

The Institutionalization of the U.S. Supreme Court

Kevin T. McGuire

*University of North Carolina at Chapel Hill, Department of Political Science,
361 Hamilton Hall, Chapel Hill, NC 27599-3265
e-mail: kmcguire@unc.edu*

In pursuing their goals, members of the U.S. Supreme Court are affected by their institutional setting. How has that institutional environment changed over time and what have been the political consequences of those changes? Despite considerable analysis of the institutional dynamics of legislatures and executives, political scientists have been slow to bring time series techniques to the study of the Supreme Court, and as a result much less is known about its evolutionary path. Measuring a variety of organizational characteristics, I construct an index of the institutionalization of the Supreme Court from 1790 to 1996. This indicator suggests that the integration of the Court into the system of federal policy making has better enabled the justices to satisfy their objectives. To demonstrate this empirically, I test a series of error correction models of judicial influence, each of which confirms that the nature of the Supreme Court's character has had considerable implications for the scope of the justices' legal and political impact. These results underscore the need for judicial scholars to examine the Court's policy making in longitudinal perspective.

1 Introduction

An observer today would scarcely recognize the U.S. Supreme Court of the early nineteenth century. With little prestige, modest power, a meager caseload, and no permanent courtroom, it was a bench on which few were anxious to serve. "Imagine a Court with no library, no secretaries, no law clerks, no typewriters, no duplicating machines, no office space, no published docket, and no time limit for oral arguments. Imagine a Supreme Court Justice not only deciding cases in Washington, but also traveling on horseback, in a stagecoach, or by steamboat from one United States Circuit Court to another to hear an additional set of cases" (White 1991, p. 157). Holding brief sessions in taverns and the Capitol's basement, largely without established norms and procedures governing decision making, the Supreme Court had little institutional identity (O'Brien 2000, pp. 104–116). The Court has changed dramatically, evolving into an institution of significant status. It has assumed the mantle of judicial power and exercises sweeping authority over a vast and diverse policy domain. How has the Court developed over time, and with what effects?

Interestingly, longitudinal knowledge of the Supreme Court is quite limited. The vast majority of systematic analyses of the Court illuminate it from only a cross-sectional

Author's note: For their insights and suggestions, I am especially indebted to James A. Stimson and Christopher Zorn. I am also grateful for the comments of John A. Clark, Roy B. Flemming, Charles Johnson, David Lowery, Michael MacKuen, Kenneth Meier, Thomas Oatley, Terry Sullivan, Charles E. Smith, Jr., Georg Vanberg, Thomas G. Walker, and Stephen Wasby. An online appendix is available on the *Political Analysis* Web site. Replication materials are available from the author.

perspective, overlooking most historical variation and evaluating it as a more or less static institution. Even the research that does bring a time series perspective often lacks the methodological rigor that is found in other scholarship on the Court. Consequently, the dynamics of the Court are not well understood. In light of the considerable changes that the Court has undergone, this lack of understanding is particularly glaring. My aim here, therefore, is to examine the Supreme Court's process of institutional growth and to test its linkages to the justices' policy outputs. Relying upon various measures of differentiation, durability, and autonomy, I develop an aggregate measure of institutionalization for the Supreme Court and examine both the path of institutional growth and its consequences. The results suggest that institutional arrangements have had noteworthy implications for the historic role of the Supreme Court. In fact, they have served as a principal determinant of the justices' political power.

2 The Supreme Court in Institutional Perspective

Institutionalization refers to the development of a regularized system of policy making. "A political community ... develops routines—standard ways of doing things by organizations endowed with resources and authority. ... In a word, responses to regularly recurring problems are often institutionalized. Collective action comes to pass in the political community because standard procedures are established that provide political actors with appropriate incentives to take the action necessary to provide a public good or control an externality" (Shepsle and Bonchek 1997, p. 299). Thus a governmental organization may be given basic responsibilities—to legislate, to enforce laws, to adjudicate disputes, and so on. Simply having formal responsibility, however, is no assurance that it will be regarded by other actors as valuable and legitimate. To become an effective component part of government, it must develop procedures and informal norms that enable it to exercise powers that are not found elsewhere. Accordingly, a legislature, an administrative agency, or a court is institutionalized to the extent that it is an integrated part of the governmental system with an identity or mission seen as uniquely its own (Selznick 1957). Those procedures that collectively constitute that mission necessarily structure the opportunities available to political actors (North 1990).

For the past three decades, scholars examining political institutionalization have provided a clearer understanding of, among other things, the development of the federal executive, as well as legislatures both in the U.S. and abroad (see, e.g., Polsby 1968; Hibbing 1988; Squire 1992; Ragsdale and Theis 1997). Institutional perspectives have also been brought to bear upon courts. Formal selection mechanisms, such as popular elections, constrain how judges might otherwise respond to cases (Hall 1992), and in the case of the Supreme Court, considerations such as jurisdiction, caseload, procedures, and informal norms likewise create some of the political pathways through which judges must navigate (Gillman 1999).

No less than legislators or executive officials, the members of the Court have goals—at any given point in time, the justices may seek ideological objectives, sound law, or effective public policy (Baum 1997)—but changes in institutional arrangements have surely affected their ability to pursue those ends. Tracking those changes through time is a subject to which I now turn.

3 Measuring Judicial Institutionalization

If institutional structures determine the range of choices available to political actors, then institutional growth should provide the justices with the increased opportunities and

resources that are necessary to achieve their collective goals. Testing this hypothesis, however, first requires a measure of institutional change on the Supreme Court. How can the institutionalization of the Court be gauged?

