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Reading and Learning Journal:

**The US Supreme Court in the Context of
the *Dobbs v. Jackson Women's Health
Organization* Decision**

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Table of Content

1. Introduction	1
2. Mauk, David and Oakland, John (2005): “The Legal System”	2
2.1 Central Aspects.....	2
2.2 My Engagement with the Text	3
3. Saletan, William (2022): “The Data Have Spoken: Abortion Was a Decisive Issue in the 2022 Midterms”	5
3.1 Central Aspects.....	5
3.2 My Engagement with the Text	6
4. Berger, Martina (2022): “Explaining SCOTUS’s Abortion Decision in <i>Dobbs v. Jackson Women’s Health Organization</i>”	7
4.1 Central Aspects.....	8
4.2 My Engagement with the Text	9
5. Chappell, Bill and Nell Clark (2022): “The Supreme Court’s majority and dissent opinions on <i>Dobbs</i> reveal a schism.”	10
5.1 Central Aspects.....	10
5.2 My Engagement with the Text	12
6. Alvaré, Helen (2022): “<i>Dobbs</i> decision shows US can be both powerful and humane”	13
6.1 Central Aspects.....	13
6.2 My Engagement with the Text	14
7. My Personal Impression of our <i>Dobbs v. Jackson Women’s Health Organization</i> Debate on the 21st of December 2022	15
8. Conclusion	16
9. Works Cited	18

1. Introduction

“Few institutions have inflicted greater suffering on more Americans than the Supreme Court of the United States. [...] The justices of the Supreme Court are the closest thing America has to actual royalty. They serve for life and hold their offices due to presidential appointment – not because they earned a mandate from the people in an election.”

Millhiser, Ian (2016). *Injustices. The Supreme Court's History of Comforting the Comfortable and Afflicting the Afflicted*. New York: Nation Books. Web. (16 Jan. 2024).

This quote by Ian Millhiser, provided to our seminar by Laura Borchert, offers a deep insight into the US Supreme Court and its position in American society. It therefore hints at the existence of a deep conflict between the Court and the public opinions towards it. It moreover seems contradictory to speak about the Supreme Court, the highest court in the US, that is supposed to resolve conflicts, in connection to potential harm that it has inflicted on the whole nation. So, what does this really mean? Can one see traces of that harm in today's context?

Before visiting this seminar, I had limited previous knowledge on the Supreme Court but also on the American legal system in general. Hence, I had been asking myself which exact position the Supreme Court takes in the American legal system as well as in American society. Additionally, the question arose which relationship the American people have with their highest court. However, I had heard about a few court decisions before that drew national attention and resulted in deep controversies, which is something the quote I began with already hinted at. In this context, our seminar's main focus was the recent *Dobbs v. Jackson Women's Health Organization* decision, which was officially released on the 24th of June 2022, leading to far-reaching constitutional, legal but also health consequences for everyone in the US who can get pregnant. Before attending this seminar, I had been asking myself which factors led to this decision as well as which arguments were prominent for both sides.

I want to use this reading and learning journal to document my engagement with the course topics and a selection of texts we have read and discussed in our seminar sessions. In this context, I want to search for answers to the questions I raised earlier, but more importantly, I want to gain an in-depth understanding of the Supreme Court as a highly important American legal institution as well as the *Dobbs* decision with its far-reaching consequences for American society.

2. Mauk, David and Oakland, John (2005): “The Legal System”

After setting the general tone for our upcoming seminar in the first meeting, we began our second session with Mauk and Oakland’s text “The Legal System” which was published in 1995 as the eighth chapter of their introductory literature piece “American Civilization”. This text was of high importance for me, as it helped me to gain a fundamental understanding of US law and the US court system with the Supreme Court as its highest institution. I perceive my engagement with this text as a crucial step of my learning process, as this offered me a general basis I could build on in the further course of this seminar. Since our seminar’s main topic was the Supreme Court, I will particularly focus on this in the following outline of the text’s central aspects.

2.1 Central Aspects

In their text, Mauk and Oakland explain the general structure of the American legal system by naming the main participants, which are the independent courts, judges and lawyers that are operating on the federal, state, and local system level. Additionally, Mauk and Oakland distinguish between civil and criminal law, whereas civil law includes conflicts between individuals or groups of people who are seeking for (financial) compensation due to loss or damage caused by others, criminal law is connected to trials against and punishment of persons who have committed crimes against society, such as theft or murder (cf. Mauk and Oakland: 182f.).

