

Who Will Fight for What They Believe is  
Bad?  
An Analysis of Pro-Slavery & Pro-Abortion  
Argumentation

Eliza Jayne Kelly

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**Who Will Fight for What They Believe is Bad?<sup>1</sup>**  
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Advisor: Ken I. Kersch, Ph.D.

*Abstract:* The aim of this project is to understand how and why social movement actors shift their framing of issues when they come under attack on moral grounds for the practice or right they seek to protect. Specifically, I wanted to understand how actors justify a practice when it is accused by a mobilized countermovement of violating the perceived fundamental right of another party, and why their argumentation may change over time. I specifically investigated the cases of the pro-slavery movement in the 19<sup>th</sup> century and the pro-abortion movement in the 20<sup>th</sup> and 21<sup>st</sup> centuries because in each of these cases, the actors shifted their framing of the practice in question from one of a “necessary evil” to a “positive good.”

Through an in-depth analysis of numerous primary sources from various actors within the pro-slavery and pro-abortion movements, I discovered that within social movements, even actors trying to maintain the status quo (rather than establish a new right or practice) are heavily influenced by countermovement dynamics and can find their strategies confined and dictated by the terms of the debate established by the opposition. In both cases in question, the actors were pushed to justify their “right” within the realm of morality, and this pushed them to intentionally shift from an apologetic to unapologetic framing of the issue to both mobilize greater support and try to gain

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<sup>1</sup> This title is inspired by a *NOW Times* article from 1989 encouraging pro-abortion activists to call themselves “pro-abortion” *not* “pro-choice” (“On Not Choosing Choice,” *NOW Times*, October/November/December 1989, Schlesinger Archives).

leverage over the opposition. Additionally, the political and cultural climates can significantly impact issue framing and the choices available to movement actors who need to adjust their rhetoric in response to their political needs and goals and the mores of society. Finally, in order to discredit the rights-holding status of the other party involved (the slave or the fetus), movement actors used both dehumanizing language to describe them and endeavored to situate the practice they were trying to protect within the context of a broader sociopolitical battle for a particular vision for society and law, thereby shifting the discussion of morality entirely away from the nature of the slave or fetus. These findings are significant for the study of social movements and rights discourse within political science as they raise questions for further study on the relationship between law and morality, the role of rhetoric in politics, and the nature of competing rights claims.

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## INTRODUCTION

*“Against this institution war has been commenced. A crusade is proclaimed. [...] Let them come! We will be ready. Standing on our institutions, which of themselves give us a strength almost impregnable, and rallying around them as one man, with the help of God I believe we shall be able to roll back the frantic tide to whence it came.”*  
 ~ James Henry Hammond, 1836

*“Women and men from across the country will march [...] to demand reproductive freedom. We will demonstrate the depth of support for these life-and-death issues, the passion of our convictions, and the power that we hold. We will serve notice that the right-wing attack on our rights is over.”* ~ NOW Times, 2003/2004

How do people respond when their rights come under attack? More specifically, how do they respond when their perceived right is deemed immoral by a mobilized countermovement and attacked on such grounds? This thesis seeks to analyze such questions through a comparison of the pro-slavery movement in the 19<sup>th</sup> century and the pro-abortion movement in the 20<sup>th</sup> and 21<sup>st</sup> centuries. These cases are both fascinating in their own right, but especially so in conversation with one another because in each of them, movement actors shifted their framing of the issue in question from a “necessary evil” to a “positive good.” Southern proponents of slavery went from conceding in 1806 that “slavery is an evil, regretted by every man in the country,” to declaring in 1836 that “it is the greatest of all blessings which a kind Providence has bestowed upon our glorious region.”<sup>2</sup> Abortion advocates shifted from claiming “we at NARAL don't know

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<sup>2</sup> *Annals of Congress*, 9th Cong., 2nd sess., 174 (December 17, 1806); *Annals of Congress*, 24th Cong., 1st sess., 2456 (February 1, 1836).

anyone who is ‘pro-abortion’” in the 1980s, to “we encourage you to say abortion and to say it proudly!” in 2022.<sup>3</sup> How and why does such a transformation occur?

This question is worthy of investigation because it encompasses major issues within the study of politics and society – namely, rights claims, social movements, activist rhetoric, political coalitions, the intersection of law and morality, and how evolutions in culture affect all of these things. Additionally, analyzing two cases from vastly different time periods in American history can shed light on which significant elements in the cases are related to their specific time and place, and which trends stand the test of time. The debate over abortion is undeniably one of the most significant in contemporary society, just as the debate over slavery was in the antebellum United States. These cases are also similar in the intensity and type of opposition the movement actors received because both slavery and abortion have been criticized as immoral and unjust due to the violation of the fundamental rights of another party, that is, the slave or the fetus. Thus, it is important to understand how and why proponents of these practices respond to such criticism in the way that they do and the implications this has for our current sociopolitical situation.

In order to investigate this shared trajectory of issue framing and argumentation from apologetic to unapologetic defenses in the slavery and abortion cases, the structure of this thesis unfolds as follows. Chapter 1 briefly explores the literature on rights discourse and the characterization of rights-holders in American politics to situate the movements to protect the right to slavery and the right to abortion within the larger

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<sup>3</sup> *You know them as the ‘Right to Life’ People* (NARAL, n.d. early 1980s), Schlesinger Library; *Reproductive Freedom Conversation Guide* (NARAL, 2022), <https://www.prochoiceamerica.org/report/reproductive-freedom-conversation-guide-v3/>.

context of rights theories. It also surveys the scholarship on issue framing in social movements more broadly, and on the evolution of both pro-slavery and pro-abortion argumentation specifically. The literature review helps to contextualize this study within the framework of existing, relevant research to illustrate what has and has not been investigated and, therefore, what this study can contribute.

Chapter 2 lays out the methodology for the study and further explains why these two cases are being compared, the sources used to evaluate the transformation of issue framing within the cases, and the methods used to analyze the primary sources.

Chapters 3 and 4 present the findings from the pro-slavery and pro-abortion sources, respectively. Here, I describe the results of the document analysis and briefly explain the observable trends in each case utilizing the framework presented in Chapter 2.

Chapter 5 offers an analysis of the findings and a comparison of the trends within the cases. I highlight key discoveries from the research, analyze the significance of such findings, and conclude with some thoughts on the implications of the study.

## CHAPTER 1: LITERATURE REVIEW

### 1.1 Rights

#### *1.1.1 Rights Theories*

The theory and practice of rights is often traced back to ancient philosophies of human nature and natural law, particularly those developed by Plato and Aristotle and expounded upon by Thomas Aquinas.<sup>4</sup> Thomas Hobbes then played a pivotal role in the mid-1600s in introducing a rational, more secular understanding of natural rights in his Social Contract theory, which emphasized fundamental equality and individual consent.<sup>5</sup> In his book *The Evolution of Rights in Liberal Theory*, Ian Shapiro argues that the natural rights theory developed by Hobbes marked “an important shift in the Western tradition away from emphasis on natural law to the centrality of individual natural rights.”<sup>6</sup>

John Locke, widely regarded as the “founder of modern liberal conceptions of individual human rights,” further developed the natural rights tradition.<sup>7</sup> In his *Second Treatise on Government*, published in 1689, he asserted that man has, *by nature*, certain inalienable rights. Locke claims that each man has “a title to perfect freedom, and an uncontrolled enjoyment of all the rights and privileges of the law of nature, equally with any other man, [and] by nature a power, not only to preserve his property, that is, his life, liberty and estate, against the injuries and attempts of other men; but to judge of, and punish the breaches of that law in others.”<sup>8</sup> Locke’s conception of natural rights found full expression in what Mary Ann Glendon refers to as the first great “moment” in the

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<sup>4</sup> See, for example, Finnis, *Natural Law and Natural Rights*; Strauss, *Natural Right and History*.

<sup>5</sup> Shapiro, *The Evolution of Rights in Liberal Theory*, 40; Hobbes, *Leviathan: Or, The Matter, Forme & Power of a Commonwealth, Ecclesiasticall and Civill*.

<sup>6</sup> Shapiro, *The Evolution of Rights in Liberal Theory*, 41.

<sup>7</sup> Shapiro, 82.

<sup>8</sup> Locke, *Second Treatise of Government*, 46.

history of human rights – the American and French declarations of rights in the late-1700s. These declarations drew on the previous philosophies of thinkers like Hobbes and Locke to crystallize the ideas of natural rights and equality in the fundamentals of law and politics. These 18<sup>th</sup> century “rights of man [...] all mark a stand against the abuse and arbitrary exercise of power. They are landmarks in the recognition of the dignity of the individual human person and of our potential to be free and self-determining.”<sup>9</sup>

Many scholars have argued that the Lockean notion of rights, which ascribed paramount importance to property rights, was very influential to the development of American rights discourse. Locke elevated the right to property to the highest place by claiming that the preservation of property “is the great and chief end” for which people come under the subjection of a government.<sup>10</sup> Glendon, following the argument of Jennifer Nedelsky, claims that this Lockean preoccupation with property found resonance with the minority property owners in 18<sup>th</sup> century America who shaped their government in large part to protect their private property rights against popularly-elected legislatures.<sup>11</sup> As a result, Morton Horowitz argues that natural rights came to be understood, especially by Progressive thinkers at the turn of the 20<sup>th</sup> century, as “a conservative doctrine designed to protect private property,” which was antithetical to communal values and reform goals.<sup>12</sup> Additionally, Glendon argues that the Lockean conception of property rights before and above the needs of the community helped to foster an absolutist rhetoric about property rights and rights in general in America, as

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<sup>9</sup> Glendon, *Rights Talk*, 10–11.

<sup>10</sup> Locke, *Second Treatise of Government*, 66.

<sup>11</sup> Glendon, *Rights Talk*, 24–25; Nedelsky, *Private Property and the Limits of American Constitutionalism*.

<sup>12</sup> Horowitz, “The Warren Court and the Pursuit of Justice,” 8; Horowitz, “Rights,” 395.

well as a tendency to “propertize” all kinds of things for the sake of legal argumentation (e.g. welfare benefits, employment, our own bodies).<sup>13</sup>

At the same time that natural rights theories were enshrined in the American Declaration of Independence and the French Declaration of the Rights of Man, they began to come under attack from the growing school of utilitarianism. Known as the father of utilitarianism, British philosopher and jurist Jeremy Bentham directly criticized the principles of natural rights in the Declaration of Independence as “ridiculous,” “contemptible,” and “repugnant to the British Constitution.”<sup>14</sup> He further argues, “There are no other than legal rights;—no natural rights—no rights of man, anterior or superior to those created by the laws. The assertion of such rights, absurd in logic, is pernicious in morals. A right without a law is an effect without a cause. We may feign a law, in order to speak of this fiction—in order to feign a right as having been created; but fiction is not truth.”<sup>15</sup> John Austin, writing in the mid-1800s, expounded on this denial of natural, pre-political rights in his development of the theory of positive law, or legal positivism. He argued that we must distinguish between law as it *is* and law as it *ought* to be, and separate law from subjective considerations of moral values. Austin writes, the “tendency to confound Law and Morals, is one most prolific source of jargon, darkness, and perplexity.”<sup>16</sup>

The crumbling religious foundations of natural rights theories and the rise of legal positivism in the 19<sup>th</sup> century paired with the persistent use of natural rights claims to protect the property of the wealthy led to a rejection of rights discourse by reform-minded

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<sup>13</sup> Glendon, *Rights Talk*, 25,31.

<sup>14</sup> Bentham, “Short Review of the Declaration.”

<sup>15</sup> Bentham and Bowring, *The Works of Jeremy Bentham*.

<sup>16</sup> Austin, *The Province of Jurisprudence Determined*, 3:355.

political and legal actors by the early 20<sup>th</sup> century.<sup>17</sup> For this reason, the revitalization of natural rights discourse in America in the mid-20<sup>th</sup> century and the shift toward individual rights claims on behalf of the politically weak is considered somewhat of a revolution.<sup>18</sup> Glendon argues that in the wake of World War II and Hitler's manipulation of positive law for the purpose of committing atrocities, there arose a renewed attraction to pre-political "human" rights in the international community.<sup>19</sup> Considering the lack of secular consensus on the exact foundation and content of such rights, "judicial review in some form began to seem desirable as a way of backing up human rights and checking abuses of majoritarian rule."<sup>20</sup>

This global trend of a judicial bolstering of rights manifested itself most clearly in the U.S. with the rulings of the Supreme Court under Chief Justice Earl Warren from 1953-1969. The Warren Court utilized judicial review in numerous cases specifically to protect the rights of the individual against interference by the government.<sup>21</sup> Horwitz maintains that the Warren Court "revived the revolutionary spirit of rights discourse after it had been debased in the protection of slavery and, arguably, in the protection of property."<sup>22</sup> Thus, Horwitz and Glendon both claim that the Warren Court was instrumental in resurrecting discourse about natural rights and using them to represent a "liberatory" and "emancipatory" conception of law to aid the politically weak.<sup>23</sup>

In the wake of this resurgence of rights discourse, legal and political philosophers from the mid-20<sup>th</sup> century onward began to develop reinterpretations of rights theories, in

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<sup>17</sup> Horwitz, "Rights," 395–96.

<sup>18</sup> Glendon, *Rights Talk*, 4; Horwitz, "The Warren Court and the Pursuit of Justice," 8.

<sup>19</sup> Glendon, *Rights Talk*, 38.

<sup>20</sup> Glendon, 38.

<sup>21</sup> Glendon, 4.

<sup>22</sup> Horwitz, "The Warren Court and the Pursuit of Justice," 9.

<sup>23</sup> Horwitz, 8.

part to address the uneasy tensions between legal positivist, utilitarian views of the law and rights-oriented liberalism. As Horwitz argues, “The liberal legal theory of rights has attempted to mediate between substantive values (‘subjectivism’) and forms of legal positivism that seek to obtain ‘objectivity’ by denying any moral content to law.”<sup>24</sup> In response to the dominant legal trend of utilitarianism at the time, particularly as espoused by H.L.A. Hart, John Rawls published *A Theory of Justice* in 1971 and attempted to present an alternative philosophy to offer a “moral basis for a democratic society” that was neither utilitarianism nor “intuitionism.”<sup>25</sup> Rawls’ endeavor inspired further theorizing about individual rights from thinkers such as Ronald Dworkin, Robert Nozick, and Joseph Raz who attempted to understand rights within these intersections of natural law and legal positivism, as well as morality and utilitarianism.<sup>26</sup>

### ***1.1.2 Rights Talk***

This evolution of rights theorizing has produced another subset of literature that aims to understand *why* and *how* rights theories developed in American and liberal political history. In his book *The Evolution of Rights in Liberal Theory*, Ian Shapiro attributes the developments of rights theories largely to changes in the broader social and economic contexts. Shapiro critically evaluates “contemporary arguments about rights and justice,” and he does so through a historical analysis of principal liberal rights theorists, namely John Locke, Thomas Hobbes, John Rawls, and Robert Nozick. He

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<sup>24</sup> Horwitz, “Rights,” 399.

<sup>25</sup> John Rawls, *A Theory of Justice* (Cambridge, Mass: Belknap Press of Harvard University Press, 1971), viii; see also H.L.A. Hart, *The Concept of Law*, Second Edition, Clarendon Law Series (Oxford: Clarendon Press, 1998).

<sup>26</sup> Dworkin, *Taking Rights Seriously*; Nozick, *Anarchy, State, and Utopia*; Raz, *The Authority of Law*.

investigates “the more complex relationship between the meaning of the text for the author and its role in the evolving tradition, and [locates] these in the broader processes of socioeconomic reproduction and change of which they are a part.”<sup>27</sup> Shapiro concludes that because external changes in culture and philosophy eroded many of the foundations on which the theories of Locke and Hobbes rested, the modern rights theories of Rawls and Nozick are less intellectually robust and consistent.<sup>28</sup>

One significant aspect of the foundation of the 17<sup>th</sup> century theories was the possibility for objective moral knowledge to properly order rights. Shapiro argues, “An important difference between the pluralism of Hobbes and Locke and that argued for by Rawls and Nozick is that the former did not argue that pluralism was in any sense a morally neutral doctrine. This is one of the most problematical claims in the contemporary arguments.”<sup>29</sup> Shapiro contends that the modern writers resort to the argument that each individual should be able to pursue his own conception of the good with the state as a neutral arbiter of individual desires.<sup>30</sup> Ultimately, Shapiro finds fault with the abstractions and intellectual inconsistencies in contemporary thinkers like Rawls and Nozick, and particularly with the moral ambiguity within the topics of rights and justice that refuses to entertain substantive conceptions of the good. This, he believes, precludes a critical analysis of the “causal structure of the social world [in which] problems of social justice arise.”<sup>31</sup>

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<sup>27</sup> Shapiro, *The Evolution of Rights in Liberal Theory*, 10.

<sup>28</sup> Shapiro, 19.

<sup>29</sup> Shapiro, 283.

<sup>30</sup> Shapiro, 282–85.

<sup>31</sup> Shapiro, 304.

Daniel Rodgers similarly attributes the shifts in rights discourse in America to the larger sociopolitical context, but he looks not at theorizing from intellectuals at the top, but to changes in popular rights consciousness at critical historical moments. In a recent book entitled, *The Bill of Rights in Modern America*, Rodgers' opening chapter examines four phases of American history that he argues involved a surge of popular rights consciousness and, "by consequence, of fertile, even audacious, rights invention."<sup>32</sup> These periods are the 1760s through 1791, the 1820s through Reconstruction, the 1880s through the mid-1930s, and the post-World War II era. Examining the politics and social movements of these periods, he argues, "Arguments about rights—essential, inalienable, human rights—have been among the key tools Americans have used to debate what a good society might look like, freed of injustice and the dead hand of the past. In its messiness, power, and contradictions, rights talk is one of the fundamental strands of US history."<sup>33</sup> Rodgers claims that phases of protestation and rights invention often "gathered individual and collective rights into a common fold" and allowed for "political theorizing" about rights from below in a democratic fashion.<sup>34</sup> He ultimately argues that for all of its weaknesses, rights talk has contributed greatly to American democracy in spite of its potentially antagonistic qualities and allowed Americans to pursue a more just society.<sup>35</sup>

Richard Primus also focuses on grassroots rights consciousness in his book *The American Language of Rights* to argue that formal *theorizing* about rights has mattered less to American politics than the actual *use* of rights talk. Primus, like Glendon,

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<sup>32</sup> Rodgers, "Rights Consciousness in American History," 10.

<sup>33</sup> Rodgers, 9.

<sup>34</sup> Rodgers, 24.

<sup>35</sup> Rodgers, 24.

emphasizes the preeminence of rights discourse in American politics, and he shows that rights theories need not be intellectually robust or coherent to be politically salient. He claims, “In the world of American political discourse, a strong claim of rights, any rights, tends to overpower a subtle intellectual argument about the shortcomings of rights as a concept.”<sup>36</sup> Moreover, Primus claims that even those who theorize about rights are often influenced by political persuasions, which shape the way in which they utilize the language of rights. Therefore, “to try to settle political questions by reference to theories of rights is problematic at best, because theories of rights do not supply evidence of an order prior to and regulative of politics.”<sup>37</sup>

In a similar vein to Shapiro and Rodgers, Primus argues that American rights theories have developed in response to broader social circumstances and, particularly, in reaction to crises. Specifically, Primus looks at the American Revolutionary period, the post-Civil War Reconstruction period, and the post-World War II era to illustrate how “innovations in concepts of rights have chiefly occurred in opposition to new adversities, as people articulate new rights that would, if accepted, negate the crisis at hand.”<sup>38</sup> Thus, Primus’ aim is not to assess the validity of different rights theories, but rather to expound on the ways that Americans make use of rights talk in the political arena and their goals for doing so.

He argues that there are three general reasons why political actors use rights claims, either intentionally or unintentionally: “(1) to claim general authority for specific propositions, (2) to attempt to entrench politically precarious practices, and (3) to declare

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<sup>36</sup> Primus, *The American Language of Rights*, 4.

<sup>37</sup> Primus, 7.

<sup>38</sup> Primus, 7.

particular practices or propositions to be of special importance.”<sup>39</sup> He also claims that in the periods of major transformation in the theory and practice of rights that he analyzes, actors were *reacting* to some *adversity* by making new rights claims, and attempting to *synthesize* these new rights with existing conceptions of rights. “Reaction to a set of adversities involves establishing rights that will block those adversities from occurring and that will give people a moral basis on which to condemn those adversities that have already occurred.”<sup>40</sup>

Notably, in his analysis, Primus is analyzing movements that arose in response to a perceived rights violation and aimed to codify new rights or reinterpret existing ones. His study, therefore, focuses on those aiming to change the status quo rather than those trying to protect it. On the contrary, my research aims to understand how actors deploy rights talk when they seek to protect a currently recognized right against those who want to take it away.

While Primus notes that rights discourse has its failings, namely its shaky theoretical foundations and ability to be manipulated for political purposes, he does not believe that we should abandon rights talk altogether. He argues that simply eliminating rights talk would not solve the problems that it is accused of creating in political debate, namely the difficulty in defining normative grounds for political argumentation and bringing political debates onto the same theoretical plane.<sup>41</sup>

In addition to assessments of the evolution of rights talk, other scholars have presented *normative assessments* of rights discourse in American politics. Many authors

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<sup>39</sup> Primus, 39.

<sup>40</sup> Primus, 63.

<sup>41</sup> Primus, 44.

have highlighted the unstable foundations of rights theories in a modern culture so influenced by secularism, morally-neutral liberalism, and utilitarianism and called for some *modification to the practice of rights talk*. Horowitz argues that rights talk has been a “double-edged sword” because the ambivalent foundations of liberal rights theories have allowed rights discourse to lend itself either to the protection of the strong *or* to the emancipation of the weak.<sup>42</sup> As mentioned above, the attempted mediation between subjective values and objective legal positivism at play in rights claims results in “an ungrounded conception of rights that allows anyone to propose his or her favorite right” and to call on “rights” to protect almost anything.<sup>43</sup> Horowitz concludes that, “theories of rights have continued to represent [this] double-edged sword because of their lack of grounding in any substantive theory of social justice or the ‘good society.’”<sup>44</sup>

Michael Sandel similarly criticizes modern rights discourse for its lack of basis in an objective understanding of the “good life.” In *Democracy’s Discontent*, Sandel argues that contemporary Americans are lamenting both “the loss of self-government and the erosion of community,” and that this is due to the American public philosophy, or “the assumptions about citizenship and freedom that inform our public life.”<sup>45</sup> This American public philosophy is a version of liberalism that claims that government should be neutral toward individuals’ perceptions of the “good life” and “should provide a framework of rights that respects persons as free and independent selves, capable of choosing their own values and ends.”<sup>46</sup> Sandel argues that this idea of rights divorced from any objective

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<sup>42</sup> Horowitz, “Rights,” 396.

<sup>43</sup> Horowitz, 399.

<sup>44</sup> Horowitz, 406.

<sup>45</sup> Sandel, *Democracy’s Discontent*, 3–4.

<sup>46</sup> Sandel, 4.

morality is both unrealistic and harmful. First, for the government to enforce any rights at all is to make judgments about the values such rights are meant to promote. In regard to values that liberals defend, Sandel says, “Toleration and freedom and fairness are values too, and they can hardly be defended by the claim that no values can be defended.”<sup>47</sup> Furthermore, Sandel claims that liberal principles like freedom and autonomy fail to “inspire the sense of community and civic engagement that liberty [and self-government] require.”<sup>48</sup> He, therefore, calls for a shift in American political rights discourse away from strictly liberal values to include considerations of republican values like community, civic engagement, and moral and religious convictions.<sup>49</sup>

Glendon also argues that the stripping of rights claims of any moral objectivity and the tendency toward absoluteness in American rights talk has led to shallowness in current political discourse.<sup>50</sup> Moreover, because the American language of rights tends to formulate rights claims as “absolute, individual, and independent of any necessary relation to responsibilities,”<sup>51</sup> rights talk becomes “the language of no compromise.”<sup>52</sup> This stunts productive deliberation and “impedes creative long-range thinking about our most pressing social problems.”<sup>53</sup> Similar to Sandel, Glendon calls for a refining of rights rhetoric and liberal politics, in general, to include a more robust reference to “cultural value systems” and “civic skills,” and a transcendence of short-term individual and group interests.<sup>54</sup>

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<sup>47</sup> Sandel, 8.

<sup>48</sup> Sandel, 6.

<sup>49</sup> Sandel, 6–7.

<sup>50</sup> Glendon, *Rights Talk*, 171–83.

<sup>51</sup> Glendon, 12.

<sup>52</sup> Glendon, 9.

<sup>53</sup> Glendon, 171.

<sup>54</sup> Glendon, 179.

Stephen Holmes and Cass Sunstein evaluate rights not on philosophical and moral grounds, but through a practical, economic lens in their book, *The Cost of Rights*. They argue that no rights can be truly absolute because their enforcement is dependent upon scarce resources with a myriad of competing recipients. “No right whose enforcement presupposes a selective expenditure of taxpayer contributions can, at the end of the day, be protected unilaterally by the judiciary without regard to budgetary consequences.”<sup>55</sup> In light of the restrictive effects of enforcement costs, Cass and Sunstein, therefore, call for an amended approach to theorizing about rights that focuses at least as much on the practical and economic factors as it does on the moral and political. They argue that scholars, politicians, and judges all must take public finance concerns more seriously when assessing the enforceability of rights claims if they hope “to capture the way a rights regime structures and governs actual behavior.”<sup>56</sup>

More drastically, Mark Tushnet claims that rights talk should not be reworked, but abandoned. He argues that rights claims are unstable, indeterminate, empty abstractions that impede meaningful political discourse and societal flourishing.<sup>57</sup> He explains that the contextual relativity of rights along with their uncertain enforcement makes them useless at best and easily manipulated for negative, pragmatic purposes at worst.<sup>58</sup> He further criticizes rights discourse for depreciating real human experiences by relegating our human needs for both independence and communal solidarity to the realm of legal abstractions. He contends, “The language of rights should be abandoned to the

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<sup>55</sup> Holmes and Sunstein, *The Cost of Rights*, 97.

<sup>56</sup> Holmes and Sunstein, 98.

<sup>57</sup> Tushnet, “An Essay on Rights,” 1363–64.

<sup>58</sup> Tushnet, “An Essay on Rights.”

very great extent that it takes as a goal the realization of the reified abstraction ‘rights’ rather than the experiences of solidarity and individuality.”<sup>59</sup>

Additionally, Tushnet claims that the current rhetoric of rights primarily highlights negative rights (that is, freedom from interference) and that it does so by creating “a sphere of autonomy stripped of any social context and counterposes to it a sphere of social life stripped of any content.”<sup>60</sup> This formulation, though, makes it difficult to claim positive rights, which require a belief that the abstract sphere of social life actually has meaningful content.<sup>61</sup> Thus, Tushnet believes that striving to justify positive needs in the form of rights distracts from efficiency in providing those things in the present. “People need food and shelter right now, and demanding that those needs be satisfied – whether or not satisfying them can today persuasively be characterized as enforcing a right – strikes me as more likely to succeed than claiming that existing rights to food and shelter must be enforced.”<sup>62</sup>

Richard Epstein, in his review of Glendon’s *Rights Talk*, argues not for the improvement of rights discourse, nor the abandonment of it. He, instead, believes that “our first order of business [...] should be to reduce the number of issues that get dragged into the public sphere.”<sup>63</sup> Epstein claims that the efficacy of rights claims is quite dependent on the legal regime in which they are made and that rhetoric is less important than who gets to make the decisions. He argues that by diverting rights claims away from

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<sup>59</sup> Tushnet, 1382–83.

<sup>60</sup> Tushnet, 1392–93.

<sup>61</sup> Tushnet, 1393.

<sup>62</sup> Tushnet, 1394.

<sup>63</sup> Epstein, “Rights and ‘Rights Talk,’” 1123.

the government, individuals can engage in “private agreement [so that] all parties can exchange and use entitlements in ways that work to their mutual advantage.”<sup>64</sup>

Other authors have *come to the defense of rights talk* in American culture despite its weaknesses in large part because of its ability to call people to higher ideals and advocate against injustices. In their review of Primus’ book, Jack Rakove and Elizabeth Beaumont highlight the rhetorical power of rights to express our deepest-held values notwithstanding debates about the metaphysical truth of rights theories. They argue, “The prominence of rights in the American imagination stems from their force as tools of moral and political suasion rather than from their abstract exquisiteness or ontological truth.”<sup>65</sup> They then critique Primus’ focus on elitist constructions of rights discourse to the exclusion of ordinary rights understandings, but they do not discount the rhetorical value of rights discourse in the political arena.

Thomas Haskell argues both for a critical analysis of the dissolving foundations of rights theories and for a robust encouragement of the use of rights talk despite its limitations. In his article “The Curious Persistence of Rights Talk in the ‘Age of Interpretation,’” he states at the outset, “The plain truth is that no one at present can offer any entirely satisfactory justification for the idea of a right, or for the larger and even more vital notion idea of objective moral obligation.”<sup>66</sup> Nevertheless, he believes that rights refer to something real and “ought to be valued as rational conventions and that they neither have nor need any deeper sort of justification, in nature or anywhere else.”<sup>67</sup>

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<sup>64</sup> Epstein, 1123.

<sup>65</sup> Rakove and Beaumont, “Rights Talk in the Past Tense,” 1866.

<sup>66</sup> Haskell, “The Curious Persistence of Rights Talk in the ‘Age of Interpretation,’” 984–85.

<sup>67</sup> Haskell, 985.

Joel Feinberg also believes in the necessity of rights claims in a society despite disagreement on the exact nature and content of rights. In “The Nature and Value of Rights,” he argues for the moral significance of rights when he says, “To respect a person then, or to think of him as possessed of human dignity, simply is to think of him as a potential maker of claims. Not all of this can be packed into a definition of ‘rights;’ but these are facts about the possession of rights that argue well their supreme moral importance.”<sup>68</sup>

In his book, *This is Not Civil Rights: Discovering Rights Talk in 1939 America*, George Lovell argues for the value of “extravagant” rights talk to “express aspirations for a better legal order” and to give citizens an avenue for political engagement.<sup>69</sup> Lovell, like Rodgers and Primus, focuses on grassroots rights consciousness in his investigation of complaint letters regarding rights that were written to the federal government between 1939-1941. In his research, Lovell shows how popular invocation of idealized legal and rights rhetoric allowed citizens to express not so much “faith in law,” but to express their resistance and contestation to violations of legal authority and to assert their dignity.<sup>70</sup> Thus, Lovell champions rights talk despite its ability to be manipulated or disordered because of its prospects for promoting Americans’ aspirations for a better, more just society.<sup>71</sup>

J. Harvey Wilkinson III goes so far as to argue that rights talk is not broken at all and that the duality of rights (i.e. the discrepancy between rights in theory and in practice) is a laudable part of their very nature. In his article “The Dual Lives of Rights:

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<sup>68</sup> Feinberg, “The Nature and Value of Rights,” 252.

<sup>69</sup> Lovell, *This Is Not Civil Rights*, xi.

<sup>70</sup> Lovell, xii.

<sup>71</sup> Lovell, xiii.

The Rhetoric and Practice of Rights in America,” Wilkinson explains, like Glendon, how American discourse about rights tends to be absolute in nature even though we know rights must be qualified in practice, but he believes this is inherent in the way rights are supposed to function.<sup>72</sup> “It is these twin elements of rhetoric and practice that define a right, and neither one is ancillary to or derivative of the other.”<sup>73</sup> He argues that the duality of rights talk, like the duality of federal and state sovereignty in America, has “led us to different conceptions of rights in different contexts, resulting in an infinitely richer framework of laws.”<sup>74</sup> Moreover, Wilkinson argues that we should not lower the standard for rights claims even though there is a gap between the absolutist way we talk about rights and their more limited application in real, practical situations. He argues for “strong” rights talk in order to preserve national identity and signpost “our most important values and beliefs;” to bolster the legitimacy of rights in the legal and political arenas; to encourage a fervent rights consciousness among the people; and to promote the recognition of new realms of rights and freedoms.<sup>75</sup>

Through this brief examination of the scholarship on rights discourse in America, several things become clear. “Rights culture” is an integral part of American political history, and rights talk has been utilized and developed from the Founding both by actors seeking to preserve the status quo, as well as by those aiming to establish new interpretations of entitlements in a just society. This has been fueled by the fact that we are far from a consensus on the nature, source, and content of rights within the legal, political, and philosophical communities. Thus, rights claims have increasingly been

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<sup>72</sup> Wilkinson, “The Dual Lives of Rights: The Rhetoric and Practice of Rights in America,” 279.

<sup>73</sup> Wilkinson, 277.

<sup>74</sup> Wilkinson, 280.

<sup>75</sup> Wilkinson, 307–12.

potent because of their rhetorical force rather than their moral foundations and logical consistency. Many scholars believe that rights talk is still valuable despite this lack of consensus and the weaknesses of rights theories, while others believe we should adjust rights framing or abandon it altogether. Regardless, rights talk is objectively *powerful*, so it is warranted to examine why and how actors make rights claims in their efforts to garner popular support for their particular social movements, which is part of the goal of this project.

### ***1.1.3 Legal Personhood***

In this overview of the evolution of rights discourse in American political culture, it is necessary to take note of a relevant and parallel development – that of “legal personality”, or “legal personhood.” This concept is significant because in our understanding of the development of rights discourse, it is crucial to also understand how the holders of these rights have been conceptualized. Additionally, personhood is particularly important for this project because in both the slavery and abortion debates, it is ultimately the legal personality of one of the parties involved that is being called into question and negated.<sup>76</sup>

Dating back to ancient Rome, legal scholars and philosophers sought to understand the purpose of the law and the law’s subject. Consequently, they developed distinctions between persons and things and sought to understand who and what belonged in such categories.<sup>77</sup> In his book *A Theory of Legal Personhood*, Visa Kurki explains that

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<sup>76</sup> For a discussion of slavery and abortion as primary cases of disputed personhood, see Fagundes, “What We Talk about When We Talk about Persons”; Hoffman, “Personhood and Rights”; Kurki, “Short History of the Right-Holding Person”; Noonan Jr., “The Root and Branch of Roe v. Wade”; Macedo, “In Defense of Liberal Public Reason.”

<sup>77</sup> For a brief overview of the history of legal personality, see Kurki, “Short History of the Right-Holding Person.”

by the 18<sup>th</sup> and 19<sup>th</sup> centuries, German thinkers like Immanuel Kant, Georg Wilhelm Friedrich Hegel, and Friedrich Carl von Savigny expounded on the nature of rights and rights holders. Kant, harkening back to Roman law, explained how only *persons*, or “rational agents with the capability to act autonomously in accordance with principles, are ends in themselves,” whereas *things* “may be used purely as means.”<sup>78</sup> Kant classifies persons as having rights and duties, and he classifies human beings who have duties but no rights (e.g. slaves) as lacking in “personality.”<sup>79</sup>

In assessing Hegel’s understanding of personhood, Kurki states that for Hegel, “The ‘right of personality’ is thus the capacity to hold rights to things, and things are anything external to persons.”<sup>80</sup> Hegel’s definition of “persons”, similarly to Kant’s, hinges on rationality, self-knowledge, and the will or “capacity” for exercising rights.<sup>81</sup> According to Savigny’s definition, persons possess legal capacity, “the capacity to hold rights and bear obligation.”<sup>82</sup> Savigny claims, “the original concept of person or legal subject must coincide with the concept of human being,” so all human beings are legal persons.<sup>83</sup> Moreover, he claims that personhood could be extended to artificial, juristic persons in certain cases.<sup>84</sup>

These German thinkers had a great deal of influence on Anglo-American legal scholars and the American law tradition, especially their ideas of legal “personhood” and “thinghood.”<sup>85</sup> An important example of this influence is in the writing of Sir William

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<sup>78</sup> Kurki, 39–40; Kant, *Metaphysical Elements of Justice*.

<sup>79</sup> Kurki, “Short History of the Right-Holding Person,” 41.

<sup>80</sup> Kurki, 42.

<sup>81</sup> Kurki, 42; Hegel, *Elements of the Philosophy of Right*.

<sup>82</sup> Kurki, “Short History of the Right-Holding Person,” 44.

<sup>83</sup> Savigny, *System of the Modern Roman Law*.

<sup>84</sup> Kurki, “Short History of the Right-Holding Person,” 45.

<sup>85</sup> Kurki, 49.

Blackstone, an English jurist who published his treatise *Commentaries on the Laws of England* in the late 1760s. In his book, *America's Unwritten Constitution: The Precedents and Principles We Live By*, Akhil Reed Amar argues that Americans frequently looked to the *Commentaries* as they developed their own legal tradition. Amar claims, “Both before and after independence, American lawyers and activists of all stripes relied heavily and preeminently on the *Commentaries* for instruction on basic English legal principles, many of which applied with full force in America.”<sup>86</sup> Thus, looking to Blackstone’s interpretation of legal personhood is a reasonable way to understand the conceptualization of legal personality at the Founding.<sup>87</sup>

The distinction and definition of legal *persons* made by previous scholars comes through in Blackstone’s thinking. In his chapter on the absolute rights of individuals, he claims, “Persons also are divided by the law into either natural persons, or artificial. Natural persons are such as the God of nature formed us; artificial are such as are created and devised by human laws for the purposes of society and government, which are called corporations or bodies politic.”<sup>88</sup> Thus, in the 1760s, Blackstone proclaimed a legal understanding of both natural, biological persons and legally-constructed, nonhuman “persons,” like corporations.

Blackstone further argues that the first of the primary rights of persons is to personal security, that is “a person’s legal and uninterrupted enjoyment of his life, his limbs, his body, his health, and his reputation.”<sup>89</sup> Interestingly, he continues “Life is the immediate gift of God, a right inherent by nature in every individual; and it begins in

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<sup>86</sup> Amar, *America’s Unwritten Constitution*, 7.

<sup>87</sup> For a more detailed analysis of this approach, see Paulsen, “The Plausibility of Personhood.”

<sup>88</sup> Blackstone, *Commentaries on the Laws of England in Four Books*, 1:123.

<sup>89</sup> Blackstone, 1:129.

contemplation of law as soon as an infant is able to stir in the mother’s womb.”<sup>90</sup> It is worth noting that the “stirring in the womb” to which Blackstone refers, also known as “quickening,” would have been, at that time in scientific history, the first conclusive indication during pregnancy of new life within the body of the mother.<sup>91</sup> As Michael Stokes Paulsen maintains, “Blackstone’s standard appears to be whether there *is* new human life, *as judged by* ability to move within the womb. Thus, where human life can be shown to exist, legal personhood exists” [emphasis original].<sup>92</sup> Furthermore, Blackstone claims that “pure and proper slavery does not, nay, cannot, subsist in England” as it is “repugnant to reason, and the principles of natural law.”<sup>93</sup> Thus, for Blackstone, there is no distinction between biological humanity and legal personhood – all humans are legal persons, including the fetus when its living presence can be detected, as well as slaves.

John Austin similarly rejected the notion that human beings could be considered *things* before the law rather than persons. Writing in the 19<sup>th</sup> century, he argues, “by a *person* simply, I mean *homo*, or a *man*, in the largest signification of the term: that is to say, as including *every* being which can be deemed *human*” [italics in original].<sup>94</sup> He further argues that in Roman law, even slaves, though they had no *rights*, were afforded a *status* before the law and were treated as a “class of *persons*.”<sup>95</sup>

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<sup>90</sup> Blackstone, 1:129.

<sup>91</sup> For a discussion of quickening as first evidence of fetal life and quickening in common law, see Keown, “Back to the Future of Abortion Law: Roe’s Rejection of America’s History and Traditions”; Dickens, *Abortion and the Law*.

<sup>92</sup> Paulsen, “The Plausibility of Personhood,” 27–28.

<sup>93</sup> Blackstone, *Commentaries on the Laws of England in Four Books*, 1:423.

<sup>94</sup> Austin, *Lectures on Jurisprudence, Or, The Philosophy of Positive Law*, 1:358.

<sup>95</sup> Austin, 1:359.

Thus, Austin rejects the somewhat circular argument posed by many of his contemporaries that those who have rights are *persons* and persons are those who have *rights*. Thomas Holland, for instance, argues, “A ‘natural,’ as opposed to an ‘artificial,’ person is such a human being as is regarded by the law as capable of rights or duties: in the language of Roman law as having a ‘status.’”<sup>96</sup> A natural person must be both “a living human being” and “must be recognised by the State as a person [not a slave or otherwise “civilly dead”].”<sup>97</sup> Thus, to be a person before the law, you must be recognized as a person by the law.

Following suit, Sir Frederick Pollack claim, “A person is such, not because he is human, but because rights and duties are ascribed to him,” thus “there may well be human beings having no legal rights, as was the case with slaves in ancient law.”<sup>98</sup> Pollack, writing in 1896, is quick to assert that the institution of slavery is “repugnant to the spirit of modern laws;” however, “we are now examining what is conceivable and possible, not what is desirable or now prevalent.”<sup>99</sup>

As scholars continued to reject the notion that all human beings are legal persons, they continued developed theories to denote *which* human beings should be recognized as persons, and, therefore, as the subject of legal rights and duties.<sup>100</sup> As Bryant Smith claims in his 1928 article “Legal Personality,” “legal philosophers and students of jurisprudence [...] have sought for the ‘internal nature’ of legal personality, for an abstract essence of some sort which legal personality requires.”<sup>101</sup> For John Chipman

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<sup>96</sup> Holland, *The Elements of Jurisprudence*, 93.

<sup>97</sup> Holland, 94–95.

<sup>98</sup> Pollack, *A First Book of Jurisprudence*, 108.

<sup>99</sup> Pollack, 108.

<sup>100</sup> Smith, “Legal Personality,” 283.

<sup>101</sup> Smith, 284.

Gray, a natural, legal person must be capable of exercising a will (or have a guardian able to attribute a will, as in the case of children or the mentally impaired).<sup>102</sup> For John Salmond, a legal person must have a capacity of “interest.”<sup>103</sup>

Some scholars, like Hans Kelsen, go so far as to abandon the reality of a natural person altogether and to claim that a person is *only* a construct of the law. For legal purposes, Kelsen considers a human being one and the same with his or her rights and duties, so he claims, “the so-called physical person, then, is not a human being, but the personified unity of the legal norms that obligate or authorize one and the same human being. It is not a natural reality but a legal construction, created by the science of the law.”<sup>104</sup>

This distinction of rights-bearing “persons” as not simply human beings but only those humans who are recognized as such persons may appear subtle and even moot considering the abolition of institutions like slavery in the modern world, as Pollack highlights. However, theories such as Kelsen’s in which personhood has no independent, ontological meaning apart from the law open up worrisome possibilities for the abuse of the definition of rights and rights holders by those in power. In considering the implications of this view, John T. Noonan Jr. posits the corollary that “there is no kind of human behavior that, because of its nature, could not be made into a legal duty corresponding to a legal right. When one thinks of the vast variety of human behavior it is at least startling to think that every variation could be converted into legal duties and

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<sup>102</sup> Gray, *The Nature and Sources of the Law*, 25–39.

<sup>103</sup> Salmond, *Jurisprudence*.

<sup>104</sup> Hans Kelsen, *Pure Theory of Law*, trans. Max Knight, Second Edition (Berkeley: University of California Press, 1970), 174.

legal rights.”<sup>105</sup> We have seen those in political power declare entire groups of people to be “things” before the law in the past, and there is no guarantee that we will not see it again in the future.

The vagueness of modern definitions of personhood and their reliance on recognition by those with legal power has proven to be problematic in American political history, specifically in regards to slaves. The concept of personhood was interpreted inconsistently or sidestepped altogether in cases concerning African American slaves. In his article on the legal fiction of personhood, Dave Fagundes claims, “Judges tended to adopt robust visions of legal personality in the limited number of situations in which they wanted to treat slaves as legal persons, but readily retreated to a narrower, citizenship-oriented notion of legal personality when that characterization better suited their purposes.”<sup>106</sup> Though laws were inconsistent in different states, the murder of a slave was often criminalized, while assault and battery laws protecting persons often did not apply to slaves.<sup>107</sup>

Moreover, judges used theories of personhood like Blackstone’s in which all humans are persons when they wanted to include slaves in some rights protection, but they invoked the narrower theories of personhood to argue that humanity was not sufficient when doing so was necessary for their aims.<sup>108</sup> In the case of *The Antelope* – a foreign ship captured off the coast of Georgia in 1821 carrying 281 Africans to be illegally sold into slavery – the Supreme Court ultimately decided that some of the

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<sup>105</sup> Noonan Jr., “The Root and Branch of *Roe v. Wade*,” 668.

<sup>106</sup> Fagundes, “What We Talk about When We Talk about Persons,” 1747.

<sup>107</sup> Fagundes, 1749.

<sup>108</sup> Fagundes, 1749–50.

Africans were to be considered persons and were freed, while the rest were considered property and were enslaved.<sup>109</sup>

The most famous consideration of the personhood of African American slaves was in the Supreme Court case *Dred Scott v. Sanford*, decided in 1857. In his majority opinion, Chief Justice Taney claimed, “The unhappy black race were separated from the white by indelible marks, and laws long before established, and were never thought of or spoken of except as property.”<sup>110</sup> Furthermore, in regards to the pronouncement of universal equality among men in the Declaration of Independence, Taney argued, “it is too clear for dispute that the enslaved African race were not intended to be included.”<sup>111</sup> African slaves, then, were deemed property and not persons by the highest court in the land.

The Fourteenth Amendment, adopted in 1868, 11 years after the *Dred Scott* decision, rejected the relegation of African American slaves to the status of property and asserted, “All persons born or naturalized in the United States [...] are citizens of the United States” and cannot be denied “equal protection under the law.” As Fagundes claims, “The Fourteenth Amendment repudiated these [status] distinctions – at least distinctions made on the basis of race – in the apparent hope of creating a body of law in which personhood had a single, universal meaning.”<sup>112</sup>

Even after the adoption of the Fourteenth Amendment, however, the issue of legal personhood has not been resolved because certain difficult cases continue to arise. Daniel

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<sup>109</sup> Noonan Jr., “The Root and Branch of *Roe v. Wade*,” 670–71; for more on this case, see John T. Noonan Jr., *The Antelope: The Ordeal of the Recaptured Africans in the Administrations of James Monroe and John Quincy Adams* (Berkeley: Univ. of California Press, 1990).

<sup>110</sup> *Dred Scott v. Sanford*, 60 U.S. 393 (U.S. Supreme Court 1857).

<sup>111</sup> *Dred Scott v. Sanford*.

<sup>112</sup> Fagundes, “What We Talk about When We Talk about Persons,” 1767.

Hoffman, in his article “Personhood & Rights,” identifies three “hard” cases: “potential humans; impaired humans; and human-like nonhumans” who are “largely unable to assume the functions and responsibilities of normal persons.”<sup>113</sup> In regards to “potential humans,” or the unborn, the Supreme Court decided in *Roe v. Wade* in 1973 that “the word ‘person,’ as used in the Fourteenth Amendment, does not include the unborn.”<sup>114</sup> However, if “personhood is established, [then] the fetus’ right to life would then be guaranteed specifically by the Amendment.”<sup>115</sup>

The Court’s exclusion of the unborn fetus from constitutional personhood rested not on a robust theory of personhood, but rather on the interpretation “that, as a society, we have never clearly recognized the fetus as a person.”<sup>116</sup> This strongly echoes the theories of personhood noted above that maintain that persons must be not only human, but *recognized as persons* by the law. This conceptualization of the term is precarious because, as we have seen in the case of African American slaves, those administering the law are able to manipulate such an understanding of legal personality to the detriment of an entire subset of human beings.

