Hierarchical Interactions and Compliance in Comparative Courts

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Abstract
Given their place within the judicial hierarchy, judges on lower courts face a complex array of challenges including heavy caseloads, mandatory dockets, and the threat of Supreme Court reversal. Despite the extensive scholarship on the American courts, little is known about judicial interactions in comparative contexts. We articulate and evaluate a framework for lower court adherence to Supreme Court precedents by leveraging a cross-national design in three countries—Canada, the United Kingdom, and the United States—with similar systems but meaningful institutional variability. We find that the mechanisms promulgating adherence to Supreme Court precedents do not substantially vary across design or institutional context. Instead, our results demonstrate that legal factors exert a consistent, homogeneous effect on lower court compliance across judicial systems. Our work offers new and important implications for studies on law and courts and comparative institutions, more broadly.

Keywords
comparative courts, Supreme Court precedent, lower courts, judicial hierarchy

Introduction

"The intellectual challenge of being a judge is trying to figure things out—to get it right. The whole process is an intellectual exercise."

– Interview with Anonymous Lord Justice, Court of Appeal of England and Wales

An independent and well-functioning judiciary is a cornerstone of democracy. Even though the brightest light is often cast on the court of last resort (i.e., the Supreme Court), the vast majority of law is adjudicated within lower tiers of the judiciary (Hettinger et al. 2006; Songer et al. 2000). Given their place within the judicial hierarchy, judges on inferior courts are confronted with a complex set of challenges compared to their judicial superiors on courts of last resort. For instance, judges on the intermediate appellate courts face arduous caseloads, mandatory dockets, complex cases, and various constraints prevalent within a hierarchical environment (Songer et al. 1994; Zorn and Bowie 2010). Existing scholarship on judicial interactions primarily centers on the interplay between the U.S. Courts of Appeals and the U.S. Supreme Court demonstrating that lower court judges typically conform to the preferences of their judicial superiors on the Supreme Court (Bowie et al. 2014; Westerland et al. 2010). Despite these advances, much of our understanding on the relationship between higher and lower court interactions remains limited to the American context.

While judicial scholars are increasingly attentive to courts of last resort beyond the United States (Hanretty 2020; Johnson and Masood 2023; Solberg and Wetstein 2007; Sanchez Urribarri et al. 2011), we shift the research focus to how inferior court judges interact with their judicial superiors in comparative context. In doing so, we explore two key questions. First, to what extent do lower courts rely on Supreme Court precedents across judicial systems? Second, do institutional idiosyncrasies impact lower court adherence to Supreme Court precedent across judicial systems? We address these questions by

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leveraging original data from three common law judiciaries with similar systems but key institutional differences that may impact the nature of higher and lower court interactions.

Our study aims to deepen the understanding of how cross-court institutional frameworks may impact higher and lower court interactions. We undertake this endeavor by acutely focusing on two key institutional factors within each country's court of last resort: judicial selection and panel dynamics. In the sections that follow, we present an overview of judicial interactions and explain our theoretical approach, which delineates the mechanisms for lower court adherence to Supreme Court precedents, comparatively, across judicial systems. We test our expectations through three novel data sets compiled on intermediate appellate court responses to higher court decisions that encompass a sample of precedents issued by (1) the Supreme Court of Canada, (2) the House of Lords in the United Kingdom, and (3) the Supreme Court of the United States.[1] Our analysis reveals that, despite varying degrees of adherence across countries, differences in levels of adherence are not influenced by the institutional context. Instead, our results demonstrate that across institutional contexts, lower court compliance is driven by legal rather than institutionally constraining factors. Our work represents the first systematic and simultaneous examination of judicial interactions between higher and lower courts across multiple national judiciaries. The comparative focus of this project provides new insights on how institutional differences across judicial systems, while important, do not necessarily yield substantially different mechanisms of compliance to High Court precedent. The theoretical and empirical elements of our study hold important implications for future studies on hierarchical interactions within comparative courts.

Judicial Selection and Norm Development in Comparative Perspective

We contend that appellate judicial behavior is driven by legal norms in Canada, the United Kingdom, and the United States, but to varying degrees. For instance, judicial selection varies between a career-based emphasis in the United Kingdom (Blom-Cooper et al. 2009) to a politically motivated approach in Canada and the United States (Songer 2008). Selection processes that are characterized as apolitical or career-based, like in the United Kingdom, facilitate an environment where judges are socialized to adhere to precedent as a professional norm. Alternatively, selection processes that are inherently political may foster a willingness for judges to shirk from Supreme Court precedent when judges are ideologically distant from the median member of the Supreme Court.

We consider the dynamics within each country while paying particular attention to how country-specific nuances influence judicial behavior within the courts of appeals.

Legal scholars typically characterize the appellate courts of the United Kingdom as a career-based judiciary (Drewry et al. 2007; Masood and Lineberger 2020). Judges on the Court of Appeal are drawn exclusively from the "High Court of Justice" (trial court). The rationale behind this practice is that in order to serve as an appellate judge, one must understand the methods and processes in a court of first instance (Salzberger and Fenn 1999). Thus, judges who accept appointments to the lowest tier of the judiciary (the High Court of Justice) are likely those who are seriously motivated and concerned with the importance of legal matters. As a consequence, judges selected to serve on the Court of Appeal generally exhibit a high degree of deference to law, precedent, and the norms of the judicial system.

The selection of U.K. appellate court judges is less susceptible to political maneuvering, especially compared to the appointment of appellate judges in the United States, whose appointment is conditional upon a nomination by the president and confirmation by political actors in the U.S Senate. Assuming that the Lord Chancellor is primarily concerned with appointing judges of high caliber, one can presume that the goal of appointment in the United Kingdom is thus more focused upon legal, institutional, and legitimacy concerns (as opposed to the United States, where the ideological preferences of a nominee are an important aspect of an individual's consideration for nomination by the president and subsequent confirmation by the U.S. Senate). We believe that, since judges on the Court of Appeal directly originate from the U.K. High Court of Justice, these individuals are especially qualified legal professionals that are accustomed to adjudicating legal disputes based on law, precedent, and the merits of the cases that come before them. Therefore, it is unlikely to expect that judges on the Court of Appeal systematically engage in strategic behavior that is in any way deferential to either the Law Lords or any individual involved in filling a future vacancy on the top court. As such, our expectation is that the decision-making behavior of judges on the English Court of Appeal is predominantly guided by legal, rather than strategic or ideological, considerations.

