



Victimization, Corruption, and a Judicial Confidence Gap

The gap between confidence in judicial institutions and confidence in judicial principles in the United States and Europe

Quita Muis

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Supervisor: Prof. Dr. P. H. J. Achterberg

Second reader: Prof. Dr. A. Pemberton

Abstract

The level of public confidence in judicial experts and institutions is changing, while at the same time, the level of confidence in the core principles of the justice system seems to be stable or even increasing. This paper investigates whether there exists a gap between these two dimensions of confidence: a judicial confidence gap. Analyses of GfK (2014) data from the United States and European Social Survey (ESS) (2012) data from twenty-one countries show that there indeed exists such a gap, and the paper further examines whether this gap could be explained by the ineffectiveness of the justice system. Two studies are conducted. In Study 1, the American data are used to explore the role of victimization in the existence of the judicial confidence gap, and in Study 2, the influence of corruption on this relationship is tested by using the European data. The broader theoretical and societal relevance of the findings is discussed at the end of the paper.

Introduction

Negative attitudes towards the justice system have resulted in what some call a “legitimacy crisis” (Achterberg, 2017; Norris, 2011, p. 1). More specifically, a part of the public seems to have lost confidence in procedural justice, the effectiveness of the rule of law, and the efficiency of its institutions (Haas, 2010; Sherman, 2002; Tyler, 2001; Van de Walle, 2009a). Dissatisfied individuals could simply choose Hirschman’s (1970, p. 21) “exit” option: leaving the institutional life altogether. Yet, this does not happen on a large scale in Western societies, as the following examples illustrate. A farmer in England dumped a truckload of muck outside a crown court as “a peaceful protest against the severely flawed justice system”, in reaction to a case that had been going on for nearly eight years (Sawer, 2017). Secondly, the Dutch justice system was publicly accused of racism and discrimination based on sexual orientation, because law enforcement did not perform as firmly as the public required in the disappearance case of Orlando Boldewijn, a black, homosexual teenager (De Zwaan, 2018).

Do these negative attitudes really indicate a legitimacy crisis? Not necessarily. According to Mondak and Smithey (1997), and as the examples seem to show, a loss of confidence in the functioning of the legal system does not automatically mean a loss of commitment to its core principles such as (procedural) fairness and equality. Indeed, according to several other scholars, confidence (or trust) is in fact a multi-dimensional concept (Achterberg, 2017; Achterberg, De Koster & Van der Waal, 2017; Van Damme & Pauwels, 2012; Van de Walle, 2009a). They distinguish between “trust in current institutions” and “trust in principles and methods”, which do not have to fluctuate at the same rate or in the same direction (Achterberg et al., 2017, p. 705). So far, the existence of a gap between these two dimensions of trust has been tested and confirmed not only in the fields of science (Achterberg et al., 2017) and democracy (Norris, 2011), but also in the field of government, business and labor institutions (Lipset & Schneider, 1983). It has yet to be investigated whether there also

exists a judicial confidence gap: a discrepancy between confidence in judicial institutions and confidence in the core principles of the rule of law. Therefore, this paper answers the following research questions: *1) Is there a gap between the level of commitment to the principles of the rule of law and the level of confidence in its judicial institutions, and 2) which micro- and macro-level factors explain this judicial confidence gap?*

In order to find explanations for the existence of such a gap, this paper examines signs of an ineffective rule of law. Since the justice system stems from the democratic ideology of protecting citizens' freedom against wrongdoings of other citizens and government officials (Mitchell, 2002; Summers, 1999), both victimization and corruption can be perceived as signs of ineffectiveness. First of all, when someone has been victimized, they have become the object of a breach of law, which shows that the system was unable to protect its citizens (e.g. Bateson, 2010; Fajnzylber et al., 2000). Furthermore, several studies have focused on the dissatisfaction with legal procedures that is common among victims (e.g. Erez, 1999; Herman, 2003; Raad voor de Rechtspraak, 2017), and which leads to a further decline in confidence in the justice system (e.g. Haas, 2010; Wood et al., 2015).

Secondly, the presence of corruption suggests that the system was ineffective in protecting citizens against the power of government officials. Moreover, corruption has shown to negatively influence the level of public confidence in the justice system's experts and institutions (Hakhverdian & Mayne, 2012). It has been demonstrated that both the perceived level of corruption (European Commission, 2016; WJP, 2018) and the level of confidence in the justice system (Achterberg, 2017; European Commission, 2013; Hough et al., 2013; Van de Walle, 2009a; 2009b) vary between countries. Hence, it is possible that for victims, the quality of the justice system affects their confidence differently than for individuals who have never been victimized, since the former have been direct victims of the ill-performing rule of law and they may have come into direct contact with the possibly corrupt experts and institutions. This

could suggest that there are differences between countries in the relationship between victimhood and trust in the justice system. However, it is unclear whether and how victimization and perceived corruption influence the second dimension of confidence: commitment to the principles of the rule of law.

In the following section, a broader range of existing research on this topic will be discussed, and six hypotheses will be derived from the findings. The micro-level hypotheses will be tested in Study 1 by conducting linear regression analyses, using data from the GfK (2014) study: Residential Preferences, Institutional Trust, and Fear of Crime in the United States. In Study 2, data from the European Social Survey (ESS) (2012) in twenty-one countries will be used to both replicate the micro-level analyses from Study 1, and test the macro-level hypothesis by using multilevel linear regression analyses.

The Judicial Confidence Gap

Departing from the idea that confidence is a multi-dimensional concept, confidence in judicial institutions will first be discussed, followed by confidence in the system's core principles. First of all, while judicial institutions worldwide have been experiencing a decline in public trust in the past (Van de Walle, 2009a; 2009b), the level of public confidence in Western countries has been stable since 2002 (Achterberg, 2017; Bijl, Boelhouwer & Wennekers, 2017; Hough et al., 2013). However, when taking a closer look at the characteristics of the public, there actually seem to be opposing trends. Among some groups, confidence in the justice system has increased, while for others their confidence level has gone down (leading to an overall stable effect) (Achterberg, 2017; Hough et al, 2013). Furthermore, despite the general stability, there still exists great variation in the level of confidence between countries in the West. For example, in Finland, 85% of the public tends to trust the justice system, while this holds for only 24% of the Slovenian population (European Commission, 2013, p. 14). Accordingly, these findings

suggest that the extent and direction of the change in confidence levels vary both on a micro- and macro-level. Which factors contribute to this variation will be discussed in later sections.

Included in the second dimension of confidence are the principles of the justice system, such as accountability and just laws (WJP, 2018, p. 7). Since there is no literature that directly addresses citizens' commitment to all principles of the justice system, research on the commitment to the underlying democratic principles will be consulted instead. This decision is based on the following considerations: first of all, since the rule of law finds its roots in a democratic ideology, its principles are detailed fragmentations of the core democratic principles of fairness and equality (Achterberg, 2017; Hakhverdian & Mayne, 2012; Mitchell, 2002; Peršak, 2016; Summers, 1999). Secondly, Caldeira and Gibson (1992) have shown that support for these democratic principles is a good reflection of commitment to judicial institutions that ensure the principles of the rule of law.

