

Department of Politics and Society



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Judicial Rhetoric and the Politics of Abortion: A Critical Discourse Analysis of
the Dobbs v. Jackson Women's Health Organization Opinion

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Abstract

This thesis uses Critical Discourse Analysis to analyze how and if political institutions influence Supreme Court decisions on abortion in the United States, with a specific focus on the roles of populism and moral conservatism in shaping judicial discourse. Since the Supreme Courts' 2022 decision to overturn *Roe v. Wade* through the *Dobbs v. Jackson Women's Health Organization* decision, there has been a notable shift in the legal landscape of reproductive rights in the U.S., where it is now with the authority of the individual states to make decisions on abortion legislation.

With the use of CDA, in particular Fairclough's three-dimensional model of discourse, this thesis analyzes the Supreme Court's justice's majority and dissenting opinions in the *Dobbs* case, examining how language, framing, and ideology are used in the construction of judicial authority. The analysis concludes that moral conservatism, that emphasizes tradition values, and populism, challenging the legitimacy of elite institutions, influence the way the ruling is written and justified, both in terms of language and legal reasoning. These ideological forces not only affect what the courts decide but also make people question whether the courts are truly fair and unbiased. Both majority and dissenting opinions were dominated by colored language and ideological biases, which helps conclude that political institutions likely do have an influence over judicial discourse and thus the decision on abortion legislation in the country. It also opens to further discussion about which institutions should have the authority to make decisions on matters of reproductive rights. If courts are increasingly shaped by political ideologies and institutional pressures, it raises important questions about democratic accountability, judicial independence, and the role of the judiciary in upholding things like human rights. Moreover, the findings suggest that the legal framing of abortion in the United States cannot be fully understood without examining the broader sociopolitical context in which these rulings occur. This includes the influence of elected officials, party ideologies, media narratives, and grassroots movements that apply pressure to the judicial system. By placing the *Dobbs* decision in a broader political and ideological context, the thesis shows how court decisions can be influenced by powerful institutions, instead of being made completely independently. This insight creates opportunities for future research comparing how other democratic countries deal with the balance between legal authority, political pressure, and reproductive rights.

Keywords: abortion legislation; reproductive rights; critical discourse analysis (CDA); moral conservatism; populism; political discourse; United States of America

Table of Content

I. Introduction	4
II. Literature Review	7
III. Theory.....	11
<i>III.i Moral Conservatism</i>	<i>11</i>
<i>III.ii Populism.....</i>	<i>14</i>
IV. Methodology	15
<i>IV. i Critical Discourse Analysis (Fairclough's three-dimensional model of discourse)</i>	<i>16</i>
IV.i.a The textual level	17
IV.i.b The discourse practice level	17
IV.i.c The social practice level.....	17
<i>IV.ii Data</i>	<i>18</i>
<i>IV.iii Operationalization</i>	<i>19</i>
<i>IV.iv The use of Artificial Intelligence</i>	<i>21</i>
V. Analysis: Case of Dobbs v. Jackson Women's Health Organization (2022).....	22
<i>V. i Justice Alito Opinion</i>	<i>22</i>
V.i.a The textual level.....	22
V.i.b The discourse practice level	25
V.i.c The social practice level	27
<i>V. ii Justices Breyer, Sotomayor, and Kegan Dissenting Opinion</i>	<i>31</i>
V.ii.a The textual level.....	32
V.ii.b The discourse practice level	34
V.ii.c The social practice level	37
Sub conclusion	40
VI: Discussion.....	40
V.II Conclusion.....	43
V.III Bibliography.....	44
IX. Appendices	49
<i>Appendix A: Majority Opinion by Justice Alito</i>	<i>49</i>
<i>Appendix B: Dissenting Opinion by Justices Breyer, Sotomayor, and Kagan.....</i>	<i>49</i>

I. Introduction

According to Amnesty International “an abortion is a medical procedure that ends a pregnancy. It is basic healthcare needed by millions of women, girls and people who can get pregnant. It’s estimated that one in four pregnancies ends in an abortion every year” (Amnesty International, 2022). In some countries, abortion is recognized, as Amnesty also calls it, as basic healthcare. However, in other parts of the world, abortion remains highly stigmatized, criminalized, or severely restricted. The debate over whether access to safe abortion constitutes a human right and basic healthcare is ongoing, raising critical questions about who should have the authority to make such decisions. In countries like Denmark, abortion is legislated at the national level and provided through the public healthcare system, ensuring relatively consistent and uncontroversial access. In contrast, the United States has undergone a significant shift in abortion governance following the Supreme Court’s 2022 decision to overturn *Roe v. Wade*. This ruling transferred authority to individual states, resulting in highly uneven access to abortion, which now depends heavily on geographic location, political climate, and socioeconomic status. The *Dobbs v. Jackson Women's Health Organization* decision not only reignited debates about abortion itself but also called into question the legitimacy and neutrality of the U.S. Supreme Court. Despite conventional perceptions of courts as independent arbiters of law, their decisions, particularly on controversial issues like abortion, often reflect deeper ideological and political influences aligned with broader institutional interests.

To better understand how abortion became such a polarizing legal and political issue, specifically in the United States, it is important to examine the historical development of abortion law in the country. A landmark moment in the abortion debate came in 1973 with *Roe v. Wade*, when the U.S. Supreme Court ruled that the Constitution protects the right to abortion (The Editors of Encyclopedia Britannica, 2018). However, even before this decision was made, abortions were still performed by physicians in the 1940s and 1950s, often justified as necessary to save a woman’s life. However, as medical technology and obstetric care improved, these justifications became harder to sustain, prompting some doctors to advocate for changes in abortion laws. By the 1960s, advocates expanded their reasoning, claiming that legal abortion could prevent the birth of severely disabled children and help conserve environmental resources. Meanwhile, feminists and grassroots activists fought for the complete repeal of abortion restrictions, arguing that reproductive rights were fundamental to women's autonomy¹. These perspectives contributed to the legal framing of abortion as a constitutional right – a perspective that gained even greater traction after *Roe v. Wade* (Ziegler, 2020).

Furthermore, these debates were not unique to the United States. Across much of the Western world in the post-war period, abortion laws were being reevaluated under pressure from feminist movements, medical professionals, and shifting societal values. For example, the United Kingdom passed

¹ In this thesis, the term "women" is used in line with the dominant legal and academic discourse. It is acknowledged, however, that this terminology may exclude gender non-conforming individuals, such as transgender men and non-binary people, who are also affected by reproductive healthcare policies.

the Abortion Act in 1967, legalizing abortion under certain conditions (Abortion Rights, n.d.). In France, the Veil Act of 1975 decriminalized abortion (Chaput, Baril, & Mazuy, 2024), and similarly West Germany reformed its abortion laws in 1974 to allow abortions within the first twelve weeks under certain conditions; however, the Federal Constitutional Court overturned this reform in 1975, emphasizing the state's duty to protect unborn life (Kommers, 1997). In many of these cases, legal changes reflected broader discussions about gender equality, bodily autonomy, and public health. The *Roe v. Wade* decision in the U.S. was part of a larger international shift toward recognizing reproductive rights. However, the American approach was shaped more by court rulings based on constitutional rights to privacy and liberty, unlike some other countries where changes came through parliaments. These developments, both in the U.S. and abroad, helped frame abortion as an important issue tied to personal freedom and gender equality, laying the groundwork for the legal and political debates that followed, especially in the U.S.

The legal framework of *Roe v. Wade* was reaffirmed and modified nearly two decades later in *Planned Parenthood v. Casey* (1992), an important case that redefined how courts evaluate abortion laws. In *Casey*, the Court upheld the core principle of *Roe*, that women have a right to an abortion before fetal viability,² but replaced the trimester framework with a new standard: the “undue burden” test. This standard allowed states to regulate abortion so long as those regulations did not place substantial obstacles in the path of a woman seeking an abortion before viability (*Undue Burden*, n.d.). *Casey* thus preserved the constitutional right to abortion while also expanding the space for state-level restrictions, laying the groundwork for many of the laws that would later come under scrutiny. One such challenge came decades later in *Dobbs v. Jackson Women’s Health Organization* (2022), a case that ultimately dismantled the framework established by both *Roe* and *Casey*. This decision meant that individual states now had the power to regulate abortion laws independently (Brennan Center for Justice, 2022). While some states have since limited or completely banned abortion, others have expanded access (Guarnieri & Leaphart, 2024). The ruling was widely criticized, particularly by human rights organizations, which urged the then President Joe Biden to mitigate its consequences (USA: UN Experts Denounce Supreme Court Decision to Strike Down *Roe v. Wade*, 2022). The *Dobbs* case arose from Mississippi’s Gestational Age Act, which banned nearly all abortions after 15 weeks of pregnancy. Jackson Women’s Health Organization, the state’s only abortion clinic, challenged the law, arguing it was unconstitutional under the precedents set by *Roe* and *Casey*. Although lower courts struck down the law, the Supreme Court – then with a conservative majority – agreed to hear the case, fueling speculation that it would overturn *Roe* (Kelly, 2021). Later, in December 2021, the Court heard oral arguments in which Mississippi lawyers argued that abortion was not a constitutional right and should be left to state legislatures. Conservative justices, including Samuel Alito and Clarence Thomas, expressed

² “viability” addresses whether a pregnancy is expected to continue developing normally (American College of Obstetricians and Gynecologists, 2023).

skepticism about Roe and Casey (National Constitution Center, 2022). On June 24, 2022, the Supreme Court ruled 6-3 in *Dobbs v. Jackson Women's Health Organization*, with a 5-4 decision specifically overturning *Roe v. Wade*. Justice Samuel Alito's majority opinion stated that the Constitution does not protect abortion rights, giving states full authority to regulate abortion as they see fit (The Editors of Encyclopedia Britannica, 2018).

While the *Dobbs* decision was framed as a matter of constitutional and legal interpretation, it coincided with broader political movements seeking to restrict reproductive rights. This thesis will explore the extent to which the Court incorporated ideological justifications associated with moral conservatism and populism in its ruling. Moral conservatism, which advocates for the legal enforcement of traditional social values, has historically influenced abortion debates by framing the issue as a moral and ethical question rather than a matter of legal rights (*Abortion*, 2024). Populism, which positions courts as elite institutions disconnected from the will of the people, has also played a role in reshaping judicial reasoning by pressuring courts to align with political majorities that oppose abortion (Mouritsen, 2023). To analyze these dynamics, the study will apply Critical Discourse Analysis (CDA) to the judicial opinion of the Supreme Court ruling, focusing on language, framing, and ideological narratives. The approach will follow Fairclough's three-dimensional model of discourse, which conceptualizes discourse as text, discourse practice, and social practice. This method ensures a well-rounded analysis that considers both textual elements and broader societal contexts.

This research contributes to existing scholarship by challenging the idea that courts are independent legal bodies. Instead, it shows how they often function as political institutions influenced by outside ideological and institutional pressures. While previous studies have looked at judicial decision-making and abortion law separately, this study brings them together by exploring how political institutions directly shape court decisions. It also expands how moral conservatism and populism are used as tools for analysis, not just in political science, but within judicial discourse as well. By placing abortion rulings within the wider context of democratic governance, institutional power struggles, and human rights debates, this research helps explain why some countries are reversing reproductive rights, even when past rulings and international norms support them. This approach sheds light on how courts are becoming more politicized and how judicial independence is being undermined. The focus will be on the U.S., examining how abortion rulings can act as political moves shaped by conservative ideologies, ruling institutions, and populist narratives. Later sections will draw international comparisons to show how these dynamics are playing out globally and what that means for reproductive rights and democracy.

This project offers a thorough exploration of how political institutions influence the United States Supreme Court's decision on abortion, focusing in particular on the roles of moral conservatism and populism in shaping judicial discourse. The central case examined is *Dobbs v. Jackson Women's Health Organization*, the ruling that overturned *Roe v. Wade*, effectively removing federal protection for abortion and enabling individual states to impose strict restrictions or outright bans. The structure

of the project is divided into several key sections. Starting with the introduction, including background information necessary to understand the historical and contemporary societal and legal context of the abortion situation in the United States. Following this, the literature review outlines the existing research and highlights where this project fits within those larger scholarly conversations. After that, the theoretical and methodological aspects of the project will be presented. These sections will break down the concepts of moral conservatism, populism and how CDA will be used in the project. Furthermore, the method section will explain why these democratic theories are relevant to look at as well as why the US is an interesting case to look at thereby also explaining how I will go about the operationalization of the problem. Then I will go into the main part of the thesis, the analysis. Here I will analyze the majority and dissenting opinions in the *Dobbs v. Women's Health Organization* legislation, analyzing the text according to Fairclough's three-dimensional model of discourse, focusing on the textual part, the discursive practice and the sociocultural practice of the decision and the opinions. Building on this analysis, a discussion will be had, discussing the outcomes of the analysis as well as bringing in a larger international perspective, discussing trends across the globe and the implications of what is happening in the United States of America regarding abortion legislation.