There still exists no consensus on what constitutes legal personhood on the theoretical level, something evidenced by the inconsistent treatment of the criminalization of feticide from state to state.<sup>117118</sup> Clearly defining who classifies as a

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<sup>113</sup> Hoffman, “Personhood and Rights,” 83.

<sup>114</sup> *Roe v. Wade*, 410 U.S. 113 (U.S. Supreme Court 1973).

<sup>115</sup> *Roe v. Wade*.

<sup>116</sup> Hoffman, “Personhood and Rights,” 89.

<sup>117</sup> Fagundes, “What We Talk about When We Talk about Persons,” 1759; Hoffman, “Personhood and Rights,” 93.

<sup>118</sup> As of 2018, 38 states had fetal homicide laws that defined the unborn child as a “person”: 29 of these laws apply to the fetus at *any time* of development. Most of these laws explicitly state, though, that the fetal homicide law is not to conflict with a legal abortion (as defined in that state). Thus, in the same states, the fetus is a person in cases defined as fetal homicide, but not a person for instances of abortion. See “State Laws on Fetal Homicide and Penalty-Enhancement for Crimes Against Pregnant Women.”

legal rights holder is of utmost importance, however, because such a distinction signifies full inclusion and protection in a society. As Hoffman argues, “To say one is not a person is to deny that such a one can have any rights; it is to shut off access to the institutions and processes wherein specific claims of right can be authoritatively decided.”<sup>119</sup>

Moreover, legal personality is significant in part because it governs others’ actions *toward* the subject. As Smith contends, “The broad purpose of legal personality, whether of a ship, an idol, a molecule, or a man, and upon whomever or whatever conferred, is to facilitate the regulation, by organized society, of human conduct and intercourse.”<sup>120</sup>

Thus, the way the law treats a subject is indicative of the way the broader society will treat the subject. Fagundes elaborates, “When the law manipulates status distinctions through the use of the metaphor ‘person,’ it necessarily expresses a conception of the relative worth of the objects included and excluded by the scope of that metaphor.”<sup>121</sup> A great deal is at stake, then, in the definition and application of the concept of legal personhood, though neither is consistent even in our contemporary era.

## 1.2 Social Movements & Issue Framing

Having looked at the literature on American rights discourse and conceptualizations of rights holders, or legal persons, I now turn to the scholarship on the rhetorical dynamics of social movements that aim to make rights claims. A great deal has been written about social movements and their evolution throughout history. Prior to the explosion of mass protest and social activism in the 1960s, scholars tended to view social movements as “the result of anomie and social disorganization;” a deviation from

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<sup>119</sup> Hoffman, “Personhood and Rights,” 75.

<sup>120</sup> Smith, “Legal Personality,” 296.

<sup>121</sup> Fagundes, “What We Talk about When We Talk about Persons,” 1760.

ordinary politics often characterized by violence and extremism.<sup>122</sup> However, by the 1970s scholars began to assess social movements and politics of contention as natural and intentional manifestations of political action in society.<sup>123</sup> As Oliver et al argue in a chapter of *Research in Political Sociology* published in 2003, “it is now well recognized that extra-institutional and institutional politics are intertwined and interdependent.”<sup>124</sup>

Social movement literature prior to the 1980s tended to focus on the influence of resource mobilization and external political processes, and little on the internal strategies and dynamics of the movements themselves.<sup>125</sup> Aldon Morris argues, “Human agency operated indirectly in collective behavior theories because participants were viewed as reacting to external forces beyond their control. Indeed, agency-producing mechanisms – social organization, strategizing, reasoning, analyses, and rationality – were argued to be absent in movements, especially in their formative stage.”<sup>126</sup> However, by the 1990s, Sidney Tarrow claims that scholars began to realize that “movements do not simply seek instrumental goods; they also make and manipulate meanings.”<sup>127</sup> Thus, the “social constructionism” subset of social movement theories emerged and began to highlight “processes of interpretation and symbolization” as key dynamics within movements.<sup>128</sup>

It is also important to note that within the literature, social movements are largely defined as movements from the bottom, that is from those lacking power and trying to change the status quo. In his book *Power in Movement: Social Movements and*

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<sup>122</sup> Tarrow, *Power in Movement: Social Movements and Contentious Politics*, 8.

<sup>123</sup> Tarrow, 8–9; Morris, “Reflections on Social Movement Theory: Criticisms and Proposals,” 445–46.

<sup>124</sup> Oliver, Cadena-Roa, and Strawn, “Emerging Trends in the Study of Protest and Social Movements,” 214.

<sup>125</sup> Benford, “An Insider’s Critique of the Social Movement Framing Perspective,” 409.

<sup>126</sup> Morris, “Reflections on Social Movement Theory: Criticisms and Proposals,” 445.

<sup>127</sup> Tarrow, *Power in Movement: Social Movements and Contentious Politics*, 142.

<sup>128</sup> Benford, “An Insider’s Critique of the Social Movement Framing Perspective,” 409.

*Contentious Politics*, Tarrow argues that “contentious collective action” lies at the basis of all social movements. Furthermore, “Collective action becomes contentious when it is used by people who *lack regular access to representative institutions*, who act in the name of *new or unexcepted claims*, and who behave in ways that fundamentally *challenge others or authorities*” [emphasis mine].<sup>129</sup> He further defines social movements as “collective challenges, based on common purposes and social solidarities, in *sustained interaction with elites, opponents, and authorities*” [emphasis mine].<sup>130</sup> In the first part of their definition of a “social movement campaign,” Charles Tilly and Tarrow refer to a “sustained challenge to power holders.”<sup>131</sup> Thus, social movements and contentious politics, in general, tend to refer to less powerful groups challenging the established order rather than powerholders striving to protect the existing state of affairs. My project, on the other hand, seeks to understand similar dynamics of rhetoric, symbolism, framing, and collective identity that take place in social movements but are employed in an effort to maintain the status quo and protect an existing right.

For the purposes of my research, the “social constructionism” strand of social movement literature mentioned above is most relevant as it deals directly with the strategic use of discourse and rhetoric within social movements. Thus, I evaluate the prominent scholarship specifically on *framing* within movements and how social movement actors construct and shift their rhetoric.<sup>132</sup>

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<sup>129</sup> Tarrow, *Power in Movement: Social Movements and Contentious Politics*, 7.

<sup>130</sup> Tarrow, 9.

<sup>131</sup> Tilly and Tarrow, *Contentious Politics*, 114.

<sup>132</sup> For a great introduction to the framing literature and examples of framing practices, see Johnston and Noakes, *Frames of Protest*.

The literature on strategic framing began most notably with the work of David Snow and Robert Benford, who demonstrate how activists tie concepts and experiences together through a synthesis of rhetoric. In their book chapter, “Master Frames and Cycles of Protest,” Snow and Benford define a frame as “an interpretative schemata that condenses the ‘world out there.’”<sup>133</sup> Activists use these collective action frames “to punctuate or single out some existing social condition or aspect of life and defined it as unjust, intolerable, and deserving of corrective action.”<sup>134</sup> Additionally, the frames attribute blame and a “corresponding sense of responsibility for corrective action” to some individual, group, or institution.<sup>135</sup> Thus, Snow and Benford argue that collective action frames are devices that allow activists to break down and “‘package’ slices of observed and experienced reality so that subsequent experiences or events need not be interpreted anew.”<sup>136</sup> This synthesis of existing value systems with emerging conceptions of claims that were “previously inconceivable, or at least not clearly articulated” allows activists to translate their claims into more meaningful terms for supporters and opponents.<sup>137</sup>

Snow and Benford further discuss how the adoption of potent “master frames” by social movements helps to mobilize collective action when circumstances are ripe for protest and that these frames tend to constrain future movement action to remain in line with the original master frame.<sup>138</sup> Moreover, “the emergence of competing frames can

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<sup>133</sup> Snow and Benford, “Master Frames and Cycles of Protest,” 137.

<sup>134</sup> Snow and Benford, 137.

<sup>135</sup> Snow and Benford, 137.

<sup>136</sup> Snow and Benford, 138.

<sup>137</sup> Snow and Benford, 138.

<sup>138</sup> Snow and Benford, 138–49.

suggest the vulnerabilities and irrelevance of the anchoring master frame, thus challenging its resonance and rendering it increasingly impotent.”<sup>139</sup>

In regards to the effectiveness of chosen frames to mobilize public support, Snow and Benford further discuss the ability of social movement actors to link their goals and ideology to the interests, values, and beliefs of individuals.<sup>140</sup> They refer to this process as “frame alignment” and seek to understand what then leads to “frame resonance.”<sup>141</sup> They identify four sets of factors that affect frame resonance and a chosen frame’s potency in mobilizing public support. These factors are: 1) thoroughness in the effort to diagnose the problem, propose a solution, and motivate action, 2) alignment with the larger belief system with which the movement seeks to affiliate 3) “the relevance of the frame to the life world of the participants” 4) external circumstances favorable to mobilization and protest.<sup>142</sup>

A vast amount has been written on how social movement actors try to achieve frame resonance with strategies targeting the four broad categories above, and one common trend is how actors choose frames that resonate with the desired audience because of their ability to form and sustain a *collective identity*. As Tarrow explains, “Movements require solidarity to act collectively and consistently; constructing identities around its claims is one way of doing so.”<sup>143</sup> While early research on social movements tended to separate framing and collective identity formation as distinct variables, Hunt and his collaborators pointed out the undeniable link between these two processes. They

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<sup>139</sup> Snow and Benford, 150.

<sup>140</sup> Snow et al., “Frame Alignment Processes, Micromobilization, and Movement Participation,” 464.

<sup>141</sup> Snow and Benford, “Ideology, Frame Resonance, and Participant Mobilization,” 199.

<sup>142</sup> Snow and Benford, 199.

<sup>143</sup> Tarrow, *Power in Movement: Social Movements and Contentious Politics*, 151.

argue, “Not only do framing processes link individuals and groups ideologically but they proffer, buttress, and embellish identities that range from collaborative to conflictual.”<sup>144</sup> Hunt and his colleagues claim that there are three “identity fields” within social movements – protagonists, antagonists, and neutral or uncommitted observers – and that actors engage in strategic framing to demarcate these groups and achieve their distinct goals in regards to each group.<sup>145</sup> Albert Melucci makes a similar claim when he says that a *collective actor* is necessary for any sort of *collective action* to occur, and that collective actors are formed through strategic *identity framing and construction*.<sup>146</sup>

Framing can be incredibly important to this identity construction because it can delineate the “in-group” and “out-group” and enhance feelings of intergroup solidarity. In their edited volume, *Identity Work in Social Movements*, Reger and her collaborators focus on how activists conduct “identity work;” that is, how they construct “sameness” and “difference” between movement participants and outsiders, as well as how they synthesize a diversity of identities within their membership.<sup>147</sup>

Social movement actors also choose frames based on their ability to resonate with *value systems and emotions*. Tarrow, for example, focuses specifically on the words or phrases chosen in framing strategies by actors engaged in contentious politics in his book *The Language of Contention*. He argues, “Two major concepts help us see why some contentious words endure and diffuse, whereas others disappear or are absorbed into

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<sup>144</sup> Hunt, Benford, and Snow, “Identity Fields: Framing Processes and the Social Construction of Movement Identities,” 185.

<sup>145</sup> Hunt, Benford, and Snow, “Identity Fields: Framing Processes and the Social Construction of Movement Identities.”

<sup>146</sup> Melucci, “The Process of Collective Identity,” 44.

<sup>147</sup> Reger, Myers, and Einwohner, *Identity Work in Social Movements*. See the book for examples of framing and identity construction in a variety of modern social movements.

ordinary language” – symbolic resonance and strategic modularity.<sup>148</sup> Thus, for Tarrow, frames are particularly resonant when their rhetoric both “resonates with culturally familiar concepts” and values and “can be repeated [in new strategic contexts] without losing the strategic advantage they originally possessed.”<sup>149</sup> Tarrow also highlights the role of *ambiguity* in framing language, which allows contentious words to be adapted to diverse contexts and to connect groups and causes with dissimilarities.<sup>150</sup>

Another major concept in the literature that underscores the role of emotion is the “injustice frame,” which highlights “a sense of moral indignation” in a movement’s cause and seeks redress for it.<sup>151</sup> William Gamson, who pioneered this concept, argues that successful collective action frames have three components: 1) an emotion-laden sense of moral outrage at a perceived *injustice* 2) a sense of *agency* that “it is possible to alter conditions or policies through collective action” 3) a strong sense of identity defining a “we” and an adversarial “they.”<sup>152</sup> Thus, the “injustice frame” aims to achieve both the identity construction discussed above and a resonance with deep-seeded emotions to mobilize support and action. Jonathan Horowitz further analyzes how these notions of injustice, identity, and agency work together. He finds that “social identity in-groups” (e.g. race, gender) interact with perceived injustices to both strengthen the in-group mentality or redefine it to be more salient and poised toward actionable protest.<sup>153</sup>

In addition to highlighting injustice, collective action frames can also achieve potency and mobilize action through their engagement of other emotions. Goodwin and

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<sup>148</sup> Tarrow, *The Language of Contention*, 17.

<sup>149</sup> Tarrow, 17–18.

<sup>150</sup> Tarrow, 14.

<sup>151</sup> Gamson, *Talking Politics*, 4.

<sup>152</sup> Gamson, 7.

<sup>153</sup> Horowitz, “Who Is This ‘We’ You Speak of? Grounding Activist Identity in Social Psychology,” 7.

his colleagues claim, “Political activists often use emotions strategically to signal things about themselves to each other and to outsiders.”<sup>154</sup> They argue that activists can use reflex emotions (fear, anger, and disgust) as well as affective emotions (love, hate, respect, trust) as strategic tools and target these in rhetoric and framing to solidify collective identities and mobilize action.<sup>155</sup>

Moreover, frames can elicit emotions through their use of *narratives* by drawing people into a larger story to help make sense of events and experiences. Margaret Somers explains, “To make something understandable in the context of a narrative is to give it historicity and relationality,” and this is what can spur “political emotion.”<sup>156</sup> She further argues that the use of story-telling helps to more powerfully bind the concepts of identity and agency that lead to social action.<sup>157</sup> Francesca Polletta also emphasizes the role of narratives in much of her scholarship, and she explains that framing goals and identities through stories can be powerful precisely because of their subjectivity.<sup>158</sup> She explains, “Stories resonate through a combination of familiarity, pleasurable surprise, and emotional identification; this makes them difficult to challenge.”<sup>159</sup> Polletta, like Tarrow, emphasizes the power of *ambiguity*. She argues that stories can “generate political resources” when they are ambiguous, or open to interpretation, because they can help

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<sup>154</sup> Goodwin, Jasper, and Polletta, “Emotional Dimensions of Social Movements,” 414.

<sup>155</sup> Goodwin, Jasper, and Polletta, “Emotional Dimensions of Social Movements.”

<sup>156</sup> Somers, “The Narrative Constitution of Identity: A Relational and Network Approach,” 616–17.

<sup>157</sup> Somers, 635.

<sup>158</sup> See Francesca Polletta, “Contending Stories: Narrative in Social Movements,” *Qualitative Sociology* 21, no. 4 (1998): 419–46; Francesca Polletta, “Storytelling in Social Movements,” in *Culture, Social Movements, and Protest*, ed. Hank Johnston (Farnham, England: Ashgate, 2009); Francesca Polletta and Pang Ching Bobby Chen, “Narrative and Social Movements,” in *The Oxford Handbook of Cultural Sociology*, ed. Jeffrey C. Alexander, Ronald N. Jacobs, and Philip Smith (Oxford University Press, 2012), <https://doi.org/10.1093/oxfordhb/9780195377767.013.18>.

<sup>159</sup> Polletta, “Contending Stories: Narrative in Social Movements,” 425.

“disadvantaged groups to chip away at the conceptual oppositions responsible for the uneven benefits of social policies.”<sup>160</sup>

### ***1.2.1 Frame Transformation***

We can see in the vast scholarship that framing plays an important role in social movements and that there are a variety of framing tactics that actors employ to bolster their movements and motivate action. Interestingly, there has been less research done on *frame transformation*, or the process by which “the objects of orientation [...] come to be seen by the participants or other relevant parties as something quite different from the way in which they were previously viewed and regarded.”<sup>161</sup> This is of particular importance for my project because it encompasses the process by which actors strategically alter their framing rhetoric over time. Snow explains that frame transformation can happen at both the individual and group levels, and that it can involve a range of strategic actions. For instance, sometimes movement actors are “attempting to affect conversion among prospective adherents or members, other times constructing or reconstituting an object or target of protest, and at other times reframing the image or identity of the movement itself.”<sup>162</sup>

Scholars who have explored frame transformation have largely focused on movement-counter movement interaction and how actors specifically shift their framing in response to a demonstrated counter movement. In his study of framing processes of “new racist white separatist” rhetoric, Mitch Berbrier demonstrates how contemporary

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<sup>160</sup> Polletta, *It Was Like a Fever*, ix.

<sup>161</sup> David A. Snow, “Framing Processes, Ideology, and Discursive Fields,” in *The Blackwell Companion to Social Movements*, ed. David A. Snow, Sarah A. Soule, and Hanspeter Kriesi (Hoboken: Wiley, 2004), 393; see more on this lack of research in Johnston and Noakes, *Frames of Protest*, 196.

<sup>162</sup> Snow, “Framing Processes, Ideology, and Discursive Fields,” 395–96.

white separatists shifted their framing both to remain relevant and more attractive in “the authoritative pluralist frame of contemporary American culture,” but also to adopt and undermine the language used by their opponents.<sup>163</sup> In another study of 1836 anti-abolition riots in Cincinnati, Stephen Ellingson demonstrates how frame transformation and rhetoric shifts can occur after pivotal events involving opposing groups as actors realign their framing to respond to a changed social environment.<sup>164</sup> In his analysis of the women’s movement in the 1960s, Pedriana argues that transformations in the women’s movement “were largely attributable to a symbolic framing contest between competing cultural representations of gender (‘protective’ vs. ‘equal’ treatment).”<sup>165</sup>

Interestingly, much of the research that has arisen in the category of frame transformation has dealt particularly with the abortion rights movement. Thus, I now turn to the scholarship on the evolution of pro-abortion rhetoric and argumentation, specifically.<sup>166</sup>

### 1.3 Evolution of Pro-Abortion Argumentation

Many scholars who have analyzed discourse in the abortion debate have focused on the influence of *movement-counter-movement dynamics* to explain strategic shifts in

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<sup>163</sup> Berbrier, “‘Half the Battle’: Cultural Resonance, Framing Processes, and Ethnic Affectations in Contemporary White Separatist Rhetoric,” 437–38.

<sup>164</sup> Ellingson, “Understanding the Dialectic of Discourse and Collective Action: Public Debate and Rioting in Antebellum Cincinnati.”

<sup>165</sup> Pedriana, “From Protective to Equal Treatment: Legal Framing Processes and Transformation of the Women’s Movement in the 1960s.”

<sup>166</sup> While there has been a great deal written about the evolution of the anti-abortion movement, as well, this study focuses specifically on the pro-abortion movement after the passage of *Roe* when activists were trying to protect abortion as a constitutional right; thus, it is outside the scope of this paper to separately analyze literature on the development of anti-abortion activism, but for relevant scholarship about the anti-abortion movement, see Munson, *The Making of Pro-Life Activists*; Ziegler, *After Roe*; Ziegler, “Women’s Rights on the Right: The History and Stakes of Modern Pro-Life Feminism”; Williams, *Defenders of the Unborn*; Flowers, *The Right-to-Life Movement, the Reagan Administration, and the Politics of Abortion*; Trumpy, “Woman vs. Fetus: Frame Transformation and Intramovement Dynamics in the Pro-Life Movement”; Roberti, “‘Women Deserve Better’: The Use of the Pro-Woman Frame in Anti-Abortion Policies in U.S. States.”

abortion framing and rhetoric. Dawn McCaffrey and Jennifer Keys, for example, published an article investigating pro-abortion framing in response to the anti-abortion countermovement to analyze how and why frame transformation occurs.<sup>167</sup> They analyzed newsletters from New York State National Organization for Women (NYSNOW) from 1970-1988 with references to anti-abortion activities to evaluate “how framing strategies evolve according to the needs of an SMO [social movement organization] embroiled in CM [countermovement]-generated conflict.”<sup>168</sup> From their analysis, McCaffrey and Keys observe “a transition from diffuse targets and mostly tame rhetoric to a heated discursive attack on the putative enemies of reproductive freedom.”<sup>169</sup>

In order to evaluate the rhetorical dynamics they discovered, McCaffrey and Keys propose “three counterframing concepts that identify responses of SMOs to ideological challenges by opponents: polarization-vilification, frame saving, and frame debunking.”<sup>170</sup> The first of these strategies aims to portray opponents as “corrupt, hypocritical, or a reprobate” in order to maintain one’s own moral high ground. The second strategy aims to scrutinize and discredit opponents’ claims, and the third strategy seeks to rescue one’s own frame that has been “challenged or denounced.”<sup>171</sup> All of these tactics are intentionally chosen by movement actors in response to countermovement challenges, and they aim to bolster the image of the movement and undermine the countermovement at the same time. Ultimately, McCaffrey and Keys claim, “As the

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<sup>167</sup> McCaffrey and Keys, “Competitive Framing Processes in the Abortion Debate.”

<sup>168</sup> McCaffrey and Keys, 42.

<sup>169</sup> McCaffrey and Keys, 42.

<sup>170</sup> McCaffrey and Keys, 44.

<sup>171</sup> McCaffrey and Keys, 44.

battle over abortion grew in intensity, movement rhetoric followed suit.”<sup>172</sup> Thus, they attribute frame transformation and rhetorical developments largely to interactions with opponents and the need to remain credible and persuasive in a competitive sociopolitical environment.

Gene Burns examines the impact of political and countermovement influences on issue framing in his book *The Moral Veto: Framing Contraception, Abortion, and Cultural Pluralism in the United States*. His aim is to understand why the issues of contraception and abortion have been matters of intense public controversy at some times but not others, and he argues that issue framing is a key factor. Burns makes a distinction between what he calls *limiting frames* and *moral worldviews*. “Limiting frames,” he explains, reduce and simplify discussion of an issue “so that it is stripped even of the many specific moral implications that most people would, in other circumstances, attach to the issue.”<sup>173</sup> By simplifying a potentially controversial issue, limiting frames allow groups with different opinions and grounding moral principles to form coalitions around an issue or at least to “live with each other” in relative peace. Additionally, Burns claims that limiting frames “are successful to the extent that they divert attention away from any such cultural bases of moral discomfort or controversy.”<sup>174</sup> “Moral worldviews,” on the other hand, “encompass many morally charged issues simultaneously, within a comprehensive and explicit worldview.”<sup>175</sup> Burns argues that this type of issue framing is not as strategically effective for implementing goals because it offers a lot of space for

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<sup>172</sup> McCaffrey and Keys, 56.

<sup>173</sup> Burns, *The Moral Veto: Framing Contraception, Abortion, and Cultural Pluralism in the United States*, 13.

<sup>174</sup> Burns, 24.

<sup>175</sup> Burns, 16.

disagreement; however, the movements that form around moral worldviews often foster passionate agreement amongst followers.<sup>176</sup> As a result, movements with “great moral passion” often fail to realize their goals in mainstream society, but they can experience success in “vetoing” the goals of opponents – hence, the “moral veto.”<sup>177</sup>

Burns, writing in the early 2000s, ultimately concludes that pro-abortion activists pragmatically chose the limiting “pro-choice” frame, while anti-abortion advocates pursued “a moral worldview at odds with mainstream U.S. society.”<sup>178</sup> Interestingly, he states that the “pro-choice” frame is more of a limiting frame than an “abortion rights” frame would be. He says, “The pro-choice rhetoric often implies that legal abortion, far from heralding a sweeping reform of society, is simply a regrettable necessity.”<sup>179</sup> Burns subsequently quotes politicians, like Bill Clinton, who supported legal abortion but wanted to make it “safe, legal, and rare.” Burns argues that the “intense movement solidarity had weakened” on the pro-abortion side following the “apparent full-scale victory of *Roe v. Wade*,” so “pragmatic, limiting frames became an option that the remaining movement could support.”<sup>180</sup> I would argue that in the two decades since Burns made this observation, the pro-abortion movement has shifted from such a limiting frame to the very “abortion rights” frame he claimed it was avoiding. Thus, given Burns’ reasoning, it is possible that as the victory of *Roe* came under increasing attack, the pro-choice frame was no longer a practical option, and the movement solidarity needed to be

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<sup>176</sup> Burns, 17.

<sup>177</sup> Burns, 22.

<sup>178</sup> Burns, 294.

<sup>179</sup> Burns, 297.

<sup>180</sup> Burns, 299.

strengthened again, this time around a moral worldview frame of full-scale abortion rights.

Deana Rohlinger also investigates both movement-counter movement dynamics and the influence of the political environment in her article “Framing the Abortion Debate.” In particular, she analyzes how “how [opposing] organizations create media messages, their strategies to get media coverage, and the relative success of each organization’s efforts in mass media outlets.”<sup>181</sup> Rohlinger examines the strategies of the pro-abortion National Organization for Women (NOW) and the anti-abortion Concerned Women for America (CWA) at “three critical discourse moments based on Supreme Court cases that, according to SMOs and researchers alike, reflect landmark decisions in the abortion debate.”<sup>182</sup> These moments were *Webster v. Reproductive Health Services* decided July 3, 1989, *Ohio v. Akron Center for Reproductive Health et al.* decided June 25, 1990, and *Planned Parenthood of Southeastern Pennsylvania v. Casey* decided on June 29, 1992.<sup>183</sup> Rohlinger examines the “preferred frames and packages of CWA and NOW in the abortion debate,” how these frames changed during the critical moments listed above, and the media coverage outcomes that CWA and NOW received in mainstream media during these moments. She analyzes materials internal to these

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<sup>181</sup> Rohlinger, “Framing the Abortion Debate,” 480.

<sup>182</sup> Rohlinger, 484.

<sup>183</sup> *Webster v. Reproductive Health Services* “upheld a state law that ruled that human life begins at conception, barred the use of state hospitals for abortions, and required fetal viability testing;” *Ohio v. Akron Center for Reproductive Health et al.* “ruled that a state can require a waiting period and parental notification before performing an abortion on a minor but also made a judicial bypass provision;” and *Planned Parenthood of Southeastern Pennsylvania v. Casey* “upheld a twenty-four hour waiting period before administration of an abortion as well as required anti-abortion counseling and parental consent for minors” (Rohlinger, 484)

organizations from 1985-1992 and publications from mainstream media outlets surrounding the critical moments.<sup>184</sup>

Rohlinger ultimately finds that an organization's strategy for obtaining media coverage as well as its choice of more broadly resonant frames greatly influences the favorable media coverage it receives. For example, NOW "regarded media as important to its vision of political change" while CWA "initially regarded mainstream (secular) media as hostile to its messages" and did not actively seek coverage.<sup>185</sup> Moreover, "NOW directly supplied the 'phraseology' used by [its] chapters in abortion debate by providing chapters with the preferred frames and packages, which had been researched and tested, and strategically placed spokeswomen across the country who could 'sell' NOW to media."<sup>186</sup> Additionally, NOW's preferred dominant frame of "rights" was more widely and culturally salient than CWA's frame of "morals."<sup>187</sup>

In regards to frame transformation, Rohlinger observes that "NOW emphasized different [framing] packages as the political environment and pro-life tactics changed."<sup>188</sup> Borrowing McCaffrey and Keys' strategies explained above, Rohlinger argues that NOW engaged in polarization and vilification of the opposition in the public sphere from 1985-1988. However, as the pro-abortion movement began losing battles in state legislatures, NOW shifted its focus to attacking anti-abortion forces in the government. From 1989-1992, it attempted to "save" its frame of "rights" by targeting the state and its failure to protect the rights of women. CWA, on the other hand, intentionally did not alter its

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<sup>184</sup> Rohlinger, "Framing the Abortion Debate," 485-86.

<sup>185</sup> Rohlinger, 500, 502.

<sup>186</sup> Rohlinger, 501.

<sup>187</sup> Rohlinger, 502.

<sup>188</sup> Rohlinger, 488.

message in response to the changing political environment and oppositional tactics. Instead, it focused on reinforcing its own position on abortion through frame saving, as well as “debunking” the opposition’s frames.<sup>189</sup> Thus, these pro-abortion and anti-abortion organizations utilized vastly different framing strategies, and the pro-abortion emphasis on employing culturally resonant frames and shifting frames when it was deemed necessary allowed the organization to receive more media coverage and more favorable coverage than opponents.

Celeste Michelle Condit highlights the importance of both countermovement action and the cultural climate to the evolution of the rhetorical structures of abortion discourse in her book *Decoding Abortion Rhetoric*. She argues that pro-abortion activists chose particular discursive tactics at different moments in order to effectively counter anti-abortion forces. For instance, even before *Roe* and the full mobilization of the anti-abortion movement, abortion advocates tried to chip away at the “stigma” of abortion through powerful *narratives*. Condit explains that since abortion was such a taboo topic in the 1950s and 60s, women needed a “special discursive form [...] that could weave a compelling understanding of the abortion problem without engaging the powerful value sets that surrounded it.” As a result, they chose to utilize “exposés” that vividly portrayed “the horrors of the illegal abortion ‘racket.’” While these narratives did not advocate new laws, they did bring abortion into the public limelight and paint it as a particularly distressing issue for women.<sup>190</sup>

Then, Condit claims that between 1965-1972, both abortion advocates and opponents began employing the *ideographic* terms of the Constitution in order to make

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<sup>189</sup> Rohlinger, 488–92.

<sup>190</sup> Condit, *Decoding Abortion Rhetoric*, 23–24.

their claims resonate with the values of the larger community. She explains that “ideographs” are words or phrases that express fundamental “public values.”<sup>191</sup> As early as the 1960s, the anti-abortion actors chose “life” (fetal life) as their grounding ideographic frame. Thus, in order to demand social action and legal change, abortion proponents had to frame the “political right of women to ‘control their own bodies’” in a similarly potent ideographic way.<sup>192</sup> Condit explains:

The pro-Life argument rested the case against abortion on the constitutional Right to Life of an individual fetus. The movement to this ideographic level of argument necessitated a response from the reform group on an equally fundamental level. They could have denied the linkage of fetus and Life. [...] Instead, to counter the weight of these claims and to resolve the contradictions generated within their own narrative, they developed their own ideographic argument.<sup>193</sup>

Consequently, the first frame that pro-abortion actors chose in the late 1960s was the right of all citizens to “equality,” but this alone proved incapable of standing up to arguments about the fetus’ right to life. Thus, Condit claims, “Equality and Freedom were to be combined in a new demand for a Right to Choice.”<sup>194</sup> Condit interestingly argues that two key factors paved the way for the “choice” frame: the birth control pill and changing roles for women. She explains that by convincing women that they had full control of their fertility, “the pill made the social demand for control or ‘choice’ *appear* as a biological and physical possibility,” thereby making the demand for “choice” more persuasive [emphasis original].<sup>195</sup> Additionally, the post-World War II era “brought major changes in the expectations about women’s social role as ‘mothers’,” so women

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<sup>191</sup> Condit, 13.

<sup>192</sup> Condit, 59.

<sup>193</sup> Condit, 63.

<sup>194</sup> Condit, 67.

<sup>195</sup> Condit, 70.

entered the 1970s “ready for and expectant of new occupational *choices* [emphasis original].”<sup>196</sup>

Condit argues that the contest between pro-Choice and pro-Life forces ultimately led to a *compromise* in both the legal and cultural realms even as activists on both sides aimed for more inflexible rhetoric. This compromise came about in part because the Supreme Court incorporated principles from both sides of the issue in its legal precedent. Condit maintains that in the *Roe* decision, “the Court constructed a compromise from the strongest substantive arguments offered by both sides. The *value* of the fetus (as it became materially more substantial in the later stage of development) and women’s Liberty (through the ‘freedom of choice’) were both conserved.”<sup>197</sup> Moreover, anti-abortion advocates utilized the “persuasive force of the image of the fetus” that embedded elements of the pro-Life rhetoric “deeply within popular culture.”<sup>198</sup> Pro-abortion activists subsequently failed to seriously counter claims about the humanity of the fetus or to “address the violence being done to the fetus” in debates, speeches, and articles, and deferred to the argument that “everyone has a right to decide.”<sup>199</sup>

Thus, Condit argues that a compromise arose in the public in which opinion about abortion was influenced more by emotion than by argumentation and based on pragmatic factors rather than philosophical principles. She explains that in the 1970s, “The popular opinion included a wide range of beliefs, but by and large these attitudes incorporated elements of both the pro-Choice and pro-Life rhetorics.”<sup>200</sup> For example, in both popular

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<sup>196</sup> Condit, 71.

<sup>197</sup> Condit, 112.

<sup>198</sup> Condit, 94.

<sup>199</sup> Condit, 164.

<sup>200</sup> Condit, 148.

television and opinion polls, it became clear that people had shifting opinions on abortion depending on the reason a woman was pursuing it and the stage of fetal development. Additionally, majorities of Americans seemed to believe *both* that women should be able to control their own bodies *and* that a fetus is a person well before birth, and to make distinctions between what they would personally choose in regards to abortion and what they would permit the law to be.<sup>201</sup> These compromises and distinctions between private morality and public law drew a wedge between the public and activists on both sides of the issue who often “continued their insistence on the dominance of their own ideology in pure form.”<sup>202</sup> Therefore, for Condit, whose study only goes until 1985, early abortion advocacy was heavily influenced by the tactics of opponents and attempts to remain relevant and persuasive within more ambivalent legal and social parameters.

In her pathbreaking book, *After Roe: The Lost History of the Abortion Debate*, Mary Ziegler also emphasizes both movement-counter movement interaction and the importance of the broader sociopolitical context to explain the evolution of pro-abortion argumentation.<sup>203</sup> Through a thorough analysis of primary sources and personal interviews, Ziegler focuses her study on the evolution of activism on both sides of the abortion issue during the 1970s and early 1980s. Essentially, she argues that too much importance has been attributed to the Supreme Court’s decision in *Roe*, and, as a result, “we have lost a much richer story about the evolution of abortion politics.”<sup>204</sup> She argues that early developments in activism on both sides of the abortion issue were more significantly influenced by “the realignment of the Religious Right and the New Right,

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<sup>201</sup> Condit, 148–50.

<sup>202</sup> Condit, 166.

<sup>203</sup> Ziegler, *After Roe*.

<sup>204</sup> Ziegler, 221.

the changing politics of population control and civil rights, and the popularization of neoliberalism” than they were by *Roe*. Additionally, activists made tactical decisions in response to opponents and “shifting ideological commitments.”<sup>205</sup>

Specifically, in regards to the pro-abortion movement, Ziegler examines two conventional narratives and presents different interpretations of the evidence. First, she argues that “we often equate the abortion-rights movement too easily with the women’s movement.”<sup>206</sup> Prior to the 1970s, abortion was most often promoted not as a key aspect of women’s rights and freedom, but as a pragmatic solution, especially to the population control frenzy of the time. Ziegler claims, “Instead of linking abortion to rights for women, leading advocates primarily described the procedure as a means to an end: the prevention of deaths suffered during dangerous illegal abortions or the reduction of domestic population growth.”<sup>207</sup> By the mid-1970s, “feminists gradually made *Roe* a symbol of the relationship between the abortion-rights and women’s movements.”<sup>208</sup> Ziegler argues that this shift was not a result of the *Roe* decision alone, though, because abortion advocates had already been responding to “the changing politics of civil rights in the late 1960s and early 1970s – the rise of the black-power movement, the mobilization of feminists of color, and growing controversy about population control.”<sup>209</sup> Feminists then used the Court’s decision to legitimize claims that “legal abortion reflected the importance of equality on the basis of race and sex,” thereby defining their cause as a part of a movement for equal rights.

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<sup>205</sup> Ziegler, 221.

<sup>206</sup> Ziegler, 96.

<sup>207</sup> Ziegler, 96.

<sup>208</sup> Ziegler, 96.

<sup>209</sup> Ziegler, 96–97.

Second, Ziegler argues against a common belief that *Roe* forced feminists to pursue a “choice” framework and a single-issue agenda prioritizing abortion over other reproductive health concerns. Instead, Ziegler claims that these elements were more a result of countermovement dynamics and strategic decisions by leaders. As abortion opponents gained strength in state legislatures and experienced victories in Congress, abortion advocates changed their tactics to remain competitive. “If victory depended on the movement’s ability to impact national elections, a single-issue agenda seemed more realistic, practical, and effective. Movement leaders also used choice arguments to court voters, since abstract concepts of privacy and autonomy enjoyed more support than did claims involving socioeconomic or sex equality.”<sup>210</sup>

Ziegler’s 2020 book, *Abortion and the Law in America*, brings the narrative up to the present day just before the Supreme Court’s decision in *Dobbs v. Jackson Women’s Health*.<sup>211</sup> In this book, as well, Ziegler attributes developments in pro-abortion argumentation to specific action on the part of leaders in response to changes in the broader sociopolitical context and anti-abortion movement activism. In particular, Ziegler argues that internal disputes within pro-abortion organizations about how best to effect change had the largest impact on evolutions in the framing of abortion. The different possible frames – for example, in terms of population control, or as a woman’s right, or as a right to private choice, or as a medical issue – were often decided upon based on their ability to attract maximum public support and form politically powerful coalitions.<sup>212</sup> Moreover, as anti-abortion activists took the offensive and centered the

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<sup>210</sup> Ziegler, 129–30.

<sup>211</sup> Ziegler, *Abortion and the Law in America*.

<sup>212</sup> Ziegler, *After Roe*, 95–153.

debate around the visibility of the fetus at different times (with the advent of the sonogram, and later debates over abortion late in pregnancy, for example), abortion advocates were forced to take a defensive position and adjust their rhetoric in response.<sup>213</sup>

Other scholars have focused less on inter-movement dynamics and competition and *more fully on the sociopolitical context* to account for developments in abortion discourse. Rohlinger and David Meyer focus on national political culture in their investigation of “the factors that affect how organizations frame the abortion issue at the national level” in the United States, England, and Ireland.<sup>214</sup> They analyzed the framing of abortion discourse in newsletters, press releases, and other documents published by national branches of abortion-rights and pro-life groups in 2000 and 2001 and conducted interviews with organization leaders.<sup>215</sup> Ultimately, they find that the way abortion is discussed and presented is more significantly affected by the national context than by international networks or transnational identity. Rohlinger and Meyer conclude, “Although international coordination matters, state policies and national political culture still dominate the field on which activists struggle.”<sup>216</sup> Interestingly, they find that a cross-national trend is the use of “rights talk” as a key rhetorical element on both sides of the debate.<sup>217</sup>

In their book, *Shaping Abortion Discourse: Democracy and the Public Sphere in Germany and the United States*, Myra Marx Ferree and her colleagues highlight the impact of national politics and legal precedents in the abortion debate. They analyze “the

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<sup>213</sup> Ziegler, *Abortion and the Law in America*, 127, 162.

<sup>214</sup> Rohlinger and Meyer, “Transnational Framing of Access to Abortion in the United States, England, and Ireland,” 198.

<sup>215</sup> Rohlinger and Meyer, 199.

<sup>216</sup> Rohlinger and Meyer, 213.

<sup>217</sup> Rohlinger and Meyer, 210.

evolution and content of abortion *talk* rather than abortion *policy*” [emphasis original] in both the United States and Germany.<sup>218</sup> They seek to understand how abortion discourse is shaped in these countries by investigating the major players in the debate and the strategic tools they employ, especially framing. They also assess the “quality” of abortion talk through the lens of democratic theory about the nature of the public sphere.<sup>219</sup> To assess the content of abortion talk, Ferree et al. analyzed mass media sources as well as materials from relevant movement organizations.

In their particular chapter on framing, Ferree and her colleagues explain how they analyzed articles from two major newspapers in each country between 1970 and the mid-1990s for coverage of abortion. They propose eight frames for abortion from the data they coded: four *rights* frames (*Fetal Life*, *Balancing*, *Women’s Rights*, and *Individual and State*) and four others (*Social Morality*, *Effects on Society*, *Pragmatic Consequences*, and *Social Justice*). They explain that within these frames, “ideas may be pro [abortion], anti, or neutral in their policy implications.”<sup>220</sup> They find that in German discourse, the *Fetal Life* frame is overwhelmingly the most prominent, and the *Balancing* frame, which aims to strike a balance between the rights of the fetus and the rights of the mother, is the second most common. In the U.S., on the other hand, the most prominent frame is the *Individual and State* followed far behind by the *Fetal Life* frame.<sup>221</sup> Additionally, they find that, contrary to expectation, the discourse in Germany is actually more rights-focused than in the U.S. with 70% of German frames within the rights category and only

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<sup>218</sup> Ferree et al., *Shaping Abortion Discourse*, 4.

<sup>219</sup> Ferree et al., 4.

<sup>220</sup> Ferree et al., 106.

<sup>221</sup> Ferree et al., 111–12.

59% of U.S. frames within the rights category.<sup>222</sup> They also find that “the rhetorical advantage lies quantitatively and qualitatively on the Anti side” in Germany, while Pro frames outnumber Anti frames overall in the U.S.<sup>223</sup>

Ultimately, Ferree and her collaborators attribute these findings to the impact of high court decisions. They argue, “The relative significance of the Fetal Life frame in Germany and the Individual and State frame in the United States can be traced back specifically to the ideas expressed by the highest courts in each country in their landmark decisions in the early 1970s.” They claim that the courts’ decisions both contributed to the framing of abortion in public discourse and reflected “legal precedents and historical traditions.”<sup>224</sup> By framing abortion as an issue of privacy and declining to take a stance on fetal life, the U.S. Supreme Court thereby privileged arguments about individual rights and state interference and marginalized arguments based on fetal life and personhood. On the contrary, the German Constitutional Court ruled in 1975 that a liberal abortion law “violated the constitutional mandate for the state to protect human life,” and this decision pushed abortion discourse into realm of discussing fetal rights in relationship to women’s rights.<sup>225</sup> Thus, Ferree and her colleagues argue that issue framing around abortion is largely shaped by national traditions, political contexts, and legal precedents and how main actors (they highlight women’s movements, religious constituencies, and political parties) mobilize rhetoric within these parameters.

Some scholars have highlighted the importance of intra-movement dynamics as well as countermovement dynamics, but have *not focused much on rhetoric or framing*.

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<sup>222</sup> Ferree et al., 114.

<sup>223</sup> Ferree et al., 126.

<sup>224</sup> Ferree et al., 121.

<sup>225</sup> Ferree et al., 120–22.

Writing in 1991 about the development of the pro-choice movement since the 1960s, Suzanne Staggenborg argues that the pro-choice movement “has been able to maintain itself and grow in strength since the legalization of abortion by acquiring professional leadership and formalized organizational structures.” She says that this development was largely in response to the threats created by the growing anti-abortion countermovement after *Roe*.<sup>226</sup> She further argues, “Contrary to some theories of what happens to movements when they become ‘institutionalized,’ however, these developments actually facilitated, rather than hindered, the growth of grass-roots movement activities.”<sup>227</sup> Staggenborg studies the organizational documents of six national pro-abortion organizations and seven pro-abortion organizations local to Chicago and Illinois to track their activity from their origins through the 1980s. While Staggenborg does make some mention of certain strategic framing decisions by movement activists, she focuses much more on resource mobilization, political opportunity, and movement formalization than on the evolution of pro-abortion argumentation.<sup>228</sup>

Kelsy Kretschmer similarly focuses on movement-countermovement dynamics in her study of splintering within the feminist movement, and her analysis highlights how shifting boundaries on issues force actors to redefine their collective identity. Kretschmer explains how abortion “moved from a nonissue to a peripheral issue, before becoming a divisive issue that threatened organizational relationships within the [feminist]

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<sup>226</sup> Staggenborg, *The Pro-Choice Movement*, 5.

<sup>227</sup> Staggenborg, 5.

<sup>228</sup> Staggenborg, 8–10. Staggenborg mentions, for example, how NARAL “gained prominence for its role in framing the issue as a matter of private choice versus government interference” (139); moreover, NARAL realized that grassroots activists might be better mobilized by “more feminist rhetoric about women’s right to control their bodies” (146).

movement.”<sup>229</sup> Thus, as abortion became a “‘bottom line’ issue for NOW and most feminist organizations,” the “feminist movement boundary” was fundamentally redefined.<sup>230</sup> This forced existing feminist organizations with an anti-abortion stance to either shift to a pro-abortion position or be excluded from the movement. Kretschmer examines two feminist organizations that found themselves in this position – Women’s Equity Action League (WEAL) and Feminists for Life (FFL) – and that chose opposite paths; WEAL ultimately conformed to the pro-abortion stance, while FFL “was pressed out of the feminist movement and completely into the conservative countermovement.”<sup>231</sup>

Though Kretschmer does not explicitly discuss framing strategies in her article, an implication that can be drawn from her findings is that the feminist movement’s strategic choice to *frame* abortion as *the* paramount issue significantly affected the collective identity of the movement and its future tactics, including how it responded to the countermovement. Kretschmer argues that before *Roe*, anti-abortion feminists were still accepted by the feminist movement but that this changed after the legalization of abortion allowed feminists to “claim it as a fundamental part of their agenda.”<sup>232</sup> After the mid-1970s when abortion had become essential to the feminist collective identity, feminist groups became “less and less willing to partner with a pro-life group” like FFL and eventually pressed FFL out of the feminist movement. This precluded the possibility of any sort of coalition on other women’s issues on which the pro- and anti-abortion groups could find common ground.<sup>233</sup> Thus, it was the choice to frame abortion rights as an

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<sup>229</sup> Kretschmer, “Shifting Boundaries and Splintering Movements: Abortion Rights in the Feminist and New Right Movements,” 894.

<sup>230</sup> Kretschmer, 901.

<sup>231</sup> Kretschmer, 894.

<sup>232</sup> Kretschmer, 901.

<sup>233</sup> Kretschmer, 908.

indispensable aspect of the feminist identity that redefined the boundaries of the feminist movement and defined an anti-abortion “feminist” as an opponent.

As we can see, there has been a good deal of scholarship produced on the evolution of the pro-abortion movement and even on issue framing and rhetoric within the movement, specifically. However, Ziegler’s 2020 book offers the only comprehensive study of developments in the 21<sup>st</sup> century and how abortion discourse has evolved from *Roe* into the 2000s, and my study aims to engage with and build on her findings. Moreover, the existing literature tends to focus on pro-abortion issue framing in terms of rights, choice, and privacy, but not as much on how the movement frames and discusses fetal life and rights and how that has changed over time, an aspect of the argumentation in which I am interested. Like the scholars discussed above, I am interested in understanding both *why* activists shift their framing and rhetoric and *how* they do so. Many of the studies above highlight the importance of the national sociopolitical context as well as countermovement tactics as impetuses for pro-abortion frame transformation. Thus, I will also assess changes in pro-abortion argumentation in light of major social and political events and developments in anti-abortion movement activism. The existing research has contributed a lot to our understanding of the progression of abortion discourse, and my research aims to build on this foundation and offer new evidence and insights.

