

## **The Public Administration of the Supreme Court: The Chief Justice, Management, and Consensus**

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### **Abstract**

In this paper, we draw on a prominent model of public management to develop a preliminary theoretical approach to understanding the role of the chief justice in Supreme Court decision-making. In particular, we argue that Court may seek *legitimacy* through greater *unanimity* and discuss how the *leadership* of the chief justice can facilitate that effort. We assess two hypotheses derived from this theory, showing that increased efficiency in the chief justice's use of his formal powers over his tenure in office and greater agreement among the justices as the incumbent chief justice's tenure in office increases. We argue that these results provide support for further attention to and development of a public administration-based approach to the study of Supreme Court decision-making.

Paper prepared from presentation at the 2012 Annual Meeting of the Southern Political Science Association, New Orleans, Louisiana.

Following the initial round of oral arguments in *Brown v. Board of Education* (1954) in December 1952, the nine justices of the Supreme Court were divided about the outcome of the case and the constitutional reasoning that might support invalidating the legal segregation of public education in the United States (Klarman 2007; Kluger 2004; Tushnet and Lezin 1991).

[F]our of them—Black, Douglas, Burton, and Minton—thought that school segregation was plainly unconstitutional... Two of them—Vinson and Reed—probably leaned toward reaffirming *Plessy*. The other three—Frankfurter, Jackson, and Clark—were apparently ambivalent (Klarman 2007, p. 76).

Chief Justice Vinson's death in September 1953 and his replacement by Earl Warren created a firm (though minimal) majority in favor of desegregation and catalyzed the process by which a "split [Court] became a 9-0 ruling against segregation" (Klarman 2007, p. 77).

Indeed, Chief Justice Warren did not merely provide a key vote in favor of overturning *Plessy v. Ferguson* (1896), at least as it applied to public education. He assigned responsibility for drafting the opinion of the Court to himself and set about the task of crafting a majority opinion (and later a decree implementing the Court's decision) that would attract the unanimous support of his fellow justices in order to protect and enhance the public legitimacy of the decision in *Brown* and the Supreme Court itself (Klarman 2007; Kluger 2004; Tushnet and Lezin 1991). In particular, Warren drafted an opinion that compromised the more aggressive stance of the majority's core with those of Justices Frankfurter and Jackson, who were especially concerned with presenting a compelling constitutional rationale for overturning an established precedent and in developing a decree permitting states the opportunity for "gradual adjustment" from their (Tushnet and Lezin 1991, p. 1909; see also Uhlmann 2004).

Ultimately, Chief Justice Warren was able to produce an opinion that successfully accommodated the diverse views of the other justices and which was joined unanimously. It would obviously be a mistake to attribute the Court's unanimity entirely to the actions of Chief Justice Warren. If nothing else, he joined a Court in which at least four other justices were prepared to overrule *Plessy* outright. Yet, even skeptics of the "standard view" of the evolution of the Court's unanimous decision in *Brown* concede that "in the end what mattered... was indeed Warren's ability to accommodate the conflicting views of his colleagues" (Tushnet and Lezin 1991, p. 1867). In particular Warren "accommodated" his colleagues who may have been inclined to write separately or, perhaps, even dissent from the Court's decision by implicitly trading a nonunanimous decision with policy implications and legal reasoning more nearly in line with his own preferences and thinking for a unanimous decision more distant from his preferred alternative.

The history of the Court's unanimous decision in the school segregation cases consolidated as *Brown v. Board of Education* (1954)—and of the important role of Chief Justice Earl Warren in forging that decision—is familiar to many scholars of judicial politics and public law. Yet, the story of *Brown* illustrates a process that is essentially foreign to political science theories of judicial behavior and the development of legal policy by collegial courts. Attitudinal theories of judicial behavior emphasize justices' strict adherence to personal policy preferences in matters of decision-making (e.g. Segal and Spaeth 1993, 2002). Strategic theories of judicial behavior emphasize justices' ability to "bargain, negotiate, and compromise in an attempt to bring legal policy as close as possible to their preferred alternatives" (Johnson, Spriggs, and Wahlbeck 2005, p. 350; see also Epstein and Knight 1998, Maltzman, Spriggs, and Wahlbeck 2000; Sill, Ura, and Haynie 2010). More recent syntheses of attitudinal and strategic claims with traditional models of legal decision-making likewise emphasize some justices' apparent interest in producing decisions consistent with exogenous legal principles or philosophies, even at the expense of

preferred policy outcomes (Bailey and Maltzman 2011). In *Brown*, though, Chief Justice Warren assumed authorship of the opinion in order to ensure the Court's unanimity in the case's result, reasoning, and decree in order to enhance the public legitimacy of the decision and the Court even at the cost of his preferred policies and legal arguments.

Though only a single episode in the Court's long history, the story of *Brown v. Board of Education* (1954) indicates both a dimension of Supreme Court decision-making and a role of the chief justice that has been underappreciated by scholars of judicial politics within political science. In particular, the history of *Brown* indicates how the Court may seek *legitimacy* through greater *unanimity* and how the *leadership* of the chief justice can facilitate that effort. This suggests a more general theoretical relationship between the leadership capacity of the chief justice and the quality of the Supreme Court's decisions in terms of their prospects for supporting the legitimacy of the Court.

Synthesizing this intuition with on a model of public management due to Meier and O'Toole (1999), we articulate a theory of the chief justice's role on the United States Supreme Court. In particular, theories of public administration tend to emphasize the effects of management on the quality of outcomes produced by an institution rather than by its ability to produce outcomes consistent with a particular political ideology or by a particular process. This approach suggests that the leadership of the Supreme Court, embodied formally in the office of the chief justice, has a special interest in producing outcomes of high quality for his institution rather than merely producing outcomes consistent with his personal policy preferences or legal philosophy. Unlike prior theoretical accounts of the chief justice's role in Supreme Court decision-making, we do not view the chief as a merely justice of ordinary motivation (perhaps political) with some extra-ordinary institutional prerogatives (e.g. the ability to assign opinion authorship when voting with a conference majority). Instead, we consider the chief justice as a "manager" who exerts leadership on his institution to improve the quality of its outputs in terms of the standing of the institution itself.

This public management approach yields testable predictions about both the behavior of the chief justice and his influence on the Court. Specifically we build on the simple but important prediction woven into the public management literature that experience in a given position or role is associated with improved performance and efficiency in that position. Considering the chief justice alone, our theory predicts that the length of a chief's tenure in office should be positively associated with the strategic application of his institutional prerogatives. Considering the Court as a whole, our theory predicts that the length of a chief justice's tenure in office should be positively associated with the typical level of consensus in votes in the merits in cases decided by the Court.

