Chapter 8
Theories of Judicial Behavior and the Law: Taking Stock and Looking Ahead

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8.1 Introduction

Several theories have been put forward to try to make sense of how apex courts decide the cases that are brought before them and to measure judicial activism. They are strikingly different in scope and purpose, methodology and assumptions, but they all try to understand how the adjudication process unfolds and law is put into practice. As the analysis shall illustrate, not all of them are mutually incompatible. Quite the opposite: they serve as different lenses shedding light on distinct aspects of judicial decision-making, each engaging in a different enterprise.[1]

Amongts these, *positive (political) theories of judicial review*—more suggestively labelled *theories of judicial behaviour*—aim at suggesting a cognitive framework accounting for the ways in which rulings are delivered, focusing on how courts do it and why: what motivates and influences judges to decide, in concrete, each case.[2] They attempt to go beyond the reasons judges adduce in their opinions, claiming that the real explanations for judicial decisions are not necessarily the

[1]See Dyèvre (2008: 8–14).

[2]For an overview of the existing theories of judicial behaviour, see Baum (2008: 5–19), Burbank (2011: 41–60), Dyèvre (2008: 10–22, 2010: 300–312), Friedman and Martin (2011: 147–156), Magalhães (2003: 257–269), Magalhães and de Araújo (1998: 11–16), Posner (2008: 19–56), Robertson (2010a: 579–588), Segal and Spaeth (2002: 86–114), Segal (2011: 18–34). For an intellectual history of judicial behaviour theories, see Maveety (2002: 1–44).

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rationales that are stated in the majority's or in an individual judge's opinion. They would rather lie in other factors, pertaining to the individual judge or to the general context in which she moves. Indeed, as positive theories were born out of the legal realism movement[3] and dominated by political scientists, they typically give precedence to extra-legal explanations.[4] Being causal accounts of judicial decision-making—i.e., theories that assume, and argue, that judicial decisions are determined by factors which can be interpreted as causes—, they aim at enabling predictions.

Technically, the outcome of judicial decisions is taken as the dependent variable and the authors try to identify the independent variable that might determine it. To do so, they resort to *models*. These are representations of the reality that focus on the most explanatory variables of a certain behaviour, concentrating on the big picture and providing a framework that can be systematically used to understand a set of cases. They generally consider whether certain characteristics of the object relate to one another by systematising enormous amounts of data and extracting inferences about the existence of patterns. While doing so, they necessarily simplify the complexity of the reality they analyse and go beyond the idiosyncrasy of case-studies. At the same time that they illuminate past deeds, they aim at predicting future behaviours. This does not mean, however, that all models must be both explanatory and predictive: some only try to map and make sense of observed phenomena, while others focus on anticipating upcoming events. One essential characteristic is that models must be falsifiable or at least testable.[5]

In the following pages, the most relevant positive models will be discussed: the attitudinal and the strategic (internal and external) models. The so-called 'legal models'—i.e., those that are based on legal variables to explain judicial behaviour, such as the plain meaning of the law, the intent of the framers, precedent, and balancing—have been bracketed. The reason for this is that they are not real positive models, but rather normative: they do not analyse how the decision-making process actually takes place, but prescribe how it ought to.[6]

The objective of the subsequent sections is to state their purpose and briefly evaluating their potential for the current enterprise: that of measuring and understanding when and why judicial activism occurs. The positive accounts of judicial

[3]For an overview of the legal realism movement, see Leiter (2010).

[4]See Segal and Spaeth (2002: 97–103).

[5]See Segal and Spaeth (2002: 44–48), Spaeth (2008: 754–755), Friedman and Martin (2011: 148–150).

[6]In addition, political scientists do not really engage with the legal literature and picture it as no more than a caricature, dubbing it as "meaningless" and not even hesitating in admitting that they rely on anecdotal evidence for their claims regarding the legal model—see Segal and Spaeth (1993: 62). It is therefore not surprising that they claim that the legal model "serves only to rationalise the Court's decisions and to cloak the reality of the Court's decision-making process"—see Segal and Spaeth (1993: 34); see also Segal and Spaeth (2002: 48–85). Similarly, considering that positive theories "attack a model of the law that simply does not exist" and that their "descriptions of the legal model do not correspond to the conceptions of the law held by lawyers, judges, and law professors", see Gerhardt (2005: 912). For a different account of a legalist model of judicial review, see the chapter by Almeida Ribeiro in this volume.

law-making that will be surveyed are general theories about judicial behaviour, and not theories that are focused on specific types or categories of issues adjudicated by courts.

