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# Local Judges and Local Government

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# LOCAL JUDGES AND LOCAL GOVERNMENT

*Ethan J. Leib\**

*This interview-based empirical study explores how local judges view themselves and their crosscutting roles in local and state government. In particular, it considers local judges' relationships with the public that elects them, the executive and legislative branches of their localities, and the larger statewide judicial bureaucracy of which they are a very large but somewhat disconnected part. The Article reports on the results of interviews with local judges at the county, town, and village levels—and suggests some broader lessons for scholars, officials, and policymakers interested and active in local government law and politics. Those who study local government have insufficiently appreciated how the local courts are a part of the constellation of local power and sovereignty, and they have failed to appreciate some of the psychological and institutional pressures local judges face in performing their roles.*

|  |     |
|--|-----|
| INTRODUCTION . . . . .                         | 708 |
| I. RESEARCH DESIGN . . . . .                   | 712 |
| A. Which Courts Are “Local Courts”? . . . . .  | 713 |
| B. Research Questions . . . . .                | 713 |
| II. FINDINGS . . . . .                         | 715 |
| A. Local Judges and Local Politics . . . . .   | 716 |
| B. Local Judges and Local Government . . . . . | 720 |
| 1. Town and Village Elected Judges . . . . .   | 720 |
| 2. County Judges . . . . .                     | 723 |
| C. Local Judges and the State . . . . .        | 724 |
| III. DISCUSSION . . . . .                      | 733 |
| CONCLUSION . . . . .                           | 739 |

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\* Professor of Law, Fordham Law School. Many thanks to Fordham University for financial support and to the many local judges in New York State’s Ninth Judicial District who were willing to talk to me. Aaron Saiger and Nestor Davidson are always helpful guides in my studies of local government. Jed Shugerman is my local interlocutor on all judicial election issues. John Pfaff is my resident expert on prosecutors’ role in criminal justice. Andrew Kent and Corey Brettschneider were excellent sounding boards as I worked on this project. Steve Thel was a cheerleader. Stephen Galoob and Aaron Bruhl read drafts and helped me make improvements. The faculties at Rutgers Law School-Camden and New York Law School discussed drafts with me over stimulating lunch workshops. My assistant Cynthia Lamberty-Cameron helped in twelve different ways; I could not have completed this work without her. Benjamin Chisholm helped close the deal. David Isakov helped with research assistance.

## INTRODUCTION

Many things seem to have gone wrong in Ferguson, Missouri last summer. In an effort to reform some of the central institutions that led to the city's failings, the City Council identified the local court system for a sweeping overhaul.<sup>1</sup> The courts had been criticized for targeting defendants in a racialized way, and for issuing excessive fines on an already-overtaxed group of residents. The fines in question were a principal source of revenue for the city's basic functions, and the pressure to collect this necessary revenue had led the City Council to adopt many of the policies that activists in Ferguson aggressively protested during the summer and early fall of 2014. Ultimately, the City Council conceded that the local courts were part of the problem and moved to relieve the pressure on citizens that contributed to a city boiling over with rage and frustration.<sup>2</sup> What through one lens looks like a story about race and the police is, through another, a story about local courts and the revenue-generating pressures they face, which can engender general governance and trust problems within a community.

Local government scholars have focused their attention on a wide range of local political institutions and actors: local legislatures, executives, school boards, trustees, and the local referendum and initiative process.<sup>3</sup> Some new attention is also being paid to local administrative agencies.<sup>4</sup> However, it seems quite rare to see work focused on where the law is applied, interpreted, analyzed, and brought to bear upon local communities: the local courts.<sup>5</sup> These are ultimately the courts

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1. See Frances Robles, *Ferguson Sets Broad Change for City Courts*, N.Y. TIMES, Sept. 9, 2014, at A1, <http://www.nytimes.com/2014/09/09/us/ferguson-council-looks-to-improve-community-relations-with-police.html>.

2. *Id.* More attention is being paid to the local courts on account of some new lawsuits that take aim at these legal institutions. See Monica Davey, *Ferguson One of 2 Missouri Suburbs Sued over Gantlet of Traffic Fines and Jail*, N.Y. TIMES, Feb. 9, 2015, at A8, [http://www.nytimes.com/2015/02/09/us/ferguson-one-of-2-missouri-suburbs-sued-over-gantlet-of-traffic-fines-and-jail.html?\\_r=0](http://www.nytimes.com/2015/02/09/us/ferguson-one-of-2-missouri-suburbs-sued-over-gantlet-of-traffic-fines-and-jail.html?_r=0).

3. See LYNN A. BAKER & CLAYTON P. GILLETTE, LOCAL GOVERNMENT LAW: CASES AND MATERIALS (3d ed. 2004); GERALD E. FRUG, RICHARD T. FORD & DAVID J. BARRON, LOCAL GOVERNMENT LAW: CASES AND MATERIALS (5th ed. 2010); DANIEL R. MANDELKER ET AL., STATE AND LOCAL GOVERNMENT IN A FEDERAL SYSTEM (6th ed. 2006).

4. See Michael Asimow, *Due Process in Beverly Hills 90210: Separation of Functions in Local Government*, 28 ADMIN. & REG. L. NEWS 27 (2003); Michael Asimow, *Taking a Step Toward Better Local Government Adjudication*, 27 ADMIN. & REG. L. NEWS 12 (2002); Nestor M. Davidson, *The Administrative City-State: Administrative Law in Local Governance* (2015) (unpublished manuscript) (on file with author).

5. For some notable exceptions, see GORDON L. CLARK, JUDGES AND THE CITIES: INTERPRETING LOCAL AUTONOMY (1985); MARTIN A. LEVIN, URBAN POLITICS AND THE CRIMINAL COURTS (1977) (comparing the judicial selection processes and the behavior of local judges in Minneapolis and Pittsburgh). *Localist Statutory Interpreta-*

closest to the people, and they oversee the largest number of cases our courts adjudicate.<sup>6</sup> Perhaps a simple explanation for this dearth of scholarship is that the cases that law professors teach and study in law schools—and which are found easily on LexisNexis and Westlaw—tend to come from high-level state and federal courts. Political scientists and students of courts also tend to focus their attention on high-level state and federal courts.<sup>7</sup> Although there is some attention paid to the state trial courts,<sup>8</sup> these are often less “local” than the range of courts presided over by local officials with somewhat different jurisdictions. Accordingly, this study is a first attempt to think about how local courts can illuminate the workings of local government. And although there is no reason to believe that the separation of powers works identically at every level of government,<sup>9</sup> it may be reasonable to study the local courts as a “branch” of local government. After all, quite often the same electorate elects both the local judge and executive.<sup>10</sup>

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tion was my first attempt to both spotlight and remedy this omission. Ethan J. Leib, *Localist Statutory Interpretation*, 161 U. PA. L. REV. 897 (2013).

6. See, e.g., ROBERT C. LAFOUNTAIN ET AL., NAT’L CTR. FOR STATE COURTS, EXAMINING THE WORK OF STATE COURTS: AN ANALYSIS OF 2009 STATE COURT CASELOADS (2011), <http://www.courtstatistics.org/FlashMicrosites/CSP/images/CSP2009.pdf>.

7. See CHRIS W. BONNEAU, FEDERALIST SOC’Y, A SURVEY OF EMPIRICAL EVIDENCE CONCERNING JUDICIAL ELECTIONS 5 (2012), <http://www.fed-soc.org/publications/detail/a-survey-of-empirical-evidence-concerning-judicial-elections> (“At the trial court level, systematic research has yet to be conducted . . .”).

8. See, e.g., Sanford C. Gordon & Gregory A. Huber, *The Effect of Electoral Competitiveness on Incumbent Behavior*, 2 Q.J. POL. SCI. 107, 133 (2007); Gregory A. Huber & Sanford C. Gordon, *Accountability and Coercion: Is Justice Blind when It Runs for Office?* 48 AM. J. POL. SCI. 247, 248 (2004). Some scholars do study the lower state courts systematically to evaluate citizens’ perceptions of them. See, e.g., George W. Dougherty et al., *Evaluating Performance in State Judicial Institutions: Trust and Confidence in the Georgia Judiciary*, 38 ST. & LOC. GOV’T REV. 176, 184 (2006). Local courts are studied even less frequently than trial courts, as they are generally a hierarchical step below trial courts in terms of their authority.

9. See, e.g., *Moreau v. Flanders*, 15 A.3d 565, 579 (R.I. 2011) (“After considering the arguments raised by the parties, we hold that the separation of powers doctrine is a concept foreign to municipal governance.”); Annie Decker, *A Theory of Local Common Law*, 35 CARDOZO L. REV. 1939 (2014); Ethan J. Leib, *Local Separation of Powers?*, PRAWFSBLAWG (Mar. 15, 2013, 10:12 AM), <http://prawfsblawg.blogs.com/prawfsblawg/2013/03/local-separation-of-powers-.html>.

10. Some low-level local courts have received some attention, but they are rarely treated as local in character. See, e.g., JOHN RUHNKA & STEVEN WELLER, SMALL CLAIMS COURTS: A NATIONAL EXAMINATION (1978); Arthur Best et al., *Peace, Wealth, Happiness, and Small Claim Courts: A Case Study*, 21 FORDHAM URB. L.J. 343 (1994); Victor E. Flango, *DWI Courts: The Newest Problem-Solving Courts*, 42 CT. REV. 22 (2005); William G. Haemmel, *The North Carolina Small Claims Court—An Empirical Study*, 9 WAKE FOREST L. REV. 503 (1973); Michael H. Minton & Jon E. Steffenson, *Small Claims Courts: A Survey and Analysis*, 55 JUDICATURE 324

Regardless of how we ultimately conceptualize the local courts within the tapestry of local government, we must learn more than we now know. Karl Llewellyn, in *The Bramble Bush*, apologizes to generations of law students for our failing to teach them anything about where the real law-in-action is to be found and for continuing to mint new lawyers that know virtually nothing about the actual local courts that imprison citizens, levy fines against them, enforce their contracts, and adjudicate their civil disputes.<sup>11</sup> A series of *New York Times* articles from several years ago brought to light some disturbing practices in New York State's town and village courts,<sup>12</sup> and a Dunne Commission report a few years later analyzed the local courts in New York, proposing several reforms to improve upon them.<sup>13</sup> Despite this exposure, for the most part we still do not have a clear sense of how to think of local courts. Although there is increasing interest in the effects of judicial elections and how those elections should be regulated,<sup>14</sup> scholars know very little about the bottom rung of the judicial bureaucracy, the one closet to the people.

This oversight renders a vast swath of judicial activity completely opaque. As one local judge has observed:

In New York, local justices preside over a variety of matters [of law and equity] ranging from town ordinance violations, such as the legality of raising chickens, dog bite cases, vehicle and traffic

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(1972); Austin Sarat, *Alternatives in Dispute Processing: Litigation in Small Claims Court*, 10 L. & SOC'Y REV. 339 (1976); John M. Steadman & Richard S. Rosenstein, "Small Claims" Consumer Plaintiffs in the Philadelphia Municipal Court: An Empirical Study, 121 U. PA. L. REV. 1309 (1973); Neil Vidmar, *The Small Claims Court: A Reconceptualization of Disputes and an Empirical Investigation*, 18 L. & SOC'Y REV. 515 (1984). Recently, careful attention has been given a class of courts that divert people from incarceration. See Allegra M. McLeod, *Decarceration Courts: Possibilities and Perils of a Shifting Criminal Law*, 100 GEO. L.J. 1587 (2012). McLeod attests—albeit unsystematically—to the localist roots of these judicial institutions. See *id.* at 1625–44.