We assess the first expectation by replicating Johnson, Spriggs, and Wahlbeck's (2005) study of chief justices' "strategic passing" in conference voting and then extending the analysis to account for variance due to the chief justice's experience in office. We test the second by modeling the average number of dissenting votes in signed opinions of orally argued cases in each term of the Supreme Court from 1946 through 2010 as a function of the length of chief justices' tenure in office, controlling for the ideological variance among the justices of the Court, the composition of the Court's docket, the justices' prior judicial experience, and the resource support made available to the justices by Congress. In both cases, the data indicate significant support for hypotheses derived from our public administration-based account of the chief justice's behavior on and influence over the Supreme Court. These results indicate an important, new perspective on the role of the chief justice for Supreme Court decision-making and new possibilities for applying theories of public administration to judicial politics.

## Supreme Court Decision-Making and the Chief Justice

Scholars have developed several models of Supreme Court decision-making, emphasizing various facets of its unique institutional standing. Most simply, the Supreme Court is conceptualized as a legal institution in which justices reach decisions through the neutral application of established legal rules (e.g. Brisbin 1996; Weschler 1959; White 1978). This legal model of Supreme Court decision-making is frequently embraced by members of the legal profession, scholars of law, and jurists themselves (e.g. Roberts 2005).

Alternatively, political scientists have frequently asserted that Supreme Court justices are motivated, to a greater or lesser degree, by various extralegal factors including the quality of oral arguments (Johnson 2004), litigants' status or expertise (Bailey, Kamoie, and Maltzman 2005; McGuire 1993), and, perhaps most importantly, justices' personal policy preferences (e.g. Segal and Spaeth 2002). Additionally, political scientists have identified a number of institutional considerations, both between branches of government and within the Court itself, which may lead justices to act strategically in pursuit of their legal policy objectives. Externally, various theories of Supreme Court decision-making emphasize the need to avoid congressional court curbing and to maintain public support constrain Supreme Court decision-making to some degree (Casillas, Enns, and Wohlfarth 2011; Clark 2009; Ura and Wohlfarth 2010). Internally, numerous theoretical accounts of decision-making on the United States Supreme Court suggest that justices engage in a variety of strategic behaviors aimed at crafting majority opinions which, as nearly as possible, create legal policy consistent with their preferred alternatives (Epstein and Knight 1998; Maltzman, Spriggs, and Wahlbeck 2000).

It is principally within this final theoretical framework, emphasizing the strategic considerations which arise internally among members of a collegial court, that the role of the chief justice has been most fully investigated. Political scientists have devoted special attention to the ways that the chief justice may use the unique prerogatives of his office—especially his ability to assign authorship for the opinion of the Court when he votes with the majority on the merits—to influence the development of legal policy in the Court's decisions (Maltzman, Spriggs, and Wahlbeck 2000; Johnson, Spriggs, and Wahlbeck 2005). Yet, systematic empirical analysis of the chief justices' behavior concludes that the chief's ability to influence legal policy is substantially “conditional” and “constrained...by the prevailing political and institutional context of the Court” (Maltzman, Spriggs, and Wahlbeck 2000 p. 55; Johnson, Spriggs, and Wahlbeck 2005; Sill, Ura, and Haynie 2010).

Taking a step back, though, it is clear that the chief justice is typically understood as a justice of ordinary motivation with some extra-ordinary institutional prerogatives. That is, the chief is motivated by some combination of his personal politics and individual taste in legal reasoning, as are other justices. He simply has some tools available to advance those interests which are not available to the other justices in most circumstances.

This approach to the role of the chief justice presents a stark contrast with historical accounts (as well as some political science research in the domain of American political development) of the important role played by various chief justices in leading the Court, especially in periods in which the institutional integrity of the Court was threatened or the provenance of the Court was expanding. Chief Justices Marshall (Johnson 1997; Smith 1996), Taney (Lewis 1965; Steiner 1922), Hughes (Hendel 1951), and Warren (Belknap 2004; Schwartz 1983) are often described as important leaders of the Court whose actions preserved or expanded some degree of judicial independence. The canonical example of this is, of

course, Chief Justice Marshall's leadership of a unanimous Court asserting the power of constitutional review of acts of Congress in *Marbury v. Madison* (1803).

These historical claims are important for illustrating a dimension of the chief justice's motives that is unaddressed by most political science theories of the chief's role on the Supreme Court. Though the chief, like other justices, has political and legal motives, the historical evidence suggests that chief justices assume a relatively unique role as the leader of the Court in its ongoing efforts to establish, expand, and defend judicial independence. This role is manifest through the chief justice's efforts to lead the Court to offer decisions and opinions that enhance the public legitimacy of the Supreme Court. Put somewhat differently, there historical evidence of various chief justices using the formal and informal powers of their office to produce decisions motivated by concerns for the institution of the judiciary rather than public policy or law.

Individual chief justices demonstrated concern for the development of the Supreme Court as an institution and their attendant actions in shaping the Court's actions in service of that goal suggest a "public management" dimension of the chief justice's role on the Supreme Court. In other words, the historical record indicates that chief justices use the powers and standing of the office to influence the other justices of the Supreme Court to produce decisions of greater value for the development of judicial independence rather than or in addition to their value for public policy or law. This concern for quality rather than ideology or process is, in some respects, the critical divide between that which is managerial or administrative and that which is more broadly political.

### **Public Administration Theory**

Given the historical observation of behaviors consistent with public management on the part of at least some chief justices, it is, perhaps, possible to elaborate a theoretical account of the chief justice as a public manager of the Supreme Court by drawing on a general theoretical account of public management and public administration. Meier and O'Toole's (1999) formal model of public management provides a useful point of departure. The model provides a parsimonious account of the extensive case study literature public management and administrative systems.

The base model of public management is:  $O_t = \beta_1 (S + M_1) O_{t-1} + \beta_2 (X_t/S) (M_3/M_4) + e_t$

Where

O is an outcome of the organization,

S is stability within the organization,

M is management, which is divided into three parts:

$M_1$  – internal management of an organization,

$M_3$  – management's efforts to exploit the environment of the organization,

$M_4$  – management's effort to buffer the organization from environmental shocks,

X is a vector of environmental forces,

e is an error term,

subscripts with  $t$  denote time periods, and

$\beta_1$  and  $\beta_2$  are estimable parameters.

Meier and O'Toole further define  $M_2$  as the ratio of  $M_3$  to  $M_4$ , representing management's total efforts oriented to maximizing the benefits and minimizing costs associated with an organization's environment.

