

Institutional Maintenance on the United States Supreme Court

by

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The purpose of this paper, a shortened version of my honors thesis, is twofold. First, I derive a goal-based framework to discuss institutional maintenance in legislative politics and congressional organization. Second, I apply that framework to the Supreme Court of the United States. In doing so, I argue that leaders in both institutions play a unique role in the coordination of institutional maintenance.

Political scientists (e.g. Mayhew 1974, Fenno 1978, Baum 1997, and Epstein and Knight 1998) have argued that actors strive to meet their individual goals. Similarly, scholars (e.g. Davidson and Oleszek 2006 and Baum 1997) have also claimed that institutions have their own sets of goals. Since individual actors are also members of institutions, they have two sets of goals—personal and institutional. While some of these goals may overlap, these goals are not necessarily synonymous; a tension can exist between actors' individual and institutional goals (Mayer and Canon 1999). In this paper, I will discuss two institutional goals, legitimacy and effectiveness, as they relate to Congress and the Supreme Court. I will argue that leaders in both institutions coordinate members and tasks; leaders, then, perform institutional maintenance.

Institutions are given powers to carry out their work and to achieve their goals. All political institutions must be able to do work and to govern in order to function in the broader political system; as such, both of these abilities are institutional goals. The first ability (the capacity to do work), I define as effectiveness. In other words, effectiveness is the ability of an institution to perform the tasks prescribed to it by the government. The second ability (the capacity to govern) is legitimacy. This definition of legitimacy comes from Jean Marc Coicaud's (2002) definition of legitimacy as "the right to govern" (10). Thus, in its simplest form, legitimacy is the ability of an institution to transform its work into governance.

While individual actors want to accomplish both their individual and institutional goals, they only have a finite amount of time, energy, and other resources to accomplish their tasks. As

such, individuals must choose how to allocate their efforts between these sets of goals; this allocation creates tension. Olson (1974) argues that this tension will only be resolved in a group under specific circumstances. Normally, actors will allow their individual goals to override their institutional goals. He writes:

[i]f the members of a large group rationally seek to maximize their personal welfare, they will *not* act to advance their common or group objectives unless there is coercion to do so, or unless some separate incentive, distinct from the achievement of the group or common interest, is offered to the members of the group individually on the condition that they help bear the costs or burdens involved in the achievement of the group objectives (2).

Thus, Olson argues that actors will not work toward institutional goals unless they are given some direct incentive to achieve those goals in addition to the peripheral incentive that they will automatically achieve. In the absence of such an incentive, actors prefer to accomplish their individual goals because these are the goals that provide the most direct benefits. Too much time spent on individual goals may divert the individual's attention from his or her institutional tasks.

An example can clarify this tension between individual and institutional goals. Fenno (1978) found that members of Congress distance themselves from the institution when speaking to their constituents. He described this behavior as follows:

the willingness of House members to stand and defend their own votes or voting record contrasts sharply with their disposition to run and hide when a defense of Congress might be called for. Members of Congress run *for* Congress by running *against* Congress. The strategy is ubiquitous, addictive, cost-free and foolproof... In the short run, everybody plays and nearly everybody wins. Yet the institution bleeds from 435 separate cuts (168).

Because any individual member of the public only elects three of the 535 members of Congress, members of Congress do not need to focus upon building their constituents' approval of the institution; instead, they can (and do) actively work to decrease the esteem in which the institution is held in order to increase their chances of re-election. Here, an action that is beneficial to the individual (attacking Congress to reap electoral benefits) has the potential to

harm the institution by lowering the esteem in which it is held nationwide. As such, action taken in the pursuit of an individual goal has the potential to be detrimental to the broader institution.

What is Institutional Maintenance?

Writing about Congress, Mayhew (1974) argues that institutional maintenance allows the institution to “stay afloat” (141). Davidson and Oleszek (2006) claim that institutional maintenance is “ensuring that Congress and its members perform their lawmaking and oversight duties effectively and preserving Congress’s reputation and integrity” (177). Mayer and Canon (1999) describe institutional maintenance as “[t]he task of looking after the institutional needs of Congress, by performing key organizational and administrative functions. Historically, party leaders and key committees... have performed this job” (162). These definitions highlight the importance of both effectiveness and legitimacy--the two institutional goals outlined above. As such, institutional maintenance involves work toward the achievement of institutional goals. Building on these conceptions of the topic, I define institutional maintenance as those activities which ensure and enable the effectiveness and legitimacy of the institution. In other words, institutional maintenance is the upkeep of collective institutional goals.

