

Ideological Perfectionism on Judicial Panels

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Behavioral Judging

⇒ Formation of Normative Commitments

- Priming “Priming Ideology? Electoral Cycles Without Electoral Incentives Among U.S. Judges”
- Gambler’s Fallacy “Decision-Making Under the Gambler’s Fallacy: Evidence From Asylum Courts, Loan Officers, and Baseball Umpires”
- Extraneous Events “This Morning’s Breakfast, Last Night’s Game: Detecting Extraneous Factors in Judging”
- Voice “Overtones of Justice: Concealable Characteristics and Perceptions of Voice in the U.S. Supreme Court”
- Peer Effects “Is Ideology Infectious? Evidence from Repeated Random Exposure in U.S. Circuit Courts”
- Deontological Motivations - today’s paper

⇒ Measurement of Normative Commitments

“Social Preferences or Sacred Values? Theory and Evidence of Deontological Motivations”

“A Theory of Experiments: Invariance of Equilibrium to the Strategy Method of Elicitation and Implications for Social Preferences”

“Markets, Morality, and Economic Growth: Does Competition Affect Utilitarian Commitments?”

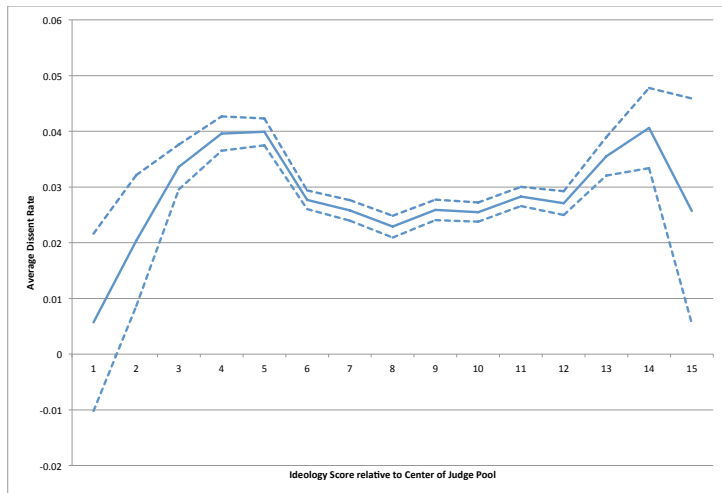
Deontological Motivations

- How do individuals perceive the cost of taking actions they disagree with politically or morally?
- Economics tends to gravitate towards the assumption that costs – be they economic, effort or cognitive – are convex.
- One rationale for this assumption is that it makes theoretical models analytically tractable.
- Another rationale is that it seems intuitively plausible. However, such intuition has proved fragile following a number of recent experiments
 - ▶ even small deviations from convictions are perceived to be very costly, but once a small deviation has been made, further deviations will entail relatively little additional cost.
 - ▶ implies individuals tend to give up on their morals if they cannot follow them fully, suggesting a concave cost of deviation.
- This paper presents a novel and puzzling phenomenon in judicial decisions and shows that concave ideological preferences explains this phenomenon along with a number of related empirical facts.

Lab Experiments

- For instance, individuals with concave moral costs will tend to give up on their morals if they cannot follow them fully.
- This pattern of behavior has been popularly labeled the “what-the-hell-effect” (Ariely 2012; Baumeister et al. 1996).
 - ▶ The decision whether to lie is often insensitive to the outcome of lying once it is preferred over the outcome of being truthful (Hurkens et al. 2009; Gneezy et al. 2013).
 - ▶ Once individuals are induced to cheat, they succumb to full-blown cheating (Gino et al. 2010).
 - ▶ In politics it may be more sensible to assume concave preferences. A voter on the far right would be more or less indifferent between two candidates on the left (both are equally bad), but would care greatly about which of the right wing candidates wins (Osbourne 1995).
- The question remains whether concave preferences have empirically observable implications for important real world decision situations.

The “Spider” Result



Intuition

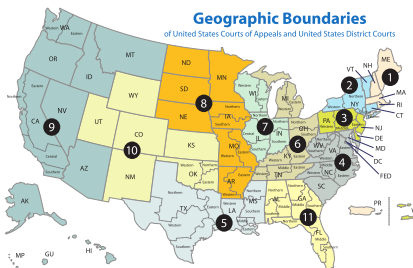
- Judges feel bad when signing “unfavorable” verdicts.
- They are ideological perfectionists: signing even one unfavorable verdict comes at high cost, signing many is marginally less costly.
- Not signing (=dissenting) implies a collegial pressure.

