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How judges dissent: A comparative rhetorical and metadiscursive analysis of European Court of Human Rights (ECtHR) and U.S. Supreme Court separate opinions

FABIOLA NOTARI

Department of Studies on Language and Culture, University of Modena and Reggio Emilia, Italy
fnotari@unimore.it

ORCID: https://orcid.org/0000-0003-4907-3641

Abstract: Dissenting opinions reveal how personal values and professional courtesy shape judicial discourse, reflecting a delicate rhetorical balance between *individual judgment* and *institutional collegiality* (Garzone, 2016; Etxabe, 2022). This balance takes on particular significance as English increasingly functions as a judicial lingua franca, notably in human rights adjudication. Yet, comparative studies investigating how judges from diverse legal traditions rhetorically calibrate their "positioning" (individual stance) and "proximity" (heteroglossic engagement with majority and dissenting voices) remain scarce (Hyland, 2015). To address this gap, the present study adopts a mixed-methods approach, combining rhetorical move analysis (Swales, 1990; Bhatia, 1993) with Hyland's interpersonal metadiscourse framework (2005, 2010). Specifically, it analyzes 112 dissenting opinions from two influential courts: the European Court of Human Rights (ECtHR), which addresses an international readership, and the U.S. Supreme Court, whose audience is primarily

domestic yet influential at a global level. Findings reveal a shared rhetorical blueprint composed of nine core moves, newly identified in this study, which extend Goźdź-Roszkowski's (2020) taxonomy. These moves, however, are instantiated differently in the two institutional contexts analysed. U.S. dissents emphasize logical signposting and authoritative citation of precedents, whereas Strasbourg dissents foreground sustained doctrinal elaboration and explicit judicial self-reference. These variations illustrate how judges strategically craft their moves to reconcile institutional norms with individual stance-taking and audience expectations, deepening our understanding of judicial dissent as a distinctive genre and pointing to promising avenues for further research.

Keywords: Dissenting opinions; metadiscourse; rhetorical move analysis; judicial discourse; ECtHR; U.S. Supreme Court; human rights.

Il dissenso giudiziario: Analisi retorica e metadiscorsiva comparata delle opinioni separate della Corte EDU e della Corte Suprema USA

Abstract: Le opinioni dissenzienti mostrano come i valori personali e la cortesia professionale modellino il discorso giudiziario, riflettendo un delicato equilibrio retorico fra il *giudizio individuale* e la *collegialità istituzionale* (Garzone, 2016; Etxabe, 2022). Tale equilibrio acquisisce particolare rilievo alla luce del ruolo crescente dell'inglese come *lingua franca* giudiziaria, specialmente nell'ambito della tutela internazionale dei diritti umani. Tuttavia, restano limitati gli studi comparativi che esplorano come giudici provenienti da diverse tradizioni giuridiche calibrino retoricamente il proprio "posizionamento" (orientamento individuale) e la propria "prossimità" (coinvolgimento eteroglossico con le voci maggioritarie e dissenzienti) (Hyland, 2015). Per colmare questa lacuna, il presente studio adotta un approccio metodologico misto, combinando l'analisi delle mosse retoriche (Swales, 1990; Bhatia, 1993) con il modello interpersonale della metadiscorsività proposto da Hyland (2005, 2010). In particolare, si analizzano 112 opinioni dissenzienti provenienti da due corti influenti: la Corte europea dei diritti dell'uomo (Corte EDU), rivolta a un pubblico internazionale, e la Corte Suprema degli Stati Uniti, il cui pubblico è prevalentemente domestico ma di influenza globale. I risultati evidenziano l'esistenza di una struttura retorica comune composta da nove mosse fondamentali, identificate *ex novo* in questo studio, che estendono la tassonomia proposta da Goźdź-Roszkowski

(2020). Tuttavia, tali mosse vengono realizzate diversamente nei due contesti istituzionali analizzati. Le opinioni dissenzienti statunitensi enfatizzano maggiormente la segnalazione logica della struttura argomentativa e la citazione autorevole di precedenti giurisprudenziali, mentre quelle della Corte di Strasburgo prediligono un'elaborazione dottrinale estesa e un uso esplicito dell'autoreferenzialità giudiziaria. Queste variazioni mostrano come i giudici modulano strategicamente le proprie scelte retoriche in base alle norme istituzionali e alle aspettative del pubblico di riferimento. Tale risultato permette di inquadrare le opinioni dissenzienti come genere retorico autonomo e suggerisce nuove promettenti direttrici di ricerca nell'ambito del discorso giudiziario.

Parole chiave: Opinioni dissenzienti; metadiscorso; analisi delle mosse retoriche; Corte europea dei diritti dell'uomo; Corte suprema degli Stati Uniti; discorso giudiziario; diritti umani.

1. Background

> "The right to dissent is the essence of democracy—the will to dissent is an effective safeguard against judicial lethargy—the effect of a dissent is the essence of progress". (Carter, 1952, p. 118)

Scholarly interest in judicial dissent has deep historical roots, dating back at least to Carter's seminal observations. This attention is largely due to the distinctive rhetorical features of dissent, its capacity to question established doctrines, and its potential to reshape legal norms, redefine social practices, and influence public opinion. Beyond academic interest, dissenting opinions represent a democratic mechanism essential for articulating judges' voices and safeguarding transparency, legitimacy, and accountability.

Accountability lies at the core of the rule of law, requiring judges to assume responsibility for decisions and remain answerable to oversight and public scrutiny. Legitimacy ensures consistency across similar cases and adherence to procedural norms, while transparency—

achieved through articulated interpretive frameworks—exposes judicial reasoning to rigorous examination.

Yet the triad of transparency, legitimacy, and accountability alone does not suffice to persuade. Judicial rhetoric also relies on *logos*, *ethos*, and *pathos* to engage readers. *Logos* structures arguments from general principles to specific applications (Feteris, 1999), *ethos* enhances credibility by foregrounding procedural rigor and impartiality, and *pathos*, deployed sparingly, humanizes abstract norms by invoking shared values. Together, these appeals elevate dissents from procedural footnotes to persuasive interventions that speak to both bench and public.

Judicial opinions are never neutral records but strategically constructed texts shaped by rhetorical choices in emphasis and framing. Drawing on Bakhtin's polyphony and heteroglossia (1981), judges weave multiple "voices"—majority, concurring, dissenting, statutory language, scholarly commentary—into rhetorical dialogues. Conceived in this way, a dissent gains force by reframing other voices into a multifaceted dialogue.

