Consensus and ideology at the Judicial Committee

of the Privy Council

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PRELIMINARY: PLEASE DO NOT QUOTE OR CIRCULATE

Abstract

This paper sets up a model for estimating the extent to which judicial voting behavior is the result of a norm of consensus when there is heterogeneity in the cost of dissenting across different areas of law. We derive a two-stage model to test this hypothesis on data from the Judicial Committee of the Privy Council (JCPC) in the period 1998-2011. The first-stage estimates political ideology from sincere voting and from there a proxy for dissent suppression (propensity towards consensus) is constructed. The second-stage uses a hierarchical model of voting to test for heterogeneity in the cost of dissenting across different areas of law (*i.e.*, devolution, domestic and Commonwealth appeals). We find that the intensity to suppress dissent is stronger in devolution cases, which are those with a higher political content.

1. Introduction

A large empirical literature on judicial behavior has attempted to assess which factors affect judicial voting in collegial courts. Ideal point models have been one of the methods used to analyze judicial decision making, and these models provide an estimate of judges' ideology. In fact, there is evidence that ideology plays an important role, and judges in higher courts are no exception.[1] US Supreme Court justices have been those more often studied by political scientists and legal scholars, and several studies locate those justices in the political space according to their individual votes.[2]

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[1] See Martin and Quinn (2002) and Alarie and Green (2007), among others.
[2] Martin and Quinn (2002), Segal and Cover (1989) and reference therein.

It has been however more difficult to perform this type of analysis with British higher court judges, as these judges tend to be considered independent and relatively insulated from political interference. For example, Hanretty (2012) finds that Law Lords cannot be located in the political space according to their individual votes. At the same time, Arvind and Stirton (2012) argue that Law Lords are more polarized than traditional account suggests, but not on ideological grounds.

Besides ideology, there is also evidence that panel composition influences individual judges' votes,[3] a possibility that is generally not considered in conventional ideal point models. If panel composition does affect judge´s vote, the judge might not vote for her most preferred outcome. One possible explanation for panel effects is the existence of a norm of consensus (Fischman, 2011).[4] Judges may vote against their preferred outcome because, under some circumstances, dissenting is relatively more costly than suppressing a dissent. The Fischman (2011) model of collegial voting assumes that suppressing dissent is more likely when: *i)* a judge is relatively close to the case cutpoint, the latter being a threshold in the policy space representing the boundary between votes to affirm and votes to reverse a decision of a lower court (i.e., an inverse measure of ideological polarization), and *ii)* the judge´s ideal point is such that she is not part of the majority for that decision, conditional upon the case cutpoint.

The objective of this paper is twofold: first, to test Fishman's definition of dissent suppression on data from the Judicial Committee of the Privy Council (hereafter, JCPC) in the period 1998-2011; second, to propose an alternative approach which accounts for heterogeneities across issue areas in the judges' attitude towards dissenting. The particular way in which the JCPC operates make it a particularly interesting institution to consider and to test what we propose.

Formally created in 1833 (by the Judicial Committee Act 1833), there are several aspects that make the JCPC an unusual type of court. First, the mix of cases this court hears. Second, the "appointment" mechanism of judges (or lack of such a formal mechanism), with an extensive number of judges that are eligible to sit in a case; furthermore, many judges sitting at the JCPC spend the majority of their time deciding cases in another court. In practice, the JCPC operates as a court of appeal. The advice provided by the JCPC is subject to standard appellate proceedings, there are formal legal and procedural rules, and the decision is binding on both parties. The JCPC deals with points of law, and facts are not formally reviewed.

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[3] See for instance Boyd *et al*. (2010), Sunstein *et al.* (2006) and references herein.
[4] There are other alternative explanations, such as dissent aversion (Posner, 2008) or group polarization (Sunstein *et al.*, 2006).

As noted, there are different judges on the JCPC: the Law Lords, that is, the judicial members of the House of Lords before the 2009 changes that lead to the creation of the UK Supreme Court (known formally as Lords of Appeal in Ordinary, and the British equivalent of the US Supreme Court justices; these are now the UK Supreme Court Justices); senior judges from the UK (other Lords of Appeal); privy counsellors with judicial background (judges from the Court of Appeal of England and Wales, the Inner House of the Court of Session in Scotland and the Court of Appeal in Northern Ireland); other privy counsellors who are senior judges abroad (usually judges from superior courts of Commonwealth members); and the Lord Chancellor (before the Constitutional Reform Act 2005). There is no formal selection procedure for judges to be appointed to the JCPC. Essentially, judges of certain seniority who are appointed to other courts become eligible to sit on the JCPC, which works as a sort of part-time court. More than sixty judges are eligible to be called upon and decide cases at the JCPC.