Following this assumption, Thomassen (1995) states that there is a difference between confidence in the functioning of democratic institutions and support for democratic principles. Norris (2011) later based her reasoning about the existence of a democratic confidence gap on these findings. According to Mondak and Smithey (1997), commitment to democratic principles is generally stable over time. Nevertheless, it is argued that those who believe in their own ability to influence politics through activism are also more strongly committed to the principles of the rule of law (Caldeira & Gibson, 1992). Since other studies have shown an increase in political activism among certain groups (e.g. Campbell, 2011; Inglehart, 2015; Norris, 2002), this indirectly suggests that their commitment to democratic principles has increased as well. As argued before, trust in the functioning of judicial institutions has declined for certain groups of people in certain countries, which in both cases (stable or increased commitment) means a gap between confidence in the justice system and commitment to its core

principles. Which factors contribute to the variation in the width of this gap will be elaborated below. The following hypothesis is derived from the findings:

H1: There exists a gap between the level of commitment to the principles of the rule of law and the level of confidence in its judicial institutions (i.e., a judicial confidence gap).

To test this hypothesis, a factor analysis will be conducted which will show whether these two dimensions of judicial confidence are truly distinct.

Victimization and the Judicial Confidence Gap

Everyone has a chance to get involved in the justice system at (a) certain moment(s) in their lives. Therefore, the relevance of an effective system applies to all citizens (Malsch, 2013). Summers (1999, p. 1711) argues that a well performing rule of law requires a number of conditions, including the following: “Citizens adversely affected by violations of the rule of law must be legally empowered to seek redress, and be willing and able to do so”. However, what Summers (1999) does not seem to take into account is that if citizens are adversely affected by violations of the rule of law, the system has not been effective in the first place. So, while the functioning of the rule of law is in fact every citizen’s business, victims have experienced malfunctions of the justice system at first hand, whereas individuals who have never been victimized do not have such experiences. Research has shown that victimization can reduce trust in the judiciary and its ability to punish offenders (Bateson, 2010; Fajnzylber et al., 2000), and that it has a strong negative impact on trust in the police (Ahmad et al., 2011; Corbacho, Philipp & Ruiz-Vega, 2015; Malone, 2010). Bradford, Jackson and Stanko (2009) show that the more often one has been victimized, the less confidence one has in the police.

Furthermore, when individuals decide to legally seek redress after being victimized,

they come into close contact with different judicial experts and institutions. Thus, besides confidence in the justice system in general, trust in the appropriate personal treatment by the experts and institutions also plays a role (Haas, 2010)¹, and is another condition for an effective rule of law (Summers, 1999). However, victims often feel unjustly treated which leads to a strong (further) decline in trust in the justice system. This is primarily predicted by outcome satisfaction and subjective procedural justice (Haas, 2010; Orth, 2002; Wood et al., 2015), although it seems that the perception of procedural fairness is more important in shaping confidence than the outcome of the procedure (Myhill & Bradford, 2012; Van Damme & Pauwels, 2012). Indeed, other research has shown that when procedural justice is perceived as high, acceptance of and compliance with the outcome increase as well (Malsch, 2013). Yet, victims are often dissatisfied with their treatment during procedures, due to the lack of efficiency, transparency, participation and acknowledgement of their situation (Haas, 2010; Herman, 2003; Hoffman, 1982; Erez, 1999; Frazier & Haney, 1996; Raad voor de Rechtspraak, 2017). Because procedural injustice is only experienced by victims and not by individuals who have never come into contact with judicial experts and institutions, these findings further contribute to the expectation that victims have lower confidence in the justice system than non-victims. Hence, the following hypothesis is presented:

H2: The level of confidence in judicial institutions is lower for victims than for non-victims.

¹ The concepts of ‘trust’ and ‘confidence’ in the justice system have been used interchangeably so far, and will continuously be used as synonyms in this paper. However, the literature makes a distinction between trust: “someone’s expectation that they personally will be treated in a certain way by the criminal justice system”, and confidence: “how the system is perceived to act in general” (Haas, 2010, p. 44). This distinction is helpful to further assess the differences between victims and those who have never come into contact with the justice system.

Less clarity exists about the relationship between victimhood and the other dimension of confidence: commitment to the core principles of the rule of law. On the one hand, it could be argued that victims have lost all their faith in these principles because of their unjust experiences. On the other hand, it also seems likely that this unjust treatment actually triggers a stronger pursuit of fairness and equality. Indeed, when it comes to the relationship between victimhood and these democratic principles, the literature is inconsistent. In most studies that addresses this topic, a distinction is made between satisfaction with democratic institutions and actors, and support for democratic principles (Bateson, 2010; Ceobanu, Wood & Ribeiro, 2010; Corbacho et al., 2015; Fernandez & Kuenzi, 2010; Parás, Coleman & Seligson, 2006). All studies indicate decreased confidence in democratic institutions after a person has been victimized, and some show a simultaneous decrease in support for democratic principles (Bateson, 2010; Parás et al., 2006). Yet, in other studies, support for these core principles is not affected (Bateson, 2012; Ceobanu et al., 2010; Corbacho et al., 2015). Mixed results are found by Fernandez and Kuenzi (2010), due to country differences. However, according to Bateson (2010; 2012), victims actually become more politically engaged after being victimized, and they are more supportive of political activism and vigilant justice than non-victims. This suggests that victims' dissatisfaction with the democratic institutions actually triggers the pursuit of fairness and equality, more so than for non-victims. Moreover, Bateson's (2012) conclusions are based on a broader range of continents than the other studies, including Europe and North America. Since the current study focusses on these continents, it seems most likely that victims are either more committed to the core principles of the rule of law than non-victims, or unaffected in their commitment after victimization. This leads to the following hypothesis:

H3: The level of confidence in the principles of the rule of law is either higher for victims than for non-victims, or unaffected by victimization.

In sum, victimhood negatively affects overall confidence in the justice system, especially in the effectiveness of the police. What is more, victims sometimes perceive their experiences with the judiciary as unjust, which further decreases their trust in the justice system. With regard to confidence in the principles of the rule of law, victims, more than non-victims, seem to turn their dissatisfaction with the system into stronger commitment or stay unaffected in their confidence in these principles. These findings lead to the following hypothesis:

H4: The judicial confidence gap is wider for victims than for non-victims.

Victimization and Education

Considering the significant influence education has on the confidence gap in other domains (Achterberg et al., 2017; Lipset & Schneider, 1983; Norris, 2011), it cannot be left unstudied in the current research. Moreover, of the earlier mentioned groups that cause variation in trust in judicial institutions and commitment to the core principles of the rule of law, education is one of the strongest predictors. Recent studies show that the lower educated have less confidence in the justice system than the higher educated, and that the difference has grown over the years (Achterberg, 2017; Bijl, Boelhouwer & Wennekers, 2017; Hertogh, 2011; Jonkers, 2013). However, when victimhood is also taken into account, the relationship seems to shift. When higher educated victims come into contact with the justice system, they are less satisfied overall with the way they are treated during procedures than lower educated victims (Raad van de Rechtspraak, 2017), which could be explained by the “accuracy-inducing function” of education (Hakhverdian & Mayne, 2012, p. 741). This means that the higher educated are better able to identify and are more aware of malpractices within the justice system than the lower educated, which makes them more accurate in their assessment of the functioning of the institutions (Achterberg, 2017; Achterberg et al., 2017; Hakhverdian & Mayne, 2012).

