

**Rules of Law? Canons and Reasoning in Supreme Court Statutory Construction in
Bankruptcy and Tax Decisions 1990-2013**

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Abstract. The role of law and the rule of law in Supreme Court decision-making remain deeply contested, reflecting nettlesome data and conceptual issues. In this pilot project, we explore these issues by distinguishing competing conceptions of the rule of law—the positivist and epistemic models—and identifying their observable implications. We then probe these models using a detailed content analysis of Supreme Court decisions from 1990 to 2013 that interpret bankruptcy and tax law. The data suggest that the Court uses very similar canons of construction in interpreting these statutes but applies them using three very different modes of reasoning: (1) *generic reasoning*, a checklist approach that begins with the text of the statute and then argues how secondary factors, such as the legislative purpose, reinforce its textual analysis; (2) *predictable rules reasoning*, an approach that focuses narrowly on the rules and tends to apply the law as written regardless of policy outcome; and (3) *particularized justice reasoning*, an approach that interprets the statute in light of the equities of the case and its policy implications as well as the need to preserve flexibility for lower courts in later decisions. Moreover, while examples of generic reasoning were evenly distributed throughout our sample, predictable rules and particularized justice reasoning were not. Predictable rules reasoning predominated in tax, whereas particularized justice reasoning predominated in bankruptcy. While recognizing that our data are preliminary, we argue that they raise intriguing puzzles about the underlying “rules of law” (or normative frameworks) governing statutory interpretation and what constitutes persuasive legal arguments in these policy areas.

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I. Introduction

Does the Supreme Court adhere to the law and rule of law when interpreting statutes? Answering this question has proven frustratingly difficult. Part of the problem lies in the limits of judicial decisions as data. As Martin Shapiro argued long ago (1980), the legitimacy of courts depends on judges appearing as neutral arbiters of disputes under the law and as stewards of the rule of law. As a result, judges have strong incentives to insist that they are following the law and adhering to the rule of law even when they are, in fact, ignoring them and using their decision-making power to pursue personal preferences or other “non-legal” objectives.

Another complicating factor is that analyzing the correlates of judicial voting patterns does not settle the question of how the law is used in judicial decision-making. To be sure, there is a well-established relationship between Supreme Court justices’ political ideologies and their votes (e.g., Pritchett 1948; Schubert 1965; Rhode & Spaeth 1976; Segal & Cover 1989; Segal et al 1995; Segal & Spaeth 1993; 1999; 2002). But the meaning of this relationship remains contested. Behavioralists insist that it suggests justices largely ignore the law and impose their personal preferences when deciding cases. “Simply put, Rehnquist votes the way he does because he is extremely conservative; Marshall voted the way he did because he is extremely liberal” (Segal & Spaeth 1993: 65). Under this interpretation, justices use the law instrumentally

and the rule of law (however defined) is a fiction at best and a cover for judicial policy-making at worst.

“Post-behavioralists” strongly dispute this argument (Gillman 1999, 2001). They envisage a very different decision-making process in which justices begin with good faith understandings of legal rules and general principles that meaningfully constrain justices’ discretion but do not mechanically do so (e.g., Burton 1992; Gillman 1993, 1996, 1999; Cushman 1998; see also Dworkin 1978; Kritzer & Richards 2002, 2010). From this perspective, conservative and liberal judges can vote differently while applying the same legal principles in good faith, just as two sergeants ordered to choose the “best” five soldiers from a platoon might both follow the command faithfully but still select different soldiers (Dworkin 1978). In the words of Howard Gillman (2001: 487), post-behavioralists “do not reject behavioralist descriptions of decision-making patterns, but they insist that behavioralists should not infer that these patterns mean an absence of legal motivations unless they have additional independent evidence that judges are basing their decisions on considerations that are not warranted by law.” Assessing the role of law and the rule of law in judicial decision-making from this vantage requires more than counting votes; we must contextualize judicial decisions to understand how the law is being used (or not) in particular cases (e.g., Gillman 1993, 2001).¹

Conceptual debates over the meaning of the rule of law further compound the difficulty of assessing its role in Supreme Court decision-making. Whether scholars like it or not, the rule of law is a slippery concept that can be defined in many different ways (Whitehead 2007; Tamanaha 2004; Feeley & Rubin 1998). Moreover, different conceptions can reflect very

¹ It is sometimes argued that the post-behavioralist view that the law only loosely constrains judicial behavior cannot be falsified because decisions that follow the law and those that do not are observationally equivalent. This critique, however, only applies to data related to judicial voting patterns. Using a more contextualized analysis, Gillman (2001), a leading proponent of post-behavioralism, strongly argues that the law did not matter in *Bush v. Gore*, the decision that decided the 2000 presidential election.

different assumptions about the nature of law and how judges should approach the task of statutory construction. As a result, the rule of law has a Cheshire Cat-like quality as a concept— from a distance, we think we can see its meaning, but it vanishes as we take a closer look.

This paper seeks to take a slightly different cut at this long-standing debate. Instead of trying to identify a single overarching conception of the rule of law, it sets forth two competing definitions that we call the *positivist* and *epistemic models* of the rule of law. As elaborated below, the positivist model sees the law as prescriptive commands and the rule of law as fidelity to legal texts. From this vantage, judges should approach the problem of statutory construction in a similar fashion regardless of policy area and apply the letter of the law as written, even if produces unfair results. The epistemic model, by contrast, assumes that the law is a problem-solving language used by lawyers and judges (Carter and Burke 2005). In grappling with how to apply general statutes to specific disputes, this model implies that justices should begin with the rules but also draw on shared understandings about the norms and goals of the law in particular policy areas to reach equitable results. Here, the rule of law requires judges to consistently draw on relevant understandings of rules, norms and goals in construing statutes in particular policy areas, but does not necessarily require consistency across policy areas.

Using an original content analysis of all Supreme Court decisions from 1990 to 2013 that interpret the Bankruptcy and Tax Codes,² we find that both of these views capture important aspects of Supreme Court statutory construction. Broadly consistent with the positivist model, the data show that the Court relies on nearly identical canons of statutory construction in both tax and bankruptcy cases. Moreover, a closer look at the decisions suggests the Court applies these

² Based on a search through the United States Supreme Court Database for cases that fall under Issue codes 80030 (Bankruptcy) and 120010-120040 (Federal Taxation) (Spaeth et al. 2014).

canons using *generic reasoning* in about half of our cases, evenly distributed across policy areas, which entails a checklist approach that begins with an analysis of the text of the law and then shows how secondary factors, such as legislative purpose and stare-decisis, buttress its textual analysis.

In the other half of our cases, however, the Court applies these canons using distinct modes of reasoning that vary across policy areas, as predicted by the epistemic model. In tax, when the Court is not using generic reasoning, it overwhelmingly uses *predictable rules reasoning*, an approach that focuses narrowly on the language of the law (while eschewing other factors) with an eye towards creating predictable rules. In bankruptcy, when the Court is not employing generic reasoning, it overwhelmingly uses *particularized justice reasoning*, an approach that emphasizes the equities of the case at hand while preserving flexibility in future cases.

The result is a set of nested findings, as depicted in Figure 1 below. There is a standard language of statutory construction that pertains to both tax and bankruptcy, which draws on very similar canons of construction, and a mode of reasoning that is common across-the-board. At the same, each policy area also features a distinct normative framework (or rule of law) that significantly influences how these canons are used in a significant percentage of cases.

[Insert Figure 1 here]

These findings are admittedly preliminary but we believe raise several intriguing possibilities. First, they suggest that there is a general template for statutory construction that broadly shapes the Court's language when it construes the Tax and Bankruptcy Codes. Second, this template is subject to distinct "rules of law" in each policy area: normative frameworks of

what constitutes persuasive legal reasoning and appropriate divisions of labor between the branches in particular policy areas. These findings imply the need to look beyond judicial votes when examining statutory interpretation decisions and embed the language of judicial decisions within the norms and goals of the relevant policy community, which serves as the Court's main audience and must be persuaded if the decision is to be effectively implemented (Baum 2006; Feeley and Rubin 1998).