The JCPC offers an intriguing institutional setting to analyze dissent suppression and consensus voting since its jurisdiction varies considerably from areas politically highly controversial (such as devolution) to cases quite distant from judicial ideology concerns (such as most Commonwealth cases). A few articles have addressed judicial behavior at the JCPC, in particular investigating possible political determinants. The overall conclusion seems to point out that dissenting and explicit politicization is weak.[5] Our work follows a different approach. We start by investigating under which circumstances judges are likely to suppress their willingness to dissent with the majority of their panel colleagues. If Fischman´s definition of dissent suppression fits our data well, a measure of dissent suppression (based on two relevant points, judge´s location relative to the cutpoint and judge is not part of the majority for the decision being made) should be significantly (negatively) correlated with actual dissent.

In order to manage this aspect, we initially derive a behavioral model of consensus voting, estimating judicial ideology as a latent trait revealed by each judge's manifest behavior when the judge is pivotal in the decision of the panel.[6] The structure of the model employs a random utility framework, while contemporaneously accounting for case and individual characteristics, and for the influence of panel colleagues on each judge's voting behavior.

In general, random utility models impose several restrictions when applied to the estimation of judicial behavior (see Fischman (2008) for a discussion). In order to overcome identification problems, we

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[5] See Voigt *et al.* (2007) and Amaral-Garcia and Garoupa (2016).

[6] As opposite to non-behavioral models, ideology is *inferred* from the estimated behavior of each judge rather than being treated as a deterministic component. Furthermore, non-behavioral approaches generally explains the vote of a judge as a function of some measurable characteristics, such as her political affiliation. However, proxies of judicial ideology raise problems due to the aggregation of data spanning different issue areas (Fischman, 2008).

exploit the random composition of panels and the random assignment of cases to panels within the three branches of the JCPC operating on different areas of the law.[7]

Moreover, behavioral models normally use the Item Response methodology (IRT) to infer individual justices' latent traits. This approach normally assumes that, in a typical regression used for predicting the vote of a judge as a function of her ideology, the error terms are independent of each other and of other judges' ideal points. However, it seems rather unlikely that the ideology of judge i's panel colleagues has no impact on her final decision. In particular, some branches of a court dealing with different issue areas may be more biased towards consensus, so that unanimous decisions deriving from suppressed dissenting may occur as the outcome of a judge's own ideology interacted with other panel members' ideology. We account for this possibility and investigate whether judges have different propensity towards consensus, depending on the cost of dissenting entailed by the specific issue area they are dealing with. This is an important difference with respect to the Fischman's approach given that he concentrates on one single legal issue, thereby deriving a constant cost of dissenting.

In our specific case, this setup − which could be of general use when there are forms of heterogeneity leading to different judicial attitudes − is used to estimate whether the cost of dissenting changes across the three types of cases that can be appealed to the JCPC: domestic, devolution, and Commonwealth. In details, we test the hypothesis according to which suppressing dissents provides a different intensity of discomfort depending on the nature of the issue brought before the court. We expect such a phenomenon to be relevant when cases' political content changes across issue areas and when judicial ideology reflects political traits.

These features endanger the need to account for issue area specificities when evaluating the impact of a judge's ideological position on the likelihood to dissent. In our model, the probability of observing an actual dissent is modelled as a (expectedly negative) function of the estimated propensity towards consensus and other measurable case's and justices' characteristics. We model the propensity towards consensus as a combination of a judge's ideological position relative to the position of other panel colleagues in cases where the majority of justices in the panel are pivotal.

We find evidence that there are circumstances in which judges suppress their willingness to dissent with their panel colleagues. This is shown by the negative coefficients of the variable that measures propensity towards consensus. Moreover, the cost of dissenting differs across issue areas. In fact, our

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[7] Commonwealth judges cannot be assigned to devolution cases. However, we can control for this feature in the second-stage (GLMM) regression. A description of panels at the JCPC can be found in Section 3.

results show that judges are more likely to suppress dissent in devolution cases, which are those with a potential stronger political content.

The paper is organized as follows. Section 2 presents the methodology used in the paper. Section 3 describes the JCPC data analyzed in this paper and presents the results. Finally, Section 4 concludes.

2. Methodology

We formalize the conceptual framework discussed in the previous section illustrating the two-stage empirical methodology. We will present this approach backwardly, starting from the description of the generalized multilevel mixed model (GLMM) used to account for issue area heterogeneity in explaining the pattern of dissenting (second-stage of the analysis). Next, we illustrate the IRT model for ideal point estimation and derive our measure of propensity towards consensus.

