

Women's rights and heartbeats: (de)legitimation of abortion and the Texas Senate  
Bill 8 in the United States news media

Essi Heinola  
Bachelor's Thesis  
English  
Languages and Literature  
Faculty of Humanities  
University of Oulu  
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## **Abstract**

This thesis examines the abortion debate, which gained attention after the Texas Senate Bill 8 (SB 8) was introduced in May 2021 and came into effect on September 1<sup>st</sup>, 2021. By employing critical discourse analysis and Van Leeuwen's (2007) framework for analyzing legitimation, this thesis aims to find out what types of discourses are prevalent in the debate and how legitimation strategies are used to justify and oppose abortion and SB 8. The reproduction of both ideologies in this debate are examined. The data for this study consist of 20 opinion articles discussing abortion and SB 8, 10 from The New York Times representing the pro-choice movement, and 10 from Fox News representing the pro-life movement. Three main discourses were identified, which appeared in both sources. These are the discourse of women and wellbeing, which frames abortion as a feminist issue, the discourse of life and personhood, which frames abortion as an issue of fetal personhood, and the discourse of legality and Constitution, which frames SB 8's constitutionality. In addition, multiple legitimation strategies, such as impersonal authority, authority of conformity and moral evaluation, were used to achieve legitimation. The three discourses are used as a foundation for the reproduction of both pro-life and pro-choice ideologies and to seek legitimacy through legitimation strategies. Thus, abortion ideologies are reproduced through these discourses and the legitimation strategies utilized in them. Both abortion movements often seek legitimation for their arguments and ideologies by representing the other movement in a negative light. Additionally, this thesis found that women have stronger representation in The New York Times' articles while men dominated Fox News' articles.

## **Tiivistelmä**

Tässä kandidaatin tutkielmassa tarkastellaan Yhdysvaltojen aborttikeskustelua, joka sai huomiota Texasin uuden aborttilain – SB 8:n – myötä. Laki esiteltiin maaliskuussa ja se astui voimaan syyskuussa 2021. Tämä tutkielma pyrkii selvittämään kriittisen diskurssianalyysin ja Van Leeuwenin (2007) legitimaation analysoinnin viitekehyksen avulla, mitä diskursseja keskustelussa esiintyy sekä millaisia legitimaatiostrategioita diskursseissa hyödynnetään. Lisäksi ideologioiden reproduktiota tarkastellaan. Tutkielman aineisto koostuu 20 mielipidekirjoituksesta, jotka ottavat kantaa aborttiin ja SB 8:aan. 10 artikkelia kerättiin The New York Times lehdestä, joka edustaa aborttimyönteistä liikettä (*pro-choice*), kun taas toiset 10 kerättiin Fox Newsiltä, edustaen abortinvastaista liikettä (*pro-life*). Kolme molemmissa lähteissä esiintyvää keskeistä diskurssia tunnistettiin. Nämä olivat: 1) naisten ja hyvinvoinnin diskurssi,

joka kehystää abortin feministisenä asiana; 2) elämän ja ihmisyyden diskurssi, joka kehystää abortin sikiön ihmisyyden ongelmana, ja 3) laillisuuden ja perustuslain diskurssi, joka kehystää lain perustuslaillisuutta. Lisäksi useita legitimaatiostrategioita, kuten persoonatonta auktoriteettia, yhdenmukaisuuden auktoriteettia ja moraalista arviointia, käytetään legitimaation saavuttamiseksi. Havaittuja diskursseja käytetään pohjana molempien aborttiliikkeiden ideologioiden reproduktioon ja legitimitietin luomiseen legitimaatiostrategioiden kautta. Täten abortti-ideologioita jäljennetään näiden diskurssien ja niissä käytettyjen legitimaatiostrategioiden kautta. Molemmat liikkeet tavoittelivat legitimaatiota argumenteillensa ja ideologioilleen usein esittämällä toisen liikkeen negatiivisessa valossa. Lisäksi tutkielmassa havaittiin, että naiset ovat enemmän esillä The New York Times lehden artikkeleissa, kun taas miehet dominoivat Fox Newsin artikkeleita.

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## **1. Introduction**

Abortion has been a topic of steady and vehement discussion for decades in the United States, and the overall support for the pro-life movement has increased in recent years. Abortion is one of the most polarized political and ethical issues in the country. The political climate around abortion has been shifting in the past years, with new abortion laws being passed. On September 1<sup>st</sup>, a new abortion law came into effect in Texas, the United States of America. The law is the strictest abortion law since abortion was made legal without extensive restrictions in *Roe v. Wade* in 1973. This Texas law has sprung a new wave of debate about abortion in media outlets and social media in the United States.

This new wave of debate in opinion articles is used as data for this study. The main purpose of this critical discourse analytic study is to firstly identify the different types of discourses in the data and secondly examine what legitimation strategies are used to justify the new abortion law or the right to abortion in these discourses. Legitimation strategies can be used to criticize (de-legitimize) as well. Thus, the data is also analyzed to examine how abortion and the new abortion law are de-legitimized.

This thesis aims to aid in understanding how discourses construct the issue of abortion and how the opposing ideologies are reproduced. Studying abortion debates can give us insight into how personhood, for example, is defined in society. Furthermore, research on abortion debate can indicate what type of ideologies and discourses affect decision-making and society, how these discourses are constructed, as well as how pregnancy and women are viewed in the United States. In addition to analyzing the pro-life discourses and (de)legitimation, this thesis also examines the pro-choice discourses and (de)legitimation, which have not been a focal point in earlier research. Previous research has most often focused on the pro-life movement and analyzing how it frames the issues. Legitimation has not been a prime focus in previous abortion debate research.

Firstly, this thesis presents background information regarding abortion, as well as the research materials and its collection process. Secondly, the theoretical background and methodology – critical discourse analysis, discourse, and Van Leeuwen's (2007) framework for analyzing legitimation – are introduced and explained. Thirdly, the data is analyzed and the findings are discussed with previous research. Following analysis, a discussion on the discourses, (de)legitimation, and their reproduction is presented. Lastly, the conclusions and some suggestions for future research are presented.

