

Writing History in a Supreme Court Ruling: Evaluative language in the majority opinion concerning *Dobbs vs. Jackson*

Abstract

This paper conducts an exploratory investigation into the use of evaluative language in the historical section of the majority opinion in *Dobbs v. Jackson Women's Health Organization*, 597 U.S. (2022). The investigation employs Martin & White's (2005) Appraisal Theory, adapted specifically for the analysis of the particular evaluative features of historical discourse as elaborated on, for example, by Myskow (2018a) and Oteiza & Pinuer (2013). The findings confirm that a revised version of the Appraisal framework can be fruitfully applied to systematically account for the complex interplay between, on the one hand, the various sources of evaluation, and, on the other hand, the specific attitudinal resources, employed by the authorial voice in an attempt to construe and advance a particular view of the past. This particular ideological view is ultimately leveraged to produce a convincing justificatory argument for the overruling of the two previous landmark Supreme Court decisions that had, respectively, granted and confirmed abortion as a constitutional right in the United States of America.

Keywords

Appraisal Theory, legal discourse, U. S. Supreme Court, abortion, argumentative discourse

1 Introduction

This paper investigates the patterns of evaluative language use in the majority opinion released by the U. S. Supreme Court in *Dobbs v. Jackson Women's Health Organization*, 597 U.S. (2022).¹ The investigation focuses on a ten-page extract (pp. 15-25) containing a section in which the majority justices deal with the history of abortion jurisprudence in the English common law and in the American legal traditions respectively, with a view to argue that abortion is not a constitutional right “rooted in our Nation’s history and tradition” (p. 9). This historical reconstruction is at the core of the majority’s argument justifying the overruling of the two previous Supreme Court decisions, namely *Roe v. Wade*, 410 U.S. 113 (1973) and *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833 (1992), as is explicitly acknowledged and emphasized by Justices Breyer, Sotomayor and Kagan in the dissenting opinion:

The lone rationale for what the majority does today is that the right to elect an abortion is not “deeply rooted in history”: Not until *Roe*, the majority argues, did people think abortion fell within the Constitution’s guarantee of liberty.²

The goal of the present study is to examine the rhetorical mechanisms at work in the representation, supported by explicitly inscribed and/or implicitly invoked realizations of evaluation (Martin & White 2005), of historical facts and historical actors in the majority justices’ reconstruction of the

¹ The text of the ruling can be retrieved from <https://supreme.justia.com/cases/federal/us/597/19-1392/>. The Court here ruled in favor of upholding Mississippi’s Gestational Age Act that banned abortions performed after 15 weeks of gestation, overruling the previous decisions in *Roe v. Wade* and *Planned Parenthood of Southeastern Pa. v. Casey*. The full text of the majority opinion, excluding appendices, runs 79 pages long. In what follows, the page numbers in brackets accompanying the quotations from the ruling refer to the pdf version that can be downloaded from the same website.

² *Dobbs v. Jackson Women's Health Organization*, 597 U.S. (2022), dissenting opinion.

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pre-*Roe* tradition of abortion jurisprudence. In what follows, I set out to show how this piece of legal writing, in its purportedly objective and neutral presentation of the relevant facts of the past, uses a range of evaluative resources typical of historical discourse (Coffin 2002, 2006; Bondi 2017; Carrió-Pastor 2019). The extract from the majority opinion is analyzed through the lens of Appraisal Theory (Martin & White 2005), drawing on the recent work by Myskow (2017, 2018a, 2018b), as well as Oteíza (2003, 2009) and Oteíza and Pinuer (2013), who have expanded and fine-tuned Appraisal framework in order to more accurately and systematically account for the particular evaluative patterns typically found in historical writing.

In the analysis of the excerpt from the *Dobbs v. Jackson* ruling, the present study adopts a systemic-functional approach to legal discourse. Seen from this perspective, legal discourse represents an example of a specific type of language use “embedded in the context of situation and beyond this in the context of culture” (Miller 2002: 120). Following Miller, I treat the text of the majority opinion “as an instance of a ‘specialized site of engagement’” characterized by “speaker selections from the semantic resources which the culture makes available for use in struggles for meaning ascendancy” (2002: 120). In this struggle for meaning, the relations of power and solidarity can be realized in the lexicogrammar and the phonology, with attitudinal meanings “either explicitly expressed in the text [“inscribed”] or conveyed through ideational expressions [“invoked”]” (Simon-Vandenberg 2014: 125). As such, the focus of the investigation is on the different types of evaluative acts employed in the majority opinion to construct a persuasive justificatory argument.

Section 2 of the paper begins by briefly introducing the rich field of linguistic approaches to the study of evaluative phenomena, paying special attention to Martin and White’s Appraisal Theory. I then review some examples of research in legal discourse that have employed the Appraisal framework to analyze the use of evaluative meanings in legal texts. The section concludes by detailing the adaptations to the Engagement subsystem of the Appraisal framework that have been introduced to investigate the patterning of evaluative language in historical discourse (see above). Section 3 first offers a brief overview of the history of the U. S. Supreme Court involvement in matters concerning reproductive rights up until 1973, followed by the presentation of the analytical procedure carried out on the dataset with the view to explore the use of multiple sources of evaluation in the excerpt under investigation. In Section 4 I propose to integrate the methodology presented and applied in Section 3 with the notion of “the valorative symbolic representation” of the time framework as discussed by Oteíza and Pinuer (2013). Finally, Section 5 offers some concluding remarks.