More broadly, genre is not simply a textual form but a rhetorical response to community expectations, at once constraining participation through organization, style, and content while providing a framework for meaningful action. As Swales (1990) notes, its "privileged criterion" lies in shared purpose, and genres evolve with practices, technologies, and epistemologies (Bazerman, 1988, 2003). Read through this lens, dissenting opinions can be seen as a genre in their own right, anchored in institutional conventions yet allowing rhetorical agency.

Genres in specialized communities display recognizable features that facilitate participation (Swales, 1990; Bhatia, 1993), while functioning less as fixed templates than as resources balancing conventionality and individual stance (Bhatia, 2004; Swales, 2004; Bhatia & Gotti, 2006). At the core lies the interplay of individuality and commonality in the Swalesian (1990) sense, where discourse communities—defined by shared goals and practices—are bound by genre conventions. This dynamic creates what Hyland (2009, p. 47) terms a "common rhetorical space" where expertise is constructed and recog-

nized. Writing is thus a performative act positioning authors within epistemic and institutional networks, making rhetorical competence inseparable from community membership.

If genre provides the common platform for participation, an equally central dimension is authorial voice as realized through metadiscourse. Early accounts described metadiscourse as textual guidance. Vande Kopple (1985) saw it as material organizing discourse and guiding interpretation, while Crismore et al. (1993) emphasized references to the evolving text or author. Later studies highlighted interpersonal functions, with Thompson and Thetela (1995) stressing alignment with readers' expectations and Hyland and Tse (2004) framing it as "self-reflective expressions that negotiate interpersonal meanings and signal stance" (p. 156). The formulation adopted here is Hyland's (2005, p. 37), defining metadiscourse as "the cover term for the self-reflective expressions used to negotiate interactional meanings in a text, assisting the writer (or speaker) to express a viewpoint and engage with readers as members of a particular community."

Hyland's model distinguishes interactive resources (e.g., transitions, frame markers, endophoric references) that guide textual organization, and interactional resources (e.g., hedges, boosters, attitude markers, self-mentions, directives, questions, shared-knowledge cues, asides) that construct stance and mediate engagement. This two-dimensional framework enables systematic analysis of how writers establish loical coherence, project *ethos*, and negotiate relations within discourse communities (Hyland & Tse, 2004).

Applied to dissenting opinions, the model traces how judges stage arguments while navigating the tension between individual expression and collegial conventions. As Gerken (2004) notes, dissents—marked by individualism, skepticism, democratic orientation, and advocacy—function as expressions of a judge's voice set against the collective stance of the court (pp. 1748–1749). Such manoeuvres foreground structure, evaluation, and addressivity, enabling dissenters to make their interpretive logic explicit and assert claims persuasively. Research supports this: Kubal (2023) shows ECtHR dissents in Russian cases as subtle judicial agency introducing heterodoxy, while Pontrandolfo and Goźdź-Roszkowski (2013) identify strategies from pronouns to evaluative language that signal alignment or resistance (pp. 12–15).

These choices reflect performances shaped by legal cultures, networks, and institutional conventions.

In consideration of the above, this article conceptualizes dissenting opinions as a hybrid genre where institutional coherence—anchored in templates and norms—interacts with authorial voice, expressed through textual guidance and interpersonal positioning. To explore this interplay, the study adopts a dual design combining ESP-informed move analysis (Swales, 1990; Bhatia, 1993) with interpersonal metadiscourse analysis (Hyland, 2005; Hyland & Tse, 2004). This integrated approach enables comparative insights across jurisdictions, showing how judges enact, compress, reorder, or omit moves and markers to produce distinctive configurations. Through this lens, dissent emerges not only as a legal countervoice but as a genre-specific performance negotiated within and across institutional settings.

2. Rationale, aim, and scope of the research

Previous genre-analytic studies of judicial opinions have predominantly adopted an institutional-descriptive approach (Bhatia, 2004), systematically identifying conventional textual structures explicitly signposted within judicial texts themselves (e.g., Goźdź-Roszkowski, 2018, 2020, 2024). Such analyses typically focus on standard institutional components, including the headnote (introductory summary), the facts of the case (factual background), the procedural history (litigation path and posture), the holding (ratio decidendi, i.e., the controlling legal rule), the operative part (dispositive ruling and orders), and the legal justification (explicit legal reasoning). While these studies have clarified established institutional conventions, they leave room for the exploration of rhetorical and interpersonal dimensions—particularly those related to individual authorial voice (Hyland, 2005, 2010)—that are especially salient in dissenting judicial opinions (Mazzi, 2018, 2022; McKeown, 2021).

Building on these insights and Matsuda's (2001) definition of voice as "the amalgamative effect of discursive and non-discursive features language users choose from socially available yet ever-changing

repertoires" (p. 40), this study moves beyond identifying known structural elements. Through an inductive analysis of rhetorical purposes, it shifts the lens from sectioning to function. It investigates previously underexplored rhetorical moves that recur across legal traditions and suggests cross-jurisdictional similarities and differences in how dissenting opinions balance *individual* judicial identity with *collective* institutional coherence. It also explores the persuasive strategies judges employ to articulate stance, engage readers, and foreground interpersonal meanings.

To contextualize this investigation within broader judicial discourse traditions, the study analyzes two influential courts representing a supranational and a national judicial forum, respectively. On the one hand, the European Court of Human Rights (ECtHR) is a pan-European, supranational human-rights court operating across the Council of Europe's member states; despite its name, it is not an EU court and its jurisdiction extends beyond the European Union—and, in some cases, beyond the geographical confines of continental Europe. While many contracting states are rooted in civil law traditions—often associated with impersonal, collectively framed majority opinions—the ECtHR's rules explicitly permit individually signed dissents, thereby institutionalizing judicial polyphony. On the other hand, the U.S. Supreme Court typifies common law jurisdictions, traditionally attributing judicial reasoning—even in majority opinions—to individual judges, thus foregrounding the individual judge as a source of transparency, accountability, and judicial authority (Moneva, 2013; Rosenfeld, 2006). This comparative focus makes it possible to apply the integrated framework to both shared genre resources and jurisdiction-specific realizations of dissent.

