The Strategic Content Model of Supreme Court Opinion Writing

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Abstract:

The Supreme Court's reasoning in a decision, including the precedent it cites in support of that reasoning, can be as significant as the outcome in determining the long-term impact of a case. As a result, the content of opinions can be used to provide important new insights into existing debates regarding judicial politics. In this article we present a strategic content model of the judicial process, which demonstrates how opinion content results from the strategic interaction between justices during the Court's bargaining process. This is the first article to show on a large scale that the extent to which a majority opinion writer cites authoritative precedent is systematically influenced by the decisions and ideology of other justices. We find that the Court generates opinions that are better grounded in law when more justices write concurring opinions. This demonstrates that justices write concurring opinions based not just on a preference for making their opinions known, but also to influence the reasoning relied on by the majority opinion. We also show that diversity of opinion on the Court, a factor often overlooked in the political science literature, has a significant impact on the extent to which a Court opinion cites authoritative precedent. Finally, our results provide a novel test of the agenda-control and median-justice models. We find that the ideology of the median justice influences the citation of precedent in the majority opinion, whereas the majority opinion writer's ideology does not, suggesting that agenda-setting powers are not as strong as previously claimed.

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In recent years, scholars of judicial politics have made important advances in studying the Supreme Court process by focusing on the strategic interaction of the Court's members. Using this approach, they have sought to explain how strategic constraints influence factors such as the justice chosen to write the Court's majority opinion (Rohde 1972; Maltzman and Wahlbeck 1996a; Maltzman et al. 2000), the voting decisions of individual justices, including when they change their original votes (Brenner and Spaeth 1988; Bonneau et al. 2007), and the final outcomes of cases (Rohde and Spaeth 1976). Political scientists have also attempted to understand the role of ideology on the Court, generating a debate between those who believe the majority opinion writer's opinion is most important (Murphy 1964; Bonneau et al. 2007; Epstein and Knight 1998; Maltzman and Wahlbeck 1996b; Rohde and Spaeth 1976; Slotnick 1979) and those who argue the median justice is the most influential (Spiller 2000; Anderson and Tahk 2007).

In this article we argue that an important limitation of the strategic model is that it does not sufficiently account for the content of the Court's opinion. The Supreme Court's reasoning in a decision, including the precedent it cites in support of that reasoning, can be as significant as the outcome in determining the long-term impact of the case. As a result, the content of opinions can also be used to provide important new insights into existing debates regarding judicial politics. We present a strategic content model of the judicial process, which demonstrates how opinion content results from the strategic interaction between justices during the Court's bargaining process.

We apply this model to test the impact of judicial tactics and judicial preferences on the extent to which a Supreme Court opinion is well-grounded in precedent. Ours is the first article to show that the extent to which a Court opinion cites authoritative precedent is systematically
influenced by the decisions and ideology of other justices. We have three key findings. First, the Court will generate opinions more well-grounded in law when more justices write concurring opinions. This demonstrates that justices write concurring opinions based not just on a preference for making their opinions known, but also to influence the reasoning relied on by the majority opinion. Second, we demonstrate that the diversity of opinion on the Court, a factor often overlooked in the political science literature, has a significant impact on the extent to which a Court opinion cites authoritative precedent. Third, our results provide a novel test of the agenda-control and median-justice models against each other. We find that the ideology of the median justice influences the citation of precedent in the majority opinion, whereas the majority opinion writer's ideology does not, suggesting that agenda-setting powers are not as strong as previously claimed.

EXISTING THEORIES OF JUDICIAL DECISION-MAKING

The dominant decision-making framework used by judicial politics scholars today is the strategic model, which assumes that individual members of the Court are not entirely free to act on their personal preferences (Rohde 1972). Instead, they are constrained by their strategic interaction with one another, and they must therefore take into account one another's ideologies. While the strategic model has allowed scholars to make significant progress in understanding the Court's decisionmaking, it suffers from three significant limitations. Most importantly, as used in the existing literature, the strategic model has not sufficiently addressed the content of the Court's opinions. That is, while existing scholarship has done much to explain the processes and strategic concerns weighing on justices' decisions, with few exceptions it has not explained the effects of these processes on the actual text of the Court's opinions. Notable studies of opinion include Corley (2008), which argues that the language of party briefs is often used in the Court's
opinions; Corley et al. (2005), which analyzes the rates of citations to the Federalist Papers in Court opinions over time; Hume (2006), which argues that Supreme Court justices strategically cite non-binding texts and prominent authors; Way and Turner (2003), which conducts a content analysis of concurring opinions in the Rehnquist Court; and Choi and Gulati (2008), which argues that Circuit Court judges exhibit various biases in their citation choices. In addition, a number of recent papers have provided formal models to explain how the Court's bargaining process influences the policy position embodied in the Court's opinion (Anderson and Tahk 2007; Lax and Cameron 2007). We build on these literatures by explaining how judicial tactics and ideology systematically affect the content of the Court's majority opinion.

Opinion content — the Court's reasoning and citations to precedent — is significantly more important, particularly in the long run, than the ruling between the parties in the case. When the Court hands down an opinion, lawyers and lower-court judges are often more interested in the text of the opinion than in the outcome of the case. The reasoning behind a decision and the precedent cited to support it are likely to substantially affect the interpretation of the decision by lower courts, legal scholars, and the Supreme Court itself. Supreme Court opinions are important for the precedent they set, not only for the individual disputes they resolve.

That political scientists have paid relatively little attention to the content of Supreme Court opinions is ironic, since most research using the strategic model assumes that Supreme Court justices care about policy outcomes and, therefore, about the ideas embodied in their opinions. To some extent this shortcoming may be explained by the fact that political scientists have had difficulty constructing measures of particular aspects of the content of Court opinions, whereas measures of dependent variables such as voting histories are readily available. Yet, as
we discuss below, newly developed methodologies have made it possible to construct such measures.

A second, related shortcoming of the research to date using the strategic model is its inability to conclusively explain the role of ideology in the judicial bargaining process. While the majority of Supreme Court scholars agree that ideology plays a key role, at least two major theories have been proposed to explain how it affects the process. The agenda-control model holds that the writer of the Court's majority opinion holds disproportionate control over the judicial process (Murphy 1964; Epstein and Knight 1998), although scholars generally recognize that this power is not monopolistic (Maltzman and Wahlbeck 1996b; Rohde and Spaeth 1976; Slotnick 1979). A contrary view, based on the median-voter theorem (Downs 1957), holds that the justice with the median ideology on the Court will be the pivotal voter who plays the most important role in the process (Spiller 2000; Anderson and Tahk 2007). A recent study by Bonneau et al. (2007) tested these theories against each other, finding greater support for the agenda-control model. They argue that they test "two competing models regarding which justice controls the content of the final opinion," (p. 891) yet the dependent variable they use is the decision to join or not join the majority coalition, which means the content of the Court's majority opinion is not explicit in their model. As a result, we argue that their method does not provide a conclusive test between these two theories because they do not account for the influence of either the median justice or the majority opinion writer on the content of the Court's opinion.

