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Court Curbing via Attempt to Amend the Constitution: An Update of Congressional Attacks on the Supreme Court from 1955–1984

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This study investigates the validity of the common practice of differentiating between "high" and "low frequency" periods of congressional attacks on the Supreme Court. In-depth examination of the Congressional Record from 1955–1984 reveals 1,497 previously uncounted constitutional amendment attacks. Rather than starting and stopping, the never-ending court curbing efforts of this era evolved in four phases, differentiated by shifts in an unexamined dimension—leadership of attacks. This suggests that modern attacks may be a way for partisan and regional coalition managers to "signal" others (including those outside the Court) in efforts to maintain, build, or assert their party's dominance. Court curbing may therefore play a greater role than realized in party system development, making congressional attacks an overlooked "mechanism" through which coalitional change may be both opposed and wrought.

KEYWORDS: Congressional–Judicial relations, court curbing, Supreme Court, constitutional amendment, party system development, school prayer.

On June 25, 1962, the Supreme Court decided *Engel v. Vitale*, overturning the constitutionality of school prayer and igniting a firestorm of protest. Many Catholic members of the New Deal coalition felt that the ruling "struck at the heart of the Godly tradition in which America's children have for so long been raised" (Solomon 2009, 263). Democratic members of Congress (MCs) representing Catholic constituencies began attacking the Court. Republicans also began attacking more. In fact, on the very day *Engel* came down, Frank Becker (R-NY), a Catholic, offered the first constitutional amendment seeking to reverse the decision. By the end of the session, MCs had proposed 59 attacks via constitutional amendment that centered on school prayer. By way of comparison, the rate of attacks was higher in 1962 than the infamous "switch in time" era of the 1930s. Furthermore, it equals the total number of court curbing efforts on all issues between the highly contentious years of 1955–1959 (Rosenberg 1992). Undoubtedly, the Court had touched a nerve.

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TABLE 1
Scholarly Accounts of "High Frequency" Periods of Attack: 1953–1982

Nagel (1965)	1955–1957			
Rosenberg (1992)	1955–1959	1963–1965		1977–1982
Clark (2011)	1953–1959	1965–1969		1975–1982
Engel (2011)	1955–1959	1963–1966	1971–1974	1977–1982

Yet, as Table 1 demonstrates, scholars have not considered 1962 to be part of a "high frequency" period of attack on the Supreme Court (Nagel 1965; Rosenberg 1992; Clark 2011; Engel 2011). Instead, scholars have categorized the 1962 attacks as belonging to a "low frequency" period, resulting in the exclusion of these attacks on school prayer from close analysis.

This study accounts for the discrepancy, as well as others. We first determine the validity of the continued practice of differentiating between high and low frequency periods of congressional attack on the Supreme Court. Empirically, our work centers on the effort to fully account for court curbing via attempts to amend the Constitution. Next, in-depth examination of the *Congressional Record* reveals 1,497 previously uncounted amendatory attacks from 1955–1984. This more complete reading of the historical record demonstrates that there were no low frequency periods of attack during this era. Once all attacks are included, we then uncover a previously overlooked phenomenon: leadership of attacks evolved in four phases. After testing an alternate public confidence hypothesis, we suggest that modern Court attacks may be understood as a way for partisan and regional coalition managers to "signal" other political elites (including those outside the Court) in efforts to maintain, build, or assert their party's dominance. We therefore conclude that court curbing may play a greater role than realized in party system development, making congressional attacks an overlooked "mechanism" through which coalitional change may be both opposed and wrought.

HIGH AND LOW FREQUENCY PERIODS OF ATTACK ON THE SUPREME COURT

The concept of high and low frequency periods of attack comes from the long-practiced scholarship examining court curbing efforts (Warren 1913, 1922; Culp 1929a, 1929b; Jackson 1941; Elliot 1958; Pritchett 1960; Murphy 1962; Stumpf 1965). The key development derives from Stuart Nagel's (1965) effort to grapple with all historical attacks. Nagel concludes that attacks cluster in the historical record, producing a finite number of high and low frequency periods of court curbing activity. Gerald Rosenberg (1992), Tom Clark (2009, 2011), and Stephen Engel (2011) have continued using both this terminology and accounting practice in recent journal and book-length analyses.

