

**ONLINE APPENDIX FOR JUDICIAL IDEOLOGY IN THE ABSENCE OF RIGHTS: EVIDENCE FROM  
AUSTRALIA**

Zoë Robinson, Patrick Leslie, & Jill Sheppard

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**Appendix A: Constructing Ideology Measures**

In this Appendix, we:

- Outline our coding schema and explain our coding procedures;
- Provide detailed descriptive data relating to the newspaper coding and explain our weighting;  
and
- Present a robustness check of the scores by comparing judicial nominees with and without prior judicial service.

***Coding Schema and Procedures***

The procedures for creating our ideology scores are based on Segal and Cover’s methodology creating *ex ante* ideology scores for US Supreme Court Justices (Segal and Cover 1989).<sup>1</sup> Specifically, our measure of judicial ideology was created by hand-coded content analysis of newspaper articles relating to a nominee for a period of 6 months prior to the nominee being sworn-in as a High Court Justice. Given the mandatory retirement age of 70 for Australian federal judges, speculation as to the

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<sup>1</sup> Note that a 2011 comparative study of Australia, US, and Canadian voting behaviour sought to replicate the Segal and Cover’s method for Australian High Court justices sitting in the 1990s (Weiden 2011). However, neither the study nor the supplementary materials provide foundational details as to the parameters of data collection (e.g., how many and which newspapers were relied on, the date range included in the search for each nominee, the type of coverage coded, and the coding schema), therefore we were unable to rely on and extend Weiden’s scores.

identity of the nominee begins prior to the new Justice being announced. The wide-ranging period of 6 months of newspaper mentions ensures that mentions of the Justice are captured pre-nomination, as well as post-nomination but pre-swearing in.

Because the date range raises the possibility that the coded articles might capture reporting on a lower court decision of a Justice, there is the possibility of endogeneity: i.e. capturing a Justice's judicial philosophy as disclosed by decision-making on the lower courts from which a Justice appointed rather than their ideological values. To mitigate this possibility, we code each newspaper article as relating to the Justice in one of three ways:

- (1) As a nominee to the High Court;
- (2) Discussing the Justice as a potential nominee to the High Court, either alone or with other possible nominees; or
- (3) Directly relating to a decision of the Justice when sitting as a judge of another court, without reference to the Justice as a nominee or potential nominee to the High Court.

For the purposes of calculating the ideology score, we exclude all articles coded as relating to (3) a decision of the Justice when sitting as a lower court judge, without any reference or discussion of the Justice as a nominee or potential nominee to the High Court.

Each paragraph was coded as liberal (3), moderate (2), conservative (1), or non-ideological (4). For the ideological coding, the coding rules were based on the standard position on single dimension ideological positions (Segal and Cover 1989; Segal and Spaeth 2002). The general rules are as follows:

- Rights (constitutional, statutory, common law) and criminal law and criminal procedure (e.g. sentencing): paragraphs were coded liberal when the coverage noted the Justice was pro-defendant, pro-rights, pro-state in a state bill of rights case where challenge is to statute and state is defending the statute, pro-privacy, pro-indigent, pro-Native Title. Paragraphs were coded as conservative when they were the opposite of these positions.

- Constitutional and administrative law: paragraphs were coded liberal when the coverage noted the Justice was pro-disclosure in FOI issues, pro-individual, pro-judicial review, and pro-tribunal power in administrative law claims. Paragraphs were also coded as liberal where the Justice was noted as pro-exercise of judicial power, pro-federal power, anti-state power, and pro-federal government in federalism disputes. Paragraphs were coded as conservative when they were the opposite of these positions.
- Common law, economic relations, employment, bankruptcy and insolvency: paragraphs were coded liberal when the coverage noted the Justice was pro-injured party in tort claims, against statutory limitations of tort liability, pro-compensation, pro small business, pro-economic underdog, pro-indigent, pro-union, anti-employer/pro-employee, pro-debtor, pro-competition, pro-trial in arbitration, anti-person alleging patent, copyright, or trademark infringement, and pro-government in tax claims. Paragraphs were coded as conservative when they were the opposite of these positions.
- Procedure and ethics: paragraphs were coded liberal when the coverage noted the Justice was pro-purposive and expansive interpretation in statutory interpretation, pro-judicial power in inherent power issues, and broadly inclusive of evidence for a plaintiff. Paragraphs were coded as conservative when they were the opposite of these positions.
- Family law, migration, international law, and vulnerable persons: paragraphs were coded liberal when the coverage noted the Justice was pro-immigrant, pro-international agreement in public international law, pro-human rights, pro-female, pro-indigent, pro-vulnerable person, pro-underdog, and pro-environment. Paragraphs were coded as conservative when they were the opposite of these positions.
- Where paragraphs expressly ascribed moderation to the nominee, or indicated both conservative and liberal views in a single paragraph, the paragraph was coded as moderate.

Tables A1 and A2 below provide examples of the scoring of a portion of the newspaper coverage for Justices Callinan and Justice McHugh, respectively., representing two Justices with ideology scores at either end of the ideological spectrum.

**TABLE A1: Examples of scoring of newspaper commentary for Justice Callinan**

<b>Newspaper</b>	<b>Comment</b>	<b>Score</b>
<i>Australian Financial Review</i>	The conservative background of the newest judge, Ian Callinan	1
<i>Sydney Morning Herald</i>	He attacked the court's decisions in Mabo and on the constitutional freedom of political communication	1
<i>The Age</i>	Mr Callinan is likely to be a conservative member of the bench	1
<i>Australian Financial Review</i>	Conservative Queensland barrister	1
<i>Sydney Morning Herald</i>	Unabashedly conservative in his political and social views	1
<i>Canberra Times</i>	Ian Callinan has a good and an open mind, a judicial temperament, and will grow in the job, almost inevitably towards the centre of the court.	2
<i>The West Australian</i>	Conservative Queensland QC Ian Callinan.	1
<i>The West Australian</i>	Has a reputation as a legal conservative	1
<i>Sydney Morning Herald</i>	His views on Aboriginal issues are so conservative that he even disputes the High Court's position on Mabo	1
<i>Sydney Morning Herald</i>	A conservative Queensland with publicly expressed doubts about the direction of the High Court.	1
<i>Sydney Morning Herald</i>	Arch-conservative	1
<i>Sydney Morning Herald</i>	Conservative Queensland barrister and critic of the Mabo decision. "I think it is important that the High Court decide cases in an orthodox way, and I hope I do that."	1
<i>The Courier Mail</i>	Mr Callinan has been a leading critic of the High Court in recent years, arguing against its development of implied rights	1
<i>The Advertiser</i>	Mr Callinan is identified as a conservative	1
<i>The Courier Mail</i>	The new High Court judge has a very conservative approach to the way the court should interpret our Constitution and develop Australia's common law	1

**TABLE A2: Examples of scoring of newspaper commentary for Justice McHugh**

<b>Newspaper</b>	<b>Comment</b>	<b>Score</b>
<i>Australian Financial Review</i>	A “progressive” judge	3
<i>Australian Financial Review</i>	He is a progressive judge who is willing to change the law where he considers necessary. However, going on his judgements so far, he is likely to favour the softly-softly approach, rather than the radicalism of the late Justice Lionel Murphy.	3
<i>The Advertiser</i>	Appointment of Justice Michael McHugh would give the High Court the most pro-Commonwealth bench since the 1920s. Justice McHugh is expected to take a more centralist view	2
<i>Canberra Times</i>	Considered a centralist	2
<i>Canberra Times</i>	Justice McHugh is well known as a liberal judge	3
<i>Canberra Times</i>	Commitment to freedom of press, the rights of the individual in criminal cases, and a reformist attitude in negligence cases	3
<i>Sydney Morning Herald</i>	As a judge he has shown a willingness to use judicial office to try to strengthen civil liberties, attitudes that are likely to bring a reformist stamp to the High Court	3

Each paragraph was double blind coded (i.e., the entirety of the dataset was hand-coded by two coders), and the scores are internally reliable at 96.5 per cent (Cohen’s Kappa 0.72,  $p=.000$ ).

### ***Descriptive Data on Newspaper Data***

Table A3 provides information on the total number of paragraphs coded by each Justice, and collectively. The table also disaggregates the number of paragraphs coded by newspaper publisher. As noted in the article, we take newspaper coverage of the nominees from eight Australian newspapers: The Advertiser, The Age, The Australian, the Australian Financial Review, the Canberra Times, The Courier Mail, the Sydney Morning Herald, and The West Australian. This large number of newspapers ensures equal coverage of the two primary media ownership of print newspapers in Australia, Fairfax (broadly center-left ideologically) and News Corp (broadly center-right). Out of our eight newspapers, four were owned by Fairfax (The Age, Australian Financial Review, Canberra Times, and the Sydney

Morning Herald), three by NewsCorp (The Advertiser, The Australia, and The Courier Mail), and one newspaper was independent (The West Australian).