Fortunately, the literature on political institutionalization furnishes a firm footing on which to develop such an estimate. Examining a wide variety of organizations, scholars have consistently sought specific indicators that reflect an underlying dimension of institutionalization (see, e.g., Mishler and Hildreth 1984; Hibbing 1988; Ragsdale and Theis 1997). Although they appear in various guises, these indicators can be subsumed under three general headings: differentiation, durability, and autonomy (Keohane 1969; see also Huntington 1968; Shepsle and Bonchek 1997). Employing these common criteria, I construct a variety of parallel measures for the Court from 1790 to 1996. As theoretically relevant components of institutionalization, these indicators should all be outward reflections of the Court's assimilation into the system of federal policy making.¹

3.1 *Differentiation*

A principal indicator of an institutionalized political organization will be differentiation from its environment—that is, the establishment of clear boundary lines that mark its distinctiveness. In practical terms, its members should constitute a discrete group with a well-defined role in the political system (Eisenstadt 1964). One common measure of such differentiation is the extent to which members are recruited from among the veterans within an organization and thus share a common understanding of their institution's goals (Polsby 1968; Keohane 1969). To that end, the recruitment of federal judges to the Supreme Court should produce justices with both national policy aspirations and the judicial expertise to achieve them (Schmidhauser 1959). Accordingly, I calculate the annual average number of years of prior federal judicial service among the sitting members of the Court.²

Differentiation also demands that the Court's role be unique, demarcated from the responsibilities of other federal courts. Initially, however, Congress blurred the Court's institutional identity by requiring its members to serve simultaneously on the Court and the federal appellate courts. Aside from denying the Court what Chief Justice Jay called its "energy, weight, and dignity," circuit riding led presidents to pay attention to geographic representation when selecting nominees for the Court, a consideration that often produced justices more attentive to salving local concerns than to developing coherent national policies (Biskupic and Witt 1997; O'Brien 2000). This hampered the differentiation of the Court; part of the rationale for preserving a bifurcated structure was the fear that the justices, working solely in Washington, would become captives of national politics and lose their regional sensitivities (Warren 1937). By creating parochial pressures, these institutional arrangements thereby made it difficult for the justices to pursue a single set of goals at the national level. Over time, Congress increased the Court's independence by reducing, and later completely eliminating, the justices' circuit-riding duties. Measured as a step-level change with each such congressional enactment related to circuit riding, this variable marks growth over time in the differentiation of the Court.

¹To develop the variables described in this section, I assembled data from several primary sources; their origin and description, as well as details about coding, can be found in the Appendix (available at the *Political Analysis* Web site). Any further details and replication data are available from the author.

²Concerned that changing life expectancies over time might increase the amount of time more recent justices have been able to spend on the federal bench, one might alternatively calculate the simple proportion of justices with *any* prior federal judicial experience. As it turns out, this provides little additional information. Virtually identical, these two measures are correlated at the .94 level.

Finally, one concrete measure of the Court's distinctiveness is its physical location. For much of its history, the Court lacked a permanent home. The justices, like other federal government officials, had a certain amount of institutional insecurity as the capital city migrated south from New York to Philadelphia to Washington (Young 1966). Settling definitively in Washington in 1801, however, had the salutary effect of promoting the Court's budding institutional role; its members soon settled into a distinctive society to serve "the interest of the judiciary in maintaining its own independence" (p. 79). Yet the lack of its own building was "evidence that the Court was not regarded as an institution of great importance in the federal system" (Schwartz 1993, p. 33). Surely the justices' move into their own building in 1935 was evidence of their unique identity and status (Brigham 1987; Gillman 1999). It was a tangible recognition that the Court's mission had been institutionalized. This variable, then, marks the Court's initial move to Washington and its eventual transition into a permanent building.

3.2 *Durability*

Institutional growth can also be expressed in terms of durability, the ability to persist and to adapt to change (Gurr 1974). Resilience is the mark of a stable policy maker, so if an organization can maintain its role in the ebb and flow of politics, this serves as a gauge of integration into the political system. A durable organization, therefore, would be able to pursue its goals when confronted with environmental change (Huntington 1968).

The Supreme Court is dependent on the Congress and the President for its resources. So inasmuch as durability is captured by "the willingness . . . to support the organization financially" (Keohane 1969, p. 865), the amount of money allocated to the Court is an indicator of the extent to which its coequal branches acknowledge the justices' mission. Modest commitments to the Court suggest an inferior role; higher levels of support indicate that the elected branches view it as a coequal component under the Constitution.

The financial commitment to the Court is a particularly pertinent measure because, in addition to capturing the support the Court enjoys from the other two branches, it also inevitably reveals something of the size and scope of the Court's internal operations (Polsby 1968; Hibbing 1988). Consequently, an extensive administrative framework with clear divisions of labor ends up being more durable than a more basic pool of personnel whose mission is only vaguely defined (Huntington 1968). Over time, the Supreme Court has developed a variety of organizational resources—the Court's clerk and legal office, the library and its attendant staff, the chief justice's administrative assistant—that exist to support the justices' needs. The amount of money required to run the Supreme Court, therefore, captures the level of this institutional infrastructure. Unfortunately, annual data on total Court expenditures are not readily available as far back as 1790,³ but the salary of a justice—interpreted here as a proxy for general fiscal commitment to the Court—is very highly correlated with known spending totals.⁴ Thus, for this measure of durability, I employ the annual salary of an associate justice, indexed for inflation.

³The reason is that, prior to the 1930s, the Supreme Court did not receive its own budgetary authorization. Instead, the funds for the operation of the federal courts were variously funneled through the Departments of the Treasury, the Interior, and Justice, which allocated the judiciary's budget (Fish 1973).

⁴To the extent that modern spending patterns represent the historical trend, using salary data is a highly reliable means of estimating total expenditures. Indeed, for the years in which I have data on total expenditures—roughly 1930 to 1990—the correlation between the salary of an associate justice, which is the measure I employ, and overall spending on the Court is .98.

