APPENDIX

Composition of institutionalization

The following variables were used to construct the index of institutionalization:

(1) *Federal judicial experience*. For all members of the Supreme Court, the average number of years of service on the federal bench prior to being elevated to the Supreme Court. This variable ranges from 0 to 6.9. Where more than one justice occupied the same seat on the Court during the same calendar year **C** e.g., if a sitting justice served during the first three months of a year before retiring and the new justice served the remaining nine months **C** I use the data for the justice who served the longer period within that year. These data were taken from Epstein et al. 1996, Table 4-9.

(2) *Circuit duties*. This variable takes account of the extent of the justices' circuit responsibilities. It is coded as 1 from 1790 to 1800, for the Judiciary Act of 1789's requirement that justices ride circuit; 2 during 1801, when the Circuit Court Act temporarily suspended circuit riding duties; 1 during the 1802-1890 period, after Congress reinstated those duties with the repeal of the Circuit Court Act; 2 from 1891 to 1910, when Congress virtually eliminated circuit riding duties; and 3 from 1911 to 1996, when Congress completely eliminated circuit riding responsibilities. These data were taken from Epstein et al. 1996, Table 1-2.

(3) *Supreme Court location*. This measure of the physical permanence and independence of the Court is coded as 1 from 1790 to 1800, when the Court met in New York and then Philadelphia, 2 from 1801 to 1934, when the Court met permanently in Washington, but without its own building, and 3 from 1935 to 1996, when the Court had its own building. This information is found in Biskupic and Witt (1997).

(4) *Expenditures per justice*. The salary of an associate justice in 1997 dollars, as determined by the Consumer Price Index, from 1800 to 1996. From 1975, data on inflation were taken from the *Statistical Abstracts of the United States* (Washington: Department of Commerce). Prior to that time, the data can be found in the *Historical Statistics of the United States* (Washington: Government Printing Office). To construct the index of institutionalization, these data were imputed for the years preceding 1800. These data were generated using Stata's "impute" command, which uses the information from other variables (in this case, the other measures in the index) to produce estimates to replace the missing values. These data

were taken from Epstein et al. 1996, Table 1-9.

(5) *Law clerks.* This measure of staff support is coded as 1 from 1790 to 1881, when there were no law clerks on the Court, 2 from 1882 to 1921, marking the period when the justices began informally to employ law clerks, and 3 from 1922 to 1996, during which time Congress authorized law clerks to be provided for the justices at public expense. This information is found in Biskupic and Witt (1997).

(6) *Discretionary agenda*. For the years 1790 to 1890, the variable is coded as 1, establishing an initial baseline of (lack of) agenda control. It is coded as 2 from 1891 to 1924, for the passage of the Circuit Court of Appeals Act of 1891, which provided limited discretionary review via the writ of certiorari, 3 from 1925 to 1988, for the passage of the Judiciary Act of 1925, which greatly expanded the Court=s certiorari jurisdiction, and 4 from 1988 to 1996, for the passage of the Act to Improve the Administration of Justice, which virtually eliminated all mandatory appeals. These data were taken from Epstein et al. 1996, Table 1-2.

(7) *Rules of the Supreme Court*. The number of physical pages the Rules of the Supreme Court occupy in the *U.S. Reports.* Although the Court, from one year to the next, will modify a rule here and there, this number is taken only in those years in which the Court undertakes a wholesale revision of its rules. These data were collected directly from the *U.S. Reports*, various editions.

Composition of power

The following variables were used to construct the dependent variable:

(1) *Federal judicial review*. The annual number of federal laws declared unconstitutional by the Supreme Court, as reported in the Congressional Research Service's *The Constitution of the United States of America* (1996). This variable has a mean of .69.

(2) *State judicial review*. The annual number of state laws declared unconstitutional by the Supreme Court, as reported in the Congressional Research Service's *The Constitution of the United States of America* (1996). This variable has a mean of 6.0.

(3) *Landmark decisions*. The annual number of landmark decisions as reported in *Congressional Quarterly's Guide to the U.S. Supreme Court* (1997). This variable has a mean of 2.4.

Control variables

(1) *Socioeconomic complexity*. Annual spending by the federal government as a proportion of the gross national product of that same year. These data are found in Brian R. Mitchell's *International Historical Statistics: The Americas, 1750-1993*, Table J1, and the *Statistical Abstracts of the United States*. (1999).

(2) *Legislative activity*. For each year, the number of bills introduced during the relevant two-year congressional term. These data are found in the U.S. Department of Commerce's *Historical Statistics of the United States: Colonial Times to 1970* (1975). This variable is divided 1000 to reduce the leading zeros on its coefficients.

(3) *Size of the Court=s docket*. The total number of cases with signed opinions, as listed in Epstein et al. 1996, Table 3-2. For years prior to 1800, data are taken from Howe Electronic Data, Inc. 1995. *U.S. Supreme Court Reports.* This variable is divided 1000 to reduce the leading zeros on its coefficients.