Polarization in Court: A corpus-assisted analysis of the language in the Dobbs v. Jackson ruling

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Contemporary Political Polarisation: a Intercultural Perspective

Polarization in Court: a corpus-assisted analysis of the language in the Dobbs v. Jackson ruling

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Abstracts

Français English Español
Cet article propose une analyse des lignes de concordance existant au sein des opinions majoritaires et dissidentes de la Cour suprême des Etats-Unis à propos de l'arrêt Dobbs v. Jackson, publié le 24 juin 2022. La combinaison d'une analyse quantitative et d'une inspection manuelle des concordances identifiées fournit des preuves linguistiques des profondes divisions idéologiques qui existent entre les juges majoritaires et les dissidents. Au-delà, elle témoigne de la complexité de la prise de décision judiciaire partisane.

This study uses corpus linguistic methods to extract top keywords and analyze concordance lines in the majority and dissenting opinions in the U. S. Supreme Court ruling concerning *Dobbs v. Jackson* released on 24th June 2022. The combination of a quantitative analysis with manual inspection of selected concordances offers linguistic evidence of a deep ideological divide between the majority and dissenting justices that underpins the reality of partisan judicial decision-making.

Este estudio propone un análisis de las líneas de concordancia que existen entre las opiniones mayoritarias y las disidentes en el seno del Tribunal Supremo de Estados Unidos acerca de la sentencia Dobbs v. Jackson, publicada el 24 de junio de 2022. La combinación de un análisis cuantitativo con la inspección manual de las concordancias seleccionadas ofrece pruebas lingüísticas de la profunda división ideológica que impera entre los jueces mayoritarios y los disidentes, fenómeno que subraya la compleja realidad de la toma de decisiones judiciales partidistas.

Index terms

Mots-clés : processus de délibération de la justice, logique de parti, Cour Suprême des Etats-Unis, avortement, Dobbs v. Jackson
Keywords: judicial decision-making, partisanship, U. S. Supreme Court, abortion, Dobbs v. Jackson
Palabras claves: toma de decisiones judiciales, partidismo, Tribunal Supremo de EE.UU., aborto, Dobbs v. Jackson

Full text

1 As is well known, the U. S. Supreme Court's 1973 landmark decision in *Roe v. Wade* revolutionized constitutional jurisprudence in the matters related to abortion and reproductive rights. Roe's primary holding ruled that « A person may choose to have an abortion until a fetus becomes viable, based on the right to privacy contained in the Due Process Clause of the Fourteenth Amendment. Viability means the ability to live outside the womb, which usually happens between 24 and 28 weeks after conception »[1]. This watershed decision framed the abortion issue in the United States « as a question of a woman's right to bodily integrity and privacy versus a fetus's right to life »[2], thus making it impossible to attain common ground and compromise in the political arena. By establishing a constitutional right to abortion, the Supreme Court's ruling galvanized the anti-abortion movement (that quickly adopted the label of « prolife » in an attempt to present itself as a defender of the lives of the unborn), at the same time as it « temporarily lulled prochoice [i.e., pro-abortion] proponents into a false state of security »[3]. The main arguments that the two opposing groups employ to push their respective agendas center on the issue of the status of the fetus. While the prochoice group argues that the rights of the fetus cannot be elevated above the mother's right to terminate a pregnancy – thus framing the decision as a private matter for the latter to take, pro-lifers support the belief that « the fetus is a living being, a person »[4] whose life is taken through the act of termination. This is spelled out, for example, on the website of the Texas Right to Life organization:

> […] the Right to Life is paramount. This universal, God-given right establishes the State's interest in protecting innocent Life from being taken. Our state made elective abortion illegal because it intentionally takes an innocent Life and violates the Right to life that everyone has – no matter your age, size, or location.[5]

2 In the pro-life framing, abortion has been treated as murder since the early 1970s and this association has since become commonplace in the violent and often apocalyptic rhetoric of the anti-abortion movement. As Reagan has summarized,

> The most significant ideological work of the antiabortion movement was the separation in American cultural and legal thought of both the pregnant women from her own pregnancy and the developing fetus from the pregnant body. This made the embryo/fetus into an individual « person » with its own interests, rights, and life completely separate from a woman's pregnant body.[6]

3 At the same time as *Roe v. Wade* was celebrated by the nascent pro-choice movement and condemned by pro-lifers, the ruling also attracted heavy criticism from numerous legal scholars representing the opposite sides of the ideological spectrum who argued that

> *Roe* helped to entrench the ideological positions held by those on either side of the issue, precluding any form of productive compromise. The polarization produced by *Roe* spilled over into other legal conflicts about gender, helping to doom the Equal Rights Amendment (ERA), to energize the New Right and the Religious Right, and to put off potentially promising alliances in support of caretaking.[7]

4 When, twenty years later, the Court issued its ruling in *Planned Parenthood v. Casey*[8],the decision reflected the collapse of any consensus about the facts about abortion. In rejecting the trimester framework[9], the Court adopted the undue burden standard. That rule, in turn, encouraged opposing sides to focus on the effects of both abortion and abortion restrictions[10].

