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ISSUE IMPORTANCE, COLLEGIAL BARGAINING, AND DISAGREEABLE RHETORIC IN SUPREME COURT OPINIONS

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ABSTRACT

How do political actors use rhetoric after an initial policy battle? We explore factors that lead Supreme Court justices to integrate disagreeable rhetoric into opinions. Although disagreeable language has negative consequences, we posit that justices pay this cost for issues with high personal significance. At the same time, we argue that integrating disagreeable rhetoric has a deleterious effect on the institution by reducing majority coalition size. Examining opinions from 1946 to 2011 using text-based measures of disagreeable rhetoric, we model the language of opinion writing as well as explore the consequences for coalition size. Our findings suggest serious implications for democratic institutions and political rhetoric.

Disagreeable rhetoric is among the most powerful persuasive tools available to political actors. Aristotle's *Rhetoric* argues that discourse rooted in anger and indignation has the ability to "change men as to affect their judgments." Riker (1996) conceptualizes harsh rhetoric as a high-utility tool that enables the targeting of messages and provides political actors the ability to "weaken the resolve of their opponents" (67). More recent scholarship verifies the multidimensional "importance of rhetoric" (Garsten 2011, 160) in a variety of institutional (e.g., Wedeking 2010; Grose, Malhotra, and Van Houweling 2015) and campaign contexts (e.g., Skaperdas and Grofman 1995; Sigelman and Buell 2003; Druckman, Kifer, and Parkin 2009; Fridkin and Kenney 2011).

These approaches greatly enrich our understanding of political and legal strategy as well as democratic theory. Yet much of the work on rhetoric shares a common feature in that it explores political and legal discourse when actors have short-term goals in mind. These

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goals often take the forms of winning an upcoming election, increasing one's popularity, or winning struggles over policy. As a result, a fundamental question remains unanswered: Why would policy makers employ disagreeable rhetoric even after short-term policy debates have been settled? This article aims to broaden our theoretical window into the use of rhetoric during an overlooked phase of the political process, the period after a policy decision has been made. We theorize that an understudied aspect of the political and legal environment, the personal importance of an issue, influences the extent to which actors adjust their rhetorical tone. Furthermore, we argue that these adjustments have important implications for the nature of decision making on collegial institutions as well as support for political and legal institutions more generally.

In our study we examine the use of disagreeable rhetoric in the written, signed opinions of the US Supreme Court. In common-law systems like the United States, it is not only the decisions of judges to affirm or reverse but also the written opinions that accompany them that shape the law and public reaction.[1] As one study observes, in order to further their jurisprudential and policy legacies, "justices wish to write legally strong, persuasive opinions" (Corley, Collins, and Calvin 2011, 34; see also Murphy 1964). Because the rhetoric used in Court opinions allows justices to influence policy debates even after a controversy has been resolved, we expect that justices use harsh rhetoric to emphasize their positions and discredit opponents. At the same time, the use of disagreeable language may have negative consequences from an institutional perspective. We argue that justices are willing to pay the long-term costs of disagreeability when an issue is of high personal importance to them. When justices feel strongly about a case or issue, they place a premium on engaging in a rhetorical struggle with their opponents, and they use harsh rhetoric even though it may negatively impact the Court as an institution. We find evidence consistent with our account across a variety of opinion types, including separate concurring and dissenting opinions in which authors have significant control over content.

Yet, given that the opinion-writing and bargaining process is endogenous, we also anticipate that the use of disagreeable language, although more prevalent on issues that are important to the justices, has consequences for bargaining among the justices. Specifically, we demonstrate that disagreeable rhetoric in majority opinions is common and posit that it will lead fewer justices to join the majority coalition, which has potential implications for the Court's popular support. To model this endogeneity, we use two-stage least squares estimation, with instrumental variables for each stage, to explore the linkage between disagreeable rhetoric and the size of the majority coalition. Our findings demonstrate that more disagreeable rhetoric leads to a smaller majority coalition. This suggests serious concerns for bargaining when justices use harsh language.

Our work has three major implications. First, we are able to demonstrate that justices may eschew the long-term goal of maintaining institutional support when an issue

1. The most powerful illustration of this contention may be n. 4 in *United States v. Carolene Products* (304 U.S. 144 [1938]), an apparent sidebar in Justice Stone's majority opinion that has nonetheless shaped decades of equal protection law.

becomes important enough. This means, for instance, that justices may utilize harsh opinion language with the hopes of influencing subsequent legal developments and policy debates. Second, in cases in which larger coalitions provide benefits, our findings have implications for the opinion assignment literature. Because justices who feel strongly about an issue write in starkly different terms, a justice with assignment power must consider the types of opinions that will be written and the subsequent influence of opinion language when selecting an author.

Finally, our work raises the possibility that institutional support may decline when the Supreme Court relies on disagreeable rhetoric, as it has been increasingly willing to do. Such language may violate norms of sober, thoughtful decision making that help courts maintain support, but we are also able to show that disagreeable rhetoric has the more immediate effect of increasing division on the bench. This implies that as the Court's norms change and its justices become more comfortable with harsh language, this may contribute to the perception of ideological disagreement on the Court that is vitally linked to public support for the institution.

CONCEPTUALIZING DISAGREEABLE RHETORIC ON THE SUPREME COURT

As we conceptualize it, disagreeable rhetoric consists of language with harsh, unpleasant, or negative connotations. Harsh rhetoric is used as an integral part of a framing strategy to structure audience expectations in order to persuade (Tannen 1993; see also Murphy 1964; Entman 1993). In the electoral context, emphasizing negative aspects primes emotional responses (Hainmueller and Hopkins 2014, 234) and allows the messenger to influence a variety of attitudes and behaviors (e.g., Knoll, Redlawsk, and Sanborn 2011). Scholars have a more limited understanding of disagreeable rhetoric when it comes to the judicial branch, but research demonstrates that it is on the rise at the US Supreme Court and pervades multiple types of opinions (Bryan and Ringsmuth 2016; Wedeking and Zilis 2018), which suggests a need for more careful attention to how it comes about and the implications that result.

In order to add nuance, we consider in more detail the defining features of disagreeable rhetoric in the context of the Supreme Court. While justices may integrate harsh language at multiple stages, including oral argument and private deliberations, we are particularly interested in opinion language for a few reasons. First, opinions have a great deal of substantive importance from legal and policy-making perspectives. This is certainly true with respect to majority opinions of the Court, but even dissents and concurrences have the capacity to influence subsequent policy developments by constraining the impact of majority opinions and signaling conflict to other actors (Wahlbeck, Spriggs, and Maltzman 1999; Urofsky 2017). Relatedly, justices are very deliberate about their opinion language (Black, Owens, Wedeking, and Wohlfarth 2016) since legal and political elites pay close attention. Finally, the language of majority opinions in particular has been shown to influence media coverage and public responses, suggesting implications for the Court's popular standing (Zilis, Wedeking, and Denison 2017).

With this in mind, disagreeable opinion language consists of a few key features. First, this language highlights unpleasant or negative characteristics for interested audiences (Nelson, Oxley, and Clawson 1997, 225–28), which is valuable because negative information has a higher likelihood of capturing audience attention and sticking in memory (Marcus, Neuman, and MacKuen 2000; Entman 2004; Brader 2005) and tends to be weighted more heavily in attitude formation (Lau 1985). In the context of the Supreme Court, some noteworthy opinions adopt this tactic. For example, the recounting of the facts in *Roper v. Simmons* (543 U.S. 551 [2005]) describes a horrific chain of events, strongly emphasizing the brutal act of the crime, which ultimately sets the stage for the Court's legal reasoning that follows. In the legal reasoning, the majority opinion repeatedly uses the term "death penalty" (over 80 times) while also taking a confrontational tone toward the petitioner's arguments. This is far from the only example of the justices detailing unsettling facts to frame their arguments. In a recent opinion that attracted popular attention, Clarence Thomas went to "great lengths" to describe a murder and criticized his colleagues for leaving out these details (de Vogue and Cole 2019). Such language fits within our conceptualization of disagreeable rhetoric by strongly emphasizing negative aspects as part of its persuasive approach.

