Judges Picking Judges

An Empirical Analysis of Insular Selection Commissions and Judicial Homogeneity

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Abstract

The appointment process for US Supreme Court nominees has been recently characterized by an unprecedented level of politicization. In attempts to preserve the independence and legitimacy of the judiciary, some countries have implemented systems in which sitting Supreme Court justices play a central role in the selection of new justices. These selection commissions give rise to questions about the consequences of placing the authority to oversee judicial appointments in the judiciary itself. I gauge the relative effects of this model on judicial independence and perceived legitimacy by first conducting a comparative analysis of the judicial selection systems of India, Israel, and the United Kingdom. Then, I employ an original "inter-judicial agreement analysis" in which I measure the varying degrees of agreement between individual justices on the UK Supreme Court. I find evidence that the Court has become more homogenous over time and that the overall level of inter-judicial agreement has risen sharply since the Court's inception in 2009. I conclude with a discussion of the implications these findings have on the potential for judicial reforms in the United States and the United Kingdom as well as pose topics of interest for future research on comparative judiciaries.

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"If everyone is thinking alike, then no one is thinking." — Benjamin Franklin

1 Introduction

October 6th, 2018, marked the culmination of a months-long, heated congressional battle when Brett Kavanaugh was sworn in to fill retired Justice Anthony Kennedy's seat on the United States Supreme Court. Following President Donald Trump's announcement of Kavanaugh's nomination in July, the American public became critically engaged in an intense national debate about the institutional legitimacy of the Supreme Court and its diminishing status as a perceived apolitical establishment. Justice Kavanaugh, a legal conservative, represented a turning point in the composition of America's highest interpretive body: while trusted "swing-votes" could previously be counted on to keep the ideological underpinnings of justices on both sides in check, the Court now tilted in a distinct ideological direction with potentially far-reaching effects on public confidence. Public trust in the American judiciary had already been declining for some time, with a Gallup-poll showing that only 51% of the American public approves of how the Court is handling its job [6].

Modern justices have long been typecast as liberal or conservative based on the political party of the president by whom they were appointed. In light of this, many scholars of the judiciary argue that "policy preferences play a ... powerful role" in judicial decision-making [10, p. 9]. Some have also gone so far in recent years as to study the role of judges in the US and around the world as political actors [33][29]. The characteristic ideological divide of the current US Supreme Court did not develop in a vacuum; instead, it was the result of legislators and executives increasing their support for judges they knew would sympathize with or strike down particular ideas. The intensifying politicization of Supreme Court nomination hearings arguably peaked in 2016 when the Senate refused a hearing for nominee Merrick Garland simply because he was nominated by a president from the opposition party. These rapid changes in how government officials interact with and attempt to influence the judiciary

have ignited serious conversations about the durability of the US appointment process and whether or not the current model puts enough securities in place to adequately protect judicial independence.

An understanding of a judiciary's selection process is essential for addressing the important institutional and cultural changes that are brought about by Supreme Court decisions. The United States celebrates having the world's oldest written constitution, and the document outlines a process by which the sitting president "shall nominate, and by and with the Advice and Consent of the Senate, shall appoint... Judges of the Supreme Court."[1] Over time, the advice and consent doctrine has been expanded on to incorporate full Senate confirmation hearings for new appointees followed by chamber votes that secure a nominee's acceptance or rejection. There are no requirements or qualifications listed in the Constitution that a Supreme Court justice must meet in order to be seated on the Court; once confirmed, justices serve lifetime tenure "during good behavior," and they can only be removed by impeachment and only in extraordinary circumstances. Modern presidents' inclinations to nominate justices who are perceived to hold partisan biases as well as the Senate's hard-line interpretation of "advice and consent" have brought the US model of judicial appointments under scrutiny. It is ironic that a system which purposefully excludes the judiciary from its appointment process in an effort to protect judicial independence has, in the long run, possibly done more harm in achieving that goal than good.

While many democracies have adopted appointment processes similar to that of the US, the unique ways in which other nations utilize different models of judicial selection can shed light on the positive and negative aspects of the American system. This paper focuses primarily on what I call the "insular selection commission" model, which describes systems where new Supreme Court justices are chosen by independent committees that are partially or fully comprised of active members of the Court. The study that follows begins with a comparative analysis of the insular selection commission model as implemented in several key

[1] *Constitution of the United States of America*: Article II, Section 2, Clause 2

democracies. Then, I examine the outcomes of Supreme Court cases in the United Kingdom to measure the selection model's effects on judicial decision-making through an analysis of interpersonal agreement among the justices. I conclude with a discussion of the practical and theoretical implications that my findings may serve for further understanding this model and informing judicial reform movements in the United States and elsewhere.

2 Comparative Overview

Three key nations whose appointment processes incorporate a variant of the insular selection commission model are India, Israel, and the United Kingdom. Though the bulk of this paper specifically analyzes the effects of this type of selection commission on the Supreme Court of the United Kingdom, it is nevertheless important to understand the historical underpinnings and intricacies of each nation's system in order to best dissect the elements of the model which are most consequential for the upkeep of judicial independence and legitimacy.

2.1 India

Founded in 1950 with the ratification of the Indian Constitution, the Supreme Court of India has a long history of expanding its own authority over the judicial selection process and using judicial independence as an argument in defence of that principle. The Constitution originally called for the Supreme Court to be comprised of seven justices and one Chief Justice [17], though the number of judges has since been raised to thirty-one to compensate for an ever-increasing volume of caseloads [14]. With an increase in the number of cases each year came a natural decrease in the number of justices who would hear each one. It was previously expected that every justice would hear each case brought before the Court; now, only two or three justices on average, though sometimes more, hear each case, and they are assigned to sit on separate panels that are reflective of their individual legal specialties [28, p.

176].

Article 50 of the Indian Constitution dictates that "[t]he State shall take steps to separate the judiciary from the executive in the public services of the State." Since the 1964 ruling of *Sajjan Singh v. State of Rajasthan*, "basic structure doctrine" has served as a staple judicial principle which, among other provisions, protects Supremacy of the Constitution, Separation of Powers, Judicial Review, and Independence of the Judiciary. Though there is no definitive list of institutions or standards protected by basic structure doctrine, the principle holds that some aspects of the Constitution are so intrinsic to its identity that they cannot be challenged or amended by legislation or executive authority [20]. Notably, the Supreme Court has consistently invoked basic structure doctrine to rule in favor of its own exercise of power over the selection of new Supreme Court justices. From the Court's inception, judges were appointed by the President in conjunction with the advice of the Union Council of Ministers [17]. However, the executive power to alter the composition of the judiciary was challenged in the Three Judges Cases—heard in 1981, 1993, and 1998, respectively—in which each case further established judicial independence as a principle so essential to the proper functioning of the judiciary that any interference in its proceedings, through the selection of judges or otherwise, is deemed a violation of Separation of Powers [13, p. 137-139].

The majority opinion of the Second Judges case in particular established a model of judicial selection that became known as the collegium system [1]. In this model, the executive and legislative branches have almost no authority over the selection of judges put forth for nomination; instead, a closed committee composed of the four most senior members of the Court and the Chief Justice forwards a name to the president for appointment, which he or she is obligated to accept. The Supreme Court famously ruled in 2009 that the criteria specifying who can become a judge is a factual question, but who is selected for the judiciary barring those qualifications is a matter of opinion and cannot be questioned [2]. Thus, presidents almost never attempt to reject recommendations from the collegium and play only

a symbolic role in the appointment of judges to the Supreme Court. This has led some to refer to the appointment process for Supreme Court justices as the "best kept secret in the country" [26, p. 19-20].

The Indian case is a paragon example of the potential dangers posed by the insular selection commission model. Since the Second Judges case, the Supreme Court has been plagued with multiple corruption scandals and internal criticisms of maladministration which have roots in the lack of transparency bolstered by the collegium system [11, p. 44]. In particular, the closed nature of the collegium's internal proceedings has drawn criticism from the public and government officials alike [26]. One attempt by the legislature to increase transparency in the nomination process came in the form of a 2014 constitutional amendment replacing the Collegium with the National Judicial Appointments Commission [26, p. 66-67]. The Commission called for a selection body composed of the Chief Justice and two other senior Supreme Court judges, as well as the Union Minister of Law and Justice and two "eminent persons" who are not members of a judiciary. This system, which even if flawed would have provided for a much more transparent method of judicial selection, was struck down by the Supreme Court itself as an infringement of the basic principle doctrine [31, p. 126-127].

The decision was ill-received by reform-activists as well as the public. It follows that institutional attempts by the judiciary to prohibit any outside influence in the selection of judges have thoroughly diminished the perceived legitimacy of the Court and have led to accusations of internal corruption even from its own members [9]. The back-room dealings and negotiations that take place within the collegium are an open secret that the justices are not afraid to preserve: "They ask no one. They consult no one but themselves" [26, p. 39]. The sustained implementation of the collegium exemplifies a purposeful trade-off between legitimacy and independence. Over time, the more the Indian Supreme Court has worked to protect and expand its decision-making powers, the greater the cost has been in the degradation of its relationships with other branches of government and the loss of public trust.

The collegium system proves that a completely insular judicial appointment process devoid of any real constitutional guidelines accrediting outside consultation secures independence but simultaneously sacrifices the integrity that is necessary to wield that independence efficiently.

2.2 Israel

If the Indian collegium system represents the extreme end of how insular the inner-workings of a selection commission can be, the judicial selection process of Israel conversely stands out for its emphasis on intergovernmental collaboration. The Israeli Judicial Selection Committee traces its roots back to the 1952 Judges Bill passed by the Knesset[2] that established a system by which the judiciary is granted power over judicial appointments so long as it calls on other branches of government for consultation [30]. The president, as in India, is the political actor who formally appoints the judges, but the president does not have any real voice in deciding who is appointed, nor does he or she have the power to reject nominations [15, p. 34]. Nominations are brought to the President on the recommendation of a committee that today is comprised of the President of the Supreme Court, two other senior members of the bench, the Justice Minister, two legislators, two members of the Chamber of Advocates[3], and another Cabinet minister. Though members of the Supreme Court no doubt make up a large swath of that commission, the other committee stakeholders theoretically function as an institutional safeguard that prevents any one branch of government from wielding unitary power over the entire appointment process.

