

**The Courts/Parliament Trade-off:
The View from the Canadian Election Study**

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Introduction

Canadian scholars have had more than a quarter century to assess how the Canadian Charter of Rights and Freedoms is influencing Canadian political practices, political behaviour and citizen engagement. Scholarly work has shown considerable interest in the institutional dimensions of the Charter, such as how courts interpret the Charter when reviewing impugned legislation, how policy processes have changed to incorporate Charter norms, and the relationship between the Charter and federalism. Yet scholars have shown considerably less interest in assessing how the Charter has shaped citizens' attitudes about values, social policies or institutions.

This does not mean scholars have been indifferent to the societal dimensions of the Charter. Scholars have offered normative critiques of the Charter's influence on how Canadians perceive their representative institutions¹ and the Charter's effects on the language and tenor of political debate;² assessed the Charter's contribution to constitutional discourse;³ examined how Charter politics have been invoked by groups traditionally lacking political support to pursue safety and security concerns;⁴ what role the Charter has played in shaping national feminist organizations' ideas and practices of representation;⁵ how the Charter has influenced the strategies and objectives of social actors and groups;⁶ and what characteristics and circumstances make interest group Charter litigation more compelling for some than others.⁷

But what has received remarkably little attention is how the Charter is affecting public opinion, whether on contested issues that divide citizens and political parties,⁸ or on questions about how citizens assess their governing institutions. This paper moves to address this void, by examining public attitudes on what is almost certainly the most contested dimension of the Charter's relationship to Canadian politics: its influence in resolving contentious social policy issues. Drawing on two years of Canadian Elections Study data, we focus on the following questions. First, do Canadians have meaningful attitudes on what we term the "courts/parliament trade-off" and, if so, do they prefer that the courts or parliament take the

¹ F.L.Morton and Rainer Knopff, *The Charter Revolution and the Court Party* (Broadview Press, 2000).

² Rainer Knopff, "Populism and the Politics of Rights: The Dual Attack on Representative Democracy," *Canadian Journal of Political Science* 31:4 (1998), pp. 683-705.

³ Alan C. Cairns, *Disruptions: Constitutional Struggles, from the Charter to Meech Lake* (Toronto: McClelland and Stewart, 1991), Chapter 4.

⁴ Matt James, *Misrecognized Materialists. Social Movements in Canadian Constitutional Politics* (UBC Press, 2006).

⁵ Alexandra Dobrowolsky, *The Politics of Pragmatism. Women, Representation, and Constitutionalism in Canada* (Oxford University Press, 2000).

⁶ Miriam Smith, *Lesbian and Gay Rights in Canada: Social Movements and Equality-Seeking, 1971-1995* (Toronto: University of Toronto Press, 1999); Christopher P. Manfredi, *Feminist Activism in the Supreme Court* (Vancouver, UBC Press, 2004).

⁷ Gregory Hein, "Interest Group Litigation and Canadian Democracy," in Paul Howe and Peter H. Russell, eds., *Judicial Power and Canadian Democracy* (Montreal and Kingston: McGill-Queen's University Press, 2001).

⁸ A partial exception to this generalization is J. Scott Matthews, "The Political Foundations of Support for Same-sex Marriage in Canada," *Canadian Journal of Political Science* (2005) 38-4: 841-866. However, the impact of the Charter in this analysis is highly indirect – interpreted by the courts in the first instance, and then mediated via legislative responses to Supreme Court decisions.

lead in resolving contentious issues of public policy? Second, what factors explain these preferences?

Empirical and Theoretical Context

Public Opinion and the Politics of the Charter

When the Charter of Rights was adopted in 1982, it was virtually impossible for scholars to predict how the Charter would affect Canadians' attitudes toward the role of government or courts, or whether and how it would influence Canadians' attitudes about contested social policy issues. Two reasons explain this difficulty.

First, the Charter was not the product of strong political demand for radical constitutional reform. The Charter was placed and maintained on the constitutional agenda by Pierre Trudeau in quest of his constitutional vision for how the federation should evolve (a vision that overlapped with his philosophical commitment to constitutionally-protected individual rights). This statement of where the impetus arose for the Charter does not mean that Canadians were indifferent to the Charter. Indeed, interest grew as the entrenchment debate continued; stimulated during the parliamentary hearings that occurred as a result of Trudeau's threat in 1980 to seek unilateral patriation and reform of the constitution. Unexpectedly, the publicity these hearings attracted helped promote public awareness and interest in the Charter, citizens' interventions helped shape many of the Charter's key provisions,⁹ and their recommendations contributed to a strong sense of ownership of the Charter that are thought to have helped transform citizens' conceptions of their relationship to the constitution.¹⁰ But the fact that the Charter was welcomed rather than sought by Canadians invokes two important questions: Assuming Canadians were confident in parliament's judgment affecting rights before 1982 (a reasonable assumption since the public did not initiate demand for the Charter), would that confidence in parliament change after the Charter came into effect? And if so, did the Charter contribute to this change and why?

Second, although any bill of rights has potential to exert profound influence on a political system, its mere introduction does not determine the societal or institutional effects that follow. A bill of rights is not an inevitably dynamic force for social or political change, whether in terms of altering public opinion on issues or governance or affecting the political strategies individuals and groups undertake to influence social policies. Moreover, just as it is a mistake to assume a bill of rights will be an instrument for social change, it is also an error to assume it will have a predictable effect on public attitudes, whether positive or negative. The United Kingdom has recently introduced the Human Rights Act which, far from being popular, is regularly attacked in the media, criticized by politicians (including high ranking members of the party that introduced it), and subject to political campaigns to be repealed. However, the Canadian Charter of Rights and Freedoms has been received very differently.

⁹ James B. Kelly, *Governing with the Charter. Legislative and Judicial Activism and Framers' Intent* (Vancouver: UBC Press, 2005), pp. 63-64.

¹⁰ Alan C. Cairns, *Charter versus Federalism. The Dilemmas of Constitutional Reform* (Montreal and Kingston: McGill-Queen's University Press, 1992), pp. 62-95.

Earlier survey research suggests that a clear majority of Canadians believe that courts, not parliament, should have the final word on decisions related to rights.¹¹ The apparent public perception that courts have greater legitimacy to interpret rights coincides with a growing inclination by political leaders to emphasize compliance with judicial Charter interpretations, as the morally appropriate path to take for issues where courts and parliament disagree on how the Charter should guide or constrain legislation. Be that as it may, it is unclear why the Charter is so popular and, more specifically, why Canadians have more confidence in the courts than in parliament to render judgment on rights issues.