At first, the collective action problem that arises out of institutional maintenance appears to be a dangerous game of chance. After all, the possibility exists that every member of the institution will expend all of their resources on individual goals, and no actor will perform institutional maintenance. With this in mind, individual members of the institution know that the institution’s goals need to be met; however, they do not want to be responsible to achieve those institutional goals. As such, there is an incentive to “free ride” and rely on other actors within the institution to perform the work. To solve this problem, members of an institution select institutional leaders. In Congress, these individuals are given the authority to place members of

the institution on committees, to oversee the legislative process, and to organize members of the institution (Davidson and Oleszek 2006). In other words, these leaders act as coordinators to ensure that the institution completes its tasks.¹

It is important to note that institutional maintenance and institutional prestige are not mutually exclusive. While some institutional maintenance tasks (supervising the purchase of Congress's office supplies, for example) may be undesirable, other institutional maintenance tasks (such as assigning members of Congress to committees) are prestigious. Another example from legislative politics will further illustrate this point. Deering and Smith (1997) note that members of Congress have the opportunity to request assignment to a particular committee; congressional leaders, then, assign members to committees. Mayhew (1974) identifies three committees (Rules, Appropriations, and Ways and Means) that directly contribute to institutional maintenance. Mayhew argues that service on these committees will not harm an individual at election time; however, these committees do not provide the specialized, constituency-oriented electoral benefits that other committees, such as the Agriculture or Science and Technology committees, can provide. However, these committees perform tasks (such as drafting rules of debate) that are vital to the institution's functioning. Deering and Smith classify Mayhew's three institutional maintenance committees as prestige committees. Particularly, Deering and Smith argue that "[w]hat makes these committees unique is their attractiveness to House members beyond their value for serving constituents or pursuing personal policy interests" (63). In other

¹ To define leaders, I adopt Davidson and Oleszek's (2006) definition of formal leaders. Writing about Congress, they argue that formal leaders are those individuals who "help organize the two chambers, assign members to committees, schedule business, and devise parliamentary strategy" (29). In other words, leaders are those individuals who hold an institutional position that gives them the responsibility to look out for the broader interests of the institution for a specified amount of time. This study of leadership and institutional maintenance is confined to a discussion of formal leaders; after all, the institutional position occupied by formal leaders gives them the ability to officially direct other individuals within the institution.

words, these committees provide members with additional incentives (institutional prestige) to compensate for the lack of a constituency focus. As such, service on Mayhew's institutional maintenance committees is an example of an institutional maintenance activity which also provides institutional prestige to the member of Congress.

Still, other committee assignments can contribute to institutional maintenance without providing institutional prestige. Deering and Smith note that some committees (such as the Oversight and Government Reform and Standards of Official Conduct committees) are rarely requested by members of Congress (77). Service on these committees helps the institution to achieve its goals, but it does not help members of Congress to gain institutional prestige. Still, these committees perform tasks that are essential to the overall functioning of the institution, so someone must perform this work. Thus, congressional leaders, through their power to assign members to committees, are able to coordinate members' committee placements to ensure these undesirable tasks are completed.

A view that institutional leaders act as coordinators ties directly to Olson's conception that leaders help to overcome collective action problems. By giving institutional leaders the means necessary to coordinate the institution's members and its tasks through committee assignment, members of the institution free themselves to invest additional time on their desired activities; members never have to worry about the possibility that no one will agree to serve on an unrequested committee because they have given their leaders the ability to force others to serve. Through this delegation of power to leaders and the division of responsibility inherent in the committee model, members of Congress give their leaders the ability to perform institutional maintenance.

The Chief Justice and Judicial Legitimacy

Having discussed that congressional leaders have the ability to coordinate the institution to pursue institutional maintenance, we can now turn our discussion to the Supreme Court of the United States. If the correlation between Congress and the Court holds, the Chief Justice, as the institutional leader of the Supreme Court, should be responsible for institutional maintenance. If the Chief Justice, as an institutional leader, is responsible for institutional maintenance, he should play a role in the upkeep of institutional legitimacy at the Court. However, before we can turn to a discussion of the Chief Justice's role in the upkeep of judicial legitimacy, some preliminary remarks about its nature are necessary.

