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## 9. Explaining congressional support for the federal judiciary

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### INTRODUCTION

An independent judiciary it is not an empirical reality in the American political system, in part because the federal judiciary is tied to decisions made by Congress. Of course, the American separation-of-powers reality is that Congress also depends on the judiciary to reinforce and “constitutionalize” its policymaking. Given this, a legislature interested in policy longevity can choose to strategize and support the judiciary in an opportunistic manner. The degree to which Congress chooses strategies that support the judiciary impacts the institution’s influence and capacity. The extent to which support is demonstrated over time reflects the institutional development of the federal judiciary itself.

Over time, the federal judiciary has undoubtedly undergone institutional transformation. McGuire (2004) keenly noted, “an observer today would scarcely recognize the U.S. Supreme Court of the 19th century. With little prestige, modest power, a meager caseload, and no permanent courtroom, it was a bench on which few were anxious to serve” (p. 128). McGuire’s observation translates to the entirety of Article III courts. Since the period preceding the Civil War, the population of Article III judgeships ballooned from only 51 authorized federal judgeships in 1855 to 850 in 2015 – a number that more than doubled between 1940 and 1970 alone. In the same period, the total number of Article III courts also grew exponentially, from 37 in 1855 to 108 by 2015. These expansions of institutional structure coincided with the evolution of judicial prestige itself. The era of self-taught lawyers or aspiring politicians serving as federal judges has given way entirely to career judges with expert legal training.

The transition to the modern federal judiciary is not explained by a singular congressional policy event. Prior research helps us understand the historical progression, albeit with a focus primarily on the U.S. Supreme Court. In particular, McGuire (2004) saw the Court’s institutional development as rooted in a set of exogenous political factors that helped facilitate *differentiation*, *durability*, and *autonomy* for the institution. By creating a dynamic index that measured institutional change over time, he mapped the historical trajectory of Supreme Court institutional development and observed the long-term implications for Supreme Court power.

This conceptualization of institutional development is a valuable framework as we expand the inquiry beyond the Supreme Court. Specifically, we are interested in the long-term record of action taken by Congress to support the institutional development of the entire federal judiciary. Our analysis indicates a long-term trend of congressional support that appears more stable than what scholars have found specific to the Supreme Court (McGuire, 2004; Ura and Wohlfarth, 2010). To this end, we find that economic and political conditions can motivate or deter congressional support to varying degrees. Overall, our analysis explores the dynamic between Congress and the federal judiciary and the evolving conditions of that relationship.

## CAUSES OF CONGRESSIONAL SUPPORT FOR THE SUPREME COURT

The U.S. Constitution provides no direct guidance concerning the size, structure, or jurisdictional scope of the federal court system beyond the assertion that “the judicial power of the United States shall be vested in one Supreme Court.” Instead, the founders provided Congress with the power to “ordain and establish inferior courts” and regulate the jurisdictional scope of the Supreme Court. Likewise, the judicial branch is dependent upon Congress to fund America’s legal system – which broadly includes both the salaries of judges and the ancillary costs needed to promote and maintain every Article III body. This dependence on Congress has promoted a recurring principal–agent problem. Further, the judicial branch must compete with the countless other agencies, institutions, and programs across the federal government. Generally speaking, the support that Congress can provide the judiciary is grouped into financial and institutional considerations. Also generally speaking, scholars have found that the proclivity of Congress to provide support has been mixed over time. What seems to factor into the congressional calculus are factors related to the political relationship between the branches, as well as economic considerations.

What we know about the impact of interbranch relations on congressional support comes primarily from analyses of Congress’s relationship with the Supreme Court. Scholars have operationalized this relationship in several ways, including interbranch ideological differences and congressional reaction to Supreme Court decision-making. The impact of ideological differences has, not surprisingly, been shown to constrain congressional support for the federal judiciary. In other words, when Congress collectively views the Supreme Court as more favorable to its preferred policy outcomes, research finds that support for the judiciary is more likely. For example, Vining, Wilhelm, and Hughes (2019) found requests made by the Chief Justice for federal judicial improvements were more likely to be granted by Congress when legislative-judicial ideological distance was smaller.

Scholars have also considered interbranch relations in light of Supreme Court decision-making, and congressional reaction to it. Toma (1991) found that Supreme Court decision-making that runs counter to congressional preferences impacted the degree of their willingness to support the institution. She offered an anecdote from the Warren Court to illustrate how Congress employs tools like budget appropriations to punish the Supreme Court for decision-making that they view as antagonistic: “In response to the liberal Court of the 1960s, a less liberal Congress passed the 1964 Government Employees Salary Reform Act that increased the annual salaries of members of Congress and of federal judges, except Supreme Court justices, by \$7,500. The justices of the Supreme Court received increases of only \$4,500” (p. 135). That congressional support is impacted by Supreme Court decision-making is echoed in Barnes’s (2004) work on congressional overrides and Clark’s (2009) investigation of court-curbing legislation as well.

Evidence by McGuire (2004) seemed to stand to the contrary, at least in terms of longitudinal impact. In his research, Supreme Court decision-making is a surrogate measure for judicial power. His analysis reveals that long-term institutionalization of the Supreme Court is not impacted by Supreme Court decisions. In other words, the Court’s long-term institutional capacity is not increased when the Supreme Court exercises power. Importantly, institutional support does not appear to be hindered by Supreme Court power either. McGuire concludes,

notably, that the institutional development of the Supreme Court can itself lead to increases in the Court's use of power, but not the other way around.

Beyond the politics of interbranch relations, other conditions have been found to mediate congressional support as well. Ura and Wohlfarth (2010) found that public support serves as a reference point for congressional decisions about the judiciary. Namely, even when controlling for the ideological separation between the Court and Congress, they find that "congressional support for the Supreme Court is a function of public opinion about Congress as well as public opinion about the Supreme Court" (p. 953). Clark's (2009) analysis of court-curbing legislation echoes this finding as well.

