



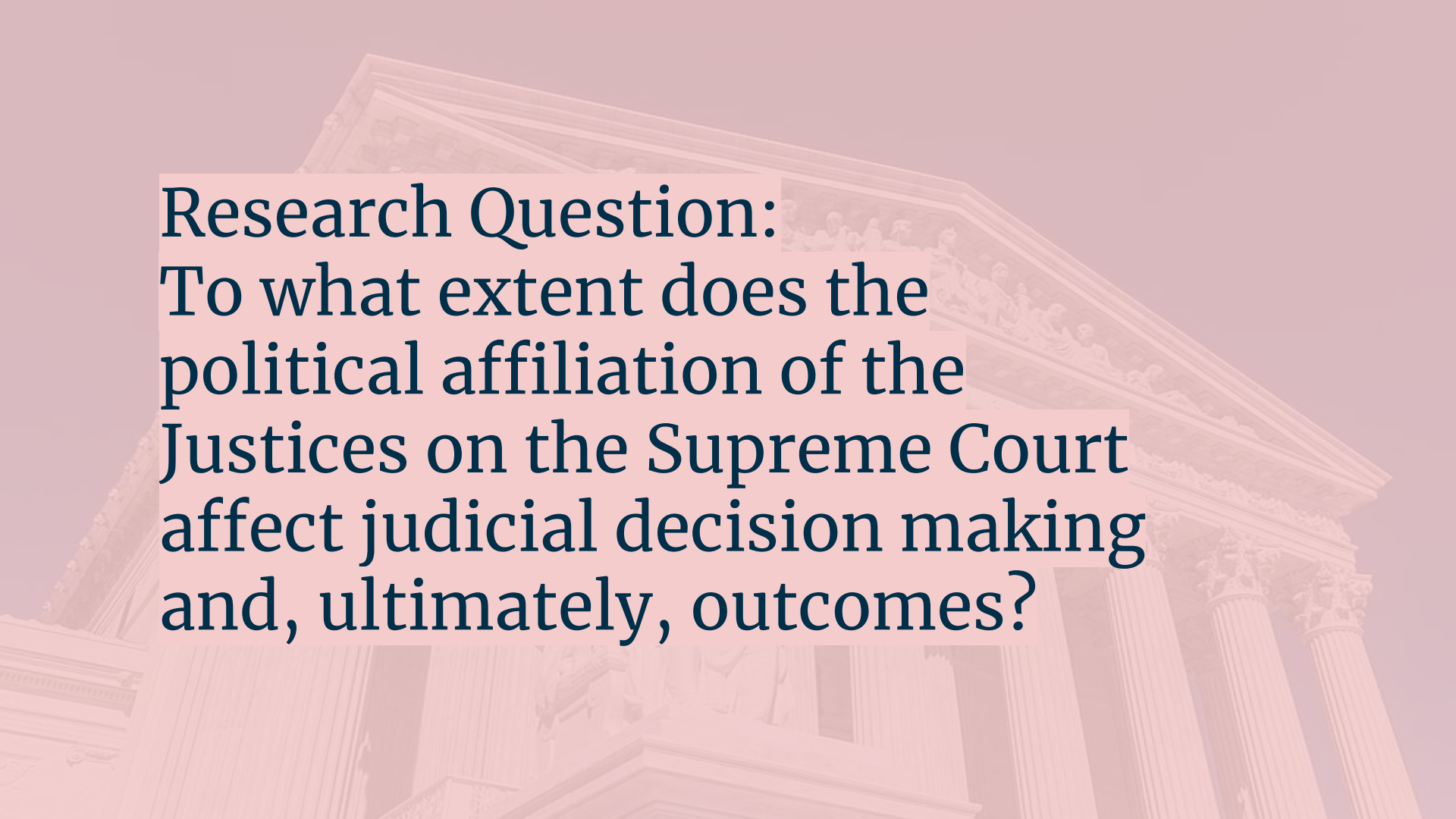
The Intersection of Judicial Interpretive Methods and Politics in Supreme Court Justices' Due Process Opinions

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I. Introduction: The Judiciary and Politics

- The United States Supreme Court is the highest court in the country and, with it, we expect the highest level of judicial reasoning and interpretative methods consistent with the Constitution and common law.
- Frequently, it is assumed that the Court is an unbiased third party, due to its disconnect from politics. Is this truly the case though?



Research Question:
To what extent does the political affiliation of the Justices on the Supreme Court affect judicial decision making and, ultimately, outcomes?

I. Introduction, Con't: Thesis and Concepts

Thesis: Political affiliation will manipulate the decision making methods of a Justice when it is necessary to achieve their preferred political outcome.

