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The Verdict Is In: Judge and Administrator Perceptions of State Court Governance

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Abstract

The court unification movement has progressed in fits and starts over the decades. Recent proposals have been put forth that attempt to continue the move toward a state court structure that utilizes a more coherent approach to governance. Drawing on a survey of court personnel who were asked about a set of proposed governance principles, this article examines how state court judges and administrators view their roles and responsibilities in the court system, the current need for court reform, the importance of future trends, and whether they are confident in the performance of their respective court system. Three hundred and seventy-five judges and administrators answered sixty-two questions regarding principles governing state court procedures and measures of their confidence in the court system. Participants overwhelmingly agreed that changes in court governance are necessary, although the degree of change for specific principles and trends was moderated by career, age, and time working for the courts. Results indicate that perceptions of court performance are not uniform among court professionals, perhaps signifying that current court governance emphases should be reexamined.

Keywords: court reform, court organization, court standards, unification

Debate on the most effective model for organizing state court systems continues. The long-standing movement among states to unify their courts in order to increase public satisfaction and court performance generated reforms in many states but largely lost steam by the mid-1980s. A recent review of the unification agenda (Rottman 2008) found that only one-third of the states have a court system that conforms closely to the original unification model as proposed by the American Bar Association (ABA) in 1974. That proportion shows little advance in court unification in the last twenty years (Flango and Rottman 1992). One reason for the incomplete adoption of the unification agenda is the lack of persuasive empirical evidence to show that achieving unification provides an advantage in either increasing public satisfaction with courts (Mahoney, Sarat, and Weller 1978) or making courts more effective (Rottman and Hewitt 1996).

While there is no consensus on the best way to organize state court systems, new ideas are emerging that reject a one-size-fits-all approach and seek to allow each state to find the most effective form of governance for its needs and circumstances. This article tests the appeal of one such approach now currently receiving considerable attention in the state court community. This approach, advocated by Christine Durham and Dan Becker (2010),¹ advances general principles for court governance that are applicable to any court system, regardless of its level of unification. The approach emerged from a three-year Harvard Kennedy School of Government "Executive Session for State Court Leaders in the 21st Century," and it follows a model the Kennedy School previously applied to policing, prosecution, and defenders as a way to solve the impasses associated with traditional practices.²

The 2010 survey of judges and court administrators that forms the basis of this article, however, offers a more comprehensive look at what judges think about issues related to the unification agenda, in addition to adding the voices of court administrators. Specifically, we analyze the survey responses to answer three basic questions relevant to court reform: First, how satisfied are contemporary judges and administrators with the status quo in terms of how they are governed? Second, which court functions are seen as best performed locally at the trial court level, and which functions require authoritative guidance from a centralized administration? Third, are there significant differences in perspectives on court reform between judges and administrators or by career length?

In this way, our assessment of the Durham and Becker (2010) principles and of the general views of court insiders toward aspects of unification follows in a tradition of assessing court reform based on the perceptions and preferences of court insiders (Berkson 1980; Mahoney et al. 1978; Scheb 1990), rather than or in addition to those of the general public. While our analysis provides feedback on the response to the Durham and Becker principles, our principal concern is to provide analysis relevant to our research questions about how satisfied judges and administrators are with the organization of their state's courts, whether court insiders

1. Christine Durham is currently a member of the Utah Supreme Court (serving as chief justice between 2002 and 2012) and Dan Becker is the Utah state court administrator. Both were members of the Executive Session for State Court Leaders in the 21st century.

2. An Executive Session brings together individuals of independent standing who take joint responsibility for rethinking and improving society's response to an issue. For a description of the Executive Session and the resulting "New Perspectives in Court Leadership" paper series, see <http://www.hks.harvard.edu/programs/criminaljustice/research-publications/executive-sessions/esstatecourts>. The Executive Session was funded by the Bureau of Justice Assistance and the State Justice Institute.

agree on which functions should be a local responsibility, and whether there are patterns in responses that distinguish judges from administrators or relatively new versus long-serving court insiders.

First, we examine judge and court administrator attitudes regarding how courts *should* work, in contrast to how courts *currently* work, in relation to the ten principles. This analysis of whether a gap in the perceptions of court personnel regarding the ways in which courts should work and how they actually do work is important for identifying whether there is a perceived need for new governing principles, such as the ones outlined by Durham and Becker (2010). Second, we examine attitudes regarding which features of state court governance should be located at the central level and which at the local level, a key question that has not been studied. Third, we also examine whether any gap between one's ideal view of the courts and how they believe the courts actually work varies as a function of factors such as age and length of time in their current career. Finally, we return to our examination of the gaps in perceptions of judges and court administrators to determine whether such gaps might have a relationship to the confidence that court personnel have in the ability of state courts to carry out important court functions. We conclude by discussing our findings in the context of Durham and Becker's proposed governance principles and the current status of court reform.

Taken together, these analyses provide a unique look at the views and opinions of court personnel who work within the context of current court governance structures. In conjunction with the writing of Durham and Becker (2010), we believe this article allows for an opportunity for practitioners to take stock of the current attitudes of state court personnel as we look forward to potential trends, especially as state governments continue to operate in an age of relative austerity. If institutional reforms are indeed on the horizon, as seems likely (National Center for State Courts 2011), this article will help provide a baseline understanding of the current status of court reform in the United States.