The first component of the model,  $O_t$  (the term on the left hand side of the equation), is an organization's output. In theoretical and empirical accounts of public management, this output is almost always some achievement indicative of the quality of an organization's product or performance rather than the mechanism or process used to achieve the outcome. For example, the left hand side of the Meier-O'Toole management model indicates outcomes like test scores and graduation rates, in the context of public education, rather than whether a school district permits charter schools or whether its programs meet given accreditation criteria (Meier and O'Toole 2002). Outcomes are measured in terms of quality and not in terms of their location in some policy space nor in terms of the specific methods or processes by which they were produced.

The right hand side of the model can be broken down into five distinct parts: organizational inertia from the recent past performance of the organization, a stability component and three different functions of management. First, the influence of prior practices and performance on an organization's outputs is indicated by an autoregressive outcome term,  $O_{t-1}$ . The second component, stability (denoted  $S$  in the model), refers to any one of five different components of an organization's operations: structure, mission, productions, procedural, and personnel (O'Toole and Meier 2003).

The first function of management is internal management operations (the  $M_1$  term). One such example of internal operations is whether or not to contract out organization tasks to external actors or to provide the service within the organization. Other conceptualizations of internal management include managing upward, downward, and outward (O'Toole et al. 2005).

The final two managerial functions (in the model  $M_3$  and  $M_4$ , together  $M_2$ ) represent the environmental factors. Manager's efforts to exploit the interdependent environment are captured in the  $M_3$  term. The  $M_4$  term is the manager's efforts to buffer negative factors in the environment from harming the organization. These terms are the external or environmental management. This environmental portion of the public management model has been explored through managers' networking choices (Meier and O'Toole 2001).

Previous scholarship has (implicitly at least) applied some elements of this public management or public administration perspective to develop theories of federal judicial politics. However, some studies have joined the management and courts literatures. For example, McGuire (2004) provides a theory of the relationship between the structural resources available to the Supreme Court ( $M_4$ ), which he refers to as "institutionalization," and the Court's propensity to declare state and federal laws unconstitutional and to issue important decisions (see also Ura and Wohlfarth 2010). Lindquist et al. (2007) show how the management practices of the Supreme Court over the circuits change through time finding that the auditing process of circuit courts by the Supreme Court is shaped by structural capacity, institutionalization, and demographic characteristics ( $S$ ). Crowe (2007) qualitatively suggests that William Howard Taft's use of networks was instrumental in creating judicial autonomy ( $M_3$ ). Vining et al. (2006) found that Supreme Court turnover—part of the stability term ( $S$ ) of the management model—is attributed to the caseload amount and prestige of position.

While existing studies of the federal judiciary in general, and the Supreme Court in particular, have examined various ways that courts' organization stability ( $S$ ) or management of environmental forces ( $M_2$ ) influence the judiciary's institutional development, workload, or decision-making, attention to internal management has been neglected. Indeed, at least one prominent scholar of public administration

asserts that, “[c]ourts are institutions with very little  $M_1$ ” (Meier 2007, p. 6).<sup>1</sup> Despite these suspicions, though, qualitative, historical evidence of the chief justices’ actions to create consensus on the Supreme Court to enhance the legitimacy of the Court’s decisions and the Court itself are indicative of  $M_1$ -style internal management. By expressly applying Meier and O’Toole’s (1999) management model to the chief justice, we may generate novel hypotheses positing ordinary dynamics of public management within the Supreme Court of the United States, which may then be subjected to empirical scrutiny.

### **Applying the Management Model to the Chief Justice**

Meier and O’Toole’s (1999) model of public management is conceptually oriented toward explaining the quality of organization outcomes. In the context of collegial courts, of course, the relevant outputs are decisions and opinions. Yet, scholarly accounts—at least those produced within political science—of the process by which these outputs are produced tend to conceptualize decisions’ policy implications (their locations in a policy space) as their most salient feature. Many of the rest tend to consider decisions’ consistency with precedent or established principles of legal reasoning. The first emphasizes the political or ideological influence of judicial decisions; the second emphasizes decisions’ consistency with principles of legal reasoning. Bridging the theoretical gap between attitudinal, strategic, and legal accounts of the behavior of the chief justice and the public management or public administration perspective is the identification of some dimension of Supreme Court decision-making indicative of “quality” in terms of the institutional development, standing, or independence of the judiciary.

Studies of the political construction of judicial independence emphasize the important role of diffuse public support for the Supreme Court and its decisions in insulating the Court from congressional court curbing and public noncompliance with unpopular decisions (for recent examples see Clark 2009; Friedman 2009; Ura and Wohlfarth 2010). Likewise, a related literature emphasizes that individuals’ perceptions of procedural fairness are critical for supporting courts’ legitimacy in the public mind (e.g., Benesh 2006; Caldeira and Gibson 1992; Gibson 1989; Lind and Tyler 1988). Within this literature, scholars have identified features or attributes of individual decisions that are most important for promoting perceptions of an institution’s commitment to fair procedures and, by extension, institutional legitimacy. In particular, scholars have identified consensus in decisions along with consistency with established precedent and as an important factor in shaping individual perceptions of judicial decisions (Zink, Spriggs, and Scott 2009). Thus, all else being equal, a Supreme Court decision reflecting greater consensus among the justices is more valuable to the standing and independence of the judiciary than an opinion reflecting less consensus.

By extension, the institutional value of consensus provides unique incentives for justices playing a variety of roles in a given case. For a justice making an opinion assignment, the value of consensus would indicate positive utility for assigning opinions to more ideologically moderate members of majority coalitions to improve the prospects of preserving and, perhaps, expanding the majority in a given case. Likewise, for a justice writing a majority opinion, the legitimizing role of consensus suggests value in compromising an opinion’s policy pronouncements or legal reasoning in order to preserve or augment the size of the majority coalition. A justice who is not an opinion author, similarly, has incentives to join a majority coalition despite disagreements with Court’s decision or reasoning in a given case.

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<sup>11</sup> Meier (2007) attributes the lack of internal management in the judiciary to a possible hereditary defect in members of the bar: “While it may be genetic, lawyers for some reason appear to have no management skills whatsoever” (p. 6).

Justices' pursuit of consensus to enhance the standing of their institution is complicated in at least two ways, though. First, justices must balance the value of agreement with their colleagues against the value they attach to voting and writing in accord with their personal policy preferences and methods of legal reasoning. This presents justices with an extra complication in their familiar, if not easily resolved, problem of balancing personal policy preferences, legal principles, and strategic considerations in taking action on the Court (Bailey and Maltzman 2011; Epstein and Knight 1998; Maltzman, Spriggs, and Wahlbeck 2000). Second, and more uniquely, institutional legitimacy is a public good for the justices, which is to say that the public standing of the Court is jointly supplied to all justices and from which a member of the Court cannot be uniquely excluded. The public character of the value of institutional legitimacy creates potential for a collective action problem among the justices of the Supreme Court (Olson 1965).

