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Silent Acquiescence on the Supreme Court

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The norm of silent acquiescence on the Supreme Court was thought to have been eviscerated in the twentieth century by certain institutional reforms and the rise of dissenting opinions. Given that silent acquiescence is difficult to observe, however, the extent to which this norm persists on the modern Court remains unclear. To overcome this observational difficulty, I analyze private memoranda exchanged by justices who served during the Burger Court. The empirical results suggest that silent acquiescence is a rare but regular occurrence on the modern Court, and is more likely to occur in comparatively unimportant cases. Notwithstanding institutional and personnel changes that limited silent acquiescence and precipitated an increase in dissenting opinions, it appears that the practice of go-along voting continued throughout the Burger Court. The results have implications for our understanding of separate opinion writing, judicial decision-making, and judicial legitimacy.

KEYWORDS: Supreme Court, dissenting opinions, opinion writing

In *Irving Independent School District v. Tatro* (1984), the Supreme Court considered whether the Education of the Handicapped Act or the Rehabilitation Act of 1973 required a school district to provide a bladder-draining procedure known as clean intermittent catheterization to a handicapped student during school hours. The Court, in an opinion written by Chief Justice Burger, affirmed a lower court judgment that both legislative acts required the school district to administer the procedure to a student with spina bifida. Although Justice Blackmun disagreed with the Court's judgment, he sent a note to Burger that read, in part: "I can give you a . . . 'graveyard dissent' and join your opinion."[1]Blackmun's reference to a "graveyard dissent" indicated that he would acquiesce and silently join the majority despite his disagreement with its opinion. Ultimately, the Court delivered an opinion with all nine justices voting to require coverage for the procedure under both congressional acts.

The Supreme Court has a long history dating back to the Marshall Court of justices silently acquiescing in majority opinions. However, the explosion of separate opinions in the early part of the twentieth century makes continued use of this practice puzzling. Moreover, dominant theories of judicial behavior suggest that justices are motivated primarily by a desire to implement their sincere legal or policy preferences. Notwithstanding the rise of dissents and prevailing perspectives on judicial decision-making, there is anecdotal evidence that judges continue to engage in a

[1]Docket No. 83-558, Letter from Blackmun to Burger (June 13, 1984). All private papers referenced here can be accessed electronically via the Supreme Court Opinion Writing Database (Wahlbeck, Spriggs, and Maltzman 2011).

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practice Judge Posner (1993, 2) called "go-along voting." Although scholars have suggested that justices on the modern Supreme Court sometimes issue graveyard dissents in unimportant cases (Collins 2008, 157; Wahlbeck, Spriggs, and Maltzman 1999, 497), this observation is based on a limited number of anecdotes. The lack of research on acquiescence by justices on the modern Court is understandable, however, given the difficulty inherent in observing go-along voting.

In this article, I present the first direct and systematic evidence of judges engaging in go-along voting. Utilizing memoranda exchanged between justices on the Burger Court, I demonstrate that go-along voting occurs regularly, albeit not frequently, on the modern Supreme Court. Moreover, I develop the claim that go-along voting by Supreme Court justices is more likely to occur in unimportant cases by grounding it in a blossoming literature that suggests broadening our understanding of judicial behavior to focus on a variety of personal motivations beyond the implementation of legal and policy preferences (e.g., Epstein and Knight 2013; Epstein, Landes, and Posner; Posner 1993, 2008). Analyzing justice-level voting data, the empirical results suggest that graveyard dissents are less likely to occur in constitutional and politically salient cases. The results have implications for our understanding of separate opinion writing, judicial decision-making, and judicial legitimacy.

ACQUIESCENCE

The Supreme Court has a long history with the practice of silent acquiescence. Prior to Chief Justice John Marshall's tenure, the Court often issued seriatim opinions, with justices separately expressing their individual views. Under Marshall, however, separate opinions became the exception, and justices tended to go along with the majority even if they disagreed with its judgment and opinion (White 1991). For example, Chief Justice Marshall once noted in a rare dissent that it was his "custom, when I have the misfortune to differ from this Court, [to] acquiesce silently in its opinion" (*Bank of United States v. Dandridge* 1827, 90). Similarly, Justice Story noted in a rare dissent that "[h]ad this been an ordinary case I should have contented myself with silence" (*The Nereide, Bennett, Master* 1815, 455). Others took notice of the Court's consensual norm as well, with Thomas Jefferson (1820) once criticizing "the silent acquiescence of lazy or timid associates" during the Marshall Court era.

The consensual norm that took root in the Supreme Court during Chief Justice Marshall's tenure remained firmly entrenched until the early part of the twentieth century. There is a rich body of literature devoted to understanding the rise of dissents on the Supreme Court (see, e.g., Caldeira and Zorn 1998; Corley, Steigerwalt, and Ward 2013; Haynie 1992; Hendershot et al. 2012; Hurwitz and Lanier 2004; Sunstein 2014; Walker, Epstein, and Dixon 1988). However, there is little consensus about what led to the evisceration of the unanimity norm. Popular explanations include changes in chief justice leadership styles, increased ideological heterogeneity among the justices, shifting attention to particular issue areas, the rise of legal realism, internal procedural changes, and additional discretionary control of the docket. Regardless of what caused the consensual norm's demise, it is clear that separate opinion writing is a fixture on the modern Supreme Court. Indeed, from 1946–2012 about 62 percent of the Court's decisions were accompanied by at least one dissenting opinion.[2]

[2]This percentage was calculated using the Supreme Court Database (available at http://scdb.wustl.edu) and decision types 1, 6, and 7.

Dissenting opinions are valuable for a number of reasons. As an initial matter, dissents allow judges on collegial courts to express their legal and policy preferences even if they are not in the majority. Voting based on sincere preferences is part of what makes judging an appealing occupation (Posner 2008), and that benefit would be diminished if it only accrued when those preferences happened to align with the Court's majority. Dissents are also a valuable tool for contributing to a judge's reputation and style because they are not subject to the same bargaining constraints as majority opinions (see Scalia 1994). Of course, the opportunity to influence the development of the law is perhaps the most important benefit of dissenting. As Chief Justice Hughes (1928, 68) famously noted, "[a] dissent in a court of last resort is an appeal to the brooding spirit of the law, to the intelligence of a future day, when a later decision may possibly correct the error into which the dissenting judge believes the court to have betrayed." Even if a particular majority opinion is not overturned, however, a dissent may influence the development of the law by highlighting limiting principles and advancing arguments that may be adopted by future courts addressing similar issues.