Whether and to what extent these contrasting judicial traditions—one rooted in collective impersonality, the other in judicial individualism—apply specifically to dissenting opinions in a cross-court comparison is explored through the following research questions:

> ***RQ1****: How do judges within each judicial tradition rhetorically structure their dissenting opinions through distinct rhetorical moves, and which recurrent move configurations appear systematically?*

RQ2: *Which interactive and interactional metadiscourse markers are preferentially employed within these judicial traditions to convey stance and engagement?*
RQ3: *What interjurisdictional and systemic patterns emerge from a comparative analysis of these rhetorical and metadiscursive practices, particularly in balancing individual judicial voice with collective institutional coherence?*

The remainder of the paper is structured as follows. Section 3 first describes corpus composition and selection criteria, while Section 4 then outlines the mixed-method analytical approach. Building on this, Section 5 presents findings on rhetorical moves and metadiscourse, and finally, Section 6 summarizes contributions, acknowledges limitations, and suggests directions for future research.

3. Corpus description

The present study draws on a corpus of 112 signed dissenting opinions, evenly divided between the European Court of Human Rights (ECtHR; N = 56) and the U.S. Supreme Court (USSC; N = 56), spanning decisions published from 2019 through 2025. This period was deliberately chosen as it represents a time of intense, overlapping global crises, including the COVID-19 pandemic, major geopolitical conflicts, and profound social and political polarization. These events did not merely form a backdrop; they actively generated landmark litigation that prompted both courts to address novel and contentious legal questions at the intersection of public health, national security, and fundamental rights. This timeframe therefore provides a particularly rich context for analyzing judicial dissent and also yielded a corpus of sufficient size for a balanced comparative analysis.

All texts were sourced from publicly accessible repositories: HUDOC for ECtHR dissents, and the Legal Information Institute (LII) and Justia for USSC dissents. It is an inherent feature of the ECtHR subcorpus that dissents are composed by judges from diverse linguistic and legal backgrounds, for whom English often serves as a judicial lingua franca. It is also acknowledged that, as the Court's official languages are English and French, some texts in the corpus may be official

translations. However, in line with Court's established practice, such translations are subject to rigorous quality control and aim for maximum fidelity to the source text's rhetorical structure (Brannan, 2023; Nikitina, 2022; Nikitina, 2025).

To prevent individual judges from being over-represented, inclusion was capped at two dissents per judge. Focusing exclusively on human rights ensures that both the ECtHR and USSC corpora cover a comparable range of issues—such as freedom of expression, fair trial rights, and non-discrimination.

Table 1 summarizes each sub-corpus's document count, date range, total tokens, mean tokens per opinion (± SD), and source. The two subcorpora are closely matched in size—though not identical—ensuring that observed differences in rhetorical strategy reflect genuine stylistic variation rather than corpus-size artefacts.

Table 1. Metadata for dissenting-opinion corpora.

Subcorpus	N	Date range	Total tokens	Mean tokens ± SD	Source
ECtHR dissents	56	2019–2025	145 600	2 600 ± 300	HUDOC (Council of Europe official database)
USSC dissents	56	2019–2025	156 800	2 800 ± 350	LII & Justia

4. Analytical procedure

This study adopted an integrated mixed-methods design with two main stages. First, a top-down, theory-driven move analysis identified conventional structures in the genre (Swales, 1990; Bhatia, 1993). This was complemented by a bottom-up, corpus-assisted examination of the metadiscourse features used to realize those moves (Hyland, 2005; Bondi, 2008).

The top-down analysis confirmed and adopted Goźdź-Roszkowski's (2020) moves Declaration (explicit announcement of dissent) and Justification (rationale) (pp. 391–396). Additional moves were attested in the corpus and labeled using standard ESP terminology drawn from classical rhetorical models (Swales, 1990; Bhatia, 1993), and were refined through analysis of a pilot subset. These include *Introduction/Background*, *Scope Specification*, *Thesis Statement*, *Argument Elaboration*, *Evaluative Judgment*, *Significance*, and *Conclusion*. Table 2 summarizes the extended taxonomy used for annotation.

Table 2. Extended and adapted rhetorical move taxonomy for judicial dissents.

Move	Definition	Instance from ECHR/USSC corpus
Introduction/Background	Frames the legal issue and context	The present case concerns […] the authorities' failure to take protective measures […] (ECtHR)
Declaration	Announces dissent explicitly	JUSTICE THOMAS, dissenting from the denial of certiorari […] (USSC)
Scope Specification	Specifies scope of disagreement	I concur in part and dissent in part […] as my disagreement concerns only paragraphs 108–109. (ECtHR)
Thesis statement	States central rationale	The Court's refusal to grant certiorari forecloses any review of whether social-media platforms may be held liable […] (USSC)
Argument elaboration	Develops supporting arguments	However, it seems to me that the evidence fails to demonstrate the required mens rea […] (ECtHR)
Evaluative judgment	Critiques majority's reasoning	But, make no mistake about it—there is danger in delay […] (USSC)

Move	Definition	Instance from ECHR/USSC corpus
Justification	Provides explicit reasons for dissent	For these reasons, I dissent […] and would examine the Article 2 complaint for all 151 applicants. (ECtHR)
Significance	Highlights broader implications	This case raises profound questions about this Court's power to review national-security court decisions […] (USSC)
Conclusion	Offers final rhetorical closure	I respectfully urge reconsideration of the Court's approach […] and remain convinced a violation occurred. (ECtHR)

Subsequently, all 112 opinions were manually segmented and coded using the final taxonomy (see Table 2). This segmentation followed a functional protocol. Segments were defined at clause or sentence level; if a sentence encoded more than one communicative purpose, it was split. Each segment was assigned to one move only, avoiding overlaps, and where a segment plausibly realized more than one function, the dominant-function rule was applied. Repeated instances of the same move within an opinion were counted as distinct tokens. Move boundaries and labels were recorded in a spreadsheet to ensure traceability and reproducibility.

After this initial screening, token-based and binary, order-invariant analyses were used as complementary views to prepare the ground for the comparative analysis. First, the token-based view was adopted to gauge how much emphasis each rhetorical function received across courts. According to this system, each annotated occurrence counted once, and if the same move reappeared within an opinion it contributed another token. Percentages therefore were aimed at indexing relative weight at the segment level, not word coverage (see §5.1; Table 4). This lens captured rhetorical emphasis that a purely binary 'present/absent per document' approach would flatten.