Second-stage. Suppose that $D_{pij}=1$ if judge p provides a manifest dissenting opinion on case i belonging to issue area j ($j=1, \ldots, J$). Define S_{pij} as a measure of judge p's propensity towards consensus when voting on case i (see below for details). The extent to which S_{pij} affects the probability of observing an actual dissent in a specific issue area (D_{pij}) is modelled as follows:

$$\Pr(D_{pij}=1) = F(h_j(S_{pij}), X_p, Z_{ij}) \qquad (1)$$

where X_p and Z_{ij} are, respectively, judge and case related characteristics, while F is a logit link function. h_j is an issue area function representing the cost of dissenting in each different area of law. In particular, in the empirical analysis we will check whether the pattern followed by h_j changes according to the specific issue area in which judges vote. For example, as the position of a judge becomes relatively more oriented towards agreement (*i.e.*, S_{pij} becomes larger) the impact on the probability that she actually dissents is expected to be negative in general. However, it may occur that such an effect is more intense on the decisions pertaining to a given area where general agreement may be highly desirable, compared to dissenting in other areas. This is equivalent to say that, in that area, the cost of dissenting is relatively higher. In our approach we construct our measure of S_{pij} drawing from the judges' ideal points estimated in the first-stage analysis, and other case characteristics. This allows inferring on the shape of h_j in the second-stage.

Technically, since in equation (1) observations are nested within issue areas, we exploit the hierarchical structure of our data by adopting a GLMM approach (Gelman *et al*., 2003). This assumes that judges voting in a given area provide correlated likelihood of dissenting which is generated by a single set of regression coefficients, whereas (even the same) judges voting in another area provide votes generated by a different set of coefficients. Meanwhile, the coefficients themselves are assumed to be correlated and generated from a single set of hyperparameters.[8] Under these assumptions, equation (1) takes the following form:

$$y_{pij} = S_{pij}\, \gamma_j + X_p\, \alpha + Z_{ij}\, \beta + \varepsilon_{pij} \qquad\qquad (2)$$

In equation (2) we assume that judge p dissents on case i belonging to issue area j if $y_{pij} > 0$, whereas instead concurring if $y_{pij} \leq 0$. X_p and Z_{ij} are respectively judge-level predictors, such as age, proxies for experience, origins, etc., and case-level predictors, whose details will be discussed in the remainder. Note, in particular, that fixed-coefficients are associated with X_p and Z_{ij}, whereas random coefficients are associated with S_{pij}.[9]

First-stage. According to the Fischman's model of consensus voting, the likelihood of dissent suppression (S_{pij}) is related to judges' ideological preferences. Following a genuine behavioral approach we should infer ideal points from judges' manifest opinions when the latter are not aligned with other judges voting on the same case. In general, decisions with dissenting opinions are informative in order to identify judicial preferences, contrary to cases that end up with unanimous voting. However, even decisions involving dissents could provide biased information, as long as some judges may opt for dissent suppression.

In order to overcome this problem we initially concentrate on a subset of decisions with dissenting opinions in which the majority of the judges are *pivotal*. Provided that panel members are in odd number, set in panels of either three or five members, it is straightforward to conclude that: *i*) in panels

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[8] This feature is extremely important when one needs to manage situations in which there are relevant discrepancies in the rate of dissenting across different branches of a court. In our specific situation, for example, the rate of dissenting is considerably lower in devolution and domestic issue areas, compared to Commonwealth issues. Estimating a comprehensive model which accommodates for issue area heterogeneity allows accounting for the behavior of the same judge when the latter votes on cases pertaining to different areas, all other things left equal. If the estimated behavior of the judge changes (perhaps dissenting on one case while not dissenting on another case pertaining to a different area) this allows grasping possible gaps in the cost of dissenting across different areas. Conversely, the low or null rate of dissenting in some branches of the court would represent a problem if one tried to estimate a separate model for each individual issue area (*i.e.*, in some regressions the dependent variable could be null).

[9] We will estimate one random intercept and one random slope for each issue area.

of three members *the majority* of the judges is pivotal when there is one dissent; *ii*) in panels of five members *the majority* of the judges is pivotal when there are two dissents.