A third flaw of most empirical studies of Supreme Court decisionmaking is the failure to account for the variety of voting alternatives available to the justices. Most research focuses on the dichotomous choice justices have of joining or not joining the majority in the case (e.g.,
Bonneau et al. 2007). As Anderson and Tahk (2007) argue, doing so "has the felicitous effect of leading to stable outcomes and analytical tractability" and was "largely imported from the scholarship on the U.S. Congress." (p. 812) Yet this assumption is not consistent with the reality of Supreme Court voting, where justices have other options, most importantly the writing of concurring opinions. Using this assumption results in treating equally, for example, all cases in which 7 justices vote with the majority, whereas in some of these cases members of the majority may have published influential concurring opinions that set forth reasoning not provided in the majority opinion. Anderson and Tahk go a long way toward addressing this problem by providing a formal model that uses the range of voting options to predict voting and policy outcomes. They show the Court will converge on the issue-by-issue median ideal points of the justices, whereas the ideal point of the majority opinion writer will not have a significant effect on policy.

We build on the work of Anderson and Tahk by incorporating the range of the justices' options to explain the content of the Court's majority opinion. Our model endogenizes the content of the Court's majority opinion and explains the ways in which it is determined by the judicial bargaining process, including the tactics chosen by justices and their ideological preferences. This strategic content model therefore fills a key gap in the literature by allowing us to understand how the strategic interaction between justices explains the full outcome of Supreme Court cases.

**VOTING, BARGAINING AND OPINION WRITING ON THE SUPREME COURT**

Before detailing the strategic content model, we turn first to a brief description of the Court's voting and opinion-writing process, which informs the key assumptions made in our model. Within days of hearing oral argument on a case, the justices convene and take an initial
vote on the outcome of the case, generally referred to as the conference vote. The senior member of the conference majority then chooses a member of the majority to write the Court's majority opinion. The conference vote is not officially recorded, but historically has been recorded by individual justices in personal notebooks.

The Court's final vote can be said to take place publicly in the sense that we can determine each justice's voting behavior from the Court's published opinions. During the final vote, each justice has several voting options, the most pertinent of which are: (1) "silently" joining the majority opinion by not writing any additional opinion; (2) agreeing with the majority opinion in both outcome and reasoning but writing or joining a "regular" concurrence that lays out additional reasoning; (3) agreeing with the majority in outcome only and writing or joining a "special" concurrence laying out alternate reasoning; and (4) dissenting and choosing whether or not to write an opinion describing the reasoning for the dissent. If no opinion receives a majority of the votes, it stands as the opinion of the Court but does not carry the force of precedent.

Despite the public nature of the justices' final voting decisions in a case, a complex and secretive bargaining process occurs between the conference vote and the final vote. In his classic analysis of Supreme Court behavior, Howard (1968) argued that: "[c]learly, judges of all ideological persuasions pondered, bargained, and argued in the course of reaching their decisions, and they compromised their ideologies too." (p. 55) Two features of this bargaining process are of particular importance in determining the Court's decision and written opinion(s). First, this is an iterative process in which justices circulate multiple drafts of the majority opinion as well as any concurrences or dissents until all of the Court's members have chosen which opinion(s) to join. Beginning at conference, justices often do more than vote for one side or the
other; they can indicate, formally or informally, their intent to write a concurring or dissenting opinion.

Second, the Court's members send memoranda to each other indicating their intentions and views on previously circulated opinion drafts. They may also indicate to the majority opinion writer the specific conditions under which they would be willing to join the opinion. (Murphy, 1964) As Spriggs, Maltzman and Wahlbeck (1999) argue, "[o]ther than simply joining the majority opinion, justices in the majority conference coalition may choose to appear unsure, make suggestions with or without threats, circulate or join a draft concurrence, or change votes and circulate or join a draft dissent." (p. 487) Likewise, Murphy (1964) writes that "[t]he two major sanctions which a justice can use against his colleagues are his vote and his willingness to write opinions which will attack a doctrine the minority or majority wishes to see adopted." (p. 54) An example of such a threat occurred in 1889, when Justice Samuel Miller received the following note from Justice Horace Gray:

After a careful reading of your opinion in Shotwell v. Moore, I am very sorry to be compelled to say that the first part of it … is so contrary to my conviction, that I fear, unless it can be a good deal tempered, I shall have to deliver a separate opinion on the lines of the enclosed memorandum. I am particularly troubled about this, because, if my scruples are not removed … your opinion will represent only four judges, half of those who took part in this case.¹

These characteristics of the Court's bargaining process have two related results. First, justices often change their initial voting and opinion-writing decisions. Although justices generally do not admit in a written opinion to having done so,² changes in voting are evidenced by comparing conference vote and final vote records. Brenner (1980; 1982) analyzed several justices' notebooks and found that between 1946 and 1956 at least one justice changed his vote in

¹ Quoted in Fairman (1939) p. 320.
61% of cases, and that this figure was 55% for the period between 1956 and 1967. In addition, the bargaining process influences justices' decisions regarding whether they will write or join concurring opinions. Indeed, the conference vote is not deterministic, but instead a step in a bargaining process (Hagle and Spaeth 1991; Brenner et al. 1990).

The second key result of the bargaining process is that it creates changes to the content of the Court's majority opinion, an aspect of the process the justices themselves have often acknowledged (Brennan 1960; Ginsburg 1990). While the opinion writer would ideally like to see certain cases cited to support a decision, he might allow other lines of reasoning and other cases to be cited as concessions to other justices (Rohde and Spaeth 1976). Spriggs et al. (1999) found, for example, that justices exchange memoranda during the bargaining process indicating the specific parts of an opinion they wish to be changed before they agree to the draft. Through these mechanisms, the bargaining process affects not just the final vote tally, but also the content of the Court's majority opinion, including the precedent cited in that opinion.