Furthermore, the authors make a short digression into the legal history of the US by explaining that one major source of its law, the common law, stems from the era of the British settlement. The common law (or case law) was adopted and is still being applied in 49 states, with the exception of Louisiana (cf. *ibid.*: 184). The case law is administered and interpreted by US courts and judges that often base their decisions on previous similar cases, called precedents (cf. *ibid.*: 187). A second source to American law is the so-called statutory law, consisting of laws having “been passed by state or federal legislature” (*ibid.*).

According to Mauk and Oakland, US courts play an influential role in American society, as their decisions directly affect American people’s daily lives. While state and local courts are responsible for deciding the vast majority of cases, some are, in specific circumstances, directly appealed to higher courts, i.e. the federal courts. The federal courts, in specific, deal with cases and laws that concern federal questions, or, in the light

of the Judiciary Act of 1789, directly touch the Constitution (cf. *ibid.*: 185-188). The highest rank of those courts is taken by the US Supreme Court, located in Washington DC (cf. *ibid.*: 188). It consists of nine justices, one of them functioning as chief justice (cf. *ibid.*: 189). Just like other federal judges, a Supreme Court judge gets nominated by the President, approved by the Senate and serves until retirement or death (cf. *ibid.*: 186). In general, the Supreme Court mostly functions as an appellate court, being able to review any executive or legislative action and law and having the power to overturn any previous court decision if it happens to violate federal law or the Constitution itself. Hence, it functions as a protector of the Constitution.

Although the Supreme Court does not have the power to make laws (cf. *ibid.*: 190), its actions as an independent branch of government that stands “above politics” (*ibid.*: 195) still have a certain legislative and policy-making force. Due to its far-reaching power, it is generally argued that the Supreme Court is, to a certain extent, a political institution that indirectly sets the tone for political processes in the country (cf. *ibid.*: 186f.). The justices of the Supreme Court, therefore, have a highly influential power, as their decisions significantly influence US Americans’ lives (cf. *ibid.*: 195). Their political attitudes can vary from liberal to conservative, which may also be reflected in their decision-making. The Supreme Court has made a few landmark court decisions that still have a precedent-role today.

Additionally, Mauk and Oakland define the relationship between US Americans and their legal system, claiming that US society is deeply intertwined with its legal system, which results in Americans making active use of it and not hesitating to take legal actions if necessary (cf. *ibid.*: 182). This character trait is opposed with the existence of a certain mistrust people have in the abilities of their courts to effectively protect US citizens (cf. *ibid.*: 202). This mistrust also applies to the Supreme Court and fundamentally shapes American’s relationship with their highest court (cf. *ibid.*: 195).

2.2 My Engagement with the Text

I generally perceived Mauk and Oakland’s text “The Legal System” to be highly informative, as it supported me in gaining a fundamental understanding of the US legal system and its institutions, like the Supreme Court. In connection with our course discussion, I was able to form a general understanding of the fundamental differences that exist between the American and the, to me more familiar, German judicial system. In this

context, I was certainly surprised to learn about the importance that trial juries and case law have in the US, neither of which are part of the German system. I have heard of both of them before, but certainly did not grasp the full importance of those constituents for the US legal system before attending this seminar.

Additionally, I specifically found it interesting to read Mauk and Oakland's depiction of the mixed American attitude towards the legal system. I was therefore very surprised to learn about the certain level of mistrust a part of American society shows towards the American legal system. I think that similar traits can be found in German society too, but I would argue, taking Mauk and Oakland's description into account, that the situation in Germany differs from the situation in the U.S. Concerning this specific question, our seminar discussion with Professor Olson helped me to gain clarity, since she pointed out that this mistrust may be a bigger issue in America than in Germany. Regardless of this, Americans' relationship with their legal system appears to be deeper than the Germans' relationship with their legal system.

