The Predictability of Judicial Interruptions at Oral Argument in the Australian High Court

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Conventional wisdom in judicial politics is that judicial behavior at U.S. Supreme Court oral argument is exceptional in its predictability based on Justice ideology, gender, and partisanship. This understanding is largely anecdotal, with few extant studies of oral argument behavior in comparative apex courts. This Article examines one aspect of oral argument in the High Court of Australia: interruptions. Utilizing a novel dataset of oral argument proceedings, we show that Australian Justices behave predictably in oral argument based on individual and case-level characteristics, despite institutional design features that militate against interruptive predictability.

Introduction

Increasing attention is being paid to interruption behavior, particularly social norms relating to gender differences: not only are women more likely to be interrupted, but this is true even in contexts where women possess significant power, such as in Congress (Kathlene 1994; Mendelberg, Karpowitz, and Oliphant 2014) and boardrooms (Dhir 2015). In recent years, scholars have observed these same interruption behavior patterns at U.S. Supreme Court oral arguments: female Justices are disproportionately interrupted compared to their male counterparts (Jacobi and Schweers 2017; Feldman and Gill 2019; Patton and Smith 2017). A Justice's ideology and experience also predict interruptive behavior, and interruption rates increase when a Justice is less likely to agree with a colleague or attorney (Jacobi and Sag 2019; Patton and Smith 2020).

Psychologists and sociologists have long found interruptions to be indications of dominance

behavior between individuals (Zimmerman and West 1975; Watts 1991). Interruptions then, have significance beyond social dynamics: if interruptions are reflective—and potentially reinforcing—of power imbalances, interruptions can limit the contributions of some oral argument participants and promote others. The systematic patterns between genders, for example, raises concerns that greater representation of women on the Court, among both Justices and advocates, will not prevent women's voices being drowned out. Yet, there are very few studies of judicial behavior at oral argument in courts outside of the United States.

This Article examines the drivers of interruptions in oral argument at the High Court of Australia. Australia presents an ideal context in which to study this question. A growing body of empirical scholarship has demonstrated that High Court Justices, like their American counterparts, vote in line with *ex ante* ideological and partisan preferences (Robinson, Leslie, and Sheppard 2021), and that case outcomes are predicable based on oral argument (Jacobi, Robinson, and Leslie 2022). There is good reason, then, to believe that interruptions at the High Court may also mirror interruptive behavior at the U.S. Supreme Court. Yet, the Australian case is a tough test of whether judicial features (ideology and gender, among others) and case features (the winner and the issue area, among others) drive interruptions, due to two key institutional design features of the High Court. First, the time for oral argument at the Australian High Court is *ex ante* unlimited, with oral argument typically measured in days rather than hours (Bennett 2007). Scholars have hypothesized that time limited oral argument—as occurs in U.S. Supreme Court oral argument—creates competition for speaking time, with interruptions a product of that competition (Johnson 2001; Johnson, Black, and Wedeking 2009; Johnson, Wahlbeck, and Spriggs 2006). If true, we might expect that individual and case-level characteristics are less predictive of interruptions in the High Court than the Supreme Court. Second, unlike the U.S. Supreme Court, the Australian Chief Justice has unusually powerful levers of control over both case dockets and oral arguments, including

choosing the size and personnel of the panel that hears the case (Mason 2007). As such, the High Court is more hierarchical, leading to an expectation of deference to the Chief Justice and potentially less disruptive behavior by the puisne (i.e. associate) Justices. Additionally, there is a persistent normative claim that Australian judicial behavior is neither ideologically predictable nor strategic. These differences—if causative—should render interruptions at the Australian High Court unpredictable based on ideology, gender, outcomes, and other factors that make interruptions predictable for its American counterpart.

We analyze all oral arguments in the Australian High Court between 1995 and 2020. We find that, despite institutional design militating against predictability of interruptions, interruptive behavior at the High Court looks remarkably similar to that observed at the U.S. Supreme Court. Specifically, we find that individual Justice characteristics—ideology, experience, and expertise—and case characteristics—voting direction and dissenting behavior—mirror those in the U.S. Supreme Court. However, standard tools for examining the relationship between gender and interruptions yield no effect. This is consistent with our own previous findings (Jacobi, Robinson, and Leslie, 2020); however, given the otherwise consistent findings between High Court and Supreme Court interruptions, this incongruity seems potentially unreliable. Accordingly, we develop a novel methodological approach to further investigate the predictors of interruptions.

Most studies of interruptive behavior control for an individual's respective volubility, given that a person can only be interrupted if they are speaking (Jacobi and Rozema 2018; Johnson, Black, and Wedeking 2009). But this could permit interruption patterns to be masked by differences in speaking patterns between the genders. For example, a potential interrupter may behave differently depending on not only how many words another person has spoken at oral argument, but how long any individual speech event has been going on, systematically reflecting the varying impatience of interrupters at different stages of the argument. Following this theory, we build in a

prediction of the likelihood of an interruption every time any person is speaking. Deploying this approach, we not only confirm the strong impact of Justice characteristics and case features found under the traditional approach of controlling for volubility, we also find a small but significant gender effect similar to that found in the U.S., albeit significantly reduced.

Our findings make three key contributions to the literature on comparative courts generally, and interruptive behavior specifically. First, by examining an example of the oral argument in an apex court beyond the U.S. Supreme Court, our findings contribute to mapping the landscape of comparative judicial institutions. Second, we show that interruptions are predictable based on both Justice and case characteristics in a context where institutional design *ex ante* should render interruptions unpredictable. Third, we develop a novel methodological approach to account for volubility and its interaction with interruptive behavior, one that we argue is better suited to studying and identifying drivers of interruptions generally. Conceiving of interruptions as predictable probabilistic parts of speech has significance for studies of interruptions generally, and U.S. Supreme Court oral argument specifically. Using the probabilistic method, we show that longer arguments are associated with more interruptions, despite less competition for airtime. This directly brings into question the theory that interruptions in the U.S. Supreme Court are a product of time constraints and the harried atmosphere at U.S. oral argument. This Term, the U.S. Supreme Court has changed its structure of oral argument to include a stage where each justice is permitted to question the advocate without interruption. This innovation was developed specifically to reduce interruptions (Deese, 2021), yet it lengthens oral argument, bringing new significance to our findings. As such, our findings have significance for the study of U.S. Supreme Court argument also.