## **2. Background and research materials**

This section introduces the background of the issue as well as the materials used as the data. World Health Organization (WHO) states that “Every individual has the right to decide freely and responsibly – without discrimination, coercion and violence – the number, spacing and timing of their children, and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health” (ICPD, 1994, as cited in WHO, n.d.). Despite this, abortion discussions have increased recently as protests against abortions have increased and new, stricter abortion laws have been passed. Consequently, human rights organizations, such as Amnesty, have criticized the increasingly limited access to abortion. The violence and confrontations between pro-choice and pro-life advocates have also increased: the United States had an all-time high of violent anti-abortion attacks against abortion providers and clinics in 2018 (Smith, 2019). In turn, pro-choice advocates have also reportedly destroyed pro-life displays.

### **2.1. Abortion in the USA**

Abortion has been legal in the United States of America since 1973 landmark court ruling in *Roe v. Wade*, where the Supreme Court decided that the U.S. Constitution shall protect the right to choose abortion until a fetus is officially viable – around 24–28 weeks after conception (Justia Law, n.d.). According to Britannica, this ruling overturned many states’ already existing abortion laws (see also Gold, 2003; Burns, 2005), as the decision included that the states are not allowed to restrict abortion excessively. However, the 1973 Supreme Court decision and the following ruling on *Planned Parenthood v. Casey* allow states to interpret the rulings by limiting and regulating abortion to some extent (Britannica, 2021). These are, for example, gestational age limits, abortion counseling, mandatory waiting periods, and mandatory ultrasounds. Abortion and its limits, legality, as well as morality, have been a subject of debate since *Roe v. Wade*.

This thesis was inspired by the discussion the new Texas abortion law – *Texas Senate Bill 8* (SB 8) – also known as the Texas Heartbeat Act, brought into the foreground. SB 8 was introduced on March 11<sup>th</sup>, 2021, and came into effect on September 1<sup>st</sup>, 2021. According to Britannica, this law bans abortions in Texas after a cardiac activity, also referred to as a fetal heartbeat, has been detected, usually around six weeks gestational age. It is also enforced by private citizens, who can sue a person performing the

procedure or a person otherwise aiding in obtaining an abortion after the detection of “fetal heartbeat” for up to \$10,000 (Britannica, 2021). The person getting the abortion cannot be sued, but the people performing the procedure can, thus resulting in clinics closing or not performing abortions (Berner, 2021). According to Berner (2021), SB 8 is the first law to ban abortions after 6 weeks in all cases except medical emergencies in the United States and is one of the country’s tightest restrictions on abortion, as previous heartbeat acts have been blocked. Pregnancies resulting from sexual assault or incest are no exemptions in this law (Britannica, 2021). As of September 3<sup>rd</sup>, 2021, at least seven states have announced considering similar laws, among them Florida, for example (Kornfield et al., 2021).

However, the Justice Department and many other organizations see the law as a violation of *Roe v. Wade*: SB 8 would overturn the 1973 ruling and be against the Constitution. The Department of Justice has filed a lawsuit against SB 8 in federal court after the bill was taken to the U.S. Supreme Court, which declined to rule on it for now (Timonen, 2021). After its implementation, SB 8 has been halted once but was put into effect soon after as of October 8<sup>th</sup> (STT-AFP, 2021). In addition to SB 8, tighter abortion laws have been on the rise in the country during the past few years. Recently, states such as Arkansas and Oklahoma have implemented more abortion restrictions in the United States altogether than ever before since *Roe v. Wade* (Luthra, 2021).

## **2.2. Research materials**

The data for this study come from two news websites, The New York Times and Fox News (see Appendix). These media outlets were chosen for their opposing political biases, which reflect the opposing sides of the abortion debate and political parties. The United States has a two-party system in politics: the Republican Party and the Democratic Party. Abortion is a partisan issue, which the two political parties seem to find it hard to agree on as suggested by continuous discussions and changes in abortion laws. It can be argued that partisanship has increased in recent years following Trump’s presidency and COVID-19.

The New York Times is a prominent media outlet in liberal discourses, whereas Fox News is often in the foreground in conservative discourses. In addition, similar articles were found in multiple other media outlets, such as the Washington Examiner, Newsmax, and MSNBC. Regardless, The New York Times and Fox News were selected as sources for their visibility in U.S. politics and media overall. The data consists of 20 opinion articles published on the media outlets’ websites in written form, 10 articles from

both opposing positions. The articles were published between September 1<sup>st</sup> and October 20<sup>th</sup>, 2021. The data collection was conducted at the beginning of November 2021.

Fox News is a conservative cable news media company launched in 1996, which produces news and TV shows. AllSides (n.d.) rates Fox News as a right-wing media company. Right-leaning or right-wing media usually associates with the Republican party as well as the pro-life movement. For the data of this study, only written opinion articles available on the Fox News website were taken into consideration. The data was gathered from the website's "abortion" category by selecting the articles categorized as opinion articles in the given time frame (September 1<sup>st</sup> – October 25<sup>th</sup>, 2021), which resulted in 12 articles. These 12 articles were further limited by dismissing articles that mention abortion in passing. As a result, Fox News had 10 articles discussing the topic of SB 8 and abortion in general. The Fox News' opinion articles are available to everyone on the Fox News website.

The New York Times is a daily newspaper founded in 1851 with the 3<sup>rd</sup> largest distribution amongst the newspapers in the USA (Cision, 2019). According to AllSides (n.d.), The New York Times news is rated as left-leaning, whereas The New York Times opinion is rated as left-wing. Left-wing or left-leaning media outlets usually associate with the Democratic Party and the pro-choice movement. The data from The New York Times was gathered by using the search word "abortion". Furthermore, the search was narrowed down to opinion articles with the same time frame. This resulted in 69 search results. After excluding opinion podcasts, neutral articles, transcripts, and letters, The New York Times had 20 opinion articles discussing abortion more in-depth.

Both The New York Times and Fox News had a similar emphasis on publication dates. Due to this, to limit the data to 10 articles, the publication dates were matched up so that the articles were published on the same day or as close to each other as possible. If multiple articles were published on the same day, the text written by one person or with more words was selected in an effort to keep the texts similar. Moreover, The New York Times opinion articles are not available for everyone. To access the articles, a subscription fee had to be paid.



### 3. Theoretical background and methodology

This section introduces the theoretical background of this thesis. This thesis utilizes critical discourse analysis (CDA), the concept of *discourse*, and Van Leeuwen's (2007) legitimation categories as the analytic framework to analyze what type of discourses are used to construct meaning to SB 8 and abortion in general, and how the issue is being (de)legitimized.

