

The Inadequacy of Objectivity for a Feminist Movement: How the Pro-Choice Movement Failed Women of Color and Its Own Agenda

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INTRODUCTION

Objectivity, as a virtue and methodology, has been touted as the gold-standard for sound reasoning and argumentation, particularly in the legal domain. Because objectivity, as Catharine MacKinnon describes, can be interpreted as a neutralized description of the male point of view, this valuation has created a false binary which positions male subjectivity as authoritative, and female subjectivity as incredulous.¹ This Note seeks to explore the ways in which this binary has influenced pro-choice and anti-abortion rhetoric—an area which, especially in the pro-choice camp, has been particularly shaped by female voices. Specifically, I argue that the mainstream feminist abortion-rights movement, in consistently appealing to neutral arguments and insisting on a single, universalized voice, has responded to anti-abortion advocates' use of emotionally salient rhetoric in ways that reflect and reinforce the false binary, undermining all women. The result has been a shallow movement that excludes women of color and, as such, embraces a misguided feminist vision.

I. CONSTRUCTION OF THE LOGIC/EMOTION BINARY

Lawyers, time and time again, learn that superior argumentation involves appeals to supposed neutrality. Problems arise when we interrogate the ideal of neutrality to reveal the inherent imbalances imbued in that rhetorical principle. This section introduces the structures that teach and enforce lawyers' preference for perceived objectivity and argues that this systemic trend relies on false premises that ultimately work to discredit women.

A. PERFORMANCE OF OBJECTIVITY IN THE LEGAL PROFESSION

Law school teaches its students to approach legal issues with “objectivity”—words like rationality, reason, unbiased, and logic recur, while words like emotion, subjectivity, and opinion are eschewed. Some professors might seek students'

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1. See Catharine A. MacKinnon, *Feminism, Marxism, Method, and the State: An Agenda for Theory*, 7 *SIGNS* 515, 537–38 (1982); EVE KOSOFSKY SEDGWICK, *EPistemology of the Closet* 9–10 (2008).

opinions and encourage open debates at the tail-end of certain units or after learning particularly controversial cases, especially in classes like Constitutional Law or Criminal Justice. But, for the most part, when it comes down to exams, students are given long hypotheticals, asked to argue both sides and determine, *based on the facts and current law*, how the situation should be resolved; students might have a “policy question,” but it usually feels like an afterthought. Ultimately, “performance will depend on your ability to dispassionately analyze the details provided to you for traces of ‘facts’ needed to satisfy one or another legal test.”²

Lawyers, mere products of law school, carry this practice of devaluing emotion in favor of perceived impartiality with them through their careers. “The law and emotions have an uneasy, if not antagonistic, relationship. In an extreme view, emotions are antithetical to the rule of law—human frailties that pose a constant threat to the orderly and impartial dispensation of justice.”³ Statutes and legal standards are designed “to ensure that emotions do not poison the objective analysis of facts and the uniform application of rules.”⁴ Emotion in the legal world is often viewed as compromising lawyers’ ability to reason, the implication being that emotionally-fueled arguments are “ill-founded and discrepant with reality.”⁵

Some argue that legal theorists have “accorded too great a role to rationality, and an insufficient role to emotion, when describing the origin of the rule of law itself, as well as our attachment to it and our ideals for it.”⁶ It may well be that the legal profession is not as cut and dry as posited above. I argue, however, that the point of concern is not whether it *is* or *is not*, but the legal profession’s disposition that its credibility relies on its apparent objectivity. Legal institutions strive to *appear* as operating in an unbiased, dispassionate manner—separating facts from feelings to reach the most equitable result. In other words, the problem lies with legal institutions’ mask of objectivity, which, as I will argue, is not objective at all.

The *Model Rules* reflect and reinforce this performance of objectivity in its references to reasonableness or reasonable behavior.⁷ Rule 7.3(a), for instance,

2. ELIZABETH MERTZ, *THE LANGUAGE OF LAW SCHOOL: LEARNING TO “THINK LIKE A LAWYER”* 4 (2007). In her book evaluating the “language of law school,” in which she taped and coded first year Contracts courses to “develop a detailed picture of the epistemology and process of legal training,” Elizabeth Mertz describes the process of automation through which law students are taught to read cases, noticing only certain parts and discarding others: “[p]oignant, glaring, pitiful stories of human drama and misery begin to sail easily past you, and you take them expertly in hand and dissect them for the ‘relevant’ facts.” *Id.* at 4–9.

3. Randall Kiser, *The Emotionally Attentive Lawyer: Balancing the Rule of Law with the Realities of Human Behavior*, 15 NEV. L. J. 442, 442 (2015).

4. *Id.*

5. See Evangelos Ntontis & Nick Hopkins, *Framing a ‘Social Problem’: Emotion in Anti-abortion Activists’ Depiction of the Abortion Debate*, 57 BRIT. J. SOC. PSYCH. 666, 669 (2018).

