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Habeas Disharmony: The Dissents in Trevino v. Thaler and McQuiggin v. Perkins

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In the wake of the big 2011-term cases, such as Martinez v. Ryan, Maples v. Thomas, and the double punch of Lafler v. Cooper and Missouri v. Frye, the Supreme Court's 2012-term habeas cases cannot help but seem a little anemic, especially given the sheer number of blockbuster cases in areas of somewhat broader appeal. Two of the term's more-notable habeas cases were, at first blush, quite modest in scope. Trevino v. Thaler was a slight gloss on Martinez v. Ryan, and McQuiggin v. Perkins added AEDPA's one-year statutory limitations period to the list of considerations that may be relaxed in the face of an actual-innocence claim.

Much has been written about Trevino and McQuiggin in the mainstream media, and the scope of both will undoubtedly soon be a topic of discussion in legal periodicals. In this short article, I will add to the discussion by analyzing an odd feature of both cases: the vehement dissents. Despite being cases of arguably minor impact, neither was unanimous ? far from it ?and both drew strong-worded responses. Trevino contained two, and McQuiggin brought a barnstormer by Scalia that was joined?mostly, as we will see below?by the conservative wing of the Court.

In this piece I argue that the dissents in both cases signal more than a disagreement over statutory interpretation and proper outcomes. Rather, as Andrew Cohen of the Atlantic suggested in his discussion of Alleyne v. United States, the Court appears to be engaging in a coded discussion with itself, contemplating the future role to be played by the federal courts in addressing habeas corpus petitions?a role complicated by evolving ideas of innocence, exoneration, and redemption colliding with principles of federalism and finality. Trevino and McQuiggin, while minor, might provide a fascinating glimpse into where the Supreme Court finds itself as of 2013 and 2014.

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