

COGNITIVE DISSONANCE ON THE U.S. SUPREME COURT*

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ABSTRACT

This research examines the applicability of cognitive dissonance theory to explain a judge's decision to author or join a separate opinion. I propose that, when a judge casts a counter-attitudinal vote, that judge will endeavor to reduce the aversive consequences of being viewed as an inconsistent decision maker by justifying his or her attitudinally incongruent vote choice to the public in a separate opinion. I test this possibility by examining U.S. Supreme Court justices' decisions to author or join concurring and dissenting opinions during the 1946-2001 terms. The empirical results provide qualified support for the use of separate opinions as dissonance reduction mechanisms, suggesting that dissonance theory is both applicable to the actions of elite decision makers and enjoys validity outside of a laboratory setting.

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The application of psychological theories to legal decision making has a long history in the social scientific study of judicial politics and behavior. This vein of research saw its genesis in the legal realist movement of the early twentieth century. In response to formalistic and mechanical views of how judges rendered their decisions, the legal realists turned to theories and methodologies developed in the social sciences, and social psychology in particular, to explain legal decision making (e.g., Burt 1931; Frank [1930] 1963; Schubert 1965). In large part, the incorporation of psychological concepts has proved a success. For example, cognitive and motivational components inform the attitudinal model of judicial decision making (e.g., Rohde and Spaeth 1976; Segal and Spaeth 2002). Likewise, the concept of motivated reasoning has been profitably applied to explain legal decision making (Braman and Nelson 2007) and social cognition and motivational theories more generally have been shown to offer substantial leverage over the determinants of judicial behavior in a variety of contexts (e.g., Aliotta 1988; Rowland and Carp 1996). Despite the explanatory power proffered by psychological theories, in more recent years there has been somewhat limited attention devoted to the psychology of judicial choice as scholars have focused a great deal of research on strategic (e.g., Epstein and Knight 1998; Maltzman, Spriggs, and Wahlbeck 2000), as opposed to (non-strategic) psychological, characterizations of judicial decision making (but see, e.g., Baum 1997, 2006; Braman 2006; Simon 1998; Wrightsman 1999, 2006). The purpose of this research is to add to our understanding of the psychology of judging by exploring the application of cognitive dissonance theory to explain authorship of separate opinions on the U.S. Supreme Court.

At its core, cognitive dissonance describes the state of psychological discomfort that arises when an individual behaves in a manner that is inconsistent with that individual's beliefs or prior actions (Festinger 1957). More specifically, cognitive dissonance occurs when, for example, an individual holds an opinion "X", but then states that he or she believes "not X" (Festinger and

Carlsmith 1959: 203). When the individual behaves in such an inconsistent manner, dissonance is said to ensue. To alleviate this dissonance, the individual will employ dissonance reduction mechanisms in an attempt to reduce the psychological discomfort that resulted from the discrepant behavior (e.g., Festinger 1957; Stone, Wiegand, Cooper, and Aronson 1997). Since the publication of Festinger's (1957) seminal introduction to cognitive dissonance, thousands of articles in disciplines as diverse as anthropology, economics, history, philosophy, psychology, and sociology have explored the applicability of the theory to a wide range of situations (Aronson 1992) and dissonance has been identified as "the most important development in social psychology to date" (Jones 1976: x). Despite its widespread acceptance as a powerful theory to account for decision making in a host of circumstances, its usage in political science has been relatively sparse (but see, e.g., Beasley and Joslyn 2001; Jervis 1976; Whittaker 1964). And, with a few notable exceptions (e.g., Monacell 1977; Rathjen 1974), students of judicial politics have not attempted to empirically test the predictions derived from cognitive dissonance theory to explain judicial choice. This research seeks to remedy this state of affairs.

The application of cognitive dissonance to explain separate opinion authorship on the U.S. Supreme Court is significant for a number of reasons. First, the theory provides a novel perspective on the occurrence of separate opinions. This is noteworthy since separate opinions, while not having precedential value, nonetheless have profound implications for the polity. For example, separate opinions are capable of foreshadowing doctrinal development in the courts (e.g., Hettinger, Lindquist, and Martinek 2006; Scalia 1994), while allowing judges to engage in a democratic dialogue with the public (e.g., Bennett 2001). Moreover, the presence of separate opinions increases the likelihood that the majority opinion will be overruled (Spriggs and Hansford 2001), while at the same time they provide the opportunity for judges to engage in institutional disobedience (Campbell 1983). Further, separate opinions can weaken the institutional legitimacy of the Court by illustrating

to the public the uncertainty of the law and suggesting that partisan cleavages, as opposed to the objective interpretation of the law, may best explain Supreme Court decision making (e.g., Wahlbeck, Spriggs, and Maltzman 1999). Second, because dissonance theory is rooted in both cognitive and motivational psychology, it has the promise to offer substantial insight into the mental mechanisms that motivate a justice to write or join a separate opinion. In this sense, it provides the opportunity to investigate the judicial reasoning process in a more rigorous manner than the purely behavioral approaches that are most familiar to political scientists (see also Braman and Nelson 2007; Rowland and Carp 1996). In addition, investigating the application of cognitive dissonance theory to explain Supreme Court opinion authorship is significant since it provides for an auspicious opportunity to take the theory outside of a laboratory setting and investigate its pertinence to the study of elite decision makers. This is a particularly important point given that the vast majority of analyses in the cognitive dissonance tradition utilize undergraduate students as subjects in an experimental setting. By testing the theory with data compiled from the real-life actions of elite decision makers, much can be gained regarding the theory's external validity (e.g., Holland, Meertens, and Van Vugt 2002). Thus, the current research holds the promise of informing both the political science and social psychology literatures.

COGNITIVE DISSONANCE ON THE SUPREME COURT

Festinger (1957) introduced the concept of cognitive dissonance in an effort to explain the desire to avoid the unpleasant hedonic state that occurs following some discrepant behavior (e.g., I believe "X"; I did "not X"). As such, Festinger's theory is very much informed by both cognitive and motivational psychology. The cognitive component consists of the relationship between two (or more) actions or beliefs. The motivational component encompasses the drive to reduce the psychological tension that occurs following the discrepant behavior (Aronson 1992). Thus, cognitive dissonance can be thought of as "cognition with an engine" (Gerard 1992: 324) in that it brings

together two interrelated concepts, the cognitive and motivational, into a coherent whole. While it is clear that Festinger's (1957) elegant theory of cognitive dissonance is one of the most significant single theories of human decision making, Cooper and Fazio (1984) argue that, because of its simplicity and general nature, Festinger's original theory needs refining in order to account for circumstances under which cognitive dissonance is more or less likely to be aroused. To achieve this, they present a New Look model of dissonance theory. Below, I outline the two central components of the New Look model and discuss the application of dissonance theory to the Supreme Court.

The two key components of cognitive dissonance theory involve aversive consequences and personal responsibility (Cooper and Fazio 1984). According to the theory, cognitive dissonance is potentially aroused when an individual engages in some counter-attitudinal behavior (that is, a behavior that runs counter to one's attitudes). For dissonance to manifest itself most strongly, the inconsistent behavior must lead to some aversive consequence or the perception of an aversive consequence. Examples of aversive consequences are ubiquitous; they include being viewed as a liar, a hypocrite, or a flip-flopper. Significantly, aversive consequences can manifest themselves either privately or publicly. For example, dissonance might occur privately when an individual makes a statement to some audience that he or she internally does not believe; only the individual knows the statement is attitudinally inconsistent. Alternatively, dissonance arousal might occur publicly when an individual makes a public statement that runs counter to his or her previous public statements or actions; both the individual and the audience know that the statement is counter-attitudinal.

The second key component of cognitive dissonance involves whether an individual believes that he or she is personally responsible for the counter-attitudinal behavior. Thus, the dissonance literature makes a distinction between induced behavior (e.g., Festinger 1957; Festinger and Carlsmith 1959) and free choice behavior (e.g., Cooper and Fazio 1984; Fleming and Rudman 1993). Induced behavior involves a discrepant action that the individual was compelled to make, such as

forcing an individual to write a counter-attitudinal essay. Conversely, free choice refers to actions in which the individual was free to choose (or not to choose), such as informing an individual that the decision to write a counter-attitudinal essay is entirely his or her own (Linder, Cooper, and Jones 1967). The important point of these distinctions is that dissonance should manifest itself most strongly when the individual has free choice to engage in counter-attitudinal behavior (e.g., Cooper and Fazio 1984; Linder, Cooper, and Jones 1967).