As it will be seen, all of them are insufficient—either alone or altogether—and no 'size fits all'. What is more: certain theoretical approaches are strongly conditioned by the institutional environment of origin, and cannot persuasively suggest any universalist claims. In fact, most of this work has been written by US scholars, generally on US courts, with an emphasis on federal courts and particularly on the Supreme Court.[7] When it is not written by US scholars and about US courts, it is still heavily influenced by the US model and its assumptions; its transferability is, therefore, doubtful.[8]

8.2 The Attitudinal Model

The attitudinal model was the first positive model proposed by political scientists to analyse judicial behaviour.[9]

According to this theory, judges would come to the bench with a crystallised set of ideological predispositions and would systematically apply them in their adjudication of the cases at hand. It would be their raw preferences and attitudes to policy that would determine the content of their rulings. Essentially political in nature, those principles and values would be shaped by their personalities, background, and presuppositions. The consequence is therefore that the primary determinant of judicial decision-making would be the judge's own values.[10] As such, the legal arguments that judges use in their opinions would be simple post hoc justifications and not true causes of judicial behaviour. Put bluntly yet simplistically, this means that conservative judges would vote for conservative decisions, whereas liberal judges would vote for liberal ones.

To measure their preferences, the proponents of the attitudinal model submit a number of possible proxies: the judges' background or personal attributes, region of birth, judicial experience, past voting records, the political preferences of the

[7]Spaeth (2008: 763). Explaining the reasons for this, see Robertson (2010b: 21–22). The author adduces one main factor for the prevalence (and influence) of the US scholarship: the fact that US (positive) political science scholarship seems to technically have the lead in the subject. See also Magalhães and de Araújo (1998: 16–18, 40–42).

[8]Robertson (2010b: 24), even states that "no one, to [his] knowledge, has ever convincingly applied such an attitudinal model to, for example, a European court". Examples of solid work regarding its applicability to European and Asian jurisdictions include de Araújo (1997), Volcansek (2000), Magalhães (2003), Ginsburg (2003), and Vanberg (2004).

[9]The landmark work on this model is that of Segal and Spaeth (1993, 2002). For earlier versions, see, e.g., Rohde and Spaeth (1975).

[10]Although this model might work for all courts, it works particularly well for apex courts, which cannot be overruled by other courts—see Segal (2008: 25).

appointing authority, as well as their published work or interviews.[11] The choice of the 'measure of judicial ideology' is a very important step in these accounts.

This is the dominant model to analyse the US Supreme Court. The fact that US Supreme Court justices have life tenure (and therefore no incentives to seek higher offices), no electoral accountability, and complete control over their docket make it a particularly adequate model.[12] It is because Supreme Court justices are so completely unconstrained that they can freely implement political policy preferences.[13]

The implication of this model is that changes in judicial personnel are likely to bring about changes in judicial politics.[14] This theory comes with the corollary that promotions or demotions of judicial personnel are bound to tamper with the delicate balance of judicial politics.

From another perspective, this means that judicial decisions can only be moulded by external actors through the appointment process: the initial selection of a liberal or of a conservative judge. And the selection of politically dependable judges, from this standpoint, is a victory of the attitudinal school.[15] Drawing a parallel with game theory, it resembles the adverse selection game, in which the only relevant fact is the a priori type of the appointed actor.[16]

Interestingly, by defending that judges decide cases only in accordance with their pre-existing political preferences, attitudinalists claim that no other institutions constrain judges. By way of doing this, they assert that the latter decide their cases completely insulated from the political context.[17]

[11]Segal and Spaeth (1993: 221–234) most rely on past voting record and content analysis (i.e., press editorials that characterise the US Supreme Court nominees before their confirmation), but set aside the social background. For a different perspective, focusing on how judges gain their preferences, see Baum (2011: 79).

[12]Not all apex courts share these features. The term of Portuguese constitutional justices, for example, lasts for 9 years and it is not renewable [see Article 222(3) of the Portuguese Constitution]; at the same time, the court has virtually no control over its docket. For other relevant data, see de Araújo (1997: 55–64, 69), as well as Magalhães and de Araújo (1998: 21–26).