5 The highly polarized national debate on abortion-related issues further intensified at the turn of the twenty-first century, reaching the peak of polarization in the much anticipated ruling in *Dobbs v. Jackson*, released on 24th June 2022[11]. Here the Court ruled that the Constitution does not confer a right to abortion and that the authority to regulate abortion is to be returned to the individual state legislatures. In

other words, in overturning its previous decisions in *Roe v. Wade* and *Planned Parenthood v. Casey*[12], the majority Justices at the U. S. Supreme Court made clear that they wished to bring the involvement of the Court in the national debate on abortion to an end.

6 Before *Dobbs v. Jackson* was decided in 2022, *Roe v. Wade* held the dubious honor of being one of the two most egregious examples of the « shamelessly partisan » rulings released by the U.S. Supreme Court[13]. In order to contextualize the linguistic analysis of the *Dobbs* ruling that will be conducted in the present study, it is helpful to first turn to the scholarship on judicial decision-making as represented by Segal and Spaeth's attitudinal model of judicial policy making. Presented in their seminal 2002 publication, the model describes the U. S. Supreme Court Justices as policy makers whose decisions reflect (sometimes exclusively so) their individual biases, ideological attitudes and values. In fact, Segal and Spaeth treat the votes cast by the individual justices as « an expression of fact situations applied to their personal policy preferences »[14]. Thus the central concept in the attitudinal model is that of « an "attitude", which comprises a relatively enduring "interrelated set of beliefs about an object of situation" »[15]. This is how Segal and Spaeth contrast the myth of impartial, objective, dispassionate, discretionless decision-making with what they present as the concrete reality of partisan judicial policy making:

> The jurisdiction that American courts have derives from the constitution that established them and/or from legislative enactments. Because judges' decisions adjudicate the legality of contested matters, judges of necessity make law. Even so, Americans find it unsettling to admit to judicial policy making because we have surrounded judicial decisions with a panoply of myth, the essence of which avers that judges and their decisions are objective, impartial and dispassionate.[16]

7 Segal and Spaeth's analysis of judicial policy making as a partisan, ideologically-biased activity of law making has been generally accepted in mainstream judicial scholarship[17]. Moreover, as Ferejohn has observed, the long-term trend of judicial involvement in the regulation of political activity can also be presented as the process of « the judicialization of politics »[18]. In more recent scholarship, Segal and Spaeth's model has been applied to investigating the current trends in judicial polarization that appears to have expanded from top down, from the Supreme Court to a range of lower American courts:

> Judges appointed to the federal courts, from both parties, are increasingly being selected based on their partisan bona fides and being drawn from the ideological extremes. While polarization is on full public display in recent Supreme Court nomination battles, this trend is also playing out in the federal courts more generally. [...] One sign of polarization is that Supreme Court Justices have sorted into distinct ideological voting blocks along party lines. The notion that a president would nominate a justice who would align with the opposing ideological camp, something that had been relatively common in the past, is now unthinkable. The lower courts have polarized longside the Supreme Court, to the extent that federal district and circuit court judges are now nearly as polarized as the parties in Congress.[19]

8 The ways in which judicial ideology can be measured - beyond simply using the party of the appointing president as a proxy - have been dealt with most extensively in the area of scholarship concerning the U. S. Supreme Court. A helpful overview of the various existing measures of judicial ideology is offered in Bonica and Sen[20].. Of particular interest for the present study is the section on « text-based analysis », that is to say, the use of automated computer-based tools to measure ideology and judicial polarization, included in Bonica and Sen's overview. Introducing these approaches, typically developed outside the legal context, Bonica and Sen point out that « lawyers communicate in a specific legal language, which creates challenges for mapping legal concepts and language directly onto ideology »[21]. The underpinning assumption guiding such text-based research is the idea « that the greater use of certain words is likely to be

associated with certain ideologies »[22]. This assumption is tested in the use of specialized software programs[23].