II. Literature Review

The legal status of abortion has been widely examined across disciplines, reflecting its complex intersection with law, politics, religion, and public health. Comparative studies show that while some countries have expanded access to abortion as part of broader commitments to gender equality and human rights, others have adopted increasingly restrictive measures, often under the influence of religious conservatism, nationalist ideologies, and shifting political agendas (Center for Reproductive Rights, 2024). Scholars have noted that legal reforms in countries like Ireland and Argentina followed decades of public advocacy and political transformation, while in regions such as Central and Eastern Europe, parts of Latin America, and segments of the United States, abortion policy has moved in a more restrictive direction (Center for Reproductive Rights, 2024). This scholarly landscape points to a growing interest in how institutional and ideological forces shape abortion law, particularly the role of courts in either advancing or restricting reproductive rights. While much of the existing research focuses on legislative or societal shifts, there is a need for closer examination of how judicial discourse itself reflects broader political ideologies. In the U.S. context, the Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization* (2022), which overturned *Roe v. Wade* and removed federal protection for abortion, has drawn renewed attention to the politicization of the judiciary and the influence of conservative legal and political movements. This literature review explores the existing scholarship on abortion law, judicial decision-making, and the ideological foundations of legal discourse. It focuses on how political institutions, moral conservatism, and populist narratives intersect with judicial reasoning. By doing so, it lays the foundation for analyzing how these forces are embedded in the majority and

dissenting opinions in *Dobbs* and situates this study within broader academic conversations on the role of courts in shaping reproductive rights.

The existing literature on abortion has primarily focused on its medical, political, and religious dimensions, often sidelining the role of judicial discourse in shaping abortion law. Studies on countries with restrictive abortion policies, such as Poland, tend to emphasize the moral dilemmas faced by women and the strong influence of religious institutions on national policymaking (Zaręba et al., 2017). Much of this research situates abortion within broader historical, legal, and sociopolitical frameworks, with an emphasis on public health, gender rights, and international human rights standards (Groome, 2017). Political ideology is frequently identified as a major force behind legislative decisions and public attitudes toward abortion. However, less attention has been given to how these ideological and institutional forces influence judicial rulings specifically. While the question of judicial independence in politically polarized environments is occasionally raised, it remains an underdeveloped area in abortion scholarship. There is still limited research into how courts actively participate in shaping political and legal narratives on abortion, or how trends like moral conservatism and populism may be embedded within judicial language and reasoning. Although some recent work, including graduate-level studies, has begun exploring abortion-related legal discourse (Vadskjær Grapek, 2020), few studies have closely examined how judicial decisions reflect broader institutional and ideological influences, particularly in the context of the U.S. Supreme Court. This gap in the literature highlights the need for a closer look at how political dynamics and conservative ideologies are reflected in judicial reasoning, and how this contributes to the broader shaping of abortion law.

While the broader relationship between political institutions and judicial opinions has been explored in constitutional scholarship, especially regarding issues like race, business, and religion, there remains a notable gap when it comes to abortion. Scholars such as Randazzo and Waterman (2014) have examined how legislative interests can override or influence judicial decision-making through mechanisms such as agenda-setting, budgetary control, and political signaling. This demonstrates how institutional power dynamics are able to shape court behavior, especially in politically sensitive situations. Building on this, Bailey and Malzman (as cited by Randazzo and Waterman) further argue that legislative actors, such as Congress, can sway judicial outcomes not only through formal checks but also through informal influence, ensuring that court decisions do not stray far from dominant political sentiment. However, these insights have rarely been applied to the judicial treatment of abortion, where the stakes of ideological influence are particularly high (Randazzo & Waterman, 2014). Existing research also shows that courts do not always make decisions in a strict or completely independent way. Instead, they may adjust their rulings based on what lawmakers do. Research on constitutional courts, such as the study analyzing German federal laws reviewed by the German Federal Constitutional Court between 1977 and 2015, indicates that lawmakers anticipate judicial scrutiny and sometimes adjust their policies to avoid conflict. However, when lawmakers deliberately push constitutional boundaries and dismiss warnings of unconstitutionality, courts tend to show greater deference, moderating their rate of

striking down legislation (Schroeder, 2022). This dynamic reveals how institutional power struggles shape judicial decision-making, especially in politically sensitive contexts where lawmakers may provoke confrontations to influence court behavior. Such insights deepen the understanding of how judicial outcomes are embedded in broader political interactions rather than being purely legal judgments. Applying this perspective to abortion law, where ideological stakes are high, highlights the importance of examining how courts may respond not only to formal checks but also to the informal pressures and strategic actions of political institutions. However, even though there is a lot of research on this topic, these theories are rarely used to study abortion law. The intersection of judicial reasoning, political ideology, and abortion remains an underdeveloped area of study, particularly when it comes to understanding how courts frame abortion decisions in response to populist movements, partisan agendas, and institutional pressure from other branches of government. While legal scholars have explored constitutional arguments around privacy, autonomy, and viability, fewer studies investigate how those arguments are shaped, or subtly constrained, by prevailing political ideologies and institutional alignments. This gap becomes especially important in a political climate where courts are increasingly perceived as partisan actors and where abortion rights have become a litmus test for broader ideological commitments.

While comparative studies have examined how courts in various democratic systems navigate ideological pressure, these insights are particularly relevant to the U.S., where judicial appointments are overtly political. Supreme Court justices, though expected to serve as impartial arbiters of the law, are nominated by the president and confirmed by the Senate, two political actors who frequently prioritize ideological alignment over judicial neutrality. As Epstein et al. (2007) argue, when personal beliefs are defined in strictly ideological terms, the nomination and confirmation of Supreme Court justices become deeply influenced by political considerations. The authors highlight that presidential nominations are increasingly guided by a desire to appoint individuals who reflect the administration's political values, and that the Senate tends to confirm those who fall within its acceptable ideological range. Notably, this ideological filtering has become significantly more pronounced over the past thirty years, reinforcing the idea that judicial appointments are far from ideologically neutral. This politicization of the judiciary has direct implications for how justices' rule on deeply divisive issues, including abortion. Given that abortion has become a central battleground in American ideological and partisan conflict, the ideological leanings of the justices themselves are not incidental but structurally embedded in the decision-making process. Understanding the judicial discourse around abortion, therefore, requires attention not only to legal reasoning but also to the political and ideological context in which justices are selected and operate. This increasing politicalization of the judiciary underscores the importance of analyzing how political institutions and ideologies, such as moral conservatism and populism, may shape judicial discourse in landmark decisions like *Dobbs v. Jackson Women's Health Organization*. Supporting this perspective, Zhou and Müller (2022) have explored the ideological development of the U.S. Supreme Court by analyzing decades of empirical voting data. Their research shows how justices'

decisions tend to shift in line with broader political trends, suggesting that judicial behavior is shaped not only by legal reasoning but also by long-term ideological movements. Rather than viewing the Court as a politically neutral body, they argue that its decisions reflect the evolving ideological climate in which it operates. Over time, the Court's position on key issues, including abortion, can be seen as part of a broader trajectory influenced by changing political pressures, party alignments, and shifts in public opinions. Their findings help explain how judicial outcomes are not static but move with ideological patterns, reinforcing the idea that legal decisions, even at the highest level, are embedded in political context.

Beyond the U.S. context, legal scholars have also examined the broader relationship between constitutional courts and political institutions. One key area of focus is the extent to which courts should be able to review and potentially limit parliamentary decisions. Annus (2007), for instance, discusses how these questions have been debated at international constitutional law conferences, such as one held in Estonia. These discussions typically present two competing perspectives: one side advocating for judicial restraint, arguing that excessive court intervention in parliamentary decisions undermines democracy by restricting the actions of an elected legislative body, and another advocating for a more assertive role for constitutional courts, emphasizing their responsibility to uphold the constitution, safeguard human rights, and maintain democratic integrity. This perspective is often linked to discussions on the importance of judicial independence (Annus, 2007). While much of this literature emphasizes the importance of limiting parliamentary overreach, it often overlooks the opposite concern; namely, the ways in which parliaments and political actors may influence constitutional courts. As Epstein et al. (2007) argued, presidents often select judicial nominees who are likely to further their political goals, suggesting that political institutions do indeed exert influence over judicial outcomes. Taken together, these findings support the need to analyze the ideological forces that may inform judicial discourse and decision-making in politically and morally controversial cases.

As political ideologies increasingly shape the legal landscape, particularly regarding abortion, it is essential to examine how these ideological forces translate into judicial decision-making. The abortion debate, framed by the pro-life and pro-choice movements, goes beyond mere policy disagreements to reflect deeper ideological divides that influence political discourse and public policy. Although these movements are often associated with specific political ideologies, the binary labels of "pro-life" and "pro-choice" oversimplify a much more nuanced public opinion (Holly, 2024).

As abortion continues to serve as a central issue in American ideological conflict, it becomes increasingly important to understand how courts internalize and reproduce broader political narratives. Rather than treating abortion decisions as isolated legal judgments, scholars like Siegel (2024) argue that recent rulings, particularly *Dobbs v. Jackson Women's Health Organization*, reflects a broader constitutional shift. This shift involves a growing reliance on originalist interpretation, which questions the legitimacy of rights once grounded in substantive due process, such as privacy, autonomy, and bod-

ily integrity³. As legal scholars warn, the logic of *Dobbs* may extend beyond abortion, putting precedents like *Griswold v. Connecticut* and *Obergefell v. Hodges* at risk. This concern has prompted increased attention to the ideological frameworks that shape judicial reasoning, especially as populist rhetoric and conservative moral values are increasingly reflected in court language. While the legal discourse on abortion is often framed in terms of neutrality and precedent, a closer examination reveals how deeply these decisions are embedded within conflicted political ideologies. This study goes beyond general claims about the politicization of the judiciary by examining how specific ideological forces, namely moral conservatism and populism, appear in the language of legal opinions. It focuses on the discursive strategies used to build legitimacy, assert authority, and frame morality within judicial reasoning, offering a more detailed look at the political role of courts today. The main goal is to explore how political institutions influence U.S. Supreme Court decisions on abortion. More specifically, the research investigates how moral conservatism and populism shape the way judges write and justify their rulings, especially in cases where abortion rights are challenged. By looking at how political influence, legal reasoning, and public morality intersect, this study aims to better understand how deep ideological divides, shaped by both political and societal values, impact outcomes in ethically complex cases. The findings will contribute to broader discussions about the relationship between law and politics, and how judicial independence may be affected in a time of growing polarization.

With a starting point in the already existing literature and the research into the Supreme Court relationship with political institutions, this project will aim to answer the research question: **How do political institutions influence Supreme Court decisions on abortion in the United States, and what role do moral conservatism and populism play in shaping judicial discourse?**

III. Theory

To investigate how political institutions influence Supreme Court decisions on abortion in the United States, this project applies the theoretical frameworks of Moral Conservatism and Populism to analyze their roles in shaping judicial discourse. These two perspectives provide complementary insights into how judicial rulings on abortion are not merely legal decisions but also deeply political, ideological, and culturally significant acts. This theory section will outline both frameworks, defining the terms and briefly discuss how moral conservatism and populism shape the broader ideological and political contexts in which abortion legislation is developed.

III.i Moral Conservatism

One of the most prominent political ideologies is conservatism, which is a political doctrine that emphasizes the value of traditional institutions and practices. Conservatism is rooted in a preference

³ Substantive due process is the principle that the Fifth and Fourteenth Amendments of the U.S. Constitution protect fundamental rights from government interference (Ryan Strasser, 2017).

for tradition and continuity over abstract ideals and radical change. While not all conservatives see society the same way, many believe that traditions and institutions help keep things stable over time. From this perspective, governance should serve to uphold existing social structures rather than seek to transform them (Dagger & Minogue, 2018).

This ideological foundation is particularly relevant to discussions on moral conservatism. Moral conservatism is a branch of conservatism that, like traditional conservatism, focuses on maintaining traditional moral values that are oftentimes rooted in cultural or religious beliefs. Thus, it also advocates for policies that mirror these beliefs, examples of this could be policies that oppose abortion, restricts LGBTQ+ rights, and policies that promote ethical or religious frameworks in law and society (Takamatsu, 2022). According to Evan Simpson (1987), there are four related features of moral conservatism. Firstly, moral conservatism honors the integrity of communities, their customs, their institutions, and their prevailing values. Secondly, it is pluralistic and particularistic, recognizing the diversity of human groups and the internality and flexibility of the rules which define the practices in each. Thirdly, it is pessimistic about utopian ideas of progress but realistic about the ongoing existence of conflict between different ways of life and views of what it means to live well. And at last, it rejects abstract, rule-based morality, whether focused on outcomes or duties. These four features outlined by Simpson (1987) highlight that moral conservatism is a complex and multifaceted ideology. Like other ideologies, it can take on different forms and expressions, especially in written legal language, which often appears stiffer and more definitive than in spoken discourse.

Beyond this, moral conservatism is closely linked to political ideology, particularly through religious affiliation and party allegiance. It is defined by a resistance to change and a commitment to traditional values, which often influence perspectives on moral issues such as same-sex marriage and abortion. Religious beliefs and political affiliations play a crucial role in shaping moral conservatism, as individuals may align their moral attitudes with the teachings of their faith or the positions of their political party (Evans & Tonge, 2016). In the United States, moral conservatism is most prominent in the South and the Heartland, commonly referred to as the Bible Belt. Scholar Robert B. Smith (2016), who has studied the relationship between states' human development, income equality, and economic and social issues, examined whether these factors influence voters' political choices. He concludes that while their impact is limited, there is a strong correlation between moral conservatism and Evangelicalism, particularly in opposition to abortion and same-sex marriage. This suggests that moral issues often take precedence in the Bible Belt, diverting attention from practical policy solutions. Politicians and political institutions are aware of this dynamic, which likely explains why many adopt strong stances on polarizing topics such as transgender rights, immigration, and abortion (O'Brien & Abdelhadi, 2020).

Moral conservatism is maintained and perpetuated through different mechanisms that shape societal norms and individual behavior. These include institutions such as churches, families, and edu-

cational systems, which serve as primary vehicles for the transmission of traditional values. Additionally, law and public policy play a central role, as legal frameworks often reflect and enforce moral values, shaping behavior through formal rules and regulations. Social expectations and stigma help keep moral rules in place by rewarding people who follow them and punishing those who do not. Understanding these mechanisms allows for a deeper analysis of the power structures at play, specifically, who gets to define and enforce what is deemed "moral". In this context, Thomas Pogge (2007) argues that the law and political institutions are not neutral but deeply reflect and perpetuate prevailing moral standards within a society.