The rationale behind this conjecture is that if the majority of the judges are pivotal each of them can revert the final decision by simply switching to the alternative choice, so that there is no need to suppress dissenting. In the same vein, the minority of the judges would not dissent if their attitude did not reflect their true ideology. Therefore, concentrating on the restricted sample of decisions involving *a majority* of pivotal judges allows identifying their true ideological points, *i.e.*, based on sincere voting.[10] In particular, according to Fischman (2008 and 2011) we define our measure of propensity towards consensus (S_{pij}) as the interaction between the distance of a judge's ideal point from the case cutpoint (an inverse measure of ideological polarization) and a dummy variable indicating whether the judge is in conflict with the majority of the panel, based on the estimated ideal points.[11]

We follow a traditional one-dimension IRT approach in order to estimate judges' ideal points.[12] Define a judge's propensity to favor the government as a point θ_p in the ideology space. Each judge may choose a ruling $v_p \in \{ProGov, AntiGov\}$ representing a vote in favor of or against the Government, respectively.[13]

We observe the vote of each judge for decision *i* located in issue area *j*. Suppose that the excess utility of a given judge *p* who votes in favor of the Government in a particular decision *i* in issue area *j* is the following:[14]

$$q_{pij} = -a_{ij} + b_{ij}\theta_p + e_{pij} \qquad (3)$$

We assume that the judge votes in favor of the Government if $q_{pij} > 0$ and against the Government if $q_{pij} \leq 0$. We constrain the parameter b_{ij} to be equal to 1 so that the recovered dimension reflects justices' ideology being anti-Government (negative values of θ_p) or pro-Government (positive values of θ_p). a_{ij} is

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[10] As described in Section 3, in the first-stage we retrieve preferences for 27 judges over 62. Because these judges are the most active, it turns that we are able to associate ideal points for a total of 1,004/1,127 (89%) votes in the overall sample used to conduct the second-stage analysis. The remaining judges, who take part in a restricted number of cases, are associated with an ideal point of 0.

[11] The "*conflict with majority*" dummy takes value 1 when the ideal point of the majority of judges in the panel is located at the opposite part of the case cutpoint compared to the ideal point of the observed judge.

[12] *See* mainly Martin and Quinn (2002) and Hanretty (2012), Dalla Pellegrina *et. al.* (2012), Clinton *et. al.* (2004) and Jackman (2001), Alarie & Green (2007), Ho & Quinn (2010).

[13] Therefore, this dimension is also allowed for Commonwealth cases. We consider a pro-government outcome whenever the JPCP provided an outcome in favor of the Commonwealth government.

[14] We could have omitted the index *j* referring to the law area since all cases in which the majority of judges is pivotal are Commonwealth appeals. We preserve it for coherence with the explanation of the second-stage.

representative of case characteristic.[15] Notice that since $b_{ij}=1$, then a_{ij} coincides with the case cutpoint. In other words, cases exhibiting negative values of a_{ij} can be intended as those that, due to their nature, are less likely to provide consensus to the Government. Therefore, if $\theta_p < a_{ij}$ judge p will prefer to vote against the Government when deciding on case i, whereas the opposite occurs if $\theta_p > a_i$. We also assume that the error term e_{pij} is distributed according to a standard Normal.

3. Data and Results

The database examined in this paper is composed of 1,127 observations corresponding to the individual votes of 62 JCPC members on a total of 262 decisions released between 1998 and 2011.[16] The JCPC is a British court of last resort that hears three different types of appeals: *i)* domestic appeals; *ii)* Commonwealth appeals; and *iii)* devolution appeals (from 1998 to 2009). In a nutshell, domestic appeals are from ancient and ecclesiastical courts, and from a few professional disciplinary bodies (*i.e.*, Disciplinary Committee of the Royal College of Veterinary Surgeons, the Professional Conduct Committee of the General Medical Council, and the Professional Committee of the General Dental Council). Commonwealth appeals are from Commonwealth jurisdictions and, since the 1960s, they tend to be dominated by business law and protection of property rights.[17] Finally, devolution appeals concern cases in which devolved governments or legislatures went allegedly beyond their powers. This type of appeals arose after the Scotland Act 1998, the Government of Wales Act 1998, and the Northern Ireland Act 1998.

The JCPC usually sits in panels of three or five judges, the general rule being that the board should have an odd number of judges.[18] JCPC panels are generally composed of judges with different backgrounds: the vast majority are British judges that have a judicial training and practiced in England and Wales, Scotland or Northern Ireland and can sit in any type of appeals; a minority is composed by judges that practice in Commonwealth jurisdictions and can sit in Commonwealth and domestic cases.[19]

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[15] Typically, in IRT models, b_i is interpreted as a discrimination parameter, *i.e.*, the attitude of a given case to discriminate across individuals according to the recovered dimension.

[16] For a brief description of the JCPC and of the dataset used in this paper, see Amaral-Garcia and Garoupa (2016). See also Le Seuer (2009) and references therein.

[17] See Voigt *et al.* (2007).

