**PAPER ABSTRACT**

**Submitted for consideration to: Agreement and Disagreement Beyond Ethics and Epistemology**

**Disentangling agreement and disagreement in judicial decision making: Insights from analysis of UK Supreme Court decisions**

Disagreement in the courts is prolific. After all, the reason why one encounters the courts is invariably the result of a need to resolve a disagreement or dispute – x is charged with theft but pleads not guilty; despite protestations from their neighbour, y is adamant the land at the foot of the garden is theirs; z appeals the decision of the court in dispute of the correct use of the law – and so on. Indeed, it is legal philosopher Jeremy Waldron’s belief that “the point of law is to enable us to act in the face of disagreement”.[[1]](#footnote-1) Yet, what is rarely acknowledged, is that the commonly held view proffered by Waldron here could be re-framed. It could be, perhaps, that we *seek agreement.* What, then, are the roles of agreement and disagreement in the decisions of our courts?

In this paper I draw on close analysis of UK Supreme Court (UKSC) judgments, through the lens of key works in epistemology and legal philosophy, to shed light on our understanding of agreement and disagreement in judicial decision making. As legal authority and precedent for future decisions, judgments of the UK’s court of last resort provide an apt test site for what it means to agree and disagree, and the impact this can have. To this end the paper has two key focuses.

First, I attend to the literature on, and notion of, disagreement. I note that in spite of the seemingly central role played by disagreement, surprisingly little space has been given to our understanding of the phenomenon. Furthermore, it is my claim that where attention is given to disagreement, recurring imprecision in its treatment results in misunderstandings of the notion, with consequences for our understanding of court decisions. To spotlight this claim, I take as my example the way in which literature in both epistemology and legal philosophy define and illustrate disagreement. Through application to, and analysis of, UK Supreme Court decisions, I suggest that disagreement is often conflated with decision making. In disentangling the two, and in treating decision making processes as distinct from disagreement, we can come to better understand the scope for, and impact of, disagreement in judicial decision making.

Second, it is through this examination that I also offer insights regarding the role and understanding of agreement. Through the preceding analysis of judgments, we encounter instances in which concurrent opinions are presented; where Justices assent to the court’s overall decision, but offer a different opinion from the lead judgment. Notably here, we will see that agreement as to outcome, can also mask disagreement as to means. Overall, then, in exploring the ways in which disagreement and agreement manifest in court decisions, we can shed light on the significance of these ideas in the construction of legal authority.

1. Jeremy Waldron, *Law and Disagreement* (OUP 2001) 7. [↑](#footnote-ref-1)