These mechanisms not only promote certain behaviors but also help maintain deeper moral expectations that are often not about harm in a direct sense. Joel Feinberg (1990) makes an important distinction between two kinds of morality: grievance and non-grievance. Grievance morality involves rules that exist to protect people from harm, such as rules against violence, coercion, or invasion of privacy, where someone can with reason claim to have been wronged and seek to get it rectified. These types of moral violations involve clear victims, and they form the basis of many legal protections. In contrast, non-grievance morality involves moral rules where no specific person is harmed, and therefore, no one can claim a personal grievance. Feinberg (1990) points out that things like having immoral thoughts, false beliefs, or failing to meet religious obligations might be seen as wrong within a certain moral system, but they don't directly harm others. Because of this, trying to enforce these rules through legal or political means can seem morally unjustified, since they impose consequences for actions that have not hurt anyone. This distinction is significant when thinking about moral conservatism. Many of the concerns held by moral conservatives, such as the loss of traditional values or the decline of cultural norms, often fall under non-grievance morality. These are not issues where someone has clearly been wronged, but rather cases where change is seen as a threat to a way of life. Feinberg (1990) suggests that the kinds of social changes moral conservatives worry about, like the disappearance of certain traditions or lifestyles, may be viewed as moral losses even though no one is directly harmed. For moral conservatives, it is not always the outcome of the change that is concerning, but the fact that change is happening at all, especially when it is rapid or imposed without regard for tradition. This also helps explain why moral conservatives are often resistant to even progressive changes that may benefit society. From their perspective, the breakdown of long-standing moral and cultural norms represents a kind of moral decay, even if it does not result in personal harm. Their opposition is less about individual rights and more about preserving the perceived moral integrity of a community or culture (Feinberg, 1990).

Thus, moral conservatism emphasizes the preservation of traditional values and institutions, often rooted in religion and culture. It resists rapid social change, viewing such shifts as threats to a stable way of life. This resistance is not always based on direct harm but on the perceived destruction of moral and cultural norms. As a result, it prioritizes continuity and tradition over progressive reform.

III.ii Populism

Populism has become an increasingly important feature of contemporary political discourse, often used in debates about democracy, representation, and national identity. At its core, populism establishes a clear divide between *the people* and *the elite*, portraying a moral struggle in which populists claim to represent *pure people* against a *corrupt* ruling class (Mouritsen, 2023). As Mouritsen (2023) explains, this opposition is central to populist rhetoric and is key to understanding both its appeal and its risks. Far from being a unified or straightforward concept, populism is an argued and multifaceted phenomenon that can function as an ideology, a political strategy, or a rhetorical style. Understanding its dynamics is essential for analyzing how it influences debates on sensitive issues such as abortion, national identity, and the role of democratic institutions.

While this definition may seem neutral or even positive at first glance, populism is a complex and often controversial concept, frequently carrying negative connotations. It is often understood as a political stance, program, or movement that claims to champion the common person, typically by contrasting them with a real or perceived elite (Munro, 2018). As a political strategy, populism frames society as a struggle between *ordinary people* and *corrupt elites*. This framework is particularly relevant in abortion debates, where conservative governments and judicial bodies often depict abortion rights as an elitist, foreign, or liberal imposition that threatens national traditions, religious identity, and cultural values. Scholarly discussions suggest that populism can be viewed in multiple ways – as an ideology, a strategy, or a discursive logic. This has sparked debates about its core nature and its impact on democracy. Some argue that populism can either strengthen or undermine democratic principles, depending on how it frames popular demands and engages with pluralism (Geneviève Nootens, 2024). Scholar Jan Werner Müller (2016) means that populists should be criticized for what they are: “a real danger to democracy” (p. 103). Müller (2016) centers on the idea that populists pose a fundamental threat to democratic institutions, not just because of their anti-elitist rhetoric, but because of how they understand and enact the concept of *the people*. For Müller, populism is not simply about appealing to ordinary citizens or criticizing elites; it is characterized by an exclusionary and anti-pluralist logic that undermines the core of democratic governance (pp. 19–24, 101–103).

Müller (2016) also argues that “populism is neither the authentic part of modern democratic politics nor a kind of pathology caused by irrational citizens” (p. 101). Instead, he suggests that populism is a recurring tendency within representative systems, the ever-present possibility that someone will claim to speak exclusively for *the real people* in order to challenge those in power. This does not mean that the idea of *the people* is a necessary feature of all representative politics, but that populism constructs and exploits this notion to justify its claims. Populists are not opposed to political representation per se; rather, they assert exclusive legitimacy as the only true representatives of the people. This distinction is crucial, as it means not all elite criticism is populist. However, in addition to being anti-elitist, populists are also anti-pluralist: they assert that only they represent the people, rendering all political opponents illegitimate and excluding dissenters from the democratic community. For populists,

elites are not simply wrong, they are immoral, while the people are seen as a unified, morally pure entity that cannot err (p. 101).

Prominent examples of populist leaders today include Donald Trump, Silvio Berlusconi, Marine Le Pen, and Hugo Chávez, although some of them are not in power anymore. Populist politicians have been gaining traction worldwide, with the term “populism” being more frequently mentioned than ever during the 2015–2016 U.S. election campaign. Both Bernie Sanders and Donald Trump were, and continue to be, labeled as populists. The term is often used interchangeably with *anti-establishment*, seemingly without regard for specific political ideologies. In many cases, the focus is more on style and rhetoric than on actual policy content (Müller, 2016, p. 1). Some scholars such as Bulgarian Ivan Krastev refer to our current era as the *age of populism*. However, as Müller points out, despite the frequent discussions on the topic, there remains a lack of clarity about what populism truly entails. He argues that there is no cohesive theory of populism, which makes it difficult to determine when political actors can genuinely be classified as populist (Müller, 2016, p. 2). While populists often claim to represent the common good, Müller emphasizes that this claim is not based on inclusive democratic processes or open deliberation. Rather, it relies on a symbolic and exclusionary construction of *the real people*, which they use to legitimize their policies. This allows populists to present their political stance as unquestionably legitimate and immune to criticism, since they claim to embody the will of a morally unified people. As a result, their positions are resistant to empirical refutation, as dissent can be dismissed as coming from illegitimate elites or out-of-touch minorities (Müller, 2016, p. 102).

Populism is often portrayed as a corrective to liberal democracy, claiming to bring politics closer to *the people* or to reassert popular sovereignty. However, this understanding of populism as a direct remedy for democratic deficits is problematic. Populism does not inherently serve to correct liberal democracy by making political processes more inclusive or representative. Rather, it is more useful in highlighting that certain segments of the population feel unrepresented, whether due to concerns about their interests, identity, or both. However, one thing populism can do, used as a theory, is help us examine whether abortion restrictions are framed as a response to elite or globalist influence, positioning the judiciary as defending the people or national identity against liberalization. Furthermore, it can help understand the political and institutional pressures on courts, focusing on what is considered populist politics and whether that plays a significant role in shaping the judicial decisions.

IV. Methodology

This following section outlines the chosen methodological framework used for the thesis, including a description of the data sources and the tools used for the analysis. It will also present the operationalization part of the project, providing a structured overview of how the analysis will be organized and carried out.

IV. i Critical Discourse Analysis (Fairclough's three-dimensional model of discourse)

The chosen method in this thesis is Critical Discourse Analysis (CDA). CDA adopts a theoretical perspective that acknowledges the role of discourse in shaping and being shaped by social practices, without reducing these practices solely to their discursive elements. In CDA, the concept of discourse is seen as a tool for understanding how societies both structure and are structured by language use (Farrelly, 2014, p. 41).

This thesis adopts Critical Discourse Analysis (CDA) due to the nature of the research focus. Legal language is a part of institutional discourse and plays a fundamental role in the judicial system. However, its highly specialized nature creates a disconnect between legal discourse and the everyday language practices of ordinary citizens, whose linguistic habits are far removed from the judicial system (Simpson et al., 2018, p. 33). This gap exists because legal discourse often uses advanced and highly specific forms of writing rarely encountered outside the legal domain (Simpson et al., 2018, p. 34). For instance, untranslated Latin and French borrowings – such as *stare decisis*, *habeas corpus*, *tort*, and *quash* – persist in legal texts, further reinforcing its specialized nature. Given these characteristics, legal language must be approached like any other discourse genre, with careful consideration of its conventions and norms to ensure a thorough and accurate analysis. Despite its complexity, examining legal discourse is essential to understanding whether the political ideologies outlined in the theoretical framework influence the content and outcomes of legal policies (Simpson et al., 2018, p. 34).

A key analytical framework within CDA is Fairclough's three-dimensional model of discourse, which conceptualizes discourse on three levels: as text (written or spoken), as discourse practice (processes of production and interpretation), and as social practice (its broader societal context). Norman Fairclough, a leading discourse analyst, was among the first to expand critical linguistics by incorporating social practices and multiple contextual factors into CDA. His approach was shaped by linguistic scholars such as M.A.K. Halliday and Mikhail Bakhtin, as well as sociopolitical theorists like Antonio Gramsci and Michel Foucault. To explore how language constructs, reinforces, and challenges power structures and ideologies, he introduced a three-stage model of CDA. His research focuses on contemporary social transformations, particularly globalization, neoliberalism, and the knowledge economy (Ellece & Baker, 2010).

Beyond this, the model allows for a comprehensive examination of legal language, considering not only the linguistic features of legal texts but also how they are produced, interpreted, and embedded within institutional and ideological structures (Simpson et al., 2018, p. 62). Fairclough's model is rooted in the understanding that discourse plays a central role in shaping and challenging power dynamics. He identifies two key processes that reflect broader transformations in discourse practices: conversationalization, where informal and everyday language influences institutional discourse, and commodification, where language is shaped by market-driven forces. These processes are particularly relevant to this study, as they provide valuable insights into how legal discourse evolves and how ideological influences manifest within legal texts and policies (Fairclough, 2000).

The three-dimensional model consists of three stages: the textual level, the discourse practice level, and the social practice level, which will all be explained below.

IV.i.a The textual level

The first level of analysis focuses on the linguistic features of a text. This includes an examination of vocabulary choices and patterns, such as wording and metaphor, which can shape meaning and influence interpretation. It also considers grammatical structures, including the use of passive versus active voice (e.g., in news reporting) and modal verbs, which can indicate degrees of certainty or obligation, as well as express possibility and necessity. Additionally, cohesion is analyzed through elements like conjunctions, synonyms, and antonyms, which contribute to the overall coherence of a text. The structural aspects of texts, such as turn-taking in spoken interactions, are also important, as they can reveal underlying power dynamics in communication. This level is essential for uncovering how specific linguistic choices contribute to the construction of meaning (Simpson et al., 2018, p. 62).

IV.i.b The discourse practice level

The second level shifts the focus from individual texts to the processes involved in their production, distribution, and consumption. This level acknowledges that discourse is not isolated but shaped by and shaping other discourses over time. A key concept here is intertextuality, which examines how texts draw upon, reference, or respond to prior texts, situating them within broader discursive and societal contexts. Understanding intertextuality allows for a deeper analysis of how certain narratives, ideologies, or linguistic conventions persist, evolve, or are challenged across different texts and genres. At this stage, the role of institutional and media discourse becomes particularly relevant, as it influences how legal and political language is framed and interpreted (Simpson et al., 2018, p. 62-63).

IV.i.c The social practice level

The social practice level in the model examines how discourse shapes and is shaped by broader societal contexts. It investigates how communicative events, such as legal rulings or political speeches, contribute to the maintenance or transformation of power structures and ideologies. Discourse does not merely reflect societal norms; it actively influences how issues are perceived and acted upon. For example, legal and political discourse not only conveys laws and policies but also plays a critical role in shaping public opinion about justice, rights, and morality. Texts are produced through established genres, which influence both production and interpretation. The linguistic features of a text, such as vocabulary, syntax, and sentence structure, are integral in framing ideologies, contributing to how issues are understood within a society. In this way, texts mediate the relationship between individual interpretation and broader societal practices, either reinforcing or challenging existing norms. By analyzing discourse at this level, you can uncover how language either perpetuates the status quo or facilitates social change.

This analysis is particularly relevant for legal and political discourse, as it helps to explore how power relations, institutional authority, and public perceptions are shaped and sometimes challenged (Simpson et al., 2018; Jørgensen & Phillips, 2002).

IV.ii Data

This study analyzes the official Supreme Court decision in *Dobbs v. Jackson Women's Health Organization* (2022), which overturned *Roe v. Wade* (1973) and *Planned Parenthood v. Casey* (1992), thereby eliminating the federal protection for abortion. Both the majority opinion, authored by Justice Samuel Alito, and the dissenting opinion, authored by justices Breyer, Sotomayor, and Kegan, were selected for analysis due to their significant legal, political, and societal impact. The *Dobbs* decision was selected for analysis because it represents a highly significant and authoritative example of judicial discourse on abortion rights in contemporary U.S. constitutional law. While other relevant decisions will be referenced in the discussion and throughout the thesis, like *Roe v. Wade* and *Planned Parenthood v. Casey*, *Dobbs* serves as the primary case study due to its central role in reshaping the legal landscape around abortion in recent times. The full text of the opinion, including the majority, concurring, and dissenting opinions, was obtained from the official website of the U.S. Supreme Court and is attached as appendices. As this study focuses on Critical Discourse Analysis, the textual data consists exclusively of the written opinions in the *Dobbs* decision. The document was downloaded in its official format and converted into a text-based file for systematic analysis. To ensure a thorough analysis using CDA, the sections of the analysis will focus on the majority opinion and the dissenting opinion, leaving out the concurring opinions, unless they present elements directly relevant to the research question. This is because the concurring opinions largely align with the reasoning and sentiments expressed in Justice Alito's majority opinion. As such, the analysis will prioritize the contrasting perspectives between the majority and the dissent, in order to explore the full ideological spectrum of the debate rather than reiterating similar arguments.