Besides the accuracy-inducing function, education also seems to have a “norm-inducing function” (Hakhverdian & Mayne, 2012, p. 741). Namely, confidence in the core principles of the rule of law are stronger among the higher educated than among the lower educated (Bovens & Wille, 2010; Caldeira & Gibson, 1992; Campbell, 2011; Hakhverdian & Mayne, 2012; Norris, 2002). Together with the earlier mentioned findings showing that victimhood also relates to more commitment to the core principles of the justice system, this results in the following hypothesis:

H5: The judicial confidence gap is wider for higher educated victims than for lower educated victims.

Victimization and Corruption

Besides victimization, corruption can be seen as another sign of an ineffective justice system. On an international level, there are differences between countries in the perceived level of corruption within the national justice system (European Commission, 2016; WJP, 2018). Research has shown that corruption negatively affects confidence in judicial institutions and experts (Chang & Chu, 2006; Corbacho et al., 2015; Hakhverdian & Mayne, 2012; Seligson, 2006). This is due to the undermining effect corruption has on the procedural performance of the justice system and the difficulties it causes for producing policies and services in favor of the general public (Hakhverdian & Mayne, 2012). Victimization seems to strengthen this effect: the first-hand experience of corruption during legal procedures strongly decreases institutional trust (Seligson, 2006). Moreover, the presence of corruption leads to a higher propensity to be victimized (Corbacho et al., 2015), which in turn causes decreased trust in the justice system, as elaborated before.

Compared to ‘old’ democracies, levels of corruption are generally higher in more recently established democracies (such as Bulgaria, Hungary, Poland, and Russia), because the shift from an authoritarian government to governance by many actors and the additional (justice) system reforms cause more opportunities for bribery (Malone, 2010; Seligson, 2006). So, when attempts are made to become more democratic, the simultaneous increase in corruption actually “recklessly violates the fundamental principles of democracy” (Chang & Chu, 2006, p. 259). This violation contradicts the public’s expectation of an effective system based on democratic principles, which seems to trigger political activism and vigilant justice (Gross, 2016; Hakverdian & Mayne, 2012; Nivette, 2016). Since it was already argued that victims are more strongly committed to the principles of fairness and equality than non-victims, the following hypothesis is formulated:

H6: The judicial confidence gap among victims is wider in relatively corrupt countries than in relatively clean countries.

Data and Measures

In order to test the hypotheses, two studies were conducted. In Study 1, American data were used to test the first five hypotheses (i.e., the micro-level hypotheses), and in Study 2, European data were analyzed to test all hypotheses (i.e., both micro- and macro-level hypotheses). It was chosen to use both American and European data, since findings from the World Justice Project (WJP, 2018) showed that the United States has a relatively low score on the World Justice Index compared to other developed democracies in the West (such as the Scandinavian countries, the Netherlands, and Germany). When taking into account other European (less democratically developed) countries of which data was available, the United States takes a place in the middle of this ranking list. Thus, including both the United States and European countries enabled the

investigation of the judicial confidence gap in the context of different justice systems (See Appendix I for an overview of the ranking list of all included countries, in accordance with the data from the World Justice Project, 2018).

Study 1

In the first study, panel data were used from a study regarding Residential Preferences, Institutional Trust, and Fear of Crime in the United States, performed by the GfK Group (GfK, 2014). Data were collected by means of an online survey, with the target population being non-institutionalized individuals, aged 18 years and over, residing in the United States. Households were sampled from GfK's KnowledgePanel, which is a probability-based web panel designed to be representative for the US-population. The initial dataset consisted of 2062 respondents. The median completion time of the survey was 29 minutes, which led to the removal of 56 respondents who finishes the survey in 10 minutes or less, since this was not considered to be enough time to give valid answers. Scores which indicated that a question was not asked or that a respondent refused to answer the question were treated as missing for all used items. In case of any missing data, listwise deletion was applied. This resulted in an eventual sample size of 1925 respondents. In order to reduce sampling error and potential non-response bias, study-specific post-stratification weights were applied to all analyses (a weight-variable was already included in the dataset).

The dependent variable *Confidence in judicial institutions* was measured with three items, including 1) "Please indicate your confidence in the justice system", 2) "Please indicate your confidence in judges", and 3) "Please indicate your confidence in lawyers". Respondents were asked to answer all three questions on a scale ranging from 0 (no confidence at all) to 10 (a lot of confidence). After a factor analysis was conducted (of which the findings will be discussed in the Results-section), an institutional confidence-scale was created by taking the

average of the three items. A higher score indicated more confidence in judicial institutions. *Confidence in the principles of the rule of law* was measured with one item that referred to one of the core democratic principles underlying the rule of law: equality. Respondents were asked to what extent they agreed with the following statement on a scale from 0 (strongly disagree) to 10 (strongly agree): “It needs to be guaranteed that all people are treated equally before the law”. The higher the score, the stronger the confidence in the principles of the rule of law. In the Results-section, it will be elaborated how the items measuring confidence in judicial institutions and confidence in judicial principles were used to create a dependent variable measuring a *Judicial confidence gap*.

The independent variable *Victimization* was measured with five items, regarding a) Swindle, b) Burglary, c) Violent attack, d) Street robbery, and e) Vandalism. The question “Have you been the victim of the following crimes during the last twelve months?” had to be answered with either a 1 (no) or a 2 (yes) for all five items. A principle component analysis showed a (KMO) sampling adequacy of .82, and a significant Bartlett’s test of sphericity ($\chi^2(10) = 2973.21, p < .001$). The analysis yielded one component with an eigenvalue of 2.85 that explained 57.05% of the total variance. The factor loadings ranged from .69 to .81. Therefore, a scale was created with all five items by taking the mean of at least four valid scores. If more than one score was missing, the respondent was not taken into account in further analyses. A higher score on the scale indicated more frequent victimization. With a Cronbach’s alpha of .80, the scale was reliable.

Educational level was determined by respondents’ highest degree of education received, ranging from 1 (no formal education) to 14 (professional or doctorate degree).

Additionally, a number of control variables were included in the analyses², namely *Age* (in years), *Gender* (0 = male, 1 = female), and *Fear of crime*. The latter has shown to be of influence on trust in the justice system in several studies (e.g. Corbacho et al., 2015; Haas, 2010; Malone, 2010). Fear of crime was measured by the question “We are interested in how afraid people are in everyday life of being a victim of different kinds of crimes. Please rate your fear of a) Swindle, b) Burglary, c) Violent attack, d) Street robbery, and e) Vandalism”. All five items were answered on a scale ranging from 0 (not afraid at all) to 10 (very afraid). After conducting a principle component analysis (with a (KMO) sampling adequacy of .87, and a significant Bartlett’s test of sphericity ($\chi^2(10) = 8979.92, p < .001$), it could be concluded that all items formed one component, with factor loadings ranging from .81 to .93. This one component explained 80,22% of the total variance with an eigenvalue of 4.01. Hence, a reliable scale ($\alpha = .94$) was created with all five items, by taking the mean of at least four valid item-scores. The higher the score on the scale, the stronger one’s fear of crime. In case of more than one missing score, the respondent was removed from the analyses. See Table 1 for a summary of all variables.

Study 2

In the second study, data from the European Social Survey, Round 6 (ESS, 2012) were used. Cross-national data were collected by means of face-to-face interviews with individuals aged 14 years and over, originating from 29 different countries. The original dataset consisted of 56,835 respondents. Since judicial procedures are different for minors than for adults, and the effects of being victimized can differ between both groups, all respondents younger than 18

² At first, respondents’ race/ethnicity was also added as a control variable. However, this variable did not yield significant results in any of the models, and did not affect the estimates of the other variables. Therefore, and for the sake of clarity of the results, race/ethnicity was left out of all analyses.

