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**SEEING THE SUPREME COURT AS A WHOLE INSTITUTION: LAW
AND SOCIAL SCIENCE**

MORGAN L. W. HAZELTON*

ABSTRACT

The internal and external institutional features of the Supreme Court shape how it operates and impacts society. Engaging scholarship in social science, including Judicial Politics, can deepen our understanding of the Supreme Court and inform related debates. For example, emerging research on the effect of interpersonal relationships and public disagreement helps us understand how life tenure and office arrangements influence the rate at which we see separate opinions and, thus, legal development. Finally, easy access to information regarding decisions of all types and the decision-making process is vital for such research.

* Associate Professor, Saint Louis University Department of Political Science and School of Law (by courtesy). This article is based on comments at the 2022 Richard J. Childress Memorial Lecture on “The Business of the Supreme Court: The Evolution and Devolution of the Supreme Court’s Docket” at Saint Louis University School of Law. Stephen Vladeck delivered the keynote lecture. I want to thank him and the other panelists—Ben Johnson and Tejas Narechania, Josh Chafetz, Daniel Epps, Jennifer Mascott, Ariane de Vogue, Amy Howe, and Kate Shaw—for their insights. I would also like to thank Sam Jordan and Mikayla Lewison for inviting me to participate and Julie Orr and Stephanie Haley for their tireless work.

INTRODUCTION

Professor Vladeck's fundamental point that we should consider the Supreme Court as an institution is a vitally important one.¹ As Lee Epstein and Jack Knight pointed out in their seminal work, *The Choices Justices Make*, the Supreme Court is an institution that both shapes the choices of the individuals who operate in it, the intricacies,² and exists within larger social and political contexts, the interrelationships.^{3,4} When we fail to acknowledge these internal and external aspects of the Supreme Court, we limit our understanding of it.⁵ This broader view is presented in social science research regarding the Supreme Court generally and in "Judicial Politics" scholarship specifically.⁶ For example, my co-authored research on the effect of interpersonal relationships and public disagreement illustrates how such research on the Supreme Court helps our understanding of it and can inform related policy debates. Finally, readily available data regarding the Supreme Court and its decisions is essential for research that helps elucidate this broader view.

I. WHY IT MATTERS HOW WE THINK AND TALK ABOUT THE SUPREME COURT

Viewing the Supreme Court purely in terms of merit decisions provides an inherently limited vantage point. First, it frankly promotes mental gymnastics⁷ and the casting of ideological foes as not operating in good faith while excusing allies' actions.⁸ Furthermore, it makes it harder for students and citizens alike to

1. Stephen I. Vladeck, *The Business of the Supreme Court: How We Do, Don't, and Should Talk About SCOTUS*, 67 ST. LOUIS U. L.J. (forthcoming May 2023).

2. LEE EPSTEIN & JACK KNIGHT, *THE CHOICES JUSTICES MAKE* 10 (1998); see also Howard Gillman, *The Court as an Idea: Not a Building (or a Game): Interpretive Institutionalism and the Analysis of Supreme Court Decision-Making*, in *SUPREME COURT DECISION-MAKING: NEW INSTITUTIONALIST APPROACHES* 68 (Cornell W. Clayton & Howard Gillman eds., 1999).

3. EPSTEIN & KNIGHT, *supra* note 2, at 10–11; see also, e.g., Timothy R. Johnson, *The Supreme Court, The Solicitor General, And The Separation Of Powers*, 31 AM. POL. RES. 426, 426 (2003).

4. See EPSTEIN & KNIGHT, *supra* note 2, at 11–12.

5. See Andrew D. Martin & Morgan L.W. Hazelton, *What Political Science Can Contribute to the Study of Law*, 8 REV. L. & ECON. 511, 515–16 (2012).

6. The subfield is also called "Public Law" or "Law and Courts." *Id.* at 511.

7. Even rather ardent supporters of the view that law primarily drives judicial decision-making acknowledge that law is unlikely to dictate specific outcomes. See, e.g., Brian Z. Tamanaha, *Understanding Legal Realism*, 87 TEX. L. REV. 731, 732 (2008); Suzanna Sherry, *Putting the Law Back in Constitutional Law*, 25 CONST. COMMENT. 461, 461 (2008) (discussing the nature of constitutional law as neither fully determinate nor indeterminate while also asserting the importance of law).