6. See Robin West, *Law’s Emotions*, 19 RICH. J. L. & PUB. INT. 339, 340–41 (2016).

7. See generally MODEL RULES OF PROF’L CONDUCT [hereinafter MODEL RULES].

describes a “solicitation” in terms of reasonable knowledge.⁸ Likewise, Rule 8.4 (g) positions harassment and discrimination as conduct that a lawyer “reasonably should know” constitutes as such.⁹ In couching important terminology in terms of reasonableness, the *Model Rules* veil subjective inquiries, creating standards applied to all lawyers, but designed for a few.¹⁰

As Alyssa Agostino argues, the reasonable person standard in sexual harassment cases also make the flaw with reasonableness clear:

Despite the aim of the reasonable person standard being gender-free, many critics do not believe it is in practice. Opponents of the standard argue that in practice, the “reasonable person” is a “reasonable man.” If a “reasonable person” is a “reasonable man,” it becomes very burdensome and hard for female plaintiffs trying to prove a case of hostile work environment sexual harassment.¹¹

The proposed objective alternatives—the reasonable man and reasonable woman standards—are similarly problematic:

The reasonable person is based on a male model and judges woman against a reasonable man standard, which is underinclusive of their concerns and experiences. The reasonable woman standard perpetuates gender stereotypes about women, is too hard to define, and is also underinclusive to a large majority of women. The reasonable man standard also makes it nearly impossible for male victims to succeed on their claims and perpetuates American machoism stereotypes. None of the standards takes a holistic view of the victim and their experiences to decide if their reaction was reasonable.¹²

Agostino proposes a more holistic model which considers a victim’s whole life experiences and individual beliefs—an incorporation of subjectivity and particularity.¹³

B. A GENDERED BINARY

The uptick of the legal world’s performance of objectivity is the formalization of a false binary—perceived dualities represented as trade-offs—whereby objectivity is diametrically opposed to subjectivity and emotion (the “logic/emotion

8. MODEL RULES R. 7.3(a).

9. MODEL RULES R. 8.4(g).

10. Vanessa A. Kubota makes a similar argument in her discussion of the word “repugnant” in the *Model Rules*, arguing that the word’s vagueness invites moralistic implications and creates an illusion of an objective standard. See generally Vanessa A. Kubota, *Subjective Feeling or Objective Standard? The Misuse of the Word “Repugnant” in the Model Rules of Professional Conduct*, 35 GEO. J. LEGAL ETHICS 259 (2022).

11. Alyssa Agostino, *The Reasonable Woman Standard’s Creation of the Reasonable Man Standard: The Ethical and Practical Implications of the Two Standards and Why They Should Be Abandoned*, 41 J. LEGAL PROF. 339, 342 (2017).

12. *Id.* at 353.

13. *Id.*

dyad”).¹⁴ Objectivity is rational is logical. Subjectivity is irrational is emotional. As Eve Sedgwick describes, these dyads rarely involve two equally valued phenomena, and this “double bind” works to create and uphold certain power dynamics by subjugating “term B” (here, emotion) to “term A” (objectivity).¹⁵ Further, Sedgwick’s framework works to bolster the claim that this presentation of objectivity is false; rather, it is invariably intertwined with emotion.¹⁶ Catharine MacKinnon’s ideas add texture to Sedgwick’s framework by suggesting that the very concept of objectivity is patriarchally constructed.¹⁷ She argues that “objectivity” is at once a myth and a reality: “men *create* the world from their own point of view, which then *becomes* the truth to be described. . . . [t]he male epistemological stance, which corresponds to the world it creates, is objectivity”.¹⁸ Taken together, in legal and rhetorical persuasion, “subjectivity,” or emotion, is subordinated to the ontologically valorized “objectivity”—but this objectivity is a stand-in for *male* subjectivity. The result is a devaluation of uniquely feminine emotion, positioning it as incredulous and inherently suspect.

II. THE RISE OF CONSTITUTIONAL ARGUMENTS

Before the rise of an organized pro-choice movement in the 1960s and 1970s,¹⁹ abortion discussions were mainly anchored within the medical community—lodged with abstract morality appeals, but largely detached from constitutional or “rights-based” arguments.²⁰ Second-wave feminists reshaped the movement by framing the status of abortion as a “fundamental feature of the subordination of women,” and asserted that “women had a right to end their pregnancies regardless of their reasons for doing so or of the consequences of their decisions.”²¹ Organizations like the National Organization for Women (NOW) and the Women’s National Abortion Action Coalition (WONAAC) demanded the repeal

14. I will use the terms “objective,” “rational,” “logical,” and “reason” interchangeably, and “subjective” and “emotion” interchangeably. See Lutfey Siddiqi, *Why We Should Rise Above False Binaries*, WORLD ECONOMIC FORUM (Jan. 20, 2015), <https://www.weforum.org/agenda/2015/01/why-we-should-rise-above-false-binaries/> [<https://perma.cc/3QKL-N48P>] (false binaries generally); SEDGWICK, *supra* note 1, at 9–10 (dyads).

15. See SEDGWICK, *supra* note 1, at 9–10.

16. *Id.*

17. See MacKinnon, *supra* note 1, at 537–38.

18. *Id.* (emphasis in original). See also CATHARINE A. MACKINNON, TOWARD A FEMINIST THEORY OF THE STATE 97 (1989) (“Socially, men are considered objective, women subjective. Objectivity as a stance toward the world erects two tests to which its method must conform: distance and aperspectivity. . . . This stance defines the relevant world as that which can be objectively known, as that which can be known in this way.”).

