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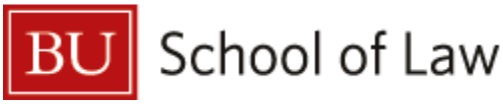

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Scholars have long paid attention to how often and for what reasons Supreme Court justices cite law review articles and academic books in their opinions. More recently, a new area of scholarship has begun to look at how Justices create their own lines of "personal precedent" through not only their prior opinions but also their academic writings. At the intersection of these two areas of inquiry lies questions of how often and for what reasons Supreme Court justices cite the journal articles and books of the various justices sitting on the Court, including their own. With the exception of one article focusing on the self-citation practices of justices, however, the scholarly literature has not focused on these questions. Until now, that is. In this Article, I provide the first empirical analysis of how often justices on the modern court cite the law review articles and books of other justices. The most interesting findings revealed in this section of the Article include the fact that Justice Scalia was by far the justice whose academic work has been cited most often by other justices in the modern era, and that Justice Thomas is the justice who most often cites the academic work of other justices. In the second part of the Article, I address the question of why justices cite the academic work of other justices. These reasons include paying honor or homage to other justices, scolding other justices for not following the teachings of justices they claim to be allied with, and, most controversially, pointing out how other justices have departed from their previous personal precedent or the personal precedent of purported judicial allies. The Article argues that this latter rationale for citing the work of other justices is inappropriate and more well suited to teenagers and Twitter trolls than high court judges.

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Introduction

Scholars have long studied the citation practices of Supreme Court justices, including how often the justices cite academic work such as books and journal articles. For example, in his update to several earlier pieces, Louis Sirico, Jr. observed in a 2000 study that the Court had been citing law review articles at a lower rate than in previous decades, in large part due to a decline in the number of times justices cited pieces from

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the *Harvard Law Review*.[1] More recently, Brent Newton analyzed the citation practices of the justices in the years between 2001 and 2011, finding that although citations to journal articles had continued to decline, liberal justices were more likely to cite such articles than conservative justices.[2] In the same year as Newton's study, Lee Petherbridge & David L. Schwartz, writing in the *Northwestern Law Review*, found that justices are more likely to cite law journal articles in difficult or important cases than in ordinary ones.[3] Most recently, Adam Feldman, writing for ScotusBlog, analyzed how the justices cited academic work during the Court's 2016 and 2017 terms and concluded, among other things, that Justices Thomas and Gorsuch were more likely than other justices to cite law review articles and that articles written by faculty members of the University of Virginia had been cited more often than faculty from other schools, including higher ranked institutions such as Harvard and Yale.[4]

In the past year, a somewhat parallel scholarly development has hit the limelight, marked by the publication in early 2023 of Richard Re's *Harvard Law Review* article, "Personal Precedent at the Supreme Court."[5] In that piece, Re argues that judges, including Supreme Court justices, tend to rely on their "previously expressed views of the law,"[6] including not only their prior separate opinions but also their published academic scholarship, when deciding new cases.[7] These "previously expressed views of the law," which Re refers to as "personal precedent," play an extremely important and previously unrecognized role in the development of the law; indeed, Re even suggests that "though typically excluded from the law, personal precedent may actually be its building block."[8] Re's article attracted substantial attention both from the legal academy[9] as well as the popular press. Writing for the *New York Times*, for instance, Adam Liptak highlighted Re's piece, quoting an interview with Re in which the

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[1] *See* Louis Sirico, Jr., *The Citing of Law Reviews by the Supreme Court, 1971-1999,* 75 Indiana L.J. 1009 (2000). For a list of other sources analyzing citations of academic writing by judges and justices, see *id.* at 1009 n.1.

[2] Brent Newton, *Law Review Scholarship in the Eyes of the Twenty-First Century Supreme Court Justices: An Empirical Analysis*, 4 DREXEL L. REV. 399 (2012).

[3] Lee Petherbridge & David L. Schwartz, *An Empirical Assessment of the Supreme Court's Use of Legal Scholarship*, 106 N.W.U. L.REV. 995 (2012).

[4] Adam Feldman, Empirical SCOTUS: With a little help from academic scholarship, SCOTUSblog (Oct. 31, 2018, 5:22 PM), https://www.scotusblog.com/2018/10/empirical-scotus-with-a-little-help-from-academic-scholarship/

[5] Richard Re, *Personal Precedent at the Supreme Court*, 136 HARV. L. REV. 824 (2023).

[6] *Id.* at 825.

[7] *Id.* at 826 ("The range of sources potentially giving rise to personal precedent is expansive, including not just a Justice's separate opinions, but also lower court opinions and even law review articles.).

[8] *Id.* at 859.

[9] See e.g., Gerard Magliocca, "Personal or Impersonal Precedent," https://prawfsblawg.blogs.com/prawfsblawg/2022/04/personal-or-impersonal-precedent.html (April 5, 2022); Rachel Bayefsky, *Administrative Stays: Power and Procedure*, 97 NOTRE DAME L. J. 1941, 1970 n. 169 (citing *Personal Precedent*); Amy Howe, "Thursday round-up," https://www.scotusblog.com/2014/06/thursday-round-up-231/ (June 5, 2014) (linking to Re's piece in *Res Judicata* on personal precedent in a specific case from the 2013 term).

University of Virginia professor said of personal precedent, "You've got to reckon with it . . . You can't wish it away."[10]

At the intersection of these two lines of inquiry arises a series of natural questions: How often do Supreme Court justices cite law journal articles and other forms of scholarship, including books, written by other Supreme Court justices? How often do they cite their own scholarship? And what are the *reasons* that justices cite legal scholarship written by other justices? If personal precedent is as important as Professor Re suggests, and if it is as interesting as the attention to his article seems to indicate, one might expect that someone would have analyzed how often and why justices cite journal articles and books written by justices. And yet, with the notable exception of one spectacular short piece analyzing how often justices cite their own scholarship,[11] the scholarly literature has yet to consider these questions.

