

# The Colonization of “American Values”: a Neo-Aristotelian Comparison of Ronald Reagan’s Abortion and the Conscience of the Nation, and the Overturning of *Roe v. Wade*

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In 1983, on the 10-year anniversary of the Supreme Court judgement on *Roe v. Wade*, Ronald Reagan published the critically acclaimed pro-life essay “Abortion and the Conscience of the Nation,” in which he referred to the Court’s decision as a “continuing prod to the conscience of the nation” (Reagan, 1984). Today, as we face the overturning of the *Roe* decision almost 40 years later, the modern conservative political landscape has successfully colonized the meaning of the “conscience of the nation,” cleansing it of intersectionality, defining within it the appropriate and the obscene; and weaponizing it as a way to alienate those who do not conform to white, male, able-bodied, heterosexual norms. Sex, freedom, and transparent rhetoric have been displaced into the realm of theory and thought, and have become an unpalatable ideology within American law. This paper will use a neo-Aristotelian approach to analyze the value system at play in Reagan’s essay in order to reveal how a preconceived, fossilized notion of “American Values” is being applied to modern law through Justice Alito’s initial draft in the Court’s opinion on *Dobbs v. Jackson Women’s Health Organization*.

## A Brief Examination of Pre-*Roe* Rhetoric in the Mid-20<sup>th</sup> Century

I argue that an analysis of the rhetoric surrounding reproductive justice and the right to abortion is crucial in understanding the development of the modern phrase “American Values,” where the influence of legislators work to “harass and scare [women] with an unwanted pregnancy [because] abortion violates some age-old and God-given ‘natural law’” (Driscoll et al., 1971). This notion of ‘natural law’ is a key element in the coining of “American Values” as an othering ideology in American political discourse, and a central theme in both Reagan and Alito’s belief system and writing.

Conversations surrounding abortion and the right to contraceptives in the mid-20<sup>th</sup> century, pre-dating the legalization of abortion, centered around women’s rights and the autonomy of the female body. After decades of fighting for the incorporation of gender as a categorical identity to be incorporated into socio-political discourse, practice, and institutions —and with the shortcomings of the first wave of feminism in mind— the second wave feminist movement of the 1960s worked to promote recognition of the instruments and influence of the patriarchy on the female self-identification process. Among one of the most fundamental features of the movement was the focus on public versus private women, and the “moral” dilemma faced by women who did not occupy traditional gender roles. Crucial to understanding the American Value system at play today is the acknowledgement of these political, patriarchal instruments which shaped reproductive rhetoric in American history. The second wave feminist realization that the correlation between abortion and sex equality lay in a fundamental right to choose, actively challenged previously revered notions of morality and the role of the female body. I

argue that an analysis of the feminist understanding of bodily autonomy agitated these long-held and misled notions of gender roles and values in the United States.

Among numerous other authors, activists, and lay-women contributors to the feminist movement<sup>1</sup>, an examination of Carol Driscoll, Wendy Sanford, Nancy Hawley, and Betsy Sable’s “Abortion,” published in *Women and Their Bodies: a course* in 1970, reveals a focus on specific themes which I will later examine as being actively negated in modern conservative political rhetoric.

The pre-*Roe* era was home to countless illegal and unsafe abortions, wherein women, specifically the poor and those “from minority groups who couldn’t access abortion safely, turned to a variety of methods, including: self-medication with toxic chemicals such as turpentine, bleach, detergent solutions quinine, and strong teas... In addition, women would frequently resort to enemas and vaginal or abdominal trauma” (Ginsberg & Shulman, 2021). The dismemberment of the female reproductive system was not a result of choice, but of necessity, and the rhetorical framework of pleas for the legality of abortion and safer, cheaper methods of birth control centered around the realization that the female collective must stray away from self-blame. As feminists began to realize the correlation of abortion and sex equality, their public discourse called for legal challenges to abortion bans.