Table 1. Variable descriptives (GfK, 2014)

Variable	N	Range	Mean	SD
Confidence in judicial institutions	1960	0 - 10	4.49	2.01
Confidence in judicial principles	1941	0 - 10	8.27	2.11
Victimization (categorical)	1965	1 - 2	1.06	0.18
Education	1979	1 - 14	10.14	2.00
Age	1979	18 - 92	47.42	17.06
Gender (categorical)	1979	0 - 1	0.52	0.50
Fear of crime	1958	0 – 10	4.02	2.53
Valid N (listwise)	1925			

years old were deleted from the dataset. This makes the findings from Study 1 and Study 2 more comparable as well. As elaborated before, the choice of data was based on the findings from the World Justice Project (WJP, 2018), which were also used to create a corruption index (this will be elaborated shortly). Countries on which ESS-data was available, but that were not included in the World Justice Project were deleted from the dataset. This resulted in the inclusion of the following countries: Albania, Belgium, Bulgaria, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Italy, the Netherlands, Norway, Poland, Portugal, Russia, Slovenia, Spain, Sweden, Ukraine, and the United Kingdom. Furthermore, the median completion time of the interview was 50 minutes, which led to the removal of 61 respondents who finishes the interview in 15 minutes or less, since this was not considered to be enough time to give valid answers. Scores indicating “refusal”, “don’t know”, or “no answer” were treated as missing for all used items. In case of any missing data, listwise deletion was applied.

This resulted in an eventual sample size of 48,742 respondents. In order to reduce sampling error and potential non-response bias, and to account for differences in population size between countries, weights were applied to all analyses. These were created by multiplying the post-stratification weights with the population size weights (which were already included in the dataset).

Confidence in judicial institutions was measured with two items, namely 1) “How much do you trust the legal system?” and 2) “How much do you trust the police?”. Respondents had to indicate their trust on a scale ranging from 0 (no trust at all) to 10 (complete trust). After conducting a factor analysis, an institutional confidence-scale was created by averaging the scores on the two items, so that a higher score indicated more confidence. The findings from this analysis will be discussed in the Results-section. *Confidence in the principles of the rule of law* was measured with the following question: “How important do you think it is for democracy that the courts treat everyone the same?”. Answers were given on a scale ranging from 0 (not at all important for democracy in general) to 10 (extremely important for democracy in general), where a higher score meant more confidence in the principles of the rule of law. Elaboration on how the items measuring confidence in judicial institutions and confidence in judicial principles were used to create a variable measuring a *Judicial confidence gap*, can be found in the Results-section.

Victimization was measured with one item asking respondents: “Have you or a member of your household been the victim of a burglary or assault in the last 5 years?”. This question was answered with either a 1 (yes) or a 2 (no). Since analyzing a random slope (as discussed in the Results-section) for dichotomous items raises difficulties, the victimization-item was treated as a continuous variable in all analyses. Hence, the variable was recoded (1 = no, 2 = yes), so that a higher score indicated victimization.

Educational level was measured by respondents' highest level of education completed. The scale ranged from 1 (less than lower secondary) to 7 (higher tertiary/ master level). A score of 0 indicated that the answer could not be harmonized into an ES-ISCED scale, and was therefore treated as missing.

The national-level variable *Corruption* was based on the World Justice Project's factor: 'absence of corruption' (WJP, 2018, p. 10). This measure is related to the Corruption Perception Index, created by Transparency International (2017). The absence of corruption-factor consisted of a score between 0 and 1, where a higher score indicated a cleaner society. The factor was transformed by subtracting each country-score from 1, so that a higher score indicated a more corrupt society. See Appendix I for an overview of the corruption-scores for all included countries.

Lastly, the same control variables were used as in Study 1³, namely: *Age* (in years), *Gender* (0 = male, 1 = female), and *Fear of crime*. The latter was measured with the question: "How safe do you – or would you – feel walking alone in this area after dark?". Respondents answered the question on a scale ranging from 1 (very safe) to 4 (very unsafe), meaning that a higher score indicated more fear of crime. See Table 2 for a summary of all variables.

Results

The results of the two studies will now be discussed separately, followed by a further examination of the findings of both studies.

³ At first, a question regarding being an ethnic minority (1 = yes, 2 = no) was also added as a control variable. Although this variable had significant impact on confidence in judicial institutions ($t(44636.32) = -7.87, p < .001$), confidence in judicial principles ($t(44647.13) = 4.02, p < .001$), and on the judicial confidence gap ($t(44638.53) = 8.83, p < .001$), it did not affect the estimates of the other variables. Therefore, and in accordance with Study 1, it was left out from all analyses.

Table 2. Variable descriptives (ESS, 2012)

Variable	N	Range	Mean	SD
Confidence in judicial institutions	50,789	0 - 10	4.86	2.56
Confidence in judicial principles	50,411	0 - 10	9.25	1.54
Victimization (categorical)	51,082	1 - 2	1.17	0.38
Education	51,044	1 - 7	3.80	1.81
Corruption	51,371	0.05 – 0.66	0.35	0.18
Age	51,371	18 - 103	47.64	18.06
Gender (categorical)	51,311	0 - 1	0.53	0.50
Fear of crime	50,626	1 – 4	2.11	0.85
Valid N (listwise)	48,742			

Study 1

In order to investigate how the judicial confidence gap could be explained, the possibility of measuring this gap had to be established first. By means of a principle component analysis with varimax rotation and normalization, it was examined whether the measurements of confidence in judicial institutions and confidence in judicial principles are empirically distinct. The (KMO) sampling adequacy was .66, and the Bartlett's test of sphericity was significant ($\chi^2(6) = 2062.26$, $p < .001$). The results presented in Table 3 show that the four items indeed measure two separate dimensions, with the three institutional confidence-items forming one component, and the item concerning judicial principles forming the other. The three items regarding institutional confidence positively correlated, and all correlations transcended the value of .45. Accordingly, an institutional confidence-scale was created with these three items by taking the mean of three

valid item-scores. The variable was treated as missing when less than three valid answers were given. The scale showed to be reliable ($\alpha = .81$).

The correlation between this scale and the item measuring confidence in judicial principles was low and not significant ($r = .03, p = .17$), which indicates that confidence in judicial institutions is not a good predictor for confidence in judicial principles or vice versa. Furthermore, the relationship between confidence in lawyers and confidence in judicial principles was negative ($r = -.08, p < .001$), which shows that, besides being nearly unrelated, the two separate dimensions of judicial confidence do not always fluctuate in the same direction. These findings confirm the existence of a judicial confidence gap. Following Norris (2011) and Achterberg et al. (2017) in their approach, the *Judicial confidence gap* variable was created by subtracting respondents' confidence in judicial institutions from their confidence in judicial principles.

To examine whether victimization can explain the existence of a judicial confidence gap, the relationships between victimization and the two dimensions of confidence were first investigated separately. Inspection of the correlations between the variables showed an insignificant, weak to non-existent relationship between victimhood and confidence in judicial institutions ($r = .01, p = .65$), and between victimhood and confidence in judicial principles ($r = .00, p = .98$).

