

## THEMES OF INJUSTICE AND SEXISM IN THE ABORTION DEBATE: A CRITIQUE OF THE JUSTICE ARGUMENT

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*Abstract:* The prolife<sup>1</sup> position has so far failed to usurp the collective force of the "justice argument" for Women's rights (including abortion choice). With dozens of new restrictions passed at the state level just last year, it would seem like they are still winning. How can this be? One reason might be the tactic of using the same argument against abortion choice advocates. In particular, they can rebrand the "Justice Argument" in terms of "female" rights, and include fetuses on par with women. Or, they can identify abortion as an injustice against fetuses, and leverage fetal rights against women's rights. Moreover, this retooled "Justice Argument" has been known to appeal to traditional models of femininity (as if the advance of women generally, must benefit every woman specifically) and to sex-selective abortion. I suggest that it's too murky and distracting for them to phrase the justice argument in terms of (positively) reinforcing traditional roles of women. However, I admit that the prolife camp may be right regarding sex selective abortion, and some level of "fetal rights," but tactful abortion-choice advocates can concede those points with no serious threat to their core commitment to justice and sexual equality.

By all measures, the prolifers are winning.<sup>2</sup>

Week by week, states are introducing pro-life friendly legislation adding countless restrictions to women's reproductive health. In the last four years, Guttmacher institute reports, [231](#) abortion-restricting laws were passed at the state level, an average of [56](#) per year over that period. Compare this spike to the average of (about) [20](#) per year over the prior two decades.<sup>3</sup> Prochoice sentiment is spoiling, and the spotlight of bad press and political trends aren't helping. The Christian Coalition and the Conservative Resurgence in the 1990's swung a huge religious voting block from moderately prochoice to radically prolife. More recently Fox News (1996) and the Tea Party (2007) joined in, tugging at disenchanted moderates and voiceless conservatives till they become passionate outspoken prolife conservatives.

And just this summer, [Center for Medical Progress](#) began releasing undercover videos about Planned Parenthood and its affiliates.<sup>4</sup> Media headlines broadcast the story with

allegations of barbarism, torture, illegal manipulation of abortion procedures and illegal profiteering. A flaming scandal was born. This flame has risen even to congress, with live proposals to federally defund Planned Parenthood. The House already approved the bill, pending investigation. There have been no formal criminal charges, but the court of public opinion is more than willing to convict them.

Of course, Planned Parenthood has long been a regular target by pro-lifers.

Planned Parenthood Exposed, a project of LiveAction and Lila Rose, alleges that Planned Parenthood has covered up sexual abuse, sex trafficking, performed illegal late term abortions, and encouraged young teens to experiment in BDSM.<sup>5</sup> Planned Parenthood has even taught “sex positive” classes to college students certifying its graduates as licensed “sexperts.”<sup>6</sup> And by one representative’s testimony, Planned Parenthood would even support negligent infanticide in the event of a botched abortion, provided the mother consents.

In spite of all this negative press, Planned Parenthood remains the single largest abortion provider in the country, has enjoyed resounding support from their friends and affiliates, and is probably not going anywhere. Planned Parenthood is deeply rooted and wields their influence powerfully. Nevertheless, the prochoice “brand” has taken some major hits. Planned Parenthood, has long based their case on justice for women (i.e., recognizing basic rights of life, liberty, privacy and property). But in light of recent trends, their crowning argument—the justice argument—is just not enough

The prochoice position is a lot more than just Planned Parenthood. The political left is an even bigger player. The Democratic party, along with progressives, socialists, and various shades of liberals have overwhelmingly favored a prochoice platform. Prochoice positioning is not universal among liberals, but it’s still such a powerful majority that the 2012 election year was

able to showcase the slogan, “Stop the Republican War on Women.” Abortion choice is a pillar in that platform. And the 2016 candidates Hillary Clinton and Bernie Sanders have not departed from that script, see for example Sander’s 2012 piece for Huffington Post, “United Against the War on Women.” [Hillary Clinton](#) has deep financial ties to Planned Parenthood, Stem Express, and EMILY’s list. She is essentially vying to be the figurehead of “women’s interests” in this election. Of course, our current president is perhaps the most prochoice president America has ever had—supporting even the controversial Partial Birth Abortion procedure.

But with the glaring exception of Obama’s victory, the 2012 and the 2014 midterm elections amounted to a Republican shift, winning back both the house and senate. In 2016, the “War on Women” rhetoric does not look as promising as it once did. The conservative swing corresponds—tellingly—with the spike in prolife legislation mentioned earlier.

### What Gives?

How is the prolife position winning?

We cannot attribute this prochoice downturn to the scandalous videos about fetal tissue sales. That could explain only the most recent dissenters.<sup>7</sup> Prolife groups have been surging before that exposé, for example, Live Action, Forty Days for Life, Online For Life, and the more extreme group Abolish Human Abortion were founded in 2007, 2007, 2009, and 2012 respectively. These can be seen as part of a conservative resurgence which can be traced at least as far back as Fox News founded nineteen years ago in 1996.