2. Literature review

2.1 Discourse-analytical approaches to the study of evaluation in discourse

In recent decades interest in the analysis of evaluative language has opened new avenues of research into linguistic phenomena that have been variously defined as stance (investigated mainly by Biber, Finegan and Conrad, e.g. Biber & Finegan 1988, 1989; Conrad & Biber 2000, as well as Somasundaran & Wiebe 2010 and Hyland 2005), evidentiality (Chafe & Nichols 1986), as well as subjectivity (White 2004) (cf. Benamara et al. 2017). These examples represent but some from a range of linguistic approaches to the study of evaluative linguistic phenomena that have been surveyed by Benamara et al. (2017: 203-209) in a helpful overview that includes both qualitative and corpus-based studies of evaluative language (cf. also Sarangi 2003; Martin & White 2005: 38-40; Flowerdew 2012: 179-180; Partington et al. 2013: 64-65; van Leeuwen & Han 2023). Among the most important approaches that represent the different traditions of research into evaluative language we find, on the one hand, Martin & White’s (2005) Appraisal theory, and, on the other, the research area of evaluation and pattern grammar established by Hunston (2011), as well as Hunston and Thompson (2000a; 2000b). Major contributions to the area of corpus-based studies of evaluation

include also work by Bednarek (2006) and Zappavigna (2018: 59-72), while Partington et al. (2013) investigate evaluation by combining qualitative methodologies (e.g., manual inspection/close reading) with quantitative corpus analyses, typically used in corpus-assisted discourse studies. The development of specialized computer-based tools (e.g., the UAM Corpus Tool created by O'Donnell [2008] or the AppAnn system designed by Almutairi [2013]), offers new possibilities for a more systematic study of evaluative patterns in language use (Oteiza 2017).

In the present study evaluative language patterns will be analyzed through the lens of Appraisal Theory (Martin & White 2005). As Oteiza (2009: 613) explains,

Appraisal theory is a reorientation of Halliday's legacy (1994) and his work on mood and modality developed as part of the theoretical frame of the SFL. The main purpose of Appraisal theory has been to present a comprehensive and systematic reorganization of the linguistic resources that can be used to value the social experience.

As is well known, the system of Appraisal according to Martin and White (2005) is represented by the three domains of Engagement, Attitude and Graduation:

APPRAISAL	ENGAGEMENT	Monogloss (Authors do not recognize alternative voices)
		Heterogloss (Authors recognize alternative positions)
	ATTITUDE	Affect: Un/Happiness, In/Security, In/Satisfaction
		Judgement: Social Esteem and Social Sanction
		Appreciation: Reaction, Composition and Social Valuation
	GRADUATION	Force: raise/ lower
Focus: sharpen/ soften		

Fig. 1: Overview of the Appraisal system (from Oteiza 2009: 615)

The different sub-systems of Appraisal can be briefly described as follows. The system of Engagement focuses on the dialogical positioning of the speakers or writers with respect to their audience or to propositions within the discourse (Martin & White 2005). The system of Attitude examines explicitly inscribed and/or implicitly invoked codings of personal feelings about self (Affect), others (Judgment), and objects (Appreciation), respectively (cf. Gales & Solan 2017: 116-117). The system of Graduation enables speakers or writers to either intensify or downplay the strength of their utterances (Martin & White 2005). More specifically,

[w]ithin the system of Attitude, speakers utilize graduation to demonstrate greater or lesser degrees of positive or negative feelings; within the system of Engagement, speakers utilize graduation to intensify or diminish their level of involvement or investment in the discourse. (Gales & Solan 2017: 117)

To sum up, Appraisal Theory enables the researcher to investigate “the inscribed and evoked codification of intersubjectivity in the discourse, taking into consideration both the epistemological and interpersonal expressions” (Oteiza 2017: 458). Section 2.2 will review examples of some recent research that has fruitfully applied the framework in the analysis of legal texts.

2.2 Appraisal Theory and legal discourse

Thanks to the growing interest in investigating the ways in which evaluation can manifest itself in legal discourse, labels such as evaluation and stance (see 2.1 above) have been used to explore the process of stancetaking from a discourse-pragmatic perspective (cf. Chaemsaithong 2017). Chaemsaithong (2017: 106-107) includes terms such as voice (Ivanic and Camps 2001; Hyland 2008), point of view (Simpson 1993), as well as appraisal (Martin & White 2005), in the list of the partially overlapping/competing theoretical and methodological frameworks that have been employed to explore “legal discourse as evaluative and interpersonal rather than merely objective and impersonal”.

Following Bhatia (1987), Bayley explains that

[t]he superordinate term “language of the law” can in fact be broken down into “professional discourse” (lawyer-client consultation, courtroom discourse), “juridical discourse” (judgments and rulings), and “legislative discourse” (contracts, agreements etc., legislation and rules, etc.) (1993: 63)

In recent years Appraisal Theory has been fruitfully applied as a method of analysis for the study of evaluative patterns in a range of legal texts, with most research being focused on identifying, cataloging, and quantifying the specific attitudinal resources used by a wide range of actors in a number of sub-categories of legal discourse (cf. Miller 1993).

In the studies of courtroom discourse, for example, Gales & Solan (2017) have analyzed the use of stance markers during cross-examination comparing cases involving sexual and non-sexual assault. More specifically, they were interested in investigating “how moral judgements – those that were supposedly barred through rape shield laws – are still expressed in [sexual assault cases]” (Gales & Solan 2017: 108). Their findings showed that the attitudinal resources from the category of Social Sanction (Judgment) in the sub-system of Attitude were frequently employed by cross-examining lawyers to provide socially negative assessments of witnesses. Gales & Solan (2017: 108) conclude by reasserting “the usefulness of Appraisal Analysis as a tool for achieving a more nuanced understanding of the use of stance markers during cross-examination”, stressing that, as their analysis has shown, in sexual assault cases specifically, “the [negative] stance toward the witness [creates] different and more powerful reactions” (2017: 137).