To conduct the Critical Discourse Analysis the text of the *Dobbs* decision and the Majority Opinion and the Dissenting Opinion was imported into NVivo, a qualitative analysis software, to facilitate systematic coding and discourse analysis. The analysis is conducted using NVivo, for the purpose of coding, organizing, and analyzing the data structurally. NVivo is a qualitative data analysis software that allows for efficient coding, categorization, and thematic analysis, perfect for a CDA analysis. It can help manage large amounts of qualitative datasets, while maintaining transparency, overview, and consistency in the analytical process. The software's coding features help structure the analysis by categorizing key themes and discursive elements, making the process more organized, manageable, and readable.

IV.iii Operationalization

This study applies Critical Discourse Analysis to examine how moral conservatism and populism manifest in the language of the *Dobbs v. Jackson Women's Health Organization* decision. To systematically analyze these ideological influences, both concepts are operationalized into identifiable discourse patterns, which will be coded and analyzed using NVivo. This following section outlines how moral conservatism will be operationalized within the context of judicial discourse.

Moral conservatism is defined in this study as a discourse that promotes traditional values, historical legal interpretations, and the framing of abortion as a moral rather than a legal or individual rights issue. In the context of judicial texts, moral conservatism often reveals itself through specific lexical choices and morally charged language.

One key marker is the use of morally charged language. Phrases such as *unborn life*, *moral question*, or references to *deeply rooted traditions*, can signal a normative stance on abortion rooted in moral and religious values (Siegel, 2007; Ziegler, 2020). These terms will be used as discursive markers of moral conservatism, particularly when they frame abortion as morally wrong or a threat to social order. Furthermore, another discursive pattern associated with moral conservatism is the reliance on historical and religious justifications, often relying on past legal precedents and moral traditions, in this case, likely to argue against *Roe v. Wade*. The mentioning of this will be analyzed as a strategy that seeks to legitimize conservative legal reasoning through appeals to continuity and tradition (Ginsburg, 1985; Siegel, 2008). Additionally, originalist constitutional interpretation, the idea that the Constitution should be interpreted according to its original meaning at the time it was written, will be treated as a core component of moral conservative discourse (Calabresi, 2022). This is because this legal philosophy often aligns with conservative ideological goals and frames progressive changes as legally illegitimate or morally suspicious (Scalia, 1989; Ziegler, 2022). The analysis will also pay attention to how gender roles and family values are constructed in the text. Moral conservatism often upholds traditional gender norms, positioning women primarily in reproductive or familial roles. Discursive elements that portray abortion as a disruption to the natural or moral order of the family, or that frame women's autonomy in contrast to their *duties* as mothers, will be included in the coding process (Siegel, 2008). In summary, moral conservatism will be operationalized through the identification of specific discursive features within the judicial opinion. These include the use of morally charged and value-laden language, appeals to legal history and long-standing precedent, the application of originalist constitutional interpretation, and the reinforcement of traditional representations of gender and family roles. Together, these elements will be systematically coded and analyzed to uncover how moral conservatism is embedded not only in the explicit content of the ruling, but also in the deeper discursive structures that inform its legal and ideological reasoning.

Having outlined how moral conservatism will be identified and analyzed, the following section turns to the second key ideological framework of this study: Populism. Like moral conservatism, populism can also be traced through specific discursive patterns within judicial language, particularly in how the Court positions itself in relation to the public, democratic institutions, and elite legal authority.

Populism in judicial discourse often manifests through anti-elitist rhetoric, appeals to democratic legitimacy, and a rejection of judicial activism (Edinger, n.d.). In the context of the Dobbs decision, this discourse can be identified through several key features. First, I will look for anti-elite language that delegitimizes past Supreme Court rulings, particularly *Roe v. Wade* and *Planned Parenthood v. Casey*, by portraying them as undemocratic, overly interventionist, or disconnected from the will of the people. Secondly, I will identify discursive framings that construct a dichotomy between *the people* and the judiciary. This includes explicit statements suggesting that decisions about abortion should be made by elected state legislatures rather than by *unelected judges*, reinforcing the idea that judicial authority should defer to popular opinion. Thirdly, I will examine references to state sovereignty and federalism, especially where such references are tied to claims about restoring democratic control and respecting local governance – likely referencing the individual states. These statements often position state-level decision-making as more legitimate and reflective of the people's will than centralized judicial rulings. Finally, I will also look for instances where originalist interpretations of the Constitution are framed in populist terms, that is, where judicial restraint and deference to the Constitution's original meaning are portrayed as aligning with democratic values and protecting the voice of the electorate. Together, these discursive elements will be used to explore how populism may function as an ideological force in the Dobbs ruling, examining whether and how the majority opinion constructs its legal reasoning in ways that align with broader populist narratives about power, legitimacy, and democratic participation.

All these discursive elements will be identified through keyword searches and thematic coding using NVivo, which will enable a systematic analysis of how the majority and dissenting opinions employ moral conservative and populist rhetoric to justify their decision or opinions. In addition to explicitly charged language, the analysis will also attend to more general lexical choices that carry specific discursive connotations within the broader context of abortion debates. This includes emotionally loaded or ideologically suggestive terms and phrases that signal underlying moral or populist narratives. Forceful or bold statements that work to legitimize particular ideological positions will also be examined for their rhetorical impact. It is also important to recognize that the analytical material consists of judicial opinions, which naturally include more charged language and personal viewpoints from the justices. This reinforces the argument that political ideologies and institutional influences can shape judicial discourse and ultimately impact legal outcomes.

While the primary analytical focus lies on the majority opinion authored by Justice Alito, the dissenting opinion, written by Justices Breyer, Sotomayor, and Kagan, will also be examined using the

same conceptual framework. However, rather than advancing moral conservatism or populism, the dissent may engage with these discourses critically. For instance, moral conservatism might be addressed indirectly through resistance to originalist reasoning or the reaffirmation of individual rights and legal precedent. Similarly, populist themes may surface in the dissent through concern over the Court's legitimacy or warnings that the decision undermines democratic principles and the rights of marginalized groups. Including the dissenting opinion allows for a more nuanced understanding of how the broader ideological discourse is negotiated within the Court's ruling.

All in all, the analysis will be done systematically, beginning with the majority opinion written by Justice Alito. This section will be examined by Fairclough's three-dimensional model of discourse, identifying discursive elements associated with moral conservatism and populism across the three levels. Following this, the dissenting opinion will be systematically analyzed using the same methodological framework. The chapter will conclude with a discussion, discussing the broader implications of the findings in the two opinions and what that means for the U.S. system as well as internationally regarding political influence over courts judicial discourse and reproductive rights in general.

IV.iv The use of Artificial Intelligence

The use of Artificial Intelligence (AI) is a fast-evolving technology and has become progressively more popular among scholars and students alike. While it is a helpful tool that is also used to an extent in this project, there are still various flaws in the technology, namely its sources not always being available or credible if they are. AI systems such as the ones that ChatGPT and Copilot uses, can only gather knowledge from open access sources, which gives a limited perspective. However, recently the online university library has gotten a research assistant, which uses AI to find reliable sources within the library. The Primo Research Assistant is a tool that is powered by generative AI and allows you to explore your topic within academic content. The tool uses most of the content available through the library to identify five documents that can help answer whatever question you have. These five documents are extracted as the most relevant from the description you give, and it gives you a short summary of each document as well as in-line citations, so you can see which source was used to generate part of the answer. Unlike general AI tools that pull information from across the internet, this research assistant relies exclusively on credible academic sources that users can further explore themselves. While recognizing the environmental concerns surrounding AI, the university research assistant tool offers a more responsible and academically sound option for literature discovery. However, like all forms of AI, it cannot replace human expertise. The Primo Research Assistant serves as a resource for gathering literature and enhancing topic comprehension, but it does not contribute to the writing process itself.

With that being said, AI systems such as ChatGPT and Copilot, although more unreliable, are valuable tools for structuring and creating overviews of certain topics. They can help organize large amounts of information, generate outlines, and assist in brainstorming ideas, making the research process more efficient. However, their outputs should always be critically evaluated and cross-checked

with reliable sources to ensure accuracy. So, while these tools can help in certain situations in the writing process, they do not replace actual academic research, critical thinking and writing. As such, while these platforms may assist with practical aspects of the writing process, they do not substitute for academic research, critical thinking, or scholarly analysis. The research and analysis presented in this project are entirely my own, with only occasional assistance from the university's research assistant for locating academic literature and limited use of AI platforms for structural guidance.

V. Analysis: Case of *Dobbs v. Jackson Women's Health Organization* (2022)

This section will present an in-depth analysis of the *Dobbs v. Jackson Women's Health Organization* decision through the lens of Fairclough's three-dimensional model of discourse. The analysis will be divided into three levels: the textual level, which will examine the language and rhetoric used in the majority and dissenting opinions; the discursive practice level, which will focus on how the opinions are produced and distributed; and the social practice level, where the broader societal, political, and ideological implications of the ruling will be explored. The analysis will then be organized according to the different judicial opinions included in the case. The first part will focus on the majority opinion authored by Justice Alito, critically exploring how it aligns with themes of moral conservatism and populism, particularly in its framing of abortion and constitutional rights. Following this, the dissenting opinion, written by Justices Breyer, Sotomayor, and Kagan, will be analyzed to highlight how these justices resist or engage with these discourses, offering a contrasting perspective on the legal and moral questions at stake. This will provide a comprehensive view of the ideological landscape of the case, reflecting both the dominant conservative narrative and the more liberal counterargument.

V. i Justice Alito Opinion

Justice Samuel A. Alito, Jr., appointed to the U.S. Supreme Court by President George W. Bush in 2006, is a conservative Associate Justice known for his originalist and textualist approach to constitutional interpretation (Granick & Sprigman, 2013). Born in Trenton, New Jersey, Alito served as a judge on the U.S. Court of Appeals for the Third Circuit before his Supreme Court appointment. His judicial philosophy emphasizes respect for historical precedent and a restrained view of constitutional rights. These tendencies are particularly evident in his majority opinion in *Dobbs v. Jackson Women's Health Organization*, which is the primary focus of the following analysis (Supreme Court of the United States, 2024).

V.i.a The textual level

Justice Alito begins his majority opinion in *Dobbs v. Jackson Women's Health Organization* with an explicit account of the moral issues surrounding abortion. He frames abortion as an important

issue where Americans hold deeply conflicting views, invoking the ethical concerns and societal debates surrounding the practice. In his opening paragraphs, Alito makes it known that “the Constitution makes no mention of abortion” (See appendix A, ll. 22), signaling his initial position that abortion is not a constitutionally protected right. This statement is not merely a one-time declaration; rather, it is a statement that Justice Alito returns to multiple times throughout the opinion, underscoring the absence of abortion in the Constitution as a central pillar of his argument. The repeated mention of this point serves to emphasize Alito’s originalist approach and to reinforce the legal foundation of his argument. By invoking the Constitution’s silence on the matter of abortion, Alito effectively shifts the focus from a broader rights-based discourse to a constitutional interpretation based on historical and textual accuracy. This rhetorical strategy functions to diminish the legitimacy of *Roe v. Wade* and *Planned Parenthood v. Casey*, which had framed abortion rights as part of a broader constitutional guarantee. His rhetorical emphasis on the Constitution’s silence invites the reader to question the legitimacy of abortion rights as judicially created rather than constitutionally grounded.

This rhetorical strategy is further reinforced by Alito’s broader linguistic choices, which are oftentimes very direct and unambiguous. His wording is forceful, and his position is asserted through repetition and lexical emphasis, leaving little room for interpretation or misunderstanding. An example of this is in the statement: “It is time to heed the Constitution and return the issue of abortion to the people’s elected representatives” (app. A, l. 103). This phrase is repeated multiple times throughout the opinion, underscoring its central role in Alito’s argument. The repetition not only signals the importance of this idea within the opinion but also serves as a key populist appeal, framing the judiciary as having overstepped its bounds and asserting that power should be restored to *the people*. This construction sets up a dichotomy between unelected judicial elites and democratically elected officials, reinforcing a populist narrative that favors direct representation and challenges institutional authority. At the same time, the statement’s clarity and assertiveness reflect a moral conservative worldview that seeks to realign the law with what is perceived as the original intent of the Constitution, arguing that past rulings like *Roe v. Wade* deviated from these traditional foundations.