Driscoll et al. note that one of the most dangerous reasons for the sudden emergence of anti-abortion

<sup>1</sup> Discussing the various periodicals, artifacts, and authors of the late 19th and early 20th century pertaining to this issue is outside the scope of this paper. Several other works support this analysis, that 1960s and 70s feminist activists framed abortion as a fundamental human right. See Kaplan 1995, Edmiston 10, Prager 135-143.

laws is the “idea that sex for pleasure is bad, that pregnancy is a punishment for pleasure, and that fear of pregnancy will reinforce “degenerating” modern morals” (Driscoll et al., 1971). This analysis acknowledges the value system forming in the American socio-political sphere surrounding women and their sexuality, during what I will refer to as the “Comstock Era,” which I define as the rhetorical and behavioral social norms that directly preceded and accompanied the codifying of the Comstock Act in 1873. The Comstock Act specified numerous synonyms and likenesses to “obscenity,” including the terms “lewd,” “lascivious,” “indecent,” “filthy,” “vile,” and “immoral.” (18 USC. §1461-1462). I argue that despite the Act being overturned in 1965, the ghost of Comstock still pervades discourse surrounding reproductive justice, and acts as a backdrop to President Reagan’s speech on abortion almost two decades later.

### An Appeal to Hearts and Minds: Pathos and Logos in Reagan’s “Abortion and the Conscience of the Nation”

Written by a sitting president at the time, Ronald Reagan’s “Abortion and the Conscience of the Nation” was published on the 10-year anniversary of the *Roe* Court decision. Beyond the realms of the Constitution, this book emulates the value system which birthed his 1980s presidential campaign slogan “Let’s Make America Great Again.” A Neo-Aristotelian criticism of this book reveals three main appeals to pathos which work implicitly to define “American Values” as intrinsic in *all* members of society— while simultaneously alienating women, historically marginalized minorities, and members of the working class. First, Reagan utilizes repeated reference to pregnancy as the existence of “unborn children”; second, the comparison of *Roe v. Wade* to the detrimental decision of *Dred Scott* to play on American guilt; and third, an emphasis on Reagan’s own definition of the value of human life. I argue that these three fundamental features of his book translate directly into the framework of Justice Alito’s draft decision to overturn *Roe v. Wade*.

1. *The Unborn*. —Reagan begins the essay by discussing the consequences of the judicial decision that codified *Roe*, which resulted in “more than 15 million unborn children [who] have had their lives snuffed out by legalized abortion” (Reagan, 1984). The reference to the abortion process as the “snuffing out of lives” of unborn “children” immediately posits the conversation as a moral one, as opposed to a scientific or political one. Children necessarily signals life, a human being, and “snuffing” signals the violence of the abortion process. Reagan notes that this loss is “over ten times the number of Americans lost in all our nation’s wars” (Reagan, 1984), denoting the rising and perceived communist threat of the time. Linking abortion to loss of life and the loss of soldiers serves as an emotional appeal to the American public, whose patriotic and American identities should feel threatened by looming death.

In quoting Mother Teresa and Margaret Heckler, Head of Health and Human Services during his administration, Reagan emphasizes the grief “over the loss of life” brought on by *Roe*, where both prominent women agreed that abortion is “the greatest moral crisis facing our country...” (Reagan, 1984). Stephen Toulmin’s “The Uses of Argument” describes this argument style as a “warrant,” an appeal made implicitly, which strays from rational assessment. By quoting women, and specifically nationally recognized and esteemed women, Reagan im-

PLICITLY argues that it is not just men or his administration protecting the unborn— it is women, *mothers*, who oppose any notion of freedom of choice. By invoking women’s agreement, and graphically describing Baby Doe’s abortion as “a live human being— one lying helpless before the eyes of the doctors and the eyes of the nation,” (Reagan, 1984), Reagan argues that women’s support of his values necessarily makes his opinion fact. He builds on the “American Value” schema, that family, the protection of “life”, and men’s protection of women, are intrinsically American behaviors, by signaling a common understanding of value among men and women alike.

