



A DCI Deliberation Guide

Justice and the Rule of Law: Interpreting the Constitution

How should we balance the achievement of justice with the principles of a robust rule of law, and what should the goal of justice be?

About the Deliberative Series on American Values

As the United States nears the 250th anniversary of the Declaration of Independence and the nation's founding, this Deliberative Series on American Values invites participants to reflect on the foundational ideals shaping our republic for centuries. Approaching this milestone in an era marked by historical amnesia and selective memory, the series aims to foster a more complete understanding of our nation's past and present. Each forum draws from both the Declaration and the Constitution's Preamble to explore a pair of core American values that often complement each other but also have exposed deep tensions during moments of national change. Through dialogue grounded in history and informed by current policy challenges, we encourage thoughtful deliberation on how best to uphold and balance these enduring commitments in an ever-changing democracy.

Format for Deliberation

Before the Deliberation

- I. Read this Deliberation Guide (required)

During the Deliberation

- I. Setting Expectations (5 min.)
- II. Getting to Know Each Other (10 min.)
- III. Identifying Justice and Rule of Law (15 min.)
- IV. Exploring Justice and Rule of Law (20 min.)
- V. Break (5 min.)
- VI. Interactions Between Justice and Rule of Law (20 min.)
- VII. The Supreme Court: Tensions in Theory (15 min.)
- VIII. The Supreme Court: Tensions in Practice (20 min.)
- IX. Reflections (10 min.)

Background

Introduction

Justice long has been a central but difficult to pin down concept in American history. It has inspired revolutionaries and reformers, fueled the Civil Rights Movement, and guided courts and legislatures for decades. Still, justice remains a deeply contested concept, especially with regard to its purpose and application. For some, justice is about upholding clear rules and punishing wrongdoing to preserve social order. For others, it is about addressing deeper inequalities, repairing harm, and ensuring fair outcomes that reflect people's real circumstances.

The rule of law has also been one of the cornerstones of American society since its founding. The rule of law is meant to be a robust, unbreakable, and impartial system that delivers fair and just results, blind to bias or influence.¹ In his 1903 State of the Union address, President Theodore Roosevelt described the rule of law as the promise that “no man is above the law, and no man is below it.”² Yet tensions often emerge when strict adherence to the rule of law clashes with what is perceived to be just or fair. The rule of law can be a vehicle for justice, but history shows it can also perpetuate outcomes that many view as unjust.

America's commitment to these principles is enshrined in the Declaration of Independence and Constitution. The Declaration is itself a list of complaints against King George III's violations of colonial rights, legal norms, and the rule of law – over 27 grievances are listed, ranging from preventing citizens from electing their own judges to kangaroo courts to the deprivation of jury trials. In the Preamble of the Constitution, the Founding Fathers reflected their desire to establish a government of laws that protected individual rights and guarded against tyranny by listing “establish Justice” as one of the first ideals.³ However, this commitment towards justice and the rule of law has been tested throughout American history, from the injustice of slavery to the lasting effects of segregation and discrimination in modern society.

Nowhere is the tension between justice and the rule of law more visible than at the Supreme Court, where debates on the interpretation of the Constitution frequently play out. One view advocates for a strict adherence to the text, while another advocates for a more adaptive and flexible approach.

These debates may be contributing to declining trust in the Court. A recent 2024 Gallup poll found that only 35% of Americans had confidence in the judicial system and courts, which may reflect broader concerns about the rule of law and whether justice is being served.⁴ In order to understand these dynamics, it is important to explore these concepts and discover the foundational ideas behind them.

¹ [“Rule of Law.”](#) American Bar Association. 2025.

² [“The Message of the President.”](#) The New York Times. 1903.

³ [“The Preamble.”](#) Constitution Annotated. 2025.

⁴ [“Americans Pass Judgment on Their Courts.”](#) Gallup. 2024.

The goal of today's deliberation is to explore how justice and the rule of law interact—and sometimes conflict—in our legal and political systems. We will examine these values both from a historical perspective and in light of specific constitutional doctrines and Supreme Court cases.

Historical Pathways of Justice and Rule of Law

The Founding Era

Justice and the rule of law were codified and emphasized as foundational principles for the United States during the founding era. Drawing from the Enlightenment and from their own experiences with the British monarchy, the Founders sought to create a government that was grounded in protections of individual rights and limitations of the abuse of power through a robust rule of law. The Declaration of Independence makes a powerful claim that “it is the Right of the People to alter or to abolish” unjust governments,⁵ emphasizing the moral justification for government to be the preservation of natural rights and justice.