In addition to freedom of choice, personal responsibility involves foreseeability. This refers to whether the individual is cognizant of the consequences of the counter-attitudinal behavior prior to making his or her decision to engage in that behavior. For example, if an individual writes a counter-attitudinal essay and is told that the essay will not be publicly revealed when, in fact, the essay is publicly revealed, that individual was incapable of foreseeing the consequences of his or her behavior (having the counter-attitudinal essay read by some public). Conversely, if an individual is informed that a counter-attitudinal essay will be read by a public, that individual is capable of foreseeing the consequences of his or her actions as a result of having *a priori* information that the essay will be read by the public (Goethals, Cooper, and Naficy 1979). As such, knowledge of the consequences of one's actions plays a role in the arousal of dissonance. Dissonance is most significantly aroused when an individual has both free choice to engage in counter-attitudinal behavior and is knowledgeable of the consequences of that behavior (e.g., whether others will be made aware of the individual's discrepant behavior) (Cooper and Fazio 1984: 241).

With the New Look perspective of cognitive dissonance outlined, the question remains: Is dissonance theory applicable to the Supreme Court? Clearly, there are ample opportunities for justices to engage in counter-attitudinal behavior. Despite the powerful explanatory capabilities of the attitudinal model, it is evident that attitudes do not explain every justice's vote in every case. Rather, a growing body of scholarship has identified circumstances under which the justices rely

more or less on their attitudes in rendering their decisions (e.g., Braman 2006; Collins 2008a; Edelman, Klein, and Lindquist 2008; Lindquist and Klein 2006; Richards and Kritzer 2002; Unah and Hancock 2006). Further, it is also apparent that myriad factors are capable of explaining judicial behavior outside of the vote on the merits, such as the decision to author concurring and dissenting opinions (e.g., Collins 2008b; Hettinger, Lindquist, and Martinek 2006; Wahlbeck, Spriggs, and Maltzman 1999). In this sense, the attitudinal model is primarily an explanation of voting on the merits (Segal and Spaeth 2002). Thus, it is clear that the justices have wide latitude to behave in a cognitively inconsistent fashion.

The ability to perceive the possibility of aversive consequences is likewise applicable to the Supreme Court. As a national policy making institution, the Supreme Court is acutely under the scrutiny of the public, both elite and non-elite (e.g., Baum 2006). Should a justice behave in a disparate and inconsistent manner, the public has ample opportunities to observe this behavior because the justice's votes and opinions are made public, while a justice has private information regarding the internal consequences of the ideologically discrepant behavior (as do all individuals). In such a situation, the aversive consequence is being viewed, both internally and externally, as an inconsistent decision maker. Indeed, Justice Ginsburg (1990: 140) recognized this fact in no uncertain terms in writing that "[p]ublic accountability through the disclosure of votes and opinion authors puts the judge's conscience and reputation on the line." For example, should a justice habitually vote to support states' rights in federalism cases, and then cast a pro-federal power/anti-states' rights vote, the public is made aware of this behavior through the opinion that accompanied the disposition of the case (revealing the justice's vote), as well through media coverage of the case. The justice is internally aware of the inconsistent behavior as a function of having veered from his

or her past voting behavior.¹ Justice Scalia acknowledged the aversive consequences associated with being viewed as an inconsistent decision maker in rather strong terms in noting that a justice “cannot, without risk of public embarrassment, meander back and forth—today providing the fifth vote for a disposition that rests upon one theory of the law, and tomorrow providing the fifth vote for a disposition that presumes the opposite” (1994: 42).

The second component of cognitive dissonance, personal responsibility, is also applicable to the Supreme Court. First, it is clear that justices on the Supreme Court enjoy free choice. Life tenure insulates the justices from both political and electoral accountability, allowing them to render decisions however they may choose (Segal and Spaeth 2002). While there are normative expectations for Supreme Court justices, such as adherence to precedent, it is inappropriate to view such constraints as having the capability of inducing behavior since no enforcement mechanisms exist to punish justices for violating legal norms.² Second, it is evident that the justices are capable of

¹ For example, in *Bush v. Gore* (2000), Chief Justice Rehnquist broke from his usually strong support for states’ rights in rejecting the Florida Supreme Court’s interpretation of state election law (e.g., Solimine 2002). In justifying this action to the public through a concurring opinion, Rehnquist wrote: “In most cases, comity and respect for federalism compel us to defer to the decisions of state courts on issues of state law. That practice reflects our understanding that the decisions of state courts are definitive pronouncements of the will of the States as sovereigns. . . . But there are a few exceptional cases in which the Constitution imposes a duty or confers a power on a particular branch of a State’s government. This is one of them” (531 U.S. 98, at 112, citations omitted).

² Further, given the inherent uncertainty of the law, in that multiple precedents often dictate divergent outcomes (e.g., Segal and Spaeth 2002: 77), it is not entirely evident how deference to precedent manifests itself on a case-by-case basis (cf. Richards and Kritzer 2002). While there are no enforcement mechanisms capable of inducing behavior on the U.S. Supreme Court, such

foreseeing the consequences of their decisions since their votes are made public through the publication of opinions. Moreover, the significant amount of media attention devoted to the Court's decisions ensures that, even though a particular audience may not read the opinions that accompany each case, that audience can nonetheless be made aware of the Court's decision through internet, newspaper, and television coverage of the Court's actions (e.g., Greenhouse 1996; Slotnick and Segal 1998). As Baum (2006: 33) notes, because justices on the Supreme Court care more about the manner in which the public holds them in esteem than does the average citizen, in order for the public to view the justices in as favorable as light as possible, the justices are motivated to present themselves as consistent decision makers (e.g., Collins 2008a).

Taken as a whole, cognitive dissonance theory is unmistakably applicable to the Supreme Court. More significantly, the above discussion illustrates that dissonance might manifest itself particularly strongly on the Supreme Court. That is, since the justices potentially face aversive consequences for behaving in an inconsistent manner, which is enhanced by the fact that legal norms favor consistent decision making (e.g., Collins 2008a; Scalia 1994), and because the justices enjoy free choice, coupled with the ability to foresee the consequences of their decisions, all of these factors combine to enhance the extent to which dissonance may be aroused. Having laid out the case for dissonance, I now turn to a discussion of the dissonance reduction mechanisms available to Supreme Court justices.

SEPARATE OPINIONS AS DISSONANCE REDUCTION MECHANISMS

When an individual engages in counter-attitudinal behavior, dissonance is potentially aroused. Dissonance theory suggests that, because of the uncomfortable psychological state that mechanisms do exist in foreign judiciaries. For example, Helmke (2002: 292) demonstrates that, in developing countries, judges face severe consequences for rendering decisions that are unpopular with the government, including "criminal indictment, physical violence, and even death."

results from inconsistent behavior, the individual will be motivated to negate or reduce dissonance by employing a dissonance reduction mechanism. While there are a variety of such mechanisms available to an individual, ranging from self-destructive behavior (e.g., excessive alcohol consumption) to trivializing the significance of the discrepant behavior to denying the existence of an inconsistency (e.g., Cooper and Fazio 1984; Festinger 1957; Holland, Meertens, and Van Vught 2002), I argue that Supreme Court justices will utilize separate opinion writing as a means to reduce the dissonance that accompanies the decision to engage in cognitively inconsistent behavior. This follows from the expectation that, because dissonance can be motivated by either private or public actions, the options available for dissonance reduction vary depending on whether the counter-attitudinal behavior is public or private in nature (Baumeister 1982: 4; Stone, Wiegand, Cooper, and Aronson 1997: 56). If the counter-attitudinal behavior is purely private (i.e., only the decision maker is aware that his or her behavior is discrepant), the individual is likely to employ internal mechanisms to reduce the dissonance, such as adjusting his or her beliefs to accommodate the disparate behavior or by focusing on positive aspects of his or her self-worth. However, when an individual engages in counter-attitudinal behavior in a public setting, there are fewer dissonance reduction mechanisms available since the individual, to reduce the dissonance, has to confront an external audience that is aware of the counter-attitudinal behavior. Thus, in the public circumstance, the individual is likely to employ a dissonance reduction mechanism that focuses on externally addressing the inconsistent behavior (e.g., Baumeister 1982; Holland, Meertens, and Van Vught 2002). Although opinion writing is not the sole mechanism available by which a justice can publicly reduce dissonance caused by counter-attitudinal behavior, it is the clearest option available. For example, while a justice might publicly reduce dissonance through public speaking, authoring law review articles, or giving newspaper or television interviews addressing the justice's inconsistent behavior, these mechanisms are employed far less frequently by Supreme Court justices than are separate opinions (e.g.,

Greenhouse 1996). As such, the publication of separate opinions provides an institutionalized and authoritative form of dissonance reduction that is most familiar to both Supreme Court justices and the public.