We can trace the groundswell of antichoice sentiment even earlier, however. Since 1976 sonogram technology has been standard technology in OBGYN clinics. NARAL co-founder Bernard Nathanson attributes his prolife conversion (in majority part) to the introduction of ultrasound technology.<sup>8</sup> When abortion was a “blind” procedure he conducted around 60,000

abortions but within a few years of the standardized sonogram usage, he walked away from the practice to become one of the most celebrated prolife advocates in America. Nathanson's key contribution to that cause was a video featuring sonogram footage known as the "Silent Scream" (January 22, 1984). Nathanson opines that countless others in medical practice took the same off ramp he did, because of ultrasound technology.<sup>9</sup> Indeed, Abby Johnson, former director of the Houston Planned Parenthood clinic, and another celebrated prolife zealot, details how her assistance in an ultrasound abortion predicated her departure.<sup>10</sup>

We cannot attribute the prochoice downturn to the presence of prolife groups generally because long-standing anti-abortion groups have been trudging away for decades including the National Right to Life League (1968) and March for Life (1974). But when those groups first started, prochoice sentiment was still rising. Perhaps something has changed in the rhetoric or strategy, but the prolife movement and most of its core arguments and interests have been around for decades. Bear in mind, the heart of the masses has long sympathized with struggling young mothers, rape victims, and impoverished families. But for decades now their increasing sympathy for fetal babies has started to win out.

The prolife side has not been "winning" because of some seeping indifference towards the plight of mothers. Generally, pro lifers advocate for conservative family values understanding that framework of traditional marriage to provide the safest and most empowering place for women. This prolife view does not necessarily neglect prochoice values so much as it offers an alternative method of addressing them. Both value justice, compassion, and women's equality, for example, but pro lifers tend to think that conservative sexual practice and traditional marriage and family empower greater justice, compassion and equality for women than does abortion-choice policy.

Prochoicers would be well advised not to demonize the prolife position, generally, as if it is intrinsically or broadly motivated by misogyny. There are bound to be some who are, but prochoicers are not always saints themselves. After all, Bill Clinton has been a major voice for prochoice causes but it's hard to shake his accusations of misogyny and sexism.<sup>11</sup>

Besides those reasons, neither can we attribute the prochoice downturn to ignorance about women, women's issues, or unfamiliarity with prochoice arguments and evidence. Planned Parenthood, NARAL (National Abortion and Reproductive Action League), and the Feminist movement has held the limelight for many years now, and much of the Democratic Party has helped reassure that the prochoice message circulate widely. There's nary an ethics class which fails to cover abortion including the right of privacy, women's rights, sexism, and "the Violinist Argument." People hear the arguments, and know a lot of the evidences, but even then they are less and less persuaded.

Have abortion-rights advocates oversold the benefits of abortion? Maybe. Have prolife zealots used dishonest means and backroom dealings to paint abortion-choice as "baby killing," "pro-abortion," and "anti-family"? Likely. Have shrill feminists and marxists overloaded abortion-choice with political baggage? Probably. Have gut-wrenching pictures of mutilated babies trumped all reason and logic? That's a strong possibility.

There is likely some truth in all of these. But I want to focus on one aspect of the prochoice arsenal that has worked quite well for abortion-choice in the past, but, lately, seems to have faltered.

### **The Justice Argument**

The justice argument, defined here, refers to the body of arguments which seek to justify liberal abortion access on the grounds that it is or it extends some measure of justice to women.

This argument, at base, is really a collection of arguments revolving around justice issues, and for the prochoice camp, the person of interest has been women, and pregnant women especially.

The justice argument tends to look something like this.

- Premise 1: Women have suffered/are suffering/will suffer great injustice which is at least partly correctable.
- Premise 2: Liberal access to abortion lends some correction to that injustice without committing some greater harm (such as injustice) to them, or others.
- Conclusion: Therefore liberal abortion access is ethically justifiable.

With women in view, the modes of injustice could be any sort of misogyny, glass ceilings, sexism, or discriminatory policies. History has given us plenty of examples to choose from including laws permitting marital rape, restrictions on property ownership, bans on voting, hiring discrimination, religious constraints, patriarchal family courts, and the more general problem of, what Betty Friedan terms, “the feminine mystique.” This concept is like a haunting apparition of femininity that demands women find their full satisfaction in sacrificing themselves to narrow roles of wife and mother.<sup>12</sup> It’s not hard to find an evidential panoply proving that women have been treated unjustly across human history and today.

The justice argument is not saying however, that abortion is a “good” thing. As David Boonin points out, the prochoice effort is to show that abortion is ethically “permissible.”<sup>13</sup> With the justice argument, the light shines on real and prospective injustice against women. Abortion is not good, *per se*, but abortion-choice is seen as female empowerment and that’s good. Prochoice is not “pro-abortion” as if abortion were a good thing to be celebrated and widely encouraged. Instead, abortion is typically thought of as a regrettable necessity to prevent worse personal or social harms. Commonly named are rape cases, incest, and child abuse. In those cases, the woman has suffered traumatizing injustice. Abortion is an effort to ease further suffering. Moreover, there are medically dangerous pregnancies where the fetus is not situated

properly, has an abnormality or deformity, or the mother has a condition with which the pregnancy interferes—such as a cancer, and chemotherapy treatments cannot begin until after the pregnancy. In these cases, the mother’s health is victimized, so to speak, in the circumstances of her pregnancy. Abortion offers a means to reassure her “right of life,” whereas her particular pregnancy encroaches dangerously on that right.