11. See KARL N. LLEWELLYN, *THE BRAMBLE BUSH: THE CLASSIC LECTURES ON THE LAW AND LAW SCHOOL* 94–96 (Oxford Univ. Press 2008) (1930).

12. See William Glaberson, *In Tiny Courts of N.Y., Abuses of Law and Power*, N.Y. TIMES (Sept. 25, 2006), <http://www.nytimes.com/2006/09/25/nyregion/25courts.html>; William Glaberson, *Small Town Justice, with Trial and Error*, N.Y. TIMES (Sept. 26, 2006), <http://www.nytimes.com/2006/09/26/nyregion/26courts.html>; William Glaberson, *How a Reviled Court System Has Outlasted Critics*, N.Y. TIMES (Sept. 27, 2006), <http://www.nytimes.com/2006/09/27/nyregion/27courts.html>.

13. See SPECIAL COMM'N ON THE FUTURE OF N.Y. STATE COURTS, *JUSTICE MOST LOCAL: THE FUTURE OF TOWN AND VILLAGE COURTS IN NEW YORK STATE* (2008), [http://www.nycourtreform.org/Justice\\_Most\\_Local\\_Part1.pdf](http://www.nycourtreform.org/Justice_Most_Local_Part1.pdf) [hereinafter *JUSTICE MOST LOCAL*].

14. See, e.g., Adam Liptak, *Judges on the Campaign Trail*, N.Y. TIMES, Sept. 27, 2014, at SR4, <http://www.nytimes.com/2014/09/28/sunday-review/judges-on-the-campaign-trail.html>.

violations, to all manner of misdemeanor crimes from DWI to misdemeanor sex offenses, animal cruelty and drug possession cases.<sup>15</sup>

Ultimately, there are over 2000 judges serving in over 1200 town and village courts statewide in New York, overseeing two million cases and collecting \$210 million in fees and fines annually.<sup>16</sup>

There is a range of traditional questions that drives research and thinking about local government. For example, political theorists investigate how local political power can be optimized in order to establish political efficacy and legitimacy.<sup>17</sup> Institutional designers and legal scholars ask how power ought to be distributed at different levels of government and how to navigate potential conflicts and tensions with other legitimate sources of power like the state, the federal government, or other regional municipal governments.<sup>18</sup> But these questions have not meaningfully been pursued with regard to local courts and local justice. Notwithstanding recent calls to examine hierarchy and heterogeneity within the judiciary,<sup>19</sup> local courts routinely fall below the radar. Although these courts are limited in their jurisdiction,<sup>20</sup> they emerge from local communities and apply both local and state law. We should be interested in how, if at all, they form part of the constellation of local government.

What follows is an interview-based study of local judges in New York State's Ninth Judicial District, which covers Dutchess, Orange,

15. Michael J. McDermott, *Jurisdiction of NYS Justice Courts to Adjudicate Issues of Law and Equity*, 37 WESTCHESTER B.J. 42 (2010).

16. Lawrence K. Marks & Ronald P. Younkins, *Preface to N.Y. STATE UNIFIED COURT SYS., ACTION PLAN FOR THE JUSTICE COURTS: TWO YEAR UPDATE* (2008), <https://www.nycourts.gov/whatsnew/pdf/JusticeCourts2YearUpdate9-08.pdf>.

17. See, e.g., BENJAMIN R. BARBER, *IF MAYORS RULED THE WORLD: DYSFUNCTIONAL NATIONS, RISING CITIES* (2013).

18. See, e.g., David Barron, *The Promise of Cooley's City: Traces of Local Constitutionalism*, 147 U. PA. L. REV. 487 (1999); Gerald E. Frug, *Beyond Regional Government*, 115 HARV. L. REV. 1763 (2002); Nestor M. Davidson, *Cooperative Localism: Federal-Local Collaboration in an Era of State Sovereignty*, 93 VA. L. REV. 959 (2007); Kathleen S. Morris, *The Case for Local Constitutional Enforcement*, 47 HARV. C.R.-C.L. L. REV. 1 (2012).

19. See, e.g., Aaron-Andrew P. Bruhl, *Hierarchy and Heterogeneity: How to Read a Statute in a Lower Court*, 97 CORNELL L. REV. 433 (2012); Heather K. Gerken, *The Supreme Court 2009 Term Foreword: Federalism All the Way Down*, 124 HARV. L. REV. 4 (2010); Abbe R. Gluck, *Intersystemic Statutory Interpretation: Methodology as "Law" and the Erie Doctrine*, 120 YALE L.J. 1898 (2011). Lower federal courts have also been the subject of study within constitutional law. See Ori Aronson, *Inferiorizing Judicial Review: Popular Constitutionalism in Trial Courts*, 43 U. MICH. J.L. REFORM 971 (2010).

20. For an exhaustive list of the different jurisdictional limitations around the nation (and the election methods used to populate the courts), see *Methods of Judicial Selection*, NAT'L CTR. FOR ST. CTS., [http://www.judicialselection.us/judicial\\_selection/methods/limited\\_jurisdiction\\_courts.cfm?state](http://www.judicialselection.us/judicial_selection/methods/limited_jurisdiction_courts.cfm?state) (last visited Nov. 17, 2015).

Putnam, Rockland, and Westchester counties. Part I explains the research design and research questions that frame this study. Part II presents my findings. Part III reflects on what these findings may mean for local government scholars, local government officials, and future students of the courts.

## I. RESEARCH DESIGN

When I set out to learn more about local judges for this project, I built upon a pilot study I conducted, which focused on local courts in Ohio but also looked at local courts in Nebraska and West Virginia.<sup>21</sup> Having gotten a general sense of these courts, I knew about the variations in their jurisdictions, the various mechanisms for selecting local judges, and the variety of term lengths. Some have fairly general jurisdiction while others have extremely limited jurisdiction; some have elected judges while others have appointed judges; some judges are subject to retention elections after an initial appointment from other local officials, others have four- or even ten-year terms. These variations limit the general applicability of any but the most exhaustive research designs.

However, by choosing to focus on a set of counties close to my residence in New York State (with several judges being graduates of the university with which I am affiliated),<sup>22</sup> I was hopeful I would come to a nuanced understanding of these local officials from which I could induce a few general lessons for this whole class of courts.<sup>23</sup> Part I.A describes the class of courts I studied, while Part I.B outlines the research questions I pursued.

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21. See Leib, *supra* note 5.

22. I live in Manhattan, but New York City's court system is truly *sui generis* so I chose not to study the local city courts.

23. Obviously, focusing on other states and counties might produce different findings or conclusions. Broward County, Florida, for example, has recently been in the news for especially egregious local judicial conduct. See Frances Robles, *Here Comes the Judge, in Cuffs: In Broward County, Fla., Spate of Judges in D.U.I. Arrests*, N.Y. TIMES (June 27, 2014), <http://www.nytimes.com/2014/06/28/us/in-broward-county-fla-spate-of-judges-in-dui-arrests.html> (highlighting occurrences of judicial drunk driving, judicial nudity, and a judicial marijuana-smoking incident). However, this may be a unique case. As the elected public defender in Broward said, "Tell me one other courthouse that at any time ever had three judges pending criminal charges, a fourth judge disbarred by the Supreme Court and another judge awaiting removal. . . . And that doesn't include the naked judge!" *Id.*

### A. Which Courts Are “Local Courts”?

“Local courts” can mean several things, so it is worth specifying the features of the New York courts included in this study.<sup>24</sup> In order to maximize my resources and potential impact, I focused on county courts and town and village justice courts in New York’s Ninth Judicial District. These courts, in New York’s Second Judicial Department, are essentially trial courts. Elected judges chosen in partisan elections sit in all these courts, though town and village justice courts always have an appointed “Acting Judge”—often not residing in the locality—to share the docket and to deal with cases that create conflicts of interest. County courts have jurisdiction over felony prosecutions and share jurisdiction over misdemeanors with the town and village justice courts, which also arraign defendants accused of felonies.<sup>25</sup> On the civil side, county courts can hear cases in which the amount in dispute is up to \$25,000; town and village justice courts can hear cases with up to \$3000 at stake.<sup>26</sup> The town and village justices do their jobs part-time and usually have other employment, though many need to be on-call around the clock for arraignments.

These local courts sit below their region’s branch of the Supreme Court of New York, the trial-level court for cases outside the jurisdiction of the local courts. Those cases—along with cases that start in the limited jurisdiction courts—can be appealed to the Appellate Divisions of the Supreme Court. From there, appellants can appeal to the Court of Appeals, New York’s highest court.<sup>27</sup>

### B. Research Questions

I sought to pursue three core lines of inquiry with the local judges in my target courts. First, I asked judges a battery of questions focusing on the way in which local judgeships interact with the local political ecosystem. In light of my earlier work on elective judiciaries<sup>28</sup> and

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24. The most authoritative sources for the selection methods, qualifications, jurisdiction, and term duration for New York court judges is in Article VI of the New York Constitution and in Executive Order No. 15. See N.Y. CONST. art. IV, § 1; N.Y. COMP. CODES R. & REGS. tit. 9, § 8.15 (2015) (codifying Executive Order No. 15).

25. JONATHAN LIPPMAN & A. GAIL PRUDENTI, N.Y. STATE UNIFIED COURT SYS., THE NEW YORK STATE COURTS: AN INTRODUCTORY GUIDE 4 (2014), <https://www.ny.courts.gov/Admin/NYCourts-IntroGuide.pdf>.

26. *Id.*

27. New York’s byzantine system for judicial election at the Supreme Court level was a target of litigation, but the United States Supreme Court upheld New York’s system in *New York State Board of Elections v. Lopez Torres*, 552 U.S. 196 (2008).

28. See Aaron-Andrew P. Bruhl & Ethan J. Leib, *Elected Judges and Statutory Interpretation*, 79 U. CHI. L. REV. 1215 (2012).



the intuitions some have about the way politics and law interact, I wanted to understand whether local judges emerge from a local political or professional infrastructure, a statewide party apparatus, or whether, perhaps, they are lawyers in the community just looking for side income or to perform public service quite removed from local or statewide politics. I questioned them not only about what it took—politically—to get their jobs but what it takes to maintain them. I asked about their relationships with party leaders and constituents to sketch a political portrait of the local judge.

Second, I explored the local judges' relationships with other local government officials, such as local legislators, board members or trustees of the locality, and the executive officials. I was interested in whether the relationships within a given governmental unit were collaborative, adversarial, or somewhere in between. I was particularly interested in whether the judges were self-conscious about being in a joint project with other local officials and whether they detected a rigid separation of powers within their jurisdictions.