The expectation that Supreme Court justices will endeavor to reduce the dissonance that accompanies publicly revealed, attitudinally incongruent behavior follows from the idea that justices, as human decision makers, are motivated to present a positive image of themselves to the public (e.g., Baum 2006). Should a justice engage in attitudinally inconsistent behavior, there is ample potential for the public to view that justice in a negative light, perceiving the justice as being unreliable or hypocritical. Because a justice's votes are made public through the publication of opinions, this creates a substantial motivation to employ a dissonance reduction mechanism in order to avoid damage to the justice's reputation. This is in-line with the notion that judges genuinely care about how the public holds them in esteem, not solely for instrumental reasons, but because being viewed in a favorable light is a good in and of itself (Baum 2006: 4). The option of authoring a separate opinion, in which a justice can explain the reasons for his or her discrepant behavior, provides the justice with a clear opportunity to justify his or herself to the public to reduce the appearance of inconsistency. In other words, opinion writing constitutes the primary mechanism available to a justice to reconcile his or her counter-attitudinal behavior, allowing the justice to present him or herself in favorable spotlight, even in the face of a public manifestation of inconsistent behavior.³

³ For example, in *Johnson v. Louisiana* (1972), a case involving the constitutionality of supermajority jury verdicts in non-capital criminal trials, Justice Blackmun joined the majority in upholding the use of the verdicts, despite his own preference against the supermajority system. Illuminating the psychological tension that accompanied his vote choice, Blackmun authored a concurring opinion noting that, while the supermajority system is not constitutionally offensive, it is an unwise from a

COGNITIVE DISSONANCE, AVERSIVE CONSEQUENCES, AND JUDICIAL STRATEGY

Thus far, I have treated all counter-attitudinal behavior as commensurate. For example, I have assumed that, when a liberal justice casts a conservative vote (the counter-attitudinal behavior), he or she will be more likely to write a separate opinion to reduce the dissonance that accompanies this incongruent choice. However, it is important to note that not all votes are created equal. Rather, the impact of an attitudinally incongruent vote depends in large part whether a justice is a member of the Court's majority or minority. If we consider each case decided by the Supreme Court as setting a precedent (e.g., Spriggs and Hansford 2001), then it becomes clear that the decision to engage in counter-attitudinal behavior has more severe consequences for justices voting with the majority than for justices voting with the minority. The counter-attitudinal behavior of a justice voting with the majority is double damaging. First, it runs counter to the justice's preferences, potentially creating the negative consequences of the justice being viewed as an inconsistent decision maker. Second, the decision to vote with the majority by casting a counter-attitudinal vote puts the justice in a position of publicly assisting in the establishment of a counter-attitudinal precedent. Because the Court's majority opinions have precedential value, serving as constraints on the behavior of lower court judges and future Supreme Courts, as well as guides to allow litigants to make efficient litigation decisions, the justice becomes personally responsible, not only for his or her attitudinally incongruent vote, but also for the majority opinion that acts as precedent. In comparison, the counter-attitudinal behavior of a justice voting with the minority is damaging only to his or her person. That is, when a justice votes with the minority by casting a counter-attitudinal vote, that justice may be viewed as an inconsistent decision maker. However, the justice is not

public policy standpoint: "Were I a legislator, I would disfavor it as a matter of policy. Our task here, however, is not to pursue and strike down what happens to impress us as undesirable legislative policy" (406 U.S. 356, at 366).

responsible for the establishment of a precedent. While there are clear consequences of voting with the minority, particularly as relating to writing dissenting opinions (e.g., Wahlbeck, Spriggs, and Maltzman 1999), a justice voting with the minority is in no way publicly or privately responsible for the precedent established by the majority.

The above discussion suggests that a justice may be more or less likely to utilize a separate opinion as a dissonance reduction mechanism depending on whether the justice is part of the Court's majority or minority. This follows from the idea that the consequences of one's counter-attitudinal behavior can potentially motivate more or less dissonance; the higher the consequences, the more dissonance is aroused (e.g., Aronson 1976: 111; Burger 1989; Festinger 1957: 263). For justices who vote with the majority, the aversive consequences of the counter-attitudinal behavior are more significant as compared to justices who vote with the minority since justices in the majority assist in the establishment of a precedent. That is, the audience is potentially aware of both the justice's counter-attitudinal behavior and the justice's decision to assist in the establishment of a precedent. However, it is important to note that there are strategic gains that can be achieved by casting a counter-attitudinal vote for the purposes of voting with the Court's majority. Namely, by voting with the majority, a justice has the opportunity to bargain more fully over the content of the Court's precedent-setting opinion than do justices voting with the minority (Maltzman, Spriggs, and Wahlbeck 2000; Murphy 1964; Scalia 1994).⁴ Because this may provide a justice with the opportunity

⁴ While members of the Court's minority do have the opportunity to bargain over the content of the majority opinion, they have less control over the majority opinion as a result of not being members of the majority winning coalition. For example, Maltzman, Spriggs, and Wahlbeck (2000: 71) found that justices in the minority rarely make substantive recommendations to the majority opinion author, while members of the majority do so with great frequency. In interpreting this finding, they

to bring the majority opinion more closely in accord with the justice's preferences, as compared to voting with the minority (in which the justice has minimal control over the content of the majority opinion), this intimates that the aversive consequences of being viewed as an inconsistent decision maker might be mitigated by the opportunity to shape the Court's majority opinion. Thus, there are both psychological and strategic incentives for authoring or joining separate opinions as they relate to counter-attitudinal voting on the Supreme Court.

First, the utilization of separate opinions as dissonance reduction mechanisms should be particularly applicable to special concurring opinions, which provide a justice with the opportunity to vote with the majority, while expressing some level of disagreement as to the majority's reasoning for reaching its outcome. In so doing, a justice is able to justify counter-attitudinal behavior, while potentially weakening the precedential force of the majority opinions since the special concurring opinion may turn the majority opinion into a plurality opinion (Thurmon 1992). Through this, the justice is able to employ a distancing behavior (e.g., Fleming and Rudman 1993) by communicating that his or her attitudinally incongruent vote is in some way divergent from that of the majority opinion. In addition, because special concurring opinions highlight flaws in the majority's logic, these opinions increase the extent to which lower courts will negatively interpret the precedent (Corley 2006), providing a justice with the opportunity to illustrate to lower court judges avenues for avoiding complying with the precedent. As such, there are both strategic and psychological incentives to engage in special opinion authorship when casting an attitudinally incongruent vote. Accordingly:

concluded that "minority coalition justices are far removed from the position of the majority and thus have little incentive to try to modify its legal reasoning" (see also Scalia 1994: 41).

*H1: When a justice casts a counter-attitudinal vote, that justice will be more likely to author or join a special concurring opinion, as compared to joining the majority.*⁵

Second, a justice might utilize a regular concurring opinion as a dissonance reduction mechanism. Regular concurring opinions agree with the judgment in the case, but also either expand or somewhat qualify the majority's reasoning for its judgment. Although regular concurring opinions do not necessarily weaken the strength of the majority's precedent, they nonetheless provide a justice voting with the majority the opportunity to justify discrepant voting behavior. While there is a motivation to regularly concur, because these opinions reflect a more substantial level of agreement with the content of the majority opinion than do special concurring opinions, it is expected that regular concurring opinions will be employed as dissonance reduction mechanisms less frequently than special concurring opinions. Therefore:

⁵ It is not clear from the dissonance or judicial literatures whether a justice will be more or less likely to write, as opposed to join, a separate opinion when casting a counter-attitudinal vote. On the one hand, by authoring a separate opinion, a justice has more control over the content of that separate opinion than by joining a separate opinion authored by another justice. On the other hand, since these behaviors are functionally equivalent, in that both authoring and joining a separate opinion provide for the opportunity to justify counter-attitudinal behavior, it is not clear whether the level of control over the separate opinion is meaningful, particularly given that justices may bargain over the content of the separate opinion (e.g., Maltzman, Spriggs, and Wahlbeck 2000; Murphy 1964). For example, Justice Scalia notes, "Even if they [the justices] do not personally write the majority or the dissent [inclusive of concurring opinions], their name will be subscribed to the one view or the other" (1994: 42). Ultimately then, this is an empirical question. I address this in the statistical model that follows by parsing out authoring and joining separate opinions.

H2: When a justice casts a counter-attitudinal vote, that justice will be more likely to author or join a regular concurring opinion, as compared to joining the majority. However, regular concurring opinions will be utilized less frequently than special concurring opinions as dissonance reduction mechanisms.