In addition to emphasizing negative aspects, disagreeable rhetoric may also feature an overall unfavorable tone (see, specifically, Zilis et al. 2017 and, more generally, Young and Soroka 2012). This particular aspect of opinions has garnered significant attention in recent years, with some commentators worried about the rise in harsh emotional language on the Court. Court observers often noted the language used by Justice Scalia, whose opinions characterize opponents in very unflattering terms (Chemerinsky 2015). Unfavorable language also appears from different quarters of the Court, such as when Justice Alito suggested the "irredeemable corruption" of constitutional interpretation in the federal judiciary (Gerstein 2015). But while popular attention tends to focus on isolated examples of harsh tone, we note that similarly heated rhetoric has worked its way into many other opinions over time (Wedeking and Zilis 2018).

In short, our understanding of disagreeable rhetoric on the Supreme Court identifies a few important conceptual features, including the emphasis on unpleasant characteristics and use of an unfavorable tone. This language appears increasingly common on the Court and in multiple types of opinions. Indeed, in spite of the fact that commentators often highlight disagreeable rhetoric in dissents, there is nothing to prevent the majority from adopting this language as well, which is critical given that their opinions carry the force of law. We examine in more detail the differences across types of opinions in subsequent sections.

STRATEGIC CONSIDERATIONS RELEVANT TO DISAGREEABLE RHETORIC

Supreme Court justices act strategically when crafting opinion language. With multiple audiences and goals in mind, justices in the majority aim to build public support, bring about implementation, and evade congressional oversight through adjustments in the

clarity and complexity of their writing (Owens and Wedeking 2011; Owens, Wedeking, and Wohlfarth 2013; Black, Owens, Wedeking, and Wohlfarth 2016). Majority justices also make use of strategic citation patterns in order to signal stronger legal support for their opinions (Corley, Howard, and Nixon 2006; Hume 2006) and, more germane to our purposes, adjust their level of disagreeable language depending on the salience of a case in order to safeguard popular support (Wedeking and Zilis 2018). For dissenters, aggressive language is common on issues about which justices feel strongly and for which they value policy outcomes over the legitimacy of the institution itself (Cross and Pennebaker 2014; Bryan and Ringsmuth 2016).

On the whole, existing work views disagreeable rhetoric as a product of the justices' desire to take clear positions for interested audiences (Cross and Pennebaker 2014); justices have long been seen as concerned about their reputations among audiences (Baum 1994, 2006). Using disagreeable language is valuable not only as a framing device but also as a way to raise the salience of specific policy considerations that the justices seek to emphasize.

The literature supplies additional traction when we broaden the focus beyond opinion rhetoric and look at other forms of contentious or disagreeable behavior, which are also becoming increasingly common (e.g., Black, Owens, and Wedeking 2016; Rice and Zorn 2016). One study explains, "The use of anger may seem to be a lapse by the justices [but] the use of emotion may be a *strategic tool* that makes opinions more powerful" (Cross and Pennebaker 2014, 890; emphasis added). Consistent with this insight, Johnson, Black, and Ringsmuth (2009) show that judges become more likely to read oral dissents when a dissent's ideological distance from the majority increases and the majority coalition is a minimum winning one. Conversely, interpersonal cooperation can dissuade justices from behaving in a disagreeable fashion. For example, the reading of oral dissents becomes less likely when one has worked with the majority opinion author in the past (Blake and Hacker 2010). This view squares with a broader literature showing that interpersonal relationships play a critical role for policy-minded justices (Haynie 1992; Epstein and Knight 1998; Maltzman, Spriggs, and Wahlbeck 2000). In the short term, collegial accommodation allows justices to persuade colleagues to sign on to a specific opinion, while in the long term it fosters mutually beneficial interactions among the group.[2] Again, however, noncollegiality is not just the province of dissenting justices (e.g., Black, Johnson, and Wedeking 2012; Cross and Pennebaker 2014; Rice and Zorn 2016; Smith 2017), although it is an approach that dissenters frequently use (Johnson et al. 2009).

Therefore, existing work suggests that strategic considerations influence both the majority and the dissent in terms of their willingness to employ disagreeable rhetoric. To be clear, this does not always mean that the coalitions write the same types of opinions but rather that both are guided by strategic considerations when they act. An important underlying goal for both is to build support for their positions at the expense of their opponents.

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2. Awareness of this extends to justices in the opinion-crafting process as well. For example, upon reading a clerk's draft of what became the landmark opinion in *Carolene Products*, Justice Stone focused his changes on "toning down a couple of over-emphatic words" (Mason 1956, 513).

Finally, we note an additional drawback of disagreeability: its ability to weaken the Court's popular authority (Epstein, Segal, and Spaeth 2001, 362–63; Baird and Gangl 2006; Zink, Spriggs, and Scott 2009). Because media coverage tends to track closely the language used by the Court majority in reporting on decisions (Zilis 2015), an important cost associated with breaches of collegiality is sensationalist or divisive portrayals of rulings to the public, which hamper the Court's support (Johnston and Bartels 2010). Simply put, the Court's rhetoric matters in shaping responses to decisions.[3]

In sum, the literature suggests two primary insights. First, justices adjust the language of their opinions as part of a framing strategy for external audiences. When it comes specifically to disagreeable rhetoric, this language allows justices to make salient their positions for interested audiences and influence the reception that external actors give to rulings. Second, we note that disagreeable behavior harms the ability to bargain with one's colleagues and may also have costs in terms of institutional support. Focusing on these costs and benefits, we next build our theory of disagreeable rhetoric with an application to Supreme Court opinions.

THEORETICAL FRAMEWORK

Personal Importance and Disagreeable Language

Disagreeable language is costly in that it may signal the breakdown of bargaining among the justices and have reputational costs for individual justices and the institution as a whole. Furthermore, the use of disagreeable rhetoric is potentially more costly than other rhetorical approaches that have been the subject of study, such as the citation to precedent or other legal writings (Corley, Howard, and Nixon 2006; Hume 2006). Whereas the latter may simply increase resource and time pressures, disagreeable rhetoric may also make it more difficult to attract ambivalent colleagues to sign on to opinions both contemporaneously and in the future. To the extent that disagreeable rhetoric violates Court norms and is seen as beyond the bounds of acceptable rhetoric, it may come at a reputational cost to the justices who employ it and, more significantly, the Court itself. However, justices may have reason to pay the costs associated with disagreeable language for important goals in order to influence the views of external audiences (Bryan and Ringsmuth 2016).

In other words, disagreeable rhetoric has benefits and costs for the justices when writing their opinions. The language can be used as part of a framing strategy to effectively discredit opponents, but it may also negatively impact the ability to bargain with one's colleagues and the reputation of the institution more generally. We theorize that opinion authors weigh these trade-offs and become more apt to use disagreeable language when a dispute concerns an issue that is highly important or significant to them personally. In these instances, justices place a premium on making a point to observers and discrediting

3. This sentiment was echoed by Chief Justice Roberts, who recently emphasized the historical importance of "making sure people [justices] disagreed without being disagreeable" since "somebody does have to represent the institution to the outside world" (de Vogue 2015).

opponents, even if this means that they must be more aggressive in their use of disagreeable rhetoric.

Our focus on personal importance as a central determinant of harsh rhetoric is based on the observation that justices are most likely to accept the costs associated with disagreeableness when they feel strongly about a matter before the Court and when they value influencing subsequent developments through effective persuasion. In other words, our concept of personal importance considers the extent to which justices feel strongly about particular issues, which has implications for how they behave in relevant cases. As Baum observes, "some goals are sufficiently important that people have strong incentives to act on their behalf" (2006, 15), and we recognize that different factors may influence the issues a justice finds personally important. Specifically, we anticipate that justices may be more apt to hold strong feelings about issues that are legally significant or politically salient or those about which they have personal experience or expertise.

On important issues, integrating disagreeable language supplies justices with a powerful rhetorical strategy to persuade audiences. Consistent with this observation, research demonstrates that highly contentious and high-profile cases tend to generate more heated rhetoric on the Court (Hume and Guidry-Leingang 2017). Building on this, we anticipate that justices' desires to persuade in cases that are important to them gives rise to an increased willingness to employ aggressive rhetoric. This allows them to emphasize the position taken or aggressively attack the arguments made by their opponents.

> Personal Importance Hypothesis: As an issue becomes more personally important to an opinion author, this leads to an increase in disagreeable language.

At the same time, we recognize that distinct dynamics govern the writing of majority versus separate opinions. Although we expect that authors use more disagreeable rhetoric on personally important issues, we do not expect that authors of majority and separate opinions will integrate the same level of disagreeable rhetoric, since there is likely to be more negotiation over majority opinions. For this reason, we focus on separate opinion writing in the first part of our analysis in order to understand the effects of personal importance on disagreeable rhetoric.