The Court, through its opinions, sometimes directly addresses its legitimacy. For example, Justices O'Connor, Souter, and Kennedy, in their joint opinion in *Planned Parenthood v. Casey* (1992) write:

The Court's power lies, rather, in its legitimacy, a product of substance and perception that shows itself in the people's acceptance of the Judiciary as fit to determine what the Nation's law means, and to declare what it demands...

The Court must take care to speak and act in ways that allow people to accept its decisions on the terms the Court claims for them, as grounded truly in principle, not as compromises with social and political pressures having, as such, no bearing on the principled choices that the Court is obliged to make. Thus, the Court's legitimacy depends on making legally principled decisions under circumstances in which their principled character is sufficiently plausible to be accepted by the Nation (865-866).

As such, the justices argue that they must achieve legitimacy in order to be effective. To be seen as legitimate, the justices claim that they rely on "legally principled decisions" to solidify their public support into legitimacy. In other words, by rendering legally sound, impartial decisions, the Court remains a legitimate institution. This ability stands in contrast to the overtly partisan legislative and executive branches of American government. Thus, the Court ties its legitimacy to an ability to render decisions based on legal principles rather than based upon political

leanings. Gibson (2008) argues that Courts differentiate themselves from other political institutions so they can claim that they “are worthy of more respect, deference, and obedience—in short, legitimacy” (61). As such, the Supreme Court differentiates itself from the elected branches of government by emphasizing its reliance upon legal modes of decision-making instead of self-interested, goal-based decision-making. Judicial legitimacy, then, is partly tied to the notion that the Court makes decisions based upon legal principles and not politics.

The Court’s internal correspondence indicates that the justices believe that unified decision-making is another factor that increases their legitimacy. Discussing *Planned Parenthood v. Casey*, a June 18, 1992 memorandum from Justice Stevens to Justices O’Connor, Kennedy, Souter, and Blackman says

In my opinion, an opinion that begins as an opinion of the Court and continues to speak for a Court for 25 pages would be far more powerful than one that starts out as a plurality opinion and shifts back and forth between a Court opinion and a plurality opinion.

Additionally, a memorandum sent from one of Justice Blackmun’s clerks to him on that same day echoes Stevens’s sentiment. The clerk writes: “as a general matter, the opinion would look much stronger if it had a Court for all of the first 25 p [sic] or so” (Steph 1992). These statements show that the Court looks to unified decision-making to increase their standing with the public. This view is not confined to the Court. Marshall, in his 1988 study of public opinion and the Supreme Court, writes “[u]nanimous decisions, however, may carry more prestige than nonunanimous rulings. Indeed, when the justices expect their decisions to be challenged, they may even seek unanimity to stave off anticipated attacks” (175). In other words, consensus can lead to opinions that are more resistant to attack from outside forces.

Having established that making decisions based upon legal rules and unified decision-making are two factors that increase judicial legitimacy, we can now turn to the Chief Justice’s

role in fostering these two elements at the Court. As Danelski (1960) notes, the Chief Justice has the power to wield significant task and social leadership over the Court. Through the development of norms of procedure and the overall development of the Court, the Court has delegated significant responsibilities to the Chief Justice. He leads discussion during the Court's private conferences, and he traditionally wields the ability to assign an opinion in every case that comes before the Court. These abilities put the Chief Justice in a unique position to solve conflict and to exert leadership over the Court. Indeed, Danelski (1960) argues that unification is one of the Chief Justice's most important tasks as an institutional leader. As such, the Chief Justice, through his authority to lead the Court, is given the power to influence his colleagues to reach consensus. By persuading others to achieve common ground, the Chief Justice engages in institutional maintenance. He encourages individual members of the Court to forgo their individual policy goals to find a compromise that will allow the Court to act effectively.

In order to investigate the Chief Justice's relationship to the Court's unanimous opinions, I used Harold Spaeth's United States Supreme Court Database. Consistent with my theory that the Chief Justice has the ability to coordinate the institution, I hypothesized that he should write the most unanimous opinions. Using the United States Supreme Court Database, I examined the case citations of all orally argued and fully decided cases between 1953 and 2004 (the Warren, Burger, and Rehnquist Courts). During this time, the Court issued 1,523 unanimous opinions; 28.41% of its total decisions were unanimous during this time. I found that the Chief Justice writes opinions in 12.6% of unanimous decisions (as opposed to 11.5% of all cases). If all unanimous decisions were distributed equally, the Chief Justice would write 1/9 (or 11.11% of cases). As such, this data shows that the Chief Justice is slightly more likely to write unanimous decisions. A table outlining these findings is Figure 1.