[18] See Patterson (2013) for panels at the House of Lords.

[19] See for example Munday (2002). Therefore, Commonwealth judges cannot sit in devolution appeals. We take this into account in our second-stage (GLMM) regression.

As shown in Table 1, the majority of decisions refer to Commonwealth cases (144 decisions/729 individual votes), followed by domestic cases (96 decisions/294 individual votes) and devolution cases (22 decisions/104 individual votes). On average, judges participated in 18 decisions, but some judges participated in fewer or higher number of decisions than others. We can also see that judges voting at the JCPC tend to be English/Irish and male. The majority of panels sit with five judges.

[Table 1]

The pivotal-sentence dataset used in the first-stage regressions consists of 105 (individual votes) corresponding to 21 pivotal decisions. Estimating the θ_p for all justices that participated in cases in which the majority was pivotal allows recovering the ideal points of 27 justices[20] over 62 who are present in the overall dataset. However, the 27 justices for whom we are able to obtain "sincere" ideal points are those deciding over the largest number of cases. Indeed, 1,004 observations (corresponding to 89% of the sample) match pivotal justice's ideal points with individual votes. Summary statistics for justices participating in pivotal and non-pivotal decisions can be found in Table 3. The vast majority of pivotal justices are British (85%), Law Lords (78%) and male (96%). They tend to be slightly more senior than non-pivotal justices. Pivotal justices participated in a higher number of decisions and, as expected, they are more likely to present separate votes. The proportion of Scottish justices and justices from Commonwealth jurisdiction is higher for the non-pivotal group.

We estimate the first-stage equation (3) on a set of 105 pivotal justices' decisions. We perform a Markow Chain Monte Carlo simulation, assuming Normal priors for judges' ideal points and multivariate Normal priors on the case parameters. The model is run for 52,000 iterations, discarding the first 2,000 as burn-in. We fix the thinning interval to 10. Gibbs sampling is adopted. Estimated ideal points and standard deviations are reported in Table 4. Lord Slynn is the judge located closer to anti-government, whereas Lord Lloyd is the one located more pro-government. Case cutpoints are estimated along with ideal points for the cases involving pivotal justices.

[Table 4]

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[20] We refer to these 27 justices as pivotal and the remaining 35 as non-pivotal.

After having recovered individual ideal points and case cutpoints for the subset of 27 judges participating in pivotal sentences we extend our analysis to the full dataset of 1,127 decisions. First, we associate an ideal point equal to zero (i.e., the prior) to non-pivotal justices (123 decisions, 11% of the sample), whereas the full set of case cutpoints is completed drawing posteriors from a standard IRT model based on the full set of cases brought before the JCPC. Estimates are carried out with and without covariates.[21]

The last stage is to estimate (2) through a multilevel GLMM model on all cases in the sample using the estimated measures of S_{pij} and Z_{ij}. As in the first-stage regressions, a Markow Chain Monte Carlo methodology is used here. In this case we assume multivariate Normal priors for the fixed-coefficients α and β, a zero-mean multivariate Normal prior for the random-coefficients γ_j, and an Inverse-Wishart prior for their variance matrix. We also assume that ε is normally distributed, with zero mean and block-diagonal variance-covariance matrix, where blocks refer to the areas of law. Finally, we use an Inverse-Gamma prior for modelling over-dispersion in the variance-covariance matrix of ε. The model is run for 30,000 iterations, discarding the first 2,000 as burn-in and using a thinning interval of 10. The blocked Gibbs sampler 2 of Chib and Carlin (1999) is adopted. Results are reported in Table 5.

[Table 5]

There are two main outcomes stemming from the Second-Stage regression. First, random coefficients associated with the propensity towards consensus (S_{pij}) are negative. This provides evidence on the correct construction of the Fischman's definition of dissent suppression expressed as judges' ideological position relative to the position of other panel colleagues, conditional on not making part of the majority of justices in the panel. In other words, negative parameters associated with S_{pij} indicate that when justices find themselves in a highly likely consensus position they will dissent less frequently, conditional on not being part of the majority of the panel.

Second, the pattern of S_{pij} is different across issue areas. In particular, in all regressions reported in Table 5 one can observe that increasing the consensus propensity measure in the devolution area and, to some extent, in the domestic area has a more intense impact on the reduction of actual dissents

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[21] Notice that gender (Tables 1 and 3) and Appellant-Respondent identities (Table 1) are not included among the covariates due to the high imbalance between categories, i.e. variables are collinear with the grand-mean of the regressions.

compared to what occurs in the cases dealing with Commonwealth issues. According to our previous considerations, this suggests that the cost of dissenting may be higher when judges make decisions on issues related to the former fields. Therefore, judges tend to suppress their ideological preferences more frequently in cases with a higher cost of dissent. Most important, this goes in favor of our hypothesis that a norm of consensus is more relevant in cases involving a greater political content, such as those in the devolution area, in comparison with decisions which are less political in nature.

