Legislative/judicial interaction: do court ideologies constrain legislative action?

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Bill success in state legislatures demonstrates the dynamics of policy making in a separation-of-powers system. To date, most studies of legislative-judicial interaction have examined the role courts play in policy making and the extent to which legislatures constrain judicial action. Courts do respond to the political context in which laws are made, but the relationship between state legislatures and state courts of last resort may be more complex than previously thought.

Examinations of legislative response to judicial decisions have emphasized judicial review of legislation after its passage (Rogers 2001). Scholars have studied the extent to which legislatures modify policy after courts have interpreted it and considered whether legislatures defer to courts and invite them to make policy. The idea that the legislature will not pass bills in order to obviate the need for the courts to interpret, expand, or retract the meaning of contentious pieces of legislation is only beginning to receive attention in the literature. In states in which supreme courts are ideologically extreme, legislatures may be hesitant to enact legislation because of how it might be construed. Furthermore, legislators may find it difficult to muster the necessary support to pass legislation in these climates.

This study considers the possibility that the anticipated actions of one branch of government (i.e., the courts) might discourage or prevent policy making by another branch (i.e., legislatures). A model of bill success is tested empirically across major state policy domains. A measure of judicial preferences is included in the model to ascertain the extent to which judicial ideology and perceived judicial climate constrain legislative behavior at the state level. The findings indicate support for the supposition that judicial ideology does influence the likelihood of a bill being enacted into law.

Legislative-Judicial Interaction

In a constitutional democracy in which courts are permitted judicial review, the balance of power between courts and legislatures is a significant issue. In the United States, it has long been assumed that appellate courts, especially courts of last resort, serve to protect the rights and interests of minorities against potential abuses resulting from popular will.
Thus, the role of appellate courts is to defend basic constitutional liberties from political repression.

In his seminal article, Dahl (1957) challenges this conventional wisdom, arguing that the U.S. Supreme Court cannot sustain a non-majoritarian role in the U.S. system. He suggests that because justices are recruited from the political arena, they can be expected to support the regime that recruited them. Exceptions are likely to occur only when a new political coalition emerges. In this regard, judicial-legislative interaction has been understood as courts reacting to legislatures, usually validating their decisions.

A more contemporary writer notes that the purpose of judicial review in constitutional courts is to “oversee and constrain the exercise of political power by legislative majorities” (Vanberg 2001, 346). Whether review by the courts serves this function remains unclear, however. To ascertain the extent to which the threat of judicial review holds the exercise of power in check or discourages the passage of legislation requires thinking more critically about how courts and legislators interact.

Separation-of-powers models are increasingly being used to examine the ways in which courts and legislatures at both the state and federal levels constrain one another by virtue of judicial review. Rogers’s (2001) research suggests that Congress must act in a climate of uncertainty as to the ultimate consequences of a ratified bill. He noted that the Supreme Court can influence Congress by striking down legislation and that the courts have an informational advantage relative to legislatures. Rogers further explained that courts “make an informational contribution to the policy process that legislatures cannot easily replicate” (2001, 87). Moreover, “what the legislature loses to judicial policy making, it more than makes up from the informational service that the Court provides in helping the Legislature to secure its own policy goals” (2001, 96).

Recent scholarship on the interaction between legislatures and courts comes out of the neo-institutionalist movement within judicial politics. The neo-institutionalists seek to modify the behavioral paradigm and bring “institutions and rules back into the study of policymaking” (Barnes and Miller 2004, 4). Neo-institutionalism is therefore firmly grounded in rational choice theory (Hall and Bracey 1999, 283), the assumption being that actors are instrumentally rational. That is, legislators and judges act in accordance with their preferences, knowledge, and available choices within certain institutional arrangements and political contexts.

Because policy emanates from interactions among the branches, it may be useful to study the ways in which judicial ideology informs the legislative process, and vice versa. Neo-institutionalists argue that behavioralists, using social-psychological models, have overstated the competitive nature of legislative-judicial interactions. The behavioralist assumption is that judges and legislators are rivals and that attitudes and ideology drive behavior.