An additional important learning step for me was to gain an impression of the importance the Supreme Court has for American everyday life, regardless of the lack of support that some of the judges experience from the American people nowadays. When I compare this to the German context, I cannot help but come to the conclusion that the general relationship between the German people and their "Bundesverfassungsgericht" differs to a great extent. I myself, and I believe most Germans, do not know the names of the German "Bundesverfassungsrichter:innen", which showcases this fundamentally different relationship between the American and German people and their highest courts. In the same essence, the decisions of the German "Bundesverfassungsgericht" seem to not receive as much national attention (except for the "Kopftuchurteile"¹) as the Supreme Court decisions.

Besides these comparative aspects, my most important learning step in the context of this text and the related seminar session was to understand that the Supreme Court is a formally non-political institution which, nevertheless, has a high political influence in the

¹ which ruled whether women were allowed to wear hijabs while being in public office or working in state jobs

US, shaping with its decisions American society and everyday life. This specific learning step was of utmost importance for me in the light of our general seminar topic.

3. Saletan, William (2022): “The Data Have Spoken: Abortion Was a Decisive Issue in the 2022 Midterms”

After acquiring a basic understanding of the US legal system and the Supreme Court as a legally but also politically influential institution, our seminar’s focus shifted towards a recent Supreme Court case: the *Dobbs v. Jackson Women’s Health Organization* decision, which was officially released on the 24th of June 2022, after having been leaked beforehand (cf. Berger 2022: n. pag; de Vogue, Sneed, and Cole 2023: n. pag.). This Supreme Court ruling overturned the previous landmark case *Roe v. Wade* from 1973 which originally guaranteed abortion as a constitutional right (cf. history.com 2023: n. pag.).

Before diving deeper into the case itself, we began by informing ourselves about the upcoming midterm elections in connection with the *Dobbs* decision. The midterm elections are typically held halfway through the presidency of a US president and put up for vote all seats of the House of Representatives and approximately one third of the Senate seats (cf. Tagesschau n.d.: n. pag.). In this context, we dealt with the correlation of the *Dobbs* decision and the outcome of the midterm elections by, for example, reading the article “The Data Have Spoken: Abortion Was a Decisive Issue in the 2022 Midterms”, written by William Saletan and published on the 11th of November, which I will be summarizing and discussing in the following.²

3.1 Central Aspects

Saletan’s main point is that the Republican party achieved relatively poor election results which is a specifically surprising outcome for a party currently being out of power. Accordingly, it is pointed out that the Republicans lost important governorships, were not able to capture the Senate and hardly gained any seats in the House of Representatives. The author traces this back to the *Dobbs* decision that was released nearly five months before the midterm election took place. To prove his point, Saletan quotes several surveys showcasing that abortion was not only an important matter for most Americans but also a major aspect influencing people’s willingness to vote as well as what they voted for.

² The following paragraphs relate to this citation: Saletan, William 2022: n.pag.

In this context, Saletan mentions several VoteCast polls that were conducted in the context of the midterm election in 2018 and 2022. Whereas in 2018 abortion was an important topic for Republican voters, it was not in 2022. In comparison, in 2022 abortion was a highly important matter for people who votes for the Democrats. Additionally, another survey showed that the fact that *Roe* had been overturned had an immense effect on “pro-choicer’s” votes. All the aforementioned aspects significantly boosted pro-choice Democratic candidates.

In general, the article points out that the numbers being presented do not prove that the Court made a mistake with overturning *Roe*, but that most voters are pro-choice than pro-life, which manifested itself in their voting choices. The surprising election outcome may have resulted from people showing up to vote, who would have not voted under other circumstances, just like from traditional Republican voters switching sides to position themselves against the Republicans’ anti-choice agenda.

3.2 My Engagement with the Text

Generally, reading this text and discussing the midterm elections in our seminar sessions gave me a deeper understanding of the far-reaching consequences Supreme Court decisions can have for US politics and society. As mentioned before, this may not be comparable to the German context, which made it complicated for me to grasp the full picture at first. In this context, the initial impression I had gained through reading the text was reinforced and expanded by Professor Olson who offered lots of background knowledge and contextualization in connection with the texts we have read before. Since I had limited previous knowledge about the midterm elections as such, I was surprised to learn that this outcome was specifically surprising due to the Republican party being the party out of power. Professor Olson explained this by pointing out that people tend to become frustrated with the party in power, which is why midterm elections typically end in favor of the party out of power, which sounds highly legitimate to me but was a factor that I had not thought about beforehand.