Finally, our analysis sounds a cautionary note on the use of some forms of computerized textual analysis (CTA). In studying statutory interpretation decisions, it is tempting to utilize CTA by creating a dictionary based on the canons of statutory construction, let the computer read the cases (literally, all of the cases), and count the distributions of the canons used. In our preliminary study, this mechanical approach would have produced misleading results, as the manual coding of cases revealed that the key differences lies not in the raw count of which canons are used but the underlying goals and norms driving their application. This type of difference—how language is used versus what language is use—can be difficult to pick up using many common forms of CTA, reminding us of the importance of manual coding. Accordingly, we use CTA as a robustness check in this paper as opposed to a primary means of coding.³

II. The Positivist and Epistemic Models of the Rule of Law: A Closer Look

The paper turns on the distinction between the positivist and epistemic models of the rule of law. The positivist model is fairly straightforward (and we believe) underlies much of the judicial behavior literature as well as traditional notions of separation of powers, which hold that elected officials should make the law and judges should apply it as written (Nonet & Selznick

³ The results of our CTA analysis are found in Appendix III.

1978; see also Barnes 2004 (collecting authority and offering a critique of this view)). As noted in the introduction, the positivist model envisages law as prescriptive commands and the rule of law as fidelity to these commands. If the law is clear, the positivist model requires judges to apply the letter of the law, even if strictly following the text produces objectionable outcomes. As a result, we would expect judges to face the dilemma of “judicial can’t”: cases where the law’s language sharply constrains judges’ discretion and effectively ties their hands, just as the narrow language of the Fugitive Slave Act forced abolitionist judges to send escaped slaves back to the South, even though they found slavery morally repugnant (Cover 1975). If the plain language of the law is unclear, the positivist model implies that judges should employ the same basic approach to legal interpretation regardless of policy area with an eye towards creating clear, predictable rules that can be faithfully applied in future cases (Posner 1992).

The epistemic model reflects the post-behavioralist emphasis on contextualizing the language of judicial decisions to understand how justices use the law. This view eschews the notion that laws are merely prescriptive rules and that the rule of law can be reduced to strict adherence to legal texts. Instead, it sees the law as a professional language that judges and lawyers use to solve problems, including the problem of how statutory texts should be used to resolve disputes. Here, the rule of law “remains a valid norm, and an important one, but it has been transformed by administrative reality and modern social theory from the requirement of fixed and pre-established rules to one of socially embedded constraints” (Feeley and Rubin 1998: 351; see also generally Sunstein 1989). From this vantage, the epistemic rule of law requires judges to use official rules as a starting point for legal reasoning but only a starting point (Carter and Burke 2005). Even when the rules are clear, it is expected that judges will draw on the relevant social understandings about the law’s underlying purposes and goals (Eskridge 1989).

Moreover, these norms and goals may differ across policy areas, as laws can reflect distinct normative frameworks. Some laws, for instance, rest on more equitable traditions that stress particularized justice (treating each case according to its merits) while others stress legal consistency and predictability (treating like cases alike) (see Kagan 2001; Atiyah and Summers 1987). In more equitable areas of law, the epistemic rule of law does not require judges to mechanically follow the black letter of the law regardless of result; rather it implies that judges should interpret law in ways that address the merits of the specific case and allow flexibility down the road (see e.g. Cross 2008: 127). This accords with the pragmatic theory of statutory interpretation that is results oriented (see Eskridge and Frickey 1990, Wilkinson 2012: 80-104). In areas that stress the predictability of rules, the epistemic rule of law would expect justices to take the law as they find it and, if there is a problem, urge Congress to change the rules as needed (Hausegger and Baum 1999).

The mechanisms underlying the adherence to the rule of law also differs under these competing models. The positivist model implies that judges should be motivated to follow the ideal of the rule of law as a matter of personal obligation to professional norms and perhaps in order to maintain the perceived legitimacy of the courts. The epistemic model implies a slightly different set of motivations. Under this view, judges must *persuade* other actors in the relevant policy communities to implement their decisions and, to do so, they must draw on the accepted normative tool kit of that community (Baum 2009; Feeley & Rubin 1998). So, under this approach, we would expect judges to approach statutory construction consistently *within* particular policy areas, but that their reasoning—how they deploy the canons of statutory construction—might be informed by different norms and goals depending on the policy area. From this vantage, it is more appropriate to talk of rules of law that define persuasive legal

reasoning in particular policy areas as opposed to a single, overarching rule of law that applies across-the-board (see Whitehead 2007; Feeley & Rubin 1998).

Table 1 summarizes the key definitions underlying these models and their observable implications.

[Insert Table 1 here]

III. Case Selection

We envision that a useful set of cases for probing these models has several features. First, we would want to look at courts of general jurisdiction that construe different types of statutes, so that we would be able to observe the same courts applying different types of statutes. Ideally, we would look at a single court in order to reduce the number of judges and variation in the institutional features of the courts interpreting the law.

Second, we would want to compare statutes that are likely to reflect different underlying norms to see whether judicial approaches to statutory construction are similar across policy areas, as the positivist model suggests, or vary across policy areas, as the epistemic model implies.⁴ Cases of “judicial can’t” might be particularly interesting from this vantage. (As noted above, judicial can’t occurs when the law sharply constrains the Court’s discretion so that a strict application of the rules will produce unfair or questionable results.) Under these circumstances, does the Court employ the law as written despite its consequences? Does the Court find ways to circumvent the letter of the law? Or does its approach vary across policy areas?

⁴ It should be noted that there is some observational overlap in these models: namely, in “legalistic” policy areas, the positivist and epistemic models predict similar approaches to statutory construction. They are not, however observational equivalent in all policy areas.

Although far from perfect, we think that focusing of Supreme Court interpretation of federal bankruptcy and tax law from 1990 to 2013 offers a reasonable place to start. First, focusing on the Supreme Court allows us to examine the approach of a single court to the interpretation of multiple statutes and, as a practical matter, there are well-developed data sets that enable us to control for a range of factors when comparing patterns of interpretation across these policy areas.

Second, bankruptcy and tax law offer a theoretically promising comparison from the perspective of our competing models of the rule of law. Both involve federal statutes that govern commercial activity. Both feature relatively specialized bars and trial courts, so it is plausible to think of each having distinct epistemic communities. Yet each has a different tradition. Bankruptcy law has an equitable tradition (see generally Skeel 2001). Indeed, a primary goal of bankruptcy law is to stop legal proceedings and prevent a race to the courthouse in order to promote a fairer distribution of assets, either through an orderly liquidation of the debtors' property that divides the proceeds evenly across different classes of creditors or a reorganization of the debtors' business, so that debtors (despite their legal obligations in the pre-bankruptcy period) can enjoy a "fresh start." In our experience as attorneys, we have often heard of bankruptcy courts described as "cowboy courts," where the normal rules and procedures are suspended and issues of equity prevail over legal requirements. Tax, by contrast, is a technical area of the law. It prescribes specific conditions under which the state can raise revenues from its citizens. In our experience, tax law is seen as highly rule-oriented practice area (Weisbach 1999). The ability to plan is at a premium; indeed, lawyers who are able to strategically minimize tax exposure under the rules command huge legal fees.

The question is whether these perceived differences at the level of the law and legal practice play out in the Court's interpretations of these laws, as the epistemic model suggests, or whether the Court takes a more mechanical, across-the-board approach as the positivist model suggests.

IV. Data and Measures

Our preliminary dataset consists of 40 bankruptcy and 47 tax cases, representing all of the Supreme Court decisions in these areas from 1990 to 2013. To code the cases, we first used William Eskridge and Lauren Baer's statutory interpretation codebook (2007) that separates methods of interpretation into eleven discrete categories including plain meaning, whole act, and legislative purpose.⁵ A justice using the plain meaning approach looks to the words of a specific statutory provision that governs a dispute. A whole act interpretation reads the law more holistically by defining a key provision with reference to another term or section in the same statute. (The difference in these approaches to statutory construction is a key issue in the current challenge to the Affordable Care Act, as the case turns, in part, on whether the Court should read the phrase about providing subsidies only to participants in State exchanges in isolation or more holistically in reference to other provisions of the Act.) By contrast, an opinion focusing on legislative purpose looks beyond the text of a statute, seeking to understand its meaning and goals by analyzing materials from the law's legislative history, such as committee reports and statements made during debates on its passage.