**TABLE A3: Number of paragraphs coded by Justice and publisher**

<b>Justice Name</b>	<b>Paragraphs News Corp</b>	<b>Paragraphs Fairfax</b>	<b>Paragraphs Independent</b>	<b>Total Paragraphs</b>
Edelman	195	194	42	431
Gordon	80	140	13	233
Nettle	85	75	0	160
Keane	240	216	0	456
Gageler	55	171	4	230
Bell	74	198	7	289
French	320	373	66	801
Kiefel	341	340	0	703
Crennan	230	347	0	577
Heydon	165	484	5	672
Gleeson	217	144	13	407
Callinan	255	312	11	620
Hayne	54	142	28	224
Kirby	14	150	3	167
Gummow	82	275	8	365
McHugh	39	226	8	262
Gaudron	90	244	73	407
Toohey	106	192	44	340
Dawson	9	70	1	80
Deane	18	51	7	76
Brennan	65	159	19	243
<b>Total</b>	<b>2734</b>	<b>4503</b>	<b>352</b>	<b>7743</b>

The corpus contains a large number of non-ideological paragraphs; only 14 per cent of the corpus paragraphs are coded as ideological, with little variation by media publisher. The coverage of some Justices is notably more ideological than others: almost 40 per cent of pre-appointment paragraphs written about Michael Kirby (during the six months prior to his appointment) contained ideological content, while only four per cent of paragraphs written about James Edelman, the most

recent appointment, contain ideological content. These differences likely reflect different levels of knowledge of the presumptive nominee's ideological preferences.

**TABLE A4: Total and proportion of ideological paragraphs by Justice and publisher**

Justice Name	News Corp	Fairfax	Independent	Cumulative	Proportion Ideological
Edelman	8	7	2	17	0.04
Gordon	11	12	1	24	0.10
Nettle	9	3	N/A	12	0.08
Keane	29	34	N/A	63	0.14
Gageler	3	12	0	15	0.07
Bell	19	36	1	58	0.20
French	60	84	15	160	0.20
Kiefel	22	46	N/A	68	0.10
Crennan	22	63	N/A	85	0.15
Heydon	27	92	1	120	0.18
Gleeson	35	21	3	65	0.16
Callinan	70	50	7	129	0.21
Hayne	20	23	0	43	0.19
Kirby	10	52	1	63	0.38
Gummow	25	41	0	66	0.18
McHugh	4	23	2	28	0.11
Gaudron	9	20	2	31	0.08
Toohy	10	19	2	31	0.09
Dawson	0	10	0	10	0.13
Deane	2	11	0	13	0.17
Brennan	1	20	0	21	0.09
<b>Total</b>	396	679	37	1122	-
<b>Prop. Ideological</b>	0.14	0.15	0.11	0.14	0.14

## Appendix B: Case Selection and Voting Direction

In this Appendix, we:

- Outline our case selection;
- Explain our coding of judicial votes; and
- Outline additional case-level variables.

### *Case Selection*

Our dataset comprises all cases decided by a panel of the High Court of Australia, defined as 2 or more Justices (High Court of Australia Act 1979 (Cth) (Aust.), § 5; Judiciary Act 1903 (Cth) (Aust.) § 19), between 1995 and 2019. The dataset includes every decision of the Court regardless whether the decision was reported or unreported.<sup>2</sup>

Our case selection excludes all decisions prior to the High Court sitting as Australia's apex court. As noted in the article, although the Australian High Court is a constitutionally mandated court, established upon the enactment of the Constitution in 1901 (Commonwealth of Australia Constitution Act 1900, § 9 (U.K.)), it was initially established as an intermediate court of appeal, sitting above the state supreme courts, but below the Judicial Committee of the Privy Council in London, which sat as the apex court in Australia's judicial hierarchy. It was not until 1986, with the advent of the Australia Acts 1986 (Cth and U.K.) that the High Court became Australia's apex court. Ideally our analysis would have included all cases from 1986, however the limited availability of consistent and complete data on High Court decision-making prior to 1995 prevented this.

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<sup>2</sup> Scholars that have examined decision-making on the High Court almost exclusively rely on the High Court Judicial Database (Alaire and Green 2017; Sheehan, Wood, and Randazzo 2012; Wood 2002; 2009). These data include only cases reported in the Commonwealth Law Reports between 1969 and 2003, meaning the data are both underinclusive (excluding unreported cases, which account for around 20% of the Court's decisions), and overinclusive (including decisions prior to the High Court's formal status as Australia's apex court). For these reasons, amongst others, we chose to create a new dataset.



We sourced the cases from the High Court of Australia's own internal database, available at <http://eresources.hcourt.gov.au/>. Each decision of the Court is represented by a citation that denotes the year and date order in which a decision is issued. For example, [2018] HCA 1 represents the first decision issued in 2018. Given our dataset concerns only panel decisions, we discarded any decision with a citation issued by a single Justice. Importantly, a single citation may include multiple cases, represented by different matter numbers. These cases were either or both heard and/or decided in conjunction with one or more other cases. In the parlance of the U.S. Supreme Court, these are companion cases. While many cases heard and decided together resulted in the same outcome, this was not always the case. For this reason, each case—as denoted by the file number allocated by the High Court—was coded separately, regardless of whether it was decided alone or in conjunction with another case, although as discussed in the article, for the purpose of analysis we exclude companion cases. For example, [2018] HCA 38 encompasses two cases, *Mighty River International v Hughes* (Case number P7/2018) and *Mighty River v Mineral Resources Limited* (Case number P8/2018); each case was coded separately.

### ***Coding Judicial Votes***

#### *Majority/Dissenting Vote*

We code each Justice's vote for both the majority/dissenting status and the ideological direction. We measure majority and dissent in terms of the disposition of the case—that is, who wins and who loses. The respondent is denoted as the winner if a majority of the High Court affirmed the lower court decision or otherwise dismissed the case or denied the motion. In all other instances, the petitioning party is deemed to have won. In terms of the Justices' individual vote for the appellant or respondent, when Justices co-sign an opinion, the author of the opinion is not disclosed, and instead the opinion is attributed to all cosignatories. In this instance, each cosignatories' determination of the case (i.e. their vote) is determined by the orders and statements as the end of the joint opinion.

The result is a dataset comprised of 1,758 case outcomes, with 12,306 individual Justice votes, comprising of 7,882 unanimous votes (i.e. votes in cases where all the Justices agree on the outcome) and 4,424 non-unanimous votes (i.e. votes in cases where there is disagreement between the Justices on the outcome, as indicated by the presence of dissent judgment(s)). While the rate of non-unanimous decisions appear low when compared to that of the US Supreme Court, where over 50% of cases are non-unanimous (Alaire and Green 2017), it is important to recognize that the US Supreme Court sits *en banc*—i.e., with a panel of all nine Justices—in every case. Conversely, the Australian High Court only sits *en banc*—i.e. with all seven Justices—in a subset of cases (31.9% of cases in dataset). Importantly, the Chief Justice controls the panel size and composition, raising the possibility of *ex ante* gaming of panel size and composition, which in turn impacts the consensus rate (Alaire and Green 2017). Compared to other common law courts with variable panel size and composition (e.g., India, UK, Canada, Israel), the Australian High Court has the highest rate of non-unanimous cases (Alaire and Green 2017).

#### *Ideological Direction*

In terms of coding the ideological direction of each Justice's vote, the coding rules were based on the standard position on single dimension ideological positions developed by Segal and Spaeth (2002). The general rules replicate the ideological direction rules for the coding of individual judicial ideology outlined above. For convenience we replicate these here in the context of judicial votes:

- Rights (constitutional, statutory, common law) and criminal law and criminal procedure (e.g. sentencing): a vote was coded as liberal when the result was pro-defendant, pro-rights, pro-state in a state bill of rights case where challenge is to statute and state is defending the statute, pro-privacy, pro-indigent, pro-Native Title. Votes were coded as conservative when they were the opposite of these positions.

- Constitutional and administrative law: a vote was coded as liberal when the result was pro-disclosure in FOI issues, pro-individual, pro-judicial review, and pro-tribunal power in administrative law claims. Perhaps more controversially, votes were also coded as liberal where the Justice was noted as pro-exercise of judicial power, pro-judicial activism, pro-federal power, anti-state power, and pro-federal government in federalism disputes. Votes were coded as conservative when they were the opposite of these positions.
- Common law, economic relations, employment, bankruptcy and insolvency: a vote was coded as liberal when the result was pro-injured party in tort claims, against statutory limitations of tort liability, pro-compensation, pro small business, pro-economic underdog, pro-indigent, pro-union, anti-employer/pro-employee, pro-debtor, pro-competition, pro-trial in arbitration, anti-person alleging patent, copyright, or trademark infringement, and pro-government in tax claims. Votes were coded as conservative when they were the opposite of these positions.
- Procedure and ethics: a vote was coded as liberal when the result was pro-purposive and expansive interpretation in statutory interpretation, pro-judicial power in inherent power issues, and broadly inclusive of evidence for a plaintiff or criminal defendant. Votes were coded as conservative when they were the opposite of these positions.
- Family law, migration, international law, and vulnerable persons: a vote was coded as liberal when the result was pro-immigrant, pro-international agreement in public international law, pro-human rights, pro-female, pro-indigent, pro-vulnerable person, pro-underdog, and pro-environment. Votes were coded as conservative when they were the opposite of these positions.