This is a particularly opportune time, moreover, to address the issue of when and why justices cite justices, because some of the most important cases of the Court's most recent term—one of which is indeed one of the most important cases the Court has ever decided—include such citations quite prominently. For instance, in *West Virginia v. EPA*,[12] in which a 6-3 majority of the Court invalidated the Obama Administration's Clean Power Plan and essentially shut down efforts in the United States to control greenhouse gas emissions from coal-fired electricity plants,[13] Justice Gorsuch cited an article written by Justice Barrett three times[14] and a book written by Justice Breyer once[15] in his concurrence, while Justice Kagan cited a different Breyer book in her dissent.[16] In *Ramirez v. Collier*,[17] upholding a challenge under the Religious Land Use and Institutionalized Persons Act to Texas's refusal to allow a pastor to pray over and lay hands on a prisoner being executed,[18] Justice Kavanaugh cited his own law review article in his concurring opinion.[19] And in the landmark case of *Dobbs v. Jackson Health Center*,[20] which overruled *Roe v. Wade*,[21] the joint dissent cited a book written by Justice Breyer,[22] while Justice Alito's majority opinion not only cited a book penned by Justice Gorsuch,[23] but also remarkably twice cited an article written thirty years earlier by the late Justice Ruth Bader Ginsburg.[24]

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[10] Adam Liptak, *The Problem of Personal Precedents of Supreme Court Justices*, New York Times, April 4, 2022, https://www.nytimes.com/2022/04/04/us/politics/supreme-court-personal-precedents.html.

[11] Joel Heller, *Auto Citation*, 2021 ILL. L. REV. ONLINE 77.

[12] West Virginia v. Environmental Protection Agency, 142 S.Ct. 2587 (2022).

[13] *Id.* at 2616.

[14] *Id.* at 2616, 2620, 2620 n.3 (Gorsuch, J., concurring)

[15] *Id.* at 2618.

[16] *Id.* at 2637 (Kagan, J., dissenting).

[17] 142 S.Ct. 1264 (2022).

[18] *Id.* at 1284.

[19] *Id.* at 1286-87 (Kavanaugh, J., concurring).

[20] 142 S.Ct. 2228.

[21] 410 U.S. 113 (1973).

[22] *Dobbs*, 142 S.Ct. at 2350 (Breyer, Sotomayor, Kagan, JJs, dissenting).

[23] *Dobbs*, 142 S.Ct. at 2262.

[24] *Id.* at 2241 n.4, 2279.

With the exception of the aforementioned short piece about self-citation practices on the Court,[25] this Article is the first to analyze how often and for what reasons Supreme Court justices cite the books and articles of Supreme Court justices. In Part I of the Article, I describe the results of my empirical study of these citations covering the period between the beginning of the Supreme Court's 2005 term and the end of its 2021 term. Here I report the following findings, among others: (1) Justice Scalia is the justice during this period whose academic work was most cited by other justices, gathering up nearly 90 citations by his peers; (2) most of these citations were to Justice Scalia's book on statutory interpretation, *Reading Law*, co-written with Bryan Garner, but even without counting citations to that book, Scalia still leads the pack; (3) conversely, Justice Scalia himself never cited to his or any other justice's academic work during the period in question; and (4) the two justices who cited the work of other justices most frequently were Justice Thomas, who cited other justices 26 times (22 of these were to Justice Scalia) and Justice Alito, who cited other justices 19 times (16 of which were to Justice Scalia).

In Part II of the Article, I then turn to the question of *why* justices cite justices. Here I identify, and illustrate through examples, three primary rationales that appear to be motivating the choice to cite the work of other justices. These include (1) paying honor or homage to other justices; (2) scolding other justices for departing from the wisdom or teachings of other justices they purport to be allied with; and, most controversially, (3) demonstrating how other justices have departed from their previous personal precedent or the personal precedent of purported judicial allies. This latter rationale, which one commentator has described in passing as a "gotcha" move,[26] might have some surface appeal to those readers who agree with the citing justice, but, as I will suggest toward the end of the Article, is in fact an example of childish reasoning more well suited to teenagers and Twitter trolls than to the judges of our highest court.

I. How Often Do Justices Cite Justices?

To keep my study manageable, I decided to focus exclusively on the Roberts Court era, both in terms of the justices being studied and the time of the citations. My goal was to find every instance between October 2005 and June 2022 in which any justice who was either on the Court in 2005 or joined the Court thereafter cited a book or article of any other justice who was either on the Court in 2005 or joined the Court thereafter.[27] This means that I excluded any citation that occurred before 2005, even if both the citing justice and the cited justice were on the Court in 2005; for example, if in 2002 Justice Scalia cited an article written by Justice Ginsburg (or Professor Ginsburg, for that matter), I did not count the instance in the study. Although I

[25] *See* Heller, *supra* n. 11.

[26] *Id.,* at 79 n.18.

[27] The cited justice had to have been on the Court (or retired from the Court or deceased) at the time of the citation to be included in the study. Thus, if in 2008 Justice Scalia had cited an article written by then Dean Kagan (who didn't join the Court until 2010), the citation would not count for purposes of my study.

considered also excluding citations to justices who had already either retired or died at the time of the citation, I decided against doing so because such citations are still interesting, particularly since the citation might very well have been intended to influence those justices still on the Court who consider themselves allies of the retired or deceased justice. To find the citations, I compiled lists of every book or law journal article (contained in Westlaw's JLR database) published by each of the fifteen relevant justices and then searched for them in Westlaw's Supreme Court database during the relevant dates.

The following table reports the number of citations of each justice by each justice during the relevant time period, with the citing justices listed on the Y axis and the cited justices on the X axis. The number in each box represents the number of *cases* in which at least one citation occurred. Because there were some cases in which a justice cited a particular book or article written by a justice more than once, the total number of *citations*, when different from the number of *cases*, is denoted in a parenthetical. The column on the far right and the row at the bottom tabulate the totals of how many times a justice cited justices and how many times a justice was cited by justices, respectively.

	CJR	JPS	SOC	AS	AMK	DHS	CT	RBG	SGB	SA	SS	EK	NG	BK	ACB	**TOT**
CJR	0	0	0	7	0	0	0	1	1	0	0	2	0	0	0	**11**
JPS	0	3(7)	0	1	0	0	0	0	1	0	0	0	0	0	0	**5(9)**
SOC	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	**0**
AS	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	**0**
AMK	0	0	0	2	0	0	0	0	0	0	0	0	0	0	0	**2**
DHS	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	**0**
CT	0	0	0	22	0	0	1	0	3	0	0	0	0	0	0	**26**
RBG	0	0	0	1	0	0	0	1	0	0	0	0	0	0	0	**2**
SGB	0	1	1	2	0	0	0	0	1	0	0	0	0	0	0	**5**
SA	0	0	0	16	0	0	0	1 (2)	0	0	0	0	1	1	0	**19(20)**
SS	0	0	0	10	0	0	0	0	1	0	0	0	0	0	0	**11**
EK	0	0	0	6	0	0	0	0	1	0	0	2(3)	0	0	0	**9(10)**
NG	0	0	0	10(11)	0	0	0	0	1	0	0	0	0	1	1(3)	**13(16)**
BK	1	0	0	6(7)	0	0	0	0	0	0	0	0	0	3	0	**10(11)**
ACB	0	0	0	5	0	0	0	0	0	0	0	0	0	0	0	**5**
TOT	**1**	**4(8)**	**1**	**88(90)**	**0**	**0**	**1**	**3(4)**	**9**	**0**	**0**	**4(5)**	**1**	**5**	**1(3)**	**118(128)**

Figure 1: Total Number of Cases in which Each Justice Cited Each Justice (2005-2022) (# in parentheses is total number of citations).