Opinions examining statutes can and generally do include more than one method of interpretation although one method generally dominates. To account for this variation, we

⁵ We present examples from our cases of each method of interpretation in the Appendix II.

followed Eskridge and Baer’s three-point scale to code each method. The codebook is attached in the appendix. Generally speaking, a method was coded as 0 if it was not mentioned at all, 1 if it is merely mentioned in passing, and it was coded as a 2 or 3 depending on the reliance of the method in the opinion.⁶

We added four categories that require a deeper analysis of the opinion content, which were aimed at capturing three different types of statutory construction reasoning, which we call generic, predictable rules, and particularized justice reasoning, and cases that involved judicial can’t. Each is discussed below.

Generic Reasoning. Generic reasoning reflects the standard mode of statutory reasoning that is taught in law schools, which begins with the text of the statute and then turns to the legislative purpose and other factors, such as stare-decisis. The genetic marker of this type of reasoning lies in its checklist quality; the Court tends to move through a combination of textual and legislative intent analyses that reinforce one another. We can see this type of reasoning in the case *O’Gilvie v. United States*, 519 U.S. 79 (1996). The issue in *O’Gilvie* is whether punitive damages received in a tort suit may be taxed as gross income. The opinion, authored by Justice Breyer, is methodical in its approach to statutory interpretation. First, the opinion goes through both parties’ arguments regarding the meaning of the words of the statute, “received...on account of” (519 U.S. at 83). Although there is a brief reference to the Webster’s dictionary, the Court defines the phrase with reference to a prior decision and to statutory history including preceding statutes and statements from the Treasury Department. The opinion then goes on a discussion attempting of why Congress’ intent is in favor of the government and consequently rebuffs petitioner’s arguments to the contrary.

⁶ This is explained in greater detail in Appendix I.

While Congress' intent was not clearly stated or implied in the statute, or described in the legislative history, the opinion finds only one pragmatic reading of the statute as it Justice Breyer writes, "We are not aware of any good reason why Congress would have intended a different result." 519 U.S. at 91. The opinion concludes noting the ambiguity in the phrasing of the statute, "The language of the statute admits of both interpretations" (519 U.S. at 91) but deciding in favor of the government based on the combination of interpretive factors that favor the government's approach. With generic reasoning there is no one dominant method of interpretative, rather it is the additive effect of the multiple canons that leads to the Courts' decisions in such cases.

Another example of such reasoning can be found in the tax case *United States v. Craft*, 535 U.S. 274 (2002). The opinion focuses on defining the terms "property" and "rights to property" for the purpose of a federal tax lien. The Court uses a variety of sources to come to a definition. It goes through a lengthy description of the common law roots (535 US at 279-83). It also looks at the applicable state law. The Court then examines its interpretation of similar issues in past cases and at the legislative history of Congress' tax lien statute. In the end the Court comes to a decision based on "the broad statutory language Congress did enact" (535 U.S. at 288). The Court achieves its definition of the ambiguous wording through the cumulative evidence it examines and by focusing on what it can extract as Congress' intent from the "broad statutory language." As with other generic reasoning cases, it is the amalgamation of interpretive methods that lead to the result as the Court finds the individual methods of reasoning alone as non-dispositive.

Predictable Rules Reasoning. Whereas generic reasoning is eclectic reflecting a "belts-and-suspenders" mentality, predictable rules reasoning focuses narrowly on the text of the statute

and largely ignores other considerations. The tax case of *Cottage Savings v. Commissioner* (1991) illustrates predictable rules reasoning. In that case, the Court had to decide what constituted a “realizable event” under the Tax Code, meaning an exchange of property that triggered tax liability. The critical passage of the decision stated as follows: “Under our interpretation of § 1001(a), an exchange of property gives rise to a realization event so long as the exchanged properties are ‘materially different’—that is, so long as they embody legally distinct entitlements. Cottage Savings’ transactions at issue here easily satisfy this test.” What is missing from this decision is equally important for coding purposes. Unlike generic reasoning that would go from text to legislative purpose and other factors, *Cottage Savings* did not meaningfully elaborate on its textual analysis. It did not, for example, explain the policy implications of the law, its rationale, or the fairness of the result. It simply applied the legal test.

Particularized Justice Reasoning. Whereas generic reasoning has a checklist quality and predictable rules reasoning is cut-and-dried, particularized justice reasoning centers on the fairness of the decision in light of the equities of the case and its policy implications while seeking to preserve flexibility for courts in subsequent decisions. *United Student Aid Funds v. Espinosa* (2010) illustrates particularized justice reasoning. Here, the Court had to untangle a series of deadlines associated with the confirmation of a bankruptcy plan. In interpreting the rules, the Court looked to weigh competing policy considerations. It explained as follows: “Rule 60(b)(4) strikes a balance between the need for finality of judgments and the importance of ensuring that litigants have a full and fair opportunity to litigate a dispute. Where, as here, a party is notified of a plan’s contents and fails to object to confirmation of the plan before the time for appeal expires, that party has been afforded a full and fair opportunity to litigate, and the party’s failure to avail itself of that opportunity will not justify Rule 60(b)(4) relief.” We coded this and

similar instances as adopting particularized justice reasoning because the Court stresses the effect of the law on the litigants and the need to balance competing policy considerations in future cases. The text of the statute, while relevant, plays a less critical role in this mode of reasoning than in either the generic or predictable rules modes of reasoning.

Judicial Can't. Judicial can't occurs in cases where Court argues that its hands are tied in coming to a decision even though the application of the rules produced absurd results. *United States v. Burke* (1992) illustrates judicial can't. In this case, the Court had to decide on the extent to which victims of discrimination could claim damages under Title VII. In this case, the Court clearly stated that the statute trumped any other consideration: "Notwithstanding a common-law tradition of broad tort damages...Congress declined to recompense Title VII plaintiffs for anything beyond the wages properly due...Thus we cannot say a statute such as Title VII...redresses a tort like personal injury within the meaning of §104(a)(s) and the applicable regulations." In short, the Court adhered to the letter of the law, even though it benefited a defendant that had violated the plaintiff's civil rights.

To code the cases, we began by examining the first half of the cases in our set and reviewing our coding results on a case-by-case basis. Although there were initial discrepancies between our coding, this double coding allowed us to calibrate our understanding of the codebook. After double coding half of the cases and establishing near consistent coding results, we split the coding for the second half of the cases and reviewed together all instances where the correct method of interpretation was questionable.⁷

⁷ In future drafts we plan to include additional reliability measures for coding accuracy including double coding a random sample of cases and providing a kappa test to convey the strength of our intercoder reliability.

VI. Findings

A. Patterns of Canon Usage and Reasoning

From the perspective of the competing models, our findings are mixed. Consistent with the positivist model, our content analysis shows that the Supreme Court relies on very similar canons of statutory construction in interpreting bankruptcy and tax laws. As seen in Figure 2, the Court relies most heavily on textual canons of interpretation, including plain meaning, whole act and whole code, in both policy areas, as measured by its average reliance on these cases. The median reliance on the textual canons was 2 in tax and 3 in Bankruptcy, where a score of 0 means there was no reference to this method of interpretation in the decision and a score of 3 means the canon is “a” or “the” key determining factor in the case (Eskridge and Baer 2007). The Court’s median and interquartile reliance on other types of canons was nearly identical.⁸ This suggests that the Court is drawing from a very similar lexicon of statutory interpretation across-the-board.

[Insert Figure 2 here]

Figure 3 takes a more granular look at the average reliance scores of the Supreme Court decisions, noting the reliance on each of the statutory canons separately. It is a radar graph in which each spoke is the average reliance on a particular canon. The specific textual canons are clustered together in the upper right quadrant. As with Figure 2, a score of 0 means the Court did not cite the canon and a 3 means the canon is “a” or “the” determinative canon. The story lies in the nearly identical shapes of the graphs, as the black and gray lines representing the different policy areas closely overlap, except for a slight difference in the higher reliance on the

⁸ We tested the significance level for differential use of the canons in tax and bankruptcy cases. None of the canons achieved a significant p-value at the .1 level for difference in t-tests. Stare-decisis was the closest at .102.

“whole act” canon in bankruptcy, where the Court reads the specific statutory provision in question in light of other provisions within the statute.