Judges on the court of last resort are formally appointed by the monarch; however, their appointments are based upon the recommendation of the Lord Chancellor and Prime Minister who often consult the sitting justices on potential replacements for vacancies on the Judicial Committee of the House of Lords.[2] There is some disagreement about the extent to which judges aspire to

climb the judicial ladder in the United Kingdom. Many judges consider an appointment to an appellate court as a final placement. But scholars, such as Blom-Cooper et al. (2009), disagree with such a traditional approach noting the inherently ambitious aspect of human nature. We agree with Drewry et al.'s (2007) assessment of the factors that motivate the actions of lower court judges: the quality of judges selected to the High Court, combined with any aspirations for promotion, should provide incentives for judges to ascribe to the legal and institutional norms of the judiciary in the United Kingdom.

At the other end of the spectrum, the selection process in the United States is frequently characterized as political (Bonica and Sen 2017; Epstein et al. 2007; Giles et al. 2001). For instance, in order to become a judge on the U.S. Courts of Appeals, an individual must be nominated by a partisan actor, the president, and be confirmed by partisan members of the U.S. Senate. Additionally, under the informal rules of senatorial courtesy, the president is expected to coordinate with home state senators that may at times yield more partisan judicial nominees (Bowie et al. 2014). As a consequence of two political bodies weighing in on the selection of an appellate judge, the judges selected may be more likely to engage in ideologically oriented behavior compared to judges elevated to intermediate appellate courts in judicial systems that nourish professional judges who are selected based on merit by non-political actors, such as judges on the Court of Appeal of England and Wales who are almost exclusively selected based on prior judicial experience, merit, and professional reputation (Blom-Cooper et al. 2009; Masood and Lineberger 2020).

In contrast to the United Kingdom, where the process of selecting judges for the higher judiciary is largely apolitical, and the United States, where the selection process is highly political, Canada's system falls between the two extremes. Specifically, federal judges in Canada are officially appointed by the Governor General, who makes appointments based on recommendations from the Prime Minister (Songer 2008).[3] In effect, the Prime Minister has a high degree of influence over the type of judges that are called to the judiciary (Hauseg-ger et al. 2013). As a consequence, appointments in Canada have been historically either political, where the government seeks individuals interested in progressing party platforms, or deferential, where the Prime Minister selects individuals that value the primacy of the legislature (McCormick 1994). The benefit of a political appointment to the court is obvious; a judge that pursues a party's agenda through its decisions adds another dimension to the longevity of policies. A deferential appointment can be similarly useful as judges deferring to the values and policies of the legislature can benefit the majority party, assuming the Prime Minister's party will retain control in the legislature. As a consequence, judges appointed to the Canadian Courts of Appeals may be inherently more inclined to pursue policy preferences in their decisions. Despite the political processes in the United States and Canada, judges do not always base their decisions on ideology (Klein 2002; Songer et al. 2012). That is, while appellate court judges may be products of a political process, judges still operate within environments that encourage fidelity and adherence to the legal norms of the institution, although they may be inclined to view those legal norms through an ideological lens.

Institutional Dynamics as a Constraint

When deciding how to apply higher court precedent, appellate judges take a variety of factors into consideration, one of which is the degree of institutional constraint imposed on judges by the system. We argue that an important constraint on appellate judges is panel makeup practices (i.e., pseudo-random panels versus en banc panel structures). The practice of pseudo-random panels on a High Court creates uncertainty in how the Supreme Court would decide a given case. For example, uncertainty in the ideological composition of a Supreme Court impacts lower court behavior by creating an environment where it is more difficult to predict the actions of a Supreme Court. If appellate court judges were willing to pursue policy preferences through their decisions, uncertainty about if and how the Supreme Court would rule on the case should induce appellate judges to not attempt to shirk from Supreme Court precedent. On the other hand, stability in the composition of justices adjudicating a case, like in the United States, allows appellate judges to reliably predict the preferences of their Supreme Court superiors, thereby creating opportunities to engage in shirking behavior, if willing.

When making decisions, the Supreme Courts in the United Kingdom and Canada employ panels of justices rather than sitting en banc like in the U.S. Supreme Court. The use of panels in the United Kingdom and Canada makes it difficult for lower court judges to predict panel composition of their Supreme Court (Hanretty 2020; Hausegger and Haynie 2003). Specifically, within the United Kingdom, decisions are made through pseudo-random panels of 5 justices from the slate of 12 justices. The Supreme Court of Canada employs pseudo-random panels of 5 or 7 justices and occasionally the full bench. The Canadian Court has fewer justices but significantly more cases to process than the United Kingdom. Therefore, the institutional constraints in Canada should produce similar uncertainty among lower court judges, but to a lesser extent. This moderate mix of static and dynamic panel makeup on the Supreme Court could allow for some lower court judges to shirk from precedent. By

contrast, it is quite straightforward for appellate court judges in the United States to make rational predictions based on the ideological composition of the Supreme Court, were it to grant an appeal from the lower court. This institutional arrangement creates the greatest opportunity for preferences to influence appellate judicial behavior.

The non-utilization of panels by the U.S. Supreme Court presents unique opportunities for lower court judges to engage in strategic behavior. Recognizing the stable composition of Supreme Court justices and the relative ease with which appellate court judges can discern the Court's ideological preferences should enable them to respond to precedents strategically (Salam 2022; Westerland et al. 2010). However, institutional settings where higher courts, like that of Canada and the United Kingdom, rely on panels instead of sitting en banc should observe less strategic or ideologically divergent behavior since appellate judges within these systems cannot definitively predict which Supreme Court justices will be on a given panel reviewing a lower court decision. As such, we expect institutions with stable panel composition, such as the United States, to provide greater opportunities to engage in strategic responses to precedent compared to systems where Supreme Court justices employ panels to decide cases.

