CefES-DEMS Paper Series

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Consensus and Ideology in Courts: an Application to the Judicial Committee of the Privy Council

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Consensus and Ideology in Courts: an Application to the Judicial Committee of the Privy Council

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Abstract

This article argues that judges suppress dissent when it is costly to do so, and that the cost of dissent depends on the political dimension of the issue broached. It contends that judges who disagree may nevertheless try to safeguard integrity and legitimacy in political disputes by presenting a public impression of unity. We muster evidence from the United Kingdom, specifically, votes from the Judicial Committee of the Privy Council (JCPC) between 1998 and 2011. We demonstrate through statistical analysis that judges are likelier to suppress dissent in devolution cases, which are more political in character, than in Commonwealth appeals, which are more mundane in nature. We find that while consensus on domestic issues reflects the absence of conflict between judicial ideologies, judges have stronger conflicting positions on issues concerning devolution, but tend to suppress their propensity to dissent. This finding confirms that the Court wants to appear cohesive to give an image of greater authority on decisions of predominantly political content.

1. Introduction

A large empirical literature on judicial behavior has attempted to assess which factors affect or determine judicial voting in collegial courts. Spatial models that account for case heterogeneities and judicial preferences have been one of the methods used to analyze judicial decision making. These models provide an estimate of judges' revealed ideology in a given continuum. In fact, evidence suggests that ideology plays an important role in explaining individual decisions, and judges in higher courts are no exception.[1] U.S. Supreme Court Justices are among those more often studied by political scientists and legal scholars, and several studies locate those judges in the political space according to their individual votes.[2] However, performing this type of analysis for British higher court judges has been more difficult as these judges tend to be considered apolitical and relatively insulated from political interference.[3]

Besides ideology, evidence indicates that panel composition influences individual judicial votes, a possibility generally not considered in conventional spatial models.[4] If panel composition does affect a judge's vote, the vote might not be sincere (*i.e.*, the judge's vote does not coincide with his or her preferred outcome). Some possible explanations for panel effects are dissent aversion (Posner, 2008), collegial deliberation (Edwards, 2003), strategic motivations (Cross and Tiller, 1998), group polarization (Sunstein *et al.*, 2006) and judicial ability (Iaryczower and Katz, 2016). Fischman (2011) shows that another possible explanation for panel effects is the existence of a norm of consensus.[5] Judges may vote against their preferred outcome because, under some circumstances, dissenting is relatively costlier than suppressing a dissent. Whereas ideology is an intrinsic judicial characteristic that

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[1] See Martin and Quinn (2002) and Alarie and Green (2007), among others.

[2] See Segal and Cover (1989), Martin and Quinn (2002), and references therein.

[3] 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 (2016) argue that Law Lords are more polarized than traditional accounts suggest, but not on ideological grounds. Iaryczower and Katz (2016) study the House of Lords Appellate Committee. They find that a model of judicial decision-making that accounts for both the legal and attitudinal model (*i.e.*, a model that considers both differences in judicial ability and ideology) better explains the votes of the Lords of Appeal than the standard ideological model. Blanes i Vidal and Leaver (2013) analyze decisions from the English Court of Appeals and conclude that citation behavior is influenced by social interactions. The results do not support the view that the political status of litigants influences citation behavior. Amaral-Garcia and Garoupa (2017) find that different types of cases induce different opinion writing behavior (concurring or dissenting opinions) from judges at the Judicial Committee of the Privy Council. They conclude that divisions can be induced by political or ideological dimensions, which are distinct from mere party politics.

[4] For instance, Revesz (1997), Sunstein *et al.* (2006), and Boyd *et al.* (2010).

[5] Fischman (2011) tests a model of consensus on asylum cases decided by the U.S. Ninth Circuit Court of Appeals. The author includes a cost of dissent and finds that the consensus model performs better than a model of sincere voting.

interacts with case characteristics to provide a given voting outcome, panel composition can be interpreted as a "disrupting" factor altering sincere judicial behavior.

This article develops an approach that accounts for heterogeneities in the cost of dissent depending on the field of law.[6] As far as we are aware, this is the first empirical article that attempts to reveal dissenting behavior across different fields of law. We test this model using cases decided by the Judicial Committee of the Privy Council (hereafter, JCPC) from 1998 through 2011. This British court of last resort hears three different types of appeals: Commonwealth, domestic, and devolution (until 2009). What makes this court particularly interesting for the purposes of our analysis is that judges often dissent when they decide cases relating to the Commonwealth, while there is an absence of dissenting opinions when the court adjudicates domestic or devolution issues.

We start by investigating circumstances in which judges are likely to dissent from the majority of their panel colleagues. In order to manage this aspect, we initially derive a behavioral model of voting, estimating judicial ideology as an individual latent trait revealed by each judge's manifest behavior. The structure of the model employs a random utility framework, while contemporaneously accounting for case characteristics. We exploit cases with panels in which judges in the majority are *pivotal* to retrieving a "sincere" measure of judicial ideology along some latent dimension.[7] The likelihood of observing an actual dissent is defined as a positive function of each judge's likelihood to dissent, inferred from a measure of sincere ideology, interacted with the net benefit[8] of dissenting, which is specific to each field of law.[9]

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[6] In this article, we refer to devolution, Commonwealth and domestic as fields of law. Business law, criminal, civil, family, etc., are areas of law for the purpose of our article.

[7] The dimension along which judicial ideology is retrieved is irrelevant to the purposes of this article. Hence, although many studies have found this dimension has a political nature, we do not confine our article to this specific trait of judicial preferences.

[8] In this article, we refer to net benefit of dissenting as the difference between the benefits and the costs of dissenting. On the one hand, a judge may benefit from dissenting because it can make the rapporteur of the majority opinion clarify her position and could affect future judgments in situations similar to the case in question (Bader Ginsburg, 2010). There are also strategic behavior and career concerns related to future appointments, which may drive judges to signal individual preferences. Costs could be represented by the time and effort spent in writing separate opinions. In this article, we mainly concentrate on those costs stemming from the lack of cohesiveness, which may give an image of lower authority of the court. For instance, as Justice Ginsburg (2010) points out, "the U.S. Supreme Court may attract greater deference, and provide clearer guidance, when it speaks with one voice."

[9] Following Fischman's approach, we define the likelihood of dissent as a combination of a judge's ideological position relative to the position of other panel colleagues and distance from the case cutpoint. See Section 3 for details.

Behavioral models normally use the Item Response methodology (IRT) to infer judicial latent preferences.[10] 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 other judges' latent traits. However, it seems rather unlikely that the ideology of a judge's panel colleagues has no impact on her final decision. Furthermore, some branches of a court dealing with different fields of law may be additionally 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 propensities towards dissent, which interacts with the net benefit of dissenting entailed by the specific field of law they are dealing with. This is an important difference with respect to Fischman's approach (Fischman, 2011) which concentrates on a single and homogeneous legal issue, thereby deriving a constant cost of dissenting. Instead, we assume that the net benefit (mirroring Fischman's dissenting cost) of dissenting is specific to each field of law, conditional on measurable case characteristics and individual judicial traits.

This setup − which could be of general use when forms of heterogeneity lead to different judicial attitudes − is used to estimate whether the net benefit of dissenting changes across cases that can be appealed to the JCPC, belonging to the three fields of law: domestic, devolution, and Commonwealth.[11] Specifically, we test the hypothesis under which dissenting provides a different intensity of benefit and discomfort depending on the nature of the issue brought before the court. On the one hand, judges might be more likely to dissent in cases that are politically irrelevant, conditional on the presence of conflicting ideological positions. Judges might consider the cost of cooperative behavior contrary to their true ideology too high and that the type of case is not worth the effort. On the other hand, judges might be more likely to suppress dissent in politically relevant cases, as they consider these cases to be significant and want to avoid sending a signal of a divided court. This effect could be particularly important in an environment where division or polarization is perceived as politicization, or when a court needs to develop a new field of law (where dissents could be considered a source of confusion and misunderstanding).

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[10] As opposed 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 explain the vote of a judge as a function of some measurable characteristics, such as political affiliation. However, proxies of judicial ideology raise problems due to the aggregation of data spanning different areas (Fischman, 2008).

[11] A similar approach can be found in Islam et al. (2016), where text-mining techniques are used to identify the most relevant topics on which US Supreme Court justices vote. Their study shows how the ideal points tend to polarize more when justices vote on some specific topics. Our approach is similar, although we claim that ideology is invariant, whereas it is the net benefit of revealing one's ideology through dissenting that can vary across fields of law.

The JCPC offers an interesting institutional setting to analyze dissent suppression and consensus voting since its jurisdiction varies considerably from highly political, controversial cases (such as devolution) to relatively apolitical cases (such as most Commonwealth cases). A few articles have addressed judicial behavior at the JCPC, particularly investigating possible political determinants. The overall conclusion seems to point out that dissenting and explicit politicization is weak.[12]

We find evidence that the net benefit of dissenting varies across different fields of law. In fact, our results show that – despite ideological diversity – judges are more willing, *ceteris paribus*, to issue unanimous opinions in devolution cases, which have potentially stronger political content. Besides the additional work that dissenting requires, the difficulties of collegial relationships or their detrimental effect on the workplace,[13] there is a tradition in the House of Lords Appellate Committee to avoid exhibiting differences across the bench.[14] This tradition stems from a concern regarding public perception of politicization. Arvind and Stirton (2016) argue that there is a strong norm for consensus and deflection of possible signs of division. With respect to devolution appeals, these are the only cases of a political nature that are directly related to the members of the JCPC (privy councilors have few opportunities to deal with UK constitutional law). The particular role of Scottish criminal law also adds to the concern (since it should not be subject to English courts). Therefore, we may expect more legal debate and enhanced expressive roles. At same time, judges could be more concerned with their performance and therefore develop more careful separate opinions in order to establish their individual legitimacy. It is likely that devolution might deter dissents to create a stronger precedent (Amaral-Garcia and Garoupa, 2017). Moreover, empirical evidence provides support for Fischman's approach to dissenting behavior.

The article is organized as follows. Section 2 describes the JCPC and the data analyzed in this paper. Section 3 illustrates the methodology used in the paper. Section 4 presents the results. Finally, Section 5 concludes.

2. Analysis of the Judicial Committee of the Privy Council

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[12] See Voigt *et al.* (2007) and Amaral-Garcia and Garoupa (2017).
[13] See, for instance, Epstein *et al.* (2011) and Edelman *et al.* (2012).
[14] See Hanretty (2012b, 2014) and references therein.

2.1 Institutional Analysis[15]

The JCPC was formally created in 1833 by the Judicial Committee Act and, in practice, operates as a court of appeal. The advice provided by the JCPC is subject to standard appellate proceedings with 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. The JCPC 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 as well as 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). These cases are relatively marginal as they are appealed from a limited number of bodies and the vast majority concern professional misconduct.

Commonwealth appeals are from Commonwealth jurisdictions and, since the 1960s, they tend to be dominated by business law and protection of property rights.[16] UK judges might distance themselves from these cases as they require application of Commonwealth law and are unrelated to UK human rights. One exception might be Commonwealth cases that are related to human rights, in particular, criminals sentenced to life in prison or death, or plaintiffs sent to jail without a fair trial. On the one hand, privy counsellors can feel distant considering that these cases arise from Commonwealth jurisdictions. On the other hand, they might be concerned with the implications of these cases considering the human rights issues that they raise.