Oral Argument and Interruptions in Judicial Proceedings

Analyses of drivers of judicial behavior at oral argument are shaped by, and feed into, a

debate over the role of oral argument. The traditional, legalistic view sees oral argument as a forum for information-seeking, allowing Justices to directly seek answers from advocates to questions that will help the Justices decide the case and controversy before them (Sullivan and Canty 2015). Oral argument also enables advocates to supplement their written arguments, respond directly to Justices' queries, and emphasize the most important aspects of their arguments (Johnson 2001). Scholars have unearthed questioning patterns of Justices supporting this judicial information-seeking theory (Johnson 2001; Benoit 1989). For example, McAtee and McGuire (2007) suggest that Justices ask more questions in less salient cases because less external information is readily available and so Justices need to ask more questions to gather the information necessary to decide how to vote.

The more ideological or strategic view sees oral argument serving as a forum for coalition building and persuasion among the Justices, who use argument in part to lobby each other and begin coalition building (Johnson 2004; 2001; Johnson, Wahlbeck, and Spriggs 2006). This view has received the concurrence of some Supreme Court Justices, with Justice Kennedy commenting, "the Court is having a conversation with itself through the intermediary of the attorney" and Justice Scalia noting, "It isn't just an interchange between [] counsel and each of the individual Justices [] what is going on is also to some extent an exchange of information among the Justices themselves" (Duke 1988).

Scholars have demonstrated that interruptions affect this information exchange between Justices and counsel and are important for understanding and predicting case outcomes. Jacobi and Rozema (2018) show that interruptions are associated with conflict, such that each interruption between a pair of Justices is associated with a significant decrease in the chances of those Justices voting together in the ultimate outcome of the case. Furthermore, Jacobi and Sag (2019) show that the Justices interrupt the advocates they ultimately vote against at significantly higher rates than

they interrupt the advocates they ultimately vote for.

Additionally, scholars have shown that interruptions are driven by individual Justice characteristics. As discussed, female Justices have been shown to be interrupted disproportionately compared to their male counterparts, both by their colleagues and their technical inferiors, the advocates (Jacobi and Schweers 2017). Justices also interrupt female lawyers more extensively and more frequently than male advocates (Patton and Smith 2020). Scholars have shown that judicial ideology shapes interruptions, with cross-ideological interruptions more common than within-ideological-coalition interruptions (Black, Johnson, and Wedeking 2012; Johnson, Black, and Wedeking 2009; Patton and Smith 2020), and systemic differences between ideological camps, with conservative Justices interrupting more and being interrupted less (Jacobi and Sag 2019). Similarly, experience has been shown to be significant, with more senior Justice interrupting more and being interrupted less (Jacobi and Sag 2019).

Institutional Context: The Australian High Court

Australia is a federal system governed by a national constitution, with a court of last resort at its apex—the High Court of Australia—the primary interpreter of the Australian Constitution, as well as both federal and state law (Mason 1986). The High Court is comprised of seven permanent Justices, including the Chief Justice, each appointed at the discretion of the Prime Minister, eligible to sit until they reach 70, the age of mandatory retirement (Opeskin 2015).

When hearing cases on their merits, the High Court sits on panels of variable size and personnel, both of which are determined by the Chief Justice (Kirby 1999). How oral argument is conducted largely depends on the preferences of the Chief (Bennett 2007; Mason 2007). According to former Chief Justice Anthony Mason, it is the role of the Chief "to control oral argument, to ensure that it is directed to the points at issue and that time is not wasted." (Mason 2007) Consequently, interactions at oral argument have vacillated over the years, with some Chief

Justices preferring a Socratic forum and combative hearings, and others preferring a placid forum, with little Justice-advocate engagement.

There is little doubt that oral argument matters greatly at the High Court. With a strong tradition of orality, it was not until 1997 that the High Court mandated parties provide comprehensive written submissions (Kirby 1999) and the value of written submissions remains mixed, with some Australian judges criticizing written submissions as "little more than a position paper," and as less comprehensible than oral submissions (Beaumont 2001; Kiefel 2010). Accordingly, the High Court spends significant time in oral hearings, with oral argument *ex ante* unlimited, typically running for days rather than hours (Kirby 1999; Bennett 2007; Kiefel 2010).

Australian orthodoxy holds that oral argument is an information-gathering exercise, with Justices interjecting only to probe the advocate on the legal argument presented (Kiefel 2010). On this account, there is no understanding that, like the U.S. Supreme Court, oral argument is a strategic forum, where judicial behavior is driven by the intersection of various Justice characteristics, including gender, ideology, and partisanship. Yet, there is a growing body of scholarship showing that judicial ideology measured prior to appointment is predictive of a Justice's subsequent voting behavior on the High Court (Robinson, Leslie, and Sheppard 2021). Further, Jacobi, Robinson, and Leslie (2022) find that not only does the Chief Justice tend to dominate oral argument more than the other Justices, in terms of various measures of judicial activity, but also the Chief's patterns of behavior seem to be mimicked by the Court overall, leading the authors to conclude that the Chief Justice has influence beyond her single vote. They also find similar patterns between Australian High Court and U.S. Supreme Court Justices, with Justices engaging in judicial advocacy on behalf of the side of the case that they ultimately support, and judicial ideology, gender, and experience acting as predictive drivers of oral argument behavior.

The question of gendered interruptions at Australian oral argument has been only preliminarily analyzed. Loughland (2019) used snapshot data to suggest that the same gender patterns emerge in the Australian Court as the U.S. Supreme Court, with female Justices being interrupted at a higher rate than their male counterparts. However, examining all *en banc* merits hearings between 1995 and 2019, Jacobi, Robinson and Leslie (2020) showed that Loughland's result was a product of the few unrepresentative terms studied, and that, over a twenty-six year period, there was no such gender effect in Australia, at least during merits proceedings where the Court sat *en banc*. Beyond gender, interruptions at Australian oral argument have not been quantitatively examined.[1]

Hypotheses

We expect that interruptions of and by Justices at High Court oral argument are influenced by various extra-legal characteristics, which we place into two categories: individual characteristics, and outcomes characteristics.