The Unification Agenda and How it is Viewed by Court Insiders

The unification agenda called for implementing four principles intended to create unified state court systems that would be better able to manage themselves, protect their interests, maintain independence from the other branches of government, and increase public satisfaction with the courts. Groups such as the ABA and the American Judicature Society advocated for unification as a solution to what ailed the state courts, abetted by significant funding support from the U.S. Department of Justice. The prevailing standards were established by the ABA (1974/1990). States court systems were to be reformed by (1) simplifying their organizational structure by consolidating trial courts, (2) centralizing management and personnel policies, (3) replacing local court funding with a single centralized judiciary budget, and (4) centralizing rule-making authority in the state supreme court. The standards acknowledged, but largely ignored, the implications for achieving unification and, in many states, the political, legal, and other realities making unification unachievable and perhaps undesirable.

The unification agenda therefore progressed unevenly across the country, with most of the associated changes to court structure occurring in the initial decade of those efforts. By the mid- 1970s, skepticism about the generalizability and even the wisdom of this agenda (Gallas 1976; Lipscher and Conti 1991) was commonplace. The limited research undertaken

to find evidence for the benefits of unification was disappointing to advocates. In particular, the expectations of reformers were shaken when a special analysis of a 1977 national survey found no differences between the perceptions of their courts by residents in three states with a long history of court reform and three states “with traditional orientations” (Mahoney et al. 1978).

The benefits of unification also were not apparent in the field research on the topic. One study of trial courts in four states with varying levels of unification concluded that there was some relationship between the level of unification and court performance (as assessed both by the courtroom work group and local leaders in the legal and local government community), giving a slight advantage to trial courts in unified systems, but nonetheless concluded: “court unification, in and of itself, is not necessarily associated with higher levels of court performance” (Rottman and Hewitt 1996, 82). Locally determined factors, such as the method for making judicial assignments, were found to be more important.

For the most part, assessments of unification relied on surveys of the general public, leading one researcher to express concern that “[c]onspicuously absent from the numerous articles on court reform are studies of judges’ attitudes toward important reform issues” (Scheb 1990, 17). To date, only a small research literature on judges’ attitudes to court reform exists, most of which dates back to the period in which the unification agenda was advancing. First, the 1977 Public Image of the Courts survey was extended to include separate samples of judges, lawyers, and community leaders. As with the general public, members of these groups did not report greater confidence in the courts of “unified” states, although there was greater awareness that reforms associated with unification had been implemented there. Judges also varied in the perceived need for reform: 40 percent reported a “great” or “moderate” need for reform, while another 27 percent believed “some reform” was needed (Mahoney et al. 1978, 86). The remainder saw no need for reform.

In a national survey of probate judges, Berkson (1980) found a split in views about the desirability of unification, with only 44 percent of probate judges supporting unification. These supporters viewed “greater prestige” and “salaries more equitable” as consequences benefiting themselves, but they were also overwhelmingly persuaded that the public would be better served and taxpayers would save from unification. Another national survey focused on the perceptions of appellate judges (Scheb 1990). This 1987 survey once again found a lack of consensus on the value of court consolidation, a central plank of the reform agenda, with 55 percent of appellate judges agreeing that consolidation was beneficial and with 22 percent disagreeing, leaving 23 percent “not sure.” The only subsequent survey-based assessment of court reform by court insiders is the one analyzed in the present article (Durham and Becker 2010).

The Durham and Becker Principles for State Court Governance

The initial meetings of the Executive Session for State Court Leaders in the 21st Century identified tensions between local and centralized decision-makers as a key problem facing the state courts. This led Executive Session members Utah Chief Justice Christine Durham and Utah state court administrator Dan Becker to urge state courts to reevaluate traditional methods of managing courts so that contemporary problems can be addressed. They set forth ten

principles by which courts should be governed in an attempt to jumpstart a national debate on how potentially outdated methods might be modernized to meet current and future challenges (Durham and Becker 2010).³

There are several notable features of their principles. First, they are designed to apply to all state court systems regardless of their level of unification. Second, the principles focus on the internal operations of the courts rather than external perceptions of the courts or relations with outside entities:

The principles were developed by examining what courts, as institutions, need to do internally, to meet their responsibilities. This is in contrast to much of the current writing about the future of court governance, which considers ways in which the state courts can improve their relationship with the other branches of government. (Durham and Becker 2010, 1)

As such, Durham and Becker's (2010) ten court management principles represent one of the most recent and comprehensive set of recommendations currently being advocated by court experts.⁴ The principles promoted by Durham and Becker reflect a general conclusion that while specific organizational features such as full unification may influence the administration and efficiency of justice (Dahlin 1993; Nelson 2001), it is, perhaps, more important for courts to simply to have a coherent set of policies in place (Henderson and Kerwin 1983). Given that judges and administrators develop and carry out such policies, it is critical to understand how these individuals perceive their applicability and their state's progress toward adopting a coherent set of policies. At the same time, our analysis of those attitudes can be used to provide answers to questions about satisfaction with how state courts are governed and where the line should be drawn between local and central responsibilities.