By contrast, neo-institutionalists contend that if rationality drives behavior, then legislators and judges might seek to anticipate the responses of each other. Some scholars have posited that the U.S. Congress sometimes defers to the federal courts to make policy (Lovell 2003). The idea that legislators empower judges to make policy as a means of escaping accountability is underscored by Lovell (2003), who challenges the notion that insulated judges threaten democracy when they stray from baseline positions chosen by legislators, essentially acting as rivals to elected representatives.

As Kagan (2004) notes, it is inevitable that courts will be actively involved in policy making in the U.S. system of government because of the way in which power is separated. Policy may be the end result of dispute resolution, which is the purview of the courts. Legislators may encourage the courts to function in this capacity if they are ambivalent toward legislation or uncertain that it will allow them to achieve their goals. Conversely, under different circumstances, legislators may not want...
courts to have the opportunity to rule on legislation. The most effective way to guarantee that the courts do not make rulings is not to pass such legislation.

Barnes (2004) suggests in his study of legislative overrides of judicial decisions that the policy issue and its salience inform the nature of legislative-judicial interaction. The issue area may well determine whether the legislature will enact a policy in anticipation of a judicial response. Issues that do not affect the budget but do affect the rights of discrete, insular minorities, for example, may well be phrased vaguely to invite judicial policy making (Barnes 2004, 192–93).

The study presented here extends upon Barnes’s work by examining whether the nature of an issue juxtaposed against the perceived ideology of the court might discourage or delay passage of legislation. The contention is that the relationship between courts and legislatures is not confined to formal responses to codified decisions and policies of the other branch. Similarly, Pickerill (2004) observes that scholars need to synthesize the traditional-institutional approach to policy making with the behaviorally oriented social-psychological approach. He suggests that legislators are aware of judicial decisions—and by extension, judicial ideology—and that their awareness may inform their behavior (Pickerill 2004, 152).

**Theoretical Framework**

Most scholarship devoted to legislative-judicial interaction has focused on the relationship between the U.S. Congress and the Supreme Court. This study contributes to the emerging field of analysis of interbranch relationships by examining the judicial climates in which bills are enacted at the state level. It is instructive to look at legislative-judicial interaction in the state context because states provide a “unique comparative analytic advantage” (Brace and Jewett 1995, 643). Moreover, some state courts of last resort have low levels of dissent, suggesting they are not as ideologically extreme as other state supreme courts (Brace and Hall 1990). Institutional arrangements may also minimize the ability of judges to be unabashedly attitudinal in their approach to decision making. As Neoinstitutionalism suggests, legislators’ perceptions of the political climate may influence their decisions.

In this article, a fairly straightforward transaction cost theory is posited: legislators will not want to enact laws they suspect the court of last resort will strike down, believing it would be more productive to advocate for legislation the court would be more willing to accept. They might introduce bills for myriad reasons including garnering electoral support, responding to interest group pressure, or proactively taking a position on issues. Introducing a bill is easy and relatively cost free. Enacting a bill, however, requires more resources. Legislators might therefore want to pass legislation they think will survive judicial review.

This transaction cost theory is derived from the same assumptions as rational choice theory as understood by the Neoinstitutionalists. In their examination of legislative-bureaucratic interactions, Huber and Shipan (2000) note that political actors are viewed as rational optimizers who adopt strategies to maximize utility. These actors—legislators and judges alike—are boundedly rational in the narrow sense that they may have insufficient or inaccurate information that limits their ability to make sound decisions (Huber and Shipan 2000, 26–27). Similar logic may hold for legislative-judicial interactions. Even though legislators cannot predict the future behavior of judges, their perceptions of that behavior can inform their reasoning.

Huber and Shipan (2000) also assume that politicians are policy oriented and face particular types of transaction costs. Politicians may choose to delegate authority to agencies in order to maximize utility given the trade-off between the policy and the transaction cost. Legislators might be not only reticent about proposing ideological legislation but
also unable to marshal the resources needed to pass it, even though there may be support for it.

