

## **17.20 Introduction to the American Political Process**

Recitation: the Court and Political Parties

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# **The Supreme Court: What We Learned**

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- Three models explaining the Court's decisions: 1. The Legal Model  
2. The Attitudinal Model 3. Rational Choice Model
- Are courts too constrained to promote social changes? (Rosenberg: Yes.)

## Some Questions Remained

- Segal and Spaeth are proponents of the attitudinal model. But in reality, we see evidence that supports both the attitudinal model and the rational choice model. In short, Supreme Court Justices do have ideological preferences, but they also make calculated and strategic decisions
- Rosenberg argued that courts are institutionally constrained. What are the sources of such constraints?
- What is the relationship between Congress and the Judiciary?

# Congress and the Supreme Court

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- What would happen if the Congress and the Court have different ideological preferences? Say a Democrat-controlled House vs. a conservative-leaning Court?
  - Clark (2009) examined how Congress serves as a institutional check to the Supreme Court
  - “Public discontent with the Court, as mediated through congressional hostility, creates an incentive for the Court to exercise self-restraint.”
  - “When Congress is hostile, the Court uses judicial review to invalidate Acts of Congress less frequently than when Congress is not hostile towards the Court.”

Clark, Tom S. "The Separation of Powers, Court Curbing, and Judicial Legitimacy." *American Journal of Political Science* 53, no. 4 (2009): 971–89. © Wiley-Blackwell for the Midwest Political Science Association (United States). All rights reserved. This content is excluded from our Creative Commons license. For more information, see <https://ocw.mit.edu/help/faq-fair-use/>.

# Insulated from Public Pressure?

- Supreme Court Justices care about public opinion
- Diffuse support vs. specific support
- Consequences of lack of public support:
  - Impeachment of justices.
  - Lower court justices heed Supreme Court precedent
  - Elected officials refuse to implement Court's decisions
- The public is not happy → Lack of legitimacy → Don't be too out of step → self-restraint → Fewer instances of judicial reviews

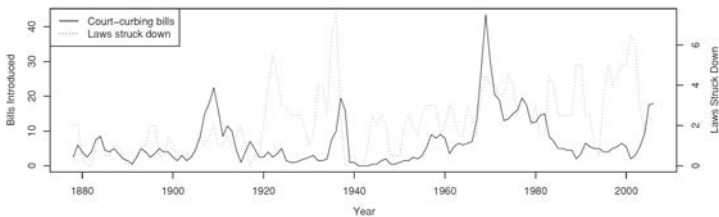


## Congress's toolkit against the Court

- Position taking as a way to signal public discontent
- Court-curbing bill: a legislative proposal to restrict, remove, or otherwise limit judicial power (e.g., circuit-splitting bill: court's version of gerrymandering)
- Congress is introducing/passing a large number of Court-curbing bills → the Court is not popular among the ordinary voters
- Empirical test: use the number of Court-curbing bills introduced in Congress to predict number of laws declared unconstitutional

# Court-Curbing Bills and Laws Struck Down

**FIGURE 1** Two-year Moving Average of Court-curbing Bills Introduced in Congress and Federal Laws Invalidated, 1877–2006



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## Issue Evolution

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- Issue Evolution: joint transformation of issues and party systems. Specifically, political elites from two parties take distinct and divergent positions on certain salient political issues and ordinary voters notice the difference
- General Sequence: Elite Positions → Clarity → Affect Toward Parties → Mass Alignment
- Critical Moment: mass polarization along the new line of issue cleavage enough to be noticeable (rising issue salience)

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