Finally, devolution appeals concern cases in which devolved Governments or legislatures allegedly went beyond their powers. This type of appeal arose after the Scotland Act 1998, the Government of Wales Act 1998, and the Northern Ireland Act 1998. Even though these appeals make up a small number of cases decided by the JCPC, they are significantly important for different reasons: *i)* they address the balance of power between the central Government at Westminster and the devolved administrations (mainly on human rights); *ii)* they effectively limit the competences of higher courts such as the High Court of Justiciary (last court of appeal for criminal law in Scotland); *iii)* they allow the House of Lords to be bypassed in human rights appeals when these appeals are claimed within a devolution appeal; and *iv)* they empower English judges to influence Scottish law on human rights.

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[15] A more detailed description of this court can be found in Amaral-Garcia and Garoupa (2017), which we follow closely in this section.
[16] See Voigt *et al.* (2007).

Scottish, Irish, and English members of the JCPC decide Scottish criminal cases that raise human rights issues. All in all, devolution is a new area of the law that deals mainly with human rights.

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 led 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 appointing judges to the JCPC. Essentially, judges of certain seniority 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, which means many judges sitting on the JCPC spend the majority of their time deciding cases in another court.

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. JCPC panels are generally composed of judges with different backgrounds: the vast majority are British with judicial training and practice in England and Wales, Scotland or Northern Ireland and can sit in any type of appeals; judges that practice in Commonwealth jurisdictions and can sit in Commonwealth and domestic cases comprise a minority.[17]

2.2 Data

The database examined in this paper is composed of 1,127 individual votes of 62 JCPC judges on a total of 262 decisions released between 1998 and 2011.[18] As shown in Table 1, the majority of decisions refer to Commonwealth cases, 144 decisions (55%), which correspond to 729 individual votes (65%); followed by domestic cases, 96 decisions (37%), which correspond to 294 individual votes (26%); and devolution cases, 22 decisions (8%), which correspond to 104 individual votes (9%). In each case, the Government may be either the appellant or the respondent, *i.e.* the database does not include cases in which both parties are either companies or individuals. On average, each judge participated in 18

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[17] See, for example, Munday (2002). Therefore, Commonwealth judges cannot sit in devolution appeals. We take this into account in our empirical analysis.

[18] For a brief description of the dataset used in this paper, see Amaral-Garcia and Garoupa (2017). See also Le Seuer (2009) and references therein.

decisions, but some judges participated in fewer or more decisions than others (see Table 2 for more details on individual votes). We can also see that judges voting at the JCPC tend to be English. Overall, there are 41 English judges (66%), eight Scottish judges (13%), seven New Zealander judges (11%), five Irish judges (8%), and one Jamaican judge (2%).[19] From the 62 judges, only three (5%) are female. The majority of panels sit with five judges. From the 62 judges voting at the JCPC, half are Law Lords. However, as expected, Law Lords are those participating more actively in appeals: 84% of individual votes are made by Law Lords. On average, judges are 68 years old when they cast their vote, corresponding to 7 years to mandatory retirement (at 75).

[Table 1]

Table 2 shows some summary statistics for each judge's individual votes (judges appear by alphabetical order of their surname).[20] Lord Hope[21] voted in a higher number of decisions (a total of 90 individual votes). Other judges casting their vote in a higher number of decisions are Steyn, Hoffmann, Rodger, Hutton, Bingham, Millett, Scott, Hobhouse and Nicholls.[22] These are also the judges presenting a higher

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[19] The last appeal from New Zealand to the JCPC was heard in 2015. Jamaica also approved a law to end legal appeals to the JCPC in 2015. Singapore abolished appeals to the JCPC in 1994, Australia in 1986 and Canada even earlier, in 1949.

[20] This table shows summary statistics for judges that participated in at least 5 decisions. In the next section, we will use this subset of judges to recover an unbiased measure of ideology.

[21] *David Hope* (1938), Scottish, Lord of Appeal in Ordinary in 1996. Retired in 2013. Second Senior Lord of Appeal in Ordinary (April to October 2009). Deputy President of the Supreme Court of the United Kingdom (2009-2013). Biographical source: Wikipedia, also https://www.parliament.uk/biographies/lords/lord-hope-of-craighead/2004, http://www.brickcourt.co.uk/people/profile/lord-hope (last access April 11, 2018).

[22] *Johan Steyn* (1932-2017), British born in South Africa, Lord of Appeal in Ordinary in 1995. Retired in 2005. He endorsed Tony Blair's program for reforming the English legal system (including the abolition of the position of Lord Chancellor). *Leonard Hoffmann* (1934), British born in South Africa, Lord of Appeal in Ordinary in 1995. Retired in 2009. Second Senior Lord of Appeal in Ordinary (2007-2009). His failure to declare his links to Amnesty International before ruling on whether former Chilean President Pinochet was immune from prosecution led to the unprecedented setting aside of a House of Lords judgment (1999). Non-permanent Judge of the Hong Kong Court of Final Appeal (since 1998). *Alan Rodger* (1944-2011), Scottish, Lord of Appeal in Ordinary in 2001. Justice of the Supreme Court of the United Kingdom (2009-2011). Lord Justice General and Lord President of the Court of Session, Scotland (1996-2001). *Brian Hutton* (1931), Northern Irish, Lord of Appeal in Ordinary in 1997. Retired in 2004. Lord Chief Justice of Northern Ireland (1988-1997). He was one of the seven Law Lords on the famous unprecedented setting aside of a House of Lords judgment, concerning Pinochet's extradition (1999). He was later chosen by the Blair Government to chair the inquiry on the circumstances surrounding the death of scientist David Kelly (2003-2004). *Thomas Bingham* (1933-2010), English, Lord of Appeal in Ordinary in 2000. Retired in 2008. Senior Lord of Appeal in Ordinary (2000-2008). Lord Chief Justice of England and Wales (1996-2000). He was a strong supporter of Tony Blair's constitutional reform (2005). He spoke against the war in Iraq (2008). Known as a leading judge in human rights law, Bingham presided over various decisions at the Judicial Committee of the Privy Council upholding the unconstitutionality of the death penalty in Belize, St Lucia, St Kitts and the Bahamas. *Peter Millett* (1932), English, Lord of Appeal in Ordinary in 1998. Retired in 2004. Non-permanent Judge of the Hong Kong Court of Final Appeal (since 2000). *Richard Scott* (1934), British born in South Africa, Lord of Appeal in Ordinary in 2000. Retired in 2009. Non-permanent Judge of the Hong Kong Court of Final Appeal (2003-2012). *John Stewart Hobhouse* (1932-2004), English, Lord Justice of Appeal in 1993 and Lord of Appeal in Ordinary in 1998. *Donald James Nicholls* (1933), English, Lord Justice of Appeal in 1986, Vice-Chancellor of the High Court in 1991. He was also involved in the Pinochet appeal where he sided against

number of non-unanimous votes (which might be expected, as they voted in a high number of cases). There is some heterogeneity with respect to judicial individual votes: several judges participated in less than 10 decisions, and several in more than 50.

[Table 2]

As previously mentioned, we focus on pivotal decisions in the first stage of the empirical analysis (see below for a detailed description of pivotal decisions). In order to retrieve the pivotal-sentence dataset we consider cases with $(n-1)/2$ dissents. Data shows a total of 21 pivotal decisions, corresponding to 105 individual votes. These decisions were all Commonwealth appeals[23] with panels composed of five members.[24] Table 3 presents summary statistics for judges participating in pivotal and non-pivotal decisions. There are 27 pivotal judges and 35 non-pivotal judges with a higher proportion of English/Irish/Scottish pivotal judges in comparison to non-pivotal judges. However, the proportion of New Zealanders and Jamaicans is higher among non-pivotal judges. The proportion of Law Lords is higher among pivotal judges, who voted, on average, in a higher number of decisions.

[Table 3]

3. Methodology

3.1 General Model

In order to provide a framework for modelling preference aggregation within panels of judges, suppose that each decision t pertaining to the field of law i has some characteristics that locate it in the position

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the immunity doctrine. Second Senior Law Lord in 2002 and non-permanent Judge of the Hong Kong Court of Final Appeal (1998-2004). Retired in 2007. Biographical source: Wikipedia, Burke's Peerage.

[23] Judges could, in some cases, signal that they would like to be put on a case according to their expertise, which may in turn be related to the strength of a case. This could raise identification issues in the first-stage approach. Luckily for us, only Commonwealth appeals are part of the pivotal sentence dataset. In Commonwealth appeals, expertise is normally replaced by nationality. Therefore, judges from New Zealand are assigned to appeals from New Zealand, Jamaican judges to Jamaican appeals, and British judges are randomly chosen. British judges feel more distant from Commonwealth cases, and there should be no self-selection for these judges. As in Hangartner *et al.* (2018), we control for nationality as a covariate in the regression analysis in order to account for possible differences in the cases' strength.

[24] There was only one (non-Commonwealth) decision taken in a panel of three judges with one dissent. We did not include it at this stage for coherence with the panel dimension in the rest of the sample. The results hold if this decision is included.

α_{ti}, defined as the case cutpoint. In our setup, cases exhibiting relatively high α_{ti} will be intended as those that, due to their nature, are less likely to support the Government (*i.e.*, more likely to favor private companies or individuals, regardless of whether they are appellants or respondents).

Let us define a judge's preference towards favoring/disfavoring the Government as an individual cutpoint (ideal point) θ_j in the case space[25], where j is the judge's identifier. Judges with higher θ_j are more inclined to support the Government, whereas judges with lower θ_j are inclined to disfavor it. Specifically, a judge deciding a case alone would rule in favor of the Government if and only if $\alpha_{ti} < \theta_j$. This situation is represented in Figure 1: judge j, having individual cutpoint θ_j, would vote against the Government in all situations in which the case cutpoint α_{ti} lays in the interval $(\theta_j, +1]$. Instead, she would vote in favor of the Government in cases with cutpoint falling in the interval $[-1, \theta_j]$.

Figure 1: Case cutpoint, judges' preferences and hypothetical votes
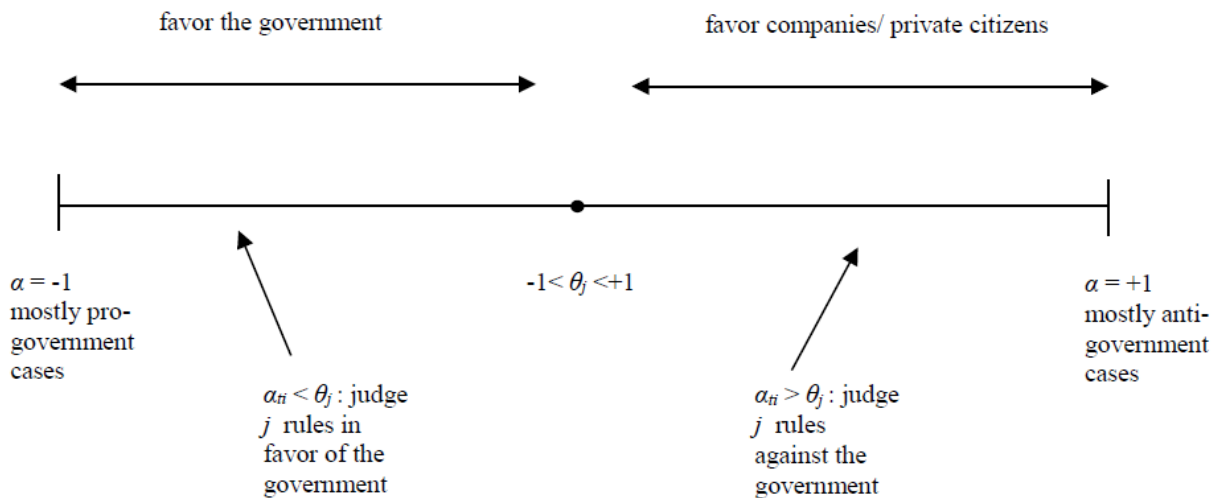
In a setup where judges do not decide cases alone, and following a genuine behavioral approach, we can infer judges' ideology from their manifest opinions when the latter are not aligned with those of other colleagues voting on the same case. In other words, decisions with dissenting opinions are informative to identify judicial preferences, contrary to unanimous decisions. However, in the spirit of this paper, it must be recognized that not only unanimous decisions, but also some decisions with dissents, may

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[25] We will refer to θ_j as individual cutpoints, to distinguish them from case cutpoints (α_{ti}).

contain biased information. This could happen as long as some of the judges whose ideology contrasts with the ideology of the majority of their panel colleagues opt for dissent suppression because their position has a cost and, at the same time, would not imply any changes in the final decision outcome. The estimated ideal points, therefore, may end up being a convolution of elements involving both the alleged form of ideology, and each judge's propensity towards dissenting/suppressing dissent, which is also an intrinsic, although heterogeneous, individual characteristic.

