Backlash and discretion: Explaining judicial rule-making in constitutional review cases

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Abstract

How do courts reviewing the constitutionality of policy decide on the level of specificity of their opinions? Existing literature suggests that courts issuing policymakers with specific constraints on their actions risk exposing themselves to backlash for encroaching on policy-making prerogatives of the elected branches. On the other hand, courts opting for less specific instructions risk that policymakers fail to comply with the spirit of their opinions. I introduce a formal model that explores how courts navigate this dilemma. The model identifies under which conditions courts opt for determinate opinions and risk backlash to ensure that constitutional limits to policy are respected in the future.

1 Introduction

In this paper, I introduce a formal model to explore how courts exercising constitutional review of policy decide on the level of specificity in their opinions. Courts spell out constraints on the future actions of policymakers, which has caused concerns of a 'judicialization' of politics and government through courts rather than elected representatives in the legislative and executive branches (Hirschl 2009, Stone Sweet 2000, Vallinder 1995). As courts issue clear guidelines on what the constitutional text allows and what not, policymakers face an increasingly dense web of

constraints that curtails their freedom to create policy. Courts supplying specific instructions to policymakers then risk inviting backlash from the latter, who may choose to discipline courts for encroaching on their prerogative to produce policy (Epstein & Knight 1998, Rogers 2001). On the other hand, a separate strand of literature argues that courts opting for less determinate rules in their opinions provide policymakers with discretion to choose future policies at odds with the spirit of courts' decisions (Spriggs 1997, Staton & Vanberg 2008). Courts then face a dilemma: Courts issuing policymakers with narrow instructions in their opinions expose themselves to the risk of backlash, yet when policymakers are provided with greater discretion in interpreting the consequences of constitutional review opinions, policymakers may choose policies in response that sidestep the constitutional limits courts sought to establish.

Scholars studying the dynamics of systems of separation of powers have long recognised that courts reviewing the constitutionality of policy are at risk of backlash from the elected branches in response to unfavourable rulings (Handberg & Hill Jr. 1980, Rogers 2001, Whittington 2003, Clark 2009). Much of the existing literature on how the tension between the elected and judicial branches reflects in courts' exercise of constitutional review has centred on courts' decisions whether or not to invalidate policy (Vanberg 2005, Segal, Westerland & Lindquist 2011, Hall & Ura 2015). With the advent of a "new judicial politics of legal doctrine" (Lax 2011), however, interest in the types and determinants of the actual rules courts create in their opinions has increased (Staton & Vanberg 2008, Owens & Wedeking 2011, Owens, Wedeking & Wohlfarth 2013, Clark 2016, Tiller & Cross 2006). Switching attention from case outcomes to the language and rules contained in courts' opinions appears warranted as "decisions are often most important because of the qualitative changes in law that

they effect, rather than because of the decision they provide on the case facing the Court" (Clark & Lauderdale 2010, 871).

This paper pushes scholarship explaining courts' choice between specific and less specific opinions in constitutional review cases into a new direction, highlighting that it is courts' choice to supply policymakers with narrow, determinate instructions that provokes the familiar charge of courts usurping the prerogatives of the elected branches. The model shows how the prospects of backlash from policymakers in the immediate aftermath of an opinion's publication and current policymakers' preferences for policy shape the discretion future policymakers enjoy when interpreting the consequences of the opinion for their policy choices.

The paper proceeds as follows. The next section discusses the choices available to courts when writing constitutional review opinions and their implications for policymakers. The third section distinguishes the formal model from existing approaches, introduces the elements of the model and details its comparative statics. The concluding section discusses the implications of the the model's insights for theoretical and empirical questions prominent in the literature on courts' strategic exercise of constitutional review.