The Courts/Parliament Trade-off as a "Hard Issue"

Before considering possible sources of attitudes regarding the respective policy roles of courts and parliament, it is important to address the analytically prior question of whether Canadians actually have meaningful attitudes in this domain. Public opinion scholars have long since abandoned the assumption that citizens have "true attitudes" in regards to all of the questions that occupy the attention of practitioners and analysts of politics. Indeed, one of the earliest and most influential statements in the field concluded that mass political attitudes were, by and large, "nonattitudes": fleeting, lightly-held evaluations that could be concocted to satisfy the social pressures of the survey interview, but were otherwise meaningless. In this regard, two critical findings were the lack of *constraint* across attitudes (i.e. attitude toward issue *A* is a poor predictor of attitudes on logically-related issues *B*, *C* and *D*) and, particularly, the lack of over-time *stability* in political attitudes (i.e. attitude on issue *A* at time *t* is a poor predictor of attitude on issue *A* at time *t+1*).¹²

More recently, public opinion scholars have moved beyond this earlier, "minimalist" conception of political attitudes¹³ and, instead, have emphasized profound heterogeneity in the nature of political attitudes, both at the level of individuals and at the level of the objects of political evaluation, that is, at the level of "issues." First, there is a great deal of evidence supporting the view that citizens vary in their approach to political reasoning. For instance, the influence of abstract ideological concepts on policy attitudes tends to increase with one's knowledge of and engagement with political matters (i.e. one's political sophistication¹⁴). Likewise, the impact of feelings and emotions (e.g. affective orientations toward salient social groups or "group affect") on political attitudes, while common to both the politically knowledgeable and unknowledgeable, can be subtly articulated by one's level of cognitive sophistication about politics: the most knowledgeable can involve group affect in multi-step inferences about the policy commitments of political actors (the "likeability heuristic"); conversely, the least knowledgeable can use feelings about groups as a simple "cognitive

¹¹ Nik Nanos, "The Charter Values don't Equal Canadian Values: Strong Support for Same-Sex and Property Rights," *Policy Options* (2007) v. 28: 50-55.

¹² Philip Converse, "The Nature of Belief System in Mass Publics," in *Ideology and Discontent*, ed. David Apter (New York: Free Press, 1964).

¹³ The language of "minimalism" derives from Paul Sniderman, Richard Brody and Philip Tetlock, *Reasoning and Choice: Explorations in Political Psychology* (Cambridge, UK: Cambridge University Press, 1991).

¹⁴ Robert C. Luskin, "Explaining Political Sophistication," *Political Behavior* (1991) 12-4: 331-361.

shortcut” in evaluations of policy measures with salient group-based beneficiaries (the “group affect heuristic”).¹⁵

Second, public opinion scholars have drawn an important distinction between so-called “easy issues” and “hard issues.”¹⁶ In their classic development of this dichotomy, Edward Carmines and James Stimson define easy issues in terms of three attributes: they are “symbolic rather than technical”; they “more likely deal with policy ends than means”; and they are “long on the political agenda.”¹⁷ A hard issue, then, is one that is relatively technical and means-oriented and new on the political scene. The upshot of this distinction is that easy issues make “possible a gut response... equally from well-informed and ill-informed, from interested and uninterested, from active and apathetic voters.”¹⁸ Hard issues, in contrast, are likely to show significant differentiation across levels of political sophistication in levels of attitude constraint and in levels of non-response (the tendency of survey respondents to answer “don’t know”).¹⁹

These conclusions about the nature of public opinion have important implications for the question of Canadians’ responses to the courts/parliament trade-off. It seems clear that the relative role of courts and legislatures in policy making is a quintessentially hard issue. The nub of the question is one of means (the process of policy making), rather than ends; while a commonplace for political science scholars, one could hardly assert that the issue has long been on the national political agenda; and the issue involves the manifestly technical matter of the proper allocation of authority across the various branches of government, and does not invoke obvious associations with salient political symbols.²⁰ Accordingly, it is far from obvious that most Canadians will form meaningful attitudes on the courts/parliament trade-off. That is to say, although survey respondents may indulge interviewers with “opinions” in response to questions in this domain, it seems highly likely that these attitudes will generally be weakly constrained by associations with other political attitudes and, when measured repeatedly over-time, exhibit relatively high levels of instability. Indeed, it is probable that a non-trivial and relatively large proportion of Canadians will fail even to express attitudes on the courts/parliament trade-off when invited to do so. Further, to the extent that we do observe

¹⁵ Sniderman, Brody and Tetlock, *op. cit.* Useful general discussions of heterogeneity in mass political reasoning are found in Elisabeth Gidengil, André Blais, Neil Nevitte, and Richard Nadeau, *Citizens* (Vancouver: UBC Press, 2004) and Richard Lau and David Redlawsk, *How Voters Decide: Information Processing during Election Campaigns* (New York: Cambridge University Press, 2006). Two recent contributions to this literature in the Canadian context are Amanda Bittner, “The Effects of Information and Social Cleavages: Explaining Issue Attitudes and Vote Choice in Canada,” *Canadian Journal of Political Science* (2007) 40: 935-968, and Jason Roy, “Voter Heterogeneity: Information Differences and Voting,” *Canadian Journal of Political Science* (2009) 42: 117-137.

¹⁶ This distinction originates in Edward Carmines and James Stimson, “The Two Faces of Issue Voting,” *American Political Science Review* (1980) 74(1): 78-91.

¹⁷ Carmines and Stimson, *op. cit.*, 80.

¹⁸ Carmines and Stimson, *loc. cit.*

¹⁹ The relationship between the hard-easy issue distinction and non-response is developed in Adam Berinsky, *Silent Voices: Public Opinion and Political Participation in America* (Princeton: Princeton University Press, 2004).

²⁰ In the context of political issues, a symbolic association arises when an issue invokes a symbol that is high in “similarity” to the symbols involved in longstanding predispositions, such as party identification, value orientations or social group identifications and affects. The classic discussion of the psychology of symbolic politics is David Sears, Richard Lau, Tom Tyler, and A. Allen, “Self-Interest vs. Symbolic Politics in Policy Attitudes and Presidential Voting,” *American Political Science Review* (1980) 74: 674-684.

stable and constrained attitudes on this issue, we should find significant cognitive heterogeneity – that is, attitude stability and constraint should increase with political sophistication.

The Courts vs. Parliament: Reasoning the Choice

While many Canadians may lack stable and constrained, or “crystallized,”²¹ views on the proper roles of the courts and parliament in policy-making, it is also likely that some Canadians – the most politically sophisticated ones – will have meaningful attitudes on this issue. And, in addition to a group of political sophisticates with crystallized attitudes and a group of non-sophisticates with “nonattitudes,” we should expect a large group of citizens with attitudes toward the courts/parliament trade-off that exhibit diverse levels of crystallization. This raises the question of how those with partially or fully crystallized attitudes might have arrived at them. In other words, how might they have reasoned the choice between the courts and parliament?

Previous scholarly work on public opinion and the courts has tended to concentrate on explaining the courts’ popularity, particularly that of supreme courts²²; the congruence between courts’ decisions and majority public opinion on issues; related questions about the precise relationship between public evaluations of specific court decisions and diffuse or generalized support for the courts²³; attitudes relating to supreme court appointment procedures; and the like. Our analyses focus on questions that have received less attention, including whether Canadians actually have meaningful attitudes about the courts and their policy role and, if so, what determines these attitudes. We therefore must look beyond the existing literature on public opinion and the courts.

We propose that plausible determinants of (crystallized) attitudes on the proper roles of the courts and parliament in policy-making can be grouped into one of two categories: *process-oriented considerations* and *outcome-oriented considerations*. An emphasis on process-oriented considerations would characterize those individuals with distinct views about the processes for resolving disagreements about rights. Some might have a more juridical leaning, and assume that when rights are implicated that it is the role of courts to resolve the conflict. Others might have less confidence in assigning hegemony to courts and, for issues that do not elicit clear and unequivocally correct answers, place more emphasis on representative government to resolve the conflict. Regardless of whether the preference is for a juridical or political form of resolution, what unites this category is interest in the processes by which

²¹ Howard Schuman and Stanley Presser, *Question and Answers in Attitude Surveys: Experiments on Question Form, Wording and Context* (Thousand Oaks, CA: Sage Publications Inc., 1996), 251-274.

