The Conscientious Justice

How Supreme Court Justices' Personalities Influence the Law, the High Court, and the Constitution

Ryan C. Black, Ryan J. Owens,
Justin Wedeking and Patrick C. Wohlfarth

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US Supreme Court justices make decisions that have a profound impact on American society. Empirical legal scholars have portrayed justices as either single-minded or strategic seekers of policy, and there is little room in these theories for things like law, reputation, or personality. This book offers a fresh perspective that will jar Supreme Court scholarship out of complacency. It argues that justices' personalities influence their behavior, which in turn influences legal development and the US Constitution. This impressive group of authors exhaustively examine every part of the Court's decision-making process, and focus on the trait of conscientiousness and how it influences justices over nine different empirical contexts, from agenda setting to writing the Court's opinions. The Conscientious Justice is an important and comprehensive account of judging that restructures existing approaches to analyzing the High Court.

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To Emily. – PCW

Contents

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1

Introduction

All human beings have personalities that influence their behavior. Though it may surprise some to hear, US Supreme Court justices are human beings. What this means, of course, is that justices have personalities that influence their behavior and, in turn, legal development and the US Constitution. If Court watchers want to understand the Court, they must understand how justices' personalities shape their behavior. *The goal of this book is to establish that justices' personalities – and, more specifically, their conscientiousness – influence judicial decision-making.*

A few brief examples should prompt you to believe that personalities matter on the Court. Consider Justice James McReynolds, who served on the Court from 1914 to 1941. He appeared to hate everyone and everything around him (Knox 2002). Once, when Justice Harlan Stone remarked that an attorney's brief was "the dullest argument" he ever heard, McReynolds responded, "the only thing duller I can think of is to hear you read one of your opinions" (Abraham 1999, 134). An anti-Semite, McReynolds refused to sit for Court pictures with Justice Brandeis, telling his colleagues, "As you know, I am not always to be found when there is a Hebrew around" (Mason 1964, 216–217). One book says he was "the rudest man in Washington, with unspeakable manners – sarcastic, peremptory, and antagonistic" (Knox 2002, xix). Not surprisingly, his colleagues refused to send him "the customary letter of appreciation" when he retired. Not a single justice attended his funeral (Cushman 2003, 749).

Think, next, of Justice Harry Blackmun, who served on the Court from 1970 to 1994. Blackmun notoriously lacked self-confidence. He told prospective clerks "that his was the least desirable clerkship at the Court, in part because his colleagues were more intelligent and better teachers than he" (Lazarus 2005, 23). His own oral argument notes drip with self-deprecating remarks (Johnson 2009). In *NLRB* v. *Food Store Employees Union*

(73–370),[1] he wrote to himself, "What am I doing here on the U.S. Supreme Court!" In *Hadley* v. *U.S.* (91–646), he wrote, "What really am I doing here?" Woodward and Armstrong (1979, 143) note that "Blackmun often seemed paralyzed by indecision" and that "[t]he problem was greatest on cases where he was the swing vote." His indecision was so palpable that Justice Black once remarked, "If he [Blackmun] doesn't learn to make up his mind, he's going to jump off a bridge some day" (143–144).

Finally, think of Justice Antonin Scalia, who served from 1986 to 2016. Scalia was perhaps the most aggressive and acerbic opinion writer (and questioner) on the Court. Dissenting in *King* v. *Burwell* (2014), he shook a giant admonitory finger at the majority, calling the majority opinion "pure applesauce."[2] Dissenting in *Obergefell* v. *Hodges*, he declared that he would "hide [his] head in a bag" before he signed on to Justice Kennedy's opinion.[3] And his concurring opinion in *Webster* v. *Reproductive Health Services* (1998) ripped Justice O'Connor, saying that her views "cannot be taken seriously."[4] His pugnacious personality was not limited to opinion writing. During oral arguments, he regularly interrupted attorneys and his colleagues. Justice Alito (2017, 1605) remarked that Scalia turned oral argument into "a contact sport." Indeed, in *Pennsylvania* v. *Ritchie* (85–1347) – only two months after Scalia took his seat at the Court – Blackmun wrote in his personal papers, "Too much questioning and arguing by Scalia again!" (Johnson 2009).

These are but brief examples, yet they should make the point. Justices have distinct personalities, and it seems eminently reasonable to believe these personalities influence their behavior on the Court. McReynolds's attitude surely influenced how he interacted with his colleagues when they discussed the content of the opinions they wrote. Blackmun's hesitancy almost assuredly influenced how he voted to set the Court's agenda. And it does not require much to believe that Scalia's aggressiveness affected not only oral argument but also the Court's treatment of precedent, his relationships with his colleagues, and other actions. Stated simply, justices' personalities must

[1] Throughout this book, we will refer to the docket number of cases when we discuss them in the agenda-setting or oral-argument context. Doing so makes it easier to search for them at `http://epstein.wustl.edu/blackmun.php?p=3` and `https://sites.google.com/a/umn.edu/trj/harry-a-blackmun-oral-argument-notes`. When we discuss cases the Supreme Court heard and decided, we will refer to the full United States Reports citation or, when necessary, the Supreme Court Reporter.

[2] *See King* v. *Burwell*, 135 S.Ct. 2480, 2501 (2014) (Scalia, J., dissenting).

[3] *See Obergefell* v. *Hodges*, 135 S.Ct. 2584, 2630 (2015) (Scalia, J., dissenting).

[4] *See Webster* v. *Reproductive Health Services*, 492 U.S. 490, 532 (1989).

influence their behavior on the Court. To think otherwise would be "a fiction of Jack-and-the-Beanstalk proportions."[5]

To read empirical legal scholarship over the last fifty years, though, one would hardly see any mention of justices' personalities. With some important exceptions (Hall 2018; Collins 2011; Klein and Mitchell 2010; Baum 2006; Wrightsman 2006; Baum 1997; Gruenfeld 1995; Aliotta 1988; Tetlock, Bernzweig, and Gallant 1985), scholarship has ignored the role of personality in judicial decision-making. Instead, studies portray justices as either single-minded (Segal and Spaeth 2002) or strategic (Epstein and Knight 1998) seekers of *legal policy*. Scholars largely treat justices as fungible, with only their ideological differences worth examining. We agree, then, with Schauer (2000, 617), who bemoaned that political scientists do not "even pause to examine the possibility" that things other than ideology determine judicial behavior (see also Epstein and Knight 2013; Posner 2008). There has been almost a singular focus on ideology.

Put simply, empirical legal scholarship has remained in "the clean and well-lit prison of one idea" (Chesterton 1908, 22). That idea has been that justices seek policy goals above all else. It's time to break out. Empirical legal scholarship must grow beyond its existing boundaries. It must recognize how justices' *personalities* influence judicial behavior.