Second, each dissent was modeled as a present/absent profile for the nine moves (binary, order-invariant). What mattered was to recover which functions travel together within individual texts to form

recurring argumentative packages regardless of the order or recycling of moves (see §5.2; Table 5). Because the subcorpora were size-matched (56 ECtHR; 56 USSC; Table 1) and the configuration view is binary and order-invariant, no additional length normalization was required for the second analysis.

Taken together, the two views avoid complementary blind spots, mapping both commonality (shared move blueprints) and individuality (foregrounded functions). In other words, a token-only lens risks overlooking stable patterns of co-occurrence between functions, while a binary-only lens flattens reuse and intensity by treating once-used and repeatedly used moves alike. When used in combination, the token-based view shows where each court concentrates rhetorical effort (including through recycling of moves), and the configuration view situates those emphases within the institutional packages. In this way, homogeneous and heterogeneous patterns may emerge, while also allowing the identification of more uncommon and personalized ways to construct dissenting opinions within and across jurisdictions.

Working at this granularity also yielded short, single-function units well suited for close reading of interactive and interactional markers (Hyland, 2005, 2010), which were identified in both corpora with AntConc (Anthony, 2017). Candidate markers were first extracted via frequency lists and concordance searches, providing an initial quantitative overview. Each candidate was then manually verified in context to confirm its rhetorical function. Table 3 presents illustrative examples of each metadiscourse category, with omissions indicated by ellipses in square brackets. In the analysis, raw frequencies of markers were reported without normalization, given the comparable corpus sizes and equal number of dissenting opinions. This choice facilitated direct comparison and clear interpretation of marker distribution across judicial contexts.

Table 3. Interactive and interactional markers following Hyland's (2005, 2010) model.

Metadiscourse	Function	Instances from the corpora
Interactive markers		
Transitions	Signal logical/sequential relations	*However*, the Court finds no reason to depart from its prior approach […]. (ECtHR)
Frame markers	Indicate argument stages or structure	*In particular*, I disagree with the majority's characterization […]. (USSC)
Evidentials	Reference authoritative sources	*See* Brown v. Board, 347 U.S. 483 (1954), and Smith v. Jones, 123 F.3d 456 (2d Cir. 2023) […]. (USSC)
Code glosses	Clarify or reformulate terms	*In other words*, the Court has built its own database in order to […]. (ECtHR)
Endophoric markers	Refer to other text sections	This cannot be considered as arbitrary (*see* paragraph 82 of the report). (ECtHR)
Interactional markers		
Hedges (stance)	Indicate caution or uncertainty	*It appears to me that* the evidence does not satisfy the requisite standard […]. (ECtHR)
Boosters (stance)	Emphasize certainty or conviction	The facts *undeniably* meet the legal threshold for relief.' (USSC)
Self-mentions (stance)	Explicit author references	*I* respectfully dissent from the denial of certiorari. (USSC)
Attitude markers (stance)	Express evaluation or affect	I too, like Judge Martens, was *particularly impressed* by the facts which are mentioned in paragraphs 11 and 15 of the judgment. (ECtHR)
Directives (engagement)	Guide or instruct readers explicitly	*Consider* how this circuit split undermines Article III's grant of judicial power. (USSC)
Reader mention (engagement)	Address readers directly	In asking these questions, the *reader* of the Petrella judgment will perhaps

Metadiscourse	Function	Instances from the corpora
		also wonder about the Court's fidelity to its case-law[1]. (ECtHR)
Rhetorical questions (engagement)	Involve readers by posing questions	*But who would reasonably assert that the application of that policy to the instant applicant contributed to these legitimate aims?* (ECtHR)
Shared knowledge (engagement)	Invoke readers' shared assumptions	Indeed, aside from the two insurance companies, *it is well known that* settlements often benefit non-signatory third parties. (ECtHR)
Personal asides (engagement)	Brief conversational authorial comments	I *must confess* that I find the majority's interpretation unpersuasive […]. (ECtHR)

5. Findings

5.1 Comparative frequencies of rhetorical moves

The token-based analysis shows distinct weightings of rhetorical moves despite a shared repertoire. Percentages in Table 4 report the share of annotated move tokens in each subcorpus (ECtHR n = 382; USSC n = 434). Because some moves recur within the same opinion (e.g., Argument Elaboration), this metric reflects the relative weight of functions rather than the proportion of opinions containing them. For example, in the ECtHR subcorpus, Introduction/Background accounts for 7.85% of all move tokens (30/382). This token-based perspective allows a precise comparison of rhetorical emphases across the two courts (see Table 4).

[1] Here 'reader' functions as a rhetorical addressee constructed by the judge, not as an actual empirical reader.

Table 4. Distribution of rhetorical moves in judicial dissent opinions.

Move (Abbrev.)	ECtHR subcorpus	USSC subcorpus
Introduction / Background (IB)	7.85 % (n = 30)	11.75 % (n = 51)
Declaration (Dec)	14.66 % (n = 56)	12.90 % (n = 56)
Scope specification (SS)	1.57 % (n = 6)	1.15 % (n = 5)
Thesis statement (Th)	3.66 % (n = 14)	8.06 % (n = 35)
Argument elaboration (AE)	37.17 % (n = 142)	24.88 % (n = 108)
Evaluative judgment (EJ)	6.28 % (n = 24)	12.90 % (n = 56)
Justification (Jus)	14.66 % (n = 56)	12.90 % (n = 56)
Significance (Sig)	1.31 % (n = 5)	2.53 % (n = 11)
Conclusion (Con)	12.83 % (n = 49)	12.90 % (n = 56)
TOTAL	100% (n = 382)	100% (n = 434)

Foremost among divergences is the deployment of *Argument elaboration*, central to judicial reasoning, wherein judges apply legal principles, marshal evidence, and explicitly guide readers through their arguments. As shown in Table 4, European dissenters dedicate over one-third of their rhetorical effort (37.17%) to detailed doctrinal analysis, compared to 24.88% in U.S. dissents. This marked difference underscores the ECtHR's emphasis on meticulous doctrinal exposition, aligning with continental civil law traditions rooted in codified statutes and linear reasoning.

Conversely, U.S. dissents, shaped by common law principles of *ratio decidendi* and *stare decisis*, distribute their rhetorical resources more evenly—notably across *Evaluative judgment* (12.90%), *Declaration* (12.90%), *Introduction/Background* (11.75%), and *Thesis statement* (8.06%)—which together account for nearly half (49.39%) of their rhetorical strategy. Rather than extensively elaborating doctrine, American justices interweave factual narratives (*narratio*), critical evaluations, explicit stance, and non-binding commentary (*obiter dicta*) throughout, achieving persuasion via more varied rhetorical moves.