Moreover, our seminar session equipped me with further contextual information given by the text, which additionally supported my personal learning process. Whereas the text pointed out that the Republicans made hardly any gains in the House of Representatives, Professor Olson explained to us that the party may reach the majority in the House but definitely not enough seats to impeach Biden’s position as US-President

(which is a development that became true in the days after our seminar session). Additionally, we further discussed the term “red wave” that was permanently used by Fox News in the context of this topics but ended up being no more than a red “trickle”. I had issues with understanding these terms in this specific context, which was another aspect Professor Olson covered in our seminar session.

A fact we also discussed, which was not part of the article itself, was the change the Republicans performed over the course of the election campaign. According to Professor Olson, they seemed confident with their position when the *Dobbs* decision was released but soon realized that there is not that much “antiabortion sentiment”³ out there which was the main reason for them to change their topics and their wording throughout the pre-election time.

In general, reading this text and discussing it was an important learning step for me, as it gave me a deeper understanding of what Mauk and Oakland meant by saying that the Supreme Court is a politically influential institution, operating indirectly. Additionally, it also introduced me to the *Dobbs* decision itself, which I had already heard about but only had limited previous knowledge about before attending this seminar. Accordingly, reading this article served as a fundamental basis for our upcoming seminar sessions about the *Dobbs* trial.

4. Berger, Martina (2022): “Explaining SCOTUS’s Abortion Decision in *Dobbs v. Jackson Women’s Health Organization*”

After acquiring a basic understanding of the political importance *Dobbs v. Jackson* had for the outcome of the midterm elections, our seminar’s focus was shifted towards the decision itself. Accordingly, we dealt with multiple articles that were written from a neutral, pro-, or contra-*Dobbs* perspective in order to gain a profound understanding of the arguments that were used by both sides. In this context, we also read Martina Berger’s article in which she strongly disagrees with the arguments used by the majority opinion of the *Dobbs* decision, written by Justice Samuel Alito.⁴

³ quote by Professor Olson, uttered in our 5th seminar session on the 16th November 2022

⁴ The following paragraphs relate to this citation: Berger 2022: n.pag.

4.1 Central Aspects

Berger leads into her text with quoting crucial extracts of the majority opinion. By doing so, she points out that according to Justice Alito abortion should not be considered a fundamental constitutional right, as it is neither specifically mentioned in the Constitution nor deeply rooted in the country's history or traditions. Berger criticizes Alito by calling his view onto the Constitution to be "antiquated", as he bases his opinion on legal documents from thirteenth-, seventeenth-, and eighteenth-century England and eighteenth and nineteenth century America while, according to Berger, ignoring any social and cultural change that occurred over the course of the last centuries.

Moreover, Berger analyzes Alito's approach to be an extreme form of originalism, which assumes that the Constitution must be interpreted in the light of the time it was adopted in. She deplores the Court's originalistic way of interpretation to be extremely "troubling" (2022: 3), as it positions its argumentation into a time approximately 200 years ago, where the Constitution conferred women and people of color hardly any rights while only perceiving white property-owning males as full US citizens. She therefore agrees with the dissent, supported by the justices Breyer, Sotomayor, and Kagan that accuses the Supreme Court of ignoring any kind of social or cultural change while limiting women's rights and taking away their status as free and equal citizens, impacting women of color and of limited means the most.

Moreover, Berger disagrees with Alito's claim about the *Roe v. Wade* decision having relied on precedents not similar enough to be used as a constitutional foundation (cf. *ibid.*). For her, this logic used by the majority opinion makes it nearly impossible to recognize any unenumerated right that is not specifically mentioned by the Constitution. According to Berger, this legal reasoning which is newly adopted by the majority of the Supreme Court could pose a danger to a multitude of other recognized unenumerated rights that form an enormously important foundation of today's American society (cf. *ibid.*: 4). In this context, she instances a few precedent cases, like *Obergefell v. Hodges* (ruling the equality of same-sex couples) and *Griswold v. Connecticut* (securing contraception usage) that could be endangered because they have been legally based on the right to privacy or the right to liberty; a legal reasoning the conservative side of the Supreme Court increasingly criticizes. Berger adds that none of those rights were recognized legislatively, legally, or socially in the nineteenth century but still are

generally considered an important part of the modern American society (cf. *ibid.*). She moreover outlines the troubling development of Justice Thomas having announced further reviews on the cases mentioned above.