The table reveals several interesting results. The total number of cases in which a justice cited a book or article of a justice is 118, which is perhaps a smaller number than one might have expected; if we assume that the Court decided an average of seventy cases per term during the relevant period, then a justice cited a book or article of a justice in only about one out of every ten decided cases. The justice whose extra-judicial writings were cited most often is Justice Scalia by far. Cited in eighty-eight cases, Scalia was cited in nearly ten times more cases than the second most-cited

justice, who was Justice Breyer. Justice Kavanaugh was cited in the third most cases with five, which might have been remarkable given that he has only been on the Court for a few terms, but since three of those cases involved self-citations, there's little notable about the third-place finish.

With respect to which justices cite justices most often, the clear leader is Justice Thomas, who cited books or articles written by other justices in twenty-six cases. Justice Alito came in second, citing justices in nineteen cases. If instead of total number of cases we consider the average number of cases per term in which a justice has cited a justice, however, Justice Gorsuch rises to the top, having cited a justice in thirteen cases over only five terms (about two-and-a-half cases per term), along with Justice Barrett, who cited her former boss Justice Scalia (and nobody else) in five cases in less than two full terms on the Court. Although it is perhaps unremarkable that neither Justice Souter nor Justice O'Connor cited the academic work of a justice during the relevant time period, given that they left the bench soon after the study's beginning date, the fact that Justice Scalia did not cite a justice a single time in the nearly eleven relevant terms he sat on the bench does seem significant, particularly because he himself had been cited by other justices so often.

If the data demonstrate one obvious, overarching result, it would be that a majority of citations by one justice to the academic work of another justice are to one particular book, *Reading Law*, by the late Justice Scalia and Bryan Garner.[28] Indeed, nearly sixty percent of all cases involving a citation by a justice to a justice involve at least one citation to this book.[29] The reasons for this will be explored later, but for now, it makes sense to report the data excluding citations to *Reading Law*, which I've done in the following table:

[28] ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS (2012).

[29] *Reading Law* was cited 73 times in 71 cases by justices over the studied time period. Specifically, the total number of citations by justice to the book are as follows: CJR 5, JPS 0, SOC 0, AS 0, AMK 2, DHS 0, CT 17, RBG 0, SGB 1, SA 14, SS 10, EK 6, NG 6(7), BK 5(6), and ACB 5.

	CJR	JPS	SOC	AS	AMK	DHS	CT	RBG	SGB	SA	SS	EK	NG	BK	ACB	**TOT**
CJR	0	0	0	2	0	0	0	1	1	0	0	2	0	0	0	**6**
JPS	0	3(7)	0	1	0	0	0	0	1	0	0	0	0	0	0	**5(9)**
SOC	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	**0**
AS	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	**0**
AMK	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	**0**
DHS	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	**0**
CT	0	0	0	5	0	0	1	0	3	0	0	0	0	0	0	**9**
RBG	0	0	0	1	0	0	0	1	0	0	0	0	0	0	0	**2**
SGB	0	1	1	1	0	0	0	0	1	0	0	0	0	0	0	**4**
SA	0	0	0	2	0	0	0	1 (2)	0	0	0	0	1	1	0	**5(6)**
SS	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	**1**
EK	0	0	0	0	0	0	0	0	1	0	0	2(3)	0	0	0	**3(4)**
NG	0	0	0	4	0	0	0	0	1	0	0	0	0	1	1(3)	**7(9)**
BK	1	0	0	1	0	0	0	0	0	0	0	0	0	3	0	**5**
ACB	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	**0**
TOT	**1**	**4(8)**	**1**	**17**	**0**	**0**	**1**	**3(4)**	**9**	**0**	**0**	**4(5)**	**1**	**5**	**1(3)**	**47(55)**

Figure 2: Total Number of Cases in which Each Justice Cited Each Justice (2005-2022) (# in parentheses is total number of citations) Omitting Reading Law

When citations to *Reading Law* are excluded from the data, Justice Scalia's remains the justice whose work was cited most frequently over the time period studied, although his lead over Justice Breyer slips from ten times more citations to only twice as many. Similarly, Justice Thomas remains the justice who has cited the academic work of other justices most frequently, but excluding his seventeen citations to *Reading Law* makes the results much closer, with Justice Gorsuch pulling within two cites of Thomas (and, indeed, if we look at total citations rather than number of cases in which a justice cites another justice, both Justice Gorsuch and Justice Stevens end up in a first place tie with Justice Thomas, although the result is more interesting for Justice Gorsuch than Stevens, since most of Justice Stevens' citations were to his own work). Similarly, excluding Justice Alito's fourteen citations to *Reading Law* drops him from a strong second place to being in a three-way tie for fourth with Justices Stevens and Kavanaugh when we look at number of cases in which a justice cited another justice's academic work.[30]

When it comes to the issue of what *type* of opinion (majority, concurring, dissenting) typically contains citations to the books and articles of other justices, the results are also remarkable. The following table reports the number of cases in which such a citation occurred separated out by majority, concurring, and dissenting opinions on the X axis and law journal articles, books, and *Reading Law* on the Y axis:

[30] For more on citations to *Reading Law* by someone who thinks the work is "magisterial," see Josh Blackman, *SCOTUS Citations for Scalia and Garner's* Reading Law, https://joshblackman.com/blog/2015/06/30/scotus-citations-for-scalia-garners-reading-law/ (June 30, 2015).

	Majority	Concurring	Dissenting
Journal Articles	7	15	14
Books	1	3	7
Reading Law	35	10	26

Figure 3: Citations to the academic work of justices by justices sorted by type of academic work and type of opinion.

Two things about this data are particularly notable. First, it's interesting that when it comes to typical articles and books (*i.e.*, not *Reading Law*) citations are far more likely to occur in separate opinions than in majority opinions (only eight of forty-seven citations, or 17%, occurred in majority opinions). Second, it's similarly interesting that this result is reversed for citations to *Reading Law*, citations to which occurred in majority opinions nearly fifty percent of the time. The reasons for this can only be speculated about; my hunch is that typically a citation to another justice's work will be idiosyncratic and at least somewhat controversial, so justices feel that they're more fitting for separate opinions (and less likely to alienate justices inclined to join such opinions than majority opinions), but that because *Reading Law* has become something of a "restatement" of statutory interpretation, citing to it is less controversial and thus more likely to occur in majority opinions.