One critical element of the Court's organizational structure—and one that may not be well captured by the measure of spending—is the use of law clerks to support the work of the justices. Clerks first appeared on the Court in 1882, when Justice Horace Gray set the precedent by hiring a law clerk at his own expense. This practice continued informally until the 1920s, when Congress actually began to provide for these personnel in the Court's budget (Brigham 1987; Schwartz 1993). Drafting opinions, preparing legal research, and sifting through petitions for review, these staffers have become perhaps the most important members of the justices' organization. Thus a separate measure of their initial appearance and subsequent incorporation into the Court's formal structure should serve as a complimentary yardstick by which to measure the stability of the Supreme Court.

A related link to an organization's durability is the presence of internal norms and regularized procedures for decision making. After all, a policy maker that is genuinely integrated into the business of governance maintains an even keel by relying upon formal rules, not the ephemeral forces of individual personalities (Selznick 1957; Eisenstadt 1964). Institutionalization, therefore, is evidenced by a dependence upon established guidelines, not specific leaders within an organization, to guide its processes (see, e.g., Hedlund 1985).

The justices of course have long employed internal practices—such as the Rule of Four in selecting cases and seniority in the assignment of opinions—that guide their consideration of cases. Perhaps the most reliable proxy for the Court's reliance upon such institutional protocols is the set of formal rules that the justices adopt to govern their consideration of cases. By making more explicit, for example, an interest in deciding cases involving conflict with precedent as well as cases that have nationwide consequences, the justices have used these rules to frame and advance the Court's institutional role within the federal system (see, e.g., Gillman 1999). To capture the Court's use of such regularized procedures, I measure the number of pages the “Rules of the Supreme Court” occupy in the *U.S. Reports*.⁵

3.3 *Autonomy*

An effective policy maker must also be autonomous, having “some degree of independence in making its own decisions without dictation from outside actors” (Keohane 1969, p. 862). An institutionalized Court, therefore, should be appropriately insulated from the other branches of the federal government. The framers provided the foundation for the Court's independence through the separation of powers, but formal structures belie the Court's struggle for autonomy (Haines 1959).

Operationally, autonomy is “indicated by the presence of . . . procedures protecting the independence of the [institution] vis-à-vis other political actors and institutions” (Mishler and Hildreth 1984, p. 30). Calibrating the Court's capacities requires some measure of the Court's ability to chart its own policy course independent of the Congress or the President. One of the best indicators is the Court's ability to construct its agenda, since “deciding to decide” gives it the flexibility to focus on the legal and political issues of greatest concern to its members (Perry 1991).

⁵As an alternative, one might simply count the number of rules, but there is an obvious shortcoming in terms of the reliability of such a measure. Since there is no standard governing the length of individual rules, there is no way of knowing whether any single rule is longer or shorter than any other. So, for example, a given rule could be longer than a number of shorter ones put together. Page size is, more or less, standard across the *U.S. Reports*, so counting the number of pages is probably a better barometer of the complexity of the Court's rules. Another approach might be to develop a more complex measure through a content analysis of the rules, but there are obvious difficulties associated with such a strategy.

For a long time, Congress gave the Court little control over its agenda, requiring it to resolve an ever burgeoning docket (Frankfurter and Landis 1928). After some modifications in the late 1800s, the writ certiorari came fully into force in 1925 and with it came a fair amount of self-sufficiency. Still, it was not until 1988 that the Supreme Court was granted virtually total control over its docket (Perry 1991). This measure of autonomy is therefore an ordinal variable, increasing with each major congressional enactment that cedes greater docket control to the justices. Necessarily, it should capture the Court's increasing flexibility to make policy independent of its coordinate branches.

3.4 *Constructing a Dynamic Index of Institutionalization*

Each of these variables illuminates some aspect of the Court's integration into the system of federal policy making. If each is an imperfect replication of a single, unobserved pattern of institutional development, then these variables can be aggregated to construct a more general estimate. This is preferable because, as a matter of measurement theory, "their composite is likely to be a more reliable indicator of the concept than any one indicator alone" (Berry and Feldman 1985, p. 48). To create this index, I began by conducting a principal components analysis. This exercise returned only one principal axis with an eigenvalue greater than 1.0, alone accounting for some 80% of their common variance, and each of the variables loaded substantially on this dimension.⁶ This evidence of dimensionality should be viewed with some circumspection, however, since each of the several indicators is nonstationary.⁷ 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. Do these individual measures genuinely reflect a single dimension, or are they just artificially correlated? The majority of the variables are cointegrated, which would imply a causal connection between them (Durr 1992), but closer investigation of the data is warranted.

One standard diagnostic tool is to recalculate the index without each variable and examine its relationship to the excluded indicator (McIver and Carmines 1981). This works well in cross-sectional analyses, but in the face of integrated time series—that is, when their values at any time point can be expressed as a function of all past inputs—correlations between variables are likely to be illusory. In place of the simple correlations, therefore, I employ a series of error correction models, which furnish an effective safeguard against trend-on-trend spuriousness (Engle and Granger 1987). Tests of Granger causality derived from these error correction models can then be used to examine the causal paths that run from the index (i.e., the proxy for the unobserved dimension) to each of its component parts, while controlling for the complications of spurious association (Durr 1992). By this method, one can ask whether the latent construct "causes" each of the observed indicators in the index.⁸ The logic is simple: If an individual variable from the scale is Granger-caused by institutionalization, then it cannot be considered as exogenous (see Sims 1972).

⁶To be specific, the respective loadings for the variables were as follows: federal judicial experience (.71); circuit duties (.95); Supreme Court location (.82); law clerks (.98); expenditures per justice (.82); discretionary agenda (.96); rules of the Supreme Court (.97). I address a variety of more general concerns related to the theory and measurement of the index in the Appendix.

⁷Tests of integration and cointegration for these variables are available in the Appendix.

⁸Statistically, I am asking whether the concept of institutionalization explains each indicator better than the history of that indicator alone (see Freeman 1983).