However, as Olson (1965) points out, the "small group" setting of the Supreme Court creates two dynamics which may mitigate justices' propensity to free ride on the legitimizing activities of their brethren. The first of these is that, in a small group, there is often greater potential for an individual's contribution to actually be pivotal in the provision of a public good than in a large group. Second, in a small group, individuals who do not contribute to public goods may be easily identified and subjected to "social pressure and social incentives" by the remaining members of the group (Olson 1965, p. 62).

The "small group" nature of the Court's structure and the availability of information on contributions to the public good of institutional legitimacy along with the prospects for informal sanctioning of free-riding justices suggests at least two possible mechanisms for the chief justice to exercise internal management of the Supreme Court ( $M_1$ ) and work toward greater public agreement among the justices. First, the chief may make direct appeals to individual justices, them reminding of the importance of their individual decisions to join a majority for the public standing of a decision or of the Court as an institution. These appeals may take the form of the familiar written memoranda circulated among the justices or actual conversations between the chief and other justices. Historically, this type of direct, personal intervention on the part of the Chief Justice has been credited, at least in part, with Justice Jackson's decision to join the majority in *Brown v. Board of Education* (1954) without writing separately (e.g. Kluger 2007) and with Justice Roberts's decision to abandon his opposition to the New Deal, which eliminated the political impetus for Franklin Roosevelt's court-packing plan (Leuchtenburg 2005). Second, the chief may impose informal sanctions on justices who are not complicit in the Court's project of preserving and expanding its institutional capacity by, for example, redirecting important opinion assignments to other justices or imposing a disproportional workload on a recalcitrant colleague.

### **Identifying Internal Management and Its Effects on Supreme Court Decision-Making**

Prior studies of collegial dynamics in Supreme Court decision-making already suggest an public management,  $M_1$  dimension in the behavior of the chief justice. For example, numerous studies indicate that the chief justice's opinion assignments are significantly influenced by other justices' established records of substantive expertise and by the distribution of justices' workloads (Baum 1997; Brenner 1984, 1985; Brenner and Palmer 1988; Maltzman, Spriggs, and Wahlbeck 2000; Maltzman and Wahlbeck 1996; Spaeth 1984). The chief is more likely to repeatedly assign opinion authorship in a given issue area to the same justice or subset of justices rather than making opinion assignments without regard for justices' prior experience writing on an issue. This sort of specialization and standardization of operating procedures are indicative of internal management of public organizations (Meier and O'Toole 2011). Also, Sill, Ura, and Haynie (2010) report that the chief justice tends to assign opinions in politically salient cases to more

moderate members of majority coalitions. This latter result is consistent with a desire to preserve or augment the size of a majority coalition when the public is most likely to pay attention to the Supreme Court's decisions.

In addition to glean evidence of internal management ( $M_1$ ) from prior studies of the role of the chief justice on the Supreme Court, we may make and assess novel, positive predictions about the dynamics of  $M_1$  on the high court. Here, we focus on two issues: how experience in office influences the behavior of the chief justice and how the chief justice's experience in office influences patterns of decision-making on the Court as a whole.

As part of this gained knowledge and trust, managers gain power in another way: the more effective use of informal powers as opposed to formal ones. When managers understand their environment and colleagues trust them, employees are more likely to follow the manager's orders without formal commands.

The public management literature identifies experience in office as a key predictor of an incumbent's success and efficiency in office (e.g. Hambrick and Fukutomi 1991). Studies of managers indicate that as manager tenure in office increases, the more power a manager obtains. This is attributed to managers evolving in their level of task knowledge for the organization. Furthermore, more time in one position leads to increased trust from coworkers—an essential element to yield more power and to become a better manager in an organization. This equivalence between experience and performance among public managers has a well-established parallel in studies of judicial politics. Throughout the courts literature, scholars have identified a variety of “freshman effects” in the behavior of Supreme Court justices (Howard 1968; Brenner and Hagle 1996) which indicate that jurists' behavior very early in their tenure in office varies systematically from later behavior. It takes some period of time for new justices to become comfortable with and take on all the responsibilities of their position (Howard 1968; Brenner and Hagle 1996). More time spent on the job results in added knowledge of how to functionally accomplish tasks within an organization. Once justices learn their job and gain the trust of their colleagues, they can take more control over their surroundings and influence outcomes.

Extrapolating this principle to the chief justice leads to two related predictions about the internal management of the Supreme Court and its effects. First, we expect that as a chief justice's tenure in office increases so will the quality of his performance as a public manager. Second, we expect that as the chief justice's tenure in office increases, the typical level of agreement among the justices on cases decided by the Court will increase. Evidence consistent with the first prediction helps establish the existence of basic dynamics of public management within the Supreme Court. Evidence supporting the second prediction is indicative of effects of management consistent with our theoretical claims identifying greater consensus in Supreme Court decision's with their “quality” and the role of the chief justice in promoting agreement among the justices.

### **Assessing the Effect of Experience on the Chief Justice's Management Performance**

To test the expected link between tenure in office and the quality of a chief justice's internal management ( $M_1$ ) of the Supreme Court, we turn to the literature addressing the chief justice's strategic behavior in conference voting. Following oral arguments, the justices of the Supreme Court meet in conference to discuss each case and cast preliminary votes on its outcome. Discussion of the cases begins with the chief justice and proceeds through the associate justices in order of seniority. Typically, justices cast their preliminary vote on the merits of each case at the conclusion of any remarks they may make in

the conference's discussion. Thus, the chief justice typically casts the first vote in each case, followed by the senior associate justice, and so forth. Following the conference vote, a justice is assigned to draft an opinion for the majority in each case. When the chief justice is in the majority, he is responsible for making the opinion assignment. When the chief justice is not in the majority, the senior associate justice in the majority coalition assigns the opinion.

Though opinion assignments are often constrained, or at least influenced, by contextual and administrative concerns, such as the justices' substantive expertise and workloads, the literature indicates that chief justices and senior associate justices may use their prerogative to assign opinions to influence the political character of the Supreme Court's decisions by assigning opinions to themselves or to their political allies on the Court (Brenner 1973; Ulmer 1970; Rohde 1972; Rohde and Spaeth 1976; Segal and Spaeth 1993; Slotnick 1978). Although the literature suggests that these political dynamics play only a marginal and conditional role in the opinion assignment process and for the opinions ultimately produced by the Supreme Court, the opinion assignment process provides strategic justices with an important opportunity to influence legal policy and create outcomes more consistent with their preferred alternatives.

Because of the opportunity to influence legal policy through opinion assignments, scholars have argued that the chief justice and more senior associate justices may engage in strategic behavior during conference voting to take on responsibility for opinion assignments (Johnson, Spriggs, and Wahlbeck 2000; Sill, Ura, and Haynie 2010). In particular, scholars have identified the chief justice's (and, less often, senior associate justices') occasional practice of "passing" or withholding his vote during the initial round of conference voting in order to preserve his opportunity to join a conference majority and control the opinion assignment. By passing, the chief can gain additional information about the votes of other justices and join a majority coalition with greater certainty.