Historically, this division of power has not always been distributed equally among the three branches of government. Among the positions that form the Judicial Selection Committee, only the seats held by members of the judiciary are constant–the other positions are elected and therefore are regularly replaced when the political tides change. This has led to criticism that the judiciary, by nature a more stable body, holds a monopoly over the appointment process in the long-term. This is especially relevant considering that the

[2]Israel's unicameral legislative body

[3]the Israeli equivalent of the American Bar Association

judiciary takes up three seats on the Committee and that a successful nominee need only be approved by all but two of the Committee's members [16, p. 319]. Evidence suggests that the justices on the committee enjoy a strong institutional relationship with the Chamber of Advocates since the justices who sit on the committee, apart from the President of the Court, are hand-picked by the CoA. Together, these five actors hold an absolute majority on the committee, which is representative of a consolidation of power that is antithetical to the constitutional goals of the selection commission and has resulted in numerous controversial appointments over time [15, p. 34].

In contrast to the selection processes for other public offices in Israel, a rule of confidentiality applies to the deliberations and proceedings of the Judicial Selection Committee to better insulate the committee from external political pressures. One could argue that secrecy and confidentiality are essential for the execution of judicial independence; justices do not regularly publish their case notes, for example, because they may not be reflective of their final opinions and play an important role in formulating those opinions [26, 194-195]. Though the list of candidates under consideration must eventually be published and the committee is mandated to seek some input from the public, the selection process perpetuates an insular environment in which current members of the Supreme Court have greater agency to influence the committee's decisions. Another way in which the Court exerts power over the nomination process is through the use of temporary appointments. This is a system in which the Court elevates District Court judges to serve one-year terms on the Supreme Court as a means of compensating for higher caseloads. This process has allowed the Court to effectively select and groom future appointees, which has in turn given the Court "nearly exclusive power over appointments" [16, p. 318].

The other branches of government represented on the committee, however, also work to represent their interests. In a convening of the Selection Commission to fill three vacancies in 2009, a stark disagreement erupted between the right-wing legislators and the rest of the committee that almost ended in deadlock, eventually resulting in a compromise more

akin to a high-stakes negotiation than to a professional evaluation of job candidates [19]. Such hostility between government actors demonstrates that the composition of the Judicial Selection Commission has not fostered strong cooperation among government officials as was hoped but has instead created an environment in which members of opposing branches attempt to assert influence over the appointment process in order to embolden their own political interests.

2.3 United Kingdom

The United Kingdom employs a judicial selection process that is independent and insular from the executive and legislative branches but still structurally relies on the informal input of officials from all branches of government. For most of its history, the UK did not have an independent high court; rather, a designated subgroup of the House of Lords—the Lords of Appeal in Ordinary, or colloquially, the Law Lords—oversaw constitutional cases of last resort. The Law Lords, though technically a part of the upper house of legislature, were qualified legal professionals and collectively functioned as an independent body, so controversy over the legitimacy of their decisions was rare. Despite this, a good faith effort to delineate clear responsibilities between the judicial and legislative functions of government led to the passage of the Constitutional Reform Act of 2005, which did away with the Law Lords system and established a new Supreme Court that would serve as an independent judicial body that was the final court of appeal for civil cases in the UK. In adherence to Part 3, Section 23(1) of the Act, the twelve Law Lords were appointed as the first twelve Supreme Court justices with the Court's formal creation on October 1, 2009 [4].

Though the first justices were appointed to the Court by means of transfer, the Act specifies that future justices must be chosen at the recommendation of a specialized judicial selection commission comprised of the President of the Court, the Deputy President[4], and one member each from the respective appointment commissions of England and Wales, Scotland,

[4]Schedule 13(4)(1B) of the Crime and Courts Act of 2013 effectively removes the Deputy President from the selection commission, to be replaced by a "non-legally-qualified" person of the President's choosing

and Northern Ireland. After consulting with a list of government and judicial authorities specified in the Act, the selection commission offers one name to the Lord Chancellor, who either approves or rejects the nomination. Once approved, the name is presented to the Prime Minister who is then obligated to submit the appointment to Her Majesty the Queen. Like the Israeli system, these approval mechanisms play a practical role in ensuring that the independence of the court is protected while still incorporating feedback and guidance from the other branches of government. Some of these duties, though, are merely symbolic. While the Lord Chancellor has the power to reject a nomination presented by the committee, he or she may only do so once; if the Lord Chancellor is not satisfied with a nominee and requests a second option or reconsideration, one of those two nominees *must* be chosen for appointment. It could be argued that this system does not actually provide a legislative check on judicial authority and instead emboldens the committee to pursue nominees without consideration for how that person will be received by the Lord Chancellor [18, p. 218]. Rejecting a nominee is a risky maneuver for the Lord Chancellor since he or she would be mandated to accept the next option presented regardless of his or her approval of the nominee, effectively giving the judiciary full power to hold the legislative authority constitutionally hostage in such circumstances [18, p. 220]. The executive power of the Prime Minister is also null, since he or she is also required by law to accept the name approved by the Lord Chancellor and request an appointment from the monarch. With regard to the changes to the UK Constitution made by the 2005 Act, Masterson writes, "The judges would not admit it, but they have emerged immensely stronger" [25, p. 222].

The Supreme Court, being a young institution, necessitated that many of the workings of the Court would be tested by trial and error and closely monitored. Among these observations was a growing concern over the dangers of self-replication that could potentially arise from the selection committee's current makeup [8], and by 2012 even President Lord Phillips had acknowledged that the President's and Deputy President's presence on the judicial selection commission was problematic [18, 219]. A proposal compiled by the Ministry

of Justice in 2012 which summarized various public responses to the new judiciary called for a more "proper balance between executive, judicial and independent responsibilities" by means of instituting guidelines for the creation of a "more diverse judiciary that is reflective of society and appointed on merit" [3]. The Crime and Courts Act that followed suit in 2013 effectively mandated that only one current Supreme Court justice could sit on the selection committee and barred the President and Deputy President from serving on the committees which would choose their replacements[5]. This structurally limited the influence of justices in the selection process, but the lack of regulations stipulating how many times someone may serve on the selection committee meant that most committees convened so far have been remarkably similar in composition [18, 220]. Despite the reforms of the 2013 Act, this homogeneity of the committee has meant that power over judicial appointments has been confined to a handful of select authorities who have only weak institutional mechanisms to keep them in check.

To better understand the implications of this unique form of selection in a relatively new institution, I undergo an analysis of the individual agencies of UK Supreme Court justices and how they interact with one another through their formal and informal associations in Court opinions. By uncovering these relationships, it is possible to see what commonalities or differences between justices exist and determine whether they are a result of the selection process through which they were appointed.

3 Hypothesis

The internal selection commission model places an emphasis on Supreme Court judges having a distinguished role in assessing and nominating their future colleagues. One major question posed by this system is whether or not members of these commissions select judges who conform with their own legal and judicial philosophies. If sitting Supreme Court judges

[5]At this point, President Lord Phillips had already served on the committee which chose Lord Neuberger as his successor.

are assumed to function as political actors with policy preferences, it follows that members of a selection commission would demonstrate a bias towards candidates with legal backgrounds or values similar to their own. Judges acting on their preferences would have a clear incentive to nominate like-minded individuals for seats on the high court because increasing the ratio of sitting justices with similar preferences would correspondingly increase the probability that a case would be decided in favor of those preferences.

This inference as applied to the United Kingdom is complicated, no doubt, by the fact that the majority of cases that are heard by the Supreme Court are administrative interpretation issues of narrow legal focus. Very few cases relay politically salient content or refer to hot-button challenges to societal norms that are prevalent in the public consciousness [32, p. 295]. Given this context, it is difficult to determine exactly how a sitting justice might be able to accurately assess an applicant's philosophical or ideological leanings and map these complexities onto their own philosophies or ideologies. One could thus reasonably expect that the actualized effect of justices selecting judges who share their views is small. This general effect could also be diminished by the idea that because the UK's selection commission is composed of a minority of sitting justices, justices may simply not have enough institutional negotiating leverage to secure their candidates of choice. Despite these very real reasons for doubt, I hypothesize that the positions of President and Deputy President of the Supreme Court are respected enough that they carry weight in the selection committee and that the motivation for justices to select like-minded associates is strong such that justices will make a concerted effort to do so despite the potential for failure. This is supported by interviews of lay members seated on selection committees who admit to deferring decision-making to the judges due to their own insecurities about having less experience working in the judiciary [18, p. 219-220].

The quantifiable implications of this hypothesis are two-fold. First, it implies that new justices will tend to reach the same conclusions by the same means as those justices who played a role in selecting them. In situations where these justices hear the same case, I expect

newly-appointed justices will tend to explicitly agree with the justices who appointed them. Second, it follows that the appointments of new justices who hold similar judicial philosophies to those currently serving will result in the rise of the percentage of unanimously-decided cases over time. At the Supreme Court's founding in 2009, the eleven original justices were each promoted from their positions on the Appeals of Ordinary; since the new institution imposed a unique set of legal challenges, only chance could predict how the first justices would react in their opinions. Since retiring justices would hypothetically be replaced with judges who are biased to agree with the justices who appoint them, each new justice would bring the Court one marginal degree closer to full homogeneity.

In the next section, I outline the process by which I attempt to test this hypothesis and present the reasoning behind my choice to focus exclusively on the UK Supreme Court as a representative of countries that use the internal selection commission model.