Thereafter, an Ordinary Least Squares (OLS) regression analysis was conducted with the dependent variable being confidence in judicial institutions, and the independent variables being victimization and all control variables. Results indicated that the five predictors together explained 1.90% of the variance ($F(5,1919) = 7.26, p < .001$). The findings presented in Table 4 (H2) show that victimization had no significant effect on institutional confidence ($t(1919) = 0.82, p = .41$).

Table 3. Principle component analysis with varimax rotation and normalization – items measuring confidence in judicial institutions and confidence in the principles of the rule of law (GfK, 2014) (N= 1906)

	Component 1	Component 2
Please indicate you confidence in the justice system	.84	.13
Please indicate your confidence in judges	.90	.09
Please indicate your confidence in lawyers	.81	-.20
All people should be treated equally before the law	.02	.99
Eigenvalue	2.16	1.03
R ²	.54	.26
Cronbach's alpha (first three items)	.81	-

The second OLS regression analysis was conducted with confidence in principles of the rule of law as dependent variable and the same independent variables as mentioned above. The model explained 4.40% of the total variance in confidence in judicial principles ($F(5,1919) = 17.47$, $p < .001$). As the correlations already suggested, there was again no effect of victimization ($t(1919) = 0.86$, $p = .39$) (See Table 4, H3).

Then, the correlation between victimization and the judicial confidence gap was inspected ($r = .01$, $p = .76$), whereafter an OLS regression analysis was conducted, focusing on the confidence gap as independent variable. The same five predictors were included in the model and explained 2.90% of the variance in the gap ($F(5,1919) = 11.51$, $p < .001$). As shown in Table 4 (H4), victimization did not affect the width of the judicial confidence gap ($t(1919) = 0.05$, $p = .96$).

Table 4. Confidence in judicial institutions, confidence in judicial principles, and a judicial confidence gap in the United States – Ordinary Least Squares (OLS) regression analyses. Unstandardized coefficients presented (standard error between parentheses)

	Confidence in judicial institutions (H2)	Confidence in judicial principles (H3)	Judicial confidence gap (H4)	Judicial confidence gap (H5)
Constant	3.37 (0.41)***	6.49 (0.42)***	3.12 (0.58)***	9.36 (1.89)***
Victimization	0.21 (0.26)	0.22 (0.27)	0.02 (0.37)	-5.80 (1.72)**
Education	0.07 (0.02)**	0.03 (0.02)	-0.04 (0.03)	-0.66 (0.18)***
Victimization*Education	-	-	-	0.58 (0.17)**
Age	0.00 (0.00)	0.03 (0.00)***	0.03 (0.00)***	0.03 (0.00)***
Gender	0.48 (0.09)***	0.01 (0.09)	-0.47 (0.13)***	-0.45 (0.13)***
Fear of crime	-0.02 (0.02)	-0.00 (0.02)	0.01 (0.03)	0.01 (0.03)
R ²	.02	.04	.03	.04

** $p < .01$; *** $p < .001$.

Lastly, an interaction effect of victimization and education was added to the model to investigate whether the effect of victimhood on the judicial confidence gap is dependent on the educational level of the victim. Adding this interaction term explained an extra 0.60% of the variance ($R^2 = 3.50\%$, $F(6,1918) = 11.64$, $p < .001$). As shown in Table 4 (H5), victimization strongly affected the judicial confidence gap in a way that the more often one has been victimized, the smaller one's confidence gap gets in general ($t(1918) = -3.38$, $p < .01$). Similarly, people with a higher level of education have a smaller gap than those who have received lower education ($t(1918) = -3.61$, $p < .001$). However, when victimhood and education were combined, they positively affected the judicial confidence gap, meaning that higher

educated victims have a wider confidence gap than lower educated victims ($t(1918) = 3.46, p < .01$).

Study 2

Similar to Study 1, a principle component analysis with varimax rotation and normalization was conducted to examine whether it was possible to measure a judicial confidence gap. The analysis had to yield two distinct dimensions of confidence in judicial institutions and confidence in judicial principles, in order to continue the process of hypotheses testing. The analysis showed a (KMO) sampling adequacy of .50, and a significant Bartlett's test of sphericity ($\chi^2(3) = 30345.19, p < .001$). The results presented in Table 5 show that the two items regarding institutional trust indeed formed one component, whereas the item regarding equal treatment by courts formed another component by itself. The former two positively correlated with $r = .68$. Based on Steenkamp and Baumgartner's (1998, p. 80) criteria of measurement invariance, it could be concluded that configural invariance was supported, which implies that the pattern of salient (non-zero) and non-salient (zero or close to zero) factor loadings is the same across the different countries. This was concluded after performing the principle component analysis for every country separately as well, and examining whether the two component-pattern existed for all countries. Consequently, an institutional trust-scale was created by taking the mean of two valid item-scores. In case of a missing score on one of the two items, the respondent was not taken into account in the analyses. The scale was reliable with a Cronbach's alpha of .81.

The correlation between this scale and the item measuring confidence in judicial principles was low, but significant ($r = .05, p < .01$). The correlations between trust in the legal system and trust in judicial principles, and trust in the police and trust in judicial principles were .04 and .07 respectively (with $p < .001$ for both relations). This showed again that the two

dimensions of judicial confidence do not predict each other well, which is a confirmation of the existence of a judicial confidence gap. In accordance with these findings, the *Judicial confidence gap* variable was created by subtracting respondents' confidence in judicial institutions from their confidence in the principles of the rule of law.

Table 5. Principle component analysis with varimax rotation and normalization – items measuring confidence in judicial institutions and confidence in the principles of the rule of law (ESS, 2012) (N= 48,969)

	Component 1	Component 2
How much do you trust the legal system?	.92	.01
How much do you trust the police?	.92	.04
Important for democracy courts treat everyone the same	.03	.99
Eigenvalue	1.69	0.99
R ²	.56	.33
Cronbach's alpha (first two items)	.81	-

After it was established that a judicial confidence gap could be measured with these data as well, the relationships between victimization and the two separate dimensions of the gap were analyzed first. This resulted in a weak negative correlation between victimization and confidence in judicial institutions ($r = -.03, p < .01$), and a weak positive correlation between victimization and confidence in judicial principles ($r = .02, p < .01$).