[13]See Segal and Spaeth (1993: 69–72, 358), recognising that the full application of the model may be limited to the US Supreme Court on civil rights and liberties matters. On the same point, see Friedman and Martin (2011: 166), hinting at selection bias.

[14]On the factors that affect the presidential nomination (partisanship and ideology; political environment; prior experience; region; religion, race, and sex; and friendship and patronage), see Segal and Spaeth (2002: 179–186, 1993: 126–131).

[15]See Burbank (2011: 60), Posner (2008: 169). On the topic, see Epstein and Segal (2007: 119–145).

[16]See Landau (2005: 697).

[17]See Friedman (2006: 274).

8.3 The Strategic Model

Proponents of the strategic model do concede that the judges' preferences and values play a role in judicial decision-making. However, significantly influenced by the rational choice theory axiom that human behaviour is inherently interactive,[18] they add a supplementary caveat: that their influence is significantly conditioned and constrained by the institutional setting in which judges operate.[19]

This model's claim is that judges would defect from their ideological ideal point so as to effectively weigh on the court's final decision or, at least, its long term policies. In other words: judges would be led to rationally deviate from their brute preferences by the presence of other relevant actors within the systems. Each player would behave strategically on the basis of her preferences, of her perceptions, and in anticipation of the other players' preferences and strategies. It would be a game of mutual calculation in which judges would not wait for the other actors to act and see what happens, but would think ahead and modify their positions, even if that would mean going for the second-best outcome. The consequence of this would be that at times courts would not get away with their most preferred result, but would instead meet halfway between theirs and those of other institutions. It would therefore be a matter of anticipated reaction. And "the implication of anticipated reaction is that institutions may be responding to constraint, even if this is unobservable".[20]

This theory, along with the attitudinal model, acknowledges that all institutions have preferences regarding policy outcomes.[21] The difference is that it also sustains that, in acting, they must take into account the preferences of other actors that play a role in the ultimate policy choice.[22]

It rests, then, on a sharp dichotomy between sincere behaviour, whereby a judge would not take account of the other judges' or political actors' preferences but would rely solely on his own views and preferences, and strategic behaviour, whereby a judge is driven by his determination to ensure a final outcome which is the closest possible to his preferences. This does not mean, though, that sincere (attitudinal) and strategic judges will always behave differently: "strategic considerations may require only occasional and limited departures from judges' most preferred positions".[23] The fundamental difference is, then, one of motivation to act.

The strategic model has two different versions, depending on whom the relevant other actors are considered to be: the remaining judges in the court (for the internal strategic model) or the broader political environment (for the external strategic model).

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[18]See Segal (2011: 30).

[19]The seminal work on the strategic theory belongs to Epstein and Knight (1997).

[20]See Friedman (2006: 312).

[21]Claiming that both attitudinal and strategic models are in practice one wherein actors are assumed to have preferences and to act strategically to maximise them, see Landau (2005: 696).

[22]See Epstein (2008: 496–497).

[23]See Baum (2011: 73–74).

Regardless of which of the two is chosen, the result is always "an account of how individual judicial policy preferences lead to group decisions".[24]

8.3.1 The Internal Strategic Model

The internal strategic model emphasises the collegial structure of judicial bodies and the dynamics of the deliberation process.[25] In a sentence, the theories based on this model predict that judges will vote on the basis of what they expect their colleagues will do.

A number of institutional elements constrain the unfolding collegial game in procedural terms. In particular, the court's statute and rules shape the room for internal dynamics, as well as determine both where the power rests in the court and more crucially how that power is exercised.[26] All procedural stages might be pertinent: from the admissibility moment to the preliminary vote, from the assignment of the task of writing the majority opinion to the decision to join, concur, or dissent.[27] Several factors are relevant: the rules concerning the quorum for decisions, the majority required to strike down laws, the size of the court, who assigns the writing of opinions for the court,[28] whether the court has the power to set its own agenda by controlling its own docket (e.g., the US Supreme Court's certiorari practice).[29]

There are two limitations to research done within this model. On the one hand, it presupposes, at the empirical level, that there is open access to data on opinion assignment and to the minutes of conference meetings and internal documents. In the US, it is possible to resort to, and empirically substantiate, this type of analysis because US Supreme Court data is available; the same cannot be said, though, of many other countries. On the other hand, this model requires a deliberative court, i.e., one in which judges debate the available normative directions and interact in ways that lead them to consider one another's views, or at least one in which (explicit or implicit) bargaining takes place.[30] The truth, however, seems to be that, at most, what occurs is a certain degree of accommodation among opinions.