Notwithstanding the explosion of separate opinion writing and well-known benefits of dissenting, justices on the modern Supreme Court appear to at least occasionally continue the practice of silently acquiescing despite disagreement with the majority. Justice Reed's acquiescence to the Court's opinion in *Brown v. Board of Education* (1954) invalidating segregation in public schools under the Fourteenth Amendment's Equal Protection Clause is perhaps the best-known example.[3] Indeed, the Court long maintained a tradition of unanimity in segregation cases due to their public importance and a desire to secure downstream compliance. But the justices secured unanimity in the segregation cases through intense bargaining and a commitment to issuing narrow opinions. In *Swann v. Charlotte-Mecklenburg Board of Education* (1971), for example, Chief Justice Burger noted that he had accommodated substantial requests, including many he disagreed with, "[i]n the hope of securing a unanimous opinion."[4] In particular, Justice Black noted that although he "had hoped to go along with [the Court's] opinion and acquiesce in the affirmance," he was "of the opinion that it would be a mistake to give the appearance of a unanimity on the Court which does not actually exist."[5] Ultimately, Burger and other members of the majority made sufficient concessions to secure Black's vote for a unanimous opinion.

The exceptional political context surrounding the Supreme Court's segregation rulings makes them a poor case study for understanding go-along voting as that phrase is traditionally understood, which is to reflect a judge's decision to acquiesce to the majority position without requesting substantial accommodations. Although scholars and justices have acknowledged that go-along voting sometimes occurs on the modern Supreme Court, the empirical evidence is largely circumstantial; this is understandable, however, given the difficulty inherent in detecting silent acquiescence in final vote data.[6] Wrightsman (2008, 69) interprets the under-prediction of unanimous and over-prediction of lone-dissenter opinions by the Supreme Court Forecasting

[3]Various historical accounts suggest that other justices may have acquiesced in *Brown* as well (see, e.g., Klarman 2004).

[4]Docket No. 70-281, Memorandum from Burger to the Conference (March 22, 1971).

[5]Docket No. 70-281, Letter from Black to Burger (March 25, 1971).

[6]In an effort to determine whether widespread consensus on the early Supreme Court was due to a prevailing consensual norm or the prevalence of easy cases, Epstein, Segal, and Spaeth (2001) analyzed data from docket books during Chief Justice Waite's tenure (1874–1888). They demonstrated that justices on the Waite Court routinely withheld dissent after voting against the majority position at conference even in difficult cases. Although this is strong evidence in

Project for cases decided during OT 2002 as evidence that "when most justices vote one way, pressures exist on the holdout justice to go along, and often they do." Granberg and Bartels (2005) conclude that justices engage in go-along voting based on evidence that unanimous opinions were overrepresented and solo-dissenter opinions underrepresented from 1953–2001 given what would be expected when applying a rectangular distribution to coalition possibilities that assumes an equal probability for each split. Most recently, Epstein, Landes, and Posner (2013) suggest that go-along voting may be partly responsible for the larger than expected number of unanimous opinions delivered by the Court. Although these interpretations are certainly plausible, the empirical evidence for acquiescence remains indirect.

Studies of circuit court decision-making highlight the possibility that go-along voting can explain panel effects. On this view, for example, evidence that Democratic (Republican) judges are more likely to cast conservative (liberal) votes when assigned to three-judge panels with two Republican (Democratic) colleagues is an indication of silent acquiescence by the minority judge (see, e.g., Epstein, Landes, and Posner 2013; Posner 1993, 2008). Although go-along voting is certainly a plausible explanation for panel effects, however, it can be difficult to disentangle it from other plausible explanations such as the influence of collegial norms on a judge's willingness to consider alternative perspectives (Edwards 2003) or a "whistleblower" effect, whereby an ideologically divergent judge on a panel negotiates changes in the opinion leading to moderation in exchange for withholding dissent (Cross and Tiller 1998; Kastellec 2007). As with studies concerning the Supreme Court, it is difficult to pinpoint the extent to which circuit court judges are actually engaging in go-along voting.

THE INFLUENCE OF CASE IMPORTANCE

What leads judges to engage in go-along voting? Some might contend that this question proves to be particularly vexing as applied to Supreme Court justices. After all, Supreme Court justices enjoy secure tenure, an almost entirely discretionary docket, and a place atop the judicial hierarchy. Moreover, dominant theoretical accounts of judicial decision-making often emphasize that justices make decisions in accordance with their sincere legal or policy preferences (see, e.g., Segal and Spaeth 2002). At first glance, these institutional considerations make go-along voting a somewhat puzzling phenomenon for Supreme Court justices. However, recent interdisciplinary research examining a broad range of self-interested motivations underlying judicial decision-making offers a useful theoretical perspective for understanding the benefits of acquiescence.

In contrast to dominant theoretical accounts of judicial behavior that emphasize a judge's single-minded desire to implement legal or policy preferences, recent treatments have suggested broadening our understanding of judicial motivations to account for other self-interested goals driven by institutional context (Epstein and Knight 2013). Although this understanding of judicial behavior is rooted in established strategic accounts of decision-making, it offers a deeper theoretical portrayal of how judges make decisions by moving beyond the limiting view that pursuing policy goals is necessarily a judge's ultimate objective. Psychological and rational choice perspectives, both of which emphasize decision-making costs (e.g., Posner 2008), are prevalent

support of the proposition that a consensual norm once prevailed on the Supreme Court, it is not meant to suggest that justices on the modern Court engage in go-along voting.

in this line of research. As applied to go-along voting, for example, a well-developed psychology literature suggests that social pressures can influence decisions to dissent from majority positions (e.g., Asch 1955; Noelle-Neuman 1993). Going along with the majority can help maintain collegiality in group settings and reduce decision-making costs (e.g., Posner 2008; Granberg and Bartels 2005).

Building on psychology's emphasis on decision-making costs, rational choice perspectives emphasize the connection between acquiescing and the opportunity cost of dissenting. According to Judge Posner (1993, 20), for example, go-along voting is "an example of the influence of leisure-seeking on judicial behavior," where leisure is defined as "an aversion to any sort of 'hassle,' as well as to sheer hard work." Alternatively, Judge Posner (1995, 126) suggests that judges might decide to silently acquiesce rather than dissent in certain cases in order to free up time for work on other judicial tasks. Justice Ginsburg (1990, 141–142) expressed a similar understanding of go-along voting when she wrote that "[w]hen to acquiesce and when to go it alone" in dissent is "subject to one intensely practical constraint: time." More generally, scholars and judges often note that the value of dissenting increases with case importance. As Justice Ginsburg (2010, 7) once explained, dissents are most valuable "when important matters are at stake." Scholars have also noted the possibility that go-along voting is tied to perceptions of case importance. Wahlbeck, Spriggs, and Maltzman (1999, 497), for example, suggest that "[i]n unimportant cases, justices may be willing to ignore their preferences and thus create the illusion of consensus." And Collins (2008, 157) suggests that "[i]n relatively unimportant cases, a justice might join the majority for the purpose of appearing consensual." These statements, however, were made as asides in broader studies of dissensus.