Intuition

- The marginal cost of signing unfavorable verdicts falls while the marginal benefit of signing unfavorable verdicts stays high, so you just sign all of others verdicts.
- Whereas for moderate and centrist judges, the marginal cost of signing unfavorable verdicts remains high while the marginal benefit is low, so there's a corner solution and the # of dissents is determined by the natural normal distribution of judge scores.

Circuit Courts

- 12 Circuit courts decide on appeals from lower courts
 - ▶ Three judges are randomly picked to a case
 - ▶ Set precedent for future cases
 - ▶ Around 20 judges in each circuit, politically appointed by president, for life
- The opinion (interpretation of the law) is what sets precedent and is a continuous variable.
- Judges can “**dissent**” by not signing opinion and then write motivation why.

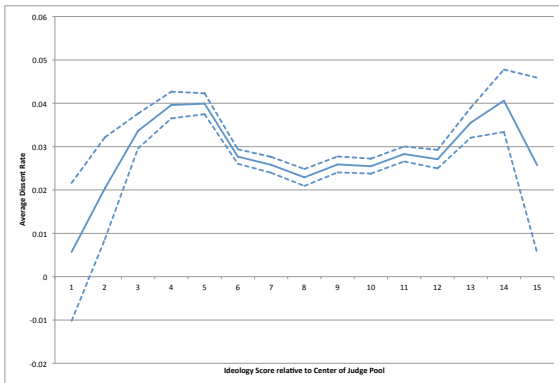


Ideology

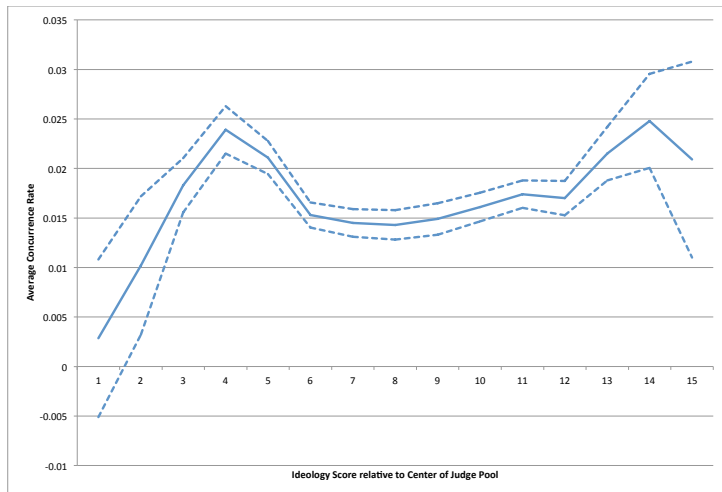
- What role does ideology play in determining whether a judge dissents?
- Use proxy for ideology by weighing voting behavior of appointing president and voting behavior of home state senators (Judicial Common Space)
- Yearly data 1950-2007 (Openjurist), 5% sample (1925-2002) (Songer-Auburn)
- Proxy goes from -1 (leftist/liberal/democrat) to +1 (rightist/conservative/republican)

Stylized Fact

- Dissent is as a non-monotonic function of ideological extremeness:
 - ▶ Centrists dissent seldom
 - ▶ Moderates dissent often
 - ▶ Extremists dissent seldom



The “Spider” Result



How Can the Spider Be Explained?

- Note: The result is driven by ideological distance between judges, not by the ideology per se.
- Example: A very liberal judge (-1) will dissent seldom when in circuit of very conservative judges (+1), but dissent often in circuit of moderate liberals (-0.5).
- This is about interaction between judges with different ideologies.