#### **1.4 Evolution of Pro-Slavery Argumentation**

An immense amount has been written about the development of pro-slavery thought and its dissemination in the U.S., so here I aim to highlight the central trends in

the primary scholarship beginning with William Sumner Jenkins.<sup>234</sup> Jenkins' 1935 work entitled *Pro-Slavery Thought in the Old South* was the first book-length study of the evolution of the defense of slavery "from its earliest utterances in America, through the many ramifications of its expression, to its complete statement," so the historical account it provides is worth investigating at length.<sup>235</sup> Jenkin's ultimate conclusion is that the basic arguments in defense of slavery remained rather constant in all the periods they were presented, but the *intensity* with which slaveholders wielded these arguments grew over time, particularly in response to anti-slavery activism. Jenkins claims, "The course of pro-slavery theory takes us from the apologist of the early period to the propagandist of slavery, from an attitude of passivity to one of militancy, from toleration to glorification of the institution."<sup>236</sup>

Jenkins explains that the first well-publicized written defense of slavery in America came out of New England in 1701 when John Saffin wrote a reply to Samuel Sewell's anti-slavery pamphlet entitled *The Selling of Joseph, A Memorial*. Jenkins says, "In these two pamphlets appears for the first time in published form the clash of opinion over the slavery question."<sup>237</sup> Saffin responded to Sewall's arguments by justifying slavery through the Puritan theory of election and a few select Scripture passages discussing Israel's possession of slaves and the dynamics of the master-slave

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<sup>234</sup> Similar to the review of pro-abortion movement literature, I focus here only on literature about the evolution of the pro-slavery movement. For helpful studies on the anti-slavery movement, see, for example Stamp, "The Fate of the Southern Antislavery Movement"; Litwack, "The Abolitionist Dilemma: The Antislavery Movement and the Northern Negro"; Finnie, "The Antislavery Movement in the Upper South Before 1840"; McKivigan, *Abolitionism and American Politics and Government*; Cameron, *To Plead Our Own Cause*; Cameron, *The Abolitionist Movement*.

<sup>235</sup> Jenkins, *Pro-Slavery Thought in the Old South*, 2.

<sup>236</sup> Jenkins, 106.

<sup>237</sup> Jenkins, 4.

relationship.<sup>238</sup> Jenkins explains that the “seeds of the *anti-slavery* crusade” then lay essentially dormant until the Revolutionary period when “fertile thought of the American patriot” helped stimulate their growth.<sup>239</sup> In the meantime, the seeds of *pro-slavery* thought were being developed as slaveowners objected to the religious instruction of slaves on the grounds that “the Negro was a different species from man” and had no soul, and the fear that administration of the sacraments to slaves would elevate them to equality with their masters. Jenkins says that these early arguments about the innate inferiority of Africans made “an indelible impression on the collective mind of the slaveowners” and formed a basis for later defenses of slavery.<sup>240</sup>

Beginning in the decade prior to the Revolution, defenses of slavery began to mature as pro-slavery advocates needed to respond to increased attacks from abolitionists. The foundation of anti-slavery argumentation was being built on the emerging theory of natural rights that was becoming popularized, especially in New England.<sup>241</sup> Jenkins explains that pro-slavery thinkers had to respond to the inconsistencies between these theories of natural rights and individual freedom underpinning the present Revolution and the enslavement of blacks. “In one way or another, in order for them to defend slavery logically, they had to break down the force of the argument that all men have a natural right to freedom.”<sup>242</sup> This they often did both by arguing that Africans are *not fully human* and are of a different species from whites, and by arguing for a *utilitarian* view of natural rights.<sup>243</sup>

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<sup>238</sup> Jenkins, 5–6.

<sup>239</sup> Jenkins, 7.

<sup>240</sup> Jenkins, 17.

<sup>241</sup> Jenkins, 22–26.

<sup>242</sup> Jenkins, 34.

<sup>243</sup> Jenkins, 40.

For instance, in a 1773 Harvard debate about whether or not slavery was permissible by the law of nature, the pro-slavery speaker defined the law of nature “in utilitarian terminology rather than in terms of natural rights.” He maintained that “any principle of society was ‘in its nature fit and proper, just and right’ and therefore conformable to the law of nature if [...] it ‘tends to the happiness of the whole’ community.” Moreover, the speaker justified the authority of masters over slaves by the “‘vast inequality observable between different individuals of the human species’” either by nature or education.<sup>244</sup> Thus, a pragmatic, utilitarian understanding of rights and of natural inequality before the law was used to refute anti-slavery egalitarian appeals to natural rights. Additionally, even in the Revolutionary period, southerners were already beginning to utilize arguments about the *beneficial* aspects of slavery, like how decent life was for enslaved Africans, the desire to Christianize slaves, and the necessity of slavery for the southern economy.<sup>245</sup>

The foundations of pro-slavery argumentation having thus been laid, proslavery theory entered what Jenkins calls “a state of quiescence” between 1790-1820. He claims that the Revolutionary zeal and natural rights theorizing produced considerably fewer emancipationists in the South than in the Northern and Middle states, so southern slavery proponents had fewer occasions to defend the institution. However, Jenkins claims, “Slavery had defenders whenever defenders were needed; the exact nature of the defense was determined to a great extent by the degree to which and by the way in which the welfare of slavery was endangered.”<sup>246</sup> Jenkins further argues that during this period

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<sup>244</sup> Jenkins, 44.

<sup>245</sup> Jenkins, 41–43.

<sup>246</sup> Jenkins, 49.

when pro-slavery argumentation was “quiescent,” or rarely on the offensive, another parallel trend was taking root in southern thinking that served to bolster pro-slavery thought. This was a “definite conservative reaction to the radical principles of the Revolutionary era” and a broader denial of natural rights and the ideals of the Declaration of Independence.<sup>247</sup> Echoing Jeremy Bentham’s critique of the Declaration, proponents of slavery began to rail against the principles of the Declaration as “falsehoods,” “abstractions,” “anarchical,” and “Utopian.”<sup>248</sup> They pointed to the dangers of despotism in the “new-fangled French philosophy of liberty and equality” and attempted to draw direct links between the subversive French revolutionary philosophy and the anti-slavery movement.<sup>249</sup>

Jenkins argues that this period of dormancy in pro-slavery thought ended beginning in 1820 as slaveholders began to make more open and bold justifications for slavery. He attributes this shift to the heightened vulnerability slaveholders felt in response to “the fight over the admission of Missouri into the Union, the Charleston Insurrection of 1820, the enlarged scope of activity of the Colonization Society, and the increased propaganda of the abolitionist groups.”<sup>250</sup> As a result, Jenkins aims to demonstrate that the theory of slavery as a “positive good” came out of the 1820s and not, as historians before him had argued, in direct response to abolitionist propaganda in the 1830s, specifically William Lloyd Garrison’s *The Liberator* newspaper. In the Missouri debates, Jenkins argues that the main goal of slaveholders was constitutional; they wanted “to deny the existence in Congress of any power to legislate on the subject of

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<sup>247</sup> Jenkins, 58.

<sup>248</sup> Jenkins, 60–61.

<sup>249</sup> Jenkins, 63–64.

<sup>250</sup> Jenkins, 65–66.

slavery.”<sup>251</sup> However, some *positive* defenses of slavery also “cropped out in their speeches,” the most aggressive of which was delivered by Senator William Smith in January 1820. In this speech, Senator Ruggles of Ohio said that Smith took “entirely new ground” and went further in defense of slavery “than he had ever heard any gentleman go before” by arguing that slavery was not an evil or a misfortune; rather, Smith “pronounces right, views it as a benefit and looks for its perpetuity.”<sup>252</sup>

Following the Missouri debates, Jenkins claims, southerners began defending slavery more loudly, more aggressively, and in more positive terms. The number of pro-slavery pamphlets coming out of the South increased, and many warned the North “that the rights of the slave States must not be trampled upon [and] that the abolition sentiment developing the North had become very distasteful.”<sup>253</sup> These defenses relied on many of the existing arguments for slavery and further “challenged southerners to resent the false and revolting colors in which outsiders were painting the institution.”<sup>254</sup> Jenkins says that “the most definite and clear statement” of the positive arguments for slavery came from South Carolina Governor Stephen D. Miller in 1829 when he declared, “Slavery is not a national evil; on the contrary, it is a national benefit.”<sup>255</sup> Local southern politicians and newspapers continued to discuss slavery as a social benefit, and by the late 1830s, southern congressmen finally began openly defending slavery. Jenkins states:

Instead of being recognized as a political evil, slavery was considered to be an element of social welfare, a feature of good government that should be nourished and passed on to posterity. It was ‘the most safe and stable basis for free institutions in the world.’ The true position of the South was now definitely stated

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<sup>251</sup> Jenkins, 69.

<sup>252</sup> Jenkins, 71.

<sup>253</sup> Jenkins, 71.

<sup>254</sup> Jenkins, 73.

<sup>255</sup> Jenkins, 76.

to the nation; pro-slavery leaders in Congress had taken the high ground of defense.<sup>256</sup>

A fascinating microcosm of the evolution of pro-slavery defense from arguments of necessity to arguments of social benefit can be found in debates in Virginia in the 1830s. At the same time that the lower South was further advancing in pro-slavery opinion, Virginians were experiencing struggles within their slavery institution and many were feeling that “the evils of slavery were beginning to outweigh the benefits.” This culminated in Nat Turner’s slave rebellion in 1831, “and the wave of excitement that overran the state forced the [Virginia] legislature into an open debate on the public policy of continuing or abolishing slavery.”<sup>257</sup> Ultimately, slaveholders prevailed in the debates by maintaining a mild, defensive position. Jenkins argues that “under the plea of property rights and of necessity, without taking a bold positive stand, [slavery advocates] prevented any action at all being taken.”<sup>258</sup> Then, since the moderate solution of gradual “colonization” of slaves was discredited as infeasible, it became clear that the only options were abolition or the continuation of slavery. Faced with these options, Virginians were pushed toward a complete defense of slavery, and “the South as a whole became united in the active defense of its institution.”<sup>259</sup>

Jenkins claims that between 1835-1860, pro-slavery thought “flourished” and was “perfected” through rigorous effort of southerners to bolster their “positive good” theory of slavery. Jenkins asserts, “The South, in a challenging temper, without apology, presented her completed case to the world tribunal, confident that the verdict would be an

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<sup>256</sup> Jenkins, 81.

<sup>257</sup> Jenkins, 82.

<sup>258</sup> Jenkins, 87.

<sup>259</sup> Jenkins, 88.

entire vindication of her course in perpetuating her peculiar institution.”<sup>260</sup> This led to an outpouring of writing, sermons, and studies justifying and championing slavery; “indeed, a survey of the literature of the period produces the impression that the entire product of the collective mind of the South was colored by this one absorbing interest.”<sup>261</sup> Thus, as southerners stood in the breach to defend slavery against those who wished to dismantle it, they were compelled to deny its evil and embrace it wholeheartedly. As John C. Calhoun pronounced in 1838, “Many in the South once believed that [slavery] was a moral and political evil; that folly and delusion are gone; we see it now in its true light, and regard it as the most safe and stable basis for free institutions in the world.”<sup>262</sup> Jenkins concludes that the “whole southern civilization [...] was so completely identified with slavery as to make its very existence seem to depend upon the defense of that institution.”<sup>263</sup>

Jenkins, therefore, highlights several key factors that influenced evolutions in pro-slavery thought and were subsequently elaborated upon by future authors; these are *response to anti-slavery antagonism* (an element of *movement-counter-movement dynamics*), preservation of *collective southern identity*, and pro-slavery as a part of a *larger ideological schema*.

Essentially all scholars after Jenkins emphasize the importance of northern anti-slavery antagonism as an impetus for the development of pro-slavery argumentation, but they differ on their interpretations of what, exactly, motivated pro-slavery advocates to defend slavery more and more vigorously and in particular ways in the wake of anti-

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<sup>260</sup> Jenkins, 89.

<sup>261</sup> Jenkins, 90.

<sup>262</sup> Jenkins, 89–90.

<sup>263</sup> Jenkins, vii.

slavery attacks. One camp of scholars focuses on the southern need to *quell doubts and feelings of guilt* by presenting slavery as a morally good and beneficial thing. W.J. Cash, in his book *The Mind of the South*, attributes pro-slavery thought in the South and the “positive good” arguments, specifically, to a need to appease the southern conscience. In speaking about the southern “proneness to sentimentality,” he argues that “the interaction of the Yankee’s attack with the South’s own qualms over slavery” led southerners to create “fictions” to deny the brutality of their institutions.<sup>264</sup> In response to outcries from the North about the evils of slavery, “the South could not and must not admit it, of course. It must prettify the institution and its own reactions, must begin to boast of its own Great Heart.”<sup>265</sup> Thus, Cash claims that southerners strove to overcome their uneasiness about slavery, especially after it was attacked by northerners, by convincing themselves that slavery was beneficial for all involved.

In his article “The Proslavery Argument Revisited,” Ralph Morrow also emphasizes the southern conscience and argues that the primary goal of pro-slavery thought was not to respond to anti-slavery attacks, but to *convince southern slaveholders* of the goodness of slavery. Morrow explains that most historians before him had emphasized that pro-slavery propaganda was aimed at “proselytizing,” or at least responding to, anti-slavery proponents, be they northern abolitionists or southern non-slaveholders. Morrow, on the other hand, argues that theoretical defenses of slavery were often tailored to “the state of mind among southerners who entertained no hostility to the

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<sup>264</sup> Cash, *The Mind of the South*, 85.

<sup>265</sup> Cash, 86.

institution [of slavery], or who even were committed to its preservation” but who still maintained traces of guilt and doubt.<sup>266</sup>

Morrow explains how increased antagonism from the North about slavery intensified the conflict between elements of southern traditions of Jeffersonianism and Christianity that were fundamentally at odds with slavery. Thus, Morrow claims that the function of pro-slavery propaganda was to put “the South at peace with herself by bringing moral values into line with social practice.”<sup>267</sup> He explains how many southern thinkers shaped an understanding of Christian morality, science, and even literature to romanticize and justify slavery and to intentionally “strengthen and confirm the convictions of the slaveholder” to present a united front in response to northern antagonism.<sup>268</sup> Moreover, as the “need to believe” in the goodness and morality of slavery increased, pro-slavery thinking became self-reinforcing regardless of its content because it was the mindset of the dominant class and found expression in all platforms of society.

Kenneth Greenberg specifically looks at how South Carolinians justified slavery along with Revolutionary ideals, particularly after 1820 when they were forced to make more bold defenses of the institution, and finds *self-deception* as the method of choice.<sup>269</sup> He argues that this was largely accomplished through “verbal smokescreens” and “semantic ambiguity” as South Carolinians interpreted words like “liberty” and “slavery” in accord with their own interests.<sup>270</sup> They denied widespread abuse of power by masters

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<sup>266</sup> Morrow, “The Proslavery Argument Revisited,” 83.

<sup>267</sup> Morrow, 85–86.

<sup>268</sup> Morrow, 88.

<sup>269</sup> Greenberg, “Revolutionary Ideology and the Proslavery Argument,” 368.

<sup>270</sup> Greenberg, 368–69.

or mistreatment of slaves, and they overemphasized the goodness of life for enslaved Africans.<sup>271</sup> They employed euphemisms such as “our peculiar institution” and “African servitude,” and claimed that the African slave was more free than the white poor man ensnared in “wage slavery.”<sup>272</sup> Thus, Greenberg concludes, “unable to rid themselves of the old ideals or of the reality of slavery, South Carolinians did the next best thing: they transformed their conception of reality.”<sup>273</sup>

Dickson D. Bruce, Jr. also argues that the aim of pro-slavery argumentation was to maintain a united southern mind and that the propaganda was “a kind of ritual of consensus for many white Southerners [...] in a social order about which there was some anxiety.”<sup>274</sup> Bruce contends, “The proslavery argument was mainly concerned with the importance of preserving the stability of slave society.” This it aimed to do by persuading southerners both of the goodness of the southern way of life, but just as importantly of the potential for racial warfare in the case of emancipation.<sup>275</sup> Bruce argues that the rhetorical use of racial fear was a perennial and intentional tactic of pro-slavery propagandists to elicit powerful emotions leading to desired action.<sup>276</sup> Thus, pro-slavery arguments served to remind southern whites of the superiority of their social order, but also of its fragility and the need to actively preserve it against subversion from within or without.

Another large group of thinkers argues that slavery was part of a larger cultural and ideological struggle, so the defense of slavery was representative of a *defense of*

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<sup>271</sup> Greenberg, 376–81.

<sup>272</sup> Greenberg, 383–84.

<sup>273</sup> Greenberg, 373.

<sup>274</sup> Bruce, “Racial Fear and the Proslavery Argument: A Rhetorical Approach,” 476.

<sup>275</sup> Bruce, 464.

<sup>276</sup> Bruce, 468.

*southern collective identity, civilization, and political ideology*. Julian Bach, Jr., for example, argues that southerners wanted to stand in contrast to the “secularism of northern and other free, industrial societies. If the world had gone dynamic, federalistic, urban, rationalistic, industrial, and radical, the South had gone and would continue to go static, local, rural, moralistic, agricultural, and conservative.”<sup>277</sup> Pro-slavery thought both enhanced this southern sociopolitical philosophy and was born from it as southerners championed the benefits of their slave labor society over the “turmoil of industrial conflict” and the unrestrained liberty of secular radicalism.<sup>278</sup> Bach argues that as the South began to recognize its own economic lag in comparison to the North, southern social and economic thought began to incorporate more reform elements and considerations of modern industry. However, it was never in doubt that slavery should be perpetuated, so pro-slavery thought had to adjust to shifting socioeconomic concerns on the eve of the Civil War.<sup>279</sup>

In his 1943 book *George Fitzhugh, Propagandist of the Old South*, Harvey Wish similarly argues about the importance of competing sociopolitical philosophies on the slavery debate. Wish ultimately claims that pro-slavery scholars in the South, like George Fitzhugh, had a “revolutionary influence [...] in altering the mind of the ante-bellum South,” and he understands pro-slavery thought as something derived by the elite class and pushed on the masses.<sup>280</sup> In the minds of these thinkers like Fitzhugh, Wish shows that slavery “was but incidental to a much broader societal conception” and part of a

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<sup>277</sup> Bach, “The Social Thought of the Old South,” 180.

<sup>278</sup> Bach, 181.

<sup>279</sup> Bach, 186–88.

<sup>280</sup> Wish, *George Fitzhugh, Propagandist of the Old South*, vii.

bigger fight against the spread of modern liberalism and free societies.<sup>281</sup> Thus, as both Jenkins and Bach also argue, southern elites' rejection of liberalism, Jeffersonian natural rights, and wage labor both fueled and was fueled by the desire to uphold slavery.<sup>282</sup> As anti-slavery advocates increasingly attacked southern slavery, the South rose up to glorify everything that was uniquely southern, including slavery, and condemn everything that was northern, including liberalism.

Eugene Genovese expressly refutes the “guilt-complex” thesis noted above and highlights the role of slavery in the larger southern civilization. Genovese denies that the majority of southern slaveholders felt any conscious sense of guilt and therefore needed to be convinced of slavery’s merits. He argues that most southerners were able to live their lives with a general feeling of ambivalence toward the institution of slavery without despising it or defending it. He states:

There is no reason to believe that for every guilt-stricken, inwardly torn slaveholder there were not many who went about their business reasonably secure in the notion that they did not create the world, that the world existed as it existed, and that their moral worth depended on how well they discharged the duties and responsibilities defined by the world in which they, not someone else, lived.<sup>283</sup>

Genovese ultimately interprets pro-slavery thought in light of the broader southern elite hatred of capitalism and bourgeoisie northern society. He argues that pro-slavery thinkers like Fitzhugh did not try to appeal to the North but to the South “to understand that it was different, that it had more than an institution, peculiar or not, setting it apart, that it was rebuilding a lost civilization.”<sup>284</sup> Furthermore, Genovese points out that southern intellectuals were fascinated by ancient and medieval history, and that

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<sup>281</sup> Wish, viii.

<sup>282</sup> Wish, 46–47.

<sup>283</sup> Genovese, *The World the Slaveholders Made: Two Essays in Interpretation*, 147.

<sup>284</sup> Genovese, 234.

these interests paired with Christian moral philosophy gave them a conflicted attitude toward “progress” in many senses.<sup>285</sup> Thus, in their defense of slavery and southern civilization, “they earnestly sought to champion a modernity purged of distortions and heresy and to present themselves as the carriers of a well-ordered progress in human affairs.”<sup>286</sup>

Robert Shalhope introduces an argument that attempts to merge the anti-capitalist, class-conscious thesis with the guilt-complex idea through an emphasis on both class and race. He argues that pro-slavery thought was a product both of *logical reasoning* (“that is, the planter's reasoned [desire] to protect his unique society”) and *irrational perception* (“that is, the planter’s emotional attachment to slavery and unreasoning attitude toward attacks upon that institution”).<sup>287</sup> Shalhope highlights the southerner planter’s desire to live in a “prebourgeois, structured, paternalistic, gentry society,” but also the deep-seeded racism that instilled “anxieties” about the ownership (and potential emancipation) of blacks.<sup>288</sup> Pro-slavery theory, then, was born out of an interwoven desire both to protect the southern socioeconomic situation and to quell anxieties and doubts.

David Donald, in his article “The Proslavery Argument Reconsidered,” also discounts the “guilty conscience” thesis as unconvincing and difficult to prove.<sup>289</sup> He, like Genovese, highlights the desire of pro-slavery thinkers to celebrate and reinstate “a bygone age” of southern life.<sup>290</sup> He argues that most of the prominent pro-slavery writers were “unhappy men who had severe personal problems relating to their place in southern

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<sup>285</sup> Genovese, *The Slaveholders’ Dilemma: Freedom and Progress in Southern Conservative Thought, 1820-1860*, 1–8.

<sup>286</sup> Genovese, 8.

<sup>287</sup> Shalhope, “Race, Class, Slavery, and the Antebellum Southern Mind,” 571.

<sup>288</sup> Shalhope, 573.

<sup>289</sup> Donald, “The Proslavery Argument Reconsidered,” 8.

<sup>290</sup> Donald, 17.

society” and channeled their desperate ambitions into a nostalgic defense of southern life and slavery as it “used to be.”<sup>291</sup> Donald claims:

They were defending not the social order which they knew, with flaws so glaring they had to be admitted, but an idealized paternalistic society which, as they believed, had formerly flourished in the South before it was undermined by the commercialization of urban life on the one hand and by the increasing democratization and decentralization of the frontier on the other.<sup>292</sup>

Thus, Donald argues that in response to the rapidly changing world around them, as epitomized by northern society, pro-slavery thought offered a way to seek social stability and champion the authentically southern way of life before it was corrupted by liberal, capitalist influences.<sup>293</sup>

Drew Gilpin Faust, like Donald, highlights the role of slavery in the idealized southern civilization, and she focuses exclusively on the relationship between pro-slavery argumentation and southern intellectuals’ ambition. She argues, “In taking up the public defense of the peculiar institution, [the southern intellectual] sought as well to advance his particular values and to define for himself a respected social role within a culture known for its inhospitality to letters.”<sup>294</sup> Faust, like many of the authors above, illustrates how the defense of slavery was the southerners’ way of responding to a rapidly changing world by standing up for traditional southern values and their unique way of life. She contends, “The language of slavery, with its close relation to questions of hierarchy and social order, provided a metaphorical framework within which Americans of all sections sought to explore problems central to a society undergoing rapid change.”<sup>295</sup> Thus, for

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<sup>291</sup> Donald, 12.

<sup>292</sup> Donald, 16.

<sup>293</sup> Donald, 17.

<sup>294</sup> Faust, “A Southern Stewardship,” 63.

<sup>295</sup> Faust, 78.

Faust, pro-slavery thinkers took up the cause to promote their desired civilization, to help southerners justify this civilization based on the growing trends of science and empirics, and in doing so, to achieve social status and esteem for themselves.

Alfred L. Brophy takes up a similar focus to that of Faust by analyzing the role of southern intellectuals, as well as lawyers and judges, in the progression of pro-slavery thought. Brophy argues that these men “moved our country from the world of the Enlightenment, which aspired to universal freedom, toward the Romantic era’s focus on context and empirical and economic analysis of slavery.”<sup>296</sup> He traces the development of pro-slavery ideas from 1831 to the Civil War and argues that all of southern society intensified its slavery advocacy after Nat Turner’s rebellion and the rise in abolitionist activity. Then, “As the South became more committed to slavery, so did the southern academy and the judiciary.”<sup>297</sup> Moreover, these scholars and lawyers used utilitarian and empirical arguments to claim that slavery was necessary and beneficial for the southern society and economy, beneficial for the inferior enslaved blacks, and practically impossible to eliminate.<sup>298</sup> Eventually, by implementing the pro-slavery ideology that academics were developing, “judges and lawyers had legitimized a world view that said threats to slaves as property was unconstitutional and justified war.”<sup>299</sup> Thus, Brophy attributes the escalation in pro-slavery argumentation to a joint effort by intellectual elites and legal professionals to craft and implement a worldview that eventually led southerners to embrace slavery so passionately that it drove them toward secession.

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<sup>296</sup> Brophy, *University, Court, and Slave*, 10.

<sup>297</sup> Brophy, 1.

<sup>298</sup> Brophy, xiii–xx.

<sup>299</sup> Brophy, xx.

In a fascinating comparison of American pro-slavery and Russian pro-serfdom arguments, Peter Kolchin finds that the American southern defense of slavery as a good in and of itself grew in intensity, unlike in Russia, because it represented the entire southern way of life rather than just the economy. He argues that the major arguments for slavery in the U.S. and for serfdom in Russia were essentially the same in character – racial inferiority of the enslaved (even though Russian peasants were, in fact, of the same race), natural inequality between men, paternalistic claims that the enslaved were unsuited for freedom, appeals to economic necessity, and predictions of social collapse in the case of emancipation.<sup>300</sup>

Interestingly, the major difference that Kolchin finds is in the trajectory of the argumentation because while pro-slavery defenses became more “militant” in the South in the 1830s, they essentially gave way to free labor proponents in Russia around the same time, and defenses of serfdom eventually died out.<sup>301</sup> Kolchin ultimately attributes this divergence to four major factors that existed in the U.S. but not in Russia – “(1) a racial distinction between owner and owned; (2) a democratic political system; (3) freedom of the press; and (4) the sectional nature of servitude.” He contends that these factors were subsumed under the overarching reality that slavery was the bedrock of the “entire world of southern slaveowners” rather than a mere economic issue, as it was for Russians.<sup>302</sup> Thus, given a sociopolitical environment in which they could give voice to their pro-slavery thought, southerners rose up aggressively to defend their very way of life against northern aggression.

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<sup>300</sup> Kolchin, “In Defense of Servitude,” 815–16.

<sup>301</sup> Kolchin, 819–20.

<sup>302</sup> Kolchin, 825.

In his book on evangelical Christianity and proslavery, John Patrick Daly attributes shifts in the pro-slavery movement to the broader impact of evangelical moral philosophy, which, he argues, “led the antebellum shift toward a less compromised, more ideological defense of slaveholding.”<sup>303</sup> He argues that “in the late eighteenth century, most Americans believed that slavery, as institutionalized dependence, was neither good nor practical, and so would fade before the action of natural forces under the new, free political system.”<sup>304</sup> Moreover, if slavery was an evil in any sense, God’s divine Providence would cause it to fail in America. However, with the spread of providentialism in the 19<sup>th</sup> century, Americans increasingly believed that “social and economic advances were indications of divine will, and the resultant power was regarded as the fruit of proper moral organization.”<sup>305</sup> Thus, slavery became justifiable by its profitable fruits – if God had so blessed the slaveholding society with prosperity, then it certainly could not be evil.<sup>306</sup> Consequently, as abolitionists began condemning southern slaveholders on Biblical and moral grounds, southerners became increasingly self-righteous and confident in the divine sanction of slaveholding. Thus, pro-slavery argumentation grew more impassioned in response to the anti-slavery moralistic attack.

Daly contends:

Abolitionism struck southerners exactly where they were least likely to listen or feel anyone else had authority to speak to them – in the realm of personal religious morality. The southern evangelical response to abolitionism was swift and certain. Abolitionism constituted a heresy. It also, however, offered an opportunity to express the South’s position on a range of topics – the origins of slavery, the special relationship of the South to God, character, race, the future of slavery, and the possibility of emancipation.<sup>307</sup>

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<sup>303</sup> Daly, *When Slavery Was Called Freedom*, 32.

<sup>304</sup> Daly, 32–33.

<sup>305</sup> Daly, 33.

<sup>306</sup> Daly, 34.

<sup>307</sup> Daly, 72.

Edward B. Rugemer even brings international influences into the discussion by arguing that the shift to more aggressive pro-slavery argumentation in the South in the 1830s was profoundly influenced by the British abolition of slavery in the West Indies in the early 1830s. Rugemer claims that the success of the anti-slavery movement in the West Indies bolstered the abolitionist cause in the U.S. and therefore posed a threat to the southern way of life.<sup>308</sup> As a result, certain pro-slavery advocates “sought to uncouple southern from West Indian slavery with an assertion of southern exceptionalism that could deflect the easy transfer of arguments used in the West Indian debates to the case of the South.”<sup>309</sup> Therefore, they argued that American slavery was benevolent in comparison to slavery in the West Indies and that the forced emancipation of slaves was yet another transgression from a tyrannical British government. Rugemer concludes, “Theirs was an argument of sinister brilliance that attempted to undermine the precepts of antislavery while placing American slavery beyond the abolitionist critique.”<sup>310</sup>

Another group of scholars argues that pro-slavery defenses were part of an attempt not only to defend a uniquely southern way of life, but to show that it was, in fact, *the South* that was *preserving the true ideals of American republicanism*. In an article on the influence of Thomas Jefferson on southern antebellum thought, Shalhope argues that Jefferson, like many other southern elites, gradually became certain that the North was being corrupted by capitalism, materialism, and secularism while “southern society epitomized American republicanism.”<sup>311</sup> As a result, Jefferson believed that

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<sup>308</sup> Rugemer, “The Southern Response to British Abolitionism: The Maturation of Proslavery Apologetics,” 243.

<sup>309</sup> Rugemer, 245.

<sup>310</sup> Rugemer, 248.

<sup>311</sup> Shalhope, “Thomas Jefferson’s Republicanism and Antebellum Southern Thought,” 539.

southerners “had to be made aware of the values of their own way of life to combat the spreading influence of the North,” and this included the values of slavery.<sup>312</sup> Shalhope emphasizes that there was no “sharp break in southern thought” leading to a rejection of the Revolutionary ideals; rather, “the South, far more static than the rest of the nation, retained an agrarian or pastoral republicanism, while the North moved toward a new definition of republicanism.”<sup>313</sup> Consequently, the defense of slavery was less about slavery itself and more about promoting the southern “pastoral republican ideology.” Shalhope concludes, “Jefferson clung to an ideology – to a way of life with identity and meaning in a changing world – which rested on slavery. The exploitation of the black was legitimized in terms of preserving higher values – a republican society.”<sup>314</sup>

In an investigation of pro-slavery petitions in Virginia from 1784-1785, Fredrika Teute Schmidt and Barbara Ripel Wilhelm also claim that southerners were defending slavery in line with Revolutionary values early on. Similar to Jenkins, Schmidt and Wilhelm argue that positive defenses of slavery could be found from the beginning (even if they were not the dominant strand), and they show that these defenses highlighted “the rhetoric of the Revolution.” They claim, “The tone of the petitions is not one of guilt and defensiveness. They contain a fierce assertion of property rights and liberty at the same time they deny the slaves’ humanity and their right to enjoy freedom to participate in society.”<sup>315</sup>

In an attempt to understand the coexistence of Revolutionary values and slavery, Duncan MacLeod argues that pro-slavery thinkers, rather than abandon the ideals of the

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<sup>312</sup> Shalhope, 541.

<sup>313</sup> Shalhope, 555.

<sup>314</sup> Shalhope, 556.

<sup>315</sup> Schmidt and Wilhelm, “Early Proslavery Petitions in Virginia,” 136.

Declaration, instead denigrated blacks. He claims, “The tension between Revolutionary beliefs and the practice of slavery produced a distinctive view of the character of the Negro, to the extent that it seemed to many to be the very nexus of the problem.”<sup>316</sup> In striving to prove that blacks were “objectively” not equal to whites, pro-slavery advocates could quell any dissonance between American values and the enslavement of an entire group of humans. Thus, MacLeod shows that slavery activists formed entire systems of religion, sociology, and science to prove the moral, intellectual, and biological inferiority of blacks.<sup>317</sup> The “scientific” theories that asserted that blacks were closer to the animal kingdom than to white homo sapiens served to justify their enslavement and to enflame fears of their “savage” nature.<sup>318</sup> MacLeod asserts that the “sciences” were able to justify the sub-human nature of blacks because science is “far from neutral.” “Scientific investigation tends rather to reflect society’s priorities and values than to determine them, and it is largely self-fulfilling. Thus, we should not be surprised that eighteenth-century theories were in great measure reflections and rationalizations of irrational predilections already existing within society.”<sup>319</sup>

Edmund S. Morgan also investigates the concurrence of increasing freedom and increasing slavery in Colonial and Revolutionary America, and he comes to the conclusion that the very existence of slavery led to the birth of republican values in the South.<sup>320</sup> Morgan explains how thinkers like Jefferson held “individual independence as the basis of freedom” and both feared and despised landless urban workers who posed a

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<sup>316</sup> MacLeod, *Slavery, Race and the American Revolution*, 12.

<sup>317</sup> MacLeod, 148–82.

<sup>318</sup> MacLeod, 176–82.

<sup>319</sup> MacLeod, 180.

<sup>320</sup> See both Edmund S. Morgan, *American Slavery, American Freedom: The Ordeal of Colonial Virginia* (New York: W.W. Norton & Co, 2003); and Edmund S. Morgan, “Slavery and Freedom: The American Paradox,” *The Journal of American History* 59, no. 1 (1972): 5–29, <https://doi.org/10.2307/1888384>.

threat to the health of the republic they were trying to build.<sup>321</sup> Morgan argues, “It seems probable that the Revolutionary champions of liberty who acquiesced in the continued slavery of black labor did so not only because of racial prejudice but also because they shared [...] a distrust of the poor that was inherent in eighteenth-century conceptions of republican liberty.”<sup>322</sup> The importation of African slaves was thus attractive because it was more profitable than free labor and it decreased the number of indentured servants who could not be suppressed as effectively as blacks and therefore posed a greater threat to social stability.<sup>323</sup> Consequently, Morgan argues that “as the tide of slavery rose between 1680 and 1720 Virginia moved toward a government in which the yeoman farmer had a larger share.” Moreover, it was in this government that Virginians developed the commonwealth ideas that “they so fervently asserted in the Revolution” and which they could express in the 18<sup>th</sup> century because “they were no longer threatened by a dangerous free laboring class.”<sup>324</sup> Therefore, for Morgan, the Revolutionary values were actually *born out of* slavery; it was “slavery that made the Virginians dare to speak a political language that magnified the rights of freemen.”<sup>325</sup>

In his book about the evolution of white southerners’ attempts to justify slavery along with the ideals of the new American republic, Lacy K. Ford, in a vein similar to Morgan, argues that whites in the lower South, especially, achieved an ideological “reconfiguration” that allowed slavery to be seen as “both a foundation for a republican social order and a promoter of democracy for white men.”<sup>326</sup> Ford highlights three

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<sup>321</sup> Morgan, “Slavery and Freedom,” 9.

<sup>322</sup> Morgan, 13.

<sup>323</sup> Morgan, 25–27.

<sup>324</sup> Morgan, 28.

<sup>325</sup> Morgan, 29.

<sup>326</sup> Ford, *Deliver Us from Evil*, 10.

periods of pro-slavery thought and argues that the lower South and the upper South responded differently in these phases. The first phase was from the Founding era in the 1780s to the closing of the slave trade in 1808; the second was from the end of the foreign slave trade to the rise of immediate abolitionism and Nat Turner's rebellion in the early 1830s; and the third phase was from the 1830s to the Civil War.<sup>327</sup> Ford claims that the first period was characterized by "ambivalence and inaction" in regards to the continuation of slavery in the upper South, and "a growing commitment to slavery among lower South whites scrambling to capture a share of the emerging cotton bonanza."<sup>328</sup> In the second phase, both upper and lower southerners sought answers to the slavery question. Upper southerners "looked to diffuse slavery further south through the interstate slave trade," and lower southerners began to champion paternalism, in which masters were seen as caretakers of their slaves, as a way to "render slaveholding consistent with existing republican and emerging humanitarian ideals while accepting the inevitability of the region's dependence on slave labor."<sup>329</sup>

Ford claims that, by the 1830s, "the ideology of white supremacy replaced an elaborate system of social hierarchy, in which race had been one difference among many, with a simple system centered on race."<sup>330</sup> The rise in white supremacist thinking coupled with the sharp increase in "unrelenting abolitionist attack" pushed lower southerners to fully embrace paternalistic arguments claiming that slavery was good for the spiritual and physical welfare of slaves, that blacks were inherently inferior and suited for enslavement, and that "slavery mitigated by paternalism allowed the South to avoid many

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<sup>327</sup> Ford, 5.

<sup>328</sup> Ford, 5.

<sup>329</sup> Ford, 5, 8.

<sup>330</sup> Ford, 9.

of the class tensions associated with capitalist society.” Thus, slavery could be seen as the “foundation of white independence” and “a protector of cherished republican values rather than a threat to them.”<sup>331</sup>

Still other scholars have focused on the *national dimensions of pro-slavery thought* and have not confined their analysis of pro-slavery argumentation to the South at all. Larry E. Tise, who wrote the first book-length analysis of pro-slavery argumentation in 1989 since Jenkins’ in 1935, attributes pro-slavery ideology to a broader national conservative counterrevolution that he argues began in the Northeast.<sup>332</sup> Tise, like Jenkins, claims that pro-slavery thought existed even before the Revolution but did not mature until slavery needed to be defended against oppositional attacks.<sup>333</sup> When abolitionism intensified, especially in the 1820s and 30s, pro-slavery argumentation changed in degree, but not in kind. Tise claims that there were no “new arguments created by southern proslavery writers after the emergence of abolitionism,” and, internationally speaking, there was “amazing continuity in proslavery arguments wherever they appeared.”<sup>334</sup> What did change in response to increased anti-slavery activism in the 1830s, Tise argues, was a national resistance to abolition rooted in a conservative counterrevolution.<sup>335</sup> He states, “The great proslavery revolution that occurred in America during the 1830s was not the development of new proslavery arguments. It was instead the general shift of Americans to a new perspective on their

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<sup>331</sup> Ford, 10.

<sup>332</sup> Cooper, “Proslavery: A History of the Defense of Slavery in America, 1701-1840 (Review),” 77.

<sup>333</sup> Tise, *Proslavery*, 15.

<sup>334</sup> Tise, 102.

<sup>335</sup> Tise, 262–63.

own society that could tolerate the perpetuation of slavery. The real revolution was a national rejection of the libertarian heritage of the American Revolution.”<sup>336</sup>

Thus, Tise ultimately argues that the evolution of argumentation about slavery as a “necessary evil” to a “positive good” was not a change in the argumentation or rhetoric, itself; rather, a larger shift in the ideological climate of America occurred that allowed Americans to comfortably support the institution of slavery. This shift, Tise claims, like many of the authors above, was toward a conservatism that opposed social subversion and radical change, which were perceived to be threats to social stability and the whole republican project.<sup>337</sup> Tise maintains that the promulgation of this conservative ideology began in the Northeast long before the South, but that the South adopted it in the wake of intensified anti-slavery activism and used it to develop the ideology of a “pro-slavery republicanism.” He argues that by latching onto the powerful urge of many 19<sup>th</sup> century conservatives to “purify and upgrade” the nation, “pro-slavery became associated with and integrated into a program of social uplift that had long since gained the hearty approval of the majority of Americans.”<sup>338</sup> The ideology of pro-slavery republicanism, Tise claims, was never “a mere endorsement of slavery” but also “a system of values and beliefs that reconciled for Americans the inevitable conflict between the nation’s Revolutionary ideals and the facts of enslavement.”<sup>339</sup>

Tise’s conclusions, therefore, highlight how pro-slavery argumentation was not an end in and of itself, but rather an aspect of a broader movement that sought to protect American society against insurrection and to uphold a particular interpretation of

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<sup>336</sup> Tise, 262.

<sup>337</sup> Tise, 283–85.

<sup>338</sup> Tise, 360.

<sup>339</sup> Tise, 361.

republican ideals. As Tise claims, most of American pro-slavery literature placed more emphasis on “instilling the outlook and values of conservative republicanism than in arguing the merits of slavery.”<sup>340</sup> This conservative movement was national in scope, not confined to the South, and as Tise argues, native to the Northeast. Tise did receive criticism from scholars who argue that he does not focus enough on the distinctiveness of the South and southerners’ particular relationship to slavery, and that he overemphasizes the potency of the conservative counterrevolution in America.<sup>341</sup> Still, Tise’s focus on how pro-slavery thought fit into the larger ideological landscape of the country from the Founding to the Civil War is illuminating and helps integrate our understanding of the South into existing theories of politics and social movements rather than viewing it simply as an unfortunate “aberration.”

Micahel F. Conlin similarly emphasizes the role of pro-slavery thought within a wider national conservative movement. He argues that American conservatives in both the North and the South regarded abolitionism as one concept in a sea of other dangerous “isms” believed to be “imported from Europe” and posing “an existential threat to the American Republic.”<sup>342</sup> Conlin argues that these conservatives rejected the social changes that modernity was bringing because they threatened “established hierarchies of civil government, organized religion, race relations, labor management, and domestic arrangements.”<sup>343</sup> In other words, American conservatives resisted anything that

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<sup>340</sup> Tise, 285.

<sup>341</sup> Genovese, “Larry Tise’s Proslavery: A Critique and An Appreciation”; Scarborough, “Larry E. Tise. ‘The Defense of Slavery in America’ (Book Review)”; Cooper, “Proslavery: A History of the Defense of Slavery in America, 1701-1840 (Review).”

<sup>342</sup> Conlin, “The Dangerous Isms and the Fanatical Ists,” 205.

<sup>343</sup> Conlin, 207.

challenged the status quo and their own privilege and power in society, be it atheism, skepticism, socialism, free-lovism, or abolitionism.<sup>344</sup>

Conlin further argues that the South clung to slavery for its “prophylactic effect” in insulating southerners from many of these isms because it maintained the traditional, hierarchical structure of southern society.<sup>345</sup> Because of southerners’ deep reliance on slavery and their proximity to it, Conlin claims that they felt more threatened by abolitionism than did northern conservatives, who were more concerned with socialism. As a result, white southerners ultimately reacted more intensely to the anti-slavery movement than northerners did, and as the sectional conflict worsened, the wedge between northern and southern conservatives regarding the defense of slavery grew.<sup>346</sup> Thus, white southerners rose up to defend their very identity in slavery, and the sectional identity took precedent over the ideological one.

The literature on the development of pro-slavery thought is both immense and diverse, but the above overview offers several insights that appear relatively consistent across the different works analyzed.<sup>347</sup> First, pro-slavery thought evolved *defensively* in response to anti-slavery attacks. The first major instance of anti-slavery sentiment and activism was during the Revolutionary period, and the next came during the 1820s and 30s. As a result, pro-slavery arguments existed even prior to the Revolution, but the defense of slavery in both the North and the South took on a new intensity after the 1820s. Second, while pro-slavery thought was not unique to the South, southerners did

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<sup>344</sup> Conlin, 208.

<sup>345</sup> Conlin, 218.

<sup>346</sup> Conlin, 220–26.

<sup>347</sup> For a very helpful overview of the evolution of pro-slavery argumentation, see the recent book, Finkelman, *Defending Slavery*.

have a distinct relationship to and dependence on slavery, so pro-slavery argumentation eventually flourished there most potently after the 1830s and up to the Civil War. Third, pro-slavery thought cannot be understood apart from the larger ideological currents at play in 19<sup>th</sup> century America and the conservative backlash to the rapid social change brought about by modernity and capitalism that threatened traditional social hierarchies. Fourth, slavery posed a persistent problem to American republican and Revolutionary ideals, so a major goal of pro-slavery thought was to justify enslavement in the “land of the free.” This was largely achieved through paternalistic arguments that claimed that slavery was good for the material and spiritual well-being of slaves and that slavery was actually a well-suited foundation for a republican society. Fifth, and of great importance, every argument for slavery and the very desire to defend it rested foundationally on a conviction, either implicit or expressed, that blacks were of an inferior race to whites. To even debate the merits of slavery first necessitated a dehumanization of black men and women.

## CHAPTER 2: RESEARCH METHODS

### 2.1 Case Comparison

The cases of pro-slavery and pro-abortion activism offer examples of frame transformation in social movements, particularly where movement actors shift their rhetoric and argumentation from a frame of necessity to one of positive goodness. In both of these cases, the actors are arguing for a “right” in a situation in which a) their perceived fundamental right is coming into conflict with the perceived fundamental right of another party (slave/fetus), and b) they are being attacked precisely on *moral* grounds from their opposition. Thus, I am interested in analyzing the arguments activists use to justify the practice (or right) they desire to protect, how these arguments change over time, and what prompts these changes. For both cases, I therefore examine measures of *movement leadership rhetoric* to see how activists frame the issue when speaking to current or potential movement followers.

It is necessary to note that this study takes the position that there is a plausible case for the personhood of the fetus. The argument for fetal rights has been made by many scholars who emphasize, among other factors, how the fetus is a member of the human species, the fetus is a unique entity from the moment of conception who needs only time to fully develop, and moments such as viability or birth are arbitrary and shifting grounds on which to recognize the start of meaningful life.<sup>348</sup> It is also true, as the sources in the following chapter reveal, that many abortion proponents concede that the fetus is, indeed, human and living, but make a distinction between humanity and legal

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<sup>348</sup> See, for example, George and Lee, “The Wrong of Abortion”; Bachiochi, “What Makes a Fetus a Person?”

personhood.<sup>349</sup> Thus, it is possible to draw comparisons between the pro-abortion movement's treatment of the fetus and the pro-slavery movement's treatment of the black slave in the attempt both make to deny full humanity and/or full legal personhood to another human being.<sup>350</sup>

It is also important to mention that a similar study of the evolution of either anti-slavery or anti-abortion argumentation could be undertaken, and certain trends, especially vilification of the opposition, may appear in those cases. However, it is precisely the pro-slavery and pro-abortion movements that received criticism of injustice and immorality in regards to the practice they were trying to protect as a right and whose rhetoric changed drastically in a short span of time, so it is these cases I am investigating in this study.