The existing direct empirical evidence for go-along voting on the Supreme Court is largely anecdotal, as is to be expected given the difficulty of observing justices voting against their sincere legal or policy preferences (e.g., Corley, Steigerwalt, and Ward 2013, 39–41). Several scholars, for example, have noted an example of go-along voting that occurred in *Astrup v. Immigration and Naturalization Service* (1971) to illustrate the relationship between case importance and silent acquiescence (Collins 2008, 157; Maltzman, Spriggs, and Wahlbeck 2000, 22; Wahlbeck, Spriggs, and Maltzman 1999, 497; Wrightsman 2006, 148). In *Astrup*, the Court overturned a lower court judgment denying a petition for naturalization from an individual who had previously claimed exemption from military service as a foreign national in exchange for relinquishing any claim of citizenship after the government attempted to draft him despite the agreement. Chief Justice Burger silently acquiesced in Justice Black's majority opinion, writing to him: "[I do] not really agree but the case is narrow and unimportant except to this one man. . . . I will join up with you in spite of my reservations."[7] Although justices do not typically explain their reasons for going along, *Astrup* is not the only example of a case where acquiescence is connected to perceptions of case importance. In *Burlington Northern v. United States* (1982), for example, the Supreme Court held that the primary authority for setting and reviewing shipping rates rested with the Interstate Commerce Commission rather than the lower federal courts. Although Justice Powell disagreed with the majority position, he ultimately acquiesced with a note to Chief Justice Burger, the opinion's author, that read: "As a dissent in this case is hardly worthwhile, you may record me as a join."

[7]Docket No. 840, Letter from Burger to Black (May 20, 1971).

Notwithstanding the anecdotal evidence suggesting that justices sometimes go along with majority opinions in comparatively unimportant cases, the proposition has not been tested empirically. Again, this is understandable given the difficulty inherent in attempting to observe silent acquiescence. Perhaps as a result of this lack of systematic attention to the possibility of acquiescence by Supreme Court justices, little effort has been invested in delineating the determinants of case importance that are likely to influence a justice's decision to go along with the majority. Building on the extensive judicial politics literature on case importance, the rest of this section explains how the probability of observing go-along voting may be connected to specific indicia of case importance.

Constitutional Cases

Several Supreme Court justices have suggested that dissenting opinions are more valuable in constitutional cases (Brennan 1986; Ginsburg 1990; Scalia 1994). In general, constitutional cases impose unique pressures on the Court because they are comparatively insulated from legislative review. This comparative insulation means that the Court is thought to be more willing to overturn constitutional as opposed to statutory cases. Justice Powell (1990, 287) once noted, for example, that "stare decisis should operate with special vigor in statutory cases because Congress has the power to pass new legislation correcting any statutory decision by the Court that Congress deems erroneous." And the empirical evidence suggests that the Court is more likely to overturn constitutional decisions (Hansford and Spriggs 2006). Given the increased institutional pressure in constitutional cases and the greater likelihood of later overruling constitutional precedents, it is reasonable to expect that justices be less likely to acquiesce in these disputes.

Constitutional Case Hypothesis: A justice will be less likely to acquiesce in a constitutional case.

Salient Cases

Case salience is another dimension of case importance. The literature on consensus and judicial decision-making identifies two dimensions of case salience. First, a case may be publicly salient. The judicial politics literature highlights a number of ways that decision-making differs in cases that are publicly salient. For example, justices are more likely to bargain over opinion content in salient cases (Maltzman, Spriggs, and Wahlbeck 1999). Furthermore, evidence suggests that justices "become more cognitively engaged," and thus make more consistent decisions, in salient cases (Collins 2008, 124). The central idea underlying studies considering the interaction between case salience and decision-making is that landmark disputes typically have broader policy implications and are more likely to activate the justices' policy preferences (Bartels 2011; Unah and Hancock 2006). Considering the influence of case salience on decision-making and the greater likelihood of judges dissenting in salient cases more generally (e.g., Collins 2008; Hettinger, Lindquist, and Martinek 2004; Wahlbeck, Spriggs, and Maltzman 1999), it is reasonable to expect that justices will be less likely to acquiesce in salient cases.

In addition to the public dimension, there is a justice-specific dimension to the concept of case salience (e.g., Black, Sorenson, and Johnson 2013). Justices join the Court with varying degrees

of expertise and interest in particular issue areas (e.g., Brenner 1984). On the current Court, for example, Justice Breyer is an expert in regulation, Justice Ginsburg in civil procedure, and Justice Scalia in administrative law. On the Burger Court, Justice Douglas was an expert in securities regulation, Justice Marshall in civil rights litigation, and Justice Powell in antitrust. Given that justices are more likely to make ideological decisions in cases involving issues on which they are specialists (Curry and Miller n.d.), and more likely to write separately in cases that are salient to them (Collins 2008), they are presumably also less likely to simply go along with the majority in these cases.

Salient Case Hypothesis: A justice will be less likely to acquiesce in a salient case.

Amicus Participation

Organized interests routinely participate in Supreme Court cases by filing amicus curiae briefs. The number of amicus briefs filed at the merits stage is positively associated with Supreme Court dissensus (Collins 2008). Likewise, there is reason to think that increased amicus participation will be associated with the likelihood of observing go-along voting. Amicus briefs are valuable in part because of their informational content (e.g., Collins 2004; Hansford 2004; Spriggs and Wahlbeck 1997). According to Collins (2008, 149), for example, the additional informational content generated by increasing the number of amicus curiae briefs in a case increases the probability of a justice dissenting by "expand[ing] the scope of the conflict." As a result, the same logic that connects the number of amicus briefs to the probability of justices dissenting suggests that an increase in filings should result in justices being less likely to silently acquiesce.

Amicus Participation Hypothesis: A justice will be less likely to acquiesce as the number of amicus filings increases.

DATA AND MEASUREMENT

The nature of go-along voting makes it inherently difficult to capture empirically. To overcome the observational difficulty, I utilize memoranda exchanged between justices during the Burger Court to systematically uncover instances of acquiescence. Specifically, I read each case file comprising the Supreme Court Opinion Writing Database (Wahlbeck, Spriggs, and Maltzman 2011), which spans the Burger Court (OT 1969–1985) and includes papers from the files of eight justices who served during that time, coding any instance of a justice engaging in go-along voting. The justices typically indicate their acquiescence in join notes. Rather than join with standard language such as "Please join me" or "I agree," for example, justices may note that they are filing only a "graveyard dissent" or that they "acquiesce" in the majority opinion despite their disagreement. Sometimes this language is used to indicate acquiescence on a certain aspect of the opinion. As a result, instances are counted only if it is reasonably clear from the case file that the justice would have otherwise dissented.