The starting point of our analysis is therefore to retrieve judges' *sincere* preferences and compare them with their actual voting behavior. We initially concentrate on a subset of decisions with dissenting opinions in which judges in the majority are *pivotal*. Consider a panel composed of an odd number of judges (*n*). In principle, to conclude that each one in *the majority* is pivotal when there are (*n*-1)/2 dissents is straightforward (*e.g.*, in panels of five members, judges in *the majority* are pivotal when there are two dissents).

This situation is represented in Figure 2. As anticipated earlier, in our dataset the cases exhibiting dissents in which judges in the majority are pivotal are all decided by five judges, who vote according to the procedures described in the preceding section. We will therefore illustrate the occurrence of pivotal decisions and dissent suppression adopting the five-judge panel composition. The resolution of cases in which the five judges disagree depends on the aggregation rule that combines their preferences into a decision. We assume a simple majority rule.

Following the scheme in Figure 2, suppose that judges, labelled *j1-j5*, have heterogeneous individual cutpoints (θ_{j1}-θ_{j5}), whereas the case cutpoint is α_{ti}. The latter, depending on the position taken in the case-space, may originate different possible sentence outcomes and attitudes towards dissenting. There are three possible scenarios. The first is a sincere unanimous decision in which either all judges have preferences in favor of the Government, as all of their cutpoints lay at the right-side of α_{ti}, or all judges have preferences against the Government, as all of their cutpoints lay at the left-side of α_{ti}. Clearly, in either of these situations there is no ideological conflict among the panel, none will dissent and there are no pivotal judges.

In the second scenario, dissent may occur although there are no pivotal judges. This happens when either four judges (*j1*, *j2*, *j3* and *j4*) have individual cutpoints falling on the left side of α_{ti}, while a fifth judge (*j5*) has a cutpoint located at the right-side of α_{ti}; or one judge (*j1*) has her individual cutpoint falling on the left side of α_{ti}, while the other four judges (*j2*, *j3*, *j4* and *j5*) have their cutpoints located at the right-side of α_{ti}. In the former case, the sentence outcome will be against the Government, *j5* may or

may not dissent, but her opinion does not influence the outcome of the sentence. In the latter case, the decision will be in favor of the Government, and *j1* may dissent or suppress dissent. Again, whatever the judge decides in terms of actual dissent, her opinion does not influence the outcome of the sentence. Notice, however, that including such cases in a behavioral model with the purpose of estimating judicial ideology affects the estimation of θ_j. In particular, estimation bias occurs in case of dissent suppression as one judge votes insincerely.

Figure 2: Pivotal decisions, sincere voting and dissent suppression in a five-judge panel
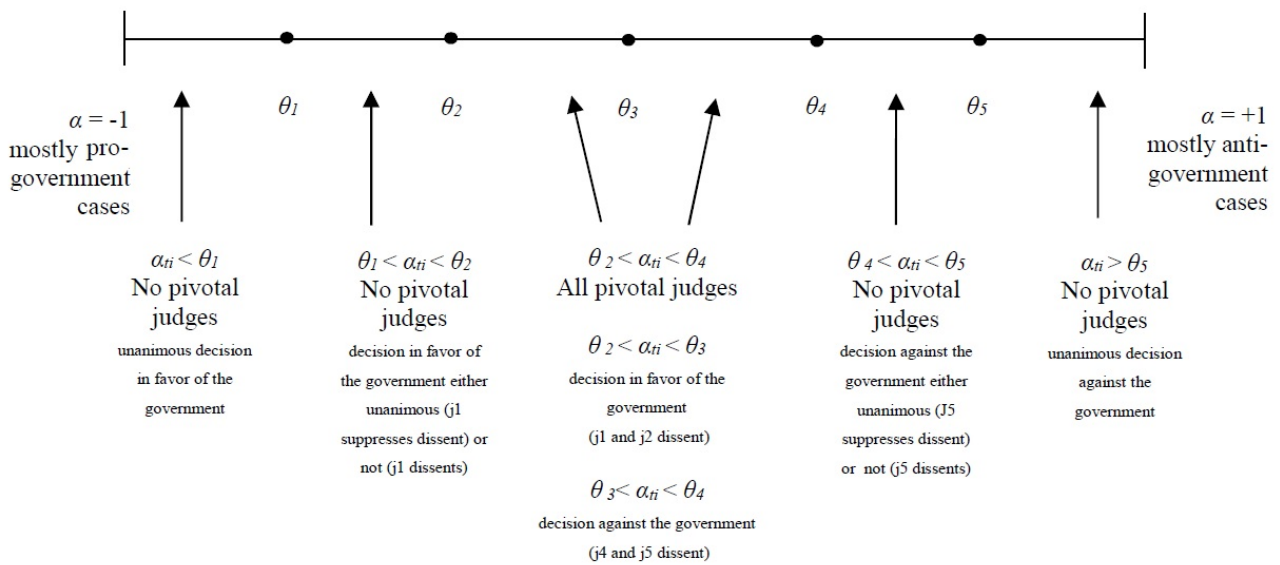
In the third scenario, dissent occurs and there are pivotal judges. This happens when either three judges (*j1*, *j2*, *j3*) have individual cutpoints falling on the left side of α_{ti}, while the other two (*j4* and *j5*) have cutpoints located at the right-side of α_{ti}, or two judges (*j1* and *j2*) have individual cutpoints falling on the left side of α_{ti}, while the other three (*j3*, *j4* and *j5*) have cutpoints located at the right-side of α_{ti}. In the former case, the sentence outcome will be against the Government, and both *j4* and *j5* may dissent, although their opinions do not influence the outcome of the sentence. In the latter case, the decision will be in favor of the Government, and *j1* and *j2* may dissent or suppress dissent. Again, whatever minority judges decide in terms of actual dissent, their opinion is uninfluential. The important difference with the previous scenarios, however, is that according to a majority rule each majority judge on the panel is pivotal as she can revert the final decision by simply switching to the alternative choice. Hence, these judges have no advantage in suppressing dissent. In the same vein, if judges in the minority (non-pivotal ones) choose to dissent, their attitude reflects their true ideology, otherwise they would simply align with the majority. In other words, if we observe a situation in which the two minority judges opt for dissenting, all judges in the panel are expressing their sincere opinion.

Proposition 1: if in an *n*-judge panel we observe (*n*-1)/2 (minority) judges dissenting, and judges vote according to a majority-rule, then all *n* judges are voting sincerely. Each majority judge is pivotal, as she can revert the outcome of the sentence by switching her vote.

In general, only such types of cases should be considered in estimating judges' sincere ideal points. Hence, we will focus only on sentences exhibiting this structure in order to estimate judges' ideological preferences. We chose to focus on their attitude towards supporting or opposing the Government.[26]

3.2 Dissenting Behavior

Following Fischman's (2011) model of collegial voting, we assume that dissenting is more likely when: *i)* a judge is relatively distant from the case cutpoint, the latter being a threshold in the case-space representing the boundary between votes to affirm and votes to reverse a decision of a lower court, and *ii)* the judge's preferences are such that she is not part of the majority for that decision, conditional upon the case cutpoint. Following this approach, we define the propensity towards dissent (S_{jti}) as the product of a "*conflict with majority*" dummy variable indicating whether the judge's true ideological position is in conflict with the majority of the panel and the distance of the judge's individual cutpoint from the case cutpoint (α_{ti}).

$$S_{jti} = \text{conflict\_w\_majority} * | \theta_j - \alpha_{ti} | \tag{1}$$

In particular, the dummy expressing conflict takes value 1 when the estimated ideal points of the majority of judges on the panel are located at opposite ends of the case cutpoint compared to the ideal point of the observed judge, and zero otherwise. The absolute distance of θ_j from α_{ti} is instead a continuous measure of ideological polarization based on the estimated ideal points and case characteristics. In fact, when ideologies are not aligned, a large polarization of the judges' θ_j increases the likelihood of an actual dissent.

In the remainder of this section we formalize a two-stage empirical methodology. The first-stage presents an IRT model for the estimation of sincere judges' preferences and derives the measure of

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[26] This choice is motivated, on the one hand, by the fact that the hypothesis we want to test is precisely that on decisions with political content there is a more active attitude towards dissent suppression and, on the other hand, from the absence of reliable priors on the judges' preferences on other kinds of political dimensions (such as the traditional progressive-conservative one).

propensity towards dissent. In the second-stage, we test whether there is heterogeneity in the net benefits of dissenting across different fields of law.[27]

3.3 First-stage Estimation

We use a traditional one-dimension IRT approach (Kornhauser, 1992) to estimate judicial ideology from pivotal decisions.[28] This allows us to theoretically describe judicial preferences and map different preference aggregation rules into likelihood functions.

We observe the vote of each judge (y_{jti}) for decision t located in a given field of law i. Each judge may choose a ruling $y_{jti} \in \{ProGov, AntiGov\}$ representing a vote for or against the Government, respectively.[29] Suppose that the (random) utility of the judge is described as follows:

$$q_{jti} = -\alpha_{ti} + \beta_{ti}\theta_j + e_{jti} \tag{2}$$

We assume that a judge votes in favor of the Government ($y_{jti}=1$) if $q_{jti}>0$; and against the Government ($y_{jti}=0$) if $q_{jti}\leq0$. As is standard in IRT models, α_{ti} and β_{ti} are case characteristics (*i.e.*, difficulty and discrimination parameters, respectively). The error term e_{jti} is i.i.d.

The model is not identified unless restrictions are imposed on either case characteristics or the latent variable θ_j.[30] In particular, we constrain the parameter β_{ti} to be equal to 1 (Rasch model)[31] so that the

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[27] There is historical (see for example Jeffries, 2001) and statistical (Lauderdale and Clark, 2012) evidence that judges' preferences vary across fields of the law. In this paper, we assume that preferences are the combination of an intrinsic and unidimensional traits of the judges (θ_j) and a net benefit of dissenting, which is allowed to differ according to the field of the law. This is an innovative aspect compared to the Fischman's (2011) consensus voting model. In fact, we operate in three different fields of law, while Fischman's model operates in homogeneous cases (asylum), which is a suitable environment for the estimation of a single cost of dissent. Unquestionably, in the presence of dissenting opinions in all three fields of law considered in this paper, the Fischman setup could be applied to each subgroup of cases of a different nature. However, on the one hand, this would imply a great loss of information in presence of inter-group correlation due to non-measurable characteristics of the judges, which would not be accounted for. On the other hand, our model is precisely designed for contexts in which there is paucity of pivotal dissents available to estimate sincere ideal points (in our case only in Commonwealth law).