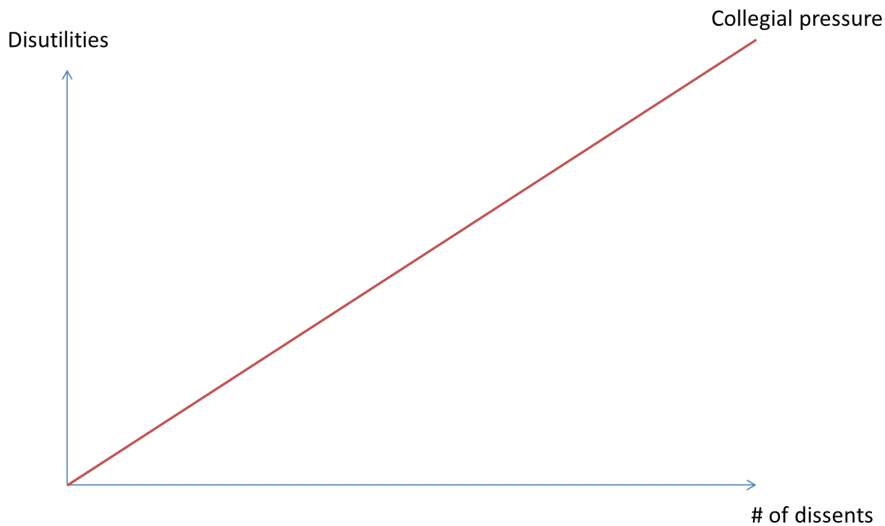
Dissent More When a Judge's Ideology Far From Panel Median

Table: Dissents and Concurrences vs. Distance to Center of Judge Panel (1950-2007)

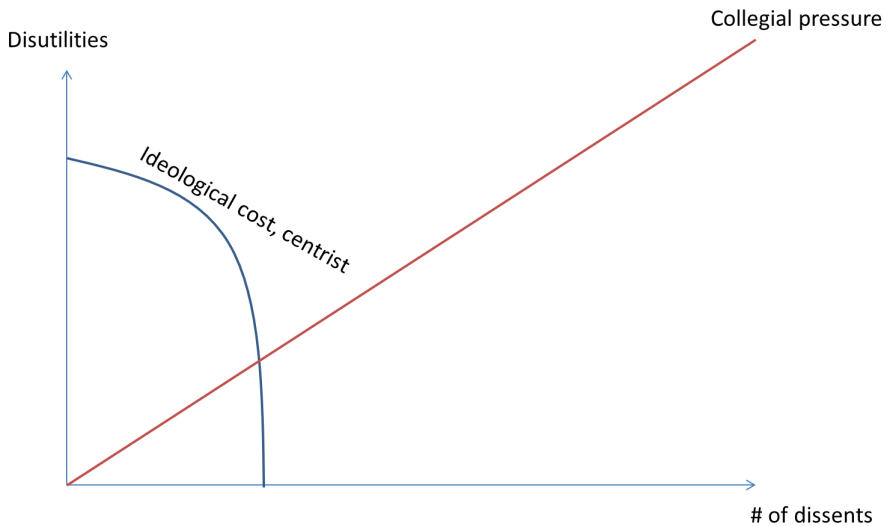
	Dissents or Concurs
Distance to Center of Panel	0.0399*** (0.00580)
Circuit Fixed Effects	Y
Year Fixed Effects	Y
N	541182
R-sq	0.008

Extremists more often distant to panel center, should dissent more often,
yet dissent less according to spider