Disagreeable Language and Coalition Size

Although our theoretical framework offers insight about how one overlooked factor, the personal importance of an issue, influences the disagreeability of opinions, it has an additional testable implication. A major reason that justices are more willing to use disagreeable rhetoric on issues of high importance to them is that they value discrediting their opponents' arguments. Yet when majority opinions become highly disagreeable, it has an added cost of making it more difficult to persuade other justices to join (or maintain others already in the majority coalition). This is because each individual justice has preferences over not only a case disposition but also the content of opinions themselves (Clark and

Carrubba 2012), and opinions that feature disagreeable rhetoric may be off-putting to colleagues.

Indeed, we can observe the importance that justices place on opinion rhetoric by looking to bargaining interactions on the Court. In *Mapp v. Ohio* (367 U.S. 643 [1961]), for example, Justice Harlan expressed in a note to Justice Clark that he was "unable to understand why a ground for deciding this case should have been chosen which is not only highly debatable and divisive. . . . I earnestly ask you to reconsider the advisability of facing the Court, in a case which otherwise should find a ready and non-controversial solution, with the controversial issues that your proposed opinion tenders."[4] Harlan's actions indicate the bargaining costs associated with divisive majority opinions; unsatisfied by Clark's response to his memo, Harlan ultimately issued a dissent in *Mapp*. Alternatively, during bargaining in *United States v. Hensley* (469 U.S. 221 [1985]), Justice Stevens asked the Court to recast its opinion in a more modest light, which allowed him to sign on (Maltzman et al. 2000, 156–57).

There are numerous other examples of bargaining over opinion language (Spriggs, Maltzman, and Wahlbeck 1999), and these indicate that harsh or divisive language is a source of concern for justices when considering whether to sign on to a majority opinion. Therefore, we anticipate that, in majority opinions in particular, the use of disagreeable language makes it more difficult for a potential author to bargain with ambivalent colleagues, with consequences for the size of the Court's majority coalition in a given case.

> Coalition Size Hypothesis: As disagreeable rhetoric increases in a majority opinion, the size of the majority coalition decreases.

EMPIRICAL STRATEGY

Our empirical approach proceeds in two steps. First, we explore our personal importance hypothesis, which predicts that opinion authors become more willing to integrate disagreeable rhetoric on issues that are personally important to them. While there are several avenues to study this, we focus our first analysis on the rhetoric in separate (nonmajority) opinions. This is advisable because the justices have significant control over the content of their concurring and dissenting opinions. Unlike for majority opinions, there is no incentive to bargain over opinion language in order to maintain a winning coalition, making for an appropriate test of our justice-specific personal importance hypothesis.

After showing that the importance increases the likelihood that justices will integrate disagreeable rhetoric in separate opinions, we then proceed to our second analysis, which involves analyzing the consequences of disagreeability, particularly as they concern the size of the Court's majority coalition. We anticipate that disagreeable rhetoric in majority opinions will influence the size of the coalition. However, we are also cognizant of concerns

4. "The Papers of Justice Tom C. Clark," Tarleton Law Library, University of Texas, https://tarltonapps.law.utexas.edu/clark/pdf/mapp/a115-06-03.pdf.

with endogeneity or reverse causation, in which coalition size may influence opinion rhetoric. In other words, while harsh rhetoric may cause some justices to refuse to join, it may also be the case that coalition size influences disagreeable rhetoric in an opinion.[5]

Given these concerns, we use two-stage least squares as an estimation strategy in our second analysis because it is designed to account for endogenous relationships. The first-stage equation explains disagreeable opinion rhetoric as a function of the issue's personal importance to the opinion author as well as a series of other covariates. We then estimate a second-stage equation to explain coalition size as a function of disagreeable opinion rhetoric and a series of other covariates. Estimating a two-stage least squares model requires us to identify instrumental variables that are exogenous for each stage.

For the first-stage equation, we use the personal importance to author variable as an instrument for estimating disagreeable opinion rhetoric (i.e., personal importance to the author directly influences opinion rhetoric but not the size of the majority coalition). To evaluate the theoretical justification for this instrument, we draw on our first analysis, which demonstrates that personal importance influences the extent to which justices rely on disagreeable language in their opinions. Specifically, justices are more likely to compose a harsh opinion on a case of high personal importance than any other case.

To evaluate the instrument's validity for majority coalitions, we consider the concern that other (nonauthor) justices may vary in their likelihood of joining a coalition given the importance they place on the case. In other words, one threat to validity might occur when the importance of an issue to nonopinion authors influences their likelihood of joining a coalition, thus affecting the second-stage equation. This objection necessitates that we account for the aggregate importance of an issue to all other justices, and not just the majority opinion author, since this factor is likely to influence their voting behavior. To do so, we include an aggregate importance control variable in our first- and second-stage equations. This variable captures the importance that nonauthor justices place on a given case. The personal importance to author instrument, however, is included only in the first stage.[6]

For the second-stage equation, whether the Court is operating with a missing member (i.e., if it has all nine members or not) is a theoretically appropriate instrument.[7] This factor should have a strong link to estimating the size of the majority coalition, since cases in which the Court is at less than full strength have fewer members available to sign on to a majority opinion, but it is not theoretically expected to influence the disagreeability of an opinion. To ensure the validity of this instrument, we have performed a number of

5. This correlation could cut in one of two directions. If there is little prospect that justices will abandon the majority, smaller majority coalitions may be free to write more disagreeable opinions. But if there is the potential for defection, smaller majority coalitions may be forced to limit their disagreeable language in order to maintain their majority.

6. Keep in mind that because the unit of analysis is the opinion (not the justice level), we have to account for the nonauthors' importance in some aggregated fashion (i.e., it is not possible to simply include each individual justice's importance score).

7. Although it may seem uncommon for cases to feature a missing justice, in actuality the event is not all that rare. In our sample 1,402 cases include a missing member (21%).

robustness checks, omitting the most common missing members from our analysis to ensure that the recusals of highly disagreeable justices are not driving the results. Additionally, the results of a Sargen-Hansen test for overidentifying restrictions do not allow rejection of the null hypothesis that both the first- and second-stage instruments are valid.

To summarize our empirical approach, we begin by evaluating our personal importance hypothesis, showing how this factor increases the use of disagreeable language, particularly in separate opinions in which an author has significant control over content. Then, we model the endogenous relationship between disagreeable language and coalition size for majority opinions. We find that highly disagreeable majority opinions attract smaller coalitions of justices to sign on.

Measuring and Validating Disagreeable Rhetoric

For our dependent variable, we examine all US Supreme Court opinions from the 1946 to 2011 terms. While some work has explored other forms of disagreeability (e.g., Black et al. 2011), very little explores written opinions (but see Wedeking and Zilis 2018), which is unfortunate since these are the clearest means through which the justices communicate with interested audiences, policy makers, and other actors in the political and legal system. As such, the language used in written opinions has tremendous importance in shaping subsequent developments both inside and outside of the legal system. Furthermore, we anticipate that our approach is a conservative one, since justices are much less likely to employ inflammatory language in carefully thought-out written opinions than they would be in oral arguments or oral dissents.[8]

We examine three different measures of disagreeable language from two different computer programs. We do so because it enables us to make more robust claims if our results are replicable across different data sets and coding schemes. The first computer program is the Dictionary of Affect in Language (DAL), which measures the emotional meaning of words and texts (Whissell et al. 1986; Whissell 1989). The program observes the frequency with which a set of words, corresponding to a given emotional construct, occurs in a text, rating each word for its degree on three dimensions: activeness, pleasantness, and imagery. DAL has been widely used in psychology and was previously used in political science to study the Supreme Court (Black et al. 2011).

For our first two indicators that capture disagreeable language, we make use of the DAL subdictionaries of "nasty" and "very unpleasant" words. Nasty words are those that score in the top quartile for activation and the bottom quartile for pleasantness, while very

8. We recognize that our focus on written opinions introduces complexity into the attribution phase, since the justices' law clerks have taken on an increasingly important role in crafting opinion language (Peppers 2006; Ward and Weiden 2006). Since these clerks function as agents for the justices themselves, however, and the justices must ultimately sign off on opinions, we believe that we can glean an understanding of interpersonal differences on the Court through our approach. More importantly, our primary goal in this article is not to offer an account of justice-specific effects but rather a theory of how personal importance influences disagreeability.

unpleasant words are in the bottom decile for pleasantness; as such, both give us insight into the disagreeability of opinions.