This book seeks to help in that regard. It focuses on how conscientiousness influences justices' behavior. We set our sights squarely on conscientiousness. We exhaustively examine its effects on justices throughout the decision-making process. And while so doing, we employ the most sound measure of personality to date.

1.1 CONSCIENTIOUSNESS AND SUPREME COURT JUSTICES

Personality is a difficult concept to define. Indeed, even psychologists are "unable to arrive at a commonly accepted definition" of it (Greenstein 1969, 2–3). One definition calls personality, "the set of psychological traits and mechanisms within the individual that are organized and relatively enduring and that influence his or her interactions with, and adaptations to, the intrapsychic, physical, and social environments" (Larsen and Buss 2014, 4). Another distinguishes the study of personality into two parts: "the fundamental goal of understanding the structure of personality and also the fundamental

[5] *Bank One Chicago* v. *Midwest Bank and Trust Co.*, 516 U.S. 264, 279 (1996) (Scalia, J., concurring).

goal of understanding the functions of personality," where "understanding the functions of personality concerns how personality works to guide and direct human functioning in diverse life domains" (Snyder 1994, 163). These definitions seem, at least to us, full of jargon and not particularly helpful to most readers. Thankfully, we can turn to the concept of traits to help define and understand personality. The scholarship on traits has a more recent scholarly pedigree and tends to be cleaner and clearer. As a consequence, most personality scholars today focus on traits. And so do we.

Most scholars argue that a trait is a fairly stable feature of someone's behavior. It is a behavior that is "typical of the person in question" (Mondak 2010, 5). One could think of traits as central tendencies. As McCrae and Costa Jr. (2003, 7) note, traits are "dimensions of individuals' differences in tendencies to show consistent patterns of thoughts, feelings, and actions." Thus, when we say someone is agreeable, we mean that she *usually* is agreeable. She could, of course, be uncooperative and disagreeable from time-to-time, but her typical behavior tends to be agreeable (Mondak 2010). In other words, a trait is different than a state of being. Someone who is angry right now is in a state of anger; someone who is prone to anger across many situations would have the trait of disagreeableness.

Scholars have identified five major traits possessed by all humans. These "Big Five" traits are conscientiousness, agreeableness, neuroticism, openness, and extraversion. Conscientiousness bespeaks dependability (Mondak 2010, 53). It captures whether a person is loyal and hardworking. People who score high on the conscientious "dimension" tend to be hard workers, perform well at their jobs, and are academically successful. Perhaps a bit of an overstatement (but not much), one could think of an intelligent Boy Scout as the image of conscientiousness. Agreeableness focuses on interpersonal relations, with an emphasis primarily on the degree to which a person interacts positively with others. Neuroticism touches on emotional instability. Openness to experience touches on a person's sensitivity toward change and routine. Extraversion is a trait that relates to an individual's tendency to be outgoing or demure.

While all of these traits combine to create a personality profile, we focus on the trait of conscientiousness throughout this book. We do so for two primary reasons. First, we believe that focusing on one trait is theoretically more precise and informative than examining every trait. Trying to write a careful and coherent theory about how five different traits interact with one another and influence justices in numerous judicial activities would devolve quickly into cherry-picked hypotheses and post hoc rationalizations. Rather than trying to theorize about all traits (probably unconvincingly), we opted to focus on one

trait and examine it exhaustively over nine different contexts. By focusing on one trait, we can follow it through the entire judicial decision-making process, from agenda setting to the published opinion and more, an enterprise which begets focus and clarity.

That explains why we focus on one trait, but it does not explain why we focus specifically on conscientiousness. We focus on conscientiousness because it is the trait most directly relevant to judging. Meticulousness and academic rigor – concepts tied to conscientiousness – are necessary to become a judge. Consider the requirements established by the American Bar Association's Standing Committee on the Federal Judiciary.[6] The ABA demands that Supreme Court nominees "possess exceptional professional qualifications," such as "industry and diligence . . . intellectual capacity, judgment, writing and analytical abilities, knowledge of the law," and other related characteristics.[7] Furthermore, the ABA's Canons of Judicial Ethics explicitly demand that judges be conscientious.[8] Specifically, item 34, titled "A Summary of Judicial Obligation," declares that "[i]n every particular [a judge's] conduct should be above reproach. [A judge] should be *conscientious*, studious, thorough, courteous, patient, punctual" (emphasis added). Simply stated, of the Big Five traits, conscientiousness seems to us the most relevant to judging. (The reader interested in the other traits will note, however, that we control for the other four traits in every one of our models.)

1.2 WHY CARE ABOUT CONSCIENTIOUSNESS AND SUPREME COURT JUSTICES?

Readers should care about conscientiousness and the Court for at least three reasons. First, knowing how conscientiousness influences justices can answer a number of current mysteries about justices and the Court. We sometimes observe justices behave in ways that existing scholarship cannot explain. For example, why might a conservative justice like Clarence Thomas vote to grant review to a case when other conservative justices do not? Why do some justices vote to overrule precedent when their ideologically similar colleagues do not?

6 https://www.americanbar.org/content/dam/aba/uncategorized/GAO/Backgrounder.authcheckdam.pdf.

7 To be sure, "judicial temperament" touches on agreeableness and openness, but those features appear not nearly as important to observers as the analytical features related to conscientiousness.

8 https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/pic_migrated/1924_canons.authcheckdam.pdf.

Why are some justices more susceptible to legal persuasion than their ideologically similar colleagues? Existing theories cannot answer these questions. Their predominant focus on ideology leaves them mute. A focus on conscientiousness, however, can answer these questions. And our analyses reveal that conscientiousness plays a strong role in all of these behaviors.

Second, readers should care about conscientiousness and the Court because conscientiousness influences every aspect of judicial behavior. As we show in every empirical chapter throughout this book, Court action and the evolution of law are functions of conscientiousness. Sometimes, conscientiousness plays a stronger role than the factors we currently believe influence justices; sometimes it plays a more subtle, supplemental role. But always, it matters. Conscientiousness influences whether a justice votes to hear cases, receives opinion assignments, upholds precedent, recuses, follows public opinion or the Solicitor General, and many other factors.

Third, the importance of conscientiousness – and how it shapes judicial decision-making – matters to policy makers. Presidents who seek to influence the Court ought to pay attention to the conscientiousness of those whom they select. After all, conscientiousness may make a justice more (or less) effective on the Court. Presidents seeking effective appointees should take the time to understand their nominees' personalities and how they expect them to interact with the justices with whom they must work (e.g., Rosen 2007). Because conscientiousness influences how justices behave, those who select justices must understand it. In other words, there are both academic and policy-based reasons to understand justices' conscientiousness.