8. See Frank B. Cross & Stefanie A. Lindquist, *The Scientific Study of Judicial Activism*, 91 MINN. L. REV. 1752, 1752 (2006).

understand legal areas like Constitutional Law.⁹ Moreover, advancing a view of the Supreme Court that does not include institutional context often results in a backlash from citizens, students, and others, who find that the more traditional view does not explain what they are observing; instead, they then tend to adopt a view held by some political scientists¹⁰ and others that law matters very little, if at all.¹¹

By allowing for a more nuanced and sophisticated view of the Supreme Court, we can appreciate that it is an important institution with inherently legal, psychological,¹² sociological,¹³ and political¹⁴ aspects. Furthermore, one can better analyze and predict the Supreme Court's rulings¹⁵ and their impact¹⁶ by accounting for institutional features. Moreover, it helps us understand how the Supreme Court functions. This, in turn, allows us to assess if the institution should be preserved or changed and what, if any, changes would be desirable.

9. See Alice Ristroph, *Is Law? Constitutional Crisis and Existential Anxiety*, 25 CONST. COMMENT. 431, 431 (2008) (discussing general doctrinal disarray in constitutional law and issues of larger constitutional and political order).

10. E.g., JEFFREY A. SEGAL & HAROLD J. SPAETH, *THE SUPREME COURT AND THE ATTITUDINAL MODEL REVISITED* (2002).

11. See Matthew Rozsa, *Did the Supreme Court just become "political"? God, no—it's always been that way*, SALON (May 15, 2022), <https://www.salon.com/2022/05/15/did-the-just-become-political-god-no—its-always-been-that-way/> [<https://perma.cc/U7XC-CJJM>] (discussing a view of the Supreme Court as having always been political in light of recent Supreme Court behavior); see Sherry, *supra* note 7, at 461 (discussing how professors, students, judges, and others come to lose faith in the ability of law to explain constitutional law in part from its inability to be wholly determinative); Joshua Zeitz, *The Supreme Court Has Never Been Apolitical*, POLITICO (Apr. 3, 2022), <https://www.politico.com/news/magazine/2022/04/03/the-supreme-court-has-never-been-apolitical-00022482> [<https://perma.cc/4U9K-Z9N2>] (offering a view of the Supreme Court as inherently political); *U.S. Voter Support For Abortion Is High, Quinnipiac University National Poll Finds; 94 Percent Back Universal Gun Background Checks*, QUINNIPIAC U. POLL (May 22, 2019), <https://poll.qu.edu/Poll-Release-Legacy?releaseid=2623> [<https://perma.cc/3HAD-W5MK>] (reporting that 55 percent of Americans believe that Supreme Court decision-making is based mostly on politics).

12. E.g., MATTHEW E.K. HALL, *WHAT JUSTICES WANT: GOALS AND PERSONALITY ON THE US SUPREME COURT* 10 (2018).

13. E.g., ROBERT COSTELLO & COLLEEN EREN, *THE IMPACT OF SUPREME COURT DECISIONS ON US INSTITUTIONS: A SOCIOLOGY OF LAW PRIMER* 19 (2021).

14. E.g., EPSTEIN & KNIGHT, *supra* note 2, at 11.

15. Theodore W. Ruger et. al., *The Supreme Court Forecasting Project: Legal and Political Science Approaches To Predicting Supreme Court Decisionmaking*, 104 COLUM. L. REV. 1150, 1152 (2004).