Table 1 provides descriptive information on two institutional features that reduce the ability for Supreme Court justices to effectively monitor lower court behavior: the proportion of Supreme Court justices to appellate

court judges and the rate of review by the Supreme Court. These characteristics in the United Kingdom should produce an environment that encourages lower court judges to adhere to legal and institutional norms of the court. There is approximately one Supreme Court justice for every 3 lower court judges in the United Kingdom. In addition, the rate of review is the highest out of the three countries, where the Supreme Court reviews, on average, 37% of the cases decided by the English Court of Appeal. With such a small amount of appellate judges to oversee, the ability for the U.K. Supreme Court to effectively monitor the decisions of the subsidiary court is great. With this in mind, lower court judges have a substantially limited opportunity to seek policy oriented outcomes. The Canadian Supreme Court has the second highest rate of review of lower court decisions at 13%. However, the proportion of Supreme Court justices to appellate judges is relatively large; for every 1 Supreme Court justice there are 18 appellate court judges. Apart from the fact that there is only one English Court of Appeal to Canada's 13 courts, the appellate courts in Canada grant and decide substantially more cases than the appellate court in the United Kingdom. As such, appellate judges in Canada should have more opportunities to pursue policy preferences in their decisions, than judges in the United Kingdom. Finally, institutional aspects in the United States create difficulties for the justices concerned with monitoring all decisions by the courts below. With a proportion of 1 Supreme Court justice to every 19

Table 1. Institutional Characteristics of Judicial Systems.

	Canada	United Kingdom	United States
# of Supreme Court justices	9	12	9
# of appellate judges	160	38	175
# of appellate cases	5,000	6,000	60,000
Supreme Court petitions	540	200	10,000
Rate of Supreme Court review	13%	37%	>1%
Mode of decision-making	Pseudo-random panels of 5, 7, or 9 justices	Pseudo-random panels of 5, 7, or 9 justices	Full court of 9 justices
Mandatory retirement age	75	70	None (life tenure)
Turnover on Supreme Court	15 new justices in 22 years	23 new justices in 19 years	5 new justices in 17 years
Method of judicial selection	Appointed by Governor General on advice of P.M.	Appointed by P.M. on advice of Lord Chancellor	Nominated by President; confirmed by Senate

Note: The number of cases appealed and reviewed by the Supreme Court varies dramatically by country. It is also worth noting that while the U.S. Supreme Court decides cases with a full slate of justices, cases are decided by panels of justices in Canada and the United Kingdom. The panel assignments in Canada and the United Kingdom are quasi-random due to the fact that justices are often added to a panel based on their expertise in an issue area and certain regional considerations. Additionally, in certain circumstances, both the Supreme Courts of Canada and the United Kingdom may sit in panels of seven or nine justices for particularly important cases (see Hausegger and Haynie 2003; Masood and Lineberger 2020). The statistics in this table reflect the information for the judiciaries for the years in our dataset.

appellate court judges and a rate of review at 1%, the data indicate that monitoring from above is substantially more difficult in the United States than in their common law counterparts. In addition, the number of cases before the Courts of Appeals in the United States approximates to over 60,000 cases a year. As a consequence, appellate judges in the United States have the greatest opportunity to shirk from precedent, due to the inability of the Supreme Court to effectively monitor all cases in the appellate courts.

Navigating the Landscape of Comparative Judicial Systems

Scholars posit that at the top of the judicial hierarchy, justices focus on furthering their policy goals throughout the decision-making process (Masood and Songer 2013; Segal and Spaeth 2002). Conversely, judges at lower levels of the judiciary (i.e., trial courts) are not usually seen as attempting to further their policy goals but instead focus on routine and procedural norms of civil and criminal cases (Zorn and Bowie 2010). Intermediate appellate court judges are not only able to influence policy through their decisions and application of precedent but also handle routine cases appealed to them (Bowie et al. 2014; Drewry et al. 2007; Hausegger et al. 2013). What is more, mid-level appellate courts are bound by and highly responsive to High Court precedents.

Research on the American courts suggests that much of the law is adjudicated within the U.S. Courts of Appeals (Hettinger et al. 2006) because they are effectively the final arbiters of most legal appeals within the federal courts. Accordingly, several studies on decision-making behavior on the American appellate courts indicate that ideological preferences exert some influence on judicial behavior. Zorn and Bowie (2010) find that the impact of judicial attitudes in the courts of appeals is less pervasive than the U.S. Supreme Court. Most judicial scholars agree that while ideology has some impact on decisions within lower courts, its impact is not as vigorous as it is within the U.S. Supreme Court (Baum 2017). Instead, a large body of work confirms support for the strength of legal influences in motivating the decisions of judges on intermediate appellate courts (Hansford and Spriggs 2006; Masood et al. 2017). For instance, Cross and Tiller (1998, 2155) note that judges on the "lower courts are presumed to adhere to the self-enforcing principle of stare decisis and to apply the doctrines of higher courts to the particular facts of the underlying case." Corroborating this perspective are a series of interviews conducted by Klein (2002) and Bowie et al. (2014) where appellate judges claim that law and precedent exert a forceful influence, which often out-weighs ideological considerations. Yet, other studies find that federal

appellate court judges face a greater number of institutional constraints, which includes an adherence to collegial norms (Hettinger et al. 2006), large caseloads (Songer et al. 2000), and the likelihood of review, either en banc (Blackstone and Collins 2014) or by the Supreme Court (Bowie and Songer 2009; Songer et al. 1994).

Several important studies explore judicial decision-making behavior within Canada (Mc- Cormick 1993; Ostberg et al. 2002) and the United Kingdom (e.g., Hanretty 2020; Iaryczower and Katz 2016) and find both similarities and key differences from the American courts. For the Canadian courts, a number of studies have shown that institutional norms, collegiality, and role perception have dampened the influence of political attitudes on decision-making (Ostberg and Wetstein 2007; Songer 2008). Additionally, prior research finds that compared to the U.S. Supreme Court, Supreme Court justices in Canada are less political and divided in their decisions (Songer et al. 2012). Scholars examining decision-making on the Provincial Court of Appeal in Canada find a modest effect for ideology on votes (Greene et al. 1998) but that this effect is dependent on case type. For instance, Hausegger et al. (2013) note that ideology influenced criminal cases but had less of an effect when it came to family and human rights cases. More recently, Hausegger and Riddell (2020, 52) explain that even judges on the Provincial Court of Appeal acknowledge that they are influenced by their backgrounds and experiences; they note that while "judges do have discretion" they encounter "significant restraints" in being able to make decisions ideologically.

In contrast to the burgeoning literature on decision-making in the American and Canadian courts, studies on the courts in the United Kingdom are less abundant. Important work on the courts within the United Kingdom suggest that courts at all levels are staffed by highly qualified, merit-based professionals (Drewry et al. 2007; Salzberger and Fenn 1999) who tend to adjudicate cases on principles of law more so than attitudinal considerations (Blom-Cooper et al. 2009). Recent work by Masood and Lineberger (2020) demonstrates similar tendencies for judges on the Court of Appeal of England and Wales where legal factors, rather than strategic considerations, influence attention to precedent by appellate court judges. While informative, prior work on all three countries raises a critical puzzle; are hierarchical interactions and attentiveness to precedent comparable across judicial systems?