#### *Policy Issue(s)*

We coded the issue area for each decision. We allowed for two issue areas to be coded in each case. We coded the issue area on each of these cases based on the ‘catchwords’ issued by the Court in

the decision. The catchwords are constructed and approved by all Justices on a panel and denote the general and specific issues raised by the decision. Multiple sets of catchwords are possible in a single case denoting multiple issues raised in the case, and the issue areas are listed in the order of importance. Below we provide an example of catchwords for the Court's decision in *Johnson v The Queen*, [2018] HCA 48.

## **CATCHWORDS**

### **Johnson v The Queen**

Criminal law – Appeal against convictions – Where appellant convicted of five counts of sexual offending against single complainant being his sister – Where counts joined – Where s 34P of *Evidence Act* 1929 (SA) provided for admission of discreditable conduct evidence for permissible use – Where applications to have counts one and two tried separately and to prevent Crown from leading evidence of discreditable conduct against complainant dismissed – Where Crown relied upon evidence of appellant's other alleged sexual misconduct to rebut presumption of *doli incapax* and to show relationship between appellant and complainant – Where verdicts on counts one and three quashed on appeal – Whether evidence of appellant's other alleged sexual misconduct admissible on trial of each remaining count – Whether joinder occasioned miscarriage of Justice.

Evidence – Criminal trial – Sexual offences – Propensity evidence – Admissibility – Where Crown relied on uncharged acts as relationship or context evidence – Where evidence of one uncharged act improperly admitted – Whether miscarriage of Justice.

Words and phrases – "admissibility", "context evidence", "contextual use", "discreditable conduct evidence", "effluxion of time", "impermissible use", "non-

propensity use", "other alleged sexual misconduct", "permissible use", "prejudicial effect", "probative value", "relationship evidence", "uncharged act".

Ultimately, reliance on the catchwords, both in terms of identifying the issue area and the order of issue importance where a case has multiple issue means that our dataset captures, as much as possible, the Justices' own determination of the issue areas raised by the case and their relative importance.

Although we analyze the corpus of the High Court's decisions in the six broad policy areas described in the article, we coded three variables relating to identification of the issue considered by the Court in each decision. The difference between the three variables is in the level of generality at which the issue is coded. Unlike other jurisdictions, which grant final court review on extremely specific questions, final court review in Australia tends to be more generalized. For that reason, we coded each decision at the specific issue level (approximately 200 specific legal issues), before aggregating into a more general legal issue area (approximately 40 issue areas), and finally collating the general legal issue area into six general policy areas.

At each level of specificity, the areas were chosen to reflect both the general understanding of legal categorization in Australia as well as categories that are useful for analysis for scholars and commentators, both legal and policy-based. The categories were developed after an extensive examination of judicial records, practice areas in the federal and state courts, discussions with legal scholars, examination of legal scholarship. The categorization is necessarily imperfect, and some readers might disagree with some categorizations. In this instance, the more specific issues variables permit re-categorization of legal and policy issues for scholars interested in examining the issues in a different taxonomy.

The table below denotes the three levels of policy and legal issues, as well as the distribution of the issue type as a percentage of the entire dataset.

**TABLE B1: Policy issues, general and specific level**

General Policy Area	Issues Included, General Issue	Issues Included, Specific Issue	Percent of Total Dataset
Economic Issues	Corporations law Bankruptcy Property (including liquor, gaming, and hospitality) Intellectual property Competition and consumer law Taxation Banking and finance Succession Employment and Industrial Relations	Economic Relations—Corporate and business—Actions by or against ASIC Economic Relations—Corporate and business—Corporations law—Company formation Economic Relations—Corporate and business—Corporations law—Shareholders rights Economic Relations—Corporate and business—Corporations law—Directors’ duties Economic Relations—Corporate and business—Corporations law—Shareholder litigation Economic Relations—Corporate and business—Corporations law—Takeovers Economic Relations—Corporate and business—Corporations law—General corporate governance Economic Relations—Corporate and business—International commercial arbitration Economic Relations—Corporate and business—Insurance Economic Relations—Corporate and business—Commercial disputes Economic Relations—Corporate and business—Disputes between individuals and banking and finance organizations (includes guarantor issues) Economic Relations—Corporate and business—Creditor-debtor disputes Economic Relations—Corporate and business—Other Economic Relations—Bankruptcy and Insolvency—Individual Economic Relations—Bankruptcy and Insolvency—Corporate Insolvency Economic Relations—Bankruptcy and Insolvency—Liquidation Economic Relations—Bankruptcy and Insolvency—Director Liability Economic Relations—Bankruptcy and Insolvency—Restructuring (voluntary administration, deed of company arrangement) Economic Relations—Bankruptcy and Insolvency—Avoidance of transactions Economic Relations—Bankruptcy and Insolvency—Other Economic Relations—Property—Landlord-tenant disputes Economic Relations—Property—Disputes over entitlement to land Economic Relations—Property—Disputes between landowners Economic Relations—Property—Other Economic Relations—Intellectual property—patents Economic Relations—Intellectual property—exclusive rights but not patents Economic Relations—Intellectual property—trademarks Economic Relations—Intellectual property—copyright disputes Economic Relations—Intellectual property—design and other disputes Economic Relations—Consumer and competition law—restrictive trade practices—cartel conduct and price fixing Economic Relations—Consumer and competition law—restrictive trade practices—anti-competitive agreements	26.8

General Policy Area	Issues Included, General Issue	Issues Included, Specific Issue	Percent of Total Dataset
		Economic Relations—Consumer and competition law—restrictive trade practices—exclusionary provisions	
		Economic Relations—Consumer and competition law—restrictive trade practices—misuse of market power	
		Economic Relations—Consumer and competition law—restrictive trade practices—exclusive dealing	
		Economic Relations—Consumer and competition law—restrictive trade practices—resale price maintenance	
		Economic Relations—Consumer and competition law—restrictive trade practices—mergers	
		Economic Relations—Consumer and competition law—consumer protection—misleading and deceptive conduct	
		Economic Relations—Consumer and competition law—consumer protection—unconscionable conduct	
		Economic Relations—Consumer and competition law—consumer protection—conditions or warranties in consumer agreements	
		Economic Relations—Consumer and competition law—consumer protection—other unfair practices	
		Economic Relations—Consumer and competition law—access to services	
		Economic Relations—Consumer and competition law—violation of statutory industry code	
		Economic Relations—Consumer and competition law—immunity and cooperation	
		Economic Relations—Consumer and competition law—remedies	
		Economic Relations—Consumer and competition law—restraint of trade	
		Economic Relations—Consumer and competition law—telecommunications	
		Economic Relations—Consumer and competition law—product liability general	
		Economic Relations—Consumer and competition law—Other	
		Economic Relations—Taxation—Individual income taxation liability disputes	
		Economic Relations—Taxation—Corporate taxation liability disputes	
		Economic Relations—Taxation—Charitable taxation liability disputes	
		Economic Relations—Taxation—Individual taxation other	
		Economic Relations—Taxation—Corporate taxation other	
		Economic Relations—Taxation—Charitable taxation other	
		Economic Relations—Taxation—Conduct of Taxation Commissioner	
		Economic Relations—Taxation—GST disputes	
		Economic Relations—Taxation—Land taxation disputes	
		Economic Relations—Taxation—Taxation recovery	
		Economic Relations—Taxation—Civil or criminal penalties	
		Economic Relations—Taxation—Departure Prohibition Order	
		Economic Relations—Taxation—Other	
		Economic Relations—Succession—General	
		Employment and Industrial Relations—nature and scope of employment	
		Employment and Industrial Relations—unlawful termination	