4 Method

In order to better understand the effects of the internal selection commission model on UK Supreme Court decisions, I employ an original technique that I refer to as "inter-judicial agreement analysis" in which I examine the degree of agreement between unique combinations of justice pairings. That is, for each decided case I attempt to map the conclusions of the justices who heard the case using a metric of explicit referencing that underscores levels of agreement beyond the binary of majority and dissent. I conduct this analysis for all decided cases from 2009 to December 5th, 2018.

In a 2015 paper, Cahill-O'Callaghan conducted an agreement analysis of UK Supreme Court justices from 2009 to 2013 to highlight the tacit values they share which potentially impact their decision-making. The analysis classified the small pool of original justices into three value categories and compared their individual levels of agreement to show that justices who shared similar view on traditionalism, universalism, or self-direction agreed with each

other at a higher rate than the average overall agreement [12]. While this study was unique in that it incorporated individual justice's perceived values as a metric for interpreting decision outcomes, the short time frame studied precludes any possible analysis of the impact of appointments. Agreement between justices in the study is exclusively measured in terms of majority and dissent and shows whether or not justices reached the same conclusion on a particular case. My analysis goes a step further and measures the uniqueness of each judge's conclusions *and* reasoning to demonstrate a more nuanced model of tacit agreement than that proposed by Cahill-O'Callaghan. I am grateful for the insights this original study provides, and I consider my own paper to be a tangential extension of it.

I define a justice's agreement with another justice as a specific reference to concurrence with that justice's conclusions and his or her reasons for those conclusions. Typically, this is accomplished entirely within the heading of an opinion. Once a majority decision has been determined, the President of the court assigns one member of the majority to compose the lead opinion. The other members of the panel then have the opportunity to read a draft of the lead judgment and decide whether or not they agree exactly with the argument presented [7]. If a member agrees entirely with the opinion and has no further comments, that member will often list his or her name as agreeing with the judgment within the heading. For example, the heading for the sole opinion of the judgment with citation *[2014] UKSC 24* reads, "LORD MANCE (with whom Lord Neuberger, Lord Sumption, Lord Toulson and Lord Hodge agree)," which indicates that the lead opinion was drafted by Lord Mance and that the other four justices on the panel explicitly agreed with all of the arguments and conclusions that are contained within it. In this case, I coded the level of agreement between each unique combination of justices as equal, since all five justices reached the exact same conclusions by exactly equal means.

If a justice dissents from the majority, it is common practice for the justice to draft a dissenting opinion that is published alongside the majority judgment. Oftentimes dissenting arguments are individual, but there are many cases in which a justice expresses full agreement

with another justice's dissenting opinion in the heading introducing that opinion. The same is true for concurring judgments, in which justices express support for the majority conclusions but offer additional or differing observations and arguments to support those conclusions. Most concurring judgments are compatible with their respective majority judgments, and, if applicable, justices will commonly express agreement with both in each respective heading.

Sometimes, however, justices who write concurring opinions do not associate themselves with the majority opinion directly by means of the opinion heading but instead reference explicit agreement with the lead judgment within the bodies of their separate opinions. In a situation such as this, I still code the concurring justice as explicitly agreeing with the author of the majority opinion since he or she expresses direct support for the conclusions and reasons argued in that opinion. One could argue that there may be an implicit distinction between listing oneself in the heading of an opinion and merely mentioning one's support for the opinion tucked away within the body of a separate judgment, and it is not difficult to imagine that choosing one optic over the other might be purposeful. Yet, there are several possible explanations for why this distinction exists, such as the fact that not all justices are always given the opportunity to read each other's draft opinions in advance and thus cannot assign their full support to their arguments before they compose their own[6]. Secondly, there is a marked change in the formatting of published opinions that occurs several years into the Court's tenure in which it becomes more common for justices to list themselves in more than one opinion heading.[7]

It is important to note that my measurement of agreement goes beyond the scope of majority versus dissent—in fact, it does not track these variables at all. Rather, I code for two degrees of agreement which I label as "pure" and "qualified" agreement, respectively. Pure

[6]Inferred from recurrent references to drafts in a multitude of case opinions

[7]In many early opinions, it was common practice to express agreement with more than one opinion through a published joint statement or a statement of one's own, even if the statement provided no additional observations or content. For the sake of consistency across time, I consider such agreements to be qualified, not pure, since there are examples in this same set of cases of justices writing identical separate statements as opposed to joint ones. Acknowledging authorship is a central component of my analysis as it captures a justice's desire to have his or her individual voice heard.

agreement refers to two justices who have reached the exact same conclusions by the exact same reasoning. It does not matter how many different judgments they attach themselves to, so long as they are the same set of judgments. Even if each judge writes his or her own concurring or dissenting judgment, they must each explicitly agree with the conclusions and reasoning of one another. Conversely, qualified agreement refers to two justices who share at least one common reference. This type of agreement can take many forms, e.g., two justices both agree with the leading opinion but one justice also agrees with a concurring judgment with which the other does not explicitly agree. Pure agreement is a subset of qualified agreement; that is, all qualified agreements are also pure, but not all pure agreements are qualified. Pure agreement represents the most specific degree of commonality possible between justices, while qualified agreement accounts for a much wider and more realistic range of ways in which justices can express some form of individual agreement. It is possible that two justices reach the same conclusion on an issue but do so by completely different means. In such a case, the justices would not demonstrate either pure or qualified agreement and would be treated the same as dissenting judges.

Apart from tracking agreement between justice pairs, I also code for pure and qualified unanimity across entire cases. Correspondingly, cases that result in pure unanimity are composed of justices all of whose expressed conclusions and reasoning are exactly alike. Cases that demonstrate qualified unanimity are composed of justices for whom there is at least one common opinion with which they each entirely agree. As a statistical control, I code for unanimous cases that are not qualified or pure but in which all justices reach the same conclusion though not necessarily by equivalent means. Lastly, I track the number of justices who hear each case and create a dummy variable for whether or not a case was considered a "landmark case," a case deemed of great enough national importance that it was purposely heard by a judicial panel larger than five.

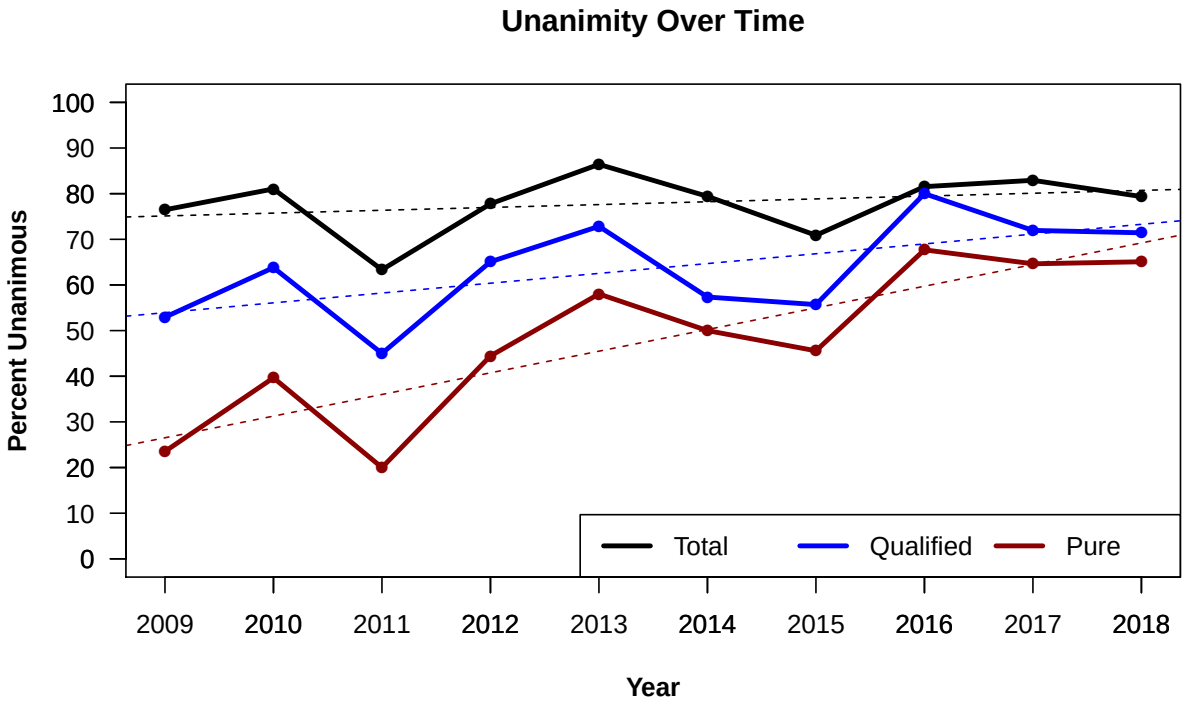
While the examples of India and Israel have much to teach us about the consequences of expanding judicial independence in a way that allows for compositional self-determination,

I focus this study on the United Kingdom because this form of inter-judicial analysis I employ would be near impossible to reproduce in an equivalent study of Indian or Israeli decisions. The UK Supreme Court's young age means that the number of total cases available for analysis is manageable and records of past case judgments are well-documented and organized online. The Indian Supreme Court, by contrast, is over fifty years older than the UK court and sometimes hears over seven hundred cases per day, most of which are not well-archived or of national significance [21]. The "newness" of the UK Supreme Court also adds to its intrigue—its adoption of the internal selection commission model decades after the process was established in Israel and India makes it a unique case study for tracking the development of a fledgling judiciary in the modern day. Understanding the selection commission's impact on the development of the Court can serve as important guidance for judicial reform movements around the world.