There is much anecdotal evidence of this practice among chief justices, though Chief Justice Burger was an especially frequent passer. Woodward and Armstrong (1979) report that in the case of *Thermtron Products Inc. v. Hermansdorfer* (1975) Chief Justice Burger stated in the ordinary course of conference discussion that he "would vote" to uphold the district court's decision to remand the case to a state court because the relevant federal court was unable to add the case to its docket due to time constraints, a minority position joined only by Justices Stewart and Rehnquist. As the senior associate justice in the majority, Justice Brennan began to assign the opinion to Justice White. Chief Justice Burger interrupted Brennan and claimed that he had, in fact, not cast a final vote during the original discussion of the case, drawing a distinction between actually casting a vote and his literal statement that he "would vote" to affirm. Chief Justice Burger then announced he was casting a firm vote to reverse the district court judge, assuming the right to assign the opinion himself. This was not an anomaly. According to Woodward and Armstrong (1979), Justice Brennan estimated that Burger attempted to manipulate opinion assignments at least once during every conference by passing or switching his votes after the other judges had cast theirs. Justice Brennan called these Burger's "phony votes" (Woodward and Armstrong, 1979, p. 496). Indeed, Thomas (1979) reports that "a Justice once joked that 'on Burger's tombstone . . . should be carved the inscription: I think I'll pass for the moment'" (p. 3).

To the extent that passing in conference voting might be a no-cost or low-cost proposition, we might, of course, expect chief justices to engage in the practice freely and frequently to cement their prerogative to assign opinions in cases in which the direction of the conference majority's vote is unclear *ex ante*. However, "passing in conference [voting] likely imposes nontrivial costs on justices who are perceived [by other justices] to manipulate conference procedures to secure assignment power" (Ura, Sill,

and Haynie 2010, p. 169). Thus, strategic and effective chief justices should only pass when the utility of ensuring the right to assign an opinion in a given case outweighs its cost in lost reputation among the other members of the Court. In an analysis of conference behavior of Chief Justice Burger, Johnson, Spriggs, and Wahlbeck (2005) find evidence of exactly this sort of strategic calculus, finding that the chief is more likely to pass when he is uncertain about his prospects for being in the majority coalition (i.e. when he is neither especially close nor especially distant ideologically from the median justice), when the outcome of a case is less certain in advance of conference voting, or when the salience of a pending decision is high.

Johnson, Spriggs, and Wahlbeck's (2005) theoretical account and empirical analysis of strategic passing in conference voting provides a useful point of departure for identifying management dynamics consistent with improved administration due to experience. If experience is related to improved quality of internal management, then there should be a temporal relationship between chief justice's behavior in conference voting and the length of his tenure in office. In particular, our public management theory suggests the hypothesis that:

As a chief justice's time in office increases, his propensity to pass in circumstances that are not strategically advantageous should decrease.

This hypothesis may be tested by incorporating the length of time that Chief Justice Burger had held office in each term included into Johnson, Spriggs, and Wahlbeck's model of Burger's decision to pass in conference votes.

Johnson, Spriggs and Wahlbeck (2005) analyzed data derived from the papers of Justice Lewis Powell on justices' conference votes in 1,043 Supreme Court cases decided during the 1971 through 1985 terms. Powell's papers are especially useful for analyzing strategic dynamics in conference voting since he recorded both justices' initial votes (or nonvotes) during conference discussion and their final conference votes (see also Maltzman, Spriggs, and Wahlbeck 2000). Of the 10,578 conference votes potentially available for analysis, the justices passed a total of 246 times. Almost exactly half of these, 122, were due to Chief Justice Burger. The dependent variable in the analysis is a dichotomous indicator of whether a justice "passed," that is declined to cast a firm vote in the initial conference discussion, for each case conference in which he or she participated.

To assess their theory of strategic passing, Johnson and his coauthors identify several independent variables which account for the political and legal context in which each case was decided and which are associated with the utility of passing in the given case: the ideological distance between a justice and the median member of the Court, a justice's ideological distance from the median squared, justices' uncertainty about the preferences of the other members of the Court, justices' uncertainty about the outcome of a case, and the salience of each case. Justice's ideologies were measured as "the percentage of time that each justice had voted in a liberal direction in the Spaeth value area of a case in terms prior to the one in which the case was decided" (p. 361; Spaeth 2001; see also Spaeth et al 2011). The ideological distance between a justice and the median is the absolute difference between each justice's measured ideology and the measured ideology of median justice. Justices' uncertainty about one another's preferences is measured by the average (mean) number of cases in which other justices had participated in the same issue area. Outcome uncertainty is indicated by a dichotomous dummy variable indicating when a case has been granted certiorari by a minimum winning coalition—that is, with the votes of only four justices. Case salience is indicated by the rate of amici participation standardized against the average rate of amici participation for cases in the same term (see also Gibson 1997). Johnson, Wahlbeck, and Spriggs also identify a pair of nonstrategic, control variables: being a freshman justice (a dichotomous dummy variable

coded one for justices in their first two terms of service) and the legal complexity in a case (a factor score derived from the common variance the number of legal issues raised in a case, the number of legal provisions at issue, and the number of opinions written by justices).

To identify, which if any strategic factors were associated with significant differences in the chief justice's propensity to pass in a conference vote, Johnson and his colleagues estimated a rare events logit model of justices' decisions to pass in conference votes. The model expresses the propensity to pass as a function of the "strategic" predictors indicated above, those strategic factors interacted with a categorical dummy variable indicating votes cast by associate justices, and the nonstrategic controls. Using the authors' publicly available replication data file, we are able to reproduce their published results precisely. Table 1 reports the results of this replication. Once again, the results indicate that the chief justice is significantly more likely to pass in strategically advantageous situations: when he is uncertain that he will (or will not be) in the majority coalition if he votes sincerely, when the outcome of a case is uncertain, or when a case is highly salient.

To assess whether experience in office may have had an effect on Chief Justice Burger's decisions to pass in conference votes, we extend Johnson, Wahlbeck, and Spriggs's (2005) model by including a simple count of the number of terms that Chief Justice Burger had previously served and a set of interactions terms between this indicator and the strategic variables identified by Johnson and his coauthors: ideological distance from the Court median, ideological distance from the Court median squared, preference uncertainty, outcome uncertainty, and case salience. Results of this extended model are reported in Table 2.