General Policy Area	Issues Included, General Issue	Issues Included, Specific Issue	Percent of Total Dataset
		Employment and Industrial Relations—employer contract violations Employment and Industrial Relations—workplace conduct Employment and Industrial Relations—employee entitlements Employment and Industrial Relations—independent contractors Employment and Industrial Relations—workers compensation Employment and Industrial Relations—actions between government-employer and individual(s) Employment and Industrial Relations—actions brought by union, either for itself or on behalf of workers Employment and Industrial Relations—conduct of unions (including boycotts and conduct of unions) Employment and Industrial Relations—Other	
Criminal Law and Procedure	Federal criminal law Federal criminal procedure State criminal law State criminal procedure	Criminal Law and Procedure—Federal criminal law—offenses against the Commonwealth Criminal Law and Procedure—Federal criminal law—other offenses, individual crime Criminal Law and Procedure—Federal criminal law—other offenses, corporate crime Criminal Law and Procedure—Federal criminal procedure—misconduct of government actor Criminal Law and Procedure—Federal criminal procedure—misconduct of counsel Criminal Law and Procedure—Federal criminal procedure—sentencing Criminal Law and Procedure—Federal criminal procedure—questioning and arrest Criminal Law and Procedure—Federal criminal procedure—pre-trial Criminal Law and Procedure—Federal criminal procedure—trial conduct, general Criminal Law and Procedure—Federal criminal procedure—Other Criminal Law and Procedure—State criminal law—offenses against the person leading to death (e.g. murder, manslaughter) Criminal Law and Procedure—State criminal law—other offenses against the person leading (e.g. assault, armed robbery, kidnap) Criminal Law and Procedure—State criminal law—attempted offenses against the person Criminal Law and Procedure—State criminal law—sexual violence (including rape and attempted rape) Criminal Law and Procedure—State criminal law—offenses against property Criminal Law and Procedure—State criminal law—drug offenses Criminal Law and Procedure—State criminal law—morality offenses (e.g. disorderly conduct, alcohol-related offenses, gambling offenses) Criminal Law and Procedure—State criminal law—white collar crime Criminal Law and Procedure—State criminal law—political crimes, including corruption Criminal Law and Procedure—State criminal law—other	21.8



General Policy Area	Issues Included, General Issue	Issues Included, Specific Issue	Percent of Total Dataset
		Criminal Law and Procedure—State criminal procedure—misconduct of government actor Criminal Law and Procedure—State criminal procedure—misconduct of counsel Criminal Law and Procedure—State criminal procedure—sentencing Criminal Law and Procedure— State criminal procedure—questioning and arrest Criminal Law and Procedure—State criminal procedure—pre-trial Criminal Law and Procedure— State criminal procedure—trial conduct, general Criminal Law and Procedure— State criminal procedure—other	
Public Law	Federal constitutional law Federal Administrative law State constitutional law State Administrative law	Public Law—Federal constitutional law—Executive power—general Public Law—Federal constitutional law—Executive power—prerogative powers Public Law—Federal constitutional law—Executive power—nationhood power Public Law—Federal constitutional law—Legislative power Public Law—Federal constitutional law—Legislative power—Trade and commerce power Public Law—Federal constitutional law— Legislative power—Taxation power Public Law—Federal constitutional law— Legislative power—Corporations power Public Law—Federal constitutional law—Legislative power—Races power Public Law—Federal constitutional law—Legislative power—External affairs power Public Law—Federal constitutional law—Legislative power—Appropriations and grants Public Law—Federal constitutional law—Legislative power—Territories power Public Law—Federal constitutional law—Legislative power—conciliation and arbitration power Public Law—Federal constitutional law—Legislative power—defense power Public Law—Federal constitutional law—Legislative power—other Public Law—Federal constitutional law—Federal judicial power Public Law—Federal constitutional law—Federal judicial power—definition and scope of judicial power Public Law—Federal constitutional law—Federal judicial power—limits on judicial power Public Law—Federal constitutional law—Federal judicial power—other Public Law—Federal constitutional law—Separation of powers Public Law—Federal constitutional law—Federalism—general Public Law—Federal constitutional law—Federalism— inconsistency (section 109) Public Law—Federal constitutional law—Federalism—Cooperative federalism	15.7

General Policy Area	Issues Included, General Issue	Issues Included, Specific Issue	Percent of Total Dataset
		Public Law—Federal constitutional law—Constitutional rights—Section 80	
		Public Law—Federal constitutional law—Constitutional rights—Section 116	
		Public Law—Federal constitutional law—Constitutional rights—Section 117	
		Public Law—Federal constitutional law—Constitutional rights—Section 92	
		Public Law—Federal constitutional law—Constitutional rights—Section 51(xxxi), “just terms” property acquisition	
		Public Law—Federal constitutional law—Constitutional rights—Implied freedom of political communication	
		Public Law—Federal constitutional law—Constitutional rights—Other	
		Public Law—Federal constitutional law—Elections	
		Public Law—Federal constitutional law—other	
		Public Law—Federal administrative law—Relevant and irrelevant considerations	
		Public Law—Federal administrative law—Power of tribunal	
		Public Law—Federal administrative law—Natural Justice and/or procedural fairness	
		Public Law—Federal administrative law—Judicial review of delegated legislation	
		Public Law—Federal administrative law—Judicial review of government action, including scope of power, improper exercise of power, consequences of unlawful exercise of power, limits on judicial review	
		Public Law—Federal administrative law—Delegated legislation other	
		Public Law—Federal administrative law—Freedom of information	
		Public Law—Federal administrative law—Merits review of administrative decisions	
		Public Law—Federal administrative law—Other	
		Public Law—State constitutional law—legislative power	
		Public Law—State constitutional law—executive power	
		Public Law—State constitutional law—judicial power	
		Public Law—State administrative law—General	
Traditional Common Law	Tort Contract Equity Trusts	Common Law—Tort—Negligence Common Law—Tort—Professional malpractice Common Law—Tort—Breach of public and statutory duties Common Law—Tort—Misrepresentation (including defamation) Common Law—Tort—Trespass against person Common Law—Tort—Trespass against property Common Law—Tort—Occupation or possession of land Common Law—Tort—Intentional damage to economic interest Common Law—Tort—Interference with employment and family relations Common Law—Tort—Limitation of actions Common Law—Tort—Defenses to tort liability Common Law—Tort—Remedies Common Law—Tort—Responsibility for liability (vicarious liability etc.)	16.7

General Policy Area	Issues Included, General Issue	Issues Included, Specific Issue	Percent of Total Dataset
		Common Law—Tort—Other Common Law—Contract—Formation Common Law—Contract—Scope and content Common Law—Contract—Avoidance Common Law—Contract—Performance and termination Common Law—Contract—Remedies Common Law—Contract—Other Common Law—Equity—Fraud, undue influence, and breach of confidence Common Law—Equity—Estoppel Common Law—Equity—Fiduciary law Common Law—Equity—Other equitable relief (including set-off, contribution etc.) Common Law—Trusts—General	
Civil Rights and Liberties	Statutory rights State bills of rights Common law rights Indigenous rights (including native title) Refugees Migration (non-refugee) Environmental law Family law Vulnerable persons (e.g. child protection, disabled persons etc.)	Civil Rights—Statutory rights—Race discrimination Civil Rights—Statutory rights—Sex discrimination Civil Rights—Statutory rights—Age discrimination Civil Rights—Statutory rights—Religious discrimination Civil Rights—Statutory rights—Disability discrimination Civil Rights—Statutory rights—Other federal rights Civil Rights—Statutory rights—Other state rights (excluding statutory bills of rights) Civil Rights—State bills of rights—Australian Capital Territory Civil Rights—State bills of rights—Victoria Civil Rights—State bills of rights—Other Civil Rights—Common law rights—General Civil Rights—Indigenous rights—Native title Civil Rights—Indigenous rights—Other rights Civil Rights—Refugees—general Miscellaneous —Family law—General Miscellaneous —Migration (non-refugee)—immigration Miscellaneous —Migration (non-refugee)—deportation Miscellaneous —Migration (non-refugee)—citizenship Miscellaneous —Environmental law—General Miscellaneous —Vulnerable persons—General	11.3
Procedure and Ethics	Civil procedure/litigation Evidence (civil only) Statutory interpretation (Acts Interpretation Act) Legal profession (ethics) Inherent power of the Court Costs	Procedure and Ethics—Civil procedure/litigation—Choice of law Procedure and Ethics—Civil procedure/litigation—Mediation, negotiation, and settlement Procedure and Ethics—Civil procedure/litigation—Judgment enforcement Procedure and Ethics—Civil procedure/litigation—Trial procedure Procedure and Ethics—Civil procedure/litigation—Pre-trial procedure (e.g. directions hearings, motions, subpoenas, judgment before trial etc.) Procedure and Ethics—Civil procedure—Evidence— Interpretation of rule or principle Procedure and Ethics—Civil procedure—Evidence— Admissibility of evidence (documentary and testimonial) Procedure and Ethics—Civil procedure—Evidence—Privilege Procedure and Ethics—Civil procedure—Evidence—Witness credibility	6.2

General Policy Area	Issues Included, General Issue	Issues Included, Specific Issue	Percent of Total Dataset
		Procedure and Ethics—Civil procedure—Evidence—Sufficiency of evidence Procedure and Ethics—Civil procedure—Evidence—Other Procedure and Ethics—Statutory interpretation (Acts Interpretation Act)—General Procedure and Ethics—Legal profession (ethics)—General Procedure and Ethics—Inherent power of the Court—General Costs—Costs	

Returning to the example of the case of *Johnson v The Queen*, [2018] HCA 48 noted above, the catchwords of the case indicated two issues, criminal law and criminal procedure. At both the general and specific issue level, this results in the case being coded with two separate issues, however for the purposes of this article these the fact that there are two issues are inconsequential given criminal law and criminal procedure both form part of the same broad policy issue category.