2. *Comparing Roe v. Wade and Dred Scott*. — Reagan notes that the *Roe* decision is not the first mistake and divisive decision made by the Supreme Court, and directly addresses the *Dred Scott* decision as “den[ying] the value of certain human lives” (Reagan, 1984). Noting that only a minority of the country deplored the decision, Reagan argues that the decision was finally recognized for what it was because the minority opinion “appeal[ed] to the hearts and minds of their countrymen, to the truth of human dignity under God” (Reagan, 1984). Building on the foundation that abortion is the termination of an existing life, Reagan virtue-signals to the African American community, that they, too, are a part of this battle— that not so long ago, a Supreme Court decision was made which challenged the value of their own lives. This association also plays on a new American guilt regarding its history of slavery, and the legal devaluation of an entire people. Reagan weaponizes this guilt in order to make an emotional appeal to another audience, one which should, under the “American Value” system, recognize a mistake when one is made. Furthermore, the positioning of the topic of abortion and racism couples life with life, making unavoidable the argument that abortion is necessarily the termination of an “unborn child”.

3. *Defining the Value of Human Life*— Reagan argues that the topic of abortion is a matter of discussing two lives— “why else do we call a pregnant woman a mother?” (Reagan, 1984). Toulmin analyzes the logical process of a conclusion being supported by proper, logical premises. There is a foundation of logical reasoning which allows one to deduce a conclusion based on the validity of the premises presented, where in order to “present a particular set of data as the basis for some specified... the question is now one about the nature and justification of this step” (Toulmin, 2022). The argument presented here is that P1: everyone calls pregnant women mothers, P2: all pregnant women want to be called mothers, C: we call pregnant women mothers because two lives are involved. There is a fundamental flaw in this type of reasoning, where the conclusion that two lives are at play does not follow the premises presented. The purpose of this logical framework is to “give life the benefit of the doubt” (Reagan, 1984), and to promote in the audience a sense of logic behind the moral appeal of his es-say.

Reagan further notes that the true abortion debate question should not be “when human life begins, but *what is the value of human life?*” (Reagan, 1984, author’s italics). Reagan argues that this question must address whether or not the “tiny human life” has the same right to be protected by the law that all American citizens have. By not providing an explicit answer, I argue Reagan is relying on the foundation he has built for the definition of “American Values” to provide the answer. In the summarizing notes of the essay, Reagan notes that “we live at a time when some persons do not value all human life” (Reagan, 1984, author’s italics). This is the culmina-

tion of the implicit ideology his essay promotes: those who fall within the American Value system value human life, would have disagreed with the Dred Scott decision, understand the dangers posed to unborn children; and those who support abortion defy “the long held Western ethic of intrinsic and equal value for every human life...” (Reagan, 1984)— the very same long held Western ethic of equal value which condoned slavery, but recognized its mistakes.

### Overturing *Roe v. Wade*

Driscoll et al. wrote in 1970 that the pre-*Roe* political landscape was home to “a schizophrenic system that separate[d] our minds from our bodies and [told] us we shouldn’t have [the right to control our bodies]” (Driscoll et al., 1971), at a time when abortion was catalogued with the terms “control,” “blame,” and “unborn life”. In 1973, the Supreme Court held that the right to abortion was rooted in the legal logic of constitutional privacy (410 U.S. 113 1973), and in turn legalized abortion in all of the United States<sup>2</sup>. As a direct result of *Roe*, 1990s feminists approached a new framework of “reproductive justice,” which focused on reproductive health for underserved communities; reproductive rights and increased access to abortion and contraceptives; and reproductive justice, which acknowledges the systemic inequalities which impact women’s reproductive options (Rebouché, 2016). The new reproductive justice framework, which has developed into the 21<sup>st</sup> century, is now being called into question after nearly 50 years, as the Supreme Court voted to strike down *Roe v. Wade*<sup>3</sup> in an initial draft written by Justice Samuel Alito in 2022, which also repudiates the 1992 *Planned Parenthood v. Casey* decision. I argue that Justice Alito’s logical and emotional reasoning in *Dobbs v. Jackson Women’s Health Organization* is rooted in the decades held notion of “American Values,” despite the doctrine of stare decisis<sup>4</sup>.