A third measure of disagreeable rhetoric examines the negative emotion category from Linguistic Inquiry and Word Count (LIWC), a textual analysis software package that operates on the same dictionary-based principles as DAL. LIWC employs a word count strategy that searches whatever text is under review for over 2,300 words (or word stems) using specific, validated dictionaries (Pennebaker and King 1999). LIWC has also been employed to study the Court on several occasions (e.g., Owens and Wedeking 2011; Corley and Wedeking 2014; Cross and Pennebaker 2014) and has a specially designed dictionary of negative emotion words. LIWC's dictionaries were designed specifically for capturing tone; their validity and reliability have been extensively tested by previous scholars (Pennebaker and King 1999; Tausczik and Pennebaker 2009).

Factor analysis of these three indicators confirms that they have an underlying unidimensional structure. Cronbach's alpha is 0.785, and the eigenvalue of the first extracted factor is 1.337 (the second is −0.139). The factor loadings range from 0.628 (negative emotional words) to 0.695 (very unpleasant words). Given this evidence, we create a factor variable using a simple regression method. Using the factor variable provides the added benefit that it focuses on the variance common to all three measures, which we assume to be disagreeable rhetoric, and reduces reliance on idiosyncratic effects of each individual measure. This added robustness protects against misleading false positives from words that may be used in one dictionary but not the other two. Importantly, in the following model estimates, if we use all three indicators individually (rather than the factor variable that combines all three), we get nearly identical results (see the appendix). Written opinions range from −2.599 (mild) to 6.188 (harsh), with a mean of 0 and a standard deviation of 0.819. To provide a more concrete illustration of the variance, we can focus on one indicator that is a component of the factor score: the percentage of nasty words used by the justices. This ranges between 0% and 12.5% in a given opinion, with a mean of 3.657%. While this may seem like a small difference at first, remember we are talking about opinions that contain thousands of words (our mean majority opinion length is over 4,000 words).

To explore the properties and validity of our dependent variable, figure 1 plots three distributions of disagreeable rhetoric, one for each type of opinion (majority, concurrence, and dissent). As figure 1 demonstrates, the distribution for each opinion type is very similar. In addition, figure 1 highlights 10 opinions along the distribution to provide further context for how these opinions map onto our dependent variable.

To provide more detail about some of the cases that exhibit high levels of disagreeable rhetoric, let us consider three cases that appear on figure 1. First, Justice White's dissent in *Booth v. Maryland* (469 U.S. 221 [1985]) has an extremely high score. Consider these two quotes from the opinion:

> The affront to humanity of a brutal murder such as petitioner committed is not limited to its impact on the victim or victims; a victim's community is also injured,

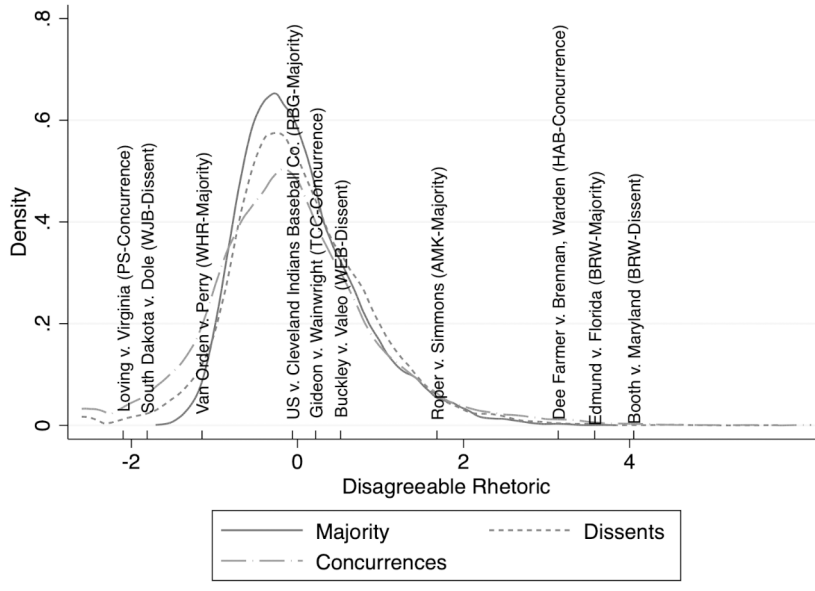

Figure 1. Distribution of disagreeable rhetoric, across opinion types. There are 10 opinions highlighted in the distribution to provide a greater description of the content of the measure. Each opinion lists the opinion author by type as well as the author's initials. PS = Potter Stewart; WJB = William J. Brennan; WHR = William H. Rehnquist; RBG = Ruth Bader Ginsburg; TCC = Tom C. Clark; WEB = Warren E. Burger; AMK = Anthony M. Kennedy; HAB = Harry A. Blackmun; BRW = Byron R. White.

> and in particular the victim's family suffers shock and grief of a kind difficult even to imagine for those who have not shared a similar loss. . . .
>
> The Court is "troubled by the implication that defendants whose victims were assets to their community are more deserving of punishment than those whose victims are perceived to be less worthy," and declares that "our system of justice does not tolerate such distinctions." Ante, at 506, n. 8. It is no doubt true that the State may not encourage the sentencer to rely on a factor such as the victim's race in determining whether the death penalty is appropriate. Cf. *McCleskey v. Kemp*, 481 U.S. 279 (1987). But I fail to see why the State cannot, if it chooses, include as a sentencing consideration the particularized harm that an individual's murder causes to the rest of society and in particular to his family. (*Booth*, 483 U.S. at 515, 517; Justice White dissenting)

In addition, consider how Justice White's majority opinion in *Enmund v. Florida* (458 U.S. 782 [1982]), which is also shown in figure 1, frames the legal question. Specifically, he writes, the case is about "the question whether death is a valid penalty under the Eighth and Fourteenth Amendments for one who neither took life, attempted to take life, nor

intended to take life" (*Enmund*, 458 U.S. at 787). The opinion then goes on to use the word "death" as part of "death penalty" over 70 times. The words "killing" and "rape" are also used extensively. Yet the harsh tone does not stop there. It also criticizes the dissent: "The dissent criticizes these statistics on the ground that they do not reveal the percentage of homicides that were charged as felony murders or the percentage of cases where the State sought the death penalty for an accomplice guilty of felony murder. Post at 818–819. We doubt whether it is possible to gather such information" (*Enmund*, 458 U.S. at 796; Justice White in the majority). These sorts of attacks are becoming more commonplace. Consider Justice Blackmun's concurrence in *Dee Farmer v. Edward Brennan* (511 U.S. 825 [1994]), also shown in figure 1. For example, Blackmun writes, "The Court's analysis is fundamentally misguided; indeed it defies common sense" (*Farmer*, 511 U.S. at 854). In sum, there is a tone and hostility that the measure seems to capture.

Additionally, when we analyze temporal trends using our measure, we see a persistent rise in disagreeable rhetoric over time, including the fact that five of the most disagreeable justices in the entire sample serve on the current Court. This fact is worthy of attention in its own right, but it also suggests a measure of face validity for our dependent variable, since recent studies note that various forms of disagreeable rhetoric appear to be on the rise at the Court (e.g., Long and Christensen 2012).

Other Covariates

For our measure of personal importance to an author, which is our main covariate of interest in the first stage, we generate an opinion ratio score for each justice. This captures the number of opinions written in a legal area but strips away majority opinions, as justices have little control over these assignments. Our measure employs the issue area codes from the Supreme Court Database (Spaeth et al. 2018) to capture the percentage of all separate opinions a justice authored that were in a given legal area. In generating this measure, we include only separate opinions (dissents and concurrences) because those are the only opinions that are completely under the control of the justices in terms of deciding whether to write. In other words, if justices feel strongly about an issue, they may write a separate opinion in that case, either as a concurrence (if they are in the majority coalition) or as a separate dissent. In contrast, justices have little control over whether they get to write majority opinions, regardless of how strongly they feel about the topic (with the obvious exception of the chief justice and the senior associate justice when the chief justice is not in the majority). Thus, we think that an indicator of how often a justice writes separately captures how strongly the justice feels about a given issue area, all else equal.[9]

9. The measure is constructed such that a justice who authored 100 separate opinions during his or her time on the Court, 30 of which dealt with criminal procedure and 5 of which with civil rights, would receive a score of 0.30 for criminal procedure and 0.05 for civil rights, indicating the relatively high personal importance of criminal procedure compared to civil rights, with the remaining issues being assigned the relative proportion of separate opinions written in corresponding issue areas. This produces issue-fixed values for each justice throughout the course of his or her tenure, which coincides with