Generally, Berger's main concern is to draw attention to the Court's development towards a more and more extreme way of a constitutional interpretation influenced by Originalism, however, is not a fundamentally new phenomenon. She proves her point by mentioning the pre-*Dobbs* case *New York State Rifle and Pistol Association v. Bruen* that lead to the Supreme Court restricting any kind of gun control measures and basing this decision on rights and norms from hundreds of years ago.

4.2 My Engagement with the Text

One major question I had been asking myself, before going into greater detail with my research on the *Dobbs* trial, concerned the legal arguments that had led to the *Dobbs* decision to overturn *Roe v. Wade*. In this context, I personally perceived Berger's text to be highly informative as it provides detailed information on the arguments used by the majority opinion. In this context, I was especially surprised to learn that the core element of the conflict between both argumentative sides was, in fact, about having a different opinion on the correct way of interpreting the constitutional text. The concept of originalism and the legal discussion surrounding it was completely unfamiliar to me, as I could not remember ever seeing something comparable in the context of the German "Grundgesetz".

Our fifth and sixth seminar session with Professor Olson therefore deepened my initial understanding of this concept that I had previously gained by reading Berger's text and provided me with additional contextual information about the problems connected to this way of legal interpretation. Hence, we discussed the problems that arise out of the fact that the Constitution as a legal document was composed and ratified over 200 years ago as well as the fact that the founding father, who composed the Constitution, were all white land-owning cis men. Accordingly, we came to the conclusion that this group of people cannot possibly reflect today's highly diverse society and, in the light of their time, probably could not have grasped the importance social equality and liberty would have for today's American society, which suggests for a contemporary way of interpreting the Constitution.

Another surprising point I learned through our seminar's discussion concerns the Supreme Court's relationship with the American people. Accordingly, understanding that the Court does not necessarily act in a way that represents the broad public opinion was an important learning step for me, as I was not particularly familiar with this from the German context and the German "Bundesverfassungsgericht". Hence, I personally do not remember any specific "Bundesverfassungsgericht"-Decision that a majority of Germans disagreed with. In this context, Professor Olson explained to us that the German highest court tends to go with the people's opinion on certain matters, which cannot be said about the US Supreme Court. Reading Berger's text and participating in the seminar discussion were two major factors that helped me to gain a deeper understanding of the somehow torn relationship between the American people and their highest court.

5. Chappell, Bill and Nell Clark (2022): "The Supreme Court's majority and dissent opinions on *Dobbs* reveal a schism."

After gaining a fundamental impression of the *Dobbs* decision and potential criticism on it, our seminar's main focus was laid on informing ourselves about the legal arguments that the majority and the dissent used in order to discuss their legal, social, and cultural justification. One exemplary text we read and discussed in connection with the aforementioned goal was Chappell and Clark's article "The Supreme Court's Majority and Dissent Opinions on *Dobbs* Reveal a Schism", which was released on the 24th of June 2022 on National Public Radio. This article was particularly interesting in the light of our seminar's topic, as, in opposition to multiple other articles we read, it offers a neutral insight into the argumentation of both sides. Accordingly, it was a suitable addition to the previously discussed Berger text which argued from a contra-*Dobbs* perspective.⁵

5.1 Central Aspects

In this text, the two authors Chappell and Clark give an introduction to the content of both sides' opinion writings while also pointing out which justices stood on which side in the *Dobbs* trial. Accordingly, they mention that Justice Alito, who wrote the majority opinion, was joined by Thomas, Gorsuch, Kavanaugh, and Barrett, whereas the justices Breyer, Sotomayor, and Kagan collaboratively authored the dissent. According to Chappell and

⁵ The following paragraphs relate to this citation: Chappell and Clark 2022: n.pag.