[28] See mainly Martin and Quinn (2002) and Hanretty (2012a, 2012b, 2015). Also Jackman (2001), Clinton *et al.* (2004), Alarie and Green (2007), Ho and Quinn (2010), and Dalla Pellegrina *et al.* (2012, 2014, 2017).

[29] A pro-respondent/pro-appellant characterization would be equivalent, as the key element affecting the estimated parameter in the IRT model is the dissenting position with respect to the majority. Alternative estimates of judges' ideology using the pro-respondent/pro-appellant variable are reported in Appendix 2, Table A1. As expected, the computed correlation between judges' ideal point on either the pro-Government/anti-Government or pro-respondent/pro-appellant grounds is close to 1 (0.91).

[30] We also estimate a dynamic IRT model (Martin and Quinn, 2002) to account for possible evolution of judges' ideology through time. In order to test if the *changes* in the ideal points are significant, dynamic ideal points are

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recovered dimension reflects judicial ideology as being anti-Government (low values of θ_j) or pro-Government (high values of θ_j).[32] Additionally, such a constraint implies that α_{ti} coincides with the case cutpoint, as illustrated in the previous section. Consequently, if the expected value of θ_j is lower than α_{ti}, judge j will tend to vote against the Government on case t. The opposite occurs if $\theta_j > \alpha_{ti}$.

3.4 Second-stage Estimation

Suppose that $diss_{jti} = 1$ if judge j provides a manifest dissenting opinion on case t belonging to the field of law i. The extent to which the propensity towards dissent S_{jti} affects the probability of observing an actual dissent in a specific field of law is modelled as follows:

$$diss_{jti} = \delta_{0i} + \delta_{1i}\, S_{jti} + \delta_2\, X_j + \delta_3\, Z_{ti} + \varepsilon_{jti} \tag{3}$$

where X_j are judge characteristics (time-invariant) different from θ_j, such as date of birth, experience (total number of votes expressed in the period of analysis and whether the judge is a Law Lord), whether the judge has been Rapporteur in each specific decision, his origins (English, Scottish or Irish),[33] proximity to retirement (dummy for the judge being more than 65 years old), etc. Z_{ti} are case characteristics, different from α_{ti}, such as area of law (dummies for criminal law, professional and business law, property rights), while ε_{jti} is a zero-mean error term.

In particular, δ_{1i} is a *field of law* parameter reflecting the net benefit of dissenting in each different field of law, i. Given that the propensity to dissent (S_{jti}) is expected to be positively related to the dependent variable reflecting judges' actual dissent, we aim at testing whether δ_{1i} magnifies the relationship between "propensity towards" and "actual" dissent in some particular field of law. In other words, S_{jti},

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regressed on year dummies and on a time trend. Results point towards the absence of significant changes in the time span considered. See Appendix, Tables A2 and A3.

[31] The choice to use a Rasch (1961) model is due to the need to reduce the number of parameters estimated, given a relatively small database including only decisions in which minority judges are pivotal. In this sub-sample, there are 21 decisions available, each voted in panels of 5 judges. If we estimated a standard two-parameter IRT model we would impose an excessive difficulty on the estimation algorithm, with the request to calculate 27 ideal points plus 42 case parameters. For the same reason, there is no chance to obtain reliable parameters when estimating a multi-dimensional model where each dimension reflects a different field of law.

[32] The Rasch model is particularly suitable in our context in which we need to estimate an ideological dimension at the political level (captured by the Pro-Government / Anti-Government axis), but we are not endowed with reliable information about the political orientation of the judges to set up the priors needed to run an IRT model with two parameters. The two-parameter model is also computationally cumbersome in terms of the number of parameters to be estimated, due to the small-sample of pivotal decisions.

[33] We do not include dummies for other nationalities (Jamaica, New Zealand) because of the reduced number of decisions expressed by non-British judges.

could more easily become an actual dissent the greater the net benefit of disagreeing, *i.e.* the larger the value of δ_{1i}.

Our hypothesis is that such an effect is considerably smoothed on decisions pertaining to fields with strong political content, where general agreement may be highly desirable. Consequently, the analysis is intended to estimate not only how δ_{1i} shapes the ideological propensity to dissent (*i.e.*, the sign of δ_{1i}), but also how the intensity of this relationship differs according to the specific field of law in which judges vote (the magnitude of δ_{1i}).

In order to grasp these aspects, we exploit the hierarchical structure of our data in a multilevel setup (see, for example, Gelman and Hill, 2007 and Goldstein, 2011). We define individual judges' votes as lower level units, whereas the upper level in the hierarchy is represented by the three fields of the law. Let us define the main parameters of interest as follows:

$$\delta_{0i} = \gamma_{00} + \gamma_{01}\, D_i + u_{0i} \tag{4}$$

$$\delta_{1i} = \gamma_{10} + \gamma_{11}\, D_i + u_{1i} \tag{5}$$

where D_i is a field of law dummy variable, the gammas are parameters to be estimated, and u_{0i} and u_{0i} are random components (respectively random intercept and random slope) uncorrelated with ε_{jti}.

Substituting (4) and (5) into (3), and rearranging terms, we obtain the following:

$$diss_{jti} = \gamma_{00} + \gamma_{10}\, S_{jti} + \gamma_{01}\, D_i + \gamma_{11}\, D_i\, S_{jti} + u_{0i} + u_{1i}\, S_{jti} + \delta_2\, X_j + \delta_3\, Z_{ti} + \varepsilon_{jti} \tag{6}$$

In (6) γ_{00} and γ_{10} are, respectively, the standard (deterministic)[34] overall regression intercept and slope, whereas γ_{01} is a field of law fixed-effect (intercept). We are particularly concerned with the slope parameter γ_{11}, measuring the effect of an increase of the propensity towards dissent, S_{jti}, on the occurrence of an actual dissent in each field. Finally, u_{0i} is a random intercept capturing the deviation of the intercept of a given field from the overall intercept, whereas u_{1i} refers to the random component of the slope (*i.e.*, the deviation of a field's slope from the grand-slope).[35]

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[34] In multilevel (mixed) models these are normally labelled "fixed-effects", as opposed to random components. We will adopt this terminology hereafter.

[35] All the parameters included in (6) will be estimated in a random effects model, whereas in the fixed-effects model some variables are treated as residual category (due to collinearity) and the relative parameters are not estimated. See Tables 6 and 7.

We initially assume that u_{0i} and u_{1i} are equal to zero. Under this assumption, (6) corresponds to a baseline fixed-effects regression with interaction terms ($D_i * S_{jti}$), which account for the fact that judges perceive a different utility from dissenting when voting in different fields of law.

Then, we revert our previous hypothesis imposing γ_{01} and γ_{11} to be zero. This is similar to the previous model, but assumes that the specific field-effects influencing judges dissenting behavior are random, rather than fixed. In particular, the random intercept u_{0i} provides information regarding the frequency of dissenting when judges are not concerned about reaching consensus in that field (*i.e.*, they are not interested in dissenting because there are no ideological conflicts in the panels). Instead, the random slope u_{1i} identifies the extent of the utility obtained from dissenting in each different area as S_{jti} increases. Specifically, if the benefit from dissenting is high, u_{1i} will be positive and significant, whereas a high cost of dissent, resulting in a suppression of judges' sincere ideology, will end up in a low, or non-significant u_{1i}.

Under the hypothesis that the location of each case in a given field is independent of individual idiosyncratic components affecting actual dissent (conditional on judges' personal traits and case specificities), this is a more efficient version of the model. Also compared to the fixed-effects model, the multilevel framework with random intercepts and slopes proves particularly advantageous as it admits intra-cluster correlation associated with relevant discrepancies between clusters.[36]

4. Results

We estimate the first-stage equation (2) on pivotal decisions. A Markov Chain Monte Carlo methodology has been used, assuming Normal priors for judges' ideal points and multivariate Normal priors on the case parameters. The model has been run for 52,000 iterations, discarding the first 2,000 as burn-in. We fixed the thinning interval to 10. Gibbs sampling is adopted.

Estimating θ_j for all judges that participated in cases in which the majority was pivotal allows recovering the ideal points of 27 judges in the overall dataset. These 27 judges are those presiding over the largest number of cases (*i.e.*, they are the most active judges). Indeed, 1,004 observations (corresponding to

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[36] An alternative strategy is to estimate three different equations, one per field of law. However, a comprehensive model that accommodates field of law heterogeneity allows accounting for the behavior of the same judge when the latter votes on cases pertaining to different fields, all other things being equal. In this vein, changes in judges' voting behavior help to identify possible gaps in the cost of dissenting across different fields.

89% of the sample) are individual votes expressed by these 27 judges. Table 4 reports the estimated ideal points for these judges, the corresponding standard deviations, and confidence intervals.[37] We find that Lord Slynn[38] is the judge located closer to anti-Government, whereas Lord Lloyd[39] is more pro-Government. It is remarkable that a judge with a long experience in European courts seems to emerge as the judge located closer to anti-Government positions (that is, favoring the appellant).

[Table 4]

After having recovered the individual judge's ideal points for the subset of 27 judges participating in pivotal decisions and the case cutpoints corresponding to these decisions, we calculated S_{jti}. In order to assign a value of S_{jti} to the 11% of votes not involving pivotal judges, we associated an ideal point equal to zero to those who have never been pivotal. Instead, the full set of case cutpoints was completed by drawing posteriors from a standard IRT model based on the full set of cases with dissenting opinions, and the mean values of the alphas' posteriors were used for unanimous decisions.[40] Summary statistics for the computed likelihood of dissent are reported in Table 5, sorted by fields of law. Descriptive statistics tend to support our initial hypotheses: regardless of the presence of actual dissents in Commonwealth decisions, judges seem more willing to dissent in devolution cases (average S_{jti} =0.26), compared to cases involving domestic or Commonwealth issues (average S_{jti} =0.10 and average S_{jti} =0.02, respectively).

[Table 5]

In order to check whether a judge's propensity to dissent ends up in actual dissent positions, the regression analysis has been extended to the full dataset of 1,127 individual votes. We initially estimated (6) using a linear probability model (LPM) with interaction terms.[41] Results are reported in Table 6. In particular, in columns (a) and (b) we compare the devolution and domestic categories,

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[37] Posterior densities for case characteristics (alpha) and judges' id points (theta) are reported in Figure A1 in the Appendix.

[38] *Gordon Slynn* (1930-2009), English, Lord of Appeal in Ordinary in 1992. Retired in 2002. Second Senior Lord of Appeal in Ordinary (2000-2002). Also advocate-general and judge of the European Court of Justice, appointed by a Tory Government (1981-1992). Biographical source: Wikipedia.

[39] *Anthony Lloyd* (1929), English, Lord of Appeal in Ordinary in 1993. Retired in late 1998. He is famous for a leading judgment in Page v Smith (1995), a landmark case concerning psychiatric harm and foreseeability. Biographical source: Wikipedia.

[40] We acknowledge that this measure is less precise than the ideal point retrieved on pivotal judges in decisions with two or three dissents. However, this is the best proxy of the ideal points of (non-pivotal) judges voting in non-unanimous decisions.