5 Data

An initial analysis of unanimity outcomes from 2009 to late 2018 demonstrates a particularly interesting trend: while the total percentage of unanimous cases per year remains the same on average, the total percentage of cases that are purely or qualified unanimous rises significantly over time. When viewed as a percentage of all cases, the unanimity trends are plagued by a wide degree of variance. The lines of best fit for the total percentage of unanimous cases and total percentage of qualified unanimous cases output multiple R-squared values of 0.082 and 0.36, respectively, as well as respective significance values of 42% and 6.5%. While the high variance levels diminish the usefulness of these trends, it is still clear that since the Supreme Court's inception in 2009 the total percentage of unanimous cases has remained mostly stable while the total percentage of qualified unanimous cases has risen steadily.

It is especially worth noting that despite these less significant trends, the total



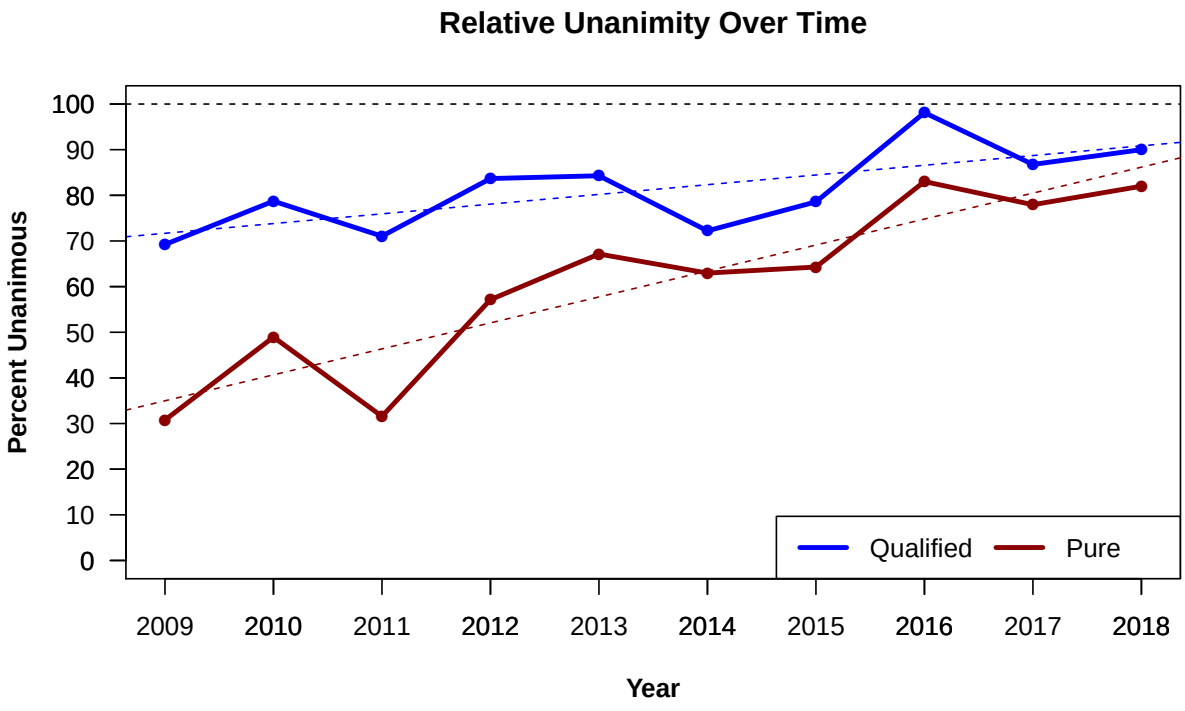


Figure 1: The first chart plots change over time for the total number of unanimous, qualified unanimous, and purely unanimous cases over the total number of cases heard each year. The second chart plots change over time for the percentage of qualified unanimous and purely unanimous cases relative to the total number of unanimous cases ruled each year. Dashed lines indicate lines of best fit for each parameter.

percentage of purely unanimous cases has increased drastically over the past nine years, with the total percentage of purely unanimous cases in 2018 being 276% higher than it was in 2009. With a multiple R-squared value of .73 and a significance level of 0.16%, it is clear that this increase represents a meaningful trend in the increase of inter-judicial agreement. This increase also implies that justices have become less prone to publishing their own judgments for cases in which they were not chosen to produce the majority opinion.

When the number of qualified and purely unanimous cases is plotted as a percentage relative to the total number of cases—such that the percentage of unanimous cases is always 100%—the upward trends of both of these forms of agreement are even more pronounced. The plot of purely unanimous cases is once again most notable, boasting an R-squared value of 0.83 and a significant p-value of 0.00023. The p-value for the qualified unanimity trend line also falls well below the standard .05 significance threshold at 0.023. It is clear from this relationship that the vast majority of unanimous cases have become qualified or purely unanimous, with a stabilized convergence in recent years that leaves only an average of 8.4% unanimous cases in which there is not at least one degree of commonality among all of the justices' various conclusions and reasoning.

Further regression analysis shows that neither the distinguished qualification of being a landmark case nor the number of judges on a case panel had a significant effect on any of these trends. However, it is worth noting that 2011, which saw a major dip in the total percentage of unanimous cases, was also the year that saw the greatest number of landmark cases: exactly one-third of the sixty cases heard that year were landmark cases. Likewise, 2018 has seen an extraordinarily low percentage of landmark cases, with only 4.76% of cases being deemed of high enough national importance to warrant a judicial panel greater than five members.

For the next part of the study, I look at the individual levels of agreement between unique justice pairings. In particular, I examine the relationships between justices who held seats on the judicial selection commission and the justices who they nominated to see whether

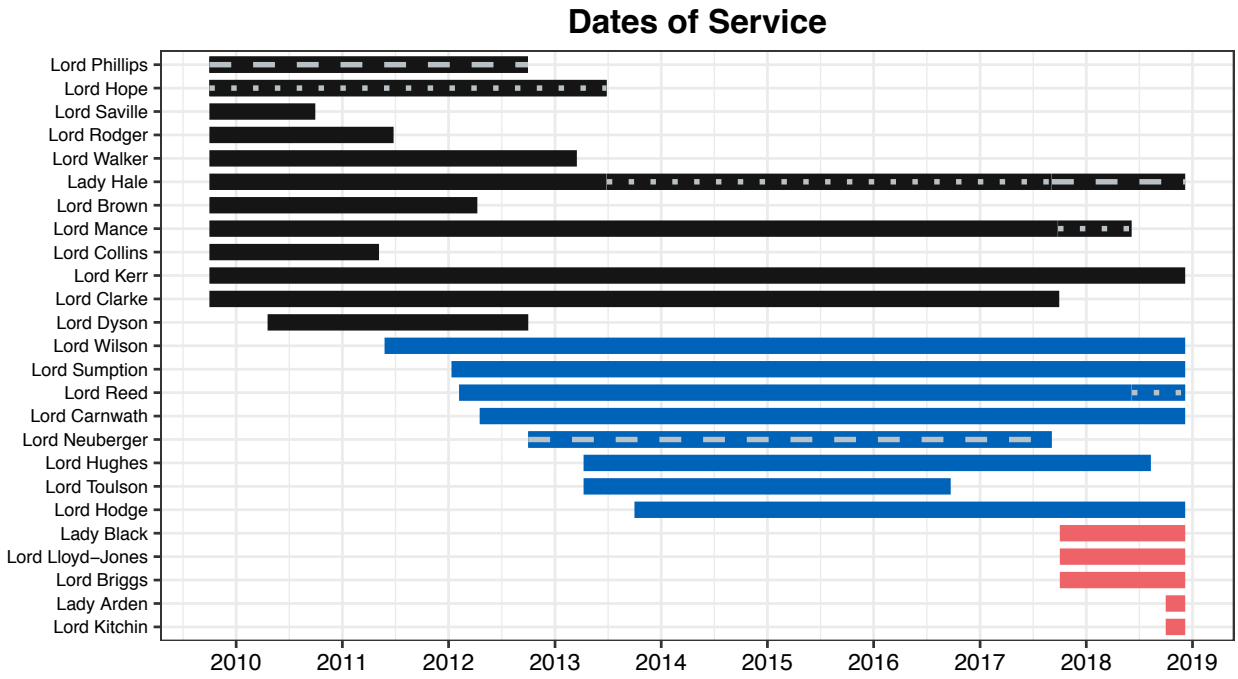


Figure 2: Timeline of service on the UK Supreme Court. The colors denote three groupings of appointees: the Original justices (black), the Replacements (blue), and the New appointees (red). A dashed line indicates the time a justice served as President, and a dotted line indicates time served as Deputy President.

or not there is evidence that newly-appointed justices tend to share their views with those justices who select them. The only judges who have sat on the selection commission and appointed justices who fall within the purview of this study are Presidents Lord Phillips and Lord Neuburger and Deputy President Lord Hope.

Together, these three justices represent seventeen unique observational relationships between a selector and an appointee. Several of the individual relationships are quite strong. Compared to the overall average pair pure agreement level of 59.5%, Lord Neuberger and his appointee Lord Hodge, for example, exactly agree with one another 76.9% of the time, which is 17.4% higher than average. Lord Phillips and his appointee Lord Sumption purely agree 75.0% of the time, which is 15.5% higher than average.

However, this above-average relationship does not hold true for the majority of these observational pairs. In fact, the average rate of pure agreement between a justice on the selection commission and a new appointee is only 2.5% higher than the normal pure average.