**Table 1: Replication of Johnson, Spriggs, and Wahlbeck (2005)**

Rare Events Logit Model of the Chief Justice's and Senior Associate Justices' Propensity to Pass at Conference on the U.S. Supreme Court, 1971-1985 Terms, Number of Observations: 8242

	Coefficient	Robust Standard Error	P >  z
<b><i>Strategic Variables (CJ or SAJ)</i></b>			
Distance from Court Median	10.401	0.112	0.00
Distance from Court Median Squared	-17.600	0.395	0.00
Preference Uncertainty	-0.0008	0.000	0.00
Case Outcome Uncertainty	0.060	0.0007	0.00
Case Salience	0.028	0.003	0.00
<b><i>Strategic Variables (AJ)</i></b>			
Associate Justice (AJ)	-1.340	0.630	0.03
Distance from Court Median * AJ	-8.292	4.443	0.06
Distance from Court Median Squared * AJ	3.533	12.124	0.77
Preference Uncertainty * AJ	-0.0001	0.0008	0.87
Case Outcome Uncertainty * AJ	0.125	0.232	0.59
Case Salience * AJ	0.002	0.021	0.93
<b><i>Nonstrategic Variables</i></b>			
Freshman	0.605	0.452	0.18
Case Complexity	0.214	0.097	0.03
Constant	-2.903	0.029	0.00

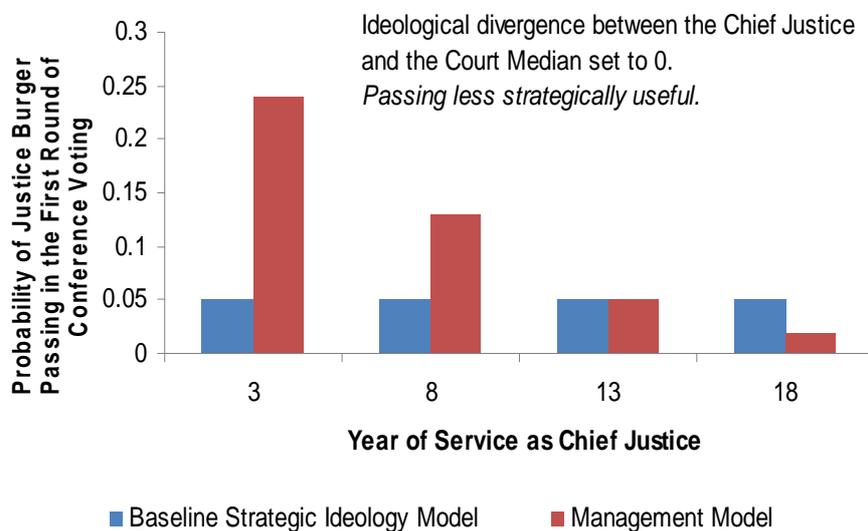
**Table 2: Management Model**

Rare Events Logit Model of the Chief Justice's and Senior Associate Justices' Propensity to Pass at Conference on the U.S. Supreme Court considering CJ and SAJ Experience, 1971-1985 Terms, Number of Observations: 8242

	Coefficient	Robust Standard Error	P >  z
<b><i>Strategic Variables (CJ or SAJ)</i></b>			
Distance from Court Median	-15.359	7.168	0.03
Distance from Court Median Squared	69.680	27.463	0.01
Preference Uncertainty	0.001	0.001	0.33
Case Outcome Uncertainty	0.491	0.145	0.00
Case Salience	-0.009	0.042	0.83
<b><i>Strategic Variables (AJ)</i></b>			
Associate Justice (AJ)	-2.215	0.745	0.00
Distance from Court Median * AJ	-1.263	3.856	0.74
Distance from Court Median Squared * AJ	-17.562	9.856	0.08
Preference Uncertainty * AJ	-0.0004	0.0008	0.57
Case Outcome Uncertainty * AJ	0.120	0.219	0.59
Case Salience * AJ	0.005	0.018	0.79
<b><i>Management Variables (CJ)</i></b>			
Chief Justice Yearly Counter	-0.176	0.072	0.01
Distance * CJ Counter	2.449	0.911	0.01
Distance Squared * CJ Counter	-9.065	3.834	0.02
Preference Uncertainty * CJ Counter	-0.0001	0.0001	0.42
Outcome Uncertainty * CJ Counter	-0.055	0.019	0.01
Case Salience * CJ Counter	0.005	0.004	0.21
AJ * CJ Counter	0.054	0.035	0.12
<b><i>Nonstrategic Variables</i></b>			
Freshman	0.431	0.507	0.40
Case Complexity	0.214	0.103	0.04
Constant	-1.292	0.566	0.02

Comparing the results of the original model with the extended model indicates a striking difference in the estimated effects associated with the chief justice’s ideological position relative to the median justice on the Court. The baseline, strategic-ideology model shows a simple quadratic relationship between the chief’s ideological divergence from the median justice and his propensity to pass. The coefficient for ideological distance is positive and significantly different than zero; the coefficient for ideological distance squared is negative and significant. These indicate that as the chief becomes more ideologically distant from the Court’s median member, he becomes, first, increasingly likely to pass, and then increasingly unlikely to pass as that ideological distance becomes more extreme. This is consistent with the expectation that the chief justice is more likely to pass when he is less certain about his prospects for voting with a conference majority should he cast a sincere vote. Likewise, the chief is more likely to pass when he is less certain about his colleagues’ preferences, when the outcome of a case is uncertain, or when the case is more salient.

**Figure 1: Predicted Probability of the Chief Justice Passing in Conference Votes**



This reasonably straightforward picture of the chief justice’s strategic behavior is substantially altered by the results of the dynamic management model, which indicate that the chief’s underlying propensity to pass as well as the net effect of the chief’s ideological divergence from the median justice and his reaction to the uncertainty surrounding the outcome of cases are significantly dependent on the length of time the chief has served in office. We note, first, that the directions of the estimated effects of ideological distance between the chief justice and the Court’s median and the square of this predictor in the management model are significant in the opposite directions compared to the baseline strategic model. Importantly, though, the interactions between the ideological distance term and its square with the duration of the chief’s tenure in office are both significantly different from zero and have opposite sign of the uninterested effects of ideological distance and its square. This combination of estimated effects, once again, indicates that the management model indicates that the strategic behavior of the chief justice is strongly conditional on the length of his service in office. Assessing the precise extent of this dependence on experience is impossible to assess from the model coefficients themselves, so we generate predicted probabilities of the chief justice passing in a conference vote over time for a covariate profile that closely resembles our management-based hypothesis: *As a chief justice’s time in office increases, his propensity to*

*pass in circumstances that are not strategically advantageous should decrease.* These are illustrated in Figure 1.