In Federalist No. 51, author James Madison, a key contributor to the Constitution, argued that justice “is the end of government. It is the end of civil society.”⁶ For Madison, the rule of law was the means by which this end towards justice could be achieved. The Constitution created a rule of law framework in order to secure vital principles such as the separation of powers, an independent judiciary, and the ultimate belief that no person is above the law.

Another source of inspiration for the Founders was the Magna Carta, a 13th century document that established the idea that even the king is subject to the law and that certain legal rights must be respected. Ultimately, the concepts within the Magna Carta became cornerstones of American due process and were enshrined in the Bill of Rights. The Bill of Rights is itself further proof of the Founders’ intention to establish a rule of law that would guarantee justice and due process.

Slavery and the Civil War

Yet, even as these ideals were written explicitly in the founding texts, their language and application were deeply flawed. The institution of slavery was a clear contradiction to the vision of justice for all, yet the rule of law for the first century of America was complicit and even supportive of the enslavement of African Americans. For example, the Fugitive Slave Act of 1793 and its more expansive version passed in 1850 required the return of slaves to their owners, even in free states, and often with little to no proof that an individual was a fugitive.⁷

As the nation expanded from the original thirteen colonies, fierce debates about the morality and permissibility of slavery revealed how deep the divide was over what justice and rule of law meant in America. Abolitionists argued that slavery violated the Declaration’s promise that “all men are created

⁵ [“Declaration of Independence: A Transcription.”](#) National Archives. 2025.

⁶ [“The Federalist Papers: No. 51.”](#) The Avalon Project. 2008.

⁷ [“The Fugitive Slave Act \(1850\).”](#) National Constitution Center. 2025.

equal,”⁸ while defenders of slavery insisted that the rule of law and various Supreme Court rulings, such as *Dred Scott v. Sanford*, protected their ability to own property, including human beings.⁹

Eventually, this conflict reached its breaking point with the Civil War. At the outset of the war, President Abraham Lincoln insisted that the war was not about freeing enslaved people in the South, but about preserving the Union.¹⁰ He wrote in an editorial in August of 1862 that “my paramount object in this struggle is to save the Union and is not either to save or to destroy slavery.”¹¹ But by September of that year, Lincoln issued the Preliminary Emancipation Proclamation, and a few months later, the Emancipation Proclamation paved the way for the permanent abolition of slavery in the United States. His decree had enormous symbolic power as it announced freedom for enslaved people as one of the North’s war aims, alongside preserving the Union itself.¹²

The Emancipation Proclamation was a key moment when an expansive understanding of justice was made compatible with the explicit rule of law. This step taken by President Lincoln laid the groundwork for the Thirteenth Amendment, which officially abolished slavery and involuntary servitude (with an exception for punishment for a crime).¹³ These two key texts helped further align the nation’s rule of law framework with its founding promise of justice and equality for all.

Civil Rights Era to Today

Despite the passing of the Thirteenth Amendment, the struggle to reconcile America’s historical injustices and the Constitution’s promise of equality was far from over. In the decades following the Reconstruction era, new systems of racial segregation and discrimination were invented to maintain stratification and inequality. Moreover, these systems were both upheld and enforced by the legal system, through Jim Crow laws and court rulings, exposing how the rule of law could still be manipulated to perpetuate injustice and inequality.

By the 1960s, the Civil Rights movement gained momentum as more and more people were frustrated and dissatisfied with the unjust ways of American society. Dr. Martin Luther King, Jr. and other activists engaged in civil disobedience, as they endeavored to challenge specific laws while respecting the general rule of law at the same time.

While imprisoned in the Birmingham Jail for leading peaceful protests against racial segregation and discrimination, King distinguished between unjust and just laws, citing St. Augustine’s famous line that “an unjust law is no law at all,” a natural law expression that emphasizes that authority is not legitimate

⁸ “[The Declaration of Independence and Slavery](#).” The Heritage Foundation. 2025.

⁹ “[Dred Scott v. Sandford](#).” 60 U.S. 393 (1856). 1856.

¹⁰ “[The Civil War and emancipation](#).” PBS. 2025.; “[Slavery as a Cause of the Civil War](#).” National Park Service. 2025.

¹¹ “[Letter in Reply to Horace Greeley on Slavery and the Union—The Restoration of the Union the Paramount Object](#).” The American Presidency Project. 1862.