To be clear, we do not argue that conscientiousness – or personality more broadly – is the *sole* factor that explains judicial behavior. We simply argue that conscientiousness is another factor – an important one, to be sure – that explains judicial behavior. We agree with Atkins and Ziller (1980, 190), who argue "the issue is not really whether personality, in and of itself, explains the policy outputs of courts . . . On the contrary, the conceptual utility of personality theory . . . lies in the extent to which it provides [additional] explanations" to known behavioral patterns. Understanding conscientiousness can provide a fuller understanding of the Court's behavior.

1.3 A ROADMAP FOR THIS BOOK

This book unfolds as follows: Chapter 2 explicates our theory and provides important background information for readers. We discuss existing theories of judicial behavior, including their strengths and their weaknesses. We then provide an extended discussion about psychology scholarship and the role of

conscientiousness in explaining human behavior. Throughout the book, each hypothesis we proffer draws from this chapter and its theory.

Chapter 3 discusses how we measure conscientiousness. We measure conscientiousness by examining justices' pre-nomination speeches and writings. We employ IBM's Watson Personality Insights program to derive empirical estimates of their traits.[9] We follow the path set out by Winter, who broke ground in measuring the personality components of political actors by using their written (and recorded) words (Winter 2003). Winter used this method to determine the personalities of presidents, other world leaders, and even individuals in the business world. Others have verified the use of language to assess leaders' traits (see, e.g., Keller and Foster 2012). After an extensive discussion of our measurement methodology, we provide an exhaustive series of analyses to establish the criterion validity of our measures. We then compare our measures of justices' personalities to a similar, recently published study (Hall 2018). The comparison reveals our measurement approach to be substantively and empirically stronger. We urge scholars to employ our estimates of justices' personality traits.

Chapter 4 examines how justices' conscientiousness influences their behavior at the Court's agenda-setting stage. Justices enjoy the legal authority to select which cases the Court will hear and decide each year. And while scholars know quite a bit about the conditions under which justices set their agenda (see, e.g., Black and Owens 2009*a*), they know next to nothing about how personality influences those decisions. Using the private archival data of Justice Harry Blackmun, we scrutinize how conscientiousness influences justices' agenda setting votes. The data uncover three important results. First, highly conscientious justices are more likely to seek to resolve legal conflict than justices who are less conscientious. Second, highly conscientious justices are less likely to cast tentative "Join-3" votes. Third, highly conscientious justices are less likely to pursue forward-looking policy goals than less conscientious justices.

Chapter 5 focuses on whether conscientious justices are more likely to be persuaded by strong and credible legal arguments than less conscientious justices. After the Court grants review to a case, it receives written briefs from the attorneys and then holds oral argument. The attorneys provide justices with information about the case and try to persuade them to vote for their position. Existing scholarship suggests that justices respond to strong legal arguments (Black, Hall, Owens, and Ringsmuth 2016; Johnson, Wahlbeck, and Spriggs

9 https://www.ibm.com/watson/services/personality-insights/.

2006). They are less likely to vote for the party that employs emotional language in its briefs (i.e., the less credible attorney), and they are more likely to side with the attorney who makes a stronger oral argument. We seek to understand why. More specifically, we analyze whether those findings apply to *all* justices similarly, or whether, as we expect, those results obtain primarily among the most conscientious justices. Our analyses reveal that conscientious justices are most amenable to strong legal arguments.

Chapter 6 analyzes whether conscientious justices are more or less likely to support the US Solicitor General. The SG's office is highly successful before the Supreme Court. Recent scholarship ties that success to the SG's practice of making professional and objective arguments to the Court (Black and Owens 2012*b*; Wohlfarth 2009). We go beyond these findings, however, and argue that particular justices – the highly conscientious ones – are more likely to put a premium on that high quality information. Our results concur. Conscientious justices are more likely to support the SG's position than less conscientious justices. And these results hold whether the SG is a party to the case or participates as a "friend of the Court." The conscientious justice appears to value the SG's high quality information more than less conscientious justices.

Chapter 7 investigates the conditions under which Chief Justices assign majority opinions to some justices but not others. When the Chief is in the majority coalition in a case, Court norms empower him to assign the opinion, either to himself or to another justice in the majority coalition. The question we seek to answer is whether the Chief is more likely to assign opinions to increasingly conscientious justices. The results show that Chiefs are, in fact, significantly more likely to assign opinions to conscientious justices. Because of the strong norm of equitable opinion assignment – everyone receives about the same number of opinions these days – the Chief's powers are somewhat constrained. But some cases are more important than others, and in those cases, Chiefs favor conscientious justices.

Chapter 8 analyzes whether conscientiousness influences how justices bargain and negotiate with each other over the content of opinions. After the majority opinion author circulates his or her draft opinion, other justices in the majority coalition can (among other things) join the opinion, ask for changes, make threats, or refuse to join. We analyze whether a justice's conscientiousness influences the duration of time it takes her to write a majority opinion. We also examine whether an increasingly conscientious justice is more likely to bargain with opinion writers, and whether conscientiousness influences the types of bargaining tactics justices employ. Our results suggest that conscientious justices take longer to draft opinions than

less conscientious justices. They take their time in an effort to write more thorough opinions. Contrary to our expectations, increasingly conscientious justices are, on average, less likely to bargain with opinion writers. Nevertheless, they are more likely to bargain in salient cases. And when they do bargain, they are more likely to make suggestions than less conscientious justices.

Chapter 9 examines whether justices' conscientiousness influences the content of the opinions they write. The chapter investigates how justices' conscientiousness influences the legal breadth, cognitive complexity, length, and rhetorical clarity of the opinions they write. Rooted in the theory that conscientious justices will be more likely to seek out as much information as possible to resolve a legal dispute, the results suggest that conscientious justices write opinions with greater breadth, opinions that are more cognitively complex, longer opinions, and (contrary to our expectations) slightly less readable opinions.

Chapter 10 examines whether increasingly conscientious justices are more likely to overrule precedent. Our theory is simple. Conscientious people believe they must fulfill their roles and obligations. The role of a justice, at least according to most people in the public and in the legal community, is to follow rather than circumvent precedent. Therefore, conscientious justices should be more supportive of precedent. Our analyses concur. Conscientious justices are more likely to treat precedent positively than their less conscientious colleagues. Further, to the extent that conscientious justices must circumvent precedent, they do so in a limited manner, and appropriately within the realm of legal treatment. They are less likely to overrule or criticize a precedent than their less conscientious colleagues. Instead, they distinguish those precedents.

Chapter 11 investigates whether conscientious justices are more likely to follow public opinion than less conscientious justices. We believe conscientious justices seek out information about the Court's external environment. Why? Conscientious people tend to value their professions and protect existing norms. The Court needs public support in order to survive. As such, we suspect that conscientious justices will pay attention to public opinion when reaching decisions. The results agree. The most conscientious justices in the modern era exhibited considerable concern for public opinion when making decisions. By contrast, the least conscientious justices exhibited no responsiveness to public opinion at all.