In a similar vein, Bartley has used the analytical framework of Appraisal Theory to examine “the evaluative nature of the lawyers’ discourse concerning specific individuals” (2020: 422). Her case-study dealt with the portrayals of the defendant and the victims by the lawyers in a rape case that resulted in a wrongful conviction. Using the UAM Corpus Tool (see 2.1 above), Bartley conducted a corpus-based investigation whose aim was to determine “particular language patterns employed by attorneys of the case in their closing arguments”, paying special attention to “the lexical and grammatical choices [that were] selected in favor of others” (2020: 427). Focusing on Affect and Judgment, Bartley was able to identify a difference between the use of positive and negative appraisals by the prosecution and the defense team respectively. Another interesting finding in this study concerned the use of invoked vs. inscribed appraisal, with some instances of explicitly evaluative comments found in the dataset of “courtroom discourse [that] is supposed to be free of evaluative lexis” (Bartley 2020: 440).

When it comes to juridical discourse, the evaluative language of the U. S. Supreme Court opinions has been investigated in several recent studies. Chaemsaithong (2017) refers to the work of Finegan (2010) and Mazzi (2010), who have examined the use of attitudinal and emphatic expressions (Finegan 2010), as well as judicial evaluation strategies in Supreme Court judgments (Mazzi 2010). The consensus in legal discourse studies is that the distinct functions of language in the U.S. Supreme Court decisions are associated with the pivotal role of attitudinal, that is to say, evaluative meanings that 1) are extremely context-dependent and 2) occur “within the constraints of values valid for [this

particular] legal system and legal culture” (Goźdź Roszkowski & Pontrandolfo 2013: 13). In other words, as Goźdź Roszkowski argues,

judicial argumentation is an institutionalized form of discourse communication where evaluation is the core information communicated. [...] In the context of Supreme Court opinions, judges need to refer to arguments advanced by lower court judges and other legal actors taking into account a multiple audience. [...] the acceptability of the decision, to a large extent, depends on the quality of the justification. The skillful use of evaluative language, which contributes to the justificatory force of argumentation, should be regarded as one of the hallmarks of professional judicial writing. (Goźdź Roszkowski 2022: 4)

As already hinted at above (see Section 1), in the particular extract under investigation from the U. S. Supreme Court opinion, the majority justices craft their justificatory argumentation by referring to historical facts and historical actors. This is done in order to write an apparently impartial and, at the same time, convincing historical account of the pre-*Roe* abortion jurisprudence that provides the foundation upon which rests the decision to overrule the two previous landmark Supreme Court rulings. The final paragraph in this Section details the expanded analytical framework that will be applied to carry out the analysis on the dataset that will be presented in Section 3.

2.3 Evaluative meanings in historical discourse: Myskow’s Levels of Evaluation framework

In research that has employed an SFL-based framework to analyze evaluative meanings in historical discourse the subsystem that has received special attention is that of Engagement, that is to say, “the system that helps us explore the source of evaluations” (Oteíza 2009: 614; cf. Martin & White 2005: 92-135). As outlined already in White (2000, 2003), the first distinction in the Engagement subsystem concerns that between monoglossic and heteroglossic utterances (see Fig. 1 above). The former, as White makes clear, are evaluations

introduced into the text via bare assertion. Accordingly these propositions are declared absolutely. There is no acknowledging of alternative positions with respect to these particular evaluations, no recognition that such propositions operate within a continuing debate. Rather, the text represents each of these negative evaluations as located in the textual voice’s single, autonomous and isolated subjecthood, and as not in tension with, or contradistinction to, any alternative position or positions. Thus from the Bakhtinian perspective, such bare assertion is ‘monoglossic’ or ‘undialogized’ (Bakhtin 1935[1981]: 427). (White 2003: 263)

When, instead, writers or speakers use a range of linguistic resources to introduce alternative positions with respect to particular evaluations, the phenomenon of heteroglossic engagement is at work (White 2003: 267-270). Heteroglossic engagement, as White explains, can vary in the degree of construing engagement by positioning the textual voice, for example, as either “being open to, or entertaining, dialogic alternatives” or as aiming “to reject, counter, confront, head off or rule out actual or potential dialogic alternatives” (2003: 268). The two communicative effects have been labelled as “dialogic expansion” and “dialogic contraction” respectively (White 2003: 268).

In order to account for the ways in which, in historical discourse, the various evaluative voices are introduced and “work together to advance particular value positions” (Myskow 2018a: 336), Myskow has devised a four-level framework of evaluation that builds on and fine-tunes the Engagement subsystem in Martin & White’s Appraisal framework, as well as Hunston’s (2000) Status, Value and Relevance (SVR) theory.³ By adapting Martin & White’s framework, Myskow’s goal is to account “for the complex interplay of evaluative voices in historical discourse, [designing]

³ For reasons of space, Hunston’s SVR theory cannot be discussed in detail in this paper (see Hunston [2000] for details). Another source that Myskow is indebted to is Macken-Horarik’s (2003) work on inter- and super-subjectivity.

four levels of evaluation tuned specifically to the disciplinary activities of historians” (2018a: 336). As shown in Table 1, Myskow’s levels of evaluation are labelled as “*inter*, *super*, *extra*, and *meta*-evaluation”, with each level being “differentiated vis-à-vis different combinations of *target* and *source* of evaluative acts” (Myskow 2018a: 337):