The Durham and Becker (2010) principles are meant not as a rigid collection of rules, but instead as a starting point that can and should be adapted to fit the needs of individual court systems, however those might be defined. Indeed, as Durham and Becker note, court culture—the expectations, practices, and informal rules of courts (Church, Carlson, Lee, and Tan 1978)—is a critical determinant of the success of structural reforms (Ostrom and Hanson 2010). Importantly, several of the principles (e.g., transparency, voice) are grounded in procedural justice, a theory from social psychology that explains how members of the public define the elements of fair decision-making (e.g., Tyler 1990). Procedural justice has been shown to be an important element of properly functioning courts (Burke and Leben 2008; Rottman and Tomkins 1999). Before moving to a description of our analytic approach, we briefly list and expand on each of the ten court principles put forth by Durham and Becker.

3. See note 1.

4. Since the mid-1970s, a number of models for court reform have been advanced based on theories of organization. These include contingency theory, TQM (total quality management), and organizational culture (Ostrom and Hanson 2010). For a partial summary of these approaches, see Rottman (2010). Their application, however, has been focused on the level of the trial court, not the state court system. The Durham and Becker contribution, by contrast, is focused on reforming state court systems by adopting a set of principles in a manner appropriate for the individual state. The Executive Session for State Court Leaders produced two other approaches to state-level court reform. Former Phoenix, Arizona presiding judge Barbara Mundell and Texas Chief Justice Wallace Jefferson (2012) contributed ideas on reconciling local and central interests in court governance and National Center for State Courts president Mary McQueen applies loosely-coupled organization theory to urge courts to look to hospitals and universities, not other government units or corporations, as the guide to court reform (2013). All of these new approaches stress flexibility and the impossibility of any set of standards that can be applied uncritically in the vast majority of states.

- Principle 1: "A well-defined governance structure for policy formulation and administration for the entire court system." Despite the call for the unification of court systems in the 1970s and 1980s, Durham and Becker show that many jurisdictions still lack a central authority, possibly due to an absence of consensus that full unification is the logical goal for all court systems.
- Principle 2: "Meaningful input from all court levels into the decision-making process." Durham and Becker emphasize that input from all levels of the court system brings two essential elements to the decision-making process. First, the variety of novel ideas and knowledge is enhanced. Second, if the constituents of each system feel they do not have a say in the decision-making process, they have the potential to lose faith in the system, resulting in apathy or outright resistance.
- Principle 3: "A system that speaks with a single voice." A unified voice while dealing with the public and other branches of government is necessary to reflect institutional independence and equality, as well as to garner the respect the courts deserve.
- Principle 4: "Selection of judicial leadership based on competency, not seniority or rotation." Durham and Becker suggest a more thoughtful approach to leadership selection and training, expanding on traditional methods that focus on seniority or rotation.
- Principle 5: "Commitment to transparency and accountability." Parallel with the ongoing calls for transparency within the federal government, Durham and Becker argue that for state courts to justify institutional independence, they must also be open with how they utilize public resources.
- Principle 6: "Authority to allocate resources and spend appropriated funds independent of the legislative and executive branches." By allowing courts to monitor and allocate their own resources, they would have the independence to manage funds without being influenced by the third-party agendas of the legislative and executive branches.
- Principle 7: "A focus on policy level issues; delegation with clarity to administrative staff; and a commitment to evaluation." By assigning policy decisions to structural heads of the judicial system and the more day-to-day tasks to administrative staff, state courts can improve operating efficiency. In addition, Durham and Becker emphasize evidence-based evaluations of all new policies.
- Principle 8: "Open communication on decisions and how they are reached." Without influencing or instructing judges on how to make their decisions, Durham and Becker suggest a more open environment of communication toward the public. Previous research indicates that allowing the public to better understand the process that goes into a judge's decision will lead to higher levels of satisfaction, regardless of the outcome (Tyler 1990).
- Principle 9: "Positive institutional relationships that foster trust among other branches and constituencies." To maintain good working relationships with outside entities that are often responsible for allocating funds, the judicial branch should pursue accountability and constant improvement within the state court system. By advocating continuing judicial education and performance evaluations for judges and other key court personnel, the judicial branch can be proactive in demonstrating credibility.

Table 1. Participant Organizations

<i>Organization</i>	<i>Number of Participants</i>	<i>% of Participants</i>
American Judges Assoc.	77	20.9
Conf. of Chief Justices	21	5.7
Conf. of Court Public Info. Officers	16	4.3
Conf. of State Court Admins.	33	8.9
Council/Chief Judges/State Courts of Appeal	17	4.6
Cons. for Lang. Access in the Courts	6	1.6
Judicial Family Institute	5	1.4
Natl. Assoc. for Court Mgmt.	157	41.5
Natl. Assoc. of Women Judges	81	22.0
Natl. Cons./Race/Ethnic Fairness/Courts	16	4.3
Natl. Conf. of Appellate Court Clerks	9	2.4
Natl. Conf. of Metro. Courts	6	1.6
Natl. Conf. of Probate Judges	9	2.4
None of the above	24	6.5

Frequencies may not add up to 369, as some participants did not respond and some were members of multiple organizations.

