

# “PARTISANSHIP V. CONSTITUTIONAL INTERPRETATION”

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The Supreme Court of the United States (SCOTUS) is often brought to the forefront of public discussion, particularly in the wake of landmark decisions. One of the most recent examples was *Dobbs v. Jackson Women's Health Organization*, which succeeded in overturning *Roe v. Wade* and ended the federal protection of abortion. Most see the Court as highly partisan, and it certainly is. At the same time, asking what else goes into the justice's decisions may be appropriate. Are they simply political actors using their power to overturn the people's will because they feel like it? If that is the case, does our approval merely depend on them delivering a decision we agree with? Today I would like to discuss modes of constitutional interpretation, an aspect of judicial reasoning often overlooked.

We all divide the SCOTUS justices into their respective political camps, conservative or liberal. No one doubts the inherent partisanship of the justices or their personal biases, but there is more to their reasoning than policy considerations. As discussed in depth in Dr. John Aughenbaugh's Constitutional Law Course at VCU (POLI 314), the conservatives of the Court are typically what are called interpretivists (a.k.a. "strict-constructionists"), while their liberal counterparts are often non-interpretivists (a.k.a. "loose constructionists"). The former claims only to consider the letter of the law of the constitution, leaving the unelected justices out of making law (allegedly). The latter view the justices' job as updating the law to fit a changing society by disregarding the letter of the law.

It is easy to see the reasoning behind interpretivism, given the inherent issue of having unelected justices determine the law by overturning the will of the people's representatives. On the other hand, non-interpretivism led to landmark rectification of injustices like when *Brown v. Board of Education* effectively outlawed segregation. In the *Brown* case, the Court overturned well-established precedent, but everyone rightly agreed with their decision and the results. This support is much different in a case such as *Dobbs*, which served to overturn established precedent in the same way. This demonstrates at least one of the dangers of justices taking the law into their own hands.



Interestingly, political alignment and interpretation come apart in some cases, such as the highly conservative Scalia striking down flag-burning laws and violent video game bans. Still, it would be naive to say that the justices do not impart their worldview into their decisions and even into what mode of interpretation they adhere to. By understanding these similarities and differences, we can appreciate many Court decisions in a much clearer way, just as we can mitigate being surprised when they happen. Although SCOTUS justices may seem to be considering their partisanship in how they decide, there is at least a reasonably consistent legal rationale behind many of their opinions if you look closely enough.