Individual characteristics: Multiple studies have evinced the impact of ideological division on both oral argument and interruptive behavior in the United States (Johnson 2004; Patton and Smith 2020). Jacobi and Schweers (2017) show not only that ideology was a significant predictor of interruptions, but that conservative Justices were significantly more disruptive than liberal Justices. Jacobi and Sag (2019) confirmed that this effect arose for the last six decades, during which conservative Justices dominated the Court's personnel. They also show that ideology is predictive of many different forms of activity, including the number of words used by Justices, the level of

[1] There are qualitative studies of oral argument in the High Court of Australia (Tutton, Mack, and Roach Anleu 2018; Opeskin 2016) as well as a quantitative study examining attorney gender and litigation success rate (Smyth and Mishra 2014).

interruptions, and the extent the Justice favored asking questions over comments.

In the Australian context, Robinson, Leslie, and Sheppard (2021) demonstrate the impact of a Justice's ideology on their ultimate decisions in the Australian High Court, and Jacobi, Robinson, and Leslie (2022) find that ideology correlated with judicial activity at oral argument, such as number of words spoken. While the impact of ideology on interruptions in particular has not been tested in the Australian context, the similarity in other behavior to the U.S. Supreme Court leads to an expectation that interruptions will be similarly predictable based on ideology. Given the consistent American findings that conservatives interrupt more and are interrupted less, we also test for systematic differences between the two ideological groups.

Ideology Hypothesis: A Justice's ideology will be predictive of interruptive behavior.

Ideological Division Hypothesis: Conservative Justices will be interrupted less, while interrupting more.

Seniority on the bench—referring to post-appointment experience—has been consistently shown to be a predictor at oral argument (Jacobi and Schweers, 2017; Houston, Li, and Johnson 2021). In the context of interruptions, Jacobi, Robinson and Leslie (2021) find that senior Justices are interrupted less and interrupt more and that experience and gender interact in a significant way: female Justices speak less than male Justices, and more experienced Justices speak more than less experienced Justices; only after more than seven years on the Court is a female Justice expected to speak at the same rate as a male Justice. The inclusion of the variable *Seniority*, then, will capture any effects of apex court judicial experience.

Seniority Hypothesis: Senior Justices will be interrupted less and interrupt more than more junior Justices.

With respect to gender, at the U.S. Supreme Court, female Justices are interrupted more than male Justices (Jacobi and Schweers 2017; Feldman and Gill 2019). In Australia however, the

gender effect on interruptions is less clear, given that Loughland (2019) shows a discriminatory pattern in High Court oral argument in *en banc* cases over two and a half terms, but Jacobi, Robinson, and Leslie (2020) find that when examining all *en banc* oral arguments of the High Court over 25 years, while female Justices interrupted less, there was no evidence female Justices were interrupted more. Yet, there is nothing in the scholarship on Australian legal culture to suggest why Australian oral argument would be less prone to the broad gender patterns found within society in an enormous variety of contexts, especially as other gender norms, including women speaking less than men, hold at Australian High Court oral argument.

Gender Hypothesis: Female Justices will be interrupted more, and interrupt less than male Justices.

The fact that the size and personnel of each High Court panel is determined by the Chief Justice leads to an expectation that the Chief may receive greater deference from both the advocates and other Justices, and accordingly be interrupted less. Jacobi, Robinson, and Leslie (2022) find deference to the Chief Justice in relation to non-interruptive behavior at oral argument and that High Court oral argument reflects the preferences of the Chief Justice. Accordingly, we expect that there could be significantly fewer interruptions of the Chief Justice and variation in the different eras defined by each Chief Justice's leadership. Further, we hypothesize that interruptions may meaningfully vary between puisne Justices of the same versus divergent ideology to the Chief Justice, given the Chief Justice has the power to favor ideological brethren.

Chief Justice Power Hypothesis: Chief Justices will be interrupted less, and interrupt more, than puisne Justices.

Chief Justice Influence Hypothesis: Interruptions levels for the Court overall will vary by Chief Justice era.

Chief Justice Ideological Influence Hypothesis: Puisne Justices who are politically

aligned with the Chief Justice will interrupt more and be interrupted less than those who are politically divergent from the Chief Justice.

Finally, we consider specialization, which refers to each Justices' area(s) of legal specialty. Multiple studies have demonstrated that a judge's issue-area expertise is a determinant of voting behavior and amplifies an individual Justice's ideological propensities (Miller and Curry 2009; Judd and Downing 1990; Robinson, Leslie, and Sheppard 2021). Yet, no study has yet examined the role of specialization on behavior at oral argument. We expect that deference will be given to issue-area specialists in oral argument, resulting in fewer interruptions of them.

Specialization Hypothesis: Justices sitting on a case in which they have a specialism will be more likely to interrupt, and less likely to be interrupted.

We examine interruptions not only in terms of what impacts the Justices, but also what shapes whether advocates are interrupted. Scholars have shown that Justices interrupt advocates more when the Justice will ultimately vote against the advocate (Jacobi and Sag 2019). Thus, predicting when interruptions of attorneys will occur goes a long way to predicting who will win the case at hand, and how individual Justices will vote. We expect that many of the same factors affect attorneys as affect Justices in terms of being interrupted, including ideology, gender, and seniority. We test this to the extent possible.

Advocate hypothesis: Advocates will be interrupted based on similar predictors to Justices. Specifically: female and/or more junior advocates will be interrupted more often that male and/or senior advocates.

Data and Measures

To test our hypotheses, we analyze the transcripts of every High Court oral argument between 1995–2020, where the argument on the merits was heard by a bench of two or more Justices. Oral argument transcripts from 1995 onwards are freely available online, recorded and

compiled by the High Court's internal reporting service (Howard 2007). The transcripts consistently identify case name(s), case number(s), participating Justices, who is speaking, who is interrupting, and the timestamp for each speech episode.