9 Developed in research areas outside linguistics, many of the text-based approaches used to investigate judicial polarization appear to lack any grounding in a specific theory of language. Moreover, such text-based studies ignore the wealth of research conducted in the increasingly active scholarly field of legal corpus linguistics. Goźdź-Roszkowski's helpful review paper offers an insightful overview of the « many different ways in which modern Corpus Linguistics can be used to enrich and broaden our understanding of legal discourse »[24]. In fact, as Goźdź-Roszkowski sums up:

> [...] recent years have seen an unprecedented growth of corpus-informed research into legal discourse, with its traditional interest in areas such as variation, phraseology, translation, terminology or phraseology, only to be paralleled by explorations carried out by both legal academics and practitioners embracing corpus linguistics methods as a new tool.[25]

10 The present study contributes to the research area of legal corpus linguistics by conducting a corpus-assisted investigation of linguistic patterns in the majority and the dissenting opinions in the *Dobbs v. Jackson* ruling. The quantitative study is further informed by a systemic-functional approach to legal discourse[26]. From the systemic-functional perspective, legal discourse represents an example of a specific type of language use « embedded in the context of situation and beyond this in the context of culture »[27]. Following Miller, the present study treats the texts of the majority and dissenting opinions « as [instances] of a "specialized site of engagement" » characterized by « speaker selections from the semantic resources which the culture makes available for use in struggles for meaning ascendancy »[28]. In this struggle for meaning, the relations of power and solidarity can be realized in the lexicogrammar and the phonology, with attitudinal meanings « either explicitly expressed in the text ("inscribed") or conveyed through ideational expressions ("invoked") »[29]. In fact, from the legal, as well as linguistic points of view, the particular functions of language in the U. S. Supreme Court decisions are associated with the pivotal role of attitudinal, or evaluative meanings that 1) are extremely context-dependent and 2) occur « within the constraints of values valid for a particular legal system and legal culture »[30]. In other words, as Goźdź Roszkowski argues:

> judicial argumentation is an institutionalized form of discourse communication where evaluation is the core information communicated. [...] In the context of Supreme Court opinions, judges need to refer to arguments advanced by lower court judges and other legal actors taking into account a multiple audience. [...] the acceptability of the decision, to a large extent, depends on the quality of the justification. The skillful use of evaluative language, which contributes to the justificatory force of argumentation, should be regarded as one of the hallmarks of professional judicial writing.[31]

11 The evaluative meanings in the present study are identified through a corpus-based linguistic analysis of keywords[32], with the view of better understanding the ways in which Supreme Court Justices « negotiate and "naturalize" subjective, and, ultimately ideological, positions »[33]. The dataset for the quantitative analysis, presented in Table 1, consists of the second and the sixth sections in *Dobbs v. Jackson* ruling, representing, respectively, the majority opinion (excluding the two appendices) and the dissenting opinion (excluding the appendix).

DOBBS, STATE HEALTH OFFICER OF THE MISSISSIPPI DEPARTMENT OF HEALTH, ET AL. *v.* JACKSON WOMEN'S HEALTH ORGANIZATION ET AL.	page number (individual sections)	page number (pdf document)
1. Syllabus	pp. 1-8	pp. 1-8
2. Opinion of the Court (delivered by Alito, J.)	pp. 1-78	pp. 9-87

2.1 Appendices		
Appendix A	pp. 79-101	pp. 87-109
Appendix B	pp. 101-108	pp. 109-116
3. Justice Thomas, concurring	pp. 1-7	pp. 117-123
4. Justice Kavanaugh, concurring	pp. 1-12	pp. 124-135
5. Chief Justice Roberts, concurring in the judgment	pp. 1-12	pp. 136-147
6. Justice Breyer, Justice Sotomayor, and Justice Kagan, dissenting	pp. 1-60	pp. 148-207
6.1 Appendix	pp. 61-66	pp. 208-213

Table 1. Sections in *Dobbs v. Jackson* ruling

12 The length of the two opinions[34] justifies the use of corpus linguistic techniques aiming to detect specific ideological positioning. Two sets of keyword lists were compiled for the two individual sections. The first set of lists was extrapolated by using a corpus of General American English (*AME06*) as a reference corpus, while the second list was produced using an ad-hoc, specialized corpus of previous Supreme Court abortion-related rulings (*AB Rulings*)[35]. Tables 2a, 2b, 3a and 3b present the results of the keyword extraction procedure[36].

	raw frequency (per 10k token)	dispersion	raw frequency (reference corpus)	dispersion (reference corpus)	statistics
abortion	241	1.3	63	10.67	59
roe	140	1.9	7	19.4	53
casey	114	2	50	14	31
viability	53	3.4	4	11.1	21
opinion	73	3	57	4.4	19
505	42	5.2	2	22.3	17
dissenting	43	4	7	16.6	17
overruling	40	4.7	0	0	17
roe's	39	3.5	0	0	16
fourteenth	41	3.1	12	20.5	15

13

Table 2a. Keyword analysis : Majority opinion v. *AME06*.