## **Appendix C: Analysis and Additional Regression Models**

In the additional regression tables below, we present (1) models to support our rationale for including only non-unanimous cases in the primary analysis; (2) a model demonstrating the impact of variable panel size on our conclusions; (3) a model accounting for a measure of pre-appointment specialization that relies on a Justice's lower court decision-making (as opposed to legal practice specialization included in the main text); (4) models with additional explanatory variables to address omitted variable bias; (5) models with alternative specifications of random effects groupings to indicate that our findings do not change substantively when we alter observation groupings; (6) an interactive model that shows how the effect of ideology varies within different areas of law; and (7) an alternative Bayesian specification accounting for measurement error.

### ***Unanimous and Non-Unanimous Cases***

Previous analysis of the attitudinal model in apex courts typically subsets cases to those which have resulted in a dissent from one or more judges (Epstein, Landes, and Posner 2013; Hanretty 2020; Segal and Spaeth 2002). One motivation for this derives from the assumption that cases with non-unanimous outcomes are inherently more difficult to decide and are thus Justices are more likely to rely on ideological heuristics in order to make their judgment. Another explanation is that unanimous cases cannot distinguish Justices in terms of their ideology and so are not useful for statistical analysis. Accordingly, to improve our findings' comparability with similar studies in other countries, we only present votes in non-unanimous decisions in models in the main manuscript. However, when restricting data in this manner, it may be argued that the analysis narrows the generality of our claims. In other words, without a more inclusive set of models, we can only make claims about the effect of ideology in contested High Court cases, not in all High Court cases.

In Table C1, we address this potential problem with a regression model with the same specification as those in the main manuscript, except that we remove the exclusion of unanimous

cases. This increases the total number of cases from 429 to 1,176 and the total number of observations from 2,458 to 6,482. Within this model, we also include the interaction term for ideology and unanimously decided cases.

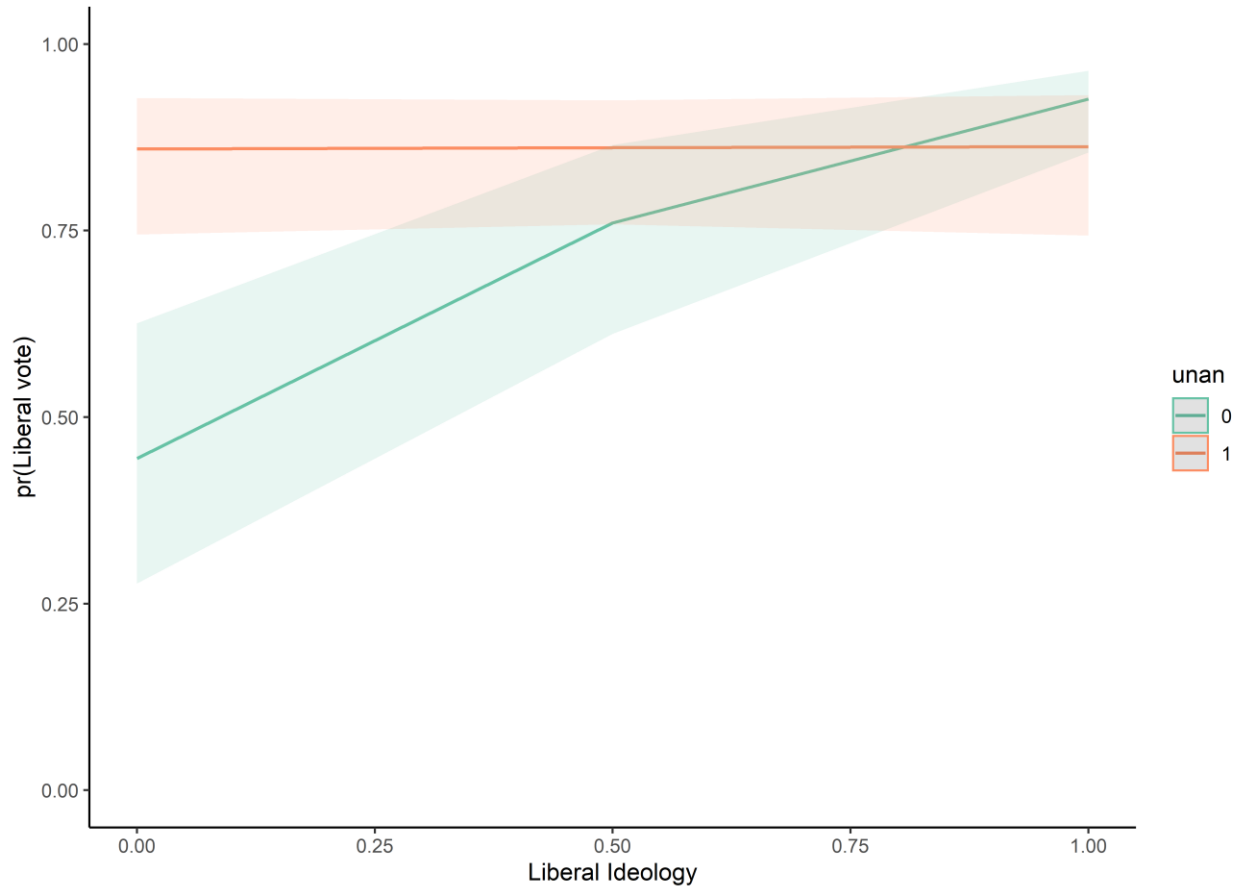
**TABLE C1: Model with unanimous cases included**

<i>Predictors</i>	<b>Model C1</b>		
	<i>Log-Odds</i>	<i>CI</i>	<i>p</i>
(Intercept)	0.35	-0.63 – 1.34	0.483
Ideology	2.75	2.23 – 3.27	<b>&lt;0.001</b>
Unanimous	2.03	1.38 – 2.69	<b>&lt;0.001</b>
<i>Specialization</i>	0.42	-0.17 – 1.02	0.164
Economic	-0.80	-1.14 – -0.47	<b>&lt;0.001</b>
Criminal	-1.19	-1.71 – -0.67	<b>&lt;0.001</b>
Public	-0.07	-0.52 – 0.39	0.779
Civil	-1.17	-1.74 – -0.59	<b>&lt;0.001</b>
Common	0.02	-0.00 – 0.04	0.052
Experience	-0.15	-0.41 – 0.11	0.256
Female	-2.71	-3.36 – -2.06	<b>&lt;0.001</b>
Lower Court Disposition Direction [liberal]	0.26	-0.36 – 0.89	0.411
Lower Court Dissent	-2.73	-3.43 – -2.02	<b>&lt;0.001</b>
Ideology * Unanimous	0.35	-0.63 – 1.34	0.483

Observations: 6,482. This table presents estimates from non-nested multilevel models. Random effects specified are: Case Number (n=1,176); Primary Issue Sub Area (n=37); Chief Justice Reign (n=4); and Justice (n=21).

The interaction shows that the entire effect of ideology is observed in non-unanimous cases, as the coefficient of ideology is cancelled out by its interactive term (see Figure C1 below). But this is only a necessary implication of the models presented in the main manuscript. If we make an analogy to a spatial model, in which Justices sit on a single line separated by ideology, then ideology only distinguishes Justices from each other when the position of a case sits between the right-most and left-most Justices. Cases sitting on one side or the other of the entire group of Justices in ideological space are not analytically useful because all Justices vote together regardless of their ideology. Indeed, this explains why the addition of non-unanimous cases does not change the coefficient of ideology; subject to statistical noise, the effect of ideology on Justice-level voting behavior in *unanimous cases* is effectively and necessarily zero.

**Figure C1: Model with unanimous cases included**



In Table C2, we present the interactive Model 4 from the main manuscript, with the addition of unanimously decided cases. Again, this more than doubles the number of observations from 2,416 to 6,369 but does not change the substantive effect of ideology within each area of law.

