
16. A bottom-up approach to lower court influence on the Supreme Court of the United Kingdom

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INTRODUCTION

Written opinions play a pivotal role within the courts and the judicial decision-making process. Courts at every judicial level issue decision along with written opinions to justify legal outcomes. The language provided within written opinions is critical in that it offers guidance to judicial decision makers, within both higher and lower courts, to adopt or reject such rationales in subsequent cases that come before the courts. The fact that judges learn from each other is well-established in the literature (Baum 2006; Cameron, Segal, and Songer 2000; Lindquist and Klein 2006; Masood, Kassow, and Songer 2017, 2019; Songer, Segal, and Cameron 1994). A key mechanism through which judges learn from each other is by incorporating the language of written opinions in their future decisions, as practiced within the American courts (Bowie and Savchak 2022; Corley, Collins, and Calvin 2011; Masood and Kassow 2020, 2023). Studies suggest that the written content of lower court opinions is highly influential in shaping the language of United States Supreme Court opinions by providing the reasoning which helps various judicial audiences “understand the law, and thus the outcome of the case” (Songer 1990, 307). Seen in this way, lower court opinions provide a blueprint for higher court judges when crafting their judgments.

Lower court opinion influence has regularly been studied in the American context, and we know that justices on the U.S. Supreme Court routinely lean on the writings of judges on the U.S. Courts of Appeals (Corley, Collins, and Calvin 2011), as well as state supreme court justices, to craft their own legal justifications (Bowie and Savchak 2022). For example, scholars have found that U.S. Supreme Court justices directly incorporate language from the lower court opinion into their own decisions, thus codifying the language from the lower courts as national law (Corley, Collins, and Calvin 2011; Bowie and Savchak 2022). U.S. Supreme Court justices borrow lower court language in various ways, including the case facts and explanations of statutory law or precedent to the reasoning behind a decision (Corley, Collins, and Calvin 2011).

We focus on the judicial opinion because it is the principal mode of written communication within the judiciary. Corley and Wedeking (2014) note that “language is important because it is the primary way that political and legal actors communicate with each other” (36). We argue that higher court justices in the UK are more likely to incorporate language from lower court opinions that are written analytically, with certainty, and with little emotion. Compared to the growing number of studies on the American courts, very little work examines the nature of opinion borrowing from a comparative context (but see Bowie et al. 2024). We believe that studying judicial systems like the United Kingdom is useful in understanding the extent to which judges borrow language from each other in varying institutional environments and,

concurrently, how language in the lower court opinion can shape the content of higher court opinions, and therefore, the course of law at the national level.

We apply our theory to the UK Supreme Court, analyzing how justices incorporate language from the lower court opinion. A unique feature of the UK judiciary is that nearly all Supreme Court cases emerge from a single lower court, the Court of Appeal of England and Wales (Drewry, Bloom-Cooper, and Blake 2007; Masood and Lineberger 2020). This provides a rich opportunity to understand how the variability in language credibility impacts lower court influence. We leverage novel data from multiple sources to test whether language credibility (as a function of analytical, certain, and emotional writing), within the lower court opinion influences the extent to which the justices borrow language from the lower court opinion. Our results suggest that UK Supreme Court justices are influenced by language credibility displayed in the Court of Appeal of England and Wales opinions. Our work has important new implications for opinion writing practices and lower court influences within a comparative perspective.

IMPORTANCE OF JUDICIAL OPINIONS

The importance of judicial opinions is multifaceted. First and foremost, a written opinion communicates the outcome of a case to the parties involved and establishes legal precedent which constrains the behavior of lower courts (Corley 2008). Opinions are more than mere interpretations of law, though. Judges rarely hold press conferences or give interviews – in addition to their literal legal function, the content of a judicial opinion serves as an important window into the judges’ decision-making process. While each judge must, of course, judge, they do not formulate their decisions in a vacuum based solely on their own legal convictions. For example, several studies demonstrate that attorney briefs (Corley 2008; Black and Owens 2012), oral arguments (Johnson et al. 2006; Gleason 2019, 2020; Gleason and Smart 2023), amicus curiae briefs (Canelo 2022), and lower court opinions (Corley, Collins, and Calvin 2011; Savchak and Bowie 2016; Bowie and Savchak 2019, 2022) all factor vitally into how opinions are written. Scholarship using plagiarism-detection software has also revealed the phenomenon of “borrowing” where both United States Supreme Court justices (Corley, Collins, and Calvin 2011) and state supreme court justices (Savchak and Bowie 2016; Bowie and Savchak 2019) habitually pluck language and syntax directly from lower court opinions for use in their own.