Not surprisingly, go-along voting appears to be rare on the modern Supreme Court. During the Burger Court, there were 129 recorded graveyard dissents, which represent 0.7 percent of all votes cast in orally argued cases decided with an opinion during this period. Of course, this

FIGURE 1 Silent Acquiescence by Term.

number is likely to underestimate the true number of graveyard dissents given that it is unlikely that all instances were expressed or formally recorded.[8] Although go-along voting is a relatively rare event, it occurs about as often as passing at conference (see Johnson, Spriggs, and Wahlbeck 2005), which has long been considered an important strategic maneuver.[9] Figure 1 displays the number of graveyard dissents per term. Graveyard dissents occurred consistently during the Burger Court, with one in at least each term. The average number of graveyard dissents per term was 7.6, with a standard deviation of 3.1. There were two graveyard dissents during OT 1985, the fewest of any term during the Burger Court; there were fourteen graveyard dissents during OT 1978, the highest number over that period.

To examine variation in acquiescence across justices, Figure 2 displays the number of times each justice who served on the Burger Court issued a graveyard dissent averaged by the total number of terms served during that period. Every justice acquiesced at least once during the sample period. Justices Blackmun, Douglas, Rehnquist, Stewart, and White all averaged more than one graveyard dissent per term.[10] Justice Stevens (2011, 156) has suggested that Justice White regularly acquiesced in majority opinions, and the data presented here support his claim. Interestingly, although one of his clerks during this period said of Rehnquist that he was "not a 'go along to get along' guy" (Nannes 2006, 3), Rehnquist averaged almost as many graveyard dissents as White during the sample period. Justice Stevens acquiesced the least per term over the sample period, which is consistent with his criticism of the practice, suggesting that "the institution and the public are better served by an accurate disclosure of the views of all the justices in every argued case" (Stevens 2011, 156).

[8]There is, however, little reason to suspect that unobserved instances are nonrandom.

[9]Other rare but important events in Supreme Court decision making include reading dissents from the bench (Blake and Hacker 2010), citing the *Federalist Papers* (Corley, Howard, and Nixon 2005), avoiding constitutional cases (Goelzhauser 2011), rearguing cases (Hoekstra and Johnson 2003), and calling for the views of the solicitor general (Johnson 2003).

[10]Justice Douglas acquiesced twice during OT 1974, with both instances occurring prior to the debilitating stroke that affected his performance that year.

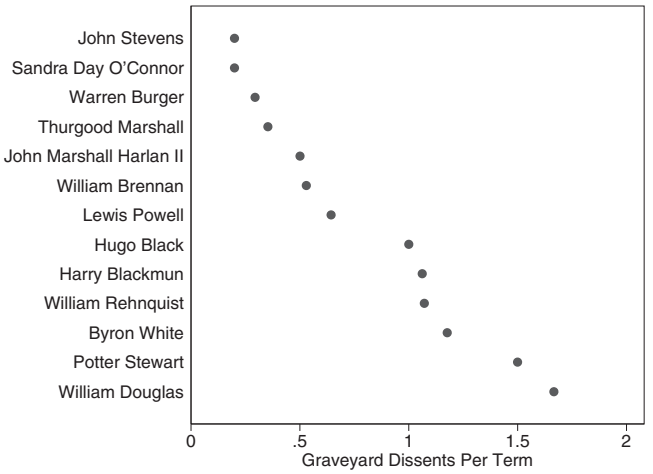

FIGURE 2 Justice Averages.

The dependent variable is an indicator scored one if a justice acquiesced in a particular case and zero otherwise. The hypotheses developed above tap into three distinct aspects of case importance. *Constitutional Case* is an indicator scored one for constitutional cases and zero otherwise.[11] *Salient Case* is an indicator scored one for cases that received coverage on the front page of the *New York Times* the day after being handed down and zero otherwise (Epstein and Segal 2000). Following Collins (2008), *Amicus Participation* scores the total number of amicus briefs filed on the merits in a particular case.[12]

Several control variables are included to account for alternative explanations for acquiescence. Judges are more likely to dissent in complex cases because there are multiple dimensions upon which to disagree. As a result, justices may be less likely to go along in complex cases. To capture *Case Complexity*, I utilize a factor analysis of the number of issues and legal provisions in a case (Collins 2008; Wahlbeck, Spriggs, and Maltzman 1999).[13] From an institutional perspective, freshman justices are expected to dissent less frequently because of acclimation effects, including learning how to manage their time effectively and developing stronger preferences over case outcomes (Collins 2008; Wahlbeck, Spriggs, and Maltzman 1999).[14] This conventional wisdom suggests that freshman justices may be more likely to go along with the majority. To test this

[11]All independent variables are from Collins (2008), which utilizes information from Spaeth's justice-level Supreme Court Database. Additional data sources are noted where applicable.

[12]The highest pairwise correlation between any of the key explanatory variables is $r = 0.31$, which is below the threshold of what is "generally considered to represent [a] low or weak correlation" (Taylor 1990, 37). Although each of these variables taps into the broader concept of case importance, they are conceptually distinct and represent different dimensions of the concept. A factor analysis reveals that the key explanatory variables do not load onto a single dimension with an eigenvalue greater than one.

[13]The number of issues and legal provisions in a case are derived from the Supreme Court Database. The highest pairwise correlation between the complexity variable and any of the key explanatory variables is $r = 0.12$.

[14]The models do not include a chief justice indicator since that reduces to a Chief Justice Burger indicator in this sample. However, one of the robustness checks presents results from a model with justice fixed effects.

expectation, *Freshman Justice* is an indicator scored one for justices in their first two years of service and zero otherwise.

I also account for two interpersonal factors that affect dissenting behavior more generally and thus might also motivate acquiescence (Collins 2008; Wahlbeck, Spriggs, and Maltzman 1999). First, go-along voting may be less likely when a potential dissenter is more ideologically distant from the opinion author. Thus, *Ideological Distance* scores the absolute value of the distance between a justice and the opinion author.[15] Second, past cooperation between justices is expected to decrease the likelihood of dissensus and thus may increase the likelihood of acquiescence. To account for this possibility, *Cooperation* captures the percentage of cases where a justice joined the opinion author's separate opinions during the previous term.[16]

Corley, Steigerwalt, and Ward (2013) highlight three institutional changes during the Burger Court that may have led to a decrease in consensus. First, in OT 1971 the Court began using a syllabus noting each justice's vote. Second, beginning in OT 1975 justices were formally assigned dissent-writing responsibilities by the senior justice in the minority coalition. Third, the number of law clerks increased from two to three in OT 1970 and from three to four in OT 1974, reducing the opportunity cost associated with writing separately. To account for the possibility that these changes may have affected the probability of acquiescing, I follow Corley, Steigerwalt, and Ward (2013) and include three variables: *Syllabus* is an indicator scored one for cases decided from OT 1971 onward and zero otherwise; *Dissent Assignment* is an indicator scored one for cases decided from OT 1975 onward and zero otherwise; and *Clerks* counts the number of clerks available to the justices in a given term. Last, acquiescence may be more likely near the end of the term. To account for time left in the term, I follow Corley, Steigerwalt, and Ward (2013) and count the number of days between oral argument and July 1 with a variable called *Days Left in Term*.