Alito’s use of the term “liberty” (see app. A), is an interesting discursive choice, both textually but also discursively, and will thus be included in both levels. On a textual level, his repeated use of the term liberty is a notable linguistic feature that is traditionally associated with personal freedom and individual rights, however, in his opinion he frames the terms differently than what is usually meant by it. Rather than supporting a more inclusive interpretation of liberty that included abortion rights and the rights to one’s body, Alito emphasizes that liberty does not grant the judiciary the authority to establish such rights unless they are “deeply rooted in this Nation’s history and tradition” (app. A, ll. 87). The repetition of liberty in this context works rhetorically to reinforce a moral conservative reading of the Constitution, wherein liberty is not conceptualized as individual autonomy or the freedom to make personal decisions, but rather as a legal principle that must be grounded in longstanding historical norms and precedents. In this view, rights are not evolving or adaptive but must be outright rooted in the

nation's legal and cultural traditions to be constitutionally protected. This discursive choice contributes to the overall ideological framing of the decision and subtly undercuts the idea of reproductive freedom as a constitutional guarantee. While Alito acknowledges that liberty alone provides little guidance and refers to it as a “capacious term” (app. A, l. 249), his frequent use of it is rhetorically strategic. He continues to use liberty to support his argument that abortion is not a constitutionally protected right, a point he reinforces through repetition. Additionally, Alito's usage of liberty directly engages with the term's earlier acknowledgement in *Roe* and *Casey*, as well as its mention in the dissenting opinion. By doing so, Alito draws on a term that has historically been central to the legal debates surrounding abortion rights, yet he redefines its meaning to fit his conservative interpretation. This discursive strategy works to solidify his position by framing liberty in a way that supports a conservative reading of the Constitution – one that privileges continuity with historical norms over individual autonomy or reproductive freedoms. This can be seen in his reference to the 1997 case *Washington v. Glucksberg*, where he states: “We hold that *Roe* and *Casey* must be overruled on the grounds that ‘the Constitution makes no reference to abortion, and no such right is implicitly protected by any constitutional provision, including the one on which the defenders of *Roe* and *Casey* now chiefly rely – the Due Process Clause of the Fourteenth Amendment’” (app. A, ll. 83-85). The Due Process Clause, which appears in both the Fifth and Fourteenth Amendments, ensures that no person is deprived of “life, liberty, or property” without fair legal procedures. While it has historically been interpreted to protect certain unenumerated rights (Strauss, 2022), Alito argues that any such right must be “deeply rooted in this Nation's history and tradition” and “implicit in the concept of ordered liberty”, thus narrowing its application to exclude abortion rights (app. A, ll. 87-88). Alito's use of the phrase “ordered liberty” is an interesting expression and is central to his argument that the Constitution does not support a right to abortion. By invoking “ordered liberty,” Alito refers to a conception of liberty that is tightly bound by the nation's historical traditions and legal precedents. One would assume he means that, “ordered liberty” is not merely about individual autonomy or personal choice, but about a form of liberty that is compatible with a stable social and legal order, one that respects the historical understanding of rights and societal norms.

A couple of other words that are repeated throughout his opinion are the terms “quickening” and “viability”. Quickening, which refers to the first motion of a fetus in the uterus felt by the mother, typically occurring before the middle of the period of gestation, reflects an older, historical marker in abortion debates (*Merriam-Webster Dictionary*, 2025). Viability, which is the ability of a human fetus to survive outside of the uterus, and is central to *Roe* and *Casey*, is repeatedly invoked to question its relevance and constitutional basis. These terms serve not only as legal and medical references but also as rhetorical tools to support his argument. By returning to these terms, Alito grounds his reasoning in traditional legal language, reinforcing a moral conservative perspective that favors historical continuity over evolving standards.

In terms of populist discourse, several key indicators can be found throughout Alito's opinion. Terms such as “the people” – as seen in phrases like “the people's elected representatives” (app. A, ll.

259) or "return the issue of abortion to the people" (app. A, ll. 1233) – reinforce the notion of popular sovereignty. Additionally, Alito's reference to the "democratic process," as in "the Court has previously overruled decisions that wrongly removed an issue from the people and the democratic process", underscores his argument that such decisions should rest with the public and their elected representatives (app. A, ll. 775). These terms and phrases reflect a clear populist rhetoric that positions the Court's decision as an effort to return power to the people.

Lastly, Alito's critique of the dissenting opinion is notably harsh and direct, employing strong language to undermine its arguments. For instance, he asserts that "the dissent's failure to engage with this long tradition is devastating to its position," which serves to delegitimize the dissent's reasoning by highlighting its lack of historical grounding (app. A, l. 617). Alito goes further, accusing the dissent of feigning adherence to legal principles, stating "despite the dissent's professed fidelity" to legal precedent, suggesting that the dissent is not truly committed to respecting the constitutional framework (App. A, l. 621). This rhetorical maneuver positions the dissent as disingenuous in their approach. Furthermore, Alito critiques the dissent's interpretation of case law, claiming that "the dissent attempts to obscure this failure by misrepresenting our application of *Glucksberg*" (app. A, ll. 624), which underscores his belief that the dissent's analysis of legal precedents is not only incorrect but intentionally misleading. Alito's use of these phrases reflects his effort to assert the validity of the majority opinion while attacking the dissent's perceived shortcomings with forceful, dismissive language. This serves to solidify the majority's position and reinforce its authority, framing the dissent as both legally flawed and strategically deceptive.

To conclude, the textual analysis of Alito's majority opinion in *Dobbs* reveals a deliberate and forceful rhetorical strategy rooted in moral conservatism and populist discourse. Through repeated emphasis on constitutional silence, appeals to historical tradition, and strategic uses of terms like "liberty" and "the people," Alito constructs a legal narrative that redefines key concepts to support his position. His language is assertive and dismissive of opposing views, particularly in his sharp critique of the dissent, which he portrays as historically and legally unfounded. These rhetorical choices do more than argue a legal point, they shape a discourse that positions the majority opinion as both constitutionally authoritative and aligned with the will of the people, reinforcing a broader ideological agenda through textual means.

V.i.b The discourse practice level

At the discursive level, Justice Alito employs a range of rhetorical strategies that serve to reinforce his ideological stance on abortion, positioning his legal reasoning within a broader conservative discourse. One prominent technique he uses is referencing the opinions and perspectives of other authoritative figures, including current and past Justices, constitutional scholars, and organizations that mostly share his views. By doing so, he not only strengthens his argument but also frames it as part of

a larger, accepted legal and moral framework. A key example of this strategy appears early in the opinion where Justice Alito quotes a prominent constitutional scholar who claims that if he were a legislator, he would “vote for a statute very much like the one the Court end[ed] up drafting” in the case. This scholar further criticizes *Roe v. Wade*, stating that it was “not constitutional law” and lacked “any sense of an obligation to try to be” (app. A, ll. 37-38). This citation is significant as it functions to legitimize Alito’s opinion by appealing to a respected legal authority who agrees with his assessment of *Roe*. By invoking such scholars and figures, Alito places his opinion within an established, ideologically conservative context, signaling to the reader that his interpretation of the Constitution is not an isolated or novel perspective but rather one that aligns with a broader, historically grounded view of constitutional law.

Another tactic, whether intentional or not, that Alito uses in his opinion is the strategic use of historical references to bolster his argument. By drawing on legal and societal views on abortion from as far back as the 17th century, he constructs a narrative in which historical precedent serves as justification for the present-day ruling. This rhetorical move not only reinforces the idea that abortion was long viewed as morally and legally unacceptable but also supports a broader conservative ideology that prioritizes tradition and continuity over legal or social change. Through this framing, Alito points to how abortion was viewed in the past to support the idea that it shouldn’t be protected now – showing a preference for relying on historical perspectives rather than allowing for legal or moral change over time. This is also a tactic briefly noted by the dissent, which identifies Alito’s reliance on historical precedent as a central pillar of his argument. A point they later challenge more directly in their reasoning.

As previously mentioned, Alito’s use of the term “liberty” is an important part of the opinion as it reinforces different discursive elements. At the discursive level, Alito’s use of liberty participates in a broader conservative discourse that redefines constitutional rights through a historical and originalist lens. By situating liberty within the confines of tradition and precedent, he discursively positions the majority opinion in alignment with moral conservatism, a framework that resists progressive interpretations of the Constitution in favor of maintaining established social and legal norms. This way of interpreting the law supports the belief that judges should exercise restraint and respect historical traditions, quietly pushing back against decisions like *Roe* and *Casey*, which it views as overly influenced by ideology. The discourse constructed here draws clear boundaries between acceptable and unacceptable uses of judicial power, framing the decision as a corrective to prior deviations from the *true* meaning of the Constitution. In doing so, Alito not only justifies the reversal of abortion rights but also reasserts a conservative view of democratic legitimacy, where the judiciary is tasked with preserving inherited moral structures, meaning long-standing, culturally embedded beliefs and legal interpretations that reflect the historical values of the nation, rather than to innovate in response to evolving societal norms.

One of the most important discursive features of Alito’s opinion is how frequently he refers to *Roe* and *Casey*, emphasizing the aspects he disagrees with and framing them as judicially insufficient

to justify federal protection of abortion rights. Alito argues that the doctrine on which Casey's controlling opinion was based does not require unending adherence to Roe, describing Roe as "egregiously wrong from the start" (app. 1, l. 100). He critiques the reasoning behind Roe, calling it "exceptionally weak" and pointing out that the decision has had "damaging consequences" (app. 1, l. 101). In doing so, Alito draws a clear line between Roe's legal framework and what he perceives as a more constitutionally sound approach. Additionally, Alito's declaration that "Roe was on a collision course with the Constitution from the day it was decided, Casey perpetuated its errors, and those errors do not concern some arcane corner of the law of little importance to the American people" (app. A, ll. 761-762) exemplifies a key discursive strategy: positioning the overturning of Roe not as a legal innovation, but as a long-overdue correction of a fundamental constitutional misstep. The metaphor of a "collision course" suggests that Roe was always bound to conflict with the Constitution, highlighting a sense of inevitability and urgency in Alito's reasoning. When he says the issue is not "arcane" or obscure, he stresses that abortion is a major public concern. He frames it not as a narrow legal issue, but as an important political and moral question that should never have been taken out of the hands of the people and their elected representatives. Discursively, this move reinforces Alito's broader narrative that Dobbs restores both constitutional integrity and democratic legitimacy. It frames the Court's prior rulings as not only legally flawed but dangerously detached from the public will and constitutional truth, aligning the majority opinion with a populist and moral conservative discourse. By focusing on the perceived judicial errors of Roe and Casey, Alito reinforces his stance that the federal protection of abortion rights was not grounded in solid legal reasoning, positioning the decision as part of a broader pattern of judicial overreach that should be corrected.

Overall, Alito's discursive approach supports a conservative and originalist reading of the Constitution, where the Dobbs decision is framed as a justified correction of past mistakes. Through historical references, strong critiques of Roe and Casey, and appeals to democratic authority, he constructs a narrative that legitimizes the Court's reversal of Roe and Casey as both legally sound and democratically justified.

V.i.c The social practice level

Building on the discourse level, it becomes clear that Alito and the majority, in their opinion, sought not only to correct what they viewed as past judicial mistakes but also to shift the broader societal framework to align with their conservative ideological perspective. By presenting their decision as a correction, they claim to be upholding the Constitution, while also pushing for changes in society that reflect their own view of tradition and morality. Additionally, this approach aligns with the political ideologies of the party that appointed them, suggesting that the Court's rulings may reflect not just legal

interpretation but also the broader political and social agenda of the conservative movement in the United States.

With this said, to fully understand the social practice level of the Dobbs decision, it is important to consider the social and political climate in the United States at the time of the ruling and how the decision is situated within that context. In recent years, a populist wave has been rising across the Western world, reflected in the resurgence of conservative ideologies. Although scholars and journalists continue to examine the underlying causes, key moments such as Brexit and the election of Donald Trump have marked this shift. During this period, the terms "populism" and "populist" gained renewed traction and were mentioned more in the media and political discourse (Rooduijn, 2019). Alongside this populist surge, another notable trend has emerged: growing political polarization. In countries like the United States, political discourse has become increasingly dominated by extreme positions on both the right and left, with fewer voices occupying the moderate center, a contrast to the broader political landscape of the early 2000s (Filipovic, 2023). Therefore, it is also relevant to consider the role of political parties and key political figures, as they both shape and reflect the broader ideological climate in the United States. In particular, the Republican and Democratic parties play a significant role in shaping the composition of the Supreme Court, since justices are nominated by presidents and confirmed by the Senate, often along party lines. Although Justice Samuel Alito was appointed by President George W. Bush in 2006 and not by Donald Trump, both figures are affiliated with the Republican Party and generally reflect conservative judicial philosophies. While the intensity or tone of their political expression may differ, they are situated within the same ideological framework that prioritizes traditional values, limited government intervention, and often a moral conservative outlook. When a president shifts further toward the ideological poles, the party often follows suit. As a result, justices appointed by these presidents, like Alito, often reflect and reinforce the broader conservative agenda of their political affiliations. Here it is also important to note that all the concurring justices were nominated by republican presidents, further underscoring how the Dobbs ruling aligns with key conservative priorities, such as restricting abortion access, and forms part of a broader political and ideological project backed by significant segments of the Republican establishment.

Justice Alito's opinion in Dobbs not only aligns with current political and cultural movements but also plays a direct role in redefining the relationship between legal authority and societal values. Viewed through Fairclough's model, the opinion demonstrates how judicial texts reflect and reinforce social values while simultaneously contributing to the reproduction of ideological structures. By prioritizing history and tradition and emphasizing originalist constitutional interpretation, Alito's decision acts as a powerful tool in reinforcing conservative ideological frameworks. This is particularly noticeable in how legal discourse in Dobbs mirrors broader social movements, such as pro-life activism and Christian conservatism, which advocate for a return to traditional moral values. The decision also reflects legislative trends at the state level that seek to limit abortion access, showcasing how legal rulings can influence and be influenced by political movements. For example, in Louisiana, the state enacted a

near-total abortion ban following the overturning of *Roe v. Wade*, permitting the procedure only in cases where the pregnant person's life is at risk or when the fetus is deemed "medically futile" (Physicians for Human Rights, 2024). Notably, the law does not provide exceptions for pregnancies resulting from rape or incest. Further intensifying restrictions, in October 2024, Louisiana reclassified the abortion-inducing drugs mifepristone and misoprostol as Schedule IV controlled substances under Act 246. This reclassification has raised concerns among healthcare providers about potential delays in emergency reproductive care (Physicians for Human Rights, 2024). Similarly, Mississippi's "Gestational Age Act," which was central to the *Dobbs* case, bans abortions after 15 weeks of pregnancy, with exceptions only for medical emergencies or severe fetal abnormalities. This legislation reflects the state's legislative trend toward limiting abortion access and underscores the broader national shift influenced by the *Dobbs* decision (*Dobbs v. Jackson Women's Health Organization*, 2025). In this way, *Dobbs* not only reaffirms existing conservative ideologies but also plays a role in shaping future legal and political trajectories in the United States.