### **Problems with the Justice Argument**

Let us assume for the moment that the justice argument is valid, or can be rephrased to be logically valid. My concern today is more about the theme of “justice” than about the formal argument surrounding it. Is the notion of “justice” overall helpful or harmful to abortion-choice policy? I will argue that “justice” can be used to great effect for *both* prochoice and prolife positioning. This makes justice disputed ground, claimed by both prolife and prochoice camps. As such, the prochoice position, in the eyes of the public, needs to position itself carefully and call upon the wider battery of arguments and evidence if it is going to retain intellectual respectability. At minimum, abortion choice advocates need to demonstrate that their appeals to justice are somehow more legitimate than their opponents. More than that, the abortion choice position needs a wider base of arguments and evidence to justify the concept of “abortion choice” broadly. Some of these “other” arguments may be Judith Jarvis Thompson’s “Violinist” argument, or James Rachel’s “bathtub” argument, but even then, we must be leery of allowing the debate to escalate into outer levels of abstraction. At the “ground level” where the persuasive power of these arguments tug at our heartstrings, highly abstract arguments come off as evasive or even heartless. We need intellectually rigorous argumentation but we also need heart-felt and emotionally compelling evidence that reminds us of why truth matters.

## Critique 1: Times Are Changing

In the past, the justice argument offered the best of both worlds, fusing rigorous ethical argumentation with heart-felt persuasive evidence. For example, the Roe v. Wade decision of 1973 reflected a historically informed, timely, yet impassioned sense of justice for women. It was a deeply feminist ruling. Likewise, one can find in the great figureheads of modern feminism impassioned cries for social justice, cries that echoed just as well in academic halls as they do in the streets and homes. The second wave feminists of the 1960's clung to the notion of "reproductive rights" pushing for greater liberty, equality and sorority while the changing ways of the nation gave us the birth control pill, the free love sixties, and later the swinging seventies.

All of these spelled a new hope of sexual liberation. This hope was promising and believable in those days. The justice argument made sense as women, broadly, were able to conceive of radically reoriented social models such as communal living, casual sex, village parenting, and pacifism. A new hope was born, a hope for liberal sexual expression without coercive conception. If men can approach sex that way, why can't women? Most anything constraining free love could be seen as "injustice." Of course, the abortion choice position is far more than these—but it didn't *need to be* more than these, at least not by much, until the changing times pressed advocates to find stronger reasons besides "Make love not war" and "Love the one you're with." The feminist arguments were swelling and liberalism was rising. Conservative constraints looked like obstructive walls, not protective barriers.

While the adventurous spirit of the sixties and seventies led to many great things, it is hard to ignore how many objective measures for the stability and security of family have worsened since then including out-of-wedlock birthrates, divorce rates, and domestic abuse rates.<sup>14</sup> Many women are not interested in traditional marriage or maternity. But a great many

women would be delighted to have an old-fashioned family, with one income, between traditionally married parents raising their 2.5 kids together. To many moderns, 60's idealism, looks foolish and irresponsible. It's difficult if not impossible to prove any strong causal connection between abortion choice policy and the statistical decline in traditional family metrics. But people have garnered many life lessons from their own Baby Boom parents who are likely to have gone through multiple sexual partners, had at least one abortion, and endured a divorce. These experiences and opportunities at free love, abortion, experimentation, and separation may, for the parent, feel like justice but to the child they feel like injustice. The justice argument can come off as shallow and ineffectual if it trades one injustice for another. Women are liberated in their sexual and reproductive choices, but their families and children are not necessarily any freer, and might be more constrained for it.

The times have changed. Free love gave way to venereal diseases. No fault divorce skyrocketed the divorce rate. These correlated with distant and deadbeat dads, cohabitation, and various factors which may have been causal factors escalating child abuse. And, of course, abortion choice policy left the door open for 58,000,000 abortions since Roe v. Wade.<sup>15</sup> A conscientious observer can even grant that abortion-choice was the necessary policy for the time, given what people knew back then, but a lot has changed since then and we may have seen old injustices give way to new injustices that are just as wrong. Women are not the only victims of injustice. That fact must be kept in mind if the abortion choice policy is going to assert the justice argument effectively in the 21<sup>st</sup> century.

### **Critique 2: Prochoice “Justice” Risks Implying Women aren’t Equal to Men.**

The second problem with the justice argument is that while abortion offers some measure of equality it does this by implying inequality. If women need abortion access for the sake of

justice (as equals to men) under the law, then their natural state is inequality. Put another way, if women need technological help to become equals then they were not naturally equal in the first place. Pregnancy is a natural process restricted to women only. And abortion is an artificial or technological process also restricted to women. If abortion is needed for equality, then, by implication, child-bearing is a liability that actually or potentially demeans women, making them less than equal with men.