The predicted probabilities of in Figure 1 are based on a covariate profile in which the ideological gap between the chief justice and the median justice is zero with other predictors set to their mean or modal values. Johnson, Spriggs, and Wahlbeck (2005) identify this situation as one in which there is little strategic value in passing during the conference vote. Without considering management effects due to experience in office, the baseline strategic model predicts that there is about a five percent probability that the chief justice passes when he is fully ideologically aligned with the court's median justice, holding all other variables at their mean or modal values. This is illustrated by the blue bars in the top panel of Figure 1 (which we note indicate a static prediction regardless of the chief's tenure in office).

Predicted probabilities derived from the management model are illustrated by the red bars in Figure 1 using the same covariate profile as before, but allowing the chief justices' tenure in office to range from three to eighteen years in five year increments. It is evident that the effects of experience in office for the quality of the chief justice's internal management of the Court are substantial (at least for Chief Justice Burger). In his third year in office, the model predicts that the chief has a twenty-four percent chance of passing in cases in which the strategic value for doing so is relatively low. This predicted probability declines sharply in the chief's eighth year in office to thirteen percent and to five percent in his thirteenth year in office. By his eighteenth year in office, the model predicts that the chief justice has a predicted probability of passing in only about two percent of the cases in which there is little strategic imperative to do so.

These estimates are consistent with an established dynamics in public management. As the tenure of managers and administrators increases, their performance improves. Evidence of increased efficiency in the chief justice's use of strategic passing over time is consistent with this general dynamic of public administration and our specific expectations about the role of experience in shaping the behavior of the chief justice. This evidence is important since it suggests the potential for  $M_1$ , internal management, by the chief justice and indicates that tenure in office may be a useful proxy for the quality of  $M_1$  practiced by chief justices. We now turn to examining whether the chief justice's improved capacity for management over time is associated with higher quality outcomes for the Supreme Court.

### **Assessing the Effect of the Chief Justice's Experience for Consensus in Supreme Court Decisions**

To test the expected link between variance in the quality of internal management practiced by chief justices and the quality of outputs produced by the Supreme Court, we estimate a macro-level model of the typical quality of Supreme Court outcomes expressed as a function of the quality of internal management exercised by the chief justice. Our consideration of the literature on diffuse support for courts, judicial legitimacy, and judicial independence suggests that the degree of consensus expressed by the Supreme Court's justices is an important component of a decision's value for promoting the institutional development of the judiciary. By extension, the extent of justices' agreement with one another in an individual case or across a set of cases is indicative of the quality of the institutions outputs at a given point in time— $O_t$ .

At the same time, our analysis of the association between tenure in office and the quality of internal management practiced by the chief justice suggests the specific hypothesis that:

As a chief justice's time in office increases, the typical level of disagreement among the justices in cases decided by the Supreme Court should decrease.

In this hypothesis, average levels of disagreement represent the quality of the Supreme Court's outputs,  $O_t$ , and a chief justice's experience in office represents  $M_t$ .

To assess this hypothesis, we estimate an aggregate, time series model of the average number of dissenting votes cast in all orally argued cases that produced signed opinions in each term ( $O_t$ ) from the 1946 to 2010 terms of the Supreme Court (Chief Justices Vinson through Roberts)—as reported in the Supreme Court Database (Spaeth et al 2011)—as a function of the number of years of service of the incumbent chief justice for each term ( $M_t$ ). To account for the other components of Meier and O'Toole's (1999) model of public management, we include several control variables in the model. These the lagged value of the mean dissenting votes time series ( $O_{t-1}$ ), the average number of years of federal judicial experience prior to joining the Supreme Court ( $S$ ), the ideological dispersion of the justices measured as the variance of the estimated Martin and Quinn (2002) dynamic ideal point estimates for all justices in each term ( $S$ ), the percentage of cases heard by the Court in each term identified as addressing civil liberties or criminal procedure Supreme Court Database ( $M_3$ ; Spaeth et al 2011), and the salary of associate justices in constant dollars ( $M_4$ ; see McGuire 2004; Ura and Wohlfarth 2010). We also include a dummy variable for each individual chief justice to account for idiosyncratic variance in management unrelated to experience in office. The model is estimated using ordinary least squares and its estimates are reported in Table 3.

<b>Table 3: Court Consensus</b>			
Dependent Variable: Average Number of Dissenting Votes in Each Term			
	<b>Coefficient</b>	<b>Standard Error</b>	<b>P &gt;  t </b>
Lagged Average Number of Dissenting Votes	0.047	0.137	0.73
Chief Justice Counter	-0.016	0.008	0.04
Percent Cases Civil Rights / Criminal Procedures	0.007	0.006	0.23
Justice Ideology Variance	0.065	0.029	0.03
Average Prior Federal Judicial Experience	0.104	0.057	0.07
Associate Justice Salary	-0.003	0.001	0.11
Chief Justice Warren	-0.178	0.140	0.21
Chief Justice Burger	-0.672	0.295	0.03
Chief Justice Rehnquist	-0.701	0.281	0.02
Chief Justice Roberts	-0.938	0.390	0.02
Constant	1.750	0.412	0.00

Note: Chief Justice Vinson is the excluded base case in the estimation of chief justice unit effects.

N=63

R Squared: 0.22

Breush-Godfrey Lagrange Multiplier: 1.36 (p=0.24)

Breush-Pagan Statistic: 0.69 (p=0.40)

Most importantly, the model estimates indicate that there is a negative and significant relationship between the length of the chief justice's tenure in office and disagreement among the justices of the Supreme Court. The longer a chief justice has served in office, the smaller the number of justices who dissent, on average, in a given term. This result is consistent with our theory of a public administration of the Supreme Court in general and our hypothesis linking the quality of internal management exercised by the chief justice and the quality of Supreme Court outputs in particular.

The model predicts that each additional year's service by a chief justice predicts a decrease of 0.02 dissenting votes, on average. One year's effect is approximately equal to eight percent of a standard deviation's (0.24) decrease in the number of dissenting votes observed in a term or about one vote in every fifty cases considered by the Court or about two votes in a term (assuming 100 cases in a term). This is, by itself, an effect of relatively modest magnitude. Over time, though, the predicted effect of the chief justice's service increases steadily. The model predicts that a chief serving in his sixth year in office would preside over a Court with half a standard deviation's fewer dissents on average than in his first year of service, the equivalent of one vote in every eight cases decided by the Court or about a dozen votes a term (assuming 100 cases in a term). Given an average tenure of chief justices in our data of 14.75 years (excluding Chief Justice Roberts), the model clearly predicts the development of management effects of appreciable substantive importance over the course of a chief justice's service.

In addition to indicating the effects of the chief justice's internal management for consensus on the Supreme Court, the model indicates other elements of the Supreme Court's structure and environment which also influence the typical level of agreement among the justices. In particular, the ideological variance among the justices is positively associated with significant increases in the average level of agreement among the justices. As the justices' ideological predispositions become more widely distributed, the typical level of disagreement in Supreme Court decisions.