There is some qualified support in the literature for the argument that judicial climate constrains legislatures. For example, Mansbridge (1986) argues that some state legislatures were reluctant to ratify the Equal Rights Amendment for fear that a liberal U.S. Supreme Court would interpret it more broadly than intended or desired by members of those legislatures. Stiles (2002) argues that for similar reasons, legislation expanding the rights of gays and lesbians is less likely to be successful in states with liberal courts.

Preliminary work examining the preemp- tive power of courts with regard to the passage of legislation in specific policy areas indicates that the anticipated judicial response to legislation does shape legislative behavior. For example, Brace and Langer (2001, 4) found that in the policy areas of abortion and the death penalty, judicial ideology coupled with the perceived likelihood of judicial intervention help determine whether a legislative policy will be enacted. Similarly, in his work on education policy, Wilhelm (2003) concluded that the ideological distance between a state supreme court and a state legislature decreases bill introductions. Further, “when state supreme courts pay more attention to education, legislatures introduce less policy” (Wilhelm 2003, 21). As Brace and Langer (2001) suggest, judicial review has passive effects.

Most studies incorporating transaction cost theory have been interpretive (Huber and Shiptan 2000). Extending the theory to legislative-judicial interaction by testing empirically verifiable propositions and expanding the scope to include multiple policy areas, this study posits that legislation is more likely to be enacted in the presence of moderate courts. Courts of last resort that are understood to be ideological in either direction might interpret legislation counter to legislative intent, thereby discouraging its progress.

Factors of Bill Success

Partisan composition and degree of professionalization in a state legislature and the critical mass or strength of the benefiting constituency have been shown to affect the success of proposed legislation at the state level. Similarly, because interest groups influence the progress of bills in state legislatures, a dense network of interest groups may make bill passage more difficult (Lowery and Gray 1996). Recognizing the importance of institutional variables, this study goes beyond focusing on the internal workings of the legislature to examine the legislative-judicial relationship.

Relationships among political actors and the extent to which political elites are responsive to the perceived preferences of other actors may inform legislative behavior in terms of interaction with the judiciary (Brace, Langer, and Hall 2000). Legislators, as strategic actors, might be reluctant to respond to judicial interpretation of statutes. Preventing the enactment of a bill may be deemed more desirable than having to revisit it because of how the courts construed it (see also Rogers 2001).

Although actors might be expected to be most effective when different ideological perspectives prevail across the two branches, liberal courts may discourage the passage of liberal legislation and vice versa. Judges have the potential to interpret legislation more broadly (and narrowly) than even ideologically similar legislators would like. Ideologically dissimilar legislators might be able to secure the necessary resources to defeat legislation that could be expanded (or narrowed) beyond what they can tolerate. Accordingly, this behavior is most apparent when the legislature determines whether to enact the legislation.

A situation in which the branches are ideologically similar may have depressing effects on legislation. Krehbiel (2005) found in his study of national policy making that most legislation that is passed by Congress enjoys
much more than bare majority support. In fact, the average proportion of legislators who supported successful legislation was .819. If this finding holds at the state level (the data in this study show an average of 86 percent support for legislation), two major implications follow.

First, in legislatures in which there is not a supermajority, members must look to moderates for bill support. Like other actors, moderates may be wary about the courts interpreting ideological legislation expansively even though they may be willing to support it. Because a supermajority seems to be necessary to enact legislation, an elite ideology variable measuring the average ideology of legislatures may not be a predictive factor in the passage of ideological legislation. Second, unless more than 80 percent of the legislature is composed of the same party, most bills are passed with bipartisan support. Thus, party composition of the legislature alone may not entirely explain why bills are passed, as Krehbiel (2005) suggests.