Meanwhile, extensive scholarship on the psychology of rhetoric and communication has demonstrated the importance of language credibility in delivering strong and persuasive messages (Black et al. 2016), and scholars have determined that establishing credibility is just as important in the courts (Corley and Wedeking 2014). Credibility studies on the courts show that experienced attorneys whom justices deem credible, generally due to extensive experience, succeed more at the United States Supreme Court (McGuire 1995; Wohlfarth 2009; Black and Owens 2012). Likewise, Canelo (2022) finds that justices are less likely to cite amicus curiae briefs filed by overtly ideological interests, hypothesizing that the Court prefers to cite “credible” sources in order to bolster the credibility and authority of its own decisions.

Such credibility can be sourced from ideological neutrality, but it may also be established through the use of clear and straightforward language. Linguistic clarity, in both attorneys’ arguments and judges’ decisions, is essential to the effective interpretation of the law as well as the eventual enforcement of each court’s ruling (Corley and Wedeking 2014; Owens and

Wedeking 2011). Using language content analysis software, Corley and Wedeking (2014) find that the more certain the language of a United States Supreme Court majority opinion, the more likely lower courts are to treat the decision positively. Further, just as judges at all levels prefer clean, clear, and logical arguments, they tend to eschew the use of overly emotional language (Magidson 1971; Scalia and Garner 2008). Justices reward attorneys who abstain from appeals to emotion in oral arguments (Gleason 2019, 2020; Gleason and Smart 2023), and attorneys who use intensifiers in their briefs are less likely to win on the merits before the Supreme Court (Black et al. 2016). The American legal system's predilection for clear language is also manifested in the borrowing tendencies of judges: they borrow more from amicus briefs with "plain language" that denote "cognitive clarity" (Collins, Corley, and Hamner 2015).

There is little disagreement that judges regularly borrow language from lower court opinions, attorney briefs, and amicus briefs, and judges value clarity in language. It follows from these trends that, first, judges prefer to borrow from clearly written documents (Canelo 2022; Collins, Corley, and Hamner 2015), and second, that clarity and certainty of language influence how lower courts interpret higher court decisions (Corley and Wedeking 2014). Thus, the clarity and persuasiveness of lower court opinions may also influence how higher courts perceive their validity, persuasiveness, and credibility. The UK Supreme Court's proclivity to adopt language from the lower Court of Appeal opinion (Bowie et al. 2024) provides a prime testing ground to understand how lower court opinion credibility and certainty influence higher court opinion content.

THEORETICAL FRAMEWORK

We begin with the premise that the United Kingdom judiciary is a professional, career-based judiciary that selects and promotes judges based on their professional qualifications and experience, rather than their political affiliations or ideological leanings (Blom-Cooper, Dickson, and Drewry 2009; Masood and Bowie 2023). For instance, an essential requirement to become a justice on the UK Supreme Court is to have either served on the High Court of Appeal for two years or to have practiced law in UK courts for at least 15 years (Gee, Hazell, and O'Brien 2015; Masood and Lineberger 2020). A similar requirement exists in order to become a judge on the Court of Appeal of England and Wales, where a candidate must have previously served as a trial court judge or have significant experience in practicing law (Drewry, Bloom-Cooper, and Blake 2007; Malleon and Moules 2010). We argue that in such a career-based system, judges are more likely to share a common professional culture and a commitment to the rule of law, which may lead to more consistency in the use of shared opinion language across different levels of the judiciary. In such a career-based judiciary, opinion language borrowing should be common practice because both justices and appellate judges are likely to adopt common professional norms and writing styles since UK judges, unlike those serving in an ideologically appointed judiciary, are extensively trained in legal writing and reasoning as part of their professional education and are expected to adhere to certain standards and conventions of legal writing throughout their careers. This common language and writing style may be reinforced, and rewarded, through continuing education and professional socialization in advancing up the ranks within the courts, providing opportunities for judges at all levels to interact with each other and adopt similar legal writing tendencies.

In addition to a common professional culture for judges, the absence of ideological interests in the judicial selection process should contribute to high levels of language borrowing between higher and lower courts. That is, in a system where judges are not appointed based on their political affiliations or ideological leanings, there may be less variation in the use of opinion language across different levels of the judiciary. In such a career-based system, judges may be more likely to adopt a neutral or objective approach to the content of their opinions by avoiding using language that is overly partisan or ideologically charged. This should facilitate an environment where Supreme Court justices have a high propensity to borrow opinion language from lower court judges.