2 Rule-making in constitutional review cases

The field of judicial politics has undergone a "sea change" in recent years (Clark 2016, 353), as scholars have sought ways to capture what courts actually do when they decide their cases. At the forefront of this development has been the 'case-space model', which argues that courts create legal rules in their opinions that partition a

(possibly multidimensional) case-space into winners and losers, and then classify a case before them according to these rules (Kornhauser 2008, Lax 2007).

Studies drawing on the case-space model have emphasized that the rules courts establish in their opinions vary with regard to their specificity, with much of this literature centring on the opinion-writing of justices at the U.S. Supreme Court for an audience of lower courts (Lax 2003, Clark 2016, Owens & Wedeking 2011). The U.S. Supreme Court faces a choice between determinate or more flexible doctrines, knowing that determinate doctrines increase the chance that lower courts will apply the doctrine in a way that produces case outcomes matching the higher court's preferences, yet require investing more resources into crafting the doctrine and narrow its applicability to future cases before lower courts (Lax 2012, Clark 2016).

We can find some of the features characterising the relationship among courts in a judicial hierarchy in the relationship between policymakers and courts reviewing the constitutionality of their policies. Courts' opinions in constitutional review cases interpret the text of the constitution and establish where the constitution sets limits to policymakers. Typically, policymakers are formally required to respect the constitutional constraints courts impose on them, yet an established strand of scholarship has shown that in reality courts do not have 'the last word' (Ferejohn & Weingast 1992). Once an opinion is published, policymakers themselves interpret its contents and how to respect the constitutional limits defined in the opinion in their future policy choices, with several studies providing evidence that policymakers do not always follow the spirit of courts' opinions in their responses (Vanberg 2005, Carrubba & Zorn 2010, Carrubba, Gabel & Hankla 2008, Fisher 1993).

Similar to lower courts applying a higher court's doctrine in ways at odds with the

latter's preferences, policymakers may choose to interpret a court's opinion in a way that allows them to opt for a policy that matches their own preferences yet effectively ignores the spirit of the opinion. Some studies have highlighted that less specific opinions favour policymakers seeking to implement policies that deviate from the spirit of a constitutional review decision (Staton & Vanberg 2008). Flouting opinions of courts is risky for policymakers, given that courts typically enjoy comfortable reservoirs of public support, which may translate into electoral losses at the ballot box for policymakers ignoring the demands of courts (Vanberg 2001, Mayhew 1974, Clark 2009, Gibson, Caldeira & Baird 1998). Yet, as the language in courts' constitutional review opinions becomes more vague, policymakers enjoy greater to discretion to choose policies at odds with courts' demands without provoking accusations of outright non-compliance.

One way for courts to avoid such scenarios is to simply avoid ambiguous language in their opinions and provide specific instructions as to what policymakers can and cannot do. Indeed, courts at times opt for highly determinate opinions, which come close to defining policy themselves. Consider the following example of the German Federal Constitutional Court's 1998 opinion on the question of whether child benefits and child income tax allowances granted to single-child parents met requirements of the German Basic Law.[1] In a complex opinion, the court details a calculation method for the payment of child allowances, including so-called 'residential requirements' of children and "precise figures as to the tax rate with which the child benefit actually paid is to be converted into a fictitious child allowance".[2]

By specifying detailed instructions for policymakers in their opinions, courts can

[1] See BVerfG, Order of the Second Senate of 10 November 1998 - 2 BvL 42/93 -, paras. (1-83), `http://www.bverfg.de/e/ls19981110_2bvl004293en.html`.