It might be the case that the evidence stemming from the Second-stage regression analysis is affected by the fact that, compared to British judges, Commonwealth ones have a different degree of involvement in decisions pertaining to the three areas of law. As a robustness check we replicate the regressions in columns (1) and (2) dropping from the overall sample the votes relative to judges whose jurisdiction is the Commonwealth (columns (3) and (4), Table 5). The exclusion of these observations has the effect of increasing the significance of all parameters (in absolute value) associated with the propensity towards consensus. It must be noticed, however, that even when the parameter associated to dissent suppression in Commonwealth decisions is significant (column (4), Table 5), its magnitude is still lower than in the devolution and domestic areas, thus leaving our main predictions unaffected.

There is additional interesting evidence from the Second-Stage regression outcome. First, younger judges and judges that participated in a higher number of decisions seem to dissent more frequently. Second, English judges seem to have a higher rate of dissenting compared to Scottish and Irish ones (Table 5). Finally, cases related to criminal, professional and business law show lower dissenting rates, in particular in comparison with cases involving civil rights and other less homogeneous matters (residual category) (Reg (2) and (4), Table 5).

4. Conclusions

We have used decisions from the Judicial Committee of the Privy Council to test whether judges suppress disagreement. We have also considered that the cost of disagreement can be different across different areas of the law. We find evidence that judges are more likely to suppress dissent in one particular type of cases: devolution appeals.

Devolution appeals are significantly important. They address the balance of power between the central government and the devolved administrations (although, the balance of power is mostly and more

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specifically on human rights and not conflict of executive jurisdictions). Furthermore, they effectively limit the competences of higher courts such as the High Court of Justiciary, which is the last court of appeal for criminal law in Scotland. At the same time, they have also allowed the House of Lords to be bypassed in human rights appeals when they are claimed within a devolution appeal (in fact, appeals to the JCPC between 1998 and 2009 raising devolution issues have relied more significantly on the European Convention on Human Rights).

Given the importance of devolution appeals, we might expect a tendency for more political polarization at the JPCP. However, our results indicate a tendency to suppress dissent precisely in these cases. Our interpretation is that, given the constitutional role of devolution appeals, judges tend to be more inclined to avoid perceptions of division in the Court.

The general conclusion is that areas of the law that seem of more significant political repercussion do not necessarily induce more dissent as the attitudinalists seem to suggest. Precisely due to the political repercussions, judges might be more inclined to suppress dissent in order to promote a perception of unity across the bench and diffuse disputes concerning the legitimacy of the Court decisions.

Table 1: Summary Statistics: JCPC 1998-2011

Variable	Mean	StandDev	Min	Max	N
Appellant individual	0.88	0.33	0.00	1.00	262
Appellant company	0.06	0.25	0.00	1.00	262
Appellant public	0.06	0.25	0.00	1.00	262
Business law	0.02	0.14	0.00	1.00	262
Commonwealth	0.55	0.50	0.00	1.00	262
Criminal	0.18	0.38	0.00	1.00	262
Devolution	0.08	0.28	0.00	1.00	262
Dissenting	0.05	0.13	0.00	0.44	262
Domestic	0.37	0.48	0.00	1.00	262
Pro-Gov outcome	0.58	0.49	0.00	1.00	262
Prof. misconduct	0.37	0.48	0.00	1.00	262
Respondent individual	0.05	0.21	0.00	1.00	262
Respondent company	0.02	0.12	0.00	1.00	262
Respondent public	0.94	0.24	0.00	1.00	262
Rights	0.26	0.44	0.00	1.00	262
Total dissents	0.27	0.71	0.00	4.00	262
Panel size	4.30	1.14	3.00	9.00	262
Year	2002.39	2.78	1998	2011	262
Appellant individual	0.85	0.35	0.00	1.00	1,127
Appellant public	0.08	0.27	0.00	1.00	1,127
Commonwealth	0.65	0.48	0.00	1.00	1,127
Devolution	0.09	0.29	0.00	1.00	1,127
Dissenting	0.06	0.24	0.00	1.00	1,127
Domestic	0.26	0.44	0.00	1.00	1,127
Judge vote Pro-executive	0.54	0.50	0.00	1.00	1,127
Respondent individual	0.06	0.23	0.00	1.00	1,127
Respondent public	0.93	0.26	0.00	1.00	1,127
Total dissents (per decision)	0.36	0.84	0.00	4.00	1,127
Female Judge	0.05	0.22	0.00	1.00	62
Irish Judge	0.08	0.27	0.00	1.00	62
English Judge	0.66	0.48	0.00	1.00	62
Jamaican Judge	0.02	0.13	0.00	1.00	62
New Zealander Judge	0.11	0.32	0.00	1.00	62
Judge is from Commonwealth	0.13	0.34	0.00	1.00	62
Law Lord Judge	0.50	0.50	0.00	1.00	62
Judge vote Pro-executive	0.53	0.30	0.00	1.00	62
Scottish judge	0.13	0.34	0.00	1.00	62
Years to retirement	6.82	4.91	0.00	21.50	62
Total votes by judge	18.18	24.08	1.00	90.00	62
Total dissent by judge	1.16	1.94	0.00	10.00	62