[24]See Robertson (2010b: 22).

[25]Emphasising the role of collegiality and the contribution of the economic analysis of law for its understanding, see Kornhauser (2008: 705–708), with further references.

[26]See Friedman (2005: 291).

[27]See Spiller and Gely (2008: 41).

[28]See Friedman (2006: 291).

[29]On case selection and the US Supreme Court's caseload, see Segal and Spaeth (2002: 240–252, 1993: 179–185), as well as Rohde and Spaeth (1975: 118–133).

[30]Arguing that internal procedural rules and customary practices are extremely relevant variables in assessing the deliberative performance of a court, see Afonso da Silva (2013).

This corresponds to the exchange of suggestions after draft versions of documents are circulated, so as to "'improve' the meaning of the text by eliminating uncertainty, dodging thorny problems, and offering greater clarity".[31]

8.3.2 The External Strategic Model

The external strategic model, instead of focusing on the court's collegial dynamics, highlights the broader political setting in which courts and judges operate. In seeking to maximise their preferences, judges would be, to a large extent, constrained by their political and institutional environment. Judges would anticipate the reactions of other actors to their rulings, just as other actors may anticipate the judicial decisions. These actors would range from presidents, legislatures, the executive branch, through a number of interest groups and lobbies, to lower courts.

This trend of the strategic theory assumes that the court will construe the constitutional provisions as close to its ideal preferred outcome as possible without running the risk of being trumped by any other political branch. The result of the judicial decision-making process would therefore be a function of the interactions between the court and its political and institutional environments.

The general assumption underlying this theory is that the potential risk of a preference, as incorporated in a ruling, being overturned would be the main variable that would determine the degree of judicial activism. Consequently, the high probability of non-compliance with a ruling by the legislative and executive branches would diminish the room for an active court. Conversely, the high probability of the proper implementation of the judicial decision would afford the Court ample margin of discretion and activism.

This theory departs from the presupposition that the court has a vested interest in actively preserving its authority, legitimacy and institutional integrity. This supposes, in turn, that it entails having its decisions implemented by the other branches and thus attain a high level of compliance with its decisions.[32]

Several institutional variables may account for variations in judicial policy-making. In specific, the rigidity of the constitutional amending process, the existence of veto powers, the policy preferences of the legislature and the executive, the distance between the policy preferences of the disputants, or the normative chasm between the preferences of the legislative majority and the opposition, public opinion and public support for the court, and precedents do explicate judicial policy making to varying degrees.

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[31]See Friedman (2005: 287).

[32]Several reasons might explain non-compliance: the lack of coercive capacity, the lack of clarity in the court's opinion, or the fact that decisions only bind the parties to litigation—see Segal and Spaeth (1993: 337–345, 348–353), analysing several case-studies.

It is easy to understand why constitutional rigidity, for example, might play a role in judicial law-making. If the legislature can easily reverse the rulings of the constitutional court by amending the constitution, it will be more likely that the court will defer to the policy preferences of the legislature. Otherwise, the court would be overturned and that might harm the court's institutional standing. Conversely, if the amendment procedure is lengthy and costly, the court will be more at ease with confronting the legislator.[33]

Constitutional rigidity alone, however, could only explain the variations among countries with different constitutional arrangements. Differently, it cannot explain variations among countries where constitutions are equally rigid. Nor can it explain variations in judicial activism throughout time with the same constitutional framework.[34]

In this game, the political branches have another set of weapons available: judges may be impeached, jurisdiction may be stripped, courts may be packed, and judicial budgets may be cut. Even if these tools do exist, the doctrine of anticipated reaction claims that the political branches need not use them and still keep the judiciary in check.

Without denying the impact of the appointment process, the strategic model suggests that external actors can also influence judicial behaviour after this point in time through the use of incentives such as denials of promotions, reputational losses, impeachment, and reversals.[35]

8.4 Limitations of the Positive Model(s)

Even if the empirical work of positive scholars has shown that ideology is, amidst other variables, a statistically relevant factor for determining judicial outcomes, its effects have been overstated.[36] Several trends of criticism to this school of research can be presented, some of which are internal, whereas some others are external.[37]

The main internal negative points lie on its methodological issues. Indeed, the empirical scholars' findings are only as good as their measures,[38] i.e., what variable

[33]See Lijphart (1999: 216–231).