[Insert Figure 3 here]

Although the Court used nearly identical canons, the pattern of the Court’s reasoning was more complex. As seen in Figure 4, about half of the cases overall and under each statute followed a pattern of generic reasoning, as the Court went through the litany of textual methods, legislative purpose and stare-decisis, typically arguing primarily that the text required a particular result and that other factors reinforced the Court’s textual analysis. The other half of the cases, however, did not follow this generic pattern of reasoning. Instead, the Court used particularized justice or predictable rules reasoning in 46 of 87 cases overall (20 of 40 bankruptcy decisions and 26 of 47 tax decisions). Consistent with the epistemic model, the distribution of these more specialized types of reasoning differed across policy areas. As seen in Figure 4, 85% of the bankruptcy cases (17 of 20) emphasized particularized justice reasoning while only 15% (3 of 20) used predictable rules reasoning. The tax cases were the mirror opposite. In over 95% of these cases (25 of 26), the Court stressed predictable rules reasoning and in less than 5% (1 of 26) the Court emphasized particularized justice reasoning.

[Insert Figure 4 here]

Although the numbers are small, these differences hold up in a multivariate analysis. When controlling for a variety of factors, including the type of canon most heavily relied upon, whether the decision was unanimous, the configuration of justices and others, the likelihood of construing the statute in light of the goal of particularized justice significantly increases when moving from a tax case to a bankruptcy cases. Conversely, the likelihood of interpreting the

statute in light of the goal of predictable rules significantly decreases when moving from a tax to bankruptcy case.

[Insert Table 2 here]

To test this relationship further and get a sense of the magnitude of the effects, we ran predicted probabilities on the likelihood that an opinion utilizes particularized justice depending on the case issue area. The percentage likelihood that an opinion focused on particularized justice increases from 2.3% to 43.2% moving from tax to bankruptcy. Conversely when looking at predictable rules, the likelihood that a case deals with bankruptcy is 8.1% while the likelihood that the case issue area is tax is 55.1%.

B. Reasoning in Cases of Judicial Can't

The differences were even more stark when we zeroed in on cases of judicial can't. In all of these cases, the Court faced the same problem: the governing statute was very clear but the application law as written would produce a questionable result. In these cases, the Court applied the rules as they found them, but their reasoning—how they reached the final result and its implications for cases going forward—widely diverged. To begin to see these differences, consider two cases from the Roberts Court: *U.S. v. Home Concrete & Supply, LLC*, 132 S.Ct. 1836 (2012) and *Law v. Siegel*, 134 S.Ct. 1188 (2013). *Home Concrete* is a tax case that turned on the government's power to seek deficiency judgments when taxpayers overstate the basis of property that has been sold. The case was relatively straightforward. Under the Tax Code, the government must assess a deficiency within three years of the filing of a return. That period is extended to six years if taxpayers "omit" significant amounts of property from their returns. The

issue was whether the extension applied when taxpayers overstated the basis in property sold and, as a consequence, understated the gain received from the sale.

The government argued that the taxpayer should not benefit from lying on his returns by omitting *value* from the amount of property reported. The taxpayer countered that it did not wholly omit the property from its returns; he understated its value. As such, he argued that the extension should not apply. The Court agreed with the taxpayer, arguing that its hands were tied by prior precedents, which had held that the Code’s reference to “omitted” property only applied to property that left out of tax returns altogether, not reported property whose value is understated. In justifying the rather fine distinction between failing to report property and intentionally understating its value, the Roberts Court leaned heavily on the importance of predictable rules and following existing precedent; in this case, *Colony, Inc. v. Commissioner*, 357 U.S. 28 (1958), which had interpreted a nearly identical provision in an earlier version of the Tax Code. In a critical passage, the Court stated: “In our view, Colony has already interpreted the statute, and there is no longer any different construction that is consistent with Colony and available for adoption by the agency” 132 S.Ct. at 1843 (2012). After noting that the lower courts had ruled similarly—another nod to legal consistency—it ended by invoking the “principles of stare decisis” and concluding that it “must follow” precedent, even though there was no question that the taxpayer had misstated the value of its property on his return. As with the other predictable rules reasoning cases, the Court’s analysis began and ended with an analysis of the rules, excluding consideration of their policy implications or fairness.

In *U.S. v. Siegel*, 134 S.Ct. 1188 (2012), the Roberts Court faced a similar dilemma in a bankruptcy case. Under Chapter 7 of the Bankruptcy Code, the debtor’s property is swept into a bankruptcy estate to be administered by a trustee under the auspices of the Bankruptcy Court.

However, the debtor may exempt some property from the estate and this property is not liable for the cost of the estate's administration. In *Siegel*, the issue was whether the bankruptcy court may order a debtor's exempt assets to be used to pay for administrative costs incurred because of the debtor's misconduct. As in *Home Concrete*, the facts involved a litigant who had intentionally understated the value of his property and was trying to benefit from a literal interpretation of the law. Specifically, Stephen Law filed for bankruptcy in 2004 and Alfred Siegel was appointed the bankruptcy estate's trustee. The only significant asset was Law's house. Law represented that the house was subject to significant liens and, as a result, it was exempt under relevant state law, which allowed him to exempt \$75,000 of the house's value. After years of litigation, Siegel proved that the liens on the house were fraudulent and the bankruptcy court allowed him to use the \$75,000 of the property's exempted value to defray some of the \$500,000 in attorney's fees that the trustee had incurred in proving that Law had improperly claimed the property exempt. The Court reversed, acknowledging that the ruling placed a "heavy burden" on Siegel.

If the case stopped there, *Siegel* would illustrate the positivist model as a classic instance of judicial fidelity to black letter law regardless of policy consequences. Yet the Court in *Siegel* did not simply interpret the rules and leave it at that, as it did in *Home Concrete*. Instead, the Court went to great lengths to explain how other provisions in Bankruptcy Code provided lower courts with flexibility to reach a more equitable result. It explained, "[o]ur decision does not denude bankruptcy courts of the essential 'authority to respond to debtor misconduct with meaningful sanctions.' There is ample authority to deny the debtor a discharge.... In addition, Federal Rule of Bankruptcy Procedure 9011 ... authorizes the court to impose sanctions for bad faith litigation, which may include 'an order directing payment ... of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.'" In

other words, even in bankruptcy cases where the text of the statute sharply constrained the Court's discretion, the Court did not adopt predictable rules reasoning. It sought to promote particularize justice by finding ways to avoid the "heavy burden" that its strict application of the law placed on the trustee and stressing how its decision did not undermine the bankruptcy court's equitable powers to reach a fair result in this and future cases.

These cases are not alone. In the bankruptcy case *Taylor v. Freeland & Kronz*, 503 U.S. 638 (1992), the trustee mistakenly failed to file a timely objection to the exemption of proceeds from a lawsuit. Because of this administrative oversight, proceeds of the lawsuit went to her attorneys rather than into the bankruptcy estate. To correct this error, the trustee asked the court to recognize a "good faith" exception to the deadline for objecting to exemptions. In support of its argument, the trustee argued that strictly adhering to the law's text would encourage the filing of claims in bad faith by debtors (in the hope that the trustee might inadvertently miss the deadline for objections).

The Court rejected the trustee's argument claiming judicial can't. The Court explained: "Deadlines may lead to unwelcome results, but they prompt parties to act and they produce finality." Predictable rules reasoning would stop at that. After all, the Code section creates a clear window when parties can object to exemptions and the trustee acknowledged his failure to file a timely objection. Yet the Court did not end its analysis with the text. Instead, it turned to policy. Specifically, the Court took the trustee's policy argument seriously and explained how other sections of the Bankruptcy Code would deter bad faith filings, including four statutory sections that provide penalties for lawyers and debtors that engage in such inappropriate conduct. So, while the Court claimed judicial can't under the particular statute at issue, it explained how the lower courts had ample discretion under *other* provisions to avoid unfair results.

The tax case, *United States v. Hill*, 506 U.S. 546 (1993), offers an interesting contrast to *Taylor* and another twist on the Court's use of predictable rules reasoning. In *Hill*, the Court needed to decide whether the oil and gas deposits the respondents attempted to deduct from their taxes were "capital expenses" or "intangible costs." In this case, the Court faced a slightly different dilemma than judicial can't: it faced the situation in there where alternative, plausible readings of the Tax Code. Under generic reasoning, the Court would begin with then text and then consider secondary methods, such legislative purpose. At first glance, that is exactly what the Court did. However, a closer reading reveals the Court's highly rule-centric approach to construing tax law. In divining congressional intent, the Court did not look to the congressional record. It looked to the Treasury Regulations that were in place at the time Congress adopted the legislation at issue. Because Congress did not address the existing regulations explicitly in the statute, the Court assumed Congress meant to adopt the approach espoused in the regulations. Put differently, it took a ruled-based approach to assessing congressional intent.