Note: The unit of observation is: *decision*, if N is 262; *individual vote*, if N is 1,127; and *judge*, if N is 62.

Table 2: Voting statistics, JCPC 1998-2011, by Judge

| Judge | Number of Votes | | | | | | % Pro-Gov votes | | |
	Unan	Non-unan	Dissent	Devolution	Domestic	Commonwealth	Total	Unan	Non-unan
Bingham	51	12	5	13	5	45	0.54	0.55	0.5
Brown	17	11	3	4	0	24	0.54	0.65	0.36
Browne-Wilkinson	7	3	0	0	4	6	0.40	0.43	0.33
Carswell	21	10	2	6	2	23	0.52	0.48	0.6
Clyde	39	5	1	8	11	25	0.61	0.59	0.8
Cooke	14	1	1	0	4	11	0.60	0.64	0.00
Evans	7	0	0	0	6	1	0.71	0.71	-
Gault	5	0	0	0	4	1	0.60	0.60	-
Goff	4	1	1	0	1	4	0.60	0.75	0.00
Hale	21	8	3	5	3	21	0.45	0.48	0.38
Henry	6	1	0	0	3	4	0.71	0.67	1.00
Hobhouse	42	8	3	1	12	37	0.56	0.52	0.75
Hoffmann	59	19	5	3	19	56	0.54	0.47	0.74
Hope	79	11	3	22	27	41	0.58	0.61	0.36
Hutton	58	10	3	4	14	50	0.43	0.43	0.4
Leggatt	32	3	1	0	17	18	0.51	0.50	0.67
Lloyd	7	4	2	0	5	6	0.64	0.57	0.75
Mackay	13	1	0	1	4	9	0.57	0.54	1.00
Mance	11	6	3	0	3	14	0.41	0.36	0.50
Millett	46	10	3	3	12	41	0.70	0.65	0.9
Neuberger	6	0	0	2	2	2	0.33	0.33	-
Nicholls	43	7	4	4	8	38	0.48	0.51	0.29
Nourse	5	0	0	0	3	2	0.80	0.80	-
Otton	38	1	1	0	35	4	0.77	0.76	1.00
Phillips	3	2	0	0	0	5	0.80	1.00	0.5
Rodger	54	15	4	12	14	43	0.46	0.44	0.53
Russell	14	1	0	0	2	13	0.20	0.14	1.00
Scott	39	12	6	5	7	39	0.57	0.54	0.67
Slade	10	1	0	0	5	6	0.82	0.80	1.00
Slynn	23	5	3	3	9	16	0.50	0.61	0
Steyn	61	18	10	3	24	52	0.52	0.57	0.33
Thomas	6	4	1	0	2	8	0.50	0.33	0.75
Walker	29	10	3	2	13	24	0.44	0.48	0.3
Overall average	42	10	3	5	12	32	0.55	0.58	0.40

Note: Individual summary statistics for judges that participated in at least 5 decisions.