Our dependent variable is the number of interruptions, which we examine in five models: Justice interrupted, Justice interrupter, Justice interrupts counsel, Justice interrupts Justice, and advocate interrupted.[2] Our independent variables comprise individual (Justice and advocate) and case characteristics, with Justice characteristics variables drawn from the Australian High Court Justices Biographical Database, which captures detailed biographical information on all Justices sitting on the Court from 1995. The advocate variables are drawn from each oral argument transcript, which identifies each advocate's gender and seniority. The case- and outcome-level variables are taken from the Australian High Court Database, which codes all panel decisions of the High Court from 1995–2020 across 320 variables.

We deploy four individual Justice characteristics—ideology, gender, specialization, and seniority. Ideology is measured using the Robinson, Leslie, and Sheppard (2021) ideology score, an *ex ante* measure of judicial ideology generated from the content of newspaper coverage of each Justice for the six-month period prior to swearing in. The score ranges from 0 (most conservative) to 1 (most liberal). Gender is a binary variable, where each Justice and advocate is coded as one if female. Seniority denotes the number of years a Justice has sat on the High Court prior to any given case. Specialization deploys Robinson, Leslie, and Sheppard's (2021) measure of pre-appointment specialization, a hybrid measure of whether a Justice's legal practice area prior to judicial

[2] The fifth model can only be examined in our second mode of analysis, presented in Table 2, as the data structure in our first analysis, presented in Table 1, is at the Justice-Case level and does not allow for the advocate as the unit of analysis.

appointment was in the issue area, or, where a Justice sat on a lower court, more than 50% of the 30 most recent lower court cases seen by a Justice were a match for the issue area of the case in question. Advocate experience captures the seniority of the attorney, and is measured in three categories: Senior Counsel (SC) or Queen's Counsel (QC), a rank awarded to the most senior and successful advocates by the relevant state bar association; a barrister or solicitor (denoting a less experienced attorney); or as a self-represented litigant.

We utilize five case-level control variables. Chief Justice is a categorical variable covering each of the four Chief Justiceships during our data period. IdeologyxALPCJ interacts the ideology of each puisne Justice (Ideology) with a dichotomous variable indicating whether the Chief Justice was appointed by an ideologically liberal Prime Minister (ALPCJ i.e., a Chief Justice appointed by the liberal Australian Labor Party (ALP)). This interaction variable is included to determine the relationship between puisne Justice interruptive behavior and the ideology of the Chief Justice. Time is a continuous variable denoting the number of hours for oral argument in each case. Panel size denotes the number of Justices sitting on a panel, with the maximum panel size being 7, representing the full bench of the High Court. Issue area is measured by deploying the issue categorization constructed by Robinson, Leslie and Sheppard (2021), which categorizes cases into one of six policy areas: economic, public law, criminal law and procedure, traditional common law, civil rights, and procedure and ethics.

Finally, we account for volubility in two different ways. In our first approach, we control for volubility by including a word count for each speech episode in the transcripts. In our second approach, we incorporate volubility into the dependent variable itself, using the probability of an interruption per speech episode, and then controlling for both word count of the speaker in a given speech episode, and cumulative word count, capturing the verbosity of the speaker over the course of the entire argument.

Results

We utilize two different methodologies for determining what predicts interruptions at Australian oral argument. First, we use a negative binomial regression in which we control for volubility relying on a poisson model; second, we use a logit model to predict the likelihood of an interruption every time someone speaks.

Predicting Interruptions Controlling for Volubility

In Table 1, we present results from negative binomial regressions modelling the count of interjections per justice per case, controlling for Justice volubility. Tests for overdispersion relative to a Poisson regression were positive in each model, confirming that negative binomial regression is appropriate for the present data. Negative binomial coefficients represent a change in a conditional probability and cannot be interpreted directly. However, the positive or negative signs and the statistical significance are both immediately apparent, and we provide translations of the proportional effects of our key variables on the rate of interruptions.

Table 1: Negative Binomial Regressions of Interruptions at Oral Argument

	Justice Interrupted (Model 1)	Justice Interrupter (Model 2)	Justice Interrupts Counsel (Model 3)	Justice Interrupted by Justice (Model 4)
Case Characteristics				
Panel Size	-0.065***	-0.050***	-0.051***	-0.037
	(0.013)	(0.010)	(0.010)	(0.032)
Time	0.019***	0.020***	0.019***	0.002
	(0.004)	(0.003)	(0.003)	(0.009)
Justice Characteristics				
Liberal Ideology	0.357***	-0.447***	-0.456***	0.661***
	(0.054)	(0.042)	(0.043)	(0.122)
Is Chief Justice	-0.103**	0.101***	0.102***	-0.480***
	(0.033)	(0.025)	(0.025)	(0.095)
Seniority	0.022***	0.043***	0.044***	0.033***
	(0.003)	(0.002)	(0.002)	(0.007)
Female	0.035	-0.097***	-0.098***	0.110
	(0.029)	(0.022)	(0.022)	(0.076)
Specialization	-0.013	-0.081***	-0.083***	0.009
	(0.026)	(0.020)	(0.020)	(0.063)
Liberal Ideology × ALP CJ	0.047	-0.129	-0.110	-0.441
	(0.100)	(0.075)	(0.075)	(0.282)
Volubility	0.0004***	0.001***	0.001***	0.0003***
	(0.00001)	(0.00001)	(0.00001)	(0.00002)
Constant	-0.237*	1.557***	1.531***	-2.627***
	(0.102)	(0.075)	(0.075)	(0.275)
Issue Area Fixed Effects	✓	✓	✓	✓
Chief Justice Fixed Effects	✓	✓	✓	✓
Observations	8102	8102	8102	8102
Theta	2.300*** (0.076)	2.506*** (0.053)	2.466*** (0.052)	1.756*** (0.202)

Note: Significance at *p<0.1; **p<0.05; ***p<0.01. Exponentiating coefficients gives the unit change in the rate of interruption per case, holding other coefficients constant.