1. **Constitutional analysis methods:**
 - a. Natural Law
 - b. Holmesian
 - c. Formalism
 - d. Instrumentalism
2. **How would I know** that politics was the cause for deviation?
3. Which Justices have the **most established** constitutional analysis methods?

II. Literature Review

1. Scholars have different methods for interpreting how Justices analyze the cases and come to their opinions, concurrences, and dissents. The four constitutional analysis methods are Natural Law, Holmesian, Formalism, and Instrumentalism.
2. The most politically charged cases are due process. There is substantive and procedural due process.
 - a. **Substantive due process** requires that the government have sufficient justification to deprive a person's life, liberty, or property.
 - b. **Procedural due process** requires the government follows proper procedures in depriving a person of life, liberty, or property.

IV. Analytic Framework: Constitutional Analysis Methods

Natural Law

- Appeal to a general enlightenment principle or Christian principle
- Strong Advocacy of precedent
- Originalism, or original meaning

Formalism

- Textualism
- Strong advocacy of states' rights
- Specific abstraction
- Traditional values

Holmesian

- Deference

Instrumentalism

- Social policy analysis
- Community consensus
- Legislative history
- Broad-based historical investigation

III. Method: Pattern Matching

Pattern matching is when you compare an observed theory to data and evaluate whether the theory is applicable or accurate.

“The important characteristic of these rival explanations is that each involves a pattern of independent variables that is mutually exclusive: If one explanation is to be valid, the others cannot be”

- **The Justices**

- Justice Breyer
- Justice O'Connor
- Justice Scalia

- **The Cases**

- Due Process

- **The Research**

- 10 cases for each Justice
- Evaluate each case and identify anytime an indicator is used
- If a Justice uses their established style 65% of the time in an opinion, they will have reasonably adhered to their established style.
- If a Justice uses their established style 65% of the time throughout all opinions, they will have reasonably adhered to their established style.

V. Analysis: Justice Breyer

On the micro-level of analysis, Justice Breyer adhered to instrumentalism more than 65% of the time in 5 of the 10 cases evaluated.

The macro-level of analysis is represented below:

Total Natural Law Distinct Instances in All Cases	Total Holmesian Distinct Instances in All Cases	Total Formalism Distinct Instances in All Cases	Total Instrumentalism Distinct Instances in All Cases	Total Distinct Instances in All Cases
39	23	22	240	324
% Natural Law of Total Distinct Instances in All Cases	% Holmesian of Total Distinct Instances in All Cases	% Formalism of Total Distinct Instances in All Cases	% Instrumentalism of Total Distinct Instances in All Cases	_____
12%	7%	7%	74%	100%

V. Analysis: Justice O'Connor

On the micro-level of analysis, Justice O'Connor adhered to natural law more than 65% of the time in 2 of the 10 cases evaluated.

The macro-level of analysis is represented below:

Total Natural Law Distinct Instances in All Cases	Total Holmesian Distinct Instances in All Cases	Total Formalism Distinct Instances in All Cases	Total Instrumentalism Distinct Instances in All Cases	Total Distinct Instances in All Cases
161	12	7	175	355
% Natural Law of Total Distinct Instances in All Cases	% Holmesian of Total Distinct Instances in All Cases	% Formalism of Total Distinct Instances in All Cases	% Instrumentalism of Total Distinct Instances in All Cases	_____
45%	3%	2%	49%	~100%

V. Analysis: Justice Scalia

On the micro-level of analysis, Justice Scalia adhered to formalism more than 65% of the time in 0 of the 10 cases evaluated.

The macro-level of analysis is represented below:

Total Natural Law Distinct Instances in All Cases	Total Holmesian Distinct Instances in All Cases	Total Formalism Distinct Instances in All Cases	Total Instrumentalism Distinct Instances in All Cases	Total Distinct Instances in All Cases
119	2	92	245	458
% Natural Law of Total Distinct Instances in All Cases	% Holmesian of Total Distinct Instances in All Cases	% Formalism of Total Distinct Instances in All Cases	% Instrumentalism of Total Distinct Instances in All Cases	_____
26%	0%	20%	53%	~100%

V. Analysis

Constitutional Analysis Method	Total Distinct Instances of All Indicators for the Constitutional Analysis Method in All 30 Opinions	% of All Distinct Instances for the Constitutional Analysis Method in All 30 Opinions
Natural Law	319	28%
Holmesian	37	3%
Formalism	121	11%
Instrumentalism	660	58%
Totals	1137	100%



VI. Questions & Comments