Alito's opinion in *Dobbs* is also clearly influenced by long-term conservative legal activism, a concerted effort to overturn *Roe v. Wade*, that has been supported and nurtured by organizations such as the Federalist Society (StackPath, n.d.). These organizations have long advocated for an originalist interpretation of the Constitution, aiming to reshape the judiciary by appointing judges who share a commitment to limiting judicial power and returning issues like abortion to the political process. This strategic judicial appointment process, which has been ongoing for several decades, has had a profound impact on the composition of the Supreme Court. With the steady rise of conservative justices, many of whom were closely affiliated with or recommended by legal advocacy groups like the Federalist Society, the judiciary has become more receptive to interpretations that reflect a strict adherence to historical precedent and tradition (Sweitzer, 2023). Beyond simply advocating for a particular legal interpretation, these organizations have also been key players in the broader cultural and political fight against abortion. Their influence extends into public policy debates, media discourse, and educational efforts aimed at shifting the national conversation around abortion, often framing it as a moral issue tied to larger cultural battles over religion, individual rights, and the role of government. This activism has created an environment where overturning *Roe* was not only a legal goal but also a cultural and political one, aligned with a broader conservative movement seeking to reinforce traditional family values, religious principles, and limited government intervention. Alito's *Dobbs* opinion, then, does not emerge in a vacuum but reflects the culmination of these sustained efforts to realign the law with a conservative vision, prioritizing what he and his allies see as a return to constitutional principles that align with their ideological values.

As mentioned earlier, the nature of judicial appointments in the U.S. also plays a significant role in this process. Supreme Court justices are appointed for life, which means that their influence can extend well beyond the tenure of any given president. When a justice retires or passes away, it is the sitting president who has the power to nominate a replacement, making the timing of these appointments

somewhat random, and often politically consequential. This has resulted in moments where a president's legacy is shaped by the opportunity to appoint a judge who aligns with their ideological values. For example, the conservative shift in the Court can be attributed not only to the deliberate efforts of organizations like the Federalist Society but also to the unique timing of presidential appointments, where the outcome of a single nomination could have a long-lasting effect on the Court's ideological balance. See, the incident with Justice Ginsburg, who likely tried to stay alive long enough for President Biden to take office, so it would be a democratic Justice that would be nominated next. Although there is no direct public statement or official record from Justice Ruth Bader Ginsburg explicitly saying she was trying to "stay alive" for a Democratic president to appoint her successor, there are credible reports and quotes from people close to her that suggest she was acutely aware of the political implications of her tenure and successor. She unfortunately died before Joe Biden took office offering President Trump his third Supreme Court pick in his first term (Ruiz, 2020).

The Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization* undeniably positions the Court as a political institution, one that plays a significant role not only in interpreting the Constitution but in shaping public morality and societal norms. Through this decision, the Court takes an active role in reshaping the legal and moral landscape surrounding abortion, not as a departure from its previous influence, but as a dramatic reversal of the direction established by *Roe v. Wade* and *Planned Parenthood v. Casey*. In doing so, it not only reaffirms the Court's authority as a political institution but also underscores how strongly legal rulings can reflect and influence broader ideological shifts. *Dobbs* arguably reproduces dominant conservative ideological structures, particularly those that emphasize traditional moral values, strict adherence to originalist interpretations of the Constitution, and a preference for limiting federal judicial power. By overturning *Roe* and *Casey*, the Court reinforces the belief that certain issues, including abortion, should be subject to democratic decision-making rather than judicial intervention. In this sense, the decision aligns with the broader conservative effort to return controversial matters like abortion to the political process, where voters and legislators can determine the outcome rather than relying on judicial rulings. However, *Dobbs* also disrupts previously established legal norms. It represents a significant departure from the Court's approach to rights-based rulings, particularly in the context of privacy and bodily autonomy. By overturning a nearly 50-year precedent, the Court challenges the legitimacy of judicial decisions that have shaped modern American social policies, especially those related to personal rights and freedoms. In rejecting *Roe*'s framework, the Court effectively breaks down the idea that certain rights, such as the right to access an abortion, are protected by the Constitution as part of a broader understanding of personal liberty. Moreover, the decision in *Dobbs* demonstrates the evolving nature of institutional authority. While *Roe* and *Casey* were seen by many as landmark rulings that established a liberal interpretation of constitutional rights, *Dobbs* signals a shift toward a more conservative legal framework. The opinion itself, written by Justice Alito, emphasizes historical and traditional understandings of the Constitution, which positions the Court's

ruling as a return to constitutional roots. This shift in judicial philosophy and the willingness to challenge long-standing precedents represent a redefinition of the Court's institutional role, aligning it with a political agenda that seeks to influence the direction of public morality and societal norms. In this way, *Dobbs* both continues conservative ideals and breaks with what came before. It repeats common conservative arguments about tradition and originalism, but it also undoes decades of legal precedent around abortion rights. This highlights how the Court does not just reflect society but plays an active role in guiding it, especially on moral and political issues, by deciding which rights are protected under the Constitution.

Seen in a broader legal and social context, *Dobbs* not only departs from the judicial narratives established in cases like *Roe*, *Casey*, and even *Obergefell* but also plays into a much larger cultural and political moment. The ruling made by Justice Alito and the rest of the majority has been celebrated by many within religious and conservative communities, for whom abortion is not only a political issue but also a deeply moral and religious one. At the same time, the decision has sparked widespread public backlash, protests, and political mobilization, highlighting how the Court's choices resonate far beyond the legal sphere. Importantly, *Dobbs* also has very real social consequences, as it disproportionately impacts low-income people, people of color, and those in states with strict abortion laws – groups that already face structural disadvantages. However, Alito and the majority opinion largely overlook these impacts. In this way, the ruling both reflects and reinforces existing inequalities, while reshaping the legal landscape in a way that aligns with the ideological goals of long-standing conservative activism.

V. ii Justices Breyer, Sotomayor, and Kegan Dissenting Opinion

In analyzing the dissenting opinion, in *Dobbs v. Jackson Women's Health Organization*, it is essential to consider the unique perspectives brought forth by Justices Stephen G. Breyer, Elena Kagan, and Sonia Sotomayor⁴. These three justices, with their diverse backgrounds and extensive legal experience, provide a contrast to the majority opinion, reflecting a commitment to legal precedent, individual rights, and a different interpretation of the Constitution. Justice Breyer, a loyal advocate for pragmatic and balanced decision-making, is known for his focus on real-world consequences and the protection of fundamental rights. Justice Kagan, with her emphasis on the principles of fairness and the role of the Court in safeguarding individual freedoms, often stresses the importance of institutional integrity and the Court's duty to protect vulnerable groups. Justice Sotomayor, a vocal advocate for social justice and equality, brings her experiences from her background as a district court judge and her commitment to defending civil rights to her dissent. Together, their voices provide an alternative perspective on the interpretation of the Constitution, particularly in relation to abortion rights. The dissenting justices' reasoning is likely to engage with legal precedent, individual rights, and constitutional principles in

⁴ A dissenting opinion in legal contexts refers to the opinion written by one or more judges who disagree with the majority opinion of the court (*Dissent*, n.d.).

ways that may contrast with the majority opinion, offering a counterpoint to its ideological framework. It is also important to note that all three dissenting justices were nominated by Democratic presidents. Justice Breyer was nominated by President Clinton, while Justices Sotomayor and Kagan were both nominated by President Obama (Supreme Court of the United States, 2024).

V.ii.a The textual level

“For half a century, *Roe v. Wade* (1973), and *Planned Parenthood of Southeastern Pa. v. Casey* (1992), have protected the liberty and equality of women. *Roe* held, and *Casey* reaffirmed, that the Constitution safeguards a woman’s right to decide for herself whether to bear a child” (See appendix B, ll. 12-15). This is the statement the dissenting opinion begins their lengthy counterargument to the majority decision with. You can tell a lot by this initial statement. The phrase “for half a century” emphasizes the longevity of *Roe* and *Casey*, highlighting the weight of established precedent and suggesting that the majority’s decision disrupts decades of consistent constitutional interpretation. Additionally, terms like “liberty” and “equality” are ideologically charged and invoke core democratic values, reinforcing the idea that abortion rights are not secondary legal issues but central to constitutional protections. The use of the verb “protected” underscores the idea of the Court as a guardian of individual rights, while the structure of “*Roe* held, and *Casey* reaffirmed” creates a sense of continuity and unity. By framing the right as one of personal decision, “to decide for herself whether to bear a child”, the dissent focuses on the principle of autonomy and situates reproductive choice within a broader discourse of gender equality and self-determination. Therefore, this first sentence establishes both the legal foundation and the ethical orientation of the dissenting opinion, opposing the majority’s historical and originalist approach with a defense of long-recognized individual rights. It also provides a preview of the dissent’s overall stance, signaling the direction their argument will take.

Like Alito and the majority, the dissenting justices also frequently invoke the concept of “liberty” and the Fourteenth Amendment throughout their opinion, likely as a deliberate rhetorical strategy to directly counter the majority’s historical and constitutional interpretation. For instance, they write: “Like *Roe*, *Casey* grounded that right [a woman’s right to choose] in the Fourteenth Amendment’s guarantee of ‘liberty’” (app. B, ll.185-186). In emphasizing this term, the dissent underscores their belief that constitutional protections extend beyond the specific language of the document and evolve with time. They assert that “the guarantee of liberty encompasses conduct today that was not protected at the time of the Fourteenth Amendment,” (app. B, ll. 189-190) thereby rejecting the majority’s reliance on 19th-century legal standards and instead framing liberty as a dynamic and expansive principle. To build on this, the dissent comments on the majority’s main argument for overturning *Roe* and *Casey*, saying that: “The lone rationale for what the majority does today is that the right to elect an abortion is not “deeply rooted in history”: Not until *Roe*, the majority argues, did people think abortion fell within the Constitution’s guarantee of liberty” (app. B, ll. 95-97). The dissenting opinion directly engages with the majority’s core rationale by quoting and critiquing its reliance on historical precedent. The phrase “lone

rationale” is a lexical choice, minimizing the legitimacy of the majority’s argument and suggesting it lacks sufficient complexity, nuance or additional reasoning. It frames the majority’s reasoning as narrow and insufficient for such an important decision that, according to the dissent, will have horrifying consequences for women. The dissent further emphasizes the historical focus by repeating the phrase “deeply rooted in history,” echoing the majority’s language in a way that subtly distances itself from that framework while still addressing it head-on. The quoted sentence is structured with parallelism; “Not until Roe...did people think...”, which draws attention to the chronological argument being made and primes the reader to question whether historical absence is a justifiable reason for denying women their bodily rights. This choice of syntax, combined with modal verbs like “does” and “did,” works to contrast present judicial action with past social perceptions, reinforcing the dissent’s view that constitutional interpretation should evolve with time rather than be tethered exclusively to historical norms. Through these textual strategies, the dissent not only summarizes but undermines the majority’s justification, setting the tone for a broader critique grounded in both legal principle and rhetorical framing.

The dissent’s passion and frustration are unmistakable, conveyed through emotionally charged language that departs from the typically restrained tone of judicial writing. Their use of expressions such as “a nightmare” (app. B, l. 78), “that is flat wrong” (app. B, ll. 386–387), and “today’s decision, taken on its own, is catastrophic enough” (app. B, l. 559) underscores the severity with which they view the ruling’s consequences. This rhetorical force continues in statements like, “as a matter of constitutional substance, the majority’s opinion has all the flaws its method would suggest” (app. B, l. 568) and “in overruling Roe and Casey, this Court betrays its guiding principles,” (app. B, ll. 1135–1136) which explicitly challenges the intellectual and ethical integrity of the majority’s reasoning. Through these strong formulations, the dissent frames the decision not merely as a legal error, but as a breach of the Court’s own institutional responsibilities. Additionally, the statement that “a majority of today’s Court has wrenched this choice from women and given it to the States” (app. B, ll. 964–965) support their concern that the ruling represents an unjust and regressive shift in constitutional interpretation. Together, these textual elements construct a powerful counter-narrative grounded in moral clarity and constitutional urgency, signaling the dissenters’ intention to expose what they perceive as the far-reaching harm of the majority’s decision.

Furthermore, the dissenting justices challenge the notion of judicial neutrality, particularly as it was framed by Justice Kavanaugh⁵, through a strategic use of quotation marks, rhetorical questions, and analogies. The dissent writes: “Eliminating that right... is not taking a ‘neutral’ position, as Justice Kavanaugh tries to argue. His idea is that neutrality lies in giving the abortion issue to the States... But would he say that the Court is being ‘scrupulously neutral’ if it allowed New York and California to

⁵ Brett Kavanaugh is an Associate Justice of the U.S. Supreme Court. He was nominated by President Donald Trump. In *Dobbs*, Kavanaugh filed a concurring opinion, supporting the majority’s decision to overturn *Roe v. Wade* (Wikipedia Contributors, 2018).

ban all the guns they want?” (app. B, ll. 391–395). Textually, this passage employs rhetorical questioning and analogy to undermine Kavanaugh’s assertion of neutrality. By comparing abortion to gun rights, which is a politically and constitutionally charged issue, the dissent illustrates the inconsistency in defining judicial neutrality. The quotation marks around “neutral” and “scrupulously neutral” further emphasize the dissent’s skepticism toward the legitimacy of the majority’s stance, presenting it as just a rhetorical strategy that hides the real consequences of taking away a right.