Table 1 Granger causality tests of institutionalization index and its indicators

<i>Indicator</i>	<i>Granger-caused by institutionalization?</i>	<i>F</i>	<i>p value</i>
Rules of the Supreme Court	Yes	6.51	.002
Supreme Court location	Yes	6.39	.002
Discretionary agenda	Yes	3.57	.030
Federal judicial experience	Yes	3.48	.033
Law clerks	Yes	2.81	.062
Circuit duties	Yes	2.67	.072
Expenditures per justice	Yes	2.23	.111

Note. In each case, the dependent variable (i.e., current changes in Y) is regressed on two lagged terms of itself, both with and without two lags of the independent variable (i.e., equilibrium errors). F statistics measure the significance of the improvement in variance explained; p values are the probability that the independent variable does not cause the dependent variable.

To implement this exercise, I began by successively recreating the index, each time excluding one of the several indicators. In order to test whether each of those indicators was a manifestation of the underlying dimension (i.e., the index with that indicator excluded), I then estimated a long-term error correction model and tested whether the equilibrium errors Granger-caused changes in the indicator. This method both controls for the potentially inflated correlations between integrated variables and reveals whether each variable is exogenous of the underlying dimension. These results are presented in Table 1.

By this reckoning, the probability that any of these variables are truly independent of institutionalization is fairly remote. All of the variables in the index are Granger-caused by institutionalization, thereby excluding the possibility that any of the components of the index are exogenous. Just as the principal components analysis measures the degree to which the variance in the observed indicators can be explained by a single principal axis, these time series tests, by analogy, reveal something quite similar: Each of these variables is a function of the underlying dimension.

With solid evidence of a latent construct, I created an overall index by generating scores from the first principal component.⁹ This time series, presented in Fig. 1, can thus be interpreted as a general barometer of the Supreme Court's institutionalization. After a shaky start, the Court's institutional development remained at relatively low levels through the first half of the 1800s. To be sure, the early norms of policy making, such as the move from opinions seriatim to opinions per curiam, are rightly credited with helping to promote the influence of the young bench. Even so, the justices of this era operated under a variety of critical constraints, including the burdens of circuit riding and a large volume of inconsequential cases on a mandatory docket. In contrast, the Court came rapidly into its own following the Civil War and by the early 1900s was considerably more self-confident, limiting congressional efforts to exercise its commerce power while fashioning a constitutional liberty of contract. Increases in institutionalization also match the Court's magnified profile during the New Deal, when the Court took on Franklin Roosevelt and his

⁹Since these scores represent the sum of the various indicators, after being standardized and weighted according to their respective scoring coefficients from the principal components analysis, the individual values of the index have no intuitive meaning. Although one might be interested in the substantive interpretation of the index—what a unit change in institutionalization actually represents, for example—that is less of a concern here, since the primary purpose is not to detail institutionalization for its own sake but rather to estimate its effects.

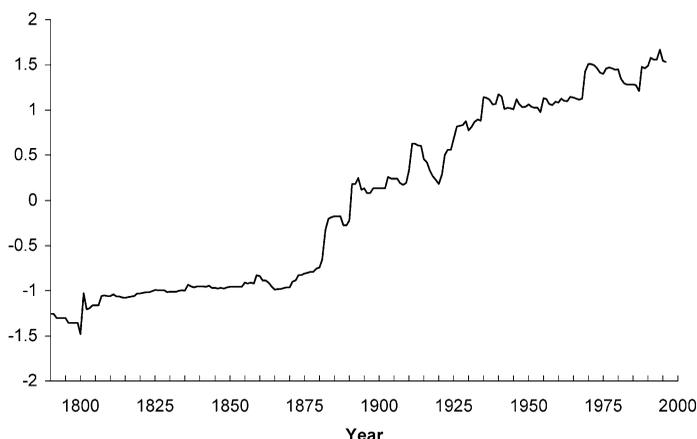


Fig. 1 Index of institutionalization of the U.S. Supreme Court. The y-axis is the principal component score for institutionalization.

policies. Further growth follows into the Warren Court, at a time when the justices generated a sea change in the course of their agenda, vastly expanding the protections of civil liberties and civil rights. By these lights, the levels of institutionalization on the Supreme Court correspond quite favorably with the Court's rise to become a distinctive and independent force within the federal government.

4 Assessing the Impact of Institutionalization

To the extent that the Supreme Court's institutionalization is adequately measured, it represents an underlying set of incentives and resources available to the justices at any point and should shape the scope of their political influence. By this logic, modest levels of institutional development should check the justices' policy ambitions; greater degrees should enlarge the Court's institutional capacities, thereby better enabling its members to accomplish their objectives. As a rule, institutionalization translates into political power (Stinchcombe 1968); these transformations, therefore, should *ceteris paribus* enhance the impact of the Court. Testing this proposition requires information about the Court's policy outputs.

One index is the frequency with which the justices overturn the preferences of popular majorities. Investigating a variety of research questions, scholars have found judicial activism—assessed by the number of times the Court declares unconstitutional both federal and state legislative acts—to be a useful standard for assessing the Supreme Court's power (see, e.g., Casper 1976; Caldeira and McCrone 1982). Another way of calibrating the Court's influence is by observing the significance of its decisions. Landmark decisions are typically used as an independent rather than a dependent variable (see, e.g., Rohde 1972), but cases whose effects are of lasting consequence are themselves an indicator of the Court's practical influence; scholars who employ this variable assume that it taps the “concept of judicial impact” (Cook 1993, p. 1128).¹⁰

¹⁰The measures of judicial review are the number of laws—federal, as well as state and local—declared unconstitutional by the Supreme Court. Similarly, the estimate of the importance of the Court's policies is the annual number of landmark decisions. Several sources have developed lists of landmark cases, but I rely upon those reported in Congressional Quarterly's *Guide to the U.S. Supreme Court*. This list has been shown to be preferable to a variety of alternatives (Cook 1993).