Finally, what about the pattern of citations over time? Although the study's methodology guarantees a certain amount of increase in citations over time, it is still perhaps notable how much of such an increase the data demonstrate. As Figure 4 shows, it was not until the 2015 term that more than five relevant citations occurred. Moreover, a clear and substantial increase of citations can be seen beginning in 2019, undoubtedly because of a confluence of factors, including the death of Justice Scalia, the relatively recent publication of *Reading Law*, and the appointments of Justices Gorsuch and Kavanaugh.

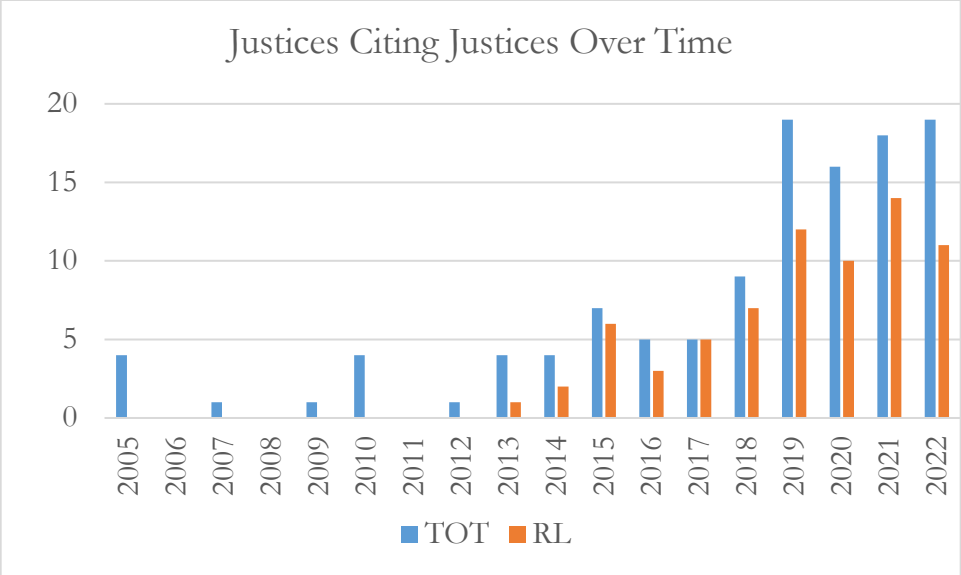

Figure 4: Total citations (in blue) and citations to Reading Law *(in orange) by Supreme Court term.*

II. Why Do Justices Cite Justices?

The question of *why* justices cite the academic work of justices obviously calls for more speculative reasoning than the question of *how often* the justices cite such work since the justices never explain why they have cited a particular source as opposed to others. Still, though, the question is important because it provides a window into the thinking of the justices. Any choice to cite one source over another is a deliberate one that may potentially reveal some insight into how the justices think, how they see themselves in relation to their colleagues, and how they communicate both with their colleagues and the general public. In this Part of the Article, I offer some brief thoughts and conjectures about the "why" question.

Before diving into the bulk of the citations, though, I want to separate out and put aside those instances in which the justices have cited their own academic work, since these instances are fairly rare and are likely motivated by quite different concerns than citations to the academic work of other justices. In his article, *Auto-Citation*, Joel Heller comprehensively and with great wit analyzes the phenomenon of justices citing their own academic work in their judicial opinions. Writing in 2021, Heller explained that despite the fact that many of the current sitting justices had come from an academic background, those justices had cited their own academic work only five times during their tenure on the bench.[31] Adding data from the most recent term, that number goes up only slightly, as both Justice Kavanaugh and Justice Kagan cited themselves since

[31] Heller, *supra* n. 11, at 78-79.

the publication of Heller's piece.[32] Heller asks "under what circumstances will we see [an auto-citation]," and answers as follows: "The current justices' collection of auto-citations covers a range of substantive topics. Sometimes they appear in areas where the authoring justice has particular expertise, while other times they seem to signal interest in certain arguments or express a personal judicial philosophy. They appear exclusively in concurrences or dissents, which is unsurprising, given that the justice is speaking more for herself or himself than for the Court. And they are made with varying degrees of self-awareness."[33] On the question of why auto-citations are so rare on the Supreme Court, Heller posits that the reluctance to admit the importance of what Professor Re would call "personal precedent" might explain the rarity of such citations:

> So why is the auto-citation such a relatively rare phenomenon? It is not for lack of options, given the fair-sized corpus of publications by the justices. . . . It could be a sign of humility. But anyone with the smarts, connections, and accomplishments to make it to the Supreme Court probably has a healthy ego. Perhaps it is because the auto-citation implicates the sometimes fraught issue of the role that a judge's personal views play in shaping her jurisprudence. The presence of an auto-citation signals that the justices are people who had thoughts and interests about legal issues before they joined the bench or outside of their role as a judge. The hesitancy to auto-cite may be an effort to push back against any recognition of judicial personhood and to maintain the appearance of objectivity. After all, Chief Justice Roberts' umpire never would say "as I explained in Nationals v. Mets, March 30, 2014, this is a strike." Even jurists who do not subscribe to the Chief's metaphor may be cautious about invoking their own work; it may be too direct an expression of off-the-bench views even for those who acknowledge such views exist.[34]

In light of Heller's observations, it will be interesting to see whether Re's article spurs a general recognition that personal precedent is more important than previously recognized and, if so, whether that recognition results in an increased rate of auto-citation on the Supreme Court and other courts.

Turning now to instances where a justice has cited the work of another justice, such citations appear to play one of three primary functions. Those functions are (1) approving of, honoring, or spotlighting a colleague's ideas or language; (2) scolding a colleague or group of colleagues for departing from the precedent of judicial allies on the bench; and (3) demonstrating that a colleague has departed from their own

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[32] *See* Ramirez v. Collier, 142 S.Ct. 1264, 1286-87 (Kavanaugh, J., concurring); Wooden v. United States, 142 S.Ct. 1063, 1076 (Kavanaugh, J., concurring); Collins v. Yellen, 141 S.Ct. 1761, 1802 (Kagan, J., concurring). The count goes up by one if we include the *Dobbs* joint dissent's citation of Justice Breyer's own book, see Dobbs v. Jackson Women's Health Organization, 142 S.Ct. 2228, 2350 (Breyer, Kagan, and Sotomayor, JJ., dissenting)

[33] Heller, *supra* n. 11, at 78.

[34] *Id.* at 84.

personal precedent, thus undermining that colleague's reasoning and revealing it to readers as faulty.