¹² “[Emancipation Proclamation](#).” History. 2025.; “[Abraham Lincoln and the Preservation of the Union](#).” Jack Miller Center. 2025.; “[Emancipation Proclamation \(1863\)](#).” National Archives. 2025.

¹³ “[Thirteenth Amendment](#).” Constitution Annotated. 2025.

unless it is good and right.¹⁴ Dr. King's perspective was that law must be rooted in moral justice to be truly valid – unjust laws, even if legally enacted, lack legitimacy.

Understanding Justice and Rule of Law

JUSTICE

There are several different ways of thinking about justice that are summarized in the table below. They include moral, distributive, restorative, retributive, and procedural justice. The table outlines the primary objective associated with each type of justice and how each type would view a situation where a poor man steals food for his hungry family. They vary from a strong focus on outcomes to a strong focus on process.

TABLE 1: Process vs. Outcome-Based Views of Justice

Type of justice		What is the purpose/goal of justice?	Poor man steals food for hungry family
Outcome Process	MORAL/IDEAL	Justice as achieving the right or moral outcome, regardless of what the law might be	The theft is morally justified – it was out of survival/necessity; hence, punishment is unjust
	DISTRIBUTIVE	Justice as the fair allocation of resources, opportunities, and burdens in society	Focus on why he stole – justice is addressing the inequality that led to their poverty/need to steal
	RESTORATIVE	Justice as repairing harm and restoring relationships	Repair harm, but consider family's needs – discussion with store owner, community aid/support for family
	RETRIBUTIVE	Justice as punishment proportional to the wrongdoing	Theft is a crime; punishment might be community service or fine
	PROCEDURAL	Justice as following fair processes, regardless of what the outcome might be	As long as there is due process, treated fairly, and law is consistent, justice is served, even if the outcome is harsh

RULE OF LAW

While the concept of rule of law is discussed more extensively below, it is first helpful to explore what the alternatives to the rule of law might be.

Rule of the Majority (Ochlocracy/mob rule)

¹⁴ “[Letter from Birmingham Jail Summary](#).” Bill of Rights Institute. 1963.

- Governance is based on the passions and whims of the populace
- Emotions can override reason and logic at times
- Rights may be denied, ignored, or suppressed

Rule of Power (Authoritarianism/dictatorship)

- Arbitrary exercise of power by individuals, rather than established laws
- “Divine right of Kings” - monarchs are sanctioned by God, so their word has the force of law
- People (specifically, who has the most power), rather than laws, govern a society

Since mob rule is usually violent and capricious, it rarely lasts for a significant period of time before either a powerful group rises to power or the mob self-destructs. Still, in the heat of the moment, mob rule can be an extremely powerful force. The Salem Witch Trials are one historical example when the mob took over common sense and logic to the detriment of dozens of innocent people, many of whom were imprisoned or killed.¹⁵ At the same time, critics argue that rigid legal systems can become unresponsive or unjust when they fail to adapt to changing moral standards.

The robust Rule of Law that was created by the Founding Fathers was largely due to their lived experiences with the British monarchy and King George III. The Declaration of Independence lists out a series of 27 grievances that range from a failure to provide due process to imposing taxes without representation. The Founding Fathers kept in mind their experience with rule by power by King George III when they wrote the Constitution.

Today, the World Justice Project defines four key components to a robust and durable rule of law.

1. Accountability: The government and private actors are accountable under the law for their actions.
2. Just Law: The law is clear, publicized, stable, and applied evenly and consistently. It ensures human rights, as well as property, contract, and procedural rights.
3. Open Government: The processes by which the law is adopted, administered, adjudicated, and enforced are accessible, transparent, fair, and efficient.
4. Accessible and Impartial Justice: Justice is delivered timely by competent, ethical, and independent representatives and neutrals who are accessible, have adequate resources, and reflect the makeup of the communities they serve.

Tensions between Justice and the Rule of Law

The overarching question about the relationship between justice and rule of law is whether the law exists to enforce rules or achieve justice. The former approach views rules as an important end in themselves, as they promote both stability and fairness, while the latter only views them as means to promote justice.

¹⁵ [“Founding Fathers’ Fear of Tyranny of Majority and Mob Rule.”](#) Sierra Thread. 2025.