19. A birth control movement began earlier, but leaders of the movement separated it from abortion, claiming that the two were unrelated. See LESLIE J. REAGAN, WHEN ABORTION WAS A CRIME 134 (1997).

20. See *id.* at 110; MARY ZIEGLER, ABORTION AND THE LAW IN AMERICA 13 (2020).

21. REAGAN, *supra* note 19, at 217; ZIEGLER, *supra* note 20, at 11–12. See also Mary Ziegler, *The Jurisprudence of Uncertainty: Knowledge, Science, and Abortion*, 2018 WIS. L. REV. 317, 320 (2018).

of all state restrictions on abortion, arguing that access to abortion would enable women's equal participation in society.²²

For the first time, women were at the forefront of the discussion, and abortion was framed as a feminist right.²³ White feminist voices in the abortion movement brought the conversation from physicians' offices to the public forum and politicized the issue like never before: "[w]hat had been the private problem of abortion had become political, and what had been the subject of personal discussions had turned into a public debate."²⁴ Just like that, the personal became the political for mainstream feminists—so, too, for abortion foes, who responded with their own constitutional arguments. Using "fetal personhood" (allegedly a scientific fact) as a constitutional foundation, they argued that because fetuses are people, legal abortion would violate Fourteenth Amendment Due Process and Equal Protection by enabling invidious discrimination on the basis of "age and residence in the womb," and that the government, therefore, "had a compelling interest in protecting fetal life from the moment of conception."²⁵ *Roe*, in finding some constitutional basis for federal abortion protections, albeit a shallow "penumbral" right to privacy, formalized and legitimized constitutional appeals to abortion.²⁶

The movements strategically diverged following *Roe*: anti-abortion advocates were in an offensive posture, free to experiment with legal and rhetorical tools, while the abortion-rights advocates were in a defensive posture, safeguarding the new-found constitutional right. Immediately following *Roe*, abortion-rights groups thought they won. As NARAL's executive director stated shortly after the decision, "[t]he Court has spoken, and the case is closed."²⁷ Thus, defenders of abortion rights felt assured by the constitutional rights-based arguments that had proved successful and focused on ensuring safe access to abortion.²⁸

Simultaneously, an organized pro-life movement developed in earnest. Though some pro-lifers endorsed a constitutional amendment emphasizing fetal rights, prominent anti-abortion groups like the National Right to Life Committee

22. See ZIEGLER, *supra* note 20, at 19.

23. See REAGAN, *supra* note 19, at 224 (introducing rhetoric from the Society for Humane Abortion in the 1960s as the "first time an American women's organization had framed the problem of abortion in terms of women's right to control their reproduction" and discussing how women's liberation groups and the feminist movement adopted its perspective).

24. *Id.* at 217.

25. See Ziegler, *The Jurisprudence of Uncertainty*, *supra* note 21, at 320-21. For more on the question of "fetal personhood," see Jeff Amy, *Explainer: What's the role of personhood in abortion debate?*, A.P. NEWS (July 30, 2022), <https://apnews.com/article/abortion-us-supreme-court-health-government-and-politics-constitutions-93c27f3132ecc78e913120fe4d6c0977> [<https://perma.cc/M5F8-H655>]; Carrie N. Baker, *The Pseudoscience of 'Fetal Personhood'*, MS. MAGAZINE (Jan. 3, 2023), <https://msmagazine.com/2023/01/03/pseudoscience-fetal-personhood/> [<https://perma.cc/NB8U-7FAL>]; Greer Donley & Jill Wieber Lens, *Abortion, Pregnancy Loss, & Subjective Fetal Personhood*, 75 VAND. L. REV. 1649 (2022).

26. See *Roe v. Wade*, 410 U.S. 113, 152 (1973).

27. See ZIEGLER, *supra* note 20, at 30.

28. See *id.* at 23, 39.

(NRLC) and Americans United for Life (AUL) felt this approach would undermine their goals by implying that the Constitution did not already protect fetal rights.²⁹ Instead, they aimed to incrementally overrule *Roe* with state legislation limiting legal access to abortion.³⁰ The incremental restrictions NRLC and AUL advocated for—funding bans, informed consent statutes, physician restrictions, for example—could no longer be justified by just fetal personhood because, at least on the surface, they merely made it more difficult for women to access abortions.³¹ New arguments were needed, and the pro-life movement could afford to experiment while the pro-choice movement grew complacent in its defensive posture.³²

III. EMOTIONAL SALIENCE IN THE PRO-LIFE MOVEMENT

Through their experimentation period, abortion foes began to recognize that the pro-choice movement's "rights-based arguments left open a strategic weakness" they could exploit through certain emotional appeals.³³ In this section, I focus on two rhetorical strategies utilized by the pro-life movement—grotesque incorporation of fetal imagery and weaponization of female pain—which, I argue, reflect the logic/emotion binary and consequently draw their efficacy from the imbalanced dynamic the binary produces.