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	raw frequency (per 10k token)	dispersion	raw frequency (reference corpus)	dispersion (reference corpus)	statistics
overruling	40	4.7	4	1.6	14
roe	140	1.9	72	1	11
roe's	39	3.5	8	2.4	11
stare	32	3.7	6	1.5	10

decisis	32	3.7	6	1.5	10
quickening	23	4.8	0	0	10
concurrence	21	5.9	1	2.6	9
viability	53	3.4	31	1.7	8
history	39	3.1	22	1.3	7.5
tradition	19	4.4	3	1.8	7.3

Table 2b. Keyword analysis : Majority opinion v. *AB Rulings*.

	raw frequency (per 10k token)	dispersion	raw frequency (reference corpus)	dispersion (reference corpus)	statistics
roe	112	1.27	7	19.45	62
casey	152	1.29	7	14	37
abortion	137	1.64	63	11	43
majority	137	1.27	97	3.2	35
505	44	2	2	22	19
pregnancy	57	2	36	8	13
woman's	40	2.5	0	0	21
court	143	1.3	283	3.8	19
today's	35	2.5	0	0	18.5
constitutional	62	1.9	74	7.5	18.4

Table 3a. Keyword analysis : Dissenting opinion v. *AME06*.

	raw frequency (per 10k token)	dispersion	raw frequency (reference corpus)	dispersion (reference corpus)	statistics
contraception	29	3.3	2	2.6	14
stare	31	3	6	1.5	12.5
decisis	31	3	6	1.5	12.5
roe	112	1.27	72	1	11
1868	18	4	0	0	10
decisions	42	1.9	24	1	9.6
majority	137	1.27	122	1.7	9
liberty	40	2.1	25	0.8	9
majority's	32	2.54	19	1.6	8.4
mississippi	20	4.9	6	1.4	8.3

Table 3b. Keyword analysis : Dissenting opinion v. *AB Rulings*.

15 A number of distinct linguistic patterns have been identified in the comparative analysis of the four keyword lists. When it comes to the majority opinion, the lexical items with the highest frequency detected in the first step of the procedure include 1) references to the two previous Supreme Court rulings, *Roe v. Wade* and *Casey v. Planned Parenthood;* and 2) references to the dissenting opinion. Other recurrent lexical items are *viability*, *overruling*, and *fourteenth* (referring to the Fourteenth Amendment). After completing the second step of the keyword extrapolation procedure, to the list of keywords in the majority opinion new items such as *stare decisis*, *quickening*, *concurrence*, *history*, and *tradition* were added. Similar patterns have been detected in the dissenting opinion, with the top keywords referring to the two overruled decisions, as well as the majority opinion. The mutual references found in the majority and dissenting opinions hint at the interactive nature of the two judicial opinions. The dissent, however, also introduces topics related to *pregnancy*, *women* (as in the keyword *women's*), *court*, *today* and *constitutional* matters. Finally, with the second reference corpus, the dissent adds *contraception*, *1868*[37], *decisions*, *liberty* and *Mississippi*, the reference to the specific case heard by the Court on that day[38].

16 Overall, in terms of the similarities between the top keywords in the two sections of the *Dobbs* decision, the most salient trend is represented by the frequency of the references to *Roe v. Wade* and *Casey v. Planned Parenthood,* as documented across the four lists. Secondly, the differences recorded in the lists (for example, the centrality of the *viability* discussion in the majority opinion, on the one hand, and, on the other hand, the attention given to *women* by the dissent) plausibly hint at the differing ideological positioning reflected both in the contents and the language of the two opinions. In other words, the quantitative linguistic analysis supports the reading of the two opinions through the lens of the two different rhetorical frames: the conservative one, with its focus on the right of the unborn (which explains the frequency of *viability)*, and the liberal one that privileges the rights of women to bodily autonomy (which explains the frequency of *women)*. Tentatively, the findings of the linguistic analysis can be interpreted to reflect Justices' polarized views on the abortion debate.