ANALYSIS AND RESULTS

Table 1 presents results from a series of logistic regression models explaining the occurrence of go-along voting. Given that acquiescence is a rare event, the baseline results presented in Model 1 were estimated using King and Zeng's (2001a, 2001b) rare events correction for logistic regression models. As noted previously, these are justice-level vote data for each case decided with a formal opinion after oral argument during the Burger Court with a dependent variable scored one if a justice issued a graveyard dissent in a particular case and zero otherwise.[17] Standard errors are clustered by case.

[15]Ideal point estimates come from Martin and Quinn (2002).

[16]To ensure this variable does not simply tap into ideological compatibility, the joining percentage is regressed on the measure of *Ideological Distance* and the residuals used as a proxy for cooperation (Collins 2008; Wahlbeck, Spriggs, and Maltzman 1999).

[17]An alternative approach would be to look at decisions to acquiesce only if a justice voted with the minority at conference, linking this project to the literature on voting fluidity (e.g., Maltzman and Wahlbeck 1996a). There are two problems with this approach that make it unfeasible for this study. First, not every graveyard dissent is associated with a conference vote in the Expanded Burger Court Database. This may be because a conference vote was not recorded or because the conference vote was not a simple vote to affirm or reverse. Second, some graveyard dissents are associated with conference votes suggesting that the justices were in the majority at conference, possibly owing to mistakes in conference records (see Maltzman and Wahlbeck 1996b). It is important to avoid losing observations because of how

TABLE 1
Silent Acquiescence on the Supreme Court, 1969—1985

	Model 1	*Model 2*	*Model 3*	*Model 4*
Constitutional Case	−0.55* (0.23)	−0.57* (0.23)	−0.46* (0.27)	−0.57* (0.23)
Public Salience	−1.03* (0.50)	−1.14* (0.50)	−1.12* (0.52)	−1.19* (0.50)
Justice Salience	−1.80* (0.63)	−2.25* (0.69)	−1.77* (0.63)	−1.77* (0.61)
Amicus Briefs	0.03 (0.03)	0.03 (0.03)	0.04 (0.03)	0.04 (0.03)
Case Complexity	−0.10 (0.13)	−0.11 (0.13)	−0.10 (0.13)	−0.09 (0.14)
Freshman Justice	−0.71 (0.50)	−0.68 (0.54)	−0.89 (0.50)	−0.79 (0.48)
Ideological Distance	0.32* (0.14)	−0.21 (0.25)	−0.08 (0.14)	−0.05 (0.14)
Cooperation	0.27* (0.15)	0.24 (0.28)	0.12 (0.16)	0.11 (0.16)
Syllabus	−0.02 (0.47)	< −0.01 (0.44)	−0.01 (0.47)	−0.69 (1.01)
Dissent Assignment	−0.15 (0.41)	0.08 (0.43)	−0.13 (0.41)	−1.68** (0.81)
Clerks	−0.11 (0.39)	−0.05 (0.41)	−0.11 (0.39)	0.21 (0.57)
Days Left in Term	< 0.01 (< 0.01)	< 0.01 (< 0.01)	< 0.01 (< 0.01)	< 0.01 (< 0.01)
Intercept	−4.83* (1.11)	−4.21* (1.41)	−3.91* (1.12)	−4.55*** (1.26)
N	18385	18385	18143	18385
Fixed Effects	None	Justice	Issue	Term

Standard errors clustered by case in parentheses. * $p < .05$ (one-tailed).

The results presented in Model 1 suggest that there is no statistically meaningful relationship between interest group participation and the probability of a justice acquiescing. However, there is a relationship between other aspects of case importance and go-along voting. The estimated coefficient for *Constitutional Case* is negative and statistically distinguishable from zero, indicating that justices are less likely to acquiesce in constitutional cases. While King and Zeng (2001a, 152) note that "[r]elative risks are typically considered important in rare event studies if they are at least 10–20%," the probability of a justice going along with the majority in a constitutional case is 41 percent [16 percent, 60 percent] lower than in a non-constitutional case.[18] This result is consistent with suggestions by justices and scholars that dissents are more valuable in constitutional cases.

Model 1 also suggests that the probability of justices acquiescing is higher in salient cases. The estimated coefficient for *Public Salience* is negative and statistically distinguishable from zero, indicating that the probability of going along is lower in cases that are newsworthy. Substantively, the probability of a justice acquiescing in a case that is publicly salient is 63 percent [17 percent, 84 percent] higher than in a case that is not publicly salient. The estimated coefficient for *Justice Salience* is also negative and statistically distinguishable from zero, indicating that the probability of justices going along decreases in cases involving issues that are salient to them. Substantively, a change from the 25th to 75th percentile in *Justice Salience* decreases the probability of acquiescing by 35 percent [18 percent, 51 percent].[19] Overall, these results lend additional support to the conventional wisdom that go-along voting is more likely in relatively

few graveyard dissents there were during the sample period. Moreover, the approach employed here ensures that this is a conservative test of the hypotheses with results biased against finding statistical significance.

[18]Brackets contain 90 percent confidence intervals.

[19]Including a measure of legal salience in the model, denoting whether a case overturned a precedent or invalidated a law on constitutional grounds, yields results that are statistically and substantively similar. Moreover, the estimated coefficient for the legal salience variable is not statistically distinguishable from zero.

unimportant cases. Interestingly, however, the results suggest that what constitutes a relatively unimportant case differs across justices.