²² David Adamany and Joel B. Grossman, “Support for the Supreme Court as a National Policymaker,” *Law & Policy Quarterly* (1993) 5; Gregory A. Caldeira, “Neither the Purse nor the Sword: Dynamics of Public Confidence in the Supreme Court,” *American Political Science Review* (1986) 80(4): 1209-1226; Jeffery J. Mondak and Shannon Ishiyama Smithey, “The Dynamics of Public Support for the Supreme Court,” *Journal of Politics* (1997) 59(4): 1114-1142.

²³ E.g., Fletcher and Howe, “Canadian Attitudes,” (2000); James L. Gibson, Gregory A. Caldeira, Vanessa A. Baird, “On the Legitimacy of National High Courts,” *American Political Science Review* (1998) 92(2): 343-358; Lori Hausegger and Troy Riddell, “The Changing Nature of Public Support for the Supreme Court of Canada,” *Canadian Journal of Political Science* (2004) 37:1: 23-50; Mondak and Smithey (1997).

political conflicts are resolved. In contrast, the opinions of those emphasizing outcome-oriented considerations would be shaped by firmly embedded convictions about what the preferred, appropriate or legitimate outcome is to a particular conflict, with little concern for, or interest in, whether the outcome is rendered by courts or parliament.

Obviously, presenting these as dichotomous positions is a simplification. Opinions about policies are likely also to influence evaluations about institutional competence and *vice versa*. More importantly, there is no *prima facie* reason to assume that those focused on process will be indifferent to outcomes, and the outcome oriented may invoke process-related considerations too.

Our framing of the research problem here, while to some degree novel, nevertheless overlaps with a perennial question in the literature: the relationship between specific and diffuse support – between attitudes toward courts’ decisions and institutional support for the court. In other words, what effect do courts’ decisions have on attitudes toward the court generally? Indeed, how supreme courts decide on issues, many of them contentious, seems certain to be bound up with other perceptions and attitudes about the court.

Furthermore, our analytical framework is decidedly in line with work by Hibbing and Theiss-Morse,²⁴ among others, and bucks the strongly-held view that citizens “judge government by the results and are generally ignorant of or indifferent about the methods by which the results are achieved.”²⁵ Hibbing and Theiss-Morse make a strong case for the view that, notwithstanding the hard-easy issues distinction, many citizens do possess meaningful attitudes with regard to questions of political processes. Indeed, these scholars conclude that, far from being irrelevant to most citizens, process-oriented considerations frequently eclipse outcome-oriented – in their terms, “policy-oriented” – considerations in their impact on political evaluations. In Hibbing and Theiss-Morse’s view, “[p]olicies are certainly not irrelevant to American politics, but people are less concerned with the substance of public policy than analysts seem to realize. When policy preferences do come into play, they are just as likely to be endogenous as exogenous.”²⁶

For all that, it remains to specify the relevant process- and outcome-oriented considerations in this domain. The possibilities are numerous. As regards process considerations, for example, Hibbing and Theiss-Morse focus on a central dimension running from “direct democrat” to “institutional democrat,” where the former pole is typified by such processes as the initiative and the New England-style town meeting, and the latter pole is well captured in Edmund Burke’s trusteeship theory of representative democracy. A broader conception of process-oriented attitudes would also include such enduring dispositions as

²⁴ John R. Hibbing and Elizabeth Theiss-Morse, “Process Preferences and American Politics: What the People Want Government to Be,” *American Political Science Review* (2001) 95(1): 145-153. See also Hibbing and Theiss-Morse, *Stealth Democracy: Americans’ Beliefs about How Government Should Work* (New York: Cambridge University Press, 2002). One difference between our approach and that of Hibbing and Theiss-Morse is our use of the language of “outcomes.” Where Hibbing and Theiss-Morse refer to “policy,” we prefer the more general language of outcomes, in view of the fact that citizen responses may reflect considerations other than policy attitudes (e.g. party identification).

²⁵ Samuel L. Popkin, *The Reasoning Voter*. (Chicago: University of Chicago Press, 1991), 99.

²⁶ Hibbing and Theiss-Morse, *Stealth Democracy*, 34.

political trust and efficacy, along with diffuse attachments to and evaluations of the political system.²⁷ As regards the set of plausible outcome-oriented considerations, the relevant dimensions of controversy are, in principle, as numerous as the questions considered by the courts. Even if we consider only the docket of the Supreme Court of Canada, the set of relevant outcome-oriented considerations is undoubtedly very large.

Given the state of knowledge in this area, together with the nature of our data (discussed below), we take an inductive approach. We form measures of several salient, recurrent dimensions of conflict in Canadian political life – dimensions on which citizens are likely to have formed stable, meaningful dispositions. We provide more detail on this in discussion of our data.

Previous Research

What does previous empirical work say about the sorts of questions we pose in this paper? While public attitudes toward the courts and the Charter are less well-documented than those about parties, legislatures, and other political institutions, there is ample evidence that Canadians are supportive of the courts.²⁸ Indeed, Canadians seem far more supportive of the courts than ongoing and often heated debates about judicial power, particularly among critics of “judicial activism”, might suggest. Not only are the courts popular, they tend to be more popular or trusted than other political institutions, including legislatures, both in Canada and the US.²⁹

For example, in Fletcher and Howe’s 1999 survey, Canadian respondents were decidedly pro-courts, and by a two-to-one margin. Sixty-two percent of Canadians preferred giving courts the final say when a law is ruled unconstitutional, versus 30 percent in favour of granting the legislature this right.³⁰ This relative division of opinion is virtually identical to that recorded more than a decade previous in 1987.³¹ It is interesting to consider this stability over the 12-year period when we bear in mind, as Hausegger and Riddell instruct,³² that the early years of

²⁷ With regard to these constructs, see, *inter alia*, Gabriel Almond and Sidney Verba, *The Civic Culture: Political Attitudes and Democracy in Five Nations* (Princeton: Princeton University Press, 1963); David Easton, *A Systems Analysis of Political Life* (Wiley, 1965); Margaret Levi and Laura Stoker, “Political Trust and Trustworthiness,” *Annual Review of Political Science* (2000) 3: 475-507.

²⁸ Joseph F. Fletcher and Paul Howe, “Public Opinion and Canada’s Courts” in Paul Howe and Peter H. Russell, eds., *Judicial Power and Canadian Democracy* (McGill-Queen’s University Press, 2001); Joseph F. Fletcher and Paul Howe, “Canadian Attitudes toward the Charter and the Courts in Comparative Perspective,” *Choices* (2000) 6(3): 4-26; Joseph F. Fletcher and Paul Howe, “Supreme Court Cases and Court Support: The State of Canadian Public Opinion,” *Choices* (2000) 6(3): 30-54.; Jeffery J. Mondak and Shannon Ishiyama Smithey, “The Dynamics of Public Support for the Supreme Court,” *Journal of Politics* (1997) 59(4): 1114-1142; Nanos (2007); Paul M. Sniderman, Joseph F. Fletcher, Peter H. Russell, and Phillip E. Tetlock. *The Clash of Rights: Liberty, Equality, and Legitimacy in a Pluralist Democracy* (New Haven: Yale University Press, 1996).