Obviously, women and men are physiologically and psychologically different and those differences spell different abilities, tendencies, strengths and weakness. These differences could be thought of as equal, like irrelevancies or tradeoffs. Or, in a prejudicial fashion, they could be thought of as unequal, where the differences distinguish one as better than the other. The conventional wisdom in the United States is that women and men are naturally equal such that any differences are either irrelevant or they are a fair tradeoff. Inequality may abide, but at another level such as communities, churches, neighborhoods, families, or otherwise institutional levels. We can distinguish these two broad senses, for our purposes, as “natural equality” and “institutional equality.”

The abortion choice advocate can accept women’s natural equality broadly while attributing injustice to institutional inequalities. But is this view internally consistent enough to resolve the “natural inequality” problem? Perhaps, but not likely. To maintain that position, consistently, one would have to allow that if we as a society were to draw close enough to equality then a liberal abortion policy would no longer be needed as a corrective and should be abolished.<sup>16</sup> One would have to surrender liberal access to abortion in exchange for a highly restricted abortion policy, or outright abolition. In that way, the prochoicer and prolifer would share the same end-goal, of abolishing abortion. My suspicion is that most every prochoicer

would find that metric mistaken. I'm not convinced that many prochoice advocates would grant that abolishing abortion is even a theoretical end-goal, much less a practical end goal.

Moreover, prolifers can counter that society has made great strides to liberate women from undue constraints and social discrimination, achieving a great deal of equality sufficient to dismiss a lot of the prochoice rhetoric as "overblown," "shrill," and "alarmist." From a prolife perspective, society has achieved enough equality already, albeit imperfect and partial, such that abortion is largely or entirely gratuitous. Prolifers could grant a compromised position, for example, where only rape victims and mortally dangerous pregnancies can qualify for legal abortion. That compromise position would address the most clear inequalities that remain without instituting an abortion choice policy that, in other sectors, is superfluous.

The point is, prochoicers have an option that could retain a sense of natural equality while admitting real inequality, but so far, the prochoice position has declined that option. That option admits too much conceptually, and smells like a prolife ploy. Having declined the alternative, the prochoice advocate is left holding a version of the justice argument which teaches an implicit natural inequality.

This point can be restated in a positive light saying that to the extent that we emphasize abortion-choice as a necessary step towards women's equality we must also demonstrate that the inequalities it combats are not from nature, or innate to femininity, but come from institutions (including, churches, government, families, or anyone besides one's self). Otherwise, we have outlined a model of abortion choice, within the justice argument, which implies innate inequality for all womankind while militating against nature itself.

### **Critique 3: The Justice Argument hinges on questionable science**

There is little doubt that the prolife camp intentionally emphasizes the fetus, calling it “baby,” “child,” “preborn,” “unborn,” “person,” and “human being.” They seek to illicit sympathy for the fetus over and above the interests of the pregnant mother. This tactic elicits sympathy and affection since “baby” sounds cute, helpless, and in need of protection. The prochoice position has historically sought to undermine that evidence, calling the fetus only a “potential human.” Whatever “rights” or “interests” the fetus may have are secondary or illusory compared to the mother’s because she is an actual human being while the fetus is, at best, a “potential human.”

This logic makes sense, but is scientifically antiquated. In 1973, Justice Blackmun writing the majority opinion in the Roe v Wade ruling, describes the fetus as “potential human life,” “potential life,” or having “the potentiality of human life,” going so far as to state explicitly that “the fetus, at most, represents only the potentiality of life.”<sup>17</sup> His argument hinges on viability.<sup>18</sup> Viability is valid for state interests such as child support laws, child protective services and so on, but his terminology is unfortunate since the child-in-utero has been a living human since conception, through the embryo and fetal stages, and remains alive as long as nature and circumstance allow. There is no scientific debate, since at least the 1970’s, about whether the conceptus is *actual* human life.<sup>19</sup>

Blackmun’s description of the unborn child as only “potential” life is unfortunate for prochoicer and prolifer alike since. Prolifers can mourn how the mistake instrumentally empowered liberal abortion policy. And prochoicers can bemoan how the mistake installs bad science at the epicenter of abortion choice policy.

What does all this mean for the justice argument? The justice argument, to the extent that it leans on the ruling of Roe v. Wade, or it grants the terms and ideas of that ruling, is

scientifically ill-informed. That fact is a liability in itself. But the more foreboding fact is that the prochoice position sacrifices exclusive rights to the justice argument. Both sides can justifiably argue their view on the basis of human rights: prochoicers emphasizing the rights of the mother and prolifers emphasizing the rights of the child. If both are human, then it would seem that both can appeal to *human* rights.