#### 3.1. Critical discourse analysis

Critical discourse analysis (CDA) is the basis of this thesis' theoretical framework. According to Fairclough, "critical analysis aims to produce interpretations and explanations of areas of social life which both identify the causes of social wrongs and produce knowledge which could (in the right conditions) contribute to righting or mitigating them" (2010, p. 8). CDA is related to the field of discourse analysis, as it is one of its variations. Discourse analysis aims to discover meanings in a text and speech, whereas CDA aims to critically analyze, explain, and interpret the meanings in discourses and how they are reproduced. Reproduction, in other words, means how speakers "influence their audiences" (Van Dijk, 1993, p. 259). CDA focuses on issues such as power, dominance, inequality, and hegemony, and how especially these dimensions are constructed and reproduced in text, discourse, and social relations (Van Dijk, 1993). Hence, this is a sociolinguistic study. Fairclough introduces three guidelines for CDA:

1. It is not just analysis of discourse (or more concretely texts), it is part of some form of systematic transdisciplinary analysis of relations between discourse and other elements of the social process.
2. It is not just general commentary on discourse, it includes some form of systematic analysis of texts.
3. It is not just descriptive, it is also normative. It addresses social wrongs in their discursive aspects and possible ways of righting or mitigating them. (2010, pp. 10–11)

Therefore, CDA strives to contribute to change through analyzing discourse. Fairclough (2010) argues that the critique CDA provides is rooted in values related to an equal, fair, and free society and the well-being of people. Furthermore, Van Dijk (1993) states that CDA studies should take an ideological and moral stance, which is indicated clearly.

This thesis aims to identify from the data the common discourses, which construct meaning to abortion and SB 8, and analyze what type of justifications – legitimations – are used in the opposing views inside

these discourses. This is done firstly by identifying parts of the data that contribute to the (de)legitimation of SB 8 and abortion, therefore finding the relevant discourses. Then, a more in-depth analysis of the interrelations between the discourses and (de)legitimation is done. A similar method was used by Tiainen (2017) who examined the news coverage on electronic surveillance after the Snowden revelations, investigating the discourses and strategies used to construct meaning and (de)legitimize electronic surveillance.

### **3.2. Discourse**

To explain what discourse is and what it means, this section introduces a definition for the concept. *Discourse* can be defined as a form of debate and communication. It is “a mode of organizing knowledge, ideas, or experience that is rooted in language and its concrete contexts” and can be both written and spoken (Merriam-Webster, n.d.). Discourses constitute social life and structures by meaning and making meaning discursively (Fairclough, 2010). Van Dijk (1993) notes that societies have certain general attitudes and ideologies, which are representations of people and issues. The culture that shares these same ideologies and attitudes – biases – then produce “discourse structures that signal such underlying bias” (p. 262) and may thus influence other people’s attitudes by altering social representations (Van Dijk, 1993). Thus, a discourse has societal power. An instance of such attitudes are the traditional gender roles, which Roberti (2021) noted emerging often in the abortion restriction bills in the US through the frame of protecting women against abortion. As Fairclough’s third guideline indicates, CDA aims to study these discourses as well as the relations between discourse and other social processes, such as power relations and legitimation (Fairclough, 2010).

Because discourses constitute meanings, they lay down limits on what is acceptable in society, what is morally right or wrong, which in turn are reflected in the laws (McIlvenny, 2002, as cited in O’Rourke, 2016). Abortion is therefore constructed discursively, as these discourses construct the morality and legitimacy of abortion. For example, the way abortion discourses frame and represent women affects the way women are viewed in society and vice versa. These views can then be reproduced in said society and culture. This applies to how the fetus is constructed in discourse as well. The result of this meaning-making and reproduction can be eventually seen in abortion laws, as noted in O’Rourke (2016), and can result in inequality. The prospect of whose voices are present in the discourse and who can hear the discourse can also reproduce dominance and thus power (Van Dijk, 1993). To explain this, if an issue

relating to African American people is discussed without involving African Americans in the discourse, the power is given to the other population, thus dominating the discourse.

### 3.3. Legitimation and de-legitimation

To complement CDA, this thesis uses Van Leeuwen's (2007) framework as the method of analysis. The framework for establishing justification by using legitimation and de-legitimation categories is used to systematically analyze the data. Berger and Luckmann offer a helpful definition for legitimation:

Legitimation provides the 'explanations' and justifications of the salient elements of the institutional tradition. (It) 'explains' the institutional order by ascribing cognitive validity to its objectivated meanings and (...) justifies the institutional order by giving a normative dignity to its practical imperatives. (Berger & Luckmann, 1966, as cited in Van Leeuwen, 2007, p. 92)

Legitimation, in this thesis, is defined as the ways an action or an opinion is being defended, justified, or explained to be right or correct. Van Dijk (1993) argues that legitimation in itself is a tool used for reproduction. Van Leeuwen's four major categories of legitimation are 1) authorization, 2) moral evaluation, 3) rationalization and 4) mythopoesis. *Authorization* legitimizes through references to some higher authority, such as an expert, a law, or a tradition. *Moral evaluation* legitimizes by reference to values. *Rationalization* is legitimation by referring to shared knowledge or the goals of action. *Mythopoesis* legitimizes through narratives, whose outcomes either reward or punish the actor for the action. These are, in turn, divided again into sub-categories. Furthermore, the categories can be used for de-legitimation as well (Van Leeuwen, 2007), that is, criticize. This thesis will not go in-depth on the fourth category, mythopoesis, as it did not occur in the data as often as the other three categories.

The most relevant legitimation strategy for this thesis is authorization. In Van Leeuwen's (2007) framework, authorization means that something is legitimized through some type of authority. There are six sub-categories, which are personal, impersonal, role model, and expert authority, as well as authority of conformity and tradition. For example, *personal authority* uses an individual's usually higher status or title in an organization et cetera (Van Leeuwen, 2007). In turn, *impersonal authority* is not an individual but an impersonal structural placeholder, an institution, or legislation (Van Leeuwen, 2007). These can be a church or a recommendation issued by some institution, for example. *Authority of tradition* in turn relies on practices, such as cultural traditions, for legitimation, whereas the *authority of conformity* in the claim that the majority agrees on something (Van Leeuwen, 2007).