Spriggs et al. (1999) refer to an example that perfectly illustrates the importance of understanding the relationship between the bargaining process and the Court's opinions. In *Hawaii v. Standard Oil* (1972), Justice Marshall circulated a majority opinion with which Justice Stewart did not entirely agree. Stewart proceeded to circulate a concurring opinion in which he offered a separate line of reasoning for the Court's decision. After reading this draft opinion, Marshall revised the majority opinion to incorporate Stewart's reasoning. As a result, Stewart withdrew his opinion and joined Marshall's opinion. The significance of this example is that it shows not only that the bargaining process influences both decisionmaking and opinion-writing, but that it does so jointly. In other words, the voting decisions and opinion content are
endogenous to each other and are collectively an equilibrium outcome of the Court's bargaining process.

THE STRATEGIC CONTENT MODEL

In the strategic content model of Supreme Court decisionmaking and opinion-writing, we adopt several assumptions underlying the strategic model used by most judicial politics scholars. We assume that, during the opinion-writing process, Supreme Court justices behave as strategic decision-makers, choosing among their voting options and writing their opinions based on the expected behavior of their colleagues. (Boucher and Segal 1995; Maltzman and Wahlbeck 1996b) We also assume justices are concerned with public policy and want the outcomes of cases and the Court's opinion to reflect as closely as possible their policy preferences (Spriggs and Hansford 2001; Knight and Epstein 1996; Murphy 1964). As Rohde and Spaeth (1976) have argued, "[e]ach member of the Court has preferences concerning the policy questions faced by the Court, and when the justices make decisions they want the outcomes to approximate as nearly as possible those policy preferences." (p. 72) Because justices are concerned with policy outcomes, we assume they prefer to set authoritative precedents that will be more likely to be followed by the Court in the future, as well as by lower courts. Finally, unlike earlier literature that assumed justices are unconstrained in pursuing their preferred policy outcomes (e.g., Murphy 1964; Ulmer 1971), we follow the more recent approach that recognizes the constraints placed on individual justices by the Court's bargaining process (Spriggs and Hansford 2001; Maltzman et al. 2000).

Applying these assumptions to the behavior of the justice assigned to write the Court's majority opinion, we argue that she attempts to balance two related goals. First, she prefers to write a majority opinion that most closely reflects her reasoning and basis in precedent. Second,
because she wants to write an opinion that sets strong, enduring precedent, she attempts to minimize the number of additional opinions written by colleagues and maximize the majority joining the Court's opinion. As several scholars have argued, both the presence of separate opinions and a relatively small majority are more likely to result in a decision being overturned (Brenner and Spaeth 1995; Banks 1992; Schmidhauser 1962). As Murphy (1964) argued, "[t]he greater the majority, the greater the appearance of certainty and the more likely a decision will be accepted and followed in similar cases." (p. 66) As O'Brien (1996) argues, "When individual opinions are more highly prized than opinions for the Court, consensus declines and the Court's rulings and policy-making appear more fragmented, less stable, and less predictable." (p. 322)

The majority opinion writer attempts to achieve these goals by bargaining with the other members of the Court, both those in the majority and the minority, as described above. The majority opinion writer is constrained by both the preferences of his colleagues and their tactics because, during this process, justices bargain not just over their votes but also about the extent to which additional opinions will be written and the reasoning behind those opinions. During this bargaining process, the majority opinion writer must often deviate from the set of precedents she prefers to cite and add additional precedents to her opinion in order to persuade her colleagues (Hume 2006). The result of this process is a majority opinion that is in equilibrium with the vote in the case and with the arguments put forward in concurring and dissenting opinions. Importantly, the extent to which authoritative cases are cited in the majority opinion forms an endogenous aspect of this equilibrium.

We make two additional assumptions in this model that should be noted before we proceed to deriving our hypotheses. First, we assume that justices' time and resources are limited and they therefore must apportion these strategically among their various assigned opinions and
other responsibilities. In other words, opinion writing is costly (Lax and Cameron 2007).

Second, we assume the Court's members have information regarding each others' preferences and behavior during the opinion-writing process. Based on what is known about Supreme Court bargaining, we believe these assumptions are reasonable and do not create an undue distortion of the actual process.

Up to this point, we have discussed the content of the Court's majority opinions in general, but we must choose a particular facet of the content in order to draw testable hypotheses regarding the effects on it of the bargaining process. For several reasons, we focus in this article on the extent to which the majority opinion is grounded in authoritative precedent. First, the precedent cited in a Court opinion is of utmost importance in terms of fleshing out the Court's rationale for its decision, interpreting the relevance of previous cases, and setting new precedent in the opinion. Second, the extent to which a Court majority opinion cites precedent significantly affects both the extent to which that opinion will be cited as precedent by future cases (Fowler et al. 2007) and the likelihood the opinion will be overturned (Fowler and Jeon 2008). Thus, because majority opinion writers want their opinions to be cited as authoritative, they have an interest in the extent to which their opinion is grounded in law.

Majority opinion writers may have several rationales for citing case precedent. To some extent, the majority opinion writer is constrained by the law and the underlying characteristics of the case, as the legal model would suggest. It is difficult to imagine, for example, a Supreme Court opinion on abortion rights that does not cite *Roe v. Wade*. The attitudinal model suggests that another rationale for citations to precedent is ideology. Not only do justices choose the cases they cite based on their ideology, but ideology may also affect the overall extent to which justices cite precedent. Working within the framework of the strategic content model, we argue
that majority opinion writers' decisions to cite precedent are not only constrained by the law and their own ideological preferences, but also by the preferences and tactics of their colleagues and their own limited resources. Thus, we expect that decisions to cite precedent can be explained as resulting from strategic interaction.

Several testable hypotheses can be derived by applying the strategic content model to the set of precedents cited in Supreme Court majority opinions. We begin by analyzing the effects of the Court members' tactics on the majority opinion writer. Although the justices are free to take any number of informal actions during the opinion-writing process, the most important tactic they may use is an indication that they intend to write or join separate opinions, such as concurrences and dissents. As mentioned above, the prospect of separate opinions threatens the strength of the precedent set by the majority opinion. Knowing this, we expect the majority opinion writer to attempt to minimize the number of separate opinions.

We argue that the primary mechanism by which the majority opinion writer reduces the number of opinions written is by incorporating the views of potential separate opinion writers and joiners into the majority opinion, a process Maltzman et al. (2000) refer to as "preemptive accommodation." That is, when other justices indicate their intent to write separate opinions, the majority opinion writer will attempt to dissuade them from doing so by altering the majority opinion such that it includes their favored reasoning, as Justice Marshall persuaded Justice Stewart in *Hawaii v. Standard Oil*. Way and Turner (2003) argued that justices use concurrences to express their doctrinal preferences (see also Wahlbeck et al. 1999), which implies that the majority opinion writer has an incentive to accommodate those preferences in the Court's opinion in order to reduce the number of her colleagues joining concurrences. In practice, this will often
result in relying on precedent not initially relied on by the majority opinion writer, thereby increasing the extent to which the majority opinion cites precedent.