17 A manual inspection of the extended concordance lines in the majority opinion containing the references to *Roe v. Wade* and *Casey v. Planned Parenthood* has helped to identify an important evaluative pattern[39]. The pattern can be introduced under the label of « the egregious wrongness » of *Roe* and *Casey*. As the selection of shorter passages exemplifying this pattern will show, the negative assessment of the two previous rulings on abortion, even if not at all unexpected as such given the majority's decision to overrule them, is nonetheless extraordinary in its use of a variegated range of linguistic resources leveraged to amplify the criticism. The items underlined in the examples below illustrate the use of such resources:

18 (1) The weaknesses in *Roe's* reasoning are well-known. Without any grounding in the constitutional text, history, or precedent, it imposed on the entire country a detailed set of rules much like those that one might expect to find in a statute or regulation.

19 (2) *Roe's* failure even to note the overwhelming consensus of state laws in effect in 1868 is striking, and what it said about the common law was simply wrong.

20 (3) An even more glaring deficiency was *Roe's* failure to justify the critical distinction it drew between pre- and post-viability abortions.

21 (4) In Part II, supra, we explained why *Roe* was incorrectly decided, but that decision was more than just wrong. It stood on exceptionally weak grounds.

22 (5) [*Casey's*] new doctrine did not account for the profound wrongness of the decision in *Roe*, and placed great weight on an intangible form of reliance with little if any basis in prior case law.

23 (6) *Stare decisis*, the doctrine on which *Casey's* controlling opinion was based, does not compel unending adherence to *Roe's* abuse of judicial authority. *Roe* was egregiously wrong from the start. Its reasoning was exceptionally weak, and the decision has had damaging consequences. And far from bringing about a national settlement of the abortion issue, *Roe* and *Casey* have enflamed debate and deepened division.

24 (7) *Roe* was also egregiously wrong and deeply damaging. For reasons already explained, *Roe's* constitutional analysis was far outside the bounds of any reasonable interpretation of the various constitutional provisions to which it vaguely pointed. [comparing *Roe* to the « infamous decision in *Plessy v. Ferguson »,* a 1896 ruling that upheld the constitutionality of racial segregation under the « separate but equal » doctrine, *author's note*]

25 In these passages, the negative evaluative meanings are consistently intensified to offer a categorically critical, unequivocal and explicitly negative assessment of the two overruled decisions. Thanks to the frequency and a relatively equal distribution of such evaluative resources within the text, the majority opinion is able to gradually build up, maintain and reinforce the negative prosody of the text, thus helping to align the reader « rhetorically as [the] text unfolds »[40]. This strategy is of crucial importance in the case of *Dobbs v. Jackson* majority ruling that aims to justify its claim that the two overruled decisions were « egregiously wrong ».

26 The dissent recognizes this effort to undermine the credibility of the previous rulings. « To hear the majority tell the tale, *Roe* and *Casey* are aberrations: They came from nowhere, went nowhere – and so are easy to excise from this Nation's constitutional law », write the dissenting Justices. Moreover, the Justices make a point of questioning the evaluative resources employed in the majority opinion: « In the end, the majority says, all it must say to override *stare decisis* is one thing: that it believes *Roe* and *Casey* are 'egregiously wrong'« . In terms of the linguistic resources used to refer to the two decisions, the dissent does not mirror the majority's strategy employed to amplify attitude in an excessive use of evaluative resources. The emotional, subjective force of the dissent's criticism is made transparent in the use of attitudinal lexis, although this use is much more sparse and scattered throughout the text (e.g., « In overruling Roe and Casey, this Court betrays its guiding principles »; « The majority scoffs at that idea [...] »; « With sorrow – for this Court, but more, for the many millions of American women who have today lost a fundamental constitutional protection – we dissent ».)