The results in Table 1 demonstrate that Justice characteristics are predictive of interruptive behavior at High Court oral argument. Volubility is statistically significant ($p<0.01$) and the coefficient translates into a substantial effect: holding the other variables at their means, speaking

an additional 1,000 words in a case increases the rate of interruption by approximately 40%. We return to the substantive significance of this finding shortly, but it is worth noting that in methodological terms, this result confirms the importance of accounting for volubility at oral argument.[3]

Ideology is statistically significant for each of our models ($p<0.01$), confirming our Ideology Hypothesis. Further, the results support the Ideological Division Hypothesis, that liberal Justices are interrupted more and interrupt less, as Jacobi and Sag (2019) found in the U.S. context. In the U.S., there has been more than half a century of conservative dominance on the Supreme Court but this has not been the case in Australia. As such, Jacobi and Sag's explanation that more right-wing interruptions are likely a product of conservative dominance, just as left-wing dominance in speaking is a reaction to lack of influence, cannot explain the same pattern appearing at the Australian High Court. The explanation that Jacobi and Sag (2019) resisted—that there is something culturally linking conservatism and interruptions—is harder to rebut given this international similarity despite the varied context of ideological dominance. Translating the coefficient into real-life terms, holding all other variable at their means, shifting from the ideology of a highly conservative Justice to a highly liberal Justice results in a 30% change in the rate of

[3] It also has the advantage of allowing us to disentangle the effect of the high variance in the length of oral argument at the High Court. Once volubility is controlled for, the number of hours of argument remains statistically significant for all four dependent variables but the substantive effect is quite small, accounting for only between 0% and 10% of one additional interruption per additional hour of argument.

interruptions of a Justice, while interrupting almost 26% less often, in a typical case.[4]

In addition to ideology, the *Chief Justice* variable is universally significant and positive. A Chief Justice faces 10% fewer interruptions, even while Chiefs interrupt around 10% more often per case. Together, these results confirm the Chief Justice Power Hypothesis, since greater interruptions are generally a sign of dominance (Goldberg 1990). Relatedly, the results show a limited interplay between the Chief Justice and puisne Justice ideology. We expect that liberal justices are less likely to be interrupted when an ALP Chief Justice reigns, due to ideological affinity and the power of the Chief Justice. However, in this specification, we do not find evidence in support of this hypothesis.[5]

Seniority is also strongly predictive of interruptive behavior, and significant ($p<0.01$) for the relevant categories (Justice interrupts Justice, and Justice interrupts advocate). Each additional year's experience on the High Court is associated with a 2% increase in the rate of being interrupted and a 4% increase in the rate of interruptions made. These results suggest that Justices become more confident with interrupting advocates over time. The fact that these Justices are also interrupted more shows that a small amount of the change results from interruptions causing interrupting. These results confirm the Seniority Hypothesis.

The remaining individual characteristics variables evidence mixed results. First, with respect

[4] Note this effect holds during the reign of a Coalition appointed Chief Justice; we discuss the effect during the reign of an ALP appointed Chief Justice below. We use the ideology scores of Justice Kirby at 0.85, the most liberal Justice, and Justice Callinan at 0.06, the most conservative Justice (see Robinson, Leslie, and Sheppard 2021).

[5] We control for differences between each Chief Justice through fixed effects here; we explore how the rate of interruptions varies between Chief Justices in the second analysis, below.

to Gender, the results in models 2 and 3 mimic that found in the U.S. with respect to women as interrupters. Women interrupt both fellow Justices and advocates significantly less—around 10% less often per oral argument. Yet, contrary to findings in the U.S., the first coefficient on female—Justices being interrupted—is effectively zero, indicating that women are not interrupted more at Australian oral argument. However, given that Jacobi, Robinson and Leslie (2021) found that female Justices talk significantly less than male Justices at High Court oral argument, it is possible that controlling for speech may not fully capture differences in activity levels between Justices. Accordingly, we also measure interruptions as a probabilistic effect in any given speech episode below and find different results.

With respect to Specialization, models 2 and 3 suggest that specialist Justices are in fact around 8% *less* likely to interrupt than other Justices who lack additional field knowledge, all else equal, contrary to expectations. We suspect this may be due to these Justices requiring less engagement with oral argument to form their views on how to interpret the facts of the case. Further, there is no evidence that specialist Justices are interrupted more often. Thus, the evidence does not support the Specialization Hypothesis.

Finally, our other two case characteristic control variables—Panel Size and Hours of Argument—are significant in most models, except in model 4, predicting Justice-to-Justice interruptions, which occur far less frequently. Time is consistently positive in all four models, and Panel Size is consistently negative. Interruptions tend to increase with more hours of argument, at around 2% per hour, as there is more time to be interrupted. Once again, this sheds light on the impact of limited versus unlimited oral argument: it may not be the case that interruptions at U.S. Supreme Court oral argument are so common because of the strictly limited time, with the Justices fighting to get their points across. Rather, interruptions increase with opportunity; that is, with more speaking time.

However, our results on the Panel Size control variable suggests that there might be some normative constraints on this tendency to simply interrupt more with more opportunity. All types of interruptions decrease significantly with increased panel size. Both the probability of a Justice being interrupted and interrupting are negative, meaning that the larger the panel size, the fewer interruptions that occur: an increase in panel size of one Justice is associated with a decrease in interruptions of between 5–6% in models 1, 2 and 3. Thus, despite the fact that on larger panels there are more people competing to get their points across, interruptions go down in all four of our models.