To verify the face validity of this measure, we calculated the issue areas that it scores as most and least important to the justices. As expected, rights and liberties issues were among the most significant according to our measure. Using Supreme Court Database issue area codes, among the issues identified as most important on average to the justices were those involving criminal procedure, civil rights, and the First Amendment. Our measure also identifies interstate relations, attorneys, and miscellaneous issues as among the least important. We are confident that the importance measure provides a valid indication of the issues the justices find the most significant.[10]

For our measure of coalition size, which is our dependent variable in the second stage and also a predictor in the first stage, we use the number of votes that agreed with the disposition made by the majority from the Supreme Court Database. For our instrument that measures whether the Court has a missing member, we use the Supreme Court Database to create a binary variable anytime the Court makes a decision without nine members.[11]

We also include a series of control variables to account for other factors associated with both the use of harsh rhetoric and coalition size. We control for the possibility that the personal importance of issues to nonopinion authors will affect opinion content and coalition size. To do so, we create a measure of aggregate personal importance, which is simply the mean value of all justices' personal importance scores in a case minus the majority author's personal importance score. This indicates whether nonauthors see an issue as particularly important relative to the majority author's view, which may affect their behavior in a case.[12]

Additionally, we note that much of the controversy surrounding the Court's role in American society can be traced back to its shift in the docket and footnote 4 in *United States v. Carolene Products* (304 U.S. 144 [1938]), which ended the norm of consensus on the Court (Epstein et al. 2001). After this, the Court started taking and deciding many cases dealing with civil rights and liberties. These topics were much more hotly contested, sharply dividing the public and the justices. For our measure of issue area (civil

our conceptualization of personal importance as relatively fixed. However, our personal importance results are robust to the use of a time-variant measure.

10. We also considered other ways to operationalize the concept of personal importance. The most obvious alternative is to generate an opinion ratio score within issue areas. This would capture the percentage of time a justice wrote separately in a particular area, out of all possible cases in that area. But issue area ratios have a disadvantage in that they do not enable us to account for the fact that the Court tends put more cases on its docket when it finds an issue important. Ratios treat all issue areas as relatively equal in baseline importance, irrespective of whether the Court dockets 5 cases or 50 from one area in a given term. Additionally, using issue area ratios means that a single separate opinion in a low-salience area like interstate relations has a much greater effect on importance than the same opinion in a high-salience area like civil rights. As such, a measure based on issue area ratios lacks the face validity of the one on which we rely.

11. This is constructed from the "majVotes" and "minVotes" variables.

12. We also created a similar measure focused on only members of the majority coalition (instead of all members). This does not alter the results.

rights or liberties), we use a binary variable modified from the "IssueArea" variable of the Supreme Court Database that codes values 1–6 as civil rights and liberties issues.

We also draw on the Supreme Court Database to create binary indicators for whether a decision altered precedent or engaged in judicial review. Additionally, we measure ideological considerations by drawing on the widely used Martin-Quinn scores (Martin and Quinn 2002). We account for ideological accommodation in a case by taking the standard deviation in Martin-Quinn scores among members of the majority coalition. We also include measures of the number of special concurrences and regular concurrences because those should both be related to opinion language and coalition size.

We also account for several other factors. Because an individual's age has been shown to be negatively correlated with the use of disagreeable language (Pennebaker, Mehl, and Niederhoffer 2003, 556), we expect that older justices should use less disagreeable rhetoric. For the opinion authors' age at the time of the decision, we simply calculated the difference in years between their birth and the decision year. Additionally, research suggests the chief justice may play an important role as the "social leader" of the Court, with a role to ensure that judicial work remains collegial (Black, Owens, and Wedeking 2016). Chief justice author is a binary variable indicating whether the chief justice authored the opinion. We also include a variable to control for the word count (in hundreds of words) of the written opinions.

We control for a general trend toward diminished collegiality on the Court. This is important because of the disintegration of the "norm of consensus" throughout the 1930s and 1940s (Epstein et al. 2001) and increasing trends toward disagreeability on the bench. To account for changes in the use of disagreeable language over time, we use a trend variable that is simply the year of the decision, enabling us to gauge the average level of disagreeable language at a given time. This is a common modeling strategy when accounting for trends over time (e.g., Epstein et al. 1998; Shipan 2008; Farganis and Wedeking 2014). Finally, to control for the possibility that opinion disagreeability is due to certain authors, we also include author-fixed effects, although the results are robust to their exclusion (see the appendix).

ANALYSIS 1: DOES PERSONAL IMPORTANCE INFLUENCE DISAGREEABLE RHETORIC IN OPINIONS?

We begin by analyzing our personal importance hypothesis, using the empirical models presented in table 1. We focus this analysis on the level of disagreeable rhetoric in separate opinions—dissents and concurrences—because of the control that an author exerts over the content. Put differently, separate opinion authors do not need to negotiate with colleagues in order to maintain a majority, making these opinions an appropriate avenue for studying how the personal importance of an issue affects opinion language.

We find substantively consistent results across our separate models for concurrences and dissents when it comes to how disagreeable rhetoric comes about. Most notably, we

Table 1. Estimates of Disagreeable Rhetoric in Separate Opinions

	Dissents	Concurrences
Personal importance to author	2.100**	1.848**
	(.132)	(.221)
Coalition size	.014	−.006
	(.011)	(.014)
Aggregate personal importance (all other justices)	1.946**	1.743**
	(.300)	(.527)
Issue area (civil rights or liberties)	.228**	.176**
	(.026)	(.043)
Special concurrences	.007	−.003
	(.013)	(.016)
Regular concurrences	.005	−.013
	(.012)	(.016)
Judicial review	.005	.015
	(.039)	(.056)
Altered precedent	.031	−.079
	(.064)	(.093)
Ideological accommodation	−.058**	−.053
	(.018)	(.034)
Author age	−.007	−.002
	(.005)	(.013)
Chief justice author	.086	−.006
	(.103)	(.239)
Year	.006	.003
	(.005)	(.013)
Word count	.002**	.006**
	(.0004)	(.001)
Author-fixed effects?	Yes	Yes
R^2	.13	.08
N	5,496	3,165

Note.—Ordinary least squares regression coefficients with standard errors (in parentheses).
* $p < .05$.
** $p < .01$.

find support in both types of opinions for the hypothesis that justices integrate disagreeable language more readily on matters of high personal importance to them. The effect is quite prominent in the case of dissenting opinions and significant at $p < .001$. The model estimates that a 1 unit increase in an issue's importance to a justice leads to a 2.10 unit increase in disagreeable rhetoric, a change of just under 3 standard deviations. From a substantive perspective, we can better understand this effect by isolating the influence of importance on any one of our three dictionary-based indicators of disagreeability (which we have done in the appendix). So, for example, the influence of a unit change in importance is to increase nasty words by about 3.97%. This equates to about 112 additional nasty words in the average dissenting opinion. The comparable figures for very unpleasant and negative

emotion language are, respectively, an increase of about 65 and 48 words in the average dissent.

Turning to the model for concurring opinions, we also find support for the hypothesized effect of personal importance on disagreeability. The estimated coefficient demonstrates that a 1 unit increase in personal importance ramps up disagreeable rhetoric by about 1.85 units. Again, translating this to specific subdictionary word counts, the effects equate to an increase of about 37 nasty words, 30 very unpleasant words, and 20 negative emotion words in the average concurrence. While this is a substantively meaningful difference, representing dozens of words in a typical opinion, we note that it is a bit smaller than what we observed for dissents, which may be due to a few factors, including the fact dissenters might have even stronger incentives to emphasize harsh language given their losing positions in the case. But dissenting opinions also tend to be much longer on average than concurrences (in fact, more than double the length), which means the number of disagreeable words is naturally higher.

Turning briefly to our control variables, we see that a few of them have a consistent effect across both models. First, we have controlled for the collective importance of an issue to all justices on the Court using an aggregate measure, and the significant coefficient on this variable indicates that it is associated with increases in disagreeable rhetoric in both opinion types. Also, rights and liberties cases have a similar effect in bringing about more disagreeable language. Both of these results make some sense. They indicate that on collectively important and legally significant issues, separate opinions tend to be more disagreeable overall. Finally, we also see that lengthier opinions are more disagreeable on average, as shown by the significant coefficient on the word count variable.