**Table C2: Model with unanimous cases included, interacted by area of law**

<i>Predictors</i>	<b>Model C2</b>			
	<i>Estimate</i>	<i>CI</i>	<i>p</i>	
Ideology Score	3.61	2.50 – 4.72	<b>&lt;0.001</b>	
<b>Case Level</b>				
Area [Common Law]	2.18	0.88 – 3.48	<b>0.001</b>	
Area [Criminal Law and Procedure]	0.62	-0.73 – 1.98	0.365	
Area [Economic Relations]	3.14	1.89 – 4.39	<b>&lt;0.001</b>	
Area [Procedure and Ethics]	2.04	0.32 – 3.76	<b>0.020</b>	
Area [Public and Constitutional Law]	1.47	-0.03 – 2.98	0.055	
Lower Court Disposition Direction[liberal]	-3.09	-3.79 – -2.39	<b>&lt;0.001</b>	
Lower Court Dissent	0.25	-0.40 – 0.91	0.446	
<b>Pre-Appointment Characteristics</b>				
<i>Specialization</i>				
Economic	0.57	-0.04 – 1.17	0.066	
Criminal	-0.88	-1.23 – -0.54	<b>&lt;0.001</b>	
Public	-1.29	-1.82 – -0.77	<b>&lt;0.001</b>	
Civil	-0.08	-0.55 – 0.38	0.734	
Common	-1.23	-1.81 – -0.65	<b>&lt;0.001</b>	
Experience	0.03	0.01 – 0.05	<b>0.014</b>	
Female	-0.14	-0.40 – 0.13	0.311	
<b>Interactions</b>				
Ideology × Area [Common Law]	-1.55	-2.83 – -0.27	<b>0.017</b>	
Ideology × Area [Criminal Law and Procedure]	-1.55	-2.80 – -0.30	<b>0.015</b>	
Ideology × Area [Economic Relations]	-1.93	-3.19 – -0.68	<b>0.003</b>	
Ideology × Area [Procedure and Ethics]	-2.75	-4.42 – -1.08	<b>0.001</b>	
Ideology × Area [Public and Constitutional Law]	-1.70	-3.19 – -0.21	<b>0.026</b>	
Constant	-0.55	-1.89 – 0.79	0.420	
<b>Random Effects</b>				
	<i>Intercept Variances</i>		<i>Group Sizes</i>	
$\tau_{00}$ HCDBcaseId	17.80		N ChiefJustice	4
$\tau_{00}$ primaryIssueSubArea	0.03		N HCDBcaseId	1157
$\tau_{00}$ justice	<0.01		N primaryIssueSubArea	35
$\tau_{00}$ ChiefJustice	0.11		N justice	21

Notes: n=6,369.  $\sigma^2= 3.29$ . p-values<0.05 in bold.

### ***Variable panel sizes on the Australian High Court***

Model C3 below includes an interaction at the case level between Justice ideology and an indicator of whether the case was seen by a full seven Justice panel of the High Court. We find that model C2 indicates that ideology is *no less important* for justice decision-making than in cases with smaller



panels. This does not mean that panel selection is irrelevant to case outcomes however, since there is potential for Chief Justices to affect the outcomes of certain cases through strategic panel selection.

**TABLE C3: Model accounting for panel size**

<i>Predictors</i>	<b>Model C3</b>		
	<i>Log-Odds</i>	<i>CI</i>	<i>p</i>
(Intercept)	-0.31	-1.09 – 0.48	0.445
Ideology	1.70	1.16 – 2.24	<b>&lt;0.001</b>
Full Panel	-0.00	-0.39 – 0.39	0.989
<i>Specialization</i>			
Economic	0.46	-0.16 – 1.08	0.148
Criminal	-0.73	-1.08 – -0.38	<b>&lt;0.001</b>
Public	-1.12	-1.69 – -0.55	<b>&lt;0.001</b>
Civil	0.05	-0.42 – 0.52	0.828
Common	-1.02	-1.65 – -0.40	<b>0.001</b>
Experience	0.02	-0.00 – 0.04	0.057
Female	-0.19	-0.47 – 0.08	0.173
Lower Court Disposition Direction [liberal]	-0.37	-0.65 – -0.10	<b>0.008</b>
Lower Court Dissent	0.30	0.02 – 0.58	<b>0.038</b>
Ideology * Full Panel	0.39	-0.28 – 1.06	0.259

Observations: 2,458. This table presents estimates from non-nested multilevel models. Random intercepts specified are: Case Number (n=429); Primary Issue Sub Area (n=33); Chief Justice Reign (n=4); and Justice (n=21).

Formally, the decision to sit as a full panel is subject to the exclusive discretion of the Chief Justice (though by convention, cases with the potential to invoke constitutional matters are heard by a full panel). The extent to which panel selection by the Chief Justice in Australian High Court matters for case outcomes is a complex topic for future research and largely outside the scope of this study. We provide the analysis in Table C3 as a first step, indicating that our findings for the effect of ideology are robust to one attempt to isolate the effect of Chief Justice panel selection from the analysis of ideology on judgment.

***Pre-appointment experience measured by Lower Court Cases***

Our study proposes two measures: specialization in legal practice prior to appellate court appointments; and specialization measured by the areas of law covered by the 30 most recent cases decided by each Justice prior to High Court appointment. We provide results in Table C4 from analysis using lower court specialization here. The analysis shows minimal substantive difference to the results

of the model, except that since four Justices did not sit on appellate court panels before being appointed, we see results from 17 Justices rather than 21 Justices.

**TABLE C4: Model using Pre-Appointment Experience Measured by Lower Court Cases**

<i>Predictors</i>	<b>Model C4</b>		
	<i>Log-Odds</i>	<i>CI</i>	<i>p</i>
(Intercept)	-4.98	-7.75 – -2.22	<b>&lt;0.001</b>
Ideology	2.08	0.73 – 3.42	<b>0.003</b>
<i>Specialization (LC cases)</i>			
Economic	3.23	0.82 – 5.64	<b>0.009</b>
Criminal	3.28	0.52 – 6.05	<b>0.020</b>
Public	1.75	-1.02 – 4.52	0.215
Civil	3.06	-0.59 – 6.71	0.101
Common	2.67	-0.47 – 5.81	0.096
Procedure	2.63	-2.00 – 7.27	0.266
Lower Court Experience	0.04	0.01 – 0.07	<b>0.014</b>
Female	-0.37	-1.04 – 0.29	0.273
Lower Court Disposition Direction [liberal]	-0.29	-0.60 – 0.03	0.077
Lower Court Dissent	0.41	0.08 – 0.74	<b>0.014</b>

**Note:** n=2,044. This table presents estimates from non-nested multilevel models. Random intercepts specified are: Case Number (n=429); Primary Issue Sub Area (n=33); Chief Justice Reign (n=4); and Justice (n=17).

### ***Omitted Variable Bias***

In Table C5 we provide models with a larger number of explanatory variables. Model C5 presents Model 3 from the main manuscript. In Model C6 we include additional justice level covariates. Specifically, we examine two additional Justice-Level covariates: ‘Is Chief Justice’ is an indicator variable for whether or not the Justice making the decision is the Chief Justice of the Court at the time of the case. We include this because we might expect that becoming a Chief Justice (admittedly this is an occurrence that happens only once in our dataset, with the promotion of Justice Susan Kiefel to Chief Justice in 2017) may moderate ideological voting to a median position in order to help a Chief Justice speak for the court with a deciding vote. However, no such effect is evident from the evidence provided in the model. Justice High Court experience is defined as the number of years between a Justice’s swearing-in date and the date of the decision on each case. We find some evidence for the effect of high court experience; less experienced justices are likely to vote in a conservative manner.

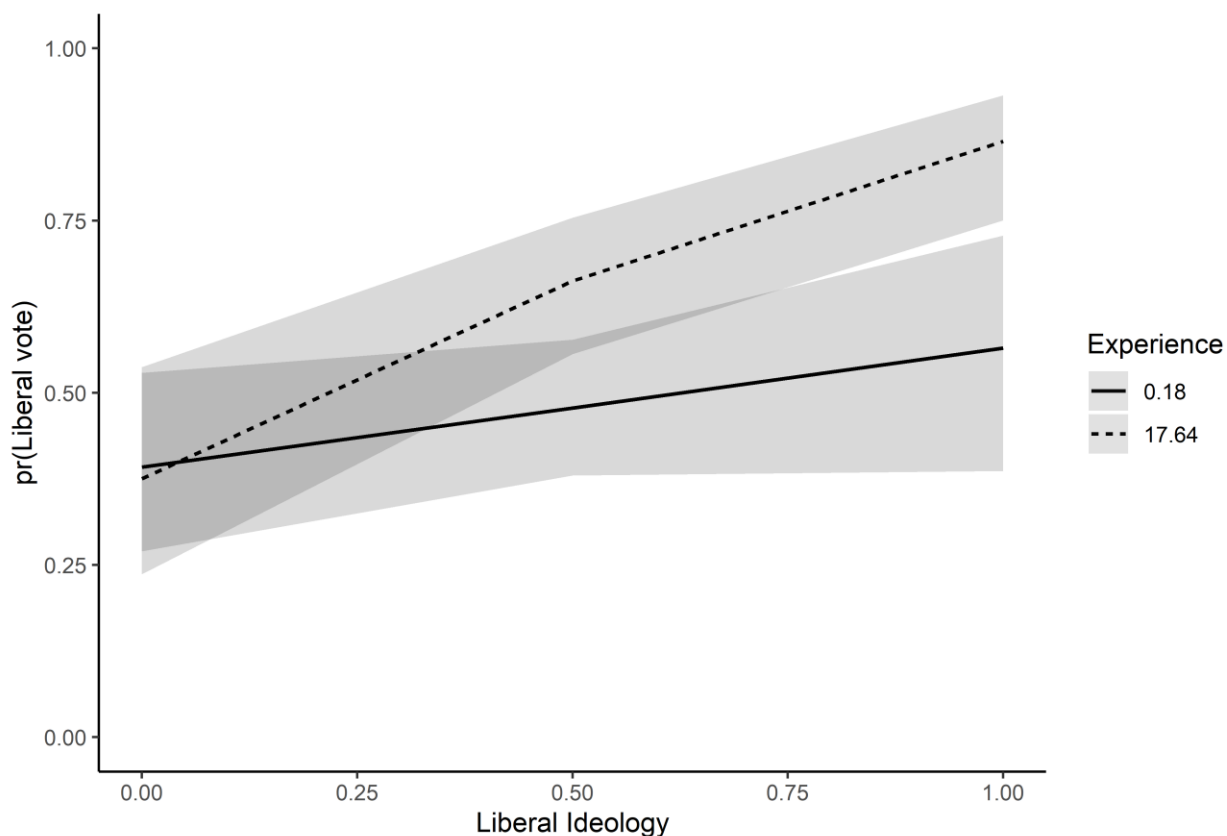
We also find some evidence for a slight attenuation of the effect of ideology when taking these variables into account, though none which nullifies the significance of the coefficient. We return to the potential moderating effect of Justice experience in Model C8.