A. USE OF FETAL IMAGERY

In a first move away from strictly rights-based arguments, NRLC, in 1984, created and distributed a graphic twenty-eight-minute film, *The Silent Scream*, showing ultrasounds of a twelve-week-old fetus appearing to scream in pain during an abortion.³⁴ Focusing less on what the Constitution said, pro-lifers instead signaled that "no woman should knowingly inflict unnecessary pain on an unborn child."³⁵ Even if women had a "right to abortion," pro-lifers questioned whether they should morally exercise that right.³⁶ Critically, the images were cropped such that the "unborn children" appeared as independent from their mothers. The images were accompanied by an obstetrician-gynecologist—who stated that he became anti-abortion only after viewing these ultrasounds—narrating the procedure.³⁷ Through messaging like *The Silent Scream*, the anti-abortion case drew its efficacy from disguising strong emotional appeal with the appearance of neutral

29. *Id.* at 26.

30. *See id.* at 25.

31. *See id.* at 26.

32. *See id.* at 20-40.

33. *See id.* at 79.

34. *See id.* at 77.

35. *Id.*

36. *Id.*

37. Karyn Valerius, *A Not-So-Silent Scream: Gothic and the US Abortion Debate*, 34 *FRONTIERS* 27, 31-33 (2013).

objectivity.³⁸ As Nick Hopkins describes, “strong emotional reactions of disgust and outrage at the act of abortion are construed as deserving of attention and respect for the information that they convey.”³⁹ The use of fetal imagery in pro-life strategy remained strong through the campaign against “partial-birth” abortions, and manifests today in grotesque imagery on clinic protesters’ signs.⁴⁰

B. WEAPONIZING FEMALE PAIN

The pro-life movement also put female pain center-stage, taking advantage of the aspects of the binary that equate female emotion with irrationality and incapacity.⁴¹ This strategy is memorialized in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, which also set the stage for greater use of this rhetorical weaponization.⁴²

First, *Casey* upheld informed consent statutes—the implication being that women, in their vulnerable states, are ill-equipped to make a rational decision without intervention of “truthful and not misleading” information.⁴³ The irony is that the Court’s standard of “truthful and not misleading” willingly ignores the fact that “even a truthful message may be misleading when it inappropriately takes advantage of emotional influence to bias an individual’s decision.”⁴⁴ In this way, even accepting the premise that some women experienced regret following abortions, the Court’s proposed solution aims to minimize this emotional distortion with a faux-neutral legal standard that itself manipulates emotion.

Of course, *Casey* also narrowly reaffirmed the main holding of *Roe*, largely citing women’s reliance on it and emphasizing women’s interest in equal participation.⁴⁵ “The Court’s willingness to preserve abortion rights, it seemed, depended on evidence that abortion helped women achieve more equal citizenship,” creating a fresh avenue for abortion foes to undermine *Roe*.⁴⁶ Groups like AUL and NRLC determined that “[i]f the Court saved abortion rights because women relied on it, the pro-life movement would demonstrate that the procedure

38. See *id.* at 33 (“*Silent Scream* falsely claims to present empirical evidence that abortion causes fetuses to suffer . . . [t]his gothic narrative transforms a routine medical procedure into a violent spectacle as it encourages audiences to identify with a fetal protagonist into a violent spectacle as it . . .”).

39. Nick Hopkins, Suzanne Zeedyk & Fiona Raitt, *Visualising Abortion: Emotion Discourse and Fetal Imagery in a Contemporary Abortion Debate*, 61 SOC. SCI. & MED. 393, 398 (2005).

40. For greater discussion of the partial-birth movement see ZIEGLER, *supra* note 20, at 178-79. Since Trump’s election, the pro-life movement has used this strategy even more fully, using even “more inflammatory language or graphic imagery” and circulating propaganda videos that “spun Planned Parenthood’s fetal tissue donation program into an illegal, for-profit conspiracy to ‘sell baby parts.’” Emily Crockett, *Reproductive Rights in the Age of President Trump*, in REPRODUCTIVE RIGHTS 22 (Anne Cunningham ed., 2018).

41. See MacKinnon, *supra* note 1, at 537; SEDGWICK, *supra* note 1, at 9–10.

42. See generally *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833 (1992).

43. See *id.* at 882.

44. Jeremy A. Blumenthal, *Abortion, Persuasion, and Abortion: Implications of Social Science Research on Emotions for Reading Casey*, 83 WASH. L. REV. 1, 27 (2008).

45. See *Casey*, 505 U.S. at 855–856.

46. ZIEGLER, *supra* note 20, at 119.

damaged their health.”⁴⁷ Even before *Casey*, AUL President Guy Condon “promoted a woman-protective message . . . insisting that ‘pro-lifers needed to show love not only to unborn children but to their young moms who feel trapped.’”⁴⁸

This ideology became the guiding principle behind AUL’s “mother-child strategy,” an approach that “presents women as victims of a ‘profit-driven abortion industry’ which convinces them they must abort their pregnancies to have successful careers and happy lives.”⁴⁹ Conversely, the mother-child strategy presents “motherhood as already compatible with equal opportunity,” and uses any indication of damaged physical or psychological health as evidence that abortion is negative for women.⁵⁰ Described by AUL’s Vice President of Legal Affairs as a “comprehensive and caring approach” that seeks to “hold the abortion industry legally and morally accountable for complying with basic, commonsense standards for safeguarding women’s health and safety,” the mother-child strategy has been profoundly successful, particularly in advancing state legislation.⁵¹

IV. TOWARDS A PRO-CHOICE “FEMINIST ABORTION EXPERIENCE”

The white feminist pro-choice movement, operating in a defensive posture, allowed itself to be defined by the pro-life movement’s rhetorical weaponization of emotion. It sidestepped the use of fetal imagery with appeals to medicalized standards and responded to the weaponization of female pain by rejecting any woman’s narrative that might be used against the movement.⁵² Pro-choice leaders largely rallied around persuasive strategies that intentionally represented the issue as one-dimensional.