## 2.2 Primary Sources

### 2.2.1 Slavery Sources

Although pro-slavery thought in the North was certainly important and even predated the maturation of pro-slavery thought in the South in some respects, I focus my analysis on southern primary sources because it was in the South that pro-slavery argumentation persisted the longest and became most widespread and radicalized.<sup>351</sup> Moreover, the South had a unique relationship with slavery as it formed the foundation of their economy and heavily influenced their society, so southerners arguably had a larger stake in upholding the practice.

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<sup>349</sup> See, for example, Center for Reproductive Rights, "Whose Right to Life? Women's Rights and Prenatal Protections under Human Rights and Comparative Law"; Roxburgh, "Whose Rights Are the Most Right? The Dilemma of Autonomy in a Society: On Abortion, Women, and Human Life"; Goodwin, "If Embryos and Fetuses Have Rights"; Singer and Kuhse, *Unsanctifying Human Life*; Räsänen, "Why Pro-life Arguments Still Are Not Convincing"; Veit, "Does Birth Matter?"

<sup>350</sup> See Chapter 1 for more discussion of the concept of legal personhood.

<sup>351</sup> Tise, *Proslavery*.

I begin my analysis of pro-slavery texts in 1787 with the Constitutional Convention, and I end it with the start of the Civil War in 1861. As Tise explains, there were not many notable public defenses of slavery in the South between the Revolutionary War and the rise in abolitionism in the 1820s. While northern states experienced “occasional outbursts of bristling debate on slavery” around the American Revolution, “from 1775 until the first decade of the nineteenth century, [...] Americans kept whatever proslavery ideas they entertained largely to themselves. [That period] was practically devoid of any public expressions on the benefits of slavery and of slave society.”<sup>352</sup> Consequently, a helpful, consistent measure of slavery defenses, especially during this “quiescent” period early in pro-slavery thought, is the discussion of slavery in the national legislature.

Utilizing the congressional database containing all transcripts of discussions and debates, I analyze the key debates regarding slavery from the Constitutional Convention in 1787, and then from the first session of Congress in 1789 to the start of the Civil War in 1861. I rely heavily on Jenkin’s analysis of this period of pro-slavery thought and his references to congressional debates about slavery to locate the relevant places in the congressional record where slavery was most prominently debated.<sup>353</sup>

Additionally, as pro-slavery actors became more active in the 1820s, they began to publish more writings in defense of slavery. There were no prominent pro-slavery societies in the South, as there were anti-slavery ones in the North, so pro-slavery actors were largely academics, writers, and politicians.<sup>354</sup> Thus, I analyze key writings from

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<sup>352</sup> Tise, 33.

<sup>353</sup> See especially Jenkins, *Pro-Slavery Thought in the Old South*, 48–71. See Appendix A for a complete list of congressional debates analyzed for this project.

<sup>354</sup> Tise, *Proslavery*, 261–62.

such people who were noted by multiple scholars in my literature review as prominent actors in the pro-slavery movement. These men are listed below in Figure 2.1.<sup>355</sup>

**Figure 2.1: Included Pro-Slavery Actors Who Published Defenses**

<p><u>Virginia</u></p> <ul style="list-style-type: none"> <li>○ Jonathan Boucher (1738-1804, Anglican clergyman and teacher)</li> <li>○ Edmund Ruffin (1794-1865, intellectual and VA senator)</li> <li>○ Thomas Dew (1802-1846, professor and president of The College of William &amp; Mary)</li> <li>○ George Fitzhugh (1806-1881, social theorist)</li> <li>○ <i>Various representatives present at the Virginia Debates on slavery in 1831-32</i></li> </ul> <p><u>South Carolina</u></p> <ul style="list-style-type: none"> <li>○ Charles C. Pinckney (1746-1825, delegate to Constitutional Convention, prominent SC statesman)</li> <li>○ Richard Furman (1755-1825, Baptist leader)</li> <li>○ John Drayton (1766-1822, SC governor)</li> <li>○ William Harper (1790-1847, SC senator)</li> <li>○ Edward Brown (born 1790, SC lawyer)</li> <li>○ Whitmarsh Seabrook (1793-1855, SC governor)</li> <li>○ Alexander D. Sims (1803-1848, born VA, SC politician)</li> <li>○ William Gilmore Simms (1806-1870, historian and novelist)</li> <li>○ James Henry Hammond (1807-1864, SC governor)</li> </ul> <p>* John Calhoun (1782-1850, SC senator) is also very important, but his speeches are found in the congressional debates</p>
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I focus specifically on actors from Virginia and South Carolina because these two states were the source of a great deal of pro-slavery thought and had slightly different trajectories in regards to the defense of slavery. Jenkins explains that Virginians embraced a full defense of slavery later than the lower South because “the institution of slavery was going to seed in Virginia, and she was faced with a double problem of lands speedily becoming exhausted and of a black population rapidly growing out of proportion

<sup>355</sup> See Appendix A for a complete list of all of the works that were analyzed.

to the white.”<sup>356</sup> However, after debates about emancipation in 1831-32 revealed that any alternative to slavery would be impractical, Virginia “became united [with the lower South] in the active defense of the institution.”<sup>357</sup> Consequently, looking at sources from two states in the South with different experiences with slavery can provide a fuller picture of the relevant trends in pro-slavery thought during the period.

### **2.2.2 Abortion Sources**

I begin my analysis of pro-abortion materials in the 1960s when the pro-abortion movement in the U.S. began to gain momentum along with the growing women’s rights movement and the sexual revolution. As Ziegler claims, “in the 1960s, changing attitudes toward birth control and sexual behavior helped to prompt a rethinking of women’s role in American society.”<sup>358</sup> As a result, new feminist organizations sought to change laws on birth control and abortion “as a necessary step in the expansion of opportunities for women.”<sup>359</sup>

It should be noted that slavery was legal during the entire period of my analysis of pro-slavery texts, while abortion was illegal in all states at the start of my analysis in 1960 (except to save the life of the mother), and then made legal in all states at least in the first trimester in 1973 through the Supreme Court’s ruling in *Roe v. Wade*.<sup>360</sup> As a result, activism to reform and/or repeal the existing abortion laws began first, and anti-abortion activism arose in response.<sup>361</sup> This is opposite of pro-slavery activism, which first began in response to anti-slavery activism. Thus, while arguments in favor of slavery

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<sup>356</sup> Jenkins, *Pro-Slavery Thought in the Old South*, 81.

<sup>357</sup> Jenkins, 88.

<sup>358</sup> Ziegler, *After Roe*, 5.

<sup>359</sup> Ziegler, 5.

<sup>360</sup> Ziegler, 4–7. For a brief overview of the legality of abortion prior to *Roe*, see Ziegler 1-12.

<sup>361</sup> Ziegler, 30.

truly did arise *defensively* when slavery came under attack by the anti-slavery countermovement, arguments in favor of abortion began more *offensively* as activists tried to have a right to abortion recognized. However, as the movement continued and abortion was legalized, it appears that the development of pro-abortion argumentation did still occur largely in response to anti-abortion countermovement activism, quite similarly to pro-slavery argumentation. Hence, in both cases the activists became more vocal about the *goodness* of their practice and the need to *destigmatize* it in the face of countermovement attacks and gains.

Additionally, abortion advocates are operating in a very different social and political climate than slavery advocates were in the 1800s. The role of mass media and the more “open” nature of politics (that is, more people and groups have access to politics now than in the mid-nineteenth century), necessarily means that pro-abortion voices are more plentiful and diffuse than were pro-slavery voices. Thus, a comparison of the same exact number and type of sources is not possible. However, by analyzing sources from the leading actors in the pro-abortion movement, as well as sources they reference, I still expect to capture a variety of material comparable to the pro-slavery case.

For the pro-abortion movement, leading actors have been feminist and pro-abortion organizations, many of which were established prior to *Roe* and fought for the legalization of abortion. Therefore, I analyze documents from the archives of two major feminist and pro-abortion organizations: National Organization for Women (NOW) and NARAL Pro-Choice America.<sup>362</sup> NOW was founded in 1966 as a feminist organization to promote an array of issues concerning women and women’s rights.<sup>363</sup> NARAL, originally

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<sup>362</sup> Archives for both of these organizations are housed at the Schlesinger Library at Harvard University

<sup>363</sup> Ziegler, *After Roe*, 110.

known as the National Association for the Repeal of Abortion Laws, was founded in 1969 as a single-issue organization with the goal of repealing abortion laws in the U.S.<sup>364</sup>

For both NOW and NARAL, I analyze press releases, speeches, mailings to members, mailings to solicit new members, brochures, meeting and conference notes, leadership correspondence, and newspaper clippings from the late 1960s through the early 2000s. For more recent material, I utilize “snapshots” of the NOW and NARAL websites from the archives at different moments in time since 2010 and analyze publications about abortion from the organizations found on the websites. I also examine all available issues of the NOW Times periodical from 1977-2009. In all of the archives, I select sources primarily about defending abortion and mobilizing support for it.<sup>365</sup>

The analysis in the concluding chapter draws also on secondary literature, news articles, grassroots sources, and sources from other pro-abortion organizations in order to supplement the sources noted above and further analyze existing trends.

## **2.3 Methods**

### ***2.3.1 Document Process Tracing***

In order to analyze the evolution of pro-slavery and pro-abortion argumentation in the chosen primary sources, I utilize a qualitative research method called document process tracing. Andrew Bennet and Jeffrey T. Checkel define process tracing as “the analysis of evidence on processes, sequences, and conjunctures of events within a case for the purpose of either developing or testing hypotheses about causal mechanisms that might causally explain the case.”<sup>366</sup> Thus, process tracing examines how a process

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<sup>364</sup> Ziegler, 107.

<sup>365</sup> See Appendix A for a complete list of all materials that were analyzed.

<sup>366</sup> Bennett and Checkel, *Process Tracing*, 7.

unfolds over time by looking closely at events and related materials within that process to understand how the dependent variable of interest came about.

Process tracing is ideal for evaluating changes in social movement rhetoric over time because it allows for a close analysis of material published by movement leaders at different points in time to see when, how, and in response to what influences the argumentation changed. Thus, when analyzing each source, I evaluate the overall *tone* of the writing, how the source discusses the *opposition*, how the source discusses the *other party* involved (slave/fetus), and the *types of arguments* used to justify the practice of slavery or abortion (see Table 2.1 below). I then analyze trends across the sources to see *if* there is a frame transformation over time, and if so, *what* the frame transformation looks like and *how* it is prompted.

**Table 2.1: Elements of Primary Source Analysis**

<i>Tone</i>	<b>apologetic</b> (this practice is unfortunate, but necessary) OR <b>unapologetic</b> (this practice is objectively good)
<i>Discussion of Opposition</i>	<b>unimpassioned</b> OR <b>vilifying</b>
<i>Discussion of Other Party</i>	<b>humanizing</b> (pity, paternalism, etc) OR <b>dehumanizing</b> (sub-human or sub-person, suited for slavery/abortion)

<p><i>Examples of types of Arguments</i></p>	<p><b>Necessity</b></p> <ul style="list-style-type: none"> <li>▪ “integral to southern economy,” “control blacks,” “preserve racial peace”</li> <li>▪ “prevent illegal abortion,” “in dire cases”</li> </ul> <p><b>Rights claims</b></p> <ul style="list-style-type: none"> <li>▪ “property rights,” “no government infringement”</li> <li>▪ “rights of equality, freedom, choice, privacy,” “no government infringement”</li> </ul> <p><b>Larger cultural/ideological battle</b></p> <ul style="list-style-type: none"> <li>▪ “preserve traditional values,” “prevent radicalism/socialism,” “preserve social order”</li> <li>▪ “misogynistic oppression,” “ultra-conservative attack,” “war on women,” “religious imposition”</li> </ul> <p><b>Objectively beneficial</b></p> <ul style="list-style-type: none"> <li>▪ “slaves are better off,” “best way to run an economy/society,” “Christianize slaves”</li> <li>▪ “only way women can be equal to men,” “women can be fulfilled,” “women can be better mothers,” “better for the unwanted and/or disabled child,” “it was historically acceptable in society”</li> </ul>
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### **2.3.2 Limitations**

Every research method is accompanied by limitations, and document process tracing in this manner is no exception. By prioritizing depth in my document analysis, I therefore sacrifice some element of breadth because it is not possible to closely analyze as large a number of sources as other, more quantitative methods could evaluate. Additionally, it is not possible to evaluate a consistent source throughout the whole period of analysis for either case (e.g. writings over time from the same author or publication) because no such source exists. Thus, it is possible that evaluating writings from different actors at different points in time could reveal idiosyncrasies from one source or actor that are not characteristic of the broader movement. In an attempt to limit both of these methodological weaknesses, I consequently chose an array of sources differing in time, location, and author (congressional debates and pro-slavery writings

from two different states; mailings, publications, and notes from two different pro-abortion organizations) in order to capture broader trends at work.

An additional limitation of deeper case studies is the difficulty in making external generalizations about the findings because trends found in two cases may not be applicable to a range of other cases. However, case studies are especially helpful for “theory-building,” so this study could be useful for generating a theory to build on the existing literature and be further assessed through future research.<sup>367</sup> Thus, while this research cannot determine for certain how and why actors shift their frames on contentious moral issues, its aim is to highlight trends and correlated variables that could potentially be tested in future cases.

### ***2.3.3 Hypotheses***

Given my understanding of the secondary literature, especially the work of Jenkins and Tise, I expected to find that in the pro-slavery sources, the defenses of slavery grow in intensity specifically in response to countermovement mobilization and action. Additionally, I expected to see that there was not much change in the pro-slavery arguments themselves over time; as Tise claims, “in terms of the development of the new theories favoring slavery, the antebellum period in America was nearly barren.”<sup>368</sup> Instead, I expect that the tone and rhetoric of the argumentation will change more than the content. In particular, I expect that the pro-slavery rhetoric becomes *less apologetic*, *more vilifying* of the opposition, *more dehumanizing* toward the other party, and emphasizing fewer arguments of *necessity* and more *positive* arguments over time. I hypothesize that the same shift will occur in pro-abortion argumentation, as well.

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<sup>367</sup> Eisenhardt and Graebner, “Theory Building from Cases: Opportunities and Challenges.”

<sup>368</sup> Tise, *Proslavery*, 262.

## CHAPTER 3: PRO-SLAVERY SOURCES

### 3.1 Congressional Debates

#### 3.1.1 Slavery as a “Necessary Evil”

At the Constitutional Convention in 1787, the discussion of slavery revolved around the population count for representation in the newly established legislature. The southern states argued that their slaves were “as productive and valuable” as free laborers in Massachusetts and thus should be counted as such for the purposes of representation.<sup>369</sup> In these discussions, which resulted in the Three Fifths Compromise, slaves were generally referred to as a “peculiar species of property.”<sup>370</sup> At the Convention, whenever slavery was criticized, it was done not on moral grounds in regards to the evil of the practice, but rather on the basis of national interest. For example, Mr. Mason from Virginia, referred to slavery and the slave trade as a “national sin,” but his concern was for the safety of the white population against the growing black population and the impact of slavery on the spirit of society. He feared “dangerous insurrections of the slaves” and argued, “slavery discourages arts and manufactures. The poor despise labor when performed by slaves. They prevent the immigration of Whites, who really enrich and strengthen a Country. They produce the most pernicious effect on manners. Every master of slaves is born a petty tyrant.”<sup>371</sup>

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<sup>369</sup> *Notes on the Debates in the Federal Convention* (James Madison), July 11, 1787, [https://avalon.law.yale.edu/18th\\_century/debates\\_711.asp](https://avalon.law.yale.edu/18th_century/debates_711.asp).

<sup>370</sup> *Notes on the Debates in the Federal Convention* (James Madison), July 11, 1787, [https://avalon.law.yale.edu/18th\\_century/debates\\_711.asp](https://avalon.law.yale.edu/18th_century/debates_711.asp); The Three Fifths Compromise maintained that three fifths of a state’s slave population would be counted in the total population for the determination of representation in Congress. Thus, each slave effectively counted as “three fifths” of a person.

<sup>371</sup> *Notes on the Debates in the Federal Convention* (James Madison), August 22, 1787, [https://avalon.law.yale.edu/18th\\_century/debates\\_822.asp](https://avalon.law.yale.edu/18th_century/debates_822.asp).

In response, the defenses of slavery offered by southern men were entirely grounded in necessity and states' rights. Slavery was deemed untouchable by the national government because "the morality or wisdom of slavery are considerations belonging to the States themselves."<sup>372</sup> Moreover, slavery was contributing immensely to national production and revenue, so both state and national interests were a testament to the need for the preservation of slavery. As Mr. Rutledge from South Carolina claimed, "Religion and humanity had nothing to do with this question. Interest alone is the governing principle with nations."<sup>373</sup> Moreover, states such as Georgia and South Carolina could not survive without slaves, and they would be "fools as to give up so important an interest" upon entering the Union. Another defense of slavery was its existence throughout history and the claim that "in all ages one half of mankind have been slaves," so "if slavery be wrong, it is justified by the example of all the world."<sup>374</sup>

Thus, in 1787, slavery was not generally criticized on moral grounds with the interest of the slaves in mind. Subsequently, defenses of the institution were not a glorification of slavery in the abstract, but a plea of necessity for the survival and prosperity of the southern states, a claim that slavery was always a part of human history, and an argument that the national government could not do anything to prevent slavery regardless of its immorality.

The next substantial debates about slavery occurred in 1790 and 1800, both in regard to petitions submitted by those seeking to abolish the slave trade and ultimately

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<sup>372</sup> *Notes on the Debates in the Federal Convention* (James Madison), August 21, 1787, [https://avalon.law.yale.edu/18th\\_century/debates\\_821.asp](https://avalon.law.yale.edu/18th_century/debates_821.asp).

<sup>373</sup> *Notes on the Debates in the Federal Convention* (James Madison), August 21, 1787, [https://avalon.law.yale.edu/18th\\_century/debates\\_821.asp](https://avalon.law.yale.edu/18th_century/debates_821.asp).

<sup>374</sup> *Notes on the Debates in the Federal Convention* (James Madison), August 22, 1787, [https://avalon.law.yale.edu/18th\\_century/debates\\_822.asp](https://avalon.law.yale.edu/18th_century/debates_822.asp).

emancipate all slaves.<sup>375</sup> These debates represented the first instance of slavery being explicitly challenged on moral grounds and of a more organized opposition attacking the right to slaveholding. Consequently, the language used by pro-slavery actors to describe the opposition became more demeaning and aggressive. The language to describe slaves was dehumanizing, and endeavors were made to justify their classification as “property” because of their “inherently inferior” nature. The arguments used to defend slavery were still largely grounded in necessity and states’ rights, or they deflected the accusations of immorality rather than boldly asserting the moral goodness of slavery. When the moral nature of slavery was discussed by pro-slavery actors, it was conceded that the practice was a necessary evil. There were a few “positive good” defenses put forth, such as the argument that slavery was sanctioned by Scripture and that blacks were better off in a state of slavery than they would be otherwise. Additionally, there were claims made that abolition was linked with anti-American and foreign values and movements, so a defense of slavery was a defense of American values. Table 3.1 summarizes these trends.

**Table 3.1: Rhetoric in Pro-Slavery Defenses in Congressional Debates (1790 & 1800)**

<i>Discussion of Opposition</i>	<ul style="list-style-type: none"> <li>▪ “But, sir, <b>is the whole morality of the United States confined to the Quakers?...</b> But why do these men set themselves up in such a particular manner against slavery? Do they understand the rights of mankind, and the disposition of Providence, better than others?” (Mr. Jackson (GA), February 11, 1790)<sup>376</sup></li> <li>▪ “The memorials from the Quakers contained, in his opinion, a <b>very indecent attack on the character of those States which possess slaves...</b>He could not but consider it as calculated to fix a stigma of the blackest nature on the State he had the honor to represent, and to hold its citizens up to public view as men</li> </ul>
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<sup>375</sup> In 1790, anti-slavery groups (largely Quakers) from Massachusetts, New York, and Pennsylvania submitted petitions to the House to abolish the slave trade, which was specifically prohibited by the Constitution until 1808. In 1800, a group of free black men from Philadelphia submitted a petition calling for an end to the slave trade and full emancipation.

<sup>376</sup> *Annals of Congress*, 1st Cong., 2nd sess., 1229 (February 11, 1790).

	<p>divested of every principle of honor and humanity” (Mr. Smith (SC,) March 17, 1790)<sup>377</sup></p> <ul style="list-style-type: none"> <li>▪ <b>“They have begun their war upon us;</b> an actual organization has commenced; we have had them meeting in their club rooms, and debating on that subject, and determinations have been made” (Mr. Rutledge SC, January 3, 1800)<sup>378</sup></li> <li>▪ <b>“He could not think but the arguments of some gentlemen must originate from improper motives”</b> (Mr. Jones (GA), January 3, 1800)<sup>379</sup></li> </ul>
<i>Discussion of Slaves</i>	<ul style="list-style-type: none"> <li>▪ <b>“negro property”</b> (Mr. Smith (SC), February 12, 1790)<sup>380</sup></li> <li>▪ <b>“It was well known that they were an indolent people, improvident, averse to labor:</b> when emancipated, they would either starve or plunder” (Mr. Smith (SC), March 17, 1790)<sup>381</sup></li> <li>▪ <b>“Negroes were by nature an inferior race of beings”</b> (Mr. Smith (SC), March 17, 1790)<sup>382</sup></li> <li>▪ <b>“this species of property”</b> (Mr. Rutledge (SC), January 3, 1800)<sup>383</sup></li> <li>▪ <b>“It was to be lamented that this kind of property did exist; but it did exist, and it was sanctioned by the Constitution”</b> (Mr. Hill (NC), January 2, 1800)<sup>384</sup></li> </ul>
<i>Types of Arguments</i> <u>Necessity</u>	<p><b>Slavery cannot be disentangled from southern society</b></p> <ul style="list-style-type: none"> <li>▪ <b>“Slavery was so ingrafted into the policy of the southern states,</b> that it could not be eradicated without tearing up by the roots their happiness, tranquility, and prosperity; that if it were and evil, it was one for which <b>there was no remedy</b>, and, therefore, like wise men, they acquiesced in it” (Mr. Smith (SC), March 17, 1790)<sup>385</sup></li> <li>▪ <b>“[South Carolina] can only be cultivated by slaves;</b> the climate, the nature of the soil, ancient habits, forbid the whites from performing the labor” (Mr. Smith (SC), March 17, 1790)<sup>386</sup></li> <li>▪ <b>“We found slavery ingrafted in the very policy of the country when we were born, and we are persuaded of the impolicy of removing it;</b> if it be a moral evil, it is like many others which</li> </ul>

<sup>377</sup> *Annals of Congress*, 1st Cong., 2nd sess., 1503 (March 17, 1790).

<sup>378</sup> *Annals of Congress*, 6th Cong., 1st sess., 242 (January 3, 1800).

<sup>379</sup> *Annals of Congress*, 6th Cong., 1st sess., 243 (January 3, 1800).

<sup>380</sup> *Annals of Congress*, 1st Cong., 2nd sess., 1244 (February 12, 1790).

<sup>381</sup> *Annals of Congress*, 1st Cong., 2nd sess., 1505 (March 17, 1790).

<sup>382</sup> *Annals of Congress*, 1st Cong., 2nd sess., 1505 (March 17, 1790).

<sup>383</sup> *Annals of Congress*, 6th Cong., 1st sess., 242 (January 3, 1800).

<sup>384</sup> *Annals of Congress*, 6th Cong., 1st sess., 233 (January 2, 1800).

<sup>385</sup> *Annals of Congress*, 1st Cong., 2nd sess., 1508 (March 17, 1790).

<sup>386</sup> *Annals of Congress*, 1st Cong., 2nd sess., 1510 (March 17, 1790).

	<p>exist in all civilized countries, and which the world quietly submit to” (Mr. Smith (SC), March 17, 1790)<sup>387</sup></p> <p><b>Emancipation infeasible</b></p> <ul style="list-style-type: none"> <li>▪ “Emancipation would be attended with one or other of these consequences; either that or a mixture of the races with denigrate the whites, without improving the blacks, or that it would create two separate classes of people in the community involved in inveterate hostility, which would terminate in <b>the massacre and extirpation of one or the other</b>” (Mr. Smith (SC), March 17, 1790)<sup>388</sup></li> <li>▪ “The gentleman further says that 700,000 men are in bondage. I ask him <b>how he would remedy this evil as he calls it?</b> But I do not think it is any evil; would he have these people turned out in the United States to ravage, murder, and commit every species of crime?” (Mr. Jones (GA), January 2, 1800)<sup>389</sup></li> <li>▪ “[Low] probability of discovering an eligible and just mode of acquiring the object of emancipation... All researches into these <b>attempts were illusory, and both alike impracticable</b> at this time, if ever they would be” (Mr. Jones (GA), January 3, 1800)<sup>390</sup></li> </ul> <p><b>States’ rights</b></p> <ul style="list-style-type: none"> <li>▪ “He would contribute all in his power to their comfort and well-being while in a state of slavery; but he was fully of opinion that <b>Congress has no right to interfere in the business</b>” (Mr. White (VA), March 17, 1790)<sup>391</sup></li> <li>▪ “The toleration of slavery in the several States was <b>a matter of internal regulation and policy</b>... If the citizens of the Northern States were displeased with the toleration of slavery in the Southern States, the latter were equally disgusted with some things tolerated in the former” (Mr. Smith (SC), March 17, 1790)<sup>392</sup></li> <li>▪ “That property which the people of the Southern States possess consisted of slaves, and therefore <b>Congress had no authority but to protect it</b>, and not to take measure to deprive the citizens of it” (Mr. Lee (VA), January 2, 1800)<sup>393</sup></li> <li>▪ “He observed that so improper was it to consider this subject that some of the States would never have adopted the federal form of Government if it had not been secured to them that <b>Congress would never legislate on the subject of slavery</b>” (Mr. Rutledge (SC), January 2, 1800)<sup>394</sup></li> </ul>
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<sup>387</sup> *Annals of Congress*, 1st Cong., 2nd sess., 1510 (March 17, 1790).

<sup>388</sup> *Annals of Congress*, 1st Cong., 2nd sess., 1508 (March 17, 1790).

<sup>389</sup> *Annals of Congress*, 6th Cong., 1st sess., 235 (January 2, 1800).

<sup>390</sup> *Annals of Congress*, 6th Cong., 1st sess., 243 (January 3, 1800).

<sup>391</sup> *Annals of Congress*, 1st Cong., 2nd sess., 1501 (March 17, 1790).

<sup>392</sup> *Annals of Congress*, 1st Cong., 2nd sess., 1507 (March 17, 1790).

<sup>393</sup> *Annals of Congress*, 6th Cong., 1st sess., 231 (January 2, 1800).

<sup>394</sup> *Annals of Congress*, 6th Cong., 1st sess., 232 (January 2, 1800).

<u>Positive</u>	<p><b>Deflecting accusations of immorality</b></p> <ul style="list-style-type: none"> <li>▪ “What is the purpose of the memorial? It is plainly this, to reprobate a particular kind of commerce, in a moral point of view... [but] this is a political consideration, <b>not arising from either religion or morality</b>” (Mr. Tucker (SC), February 11, 1790)<sup>395</sup></li> <li>▪ “When we entered into this confederacy, we did it from political, not from moral motives, and <b>I do not think my constituents want to learn morals from the petitioners</b>; I do not believe they want improvement in their moral system; if they do, they can get it at home” (Mr. Smith (SC), February 12, 1790)<sup>396</sup></li> </ul> <p><b>Slavery has always existed in history</b></p> <ul style="list-style-type: none"> <li>▪ “There never was a <b>government on the face of the earth</b>, but what <b>permitted slavery</b>” (Mr. Jackson (GA), February 12, 1790)<sup>397</sup></li> <li>▪ “Slavery was <b>no new thing in the world</b>” (Mr. Smith (SC), March 17, 1790)<sup>398</sup></li> </ul> <p><b>Scripture sanctions it</b></p> <ul style="list-style-type: none"> <li>▪ “<b>Religion is not against it</b>. He [sees] from Genesis to Revelations, the current setting strong that way” (Mr. Jackson (GA), February 12, 1790)<sup>399</sup></li> </ul> <p><b>Blacks are better off in slavery</b></p> <ul style="list-style-type: none"> <li>▪ “He gave an account of the <b>humane treatment which the slaves of the Southern States received</b>, their habitations, families, children, privileges, etc. He then showed that their emancipation would tend to make them wretched in the highest degree” (Mr. Burke (SC), March 17, 1790)<sup>400</sup></li> <li>▪ “The slaves in South Carolina were <b>a happier people</b> in the lower order of whites in many countries he had visited” (Mr. Smith (SC), March 17, 1790)<sup>401</sup></li> <li>▪ “I believe it might have been happy for the United States if these people had never been introduced among us, but I do believe that <b>they have been immensely benefited by coming amongst us</b>” (Mr. Jones (GA), January 2, 1800)<sup>402</sup></li> </ul> <p><b>Linking slavery to anti-American activity</b></p> <ul style="list-style-type: none"> <li>▪ “Already had too much of this <b>new-fangled French philosophy of liberty and equality</b> found its way and was too apparent among these [blacks] in the Southern States, by which nothing</li> </ul>
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<sup>395</sup> *Annals of Congress*, 1st Cong., 2nd sess., 1232 (February 11, 1790).

<sup>396</sup> *Annals of Congress*, 1st Cong., 2nd sess., 1244 (February 12, 1790).

<sup>397</sup> *Annals of Congress*, 1st Cong., 2nd sess., 1242 (February 12, 1790).

<sup>398</sup> *Annals of Congress*, 1st Cong., 2nd sess., 1506 (March 17, 1790).

<sup>399</sup> *Annals of Congress*, 1st Cong., 2nd sess., 1242 (February 12, 1790).

<sup>400</sup> *Annals of Congress*, 1st Cong., 2nd sess., 1502 (March 17, 1790).

<sup>401</sup> *Annals of Congress*, 1st Cong., 2nd sess., 1513 (March 17, 1790).

<sup>402</sup> *Annals of Congress*, 6th Cong., 1st sess., 235 (January 2, 1800).

	<p>would do but their liberty” (Mr. Rutledge (SC), January 2, 1800)<sup>403</sup></p> <ul style="list-style-type: none"> <li>▪ “Sir I do believe that <b>persons have been sent from France</b> to feel the pulse of this country, to know whether these [abolitionists] are the proper engines to make use of... They now will see that the argument has been agitated in the Legislature; that the subject of emancipation has been discussed” (Mr. Rutledge (SC), January 3, 1800)<sup>404</sup></li> </ul>
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In 1806, as Congress discussed a bill to end the importation of slaves starting in 1808, a representative from Georgia shed light on the interesting attempt of some in the South to reconcile previous claims about slavery as “an evil” with the growing need to defend the institution. Representative Peter Early initially argued that slavery was a necessary evil to maintain law and order among the two races in the South. Furthermore, he aimed to instill fear about the potential outcome of emancipation to highlight the undesirable nature of such a pursuit. He asserted:

Yes, sir, though *slavery is an evil, regretted by every man in the country*, to have among us in any considerable quantity persons of this description, is an evil far greater than slavery itself. [...] Wherever people of color are found in a state of freedom – I mean in the States were they are found in considerable numbers – they are considered as the instruments of murder, theft, and conflagration. [...] We are told it is cruel and disgraceful to keep them in slavery. There is no doubt of it. But would it not be more cruel to place them in a situation where we must in self-defense – gentlemen will understand me – get rid of them in some way. *We must either get rid of them, or they of us; there is no alternative*, and I leave it to gentleman to determine which course would be pursued [emphasis mine].<sup>405</sup>

Interestingly, further on in the same debate in responding to a representative from Pennsylvania who emphasized the southern perception of slavery as a necessary *evil*, Early replied with a distinction between a *political* evil and a *moral* evil. He argued that while slavery was considered a political evil in the South because of its possible

<sup>403</sup> *Annals of Congress*, 6th Cong., 1st sess., 230 (January 2, 1800).

<sup>404</sup> *Annals of Congress*, 1st Cong., 2nd sess., 242 (January 3, 1800).

<sup>405</sup> *Annals of Congress*, 9th Cong., 2nd sess., 174 (December 17, 1806).

detrimental effects on society, it was not considered a crime or moral affront. Early declared:

A large majority of the people in the Southern States do not consider slavery as a crime. *They do not believe it immoral to hold human flesh in bondage.* Many deprecate slavery as an evil; as a political evil; but not as a crime. Reflecting men apprehend, at some future day, evils, incalculable evils, from it; but it is a fact that very few, very few, consider it as a crime. It is best to be candid on this subject. *If they considered the holding of men in slavery as a crime, they would necessarily accuse themselves, a thing which human nature revolts at [emphasis mine].*<sup>406</sup>

In the same debate, slavery proponents were also beginning to repudiate the notion that “all men are created equal” contained in the Declaration of Independence by arguing that it was an abstract concept never intended by the Founders to be taken literally. Representative Joseph Clay of Pennsylvania asserted

The Declaration of Independence is *to be taken with great qualification.* It declares those men have an inalienable right to life; yet we hang criminals – to liberty, yet we imprison – to the pursuit of happiness, yet he must not infringe on the rights of others. If the Declaration of Independence is taken in its fullest extent, it will warrant robbery and murder, for some may think even those crimes necessary to their happiness [emphasis mine].<sup>407</sup>

Thus, as early as 1806, pro-slavery actors were starting to take on a more unapologetic tone in discussing the institution of slavery by engaging the opposition *on the grounds of morality* and undermining the very principle of natural equality being used against them.

In 1818, Representative William Smith from South Carolina further engaged the realm of morality, but this he did by trying to turn the accusation back onto the accusers. In response to the dissemination of anti-slavery pamphlets that attacked slavery and the character of slaveholders, Smith emphasized the hypocrisy of northerners who he said

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<sup>406</sup> *Annals of Congress*, 9th Cong., 2nd sess., 238 (December 31, 1806).

<sup>407</sup> *Annals of Congress*, 9th Cong., 2nd sess., 227 (December 29, 1806).

only turned against slavery once it was in their interest to do so. He claimed, “Whilst it was their [northerners’] interest to hold slaves, so long they kept them. Whenever the interest coupled with it ceased, slavery ceased, but not before.”<sup>408</sup> Moreover, he asserted that slaves “lived happy” and “were better provided for than the peasantry of any other country upon earth.” Thus, the anti-slavery activists knew “no more of the condition of the slaves than they do of the man in the moon,” so their “fanatic” propaganda was only “calculated to inflame.”<sup>409</sup>

During the Missouri Debates in 1819-1820 when Congress was debating the extension of slavery into the soon-to-be state of Missouri, state representatives, rather than outside anti-slavery societies, took on the anti-slavery cause themselves for one of the first times, and they proposed drastic legislation. Representatives Tallmadge and Taylor of New York proposed that slavery be prohibited in new states, and they denounced in colorful language the “market overt for human flesh.”<sup>410</sup> Tallmadge captured the intensity of the debate and the extreme sentiments of both pro- and anti-slavery proponents in an impassioned speech:

Another gentleman, Mr. Cobb, from Georgia, in addition to other expressions of great warmth, has said, ‘that, if we persist, the Union will be dissolved;’ and, with a look fixed on me, has told us, ‘we have kindled a fire which all the waters of the ocean cannot put out, which seas of blood can only extinguish.’ Sir, language of this sort has no effect on me; my purpose is fixed, it is interwoven with my existence, its durability is limited with my life, *it is a great and glorious cause, setting bounds to a slavery the most cruel and debasing the world ever witnessed; it is the freedom of man; it is the cause of unredeemed and unregenerated human beings.* Sir, if the dissolution of the union must take place, let it be so! If civil war, which gentlemen so much threaten, must come, I can only say, let it come!  
[emphasis mine]<sup>411</sup>

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<sup>408</sup> *Annals of Congress*, 15th Cong., 1st sess., 234 (March 6, 1818).

<sup>409</sup> *Annals of Congress*, 15th Cong., 1st sess., 236 (March 6, 1818).

<sup>410</sup> *Annals of Congress*, 15th Cong., 2nd sess., 1175 (February 15, 1819).

<sup>411</sup> *Annals of Congress*, 15th Cong., 2nd sess., 1204 (February 16, 1819).

Despite the intense language on both sides and the willingness to risk war rather than concede, Representative Cobb still did not assert the moral goodness of slavery outright. Rather, he declined to comment on the moral standing of the practice and only appealed to states' rights as the justification for slavery in Missouri. He argued:

It is not now a question whether it is politic or impolitic to tolerate slavery in the United States, or in a particular State. [...] *Admit, however, its moral impropriety: yet there was a vast difference between moral impropriety and political sovereignty.* The people of New York or Pennsylvania may deem it highly immoral and politically improper to permit slavery, but, yet, they possess the sovereign right and power to permit it, if they choose [emphasis mine].<sup>412</sup>

The closest assertion of a positive defense came in the form of patriarchal arguments about how slavery in the South was very humane and nearly familial, thus it could not be as hostile as critics claimed. Virginia Representative Barbour argued that slaves, though they were considered property, “were considered and treated as the most valuable, as the most favored property.” Masters “felt for them those sympathies which bind one man to another, though that other may be our inferior.”<sup>413</sup> Additionally, Smith of South Carolina claimed, “The whole commerce between master and slave is patriarchal. [...] The black children are the constant associates of the white children; they eat together, they play together, and their affections are often times so strongly formed in early life, as never to be forgotten.”<sup>414</sup>

### ***3.1.2 Embracing “Positive” Defenses***

By the 1830s in debates over slavery in the District of Columbia, pro-slavery advocates began fully embracing a positive defense of the goodness of slavery and denounced the previous tenuous position of many southerners who condemned the very

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<sup>412</sup> *Annals of Congress*, 15th Cong., 2nd sess., 1436 (March 2, 1819).

<sup>413</sup> *Annals of Congress*, 15th Cong., 2nd sess., 1188 (February 15, 1819).

<sup>414</sup> *Annals of Congress*, 16th Cong., 1st sess., 269 (January 26, 1820).

institution they were so eager to protect. Representative Weems of Maryland perfectly captured this sentiment when he accused fellow slaveholders who criticized slavery of being hypocrites. He asserted, “Sir, will any of the demands of policy justify my doing what, in itself, I believe to be evil? [...] God forbid! [...] God forbid, Sir, that I should be found practicing that which I cannot fully justify to myself.”<sup>415</sup> He then went on “to prove my right by every dispensation from God to man, to hold my fellow man as property” and offered most of the positive arguments for slavery – Scriptural support, blacks being from an “inferior stock,” slaves being taken care of by their masters and better off in slavery than in freedom.<sup>416</sup>

In a lengthy speech, Representative James Henry Hammond of South Carolina elaborated on the positive defenses of slavery and further emphasized the battle-like nature of the conflict over abolition. His oration epitomized the trends that increasingly appeared from the 1830s onward. He was unapologetic in his defense of slavery, referred to the opposition as enemies in a war, spoke of slaves in paternalistic and demeaning language, linked the defense of slavery to the southern collective identity, linked the defense of slavery to a larger sociopolitical battle, and affirmed that slavery was beneficial for slaves. Significantly, as pro-slavery actors grew more impassioned in this way, they actually moved *away* from *actual arguments* in defense of slavery and relied more on *general claims* of rights and emotional appeals. In other words, these actors increasingly took it for granted that theirs was the correct moral position and therefore did not feel the need to explicitly defend it. Table 3.2 below summarizes these trends.

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<sup>415</sup> *Register of Debates in Congress*, 20th Cong., 2nd sess., 183 (January 7, 1829).

<sup>416</sup> *Register of Debates in Congress*, 20th Cong., 2nd sess., 183-7 (January 7, 1829).

**Table 3.2: Quotes from John Henry Hammond’s Speech to the House, February 1, 1836<sup>417</sup>**

<p><i>Unapologetic Tone</i></p>	<ul style="list-style-type: none"> <li>▪ “If it be an evil, it is one to us alone, and we are contented with it – why should others interfere? <b>But it is no evil. On the contrary, I believe it to be the greatest of all the great blessings</b> which a kind Providence has bestowed upon our glorious region.”</li> <li>▪ “I have touched on topics today which have not heretofore been broached within these walls. In thus departing from the usual silence of the South upon this subject, it may be thought that I have gone too far. <b>But times have changed.</b> [...] We cannot, in my judgment, avoid this danger longer, <b>by closing our eyes upon it, and lulling our people into false security.</b>”</li> </ul>
<p><i>Opposition as Enemies</i></p>	<ul style="list-style-type: none"> <li>▪ “Sir, there can no longer by a doubt of the deep, pervading, uncontrollable excitement which shakes the free States on this subject, nor of the energy and power with which the abolitionists are pressing their <b>mad and fatal schemes</b>. Every mail from the North brings fresh <b>news of agitation</b>; every breeze is tainted with it. It spreads like <b>wildfire</b> in the prairies, and throws its red glare up to heaven, that all may see while it sweeps with <b>resistless fury</b> everything before it.”</li> <li>▪ “<b>Against this institution war has been commenced.</b> A crusade is proclaimed. The banner has been hoisted, and on it is inscribed that visionary and disastrous sentiment, ‘Equality to all mankind,’ although there is no analogous equality in the moral or physical creation.”</li> <li>▪ “And I warn the abolitionists, <b>ignorant, infatuated, barbarians</b> as they are, that if chance shall throw any of them into our hands he may expect a felons defeat.”</li> </ul>
<p><i>Paternalistic, but Sub-human Discussion of Slaves</i></p>	<ul style="list-style-type: none"> <li>▪ “Sir, our slaves are a <b>peaceful, kind-hearted, and affectionate race</b>; satisfied with their lot, happy in their comforts, and devoted to their masters.”</li> <li>▪ “Although I am perfectly satisfied that <b>no human process can elevate the black man to an equality with the white</b> – admitting that it could be done – are we prepared for the consequences which then must follow? ... [are we prepared] to see them enter these halls and take their seats by our sides, in perfect equality with the white representatives [...] <b>From such a picture I turn with irrepressible disgust.</b>”</li> </ul>

<sup>417</sup> *Register of Debates in Congress*, 24th Cong., 1st sess., 2448-62 (January 7, 1829).

<p><i>Positive Arguments</i></p>	<p><b>Part of southern collective identity &amp; culture</b></p> <ul style="list-style-type: none"> <li>▪ “I call on every slaveholder in this House, and in this country, to mark [abolitionism’s] fearful progress, and prepare to meet it. He who falters here or elsewhere, <b>he who shrinks from taking the highest and the boldest ground at once, is a traitor!</b> A traitor to his native soil! A traitor to the memory of those from whom he has inherited his rights! [...] And on his head be the blood which his treachery or cowardice may cause to flow.”</li> <li>▪ “Domestic slavery is <b>indispensable [to the South]</b>. To such a country it is as natural as the clime itself – as the birds and beasts to which that climate is congenial. [...] It is equally the <b>order of Providence</b> that slavery should exist among a planting people, beneath a southern sun.”</li> </ul> <p><b>Slaves are better off in slavery &amp; than poor free laborers</b></p> <ul style="list-style-type: none"> <li>▪ “As a class, I say it boldly, <b>there is not a happier, more contented race upon the face of the earth.</b> I have been born and brought up in the midst of them, and, so far as my knowledge and experience extend, I should say they have every reason to be happy. Lightly tasked, well clothed, well fed – far better than the free laborers of any country in the world, our own and those perhaps of the other States of this confederacy alone excepted.”</li> </ul> <p><b>Slavery breeds good civilization</b></p> <ul style="list-style-type: none"> <li>▪ “Sir, I do firmly believe that domestic slavery, regulated as ours is, <b>produces the highest toned, the purest, best organization of society</b> that has ever existed on the face of the earth.”</li> </ul> <p><b>Part of a larger sociopolitical battle</b></p> <ul style="list-style-type: none"> <li>▪ “But <b>other causes are at work.</b> This excitement belongs to the spirit of the age. Every close observer must perceive that we are approaching, if we have not already reached, <b>a new era in civilization.</b> [...] <b>Proclaiming as their watchword that immortal but now prostituted sentiment, ‘that all men are born free and equal,’</b> [the revolutionaries] have rallied to their standard the ignorant, uneducated, semi-barbarous mass which swarms and starves upon the face of Europe!”</li> </ul>
<p><i>Appeals to Emotion, not Reason</i></p>	<ul style="list-style-type: none"> <li>▪ “Now can we justify ourselves before the world for the course which we may be compelled to take in order to maintain our rights, <b>without boldly declaring what those rights are, defining them,</b> and showing that they are inestimable.”</li> </ul>

	<ul style="list-style-type: none"> <li>▪ “Our last thought will be to give up our institutions. We were born and bred under them, and <b>will maintain them or die in their defense.</b> [...] The <b>superhuman instinct of self-preservation, the indignant feelings of an outraged people,</b> to whose hearth-stones [the abolitionist] is seeking to carry death and desolation, pronounce his doom.”</li> </ul>
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In 1837, a fascinating debate between two southern senators took place that perfectly highlighted the tension between the “necessary evil” and “positive good” defenders of slavery and illustrates why the latter camp won out. In very reasoned and unimpassioned language, Senator Rives from Virginia defended the rights of slaveholders and implored that northerners stop attacking the institution. Rives said,

*He was not in favor of slavery in the abstract. [...] But it was an existing institution; it was recognized and protected by the Constitution [...] He besought the senators not to invade the peace of the firesides of their brethren, and not to persist in a course which southern men could view in no other light than as an aggression upon their dearest interests [emphasis mine].*<sup>418</sup>

Senator John C. Calhoun of South Carolina responded that he, too, did not support slavery in the abstract, but rather saw it as a good “where two races of men, of different color, and striking dissimilarity in conformation, habits, and 1,000 other particulars, were placed in immediate juxtaposition.” However, Calhoun went on to defend slavery in a positive light, saying that the “African race had never existed in so comfortable, so respectable, or so civilized a condition,” and that slavery was most favorable to the preservation of liberty” in society. Calhoun “did not admit it to be an evil. Not at all. It was a good – a great good.”<sup>419</sup>

Rives replied that he “did not believe slavery to be a good, either moral, political, or economical,” but he was “prepared to throw himself into the breach, and to perish in

<sup>418</sup> *Register of Debates in Congress*, 24th Cong., 2nd sess., 717 (February 6, 1837).

<sup>419</sup> *Register of Debates in Congress*, 24th Cong., 2nd sess., 718 (February 6, 1837).

the last ditch in defense of the constitutional rights of the South.”<sup>420</sup> In responding to Rives, Calhoun captured the prime motivation for slaveholders to shift from “necessary evil” defenses to “positive good” defenses; namely, admitting that slavery was an evil gave strength to the opposition trying to abolish it. The most effective way to protect this right was to fight for it boldly, not apologetically. Thus, Calhoun replied:

The gentleman from Virginia held it an evil. Yet he would defend it. Surely if it was an evil, moral, social, and political, the senator, as a wise and virtuous man, was bound to exert himself to put it down. *This position, that it was a moral evil, was the very root of the whole system of operations against it.* That was the spring and wellhead from which all these streams of abolition proceeded – the effects of which so deeply agitated the honorable senator. [...] Mr. C again adverted to the successful results of the experiment thus far, and *insisted that the slaveholders of the South had nothing in the case to lament or to lay to their conscience* [emphasis mine].<sup>421</sup>

Calhoun pointed out the uncomfortable dissonance involved in defending something one feels is wrong, and he aimed to “free” southerners of this burden by denying the immorality altogether.