Clark, the majority's main conclusion was that the Gestational Age Act of the State of Mississippi, prohibiting abortions after the 15th week of pregnancy, was justified. This general conclusion also led to the Supreme Court overturning *Roe v. Wade*, thereby sending the authority to regulate abortion back to the states. They, moreover, state that Alito had argued for the *Roe* decision to be wrongfully made from the beginning, as it allegedly ignored the fact that a right to abortion is not directly covered by the US Constitution. *Roe*'s original argumentation, which put the right to abortion under the sphere of influence of the constitutional right to privacy, is rejected, as this right is not directly mentioned either. According to Alito, the majority's main goal is to pay "respect for and preservation of prenatal life at all stages of development" (Chappell and Clark 2022: n. pag.).

The dissent, on the other side, accuses the Court of limiting women's rights as free and equal US citizens by granting the unborn fetus more rights than the pregnant woman. Additionally, Breyer, Sotomayor, and Kagan claim that *Roe* being overturned has nothing to do with social or scientific change, but with changes in the personnel composition of the court itself. By pointing this out, the minority side hints at Trump's nomination of the justices Neil M. Gorsuch, Brett Kavanaugh, and Amy Coney Barrett during his presidency, which significantly shifted the Court's political spectrum into a more conservative direction (cf. Baker and Haberman 2020: n. pag.).

The dissent's main criticism of the majority opinion concerns the way it adopts Originalism in connection to their constitutional interpretation while fully rejecting the fact that the framers of the 14th Amendment, all being men, presumably did not grasp the far-reaching importance that reproductive rights as well as individual liberty and societal equality of women would have for today's developed society. Hence, the dissent argues that it is not a satisfactory justification to exclude a right to abortion for today's society and, by that, disadvantaging women, only on the basis of the Constitution as a centuries-old document not explicitly mentioning that specific right.

Justice Alito rejects this accusation of the *Dobbs* decision disadvantaging women by pointing towards the existing possibility for women to use their voting right in their state to influence state law concerning this certain matter. Additionally, just like Berger, the dissent hints at the potential threat that the *Dobbs* decision poses for other unenumerated constitutional rights that were legally based on the right to individual

freedom and privacy. They, therefore, seem convinced that similar Court decisions might follow in the near or distant future.

5.2 My Engagement with the Text

As mentioned before, this text combined with Berger's text helped me to gain a deeper understanding of the majority's argumentative line as well as the dissent's criticism on it. Before going into greater detail with my research about the *Dobbs* trial, I had limited previous knowledge on the different Supreme Court justices and their positions in the *Dobbs* trial. Hence, reading Chappell and Clark's text gave me a more comprehensive understanding of the justices' involvement in the trial which is linked to their political positioning. This certain context made more evident for me what Mauk and Oakland could have meant by claiming that the Supreme Court was a somehow political institution having a direct or indirect effect on contemporary political events. In this context, Professor Olson's explanations during our seminar session about this article made it more obvious to me that the political positioning of nine people, having a high rank in the US legal system, can have a massive influence on the lives of millions of Americans. To make the situation clearer, Professor Olson added during our seminar session that the Supreme Court "is exercising raw power because a vast majority of Americans don't like abortion but want women to have a choice"⁶.

Another major aspect our course discussed in detail concerns Alito justifying the *Dobbs* decision with pointing towards the "respect for and preservation of prenatal life at all stages of development". In this context, Professor Olson explained to us that this is a highly critical point of discussion between pro-life and pro-choice activists, as both sides disagree on the question from which point on one can speak about "life" as such. In this context, we dealt with the high importance this termination has, since the use of the word "fetus" or of the word "human" fundamentally differ from each other and reveal a different mental concept about the issue itself. Generally speaking, reading Chappell and Nell's text offered me further information on the *Dobbs* trial itself and, additionally, helped me to understand the general argumentation line of the majority opinion and gave me an impression on the general points of criticism the dissent voiced in connection to it.