Finally, I questioned local judges about their place in the state judicial hierarchy. I inquired about whether the judges felt primarily part of the locality or the state, and I asked them whether they experienced state/local tensions. As so much of local government scholarship tends to be about the push-and-pull among states and their localities,<sup>29</sup> I was curious to know if state/local tensions played themselves out in the halls of the local courtroom. Although intrastate preemption is one doctrinal area where these issues are manifest,<sup>30</sup> I sought to understand whether local judges see themselves as part of some kind of activism on behalf of the locality.<sup>31</sup> The same questions about collaborative or adversarial postures can be asked about the state judicial system in which the local court is embedded. Do local courts advocate on behalf of localities at the expense of the state? Or do local courts, as part of the state judicial system, advocate for the state at the expense of the locality?

There are, to be sure, substantial limitations built into a research design that is based on what judges say in interviews—and just twenty-three at that—from only one state and one district. A fuller narrative about local courts would require follow-up discussions with others at the courts: the litigants, prosecutors, defendants, and reviewing courts. And a broader perspective could be gleaned, no doubt,

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29. See sources cited *supra* note 18.

30. See Paul Diller, *Intrastate Preemption*, 87 B.U. L. REV. 1113 (2007) (discussing this tension in the context of state preemption of city policy experimentation).

31. I hypothesized about this possibility in Leib, *supra* note 5, at 907.

from interviewing other local government officials such as mayors and legislators. But this small window into the psychology and sociology of local judging—with their false consciousness and biases—still tells a useful story that should interest policymakers, scholars, and local government officials alike. I spoke to Republicans, Democrats, and third-party-affiliated judges; judges from big towns and tiny villages; judges serving in their third decade and judges serving in their first few years; men and women. I spoke to some in their chambers, some in their homes, some in my office, and many over the phone. I spoke mostly to attorney judges but also spoke to a non-attorney judge.<sup>32</sup> The portrait I sketch below of local judging is ultimately a composite drawn from many different examples, each providing a different perspective on the archetype.<sup>33</sup>

## II.

### FINDINGS

In short form, my findings can be summarized as follows:

1. Local judges rely on political connections to get their jobs. Once in office, they generally express a desire to retire from active political lives—with perhaps mixed results;
2. At the most local level, judges maintain a strong sense of the separation of powers that tends to isolate local judges from

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32. New York, along with the majority of American states, allows non-attorney justices to preside in courts of limited jurisdiction. See BUREAU OF JUSTICE STATISTICS, STATE COURT ORGANIZATION 2011 (2013), <http://www.bjs.gov/index.cfm?ty=PBdetail&iid=4802> (providing 2011 data on the legal qualifications required to serve as a trial court judge in fifty states and the District of Columbia). Because the Ninth Judicial District is relatively close to New York City and is less rural than many other districts in New York, it is much more common for justices to be attorneys than it is in the rest of the state. I do not enter the fray here about whether or not it is desirable to move towards systems with no lay judges, though that has been the principal concern of prior work on town and village justice courts in New York. See, e.g., Mark H. Alcott, *Our Dual Roles*, 79 N.Y. ST. B.J. 5, 6 (2007); Colin A. Fieman & Carol A. Elewski, *Do Nonlawyer Justices Dispense Justice?*, 69 N.Y. ST. B.J. 20 (1997); Norman L. Greene, *Advancing the Rule of Law Through Judicial Selection Reform: Is the New York Court of Appeals Judicial Selection Process the Least of Our Concerns in New York?*, 72 ALB. L. REV. 633, 649 (2009); Joel Stashenko, *State Bar Says Defendants Should Have Option for Lawyer Judges*, N.Y.L.J., Feb. 2, 2009, at 1.

33. Some judges would speak to me only on the condition of anonymity. Therefore, I have chosen not to name any judge in the material *infra*; instead, I cite each interview by an assigned letter with the date of the interview. The interview notes are available for inspection by interested readers, and I will redact the names of judges who specifically requested anonymity. In some cases, my notes were taken in shorthand, and my reconstructed quotations here are reasonably reliable approximations. All notes were taken during the interviews when they were conducted by phone, and right after the interviews when they were conducted in person.

other local officials in the legislature and the executive. At the less-local county level, however, it seems that collaboration is more likely to occur as sister government branches work together to effectuate policy;<sup>34</sup>

3. Most local judges at the town and village level feel themselves to be local officials and not state officials, notwithstanding a judicial organizational chart that clearly includes town and village justices within the state system. Although this was not universal (and some judges were quick to remember that although their paychecks are paid by local governments, they are usually enforcing state law and sometimes receiving state health and pension benefits), local judges did tend to have a sense that they are entrusted by their community to do justice and not that they are an instrumentality of the state government. At the same time, they largely held prosecutors responsible for preferring certain ways of handling cases that tended to promote the interests of localities at the expense, quite literally, of the state.

I elaborate upon these findings below.

#### A. *Local Judges and Local Politics*

It was not greatly surprising to learn that getting a local judge position requires some interaction with the political system. Even appointive systems of judicial selection would tend to require prospective judges to have some access to those in political power who make the appointments. On the other hand, in elective systems judges are required to interact with the political system in a very direct way. The form of the interaction, however, varies.

Some judges reported substantial histories in elective politics, serving on local school boards,<sup>35</sup> zoning boards,<sup>36</sup> working with local party operatives in a legislative or administrative capacity,<sup>37</sup> or getting to know party leaders through service in a district or town attorney's office, or as Chief of the Fire Department.<sup>38</sup> Some were Acting Judges—an appointive position—prior to becoming elected judges;

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34. This somewhat surprising finding may be attributable to a clear professional culture of separation at the county level, so it doesn't need to be reinforced aggressively by the judges themselves. By contrast, at the town or village level, it may be that other officials take too many liberties, requiring more pushback by the judges.

35. Interview with Judge T (June 4, 2014).

36. Interview with Judge J (Apr. 15, 2014).

37. *Id.*; Interview with Judge T, *supra* note 35.

38. Interview with Judge F (Apr. 30, 2014); Interview with Judge W (May 8, 2014).

some are still Acting Judges in different localities, maintaining dockets in multiple courts.<sup>39</sup> Several are serving in the towns or villages where they grew up.<sup>40</sup> Although some don't consider themselves "political people,"<sup>41</sup> they do have to find a way to secure nomination by the relevant political parties. Most were active in politics in one way or another before reaching the bench.<sup>42</sup> One judge emphasized how hard it was to become a judge without being part of the "establishment," highlighting his previous experience on a local insurance commission, an ethics commission, and with the parking department as preludes to his judicial office.<sup>43</sup> Other judges emphasized that the party apparatus is needed to do the work of campaigning through pamphleteering and mail.<sup>44</sup>

In many cases, connections within the establishment were needed to get a foot in the door. Many elected judges first received an appointment when a previous judge departed. In one case, a judge's father held the position for thirty years and resigned only when he could convince the town board to appoint his son to the vacancy.<sup>45</sup> It wasn't unusual to hear other stories of judges essentially making their resignations contingent on town boards or trustees appointing their preferred successors for the remainder of their terms; the successors then became heirs-apparent to the position because incumbents are always difficult to beat.<sup>46</sup>

Some judges did report much more attenuated connections to party establishments, coming to office by more creative and unorthodox methods. For instance, one judge was approached about the possibility of a judicial position at a child's Little League game.<sup>47</sup> Another sought the job after becoming known for a local practice with some

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39. See, e.g., Interview with Judge W, *supra* note 38.

40. See Interview with Judge F, *supra* note 38; Interview with Judge H (Mar. 31, 2014); Interview with Judge N (Apr. 30, 2014).

41. See Interview with Judge P (Apr. 16, 2014); Interview with Judge R (Apr. 29, 2014) ("I was a political junkie but never active."); Interview with Judge U (Apr. 11, 2014) ("I don't consider myself a political person at all. I have soup with the party once a year.").

42. See Interview with Judge D (Apr. 30, 2014); Interview with Judge P, *supra* note 41 ("Judges are usually very active [in politics]—but I wasn't; I'm an aberration.").

43. Interview with Judge E (May 1, 2014).

44. See Interview with Judge G (Apr. 29, 2014); Interview with Judge V (Apr. 28, 2014).

45. Interview with Judge I (Apr. 3, 2014); see also Interview with Judge S (May 1, 2014) (explaining that a judge has a stepson who is a trustee and that the judge was first appointed by trustees before running unopposed thereafter, winning his election 34–0).

46. See, e.g., Interview with Judge D, *supra* note 42.

47. Interview with Judge V, *supra* note 44.

judicial experience as an ALJ in New York City.<sup>48</sup> One judge joined a synagogue because it was clear that in the local political environment, ethnic politics dictated that the local judge had to come from a certain branch of the local religious community.<sup>49</sup> Another judge found his way into the job because he served for a long time in the local police force.<sup>50</sup> One judge—after losing an election in a town court after decades of service—was elected to a newly established village court (not all villages have to have courts, and some just use the local town court instead) to circumvent bloc voting by a group that wanted to seat its own judge at the town level. When running for the new village court judgeship, he didn't need to get involved with the major party establishment as he did at the town level.<sup>51</sup>

Perhaps surprising to those who think that these local elections are not contested, several judges reported having lost battles for their seats prior to winning them.<sup>52</sup> Although some judges believed that their elections were epiphenomenal—with results attributable to coat-tail or shadow effects of other things on the ballot at a particular time<sup>53</sup>—many clearly felt they needed to run real campaigns to get their jobs. Even though some judges were quick to point out the low level of discourse in the race,<sup>54</sup> many judges reported engaging in meaningful campaigning.

The importance of third-party endorsement in these local election environments was also a notable theme to emerge during the interviews. Several local judges highlighted the need to run on a third-party line (including the Independent Party, Conservative Party, Working Families Party, and “the Block Party”<sup>55</sup>) either instead of or in addition to that of a major party if they hoped to win.<sup>56</sup> Far from the national story of uncompetitive and gerrymandered legislative dis-

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48. Interview with Judge P, *supra* note 41.

49. Interview with Judge A (Mar. 17, 2014).

50. Interview with Judge B (Apr. 16, 2014).

51. Interview with Judge C (May 2, 2014).

52. *See, e.g.*, Interview with Judge J, *supra* note 36; Interview with Judge M (Apr. 16, 2014); Interview with Judge T, *supra* note 35.

53. *See* Interview with Judge C, *supra* note 51 (suggesting that gubernatorial and presidential races have effects on local judicial races); Interview with Judge J, *supra* note 36 (suggesting that presidential races have an effect on local races); Interview with Judge M, *supra* note 52 (referring to the “Hillary [Clinton] effect”).

54. *See, e.g.*, Interview with Judge V, *supra* note 44 (describing an opponent's campaign as “like a dating profile” to persuade male voters, mentioning “liking sunsets”).

55. *See, e.g.*, Interview with Judge F, *supra* note 38; Interview with Judge S, *supra* note 45 (mentioning the local “Block Party”).