Rives emphasized the unprecedented nature of this “positive good” thinking and asserted the danger in changing an entire belief and value system to try to justify a morally objectionable practice. He claimed that while he was proud to defend the rights of the southern states,

I have not considered a part of my duty, as a representative from the south, to deny, as has been done by this *new school*, the natural freedom and equality of man; to contend that slavery is a positive good; that it is inseparable from the condition of man; that it must exist, in some form or other, in every political community; and that it is even an essential ingredient in republican government. [...] *This is a philosophy to which I have not yet become a convert.* [...] By putting the defense of southern rights on the abstract merits of slavery, as a positive good, as a natural and inevitable law of society, *you shock the generous sentiments of human nature* [emphasis mine].<sup>422</sup>

<sup>420</sup> *Register of Debates in Congress*, 24th Cong., 2nd sess., 718 (February 6, 1837).

<sup>421</sup> *Register of Debates in Congress*, 24th Cong., 2nd sess., 719 (February 6, 1837).

<sup>422</sup> *Register of Debates in Congress*, 24th Cong., 2nd sess., 721-2 (February 6, 1837).

Between 1836-1844, Congress voted to impose a “gag rule” that prevented the reception of abolition petitions to the legislature and therefore significantly limited any debate about slavery. This rule was fought by several representatives as unconstitutional, especially John Quincy Adams who finally succeeded in having it repealed in 1844.<sup>423</sup>

Once the gag rule was removed and the discussion of abolition became more common again, the trends captured above that took root in the 1830s became predominant. That is, pro-slavery representatives never again apologized for the institution of slavery or referred to it as a moral wrong or a sin; they increasingly referred to the opposition in impassioned, hostile terms as enemies in war; they made the glorification of slavery inseparable from the collective southern identity; and they associated abolition with a larger sociopolitical battle against both capitalism and socialism. They also began to explicitly undermine the principles upon which anti-slavery actors were accusing them to demonstrate that slavery was, in fact, truly in line with American and republican ideals.

Fascinatingly, defenders of slavery made increasingly *fewer* explicit defenses of slavery, itself, such as the claim that slavery was beneficial for slaves and that blacks were suited for slavery. As we began to see in the 1830s, politicians in the 1840s and beyond took it as fact that their position was the morally and intellectually correct one and refused to “stoop so low” as to thoroughly defend it. Thus, they made increasing appeals to general rights claims and deep-seeded emotions. Moreover, the pro-slavery politicians said less about slaves, themselves, and simply took it as a given that slaves were analogous to property. When slaves were discussed, it was always in dehumanizing

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<sup>423</sup> Williams, “Freedom Of Speech Within Congressional Debates: John Quincy Adams & The Gag Rule, 1840s.”

and often debasing language, but the subhuman nature of blacks often went unspoken as an assumed point of fact. Table 3.3 below summarizes these trends.

**Table 3.3: Quotes from Congressional Speeches/Debates (1847-1860)**

<p><i>Unapologetic Tone</i></p>	<ul style="list-style-type: none"> <li>▪ “An institution indispensable for <b>the good of both races</b>” (Calhoun (SC), February 19, 1847)<sup>424</sup></li> <li>▪ “It is now asserted that slavery is ‘a moral evil,’ in other words, a sin, and consequently that those who hold slaves, are guilty therefore. Sir, when I look to those enduring precepts of moral conduct [...], <b>I see slavery there tolerated, I had almost said inculcated.</b> [...] <b>Satisfied ourselves that there is no immorality in it,</b> we have very slight opinion of those who are so egregiously wounded in conscience for us.” (Bocock (VA), June 30, 1848)<sup>425</sup></li> <li>▪ “[Who] would find in all this a <i>social</i> and <i>moral</i> evil? No, sir; you gentlemen who have had no experience in this matter, know nothing of our domestic servitude. [...] <b>How then, sir, can slavery, such as that I have described, which I know to exist, be a moral or social evil?</b>” (Atkinson (VA), March 1, 1849)<sup>426</sup></li> </ul>
<p><i>Opposition as Enemies</i></p>	<ul style="list-style-type: none"> <li>▪ “The <b>insane ravings</b> of associated <b>fanatics</b> or the <b>disgraceful violences</b> of mobs.... The <b>invidious resolutions</b> and <b>unconstitutional enactments</b> of northern states” (Seddon (VA), January 7, 1847)<sup>427</sup></li> <li>▪ “I had not occupied a seat in this Hall ten days, before I saw that a great popular movement in the northern states was in progress, which, if not met with a bold and unblanching spirit by the South, would draw into its vortex elements that would defy opposition and resistance... Shall we cherish the fatal delusions of hope until our dwellings are <b>wrapped in flames</b>, and our hearthstones <b>drenched in the blood of our wives and children?</b>” (Burt (SC), January 14, 1847)<sup>428</sup></li> <li>▪ “And now today I hold the character of the humane, benevolent, Christian master, as <b>far superior to that of the intermeddling, insurrection-breeding agitator</b>, as the pure morality of the Bible is superior to the wild jargon of the <b>false philanthropist.</b>” (Bocock (VA), June 30, 1848)<sup>429</sup></li> <li>▪ “A glance at the rise in progress of abolitionism will illustrate its future and show <b>the danger which threatens</b></li> </ul>

<sup>424</sup> *Congressional Globe*, 29th Cong., 2nd sess., 454 (February 19, 1847).

<sup>425</sup> *Congressional Globe*, 30th Cong., 1st sess., 736 (June 30, 1848).

<sup>426</sup> *Congressional Globe*, 30th Cong., 2nd sess., 173 (March 1, 1849).

<sup>427</sup> *Congressional Globe*, 29th Cong., 2nd sess., 77 (January 7, 1847).

<sup>428</sup> *Congressional Globe*, 29th Cong., 2nd sess., 119 (January 14, 1847).

<sup>429</sup> *Congressional Globe*, 30th Cong., 1st sess., 736 (June 30, 1848).

	<p><b>the union.</b> [In the North] it occupies every avenue to the public mind, and makes the lecture room, the press, and the pulpit, tributary to its <b>savage propagandism</b>" (Keitt (SC), January 15, 1857)<sup>430</sup></p> <ul style="list-style-type: none"> <li>▪ "This <b>tide of fanaticism</b> has rolled on and on until it has now become a great moral and religious sentiment with the masses at the North, pervading their whole social and political fabric." (Jones (GA), April 23, 1860)<sup>431</sup></li> </ul>
<p><i>Positive Arguments</i></p>	<p><b>Part of southern collective identity &amp; culture</b></p> <ul style="list-style-type: none"> <li>▪ "The people of the South never could and never would endure [abolition]. <b>The heritage of their fathers would be at stake</b> – their own honor would be at hazard – the peace of their homes, the loves and the affections that cluster around their hearthstones – <b>the security of their state and their friends</b> [...] The Union would and must be first sacrificed" (Seddon (VA), January 7, 1847)<sup>432</sup></li> </ul> <p><b>Slaves are better off in slavery &amp; than poor free laborers</b></p> <ul style="list-style-type: none"> <li>▪ "Go with me into the families of the south [...] What do you see? A farmer, the owner of five, ten, twenty, or maybe a hundred negro slaves; <b>they are all well-fed, well-clothed</b>; when in good health, they are employed chiefly in agriculture; <b>not confined to the hot rooms of a northern manufactory</b>, but breathing a healthy, salubrious atmosphere" (Atkinson (VA), March 1, 1849)<sup>433</sup></li> <li>▪ "[...] the miserable, deluded, misguided slaves, whom your hypocritical, whining abolitionists have seduced from their happy homes. But I tell you now, that <b>the well-fed, well-clad, contented Negro of Virginia asks not your sympathy for him.</b>" (Atkinson (VA), March 1, 1849)<sup>434</sup></li> <li>▪ "<b>The southern states, with one voice, say it is right; that it is the proper condition of the Negro</b>; that wherever the African and the white man are brought in contact, it is necessary that the supremacy of the white man should be acknowledged, <b>to evolve the greatest good and happiness to both races</b>" (Jones (GA), April 23, 1860)<sup>435</sup></li> </ul> <p><b>Slavery breeds good civilization</b></p> <ul style="list-style-type: none"> <li>▪ "Where wages command labor, as in the non-slaveholding States, there necessarily takes place between labor and capital a conflict, which leads, in process of time, to <b>disorder, anarchy and revolution</b>, if not counteracted by</li> </ul>

<sup>430</sup> *Congressional Globe*, 34th Cong., 3rd sess., 140 (January 15, 1857).

<sup>431</sup> *Congressional Globe*, 36th Cong., 1st sess., 251 (April 23, 1860).

<sup>432</sup> *Congressional Globe*, 29th Cong., 2nd sess., 77 (January 7, 1847).

<sup>433</sup> *Congressional Globe*, 30th Cong., 2nd sess., 173 (March 1, 1849).

<sup>434</sup> *Congressional Globe*, 30th Cong., 2nd sess., 173 (March 1, 1849).

<sup>435</sup> *Congressional Globe*, 36th Cong., 1st sess., 251 (April 23, 1860).

	<p>some appropriate and strong constitutional provision. Such is not the case in the slaveholding States.” (Calhoun (SC), February 20, 1847)<sup>436</sup></p> <ul style="list-style-type: none"> <li>▪ “The necessity of raiment and food, which are the main wants of animal life, being the motive which leads the hireling to work, the pauper to beg, the thief to plunder, and the prostitute to degrade herself, it is not difficult to conceive why <b>these four conditions, as a general thing, should not exist under the system of slavery</b>, in which all have the necessaries of life” (Keitt (SC), January 15, 1857)<sup>437</sup></li> </ul> <p><b>Part of a larger sociopolitical battle</b></p> <ul style="list-style-type: none"> <li>▪ “There are organized abolition societies in Great Britain, and organized abolition societies in the United States, in open and active cooperation with each other. <b>These foreign societies have sent their agents and orators to the United States</b>, and they have been in correspondence with members of Congress” (Keitt (SC), January 15, 1857)<sup>438</sup></li> <li>▪ “There is a gathering conflict between <b>socialism</b> and slavery” (Keitt (SC), January 15, 1857)<sup>439</sup></li> <li>▪ “<b>Designing politicians and unprincipled demagogues</b> seized upon [abolitionism] as a hobby to <b>ride into power</b>. It became a regular system – a part of their tactics – to keep up this agitation” (Jones (GA), April 23, 1860)<sup>440</sup></li> </ul>
<p><i>Pro-slavery interpretations of American values</i></p>	<p><b>We are the true defenders of the Constitution</b></p> <ul style="list-style-type: none"> <li>▪ “That Constitution was designed to maintain the freedom, to guard the peace, and guarantee the rights of the people of all the states, equally <i>and impartially</i>. While it so operates, it is beyond all price. But, sir, <b>let it be perverted from it just ends of equal government, and be made the pretext and instrument of gross inequalities and favoritism</b> – of direct attack on the institutions and peace of half of the states of the union – of insult and injury, outrage and wrong on them and theirs, it becomes of less worth than the scroll on which it is written, and, like every symbol of tyranny, should be rent and scattered to the winds.” (Seddon (VA), January 7, 1847)<sup>441</sup></li> <li>▪ “The combined action of all the departments of this Government...with all its agencies of moral and political influence will have been enlisted in direct attempt to</li> </ul>

<sup>436</sup> *Congressional Globe*, 29th Cong., 2nd sess., 467 (February 20, 1847).

<sup>437</sup> *Congressional Globe*, 34th Cong., 3rd sess., 141 (January 15, 1857).

<sup>438</sup> *Congressional Globe*, 34th Cong., 3rd sess., 140 (January 15, 1857).

<sup>439</sup> *Congressional Globe*, 34th Cong., 3rd sess., 140 (January 15, 1857).

<sup>440</sup> *Congressional Globe*, 36th Cong., 1st sess., 250 (April 23, 1860).

<sup>441</sup> *Congressional Globe*, 29th Cong., 2nd sess., 76 (January 7, 1847).

	<p><b>subvert the fundamental equality of the Constitution</b> – in an insidious design to undermine the institutions of one half of the States, and to <b>stigmatize and depreciate their property</b> and their labor.” (Seddon (VA), January 7, 1847)<sup>442</sup></p> <ul style="list-style-type: none"> <li>▪ “Sir, as I have said, we <b>plant ourselves on the Constitution</b>. We demand only equality of right – full communion and participation in the privileges of our common Union. [We appeal to] <b>the eternal principles of sheer justice and equality</b>” (Seddon (VA), January 7, 1847)<sup>443</sup></li> </ul> <p><b>Slavery is in line with “natural law”</b></p> <ul style="list-style-type: none"> <li>▪ “The <b>right of property is a natural right</b>, not a governmental one; it springs from the laws of man’s being, not from the laws of his enactment” (Bocock (VA), June 30, 1848)<sup>444</sup></li> <li>▪ “That Negro slavery is immoral, or even wrong in itself, I utterly deny. <b>If it be wrong or immoral, then are the laws of nature herself wrong, and of immoral tendencies</b>; then is it immoral to raise one of God’s creatures to the highest point of intelligence and happiness which he is capable of attaining; then is it immoral to make a moral, religious, and comparatively intellectual being of one who, otherwise, would have been an ignorant and utterly degraded savage” (Atkinson (VA), March 1, 1849)<sup>445</sup></li> <li>▪ “Voices from every tradition of every nation that lived upon the tide of time past, proclaim <b>the primitive, consistent, and undeniable fact of original slavery</b>” (Keitt (SC), January 15, 1857)<sup>446</sup></li> </ul> <p><b>Slavery promotes true American values</b></p> <ul style="list-style-type: none"> <li>▪ “[Abolitionists say] that they are in favor of the extension of liberty. <b>I, too, sir, am in favor of liberty</b>, and I am in favor of the extension of liberty; it is not that <b>wild, unbridled, licentious, higher-law liberty, that whetted the guillotine and deluged the streets of revolutionary France with blood</b>, but it is that liberty which brings healing on its wings; <b>it is American liberty; it is constitutional liberty</b>; which protects the citizen in the enjoyment of all his civil and religious rights, and his rights of property; that liberty,</li> </ul>
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<sup>442</sup> *Congressional Globe*, 29th Cong., 2nd sess., 77 (January 7, 1847).

<sup>443</sup> *Congressional Globe*, 29th Cong., 2nd sess., 77 (January 7, 1847).

<sup>444</sup> *Congressional Globe*, 30th Cong., 1st sess., 736 (June 30, 1848).

<sup>445</sup> *Congressional Globe*, 30th Cong., 2nd sess., 173 (March 1, 1849).

<sup>446</sup> *Congressional Globe*, 34th Cong., 3rd sess., 140 (January 15, 1857).

	<p>...sir, which the <b>fathers of the republic</b> intended to secure and perpetuate.” (Warner (GA), April 1, 1856)<sup>447</sup></p>
<p><i>Refusing to Explicitly Defend Slavery (general appeals to rights &amp; emotions)</i></p>	<ul style="list-style-type: none"> <li>▪ “Sir, the proposition [of excluding slavery from territories] is monstrous – <b>too gross and too plain to be argued against</b>. We of the South – I say it plainly and firmly – never can and never will submit to such a principle.” (Seddon (VA), January 7, 1847)<sup>448</sup></li> <li>▪ <b>“The expediency of slavery, we of the south do not choose to discuss here. . . The institution is ours, and we will protect it. We have it, and claim our rights with it”</b> (Bocock (VA), June 30, 1848)<sup>449</sup></li> <li>▪ “I have heretofore <b>refused to discuss the subject of slavery</b>, because this government has no jurisdiction over the question, only so far as it is <b>the duty of the federal government to extend its protection over it as other property</b>: I deny that the federal government has either the power to create or to destroy property belonging to the citizens of the United States – that being a right reserved to the people of the several States.” (Bailey (GA), February 28, 1855)<sup>450</sup></li> <li>▪ “[The southern states] will <b>maintain the institution at all hazards</b> [...] they <i>must</i> and <i>will</i> have expansion” (Jones (GA), April 23, 1860)<sup>451</sup></li> </ul>

### 3.2 Pro-Slavery Writings

Regarding the pro-slavery writings and speeches during this period from the 1790s to 1860, similar trends are observable to those found in the congressional debates. That is, there was shift from a more nuanced discussion of the morality of slavery, the opposition, and slaves to an entirely unapologetic discussion of slavery, a vilification of the opposition, and a complete dehumanization of blacks in slavery. At the same time, the number of arguments appealing to necessity decreased and the positive arguments for slavery significantly increased (Table 3.4 summarizes these trends). Additionally, in later

<sup>447</sup> *Congressional Globe*, 34th Cong., 1st sess., 297 (April 1, 1856).

<sup>448</sup> *Congressional Globe*, 29th Cong., 2nd sess., 76 (January 7, 1847).

<sup>449</sup> *Congressional Globe*, 30th Cong., 1st sess., 736 (June 30, 1848).

<sup>450</sup> *Congressional Globe*, 33rd Cong., 2nd sess., 328 (February 28, 1855).

<sup>451</sup> *Congressional Globe*, 36th Cong., 1st sess., 251 (April 23, 1860).

writings, there was an explicit undermining of the principles of the Founding and claims that southern slaveholders were the true promoters of American values. One divergence between the congressional debates and the pro-slavery writings is that there was not the same refusal to provide a rational defense of slavery in the later writings, as there was in the later congressional debates. This is likely because the authors of the pro-slavery texts were writing with the explicit intention of *defending* slavery, so their writings and speeches all offered arguments to that end.

**Table 3.4: Summary of Trends in Pro-Slavery Writings**

<i>Text Author &amp; Date</i>	<i>Unapologetic Tone</i>	<i>Vilifying Opposition</i>	<i>Dehumanizing Slaves</i>	<i># of Arguments of Necessity</i>	<i># of Positive Good Arguments</i>
Boucher (VA), 1763/1797	No	No	Yes	2	1
Drayton (SC), 1802	No	No	Yes	3	2
Furman (SC), 1823	Yes	No	No	2	3
Seabrook (SC), 1825	No	Yes	No	2	1
Brown (SC), 1826	No	Yes	No	1	4
Pinckney (SC), 1829	Yes	Yes	Yes	1	2
VA Debates, 1831-32	No	No	No	4	2
Dew (VA), 1832	Yes	No	Yes	2	4
A. Sims (SC), 1834	Yes	Yes	Yes	1	5

W.G. Simms (SC), 1837	Yes	No	Yes	1	6
Harper (SC), 1838	Yes	Yes	Yes	4	11
Hammond (SC), 1845	Yes	Yes	Yes	3	10
* <i>Simms Updated</i> 1853	Yes	Yes	Yes	0	7
Fitzhugh (VA), 1854	Yes	Yes	Yes	2	10
Ruffin (VA), 1857	Yes	Yes	Yes	1	15
Hammond (SC), 1858	Yes	Yes	Yes	0	12

\* Simms' "The Morals of Slavery" was republished in a compilation along with Harper's "Memoir on Slavery," Hammond's letters, and Dew's *Review of the Debate in the Virginia Legislature*. In the 1853 version, Simms wrote an updated preface and used more vilifying language toward the opposition, more dehumanizing language toward slaves, and was overall bolder in his defense of slavery.

As explained above, there were very few explicit defenses of slavery published before the 1820s, but in the two analyzed (one from Virginia and one from South Carolina), the authors took an apologetic tone in regard to slavery and an unimpassioned tone in regard to the opposition. Jonathan Boucher claimed, "With all my abhorrence of slavery, I feel in myself no disposition to question either its lawfulness, or its humanity." He further believed that "more harm than good [had] been done" by recent anti-slavery publications.<sup>452</sup> Governor John Drayton of South Carolina was more dismissive, arguing, "if it be an evil, it will sooner, or later, effect its own cure; and if it be a sin, it is the

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<sup>452</sup> Boucher, *A View of the Causes and Consequences of the American Revolution*, 39.

happiness of those who are not engaged in it, to be safe from any of its future calamities.”<sup>453</sup> Both men spoke of slaves as of a naturally inferior race, and Drayton referred to them as property in the same category as horses.<sup>454</sup>

By the 1820s, only three of the remaining 14 texts were apologetic about the immorality of slavery, only four were unimpassioned toward the anti-slavery activists, and only four were nuanced in their discussion of slaves. An example of the more tentative language in defense of slavery was from Whitemarsh Seabrook, who claimed that “efforts of the national government may possibly ameliorate, but can never effectually eradicate the existing evil;” moreover, “slavery is detested – we feel its fatal effects – we abhor, we deplore it ourselves with all the pity of humanity.”<sup>455</sup> Those who were rather unimpassioned toward the opposition, such as Richard Furman and Thomas Dew, acknowledged that anti-slavery actors may have had good, albeit misguided, intentions. Furman disagreed with anti-slavery advocates “however benevolent their intentions may be,” and Dew asserted, “we have no doubt that they were acting conscientiously for the best” despite their mistaken aims.<sup>456</sup>

Those who were nuanced in their discussion of slaves, such as Whitemarsh Seabrook, referred to blacks as “fellow beings” who were “lawfully held in servitude.”<sup>457</sup> Furman even claimed, “For though they are slaves, they are also men; and are with ourselves accountable creatures; having immortal souls.”<sup>458</sup> Edward Brown, who argued

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<sup>453</sup> Drayton, *A View of South Carolina*, 145.

<sup>454</sup> Drayton, 144.

<sup>455</sup> Seabrook, *A Concise View*, 11, 15.

<sup>456</sup> Furman, “Exposition of the Views of the Baptists”; Dew, “Review of the Debate in the Virginia Legislature,” 292.

<sup>457</sup> Seabrook, *A Concise View*, 17.

<sup>458</sup> Furman, “Exposition of the Views of the Baptists.”

for slavery in the abstract, did not even discuss black slaves specifically or anything particular about blacks that implied they were suited for enslavement.<sup>459</sup>

On the other hand, authors who were boldly unapologetic in their defense of slavery claimed that slavery was certainly not immoral. Furman argued, “In proving this subject justifiable by Scriptural authority, its morality is also proved; for the Divine Law never sanctions immoral actions.”<sup>460</sup> Charles Pinckney asserted, “That Slavery, as it exists here, is a greater or more unusual evil than befalls the poor in general, we are not prepared to admit; and apprehend that its extinction would be attended with calamity to the country.”<sup>461</sup> James Henry Hammond even argued, “the domestic Slavery of these States [is] not only an inexorable necessity for the present, but a moral and humane institution, productive of the greatest political and social advantages.”<sup>462</sup> Edmund Ruffin claimed that after the abolition “fanaticism” began in full force in the 1830s, Virginians were forced to seriously consider the question of slavery; “And the result has been that nearly all thinking and reasoning men now as fully believe negro slavery to be a great benefit for this country, as they formerly believed it to be a great evil.”<sup>463</sup>

Authors who vilified the anti-slavery movement said things such as “[the North has] declared an interminable war;” abolitionists are engaged in “open hostility;” fanatics who are “deluded” and have “morbid sensibilities;” “ignorant and wicked pretenders to

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<sup>459</sup> Brown, *Notes on the Origin and Necessity of Slavery*.

<sup>460</sup> Furman, “Exposition of the Views of the Baptists.”

<sup>461</sup> Pinckney, *An Address Delivered in Charleston Before the Agricultural Society of South Carolina*, 3.

<sup>462</sup> Hammond, “Hammond’s Letters on Slavery,” 100.

<sup>463</sup> Ruffin, *Political Economy of Slavery*, 13.

philanthropy;” “they make war upon us out of excess of charity, and attempt to purify by covering us with calumny;” “this fanatical school.”<sup>464</sup>

The discussion of the nature of slaves was similarly intense and quite dehumanizing: “that class of beings, who [occupy] a subordinate station in society;” “a race of people, differing from us in color and in habits, and vastly inferior in the scale of civilization;” “so far as he is a thing or property, he is consigned to the use and management of his master;” “a people otherwise barbarous, easily depraved, and needing the help of a superior condition — a power from without — to rescue them from a hopelessly savage state;” “that the African negro is an inferior variety of the human race, is, I think, now generally admitted;” “the negro race is inferior to the white race;” it is proper to enslave “these reckless, wretched drones and cumberers of the earth, [] thereby compelling them to habits of labor [...] and raising them and their progeny in the scale of humanity.”<sup>465</sup>

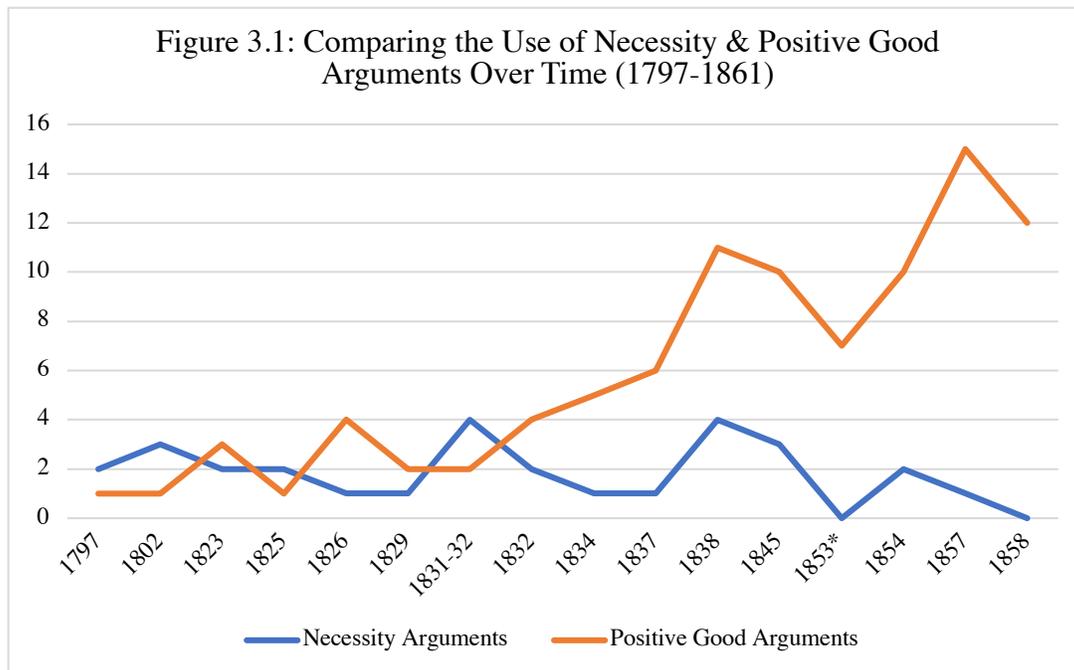
In the texts prior to the 1830s, arguments of necessity were more common or about equal to any positive good arguments. However, in the 1830s, there was a significant and consistent increase in arguments about the positive aspects of slavery (see Figure 3.1). Arguments of necessity were essentially that slavery had always existed in some form and was simply a part of the human experience, there was no feasible scheme for emancipation, slavery was essential to the economy and therefore the survival of the

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<sup>464</sup> Seabrook, *A Concise View*, 16; Brown, *Notes on the Origin and Necessity of Slavery*, 40; Pinckney, *An Address Delivered in Charleston Before the Agricultural Society of South Carolina*, 7; Sims, *A View of Slavery, Moral and Political*, v; Hammond, “Hammond’s Letters on Slavery,” 113; Ruffin, *Political Economy of Slavery*, 13.

<sup>465</sup> Pinckney, *An Address Delivered in Charleston Before the Agricultural Society of South Carolina*, 3; Dew, “Review of the Debate in the Virginia Legislature,” 286; Sims, *A View of Slavery, Moral and Political*, 24; Simms, “The Morals of Slavery,” 178; Harper, “Memoir on Slavery,” 56; Fitzhugh, *Sociology for the South*, 84; Ruffin, *Political Economy of Slavery*, 3.

South, and slaves simply fell under property rights and could not be touched. Positive good arguments took a broader array of forms, which are laid out in Table 3.5 below.



**Table 3.5: Examples of Positive Good Arguments in Pro-Slavery Texts**

<i>Blacks are better off in slavery than they would be in Africa</i>	“The exchange of physical conditions, from being a slave in Africa, in savage society and to a savage master, ... to the general or usual condition of slaves in these Southern States, would be even more conducive to the benefit of the slaves than of their new masters.” <sup>466</sup>
<i>Southern slaves are well-treated</i>	“The slave is carefully protected in life, limb, and even in a moderate share of liberty, by the policy of the laws; and his nourishment and subsistence are positively enjoined;” “A merrier being does not exist on the face of the globe, than the negro slave of the U. States.” <sup>467</sup>
<i>Southern slaves are better off than poor, free laborers in the North</i>	“[The North’s] whole hireling class of manual laborers and ‘operatives,’ as you call them, are essentially slaves. The difference between us is, that our slaves

<sup>466</sup> Ruffin, *Political Economy of Slavery*, 11.

<sup>467</sup> Dew, “Review of the Debate in the Virginia Legislature,” 321, 459.

	are hired for life and well-compensated; there is no starvation, no begging, no want of employment among our people, and not too much employment either.” <sup>468</sup>
<i>Slaves are Christianized</i>	“The slave is allowed all religious privileges necessary to his Christian comfort and edification. He may worship at whatever church he chooses, and the law secures to him the right of Sabbath.” <sup>469</sup>
<i>Slavery breeds good civilization</i>	“Hence, the division of mankind into grades, and the mutual dependence and relations which result from them, constitute the very soul of civilization. [...] It is the mutual dependence of one part of society on the other the produces social order and the courtesies of life.” <sup>470</sup>
<i>Slavery helps create the most ideal society</i>	“Therefore, it follows that, with all its imperfections, slave society is the best form of society yet devised for the masses. When Socialists and Abolitionists, by full and fair experiments, exhibit a better, it will be time to agitate the subject of abolition.” <sup>471</sup>
<i>Slavery creates the best economy</i>	“I may assume as granted and unquestionable, the fact almost universally admitted in the Southern States, that slave-labor is in our circumstances, more profitable to the employer and to agricultural interests, than could be any possible substituted labor.” <sup>472</sup>
<i>Slavery is sanctioned by God and Scripture</i>	“If Slavery were immoral, a something <i>malum in se</i> , God would not have incorporated it into the system of government and laws instituted by himself for the Jews, but would have plainly forbidden it.” <sup>473</sup>

<sup>468</sup> Hammond, “Speech of the Honorable John H. Hammond.”

<sup>469</sup> Sims, *A View of Slavery, Moral and Political*, 24.

<sup>470</sup> Brown, *Notes on the Origin and Necessity of Slavery*, 24.

<sup>471</sup> Fitzhugh, *Sociology for the South*, 163.

<sup>472</sup> Ruffin, *Political Economy of Slavery*, 25.

<sup>473</sup> Sims, *A View of Slavery, Moral and Political*, 13.

<i>Southern slavery has made the North prosperous</i>	“The South have sustained you in great measure. [...] One hundred and fifty million dollars of our money passes annually through your hands. Much of it sticks; all of it assists to keep your machinery together and in motion. Suppose we were to discharge you; suppose we were to take our business out of your hands; – we should consign you to anarchy and poverty.” <sup>474</sup>
<i>Slavery is in line with “natural law”</i>	“It is the order of nature and of God, that the being of superior faculties and knowledge, and therefore of superior power, should control and dispose of those who are inferior.” <sup>475</sup>
<i>The principle of equality in the Declaration is clearly only an abstraction</i>	“Perhaps there is not a phrase which has been more perverted to serve the purpose of the enemies to slavery, then, that <i>all men are born free</i> . In its perverted application, fact denies it, scripture denies it, the constitution denies it, and common-sense denies it.” <sup>476</sup>
<i>We are the true defenders of the Constitution</i>	“We have kept the government conservative to the great purposes of the Constitution. We have placed it, and kept it, upon the Constitution; and that has been the cause of your [the North’s] peace and prosperity.” <sup>477</sup>
<i>Slavery is the cornerstone of republicanism</i>	“Hence, Slavery is truly the ‘cornerstone’ and foundation of every well-designed and durable ‘republican edifice.’” <sup>478</sup>
<i>Abolitionism is related to other destabilizing, revolutionary doctrines</i>	“Mankind, still horror-stricken by the catastrophe of France, have shrunk from rash experiments upon social systems. But they have been practicing in the East, around the Mediterranean, and through the West India Islands. And growing confident, a portion of them seem desperately bent on kindling the

<sup>474</sup> Hammond, “Speech of the Honorable John H. Hammond.”

<sup>475</sup> Harper, “Memoir on Slavery,” 14.

<sup>476</sup> Brown, *Notes on the Origin and Necessity of Slavery*, 40.

<sup>477</sup> Hammond, “Speech of the Honorable John H. Hammond.”

<sup>478</sup> Hammond, “Hammond’s Letters on Slavery,” 111.

	all-devouring flame in the bosom of our land." <sup>479</sup>
<i>Slavery was never viewed as immoral until modern times</i>	"From all historical and cotemporaneous testimony, it may be inferred that, until in modern times, slavery in itself was never deemed by any to be a violation of morality, or as contrary to humanity, or as ground for offence to the conscience or sensibility of the most virtuous and religious persons." <sup>480</sup>

As a note on the differences between Virginia and South Carolina, there were no written defenses of slavery in Virginia before Dew's *Review of the Debate in the Virginia Legislature* in 1832 except for Boucher's text published in 1797. As mentioned above, Virginians were grappling more with the evils of slavery than their neighbors in the Deep South, and it was not until the Virginia debates in 1831-32 revealed the perceived infeasibility of emancipation that Virginians began defending slavery unreservedly. Consequently, after 1832, the texts from Virginia are more or less indistinguishable from those from South Carolina in their positive defense of slavery, defamation of the opposition, and dehumanization of slaves.

### 3.3 Conclusion

Considering together all of the sources analyzed above, we see that there was a key shift in the 1820s, and certainly by the 1830s, away from defenses of slavery as a necessary, though immoral institution, and toward an unapologetic glorification of the practice. After the 1830s, pro-slavery advocates never again apologized for the institution of slavery or referred to it as an evil. The experience of Senator Rives from Virginia in 1837 reveals that those who tried to maintain the tenuous position of supporting slavery

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<sup>479</sup> Hammond, 150.

<sup>480</sup> Ruffin, *Political Economy of Slavery*, 11.

while admitting its immorality were subsequently ostracized by their fellow southerners. Additionally, from the 1830s on, slavery proponents referred to anti-slavery actors in increasingly hostile language, and they relied on arguments that linked the defense of slavery with the southern identity, the maintenance of the ideal society, and the preservation of American and republican ideals.

Defenders of slavery also made increasingly *fewer* reasoned defenses of slavery, itself, such as the claim that slavery was beneficial for slaves and that blacks were suited for slavery. Rather, they made broader arguments connecting the defense of slavery with a larger sociopolitical battle, and they relied on general claims of rights and emotional appeals. The speeches in Congress relied on more passionate and emotional rhetoric overall than the written texts, which makes sense considering their context as orations rather than reasoned, published defenses.

In the next section, we turn to an overview of the findings from pro-abortion primary sources, and then an analysis of the trends in both the pro-slavery and pro-abortion argumentation.

## CHAPTER 4: PRO-ABORTION SOURCES

### 4.1 NOW Sources

We first turn to sources from the NOW archives from the late 1960s to the mid-1980s to analyze the early part of the time period in question, and then the *NOW Times* issues to examine the 1980s, 1990s, and early 2000s. The early sources from the NOW archives that were analyzed spoke of anti-abortion advocates in hostile terms the majority of the time, and equally either made no mention of the fetus or actively dehumanized the fetus. Within this time frame, the sources prior to the late 1970s were almost all unapologetic in their defense of abortion and used many types of positive arguments for abortion. However, by the 1980s, *all* of the texts were *apologetic* in their defense of abortion and relied largely on arguments of necessity or rights claims rather than positive arguments. Table 4.1 summarizes these trends.

**Table 4.1: Texts from NOW Archives (1960s-1980s)**

<i>Text Author &amp; Date</i> <sup>481</sup>	<i>Unapologetic Tone</i>	<i>Vilifying Opposition</i>	<i>Dehumanizing Fetus</i>	<i># of Arguments of Necessity</i>	<i># of Positive Good Arguments</i>	<i># of Arguments about "Rights"</i>
Hardin, 1964	Yes	No	No mention	1	10	0
Clarke Phelan, 1968	Yes	Yes	Yes	2	9	5
Friedan, 1969	Yes	No	No mention	0	6	5
Pilpel, 1969	Yes	No	Yes	1	7	5
<i>Redbook</i> , 1970	No	No	No	3	3	0
Greenhouse, 1970	No	No	No	2	4	7
NOW press	Yes	No	No mention	1	4	3

<sup>481</sup> All sources analyzed are listed in Appendix A.

release, 1972						
Scott Heide, 1973	Yes	Yes	Yes	0	3	4
NOW brochure, 1974-77	Yes	Yes	No	1	2	6
NOW brochure “Stop HLA,” 1980	No	Yes	Yes	3	0	4
NOW brochure “Speak Out,” 1980	No	Yes	No mention	3	1	1
NOW brochure on HLA, 1984	No	Yes	Yes	3	0	2
NOW brochure “Year of Pain,” 1985	No	Yes	No mention	2	0	3
Goldsmi h, 1985	No	Yes	Yes	3	1	2

Regarding the bold pro-abortion stance of the earlier texts, one example was from a lecture entitled “Abortion and Human Dignity” by the famous ecologist and author of “Tragedy of the Commons,” Garret Hardin. He declared:

*My thesis is this: any woman, at any time, should be able to procure a legal abortion without even giving a reason. Such a policy should (I think) be adopted by society not as a matter of mere expediency, but as the only defensible moral arrangement. If my reasoning is correct, it is almost impossible to imagine circumstances in which society would be morally justified in withholding the right of abortion [emphasis mine].*<sup>482</sup>

<sup>482</sup> Garret Hardin, “Abortion and Human Dignity” (public lecture, University of California, Berkeley, April 9, 1969), Schlesinger Library.

Another abortion advocate, Lana Clarke Phelan, asserted in 1968 that laws prohibiting abortion stripped women “of all human rights,” deprived them of liberty, and gave them “no opportunity for the pursuit of happiness outlined in our American dream.”<sup>483</sup> Betty Friedan similarly claimed in a 1969 speech, “there is no freedom, no equality, no full human dignity and personhood possible for women until we assert and demand control over our own bodies, over our own reproductive process.”<sup>484</sup>

While the texts prior to the 1980s did utilize some arguments of necessity in support of abortion – especially the need to prevent women’s deaths from illegal abortion and the notion that women would seek abortion whether it was legal or not – the authors used far more positive arguments in their defenses. They also appealed to 12 different categories of “rights” involved in the issue of abortion. All of these types of arguments are summarized in Table 4.2 below. A few direct quotations representing the positive defenses include:

*“The mother is seldom prosecuted; or if prosecuted, given only a suspended sentence. I think it is clear that **few, if any, of us believe that abortion is a crime.**”<sup>485</sup>*

*“**Not all women have to bear a child, or children, to have a rewarding life, if the culture in which she lives will accept her as a full human being without the penalty of giving birth.** I know. I said penalty. We have never dared say such things before. However, it is often a penalty, and now is a time for truth and candor.”<sup>486</sup>*

*“**There is only one voice that needs to be heard on the question of the final decision as to whether a woman will or will not bear a child and that is the voice of the woman herself. Her own conscience, her own conscious choice.**”<sup>487</sup>*

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<sup>483</sup> Lana Clarke Phelan, “Abortion Laws: The Cruel Fraud” (speech, California Conference on Abortion in Santa Barbara, February 10, 1968), Schlesinger Library.

<sup>484</sup> Betty Friedan, “Abortion: A Woman’s Civil Right” (speech, First National Conference for Repeal of Abortion Laws, Chicago, IL, February 14, 1969), Schlesinger Library.

<sup>485</sup> Hardin, “Abortion and Human Dignity.”

<sup>486</sup> Clarke Phelan, “Abortion Laws: The Cruel Fraud.”

<sup>487</sup> Friedan, “Abortion: A Woman’s Civil Right.”

*“Contrary to popular belief, the legal structures against abortion are of comparatively recent origin. Until the early nineteenth century – at common law both in England and the United States – abortion before quickening was not illegal at all. It became so only in the early 1800s [and not for protecting] morals [or] the ‘soul’ of the fetus.”<sup>488</sup>*

**Table 4.2: Types of Arguments Based on Necessity, Positive Good, & Rights**

<i>Necessity Arguments</i>	<i>Positive Arguments</i>	<i>Rights</i>
To prevent deaths from illegal abortion	Abortion is safer than childbirth	Right to control reproductive life
Women will seek it whether legal or not	It happens everywhere & has in history	Right to equality / no sex discrimination
Necessary for difficult cases (fetal deformity, rape, very young girls)	Helps curb population growth	Right to liberty
Poor women suffer most when abortion is illegal or difficult to access	Public opinion supports it / does not think it is criminal or immoral	Right to privacy
Prevent suicide for women with unwanted pregnancies	Necessary for women to free / equal in society	Right to be free from government interference
A difficult choice of exchanging the life of the unborn child for a fuller life for the mother	It is simply a method of birth control	Property rights (my body, my choice)
Our laws do not recognize fetal personhood / rights	It is a simple medical procedure / just basic healthcare	Right to pursuit of happiness / self-definition
	Better for society to have parents who choose parenthood / to not have unwanted children	Right to freedom of religion / conscience
	Allows women to be better mothers (either to her other children, or because she would not like the unwanted child)	Rights of physicians
	Better for the unwanted child to not be born	Right to be free of cruel and unusual punishment
	Allows women to seek personal fulfillment / economic prosperity	Women’s right to life

<sup>488</sup> Harriet Pilpel, “The Right of Abortion,” *The Atlantic*, 1969 (reprinted by the Association for the Study of Abortion), Schlesinger Library.

	Few women regret it	Women's legal personhood
	Only chosen motherhood is valuable	Right of child to be wanted
	Abortion rights are in line with true American values	
	More psychological problems from childbirth than abortion	
	So many women of all backgrounds have abortions	
	Access to abortion has public health benefits	

By the 1980s, none of the sources glorified abortion in the way the previous texts did; rather, they spoke of it in a more defensive way and relied on more vague claims of rights than arguments about the benefits of abortion. Thus, the texts discussed abortion as an unfortunate and difficult thing, but argued that it was a necessary choice for women to have to prevent illegal abortion. They heavily emphasized personal freedom and freedom of choice rather than boldly declaring the merits of abortion, and they highlighted the most extreme cases in which women seek abortion (such as rape or the woman's life being endangered).

A NOW brochure from 1980 declared, "For whatever reason: contraceptive failure, contraceptives are not available, illness or disease, lack of knowledge or planning we find ourselves pregnant and in need of an abortion. *The circumstances are never uncomplicated and the decision is never easy*" [emphasis mine].<sup>489</sup> A brochure from 1984 about a proposed Human Life Amendment to recognize the unborn child as a legal person asserted, "The HLAs sponsored by Senator Helms and Representative Hyde forbid the

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<sup>489</sup> "Speak Out Before It Is Too Late" (NOW, 1980), Schlesinger Library.

termination of pregnancy even in cases of rape, incest or life endangerment. Abortions could not be performed even to preserve a woman's health or to save her life.”<sup>490</sup> A 1985 brochure declared, “If you care...if you cannot imagine a United States where women do not have the freedom of individual choice there is something you can do.”<sup>491</sup>

As noted above, rhetoric used to describe the opposition was generally hostile throughout the period from the late 1960s to the mid-1980s and tended to speak of male legislators and religious institutions as oppressive and inherently anti-woman. For example, Clarke Phelan asserted, “It is here the Catholic hierarchy and leaders of certain other religious sects embracing murderous dogma compelling parenthood have used power and money to superimpose their wills on all American physicians through special-interest legislation.”<sup>492</sup> NOW President Wilma Scott Heide similarly claimed in the early 1970s, “Anachronistic, inhuman, oppressive medical, legislative and theological agencies (always unhealthy) will soon self-destruct.”<sup>493</sup> A statement epitomizing the vilification of the opposition present in these texts was from NOW President Judy Goldsmith’s in 1985:

Having failed to persuade Americans that abortion should once again be a crime, the anti-abortionists are trying to *coerce* individual women to carry pregnancies to term, through a campaign of *emotional manipulation, willful deception, vicious harassment threats, and outright terrorism*. Their exclusive focus on the fetus can only be grounded in an *utter disdain for women*, their moral character and their choices about their lives [emphasis mine].<sup>494</sup>

Furthermore, the majority of the sources made no mention of the fetus at all or discussed the unborn in dehumanizing terms. Examples of such rhetoric include

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<sup>490</sup> “Stop HLA” (NOW, 1984) Schlesinger Library.

<sup>491</sup> “Year of Pain and Fear” (NOW, 1985), Schlesinger Library.

<sup>492</sup> Clarke Phelan, “Abortion Laws: The Cruel Fraud.”

<sup>493</sup> Wilma Scott Heide, “Statement from Wilma Scott Heide (NOW President),” August 17, 1973, Schlesinger Library.

<sup>494</sup> Judy Goldsmith, “The Unsilent Scream: Abortion and Women's Lives” (speech, National Press Club, February 12, 1985), Schlesinger Library.

expressing the need of women to “rid their agonized wombs of endoparasitic growths” and discussing disabled infants as “defective offspring.”<sup>495</sup> Scott Heide declared, “The human ovum and the human sperm either singly or in combination are not so rare nor so precious as to supersede the right of the living woman to determine whether or not she wishes to be a parent and the right of every child to be wanted.”<sup>496</sup> Other language expressed incredulity that the fetus could possibly be considered a person or even a human being. “From the moment of fertilization when the sperm penetrates the ovum in the fallopian tube there would be a ‘person’ in existence defined by the ‘paramount’ HLA. Consequently, the government would be obligated to protect this ‘person.’”<sup>497</sup> “Like the HLA this bill says that the fetus is a human being from the very moment of conception.”<sup>498</sup>

One text of particular interest is NOW President Goldsmith’s response to the 1984 film *The Silent Scream*. This short film was produced by former abortion proponent and co-founder of NARAL, Bernard Nathanson, who became a fervent anti-abortion activist. It depicted an abortion occurring through the lens of a sonogram and intended to show what happens to the fetus during an abortion procedure. In response to the visibility of the fetus in the film, Goldsmith responded that while “there is nothing wrong with a concern for the fetus,” the fact that fetus had become the “entire and exclusive reality” in the abortion debate was problematic.<sup>499</sup>

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<sup>495</sup> Clarke Phelan, “Abortion Laws: The Cruel Fraud;” Pilpel, “The Right of Abortion.”

<sup>496</sup> Scott Heide, “Statement from Wilma Scott Heide.”

<sup>497</sup> “Stop HLA Before it Takes Your Life” (NOW, 1980), Schlesinger Library.

<sup>498</sup> “Stop HLA” (NOW, 1984).

<sup>499</sup> Goldsmith, “The Unsilent Scream: Abortion and Women's Lives.”