## EXPLAINING CONGRESSIONAL SUPPORT FOR THE FEDERAL JUDICIARY

Prior research suggests that interbranch relations, economic conditions, and public support all might factor into congressional decisions to support the Supreme Court as an institution. We expect that congressional considerations for the entire federal judiciary are similarly motivated. Importantly, we expect that congressional support is tied to political and economic trends throughout history. Here we identify specific factors that may explain historical support for the federal judiciary. Given that our analysis covers 220 years (1796–2015), we examine those conditions that can be operationalized for the entire time period.

### Economic Considerations

We consider that economic conditions should impact congressional support for several reasons. Most important is that the overall health of the American economy acts as a gatekeeper for federal spending. When economic health is proficient, the necessity to curtail or adjust spending preferences for Congress is less likely. Alternatively, when the nation's economic health is relatively poor, the federal government may naturally respond by reducing unnecessary expenditures. This can have an impact on the judiciary, which lobbies for appropriations like any other federal office, agency, or department.

We measure economic conditions in two ways. First, we include a dichotomous variable that indicates whether the economy is experiencing a downturn in a given year. Downturns are defined as periods where the nominal gross domestic product (GDP) in a given year is less than the previous year. Once a downturn is indicated, it remains until the nominal GDP rebounds and surpasses the prior maximum.<sup>1</sup> Of the 220 years in our dataset, economic conditions are classified as being in a downturn for 75 non-consecutive years. Our second economic indicator is the overall spending of the federal government. We base this measure on expenditure receipts.<sup>2</sup>

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<sup>1</sup> For example, the aggregated nominal GDP in 1841 was \$1.62 million. However, it was reduced in the following year (\$1.57 million in 1842). Until the nominal GDP surpassed \$1.62 million, the economy was measured as being in a downturn (=1).

<sup>2</sup> Federal spending data was retrieved from: <https://www.usgovernmentsspending.com/>

## Political Considerations

Like economic conditions, political considerations undoubtedly factor into congressional decisions for judicial support. As discussed, prior scholarship confirms this in very direct ways related to the Supreme Court. Based on this research, we posit that interbranch political conditions should temper congressional willingness to support institutional development within the entire federal judiciary as well. We consider the congressional–judicial interbranch relationship to be represented in two ways: ideological distance and judicial decision-making.

Measuring interbranch ideological distance over time presents an interesting obstacle for our research. Specifically, illustrating the full judiciary’s political or ideological composition is difficult, and even more so over the course of the last two centuries. Given this, we frame the ideological preferences of the judiciary as a reflection of the Supreme Court rather than the entire judiciary. The Supreme Court, though not the entire judiciary, acts as its primary representative. Further, prior literature has routinely reinforced that the primary source of interbranch perceptions toward the judiciary stems from evaluations of the Supreme Court (e.g., Toma, 1991; Walker and Barrow, 1985). Even if political conditions in the lower federal courts do not completely match those in the Supreme Court, support from Congress is nonetheless bound to the Supreme Court as its proxy.

To gauge interbranch political conditions, we use a spatial assessment of the interbranch relationship. Specifically, we use two measures rooted in the Poole-Rosenthal (1985) NOMINATE methodology. These represent the average first-dimensional score for both chambers of Congress during a given year, as well as the average of the Supreme Court.<sup>3</sup> The scores for the Court were determined by assigning the justices with the scores of the president who appointed them. While alternative scaling methodologies exist, a comparison using NOMINATE is the only one that allows for measurement for the entirety of our dataset. To gauge ideological distance, we measure the absolute value of the distance separating the means of the Court and Congress on a discrete NOMINATE scale. Scores greater than absolute (0) represent lesser degrees of congruity.

Our measure of judicial decision-making is a composite index. We are interested in how expansive decision-making (McGuire’s “power” variable) shown by the Supreme Court impacts levels of congressional support for the entire judiciary. To model this consideration, our index components include: (1) the number of times the Supreme Court declares acts of Congress unconstitutional in a given year; (2) the number of times the Supreme Court rules against an official, agency, or department of the federal government in a given year; and (3) a measure of landmark decision-making from the Court. After factor analysis, our resulting composite score returned only one principal axis with an eigenvalue greater than 1.<sup>4,5</sup> Figure 9.1 illustrates this variable over time.

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<sup>3</sup> First-dimension NOMINATE scores were retrieved from Voteview: Congressional Roll-Call Votes Database. Retrievable at: <https://voteview.com/>

<sup>4</sup> The data for components one and two was sourced from the Spaeth et al. Supreme Court database, retrievable at: <http://Supremecourtdatabase.org>. For landmark decision data, we relied on the Legal Information Institute’s (Cornell Law School) List of Historic Supreme Court Decisions, retrievable at: <https://www.law.cornell.edu/supct/cases/name.htm>

<sup>5</sup> The first principal component returned an eigenvalue of 2.01, accounting for 68% of the common variance.