Beyond its career-based structure, two additional facets of the United Kingdom judiciary should encourage high levels of language borrowing within its courts. The fact that the Supreme Court almost exclusively draws its cases from the Court of Appeal of England and Wales means that both sets of judges should be highly attentive to each other's opinions (Masood and Lineberger 2020). Since the UK Supreme Court reviews nearly a third of the decisions issued by the Court of Appeal each year, this should encourage Court of Appeal judges to use language that would appeal to the justices given the high rate of review. Moreover, a core distinguishing feature of the UK judiciary is the small number of judges on the Court of Appeal who also represent the primary pool of individuals who are ultimately elevated to the Supreme Court. The small number of appellate court judges (38) and Supreme Court justices (12), all of whom are located in London and are members of the same professional associations, suggests high levels of collegiality and peer-effects amongst these individuals (Darbyshire 2011). In other words, these judges and justices know each other well. For nearly every Supreme Court justice, the judges of the Court of Appeal are former colleagues. This familiarity and collegiality among judges should facilitate an environment of trust and high levels of language borrowing. As such, we expect Supreme Court justices to frequently borrow and adopt language from the opinions of the Court of Appeal of England and Wales.

Language Borrowing, Credibility, and Emotion

As we have suggested, judges should be more likely to engage in opinion borrowing when language is more credible. Given professional expectations that judges should be emotionless and maintain professionalism when communicating to court audiences, judicial credibility may be derived from the use of certain language and the absence of emotional language. High credibility in opinion writing ensures that courts within a judicial hierarchy view the decision as legitimate, increasing its status. Credibility also communicates to litigants and the public that decisions are objective, rational, and justified. Credibility can be assessed in terms of high levels of certainty, logically persuasive justifications, and low levels of emotion. The traditional view of judging suggests opinion authors should engage in careful analysis using logical, consistent, even-handed language in order to best communicate and legitimate decisions to legal communities and the public at large (Burrows 2014; Scalia and Garner 2008).

Common law tradition holds that judges are expected to make unbiased, emotionless decisions and to express judicial views through thoughtful, analytic language that downplays human frailties or perceived weakness. For instance, Maroney (2011) explores the historical origins of judicial dispassion noting that western culture discourages emotion in judicial decision making. Judicial behavior studies have examined emotion in oral arguments (Black et al. 2011; Dietrich, Enos, and Sen 2019; Gleason 2020; Gleason and Smart 2023), legal

briefs (Black et al. 2016; Gleason, Jones, and McBean 2019), concurrences (Corley 2010), and dissenting opinions (Owens and Wedeking 2011). Black et al. (2011) find that emotional language directed at petitioners during oral arguments decreases the likelihood that the U.S. Supreme Court will rule in their favor. Other studies find that justices are likely to engage in more emotional language when they are not part of the majority voting coalition (Corley 2010). While this body of work predicts judicial behavioral outcomes when emotional levels are greater, we take a different view in our research.

We predict that higher levels of emotion will decrease the likelihood of opinion borrowing because it lessens credibility. High levels of emotion are associated with bias, personal proclivities, and less rational thinking (Scalia and Garner 2008). For example, greater levels of emotion in lawyer briefs are associated with lower levels of credibility and are less likely to be convincing for justices to rule on their behalf (Black et al. 2016). However, lower levels of emotion are associated with professionalism, objectivity, and trustworthiness (Black et al. 2016). We expect that emotional language reduces credibility, in turn, decreasing the likelihood that justices will borrow from lower court opinions.

Notably, Corley and Wedeking (2014) find that higher levels of certainty in U.S. Supreme Court opinions increase the likelihood they would receive positive treatment by lower courts. Certainty equates with authoritativeness of language and strongly indicates to lower courts how they should treat precedent (Corley and Wedeking 2014). Reversing this top-down approach to certainty in opinion language, we argue that a bottom-up method is also likely where courts of last resort are more likely to engage in opinion borrowing from lower courts when the opinion contains higher degrees of certainty. Together these theories suggest a dialogue exists between judges at different levels where judges all share the common goal of writing strong, persuasive opinions to make law and communicate it effectively. Certainty is also viewed as persuasive, and thus more likely to lead to opinion borrowing because it reduces a decision maker's cognitive burden, providing a shorthand indicator of credibility and correctness in law. Since legal education stresses the importance of definitive, not tentative, writing (Corley and Wedeking 2014), we would expect English courts of last resort to rely upon and utilize certainty as indicators of credible opinions. While judges undoubtedly vary in their styles of communication including levels of certainty in drafting opinions, this variation does not undermine the notion that opinions containing higher levels of certainty should be borrowed more often (Corley and Wedeking 2014).