[2] BVerfG, Order of the Second Senate of 10 November 1998 - 2 BvL 42/93 -, par. 62, `http://www.bverfg.de/e/ls19981110_2bvl004293en.html`.

avoid confusion over where they see the constitutional limits to policy. However, courts limiting policymakers' discretion in their jurisprudence risk drawing the ire of policymakers, who argue that courts assume the roles of the legislative and executive branches by effectively writing policy themselves. Scholars have long recognised the tension between courts and the elected branches over the former's influence in policy-making (Dahl 1957, Handberg & Hill Jr. 1980, Friedman 2002). Concerns that courts lacking direct accountability to the electorate are counter-majoritarian institutions, thwarting "the will of representatives of the actual people of the here and now" (Bickel 1986, 16), are often echoed by policymakers in the aftermath of a decision that leaves policymakers little room to breathe. It is particularly courts' choice to supply policymakers with highly specific opinions that caused concern among scholars that political decision-making has become 'judicialized' and that government is effectively run by courts (Shapiro & Stone Sweet 1994, Stone Sweet 2000, Hirschl 2008).

Previous studies have shown that policymakers are not afraid to defend their policy-making prerogatives against courts placing strict constraints on their actions (Handberg & Hill Jr. 1980, Whittington 2003). Courts often enjoy sufficient public support that would make it practically unthinkable that courts' exercise of constitutional review of policy is abolished altogether following unfavourable rulings, and it is plausible to assume that policymakers themselves in principle value constitutional review even if courts at times censor their own policies (Stephenson 2003, Landes & Posner 1975). However, once courts issue opinions that determine policy and leave no discretion for the elected branches, policymakers have a variety of tools available to discipline courts for encroaching on their prerogatives (Ramseyer 1994). These may involve attacking courts in public speeches in an attempt to undermine their insti-

tutional legitimacy, or more serious accounts of slashing courts' budgets, restricting their jurisdictions or packing the courts with loyal justices (Rosenberg 1992, Epstein & Knight 1998).

The discussion in the previous paragraphs sets up a dilemma for courts: Vague, indeterminate opinions allow policymakers to flout the constitutional limits courts intended to establish, while determinate rules in their opinions expose courts to the risk of backlash from policymakers. In the following, I introduce a formal model that explores how courts solve this dilemma.

3 The model

In the following, I develop a formal model to analyse how a court reviewing the constitutionality of policy navigates the tension between issuing narrow instructions in its opinion and thus invite backlash from policymakers, and less determinate instructions at the expense of higher variation in policymakers' interpretation of the opinion. More specifically, the model centres on a court's trade-off of facing backlash in the immediate aftermath of announcing its opinion and the prospects of policymakers departing from the spirit of the court's opinion when designing policy in the future. In the model, the court controls the specificity of its opinion. The model shows how the court responds to different types of institutional environments (particularly varying policy preferences of current policymakers and uncertainty about future policymakers' preferences) in its choice of opinion specificity.

Similar to existing models analysing the determinants of specificity in a court's opinion, I expect the doctrine courts establish to map into policy, and that courts

choose such doctrine in a way so that it (at least in expectation) maps into their preferred policy (Staton & Vanberg 2008, Clark 2016). In other words, the contents of constitutional review opinions matter for policy, as policymakers have to consider the constitutional guardrails defined in these opinions in their future choices. Further, policymakers faithfully following the court's doctrine will opt for policies that match the court's ideal policy preference. At the heart of the model is the assumption that unless courts provide policymakers with very specific instructions, effectively writing policy themselves, policymakers enjoy discretion in their interpretation of the court's opinion and may implement policies in response that are at odds with the spirit of the doctrine established by the court. An incentive for a court to avoid all too specific instructions for policymakers nonetheless is that policymakers discontent with an opinion determining policy may seek to discipline the the court for usurping the elected branches' prerogative to produce policy, and curb courts' authority (Clark 2010, Lindquist & Cross 2009, Ura 2014).

The specificity of a court's opinions in constitutional review cases has been the subject of a formal model written by Staton and Vanberg (2008), focusing on the effects of policymakers' non-compliance on opinion specificity, and the model presented in the following section shares many of its features. However, the model presented here differs from this (and other similar) accounts in an important aspect. Many existing models consider (non-)compliance as a single act of a single group of policymakers: The court issues an opinion and policymakers then decide whether (or to what degree) they will follow the court's opinion in their policy choice in response. Yet, in reality once a constitutional review opinion is published, it plays a role in the policy decisions of a variety of policymakers with different policy preferences and at

different points in time. Hence, a court not only has to consider how policymakers currently in charge would respond to its opinion, but how policymakers (with possibly entirely different views on policy) would interpret the opinion in the future. The model introduced in the following paragraphs shows how this feature of reflects in courts' choice of opinion specificity.