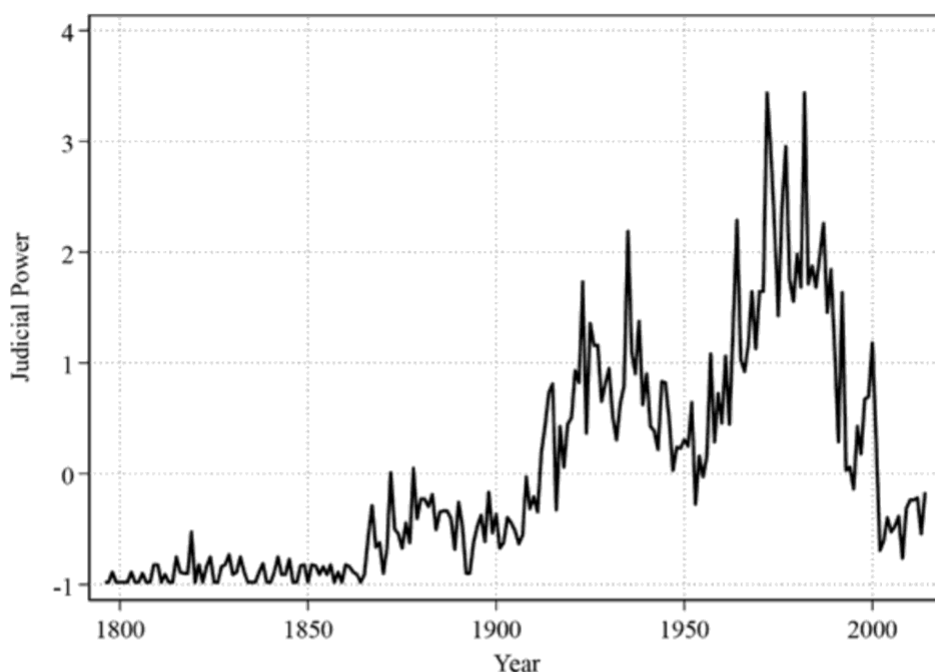


Figure 9.1 *Index of judicial power, 1796–2015*

Notably, prior literature suggests that judicial workload and public opinion should factor into congressional decisions related to the federal judiciary. Unfortunately, we do not have a way to measure such considerations for the entire federal judiciary for the entire time period of our analyses. For this reason, these factors are not included in our analyses.

## OPERATIONALIZING CONGRESSIONAL SUPPORT FOR THE JUDICIARY

To understand the institutional development of the federal judiciary, as facilitated by congressional support over time, we consider foundational work by McGuire (2004), which was subsequently augmented by Ura and Wohlfarth (2010). McGuire operationalized congressional support for the Supreme Court over time as an aggregated index, derived from principal factor analysis of underlying indicators. McGuire's index measures the Supreme Court's ability (over time) to *differentiate* as a distinct political institution; demonstrate *durability* in adapting to change; and exhibit *autonomy* in decision-making. In this research, we consider factors that promote differentiation, durability, and autonomy for the entirety of the federal judiciary.

## **Durability**

The durability of the federal judiciary is reflected in its ability to adapt to change through institutional growth. Factors such as long-term financial stability and workload (institutional) capacity provide a framework for durability of the judiciary. Much of this is accomplished, of course, by impactful legislation passed by Congress (de Figueiredo et al., 2000; McGuire, 2004). In the case of the Supreme Court, McGuire (2004) specifically considered durability relative to the role of law clerks and pay scales for Supreme Court justices. Ura and Wohlfarth (2010) expanded this to include Supreme Court appropriations more generally. Logically, as Congress increases allocations of financial and institutional resources to the court, it indicates support for the institutional output.

We agree that these factors reflect durability. As such, we first incorporate law clerk support for the entire judiciary. This indicator reflects historical milestones that expand support for law clerks in the federal courts. Beginning in 1864 when the first federal law clerks were hired, we identify congressional developments that financially and institutionally incorporate (and expand) law clerk support within the judiciary. Next, we expand McGuire's (2004) metric of Supreme Court salary information to include annual changes in salaries for all federal judges. We also incorporate the total sum of appropriations allocated to the federal judiciary in a given year (Holt, 2012),<sup>6</sup> similar to the index update by Ura and Wohlfarth (2010). Finally, we consider one additional factor: the total number of authorized Article III courts and judgeships in a given year. This additional component indicates the degree of congressional response for emerging institutional need (e.g., Hughes, Vining, and Wilhlem, 2017). It also indicates support for the entire judiciary by way of authorized institutional expansion.

## **Differentiation**

Components of differentiation are those that promote a "clear boundary [line] that mark [the institution's] distinctiveness" (McGuire, 2004, p. 130). That is, these factors indicate the judiciary's clearly defined and specialized role. McGuire (2004) measured differentiation by the extent to which veterans within the judiciary were recruited to serve in positions of power and influence. More specifically, he measured the average service of Supreme Court justices in lower Article III courts prior to appointment. By his logic, more judicial experience for members of the judiciary corresponds to an increase in collective institutional understanding and respect. Accordingly, our analysis includes a similar indicator for the average years of judicial service on the federal bench in any given year.<sup>7</sup>

## **Autonomy**

Autonomy of the judiciary is indicated when the institution exercises decision-making at its own discretion. McGuire (2004) framed autonomy as a reflection of the Supreme Court's

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<sup>6</sup> Itemized budget allocations for the federal judiciary for 1796–2010 were sourced from the Federal Judicial Center (Holt, 2012). 2010–2015 were sourced from the American Bar Association's annual reports on federal court funding.

<sup>7</sup> Notably, our average judicial service indicator pertains only to Supreme Court justices, as data on the entire federal judiciary is not available for every year in our dataset.

ability to set its own agenda. He correctly identified how, over much of American political history, the federal courts were governed by statutory jurisdictional requirements. As jurisdictional requirements have subsided over time, the progression from rights of appeal to an agenda dictated more by the discretion of federal judges represents an increase in institutional autonomy. This is particularly telling at the highest level, which promotes a residual effect on the operations and decision-making of the lower federal courts.

Like McGuire, we incorporate considerations of agenda control into our index. Similar to that research, we measure this as congressional action over time that gives more agenda control to federal judges. We also include a variable to indicate change in the jurisdictional scope of the federal judiciary as a whole. Importantly, this variable is operationalized to indicate expansion as well as contraction of jurisdiction for all Article III courts.

Our index also incorporates McGuire's (2004) measure for the length of the Supreme Court rulebook. This includes requirements, procedures, and other provisions that guide the operations. While McGuire thought this reflected durability for the judiciary, we see it as providing a natural fit for autonomous decision-making. The extent that the judiciary formalizes its rules and procedures represents an important illustration of autonomy. Autonomous decisions on procedure that impact the Supreme Court can also impact operations of the lower federal courts.

We incorporate a final indicator for autonomy, not included in prior research. Specifically, we measure any major change in judicial administration, whether arising from legislation or internal decisions from within the judiciary. Over time, the administration of the federal courts has moved away from dependence on the Departments of Interior, Treasury, or Justice to handle most of its day-to-day operations. We measure this change as an additive total of legislation or other events that have changed the administrative structure of Article III courts.