The small number of observed instances of go-along voting necessitates attention to the possibility of overfitting the model. Standard econometric practice calls for observing about five to ten events (i.e., the least occurring outcome for the dependent variable) per parameter to avoid overfitting the model (e.g., Hosmer, Lemeshow, and Sturdivant 2013; Peduzzi et al. 1996; Vittinghoff and McCulloch 2006). With baseline results provided in Model 1 consistent with that advice, I now turn to a series of robustness checks. As an initial matter, it is important to account for the possibility of justice-specific inclinations regarding go-along voting. As noted previously, for example, Justice Stevens suggested that Justice White had a proclivity for going along, whereas Stevens thought justices had a responsibility to voice their opinions in dissent. To account for any justice-specific effects, Model 2 includes justice fixed effects.[20] Issue area or term effects may also drive go-along voting. Dissenting behavior by Supreme Court justices varies generally across subject matter, with issues involving the First Amendment, criminal procedure, due process, and privacy among the least likely to generate unanimous opinions; on the other hand, issues involving interstate relations, federalism, judicial power, and attorneys are among the most likely to generate unanimous opinions (Epstein, Landes, and Posner 2013, 133). Specific terms, meanwhile, may present different working conditions, caseloads or other pressures, thereby increasing or decreasing the likelihood of acquiescing. To account for these possibilities, Models 3 and 4, respectively, include issue area and term fixed effects.[21]

The results are consistent across model specifications: the probability of a justice acquiescing is lower in constitutional cases and cases that are either publicly or personally salient. Overall, the robustness of these results lend considerable support to the conventional wisdom that go-along voting is more likely in comparatively unimportant cases. None of the control variables are consistently associated with changes in the probability of justices acquiescing.[22] Among the fixed effects models, only the justice fixed effects are jointly significant ($p < .01$).

CONCLUSION

The Supreme Court has a long history with silent acquiescence by its justices. However, it has not been clear to what extent the practice survived institutional changes during the twentieth

[20]Including a variable scoring the number of years served by a justice yields statistically and substantively similar results. Justices who are late producing assigned opinions may be more likely to acquiesce. However, data availability and difficulty determining what constitutes timely opinion production prohibits including such a variable. In any event, it is unlikely that such a variable would be correlated with any of the key explanatory variables, thereby mitigating against any omitted variable bias concern.

[21]Given that workload is a difficult concept to capture empirically due to its varied dimensions, the term fixed effects approach is better than selecting an arbitrary indicator. Nonetheless, robustness checks using several indicators of workload resulted in statistically and substantively similar results for the key explanatory variables. These measures included the total number of cases filed, total docket size, total number of cases disposed, the number of cases remaining on the docket at the end of the term, and the total number of written opinions produced during the term (all data were collected from the Federal Judicial Center). In addition, I fit a model including a justice-specific measure of workload based on the total number of opinions each justice produced in a particular term. That measure of workload is not associated with changes in the probability of go-along voting, and the results for the key explanatory variables were statistically and substantively similar.

[22]The syllabus, formal dissent assignment, and number of variables are not jointly significant ($p = .65$).

century. Indeed, scholars have noted that we may have witnessed the "death of acquiescence" during the early Burger Court (Corley, Steigerwalt, and Ward 2003, 86). Others, including some justices, have noted that the occasional graveyard dissent occurs and that the practice is more likely to occur in unimportant cases. Because the nature of graveyard dissents involves justices voting against their sincere legal or policy preferences, go-along voting is a difficult subject to study empirically. In this article, I overcome the observational problem by analyzing memoranda exchanged between justices during the Burger Court. This approach allows for the first direct study of go-along voting on any court in the modern era. The memoranda reveal that go-along voting occurred regularly, albeit infrequently, during the Burger Court. Moreover, consistent with the conventional wisdom, acquiescence is more likely to be observed in relatively unimportant cases.

These results have important implications for our understanding of judicial decision-making. The dominant theoretical accounts of Supreme Court voting behavior in political science emphasize the pursuit of legal or policy goals. Go-along voting is interesting in part because it demonstrates that judges sometimes vote contrary to their true legal or policy preferences. This is particularly intriguing with respect to Supreme Court justices because they enjoy secure tenure, an almost entirely discretionary agenda, and a place atop the judicial hierarchy. Although go-along voting runs contrary to dominant theoretical approaches on judicial behavior, it is consistent with interdisciplinary perspectives from fields such as economics and psychology demonstrating that judges are responsive to a number of personal and institutional pressures. In a recent review of the literature, for example, Epstein and Knight (2013, 13) advocate "for nothing short of a restructuring of the very foundation of the (political science) study of judging" based on evidence that judges respond to a variety of personal and institutional pressures in addition to legal and political factors. This project offers an incremental step forward in broadening our understanding of Supreme Court decision-making by highlighting how justices sometimes vote against their sincere legal or policy preferences in response to institutional pressures.

Silent acquiescence may have consequences for perceptions about the legitimacy of judicial decisions. The conventional wisdom is that unanimity enhances confidence in the Court's rulings. A recent series of survey experiments revealed that respondents were more likely to agree with and accept unanimous as opposed to divided Supreme Court decisions, particularly in less salient areas (Zink, Spriggs, Scott 2009). These results suggest that go-along voting may help to enhance the perceived legitimacy of particular decisions, and that this effect may be particularly pronounced in the non-salient cases where acquiescence is typically observed. On the other hand, other survey experiments reveal that respondents who are predisposed to disagree with particular decisions are more likely to be accepting of them when there is dissent, particularly in cases that are no more than moderately salient (Salamone 2014). These results suggest that acquiescing justices may actually have a delegitimizing effect on Supreme Court opinions. Although empirical studies offer conflicting perspectives on the relationship between coalition size and public support, it is interesting to note that effects are uniformly most prevalent in cases with low to medium public salience—exactly the type of case where we are most likely to observe acquiescence.

This project also speaks to our understanding of consensus. The traditional view is that unanimity is the product of easy cases that do not generate political or plausible legal cleavages. Goldman (1969, 219) expressed the traditional view when he wrote that "a consensually decided case indicates that 'objectively' the case situation (either because of clear-cut precedent, or the straightforward applicability of the statute, or constitutional provision to the facts of the case)

offered little leeway for the judge." As a result of this understanding, many scholars have excluded unanimous opinions from their empirical studies. The results presented here suggest, however, that unanimity sometimes masks genuine disagreement, and that the degree of consensus on the Supreme Court may be overstated even in recent years.

One important question that remains is whether the results presented here are generalizable to time periods other than the Burger Court. Unfortunately, much of our systematic knowledge about the inner workings of the Supreme Court are based on data from limited time periods, often involving the Burger Court due to the subsequent release of private papers (e.g., Johnson, Spriggs, and Wahlbeck 2005). As is the case here, utilizing archival data from this era is necessary in exchange for deriving new insights about the secret inner workings of the Supreme Court. Nonetheless, it is important to understand how using data from this time period may influence the generalizability of the results. The potential influence of changes in overall workload pressures on acquiescence is ambiguous. Although the modern Supreme Court issues about half the number of written opinions averaged during the Burger Court, the modern Court's docket is also larger by about half.[23] While there was no discernible trend in acquiescence throughout the Burger Court, the final year of the sample period represents a low mark in go-along voting over the sample period. Although it is possible that the institution started to vanish around this time, there is nothing in the Court's history that suggests such a chance would have occurred at that moment. Moreover, go-along voting seems to have survived institutional changes that were thought to have brought about its demise during the early part of Burger's tenure.