#### **Critique 4: Some prochoice factions have tainted the justice argument.**

Modern feminism (i.e., 2<sup>nd</sup> and 3<sup>rd</sup> wave feminism through today) is a telling example of how prochoice advocates can betray their own cause, overloading the justice argument with unnecessary political and social baggage.

Many modern feminists, in large part, have become a marginal or otherwise ineffectual voice in society. Women on the right and on the left often consider “feminist” a dirty word, a disqualifier in polite society for its connotative baggage. It sounds, in the public ear, like unshaved lesbian communist grievance collectors. Of course such a concept is a gross caricature, but it is influential nonetheless. In this way, feminism is often identified with only its most offensive and radical members. Women’s rights matter, and the idea of feminism—advancing women’s interests and campaigning for equality—is just as important as ever. But secondary allegiances to Marxism, lesbianism, secularism, and anti-family outlooks have left the feminist brand with limited purchase power in the market of ideas.

In short, feminism is so burdened with negative connotations that even implicit feminists do not want to be called feminist. Women generally want equality, but do not necessarily want to radically revise femininity, family, or faith just to be treated with respect. All of the above can acknowledge real injustices against women, but radically left-wing brands of feminism risk commandeering actual women’s interests and redirecting them toward political platforms where

real women's interests divide. I have had self-proclaimed feminists and abortion-rights activist argue that there is literally no such thing as a conservative feminist. This kind of dogmatism does untold damage to feminism proper, to the abortion-choice position generally, and to the justice argument specifically.

For prochoicers to retain the strongest form of the justice argument they would do well to dissociate from, or at least not pursue, the more radical prochoice factions who have strayed from the front line battle for women's rights and have wandered off into tangential campaigns for Marxism, atheism, public nudity, or prostitution.

Bear in mind, abortion choice was not always a feminist platform. First wave feminists detested the practice at the turn from the 19<sup>th</sup> into the 20<sup>th</sup> century. They saw abortion as a way for men to exploit women for sex; to use and abuse them with no romantic or family commitments. In the 1960's second wave feminism ensued in large part because of the birth control pill. Thus began the free love movement, a broadening view of sexuality and gender, and a lot of casual sex. Abortion came to be seen as an inevitable outworking of women's liberation, as more and more woman laid claim to sexual intercourse in non-traditional family settings. Women came to see themselves without fatalistic glasses, able to make their own reproductive choices up to and including abortion.

Of course, traditional sexual and family relations never went away. Many women still wanted one husband for a lifetime, with kids, and a white picket fence. These women sometimes valued abortion as an option in the event of an unwanted pregnancy or rape. But many of them still wanted to see women advance without ever "buying into" the free love movement, or claiming any of the feminist baggage. Feminism, therefore, needs to be treated carefully so that it's broader sense of women's equality is not sharpened into a narrow divisive radicalism.

### Critique 5: The Prolife Position Has Its Own Justice Argument

As alluded to earlier, there are more aspects of justice involved in the abortion debate than just the woman's immediate interest. These aspects are of pivotal importance to the prolife camp. Prochoicers may *believe* or *assert* that the mother's interest is primary, but on pain of rationality they need to demonstrate rationally that claim is true (or probably true) or else they risk losing intellectual integrity while trading one injustice for another.

How might the prolife justice argument work? Prolifers can grant the wretched reality of injustice against women yet counter that abortion is an injustice against children, and even an injustice against womankind broadly (i.e., sex selective abortion, and at least half of aborted fetuses were female).

As we stated earlier, injustice is not unique to women. To be sure, there have been many injustices foisted on women over the ages. It would be too involved here to attempt to identify whether that array of injustices are overwhelmingly caused by men specifically, by nature, by God, country, religion, or culture. But, there are many injustices in the world, and women, as such, are not the only victims. Child abuse, infanticide, and various crimes against children are injustice too. Children can suffer injustice too. Prolifers appeal heavily to the humanity, dignity, and alleged rights of the child-in-utero.

Whatever other illicit appeals prolifers may make, they can rightly appeal to science to prove, contrary to Justice Blackmun's legal opinion, that the child-in-utero is an actual human being. On that basis the prolife can raise a legal doubt against the Roe v. Wade ruling since its decision against the personhood of the fetus was based on bad science.

Even without turning to the personhood debate, prolifers can double-down on human rights, asserting that the fetus is a human being and that is sufficient grounds for human rights. A

child-in-utero may not have the civil rights which can only be applied after birth, after 18 years of age, and so on. But if they are humans, then the prolife has some grounds for arguing that the fetal human have a degree of human rights.

In this way, the prolife may argue, children-in-utero are victimized by abortion. No child-in-utero has ever been guilty of a capital crime hence no child-in-utero ethically deserves the equivalent of capital punishment—i.e., willful prescribed killing. It may be legal to have an abortion, but many injustices have been legal before too. The injustice argument is not restricted to considerations of legality or illegality.

For the sake of argument, however, let us suppose that the plight of women is so unique that it does not admit comparison to the plight of children-in-utero. By this supposition, oppression against women is not considered better or worse than the plight of fetal humans. Their oppression/suffering/harm is just different.