In the dissenting opinion, the justices criticize the majority for abandoning the legal framework established in *Casey*, suggesting that the decision to overturn it reflects a disregard for precedent and an embrace of ideological aims. The dissent warns that “the majority accuses *Casey* of acting outside the bounds of the law to quell the conflict over abortion, of imposing an unprincipled ‘settlement’ of the issue in an effort to end ‘national division’” (app. B, ll. 1134–1136). Through this critique, the dissent draws attention to how the majority characterizes *Casey* as illegitimate and undemocratic. When viewed through the lens of moral conservatism and populism, this framing can be seen as aligning with a broader ideological pattern: the majority positions itself as correcting an elite-driven moral imposition and restoring the issue to democratic control. In this way, the dissent implicitly reveals how the majority’s reasoning reflects values consistent with moral conservative priorities and populist distrust of judicial authority. This ideological critique is further underscored in the dissent’s emotionally charged closing statement, “with sorrow—for this Court, but more, for the many millions of American women who have today lost a fundamental constitutional protection—we dissent” (app. B, ll. 1138–1139), shows the emotional gravity and constitutional significance of the dissenting justices’ perspective. On a textual level, the deliberate repetition of “for” emphasizes both institutional and personal loss, while the solemn tone of “we dissent” reinforces their firm opposition to the majority’s decision. The phrasing reflects a deep concern not just for the legal implications, but for the tangible human impact on millions of women in America. This emotionally charged conclusion sums up the moral urgency of the dissent, reflecting their warning about the rollback of a long-standing right and giving the text a powerful and mournful final note.

V.ii.b The discourse practice level

While Justice Alito and the majority opinion presented several arguments for overturning *Roe v. Wade*, particularly those rooted in a historical and originalist interpretation of the Constitution, the dissenting opinion offers strong critique of these arguments. The dissent challenges the reliance on historical tradition by pointing out the exclusionary and patriarchal context in which the Constitution and its amendments were written. As the dissent notes, “those responsible for the original Constitution, including the Fourteenth Amendment, did not perceive women as equals, and did not recognize women’s rights” (app. ll. 293–294). This statement exposes the inherent limitations of basing contemporary rights on historical interpretations that ignored or actively suppressed the agency of half the population. From a discursive perspective, this clash illustrates how legal texts not only reflect but also

construct social meanings about gender, autonomy, and authority. The majority call on a discourse of constitutional loyalty and legal tradition to justify restricting reproductive rights, while the dissent draws attention to the historical marginalization embedded within those very traditions. This tension shows how different ways of interpreting the law, like originalism compared to more modern or equality-focused approaches, shape how we understand and define rights in legal discussions.

The dissent also emphasizes the precarious nature of the majority's legal reasoning, cautioning against the certainty that today's opinion will be the final chapter in this long-standing debate. In stating, "but we cannot understand how anyone can be confident that today's opinion will be the last of its kind" (app. B, ll. 546–547), the dissent underscores the dynamic and contested nature of constitutional interpretation. This comment reflects a deeper populist concern about the ability of the Court, as an institution, to impose what might be seen as elite or out-of-touch decisions on a divided public. It also underscores the moral conservative view that the Court's decision could set a dangerous precedent for rolling back other rights deemed controversial or out of step with conservative values. The dissent argues that legal decisions about rights are never final but subject to change based on evolving political and social climates, reflecting deeper moral and populist anxieties about the Court's role in shaping society.

In contrast to Alito and the majority, the dissenting opinion grounds its argument in the precedents being overturned, *Roe* and *Casey*, rather than drawing on broad or selective historical references. The dissenting justices repeatedly invoke the reasoning used in *Casey*, particularly its reaffirmation of *Roe*, emphasizing that the constitutional principles and arguments established then remain valid today. A central theme in the dissent is the concern that the majority's reliance on a narrow historical understanding of rights – namely, what was recognized in the 19th century – creates a precedent that could endanger other liberties not clearly protected at that time. This argument is underscored by Justice Thomas's concurring opinion, in which he explicitly calls for the Court to reconsider substantive due process precedents such as *Obergefell v. Hodges*, which protects same-sex marriage, along with other similar precedents such as *Griswold* and *Lawrence*, which protects the liberty of married couples to use contraceptives without government restriction (app. B, ll. 507–512). Despite this, the majority attempts to contain the implications of its ruling, asserting, "Nothing in this opinion should be understood to cast doubt on precedents that do not concern abortion" (app. B, ll. 498–499). However, the dissent highlights this assurance as inconsistent, pointing to Thomas's explicit statement as evidence that the ruling could have far-reaching consequences. This contradiction reveals an internal tension within the majority's position: while the opinion claims to be narrowly focused, its reasoning, particularly when extended by concurring justices, signals a broader agenda aligned with moral conservative priorities. The dissent's attention to this inconsistency supports their argument that the *Dobbs* decision is not only a legal reversal but part of a larger ideological shift that could threaten other substantive rights. By highlighting this potential trajectory, the dissent uses discursive strategies to position the *Dobbs* ruling not only as a legal reversal, but as part of a broader ideological shift with implications far beyond abortion rights.

In line with this, the dissenting justices use arguments such as the one above to challenge the majority's reliance on a narrow, originalist interpretation of the Constitution. They highlight that constitutional rights have long been interpreted to extend beyond those explicitly mentioned in the text. By invoking precedents like the Court's protection of the right to marry – despite the fact that marriage is not explicitly named in the Constitution – they emphasize a broader understanding of liberty under the Fourteenth Amendment. This rhetorical strategy situates abortion rights within a tradition of judicial recognition of substantive liberties, opposing the majority's assertion that the absence of the word “abortion” in the Constitution undermines its constitutional protection (app. B, ll. 186–192). The dissent thus frames the majority's reasoning as selectively narrow and inconsistent with established constitutional principles. This legal argument sets the stage for the dissent's broader warning about the real-world consequences of the ruling, captured in their clear assertion that “after today, young women will come of age with fewer rights than their mothers and grandmothers had” (app. B, ll. 1015). This striking statement from the dissenting justices sum up their central message: that the majority's decision represents a regression in constitutional protections. The dissent critiques the majority for overturning precedent not due to legal necessity, but in pursuit of ideological aims. They recall the Court's reasoning back in *Casey*, where the justices at the time acknowledged abortion as a deeply divisive issue but emphasized the Court's responsibility to uphold the law consistently, regardless of public controversy (app. B, ll. 1027–1031). In contrast, the majority today accuses *Casey* of attempting to impose an unprincipled “settlement” to end national division (app. B, ll. 1021–1023), a framing that the dissent strongly rejects.

Another point the dissent makes is in the statement: “Judges' personal preferences do not make law; rather, the law speaks through them” (app. B, ll. 593–594). This reflects the dissent's concern with judicial integrity and the proper role of the Court within a constitutional democracy, while also opening a broader discussion about political ideology and judicial impartiality. On the discursive level, this statement pushes back against what the dissent sees as the majority's imposition of personal or ideological beliefs, particularly those aligned with moral conservatism, under the guise of legal interpretation. By emphasizing that the law should speak *through* judges rather than be *created* by them, the dissent frames its position as a defense of judicial neutrality and precedent. This contrasts sharply with the populist undertones of the majority opinion, which appeals to returning power to *the people* through their elected representatives, even at the cost of individual rights. Thus, the dissent presents itself as defending the Constitution during a time when ideas are shifting backwards. To further build on this discussion, the dissent claims that “the majority has overruled *Roe* and *Casey* for one and only one reason: because it has always despised them, and now it has the votes to discard them. The majority thereby substitutes a rule by judges for the rule of law” (app. B, ll. 640–643). This claim exemplifies the dissent's deep concern with the politicization of judicial power. On the discursive level, this accusation suggests that the majority's decision is not grounded in legal reasoning but in ideological opposition and political opportunity. It challenges the legitimacy of the ruling by portraying it as an act of

judicial will rather than constitutional interpretation. This rhetoric underscores the dissent's fear that the Court is shifting from a neutral arbiter to a politically driven institution, aligning with critiques of moral conservatism and populist legal reasoning that seek to reassert majoritarian control at the expense of individual rights and precedent.

The dissenting opinion not only challenges the legal reasoning of the majority but also confronts the ideological framework underpinning its decision. By stating, "they also must recognize that the constitutional 'tradition' of this country is not captured whole at a single moment" (app. B, ll. 355–356), the dissent rejects the majority's originalist approach and instead affirms a more evolving, inclusive understanding of constitutional rights. On the discursive level, this reflects a broader critique of moral conservatism, which often seeks to root legal legitimacy in a narrow and static interpretation of history. The dissent insists that constitutional meaning must be informed by historical progress and the ongoing expansion of rights. This vision stands in contrast to the majority's reliance on selective tradition, exposing how such a perspective can reinforce exclusion and limit the scope of justice. Through this language, the dissent frames its legal argument as part of a larger ideological struggle over whose voices and experiences are recognized in the shaping of constitutional law.

Overall, the dissenting justices challenge the majority's opinion and more originalist interpretation by exposing its patriarchal roots and exclusionary nature. The dissent presents a more inclusive interpretation of constitutional rights, grounded in precedent and social progress. They critique the majority's rhetoric as ideologically motivated and warn of broader threats to liberty. Ultimately, it frames the decision as part of a larger struggle over judicial integrity and the future of constitutional justice.

V.ii.c The social practice level

At the level of social practice, one of the main things to notice is the dissent's language, which invites broader reflection on how institutions have historically excluded women's voices and experiences, and how such exclusions continue to shape contemporary policy and power structures. The disagreement between the dissident and the majority is therefore not merely about legal precedent, but also about whose narratives and experiences are legitimized within the legal system.

An important aspect of the dissenting opinion was on gender, power, and the impact this decision will have on marginalized communities. An example of this is when they show the statistics: "experts estimate that a ban on abortions increases maternal mortality by 21 percent, with white women facing a 13 percent increase in maternal mortality while black women face a 33 percent increase" (app. B, ll. 745-746). This along with the statement: "in States that bar abortion, women of means will still be able to travel to obtain the services they need" (app. B, ll. 940-941), showcases an important discussion. These points are not merely political critiques, but they also underscore the dissent's constitutional concern that the decision undermines the principles of equal protection and substantive due process. By pointing out how the decision will affect different groups of women in different ways, especially those

who are already marginalized, the dissent argues that the ruling ignores how some people have much less access to their rights than others because of their race or financial situation. Women with financial resources will still have access to reproductive healthcare, while low-income women, disproportionately women of color, will be put at greater risk and have less control over their own bodies. The dissent draws attention to the structural injustices that shape how legal decisions are felt in everyday life. The language and statistics they use emphasize the material consequences of the ruling, moving the focus beyond abstract legal principles to the lived realities of those most affected. By doing this, the dissent not only defends a constitutional right but also insists on recognizing the intersection of law, race, class, and gender in shaping access to fundamental freedoms. Building on this, the dissent also connects reproductive rights to broader questions of economic justice. Restrictions on abortion access have long-term consequences for education, employment, and financial stability, particularly for young and disadvantaged women. In this light, reproductive autonomy is framed not only as a matter of bodily integrity, but as a precondition for full participation in public, social, and economic life. The dissent thus insists that legal rights cannot be separated from the material conditions that shape people's freedom to exercise them. This again connects to the Fourteenth Amendment's Due Process Clause, which protects substantive rights. It also raises Equal Protection concerns, as marginalized groups face greater barriers.

The dissenting opinion not only talks about the unfairness made worse by overturning *Roe* but also points out a bigger problem with how the Court is changing. They argue that the abandonment of *Roe* and *Casey*, both long-standing precedents that had shaped reproductive rights for decades, the Court is moving away from respecting past rulings and legal consistency. Instead, it seems to be following a more political and ideological path. The dissent suggests that this shift is not merely legal but political, as the majority now has the votes to impose a new interpretation aligned with conservative moral values. According to the dissent, this reflects a transformation in the Court's role, from a protector of individual rights to an institution increasingly shaped by partisan agendas and responsive to political momentum rather than consistent legal principles. In this context, the dissent is worried not just about losing the right to abortion, but also about how the public may start to lose trust in the Court. They're concerned that the Court no longer seems fair or willing to stick to its past decisions. This change in judicial behavior has profound implications for democratic governance, especially when legal outcomes are perceived as the result of political strategy rather than constitutional reasoning. This shift, according to the dissent, also raises critical questions about the Supreme Court's role in society. They argue that by getting rid of precedent in a way that appears ideologically motivated, the Court risks being seen less as a neutral guardian of constitutional rights and more as a political body. While the majority claims to be returning to a correct, original understanding of the Constitution, the dissent warns that when decisions seem to reflect the views of those currently in power, the Court's legitimacy, and the public's trust in it as a stable, impartial institution, is put at risk. Here one could also question if the dissent's concerns come from the fact that their views are no longer in the majority. From this point of view, it's not that the Court has suddenly become political, but that the balance of power has shifted. The dissent

criticizes the majority for being influenced by ideology, but their own support for Roe and Casey could also be seen as based on certain values or beliefs. Also, it's worth noting that the Supreme Court has always changed over time as new justices bring different ideas. So, this decision might not be unusually political, it could just be another example of how the Court's direction changes when its members do. In this light, the dissent's warning about lost public trust might seem more like a reaction to losing influence than an objective judgment.