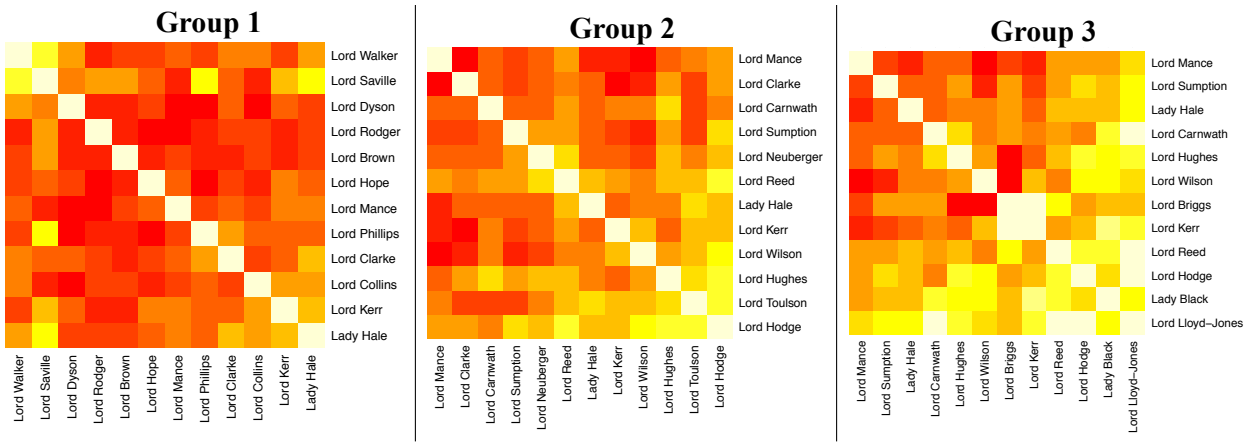


Figure 3: These heat maps visualize the pure agreement relationships between justices within the three distinct eras of the Court denoted in Figure 2. The stronger relationships (yellow) that appear in the Group 3 heat map are consistent with the Figure 1 data which indicate an increase in the percentage of purely unanimous cases each year. Because all justices by definition agree with themselves 100% of the time, the cells that compare justices with themselves appear bright white.

Similarly, the average rate of qualified agreement, which one might expect to be significantly higher given the wider range of agreement possibilities, is only 4.2% higher than the qualified average. Given that the standard deviation from the mean agreement average is 21.5%, these agreement levels do not appear to be particularly significant. These values lie so close to the overall average that they most likely do not account for the rise in purely unanimous cases that has taken place over the Court's tenure.

While it would certainly be interesting to attempt assessing the relationships between all twenty-three justices who have thus far served on the Court, such a far-reaching analysis proves superfluous in that it attempts to draw connections between judges who did not serve concurrently, the likes of which may or may not be accurate extrapolations of the judges' individual judicial philosophies. To more easily break down the plethora of comparable justice pairings, I use a timeline of each justice's dates of service to divide the court into three distinct groupings (Figure 2). Group 1 consists of the original eleven justices installed at the Court's inception as well as Lord Dyson, who was chosen to fill the twelfth vacancy soon afterward. Group 2 is comprised of the set of justices from Lord Wilson to Lord Hodge that

replaced many of the original justices following their retirements or passings. This group also includes Lady Hale and Lords Mance, Kerr, and Clarke, all of whom continued to serve well into the middle years of the Court. Group 3 is comprised of all of the justices in Group 2, except for Lords Clarke, Neuberger, and Toulson, who have been recently replaced by Lady Black and Lords Lloyd-Jones and Briggs. Lady Arden and Lord Kitchin, though labeled in Figure 2 as part of Group 3, are not included in the analysis because they have not, as of the writing of this study, served on any cases.

The ordered heat maps in Figure 3 for each of the three groups place the judges on a spectrum such that the farther apart judges are placed on the heat map, the fewer commonalities they have in their degrees of agreement with the other justices. The group distinction elucidates a deeper understanding of the nuances between judges of each distinct era of the Court, as it is more clearly discernable which justices are more or less agreeable in a more succinct time frame. If we treat the three groups as a marker of change over time, it is apparent that the newer justices agree with one another more often than do justices in the earlier groups or those who have served across multiple groups.

A larger heat map encompassing all twenty-three studied justices can now be useful as it can separate in one matrix to what extent interpersonal agreements among different court groupings are different relative to one another. As shown in Figure 4, such distinct groupings do exist, and the differences in relative agreements are clear. Nine of the original justices[8] form a distinctive grouping on the furthest edge of the heat map characterized not by lack of agreement with justices with whom they did not serve—though that is no doubt part of the equation—but rather by strikingly low levels of relative pure agreement. It is clear from this diagram that the original justices, on the whole, agreed with one another at a far lower rate than do justices who currently sit on the court. If we are to assume that the introduction of new justices roughly corresponds to change over time, these heat maps support the data in Figure 1 that demonstrate a distinctive increase in the percentage of purely unanimous cases

[8]Lords Brown, Rodger, Phillips, Collins, Saville, Walker, Dyson, Hope, and Mance

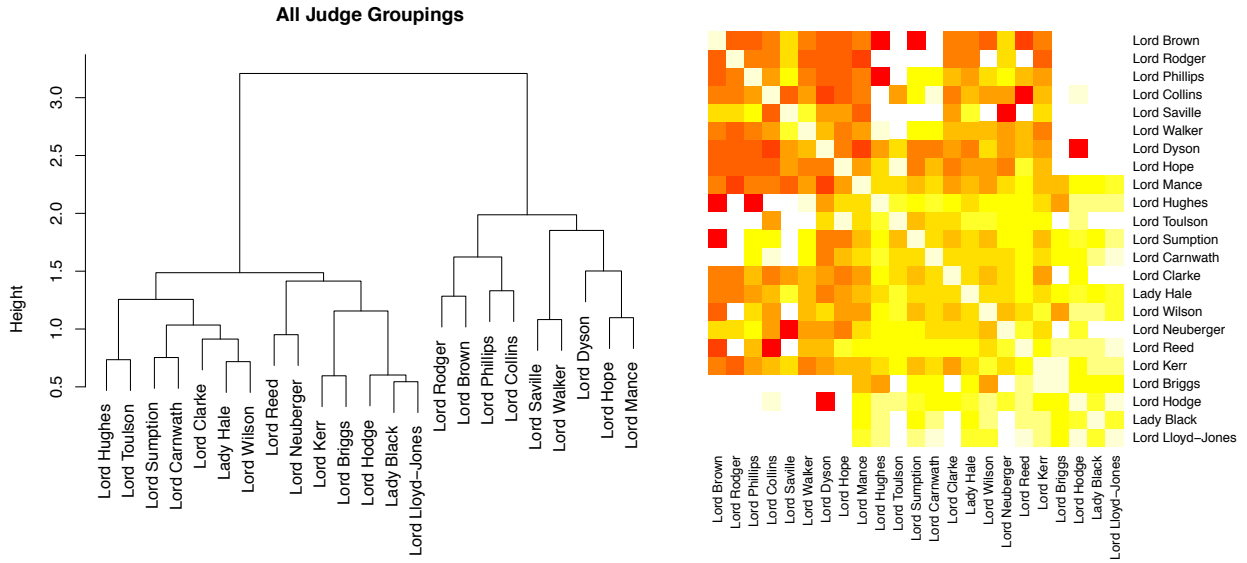


Figure 4: This cluster diagram and heat map show the pure agreement relationships between all justices across all incarnations of the Court. Empty cells indicate that there were no instances in which a pair of justices heard the same case. The distribution confirms that the original justices were far less agreeable than the current justices.

over time. Heat maps showing relative qualified agreement are displayed in the Annex, and the groups that are formed are more or less similar to the pure agreement heat maps but demonstrate a higher low bound for agreement.

Lastly, the cluster dendrogram in Figure 4 was constructed to confirm the groupings of the pure agreement heat map. The dendrogram shows that the nine original justices referenced above form a distinctive grouping of their own, separated from the rest of the justices by a relative distance[9] of approximately 3.0. This is consistent with the results of the heat map as well as with the data presented in Figure 1.

[9]Dendrogram cluster height is a relative measure of distance calculated by subtracting the correlation between two objects from a value of 1. If two objects are exactly correlated, their correlation value will be 1, which would result in a distance measure of zero. In this case, a height of 3.0 indicates that there is a strong negative correlation between groupings.

6 Analysis

The data proposes a set of interesting trends that provide unique insights into how the Supreme Court has changed over time but make some of my initial hypotheses incompatible. For example, my hypothesis regarding rate of unanimity over time was only partially correct. The total percentage of purely unanimous cases has increased dramatically over time—in fact, the increase was almost three-fold over a nine-year span—yet, the total percentage of unanimous cases has generally remained constant. This discrepancy indicates that there has not been a paradigm shift in which conclusions justices reach, but rather there has been a stark change in the means by which justices reach those conclusions. The data indicates that recent judgments have become much more streamlined: long-form dissents are written only when the case necessitates it, and fewer justices in the majority write concurring opinions or expend their personal views on decisions outcomes.

As previously mentioned, the formatting of how justices formally align themselves with other cases has changed over time, and it is worth considering whether or not this change in the data is reflected as a measurement error. In many cases before 2011, a group of justices which agreed with an opinion might have chosen to release a statement at the end of the judgment expressing their approval in writing, and because these judges expressed their views separately and were not acknowledged in the lead judgment they were treated as separate authors of a joint concurring judgment; thus, in my methodology a case like this would have been considered qualified, but not pure. However, the number of instances in which this form of distinction occurs is not enough to offset the upward trend of pure unanimous cases. Even if it were, it still would not explain when or how judges choose to associate themselves with one another. In a few rare instances within this time period, several judges would join together to compose a joint statement expressing their agreement with a particular opinion, while simultaneously another justice would submit a separate near-identical statement indicating similar agreement. In an analysis such as this study in which I aimed to place emphasis on the individual agency of justices, I codified unique authorship as a distinct and meaningful

variable in understanding inter-judicial associations and relationships. More telling, though, is the fact that 2011, the year in which this divisional format became less common, saw the most dramatic decrease in the percentage unanimous cases of any year. Unless this was a particularly unusual year for controversial cases, which the data does not suggest, it would not be fair to assume that the formatting of cases skews my analysis in any way. The unanimity over time data is thus reflective of this methodology and consistent with formatting changes in a way that I find more insightful and more meaningful than a more basic analysis of the majority-dissent binary.