A Theory on Higher and Lower Court Interactions

A common problem in most hierarchical organizations is the inability of the principal to monitor the actions of all of its subordinates. The Supreme Courts in Canada, the

United Kingdom, and the United States are no different. These High Courts face significant resource constraints that limit the ability of the justices to monitor the actions every judge or panel of judges on the courts of appeals. Nonetheless, Supreme Court justices, in all three countries, should be able to either explicitly or implicitly signal their preferences regarding their precedents and demonstrate their willingness to sanction lower court behavior that deviates from their legal and policy preferences.

Empirical studies that examine the relationship between the U.S. Supreme Court and the appellate courts suggest that judicial decisions, especially in courts lower down the judicial hierarchy, are primarily a function of legal influences (Hettinger et al. 2006). For instance, studies of lower court interactions with the U.S. Supreme Court suggest that the lower federal appellate courts are responsive to the policy pronouncements of the U.S. Supreme Court (Songer et al. 1994). More recently, Masood and Lineberger (2020) find that legal and institutional norms help explain compliance with higher court precedents in the United Kingdom. These accounts, however, conflict with a number of studies that suggest that lower court judges are strategic actors who carefully weigh the preferences of their Supreme Court superiors in making their decisions (Westerland et al. 2010). The conclusion derived from the body of work on the U.S. courts is that both legal and strategic considerations, at least to some extent, influence the decisions of lower court judges. We contend that there are both key similarities and differences between the judicial systems of Canada, the United Kingdom, and the United States that can help illuminate the factors that motivate adherence to precedent. We suggest that institutional characteristics enhance or depress the extent to which lower courts rely on legal or strategic influences when treating precedents of their country's Supreme Court.

Studies on the American courts suggest that U.S. Supreme Court justices are vigorously attentive to the broader policy impact of their decisions (Masood and Kassow 2020; Segal and Spaeth 2002). This suggests that enterprising justices should be interested in maximizing the impact of their decisions on the policies adopted by the lower courts. Thus, our theoretical starting point is grounded in the assumption that policy maximizing Supreme Court justices in Canada and the United Kingdom are similarly interested in having their precedents followed by lower court judges. An additional assumption underlying our account is that judges on the appellate courts have legal and policy preferences, which they pursue within their decisions. However, we also recognize that these lower court decision makers take their role as judges seriously and also value following precedent. Previous empirical assessments of judicial decision-making suggest that any policy preferences that lower

court judges in Canada and the United Kingdom hope to advance within their decisions can only be done within the strict confines of the law. This view is consistent with many accounts of the U.S. courts that demonstrate that judicial decisions, especially in courts lower down the judicial hierarchy, are increasingly influenced by legal factors (Zorn and Bowie 2010). As we have explained, however, there are several key institutional differences between the three judiciaries that provide appellate court judges with opportunities to pursue policy preferences in certain contexts.

Thus far, our argument has highlighted the intuition behind various institutional features enhancing or suppressing the opportunity for appellate judges to shirk from precedent. As a result, our expectations indicate that we should observe the greatest possibility for ideological behavior in the United States, a moderate amount in Canada, and the lowest likelihood in the United Kingdom. However, the similarity in certain institutional characteristics also lead to a rational expectation that legal norms should be the primary driver behind lower court decision-making behavior. We expect that the impact of such legal norms will have the most prominent effect in the United Kingdom, a lesser degree in Canada, and a meaningful, but comparatively smaller effect in the United States. We believe that judicial behavior between Canada, the United Kingdom, and the United States functions as a sliding scale, where institutional variations enhance the propensity with which appellate court judges defer to legal norms or ideological preferences. Thus, our expectation is that the institutional characteristics in the United States create an environment that provides judges the most opportunity to shirk from precedent. We expect to observe a more modest effect of preferential behavior in Canada, while institutional features in the United Kingdom create the most restrictive environment for policy based behavior. Similarly, deference to legal norms within a judge's own court level should influence judicial behavior the most in the United Kingdom, exhibit a moderate effect in Canada, and effect U.S. judges the least among the three judicial systems.

We leverage aggregate institutional differences to test how intermediate judges in each country make decisions, and we do so by focusing on compliance to precedent. We argue that the primary mechanism through which judges on intermediate appellate courts respond to the precedents of the Supreme Court is based on the norm of stare decisis. That is, the principal factor in determining the extent to which appellate court judges are likely to adopt a Supreme Court precedent is how previous panels of judges within the Court of Appeal apply a given precedent. Research on the U.S. courts demonstrates that the strength of a precedent consistently impacts how lower courts respond to Supreme Court precedents in future decisions (Hansford

and Spriggs 2006; Masood et al. 2019). Precedents that are positively treated impact the vitality of a precedent. We believe that such vital precedents are more likely to be cited and positively treated by subsequent panels of judges that come before the appellate courts in each country. Moreover, if our expectation is that the institutional features of the judicial system enhances a deference to the legal norms of the appellate courts, then we should also expect a converse relationship to be true: the way in which a Supreme Court applies its own precedents should not have a significant impact on lower court judges. This expectation is based on the infrequency with which a given Supreme Court applies its own precedents. Since the Supreme Court in each country adjudicates a relatively small number of cases each year, this provides limited opportunities for the justices to treat their precedents and signal their vitality. Therefore, we do not expect a Supreme Court's application of its precedents to influence appellate court citation and treatment behavior more so than prior Court of Appeal applications of Supreme Court precedents.

In sum, we suggest that the mechanisms influencing judicial behavior on appellate courts in Canada, the United Kingdom, and the United States are similar in that judges claim to base their decisions on law. However, due to differences in the features of each judiciary, the degree to which lower court judges rely on the law or ideological preferences can vary across judicial systems. We contend that institutional characteristics can impact judicial behavior in two ways: (1) indirect effects, which determine the nature of judges socialized and promoted to the appellate courts, and (2) direct effects, which condition the costs and benefits of complying or shirking from Supreme Court precedent. The institutional similarities and variations between Canada, the United Kingdom, and the United States represent an important, first look at how such constraints may impact appellate court behavior. Besides sharing a tradition in common law, the countries use similar methods of appointment to the appellate courts and share some similarities within their Supreme Courts. On the other hand, institutional variation among the three judiciaries could result in meaningful differences in the factors motivating lower court attentiveness to Supreme Court precedent.