### **Constructing a Dynamic Index of Judicial Institutionalization**

Each of these indicators illustrates some aspect in the evolution of the institutional capacity of the federal judiciary. Like prior research, we maintain that each individual component is best understood as necessary, but not sufficient. Instead, the composite index of all these factors best illustrates our underlying concept (Berry and Feldman, 1985; McGuire, 2004). Like prior research, we construct our index using factor analysis. This analysis resulted in two principal axes with an eigenvalue greater than 1.0, collectively accounting for some 94% of the cumulative variance. Notably, most variables load substantially on the first principal axis.<sup>8</sup>

As McGuire (2004) notes, "the correlations between these variables may simply be an artifact of a mutual trend, and because of that, any one of the variables could be quite exogenous to any underlying dimension of institutional change" (p. 133). In other words, even if the components in the index appear to be collectively cointegrated, correlation is still possible. Given that each individual component represents an independent, non-stationary time series, we performed a set of robustness checks to ensure that the individual measures reflect a single dimension. These results can be found in the Appendix. Once satisfied that the individual components reflected the evolving trends expressed by the latent dimension, we constructed our

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<sup>8</sup> Specifically, the first principal axis presented an eigenvalue of 8.33 and accounted for 83.4% of the cumulative variance. The second principal axis presented an eigenvalue of 1.15 and accounted for 11.58% of the cumulative variance.

final index using scores from the first principal axis. Figure 9.2 represents the graphed barometric evolution of the institutional development of the federal judiciary. Figure 9.3 represents our index in comparison with the Supreme Court index developed by McGuire (2004), and Figure 9.4 represents our index in comparison with the Ura and Wohlfarth (2010) modified Supreme Court index. Figure 9.5 represents the comparison of all three.

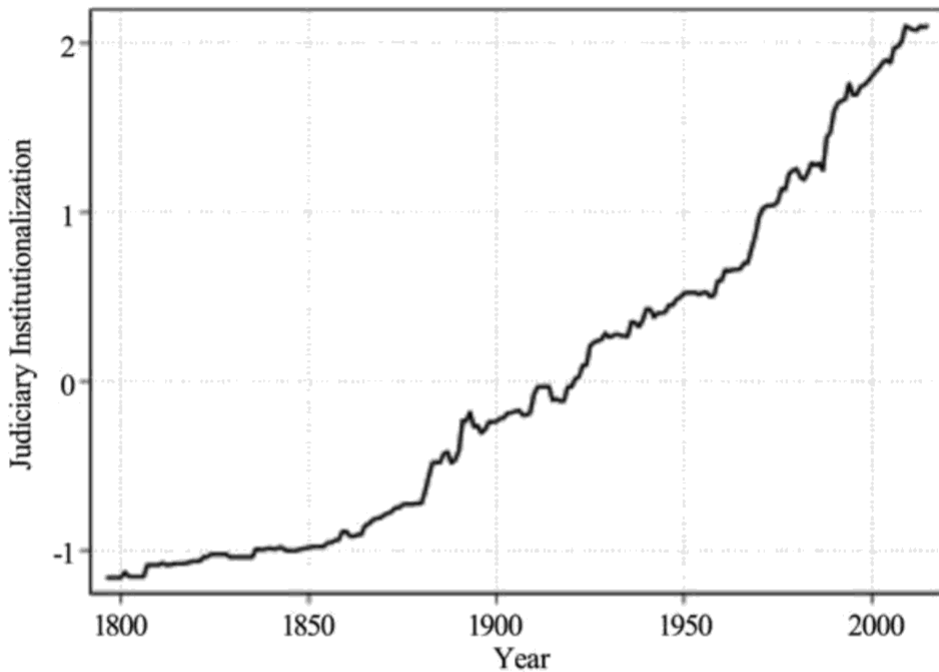


Figure 9.2 *Institutionalization of the federal judiciary, 1796–2015*

In comparison with prior developed indices specific to the Supreme Court, there is a similar variance between all measures.<sup>9</sup> This is not entirely surprising. Many milestones in the history of the federal judiciary happen in a top-down fashion. Moreover, most financial and institutional changes that occur at the Supreme Court are followed (or mirrored) by changes to the entire branch. For example, decisions to increase the salaries of federal judges are hardly exclusive to Supreme Court justices; nor are legislative decisions that change legal jurisdictions or administrative structures. By adjusting the scope of measurement, many components incorporated into prior analyses appear to be sufficiently replicable for an analysis of the entire judiciary. Still, while there does exist a similar variance, our full judiciary measure appears more stable over time than Supreme Court specific measures, as the comparative graphs in Figures 9.2, 9.3, and 9.4 illustrate.

<sup>9</sup> Specifically, 0.96 with McGuire (2004) and 0.91 with Ura and Wohlfarth (2010).