Overall, the results from our first analysis tell us something important about the determinants of disagreeable language in separate opinions, in which justices have significant control over the content. We find support for our main hypothesis, indicating that in cases personally important to them, separate-opinion authors become more willing to go the disagreeable route. Our results also show that the substantive change in opinion language that results is quite meaningful.

ANALYSIS 2: WHAT EFFECTS DOES DISAGREEABLE RHETORIC HAVE ON COALITION SIZE?

Having demonstrated that disagreeable language becomes more common in dissents and concurrences when the justices resolve cases that they find personally important, we next turn to exploring the implications of disagreeable opinion language. This is important because even majority opinions integrate a significant amount of disagreeable rhetoric, yet the effects are poorly understood. At the same time, we note that the bargaining environment is likely to have a greater effect on the language of majority (as opposed to separate) opinions, which suggests the potential for an endogenous relationship between disagreeable rhetoric and majority coalition size. Our modeling approach enables us to take this into account.

Table 2. Estimates of Disagreeable Rhetoric and Coalition Size in Majority Opinions

	First-Stage DV: Opinion Disagreeability	Second-Stage DV: Coalition Size
Personal importance to author	2.081**	. . .
	(.105)	
Coalition size	−.007	. . .
	(.028)	
Disagreeable rhetoric	. . .	−.470**
		(.102)
Missing member	. . .	−.708**
		(.042)
Aggregate personal importance (all other justices)	2.133**	−.689
	(.193)	(.372)
Issue area (civil rights or liberties)	.246**	−.189**
	(.020)	(.056)
Special concurrences	.037**	.353**
	(.013)	(.018)
Regular concurrences	.026*	.100**
	(.010)	(.021)
Judicial review	−.013	−.310**
	(.032)	(.066)
Altered precedent	.102	−.051
	(.054)	(.114)
Ideological accommodation	−.055*	.835**
	(.026)	(.030)
Author age	−.030*	−.021
	(.013)	(.028)
Chief justice author	.117	.455**
	(.062)	(.129)
Year	.035**	.015
	(.013)	(.028)
Word count	−.002**	−.013**
	(.0005)	(.001)
Author-fixed effects?	Yes	Yes
R^2	.205	.267
F-statistic	34.42	53.14

Note.—Two-stage least squares regression coefficients with standard errors (in parentheses). DV = dependent variable. $N = 6{,}642$.

* $p < .05$.

** $p < .01$.

Table 2 contains the estimates from the two-stage least squares model, with the first stage using disagreeable rhetoric as the dependent variable and the second stage using majority coalition size.[13]

13. As desired for two-stage least squares, our instruments theoretically satisfy the exclusion restriction and are significantly correlated with the outcomes of interest. The results of a Sargen-Hansen test for overidentifying restrictions do not allow rejection of the null hypothesis that the instruments are valid.

First, we focus briefly on the first-stage results presented in table 2. Examining the coefficient estimates, we again see that author personal importance is significant and in the expected direction, suggesting that as a justice feels more strongly about an issue, this results in a significantly more disagreeable opinion. The estimated coefficient implies that a 1 unit increase in an issue's importance to a justice leads to a 2.081 unit increase in disagreeable rhetoric, a change of just under 3 standard deviations. These results echo our earlier findings for separate opinions, providing more support for the idea that in cases personally important to them, opinion authors become more willing to go the disagreeable route. We have observed this effect for dissenting, concurring, and even majority opinions. However, we note that the size of the effect is slightly smaller in the majority versus dissenting opinion model, perhaps suggesting that negotiation over these documents among the coalition can blunt the impact of the issue's personal importance to the author a bit.

More importantly, we are interested in the implications that disagreeable rhetoric has for the size of the Court's majority coalition. Since our model estimates simultaneously speak to meaningful variation in the content of written opinions and their consequences for coalition size, we turn to the results of the second stage in table 2. In other words, we still want to know whether the justices might harm the institution when they deploy harsh rhetoric. Can it be of any particular consequence if the Court is apparently becoming a more disagreeable place over time?

To answer this, our primary focus is on the role of opinion disagreeability in explaining coalition size in the second stage. We find evidence of a significant negative association between opinion disagreeability and coalition size, with an increase in the use of disagreeable rhetoric accompanied by the predicted decrease in the size of the Court's majority coalition. This finding suggests that there are real consequences for using disagreeable language.

But how much of an impact does disagreeable rhetoric have on the size of a majority coalition? Figure 2 displays the estimated linear prediction for coalition size across the range of disagreeable rhetoric. As it illustrates, a small increase in disagreeability has a small but meaningful effect on the size of the coalition. For instance, as a majority opinion becomes harsher, moving from 2 standard deviations below to slightly above the mean, coalition size is predicted to decrease by about one member, meaning that an ambivalent justice may choose not to sign on to a significantly more disagreeable opinion. Furthermore, a sizable injection of disagreeable language, moving across the range of the scale, will sharply diminish the size of the majority. Our model predicts that, all else equal, the least disagreeable majority opinions garner majorities of about eight members, while the most disagreeable ones generate a minimum winning coalition.

We took a variety of steps to verify the robustness of these results (details in the appendix). First, to ensure that a subset of the justices did not drive our findings, we reran the analyses excluding the justices who were most commonly missing from the Court when cases were decided, which did not alter our results. We also ran our models both with and without justice-fixed effects. To ensure that our findings were not driven solely by any one of our three dictionary-based measures of disagreeable language, we reestimated

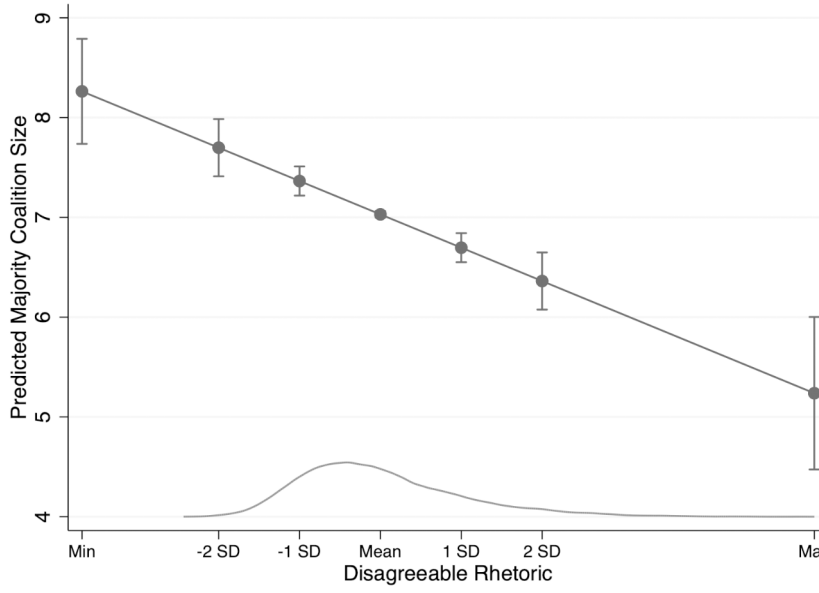

Figure 2. Linear predicted majority coalition size as a function of opinion disagreeability. Estimates are derived from the second stage in table 2, with 95% confidence intervals. The line at bottom depicts the kernel density estimation of the opinion disagreeability variable.

our models with each individual dictionary measure from either LIWC or DAL as our dependent variable. Next, we reran our majority opinion analysis as two separate equations with errors clustered by natural court, estimating the effects of personal importance on opinion disagreeability and those of opinion disagreeability on majority votes. Finally, we considered other explanations that may account for variations in opinion language, including the tone used by dissenters in their written opinions. These explanations, in addition to the ones for which we have already controlled, help capture the idea that opinion language is the product of interactions between the majority and dissenting justices in a case. Across all alternative specifications, our results hold, demonstrating that justices write harsher opinions in issues personally important to them and that harsh opinions decrease the size of the majority coalition in a case.

This decrease in coalition size becomes even more important when one considers that the size of the majority coalition can often be seen as an indicator of the strength of the Court's voice. For example, many Court watchers are often quick to point out one of the most important signals that the Court sent in its *Brown v. Board of Education* (347 U.S. 483 [1954]) decision was having it be a unanimous opinion. Imagine the amount of resistance that might have been encountered if that decision had been handed down with a 5–4 or a 6–3 decision. Recent empirical evidence verifies just such an effect: when citizens learn about division on the Court in a given case, they become less likely to

agree (Zilis 2015) and comply with a ruling (Zink et al. 2009). When we consider this alongside the finding from our earlier results that showed disagreeableness to be on the rise, it is no mystery as to why we often find recent Courts with more noticeable vote splits. Our exploration of disagreeability's repercussions here may hint at further peril ahead for an institution that depends on popular support to carry out its democratic function.