DATA AND METHODS

To explore language borrowing practices among UK Supreme Court justices, we compiled a unique dataset involving decisions the Supreme Court reviewed directly from the Court of Appeal of England and Wales between 2009 and 2019, obtained through the British and Irish Legal Institute (BAILII) website. The dataset includes 510 judicial decisions, and our unit of analysis is the Supreme Court majority opinion – Court of Appeal opinion dyad. While we know that United Kingdom Supreme Court justices borrow at noteworthy rates, the goal of this research is to better understand why the justices borrow more or less language from the individual lower court opinions. We suggest that justices' proclivities for language borrowing hinge on whether they deem the lower court opinion language to be credible. In other words, we propose that the distinct wording and writing style of the lower court opinion matter to the

higher court opinion writer, so much so that they may even borrow significant passages from lower court opinions possessing traits suggesting credibility. We used BAILII's case history function to acquire the higher court and lower court opinion texts in each case dyad in order to analyze instances of borrowed language using WCopyFind 4.1.5, a software that identifies language similarities between documents (Bloomfield 2016; Bowie and Savchak 2019; Bowie and Savchak 2022; Bowie et al. 2024; Corley 2008; Corley, Collins, and Calvin 2011; Savchak and Bowie 2016). Our dependent variable is the percentage of a Supreme Court opinion borrowed directly from the lower court decision, where the shortest matching phrases include at least ten words.¹ The range for the dependent variable is 0 to 42%.

Our study utilizes Linguistic Inquiry and Word Count software (LIWC) to measure the impact of key factors on language borrowing in the UK. LIWC is a dictionary-based software program that evaluates text from a single file or group of files. For each file, LIWC processes target words and matches them to its dictionary words. Targeted words are then processed for various structural elements, word count, and punctuation (Pennebaker et al. 2015). For each text file, LIWC produces approximately 90 output continuous variables, each of which measures percentages of targeted words captured that correspond to specific communicative elements. Some examples include summary language variables, including analytical thinking, authenticity, and emotional tone (Pennebaker et al. 2015). LIWC also produces percentages of linguistic, psychological, personal concern, informal language markers, and punctuation.

LIWC is widely used in political science and other social science research to identify linguistic patterns, language and deception, gendered language, social meaning and personality, and hierarchy and status in political groups (Windsor et al. 2019). Text as data programs such as LIWC have also been used in political science research to examine “censorship in social media, crises in authoritarian regimes, foreign policy in state media and leaders’ resolve, diplomacy, radicalization, populism, and presidential popularity (Windsor et al. 2019). LIWC’s summary indices have been shown to be reliable measures of psychological elements of language (Tausczik and Pennebaker 2010; Vaughn 2018) such as analytical thinking (Pennebaker et al. 2015), authenticity (Newman et al. 2003), clout and status (Kacewicz et al. 2014), and emotional tone (Cohn, Mehl and Pennebaker 2004; Kahn et al. 2007; King et al. 2006). It has been “extensively validated and has provided substantial evidence about the social and psychological implications of word use across 70 linguistic categories” (Cohn, Mehl, and Pennebaker 2004, 687). Of eight different sentiment analysis programs, LIWC has the highest correlation with the Lexicoder sentiment dictionary used in social science research (Young and Soroka 2012).

Text analysis is critical to this study of opinion language borrowing, and we include several explanatory variables obtained via LIWC in order to gauge whether a lower court opinion bear features conveying greater credibility. As we note above, LIWC is a widely used text analysis program using dictionary-based word lists to generate scores for various language features, in order to produce our main independent variables (Pennebaker and King 1999).² LIWC assesses texts to identify the percentage of language falling within a specific psychological category for which they have an associated word dictionary. To this point, several studies within judicial politics have utilized LIWC to uncover important relationships within the courts. For instance, scholars reliably utilize LIWC to measure communicative elements in lawyer briefs (Black et al. 2016; Collins, Corley and Hamner 2015), oral arguments (Black et al. 2011; Dietrich, Enos and Sen 2019; Gleason 2020), and written judicial opinions (Corley and Wedeking 2014; Corley 2010; Owens and Wedeking 2011; Rice and Zorn 2016; Wedeking and Zilis 2018).