What, then, causes this sizeable increase in relative pure unanimity? The answer, curiously, also does not appear to lie in my hypothesis that justices on the Judicial Appointment Commission select justices who agree with them often—in fact, appointees tend to demonstrate pure and qualified agreement levels which are only slightly higher than the average rate of agreement among all justices. This is not to say that the President and Deputy President do not attempt to choose justices with similar judicial philosophies as their own; it is possible that the justices are constrained by the other members of the selection committee in their attempts to do so, or information that is predictive of how judges will rule in narrow legal cases is too difficult to derive accurately. In either case, any purposeful attempts at self-replication in the selection process have thus far been seemingly ineffective, and the data suggests that this conclusion is equally applicable to Presidents Lord Phillip and Lord Neuberger as well as to Deputy President Lord Hope.

One theory to explain this change over time is that the formation of the Supreme Court fostered a unique working environment in which justices often felt the need to submit individual opinions in order to make discernable impacts on the legal development of the new institution. This idea assumes that the original justices were activists in the formation of opinions and used the Supreme Court as a tool through which they could bring means to a political or culture end goal, though it is not immediately clear from justices' opinions what specific end goals those may have been. The new Supreme Court also experimented with a

first-of-its-kind broadcasting system in which all public proceedings were televised [23], and so it is possible that judges purposefully utilized this forum to share their legal views in hopes that their particular lines of reasoning would be more viable and reach a wider audience. This argument is consistent with the general trend toward pure unanimity over time under the assumption that early proceedings of the Court offered a short-term opportunity for individual performances to discern any real influence, for the higher agreement rates in the Court's modern incarnation show no evidence of TV grandstanding or an influx of unique case opinions once the Court had become more established. This model therefore does not follow if it is assumed that all judges inherently have an incentive to strongly vocalize their conclusions and reasoning even at the expense of unanimity; rather, it indicates that there may have been a strictly temporary window in which the "newness" of the court and the novelty of cameras in the courtroom that would incentivize individual agency have mitigated over time. I invite future research on the effects of television broadcasting in UK courtrooms to better understand the medium's effects on general proceedings and the behavior of justices.

However, the data do show that while justices on the commission do not choose justices who act as they *themselves* do, they do seem to appoint sets of justices who agree with one another at a rate well above average. Among pairs of justices who were appointed by the same President and Deputy President[10], the rate of pure agreement is 9.11% above average and the rate of qualified agreement is 4.42% above average. This difference is especially pronounced when examining sets of judges who were appointed at similar times and by the same selection commission. Lords Hughes, Toulson, and Hodge, for example, were all appointed by the same selection in the same year; as an average of individual pairings, these three purely agree with one another at a striking rate of 26.5% above average and qualified agree at a rate of 15.0% above average. The grouping of Lord Lloyd-Jones, Lord Briggs, and Lady Black, all of whom were appointed by Lord Neuberger in 2017, similarly demonstrates a rate of pure agreement that is 17.8% above average. Interestingly, there are no instances

[10]The Crime and Courts Act removed the Deputy President from the Selection Committee. This role was filled by Lord Kakkar in every appointment made in a committee chaired by President Lord Neuberger.

of solely qualified agreement among this group; every agreement between each pair of this grouping is pure and exact, a feat that is not identifiable among any other statistically significant pairs of justices.

These data indicate that the judicial selection committee, at best, does not actively appoint new justices to an effect of increasing philosophical diversity within the Court. This is curious in light of the many efforts through legislation and internal reform that have emphasized the need to strive for diversity among sitting justices. The Law Lords, and by extension the new Supreme Court justices, have long been criticized for being composed of predominantly caucasian males [12]. At the Supreme Court's founding, Lady Hale was the only female Law Lord, and she served as the only female Supreme Court justice until the appointment of Lady Black in 2017. Throughout the UK's history, judges have traditionally filled adjudicative roles based on legal expertise and seniority. This system has thus "prioritized the appointment of candidates who are insulated from political life and who are drawn from a relatively closed and homogenous community of elite practitioners who have succeeded in acquiring a high level of specialized skills and knowledge" [32, p. 296]. In an environment where unique specialized knowledge is a prerequisite for rising to higher positions in the judiciary, it is possible that the selection commission *does* in fact select judges with a diverse range of specialized skills, but it is deference to intellectual authority in particular areas of the law that causes groups of judges appointed concurrently to purely agree with one another at higher rates. In fact, this seems especially plausible given that the constitutional provisions[11] which encourage the consideration of diversity in the selection of judicial nominees also provide for an implicit diversity requirement that at least one Supreme Court member each be representative of the jurisdictions of Scotland, Northern Ireland, and England and Wales. For cases regarding devolution issues or facts specific to unique jurisdictions, it may be that judges less familiar with these specificities may tend to show deference to the representatives of that jurisdiction, thus leading to higher levels of unanimity

[11] See Constitutional Reform Act 2005 Part 6(137) and Crime and Courts Act 2013 Schedule 13(9-15)

overall and disincentivizing written concurring or dissenting opinions.

I propose, most importantly, that most of these aforementioned possibilities are consistent with the concept of the "Cult of the Robe," famously coined by former US Justice William H. Rehnquist [27], and that it may accurately describe the UK Supreme Court's transition from a young transitioning body to an established authority well-tested constitutional issues. In his essay, Justice Rehnquist attributes the public perception of a decline in judicial quality to a growing variation of cases that are of political and social importance and those that are not as intellectually stimulating. He distinguishes the difference between judges as "administrators" and judges as "creative" thinkers and claims that the growth of the US federal court system at that time had forced judges to arbitrate more often as the former. It is entirely plausible that the establishment of the UK Supreme Court initially raised a host of constitutional issues that would be tested by the high court for the first time, with unpredictable outcomes that would inevitably carry great weight in establishing precedent that would guide future incarnations of the Court.

Once a particular case has been judged by the Supreme Court, lower courts are able to more effectively and more efficiently pass judgments on similar issues using the newly-established precedents. Simultaneously, the Supreme Court is then able to rely on its precedents as guidelines for deciding related cases. Over time, this means that the cases reaching the high court, in theory, become less politically salient over time and force judges to act as "administrators" and create a natural decline in the extent to which judgments are original. This may be especially profound given that "[u]nlike some Supreme Courts in other parts of the world, the UK Supreme Court does not have the power to 'strike down' legislation passed by the UK Parliament" [5]. Since the Supreme Court cannot overturn established law, there is little opportunity for the Court to upend precedent or alter existing policy, thus limiting the types of cases it may hear to cases of evermore legal obscurity. This idea is consistent with the number of "landmark" the Court has heard each year, with justices hearing 17-33% of cases in panels of seven or more from 2009 to 2012 and leveling out to

15% or fewer landmark cases in each of the following years. It follows that the potential for the Supreme Court to become an activist body is minimal. While there may certainly be many benefits of providing for strict limits on judicial authority, it may come at the price of the Court settling into a routine of self-perpetuating conventionalism that disincentivizes justices to act as thoughtfully and as purposefully as they might otherwise.

7 Conclusion

This study serves merely as an introduction into the inter-judicial relationships that form the back-bone of decision-making in the UK Supreme Court. While my data demonstrates that Court opinions have become more homogenous over time and that judges appointed concurrently tend to share similar opinions more than average, it does not prove that these are a direct consequence of the insular selection commission appointment process. It is also unclear whether any specific incarnation of the Court has been divided into factions based on ideology or values; any "factions" that were discovered in the data were mostly reflective of the era in which a justice served on the Court and the limits of comparability across time, not their intrinsic values. It is more likely that these findings are most affected by the constitutional construction of the Court itself and not the appointment process. In the model I propose, the original justices used their license to publish opinions as a means of shaping the precedents and values of a young institution. Over time, the limits of the Court's power to effect policy or structural changes has resulted in a more stream-lined system where justices are more inclined to agree with one another and less likely to put forth their individual views.

The implications for these findings extend to the United Kingdom and beyond. While this study does not suggest that structural changes to the UK's current appointment process are necessary, it does imply that there is still room for greater diversity in the Court, which would have the potential to chip away at the growing trend towards homogeneity. In any

form, homogeneity of thought in a judicial body is not ideal, and one needs only to look to the collegium system in India to see the dangers of corruption and malpractice that can occur when a Court has little to no real diversity. Given the numerous legislative constraints placed on the Court and its appointment process, though, it is unlikely that the Court would ever be able to rule in a manner which overrides Parliamentary sovereignty and allows the judiciary to make secret its processes for decision-making and selecting appointees. Future studies on the effects of diversity within the Court would be particularly welcome in order to determine whether or not it is the diacritic nature of the legal career-path in the UK that causes justices to vote together more often or some other factor. It seems that if gradual homogeneity is a natural byproduct of the Court's structure and justices' reliance on the expertise of one another, the solution might be to alter the powers of the Court such that it can wield more creative agency over a wider expanse of cases and serve as a check on Parliament.

The design of the Judicial Selection Commission in the UK insulates the judiciary from political pressures akin to those that currently plague the US system. While it is evident that the UK Supreme Court has thus far managed to avoid the politicization of its appointments, however, that does not inherently mean that the US system would be better off if its appointment process were amended to become a system similar to that of the UK. The US and the UK can both learn from the Indian collegium system that transparency is crucial to maintaining a respected judiciary that consistently earns high confidence from the public. The secretive nature of the collegium also demonstrates how homogeneity within the Court and a lack of diversity in thought can lead to maladministration and a judiciary that wields too much power over the other branches of government.