One well-known example of the Chief Justice's role in maintaining institutional legitimacy is the Court's decision in *Brown v. Board of Education of Topeka* (1954); a study of the Chief Justice's actions in this case illustrate how the Chief Justice can coordinate actions to perform institutional maintenance. After the Court finished its conference discussion in the case, Warren assigned the opinion to himself. As such, he could write the opinion in such a way that he could attract the support of all eight other justices. Ulmer (1971) notes that Warren, while writing the *Brown* opinion, held regular informal luncheon meetings with various members of the Court; in this manner, he was able to meet with the justices to discuss the case and to accommodate their positions. When the Court finally announced its opinion, Warren's opinion was unanimous.

While Warren's ability to use his office to unify the Court is impressive, the memorandum that accompanied his draft opinion illuminates Warren's knowledge of other facets of judicial legitimacy and, by extension, institutional maintenance. Writing to all of the justices, Warren wrote: "the opinions should be short, readable by the lay public, non-rhetorical, unemotional, and, above all, non-accusatory." This memorandum raises two points of discussion. First, Warren's claim that the opinions should be readable by the lay public implicitly acknowledges the fact that members of the public do not often read the Court's opinions. Second, Warren's decree that the opinions should be free from emotion, rhetoric, and accusations demonstrates Warren's attempt to differentiate the Court from the broader political environment. We will address each of these notions in turn.

First, Warren's desire to produce a readable opinion in a high profile case indicates, at some level, an attempt to appeal directly to the public; it implies that the *Brown* decision needed to be handled differently from other cases because it was important. Studies have shown that not

all Supreme Court decisions are treated equally by the public; as such, it seems that the Court has a conditional concern for legitimacy. Mondak (1994) argues that members of the public tend to defer to the Court when it rules on issues that are not important to them; however, when the Court rules on issues that are important to individuals, the public is more critical of the Court. Intuitively, this makes sense. Mondak also notes that few members of the public read every Supreme Court decision; instead, most get their information from the media. When the media does not cover a Court opinion, the public assumes that the Court is simply doing its job appropriately. However, when the media steps in and criticizes a Court opinion, the public is more likely to have knowledge of the opinion; as such, the public is more likely to take a stand against the Court.

Still more support for the idea of conditional legitimacy comes from Johnson and Martin (1998). They argue that the public is conditionally responsive to the Court's decisions. They write

[t]he Supreme Court can and does influence public attitudes toward highly salient issues, but its effect is conditional. At times the public will react (when an issue is initially brought to the forefront of political discourse by a landmark Court decision), but at others it will not (when the Court rules on an issue again) (306).

Thus, Johnson and Martin argue that the Court has an impact on public opinion, but this opinion is not the same at all times; when the Court rules on an issue multiple times, public opinion remains unchanged. With that in mind, the Court's concern for its legitimacy is not the same in every case. By attempting to write opinions that were readable by the public, Warren was attempting to allow the public to bypass opinion leaders and to form their own opinions of the decision. Thus, Warren's action here demonstrates the Chief Justice's ability to perform institutional maintenance by appealing directly to the public instead of forcing the public to rely upon opinion leaders.

The second point of note comes from Warren's decree that the opinions should be free from emotions, rhetoric, and accusations. This statement demonstrates Warren's attempt to differentiate the Court from the broader political environment. If the Court's unanimous *Brown* opinion was filled with personal pathos and emotional attacks, the Court would no longer appear to be making its decisions based upon law, and it would appear that the justices, like actors within the other branches of government, were fighting over the issue of civil rights. Such an opinion would discredit the idea that the Court decides cases based solely upon the law. As such, Warren's decision that the Court's opinion be free from personal opinion demonstrates an attempt by the Chief Justice to cushion the Court's legitimacy.

Since *Brown* was a contentious case, it was likely that the Court would lose some of its legitimacy because many members of the public would pay attention to the case and because many members of the public would be unhappy with the Court's decision; since *Brown* dealt with the education of children and civil rights, Warren knew that it was very likely that the public would pay attention to the ruling. By writing an easily readable opinion that relies upon the law instead of emotion, Warren attempted to limit the damage done by the Court's antisegregationist decree and to maintain as much legitimacy as possible by maintaining a reliance on legal modes of decision-making and by writing easily readable opinions so the public could form their own opinions rather than relying on the media. As such, Warren's example in the *Brown* case provides one example of how a Chief Justice can perform institutional maintenance through the upkeep of judicial legitimacy.