Subsequently, a multilevel linear regression analysis was conducted with institutional confidence as the dependent variable, victimization as independent variable, and including all

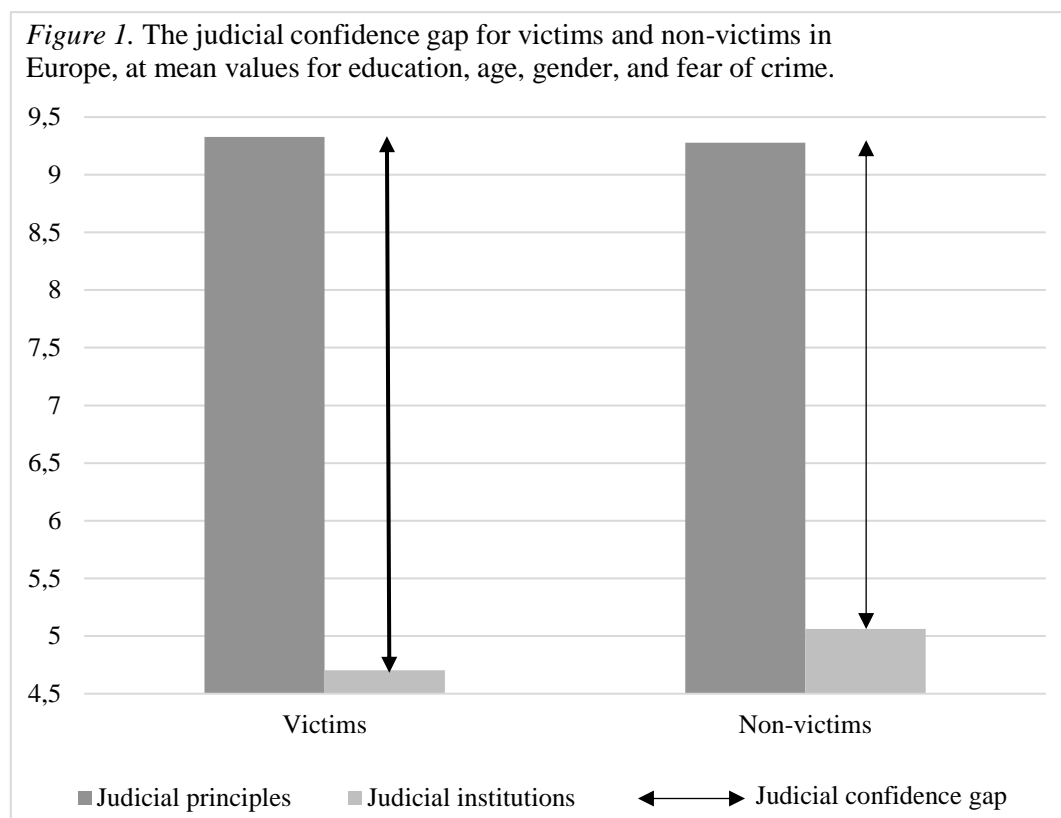
control variables. To take differences between countries into account, a random effect of country was first added to the null-model, which showed significant variation in institutional confidence between countries ($\sigma^2_{u0} = 2.03, p < .01$). The results of the model including predictors indicated that victimization had a negative effect on institutional confidence, meaning that, in general, victims have less confidence in judicial institutions than non-victims ($t(45206, 87) = -12.84, p < .001$). (See Table 6, H2).

Then, the same analysis was done with confidence in the principles of the rule of law as the dependent variable. A random effect of country in the null-model showed significant variance in confidence in these principles between countries ($\sigma^2_{u0} = 0.12, p < .01$). When predictors were added to the model (see Table 6, H3), victimization positively affected confidence in judicial principles, which means that victims are more strongly committed to these principles than non-victims ($t(45219.80) = 2.80, p < .01$).

Before the third multilevel linear regression analysis was conducted with the dependent variable being the judicial confidence gap, the correlation between victimization and the gap was inspected first. This resulted in a weak, positive relationship ($r = .03, p < .01$). The null-model with a random effect of country showed significant variation in the judicial confidence gap between countries ($\sigma^2_{u0} = 2.03, p < .01$). When predictors were included in the analysis (see Table 6, H4), victimization showed to have a positive effect, indicating that victims have a wider confidence gap than non-victims ($t(45208.32) = 12.23, p < .001$). See Figure 1 for a graphical representation of these findings.

Thereafter, an interaction term between victimization and education was added to the model. As shown in Table 6 (H5), there was a positive effect of victimization ($t(45205.38) = 9.27, p < .001$), and also education showed a significant, positive influence ($t(45207.46) = 3.99, p < .001$). The interaction itself negatively affected the judicial confidence gap, meaning that

higher educated victims have a smaller confidence gap than lower educated victims ($t(45204.11) = -4.43, p < .001$).



Lastly, it was investigated whether there are differences between countries in how victimization affects the judicial confidence gap, and whether these differences can be ascribed to the level of perceived corruption within countries. This was done by first adding a random effect of victimization to the previous model, which showed that there was some variation between countries in how victimization affected the judicial confidence gap, but this variation was not significant at the 5% level ($\sigma^2_{u1} = 0.02, p = .10$). Nevertheless, corruption was added to the model, together with an interaction term between victimization and corruption, to examine if corruption could account for the small variation between countries. Table 6 (H6) shows that corruption had a strong positive effect on the judicial confidence gap ($t(22.16) =$

8.34, $p < .001$), indicating that in more corrupt countries, citizens generally have a wider confidence gap. However, it appeared that corruption could not account for the differences between countries in the relationship between victimization and the judicial confidence gap ($t(10.94) = -1.41$, $p = .19$), which could be due to the fact that the variation was small and insignificant in the first place. Yet, including corruption in the model strongly decreased the variation in the width of the confidence gap between countries ($\sigma^2_{u0} = 0.35$, $p < .01$).

The contradictory findings of both studies concerning victims' educational level and their judicial confidence gap asked for further exploration of the two dimensions of the confidence gap. Therefore, two separate OLS regression analyses were conducted with the American data, with confidence in judicial institutions and confidence in judicial principles as dependent variables. Included in the model were victimization, education, an interaction term between the two, and all control variables. Results showed that higher educated victims are more committed to the principles of the rule of law than any other category ($t(1918) = -1.77$, $p < .01$), and that they have less confidence in judicial institutions than lower educated victims and higher educated non-victims. Yet, this effect was not significant at the 5% level ($t(1918) = 3.06$, $p = .08$). See Figure 2 for a graphical representation of these findings.

A similar examination of the composition of the judicial confidence gap was done for the European data. Hence, two separate multilevel linear regression analyses were conducted, including the same variables as mentioned for the previous analyses. Findings indicate that higher educated victims feel less commitment to judicial principles than higher educated non-victims ($t(45208.15) = -2.49$, $p < .05$), but their commitment is still stronger than that of lower educated victims. At the same time, higher educated victims have more confidence in judicial institutions than lower educated victims ($t(45203.65) = 3.62$, $p < .001$), which results in a smaller confidence gap. See Figure 3 for a graphical representation of these findings.

Figure 2. The judicial confidence gap for the highest and lowest educated victims and non-victims in the United States, at mean values for age, gender, and fear of crime.