The use of the terms "high" and "low frequency" period of attack has always been somewhat problematic, contributing to measurement issues and creating historical blind spots. From the beginning, it was never quite clear how to distinguish between high and low frequency, or whether the assessment was simply subjective. Nagel merely relied on "the consensus of historians," finding that the historical rate of attack in high frequency periods ranged from 1–26 per year (1965, 929).

Rosenberg recognized these intrinsic problems but did not fully address them. His extension of analysis to 1955–1982 found that low frequency periods sometimes averaged more than one

attack a year. Faced with the collapse of the boundary between high and low frequency periods, Rosenberg asserted—in a footnote—that "the actual number of bills is not important . . . and bear[s] little or no relationship to the intensity of the hostility towards the court . . . What is important is the intensity and seriousness of attacks on the Court" (1992, 379). Given this new, and subjective, standard of evaluation, it is somewhat perplexing that Rosenberg kept using the term "frequency" to describe periods of time that, conceptually, no longer had anything to do with the rate of attacks. Others (Clark 2011; Engel 2011) have followed Rosenberg's lead, apparently using a quantitative term (frequency) to describe a qualitative measure (intensity).

Often, the explanation for the use of muddled concepts is that they provide researchers with "analytic utility" (Gerring 2001). That is, the term "low frequency" period of attack remains useful within a research design by enabling large swaths of the historical record to be grouped together and excluded from detailed study. Nagel even admits to a utilitarian logic in deciding to exclude constitutional amendments from his analysis—simply to "keep the data within manageable limits" (1965, 926).[1] This suggests the possibility that fuzzy concepts, selected or maintained for utility rather than validity, contribute to an incomplete and therefore inaccurate record of congressional attacks on the Supreme Court.[2] It thus opens the question of whether a more complete catalog of court curbing efforts (i.e., including amendments, as well as taking stock of the partisan and regional affiliation of attackers) would still warrant designating high and low frequency periods of attack. In addition, if a complete catalog were to invalidate parsing the record into periods of high and low frequency of attack, then perhaps it would also indicate a new periodization scheme, which could lead to novel insights about congressional court curbing of the Supreme Court. In the next section, we describe our method for counting all court curbing measures of the "mature" New Deal era.

MEASURING ALL ATTACKS, INCLUDING ATTEMPTS TO AMEND THE CONSTITUTION

The first order of business is to determine what counts as an attack. Let us start with Rosenberg's (1992, 337) definition:

> Legislation introduced in the Congress having as its purpose or effect, either explicit or implicitly, Court reversal of a decision or line of decisions, or Court abstention from future decision of a given kind, or alteration in the structure or functioning of the Court to produce a particular substantive outcome.

While serving as a good foundation, this definition follows Nagel (1965) in not counting amendments that seek the same ends. In the most recent work on the subject, Clark (2011) and

[1]Nagel admits that constitutional amendment attacks are "introduced frequently and often contain proposals which would substantially reduce the powers of the Court" (1965, 925). It appears he unabashedly chose to ignore them for reasons of utility. As students of the 11th, 14th, 16th, and 26th Amendments know, amendatory attacks can very much succeed.

[2]This is not to imply that any researcher we know of has made anything but a good faith effort to employ the concepts of high and low frequency periods of attack within their research. We are just unconvinced that anyone has either satisfactorily determined how to measure the "seriousness" of an attacker's intent (Rosenberg 1992) or rigorously defined at what rate "high frequency" attacks occur.

Engel (2011) count some, if differing, amendatory attacks. We follow their lead. Specifically, we follow Clark in counting all bills and amendments seeking to

1. change the composition of the Court;
2. limit or remove the Court's jurisdiction;
3. remove or alter judicial review;
4. reverse or remedy particular decisions;
5. dictate internal matters to the Court; or,
6. otherwise target particular decisions.

This allows us to cast the widest possible net and is consonant with Engel's conclusion that post-1870s court curbing efforts seek to "redirect judicial power towards partisan objectives," rather than to undermine the judiciary's legitimacy (2011, 36). If the legislature uses attacks to send signals about their preferences (Rogers 2001; Whittington 2003), then it is problematic to include some signals while excluding others. As Clark (2012) himself points out in his review of Engel's book, "Even purely rhetorical attacks on the Court may have consequences."