27 This corpus-assisted analysis of the majority and dissenting opinions in the landmark ruling in *Dobbs v. Jackson* has attempted to show how an investigation combining corpus linguistic techniques with a manual inspection of extended concordance lines can offer concrete linguistic evidence that sheds light on cases of judicial polarization in controversial, partisan U. S. Supreme Court rulings. The analysis of keywords and selected concordance lines clearly hints at the existence of underpinning ideological divisions, unequivocally recognized as such also by the two sides. « Now a new and bare majority of this Court – acting at practically the first moment possible – overrules *Roe* and *Casey* », remarks the dissent. The majority responds with an accusation: « The most striking feature of the dissent is the absence of any serious discussion of the legitimacy of the States' interest in protecting fetal life ». The ideological divide on the one side of which we find fetal rights that trump the other side's interest in the rights to bodily autonomy, privacy and freedom from state intervention in matters concerning reproductive choices, seems as unbridgeable in this decision as it could possibly be. This divide also accurately reflects the deep political polarization on the issue of abortion that has characterized American politics since 1976, the year when the party platforms started to frame abortion as a partisan issue. Come 2024 election, the party platforms clearly stated their respective preferences for one of the two mutually exclusive standpoints on the issue. While Democrats claimed to be « dedicated to protecting reproductive rights and ensuring that women have the ability to make their own health care decisions », Republicans introduced their position on what they call « the issue of Life » by stating that they « proudly stand for families and Life »[41]. It remains to be seen what kinds of decisions the new administration will make to show its commitment to « the issue of Life ». If, as it may well happen, the much-coveted Human Life Amendment becomes law[42], at least some parts of the American public may find themselves forced to reformulate Anne Phillip's forceful 1991 statement into a pressing question, namely, can the American society present itself as fully democratic if it compels women into unwanted pregnancy and childbirth?[43]

Notes

1 *Roe v. Wade*, 410 U.S. 113 (1973), https://supreme.justia.com/cases/federal/us/410/113/. See Ziegler, Mary, *Abortion and the Law in America*. Roe v. Wade *to the Present*, Cambridge (MA), Cambridge University Press, 2020, for the details of the sixteen most significant rulings on abortion-related matters issued by the U. S. Supreme Court in the period between 1973 and 2016. See also Stambolis-Ruhstorfer, Michael et Bryson Christen, *Repenser Roe : Cinquante ans de politique en matière d'avortement aux États-Unis*, Dossier Éclairages, *IdeAs*, n° 22, 2023.

2 Strickland, Ruth Ann, « Abortion : Prochoice versus Prolife », *Moral Controversies in American Politics. Cases in Social Regulatory Policy*, sous la direction de : Tatalovich, Raymond *et al*., New York, M. E. Sharpe, 1998, p. 3.

3 *Ibid*., p. 8.

4 *Ibid*., p. 22.

5 Furnace, Samantha, « Understanding Texas' Pro-Life Laws: Exceptions for Medical Emergencies Explained », *Texas Right to Life*, 11/07/2024, https://texasrighttolife.com/understanding-texas-pro-life-laws-exceptions-for-medical-emergencies-explained/.

6 Reagan, Leslie J., *When Abortion was a Crime. Women, Medicine, and Law in the United States, 1867-1973. With a New Preface*, Oakland (CA), University of California Press, 2022, p. xix.

7 Ziegler, Mary, « Beyond backlash: Legal history, polarization, and *Roe v. Wade* », *Washington and Lee Law Review., vol.* 71, 2014, p. 971.

8 *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833, 1992, https://supreme.justia.com/cases/federal/us/505/833/.

9 The introduction of a new legal framework for abortion rights was *Roe's* major legal innovation. According to the new framework, « [i]n the first trimester, states would have very little power to regulate abortion. In the second trimester, the government could restrict abortion only to protect women's health. It was not until fetal viability, the point at which survival was possible outside the womb, that the states could act to protect fetal life », Ziegler, Mary, *Abortion and the Law in America, op. cit*., p. 23. On the same topic, also Siegel, Reva B. and Greenhouse, Linda, « The unfinished story of *Roe v. Wade* », *SSRN Electronic Journal*, 2018, https://doi.org/10.2139/ssrn.3189235.

10 Ziegler, Mary, *Abortion and the Law in America, op. cit.*, p. 119.

11 *Dobbs v. Jackson Women&apos ;s Health Organization*, 597 U.S., 2022, https://supreme.justia.com/cases/federal/us/597/19-1392/.

12 *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833, 1992, https://supreme.justia.com/cases/federal/us/505/833/.

13 Segal, Jeffrey A., and Spaeth, Harold J., *The Supreme Court and the attitudinal model revisited,* Cambridge, Cambridge University Press, 2002, p. 2. The other egregious example, according to these authors, was *Bush v. Gore,* 531 U.S. 98, 2000, https://supreme.justia.com/cases/federal/us/531/98/.

14 *Ibid*., p. 319. The attitudinal model, together with the legal and the rational choice models represent the three distinct models identified in judicial politics scholarship. Segal and Spaeth, *op. cit*., pp. 48-91.