56. *Id.*; Interview with Judge Q (Apr. 16, 2014); Interview with Judge C, *supra* note 51; Interview with Judge F, *supra* note 38.

tricts<sup>57</sup>—or the portrait of localities as lacking partisan competition<sup>58</sup>—the local judicial elections seem to produce active politics,<sup>59</sup> often with bipartisan results. Many judges reported that the co-judges on their courts were members of other parties, and all reported healthy, professional, non-combative relationships at the courts, even with substantive policy differences on a range of matters.<sup>60</sup>

The policy differences that judges discussed included views about handgun licenses,<sup>61</sup> applications of zoning codes,<sup>62</sup> and the use of a drug court model for local misdemeanors.<sup>63</sup> That these policy differences exist suggests that local justice isn't as simple as the judges tended to summarize in their common utterance: "I just apply the law." Whatever canons and ethical parameters control judicial campaigning for these offices,<sup>64</sup> substantive policy commitments, determining what goes on in the courtroom, vary among local judges.

Although some judges admitted that they want to be liked on account of their elective status,<sup>65</sup> for the most part judges had a strong

57. See, e.g., PARTY LINES: COMPETITION, PARTISANSHIP, AND CONGRESSIONAL REDISTRICTING (Thomas E. Mann & Bruce E. Cain eds., 2006); Alan I. Abramowitz et al., *Incumbency, Redistricting, and the Decline of Competition in U.S. House Elections*, 68 J. POL. 75 (2006); Jamie L. Carson & Michael H. Crespin, *The Effect of State Redistricting Methods on Electoral Competition in United States House of Representatives Races*, 4 ST. POL. & POL'Y Q. 455 (2004); John N. Friedman & Richard T. Holden, *The Rising Incumbent Reelection Rate: What's Gerrymandering Got to Do with It?*, 71 J. POL. 593 (2009).

58. See, e.g., David Schleicher, *Why Is There No Partisan Competition in City Council Elections?: The Role of Election Law*, 23 J.L. & POL. 419 (2007). For evidence that trial court elections aren't highly contested as a general matter (though there is variation among states), see Michael J. Nelson, *Uncontested and Unaccountable? Rates of Contestation in Trial Court Elections*, 94 JUDICATURE 208 (2011).

59. Although local judicial elections are not especially salient with the general public, informed and attentive voters may be paying extra attention. See Nicholas P. Lovrich, John C. Pierce & Charles H. Sheldon, *Citizen Knowledge and Voting in Judicial Elections*, 73 JUDICATURE 28 (1989); Nicholas P. Lovrich, Jr. & Charles H. Sheldon, *Voters in Judicial Elections: An Attentive Public or an Uninformed Electorate?*, 9 JUST. SYS. J. 23 (1984). But see Charles A. Johnson, Roger C. Shaefer & R. Neal McKnight, *The Salience of Judicial Candidates and Elections*, 59 SOC. SCI. Q. 371, 374 (1978) (finding that only 2.5% of voters surveyed could name a single candidate in a lower-court election compared with 14.5% of voters in higher-court elections).

60. See, e.g., Interview with Judge R, *supra* note 41; Interview with Judge T, *supra* note 35.

61. Interview with Judge O (Mar. 24, 2014).

62. Interview with Judge C, *supra* note 51.

63. Interview with Judge H, *supra* note 40; Interview with Judge Q, *supra* note 56.

64. New York State's most recent *Judicial Campaign Ethics Handbook* sets forth some of these parameters. See N.Y. STATE ADVISORY COMM. ON JUDICIAL ETHICS, JUDICIAL CAMPAIGN ETHICS HANDBOOK (2014), <http://www.nycourts.gov/reports/judicialcampaignethicshndbk.pdf>.

65. See Interview with Judge A, *supra* note 49.

feeling that “politics” was checked at the courthouse door once they got their jobs,<sup>66</sup> even if they occasionally needed to enter the fray in an election season.<sup>67</sup> But the policy interests and differences at the local level suggested that elections might plausibly be focused on real differences in how the law would be applied, depending on who won an election. One judge just put it plainly: “We are all political. It is silly to deny it about an elective office.”<sup>68</sup> This confirms limited prior empirical evidence suggesting that lower-level elected judges are responsive to constituents.<sup>69</sup>

## B. Local Judges and Local Government

### 1. Town and Village Elected Judges

Pressing judges on their relationships with other local government officials produced mixed findings. Most elected judges are equipped with something canned to say about how they navigate being both an elected official and a bulwark for the rule of law<sup>70</sup>—performing as non-political actors in a political system. Trained in judicial canons and the mechanics of campaigning by emphasizing competence over policy views, local judges were ready for this first line of inquiry and knew it would be of interest to researchers. However, as we veered from areas they expected to discuss, I was able to explore matters about which they seemed to share their unrehearsed impressions.

The first response judges had when asked about relationships with their local governments was to be clear that nothing untoward was going on: they were not taking their lead from the preferences of legislators or mayors, particularly with respect to how individual cases ought to be decided.<sup>71</sup> It is not hard to understand that local judges

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66. See Interview with Judge J, *supra* note 36.

67. See Interview with Judge G, *supra* note 44.

68. Interview with Judge O, *supra* note 61; see also Interview with Judge L (Apr. 30, 2014) (“I worry about judges getting their jobs because of party politics, not competence.”). Of course, plenty of judges deny it. See, e.g., Interview with Judge W, *supra* note 38 (“I don’t feel pressure from constituents. I feel wholly apart from the people. I couldn’t be impartial without separation.”).

69. See Gordon & Huber, *supra* note 8; Huber & Gordon, *supra* note 8.

70. See *Chisom v. Roemer*, 501 U.S. 380 (1991) (debating whether elected judges represent constituents or represent “the Law”).

71. See Interview with Judge A, *supra* note 49 (“The only time a supervisor called me on a case was when some knucklehead kid destroyed a golf course; [the supervisor wanted me to] ‘hang him.’”); Interview with Judge B, *supra* note 50 (“[I have] no contact with the board.”); Interview with Judge C, *supra* note 51 (“There is no discussion between local government officials and local courts.”); Interview with Judge D, *supra* note 42 (“I can’t do the bidding of town elders because they are a party before

might be reacting to a perceived implication of corruption in their small localities, through suggestions that local officials are meddling in case outcomes. On the occasions when judges felt interference from local officials, they reacted with hostility. One expressed frustration at the nepotism a board evidenced in addressing personnel matters at the court.<sup>72</sup> There was even one instance in which a mayor called a judge to let him know that bail was set too low; the judge did not appreciate the call, nor did he change the bail amount.<sup>73</sup>

Once convinced I wasn't accusing them of outright corruption, however, judges weren't shy about acknowledging that they know well the local officials in their communities and frequently have good relations with them.<sup>74</sup> Given that judges sometimes work in municipal buildings with other officials (some don't even have dedicated courtrooms, so they share rooms with legislatures), they tend to see them regularly, too.<sup>75</sup> Some admitted that as long as the party in control of the legislature and in control of the court was the same, there was informal and casual contact between the court and other officials.<sup>76</sup>

These casual contacts (both in and out of the office) can lead to some collaboration as well as some advocacy by the judiciary. One judge explained that the local judges went before the village board to encourage it to work with a nonprofit organization to help kids that come before the court receive productive interventions.<sup>77</sup> Another judge explained that the outdated town code needed a revision and he encouraged the board to contract with a private company that updates town codes.<sup>78</sup> And one judge changed the court's docket schedule to

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me in most cases."); Interview with Judge E, *supra* note 43 ("I would oppose being told by the board how to do anything substantive."); Interview with Judge M, *supra* note 52 ("I have never felt pressure [from the local village board] to collect fines."); Interview with Judge T, *supra* note 35 ("In five years, there has been very limited conversation [with the board] about policy or cases.").

72. See Interview with Judge L, *supra* note 68.

73. Interview with Judge T, *supra* note 35.

74. See Interview with Judge D, *supra* note 42; Interview with Judge H, *supra* note 40; Interview with Judge N, *supra* note 40.

75. See Interview with Judge P, *supra* note 41. Judge P reported, however, that the building housed only the mayor, not the legislature, and therefore he had no daily contact with the legislature. *Id.*

76. See Interview with Judge N, *supra* note 40.

77. Interview with Judge P, *supra* note 41.

78. Interview with Judge H, *supra* note 40. This was news to me. For \$6000, a private company can rewrite the laws under which a village or town regulates itself. I couldn't help wondering what might count as legislative history for Municode. See Municode, <https://www.municode.com/> (last visited Nov. 15, 2015). In the case of Judge H's locality, the board was unwilling to pay for the update and wasn't willing to fix the ordinances themselves because it didn't have the time. So the judges just keep muddling through outdated code.



add a day for building code violations, pursuant to a request by the board.<sup>79</sup>

Virtually all town and village judges reported annual adversarial interactions with the local legislature on budgetary matters,<sup>80</sup> but otherwise had only irregular formal contacts with these bodies. The primary issue that seems to make a judge pick up the phone to other local officials is when personnel internal to the court are affected by board or executive decisions.<sup>81</sup> In one episode, a local judge thought to call the mayor to impress upon the executive that the court needed more security than it was getting: with hard domestic violence cases before the court and tough bond decisions, the judge felt that more security detail was appropriate.<sup>82</sup> Money can make the calls run in the reverse direction, too: one judge highlighted a problem with bounced checks in his jurisdiction that led the local comptroller to get involved with how the courts take in money,<sup>83</sup> and the legislature will sometimes lean on courts to generate more revenue to fund itself.<sup>84</sup>

Still, notwithstanding these moments of give-and-take between the courts and other institutional actors, the overwhelming theme that came through was a commitment to independence from other local officials.<sup>85</sup> Although some judges could articulate occasional moments of collaboration, much more often they were eager to highlight the care they take not to get involved in “policy.”<sup>86</sup> As one judge put it,

79. Interview with Judge T, *supra* note 35.

80. See Interview with Judge A, *supra* note 49 (“When I supervise local courts, there is pull and tug between mayor and judicial branch.”); Interview with Judge I, *supra* note 45 (“I used to fight with them over qualified clerks.”); Interview with Judge N, *supra* note 40 (“We only have contact on budget . . . I don’t want them in my business.”); Interview with Judge Q, *supra* note 56 (“But they control the purse strings.”); Interview with Judge U, *supra* note 41; Interview with Judge W, *supra* note 38. *But see* Interview with Judge P, *supra* note 41 (“I have never asked for funding—maybe once.”).

81. See Interview with Judge W, *supra* note 38; Interview with Judge V, *supra* note 44 (“Town just unilaterally reduced the staff. I went nuts on the board and mayor.”).

82. See Interview with Judge T, *supra* note 35.

83. Interview with Judge E, *supra* note 43.

84. See Interview with Judge W, *supra* note 38. Judge W refers these efforts to the town attorney. For more on this dynamic, see *infra* Part II.C.

85. For a discussion of the complexity of the concept of judicial independence, see JED HANDELSMAN SHUGERMAN, *THE PEOPLE’S COURTS: PURSUING JUDICIAL INDEPENDENCE IN AMERICA* (2012).