Data and Methods
The model of bill success employed in this study seeks to explain the factors that affect the progress of proposed legislation in the legislative process. It is predicted that the degree of success will be explained by judicial and state government ideology, partisan control of the legislature, interest group strength, and sponsorship of the legislation. The model controls for the ideological distance between the legislature/governor and the state supreme court and for committee sponsorship. The results of a model that includes judicial variables should provide insight into legislative-judicial interaction in terms of not only legislative motivations but also the role of courts in the political process.

The data for this study were drawn from the State Legislative Dataset. To test the hypotheses, all ideological bills that originated in the House were modeled using robust standard errors, with a dummy variable for conservative bills. There were 2,841 liberal bills and 699 conservative bills available for analysis over 20 years between 1973 and 1993. Included in the dataset were bills from Arkansas (1993), Arizona (1985, 1989, and 1993), Kansas (1981 and 1993), New Jersey (1993), Ohio (1973 and 1989), and Virginia (1973 and 1993). Additional state-level variables were provided by other sources. Liberal bills included those that expand the size of government, increase regulation of business, are pro-choice on abortion, protect workers and the environment, increase civil rights, or are progressive on racial issues. Conservative bills included those that seek to cut social spending by the government, decrease regulation of business, promote traditional social values, support police power, take a narrow view of the rights of the criminally accused, or privatize government programs.

The dependent variable for all models was whether or not an introduced bill passed in the legislature. Thus, the measure is dichotomous, the possible values being 0 for not passed and 1 for passed. Independent variables were divided into groups for conceptual purposes: ideology, legislative environment, state political environment, and bill crafting and sponsorship.

Ideology
Ideology of the state court of last resort is expected to be influential in determining legislative success. However, no direct measure exists to gauge the ideological preferences of the state supreme courts. A measure was therefore derived based on Brace, Langer, and Hall's (2000) contextually based, party-adjusted surrogate judicial ideology measure. The values of this variable do not change over time, range from 0 to 100, and are based in part on the ideology of the state at the time a justice became a member of the state supreme court, the selection method of the court (appointment or election), and justices' partisan affiliations. To test the theory that ideological bills are more likely to progress through the legislature when the state supreme court is
moderate rather than conservative or liberal, the variable was recoded as the absolute value of the distance from a perfectly moderate court. In the sample, the mean value of the state supreme courts is 45; the absolute value of the ideological distance of each supreme court is therefore subtracted from 45. Thus, a conservative court with a ranking of 20, for example, and a liberal court with a ranking of 70 would receive the same score. A significant negative result for this variable would support the hypothesis that ideological courts prevent the progress of ideological bills.

Alternatively, even if a legislature is sympathetic to the ideological leanings of the state supreme court, it may be the ideological distance between the legislature and the court (regardless of ideological extremism) that negatively affects legislative action. Accordingly, the absolute value of the difference between the ideology of the state supreme court (employing Brace, Langer, and Hall’s [2000] judicial ideology measure) and Erikson, Wright, and McIver’s (1993) measure of state ideology was determined. Support for the ideological distance hypothesis would be indicated by a significant negative relationship to the dependent variable (that is, the greater the ideological distance, the less support the legislation enjoys in the legislature).

**Legislative Environment**

Measures also were included for political party, the interest group population, and the professionalism of the state legislature. Two dummy variables were created for whether or not the legislative process is controlled by the same party (that is, whether the House and Senate members and governor are of the same party; divided government is the suppressed category). For the interest group measures, Gray and Lowery’s (1996) measure of interest group density was included, as was their measure of the percentage of interest groups in the state that are nonprofits. Gray and Lowery (1996) found that bills generally are less likely to pass when interest group density is higher and are more likely to pass when there are more nonprofits in the state. The density effect was also found by Bowling and Ferguson (2001).