[41] On the advantages of using the LPM instead of Logit and Probit models see, for example, Caudill (1988).

leaving Commonwealth as baseline one. Instead, in columns (c) and (d) it is possible to compare devolution and Commonwealth issues, leaving domestic as baseline category.

Then, we applied the multilevel model with random effects (columns (e) and (f)). We used the Markov Chain Monte Carlo methodology to estimate both models[42], as it helps in overcoming convergence problems that may occur using maximum likelihood techniques.[43]

We assumed multivariate Normal priors for the fixed-coefficients δ_2 and δ_3, a zero-mean multivariate Normal prior for the random-coefficients (u_{0i} and u_{1i}), and an Inverse-Wishart prior for their variance matrix. We also assumed that ε has zero mean, using an Inverse-Gamma prior for modelling over-dispersion in the variance-covariance matrix of ε. Each model has been run 30,000 iterations, discarding the first 2,000 as burn-in and using a thinning interval of 10. Standard Gibbs sampling was used to estimate the LPM (columns (a)-(d)), whereas the blocked Gibbs sampler 2 of Chib and Carlin (1999) was adopted in the multilevel model (columns (e)-(f)).

There are some relevant outcomes stemming from the Second-Stage regressions. First, the grand-slope coefficients (γ_{10}) associated with the propensity towards dissent (S_{jti}) are positive and significant in both columns (a)-(b) and (c)-(d) of Table 6.[44] This provides evidence supporting the accurate construction of Fischman's definition of dissenting behavior expressed as judges' ideological position relative to the position of other panel colleagues. In other words, positive parameters associated with S_{jti} indicate that as judges' non-likely consensus position increases, they will dissent more frequently.

Second, the (intercept) fixed-effects reflecting the likelihood of an actual dissent in each field of law (γ_{01}) show the higher dissenting proportion in the Commonwealth decisions. This is represented by either the positive and significant parameter γ_{01} associated with decisions regarding Commonwealth issues when "Domestic" is the baseline category (columns (a)-(b), Table 6), or by the negative and

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[42] "In the Bayesian framework both 'fixed' and 'random' effects are treated as random parameters defined within a three-stage hierarchical model: the dependent variable is distributed around a mean value that depends, together with regressors, on certain parameters; these parameters are, in turn, distributed around a mean value determined by other hyperparameters, which are also random. While a fixed-effects estimation updates the distribution of the parameters, a random-effects estimation updates the distribution of the hyperparameters" (Rendon, 2013). Consequently, "for the Bayesian model the distinction between fixed, random and mixed models reduces to the distinction between different prior assignments in the second and third stages of the hierarchy" (Smith, 1973). For convention here we use the standard notation fixed-effects / random-effects. See also Gelman and Hill (2007).

[43] Difficulties are due to the presence of a number of zeros in both the independent and the dependent variables, along with an imbalanced number of observations within the groups identifying the fields of law.

[44] Significance is evaluated on the basis of confidence intervals. The parameter γ_{10} is not significant in columns (e)-(f) as the random-effects model allows estimating three intercepts, one for each field of law, without the need to set up a baseline category. In our case, therefore, the intercept effects are captured by the random intercepts u_0. (see below).

significant parameters γ_{01} associated with decisions regarding devolution and domestic issues when Commonwealth is the residual category (column (c)-(d), Table 6). The random intercepts ($u_{0.}$) estimated through the multilevel model provide the same evidence (columns (e)-(f), Table 6).

Third, the pattern of the propensity towards dissent varies across fields of law. Starting from the baseline regressions reported in columns (a)-(b) of Table 6 we observe that the parameter associated with the dissent propensity measure S_{jti} in devolution and (to a lesser extent) domestic cases is negative and significant. This leads us to infer that, in devolution and domestic law, the propensity towards dissenting is downsized when compared to Commonwealth decisions (baseline category). An analogous outcome is supported by the positive and significant random parameter γ_{11} for Commonwealth decisions in columns (c)-(d) when domestic is the baseline category. Similarly, in the multilevel model the random slope $u_{1Commonwealth}$ is positive and strongly significant, while there does not seem to be any substantial deviation from the grand-slope when devolution and domestic decisions are considered.

To summarize, the regression outcome suggests that in both devolution and domestic decisions actual dissenting does not respond significantly to increases in the propensity to dissent, measured according to judicial ideology combined with the ideology of their panel colleagues. This effect does not occur in Commonwealth decisions. According to our hypothesis, and in line with the Fischman model of consensus voting, judges suppress their ideological preferences more frequently in cases with a higher cost of dissent (lower net benefit of dissenting). The empirical evidence in this paper suggests that this cost varies depending on field of law. In particular, we found that the cost is stronger in cases with political content, namely those in the devolution field, while similar evidence on domestic issues seems to offer a different interpretation. In fact, based on the descriptive statistics in Table 5, there does not seem to be a high propensity to dissent on domestic decisions, unlike what happens on issues regarding devolution. As discussed above, this is supportive of the fact that on domestic issues judges do not have substantial ideological conflicts with other panel members, so the frequency of actual dissent is low because there is no need to disagree, not because the judges tend to suppress their true ideology.

As a robustness check, we replicated the regressions of Table 6 dropping the votes made by Commonwealth judges from the overall sample. In fact, compared to British judges, Commonwealth judges may reasonably have a different degree of involvement in decisions pertaining to the three fields of law. Results are reported in Table 7, which has the same structure as Table 6.

There is additional interesting evidence from the Second-Stage regression outcome. First, elder judges, Law Lords, those who are close to retirement (more than 65 years old) and judges that participated in a

higher number of decisions seem to dissent more frequently. Overall, experience on the bench seems to favor an inclination towards a willingness to dissent. Second, English judges (baseline category) seem to have a higher rate of dissent compared to their Scottish and Irish counterparts, which could reflect the dominant importance of English law in the case law. Finally, cases related to civil rights show higher dissenting rates, in comparison to all other areas of law (Tables 6 and 7).

[Tables 6 & 7]

5. Conclusions

We have used decisions from the Judicial Committee of the Privy Council to test whether, in some circumstances, judges are likely to vote insincerely. We have also assessed whether the net benefits/costs of disagreement can be different across different fields of law. We find evidence that judges are more likely to suppress dissent in one type of case: devolution appeals. 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 fields of law that are politically significant do not necessarily induce 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 Court decisions.

Methodologically, we have shown that estimation of ideal points is relevant even in contexts where dissent avoidance prevails. However, our results show that a traditional analysis that ignores a norm of consensus is incomplete. Dissenting opinions do not tell us the entire story about divisions in the court. Consensual courts can hide possible divisions with a norm of unanimous decisions. Our two-stage empirical methodology uncovers the relevance of a possible propensity towards dissent suppression. The results are, therefore, statistically better and more comprehensive than the classical one-stage method for estimating ideal points.

The methodology advanced in our article can be applied to the analysis of judicial behavior in courts organized by sections and dealing with different cases. For example, it can be useful to those courts

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where one section rules on politically controversial cases whereas another section deals with less salient cases. Consensus might vary across these sections and yet it could be better explained by a propensity towards dissent suppression, rather than standard ideological or party divisions as usually framed in the context of comparative judicial politics.

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TABLES

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	1.00	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	0.93	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 company	0.07	0.26	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
Law Lord	0.84	0.36	0.00	1.00	1,127
Respondent individual	0.06	0.23	0.00	1.00	1,127
Respondent company	0.01	0.13	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
Scottish judge	0.13	0.34	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 votes Pro-Government	0.53	0.30	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 (who participated in at least five decisions)

	Number of Votes					
Judge	**Unan**	**Non-unan**	**Dissent**	**Devolution**	**Domestic**	**Commonwealth**
Bingham	51	12	5	13	5	45
Brown	17	11	3	4	0	24
Browne-Wilkinson	7	3	0	0	4	6
Carswell	21	10	2	6	2	23
Clyde	39	5	1	8	11	25
Cooke	14	1	1	0	4	11
Evans	7	0	0	0	6	1
Gault	5	0	0	0	4	1
Goff	4	1	1	0	1	4
Hale	21	8	3	5	3	21
Henry	6	1	0	0	3	4
Hobhouse	42	8	3	1	12	37
Hoffmann	59	19	5	3	19	56
Hope	79	11	3	22	27	41
Hutton	58	10	3	4	14	50
Leggatt	32	3	1	0	17	18
Lloyd	7	4	2	0	5	6
Mackay	13	1	0	1	4	9
Mance	11	6	3	0	3	14
Millett	46	10	3	3	12	41
Neuberger	6	0	0	2	2	2
Nicholls	43	7	4	4	8	38
Nourse	5	0	0	0	3	2
Otton	38	1	1	0	35	4
Phillips	3	2	0	0	0	5
Rodger	54	15	4	12	14	43
Russell	14	1	0	0	2	13
Scott	39	12	6	5	7	39
Slade	10	1	0	0	5	6
Slynn	23	5	3	3	9	16
Steyn	61	18	10	3	24	52
Thomas	6	4	1	0	2	8
Walker	29	10	3	2	13	24

Note: Individual summary statistics for judges who participated in at least five decisions.

Table 3: Pivotal and Non-Pivotal Judges's characteristics

	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
Scottish judge	0.11	0.32	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
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
Scottish judge	0.14	0.36	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
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 judges' ideal points (First-Stage) – JCPC 1998-2011

Dependent variable: pro-Government vote

Judge	Mean	Std Dev	Conf. Interval	Judge	Mean	Std Dev	Conf. Interval
Slynn	-1,104	0,729	-2.53338; 0.325473	Hoffmann	0,296	0,516	-0.71449; 1.30705
Walker	-1,093	0,713	-2.49137; 0.304765	Leggatt	0,305	0,640	-0.94899; 1.559031
Hope	-0,678	0,591	-1.83623; 0.480883	Hobhouse	0,371	0,548	-0.70342; 1.444736
Cooke	-0,619	0,826	-2.2367; 0.99926	Thomas	0,499	0,607	-0.68994; 1.687541
Steyn	-0,603	0,485	-1.55339; 0.346636	Scott	0,561	0,602	-0.61948; 1.741149
Goff	-0,562	0,845	-2.2178; 1.093423	Roch	0,575	0,823	-1.03811; 2.18844
Gibson	-0,558	0,820	-2.16643; 1.049536	Henry	0,598	0,849	-1.0658; 2.26228
Rodger	-0,522	0,519	-1.53942; 0.495059	Otton	0,618	0,834	-1.01648; 2.252405
Browne-Wilkinson	-0,304	0,646	-1.57021; 0.962503	Mance	0,622	0,843	-1.03097; 2.274764
Bingham	-0,182	0,557	-1.27458; 0.909646	Carswell	0,674	0,580	-0.46188; 1.810154
Hutton	-0,016	0,506	-1.00764; 0.975487	Clyde	0,918	0,757	-0.56591; 2.401926
Brown	-0,006	0,588	-1.15914; 1.146992	Millett	1,020	0,540	-0.03886; 2.079114
Nicholls	-0,005	0,709	-1.39468; 1.384995	Lloyd	1,096	0,715	-0.30589; 2.496914
Hale	0,033	0,587	-1.11727; 1.183377				