86. See Interview with Judge C, *supra* note 51; Interview with Judge D, *supra* note 42; Interview with Judge G, *supra* note 44 (“I have told my government: I am independent.”); Interview with Judge I, *supra* note 45; Interview with Judge J, *supra* note 36 (“[The] town board stays mostly out of our business.”); Interview with Judge Q, *supra* note 56 (“We all know we are separate and independent from town government.”); Interview with Judge R, *supra* note 41 (“There is often a lack of understanding that we are a separate branch of government. We are invited to give reports to the

“They set the zoning law and we interpret it. If they don’t like a decision, they can appeal it or re-write [the law].”<sup>87</sup> Another judge wrote an opinion saying that his town board did not have the authority to collect late fees on parking tickets; although the board was furious, it complied (and then rewrote the ordinance).<sup>88</sup> This is the conventional story of the separation of powers, writ small.

Not all judges, however, viewed their role as purely interpretive. One judge explained at length how he is trying to bring the “drug court” model, which exists at the county (felony) level and encourages treatment over incarceration, to the misdemeanor-level offenses he oversees.<sup>89</sup> Although he was unable to convince his locality to pay its drug council to sit with his criminal docket, he was active in getting a nearby locality’s council to come help his court; indeed, he ran for judge in the first place on his criminal law background and his interest in drug and alcohol problems in the town.<sup>90</sup> But this is just one instance of a local court getting involved in “policy” broadly conceived. Most judges at the town and village level had a formalistic sense of the separation of powers within their locality, and the aforementioned example of policy involvement appears to be an exception that proves the rule.

## 2. County Judges

Matters appear different at the county level. Although the vast majority of the docket at county court consists of cases under state law (e.g., family law, matrimonial law, criminal law), the judges there were more comfortable collaborating with local legislators and executives.<sup>91</sup> The county judge wears many hats, extending beyond simply interpreting the law. Many county judges run drug courts, manage county jails, and take a hands-on approach to figuring out how to calibrate police and sentencing efforts with reference to how many cell beds are available in a county jail.<sup>92</sup> In one interview a county judge made clear that with 120 beds in the jail, the two county judges over-

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board and we have to make them appreciate our independence.”); Interview with Judge T, *supra* note 35.

87. Interview with Judge E, *supra* note 43.

88. Interview with Judge D, *supra* note 42.

89. Interview with Judge H, *supra* note 40. For more on these kinds of courts, see McLeod, *supra* note 10.

90. See Interview with Judge H, *supra* note 40.

91. See Interview with Judge A, *supra* note 49 (although describing the work of the county court as “independent,” confirming that collaborative professional relationships are maintained among county officials in the court and legislature).

92. See Interview with Judge O, *supra* note 61.

seeing the criminal docket assessed vacancies and made sure every single day that no one fell through the cracks.<sup>93</sup> The county court judge also reported collaborative efforts with the county executive to make sure relevant drug treatment programs were properly staffed. Indeed, this judge compared his current experience with prior experience as a town judge and highlighted that in that role he was “wholly part of a separate branch; [he] had nothing to do with the town council or the mayor then. At the county level, things are much more complicated.”<sup>94</sup> The separation of powers is not fetishized to the same extent at the county level as it is at the township level; collaboration is more common than adversarial or territorial postures. As one town justice noted, “I would like to do a lot of innovative things. Doing DWI courts and drug courts takes money and effort. I can’t do it. I think the county system works much better. [There,] everyone is on the same team.”<sup>95</sup>

At the county level, the county judge is sometimes the official in charge of granting “full carry” licenses for gun ownership, and it is clear that this is a salient issue on which voters have preferences and make policy choices in their judicial elections. I spoke to a self-described “pro-gun” judge who believes that the state law that gives him the authority to issue licenses<sup>96</sup> disables the county legislature or executive from adding additional conditions on gun ownership; he thinks they are infringements on a constitutional right he is well-situated to defend. Part of his campaign and professional identity is built upon his pro-gun views—and those views have a direct effect on who may carry a gun in his county. Meanwhile, his colleague on the county court is a Democrat and has a different view on the Second Amendment, but the Democrat has consensually opted out of being a licensing officer; he does not hear applications for “full carry” licenses, so the Republican judge’s views prevail in the county.<sup>97</sup> In short, county-level courts are involved in local governance and producing policy outcomes. The overarching story of county-level courts is that they are less fixated on a formalistic vision of the separation of powers.

### C. *Local Judges and the State*

Town and village justices and county judges likewise perceive their relationships to the state differently. The county judges—not-

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93. *Id.*

94. *Id.*

95. Interview with Judge N, *supra* note 40.

96. *Cf.* N.Y. PENAL LAW § 400.00 (LexisNexis 2015).

97. *See* Interview with Judge O, *supra* note 61.

withstanding their collaborative posture with other county officials—generally saw themselves as part of the state judiciary (though they objected to my framing their state role as being “an arm of the state”).<sup>98</sup> Whether because the county judges deal almost exclusively with state law, because they receive their checks from state coffers, and/or because they are much more likely to be appealed in the appellate court supervising them, county judges feel very much part of the state system.<sup>99</sup> One county judge who started as a town justice put it this way: “As a town judge, I had no idea who Jonathan Lippman [Chief Judge of the Court of Appeals of New York] was; as a county judge I take marching orders from him.”<sup>100</sup>

As a class, local judges working at the town and village level were more split on their identity. A majority felt primarily “of the locality,” not of the state. Judges said things like the following: “As a local judge, I don’t see the state;”<sup>101</sup> “We aren’t funded by the state, so I am accountable mostly to the locality;”<sup>102</sup> “I don’t think of myself as related to the state; I serve a local community;”<sup>103</sup> “I am part of the town on parking, zoning, and building issues. There I want the town to thrive. I feel for the locals and want the town to thrive in tough economic times;”<sup>104</sup> “I don’t have much concern about ‘the state’ as such. I worry about the kids in our community;”<sup>105</sup> “I do not feel I am an arm of the state or an apparatus of the state. I am an elected official for the village. I don’t identify as a state guy;”<sup>106</sup> “I don’t . . . consider myself a part of the state system;”<sup>107</sup> “I am of the community and paid by the locality;”<sup>108</sup> “I am ‘totally local;”<sup>109</sup> “I don’t feel integrated

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98. See, e.g., Interview with Judge A, *supra* note 49.

99. See, e.g., Interview with Judge O, *supra* note 61.

100. *Id.*

101. Interview with Judge G, *supra* note 44. Because Judge G had worked for the state in another administrative capacity within the judiciary, she said she “knew from personal experience where the state was.” *Id.*

102. Interview with Judge B, *supra* note 50. Justice Court Assistance Program (JCAP) grants are ways the state funds the local courts, though these grants are usually a very small portion of the local court budget. See N.Y. STATE UNIFIED COURT SYS., BUDGET: FISCAL YEAR: APRIL 1, 2012–MARCH 31, 2013, at 144 (2011), <https://www.nycourts.gov/admin/financialops/BGT12-13/Final2012-13Budget.pdf> (providing a short summary of JCAP).

103. Interview with Judge L, *supra* note 68.

104. Interview with Judge H, *supra* note 40.

105. Interview with Judge U, *supra* note 41.

106. Interview with Judge P, *supra* note 41; see also Interview with Judge M, *supra* note 52 (“I don’t think of myself as an arm of the state.”).

107. Interview with Judge Q, *supra* note 56.

108. Interview with Judge R, *supra* note 41.

109. Interview with Judge U, *supra* note 41.

into the state system at all.”<sup>110</sup> One judge stated, “The state does not have much say in my life at all. . . . I am more involved in the state as an attorney, not as a judge.”<sup>111</sup>

Several judges provided examples of “local mores” or sympathy towards their neighbors and beleaguered local residents, which impacted their decisions.<sup>112</sup> Although judges generally claim to be “careful in framing and drafting decisions, to use authorities, including case law, that [are] broadly accepted rather than to tailor decisions to the opinions/prejudices of a local community,”<sup>113</sup> there were several instances where judges referenced their local attachments to highlight their sympathy for residents,<sup>114</sup> ability to get informal information from police,<sup>115</sup> knowledge of the individualized circumstances of the litigants,<sup>116</sup> or investment in the communities that help them do their work.<sup>117</sup>

For example, judges reported that different counties have different policies about how to deal with drunk drivers—mostly attributable to different community needs and norms.<sup>118</sup> These local differences in approach create inconsistencies in the application of statewide DWI law. This inconsistency troubled one judge;<sup>119</sup> others saw the issue as

110. Interview with Judge T, *supra* note 35.

111. Interview with Judge V, *supra* note 44.

112. See Interviews with Judge K (Mar. 28–31, 2014) (“There are times when local mores are taken into consideration, such as a [real estate] fence squabble that I wrote a decision on. . . . My admonition was very much based on life in a tight village where neighbors have to be civilized.”); Interview with Judge L, *supra* note 68.

113. Interviews with Judge K, *supra* note 112.

114. See, e.g., Interview with Judge J, *supra* note 36 (recounting a recent defendant who was arrested on drug charges that may have implicated his future at SUNY New Paltz and feeling especial sympathy for the defendant’s recently divorced mother, who was crying in the courtroom); Interview with Judge V, *supra* note 44 (recounting a case of juveniles breaking into a community center and her efforts to get their parents involved to rehabilitate the offenders); Interview with Judge U, *supra* note 41 (recounting an especially lenient case for an eighty-year-old defendant in a tweed jacket too small for him caught stealing stool softener).

115. E.g., Interview with Judge T, *supra* note 35 (“The local police are very helpful and give me more information. You would lose that if you had centralized arraignment in White Plains.”).

116. See, e.g., Interview with Judge Q, *supra* note 56 (“I know the people; been here a long time. . . . I know the bail situation of the families. . . . We know details about the families.”).

117. See, e.g., Interview with Judge G, *supra* note 44.

118. Several judges explained that the blood alcohol content guidelines for plea bargaining DWI offenders to lesser charges vary from county to county. See Interview with Judge H, *supra* note 40; Interview with Judge P, *supra* note 41; Interview with Judge U, *supra* note 41; Interview with Judge W, *supra* note 38.

119. See Interview with Judge H, *supra* note 40 (arguing there should be one statewide policy).

primarily one of prosecutorial discretion, since these policies are largely developed by (elected) district attorneys.<sup>120</sup> Although the local judges recognize that they can reject plea deals in order to resist the trend of statewide laws being managed differentially by local prosecutors, most have not felt the need to do so except in very rare cases.<sup>121</sup>

Some town and village judges really do see themselves as state officials, or at least as quite linked with the state-level judiciary. Although this was the minority opinion, there was a cohort of local judges who did purport to “feel [like] a state officer, not a local official really. [We] do state law and follow state precedent.”<sup>122</sup> As one judge put it, “I am part of a locally funded enterprise but take my lead from being part of a state system.”<sup>123</sup> Another judge said, “I see myself as elected by the town to serve the town but I am very much a part of the state apparatus of justice. . . . I mostly read and apply state statutes.”<sup>124</sup> One judge emphasized that criminal cases are brought on behalf of the “people of the state” not “the people of the town” and that his authority is delegated from the state constitution (though the judge then remembered that he is sometimes enforcing zoning or other ordinances that are wholly town-code-driven).<sup>125</sup>

These judges were more likely to talk about decisions they wrote and published and were more interested in whether the Appellate Division would affirm their work.<sup>126</sup> Although few judges seem to spend any time considering the prospect of appeals because they are so unusual,<sup>127</sup> some judges might pay more attention to judges higher in the

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120. See Interview with Judge P, *supra* note 41 (“Discretion is necessary.”).