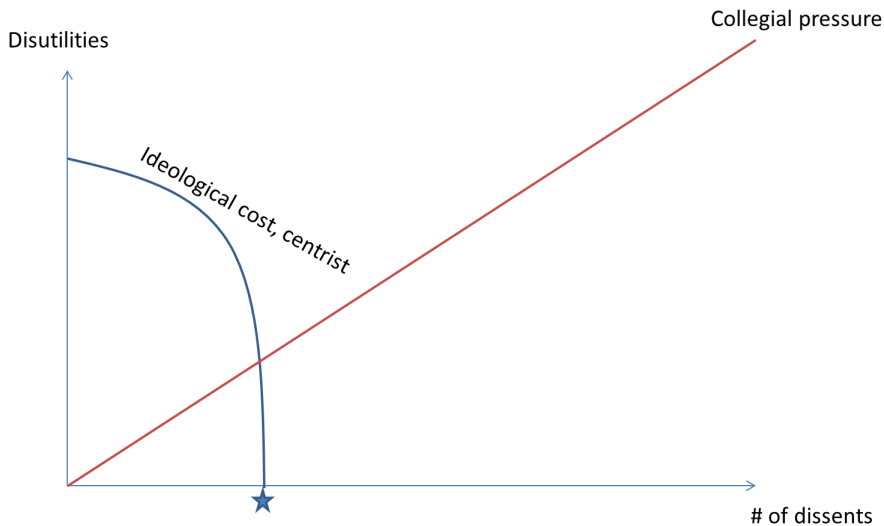
Rough Story



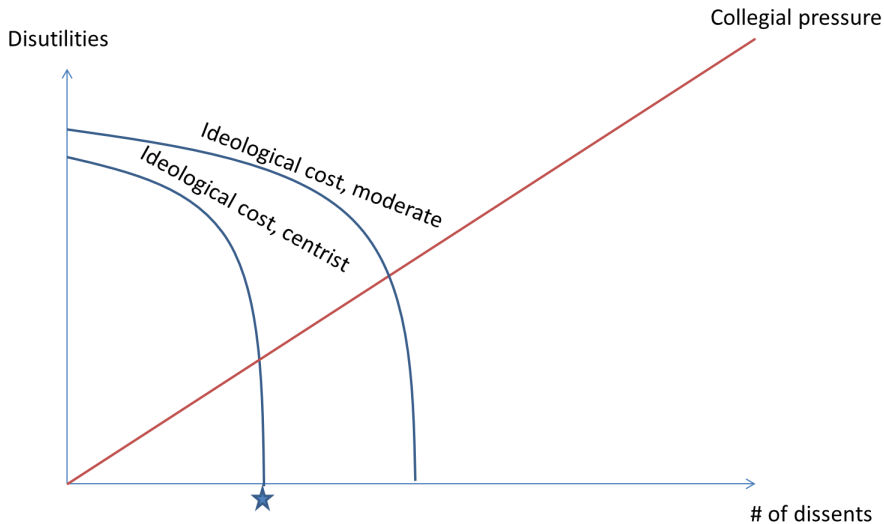
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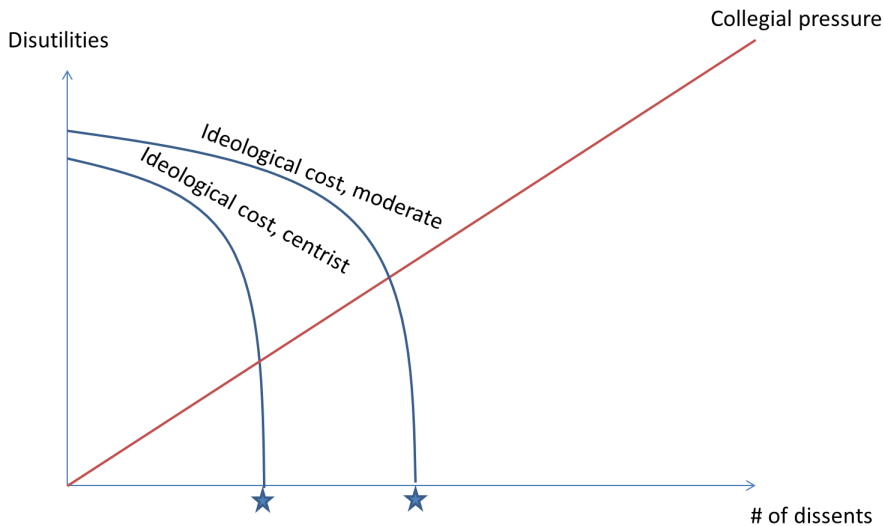
Rough Story