Geweke diagnostic (diagonal):												
Fraction in 1st window = 0.1			Fraction in 2nd window = 0.5									
alpha.X5	alpha.X6	alpha.X7	alpha.X8	alpha.X29	alpha.X31	alpha.X61	alpha.X102	alpha.X151	alpha.X153	alpha.X210	alpha.X212	alpha.X255
1.10863	-0.16144	2.45047	0.08909	0.59965	0.43443	0.18312	-0.77222	0.77307	-1.30631	-0.75635	-1.09764	-0.37401
alpha.X257	alpha.X276	alpha.X277	alpha.X279	alpha.X280	alpha.X281	alpha.X293	alpha.X320	theta.Clyde.1	theta.Cooke.1	theta.Gibson.1	theta.Goff.1	theta.Hale.1
-0.33251	-0.70784	-0.26791	-0.54495	-0.53375	0.11743	0.31077	1.77688	0.15607	0.81672	1.36559	1.24901	-1.67945
theta.Henry.1	theta.Hobhouse.1	theta.Hoffmann.1	theta.Hope.1	theta.Hutton.1	theta.Leggatt.1	theta.Lloyd.1	theta.Bingham.1	theta.Mance.1	theta.Millett.1	theta.Nicholls.1	theta.Otton.1	theta.Roch.1
0.38266	-0.46008	-1.01403	0.79437	1.10804	-0.25502	1.23263	1.17711	0.83427	-0.67827	-1.02433	-1.06391	0.57914
theta.Rodger.1	theta.Scott.1	theta.Slynn.1	theta.Brown.1	theta.Steyn.1	theta.Thomas.1	theta.Walker.1	theta.Browne.1	theta.Carswell.1				
1.27966	0.78213	0.41962	-1.16813	-0.27696	-0.15101	-0.94046	0.06449	-0.84665				
case characteristics (alpha); pivotal judges (theta)												

Note: Estimates performed on 105 individual votes. Markov Chain Monte Carlo simulation, 52,000 iterations, the first 2,000 iterations discarded as burn-in. Thinning interval: 10. Gibbs sampling adopted.

Table 5: Judges' likelihood to dissent (S_{jti}) across different fields of law – JCPC 1998-2011

Variable	Mean	StandDev	Min	Max	N
$S_{jtDevolution}$	0.263	0.911	-2.270	3.506	104
$S_{jtDomestic}$	0.099	0.883	-2.235	2.235	294
$S_{jtCommonwealth}$	0.021	1.188	-4.508	4.327	729

Table 6: Factors affecting the observed judicial dissenting behavior (Second-Stage) – JCPC 1998-2011

	Fixed-effects LPM[1]						Random intercept/slope-multilevel[2]		
	Mean	SD		Mean	SD		Mean	SD	
	(a)	(b)	Conf. interval	(c)	(d)	Conf. interval	(e)	(f)	Conf. interval
Intercept (overall, fixed): γ_{00}	4320	2652	-878; 9518	4320	2652	-878; 9518	3210	508	2214; 4206
Year of decision	-4.310	2.647	-9.498; 0.878	-4.310	2.647	-9.498; 0.878	-3.202	0.508	-4.197; -2.207
Year of decision^2	0.001	0.001	0.000; 0.002	0.001	0.001	0.000; 0.002	0.001	0.000	0.001; 0.001
Judge: total votes	0.000	0.000	0.000; 0.001	0.000	0.000	0.000; 0.001	0.000	0.000	0.000; 0.000
Judge: Lawlord	0.020	0.024	-0.026; 0.067	0.020	0.024	-0.026; 0.067	0.023	0.005	0.012; 0.033
Judge: birth	-0.005	0.003	-0.011; 0.001	-0.005	0.003	-0.011; 0.001	-0.005	0.001	-0.006; -0.004
Judge: age more than 65	0.049	0.029	-0.009; 0.106	0.049	0.029	-0.008; 0.106	0.046	0.007	0.033; 0.059
Judge: rapporteur	-0.010	0.015	-0.038; 0.019	-0.010	0.014	-0.038; 0.018	-0.010	0.003	-0.017; -0.004
Judge: vote pro-appellant	0.177	0.030	0.119; 0.235	0.177	0.030	0.119; 0.235	0.177	0.007	0.164; 0.190
Judge: vote pro-appellant*app.Public	-1.159	0.116	-1.386; -0.932	-1.159	0.116	-1.386; -0.932	-1.155	0.025	-1.205; -1.105
Case: decision pro-appellant	-0.176	0.029	-0.234; -0.118	-0.176	0.029	-0.234; -0.118	-0.176	0.007	-0.188; -0.163
Case: decision pro-app.*app.Public	1.202	0.114	0.978; 1.426	1.202	0.115	0.977; 1.427	1.197	0.025	1.147; 1.247
Case: app.Public	-0.104	0.039	-0.180; -0.028	-0.104	0.039	-0.180; -0.027	-0.103	0.009	-0.120; -0.085
Case: business law	0.021	0.048	-0.073; 0.115	0.021	0.048	-0.074; 0.116	0.022	0.011	0.001; 0.044
Case: professional	0.062	0.065	-0.067; 0.190	0.061	0.065	-0.067; 0.189	0.039	0.018	0.004; 0.075
Case: criminal law	-0.020	0.023	-0.066; 0.025	-0.021	0.024	-0.067; 0.026	-0.018	0.005	-0.028; -0.008
Case: rights	0.040	0.021	-0.001; 0.082	0.040	0.022	-0.003; 0.083	0.041	0.005	0.032; 0.050
Judge: Scottish	-0.052	0.021	-0.094; -0.010	-0.053	0.022	-0.095; -0.010	-0.053	0.005	-0.062; -0.044
Judge: Irish	-0.046	0.026	-0.097; 0.005	-0.046	0.026	-0.097; 0.004	-0.047	0.006	-0.058; -0.035
Propensity tow. dissent (fixed): γ_{10}	0.124	0.041	0.044; 0.205	0.131	0.061	0.012; 0.250	0.029	0.021	-0.012; 0.070
Intercept (fixed): γ_{01} devolution	-0.062	0.033	-0.126; 0.002	0.055	0.074	-0.090; 0.200			
Intercept (fixed): γ_{01} domestic	-0.118	0.066	-0.247; 0.011						
Intercept (fixed): γ_{01} Commonwealth				0.117	0.066	-0.013; 0.247			
Slope (fixed): γ_{11} devolution	-0.213	0.103	-0.415; -0.010	-0.018	0.113	-0.240; 0.204			
Slope (fixed): γ_{11} domestic	-0.155	0.072	-0.297; -0.014						
Slope (fixed): γ_{11} Commonwealth				0.154	0.072	0.014; 0.295			
Intercept (random): $u_{0\text{devolution}}$							-0.012	0.027	-0.066; 0.041
Intercept (random): $u_{0\text{domestic}}$							-0.042	0.024	-0.088; 0.005
Intercept (random): $u_{0\text{Commonwealth}}$							0.055	0.019	0.018; 0.092
Slope (random): $u_{1i\text{devolution}}$							-0.039	0.069	-0.175; 0.096
Slope (random): $u_{1i\text{domestic}}$							-0.035	0.053	-0.139; 0.070
Slope (random): $u_{1\text{Commonwealth}}$							0.082	0.033	0.017; 0.146
Observations	1,127			1,127			1,127		

Note: Dependent variable: $diss_{jti}$. Propensity towards dissent suppression in natural logs. Estimates performed on 1127 individual votes. Markov Chain Monte Carlo simulation, 30,000 iterations, the first 2,000 iterations discarded as burn-in. Thinning interval: 10. [1] Standard Gibbs sampler adopted. [2] Blocked Gibbs sampler 2 of Chib and Carlin (1999) adopted.
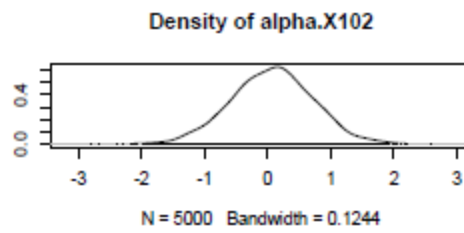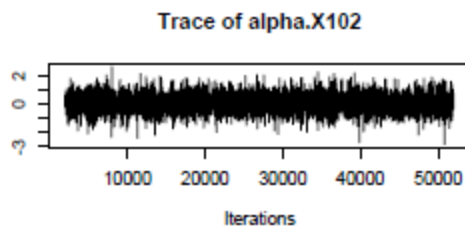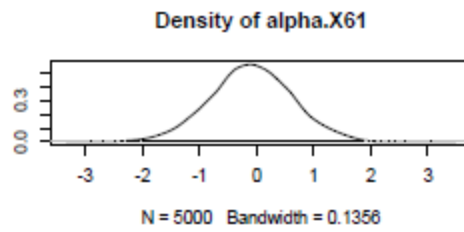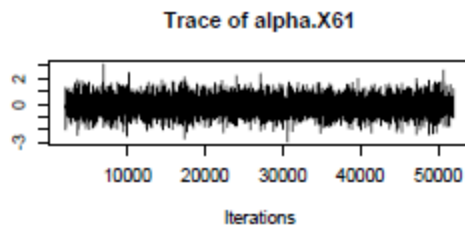
Table 7: Factors affecting the observed judicial dissenting behavior (Second-Stage) – JCPC 1998-2011