Level	Description	Examples of realization
<i>Inter</i> -evaluation	This level is concerned with evaluations of the past by historical participants	1) direct quotations (e.g., excerpts from some documents) reported by the authorial voice; 2) indirect textual assimilations (e.g., “it was assumed”); 3) realized more indirectly by incorporating reports of historical actors’ feelings vis-à-vis nominalizations of emotion
<i>Super</i> -evaluation	Here the evaluations of the past are performed by the authorial voice that offers the official, sanctioned views of the text – those that readers are most strongly positioned to align with	typically monoglossic, i.e., categorical claims by the authorial voice realized as unmediated, categorical assertions
<i>Extra</i> -evaluation	Here the authorial voice engages with other views toward the past, and in doing so takes up a more scholarly or disciplinary posture	1) realized by reporting the views of others through overt attributions (e.g., “some historians have argued”); 2) realized through other types of dialogical positioning that implicitly construe alternative views toward the subject-matter
<i>Meta</i> -evaluation	This level is concerned with evaluations of the present discourse under construction	This level is distinct from the others in that, by focusing on evaluative features of the discourse itself, it permeates all parts of a text, and thus can be seen as subsuming the other three levels of evaluation

Table 1: Myskow’s Levels of Evaluation Framework (based on Myskow [2018a: 339-340; 345-347]).

Myskow’s approach to the analysis of evaluative meaning in historical discourse pays special attention to the ways in which the different levels in the framework interact with each other. Labelled with the term “evaluative resonance”, this mechanism “accounts more specifically for how an attitudinal realization by a participant at one level of the framework may resonate at other levels, invoking evaluations by other discourse participants” (Myskow 2018a: 340). To give an example of evaluative resonance at work, “an evaluation performed by a historical actor (*inter*-evaluation) or an interpreter of the past (*extra*-evaluation) may be interpreted as consistent with or sanctioned by the authorial voice (*super*-evaluation)” (Myskow 2018a: 340).

The procedure, adopted and tested in Myskow (2017, 2018a, 2018b), as well as in Myskow & Ono (2018), involves employing the framework

[to code] particular evaluative acts in terms of their types and locating them at different levels of the proposed framework. The Attitude system provides a comprehensive set of resources for coding evaluations of things (Appreciation), people (Judgment) and their feelings (Affect) across each of the levels. The Engagement system is helpful for locating them at the *inter*-, *super*-, or *extra*-evaluative levels. (Myskow 2018a: 347)

In Section 3 I will briefly review the pre-*Roe* involvement of the U. S. Supreme Court in the matters involving reproductive rights. I will then detail the analytical procedure carried out on the excerpt from *Dobbs v. Jackson* in order to explore 1) the different sources of evaluation (e.g., historical actors, the authorial voice, other legal actors, etc.) who perform evaluations of the historical facts that have been selected by the majority justices in their reconstruction of the history of abortion jurisprudence, as well as 2) the particular attitudinal resources that the majority opinion relies on to construct its justificatory argument.

3. Applying Myskow's Levels of Evaluation framework: Presentation of findings

3.1 The U. S. Supreme Court and reproductive rights before *Roe v. Wade*

To briefly contextualize the historical background to the case under investigation, it is necessary to recall that the involvement of the U.S. Supreme Court in matters concerning reproductive rights can be traced as far back as the 1920s. In the infamous decision in *Buck v. Bell*, 274 U.S. 200 (1927), the Court ruled that there was no constitutional objection to the procedure of compelled sterilization of individuals with 'hereditary' mental conditions. The ruling was overturned fifteen years later in *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535 (1942) when, against the backdrop of a changed socio-political context, the Court ruled that compulsory sterilization violated the plaintiff's reproductive rights. It was in *Skinner v. Oklahoma* that the Court explicitly acknowledged, for the first time, that "laws that infringe the implied fundamental right to procreate are especially problematic under the Constitution" (quoted in Stone [2017: 359]). Fast forwarding to the 1960s, in the groundbreaking decision in *Griswold v. Connecticut*, 381 U.S. 479 (1965), Justice William O. Douglas designated "a right of privacy older than the Bill of Rights" (quoted in Stone [2017: 361]) as a constitutional right married couples could rely on when choosing whether to use contraception. In other words, the Court ruled that the State could no longer interfere with these decisions by making contraception illegal. The discrimination between privacy rights accorded to married as opposed to unmarried couples stood until 1972, when *Eisenstadt v. Baird*, 405 U.S. 438 (1972) was decided. As summarized by Stone (2017: 366), "[*Eisenstadt*] 'proclaim[ed] the existence of a new fundamental right, hinted at in both *Skinner* and *Griswold* [...]: *Skinner* had dealt with the right to bear or beget a child; *Griswold* and *Eisenstadt* dealt with the right not to bear or beget a child."

When, in 1973, the landmark ruling in *Roe v. Wade* was handed down, a new era started in constitutional jurisprudence on abortion-related matters. Before *Dobbs v. Jackson* was argued in 2021 and decided in 2022, sixteen major rulings involving reproductive rights were issued by the U. S. Supreme Court in the period between 1973 and 2016 (see Ziegler 2020 for the details of these decisions). Typically, rulings on reproductive rights showcased an ideologically polarized Court, so much so that, at least until *Dobbs v. Jackson*, *Roe v. Wade* had held the dubious honour of being one of the two most egregious examples of the "shamelessly partisan" (Segal & Spaeth 2002: 2) rulings in the Court's history.