**TABLE C5: Models with additional explanatory variables**

	<b>Model C5</b>	<b>Model C6</b>	<b>Model C7</b>	<b>Model C8</b>
Ideology	1.838*** (0.245)	1.471*** (0.280)	1.488*** (0.280)	0.683 (0.525)
<b>Pre-Appointment Characteristics</b>				
<i>Specialization</i>				
Economic	0.453 (0.318)	0.524 (0.315)	0.521 (0.315)	0.463 (0.317)
Criminal	-0.720*** (0.178)	-0.680*** (0.204)	-0.682*** (0.204)	-0.741*** (0.207)
Public	-1.113*** (0.291)	-0.971** (0.326)	-0.973** (0.327)	-1.081** (0.333)
Civil	0.049 (0.239)	0.290 (0.250)	0.283 (0.250)	0.263 (0.252)
Common	-1.021** (0.319)	-0.952** (0.329)	-0.950** (0.329)	-1.096** (0.339)
Experience	0.022 (0.012)	0.032* (0.014)	0.032* (0.014)	0.031* (0.014)
Female	-0.184 (0.141)	-0.212 (0.141)	-0.216 (0.141)	-0.285 (0.147)
<b>Case Level</b>				
Lower Court Disposition Direction [liberal]	-0.376** (0.140)	-0.379** (0.140)	-0.384** (0.141)	-0.378** (0.142)
Lower Court Dissent	0.300* (0.144)	0.299* (0.144)	0.310* (0.144)	0.312* (0.145)
<b>Additional Justice Characteristics</b>				
Experience on High Court		0.036** (0.013)	0.035** (0.013)	-0.004 (0.025)
Is Chief Justice		-0.258 (0.193)	-0.253 (0.193)	-0.261 (0.194)
<b>Additional Case Facts</b>				
Number Justices			0.120 (0.077)	0.121 (0.078)
Num. Fed. Gov. Party			0.065 (0.115)	0.065 (0.115)
Num. State Gov. Party			0.007 (0.071)	0.010 (0.071)
Intervener			-0.123 (0.188)	-0.132 (0.188)
<b>Interaction</b>				
Ideology × Experience				0.096 (0.053)
Constant	-0.314 (0.393)	-0.649 (0.405)	-1.340* (0.594)	-0.822 (0.666)
N	2458	2458	2458	2458
Log Likelihood	-1523.014	-1518.325	-1516.942	-1515.311
AIC	3076.027	3070.649	3075.885	3074.621
BIC	3163.134	3169.370	3197.834	3202.378

\*\*\*p < .001; \*\*p < .01; \*p < .05. This table presents estimates from non-nested multilevel models. Random intercepts specified are: Case Number (n=530); Primary Issue Sub Area (n=33); Chief Justice Reign (n=4); and Justice (n=21).

**FIGURE C2: Interaction of experience and ideology on liberal judgments**



**Note:** Interaction plot compares the effect of ideology from the minimum measured experience on the court (0.18 years) with the maximum experience observed in the model data (roughly 17.5 years' experience). The steeper predicted slope for experienced Justices suggests that the effect of ideology is more pronounced as Justices become more established in their roles.

In addition to extra Justice-level variables, Model C7 includes additional case-level variables. The number of Justices is simply the number of Justices hearing the case in question. The motivation for including the panel size is similar to the motivation for running an interactive model between ideology and full panels in the section above on variable panel sizes. As above, we find no evidence of a significant impact of panel size on the likelihood of voting liberally or of reducing or nullifying the effect of ideology. The second and third case-level variables are the number of federal and state government parties in the case respectively. Prior studies suggest that the presence of a government

party increases the probability of a vote in favor of the government (Black and Owens 2013). The inclusion of the variables capturing the number of state parties is an effort to control for the potentially disparate influence and impact of the presence of government parties. Relatedly, the inclusion of a variable denoting the presence of an intervenor captures whether the federal or state government intervened in a case. Unlike other jurisdictions, intervention in cases in the High Court of Australia is limited to specific party types, typically the federal government or state governments. The inclusion of the intervenor variable, then, controls for both the presence of an intervening party as well as the signaling effect of an intervention in any given case (Collins, Corley, and Hamner 2015). We do not find any evidence for the direct systematic effect of intervenors on Justice ideological voting behavior.

Finally, in Model C8, we test for the moderating effect of each Justice's experience on the High Court on their ideological voting behavior. As with older voters in general elections, Justices with greater experience may tend to lean right in their judgments, or in some other way change in their attitude towards judging. It is, therefore, plausible that the effect of ideology on voting is dependent upon how long a Justice has been sitting on the High Court. This may be theorized in two ways. Firstly, it might be that judges are initially reluctant to vote according to their ideology since they are inexperienced on the court and perhaps more susceptible to influence by established judges. Conversely, it might be that since we measure ideology at the beginning of the Justice's tenure, we may observe a decline in the relevance of that measure as time goes on. We illustrate in Model C8 that the former interpretation is supported by the data to some degree. In Figure C2 we show visually with an interaction plot that experience moderates the effect of ideology: inexperienced Justices vote less ideologically than do experienced Justices—further, we see that liberal justices are likely to remain committed to voting in similar patterns, while ideologically conservative justices are likely to take longer to settle into their eventual (conservative) patterns of voting.

### *Natural Courts Random Effects*

In the models presented in the main manuscript we include a temporal grouping of observations by Chief Justice reign. This is a simple and easily understood division of time in the Australian High Court. Further, there is some evidence to suggest that different Chief Justices organize the activity of the court in idiosyncratic ways. For example, the number of interruptions sustained in oral argument is strongly associated with different Chief Justices, with CJ Murray Gleeson presiding over sharp and sustained increase in the number of interruptions in oral argument (Jacobi, Robinson, and Leslie 2020). However, Chief Justice reign is not the only theoretically motivated way of dividing time in the High Court. Another division is the natural court. The natural court is the composition of the court at any one time. When one Justice leaves the court, another enters to replace them. This change is known as a break in the natural court. This grouping is more flexible than Chief Justice reign and better reflects change over time as the function of the total composition of the court rather than its leadership. Prior studies have emphasized the importance of studying apex courts by natural court rather than by, for example, chief Justice or term, given that the ideological composition of the Court is determined by a single personnel change (i.e., a change in natural court) (Epstein, Landes, and Posner 2013; Segal and Spaeth 2002).

In Table C6 we present the same models as in the main manuscript text, except here we divide up the temporal groupings not by Chief Justice reign, but by changes in the court composition. This results in an increase in the number of temporally divided groups from four to fifteen. We find little evidence for any substantive changes to our results however all signs and statistical significance remain identical to the models in the main manuscript except for the coefficient for the number of days' oral argument. Perhaps because of the way Chief Justices choose to organize court proceedings, oral argument time is significant only in models which include Chief Justice reign as a random effect and not in models including natural courts. Nevertheless, our coefficient of interest (ideology) remains

unchanged by natural court random effect specification.