Excluding Commonwealth judges – JCPC 1998-2011

	Fixed-effects LPM[1]						Random intercept/slope-multilevel[2]		
	Mean	SD		Mean	SD		Mean	SD	
	(a)	(b)	Conf. interval	(c)	(d)	Conf. interval	(e)	(f)	Conf. interval
Intercept (overall, fixed): γ_{00}	4122	2713	-1195; 9439	4122	2713	-1195; 9439	3007	521	1986; 4028
Year of decision	-4.110	2.707	-9.416; 1.196	-4.110	2.707	-9.416; 1.196	-2.998	0.520	-4.017; -1.979
Year of decision^2	0.001	0.001	0.000; 0.002	0.001	0.001	0.000; 0.002	0.001	0.000	0.000; 0.001
Judge: total votes	0.000	0.000	0.000; 0.001	0.000	0.000	0.000; 0.001	0.000	0.000	0.000; 0.000
Judge: Lawlord	0.023	0.025	-0.026; 0.072	0.023	0.025	-0.026; 0.072	0.025	0.006	0.014; 0.036
Judge: birth	-0.006	0.003	-0.012; 0.000	-0.006	0.003	-0.012; 0.000	-0.006	0.001	-0.007; -0.004
Judge: age more than 65	0.054	0.030	-0.114; 0.006	0.054	0.030	-0.005; 0.114	0.051	0.007	0.038; 0.065
Judge: rapporteur	-0.011	0.015	-0.041; 0.019	-0.011	0.015	-0.040; 0.018	-0.012	0.003	-0.018; -0.005
Judge: vote pro-appellant	0.167	0.030	0.108; 0.226	0.167	0.030	0.108; 0.226	0.166	0.007	0.153; 0.180
Judge: vote pro-appellant*app.Public	-1.145	0.117	-1.375; -0.915	-1.146	0.117	-1.376; -0.916	-1.142	0.026	-1.193; -1.091
Case: decision pro-appellant	-0.167	0.030	-0.225; -0.108	-0.166	0.030	-0.225; -0.108	-0.166	0.007	-0.179; -0.153
Case: decision pro-app.*app.Public	1.195	0.116	0.967; 1.423	1.195	0.117	0.966; 1.424	1.189	0.026	1.138; 1.240
Case: app.Public	-0.108	0.040	-0.186; -0.029	-0.108	0.040	-0.187; -0.029	-0.107	0.009	-0.125; -0.088
Case: business law	0.022	0.050	-0.075; 0.119	0.022	0.050	-0.075; 0.120	0.023	0.011	0.001; 0.045
Case: professional	0.058	0.066	-0.072; 0.188	0.058	0.066	-0.071; 0.187	0.036	0.018	0.000; 0.072
Case: criminal law	-0.020	0.024	-0.067; 0.026	-0.021	0.024	-0.068; 0.027	-0.018	0.005	-0.028; -0.008
Case: rights	0.040	0.022	-0.003; 0.082	0.039	0.022	-0.005; 0.083	0.040	0.005	0.031; 0.050
Judge: Scottish	-0.052	0.022	-0.095; -0.009	-0.052	0.022	-0.095; -0.009	-0.053	0.005	-0.062; -0.043
Judge: Irish	-0.048	0.026	-0.100; 0.003	-0.048	0.026	-0.100; 0.003	-0.049	0.006	-0.060; -0.037
Propensity tow. dissent (fixed): γ_{10}	0.130	0.042	0.047; 0.213	0.028	0.062	0.007; 0.250	0.032	0.021	-0.010; 0.074
Intercept (fixed): γ_{01} devolution	-0.063	0.033	-0.127; 0.002	0.053	0.075	-0.094; 0.200			
Intercept (fixed): γ_{01} domestic	-0.117	0.067	-0.247; 0.014						
Intercept (fixed): γ_{01} Commonwealth				0.116	0.067	-0.016; 0.247			
Slope (fixed): γ_{11} devolution	-0.220	0.105	-0.426; -0.014	-0.021	0.115	-0.247; 0.204			
Slope (fixed): γ_{11} domestic	-0.159	0.074	-0.304; -0.013						
Slope (fixed): γ_{11} Commonwealth				0.158	0.073	0.014; 0.302			
Intercept (random): $u_{0devolution}$							-0.014	0.028	-0.068; 0.041
Intercept (random): $u_{0domestic}$							-0.041	0.024	-0.088; 0.006
Intercept (random): $u_{0Commonwealth}$							0.055	0.019	0.018; 0.092
Slope (random): $u_{1i devolution}$							-0.041	0.070	-0.179; 0.096
Slope (random): $u_{1i domestic}$							-0.035	0.055	-0.141; 0.072
Slope (random): $u_{1Commonwealth}$							0.084	0.034	0.017; 0.151
Observations	1,004			1,004			1,004		

Note: Dependent variable: $diss_{jti}$. Propensity towards dissent suppression in natural logs. Estimates performed on 1004 individual votes. Markov Chain Monte Carlo simulation, 30,000 iterations, the first 2,000 iterations discarded as burn-in. Thinning interval: 10. [1] Standard Gibbs sampler adopted. [2] Blocked Gibbs sampler 2 of Chib and Carlin (1999) adopted.

Figure 3: Confidence intervals for Pivotal judges' ideal points – JCPC 1998-2011
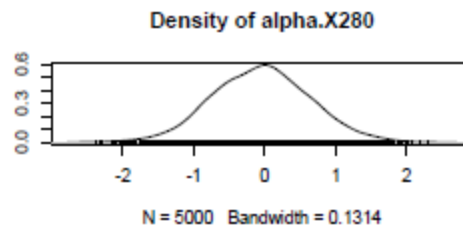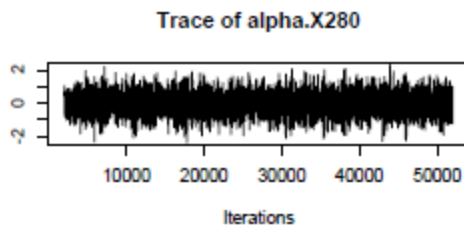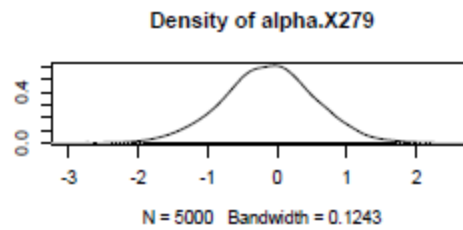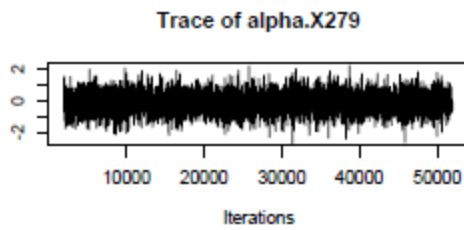
Figure A1. Posterior densities for case characteristics (alpha) and pivotal judges' id points (theta)

Trace of alpha.X29

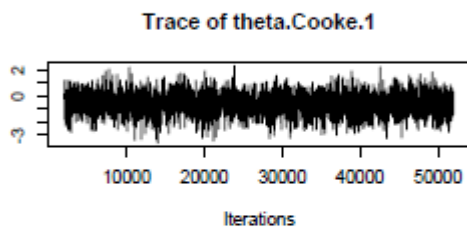**Density of alpha.X29**

N = 5000   Bandwidth = 0.1258

Trace of alpha.X31

Density of alpha.X31

N = 5000   Bandwidth = 0.1364

Trace of alpha.X61

Density of alpha.X61

N = 5000   Bandwidth = 0.1356

Trace of alpha.X102

Density of alpha.X102

N = 5000   Bandwidth = 0.1244

Trace of alpha.X151
Density of alpha.X151
N = 5000   Bandwidth = 0.1327

Trace of alpha.X153
Density of alpha.X153
N = 5000   Bandwidth = 0.1257

Trace of alpha.X210
Density of alpha.X210
N = 5000   Bandwidth = 0.1324

Trace of alpha.X212
Density of alpha.X212
N = 5000   Bandwidth = 0.1348

Iterations

Trace of alpha.X255

Density of alpha.X255

N = 5000   Bandwidth = 0.1256

Trace of alpha.X257

Density of alpha.X257

N = 5000   Bandwidth = 0.1249

Trace of alpha.X276

Density of alpha.X276

N = 5000   Bandwidth = 0.1286

Trace of alpha.X277

Density of alpha.X277

N = 5000   Bandwidth = 0.1186

Iterations

Trace of alpha.X279

Density of alpha.X279

N = 5000   Bandwidth = 0.1243

Trace of alpha.X280

Density of alpha.X280

N = 5000   Bandwidth = 0.1314

Trace of alpha.X281

Density of alpha.X281

N = 5000   Bandwidth = 0.1381

Trace of alpha.X293

Density of alpha.X293

N = 5000   Bandwidth = 0.1241

Trace of alpha.X320

Density of alpha.X320

N = 5000   Bandwidth = 0.1293

Trace of theta.Clyde.1

Density of theta.Clyde.1

N = 5000   Bandwidth = 0.1448

Trace of theta.Cooke.1

Density of theta.Cooke.1

N = 5000   Bandwidth = 0.1593

Trace of theta.Gibson.1

Density of theta.Gibson.1

N = 5000   Bandwidth = 0.1583

Trace of theta.Goff.1

Density of theta.Goff.1

N = 5000   Bandwidth = 0.163

Trace of theta.Hale.1

Density of theta.Hale.1

N = 5000   Bandwidth = 0.1133

Trace of theta.Henry.1

Density of theta.Henry.1

N = 5000   Bandwidth = 0.1634

Trace of theta.Hobhouse.1

Density of theta.Hobhouse.1

N = 5000   Bandwidth = 0.1057

Trace of theta.Hoffmann.1

Density of theta.Hoffmann.1

N = 5000   Bandwidth = 0.09952

Trace of theta.Hope.1

Density of theta.Hope.1

N = 5000   Bandwidth = 0.1131

Trace of theta.Hutton.1

Density of theta.Hutton.1

N = 5000   Bandwidth = 0.09494

Trace of theta.Leggatt.1

Density of theta.Leggatt.1

N = 5000   Bandwidth = 0.122

Trace of theta.Lloyd.1 — Density of theta.Lloyd.1
N = 5000   Bandwidth = 0.1347

Trace of theta.Bingham.1 — Density of theta.Bingham.1
N = 5000   Bandwidth = 0.1064

Trace of theta.Mance.1 — Density of theta.Mance.1
N = 5000   Bandwidth = 0.1627

Trace of theta.Millett.1 — Density of theta.Millett.1
N = 5000   Bandwidth = 0.1043

Trace of theta.Nicholls.1

Density of theta.Nicholls.1

N = 5000 Bandwidth = 0.1358

Trace of theta.Otton.1

Density of theta.Otton.1

N = 5000 Bandwidth = 0.1609

Trace of theta.Roch.1

Density of theta.Roch.1

N = 5000 Bandwidth = 0.158

Trace of theta.Rodger.1

Density of theta.Rodger.1

N = 5000 Bandwidth = 0.1002

Iterations

44

Trace of theta.Scott.1

Density of theta.Scott.1

N = 5000   Bandwidth = 0.1131

Trace of theta.Slynn.1

Density of theta.Slynn.1

N = 5000   Bandwidth = 0.1398

Trace of theta.Brown.1

Density of theta.Brown.1

N = 5000   Bandwidth = 0.1129

Trace of theta.Steyn.1

Density of theta.Steyn.1

N = 5000   Bandwidth = 0.09354

Trace of theta.Thomas.1

Density of theta.Thomas.1

N = 5000   Bandwidth = 0.117

Trace of theta.Walker.1

Density of theta.Walker.1

N = 5000   Bandwidth = 0.1376

Trace of theta.Browne.1

Density of theta.Browne.1

N = 5000   Bandwidth = 0.1247

Trace of theta.Carswell.1

Density of theta.Carswell.1

N = 5000   Bandwidth = 0.1119

Table A1. Pivotal judges' ideal points (First-Stage) – JCPC 1998-2011

Dependent variable: pro-Appellant vote

Judge	Mean	Std Dev	Conf. Interval	Judge	Mean	Std Dev	Conf. Interval
Slynn	-1.104	0.729	-2.19176; -0.07535	Hoffmann	0.296	0.516	-1.06083; 1.342128
Walker	-1.093	0.713	-2.49744; 0.390428	Leggatt	0.305	0.640	-0.81371; 1.125126
Hope	-0.678	0.591	-2.46946; 0.601464	Hobhouse	0.371	0.548	-0.76123; 1.201125
Cooke	-0.619	0.826	-1.92659; 0.460303	Thomas	0.499	0.607	-1.11116; 1.597559
Steyn	-0.603	0.485	-1.92991; 0.58438	Scott	0.561	0.602	-0.86576; 1.547786
Goff	-0.562	0.845	-2.32183; 1.02311	Roch	0.575	0.823	-0.83312; 1.76074
Gibson	-0.558	0.820	-1.84186; 0.561492	Henry	0.598	0.849	-1.04884; 2.339612
Rodger	-0.522	0.519	-2.19086; 1.184649	Otton	0.618	0.834	-0.9716; 2.332571
Browne-Wilkinson	-0.304	0.646	-2.18108; 1.189727	Mance	0.622	0.843	-0.17791; 1.546503
Bingham	-0.182	0.557	-2.15825; 1.183158	Carswell	0.674	0.580	-0.93095; 2.354398
Hutton	-0.016	0.506	-1.34585; 0.745083	Clyde	0.918	0.757	-0.43262; 1.872342
Brown	-0.006	0.588	-1.20576; 0.723665	Millett	1.020	0.540	-0.39024; 2.553288
Nicholls	-0.005	0.709	-1.40348; 1.394223	Lloyd	1.096	0.715	-0.0915; 2.726984
Hale	0.033	0.587	-1.07212; 1.164632				