²⁹ Valerie J. Hoekstra, “The Supreme Court and Local Public Opinion,” *American Political Science Review* (2000) 94(1):89-100; Hibbing and Theiss-Morse, *Stealth Democracy*, 98-101.

³⁰ Fletcher and Howe, “Canadian Attitudes,” (2000).

³¹ While at first glance this may seem to suggest that there is in fact temporal stability in attitudes about courts, the two survey samples are separate cross sections of the population, which precludes drawing inferences about attitude stability at the individual level across time.

³² Hausegger and Riddell (2004).

the Court were very different – both policy- and process-wise – than later years. The 1987 measurements of public opinion came before the *Morgentaler* decision, which Hausegger and Riddell describe as a “watershed concerning the public’s perceptions of the Supreme Court,”³³ and which was followed in the ensuing decade by the Court’s hearing of a succession of cases on weighty and controversial issues such as euthanasia, gay and lesbian rights, and provincial funding for abortion. In other words, from *Morgentaler* onwards, high-profile, gut-response moral and social issues became increasingly part of the Court’s docket. Presumably, this would have stimulated outcome-oriented considerations in evaluations of the Court’s role relative to that of parliament. However, there was no aggregate change in public opinion on the question from 1987 to 1999, from the immediate pre-*Morgentaler* era – when the Court was perceived as “essentially technical and non-political”³⁴ – to a decade later, after some of the Court’s most controversial and political cases to date.

This raises an important problem with outcome-oriented explanations of opinion on the courts/parliament trade-off: outcome orientations presume knowledge of outcomes. However, despite generally positive public sentiment, the public is typically thought to be poorly informed about courts’ functions, as well as their decisions.³⁵ For example, no more than half of the American public can recall any Supreme Court decision, and “those with more detailed knowledge form a mere corporal’s guard.”³⁶ Canada is similar. For instance, when surveyed in 1999, only seven percent of respondents had heard a lot about the relatively-salient 1998 *Vriend* decision, and a full 60 percent had not heard anything at all.³⁷ No doubt knowledge of specific decisions will vary according to public interest, media coverage, and so on. However, even with a judgment such as the Supreme Court’s 1998 *Secession Reference* – a decision of great direct importance for a much larger proportion of Canadians than, say, the *Vriend* decision – about one-third of respondents knew nothing about the decision.³⁸

Finally, the existing Canadian literature offers some, albeit modest, guidance on the question of the crystallization of attitudes regarding the courts/parliament trade-off. While there is nothing in the literature that provides direct grounding for hypothesizing about the temporal stability component of attitudes, there are Canadian data that speak to attitude constraint, the correlations between attitudes on logically-related issues. For example, Reform partisans were less supportive of the courts than other partisans,³⁹ a finding that corresponds to the former party’s populist ideology, rhetoric of western alienation (and corresponding antipathy toward central institutions like the Supreme Court), and support for specific reforms such as the adoption of an elected senate. On the other hand, as suggested above, there are also reasons to be sceptical about consistency across attitudes, particularly the public’s low level of knowledge about courts and their activities.

³³ Ibid, 32.

³⁴ Peter H. Russell, *The Judiciary in Canada: The Third Branch of Government*. (Toronto: McGraw-Hill Ryerson, 1987), 3.

³⁵ Hoekstra (2000); Walter F. Murphy and Joseph Tanenhaus, “Publicity, Public Opinion, and the Court,” *Northwestern University Law Review* (1990) 84.

³⁶ Adamany and Grossman, (1993), 407.

³⁷ Fletcher and Howe (2001), 286.

³⁸ Ibid.

³⁹ Fletcher and Howe (2000).

Data

We utilize the first two waves of the 2004-2006-2008 Canadian Election Study panel. These data provide useful measures of attitudes on the courts/parliament trade-off, along with a wide range of indicators of process- and outcome-oriented considerations. Also, use of the panel component of the surveys is critical to gaining leverage on the basic question of attitude stability. Our primary technique for examining the determinants of attitudes on the courts/parliament trade-off is regression analysis. In view of the nature of our dependent variable (see below), we estimate multinomial logit models.

The primary dependent variable in the analyses consists of a pair of items asked of random half-samples of CES respondents following the 2006 election. One half of the respondents were asked, “On issues like same sex marriage, who should have the final say: the courts or elected representatives?”; all other respondents were asked, “On issues like the death penalty, who should have the final say: the courts or elected representatives?” In the analysis, we code this measure as a trichotomy: courts vs. elected representatives vs. non-response.⁴⁰ In assessing the stability of attitudes in this domain, we also make use of a more general measure of the courts/parliament trade-off measured in the mailback component of the 2004 survey: “If a law conflicts with the Charter of Rights, who should have the final say? [Courts/Government/Not sure].”

We make two observations regarding the 2006 measures. First, both have an obvious “outcome orientation,” inasmuch as they mention recognizable political issues, and therefore may prime related considerations. Our estimates of the impact of outcome-oriented considerations on evaluations of the courts/parliament trade-off, thus, constitute an “upper-bound” of sorts on the magnitude of such effects; that is, outcome-oriented effects are likely to be smaller for measures that do not draw attention to policy outcomes. Second, responses to the two measures were somewhat distinctive – for instance, respondents were significantly more likely to choose the courts when the issue referent was the death penalty rather than same-sex marriage (on this, see below). At the same time, however, as discussed below, the measures are related in similar ways to the more general measure from the 2004 survey and, most importantly, the determinants of responses on the measures are similar.⁴¹ Accordingly, we combine responses to the two versions of the item and analyze them together.

As regards independent variables, we include a wide range of measures. In keeping with our inductive approach, we started by identifying all unique measures of process- and outcome-oriented considerations in the telephone-based (i.e. non-mailback) waves of the 2004 and 2006 surveys.⁴² This produced a total of 34 measures. Where items were repeated across the surveys, we selected the most recent measures. Then, guided in part by the results of various factor analyses (not reported), we produced a series of five attitude scales and also

⁴⁰ The “non-response” category includes those who: gave a response other than the courts or elected representatives; answered “don’t know”; or refused to answer the question.

⁴¹ This is not to imply that there are no significant differences when models are estimated separately for the two measures. However, differences are generally in terms of magnitude, rather than direction.