- Principle 10: “Clearly established relationships among the governing entity, presiding judges, court administrators, boards of judges, and court committees.” The last principle underscores the importance of having clearly defined roles within an organization. Without a proper understanding of who is responsible for what, any system would quickly suffer.⁵

Method

To conduct our analysis, we utilized the data collected from an online survey distributed to members of eleven different state court-related organizations prior to the 4th National Symposium on Court Management. The survey instrument was developed in conjunction with a paper to be presented by Durham and Becker at that symposium and anticipation of specific issues likely to come under scrutiny. Prior to the symposium, the online survey was sent to the e-mail addresses of 1,766 members of the organizations; 369 (21 percent) participants responded. Respondents were composed of 151 state trial or appellate court judges (hereafter, “judges”), as well as 213 state court administrators and staff (hereafter, “administrators”). Five respondents did not specify their position. Table 1 lists the eleven organizations, as well as the number of participants in each. Participants answered sixty-two questions total. These questions, using seven-point scales, included evaluations of the ten principles, with participants first rating how important they thought it was that courts in their state *should* follow each

5. The 2010 version of the Durham and Becker paper put forward ten principles for court governance, which were used to design the online survey. Subsequently, when revising the paper for publication in the *New Perspectives on State Court Leadership* paper series, the authors added an eleventh principle: “The judicial branch should govern and administer operations that are core to the process of adjudication” (Durham and Becker 2012, 6). This refers, in part, to the situation in some states where the ownership and maintenance of the court record lies with an entity outside of the judicial branch. This and other papers in the “*New Perspectives*” series can be accessed at www.ncsc.org/hes.

Table 2. Mean Ratings of Principle Utilization

Principle	Is Currently Utilized			Should Be Utilized		
	Judges	Admin	Total	Judges	Admin	Total
1. A Well-Defined Structure	4.84	4.51	4.64	5.87	6.12	6.04
2. Meaningful Input	3.86	3.93	3.94	6.36	6.29	6.32
3. Speaks with Single Voice	4.23	4.07	4.16	5.10	5.43	5.31
4. Competent Leadership Selection	3.94	3.97	3.94	6.04	6.36	6.26
5. Commitment to Transparency	4.47	4.69	4.64	6.44	6.53	6.51
6. Authority to Allocate Resources	3.56	3.73	3.68	6.44	6.12	6.25
7. Focus, Delegation, Commitment	4.61	4.62	4.62	5.86	6.18	6.09
8. Open Communication	3.73	4.01	3.89	6.09	6.09	6.08
9. Positive Inst. Relationships	4.17	4.41	4.35	6.39	6.45	6.43
10. Clearly Established Relationships	4.24	4.48	4.39	6.35	6.43	6.39

Ratings range from 1 to 7, with 7 indicating higher agreement that the principle is currently, or should be, embraced in the participant's court system. All mean differences between "is" and "should be" are significant (t -tests > 9.95 , $p < .001$).

principle, then rating how they thought their state's courts *currently* follow those principles. In addition, participants gave their opinions by rating 1) a series of court functions to indicate where they felt those functions would best be controlled (i.e., at the state or local level), 2) future trends in the state court system,⁶ and 3) their confidence in state courts and judges (e.g., "Most judges in my state do their job well"). Finally, participants provided demographic information (e.g., age, gender, years in current career position).

Results

Is vs. Should Be

We first examined the opinions of the court personnel (both judges and court administrators) regarding attitudes toward current governing structures, in relation to how they felt governing structures should be. The findings of that analysis are presented in Table 2. As the results show, court personnel were most convinced that a *well-defined structure* for court operations is currently in place ($M = 4.64$). It is important to keep in mind, however, that although it rated the highest compared to the other principles, it still rated near the middle of the scale, indicating that participants did not view any of the principles as well-established in the current way of organizing and managing a state court system. Conversely, court personnel were least agreeable to the notion that courts currently have the *authority to allocate resources* ($M = 3.68$). Thus, while court personnel moderately agree that a well-defined governing structure is in place, they clearly see a lack of authority over court resources. With regard to which governing principles should be used, court personnel were most likely to agree that courts should

6. Data regarding opinions about future trends was not included in the following results, as it was beyond the scope of the current article.

have a *commitment to transparency* ($M = 6.54$), *positive institutional relationships* ($M = 6.43$), and *clearly established relationships* ($M = 6.39$). Alternatively, court personnel were least likely to agree that courts need to *speak with a single voice* ($M = 5.31$).

To determine where the greatest gaps existed between perceptions of the current status of court governance and the greatest needs for future directions of state court governance, we conducted paired-sample *t*-tests to evaluate whether significant differences existed between how court members believed the ten principles were currently utilized and how those principles should ideally be utilized. An appraisal of the results reveals a clear discrepancy between how court members believe the system should work and how they believe it actually does work. In every comparison, a significant difference existed, with participants consistently indicating that the recommended principles are not presently implemented as much as they should be (all *t*-tests > 9.95 , $p < .001$).