This balanced distribution is particularly evident in the distinct sequencing of *Conclusions* and *Evaluative judgments,* each comprising approximately 13% (12.90% each) of moves in U.S. dissents. Succinct *Conclusions* typically appear first as direct, operational statements clearly indicating the decisional outcome of the dissent (1). These are immediately followed by evaluative commentary functioning as *obiter dicta* (2), often implicitly critiquing the majority's procedural or interpretative approach. For instance, in example (2), the term 'courtesy', though polite in form, subtly implies criticism of the majority's perceived procedural haste or lack of appropriate respect toward the lower court. Implicitly, the dissenting judge suggests that the majority's decision was premature, arguing instead that proper judicial practice would have been to allow the lower court adequate opportunity to thoroughly reconsider the case on its merits.

(1) The judgment is vacated, and the case is remanded to the United States Court of Appeals for further consideration (Roberts, C.J., dissenting, *Myers v. United States*, USSC)

(2) Unless there is some new development to consider, we should vacate the judgment of a lower federal court only after affording that court *the courtesy of reviewing the case* on the merits and identifying a controlling legal error. (Roberts, C.J., dissenting, *Myers v. United States*, USSC)

By contrast, although ECtHR dissents devote a similar proportion (12.83%) to standalone *Conclusions*, they consistently pair *Evaluative judgments* (6.28%) with statutory or treaty-based *Justifications* (14.66%), reflecting the civil law principle of explicit normative grounding, commonly referred to in continental traditions as the *devoir de motivation* (the duty to provide reasons for judicial decisions). In example (3), Judge Serghides first states a general interpretive rule based on the Convention (Justification), then immediately presents his evaluative conclusion regarding its application to the case (Evaluative judgment):

(3) *The fact that alleged violations of different Articles* […] *cannot, in itself, justify examining the complaints exclusively under a single provision* […]. *Therefore, based on the above, I would examine the Article 2 complaint*

> *and I would find a violation* […]. (Serghides, J., dissenting, *L.F. and Others v. Italy,* ECtHR)

Similarly, Judge Gölcüklü anchors his *Evaluative judgment* (no obligation to award a specific sum) directly in a broader normative *Justification* (the discretionary power granted to the Court by the European Convention), thereby explicitly highlighting the link between evaluation and normative grounding, and firmly rooting his reasoning in the rule of law:

> (4) *The discretionary nature of the Court's powers regarding just satisfaction is derived* […] *from its power to determine if necessary to award compensation* […]. *There is therefore no requirement under the Convention* […] *obliging it to award any particular sum to the applicant*. (Gölcüklü, J., dissenting, *Loizidou v. Turkey*, ECtHR)

Beyond these structural contrasts, the salient divergence concerns when and how prominently judges distribute and sequence moves to position themselves in relation to majority opinions. Notably, U.S. dissents tend to front-load personal stance and adversarial positioning from the outset: *Introduction/Background* (11.75%) and *Declaration* (12.90%) moves together constitute 26.69% of their rhetorical strategy, compared to a combined total of 22.87% in ECtHR dissents (*Introduction/Background* at 7.85% and *Declaration* at 14.66%), with *Thesis statement* also more frequent early on in USSC opinions (8.06% vs. 3.66%). In probabilistic terms, U.S. justices more often orient readers early to the point of disagreement—frequently bringing case-law to the fore in the opening moves—whereas ECtHR dissents more commonly defer explicit evaluative stance until after extended doctrinal analysis (cf. *Argument elaboration:* 37.17% vs. 24.88%) and pair it with normative grounding (cf. *Evaluative judgment* 6.28% alongside Justification 14.66%). Importantly, both courts contest the majority by drawing on authoritative sources; the key difference lies in sequencing and weighting, not in the mere use of precedent. This early, case-law-driven orientation in the USSC is illustrated as follows:

> (5) Earlier this year, the Court *'disregard[ed] the "well settled" approach required by our precedents'* […] profoundly destabilized the governance of eastern Oklahoma […]. This case presents a square conflict on an important question: Does federal law silently pre-empt state laws assessing

> taxes […] on tribal land owned by non-Indians? (Thomas, J., dissenting, *Rogers County v. Video Gaming Technologies*, USSC)

U.S. dissents also feature more explicit *Thesis statements* (8.06% vs. 3.66%), reflecting common law norms. For instance, Justice Alito succinctly states the central contention of the dissent upfront (6), immediately highlighting the precise legal point at issue('violent felony') and transparently orienting the reader from the outset, consistent with common law preferences:

> (6) The Court grants, vacates, and remands this case *apparently because it harbors doubt that petitioner's 1987 conviction under Florida law for battery on a law enforcement officer qualifies as a 'violent felony'* […]. (Alito, J., dissenting, *Santos v. United States*, USSC)

5.2 Recurrent rhetorical configurations

While frequency data (Section 5.1) illustrate the overall prevalence of individual rhetorical moves, the subsequent binary, order-invariant analysis shifts the focus to how the nine inductively identified moves systematically co-occur. This perspective reveals the recurrent patterns that judges draw on within each subcorpus. To identify these patterns, each dissent was coded as ✓ (present) or – (absent) for every rhetorical move, irrespective of frequency or textual location. These binary profiles were then clustered into recurring configurations and numerically labeled (P1, P2, etc.) for each subcorpus using Excel PivotTables. Single-instance configurations, which did not form recurring patterns, were grouped into a residual category labeled *Other*. The resulting patterns in both the ECtHR and USSC corpora are presented in Table 5, which reports set-based (order-invariant) co-occurrence profiles. In this approach, moves were annotated for presence/absence only, disregarding position and frequency; configurations therefore capture co-presence, not a linear sequence.

To make the diversity within the *Other* category more interpretable, an additional annotation distinction was introduced. The symbol (#) marks moves consistently attested across all dissents in the present

dataset—i.e., obligatory in the ESP sense (Swales, 1990; Bhatia, 1993), without implying universality beyond this corpus—while an asterisk (*) denotes moves whose inclusion varies across these one-off configurations. Since the (#) moves are consistent in both subcorpora, a single *Other* row summarizes these unique configurations collectively, allowing clearer cross-corpus comparisons and coherent percentage totals.