The Chief Justice and Judicial Effectiveness

Of course, as Rosenberg (1991) has shown, Warren's successful unanimous opinion in *Brown* did not amount to widespread social change. The type of effectiveness at issue in this paper is not dependent on such social change. Rather, this conception of effectiveness relies upon much more mundane tasks. Effectiveness on the Court consists of performing the work of the Court through activities like oral argument and the assignment and drafting of opinions. In essence, the type of effectiveness at issue here is simply the ability to make the Court perform its work.

Epstein and Knight (1998) posit that policy is an individual goal for judges. Assuming this to be true, another collective action problem emerges. If every justice, acting to reach his or her policy goals, acts in his or her best interest and refuses to join an opinion unless it contains the exact legal reasoning that the justice desired, the Court would probably have a much more difficult time rendering opinions; the Court's effectiveness would suffer. Again, this individually desirable outcome results in an outcome that is not collectively desirable. As the institution's leader, then, the Chief Justice should have the tools to coordinate the institution in order to solve this dilemma and help the Court operate effectively.

To test this theory, I examined the Court's opinions to determine the Chief Justice's role in preserving institutional effectiveness. While previous research (see, for e.g., Maltzman, Spriggs, and Wahlbeck 2000) explains the assignment of the majority opinion by the Chief Justice, it does not explain the institutional position of the author of the majority opinion. To determine this, I utilized data from Epstein, Segal, Spaeth, and Walker (2007) to analyze the authorship of majority opinions on the Court. Utilizing data from the Vinson Court to the Rehnquist Court (1946-2004 terms), I analyzed opinion assignment by the author's institutional position; in other words, I coded the data by the level of seniority attained by its author at the

time he or she wrote the opinion.² I chose institutional position because this measure sorts each justice by seniority alone; it does not take individual justice's ideologies into account. If justices were only motivated by their individual policy goal and did not pay any attention to institutional maintenance, a justice would always assign the opinion to himself or herself to ensure that the case is decided in the precise manner that he or she desires. Again, a collective action problem emerges. If the Chief Justice always acted in his best interest and always assigned the opinion to himself, he would always have the best ability meet his policy goals; however, the Chief Justice would be writing so many opinions that he would have a difficult time finishing all of them. Even if the Chief Justice was able to finish writing the opinions, it is unlikely that he would also be able to maintain a majority coalition on all of them. Again, an individually rational choice leads to a collectively undesirable outcome.

If the Chief Justice is the individual charged with solving the collective dilemma through his ability to coordinate the institution to achieve both individual and institutional goals, he should exercise his ability to assign opinions in a manner consistent with this responsibility. With this in mind, the hypothesis for this analysis is based on the equality norm. If the Chief Justice assigns opinions based on the Court's organizational concerns, and he tries to assign the same number of opinions to each justice, each member of the Court should write approximately the same number of opinions.

Figure 2 displays the number of opinions written by justices in each position of seniority as a percentage of the total number of opinions written.³ I used a percentage instead of the total

² Using this measure, some Justices may occupy multiple positions throughout their tenure on the Court; for example, Rehnquist wrote opinions as the junior Justice, the second-most-junior Justice, the third-most-junior Justice, and the Chief Justice while he was on the Court.

³ Figure 2 omits data from the 1956 and 1961 because those terms had a change of Justices during the term. The data from the 1969 term is also omitted because only eight Justices wrote opinions during that term; thus including that data may skew the results.

number of opinions written to control for the number of opinions and for the fact that the number of cases decided by the Court per term has decreased over time.

The results of the analysis strongly imply that the equality norm is stable over time; although the junior justice writes a slightly smaller percentage of the Court's opinion, that number is only 1.22% lower than the average percentage of opinions written. The fact that this trend is relatively stable over time shows that the equality norm has been followed routinely over the past half-century by a variety of Chief Justices. As such, the data strongly support the hypothesis.

Figure 3 displays the percentage of major decisions written by each institutional position on the Court according to Congressional Quarterly's list of major decisions as reported by Epstein, Segal, Spaeth, and Walker (2007). Even though each member of the Court writes approximately the same number of opinions, this measure tests for the importance of the opinions written by each justice.