121. E.g., Interview with Judge W, *supra* note 38 (acknowledging that in some cases judges can reject plea deals as a way of resisting disuniformity).

122. Interview with Judge D, *supra* note 42; see also Interview with Judge C, *supra* note 51 (“I hear cases under state law. I am not different from any other court [in the state]. Yes, I hear village violations too but I am mostly hearing New York State law [cases].”).

123. Interview with Judge N, *supra* note 40.

124. Interview with Judge S, *supra* note 45. Perhaps it is not coincidental that this judge does not actually sit in the town he serves because the town’s courthouse was destroyed in a natural disaster.

125. See Interview with Judge W, *supra* note 38 (“I don’t have allegiances. I have delegated responsibilities from the state constitution.”). To be fair, the constitution merely authorizes the town to have a justice, but the town funds and implements that authority; towns can choose not to have local courts at all. See N.Y. STATE UNIFIED COURT SYS., JUSTICE COURT MANUAL 16 (2015) (stating that at least some local courts in New York are “optional”).

126. See Interview with Judge D, *supra* note 42.

127. See Interview with Judge H, *supra* note 40 (“I have never been appealed.”); Interview with Judge M, *supra* note 52 (“Costs of appeal limits the number of appeals, so it is not a big part of my life.”); Interview with Judge L, *supra* note 68 (“I never worry about appeal . . . I am not worried about reversal.”).

judicial bureaucratic organization chart because they are inclined to use the local-judge job to move up the judicial hierarchy and are therefore more conscious of it.<sup>128</sup> Some were unable to say definitively whether they were more locality- or state-identified because while they recognize the importance of local judicial elections and their locally funded salary, they also acknowledge that their benefits and pension come from the state.<sup>129</sup>

Given the small sample size of my interviewees, it was not easy to tell *why* the minority of town and village judges embraced their state identity more than their local identity. It is possible that a sense of prestige associated with state rather than local authority could be driving these identifications. But given that the formal reality is that these *are* actually state courts supervised by the Office of Court Administration (OCA), it is understandable that some judges saw their role this way. Some town and village justices seem to utilize a state-run resource center and a state-run ethics commission hotline more than others,<sup>130</sup> and some get more in Justice Court Assist Program (JCAP) grants than others.<sup>131</sup> Certainly these variables may influence how a judge sees herself as well. Various town and village justices are more or less involved with the Supervising Judge of the judicial district (himself a county court judge)—and that may also affect how much town and village justices feel of a piece with the state system. Some feel the Supervising Judge's visits are really oversight,<sup>132</sup> and some feel the Supervising Judge is there only to be helpful (whether it is in negotiating with mayors and local boards, or providing recom-

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128. See Interview with Judge L, *supra* note 68 ("It is common to try to move up to county or Supreme.").

129. See, e.g., Interview with Judge E, *supra* note 43 ("I am on the state pension system and the state health system but I get town money.").

130. See Interview with Judge B, *supra* note 50 ("The Ethics Commission is helpful to me all the time."); Interview with Judge E, *supra* note 43 ("I really make the Resource Center work for me. I want memoranda, not just a case here and there."); Interview with Judge G, *supra* note 44 ("Resource Center is for the whole state and not as helpful as it could be."); Interview with Judge P, *supra* note 41 ("The Office of Court Administration is nothing but helpful."); Interview with Judge S, *supra* note 45 ("The state is very helpful. . . . There are lots of resources at OCA to support our work."); Interview with Judge T, *supra* note 35 ("I use the Resource Center a lot.").

131. See Interview with Judge Q, *supra* note 56 ("Our support arm is OCA but I get very little other than a JCAP grant from the state."). See generally N.Y. COMP. CODES R. & REGS. tit. 22, § 138.1-6 (2015).

132. See Interview with Judge I, *supra* note 45 ("[Supervising Judge] is my boss . . . we get audited once every three or four years."); Interview with Judge L, *supra* note 68 (describing a situation at a local court where money went missing and OCA came in for an audit).

mentations to help professionalize the local court).<sup>133</sup> Some welcome the state's annual judicial training (which has become more substantial since the *New York Times*'s exposé on the town and village justice court system),<sup>134</sup> and some are more disappointed in it.<sup>135</sup> Ultimately, it is not easy to predict which judges are especially skeptical of the state<sup>136</sup> and see themselves as counterweights to state power and which welcome the state's support and intervention and see themselves as fitting comfortably within the state system.

There is one further division among the local judges that may help shape their divergent role identities: some local judges seem to preside over mostly local litigants,<sup>137</sup> while others seem to adjudicate cases mostly involving outsiders.<sup>138</sup> One can imagine that local judges' sense of themselves as part of the local government or the state could be affected by whether their caseloads primarily involve local residents (who may vote in their reelections) or transients from out of town. Justice and county courts that include jurisdiction over major state highways and major shopping outlets or malls tend to see mostly outsiders; other courts report hearing cases mostly of local te-

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133. See Interview with Judge R, *supra* note 41 (“[Supervising Judge] is there to be helpful, not to be a boss.”); Interview with Judge U, *supra* note 41 (“[Supervising Judge] has been to my court for auditing and analysis. He recommended bulletproof chambers and a parking spot.”). It is worth noting that I had very limited success in reaching out to town and village courts until the Supervising Judge agreed to distribute a subject recruitment letter from his office. Once he did, I had many more volunteers for this project.

134. See Interview with Judge E, *supra* note 43 (“Dunne Commission [convened after the *New York Times* exposé to address deficiencies in the town and village justice court system] gave us real training. Before that very little was mandatory.”); Interview with Judge I, *supra* note 45 (“I take a course on arraignments run by the state, which is useful.”); Interview with Judge M, *supra* note 52; Interviews with Judge K, *supra* note 112 (“Judge school is necessary.”); Interview with Judge R, *supra* note 41 (“The *New York Times* articles actually had an effect.”); see also sources cited *supra* note 12 (*New York Times* exposé).

135. See Interview with Judge W, *supra* note 38 (highlighting the “crazy” and “remarkable” ethics questions the non-attorney judges ask at the sessions).

136. See Interview with Judge Q, *supra* note 56 (“Lippman’s ‘state of the judiciary’ speech? These guys are out of touch . . . ! Lippman doesn’t know what is going on down here.”); see also Interview with Judge L, *supra* note 68 (emphasizing discomfort with the judicial bosses in Albany).

137. See Interview with Judge G, *supra* note 44 (“I deal mostly with the residents.”); Interview with Judge Q, *supra* note 56 (acknowledging knowing many of the families of the people who come before the court); Interview with Judge T, *supra* note 35 (“Most of my litigants are from the community, not outsiders. . . . I know a lot of the people who appear before me.”).

138. See Interview with Judge B, *supra* note 50 (“Most of my cases are traffic cases with out-of-state defendants.”); Interview with Judge F, *supra* note 38 (“From what I see, most of my cases are state police cases with out-of-towners.”); Interview with Judge I, *supra* note 45 (“[V]ery few local people come before me.”).



nants, landlords, neighbors, and other residents. Some judges report a mix,<sup>139</sup> and others struggle to treat locals and out-of-towners under the same standards.<sup>140</sup> One judge said, “There is a tension between being ‘closest to the people’ and treating internal and external people the same.”<sup>141</sup> For those judges who preside mostly over locals—residents whom they often know personally—their local character is clear to them. But these judges face hard recusal problems too, dilemmas that several judges spoke about freely. These judges use a combination of common sense and the Ethics Commission Hotline provided by the state to decide when a case ought to be passed off to another judge with less of a conflict.<sup>142</sup>

The question about role identity is not just fodder for psychological analysis. It likely has a real impact in the halls of the courtroom, even if unconsciously. Almost every judge reported that there is locality-state competition for money that comes from the fines levied by the courts. Most commonly, a locality can capture extra fine money under state-level Vehicle and Traffic Law (“VTL”) by allowing defendants to plead guilty to lesser charges (whether under the state VTL or local parking ordinances), which allows the locality to keep a greater portion of the fine authorized under law. Local judges seemed keenly aware of this tactic under the VTL and well understood how it was used to help localities collect money that might otherwise end up in state coffers. Judges often used a shorthand of calling this “the

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139. See Interview with Judge L, *supra* note 68 (reporting that “heroin highway” cases (State Route 17) are mostly with out-of-area defendants but that DWI cases and petty larceny cases are mostly with local defendants).

140. See Interview with Judge H, *supra* note 40 (“I try to be fair . . . with out-of-towners.”). *But see* Interview with Judge P, *supra* note 41 (“I don’t lean to a local resident over a non-resident.”).

141. Interview with Judge E, *supra* note 43.

142. See Interview with Judge B, *supra* note 50 (“I sometimes ask the other judges to cover to avoid conflicts.”); Interview with Judge G, *supra* note 44 (“Recusal issues are a huge problem. I know many of these people. But I can’t recuse in every case. What good am I then?”); Interview with Judge P, *supra* note 41 (reporting on a recent recusal on account of a litigant who was a former client); Interview with Judge Q, *supra* note 56 (“Justice Courts are closest to the people . . . we know details about the families . . . I know the people here a long time, the bail situations of the families. . . . Recusals are big issues.”); Interview with Judge T, *supra* note 35 (“I know a lot of these people [on my criminal docket]. They are friends with my kids. I coached them. . . . I recuse if I know them too well.”); *see also* Interview with Judge J, *supra* note 36 (discussing the complexities of recusal decisions, reporting on examples in which the judge has taken over cases from adjoining localities with a conflicted judge, and reporting on a case in which a litigant took his parking space when showing up for court). The Ethics Hotline confirmed that Judge J should recuse himself. Interview with Judge J, *supra* note 36.

1201(a) issue,”<sup>143</sup> referring to VTL section 1201(a),<sup>144</sup> which is a common plea bargain offered to drivers caught speeding that doesn’t impose “points” on drivers’ licenses (causing insurance premium hikes) and that sends the relevant fine money to the locality rather than the state. As one judge put it, “This is an issue in every local court: the dynamics may be different but it is happening everywhere. Pleas get localities money so it doesn’t go to Albany.”<sup>145</sup>

Although most judges denied that they participate in manipulating charging and pleading decisions under the VTL to maximize profits for the locality at the expense of the state, almost all acknowledged this was going on in the local courts.<sup>146</sup> One judge reported, “The only area that I see myself reacting as a local is in traffic [cases], which combines traffic regulations promulgated by local ordinance and by the New York State VTL.”<sup>147</sup> This judge also reported that other local judges have been admonished for this behavior (enabling towns and villages to use plea bargains to retain money locally) and that some judges have even been removed by state disciplinary actions.<sup>148</sup> The pressure to use the VTL this way may come from a judge’s sense of

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143. See Interview with Judge E, *supra* note 43 (observing that “1201(a) is a real thing going on.”); Interview with Judge F, *supra* note 38 (reporting knowledge of a town along State Route 17 that allows speeders travelling over 100 miles per hour to plead to the “1201(a) non-moving violation so the town can keep the money”).