Now comes the crux of the argument: Injustice is no cure for injustice.

Admitting that women and children-in-utero have endured injustice, it does not seem like a viable solution to extend to women the option to commit injustice against their own children-in-utero, namely, to kill their offspring. The plight of women can be horrible, and prolife advocates seriously harm their cause whenever they diminish or dismiss that fact. Women endure higher numbers of rape than men, lower pay in the workplace, and are exclusively burdened with child-bearing. Not to mention there are countless ways that society and culture can burden them with unreasonable expectations and restrictions too subtle to measure or prove. But granting all of that, the prolife can still introduce real doubt leaving us wondering if abortion is a viable option to help “equalize” things.

If injustice is no cure for injustice, then it appears that we need to find other solutions besides abortion if we are to achieve even an approximate equality for women. Stated formally, the argument is that:

Premise 1) Abortion is unjust towards children-in-utero  
 Premise 2) Injustice (against children-in-utero) is no cure for injustice (against women).  
 Conclusion) Therefore, the fact of injustice against women fails to justify abortion.

To sum up the prolife injustice argument, abortion is gross injustice. The victimization of women, however real and pronounced it may be, is no excuse to multiply injustice in the form of abortion. It does not vindicate women to complicate their injustice by complying with, participating in, or even advocating for further injustice.

## **Application**

Having looked over the justice argument, from both the prochoice and prolife perspectives, what should we do about it?

### **Application 1: Admit Complexity**

Much of the abortion debate, unfortunately, has been shrill shouting with flaming accusations and malignant misunderstanding. The effect has been that people retreat to simplistic slogans, or avoid discussion all together. Down the line, the same people may find the subject of abortion to be way more messy and difficult than they previously thought. If we present the abortion issue like it is cut and dry, simple and one-sided, then we virtually guarantee a future generation of disenchanted detractors. People may not want truth all the time, but they do want it eventually. Shallow sloganeering leaves the deep deep waters of women's rights effectively unstirred, unexplored. Moreover, oversimplification, as a tactic has the unintended side effect of making one's position look immature and indefensible at the deeper levels.

Furthermore, whenever prochoicers resort to shallow sloganeering and vent in shrill shouts and name-calling, prochoice advocates come off looking like bullies, shutting down conversations, or berating the opposition as if our duty to honor human rights does not include honoring prolife people. We should seek to be right, in the right way. Likewise, prolifers will not get very far if they call prochoicers “baby killers,” and “murderers,” or if they belittle the values and goals of their opponents. No one in this debate is eager to see dead babies or to abuse women or kill people. So let’s not call each other terrorists, murderers, wife-beaters, and so on.

Instead, we should approach the subject with some gravitas, admitting the complexities of the issue. Justice Blackmun, in 1973, could not have imagined how abortion policy would reverberate over the years into complicated technologies like embryonic stem cell research, in vitro fertilization, cloning, morning-after pills, and fetal tissue sales. Prochoice advocates may have to draw lines that would scandalize their prochoice forebears, because genetic tampering and cloning might have exposed a murky realm beyond any mother’s rightful bodily sovereignty.

In Alexander Sanger’s words,

[T]he world has changed and pro-choice arguments haven’t. . . [N]ew technologies make the role of men in reproduction even more uncertain if women can reproduce on their own. The danger that new reproductive technologies may facilitate bad choices has become a more acute moral question.<sup>20</sup>

And of course, each pregnant woman is an individual, with personal needs and interests, interlaced in relationships with friends, and family, colleagues and strangers. And her pregnancy presents a wide array of challenges that we, on the outside, should not treat lightly. Abortion is complicated in that way too. I am not retreating to relativism or apathy here, but just admitting that abortion is a messy issue, regardless of prochoice or prolife positioning.

## **Application 2: Do not dismiss the broader justice argument**

Women's rights matter; but many people are coming to affirm a level of rights for the child. One does not have to think of the fetus as a fully rights-bearing individual equal to adults to grant that it has some qualified level of rights relative to its unique position. Prolife sentiment among the masses seems to have grown with the introduction of sonograms and now 4D imaging. Our technology is too advanced and there is too much we know about the embryo to believe that the late term fetus is "just a clump of cells." Yet for many people, unless they think of the fetus as a "clump of cells" they will not give unqualified support to the prochoice position (i.e., the "radical" position). There seems to be some ethical duty on the mother's part, or the doctor's part, or society's part, to protect that fetus. And even if that felt sense of duty is cloudy, indistinct, or it lacks conviction, that is enough to make people question how far the justice argument can rightly extend. Prolifers need to take the mother's interest seriously. And prochoicers need to take the fetal human seriously.

### **Application 3: Inform your own position**

If we are going to sincerely hold prochoice or prolife positions, and since this issue is literally a matter of life and death, we all owe it to ourselves to get informed on the issue. That means for prolifers to understand the difference between idealistic ambitions and real world numbers, the effects on social policies, and a real world sense of human behavior. Even if abortion were terrible, the prolifer needs to make a realistic case showing that abortion, and any injustices it might entail, is worse than all the other injustices found in the alternatives. Many adamant prolifers are only prolife till they have an unplanned pregnancy. Perhaps their prolife views were not informed by real world challenges or crisis planning.