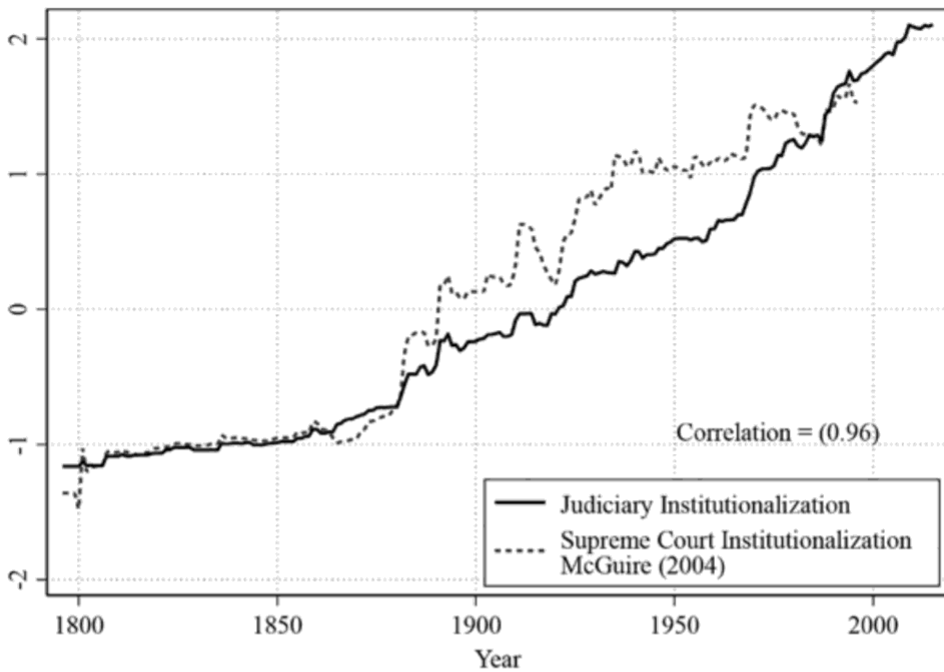


Figure 9.3 *Federal judiciary index compared with Supreme Court index (McGuire, 2004)*

One explanation could be related to the data itself. Institutional changes that impact the broader Article III court system are more regular and frequent across time than those specific to the Supreme Court. For example, while the population of the Supreme Court changed periodically throughout the nineteenth century, it has remained stagnant at nine since 1869. Alternatively, the number of federal district court judges has grown routinely until the early 2000s. Further, the broader set of Article III judgeships and courts rarely decreases. Moreover, while financial support can vary from year to year, the institutional side of congressional support for the judiciary is more additive in nature, as support is rarely decreased for the entire judiciary.

Another possible explanation, of course, is that the comparative stability of our measure means that the historical record of congressional support for the institutional development of the judicial branch is not as fragile as that for the Supreme Court. Given that the Supreme Court is constantly subject to scrutiny, as the most visible judicial body, this is not necessarily surprising. In fact, the more stable graph for the entire federal judiciary suggests that factors related to Supreme Court institutional support may *not* impact the lower federal courts. In effect, the economic and political conditions that impact support for the Supreme Court may not reflect the whole picture. Our longitudinal analysis explores this further.

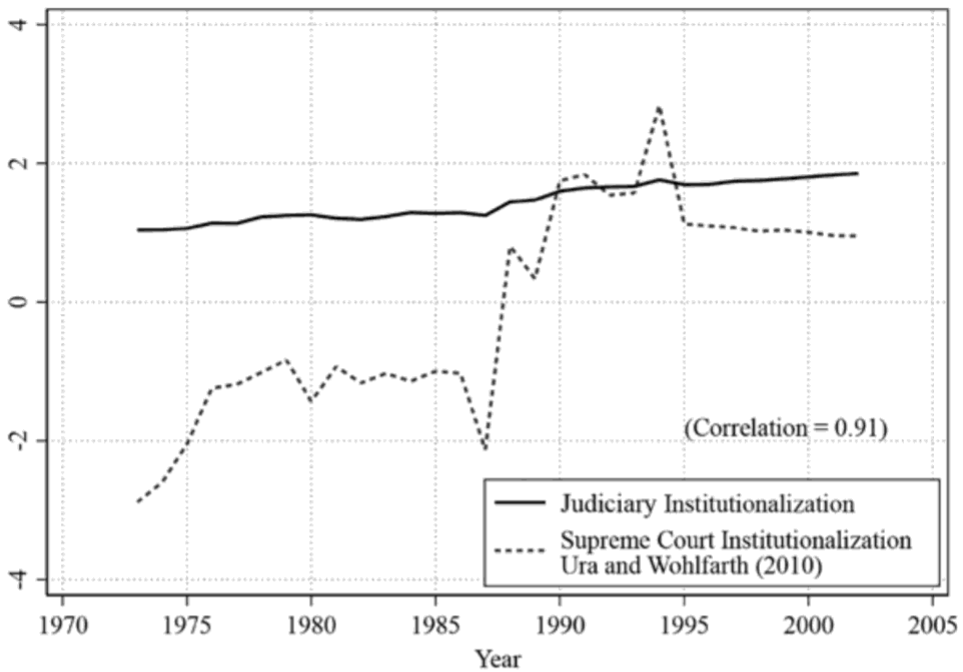


Figure 9.4 Federal judiciary index compared with Supreme Court index (Ura and Wohlfarth, 2010)

## MODEL AND RESULTS

We constructed a model to consider factors that influence support by Congress for the federal judiciary over time. To model changes in longitudinal congressional support, we use an autoregressive distributed lag (ARDL) framework. We chose ARDL for three primary reasons. First, an illustration of the dependent variable's autocorrelative functions highlights that judicial institutionalization follows a meaningful trend of autoregressive parameters but offers little evidence of moving average parameters.<sup>10</sup> This indicated that a model focusing on moving average parameters was likely unnecessary. Second, ARDL provided a framework to include lagged values of our dependent variable, since current and future values of the dependent variable are very likely reflective of prior values. Finally, ARDL allows us to model current values of the dependent variable as a response to prior values of explanatory variables, which is how we expect congressional decisions regarding support to be structured. Specifically, we expect lagged values in year<sub>(t-2)</sub> to be the most indicative period. For example, Congress appropriates funds to the judiciary for FY2010 with legislation passed in 2009 (i.e., year<sub>(t-1)</sub>). We expect that Congress, in 2009, considers conditions of the year prior (2008 year<sub>(t-2)</sub>). Employing an ARDL

<sup>10</sup> A graphic illustration of the autocorrelative and partial-autocorrelative functions can be found in the Appendix (Figure 9A.1).