Therefore, we conclude that it is a mistake not to count all attempts to signal Congressional preferences. We thus drop any attempt to get into the heads of MCs to evaluate the "seriousness" or "intensity" (Rosenberg 1992) of the signals registered in the *Congressional Record*. Instead, we count all legislative bills and constitutional amendments seeking to accomplish one of six tasks laid out by Clark (2011). In this way, we allow attackers to speak for themselves.

We rely on previous literature to guide us to the 1955–1984 timeframe, seeking to apply our more comprehensive counting method to the only era of overlap among Rosenberg (1992), Clark (2011), and Engel (2011).[3] Regarding attacks via legislative resolution, we followed and reconfirmed Clark's online database.[4] We then used the index of the *Congressional Record* to conduct a more thorough sweep of every time Congress attacked the Court via constitutional amendment. We looked at the section in the index titled "Constitution," and within that section was a subheading for amendments. This subheading listed all of the proposed amendments to the Constitution made during a particular session of Congress. We then confirmed court curbing measures by looking up the content of the amendments.

For each attack (legislative or amendatory), we documented the proposal; its subject matter; the Congress, year; the sponsoring MC, and his or her state and party affiliations. Notably, our database is the first to track the state and partisan affiliation of attackers. On the whole, our more complete database enables a more accurate account of the volume, focus, and rate of attacks, as well as the partisan and regional leadership of court curbing efforts over time.

FINDINGS: NEW PATTERNS WITHIN MANY MORE ATTACKS

In this section, we present the findings of our in-depth investigation of the *Congressional Record*. After determining that attacks occurred at a high rate of frequency during the entire era under

[3]We slightly extend our analysis past the literature's shared end date (1982) to indulge our suspicion that attacks do not stop at this time.

[4]Clark's database is found at http://userwww.service.emory.edu/~tclark7/data.html. With resolution attacks, we found two minor discrepancies: one is counted twice and one is missing.

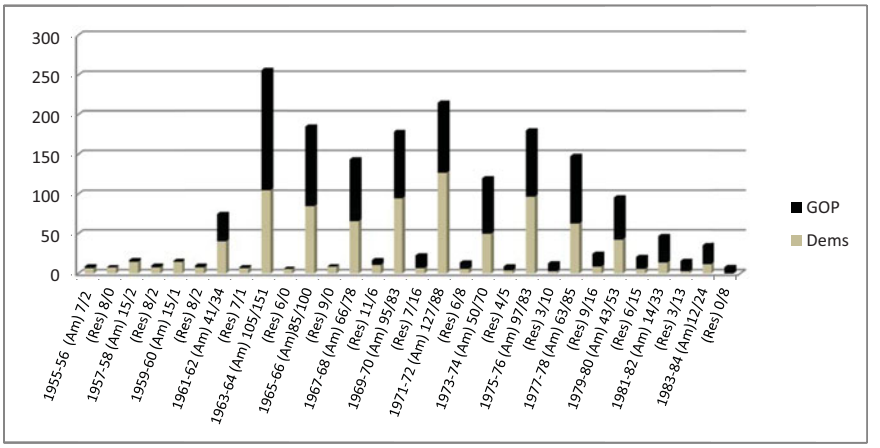

FIGURE 1 Congressional Attacks on the Supreme Court: 1955–1984. (Color figure available online.)

observation, we searched for overlooked patterns along multiple dimensions of analysis. This allows us to suggest a new periodization scheme and to outline the contours of four phases of attack.

Many More Attacks

The results of our more detailed reevaluation of the *Congressional Record* are depicted in Figure 1, which reports amendatory (AM) and legislative resolution (RES) attacks per Congress. The number of each method is listed at the end of each column label, with the number of Democratic attacks followed by the number of Republican attacks. For example, in the 84th Congress (1955–1956), there were seven Democratic attacks by constitutional amendment and two by Republicans. Attacks are visually depicted, too, with Democrats in gray and Republicans in black.

Overall, we found 1,919 congressional attacks on the Supreme Court from 1955–1984—197 from legislative resolutions and 1,722 from amendments. Within the amendatory attacks, our sweep revealed 1,497 newly discovered court curbing measures not previously listed in Clark's database. By viewing court curbing attempts as elite signals (Rogers 2001; Whittington 2003; Clark 2012) and including every instance of the behavior, we more than triple the number of known attacks.