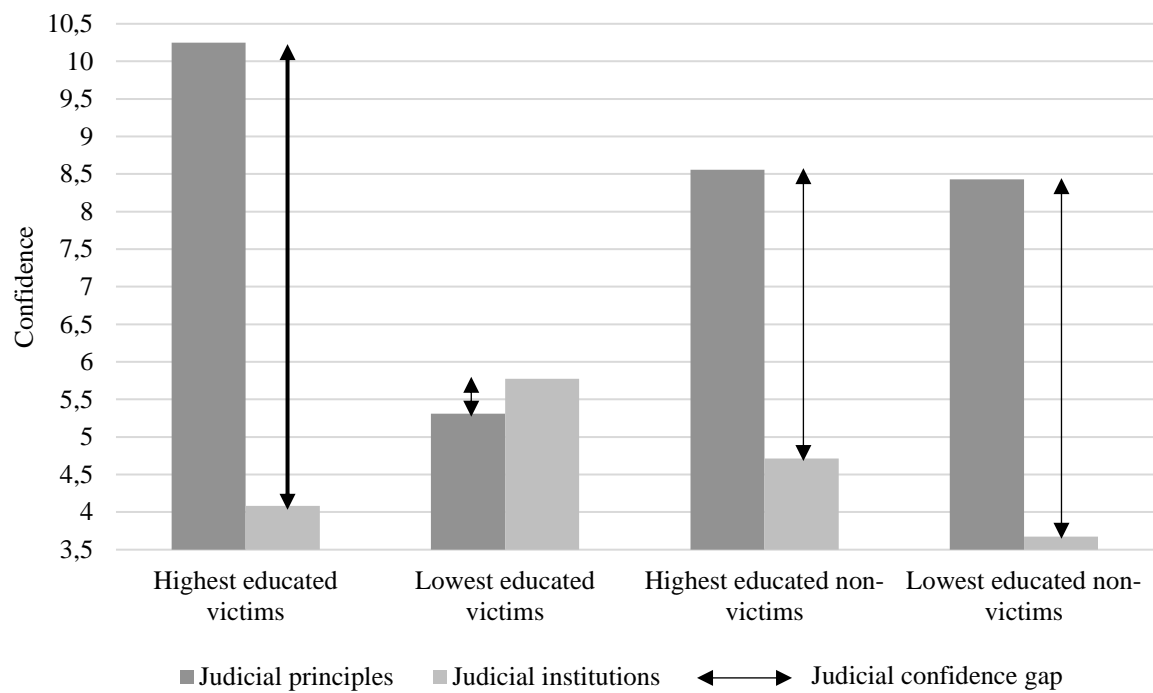


Figure 3. The judicial confidence gap for the highest and lowest educated victims and non-victims in Europe, at mean values for age, gender, and fear of crime.

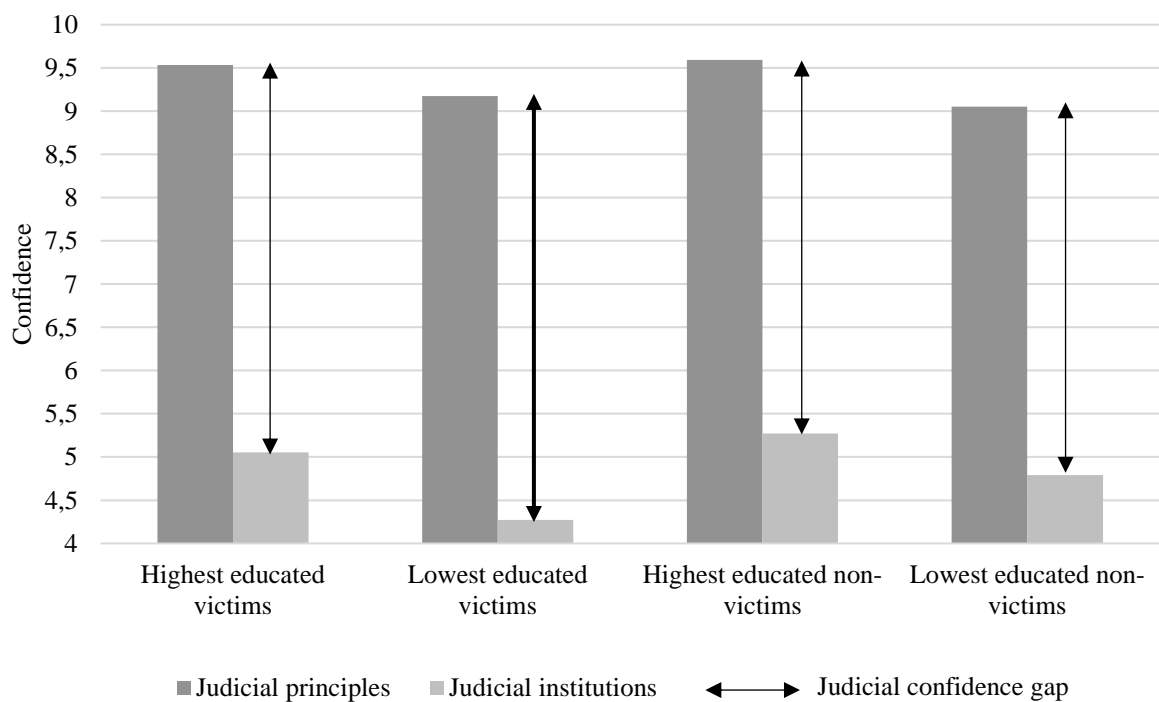


Table 6. Confidence in judicial institutions, confidence in judicial principles, and a judicial confidence gap in Europe – Multilevel linear regression analyses.

Unstandardized coefficients presented (standard error between parentheses)

	Confidence in judicial institutions (H2)	Confidence in judicial principles (H3)	Judicial confidence gap (H4)	Judicial confidence gap (H5)	Judicial confidence gap (H6)
Constant	5.29 (0.34)***	8.96 (0.09)***	3.69 (0.33)***	3.32 (0.35)***	1.13 (0.32)**
Victimization	-0.36 (0.03)***	0.05 (0.02)**	0.41 (0.03)***	0.72 (0.08)***	0.85 (0.14)***
Education	0.09 (0.01)***	0.09 (0.00)***	-0.00 (0.01)	0.09 (0.02)***	0.09 (0.02)***
Victimization*Education	-	-	-	-0.08 (0.02)***	-0.08 (0.02)***
Corruption	-	-	-	-	6.98 (0.84)***
Victimization*Corruption	-	-	-	-	-0.50 (0.35)
Age	0.00 (0.00)***	0.00 (0.00)***	-0.00 (0.00)	-0.00 (0.00)	-0.00 (0.00)
Gender	0.20 (0.02)***	-0.12 (0.01)***	-0.32 (0.03)***	-0.32 (0.03)***	-0.32 (0.03)***

Fear of crime	-0.24 (0.01)***	-0.05 (0.01)***	0.19 (0.02)***	0.19 (0.02)***	0.19 (0.02)***
AIC	197757.93	165081.43	214891.75	214878.40	214835.88
BIC	197775.37	165098.87	214909.19	214895.84	214868.04
Level-2 variance intercept (σ^2_{u0})	1.95 (0.68)**	0.12 (0.04)**	1.91 (0.67)**	1.91 (0.67)**	0.35 (0.14)**
Level-2 variance slope (σ^2_{u1})	-	-	-	-	0.02 (0.02)

** $p < .01$; *** $p < .001$.

Conclusion and Discussion

In response to decreased confidence in the justice system among certain parts of the public, concerns have been expressed about a potential legitimacy crisis in Western societies. However, scholars in other fields have claimed that confidence is in fact multi-dimensional, meaning that confidence in current institutions is not the same as confidence in principles and methods (Achterberg et al., 2017; Lipset & Schneider, 1983; Norris, 2011). The proof of a gap between these two dimensions in other fields raised the question of whether there also exists a gap between confidence in the principles of the rule of law and confidence in judicial institutions, and if so, how this judicial confidence gap could be explained.