16. See COSTELLO & EREN, *supra* note 13, at 17; MATTHEW E.K. HALL, *THE NATURE OF SUPREME COURT POWER* 14 (2010).

II. HOW SOCIAL SCIENCE CAN HELP US UNDERSTAND THE COURT AS AN INSTITUTION

Many of the aspects of how the Supreme Court operates as an institution that Professor Vladeck asks us to take seriously¹⁷ are on the radar of social scientists (both inside and outside of the legal academy). Judicial Politics scholars generally focus on such issues. For example, such scholars have theorized and carried out empirical research regarding many aspects of the Supreme Court that Professor Vladeck points out are missing from our dialogue, such as:

- Court reform recommendations^{18,19}
- Chief justices as advocates in year-end reports²⁰
- Collegiality among justices^{21*}
- Leaks²²
- Public dissents²³
- Speeches by justices²⁴
- Recusal²⁵

17. Vladeck, *supra* note 1.

18. *E.g.*, Adam Chilton et. al., *Designing Supreme Court Term Limits*, 95 S. CAL. L. REV. 1, 4 (2021).

19. Political scientists have also considered the effects of court-curbing bills on the Supreme Court. *See, e.g.*, Tom S. Clark, *The Separation of Powers, Court Curbing, and Judicial Legitimacy*, 53 AM. J. POL. SCI. 971, 972 (2009); *see e.g.*, Alyx Mark & Michael A. Zilis, *The Conditional Effectiveness of Legislative Threats: How Court-curbing Alters the Behavior of (Some) Supreme Court Justices*, 71 POL. RES. Q. 570 (2019).

20. *E.g.*, Richard L. Vining, Jr. & Teena Wilhelm, *The Chief Justice as Advocate-in-Chief*, 95 JUDICATURE 267, 277 (2012).

21. *E.g.*, LEE EPSTEIN, WILLIAM M. LANDES & RICHARD A. POSNER, *THE BEHAVIOR OF FEDERAL JUDGES: A THEORETICAL AND EMPIRICAL STUDY OF RATIONAL CHOICE* 29–30 (2013); MORGAN L.W. HAZELTON, RACHAEL K. HINKLE & MICHAEL J. NELSON, *THE ELEVATOR EFFECT: CONTACT AND COLLEGIALLY IN THE AMERICAN JUDICIARY* (forthcoming 2023) (*on file with author); Rachael K. Hinkle, Morgan L.W. Hazelton & Michael J. Nelson, *Legal scholarship highlight: Getting to know you – The unifying effects of membership stability*, SCOTUSBLOG (May 26, 2017), <https://www.scotusblog.com/2017/05/legal-scholarship-highlight-getting-know-unifying-effects-membership-stability> [<https://perma.cc/XY8G-S2TR>].

22. *E.g.*, Todd C. Peppers, *Of Leakers and Legal Briefers: The Modern Supreme Court Law Clerk*, 7 CHARLESTON L. REV. 95 (2012).

23. Timothy R. Johnson, Ryan C. Black & Eve M. Ringsmuth, *Hear Me Roar: What Provokes Supreme Court Justices to Dissent from the Bench*, 93 MINN. L. REV. 1560, 1563 (2008).

24. Colin Glennon & Logan Strother, *The Maintenance of Institutional Legitimacy in Supreme Court Justices' Public Rhetoric*, 7 J. L. & CTS. 241 (2019); Logan Strother & Colin Glennon, *An Experimental Investigation of the Effect of Supreme Court Justices' Public Rhetoric on Perceptions of Judicial Legitimacy*, 46 L. & SOC. INQUIRY *435, *436 (2021).

25. Ryan Black & Lee Epstein, *Recusals and the "Problem" of an Equally Divided Supreme Court*, 7 J. APP. PRAC. & PROCESS 75, 75–76 (2005); Robert J. Hume, *Deciding Not to Decide:*

- Justices' financial interests and their relationships to decision-making²⁶
- Strategic decisions regarding certiorari—defensive denials and aggressive grants²⁷
- Separation of powers issues and the docket²⁸

Engaging this research can help us both have a fuller view of the Supreme Court and inform conversations regarding possible court reforms.