Again, though, before I explain what I mean by these categories, I want to make two observations in the way of caveats. First, I don't mean to make any hard claims about the deep psychological motivations of a justice who decides to cite the work of a colleague. We can't possibly know for sure what these motivations are unless the justice tells us—perhaps a justice cites a colleague because the colleague cited them in a previous opinion, or perhaps the justice cites a colleague because they hope the colleague will cite them in a future opinion, or maybe the justice thinks that citing the work of a colleague will make the colleague more likely to join an opinion, or at least not object to some part of the opinion, or maybe the justice is hoping that the cited justice will give them their cupcake at lunch in return for the citation—the fact is that we generally will have no idea what light or dark psychological forces motivated the citation. The best evidence we have of the justice's purpose in citing the other justice is the function played by the citation, and so that is my primary focus here.

Second, although in my data I did attempt to casually code each citation I found by my best guess as to what the function (and thus possibly the purpose) of the citation was, I didn't calculate any totals, and I won't report any specific numbers or percentages here. Part of the reason for that is that I don't feel particularly confident in many of my guesses, but another part is that it hardly matters exactly what percentage of times a citing justice, for instance, sought to scold other justices as opposed to honor the cited justice. What's interesting is that the citations do perform a variety of functions, not how many times precisely they have performed each one. Of course, if there are scholars out there who disagree with this assertion, they should by all means feel free to do their own calculations and report what they find.

With these caveats in mind, then, it's likely that a majority of the studied citations perform the function of communicating approval of the cited work at least to some degree. After all, nearly all legal propositions can be supported by citations to a variety of sources, so the choice to cite the work of a fellow justice will typically represent a conscious decision to highlight or favor that particular work as opposed to (or in addition to) other sources. Sometimes the citation is straightforward and suggests simply that the citing justice found the cited justice's work helpful or useful for filling out the opinion. For example, when analyzing Justice Alito's "see also" cite in his dissent in *Trump v. Vance* to Justice Kavanaugh's article *Separation of Powers During the Forty-Fourth Presidency and Beyond*, for the proposition that a President who is concerned about an ongoing criminal investigation "is almost inevitably going to do a worse job as President,"[35] there's not a lot one can say about the function of the citation other than that it strengthened the opinion a bit.

In other situations, the citation appears to play a stronger role, going so far as to honor or spotlight a colleague's ideas or language. An example might be Justice Alito's

[35] Trump v. Vance, 140 S.Ct. 2412, 2427 (2020) (Alito, J., dissenting) (citing Brett Kavanaugh, *Separation of Powers in the Forty-Fourth Presidency and Beyond*, 93 MINN. L. REV. 1454, 1461 (2009)).

citation to Justice Gorsuch's book *A Republic if You Can Keep It* in his *Dobbs* majority. In describing the importance of precedent and stare decisis,[36] Alito quotes Gorsuch's characterization of precedent as "a way of accumulating and passing down the learning of past generations, a font of established wisdom richer than what can be found in any single judge or panel of judges."[37] The full quotation of Gorsuch's somewhat eloquent language suggests that Alito did not want simply to provide a citation to show that precedent is important but rather to specifically highlight Gorsuch's unique turn of phrase.

A significant subset of the "approval" category of citations might better be described as an "homage" to a deceased justice's ideas or language. This rather large subset typically involves citations to Justice Scalia's work following Scalia's death in 2016. An example that would appear to spotlight Justice Scalia's unique facility with language is Justice Gorsuch's citation of Justice Scalia's *Duke Law Journal*'s article *Judicial Deference to Administrative Interpretations of Law* in his concurrence in *Kisor v. Wilkie*. There, Gorsuch labels as a "fantasy" Justice Kagan's view that *Auer* deference applies "where the scales of justice are evenly balanced between two equally persuasive readings,"[38] quoting Justice Scalia's article for the counter proposition that, "If nature knows of such equipoise in legal arguments, the courts at least do not."[39] Most of the justices' citations to Scalia and Garner's *Reading Law* also fall into this "approval" category, although most are of the "simple and straightforward" variety; typically a justice will state a fairly uncontroversial proposition of statutory interpretation and then cite *Reading Law* as support, almost as though the book were a sort of restatement of interpretive principles that needs no further justification.[40]

A second category of citations seem to have the function of scolding one or more justices for departing from the position or judicial philosophy of a judicial ally. Typically this involves one conservative justice appearing to critique another conservative justice for misapplying or ignoring the teachings of Justice Scalia, and as such my claim relies on the premise that most of the time most of the conservative justices would like to be seen as the true inheritors of Justice Scalia's originalist, textualist judicial philosophy. Examples of this type of citation include:

- In his dissent in *Bostock v. Clayton County*, Justice Alito criticized Justice Gorsuch's majority opinion holding that Title VII prohibits discrimination

[36] Ha!

[37] Dobbs v. Jackson Women's Health Organization, 142 S.Ct. 2228, 2262 (2022) (citing NEIL GORSUCH, A REPUBLIC, IF YOU CAN KEEP IT 217 (2019)).

[38] Kisor v. Wilkie, 139 S.Ct. 2400, 2429 (2019) (Gorsuch, J., concurring).

[39] *Id.* at 2400, 2429-30 & n. 31 (citing Antonin Scalia, *Judicial Deference to Administrative Interpretations of Law*, 1989 DUKE L. J. 511, 520).

[40] *See, e.g.,* Department of Commerce v. New York, 139 S.Ct. 2551, 2600 (2019) (Alito, J., concurring) (citing *Reading Law* for proposition that, "The provisions of a text should be interpreted in a way that renders them compatible, not contradictory"); Shular v. United States, 140 S.Ct. 779, 788 (2020) (Kavanaugh, J., concurring) (quoting *Reading Law* for proposition that the rule of lenity "comes into operation at the end of the process of construing what Congress has expressed, not at the beginning.").

based on gender identity or sexual orientation, citing Justice Scalia's book *A Matter of Interpretation*: "The Court attempts to pass off its decision as the inevitable product of the textualist school of statutory interpretation championed by our late colleague Justice Scalia, but no one should be fooled. The Court's opinion is like a pirate ship. It sails under a textualist flag, but what it actually represents is a theory of statutory interpretation that Justice Scalia excoriated—the theory that courts should "update" old statutes so that they better reflect the current values of society. See A. Scalia, A Matter of Interpretation 22 (1997)."[41]

- In his dissent in *Niz-Chavez* v. Garland, Justice Kavanaugh cited the same Scalia book when criticizing Justice Gorsuch's majority (joined by Justices Thomas and Barrett) on a statutory immigration law issue, writing: "Ordinary meaning and literal meaning are two different things. And judges interpreting statutes should follow ordinary meaning, not literal meaning. . . . see also A. Scalia, A Matter of Interpretation 24 (1997) (a "good textualist is not a literalist"). The Court here, however, relies heavily on literal meaning: The Court interprets the word "a" in the phrase "a notice to appear" to literally require the Government to serve one (and only one) document."[42]