⁴² We excluded measures from the mailback component of the 2004 survey in order to retain the largest number of cases for analysis. However, we make use of a handful of these measures at various points in the analysis.

identified a number of single items that did not scale well with any other measures (presumably these items capture distinctive dimensions of political judgment). The details of the scales are as follows; we discuss the other items in the ensuing paragraph⁴³:

- *Systemic pessimism*: This six-item scale includes measures tapping evaluations of parties, the party system, politicians and external efficacy. Cronbach's α for the index is 0.71. High values of the measure correspond to the most pessimistic or cynical evaluations of politicians and parties, and of government's responsiveness to citizen demands.
- *Social liberalism*: This is a five-item scale including measures of attitudes towards gays and lesbians and feminists, along with positional commitments regarding legal same-sex marriage, abortion and gender roles. Cronbach's α for the index is 0.71. High values on the scale indicate high levels of social liberalism.
- *Ethnocentrism*: This five-item scale includes measures of attitudes toward racial minorities, Aboriginal peoples and Canada in general, and attitudes regarding immigrants and their economic impact. Cronbach's α for the index is 0.62. High values on this scale indicate high levels of ethnocentrism.
- *Market liberalism*: This ten-item scale includes measures of spending preferences regarding means-tested welfare state programs, views on corporate taxation and private health care provision, and more global orientations toward the proper role of the government in the economy. Cronbach's α for the index is 0.64. High scores on the scale correspond to the most pro-market responses on the constituent items.
- *Universal social program support*: This is a two-item index consisting of social spending preferences regarding health care and education. Cronbach's α for the index is 0.56. High values on the measure correspond to preferences for more spending in the areas of health care and education.

Four "single item" variables are also included in the analysis. High values on *gun control* correspond to support for restricting the possession of guns to the military and the police. We also include a measure on the seemingly-related issue of support for the national gun registry; note, however, that our *anti-gun registry* variable is only weakly correlated (Pearson's $r = -0.22$) with the gun control measure. *Tougher sentences* taps support for imposing "tougher sentences" on young offenders who commit violent crime, where higher values indicate more support for tough sentences. Finally, *federal treatment* measures attitudes regarding the federal government's treatment of a respondent's province of residence, where the highest value corresponds to the view that the federal government generally treats one's province better than other provinces.

In addition, we estimate the effect of *party identification*. Apart from being one of the more enduring dimensions of conflict in Canadian political life, partisanship presumably could

⁴³ Information about the specific measures composing the various scales are available from the authors.

colour responses to the courts and, especially, to legislators.⁴⁴ In the regressions we enter dummy variables for Liberal, New Democrat and Bloc Québécois partisans, and also a dummy for those indicating Green partisanship or no partisanship. The reference category is, consequently, Conservative partisanship.

Another important variable in the analysis is our measure of *political knowledge*. As suggested above, the public opinion literature leads us to consider the possibility of cognitive heterogeneity in reasoning styles with regard to the courts/parliament trade-off. Our use of a political knowledge measure to model this heterogeneity is in keeping with best practices in the literature.⁴⁵ We compute an additive index based on correct recollections of the identity of the leader of the federal New Democratic Party leader, the British Prime Minister and a female member of the current federal cabinet. The distribution of the index is approximately normal (analysis not reported), which is appropriate given theoretical expectations and empirical findings concerning political knowledge at the mass level.⁴⁶ We model statistical interactions between political knowledge and all of the independent variables above.

Finally, the regression models include controls for the following socio-demographic variables⁴⁷: *age* (a continuous variable ranging from 19 to 99 years); *language* (French speakers vs. all others); *education* (university degree-holders vs. all others); and *gender* (women=1).

Results

Attitude Crystallization

We suggest above that, for most Canadians, assessing the proper policy roles of courts and legislatures should be a difficult matter – that is, the courts/parliament trade-off should bear the attitudinal hallmarks of a “hard issue,” in the Carmines-Stimson sense. In this first section of the discussion of results, we evaluate this idea in two ways: by examining the pattern of non-response on evaluations of the trade-off; and by analyzing the stability of attitudes toward the trade-off over time. We also address the question of attitude crystallization implicitly in the next section of the discussion: the analysis of the determinants of attitudes on the courts/parliament trade-off speaks to the structure, or lack thereof, of these attitudes and, therefore, to the presence/absence of constrained attitudes in the sense intended by Converse.

(Table 1 here)

Table 1 presents the distribution of responses toward the courts/parliament trade-off. Note first that, unsurprisingly in view of previous research, a large majority of respondents choose the courts over elected representatives. Indeed, the ratio of pro-courts to pro-

⁴⁴ A useful discussion of the stability and important effects of party identification in Canada is contained in Cameron Anderson and Laura Stephenson, “The Puzzle of Elections and Voting in Canada,” in Anderson and Stephenson, eds., *Voting Behaviour in Canada* (Vancouver: UBC Press, 2010).

⁴⁵ See, especially, John Zaller, *The Nature and Origins of Mass Opinion* (New York: Cambridge University Press, 1992).

⁴⁶ Patrick Fournier, “The Uninformed Canadian Voter,” in Joanna Everitt and Brenda O’Neill, eds., *Citizen Politics: Research and Theory in Canadian Political Behaviour* (Don Mills, ON: Oxford University Press, 2002); and Luskin, *op. cit.*

⁴⁷ This list is culled from a larger set including ethnicity, religion, region, income and employment status. However, none of these were significant in the fully saturated models. (Details available from the authors.)

legislature supporters is better than 2:1 – remarkably similar to the distribution of opinion reported for 1987 and 1999 by Fletcher and Howe.⁴⁸ Notwithstanding more than a decade of debate on the issue among analysts, then, Canadians are decidedly convinced of the legitimacy of courts taking an important policy role.

But are these attitudes meaningful? Judging by levels of non-response on the item, it would seem that, in relative terms, they are. If we combine those who answered “don’t know” with those who refused to answer altogether, just under 10 percent of respondents failed to give a valid response on this item. To be sure, this is a somewhat higher level of non-response than on some measures. For instance, on the core political disposition of party identification, only 7 percent of CES respondents in 2006 were non-responsive (i.e. answered “don’t know” or were coded as refusals). Likewise, just over 7 percent of respondents were non-responsive on the presumably “easy issue” of support for the death penalty. On the other hand, 33 percent of respondents answered “don’t know” or refused to answer when queried on their views regarding legal same-sex marriage, an issue that should also fall within the “easy” category. By comparison, attitudes on the courts/parliament trade-off would seem highly crystallized.

A serious complication with this conclusion, however, relates to question wording. Critically, the measure of preference on the courts/parliament trade-off involves a strong disincentive to the non-responsive: those who expressed ambivalence on the issue (i.e. those who said “it depends”) were offered the probe, “if you had to choose, would you say the courts or elected representatives?” It is likely, therefore, that apparent levels of attitude crystallization are inflated. Conversely, the same-sex marriage item discussed in the previous paragraph involved what Schuman and Presser term a “quasi-filter” – that is, the question offered a non-response alternative: “Do you favour or oppose same-sex marriage, or *do you have no opinion on this?*”. In their analysis of the effects of such quasi-filters, Schuman and Presser find that they can lead to threefold increases in apparent levels of non-response.⁴⁹ Presumably, non-response on the same-sex marriage issue would decrease greatly if, as on the courts/parliament trade-off measure, respondents “had to choose.”

Overall, then, analysis of the pattern of non-response is somewhat ambiguous in its implications. Nevertheless, given that the courts/parliament trade-off undoubtedly has the features of a “hard issue,” the level of attitude crystallization – although possibly inflated – seems somewhat surprising. We take up the determinants of non-response when we consider the regression results in the next section.

(Table 2 here)

A second approach to the question of attitude crystallization is to evaluate the over-time consistency or stability of responses. We do so, as noted in discussion of our data, by utilizing the more general measure of the courts/parliament trade-off from the mailback component of the 2004 survey. This item is not framed in terms of outcomes – in the manner of the questions from the 2006 survey – and simply refers to a hypothetical situation wherein “a law conflicts with the Charter of Rights” (see above). Accordingly, notwithstanding levels of

⁴⁸ Fletcher and Howe, “Canadian Attitudes,” (2000).