According to Rehnquist (2001):

The chief justice is expected to retain for himself some opinions that he regards as of great significance, but he is also expected to pass around to his colleagues some of this kind of opinion (274).

As such, I hypothesize that the percentage of the Court's opinions written should correlate positively with a justice's seniority on the Court. In other words, the Chief Justice should write the highest percentage of the Court's major opinions, and the most junior justice should write the fewest. By writing for the Court on important matters, the Chief Justice, as the author of the majority opinion, can strategically draft the opinion in such a manner to attract his colleagues (Epstein and Knight 1998; Maltzman, Spriggs, and Wahlbeck 2000). Simply put, I hypothesize

that the Chief Justice should write the greatest percentage of opinions in order to utilize his role as the Court's coordinator.

When only these major decisions are analyzed, it is apparent that there is a distinct difference in assignment practices for major cases. The Chief Justice and senior associate justice write a great deal more of the Court's major decisions than the junior justice; in fact, the average trend from the Chief Justice to the junior justice is a gradual, downward trend.⁴ The data show that the higher a justice's institutional position, the more likely he or she is to write a major opinion; conversely, the more junior a justice, the more likely he or she is to write opinions of lesser consequence. As such, the second hypothesis is also supported by the data.

Taken as a whole, this data set shows that the Chief Justice acts to foster effectiveness for the Court. Through his role as the primary assignor of opinions, the Chief has the ability to control the justices' workload. By using his ability to provide equality to opinion assignments, the Chief, acting in his capacity as the leader of the Court, shows a respect for the Court's effectiveness and a desire to perform institutional maintenance. However, by self-assigning the major cases, the Chief Justice uses his coordination power to ensure that the Court's work will be finished effectively, and he is given the opportunity to determine both the content and the timing of the Court's opinion.

Conclusion

This paper presents many questions for further research. Because so few individuals have served in this office, it is difficult to generalize, and few such studies have been written (Baum 1997). Every individual who serves as Chief Justice of the United States brings his own

⁴ There is a slight upward climb for the fifth-most-senior justice; that abnormality exists because of particular individuals who have occupied this position. When the data is separated by Chief Justice, it is apparent that the justice who occupied this position during the Rehnquist years contributes to this anomaly. In the Rehnquist Court, the fifth-most-senior justice was Justice Anthony M. Kennedy.

legal and administrative background to the Court; as such, no two individuals have the exact same administrative habits and preferences. Additionally, with only seventeen individuals to analyze, it is difficult to make generalizations because of the vast differences in the political context that surrounds their service on the Court. Also, this paper does not establish the role of nonleaders in institutional maintenance. In order to have a full understanding of this topic, such information would be desirable. Finally, because the Court's internal conferences are closed to the public, it is impossible to know the exact extent of the Chief Justice's influence during these meetings. However, the personal papers of the justices have the potential to shed some light on this ability and the differences between the justices. These should also be investigated for additional evidence on the Chief Justice's ability to coordinate the Court's actions.

Institutional maintenance involves the safeguarding of institutional goals. Alternatively, it can be defined as those activities which ensure and enable the effectiveness and legitimacy of the institution. Having established that there is a fundamental conflict between individual and institutional goals, I examined the ability of institutional leaders to perform institutional maintenance within the organization. In doing so, I concluded that leaders within an institution are given tools by the institution to coordinate institutional maintenance within the institution. As applied to the Supreme Court, the Chief Justice uses his role to exert leadership over the members of the Court in order to force them to move from their personal policy goals toward opinions which will gain the Court higher amounts of political capital. Similarly, the Chief Justice uses his role as the primary assignor of opinions to divide the assignments in such a way that he maintains control over the major opinions in order to ensure the Court's effectiveness. However, the Chief Justice, through his institutional position, has the ability to organize the institution to coordinate institutional maintenance.