We expect this type of preemptive accommodation to be particularly likely with respect to concurring opinions. Concurrence writers agree with the majority vote in the outcome of the case – and, in the case of regular concurrences, also with part of the majority opinion. Because potential concurring opinion writers agree with the majority at least in part, they may be persuaded to forego writing or joining such an opinion, especially if the majority opinion writer is able to find a way to incorporate their views into the majority opinion or otherwise reconcile their disagreement. Knowing this, the majority opinion writer will strategically devote greater amounts of time and resources to writing the Court's opinion and to reconciling the differences between his and the potential concurrence writers' views. In equilibrium, the bargaining process will result in a set of opinions in which the majority opinion writer's goal of maximizing the majority in order to set strong precedent is balanced with his colleagues' preferences and the legal constraints of the case. At times, he will be successful in dissuading some of his colleagues from writing or joining concurring opinions; at other times, there will remain irreconcilable disagreements between the members of the majority coalition regarding the appropriate reasoning for the outcome, and concurring opinions will be written. In both cases, we expect that the result of the accommodation process will be a majority opinion more well-grounded in legal precedent, which leads to our first hypothesis:

*Hypothesis 1: The greater the number of justices joining concurring opinions, the more well-grounded in law the Court's majority opinion will be.*

In addition, we also expect that the different types of concurring opinions have different impacts on the majority opinion writer. While regular concurrences agree with the reasoning in the majority opinion and lay out additional reasoning, special concurrences disagree with the
majority opinion's reasoning. Thus, in terms of policy, regular concurrences are closer to the majority opinion than special concurrences. This means the majority opinion writer will be more likely to reconcile the differences in reasoning between herself and potential regular concurrence writers than she will be to reconcile her differences with potential special concurrence writers. Thus, the accommodation mechanism will have a stronger causal effect on the majority opinion with respect to regular concurrences than with respect to special concurrences. We therefore expect that regular concurrences will have a greater impact than special concurrences on the extent to which a majority opinion cites authoritative precedent. This leads to our second hypothesis:

*Hypothesis 2:* The number of justices joining regular concurrences will have a greater impact than the number of justices joining special concurrences on how well-grounded in law the Court's majority opinion will be.

Although both dissents and concurrences pose a challenge to the majority opinion writer's reasoning, we expect the preemptive accommodation mechanism to be ineffective with respect to dissenting opinions. Potential dissenters disagree both with the majority's reasoning and its decision. Thus, in order to be prevent them from joining or writing a dissent, the majority opinion must persuade them both that the majority's view on the outcome is correct and that the reasoning expressed in the opinion is correct, a much more difficult task than with respect to potential concurrence joiners. While there is evidence of fluidity among justices' votes on the outcomes of cases, most justices do not change their votes during the opinion-writing phase (Brenner 1980; 1982). As Maltzman et al. (2000) argue, “*E*ven if changes are made to the majority in response to the dissent, they are probably unlikely to be significant enough to convince many dissenters to join.” (p. 71) We expect that, knowing this, the majority opinion writer will strategically decide not to devote significant time and resources to persuading
potential dissenters and, therefore, that dissenting opinions will not have a significant impact on the extent to which the Court's opinion is well-grounded in precedent. This leads to our third hypothesis:

*Hypothesis 3: The number of justices joining dissenting opinions will not influence how well-grounded in law the Court's majority opinion will be.*

In addition to his colleagues' tactics, the majority opinion writer must account for his colleagues' preferences. That is, just as the majority opinion writer has preferences over policy and, therefore, the reasoning and case precedent cited in the Court's opinion, so do his colleagues. Thus, the majority opinion writer risks alienating his colleagues and losing their support for the opinion by using reasoning with which they do not agree. Maltzman et al. (2000) argue that heterogeneity leads to a greater degree of accommodation by the opinion author, and Staudt et al. (2007) argue this causes a "diffusion of the original author’s opinion." (p. 372) If, however, a sufficient number of Court members closely share the majority opinion writer's ideology, then their preferences should have a relatively minor effect on the Court's opinion. At the other extreme, a wider range of opinions on the Court will result in more accommodation on the part of the majority opinion writer. Thus, for example, even if he prefers to cite only a particular line of caselaw to support his reasoning, he will be more likely to accommodate his colleagues' preferences to also cite a separate line of cases. Finally, as Wahlbeck et al. (1999) argue, "[t]he closer a justice's preferences are to those of the majority opinion author, the more likely he or she will agree with the opinion and will join it without writing separately." (p. 495) This implies that a more ideologically diverse Court will result in a greater number of concurrences (or potential concurrences), which, according to our argument above, should result in a more well-grounded majority opinion. This reasoning leads to our fourth hypothesis:
Hypothesis 4: The greater the range of ideologies on the Court, the more well-grounded in law the Court's majority opinion will be.

The preceding discussion notes that the majority opinion writer must take into account his colleagues' range of preferences, but does not make distinctions based on the roles of individual justices. The agenda-control and median-justice models offer alternative ways to consider the impact of an individual justice. First, the median-justice model suggests that the justice with median ideology should be the most influential in shaping the content of the Court's opinion. By contrast, if the agenda-control model is correct, the majority opinion writer's personal ideology will have a significant influence on the extent to which he cites precedent. Nonetheless, because the majority opinion writer must strategically react to the actions and preferences of his colleagues during the judicial process, we do not expect the majority opinion writer's ideology to play a significant role in shaping the majority opinion, contrary to the prediction of the agenda-control model. Instead, we expect the majority opinion writer to be constrained by the preferences and tactics of his colleagues, which suggests the median-justice's ideology should be more influential than the majority opinion writer's ideology because the opinion writer must accommodate the median justice to maintain a winning coalition. This leads to the following hypotheses:

Hypothesis 5: The ideology of the median justice significantly influences how well-grounded in law the Court's majority opinion will be.

Hypothesis 6: The ideology of the majority opinion writer does not influence how well-grounded in law the Court's majority opinion will be.