15 *Ibid, p.* 91.

16 *Ibid, p.* 10.

17 Cf. Bonica, Adam and Sen, Maya who report that « the dominant view among social scientists [today] is that ideology is indeed a key component predicting judicial rulings and judicial behaviour », from Bonica, Adam and Sen, Maya, « Estimating judicial ideology », *Journal of Economic Perspectives*, vol. 35, n° 1, 2021, p. 97.

18 See Ferejohn, John, « Judicializing politics, politicizing law », *Law and Contemporary Problems*, vol. 65, n° 3, 2002, pp. 41-68.

19 Bonica, Adam and Sen, Maya, *op. cit*., p. 110.

20 *Ibid.,* pp. 99-101. The most popular measures mentioned here are the Supreme Court Database at Washington University in St. Louis, http://scdb.wustl.edu/, with its conservative/liberal distinctions at the case level; the Segal-Cover scores that focus on the predictions of the post-confirmation patterns at the judge level (see Segal, Jeffrey A. and Cover, Albert D., « Ideological values and the votes of U.S. Supreme Court justices », *American Political Science Review, vol.* 83, n° 2, 1989, pp. 557-565, as well as the vote-based model of ideology elaborated by Martin and Quinn (see https://mqscores.lsa.umich.edu/) that « essentially position[s] individuals along a liberal-conservative dimension such that those who often vote together are placed near one another, while those who are less likely to vote together are further apart », Bonica, Adam and Sen, Maya *op. cit*., p. 101.

21 *Ibid.,*p. 108. In the section on text-based approaches, Bonica and Sen refer to studies by Laver, Michael, Benoit, Kenneth and Garry, John, « Extracting policy positions from political texts using words as data », *American Political Science Review, vol.* 97, n° 2, 2003, pp. 311-331; Lauderdale, Benjamin E. and Clark, Tom S., « Scaling politically meaningful dimensions using texts and voices », *American Journal of Political Science, vol.* 58, n° 3, 2014, pp. 754-771; Lauderdale, Benjamin E. and Clark, Tom S., « Estimating vote-specific preferences from roll-call data using conditional autoregressive priors », *The Journal of Politics*, vol. 78, n° 4, pp. 1153-1169; Lauderdale, Benjamin E. and Herzog, Alexander, « Measuring political positions from legislative speech », *Political Analysis,* vol. 24, n° 3, 2016, pp. 374-394; Hausladen, Carina I., Schubert, Marcel H. and Ash, Elliott, « Text classification of ideological direction in judicial opinions », *International Review of Law and Economics*, vol. 62, 2020, to name but a few example.

22 Bonica, Adam and Sen, Maya, *op. cit.*, p. 108. The examples that are offered here are « death tax » or « Obamacare », two expressions typically associated with a conservative ideology.

23 Such as, for example, Wordscores developed by Ken Benoit, Michael Laver and Will Lowe (https://www.tcd.ie/Political_Science/wordscores/), Wordfish developed by Jonathan B. Slapin and Sven-Oliver Proksch (http://www.wordfish.org/), and Wordshoal, an extension of Wordfish developed by Benjamin E. Lauderdale and Alexander Herzog.

24 See Goźdź-Roszkowski, Stanisław, « Corpus linguistics in legal discourse », *International Journal for the Semiotics of Law-Revue internationale de Sémiotique juridique*, vol. 34, n° 5, 2021, pp. 1515-1540.

25 *Ibid.*, p. 1516. The article (pp. 1517-1518) also offers a discussion of the different approaches used by present-day corpus linguistics, which, for reasons of space, cannot be dealt with here.

26 The systemic-functional or Hallidayan perspective sees language as 'social semiotic', which posits lexicogrammar as a principle for social action. See Halliday, Michael A.K., *Language as Social Semiotic*, London, Arnold, 1978 ; Halliday, Michael A.K., « New ways of meaning », in *Thirty Years of Linguistic Evolution*, sous la direction de : Pütz, Martin,Amsterdam/Philadelphia, Benjamins, 1992, pp. 59-95 ; Halliday, Michael A.K., *An Introduction to Functional Grammar*, London, Arnold, 1994. As summarized by Miller, Halliday's descriptive/analytical model combines the levels of lexicogrammar (ways of saying) that realizes meanings (semantic metafunctions) determined by specific social situations (contexts). These levels thus « construe particular functional varieties of texts (regisrers), which also establish meaning relationships across a 'set' of texts to which they may be said to "belong" (inter-textuality) ». See Miller, Donna, « Multiple judicial opinions as specialized sites of engagement », *Conflict and Negotiation in Specialized Texts*, sous la direction de : Gotti, Maurizio *et al.*, Bern, Peter Lang, 2002, p. 120.