3.2 Analytical procedure

The approach adopted in the present study is exploratory and qualitative. In order to test the suitability of the framework devised by Myskow (see 2.3 above) in the analysis of a legal opinion dealing with the reconstruction of historical facts, the investigation focuses on a short extract from the majority opinion (approx. 2,500 tokens). Following the analytical procedure detailed by Myskow (2018a: 347-352), the excerpt was coded manually for attitudinal (Affect, Judgment and Appreciation categories of the Attitude domain) and engagement (Levels of Evaluation framework) resources. While the coding was performed on the sentence level, the accumulation of (negative) evaluation and evaluative resonance in the interplay of the different levels of evaluation was considered across sentences.

Tables 2 and 3 show how the coding procedure was carried out using two sample sentences (Sentence 10 [S10] and Sentence 13 [S13]).⁴ The items highlighted in bold represent instances of inscribed appreciation, while the token 't' signals invoked attitude and is introduced to indicate items whose function is to extend the prosodies inscribed by the explicitly evaluative items (cf. Martin & White 2005: 61-90).⁵

⁴ The tables with the individual coded parts have been arranged vertically rather than horizontally, as suggested in Myskow (2018a).

⁵ The fundamental distinction between inscribed and invoked attitude is summarized by Martin and White as follows: "[the] non-core vocabulary items infused with manner connote **attitude** rather than denote; as such they lie somewhere

(S10) <i>Roe</i> either (1a) ignored or misstated this history, and <i>Casey</i> (1b) declined to reconsider <i>Roe</i> 's (1c) faulty historical analysis.	
	Levels of Evaluation framework
	Super-evaluative level
Target	<i>Roe</i> , <i>Casey</i> , <i>Roe</i> 's historical analysis
Evaluation	(1a), (1b), (1c) -app
Target	this history [the history of "no support in American law for a constitutional right to obtain an abortion", see (S1-S9)]
Evaluation	t, +app

Table 2: Coding of a sample sentence (S10)

Sentence 10 (S10), coded in Table 2, sums up and concludes the introductory part of the excerpt under investigation. Sentences (1-9) introduce the main points that will be developed in the historical section of the opinion. Taken together, this initial 10-sentence sequence introduces the claim about the absence of any historical evidence whatsoever (as evinced from court rulings, scholarly treatises, etc.) for any support, in the history of either English common law or American jurisprudence, for a constitutional right to obtain an abortion.

The main evaluative act in (S10) is performed on the super-evaluative level by the authorial voice that offers a categorical assessment of the historical facts, imposing this reconstruction of the events on the multiple audiences the opinion aims to address. There is no engagement with either historical actors (on the inter-evaluative level) or other interlocutors that could offer alternative (either supporting or diverging) viewpoints on the extra-evaluative level. The main targets of evaluation are *Roe*, *Casey*, *Roe*'s historical analysis (see row "Target" in Table 2) and these are evaluated explicitly in a negative way (Composition: balance) in the stretches of text marked in bold as (1a), (1b), (1c) in row "Evaluation" in Table 2. From the inscribed negative evaluation of the way in which *Roe* and *Casey* had dealt with the history of abortion jurisprudence, it is possible to make an inference and identify an invoked positive evaluation of the history in question as logical, rich in detail (Composition: complexity, see the last two rows in Table 2) and important to recover. This reading is immediately confirmed in (S11) ("It is therefore important to set the record straight."). The accumulation of negative evaluation gradually intensifies in the following paragraphs that piece together the shortcomings of *Roe*'s and *Casey*'s (very similar) versions of the history of abortion jurisprudence.

Table 3 shows a coded example of a more complex sentence in which several levels of evaluation interact to keep the authorial voice in the background while enabling other voices to do the work of advancing one particular ideological view on the facts of the past.

between affording an **attitude** and provoking it, and so are more sensitive to co-text and reading position for interpretation" (2005: 66, emphasis in original).

(S13) The (2a) “ eminent common-law authorities (Blackstone, Coke, Hale, and the like),” <i>Kahler v. Kansas</i> , 589 U. S. _____, (2020) (slip op., at 7), <i>all</i> describe abortion after quickening as (2b) criminal . (Italics in the original)	
Levels of Evaluation framework	
Inter-evaluative level	
Source	Blackstone, Coke, Hale, and the like
Target	[women and abortionists involved in] abortion after quickening
Evaluation	(2b) -prop
Super-evaluative level	
Target	all [Blackstone, Coke, Hale, and the like]
Evaluation	t, +cap
Target	[women and abortionists involved in] abortion after quickening
Evaluation	t, -prop
Extra-evaluative level	
Source	<i>Kahler v. Kansas</i> , 589 U. S. _____
Target	Blackstone, Coke, Hale, and the like
Evaluation	(2a) +cap

Table 3: Coding of a sample sentence (S13)

Sentence (13) is an example of a typical piece of judicial writing containing embedded references. The main source of evaluation on the extra-evaluative level is represented by the ruling in *Kahler v. Kansas*⁶ from which a quotation containing an explicit evaluation in (2a) is extracted (see rows Source, Target, Evaluation under the Extra-evaluative level). For this extra-evaluative source, the targets of evaluation are represented by the “**eminent common-law authorities**” (2a, bold added to indicate explicit evaluation), who are evaluated positively using the attitudinal resources of Judgment (Social Esteem: Capacity). The same quotation from the ruling in *Kahler v. Kansas* also contains an evaluative realization on the inter-evaluative level (see rows Source, Target, Evaluation under the Inter-evaluative level). Indeed, here it is claimed that the aforementioned common-law authorities “*all* describe abortion after quickening⁷ as **criminal**” (italics in the original, bold added to indicate explicit evaluation). In other words, both the women who asked for them, and the abortionists who performed abortions after quickening, become targets of negative evaluation in (2b) (Social Sanction: Propriety). The authorial voice on the super-evaluative level makes itself visible by italicizing *all* to refer to the eminent common-law authorities. This italicizing, first, helps the reader to infer that the authorial voice not only acknowledges, but concurs with the positive extra-evaluation offered in *Kahler v. Kansas* to emphasize the capacity and authoritativeness of these historical actors. Secondly, the addition of italics has the intended effect of intensifying the condemnation of the practice of abortion after quickening in (2b), implicitly labelling the people involved as criminals.