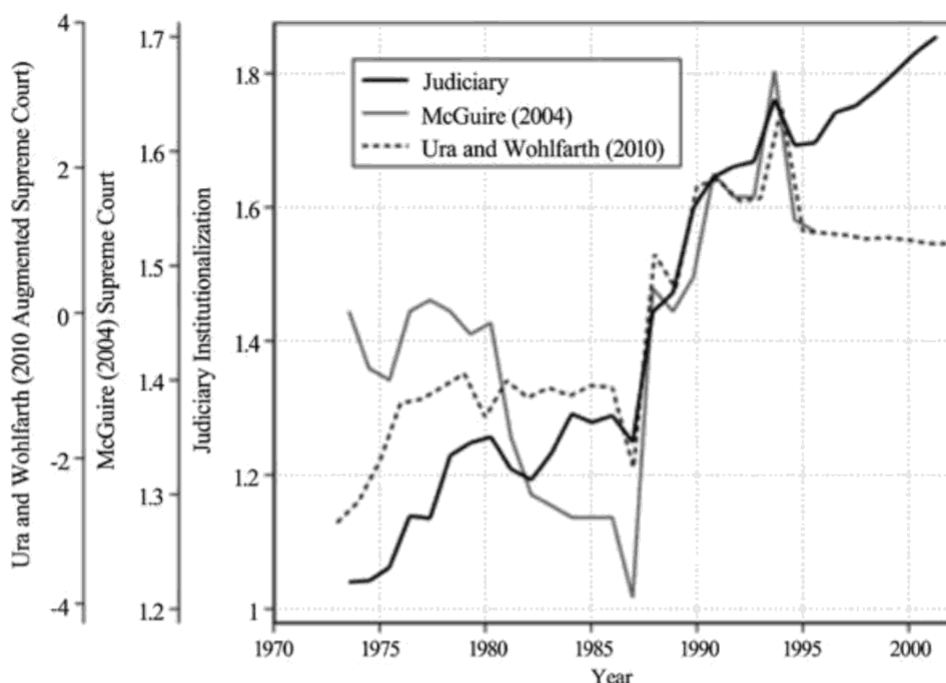


Figure 9.5 *Federal judiciary index compared with Supreme Court indexes of institutionalization (McGuire, 2004; Ura and Wohlfarth, 2010)*

approach allows us to consider these lagged terms as explanatory variables for institutionalization in the contemporary period.

Table 9.1 displays our model results, illustrating the effects of our covariates on congressional support for the federal judiciary. Of note, we provide estimates for both our index of federal judicial support and the Supreme Court-specific support index from McGuire (2004).

Table 9.1 *Effects of political and economic conditions on judicial institutionalization*

Years of Observation	Lag(t-i)	Judiciary (1796–2015)			Supreme Court (1796–1996)		
		Coef.	SE	Sig.	Coef.	SE	Sig.
Index (DV)	2	0.936	(0.02)	***	0.878	(0.03)	***
Economic Downturn (=1)	2	−0.031	(0.02)		0.016	(0.01)	
Federal Spending (Trillions, USD)	2	0.087	(0.03)	*	0.002	(0.03)	
Ideological Distance	2	−0.065	(0.10)		−0.213	(0.08)	*
Judicial Power	2	0.066	(0.01)	***	0.011	(0.01)	
Year(t)	2	0.002	(0.00)	*	0.002	(0.00)	***
Constant		−3.89	(1.79)	*	−4.24	(1.11)	***

Notes:

\*0.05, \*\*0.01, \*\*\*0.001 at a 95% confidence interval.

The *Index (DV)* variable indicates that each model's respective dependent variable is being incorporated as a lagged term.

In terms of economic factors, economic downturns do not appear to have a significant impact on congressional support for the federal judiciary, while overall federal spending does. Specifically, we find that an increase in the overall spending rate of the federal government is significantly related to congressional support for the federal judiciary. This is not surprising considering that two of the major components found within our index – the total judicial budget and Article III judge salaries – are monetary appropriations. It stands to reason that longitudinal increases in overall federal spending would coincide with increases in their budgetary support for the judiciary too. We were, however, surprised to find that this did not translate to the Supreme Court. Although McGuire's (2004) only budgetary variable was total expenditures per justice (i.e., the justices' salaries), we expected that any positive trends for federal spending for the entire judiciary – which included the Supreme Court – would likely be reflected in support for the Supreme Court.

Why do the results for financial support seem to differ between the federal judiciary and the Supreme Court considered alone? One idea is that the Supreme Court may more likely be subject to interbranch obstacles than the other Article III courts. Considering how prevalent the Supreme Court is in the public eye, the decisions of the Court invite greater congressional scrutiny. Consequently, the difference in our results may suggest other mediating factors. A natural place to look for these factors is within the political environment.

In terms of political conditions, we also find differences in the impact of congressional–judicial ideological distance on the congressional support indexes. Specifically, ideological distance does not have a statistically significant impact on congressional support for the entire judiciary but is negative and significant for the Supreme Court. In other words, increases in the ideological distance separating the Supreme Court from Congress correspond with a decrease in congressional support for the Supreme Court, but do not appear to impact congressional support for the broader judiciary. This result, in some ways, reinforces the findings of prior literature that emphasize the significance of interbranch relationships in the separation-of-powers system for the Supreme Court (e.g., Clark, 2009; Toma, 1991; Walker and Barrow, 1985).

Figure 9.6 offers an illustration of the marginal effects of ideological distance on expected congressional support toward the Supreme Court. Specifically, we find that increases in the ideological distance separating the Court and Congress correspond with a decrease in congressional support across all values of separation. It is worth noting that we have no expectation that the Supreme Court's politics reflects all judicial politics found in the lower federal courts, which may further explain the differences in results between the two indexes.

Our second variable reflecting political conditions is a measure of expansive decision-making by the Supreme Court (labeled *Judicial Power*). Once again, we find differences between our two congressional support indexes. Our results indicate a significant and positive effect for the entire judiciary, but this does not extend to the measure of the Supreme Court. Substantively, this means that we find a higher level of congressional support when the Supreme Court exercises more judicial authority. This is both interesting and unexpected, considering that it does not translate to the Supreme Court, whose exertions of judicial power serve as the foundation of the measure.