As to whether certain types of median justice ideology cause majority opinions to be less- or more well-grounded alternative theories exist. Scholarly work on Supreme Court ideology generally places individual justices on a conservative-liberal dimension (Quinn and Martin 2002; Segal and Cover 1989). One common interpretation of this dimension, particularly among legal
scholars and often among judges themselves, is that conservatives are strict constructionists, originalists or textualists, tending to emphasize the meaning of a text itself and in some cases the intent of its drafters. Justice Antonin Scalia, a vocal supporter of such a philosophy, has often argued that judges should strictly limit the bases upon which they make their decisions (1998). Liberals, however, are often characterized as loose constructionists or developmentalists, favoring the concept of a "living Constitution," the interpretation of which evolves over time. As Justice Oliver Wendell Holmes famously wrote in Missouri v. Holland (1920), "[t]he case before us must be considered in the light of our whole experience and not merely in that of what was said a hundred years ago." Thus, liberals often make decisions based on the history of the interpretation of an underlying text (Tribe 1998). To the extent the correlation between the conservative-liberal dimension of judicial ideology and the textualist-"living constitution" dimension holds, we might expect that liberal justices generally prefer to cite authoritative case precedent more so than conservative justices, who would focus more on founding texts, such as the Constitution and statutes, as well as the debates underlying those texts. This would suggest that when the median justice on the Court is liberal, the Court's opinions are more well-grounded in case precedent. Nonetheless, an alternative reading of the living Constitution concept would be that liberal justices prefer not to bind themselves with case precedents, which reflect a prior (and at times, in their perspective, obsolete) understanding of the Constitution. In addition, even if conservative justices prefer to cite founding texts, it is unclear why they would not also prefer to cite case precedent that has interpreted such texts or otherwise supports their view. To attempt to wade through the consequences of these alternative interpretations of legal philosophy is beyond the scope of this paper and, therefore, we are hesitant to speculate ex ante about whether liberal median justices result in majority opinions more well-grounded in precedent, or vice
versa. Our key point on this issue is a more modest one: that strategic concerns allow the median justice greater control than the majority opinion writer over the extent to which the opinion is grounded in precedent.

**RESEARCH DESIGN**

**Measure of Legal Grounding**

The key to our ability to test our hypotheses is a sound measure of the extent to which a Supreme Court majority opinion cites authoritative legal precedent. We acknowledge that the concept of "authoritative precedent" is open to several interpretations and, therefore, any measure of the strength of precedent should be viewed critically. Nonetheless, scholars often speak in qualitative terms of certain Court opinions being more well-grounded in precedent than others. We therefore argue that, if the precedent cited in opinions can be compared using qualitative measures, it is possible to measure it quantitatively.

As a measure of the strength of the precedent cited by Supreme Court majority opinions, we adopt the *hub scores* developed in Fowler et al. (2007) and Fowler and Jeon (2008). Because many readers may be unfamiliar with the methodology used to calculate these scores, we will briefly describe it. This procedure relies on network analytic methods to identify two kinds of conceptually important opinions, *hubs* and *authorities*. A *hub* is an opinion that cites many other decisions, helping to define which legally relevant decisions are pertinent to a given precedent, while an *authority* is an opinion that is widely cited by other decisions. Most decisions act as both hubs and authorities, and the degree to which they fulfill these roles is mutually reinforcing within the network of cases. An opinion that is a *good hub* cites many *good authorities*, and an opinion that is a *good authority* is cited by many *good hubs*. Two factors directly affect the hub score of a case: (1) the number of other cases it cites; and (2) the authority scores of the cases it cites.
cites. Thus, while it is possible for a case to have a high hub score by simply citing many unimportant cases, the cases with the highest hub scores are ones that cite many authoritative precedents.

The extent to which each opinion is a hub and/or authority can be determined using matrix algebra. Suppose \( x \) is a vector of authority scores, \( y \) is a vector of hub scores, and that these vectors are normalized so their squares sum to 1. Let each opinion's authority score \( x_i \) be proportional to the sum of the hub scores of the cases that cite it: 
\[
x_i \propto a_{i1}y_1 + a_{i2}y_2 + \cdots + a_{in}y_n
\]
and let each opinion's hub score be proportional to the sum of the authority scores that it cites:
\[
y_i \propto a_{1i}x_1 + a_{2i}x_2 + \cdots + a_{ni}x_n.
\]
This yields \( 2n \) equations which can be represented in matrix format as \( \lambda \mathbf{x} = \mathbf{A}^T \mathbf{y} \) and \( \lambda \mathbf{y} = \mathbf{A} \mathbf{x} \). Kleinberg (1998) shows that the solution to these equations converges to \( \lambda \mathbf{x}^* = \mathbf{A}^T \mathbf{A} \mathbf{x}^* \) and \( \lambda \mathbf{y}^* = \mathbf{A} \mathbf{A}^T \mathbf{y}^* \), where \( \lambda \) is the principal eigenvalue and \( \mathbf{x}^* \) and \( \mathbf{y}^* \) are the principal eigenvectors of the symmetric positive definite matrices \( \mathbf{A}^T \mathbf{A} \) and \( \mathbf{A} \mathbf{A}^T \), respectively.

Using this method, Fowler and Jeon (2008) calculated hub scores and authority scores for all Supreme Court majority opinions through 2002. Their results showed that the scores are consistent with expert opinions of the most influential cases and they can be used to predict which cases will be identified as important in the future. Moreover, they used the scores to show that the Court is careful to ground overruling decisions in past precedent (that is, overruling opinions have significantly higher hub scores), and the care the Court exercises increases with the authority of the decision that is overruled. It should be noted that these scores are dynamic. For example, the hub score of a given opinion may change over time as the cases it cites are cited (or not cited) by other cases, thus changing their authority scores. For purposes of this article, we are interested only in the initial hub score (Initial Hub Score) of an opinion; in other words,
we want to know how well-grounded in law the Court's majority opinion was when it was first published.

In order to use the initial hub scores to provide a measure of how well-grounded in law the Court's majority opinion is, we introduce two controls. First, we recognize that the methodology used by Fowler and Jeon results in initial hub scores that gradually decline over time. This is because hub scores are normed to sum to a constant while the size of the network of cases gradually increases over time. Thus, for example, an opinion written in 1953 is likely to have a higher initial hub score than one written in 1986, even if both cite an equal number of case precedents. Second, we note that while the Fowler and Jeon methodology results in opinions having higher hub scores if they cite stronger authorities, it also results in higher hub scores if an opinion simply cites more authorities. Because we are interested in the quality, rather than the quantity, of precedent cited in the Court's majority opinion, we must control for the number of other decisions cited in the majority opinion. Thus, in each of our models, we introduce the controls YEAR, which is the year in which the opinion was issued, and OUTWARD CITATIONS, which is the number of citations to other Supreme Court decisions.

Finally, because our dependent variable is bound to be positive and has a large number of values clustered at zero (i.e., opinions that cite no case precedent), we use Tobit regression in all of our models (Tobin 1958, McDonald and Moffitt 1980).