3.1 Elements of the model

Consider the following uni-dimensional spatial model in which actors' ideal preferences for policy can be represented by a single point in $\mathbb{R}$, respectively. Let the court's ideal point be $C = 0$ and the ideal point of policymakers in charge at the time of publication of the court's opinion be represented by $L \in \mathbb{R}$. In other words, the parameter L identifies the distance between the ideal points of (current) policymakers and the court in the uni-dimensional policy space $\mathbb{R}$. When the court issues a constitutional review opinion, future policymakers need to consider the opinion in their policy choices. Let future policymakers' ideal point be represented by $L + \varepsilon$, with ε being uniformly distributed on the interval $[-\alpha, \alpha]$. The court knows L but not ε, and its uncertainty about future policymakers' preferences is captured by the parameter α. The court's best guess of future policymakers' preferences is L (i.e. it bases its expectation of future policymakers' preferences on the known preferences of the current policymakers), yet its uncertainty about its prediction increases as the interval $[-\alpha, \alpha]$ grows wider. Given ε is uniformly distributed on $[-\alpha, \alpha]$, note that relative to current policymakers, future policymakers may either have preferences closer to the court's ideal point or further away from the court's ideal point (or match the preferences of current policymakers).

Following the publication of a court's opinion, let the court expect that future policymakers choose a new policy p, which is distributed according to a cumulative distribution function $D(b, L, \varepsilon)$ with mean $\mu = 0$ and variance $\text{Var}_{D(b,L,\varepsilon)} = b(L + \varepsilon)^2$. On average, future policymakers choose policies that follow the court's doctrine (i.e. in expectation future policymakers choose $p = 0$, the court's ideal point), yet the probability that future policymakers interpret the court's opinion in a way that produces policies further away from the court's preferred policy increases with the distance between the ideal points of future policymakers and the court, $L + \varepsilon$. The parameter $b \geq 0$ captures the level of discretion the court accords to policymakers, with the parameter's value being determined by the court itself. If $b = 0$, the court's opinion contains highly specific instructions and provides no discretion at all, with no variance in future policymakers' interpretation of the court's opinion (i.e. the court writes the policy itself, with $p = 0$). As b increases, the court grants future policymakers greater leeway in their interpretation of the opinion and the variance in their policy choices (as well as the prospects that these policy choices fall further away from the court's ideal point) increases.

In the following, I expect the court's (dis-)utility to be a function of the variation in future policymakers' policy choices. The court prefers lower variance in future policy choices, as it corresponds to a higher likelihood that policymakers choose policies closer to its ideal point. The court therefore faces incentive to decrease the discretion granted to future policymakers in its opinion (low values on the parameter b). However, the variance in future policymakers' choices makes up only part of the court's utility function. The court faces costs in the form of backlash from current policymakers as instructions in its opinion become more specific and the discretion granted

to policymakers decreases. Let the parameter $c \geq 0$ denote the risk that the court is left dysfunctional following policymakers' backlash and court-curbing in response to a ruling. If $c = 0$ the court has nothing to fear from policymakers' backlash and faces no constraints in its decision-making. We can think of the parameter c as a function of the court's reservoir of diffuse public support. We can expect policymakers to be less likely to curb the authority of courts popular among the electorate, as backlash against popular courts is likely to translate into the electorate's backlash against policymakers themselves at the ballot box (Vanberg 2001, Whittington 2003). Hence, courts enjoying high levels of diffuse support among the public are less likely to be at risk of court-curbing attempts that would leave them dysfunctional. We can then define the court's utility function as