She then went on to emphasize that though “most anti-abortion literature pictures the fetus as a child,” the fetus has no consciousness or ability to feel. Therefore, “The narrator’s description of a ‘child being torn apart by the unfeeling instruments of the abortionist,’ is emotional manipulation at its most cynical, designed to exploit a cultural concern for children, real living born children, and transfer it to a twelve-week, two-inch long fetus.” She emphasized the need for pro-abortion activists to “see the film, to demystify it, to refute the misrepresentations with realities, and above all, put women back into the picture.”<sup>500</sup> Thus, when forced to reckon with the reality of the fetus, abortion proponents emphasized its inferiority and aimed to shift the focus of the conversation entirely back to the rights and needs of women.

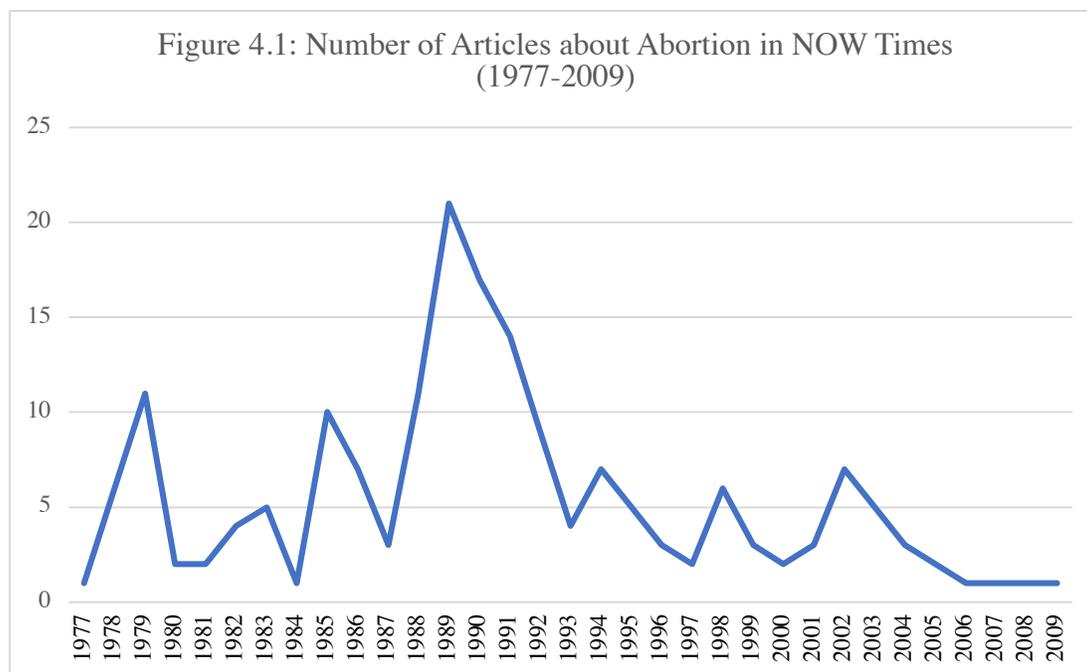
#### ***4.1.1 NOW Times (1977-2009)***

One helpful, consistent source for much of the period of this study is the *NOW Times* publication, which served as a mini-newspaper for NOW members on a semi-regular basis. The NOW archives contain most issues of the publication between 1977 and 2009, so I examined them and found some interesting trends. First, I documented the number of articles primarily about abortion in each issue, which is presented in Figure 4.1

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<sup>500</sup> Goldsmith, “The Unsilent Scream: Abortion and Women's Lives.”

below. Next, I chose the issue from each year containing the most articles on abortion and analyzed those articles more closely.<sup>501</sup>



Similar to the trend above, I found that all of the articles tended to make some mention of the opposition, and they almost always used antagonist language to describe the anti-abortion movement. Two especially common themes were the claim that the religious and/or right-wing opposition was attempting to impose its own morality or ideology on a pluralistic society, and that they were waging a war or an attack on women. A 1979 article claimed, “efforts should be aimed at alleviating the fear and intimidation caused by religious fanatics who have resorted to violence and threats of violence to impose their views of abortion and birth control on policymakers, the legislators in the women of this country.”<sup>502</sup> A 1982 article argued that anti-abortion legislation was “part

<sup>501</sup> A list of all sources analyzed can be found in Appendix A.

<sup>502</sup> NOW Times, “Nationwide NOW Action for Reproductive Rights,” July 1979, Schlesinger Library.

of an attempt by an extremely outspoken minority to impose its own personal morality on a pluralistic society which does not share its views.”<sup>503</sup> Additionally, a 1995 article made an “urgent call to action to counter the dangerous attacks against women’s rights and the rising tide of racism and sexism fueled by right-wing conservatives.”<sup>504</sup> In 2002, NOW said, “anticipating that [Bush] will continue to wage war on women’s reproductive rights by nominating a justice determined to overturn *Roe v. Wade*, NOW is organizing a campaign to raise awareness of the threats facing the right to choose abortion.”<sup>505</sup>

Regarding the fetus, the articles generally made no mention at all of the fetus and maintained the focus exclusively on women and women’s rights. If there was any discussion of the fetus, it was always as an aside and, similar to what was noted above, in language implying the absurdity of the notion that the unborn could have legal rights. For example, in 1997, an article emphasized how “male-dominated legislatures in 15 states” were working to “add equal rights to the U.S. Constitution for fetuses; only 1 state has ratified equal rights for women in the last 2 years.”<sup>506</sup> Additionally, “state level attacks” on reproductive rights included “an expansion of the long-term effort to give a fetus personhood rights and protections.”<sup>507</sup>

Two exceptions to the lack of mention of the fetus occurred in situations in which humanity of the fetus was being given particular focus in the national media. This first occurred in the mid-1980s with the above-mentioned film, *The Silent Scream*. The *NOW*

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<sup>503</sup> NOW Times, “Hatch Anti-Abortion Proposal Passes Subcommittee,” January/February 1982, Schlesinger Library.

<sup>504</sup> NOW Times, “1995 NOW Conference Focuses on Organizing for Women’s Equality, Women’s Lives,” August/September 1995, Schlesinger Library.

<sup>505</sup> NOW Times, “Feminists Organize to Protect and Advance *Roe v. Wade*,” Spring 2002, Schlesinger Library.

<sup>506</sup> NOW Times, “Who Pays the Price?” September/October 1979, Schlesinger Library.

<sup>507</sup> NOW Times, “After 33 Years of *Roe*, Reproductive Justice Still Elusive,” Spring 2006, Schlesinger Library.

*Times* published an article very similar to Goldsmith's speech about the film explaining that "there is nothing wrong with concern for the fetus. [...] What is wrong is the current myopic obsession with the fetus, to the exclusion of all other realities."<sup>508</sup> The article then emphasized how fetuses cannot feel pain or scream, but women can. Therefore, "to give equal protection to a fetus and a living woman who is already integrated into the human community is without compassion and a perversion of ethical values." Thus, abortion proponents again shifted the discussion about abortion and its morality entirely away from the fetus to focus exclusively on women and their right to "to maintain control over what happens to their bodies and their lives."<sup>509</sup>

Another instance of discussing the fetus occurred in the heat of the legislative battle over the "partial-birth abortion ban" in the mid-1990s during which particularly graphic descriptions of the intact dilation and extraction (D&X) method of abortion were being widely circulated. This abortion procedure, performed in the second and third trimesters, usually involves stopping the fetus' heart with the injection of a certain drug to ensure fetal death, dilating the woman's cervix, and extracting the fetus (possibly by crushing its skull) fully intact.<sup>510</sup> In response to the increased attention around the humanity of the fetus, a NOW article again brought the focus of the conversation back to women and the validity of their decisions in choosing such abortions. The 1996 article focused on women who wanted their babies and argued that this particular abortion procedure was used only in "the most tragic of circumstances."<sup>511</sup> Therefore, the ability to

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<sup>508</sup> NOW Times, "The Unsilent Scream," January/February 1985, Schlesinger Library.

<sup>509</sup> NOW Times, "The Unsilent Scream."

<sup>510</sup> Rovner, "'Partial-Birth Abortion': Separating Fact From Spin."

<sup>511</sup> NOW Times, "NOW Urges Congress During Abortion Debate to 'Stop Practicing Medicine Without a License,'" January 1996, Schlesinger Library.

deliver an intact fetus would allow grieving parents “to dress it, hold it, and mourn their loss with friends and family in an open-casket funeral.” The article also claimed that the attempt to ban D&X abortions was “a vicious and cynical piece of an overriding strategy to criminalize abortion in this country” and accused abortion opponents of appealing “to people’s emotions by lying to them” about the procedure.<sup>512</sup> Thus, when faced with an emotional portrayal of the humanity of the fetus, abortion proponents again vilified the opposition and accused them of deception and then shifted the debate back to women and their moral decision-making ability.

Regarding the types of defenses for abortion in the articles, the articles tended to take a similar approach throughout the time period of mostly emphasizing arguments of necessity and rights claims. Almost every year, the articles mentioned the need to keep abortion legal in order to prevent women’s deaths from illegal abortion. Many articles also emphasized dire cases, such as rape, life endangerment, and fetal anomaly. From the mid-1980s through the 1990s, all of the issues examined had articles on clinic violence perpetrated by certain anti-abortion actors. Every year, articles also heavily emphasized rights arguments, in particular the right to be free from government interference, the right of women to control their own bodies, and the right to freedom of conscience and religion.

There were significantly fewer instances of bold assertions of the benefits of abortion, but every type of positive argument listed in Table 4.2 above can be found in some of the articles. However, the most common types of positive arguments used were the support of public opinion for abortion, and how abortion allows women to be fully

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<sup>512</sup> NOW Times, “NOW Urges Congress During Abortion Debate to ‘Stop Practicing Medicine Without a License.’”

free and equal in society. For example, a 1979 article declared, “in a call to action at the 1978 national NOW issues conference, advocates of reproductive rights were urged again to take the offensive, to mobilize the overwhelming public sentiment in support of reproductive rights and to counter the well-organized anti-choice minority who seek to undermine personal liberty and choice and family planning.”<sup>513</sup> After a march for abortion rights on Washington D.C. in 1989, an article claimed, “the public outcry in support of this most personal right will continue into the foreseeable future.”<sup>514</sup> A 1997 article asserted that “the vast majority of the public favors access to abortion services under most circumstances.”<sup>515</sup>

Regarding how abortion allows women to be fully free and equal, a 1983 article claimed, “No other Supreme Court decision has meant more to the health, well-being, freedom and dignity of women than *Roe against Wade*. That decision recognizes women’s rights to make childbearing decisions, and those are rights fundamental to equality for women in this society. Without that decision, there can be no equality for women.”<sup>516</sup> Similarly, in 1989 after the march noted above, NOW President Molly Yard stated, “We are here to say that American women will safeguard their constitutional rights to legal and safe birth control and abortion. [...] American women and girls will be free, and we will be equal to the men in this country.”<sup>517</sup> A 2003 article asserted, “If

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<sup>513</sup> NOW Times, “Nationwide NOW Action for Reproductive Rights.”

<sup>514</sup> NOW Times, “Setting a Standard,” July 1989, Schlesinger Library.

<sup>515</sup> NOW Times, “New Congress Poses Threat to Reproductive Rights,” January 1997, Schlesinger Library.

<sup>516</sup> NOW Times, “Senate Trounces Hatch Amendment,” August 1983, Schlesinger Library.

<sup>517</sup> NOW Times, “600,000 March for Abortion Rights,” April 1989, Schlesinger Library.

women are ever to achieve full equality in the United States and around the globe, we must have the right to determine whether and when to have children.”<sup>518</sup>

Given that most of the articles in *NOW Times* between 1977 and 2009 relied largely on more vague rights claims to assert the positive aspects of abortion, there were a few articles that stood out by boldly declaring that abortion is not morally wrong. For example, a 1989 article entitled “On Not Choosing Choice” denounced the tendency of most abortion supporters to identify themselves as pro-choice *not* pro-abortion. She explained, “intrinsic in the disclaimer is the not-so-subtle suggestion that abortion is somehow morally wrong, but [sic] a necessary evil. So who wants to stand up for evil?” She went on to declare:

We can say we're pro-abortion rights, that's what. Because that's what we are. *Abortion is not immoral. It's not evil. It's not even shameful.* But it well could be illegal. And if, in our ‘choice’ of language, we inadvertently contribute to the notion that abortion is a ‘bad choice,’ *we may well be inadvertently helping speed the day it becomes illegal. After all, how long and how hard do we believe people will fight for something they believe is inherently bad?* [emphasis mine].<sup>519</sup>

Similarly, in 1991, an article discussing a women’s rally in New York City explained that the “theme of the rally was set by NOW’s Patricia Ireland who stated, ‘We will have to *seize the moral high ground*... We will declare again, that women are *full moral human beings* capable of deciding questions of conscience without the interference of the church or the state’” [emphasis mine].<sup>520</sup>

This type of rhetoric in both of these articles was a departure from the other defenses of abortion because it argued for abortion *on moral grounds* rather than

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<sup>518</sup> NOW Times, “NOW Fights Back Against New Abortion Rights Threats,” Spring 2003, Schlesinger Library.

<sup>519</sup> NOW Times, “On Not Choosing Choice,” October/November/December 1989, Schlesinger Library.

<sup>520</sup> NOW Times, “7,500 March in ‘Big Apple’,” Summer 1991, Schlesinger Library.

deflecting the issue of morality as one of personal choice and relying on broad rights claims. Additionally, they both aimed to dispel the belief that abortion was morally wrong, especially, as the 1989 article claimed, to convince people to fight for it more passionately. As we will see, this foreshadows the rhetorical shift that occurred in the movement several decades later.

Despite the unapologetic language used in the above articles, the articles throughout the rest of the 1990s and early 2000s were much more defensive and focused on the erosion of abortion rights under a Republican-majority Congress and then with President Bush in office. Thus, they resembled the bulk of the articles throughout the period from 1977-2009 that relied on arguments of necessity and rights, appeals to public opinion, and vague claims of abortion's role in making women free and equal.

Interestingly, the articles in the early 2000s leaned even more heavily into a characterization of anti-abortion forces as “right-wing extremists” and “ultra-conservative” radicals with a hatred for women. Every issue between 2001-2009 used such language and linked the fight for abortion rights to an overarching fight against fanatic conservatives. For example, a 2006 article declared, “The increasing numbers of ultra-conservative judges threatens individual rights, and in particular the right to privacy – the Constitutional underpinning of the 33-year-old *Roe v. Wade* decision.”<sup>521</sup> Regarding state-level anti-abortion legislation, a 2008 article asserted, “Heavily funded by right-wing religious and political extremists, the effort is part of a strategy they hope will turn out voters to elect like-minded politicians while placing new limits on women's access to reproductive health care.”<sup>522</sup>

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<sup>521</sup> NOW Times, “After 33 Years of Roe, Reproductive Justice Still Elusive.”

<sup>522</sup> NOW Times, “A New Front in the War on Women's Rights,” Spring 2008, Schlesinger Library.

#### ***4.1.2 NOW Website (2010-2022)***

Since the archives only contained *NOW Times* issues through 2009, I utilized “snapshots” from the NOW website for available years from 2010-2022 to find relevant sources for this period. I chose articles and press releases each year that were primarily about abortion and analyzed the language they used. Of the articles I analyzed, none mentioned the fetus at all, all referred to the opposition as “hostile” and/or “extremist,” and most discussed the war or attack being waged on women and their reproductive rights. Like the *NOW Times* articles, most of the web articles made appeals to many categories of rights, and about half appealed to necessity by discussing the danger of illegal abortion and the adverse effects of abortion restrictions on poor women and women in dire circumstances.

Continuing the trend from the early 2000s noted above, all of the web sources emphasized the role of the “radical right” and the bigger sociopolitical battle at stake. They used language such as “male-dominated religious extremists,” “extremist anti-choice Republicans,” and “all-out assault on women’s reproductive health and rights.”<sup>523</sup> In 2020, a NOW press release shared the National Coalition of Progressive Groups’ “bold, inclusive vision for sexual and reproductive health, rights and justice” to be included in the Democratic Party Platform. The statement discussed the “unprecedented attacks from anti-choice extremists at the behest of the Radical Right” and the role of their “extremist anti-woman white supremacist agenda.” Moreover, it explained how

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<sup>523</sup> “Open Letter to President Obama: NOW Urges a 2012 Wake-Up Call for the Nation” (2010, NOW web archive); Toni Van Pelt (NOW President), “We’re Still Mobilizing to Protect *Roe v. Wade*” (2018, NOW web archive); “War on Women’s Reproductive Rights Escalates in the States in 2013” (2014, NOW web archive).

abortion and reproductive rights are intimately linked to other concerns of the LGBTQ+ community, including “gender-affirming” care.<sup>524</sup>

One clear difference between the *NOW Times* articles and the web articles from the 2010s was an increase in the discussion of the positive aspects of abortion and its morality. Over half of the articles argued that abortion was intimately linked to women’s fulfillment and equality in society. A 2010 article quoted former abortionist George Tiller that ““abortion is about women's hopes and dreams.””<sup>525</sup> A 2013 article even claimed that women would not have been able to make the advances they did in society, education, politics, and economics if it was not for abortion. The article argued, “Access to abortion care, as well as birth control, helped pave the way for women to participate in the world outside the home in ways that men have long taken for granted [...] Could all this have happened without *Roe v. Wade* and the earlier cases that established the right to use contraception? Of course not.”<sup>526</sup> Similarly, a 2022 article argued that abortion was vital to both women’s individual advancement and the country’s overall economic growth. “Limiting women’s options in life through restrictions like abortion bans can contribute to severe economic decline, but ensuring they have equal access to opportunity by protecting their bodily autonomy can catalyze prolonged and sustained growth.”<sup>527</sup>

Over half of the articles also discussed abortion as a commonplace aspect of healthcare that should not be treated any differently from other medical procedures.

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<sup>524</sup> “National Coalition of Progressive Groups Push DNC To Adopt Bold, Inclusive Vision for Sexual and Reproductive Health, Rights and Justice in 2020” (2020, NOW web archive).

<sup>525</sup> Terry O’Neill (NOW President), “Celebrating 37 Years of *Roe v. Wade*: NOW Asserts that Abortion Care is a Human Right” (2010, NOW web archive).

<sup>526</sup> Terry O’Neill (NOW President), “40 Years After *Roe v. Wade*, We Still Fall Short of Reproductive Justice” (2013, NOW web archive).

<sup>527</sup> Christian Nunes (NOW President) “Point: Abortion Is About All of Us” (2022, NOW web archive).

Articles in both 2012 and 2013 claimed, “One in three women will have an abortion in her lifetime, making that procedure a common and necessary part of women’s basic reproductive health care.”<sup>528</sup> A 2018 article simply stated, “Abortion care is health care, and women’s health care is a human right.”<sup>529</sup>

Interestingly, a third of the web articles discussed abortion in terms of morality, as compared to only two of the articles from the *NOW Times*. In speaking about recent attack on reproductive rights, a 2013 statement from NOW President Terry O’Neill declared, “But I am confident that we will prevail because we have true moral authority and the people behind us.”<sup>530</sup> Additionally, a 2019 article affirmed Catholics for Choice’s “statement on moral clarity in abortion” that ““moral responsibility of decision making [on abortion], *at whatever the gestation*, should rest with women, their doctors, and their families”” [emphasis mine]. Subsequently, supporting the right to choose means “you support her right to choose not just in circumstances in which you feel comfortable, but those in which she decides is best.”<sup>531</sup> Thus, abortion advocates were increasingly trying to argue that abortion is a morally sound decision and that only the woman and her personal choice are of utmost importance.

#### 4.2 NARAL Sources

Of the sources from the NARAL archives that were analyzed from before 1976, 15 out of 16 were unapologetic; 8 out of 16 made no mention of anti-abortion forces

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<sup>528</sup> “Open Letter to President Obama;” O’Neill, “40 Years After *Roe v. Wade*, We Still Fall Short of Reproductive Justice.”

<sup>529</sup> Toni Van Pelt (NOW President), “We’re Still Mobilizing to Protect *Roe v. Wade*” (2018, NOW web archive).

<sup>530</sup> Terry O’Neill (NOW President), [Statement] (2013, NOW web archive).

<sup>531</sup> Toni Van Pelt (NOW President), “We Trust Women’s Reproductive Decision-Making” (2019, NOW web archive).

while 6 actively vilified the opposition; and 8 out of 16 made no mention of the fetus while 5 actively dehumanized the fetus.<sup>532</sup> From 1976 to 1991, only 6 of 32 were boldly unapologetic in their defense of abortion rights; 23 out of 32 actively vilified the opposition, while another 4 made no mention of the opposition; 21 out of 32 made no mention at all of the fetus, while another 7 actively dehumanized the fetus.

Thus, as far as broad trends go, almost all of the sources were unapologetic in their defense of abortion before 1976, and almost all were *apologetic* in their defense of abortion between 1976 and 1991. Additionally, the likelihood of vilifying the anti-abortion movement was higher after 1976, but not by a dramatic measure, and throughout the period, a majority of the sources did actively speak of the opposition in hostile terms. Regarding the fetus, both before and after 1976, about 60% of the sources did not mention the fetus at all, about 25% actively dehumanized the fetus, and about 15% did not discuss the fetus as less than human. Therefore, the majority of sources throughout the period from 1976 to 1991 both vilified the opposition and avoiding discussing the fetus entirely. The major shift that occurred after 1976 was toward a much more nuanced and timid defense of abortion in and of itself.

#### ***4.2.1 Before 1976***

Like the NOW sources, the sources from the NARAL archives before 1976 also relied on far more positive arguments for abortion than the sources after 1976. Every positive argument listed in Table 4.2 above is found somewhere in the sources before 1976, and the most common were that abortion is simply a medical decision or procedure, that abortion is necessary for women's freedom and equality, that abortion is

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<sup>532</sup> See Appendix A for the list of all sources analyzed.

the best option for the unwanted child (to prevent child abuse in the future), that abortion protects society from unwanted children, and that abortion is an extension of birth control. There were also rights arguments made, especially regarding the freedom of religion and women's right to control their own bodies. The majority of the sources before 1976 also used the necessity argument about preventing death from illegal abortion, and a few mentioned that poor women suffer most from lack of access to legal abortion and that women will seek abortion whether it is legal or not. Notably, none of these sources emphasized freedom from government interference or particularly tragic cases in which women seek abortion, and only one mentioned that abortion is simply a woman's *choice*.

Interestingly, a common theme in these sources was an explicit emphasis on the fact that the focus *should not* be on the tragic cases in which women seek abortion because most women do not seek abortion in such circumstances. Rather, most women choose abortion because they do not want a child. An article from 1970 written by Lucinda Cisler about the need to repeal abortion laws entirely rather than reform them asserted:

Part of the reason the reform movement was very small was that it appealed mostly to altruism and very little to people's self-interest: the circumstances covered by 'reform' *are* tragic but they affect very few women's lives, whereas repeal is compelling because most women know the fear of unwanted pregnancy and in fact get abortions for that reason.<sup>533</sup>

A NARAL brochure from 1970 declared:

Unfortunately, public attention focuses on the most dramatic but least frequent situations leading to abortion: conception through rape or incest and threats to pregnancies from disease or drugs. But the overwhelming number of women seek

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<sup>533</sup> Lucinda Cisler, "Abortion Law Repeal (Sort of): A Warning to Women" (NARAL, 1970), Schlesinger Library.

abortions because they do not want to give birth to an unwelcome or unexpected child.<sup>534</sup>

Moreover, in 1972, NARAL Executive Director Lee Gidding claimed that laws only allowing abortion for dire cases “ignore the primary reason why most women choose to abort – they simply do not want to bear a child at that particular time.”<sup>535</sup>

This desire to draw attention *away from* tragic cases is linked to the belief that abortion is about more than health and not about the fetus at all; rather, abortion is primarily about justice and freedom for women. In the 1970 article noted above, Cisler states, “the basic reason for repealing [abortion] laws and making abortions available is JUSTICE: women's right to abortion.”<sup>536</sup> Additionally, the 1970 NARAL brochure asserts:

Let us recall the underlying justification for all birth control practices: to free women from a now needless form of slavery, to make a woman the master of her own body. The emancipation of women is not complete until women are free to avoid the pregnancies they do not want. Ethical systems that deny women this freedom are the product of men, the residue of an ancient world.<sup>537</sup>

Relatedly, many of the sources did not discuss the fetus at all, but most of those that did aimed to dehumanize the fetus and assert that only the pregnant woman can characterize the moral status of the being inside her. Cisler claimed that “no one can ever know exactly when any stage of pregnancy is reached until birth itself,” so “all the talk about ‘quickening, ‘viability,’ and so on, is based on old religious myths” and women’s

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<sup>534</sup> “Abortion: Questions and Answers” (NARAL, 1970), Schlesinger Library.

<sup>535</sup> Lee Gidding, “Statement by Lee Gidding, NARAL Executive Director” (speech, March 7, 1972), Schlesinger Library.

<sup>536</sup> Cisler, “Abortion Law Repeal (Sort of): A Warning to Women.”

<sup>537</sup> “Abortion: Questions and Answers” (NARAL, 1970).

personal beliefs.<sup>538</sup> In discussing the need for the repeal of abortion laws, a 1970 news article stated:

A group of men in Congress had already decided for her, decades earlier, that she couldn't consider her own hardships before the interests of an unwanted mass of living tissue, three months old, in her womb. Since the fetus wasn't endangering her physical health, she would have to bring it into the world, wanted or not.<sup>539</sup>

Another news article asserted, "It must again be stated that the use of contraceptives to prevent pregnancy and the termination of unwanted pregnancies do not involve the destruction of any person, except in the eyes of those whose churches believe otherwise."<sup>540</sup>

One of the most interesting sources from this time period is an "Introduction to Debating" published by NARAL around 1974 that explicitly discusses the need to discredit the humanity and personhood of the fetus in order to advance the pro-abortion position. Regarding photographs of fetuses disseminated by anti-abortion activists, the guide explains:

*The pictures they have seen must be discredited. They have been magnified so much as to remove the facts from scientific perspective. Really, in early stages, the fetus is smaller than a fingernail. [...] If [the audience has] seen the slides they will probably be resistant to many arguments which indicate that the fetus is not a person. This is certainly one of the most basic parts of your argument, so you will have to make it tactfully.*

Attack their use of the word 'baby' when they mean conceptus, embryo, or fetus and 'mother' when they mean woman. [...] Describe how quick and safe the procedure is, how pleasant the clinic, how relaxed the patient, *how the conceptus looks at ten weeks* – a small blood mass, weighing about 3/4 of an ounce. *Absolutely no arms and legs – no 'baby' at all!* [emphasis mine]<sup>541</sup>

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<sup>538</sup> Cisler, "Abortion Law Repeal (Sort of): A Warning to Women."

<sup>539</sup> James Crawford, "End to legal abortion hurdles advocated," *Rocky Mountain News*, September 28, 1970, Schlesinger Library.

<sup>540</sup> "Letter to the Editor: Unwanted Pregnancy and Ethics," *The New York Times*, June 12, 1972, Schlesinger Library.

<sup>541</sup> "Introduction to Debating" (NARAL, n.d., 1973-1975), Schlesinger Library.

#### **4.2.2 1976-2015**

After 1976, a handful of sources used the positive arguments that abortion is better for the unwanted child, that abortion rights are in line with American values, that abortion allows women to be free and equal, and that society benefits from not having to deal with unwanted children. The most common positive argument, found in half of these sources, was that public opinion favors legal abortion. However, the vast majority of the sources relied on arguments of necessity and appeals to rights. Half of the sources discussed the danger of illegal abortion and that women would seek abortion no matter what, and a quarter discussed dire cases and/or the plight of poor women. Notably, *every single source* between 1976-1991 discussed abortion as a woman's personal right to choose and/or the right to be free from government interference. Additionally, almost every source made claims to rights such as privacy and freedom of religion and conscience.

The noticeable shift from unapologetic arguments based on justice and freedom for women before 1976 to the emphasis on freedom of *choice* for women who are often in difficult circumstances was quite stark. Table 4.3 below contains examples of quotes that highlight these apologetic defenses about being pro-choice *not* pro-abortion and discussing abortion as a last resort, as well as quotes that vilify the opposition and dehumanize the fetus.

Table 4.3: Quotes from NARAL Sources (1976-1991)

<i>Apologetic Tone</i>	<p><b>Pro-Choice Not Pro-Abortion</b></p> <ul style="list-style-type: none"> <li>▪ “NARAL is a <b>pro-choice organization</b>. [...] The American public has become increasingly alarmed about the involvement of government in regulating our private lives and interfering in private decision-making. Certainly the government should not be involved in questions so personal as whether one should or should not bear a child. <b>That is the crux of the issue.</b>”<sup>542</sup></li> <li>▪ “It would be wonderful if every pregnancy were planned by a woman who was physically and emotionally capable of being pregnant for 9 months and giving birth to a loved, healthy, wanted child which she and her family could care for and raise to adulthood. But the world is not like that. [...] <b>This brochure is not meant to promote abortion.</b> It is meant to explain the reasons some choose it, and why it must remain a safe and legal option for those facing the realities portrayed here.”<sup>543</sup></li> <li>▪ “They like to call us pro-abortion. [...] If you believe that you, not the government, should decide when you will or won't have a child, then you are what the ‘Right to Lifers’ call ‘Pro-Abortion.’ <b>Frankly, we at NARAL don't know anyone who is ‘pro-abortion.’</b> But all birth control methods can fail, and unwanted pregnancies do occur. <b>Some people feel abortion is immoral. Others feel it is immoral for a government to force a woman to bear a child</b> or to force her to risk illness and death with a back-alley butcher.”<sup>544</sup></li> <li>▪ “<b>No one is <u>for</u> abortion</b>, but the real issue is...who decides? <u>You or the politicians?</u>”<sup>545</sup></li> <li>▪ “‘Pro-Abortion’ &amp; ‘Pro-Life’: They couldn’t be more wrongly named. <b>We are not ‘pro-abortion.’</b> We are pro-choice and that’s what we should be called. We simply support a woman’s right to decide. <b>If our dreams come true, there would never be an abortion again on this earth. Ideally, there would never be the need for abortion.</b> But we live in the real world.”<sup>546</sup></li> </ul> <p><b>Decision of Last Resort</b></p> <ul style="list-style-type: none"> <li>▪ “We do not shrink from <b>the extraordinary difficulties inherent in a woman’s decision to abort.</b> Nor do we</li> </ul>
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<sup>542</sup> “Dear member of Congress” (NARAL, January 22, 1979), Schlesinger Library.

<sup>543</sup> “Abortion: The Reality” (NARAL, n.d., early 1980s), Schlesinger Library.

<sup>544</sup> “You know them as the ‘Right to Life’ People” (NARAL, n.d., early 1980s), Schlesinger Library.

<sup>545</sup> “No one is for abortion” (NARAL, 1987), Schlesinger Library.

<sup>546</sup> “Watch out America, here comes compulsory pregnancy again” (NARAL, n.d., late 1980s), Schlesinger Library.

	<p>presume to have the definitive answer to the vital question, when does life begin? The answer, as the Supreme Court recognized, is that there is no consensus among the medical, philosophical or religious leaders in our pluralistic society. That being the case, we must never allow one viewpoint – be it that of selected individuals or of a major religious denomination – to be imposed on all citizens.”<sup>547</sup></p> <ul style="list-style-type: none"> <li>▪ “We know that the choice of abortion is an intimate, private decision. The women and families who opt for abortion <b>do not do it lightly</b>, but because it is the best alternative under a particular circumstance.”<sup>548</sup></li> <li>▪ “To callously describe the decision as one of ‘convenience’ denigrates the integrity and humanity of all those millions of women who have throughout the ages <b>been forced to take that course</b>.”<sup>549</sup></li> <li>▪ “I defy anybody to tell me that she has had a <i>casual</i> abortion. There is nothing casual about it. <b>It’s a horrific decision</b>.”<sup>550</sup></li> </ul>
<p><i>Opposition as Enemies</i></p>	<ul style="list-style-type: none"> <li>▪ “Were it not for the anti-abortion people’s determination to <b>impose their moral position</b> on all citizens there would be no anti-abortion movement and freedom of choice would not be jeopardized. [...] They are seeking to impose the thinking of a minority on a pluralistic society. <b>They are seeking to deny Americans their right</b> to privacy, religion, conscience, equal protection, and choice. [...] <b>Our enemy</b> is trying harder this time. We must not be complacent.”<sup>551</sup></li> <li>▪ “Know the Opposition. They call themselves ‘pro-life.’ They are in fact <b>callous to the lives of millions of women</b> who would be deprived of the right to legal abortion, causing undue hardship for themselves and their families. [...] the radical right who would legislate not only abortion but many other intimate decisions of Americans. They profess piety but <b>practice vicious and often unprincipled tactics</b>.”<sup>552</sup></li> <li>▪ “They’ll say or do just about anything to further their cause. Their literature portrays abortion as ‘cosmetic surgery’ used by careless, wanton women as casually as birth control. <b>They indoctrinate children</b> in the schools <b>with</b></li> </ul>

<sup>547</sup> “Dear member of Congress” (NARAL, January 22, 1977), Schlesinger Library.

<sup>548</sup> Marguerite Beck-Rex, [Letter to Press from NARAL] (NARAL, January 23, 1981), Schlesinger Library.

<sup>549</sup> Sarah Weddington, “Statement of Sarah Weddington for the Senate Judiciary Subcommittee on Separation of Powers” (speech, June 18, 1981), Schlesinger Library.

<sup>550</sup> Ali MacGraw, “When Abortion Was Illegal,” *People Magazine*, 1985, Schlesinger Library.

<sup>551</sup> NARAL. NARAL press release, September 28, 1976, Schlesinger Library.

<sup>552</sup> “NARAL speaks for the overwhelming majority of Americans who believe abortion is a personal choice, not a matter for government control” (NARAL, 1982), Schlesinger Library.

	<p><b>propaganda</b> disguised as ‘textbooks,’ and often use these children in their marches and publicity stunts.”<sup>553</sup></p>
<p><i>Dehumanize Fetus</i></p>	<ul style="list-style-type: none"> <li>▪ “How are Abortions Performed?” → “<b>the uterus is gently emptied</b>”, “the uterus is cleaned by gentle scraping”<sup>554</sup></li> <li>▪ “A less than 20-week fetus is not capable of life outside the uterus. It is completely an appendage to the mother and can’t be considered a free-standing person. Therefore, <b>when ‘life’ begins is anyone’s guess.</b>”<sup>555</sup></li> <li>▪ “Never before has federal law defined a fertilized egg as a person for any purpose whatsoever. To adopt this concept would grant to fetuses rights far greater than those now granted to existing persons, for the law presently allows no person the right to touch, interfere with, or in any way use the body of another law-abiding person against his or her will, let alone the right to use the body of another in a <b>parasitic way</b>, as does the fetus.”<sup>556</sup></li> <li>▪ “That the fertilized egg and fetus are complete human beings is a religious <i>belief</i> not shared by <i>most</i> religions. The attempt to foist this viewpoint on Americans in the form of <b>COMPULSORY PREGNANCY LEGISLATION</b> goes counter to the separation of church and state guaranteed by the Constitution.”<sup>557</sup></li> </ul>

The epitome of this shift to an emphasis on choice as the crux of the issue can be found in NARAL’s 1982 campaign strategy handbook “Winning with Choice.” This guide offered talking points for politicians, and it relied on data from a 1981 survey commissioned by *Life* magazine showing that 56% of American women considered abortion morally wrong even though many still supported its legality in certain circumstances. Thus, NARAL stressed the importance of a woman’s freedom to choose for herself despite other peoples’ personal views on abortion. A few key quotes highlighting personal choice, moral ambivalence, and emphasis on tragic cases include:

<sup>553</sup> “You know them as the ‘Right to Life’ People.”

<sup>554</sup> “Abortion Q & A” (NARAL, 1977), Schlesinger Library.

<sup>555</sup> “Letters to the Editor: Abortion decision is disputed” (NARAL, 1978), Schlesinger Library.

<sup>556</sup> Weddington, “Statement of Sarah Weddington for the Senate Judiciary Subcommittee on Separation of Powers.”

<sup>557</sup> “Watch out America, here comes compulsory pregnancy again.”

*Avoid using ‘buzzwords’ such as ‘abortion rights,’ ‘pro-abortion,’ ‘pro-life,’ ‘abortion on demand,’ or ‘right-to-life’ in your statements and comments on the issue. [Instead emphasize that] it is a personal, private matter which should be dealt with by the family, not by the government.*

*Don't allow yourself to be drawn into discussions of ‘when life begins’ or ‘murder.’ Don't use their language: ‘mother,’ ‘baby,’ ‘unborn child.’ **Keep the focus on legality, the role of the government, and individual freedoms.***

***Challenge your opponent to consider the hard cases.** The major regret most targets of anti-abortion attacks have had is that they never forced their opponents to deal with the real-life situations in which a woman may choose abortion. You must shift the focus to the insensitivity of your opponent towards the victims of rape and incest.*

*Aren't you really 'pro-abortion', not 'pro-choice?': No, **I don't think that anyone is pro-abortion.** What we are saying, and I speak for the majority of Americans on this, is that we think the decision to have an abortion is personal and private and **not a matter for the government.***

*Do you support abortion on demand?: No, I believe that abortion is **a matter of personal choice.** I don't believe that anyone demands an abortion. A woman reaches the decision to have an abortion **under difficult circumstances and with much anguish.** It is a decision of last resort. [...] This is **not a matter for government interference.***

*But isn't abortion morally wrong?: We all have **different beliefs about the morality of abortion.** And each of us feels differently depending on the circumstances. [...] I do not believe that any of us, and more importantly, that **the government should impose one view of this issue on everyone else.**<sup>558</sup>*

Therefore, by the early 1980s, NARAL was very intentionally emphasizing the need for voters to respect women's personal decisions about childrearing regardless of one's personal opinion of the morality of abortion, in large part because so many Americans viewed abortion as morally wrong.

#### **4.2.2.1 Visibility of the Fetus (Mid-1980s)**

An interesting divergence from the abstract appeal to “choice” occurred during the mid-1980s at the same time that the fetus became more visible due to the increased

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<sup>558</sup> “Winning With Choice: A Campaign Strategy Handbook” (NARAL, 1982), Schlesinger Library.

use of ultrasound technology. As images of the fetus in utero were becoming more widespread, pro-abortion actors had to reckon with the humanity of the fetus in a new way. Thus, one quote from a 1983 NARAL brochure is an outlier among the more dehumanizing quotes about the fetus in the table above: “no thoughtful person denies that the fetus is a potential person and that it looks increasingly human as it develops from a fertilized egg to a full-term fetus ready for birth. What we oppose is stopping legal abortion by legislating personhood at some moment before birth.”<sup>559</sup>

Similarly, a 1984 working paper by NARAL on biomedical advances actively grappled with the humanity of the fetus and the challenge it posed to arguments for abortion. There was no nuance about the reality of the fetus as a *living, human* being in the text of the paper. It asserted, “Abortion is ordinarily considered a medical procedure with dual functions: removal of the fetus from the woman’s body and termination of the fetus’ life.” Therefore, the goal of abortion is to ensure “death of the fetus” and prevent a “live birth.” An included description of an abortion procedure explained as much:

Digoxin induction is an abortion procedure in which a dose of the medicine digoxin is *injected directly into the heart of the fetus* with the aid of ultrasonography. Digoxin, a medicine used to treat heart disease, *causes the death of the fetus*. The woman still has to go through labor *and expulsion of the fetus*. This method *ensures no live birth* and it has been reported to be safer for women than saline induction [emphasis mine].<sup>560</sup>

In this paper, the authors were grappling with the basis of the right to abortion as medical advances were allowing the fetus to become viable earlier and earlier. They concluded:

One task, then, is to insist that regardless of the scientific advances that make earlier and earlier biological survival possible, *women must still be able to decide what meaning their pregnancy has* and be able to choose abortion. [...] The other

<sup>559</sup> “Legal Abortion: Arguments Pro & Con” (NARAL, 1983), Schlesinger Library.

<sup>560</sup> “Biomedical Overview, Working Paper” (NARAL, 1984), Schlesinger Library.

task will be to find and articulate bases for the right to abortion which are not linked to medicine and which will *convince courts and legislators to leave admittedly difficult moral decision-making in the hands of women.*<sup>561</sup>

Thus, they discussed the need for a new “feminist morality” to combat the guilt permeating even the pro-choice movement about the moral nature of abortion. The paper quoted Rosalind Petcheskey who argued:

Recently, a rash of disclaimers and apologies by liberals, leftists, and even some feminists in the popular media *confessing ambivalence about abortion*, reveal the extent to which right-to-life ideology has permeated the dominate culture and *fostered guilt*, even without a change in the law. More than ever we need a *feminist, morality of abortion*, one that addresses the issues that ‘right-to-lifers’ raise in human, social terms and moves well beyond them.<sup>562</sup>

The major strategy discussed was shifting the attention away from the fetus by focusing entirely on women and their role as moral actors free to make their own decisions. Hence, the paper claimed, “Viewing the fetus as a part of the pregnant woman's body is the only definition that doesn’t dilute her control,” and “Focus the debate on the women having abortions rather than on the fetuses that may survive.” Additionally, the authors realized that focusing on women’s experiences could backfire if “some number of women [] do not have good or sympathetic reasons for having late [or post-viability] abortions;” however, they still wanted “to ensure that all women have the right to choose even if that means some women will make moral decisions we disagree with.”<sup>563</sup>

A practical application of this focus on women rather than the fetus occurred in the aftermath of *The Silent Scream* premiere discussed above. Like NOW, NARAL responded to the short film by emphasizing the importance of women and their stories as a way to argue for the morality of abortion even in light of the visibility of the fetus. For

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<sup>561</sup> “Biomedical Overview, Working Paper.”

<sup>562</sup> “Biomedical Overview, Working Paper.”

<sup>563</sup> “Biomedical Overview, Working Paper.”

NARAL, this came in the form of the “Silent No More” campaign, which specifically aimed:

- “To activate thousands of pro-choice individuals, while *refocusing the abortion debate back on the lives of women.*”
- “*Change the message of the pro-choice movement to include an increased emphasis on women, and to make a personal emotional connection to the need for choice. Get this new message to the public.*”
- “To *focus the issue on the woman rather than the fetus*”
- To “effectively counteract ‘The Silent Scream.’”
- “To create a climate that *reaffirms the ‘rightness’ of legal abortion* and raises serious questions about the wisdom of changing the status quo.”<sup>564</sup>

Thus, the Silent No More campaign placed a heavy emphasis on abortion as a “moral right” that a “moral society” had a “moral obligation” to uphold in an attempt to combat anti-abortion forces on the very grounds of morality on which they were being attacked. The campaign involved “speak-outs” with women from all over the country who stood up at rallies and shared their personal stories about abortion. In soliciting stories, NARAL specifically did *not* want to focus only on tragic circumstances or anguishing decisions, but to show that “every woman choosing abortion has a compelling reason.”<sup>565</sup> NARAL Executive Director Nanette Falkenberg insisted, “We must not focus only on the hardship cases,” so many of the stories emphasized “positive feelings about abortion.” The memo soliciting letters from women about their stories even mentioned, “Your story might have to do with the options you have had because you knew abortion was available if you needed it: [...] increased pleasure because the worry about pregnancy through contraceptive failure was decreased” – therefore underscoring that any reason at all was valid for choosing abortion.<sup>566</sup>

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<sup>564</sup> “Silent No More campaign launch documents” (NARAL, 1985), Schlesinger Library.

<sup>565</sup> “Silent No More campaign launch documents.”

<sup>566</sup> “Silent No More campaign launch documents.”

#### 4.2.2.2 *Who Decides? (Late 1980s-2015)*

Despite this attempt at a bolder and less apologetic discussion of abortion in the mid-1980s, by the end of the decade, NARAL returned to a substantial emphasis on personal choice in its rhetoric. In her keynote address at the 1987 NARAL Annual Conference, Executive Director Kate Michelman discussed the continued threat to the right to abortion under President Reagan and with his pending nomination of Robert Bork to the Supreme Court. Michelman expressed that abortion advocates needed to build a stronger “consensus” for abortion rights among more Americans by articulating “a pro-choice vision which makes dignity and freedom, not abortion, the centerpiece of the debate.”<sup>567</sup> She went on to explain, “it is now so crucial for us, as the anti-choice forces rally their troops, to keep the focus on the woman” and emphasize “stories of women who have faced the abortion choice thoughtfully, painfully, and morally.” Moreover, Michelman explained, abortion activists could build a broader coalition by “advocat[ing] policies which reduce the need for abortion.” She concluded her speech conceding:

*Let's face it. Many people will never be abortion activists. Many will not even be abortion advocates. But if we raise enough questions, make enough connections, we can ensure that many people will not become abortion adversaries. And that, my friends, could mean the margin of victory at the polls. As long as we can appeal to people's sense of fairness, justice and compassion, we can tip the balance of their sympathies. We probably can't get them to wave the pro-choice banner, but we can get them to cast a pro-choice ballot [...] they will be persuaded, not by angry rhetoric, but by an appeal to democratic values and by a vision of abortion as part of a larger, life-enhancing pro-choice agenda [emphasis mine].*<sup>568</sup>

Additionally, NARAL's 1989 campaign strategy guide was entitled “Who Decides? We Do with Our Votes,” and it encouraged politicians to lean into vague

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<sup>567</sup> Kate Michelman, “Keynote Address at NARAL Annual Conference” (speech, NARAL Annual Conference, July 11, 1987), Schlesinger Library.

<sup>568</sup> Michelman, “Keynote Address at NARAL Annual Conference.”

appeals to “choice” in order to court “the 60% of the voters who defined themselves as neither pro-choice nor anti-choice.”<sup>569</sup> The handbook explained that the “Who Decides?” message was effective because it “focuses on the decision, not on the end result of the decision. It emphasizes who makes the choice, not what the choice is. It moves the debate from moral abstraction to political common ground.” Moreover, the emphasis on “Who Decides?” is “quintessentially American” and is actually “the ‘conservative position’ against government interference, which will catch conservative politicians off guard.” The guide reminded politicians that they were “‘pro-choice’ not ‘pro-abortion’” and that they must keep the focus on the freedom to choose rather than on the morality of the choice of abortion, itself. In fact, the guide asserted “When the debate shifts away from the larger questions of ‘Who Decides?’ to reasons or exceptions, *the pro-choice advantage diminishes*” [emphasis mine].<sup>570</sup> Consequently, by the end of the 1980s, NARAL wanted to shift the focus entirely away from the morality of abortion and highlight personal choice and freedom from government interference above all.

Kate Michelman declared as much in 1997 when she asserted, “NARAL's ‘Who Decides?’ public education campaign in 1989 and 1990 shifted the debate from the question of whether abortion is right or wrong to the question of who makes the abortion decision – politicians or the individual woman with her physician.”<sup>571</sup> Michelman also discussed how this strategy coupled with Bill Clinton’s rhetoric of “safe, legal, and rare” “appealed to women voters across party lines” and helped to get Clinton elected as the

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<sup>569</sup> “Who Decides? We Do with Our Votes: NARAL Guide for Candidates & Campaigns” (NARAL, 1989), Schlesinger Library.