Legislative professionalism corresponded with Carey, Niemi, and Powell’s (2000) measure of degree of professionalism in the state legislatures, which considers legislative staff, salary, length of the legislative session, and other factors. It is possible that the more professional a legislature, the more decentralized it would be to allow individual members more power and thereby improve their reelection prospects (see, for example, Fiorina 1977). If so, then greater professionalization might have a negative effect on bill passage because decentralization might make it more difficult for bills to pass through all the necessary stages of the legislative process. However, members of more professional legislatures might require more campaign contributions to wage reelection efforts. In that case, professional legislatures might be more likely to pass bills to appease the relevant interest groups and assure future campaign finance.

**State Political Environment**

Measures were included for the party of the governor, gubernatorial power, and the political culture of the state. For party of the governor, a simple dichotomous variable was used, with values of 1 for a Republican governor and 0 for a Democrat. A variable for gubernatorial power was included because the strength of the governor vis-à-vis the legislature might affect the likelihood of bill passage as well. Also employed was Dye’s (2000) measure of the appointive powers of governors. Appointive powers are considered to be strong if the governor does not require legislative approval to make appointments. A governor who is relatively independent from the legislature may be expected to assert himself or herself to a greater degree in the legislative process. The measure is a five-point scale ranging from very weak (1) to very strong (5). Finally, Elazar’s (1972) measures of state political culture were included to capture
differences in state conceptions of citizenship and good government. Table 1 shows the effects of moral and traditional political culture dummy variables (individualistic political culture was suppressed).

**Bill Crafting and Sponsorship**

It is hypothesized that certain attributes of a bill will affect its success in the legislature. Reingold and Schneider (2001) found that committee-sponsored bills have a higher chance of passage in the legislature. Therefore, a dichotomous variable was included for whether or not a bill was sponsored by a committee. Also included as a separate independent variable was the number of members who cosponsored or “signed on” to a bill after it was crafted. It is expected that the greater the number of bill sponsors, the greater legislative success the bill will enjoy.

Further, a variable for bill type was included. Resolutions and other nonbinding legislation may be expected to enjoy more success than regular bills. Thus, a dummy variable is included for bill type (0 for a bill; 1 for non-binding pieces of legislation). Finally, because the state legislative dataset oversamples women legislators and because it is possible that the gender of the sponsoring legislator could affect the bill’s chances for success (see the debate between Thomas 1994 and Tolbert and Steuernagel 2001), a variable was included for whether a bill’s primary sponsor was a woman, a committee, or a group of legislators.7

**Table 1. Models of Bill Progress and Legislative-Judicial Interaction in State Legislatures for Liberal and Conservative Bills**

<table>
<thead>
<tr>
<th>Variable</th>
<th>Coefficient</th>
<th>Robust Standard Error</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ideology</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Supreme court extremism</td>
<td>-.104</td>
<td>(.015)***</td>
</tr>
<tr>
<td>Ideological distance between court and legislature</td>
<td>-.339</td>
<td>(.476)</td>
</tr>
<tr>
<td>Conservative bill</td>
<td>-.247</td>
<td>(.114)*</td>
</tr>
<tr>
<td>Legislative environment</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Republican-controlled legislative process</td>
<td>-.098</td>
<td>(.171)</td>
</tr>
<tr>
<td>Democratic-controlled legislative process</td>
<td>.144</td>
<td>(.210)</td>
</tr>
<tr>
<td>Interest group density</td>
<td>.000</td>
<td>(.000)</td>
</tr>
<tr>
<td>Nonprofit interest groups</td>
<td>.000</td>
<td>(.014)</td>
</tr>
<tr>
<td>Professionalism of legislature</td>
<td>.000</td>
<td>(.011)</td>
</tr>
<tr>
<td>State political environment</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Party of the governor</td>
<td>-.437</td>
<td>(.178)**</td>
</tr>
<tr>
<td>Power of the governor</td>
<td>-.474</td>
<td>(.122)***</td>
</tr>
<tr>
<td>Moral political culture</td>
<td>-.284</td>
<td>(.329)</td>
</tr>
<tr>
<td>Traditional political culture</td>
<td>.419</td>
<td>(.308)</td>
</tr>
<tr>
<td>Bill crafting/sponsorship</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Committee-sponsored bill</td>
<td>1.774</td>
<td>(.348)***</td>
</tr>
<tr>
<td>Number of bill sponsors</td>
<td>.000</td>
<td>(.000)</td>
</tr>
<tr>
<td>Type of bill (binding or not)</td>
<td>.248</td>
<td>(.173)</td>
</tr>
<tr>
<td>Woman sponsor</td>
<td>.090</td>
<td>(.106)</td>
</tr>
</tbody>
</table>