The dicta in the decision is also telling. Whereas the Court in bankruptcy cases would often go out of its way to address policy and equity concerns of the losing side, the Court in *Hill* bent over backwards to address the textual arguments of the losing side. The Court concluded, "...when an arguable suggestion of the title of one subsection of a regulation is pitted against the entire Code framework for determining basis, the Code wins, and the title is at most an infelicity" 506 U.S. at 562 (1993). The Court then delved into an explanation of why the title of the Code section creates this ambiguous "infelicity." As it did in *Home Concrete*, the Court in *Hill* explains why the competing interpretation of the rule is unsound, but stops at that point. This distinguishes how the Court reasons in these cases and the Court's approach in *Siegel* and *Taylor* (where the Court similarly rules in favor of the government). In *Siegel* and in *Taylor* the

Court also finds that the language of the law ties its hands, but its particularized justice reasoning takes a hard look at the policy implications of its results and provides a roadmap for preserving the discretion of the lower courts in future cases.

VII. Discussion

This is a pilot study and, accordingly, its goals are limited. Ultimately, we are using this study to help work through an approach that can be scaled up to a much larger project. Clearly, much work remains in building a larger sample, refining our concepts and measures and testing the reliability of our coding. Nevertheless, we think the early returns are interesting. First, it is noteworthy that the Court relies on very similar statutory canons in interpreting these statutes despite their underlying differences and that, in about half of the cases, a closer reading of the court's reasoning reflects a generic approach to statutory construction, which begins with the text and moves on to secondary supporting factors. This suggests that there is a basic approach—or at least a routinized lexicon—for statutory construction that applies across bankruptcy and tax law.

This generic approach was common but not dominant. When we took a closer look at the reasoning of the cases in each policy area, about half of them took on a very different hue. In the bankruptcy cases, about half of the cases departed from generic reasoning and, in the overwhelming majority of these cases (17 of 20), the Court employed particularized justice reasoning, which stressed the equities of the case, its policy implications, and the need to preserve flexibility in future cases. In the tax cases that did not adopt generic reasoning, the Court nearly always (in 25 of 26 cases) stressed predictable rules reasoning, focusing narrowly on the rules. We think it telling that the different modes of reasoning emerged even in cases of

judicial can't, where the Court facing sharply constraining legal rules. In bankruptcy, the Court facing judicial can't searched for ways to preserve the lower courts' flexibility and avoid the result using other provisions in the statute. In tax, the Court did not make similar arguments when confronted with judicial can't. It left it to Congress to fix the rules.

Assuming that these findings hold up in our expanded analysis, they suggest that, in a significant number of cases, the Court tends to draw on different normative frameworks when construing bankruptcy and tax law. In bankruptcy, when the Court is not using generic modes of statutory analysis, the Court seems to be using a more equity-based approach, starting with the language of the law but tempering its interpretations in light of the need to preserve the lower courts' discretion to deal with the merits of particular cases. In the analogous tax cases, the Court seems to be adopting a more formalistic or legalistic approach, adhering to the letter of the law, binding the lower courts and leaving it to the elected branches to correct any absurd or unintended consequences.

If we see these frameworks as part of the socially constructed understandings of how the law should be used within specific policy areas, then it suggests that there are, in effect, distinct rules of law informing the construction of statutes in different policy areas about half of the time. These different normative frameworks, in turn, have significant implications for how we assess judicial opinions' adherence to the rule of law, especially in cases of judicial can't. In tax, with its emphasis on adherence to the rules and predictability, the Court should follow the law as written and ask the elected branches to re-write it as needed. In bankruptcy, the emphasis on particularized justice would suggest that blindly applying the rules as written is problematic and, if the Court feels compelled to do so, it should suggest ways that lower courts can avoid any unfair results and preserve their flexibility down the line, as it did in the *Siegel* and *Taylor* cases.

From a more practical perspective, these frameworks suggest that lawyers should make different kinds of arguments to the Court, depending on the policy area. Lawyers should begin with the generic arguments, but then stress different things. In tax, persuasive legal reasoning turns on a close reading of the text and the call for maintaining a traditional division of labor among the branches, so that the elected branches make the laws and the courts apply them as written. In bankruptcy, lawyers should begin with the text of the Bankruptcy Code but also focus on whether the rules require absurd or unfair results and the need for bankruptcy courts to have discretion to provide particularized justice in future cases.

As scholars, this preliminary analysis should give at least some pause as we rush to take advantage of the powerful (and ever-expanding) tools of CTA to code judicial decisions. Of course, human beings have severe limitations as coders: we tire easily and can be idiosyncratic in our application of coding rules. Computers, by contrast, are tireless and consistent. As such, it is tempting to study statutory construction by creating a dictionary of the canons and let the computer code the cases. Yet, in our pilot study, this would have missed the story about the underlying goals driving the use of these canons, which involved recognizing more latent concepts and subtle patterns of reasoning. Dictionary-based CTA provides counts of the canons used but cannot contextualize the importance of a method of reasoning beyond the count. This count measure may be helpful and works well as a robustness check on the results of manual coding.⁹ The importance of a method of statutory interpretation in an opinion, however, is not driven by the number of times keywords are mentioned. This type of coding requires judgment and understanding, which dictionary-based methods of analysis lack.

⁹ We provide preliminary results of our dictionary based CTA in Appendix III.

Of course, a key set of questions is what factors trigger the different modes of reasoning. When would we expect the Court to shift away from the generic formulations to the more specialized ones? What triggers particularized justice reasoning? What gives rise to predictable rules reasoning? What accounts for (the limited) variation of reasoning within the policy areas? Our pilot project cannot answer these questions; it can only raise them.

VIII. Conclusion

Studying the role of law and the rule of law in Supreme Court decision-making is important but vexing. It is important for obvious reasons—we like to think of ourselves as a government of laws and, at a minimum, this means that the Supreme Court should adhere to the law and the rule of law in rendering its decisions. It is difficult because justices have strong incentives to dissemble about the role of non-legal factors in their decisions, the patterns of justices' votes are hard to interpret, and the rule of law is a contested concept. One approach for addressing these complexities is to identify competing conceptions of the rule of law and their observable implications. Armed with these insights, we can comb through the Court's decisions and probe these different models.

In this paper, we reported the results of a pilot project that explored if the language and reasoning of Supreme Court tax and bankruptcy cases seemed more consistent with the positivist or epistemic model of the rule of law. We found evidence that there is a generic mode of statutory construction across the policy areas, as the positivist model implies, but there are a significant number of cases, about half, that depart from the generic approach and adopt more specialized modes of reasoning that do vary across the policy areas, as the epistemic model suggests. These preliminary findings raise the question of what accounts for this variation.

Building on these initial findings and untangling this puzzle are the next tasks of this project, as we seek to tease out the interaction between the Court's generic approach to statutory construction and the competing rules of law in different policy areas.

In later iterations of this paper we hope to expand our analysis of tax and bankruptcy cases across a wider swatch of years. We also intend to build on our CTA by expanding on and refining our dictionaries for the canons. With these additional features we will be able to test if these modes of reasoning hold over time and whether there are distinct regimes that separate Supreme Court statutory interpretation in tax and bankruptcy cases when cases do not fall into the generic reasoning category. This analysis in turn will then help us to draw more accurate conclusions about the Court's application of the rule(s) of law.