The second most relevant category is moral evaluation. According to Van Leeuwen's (2007) framework, this category references moral values, either explicitly stating that something is good or wrong or implicitly insinuating so. This category can be divided into three further categories: evaluation, abstraction, and analogy. *Evaluation* is legitimizing through evaluative adjectives which gives them moral value. *Abstraction* in essence is referring to one practice through another, moralized practice. *Analogy*, in turn, is making comparisons between the action being legitimized and other actions, which have either positive or negative connotations and values (Van Leeuwen, 2007). Because some of these moral values are hidden and not stated explicitly, we can "'recognize' them, on the basis of our common-sense cultural knowledge" (Van Leeuwen, 2007, p. 98).

The last most relevant category is rationalization. In Van Leeuwen's (2007) framework, this category is divided into two sub-categories: *instrumental rationalization* and *theoretical rationalization*, which have further sub-categories. The former category "legitimizes practices by reference to their goals, uses and effects" (p. 101), while the latter relies on "some kind of truth, on 'the way things are'" for example through predictions (Van Leeuwen, 2007, p. 103).

## **4. Analysis**

This section is dedicated to the analysis of the data. The major discourses present in the data will be introduced and examined through (de)legitimation, analyzing simultaneously how the discourses construct and (de)legitimize abortion and SB 8. Selected examples of the legitimation strategies used in the discourses will be presented. The findings will be discussed in the light of previous academic research, which has mainly been focused on the pro-life movement.

### **4.1. Discourse of women and wellbeing**

One of the discourses related to the abortion debate in this data was the discourse of women and specifically their wellbeing. This discourse framed abortion as a feminist women's issue rather than that of fetuses'. At the center were claims of abortion's harmfulness or usefulness to women's physical and mental health, and thus its impact on society. Both movements took part in this discourse, although The New York Times and the pro-choice movement slightly more. Such framing has been a key concept in the pro-choice movement for decades. Roberti (2021) states, however, that the pro-life movement has also increasingly adopted the women-centered discourse. The aim of this shift is to appear more concerned for women and take a gentler approach (Roberti, 2021). Women generally feel more accepting towards this approach as it does not criticize them as harshly as the previous approach (Roberti, 2021). The pro-life movement has previously condemned women for wanting or obtaining abortions and for renouncing the role of a stay-at-home mother (Burn, 2005). The findings of this thesis support this notion as the pro-life articles did engage in the women-centered discourse, representing abortion as a feminist issue and abortion restrictions as advancing women's empowerment.

Firstly, legitimation with authorization, such as personal authority, was commonly used in the pro-life data in the discourse of women and wellbeing. The pro-life articles portrayed abortion as more harmful to women than an unwanted pregnancy. In addition to personal authority, role model authority was used to legitimize abortion's harmfulness, as can be seen in the following excerpt.

Excerpt 1. This event is such a far cry from the early suffragettes like Susan B. Anthony and Elizabeth Cady Stanton, who, over a century ago, took a courageous stand against abortion precisely to empower women. Stanton called abortion "a crying evil," and Anthony condemned "abortions and infanticides" in her famous Social Purity speech.

Trailblazers like Stanton and Anthony rightly realized that rolling back virtually all restrictions on abortion would also have serious safety consequences for women – not to mention its negative psychological and societal impact. – Jeanne Mancini, Fox News, October 2<sup>nd</sup>, 2021

In Excerpt 1, Mancini utilizes role model authority by referring to the famous 19<sup>th</sup>-century suffragettes Elizabeth Cady Stanton and Susan B. Anthony, both of whom had a pivotal role in the fight for women's rights in the United States. This is what gives Stanton and Anthony their authority as role models in the fight for equality. Van Leeuwen (2007) states that role model authority often needs endorsement to legitimize the authority. In this case, Mancini uses the word “trailblazer” as an endorsement to express that these people were the wise pioneers leading the fight for women's rights. Stanton and Anthony were also, according to Mancini, strictly against abortion. The adjective “courageous” in Excerpt 1 might even suggest that this was an unpopular opinion at the time. This suggests that abortion cannot be morally right because these early women's rights activist role models deemed it to be harmful to society and women especially.

Medicine has advanced much since then, and abortion was a much more dangerous operation in Stanton's and Anthony's time. This historical context would question the relevance of Mancini's statements in the modern-day abortion debate. The word choice “rightly”, however, suggests that even with the advances in the medical field, abortions still are harmful and a tragedy for a woman. Fear of harm, which is evidently a powerful emotion, is thus utilized to de-legitimize abortion. This demonstrates Roberti's (2021) insight on the protectionism frame: abortion is argued to be always harmful, so women need to be protected from it. O'Rourke argues that presenting abortion access as a concern for women's health is “premised on notions of the ‘weaker sex’, necessitating protective or paternalistic laws and practices” (2016, p. 41).

Rationalization occurred a few times in the discourse as well. In Excerpt 2 Carlson argues that providing abortions has an ulterior motive: the federal government's and business's financial benefit.

Excerpt 2. Once again the goal is to reduce women to wage slaves. It is more virtuous to work at JP Morgan than it is to be a mother. That's what they're telling you. – Tucker Carlson, Fox News, October 1<sup>st</sup>, 2021

Goal-oriented legitimation constructs its legitimation from the intention of the social action and can be expressed either explicitly or implicitly (Van Leeuwen, 2007). In Excerpt 2, in addition to their personal authority, Carlson uses goal-oriented instrumental rationalization to de-legitimize abortion. Before this

excerpt, Carlson mentions Nazi eugenics and their policy of pressuring Eastern European women to have abortions to keep them in the workforce. Here Carlson is claiming that pro-choice abortion policy has the same goal and is thus making a comparison between the Nazi regime and the pro-choice movement, which is being referred to as “them”. The words “once again” emphasize that the phenomenon is not a new one. Furthermore, Excerpt 2 reveals patriarchal and conservative gender roles and the ideal womanhood: motherhood. Carlson argues that motherhood is a “more virtuous”, thus more desirable and honorable attribute to femininity and women than working, re-enforcing the stereotype of nurturing, motherly women. This also implies that motherhood and working are mutually exclusive. O’Rourke states that “the rejection of motherhood goes against such traditional constructs” (2016, p. 40). Considering the previous research, the pro-life article can be argued to portray abortion as a threat to traditional gender and family values, which the conservatives often keep in high regard.

The pro-choice articles used authorization most often as a legitimation strategy similar to the pro-life articles. In contrast to the pro-life movement portraying abortions as catastrophes (Cannold, 2002), the pro-choice data constructed denying abortions as catastrophic. This is demonstrated in Excerpt 3 below.