CONCLUSION

In this article we make several important contributions. First, we provide the first large-scale attempt to explain the level of disagreeableness in multiple opinion types. We do so, importantly, by highlighting significant variation in disagreeable rhetoric even after policy disputes have been resolved. Our findings emphasize how issue importance influences opinion content and, in turn, affects majority coalition size. We find that the personal importance of an issue to an opinion author is a strong systematic predictor of the level of disagreeableness in opinion language.

Second, we show that this disagreeableness has real consequences for the institution. Harsh rhetoric is associated with smaller majority coalitions on the Court, which has multiple implications. There is an ongoing debate over the costs and benefits of Supreme Court dissent (Gibson, Caldeira, and Spence 2005; Sunstein 2014; Urofsky 2017), and one recent study suggests that it can increase perceptions of procedural fairness and acceptance of rulings on the part of the public (Salamone 2014). Other studies, however, find that division leads to more negative media coverage (Zilis 2015) and depresses popular support for rulings (Baird and Gangl 2006; Zink et al. 2009), indicating that the institution has reason for concern when it produces disagreeable opinions. But beyond attitudes toward specific rulings, our findings also have implications when it comes to institutional support. The size of the majority coalition is often viewed as an indicator of the strength of the voice with which the Court is speaking, and "signals suggesting disagreement on the Court possibly weaken the standing of the Court as an institution" (Wahlbeck et al. 1999, 491). While others have suggested that disagreeability may imperil the Court's legitimacy (Bryan and Ringsmuth 2016), we offer one of the first studies to identify the mechanism of declining majority coalition size through which it may do so.

Third, we offer multiple tests of our constructs, indicating a robustness that cannot be dismissed as being weak or cherry-picking the best results. Our findings, as a consequence, have implications for the study of political rhetoric. They suggest that when an issue becomes important enough, justices use language they know may harm the institution. This modifies the existing understanding of the lengths to which the justices will go to maintain institutional support. Rather than scrub their opinions of harsh rhetoric once judicial coalitions have formed, these actors leave a considerable degree of disagreeable rhetoric in place in their final written opinions. We suggest that in doing so, they may have an eye toward winning the rhetorical struggle of the day. We note that our work is but a first step in suggesting that political actors may employ such rhetoric with this short-term goal in mind. Additionally, our results have implications for the opinion assignment literature

in suggesting that authors who write disagreeable opinions may have a harder time holding together robust majority coalitions, something of which the assigning justice may be aware. If so, this fact may limit the ability of the Court's most pugnacious justices to influence majority opinions.

Finally, our results also raise important questions for the future. Specifically, among others, we note that there is a decline in collegiality with respect to opinion writing over time. Why is this the case? Our results suggest a need for a closer look at the changing nature of the political environment and the shape of the Court's docket. More specifically, they raise the question as to whether rhetorical norms may have played a role in the demise of the Court's norm of consensus. While our results do not definitively tell us the answers, they point us in that direction for future research.

REFERENCES

Baird, Vanessa A., and Amy Gangl. 2006. "Shattering the Myth of Legality: The Impact of the Media's Framing of Supreme Court Procedures on Perceptions of Fairness." *Political Psychology* 27 (4): 597–614.

Baum, Lawrence. 1994. "What Judges Want: Judges' Goals and Judicial Behavior." *Political Research Quarterly* 47:649–768.

———. 2006. *Judges and Their Audiences: A Perspective on Judicial Behavior*. Princeton, NJ: Princeton University Press.

Black, Ryan C., Timothy R. Johnson, and Justin Wedeking. 2012. *Oral Arguments and Coalition Formation on the U.S. Supreme Court: A Deliberate Dialogue*. Ann Arbor: University of Michigan Press.

Black, Ryan C., Ryan J. Owens, and Justin Wedeking. 2016. "Herding Scorpions: The Chief Justice as Social Leader." In *The Chief Justice: Appointment and Influence*, ed. David Danelski and Artemus Ward. Ann Arbor: University of Michigan Press.

Black, Ryan C., Ryan J. Owens, Justin Wedeking, and Patrick C. Wohlfarth. 2016. *U.S. Supreme Court Opinions and Their Audiences*. Cambridge: Cambridge University Press.

Black, Ryan C., Sarah A. Treul, Timothy R. Johnson, and Jerry Goldman. 2011. "Emotions, Oral Arguments, and Supreme Court Decision Making." *Journal of Politics* 73 (2): 572–81.

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

Brader, Ted. 2005. "Striking a Responsive Chord: How Political Ads Motivate and Persuade Voters by Appealing to Emotions." *American Journal of Political Science* 49 (2): 388–405.

Bryan, Amanda C., and Eve M. Ringsmuth. 2016. "Jeremiad or Weapon of Words? The Power of Emotive Language in Supreme Court Dissents." *Journal of Law and Courts* 4 (1): 159–85.

Chemerinsky, Erwin. 2015. "Justice Scalia: Why He's a Bad Influence." *Los Angeles Times*, July 14. http://www.latimes.com/opinion/op-ed/la-oe-0714-chemerinsky-scalia-bad-example-20150714-story.html.

Clark, Tom S., and Clifford J. Carrubba. 2012. "A Theory of Opinion Writing in a Political Hierarchy." *Journal of Politics* 74 (2): 584–603.

Corley, Pamela C., Paul M. Collins, and Bryan Calvin. 2011. "Lower Court Influence on U.S. Supreme Court Opinion Content." *Journal of Politics* 73 (1): 31–44.

Corley, Pamela C., Robert M. Howard, and David C. Nixon. 2006. "The Supreme Court and Opinion Content: The Use of the Federalist Papers." *Political Research Quarterly* 58 (2): 329–40.

Corley, Pamela C., and Justin Wedeking. 2014. "The (Dis)Advantage of Certainty: The Importance of Certainty in Language." *Law and Society Review* 48 (1): 35–62.

Cross, Frank B., and James W. Pennebaker. 2014. "The Language of the Roberts Court." *Michigan State Law Review*, no. 4:853–94.

de Vogue, Ariane. 2015. "Roberts Talks Leadership in Discussion on Supreme Court." *CNN*, November 21. http://www.cnn.com/2015/11/21/politics/john-roberts-charles-evans-hughes/.

de Vogue, Ariane, and Devan Cole. 2019. "Supreme Court Continues Open Feud over Last-Minute Death Penalty Appeals." *CNN*, May 13. https://www.cnn.com/2019/05/13/politics/supreme-court-death-penalty-late-night-rulings/index.html.

Druckman, James N., Martin J. Kifer, and Michael Parkin. 2009. "Campaign Communications in U.S. Congressional Elections." *American Political Science Review* 103 (3): 343–66.

Entman, Robert M. 1993. "Framing: Toward Clarification of a Fractured Paradigm." *Journal of Communication* 43 (4): 51–58.

———. 2004. *Projections of Power: Framing News, Public Opinion, and U.S. Foreign Policy*. Chicago: University of Chicago Press.

Epstein, Lee, Valerie Hoekstra, Jeffrey A. Segal, and Harold J. Spaeth. 1998. "Do Political Preferences Change? A Longitudinal Study of U.S. Supreme Court Justices." *Journal of Politics* 60 (3): 801–18.

Epstein, Lee, and Jack Knight. 1998. *The Choices Justices Make*. Washington, DC: CQ Press.

Epstein, Lee, Jeffrey A. Segal, and Harold J. Spaeth. 2001. "The Norm of Consensus on the U.S. Supreme Court." *American Journal of Political Science* 45 (2): 362–77.

Farganis, Dion, and Justin Wedeking. 2014. *Supreme Court Confirmation Hearings in the U.S. Senate: Reconsidering the Charade*. Ann Arbor: University of Michigan Press.

Fridkin, Kim L., and Patrick J. Kenney. 2011. "Variability in Citizens' Reactions to Different Types of Negative Campaigns." *American Journal of Political Science* 55 (2): 307–25.

Garsten, Bryan. 2011. "The Rhetoric Revival in Political Theory." *Annual Review of Political Science* 14:159–80.

Gerstein, Josh. 2015. "Supreme Court Justices Stop Playing Nice." *Politico*, June 26. https://www.politico.com/story/2015/06/supreme-court-justices-antonin-scalia-samuel-alito-119486.