Geweke diagnostic (diagonal):												
Fraction in 1st window = 0.1			Fraction in 2nd window = 0.5									
alpha.X5	alpha.X6	alpha.X7	alpha.X8	alpha.X29	alpha.X31	alpha.X61	alpha.X102	alpha.X151	alpha.X153	alpha.X210	alpha.X212	alpha.X255
1.10863	-0.16144	2.45047	0.08909	0.59965	0.43443	0.18312	-0.77222	0.77307	-1.30631	-0.75635	-1.09764	-0.37401
alpha.X257	alpha.X276	alpha.X277	alpha.X279	alpha.X280	alpha.X281	alpha.X293	alpha.X320	theta.Clyde.1	theta.Cooke.1	theta.Gibson.1	theta.Goff.1	theta.Hale.1
-0.33251	-0.70784	-0.26791	-0.54495	-0.53375	0.11743	0.31077	1.77688	0.15607	0.81672	1.36559	1.24901	-1.67945
theta.Henry.1	theta.Hobhouse.1	theta.Hoffmann.1	theta.Hope.1	theta.Hutton.1	theta.Leggatt.1	theta.Lloyd.1	theta.Bingham.1	theta.Mance.1	theta.Millett.1	theta.Nicholls.1	theta.Otton.1	theta.Roch.1
0.38266	-0.46008	-1.01403	0.79437	1.10804	-0.25502	1.23263	1.17711	0.83427	-0.67827	-1.02433	-1.06391	0.57914
theta.Rodger.1	theta.Scott.1	theta.Slynn.1	theta.Brown.1	theta.Steyn.1	theta.Thomas.1	theta.Walker.1	theta.Browne.1	theta.Carswell.1				
1.27966	0.78213	0.41962	-1.16813	-0.27696	-0.15101	-0.94046	0.06449	-0.84665				
case characteristics (alpha); pivotal judges (theta)												

Note: Estimates performed on 105 individual votes. Markov Chain Monte Carlo simulation, 52,000 iterations, the first 2,000 iterations discarded as burn-in. Thinning interval: 10. Gibbs sampling adopted. Correlation between ideal points on the pro-respondent/pro-appellant dimension (Mean, this Table) and ideal points on the pro-respondent/pro-appellant dimension (Mean, Table 5): 0.91.

Table A.2 reports the estimates of the evolution of each justice's ideology using the dynamic item response methodology of Martin and Quinn (2002). After retrieving the ideal points for each justice and year, a multivariate regression analysis has been performed to check whether there have been systematic ideological changes in the period of analysis (Table A.2).

Table A2. Pivotal judges' ideal points (dynamic IRT) – JCPC 1998-2011

Judge	Year	Mean	Std Dev	Judge	Year	Mean	Std Dev
Bingham	2003	-0.032	1.072	Leggatt	2002	0.055	1.073
Bingham	2004	-0.035	1.127	Leggatt	2003	0.052	1.108
Bingham	2005	-0.035	1.172	Leggatt	2004	0.058	1.138
Brown	2005	0.074	1.090	Leggatt	2005	0.060	1.167
Brown	2006	0.073	1.141	Lloyd	1998	0.129	1.188
Brown	2007	0.070	1.186	Mance	2006	0.065	1.061
Brown	2008	0.071	1.225	Millett	1998	0.074	0.977
Browne-Wilkinson	1998	-0.108	1.113	Millett	1999	0.075	1.004
Browne-Wilkinson	1999	-0.105	1.160	Millett	2000	0.085	1.063
Clyde	1998	0.108	1.145	Millett	2001	0.085	1.107
Cooke	1999	-0.066	1.096	Millett	2002	0.094	1.157
Gibson	2008	-0.027	1.069	Millett	2003	0.097	1.203
Goff	1999	0.065	1.100	Millett	2004	0.098	1.244
Hale	2004	0.000	0.989	Millett	2005	0.100	1.289
Hale	2005	-0.002	1.035	Nicholls	2001	-0.069	1.058
Hale	2006	-0.004	1.082	Nicholls	2002	-0.078	1.116
Hale	2007	0.000	1.129	Otton	2002	-0.052	1.104
Hale	2008	0.000	1.181	Roch	2004	-0.051	1.055
Henry	1999	0.079	1.042	Rodger	2002	0.159	1.380
Hobhouse	1998	0.154	1.304	Rodger	2003	0.175	1.461
Hobhouse	1999	0.165	1.367	Rodger	2004	0.182	1.532
Hobhouse	2000	0.170	1.414	Rodger	2005	0.185	1.586
Hobhouse	2001	0.168	1.448	Rodger	2006	0.189	1.621
Hobhouse	2002	0.173	1.486	Scott	2001	0.046	1.105
Hoffmann	1998	0.097	1.041	Scott	2002	0.050	1.148
Hoffmann	1999	0.106	1.112	Scott	2003	0.051	1.185
Hoffmann	2000	0.119	1.184	Scott	2004	0.055	1.226
Hoffmann	2001	0.127	1.259	Scott	2005	0.053	1.268
Hoffmann	2002	0.143	1.333	Scott	2006	0.063	1.315
Hoffmann	2003	0.147	1.392	Scott	2007	0.064	1.359
Hoffmann	2004	0.155	1.454	Scott	2008	0.064	1.404
Hoffmann	2005	0.154	1.497	Slynn	1998	-0.144	1.272
Hope	1998	-0.159	1.358	Slynn	1999	-0.147	1.315
Hope	1999	-0.172	1.426	Slynn	2000	-0.145	1.357
Hope	2000	-0.177	1.498	Steyn	1998	-0.175	1.445

Hope	2001	-0.184	1.564	Steyn	1999	-0.185	1.514
Hope	2002	-0.194	1.639	Steyn	2000	-0.190	1.566
Hope	2003	-0.200	1.678	Steyn	2001	-0.198	1.624
Hope	2004	-0.203	1.718	Steyn	2002	-0.207	1.675
Hope	2005	-0.203	1.756	Steyn	2003	-0.213	1.732
Hutton	1998	0.019	0.810	Steyn	2004	-0.220	1.782
Hutton	1999	0.015	0.850	Steyn	2005	-0.222	1.821
Hutton	2000	0.010	0.888	Steyn	2006	-0.224	1.860
Hutton	2001	0.012	0.928	Thomas	2004	-0.121	1.232
Hutton	2002	0.013	0.967	Thomas	2005	-0.131	1.301
Hutton	2003	0.015	1.007	Thomas	2006	-0.130	1.347
Hutton	2004	0.016	1.044	Walker	2003	-0.077	1.062
Hutton	2005	0.019	1.079	Walker	2004	-0.084	1.119
Leggatt	2000	0.056	0.998	Walker	2005	-0.090	1.167
Leggatt	2001	0.055	1.037				

Note: Estimates performed on 105 individual votes. MCMC dynamic estimates, 50,000 iterations; first 2,000 iterations discarded as burn-in. Thinning interval 5. Gibbs sampling adopted. Correlation with static estimates of judges' ideal points: 0.61.

Table A3. Evolution of observed judicial dissenting behavior – JCPC 1998-2011 – OLS estimates

VARIABLES	(1)	(2)
Time (discrete)		0.00209
		(0.00434)
1998	Baseline year	
	-	
1999	-0.0150	
	(0.0557)	
2000	-0.00850	
	(0.0605)	
2001	0.00517	
	(0.0586)	
2002	0.0147	
	(0.0557)	
2003	0.00200	
	(0.0570)	
2004	-0.0110	
	(0.0536)	
2005	-0.00242	
	(0.0536)	
2006	0.00507	
	(0.0628)	
2007	0.0452	
	(0.0839)	
2008	0.0275	
	(0.0754)	
Constant	-0.000500	-0.0109
	(0.0403)	(0.0266)
Observations	99	99
R-squared	0.011	0.002

Table A4: Pivotal Decisions

Case	Year	Area of the Law	Country
Downer and Others v. The Queen (Jamaica) [1998] UKPC 32 (20th July, 1998)	1998	Criminal	Jamaica
McCalla v. The Disciplinary Committee of the General Legal Council (Jamaica) [1998] UKPC 37 (30th July, 1998)	1998	Professional misconduct	Jamaica
Fisher v. The Minister of Public Safety and Immigration and Others (Bahamas) [1998] UKPC 40 (5th October, 1998)	1998	Constitutional and/ or Human Rights	Bahamas
Ramstead v. The Queen (New Zealand) [1998] UKPC 47 (2nd December, 1998)	1998	Constitutional and/ or Human Rights	New Zealand
Thomas and Haniff Hilaire v. Cipriani Baptiste (Trinidad and Tobago) [1999] UKPC 13 (17th March, 1999)	1999	Constitutional and/ or Human Rights	Trinidad and Tobago
Higgs and David Mitchell v. The Minister of National Security and Others (Bahamas) [1999] UKPC 55 (14th December, 1999)	1999	Constitutional and/ or Human Rights	Bahamas
Baughman v. The Queen (Antigua and Barbuda) [2000] UKPC 20 (25th May, 2000)	2000	Criminal	Antigua and Barbuda
Kena Kena Properties Ltd v. Attorney General (New Zealand) [2001] UKPC 51 (27th November 2001)	2001	Taxation	New Zealand
Pinder v. R [2002] UKPC 46 (The Bahamas) (23 September 2002)	2002	Criminal	Bahamas
Sealey & Anor v. The State (Trinidad and Tobago) [2002] UKPC 52 (14 October 2002)	2002	Constitutional and/ or Human Rights	Trinidad and Tobago
Khan v. The State (Trinidad and Tobago) [2003] UKPC 79 (20 November 2003)	2003	Constitutional and/ or Human Rights	Trinidad and Tobago
Roodal v. The State (Trinidad and Tobago) [2003] UKPC 78 (20 November 2003)	2003	Constitutional and/ or Human Rights	Trinidad and Tobago
Cartwright & Anor v. Superintendent of HM Prison & Anor (The Bahamas) [2004] UKPC 10 (10 February 2004)	2004	Other	Bahamas
Carter Holt Harvey Building Products Group Ltd v The Commerce Commission (New Zealand) [2004] UKPC 37 (14 July 2004)	2004	Business law	New Zealand
Dial & Anor v. The State (Trinidad and Tobago) [2005] UKPC 4 (14 February 2005)	2005	Criminal	Trinidad and Tobago
Peterson v. Inland Revenue (New Zealand) [2005] UKPC 5 (28 February 2005)	2005	Taxation	New Zealand
AG for the Sovereign Base Areas of Akrotiri and Dhekelia v Steinhoff (Akrotiri and Dhekelia) [2005] UKPC 30 (19 July 2005)	2005	Constitutional and/ or Human Rights	Akrotiri and Dhekelia (Cyprus)
Howse v. R (New Zealand) [2005] UKPC 31 (19 July 2005)	2005	Constitutional and/ or Human Rights	New Zealand
Smith v The Queen (Jamaica) [2005] UKPC 43 (14 November 2005)	2005	Criminal	Jamaica
Ebanks v. R. (The Cayman Islands) [2006] UKPC 16 (27 March 2006)	2006	Criminal	Cayman Islands
Mon Tresor Ltd & Anor v. Ministry of Housing and Lands (Mauritius) [2008] UKPC 31 (09 June 2008)	2008	Land and property	Mauritius