Excerpt 3. It’s difficult to really convey to people, as a mother — and I am also a mom — how hard it can be to take care of young kids who have survived sexual violence and just to know how much our society or community has failed them. Politicians are so far away from these kids in their lives. They never have to be there holding their hand. – Ghazaleh Moayed, The New York Times, September 20<sup>th</sup>, 2021

In Excerpt 3, Moayed uses their status and personal authority as a doctor, which is being stated at the beginning of the article, and as a mother to legitimize their opinion on SB 8’s harmfulness. Moayed’s status as an obstetrician-gynecologist and therefore as an expert in the medical field, who takes care of pregnant people implies that they know first-hand how harmful the law is to people, especially without the exception for rape. Alike the pro-life agenda of saving children, Moayed appeals to the want to care for children. Western society does not generally see children capable to raise children. Furthermore, even teen pregnancies are frowned upon as damaging to the teen and the unborn. Excerpt 3 brings the children who have been assaulted to the foreground, evoking compassion, pity, and protective emotions to de-legitimize the law. Moayed also utilizes personal authority to de-legitimize the politicians implementing SB 8 by implying that they are not aware of the harm the law could do to the children. This suggests that the politicians are essentially blind to the suffering the law will cause and they do not have to take responsibility for it. The utterance “they never have to be there holding their hand” further emphasizes the children’s need for support and incapability to cope with pregnancies.

The pro-choice articles utilized rationalization often to legitimize abortion and de-legitimize SB 8 as well. The data showed multiple occasions of questioning SB 8's clarity and the possible harm that could bring to health providers and pregnant people, as illustrated in Excerpt 4.

Excerpt 4. While miscarriage management would theoretically still be legal if no cardiac activity is found, the law's language does not directly address the matter and could create a chilling effect among providers fearing civil liability. – Spencer Bokak-Lindell, *The New York Times*, September 2<sup>nd</sup>, 2021

Excerpt 4 uses theoretical rationalization, specifically the sub-category prediction, here realized with “could create”, to de-legitimize SB 8. The premise which the article refers to is the law's unclear definition of medical emergencies and as mentioned in Bokak-Lindell's article, Texas' ban on the method used in miscarriages to remove the fetus, which is also being used in second-trimester abortions, called dilation and evacuation. Waiting for the pregnant person's situation to worsen to be certain the situation is life-threatening or delaying miscarriage management would endanger the person's health. Rationalization requires moralization to make it legitimate (Van Leeuwen, 2007). Here the moralization is the danger the law is predicted to cause for pregnant people in abortion and pregnancy care.

This same argument is displayed in Excerpt 5, which uses authority of conformity to de-legitimize SB 8 by using the frequency modality “no other area of health care”. This implies that all the other medical fields aim for prevention or as early intervention as possible. Moayedhi argues that such is not the case in maternity care if SB 8 is implemented.

Excerpt 5. “I can think of no other area of health care in which we would wait for someone to worsen nearly to the point of death before we offered intervention. It's just unconscionable. – Ghazaleh Moayedhi, *The New York Times*, September 20<sup>th</sup>, 2021

In sum, the pro-life articles engaging in the discourse of women and wellbeing justified abortion restrictions by constructing abortion as a threat to women's safety, health, and happiness. In contrast, the pro-choice articles constructed legal abortion access as means to secure women's safety, freedom of choice, and wellbeing. SB 8 was predicted to increase harassment towards women and displayed as unclear and up to interpretation, which can result in doctors fearing intervening too early in medical emergencies, hence endangering women's lives.



## 4.2. Discourse of life and personhood

The discourse of life and personhood was the second major discourse in the data. This discourse focused on constructing the image, personhood, rights, and importance of the fetus. Abortion was thus framed as a moral issue concerning the fetus. The discourse around the fetus' personhood has traditionally been the standpoint of the pro-life movement for decades (Cannold, 2002), and as the data suggests, it is still being used more than the women-centered discourse. A fetus has been a major factor and concern in the abortion debate, especially for the pro-life movement. Consequently, the pro-life articles took part in this discourse the most out of the three discourses identified. In contrast to the frequency of the discourse of life and personhood in the pro-life data, in the pro-choice articles the discourse did not play a major role although it was mentioned.

The pro-life articles in the data frequently utilized authorization, specifically impersonal authority, to delegitimize abortion and legitimize fetal personhood, as done in Excerpts 6 and 7.

Excerpt 6. Today [technological] advances like ultrasound technology have made the reality that unborn children are human beings with actively beating hearts by six weeks undeniable. – Marjorie Dannenfelser, Fox News, September 3<sup>rd</sup>, 2021

In Excerpt 6, the impersonal authority of science and technological advances were used to legitimize abortion bans and limitations. Impersonal authorities, such as “science” and “research” were referred to in numerous instances as evidence of the fetus' personhood and status as a baby instead of as a fetus to de-legitimize abortion. Thus, the implication in Excerpt 6 is that the scientifically proven cardiac activity of the fetus at week six of pregnancy is the ultimate indicator of personhood. Referring to the cardiac activity as a heart and heartbeat associates it with the human heart as we most often understand it: a fully developed organ. Evans and Narasimhan (2020) note that “this false equivalency served the purpose of connecting the detection of blood flowing through cardiac cells to the concept of life and personhood” (p. 224) while fetal heartbeat bills aim to construct a legally “protected class of persons” for fetuses (p. 221). These laws are justified using incorrect scientific evidence and “logical fallacies” (Evans & Narasimhan, 2020, p. 224).

Furthermore, referring to the fetus as a “human” or “child”, as frequently done in the pro-life articles, constructs abortion as killing, which evidently has a more negative connotation and villainizes the procedure and the pro-choice movement. This was utilized in Excerpt 6 as well. O'Rourke states that in

the pro-life narratives “abortion is not used as a medical term for the termination of a foetus [*sic*] but rather the ending of a life of a baby” (2016, p. 40).

Alternatively, the fetus can be assigned personhood through religious beliefs. Religion has been a traditional argumentative tool in pro-life rhetoric (Evans & Narasimhan, 2020). Excerpt 7 demonstrates how the fetus’ status as a person is legitimized through religion and God as an impersonal authority figure.