Justice Alito’s 98-page draft begins by stating that “abortion presents a profound moral issue on which Americans hold sharply conflicting views” (Alito, 2022), and briefly presents the differing opinions held by the American public on the matter of abortion. By launching his opinion through the association of abortion and morality, and presenting this connection as fact, Justice Alito follows what Toulmin’s argument model describes as an “implicit claim,” (Toulmin 2002), which is meant to connect between data and conclusion; however, Alito’s claim does not connect to any fact, and forgoes any other “issue” that abortion could reside on. Justice Alito’s immediate assertion that abortion is a moral issue for all Americans, as opposed to a legal, political, or economic one, lays the groundwork for his legal argument, and I argue that this framework is rooted in American ideals which promote “family values,” female subordination, and a blurred understanding of the connection of science and law.

Justice Alito further claims that at the time that *Roe* was decided, 30 states still had abortion bans at all stages of pregnancy, and thus the law “imposed the same highly restrictive regime on the entire Nation... spark [ing] a national controversy that has embittered our political culture for a half-century” (Alito, 2022). On whom did the law impose a restrictive regime? On the states? On individuals? On men? By disregarding the crucial premise to this conclusion, Justice Alito states as fact that *Roe* was legally or “morally” “highly restrictive,” and

blames the national controversy surrounding abortion over that restrictive quality, to whom he does not attribute a direct source. Furthermore, the term “embittered” signals a resentful nature to the controversy surrounding abortion, and pits pro-abortion and anti-abortion Americans into a further partisan divide. This “embitterment” and the reference to the moral “national controversy” emulate Reagan’s assertion that abortion is a “continuing prod to the conscience of the nation” (Reagan, 1984). The likeness in terminology used is almost uncanny and reveals the recurrence of the age-old argument of a woman’s need for protection, the dangers of her liberty, and a plea for a return to the times when morality was necessarily defined in the American value system as a silenced woman.

Justice Alito makes the claim that despite popular opinion, the right to an abortion negates the standards of “ordered liberty,”— that as a whole, the country’s condoning of abortions does not abide by the modern conscience of the American people, or by the American tradition— the very same tradition and conscience which condoned slavery, upheld the Comstock laws until 1965, and did not acknowledge same-sex marriage until the last decade. Justice Alito wrote that “ordered liberty sets limits and defines the boundary between competing interests” (Alito, 2022), and the interests at play here are a women’s “want” to have an abortion, and the interests of what [*Roe* and *Casey*] termed “potential life.” I argue that this is not the ordered liberty at work here. The contention is not between women and their pregnancies— it is between women and the law, and women and society, as it has been since before women were allowed to make legal decisions outside of the institution of marriage.

In a deeper examination of “ordered liberty,” Justice Alito notes that “while individuals are certainly free to think and to say what they wish about ‘existence,’ ‘meaning,’ the ‘universe,’ and ‘the mystery of human life,’ they are not always free to act in accordance with those thoughts. License to act on the basis of such beliefs may correspond to one of the many understandings of ‘liberty,’ but it is certainly not ‘ordered liberty.’” (Alito, 2022). The legal definition of ordered liberty is meant to convey a fundamental protection of the traditions and conscience of the American people.

This “American conscience,” Justice Alito argues, has an “unbroken tradition of prohibiting abortion on pain of criminal punishment persist[ing] from the earliest days of the common law until 1973” (Alito, 2022). Ironically, Justice Alito fails to understand that it is this very “unbroken tradition” which has criminalized and traumatized women for centuries, as did questionable

2 The Court’s narrow framing of the *Roe* decision “rested on a series of assumptions... [including an] assumed degree of affluence and access— women choosing an abortion ostensibly had access to medical care...” (Murray 2049). This is one of the major flaws of *Roe*, and of the neo-liberal feminist approach to abortion law. A deeper analysis of the assumptions made by the *Roe* decision are outside of the scope of this paper. See Vinson and Daniel 2020.

3 I would like to acknowledge that *Roe* was never a perfect doctrine, and neither is the neo-liberal feminist approach to abortion, which is exclusionary in nature, and creates a feminism which is only palatable and welcoming to white women and reifies class privilege. But it is crucial to note that I also reject all claims associating *Roe* with eugenic racism (see Murray 2032).