$$U_C(b) = -\frac{L^2 c}{1+b} - b(L+\varepsilon)^2$$

The first term of the court's utility function captures the costs it expects from current policymakers' backlash against its ruling. We can see that these costs increase with the distance between the ideal points of current policymakers and the court. Further, the costs of backlash increase with the risk that court-curbing attempts would leave the court dysfunctional, c. On the other hand, the court can attenuate the costs of backlash by providing policymakers with greater levels of discretion when interpreting the court's opinion. It is easy to see that if the court chooses to provide no discretion to policymakers and write policy itself, $b = 0$, its utility is given by $-L^2 c$. It is then also easy to see that the court would have no incentive not to write policy itself if current policymakers share the court's exact policy preference (i.e. $L = 0$) or if the court would have nothing to fear from court curbing (i.e. $c = 0$). In order to

make the following analysis non-trivial, let both $|L| > 0$ and $c > 0$, i.e. the court and current policymakers do not share the exact same policy preference, while the court is not entirely immune to court-curbing attempts.

3.2 Analysis and comparative statics

The solution to the court's decision problem is straightforward. Given the exogenous parameters L (current policymakers' ideal point), ε (court's uncertainty about future policymakers' ideal point) and c (court's risk of being subject to consequential court-curbing following publication of its opinion), the court needs to choose b in a way that maximizes its utility. Given ε is uniformly distributed on the interval $[-\alpha, \alpha]$, the court's expected utility is defined as

$$EU_C(b) = -\frac{L^2 c}{1+b} - b\left(\frac{1}{2\alpha}\right)\int_{-\alpha}^{\alpha}(L+\varepsilon)^2 d\varepsilon = -\frac{L^2 c}{1+b} - b\left(\frac{3L^3+\alpha^2}{3}\right)$$

The court then seeks a level of discretion accorded to policymakers in its opinion that maximizes its expected utility, which is given by

$$b^* \equiv \arg\max_b -\frac{L^2 c}{1+b} - b\left(\frac{3L^3+\alpha^2}{3}\right) = \sqrt{\frac{3L^2 c}{3L^2+\alpha^2}} - 1$$

Proofs in the appendix show that the court chooses not to write policy itself, $b > 0$, if and only if current policymakers' ideal point is above the threshold

$$L^* \equiv \frac{\alpha}{\sqrt{3(c-1)}}$$

If current policymakers' preference for policy is sufficiently similar to the court's own preferences (and hence the costs from policymakers' backlash in response to a highly determinate opinion are sufficiently small), the court does not take its chances and issues highly specific instructions to avoid variation in future interpretations of its opinion. The threshold L^* increases with the parameter α, the court's uncertainty about future policymakers' policy preferences, yet decreases with the parameter c, the risk of being subject to consequential court-curbing. In other words, ceteris paribus, courts are more willing to issue policymakers with highly specific instructions in their opinions as their uncertainty about future policymakers' preferences (and the associated variance in future interpretations of its doctrine) increase. As it becomes more difficult for courts to anticipate the policy preferences of future policymakers, courts tend to be more willing to bear the brunt of backlash for issuing highly determinate opinions.

On the other hand, once $L > L^*$, i.e. once current policymakers are sufficiently 'hostile' towards the policy a faithful application of the court's opinion would produce, courts begin to offer policymakers greater discretion to moderate the costs of backlash. Given $L > L^*$, the optimal level of discretion the court accords to policymakers in its opinion is a function of all three exogenous parameters, L, α and c, or simply $b^*(L, \alpha, c)$. Given we assume that all exogenous parameters are independent of each other, all that is left to do to get a sense of how the court's optimal opinion specificity varies with these parameters is to take the partial derivatives of $b^*(L, \alpha, c)$ respectively.