Finally, the use of separate opinions as dissonance reduction mechanisms should be least applicable to dissenting opinions, which reflect fundamental disagreement with both the outcome of the case and with the reasoning used by the majority to justify that outcome. First, because voting with the minority does not contribute to the establishment of a precedent, there are fewer incentives for the justice to engage in separate opinion writing. When voting with the minority, a justice's only motivation for writing a dissenting opinion is to justify his or her inconsistent voting behavior since the justice is not accountable for the precedent set in the majority opinion. Second, there is limited value in writing a dissenting opinion to justify a counter-attitudinal vote since, in so doing, a justice can potentially undermine the strength of the majority opinion – which is consistent with the justice's ideology – by illustrating flaws in the majority's logic. This can give way to legislative or administrative action that reverses or limits the practical application of the precedent (e.g., Murphy 1964: 60-61) and confound the interpretation of the precedent for lower court judges (e.g., Corley 2006). Further, because justices in the minority have minimal input into the content of the majority opinion (Maltzman, Spriggs, and Wahlbeck 2000: 71; Scalia 1994: 41), the incentive to dissent when casting an attitudinally incongruent vote is much less than the motivation to join the majority, in which case the justice has ample opportunity to attempt to shape the doctrinal content of the majority opinion. Thus, from a strategic standpoint, the desire to contribute to, and bargain over, the content of the majority opinion more fully might provide the motivation for casting a counter-attitudinal vote. Finally, because dissenting opinions lack precedential value, this fact might provide a disincentive to write a dissenting opinion since doing so can more thoroughly draw the public's

attention to the justice's inconsistent behavior.⁶ In this sense, even in face of an attitudinally inconsistent vote, a justice has an incentive to disidentify him or herself from the discrepant behavior by avoiding drawing public scrutiny to his or her vote choice (e.g., Aronson, Cohen, and Nail 1999: 142). Thus:

H3: When a justice casts a counter-attitudinal vote, that justice will be less likely to author or join a dissenting opinion, as compared to joining the majority.

DATA AND METHODOLOGY

To subject the dissonance hypotheses to empirical testing, I utilize data on U.S. Supreme Court separate opinion authorship during the 1946-2001 terms, derived from the Spaeth (2002, 2003) databases. The unit of analysis is the justice-vote and the data include information on the voting behavior of all justices, excluding the majority opinion author.⁷ The dependent variable represents the seven choices available to justices in the data (join the majority, author a special concurring opinion, join a special concurring opinion, author a regular concurring opinion, join a regular concurring opinion, author a dissenting opinion, or join a dissenting opinion). Because these

⁶ As Justice Scalia notes, “Unlike majority opinions, they [dissenting opinions] need not be read after the date of their issuance. They will not be cited, and will not be remembered, unless some quality of thought or of expression commends them to later generations” (1994: 42).

⁷ Votes were selected using the orally argued case citation as the unit of analysis. Majority opinion authors are excluded since they do not have the option of writing or joining a separate opinion. As such, their inclusion in the analysis would introduce bias into the model (e.g., Collins 2008b: 153; Wahlbeck, Spriggs, and Maltzman 1999: 509). Because one might argue that dissonance theory is inapplicable to justices in the Court's minority, the Appendix reports the results of an alternative model specification that excludes justices voting with the Court's minority, the results of which are consistent with those reported in Table 1.

are unordered choices, I employ a multinomial logit model (e.g., Hettinger, Lindquist, and Martinek 2006; Maltzman, Spriggs, and Wahlbeck 2000; Wahlbeck, Spriggs, and Maltzman 1999). Since I use joining the majority as the baseline, the parameter estimates indicate the probability change from joining the majority to: 1) authoring a special concurring opinion; 2) joining a special concurring opinion; 3) authoring a regular concurring opinion; 4) joining a regular concurring opinion; 5) authoring a dissenting opinion; 6) joining a dissenting opinion. Thus, the empirical results will offer leverage over whether the cognitive dissonance hypotheses are more or less applicable to authoring, as opposed to joining, separate opinions, as discussed in footnote 5. In order to account for the non-independence of observations in the data, in that there is an average of eight observations per case, I employ robust standard errors, clustered on case citation. To control for any temporal dependence in the data, I include a dummy variable for each term in the data, save one.

The independent variable of primary interest is intended to capture whether a justice cast a counter-attitudinal vote, thus potentially arousing dissonance. As with dissonance research in general, this requires a proxy for a justice's ideological orientation, offering the ability to measure whether a particular vote was consistent or inconsistent with the justice's attitudes. To measure a justice's ideology, I utilize the Martin and Quinn (2002) scores. These scores are based on dynamic ideal point estimates of the justices, taken from the justices' actual voting behavior, and range from -6.33 to +4.31, with higher scores reflecting more conservative ideologies. As such, these scores offer two primary benefits. First, their endogenous nature, as a function of being based on the votes justices cast, makes them a particularly fine-tuned means to gauge the justices' ideological proclivities. Second, their dynamic nature is capable of accounting for alterations in ideology that may occur over the length of a justice's career. To measure whether a justice cast a *Counter-Attitudinal Vote* I employ a coding rubric adapted from previous research (e.g., Bailey, Kamoie, and Maltzman 2005; Johnson, Wahlbeck, and Spriggs 2006). If a justice cast a liberal vote, this is the justice's Martin

and Quinn (2002) score multiplied by +1. If a justice cast a conservative vote, this variable represents the justice's Martin and Quinn (2002) ideal point estimate multiplied by -1. Because conservative justices have positive ideal point scores and liberal justices have negative ideal point scores, higher values on this variable indicate that a justice cast a vote discrepant from his or her ideology. For example, when conservative Justice Thomas cast a liberal vote during the 2000 term, this variable is scored 3.35. When Thomas cast a conservative vote during this term, this variable is scored -3.35. Accordingly, this variable captures, not only whether a justice cast an ideologically incongruent vote, but also the justice's relative ideological distance from that vote.⁸ Thus, this variable is capable of modeling the expectation that dissonance will be most poignantly aroused for justices with extreme ideological preferences, which is consistent with existing dissonance literature (e.g., Brehm 1960; Fleming and Rudman 1993; Rathjen 1974; Whittaker 1964). In other words, compared to justices with moderate ideological preferences, justices with extreme ideological preferences should exhibit more dissonance. The expectation is that this variable will be positively

⁸ Johnson, Wahlbeck, and Spriggs (2006) utilized a commensurate measure to capture a justice's ideological compatibility with the appellant party, while Bailey, Kamoie, and Maltzman (2005) used a consonant technique to account for the Solicitor General's ideological compatibility with a justice based on the ideological direction of the position advocated by the Solicitor General. The underlying logic in these approaches is akin to that developed here: both Johnson, Wahlbeck, and Spriggs (2006) and Bailey, Kamoie, and Maltzman (2005) sought to determine whether a particular ideological position (i.e., conservative or liberal) meshed with the ideology of a justice. Here, I am utilizing a similar measure to determine whether a particular ideological vote choice (i.e., conservative or liberal) is consistent with a justice's ideology. The results of an alternative operationalization of the *Counter-Attitudinal Vote* variable, corroborating the findings presented here, are reported in the Appendix.

signed in the models that capture a justice's decision to author or join a special or regular concurring opinion and negatively signed in the models that capture a justice's decision to author or join a dissenting opinion.

To capture other influences on a justice's decision to author or join a separate opinion, I adopt a number of control variables from the extant literature (Collins 2008b; Hettinger, Lindquist, and Martinek 2006; Wahlbeck, Spriggs, and Maltzman 1999). Unless otherwise noted, the data comprising these variables were obtained from the Spaeth (2002, 2003) databases. To account for the fact that a justice's ideological compatibility with the majority opinion author shapes the decision to write or join a separate opinion, I include an *Ideological Distance* variable. This variable represents the absolute value of the distance between each justice's Martin and Quinn (2002) ideal point estimate and that of the majority opinion author. Because higher values reflect increased ideological distance, I expect this variable will be positively signed. To capture the possibility that the legal complexity of a case might influence the decision to author or join a separate opinion, I include a *Legal Complexity* variable. This variable is based on a factor analysis of the number of legal provisions relevant to the case and the number of issues implicated in the dispute (Collins 2008b; Wahlbeck, Spriggs, and Maltzman 1999). I expect this variable will be positively signed, indicating that a justice will be more likely to write or join a separate opinion in a legally complex case.