144. See N.Y. VEH. & TRAF. LAW § 1201(a) (LexisNexis 2015).

145. Interview with Judge G, *supra* note 44.

146. See Interview with Judge B, *supra* note 50 (“We don’t get pressure in this town but it does happen.”); Interview with Judge H, *supra* note 40 (“I completely ignore whether town or state gets the money, though I have heard this is an issue . . . I don’t do the things you are suggesting—drop people to the 1201(a) . . . I just accept what the prosecutors agree to for the plea.”); Interview with Judge J, *supra* note 36 (recognizing that a conviction for “failure to observe a traffic-control device” sends most of the fine to the state but the violation of “parking on the curb” sends all the fine money to the locality); Interview with Judge M, *supra* note 52 (“When I was practicing, I thought judges redirected money to the local coffers.”); Interview with Judge P, *supra* note 41 (emphasizing that “we never plead to local ordinances to get monies” but acknowledging “1201(a)” as a way to avoid state surcharges); Interview with Judge U, *supra* note 41 (“Vehicle/traffic cases do present state/local issues because of the way fine money can be disbursed.”).

147. Interviews with Judge K, *supra* note 112.

148. *Id.* The state’s Commission on Judicial Conduct clearly removes, censures, and admonishes town and village justices with some frequency. One can search all decisions of the Commission going back to 1978 to investigate the bases for those decisions at *Commission Decisions*, ST. COMMISSION ON JUD. CONDUCT, [http://www.scjc.state.ny.us/Determinations/all\\_decisions.htm](http://www.scjc.state.ny.us/Determinations/all_decisions.htm) (last updated Oct. 16, 2015). For a recent example of the Commission calling judges out for this behavior, see Stipulation, *In re Alexander*, 2013 WL 5967122 (N.Y. Comm’n on Jud. Cond. Oct. 31, 2013), 2013 WL 5967121, at \*3 (“From on or about January 1, 2009, through on or about March 31, 2010, Respondent routinely granted reductions to Vehicle and Traffic Law charges for the purpose of directing fine revenues to the Village of Corfu

him- or herself as a local needing money to operate local services (including the court itself)<sup>149</sup> or from other local officials looking to the court for revenue for the locality.<sup>150</sup>

However, judges generally spoke of the *prosecutors* as the ones responsible for this method of using the VTL and local ordinances to maximize the local take from fine money.<sup>151</sup> Judges exhibit some passivity about the dynamic, putting the blame squarely on the heads of prosecutors, who permit this kind of plea bargaining calculated to enrich the locality at the expense of the state.<sup>152</sup> When pressed, most judges confessed that they need the plea bargain system to manage their dockets;<sup>153</sup> they only rarely resist a plea.<sup>154</sup> And they recognize that it is probably better for special prosecutors and town attorneys to get the pressure to use the courts to make money for the locality,<sup>155</sup> rather than direct pressure being applied against the courts, which is more likely to violate a community's sense of justice, the separation of

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rather than to the state treasury, with the result *inter alia* that funds which would otherwise have been credited to the state treasury were not so credited.”)

149. See Interview with Judge L, *supra* note 68 (“I would rather see the money come back to the town. So I would allow plea deals that give more money back to municipality.”).

150. See Interview with Judge A, *supra* note 49 (“Localities think the courts are cash cows for fines and revenue.”); Interview with Judge Q, *supra* note 56 (“Supervisors do sometimes intervene to get the fines. . . . Real estate taxes and fine money is all there is [to pay for town services].”); Interview with Judge M, *supra* note 52 (“Although the village has never put pressure on me to collect money, I have heard this from other judges.”); Interview with Judge W, *supra* note 38 (“From my experience, the job of town or village court is not to produce revenue but the board does talk about it . . . the town fathers think of the courts as revenue-generators.”).

151. See, e.g., Interview with Judge W, *supra* note 38 (stating that the “town attorney often bargains down speeding to get local revenue”).

152. See Interview with Judge D, *supra* note 42 (explaining that the judge knows what is going on but that the judge can't do much to resist plea deals); Interview with Judge E, *supra* note 43 (“[G]enerally, I like to go along with a plea.”); Interview with Judge H, *supra* note 40 (“I just accept what the prosecutors agree to for the plea.”); Interviews with Judge K, *supra* note 112 (“I only get the pleas, so I tend to accept pleas.”); Interview with Judge W, *supra* note 38 (explaining that there is a lot of agreement with prosecutors unless the underlying violation is really offensive).

153. See, e.g., Interview with Judge G, *supra* note 44 (remarking that plea bargaining is needed to “survive”).

154. See Interview with Judge M, *supra* note 52 (recounting a story of a rejected plea); Interview with Judge Q, *supra* note 56 (“[J]udges do sometimes reject pleas.”); Interview with Judge U, *supra* note 41 (“I reject plea agreements if I think prosecutors are playing that game.”); Interview with Judge W, *supra* note 38 (“Courts do sometimes reject the plea deals. . . . Sometimes something offends my sense of justice. . . . First time speeders or drivers on the way to the doctor are given a break. I'm okay with that. . . . It offends me when someone is getting a break for the fifteenth time.”).

155. See Interview with Judge L, *supra* note 68 (recounting why a special prosecutor was hired to handle VTL pleas in the locality); Interview with Judge N, *supra* note 40 (recounting how a board applied pressure to the prosecutor).

powers, and the rule of law.<sup>156</sup> In the few jurisdictions in which judges reported absolutely no VTL charge manipulation, the prosecutors were always from the county rather than the town or village, more closely connected to the state.<sup>157</sup> This only reinforces the view that the prosecutors control this dynamic more than the judges themselves.

This story about the centrality of prosecutors to the administration of law and governance is a relatively recent focus of modern criminal justice scholarship,<sup>158</sup> and these findings suggest that more work studying local prosecutors would help us get a clearer picture about local justice administration.

### III. DISCUSSION

Local judges find themselves in a very complex role. They are elected by a class of constituents they are supposed to represent in some form; they are politicians at least some of the time; they are members of a local government; they are part of a statewide judicial hierarchy; and they are enforcers of the rule of law within their jurisdictions.<sup>159</sup> Although some dimensions of these roles are probably more salient than others at different junctures in a career on the bench (and their purported salience probably depends in some measure on who is asking about it), conflicts within the role identity of the local judge make the job a hard one to do well. Therefore, clarifying how local judges perceive their role is invaluable.

This study found several commonalities in judges' perceptions of their relationships to their constituents, their local governments, and the state. Perhaps these findings will help scholars, judges, and policy-

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156. See Interview with Judge W, *supra* note 38 (highlighting that when local officials hassle the court to raise revenue, the judge is happy to tell them to discuss the issue with the town attorney).

157. See Interview with Judge S, *supra* note 45 (highlighting that there is no town-level prosecutor and that all cases are handled by a county district attorney).

158. See John F. Pfaff, *Escaping from the Standard Story: Why the Conventional Wisdom on Prison Growth Is Wrong, and Where We Can Go from Here*, 26 FED. SENT'G REP. 265, 268 (2014) (arguing that the most effective reforms to stem prison growth are those focusing on prosecutorial behavior); John F. Pfaff, *The Micro and Macro Causes of Prison Growth*, 28 GA. ST. U. L. REV. 1239 (2012); John F. Pfaff, *Waylaid by a Metaphor: A Deeply Problematic Account of Prison Growth*, 111 MICH. L. REV. 1087 (2013); John F. Pfaff, *The Centrality of Prosecutors to Prison Growth: An Empirical Analysis* (2015) (unpublished manuscript), [http://web.law.columbia.edu/sites/default/files/microsites/criminal-law-roundtable-2012/files/Pfaff\\_New\\_Admissions\\_to\\_Prison.pdf](http://web.law.columbia.edu/sites/default/files/microsites/criminal-law-roundtable-2012/files/Pfaff_New_Admissions_to_Prison.pdf).

159. I have explored the role identity of the judge in previous work. See Ethan J. Leib, David L. Ponet & Michael Serota, *A Fiduciary Theory of Judging*, 101 CALIF. L. REV. 699 (2013).

makers navigate these role complexities and offer reforms to help improve local justice systems. Although the findings I report here are from one judicial district in one state, there is little reason to think the complex portraiture here is unique: even states with different constellations of local government designs should be able to appreciate the perennial locality/state tension that local courts will face.

Much is at stake in local courts. Although sometimes they get treated as “more compassionate courts”<sup>160</sup> that offer litigants meaningful support systems,<sup>161</sup> it is important to remember that real law gets applied in these courts, impacting millions of citizens. And these are “the people’s courts,”<sup>162</sup> closest to the day-to-day life of the law that citizens experience, contributing a great deal to people’s sense of the legitimacy of their legal system. Legal academia is beginning to grasp the importance of misdemeanor justice.<sup>163</sup> The collateral immigration consequences of mere misdemeanor convictions, as just one example,<sup>164</sup> suggest that much that goes on in these courtrooms matters a great deal to the people under the jurisdiction of these courts. Landlord-tenant law, neighbor real estate disputes, and domestic violence cases<sup>165</sup> all come within the jurisdiction of these courts. These affect residents’ safety and stability in their homes. It is a misconception that this is “just” traffic court, but even if it were, traffic court affects our safety in our automobiles and represents a significant proportion of citizens’ interaction with the justice system. Local courts are the face

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160. See Interview with Judge Q, *supra* note 56.

161. See Interview with Judge W, *supra* note 38 (“Sometimes what is great about the job is making a difference in people’s lives at the micro-level and showing them how to find a support system.”).

162. See Interview with Judge E, *supra* note 43 (describing local courts as “closest to the people”); Interview with Judge V, *supra* note 44 (“We kind of are ‘the people’s court.’”).

163. See, e.g., Issa Kohler-Hausmann, *Managerial Justice and Mass Misdemeanors*, 66 STAN. L. REV. 611 (2014) (arguing that New York City has largely abandoned an adjudicative model of criminal law administration with respect to misdemeanor convictions); Alexandra Natapoff, *Aggregation and Urban Misdemeanors*, 40 FORDHAM URB. L.J. 1043 (2013) (arguing that practices of aggregation and grouping have led the misdemeanor conviction process to lose many of the essential characteristics of a classic criminal system of legal judgment); Alexandra Natapoff, *Misdemeanors*, 85 S. CAL. L. REV. 1313 (2012) (examining the “profound systemic implications” of misdemeanor convictions).