27 See Simon-Vandenbergen, Anne-Maria, « Systemic-functional approaches to discourse », in *Pragmatics of Discourse*, sous la direction de : Schneider, Klaus P. and Baron, Anne, Berlin, De Gruyter Mouton, 2014, p. 125.

28 Miller, Donna, *op. cit.*, p. 120.

29 Simon-Vandenbergen, Anne-Maria, *op. cit.*, p. 141. In this specific passage, Simon-Vandenbergen introduces the interpersonal system of Appraisal as developed by Martin, James R. and White, Peter R. R. *The Language of Evaluation. Appraisal in English,* Basingstoke/New York, Palgrave Macmillan, 2005. For reasons of space, no detailed description of the Appraisal system can be given here.

30 See Goźdź Roszkowski, Stanisław, Pontrandolfo, Gianluca, « Evaluative patterns in judicial discourse: A corpus-based phraseological perspective on American and Italian criminal judgments », *International Journal of Law, Language & Discourse* vol. 3, n° 2, 2013, p. 13.

31 See Goźdź Roszkowski, Stanisław, « Evaluative language in legal professional practice : The case of justification of judicial decisions », in *Language Use, Education, and Professional Contexts,* sous la direction de : Lewandowska-Tomaszczyk, Barbara and Trojszczak, Marcin, Cham, Springer International Publishing, 2022, p. 4.

32 For an overview of these methodologies, see Baker, Paul, et al., « A useful methodological synergy ? Combining Critical Discourse Analysis and Corpus Linguistics to examine discourses of refugees and asylum seekers in the UK press », *Discourse & Society,* vol. 19, n° 2, 2008, pp. 273-306 ; McEnery, Tony *et al.*, *Corpus-Based Language Studies : An Advanced Resource Book*, Abingdon, Routledge, 2006 ; Partington, Alan *et al.*, *Patterns and Meanings in Discourse : Theory and Practice in Corpus-Assisted Discourse Studies (CADS)*, Amsterdam, Benjamins, 2013. The software used in the present study to extract keywords is #LancsBox: Lancaster University corpus toolbox (http://corpora.lancs.ac.uk/lancsbox/index.php).

33 Miller, Donna, *op. cit.*, p. 120.

34 78 pages of text, 20,500 tokens, for the majority opinion ; 60 pages, 17,400 tokens for the dissenting opinion.

35 See #LancsBox: Lancaster University corpus toolbox (http://corpora.lancs.ac.uk/lancsbox/index.php) for details on the procedure for keyword extraction.

36 The lists of top keywords were adjusted to exclude abbreviations typical of judicial discourse, e.g., « u. », « s. », « v. », « id. », « j. », all of which featured in the top ten keywords originally.

37 The year when the Fourteenth Amendment was ratified.

38 The reference is to the Mississippi's Gestational Age Act, whose contents are summarized in the Opinion of the Court as follows: « The State of Mississippi asks us to uphold the constitutionality of a law that generally prohibits an abortion after the 15th week of pregnancy – several weeks before the point at which a fetus is now regarded as "viable" outside the womb ».

39 For reasons of space, unfortunately, an investigation of evaluative patterns in the dissenting opinion cannot be offered in this paper.

40 See Martin James R. and White, Peter's discussion of the « "prosody" of attitude », *op. cit.*, p. 27.

41 For the Democratic Party 2024 platform see https://democrats.org/where-we-stand/, for the Republican Party 2024 platform see https://gop.com/about-our-party/ (capitalization in original).

42 The history of the numerous proposals for a Human Life constitutional amendment that would recognize the fetus as an individual protected by the Constitution goes back to 1973, with the first proposal introduced in the House of Representatives eight days after the Supreme Court released the ruling in Roe v. Wade. See Destro, Robert A., « Abortion and the Constitution: The Need for a Life-Protective Amendment », *Calif. L. Rev.*, vol. 63, 1975, pp. 1250-1351.

43 The original statement reads « no society can present itself as fully democratic if it compels women into unwanted pregnancy and childbirth ». Phillips, Anne, *Engendering Democracy*, Cambridge, Polity Press, 1991, p. 110.

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