Both legislative and amendatory attacks occurred in every Congress examined. No Congress proposed fewer than six legislative resolutions or more than 25. Amendments saw even more variance, especially starting with the second session of the 87th Congress in 1962 and continuing through the 96th Congress (1979–1980). More specifically, from 1963–1980 no Congress produced less than 96 amendatory attacks. The 88th Congress (1963–1964) produced an era high of 256 amendatory attacks. All told, there was no break in attacks (legislative, amendatory, or combined) in the entire timeframe. We therefore conclude—against prevailing opinion in the

TABLE 2
Four Phases of Congressional Attack: 1955–1984

Phase (Dates)	*Primary Focus of Attack*	*Rate of Attack (per year)*	*Democratic Led Attacks*	*Democratic Attacks Led by Southerners*
Phase I (1955–1961)	School Segregation (33 / 83)*	11.9	72 / 83 (86.7%)	72 / 72 (100%)
Phase II (1962–1972)	School Prayer (497 / 1117)	101.5	554 / 1117 (49.5%)	423 / 552 (76.4%)
Phase III (1973–1980)	Abortion (233 / 612)	76.5	275 / 612 (44.9%)	108 / 275 (39.3%)
Phase IV (1981–1984)	Abortion (38 / 107) & School Prayer (35 / 107)	26.8	29 / 107 (27.1%)	13 / 29 (44.8%)

Note. *A plurality of attacks (40/83) were procedural in nature (see footnote 6).

literature—that there are no empirically measured low frequency periods in court curbing activity from 1955–1984. The entire era is saturated with attacks. Finding no evidence that it is valid to parse the record into high and low frequency periods of attack during this era, we use the additional information we gathered to search for other patterns in the data.

A New Periodization Scheme: Four Phases of Attack

As Table 2 demonstrates, we locate three breakpoints in the historical record and therefore divide congressional attacks on the Supreme Court into four phases. These phases are distinguished by variation across three dimensions. First, the primary focus of attack can change between phases. Second, while the entire period is awash in attacks, the rate of attack can vary among phases. Third, and most uniquely, leadership of attacks can shift, with the party affiliation and/or the regional origins of attackers differing over time.

Phase I: 1955–1961

The first phase of attack appears the most straightforward. It follows in the wake *Brown v. Board of Education of Topeka* (1954) and appears to be a reaction to the decision. While other issues—most notably, communism[5]—prompted a few attacks in this phase, the Warren Court's overruling of the "separate but equal doctrine" (*Plessy v. Ferguson*, 1896) was most certainly at the heart of this court curbing phase. Desegregation clearly inspired 33 of the 83 attacks from 1955–1961, though even these numbers may be low.[6] During this first phase, court curbing efforts proceeded at an era low rate of 11.9 per year. The leadership of attacks on the Court is both

[5]Six attacks could be clearly identified with the issue of communism between 1955–1961. In a series of cases, the Court restricted governmental power to combat communism and to punish sedition (Schmidhauser and Berg 1972; Powe 2000). See *Pennsylvania v. Nelson* (1956), *Jencks v. U.S.* (1957), *Yates v. U.S.* (1957), *Sweezy v. New Hampshire* (1957), and *Watkins v. U.S.* (1957).

[6]Of the 83 attacks, 40 were procedural in nature. Rather than targeting a particular decision, and clearly having a single focus, they sought to change the composition of the Court, remove or alter judicial review, or dictate internal matters to the Court. Some of these procedural attacks were, almost undoubtedly, sparked by *Brown*.

distinct and consistent. Overall, Democrats proposed 72 of the 83 total attacks (86.7 percent), with Southern Democrats accounting for all 72 of their party's court curbing measures. This phase ends in 1962 with the Supreme Court's foray into the issue of school prayer.

Phase II: 1962–1972

As highlighted earlier, *Engel v. Vitale* ignited a firestorm of protest, kicking off a distinct second phase of attack. In fact, more attacks took aim at the Court's school prayer decision in 1962 alone (59) than the total attacks specifically directed at desegregation in the whole era of study (53). That the literature does not consider these attacks as beginning a new phase of court curbing is a major oversight. While issues such as reapportionment (*Reynolds v. Sims*, 1964) and busing (*Swann v. Charlotte-Mecklenburg Board of Education*, 1971) occasionally came to the fore, the overwhelming number of attacks (497) directed at school prayer from 1962–1972 cannot be ignored.