Gibson, James L., Gregory A. Caldeira, and Lester Kenyatta Spence. 2005. "Why Do People Accept Public Policies They Oppose? Testing Legitimacy Theory with a Survey-Based Experiment." *Political Research Quarterly* 58 (2): 187–201.

Grose, Christian R., Neil Malhotra, and Robert Parts Van Houweling. 2015. "Explaining Explanations: How Legislators Explain Their Policy Positions and How Citizens React." *American Journal of Political Science* 59 (3): 724–43.

Hainmueller, Jens, and Daniel J. Hopkins. 2014. "Public Attitudes toward Immigration." *Annual Review of Political Science* 17:225–49.

Haynie, Stacia L. 1992. "Leadership and Consensus on the U.S. Supreme Court." *Journal of Politics* 54 (4): 1158–69.

Hume, Robert J. 2006. "The Use of Rhetorical Sources by the U.S. Supreme Court." *Law and Society Review* 40 (4): 817–44.

Hume, Robert J., and Kansas Guidry-Leingang. 2017. "The Use of Contentious Rhetoric on the U.S. Supreme Court: A Historical Perspective." Paper presented at the Annual Meeting of the Southern Political Science Association, January 2017, New Orleans, LA.

Johnson, Timothy R., Ryan C. Black, and Eve M. Ringsmuth. 2009. "Hear Me Roar: What Provokes Supreme Court Justices to Dissent from the Bench." *Minnesota Law Review* 93:1560–81.

Johnston, Christopher D., and Brandon L. Bartels. 2010. "Sensationalism and Sobriety: Differential Media Exposure and Attitudes toward American Courts." *Public Opinion Quarterly* 74 (2): 260–85.

Knoll, Benjamin R., David P. Redlawsk, and Howard Sanborn. 2011. "Framing Labels and Immigration Policy Attitudes in the Iowa Caucuses: Trying to Out-Tancredo Tancredo." *Political Behavior* 33 (3): 433–54.

Lau, Richard R. 1985. "Two Explanations for Negativity Effects in Political Behavior." *American Journal of Political Science* 29 (1): 119–38.

Long, Lance N., and William F. Christensen. 2012. "When Justices (Subconsciously) Attack: The Theory of Argumentative Threat and the Supreme Court." *Oregon Law Review* 91:933–60.

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

Marcus, George E., W. Russell Neuman, and Michael MacKuen. 2000. *Affective Intelligence and Political Judgment*. Chicago: University of Chicago Press.

Martin, Andrew D., and Kevin M. Quinn. 2002. "Dynamic Ideal Point Estimation via Markov Chain Monte Carlo for the U.S. Supreme Court, 1953–1999." *Political Analysis* 10 (2): 134–53.

Mason, Alpheus T. 1956. *Harlan Fiske Stone: Pillar of the Law*. New York: Viking.

Murphy, Walter. 1964. *Elements of Judicial Strategy*. Chicago: University of Chicago Press.

Nelson, Thomas E., Zoe M. Oxley, and Rosalee A. Clawson. 1997. "Toward a Psychology of Framing Effects." *Political Behavior* 19 (3): 221–46.

Owens, Ryan J., and Justin Wedeking. 2011. "Justices and Legal Clarity: Analyzing the Complexity of U.S. Supreme Court Opinions." *Law and Society Review* 45 (4): 1027–61.

Owens, Ryan J., Justin Wedeking, and Patrick C. Wohlfarth. 2013. "How the Supreme Court Alters Opinion Language to Evade Congressional Review." *Journal of Law and Courts* 1 (1): 35–59.

Pennebaker, James W., and Laura A. King. 1999. "Linguistic Styles: Language Use as an Individual Difference." *Journal of Personality and Social Psychology* 77 (6): 1296–312.

Pennebaker, James W., Matthias R. Mehl, and Kate G. Niederhoffer. 2003. "Psychological Aspects of Natural Language Use: Our Words, Our Selves." *Annual Review of Psychology* 54 (1): 547–77.

Peppers, Todd C. 2006. *Courtiers of the Marble Palace: The Rise and Influence of the Supreme Court Law Clerk*. Palo Alto, CA: Stanford University Press.

Rice, Douglass, and Christopher J. Zorn. 2016. "Troll-in-Chief? Affective Opinion Content and the Influence of the Chief Justice." In *The Chief Justice: Appointment and Influence*, ed. David Danelski and Artemus Ward. Ann Arbor: University of Michigan Press.

Riker, William H. 1996. *The Strategy of Rhetoric: Campaigning for the American Constitution*. New Haven, CT: Yale University Press.

Salamone, Michael F. 2014. "Judicial Consensus and Public Opinion: Conditional Response to Supreme Court Majority Size." *Political Research Quarterly* 67 (2): 320–34.

Shipan, Charles R. 2008. "Partisanship, Ideology, and Senate Voting on Supreme Court Nominees." *Journal of Empirical Legal Studies* 5 (1): 55–76.

Sigelman, Lee, and Emmett H. Buell. 2003. "You Take the High Road and I'll Take the Low Road? The Interplay of Attack Strategies and Tactics in Presidential Campaigns." *Journal of Politics* 65 (2): 518–31.

Skaperdas, Stergios, and Bernard Grofman. 1995. "Modeling Negative Campaigning." *American Political Science Review* 89 (1): 49–61.

Smith, Joseph L. 2017. "Getting Personal in Supreme Court Opinions." *Washington University Journal of Law and Policy* 54:195–207.

Spaeth, Harold J., Lee Epstein, Andrew D. Martin, Jeffrey A. Segal, Theodore J. Ruger, and Sara C. Benesh. 2018. Supreme Court Database, version 2018, release 2. http://supremecourtdatabase.org.

Spriggs, James F., Forrest Maltzman, and Paul J. Wahlbeck. 1999. "Bargaining on the Supreme Court: Justices' Responses to Majority Opinion Drafts." *Journal of Politics* 61 (2): 485–506.

Sunstein, Cass R. 2014. "Unanimity and Disagreement on the Supreme Court." *Cornell Law Review* 100:769–824.

Tannen, Deborah. 1993. *Framing in Discourse*. Oxford: Oxford University Press.

Tausczik, Yla R., and James W. Pennebaker. 2009. "The Psycho-Logical Meaning of Words: LIWC and Computerized Text Analysis Methods." *Journal of Language and Social Psychology* 29 (1): 24–54.

Urofsky, Melvin I. 2017. *Dissent and the Supreme Court: Its Role in the Court's History and the Nation's Constitutional Dialogue*. New York: Vintage.

Wahlbeck, Paul J., James F. Spriggs, and Forrest Maltzman. 1999. "The Politics of Dissents and Concurrences on the U.S. Supreme Court." *American Politics Research* 27 (4): 488–514.

Ward, Artemus, and David L. Weiden. 2006. *Sorcerers' Apprentices: 100 Years of Law Clerks at the United States Supreme Court*. New York: New York University Press.

Wedeking, Justin. 2010. "Supreme Court Litigants and Strategic Framing." *American Journal of Political Science* 54 (3): 617–31.

Wedeking, Justin, and Michael A. Zilis. 2018. "Disagreeable Rhetoric and the Prospect of Public Opposition: Opinion Moderation on the U.S. Supreme Court." *Political Research Quarterly* 71 (2): 380–94.

Whissell, Cynthia. 1989. "The Dictionary of Affect in Language." In *Emotion: Theory, Research, and Experience*, ed. R. Plutchik and H. Kellerman, 113–31. San Diego: Academic Press.

Whissell, Cynthia, M. Fournier, R. Pelland, and K. Makarec. 1986. "The Dictionary of Affect in Language: Reliability, Validity, and Applications." *Perpetual and Motor Skills* 62:875–88.

Young, Lori, and Stuart Soroka. 2012. "Affective News: The Automated Coding of Sentiment in Political Texts." *Political Communication* 29 (2): 205–31.

Zilis, Michael A. 2015. *The Limits of Legitimacy: Dissenting Opinions, Media Coverage, and Public Responses to Supreme Court Decisions*. Ann Arbor: University of Michigan Press.

Zilis, Michael A., Justin Wedeking, and Alexander Denison. 2017. "Hitting the 'Bullseye' in Supreme Court Coverage: News Quality in the Court's 2014 Term." *Elon Law Review* 9 (2): 489–523.

Zink, James R., James F. Spriggs, and John T. Scott. 2009. "Courting the Public: The Influence of Decision Attributes on Individuals' Views of Court Opinions." *Journal of Politics* 71 (3): 909–25.