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Table 1. Positivist and Epistemic Models of the Rule of Law Compared

	Definitions		Observable Implications		
	Law	Rule of Law	Variation in canons across policy areas?	Variation in goals across policy areas?	Prevalence of “judicial can’t”?
Positivist	Prescriptive Rules	Fidelity to text, consistency across policy areas	No	No	Consistent across policy areas
Epistemic	Problem-Solving language	Consistent application of norms and goals <i>within</i> policy areas	Yes	Yes	Relatively higher for “legalistic” policy areas

Table 2: Logit Regression with Robust Standard Errors Clustered on 16 Justices

	(1)	(2)	(3)	(4)	(5)
	Predictable Rules	Particularized Justice	Predictable Rules	Particularized Justice	Judicial Can't
Bankruptcy	-2.636***	4.320***			-0.251
	(0.000)	(0.000)			(0.818)
Tax			2.636***	-4.320***	
			(0.000)	(0.000)	
Textual	0.122	0.301	0.122	0.301	-0.231
	(0.665)	(0.494)	(0.665)	(0.494)	(0.497)
Purpose	0.0597	0.107	0.0597	0.107	-0.499
	(0.794)	(0.726)	(0.794)	(0.726)	(0.120)
Stare Decisis	-0.278	1.015**	-0.278	1.015**	-0.389
	(0.373)	(0.018)	(0.373)	(0.018)	(0.461)
Other	0.00944	-0.759**	0.00944	-0.759**	0.0889
	(0.970)	(0.045)	(0.970)	(0.045)	(0.886)
Unanimous	0.233	-0.0655	0.233	-0.0655	0.924
	(0.714)	(0.952)	(0.714)	(0.952)	(0.169)
Conservative	-0.379	-0.00103	-0.379	-0.00103	-1.349
	(0.544)	(0.999)	(0.544)	(0.999)	(0.473)
Reverse	0.757	0.0376	0.757	0.0376	0.315
	(0.267)	(0.962)	(0.267)	(0.962)	(0.746)
Constant	-0.430	-5.636***	-3.066*	-1.317	
	(0.764)	(0.001)	(0.075)	(0.379)	
N	87	87	87	87	87
pseudo R-sq	0.248	0.428	0.248	0.428	.105

p-values in parentheses p<.1

** p<.05

*** p<.01

Figure 1. Overview of Findings

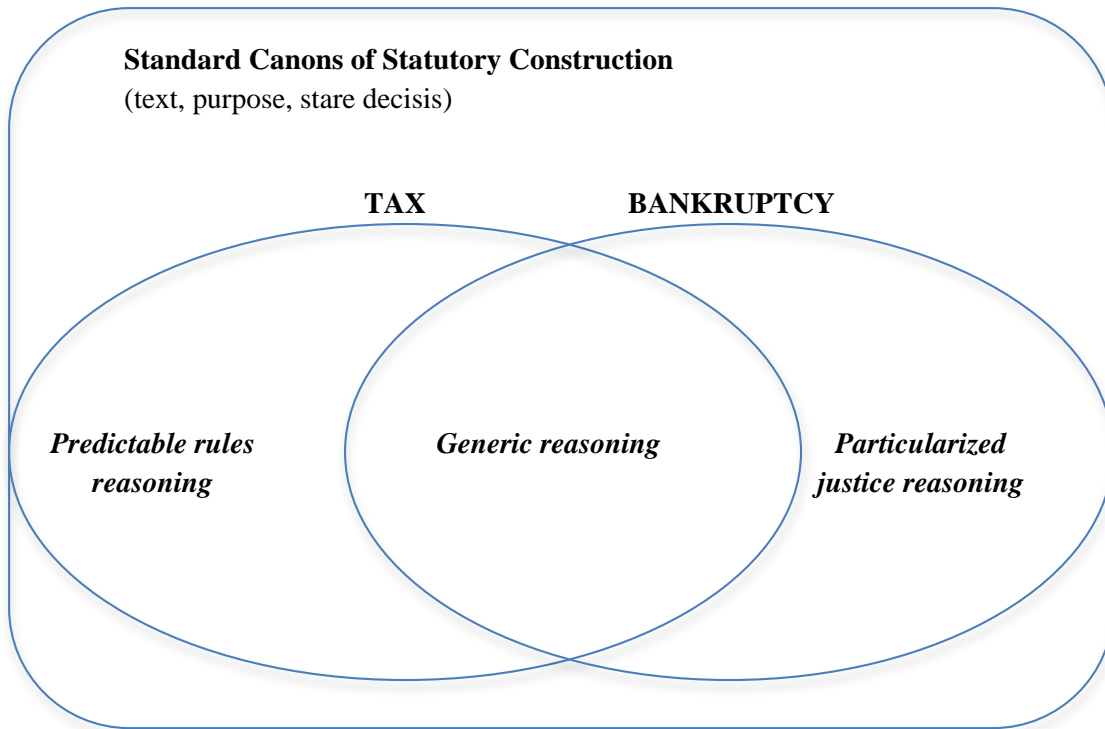
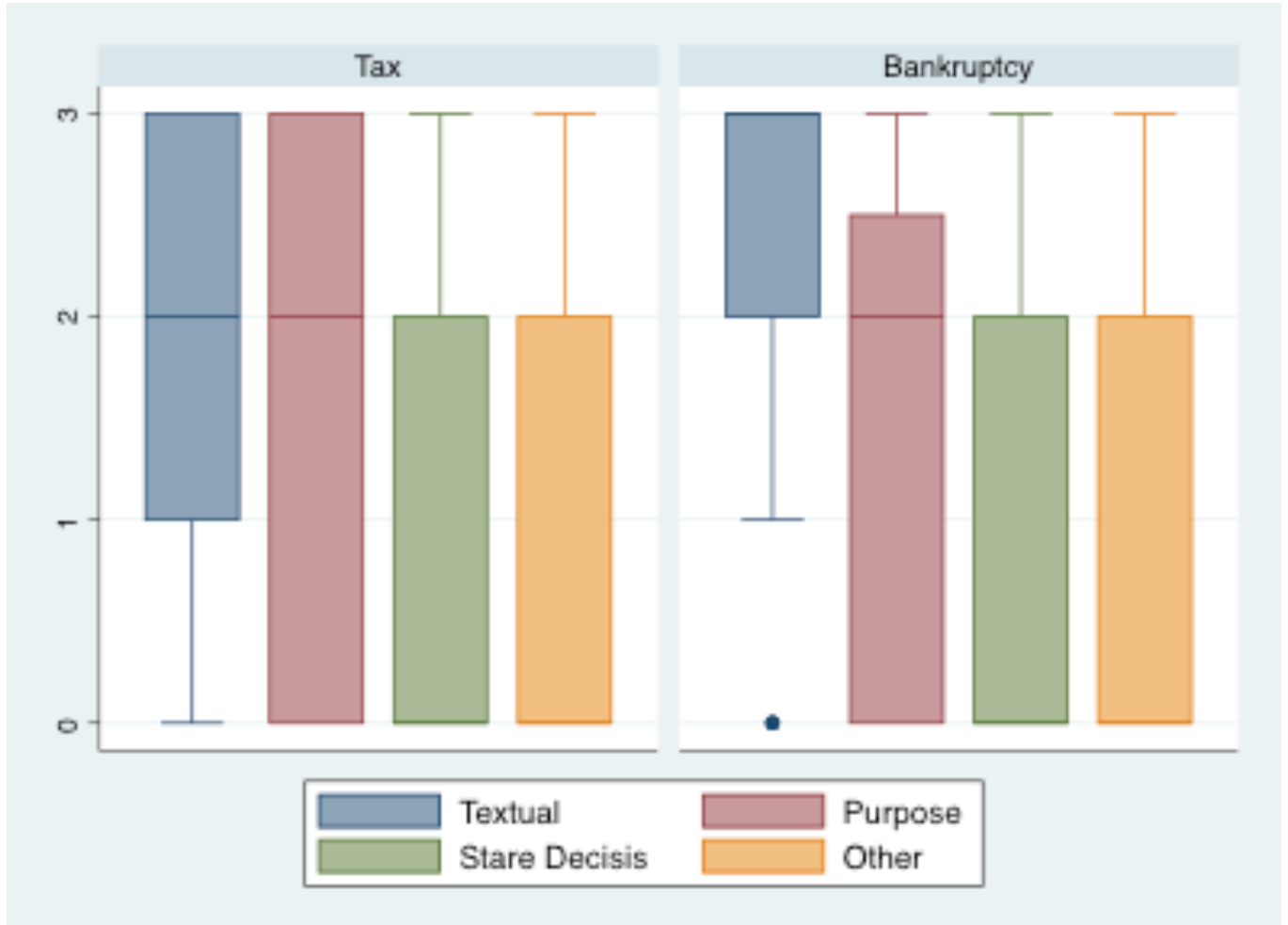


Figure 2. Box Plot of Reliance on Methods of Statutory Construction by Supreme Court 1990-2013: Bankruptcy versus Tax Decisions



Note: 0 = no reliance, 3= highest reliance.