We consider that these results may be more corollary than causal. The primary components that constitute our measure – landmark decisions, declarations of unconstitutionality, and anti-government decision-making – each represent Supreme Court authority in the modern era, of which none was particularly prominent in the early history of the federal courts. Our results likely illustrate that the longitudinal evolution of judicial power trends alongside the

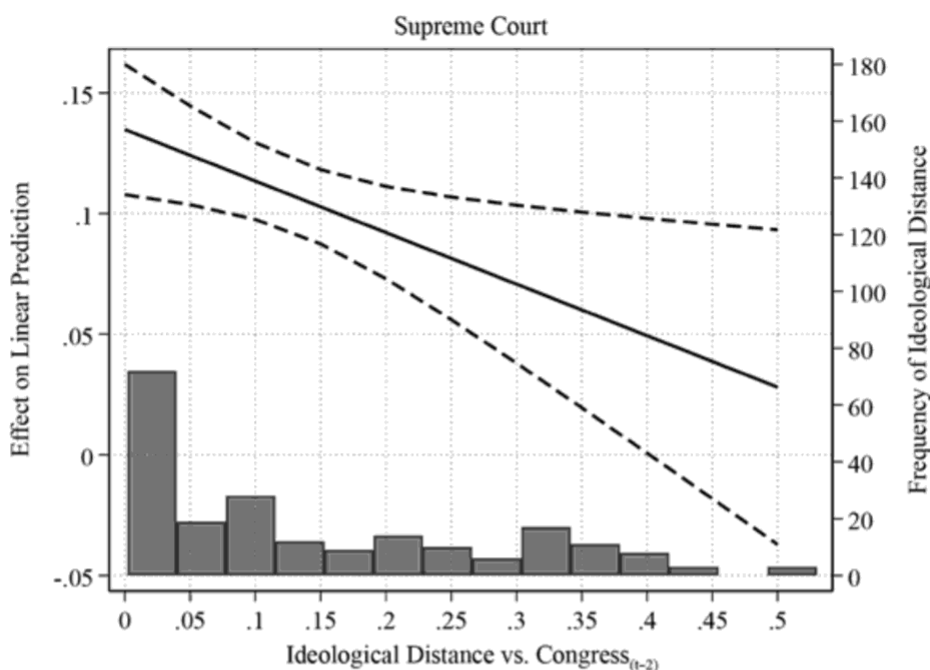


Figure 9.6 *Marginal effects of lagged ideological distance<sub>(t-2)</sub> on congressional support*

institutional development of the federal judiciary. In other words, as the judiciary's institutional capacity has grown over time, so too has the ability of the Court to employ expansive decision-making. This presumption is reaffirmed in the prior literature. Specifically, McGuire (2004) found that the long-term growth of the Supreme Court's power was caused by its institutionalization – a result that is not upheld when the causal hypothesis is flipped.

## CONCLUDING THOUGHTS

In this research, we analyze longitudinal congressional support for the federal judicial branch. In comparison with similar studies done on the Supreme Court (McGuire, 2004; Ura and Wohlfarth, 2010), support for the entire judiciary exhibits a more stable trend over time. Our analysis of this trend reveals that the entire federal judiciary has been less impacted by economic conditions and interbranch relations than the Supreme Court. Thus, the relative stability that is visible in our graphed index, in comparison with that of the Supreme Court, is likely a real thing.

We analyze congressional support as a function of economic and political conditions. Our results for the impact of economic conditions perform generally as expected. We find that increases in overall congressional spending correspond to increases in federal judicial support, and economic downturns do not have a significant impact. Both results suggest relative stability in our index. The impact of political conditions is somewhat mixed. Interbranch ideological

distance does not have a significant impact on congressional support for the entire judiciary, while expansive decision-making by the Supreme Court is both significant and positive. This seems to contrast with prior research that suggests expansive judicial decisions can often deter congressional willingness to support the judiciary. We speculate that this finding is measurement related. Moreover, we believe expansive decision-making is likely a response to congressional support, rather than the opposite.

In future research, we hope to shift our focus to the consequences of institutional development, rather than the causes. We believe that the extent that one institution has leverage over the other requires further investigation. The separation of powers ensures that Congress holds the keys to the financial and institutional stability of the Article III courts, but this has not prevented the judiciary from assuming power on its own. Investigating the dynamic of legislative–judicial relations can help us understand the consequences of this relationship across American history.

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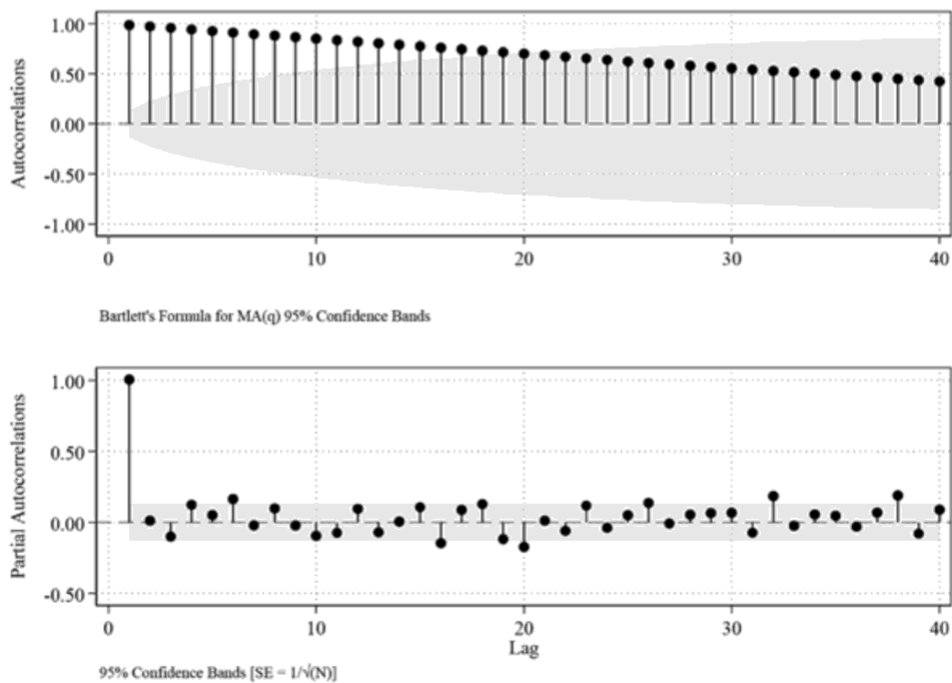
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APPENDIX 9A