⁴⁹ Schuman and Presser, *op. cit.*, 113-146.

attitude crystallization in regards to the proper relationship between the courts and legislatures, we would expect a certain inconsistency in responses across the two measures, insofar as they are, strictly speaking, different questions. A countervailing analytical consideration derives from the fact that we obviously must restrict the analysis to those respondents who participated in the mailback survey. As these respondents are likely to be relatively engaged – in a cognitive and motivational sense⁵⁰ – with political matters, levels of attitude crystallization in this group may be unrepresentatively high. On average, then, these two forces may offset each other.⁵¹

Turning to Table 2, which cross-tabulates 2004 and 2006 attitudes, we see evidence of non-trivial instability in responses to the courts/parliament trade-off. Note that, if attitudes were perfectly stable, all cases would be found along the minor diagonal, running from the top-left to bottom-right cells of the table. We observe, however, that the off-diagonal cells are far from empty. Even so, 2004 and 2006 attitudes are significantly correlated, albeit to a moderate degree (Pearson's $r=0.26$; $p=0.000$).⁵² To illustrate the relationship, consider that the probability of giving a pro-courts response in 2006 falls sharply from 70 to just over 40 percent as one moves from a pro-courts to a pro-parliament response in 2004.

(Table 3 here)

This association notwithstanding, the magnitude of over-time inconsistency in responses is striking, as shown in Table 3. This table duplicates Table 2, except now we report cell (rather than column) percentages. The table indicates that just 55.6 percent of respondents gave the same response across the two surveys or, conversely, that fully 44.4 percent of respondents were unstable in their responses. The pattern of inconsistencies also bears noting, as almost half the attitude switches (19.7 percent of overall responses) were conversions – that is, movement from a pro-courts to a pro-parliament orientation – rather than transitions to or from non-response. To gain a sense of the relative magnitude of this instability, consider again the “easier” issues of support for the death penalty and legal same-sex marriage. The rate of 2004-2006 turnover on these attitudes is just 29 and 27 percent, respectively, and attitude conversions are far more rare.⁵³

We have, therefore, a somewhat mixed picture regarding attitude crystallization on the courts/parliament trade-off. Bearing in mind that the results may be partially a survey artefact (see discussion above), it nonetheless seems that levels of non-response are surprisingly low. Contrarily, there is significant evidence of response instability over time, with fully one-fifth of the sample making an apparent 180 degree turn on the issue in a period of less than two years. We conclude that a non-trivial proportion of Canadians must have very lightly-held attitudes, or perhaps no attitudes at all, in regards to the courts/parliament trade-off. At the same time, it is

⁵⁰ And, indeed, mailback respondents score significantly higher on our measure of political knowledge ($p=0.000$).

⁵¹ We also note that attitude changes in response to modest changes in question wording are also often considered symptomatic of “nonattitudes.” On this point, see Larry Bartels, “Democracy with Attitudes,” in Michael MacKuen and George Rabinowitz, eds., *Electoral Democracy* (Ann Arbor, MI: The University of Michigan Press, 2003).

⁵² Gamma=0.39 and Kendall's tau-b=0.23.

⁵³ For instance, just 3.2 percent of the overall sample switched from death penalty support to opposition or vice versa.

also the case that a majority of Canadians – better than half, by our estimate – likely have meaningful views on this issue. We now turn to the sources of those views.

Determinants of Attitudes on the Courts/Parliament Trade-off

Next, we move to the second major question, what process- and outcome-oriented considerations determine individuals' preferences in the courts/parliament trade-off? We proceed in two stages, adding political knowledge interactions in the second stage. As noted above, we estimate our models as multinomial logits. The base outcome is 'elected representatives.' This allows us to assess the probability of professing non-attitudes (DK/other), as well as the probability of choosing one of the substantive alternatives (courts) over the other (elected representatives). The logic of proceeding this way is informed, obviously, by the nature of our two central questions regarding the existence of true attitudes and the courts/parliament trade-off.

(Table 4 here)

As regards the probability of giving the "DK/other" response, the significant effects are relatively few. These speak, first, to cognitive and motivational (i.e. political engagement) effects: being a woman or a non-partisan (of a major party) increases the probability of choosing "other/DK". So does being an ethnocentric, and the effect here is large – a 12% difference between those who score high on this scale versus those who score low.⁵⁴ A couple of the issue variables are also significant in this model. Those who think that the gun registry should be scrapped entirely and those who think that tougher sentencing is the best way to deal with young offenders are less likely to give non-responses, suggesting perhaps that those with strong views on law and order issues are more likely to hold positions on the courts/parliament trade-off.

The critical comparison is between elected representatives and the courts, and here there is more structure. Women are more likely than men to choose the courts, a finding that may relate to the Charter "wins" related to gender equality in the courts from *Morgentaler* onwards.⁵⁵ French-speakers – overwhelmingly Quebecers of course – and university degree-holders are more likely to choose elected representatives, rather than the courts. The Quebec finding is intriguing, suggesting that irrespective of partisanship and values, Quebecers are more suspicious of the courts, a position which may be related in no small measure to the Supreme Court's past decisions vis-à-vis the province, particularly the *Secession Reference*, the Court's invalidation of parts of Bill 101 in *Ford*, and so on. The degree-holders effect seems

⁵⁴ All post-estimation first difference estimates were obtained using Clarify for Stata (Tomz, Wittenberg, and King 2003).

⁵⁵ Certainly, there have been cases where gender equity was not served by the Supreme Court, such as the Court's 1991 striking down of rape shield laws. In the main, however, scholars agree that many post-Charter equality decisions have been in women's favour on such issues as the decriminalization of abortion (*Morgentaler*), the recognition of discriminatory practices against pregnant women as sex discrimination (*Brooks*), as well as in the Court's decisions on consent in sexual assault cases (*Norberg, R. v. M., R. v. Whitley*).

more predictable, and fits with longstanding findings regarding the role of education in sustaining commitment to representative democracy.⁵⁶

There are notable partisan effects in the courts/parliament trade-off. New Democrats, Liberals, and non-partisans are more likely than Conservatives to defer to the courts. The largest partisan effect is for the Liberals, who are 14% more likely than Conservatives to favour the courts over elected representatives, according to our first difference estimates. This finding certainly makes sense given past work reporting high support among Liberals for the courts, including evidence as far back as the mid-1970s.⁵⁷ The Liberal effect is also likely related to the party's role in entrenching the Charter, a factor that figures in Sniderman and colleagues' explanation of the finding.⁵⁸ The pattern of partisan effects suggests significant policy content in reasoning about the court's role: basically, Conservatives are more hostile than everyone else to the idea of "letting the court decide."

Ethnocentrics are more likely to defer to the courts than to elected representatives, a finding that deserves further exploration. By way of tentative explanation for this result, we propose several possible routes. It may be that ethnocentrics, inasmuch as they are suspicious of others,⁵⁹ may be suspicious of popular democracy. The interpretation in this case would be, then, that ethnocentrics are repelled by the legislature, rather than particularly drawn to the courts. This would be something of a process-oriented view on the matter, for in this account, ethnocentrics are conceptualized as placing low trust in popular will as a means to decide law and policy. We can evaluate this interpretation, to some degree, by turning to responses in the mailback portion of the 2004 survey. (We note, however, that generalizations from this small and relatively self-selected sample are dubious.⁶⁰) These ancillary tabular analyses reveal that ethnocentrics are no more skeptical than others about fellow citizens (results not shown).⁶¹ While preliminary, these analyses encourage scepticism about the anti-populist explanation, at least until further investigation is done.