164. See Interview with Judge S, *supra* note 45.

165. See Interview with Judge R, *supra* note 41 (discussing a set of fatal domestic violence cases in Dutchess County in 2010 that resulted in part from a failure to have a good system of nighttime arraignments, which is the responsibility of the town and village justice court); Interview with Judge U, *supra* note 41 (emphasizing that the judge takes a special interest in domestic violence cases and is not lenient about them).

of the law to millions who will never know about federal Supreme Court opinions, about the Appellate Division at the state level, about the proverbial—or the real—Jonathan Lippman. So making sure that these courts project professionalism and dignity is essential.<sup>166</sup>

The need to help judges and policymakers identify the ways a local judge may be “pro-local” in decision-making, and when such “pro-local” action is appropriate, warrants scholarly attention. One would be hard-pressed to question the practice if being “pro-local” simply meant being sensitive to local conditions in applying the law. Local courts are surely designed at least in part to afford citizens justice that makes sense in their communities. Indeed, in light of intra-state preemption<sup>167</sup> and other mechanisms of state oversight (like appeals into the more clearly identified state system, disciplinary actions against local judges, judicial training and education, and auditing), one might ask whether even more controversial acts of “pro-local” decision-making are ultimately acceptable. Although one could argue that all courts in a state ought to be dispensing the exact form of justice that state-level officers deem appropriate, the design of New York’s court system indicates the alternative view also has merit.<sup>168</sup>

By way of example, the VTL “1201(a) issue” discussed above—which is clearly a pervasive form of “pro-local” decision-making—can hardly be a great surprise to OCA and state judges in Albany. It is surely within the power of the state legislature to amend section 1201(a), to supervise the town and village court system better, to use judicial training sessions to target the conduct more directly, or to get the county district attorneys more involved in prosecuting VTL offenses (as they are in DWI cases).<sup>169</sup> Of course, using county DAs is not a guarantee of perfect intrastate uniformity: as the findings here

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166. Nothing about the findings here suggests that local judges are coming shy of that; however, more systematic work on New York’s local courts from September 2008 recommends improvement in efficiency, facilities, safety, resource support, and some dimensions of professionalism. See JUSTICE MOST LOCAL, *supra* note 13, at 10. My research method here is not adequate to draw any conclusions about whether or not the Special Commission’s particular concerns have been addressed since 2008.

167. See Diller, *supra* note 30.

168. By contrast, in Nebraska, all the lower-level court judges are staffed by gubernatorial appointment (ultimately subject to local retention elections), and their role identity is more clearly tilted to the state. See Leib, *supra* note 5, at 904 n.21 (citing email exchanges with local judges in Nebraska) (“Some county courts that hear cases under local law—as in Nebraska—see themselves, first and foremost, as instrumentalities of the state judiciary. Even though Nebraska county judges are subject to local retention elections (after gubernatorial appointment), they seem to adopt the culture of the state.”).

169. See Interview with Judge F, *supra* note 38 (suggesting that county DAs only handle DWIs downstate).

reveal, there is intrastate disuniformity in how different counties treat state DWI law. But the findings also suggest that the more the county-level prosecutor is involved with local VTL prosecutions, the more likely it is that “pro-local” decisions will not be made by using the VTL strategically.<sup>170</sup>

Apart from these practical design considerations are the normative questions about how best to optimize local autonomy and a sense of local political efficacy in light of state sovereignty—from which local governments get their formal authority.<sup>171</sup> Consider this case, in which an Indiana state appellate court reviewed an elected local judge, finding the judge to have inappropriately imported local mores into state law (a form of being “pro-local”):

We observe that one of the bases for the Juvenile Court’s . . . order was [the local court’s] understanding of the policies of Morgan County. . . . But county courts must be guided by state law rather than local practice in carrying out their duties: “[a] general statute, enacted by the people of the entire state through their representatives, speaks for and to the whole population, and therefore cannot be given or be supposed to have a merely local meaning, or a meaning varying to suit the special usage prevailing in the several localities.” In fact, “[u]niformity in the interpretation and application of the law is the keystone in our system of jurisprudence.” Accordingly, the Juvenile Court—and, indeed, all local courts—must base its decisions on state law, and must also ensure that local practice complies with state law.<sup>172</sup>

The normative questions seem somewhat more complex than this appellate judge asserts, however. Uniformity must be weighed against

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170. See Interview with Judge S, *supra* note 45 (finding very little state/local tension in part because the DAs are all from the county). There is, however, a crosscutting consideration that must be put on the table (if the state will continue to use counties in this way) in order to proof against “pro-local” manipulation of the VTL. John Pfaff’s recent work on county-level crime data, finding that county DAs may be “overcharging” to get offenders into state prisons rather than paying for their incarceration in county jails, suggests that if county DAs get more involved in town and village matters, they may start considering how to offload jailing costs to the localities to save the costs of penning people in county jail. See John F. Pfaff, *State Prisons, County Prisoners* (Apr. 23, 2014) (unpublished manuscript), [http://b3cdn.net/crjustice/6858224bae0d262bbb\\_8lm6bzpho.pdf](http://b3cdn.net/crjustice/6858224bae0d262bbb_8lm6bzpho.pdf).

171. See *Hunter v. Pittsburgh*, 207 U.S. 161 (1907); Kenneth E. Vanlandingham, *Municipal Home Rule in the United States*, 10 WM. & MARY L. REV. 269, 269 (1968) (claiming that localities “are regarded legally as occupying a subordinate status within the state; and, as a rule, they derive their existence and all their powers from the state constitution and state legislative enactments”).

172. *R.K.H. v. Morgan Cty. Office of Family & Children*, 845 N.E.2d 229, 244 (Ind. Ct. App. 2006) (quoting *Cook v. State*, 59 N.E. 489, 490 (Ind. Ct. App. 1901); and then citing *Warren v. Ind. Tel. Co.*, 26 N.E.2d 399, 405 (Ind. 1940)).

the value of local autonomy, of course, and not every state statute must always be enforced the same way throughout the state to vindicate the rule of law. Some state statutes may permit local discretion—and some are likely written sufficiently ambiguously to invite local experimentation, which can provide a feedback loop to inform future state codifications.<sup>173</sup> State legislatures and state-level judiciaries may prefer “new governance” to preemption<sup>174</sup>: “new governance” tolerates and in some instances might even celebrate “pro-local” decision-making to “increase flexibility, improve participation, foster experimentation and deliberation, and accommodate regulation by multiple levels of government.”<sup>175</sup> Ultimately, although a state can start with the design choices of its constitutional system to assess what it views as the right mix of local autonomy, inter-locality cooperation among regions, and state uniformity, there is a need to make more self-conscious design decisions going forward. And what I have exposed here is that local courts probably need as much normative reconsideration as other instrumentalities of local government when states revisit and recalibrate their design choices.

This is not the place to dig deep into normative issues.<sup>176</sup> But it is worth noting that local government scholars who spend time thinking about optimizing the relationships among different levels of government—federal, state, local—have much more work to do to situate local courts within this matrix.<sup>177</sup> One of the central works on local government highlights the fact that municipalities create different local conditions, which in turn attract different sorts of residents.<sup>178</sup> Those microclimates of law and policy can be created by local judges just like they can be created through those other instrumentalities of

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173. See Leib, *supra* note 5, at 924–29. A similar dynamic may be said to exist in state judges’ implementation of federal law. State courts are usually competent to adjudicate cases under federal statutes. See generally *Tafflin v. Levitt*, 493 U.S. 455, 458 (1990); DAVID L. SHAPIRO, *FEDERALISM: A DIALOGUE* (1995); Charlton C. Copeland, *Federal Law in State Court: Judicial Federalism Through a Relational Lens*, 19 WM. & MARY BILL RTS. J. 511 (2011).

174. For evidence that states are not always opting for preemption, their dominance notwithstanding, see Richard Briffault, *Home Rule and Local Political Innovation*, 22 J.L. & POL. 1, 17–27 (2006).

175. David M. Trubek & Louise G. Trubek, *New Governance and Legal Regulation: Complementarity, Rivalry, and Transformation*, 13 COLUM. J. EURO. L. 542, 542 (2007).

176. However, I have done normative work on this topic elsewhere. See Leib, *supra* note 5; Bruhl & Leib, *supra* note 28.

177. See sources cited *supra* note 18.

178. See Charles M. Tiebout, *A Pure Theory of Local Expenditures*, 64 J. POL. ECON. 416 (1956); see also Todd E. Pettys, *Competing for the People’s Affection: Federalism’s Forgotten Marketplace*, 56 VAND. L. REV. 329 (2003).



local government that have received the lion's share of the attention of scholars and policymakers. With more empirical detail about the ways that local courts can and do serve their communities as part of local and state governance, local government scholars can have a more rooted and realistic sense of the various institutions that make up the full panoply of local governmental powers. They can also appreciate through this empirical knowledge how the courts are not just places to fight out questions of intrastate preemption and to proffer local, creative, and experimental meanings of the various constitutions under which they operate,<sup>179</sup> but that they also are themselves complex amalgamations of local and state power.<sup>180</sup>

And of course, the psychologies of the individuals who operate the courts are important to the work they do. As the findings here reveal, judges themselves are quite ambivalent about how much they may represent the people who elect them and whom they serve, how much they are able to collaborate with other local officials, and how much they may consider the state system in which they are embedded. The psychological insight that at the helm of local courts are judges with some very difficult and layered role responsibilities is also instructive to task forces, special commissions, state legislatures, and local officials who attempt to study, improve, or design local courts. Without the nuanced sense of what is going on therein, policymakers and report authors are likely to miss several features of local courts the findings here illustrate. It is hard to offer reforms calculated to improve and optimize local governance without understanding how the judges are affected by their elective status and their electoral ecosystem, how they perceive their need for independence from (and opportunities for collaboration with) other local government officials, how they perceive their relationship with the state, and the role prosecutors play in what goes on within their courtrooms.

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179. See generally Paul A. Diller, *The City and the Private Right of Action*, 64 *STAN. L. REV.* 1109, 1135–39 (2012) (exploring the role of local policy experimentation in the debates about municipal legal freedom).

180. Although Chuck Sabel and Mike Dorf see how drug courts could fit into the picture, they did not generalize to see all local courts as “experimentalist” actors within state systems. See Charles F. Sabel & Michael C. Dorf, *A Constitution of Democratic Experimentalism*, 98 *COLUM. L. REV.* 267 (1998); Michael C. Dorf & Charles F. Sabel, *Drug Treatment Courts and Emergent Experimentalist Government*, 53 *VAND. L. REV.* 831 (2000). For Sabel's more recent work on experimentalism (now with Bill Simon), see Charles F. Sabel & William H. Simon, *Minimalism and Experimentalism in the Administrative State*, 100 *GEO. L.J.* 53 (2011) and Charles F. Sabel & William H. Simon, *Contextualizing Regimes: Institutionalization as a Response to the Limits of Interpretation and Policy Engineering*, 110 *MICH. L. REV.* 1265 (2012).

## CONCLUSION

Students of local government have for too long failed to see local judges as the complex players they are in municipal governments; indeed, local government scholars hardly seem to recognize local courts as fonts of local authority. Often elected from the same group of local residents that select other local government officials in the very same elections—and often engaged in important policymaking work alongside their judicial responsibilities—local judges seem to occupy a liminal space between delegates and trustees,<sup>181</sup> local officials and state actors. This interview-based study of judges in New York State's Ninth Judicial District seeks to mine that liminal space and explore the psychological challenges it presents to local judges who are trying to balance the crosscutting demands of politics and law at the various levels of government. The findings here suggest that scholars, policy-makers, and judges all could benefit from better understanding how local judges see themselves and how that perspective is shaped by the institutional structures in which they operate.

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181. See Leib, Ponet & Serota, *supra* note 159.