⁶ oral quote by Professor Olson, made in our 7th seminar session on the 30th of November 2022

6. Alvaré, Helen (2022): “Dobbs decision shows US can be both powerful and humane”

In opposition to several contra-*Dobbs* articles and relatively neutral texts, we also turned to pro-*Dobbs* articles in order to gain a deeper understanding of the way the majority opinion legally argues for its side. In this context, Professor Olson asked us to read Helen Alvaré’s article “*Dobbs* decision shows US can be both powerful and humane”. In her article, Helen Alvaré, the associate dean for academic affairs and the Robert A. Levy Chair in Law & Liberty at George Mason University, directly reacts to the trial’s outcome, publishing her reaction just two days after the decision’s release. In this context, Alvaré expresses her positive view onto the *Dobbs* decision, arguing for it to be a fundamental success.⁷

6.1 Central Aspects

In her article, Alvaré expresses her delight about the trial’s outcome, as it finally gives a basis for forbidding abortion that, according to her, should have never been allowed in the first place. She points out that many US states will probably continue to allow abortions but she still considers the *Dobbs* decision a groundbreaking success, as it took away abortion’s status as a constitutional right. For Alvaré, this legal action proves that the US has the capability to be powerful and humane at the same time.

Alvaré claims that the *Dobbs* decision was not only a win for democracy and for the pro-life movement but also for unborn life and for women in general. Firstly, she argues for it to be a win for US democracy, as she considers the ruling not a sole accomplishment of the Supreme Court but rather of the people who put the Constitution and the Bill of Rights into their position. In this context, she also mentions the American people having voted against a right to abortion until *Roe v. Wade* “invented” one on the basis of the 14th Amendment. Secondly, Alvaré argues for the *Dobbs* decision to be a win for women, since, according to her, they have been pressured to perceive their childbearing capacity as a disadvantage for their education and economic opportunities throughout the last decades. Thirdly, the author puts *Dobbs* into the context of the pro-life debate, calling it a win for pro-life scholars who worked on their biological and moral argumentation against abortion as a constitutional right over the past 49 years, asking the

⁷ The following paragraphs relate to this citation: Alvaré 2022: n.pag.

country to reject the legal principle of stare decisis in the context of the allegedly wrongly made *Roe v. Wade* decision, but also calling it a win for pro-life activists who persistently worked towards the prohibition of abortion as it allegedly violates fundamental human rights of unborn children.

6.2 My Engagement with the Text

Since many of the articles we read adopt a neutral or contra-*Dobbs* perspective, reading this specific article helped me to gain a more developed understanding of the way the pro-*Dobbs* side argues and articulates its main arguments. While I can generally understand why Alvaré as a pro-*Dobbs* thinker would argue for the *Dobbs* decision to be a win for multiple actors, I was, nevertheless, surprised about multiple of her arguments.

In this context, I find it astonishing that Alvaré mentions the *Dobbs* decision being a win for human rights in general while not taking into account that the decision has taken away a fundamental right “for women” (or rather: for everyone who can get pregnant). Whatever one’s general position may be towards abortion, this fundamental legal scope should be evident to everyone involved. This argumentation implicates that the right of an unborn child is important whereas the right of people who can get pregnant to make independent choices for their own body is not. Additionally, I perceive Alvaré’s argumentation for the *Dobbs* decision being a win for democracy not to be particularly strong. She speaks about “the people” who voted for the Constitution and the Bill of Rights while ignoring the fact that those are centuries-old documents that have not been ratified by people who live today.

In general, engaging with a pro-*Dobbs* text was a highly enriching learning experience for me, as it offered me the opportunity to learn about the argumentation of this side from an inside perspective, not solely relying on texts that were written from a critical outside perspective.⁸ However, I found it challenging to approach the text neutral because my personal opinion about the topic came into play in certain contexts, but generally I am convinced that reading Alvaré’s text helped me to gain a deeper

⁸ At this point, I am aware that I have to take into account that Alvaré is not a Supreme Court justice, which means that I have to differentiate between people who position themselves to be pro-*Dobbs* and those pro-*Dobbs* people who are Supreme Court justices that played an important role in the trial’s outcome.

understanding of the pro-*Dobbs* argumentation and certain emotions that play a role in this context.

7. My Personal Impression of our *Dobbs v. Jackson Women's Health Organization* Debate on the 21st of December 2022

A highly enriching experience in the context of this seminar was my participation in our course's simulation of the *Dobbs v. Jackson Women's Health Organization* trial. As both sides used their opportunities to come up with their own arguments, not solely relying on the argumentation the assigned side of the court had established before, our debate gave me another and also more profound perspective on the *Dobbs* trial as such as well as the pro-life / pro-choice debate in general. In the context of our debate, I was part of the dissent opinion, acting as a human rights activist who strongly argues against the majority opinion and its way of ignoring the far-reaching legal and health consequences that overturning *Roe v. Wade* would have for everyone in the US who can get pregnant. One of my major arguments in that context was that statistics prove that abortion bans do not lead to a decrease of abortions that are conducted in a certain country but rather perpetuates the occurrence of unsafe abortions.

