

Contents

List of Figures and Tables xi

Preface xv

Acknowledgments xix

PART I: THEORIES OF SUPREME COURT DECISION-MAKING

1	Introduction	I
	Plan of the Book	6
2	Seven Distinctions in the Literature	8
	Distinction 1: A Psychological Metaphor vs. a Rational-Choice Metaphor	8
	Distinction 2: Theories of Attitude Activation vs. Theories of Rational Choice	11
	Distinction 3: Theories of Choice vs. Theories of Measurement	14
	Distinction 4: Explaining Final Votes vs. Explaining What Final Opinion Is Adopted	15
	Distinction 5: Explaining Just the Final Vote vs. Explaining All Five Stages of Decision-Making	17
	Distinction 6: Theories of "Sincere" Rational Choice vs. Theories of "Strategic" Rational Choice	19
	Distinction 7: A "Status Quo" Policy vs. No "Status Quo" Policy	23
	Conclusion	24
3	Assessing Previous Theories of Supreme Court Decision-Making	26

The Pioneers: Pritchett, Schubert, and Murphy	26
Schubert's Attitude-Activation Model	29
The Attitudinal Model	39
Conceptual Problems with the Attitudinal Model	41
Other Issues Involving the Attitudinal Model	52
The Literature on Strategically Rational Justices	55
Conclusion	60

PART II: A FORMAL MODEL OF SUPREME COURT DECISION-MAKING

4 Why Formal Models?	65
The Role of Theories and Models in Empirical Research	66
Potential Benefits from Formal Modeling	68
Potential Costs and Other Criticisms of Formal Modeling	73
How Can We Be Sure that the Potential Benefits Exceed the Potential Costs?	76
Conclusion	78
5 Definitions and Assumptions	79
Lines, Points, and Utility Functions	80
The Status Quo Policy	83
Preferred-to Sets and Win Sets	85
The Number of Justices	89
An Informational Assumption	90
"Sincere" and "Strategic" Behavior	91
The Independence of Cases	92
Joining, Concurring, and Dissenting	92
Costless Opinion Writing	94
Conclusion	94
6 Coalition Formation and the Final Vote	95
When Can the Status Quo Policy Be Upset?	97
What Are the Constraints on the Set of Policies that Could Be Adopted?	99
What Policies Do Different Majority Coalitions Prefer to SQ?	102
How Do Justices Behave When They Dislike the Majority Opinion?	108

The Agenda-Control Version	110
The Open-Bidding Version	125
The Median-Holdout Version	129
Comparison of the Agenda-Control, Open-Bidding, and Median-Holdout Versions	134
Is Agenda-Control Behavior Unstable?	137
Summary of Major Results	138
7 Opinion Assignment	139
Self-Assignment as an Opinion-Assignment Strategy	140
Alternative Opinion-Assignment Strategies	142
Opinion Assignment by a Justice Outside $W_{Jmed}(SQ)$	143
Opinion Assignment by a Justice Inside $W_{Jmed}(SQ)$	147
Opinion Assignment by a Minority-Side Justice	156
Would an Opinion Assigner Prefer Larger Coalitions?	158
How Much Does Opinion Assignment Matter?	161
Summary of Major Results	162
8 The Conference Vote	163
Different Kinds of Strategic Behavior from Different Kinds of Justices	166
Strategic Behavior by the Chief Justice	168
Strategic Behavior by an Associate Justice Who Could Become the Opinion Assigner	173
Strategic Behavior by a Low-Seniority Justice Who Cannot Become the Opinion Assigner	192
What If Everyone Behaves Strategically?	195
When Does the Chief Justice Self-Assign?	207
Will the Chief Justice Trust What Other Justices Say on the Conference Vote?	209
Summary of Major Results	212
9 Certiorari	215
Sincere Behavior on Certiorari Decisions	216
Strategic Behavior on Certiorari Decisions	220
“Aggressive Granting” and “Defensive Denial” When Justices Are Strategic	226
Summary of Major Results	227

PART III: FUTURE DIRECTIONS FOR THEORIES OF SUPREME COURT
DECISION-MAKING

IO Empirical Implications	231
Understanding the Five Stages of Supreme Court Decision-Making	233
“Nonstrategic” or “Sincere” Behavior on the Supreme Court	241
Vote Switching between the Original and Final Votes	243
Problems of Empirical Measurement	246
Conclusion	248
II Future Research	249
Do the Justices Have Perfect Information about Each Other’s Preferences?	250
Do the Justices Always Have Clear and Fixed Preferences?	253
Are Supreme Court Cases Independent from Each Other?	254
Regular and Special Concurrences	259
How Many Issue Dimensions Are There?	262
Costly Opinion Writing	268
Extensions of the Model	269
Exogenous Preferences and the Impact of The Law	271
Broader Applications	272
Conclusion	273

Notes 277

References 289

Index 295