Previous research also indicates that a justice is more likely to write or join a separate opinion in a case in which the majority formally alters precedent or declares a local, state, or federal law unconstitutional (Collins 2008b; Wahlbeck, Spriggs, and Maltzman 1999). To control for this, I include a *Legal Salience* variable, scored 1 if the majority altered a precedent or declared a local, state, or federal law unconstitutional and 0 otherwise. I expect this variable will be positively signed. Just as the legal salience of a case might influence the decision to author or join a separate opinion, so too might the political salience of a case (Collins 2008b; Wahlbeck, Spriggs, and Maltzman 1999). As

such, I include a *Political Salience* variable, scored 1 if the case appeared on the front page of *The New York Times* on the day after the decision and 0 otherwise, as compiled by Epstein and Segal (2000). The expectation is that this variable will be positively signed. Because the number of amicus curiae briefs filed in a case has the potential to confound the correct application of the law, while providing a justice with a foundation for a separate opinion (Collins 2008b), I include an *Amicus Curiae Briefs* variable, which represents the number of amicus curiae briefs filed in the case (Collins 2008b; Kearney and Merrill 2000). I expect this variable will be positively signed.

Past research indicates that justices who are new to the bench are less likely to write or join separate opinions, as a function of acclimation issues dealing with time management and as a result of having policy preferences that are less well developed than their more senior colleagues (e.g., Hettinger, Lindquist, and Martinek 2006). To control for this, I include a *Freshman* variable, scored 1 if a justice has served less than two full terms on the Court and 0 otherwise. The expectation is that this variable will be negatively signed. Just as freshman justices might be less likely to write or join separate opinions, Chief Justices might also refrain from this type of behavior in order to demonstrate norms of consensus (e.g., Collins 2008b; Wahlbeck, Spriggs, and Maltzman 1999). To explore this possibility, I include a *Chief Justice* variable, scored 1 for all Chief Justices and 0 for Associate Justices. I expect this variable will be positively signed.

The final control variable is intended to model time constraints that might influence the decision to write or join a separate opinion (Wahlbeck, Spriggs, and Maltzman 1999). In particular, I expect that, as the Supreme Court's term nears its end, a justice will be less likely to write or join a separate opinion as function of end-of-term pressures. While time constraints are expected to most heavily influence the decision to write a separate opinion, temporal constraints can also influence the decision to join a separate opinion since there are fewer separate opinions to join as the Court's term approaches its end. To test this possibility, I include an *End of Term* variable in the model that

captures the number of days between the date of oral argument and July 1, the traditional end of the Court's term (e.g., Maltzman, Spriggs, and Wahlbeck 2000). The date of oral argument is used since the justices traditionally meet in conference within a few days following oral argument to cast a preliminary, non-binding vote that sets the opinion writing process in motion (Segal and Spaeth 2002: 282). I expect this variable will be positively signed.⁹

EMPIRICAL RESULTS

Table 1 reports the results from the multinomial logit model. The model performs quite well, correctly predicting 69% of the justices' choices with respect to authoring or joining separate opinions for a percent reduction in error of 37%.¹⁰ Because the magnitude of the parameter estimates of the multinomial logit model cannot be interpreted directly, Table 1 reports the marginal effects for each of the variables in the model that attain statistical significance at conventional levels. The marginal effects were calculated altering the variables of interest from 0 to 1 for dichotomous variables and from the mean to one standard deviation above the mean for continuous and count

⁹ I also included a variable in the model to capture each justice's past level of cooperation with the majority opinion author, operationalized in the manner described in Wahlbeck, Spriggs, and Maltzman (1999: 500). However, because this variable is correlated with the *Ideological Distance* variable at the 0.98 level, it was excluded from the model. Pearson's correlation tests reveal that the remaining variables in the model exhibit minimal evidence of multicollinearity: the highest correlations relate to the *Amicus Curiae Briefs* and *Political Salience* variables ($r = 0.28$) and the *Ideological Distance* and *Counter-Attitudinal Vote* variables ($r = 0.19$). The summary statistics for the independent variables appear in Appendix Table 3.

¹⁰ Percent reduction in error is calculated based on the tau statistic, comparing the percent correctly predicted to the null model of random assignment based on the actual distribution of the dependent variable (e.g., Collins 2008b: 161; Wahlbeck, Spriggs, and Maltzman 1999: 509).

variables, with all other variables held at their mean or modal values. While the marginal effects might appear somewhat small, it is important to keep in mind the relative infrequency with which the justices engage in separate opinion writing. In particular, justice-observations corresponding to authoring special concurring opinions account for 3.5% of observations, while 2.1% of observations involve joining special concurring opinions, 3.0% relate to authoring regular concurring opinions, 1.0% involve joining regular concurring opinions, 10.6% relate to writing dissenting opinions, and 10.7% involving joining dissenting opinions. Given this, the marginal effects of many of the variables can appropriately be viewed as relatively strong predictors of the decision to author or join a separate opinion (e.g., Collins 2008b: 161; Hettinger, Lindquist, and Martinek 2006: 65-66).

The central variable of interest, *Counter-Attitudinal Vote*, captures whether a justice is more or less likely to write or join a separate opinion when casting an ideologically incongruent vote, as compared to joining the majority opinion. As Table 1 makes clear, the hypotheses find somewhat mixed support, corroborating expectations with regard to special concurring opinions and dissenting opinions, but not regular concurring opinions. As predicted, a justice is more likely to author or join a special concurring opinion when casting a counter-attitudinal vote. A one standard deviation increase in the *Counter-Attitudinal Vote* variable corresponds to a 0.9% increase in the probability of observing a justice author a special concurring opinion and a 0.7% increase in the likelihood that a justice will join a special concurring opinion. To illustrate, consider two justices during the 1995 term: Justice Kennedy, a moderate conservative, and Justice Thomas, a strong conservative. Compared to a case in which Kennedy cast a conservative vote, if Kennedy cast a liberal vote, the chances of observing him author a special concurring opinion increase by 0.5%, while the probability of observing Kennedy join a special concurring opinion increase by 0.4%, relative to joining the majority opinion. This effect is more pronounced for Justice Thomas. When Thomas cast a liberal vote, the chances of observing him author a special concurring opinion increase by

2.7% and the probability of observing Thomas join a special concurring opinion increase by 2.2%, relative to joining the majority opinion.

However, contrary to my expectations, a justice is no more or less likely to author or join a regular concurring opinion when casting an attitudinally incongruent vote, as compared to joining the majority. This suggests that, as tested here, the justices are likely to use special concurring opinions as dissonance reduction mechanisms, but not regular concurring opinions. Also consistent with my hypothesis, a justice is less likely to author or join a dissenting opinion when casting a counter-attitudinal vote. A one standard deviation increase in the *Counter-Attitudinal Vote* variable corresponds to a 2.2% decrease in the probability of observing a justice author a dissenting opinion and a 2.8% decrease in the likelihood that a justice will join a dissent authored by another justice. Turning again to Kennedy and Thomas for illustrative purposes, compared to a case in which Kennedy cast a conservative vote, when Kennedy casts a liberal vote, he is 1.5% less likely to author a dissenting opinion and 1.4% less likely to join a dissenting opinion, as compared to joining the majority opinion. When Thomas casts a liberal vote, his chances of writing a dissenting opinion decrease by 8.9%, while the probability of joining a dissenting opinion decrease by 8.8%, as compared to joining the majority opinion.

Three significant points emerge from the findings relating to the use of separate opinions as dissonance reduction mechanisms. First, the use of separate opinions as dissonance reduction mechanisms is particularly applicable to ideologically extreme justices (see also Rathjen 1974). That is, justices with extreme ideological preferences are more likely to author and join special concurring opinions when casting ideologically incongruent votes as compared to justices with more moderate policy preferences. This corroborates extant psychological research indicating that dissonance is most poignantly aroused for individuals who hold extreme opinions and, as such, those individuals

are more likely to employ dissonance reduction mechanisms (e.g., Brehm 1960; Fleming and Rudman 1993; Whittaker 1964).

Second, it is apparent that, as relating to the use of special concurring opinions as dissonance reduction mechanisms, justices are somewhat more likely to author, as opposed to join, a special concurrence. This is evidenced by the fact that the marginal effect of authoring special concurring opinions is slightly larger than that effect relating to joining special concurring opinions, as revealed in Table 1 and in the above example of Justices Kennedy and Thomas.

Third, the results reveal that there is an element of strategy that relates to the decision to write or join a separate opinion. It is apparent that justices have dual motivations to engage in writing or joining special concurring opinions. First, it allows them to address their counter-attitudinal votes, potentially reducing the public perception of being viewed as inconsistent decision makers. Second, it allows them to present an alternative logic for the majority's disposition of the case, potentially weakening the strength of the precedent set by the majority. The role of strategy is even more apparent in the decision to write or join a dissenting opinion vis-à-vis joining the majority when casting a counter-attitudinal vote. The results reveal that, when a justice casts an ideologically discrepant vote, that justice is more likely to join the majority opinion than author or join a dissenting opinion, suggesting that the desire to more completely shape the majority opinion might motivate the counter-attitudinal vote choice. In so doing, a justice is able to more fully bargain over the content of the majority opinion as a result of being a member of the majority coalition, potentially bringing the majority opinion closer to the justice's legal and policy preferences (e.g., Maltzman, Spriggs, and Wahlbeck 2000; Murphy 1964). While a justice can still be viewed as an inconsistent decision maker in this circumstance, as a function of casting a counter-attitudinal vote, this aversive consequence might be mitigated by the opportunity to bargain over the content of the majority opinion, which may result in a more palatable opinion for the justice than might otherwise

occur without the justice's input. In other words, it appears that the justices are willing to accept the aversive consequences that accompany counter-attitudinal behavior in exchange for the opportunity to mold the legal and policy content of the majority opinion.