Results

This study finds that there is evidence of interaction based on ideology between state courts of last resort and state legislatures. Bills are less likely to pass the more a state supreme court becomes ideologically extreme. There is less support among legislators to pass liberal bills if the court is perceived as being likely to either overturn them or interpret them expansively (see also Stiles 2002). Further, ideological bills in general enjoy more legislative success when the state supreme court is moderate rather than conservative or liberal. This finding supports the argument that legislatures anticipate the likely results of a court challenge to an ideological bill and that the bill is less likely to succeed when it potentially could be struck down or interpreted more expansively by a supreme court than the legislature intends.

Using predicted probabilities to examine bill passage for the general model, it can be estimated how much of a dampening effect supreme court extremism has in the legislature. Holding all other variables at their mean, the change in the probability of bill passage by varying supreme court extremism from 0 (i.e., a perfectly moderate court) to two standard deviations above the mean can be determined (a mean of 24 indicates a very extreme court). When the court is perfectly moderate, the probability of bill enactment is .40. When the court is extreme, however, the probability of a bill passing is only .05. Thus, all else equal, a bill in a state with a perfectly moderate supreme court has a .35 higher probability of being signed into law than does a bill that is introduced in a state in which there is a very extreme supreme court.

The ideological distance variable is not significant. However, it should be noted that in many previous models, the variable is significant and that it becomes nonsignificant when the control variables for political culture are included. The dummy variable that denotes a conservative bill is significant and negative. Conservative bills are considerably less likely to pass than liberal ones.

The finding that legislative environment and party measures are not significant corroborates Krehbiel’s argument that the support of moderates and the minority party are necessary for bill passage. Also insignificant are the interest group variables. The legislative professionalism variable is negative but not significant at the .05 level.

For the political environment variables, the presence of a Republican governor has a significant and negative effect on the passage of legislation. This finding should not be interpreted to mean that Republican governors are less interested in ideological legislation, however, because there are more liberal bills in the dataset than conservative ones. Further, in states with more powerful governors, legislation is also significantly less likely to pass. Perhaps strong governors are less hesitant when they do oppose legislation. Or perhaps legislators, anticipating a veto or other opposition from a strong governor, are less likely to pass legislation in that context. Neither of the political culture variables is significant.

For the bill crafting and sponsorship variables, the findings support those of Rein gold and Schneider (2001) that committeesponsored liberal bills are significantly more successful in the legislature but committeesponsored conservative bills are not. The number of bill sponsors was not significant in any model. The type of bill, binding or not, was not significant.

Conclusion

The notion that state supreme court ideological extremism influences legislative bill passage is supported by the findings of this study. Conservative bills are less likely to pass than liberal ones. Partisanship is not significant, perhaps because party configurations and goals differ across states. Also, bills are less likely to pass when the governor is Republican and has strong powers. Particular policies may have greater success with regard to contextual variables (see, for example, Brace and Langer 2001; Wilhelm 2003).
Furthermore, there is evidence that both conservative and liberal bills across all policy domains are less likely to progress in those states in which the state supreme court is understood to be explicitly ideological. Consequently, the judiciary may be more relevant to the legislative process than has been assumed by scholars. The idea that legislators are motivated by reelection concerns and act in accordance with constituency demands reflects only part of the reality. Based on this analysis, long-term policy goals also may shape legislative behavior. Part of the calculation of how best to achieve long-term policy goals is considering the likely response of the state court of last resort to the legislation. Transaction cost theory is seemingly a useful framework within which to make sense of legislative behavior vis-à-vis judicial behavior.