Corley and Wedeking (2014) rely on LIWC's certainty category to measure the percentage of words in a writing sample to denote degrees of certainty.³ Black et al. (2016) utilize LIWC's affective language category to measure the percentage of words in a writing sample containing word or word stems denoting emotion. Similarly, Gleason (2020) relies on LIWC's affective language category to measure levels of emotion in lawyers' oral arguments, and Gleason, Jones and McBean (2019) use it to measure emotional levels in attorney's briefs. To be sure, the reliability of using LIWC to measure opinion attributes has been well established. Thus, using LIWC for judicial opinions in the United Kingdom provides a viable avenue for assessing the impact of various elements of language on borrowing by the UK Supreme Court.

Three independent variables capture facets of writing that we believe higher court justices associate with credibility in opinion writing, and each of these are measures produced by LIWC-22.⁴ *Analytical Thinking* indicates the extent to which text includes structured and well-reasoned information, where higher values indicate larger amounts of formalized writing and lower values indicate a more casual and conversational narrative within the lower court opinion. This is a summary measure produced by LIWC, which is computed using individual LIWC measures linked to higher order thinking. *Emotional Language* accounts for any language in the lower court opinion expressing either positive or negative emotional language. We expect a negative estimate for this variable because justices should be less likely to incorporate language from lower court opinions that read as emotionally charged. *Certainty* measures language of assuredness and confidence, and we expect a positive estimate for this variable showing that higher court justices borrow more language from lower court writers using unwavering language.

Several control variables account for miscellaneous features possibly affecting the opinion writing process at the United Kingdom Supreme Court. It is well documented that language borrowing can depend on ideological compatibility between the lower and higher court opinions (Corley, Collins, and Calvin 2011; Bowie and Savchak 2022), and ideology has been shown to play a role in decision making in the UK Supreme Court (Hanretty 2020). To control for such influences, we collected data on the party of the appointing Prime Minister for each higher court opinion writer (as a proxy for their political ideology) and the ideological disposition of the lower court opinion within a case dyad. From there, the absolute value of the difference between the party of the justice's appointing Prime Minister and the ideological direction of the lower court opinion makes up the *Ideological Congruence* variable, where 1 equals ideological compatibility between both the lower opinion and the higher court opinion writer, and 0 otherwise. Meanwhile, *Affirm* measures whether a majority of the higher court is in agreement with the lower court disposition, where 1 equals agreement, and 0 otherwise.

Since longer opinions offer greater opportunity for language borrowing, we include *Opinion Length*, which measures the total number of words in the lower court opinion, and we use the natural log of this number (Bowie and Savchak 2022; Corley, Collins, and Calvin 2011; Savchak and Bowie 2016). *Freshman Justice* accounts for any acclimation effects experienced by justices new to the higher court bench, where 1 indicates that the higher court opinion writer is within the first two years of service at the UK Supreme Court, and 0 otherwise.⁵ And, research has shown that more salient cases, those of greater importance and likely to garner more attention, are less likely to involve lower court opinion language (Corley, Collins, and Calvin 2011). We include *Salience*, where the higher court case is decided by a panel of more than five justices equals 1, and 0 otherwise (Hanretty 2020).

Table 16.1 *OLS regression model of lower court influence on UK Supreme Court opinion writing (2009–2019)*

Independent Variable	Expectation	Coefficient Estimate	Robust Standard Error
Analytical Thinking	+	0.142*	0.07
Emotional Language	-	-3.74*	1.27
Certainty	+	2.32	1.90
Ideological Congruence	—	0.88	0.66
Affirm	—	0.08	0.66
Opinion Length	—	1.73*	0.40
Freshman Justice	—	0.96	0.71
Salience	—	-2.19*	0.87
Constant	—	-19.9*	7.58
R ²		0.0679	
F-test		6.28*	
N		510	

Note: The unit of analysis is the UK Supreme Court – Court of Appeal opinion dyad. The dependent variable is the percentage of the lower court opinion that is borrowed by the UK Supreme Court opinion with the shortest phrase match is set at ten words. * $p < .05$ (one-tailed tests).

Source: Authors’ own.