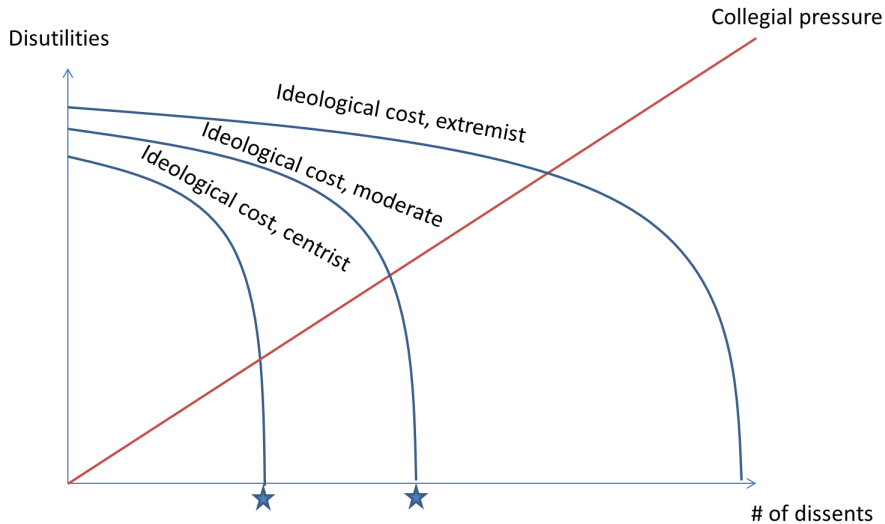
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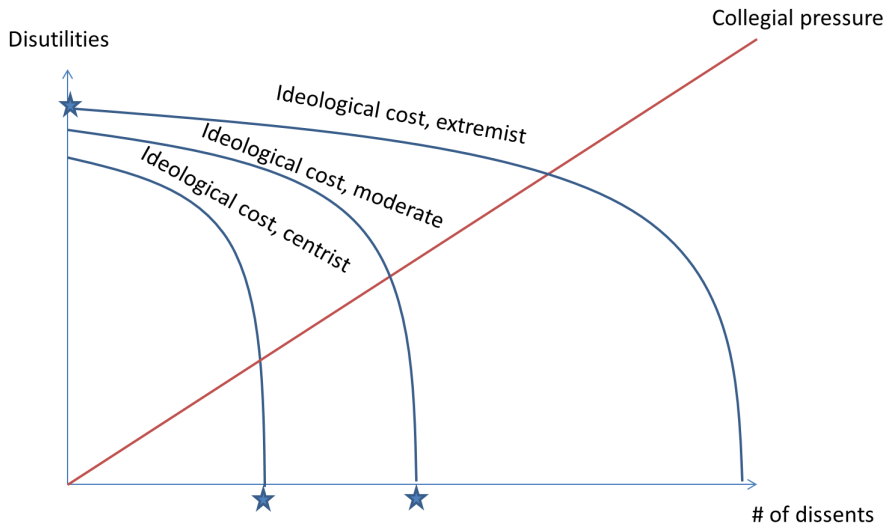
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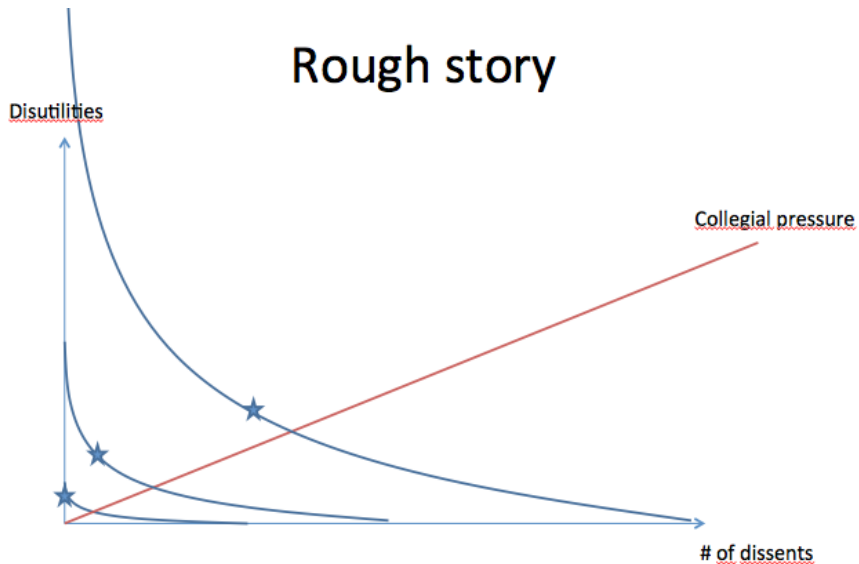
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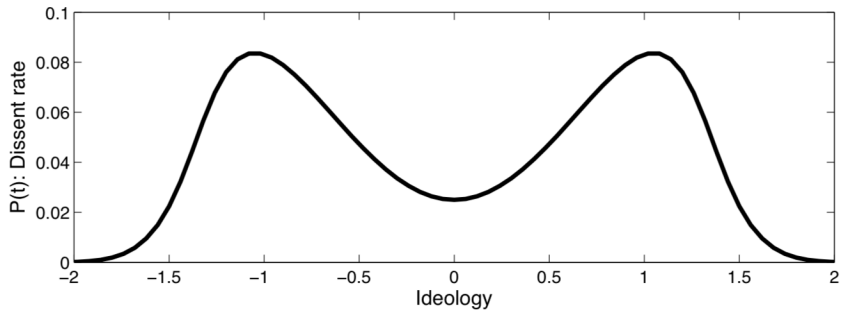
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Rough Story