At times, pro-choice campaigns have attempted to individualize the cause with women’s stories in a move away from strict constitutional arguments. Even so,

47. *Id.* at 9.

48. Ziegler, *The Jurisprudence of Uncertainty*, *supra* note 21, at 345.

49. Brittany R. Leach, *Feminist Futures: Reimagining Arguments for Abortion*, THE GENDER POLICY REPORT (July 7, 2022), <https://genderpolicyreport.umn.edu/feminist-futures-reimagining-arguments-for-abortion/> [<https://perma.cc/RP3C-5Q94>].

50. Brittany R. Leach, *Whose Backlash, against Whom? Feminism and the American Pro-Life Movement’s “Mother-Child Strategy,”* 45 SIGNS 319, 321 (1982). “[I]n September 2018 AUL recruited participants for a conference titled ‘Women Speak: A Symposium on Life without Roe,’ marketed with a photo of young women tossing graduation caps in the air, captioned: ‘it’s time to rebut the tired argument that women need abortion to succeed!’” *Id.* See also J. SHOSHANNA EHRLICH & ALESHA E. DOAN, ABORTION REGRET: THE NEW ATTACK ON REPRODUCTIVE FREEDOM 139 (2019) (describing AUL’s “pro-life playbook” that promotes legislation designed to lay “the groundwork for the day when women reject the fraudulent promises of the abortion industry and see abortion—not as a false panacea—but as a real threat to both their welfare and to their unborn children.”).

51. Denise M. Burke, *Pro-life Movement Succeeds by Focusing on Both Mother and Child*, THE HILL (Aug. 1, 2014), <https://thehill.com/blogs/congress-blog/healthcare/213967-pro-life-movement-succeeds-by-focusing-on-both-mother-and/> [<https://perma.cc/7BRS-Z62E>]. The mother-child strategy “supported the enactment of more than 40 abortion-related measures in 2014” alone. *Id.*

52. For a discussion of how the movement has responded to the pro-life weaponization of fetal remains by appealing to neutral legal and medical standards, see generally Brittany R. Leach, *Abjection and Mourning in the Struggle Over Fetal Remains*, 10 CONTEMP. POL. THEORY 141 (2020).

these campaigns—though seeming to operate as prototypically feminist “consciousness raising” exercises—continue to push a single, one-dimensional “feminist abortion experience,” running counter to the goal of “consciousness raising” as a feminist tool.⁵³

When NRLC released *The Silent Scream*, NARAL and NOW recognized the need to “recapture the emotional side of the issue” and ignited a letter collection campaign designed to personalize the movement.⁵⁴ Aptly named “Silent No More,” the campaign is richly symbolic of the extent to which the pro-choice movement has been molded by the pro-life movement.⁵⁵ Some women wrote detailed accounts of their horrifying illegal abortions, while others noted how their lives had been vastly improved because they were able to have safe abortions.⁵⁶ It was the furthest departure from strict equality and constitutional arguments and venture into the emotional dimension thus far. Nevertheless, this “emotional depth” was limited to either current *positive* feelings about the benefits of abortion (e.g., enabling education or professional participation—which, itself, is rooted in the constitutional “equal participation” argument), or *past* feelings of pain and fear to illustrate the costs of restricting access. The pro-choice camp refused to address *current* female *pain*: potentially conflicting feelings women seeking abortions might grapple with, and other sources of pain non-white women face that coalesce to distort their “choice” in abortion.⁵⁷

In 2015, “Silent No More,” and the strategy prioritizing destigmatizing abortion, entered the twenty-first century in its social media fueled iteration.⁵⁸ Responding to the House’s vote to defund Planned Parenthood, Amelia Bonow turned to Facebook to share her positive abortion experience at Planned Parenthood, and her friend-turned-co-founder, Lindy West, posted it to Twitter with the hashtag #ShoutYourAbortion.⁵⁹ Within twenty-four hours, the hashtag was used 100,000 times and the new campaign was launched in earnest.⁶⁰ The #ShoutYourAbortion project was an attempt to push back against feelings of

53. See MacKinnon, *supra* note 1, at 542; Derek P. Siegel, *Wanting a “Feminist Abortion Experience”*: *Emotion Work, Collective Identity, and Pro-Choice Discourse*, 36 SOCIO. F. 471, 472 (2021).

54. ZIEGLER, *supra* note 20, at 80.

55. *See id.* at 80-81.

56. *See id.* at 81-82; Valerius, *supra* note 35, at 34-37. NARAL also incorporated some letters in the amicus brief it filed in support of appellees in *Thornburgh v. Am. Coll. of Obstetricians and Gynecologists*. *See generally* Brief for the National Abortion Rights Action League, et. al as Amici Curiae in Support of Appellees, *Thornburgh v. Am. Coll. of Obstetricians and Gynecologists*, 476 U.S. 747 (1986) (No. 84-495), 1985 WL 669630.