As suggested by Myskow (2018a: 349), the information collected for the individual sentences on the extra-evaluative level can be extracted from the individual tables and re-arranged in comparable lists in order to present “the official, sanctioned view of the text” more clearly, as shown in Table 4:

⁶ See *Kahler v. Kansas*, 589 U.S. ____ (2020), <https://supreme.justia.com/cases/federal/us/589/18-6135/>.

⁷ That is to say, “the first felt movement of the fetus in the womb, which usually occurs between the 16th and 18th week of pregnancy” (p. 16).

S10	S13
Explicit negative Appreciation of <i>Roe</i>	Implied positive Capacity of common-law authorities
Explicit negative Appreciation of <i>Roe</i> 's historical analysis	Implied negative Propriety of the behavior of women and abortionists involved in abortions after quickening
Explicit negative Appreciation of <i>Casey</i>	
Implied positive Appreciation of the complexity, logic, and importance of the history of abortion jurisprudence	

Table 4: Evaluative acts on the extra-evaluative level in (S10) and (S13)

The analyses of the two sample sentences presented in Tables 2, 3, and 4 show that the framework developed by Myskow (see Section 2.3 above) is flexible and accurate enough to be employed in a systematic investigation of the evaluative features in a specific genre of legal writing. The next section details the findings of the analysis that was carried out by coding the sixty-three individual sentences in the excerpt under investigation here.⁸

3.3 Presentation of the findings

The primary aim of this exploratory, qualitative analysis is to identify a set of strategies that the majority justices employ to express evaluative meanings in the purportedly dispassionate, objective and discretionless process of judicial decision-making (cf. Segal & Spaeth 2002). The main evaluative pattern that the application of Myskow's Levels of Evaluation framework has enabled me to discover is represented by the preference for incorporating explicit evaluations at the inter- or extra-evaluation levels, and not on the super-evaluative one. This means that, in the excerpt in question, it is inter- and extra-evaluative voices that "perform the work" of presenting a particular viewpoint on the events of the past. This viewpoint is then used by the super-evaluative voice to construct its narrative of pre-*Roe* abortion jurisprudence. The working mechanism of this strategy has been illustrated in the coded example of (S13) above (see 3.2). Further examples are given below:

(S17) And writing near the time of the adoption of our Constitution, William Blackstone explained that abortion of a "quick" child was "by the ancient law homicide or manslaughter" (citing Bracton), and at least a very "heinous misdemeanor" (citing Coke). (p. 17)

(S37) The "most important early American edition of Blackstone's Commentaries," *District of Columbia v. Heller*, 554 U.S. 570, 594 (2008), reported Blackstone's statement that abortion of a quick child was at least "a heinous misdemeanor" [...]. (p. 20)

In (S17) and (S37) the presence of the super-evaluative voice can be detected only by analyzing the use of the inter- and extra-evaluative resources. In (S17), multiple inter-evaluative voices are introduced. Among these we find William Blackstone, an English common-law authority from the 18th century, who quotes a 13th-century treatise by Henry Bracton, as well as a 17th-century treatise by Sir Edward Coke. This interaction between historical actors is used to present an explicitly and unequivocally negative evaluation of the act of aborting a "quick child" that is described as "homicide, manslaughter [and at least] a very 'heinous misdemeanor'". The structure and evaluative realizations in (S37) mirror those discussed above in the case of (S13), with inter- and extra-evaluative voices – again with Blackstone as a protagonist quoted in another previous Supreme Court ruling, *District of Columbia v. Heller* – that are leveraged to align the reader with an authoritative negative viewpoint toward the act of aborting a "quick child". In (S22), other inter-evaluative voices, belonging to unnamed judges in historical court cases, are introduced for the same purpose:

⁸ Longer quotations from primary sources were excluded.

(S22) [...] in the 1732 case mentioned above, the judge said of the charge of abortion (with no mention of quickening) that he had “never met with a case so barbarous and unnatural.”⁹ (p. 18)

(S23) Similarly, an indictment from 1602, which did not distinguish between a pre-quickening and post-quickening abortion, described abortion as “pernicious” and “against the peace of our Lady the Queen, her crown and dignity.” [...] (p. 18)

In the examples discussed above (S17, S37, S22, S23), explicit attitudinal lexis (e.g., *heinous*, *barbarous*, *unnatural*, *pernicious*, etc.) is never employed directly by the super-evaluative voice. This is not to say that instances of explicit evaluations are not found on the super-evaluative level: see, in addition to (S10) discussed above, also the following examples (emphasis added to indicate evaluative realizations):

(S31) And it is **revealing** that Hale and Blackstone treated abortionists differently from *other* physicians or surgeons who caused the death of a patient “without any intent of doing [the patient] any bodily hurt.” [...] (p. 19)

(S46) At any rate, the original ground for the quickening rule is of **little** importance for present purposes because the rule was abandoned in the 19th century. (p. 22)

(S55) This **overwhelming** consensus endured until the day *Roe* was decided. (p. 24)

(S59) The **inescapable** conclusion is that a right to abortion is not **deeply** rooted in the Nation’s history and traditions. (p. 25)

In these examples the super-evaluative voice explicitly and strongly construes its authorial position that the reader is expected to align with. This is done, as predicted by Myskow, by using unmediated, categorical assertions of the kind we find in (S46), (S55), and (S59). This strategy represents a second typical pattern that characterizes the use of evaluative language in the text under investigation.