In addition to the shift in focus, the overall rate of attack changed in 1962. Over the following decade, Congress proposed an astounding average of 101.5 court curbing measures a year. Of the 1,117 attacks from 1962–1972, 1,043 (93.4 percent) came via constitutional amendment, again demonstrating the importance of including this method of attack when analyzing court curbing. Leadership of attacks also clearly changed in 1962. Democrats went from leading a clear majority of attacks to leading about half (554 of 1,117, or 49.6 percent) of all attacks. In other words, from 1962–1972, Republican-led attacks increased dramatically. Furthermore, the regional origins of attacking Democrats also changed. In Phase I (1955–1961), Southern Democrats accounted for every Democratic attack. In Phase II (1962–1972), Southern Democrats accounted for 76.4 percent of all Democratic attacks. We speculate that the intraparty regional shift resulted from the school prayer ruling aggravating Democrats (representing Catholic constituents) in a way that desegregation had not.

Phase III: 1973–1980

Roe v. Wade ignited a third phase of attacks in 1973. The focus of attacks again shifted, as abortion became the most contentious issue, with MCs launching 233 attacks in response to *Roe*. While busing and school prayer still generated attacks during this timeframe, other lingering and sporadic court curbing efforts (e.g., desegregation, communism, and apportionment) effectively came to a halt.

Other shifts occurred in Phase III as well. First, the rate of attacks dropped moderately starting in 1973. Over the next eight years, Congress proposed, on average, 76.5 court curbing measures a year. In addition, leadership of attacks changed yet again. While Democrats still contributed slightly less than half of all attacks (275 of 612, or 44.9 percent), Southern Democrats clearly stopped leading their party's efforts. They launched only 108 of 275 (39.3 percent) court curbing proposals from 1973–1980—a sharp decline from Phases I and II. Significantly, and unexpectedly, Southern Democrats accounted for only eight attacks on abortion during this entire phase. We again suggest that an increase of attacks by Democratic MCs with Catholic constituencies accounts for why the percentage of Southern Democratic attacks declines in this phase. Uniquely, Phase III

ends not with the Supreme Court's foray into a new issue but rather with the Republican takeover of the White House and Senate in 1981.

Phase IV: 1981–1984

This phase differs in that Congress does not shift the focus of attacks.[7] Indeed, from 1981–1984, abortion and school prayer remained the two most salient issues, inspiring 38 and 35 attacks respectively. Therefore, we rely on the other two dimensions (rate and leadership of attacks) to delineate how congressional court curbing efforts changed during this phase.

Instead of a new contentious Court ruling, the fourth phase coincides with the election of Ronald Reagan, a reconstructive president facing what has been called an "enervated," or weakened, New Deal coalition (Nichols and Myers 2010; Skowronek 2011). As Whittington argues, reconstructive presidents are the most likely to challenge judicial authority (2007). Therefore, while no new issues surfaced in this phase, a new "dominant national alliance" (Dahl 1957)—controlling the Senate and White House—emerged in politics.[8] As court-centered realignment scholars long ago predicted (Funston 1975; Adamany 1980; Lasser 1985; Gates 1989, 1992, 1999), these are the conditions under which we might expect attacks against a "lagging" Supreme Court (see also Dahl 1957; Whittington 2003).

The fourth phase's lagging attacks are distinguished by a clear drop in the rate of court curbing efforts and, more importantly, another shift in leadership. Starting in 1981, the number of attacks drops considerably. Over the next four years, Congress attacked the Court at a rate of 26.8 times a year—nearly 50 fewer attacks a year than in Phase III. Additionally, after Reagan took the inaugural oath, the percentage of Democratic attackers dropped to its lowest level in the entire era of study. From 1981–1984, Democrats accounted for only 27.1 percent (29 of 107) of all court curbing efforts. In this phase, Southerners continued to contribute less than half the Democratic attacks, leading only 13 of 29 (44.8 percent). Surprisingly, there was only one Southern Democratic attack on abortion in this phase.