57. *See* Loretta Ross, *Understanding Reproductive Justice: Transforming the Pro-Choice Movement*, 36(4) OFF OUR BACKS 14, 14-19 (2006).

58. *See* Caitlin Gibson, *How #ShoutYour Abortion is Transforming the Reproductive Rights Conversation*, WASH. POST (Nov. 15, 2015), https://www.washingtonpost.com/lifestyle/style/how-shoutyourabortion-is-transforming-the-reproductive-rights-conversation/2015/11/13/aa64e68a-895f-11e5-9a07-453018f9a0ec_story.html [<https://perma.cc/6XH8-LC32>].

59. *Id.*; ZIEGLER, *supra* note 20, at 197.

60. ZIEGLER, *supra* note 20, at 197.

shame and judgment society had thrust on women following abortions.⁶¹ As Bonow explained in her original post:

Plenty of people still believe that on some level—if you are a good woman—abortion is a choice which should be accompanied by some level of sadness, shame or regret. . . . But you know what? I have a good heart and having an abortion made me happy in a totally unqualified way.⁶²

#ShoutYourAbortion is justified in its goal of destigmatizing abortion; no woman should be made to feel ashamed because of societal judgments and pressures. However, as with “Silent No More,” the project co-opts consciousness raising by suggesting these stories represent the full spectrum of emotional responses to abortions, while instead molding them into a universalized standard.⁶³ What if a woman *does* feel sadness and is *not* “unqualifiedly happy” after her abortion, not necessarily due to any external forces or social stigma, but because, as one possibility, she wrestled with conflicting visions of her future? Scholars have, in fact, found that women identifying as feminists “internalize a distinction between the ‘right’ and the ‘wrong’ way to have an abortion” and are stunted in negotiating pro-choice standards for the “feminist abortion experience.”⁶⁴ Many self-police their abortion experiences, minimizing any “negative feelings” out of fear of being labeled a “bad feminist.”⁶⁵ What type of feminism is this?

Feminism, as MacKinnon describes, is “the theory of women’s point of view,” and, therefore, “[c]onsciousness raising is its quintessential expression.”⁶⁶ In its ideal form, “consciousness raising”—the inherent feminist method—is a tool for deconstructing the mirage of objectivity. The pro-choice feminist response to pro-lifers’ weaponization of emotion, then, has been a “pseudo-consciousness raising”—pseudo because it does *not* embrace the full spectrum of emotion, but rejects emotion it understands society to believe is weak or detrimental to its myopic goal of maintaining a legal right to abortion. By unduly excluding certain women’s stories, even if due to legitimate fears that they would be rhetorically weaponized against these women by abortion foes, the pro-choice movement has fortified the patriarchal notion of objectivity that works to discount them. It universalized one version of the privileged white woman’s experience, presenting it with the same neutral gloss as its rights-based arguments. Instead of harnessing the power that “[w]omen can know society because consciousness is part of it,

61. Gibson, *supra* note 58.

62. *Id.*

63. See Siegel, *supra* note 53, at 472–73.

64. *Id.* at 472.

65. *Id.* at 472, 482 & 487.

66. MacKinnon, *supra* note 1, at 535.

not because of any capacity to stand outside it or oneself,” pro-choice feminists bowed their heads to the structures they were working to repudiate.⁶⁷

V. ABORTION RIGHTS—FOR WHOM?

If dismantling the constructed formulation of objectivity is an inherently feminist project as MacKinnon suggests, pro-choice feminists missed the target when they catered to the idea that they will succeed by purporting a single truth.⁶⁸ When a single truth is pursued, majority voices naturally drown out minority voices—this is particularly true when the majority views its interests as conflicting with minority interests. Though there were some attempts to integrate women of color into white feminist pro-choice spaces, these efforts were largely relegated to “spin-off organizations” or projects that were sidelined whenever pro-choice feminists feared this alignment might hurt their quest to protect the right to abortion.⁶⁹ The pro-choice feminist movement vastly alienated and excluded women of color, producing an incomplete and weak movement that is *unfeminist*, by virtue and method.⁷⁰

Pro-choice feminists’ exclusion of Black women, in particular, has been salient since the movement’s roots. At the 1969 conference that formed NARAL, Betty Friedan (NOW’s then-president), addressed the crowd: “As the Negro was the invisible man, so women are the invisible people in America today. . . .”⁷¹ At once, Friedan cast a colorblind shadow on abortion rights while minimizing the struggles of the Black community in a way that would remain a key feature in the pro-choice movement.⁷² In positioning the problems of white and middle-class women as the most urgent, and isolating abortion from all other oppressive forces in its web, the pro-choice movement mobilized white women at the expense of Black women.⁷³ In fact, just after *Roe*, Black women cautioned against the

67. MACKINNON, *supra* note 10, at 98.

68. See MacKinnon, *supra* note 1, at 536–37.

69. See, e.g., ZIEGLER, *supra* note 20, at 48 (“Groups like NARAL and Planned Parenthood pursued what sometimes seemed to be contradictory aims. . . . Abortion-rights leaders wondered if their movement could be more politically effective or more diverse but not both”); JENNIFER NELSON, *MORE THAN MEDICINE: A HISTORY OF THE FEMINIST WOMEN’S HEALTH MOVEMENT 180* (2015) (describing how often when topics impacting Black women “were recognized by white feminists as important elements of a total reproductive rights movement, they were still placed on the back burner when legal abortion was threatened.”).