Data and Research Design

To test our predictions, we examine all intermediate appellate court responses to precedents from the Supreme Courts of the Canada, the United Kingdom, and the United States. We rely on both existing and original data from three sets of sources. First, to assess lower court adherence within the United States, we examine U.S. Court of Appeals responses from a stratified random sample of 300 precedents of the U.S. Supreme Court issued between 1994 and 2005. The sample of U.S. Supreme Court precedents are stratified by circuit and year. We randomly select 20 Supreme Court precedents for each year in the sample. The data for the U.S. Supreme Court's decisions are obtained from the expanded U.S. Supreme Court database (Spaeth et al. 2022).[4] To conduct our analysis on the Canadian courts, we analyze a stratified random sample of 200 from the Canadian Supreme Court between 1990 and 1999. For the English courts, we examine all responses by the Court of Appeals of England and Wales to a stratified sample of 260 House of Lords decisions issued between 1990 and 2002.[5] The data for the Canadian and U.K. Supreme Court's decisions are obtained from the High Courts' Judicial Database (Haynie et al. 2007) and supplemented with our own data collection.[6]

We test our predictions over two outcome variables for each country. The first variable captures the number of lower court citations to a Supreme Court precedent. The second outcome variable accounts for the number of positive treatments by the lower courts of a Supreme Court precedent. To obtain information for our outcome variables for the United States, we rely on Shepard's Citations via "LexisNexis" for both citations and positive treatments of Supreme Court precedents by the courts of appeals. Following the conventions in Shepard's, we count the designation "Cited," "Explained," or "Harmonized," and any explicit positive treatments of the Supreme Court's majority opinion as an appeals court citation of a Supreme Court precedent, coded as 1, and 0 otherwise.[7] We count the designation that a circuit "Followed" the Supreme Court's majority opinion as a positive treatments of the precedent, coded as 1, and 0 otherwise.[8] For Canada, we obtain lower court citation and treatments data from "LexisNexis" CaseSearch, which is a service that is similar to Shepard's Citations in the United States. CaseSearch collects information on all citations and treatments of Canadian Supreme Court precedents. We count the designation "Cited," "Considered," "Referred," and any explicit positive treatments of the Canadian Supreme Court's majority opinion as an appeals court citation of a Supreme Court precedent, coded as 1, and 0 otherwise. We count the designation that a lower court in Canada "Applied" or "Followed" the Supreme Court's majority opinion as a positive treatments of the precedent, coded as 1, and 0 otherwise. Finally, for the United Kingdom, we obtain data for the dependent variables, via "LexisNexis U.K." using their citation service within the "Lexis Law Library," which is the United Kingdom's equivalent to Shepard's Citations in the United States. We follow the approach of previous studies on lower court responses to Supreme Court precedents in the United States by counting the designation "Cited,"

"Explained," or "Harmonized" as a lower court citation to a Supreme Court precedent (Hansford and Spriggs 2006; Masood and Kassow 2023). For the second outcome, we count the designation that the Court of Appeal either "Adopted," "Affirmed," "Applied," "Approved," or "Followed," a precedent as a positive treatments of a Supreme Court precedent by lower court.[9]

To assess the influence of horizontal stare decisis, we include a variable that captures the difference between prior positive and negative appellate court treatments of a Supreme Court precedent. Stated differently, this variable measures the total number of prior positive applications by the intermediate appellate courts, within each country, subtracted by the total number of prior negative applications by the appellate courts. To avoid issues of simultaneity, we lag this variable by 1 year. In order to test the expectation that lower court responses within each country may be a function of how the Supreme Court treats its precedents, we include a variable to account for the vitality of Supreme Court precedent. This variable captures the net difference between the number of positive and negative treatments of precedent by the Supreme Court within each country (see Hansford and Spriggs 2006).

Data for this variable are obtained via Shepard's Citations. For our analysis on the U.S. courts, "Followed" Supreme Court treatments are coded as positive, whereas "Criticized," "Distinguished," "Limited," "Overruled," "Questioned," and "Superseded" are coded as negative treatments. We follow the same coding scheme in Canada and the United Kingdom where we rely on explicit positive and negative applications of precedents by each country's Supreme Court to calculate vitality these scores. We lag the Supreme Court vitality variable by 1 year to prevent issues of simultaneity.

A number of studies suggest that the size of the Supreme Court's majority coalition may influence the propensity of lower court judges or the Supreme Court, itself, to rely on a given precedent in future cases (see Corley et al. 2013). To test this expectation in the U.S. courts, we include a variable that captures the size of the majority coalition that issues a formally argued precedent. This variable is computed by subtracting the number of dissents from the number of majority votes. Since the justices on the Supreme Courts of Canada and the United Kingdom decide cases via panels, rather than sitting en banc, we generate a variable that captures the ratio of justices, within each country, that dissent in a given decision. This variable is constructed by dividing the total number of justices who dissent in a case by the total number of justices that participate on the panel.[10] For the United States, we obtain these data from the U.S. Supreme Court Database. For Canada and the United Kingdom, we obtain these data from the High Court Database.

We include a variable to capture the impact of ideology, which measures the difference between the ideological preferences at the Supreme Court and the appellate courts within each country. More specifically, this variable accounts for the ideological distance between the median member of the enacting Supreme Court and the median of the responding panel of intermediate appellate court judges. For the U.S. courts, the underlying ideology measure for each judge ranges from −1 (liberal) to 1 (conservative) and is based on the Judicial Common Space (JCS) (Epstein et al. 2007). The variable for the ideological distance between the Supreme Court median and responding courts of appeal panel median is based on the absolute value of the difference in JCS scores between the median Supreme Court justice from the Court that issued the decision and the median member of the responding lower court panel. For Canada, we collect information on judges by both the enacting Supreme Court and the citing courts. We begin by coding all the judges who participated in the case and assign them values of either 0 or 1 to define their ideological preferences. A score of 0 denotes a judge appointed by a conservative Prime Minister, while a score of 1 denotes a judge appointed by a liberal executive. To gauge ideological distance, we take the median score of the justices participating in the Supreme Court decision subtracted from the median ideological score of judges in the lower court.[11]

To determine the impact of the ideological distance between the English Court of Appeal and the enacting U.K. House of Lords, we rely on a recent measure developed by Hanretty (2013), which estimates ideal points for each Supreme Court justice between 1969 and 2009. In constructing this variable, we identify all the justices who are active during each year of our analysis and generate a median ideal point estimate for every year of the Supreme Court. Since no comparable ideal point scores exist for the judges on the Court of Appeal of England and Wales, we use a proxy measure for ideology that comes from the Party of Appointing Prime Minister. This variable is constructed by taking the median ideology of the citing appellate court. A value of "0" signifies a Conservative-appointed judge and a value of "1" indicates a Labour-appointed judge. To determine ideological distance, we take the ideological median of the U.K. Supreme Court panel and subtract it by the ideological median of the lower court. We then take the absolute value of the difference in ideology between the Court of Appeal and the panel of Supreme Court justices who issued the decision.