Excerpt 7. We often take for granted in America that our rights come from God, not man. – Sen. Marco Rubio, Fox News, October 20<sup>th</sup>, 2021

God could be argued to be a personal authority, but here it is viewed as a representation for a religious institution, not as an individual person. Although the church and the state are separated in the United States, Rubio uses the Christian religion and its moral code as a universal code that all ought to abide by, including the law. Rubio is stating that humans do not have the right to decide when life begins, who is a person and at what stage, for that right is only God’s. The assumption is that pregnancy and childbirth are a miracle, and God sees fetuses as children. Thus, it implies that terminating a pregnancy is a sin and against God’s will. However, out of the 10 pro-life articles, only two used God or religion as a justification for the fetus’ status as a person.

After authorization, moral evaluation was also often employed to legitimize SB 8 and the fetus’ personhood. This is exemplified in Excerpt 8, where Dannenfesler compares abortions to human rights violations.

Excerpt 8. In fact, 47 out of 50 European nations limit elective abortion prior to 15 weeks and the current status quo of abortion law under Roe’s regime puts the United States in the company of human rights abusers like North Korea and China. – Marjorie Dannenfesler, Fox News, September 3<sup>rd</sup>, 2021

Two legitimation strategies are used in Excerpt 8. Firstly, the authority of conformity is used by referring to most European nations’ abortion laws, hence de-legitimizing *Roe v. Wade*. Secondly, moral evaluation is utilized by making an explicit analogy between the United States and China as well as North Korea. Such analogies were made multiple times in different articles. Analogies can be implicit as well (Van Leeuwen, 2007). In Excerpt 8, Dannenfesler is arguing that the United States’ moral equal are countries, which are infamously known for their human rights violations, such as femicide through one-child policy and labor camps, and from a Western perspective, questionable morals. Abortions are therefore equated to human rights violations and fetuses to people.

Likewise, the pro-choice articles also engaged with authorization often to de-legitimize fetal heartbeat and SB 8. Excerpt 9 uses expert authority for de-legitimizing the argued fetal personhood.

Excerpt 9. The lawmakers' theory is that that's when a fetal heartbeat begins — something that perplexed many in the medical community, where people seem to believe a six-week-old embryo is a tiny speck that doesn't yet have a real heart. In fact, it isn't even a fetus until week 9. – Gail Collins, *The New York Times*, September 1<sup>st</sup>, 2021

Excerpt 9 relies on expert authority of the people in the medical field who argue that the cardiac activity defined in SB 8 is not an actual heartbeat, as there is not yet a heart as we understand it. Thus, SB 8's fetal heartbeat as an indicator of personhood is de-legitimized. The people's expertise, which is being referred to here, is not explicitly stated but rather implied with their involvement in the medical field, suggesting that the "people" are medical doctors, nurses, and scientists. Expert authority is realized with a subject (Van Leeuwen, 2007), which here is the "people" in the medical community. In addition, expert authority does not necessarily have to be a singular person as it can be qualified as well (Van Leeuwen, 2007). In Excerpt 9, the qualifier is the word "many". Collins argues that the scientific facts, upon which SB 8 is constructed and abortion de-legitimized, are wrong.

Additionally, in Excerpt 10 Blow utilizes the impersonal authority of legal standard.

Excerpt 10. Viability is the legal standard, whatever anyone may believe. – Charles M. Blow, *The New York Times*, October 3<sup>rd</sup>, 2021

The legal standard here refers to the Supreme Court decisions on *Roe v. Wade* and *Planned Parenthood v. Casey*, which decreed that the pregnant person's constitutional rights as a person are more important than the question of fetal personhood (Britannica, 2021). Before this excerpt, Blow questions the notion that a fetus is a child. In essence, Blow seems to be implying that when it comes to fetuses and abortion laws, the Constitution and legal standards set previously are the most crucial in defining and setting the limit to the personhood of a fetus.

To summarize, the pro-life articles constructed the fetus as a child, a human in the sense we understand it, with its own personhood and selfhood. This was most often done using science as a legitimation. Terminating a pregnancy or as argued, killing a child would thus be murder. Consequently, fetal personhood did not appear central to the pro-choice movement. The pro-choice articles aimed to de-construct the fetus' personhood, the fetal heartbeat, and the rights the fetus would have as a person.

### 4.3. Discourse of legality and Constitution

This section examines how the discourse of legality constructs meaning to abortion and SB 8 and the ways the issue is (de)legitimized in the data. In addition to the previously presented discourses, the articles engaged in the discourse of legality and Constitution often. Instead of framing abortion and SB 8 as a fetal rights or women's rights issue, this discourse concentrated on SB 8's legal status: is the bill constitutional, and who should make laws concerning abortion. Thus, the new wave of the debate was not completely centered on abortion and SB 8 as a moral or ethical issue as such, but as an issue of constitutionality. However, the constitutionality of the law is tied to the question of the fetus' personhood and people's constitutional right. Hence, the discourse of legality and Constitution is not completely separate from the two discourses previously analyzed.

Authorization, as in previous discourses, was the most used legitimation strategy in the pro-life articles. This is displayed in Excerpt 11 in which Domenech de-legitimizes the Supreme Court's credibility.

Excerpt 11. There is today renewed hope among those who believe every unborn baby has a right to life that the Supreme Court may at long last reopen this question for us to decide, as citizens and states, instead of leaving the deepest moral question of life and death to nine people in robes. – Ben Domenech, Fox News, October 8<sup>th</sup>, 2021

Excerpt 11 utilizes personal authority to de-legitimize the justices of the Supreme Court. Domenech questions the authority of the justices of the Supreme Court by using his authority as a contributor in a notable media outlet while diminishing the authority and credibility of the justices by asserting them as “nine people in robes”. This questions their authority position and ability to represent the American people in decision-making, particularly concerning abortion. As this is a pro-life article, this line of thinking may make one assume that the Supreme Court is liberal and most Americans are conservative who want to overturn *Roe v. Wade*.

After authorization, the pro-life articles utilized moral evaluation as a legitimation strategy often. Excerpt 12 claims the previous abortion precedents as unfounded and thus morally wrong.