The model also provides suggestive evidence of roles played by the Supreme Court's institutional stability and resource environment in promoting or undermining consensus on the Court. The model indicates a positive association between the sitting justices' average years of prior federal judicial experience and the average number of votes cast in dissent in each term. Conversely, the model shows that associate justices' constant dollar salary, which is an indicator of the overall level of resource support available to the Court, is negatively associated with levels of dissent. The greater the level of resources available to the Court, the lower the level of disagreement expressed by justices' voting during a given term. Yet, neither of these effects are statistically significant for  $\alpha=0.05$ , though, the model indicates that the data are not especially improbable given these two estimated parameters.

In contrast, the model provides little evidence to indicate an association between the composition of the Court's docket and consensus. The estimated effect of the proportion of cases heard by the Court dealing with civil rights or criminal procedure is small and not significantly different than zero. The data provide little basis for concluding that the types of cases heard by the Supreme Court, at least in terms of their issue content, matter for securing agreement among the justices in general.

Lastly, we learn that there are some modest, yet significant differences among various chief justices in their baseline ability to generate consensus. Compared to Chief Justice Fred Vinson (the excluded base case), the model indicates that three subsequent chief justices—Warren Burger, William Rehnquist, and John Roberts—led the Court to lower levels of average dissent during their tenures, amounting to between 0.62 and 0.90 fewer average dissenting votes per term. The estimated effect of the dummy

variable indicating Chief Justice Warren is negative; however, it is neither significantly different from zero nor significantly different from the predicted effects of the remaining three justices.

## **Conclusions**

Scholars of judicial politics have approached the problem of understanding the choices Supreme Court justices make from an array of perspectives ranging from now-pervasive theoretical accounts emphasizing legal reasoning, judges' policy attitudes, and their strategic choices (and various mixes of these) along with numerous others identifying various procedural, contextual, psychological, and sociological influences on judicial behavior. Despite the diversity of previous approaches, historical narratives emphasizing the capacity of the chief justice to lead the Court in various ways have not been systematically explored or developed within political science's treatment of Supreme Court decision-making.

In this paper, we have drawn on well-established models of public management to develop a novel, though still preliminary, theoretical approach to understanding the role of the chief justice in Supreme Court decision-making by the chief indicates an opportunity for leadership of the Court consistent with prominent episodes in the Court's historical record. In particular, we begin by identifying the value of decisions for promoting the institutional development and independence of the judiciary as a dimension of utility for justices of the Supreme Court that is conceptually distinguishable from decisions' value as instruments of policy or as examples of legal philosophies or methods. This insight supports applications of models of public management—which emphasize the quality of institutional outputs rather their consistency with particular ideological or procedural benchmarks—to understanding the influence of the chief justice on Supreme Court decisions. Next, we draw on studies of the Court's public legitimacy to show that agreement within the Supreme Court is an important quality of judicial decisions that supports public perceptions of the Court's procedural fairness. We then identify some mechanisms by which the chief justice may exert internal management of the Supreme Court to promote greater agreement among the justices. In turn, these various observations support our theoretical claim that the leadership or management of the chief justice is an important component of the Court's efforts to seek legitimacy through greater unanimity.

We use this public management theory of the chief justice's role on the Supreme Court to develop two specific hypotheses about judicial management dynamics, the first focusing on the performance of the chief justice as a manager and the second focusing on the role of management in shaping outcomes on the Supreme Court. Specifically, we hypothesized, first, that as a chief justice's time in office increases, his propensity to pass in circumstances that are not strategically advantageous should decrease. And, second, that as a chief justice's time in office increases, the typical level of disagreement among the justices in cases decided by the Supreme Court should decrease.

To assess the first hypothesis, we replicated and extended Johnson, Spriggs, and Wahlbeck's (2005) study of the chief justice's passing in conference voting, finding evidence that the Chief Justice Burger's propensity to pass in situations that were not strategically useful was strongly related to the instant length of his tenure in office. As the length of Chief Justice Burger's service in office increased, his use of his prerogative to pass in conference voting became more efficient. This indicates that a basic dynamic of public management—a positive association between experience and performance in office—may be observed in the performance of the Chief Justice of the United States.

To test the second hypothesis, we estimated a macro-level model of consensus on the Supreme Court from 1946 through 2010 expressed as a function of the length of the incumbent chief justice's

tenure in office as well as a set of control variables largely associated with elements of Meier and O'Toole's (1999) model of public management. Our data indicate a negative and significant relationship between the length of the chief justice's tenure in office and disagreement among the justices of the Supreme Court. The longer a chief justice has served in office, the smaller the number of justices who dissent, on average, in a given term's cases. This result supports hypothesis connecting the quality of internal management exercised by the chief justice and the quality of Supreme Court outputs.

Together, these results illustrate dynamics indicative of public management or public administration in both the unilateral choices made by the chief justice and in patterns observed in the behavior of the Court as a whole. These results provide support for some basic hypotheses derived from a theory of judicial public administration applied to the Supreme Court

Additionally, our analyses suggest wide array of topics for future inquiry. At the level of the chief justice, much work, of course, remains in explaining when and why the chief justice may utilize his various formal institutional prerogatives and informal opportunities for persuasion to help lead the Court to greater consensus. In some respects, this line of inquiry may benefit from the model of studies of the interplay between formal institutional powers and interpersonal persuasion in presidential leadership (e.g. Neustadt 1960; Edwards 1989; Cameron 2000).

Likewise, there are important questions about the micro processes that yield the macro result of greater consensus over the course of a chief justice's tenure. Perhaps the growth in consensus reflects changes in the chief's own behavior as his willingness or ability to position himself as a member of the majority coalition changes over time. Alternatively, it may be that the chief justice is increasingly able to influence other members of the Court to join majority opinions. This may emerge through either the coalescence of coalitions of justices working together to change legal policy over some set of cases or, perhaps, on a more ad hoc basis as the chief simply becomes more adept at persuading individual justices to join majorities. Whatever the case, identifying more precisely the mechanics of the aggregate-level management effects identified here promises to provide additional valuable insights into decision-making on the Supreme Court.

Finally, we note that that this project constitutes merely a first step in adapting and applying theories and methods of public management and public administration to address dynamics within the federal judiciary. The theory we have proposed and the empirical implications we have assessed are a reasonably simple, and we do not regard the analyses presented here as the final word on efforts to apply insights from the fields of public management and public administration to the study of judicial politics in general or with regard to the specific issues we have addressed here. To the contrary, our hope is that our theoretical and empirical claims will be refined and improved by future research in this promising intersection of subfields in political science and related fields.

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