4. Analysis of the temporal dimension in the majority opinion

In this section, I propose to enrich the methodology of Myskow’s Levels of Evaluation framework by adding a layer of “the valorative symbolic representation” of time as discussed by Oteíza and Pinuer (2013). For reasons of space constraints, the discussion will be limited to the most salient aspects of Oteíza and Pinuer’s contribution and its application to the case-study under investigation. The time framework in historical discourse, as Oteíza and Pinuer have argued, can be employed by the authorial voice as a strategy to align the reader with a particular perspective of the past; in that respect, investigating the temporal dimension in historical discourse is justified by considering

[its] fundamental and global role in the interpretation of the discourse of history [that is] due to the fact that authors fashion a symbolic representation of the time framework which is critical to the construction of the argument and the evaluative orientation of the discourse. (2013: 7)

By further developing the extension of the sub-systems FORCE and FOCUS of the semantic system of GRADUATION proposed by Hood (2010) for the analysis of academic discourse, Oteíza and Pinuer (2013: 8) aim “to better understand the ways historians and sociologists construct a symbolic valorative ‘scenification’ of time in historical explanations [of the recent national past].” This is done by differentiating between chronological, on the one hand, and, on the other, ‘less’ chronological and ‘more’ symbolic representations of time in historical discourse. To exemplify this distinction, for the

⁹ While it is beyond the scope of this paper to discuss the accuracy of the majority justices’ assessment and interpretation of the historical cases they relied on, it is necessary to observe that the use of this particular case, dating back to 1732 and involving the charge of manslaughter against Eleanor Beare, has been hotly debated in the press.

first category, Oteíza and Pinuer offer the use of grammatical structures that “express phasing, setting in time, segmenting time, sequencing and duration” (2013: 9); in that category we find, *second half of the sixties; in 1969; the sixties; a few months before; for some time*. All these temporary instances, they argue, can be used “to build time from specific valorative perspectives” (Oteíza and Pinuer 2013: 9). A range of metaphorical resources, on the other hand, can be used to create more symbolic representations of time. As Oteíza and Pinuer explain,

the non-congruent resources of FORCE as time codified by nominalizations and processes [can] work in a combined manner with the meaning of ATTITUDE to construct the symbolic representation of time framework in historical discourses. (2013: 13)

Oteíza and Pinuer’s approach to the analysis of time dimension in historical discourse is presented in Fig. 2:

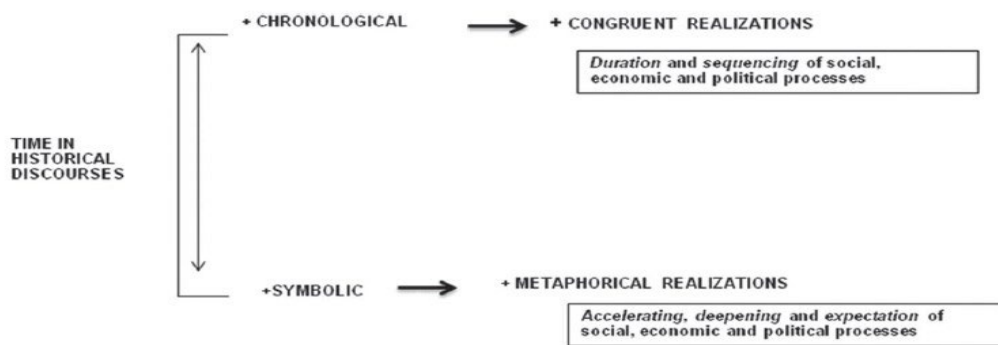


Fig. 2: Time dimension in historical discourse (Oteíza and Pinuer 2013: 17)

The frequency of a range of temporal expressions in the historical section of the majority opinion in *Dobbs v. Jackson* calls for an exploration of the ways in which time is represented here. A closer scrutiny of such expressions shows how both prototypical and more specialized structures are employed in the text not only to chronologically codify the unfolding of the past events in question, but to actively construct a particular ideological perspective toward these events. Fig. 3 below shows the frequency and the distribution of the range of temporal expressions found in the excerpt under investigation:

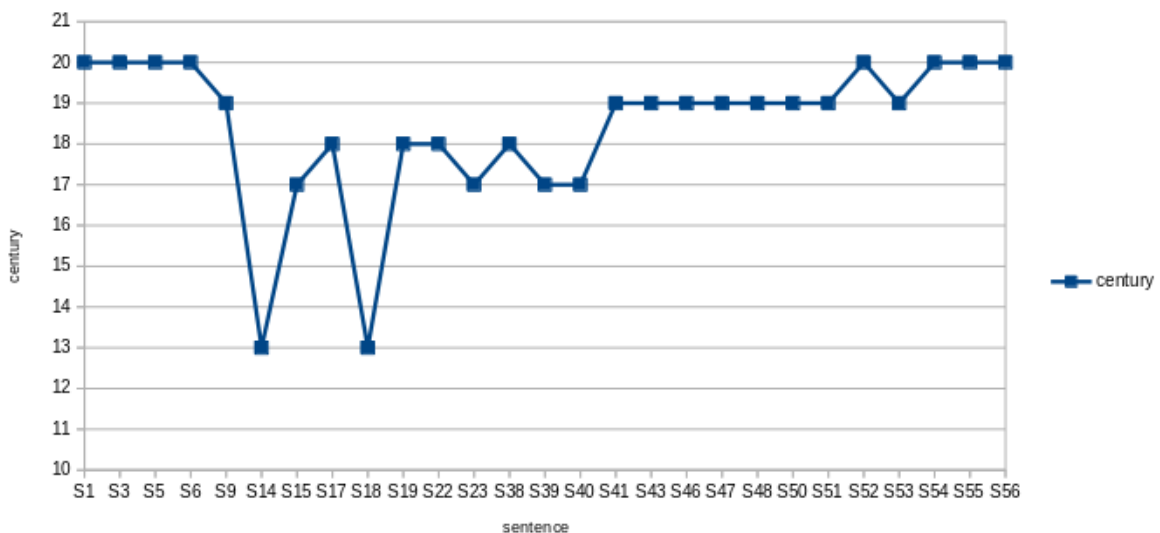


Fig. 3: Overview of the use of temporal expressions in the excerpt

The most frequently used references in the excerpt are to the events that took place either in the 19th (8 occurrences) or in the 20th centuries (9 occurrences). The remaining ten occurrences are distributed between the 13th century (2 occurrences), the 17th century (4 occurrences), and the 18th century (4 occurrences). As summarized visually in the graph, the reconstructed narrative rests on a varied assemblage of selected historical facts that occurred some time between the 13th and the 20th centuries. The non-linearity of the graph emphasizes the special attention given to some well-defined historical entry points, as the following examples of the use of temporal structures show:

Group 1

(S1) Until the latter part of the 20th century; (S3) Until a few years before *Roe* was handed down; (S5) only a few years before *Roe*; (S6) right until shortly before *Roe*; (S55) until the day *Roe* was decided;

Group 2

(S9) By the time of the adoption of the Fourteenth Amendment; (S17) near the time of the adoption of our Constitution; (S51) By 1868, the year when the Fourteenth Amendment was ratified.

Group 3

(S14) Henry de Bracton's 13th-century treatise; (S15) Sir Edward Coke's 17th-century treatise.

The most frequent historical entry point is the 1973 *Roe* decision (see examples in Group 1). Other significant occurrences that are used to establish the temporal framework include references to some specific events in American history (Group 2), as well as references to the contribution of a group of several influential historical actors (Group 3). Overall, the strategy of repeatedly referring to a limited selection of historical facts and actors creates a sense of a static, unvarying, frozen version of the past 700 years - roughly measured from the time Henry de Bracton's treatise was published in mid-13th century until the day *Roe* was decided in 1973 - during which abortion (especially after quickening) appears to have been perpetually and unanimously considered as a criminal, heinous, and barbarous activity. This selection of facts, for example, does not include any references to the previous Supreme Court rulings on reproductive rights that were discussed in Section 3.1 of the present paper. It is therefore an arbitrary selection which is based on an argumentative purpose.

5. Conclusion

This paper has conducted an exploratory investigation into the use of evaluative language in the historical section of the majority opinion in *Dobbs v. Jackson*. The analysis has shown that adaptations to Appraisal Theory proposed by, most importantly, Myskow (2018a) and Oteiza & Pinuer (2013) for the analysis of historical discourse, can be fruitfully applied to the analysis of this particular type of judicial writing.

By systematically coding and describing a small excerpt from the majority opinion that purports to reconstruct, in an objective and dispassionate manner, the facts of the past to justify the Court's decision to overrule *Roe v. Wade* and *Planned Parenthood of Southeastern Pa. v. Casey*, it has been possible to show how invoked and inscribed evaluative meanings permeate the text consistently, achieving the intended rhetorical effect of an increasingly negative evaluative prosody. In terms of the specific subsystems of the Appraisal framework, the subsystem of Engagement, that "helps us to explore the source of evaluations" (Oteiza 2009: 614), was found to be of particular importance in the investigation of the ways in which the authorial voice construes its attitudinal positioning (cf.

Myskow 2018a). The findings of this small-scale study have shown significant differences in the degree of negative explicitness when it comes to the specific lexical choices employed by the different voices introduced to construct a particular version of the past. While the lexis on the inter- and extra-evaluative levels was found to be unequivocally vituperative in the assessment of abortion (mainly of “a quick child”), of the behavior women who sought to abort a quick child and of the willingness of abortionists to perform such abortions (e.g., *criminal*, *pernicious*, *barbarous*, to name but a few examples), the authorial voice on the super-evaluative level showed a marked preference for less explicitly negative evaluations. In other words, the majority opinion appears to rely mainly on a selection of authoritative inter- and extra-evaluative voices that guide and align the reader with a particular ideological narrative of historical facts - a narrative that is imbued with an increasingly negative prosody - while attempting to maintain a degree of neutrality and objectivity expected from a legal text.

Short, but highly powerful pieces of discourse¹⁰ that have the effect of changing the lives of millions of people, such as the text analyzed in this paper, are of utmost interest to linguists. In future research, the manual investigation conducted here can be supported by a computer-assisted annotation procedure in the coding of evaluative features (for example, by using the UAM Corpus Tool, see 2.1 above) and applied to larger samples of legal texts dealing with historical facts. To conclude, the present investigation has contributed to an important research area of an SFL-based tradition of legal discourse studies whose ultimate goal is to “[provide] sufficient evidence to raise the suspicion that [legal] texts presented as grounded in logic and objectivity are not fully what they claim to be” (Douthwaite & Vasta 2001: 33).

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¹⁰ I would like to acknowledge the source by thanking one of the reviewers who used this expression to describe the text analyzed in the present paper.

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