4 Latin for “let the decision stand”— the legal doctrine which maintains that the Court cannot overturn precedence or overrule past decisions based on belief alone. See *Burnet v. Colorado Oil & Gas Co.*, 285 U.S. 393, 406 (1932) (Brandeis, J., dissenting).

common law, for that matter. This tradition confined women under a terminology of “lewd,” “lascivious,” “indecent,” “filthy,” “vile,” and “immoral” (18 USC §1461-1462). The valuation of the American “unbroken tradition” of criminalizing punishment almost mimics Reagan’s campaign slogan “Let’s Make American Great Again.” Alito continuously refers to licensed physicians as “abortionists,” uses outdated terminology like the “abortion of a quick child” (Alito, 2022) or the term “quickening,” and goes as far as to cite 13<sup>th</sup> century common law, which referred to a woman who obtained an abortion as a “murderess” (Alito, 2022).

Furthermore, Justice Alito virtue-signals, in a similar manner to Reagan in his utilization of female opinions to rally public opinion and women’s approval, in his statement that “[the Court’s] decision returns the issue of abortion to those legislative bodies and it allows women on both sides of the abortion issue to seek to affect the legislative process by influencing public opinion, lobbying legislators, voting, and running for office” (Alito, 2022). As Reagan mistakenly did in the 1980s, Justice Alito places all of his faith in a “color-blind”, “class-blind”, “gender-blind” legislative process, which ignores the privilege of affluent white women and their ability to obtain an abortion despite their state’s particular laws. This statement also blatantly ignores the wide-open door after the overturning of *Roe* to criminalize women who obtain abortions outside of their home state, crying “interstate commerce,” as was ironically argued during the legal institution of slavery in the United States<sup>5</sup> (making all the more ironic Reagan’s comparison of *Dred Scott* and *Roe*).

### Concluding Notes: The American Value System and its Consequences

The American Value system discussed in this paper referred to the idealization of the private, domestic sphere, and the embodiment of an exclusionary society which, slowly acknowledging the immorality of disenfranchisement, maintained a colorblind, gendered approach to socioeconomic and politics. The very same values which Reagan virtue-signaled in “Abortion and the Conscience of a Nation” are still at play today: anti-progression, strict definitions of morality, a clinging to old ideologies surrounding obscenity and public women, and the ultimate empowerment of white, heteronormative men. This can be clearly seen through a Neo-Aristotelian approach to Reagan’s book, and an examination of the logos in Justice Alito’s decision in *Dobbs v. Jackson Women’s Health Organization*, and its similarities to Reagan’s ideologies. The implications of upholding such a value system are tremendous: overturning *Roe* and *Cassey* will open legal avenues to challenging the various, progressive laws currently protected by the 14<sup>th</sup> Amendment. Though Justice Alito claims that overturning *Roe* will put an end to a national controversy, it will necessarily do the opposite. By giving legal voice to socio-cultural, fossilized opinions on American values, Justice Alito and the Supreme Court are opening a door not only to the continued marginalization and danger of specifically poor and gender minority women, but to an upheaval of a social structure which has taken decades, if not centuries, to build. American values, as defined by both Reagan and Alito, work to suffocate the voices of the modern era, and to continue to define the female body not

through science or society, but through a lens of patriarchal control, the historical “need” for female protection, and a weaponization of federal law. The rhetoric surrounding the overturning of *Roe v. Wade* reveals not only legal and logically flawed reasoning, but the clinging to a value system which has continuously worked to define women as submissive and in need of guidance. There is a prominent message between the lines of Alito’s decision: the law cannot allow women to make a choice in the matter of her own body, insofar as the modern woman betrays the American sense of morality.

Analyzing the rhetoric surrounding monumental historical decisions highlights trends which have continued throughout history and provides us with an understanding of how language and the interpretation of values and culture coincide with social decisions. Further research is critical in tracing the similarities of oppressive rhetorical strategies throughout our history, and specifically in understanding how the “moral conversation” surrounding abortion is being structured.

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5 See Schwartz 953, 967.

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