Specifically, the results of that analysis demonstrated that the greatest gap existed with regard to the courts' *authority to allocate resources*, with a 2.57 mean difference. Recall that, of the ten governing principles, judges and administrators were least likely to say that courts currently adhere to this governing principle. The fact that such a difference exists suggests that judges and administrators are currently dissatisfied with the courts' control over resources and view control over resources as an extremely important ideal that clearly has not been reached. The next largest difference existed for the second principle, "Meaningful input from all court levels in the decision-making process." Here, there was a 2.38 mean difference in the perception of courts' current utilization of this principle in relation to its ideal utilization. The smallest mean difference existed on the *speaks with a single voice* principle, where there was only a 1.15 mean difference in the perception of courts current utilization of this principle in relation to its ideal utilization.

Individual Differences

Because there was a general pattern that indicated most participants believed the ten principles should be embraced at a greater level than they currently are, we sought to understand whether those discrepancies varied as a function of the respondent's career type (judges vs. administrators), length in current career, and age. In order to explore these discrepancies, we used the mean difference scores (should be vs. currently is) as a proxy indicator of how strongly a participant felt a change should be made in the application of a certain principle. We then compared these scores across each of the aforementioned variables.

Judges (Mean age = 57.27) in our sample tended to be older than administrators (Mean age = 52.79), $t(332) = 5.13$, $p < .001$. Conversely, administrators had been in their current career longer than judges (20.39 years vs. 17.65 years, respectively), $t(350) = 2.41$, $p < .05$. Respondents' difference scores varied for some of the principles as a function of career type (i.e., judges versus court administrators), length in current career, and age. With regard to type of career, court administrators reported a greater difference than judges between current application and ideal application of a well-defined court structure (Principle 1), $t(336) = 3.04$, $p < .01$, and the importance of all departments and branches of government speaking with a single voice (Principle 3), $t(337) = 2.33$, $p < .05$. The findings suggest that compared to judges, court administrators view a greater gap between the actual and ideal governance of the courts. This difference could be due to a proximity difference between the two groups, where administrators spend more

Table 3. Need for Governance Change Correlations with Age/Career Length

Principle	Years at Current Career			Age		
	Judges	Admin	Total	Judges	Admin	Total
1. A Well-Defined Structure	.015	-.218**	-.101	-.163	-.159*	-.190**
2. Meaningful Input	-.122	-.158*	-.147**	-.132	-.078	-.078
3. Speaks with Single Voice	-.002	.012	.019	-.174*	-.079	-.146**
4. Competent Leadership Selection	.057	-.144*	-.054	-.155	-.077	-.138*
5. Commitment to Transparency	-.112	-.107	-.115*	-.101	-.045	-.073
6. Authority to Allocate Resources	-.112	-.158*	-.150**	-.207*	-.054	-.063
7. Focus, Delegation, Commitment	-.045	-.116	-.078	-.249**	-.119	-.182**
8. Open Communication	-.008	-.124	-.088	-.140	-.070	-.079
9. Positive Inst. Relationships	-.129	-.096	-.112*	-.221*	-.068	-.107
10. Clearly Established Relationships	-.002	-.045	-.034	-.155	-.113	-.110*
Average across all Principles	-.006	-.130	-.071	-.170*	-.164*	-.168**

Negative correlations indicate that older participants, or those who have been at their current position longer, reported smaller differences between how courts are currently governed and how they should be governed. Bolded correlations are statistically significant. * $p < .05$, ** $p < .01$.

time and deal more closely with these matters than judges and thus see where improvements can be made and how such a structure can be beneficial compared to current conditions. In addition, there was a marginally significant gap between how judges perceived the ideal and actual independent authority to allocate resources and spend appropriated funding compared to (Principle 6), $t(344) = 1.78$, $p = .077$. This finding suggests that judges may be more attuned to the fiscal side of state court operations, where courts have traditionally not been afforded the same budgetary autonomy as have the other branches of government.

We next conducted Pearson correlations between length of time working for state courts at their current position and opinion difference scores to examine how such exposure to the court system might influence opinions of each principle (see Table 3). Correlations were significantly negative for four principles, and they approached significance on a fifth. This indicates that for all significant correlations, the longer participants had been working for the courts, the less important a change in each principle became. *Independent authority to allocate funds* (Principle 6) showed the strongest correlation ($r = -.15$, $p < .01$), indicating that although many of these correlations were significant, the cohort effect sizes were relatively small. However, some correlations were dependent on who responded. For example, court administrators who had been working for state courts longer indicated lesser need for change in *a well-defined structure* (Principle 1). In contrast, judges' need for change was unrelated to how long they had been serving. A similar pattern emerged for Principle 4, which states that leadership should be based on competency, not seniority. Administrators showed less of a need for change the longer they had been working for state courts, but judges' need for change was unrelated to years on the bench.