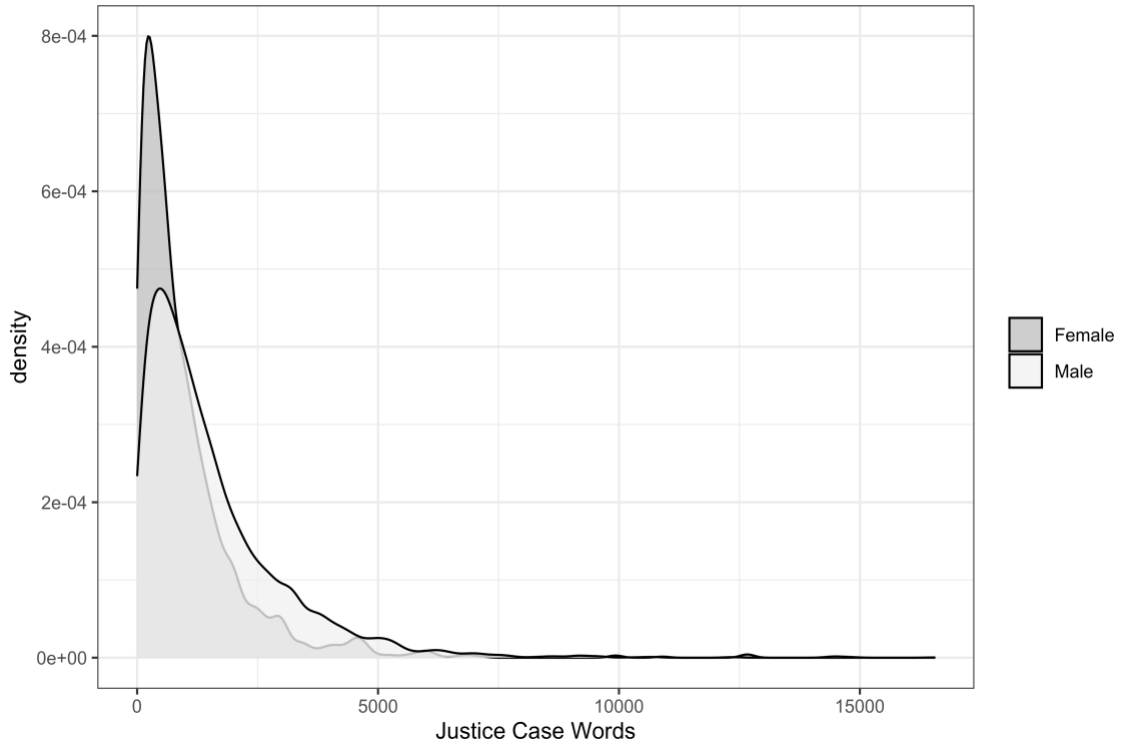
It may seem possible that there is a case salience factor that drives both hours of argument and panel size, and the two may be playing off against each other. However, this result does not appear to be an effect of subject area. Although some of our issue areas control variables are significant, public and constitutional law is not significant in any of the regressions. This is notable because public and constitutional law is the issue area in which the Court generally sits *en banc* and is likely to be the issue area of greatest political salience. Accordingly, while additional hours of oral argument may lend somewhat less of a harried atmosphere to High Court oral argument compared to Supreme Court oral argument, our panel size results indicate that some assumptions made about the competitive nature of oral argument causing interruptions at the U.S. Supreme Court do not seem to stand up, at least in the Australian context.

This conclusion directly raises the question of how to best conceive of interruptions, and suggests a different measure and modelling strategy may be appropriate. If interruptions are not occurring due to time shortage, then interruptions might be better understood as a product of speech, rather than speech simply being a variable to control for. Accordingly, we provide a different means of measuring the relationship between our independent variables and interruptions. To do so, we develop a novel methodology.

Predicting Interruptions as a Part of Speech

The difference between our findings for gender and all other individual justice characteristics in the previous approach begs the question of whether the gender effect may be hidden. Simply controlling for verbosity, although standard in interruption models, may fail to uncover gender differences if there are systematic differences in the way that men and women speak at Australian High Court oral argument. Figure 1 confirms that there are such differences—male Justices are much more likely to make longer speeches than female Justices. This supports taking a different approach to examining interruptions.

Figure 1: Density Distribution of Male and Female Justice Case Words



Note: controlling for per case volubility is important for studies of interruptions (Jacobi and Sag 2019). However, the number of words spoken by Justices tends to follow a skewed distribution, with a small number of individuals speaking most often in each case.

Rather than controlling for how voluble each participant is at oral argument, we now analyze every time a participant speaks, to predict the likelihood of an interruption occurring. While case-level count models of interruptions are statistically appropriate, there are important speech-level characteristics that might be critical to predicting each interruption. Unless we account for these factors at the level of the speech, the possibility of confounding by ecological fallacy is left open. We therefore produce a larger N analysis (over 378,184 Justice utterances and 349,376 advocate utterances) to assess how well our proposed theoretical model predicts each interruption. Table 2 presents the results.

Table 2: Speech-Level Logistic Regression of Interruptions at Oral Argument

	Justice Interrupted (Model 1)	Justice Interrupter (Model 2)	Justice Interrupts Counsel (Model 3)	Justice Interrupted by Justice (Model 4)	Advocate Interrupted (Model 5)
Case Characteristics					
Panel Size	-0.031***	-0.011*	-0.011*	0.023	-0.006
	(0.009)	(0.005)	(0.005)	(0.029)	(0.005)
Time	0.003	-0.006***	-0.007***	-0.006	-0.0004
	(0.002)	(0.001)	(0.001)	(0.008)	(0.001)
Justice Characteristics					
Liberal Ideology	0.707***	-0.156***	-0.164***	0.726***	
	(0.033)	(0.017)	(0.017)	(0.104)	
Is Chief Justice	-0.477***	-0.445***	-0.440***	-0.798***	
	(0.023)	(0.011)	(0.011)	(0.089)	
Seniority	-0.007***	0.019***	0.020***	0.007	
	(0.002)	(0.001)	(0.001)	(0.007)	
Female	0.195***	0.071***	0.071***	0.267***	
	(0.021)	(0.012)	(0.012)	(0.071)	
Specialization	0.013	-0.130***	-0.135***	0.034	
	(0.018)	(0.010)	(0.010)	(0.059)	
Liberal Ideology × ALP CJ	0.069	-0.187***	-0.170***	-0.237	
	(0.071)	(0.038)	(0.038)	(0.269)	
Counsel Characteristics					
Female Attorney					0.020
					(0.021)
Attorney Seniority					
SC/QC					-0.057***
					(0.014)
Self					0.081
					(0.076)
Speech Variables					
Word Count	-0.002***			0.002***	0.0002***
	(0.0003)			(0.0004)	(0.00002)
Cumulative Word Count	-0.00002**			0.00002	0.00001***
	(0.00001)			(0.00002)	(0.00000)
Lag (Word Count)		0.0003***	0.0003***		
		(0.00002)	(0.00002)		
Lag (Cumulative Word Count)		0.00001***	0.00002***		
		(0.00000)	(0.00000)		
Constant	-3.164***	-1.198***	-1.245***	-6.121***	-1.274***
	(0.073)	(0.038)	(0.038)	(0.262)	(0.034)
Case Type Fixed Effects	✓	✓	✓	✓	✓
Chief Justice Fixed Effects	✓	✓	✓	✓	✓
Observations	378,184	378,360	378,360	378,184	346,724

Note: Significance at *p<0.1; **p<0.05; ***p<0.01.