When we examine the control variables, we see that Table 1 generally supports the influence of each of the more well-established variables as they relate to the decision to author or join a separate opinion. As expected, a justice's ideological proximity to the majority opinion author plays a clear role in the decision to author or join a separate opinion. In addition, the results reveal that a justice is more likely to join a special concurring opinion and author a regular concurring or dissenting opinion in legally complex cases. The salience of a case, both in terms of its legal and political importance, also motivates the decision to author or join a separate opinion. In particular, a justice is more likely to author or join a regular concurring, special concurring, and dissenting opinion in a politically salient case, although the influence of the legal salience of case only applies to authoring separate opinions and joining concurring opinions. The number of amicus curiae briefs also increases the chances of observing a justice write or join a special concurring and dissenting opinion, as well as author a regular concurring opinion. Table 1 also reveals that a justice's position on the Court shapes the decision to author or join a separate opinion. That is, freshman justices are less likely to author special concurring and dissenting opinions, as well as join dissenting opinions. However, freshman justices are more likely to join regular concurring opinions than their more senior colleagues. The results also support the contention that Chief Justices refrain from authoring separate opinions, and joining dissents, in their attempts to restore norms of unanimity to the Court, presumably leading by example. Finally, the model reveals that, as the Supreme Court approaches the traditional end of its term, a justice is less likely to author a special concurring, regular concurring, and dissenting opinion, as well as join a regular concurring opinion.

CONCLUSIONS

This study advances our understanding of judicial decision making by examining the social psychological concept of cognitive dissonance as an explanation for the occurrence of separate opinions in the U.S. Supreme Court. More specifically, this research makes a number of significant contributions. First, and most importantly, in investigating the application of cognitive dissonance as an explanation for a justice's decision to author or join a separate opinion, I have demonstrated the utility of adopting psychological theories to explain legal decision making. In so doing, I have presented a novel explanation for separate opinions that moves beyond extant perspectives of judicial choice. Since dissonance combines both cognitive and motivational elements into a coherent whole, it offers substantial insight into the mental processes that underlie judicial decision making. Further, while the test of cognitive dissonance theory was somewhat narrowly employed here, its broad nature provides for myriad applications (addressed below). Accordingly, the primary benefaction of this research lies in its theoretical contribution. Because social science, like all of science, is incremental, this research should be viewed as a starting point for the analysis of dissonance as an explanation for judicial (and political) choice, rather than the final word on the subject matter.

Second, this study contributes to our understanding of the appearance of separate opinions on the Supreme Court. While the results do not support all of my theoretical expectations with respect to the use of separate opinions as dissonance reduction mechanisms, it is clear that dissonance theory is capable of offering partial leverage over the decision to write or join a special concurring opinion.

Third, the empirical findings, demonstrating that the justices are more likely to author and join special concurring opinions to justify their discrepant voting behavior, are indicative that the justices are cognizant of the utility of being viewed as consistent decision makers. As Collins (2008a)

notes, consistent decision making on the Supreme Court provides several normative benefits, such as enabling litigant's to make efficient litigation decisions, maximizing the ability of lower court judges to avoid making costly and reversible errors, and enhancing public confidence in the Court. One way in which stability can be achieved is through ideologically-driven decision making (Collins 2008a: 870). This research speaks to this point in that it illustrates that, when the justices cast counter-attitudinal votes, dissonance is potentially aroused and the justices are motivated to reduce the aversive consequences of being viewed as inconsistent decision makers through special concurring opinions. As such, this paper is capable of addressing the age old law versus ideology debate. That is, if the justices attach special significance to the perception that they decide cases on the basis of the law, as opposed to their policy preferences, counter-attitudinal votes would be a good thing, illustrating to the public that the justices dispose of cases without regard to their ideologies. If this perspective was supported by the data, there would be little to no reason for the justices to author or join special concurring opinions when casting counter-attitudinal votes as such opinions can both undermine the credibility of the Court as an institution and create uncertainty with respect to the correct application of the law for lower courts and litigants. That the justices are motivated to author and join special concurring opinions to justify counter-attitudinal votes evinces that, consciously or not, the justices recognize the importance of appearing to be consistent decision makers, even when that consistency is motivated by their ideological preferences.

Fourth, this research provides some corroboration that Supreme Court justices genuinely care about the manner in which the public holds them in esteem, thus providing support for Baum's (2006) perspective on the role of audiences in shaping judicial behavior. More specifically, the results indicate that the justices desire to avoid being viewed as inconsistent decision makers by the public and take steps to reduce or altogether eliminate negative public impressions of inconsistency on the bench through authoring and joining special concurring opinions. While the evidence brought to

bear here is only indirect, in that it is incapable of establishing whether the motivation to avoid being viewed as inconsistent stems from internal or external influences, the dissonance literature, coupled with Baum's (2006) persuasive treatise on the role of audiences, is suggestive that the incentive to appear consistent is primarily motivated by concerns for the justices' external audiences.

Finally, this research is significant in that it contributes to both the social psychological and political science literatures. With regard to social psychology, this analysis provides evidence that dissonance theory is applicable beyond the laboratory setting and is relevant to explain the actions of elite decision makers. With regard to political science, this study demonstrates the utility of incorporating interdisciplinary approaches to understand political phenomena, which has the potential to provide a more thorough understanding of the choices legal and political actors make.

Inasmuch as this research is intended to serve as a starting point for the examination of the application of dissonance theory to explain legal choice, it is important to note that it is limited in a number of ways. In reviewing these limitations, I hope to motivate other scholars to pick up where I have left off. Most obviously, this research is restricted in that it only examines a single method of dissonance reduction: the separate opinion. To be sure, there are a wide range of dissonance reduction mechanisms available to individuals. At the Supreme Court, the most obvious public dissonance reduction mechanisms, aside from separate opinions, include authoring law review articles, public speaking, giving media interviews, and writing majority opinions. For example, Justice Stevens made remarks at a 2005 meeting of the Clark County Bar Association attesting to the fact that he cast counter-attitudinal votes in two very prominent cases decided that year: *Gonzales v. Raich* (2005) and *Kelo v. City of New London* (2005). In his speech, Stevens justified his counter-attitudinal actions on the grounds that the law compelled him to vote the way he did (Greenhouse 2005).¹¹

¹¹ In stating that the law compelled Stevens to vote with the majority in *Kelo* and *Raich*, it can be inferred that Stevens utilized the law as a distancing mechanism in an attempt to remove a certain

Similarly, after Justice Rehnquist voted to overrule the majority opinion he authored in *US v. Jenkins* (1975), he wrote the majority opinion in the precedent overruling case, *US v. Scott* (1978), justifying his inconsistent vote choice on the grounds that his previous position was at odds with his current understanding of the Double Jeopardy Clause (e.g., 437 U.S. 82, at 87).¹² As these examples make clear, there are a wide variety of dissonance reduction mechanisms available to Supreme Court justices to justify their inconsistencies. Insofar as a theoretical construct can be judged by its applicability to a broad range of actions, it is apparent that dissonance theory is quite powerful.

A more specific limitation of this research lies in the fact that the justices have multiple motivations for authoring separate opinions when casting counter-attitudinal votes. This is most evident in the empirical results demonstrating that justices are more likely to cast counter-attitudinal votes for the purposes of joining the majority as opposed to dissenting with the minority. Because justices in the majority more fully bargain over the legal doctrine contained in the majority opinion as compared to justices in the minority (e.g., Maltzman, Spriggs, and Wahlbeck 2000; Murphy 1964; level of personal responsibility for his counter-attitudinal vote (e.g., Fleming and Darley 1989; Fleming and Rudman 1993). Clearly, the use of law as a distancing mechanism has a great deal of potential to explain judicial decision making in that the justices regularly refer to the law as a constraint on their decision making.