Excerpt 12. Forces on both sides of the abortion issue are amassing their arguments as the Supreme Court takes up *Dobbs v. Jackson Women's Health Organization*, a case generated in Mississippi that creates an opportunity for the court to reconsider decades of misguided abortion jurisprudence. – Sen. Hyde-Smith, Fox News, October 4<sup>th</sup>, 2021

In Excerpt 12, the word “misguided” is the evaluative adjective used to de-legitimize the previously degreed constitutional right to abortion. The implication is that *Roe v. Wade* was a misinformed juridical decision and that fetuses deserve the constitutional right to live and be born. A couple of instances discovered the pro-life articles present similar arguments of *Roe v. Wade* inventing abortion rights when none existed before and should not exist now. Underlying this statement is the notion of fetal personhood and a fetus’ sacredness from conception, as implied later in Senator Hyde-Smith’s article.

The pro-choice articles engaged largely in the discourse of legality and Constitution. Authorization, yet again, was the most used legitimation strategy. The constitutionality of SB 8 was questioned, as demonstrated in Excerpt 13.

Excerpt 13. For Justice Sonia Sotomayor, this is nonsense. “The court,” she wrote in her dissent, “has rewarded the state’s effort to delay federal review of a plainly unconstitutional statute, enacted in disregard of the court’s precedents, through procedural entanglements of the state’s own creation”. – Jamelle Bouie, *The New York Times*, September 3<sup>rd</sup>, 2021

Excerpt 13 uses expert authority by quoting Supreme Court Justice Sotomayor, who argues that SB 8 is unconstitutional and that the previous precedents, meaning *Roe v. Wade* and *Planned Parenthood v. Casey*, still stand as the correct interpretation of the Constitution. The lexical choice “plainly” reinforces this statement. Excerpt 13 de-legitimizes SB 8 and validates the pro-choice standpoint. Sotomayor gains their expert authority through their position as a justice, who have had a high social standing and respect as well as are required to be trained in law. The assumption has been and is that the justices work fairly and without a bias for the good of the people.

In turn, Excerpt 14 de-legitimizes SB 8 and the Supreme Court, which allowed the law to stay in effect for now, with the authority of conformity.

Excerpt 14. Three polls within the past month show that fewer than a third of Americans want to see the court overturn *Roe v. Wade*. Yet it appears that only a third of the justices can be counted on to preserve the right to abortion as defined by the court’s current precedents. – Linda Greenhouse, *The New York Times*, October 7<sup>th</sup>, 2021

This premises that the majority of Americans do not want *Roe v. Wade* overturned but most of the justices do, creating a juxtaposition. Greenhouse thus suggests that the Supreme Court does not represent the opinions of the population, and by allowing SB 8 to stay implemented and therefore overturning *Roe v. Wade*, is contradicting what most Americans want. The people themselves would not be the ones

deciding the laws concerning them, but the few elites in power would, thus dominating the Americans who wish to uphold *Roe v. Wade*.

In addition, rationalization appeared often in this discourse. Excerpt 15 suggests that SB 8 has rendered the Constitution useless.

Excerpt 15. The Texas law, however, was designed to avoid constitutional challenge. As The Times's Adam Liptak explains, plaintiffs seeking to block a law on constitutional grounds would usually name state officials as defendants. But the Texas law bars state officials from enforcing it, effectively circumventing *Roe v. Wade*. – Spencer Bokas-Lindell, *The New York Times*, September 2<sup>nd</sup>, 2021

Excerpt 15 can be categorized as instrumental rationalization, specifically means-oriented rationalization. This type of rationalization relies on the action itself and its purpose for legitimation (Van Leeuwen, 2007). The de-legitimation of SB 8 is achieved by implying that the way the law was written and thus able to be implemented utilizes loopholes in the Supreme Court precedents and law, and is at the core, unconstitutional. This refers to private citizens as the enforcers of the law, which is why it is hard to sue the law itself for the purpose of blocking it. In other words, the purpose of SB 8 is de-legitimized by stating that how the law is written is ingenuine. Bokas-Lindell is thus suggesting that the constitution has been outwitted.

To summarize, the pro-life discourse of legality and constitution constructed SB 8 as constitutional and democratic law, which is not a threat to *Roe v. Wade*, while stating that the outrageous reaction to it has been uncalled. The pro-choice articles focused on construction SB 8 as an unconstitutional law, which was implemented by using underhanded means, and restricting abortion access as a means to limit women's and pregnant people's Constitutional rights. Overall, the U.S. Constitution is interpreted differently. Interestingly, both sides seemed to have distrust in the Supreme Court and its ability to represent the people of the United States to some degree.

## 5. Discussion

The analysis aimed to identify the most relevant discourses in the data and examine how they construct the issue of abortion and SB 8 as well as what type of legitimation strategies are employed in these discourses. This section discusses the main findings of the analysis. In addition, the reproduction of these discourses and ideologies is discussed.

Cannold (2002) argues that analyzing how the pro-life movement frames abortion enables abortion access advocates to respond to them accordingly. Similarly, analyzing the discourses and the legitimation strategies used to represent abortion enables one to understand how the pro-life ideology is reproduced and possibly aid in responding to it.

Three main discourses which occurred in both sources were identified from the research materials. These were the discourse of women and wellbeing, the discourse of life and personhood, and the discourse of legality and Constitution. These findings correspond to the findings and focal points of previous research, which has also identified both women-centered frames (see Cannold, 2002 & Roberti, 2021) and fetal-centered frames (see Evan & Narasimhan, 2020; O'Rourke, 2016). To note, the three discourses presented did not always occur separately from one another but often engaged with each other.

Firstly, this thesis found the discourse of women and wellbeing to construct abortion as a feminist issue by both sides of the debate. The rise of such seemingly feminist ideology in the pro-life discourse can be attributed to the overall rising of feminist ideology in the West, which has gained more support and visibility. To adapt the anti-abortion rhetoric to better reproduce its message among women, the movement has had to switch its approach. Both sides of the debate used authorization the most to legitimize their argumentation. Moreover, both movements directed their argumentation to both legitimize themselves and de-legitimize the other. The pro-life movement performed both equally, while the pro-choice movement aimed to de-legitimize SB 8 more than legitimize abortion, although this was achieved through the de-legitimation of SB 8. The authority of people who claim themselves feminist is probably enough to legitimize the pro-life movement as a feminist movement and abortion as harmful to women in the eyes of the target audience – conservatives. However, the personal authority of the doctor utilized in the pro-choice excerpt can be objectively thought to be more relevant than that of the role-model authority or the personal authority of the pro-life opinion article writers.

