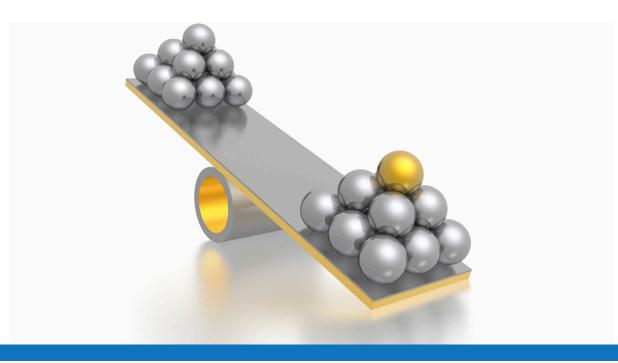# Is there bias in open peer–review?

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Introduction

The English Superior Courts are a very collegiate institution. Judges are appointed for life, sit repeatedly in panels together and often share a similar education and professional background. But when it comes to their judicial decision-making, could these close ties cause bias in their judgments? And if so, are there implications for other situations where close groups of experts are called upon to assess each other's work?

Clare Leaver and Jordi Blanes i Vidal undertook a research project to explore possible biases in open peer-review by using data from the English superior courts. Peer-review is defined as the evaluation of a person's work by a group of people in the same field. Although the term is typically associated with scientific publishing, similar practices are used in many professional settings.

Leaver and Blanes I Vidal wanted to know if there might be consequences of the strong mutual relations among judges for their judicial decision-making. Since judges often have to evaluate each other's decisions, their strong connections may make them reluctant to 'ruffle too many feathers'. To explore possible biases in decision-making, their project examined the effects of one type of relation: on-the-job interactions while sitting together in panels of three judges. Understanding how these interactions affect judicial decisions, and in particular their willingness to reverse each other's decisions, could help in determining the optimal organisational structure of this institution. It would also have strong implications for other contexts where 'experts' evaluate each other's work.

Methodology

Leaver and Blanes I Vidal examined 2,000 High Court decisions that were appealed to the Civil Division of the Court of Appeal. In many of these occasions, the panel evaluating the appeal contained at least one judge that had recently worked, or was about to work, in an unrelated case, with the High Court judge who had taken the appealed decision.

The researchers assumed the premise that one of two mechanisms could be at work in the way judges make decisions. On the one hand, a judge may develop a personal relation with a colleague with whom she sits together in a panel, and later, when asked to evaluate her colleague's decision, she may be reluctant to reverse it – this could be called 'backward-looking favouritism'. Alternatively, it may be the anticipation of working together in the future that may create some favouritism, as it might be awkward to work together with a colleague whose work one has just criticized – this would be considered 'forward-looking favouritism'. Under backward-looking favouritism the judges' past interactions would be expected to be associated with a lower likelihood of a reversal, while with forward-looking favouritism, it would be future expected interactions that prevent reversals.

Results

The findings revealed support for the forward-looking favouritism theory. The mean reversal rate for panels with an interaction in the ten days before the decision was significantly larger (by 30% points) than the mean reversal rate for panels with interaction within ten days after the decision. Two further findings reinforced the interpretation of this difference as forward-looking favouritism:

1. The difference in reversal rates is smaller for judges who would be expected to feel less awkward when meeting colleagues they have just criticized. They also found the difference to be smaller for judges assessing junior colleagues, compared to judges assessing peers of the same rank.

2. They found that affirmed decisions by judges anticipating a future interaction with the author of the appealed decision were of worse quality, and therefore more likely to be appealed themselves.

Implications

One direct policy implication of these findings is that having judges with different ranks working together is bound to lead to favouritism, and that therefore it should be avoided as much as possible. A second, perhaps more realistic, implication is that the superior courts listing process could be changed to ensure that judges cannot anticipate that they will soon sit with colleagues affected by their decisions.

These findings also have important implications for other settings subject to expert peer-review. Since the research revealed that reviewers suffer less from forward-looking favouritism bias when assessing junior colleagues, firms should reconsider the merits of decentralised open performance appraisals, and increase anonymity in multi-rater '360 degree' reviews.