¹² While Rehnquist's opinion indicates that his attitude on the Double Jeopardy Clause shifted over time, from a public standpoint, his vote choice in the two cases was inconsistent in that he voted to overrule a precedent that he not only assisted in establishing, but also authored. This suggests that an examination of the justices' voting behavior in precedent-setting cases and cases that challenge those precedents (e.g., Spaeth and Segal 1999), as well as the language used in opinions to justify that behavior, might prove particularly valuable to examine the use of opinion authorship, including majority opinion authorship, as a dissonance reduction mechanism.

Scalia 1994), this suggests that there are strategic elements that shape the decision to cast an ideologically incongruent vote. Accordingly, parsing out the strategic and psychological motivations for authoring or joining separate opinions when casting counter-attitudinal votes will surely contribute to our knowledge of the cognitive and motivational process relating to these decisions.

Finally, this research is limited in that it focuses only the U.S. Supreme Court. As thousands of articles from a multitude of disciplinary perspectives have demonstrated, dissonance theory has broad applicability to explain behavior in a wide range of contexts. While this research has its most obvious application to the study of judicial decision making on other courts, it also has the potential to inform the study of other legal and political actors. For example, politicians on the campaign trail are routinely criticized by the media and public for changing their positions on salient issues, often manifested in the label “flip-flopper.” Clearly, these elected officials have substantial motivations for addressing their inconsistent behavior; dissonance theory holds the promise of offering leverage over their choices with regard to need to justify such inconsistencies. As such, this research reinforces the importance of incorporating psychological elements into our understanding of political behavior. For far too long, students of politics have tended to ignore the powerful explanatory capabilities of cognitive dissonance theory. My hope is that the current research will serve as a stimulus to remedy this state of affairs.

APPENDIX

The purpose of this Appendix is to briefly discuss alternative methodological strategies related to the manner in which the justices' ideologies are operationalized to form the *Counter-Attitudinal Vote* variable, as well as the treatment of justices in the minority in the empirical model appearing in Table 1. Most significantly, regardless of how the *Counter-Attitudinal Vote* variable is operationalized, and irrespective of how minority justices are treated in the multinomial logit model, the results appearing in Table 1 and discussed in the text are robust.

OPERATIONALIZING DISSONANCE

In the text, I operationalize the *Counter-Attitudinal Vote* variable based on ideal point estimates of the justices' ideological preferences developed by Martin and Quinn (2002). I utilize these measures for two reasons. First, their endogenous nature, as a function of being based on the actual votes justices cast, makes them a particularly fine-tuned means to capture the justices' policy preferences.¹³ Second, their dynamic nature is capable of accounting for alterations in the justices' ideologies that might occur over time.

In adopting these ideal point scores, I am necessarily making the assumption that Supreme Court decision making takes place on a single left-right dimension that does not vary over issue areas. While scholars of Supreme Court voting behavior have reached a general consensus that the

¹³ While these scores are an endogenous measure of the justices' preferences, it is important to note that a justice's decision to author or join a separate opinion is not equivalent to the decision to cast a liberal or conservative vote. Thus, the use of the Martin and Quinn (2002) does not implicate circularity issues that sometimes arise in measuring the justices' policy preferences when predicting the likelihood of ideological vote choice (i.e., liberal or conservative voting). In other words, the Martin and Quinn (2002) scores constitute a reasonably independent measure of ideology for the purposes of examining separate opinion authorship on the Supreme Court (e.g., Collins 2008b: 155).

justices vote on a one-dimensional left-right policy space (e.g., Bafumi, Gelman, Park, and Kaplan 2005; Grofman and Brazill 2002; Martin and Quinn 2002; Poole 2003; but see Sirovich 2003), if the justices do not behave in this manner, the validity of my results can be called into question. Rather than simply assume the justices vote on a single ideological dimension, I have performed an auxiliary analysis that allows the justices' preferences to vary depending on the issue area of the case. The purpose of this section of the Appendix is to explain this alternative modeling strategy and to report the results of the alternative model specification, which corroborate the results presented above.

To operationalize an alternative, issue-specific measure of the *Counter-Attitudinal Vote* variable, I have calculated the proportion of liberal votes each justice cast, per term, in four issue areas: civil rights, civil liberties, economics, and other cases.¹⁴ Civil rights cases include cases identified in the Spaeth (2002, 2003) databases as encompassing criminal procedure, civil rights, due process, and attorneys. Civil liberties cases include cases involving the First Amendment and privacy. Economics cases include cases involving economic activity, unions, and federal taxation. Other cases involve disputes encompassing judicial power, federalism, interstate relations, and those classified by Spaeth as miscellaneous. The average number of votes on which these scores are based is 29.2 votes (standard deviation = 18.1).

I then zero centered these ideology scores by subtracting 0.5 from each score. Accordingly, these dynamic and issue-specific ideology scores range from -0.5 to $+0.5$, with higher scores reflecting more liberal ideologies.¹⁵

To operationalize the *Counter-Attitudinal Vote* variable discussed below, I followed the coding rubric employed in the text. If a justice cast a liberal vote, this is the justice's issue-specific ideology

¹⁴ Votes were selected using the orally argued case citation as the unit of analysis.

¹⁵ These issue-specific ideology scores are correlated with the Martin and Quinn (2002) scores at the -0.713 level.

score multiplied by -1 . If a justice cast a conservative vote, this variable represents the justice's issue-specific ideology score multiplied by $+1$. Because liberal justices have positive ideology scores and conservative justices have negative ideology scores, higher values on this variable indicate that a justice cast a vote discrepant from his or her ideology.

***** Appendix Table 1 About Here *****

Appendix Table 1 reports the results of the model that uses this alternative measure of the *Counter-Attitudinal Vote* variable.¹⁶ As this table makes clear, the results of the alternative model specification are consistent with those reported in the text. In particular, the results illustrate that a justice is more likely to author or join a special concurring opinion when casting a counter-attitudinal vote, but is less likely to author or join a dissenting opinion when casting a counter-attitudinal vote. As with Table 1 in the text, there is no statistically significant relationship between the *Counter-Attitudinal Vote* variable and a justice's decision to author or join a regular concurring opinion. Accordingly, this surrogate model specification indicates that the results presented in the text are not being driven by an imprecise measure of the justices' policy preferences. Rather, the findings are robust to alternative operationalizations of the justices' attitudes.

THE INCLUSION OF MINORITY JUSTICES IN TABLE 1

In the text, I have posited that dissonance will manifest itself most strongly for justices in the Court's majority, and, to reduce this dissonance, these justices will be more likely to write or join special and regular concurring opinions. Conversely, justices in the Court's minority should exhibit

¹⁶ To promote the coherency of the results, I also altered the coding of the *Ideological Distance* variable. That is, in Appendix Table 1 this variable represents the absolute value of each justice's ideological distance from the majority opinion author, using the issue-specific ideology scores discussed above. Note also that the N in Appendix Table 1 is smaller than that of the N of Table 1 in the text due to missing data corresponding to the issue area of two cases in the Spaeth databases.

minimal, if any, dissonance and should therefore be less likely to author or join a dissenting opinion when casting a counter-attitudinal vote, as compared to joining the Court's majority. In subjecting these hypotheses to empirical scrutiny, I have opted to include all justices, save the majority opinion author, regardless of their majority or minority status, in the multinomial logit model. An alternative modeling strategy would be to exclude justices in the minority from the statistical model as my theory posits that such justices will exhibit minimal, if any, levels of dissonance.

My motivation for including minority justices in the statistical model is two-fold. First, from a theoretical standpoint, both the dissonance and judicial literatures are capable of providing theoretical purchase over the behavior of justices in the Court's minority, particularly as relating to strategic characterizations of Supreme Court voting behavior (e.g., Maltzman, Spriggs, and Wahlbeck 2000; Murphy 1964) and the aversive consequences of behaving in a counter-attitudinal manner (e.g., Aronson 1976; Burger 1989; Festinger 1957). Second, from a methodological standpoint, it is desirable to include minority justices in the statistical model because their exclusion is inefficient from a data analysis standpoint. That is, it is beneficial to include minority justices because they provide information to the model that increases its ability to render unbiased and efficient parameter estimates. Inasmuch as "maximizing efficiency requires not only using all our data, but also using all the relevant information in the data to improve inferences" (King, Keohane, and Verba 1994: 28), it is clear that the exclusion of minority justices could potentially result in an inefficient use of the data under analysis.