**The Determinants of Initial Hub Scores**

We test our hypotheses by verifying whether the preferences and tactics of the majority opinion writer's colleagues have the predicted effects on INITIAL HUB SCORE. The unit of analysis for this study is an individual Supreme Court case, as each case contains one majority opinion and, thus, one INITIAL HUB SCORE. Unless specified otherwise, we obtained our data
regarding Supreme Court decisions from the United States Supreme Court Database created by Spaeth (2001), which includes data for cases beginning in 1953. We include in our analysis the number of justices joining a regular concurrence (REGULAR CONCURRENCE) and the number of joining a special concurrence (SPECIAL CONCURRENCE). If Hypothesis 1 is correct, both REGULAR CONCURRENCE and SPECIAL CONCURRENCE should have positive impacts on INITIAL HUB SCORE. We also include the number of justices who joined a dissenting opinion (DISSENTERS). If Hypothesis 2 is correct, then the coefficient for REGULAR CONCURRENCE should be significantly greater than the coefficient for SPECIAL CONCURRENCE. If Hypothesis 3 is correct, DISSENTERS should not have a significant impact on INITIAL HUB SCORE.

To test Hypotheses 4 through 6, we rely on the measures of Supreme Court justices' ideologies developed by Martin and Quinn (2002). IDEOLOGY VARIANCE is a measure of the variance of the sitting justices' ideologies, and should have a positive impact on INITIAL HUB SCORE if Hypothesis 4 is correct. IDEOLOGY MEDIAN is a measure of the ideology of the median justice, and should have a negative impact on INITIAL HUB SCORE if Hypothesis 5 is correct. Finally, the majority opinion writer's ideology (WRITER IDEOLOGY) should not impact INITIAL HUB SCORE if Hypothesis 6 is correct.

We also control for three additional factors that may influence the extent to which a majority opinion is grounded in precedent. First, it is reasonable to expect that more complex cases would require the Court to cite a greater number of its previous decisions independently of the influence of the justices' bargaining process. We therefore control for the underlying complexity of a case by using a measure developed by Spriggs et al. (1999) (COMPLEXITY), which is based on the number of issues raised by the case and the number of legal provisions involved. Second, when more amicus briefs are filed in a case, opinion authors may have more
information regarding the precedent relevant to the case (Spriggs and Wahlbeck 1997), which
would result in the opinion author citing a greater number of these precedents. We therefore
control for the number of amicus briefs filed in the case (AMICUS BRIEFS) using data provided by
Kearney and Merrill (2000). In addition, we expect that the type of legal authority being
interpreted by the Court may significantly affect the extent to which the Court cites case
precedent. Specifically, when the Court is interpreting the provisions of a statute we expect that
it will have a smaller range of precedents to choose from than, for example, when it is
interpreting a constitutional provision. We therefore include a control (STATUTORY) coded as
"1" for cases of statutory construction and coded as "0" for other cases.

Table 1 reports summary statistics regarding the variables in our models. Table 2 reports
the correlations between each of our variables.

| Table 1: Summary Statistics of Initial Hub Score and Explanatory Variables |
|-------------------------------|-------------|-------------|----------|--------|
| Variable                      | Mean        | Standard Deviation | Minimum | Maximum |
| Initial Hub Score             | 5.28        | 11.23        | 0        | 175.36 |
| Dissenters                    | 1.46        | 1.46         | 0        | 4      |
| Regular Concurrence           | 0.25        | 0.70         | 0        | 9      |
| Special Concurrence           | 0.40        | 0.91         | 0        | 8      |
| Ideology Variance             | 5.12        | 1.60         | -0.23    | 12.84  |
| Ideology Median               | 0.35        | 0.52         | -1.20    | 1.62   |
| Writer Ideology               | -0.06       | 2.15         | -6.42    | 4.28   |
| Complexity                    | -0.03       | 0.42         | -0.53    | 4.44   |
| Amicus Briefs                 | 2.01        | 3.53         | 0        | 78     |
| Statutory                     | 0.27        | 0.44         | 0        | 1      |
| Outward Citations             | 15.38       | 15.84        | 0        | 195    |
RESULTS AND ANALYSIS

We begin by examining the effects of the Court members' tactics on the majority opinion. Model 1 in Table 3 tests the effects of separate opinions on Initial Hub Score. The key finding in this analysis is that both Regular Concurrence and Special Concurrence have significant positive effects on Initial Hub Score, which serves to confirm Hypothesis 1.\(^3\) The justice assigned to write the majority opinion takes into account his colleagues' decisions to join concurring opinions and, more importantly, writes an opinion that is more well-grounded in precedent as a result. This result indicates that the institution of concurring opinions plays a key role in the judicial process. While Anderson and Tahk (2007) have argued that this institution facilitates stable equilibrium decisionmaking outcomes, our results show that, in addition, concurring opinions may be a tool through which the justices prevent shirking by the majority opinion writer (Moe 1984; McCubbins and Schwartz 1984). That is, while the majority opinion writer often would prefer to use fewer of her resources in crafting an opinion, the possibility of having to contend with concurring opinions creates an incentive for her to craft the opinion more thoroughly. We also note that a simple comparison shows that the effect of Regular

\(^3\) We obtain similar results when we code concurring opinions differently, for example when including a variable indicating whether or not there was a concurring opinion in the case and when we group special and regular concurrence joiners together in one variable.
CONCURRENCE is significantly greater than the effect of SPECIAL CONCURRENCE \((p=0.05)\), consistent with Hypothesis 2. The coefficient on DISSENTERS is not significant, conforming to the null effect noted in Hypothesis 3. Although dissenters do write opinions that contain alternative legal reasoning, it appears that majority opinion writers do not to compete with them in a way that results in citations to more authoritative precedent.