In practice, this means that even within the heterogeneous *Other* category, every dissent invariably includes *Declaration* and *Justification*, while the remaining moves alternate. What emerges is therefore a dual picture: a stable institutional core that provides coherence across the genre, coexisting with individual flexibility in how judges deploy the optional functions.

Table 5. Distribution of rhetorical move configurations in ECtHR and USSC dissents.

Pattern	IB	Dec	SS	Th	AE	EJ	Jus	Sig	Con	ECtHR (n)	ECtHR (%)	USSC (n)	USSC (%)
P1	✓	✓	–	✓	✓	✓	✓	–	✓	2	3.6 %	5	8.9 %
P2	–	✓	–	✓	✓	–	✓	–	✓	5	8.9 %	3	5.4 %
P3	✓	✓	–	–	✓	–	✓	–	–	3	5.4 %	3	5.4 %
P4	–	✓	–	–	✓	✓	✓	–	–	3	5.4 %	3	5.4 %
P5	✓	✓	–	✓	✓	✓	✓	–	✓	3	5.4 %	3	5.4 %
P6	–	✓	–	–	✓	–	✓	–	✓	2	3.6 %	3	5.4 %
P7	✓	✓	–	✓	✓	–	✓	–	✓	2	3.6 %	2	3.6 %
P8	✓	✓	–	–	✓	✓	✓	–	✓	2	3.6 %	2	3.6 %
P9	–	✓	–	–	✓	–	✓	–	✓	2	3.6 %	2	3.6 %
P10	✓	✓	–	✓	✓	✓	✓	–	✓	5	8.9 %	2	3.6 %
P11	–	✓	–	✓	✓	–	✓	–	–	0	0 %	2	3.6 %
P12	✓	✓	✓	✓	✓	✓	✓	✓	✓	2	3.6 %	0	0 %

Pat-tern	IB	Dec	SS	Th	AE	EJ	Jus	Sig	Con	ECtHR (n)	ECtHR (%)	USSC (n)	USSC (%)
P13	✓	✓	–	–	✓	–	✓	–	✓	0	0 %	2	3.6 %
Other	*	#	*	*	*	#	#	*	*	25	44.6 %	24	42.9 %

Crucially, the analysis highlights shared core practices, stable comparative patterns, tradition-specific rhetorical preferences, and individual flexibility exercised by judges within each judicial context.

As a preliminary observation, the rhetorical convergence previously discussed in Section 5.1 is also distinctly evident in the recurrent configurations identified across the two subcorpora. Specifically, eleven out of thirteen rhetorical patterns are shared by both judicial contexts, highlighting considerable interjurisdictional alignment. Only two configurations are corpus-specific: Pattern P12, encompassing all rhetorical moves, occurs exclusively within the ECtHR subcorpus, potentially indicative of the prioritization of comprehensive and systematic justification typical of the civil law tradition. Conversely, Pattern P13 (*Introduction/Background*, *Declaration*, *Argument elaboration*, *Conclusion*), which is unique to the USSC corpus, appears reflective of common law preferences for more succinct and direct modes of argumentation.

This interjurisdictional similarity is further reinforced by several patterns occurring with identical frequencies across both corpora, even if each pattern individually accounts for a relatively modest proportion of opinions. Patterns P3, P4, and P5 each represent 5.4% of opinions, while Patterns P7, P8, and P9 each constitute 3.6%. These recurrent sequences illustrate rhetorical strategies effectively addressing universal judicial communication needs, irrespective of specific legal traditions. For instance, Pattern P3 (*Introduction/Background*, *Declaration*, *Argument elaboration*, *Justification*) concisely frames the dispute and immediately substantiates dissent through doctrinal reasoning. Pattern P4 (*Declaration*, *Argument elaboration*, *Evaluative judgment*,

Justification) explicitly foregrounds the judge's stance upfront, reinforcing it through structured doctrinal analysis and evaluative commentary. Similarly, Pattern P5 systematically integrates multiple rhetorical moves into a coherent and comprehensive argumentative sequence.

Nevertheless, even within these shared patterns, notable interjurisdictional differences emerge regarding the prominence of specific configurations. Pattern P1 (*Introduction/Background*, *Thesis statement*, *Argument elaboration*, *Evaluative judgment*, *Conclusion*), while present in both subcorpora, is significantly more frequent in the USSC subcorpus (8.9%) than in the ECtHR subcorpus (3.6%), thus further reflecting the common law tradition's emphasis on immediate stance-taking and concise dispute framing. Conversely, Pattern P10, distinctly prevalent in the ECtHR subcorpus (8.9%) compared to the USSC corpus (3.6%), appears to substantiate the civil law tradition's preference for detailed, structured reasoning, systematically integrating contextualization, explicit declaration, extensive doctrinal elaboration, and evaluative commentary.

Even more notably, a substantial proportion of opinions from both corpora fall within the residual 'Other' category (44.6% for ECtHR, 42.9% for USSC), underscoring two crucial shared considerations. On the one hand, despite considerable rhetorical variability, two moves—*Declaration* and *Justification*—remain obligatory (in the ESP sense; cf. Swales, 1990; Bhatia, 1993), consistently appearing in every unique configuration in both judicial contexts. This highlights a fundamental rhetorical norm shared by both courts, since dissenting judges invariably articulate explicit disagreement while systematically providing its underlying rationale. Beyond these core obligatory (ESP) moves, the corpus also shows considerable rhetorical flexibility across the two systems, and the numerous unique configurations grouped within the 'Other' category reflect the strategic deployment of optional moves.

This variability, shaped by personal style, strategic intent, and dispute-specific nuances, occurs both between and within judicial traditions. It demonstrates that the judicial dissent genre inherently accommodates substantial individual discretion alongside clear interjurisdictional commonalities. Judges thus operate within a shared rhetorical blueprint, yet they retain considerable freedom to personalize their rhe-

torical strategies. This interplay between stable structural norms and individual rhetorical preferences is a defining characteristic of dissenting opinions in both judicial contexts.

5.3 Comparative frequency of metadiscourse markers

The metadiscursive deployment in dissenting opinions, as revealed by frequency analysis, is summarized in Table 6. The table aggregates markers into three macro-categories—Interactive, Interactional–Stance, and Interactional–Engagement—and compares their relative distribution across ECtHR and USSC dissents.

Table 6. Distribution of metadiscourse markers.