To account for the large number of cases that are criminal cases, we generate an indicator variable that denotes if the substance of a case deals with non-criminal issues assigned a value of "0" or "1" if the precedent

relates to a criminal case. In addition, a variable for the age of precedent measures the opportunities for a lower court to cite or treat a precedent. This variable is a count of the number of years a precedent is present in the dataset from the time the Supreme Court establishes a precedent to correspond with each observation for the full duration of the intermediate appellate court response data. This variable captures the linear effects of age. Age of precedent squared captures any curvilinear effects that the age of a precedent may exhibit on patterns of lower court attentiveness to precedents. Data for these variables are obtained from the U.S. Supreme Court Database for the United States and the High Court Database for Canada and the United Kingdom.

Empirical Results

Are Supreme Court justices in Canada, the United Kingdom, and the United States able to influence the likelihood that judges on the intermediate appellate courts within their respective judiciaries follow their precedents? The short answer is yes. Table 2 presents information on the frequency with which the intermediate appellate courts follow the precedents of their court of last resort. These data show that positive treatments are approximately 6 times more likely to occur than negative applications in the United Kingdom and Canada, and three times more likely in the United States. Not surprisingly, lower court

judges in the U.K. cite and treat House of Lords precedents with the lowest frequency due to a smaller caseload than their American and Canadian counterparts. Nevertheless, the overall pattern is clear: lower court judges largely follow the precedents of their country's Supreme Court.

Table 3 presents the results for the citation model where we calculate the predicted counts. Since our outcome variables are counts of lower court citations and positive treatments of precedent, we rely on event count models. To account for the over-dispersed nature of the data, we estimate a series of negative binomial models.[12] The results across the models indicate that appellate court judges in all three countries are attuned to legal factors rather than a vigorous deference to the preferences of the country's Supreme Court.

The substantive results indicate that vitality of a precedent within the Courts of Appeals of the United States, Canada, and the United Kingdom exerts a positive effect on citations to a Supreme Court precedent. The results in the United States indicate that going from the minimum to the maximum value of the vitality variable approximately doubles the number of citations every year within each circuit of the U.S. Courts of Appeals.[13] In Canada, the effect is also positive and strong. The predicted number of citations is 22.8 for low levels of Court of Appeals.

Appeal vitality at −2, and at higher values of a vitality, the predicted number of citations is approximately 47

Table 2. Lower Court Citation and Treatment of Supreme Court Precedent.

	Citations	Positive treatments	Negative treatments
United States	12,475	4,026	1,247
Canada	6,850	1,225	272
United Kingdom	1,139	488	72

Note: We obtain treatment data from Shepard's Citations in the United States, LexisNexis CaseSearch in Canada, and LexisNexis in the United Kingdom. Each citation is identified as "positive," "negative" or "neutral."

Table 3. Negative Binomial Models of Lower Court Citations of Supreme Court.

	United States	Canada	United Kingdom
Court of Appeal vitality	0.111* (0.029)	0.040* (0.005)	0.433* (0.070)
Supreme Court vitality	0.399* (0.057)	0.126* (0.019)	0.372* (0.115)
Supreme Court vote margin	−0.021 (0.011)	0.267 (0.161)	−0.822* (0.275)
Ideological distance	−0.447 (0.278)	−0.099 (0.058)	−0.351 (0.348)
Criminal case	1.115* (0.090)	0.120 (0.097)	0.126 (0.235)
Age of precedent	−0.136* (0.034)	0.128* (0.027)	0.126* (0.030)
Age of precedent^2	0.004* (0.002)	−0.004* (0.001)	−0.004* (0.002)
Constant	0.236* (0.144)	1.877* (0.147)	−0.471 (0.297)
Observations	29,056	5,733	4,126

Note: The outcome variable is the count of intermediate appellate court citations of Supreme Court precedent per circuit-year within the United States and per year within Canada and the United Kingdom. The standard errors, clustered on the precedent, are reported in parentheses. *$p < 0.05$.
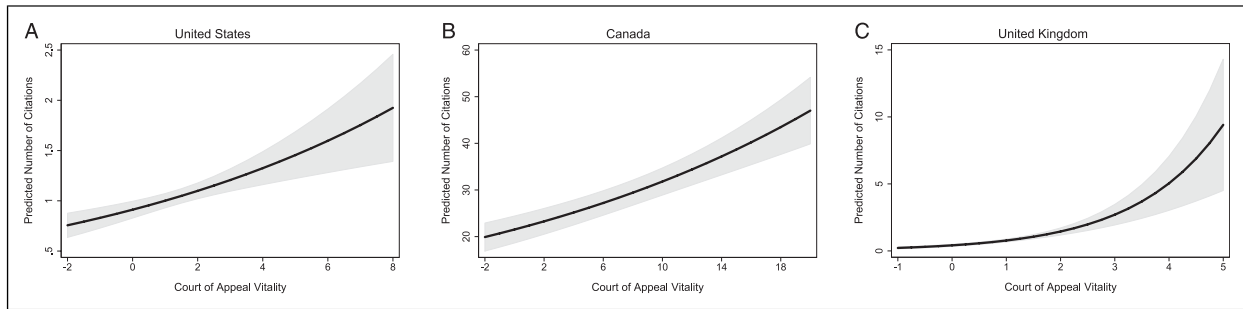
Figure 1. Influences on lower court citations of Supreme Court precedent. Note: To plot these effects, we generate the predicted counts based on the average of predicted counts across all real values in the data. The solid line represents the predicted number of citations of Supreme precedent per circuit-year in the United States, and the predicted number of citations per year in Canada and the United Kingdom. The shaded area represents 95% confidence intervals.