EMPIRICAL RESULTS

Are UK Supreme Court justices more likely to borrow language from lower court opinions written with more credibility? Results from our regression model with robust standard errors are reported in Table 16.1. Overall, we find strong results from several of our predictions regarding credibility in lower court opinion writing, and these results are consistent with what one would expect within a highly professional and career-based judiciary. The estimate for *Analytical Thinking* is positive and significant, showing that when Court of Appeal judges write with a larger concentration of higher order and structured reasoning, the UK Supreme Court justices are more likely to borrow language from their opinions, while less analytical writing has little influence on the higher court justices. Substantively, going from the minimum to the maximum value of this variable, we see a greater than two-fold increase in language borrowing by the UK Supreme Court justices as the amount of analytical writing increases, as shown in Figure 16.1.

Emotional Language also matters in opinion language borrowing, where the estimate is negative and significant, showing that emotional language is borrowed at disfavorable levels by the UK Supreme Court justices compared to Court of Appeal opinions exhibiting a more neutral tone. Figure 16.2 shows that when going from the minimum to the maximum values of this variable, we see a sharp decline with almost no language borrowed from opinions reading at the highest levels of emotional tonality. This suggests that all else being equal, UK Supreme Court justices nearly always prefer borrowing language from emotionally neutral lower court opinions. Surprisingly, the estimate for *Certainty* does not support our hypothesis regarding certainty and opinion language borrowing.

Two of our control variables, *Opinion Length* and *Salience*, have statistically significant effects. Court of Appeal opinion length has a substantively meaningful and positive effect on

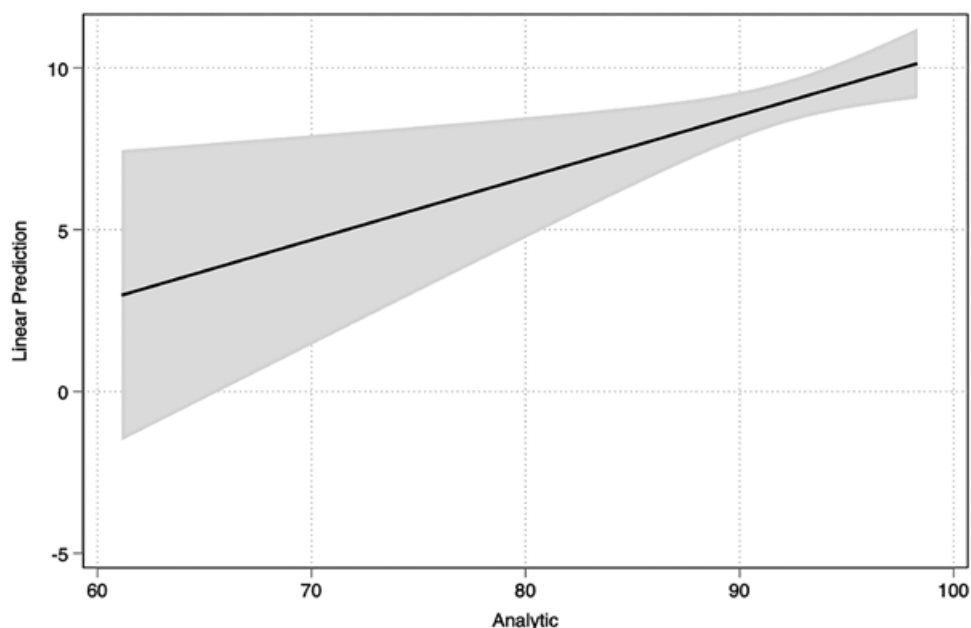


Figure 16.1 Impact of analytic writing on opinion borrowing by UK Supreme Court

Source: Author's own.

language borrowing by the UK Supreme Court justices, where we see a strong positive effect from almost no borrowing to approximately 12% of language borrowed from opinions as their length increases. This effect is illustrated in Figure 16.3. Finally, our results show that opinion borrowing in salient cases decreases. In other words, we find that Supreme Court justices incorporate more language from the lower court opinion in non-salient cases. Altogether, these results provide significant evidence that judicial decision-makers extensively borrow language in the UK judiciary. The level of borrowing is comparatively higher than in prior studies on the American courts (see Collins, Corley, and Calvin 2011; Bowie and Savchak 2022). Our findings suggest that the higher rates of language borrowing are due to the institutional idiosyncrasies of the UK courts, where merit-based career promotion, collegiality, and small-network peer effects bring about high levels of language borrowing in the UK Supreme Court.