	Enforce Rules ----- Achieve Justice					
	Legal Formalism	Rule of Law	Legal Positivism	Constitutional Balancing	Equity Jurisprudence	Natural Law
Definition	Law must be applied as written, regardless of outcome	Fair process is foundation of justice, outcomes are secondary	Law is valid if made through proper channels, even if unjust	Interpretation may consider fairness, precedent, and evolving norms	Bending rules to achieve fairness in specific cases OK	Laws that contradict morality are illegitimate
Key idea	Apply the law as written	Follow the rules, not the result	Legitimacy comes from procedure, not morality	Adapt the law to protect core values	Correct the law when fairness demands it	Unjust laws are not true laws

The Constitution and Judicial Discretion

One clear area where justice and procedure come to a head is in constitutional interpretation. Judicial discretion has long been a hotly debated topic, especially at the highest levels of the judiciary, and it has manifested itself in the longstanding conflict between originalism and living constitutionalism.

Originalism minimizes judicial discretion and modern influence, focusing on fundamentals.¹⁶ The goal of originalism is to create a more deferential judiciary that will not take control of the law using its own biases and intentions, but rather, base decisions on the historical intentions of the authors of the Constitution and its amendments.¹⁷ Originalists believe that non-originalism can allow far too much room for judges (who are typically unelected) to impose their own subjective judgments.¹⁸ At heart, originalists trust that the rule of law and the political process will effectively solve our problems – justice is the result of the process being followed, not the outcome of judicial creativity.

Living constitutionalism, by contrast, holds that the Constitution’s meaning can and should evolve with changing societal values and circumstances. Proponents argue that originalists place too much emphasis on historical detail at the expense of broader constitutional purposes;” in an attempt to be purely objective, originalists ignore the broader purpose of the Constitution¹⁹ to establish justice and secure liberty.²⁰ Living constitutionalists further contend that an overly rigid focus on historical intent risks

¹⁶ “[Originalism](#).” Legal Information Institute. 2022.

¹⁷ “[On Originalism in Constitutional Interpretation](#).” National Constitution Center. 2025.

¹⁸ “[Living Constitutionalism](#).” American Cornerstone Institute. 2023.

¹⁹ “[The Preamble](#).” Constitution Annotated. 2025.

²⁰ “[Pros and Cons Originalism](#).” Get Revising. 2023.

perpetuating outdated norms and denying the morally correct decision.²¹ Unlike originalists, they believe that the rule of law and political processes can often be inadequate in achieving justice, and that constitutional principles must be adapted to modern realities. Justice takes precedence over a reliance on the process, especially because laws themselves can be based on incorrect or immoral assumptions.

In Practice: The Supreme Court and the Fourteenth Amendment

The Supreme Court is where justice and the rule of law interact with the Constitution. In particular, the Fourteenth Amendment states that

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State **deprive any person of life, liberty, or property, without due process of law**; nor deny to any person within its jurisdiction the equal protection of the laws.²²

The Fourteenth Amendment has been a place where the rule of law and justice often conflict. The Fourteenth emphasizes the importance of a strong rule of law through due process, but it also has been used to prioritize justice in legal decision-making through its equal protection clause and through the phrase “life, liberty, or property.”

Due Process Clause

The Due Process clause has played a critical role in several landmark Supreme Court cases related to the intersection between justice and rule of law. The Due Process clause asserts that no state shall “deprive any person of life, liberty, or property, without due process of law.” This means that the state must follow the proper procedures before they take away a person’s individual rights and liberties. The interpretation of this clause has been a hotly debated topic in Supreme Court jurisprudence.

One perspective, referred to as substantive due process, argues that legitimate due process is only followed when “there is a sufficient substantive justification” for the deprivation of one’s rights. In contrast, procedural due process only requires that “the government has followed the proper procedures when it takes away life, liberty or property.”²³

Constitutional scholar Erwin Chemerinsky uses the following example to help define the difference between the two viewpoints.

The Supreme Court has said that under the word liberty in the due process clause, parents have a fundamental right to the custody of their children. **Procedural due process** means that the

²¹ “[The Living Constitution](#).” University of Chicago Law School. 2010.

²² “[Fourteenth Amendment](#).” Constitution Annotated. 2025.

²³ Erwin Chemerinsky, Substantive Due Process, 15 Touro L. Rev. 1501, 1501 (1999).

government must give notice and a hearing before it can permanently terminate custody.

Substantive means the government must show a compelling reason that would demonstrate an adequate justification for terminating custody.