Landmark legal decisions, as well as the invalidation of federal and state laws, stand in for the general concept of judicial power. Although each one may be substantively interesting on its own terms, these indicators can themselves be used to develop a more generic measure. By aggregating them into a single dependent variable—using the scores from a principal components analysis—one can obtain a better reckoning of the Court’s political impact.¹¹

4.1 *A Causal Model of Institutionalization and Power*

Institutional arrangements provide the context within which political actors seek to achieve their objectives, but those arrangements are often the product of choices made by those same decision makers (see, e.g., North 1990). Thus an institutionalized Court may allow its members greater capacity to pursue their ambitions. At the same time, politically savvy justices may fashion a legal environment that promotes their own objectives and facilitates an expanding policy role for the Court. As a result, institutional growth may be as much the result of an influential Supreme Court as it is responsible for it. Does an institutionalized Supreme Court enable its members to exercise political influence, or does political power elevate the institutional standing of the Court?

Granger causality tests would be appropriate for such questions, but a potentially confounding factor arises in that both judicial institutionalization and power tend to increase over time. Here again, examining causality through error correction models provides an attractive solution.¹² Indeed, with this method, one can test for both short- and long-term effects. If institutionalization and the Court’s power affect one another, then the causal mechanisms should be evident in either the short run or the long run, or both.

Assuming that institutional innovations are likely to be reflected in Supreme Court policy making within a year or two, I first model the Court’s power as a function of two lagged levels of institutionalization, including two lagged terms of the composite power variable itself. These results are summarized in Table 2.

By these lights, the null hypothesis that assumes no causal connection is, at least over the long term, rejected; stated differently, institutionalization has, in fact, led to an expansion of the Supreme Court’s power. As the justices have become more fully integrated into the federal system—as they have been incorporated into the policy-making process and have assumed a distinctive role—they have necessarily been able to exercise more meaningful political influence. Over the long haul, improvements in the Court’s institutional character have cleared the way for the realization of the legal and policy goals of its members. No similar signs are detected in the short term, however.

¹¹Following the same strategy used to build the index of institutionalization, I extracted scores from the first principal component. The first principal axis accounts for some 70% of the variation in these series, and neither subsequent component has an eigenvalue greater than 1.0. The loadings of .86 (significant cases), .84 (state judicial review), and .81 (federal judicial review) are likewise substantial. Those who question aggregating these variables (all of which are stationary) into a single dependent variable should know that all of the subsequent analyses may be performed on each separate measure, or any combination of these measures, with no change in inference.

¹²Despite the general upward trends in both measures, only institutionalization is actually an integrated time series. Failing to reject the null hypothesis that institutionalization is integrated, the Dickey-Fuller test produces a test statistic of -0.22 ($p < .937$). This same test for the measure of power reveals that this variable is not integrated (Dickey-Fuller statistic = -4.66 , $p < .001$). Nevertheless, under such circumstances, error correction models may still be appropriate (De Boef 2000), but of course it is critical to check the residuals from such models to ensure that they are stationary. The single-equation error correction models tested below (and presented in Table 3) indicate that this is not an issue here. Another concern relates to the application of Granger causality to integrated data (Freeman et al. 1998), but given that the results presented here are sufficiently clear, exploring such complications is probably not warranted.

Table 2 Granger causality tests of institutionalization and power on the U.S. Supreme Court

	<i>In the short run</i>			<i>In the long run</i>		
		<i>F</i>	<i>p value</i>		<i>F</i>	<i>p value</i>
Does institutionalization cause power?	No	.08	.926	Yes	10.96	.001
Does power cause institutionalization?	No	.26	.768	No	.44	.642

Note. For the short-run tests, the first difference of Y is regressed on two lagged terms of itself, both with and without two lags of the first difference of X . For the long-run tests, the first difference of Y is regressed on the equilibrium errors. F statistics measure the significance of the improvement in variance explained; p values are the probability that the independent variable does not cause the dependent variable.

Reversing the causal hypothesis, nothing emerges from these data to suggest that the members of the Court trade on their political influence to design institutional arrangements adapted to their advantage. In both the long and the short run, the Supreme Court's power does not affect its organizational character. Whatever degree of power the justices may possess, it apparently does not provide them with the strategic capacity to significantly shape the character of the Court. The justices, it seems, have been unwilling—or perhaps unable—to use their political power to create advantageous institutional circumstances.¹³

The analysis, then, excludes the possibility that the justices have used their political prestige to generate institutional innovation. At the same time, however, it confirms that the institutional sophistication of the Supreme Court is directly connected to its historical role. On this evidentiary basis, I now proceed to estimate the consequences of institutionalization, measuring its success against other likely explanations of the justices' policy impact.

4.2 *Estimating Institutional Effects*

The general causal inquiry is only a preliminary step to developing a more complete empirical picture. Having established the link between the Court's organizational character and its policy outputs, one can now model the specific effects of institutionalization and test various rival hypotheses. To that end, I estimate a series of error correction models and present the results in Table 3. Statistically, each of these models performs well, exhibiting stationary and uncorrelated residuals.

I begin simply, modeling the Supreme Court's power as a function of institutionalization. According to this equation, there are no immediate consequences of institutional change; an increase in institutionalization over the previous year fails to register any significant effects. Leaving aside the short-term fallout, though, institutionalization emerges as a catalyst of the Supreme Court's political influence over the long haul.¹⁴ Over time, given greater resources, opportunities, and independence, the members of the Supreme Court have come to assume a more visible role in national governance, and they have converted that institutional sophistication into genuine political capital. Thus the amplitude of judicial policy outputs has been made possible by an increasingly autonomous and sophisticated Court.

¹³It is worth remembering that developments in the various components of institutionalization—the several measures of differentiation, durability, and autonomy—have often been the result of congressional, not judicial, action. Seen in this way, the failure of the Supreme Court's power to generate institutional change makes a good deal of sense.