III. EXAMPLE: EVIDENCE OF INTERPERSONAL RELATIONSHIPS

As part of this larger endeavor of understanding the Supreme Court in its institutional context, I want to spend some time addressing an internal dynamic that tends to be the subject of media coverage but not academic work: the extent to which interpersonal relationships among justices influence the work that the Supreme Court does. We professors sometimes regale others with historical accounts of Chief Justice Marshall, who reached a consensus with his fellow justices with the aid of his wine stash.²⁹ Or, we talk about how Justices Douglas and Frankfurter hated each other and called each other names like “Der Fuehrer.”³⁰ We speculate whether Chief Justice Roberts asked Justice Gorsuch to wear a mask.³¹ And, consider public statements by the justices about their

The Politics of Recusals on the US Supreme Court, 48 L. & SOC'Y REV. 621, 622 (2014); Udi Sommer, Quan Li & Jonathan Parent, *Norms and Political Payoffs in Supreme Court Recusals*, 44 POL. BEHAV. 859, 862 (2020).

26. Jordan Carr Peterson, Thora Giallouri & Elli Menounou, *The Personal Finances of United States Supreme Court Justices and Decision-making in Economic Litigation*, 50 J. LEGAL STUD. 379, 381 (2021).

27. E.g., Ryan C. Black & Ryan J. Owens, *Agenda Setting in the Supreme Court: The Collision of Policy and Jurisprudence*, 71 J. POL. 1062, 1063–64 (2009); see EPSTEIN & KNIGHT, *supra* note 2, at 79–80.

28. E.g., Ryan J. Owens, *The Separation of Powers and Supreme Court Agenda Setting*, 54 AM. J. POL. SCI. 412 (2010); Johnson, *supra* note 3, at 444.

29. See Ruth Bader Ginsburg, *Supreme Court Food Traditions*, AMERICAN HISTORY TV, C-SPAN 3 (June 1, 2016), <https://www.c-span.org/video/?410429-1%2Fjustices-ruth-bader-ginsburg-sonia-sotomayor-discuss-supreme-courts-food-traditions> [<https://perma.cc/8UP7-6GWH>].

30. See Melvin I. Urofsky, *Conflict Among the Brethren: Felix Frankfurter, William O. Douglas and the Clash of Personalities and Philosophies on the United States Supreme Court*, 1988 DUKE L.J. 71, 106 (1988).

31. See Robert Barnes, *Sotomayor, Roberts Say They Did Not Ask Gorsuch to Wear a Mask on Supreme Court Bench*, WASH. POST (Jan. 19, 2022), https://www.washingtonpost.com/politics/courts_law/neil-gorsuch-sonia-sotomayor-masks-supreme-court/2022/01/19/7977831a-7946-11ec-9102-d65488c31bb1_story.html [<https://perma.cc/HAW8-SDLS>]; Nina Totenberg, *Gorsuch Didn't Mask Despite Sotomayor's COVID Worries, Leading Her to Telework*, NPR, (Jan. 18, 2022), <https://www.npr.org/2022/01/18/1073428376/supreme-court-justices-arent-scorpions-but-not-happy-campers-either> [<https://perma.cc/TJU3-XCAZ>]; Nina Totenberg, *Supreme Court Hears Arguments on Campaign Finance Law, Issues Statement on NPR Report*, NPR (Jan. 19, 2022), <https://www.npr.org/2022/01/19/1074169348/supreme-court-hears-arguments-on-campaign-finance-law-issues-statements-on-npr-r> [<https://perma.cc/XN6D-L5SY>].

warm relations or, more recently, concerns over trust within the Court.³² However, we tend not to think about how the institutional structure of the Supreme Court helps shape the relationships among justices and how they matter to the case outcomes and opinions that the justices produce.³³

For example, these relationships likely influence the extent to which justices publicize disagreement through separate opinions—dissents and concurrences.³⁴ Specifically, interpersonal relationships are likely to matter for two main reasons. First, there are issues of persuasion—the longer you know someone, the more likely they are to trust you, and you understand what types of information and arguments are more likely to persuade them.³⁵ Second, there are aspects of suppression—you may keep some objections to yourself because the benefits of announcing them are not worth the harm to your relationship with another colleague or your ability to work with them in the future.³⁶

The Supreme Court differs from many other appellate courts in ways that make these relationships more and less critical.³⁷ The relationships tend to be significant, present, and prolonged because the Supreme Court always sits en banc with all participating justices,³⁸ the justices office are in the same courthouse,³⁹ and there is no higher position to which a justice might be nominated.⁴⁰ As scholars have pointed out, life tenure also means that the justices effectively have arranged marriages with no possibility of divorce while they serve together.⁴¹