In essence, substantive due process argues that rights that are not explicitly listed in the Constitution are still fundamental enough to be protected. One classic example is *Griswold v. Connecticut*. Decided in 1965, this case examined whether Connecticut's law that banned the use of contraceptive devices was permissible. Ultimately, the law was found unconstitutional. The Constitution does not explicitly protect a general right to privacy, but the Court held that a right to privacy could be "inferred" from several other amendments.²⁴

Procedural due process instead focuses on the procedure that was followed, or not followed, in the removal of one's rights. Part of the question is whether the procedures being followed are adequate, and part of the question is whether the procedure was followed at all. For example, in *Goss v. Lopez*, a case regarding the suspension of high school students, the Court held that the imposition of suspensions without preliminary hearings violated the students' Due Process rights under the Fourteenth Amendment. The Court reasoned that since the state had extended a right to education to its citizens, it could not withdraw that right without proper minimum procedures – in this case, the students were entitled to, at a minimum, be given notice and afforded some kind of hearing.²⁵

²⁴ "[Griswold v. Connecticut](#)." Oyez. 1965.

²⁵ "[Goss v. Lopez](#)." Oyez. 1975.

	Substantive Due Process	Procedural Due Process
Questions to consider	- What are fundamental Constitutional rights? (can include rights inferred from the Constitution) - Is there sufficient justification to interfere with these rights? (high bar to clear)	- What are the adequate procedures for this set of circumstances? - Did the government properly follow these procedures?
<u>Scenario:</u> A city wants to shut down a private school	- Does shutting down the private school violate a fundamental right (right to choose your child's education)?	- Was there advance notice, a hearing for the school to defend itself, a decision made by a neutral body?
Pros	- More fundamental rights are protected, especially ones that are not explicitly listed in the Constitution (ex...) - Acts as a check on the legislature/majority rule - Allows the Court to protect the fundamental rights of minority/disadvantaged groups - Support evolving view of Constitution/more flexible to modern day society	- Ensures fairness by requiring the government to be proper when they take away individual rights and liberties - Respects democratic process – doesn't attempt to use morality to strike down laws, but instead focuses on the process - Prevents arbitrary government action
Cons	- Can result in judicial overreach/judicial activism, undermining the democratic process - Can be highly subjective on what counts as fundamental - Lack of textual basis in the Constitution (all inference)	- Can ignore the more just and sensible decision in the name of procedure - Might fail to protect certain rights or groups from the government
Relevance to rule of law and justice	Emphasis on <u>justice</u> – prioritizes justice over procedure...even if the rule of law is followed, if the outcome is not just or it violates a fundamental right, it is not allowed	Emphasis on <u>rule of law</u> – prioritizes rule of law and the procedure of majority rule/democracy over justice...even if the outcome is morally disagreeable, if the procedure is followed according to the law of the people, it is permissible

Roe v. Wade, Dobbs v. Jackson Women's Health, and the right to abortion

Roe v. Wade and related rulings by the Supreme Court provide a valuable example of the conflict between substantive and procedural due process. By extension, the value ordering of justice and rule of law changed during this time, starting with a prioritization of justice with *Roe* and a reversion to rule of law with the *Dobbs* decision, which returned the right to abortion to be decided by each state.

The landmark *Roe v. Wade* case held that the “right to privacy” inferred from several other amendments including the 1st, 3rd, 4th, 5th, and 14th,²⁶ protects a pregnant woman's choice whether to have an abortion. However, this right is balanced against the government’s interest in protecting women’s health and protecting the “potentiality of human life.” As such, *Roe* held that there were certain tiers of permissibility – in the first trimester, the state could not regulate the abortion decision at all, in the second, the state could impose regulations relating to maternal health, and in the third, once the fetus reached the point of viability, the state could regulate or prohibit abortions entirely, as long as exceptions to save the life or health of the mother existed.

The right to privacy and the related right to abortion was grounded largely in substantive due process, since neither of those rights were explicitly written into the Constitution. And since both rights were fundamental as inferred by the aforementioned amendments, the Court argued that it must be protected nationwide to prevent the government from infringing on the liberties and decisions of individuals in whatever state they live.

The holding in *Roe* was highly controversial from the moment it was decided.²⁷ There were three primary concerns with the decision-making process in *Roe*. First, opponents argued that the holding improperly bypassed the democratic process. They reasoned that the right to abortion was neither historically protected by courts in prior decades nor a fundamental right related to liberty, and as such, the right should be decided by each state by their democratically appointed legislatures. Second, critics worried that *Roe*’s interpretation of the Constitution was far too subjective and introduced bias and opinion into an objective decision. They argue that substantive due process inherently creates space for interpretation which, in turn, introduces uncertainties where individual judges can differ in opinion as to which right is fundamental or not. Lastly, some criticized the arbitrary line drawing between the first, second, and third trimester, arguing that the Court had no clear reasoning behind why certain restrictions were allowable in the separate trimesters.