Finally, we examined correlations between age and ideal/actual difference scores. Analyses indicated that the pattern of correlations was roughly the same as for time working for courts; the correlations were all in the negative direction, indicating the possible existence of

a generational gap in perceptions of the need for change, with long-term veterans perceiving less need for change. *A well-defined structure* had the strongest correlation with age ($r = -.19, p < .01$). Again, however, some correlations were entirely dependent on career type. The need for a change in Principle 3 (*speaks with a single voice*) decreased with age for judges, but it remained constant for administrators. The same was true for Principles 6 (*authority to allocate resources*), 7 (*focus, delegation, commitment*), and 9 (*positive institutional relationships*). On average, however, both judges and administrators indicated less need for change in principle implementation the longer they had served in the courts.

In summary, the findings just reported indicate considerable dissatisfaction with the way in which courts are organized and governed. While the dissatisfaction relates especially to the Durham/Becker principles, the questions refer to fundamental dimensions of court reform: a well-defined structure and authority to allocate resources. The gap between what is and what should be utilized is among the largest identified. There were also some points at which perceptions of court governance differed based on whether the respondent is a judge or an administrator and the length of time they have worked in the courts.

Distribution of Functions: Local vs. Central

As noted above, there is a controversy in the state court world about the desirability of completing the old court reform agenda that sought unification (Mundell and Jefferson 2012). That agenda is at very different levels of implementation. There is no apparent consensus on which court functions should be entirely or primarily carried out locally and which functions should be primarily or entirely the responsibility of a central court administration. To add information to the ongoing debate, we therefore examined attitudes toward centralized control over court administration by looking at how participants rated eight specific functions as to whether they are better performed at the local level or at the state level. These functions included *judicial assignments*, *budget preparation*, *human resources*, *legislative liaison*, *public information*, *research*, *selection of trial court presiding judges* (sometimes called chief or administrative judges), and *major policy decisions*. The complete distribution of ratings can be found in Table 4.

Court insiders rated judicial assignments, human resources, and the selection of trial court presiding judges as better performed at a local level and legislative liaison, research, and major policy decisions as better served at the state level. Budget preparation and public information were evenly distributed, with the majority of participants believing that these functions can be served at either level. It is important to note, however, that although some functions (e.g., human resources, legislative liaison) leaned one way or another, a large portion of participants responded that these functions could be performed at either level. The lack of consensus on these matters is confirmed. We are unable because of our sample size to analyze whether preferences of this kind vary from state to state or differ based on the extent to which a state's courts have been unified. But the basic message is clear: There are few "unifiers" among the judges and court administrators we surveyed.

Although administrators and judges tended to agree in their responses, they differed on the strength of that opinion for five of the eight functions. Judges rated judicial assignments, research, and selection of trial court presiding judges as best performed locally, as opposed to at the state level, compared to administrators. Conversely, administrators rated budget

Table 4. Preferred Locality of Court Functions

<i>Court Function</i>	<i>Judges</i>	<i>Administrators</i>	<i>All</i>
Judicial Assignments*	2.08	2.36	2.24
Budget Preparation*	3.01	2.73	2.85
Human Resources	2.66	2.47	2.55
Legislative Liaison	3.71	3.73	3.71
Public Information*	3.18	2.92	3.03
Research**	3.01	3.45	3.27
Select/Trial Court Presiding Judges*	2.31	2.65	2.52
Major Policy Decisions	3.48	3.29	3.37

Ratings range from 1 to 5, with lower ratings indicating that functions are best performed at the local level, while higher numbers indicate functions are best performed at the state level. Bolded functions are significantly different between judges and administrators. * $p < .05$, ** $p < .01$.

preparation and public information as best performed at the local level, instead of the state level, compared to judges. This suggests that today support for a key component of a unified court system is lacking generally, but especially for administrators. Some caution is needed, however, when analyzing these results. Although the strength of opinion is significantly different between judges and administrators for these five functions, the overall opinion itself was often similar. For example, both administrators and judges tended to view judicial assignments as best decided locally, but while administrator rating was only slightly in that direction, judges were clearly leaning in that direction. Alternatively, when considering selection of trial court presiding judges, administrators tended to rate this function slightly in the state level direction, whereas judges tended to rate it slightly in the local direction.

Although career type influenced the locality of function performance to a degree, length of time in current career was not as strong a predictor. Only two functions, *human resources* ($r = .12, p < .05$) and *research* ($r = .17, p < .01$), were significantly predicted. In both cases, the longer participants had been employed in their current career, the more likely they were to see these functions best performed at the state level.

Finally, age turned out to be correlated with what level respondents believed functions should be performed. The older respondents were, the more likely they were to believe that *budget preparation, human resources, legislative liaison, public information, and major policy decisions* should be decided at the state level (lowest $r = .16, p < .01$). Follow-up regression analyses were conducted, and this effect remained regardless of whether respondents were judges or administrators.

In summary, the findings reveal continuing controversy on the issue of which functions and decision-making responsibilities are best left to local trial courts and which are best carried out from a central perspective. For all functions, the overall average was toward the midpoint of the scale used, even for functions such as budget preparation, which the conventional wisdom argued needed to be a centralized function, and even for selection of presiding judges. Judges and administrators differed in their assessment of the best location for five of the eight functions considered.