N=87

Figure 3. Average Reliance on Statutory Cannons by Supreme Court 1990-2013: Bankruptcy versus Tax Decisions (where 0= no reliance, 3=highest reliance) (n=87)

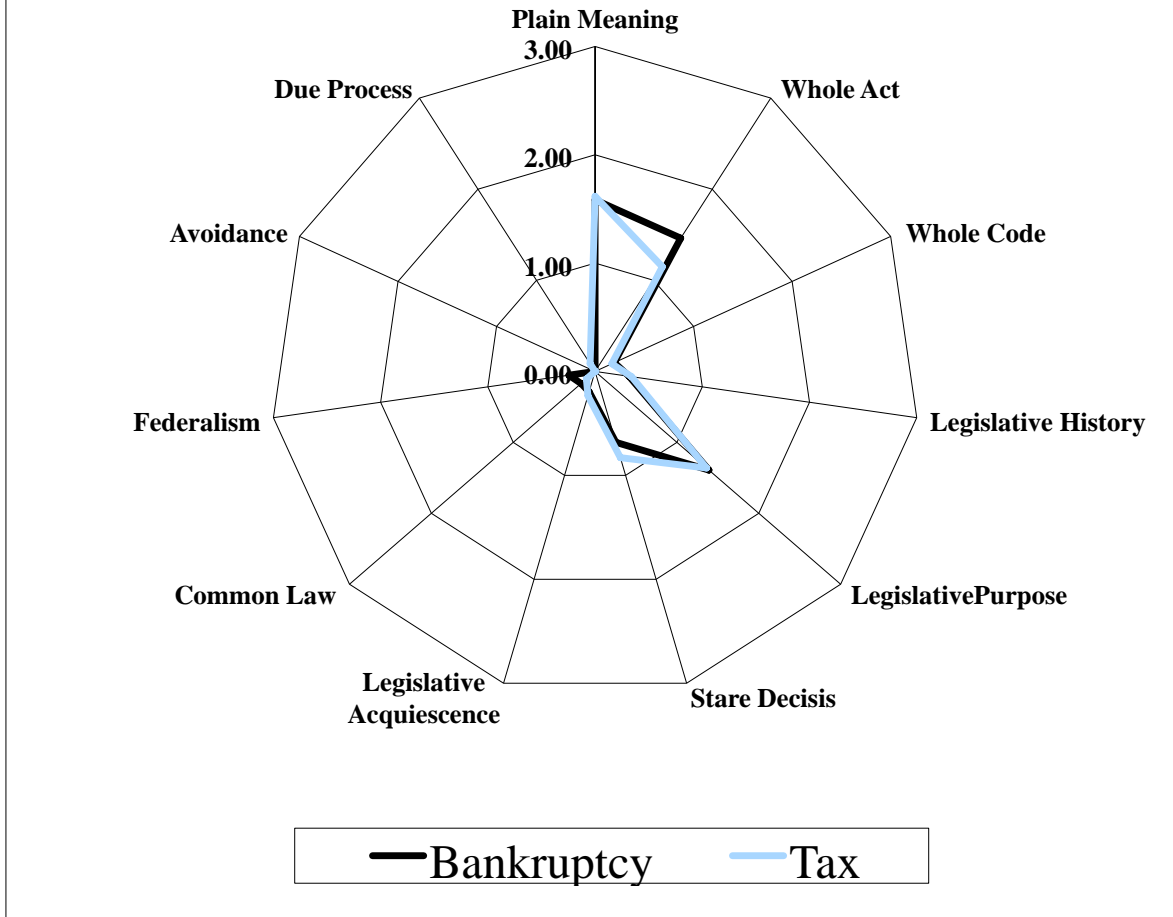
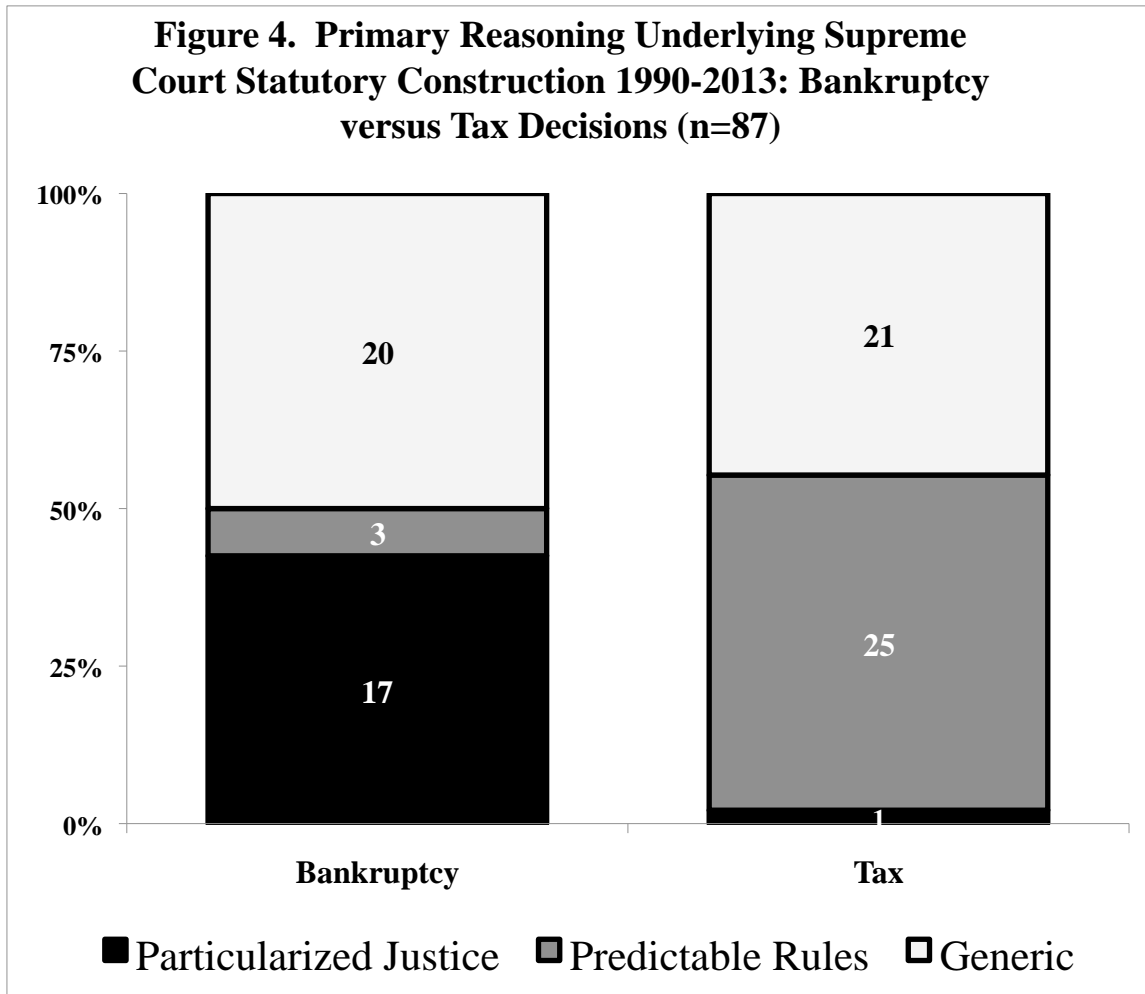


Figure 4. Primary Reasoning Underlying Supreme Court Statutory Construction 1990-2013: Bankruptcy versus Tax Decisions (n=87)



Appendix

I) Codebook Reproduced from Eskridge and Baer (2008)

Interpretive Reasoning

Every opinion in every case was coded according to the methods of statutory interpretation relied on by the Justices. The methods of statutory interpretation evaluated are outlined below.

Each method of interpretation was coded with the following rubric.

0	No reference to this method of interpretation
1	Some reference to the method, but not meaningfully relied on to advance reasoning
2	Genuine/positive reliance on method that helps bring about the result reached

3	Method is “a” or “the” key determining factor in the reasoning process
999	Indicates that ranking is not applicable because no such opinion in case

Note that opinions are abbreviated as follows:

Majority = M

Concurrence(s) = C1, C2, C3, etc.

Dissent(s) = D1, D2, D3, etc.

Thus, in the dataset, “PlainM” is the column that lists reliance on plain meaning in the majority opinion (0, 1, 2, 3, or 999), while “PlainC1” is the column that lists reliance on plain meaning in the first concurrence (0, 1, 2, 3, or 999), and so on.

The methods of statutory interpretation that were evaluated are:

Plain Meaning

This method includes reliance on how an ordinary speaker would interpret the relevant statutory language, considering dictionaries, grammar, usage, and the linguistic canons such as *inclusio unius*. If an opinion discussed the text and found it ambiguous, it was coded as 1; if the opinion found a textual “plain meaning,” it was coded as 2 or 3 depending on the reliance on this plain meaning in the opinion.