¹⁴To the extent that an index created from principal components scores creates an errors-in-variables problem, the coefficients associated with that index will necessarily be attenuated.

Table 3 Error correction models of the political influence of the U.S. Supreme Court

<i>Variable</i>	<i>Judicial power</i> (1)	<i>Judicial Power</i> (2)	<i>Judicial Power</i> (3)	<i>Judicial Power</i> (4)
Short-run estimates				
Institutionalization	-.07 (.50)	—	-.05 (.51)	-.14 (.51)
Socioeconomic complexity	—	-1.75 (1.43)	-1.29 (1.36)	-1.24 (1.36)
Legislative activity	—	—	—	-.066 (.079)
Size of Court docket	—	—	—	.12 (.18)
Long-run estimates				
Institutionalization	.42*** (.06)	—	.38*** (.08)	.43*** (.09)
Socioeconomic complexity	—	2.54*** (.59)	.72 (.67)	.55 (.75)
Legislative activity	—	—	—	-.12* (.06)
Size of court docket	—	—	—	.58 (.66)
Rate of error correction				
Judicial power	-.53*** (.06)	-.34*** (.05)	-.54*** (.06)	-.56*** (.07)
Constant	.014 (.040)	-.19** (.06)	-.043 (.068)	.01 (.13)
R ²	.26	.17	.26	.30
Adjusted R ²	.25	.16	.25	.27
<i>n</i>	205	205	205	205
Dickey-Fuller statistic	-14.14***	-15.45***	-14.16***	-14.03***
Breusch-Godfrey LM	.002	3.22	.001	.113

Note. All independent variables are lagged by one year; short-run estimates are measured as changes ($x_t - x_{t-1}$), and long-run estimates are measured in levels (x_t); numbers in parentheses are standard errors; the Dickey-Fuller statistic tests the null hypothesis that the residuals are integrated; Breusch-Godfrey LM tests the null hypothesis that the residuals are uncorrelated.

* $p < .05$, ** $p < .01$, *** $p < .001$.

Notwithstanding this long-term relationship, the perturbations in institutionalization that occur from one year to the next are naturally apt to throw these common causal trends out of kilter. The estimate associated with the lagged level of the dependent variable measures how much of that distortion is eliminated in each subsequent year, and it suggests that the Court adjusts to these temporary twists and turns relatively quickly; within a single term, better than 50% of these “errors” are corrected.

These results make a good deal of sense. The increased incorporation of the Supreme Court into the policy-making process has created institutional advantages for the members of the Court. Absorbing these new advantages into their decision making, the justices have exploited them in pursuit of their goals. Still, the ability of the Supreme Court to fashion major public policy may be driven by other catalysts as well.

Perhaps the most likely possibility is that the role of the judiciary is governed by larger forces in American life, most notably, socioeconomic change (McIntosh 1991). According to this view, “as a society becomes more urban and industrial, social and economic connections that bind people together are more formal, strictly functional, and less personal. . . . Within such a context, informal ways of dealing with conflict break down, and people turn more frequently to the courts for help” (p. 288). If increasing societal complexity brings more pressing problems into the domain of judicial policy making, then

it is likely that the influence of the Supreme Court will be determined, to some extent, by the greater availability of cases that raise issues of legal and political import.

Testing this hypothesis requires a measure of socioeconomic complexity. There are a variety of plausible indicators, but one of the most reliable is the expansion of the public sector. The rationale behind this variable is that the various forces of social development, industrialization, and the like produce problems that are best solved through government intervention (Berry and Lowery 1987). To capture the general effects of such socioeconomic demographics, I calculate the federal government's expenditures as a percentage of gross national product and include it in the error correction model (see Giles and Lancaster 1989).¹⁵ Its estimated short-term and long-term effects are arrayed in the second equation in Table 3.

By this account, the Supreme Court's influence has been a reflection of broader changes in society. Interpreting this measure's long-term impact on the Court, one might reasonably conclude that the justices' increasingly visible role within the federal system is a function of the legal conflicts that stem from the complex interactions of industrial life. In effect, the Court has taken center stage in solving the nation's problems simply because changes in socioeconomic circumstance have demanded judicial intervention.

This equation, however, does not account for as much of the variance in the dependent variable as the institutionalization model. No less significantly, it ignores the potential impact of the Court's institutional evolution. As the third equation in Table 3 suggests, the effects of socioeconomic complexity do not persist in the face of institutional evolution; the power of the Court, it turns out, has actually been insensitive to the increasingly interlinked problems that have produced expansion in the federal government more generally. The social and economic web may well have generated higher rates of litigation for the judicial system, but its implications for the Supreme Court seem to be insubstantial. Neither estimate for this variable produces noteworthy effects. More important, institutionalization holds up as a significant predictor of judicial power. Thus the influence of the Court's institutional arrangements is not a spurious manifestation of a more general tendency to turn to the justices for answers to complex legal problems. Once socioeconomic change is held constant, the impact of the justices' institutional environment remains largely unaffected.¹⁶

Other, more practical concerns involve the simple availability of opportunities for the justices to exercise political influence. Inasmuch as the measure of the Court's influence is derived from the incidence of landmark decisions and judicial review, it is quite possible that the level of the Court's power in any given year is a function of the volume of

¹⁵Known as Wagner's Law of Rising Public Expenditures, the expectation that socioeconomic change will produce corresponding development in the public sector is "the oldest and most cited explanation of the growth of government Industrialization is assumed to influence government growth through the inherent expansion of societal interdependencies in industrial societies" (Berry and Lowery 1987, pp. 50–51). To be sure, there are other measures that one might employ, such as indices of urbanization or mechanization, "but data sources become increasingly less reliable as one goes back in time" (McIntosh 1991, p. 282). My choice here is guided by both theory and the availability of consistent data on a yearly basis. Covering the entire time series, my use of government expenditures as a proportion of GNP requires no loss of data. Given existing data, other measures (e.g., the percentage of the population living in urban areas or indexes of agricultural and industrial production) would sacrifice anywhere from 50% to 75% of the observations.