The dissent not only critiques the majority's decision from a legal perspective but also situates it within the broader historical and social struggles that have shaped American civil rights. By pointing out that "The Fourteenth Amendment's ratifiers did not think it gave black and white people a right to marry each other" (app. B, ll. 334–335), the dissent questions the majority's historical approach. They argue that many rights we now consider basic, like the right to interracial marriage or access to birth control, were not recognized at first but became protected as people's ideas about freedom and equality changed over time. The dissent points to cases like *Loving v. Virginia* and *Griswold v. Connecticut* to show that the Constitution has often been read in a way that reflects the values and realities of each time period (app. B, ll. 358–361). They're not saying the Court should follow politics, but that the law should develop as society changes. By doing this, they show that abortion rights are part of a larger fight for racial, sexual, and personal freedom.

According to the dissent, the majority's silence on the experiences of vulnerable women, particularly victims of rape and incest, illustrates a profound disconnect from the lived realities of those most affected by this decision. They mean that these missing rights aren't just legal oversights but show that the law has often ignored whose pain and struggles really count. The dissent argues that by abandoning *stare decisis* and discarding long-standing precedent, the majority undermines the Court's legitimacy, damaging the public's trust in its ability to uphold neutral legal principles. In this way, the dissent's argument goes beyond just legal reasoning to highlight how the Court's decisions affect real people's lives and ongoing struggles for civil rights. While it connects to broader social movements, the dissent still frames its concerns in terms of constitutional principles and equal protection under the law. By framing the decision as part of a larger resistance to societal regression, the dissent emphasizes that the fight for reproductive rights is linked to the larger struggle for justice, equality, and freedom in American society. It positions itself as a moral and legal stand against the destruction of fundamental rights, signaling a collective call to defend and extend the protections that have been won through years of social struggle.

Lastly, going back to the discourse and the language part of the opinion, seeing as the language of the dissent not merely functions as a legal counterargument, but as a form of protest and solidarity. By referring to "the many millions of American women" (app. B, ll. 1138–1139), the dissent employs emotionally resonant and inclusive language that reaches beyond the courtroom, speaking directly to the public. This rhetorical choice transforms the dissent into a call to awareness, action, and resistance. It frames the opinion not only as a judicial disagreement but as a moral and societal stance, inviting

readers, especially those affected, to recognize their place in the narrative and potentially mobilize for change. In doing so, the dissent becomes part of a broader social discourse on rights, justice, and equality, asserting that law is not static but shaped by the voices and struggles of those it governs.

Sub conclusion

There are clear signs of both moral conservatism and populism in the majority and dissenting opinions, though expressed differently. The majority opinion appeals more to tradition and frames abortions as a matter best returned to the people, in this case, the individual states, which reflects both a moral conservative and populist stance. Contrary, the dissent, while also grounded in a form of moral conservatism through their defense of established rights, reflects a more populist concern in their emphasis on the real-world impact the decision will have on individuals, particularly the most vulnerable in society. Overall, this analysis concludes that political institutions do indeed have a certain influence on judicial discourse and, consequently, on the decisions made by the court.

VI: Discussion

The discussion over political ideology in judicial discourse is an important one that covers various other subtopics, seeing as they are all somehow connected. One of the main debates is the constitutional debate about who should decide when and if a country and a people have a right to access abortion healthcare. Here the debate is about whether abortion legislation should be determined by elected representatives or interpreted and decided by unelected judges - in the sense that they are nominated through the president, who is of course elected by the population, and not the people. This is an interesting topic in all countries across the globe but especially in the case of the United States. There, both the population and the politicians are so divided in their opinion on whether the constitution should dictate abortion rights, like it has done since *Roe v. Wade* was enacted, or if the policy should be a matter for individual states, which it is now after a majority of the supreme court justices overturned *Roe* and *Casey*. On one side, the argument for judicial intervention is that courts protect minority rights from majority rule. An example of this is with *Roe v. Wade*, where it protected women's rights instead of protecting the fetus. On the other side, the argument for legislative control is that lawmaking should reflect the current societal norms, and the public should have a say through their local elected representatives. Within the U.S. constitutional framework, the debate hinges on interpretations of the Fourteenth Amendment, particularly the Due Process Clause, which has historically been understood to protect certain rights not explicitly listed in the Constitution, such as privacy and bodily autonomy. In *Roe v. Wade*, the Court held that the right to privacy encompassed a woman's decision to terminate a pregnancy. This reasoning was reaffirmed in *Planned Parenthood v. Casey*, which emphasized the right to bodily autonomy as part of individual liberty. Critics of *Roe* and *Casey*, including the *Dobbs* majority, argue that such rights are not explicitly mentioned in the Constitution and therefore should not be federally protected. The dissent, by contrast, argues that constitutional rights have always evolved through

interpretation and that stripping this liberty away undermines both individual autonomy and the legitimacy of constitutional protections more broadly. This disagreement also opens the discussion up to a larger debate about who should decide things like abortion legislation. In most European democracies this is decided within the parliamentary system instead of relying on judicial assessments of the constitution. If we look at a couple of these European examples; Poland, representing one of the most restrictive models in Europe regarding abortion access. Although it is a parliamentary democracy, the Polish approach demonstrates how legislative power, especially when held by a socially conservative majority, can still lead to severe limitations on individual rights. Abortion laws in Poland have been very strict for a long time, even before the 2020 decision by the Constitutional Tribunal, widely seen as politically influenced, made them even tougher by banning nearly all abortions, including cases involving fetal abnormalities. Unlike in the U.S., where court rulings are based on interpreting a liberal constitution, this decision in Poland reflected the conservative agenda of the ruling Law and Justice (PiS) party and its strong ties to the Catholic Church. It shows how, in a parliamentary system without strong constitutional limits or independent courts, political power can lead to laws that are just as, if not more, restrictive than those created through judicial decisions in systems like the U.S (Warsaw, 2020). By contrast, another example; Denmark, reflects a much more liberal and, some might say, more stable model of parliamentary governance concerning abortion. Since 1973, abortion has been legal on request up to 12 weeks of pregnancy, and public health services support access. The law enjoys broad political and societal consensus, and changes to it have been rare and incremental, although they just passed a parliamentary decision to expand abortion access up to the 18th week. In Denmark, along with other more liberal democracies, abortion is not framed primarily as a constitutional or moral crisis but as a matter of public health and personal autonomy managed within the political system. Arguments and explanations for what helps Denmark maintain a balanced approach is its strong welfare system, separation of church and state, and a general trust in government. These factors supposedly make the political climate more stable and supportive of individual rights, without turning issues like abortion into major political battles.

Both examples help highlight different kinds of institutional designs, judicial vs. legislative, and their influence on abortion policy. The case of Poland also clearly shows that although the institutional design is different from the one in the U.S. that does not mean it is necessarily 'better', of course considering that the term better is subjective to individual opinion. The U.S. model relies heavily on constitutional interpretation, which can at times lead to dramatic swings in policy based on judicial appointments. Here, democratic European models, while not immune to politicization, tend to reflect more gradual and negotiated changes through elected bodies. This debate also touches on broader political ideas like populism and moral conservatism. In both Poland and parts of the U.S., populist groups have used conservative values to gain support, often presenting abortion not as a personal or health care issue, but as one tied to national identity, tradition, and family values, as also shown in the analysis of the majority opinion. This way of framing the issue can result in laws that don't always match public

opinion but are still passed through systems that appear democratic. Here it also sparks a key debate on whether moral issues like abortion should be decided by the majority through politics or protected by the constitution. Those who support court involvement believe judges help protect the rights of minorities, like in *Roe v. Wade*, which defended women's autonomy even when public opinion was split. Others argue that laws should be made by elected politicians, as they better represent the changing values of society.

But what happens when elected politicians are the ones who choose the judges, as is the case in the U.S.? This raises an important question: is that process truly democratic and representative, or does it risk undermining the separation between law and politics? While judges are nominated by elected officials, typically the president and confirmed by the Senate, they are not directly accountable to the public. This creates a system where long-term judicial decisions can reflect the political goals of a temporary majority, rather than the broader or evolving views of society. As a result, major legal rulings may end up being shaped more by political ideology than by neutral legal interpretation, blurring the line between fair representation and political bias. In this context, one could argue that the U.S. has created the situation it's in now, although many people don't see a problem with it. Since *Roe v. Wade*, abortion legislation has been decided almost entirely by judicial opinion and interpretation. The core argument in *Roe*, *Casey*, and even in dissenting opinions has been centered around the right to privacy. The justification for why abortion should be widely accessible at the federal level is subjective, especially since it's not explicitly mentioned in the Constitution. This has made it necessary to rely on interpretations, or even loopholes, in how the Constitution is read to defend federal abortion access. Although this approach worked for over 50 years, one could argue that the system for handling abortion legislation is flawed. The way it is decided should not rely solely on old amendments and judicial opinions, perhaps it should also involve input from medical experts and a broader range of perspectives.

The politicization of abortion doesn't just highlight the tension between the courts and elected politicians, it also raises bigger questions about whether the U.S. is even functioning as a truly representative democracy. When such a deeply moral and controversial issue is decided by judges, who were appointed by officials that often didn't even win the popular vote, it's fair to ask: how democratic is that really? This connects directly to the structure of the U.S. election system. Things like the Electoral College and the Senate give more power to smaller states and allow politicians to gain huge influence without representing the majority. For example, presidents can be elected without the popular vote and still appoint judges who serve for life. This is exactly what happened with the Supreme Court leading up to the overturning of *Roe v. Wade*. Judges who were confirmed by Senates that didn't reflect the will of the majority ended up deciding one of the most divisive issues in the country. At the same time, most Americans support keeping abortion legal in some form (Pew Research Center, 2024). So, if the laws no longer reflect public opinion, but rather the views of a politically powerful minority, then it's fair to question whether this system is doing what a democracy is supposed to do – represent the people. Furthermore, the combination of populism and moral conservatism, as seen in the case of *Dobbs*, has

had an effective political influence on judicial decisions. These two movements or ideologies have helped allow minority groups, especially in some states, to pass strict abortion laws, appoint judges who support such laws, and even help shape the national debate. While this might be legal under the current U.S. system, it raises questions about the democratic process. Why is a matter that is claimed to belong to the court so heavily politically influenced – and why should it not instead be decided in a parliamentary body, like it is in many other democracies around the world? However, in the end, abortion is not just about the courts or the individual rights, it is about how power is used, who gets to decide, and whether a system still represents the values of most of the society.

V.II Conclusion

Abortion is not just a medical or moral issue; it is a political and constitutional battleground that reveals deeper tensions within American democracy. This thesis aim was to investigate whether and how political institutions influence Supreme Court decisions on abortion in the United States. By examining the roles of moral conservatism and populism in judicial discourse, it found that both ideologies are present, particularly in the majority opinion of the Dobbs decision, which overturned nearly 50 years of federally protected abortion rights. The majority opinion shows how court decisions can reflect political beliefs, making it hard to separate fair legal interpretation from politics. While the dissent focuses on personal freedom and how the Constitution can change over time, the majority leans on traditional values and what most people believe is right. This divide shows deeper problems in the U.S. system, like the struggle between keeping the courts independent and letting politics influence them, between protecting the rights of smaller groups and following what most people want, and between sticking to the Constitution's original meaning and updating it for today's society. Unlike many parliamentary democracies, where elected bodies determine abortion policy, the U.S. has historically relied on the courts. However, this model becomes problematic when judicial appointments themselves are politically motivated, creating a situation where unelected judges, nominated by presidents who may not reflect the will of the majority, determine laws that affect millions. This raises critical questions about democratic legitimacy and institutional accountability. Looking at countries like Denmark and Poland helps show how different systems handle abortion laws. While Denmark offers an example of consensus-driven abortion law within a parliamentary system, Poland demonstrates how legislative majorities with strong ideological agendas can also undermine reproductive rights. These examples show that no system is perfect, but that democracy may work better when big moral and health issues like abortion are discussed openly by elected leaders and not decided in secret by judges.

This is all something that would be interesting to explore even further, specially making a more extensive comparative institutional analysis, which could help clarify how different democratic systems manage controversial moral and healthcare policies like abortion. Comparing presidential systems like the United States with parliamentary systems such as Denmark or Poland could offer insight into which institutional structures best balance individual rights with democratic legitimacy. A

key question would be whether relying on elected legislatures, rather than courts, leads to more stable or representative abortion policies. Getting this international perspective, would make a more well-rounded analysis, putting the individual countries situation into a larger perspective. This, along with exploring what institutional interests' political institutions might have in criminalizing abortion, could provide an interesting perspective. Finally, a last thing, among many possible things, that could be interesting to explore further is the role of the medical field in decisions about abortion. Since abortion is a healthcare issue, as well as many other things, it makes sense that doctors, nurses, and health experts should be more involved in shaping the laws and policies. However, many decisions are made by politicians or judges, often without much input from medical professionals. Future research could investigate how involving the medical field more directly might lead to better and more balanced policies. It could also help shift the focus from political and moral debates to the actual health and well-being of the people affected.

To conclude, abortion is a deeply divisive issue that lies at the intersection of law, politics, morality, and healthcare. This thesis has shown how political institutions influence Supreme Court decisions, highlighting the challenge of balancing democratic legitimacy with judicial impartiality. The Dobbs decision, which overturned long-standing precedents like *Roe v. Wade* and *Planned Parenthood v. Casey*, demonstrates how both majority and dissenting opinions contain political influences, whether through moral conservatism and populist rhetoric in the majority, or through a counter-ideological stance in the dissent. This reflects broader tensions in American democracy over the role of courts, the influence of politics, and the competing values that shape constitutional interpretation.

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IX. Appendices

Appendix A: Majority Opinion by Justice Alito

Appendix B: Dissenting Opinion by Justices Breyer, Sotomayor, and Kagan