The partial derivatives are calculated in the technical statement in the appendix and I discuss the effect of variation in the exogenous parameters on opinion specificity in the following. I begin with the effect of current policymakers' preferences on the

specificity of the court's opinion. The sign of the partial derivative of $b^*(L, \alpha, c)$ with respect to L is positive, hence showing that the court accords future policymakers greater discretion in their interpretation of the court's opinion as the distance between the court and current policymakers' ideal points increases. Put simply, the further apart the court and current policymakers are with respect to their policy preferences, the more discretion future policymakers (who may have entirely different preferences than their predecessors) enjoy when it comes to implementing the court's opinion. As long as a court is not immune to the effects of court-curbing, deviations in policy preferences between current policymakers and the court benefit future policymakers and provide the latter with more 'room to breathe' when it comes to interpreting where the court set constitutional limits to their policy-making.

Turning to the effect of the court's uncertainty about future policymakers' preferences on opinion specificity, formal proofs show that the sign of the partial derivative of $b^*(L, \alpha, c)$ with respect to α is negative, i.e. the court offers future policymakers less discretion in their interpretation of the opinion as the court's uncertainty about future policymakers' preferences increases. Higher levels of uncertainty about the future political environment for the court increase the level of specificity in its opinions and thus make it harder for future policymakers to flout the opinion's spirit in their policy-choices.

Finally, consider the effect of the risk that court-curbing attempts would leave the court dysfunctional on the level of opinion specificity. Unsurprisingly, as the costs of backlash in the immediate aftermath of an opinion's publication increase, the court seeks to moderate these costs by providing policymakers with greater discretion in their interpretation of the opinion (i.e. the sign of the partial derivative of $b^*(L, \alpha, c)$

with respect to c is positive).

4 Discussion

The formal model introduced in the previous section sought to explore how the prospects of backlash in response to their opinions and possible variation in policymakers' interpretation of their opinions shapes the level of specificity courts choose in their constitutional review opinions. The formal analysis's main findings can be briefly summarized as follows. First, disagreement over policy between courts and current policymakers drive the discretion future policymakers enjoy in their interpretation of courts' opinions. As long as policymakers of the here and now can muster a response to a court's opinion that would threaten to undermine the latter's authority, future policymakers will enjoy fewer constraints on their policy-making due to the opinion as the court avoids providing determinate instructions detailing what the constitutional text allows and what not.

Much of the existing literature covering courts' exercise of constitutional review has sought to explain when and why courts show self-restraint in their opinions. An established line of scholarship argues that courts exercise constitutional review strategically and show self-restraint to avoid non-compliance with their opinions and backlash from the elected branches (Vanberg 2005, Hall 2014, Epstein & Knight 1998, Clark 2010, Carrubba & Zorn 2010). The insights of the model presented in this paper mirror accounts that courts act strategically to navigate the tensions with the elected branches. However, the model also shows that attempts to attenuate the risks of backlash have ramifications for the prospects of policymakers flouting the spirit of

their opinions. Avoiding specific, determinate constraints on policy in their opinions may help courts to avoid the ire from policymakers, yet undermines the court's ability to enforce constitutional limits to policy.

The second main finding of the analysis centres on the role courts' uncertainty about the future political environment plays in their decision-making. Much of the existing literature has shown that uncertainty about the future effects of their opinions and how other actors would respond to them drives courts' propensity to show self-restraint in their decisions (Vanberg 2001, Clark 2009, Staton & Vanberg 2008). For instance, Staton and Vanberg (2008) argue that courts are more likely to opt for vague language in their opinions as courts' uncertainty about the actual effect a policy would have in the future increases. When it comes to courts' uncertainty about the preferences of future policymakers, the formal analysis presented in this paper suggests that courts become increasingly assertive and more likely to detail specific instructions in their opinions as their uncertainty about future policymakers' preferences increases. It is worth recalling here that the model does not make an assumption that the 'implementation' of a court's opinion through is a single act. Rather, once an opinion is published, a variety of future policymakers (with possibly diverging policy preferences) will have to consider the opinion's content in their actions. The model suggest that as the likelihood that future policymakers would have a variety of different opinions in a specific policy area increases, courts are more likely to limit policymakers' discretion in interpreting the consequences of their opinions for policy, despite the risk of exposing themselves to backlash.