Generally, our debate gave me a deeper understanding of the circumstances that may have led to the *Dobbs* decision ending with the known outcome. Even though most of the participants probably were of the opinion that the trial should not end with *Roe v. Wade* being overturned, our group realized throughout the process of the debate how difficult it is to argue against positions of Originalism. We were convinced that we were right and maybe even had the easier side to argue for, as it fitted probably all participants' personal opinion; however, found ourselves to be confronted with a strong argumentation of the majority opinion group. Even though our debate was a simplified and shortened version of the *Dobbs* trial, it enabled me to gain a certain understanding of the complexity of such a trial as well as the great variety of influential factors that play a role in the course of such a debate (or trial). Hence, we were aware that our side winning the debate was rather a result of most of our fellow students' agreement with us on a factual level but not particularly of our strong argumentative performance.

Consequently, the debate was an enlightening experience for me, not only in the context of my learning process concerning the *Dobbs* trial itself but also in connection to

me learning about the general structure of Supreme Court trial sessions. I had heard about the different phases of such a trial session (e.g. opening and closing statements, examination and cross-examination). However, I found it a highly enriching experience to perceive and investigate those phases myself during our trial simulation. Hence, I would describe the debate to be one of my personal learning highlights of this seminar, as it helped me to deepen my understanding of the trial while being practically involved myself.

8. Conclusion

Generally, I can say that attending this seminar offered me a high number of learning opportunities that helped me to build a basic understanding of the US legal landscape and, more specifically, the Supreme Court as the highest legal institution. As stated before, I came into this seminar with limited previous knowledge about the US court system and the Supreme Court as such which, however, did not pose a problem because the course literature as well as our discussions offered me fundamental knowledge that I could build on in the further course of the seminar. In general, I found it highly interesting to learn about the importance the Supreme Court has not only for the US legal system but also for American everyday life and society. It took me some time to grasp the far-reaching political importance and influence the Supreme Court has in the US context, as it differs from the German context which I used as a comparative context according to my personal origin.

Additionally, learning about and discussing the problems that arise out of this politicalization of the Supreme Court helped me to understand and interpret the importance of the *Dobbs v. Jackson Women's Health Organization* trial and its outcome. Before attending this seminar, I had asked myself what had led to this, in my opinion devastating and highly concerning, outcome of the case. Hence, I had no previous understanding of the far-reaching conflicts that are connected to the Supreme Court as a US institution. In this context, attending this seminar helped me to build a certain understanding of the legal but also political disputes that turn this *Dobbs* trial into the highly conflictual matter that it is until today.

However, I was also shocked to learn about the legal argumentation that underlies the majority side of the *Dobbs* decision. Accordingly, I could have never imagined that the main legal argument that led to the *Dobbs* decision was deeply connected with a

selective kind of originalism that enables its user to only use those key aspects that suits the respective interpreter and its intended way of legal interpretation. I have to admit that I have no profound legal knowledge, but I was, nevertheless, shocked about this way of legal interpretation. This made far more obvious to me in which ways the *Dobbs* trial outcome is concerning, as limiting women in their individual freedom and accepting far-reaching health risks are consequences that are legally based on centuries-old documents. It was shocking to me to realize that a small group of influential judges has to power to decide highly important questions that can negatively affect the whole US nation. Hence, the quote I mentioned in the beginning of my reading and learning journal made sense to me in the end of the semester. I finally understood what Ian Millhiser potentially meant with accusing the Supreme Court of having inflicted “great suffering” on the American people. The *Dobbs* decision is therefore a prominent case example that showcases this concerning development one can observe in the US.

Generally speaking, I am thankful for my personal learning process that I experienced while attending this seminar, as it gave me the opportunity to deepen my understanding of the US in general, the US legal system, the US Supreme Court, and, more specifically, the *Dobbs* trial that will remain a highly important case throughout the upcoming years.

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