Main Model Result



Further Predictions From Theory

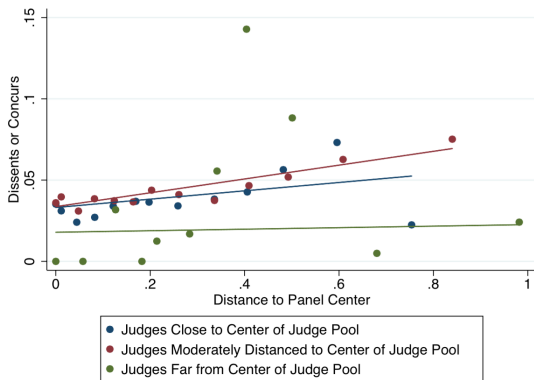
- Prediction: In all cases $v \equiv$ median judge in panel.
- Prediction: The further a judge is from panel median, the higher the probability (s)he will dissent.
- Prediction: Extreme judges sign verdicts which are more unfavorable to them than what moderate judges sign.

Does the Median Judge Decide?

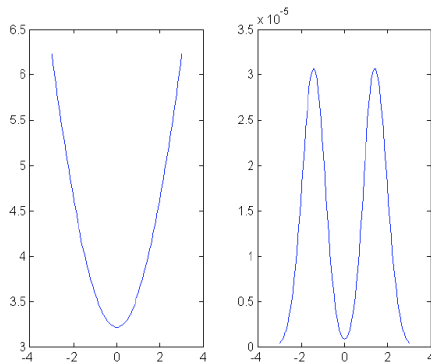
	(1)
	Liberal Verdict
Score	-0.0915*** (0.0138)
Center Judge	-0.00492*** (0.00108)
Score * Center Judge	-0.153*** (0.0278)
N	23031
R-sq	0.003

- Determine who in each panel has median ideology, and who among other two is closest to median and furthest from median.
- Use database of handcoded ideology (liberal=+1, conservative=-1) of each “opinion.”

Extreme Judges Sign Verdicts Which Are More Unfavorable?



Extreme Judges Sign Verdicts Which Are More Unfavorable?



Conclusions

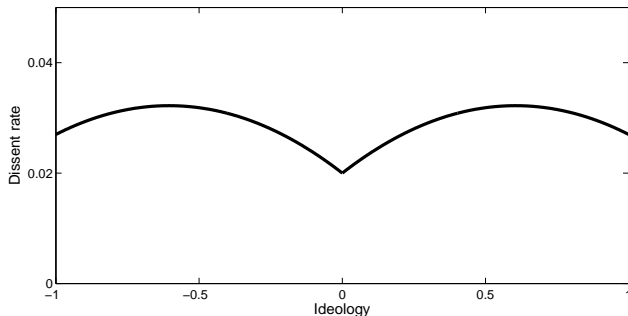
- Document non-monotonicity of dissents: extreme judges dissent less than others, moderate judges dissent the most
- Can be explained by model of ideological perfectionism and collegial pressure
- Test auxiliary model results
- Judges are sensitive to interaction with judges with distant ideologies
- But extremist judges get numb and give up on their ideology

Thank You

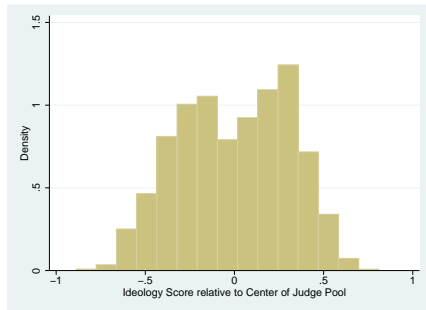
Dissent in Polynomial Distance to Expected Center

	(1)	(2)
	Dissent	Concur
Distance to Center of Judge Pool	0.0404*** (0.00756)	0.0285*** (0.00570)
Distance ²	-0.0334*** (0.0118)	-0.0313*** (0.00862)
Circuit Fixed Effects	Y	Y
Year Fixed Effects	Y	Y
N	10043	10043
R-sq	0.109	0.086