In addition, both movements used rationalization to argue what concrete harm abortions and the lack of abortion access can cause. This seems to be more effective than simply stating that abortion is harmful

to women. The arguments using rationalization presented in Fox News articles were often reminiscent of conspiracy theories, hinting at some type of ulterior motives and consequently vilifying the pro-choice movement. Furthermore, targeting SB 8 directly through predictions of harm, as the pro-choice articles did, de-legitimizes the law effectively perhaps even among those who wish to restrict abortions but do not wish women unnecessary harm.

Secondly, the discourse of life and personhood was centered around the fetus and the most notable discourse in the pro-life data. Fetal personhood was mainly constructed and legitimized through impersonal authority of science and religion. It seems natural to rely on impersonal authorities instead of personal authority to imply that the argument originates from a higher, objective authority that is not influenced by people's opinions. This may make the arguments more legitimate among people who do not share the same pro-life ideology. Anderson (as cited in Cannold, 2002) notes that the religious sacredness of a fetus underlies in the fetal-centered frame even though the legitimation is that of science. It seems that the justification of fetal personhood is moving from religious to scientific, perhaps as a result of the decreasing power of the church and the increasing importance and authority of science. In contrast, such religious arguments did not occur in the pro-choice articles and the movement's overall engagement in this discourse was minor, aimed at de-legitimizing SB 8's definition of fetal personhood rather than legitimizing a new definition.

Thirdly, the discourse of legality and Constitution or similar discourses were not presented in previous research. Here, however, abortion is seen either as a constitutional right of liberty or as a violation of the fetus' constitutional rights as a person. This discourse also indicated that the authority and credibility of the Supreme Court are decreasing. The most used legitimation strategy was again authorization, that is, personal authority and authority of conformity. Fox News writers often relied on their personal authority to legitimize abortion restrictions, thus asserting themselves as experts and their opinions presumably legitimate. The personal authority is legitimized through the target audience who agrees with the writer and by dismissing the authority of other people. In contrast, The New York Times relied on expert authority among personal authority, which the pro-life text did not, thus indicating more validity. Authority of conformity was utilized by both movements often. In moral questions such as abortion, it is easy to refer and conform to the suggested societal norms and majority opinions to argue why abortion should or should not be legal. Overall, the pro-life movement concentrated on legitimizing SB 8's constitutionality as much as de-legitimizing abortion's lawfulness. However, the pro-choice articles focused more on de-legitimizing SB 8, the legislators, and the Supreme Court.



The three discourses identified are used as a means to reproduce both the pro-life and the pro-choice argumentation and ideologies. As noted in sub-section 3.3., legitimation is a method used for reproducing ideologies and power. Overall, authorization, mainly personal, impersonal, and authority of conformity, was the most used legitimation strategy in both media outlets. The opinion articles aim to reproduce their ideologies by persuading others and pushing the notion further, especially among those who agree with the values of each media outlet – the target audience. Typically, conservative media such as Fox News will draw in more conservative readers, whereas The New York Times as a liberal media more liberals. Both media outlets are notable in their respective fields, which allows the writers their authority positions and much space for reproducing ideologies. However, Fox News has a larger audience, thus enabling it to reproduce conservative pro-life ideology to a much larger audience compared to The New York Times. In addition, Fox News' opinion articles are accessible to everyone while The New York Times' are not, which could be argued to make the reproduction of the pro-life ideology easier.

The second most used strategy, in general, was moral evaluation. This seems natural and logical as the issue of abortion is that of morality and philosophy. It seems that the legitimation strategies conform to the aims of the discourses. For example, moral evaluation, in addition to the impersonal authority of science and religion, was employed when the moral status of a fetus and its personhood was argued. In turn, when SB 8 was constructed as a threat to people's health and wellbeing, rationalization was utilized. Overall, Fox News used more moral evaluation, whereas The New York Times rationalization. This appears to suggest that Fox News relies on the argued moral wrongness of abortion to reproduce the pro-life ideology, while The New York Times places the rationalization of abortion's benefits before moral questions.

Additionally, both media outlets aimed to reproduce one's ideology by diminishing the value and credibility of the other movement. Lexical choices that have negative connotations were often employed in the articles to construct negative notions of the opposing movement. Both movements distanced the other movement from their key concepts, which are choice and saving lives.

Another interesting finding was the gender ratio among the writers. Out of the ten New York Times articles seven were written by women. In contrast, Fox News had only three articles written by women. This seems to indicate that women have more presence in the abortion debate in the pro-choice movement, while Fox News gave more space to men. Thus, men dominated the debate on Fox News. This may also suggest that more women support and contribute to the pro-choice movement over the pro-life movement.

## 6. Conclusion

This section gives a brief conclusion for this thesis and some suggestions for future research. The aim of this thesis was to examine what discourses emerge in the news media and how the Texas Senate Bill 8 and abortion, in general, are (de)legitimized.

This thesis revealed that the new wave of abortion debate surrounding SB 8 is not only focused on discourses about abortion's harmfulness and usefulness to women or the personhood of the fetus but also concentrating on the law's legality and constitutionality, as well as the Supreme Court's ability to represent the American people. Furthermore, this thesis discovered that these three main discourses are not completely separated from each other. Multiple occasions of combining discourse of life and personhood to the discourse of legality and Constitution as well as the discourse of women and wellbeing and discourse of life and personhood were observed.

Although all four of Van Leeuwen's legitimation strategies were utilized at least once in both opposing views, authorization (personal, impersonal, and conformity) was used the most frequently. The opposing ideologies are reproduced through the discourses mentioned and by using legitimation strategies. Both movements also sought legitimation by constructing negative associations to the other movement. Furthermore, this thesis found that men dominated the pro-life articles whereas women were more involved in the pro-choice articles.

To note, this thesis has a rather small set of research materials. Thus, it is not possible to draw too strong conclusions on the complete nature of the debate and overall focus on criticizing and defending abortion bans and access. This study examines the language of two media outlets whereas the discussion is done on many more platforms, such as social media. However, the media outlets are prominent in the field of journalism, reaching large audiences and considerable power in politics and journalism. Therefore, this study's ability to examine the reproduction of pro-life and pro-choice discourses and ideologies is justified.

This thesis observed an emerging discussion comparing abortion and bodily autonomy to COVID-19 and mandatory vaccinations and mask mandates. The data also noted debates of all-inclusive terms and trans men giving birth, and how these are (de)legitimized and employed in both pro-choice and pro-life rhetoric. These findings could offer a new research focus to the abortion debate.

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