Whole Act

This method includes the whole-act canons, such as the rule against surplusage, the meaningful-variation maxim, etc. If an opinion discussed the whole act and found it ambiguous, it was coded as 1; if the opinion found that the whole act established or supported a “plain meaning,” it was coded as 2 or 3 depending on the reliance on this reasoning in the opinion.

Whole Code

This method considers how other statutes shed light on the interpretation of the statute at issue. It includes the *in pari materia* rule, references to borrowed statutes, the presumption against implied repeals, etc. If an opinion discussed the whole code and found it ambiguous, it was coded as 1; if the opinion found that the whole code established or supported a “plain meaning,” it was coded as 2 or 3 depending on the reliance on this reasoning in the opinion.

Legislative History

This method considers reliance on legislative history, such as committee reports and floor statements. It includes reliance on “subsequent legislative

history,” but not legislative inaction. If an opinion discussed the legislative history and found it irrelevant, unpersuasive, or insufficiently persuasive to counterbalance other factors, it was coded as 1. If the opinion found that the legislative history confirmed the meaning suggested by the text or the whole act, it was coded as 2. If the opinion found that the legislative history provided an independent basis for a statutory interpretation, it was coded as 3.

Legislative Purpose

This method considers reliance on references to what Congress meant to accomplish, the mischief aimed at being remedied, and general policy justifications imputed to a statute. (It also includes the purpose/policy behind a Constitutional provision when that is applicable.) If an opinion discussed the legislative purpose and found it irrelevant, unpersuasive, or insufficiently persuasive to counterbalance other factors, it was coded as 1. If the opinion found that the legislative purpose confirmed the meaning suggested by the text or the whole act, it was coded as 2. If the opinion found that the legislative purpose provided an independent basis for a statutory interpretation, it was coded as 3.

Stare Decisis

This method includes reliance on the stare decisis doctrine and more general reliance on past decisions as authoritative or probative. If an opinion discussed precedent(s) and found it/them irrelevant, unpersuasive, or insufficiently persuasive to counterbalance other factors, it was coded as 1. If the opinion found that precedent confirmed the meaning suggested by the text or the whole act, it was coded as 2. If the opinion found that precedent provided an independent basis for a statutory interpretation, it was coded as 3.

Legislative Acquiescence

This method includes reliance on evidence that the post-enactment Congress agreed with the agency view (for example, by ratifying the view when it reenacted or amended the statute, or by acquiescing in the agency view by leaving it intact after learning of it). If an opinion discussed legislative acquiescence and found it irrelevant, unpersuasive, or insufficiently persuasive to counterbalance other factors, it was coded as 1. If the opinion found that legislative acquiescence confirmed the meaning suggested by the text or the whole act, it was coded as 2. If the opinion found that legislative acquiescence provided an independent basis for a statutory interpretation, it was coded as 3.

Common Law

This method includes reliance on common law meanings of terms used in statutes, as well as common law rules or baselines that are presumptively left

in place or incorporated into statutes. If an opinion discussed the common law and found it irrelevant, unpersuasive, or insufficiently persuasive to counterbalance other factors, it was coded as 1. If the opinion found that the common law confirmed the meaning suggested by the text or the whole act, it was coded as 2. If the opinion found that the common law provided an independent basis for a statutory interpretation, it was coded as 3.

Federalism Canons

This method includes the presumptions and clear-statement rules the Court has developed to protect federalism values, including the rules that judges ought not presume that Congress meant to preempt laws in which states are exercising their traditional police powers; that Congress must use specific language to abrogate state Eleventh Amendment immunity; etc. If an opinion discussed a federalism canon and found it irrelevant, unpersuasive, or insufficiently persuasive to counterbalance other factors, it was coded as 1. If the opinion found that the canon confirmed the meaning suggested by the text or the whole act, it was coded as 2. If the opinion found that the canon provided an independent basis for a statutory interpretation, it was coded as 3.

Avoidance Canon

This method includes application of the rule that when a statute is susceptible of two readings, one of which raises “serious constitutional questions,” judges should adopt the reading that “avoids” those questions. If an opinion discussed the avoidance canon and found it irrelevant, unpersuasive, or insufficiently persuasive to counterbalance other factors, it was coded as 1. If the opinion found that the canon confirmed the meaning suggested by the text or the whole act, it was coded as 2. If the opinion found that the canon provided an independent basis for a statutory interpretation, it was coded as 3.

Due Process Canons

The method encompasses the rule of lenity, the notion that ambiguous penal statutes should be construed in favor of defendants. If an opinion discussed the rule of lenity and found it irrelevant, unpersuasive, or insufficiently persuasive to counterbalance other factors, it was coded as 1. If the opinion found that lenity confirmed the meaning suggested by the text or the whole act, it was coded as 2. If the opinion found that lenity provided an independent basis for a statutory interpretation, it was coded as 3.

Appendix II) Case Examples of Methods of Interpretation

Citation	Method	Example
523 U.S. 57	Plain Meaning	The words of the statute strongly support the Eighth Circuit's reading.
502 U.S. 410	Legislative Purpose	But, given the ambiguity in the text, we are not convinced that Congress intended to depart from the pre-Code rule that liens pass through bankruptcy unaffected.
503 U.S. 30	Whole Act	That reading would bar the present suit, since the right to recover a postpetition transfer under § 550 is clearly a "claim" (defined in § 101(4)(A)) and is "property of the estate" (defined in § 541(a)(3)).
503 U.S. 638	Whole Code	Section 522(l), to repeat, says that "[u]nless a party in interest objects, the property claimed as exempt on such list is exempt." Rule 4003(b) gives the trustee and creditors 30 days from the initial creditors' meeting to object. By negative implication, the Rule indicates that creditors may not object after 30 days "unless, within such period, further time is granted by the court."
516 U.S. 59	Common Law	In this case, neither the structure of § 523(a)(2) nor any explicit statement in § 523(a)(2)(A) reveals, let alone dictates, the 70*70 particular level of reliance required by § 523(a)(2)(A), and there is no reason to doubt Congress's intent to adopt a common-law understanding of the terms it used.
517 U.S. 843	Stare-Decisis	The Government concedes, as it did below, that this case is largely indistinguishable from <i>Thames & Mersey</i> and that, if <i>Thames & Mersey</i> is still good law, the tax assessed against IBM under Section(s) 4371 violates the Export Clause. See Tr. of Oral Arg. 5; 59 F. 3d, at 1237.
499 U.S. 554	Legislative Acquiescence	Because Congress has delegated to the Commissioner the power to promulgate "all needful rules and regulations for the enforcement of [the Internal Revenue Code]," 26 U. S. C. § 7805(a), we must defer to his regulatory interpretations 561*561 of the Code so long as they are reasonable
502 U.S. 410	Legislative History	Furthermore, this Court has been reluctant to accept arguments that would interpret the Code, however vague the particular language under consideration might be, to effect a major change in pre-Code practice that is not the subject of at least some discussion in the legislative history.

504 U.S. 505	Due Process	Making a firearm without approval may be subject to criminal sanction, as is possession of an unregistered firearm and failure to pay the tax on one, 26 U. S. C. §§ 5861, 5871. It is proper, therefore, to apply the rule of lenity and resolve the ambiguity in Thompson/Center's favor.
530 U.S. 15	Federalism	The "basic federal rule" in bankruptcy is that state law governs the substance of claims, <i>Butner, supra</i> , at 57, Congress having "generally left the determination of property rights in the assets of a bankrupt's estate to state law," 440 U. S. at 54 (footnote omitted).

Appendix III. Dictionary Based Content Analysis Results

Bankruptcy

Tax

Canon	Documents	Absolute Count	Canon	Documents	Absolute Count
Textual	19	22	Textual	22	28
Purpose	18	25	Purpose	13	21
Stare-Decisis	2	2	Stare-Decisis	4	7
Other	19	50	Other	17	48

Note: We created separate Boolean-term dictionaries for the canons and applied the dictionaries to the text of each case.

Documents refer to the number of documents in which the terms appear in all cases within the issue area.

Absolute count refers to the total number of hits for the terms in the dictionary for the canon in all cases within the issue area.

There are 40 bankruptcy cases and 47 tax cases in our dataset.