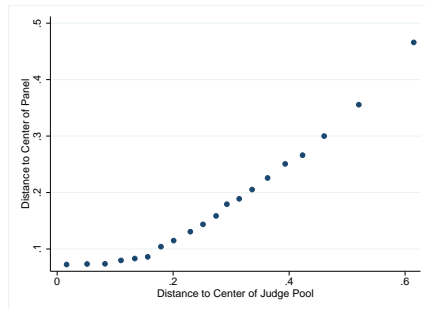
Dissent in Polynomial Distance to Expected Center



Distribution of Ideology Scores (1950-2007)



Distance to Panel Median and Distance to Center of Judge Pool



Alternative Explanations

- Do the results come from preferences?
 - ▶ No: result is driven by peer pressure
- Are extreme judges different? e.g., to signal non-bias
 - ▶ No: spider shows up mainly for relative measures of extremeness
- Do outliers explain dissent (and concurrence) spider?
 - ▶ No: would need low dissent rates for outliers, and dissent rate is bounded by zero
- Convex peer pressure and linear D?
- Is it mechanical that the presence of extreme judges requires large variance in scores?
 - ▶ No: there non-monotonicity in the spider

Alternative Explanations

- Extremists dissent less since they want to hide their private (extremist) type. Judges feel collegial pressure for their private views and not for their behavior – i.e. judges try to hide their private preferences from each other.
 - ▶ Judges know each other well; still requires a concave D
- Extremist judges think that if the verdict equals their (extremist) type then nobody will take the verdict seriously anyway – it's precedential power will be weak.
 - ▶ Requires that the ones who are supposed to cite the verdict have concave costs of deviating from it. If they had convex costs of deviating from a precedent then an extremist would always like extreme verdicts that set precedent.
- Are moderate and centrist judges who happen to sit in a panel with two extremists being backed up by others on the circuit?
 - ▶ Does the peer pressure function increase with how extreme you are?

Model

- Bell-shaped continuous distribution of judge types (t between -1 and +1)
- Continuum of cases, three judges picked randomly for each case
- Each judge foresees all cases she will sit in (alt: cases are decided upon simultaneously).
- For verdict $v \in R$, judge feels an outer disutility of $O(|v - t|)$, O is increasing fn
- Judge feels an inner disutility D which is increasing in the cumulative unfavorable verdicts s/he has signed ($s(v) = 1$):

$$D = D(\int_v |t - v|g(v)s(v)dv)$$

- For each dissent ($s(v) = 0$) judge feels collegial pressure W

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Timing within Case

- ① The three judges suggest and vote about verdict.
- ② Each judge decides whether to sign or not.
- ③ Disutility is applied

$$\begin{aligned} L &= \int_v O(|v - t|)g(v|t)dv \\ &+ D\left(\int_v (|t - v|)g(v)s(v)dv\right) \\ &+ W \int_v (1 - s(v))g(v|t)dv \end{aligned}$$

Voting Procedure and Outcome

- Each of the three judges suggests a verdict.
- Condorcet winner determines final verdict v .
- Since L is increasing in $|v - t|$:

Lemma (prediction): In all cases $v = t_m \equiv \text{median type}$

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To Sign or Not to Sign

- After v has been determined, outer disutility plays no role in decision making.

$$\begin{aligned}
 L = & \int_v O(|v - t|)g(v|t)dv \\
 & + D(\int_v |t - v|g(v)s(v)dv) \\
 & + W \int_v (1 - s(v))g(v|t)dv
 \end{aligned}$$

To Sign or Not to Sign

- Problem can be rewritten so:
- *Lemma (prediction): Each judge chooses a cutoff verdict distance, c : if verdict is beyond then dissent, if verdict is closer then sign.*
- Probability of dissent

$$\begin{aligned}P(t, c) &= Pr(v < t - c) + Pr(v > t + c) \\&= Pr(t_m < t - c) + Pr(t_m > t + c)\end{aligned}$$

- For given c , $P(t, c)$ increasing with extremeness $|t|$.
- (For spider we need $P(t, c)$ to decrease(!) to fall for large $|t|$.)
- Hence, necessary condition for $P(t, c(t))$ to fall in $|t|$ is for $c(t)$ to increase in $|t|$:
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What the Spider Needs

Lemma: If D is linear or convex then $c(t)$ is (weakly) decreasing in $|t|$ and hence $P(t, c(t))$ is increasing in $|t|$.

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What the Spider Needs

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- Proposition: A necessary condition for “the spider” is that D is concave.