*Table 9A.1      Granger causality tests of judicial institutionalization index and its indicators*

<i>Indicator</i>	<i>F</i>	<i>Prob &gt; F</i>
Total Judiciary Budget	1.03	0.348
Article III Judge Salaries	0.14	0.866
Agenda Control (SCOTUS)	3.71	0.022
Total Authorized Judgeships	0.52	0.587
Total Article III Courts	0.46	0.622
Role of Law Clerks	0.05	0.951
Jurisdiction Change Events	1.07	0.335
Administration Change Events	0.37	0.683
Federal Judicial Experience (SCOTUS)	4.25	0.015
Rules Length (SCOTUS)	1.62	0.189

*Note:* Our *Granger-Causality* procedure was derived from McGuire (2004, p. 133–134) and represents a variation of the Engle-Granger two-step method.



*Figure 9A.1      Autocorrelative and partial-autocorrelative functions of judicial institutionalization*

## **Federal judiciary institutionalization (measure of congressional support) index components**

*Total judiciary budget* – Itemized funds allocated to the federal judiciary in each fiscal year (Millions, Adjusted to 2018 USD). Source: <https://www.fjc.gov/content/federal-judiciary-appropriations-1792-2010-0>

Note: 2011–2015 data were sourced from the American Bar Association’s reports on appropriations requests to the federal judiciary.

*Article III Judge Salaries* – Total of all Article III judge salaries per year. Sources:

1. <https://www.fjc.gov/history/judges/judicial-salaries-us-district-court-judges>
2. <https://www.fjc.gov/history/judges/judicial-salaries-u.s.-circuit-court-judges-1801-1891>
3. <https://www.fjc.gov/history/judges/judicial-salaries-us-court-appeals-judges>
4. <https://www.fjc.gov/history/judges/judicial-salaries-supreme-court-justices>

*Agenda Control* (adapted from McGuire 2004) – Measures the ability of the Supreme Court to manage its own docket.

0. Initial baseline (*lack of*) agenda control – [1796] to 1890
1. Passage of Circuit Court of Appeals Act of 1891 (which provided limited discretionary review via the writ of certiorari) – 1891 to 1924
2. Passage of the Judiciary Act of 1925 (which expanded certiorari power) – 1925 to 1988
3. Passage of the Act to Improve the Administration of Justice (which moved to eliminate mandatory appeals requirements) – 1988 to [2015]

*Total Authorized Judgeships* – Total number of (statutorily) authorized Article III judgeships in a given year. Source: <https://www.uscourts.gov/judges-judgeships/authorized-judgeships>

*Total Article III Courts* – Total number of (statutorily) authorized Article III courts in a given year. Source: <https://www.fjc.gov/history/timeline/8276>

*Law Clerks* – Adapted from McGuire’s (2004) original measurement to reflect the entire judiciary. Source: <https://www.fjc.gov/history/administration/court-officers-and-staff-law-clerks>

0. Initial baseline of no law clerks in the federal judiciary – 1796 to 1863
1. Judge (and later Associate Justice) Horace Gray hires (and personally pays) a personal assistant to aid with his legal duties. – 1864 to 1885
2. Congress heeds advice of Attorney General to fund a single stenographer for each Supreme Court justice “to assist in such clerical work as might be assigned to him.” – 1886 to 1918
3. Congress begins to provide funds to pay for legally trained assistants, dubbed “law clerks” – 1919 to 1929
4. Congress expands funding to allow each Circuit Court judge to hire a single law clerk – 1930 to 1935
5. Congress again expands funding to allow District Courts to hire law clerks as a measure of necessity, which was prescribed by the Senior Circuit Judge – 1936 to 1958
6. Congress authorized judges to hire “necessary” law clerks subject to the limits of their chambers’ staff budgets and establishes a minimum law clerk salary – 1959 to 2015

*Jurisdiction Change Events* – Legislation and other events that expanded (+1) or diminished (–1) the jurisdiction of Article III Courts. Source: <https://www.fjc.gov/history/timeline/8271>

*Administration Change Events* – Total legislation or other events that changed the administrative structure of Article III courts. Source: <https://www.fjc.gov/history/timeline/8286>

Note: Events that placed greater administrative responsibility on the judiciary were coded as (+1), while those that reshuffled administrative control to other actors were coded as neutral (0).

*Federal Judicial Experience* –The average number of years of service of all Supreme Court justices on the federal bench, prior to being elevated to the Supreme Court. Source: Adapted from McGuire (2004).

*Rules Length* –Measured as the total length (in pages) of the *Rules of the Supreme Court of the United States*. Source: Adapted from McGuire (2004).

*Table 9A.2 Index component comparison summary (Truscott and Wilhelm, 2021; McGuire, 2004; Ura and Wohlfarth, 2010)*

Area	Component	Truscott and Wilhelm (2021)	McGuire (2004)	Ura and Wohlfarth (2010)
Years of Analysis		1796–2015	1796–1996	1973–2002
Monetary (\$\$)	Total Judiciary Budget	✓		
	Article III Judge Salaries	✓		
	Expenditures Per Justice		✓	✓
	SCOTUS Appropriations			✓
Institutional	Appropriations to AO			✓
	Docket Control (SCOTUS)	✓	✓	✓
	Jurisdiction Change Events	✓		
	Administration Change Events	✓		
	Law Clerks	✓	✓	
	Federal Judicial Experience (SCOTUS)	✓	✓	✓
	SCOTUS Rulebook Length	✓	✓	✓
	Authorized Article III Judgeships	✓		
	Authorized Article III Courts	✓		
	Circuit Riding (SCOTUS)		✓	
	Location of Supreme Court		✓	