Table 4. Negative Binomial Models of Lower Court Positive Treatments of Supreme Court.

	United States	Canada	United Kingdom
Court of Appeal vitality	0.250* (0.031)	0.051* (0.008)	0.589* (0.115)
Supreme Court vitality	0.196* (0.070)	0.101* (0.018)	0.190 (0.133)
Supreme Court vote margin	−0.026* (0.010)	0.466 (0.248)	−0.590*(0.259)
Ideological distance	−0.349 (0.221)	−0.124 (0.064)	−0.366 (0.406)
Criminal case	0.579* (0.069)	−0.045 (0.101)	−0.142 (0.264)
Age of precedent	−0.173* (0.029)	0.076* (0.032)	0.044 (0.030)
Age of precedent^2	0.009* (0.002)	−0.003* (0.002)	−0.001 (0.002)
Constant	−1.541* (0.109)	0.569* (0.253)	−1.316* (0.327)
Observations	29,056	5,733	4,126

Note: The outcome variable is the count of intermediate appellate court positive treatments of Supreme Court precedent per circuit-year within the United States and positive treatments per year within Canada and the United Kingdom. The standard errors, clustered on the precedent, are reported in parentheses. $*p < 0.05$.
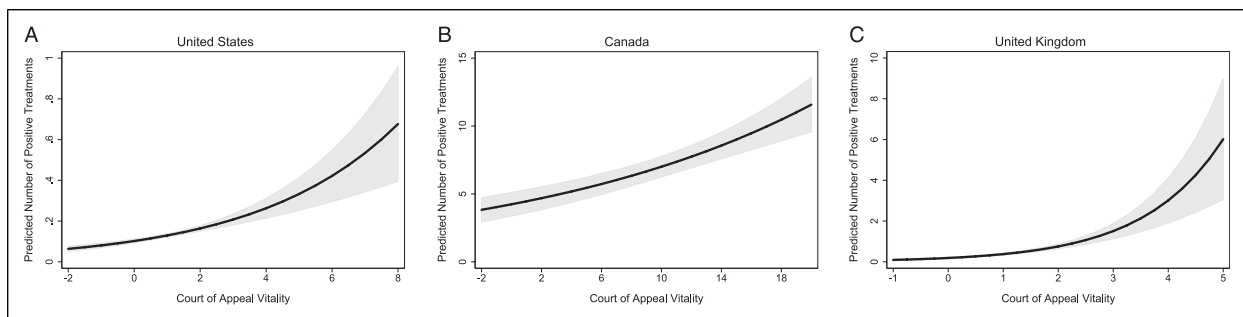

Figure 2. Influences on lower court positive treatments of Supreme Court precedent. Note: To plot these effects, we generate the predicted counts based on the average of counts across all real values in the data. The solid line represents the predicted number of positive treatments of Supreme precedent per circuit-year in the United States, and the predicted number of positive treatments per year in Canada and the United Kingdom. The shaded area represents 95% confidence intervals.

citations. Within the United Kingdom, when Court of Appeal vitality is at its minimum, the predicted number of cites is approximately 0.23. At its maximum value of 5, the predicted number of citations increases to approximately 10 citations. As Figure 1 illustrates,

this represents a very large effect within all three countries.

The variable for Supreme Court vitality exerts a significant but substantively small effect on the number of citations, especially in comparison to Court of

Appeal vitality. The results are similar for the Supreme Court vitality variable across all three countries. The muted substantive effect could be due to the fact that courts of last resort adjudicate such a small number of cases that limit the opportunities for the top court to apply a precedent. Interestingly, the variable for ideological distance between the lower court and the median of the Supreme Court is not significant within any of the three countries. These results suggest that lower court judges that are ideologically distant from the contemporary Supreme Court are not more or less likely to cite a Supreme Court precedent.

Table 4 presents the results for the positive treatment model. Though positive applications occur more frequently than negative applications, positive treatments remain a relatively rare event (see Hansford and Spriggs 2006). Overall, the results between the citation and the positive treatments model are very similar. As Court of Appeals vitality moves from its minimum value at −2 to its maximum of 8, the frequency of positive treatments increases by approximately 0.7 positive applications per circuit per year within the U.S. Courts of Appeals. Figure 2 highlights this effect. The effect of Court of Appeal vitality is multiplicatively higher when we again consider that the unit-of-analysis is "circuit-year precedent," which projects a full effect going from the minimum to the maximum value of 58.8 total positive treatments. The effect of Court of Appeal vitality is also significant and positive in Canada. The number of positive treatments goes by approximately 5 going from the minimum to the maximum value of the variable. Similarly, within the United Kingdom, lower court vitality exerts a positive effect on the propensity of the English Court of Appeal to positively treat the Supreme Court's precedents in future decisions. The variable for Supreme Court vitality is again significant for the United States and Canada but not the United Kingdom. The substantive effect of the Supreme Court vitality is again muted compared to the effect of Court of Appeal vitality. Additionally, the variable for ideological distance is once again not significant across the judicial systems.

Taken together, these results suggest that appellate court judges across judicial systems are similarly influenced by horizontal factors rather than ideological or top-down considerations. Implicit within these results is the reality that institutional variation across the three systems does not meaningfully impact lower court adherence to precedent. Ultimately, the results demonstrate that the prior treatment of precedent by peer judges, within the intermediate appellate courts, in each country, exerts the greatest influence on the propensity to comply with a given precedent. These findings have important implications for a more comprehensive understanding of higher and lower court interactions in a comparative context.

Discussion and Conclusion

Judicial scholars devote considerable attention to analyses of hierarchical processes within the American courts. Our study bridges a critical void in the compliance literature by exploring the influences on hierarchical interactions within comparative courts. In doing so, we set out to answer key questions within common law judiciaries. First, to what extent do lower courts rely on Supreme Court precedent? Second, what motivates the frequency with which lower court judges follow certain precedents but not others? To address these questions, we examine compliance in three common law countries. Our results are surprising yet highly intriguing. While we expected institutional variation across the three countries to asymmetrically impact appellate-level judges' willingness to adhere to precedent, we find very different results. Our findings suggest that instead of institutional variation, such as the appointment process, the size of the judiciary, and other judicial norms within each country, impacting levels of compliance, it is a general adherence to legal factors that motivate compliance across the three judicial systems.