**Table 3: Tobit Model of Relationship between Tactics and Initial Hub Scores**

<table>
<thead>
<tr>
<th>Variable</th>
<th>Model 1</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dissenters</td>
<td>-0.0461</td>
</tr>
<tr>
<td></td>
<td>(0.0867)</td>
</tr>
<tr>
<td>Regular Concurrence</td>
<td>0.920***</td>
</tr>
<tr>
<td></td>
<td>(0.158)</td>
</tr>
<tr>
<td>Special Concurrence</td>
<td>0.598***</td>
</tr>
<tr>
<td></td>
<td>(0.133)</td>
</tr>
<tr>
<td>Complexity</td>
<td>-0.0271</td>
</tr>
<tr>
<td></td>
<td>(0.295)</td>
</tr>
<tr>
<td>Amicus Briefs</td>
<td>-0.0190</td>
</tr>
<tr>
<td></td>
<td>(0.0367)</td>
</tr>
<tr>
<td>Statutory</td>
<td>-2.520***</td>
</tr>
<tr>
<td></td>
<td>(0.258)</td>
</tr>
<tr>
<td>Outward Citations</td>
<td>0.544***</td>
</tr>
<tr>
<td></td>
<td>(0.00867)</td>
</tr>
<tr>
<td>Year</td>
<td>-0.151***</td>
</tr>
<tr>
<td></td>
<td>(0.0113)</td>
</tr>
<tr>
<td>Constant</td>
<td>294.3***</td>
</tr>
<tr>
<td></td>
<td>(22.36)</td>
</tr>
<tr>
<td>Number of Observations</td>
<td>5099</td>
</tr>
</tbody>
</table>

Standard errors are listed below the coefficients, in parentheses

*** \(p<0.01\), ** \(p<0.05\)

These results obtain while controlling for the other factors likely to result in such an opinion. The two controls we include because of the methodology used to construct Initial Hub Score have the predicted effects. Because the network of cases has grown over time, Year has a negative and significant effect on Initial Hub Score. Likewise, when an opinion cites a greater number of previous cases, its Initial Hub Score is larger, which explains the significant
and positive coefficient on OUTWARD CITATIONS. Controlling for this factor means that our results demonstrate that the majority opinion writer, reacting to her colleagues' decisions to join concurring opinions, does not simply cite more precedent, but cites better precedent. Interestingly, the lack of a significant coefficient on COMPLEXITY indicates that the number of issues a case deals with is not a key factor in determining the quality of citations cited in the majority opinion when we account for the impact of the bargaining process.

The results indicate there is not a significant relationship between the number of amicus briefs filed in the case and the quality of the precedent cited in the majority opinion, which is somewhat surprising. Yet, while amicus briefs provide information to opinion writers about the precedents relevant to the decision, this process may only increase the number of cases cited in the decision and not their quality. Because we control for OUTWARD CITATIONS, therefore, AMICUS BRIEFS does not have a significant relationship with INITIAL HUB SCORE. Finally, the coefficient on STATUTORY is negative and significant, indicating that in cases of statutory construction the majority opinion is likely to cite less authoritative precedent, presumably because fewer such precedents exist that are relevant to the legal issues of the case.

We continued testing our hypotheses by introducing the ideology variables into our previous model. Model 2 in Table 4 tests the effects of IDEOLOGY VARIANCE, IDEOLOGY MEDIAN and WRITER IDEOLOGY on INITIAL HUB SCORE.

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4 To confirm this suspicion, we ran Model 1 again but excluded Outward Citations. The resulting coefficient for AMICUS BRIEFS is highly significant (p=.0001) and positive.
This analysis produces several important findings. First, the significant and positive coefficient for Ideology Variance indicates that, as ideological diversity on the Court increases, the majority opinion writer must accommodate a greater range of views in citing precedent in the majority opinion, which confirms Hypothesis 4. This means that majority opinions written during periods of ideological disagreement tend to cite more authoritative precedent. Second, introducing the ideology variables into our analysis does not detract from the
significance of **Regular Concurrency and Special Concurrency**, which means that his colleagues’ preferences and tactics jointly affect the majority opinion writer.\(^5\)

A third key finding in our analysis is that **Ideology Median** significantly affects **Initial Hub Score** as predicted in Hypothesis 5. These findings are important for at least two reasons. First, the significant effect of **Ideology Median** supports the median-justice model of the judicial process because it indicates that the preference of the pivotal justice impacts the content of the Court’s opinion. Second, the negative coefficient on **Ideology Median** suggests that the majority opinion writer tends to cite more authoritative cases as the median justice becomes more liberal. As discussed above, this might be interpreted as indicating that a liberal judicial philosophy tends toward a greater emphasis on case precedents than a conservative philosophy that favors founding texts. Alternately, it may indicate that Supreme Court precedents over the last 50 years, particularly during the Warren Court, have tended to be liberal and thus liberal justices prefer to cite them more so than conservative justices. We hope this finding will inform the debate in the legal and political science communities regarding the consequences of legal philosophy and spark additional research regarding ideology and citations to precedent.

The median-justice model, as opposed to the agenda-control model, is further supported by our fourth key finding. The insignificant coefficient on **Writer Ideology** indicates that, in terms of the quality of precedent cited in the opinion, the majority opinion writer is not free to let his personal ideology dictate the result, as predicted in Hypothesis 6. To confirm this finding, we conducted three additional tests regarding the nature of the relationship between **Writer Ideology** and **Initial Hub Score**. Table 5 provides our results. Model 3 indicates that opinions written by more conservative justices have higher **Initial Hub Scores**, a finding

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\(^5\) As above, we obtain similar results when using alternative coding rules for concurring opinions.
contrary to Model 2. Model 4, however, shows that when we control for Outward Citations, the effect of Writer Ideology on Initial Hub Score becomes insignificant. That indicates that while conservative justices are likely to cite more precedent when they write majority opinions, they are not more likely than their liberal colleagues to cite more authoritative precedent. Finally, when we add Ideology Median in Model 5, we find a negative and significant coefficient, as in Model 2. This confirms the finding that the ideology of the median justice affects the extent to which authoritative case precedent is cited by the majority opinion, whereas the majority opinion writer's ideology does not.

Table 5: The Relationship between Writer Ideology and Initial Hub Scores

<table>
<thead>
<tr>
<th>Variable</th>
<th>Model 3</th>
<th>Model 4</th>
<th>Model 5</th>
</tr>
</thead>
<tbody>
<tr>
<td>Writer Ideology</td>
<td>0.327***</td>
<td>0.0202</td>
<td>0.0400</td>
</tr>
<tr>
<td></td>
<td>(0.0844)</td>
<td>(0.0592)</td>
<td>(0.0595)</td>
</tr>
<tr>
<td>Ideology Median</td>
<td>-----</td>
<td>-----</td>
<td>-0.877***</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(0.281)</td>
</tr>
<tr>
<td>Outward Citations</td>
<td>-----</td>
<td>0.553***</td>
<td>0.552***</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(0.00777)</td>
<td>(0.00777)</td>
</tr>
<tr>
<td>Year</td>
<td>-0.0354**</td>
<td>-0.160***</td>
<td>-0.144***</td>
</tr>
<tr>
<td></td>
<td>(0.0152)</td>
<td>(0.0108)</td>
<td>(0.0120)</td>
</tr>
<tr>
<td>Constant</td>
<td>76.60**</td>
<td>312.7***</td>
<td>280.8***</td>
</tr>
<tr>
<td></td>
<td>(30.00)</td>
<td>(21.25)</td>
<td>(23.56)</td>
</tr>
<tr>
<td>Number of Observations</td>
<td>4845</td>
<td>4845</td>
<td>4845</td>
</tr>
</tbody>
</table>