But other factors weigh towards relationships being less critical to Supreme Court decision-making. The justices enjoy nearly complete control over their dockets and, thus, hear relatively complex, contentious, and salient cases of their

32. See Robert Barnes, *Clarence Thomas Says Supreme Court Leak Has Eroded Trust in Institution*, WASH. POST (May 14, 2022), <https://www.washingtonpost.com/politics/2022/05/14/clarence-thomas-supreme-court-leak-roe-trust/> [<https://perma.cc/HTV8-6WWS>]; see Adam Liptak, *Justice Jackson, a Former Law Clerk, Returns to a Transformed Supreme Court*, N.Y. TIMES (July 18, 2022), <https://www.nytimes.com/2022/07/18/us/politics/ketanji-brown-jackson-scotus.html> [<https://perma.cc/29BN-N3UH>].

33. See EPSTEIN & KNIGHT, *supra* note 2, at 112; Harry T. Edwards, *The Effects of Collegiality on Judicial Decision Making*, 151 U. PA. L. REV. 1639, 1641–43 (2003).

34. HAZELTON, HINKLE & NELSON, *supra* note 21.

35. *Id.* (citations omitted).

36. *Id.* (citations omitted).

37. *Id.*

38. *Id.*; Frank B. Cross & Emerson H. Tiller, *Understanding Collegiality on the Court*, 10 U. PA. J. CONST. L. 257, 259 (2007); Richard A. Posner, *A Tribute to Justice William J. Brennan, Jr.*, 104 HARV. L. REV. 13, 14 (1990); Edwards, *supra* note 33, at 1644.

39. HAZELTON, HINKLE & NELSON, *supra* note 21.

40. *About the Court*, SUP. CT. OF THE UNITED STATES, <https://www.supremecourt.gov/about/about.aspx> [<https://perma.cc/PW8P-MU5H>] (last visited Dec. 27, 2022).

41. Posner, *supra* note 38, at 14.

choosing.⁴² Therefore, the likelihood that relationships will outweigh their desire to express what they understand to be the proper reasoning and outcome in the cases will be lower than in other contexts. The justices are also relatively well-resourced in terms of clerk assistance and the flow of information from party and amicus briefs,⁴³ as well as lower court opinions.⁴⁴ Thus, they have less need to depend on each other. It should perhaps then be of little surprise that since the 1930s, the Supreme Court has not enjoyed a norm of consensus regarding separate opinions,⁴⁵ unlike the federal courts of appeals.⁴⁶

We should care about separate opinions. Research indicates that non-unanimous opinions are generally received differently by the public⁴⁷ and lower courts,⁴⁸ and that separate opinions influence the development of law.⁴⁹

In a forthcoming book, *The Elevator Effect: Contact and Collegiality in the American Judiciary*, Rachael Hinkle, Michael Nelson, and I consider how contact among justices, a necessary precursor of relationships, influences public disagreement.⁵⁰ We find that the longer justices have served together, the less likely they are to dissent from a majority opinion written by their colleague.⁵¹ Anecdotally, we can see it play out with specific relationships: for example, when Chief Justice Rehnquist and Justice Ginsburg sat together in the first few years of their time together, Rehnquist dissented from almost half of Ginsburg's majority opinions. In their final two years together that number dropped to one-

42. Donald R. Songer & Reginald S. Sheehan, *Who Wins on Appeal? Uppercourts and Underdogs in the United States Courts of Appeals*, 36 AM. J. POL. SCI. 235, 255 (2009); see Edwards, *supra* note 33, at 1644; Cross & Tiller, *supra* note 38, at 268–69.

43. MORGAN L.W. HAZELTON & RACHAEL K. HINKLE, PERSUADING THE SUPREME COURT: THE SIGNIFICANCE OF BRIEFS IN JUDICIAL DECISION-MAKING 12, 22–23 (2022).

44. Pamela C. Corley, Paul M. Collins Jr. & Bryan Calvin, *Lower Court Influence on U.S. Supreme Court Opinion Content*, 73 J. POL. 31, 32 (2011).