Our aim was to assess the efficacy of a previously untested theoretical framework where distinct institutional factors could influence how inferior court judges respond to the precedents of their country's court of last resort. From a theoretical perspective, the differences in the selection processes across national judicial systems should manifest in inherently different types of judges getting on the bench. Such institutional idiosyncrasies should produce varying levels of adherence to precedent within each country. Our results provide little support for the notion that ideological preferences influence lower court adherence to Supreme Court precedents. Instead, the results show that lower court judges, in all three countries, are most meaningfully influenced by legal considerations. These findings are important because they bring to bear the value of undertaking comparative studies within law and courts. As much of the hierarchical and judicial compliance literature relies on theories specifically formulated for the American courts, this limits our understanding of the interaction between higher and lower courts. While there are some similarities between the judicial systems of Canada, United Kingdom, and the United States, these legal environments are not identical. By testing theories in comparative contexts, we can better understand the extent to which influences on decision-making behavior are transportable across judicial systems. Further theoretical development on judicial compliance, that accounts for institutional factors, will undoubtedly help improve our understanding of hierarchical relationships within courts.

This research advances our understanding of judicial interactions in several substantive ways. First, the theoretical component is intended to improve our understanding of judicial interactions between two tiers of the judiciary within multiple judicial systems. The theoretical merits of this project speak to how the preferences of judicial superiors, within each country, are communicated down and across each judiciary. As such, the framework expounds on the various mechanisms through which judicial actors are capable of learning from one another. Beyond contributions to the academic literature, these analyses help illuminate the policy influence of lower court judges. Understanding how judges behave is necessary for understanding how law and policy takes shape and how institutional context may, under certain conditions, moderate judicial behavior. In light of burgeoning caseloads within each country, the intermediate appellate courts effectively serve as the court of last resort within common law judicial systems. This makes intermediate appellate courts a key conduit to doctrinal development.

As one of the first attempts to study judicial compliance within multiple judicial systems, we have just scratched the surface on understanding compliance outside the American context. The comparative focus of this research provides a better understanding of how ideological and institutional differences within judicial systems and between tiers of the judiciary can influence judicial behavior. Although there is increasing attention toward comparative judicial research that has opened up new avenues for comprehending courts, much work remains to be done on assessing the generalizability of the findings within intermediate appellate courts outside of the United States. Our theory and empirical framework present opportunities for research on a host of hypotheses on comparative courts that include agenda setting, opinion writing, and separation of powers influences, to name a few. Ultimately, building on this work can help scholars corroborate, refute, or refine our understanding of hierarchical interactions within the courts. This project also contributes to a broader understanding of courts in a comparative context by illustrating that scholars cannot easily assume that frameworks developed for American courts are always transportable to other countries. Finally, our work highlights the need to explore additional judicial systems to determine what institutional and contextual factors can demonstrably influence decision-making behavior. Addressing these queries will significantly bolster our understanding of judicial behavior, legal development, and higher and lower court interactions in comparative context.

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Data Availability Statement

Data and replication files will be available at: https://dataverse.harvard.edu/dataverse/alimasood (Masood and Bowie 2023).

Supplemental Material

Supplemental material for this article is available online.

Notes

1. The highest court in the United Kingdom until 2009 was the "Appellate Committee of the House of Lords." The Constitutional Reform Act of 2005 abolished the judicial functions of the House of Lords and established a new court called the Supreme Court in the United Kingdom. Given the name changes and to avoid stylistic monotony, we use the terms "High Court," "House of Lords," and "Supreme Court" interchangeability when referencing the courts of last resort within the three countries.
2. Judges on the High Court are appointed from a pool of candidates with no less than 10 years experience as a barrister. In practice, the average experience for selected judges centers around 25 years.
3. This is the typical process employed for a judge who is being elevated and already holds a judicial position. In 2005, due to criticisms of cronyism, opponents urged the prime minister to consult with the chief justice of the Canadian Supreme Court to fill judicial vacancies to ensure a fair, apolitical appointment.
4. The U.S. Supreme Court database is maintained by the Center for Empirical Research in the Law at Washington University in St Louis and is available at http://scdb.wustl.edu.
5. We acknowledge that the years of analysis for the three countries are not uniform due to resource constraints in data

collection. Our strategy in selecting the years for the U.S. courts was to analyze the period that covers the longest natural Court (i.e., no change in the membership of the Court including the chief justice) in the modern Supreme Court era. We then selected a stratified random sample of cases from Canada from the same decade where we started collection on the U.S. Supreme Court, which also represents a period of time with no change in chief justice. This time period also corresponds with the years available for Canada in the High Court Judicial Database. We employed a similar strategy for the United Kingdom but collected a few additional years due to the smaller docket size of United Kingdom's court of last resort that goes all the way up to the final year available in the High Court Database. The years of analysis for each country also represent a period of stability where no major judicial reforms take place. We have no reason to expect that the selection of time periods biases the results in any way.

6. The High Court Judicial Database (HCJD) is a public access database supported by the National Science Foundation (NSF). The HCJD data covers the period 1970–2002. The data are available at http://www.songerproject.org/national-high-courts.html

7. We are careful in excluding Supreme Court citations that result from explicit negative treatment of a Supreme Court precedent because such negative citations capture something fundamentally different from our claims.

8. The values of the outcome variables do not include citations from dissenting or concurring opinions, as these do not directly relate to the Supreme Court's majority opinion.

9. To account for any potential issues of heteroscedasticity, we cluster the standard errors on the Supreme Court precedent within each country.

10. For instance, a unanimously issued decision will have a vote margin of 0, whereas a precedent with two dissenting justices of the five on the panel will equal a vote margin of 0.4.

11. We acknowledge that there are alternative measures available for ideology in Canada. However, given that there are not corresponding scores for both the Supreme Court of Canada and the Court of Appeals, we rely on the party of the appointing Prime Minister as the measure for ideology in both sets of courts. This allows us to discern the ideological distance between the enacting Supreme Court and the responding appellate court panel for the observations in Canada.

12. We also estimate zero-inflated models for both outcome variables and find very similar results. Given the similarly in results, we report the estimates of the more parsimonious models.

13. While the substantive impact of Court of Appeal vitality may seem modest on the surface, recall that our unit of analysis is circuit-year precedent. As the average number of years for citation and treatment by the circuit courts is 7 years in our data, and there are 12 circuits below, this

means that going from the minimum to the maximum value of the variable results in approximately 168 additional citations.

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