- In his dissent in *Air & Liquid Systems v. DeVries*, Justice Gorsuch cited Justice Scalia's famous article *The Rule of Law as a Law of Rules*, when criticizing Justice Kavanaugh's majority opinion announcing a mutli-factored test for determining whether a defendant has a duty to warn in maritime tort cases: "when liability depends on the application of opaque or multifactor standards like the one proposed below or the one announced today, 'equality of treatment' becomes harder to ensure across cases; 'predictability is destroyed' for innovators, investors, and consumers alike; and 'judicial courage is impaired' as the ability (and temptation) to fit the law to the case, rather than the case to the law, grows. Scalia, The Rule of Law as a Law of Rules, 56 U. Chi. L. Rev. 1175, 1182 (1989). Just consider some of the uncertainties each part of the Court's new three-part test is sure to invite . . ."[43]

- In his dissent in *County of Maui v. Hawaii Wildlife Fund*, Justice Thomas cited the same famed Scalia article when criticizing Justice Kavanaugh's multi-factor test for determining the existence of federal jurisdiction over isolated wetlands under the Clean Water Act: "Justice Kavanaugh believes that the Court's opinion provides enough guidance when it states that '[t]ime and distance will be the most important factors in most cases, but not necessarily every case,' . . . His hope for guidance appears misplaced. For all we know, these factors may not be the most important in 49 percent of cases. The majority's nonexhaustive seven-factor test 'may aid in identifying relevant facts for analysis, but—like most multifactor tests—it leaves courts adrift once those

[41] Bostock v. Clayton County, 140 S.Ct. 1731, 1756 (2020) (Alito, J., dissenting).
[42] Niz-Chavez v. Garland, 141 S.Ct. 1474, 1491 (2021) (Kavanaugh, J., dissenting).
[43] Air & Liquid Systems, Corp. v. DeVries, 139 S.Ct. 986, 998 (Gorsuch, J., dissenting).

> facts have been identified." . . . see also Scalia, The Rule of Law as a Law of Rules, 56 U. Chi. L. Rev. 1175, 1186–1187 (1989) (noting that 'when balancing is the mode of analysis, not much general guidance may be drawn from the opinion" and arguing that 'totality of the circumstances tests and balancing modes of analysis" should "be avoided where possible').[44]

Some of the more interesting instances of "scolding" involve competing citations by conservative justices to *Reading Law* in different opinions in the same case. In these cases, the battle for true succession to Scalia is at its most pitched. Take, for example, the case of *Yselta del Sur Pueblo v. Texas*.[45] That case concerned the proper interpretation of a statute governing which type of gambling operations tribes in the state of Texas could offer and pitted a tribe that wanted to offer bingo against the state. Justice Gorsuch's majority, which was joined by Justice Barrett and the liberal justices of the Court, held for the tribe, while the Chief Justice's dissent, joined by Thomas, Alito, and Kavanaugh, would have held for the state. Both opinions cited *Reading Law* to support their positions; in response to a point made by the dissent, the majority cited the book for the proposition that "courts regularly consult preambles and recitals even in statutes and contracts,"[46] while the dissent claimed that the tribe's position would violate the "canon against surplusage."[47]

In *Van Buren v. United States*,[48] a police sergeant was convicted of violating the Computer Fraud and Abuse Act of 1986 (CFAA) when he accessed a database to obtain information about a certain license plate in return for money. Although the officer had authority to access the database generally, department policy forbid employees from accessing the database for non-law enforcement reasons. The case turned on the proper meaning of the phrase "exceeds authorized access" in the CFAA, which was specifically defined as "to access a computer with authorization and to use such access to obtain . . . information in the computer that the accesser is not entitled so to obtain." Writing for the majority, Justice Barrett (joined by Justices Gorsuch and Kavanaugh, in addition to the liberal justices) held for the defendant, while Justice Thomas's dissent (joined by the Chief Justice and Alito) would have favored the government. The dissent argued that the plain meaning of the defined phrase should prevail, while the majority looked to the statutory definition. Again, both opinions cited *Reading Law* to support their positions. The dissent reasoned as follows:

> Were there any remaining doubt about which interpretation better fits the statute, the defined term settles it. When a definition is susceptible of more than one reading, the one that best matches the plain meaning of the defined

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[44] County of Maui v. Hawaii Wildlife Fund, 140 S.Ct. 1462, 1481 n.2 (2020) (Thomas, J., dissenting). For other examples of this "scolding" category of citations, see, *e.g.*, Bucklew v. Precythe, 139 S.Ct. 1112, 1124 (Breyer, J., dissenting); Sessions v. Dimaya, 138 S.Ct. 1204, 1227 (2018) (Gorsuch, J., concurring); *id.* at 1244 (Thomas, J., dissenting).

[45] 142 S.Ct. 1929 (2022).

[46] *Id.* at 1943, n.4

[47] *Id.* at 1956 (Roberts, C.J., dissenting).

[48] 141 S.Ct. 1648 (2021).

> term ordinarily controls. See, e.g., Bond v. United States, 572 U. S. 844, 861 (2014) (considering the "ordinary meaning of a defined term"); id., at 870 (Scalia, J., concurring in judgment) (courts may "us[e] the ordinary meaning of the term being defined for the purpose of resolving an ambiguity in the definition" (emphasis deleted)). That is because "there is a presumption against" reading a provision contrary to the ordinary meaning of the term it defines. A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts 232 (2012); see also id., at 228 ("[T]he meaning of the definition is almost always closely related to the ordinary meaning of the word being defined"). The majority instead resolves supposed ambiguity in the definition against the plain meaning of the defined term.[49]

The majority responded directly in a footnote, implicitly claiming the true mantle of Scalia's textualism:

> The dissent makes the odd charge that our interpretation violates the "'presumption against'" reading a provision "contrary to the ordinary meaning of the term it defines." [ ] But when a statute, like this one, is "addressing a . . . technical subject, a specialized meaning is to be expected." Scalia, Reading Law, at 73. Consistent with that principle, our interpretation tracks the specialized meaning of "access" in the computer context. This reading is far from " 'repugnant to' " the meaning of the phrase "exceeds authorized access," post, at 9—unlike, say, a definitional provision directing that " 'the word dog is deemed to include all horses.' " Scalia, supra, at 232, n. 29.[50]

Finally, there are the "Gotcha" citations. These are the rarest type of citations but also probably the most interesting, because they presume the importance of what Re calls "personal precedent" and then criticize a fellow justice for departing from it. Indeed, Re foresees such citations in his Article, observing that a "fundamental reason for judges to find personal precedent attractive" is because "people generally want to appear, both to themselves and others, as consistent,"[51] that "[p]ersonal precedents can include a justice's non-judicial writings, such as law-review articles,"[52] and that justices naturally want to avoid being criticized for departing from personal precedent. On this latter point, Re writes that: "Majority-opinion authors usually avoid elevating a dissenter's personal precedent by relying on it to indict the dissenter. By comparison, dissenters feel freer to wield personal precedent as a cudgel—and doing so fosters legal stability. In particular, a dissenter might turn the majority justices' personal precedents against them by showing a contradiction between what the Court is doing now and

[49] *Id.* at 1657, n.7.