**TABLE C6: Models with natural court random effects specification**

	<b>Model C9</b>	<b>Model C10</b>	<b>Model C11</b>
Ideology	1.586*** (0.345)	1.608*** (0.270)	1.916*** (0.251)
<b>Pre-Appointment Characteristics</b>			
<i>Specialization</i>			
Economic		0.156 (0.316)	0.437 (0.325)
Criminal		-0.688*** (0.200)	-0.745*** (0.183)
Public		-0.923** (0.311)	-1.092*** (0.292)
Civil		-0.144 (0.268)	-0.005 (0.253)
Common		-0.962** (0.349)	-1.025** (0.324)
Experience		0.016 (0.013)	0.021 (0.012)
Female		-0.148 (0.155)	-0.187 (0.142)
<b>Case Level</b>			
Lower Court Disposition Direction [liberal]			-0.387** (0.139)
Lower Court Dissent			0.299* (0.142)
Constant	-0.938*** (0.224)	-0.192 (0.411)	-0.424 (0.403)
N	2937	2937	2458
Log Likelihood	-1846.400	-1837.943	-1518.969
AIC	3704.799	3701.887	3067.937
BIC	3740.710	3779.694	3155.04

**Note:** \*\*\*p < .001; \*\*p < .01; \*p < .05. Unlike previous models, this set of models uses the natural court at the time of decision as the temporal grouping (n=15 in C8, C9 and C10). Other random effects specified are: Case Number, (n=501 in C8 and C9; n= 429 in C10); Primary Issue Sub Area, (n=33); and Justice, (n=21).

### ***Simple Bayesian Model Accounting for Measurement Error***

We find that the error corrected results from Model 5 in the manuscript are robust to an alternative and simple specification, adapted from (McElreath 2020, 491–99). Our approach is a simple linear estimation of the rate of liberal voting among each Justice, dependent on a linear combination of a constant term, control variables, and estimations of ideology for each justice, according to our measurements of uncertainty.



Our specification of the model is as follows:

$$\begin{aligned} \text{percentLibVotes} &\sim \text{Normal}(\mu_i, \sigma) \\ \mu_i &= \alpha + \beta I_{est,i} + \gamma_1 X_1 + \dots + \gamma_k X_k \\ I_{obs,i} &\sim \text{Normal}(I_{est,i}, I_{SE,i}) \\ I_{est,i} &\sim \text{Normal}(0, 1) \\ \beta &\sim \text{Normal}(0, 0.5) \\ \gamma_k &\sim \text{Normal}(0, 0.5) \\ \alpha &\sim \text{Normal}(0, 0.2) \\ \sigma &\sim \text{Exp}(1) \end{aligned}$$

Where the second line defines the linear model using error propagated parameter of  $I$  (ideology) to predict the percentage of liberal votes for each justice. The third line of the model gives the measurement model, in which the observed quantities of  $I$  are estimated with noise generated according to the standard deviation of each observed measure of  $I$ . The final four lines specify priors for each of the additional parameters estimated by the model ( $\gamma_k$  is a vector of  $k$  co-explanatory variables).

We provide the corresponding parameterization in stan code below:

```
data{
  int numberSuccesses[21];
  int numberCases[21];
  int N;
  vector[21] meanDirection;
  vector[21] lcDissent;
  vector[21] lcDispositionDirection;
  int female[21];
  vector[21] PriorExp;
  int comm_exp[21];
  int civi_exp[21];
  int publ_exp[21];
  int crim_exp[21];
  int econ_exp[21];
  vector[21] ideol_SD;
  vector[21] ideol;
}
parameters{
  vector[N] ideol_true;
  real bI;
  real b_econ_exp;
  real b_crim_exp;
  real b_publ_exp;
  real b_civi_exp;
```

```
    real b_comm_exp;
    real bPriorExp;
    real bFem;
    real b_lcDispositionDirection;
    real b_lcDissent;
    real a;
    real<lower=0> sigma;
}
model{
  vector[21] mu;
  sigma ~ exponential( 1 );
  a ~ normal( 0 , 0.2 );
  b_lcDissent ~ normal( 0 , 0.5 );
  b_lcDispositionDirection ~ normal( 0 , 0.5 );
  bFem ~ normal( 0 , 0.5 );
  bPriorExp ~ normal( 0 , 0.5 );
  b_comm_exp ~ normal( 0 , 0.5 );
  b_civi_exp ~ normal( 0 , 0.5 );
  b_publ_exp ~ normal( 0 , 0.5 );
  b_crim_exp ~ normal( 0 , 0.5 );
  b_econ_exp ~ normal( 0 , 0.5 );
  bI ~ normal( 0 , 0.5 );
  ideol_true ~ normal( 0 , 1 );
  ideol ~ normal( ideol_true , ideol_SD );
  for ( i in 1:21 ) {
    mu[i] = a + bI * ideol_true[i] + b_econ_exp * econ_exp[i] + b_crim_exp
* crim_exp[i] + b_publ_exp * publ_exp[i] + b_civi_exp * civi_exp[i] + b_comm_exp
* comm_exp[i] + bPriorExp * PriorExp[i] + bFem * female[i] +
b_lcDispositionDirection * lcDispositionDirection[i] + b_lcDissent *
lcDissent[i];
  }
  meanDirection ~ normal( mu , sigma );
}
```

The Justice level co-explanatory variables (gender, pre-appointment experience and practice specialization) were assumed to be measured without error. We also include two case level variables expressed as the proportion of cases with a liberal lower court ruling seen by each Justice, and the proportion of cases with a lower court dissent seen by each Justice. These variables were also assumed to be observed without error.

**TABLE C7: Bayesian Estimates of Justice-Level Liberal Voting Rates**

	Model 5 (with propagated error)			
	Mean	SD	2.5%	97.5%
Ideology	0.29	0.07	0.16	0.43
<b>Pre-Appointment Characteristics</b>				
<i>Specialization</i>				
Economic	0.00	0.07	-0.14	0.14
Criminal	-0.06	0.05	-0.16	0.05
Public	-0.07	0.08	-0.22	0.11
Civil	0.03	0.07	-0.10	0.16
Common	-0.05	0.09	-0.22	0.16
Experience	0.00	0.00	0.00	0.01
Female	-0.02	0.04	-0.11	0.07
<b>Case Level</b>				
Lower Court Disposition Direction[liberal]	0.38	0.27	-0.16	0.89
Lower Court Dissent	-0.41	0.25	-0.84	0.15
<b>Constant</b>	0.36	0.12	0.10	0.57
<b>Sigma</b>	0.07	0.02	0.04	0.12

Note: N=21. Each model was run for 4,000 iterations using Hamiltonian Monte Carlo (with 2,000 reserved for burn in) and contained four MCMC chains. Each parameter displayed Gelman Rubin (1992) convergence diagnostics of 1 or lower, which is not indicative of issues with convergence. The two right hand columns for each model display the 95% credible intervals for each regression coefficient.

The results are presented in Table C8. We find that the effect of ideology on Justice votes remains statistically reliable and that moving from 0 (perfectly conservative) to 1 (perfectly liberal) is associated with a 29 percentage point increase (SD = 0.07) in the rate of liberal voting. The measurement component of Model 5 produces estimates (displayed on the right-hand panel of Table C7) that largely reproduce the point estimates of ideology with their associated standard deviations. We note that the point estimates of the ideological positions remain largely unchanged except for Justices Dawson and Edelman, for whom we could access relatively little ideological commentary, and whose bootstrapped standard deviations are larger than most other Justices. Accordingly, the Bayesian estimates of Dawson, and Edelman's ideologies bring them closer to a centrist position. Ultimately, we find that the relationship between newspaper ideology and ideological voting in the High Court is

robust to the propagation of error in the measurement of our independent variable, using a simplified small n Bayesian model.

**TABLE C8: Uncertainty in Measurement of Judicial Ideology by Justice with Bayesian Estimates**

Justice	# ideological paragraphs	Observed Measures		Model 5 Measures	
		Ideology	Bootstrapped SD	Ideology	SD
Brennan	21	0.52	0.11	0.55	0.10
Deane	13	0.73	0.08	0.71	0.08
Dawson	10	0.15	0.11	0.19	0.11
Toohey	31	0.82	0.05	0.82	0.05
Gaudron	31	0.82	0.06	0.83	0.05
McHugh	28	0.81	0.05	0.80	0.05
Gummow	66	0.22	0.04	0.23	0.04
Kirby	63	0.85	0.03	0.85	0.03
Hayne	43	0.26	0.05	0.25	0.04
Callinan	129	0.06	0.01	0.05	0.01
Gleeson	65	0.15	0.03	0.14	0.03
Heydon	120	0.10	0.03	0.09	0.02
Crennan	85	0.33	0.04	0.33	0.04
Kiefel	68	0.23	0.03	0.23	0.03
French	160	0.62	0.03	0.61	0.03
Bell	58	0.76	0.05	0.76	0.05
Gageler	15	0.83	0.07	0.82	0.07
Keane	63	0.27	0.05	0.28	0.05
Nettle	12	0.29	0.08	0.30	0.08
Gordon	24	0.50	0.09	0.48	0.09
Edelman	17	0.38	0.07	0.42	0.07

**Note:** We use estimations of the measurement model component of Model 5 to give the Bayesian estimates of ideology in the context of predicting the rate of liberal voting.

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