Meanwhile, prochoicers need to set aside some of the clumsy arguments that may have worked before sonograms but are misinformed now. Instead, prochoicers would do well to study

the pictures and videos circulating on the prolife side. This study is good for two things. First, you can pick out the fakes, and identify various alterations that undercut their evidential force. There are sure to be some like this, though probably not enough to reasonably ruin their entire collective force. But second, when you get informed on the issue, and visually study the products of abortion, that informs you of at least some of the implications of the prochoice position broadly. Perhaps, you may consider yourself a “radical” on the issue, but cannot stomach that position after further study. That kind of honest self-evaluation is important for both the prochoice and prolife camps. Many people hold a libertine view of abortion, but get weak in the knees when facing its implications. Prochoice advocates might not hold their convictions so firmly when standing opposite of a dismembered 24 week old fetus in a bed pan.

#### **Application 4: Distance yourself from Planned Parenthood**

One straightforward way to bring your prochoice position up to speed is to advocate for better options than Planned Parenthood. That is, reduce or remove your support for Planned Parenthood without denying the validity of some of their services. Other clinics or hospitals can provide those services, but Planned Parenthood needs to clean house and perhaps reorient the whole business before they can be a safe ethical investment for the future.

At a pragmatic level, this is one way to avoid getting rained on in their respective sh\*t storm. Planned Parenthood has invited great scorn from conservatives and moderates alike, and the effect is that women’s health is obscured behind allegations over fetal tissue sales. It could be the case that Planned Parenthood needs to sink, so that an array of better smarter organizations can disembark. You yourself do not have to absorb all the ire aimed at Planned Parenthood if your interest is women’s reproductive health and freedom.

At an ideological level, Planned Parenthood has historically taken the radical prochoice position, exalting the justice argument for women over all other issues. But that would mean the mother can have an abortion because it is a girl. A women's right just became an apparent wrong against another female. Or she can have an abortion because it is black. Abortion-choice just became racism. Moreover, prochoicers often agree with bans on late term abortion, or banning abortions after fetal pain, or abortion after fetal heartbeat. But these are all prolife compromises compared to the historic position of Planned Parenthood. Planned Parenthood affirms late term, partial birth, and even after-birth abortions (i.e., by neglect after botched abortions). In the past that position was winsome and compelling, but it is radically offensive to the majority of Americans today.

At a political level, Planned Parenthood has been mired in controversy. They are a well-known, powerful, political lobby. The organization has been unabashedly democrat and has helped sponsor campaigns and marketing against Republicans candidates. A Democrat conscientious objector may fault them for compromising their altruistic aims and obstructing women's health with partisan power plays and political games that hurt the party or the "liberal brand." Similarly, a libertarian prochoicer could reject Planned Parenthood because their lobbying, political ties, partisan position, and financial ties identify them as crony capitalists. In that way Planned Parenthood acts like a monopoly through their political clout and brand recognition. By tying their interest and support into congressional pockets, they are allowed to stay out of the deep free market waters. Other clinics may offer better or cheaper services but they just cannot stand as tall and compete for very long against Planned Parenthood because the pool is sloped against them (i.e., Government subsidies, party loyalties, etc.)

## **Application 5: Focus on Struggling Mothers**

The ideological power of the prochoice position has always been its concern for struggling mothers. Prochoicers have to focus, with laser vision on the needs and interests of struggling mothers. Prochoicers can admit all sorts of complexities and competing concerns for fetal humans, but they cannot afford to lose clear sight of struggling mothers. This means, however, that prochoicers need to think hard about what reasons are “good” reasons for abortion. Some women are not “struggling” so much as they are inconvenienced by their pregnancy. Many prochoicers affirm abortion choice in that way: abortion for any reason whatsoever. But this radical position walks right into a prolife trap, condemning prochoice positioning for being so preoccupied with the individual woman’s liberties that it loses sight of all other justice issues intertwined in the abortion debate. Prochoicers would do better to focus on struggling mothers and keep the frivolous cases on the sidelines.

## **Conclusion**

The argument of this paper has been that prochoicers have a powerful form of the justice argument, but for various reasons, it has so far failed to win over the masses. Instead, prolifers have countered with their own form of the justice argument, appealing to fetal human “rights.” To be sure, this battle front is not closing down any time soon. But in the meantime, prochoicers can reposition their fortifications with some honest concessions and severed allegiances to retain public sympathy for struggling mothers, which, after all, is the banner of justified abortion.

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<sup>1</sup>Some have eased away from the dichotomistic and rhetorically dated terms “prolife” and “prochoice,” for example, Katie Roiphe dislikes “prochoice” instead preferring the more expansive and principled phrase “pro-freedom” (“Good Riddance Pro-Choice,” *Slate*, 16 Jan 2013). I use the terms since they remain the conventional terminology and there is no agreed-upon alternatives yet on offer.