70. See generally Loretta Ross, *Reproductive Justice as Intersectional Feminist Activism*, 19 *SOULS* 286, 286–87 (2017); Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 *UNIV. OF CHI. LEGAL F.* 139, 145 (1989); Catharine A. MacKinnon, *Intersectionality as Method: A Note*, 38 *SIGNS* 1019 (2013).

71. Keeanga-Yamahtta Taylor, *How Black Feminists Defined Abortion Rights*, *NEW YORKER* (Feb. 22, 2022) <https://www.newyorker.com/news/essay/how-black-feminists-defined-abortion-rights> [<https://perma.cc/3ME3-JQDE>].

72. *Id.*

73. See ZIEGLER, *supra* note 20, at 48; NELSON, *supra* note 66, at 180.

“choice” language in the Court’s opinion; nonetheless, the white feminist movement doubled down on that same “pro-choice” rhetoric.⁷⁴

In the 1980s, largely responding to arguments of simultaneous oppressions advanced by feminists of color, mainstream feminist and pro-choice organizations engaged in coalition building with women of color to varying degrees.⁷⁵ The story of Loretta Ross, whose ideas laid the foundation for the reproductive justice framework, is a poignant illustration of the ways in which these efforts fell short and serves to show the power—not weakness—in harnessing women’s pain for advancing their cause.⁷⁶ “Consciousness-raising,” and thus a true feminist project, cannot be called as much while excluding voices like Ross’s.

As part of feminist and pro-choice organizations’ efforts to integrate women of color, Ross was hired as the first director of NOW’s Women of Color Programs.⁷⁷ After four years, however, Ross left NOW due to a series of “top-down” organizational failures she believed were typical of mainstream feminist organizations and reflective of the racism within.⁷⁸ As an illustration, when Ross asked NARAL and NOW to donate to the 1987 Women of Color and Reproductive Rights national forum at Howard University, which Ross organized to amplify women of color’s voices in reproductive politics, the organizations agreed, but ignored Ross’s request that white women remain behind the scenes.⁷⁹ Specifically, Ross explained that her “message to all the pro-choice organizations was that . . . you need to have women of color speaking on behalf of your organization. . . . And that caused quite a bit of controversy, because I’m asking them to put up their money but they don’t get the spotlight. They don’t get to showcase themselves.”⁸⁰ Instead, NOW’s white President, Eleanor Smeal, gave an address at a dinner during the conference; Smeal solicited Ross’s advice for the address, but wholly ignored the framework Ross offered after consulting with her press agent.⁸¹ Smeal “targeted women of color from the perspective of ‘what you people need to do’” instead of, as Ross proposed, echoing back stories of sterilization abuse “and how it’s a feminist agenda to let women control their bodies and . . .

74. In 1973, the National Council of Negro Women issued a statement: “The key words are ‘if she chooses.’ Bitter experience has taught the black woman that the administration of justice in this country is not colorblind. . . . We must be ever vigilant that what appears on the surface to be a step forward, does not in fact become yet another fetter or method of enslavement.” Jael Silliman, Marlene Gerber Fried, Loretta Ross & Elena Gutiérrez, *UNDIVIDED RIGHTS: WOMEN OF COLOR ORGANIZE FOR REPRODUCTIVE JUSTICE* 11 (2004).

75. See generally The Combahee River Collective, *The Combahee River Collective Statement* (1978); Cherrie L. Moraga & Gloria Anzaldúa, eds., *This Bridge Called My Back: Writings by Radical Women of Color* (1981); Angela Davis, *Women, Race, and Class* (1981); Bell Hooks, *Ain’t I a Woman: Black Women and Feminism* (1981). See also Nelson, *supra* note 69, at 170-71; Ziegler, *supra* note 20, at 81.

76. See Nelson, *supra* note 69, at 168.

77. See Ziegler, *supra* note 20, at 81.

78. See Nelson, *supra* note 69, at 168.

79. See *id.* at 168-169.

80. *Id.* at 168.

81. *Id.* at 169.

fight racism both outside the movement but also inside the movement.”⁸² Ross parted shortly thereafter, disappointed by the lack of true coalition.⁸³

Women of color in the 1970s and 80s singled out sterilization abuse as a particularly poignant reminder that “sexual oppression was always ‘simultaneously’ informed by race and class oppression as well,” because poor women of color were disproportionately victims of such abuse.⁸⁴ Sterilization abuse also serves as an apt illustration of an agenda which does not quite fit into the pro-choice narrative and was therefore excluded. Ross marks her own hysterectomy—the result of a doctor’s failure to diagnose an infected intrauterine device (IUD)—as a “turning point in her political perspective on racism, gender oppression, and reproductive freedom.”⁸⁵ Ross explained: “it was in that moment that I’m conscious of becoming a reproductive rights activist, ‘cause I was pissed off . . . all this that has happened to me shouldn’t happen to nobody else.”⁸⁶ Ross’s sterilization, which was linked to the disproportionately high rate of reproductive tract infections among women of color and their lack of access to quality medical care, was different than the sterilizations of other women of color, who were often sterilized without knowledge or consent, or through coercion.⁸⁷ However, she harnessed this *pain*—her feelings of being “pissed off”—to situate herself within the sterilization opposition movement and catalyze her reproductive freedom activism.⁸⁸