Chapter 12 probes judicial recusal, a normative topic that has become newsworthy in recent years. We analyze whether conscientious justices are more likely to recuse themselves from cases than less conscientious justices.

Because conscientious individuals tend to be more dutiful than less conscientious people, we believe conscientious justices will be more likely to recuse. They are. Whereas less conscientious justices stay involved with cases to accomplish their policy goals, conscientious justices remove themselves to avoid the appearance of impropriety.

Chapter 13 offers our concluding thoughts. We lay out the implications of our findings and discuss the future study of judicial behavior. We theorize what a Court full of conscientious justices might look like and discuss what our examination of conscientiousness can tell us more broadly. It is our hope that other scholars begin to examine personality more carefully and how it interacts with existing theories about the Court and justices, all in an effort to gather a more realistic understanding of judging on the High Court.

We should note one thing for the reader. In most of the empirical chapters, we replicate existing studies (either our own or those of others) while adding conscientiousness and the other four personality traits. Because those models contain different variables, some chapters include some covariates not found in other chapters. While this approach allows us to examine numerous empirical questions across a multitude of judicial actions, it does come at the (very slight) cost of employing different covariates in different chapters.

* * *

When Chief Justice Fred Vinson passed away, Justice Frankfurter stated, "This is the first indication that I ever had that there is a God" (Cooper 1995, 31). Writing to Frankfurter, then-Solicitor General Philip Elman remarked:

> What a mean little despot he [Vinson] is. Has there ever been a member of the Court who was deficient in so many respects as a man and as a judge[?] Even that s.o.b. McReynolds, despite his defects of character, stands by comparison as a towering figure and powerful intellect. . . This man is a pygmy, morally and mentally. And so uncouth. (Cooper 1995, 31)

Does personality influence judicial behavior? It sure seems as though it must. And our goal is to find the answer.

2

A Theory about Justices and Conscientiousness

When it comes to determining what Americans want from their judges, abstract ideals collide with contemporary expectations. Many of us claim to desire judges who will decide cases based on nothing more than law and logic. Aristotle also echoed this thought more than two thousand years ago when he wrote that "law is reason unaffected by desire"(Aristotle, translated by Benjamin Jowett, 350 BCE).[1] This idealistic conception of law and judging lives on today. Chief Justice Roberts underscored it when he told the Senate Judiciary Committee that judges are merely umpires who call balls and strikes. Indeed, Supreme Court nominees in the modern era have largely fallen over themselves declaring their fidelity to this general principle (Wedeking and Farganis 2014).

And yet we also want judges with the "right" personalities. Ask yourself: what characteristics should the ideal judge have? Surely most everyone would agree that a judge should be fair and impartial. To that list, most would add intelligent, qualified, honest, trustworthy, efficient, organized, and dependable. Further, most everyone would want that judge to be careful, watchful, thorough, and diligent. The Code of Conduct for US judges insists that they perform their duties diligently.[2] What are these adjectives, if not descriptions of judges' personalities? Put simply, when we say we want judges who are tabula rasa, we really want judges with, among other things, certain personalities.

[1] Translation by Benjamin Jowett, Book 3, Part XVI, http://classics.mit.edu/Aristotle/politics.3.three.html.

[2] In many ways, the Code of Conduct for United States Judges has codified these traits to an extent. This is not more plainly evident than in its requirement that judges remain impartial. In other words, judges need to, at least *initially*, keep an open mind. The same thing can be said for the traits that are closely tied to conscientiousness. More specifically, a key pillar of the Code of Conduct insists that judges perform their duties *diligently*, which is an adjective often used to define *conscientiousness*.

Of course, everyone knows that judging is not *really* purely objective. And we've known it for some time (Gibson and Caldeira 2011). Frank (1936, 120) wrote that "the law is not a machine and the judges not machine-tenders." In fact, much of the last eighty years of empirical legal scholarship has focused on understanding how justices' ideologies influence their behavior. And on this score, scholars have amassed a great deal of evidence. Knocking down that straw man really was not so hard.[3]

Yet even this empirical work suffers from a huge blind spot (Epstein and Knight 2013). It ignores the importance of personality. Existing scholarship fails to explicate how justices' personalities influence their behavior, even as scholars have become numb to the importance of other extralegal considerations.

In this chapter, we describe the evolution of scholarship on Supreme Court justices' behavior. This scholarship has gone through three major periods: the mechanical jurisprudence (or legal theory) period, the attitudinal period, and the rational choice period. We discuss each and then offer our theory of personality, focusing specifically on conscientiousness. At the conclusion of the chapter, we will have traveled over a hundred years, provided an overview of judicial and personality scholarship, and theorized how to merge the two.

2.1 THE EVOLUTION OF SCHOLARSHIP ON JUDICIAL BEHAVIOR

During his senate confirmation hearing to become Chief Justice, John Roberts stressed the importance of judges following precedent. He noted:

> Hamilton, in Federalist No. 78, said that, "To avoid an arbitrary discretion in the judges, they need to be bound down by rules and precedents." So even that far back, the Founders appreciated the role of precedent in promoting evenhandedness, predictability, stability, the appearance of integrity in the judicial process. (Roberts 2005, 142)

He went on to say: "Judges and justices are servants of the law, not the other way around. Judges are like umpires. Umpires don't make the rules; they apply them" (Roberts 2005, 55).

Roberts's comments represent the dominant view of judicial behavior for decades, if not centuries, in America. It is a view which holds that justices decide cases based on "the law" without regard to their personal policy

[3] Though the ease through which this happened may reflect our own hindsight bias.

preferences or other extralegal considerations. By applying legal principles to the facts of cases, judges arrive at sound decisions without injecting their personal beliefs into them. It is a mechanical process: Examine the facts of the case. Find existing case(s) with similar facts. Apply the law from previous case(s). Repeat. Such is the objective case method approach to judging.

Harvard Law Professor Christopher Columbus Langdell more formally introduced this case-method approach in 1870 (Kimball 2006). Langdell believed that "law, considered as a science, consists of certain principles or doctrines. To have such a mastery of these as to be able to apply them with constant facility and certainty to the ever-tangled skein of human affairs, is what constitutes a true lawyer" (Langdell 1871, iv). A case-method approach to studying law, he argued, would allow students of law, and judges, to discover legal doctrines by tracing their slowly revealed truths over a series of cases (where a series of cases, in many instances, spanned centuries). Soon, most law schools in the country taught the case-method approach, and many scholars believed it was how judges and justices actually decided cases.

Not everyone agreed, however, that judges and justices applied the law so mechanically and objectively. A collection of scholars called "legal realists" denied that the common law had a fundamental structure discernible by objective behavior and neutral legal principles. Instead, the legal realists insisted that legal doctrine was the product of social conflict and political compromise (Ackerman 1974, 121). Fictional was the notion that judges mechanically applied fundamental legal rules to resolve disputes. Legal realists began to collect data to examine whether justices in fact ruled according to law or whether, as they believed, justices injected their own policy preferences into their rulings.

Cracks showed in the mechanical jurisprudence façade at least as early as the 1930s. Perhaps the most notable crack came from the events surrounding the "switch in time that saved nine" (Ho and Quinn 2010). During the Great Depression, Congress passed President Roosevelt's New Deal legislation in an effort to improve economic conditions. Some of these laws were radical. The Court struck down several such laws, particularly in the 1934–1935 terms. In response, FDR proposed a plan that would add new members to the Supreme Court, increasing its ranks from nine to fifteen, to give him a robust majority that would, instead, uphold New Deal legislation. This Court-packing plan put the Court in the crosshairs, and it made some justices nervous. The public's support for FDR and the New Deal was a rising river, threatening to flood and overtake the Court. So, in *West Coast Hotel* v. *Parrish* (1937),

Justice Owen Roberts abruptly departed from his usual voting tendencies and cast his vote to uphold New Deal legislation.[4] His switch did two things: First, it signaled that FDR's Court packing plan was unnecessary (thus preserving the number of justices at nine). Second, it signaled to scholars that legalistic explanations of judicial behavior were, at best, incomplete.

Shortly thereafter, in 1941, C. Herman Pritchett sparked a revolution in legal scholarship when he argued that "it is the private attitudes of the majority of the Court which become public law" (Pritchett 1941, 890). In other words, the mechanical legal theory was empirically wrong. Pritchett did not merely state his proposition, though. He also supported it with data. He examined the cases in which justices dissented. He observed, first, that justices were dissenting more than ever and, second, that the same groups of justices tended to dissent with each other. Fault lines between the majority and dissenters seemed clear. He wondered: If the law dictated justices' votes, as many of his time argued, why did justices dissent? And why did they dissent together in blocs? Pritchett's answer: justices were driven by ideological goals that influenced how they voted. And his data seemed to concur.

Scholars after Pritchett followed suit. They raced to collect and analyze data on justices' votes. Like Pritchett, they argued that justices' policy preferences influenced their behavior. Soon, a new theory of judicial decision-making dominated. This model argued that justices decided cases solely to further their policy goals. As Segal and Spaeth (2002) argued, justices with liberal attitudes over criminal law, for example, voted liberally in such cases. Justices with conservative beliefs voted conservatively. This "attitudinal model" argued that (1) when a judge lacks political or electoral accountability, (2) has no ambition for higher office, and (3) serves on a court of last resort that controls its own agenda, the judge could – and would – decide cases purely on policy grounds.

Beginning in the 1990s, however, a new approach took hold. This new "strategic model" agreed that justices seek to effectuate their policy goals, but argued that they are constrained in their pursuit of those goals by their need to work with other actors and institutions (Epstein and Knight 1998). To maximize their policy preferences, they argued, justices act strategically by taking into account the choices they expect other relevant actors to make. For example, justices who want to vote liberally might need to moderate when faced with a conservative president and Congress. They might need to moderate when faced with colleagues who are centrist or conservative. And they might need to moderate when they face a conservative public.

4 See *West Coast Hotel* v. *Parrish*, 300 U.S. 379 (1937).

The strategic approach was a step in the right direction. It moved scholarship away from a myopic and unrealistically narrow focus on ideology. But even today it still requires improvement. It's time for a new theory of judging, or at least one that incorporates additional factors. Indeed, Epstein and Knight (2013, 13) – the architects of the strategic model—have made similar comments, imploring scholars to go beyond their existing work. They have called for "a restructuring of the very foundation of the (political science) study of judging," moving away from a nearly singular focus on ideological goals. As they put it:

> [I]t is impossible to deny that political scientists have offered an extremely unrealistic conception of judicial behavior for far too many years. It's time to move toward a more realistic understanding … If the process of judicial decision making is best characterized as a complicated mix of motivations, then the motivational framework should allow us to accommodate this complexity and, perhaps, to distinguish the conditions under which different types of motivations apply. (24)

Their call follows repeated entreaties by Baum and Posner for scholars to think about how other goals motivate judges (Baum 2006; Posner 1993). For example, in *How Judges Think*, Posner (2008) argues that justices are not legalists but neither are they influenced only by policy preferences. He argues that factors such as leisure, income, job satisfaction, popularity, prestige, reputation, and avoiding reversal may influence judicial decisions. He goes so far as to say that these factors may account for outcomes we generally attribute to ideology. Similarly, in a number of studies, Baum has asked scholars to think more carefully about judicial motivations (Baum 2010, 2006, 1997). In particular, he has pointed out the need for greater research into personality and judging.

To be sure, some scholarship has answered the call. Some empirical studies have focused on how precedent may actually constrain justices, showing that precedent is a norm (Knight and Epstein 1996) that corrals justices. Other work shows how early judicial treatments of precedent influence subsequent treatments (Spriggs and Hansford 2002). Moreover, research shows that precedent conformance varies depending on a justice's length of tenure on the Court (Hurwitz and Stefko 2004). Going further, many scholars argue that the force of precedent works as a constraint through justice-created institutional constructs, such as jurisprudential regimes that serve to identify relevant case facts or a particular level of scrutiny for the justices to use (Richards and Kritzer 2002; Scott 2006; Pang et al. 2012; Bartels and O'Geen 2015). Along similar lines, other research has argued for the importance of precedent as

one of the key "legal" factors that influences justices' decision-making (Bailey and Maltzman 2011). Other recent work reinforces the importance of precedent's legal impact within the legal hierarchy (Masood, Kassow, and Songer 2017).

We have, in a sense, come back to the starting point where Pritchett made his mark. What *does* explain judicial behavior on the High Court? It has to be more than policy alone. Indeed, even Pritchett came to lament the work of his successors, stating: "[P]olitical scientists, who have done so much to put the 'political' in 'political jurisprudence' need to emphasize that it is still 'jurisprudence.' It is judging in a political context, but it is still judging" (Pritchett 1969, 42). To this comment, we add that it is still judging – but by humans with personalities.

2.2 SCHOLARSHIP ON PERSONALITY AND THE COURT

Despite the fact that a link between personality and judicial behavior seems intuitive, scholars have largely ignored it.[5] Some studies simply tip their hats to the importance of personality. For example, Goldman (1966, 377) documented the rates of dissension and unanimous reversals across federal circuits, writing, "Personality characteristics . . . may be relevant [to this behavior]." Yet there was no further inquiry or follow-up. Other studies discuss the importance of personality (and psychology) but do so without empirical tests (see, e.g., Wrightsman 2006).

One area where scholars have examined personality and judging is in explorations of how cognitive aspects of personality might influence justices. Some of this early work was done by psychologists. For example, Tetlock, Bernzweig, and Gallant (1985) discovered that judicial ideology is related to a justice's integrative complexity, a cognitive structural variable that assesses the degree of differentiation and integration through which a justice interprets events in the world. In other words, it examines whether justices see the world in black and white or in shades of gray. Gruenfeld (1995) later found, however, that

[5] Some research advocating the importance of personality has been put forth to explain aspects of mass behavior (e.g., Mondak and Halperin 2008; Mondak 2010; Mondak et al. 2010). For example, we know that people with certain personalities are more likely to seek out political information, to be exposed to disagreement, to hold certain attitudes, and to participate in politics (Mondak 2010). Other research has focused on personality and presidents (e.g., Laswell 1930; George and George 1964; Hermann 1984; Winter 1987; Barber 1992; Rubenzer, Faschingbauer, and Ones 2000) and legislative behavior (Barber 1965; Hermann 1977; Crichlow 2002; Ramey, Klinger, and Hollibaugh 2017). These studies all show that personality influences the choices political actors make. But similar scholarship on the Supreme Court is hard to find.

this result was conditional on the status of being in the majority or minority coalition.

Not until much later did political scientists and empirical legal scholars analyze the effects of personality on decision-making.[6] For example, Collins (2011) examined whether cognitive dissonance theory explains justices' decisions to write concurring opinions. Moyer (2012) studied whether conservative judges have a cognitive need to simplify the world. Braman examined motivated reasoning and the Court (Braman 2009; Braman and Nelson 2007). Owens and Wedeking (2012) analyzed how cognitive rigidity can lead to ideological drift on the High Court. But even these studies, while clearly useful, do not answer our questions. They do not directly address the connections between justices' traits and their behavior.

Two studies more directly address how personality influences justices. First, Aliotta (1988) examines how justices' personal *motives* influence their decisions to write majority and separate opinions. She conceived of personality as three personal "motives" (the achievement motive, the affiliation motive, and the power motive) that influenced justices. While the study was an important first step, it was hampered by serious limitations. First, it examined personality through the lens of personal motives. On its own, this is not a limitation. Motives are clearly important to personality (Winter et al. 1998), and traits scholars acknowledge this (Roberts et al. 2014, 1324–1325). Indeed, as we began work on this book project, we sought to define personality as an interactive effect between traits and motives. The problem, however, is that the scholarship on motives is not nearly as extensive as the scholarship on traits. Traits have become the dominant aspect of personality that scholars study. As a consequence, there is simply less agreement on what motives are and, more concretely, how to measure them.[7] What is more, Aliotta measured these personal motives by coding the justices' statements during their confirmation hearings. But these remarks are unlikely to be good samples from which to draw because nominees make them under conditions where they have strong incentives to mask their true beliefs and motives. In addition, much of the

6 One early exception was Gibson (1981), who explored the impact that self-esteem has on behavioral activism in judicial decision-making. By interviewing a sample of California judges, Gibson was able to test a theory about how self-esteem had an indirect impact on the behavior of judges, working to influence the judges' role expectations (see also Atkins and Ziller 1980).

7 The debate about motives has many aspects. Part of the debate stems from disagreement on what motives are central. Other key aspects of the debate stem from the methods used to measure motives, whether implicit and explicit motives are being assessed, and the relationship between explicit and implicit motives, as well as their relationship with traits (Roberts et al. 2014, 1324–1325).

nominees' language comes in response to topics that *senators* want to address. So, while this work was advanced for its time, it did not spur much follow-up.

More recently, Hall (2018) sought to examine the role of the "Big Five" personality traits on five areas of judicial behavior: (1) agenda setting, (2) opinion assignment, (3) intra-Court bargaining, (4) voting on the merits, and (5) separate opinion writing. Hall proposes a "psychoeconomic" model of decision-making in which justices purportedly engage in utility maximization such that their personality traits structure how they derive utility from decisions. While we agree with the fundamental sentiment of Hall's (2018) study – that justices' personality traits matter – we are compelled to point out some of the study's limitations.

The first limitation is theoretical. Hall applies personality through the lens of economic utility maximization. But, utility maximization quickly becomes troublesome when integrated with personality traits, at least in terms of studying the Court. After all, utility maximization is a volitional and strategic effort. Personality, on the other hand, is largely involuntary. It operates "in the background," often without conscious control, like the human pulmonary, circulatory, or nervous systems.

If, alternatively, the argument is that utility is a product of everyone's trait profile, that is easier to understand conceptually. Nevertheless, the theorizing quickly becomes intractable. There are so many trait profiles it would take a Herculean effort to theorize about all of them. As Figure 1 reveals, even if we simplify things, where each of the five traits have only a high or low level, there are approximately thirty-two different trait profiles, each with a different utility. As this shows, the enterprise of identifying and sorting trait profiles quickly becomes complicated with five traits and rank ordering the many possible combinations of utility. Suffice it to say, deriving utility from a range of personality traits is an extremely challenging task. A full explication of the interaction between economic utility maximization and personality must, absolutely, contend with these different variations – and theorize them all. The study, however, does not do that. It really cannot, given the large number of possible trait profiles.

The second limitation with Hall's study is methodological – and it cuts to the heart of the matter. As we discuss more fully in our measurement chapter, Hall derives his indicators of justices' personalities using the text of their concurring opinions written while on the Court. This is problematic — very problematic. Concurrences are endogenous to decision-making and behavior on the Court, thereby creating a serious circularity problem. Justices write concurrences for a variety of reasons. It is analytically inappropriate to use case and vote driven information written by the justices while on the Court to

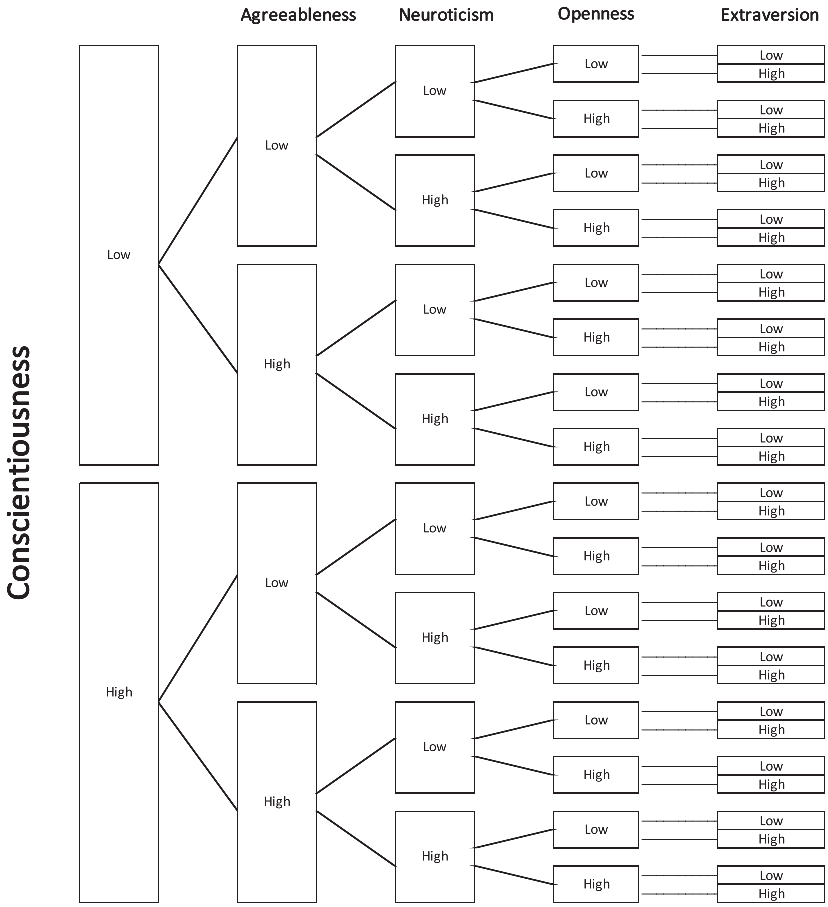

FIGURE 1: A simplified example of the many possible trait profiles, focusing on conscientiousness.

generate scores that then predict those justices' votes and behavior . . . while on the Court.

To summarize, scholarship started with an aspirational and noble view of judging. But with the systematic collection and analysis of data, scholars came to identify a host of extralegal influences on judicial behavior that challenged that view. Scholars soon identified policy preferences as the main drivers of judicial behavior. The recipe for judicial behavior, however, surely calls for more than a cup of policy preferences. It must include other ingredients. We argue that personality is one such element.

2.3 CONSCIENTIOUSNESS: A (JUDICIAL) TRAIT WORTH EXAMINING

Personality is "the set of psychological traits and mechanisms within the individual that are organized and relatively enduring and that influence his or her interactions with, and adaptations to, the intrapsychic, physical, and social environments" (Larsen and Buss 2014, 4). We focus here on the core *structure* of personality, the "Big Five" personality traits (McCrae and Costa 1987; McCrae and Costa Jr. 1997).[8] Traits have a long history in personality psychology. In recent years, trait scholarship has become one of the leading approaches to understanding personality (John and Srivastava 1999).

Roberts, Jackson, Fayard, Edmonds, and Meints (2009, 369) define a trait "as a tendency to respond in certain ways under certain circumstances . . . [(Tellegen 1988)], or, more generally speaking, [a] tendency to think, feel, and behave in a relatively enduring and consistent fashion across time." A trait is "big" (e.g., Big Five) in the sense that it contains several lower order facets or dimensions of that trait. This means that most personality scholars conceptualize traits in a hierarchical manner, where a main trait is the higher order trait, but also has lower order dimensions or "facets." For example, some common subdomains of conscientiousness include reliability, orderliness, impulse control, decisiveness, punctuality, formalness, industriousness, and conventionality (Roberts et al. 2004). While personality researchers agree on the Big Five, they have yet to agree on the number and exact dimensions of the lower order facets. As such, we focus our efforts on the higher-order traits.

Conventional wisdom suggests that personality traits are heritable, largely stable, and immutable over time. Much of this thinking, however, has evolved in recent years, with evidence showing that the environment plays more of a role than heritability, and that trait change does take place. The heritability of traits is a common misconception that persists. As Roberts et al. (2014, 1316) summarize, the best estimates suggest only between 40 percent and 50 percent is heritable, citing Krueger and Johnson (2008). This suggests, they argue, that the majority of the variance in traits are due to environmental influences.[9]

[8] While we only use traits here, we also acknowledge that there is more to personality research that future research should explore. For example, future work should look to explore the boundaries and connections between traits and motives and their potential interaction (Winter et al. 1998; Roberts et al. 2014) and also do more to address the critique of traits as descriptions versus traits as explanations (e.g., Pervin 1994).

[9] Regarding the stability of traits, this line of thinking appears to have originated with an early psychologist named William James, who wrote, "Already at the age of twenty-five you see the professional mannerism settling down on the young commercial traveller, on the young

There is a growing line of research showing that personality traits do change over a person's life. While the changes are not large, there is no longer support for the "personality is made of plaster" argument (Bleidorn et al. 2009; Helson, Jones, and Kwan 2002; Roberts and Mroczek 2008; Scollon and Diener 2006). Recent research suggests that this debate can be explained by personality scholars emphasizing different aspects of trait models.[10] We are agnostic on this debate, but we think it helpful to think of personality as made of clay – something that can be molded and shaped. Personality traits are likely to be relatively stable at predicting relevant behaviors, yet may also lead to different outcomes under different states or situations.

While some scholars still debate the correct number of traits, they largely have settled on the Big Five (McCrae and Costa 1987; John and Srivastava 1999).[11] The Big Five traits consist of conscientiousness, agreeableness, neuroticism, openness to experience, and extraversion.

doctor, on the young minister, on the young counselor-at-law . . . It is well for the world that in most of us, by the age of thirty, the character has set like plaster and will never soften again" (James 1890, 121). This belief, however, appears to be dated.

[10] Jackson and Roberts (2017) argue that traditional trait models (e.g., Five Factor Model) "emphasize stability across time and context, whereas social cognitive models of personality . . . emphasize change across situations and time" (Jackson and Roberts 2017, 134). This means that they are different levels of personality analysis, the "broad trait level that exists across multiple contexts and time, whereas [social cognitive models] focuses on the state level manifestations" (Jackson and Roberts 2017, 134). The key is that both of these describe the same system, but emphasize different components. This can perhaps be best understood, Jackson and Roberts (2017) argue, by the idea that if an individual displays one instance of unconscientiousness, it does not mean the person is not highly conscientiousness. Roberts et al. (2014, 1316) write: "The assumption that traits are immutable is clearly wrong. Empirical evidence has repeatedly shown that conscientiousness, and the related constructs that fall within the conscientiousness spectrum, such as impulse control, are both changeable and continue to develop and change well into adulthood [(Jackson et al. 2009; Roberts, Walton, and Viechtbauer 2006)]. Though changeability should not be taken as meaning inconsistency."

[11] Pervin (1994) discusses the debate about the proper number of factors in a way that one could describe it as the "five plus or minus two" critique. Some research supports the idea that there are traits outside the Big Five. Waller and Zavala (1993) present evidence that there may a "Big Seven." Spain, Harms and LeBreton (2014) discuss "dark" traits such as Machiavellianism, narcissism, and psychopathy, as opposed to the "bright" traits like the Big Five. Cheung et al. (2001) found some differences with the five-factor structure when examining cross-cultural populations, finding stronger evidence for a six-factor model. And six factors were also found among early childhood subjects (Soto 2015). In terms of the debate about what exactly the five factors are, McCrae and Costa (1987) point out that initially several variations of the five factor model emerged. For example, in his critical appraisal of the five factor model, McAdams (1992) describes one variation of the factors as: "(I) Surgency (Extraversion), (II) Agreeableness (Warmth), (III) Conscientiousness (Will), (IV) Emotional Stability (Neuroticism), and (V) Culture (Intellectance, Openness to Experience)" (McAdams 1992, 331). At present, however, most trait scholars have settled on the Big Five traits.