Finally, similar to many accounts in the existing literature, this paper suggests that the authority of courts is closely tied to the degree of public support they enjoy

as institutions. Public support for courts deters the elected branches from more serious assaults on judicial independence and allows courts to assert in their views in systems of separation of powers. On the flipside, as courts lose comfortable reservoirs of support among the public, courts may not stop identifying constitutional limits to policy in their rulings, however they will provide policymakers with greater discretion in interpreting the consequences of their opinions for policy-making.

5 Technical appendix

The court seeks to maximize the following expression by choosing the optimal value for b, given that $|L| > 0$ and $c > 0$:

$$EU_C(b) = -\frac{L^2 c}{1+b} - b\left(\frac{1}{2\alpha}\right)\int_{-\alpha}^{\alpha}(L+\varepsilon)^2 d\varepsilon = -\frac{L^2 c}{1+b} - b\left(\frac{3L^3+\alpha^2}{3}\right)$$

The partial derivative of $EU_C(b)$ with respect to b is given by

$$\frac{\partial EU_C(b)}{\partial b} = \frac{L^2 c}{(1+\alpha)^2} - \frac{3L^2+\alpha^2}{3}$$

Solving the first-order condition for b yields a unique critical value:

$$b^* \equiv \sqrt{\frac{3L^2 c}{3L^2+\alpha^2}} - 1$$

We can see that optimum for b can only be positive if $3L^2 c > 3L^2 + \alpha^2$, that is if L falls above the threshold $L* \equiv \frac{\alpha}{\sqrt{3(c-1)}}$. To verify that the court prefers to set $b = 0$

in all other scenarios, consider that the court prefers setting $b = 0$ if

$$-L^2c > -\frac{L^2c}{1+b} - b\left(\frac{3L^3+\alpha^2}{3}\right)$$

Plugging in b^* for b and re-arranging the inequality yields

$$0 < 3L^2c + b^*(3L^2 + \alpha^2 - 3L^2c)$$

The RHS of this inequality must be positive if $3L^2 + \alpha^2 \geq 3L^2c$. Solving for L yields the threshold $L^* \equiv \frac{\alpha}{\sqrt{3(c-1)}}$. The court chooses $b = 0$ whenever $L \leq L^*$ and $b = \sqrt{\frac{3L^2c}{3L^2+\alpha^2}} - 1$ if $L > L^*$.

We can write the optimum for b as the function $b^*(L, \alpha, c) = \sqrt{\frac{3L^2c}{3L^2+\alpha^2}} - 1$. In the following I show the partial derivatives of $b^*(L, \alpha, c)$ with respect to L, α and c. The chain rule and product rule give us

$$\frac{\partial b^*(L,\alpha,c)}{\partial L} = \frac{\sqrt{3c}}{\sqrt{3L^2+\alpha^2}} - \frac{3L^2\sqrt{3c}}{(3L^2+\alpha^2)^{\frac{3}{2}}}$$

$\frac{\partial b^*(L,\alpha,c)}{\partial L}$ is always positive as long as $\alpha > 0$ as required by the model. Moving on to the partial derivative with respect to α, the chain rule yields

$$\frac{\partial b^*(L,\alpha,c)}{\partial \alpha} = -\frac{\alpha\sqrt{3L^2c}}{(3L^2+\alpha^2)^{\frac{3}{2}}}$$

which is always negative. Finally, the partial derivative with respect to c is given by

$$\frac{\partial b^*(L,\alpha,c)}{\partial c} = \frac{\sqrt{3L^2}}{2\sqrt{3L^2c+\alpha^2c}}$$

which is always positive.

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