Decided at the end of the Supreme Court’s 2021-22 term, *Dobbs v. Jackson Women's Health Organization* was a landmark case that overturned *Roe* and other related decisions, holding that the right to abortion is not mentioned in the Constitution nor deeply rooted in the nation’s history, and therefore, should be reserved for the states to decide themselves. The majority opinion, authored by Justice Alito, centered largely around the idea that the democratic process had been “short-circuited” by preventing the “large number of Americans who disagreed with *Roe*” to adopt policies consistent with

²⁶ [“The Right of Privacy.”](#) UKMC School of Law. 2023.

²⁷ [“The Wages of Crying Wolf: A Comment on *Roe v. Wade*”](#) Yale Law Journal. 1973.

their views.²⁸ Criticism of *Dobbs* focused on both its legal reasoning and its policy implications, including concerns about precedent, individual rights, and the role of the Court. One article summarized the debate well in the following way – “...the Dobbs majority thinks abortion is wrong and should be restricted – or at least that legislatures can permissibly so conclude. The Court’s critics think abortion is a fundamental human right and should be constitutionally protected. That is the rub.”²⁹

While on paper, the debates focused on due process and Constitutional interpretation, there was also an underlying debate regarding the priority of justice compared to rule of law, and what purpose justice should serve. One perspective argued that justice should serve a broad range of explicit and implicit rights. The definition of justice does not just encompass an increasingly outdated interpretation of the original meaning of the Bill of Rights, but also fundamental rights not mentioned directly in the Constitution, including the right to abortion, the right to same-sex marriage, and so on. It follows that if the right to abortion is a fundamental human right that must be protected, *Roe* was decided correctly. The fact that the rule of law exists takes second place to protecting critical liberties, and legislatures should not be given the ability to infringe on those liberties even if they are elected by majorities of the people. Supporters would point to how personal liberty is among the most valued rights in American society and the Constitution.

Another approach closely aligned with the idea of liberty emphasizes the view that abortion takes away the life of the unborn child. Some advocates argue that justice requires protecting fetal life, emphasizing that the Constitution explicitly protects ‘life’ and that this protection should extend to the unborn.” The Constitution does explicitly list “life” as one of the three components of due process (“life, liberty, and property”). This perspective suggests that the wrong emphasis has been placed on freedom and liberty – instead, justice is ensuring that every life is given the ability to succeed and taking away that ability is a violation of the guarantees of due process in the Constitution.

Yet another perspective takes the opposite view of rule of law and justice towards due process. Rule of law ensures that natural justice can be achieved, advocates argue, and preventing the democratic process from working is more problematic than protecting a controversial moral position. They argue that abortion should be decided by the democratically elected representatives of the people precisely because it is a highly divisive and controversial issue of morality that each state should have the ability to decide. Removing that ability is a far more egregious violation of another important concept of society, democracy. The rule of law may be slow due to red tape and the nature of bureaucracy, but it is the best way to ensure that the people’s voices are heard, rather than the subjective and biased opinion of a handful of justices on the Supreme Court.

²⁸ “[Dobbs v. Jackson Women’s Health Organization](#).” 596 U.S. ____ (2022). 2022.

²⁹ “[What is The Matter With Dobbs?](#)” University of Pennsylvania Law Journal. 2024.

Setting Expectations (5 min.)

In this section, we will review the “Expected Outcomes,” Deliberative Dispositions,” and “Conversation Agreements” below.

Expected Outcomes of the Conversation

The purpose of this deliberation is to explore the tensions between justice and rule of law, explore different philosophical and legal approaches to law, and develop a deep understanding of how justice can at times conflict with rule of law, both practically and theoretically. You will have a chance to learn more from others about their varying perspectives, and you’ll get a chance to express your own opinions on the topic. Lastly, we’ll have the opportunity to reflect on our conversation, our areas of agreement and disagreement, and our takeaways from this discussion.

Deliberative Dispositions

The DCI has identified several “deliberative dispositions” as critical to the success of deliberative enterprises. When participants adopt these dispositions, they are much more likely to feel their deliberations are meaningful, respectful, and productive. Several of the Conversation Agreements recommended below directly reflect and reinforce these dispositions, which include a commitment to egalitarianism, open-mindedness, empathy, charity, attentiveness, and anticipation, among others. A full list and description of these dispositions are available at <https://deliberativecitizenship.org/deliberative-dispositions/>.