Table 5. Perceptions of Confidence and Court Performance

<i>Area of Performance</i>	<i>Judges</i>	<i>Administrators</i>	<i>All</i>
Your confidence in the courts of your state.**	5.74	5.40	5.54
Most judges in my state . . .			
Do their job well.*	5.90	5.67	5.77
Treat people with respect.*	5.82	5.60	5.69
Treat some people better than others.	4.55	4.40	4.46
Generally honest and fair in deciding cases.	6.07	5.93	5.99
Do not give adequate attention and time to each individual case.	4.43	4.20	4.30
The courts in my state . . .			
Protect defendants' constitutional rights.	6.03	6.00	6.01
Are not out of touch with what's going on in their communities.**	5.24	4.73	4.95
Make sure their orders are enforced.*	4.69	4.33	4.48
Treat people with dignity and respect.*	5.83	5.60	5.69
Are unbiased in their case decisions.	5.75	5.55	5.63
Listen carefully to what people have to say.**	5.49	5.16	5.30
Are sensitive to the concerns of ordinary people.**	5.53	5.14	5.30
Take peoples' needs into account.**	5.35	5.00	5.14
Most juries are representative of the community.	5.46	5.29	5.36

Ratings range from 1 to 7, with higher numbers indicating stronger agreement to each statement. Bolded areas are significantly different between judges and administrators. * $p < .05$, ** $p < .01$.

Confidence in State Courts

Finally, participants rated their confidence in state courts as well as various matters of judge and court performance. Judges ($M = 5.74$) rated their overall confidence, on a scale from 1 to 7, in the court system of their respective states significantly higher than court administrators ($M = 5.40$), $t(333) = 2.80$, $p < .01$. All significant differences regarding specific areas of judge and court performance revealed that judges had greater confidence in the court system than administrators, with the greatest difference being in the courts' sensitivity to an ordinary person's concerns, $t(349) = 2.91$, $p < .01$. A full list of performance ratings and differences can be found in Table 5. Years working for courts and age were only significant predictors of judge and court performance for judge respondents. Specifically, the older a judge was, the more likely he or she was to give higher ratings to the statements, "Judges are generally honest and fair in deciding cases" ($r = .212$, $p < .05$), "Courts protect defendants' constitutional rights" ($r = .195$, $p < .05$), "Most juries are representative of the community" ($r = .242$, $p < .01$), "Courts are not out of touch with what's going on in their communities" ($r = .179$, $p < .05$), and "Courts are unbiased in their case decisions" ($r = .195$, $p = .05$).

To understand whether the difference scores between participant perceptions of how the ten principles are currently used and how they should be used were related to the confidence judges and administrators have in the ability of courts to fulfill critical roles, we correlated respondents' confidence responses with the mean of their difference scores. The mean of all ten difference scores was used because, as described above, all scores were significant in the same negative direction. The results showed that the greater the gap between "is" and "should," the

lower participants rated confidence in their own court system ($r = -.23, p < .001$). This finding suggests that greater gaps in perceptions between the current operations of the courts in relation to the ideal operations of the courts are related to decreased levels of confidence in the ability of the courts to do their jobs. This finding that the size of the gap predicts confidence provides reassurance that the ten principles are tapping dimensions that matter to the perceived legitimacy of the courts among those who work in them.

Discussion

The Durham/Becker Principles

From the analyses presented above, a number of points related to the court governance principles become clear. First, there appear to be significant gaps in the perceptions of judges and court administrators regarding the ways in which courts currently do work and how they should work. This appears to be particularly true in relation to court control over budgetary issues, where respondents generally disagreed with the notion that courts currently have sufficient control over budget issues in relation to their attitudes about the ideal amount of control courts should have over the budget. Some, but not all, of these differences can be seen as reflecting the respective work issues faced by each group.

Second, the evidence suggests that while court administrators view court management structure as most important, judges appear to view court budgetary issues as the most critical for effective delivery of justice into the future.

Third, both judges and court administrators tend to view the centralization of court administration in a similar way. While there were statistical differences between the two groups on various aspects of court operations, both groups agreed that *judicial assignments, human resources, and the selection of trial court presiding judges* are best performed at a local level, while *legislative liaison, research, and major policy decisions* are best conducted at the state level. Finally, we found that greater gaps in perceptions between the current and ideal operations of the courts were related to decreased levels of confidence in the ability of the courts to do their jobs. This finding has important implications for the future of court administration, as it shows that members of the judicial branch may feel they are in a position of relative impotence when they do not have the tools and resources available to administer justice in their courts effectively. Fair, efficient, and equitable procedures are just as important for those who work in the court system as for “consumers” of the courts such as litigants (Burke and Leben 2008). In the end, it is important to recognize that while court personnel may have strong opinions regarding the ways in which courts should operate, there are varying levels of opportunity at the state level to make this happen. In other words, the implementation of reforms in line with the ten principles will be somewhat dependent on the political cultures and the institutional arrangements that exist in each state.

Underlying Issues

Stepping back from the specific findings, this survey of judges and court administrators provides insights into several major issues that state and local court leaders are talking about

but for which little data are available. The size of the survey sample and relatively low response rate require caution in generalizing the findings, but court leaders should consider the following points.