<sup>570</sup> “Who Decides? We Do with Our Votes: NARAL Guide for Candidates & Campaigns.”

<sup>571</sup> Kate Michelman, “To Interested Parties Re: Pro-Choice Strategy” (Women’s Meeting, June 20, 1997), <https://clinton.presidentiallibraries.us/items/show/6592>.

first pro-choice president. However, after large Republican gains in the 1994 midterm elections, anti-abortion forces still held sway over the framing of the abortion debate, and their highlighting of late-term abortion again put pro-abortion actors on the defensive. Michelman claimed, “Proponents of a ban on late-term abortion shifted the focus of the debate from the woman to the abortion procedure and from early pregnancy termination to second and third trimester abortion.” Moreover, the framing of abortion in such a way had an effect “analogous to the mid-80s film, the ‘Silent Scream,’ which used ultrasound to depict the developing fetus. *Both the ‘Silent Scream’ and late-term abortion focused new attention on the fetus*” [emphasis mine].<sup>572</sup>

In response to the renewed focus on the fetus by the late 1990s, Michelman asserted that abortion advocates needed to “give the ‘mushy middle’ on reproductive choice a moral and ethical framework in which to ground their pro-choice beliefs” by “stressing the importance of keeping politicians out of women’s reproductive lives (‘Who Decides?’) and prevention (‘Make Abortion Less Necessary’).”<sup>573</sup> This exact strategy is evident in NARAL’s annual booklet on the status of reproductive rights in the US entitled “Who Decides?” which they have published from 1990 to the present day. The issues of this publication between 1990 and 2000, and particularly in 1996 and 1997, placed an emphasis on being pro-choice *not* pro-abortion and on actively seeking to *reduce the need for abortion* through the spread of contraception. The publications also never mentioned the fetus explicitly, and they always spoke of the opposition as an enemy. The publication was not accessible for 2001-2008, but these same trends continued between 2009-2014. Additionally, in 2008 and 2009, NARAL launched its Prevention First

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<sup>572</sup> Michelman, “To Interested Parties.”

<sup>573</sup> Michelman, “To Interested Parties.”

initiative, which “helped create new laws aimed at making abortion less necessary by preventing unintended pregnancies.”<sup>574</sup> Thus, in 2009, 2010, and 2011, the *Who Decides* publication included four or five explicit mentions of the need or desire to reduce abortion and continued mentioning this through 2014. In 2015, however, the publication stopped discussing efforts to make abortion less necessary and began claiming that protecting abortion rights was the “right thing to do.”<sup>575</sup>

#### ***4.2.3 2015-2022***

Interestingly, in the NARAL sources from 2015-2022, there was a stark shift away from discussing the need to reduce abortion and the ambiguity of public opinion around the morality of abortion, and toward the notion that protecting abortion access is a beneficial thing for society and for women. Consequently, the issues of “Who Decides?” began including the statement “Policymakers are realizing what the public majority already knows: that protecting a woman’s right to comprehensive reproductive-health care is the right thing to do.”<sup>576</sup> By 2018, this statement read, “Policymakers know what the public majority already knows: that protecting a woman’s right to comprehensive reproductive healthcare is the right thing to do and makes for a healthier state with a stronger economy.”<sup>577</sup>

The 2016 publication claimed, “reproductive freedom is intrinsic to women’s equality and dignity,” and the 2017 issue discussed, for the first time ever, the need to

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<sup>574</sup> “Who Decides? The Status of Women’s Reproductive Rights in the United States” (NARAL, 2010), <https://www.prochoiceamerica.org/wp-content/uploads/2017/04/2010-Who-Decides.pdf>.

<sup>575</sup> “Who Decides? The Status of Women’s Reproductive Rights in the United States” (NARAL, 2015), <https://www.prochoiceamerica.org/wp-content/uploads/2017/04/2015-Who-Decides.pdf>.

<sup>576</sup> “Who Decides?” (2015).

<sup>577</sup> “Who Decides? The Status of Women’s Reproductive Rights in the United States” (NARAL, 2018), <https://www.prochoiceamerica.org/wp-content/uploads/2018/02/WhoDecides2018-withCover-2.pdf>.

“destigmatize” abortion. It asserted, “We also dedicate this edition of *Who Decides?* to all those who worked to challenge abortion stigma across the country in 2016. [...] Together, they demonstrated why reproductive freedom should be *celebrated, not stigmatized*” [emphasis mine].<sup>578</sup> The 2018 issue linked the fight for abortion rights to “the fight to protect progressive values” and claimed that without access to abortion, women “cannot realize [their] true potential.” The 2019 issue argued that people advocating for abortion were “the torch bearers for the promise of a democracy that assures dignity, equality, and justice for all people.”<sup>579</sup>

This shift toward a more “celebratory” discussion of abortion from 2015 onward was mirrored on NARAL’s website. Between 2011-2016, NARAL’s website mentioned the organization’s goal of reducing the need for abortion and an emphasis on the tragic cases in which abortion is chosen. However, after 2016, the website was noticeably less apologetic about abortion and never mentioned the need to reduce it. The website after 2016 declared, “We’ll never stop fighting to protect and *expand* this fundamental human right” [emphasis mine] and linked abortion to the “fundamental equality of women.” In 2016, NARAL produced a YouTube video entitled “Comedians in Cars Getting Abortions,” which aimed to treat the idea of seeking an abortion as a humorous matter and depict a woman seeking an abortion for no tragic or serious reason. In 2019, NARAL added a section to its website with personal stories of women who had chosen abortion,

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<sup>578</sup> “Who Decides? The Status of Women’s Reproductive Rights in the United States” (NARAL, 2016), <https://www.prochoiceamerica.org/wp-content/uploads/2017/01/WHODecides-2016-Final.pdf>.

“Who Decides? The Status of Women’s Reproductive Rights in the United States” (NARAL, 2017), <https://www.prochoiceamerica.org/wp-content/uploads/2017/01/WhoDecides2017-DigitalEdition3.pdf>.

<sup>579</sup> “Who Decides?” (2018); “Who Decides? The Status of Women’s Reproductive Rights in the United States” (NARAL, 2019), <https://www.prochoiceamerica.org/wp-content/uploads/2019/02/WhoDecides2019-DigitalEdition.pdf>.

and the majority of them emphasized how they did not regret their abortion or did not feel conflicted about choosing it.

Perhaps the most obvious example of a shift in rhetoric was found in a 2022 “Reproductive Freedom Conversation Guide” for politicians published by NARAL and four other organizations, including Planned Parenthood and EMILY’s List. The guide boldly proclaimed at the outset:

A note on euphemisms and using the word ‘abortion.’ As a general rule, we believe it’s important to name and ask for what we want, and to use the word ‘abortion’ when we are talking about abortion. *Avoiding saying the word is both a symptom of stigma and a source of stigma.* In short, we encourage you to *say abortion and to say it proudly!* [...] ‘We are advocating and coming together for a world where abortion isn’t just legal—it’s accessible, affordable, and *destigmatized*’ [emphasis mine].<sup>580</sup>

The guide also heavily emphasized the positive link between abortion and women’s fulfillment and dreams. For example, “The freedom to decide if and when to have children is fundamental to ensuring we live in a world where all people can thrive. Protecting people’s freedom to decide means that people can be free to dream our best life, and live it as well.” Additionally, it equated abortion with equality and democracy: “Abortion rights, and *by proxy fundamental equality in this country*, cannot be up for debate. If you care about equality and Democratic principles, reproductive freedom is non- negotiable” [emphasis mine]. The guide spoke of the opposition in quite hostile terms as “villains” who are only interested in “controlling and manipulating others for political gain.” Regarding the fetus, the guide made no explicit mention, but focused the conversation on women’s personal beliefs about the characterization of the unborn and the freedom to choose for themselves. For instance, “The issue of when life begins is

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<sup>580</sup> “Reproductive Freedom Conversation Guide” (NARAL, 2022), <https://www.prochoiceamerica.org/report/reproductive-freedom-conversation-guide-v3/>.

personal. For some, it is based on faith, and for others, it is based on science. What I do know is that elected officials aren't experts—and it's not an issue the American people want legislated.” Additionally, in reference to the viability of the fetus, it claimed, “Doctors agree that every pregnancy is different and they must evaluate each individual pregnancy to determine the right care for each person. [...] People should be able to make their own decisions about pregnancy.”<sup>581</sup> Thus, by 2022, NARAL, who had previously claimed, “we at NARAL don't know anyone who is ‘pro-abortion,’” was encouraging people “to say abortion and to say it proudly!”<sup>582</sup>

Another interesting trend that escalated in the mid-2010s, similar to the NOW sources, was the connection of abortion rights to the broader sociopolitical battle against right-wing, extremist ideology and the fight for LGBTQ+ rights. Even in the 1980s, NARAL discussed the “the radical right who would legislate not only abortion but many other intimate decisions of Americans.”<sup>583</sup> In the 1990s, it warned against the “the Radical Right political movement” seeking to eliminate reproductive healthcare for women.<sup>584</sup> However, from 2015 on, web sources and the “Who Decides?” publication all heavily emphasized abortion as one issue in a much larger “fight.” The 2017 issue of “Who Decides?” charged the “anti-choice Republicans” with “strip[ping] away our freedoms, our rights, and our ability to chart our own destiny.” It further declared:

Just as we have always said, *this is not and never has been just about abortion*. Trump's rise to power is about a worldview where women, LGBTQ people,

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<sup>581</sup> “Reproductive Freedom Conversation Guide.”

<sup>582</sup> As an interesting aside, between 1992 and 2016, the Democratic Party Platform explicitly mentioned the goal of reducing the need for abortion and making abortion rarer. In 2020, however, the Platform made no mention of reducing abortion, declared its intention to “protect and codify the right to reproductive freedom,” and for the first time emphasized recognition of the LGBTQ+ community in the discussion about reproductive rights.

<sup>583</sup> “NARAL speaks for the overwhelming majority of Americans.”

<sup>584</sup> “Who Decides? A State-by-State Review of Abortion Rights and Reproductive Rights” (NARAL, 1995), Schlesinger Library.

immigrants, Muslims, people with disabilities, and so many others are not considered equal or deserving of sharing in the American dream. Our mission now is to fight for the America we believe in: one where [...] liberty—to choose abortion, to make our own decisions about our families, to live free from fear—is unassailable [emphasis mine].<sup>585</sup>

The 2018 issue placed abortion rights “front and center in the fight to protect progressive values” because without them, women “cannot realize [their] true potential” or “give [their] children a bright future.”<sup>586</sup> The 2021 issue asserted, “2020 was the culmination of a decades-long effort by the Radical Right working in lockstep with the anti-choice movement to gut our democracy to maintain white patriarchal power.”<sup>587</sup> In regards to the LGBTQ+ community, both the 2020 “Who Decides?” and the 2022 “Conversation Guide” made a shift to “gender-inclusive” language to discuss “pregnant people” rather than “women.”<sup>588</sup> The 2022 guide further linked transgender issues directly with abortion by claiming, “Everybody should have access to the health care they need, including abortion care and gender-affirming care. Nobody should be denied care or discriminated against because of another person’s ideological beliefs.”<sup>589</sup> Therefore, by the mid-2010s, abortion was consistently being framed as a part of the promotion of a broader progressive worldview and set of values.

### 4.3 Grassroots Sources

It is necessary to briefly note the development of grassroots abortion activism during this time period from the late 1960s to the present because it was often different

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<sup>585</sup> “Who Decides?” (2017).

<sup>586</sup> “Who Decides?” (2018).

<sup>587</sup> “Who Decides? The Status of Reproductive Freedom in the United States” (NARAL, 2021), <https://www.prochoiceamerica.org/wp-content/uploads/2021/03/Who-Decides-2021-Digital-Edition.pdf>.

<sup>588</sup> “Who Decides? The Status of Reproductive Rights in the United States” (NARAL, 2020), <https://www.prochoiceamerica.org/wp-content/uploads/2020/01/NARAL-WD2020-DigitalEdition-1.pdf>; “Reproductive Freedom Conversation Guide.”

<sup>589</sup> “Reproductive Freedom Conversation Guide.”

than that of large-scale, national organizations like NOW and NARAL. The divergence in priorities and strategies between grassroots organizations and professional organizations has been well-documented by scholars like Suzanne Staggenborg and Mary Ziegler.

Specifically, regarding different framing tactics, Staggenborg writes in 1991:

Professionalized national organizations may be oriented toward reaching potential supporters in the ‘middle-of-the-road’ public, whereas local organizations are concerned with maintaining the participation of committed activists [...] the advisors hired by NARAL concluded that the movement could benefit from playing up the theme of undesirable government interference in private lives, a concern felt by many people in ‘focus groups’ who were otherwise uncertain about the abortion issue. Grass-roots activists, on the other hand, might be better mobilized – and more inclined to want to use – more feminist rhetoric about women’s right to control their bodies.<sup>590</sup>

Ziegler also discusses rifts between smaller organizations who wanted to take a more radical approach to the framing of abortion and more mainstream organizations like NOW and NARAL. Ziegler explains that in the 1970s, some abortion activists wanted to “‘bring abortion out of the closet’” and feared that expressing “so much disapproval of abortion” by presenting it “as a decision of last resort” was dangerously “stigmatizing” and “undermined reproductive choice.”<sup>591</sup> She writes, “If the public viewed abortion as an immoral decision, women would not feel free to choose it.”<sup>592</sup>

Thus, even in the 1970s, there were abortion advocates who disagreed with the strategy of “downplaying [abortion] to score political points” and wanted to encourage women to discuss their experiences [with abortion] and to share them with others.”<sup>593</sup>

Similar to the pro-slavery movement, there were always pro-abortion actors ready to make unapologetic defenses of the practice even if their voices did not define the most

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<sup>590</sup> Staggenborg, *The Pro-Choice Movement*, 145–46.

<sup>591</sup> Ziegler, *After Roe*, 142, 145.

<sup>592</sup> Ziegler, 145.

<sup>593</sup> Ziegler, 137–38.

visible image of the movement at the time. Another example of this is feminist Ninia Baehr who published a book in 1991 entitled, *Abortion Without Apology: A Radical History for the 1990s*. Baehr criticized the shift of the abortion movement toward more timid rhetoric in the late 1970s and the adoption of the term “pro-choice” to “soft-sell abortion in changing political times.”<sup>594</sup> She explained that when she became more involved in the abortion movement in the 1980s, “Feminism was out. Reagan was in, and abortion rights were definitely under attack. A lot of us in the pro-choice movement believed that we needed to tone down our message, to ‘soft-sell’ abortion to make it acceptable to the general public.”<sup>595</sup> Baehr was encouraged to “focus on the ‘hard cases’ of rape, incest, and fetal deformity” and describe abortion “as a necessary evil” even though she truly believed it was “a blessing” and “not morally problematic.” In her book, though, Baehr encouraged feminists to demand what they “really want” without apologizing, which for her was “*free* abortions for all women who choose them [...] no matter how small her town is, how young she is, or how many months pregnant she is.”<sup>596</sup>

Therefore, there were always activists calling for a bold, unapologetic defense of abortion that placed the entire emphasis on a woman’s desires to the exclusion of any concern for the fetus. However, as we saw above, the more mainstream approach was to “emphasize more abstract concerns about freedom and choice” as abortion advocates confronted “what appeared to be growing discomfort with fetal killing.”<sup>597</sup>

Yet another approach that some actors took, albeit much less frequently, was to recognize the visibility and humanity of the fetus, but lean into the “necessary evil”

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<sup>594</sup> Baehr, *Abortion without Apology*, 5.

<sup>595</sup> Baehr, 32.

<sup>596</sup> Baehr, 32–33.

<sup>597</sup> Ziegler, *After Roe*, 138, 140.

narrative. For instance, in a 1987 article published in *Harper's Magazine* entitled “We Do Abortions Here: A Nurse’s Tale,” Sallie Tisdale presented a gruesome description of what it was like to work in an abortion clinic in order to emphasize the need for abortion rights. Throughout the article, she discusses the tension she feels about helping women in difficult situations on the one hand, and the emotional exhaustion of constantly handling “bloody remains” on the other. She observes how women want to reject the notion that the fetus is “real [...] something whole and outside oneself.” Hence, the decision to abort “is a rejection” of the reality of the fetus, and the pregnancy is “something to be rid of, a condition to be ended.”<sup>598</sup> Tisdale, herself, does not dehumanize the fetus at all, but rather describes the objective “brutality” toward it for the sake of the women. She writes:

The doctor seats himself between the woman’s thighs and reaches into the dilated opening of a five-month pregnant uterus. Quickly he grabs and crushes the fetus in several places, and the room is filled with a low clatter and snap of forceps, the click of the tenaculum, and a pulling, sucking sound. [...] Abortion is the narrowest edge between kindness and cruelty. *Done as well as it can be, it is still violence –merciful violence, like putting a suffering animal to death* [emphasis mine].<sup>599</sup>

Regarding the morality of abortion, she explains that her “colleagues” seem to “prefer the broad view” of abortion as “a matter of choice, privacy, control,” while those performing abortions “are too busy to chew over ethics,” so “there is to be no ambivalence.” However, she painfully concludes:

At the end of the day I clean out the suction jars, poring bloods into the sink, splashing the sides with flecks of tissue. From the sink rises a rich and humid smell, hot, earthy, and moldering; *it is the smell of something recently alive beginning to decay.* [...] *The law defines the contents of the bucket I hold protectively against my chest as ‘tissue.’* Some would say my complicity in filling that bucket gives me no right to call it anything else. I slip the tissue gently into a bag and place it in the freezer, to be burned at another time. Abortion requires of me an entirely new set of assumptions. It requires a willingness to live with

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<sup>598</sup> Tisdale, “We Do Abortions Here: A Nurse’s Tale.”

<sup>599</sup> Tisdale.

conflict, fearlessness, and grief. *As I close the freezer door, I imagine a world where this won't be necessary, and then return to the world where it is* [emphasis mine].<sup>600</sup>

Another example of an actor seeking to walk the line between a recognition of the humanity of the fetus and the need for abortion rights is feminist Naomi Wolf. In 1995, she published an article in *The New Republic* entitled “Our Bodies, Our Souls” in which she boldly declared, with no ambiguity, that abortion should be seen and discussed as a necessary evil. She further criticized fellow feminists for telling “untruths,” “cloak[ing] their most important decisions in euphemism,” and telling “lies” not only to others, but to “ourselves.” She asserts:

In the following pages, I will argue for a radical shift in the pro-choice movement’s rhetoric and consciousness about abortion: I will maintain that we *need to contextualize the fight to defend abortion rights within a moral framework that admits that the death of a fetus is a real death*; that there are degrees of culpability, judgment and responsibility involved in the decision to abort a pregnancy; that the best understanding of feminism involves holding women as well as men to *the responsibilities that are inseparable from their rights* [emphasis mine].<sup>601</sup>

She claims that “Second Wave feminists reacted to the dehumanization of women by dehumanizing the creatures within them” and developed “a rhetoric that defined the unwanted fetus as at best valueless; at worst an adversary, a ‘mass of dependent protoplasm.’” However, Wolf argues that the fetus *is*, indeed, human and living; that abortion *does*, indeed, stop a beating heart; and that abortion *should*, as a result, be treated as a “terrible decision” made within the privacy of a woman’s own conscience. She criticizes the abortion movement for pretending “that abortion is not a transgression

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<sup>600</sup> Tisdale.

<sup>601</sup> Wolf, “Our Bodies, Our Souls,” 26.

of any kind [in order] to champion abortion rights” and deferring to evasive arguments about “‘privacy’ and ‘difficult personal decisions’ and ‘choice.’”<sup>602</sup>

Ultimately, Wolf “square[s] a recognition of the humanity of the fetus, and the moral gravity of destroying it, with a pro-choice position” by asserting that “abortion is a necessary evil that should be faced and opposed in the realm of conscience and action and even soul; yet remain legal.” She further envisions a society embracing true equality among men and women that would not require women to have “unquestioned control over fetuses” in order to “survive” and compete with men, but that would value women “very highly” and be “responsible about human sexuality.”<sup>603</sup>

Wolf also published an article in the *New York Times* a few years later arguing essentially the same thing as her 1995 article and particularly challenging feminists to shift their rhetoric in response to the heightened debates around “partial-birth” abortion.<sup>604</sup> For all of her candor and attempt to maintain the difficult, explicit “necessary evil” defense, Wolf received almost exclusively negative public feedback from other feminists. Feminist Katha Pollitt responded to Wolf in 1996 in the *New York Times*. She argued that rhetoric like Wolf’s that depicted abortion as “moral iniquity” would be a “dangerous” compromise for feminists and would only benefit the agenda of anti-abortion forces. Pro-choice actors, she advised, should continue to lean into an emphasis on personal choice because that would appeal to the common ground occupied by a majority of Americans.<sup>605</sup> Kate Michelman of NARAL also published a response to Wolf in the *Los Angeles Times*, and she asserted that the best “moral framework” for abortion

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<sup>602</sup> Wolf, 29, 34.

<sup>603</sup> Wolf, 34–35.

<sup>604</sup> Wolf, “Pro-Choice and Pro-Life.”

<sup>605</sup> Pollitt, “A Dangerous Game on Abortion.”

was not to declare it an evil, as Wolf had done. Rather, as NARAL had been doing, it involved working to “make abortion less necessary” and entrusting the moral decision to “the women of America,” not the government.<sup>606</sup> Feminist Mary Lou Greenberg was even bolder in her condemnation of Wolf in the *New York Times* by asserting:

Thus, abortion is not, as Ms. Wolf maintains, ‘a necessary evil.’ There is nothing at all ‘evil’ about it for the simple reason that abortion is necessary for women to have control over their lives. The fetus as potential human being should never take priority over the life of the existing human being, the woman. [...] *I maintain that upholding abortion on demand and without apology is profoundly moral because it puts women first* [emphasis mine].<sup>607</sup>

Consequently, between the late 1960s and the early 2000s, some grassroots organizations and actors framed abortion more radically than the mainstream movement as an unapologetic good for women at the expense of the fetus, and some aimed to acknowledge the humanity of the fetus while still arguing for the necessity of abortion in an imperfect world. However, it is clear that the actors who chose the latter path were in the minority, and it seems that their strategy was deemed ineffective at best and harmful at worst by those working to secure abortion rights. It is fitting, then, that as the 2000s progressed, it was grassroots actors that led the charge toward the less apologetic and more glorifying rhetoric around abortion that mainstream organizations ultimately picked up. While NARAL and NOW did not begin such framing until midway through the 2010s, several smaller organizations and movements began earlier and others developed during the decade that aimed to “destigmatize” abortion and champion it as a moral good. Table 4.4 below highlights several of these groups.

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<sup>606</sup> Michelman, “The Moral Choice: Elevate Parenting.”

<sup>607</sup> Greenberg, “Without Abortion Rights, Women Aren’t Equal.”

**Table 4.4: Grassroots Pro-Abortion Organizations (2010-2022)**

<i>Organization/Movement Name</i>	<i>Description from Organization Website</i>
1 in 3 Campaign (2012) – now called Abortion Out Loud	“Abortion Out Loud harnesses the power of storytelling, grassroots organizing, leadership development, and policy advocacy to <b>end abortion stigma</b> and strengthen support for young people's access to abortion.” <sup>608</sup>
A is For (2012)	“MISSION: A is For amplifies art and artists that work to <b>end the stigma against abortion</b> . VISION: A world in which every person has access to a full spectrum of reproductive healthcare <b>free from judgment, scrutiny, and obstruction</b> .” <sup>609</sup>
All* Above All (2013)	We work to “advance comprehensive abortion justice policies” and ensure “ <b>abortion care is available without hurdles or stigma</b> for people of color working to make ends meet, young folks, LGBTQ, and gender nonconforming people.” <sup>610</sup>
Shout Your Abortion (2015)	“Shout Your Abortion is <b>normalizing abortion</b> and elevating safe paths to access, <b>regardless of legality</b> . SYA makes resources, campaigns, and media intended to arm existing activists, create new ones, and foster collective participation in abortion access all over the country. <b>F*** SCOTUS. We’re doing it anyway</b> .” <sup>611</sup>
Reproaction (2015)	“Reproaction’s vision is to uphold abortion rights and advance reproductive justice as a matter of human dignity. We introduce a new culture of accountability, and empower and inspire the reproductive rights movement and the broader progressive community to <b>openly and</b>

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<sup>608</sup> “Abortion Out Loud.”

<sup>609</sup> “Artists Dedicated to Advancing Reproductive Rights & Ending the Stigma Against Abortion Care.”

<sup>610</sup> “Action Plan for Abortion Justice.”

<sup>611</sup> “Shout Your Abortion.”

	<b>enthusiastically stand up for abortion rights.</b> <sup>612</sup>
Sea Change (2016)	“The Sea Change Program is dedicated to <b>transforming the culture of stigma around abortion</b> and other stigmatized reproductive experiences. We conduct social science research and partner with organizations to identify, test, and share practices for reducing reproductive stigmas.” <sup>613</sup>
We Testify (2016)	“We Testify <b>unapologetically believes that people who have abortions are our future.</b> ” We work to <b>reduce abortion stigma</b> , which “is defined as a ‘negative attribute’ towards people who provide, have had, or are seeking abortions. Abortion stigma is a shared understanding among a group of people or society that abortion is morally wrong and/or socially unacceptable, thus people who are associated with abortion are mistreated.” <sup>614</sup>
#YouKnowMe (2019)	(quote from actress Busy Philipps who started this Twitter hashtag) “Many people think they don’t know someone who has [had an abortion], but #youknowme. So let’s do this: if you are also the 1 in 4 [women who have had an abortion], let’s share it and <b>start to end the shame.</b> Use #youknowme and share your truth.” <sup>615</sup>

The organizations above share the common mission of “normalizing” abortion and depicting abortion as a positive, moral good for women and society. They deliberately aim to dispel the “stigma” that exists around abortion that “has been nurtured by both opponents and advocates” who have spread “negative messages about abortion

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<sup>612</sup> “About Reproaction.”

<sup>613</sup> “About Us.”

<sup>614</sup> “About.”

<sup>615</sup> Saad, “Busy Philipps’ #youknowme Campaign Prompts Emotional Abortion Stories.”

for decades.”<sup>616</sup> A 2016 article on Sea Change’s website entitled “The Moral Case for Abortion” epitomizes this new type of pro-abortion argumentation. In arguing that anti-abortion forces had “planted their flag in the moral high ground” for far too long, the article asserts:

With public opinion firmly on the side of bodily autonomy, a presidential candidate who promises to end Hyde, and the Supreme Court affirming that access to abortion should never be unduly burdensome, perhaps *it’s time for pro-choicers to snatch back the morality flag and fly it high themselves* [emphasis mine].<sup>617</sup>

The article goes on to claim that it is a “moral good” to allow a woman to make “her own moral choices about her pregnancy,” and to do anything otherwise is to undermine her “humanity.” Moreover, since abortion is so common, it should not be considered negative, and women who seek abortions should not be made to feel guilty. The author criticizes media outlets and politicians who have shied “away from being bold and unapologetic in their support of abortion care” and calls for a revised understanding of abortion as “a beneficial part of society.” Thus, organizations like those noted above are “overtly challeng[ing] unfortunate and persistent tropes like ‘safe, legal, and rare’ by proudly declaring abortion a public good.” The article makes no mention of the fetus at all and extols the abortion procedure: “Abortion is more than a public good; it’s a five-minute procedure that often gives people control back over their lives.”<sup>618</sup> Thus, these smaller, grassroots actors were seeking to shift the rhetoric around abortion well ahead of large, politically-oriented organizations like NOW and NARAL.

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<sup>616</sup> Klabusich, “The Moral Case for Abortion.”

<sup>617</sup> Klabusich.

<sup>618</sup> Klabusich.

#### 4.4 Conclusion

The evolution of pro-abortion argumentation has been more nuanced than that of pro-slavery rhetoric, both in the overall evolution of rhetoric and in the divergence between sources from different actors (i.e., NOW and NARAL). While defenses for slavery were largely apologetic prior to the 1820s and then largely unapologetic after the 1830s, defenses for abortion took a different trajectory. Pro-abortion activists, though were actually bolder and spoke about abortion more positively *at first* as they were trying to have the right to abortion recognized; then, between the late 1970s and the 2010s, they tended to be more timid in their rhetoric; and during the 2010s they returned to unapologetic defenses of abortion. Additionally, both congressional debates and published pro-slavery texts from both South Carolina and Virginia all followed quite similar patterns. However, sources from the NOW and NARAL archives were not always comparable, and grassroots sources definitely tended to use different framing tactics.

During the whole period from the late 1960s to 2022, the pro-abortion sources almost always vilified the opposition (if they mentioned it), either avoided mentioning the fetus or actively dehumanized the fetus, and utilized many claims about a variety of different “rights” involved in the right to abortion. The most significant shift, though, was in the *tone* of the rhetoric because by the mid-to-late 1970s, the language around abortion generally became more vague and more apologetic, activists relied on more arguments of necessity and broad rights claims, and they emphasized that they were *pro-choice, not pro-abortion*. One divergence from this trend occurred in the mid-1980s with the Silent No More campaign in response to *The Silent Scream* that aimed to shift attention from the fetus to women and tried to boldly emphasize the benefits of abortion in women’s

lives. This strategy did not last, though, and both NOW and NARAL continued to emphasize “choice” over “abortion,” itself, until the 2010s. In the 2010s, there was a noticeable shift as abortion proponents from both NOW and NARAL began discussing abortion in more positive terms and on moral grounds, making more unapologetic defenses for it, and pushing to *destigmatize* the practice.

Interestingly, the evolution of argumentation described above was more evident in sources from NARAL, which is a single-issue organization working for abortion rights, than in sources from NOW, which defines itself as a multi-issue feminist organization working to promote women’s rights. While sources from NARAL had a very clear transition from unapologetic, to apologetic, to unapologetic again, sources from NOW never changed as drastically. Though the NOW sources after the late 1970s were not as unapologetic as those prior, they also did not become as apologetic as those from NARAL. The NOW sources did not emphasize being pro-choice *not* pro-abortion in the same way that NARAL sources did, and they continued to highlight the connection between abortion and women’s freedom and equality. However, the NOW sources after the late 1970s *did not* espouse many of the *positive* arguments for abortion and relied heavily on vague language about rights claims. Additionally, the rhetoric in NOW sources did not change as drastically as it did in NARAL sources in the 2010s because NOW did not emphasize destigmatizing abortion or being proudly pro-*abortion* in the same way that NARAL ultimately did. The grassroots actors were generally more radical in their framing of abortion than the large-scale professional organizations, and they led the charge for the rhetorical shift in the 2010s toward a celebratory, proud declaration of abortion as a *moral good*. In the next chapter, we turn to an analysis of these findings.

## CHAPTER 5: ANALYSIS & CONCLUSION

### 5.1 Countermovement Attacks & Morality

One of the main similarities between the pro-slavery and pro-abortion cases is how the evolution of argumentation was largely a response to *countermovement* actions. This dynamic has been evaluated by scholars in regards to both slavery and abortion who argue that decisions about the framing of these issues were motivated significantly by the attacks of and the tactics used by the opposition.<sup>619</sup> In both of these cases, actors took a similar approach in response to countermovement attacks on their “right” on specifically *moral* grounds. Namely, when the established right first came under more concerted attack, the actors first deflected the issue of morality and relied on arguments of necessity and rights claims to justify the practice they desired to protect. For slavery, these attacks began as early as 1790 and 1800 as abolition societies began submitting anti-slavery petitions to Congress. In response, pro-slavery actors generally utilized arguments of necessity, such as the infeasibility of emancipation and the destruction emancipation would cause to the southern society and economy. They also appealed to states’ rights to declare that the federal government had no authority to legislate on slavery regardless of its moral standing. At times the actors would concede that slavery was morally wrong – a “necessary evil” – but often they would also deflect the question of morality by asserting that the morality of slavery was no concern for the law.

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<sup>619</sup> Regarding slavery, see Jenkins, *Pro-Slavery Thought in the Old South*; Cash, *The Mind of the South*; Morrow, “The Proslavery Argument Revisited”; Greenberg, “Revolutionary Ideology and the Proslavery Argument”; Bruce, “Racial Fear and the Proslavery Argument: A Rhetorical Approach”; regarding abortion, see McCaffrey and Keys, “Competitive Framing Processes in the Abortion Debate”; Burns, *The Moral Veto: Framing Contraception, Abortion, and Cultural Pluralism in the United States*; Rohlinger, “Framing the Abortion Debate”; Condit, *Decoding Abortion Rhetoric*; Ziegler, *After Roe*.

For abortion, the countermovement mobilized in force after the 1973 *Roe v. Wade* decision codified the right to abortion (with certain stipulations) in American law. Anti-abortion forces began a determined effort to undermine the right to abortion by emphasizing the immorality of ending the lives of unborn children and subsequently harming traditional family values.<sup>620</sup> The anti-abortion movement made political gains in this time, such as the Hyde Amendment in 1976 that barred Medicaid funding for abortion and the ruling in *Planned Parenthood of Central Missouri v. Danforth* that upheld an informed consent restriction.<sup>621</sup> In response, abortion advocates began downplaying abortion in the late 1970s and emphasizing the broader notion of personal “choice” as the “crux” of the issue in the abortion debate.<sup>622</sup> They tended to rely on more arguments of necessity, such as the need to prevent death from illegal abortion and to help women in particularly tragic circumstances, and vague appeals to rights of privacy, equality, and freedom of conscience as opposed to bold, positive defenses for abortion. NARAL, especially, leaned heavily into the notion of being *pro-choice not pro-abortion*, and it deflected the issue of morality by claiming that women need to be able to make their own moral decisions in a democratic, pluralistic society. Therefore, people should support a woman’s right to *choose* abortion even if they personally think it is an immoral choice.

Fascinatingly, in both of these cases, the actors ultimately came to boldly proclaim the practice in question *as a moral good*, particularly in the wake of *major countermovement gains* and a feeling of imminent danger to the practice. Moreover, they

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<sup>620</sup> Ziegler, *After Roe*, 13–15.

<sup>621</sup> Ziegler, 50, 65.

<sup>622</sup> Ziegler, *Abortion and the Law in America*, 138.

explicitly attributed this rhetorical shift to the need to both strengthen supporters' willingness to defend it and to not bolster the strength of the opposition. For the slavery case, the anti-slavery movement began making more progress than ever before in the 1820s and 1830s. William Sumner Jenkins summarizes the forces at work during those decades: "Due to the fight over the admission of Missouri into the Union, the Charleston Insurrection of 1820, the enlarged scope of activity of the Colonization Society, and the increased propaganda of the abolitionist groups, the South, for the first time, felt an imminent danger to the welfare of the slave system."<sup>623</sup> The Charleston Insurrection of 1822 was a failed slave revolt organized by free black man Denmark Vesey in which evidence was found that the instigators of the rebellion were influenced by anti-slavery propaganda from the North.<sup>624</sup> Subsequently, in 1831, Nat Turner's Rebellion, which "took more white lives than any other North American slave insurrection," aroused massive "public fear" throughout the nation and especially the South.<sup>625</sup> Additionally, in regards to the "increased propaganda" from anti-slavery actors, Lacy K. Ford claims, "Nothing stirred the already swirling pot of the slavery controversy quite like the abolitionists mail campaign launched [by the American Anti-slavery Society] during the summer 1835."<sup>626</sup> Ford claims that this new abolition campaign launched a specifically "moral war on slavery" by insisting that "slavery was a sin" and that slaveholders' unwillingness to emancipate their slaves constituted "an unrepentant evil in their hearts."<sup>627</sup> Ford argues

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<sup>623</sup> Jenkins, *Pro-Slavery Thought in the Old South*, 66.

<sup>624</sup> Jenkins, 65.

<sup>625</sup> Ford, *Deliver Us from Evil*, 297.

<sup>626</sup> Ford, 481.

<sup>627</sup> Ford, 506.

This line of abolitionist attack engendered far more bitterness and resentment among white southerners than had earlier criticisms of slavery focusing on more general social evils of the institution [...] The new attack [...] offended many southerners, striking them as slander and libel, and even as the rhetoric of those willing to use terror to achieve their desired ends. [...] In sum, southern slaveholders understood the new abolitionist attack as an assault on the humanitarianism of the South and felt that it demanded an answer on those terms.<sup>628</sup>

Thus, in the 1820s and the 1830s, slavery proponents felt that their institution was under siege as never before and that it was being attacked in a new way on specifically *moral* grounds.

As a result, there were advocates who emphasized that speaking about slavery as an evil was contributing to the opposition's attack on the institution and who explicitly criticized fellow pro-slavery actors for espousing the "necessary evil" defense. For example, in 1837 John C. Calhoun accused fellow southern slaveholder William Rives of contributing directly to "the spring and wellhead from which all these streams of abolition proceeded" by discussing slavery as a moral iniquity. Calhoun further emphasized that because slavery was no evil and, in fact, "a great good," the "slaveholders of the South had nothing in the case to lament or to lay to their conscience."<sup>629</sup> Similarly, in 1853, William Gilmore Simms expressed gratitude to the abolitionists because, for all of their "annoyances and offences," they, in fact, contributed to

our moral reassurance, – in the establishing, to our own perfect conviction, our right to the labor of our slaves, and in relieving us from all that doubt, that morbid feeling of weakness in respect to the moral of our claim, which was undoubtedly felt so long as we forebore the proper consideration of the argument. Twenty years ago, few persons in the South undertook to justify Negro Slavery, except on the score of necessity. Now, very few persons in the same region, question their

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<sup>628</sup> Ford, 506.

<sup>629</sup> *Register of Debates in Congress*, 24th Cong., 2nd sess., 719 (February 6, 1837).

perfect right to the labor of their slaves, — and more, — moral obligation to keep them still subject, as slaves, and to compel their labor.<sup>630</sup>

Therefore, the defense of slavery as an immoral but necessary practice was a poor tactic for garnering support and strengthening the pro-slavery position, so advocates saw the need to fully embrace its defense in unapologetically positive language as they perceived an imminent threat to the existence of slavery.

For abortion, advocates eventually began consistently proclaiming the practice as a moral good in the 2010s, and they decided that doing so was a better strategy than downplaying abortion if they were going to strengthen their cause in the face of anti-abortion achievements. As noted in Chapter 4, there were certainly actors even in the 1980s and 1990s who argued for this type of framing transformation, but their voices were in the minority and did not characterize the movement at that time. For example, the 1989 *NOW Times* article entitled “On Not Choosing Choice” warned that an unwillingness to be proudly pro-abortion may “inadvertently [be] helping speed the day it becomes illegal.” Furthermore, “how long and how hard do we believe people will fight for something they believe is inherently bad?”<sup>631</sup> Similarly, after feminist Naomi Wolf argued in both 1995 and 1997 for the pro-choice movement to frame abortion as a necessary evil in order to address the humanity of the fetus, Katha Pollitt responded that such rhetoric would offer pro-choice forces no “gains” in the fight for abortion rights and could “jeopardize” their position.<sup>632</sup> Mary Lou Greenberg boldly responded that abortion is no evil and, in fact, being pro-abortion is the morally “right” position.<sup>633</sup>

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<sup>630</sup> Simms, “The Morals of Slavery,” 179.

<sup>631</sup> “On Not Choosing Choice.”

<sup>632</sup> Pollitt, “A Dangerous Game on Abortion.”

<sup>633</sup> Greenberg, “Without Abortion Rights, Women Aren’t Equal.”

It was not until the 2010s, however, that the majority of the pro-abortion movement began to adopt such unapologetic rhetoric, and this period was marked by several significant anti-abortion advances. Ziegler offers a helpful analysis of these developments, but in sum, the 2010s saw “a record number of abortion restrictions” sponsored largely by “Tea Party Republicans,” such as Nebraska’s 2010 twenty-week abortion ban and the wave of even earlier abortion bans after 2019 once President Trump nominated two justices to the Supreme Court. Additionally, in 2015, an anti-abortion group released “videos that supposedly showed Planned Parenthood workers contemplating the illegal sale of fetal tissue and generally treating fetal remains with disrespect,” which led to efforts in Congress to defund Planned Parenthood. Regarding public opinion, a 2009 Gallup poll showed “for the first time [...] that a majority of Americans identified as pro-life.”<sup>634</sup> Moreover, NARAL’s polling in 2010 revealed that among young adults, “more than 51 percent of those opposed to abortion described the issue as very important, compared to only 26 percent of those who supported abortion-rights.”<sup>635</sup> Thus, groups like NARAL and Planned Parenthood characterized this time period as a “war on women” and aimed to regain active supporters.

In 2010, NARAL president Nancy Keenan explicitly noted this dangerous territory for abortion rights and claimed that abortion advocates had “ceded moral ground” for too long around the issue.<sup>636</sup> In NARAL focus groups, it was revealed that many millennials “flat-out disapproved of a woman's abortion” and believed it was “immoral,” but still supported freedom of choice. She attributed this attitude to the

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<sup>634</sup> Ziegler, *Abortion and the Law in America*, 181, 189–206.

<sup>635</sup> Ziegler, 191.

<sup>636</sup> Kliff, “Why Young Voters Are Lukewarm on Abortion Rights.”

successful attempts of anti-abortion actors for decades to “refram[e] the abortion debate around the fetus rather than the pregnant woman,” especially by using ultrasound technology to “define how people think about a fetus as a full, breathing human being.” Thus, NARAL wanted to “start an open discussion about the moral, ethical, and emotional complexity of abortion” to resonate with younger Americans.<sup>637</sup> A 2010 academic article in the *Journal of Women's History* declared that the mantra “safe, legal, and rare” “both produces and reproduces” stigma around abortion and that advocates should instead “work to articulate abortion as a social good and to significantly increase access to services.”<sup>638</sup> She succinctly emphasized, “The linguistic trick of affirming the right to abortion while simultaneously devaluing it is both harmful and *ineffective as a strategy to securing rights*” [emphasis mine].<sup>639</sup>

Subsequently, in the 2010s, there were an array of sources from pro-abortion actors seeking to reclaim the moral “high ground” in the debate and destigmatize abortion by proclaiming it as a moral and social good in order to take the offensive in the fight for abortion rights. For example, a 2013 article in *The Nation* declared, “Tiptoeing around the issue is exhausting, and it’s certainly not doing women any favors. It’s time to resuscitate the old rallying cry ‘free abortions on demand without apology.’ It may not be a popular message, but it’s absolutely necessary. [...] The anti-choice movement isn’t pulling any punches – why should we?”<sup>640</sup> Even as early as 2013, NOW president Terry O’Neill “thanked” anti-abortion forces for helping to mobilize abortion supporters with their attacks on abortion rights and claimed, “A recent poll shows that public support for

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<sup>637</sup> Kliff.

<sup>638</sup> Tracy A. Weitz, “Rethinking the Mantra That Abortion Should Be ‘Safe, Legal, and Rare,’” 164, 168.

<sup>639</sup> Tracy A. Weitz, 168.

<sup>640</sup> Valenti, “Free Abortions on Demand Without Apology.”

Roe v. Wade is even stronger right now than it was just two years ago. The right wing's escalated attacks on women's access to reproductive health care have backfired, causing people to pay attention, speak out and mobilize to vote.”<sup>641</sup>

Continuing the push to see abortion as a moral good, a 2014 book by Katha Pollitt entitled *Pro: Reclaiming Abortion Rights* asserted “We need to see abortion has an urgent practical decision that is just as moral as the decision to have a child – indeed, *sometimes more moral*. Pro-choicers often say no one is ‘pro-abortion,’ but what is so virtuous about adding another child to the ones you’re already overwhelmed by?” [emphasis mine].<sup>642</sup> Additionally, a 2015 *Atlantic* article on the “push to destigmatize abortion” explained that in the hostile political environment, abortion proponents were both fighting legislative battles and seeking “to change the public view of abortion, much as gays and lesbians have done of homosexuality in recent years.” The article highlighted a cultural shift on attitudes around sexuality that made the normalization of abortion more possible: “The movement to de-stigmatize abortion also has a special appeal to younger women. ‘They are much more open about sex, sexuality, sexual identity, and abortion’ [...] Advocates of women ‘coming out’ with their abortion stories are quick to admit that they’re following a page from the same-sex marriage playbook.”<sup>643</sup>

By 2019, with the Supreme Court in a position to potentially overturn *Roe v. Wade*, abortion advocates were ready to shift to the “offensive,” and even the Democratic Party became characterized by an “unapologetic,” pro-*abortion* plank. A 2019 *New York Times* article highlighted this nearly uniform attitude among Democratic candidates for

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<sup>641</sup> O’Neill, “Forty Years After Ruling, Support for Roe v. Wade Grows in Face of Ongoing Attacks.”

<sup>642</sup> Pollitt, *Pro*, 16.

<sup>643</sup> Rovner, “The Push to Destigmatize Abortion.”

the 2020 election and noted, “The idea of expanding abortion rights, not just maintaining them, was in the wings of the debate until recently. Now, it is center stage.” NARAL president Ilyse Hogue affirmed this development and expressed that the candidates were “‘setting the tone that this is something we should own proudly.’” The article discussed this “striking change” in “candidates’ tone on abortion rights” and how even politicians were now embracing a framing of abortion “as a positive force enabling women to control their lives and increase their economic security.”<sup>644</sup> A 2019 *Atlantic* article explained that “young feminists living in the age of dwindling access to abortion aren’t interested in a mantra that implies there is something shameful about the procedure.” The article further characterized this unapologetic attitude in the context of the contemporary political climate in America: “In the present state of American politics, compromise – even the rhetoric of compromise – is understood as appeasement, and we seem to have decided that it is better to risk losing everything than to give an inch.”<sup>645</sup> In 2022, the Democratic Pro-Choice Caucus, motivated by Planned Parenthood, went so far as to claim that the term “pro-choice” is no longer acceptable because “‘choice’ ignores the lived realities of people, especially Black people and people of color, who face barriers that are often compounded by racist and classist policies that keep them from the care they need.” Instead of pro-choice, “You can absolutely say: pro-abortion, pro-abortion rights, pro-abortion access, or pro-abortion equity — abortion isn’t a dirty word.”<sup>646</sup>

Interestingly, those who dissented from the newly embraced positive framing were subsequently publicly shamed by the pro-abortion movement. For instance,

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<sup>644</sup> Astor, “On Abortion Rights, 2020 Democrats Move Past ‘Safe, Legal and Rare’.”

<sup>645</sup> Flanagan, “Losing the Rare in ‘Safe, Legal, and Rare.’”

<sup>646</sup> McCormack, “Planned Parenthood Has Embraced the ‘Pro-Abortion’ Label.”