ALTERNATE HYPOTHESIS TESTING

Our account of attacks centers on elite-level signaling; however, the literature on trust and confidence in the Supreme Court (see Nicholson and Howard 2003 for an overview) suggests a possible public opinion explanation for court curbing attempts. While some argue that the Court is "above politics" and relatively impervious to political circumstances (Caldeira and Gibson 1992; Hibbing and Thiess-Morse 1995), many other studies find that the Court's actions affect confidence in the Court (Adamany and Grossman 1983; Caldeira 1986; Franklin and Kosaki 1989; Mondak 1991; Mondak and Smithey 1997; Hoekstra 2000; Jaros and Roper 1980). From

[7]The judicial issues remained, substantively, the same. For example, in *Akron v. Akron Center for Reproduction Health, Inc.* (1983), the Court struck down restrictions on abortions. *Washington v. Seattle School District No. 1* (1982) struck down the municipal option not to use busing. And *Marsh v. Chambers* (1983) struck down Nebraska's practice of paying a chaplain to begin the legislative session with a prayer, while sanctioning the prayer itself.

[8]The political time literature strongly points to Reagan's presidency as reconstructive (see Skowronek 1997, 2011; Crockett 2002, 2008; Cook and Polsky 2005; Bridge 2014).

this alternate perspective, it could be that low public confidence in the Court inspires MCs to attack. If so, then court curbing may instead need to be understood as an expression of the public's will.

To evaluate the relative merits of the two contending explanatory theories (elite signaling versus public confidence), we propose a simple test. We use ordinary least-squares regression to analyze whether the dummy variable *Election Year* has an independent effect on the number of attacks per year, while controlling for the public's confidence in the Court and economic conditions.[9] There are three possible outcomes of interest: two support the public-led, low-confidence explanation of court curbing, and the other supports the elite signaling theory.

1. If *Election Year* does not affect court curbing activity—but there is a relationship between *Low Confidence* and attacks—then we can surmise that MCs attack regardless of electoral context. In this scenario, MCs are likely following the will of the public, regardless of the electoral timing.
2. If *Election Year* positively affects court curbing activity—and there is a relationship between *Low Confidence* and attacks—then we can conclude that MCs engage in election-proximate position taking (Mayhew 1974). In this scenario, *Low Confidence* is the key variable, as MCs want to be seen as attacking an unpopular Court when elections are close.
3. If *Election Year* negatively affects court curbing activity—and there is a relationship between *Low Confidence* and attacks—then we can infer a more elite driven dynamic. If MCs refrain from attacking the Court during election years, then they are unlikely posturing for their constituents. Rather, by attacking during non-election years, MCs can engage in elite-level signaling while avoiding the electoral backlash of attacking a usually popular Supreme Court. If true, then Congress may actually be affecting the public's confidence, and the causal arrow would need to be reversed.

Table 3 displays the results of our test, showing that *Low Confidence* and *Election Year* were both significant predictors of court attacks (the control variable *GDP* was statistically insignificant). First, as expected, the *Low Confidence* coefficient is positive, indicating that attacks increase when more people have "hardly any" or "very little" confidence in the Supreme Court. However, the effect is small. For every percentage point more of low confidence, attacks go up only about four a year.[10] More importantly, *Election Year* has a negative effect, indicating that attacks are less likely during election years. Substantively, the model predicts 90 fewer attacks during election years—powerful evidence that whomever congressional elites are signaling via court curbing, it is not primarily intended to be the mass public. As such, we conclude that our

[9]The dependent variable is the number of attacks per year. *GDP* is the percentage of GDP growth in a given year. We measure *Public Confidence* by looking at surveys from Gallup, Harris, and the National Opinion Research Center (NORC) (see Caldeira 1986). We take the percentage of respondents who had "very little" (Gallup) or "hardly any" (Harris and NORC) confidence in the Court. The data on public confidence is limited to 1966–1967 and 1971–1984, so, admittedly, the results cover only a portion of the era in question. As Caldeira (1986) notes, though, this is the only data available.

[10]Between 1966 and 1984, the range for low public confidence was 10–27 percent. However, confidence was lower than 12 percent or higher than 21 percent in only three observations.

TABLE 3
Alternate Hypothesis Testing: The Impact of Election Year on Number of Attacks

Variable	*Operationalization*	*Predicted Direction*	*Coefficient*
Low Confidence	% of respondents who have "hardly any" or "very little" confidence in the Court	+	4.355* (1.706)
Election Year	Dummy variable	+ (or) −	−90.338*** (12.271)
GDP	Annual GDP Growth	—	−1.049 (2.111)
Constant			39.974 (32.010)

Note. $^{***}p < .001$; $^{*}p < .05$; Two-tailed test. $N = 34$. R-squared = .69. Dependent variable = number of attacks per year. Standard errors below coefficients and in parentheses.

test supports the theory that congressional attacks on the Supreme Court are best thought of as an elite-level signaling device.