Under this approach, we are predicting what will increase or decrease interruption levels. Consequently, the baseline (in terms of interruptions) is important. From Table 2, we see that Justices are interrupted fairly infrequently (model 1), approximately one in every twenty speech

episodes. In contrast, the base rate for advocates being interrupted (model 5) is significantly higher, at roughly one in four speech episodes. Most interruptions that occur are interruptions of counsel, so the base rate for Justices interrupting anyone (model 2) and the base rate for Justices interrupting counsel (model 3) is similar to model 5, around one in four. In contrast, Justice-to-Justice interruptions (model 4), the rarest kind of interruptions, occur on average only roughly one in 200 speeches.

Turning to word count, there are two elements to predicting word count in this model: the direct measure of word count of the current speech unit and the cumulative measure of word count, i.e. the total number of words spoken by a given person in the case thus far, including the current speech episode. Each measures a slightly different aspect of speech patterns that could be associated with interruptions. For example, an interruption could result simply because a person is giving a particularly long speech versus an interruption could occur because one particular person has already spoken extensively, and the interrupter grows impatient thinking the interruptee has already had their say previously, which could occur early in a given speech episode.

All the word count coefficients except one are statistically significant, suggesting that per-speech volubility and case volubility should both be accounted for when predicting interruptions. While the effect of volubility has a positive relationship with the likelihood of interruption for the most part, we find in model 1 that if Justices are interrupted (almost always by Counsel), they will be interrupted after a relatively short speech, and earlier on in oral argument. Otherwise, we find that the effect of volubility, as expected, is associated with an increase in the likelihood of interruption. Justices are five percentage points more likely to interrupt a speech that reaches 1,000 words than a speech of only a couple of sentences, while Justices are only more likely to be interrupted by another Justice than baseline risk after a relatively long speech of around 1,500 words, a very rare occurrence.

The same effect is true for advocates being interrupted (model 5). Short speeches of only a few words are interrupted at a rate of 23%, while speeches of 1,000 words are interrupted at 26%. In terms of cumulative words spoken, advocates early into their argument (around the 100-word mark) are interrupted at a rate of 23%, while advocates at the 10,000-word mark, midway into the typical argument, are interrupted more often, at a rate of 24%. Later still, at the 40,000 word mark, advocates are interrupted at a rate of 27%.

When we look to the results for individual characteristics under the interruptive probability approach, the results for ideology, seniority, and specialization are consistent with the results from Table 1, where we simply control for volubility. In all four models concerned with Justice interruptions (models 1–4), ideology is statistically significant ($p<0.01$) and substantively meaningful. When looking at the probability of a Justice being interrupted conditional on speaking (model 1), a Justice with a highly conservative ideology score has a likelihood of being interrupted at just over 4%. In contrast, a Justice with a highly liberal ideology score will be interrupted at a rate of almost 7%,[6] a 70% increase in the number of interruptions for a liberal Justice over a conservative Justice. Although the base rate of expecting an interruption in any given speech event is low, this difference translates to a substantively significant expectation of more interruptions of liberal Justices.

A similar effect is captured in model 2, whether a Justice interrupts. Being a liberal Justice is associated with a significantly lower level of likelihood to interrupt than being a conservative Justice. The most liberal Justices are predicted to interrupt around 21% of the time, while the most conservative Justices are predicted to interrupt 24% of the time, mirroring the American results. Finally, in Justice-to-Justice interruptions, the most liberal Justices are interrupted by other Justices

[6] All differences in predicted probabilities reported in this section were significant ($p<0.05$).

0.60% of the time, while the most conservative Justices are interrupted 0.37%. Again, the base rate in model 4 is low but the effect is nonetheless meaningful, with liberals interrupted almost twice as much as conservatives. Thus, when we consider interruptions occurring regularly as part of speech, we find that, as in the United States, conservatives interrupt more and are interrupted less, conditional on speaking, as predicted in our Ideological Division Hypothesis. Ultimately, judicial ideology is the most powerful individual characteristic in determining interruptions at the High Court, with the possible exception of Chief Justice status.

Being Chief Justice inures a judge from being interrupted by almost half, with a 3.7% rate of interruptions compared to 5.7% for other Justices overall. Justice-to-Justice interruptions occur less often but follow the same trend, at 0.27% compared to 0.61%, less than 45% as often. These results reconfirm the higher status of the Chief Justice. In fact, being Chief Justice is the most powerful predictor in model 3 and 4 and the second most powerful predictor in model 1, behind only judicial ideology, supporting the Chief Justice Power Hypothesis.

Whether there is a significant difference between each Chief Justice varies by both which model we are looking at and among the Chief Justices. In each model, interruptions of Justices were slightly higher during the reign of Murray Gleeson, by around 0.1%. In terms of interruptions by Justices, Susan Kiefel's reign (up to 2020) was associated with a 3% drop, from a baseline of around 25%. Thus, the Chief Justice Influence Hypothesis is partially supported.

Relatedly, as with the models in Table 1, we find mixed evidence of an interactive effect of ideology conditional on the appointing party of the Chief Justice. In models 1 and 4, there is no interaction effect but in models 2 and 3 it is significant. When predicting interruptions by Justices, we find that there is no difference in the rate for conservative Justices, but very liberal Justices were around 3% less likely to interrupt a speaker when the Chief Justice was appointed by a liberal Prime Minister. We see a similar shift evident in model 3, Justices interrupting counsel.

The results for seniority show that more experienced Justices interrupt more often, and they are interrupted marginally less often than less experienced Justices, as expected. When it comes to predicting being interrupted, as in the U.S., the effect is statistically significant but substantively small. Those just beginning their tenure have a likelihood of interruption at 5.4%, while those at the end (at the maximum 20-year mark) have a 4.8% likelihood of interruption. This is significant statistically, but a half a percent difference over a twenty year span is not striking. In contrast, when it comes to predicting Justices interrupting (model 2), seniority is again statistically significant and the magnitude is more substantial. At the beginning of their tenure, new Justices interrupt at a rate 19.7%, while after 20 years Justices interrupt in 26% of their speeches.