[34]See Dyèvre (2008: 16–18).

[35]Landau (2005: 697) considers that this model resembles the game known as 'moral hazard'. It is doubtful that it is so, nevertheless, because there is no transfer of any risks that would allow courts to be unusually chanceful.

[36]See Cross (2011: 92, 99–104).

[37]For an overview, see Gerhardt (2005: 912–920).

[38]An example of how research tailoring may adversely impact the results is that of Amaral-Garcia et al. (2009). The authors assessed a total of 270 rulings of the Portuguese Constitutional Court over a period of 23 years (1985–2007) and concluded that "constitutional judges in Portugal are quite sensitive to their political affiliations and their political party's presence in government when voting"—see Amaral-Garcia et al. (2009: 381, 402). While doing so, they focused only on *ex ante* review of constitutionality "because this method is more related to party politics and usually

is chosen to determine their quantifiability across groups of cases.[39] One of the assumptions of virtually all positive models is that law's role as a constraint has been downplayed. However, it is very likely that this movement might have developed among positive scholars in a path-dependent fashion, much due to the dominant intra- (rather than inter-) disciplinary trends.[40] In effect, positive scholarship is self-referential, with only glancing citation to what legal scholars say.[41] As an example, one can take the fact that positive scholars do not distinguish among branches of law. This omission potentially has far-reaching consequences, because different methods of interpretation might apply.[42]

Among several methodological problems,[43] the issue of behavioural equivalence (or that of collinear variables) is self-evident: can one really say that the vote of a judge is a function of her ideology rather than her best understanding of the law? When the effects of two possible causes are the same, one cannot ascertain which of those two possible causes is the prevailing one.[44]

However, its external failures are perhaps the ones that are the most relevant for the purpose of this chapter. Even though there are several revelations of these, they can all be summarised as follows: the positive model fails to take the judicial argument seriously as a determinant of judicial decision-making, ignoring it altogether.

To begin with, it assumes that there is nothing substantial that distinguishes courts from (other) policy-making institutions (be it from the legislative or from the executive branch). "Courts are assumed to have and pursue collective interests in wielding influence and protecting their status and power. This assumption leads to studies of court decisions in terms of the court's strategic concerns". The

(Footnote 38 continued)
receives a lot of media attention", even though it was acknowledged that "the vast majority of the work by the Constitutional Court is on concrete judicial review" (Amaral-Garcia et al. 2009: 387). The problem is precisely that over that period of time, the Court decided a total of 18.936 cases (see http://www.tribunalconstitucional.pt/tc/tribunal-estatisticas.html Accessed 21 Nov 2014). This means that, although the paper makes universal claims about the behaviour of Portuguese constitutional justices, the authors only went through less than 1, 5 % of the Court's caseload. Magalhães (2003: 269–325) has, however, reached parallel conclusions. For more nuanced results, see de Araújo (1997: 85–182), as well as Magalhães and de Araújo (1998: 21–40). From a legal perspective, see Blanco de Morais (2011: 121–144, 481–497, 548–555, 968–980). For an overview, of the Court's profile, see Santos (2011: 71–208).

[39]On this topic, referring to the importance of the concept of 'construct validity', aimed at determining how well measures of particular variables capture phenomena of interest, see Braman and Pickerill (2011: 121).

[40]This argument is put forward (with evidence) by Braman and Pickerill (2011: 120–126). For a critical analysis, see Gerhardt (2005).

[41]See Friedman (2006: 263).

[42]See Friedman and Martin (2011: 157–158).

[43]Burbank (2011: 46), enumerates the following methodological faults: behavioural equivalence, the inability to accommodate cases presenting multiple issues, selection bias, coding bias, and systematic coding errors.