ATTACKS AND COALITION MANAGEMENT

The discovery that the Court was inundated with attacks from 1955–1984 has implications beyond invalidating the practice of designating low frequency periods of attack in the mature New Deal era. By identifying the changing leadership of attacks over time, we suggest that congressional elites can use court curbing to signal a wider audience than just judicial elites. MCs may also use court curbing measures to communicate with others in an effort to maintain, build, or assert their party's dominance.

Previous work on Court attacks has, understandably, viewed the phenomenon through the lens of judicial independence. Because successful court curbing limits judicial independence, attacks are generally considered problematic within the judicial politics literature. We share the concerns of this scholarship, informed as they are by awareness of the low probability of success (Rosenberg 1992) and the generally benign "redirecting" intent of most modern attacks (Engel 2011). Yet, we add that attacks may inform other subjects as well.

The explosion and continuance of amendatory attacks after 1961 suggests that MCs found court curbing to be profitable in ways other than just signaling judicial elites (who did not appear to be listening much). Further, we highlight the heretofore unstudied shifting leadership of attacks, which provides evidence of the Court upsetting the coalitional cohesion of the dominant national alliance by straying into new and "highly volatile and cross-cutting issues" (Gates 1989, 255). Altogether, attacks may be a means by which differing partisan and regional elites attempt to signal each other in order to achieve various coalition management goals. We therefore suggest leading attackers may be attempting to

1. Signal leaders within their own party, in order to *maintain the coalition* by helping those alienated by the Court. This seems to have been the case with Southern Democrats in 1955–1961.

2. Signal potential allies across party lines, in order to *build a new majority coalition* with those alienated by the Court. This seems to have been the case with Republicans in 1962–1972 over school prayer and in 1973–1980 over abortion.
3. Signal members of a recently defeated majority, in order to *assert the dominance of a new national alliance*. This seems to have been the case with Republicans in 1981–1984.

Attacks in the mature New Deal era thus appear to have helped drive party system development, making court curbing a vital—and overlooked—developmental "mechanism" through which coalitional change may be both opposed and wrought (Orren and Skowronek 2004).

CLOSING THOUGHTS

Through detailed reexamination of the *Congressional Record*, we add 1,497 amendatory attacks to the empirical record. This alters the basis of analysis for mature New Deal court curbing. Lacking our data, the attacks literature has proposed various periodization schemes (see Table 1), all of which miss breakpoints well recognized by other Court scholars.[11] Since all types of court curbing measures (legislative or amendatory) signal elite preferences—and because Congress now uses more amendatory attacks—we argue that scholars must count all court curbing efforts. This allows the data, and the attackers, to speak for themselves in determining historical breakpoints.

Our more comprehensive approach leads us to conclude that there were no lull periods of attack from 1955–1984. We thus reject the validity of assigning any part of this timeframe as a quantitatively measured "low frequency" period of attack. We further advocate reconsidering the practice of designating only some of the attacks on the Court as qualitatively "serious" (Rosenberg 1992). The method appears arbitrary and subjective. Furthermore, it seems to have encouraged post facto assessments based not on the "intensity" of the attackers' feelings (which remain unknown), but rather on the contingent impact of attacks on the Court. Instead, to help inform scholarship on attacks, we offer a new periodization that uses more rigorous distinctions based, in part, on the attacking MCs' partisan and regional affiliations. We hope this method continues the trend of Clark (2011) and Engel's (2011) work by placing court curbing within a broader political context (see Graber 1993; Gillman 2002; Whittington 2005).

By looking at the record more thoroughly, we find that court curbing efforts evolved in a way previously unrealized. While it is beyond the scope of this study to fully account for the patterns, we outline the contours of a new periodization scheme based on our finding that the leadership of attacks changed over four phases. Using a simple regression model to test the influence of public opinion, we find even more support that attacks are an elite-centered phenomenon. This opens the new possibility of studying the role that attacks play in coalition management. In doing all this, we establish the foundations for exploring congressional–judicial relations as a previously unidentified site of party system development.

[11]For example, Scott Powe writes that he, "like everyone else," dates the beginning of the second phase of Warren Court activism with the 1962 term (2000, 498).

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