Standard errors are listed below the coefficients, in parentheses

*** p<0.01, ** p<0.05

Fifth and finally, it is interesting to note that Complexity remains an insignificant predictor of Initial Hub Score, despite our expectation that more complex cases would result in majority opinions that are better-grounded in precedent. We conducted three additional tests to analyze the relationship between Complexity and Initial Hub Score. Our results are provided in Table 6. Model 6 shows that, without introducing controls, more complex cases do result in
higher hub scores. When we introduce OUTWARD CITATIONS in Model 7, however, COMPLEXITY loses its significance. This finding indicates that, although the complexity of a case results in a greater number of citations to previous decisions in a majority opinion, it does not affect the quality of those citations. It also suggests that the number of outward citations might be a good proxy for case complexity.

<table>
<thead>
<tr>
<th>Variable</th>
<th>Model 6</th>
<th>Model 7</th>
</tr>
</thead>
<tbody>
<tr>
<td>Complexity</td>
<td>4.263***</td>
<td>-0.362</td>
</tr>
<tr>
<td></td>
<td>(0.404)</td>
<td>(0.291)</td>
</tr>
<tr>
<td>Outward Citations</td>
<td>-----</td>
<td>0.550***</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(0.00753)</td>
</tr>
<tr>
<td>Year</td>
<td>0.000778</td>
<td>-0.158***</td>
</tr>
<tr>
<td></td>
<td>(0.0142)</td>
<td>(0.0102)</td>
</tr>
<tr>
<td>Constant</td>
<td>4.764</td>
<td>308.3***</td>
</tr>
<tr>
<td></td>
<td>(27.96)</td>
<td>(20.08)</td>
</tr>
<tr>
<td>Number of Observations</td>
<td>5199</td>
<td>5199</td>
</tr>
</tbody>
</table>

Standard errors are listed below the coefficients, in parentheses

*** p<0.01, ** p<0.05

CONCLUSIONS

We began this article by stressing the need for political scientists to analyze the content of Supreme Court opinions because of the importance of that content to the Court itself and to the larger legal community. By neglecting to account for the content of opinions, studies of judicial decisionmaking limit their ability to explain the complete outcome of cases. We therefore present a model that endogenizes opinion content, allowing us to examine the ways in which the bargaining process that occurs after the conference vote influences the decisions made by the majority opinion writer and, in turn, influences the development of the Court's majority opinion. We apply this model to the citations to precedent in the majority opinion,
demonstrating how strategic interaction influences these decisions. Figure 1 presents the sizes of the effects these variables have on the extent to which a majority opinion cites authoritative case precedent. The effect sizes in Figure 1 represent the percentage change in Initial Hub Score given a one-standard-deviation increase in the independent variable.

Our results indicate that including content in the analysis of the Supreme Court process can provide important insights into judicial politics. Because the strategic content model analyzes the ways in which judicial preferences and tactics affect content, it allows us to better understand how justices make opinion-writing decisions and how their ideologies influence the judicial process. In terms of judicial tactics, our analysis indicates that the opinion-writing decisions of justices have a greater significance than previously thought. By following the example of Anderson and Tahk (2007) and taking into account the multiple voting and opinion-writing options available to justices, our model explains how those decisions impact the extent to which a majority opinion is well-grounded in law. Previously, we may have assumed that a justice's rationale for joining a concurrence is to inform the legal community of his or her
difference of opinion with the rationale stated in the majority opinion. Others argued that these opinions result from "judicial egocentrism" (Caldeira and Zorn 1998) and diminish the weight of law in the majority opinion (Walker et al. 1988). Yet our finding leads us to conclude that a choice to join a concurrence is not only intended to influence the majority opinion (Spriggs et al. 1999), but often results in a majority opinion more well-grounded in legal precedent. When a justice writes a concurrence – or threatens to do so – he knows that the majority opinion writer will react to that decision, often by devoting greater time and effort to writing a more well-grounded opinion, often one that takes into account the concurring justice's preferred precedents. Thus, our finding is important because it demonstrates one way in which justices use their multiple voting options to achieve their preferred outcomes. It further suggests that the institution of concurrences creates an incentive for majority opinion writers to embed their decisions more firmly in prior authoritative precedent, which may help to promote the norm of stare decisis.

This article also provides several important insights on the role of ideology in the Supreme Court. While political scientists have generally focused on determining which justice's ideology is pivotal in the judicial process, our results demonstrate that the ideology of the Court as a whole plays an important role. As the diversity of viewpoints among the justices increases, the Court produces majority opinions more well-grounded in law. This finding indicates that, during periods of ideological disparity, the Court produces opinions that are more well-grounded in precedent and, therefore, more likely to set authoritative precedent themselves. It also indicates that the judicial bargaining process—in particular, the need to make compromises in order to achieve majorities—significantly impacts the development of judicial doctrine.
A second way in which our results clarify the role of ideology on the Court is by providing a new test of the agenda-control and median-justice models against each other. While we do not claim ours to be a conclusive test of these theories, the results have several implications. To begin with, as the strategic content model demonstrates, attempting to test these ideas against each other in terms of their effects on voting decisions is likely to miss the impact of ideology on the Court's opinion. Using our model, we find, in accordance with the strategic interaction model proposed by Anderson and Tahk (2007), that the majority opinion writer's ideology does not impact the extent to which a majority opinion cites authoritative precedent, which indicates that his ability to shape the opinion is not as significant as predicted by the agenda-control model. Instead, the majority opinion writer is constrained by the need to maintain a majority, and therefore the ideologies of his colleagues are more significant. Not only must the majority opinion writer address the range of ideologies on the Court, our results also suggest that he must specifically address the ideology of the median justice. Thus, our results suggest the median-justice model explains the content of Supreme Court opinions better than the agenda-control model.

While our findings regarding the role of ideology on the Court are not conclusive, this article demonstrates the importance of taking into account opinion content when analyzing these issues. Without including opinion content in a model, we cannot account for the full set of ways in which judicial outcomes are influenced by the judicial process. Our model provides a useful structure for analyzing how strategic interaction influences the content of Supreme Court opinions and, therefore, influences the development of legal doctrine.
Works Cited:


