The Monologic Voice: A Uniting Rhetoric of Supreme Court Opinions

Rosamond Thalken, David Mimno, Matthew Wilkens

github.com/rosthalken/supreme-court-rhetoric

Judicial Performance

"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. The role of an umpire and a judge is critical. They make sure everybody plays by the rules, but it is a limited role. Nobody ever went to a ball game to see the umpire."

Chief Justice John Roberts,
Confirmation Hearing

Should the court opinion present...

a ***unified*** Court?

a ***democratized*** body?

Curating the Judicial Persona

Four rhetorical features of court opinions:

1. Monologic Voice
2. Interrogative Mode
3. Declarative Tone
4. Rhetoric of Inevitability

Ferguson, Robert A. 1990. "The Judicial Opinion as Literary Genre." *Yale Journal of Law & the Humanities* 2 (1): 201-220.

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The Monologic Voice: "A Judicial Self-Fashioning"

Definition:

A legitimating rhetorical process that centers the Justice and/or the Court.

"Reflection has convinced me that as a judge I have no loftier duty or responsibility than to uphold...spiritual freedom to its farthest reaches"

Justice Murphy, *West Virginia State Board of Education v. Barnette* (1943)

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The Monologic Voice

Individualistic Tone:

"My views on this matter are unchanged from those I set forth in my separate opinions in Webster"

Justice Scalia, *Planned Parenthood v. Casey* (1992)

Collective Tone:

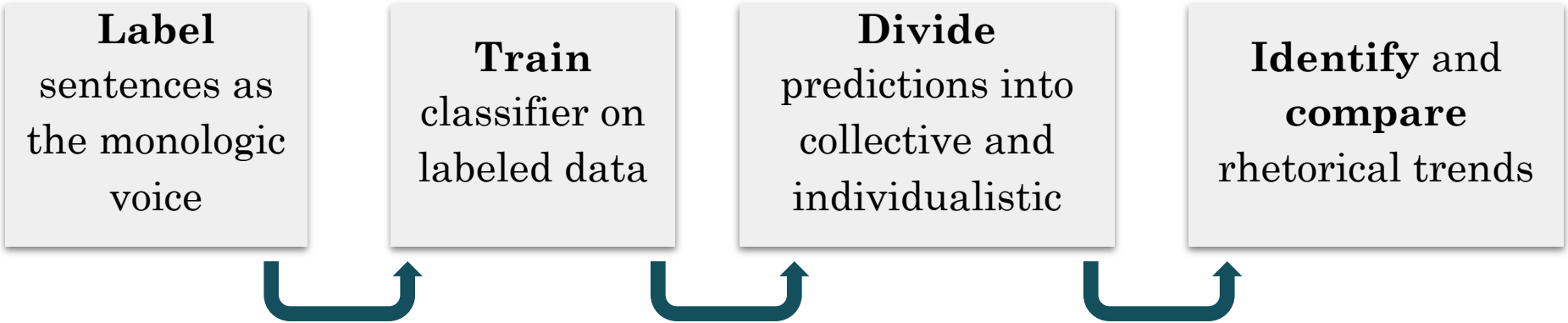
"Our task, of course, is to resolve the issue by constitutional measurement, free of emotion and of predilection"

Justice Blackmun, *Roe v. Wade* (1973)

Langford, Catherine L. 2009. "Toward a Genre of Judicial Dissent: Lochner and Casey as Exemplars." *Communications Law Review* 9 (2): 1-12.

Our quantitative approach considers:

1. Does the monologic voice **generalize** to all court opinions?
2. Does the monologic voice use **individualistic** and **collective** tones?
3. What are **trends** in the monologic voice and its tones?



DistilBERT's classification performance is highest for the monologic voice

Classifier	Precision	Recall	F1
Majority Class Baseline	0.37 (macro)	0.50 (macro)	0.74
Pronoun Baseline	0.87	0.87	0.90
Logistic Regression (overall)	***0.84***	***0.84***	***0.82***
Logistic Regression (monologic)	0.88	0.47	0.61
Logistic Regression (non-monologic)	0.83	0.97	0.90
DistilBERT (overall)	***0.92***	***0.92***	***0.92***
DistilBERT (monologic)	0.86	0.82	0.84
DistilBERT (non-monologic)	0.94	0.95	0.95

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Words that distinguish the monologic voice

Monologic Voice

our, agree, think, believe, conclude, hold, certiorari, my, view, find, dissent, granted, me, reverse, decide, am, consider, opinion, cannot, affirm, join, now, therefore, reasons, conclusion, assume, remand, disagree, cases, today, resolve, reject, decision, seems, here, constitutional, understand, accordingly, need, precedents, accept, say, noted, concur, know, holding, below, read, turn, persuaded

Non-Monologic Voice

he, his, respondent, petitioner, after, shall, their, added, they, her, who, ordered, she, during, report, provides, person, board, house, company, county, committee, service, district, provided, year, employees, him, each, commission, mr, also, days, department, senate, including, plan, concurring, union, secretary, property, amount, city, paid, corporation, quoting, years, amended, argues, motion, work

Monroe, Burt L., Michael P. Colaresi, and Kevin M. Quinn. "Fightin' Words: Lexical Feature Selection and Evaluation for Identifying the Content of Political Conflict."

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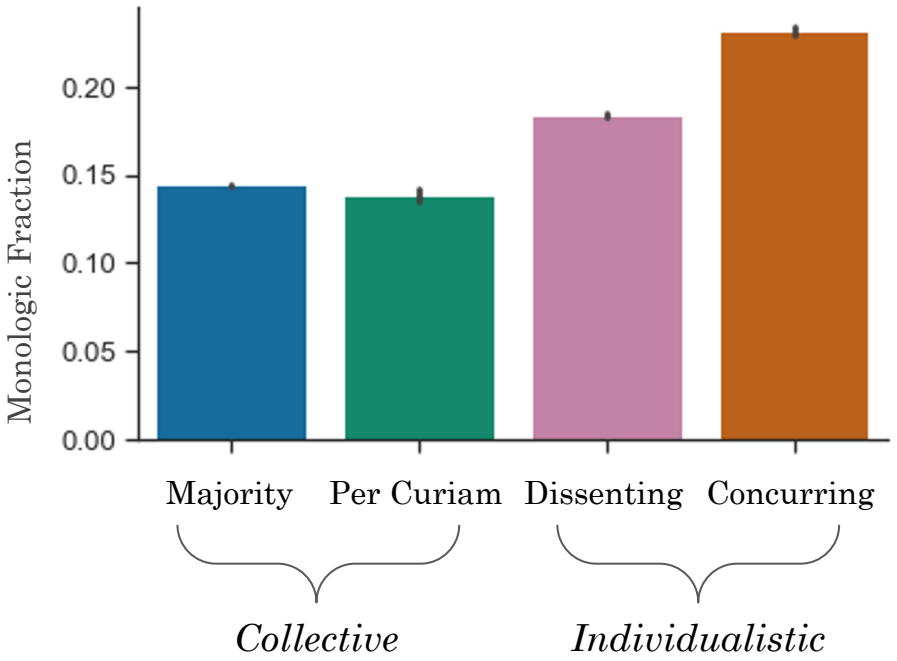
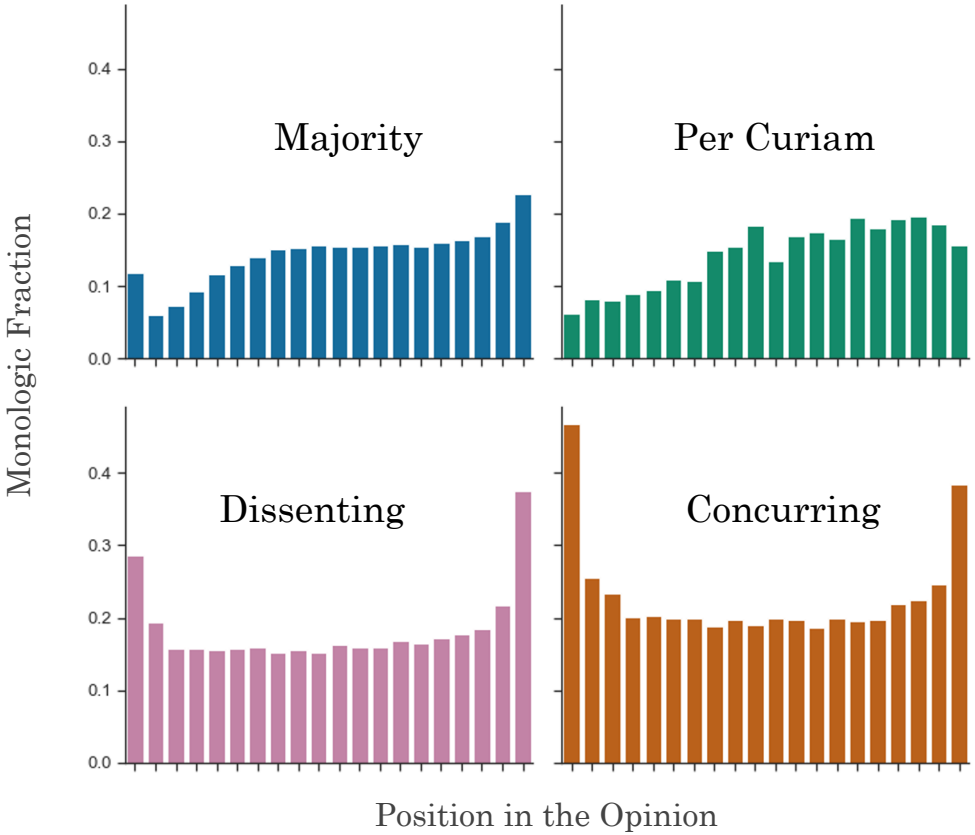
Dissenting and concurring opinions use more monologic voice



Monologic Trajectories

When in an opinion do Justices use the monologic voice?



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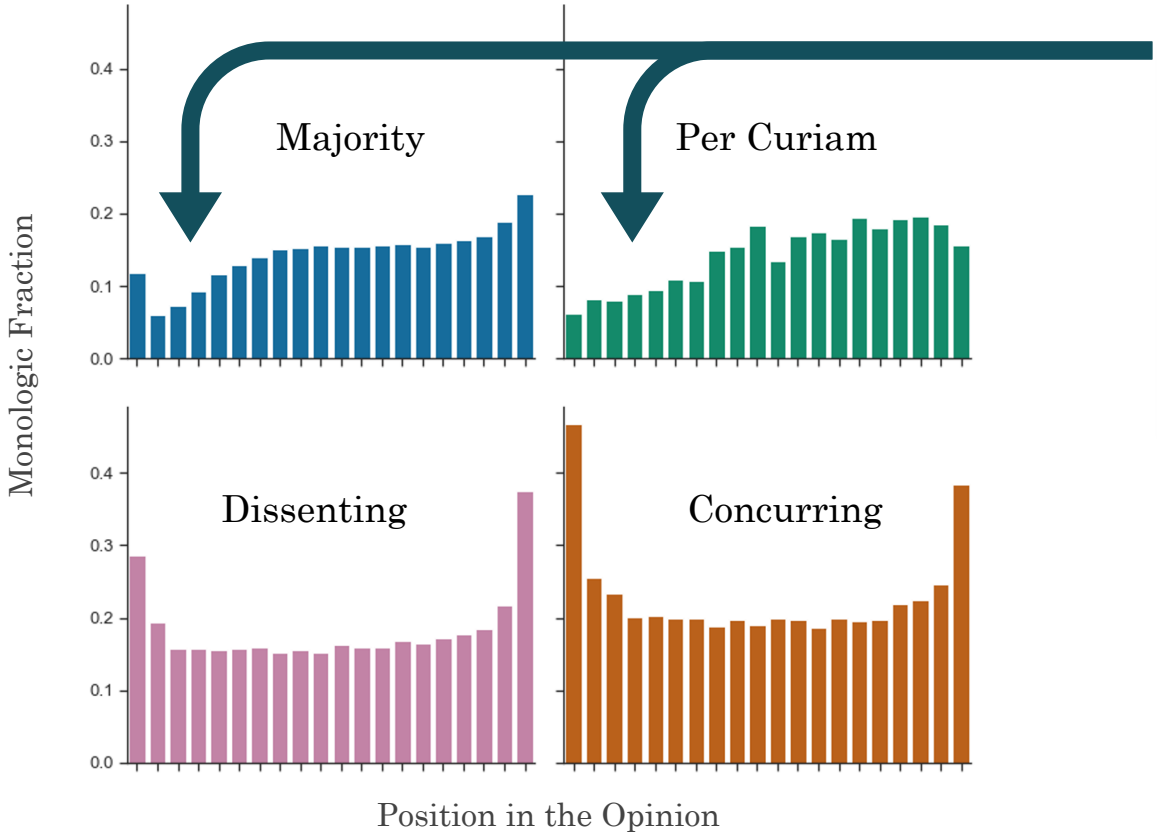

Non-monologic words: he, his, respondent, petitioner, after, shall, their, added, they, her, who, ordered, she, during, report, provides, person, board, house, company, county, committee, etc...

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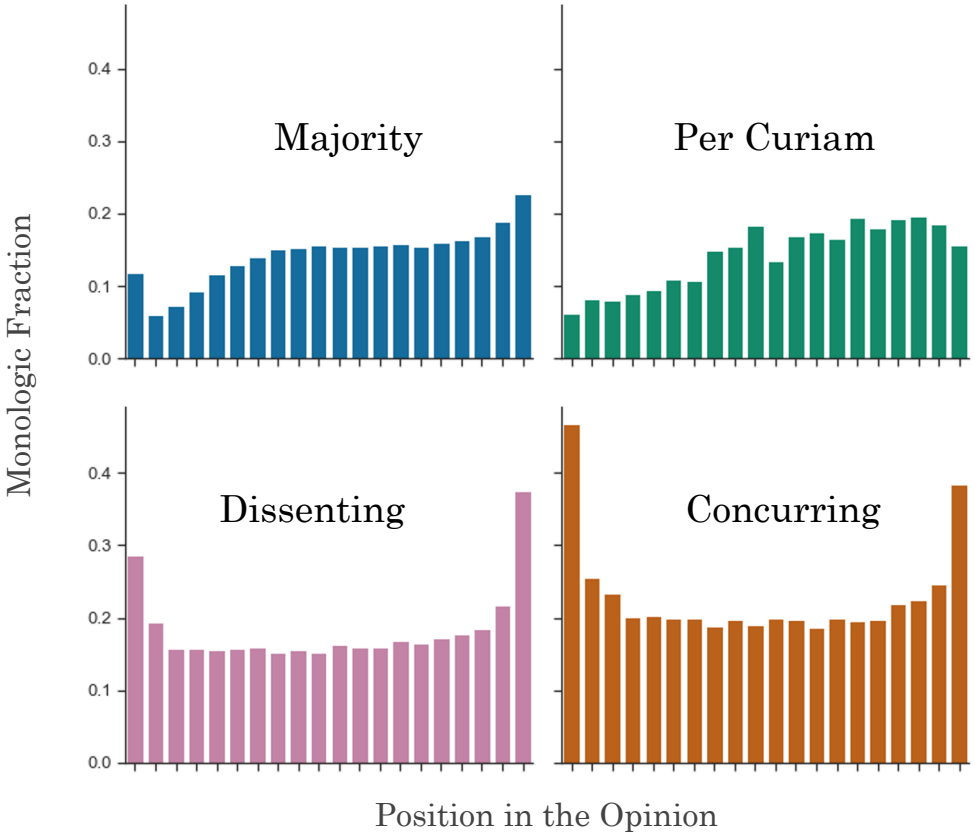

Consistently high monologic voice

Monologic voice frames the opinion

Monologic Trajectories

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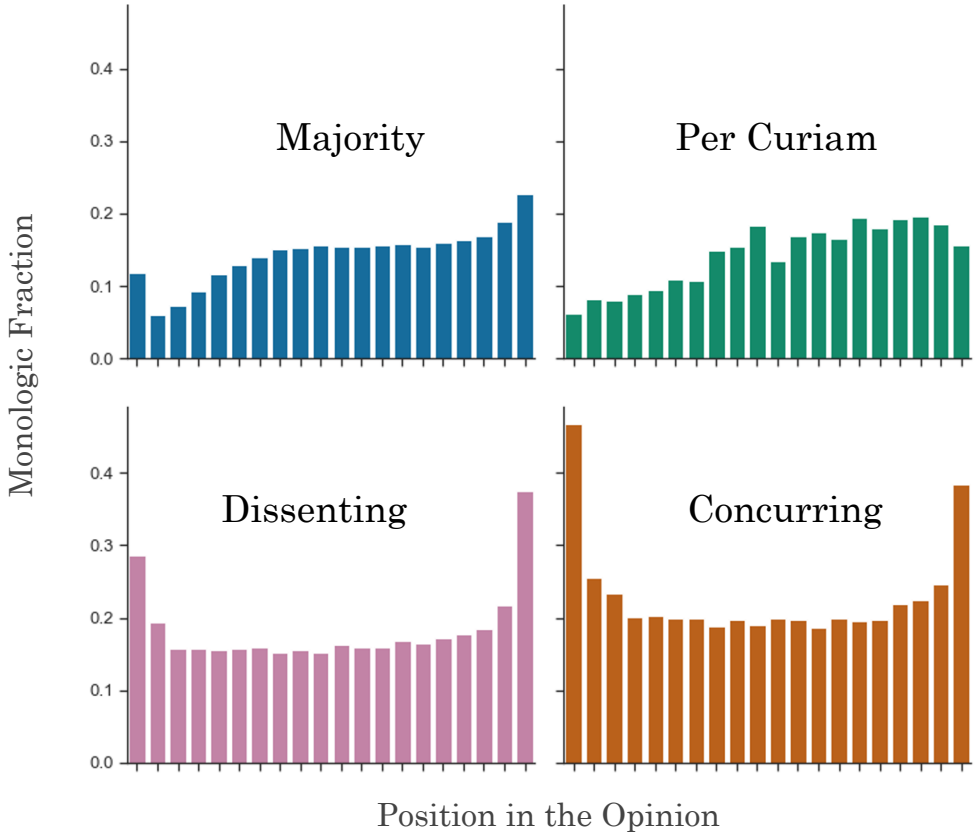


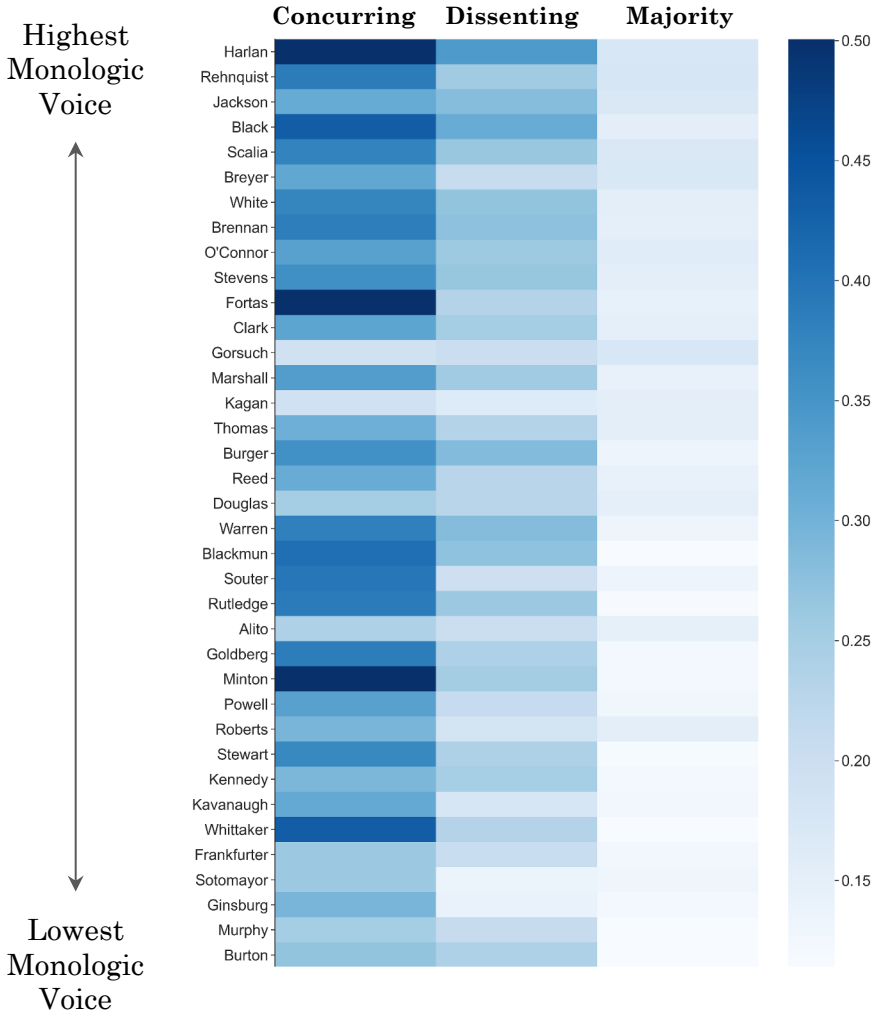
Collective

Individualistic

Monologic Voice by Author

Highest Overall Monologic Voice:
Justices Harlan, Rehnquist, Black, Scalia, Breyer

Lowest Overall Monologic Voice:
Justices Burton, Murphy, Ginsburg, Sotomayor, Frankfurter, Whittaker



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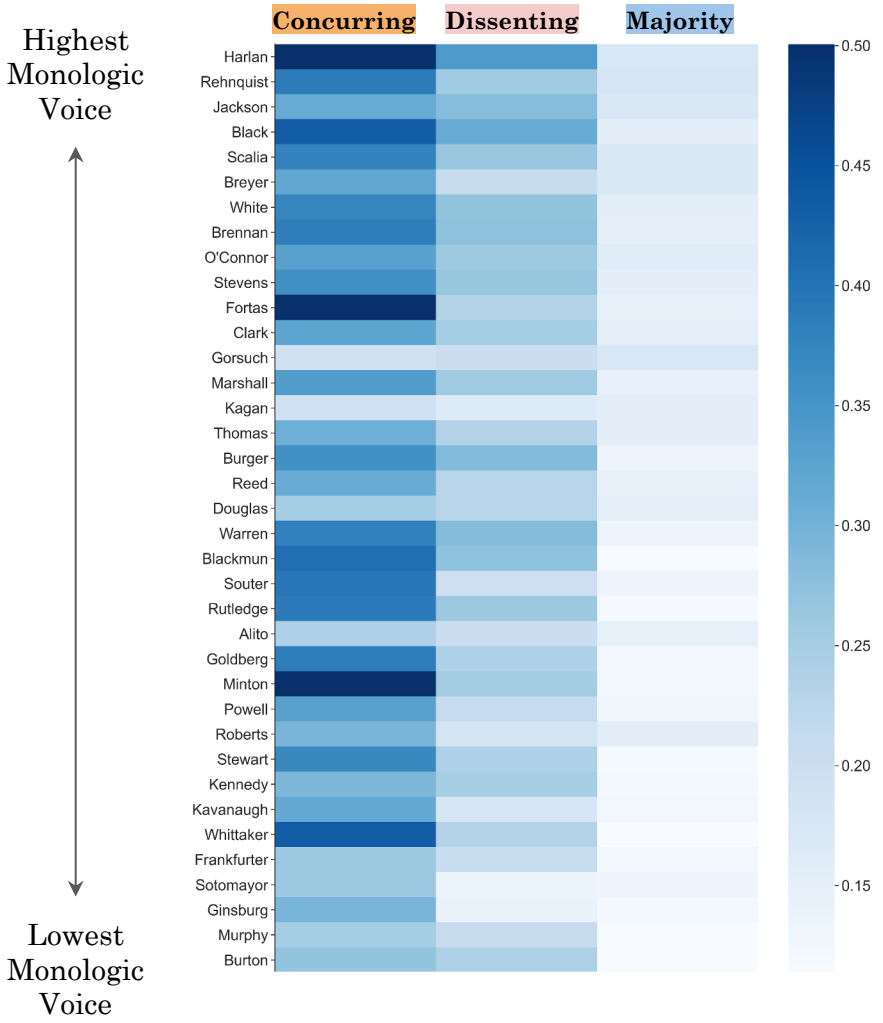
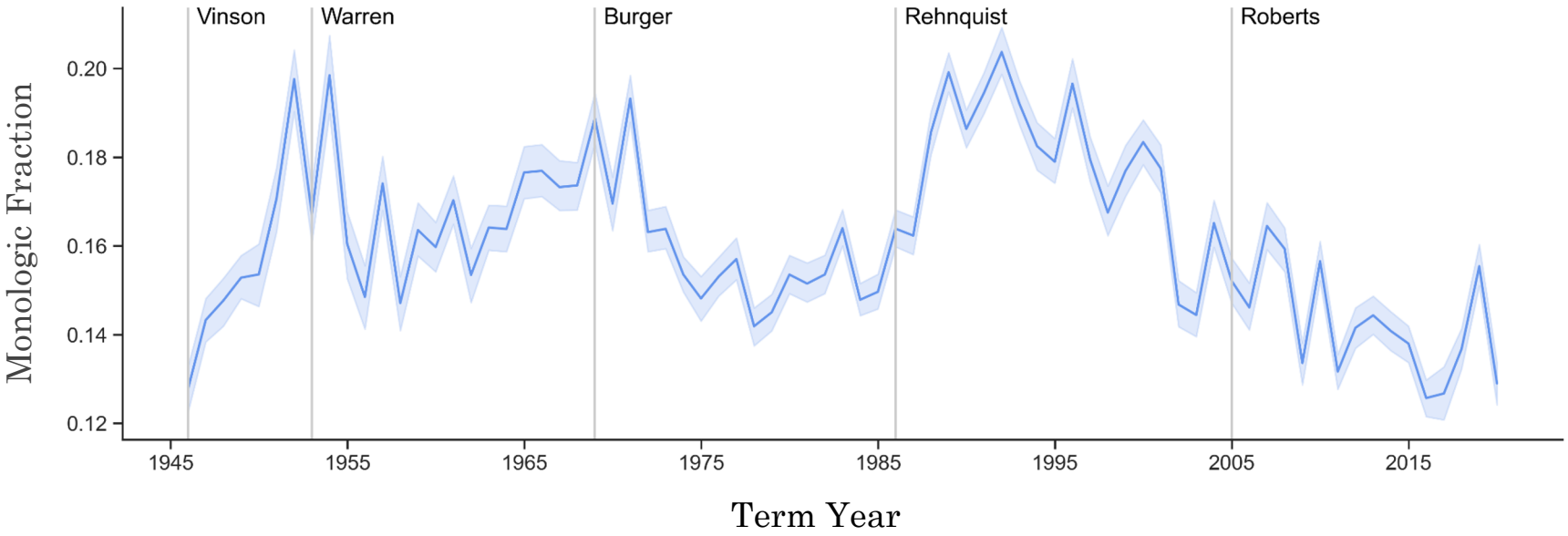


Changes in the Monologic Voice Over Terms



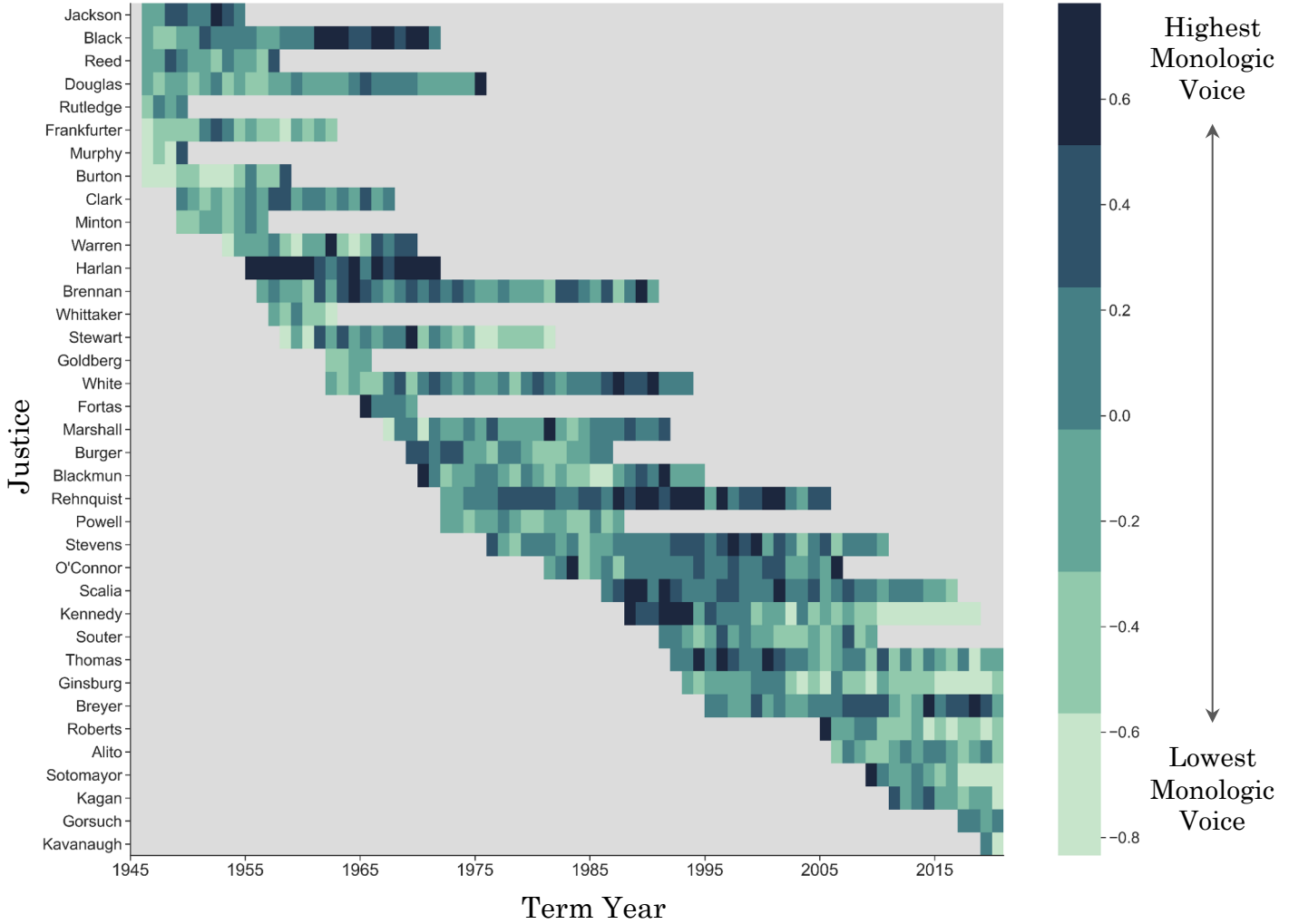
Cohen's *d* effect size:

Vinson ⟷ Warren: **-0.166**

Warren ⟷ Burger: **0.259**

Burger ⟷ Rehnquist: **0.172**

Rehnquist ⟷ Roberts **-0.336**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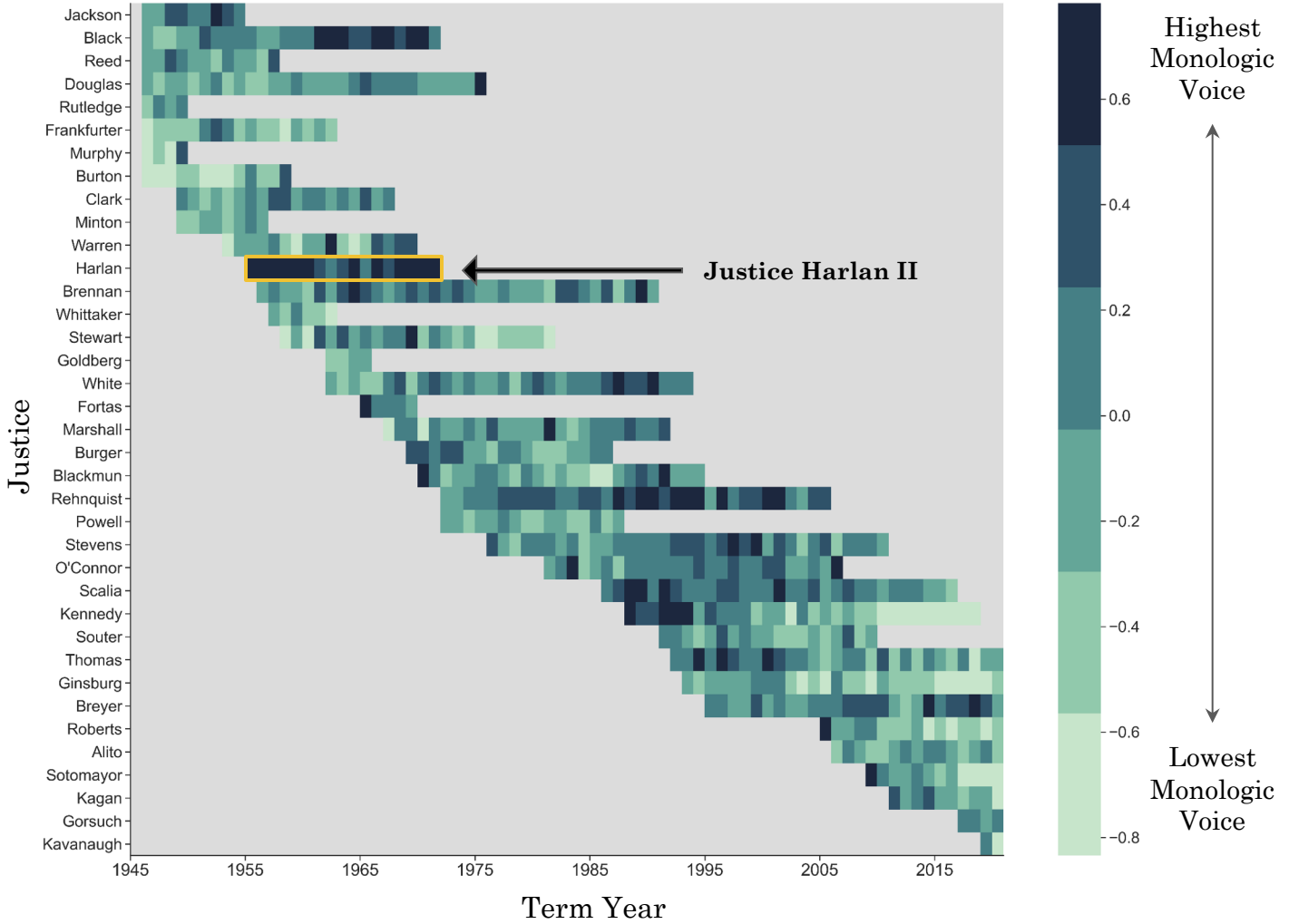
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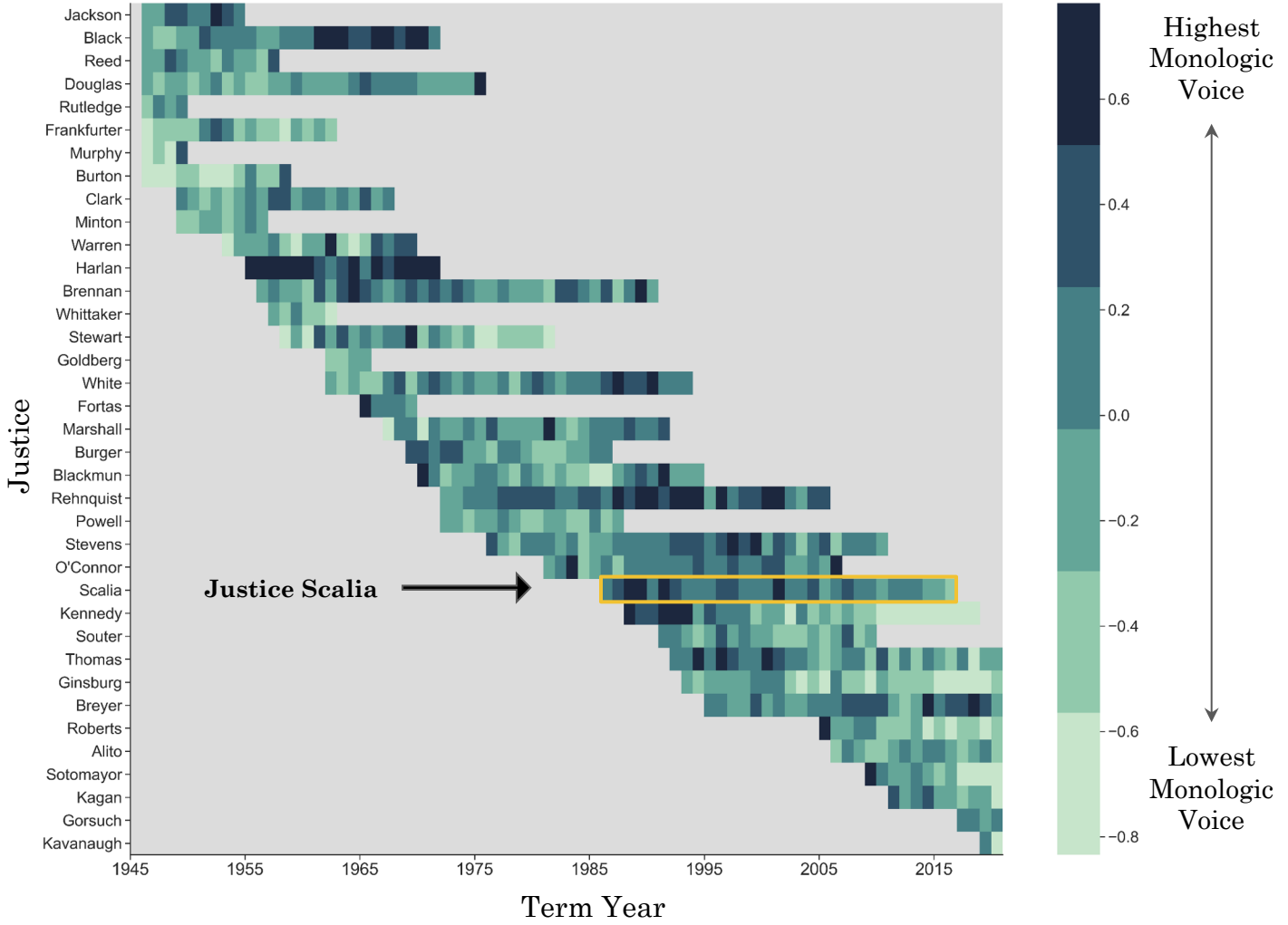
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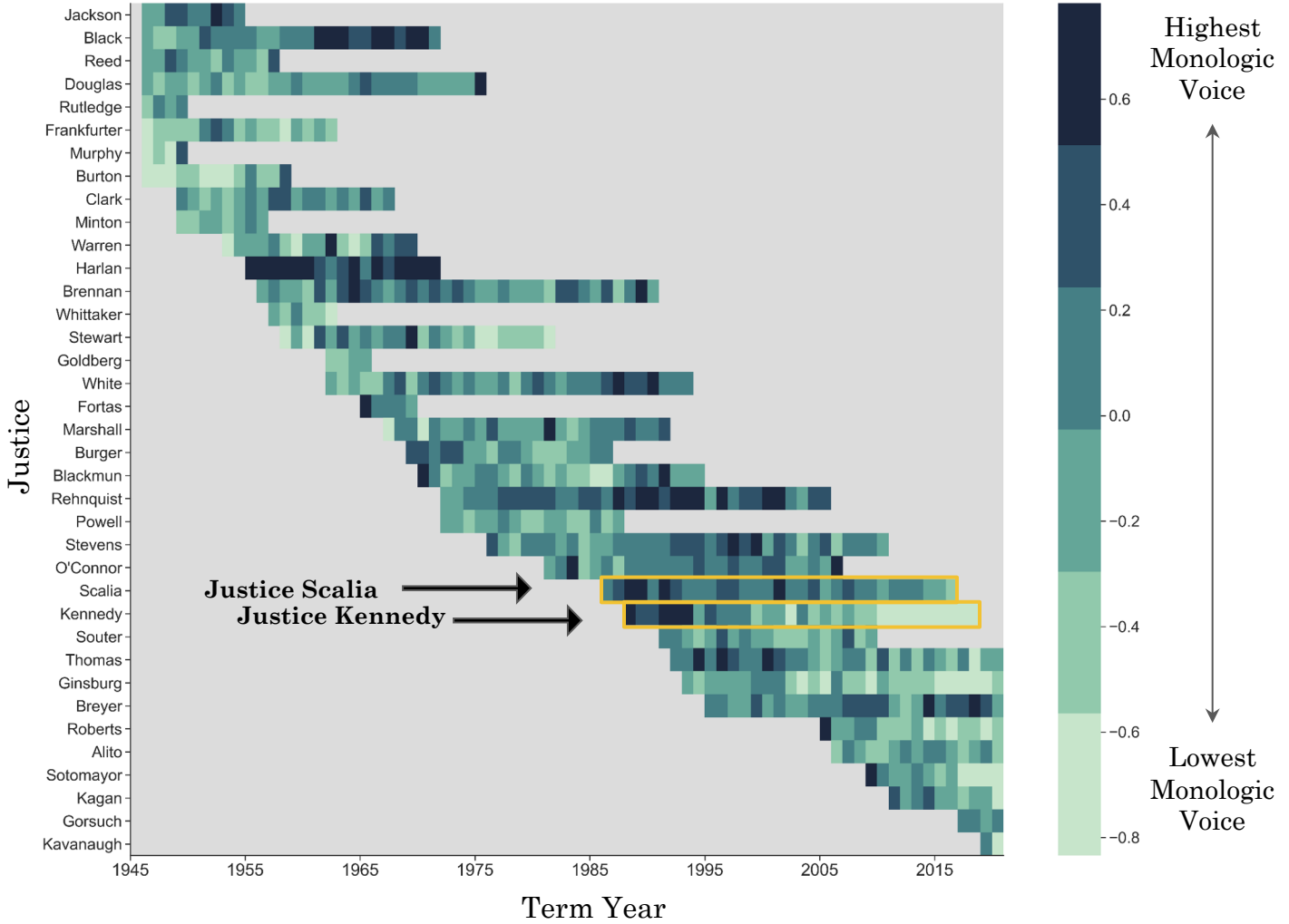
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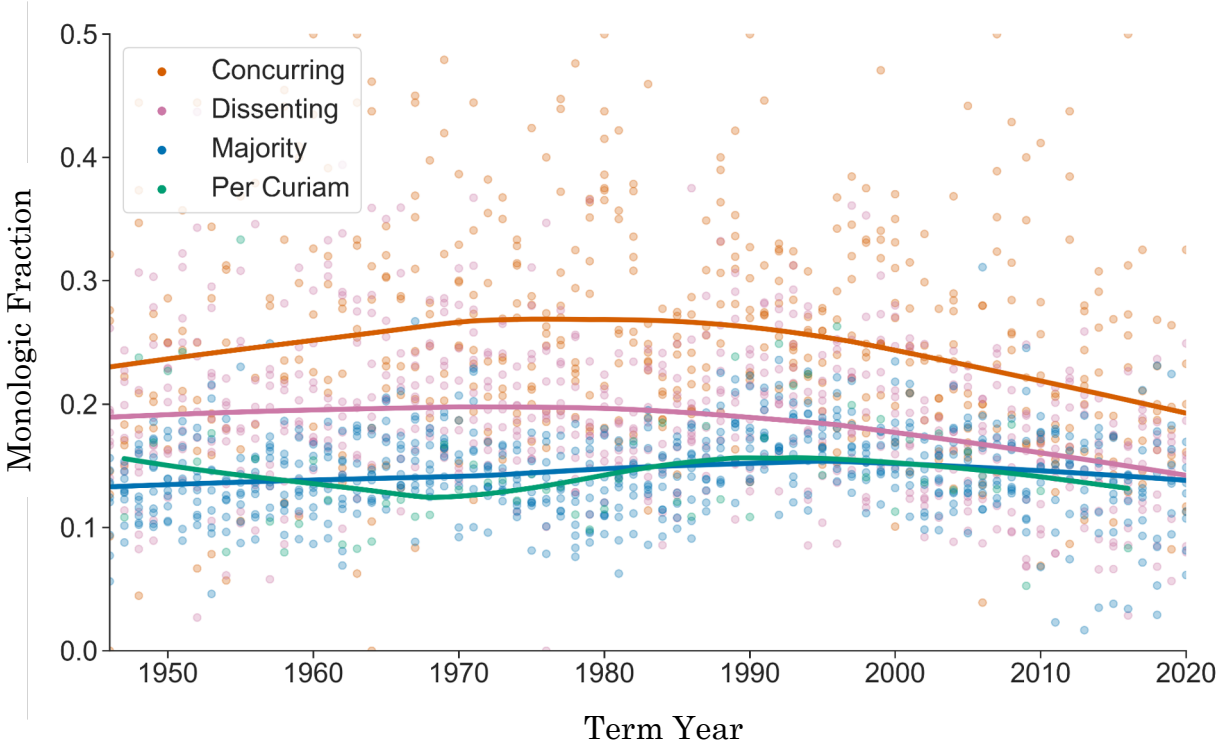
The Roberts Court uses less monologic voice overall

The **minority** opinion's monologic voice **declines**

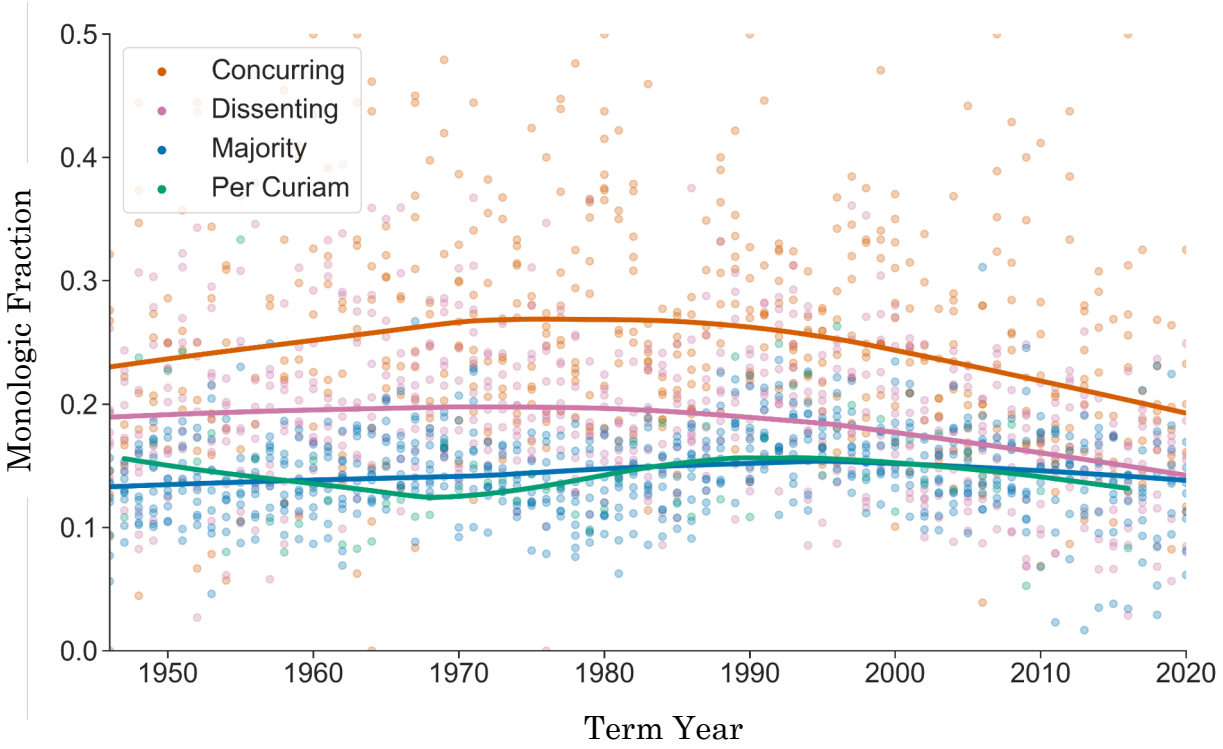
The **majority** opinion's monologic voice **remains constant**

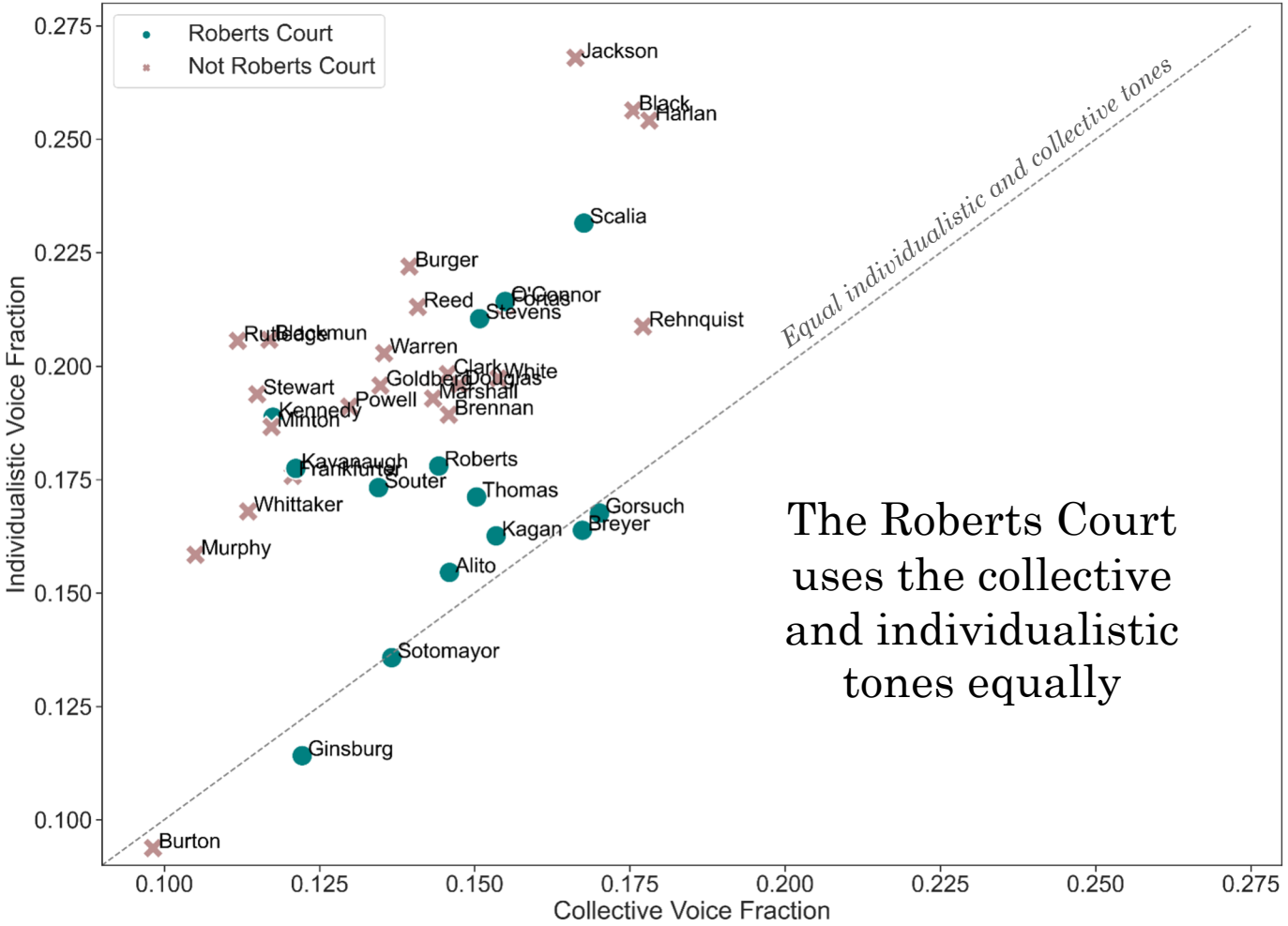



The Monologic Voice
Collective
*monologic voice **unites** the Court.
Majority
Per Curiam
Individualistic
*monologic voice **distinguishes** the Justice.
Dissenting
Concurring

The **individualistic** tone **declines**

The **collective** tone **remains constant**





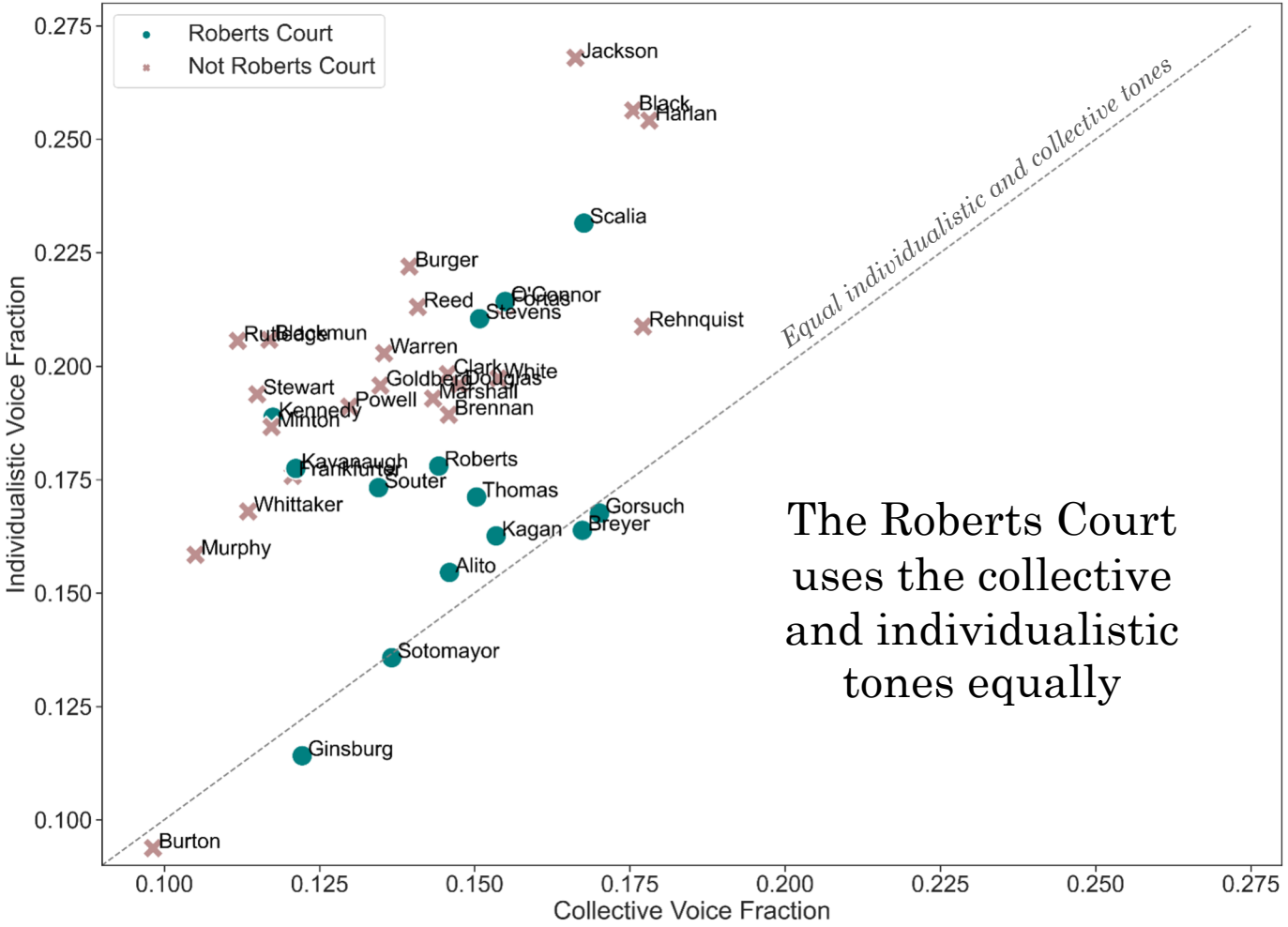
The Roberts Court uses the collective and individualistic tones equally

Concluding Thoughts:

The Roberts Court is the first Court to use the individualistic and collective tones equally.

Legitimating rhetoric responds to the political climate of a time period.

The collective tone is more strategic and appropriate for the Roberts Court.



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