<sup>2</sup>For example, prochoice advocate Peter Foster confesses that prolife agenda is winning in terms of public relations and legislation; see, “In the Publicity War Over Abortion, the Pro-lifers are Winning,” *The Telegraph*, (21 May

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2014), accessed 23 September 2015 at <http://blogs.telegraph.co.uk/news/peterfoster/100272129/in-the-publicity-war-over-abortion-pro-lifers-are-winning/>. See also, Tara Culp-Ressler, “Abortion Rights are Winning Legal Battles but Losing the Larger War,” *ThinkProgress.org* (17 March 2014), accessed 23 September 2015 at <http://thinkprogress.org/health/2014/03/17/3412201/abortion-rights-legal-battles/>. And, Jill Stanek, “15 Reasons why Pro Choicers Think Pro-Lifers Are Crushing Them,” *jillstanek.com* (July 2014), accessed 23 September 2015 at: <http://www.jillstanek.com/2014/07/15-reasons-prochoice-thinks-prolife-winning/>.

<sup>3</sup>See, the Guttmacher articles at: <http://www.guttmacher.org/media/inthenews/2015/01/05/>, <http://www.guttmacher.org/media/infographics/last-four-years-231-restrictions.html>.

<sup>4</sup><http://www.centerformedicalprogress.org/>

<sup>5</sup>BDSM is an acronym referring broadly to “kinky” or “aberrant” sexual practice, specifically bondage, discipline/dominance, submission/sadism, and masochism.

<sup>6</sup>“Sex Positive” is a growing libertine movement which broadly affirms sex, sexuality, and sexual experimentation, often including BDSM, role play, homosexuality, sex “play,” orgies, polyamory, and voyeurism. Individuals determine for themselves their own sexual norms and preferences, and so long as they are freely chosen those sexual standards are ‘good.’ Sex itself is morally good, and not harmful. Generally, the sex positive movement proposes the following guidelines: (1) keep it consensual and (2) keep it legal. Sex positivity is broadly countercultural, seeing many/most religious or traditional constraints on sex as outdated, oppressive, foolish, and even harmful.

<sup>7</sup>For example see Rubin Nawarrette Jr., “I Don’t Know If I’m Pro-Choice After Planned Parenthood Videos,” Daily Beast 10 August 2015.

<sup>8</sup>Bernard Nathanson, *The Hand of God: A Journey from Death to Life by the Abortion Doctor who Changed His Mind* (Washington DC: Regnery, 2001), 102-39.

<sup>9</sup>Ibid.

<sup>10</sup>Abby Johnson, *Unplanned* (NY: Tyndale, 2014), 133-94.

<sup>11</sup>Katie Pavlich, *Assault and Flattery: The Truth about the Left and their War on Women* (New York Threshold, 2014), 97-126

<sup>12</sup>Betty Friedan, *The Feminine Mystique* (NY: Norton, 1963), 15-32.

<sup>13</sup>David Boonin, *A Defense of Abortion* (Cambridge: Cambridge Press 2002), 2-9

<sup>14</sup>On divorce rates see, Bradford Wilcox, “The Evolution of Divorce,” *National Affairs* 1 (Fall 2009): 81-94. On child abuse see, Theodore Kaplow, et al., *Recent Social Trends in the United States: 1960-1990* (Montreal, Quebec and Kingston, Ontario: McGill-Queens University Press, 1991), 511. On Out of wedlock birthrates see George A. Akerlof and Janet Yellen’s, “An Analysis of Out of Wedlock Birth Rates In the United States,” *The Quarterly Journal of Economics* 111, no. 2 (May 1996): 277-317. A revised version can be found here: <http://www.brookings.edu/research/papers/1996/08/childrenfamilies-akerlof>. On stay at home mothering and “traditional family” models, see Rose M. Kreider and Diane Elliott, “Historical Changes in Stay At Home Mothers: 1969-2009,” Fertility and Family Statistics Branch of the US Census Bureau; presented at the American Sociological Association 2010 meeting (Atlanta, GA).

[http://www.census.gov/hhes/families/files/ASA2010\\_Kreider\\_Elliott.pdf](http://www.census.gov/hhes/families/files/ASA2010_Kreider_Elliott.pdf)

<sup>15</sup>Using primarily Guttmacher statistics, the most common reference for up-to-date numbers on abortion is: [www.numberofabortions.com](http://www.numberofabortions.com)

<sup>16</sup>Excluding, of course, pregnancies which threaten the life of the mother.

<sup>17</sup>J. Blackmun, *Roe v. Wade*, Majority Opinion, no. 17-18, 40 U.S. 113 (22 January 1973), VII-XI.

<sup>18</sup>Ibid., X

<sup>19</sup>See for example a list of concurring textbooks and standard references at:

<http://www.princeton.edu/~prolife/articles/embryoquotes2.html>

<sup>20</sup>Alexander Sanger, *Beyond Choice: Reproductive Freedom in the 20<sup>th</sup> Century* (New York: Public Affairs, 2004), 9.