CONCLUSION

While scholars have learned a great deal about lower court opinion content influences on higher courts in the U.S. judiciary, less is known about how this development of legal influence manifests comparatively, particularly in other common law courts. We have suggested that a key feature of the UK judiciary is that nearly all Supreme Court cases emerge from a single lower court, the Court of Appeal of England and Wales (Drewry, Bloom-Cooper, and Blake 2007; Masood and Lineberger 2020). We theorize that such an institutional design should be

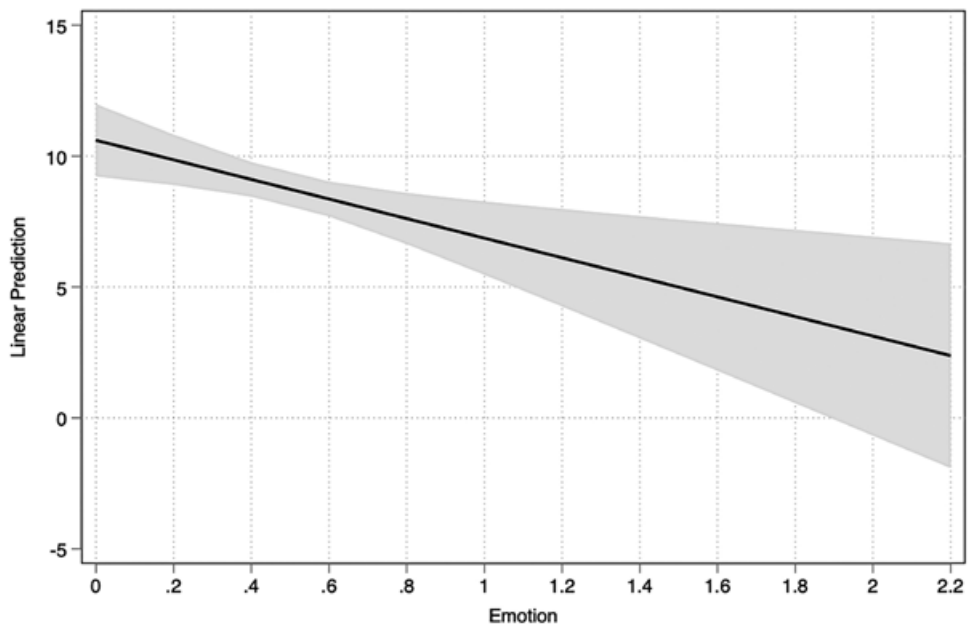


Figure 16.2 *Impact of emotional language on opinion borrowing by UK Supreme Court*

Source: Author’s own.

conducive to higher levels of language borrowing among judicial decision-makers compared to judicial systems where the Supreme Court reviews decisions from many jurisdictions. We also theorize that the UK judiciary is a more professional, career-based judiciary, which should encourage comparatively higher levels of language borrowing than judicial systems like the United States, where the courts are largely staffed through ideological rather than merit-based appointments. We also argue that the small number of justices and judges in the top two tiers of the UK courts facilitate an environment of significant familiarity, collegiality, and peer-effects among Supreme Court justices and judges on the Court of Appeal of England and Wales, and that this work environment encourages high rates of language borrowing.

We argue that higher court judges are more likely to incorporate credible lower court opinion language. We suggest that lower court opinions that utilize analytical language, refrain from emotional content, and are written with certainty will influence the borrowing tendencies of UK Supreme Court justices. While we find that certainty did not affect borrowing, analytical language, emotionally neutral language, and opinion length and salience all impact the amount of language adopted from the lower court opinion. These findings align with the career-based judiciary that values expertise, credible writing, and neutral language. More importantly, our results offer interesting insight into the language borrowing practices among UK Supreme Court justices, as well as the ability of Court of Appeal judges to influence the development of law through their written opinions. UK Supreme Court justices borrow extensively (Bowie et al. 2024) and at a comparatively higher rate than judges in American courts (see Bowie and Savchak 2022; Corley, Collins, and Calvin 2011; Savchak and Bowie