***** Appendix Table 2 About Here *****

That being said, to ensure the robustness of the empirical findings when minority justices are excluded from the analysis, Appendix Table 2 reports the results from a multinomial logit model that contains data from only justices who were part of the Court's majority. The dependent variable represents the five choices available to majority justices in the data (join the majority, author a

special concurring opinion, join a special concurring opinion, author a regular concurring opinion, or join a regular concurring opinion). This table evinces that the results are robust to the exclusion of justices in the Court's minority. That is, consistent with Table 1, justices in the majority are more likely to author or join special concurring opinions than join the majority opinion when casting counter-attitudinal votes. Also in-line with Table 1, there is no statistically significant relationship between casting a counter-attitudinal vote and authoring or joining a regular concurring opinion. Moreover, the marginal effects of the *Counter-Attitudinal Vote* variable very closely approximate those reported in Table 1: a one standard deviation increase in the *Counter-Attitudinal Vote* variable corresponds to a 0.9% increase in the likelihood of observing a justice author a special concurring opinion and the same one standard deviation increase in this variable corresponds to a 0.6% increase in the chances of observing a justice join a special concurring opinion. Thus, it is clear that the results of Table 1 are consistent regardless of whether justices in the Court's minority are included or excluded from the empirical model.

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Table 1. Multinomial Logit Model of a Justice's Decision to Author or Join a Separate Opinion, 1946-2001 Terms

Predictor Variable	Author Special Concurring	Join Special Concurring	Author Regular Concurring	Join Regular Concurring	Author Dissent	Join Dissent
Counter-Attitudinal Vote	0.107*** (0.013) [+0.9]	0.127*** (0.017) [+0.7]	0.007 (0.014) [n.s.]	0.020 (0.024) [n.s.]	-0.186*** (0.007) [-2.2]	-0.209*** (0.007) [-2.8]
Ideological Distance	0.170*** (0.014) [+0.8]	0.256*** (0.018) [+1.0]	0.068*** (0.015) [+0.1]	0.164*** (0.026) [+0.2]	0.185*** (0.009) [+2.1]	0.206*** (0.010) [+2.9]
Legal Complexity	0.044 (0.031) [n.s.]	0.097* (0.049) [+0.5]	0.112*** (0.032) [+0.2]	0.091 (0.076) [n.s.]	0.088*** (0.017) [+0.5]	0.021 (0.021) [n.s.]
Legal Salience	0.638*** (0.083) [+2.3]	0.564*** (0.123) [+1.3]	0.463*** (0.091) [+1.0]	0.295* (0.179) [+0.2]	0.164** (0.052) [+0.8]	0.077 (0.063) [n.s.]
Political Salience	0.712*** (0.075) [+2.4]	0.366** (0.116) [+0.5]	0.847*** (0.080) [+2.3]	0.573*** (0.162) [+0.5]	0.565*** (0.043) [+3.7]	0.348*** (0.050) [+1.8]
Amicus Curiae Briefs	0.030*** (0.007) [+0.3]	0.026* (0.012) [+0.2]	0.026*** (0.006) [+0.2]	0.017 (0.012) [n.s.]	0.192*** (0.004) [+0.5]	0.009* (0.005) [+0.2]
Freshman	-0.384*** (0.101) [-0.9]	-0.167 (0.125) [n.s.]	-0.120 (0.101) [n.s.]	0.315* (0.148) [+0.5]	-0.318*** (0.063) [-1.7]	-0.196** (0.060) [-1.2]
Chief Justice	-1.29*** (0.126) [-2.2]	0.0004 (0.093) [n.s.]	-0.752*** (0.106) [-1.1]	-.073 (0.136) [n.s.]	-0.958*** (0.065) [-4.4]	-0.081* (0.047) [-0.2]
End of Term	0.001*** (0.0004) [+0.3]	0.0005 (0.0007) [n.s.]	0.002*** (0.0004) [+0.2]	0.002* (0.0009) [+0.1]	0.0006** (0.0002) [+0.2]	0.0003 (0.0003) [n.s.]
Constant	-4.00*** (0.289)	-4.49*** (0.434)	-3.35*** (0.254)	-4.57*** (0.435)	-2.68*** (0.140)	-2.45*** (0.163)
Wald χ^2	103,966.7***			Percent Correctly Predicted		69.1
N	50,622			Percent Reduction in Error (τ)		36.6

The baseline category is joining the majority opinion. Numbers in parentheses report robust standard errors, clustered on case citation. Numbers in brackets indicate marginal effects. Model includes 55 temporal dummy variables (results not shown). * p < 0.05; ** p < 0.01; *** p < 0.001 (one-tailed tests). n.s. = not significant.

Appendix Table 1. Multinomial Logit Model of a Justice's Decision to Author or Join a Separate Opinion using Issue-Specific Ideology Scores, 1946-2001 Terms

Predictor Variable	Author Special Concurring	Join Special Concurring	Author Regular Concurring	Join Regular Concurring	Author Dissent	Join Dissent
Counter-Attitudinal Vote	.843*** (.159)	1.39*** (.235)	.057 (.166)	.184 (.319)	-1.49*** (.103)	-1.77*** (.108)
Ideological Distance	2.52*** (.173)	2.67*** (.248)	1.08*** (.183)	1.62*** (.333)	5.38*** (.113)	5.73*** (.118)
Legal Complexity	.040 (.031)	.095* (.048)	.110*** (.032)	.091 (.076)	.072*** (.019)	-.003 (.023)
Legal Salience	.572*** (.081)	.492*** (.121)	.442*** (.090)	.270 (.178)	-.030 (.061)	-.160** (.075)
Political Salience	.637*** (.074)	.280** (.115)	.819*** (.079)	.522** (.163)	.380*** (.048)	.138*** (.057)
Amicus Curiae Briefs	.032*** (.007)	.028** (.011)	.028*** (.006)	.019 (.011)	.025*** (.005)	.015** (.006)
Freshman	-.344*** (.099)	-.163 (.124)	-.117 (.102)	.296* (.148)	-.162** (.061)	-.055 (.059)
Chief Justice	-.978*** (.125)	.317*** (.092)	-.618*** (.107)	.107 (.131)	-.383*** (.064)	.507*** (.048)
End of Term	.001** (.0004)	.0003 (.0007)	.002*** (.0004)	.002* (.0009)	.0005* (.0002)	.0003 (.0003)
Constant	-3.99*** (.289)	-4.22*** (.442)	-3.36*** (.252)	-4.41*** (.434)	-3.41*** (.172)	-3.24*** (.197)
Wald χ^2	99,293.6***					
N	50,611					
Percent Correctly Predicted	69.7					

The baseline category is joining the majority opinion. Numbers in parentheses report robust standard errors, clustered on case citation. Model includes 55 temporal dummy variables (results not shown). * p < 0.05; ** p < 0.01; *** p < 0.001 (one-tailed tests).

Appendix Table 2. Multinomial Logit Model of a Majority Justice's Decision to Author or Join a Concurring Opinion, 1946-2001 Terms

Predictor Variable	Author Special Concurring	Join Special Concurring	Author Regular Concurring	Join Regular Concurring
Counter-Attitudinal Vote	.105*** (.012)	.120*** (.017)	.008 (.013)	.013 (.022)
Ideological Distance	.169*** (.014)	.256*** (.018)	.068*** (.015)	.167*** (.026)
Legal Complexity	.042 (.031)	.095* (.048)	.109*** (.031)	.089 (.075)
Legal Salience	.623*** (.082)	.559*** (.122)	.460*** (.091)	.294 (.178)
Political Salience	.717*** (.075)	.372*** (.116)	.859*** (.080)	.596** (.161)
Amicus Curiae Briefs	.032*** (.007)	.029* (.012)	.028*** (.006)	.017 (.012)
Freshman	-.402*** (.102)	-.175 (.125)	-.122 (.102)	.321* (.148)
Chief Justice	-1.28*** (.126)	.008 (.094)	-.722*** (.106)	-.043 (.136)
End of Term	.001** (.0004)	.0005 (.0007)	.001*** (.0004)	.002* (.0009)
Constant	-3.98*** (.288)	-4.46*** (.433)	-3.33*** (.255)	-4.55*** (.433)
Wald χ^2	107,466.0***			
N	39,861			
Percent Correctly Predicted	87.8			

The model includes only justices who voted with the Court's majority. The baseline category is joining the majority opinion. Numbers in parentheses report robust standard errors, clustered on case citation. Model includes 55 temporal dummy variables (results not shown). * p < 0.05; ** p < 0.01; *** p < 0.001 (one-tailed tests).

Appendix Table 3. Summary Statistics

Variable	Mean	Standard Deviation	Minimum	Maximum
Counter-Attitudinal Vote	-.603	1.97	-6.33	6.33
Ideological Distance	2.28	1.87	0	10.55
Legal Complexity	-.178	.844	-.572	10.35
Legal Salience	.088	.283	0	1
Political Salience	.148	.354	0	1
Amicus Curiae Briefs	2.30	3.94	0	78
Freshman	.093	.289	0	1
Chief Justice	.111	.314	0	1
End of Term	169.16	70.85	0	793