¹⁶Of course, one might posit that socioeconomic change is itself responsible for the institutionalization of the Supreme Court and that the index measuring organizational growth is a kind of proxy for those larger changes in society. Neither Granger causality nor error correction models, however, provide any support for this indirect path of influence. Sensitivity tests of these results show that, across different time periods (e.g., pre- and post-Civil War, pre- and post-1900, pre- and post-World War II), the index of institutionalization remains a consistently strong predictor of the Court's influence.

legislation; if more laws are enacted, there are more to be challenged before the Supreme Court. Regardless of their number, those laws must be brought before the Court in order for the justices to construe them. So the size of the plenary docket may also serve to explain the year-to-year variation in the Court's policy outputs. To control for these factors, I include in the fourth model indicators to capture both the degree of legislative activity and the size of the Court's caseload. These measures are, respectively, the annual number of bills enacted by Congress and the annual number of cases on the Court's plenary docket.

As it turns out, these controls do little to increase the explanatory power of the model.¹⁷ The variable more likely to be related to the magnitude of the justices' policy outputs—the number of cases they decide each term—is statistically insignificant. In the long run, the volume of congressional legislation appears to be relevant; its negative coefficient, however, suggests that the output of Congress has actually reduced the opportunities for the Court to exercise its influence. Since the index of influence is derived from the rates of federal and state judicial review, one might learn more by including some estimate of the number of cases in which the parties actually requested the Court to consider the constitutionality of one or more laws, but the costs of collecting such data are exceedingly prohibitive. As modest attempts to hold constant some of the factors that might contribute to the model, these variables leave the impact of institutionalization quite unaffected.

5 Conclusion

The results presented here highlight the importance of studying the Supreme Court over time. For too long, quantitative analyses of the Court have downplayed its dynamics, despite important historical innovations. The Court has not always occupied the same place in American national politics, and its rise in status, prestige, and influence can be explained, to a great degree, by the development of a clear institutional identity within the system of federal policy making.

In this study, I have constructed a measure of institutional change on the Supreme Court and have used that index to track the Court's transformation from an unassuming tribunal of little consequence into an integral part of the national government. According to these data, the Supreme Court increased its institutional status by only modest increments throughout the first half of the nineteenth century, witnessing no major changes until just after the Civil War, when it underwent a period of accelerated growth. Since then, it has moved steadily towards becoming a more professionalized bench, marked by self-determination, having unique and clearly defined responsibilities, and possessing the discretion and resources to chart its own independent course of policy making. In this sense, it follows a path parallel to that of its legislative counterpart (Polsby 1968). Seen in this broader context, the institutionalization of the Supreme Court reflects the more general rise in the role of the federal government relative to the states.

Exploring the causal connection between the justices' institutional arrangements and their policy authority reveals that the level of institutionalization has determined the magnitude of the Court's political power, not the other way around. The various models presented here likewise document a strong tie between the two; by several different standards, changes in the organizational character of the Court have made it possible for

¹⁷Integration tests for these three variables provide the following results: socioeconomic complexity (Dickey-Fuller statistic = -2.32 , $p < .166$), congressional legislation (Dickey-Fuller statistic = -4.56 , $p < .001$), and Court docket (Dickey-Fuller = -2.37 , $p < .151$). Since these three variables exhibit evidence of nonstationarity, the error correction models are especially useful here.

the justices to wield more meaningful political authority. As it turns out, it is no accident that the major upswing in institutionalization corresponds with a rise in judicial power just after the Civil War. There is little doubt that “the Civil War is the watershed in the development of the Court’s use of judicial review to declare state and federal enactments invalid. It marks the solidification, or . . . ‘institutionalization,’ of the Court’s power to negate actions of the legislative departments” (Caldeira and McCrone 1982, p. 106). It now appears, though, that the war merely marks a major turning point in a much longer, more continuous process of institutional growth.

This rising tide of institutional sophistication has increasingly enabled the justices to make their mark on national policy. Long suffering under the limits of a mandatory agenda, circuit duties, and scarce resources, the justices’ policy goals went relatively unfulfilled.¹⁸ An increasingly adaptable and autonomous Supreme Court, however, has become significantly more capable of having the kind of impact its members have probably always sought. Institutionalization lends both legitimacy and potency to their decisions.

Tracing the course of that institutionalization serves only to reinforce the need to consider more carefully how the Court’s character channels and guides judicial behavior. Viewed in those terms, the decisions of the Supreme Court are not merely a function of the goals of individual justices. Rather, the institutional setting is itself an important variable that has shaped the course and content of legal outcomes over time.

References

- Baum, Lawrence. 1997. *The Puzzle of Judicial Behavior*. Ann Arbor: University of Michigan Press.
- Berry, William D., and Stanley Feldman. 1985. *Multiple Regression in Practice*. Beverly Hills, CA: Sage.
- Berry, William D., and David Lowery. 1987. *Understanding United States Government Growth: An Empirical Analysis of the Postwar Era*. New York: Praeger.
- Biskupic, Joan, and Elder Witt. 1997. *Congressional Quarterly’s Guide to the U.S. Supreme Court*. Washington, DC: Congressional Quarterly.
- Brigham, John. 1987. *The Cult of the Court*. Philadelphia, PA: Temple University Press.
- Caldeira, Gregory A., and Donald J. McCrone. 1982. “Of Time and Judicial Activism: A Study of the U.S. Supreme Court, 1800–1973.” In *Supreme Court Activism and Restraint*, eds. Stephen C. Halpern and Charles M. Lamb. Lexington, MA: Lexington Books, pp. 103–127.
- Casper, Jonathan D. 1976. “The Supreme Court and National Policy Making.” *American Political Science Review* 70:50–63.
- Cook, Beverly B. 1993. “Measuring the Significance of U.S. Supreme Court Decisions.” *Journal of Politics* 55:1127–1139.
- De Boef, Suzanna. 2000. “Modeling Equilibrium Relationships: Error Correction Models with Strongly Autoregressive Data.” *Political Analysis* 9:78–94.
- Durr, Robert H. 1992. “An Essay on Cointegration and Error Correction Models.” *Political Analysis* 4:185–228.
- Eisenstadt, S. N. 1964. “Institutionalization and Change.” *American Sociological Review* 29:235–247.
- Engle, Robert F., and C. W. J. Granger. 1987. “Co-Integration and Error Correction: Representation, Estimation, and Testing.” *Econometrica* 55:251–276.
- Fish, Peter Graham. 1973. *The Politics of Federal Judicial Administration*. Princeton, NJ: Princeton University Press.
- Frankfurter, Felix, and James M. Landis. 1928. *The Business of the Supreme Court: A Study in the Federal Judicial System*. New York: Macmillan.
- Freeman, John R. 1983. “Granger Causality and the Time Series Analysis of Political Relationships.” *American Journal of Political Science* 27:327–358.