In 1994, “[i]n the tradition of the Combahee River Collective,” twelve Black women, including Ross, coined the term “reproductive justice” to “explain the phenomena at the intersection of race, class, and gender in reproductive politics” and eclipse the “binaried and under-theorized pro-choice/pro-life frameworks.”⁸⁹ SisterSong (a women of color reproductive justice collective co-founded by Ross) defines reproductive justice as “the human right to maintain personal bodily autonomy, have children, not have children, and parent the children we have in safe and sustainable communities.”⁹⁰ Through an intersectional lens that puts “Black women as the starting point,” reproductive justice reflects the truly feminist method of advocating for reproductive rights—only by recognizing the interaction between multiple forms of exclusion and lifting those from the “bottom-up” can a “feminist movement” ring true to the feminist method.⁹¹

82. *Id.*

83. *Id.* at 170.

84. *Id.* at 171.

85. *Id.* at 176–77.

86. *Id.* at 177.

87. *Id.* at 178.

88. *Id.* at 177–78.

89. Loretta J. Ross, *Reproductive Justice as Intersectional Feminist Activism*, 19 *SOULS* 286, 286–87 (2017).

90. *Reproductive Justice*, SISTER SONG, <https://www.sistersong.net/reproductive-justice> [<https://perma.cc/BM3B-NXTT>].

91. See Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 *UNIV. OF CHI. LEGAL F.* 139, 145 (1989). See generally MacKinnon, *supra* note 1.

VI. CONCLUSION

Dobbs, the decision that formally stripped women of constitutionally protected abortion access, illustrates the weakness of a purportedly feminist movement using “objectivity” as its method—using “[t]he master’s tools” to “dismantle the master’s house.”⁹² The decision rests on an originalist framework which proponents tout as “a value-neutral method that will promote the separation of law and politics,” but as Reva Siegal argues, is instead “a value-laden politics, a multi-decade political project of the conservative legal movement embedded in the Republican Party whose announced goal is reversing *Roe v. Wade*.”⁹³ Decades ago, Kimberle Crenshaw admonished that “[t]he authoritative universal voice—usually white male subjectivity masquerading as non-racial, non-gendered objectivity—is merely transferred to those who, but for gender, share many of the same cultural, economic and social characteristics.”⁹⁴ The liberal feminist pro-choice movement failed to see that its goals were methodologically aligned with intersectional feminism and reproductive justice, instead expecting to succeed by adhering to standards of objectivity—an inherently patriarchal methodology.⁹⁵ Though intersectionality is being welcomed into the mainstream feminist cultural milieu and some organizations like Planned Parenthood have distanced themselves from “pro-choice” language,⁹⁶ I fear that if white feminists are threatened by the loss of a reproductive right they now hold (birth control, for example), they will retreat to their defensive posture and again prioritize their own agenda at the expense of women of color. Instead of operating as *defenders* in a series of *battles*, I encourage feminist advocates to position themselves as *aggressors* in a *war* to lift all women from the bottom up—and to relish in that offensive posture as liberating for defining their own progression.⁹⁷

92. Lisa Bowleg, “*The Master’s Tools Will Never Dismantle the Master’s House*”: Ten Critical Lessons for Black and Other Health Equity Researchers of Color, 48 HEALTH EDUC. & BEHAV. 237 (2021) (citing Audre Lorde’s comments at “The personal and the political panel,” Second Sex Conference, Sept. 29, 1979). See generally *Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct. 2228 (2022).

93. Angie Gou, *Cherry-picked history: Reva Siegel on “living originalism” in Dobbs*, SCOTUSBLOG (Aug. 11, 2022), <https://www.scotusblog.com/2022/08/cherry-picked-history-reva-siegel-on-living-originalism-in-dobbs/> [<https://perma.cc/6CH7-PYP2>] (first quoting Justice Antonin Scalia then Reva Siegel). See generally Reva B. Siegel, *Memory Games: Dobbs’s Originalism as Anti-Democratic Living Constitutionalism—and Some Pathways for Resistance*, 101 Tex. L. Rev. (forthcoming 2023).

94. Crenshaw, *supra* note 91, at 154.

95. See MacKinnon, *supra* note 1, at 537.

96. See, e.g., *Choice vs. Access: Defining Reproductive Justice*, PLANNED PARENTHOOD OF THE PACIFIC SOUTHWEST (Jan. 28, 2021), <https://www.plannedparenthood.org/planned-parenthood-pacific-southwest/blog/choice-vs-access-defining-reproductive-justice> [<https://perma.cc/G3NW-CYEM>].

97. This Note did not have an opportunity to touch on the rights of LGBTQ+ women and non-binary people but hopes to emphasize that the overall message is one of inclusivity.