Democratic presidential nominee Tulsi Gabbard claimed in a 2019 debate, “I agree with Hillary Clinton on one thing. Abortion should be safe, legal, and *rare*” [emphasis mine].<sup>647</sup> A previous president of Planned Parenthood, Leana Wen, supported Gabbard’s remarks on Twitter, and both women were met with hostility by abortion advocates.<sup>648</sup> In a *New Republic* article, the founder of #ShoutYourAbortion, Amelia Bonow, criticized Wen’s desire for the abortion movement to maintain a nuanced discussion about abortion. Bonow claimed, “with anti-abortion extremism on the rise across the country, there has never been a worse time for the pro-choice movement to retreat in this manner.” Furthermore, she argued that the most effective way for the abortion movement to be successful was to “galvanize passive supporters of abortion rights by communicating that the fight for reproductive freedom is a fight for justice, and that the moral imperative is ours.”<sup>649</sup>

Therefore, in both the pro-slavery and pro-abortion cases, actors transformed their rhetoric specifically in response to countermovement attacks based on morality, and they did so in similar ways. Initially, they tended to sidestep the issue of morality or concede the practice’s moral complexity, though slavery advocates were more forthcoming in admitting slavery to be an evil. They also relied largely on arguments of necessity and broad rights claims. Ultimately, though, as the practice came under more serious and successful attack by the opposition, the actors embraced a bold glorification of the practice and claimed theirs was actually the morally superior position. Furthermore, the actors explicitly noted that this shift in rhetoric was intended to bolster the conviction of

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<sup>647</sup> North, “How the Abortion Debate Moved Away from ‘Safe, Legal, and Rare.’”

<sup>648</sup> See, for example, Sherman, “Dear Politicians, Put ‘Safe, Legal, and Rare’ in the Dustbin.”

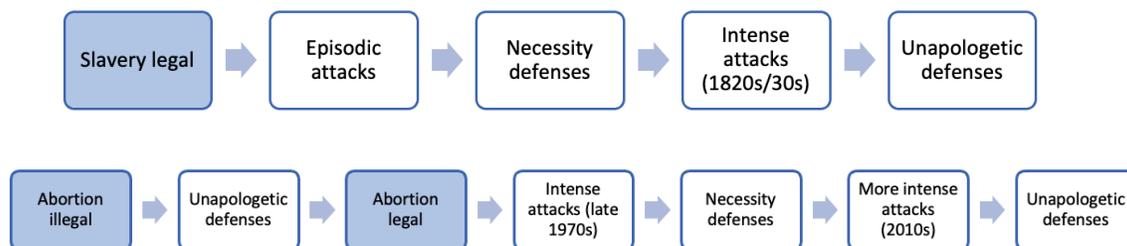
<sup>649</sup> Bonow, “Don’t Depoliticize Abortion: Why Leana Wen and Planned Parenthood Had to Part Ways.”

supporters, as well as to go on the offensive and not appear weak in the face of countermovement advances.

## 5.2 Coalition Building

A key difference in the evolution of argumentation in these two cases is the overall arch of the trajectory, which diverged from my expectations at the outset of my research. Abortion advocates *began* with unapologetic defenses when abortion was *illegal* and they were trying to legalize it. After it became legalized and the movement faced stronger opposition on moral grounds, pro-abortion actors first attempted to downplay abortion and use more apologetic framing before ultimately embracing an unapologetic defense. Slavery, on the other hand, was already legal, so it was not until pro-slavery actors began experiencing episodic attacks in the 1790s and early 1800s that they needed to offer defenses. These defenses tended to be based on necessity and used apologetic rhetoric. When they were first faced with powerful opposition on moral grounds, though, pro-slavery activists shifted more directly to positive good defenses. Figure 5.1 below illustrates these processes. Therefore, when faced with a mobilized countermovement, abortion advocates first tried defending abortion more hesitantly, while slavery advocates moved more quickly to unapologetic defenses.

**Figure 5.1: The Evolution of Pro-Slavery vs. Pro-Abortion Argumentation**



A primary reason why pro-abortion actors proceeded in such a way was because of the need to build *a broader coalition* of supporters to protect abortion rights. Since slavery was a sectional issue bound up intimately with geography and the southern collective identity and prosperity, there was less of a need to convince *southerners* of the need to preserve the institution.<sup>650</sup> Ford argues that the rise in anti-slavery activity in the 1830s, especially, convinced “most white southerners” that they needed to “express solidarity against outside critics” and speak with “one voice” to demonstrate their support for slavery.<sup>651</sup> Thus, it was not as necessary for slavery advocates to court people who viewed the practice with ambivalence, which was essential for abortion activists. Additionally, since abortion has not been a practice exclusive to any one geographic region of the U.S., it has not been identified with the collective identity of any defined mass of people (except for feminists, though they are united by a dispersed and symbolic bond rather than a territorial bond). As a result, the pro-abortion movement needed to build an electoral majority of supporters throughout the country and appeal to a variety of people to do so in a way that pro-slavery advocates never did.

This explains why abortion advocates had an incentive to moderate their message in the wake of anti-abortion gains immediately following *Roe* – they needed to appeal to a broader base, and especially the “mushy middle” voters who were unsure about abortion, if they were going to successfully fend off attacks on their new right to legal abortion. It also sheds light on the slight discrepancy between the sources from NOW and NARAL noted in Chapter 4 in which NOW did not undergo as radical of a fluctuation in framing as NARAL. Since NARAL is a single-issue organization working exclusively on

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<sup>650</sup> Genovese, *The World the Slaveholders Made: Two Essays in Interpretation*, 147.

<sup>651</sup> Ford, *Deliver Us from Evil*, 499.

abortion, its goal is to undertake the most efficacious tactics to advance the abortion agenda, specifically. As Staggenborg explains, “countermovement victories dictated pro-choice responses” beginning in the mid-1970s and forced the pro-abortion movement into the “political arena [as] the central battlefield in the abortion conflict.”<sup>652</sup> Thus, NARAL was pushed to focus on electoral success, and that necessitated a broader coalition of abortion supporters. For NOW, though, abortion was one issue among many in a larger “feminist” agenda, so the organization was constrained to frame abortion in a way consistent with its feminist organizational identity.<sup>653</sup> Consequently, NOW continued to discuss the link between abortion and women’s freedom and equality throughout the time period at the same time that NARAL was intentionally employing the “choice” frame to downplay abortion and attract more voters.

Given this need to mobilize public opinion in order to keep abortion legal, each time abortion advocates faced a potential reversal of the right to abortion, they consistently came back to the more timid frame of “choice” in order to court voters in mainstream society. First, in the early 1980s in the face of the Hyde Amendment, the election of President Reagan, and the threat of a constitutional amendment banning abortion, activists were forced to “narrow their demands” and go on the defensive to stave off potential attacks.<sup>654</sup> NARAL intentionally focused its public education and voter mobilization campaign, *Impact '80*, on specific states so as to build a pro-choice majority in at least enough states to block the ratification of an anti-abortion constitutional amendment.<sup>655</sup> NARAL’s “Winning with Choice” campaign strategy in 1982 was

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<sup>652</sup> Staggenborg, *The Pro-Choice Movement*, 93.

<sup>653</sup> Staggenborg, 38–39.

<sup>654</sup> Staggenborg, 106–8.

<sup>655</sup> Staggenborg, 94–95.

specifically targeted at convincing the large numbers of people who believed abortion was morally wrong to still vote for its legality as a matter of protecting the “freedom to choose” for oneself.<sup>656</sup>

At the same time in the late 1970s and early 1980s, feminists were working hard to pass the Equal Rights Amendment (ERA) and feared that too much discussion of abortion would deter more conservative women from supporting the ERA. Thus, feminists began downplaying the positive aspects of abortion for women and heavily emphasized the broader notion of “choice” as the fundamental right at stake.<sup>657</sup> This was especially true for NOW, which had made the passage of the ERA its paramount goal and “dedicated one quarter of its entire budget to the ERA campaign in 1980 and 1981.”<sup>658</sup> Thus, NOW significantly downplayed abortion in the late 1970s and early 1980s in order to mobilize as much support as possible for the ERA. When the ERA ultimately failed to pass in 1982, NOW’s membership and funding significantly waned, and by 1985 the organization was “on the brink of financial disaster.”<sup>659</sup> Consequently, NOW used abortion as the issue to reenergize the organization, and it dedicated the majority of its resources to this issue from the mid-1980s to the mid-1990s, particularly emphasizing the dangers of illegal abortion and role of extremism from the radical right and clinic bombing terrorists. This is revealed in the spike of articles about abortion in the *NOW Times* between 1988 and 1992, especially, as depicted in Figure 4.1. Deana Rohlinger argues that such an emphasis on urgency and necessity around abortion made it difficult for NOW to reframe the debate even under a pro-choice president in the 1990s, so they

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<sup>656</sup> *Winning With Choice: A Campaign Strategy Handbook* (NARAL, 1982), Schlesinger Library.

<sup>657</sup> Ziegler, *After Roe*, 135,138.

<sup>658</sup> Rohlinger, *Abortion Politics, Mass Media, and Social Movements in America*, 84.

<sup>659</sup> Rohlinger, 85–88.

continued to emphasize that “extremism was alive and well” rather than shifting to any more positive frame.<sup>660</sup>

In the mid-to-late 1980s, abortion advocates did try more unapologetic framing in the “Silent No More” campaign response to *The Silent Scream* in order to address the visibility of the fetus. Because the anti-abortion film drew renewed attention to the issue of morality in the abortion debate, abortion proponents “realized that arguments about a right to choose alone would not solve their movement’s problems.”<sup>661</sup> According to Ziegler, *The Silent Scream* highlighted the “strategic weakness” in the vague, rights-based rhetoric of “choice”: “Yes, women had a right to abortion, but should they exercise it? In the mid-1980s, abortion-rights supporters answered this question by telling the stories of women who felt that abortion had changed their lives for the better.” The campaign intentionally shifted attention away from the fetus and towards “real women” and the way abortion had benefited them.<sup>662</sup>

This attempt at bolder framing was short-lived, however, because by the late 1980s, abortion activists again saw the need to build a coalition to protect legal abortion. Thus, they were encouraged by strategists and advisors to again downplay the benefits of abortion for women and emphasize the “basic issue of choice.”<sup>663</sup> Ziegler captures this political climate well when she writes

In the late 1980s, larger abortion-rights groups like NARAL, NOW, and Planned Parenthood formed a tightly knit coalition that coordinated everything from messaging to tactics. Despite internal disagreements, most coalition members argued that the Supreme Court would overturn Roe. The only way forward, it seemed, was to ask voters to restore reproductive rights. Ironically, when larger abortion-rights groups assumed that the courts would no longer protect abortion,

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<sup>660</sup> Rohlinger, 89.

<sup>661</sup> Ziegler, *Abortion and the Law in America*, 79.

<sup>662</sup> Ziegler, 79–80.

<sup>663</sup> Ziegler, 102; Staggenborg, *The Pro-Choice Movement*, 139.

rights-based arguments took on more importance. Such claims, as leading abortion-rights groups saw it, would play better with both politicians and the voters who elected them than would arguments about the benefits of abortion.<sup>664</sup>

For NARAL, this strategy culminated in the “Who Decides” campaign, which emphasized “who makes the choice, not what the choice is,” and declared that abortion proponents were “‘pro-choice’ not ‘pro-abortion.’”<sup>665</sup>

Even under a pro-choice president in the 1990s and with a rather positive Supreme Court decision in *Planned Parenthood v. Casey*, the Republican-majority Congress and anti-abortion movement’s focus on “partial-birth” abortion in the mid-to-late 1990s made activists believe that “choice” was still the best frame for mobilizing public support. Abortion-rights organizations held summits during this time and discussed “what the abortion-rights movement should do now that “the fetus [was] no longer abstract.”<sup>666</sup> Both NARAL and Planned Parenthood launched new campaigns to again emphasize choice – “Choice for America” and “Responsible Choices,” respectively – which “described choice itself as a moral norm.”<sup>667</sup>

Thus, pro-abortion actors were perennially encountering serious threats to the right to abortion and needing to mobilize an electoral majority in a way unlike the pro-slavery movement. In response, they continued returning to broad rights claims and arguments about “choice” throughout the 1980s, 1990s, and early 2000s rather than boldly proclaiming abortion as a good in and of itself. The political climate became increasingly hostile to abortion rights in the 2010s, and activists finally committed more

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<sup>664</sup> Ziegler, *Abortion and the Law in America*, 101.

<sup>665</sup> *Who Decides? We Do with Our Votes: NARAL Guide for Candidates & Campaigns* (NARAL, 1989), Schlesinger Library.

<sup>666</sup> Ziegler, *Abortion and the Law in America*, 162.

<sup>667</sup> Ziegler, 164.

fully to an unapologetic defense of abortion. It is not clear, though, what ultimately prompted this shift because, as mentioned above, the movement had perceived imminent danger at multiple points in the past and had often expected *Roe* to be overturned. There was certainly a rise in grassroots movements acknowledging that the downplaying of abortion was not a winning strategy in the 2010s and calling for a radically positive defense. Additionally, the 2014 issue of NARAL's *Who Decides* publication asserted that in the face of the escalating "anti-choice War on Women," maintaining "a permanent defensive posture is a losing strategy. You win some battles, you lose others, but you're only ever ceding ground."<sup>668</sup> Nevertheless, it is not obvious why the abortion movement finally attempted a bolder framing strategy in the 2010s; perhaps a shift in culture explains part of the story.

### **5.3 Cultural Shift & Unapologetic Rhetoric**

In his analysis of the shift in pro-slavery rhetoric from necessary evil to positive defenses around the 1830s, Larry Tise argues that the most significant change that occurred was not the development of new positive arguments or even a serious reevaluation of the practice on the part of slavery advocates. Rather, Tise claims, it was "*the general shift of Americans to a new perspective on their own society that could tolerate the perpetuation of slavery*. The real revolution was a national rejection of the libertarian heritage of the American Revolution" [emphasis mine].<sup>669</sup> In other words, Tise argues that pro-slavery advocates did not experience great changes of heart or mind in their defense of the slavery, but the cultural and political climate changed in such a way

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<sup>668</sup> *Who Decides? The Status of Women's Reproductive Rights in the United States* (NARAL, 2014), <https://www.prochoiceamerica.org/wp-content/uploads/2017/04/2014-Who-Decides.pdf>

<sup>669</sup> Tise, *Proslavery*, 262.

as to accommodate the more aggressive, less apologetic arguments for the perpetuation of such an institution. In the Old South, this societal shift is explained by many scholars as a “conservative counterrevolution” that sought to “deal with crisis, to maintain social hierarchy, to generate respect for law and order, and to promote a renovation of society.”<sup>670</sup> Jenkins further explains that in the early 1800s, “a definite conservative reaction to the radical principles of the Revolutionary era became observable in Southern thought. The expression of this general tendency assumed several forms, one of which was a denial of the state of nature concept and the compact theory of government.”<sup>671</sup> Hence, scholars have argued that the defense of slavery was intimately connected to a particular view of the ideal order of society, government, and rights, and, to the extent that slavery could help achieve that worldview, it could be extolled on boldly positive terms.

I would argue that a very similar phenomenon is at work in accounting for the shift in pro-abortion argumentation in the 2010s. The evolution of pro-abortion argumentation in the U.S. has clearly not been due to the development of new pro-abortion arguments. In fact, as we saw, all of these arguments existed prior to the legalization of abortion in 1973 and were proudly espoused by abortion proponents in order to establish the right to abortion. Moreover, as noted above, the abortion movement felt that the right to abortion was imminently threatened at multiple points in the past. Consequently, I hypothesize that it has been “the general shift of Americans to a new perspective on their own society that could tolerate the perpetuation of” *abortion*. Instead

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<sup>670</sup> Tise, 348; Jenkins, *Pro-Slavery Thought in the Old South*; Bach, “The Social Thought of the Old South”; Conlin, “The Dangerous Isms and the Fanatical Ists.”

<sup>671</sup> Jenkins, *Pro-Slavery Thought in the Old South*, 58.

of a conservative counterrevolution, however, the shift is related to a sexual revolution that radically altered Americans' views of gender and sexuality.

It appears that the decades immediately following the start of the sexual revolution in the 1960s were not yet fertile enough ground to comfortably receive proclamations of abortion as a moral and social good. However, by 2010, over 60% of the population had been born during or after the sexual revolution and had therefore grown up in a society drastically shaped by it.<sup>672</sup> Such a society has developed particular views about the nature and purpose of sex, contraception, marriage, and gender that differ radically from perceptions of these things prior to the 1960s. It seems noteworthy that the same decade of the 2010s that saw the normalization of homosexuality and redefinition of marriage through the national legalization of same-sex marriage, as well as the intense movement to normalize transgenderism, was also more accommodating to unapologetic defenses of abortion.

The link between transgenderism and abortion is particularly interesting, in part because it is one that abortion advocates have heavily emphasized in recent years. As noted in the previous chapter, both the NOW and NARAL sources from the 2010s stressed the role of abortion in a larger sociopolitical battle against right-wing, extremist ideology and the fight for LGBTQ+ rights. NARAL even discussed abortion in the same context as gender-affirming care as something that should not be denied based on another's "ideological beliefs."<sup>673</sup> Similarly, a 2021 article from Planned Parenthood entitled "Just say abortion" argues that the word "choice" both perpetuates stigma around

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<sup>672</sup> "Age and Sex Composition in the United States: 2010."

<sup>673</sup> *Reproductive Freedom Conversation Guide* (NARAL, 2022),

<https://www.prochoiceamerica.org/report/reproductive-freedom-conversation-guide-v3/>.

abortion *and* “erase[s] the trans and non-binary people who have abortions,” which is “transphobic.”<sup>674</sup> The article goes on to reveal a fascinating encapsulation of the larger cultural phenomena at play:

Abortion stigma, the shared social and structural attitude that abortion is wrong or undesirable, is *rooted in patriarchal ideas about gender*. Scholars who work on abortion stigma have theorized that *this stigma is a response to noncompliance with gendered ideals of womanhood* — specifically, the ideals of motherhood and of women’s sexuality as something reserved for reproduction. In other words, when someone has an abortion, they’re perceived to be *transgressing their assigned gender*, either by rejecting the idea they should become a parent or by signifying that they had sex for a purpose other than reproduction. [...] We can push back against abortion stigma and transphobia at the same time [emphasis mine].<sup>675</sup>

These cultural changes that began with the sexual revolution and reached new heights in the past decade are beginning to be explored by scholars, and there is a great deal more to investigate. In his recent book, *The Rise and Triumph of the Modern Self*, Carl Trueman captures the worldview that links a glorification of abortion and a normalization of transgenderism when he writes

For transgenderism to be coherent, the society in which it occurs needs to place a decisive priority on the psychological over the physical in determining identity. For it to be coherent also involves a correlative downplaying of external authority, whether that of the person’s biology or of traditional social expectations. [...] In addition, its credibility is fueled by a powerful individualism and facilitated by the technological ability to manipulate biological realities.<sup>676</sup>

Consequently, in both the pro-slavery and pro-abortion movements, the issues of slavery and abortion, respectively, were conceived of and actively described as elements of a larger cultural and political battle. It was, therefore, particular cultural shifts that ultimately accommodated the transition in framing from a discussion of the practice in

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<sup>674</sup> “Just Say Abortion.”

<sup>675</sup> “Just Say Abortion.”

<sup>676</sup> Trueman, *The Rise and Triumph of the Modern Self*, 351.

question as a necessary evil to a positive, moral good. This strategy epitomizes the ultimate diversion of attention from the “other being” involved, namely the slave and the fetus. As we saw in the previous chapter, both slavery and abortion advocates made increasingly fewer mentions of the slave and the fetus as the time period went on, and they simply assumed their sub-human or sub-person status to discredit them as rights-holders. Thus, the centering of slavery or abortion in a bigger battle to *promote* particular values and *uproot* fanatical, extremist, unfavorable ones is an impressive tactic to recenter the discussion of *morality* on something entirely separate from the “other being” in question. To claim that those who dislike slavery or abortion do so because they want to promote some strand of fanaticism in our culture, and *not* because they are concerned about the slave or fetus, is a way to achieve the ultimate erasure of the victim from debate.

#### **5.4 Visibility of the “Other Being” – Deflect or Dehumanize?**

Thus, another similarity between these cases is how the actors often chose to make no mention of the “other being” involved in the practice in question, namely the slave or the fetus. In doing so, they tended to imply that the inferior status of the slave or fetus was a given and need not be justified explicitly and that it was essentially preposterous to consider conferring on them rights equal to slaveholders or women. In both cases, when the slave or fetus *was* discussed, it was almost always in dehumanizing language that sought to ascribe a sub-human or “sub-person” status thereby lowering them to an inferior category of rights-holding. One discrepancy between the cases, though, is that pro-abortion actors leaned more toward disregarding the fetus altogether,

while pro-slavery actors tended toward an overt dehumanization or depersonalization of slaves.

Perhaps one explanation for this difference is related to the *visibility* of the other being to those critical of the practice. The slave was clearly far more visible to the naked eye than the fetus in utero. Consequently, in order to justify slavery in the face of claims that it violated the principle of the Declaration of Independence that “all men are created equal,” slavery proponents had to classify living, breathing black human beings as “suited” for slavery and unfit for freedom because of their inferior nature. Such an argument allowed advocates to defend slavery as a *practical* solution to the coexistence of whites and “savage” blacks, a *natural* result of the higher law that commands “the being of superior faculties and knowledge” to subdue the inferior being, and a *beneficial* system for lower beings unsuited for freedom to “elevate” and protect them.<sup>677</sup> Thus, whether the dehumanization of blacks led to arguments about slavery as a necessity for social order, a moral obligation from a higher law, or a paternalistic practice to benefit such a “race,” an explicit degradation of the nature of blacks was necessary for dispelling critiques that slavery violated the natural rights of an equal person who both southerners and northerners could see and possibly characterize as a rights-holder.

In the case of abortion, however, the fetus is undoubtedly less visible, so it is more natural for people to think about the fetus as an “abstract” entity than it was to consider the slave in such a way. It appears that pro-abortion actors took advantage of this inclination by choosing to avoid a discussion of the moral status of the fetus whenever they were able to do so and tending toward making no explicit mention of the

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<sup>677</sup> Harper, “Memoir on Slavery.”

fetus in their defenses of abortion. Even when they were forced to confront the visibility and humanity of the fetus, such as with the proliferation of ultrasound technology and *The Silent Scream* in the mid-1980s and the widespread discussion of abortion later in pregnancy in the late 1990s, they continued to try to deflect attention away from the fetus and back toward the woman. In the mid-1980s, activists decided that they could not “[permit] the debate to center around the fetus” and must “recapture the emotional side of the issue” in regards to women’s experiences to overshadow emotional concern for the fetus.<sup>678</sup> Similarly, in the heat of the discussion around “partial-birth” abortion in the late 1990s, pro-abortion organizations launched campaigns reinforcing the emphasis on “choice” to encourage “voters to trust women and physicians to resolve contested scientific questions” and make moral judgements about abortion.<sup>679</sup> When pro-abortion activists tried to reconcile the humanity of the fetus with a pro-choice position, such as Naomi Wolf in the 1990s, they were met with harsh criticism from other abortion advocates.

Pro-abortion actors did, at times, use language about the fetus explicitly aimed at relegating the fetus to a sub-human or sub-person status. Typically, such language intentionally downplayed the human features of the fetus and emphasized how little it *looks* like a human being: “mass of living tissue,” “smaller than a fingernail, [...] much like menstrual flow to the naked eye [...] a small blood mass [...] no arms and legs,” the difference between “real living born children” or women and a “two-inch long fetus.”<sup>680</sup> Some conceded that the fetus is human and even alive, but claimed that it is not

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<sup>678</sup> Ziegler, *Abortion and the Law in America*, 80.

<sup>679</sup> Ziegler, 162.

<sup>680</sup> *Introduction to Debating* (NARAL, n.d. 1973-1975), Schlesinger Library; Judy Goldsmith, “The Unsilent Scream: Abortion and Women's Lives” (speech, February 12, 1985), Schlesinger Library.

meaningful because it is not “a free-standing person,” it is a “potential person,” or even that it is not yet a person in the same way a dead body is no longer a person.<sup>681</sup>

Interestingly, some language about the fetus still served to center attention on the pregnant woman by identifying the fetus explicitly as a part of the woman: “fertilized egg” (rather than the scientific term for a new individual being, “zygote”), “pregnancy tissue,” a “parasite” feeding off of a woman’s body, “remove the pregnancy,” “the uterus is gently emptied.”<sup>682</sup> In a 2016 instructional video about abortion from an organization called Reproaction, an abortion provider describes *even the “dead” aborted fetus as a part of the woman’s body*:

I am really honest about what it looks like when it comes out; I think that, *it’s your body, this is your choice*, this is the information that is important to you, so I do take time out to describe what it looks like based on how far along they are [...] I did work in a clinic where *I actually did show people their fetuses*. I had no problems doing that. It came from your body; *it’s no different than asking your doctor, ‘can I see my tooth’* when you have it taken out, ‘can I see my tumor’ if you had one removed. *You have a right to see those things; that’s a part of you* [emphasis mine].<sup>683</sup>

Therefore, pro-abortion actors did and do use rhetoric to intentionally dehumanize and depersonalize the fetus in a way similar to the pro-slavery actors toward the slave. However, abortion advocates were more likely to make no explicit mention of the fetus at all and to take advantage of the fact that the fetus is not completely visible in order to center the focus of the debate exclusively on women.

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<sup>681</sup> Emily Moore, *The Major Issues and the Argumentation in the Abortion Debate* (NARAL, 1971), Schlesinger Library; “*Abortion decision is disputed*” [sample letter to the editor] (NARAL, 1978), Schlesinger Library.

<sup>682</sup> *Abortion Q & A* (NARAL, 1977), Schlesinger Library; Lucinda Cisler, *Abortion Law Repeal (Sort of): A Warning to Women* (NARAL, 1970), Schlesinger Library; *Statement of Sarah Weddington before Senate Judiciary Subcommittee on Separation of Powers* (NARAL, 1981), Schlesinger Library.

<sup>683</sup> “Demystifying Abortion.”

## 5.5 Natural Law & Rights Claims

In addition to explicitly depersonalizing the “other being” to disqualify them from equal rights, activists in these cases also both undermined the very *concept of rights* to justify the practice of slavery or abortion. In discussing the development of the pro-slavery defense, Jenkins claims, “In one way or another, in order for them to defend slavery logically, they had to break down the force of the argument that all men have a natural right to freedom.”<sup>684</sup> As we saw, this was done by trying to prove that blacks were not, in fact, *men* – they were “sub-human” by nature. However, this was also done by trying to undermine the existence of “natural rights” in the first place. As noted above, part of the cultural shift that scholars argue occurred in the 1800s in America, and especially in the South, was a repudiation of natural rights within the natural law. As early as 1773, in a Harvard debate about whether or not slavery was permissible by the law of nature, the pro-slavery speaker defined the law of nature “in utilitarian terminology rather than in terms of natural rights.”<sup>685</sup> By appealing to the “observable” reality of “vast inequality” among individuals, he maintained that “the principle of absolute equality could not be supported.”<sup>686</sup> Tise argues that such a negation of natural rights and radical equality occurred primarily in the North at first in the late 18<sup>th</sup> century.<sup>687</sup> This line of thinking was ultimately picked up by pro-slavery advocates who, when criticized by anti-slavery activists on the grounds of morality that slavery violated the rights of blacks and the natural law, both denied the existence of natural rights and espoused a different understanding of natural law.

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<sup>684</sup> Jenkins, *Pro-Slavery Thought in the Old South*, 34.

<sup>685</sup> Jenkins, 44.

<sup>686</sup> Jenkins, 46.

<sup>687</sup> Tise, *Proslavery*.

First, pro-slavery actors repudiated the principle of the Declaration of Independence that “all men are created equal.” This took the form of a claim that “the abstract principles asserted [in the Declaration] were not intended to be applied in practice,” or a denial of the principles’ “intrinsic validity.”<sup>688</sup> Both such claims can be found in the previous chapter, such as Edward Brown’s assertion, “Perhaps there is not a phrase which has been more perverted to serve the purpose of the enemies to slavery, then, that *all men are born free*. In its perverted application, fact denies it, scripture denies it, the constitution denies it, and common-sense denies it.”<sup>689</sup> Next, they “entirely discarded the traditional natural rights theory, and, in its place, constructed other concepts of the law of nature upon which was based the justification of slavery.”<sup>690</sup> This they did by proclaiming that the laws of nature had made blacks inferior and fit for slavery, so whites had a “moral obligation” to enslave them both for their own good and the good of society.<sup>691</sup> Such a statement was espoused by a Virginia congressman in 1849 who claimed, “If [slavery] be wrong or immoral, then are the laws of nature herself wrong, and of immoral tendencies; [...] then is it immoral to make a moral, religious, and comparatively intellectual being of one who, otherwise, would have been an ignorant and utterly degraded savage.”<sup>692</sup>

Consequently, in the pro-slavery case, actors developed their own philosophy of rights and natural law to justify the denial of equal rights to a fellow human. Interestingly, as discussed in Chapter 1, it was partly *this* newly espoused theory of rights

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<sup>688</sup> Jenkins, *Pro-Slavery Thought in the Old South*, 59–61.

<sup>689</sup> Brown, *Notes on the Origin and Necessity of Slavery*, 40.

<sup>690</sup> Jenkins, *Pro-Slavery Thought in the Old South*, 125.

<sup>691</sup> Harper, “Memoir on Slavery”; Jenkins, *Pro-Slavery Thought in the Old South*, 138.

<sup>692</sup> *Congressional Globe*, 30th Cong., 2nd sess., 173 (March 1, 1849).

and natural law developed to justify slavery that contributed to and was further influenced by the development of legal positivism and the severing of law and morality in the 1800s.<sup>693</sup> As noted in Chapter 1, the rise of legal positivism in the 19<sup>th</sup> century paired with the persistent use of natural rights claims to protect the property of the wealthy (and slaveowners) led to a rejection of rights discourse by reform-minded political and legal actors by the early 20<sup>th</sup> century.<sup>694</sup> Then, as Mary Ann Glendon explains, in the post-World War II era, pre-political, “natural” human rights gained a new attraction in the wake of Nazi atrocities, and there was a shift in America toward individual rights claims particularly through the process of judicial review.<sup>695</sup> As Morton Horwitz argues, the Supreme Court under Chief Justice Earl Warren “revived the revolutionary spirit of rights discourse after it had been debased in the protection of slavery and, arguably, in the protection of property.”<sup>696</sup> Thus, in the latter half of the 20<sup>th</sup> century, there was a resurrection of discourse about natural rights and using them to represent a “liberatory” and “emancipatory” conception of law to aid the politically weak.<sup>697</sup> However, natural law had long since been undermined because its predominantly religious foundations had been eroded and a utilitarian “legal positivism” had escalated in the 19<sup>th</sup> century, so there was a general lack of secular consensus on the exact foundation and content of such rights.<sup>698</sup>

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<sup>693</sup> Noonan Jr., “The Root and Branch of *Roe v. Wade*”; Finkelman, “*Scott v. Sandford*: The Court’s Most Dreadful Case and How It Changed History”; on legal positivism, see Austin, *Lectures on Jurisprudence, Or, The Philosophy of Positive Law*.

<sup>694</sup> Horwitz, “Rights,” 395–96.

<sup>695</sup> Glendon, *Rights Talk*, 38.

<sup>696</sup> Horwitz, “The Warren Court and the Pursuit of Justice,” 9.

<sup>697</sup> Horwitz, 8.

<sup>698</sup> Horwitz, “Rights,” 395–96; Glendon, *Rights Talk*, 38.

This is noteworthy because the pro-abortion movement emerged in this sociopolitical environment steeped in “rights talk” and the rise of claims of individual rights that needed to be protected from government interference.<sup>699</sup> Additionally, because of the lack of agreement of the higher authority that bestowed such rights in a pluralistic, contemporary society that largely rejected natural law, abortion advocates could make constant broad appeals to rights in their arguments for abortion without needing to justify the existence of those rights. Pro-abortion activists appealed to at least 12 different categories of rights in their defenses of abortion (summarized in Chapter 4), as compared to pro-slavery actors who only appealed to two basic rights in their defense of slavery – states’ rights without federal interference, and property rights. This discrepancy certainly seems to be a product of the “rights culture” in contemporary society that demands that the government protect and promote individuals’ rights to equality, freedom, and fulfillment in unprecedented ways.

Furthermore, slavery advocates crafted an understanding of natural law and rights divergent from the principles of the Founding to argue for the morality of slavery, but abortion proponents abandoned natural law altogether to appeal to the freedom of conscience to make one’s own decisions about morality. It was often argued that the “moral” position is to allow women to make their own “moral decisions.” In her 2016 book *The Moral Case for Abortion*, Ann Furedi summarizes this line of thinking when she writes, “When we prevent a woman from making her own moral choices about her pregnancy, we undermine her humanity by taking away that ability to exercise her agency.”<sup>700</sup> Thus, the original undermining of the foundation of natural rights that began

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<sup>699</sup> Glendon, *Rights Talk*, 4–5.

<sup>700</sup> Furedi, *The Moral Case for Abortion*, 8.

in the late 18<sup>th</sup> century and both influenced and was influenced by slavery advocates in the 19<sup>th</sup> century is related to the individual rights culture of the past sixty years that espouses numerous rights claims without a meaningful source of authority. This linkage of the demise of natural law between the pro-slavery and pro-abortion cases has been explored in part by some scholars, such as Hadley Arkes and Stuart Banner, and would be a fascinating topic for further inquiry.<sup>701</sup>

## 5.6 Conclusion

At the outset, this study sought to understand how and why movement actors shift their framing of issues when they come under attack on moral grounds for the practice or right they seek to protect. Through an analysis of numerous primary sources from various actors within the pro-slavery and pro-abortion movements, several findings have come to light. First, within social movements, even actors trying to maintain the status quo (rather than establish a *new* right or practice) are heavily influenced by countermovement dynamics and can find their strategies confined and dictated by the terms of the debate established by the opposition. This was true for both slavery and abortion proponents who were pushed to justify the morality of their practices because of the accusations of immorality that the countermovement made against them. Being pushed into such an arena eventually encouraged the actors to adopt unapologetically positive defenses of the practices in order to move away from the uncomfortable and weak position of the “necessary evil” defense. Such a shift in rhetoric was an intentional choice to both mobilize greater support and try to gain leverage over the opposition rather than remain stuck in moral limbo.

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<sup>701</sup> See, for example, Arkes, *Natural Rights and the Right to Choose*; Banner, *The Decline of Natural Law*.

Second, political and cultural environments significantly impact issue framing. This was revealed by pro-abortion actors who found their right to abortion in peril of being eroded many different times because of an unfavorable situation in the legislature, presidency, and/or Supreme Court. They, therefore, saw the need to build a majority electoral coalition that would, at the very least, vote to keep abortion legal if *Roe* was overturned. As a result, their framing decisions were motivated by such a goal, and they first attempted to downplay abortion and emphasize personal choice as the crux of the issue. The sociocultural climate further constrained their rhetoric because the seeds of the sexual revolution had still not come to full fruition in American society in the 1980s and 1990s, and many people continued to view abortion as morally wrong despite their support for its legality. In the very different culture of the 2010s, though, matters of sexuality, reproduction, marriage, and gender had experienced rigorous redefinition, and society was more accommodating of a more radical defense of abortion (although it remains to be seen how mainstream Americans will ultimately respond to such framing). In the pro-slavery case, too, slavery was wrapped up in a larger sociopolitical battle and the effort to promote a particular vision for society and government. Thus, slavery advocates went on the moral offensive more immediately after coming under attack in part because a society that had already begun to undermine some of the Revolutionary principles of radical freedom and equality was receptive to positive defenses of slavery.

Third, both pro-slavery and pro-abortion actors understood that they needed to discredit the rights-holding status of the other party, or “being,” involved in the practice in question. They, therefore, utilized rhetoric that classified the slave or the fetus as less than human, or less than a full “person” before the law, to thereby undermine their claim

to equal rights. Additionally, the actors often disregarded the slave or the fetus altogether and insinuated that it was an assumed point of fact that they were inferior to slaveholders or women. This tactic was coupled with the employment of a philosophy of rights that made it possible to exclude the “other being” from the discussion of morality. In other words, pro-slavery actors undermined the theory of natural rights within natural law, and pro-abortion activists undermined natural law altogether in order to present a conception of morality that permitted either the practice of slavery or of abortion.

All of these strategic choices ultimately led actors in both cases to craft movements that, in conjunction with sociocultural developments, made it possible to discuss slavery or abortion in proud, glorifying, unapologetic terms as a social and moral good in and of itself. Moreover, the actors strategically formulated an overarching defense of the practice as one aspect of a broader sociopolitical movement, thereby redefining the “moral issue” at stake as the prevention of a certain set of values – be they fanatically left-wing for the slavery advocates or radically right-wing for the abortion activists – from taking hold in American society. In doing so, they both succeeded in shifting the focus of the debate entirely away from the potential victim and creating space to claim the “moral high ground” for themselves. Clearly, the ideological battle over slavery led to the actual battlefield. It remains to be seen how the battle over abortion will proceed, especially as two competing forces continue to affect the debate – namely, increasing visibility of the fetus through scientific advancement, and a continuing cultural reorientation and liberalization of the understanding of sexuality. In a post-*Roe* world, abortion proponents are doing their best to “destigmatize” and normalize the practice to galvanize support because they realize that doing so is necessary to keep abortion legal.

“After all, how long and how hard do we believe people will fight for something they believe is inherently bad?”<sup>702</sup>

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<sup>702</sup> “On Not Choosing Choice.”

## APPENDIX A: PRIMARY SOURCES

### Pro-Slavery Sources

#### Congressional Speeches/Debates on Slavery Analyzed (in chronological order)

- (1787) Constitutional Convention; regarding three-fifths compromise
- (1790) Regarding Quaker petitions about abolishing the slave trade
- (1800) Regarding a petition submitted by free blacks from Philadelphia
- (1806) Regarding a bill to prohibit the importation of slaves
- (1818) Regarding the Fugitive Slave Law
- (1819-20) Regarding slavery in the new state of Missouri
- (1829) Regarding slavery in the District of Columbia
- (1836-37) Regarding slavery in the District of Columbia and the discussion of anti-slavery petitions in Congress
- *GAG RULE in place from 1836-1844 that seriously limited any debate about slavery*
- (1847-49) Regarding the prohibition of slavery in new territories
- (1855-56) Regarding abolition of slavery in DC & the territories
- (1857-58) Regarding prohibition of slavery in Kansas
- (1860) Regarding the “slavery question” & the future of the Union

#### Pro-Slavery Texts Analyzed (in chronological order)

- (1797) *A View of the Causes and Consequences of the American Revolution* (Jonathan Boucher, VA)
- (1802) “A View of South Carolina” (John Drayton, SC)
- (1823) “Exposition of the Views of Baptists Relative to the Coloured Population” (Richard Furman, SC)
- (1825) “A Concise View of the Critical Situation, and Future Prospects of the Slave-holding States” (Whitemarsh Seabrook, SC)
- (1826) “Notes on the origins and necessity of slavery” (Edward Brown, SC)
- (1829) An Address Delivered in Charleston Before the Agricultural Society of South Carolina (Charles C. Pinckney, SC)
- (1831-32) Speeches from the Virginia Debates on slavery
- (1832) *Review of the Debate in the Virginia Legislature* (Thomas Dew, VA)
- (1834) *A View of Slavery, Moral and Political* (Alexander D. Sims, SC)
- (1837) “The Morals of Slavery” (William Gilmore Simms, SC)
- (1838) “Memoir on Slavery” (first as a lecture in 1838, then published in 1853) (William Harper, SC)
- (1845) Letters of James Henry Hammond (written in 1845, then published in 1853 (SC)
- (1854) *Sociology for the South; or, The Failure of Free Society* (George Fitzhugh, VA)
- (1857) *Political Economy of Slavery* (Edmund Ruffin, VA)
- (1858) “Cotton is King” Speech (James Henry Hammond, SC)

## Pro-Abortion Sources

### Texts Analyzed from NOW Archives at Schlesinger Library

- (1964) Lecture by Garret Hardin, “Abortion and Human Dignity”
- (1968) Speech by Lana Clarke Phelan, “The Cruel Fraud”
- (1969) Speech by Betty Friedan, “Abortion: A Woman’s Civil Right”
- (1969) Harriet Pilpel, “The Right of Abortion” (first in *The Atlantic*, then reprinted by the Association for the Study of Abortion)
- (1970) “Abortion” (in *Redbook* magazine)
- (1970) Linda Greenhouse, “Constitutional Question: Is There a Right to Abortion?” (first in *The NY Times*, reprinted by the Association for the Study of Abortion)
- (1972) NOW press release (July 26)
- (1973) Statement from Wilma Scott Heide, NOW President
- (n.d., 1974-77) NOW brochure “Woman’s Right to Choose & Child’s Right to be Wanted”
- (1980) NOW brochure “Stop HLA Before it Takes Your Life”
- (1980) NOW brochure “Speak Out Before It Is Too Late”
- (1984) NOW brochure about stopping the Human Life Amendment (HLA)
- (1985) NOW brochure “Year of Pain and Fear”
- (1985) Speech by Judy Goldsmith (NOW President), “The Unsilent Scream: Abortion and Women's Lives”
- NOW Times periodical issues available from 1977-2009; particular analysis of:
  - 1977 – December
  - 1978 – July
  - 1979 – July, September/October
  - 1980 – July
  - 1981 – July/August
  - 1982 – January/February
  - 1983 – April, August
  - 1984 – March/April
  - 1985 – January/February
  - 1986 – February/March
  - 1987 – Winter
  - 1988 – April, July
  - 1989 – October/November/December
  - 1990 – January/February
  - 1991 – Summer
  - 1992 – April
  - 1993 – August
  - 1994 – January, September
  - 1995 – August/September
  - 1996 – January

- 1997 – January
- 1998 – January
- 1999 – Winter
- 2000 – Winter
- 2001 – Summer
- 2002 – Spring, Fall/Winter
- 2003 – Spring, Fall
- 2003/2004 – Winter
- 2004/2005 – Winter
- 2005 – Winter
- 2006 – Spring
- 2007 – Winter
- 2008 – Spring
- 2009 – Spring
- From NOW Website Archive Snapshots
  - (2010) Statement from Terry O'Neill, NOW President, “Celebrating 37 Years of Roe v. Wade: NOW Asserts that Abortion Care is a Human Right”
  - (2012) “Open Letter to President Obama: NOW Urges a 2012 Wake-Up Call for the Nation”
  - (2012) Statement from Terry O'Neill, NOW President, “Roe v. Wade Turns 39, Abortion Rights Still Under Attack”
  - (2013) Statement from Terry O'Neill, NOW President, “40 Years After *Roe v. Wade*, We Still Fall Short of Reproductive Justice”
  - (2013) Statement from Terry O'Neill, NOW President
  - (2014) “War on Women’s Reproductive Rights Escalates in the States in 2013”
  - (2016) “Democratic Party Platform is Most Progressive Ever; GOP Platform Nutty and Dangerous”
  - (2018) Statement from Toni Van Pelt, NOW President, “We’re Still Mobilizing to Protect Roe v. Wade”
  - (2018) “Kavanaugh: A Threat to Women and Our Constitutional Right to Privacy”
  - (2019) “Keeping Track of Possible Supreme Court Abortion Cases
  - (2019) Statement from Toni Van Pelt, NOW President, “We Trust Women’s Reproductive Decision-Making”
  - (2020) “National Coalition of Progressive Groups Push DNC To Adopt Bold, Inclusive Vision for Sexual and Reproductive Health, Rights and Justice in 2020”
  - (2022) Christian Nunes, NOW President “Point: Abortion Is About All of Us,” (on NOW website, published in *DC Journal*)

Texts Analyzed from NARAL Archives at Schlesinger Library

- (1969) NARAL brochure, “Children by Choice – Repeal Abortion Laws”
- (1969) Statement by Congresswoman Shirley Chisholm

- (1970) Lucinda Cisler, “Abortion Law Repeal (Sort of): A Warning to Women”
- (1970) *Rocky Mountain News*, “End to legal abortion hurdles advocated”
- (1970) NARAL brochure, “Abortion: Questions and Answers”
- (1971) Press release, “NARAL Rebutts Nixon Abortion Stand”
- (1971) Emily Moore, “The Major Issues and the Argumentation in the Abortion Debate”
- (1972) Statement by Lawrence Lader
- (1972) Press release, “NARAL Charges Court Decision Dictated by Religious Dogma”
- (1972) Statement by Lee Gidding, NARAL Executive Director
- (1972) *NY Times* Letter to the Editor, “Unwanted Pregnancy and Ethics”
- (1972) NARAL brochure, “Public Health Benefits of Legal Abortion in NY”
- (n.d. 1973-1975) NARAL publication, “Introduction to Debating”
- (1974) NARAL brochure, “900,000 women received legal, medically safe abortions in 1974”
- (1975) NARAL flyer for book *Abortion is a Blessing* by Anne Nicol Gayor
- (1975) James Prescott, “Abortion or the Unwanted Child: A Choice for a Humanistic Society” (originally published in *The Humanist*)
- (1976) NARAL press release (September 28)
- (1976) Renee Ward, “Extent & Availability of Abortion: Political Implications”
- (1976) Letter from Abortion Rights Council of Minnesota, “Dear friends of freedom of choice”
- (1976/77) NARAL brochure, “Too Good For the Rich Alone”
- (1977) NARAL brochure, “NARAL is protecting the right to choose”
- (1977) NARAL brochure, “Abortion Q & A”
- (1977) Letter from NARAL, “Dear member of Congress”
- (1978) NARAL brochure, “Which do you prefer?”
- (1978) NARAL sample Letter to the Editor, “Abortion decision is disputed”
- (1979) Letter from NARAL, “Dear member of Congress”
- (1980) Press release, “PAC Announces Support for 29 Candidates”
- (1980) Statement by Karen Mulhauser, NARAL Executive Director
- (1981) Letter to Press from NARAL
- (1981) Statement of Sarah Weddington before the Senate Judiciary Subcommittee on Separation of Powers
- (1982) NARAL brochure
- (1982) Statement by Congressman Ted Weiss
- (1982) Press release from NARAL PAC
- (1982) *Boston Globe*, “Their goal is to remove abortion from politics”
- (1982) NARAL publication, “Winning With Choice: A Campaign Strategy Handbook”
- (1983) NARAL brochure, “Legal Abortion: Arguments Pro & Con”
- (n.d. early 1980s) NARAL brochure, “Abortion: The Reality”
- (n.d. early 1980s) NARAL flyer, “You know them as the ‘Right to Life’ People”

- (1984) NARAL, “Biomedical Overview, Working Paper”
- (1985) Ali MacGraw, “When Abortion Was Illegal” (*People Magazine*)
- (1985) Media Advisory on “Silent No More” campaign
- (1985) NARAL, “Silent No More” campaign launch documents
- (1987) Op-ed on Bork Nomination, Kate Michelman, NARAL Executive Director
- (1987) Kate Michelman, NARAL Executive Director, Keynote Address at NARAL Annual Conference
- (1988) NARAL mailing, “No one is for abortion”
- (1989) NARAL publication, ““Who Decides? We Do with Our Votes: NARAL Guide for Candidates & Campaigns”
- (n.d. late 1980s) NARAL flyer, “Watch out America, here comes compulsory pregnancy again”
- (1991) NARAL Foundation, “The Politics of Abortion: The Impact on Scientific Research”
- NARAL “Who Decides?” annual publication on the status of reproductive rights, 1990-2000, 2009-2021
- NARAL Website Archive Snapshots, 2011-2016, 2018-2022
  - (2022) NARAL publication (with other organizations), “Reproductive Freedom Conversation Guide”
  - (2022) “The Potency of Anti-Choice Attacks & Pathways to Victory”

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