Another process-oriented story is that ethnocentrics may oppose accommodation for different groups. They want everyone to be treated the same, equate equality and fairness with sameness of treatment, and may, correspondingly, have more confidence that judges are insulated from the pressures imposed by advocacy groups to 'alter' processes/outcomes in the name of accommodation. (Note, however, that this view would be precisely the opposite of the much-debated "court party thesis" of F.L. Morton and Rainer Knopf.⁶²) There may be something

⁵⁶ Philip Converse, for example, famously described education as "the universal solvent" with respect to political involvement and participation. See Philip Converse, "Change in the American Electorate," in Angus Campbell and Philip E. Converse, eds., *The Human Meaning of Social Change* (New York: Russell Sage, 1972).

⁵⁷ Casey, Gregory, "Popular Perceptions of Supreme Court Rulings," *American Politics Quarterly* (1976) 4: 3-45.

⁵⁸ Sniderman et al. (1996).

⁵⁹ On the nature of ethnocentrism and its role in political attitudes and behaviour, see Donald Kinder, "Belief Systems after Converse," in MacKuen and Rabinowitz, *op. cit.*

⁶⁰ See above and fn. 49.

⁶¹ Tabular analyses reveal, for example, that ethnocentrics are more likely than non-ethnocentrics to agree that "we could probably solve most of our big national problems if decisions could be brought back to the people at the grass roots." Moreover, ethnocentrism does not co-vary with views on the capacity of ordinary citizens to understand whether government is doing a good job.

⁶² Morton and Knopf, *op. cit.*

to this account. Turning once again to the mailback survey, supplementary analyses show that ethnocentrism is positively correlated with the belief that parties “cater” too much to minorities, as well as the belief that Aboriginals could “make it” if they “tried harder,” and is negatively correlated with the idea that minorities have greater difficulties succeeding compared to white people (results not shown). In sum, ethnocentrists are more apt to deny that there are systemic forces that diminish the life chances of minorities and Aboriginals. Rather, failure to thrive seems to be attributed to personal shortcomings. As such, ethnocentrists’ critical view of parties’ efforts on minority rights and opportunities may be motivated by a sense of unfairness toward what is seen as parties’ preferential treatment of minorities. This type of reasoning may be what orients ethnocentrists to the courts, rather than elected representatives.

A final possibility – an outcome-oriented one, in contrast – is that perhaps ethnocentrists value the courts’ (and the Charter’s) protection of freedom of expression and other civil liberties, especially in a country where many would have tighter controls on expression. Cases such as *Sharpe* – and also *Keegstra*, *Zundel*, and others – come to mind, for in all three the court protected the right to publicize and communicate bigoted views. While intuitively appealing, if this account were accurate, political knowledge should presumably mediate the relationship. In other words, we would expect that only politically-informed ethnocentrists would be aware, even in the most general sense, about past jurisprudence where the court has taken a liberal approach to free speech, thereby leading to greater deference to the court than to parliament because of the court’s commitment to protecting speech. As will be discussed shortly, we do not see this knowledge effect.

Ethnocentrists aside, social liberals also prefer the courts over parliament, offering further evidence of significant policy content in reasoning about which institution should have the final say (and making for strange bedfellows in the pro-courts camp!). Social liberals have been repeat “winners” in the courts in the post-Charter world, as discussed earlier in the context of cases on abortion rights, same-sex marriage, consent in sexual assault, employment equity, and the like. The size of the coefficient makes social liberalism the model’s strongest predictor of position on the courts/parliament trade-off, with the most socially liberal being 30% more likely to defer to the courts than the most socially conservative, according to our first difference estimates.

At the same time market liberals defer to elected representatives, not the courts, an interesting finding considering that business has often fared just as well in the courts as equality-seeking civil society groups have. Indeed, cases like *Chaoulli*, which was decided only six months prior to the 2006 wave of the CES, but also decisions such as *Irwin Toy Company*, which established that corporations have Charter rights to expression, should motivate market liberals toward the courts. Indeed, one of the items in the market liberalism scale asks about private health care provision, the topic of the high-profile *Chaoulli* case. On the other hand, our dependent variable was part of the 2006 post-election wave, so the Harper Conservatives had just won their first minority government. It seems possible, then, that market liberals would have been eagerly anticipating desirable policy change as a result of the turnover in power, orienting them toward elected representatives.

(Table 5 here)

Next, we add political knowledge interactions to our model. Starting with the probability of choosing non-response (i.e., DK/other) when faced with the question about the courts/parliament trade-off, results are similar to above. Women are more likely to choose non-response, as are non-partisans. Political knowledge itself is a strong predictor of providing a substantive response to the question. However, knowledge has virtually no mediating effects. Among those with high support for universal social programs, the most knowledgeable are significantly more likely to choose non-response than the unknowledgeable. This may be due to confusion about whether the courts or elected representatives would be the best protectors of the welfare state. Which institution should pro-welfare state individuals prefer to have the final say? Early 2006 witnessed the first Conservative federal victory since 1988, which suggests the courts. However, six months previous, the SCC's decision in *Chaoulli* suggests elected representatives. Perhaps a sizeable number of social program supporters were conflicted, particularly if they took recent contextual factors into consideration, and this ambivalence may have pushed them toward non-response.

Moving to the courts/parliament trade-off, the same socio-demographic and partisan effects (women, Quebecers, degree-holders, and Liberals) are there, with only very minor changes in the magnitudes of these variables. Significant effects are very few, obviously, among the knowledge interactions. Political knowledge seems to mediate only the effect of support for universal social programs, producing deference to the courts among highly knowledgeable social program supporters. Overall, the lack of knowledge effects is surprising, for few people are aware of the courts' work, and only a relative handful possess detailed knowledge of particular cases. Puzzling as they are, parallel results have been obtained in other studies. Hausegger and Riddell, for example, found knowledge to have no effect on specific or diffuse support for the Canadian Supreme Court.⁶³

Before concluding discussion of the regression results, we note another important non-effect: our scale of systemic pessimism is not significantly related to attitudes on the courts/parliament trade-off. Inasmuch as the measure's components are skewed in the direction of parties and politicians (that is, toward evaluations of elected representatives), one might expect those at the high end of the index to prefer the courts over parliament. As it turns out, however, it would seem the measure tracks more global sentiments regarding political institutions. Consequently, systemic pessimists may wish a pox on both houses (or institutions).

Conclusion

This paper presents a first cut through some complex issues around how Canadians think about important political institutions, and about trade-offs between them. The Charter is nearly 30 years old, and the courts' policy role has increased dramatically as a result. The effects of the role conferred on the courts by the Charter are manifest in the various high-profile decisions rendered by the courts – some of them mentioned in this paper – as well as an indelibly changed relationship between the Supreme Court and parliament, both of which have generated plenty of grist for the mill of scholarly and public debate. In this context, it may be

⁶³ Hausegger and Riddell (2004), 38.

surprising, to some, that there are strong signs of weakly crystallized attitudes toward the courts/parliament trade-off. A lot of Canadians simply do not have well-formed or stable preferences on the question. Cast in Carmines and Stimson's framework of hard versus easy issues, however, the results make more sense. Allocating ultimate authority over policy between two equally legitimate institutions whose functions are not widely well-understood individually, much less in relation to one another, is a hard task.