Table 3: Pivotal and Non-Pivotal Judges

	Mean	StandDev	Min	Max	N
Pivotal Judges					
Female Judge	0.04	0.19	0.00	1.00	27
Irish Judge	0.07	0.27	0.00	1.00	27
English Judge	0.78	0.42	0.00	1.00	27
Judge is English/Irish	0.85	0.36	0.00	1.00	27
New Zealander Judge	0.04	0.19	0.00	1.00	27
Jamaican Judge	0.00	0.00	0.00	0.00	27
Judge is from Commonwealth	0.04	0.19	0.00	1.00	27
Law Lord judge	0.78	0.42	0.00	1.00	27
Scottish judge	0.11	0.32	0.00	1.00	27
Years to retirement	5.84	3.45	0.73	14.84	27
Total votes by judge	37.19	26.07	1.00	90.00	27
Total dissent by judge	2.67	2.17	0.00	10.00	27
Non-Pivotal Judges					
Female Judge	0.06	0.24	0.00	1.00	35
Irish Judge	0.09	0.28	0.00	1.00	35
English Judge	0.57	0.50	0.00	1.00	35
Judge is English/Irish	0.66	0.48	0.00	1.00	35
New Zealander Judge	0.17	0.38	0.00	1.00	35
Jamaican Judge	0.03	0.17	0.00	1.00	35
Judge is from Commonwealth	0.20	0.41	0.00	1.00	35
Law Lord judge	0.29	0.46	0.00	1.00	35
Scottish judge	0.14	0.36	0.00	1.00	35
Years to retirement	7.58	5.72	0.00	21.50	35
Total votes by judge	3.51	3.48	1.00	15.00	35
Total dissent by judge	0.00	0.00	0.00	0.00	35

Table 4: Pivotal justices' ideal points (First-Stage) – JCPC 1998-2011

Justice	Mean	Std Dev	Justice	Mean	Std Dev
Slynn	-1,104	0,729	Hoffmann	0,296	0,516
Walker	-1,093	0,713	Leggatt	0,305	0,640
Hope	-0,678	0,591	Hobhouse	0,371	0,548
Cooke	-0,619	0,826	Thomas	0,499	0,607
Steyn	-0,603	0,485	Scott	0,561	0,602
Goff	-0,562	0,845	Roch	0,575	0,823
Gibson	-0,558	0,820	Henry	0,598	0,849
Rodger	-0,522	0,519	Otton	0,618	0,834
Browne-Wilkinson	-0,304	0,646	Mance	0,622	0,843
Bingham	-0,182	0,557	Carswell	0,674	0,580
Hutton	-0,016	0,506	Clyde	0,918	0,757
Brown	-0,006	0,588	Millett	1,020	0,540
Nicholls	-0,005	0,709	Lloyd	1,096	0,715
Hale	0,033	0,587			

Note: Number of observations is 105 (individual votes).

Table 5: Determinants of observed judicial dissenting behavior (Second-Stage) – JCPC 1998-2011

	(1)		(2)		(3)		(4)		(5)	
	Mean	Std. Dev.	Mean	Std. Dev.	Mean	Std. Dev.	Mean	Std. Dev.	Mean	Std. Dev.
Judge: birth			-0.036***	0.003	-0.009	0.005	0.011***	0.003	0.015	0.006**
Judge: total votes			0.003***	0.000	0.008***	0.000	0.005***	0.000	0.001	0.000
Judge: author			0.071***	0.022	-0.448***	0.047	-0.174***	0.037	-0.078***	0.021
Appellant public			0.083*	0.049						
Judge: engl					0.635***	0.061				
Judge: Scottish							-0.599***	0.041		
Judge: Irish							-0.565***	0.090		
Judge: Jamaican					0.086	0.140	0.296***	0.069		
Judge: New Zealander					-0.770	0.471	-1.694***	0.341		
Case: criminal law									-0.140***	0.03
Case: rights									0.227***	0.05
Case: business law									-0.062	0.096
Case: professional									-0.626***	0.118
Intercept (devolution)	0.432	0.487	-0.246**	0.118	-0.130	0.070*	-0.049	0.035	0.008	0.062
Intercept (domestic)	-1.602***	0.32	-0.515***	0.114	-0.041	0.042	-0.116***	0.022	-0.088	0.086
Intercept (Commonwealth)	1.043***	0.402	0.475***	0.117	0.171***	0.039	0.160***	0.024	0.078	0.055
Propensity towards consensus (devolution)	**-0.069***	**0.011**	**-0.031***	**0.002**	**-0.017***	**0.004**	**-0.012***	**0.003**	**-0.018***	**0.006**
Propensity towards consensus (domestic)	**-0.015**	**0.060**	**-0.117***	**0.013**	**0.023**	**0.017**	**-0.007**	**0.023**	**0.000**	**0.022**
Propensity towards consensus (Commonwealth)	**0.000**	**0.004**	**-0.004***	**0.001**	**-0.001**	**0.001**	**0.000**	**0.002**	**-0.001**	**0.002**
Sigma2	0.035	0.090	0.000	0.001	0.000	0.000	0.000**	0.000	0.000	0.000
Deviance	492.500***	9.09	501.300***	0.915	524.500***	1.434	525.700***	1.702	534.800***	2.385

Note: Obs. 1,127 (individual votes). *** for 1% sign., ** for 5% sign, and * for 10% sign. All regressions include an intercept and year of decision.

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