45. Lee Epstein, Jeffrey A. Segal & Harold J. Spaeth, *The Norm of Consensus on the U.S. Supreme Court*, 45 AM. J. POL. SCI. 362, 362–63 & fig.1 (2001).

46. Joshua B. Fischman, *Estimating Preferences of Circuit Judges: A Model of Consensus Voting*, 54 J. L. & ECON. 781, 782 (2011).

47. PAMELA C. CORLEY, AMY STEIGERWALT & ARTEMUS WARD, THE PUZZLE OF UNANIMITY: CONSENSUS ON THE UNITED STATES SUPREME COURT 4, 116 (2013); Michael F. Salamone, *Judicial Consensus and Public Opinion: Conditional Response to Supreme Court Majority Size*, 67 POL. RES. Q. 320, 320 (2014); James R. Zink, James F. Spriggs II & John T. Scott, *Courting the Public: The Influence of Decision Attributes on Individuals' Views of Court Opinions*, 71 J. POL. 909, 922–23 (2009).

48. See generally RYAN C. BLACK ET. AL., U.S. SUPREME COURT OPINIONS AND THEIR AUDIENCES 22 (2016); PAMELA C. CORLEY, CONCURRING OPINION WRITING ON THE U.S. SUPREME COURT 74 (2010); CORLEY, STEIGERWALT & WARD, *supra* note 47, at 116; HAZELTON, HINKLE & NELSON, *supra* note 21.

49. E.g., Rachael K. Hinkle & Michael J. Nelson, *How to Lose Cases and Influence People*, 8 STAT. POL. & POL'Y 195, 196 (2017); HAZELTON, HINKLE & NELSON, *supra* note 21.

50. HAZELTON, HINKLE & NELSON, *supra* note 21.

51. *Id.*

fifth.⁵² At the same time, Justice Ginsburg went from dissenting to forty percent of Rehnquist's opinions to twenty-seven percent.⁵³ We have little to no indication that Rehnquist and Ginsburg came to view the world and cases the same way, but the years together seem to have changed the extent to which they aired that disagreement in separate opinions.⁵⁴

Moreover, when we analyze rates of separate opinions from the justices between 1955 and 2009, controlling for important factors including aspects of experience and ideology, we find that co-tenure matters.⁵⁵ This is true regardless of ideological differences.⁵⁶ The effect is modest, about a five percent decrease over three decades.⁵⁷ However, the Supreme Court presents a challenging environment in which to measure these relationships; thus, this likely represents the tip of the iceberg.⁵⁸

So, reforms that would change tenure or create an influx of new justices would change the average length of relationships and likely result in more separate opinions.⁵⁹ Is that good or bad? It depends on how you view and understand separate opinions, and it is an area where we need more research. What research we do have indicates that the decisions could influence public perceptions, lower court compliance, and legal development.⁶⁰

IV. WHAT WE NEED TO UNDERSTAND ABOUT THE SUPREME COURT

Much of the coverage and commentary on the Supreme Court from the media and legal academy focuses on merit decisions. Unsurprisingly, this is an area where the Supreme Court is arguably the most transparent: unlike the other branches, the federal courts generally provide publicly accessible reasoning for their decisions and votes.⁶¹ These are also the cases in which there are public

52. *Id.*

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.*

58. *See id.*

59. *Id.*

60. *See supra* notes 48 & 49.

61. Nancy S. Marder, *The Supreme Court's Transparency: Myth or Reality*, 32 GA. ST. U. L. REV. 849, 851 (2015). *But see* BLACK ET AL., *supra* note 48, at 26 (providing evidence that the Supreme Court drafts opinions with public acceptance in mind, thus, bringing into question the extent to which they are purely statements of logic); *See generally* SEGAL & SPAETH, *supra* note 10 (arguing that decisions are window-dressing); Eric J. Segall, *Invisible justices: How Our Highest Court Hides from the American People*, GA. ST. U. L. REV. 787, 787-88 (2015) (describing ways in which the Supreme Court is not transparent).

oral arguments.⁶² However, as Professor Vladeck points out, such merit decisions represent only a small part of the work of the Supreme Court.⁶³