¹⁸This is not to deny that justices from earlier eras of the republic may have been able to act strategically and to exploit their opportunities to advance their goals, but the analysis presented here suggests that they succeeded despite, not because of, their institutional role.

- Freeman, John R., Daniel Houser, Paul M. Kellstedt, and John T. Williams. 1998. "Long-Memored Processes, Unit Roots, and Causal Inference in Political Science." *American Journal of Political Science* 42:1289–1327.
- Giles, Micheal W., and Thomas D. Lancaster. 1989. "Political Transition, Social Development, and Legal Mobilization in Spain." *American Political Science Review* 83:817–833.
- Gillman, Howard. 1999. "The Court as an Idea, Not a Building (or a Game): Interpretive Institutionalism and the Analysis of Supreme Court Decision Making." In *Supreme Court Decision-Making: New Institutional Perspectives*, eds. Cornell W. Clayton and Howard Gillman. Chicago, IL: University of Chicago Press, pp. 65–87.
- Gurr, Ted Robert. 1974. "Persistence and Change in Political Systems, 1800–1971." *American Political Science Review* 68:1482–1504.
- Haines, Charles Grove. 1959. *The American Doctrine of Judicial Supremacy*. New York: Russell & Russell.
- Hall, Melinda Gann. 1992. "Electoral Politics and Strategic Voting in State Supreme Courts." *Journal of Politics* 54:427–446.
- Hedlund, Ronald D. 1985. "Organizational Attributes of Legislative Institutions: Structure, Rules, Norms, Resources." In *Handbook of Legislative Research*, eds. Gerhard Loewenberg, Samuel C. Patterson, and Malcolm E. Jewell. Cambridge, MA: Harvard University Press, pp. 321–391.
- Hibbing, John R. 1988. "Legislative Institutionalization with Illustrations from the British House of Commons." *American Journal of Political Science* 32:681–712.
- Huntington, Samuel P. 1968. *Political Order in Changing Societies*. New Haven, CT: Yale University Press.
- Keohane, Robert O. 1969. "Institutionalization in the United Nations General Assembly." *International Organization* 23:859–896.
- McIntosh, Wayne V. 1991. "Courts and Socioeconomic Change." In *The American Courts: A Critical Assessment*, eds. John B. Gates and Charles A. Johnson. Washington, DC: Congressional Quarterly, pp. 281–301.
- McIver, John P., and Edward Carmines. 1981. *Unidimensional Scaling*. Beverly Hills, CA: Sage.
- Mishler, William, and Anne Hildreth. 1984. "Legislatures and Political Stability: An Exploratory Analysis." *Journal of Politics* 46:25–59.
- North, Douglass C. 1990. *Institutions, Institutional Change and Economic Performance*. New York: Cambridge University Press.
- O'Brien, David M. 2000. *Storm Center: The Supreme Court in American Politics*, 5th ed. New York: Norton.
- Perry, H. W., Jr. 1991. *Deciding to Decide: Agenda Setting in the United States Supreme Court*. Cambridge, MA: Harvard University Press.
- Polsby, Nelson W. 1968. "The Institutionalization of the U.S. House of Representatives." *American Political Science Review* 62:144–168.
- Ragsdale, Lyn, and John J. Theis. 1997. "The Institutionalization of the American Presidency, 1924–92." *American Journal of Political Science* 41:1280–1318.
- Rohde, David W. 1972. "Policy Goals, Strategic Choice and Majority Opinion Assignments in the U.S. Supreme Court." *American Journal of Political Science* 16:652–682.
- Schmidhauser, John R. 1959. "The Justices of the Supreme Court: A Collective Portrait." *Midwest Journal of Political Science* 3:1–57.
- Schwartz, Bernard. 1993. *A History of the Supreme Court*. New York: Oxford University Press.
- Selznick, Philip. 1957. *Leadership in Administration: A Sociological Interpretation*. Evanston, IL: Row, Peterson.
- Shepsle, Kenneth A., and Mark S. Bonchek. 1997. *Analyzing Politics: Rationality, Behavior, and Institutions*. New York: Norton.
- Sims, Christopher. 1972. "Money, Income and Causality." *American Economic Review* 62:540–552.
- Squire, Peverill. 1992. "The Theory of Legislative Institutionalization and the California Assembly." *Journal of Politics* 54:1026–1054.
- Stinchcombe, Arthur A. 1968. *Constructing Social Theories*. New York: Harcourt, Brace.
- Warren, Charles. 1937. *The Supreme Court in United States History*. Boston: Little, Brown.
- White, G. Edward. 1991. *The Marshall Court and Cultural Change, 1815–1835*. New York: Oxford University Press.
- Young, James Sterling. 1966. *The Washington Community 1800–1828*. New York: Columbia University Press.