Other factors suggest that the results presented here may not be limited to the Burger Court. As an initial matter, it is clear from historical records that acquiescence did not originate with the Burger Court, and the empirical evidence presented here is consistent with studies that have inferred regular go-along voting in more recent terms based on aggregate dissent (Epstein, Landes, and Posner 2013) and coalition split (Granberg and Bartels 2005) data. Although a chief justice's tenure can be a useful heuristic for organizing historical periods, there are justices included in this sample that served well before and well after Burger's tenure. And there is no evidence that particular instances of go-along voting by other justices were connected to Burger's presence. There are even reasons to wonder whether acquiescing may be somewhat more common now than during Burger's tenure. The time period covered by this sample is well known to have been unusually turbulent (see, e.g., Woodward and Armstrong 1979), and go-along voting may be more common with increased collegiality. Furthermore, Chief Justice Roberts has publicly advocated for more consensus, and the justices voted unanimously more often in its most recently completed term (OT 2013) than it had in more than a half-century despite being highly polarized ideologically (Katyal 2014). It is likely that most of the recent gains in unanimity owe more to agenda-setting decisions and the production of narrow opinions, but it is possible that acquiescence plays a role as well. Although the definitive resolution of these questions must be left for future research, the results presented here offer an important glimpse into the norm of go-along voting on the Supreme Court.

[23]According to data collected from the Federal Judicial Center, the average number of written opinions per term delivered by the Burger Court was about 152 compared to 76 in 2012. The average docket size per term during the Burger Court was about 4,811 cases compared to 8,806 cases in 2012.

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REFERENCES

Asch, Solomon E. 1955. "Opinions and Social Pressure." *Scientific American* 193: 31–5.

Astrup v. Immigration and Naturalization Service, 402 U.S. 509 (1971).

Bank of United States v. Dandridge, 25 U.S. 64 (1827).

Bartels, Brandon L. 2011. "Choices in Context: How Case-Level Factors Influence the Magnitude of Ideological Voting on the U.S. Supreme Court." *American Politics Research* 39: 142–75.

Black, Ryan C., Maron W. Sorenson, and Timothy R. Johnson. 2013. "Toward an Actor-Based Measure of Supreme Court Case Salience: Information-Seeking and Engagement during Oral Arguments." *Political Research Quarterly* 66: 804–18.

Blake, William D., and Hans J. Hacker. 2010. "'The Brooding Spirit of the Law': Supreme Court Justices Reading Dissents from the Bench." *Justice System Journal* 31: 1–25.

Brennan, William J., Jr. 1986. "In Defense of Dissents." *Hastings Law Journal* 37: 427–38.

Brenner, Saul. 1984. "Issue Specialization as a Variable in Opinion Assignment on the U.S. Supreme Court." *Journal of Politics* 46: 1217–25.

Brown v. Board of Education, 347 U.S. 483 (1954).

Caldeira, Gregory A., and Christopher J. W. Zorn. 1998. "Of Time and Consensual Norms in the Supreme Court." *American Journal of Political Science* 42: 874–902.

Collins, Paul M., Jr. 2004. "Friends of the Court: Examining the Influence of Amicus Curiae Participation in U.S. Supreme Court Litigation." *Law & Society Review* 38: 807–32.

———. 2008. *Friends of the Supreme Court: Interest Groups and Judicial Decision Making*. New York: Oxford University Press.

Corley, Pamela C., Robert M. Howard, and David C. Nixon. 2005. "The Supreme Court and Opinion Content: The Use of the Federalist Papers." *Political Research Quarterly* 58: 329–40.

Corley, Pamela C., Amy Steigerwalt, and Artemus Ward. 2013. *The Puzzle of Unanimity*. Stanford: Stanford University Press.

Cross, Frank B., and Emerson H. Tiller. 1998. "Judicial Partisanship and Obedience to Legal Doctrine: Whistelblowing on the Federal Court of Appeals." *Yale Law Journal* 107: 2155–76.

Curry, Brett, and Banks Miller. n.d. "Judicial Specialization and Ideological Decision Making in the U.S. Courts of Appeals." *Law & Social Inquiry*, Forthcoming.

Edwards, Harry T. 2003. "The Effects of Collegiality on Judicial Decision Making." *University of Pennsylvania Law Review* 151: 1639–90.

Epstein, Lee, and Jack Knight. 2013. "Reconsidering Judicial Preferences." *Annual Review of Political Science* 16: 11–31.

Epstein, Lee, William M. Landes, and Richard A. Posner. 2013. *The Behavior of Federal Judges: A Theoretical and Empirical Study of Rational Choice*. Cambridge: Harvard University Press.

Epstein, Lee, and Jeffrey A. Segal. 2000. "Measuring Issue Salience." *American Journal of Political Science* 44: 66–83.

Epstein, Lee, Jeffrey A. Segal, and Harold J. Spaeth. 2001. "The Norm of Consensus on the U.S. Supreme Court." *American Journal of Political Science* 45: 362–77.

Ginsburg, Ruth Bader. 1990. "Remarks on Writing Separately." *Washington Law Review* 65: 133–50.

———. 2010. "The Role of Dissenting Opinions." *Minnesota Law Review* 95: 1–8.

Goelzhauser, Greg. 2011. "Avoiding Constitutional Cases." *American Politics Research* 39: 483–511.

Goldman, Sheldon. 1969. "Backgrounds, Attitudes and the Voting Behavior of Judges: A Comment on Joel Grossman's Social Backgrounds and Judicial Decisions." *Journal of Politics* 31: 214–22.

Granberg, Donald, and Brandon Bartels. 2005. "On Being a Lone Dissenter." *Journal of Applied Social Psychology* 35: 1849–58.

Hansford, Thomas G. 2004. "Information Provision, Organizational Constraints, and the Decision to Submit an Amicus Curiae Brief in a U.S. Supreme Court Case." *Political Research Quarterly* 57: 219–30.

Hansford, Thomas G., and James F. Spriggs II. 2006. *The Politics of Precedent on the U.S. Supreme Court.* Princeton: Princeton University Press.

Haynie, Stacia L. 1992. "Leadership and Consensus on the U.S. Supreme Court." *Journal of Politics* 54: 1158–69.

Hendershot, Marcus E., Mark S. Hurwitz, Drew Noble Lanier, and Richard L. Pacelle, Jr. 2012. "Dissensual Decision Making: Revisiting the Demise of Consensual Norms within the U.S. Supreme Court." *Political Research Quarterly* 66: 467–81.