Outside of these merit decisions, the Supreme Court is far less transparent. Information regarding other types of decisions (such as the “shadow docket”) is much harder to come by. Additionally, finding systemic information across cases is far more challenging. It is telling that scholars carry out most large-scale research using commercial databases rather than governmental sites.⁶⁴ As Professor Vladeck points out, finding out about matters on the shadow docket involves searching multiple pages.⁶⁵ Recusals are opaque.⁶⁶ Information regarding the cases in which litigants pursue review by the Supreme Court, be it via petitions for certiorari or emergency motions, is very difficult to obtain and exceedingly time-consuming to do systematically.⁶⁷ Specifically, we generally do not know how the justices voted or their reasoning.⁶⁸ These are just a few examples of how it can be challenging to access the data needed to assess how the Supreme Court operates as an institution.⁶⁹ It also means that we lack important information regarding possible reforms.

It should be of little surprise that transparency in government is generally understood to be a core democratic principle.⁷⁰ Empirically, democracy and the availability of information about decision-making are correlated as such information allows for accountability.⁷¹ Transparency can help stabilize democracies.⁷² It is also associated with lower levels of corruption.⁷³

Based on Congress’s broad constitutional powers to shape the Supreme Court and federal judiciary generally,⁷⁴ readily available information regarding

62. See Marder, *supra* note 61, at 851.

63. Vladeck, *supra* note 1.

64. See Jonah B. Gelbach, *Material Facts in the Debate over Twombly and Iqbal*, 68 STAN. L. REV. 369, 393 (2016); HAZELTON & HINKLE, *supra* note 43, app. B at 224.

65. Vladeck, *supra* note 1.

66. Segall, *supra* note 61, at 787–88.

67. See *id.* at 824–25, 832.

68. *Id.* at 788, 828.

69. See generally *id.*

70. See, e.g., James R. Hollyer, B. Peter Rosendorff & James Raymond Vreeland, *Democracy and Transparency*, 73 J. POL. 1191, 1191 (2011).

71. *Id.* at 1195.

72. JAMES R. HOLLYER, B. PETER ROSENDORFF & JAMES RAYMOND VREELAND, INFORMATION, DEMOCRACY, AND AUTOCRACY: ECONOMIC TRANSPARENCY AND POLITICAL (IN)STABILITY 4 (2018).

73. Kim Quaile Hill, *Democratization and Corruption: Systematic Evidence from the American States*, 31 AM. POL. RES. 613, 613 (2003).

74. See H. W. PERRY, JR., DECIDING TO DECIDE: AGENDA SETTING IN THE UNITED STATES SUPREME COURT 24–25 (1994); GERALD N. ROSENBERG, THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE? 16 (2d. ed. 2008); Jeffrey A. Segal, Chad Westerland & Stefanie A. Lindquist, *Congress, the Supreme Court, and Judicial Review: Testing a Constitutional Separation of Powers Model*, 55 AM. J. POL. SCI. 89, 90 (2011).

the business of the Court is important for citizens and scholars alike to assess the performance of the executive and judicial branches.⁷⁵ And while we may disagree as to the exact contours of what aspects of the business of the Supreme Court should be transparent, there is general support for making data regarding decisions more easily accessible.⁷⁶

CONCLUSION

The Supreme Court is an institution with internal and external dynamics, and failure to treat it as such is detrimental to knowledge and society. Interpersonal relationships are just one aspect of how we need to consider the Supreme Court as an institution. Without considering those aspects and having reliable empirical data to help guide our understanding of what the Supreme Court is doing and how changes might influence what it does, our knowledge regarding the business of the Supreme Court and its place in our government is impoverished. I join the call to broaden our view.

75. See James L. Gibson & Gregory A. Caldeira, *Knowing the Supreme Court? A Reconsideration of Public Ignorance of the High Court*, 71 J. POL. 429, 439 (2009); see generally Stephen Ansolabehere & Shiro Kuriwaki, *Congressional Representation: Accountability from the Constituent's Perspective*, 66 AM. J. POL. SCI. 123 (2022).

76. See, e.g., Marder, *supra* note 61, at 851–52.