Moreover, the findings support the emerging emphasis on state supreme courts as key actors in the political and policy processes within states. As Brace, Hall, and Langer (2001, 82) argue, “State supreme courts are powerful institutions with a dramatic impact upon the American political landscape.” The data support the contention that state courts of last resort are influential in the sense that legislators may anticipate the effect of the ideological composition of the court on the likelihood of bill enactment and make their decisions accordingly. Particularly noteworthy is the finding that state courts serve this preemptive function regardless of the ideological direction of either the court or the legislature. That is to say, it is not ideological distance that determines the extent to which the court can preempt legislation. For example, conservative legislators do not seem to be concerned that liberal courts will expand the meaning of legislation beyond what was intended by a conservative majority. Instead, it appears that legislation progresses the furthest in the legislative process in the presence of an ideologically moderate court.

It can be inferred that legislators do act to maximize their policy goals and push the hardest for enactment when courts are most likely to leave the policy intact. Of course, at the individual level, legislators may want an ideologically compatible court to interpret the policy they propose. But given the coalitions necessary to enact a bill and the various stages at which a bill can fail, legislation generally is most likely to succeed when the court of last resort is not perceived as ideological (i.e., when opposition forces within the legislature do not need to amass support to defeat a piece of legislation).

The role of state courts as vital political players is evident in legislative-judicial interactions, which appear to influence politics and policy much earlier in the process than has been understood to date. Future research might examine not only other types of legislation but also the motivations of individual legislators. Moreover, subsequent studies could determine at which point in the legislative process bills are most likely to fail, thereby contributing to an understanding of why ideological courts discourage legislative success. Whether the minority party works harder to defeat legislation in the presence of ideological courts or whether the majority party is unable to put together an effective coalition in such climates is worthy of further exploration.

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Notes

1. This contention contrasts with Black’s (1958) “minimum winning coalition” theories, defined as the smallest group necessary to impose a decision.
2. State and time dummies were included to test whether the results occurred because of variation in these factors. The variables of interest were not affected, so these dummies were excluded.
3. Because multiple states were examined over more than one year, it could not be assumed that the disturbances would be distributed normally. Therefore, robust standard error estimates were employed in the model.
4. Bills were included in the dataset if they were introduced by the legislators in the sample. The sample includes women in each legislature plus a random sample of their male colleagues and committee-sponsored bills. Because there is an oversampling of women legislators, a control variable is included in all models for whether or not a woman legislator was the bill’s primary sponsor. Women were oversampled because the dataset was designed to address issues of gender and representation.
5. An alternative way to derive this measure would be to take the difference between each court and 50 (i.e., halfway between 0 and 100). Using this alternative measure of supreme court extremism does not affect the direction or significance of the variables of interest.
6. The cross-sectional party-adjusted surrogate judicial ideology measure could not be combined with Berry et al.’s (1998) variable for elite ideology (GOV6099) because the latter changes across time. Thus, most of the variation would have resulted from the change in the elite ideology variable. The judicial extremism measure and the ideological distance between the court and legislature are correlated at .54.
7. In early model iterations, a measure was included to control for the proportion of introduced bills enacted in a state during a year. However, the inclusion of enactment rates was not significant in either model and resulted in no significant increase in explanatory power.
8. This value was set to 0 for the variable supreme court extremism rather than two standard deviations below the mean because the number is negative and therefore has no substantive meaning. Predicted probabilities were calculated using King, Tomz, and Wittenberg’s (2000) Clarify software package. Confidence intervals were set at 90 percent. The standard error was .04 for moderate courts and .01 for extreme courts.
9. An artifact of coding may account for the preponderance of liberal bills in the dataset, but they were not selected intentionally.
10. In separate models, this finding was negative and significant in the liberal model and positive and significant in the conservative one. Liberal legislative success may be easier when the type of legislation is nonbinding. Perhaps with the rise of conserva-

References