One fundamental issue is what the objectives of court reform under current circumstances should be. The ten principles included in the survey offer the start of an answer. There was significant support for implementing all ten of the principles put forward by Durham and Becker (2010). All were viewed as desirable, although enthusiasm for “speaking with a single voice” was at a lower level than for the others. Support for the principles came equally from judges and from court administrators. The appropriateness of the principles as objectives for reform is also indicated by the statistically significant degree to which survey respondents viewed all of the principles as being insufficiently reflected in their state’s courts’ current practices. Moreover, there is evidence internal to the survey that the ten principles truly matter to people working in the courts. Their confidence in their court system is related to the size of the gap between the current and desired degree to which principles have been implemented. To a statistically significant degree, the larger the gap perceived between the current and the desired level of the principles’ implementation, the lower the respondents’ level of confidence in their state’s courts.

Of course, had other governance principles been put forward in the survey, they may well have attracted as much or even higher levels of support from the survey respondents. But, based on the available evidence, it seems reasonable to treat the ten principles as a first draft of a reform agenda. Priorities could be set in that agenda based on the level of desirability each principle attracted and the size of the gap between the current and desired level to which a principle is being used.

A second issue for which no other directly relevant source of data exists is whether support remains for renewing the agenda of court reform through unification. The survey finds no consensus among judges or administrators that court functions are best carried out by a central administration. There also is no apparent preference for reverting back to the period in which local court governance prevailed. Instead, the survey responses suggest support for a governance model in which leadership is shared, with some functions best located locally at the individual trial court, whereas others would benefit from being centrally located. Most judges and administrators who participated in the survey preferred a model that might be described as one of shared leadership, an approach now being advocated by other members of the Executive Session (e.g., McQueen 2013; Mundell and Jefferson 2012). While this may seem a matter of common sense, the findings challenge some longstanding beliefs in the court world about how state court systems operate most effectively (e.g., ABA Standards Relating to Court Organization 1974/1990; Vanderbilt 1950). Moreover, the survey did not reveal a clear set of preferences as to which functions would best be performed centrally and which locally, with judges and court administrators differing to some extent but with a significant proportion of all respondents indicating that either level would be acceptable.

That lack of consensus is likely to prove troublesome in many – perhaps all – states. Any durable division of functional responsibilities between the local and state levels will need to be negotiated within each state. Unless intrastate differences on that division are relatively small, the process is likely to prove highly contentious, creating divisions in a state at a time when working toward a common purpose is vital. The old principles of court reform left most state court systems without a decision-making mechanism that could conduct the necessary negotiations and make final decisions that would be viewed as legitimate at the trial court level. Although most states have some form of committee or council that is convened to include the

interests of trial judges and administrators in the decision-making process, with few exceptions they are purely advisory. Moreover, in nearly all states the trial court-level representatives on central decision-making bodies are selected by the chief justice or the state supreme court as a whole. As a result, these central decision-making bodies, even when they have real decision-making authority, lack legitimacy in the eyes of the trial bench and trial court administrators. A renewed effort to build genuinely representative state judicial councils is imperative (Mundell and Jefferson 2012).

Finally, our analysis provides important validation for Durham and Becker's (2010) choice of governance principles. That is fortunate because those principles are receiving extensive consideration not only by national organizations but also by individual state court systems and local trial courts engaged in reform efforts.⁷ The principles merit the attention they are receiving.

Conclusion

Our objectives in analyzing the 2010 survey were twofold. First, we sought to test reactions to Durham and Becker's ten principles for court governance. Second, we sought to use the survey as a basis for offering a contemporary assessment on where the court reform agenda stands based on the views of both judges and administrators. Our assessment included answering three specific questions outlined at the start of this article: First, there is clear evidence that judges and court administrators are not content with the current manner in which their court system is governed. Specifically, they perceive a gap between the Durham and Becker principles, which they generally endorse, and the degree to which those principles are evident in their court system, a gap they would like to close. Second, there also is no clear consensus on the respective roles of local court administration and centralized administration. Some functions that have been assumed to be increasingly viewed as a central task remain to many as best accomplished at the local level. Reaching at least broad agreement on how these roles should be allocated is an immediate challenge to any state considering court reform, and it is critical if the central authority is to be afforded legitimacy by those at the trial court level. Third, the challenge of governing state courts looks somewhat different for judges than for court administrators, with the difference greater for some functions, such as authority to allocate resources. Finally, there are "generational" differences, in which more newly minted judges and administrators seem more eager for change.

7. As of August 2013, presentations based on "the principles" by one of the authors have been made at meetings of national organizations including the National Association for Court Management (2012), the Conference of Court Public Information Officers (2013), and the Conference of (State) Chief Justices (2012). Equally important, several states already have or are using the paper (and the paper's authors) as resources in rethinking their organization and management system. The National Center for State Courts has received over 700 requests for print copies of the paper (records on file with the authors). The paper has formed the core of efforts in individual states to rethink their governance model in states like Massachusetts and Washington. The Bureau of Justice Assistance and the State Justice Institute have jointly funded a series of implementation projects based on ideas stemming from the Executive Session program to implement these and other proposals stemming from the Executive Session process.

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