Conversation Agreements

In entering this discussion, to the best of our ability, we each agree to:

1. Be authentic and respectful
2. Be an attentive and active listener
3. Be a purposeful and concise speaker
4. Approach fellow deliberators’ stories, experiences, and arguments with curiosity, not hostility
5. Assume the best - and not the worst - about the intentions and values of others, and avoid snap judgments
6. Demonstrate intellectual humility, recognizing that no one has all the answers, by asking questions and making space for others to do the same
7. Critique the idea we disagree with, not the person expressing it, and remember to practice empathy
8. Note areas of both agreement and disagreement
9. Respect the confidentiality of the discussion
10. Avoid speaking in absolutes (e.g., “All people think this,” or “No educated people hold that view”)

Getting to Know Each Other (10 min.)

In this section, we will take less than a minute to once again share our names, where we are currently located and answer one of the two questions below.

- If you could instantly master any hobby or skill, what would it be?
- If you could only eat one type of cuisine (Italian, Thai, Mexican, etc.) for a month, what would you pick?

Identifying Justice and Rule of Law (15 min.)

Before we can analyze how justice and the rule of law interact, we first need to explore what these ideas mean to us in everyday life. While the Preamble of the Constitution lists “establish Justice” as a core goal and the Founders emphasized a government of laws, interpretations of both concepts have evolved over time. We will first share what these ideas mean to us each individually.

Let’s all take about 1-2 minutes to answer the following two questions:

- Is it more important for a law to be fair in outcome, or fair in process? When has the application of the rule of law seemed fair or unfair to you? Why?
- In your recent memory, when has the legal system delivered or failed to deliver justice? Why?

Optional follow-up (if needed):

- What do the ideas of the rule of law and justice mean to you in everyday life? For society in general?

After everyone has spoken once, the group is welcome to continue discussing these questions as time allows, address some of the optional follow-up questions, or move on to the next section.

Exploring Justice and Rule of Law (20 min.)

Rule of Law

Let’s now dive deeper into our perspectives on the complexities of justice and rule of law. Please first address ONE of the two questions below about the rule of law.

- Which components of the rule of law from the World Justice Project are the most and least important? Accountability, Just Law, Open Government, or Accessible & Impartial Justice (outlined on page 6 above)?
- Are there times where ochlocracy (“mob rule”) and rule of power may be desired over rule of law?

Justice

Now let's discuss the concept of justice, which can be defined by a focus on process or outcomes. Procedural-based views of justice are commonly aligned with a focus on the rule of law and a strong system of due process, while outcome-based approaches typically emphasize justice over procedural concerns.

- Where do you land along the spectrum of outcome and procedural-based approaches to justice outlined in Table 1 on page 5 above?

After everyone has spoken once, the group is welcome to continue discussing these questions as time allows, address some of the optional follow-up questions, or move on to the next section.

Break (5 min.)

Interactions between Justice and Rule of Law (20 min.)

Justice and the rule of law are often presented as complementary, but tensions emerge when laws produce unjust outcomes or when moral arguments challenge legal consistency. Let's explore these interactions by first taking about one minute to answer one of the questions below:

- Should the law be followed even when it leads to unjust outcomes, or does justice require flexibility, even at the cost of predictability?
- Can treating people differently to achieve fairness (equity) coexist with the principle that all should be treated equally under the law?
- What happens when the democratic will of the majority conflicts with moral justice?
- What is the ultimate role and weight of justice in the use of rule of law? Should either be prioritized over the other?

After everyone has spoken once, the group is welcome to continue discussing these questions as time allows, address some of the optional follow-up questions, or move on to the next section.

The Supreme Court: Tensions in Theory (15 min.)

Substantive due process has been perhaps the most controversial and consequential philosophy ever used on the Supreme Court. Proponents argue that it has protected the right to privacy in America and created more parity in the treatment of different demographics; opponents assert that it has allowed the court to impose its will arbitrarily and undemocratically on the American people.

Ideological Pathways

The question that has been debated for decades remains: should the role of courts be to strictly enforce the law as written, or to interpret it in a way that promotes justice in today's context? Let's each take 1-2 minutes to answer one of the questions below.