[44]See Baum (2011: 76), Burbank (2011: 49–50).

consequence is that judges are regarded as being free to decide cases any way they wish and that they use this freedom to try to further their own ideological or policy preferences.[45]

Furthermore, the political scientists' obsession with quantifiability and falsification cannot be easily squared with the law. Judicial law-making, even from a behavioural approach, cannot be explained in a single dimension.[46] Judges are humans and that entails the pursuit of a broader range of goals rather than policy maximising alone. Rational choice theory, however clear and structured, leaves out too many of the factors that drive judges.[47] By focusing only on policy objectives, without even considering the possibility that other factors might influence, to a greater or lesser extent, their behaviour, it leaves a considerable span of human behaviour motivations out of the picture.[48] Consequently, this conception is also narrow. Indeed, it is at the very least plausible that judges also care for non-ideological considerations factors, such as the integrity of the law, their own reputation, popularity or prestige, career considerations, the public interest, and the avoidance of reversal. It is very likely that judges maximise the same things everyone else does[49]—and that cannot be fully grasped by "empiricists interested in measurement and operationalisation".[50] This methodological bias leads political scientists to overstate their claim and become simplistic, neglecting other important forces that also bear upon and influence judges.

In third place, by merely focusing on outcomes, it completely disregards the legal opinion—the centre of all judicial activities—itself. There is "something deeply unsettling about the work of positive scholars: the fact that it confines the efforts of all judicial actors to mere 'window dressing'".[51] The most important part in a judicial decision is the legal opinion itself and not (only) the outcome. In common law systems, the reason for this is clear: apart from awarding a judgement and argumentatively explain how one such result can be reached, an opinion also contains the rules that regulate a certain area of the law. And this latter aspect is independent of whether the justification does a good job of squaring the case with the existing body of law. But in civil law systems as well, at least for the inherently and ontological argumentative nature of legal reasoning.[52] Judges must not only explain how they reach the outcome in that particular case, but also how that result squares with the rules of other cases. Attention to outcomes only can be misleading. And "in law, however, what courts say often spells out what it is they have actually

[45]See Robertson (2010b: 22).

[46]See Burbank (2011: 50–51), Gerhardt (2005: 914–916).

[47]For an appraisal of the use of rational choice theory in judicial politics, see Spaeth (2008: 761–763, 768).

[48]See Baum (2008: 11–14), Baum (2011: 80–83).

[49]See Posner (2008: Chap. 3).

[50]See Braman and Pickerill (2011: 127).

[51]See Burbank (2011: 48), Robertson (2010b: 21).

[52]See Alexy (1989: Chap. C).

done".[53] Examples of this are comical, but apparent at the same time: positive scholars "would have treated the most famous case in American history as simply 'Marbury loses', without any concern for what John Marshall actually said in reaching that result".[54] Additionally, by focusing on votes rather than on opinions, real differences in judicial ideology are obscured. This means that, at the end of the day, these models do not model the law. "At best they are predicting the *outcome* of a certain set of cases or a *vote* by a justice on the merits, without controlling for law in any way".[55]

8.5 Concluding Remarks

None of the limitations presented above should, in any circumstance, be read as discarding judicial behaviour theories. On the contrary: their contribution to make sense and to measure judicial activism has been critical.

The positive models have made it clear, and have proved it with statistical data, that judges, when adjudicating constitutional cases, are not constrained by the law in the way normative theories—and particularly separation of powers theories—seem to require and have us believe.[56] In other words: differently from what normative theories prescribe, in some circumstances some judges do vote in patterns that reflect their ideology and aim at maximising their preferred policy outcomes. Judicial behaviour analyses have shed light on what *can* and what *cannot* be expected from normative theories of judicial review, thereby posing a standing challenge for lawyers and political philosophers to fine-tune their theories so as to more precisely demarcate what ought to be the exact province of the judiciary.

At the end of the day, positive theories do not deny the influence of law; they rather consider it as a mere influence among others. And that can be said to be, for lawyers, both its greatest relevance and challenge.

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[53]See Friedman (2006: 266); Friedman and Martin (2011: 165–166).

[54]See Friedman (2006: 266), referring to Marbury v. Madison, 5 U.S. 137 (1803). The same could be done with other cases, such as Planned Parenthood v. Casey, 505 U.S. 833 (1992) or affirmative action cases—see Cross (2011: 92, 99–104). For further examples of how positive theories would misrepresent the role and the opinions drafted by Chief Justice John Marshall, see Gerhardt (2005: 917–919).

[55]See Friedman and Martin (2011: 157).

[56]See Friedman (2006: 279).

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