Hettinger, Virginia A., Stefanie A. Lindquist, and Wendy L. Martinek. 2004. "Comparing Attitudinal and Strategic Accounts of Dissenting Behavior on the U.S. Courts of Appeals." *American Journal of Political Science* 48: 123–37.

Hoekstra, Valerie, and Timothy Johnson. 2003. "Delaying Justice: The Supreme Court's Decision to Hear Reargruments." *Political Research Quarterly* 56: 351–60.

Hosmer, Jr. David W. Stanley Lemeshow, and Rodney X. Sturdivant. 2013. *Applied Logistic Regression.* 3rd ed. Hoboken: Wiley.

Hughes, Charles Evans. 1928. *The Supreme Court of the United States*. New York: Columbia University Press.

Hurwitz, Mark S., and Drew Noble Lanier. 2004. "I Respectfully Dissent: Consensus, Agendas, and Policymaking on the U.S. Supreme Court, 1888–1999." *Review of Policy Research* 21: 429–45.

Irving Independent School District v. Tatro, 468 U.S. 883 (1984).

Jefferson, Thomas. 1820. Letter to Thomas Ritchie. December 25, 1820.

Johnson, Timothy R. 2003. "The Supreme Court, the Solicitor General, and the Separation of Powers." *American Politics Research* 31: 426–51.

Johnson, Timothy R., James F. Spriggs II, and Paul J. Wahlbeck. 2005. "Passing and Strategic Voting on the U.S. Supreme Court." *Law & Society Review* 39: 349–78.

Kastellec, Jonathan P. 2007. "Panel Composition and Judicial Compliance on the U.S. Court of Appeals." *Journal of Law, Economics, & Organization* 23: 421–41.

Katyal, Neal K. 2014. "The Supreme Court's Powerful New Consensus." *New York Times*, June 27, A26.

King, Gary, and Langche Zeng. 2001a. "Logistic Regression in Rare Events Data." *Political Analysis* 9: 137–63.

———. 2001b. "Explaining Rare Events in International Relations." *International Organization* 55: 693–715.

Klarman, Michael J. 2004. *From Jim Crow to Civil Rights: The Supreme Court and the Struggle for Racial Equality*. New York: Oxford University Press.

Martin, Andrew D., and Kevin M. Quinn. 2002. "Dynamic Ideal Point Estimation via Markov Chain Monte Carlo for the U.S. Supreme Court, 1953–1999." *Political Analysis* 10: 134–53.

Maltzman, Forrest, and Paul J. Wahlbeck. 1996a. "Strategic Policy Considerations and Voting Fluidity on the Burger Court." *American Political Science Review* 90: 581–92.

———. 1996b. "Inside the U.S. Supreme Court: The Reliability of the Justices' Conference Records." *Journal of Politics* 58: 528–539.

Maltzman, Forrest, James F. Spriggs II, and Paul J. Wahlbeck. 2000. *Crafting Law on the Supreme Court: The Collegial Game*. New York: Cambridge University Press.

Nannes, John M. 2006. "The 'Lone Dissenter.'" *Journal of Supreme Court History* 31: 1–4.

Noelle-Neuman, Elisabeth. 1993. *The Spiral of Silence: Public Opinion—Our Social Skin*. Chicago: University of Chicago Press.

Peduzzi, Peter, John Concatto, Elizabeth Kemper, Theodore R. Holford, and Alvan R. Feinstein. 1996. "A Simulation Study of the Number of Events per Variable in Logistic Regression Analysis." *Journal of Clinical Epidemiology* 49: 1373–9.

Posner, Richard A. 1993. "What Do Judges and Justices Maximize? (The Same Thing Everybody Else Does)." *Supreme Court Economic Review* 3: 1–41.

———. 2008. *How Judges Think*. Cambridge: Harvard University Press.

Powell, Lewis F. 1990. "Stare Decisis and Judicial Restraint." *Washington & Lee Law Review* 47: 281–90.

Salamone, Michael F. 2014. "Judicial Consensus and Public Opinion: Conditional Response to Supreme Court Majority Size." *Political Research Quarterly* 67: 320–34.

Scalia, Antonin. 1994. "The Dissenting Opinion." *Journal of Supreme Court History* 19: 33–44.

Segal, Jeffrey A., and Harold J. Spaeth. 2002. *The Supreme Court and the Attitudinal Model Revisited*. New York: Cambridge University Press.

Spriggs, James F., and Paul J. Wahlbeck. 1997. "Amicus Curiae and the Role of Information at the Supreme Court." *Political Research Quarterly* 50: 365–86.

Stevens, John Paul. 2011. *Five Chiefs: A Supreme Court Memoir*. New York: Little, Brown.

Sunstein, Cass R. 2014. "Unanimity and Disagreement on the Supreme Court." Working Paper.
Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1 (1971).
Taylor, Richard. 1990. "Interpretation of the Correlation Coefficient: A Basic Review." *Journal of Diagnostic Medical Sonography* 6: 35–9.
The Nereide, Bennett, Master, 13 U.S. 388 (1815).
Unah, Isaac, and Ange-Marie Hancock. 2006. "U.S. Supreme Court Decision Making, Case Salience, and the Attitudinal Model." *Law & Policy* 28: 295–320.
Vittinghoff, Eric, and Charles E. McCulloch. 2006. "Relaxing the Rule of Ten Events per Variable in Logistic and Cox Regression." *American Journal of Epidemiology* 165: 710–18.
Walker, Thomas G., Lee Epstein, and William J. Dixon. 1988. "On the Mysterious Demise of Consensual Norms in the United States Supreme Court." *Journal of Politics* 50: 361–89.
Wahlbeck, Paul J., James F. Spriggs II, and Forrest Maltzman. 1999. "The Politics of Dissents and Concurrences on the U.S. Supreme Court." *American Politics Research* 27: 488–514.
Wahlbeck, Paul J., James F. Spriggs II, and Forrest Maltzman. 2011. The Burger Court Opinion-Writing Database. http://supremecourtopinions.wustl.edu.
White, G. Edward. 1991. *The Marshall Court and Cultural Change, 1815–1835*. New York: Oxford University Press.
Woodward, Bob, and Scott Armstrong. 1979. *The Brethren: Inside the Supreme Court*. New York: Simon & Schuster.
Wrightsman, Lawrence S. 2006. *The Psychology of the Supreme Court*. New York: Oxford University Press.
———. 2008. "Persuasion in the Decision Making of U.S. Supreme Court Justices." In *The Psychology of Judicial Decision Making*, edited by David Klein and Gregory Mitchell, 57–72. New York: Oxford University Press.
Zink, James R., James F. Spriggs II, and John T. Scott. 2009. "Courting the Public: The Influence of Decision Attributes on Individuals' Views of Court Opinions." *Journal of Politics* 71: 909–25.