- Should our interpretations of the Constitution evolve with society, or should it be interpreted based primarily on its original meaning?
- What is the best method to protect minority and underrepresented groups: an active and responsive judiciary, or a judiciary that exercises restraint in its judgments?
- Do you think courts should focus more on whether proper procedures were followed (procedural due process), or on whether a law is fundamentally fair or justified (substantive due process)? Why?
- When the Supreme Court protects rights not explicitly listed in the Constitution, is it promoting justice or undermining the rule of law? Can it be both?

After everyone has spoken once, the group is welcome to continue discussing these questions as time allows, address some of the optional follow-up questions, or move on to the next section.

The Supreme Court: Tensions in Practice (20 min.)

In the Context of *Roe* and the Supreme Court Today

Let's now turn to questions about how the interconnections between justice, the rule of law, and judicial interpretation play out in practice. Specifically, the *Roe* and *Dobbs* cases provide highly salient and important examples of the tensions around different conceptions of justice and different conceptions of due process.

- How do cases like *Roe* and *Dobbs* shape public trust in the Court and the legal system?
- Should courts protect rights not explicitly written in the Constitution, or should those decisions be left to elected representatives?
- In cases like *Roe* and *Dobbs*, should the Court prioritize achieving just outcomes or following established legal processes?

Optional follow-up (if time allows)

- Do you see a meaningful difference between the right to privacy and the right to abortion? Why or why not?

After everyone has spoken once, the group is welcome to continue discussing these questions as time allows, address some of the optional follow-up questions, or move on to the next section.

Reflections (10 min.)

While today's conversation is an important step in the journey, the balance between justice and rule of law continues to change, and future research into the value dynamic is an ongoing effort. Please reflect on the insights from your discussion with your fellow participants today and then answer one of the questions below without interruption or crosstalk. After everyone has answered, the group is welcome to continue exploring additional questions as time allows.

1. What was most meaningful or valuable to you during this deliberation?
2. Where are the key areas of agreement and disagreement in your group?
3. Have any new ideas that might transcend our current way of conceiving of the problems and potential solutions?
4. Are there any perspectives missing from this conversation that you feel would be important to hear?
5. What did you hear that gives you hope for the future of conversations about justice and the rule of law?
6. Is there a next step you would like to take based upon the deliberation you just had?

About this Guide

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The Deliberative Citizenship Initiative: The Deliberative Citizenship Initiative (DCI) is dedicated to the creation of opportunities for Davidson students, faculty, staff, alumni, and members of the wider community to productively engage with one another on difficult and contentious issues facing our community and society. The DCI regularly hosts facilitated deliberations on a wide range of topics and organizes training workshops for deliberation facilitators. To learn more about these opportunities, visit www.deliberativecitizenship.org.

DCI Deliberation Guides: The DCI publishes Deliberation Guides as a foundation for such conversations. They provide both important background information on the topics in question and a specific framework for engaging with these topics. The Guides are designed to be informative without being overwhelming and structured without being inflexible. They cover a range of topics and come in a variety of formats but share several common elements, including opportunities to commit to a shared set of Conversation Agreements, learn about diverse perspectives, and reflect together on the conversation and its yield. DCI staff, faculty, and students are the authors of these guides; generative AI is sometimes used to improve the clarity of the writing, identify errors, and provide background information, but all final text is confirmed by the authors. The DCI encourages conversations based on these guides to be moderated by a trained facilitator. After each conversation, the DCI also suggests that its associated Pathways Guide be distributed to the conversation's participants.

DCI Pathways Guides: For every Deliberation Guide, the DCI has also developed an associated Pathways Guide, which outlines opportunities for action that participants can consider that are related to the covered topic. These Pathways Guides reinforce the DCI's commitment to an action orientation, a key deliberative disposition. While deliberation is itself an important contributor to a healthy democracy, it becomes even more valuable when it leads to individual or collective action on the key issues facing society. Such action can come in a range of forms and should be broadly understood. It might involve developing a better understanding of a topic, connecting with relevant local or national organizations, generating new approaches to an issue, or deciding to support a particular policy.

DCI Issue Guides and Issue Briefs: Issue Guides are similar to Deliberation Guides but do not include the structured format for group conversations. Issue Briefs provide an outline of the main ideas that are presented in the Issue Guides. While both include a similar list of questions to consider about the topic, they are designed for personal reflection, perhaps in association with a panel or speaker event.

If you make use of this guide in a deliberation, please provide attribution to the Deliberative Citizenship Initiative, and email dc@deliberativecitizenship.org to tell us about your event. To access more of our growing library of Deliberation Guides, Pathways Guides and other resources, visit www.deliberativecitizenship.org/readings-and-resources.