- *Conscientiousness* is a person's tendency to act in an organized or thoughtful way. It captures whether a person is dutiful, deliberate, driven, persistent, self-assured, or hardworking. In surveys, people who score low on conscientiousness, in contrast, tend to be carefree, unstructured, self-doubting, and content.
- *Agreeableness* is a person's tendency to be compassionate and cooperative toward others. An agreeable person dislikes confrontation, is unassuming and humble, and tends to be altruistic in the sense that helping others is genuinely rewarding. Highly agreeable people are seen as warm, sympathetic, kind, and cooperative (Mondak 2010). People who are highly agreeable work well in groups (Barrick and Mount 1991), are risk averse, and seek out good relationships with others.
- *Neuroticism* is the extent to which a person's emotions are sensitive to the individual's environment. Neurotic people tend to be sensitive to what others think of them, are vulnerable to stress, have a fiery temper, are prone to worry, and focus on things that they are unhappy about. In contrast, the opposite end of the trait is typically labeled emotional stability.
- *Openness* is the extent to which a person is open to experiencing a variety of activities. For example, a person high in openness is adventurous and likes to experience new things, will seek out creative experiences, is intrigued by new ideas, and will challenge authority and traditional values.
- *Extraversion* is a trait that describes a person's tendency to seek stimulation in the company of others. People high in extraversion are outgoing, sociable, experience a range of positive feelings, like to take charge of activities of others, and like fast-paced environments. Extraversion is probably the single most commonly studied personality trait. In contrast, individuals who are on the opposite end of the trait are introverted.

We turn our attention, now, to conscientiousness. What is it? We've already offered a brief description. More specifically, Roberts et al. (2014, 1315) define it as "a spectrum of constructs that describe individual differences in the propensity to be self-controlled, responsible to others, hardworking, orderly, and rule abiding." Along these lines, John and Srivastava (1999, 121) argue that conscientiousness "describes *socially prescribed impulse control* that facilitates task- and goal-directed behavior, such as thinking before acting, delaying gratification, following norms and rules, and planning, organizing, and prioritizing

tasks" (emphasis in original).[12] Conversely, those who are less conscientious tend to be careless (McCrae and John 1992) and display disinhibition, with an orientation toward immediate gratification and impulsive behavior (Krueger and Markon 2014). Numerous other descriptions of highly conscientious people suggest they are deliberate, self-disciplined, well-organized, competent, dutiful, orderly, responsible, goal directed, and thorough. A host of studies contextualize these definitions and clarify what they mean, and the next several paragraphs discuss them.

Scholarship indicates that conscientiousness correlates positively with job performance. Witt et al. (2002, 164) argue that "[w]orkers high in conscientiousness are predisposed to be organized, exacting, disciplined, diligent, dependable, methodical, and purposeful. Thus, they are more likely than low-conscientious workers to thoroughly and correctly perform work tasks, to take initiative in solving problems, to remain committed to work performance, to comply with policies, and to stay focused on work tasks." Research has shown that conscientiousness is one of the best predictors of job performance across many different criteria and occupational groups (Mount and Barrick 1998; Salgado 1997). Barrick and Mount (1991) find that increased conscientiousness correlates with better job performance among professionals, police, managers, salespeople, and skilled and semi-skilled workers.

Furthermore, highly conscientious people are dependable, orderly, self-disciplined, hardworking, and achievement striving. Barrick, Mount, and Strauss (1993) find that sales representatives high in conscientiousness set higher goals and are more committed to those goals than less conscientious sales representatives. On a similar note, conscientious people tend to work well on teams because they are more dependable, thorough, persistent, and hardworking (Hough 1992; Mount, Barrick, and Stewart 1998). Put simply, conscientious people tend to perform their professional tasks more thoroughly than less conscientious people. In fact, conscientiousness has been shown to be related to strong performance in virtually all jobs (Barrick, Mount, and Judge 2001).

Conscientiousness also influences how people learn about the world. Scholarship shows that conscientious individuals tend to look for more information – and do so more carefully – than others. Heinström (2003) finds that conscientious people tend to seek out more information – and more complex information – to support their positions than less conscientious people. Heinström examined how graduate students sought out information to work

[12] For a similar definition, see Roberts et al. (2004).

on their research. The study investigated how students evaluated information, how they selected the documents they used for their research, and the effects of time pressure on their information gathering. The results showed that conscientious people sought out thought-provoking documents instead of documents that simply confirmed previous ideas. The conscientious students appeared to engage with the material more extensively and push themselves to consider more complex material. On the other hand, students with lower levels of conscientiousness tended to choose their information sources based on how easily they could obtain those sources. Similarly, Gul et al. (2004, 359) find "[h]igh level conscientious scholars being very competent, disciplined and achievement striking are found to make extra efforts in database searching to get required information." In a study on how people search the Internet, Schmidt and Wolff (2016, 6) find that "[c]onscientious people have a high level of activity and an exhaustive exploitation of the search space," while less conscientious individuals use "a search pattern that aims at finding results fast but with little reflection" (see also Halder, Roy, and Chakraborty 2010).

In terms of work readiness, conscientious people tend to be more prepared. Caldwell and Burger (1998) find that conscientiousness is associated with job candidates preparing more for interviews, both in terms of using social resources (talking to friends and relatives) and researching the company. The larger point this research underscores is that the influence of personality does not start the day a person begins a job or even the day of the interview. Personality's influence starts *before* the interview takes places.

Conscientious people also seek to manipulate and control their social environment. Conscientious people deploy different tools when they interact with others. Buss (1992), for example, finds that people who are conscientious are more likely to use reason – rather than emotion or coercion – to influence people in the context of marital relationships. In a study that examines how conscientiousness affects workplace influence, Caldwell and Burger (1997) find that conscientiousness is positively associated with the "involvement strategy" (e.g., involving others by consulting them or by inspiring them) and negatively associated with the "exchange of benefits strategy" (e.g., offering help in return or reminding of past favors).[13] Similarly, Baker and McNulty

[13] Though it is important to note that Caldwell and Burger (1997) did find, however, that conscientiousness was not associated with the strategies of ingratiating themselves with others, assertiveness, rational persuasion, or using others. The null finding for the rational persuasion strategy differs from the findings of Buss (1992), but that may be due to the different contexts: marital or personal relations versus professional relations.