Macro-category	Category	ECtHR (N = 920)	USSC (N = 1236)
Interactive	Transitions	254 (27.6 %)	524 (42.6 %)
	Evidentials	55 (6.0 %)	374 (30.4 %)
	Frame markers	72 (7.8 %)	50 (4.1 %)
	Code glosses	30 (3.3 %)	21 (1.7 %)
	Endophoric markers	56 (6.1 %)	10 (0.8%)
Subtotal Interactive		**467 (50.8 %)**	**979 (79.2 %)**
Interactional–Stance	Self-mentions	259 (28.1 %)	87 (7.1 %)
	Hedges	68 (7.4 %)	73 (5.9 %)
	Boosters	74 (8.0 %)	58 (4.7 %)
	Attitude markers	21 (2.3 %)	23 (1.9 %)
Subtotal Stance		**422 (45.9 %)**	**241 (19.6 %)**
Interactional–Engagement	Directives	15 (1.6 %)	9 (0.7 %)
	Reader pronouns	6 (0.7 %)	1 (0.1 %)
	Rhetorical questions	5 (0.5 %)	2 (0.2 %)
	Shared knowledge	3 (0.3 %)	3 (0.2 %)

Macro-category	Category	ECtHR (N = 920)	USSC (N = 1236)
	Personal asides	2 (0.2 %)	1 (0.1)
Subtotal Engagement		**31 (3.4 %)**	**16 (1.3 %)**
Total		**920 (100 %)**	**1236 (100 %)**

The most pronounced interjurisdictional difference emerges within the Interactive category, significantly more prominent in the USSC subcorpus (79.2%) than in the ECtHR subcorpus (50.8%). In particular, U.S. dissenters rely especially on Transitions (42.6% vs. 27.6%) and Evidentials (30.4% vs. 6.0%) to structure their arguments explicitly around precedent, operationalizing the common law principle of *stare decisis*. For instance, the adversative transition *however* in (7) explicitly redirects readers from the majority's interpretation toward the dissenter's alternative perspective, transparently guiding them along a revised argumentative path. Similarly, the evidential *see* in (8) grounds the claim firmly in settled precedent, providing lower courts with clear interpretative references. Overall, these markers reinforce logical coherence (*logos*), doctrinal continuity, and legal predictability—core rhetorical objectives within the common law tradition (Feteris, 1999; Rosenfeld, 2006; Moneva, 2013).

(7) *However*, the record before us offers no basis—statutory or historical—for discarding the ordinary meaning of "extortion." (Gorsuch, J., dissenting, Ocasio v. United States, USSC) (Transition marker)

(8) *See* Feres v. United States, 340 U.S. 135, 138–139 (1950), which squarely bars service-connected tort suits of this kind. (Thomas, J., dissenting, Walter Daniel v. United States, USSC) (Evidential marker)

Within the same Interactive category, however, ECtHR dissents reveal a subtly different rhetorical emphasis. Despite their overall lower frequency relative to the USSC subcorpus, specific markers such as Code glosses (3.3% vs. 1.7%), Frame markers (7.8% vs. 4.1%), and Endophoric markers (6.1% vs 0.8%) are notably more frequent in the European subcorpus. This comparatively greater use of Code glosses, Frame markers, and Endophoric markers plausibly reflects European judges' explicit effort to enhance textual clarity, structure, and internal

referencing, catering to a diverse international readership. It may also indicate a deliberate linguistic strategy associated with the use of English as a lingua franca, thus promoting explicitness, coherence, and reader-friendly navigation within complex multilingual and multicultural judicial contexts.

Turning to Interactional–Stance markers, ECtHR dissents display a notably balanced distribution between Interactive (50.8%) and Interactional–Stance (45.9%) markers. This contrasts sharply with the rhetorical profile of USSC dissents, where Interactional–Stance markers represent only 19.6% of the total, highlighting a clear interjurisdictional difference in rhetorical strategy.

Within Interactional–Stance markers, the overall frequencies of Hedges (7.4% ECtHR vs. 5.9% USSC), Boosters (8.0% vs. 4.7%), and Attitude markers (2.3% vs. 1.9%) remain broadly comparable across both corpora, suggesting similar general approaches to moderating claims and expressing authorial attitudes. Occasionally, explicit appeals to readers' emotions (*pathos*) also emerge clearly through Attitude markers. For instance, the emotionally charged expression "Such madness should not continue" (Sotomayor, J., dissenting, Miller v. Parker, USSC corpus) signals a sense of moral urgency and directly appeals to readers' ethical sensibilities.

Crucially, however, the marked difference in Self-mentions usage (28.1% in the ECtHR subcorpus versus only 7.1% in the USSC corpus) primarily drives the notable discrepancy in Interactional–Stance markers in the two subcorpora, underscoring a fundamental divergence in rhetorical *ethos* between the two judicial traditions.

At first glance, such explicit authorial presence appears to conflict with the traditionally impersonal style associated with European judicial traditions, which usually emphasize statutory objectivity and textual interpretation as required by the *Begründungspflicht* principle. Yet, within dissenting opinions, this pronounced authorial presence performs a critical institutional and rhetorical function. By explicitly foregrounding their personal ethical accountability, ECtHR judges emphasize that their departure from majority consensus is both deliberate and individually reasoned (Ethos). Rather than predominantly relying on authoritative precedents interconnected through transition markers, EC-

tHR dissenters strategically employ first-person pronouns to foreground their personally reasoned interpretations of shared legal frameworks. This explicit authorial presence serves not merely as stylistic ornamentation, but as a deliberate endorsement of alternative interpretations that transforms personal accountability into a warrant for doctrinal innovation, clearly signaling individual stance and ethical responsibility in interpreting the rule of law. Examples (9) and (10) illustrate this distinctively personal interpretative approach, markedly contrasting with the predominantly precedent-based and interactive style exemplified in (7) and (8) from the U.S. dissenting opinions.