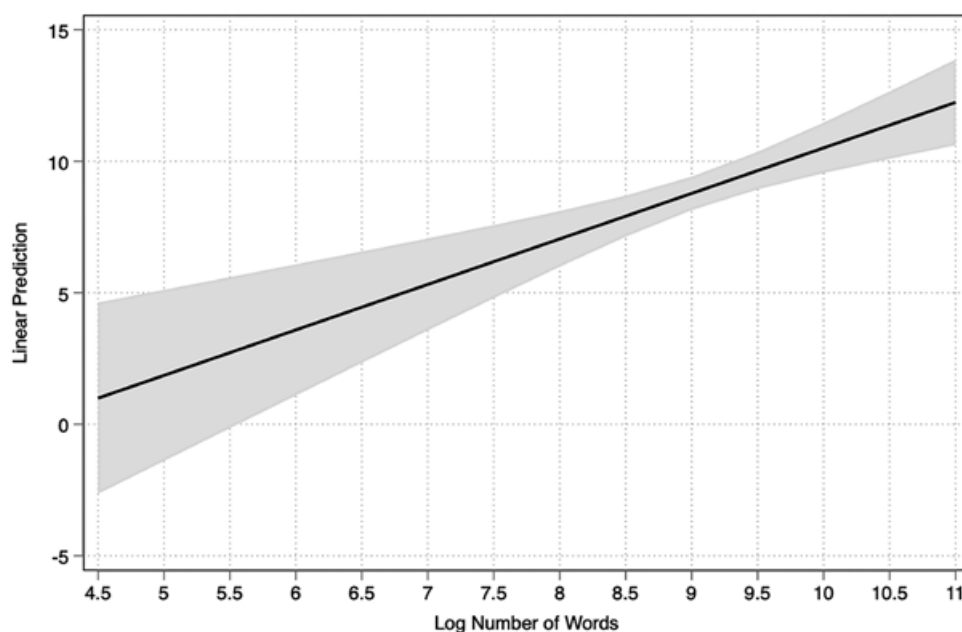


Figure 16.3 Impact of log number of words on opinion borrowing by UK Supreme Court

Source: Author's own.

2016). Our results provide evidence that such stronger language borrowing tendencies are due to institutional idiosyncrasies of the UK judiciary, where merit-based career promotion, strong norms of collegiality, and small-network peer effects create an environment conducive to high levels of borrowing at the UK Supreme Court.

NOTES

1. We employed the standard WCopyFind programming used in past research to identify language similarities within a case dyad. (Corley 2008; Corley, Collins, and Calvin (2011; Bowie et al. 2023). Matches exclude case citations, as well as indiscriminate language, like numbers, outer punctuation, non-words, and word capitalizations. We allowed the software to permit minor editing within a phrase to allow for slight imperfections. The minimum percentage of matches within a phrase was set to eighty.
2. LIWC's developers, Pennebaker et al. (2015), indicate that LIWC's English-text dictionary includes words from over 181,000 text samples gathered since 1986 from sources in the United States, England, Canada, New Zealand, and Australia. Since its first version, hundreds of studies have validated LIWC's categories across dozens of psychological domains, and dozens of studies have been analyzed using LIWC's dictionary.
3. While tentativeness is a category contained in LIWC's dictionary, Corley and Wedeking (2014) explain that it is not a suitable measure of uncertainty as "certainty" and "tentativeness" are "only weakly correlated" (2014, 45).

4. LIWC-22 revises its “certainty” variable as “certitude” with a dictionary including 131 words and word stems. Examples of “certitude” included in LIWC’s dictionary are “really,” “actually,” “of course,” and “real” (Boyd et al. 2022). Boyd et al. (2022) note that the updated certitude category replaces the original cognitive processing dimension of certainty. “Unlike all-or-none thinking, certitude appears to reflect a degree of bravado, boasting of certainty that often reveals an insecurity or lack of truly verifiable, concrete information, which we’ve labeled ‘certitude’” (17). The LIWC 2015 variable “certainty” is correlated with LIWC’s new constructs, “all-or-none thinking” (“allnone”) and “certitude” (Boyd et al. 2022). LIWC-22 retains the “affect” category, with a dictionary containing 2,999 words and word stems, such as “good,” “well,” and “love” (Boyd et al. 2022). However, LIWC-22 updates “affect” to distinguish between “emotion words” and “sentiment” (Boyd et al. 2022, 18). LIWC’s summary variable, “emotional tone” denotes degrees of positive and negative emotional tone and sentiment.
5. The UK Supreme Court was created in 2009, so technically each justice could be categorized as a freshman justice in the years 2009 and 2010. To account for whether a justice was new, we code any justice serving on the predecessor court, the House of Lords as 0. All new justices in their first two years of service on either court of last resort were coded as 1.

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