What Suffices for the Spider

- Suppose D is a step function
- Then signing any one $v \neq t$ gives same ideological cost as signing many $v \neq t$.
- Meanwhile, collegial cost is increasing in dissent.
- If you sign once, then sign always!
- If you dissent, then dissent any time $t \neq t_m$.

$$P(t) = \begin{cases} \Pr(t \neq t_m) & \text{if } |t| < t_{\text{cutoff}} \\ 0 & \text{if } |t| \geq t_{\text{cutoff}} \end{cases}$$

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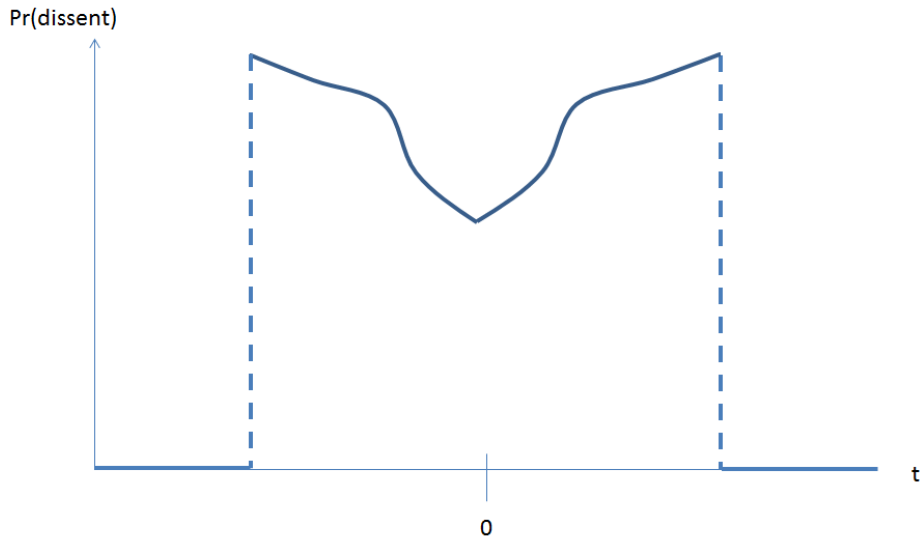
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The Fixed Cost Spider



Empirical Prediction: Are Extreme Judges, More Than Others, Signing Verdicts Which Are More Unfavorable?

$$\begin{aligned}\text{Prob}(\text{dissent or concur}) = & a + b_1 \text{abs}(t) + b_2 \text{abs}(t)^2 \\ & + b_3 \text{abs}(t - t_m) + b_4 \text{abs}(t - t_m) \text{abs}(t) \\ & + b_5 \text{abs}(t - t_m) \text{abs}(t)^2\end{aligned}$$

- Cutoff verdict increasing when judges become extreme: $b_5 < 0$
- b_3, b_4, b_5 together such that $\text{Pr}(\text{dissent})$ increases in distance from t to *panel* median: judges dissent against unfavorable verdicts

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Empirical Prediction: Are Extreme Judges, More Than Others, Signing Verdicts Which Are More Unfavorable?

$$\begin{aligned}\text{Prob}(\text{dissent or concur}) = & a + b_1 \text{abs}(t) + b_2 \text{abs}(t)^2 \\ & + b_3 \text{abs}(t - t_m) + b_4 \text{abs}(t - t_m) \text{abs}(t) \\ & + b_5 \text{abs}(t - t_m) \text{abs}(t)^2\end{aligned}$$

- Cutoff verdict increasing when judges become extreme: $b_5 < 0$
- b_3, b_4, b_5 together such that $\text{Pr}(\text{dissent})$ increases in distance from t to *panel* median: judges dissent against unfavorable verdicts

Empirical Prediction: Are Extreme Judges, More Than Others, Signing Verdicts Which Are More Unfavorable?

Dissents and Concurrences vs. Distance to Median of Judge Panel (1950 - 2007)

	(1) Dissents or Concurs
Distance to Center of Judge Pool	0.0180 (0.0225)
Distance to Center of Judge Pool ²	-0.0403 (0.0389)
Distance to Median of Panel	-0.00335 (0.00892)
Distance to Median of Panel *	0.244***
Distance to Center of Judge Pool	(0.0572)
Distance to Median of Panel *	-0.287**
Distance to Center of Judge Pool²	(0.103)
Circuit Fixed Effects	Y
Year Fixed Effects	Y
N	509022
R-sq	0.008