[50] *Id.* at 1667 (Thomas, J., dissenting). For other examples of "scolding" citations to *Reading Law*, see, *e.g.*, Texas Dept. of Community Housing and Community Affairs v. Inclusive Communities Project, 576 U.S. 519, 569 (2015) (Alito, J., dissenting); United States v. Davis, 139 S.Ct. 2319, 2347 (2019) (Kavanaugh, J., dissenting); Fulton v. Philadelphia, 141 S.Ct. 1868, 1879 (2021); *id.* at 1928 (Gorsuch, J., dissenting); Biden v. Texas, 142 S.Ct. 2528, 2555 (2022) (Alito, J., dissenting).

[51] Re, *supra* n. 5, at 829.

[52] *Id.* at 846.

what some of its members proclaimed [earlier]. The feeling of being personally inconsistent is bad enough, but being called out for it is worse."[53]

In my study, I identified perhaps ten citations to academic work over the past seventeen years that could possibly be categorized as "Gotcha" cites.[54] A few of the clearer examples include:

- In his concurrence in *West Virginia v. EPA*,[55] Justice Gorsuch asserted the general point that allowing Congress robust power to delegate its policy-making authority to agencies (as Breyer seemingly favored by joining Justice Kagan's dissent in the case) would be problematic because, "[l]egislation would risk becoming nothing more than the will of the current President, or, worse yet, the will of unelected officials barely responsive to him."[56] In making his point, Gorsuch quoted Justice Breyer's 2010 book *Making Our Democracy Work: A Judge's View*, in which Breyer wrote that with such delegation, "the president may not have the time or willingness to review [agency] decisions."[57]

- In his dissent in *Van Orden v. Perry*,[58] a case upholding the display of a Ten Commandments monument outside the Texas Supreme Court, Justice Stevens argued that, among other problems, the monument endorsed the Protestant version of the Ten Commandments as opposed to either the Catholic or Jewish versions because of the specific text engraved on the monument.[59] Stevens criticized Justice Scalia's concurring opinion ignoring those differences as being "somewhat ironic" given Scalia's typical focus on textual matters.[60] In doing so, Stevens cited Justice Scalia's book *A Matter of Interpretation* as evidence of that focus.[61]

- In *City of Arlington, Texas v. FCC*,[62] Chief Justice Roberts dissented from Justice Scalia's majority opinion, joined by Justices Kagan and Breyer, which held that agencies receive *Chevron* deference even for interpretations about their own jurisdiction. The Chief Justice would have found that agencies should not get such deference, in part because it would increase the amount of democratically unaccountable discretion possessed by agencies, particularly because the

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[53] *Id.* at 839.

[54] It's important to remember that these are only the "Gotcha" cites involving the academic work of the justices. Likely far more common are "Gotcha" cites that cite separate opinions written or joined by the justice being critiqued. Hopefully at some point, someone will study how the justices cite the separate opinions of other justices, but it won't be me.

[55] 142 S.Ct. 2587 (striking down the Obama Administration's "Clean Power Plan" as being beyond EPA's statutory authority)..

[56] *Id.* at 2618 (Gorsuch, J., concurring).

[57] *Id.*

[58] 545 U.S. 677 (2005).

[59] *Id.* at 718 (Stevens, J., dissenting).

[60] *Id.* at 718 n.17.

[61] *Id.*

[62] 569 U.S. 290 (2013).

> President cannot possibly review all agency determinations.[63] For this latter point, the Chief Justice cited and quoted both Justice Breyer's *Making Our Democracy Work* and Justice Kagan's article *Presidential Administration*: "Although the Constitution empowers the President to keep federal officers accountable, administrative agencies enjoy in practice a significant degree of independence. As scholars have noted, 'no President (or his executive office staff) could, and presumably none would wish to, supervise so broad a swath of regulatory activity.' Kagan, Presidential Administration, 114 Harv. L. Rev. 2245, 2250 (2001); see also S. Breyer, Making Our Democracy Work 110 (2010) ('the president may not have the time or willingness to review [agency] decisions')."[64]

- In his dissent in *Graham v. Florida*, in which the Court held that sentencing a juvenile to life in prison without possibility for parole violated the Eighth Amendment,[65] Justice Thomas noted that legislatures had been moving away from offering parole as part of his argument that prison without parole is not disproportionate punishment.[66] In doing so, Justice Thomas cited Justice Breyer's 1999 report on federal sentencing: "Second, legislatures have moved away from parole over the same period. Congress abolished parole for federal offenders in 1984 amid criticism that it was subject to "gamesmanship and cynicism," Breyer, Federal Sentencing Guidelines Revisited, 11 Fed. Sentencing Rep. 180 (1999) (discussing the Sentencing Reform Act of 1984, 98 Stat. 1987)."[67]

Perhaps the two most controversial "Gotcha" citations in recent years have involved cases about substantive due process. In *Obergefell v. Hodges*,[68] which held that same-sex couples have a fundamental right to marry, Chief Justice Roberts's dissent lamented the Court's insistence on stepping into (and putting an end to) what he believed was a robust democratic debate occurring among the people regarding same-sex marriage: "By deciding this question under the Constitution, the Court removes it from the realm of democratic decision. There will be consequences to shutting down the political process on an issue of such profound public significance. Closing debate tends to close minds. People denied a voice are less likely to accept the ruling of a court on an issue that does not seem to be the sort of thing courts usually decide."[69] The cherry on the top of the Chief's argument, though, was his citation to a law review article by none other than his colleague Justice Ginsburg, a fervent supporter of both same-sex

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[63] *Id.* at 313.
[64] *Id.*
[65] 560 U.S. 48 (2010).
[66] *Id.* at 109-110 (Thomas, J., dissenting).
[67] *Id.* For other cases involving "gotcha" citations, see Small v. United States, 544 U.S. 385, 402 (2005) (Thomas, J., dissenting) (citing Breyer, *On the Uses of Legislative History in Interpreting Statutes*); National Federation of Independent Business v. Sebelius, 567 U.S. 581, 644 (2012) (Ginsburg, J., concurring in part) (citing Justice Scalia's article *The Rule of Law as a Law of Rules*).
[68] 576 U.S.644 (2015).
[69] *Id.* at 710 (Roberts, C.J., dissenting).