The expectation was met that confidence in judicial principles would generally be higher than and substantially different from confidence in judicial institutions, leading to the confirmation of the existence of a judicial confidence gap in both the United States and Europe. This indicates that scholars have been approaching the issue of judicial confidence the wrong way so far. For example, in a thorough literature review funded by the European Commission (Bradford et al., 2008, p. 2), the following definition is presented: “Sitting above actual encounters and specific moments of cooperation and compliance [i.e., ‘trust’], confidence is a belief that the criminal justice as a set of institutions behaves effectively, fairly, and that it represents the interests and expresses the values of the community”. Much emphasis is put on the distinction between ‘trust’ and ‘confidence’, totally disregarding the distinction between the functioning of the judicial institutions on the one hand, and the democratic principles underlying these institutions on the other. With their self-proclaimed “topline findings”, Hough, Jackson and Bradford (2013) make a better attempt to address the multi-dimensionality of confidence by concluding that public trust in justice institutions induces the idea of shared values between the justice system and the public. Yet again, they fail to see the difference between people’s confidence in the system acting in accordance with moral values or principles they hold dear,

and people's confidence in the democratic principles on which the system is based. The fact that the current study is the first to ever investigate – and prove – the existence of a judicial confidence gap indicates the beginning of a new course of research in this field.

Predictions about possible explanations for the gap were based on literature regarding signs of an ineffective justice system and their influence on the two separate dimensions of confidence. One of those signs was victimization. It was expected that the inability of the rule of law to protect citizens against wrongdoings would decrease victims' confidence in judicial institutions (Bateson, 2010; Fajnzylber et al., 2000), and the (often negative) experiences during legal procedures were predicted to further decrease their trust (Haas, 2010; Herman, 2003; Hoffman, 1982; Erez, 1999; Frazier & Haney, 1996; Raad voor de Rechtspraak, 2017). This turned out to be true in Europe, but not in the United States, which could be explained in the following way. Previous studies have shown that victimhood has a negative effect on trust in the police in particular (Ahmad et al., 2011; Corbacho, Philipp & Ruiz-Vega, 2015; Malone, 2010). However, confidence in the police was only surveyed in the European study (where differences between victims and non-victims were found), but not in the American study (where there were no differences between victims and non-victims). This could mean that the experiences of American victims with judges, lawyers, and the justice system in general have not been negative, or are at least more or less similar to the expectations of American citizens who have never come into contact with the justice system (i.e., non-victims). Nevertheless, it is also possible that people who have been the victim of a crime in the past did not file a criminal complaint due to reasons other than low confidence in the justice system, such as shame, stigmatization, or fear of retribution. If this is the case, they have as little experience with the justice system as non-victims, except for the fact that they were not protected by the police (but, again, confidence in the police was not surveyed in the American study). In addition, it is

possible that in Europe, victims also felt unjustly treated during legal procedures, causing an even larger difference in confidence between victims and non-victims.

With regard to the principles of the rule of law, victimization was expected to either trigger the pursuit of fairness and equality, or to have no effect on the commitment to these principles (Bateson, 2010; 2012). Both scenarios were indeed found by this study in Europe and the United States respectively, leading to the conclusion that the judicial confidence gap is wider for victims than for non-victims in Europe, but not in the United States. However, it has to be taken into account that confidence in judicial principles was only represented by one item regarding equality. Other measurement differences between the studies could have influenced the findings as well, such as the different way of measuring victimization, or the larger sample size of the European study, which increases the likelihood of finding significant results.

Furthermore, the expectation that higher educated victims would have a wider confidence gap than lower educated victims was based on the findings of only one study (Raad van de Rechtspraak, 2017), which showed that higher educated victims were less satisfied with their treatment during court procedures. Findings of the current study indicated that among victimized citizens in the United States, the judicial confidence gap is indeed wider for those who are higher educated than for those who are lower educated, due to their strong commitment to judicial principles, but low confidence in judicial institutions. In Europe, higher educated victims actually have a smaller confidence gap than lower educated victims, because their high levels of confidence on both dimensions are closer together than the relatively lower levels of confidence of the lower educated. This raises two questions, namely: what mechanism is at play here and why does this mechanism work differently in different countries? First of all, a possible explanation is that the norm-inducing function and the accuracy-inducing function of education are operating on both sides of the confidence gap respectively (Hakhverdian & Mayne, 2012). The fact that that these mechanisms seem to work differently in the United States and Europe

could be due to the politicization of institutional trust (e.g. Cook & Gronke, 2005). This entails that the effect of education on institutional trust can differ among different electorates, especially in the United States. Yet, both explanations are no more than suggestions, which have to be further investigated in future research.

The second sign of an ineffective justice system examined in this study was corruption. It was expected that the confidence gap for victims would be wider in more corrupt countries, due to fact that victims have first-hand experience of corruption during legal procedures, which would decrease their confidence in judicial institutions (Seligson, 2006), and at the same time increase their commitment to the principles of the rule of law (Gross, 2016; Hakverdian & Mayne, 2012; Nivette, 2016). Although the perceived level of corruption appeared to influence the width of the judicial confidence gap in general, it did not influence those of victims in particular. Why this is the case remains unexplained. Corruption is generally seen as bad, but the extent to which the perception of corruption affects public attitudes has been insufficiently researched, especially in countries where actual corruption is low.

Future research is also necessary to investigate other causes of country differences, particularly with regard to confidence in judicial institutions, since the greatest variation in the judicial confidence gap between countries was due to differences in this dimension. Examination on a broader scale of commitment to the principles of the rule of law is recommended as well, since existing studies were primarily conducted in countries in Africa and Latin America where a democratic government was only relatively recently implemented. In more established democracies, support for democratic principles among the public is often seen as a given, while its causes and consequences remain unstudied. More research into the (dimensions of the) judicial confidence gap is important, since the combination of low trust in judicial institutions and strong commitment to judicial principles could lead to more radical

forms of democracy, such as vigilant justice, that could change the democratic system as we know it today.

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Appendix I – General rule of law ranking and Corruption ranking (WJP, 2018), for all included countries.

General rule of law (*global rank*)

- 1) Denmark (1)
- 2) Norway (2)
- 3) Finland (3)
- 4) Sweden (4)
- 5) Netherlands (5)
- 6) Germany (6)
- 7) United kingdom (11)
- 8) Estonia (12)
- 9) Belgium (15)
- 10) Czech Republic (17)
- 11) France (18)
- ➔ United States (19)
- 12) Portugal (21)
- 13) Spain (23)
- 14) Poland (25)
- 15) Slovenia (26)
- 16) Italy (31)
- 17) Hungary (50)
- 18) Bulgaria (55)
- 19) Albania (68)
- 20) Ukraine (77)
- 21) Russian Federation (89)

Corruption (*1 - absence of corruption*)

- 1) Denmark (1-0.95): 0.05
- 2) Norway (1-0.93): 0.07
- 3) Sweden (1-0.91): 0.09
- 4) Finland (1-0.89): 0.11
- 5) Netherlands (1-0.86): 0.14
- 6) Germany (1-0.83): 0.17
- 7) United kingdom (1-0.82): 0.18
- 8) Estonia (1-0.79): 0.21
- 9) Belgium (1-0.78): 0.22
- 10) France (1-0.75): 0.25
- ➔ United States (1-0.75): 0.25
- 11) Portugal (1-0.74): 0.26
- 12) Poland (1-0.72): 0.28
- 13) Spain (1-0.71): 0.29
- 14) Czech Republic (1-0.65): 0.35
- 15) Slovenia (1-0.63): 0.37
- 16) Italy (1-0.62): 0.38
- 17) Hungary (1-0.51): 0.49
- 18) Russian Federation (1-0.43): 0.57
- 19) Bulgaria (1-0.41): 0.59
- 20) Albania (1-0.35): 0.65
- 21) Ukraine (1-0.34): 0.66