Percentage of Unanimous Opinions

	CJ	AJ1	AJ2	AJ3	AJ4	AJ5	AJ6	AJ7	AJ8
Total	0.12541	0.109652	0.101116	0.121471	0.122127	0.102429	0.108995	0.111622	0.097177
	191/1523	167/1523	154/1523	185/1523	186/1523	156/1523	166/1523	170/1523	148/1523
Warren	0.144068	0.155367	0.062147	0.118644	0.115819	0.070621	0.115819	0.09322	0.124294
	51/354	55/354	22/354	42/354	41/354	25/354	41/354	33/354	44/354
Burger	0.136704	0.102996	0.108614	0.104869	0.140449	0.097378	0.108614	0.116105	0.08427
	73/534	55/534	58/534	56/534	75/534	52/534	58/534	62/534	45/534
Rehnquist	0.105512	0.089764	0.116535	0.137008	0.110236	0.124409	0.105512	0.11811	0.092913
	67/635	57/635	74/635	87/635	70/635	79/635	67/635	75/635	59/635

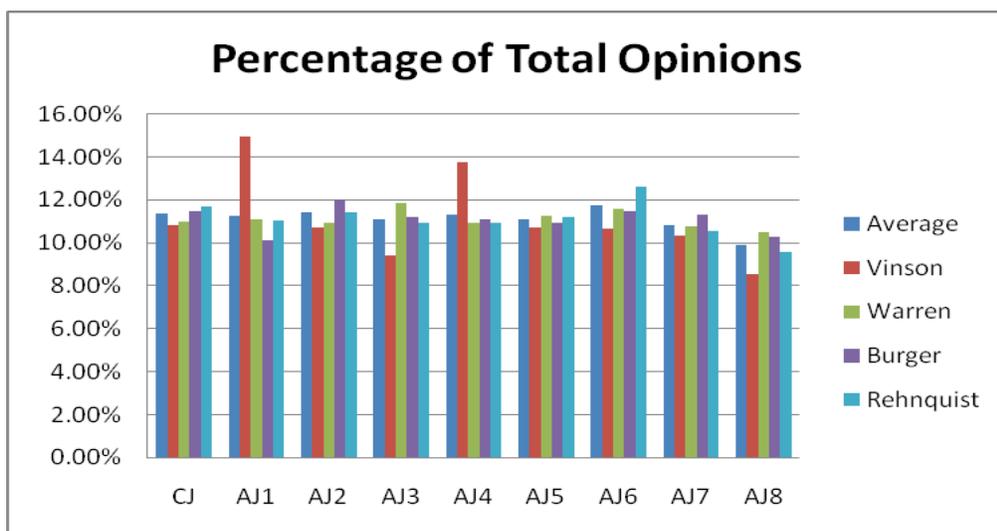


Figure 1⁵

Figure 2⁶

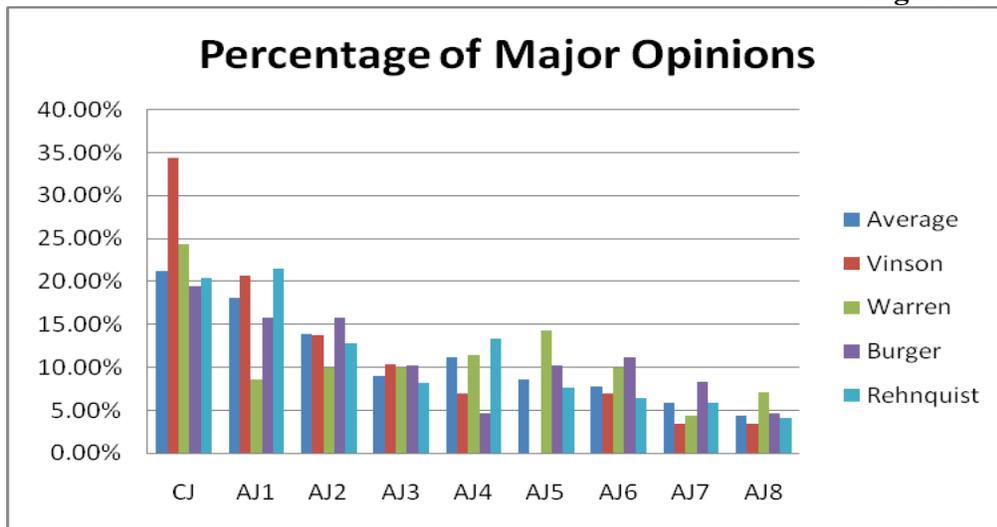


Figure 3⁷

⁵ Data from Spaeth’s Supreme Court Database and Epstein, Segal, Spaeth, and Walker (2007)

⁶ Data from Epstein, Segal, Spaeth, and Walker (2007)

⁷ Data from Epstein, Segal, Spaeth, and Walker (2007)

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