Finally, similar to the findings in Table 1, we find that specialization is associated with interruptions by Justices but not interruptions of Justices. Models 2 and 3 produce similar estimates, and interruptions by a Justice whose specialization matches with the case at hand are reduced by around 2.2 percentage points, from around 23% to 21%—a considerable reduction.

Where we see the most difference between the results using this methodology and the previous is that gender is significant in predicting interruptions in all models. This is contrary to both Table 1 and Jacobi, Robinson, and Leslie (2020), the only other comprehensive analysis of interruptions at Australian High Court oral argument. That study examined only *en banc* panels; here, using our new methodology and looking at all cases, when a female Justice speaks, she is significantly more likely to be interrupted: from 5.1% for male Justices up to 6.1% for female Justices being interrupted. But the effect for gender is reversed, and yet still statistically significant, when looking at whether a Justice interrupts (model 2). All else equal, female Justices interrupt *more often* than male Justices per speech made, up from 23% for men to 24% for women.

That the effect for gender for model 1, Justice interrupted, under this approach is statistically significant but not previously is not entirely surprising. In this model each speech is a unit in our

analyses, therefore the number of observations have greatly increased to over 377,000. As such, smaller differences are more likely to show as significant, which makes the question of whether the effect is substantively significant even more pressing. The gender coefficient in model 1 translates to women being just under 20% more likely to be interrupted when speaking. However, the base rate is low, and so the real-life effect is that there is one extra interruption per case per woman on the bench. With each Justice speaking approximately fifty times on average per case, a man could expect to be interrupted 2.55 times whereas a woman could expect to be interrupted 3.05 times, which is arguably a meaningful difference. When it comes to Justice-to-Justice interruptions, it is a harder case to make that the results are substantively significant: on average, a male Justice will be interrupted by another Justice 0.5% of the time, and a female Justice 0.6%, a 20% increase. Since the base rate is so low, a female and male Justice pair would have to sit in over ten cases before the model would reliably predict just one extra interjection for the female Justice.

For advocates being interrupted, there is no gender effect, which is a normatively a positive result for the Australian High Court. Overall, the results for gender are compelling in their novelty and worthy of note, given their parallel to other experiences of women more generally. However, there are two important caveats: first, the effects are small, and second, the effect for women being more likely to interrupt is the strongest result of our gender effects. Thus, it is much harder to argue that being female is a disadvantage in terms of interruptions at the High Court, given the proportionality between interrupting and being interrupted.

In terms of advocate seniority, for advocates being interrupted (model 5), the effect of experience is statistically significant and substantively meaningful. Ordinary advocates (barristers or solicitors) are interrupted around 24.5% of the time, whereas Senior Counsel and Queens Counsel are interrupted less often at around 23.5% of the time. Self-represented parties are interrupted at a rate of 26% but this finding is not significantly different from the other two groups,

likely because self-representation at the High Court is rare. Altogether, the Advocate Seniority Hypothesis is supported, but arguably less important than other results.

Turning again to case characteristics variables, in terms of panel size, additional Justices on the panel tend to decrease interruptive behavior, as in Table 1. A Justice sitting on a three Justice panel would expect to be interrupted in around 5.6% of speeches, while a seven Justice panel would result in interruptions 5% of the time. Justices interrupt around 22.7% of the time while sitting on a three Justice panel and 22% of the time on a seven Justice panel, a small but significant substantive finding. Interestingly, length of oral argument measured in hours is not significant in this model, except for the chances that a Justice will interrupt (model 2 and 3). In the other three models, longer oral arguments have no significant difference from shorter arguments. This suggests that while Justices may grow impatient during longer arguments and be more likely to interrupt, other parties do not, and the rate of interruption per speech episode stays unchanged.

Conclusion

This Article has shown that interruptions at Australian High Court oral argument are predictable based on a variety of individual and case characteristics. We have shown that not only is Judicial ideology highly predictive of interruptive behavior at High Court oral argument, but is so in a predictable direction: conservative Justices interrupt more and are interrupted less than liberal Justices. We have shown that the Australian High Court is different in meaningful ways from its American counterpart, notably that the Chief Justice has special power, as exemplified by being interrupted significantly less and being permitted to interrupt more, and influencing overall Court behavior during their reign.

When it comes to gender relations, the Australian High Court is more enigmatic than the U.S. Supreme Court and other forums in which gender effects are striking. Applying the standard models of analysis, female Justices appeared to be no more interrupted than their male counterparts.

But once we account for divergences in patterns of speech between men and women, we can discern differences: while the rate of interruptions per case is actually greater for men than women, when we probe interruption patterns in varied lengths of speeches, women are interrupted more. The effect is small but statistically significant—the fact that the effect is so hard to find is a positive sign, normatively, in contrast to the U.S. apex court, where women are at times interrupted three times as much as men. And Australia is exceptional in one regard: at the High Court, women interrupt significantly more, a very unusual result.

An important novel set of findings relates to advocates, who were, as expected, interrupted based on similar predictors to the Justices—effects that are probably unsurprising, given the results for judicial behavior, but have never previously been confirmed.

Of importance, this Article applies a novel methodological approach to analyzing interruptions, based on a rethinking of how interruptions occur. Examining interruptions as a variously probable outcome contingent on speech-level activity exposed effects that were missed by the standard approach of simply controlling for extent of speech. Notably, this approach revealed that disproportionate interruptions of women at the Australian High Court do occur, they are simply less visible, masked by differences between the way men and women speak. But equally important is the fact that some results consistently and strongly arose: judicial ideology was unswervingly significant, substantively important, and had multifaceted effects as predicted; and the structural power of the Chief Justice was highly influential. These three elements—the contingency of the gender effect, the consistency of the ideological effect, and the power of the Chief Justice—contribute to the predictability of interruptions at the High Court. But each also provides new insight on interruptions at apex courts more broadly, illustrating, respectively: that conceptualizing interruptions as part of speech, rather than speech being an element to control for, can be revealing; that the claim of Australian exceptionalism is aspirational, not descriptive; and

that how we structure institutions does affect behavior, even though there are consistent trends across different institutions.

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