Among those who do seem to have real attitudes on the courts-parliament trade-off, there are some predictable findings, many of which relate to policy- or outcome-oriented considerations. Winners and losers in the courts seem to have sensible attitudes toward the trade-off, with women and social liberals favouring the courts, and Quebecers preferring elected representatives. Liberals – the architects, as it were, of the courts' enhanced role and the Supreme Court's changed relationship with parliament – are court oriented. So are New Democrats and non-partisans, although to lesser extents. Ethnocentrism, social liberalism, and market liberalism, all important value cleavages, bear on the courts/parliament trade-off as well, and while we have identified what seem to be plausible explanations for these findings, some which highlight outcomes and others process, further testing is needed.

The virtual absence of knowledge effects is puzzling given the fact that the proper distribution of power between the courts and parliament is a hard issue. It has all the hallmarks of a technical, rather than gut-response, issue, and as such creates a relative cognitive/informational burden to sort through the two options. Add to this the empirical evidence suggesting that relatively few Canadians know anything about even the most famous and political of the SCC's decisions, and the lack of heterogeneity is all the more unexpected.

Table 1. Attitudes on the Courts/Parliament Trade-off

	Frequency	%
Courts	1,980	60.9
Elected reps.	852	26.2
Other institution/actor	104	3.2
Don't know	282	8.7
Refused	32	1.0
Total	3,250	100

Data: Canadian Election Study, 2006; not weighted.

Table 2. Response Stability on the Courts/Parliament Trade-off (column percentages)

		<u>2004 survey</u>			Total
		Courts	Other/non- response	Elected reps.	
<u>2006 survey</u>	Courts	450 70.3	117 56.0	87 40.9	654 61.6
	Other/non-response	68 10.6	38 18.2	24 11.3	130 12.2
	Elected reps.	122 19.1	54 25.8	102 47.9	278 26.2
	Total	640 100	209 100	213 100	1,062 100

Data: Canadian Election Study, 2004, 2006; not weighted.

Table 3. Response Turnover on the Courts/Parliament Trade-off (cell percentages)

		<u>2004 survey</u>			Total
		Courts	Other/non- response	Elected reps.	
<u>2006 survey</u>	Courts	450 42.4	117 11.0	87 8.2	654 61.6
	Other/non-response	68 6.4	38 3.6	24 2.3	130 12.2
	Elected reps.	122 11.5	54 5.1	102 9.6	278 26.2
	Total	640 60.3	209 19.7	213 20.1	1,062 100.0

Data: Canadian Election Study, 2004, 2006; not weighted.

Table 4: Multinomial Regression of Courts/Parliament Trade-Off

	Non-response		Courts	
	b	se	b	se
Age	-0.003	(0.006)	-0.004	(0.004)
Woman	0.726**	(0.178)	0.365**	(0.122)
Quebecer	-0.144	(0.250)	-0.297+	(0.180)
University degree	-0.296	(0.200)	-0.325*	(0.136)
Liberal	0.304	(0.259)	0.756**	(0.173)
NDP	0.252	(0.361)	0.423+	(0.253)
Bloc	-0.518	(0.447)	0.266	(0.285)
Non-partisan	0.646**	(0.236)	0.422*	(0.171)
Ethnocentrism	1.919**	(0.651)	1.286**	(0.468)
Social liberalism	0.047	(0.476)	1.316**	(0.340)
Market liberalism	-0.946	(0.593)	-0.781+	(0.403)
Univ. soc. prgm. support	0.301	(0.234)	0.252	(0.161)
Systemic pessimism	0.217	(0.534)	0.311	(0.373)
Gun control	-0.290	(0.228)	0.222	(0.159)
Anti-gun registry	-0.480+	(0.248)	-0.106	(0.176)
Tougher sentences	-0.561**	(0.183)	-0.070	(0.128)
Federal treatment	0.317	(0.257)	0.360*	(0.178)
Constant	-0.965	(0.736)	-0.648	(0.525)
N	1657			
pseudo-R ²	0.057			
+ p<0.10, * p<0.05, ** p<0.01				
Base outcome for both is elected representatives				

Data: Canadian Election Study 2004, 2006.

Table 5: Multinomial Regression of Courts/Parliament Trade-Off, Knowledge Interactions

	Non-response		Courts	
	b	se	b	se
Age	-0.003	(0.006)	-0.004	(0.004)
Woman	0.644**	(0.183)	0.349**	(0.126)
Quebecer	-0.214	(0.255)	-0.297	(0.183)
University degree	-0.199	(0.206)	-0.273+	(0.140)
Liberal	0.357	(0.508)	0.697+	(0.373)
NDP	0.909	(0.761)	0.543	(0.604)
Bloc	-0.014	(0.696)	0.314	(0.481)
Non-partisan	0.805+	(0.454)	0.269	(0.361)
Ethnocentrism	0.503	(1.158)	1.106	(0.915)
Social liberalism	-0.778	(0.882)	1.323+	(0.710)
Market liberalism	-1.246	(1.228)	0.219	(0.918)
Univ. soc. prgm. support	-0.853+	(0.476)	-0.606	(0.374)
Systemic pessimism	-1.037	(1.022)	0.050	(0.782)
Gun control	0.016	(0.423)	-0.027	(0.329)
Anti-gun registry	-0.009	(0.451)	0.355	(0.346)
Tougher sentences	-0.447	(0.348)	-0.414	(0.271)
Federal treatment	-0.070	(0.531)	0.114	(0.403)
Liberal*knowledge	-0.138	(0.779)	0.068	(0.536)
NDP*knowledge	-1.263	(1.185)	-0.251	(0.862)
Bloc*knowledge	-1.051	(1.165)	-0.136	(0.714)
Non-partisan*knowledge	-0.446	(0.711)	0.224	(0.529)
Ethnocentrism*knowledge	2.012	(1.871)	0.128	(1.389)
Social liberalism*knowledge	1.971	(1.353)	0.098	(1.013)
Market liberalism*knowledge	0.696	(1.874)	-1.413	(1.303)
Univ. soc. prgm. support*knowledge	1.936**	(0.731)	1.325*	(0.523)
Systemic pessimism*knowledge	2.270	(1.637)	0.449	(1.173)
Gun control*knowledge	-0.656	(0.672)	0.419	(0.484)
Anti-gun registry*knowledge	-0.705	(0.732)	-0.704	(0.523)
Tougher sentences*knowledge	-0.318	(0.551)	0.579	(0.392)
Federal treatment*knowledge	0.607	(0.797)	0.357	(0.565)
Knowledge	-4.591*	(1.900)	-1.169	(1.406)
Constant	1.665	(1.300)	0.044	(1.032)
N	1657			
pseudo-R ²	0.071			
+ p<0.10, * p<0.05,** p<0.01				
Base outcome for both is elected representatives				

Data: Canadian Election Study 2004, 2006