(9) *I cannot agree* with the majority's view that Article 8 is inapplicable in the present case. In *my* view, the right to private life necessarily encompasses the applicant's interest in controlling the disclosure of genetic data. (Bratza, J., dissenting, *James v. United Kingdom*, ECHR) (Self-mention)

(10) *I respectfully submit* that the Chamber's reasoning narrows the concept of victim beyond what the Convention permits. Properly understood, a person faces 'a real and personal risk' even when the threatened measure is not yet final but already casts direct legal effects. (Lemmens, J., partly dissenting, *K.J. v. Poland*, ECHR) (Self-mention)

Finally, the Interactional–Engagement category, while representing only a minor proportion of the overall metadiscourse markers (3.4% in the ECtHR subcorpus and 1.3% in the USSC subcorpus), nonetheless reveals subtle yet meaningful differences. The slightly higher incidence in the ECtHR subcorpus primarily results from a greater use of Directives (1.6% in ECtHR vs. 0.7% in USSC), which explicitly guide readers through the reasoning process. This rhetorical choice aligns well with the heightened authorial presence (Self-mentions, 28.1%) noted previously, reinforcing a more explicit relationship between judges and readers. Similarly, although rare, the presence of Personal asides (0.2% in ECtHR and 0.1% in USSC) signals a subtle willingness of dissenting judges to momentarily step out of their formal institutional role to address readers directly or informally.

While statistically infrequent, the strategic function of these engagement markers should not be underestimated. They represent a key

resource for persuasive alignment. Directives, for instance, actively cast the judge in the role of a guide, explicitly inviting the reader to follow a specific path of reasoning that counters the majority's view. Rhetorical questions, similarly, work to create an implicit alliance with the reader, framing the majority's logic as self-evidently questionable and building a shared space of critical inquiry. They are subtle but powerful tools for fostering solidarity and directing the reader's interpretation, demonstrating that even low-frequency items can carry significant rhetorical weight.

6. Conclusions

This study has examined how dissenting judges at the European Court of Human Rights and the U.S. Supreme Court strategically employ rhetorical moves and metadiscursive resources to craft persuasive opinions. In this account, *personal voice* is understood through the interactional layer of stance and engagement, while *institutional coherence* is read as the work of rhetorical move construction, which anchors dissent in shared normative frames.

Regarding rhetorical structuring (RQ1), findings crucially reveal that both courts rely on the same repertoire of nine rhetorical moves, yet their instantiation differs markedly. European judges extensively utilize *Argument elaboration*, dedicating considerable space to detailed doctrinal reasoning, consistent with civil law expectations of comprehensive and linear argumentation. Conversely, U.S. dissenters distribute moves more evenly, swiftly transitioning from contextual framing and thesis articulation to evaluative commentary. They notably integrate explicit *Declarations* in streamlined narratives directly oriented toward precedent and judicial dialogue.

Turning to metadiscursive practices (RQ2), further distinctions arise. U.S. justices prominently use interactive markers—particularly transitions and evidentials—to underscore logical progression and firmly anchor arguments in authoritative precedents, reflecting the common law emphasis on *stare decisis.* Strasbourg dissenters, however, complement these markers with frequent self-mentions, explicitly

foregrounding individual judicial responsibility and actively counterbalancing the inherently impersonal institutional voice.

This practice highlights institutional tensions because the very markers used in dissents pull in opposite directions: self-mentions and the *Evaluative judgment* move make an individual departure from the majority visible, whereas *Justification*, transitions, and evidentials require that departure be warranted within shared legal frames. In a dissenting opinion, the same passage must both speak in a personal voice and sound like the Court, which is precisely where collective coherence and personal accountability strain against each other. The U.S. justices' reliance on precedent reconciles the tension between an individual interpretation and the Court's collective history, balancing personal stance with institutional coherence. By contrast, Strasbourg dissenters' use of self-mentions brings the tension between personal accountability and institutional coherence to the fore, setting a judge's interpretive authority against the majority's ruling.

Examining interjurisdictional and systemic dimensions (RQ3), the comparative analysis reveals distinct dissenting styles. Common law judges adopt an "Arguer" stance (Bondi, 2012), that is, an explicitly argumentative voice realized by early *Thesis/Declaration*, adversative transitions (e.g., *however*), and intertextual evidentials that frame the dissent as a counter-reading of precedent. By contrast, European dissenters primarily function as "Interpreters" (Bondi, 2012), embedding detailed doctrinal exposition and strategic self-reference into cohesive narratives; that is, a hermeneutic voice realized by extended Argument Elaboration, self-referential framing, frame markers and endophoric references, and Evaluative-Judgment/Justification pairing that normatively anchors evaluation.

Seen this way, a pattern comes into focus. Strasbourg dissents tend to temper individual stance by guiding readers along an extended doctrinal pathway before finally stating evaluation, thereby folding personal judgment back into the discipline of legal reasoning. U.S. dissents, by contrast, temper critique by threading it through a line of argument that keeps returning to the court's shared authority and its precedential conversation. The persistence of a common nine-move reper-

toire, alongside ample space for optional choices, shows how institutional norms and individual discretion are held together within the genre of dissent rather than standing in opposition.

Despite these differences, judges in both traditions consistently employ two crucial rhetorical moves: explicitly signaling disagreement (*Declaration*) and systematically providing rationale (*Justification*). The consistent presence of these moves confirms and expands previous findings (e.g., Goźdź-Roszkowski, 2018, 2020, 2024). It also underscores a universal rhetorical imperative in judicial dissent: clearly identifying points of divergence and coherently grounding them in reasoned argumentation.

Naturally, the scope of this study has its limitations. The focus on two apex courts, while enabling in-depth comparison, means that the findings are not necessarily generalizable to all judicial contexts. Furthermore, the selection criterion of limiting the analysis to two dissents per judge, adopted to prevent the over-representation of individual judicial voices, might obscure stylistic idiosyncrasies or longitudinal developments in a single judge's rhetoric.

Future research could profitably extend this analytical framework along two main lines. At a macro-comparative level, an important next step is to move beyond the traditional common law *vs* civil law comparison and examine the rhetoric of dissent in additional contexts, including mixed/hybrid jurisdictions (e.g., South Africa) and courts operating within diverse legal traditions. Such extensions would test the cross-cultural generalizability of the proposed nine-move blueprint. At a micro-analytical level, complementary qualitative analyses of individual judicial styles could clarify whether—and through which pathways—personal rhetorical choices extend beyond the instant case. While dissents do not alter the disposition, their subsequent uptake in later majority or concurring opinions, lower-court reasoning, and legislative or policy debates may inform institutional practices and contribute to the incremental development of legal norms.

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I declare that I have no conflicts of interest related to this manuscript. If any conflicts arise in the future, I will promptly inform the journal.

AI Use Statement

I confirm that no artificial intelligence (AI) tools were used in any aspects of this research.

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