The growing homogeneity of thought in the UK Supreme Court is concerning in that the lack of dissents and concurring judgments means that there is no system in which the Court receives internal feedback and constructive criticism [22]. The US Supreme Court is famous for its closely-decided cases, but one thing that the polarization of the appointment process has provided for is a consistent internal check on the Court's power through dissent,

ensuring there is always a wide array of different judicial philosophies approaching problems in unique ways. While partisan influence over the judiciary is by no means ideal, I argue that the resulting diversity of legal thought is essential to maintaining an independent judiciary that is also healthy and able to keep justices motivated in their work. There may be many ways that the US Supreme Court can be improved upon, such as instituting fixed tenures or a mandatory retirement age, but those suggestions are not the focus of this study. My findings show that there are many merits to the UK Supreme Court appointment process's insulation from the other branches of government and reception of advice from figures all across the political spectrum and from a variety of judicial backgrounds. The US could do well to adopt ways in which the President must seek the advice and counsel of high-ranking members of both the legislature and judiciary before submitting a nominee for Senate approval, but severing the appointment process from the executive and legislative branches entirely has the potential to diminish the ideological diversity of the Court and the benefits those regular internal checks bring.

As US Supreme Court Chief Justice John Roberts once said, "By ensuring that no one in government has too much power, the Constitution helps protect ordinary Americans against abuse of power by those in authority" [24, p. 256]. No matter how or if the US and the UK are to address their present legitimacy concerns, one must hope that separation of powers and checks on government authority remain the ultimate ideals of any reforms and dutifully preserve the protections these institutions so beneficially provide.

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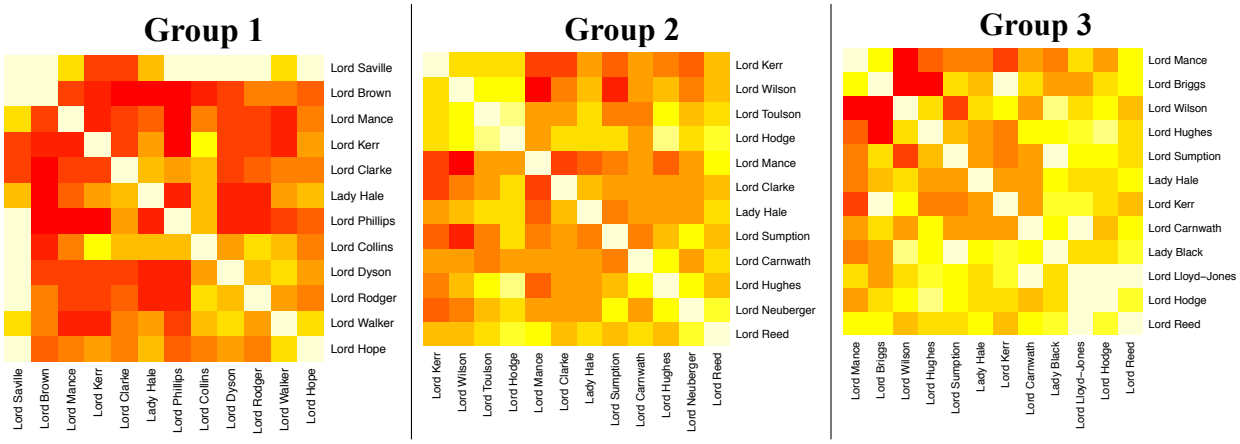
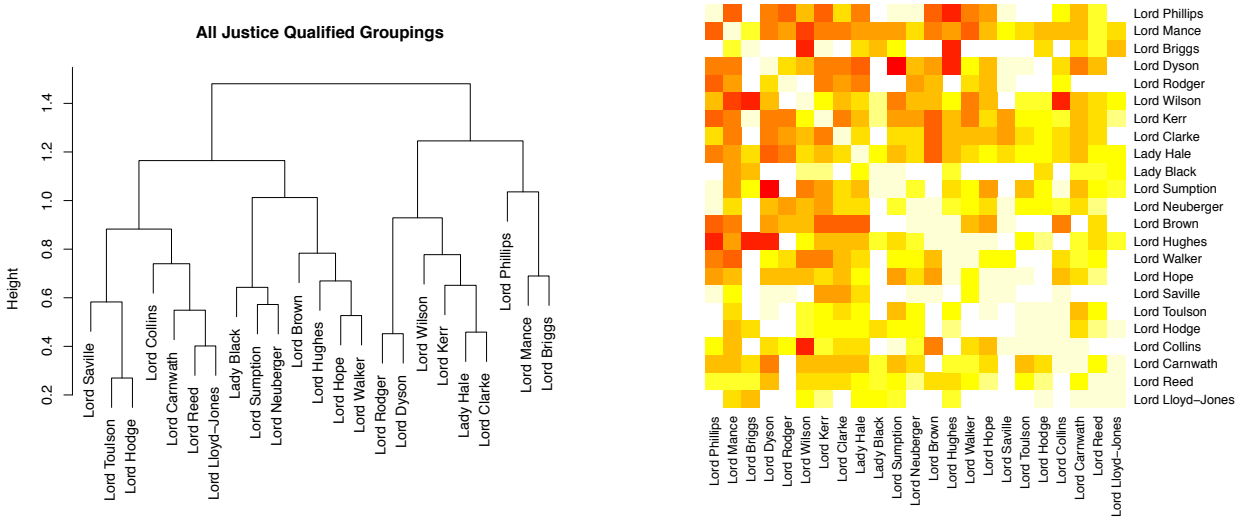
Appendices

.1 Qualified Heat Maps by Group



These heat maps show the rates of qualified agreement between the three iterations of the Court. The pattern that emerges across the three groups is very similar to that of the pure agreement heat maps. Justices in Group 1 are decisively more disagreeable than the justices in the other groups. Group 2 has a relatively even distribution, while Group 3 demonstrates consistently high levels of qualified agreement.

.2 Qualified Heat Map and Cluster Diagram



This cluster diagram and heat map show the qualified agreement relationships between all justices. Despite being less defined, a section of the original justices still form a distinct grouping, though this may be attributed more to lack of comparisons over time as opposed to any unique agreement patterns.

Table 1: Percent Pure Agreement

	Phillips	Hope	Saville	Rodger	Walker	Hale	Brown	Mance	Collins	Kerr	Clarke	Dyson
Lord Phillips	–	28.0%	75.0%	34.4%	41.7%	44.0%	28.9%	35.6%	47.6%	45.0%	56.4%	25.8%
Lord Hope	28.0%	–	42.9%	26.7%	39.4%	48.1%	30.8%	42.0%	30.3%	51.4%	39.3%	40.0%
Lord Saville	75.0%	42.9%	–	60.0%	83.3%	80.0%	60.0%	33.3%	33.3%	66.7%	44.4%	50.0%
Lord Rodger	34.4%	26.7%	60.0%	–	31.4%	40.5%	33.3%	23.8%	41.7%	32.3%	38.5%	30.4%
Lord Walker	41.7%	39.4%	83.3%	31.4%	–	56.7%	40.4%	42.6%	48.3%	40.5%	51.1%	55.2%
Lady Hale	44.0%	48.1%	80.0%	40.5%	56.7%	–	37.0%	54.2%	55.2%	62.0%	63.2%	37.1%
Lord Brown	28.9%	30.8%	60.0%	33.3%	40.4%	37.0%	–	38.1%	37.5%	33.9%	34.5%	29.3%
Lord Mance	35.6%	42.0%	33.3%	23.8%	42.6%	54.2%	38.1%	–	39.3%	51.2%	45.9%	24.0%
Lord Collins	47.6%	30.3%	33.3%	41.7%	48.3%	55.2%	37.5%	39.3%	–	55.6%	41.4%	22.2%
Lord Kerr	45.0%	51.4%	66.7%	32.3%	40.5%	62.0%	33.9%	51.2%	55.6%	–	47.8%	43.2%
Lord Clarke	56.4%	39.3%	44.4%	38.5%	51.1%	63.2%	34.5%	45.9%	41.4%	47.8%	–	43.2%
Lord Dyson	25.8%	40.0%	50.0%	30.4%	55.2%	37.1%	29.3%	24.0%	22.2%	43.2%	43.2%	–
Lord Wilson	66.7%	50.0%	–	–	57.1%	66.5%	33.3%	45.8%	50.0%	75.6%	52.9%	63.6%
Lord Sumption	75.0%	38.1%	–	–	75.0%	61.2%	0.0%	57.1%	75.0%	56.8%	57.7%	40.0%
Lord Reed	57.1%	78.1%	–	–	54.5%	73.4%	20.0%	68.4%	0.0%	70.8%	68.0%	55.6%
Lord Carnwath	75.0%	51.7%	–	–	71.4%	61.1%	–	62.7%	100.0%	65.3%	63.5%	37.5%
Lord Neuberger	75.0%	35.3%	0.0%	66.7%	46.2%	60.7%	60.0%	62.3%	42.9%	61.1%	60.8%	50.0%
Lord Hughes	0.0%	66.7%	–	–	100.0%	65.7%	0.0%	60.4%	–	61.8%	69.4%	50.0%
Lord Toulson	–	100.0%	–	–	–	79.0%	–	64.9%	50.0%	75.0%	59.2%	66.7%
Lord Hodge	–	–	–	–	–	76.6%	–	71.2%	100.0%	73.7%	71.2%	0.0%
Lady Black	–	–	–	–	–	73.7%	–	70.0%	–	91.7%	–	–
Lord Lloyd-Jones	–	–	–	–	–	83.3%	–	80.0%	–	90.9%	–	–
Lord Briggs	–	–	–	–	–	71.4%	–	57.1%	–	100.0%	–	–

Notes: This table shows the percentage of cases in which pairs of justices purely agree. Dashes indicate that there were no cases which were heard by both justices.