marriage and abortion rights, who did famously critique *Roe v. Wade* as cutting off democratic deliberation. Roberts wrote: "As a thoughtful commentator observed about another issue, 'The political process was moving . . . , not swiftly enough for advocates of quick, complete change, but majoritarian institutions were listening and acting. Heavy-handed judicial intervention was difficult to justify and appears to have provoked, not resolved, conflict.' Ginsburg, Some Thoughts on Autonomy and Equality in Relation to Roe v. Wade, 63 N. C. L. Rev. 375, 385–386 (1985) (footnote omitted)."[70]

More recently, in *Dobbs v. Jackson Women's Health Organization*,[71] Justice Alito's majority opinion cited Justice Ginsburg's 1992 *NYU Law Review* Article *Speaking in a Judicial Voice* not once but twice on the way to overruling *Roe v. Wade*. The first citation came in a footnote following Alito's observation that *Roe* "sparked a national controversy that has embittered our political culture for a half century."[72] The footnote read in full: "See R. Ginsburg, Speaking in a Judicial Voice, 67 N. Y. U. L. Rev. 1185, 1208 (1992) ('Roe . . . halted a political process that was moving in a reform direction and thereby, I believed, prolonged divisiveness and deferred stable settlement of the issue'.)"[73] Sixty-five pages later, Alito quoted the same piece again when criticizing *Casey*'s affirmance of *Roe*: "Roe 'inflamed' a national issue that has remained bitterly divisive for the past half century. Casey, 505 U. S., at 995 (opinion of Scalia, J.); see also R. Ginsburg, Speaking in a Judicial Voice, 67 N. Y. U. L. Rev. 1185, 1208 (1992) (Roe may have 'halted a political process,' 'prolonged divisiveness,' and 'deferred stable settlement of the issue'). And for the past 30 years, Casey has done the same."[74]

Cornell Law's Michael Dorf has already decimated Alito's citations to Justice Ginsburg in *Dobbs*,[75] but what about the practice of these "gotcha" citations generally? I'm not a fan. I take Re's point about the potential importance of personal precedent, and I agree that most judges would not want to be called out as violating their own such

[70] *Id.*

[71] 142 S.Ct. 2228 (2022).

[72] *Id.* at 2241.

[73] *Id.* at 2241 n.4.

[74] Unlike the Roberts' cite to Ginsburg in *Obergefell*, which of course occurred when Justice Ginsburg was still alive and on the bench, the Alito citations are a little less obviously "gotchas" and might rightly be categorized as either a scolding citation or somewhere in the middle of scolding and gotcha, since Justice Ginsburg had already died at the time of the citation. Personally, I feel the spirit of the citation is more gotcha than anything else.

[75] Michael C. Dorf, Dobbs *Double-Cross: How Justice Alito Misused Pro-Choice Scholars Work*, Verdict (July 6, 2022), *available at* https://verdict.justia.com/2022/07/06/dobbs-double-cross-how-justice-alito-misused-pro-choice-scholars-work. Specifically, Dorf writes: "In their legal research and writing classes, first-year law students learn not to quote language that supports a position they favor if that language comes from a case whose holding undercuts that position. Justice Alito either never learned or forgot that basic lesson. By selectively invoking statements critical of Roe from the likes of Justice Ginsburg and Professor Ely, the Dobbs opinion directs readers to the larger body of their work. There readers will find, respectively, a robust defense of abortion rights as essential to sex equality and an account of how the current hyper-conservative Court's rulings are profoundly illegitimate. Justice Alito's opinion is, as the kids say, a self-own." *Id.*

precedent. And I further agree that it might be a reasonable (though fairly light) criticism of a justice that they have departed from their own personal precedent. Finally, if over time the concept of personal precedent becomes widely known and accepted, there might become a day when a brief citation to an earlier inconsistent writing of a justice would be easily understood as demonstrating a present lack of principle. But given that nobody currently thinks that a justice must conform in all particulars to everything they've ever said in the past, any legitimate use of past writings to point out a current inconsistency has to, in my view, provide a good amount of context about what such an inconsistency means and explain the necessary caveats to understanding that inconsistency as a problem for it to be at all persuasive. None of the gotcha citations I found fit those criteria, which is not surprising because such a discussion of context and caveats concerning a specific citation isn't really as suitable for judicial opinions as it is for, say a journal article. To me, a quick citation to a past inconsistent writing reads more like an *ad hominem* attack than a reasoned criticism. It's too clever by half, as the Brits used to say, a blunt instrument where care and subtlety is required. The gotcha citation is a lazy form of argument, one that might be excusable if shouted by one teenager to another over fries at the mall or even perhaps in a forum like Twitter, where everyone understands the superficiality of the discourse, but not when aimed by one Supreme Court justice at another in the formal opinions of our highest Court. Until the day comes when following personal precedent is universally understood as an inexorable command, it would be better if the justices would just cut it out with the "gotchas."

Conclusion

The issue of how often and why justices cite the books and articles of other justices in their opinions lies at the intersection of two fascinating lines of academic inquiry—what scholarly sources do the justices rely upon in their decisions and what is the importance of past writings for evaluating a justice's present reasoning. A study of how often and why the justices have cited each other's academic work over the past seventeen years reveals a number of interesting results, most specifically that Justice Scalia is by far the justice whose work has been most cited by other justices, that conservative justices often compete to be seen as the most loyal follower of Justice Scalia by citing his work to critique other conservative justices, and that justices occasionally think they are making a substantial argument by pointing out an inconsistency between a justice's current stance and something they said at some point in the past—the so-called "gotcha" citation.

This Article, however, is only one small attempt to get at some of these important issues. Several avenues of scholarly research remain. For one thing, it would be helpful to see how the past seventeen years differed, if at all, from the citation practices of justices in prior decades. It will also be fruitful to track future instances of justices citing justices to try and ascertain whether the newfound attention to personal precedent results in any increase in such citations. Finally, and most ambitiously, it would be hugely interesting to see an empirical study (or studies) of how often, under

what circumstances, and for what reasons justices cite the *separate opinions* of other justices (as well as their own) in their opinions as opposed to the *academic work* of those justices because those citations are probably far more plentiful sources of personal precedent than the ones studied here. Still, though, I hope this Article has made a good start towards understanding empirically how the justices of the Supreme Court use and manipulate the personal precedent of their colleagues, for better or worse.