Table 1: Percent Pure Agreement (*cont.*)

	Wilson	Sumption	Reed	Carnwath	Neuberger	Hughes	Toulson	Hodge	Black	Lloyd-Jones	Briggs
Lord Phillips	66.7%	75.0%	57.1%	75.0%	75.0%	0.0%	–	–	–	–	–
Lord Hope	50.0%	38.1%	78.1%	51.7%	35.3%	66.7%	100.0%	–	–	–	–
Lord Saville	–	–	–	–	0.0%	–	–	–	–	–	–
Lord Rodger	–	–	–	–	66.7%	–	–	–	–	–	–
Lord Walker	57.1%	75.0%	54.5%	71.4%	46.2%	100.0%	–	–	–	–	–
Lady Hale	66.5%	61.2%	73.4%	61.1%	60.7%	65.7%	79.0%	76.6%	73.7%	83.3%	71.4%
Lord Brown	33.3%	0.0%	20.0%	–	60.0%	0.0%	–	–	–	–	–
Lord Mance	45.8%	57.1%	68.4%	62.7%	62.3%	60.4%	64.9%	71.2%	70.0%	80.0%	57.1%
Lord Collins	50.0%	75.0%	0.0%	100.0%	42.9%	–	50.0%	100.0%	–	–	–
Lord Kerr	75.6%	56.8%	70.8%	65.3%	61.1%	61.8%	75.0%	73.7%	91.7%	90.9%	100.0%
Lord Clarke	52.9%	57.7%	68.0%	63.5%	60.8%	69.4%	59.2%	71.2%	–	–	–
Lord Dyson	63.6%	40.0%	55.6%	37.5%	50.0%	50.0%	66.7%	0.0%	–	–	–
Lord Wilson	–	52.9%	65.1%	65.1%	57.1%	68.7%	76.9%	85.4%	84.6%	81.8%	50.0%
Lord Sumption	52.9%	–	68.5%	60.7%	71.5%	68.8%	57.9%	80.7%	75.0%	85.7%	68.8%
Lord Reed	65.1%	68.5%	–	69.5%	80.5%	74.3%	75.0%	87.3%	90.0%	100.0%	85.7%
Lord Carnwath	65.1%	60.7%	69.5%	–	62.4%	79.1%	58.8%	67.2%	87.5%	100.0%	70.0%
Lord Neuberger	57.1%	71.5%	80.5%	62.4%	–	75.0%	67.9%	76.9%	–	–	–
Lord Hughes	68.7%	68.8%	74.3%	79.1%	75.0%	–	80.4%	87.8%	85.7%	90.0%	50.0%
Lord Toulson	76.9%	57.9%	75.0%	58.8%	67.9%	80.4%	–	90.2%	–	–	–
Lord Hodge	85.4%	80.7%	87.3%	67.2%	76.9%	87.8%	90.2%	–	80.0%	100.0%	70.0%
Lady Black	84.6%	75.0%	90.0%	87.5%	–	85.7%	–	80.0%	–	83.3%	75.0%
Lord Lloyd-Jones	81.8%	85.7%	100.0%	100.0%	–	90.0%	–	100.0%	83.3%	–	75.0%
Lord Briggs	50.0%	68.8%	85.7%	70.0%	–	50.0%	–	70.0%	75.0%	75.0%	–

Table 2: Percent Qualified Agreement

	Phillips	Hope	Saville	Rodger	Walker	Hale	Brown	Mance	Collins	Kerr	Clarke	Dyson
Lord Phillips	–	68.0%	100.0%	59.4%	63.9%	62.0%	55.6%	57.8%	81.0%	57.5%	76.9%	61.3%
Lord Hope	68.0%	–	100.0%	71.1%	81.7%	80.5%	69.2%	74.0%	72.7%	77.8%	73.8%	75.0%
Lord Saville	100.0%	100.0%	–	100.0%	83.3%	80.0%	100.0%	83.3%	100.0%	66.7%	66.7%	100.0%
Lord Rodger	59.4%	71.1%	100.0%	–	77.1%	62.2%	71.1%	66.7%	83.3%	64.5%	69.2%	78.3%
Lord Walker	63.9%	81.7%	83.3%	77.1%	–	76.7%	72.3%	59.6%	79.3%	62.2%	72.3%	82.8%
Lady Hale	62.0%	80.5%	80.0%	62.2%	76.7%	–	57.4%	68.6%	79.3%	74.8%	78.1%	60.0%
Lord Brown	55.6%	69.2%	100.0%	71.1%	72.3%	57.4%	–	64.3%	62.5%	59.3%	58.6%	65.9%
Lord Mance	57.8%	74.0%	83.3%	66.7%	59.6%	68.6%	64.3%	–	71.4%	62.2%	64.9%	64.0%
Lord Collins	81.0%	72.7%	100.0%	83.3%	79.3%	79.3%	62.5%	71.4%	–	88.9%	79.3%	77.8%
Lord Kerr	57.5%	77.8%	66.7%	64.5%	62.2%	74.8%	59.3%	62.2%	88.9%	–	63.8%	63.6%
Lord Clarke	76.9%	73.8%	66.7%	69.2%	72.3%	78.1%	58.6%	64.9%	79.3%	63.8%	–	64.9%
Lord Dyson	61.3%	75.0%	100.0%	78.3%	82.8%	60.0%	65.9%	64.0%	77.8%	63.6%	64.9%	–
Lord Wilson	72.2%	73.1%	–	–	61.9%	79.5%	75.0%	54.2%	50.0%	84.1%	70.6%	72.7%
Lord Sumption	100.0%	66.7%	–	–	81.3%	71.8%	–	69.5%	100.0%	67.6%	76.0%	40.0%
Lord Reed	85.7%	93.8%	–	–	81.8%	84.2%	80.0%	85.5%	–	78.1%	80.0%	72.2%
Lord Carnwath	75.0%	79.3%	–	–	85.7%	73.3%	–	74.6%	100.0%	73.5%	74.6%	62.5%
Lord Neuberger	100.0%	76.5%	100.0%	66.7%	84.6%	75.4%	100.0%	77.0%	85.7%	66.7%	76.2%	75.0%
Lord Hughes	50.0%	100.0%	–	–	100.0%	73.7%	100.0%	66.7%	–	70.6%	75.0%	50.0%
Lord Toulson	–	100.0%	–	–	–	83.9%	–	75.4%	100.0%	83.3%	75.5%	100.0%
Lord Hodge	–	–	–	–	–	81.8%	–	74.2%	100.0%	81.6%	83.1%	–
Lady Black	–	–	–	–	–	84.2%	–	70.0%	–	91.7%	–	–
Lord Lloyd-Jones	–	–	–	–	–	83.3%	–	80.0%	–	90.9%	–	–
Lord Briggs	–	–	–	–	–	78.6%	–	85.7%	–	100.0%	–	–

Notes: This table shows the percentage of cases in which pairs of justices qualified agree. Dashes indicate that there were no cases which were heard by both justices.

Table 2: Percent Qualified Agreement (*cont.*)

–	Wilson	Sumption	Reed	Carnwath	Neuberger	Hughes	Toulson	Hodge	Black	Lloyd-Jones	Briggs
Lord Phillips	72.2%	100.0%	85.7%	75.0%	100.0%	50.0%	–	–	–	–	–
Lord Hope	73.1%	66.7%	93.8%	79.3%	76.5%	100.0%	100.0%	–	–	–	–
Lord Saville	–	–	–	–	100.0%	–	–	–	–	–	–
Lord Rodger	–	–	–	–	66.7%	–	–	–	–	–	–
Lord Walker	61.9%	81.3%	81.8%	85.7%	84.6%	100.0%	–	–	–	–	–
Lady Hale	79.5%	71.8%	84.2%	73.3%	75.4%	73.7%	83.9%	81.8%	84.2%	83.3%	78.6%
Lord Brown	75.0%	–	80.0%	–	100.0%	100.0%	–	–	–	–	–
Lord Mance	54.2%	69.5%	85.5%	74.6%	77.0%	66.7%	75.4%	74.2%	70.0%	80.0%	85.7%
Lord Collins	50.0%	100.0%	–	100.0%	85.7%	–	100.0%	100.0%	–	–	–
Lord Kerr	84.1%	67.6%	78.1%	73.5%	66.7%	70.6%	83.3%	81.6%	91.7%	90.9%	100.0%
Lord Clarke	70.6%	76.0%	80.0%	74.6%	76.2%	75.0%	75.5%	83.1%	–	–	–
Lord Dyson	72.7%	40.0%	72.2%	62.5%	75.0%	50.0%	100.0%	–	–	–	–
Lord Wilson	–	60.8%	77.9%	74.6%	71.4%	80.6%	87.2%	87.5%	92.3%	81.8%	50.0%
Lord Sumption	60.8%	–	80.8%	72.6%	85.4%	78.1%	71.9%	84.3%	100.0%	85.7%	81.3%
Lord Reed	77.9%	80.8%	–	84.1%	92.0%	80.0%	82.7%	90.1%	90.0%	100.0%	85.7%
Lord Carnwath	74.6%	72.6%	84.1%	–	76.3%	86.0%	70.6%	75.4%	87.5%	100.0%	80.0%
Lord Neuberger	71.4%	85.4%	92.0%	76.3%	–	85.3%	80.8%	82.4%	–	–	–
Lord Hughes	80.6%	78.1%	80.0%	86.0%	85.3%	–	84.8%	92.7%	85.7%	90.0%	50.0%
Lord Toulson	87.2%	71.9%	82.7%	70.6%	80.8%	84.8%	–	95.1%	–	–	–
Lord Hodge	87.5%	84.3%	90.1%	75.4%	82.4%	92.7%	95.1%	–	80.0%	100.0%	80.0%
Lady Black	92.3%	100.0%	90.0%	87.5%	–	85.7%	–	80.0%	–	83.3%	75.0%
Lord Lloyd-Jones	81.8%	85.7%	100.0%	100.0%	–	90.0%	–	100.0%	83.3%	–	75.0%
Lord Briggs	50.0%	81.3%	85.7%	80.0%	–	50.0%	–	80.0%	75.0%	75.0%	–