Nick de Lange

S4476638

BA werkstuk Amerikanistiek

Laszlo Muntean

3-7-20

A ‘Paper’ Abortion for men: the road to true equality

Nick de Lange (S4476638) - fourth year student of American Studies (2nd semester)

Contact: N.deLange@student.ru.nl

BA Thesis American Studies – Laszlo Muntean

Teacher who will receive this document: Laszlo Muntean

Title of document: BA Thesis

Name of course: BA Werkstuk Amerikanistiek

Date of submission: 3-7-20

Please read the Faculty's Declaration concerning Fraud and Plagiarism preceding this cover sheet. By signing this cover sheet, you also acknowledge your knowledge of and agreement with its terms.

The work submitted here is the sole responsibility of the undersigned, who has neither committed plagiarism nor colluded in its production.

Signed

Name of student: Nick de Lange

Student number: s4476638

Acknowledgements:

I would like to thank Warren Farrell for taking the time to answer my questions and for his book recommendations. I believe his work creates a much-needed social awareness for male issues that otherwise might not be brought to light.

I would also like to thank my dad for suggesting the Radboud's American Studies program and for supporting me in my journey, never coming up short in his paternal role. His presence in my life and his love and affection have been an inspiration. This has allowed me to reflect on what kind of father I would want to be and what I would change in the world to make sure my future son or daughter has equal opportunities in life. This research is testimony to that commitment.

Thank you for everything that you have done.

Love, Nick

Abstract:

This study is focused at the parental rights of U.S. males in regard to abortion and tries to map out and discuss historical events and policy which have influenced abortion rights. I will show how males have been affected by the abortion discussion and policy in the United States since the *Roe v. Wade* ruling and how the idea of a "paper" abortion could help create more equality in abortion policy. Abortion has been a relevant topic since *Roe V. Wade* and I intent to show its development through court cases, popular consensus, and policy. I argue that the controversial discussion of paternal abortion rights and the heavy focus on maternal abortion rights has led to a diminished role for the fathers of fetuses. I conclude with some propositions that might increase the legal footing of men in abortion law and is closer to true gender equality.

Keywords:

Abortion rights, equality, paper abortion, financial abortion, paternal rights.

Table of contents:

Introduction: p. 6

Chapter 1: History of abortion: p. 7

Chapter 2: Jurisprudence and abortion law: p. 9

Chapter 3: Matt Dubay and the “financial abortion” concept: p. 12

Chapter 4: International abortion law: p. 14

Chapter 5: The psychological impact of abortion: p. 16

Chapter 6: An ethical solution for paper abortion policy: p. 19

Conclusion: p. 21

Bibliography: p.23

Introduction

It has been almost fifty years ago that *Roe v. Wade* was heard before the Supreme Court, resulting in a national abortion right that was protected by the constitution (*Roe*). Since then, the abortion debate has become a central topic in politics, with pro-life supporters arguing against *Roe* because they believe the fetus has a right to life, while pro-choice supporters believe that the fetus is not a human being yet or argue that possible complications to the mother's health are more important than the survival of the fetus. As a social liberal, I have never understood why the Republican Party is aligned with the pro-life ideals of conservative Christians, since they argue that the government should interfere with a right that belongs to the parents, which goes again the Republican ideal of limited government restrictions. At the same time, I am baffled by feminist pro-life supporters that argue that abortion is solely a women's issue since men cannot carry a child to term and do not experience physical changes during the pregnancy. It takes two to tango, men are equally important in the conception and support of human life so should they not have a say in abortion decisions. A recent BBC article also shows how men have been mentally impacted by abortion decisions and that their voice is "rarely heard among the passionate multitudes in the US abortion debate" ("The men who feel left out of US abortion debate"). Therefore, it is essential that we explore the current abortion policy of the U.S. and determine what legal changes can be made to protect the rights and needs of men. More specifically, how the idea of a "paper" or "financial" abortion - a term coined by Frances Goldscheider over twenty years ago – would relieve men of their financial support obligation by "aborting" their legal fatherhood status (Goldscheider).

To do this, I will first establish the current policy by an analysis of the legal history of abortion in America, which has been shaped and structured by judicial cases such as *Roe v. Wade.* in the second chapter, I will discuss the legal policy and notions that arose from the legislative and judicial branch. Showcasing how the judiciary has been a major force in the construction of abortion policy. I will then discuss how the financial abortion concept was interpreted by the Supreme Court in *Dubay v. Wells.* Establishing how the judicial interpretations of the court are not supported by the general public and have created abortion policy that neglects the rights of men. After this, I am going to discuss how the judicial interpretation of *Roe* and the U.S. abortion debate has been mimicked in other modern nations with abortion policy. Also giving attention to two different interpretations of a financial abortion by female authors from the Netherlands and Australia. Thereafter, I will investigate the psychological impact abortion has on men, highlighting how the lack of

academic research that is available on this topic is due to the neglect of men's role in abortion. Finally, I will ethically evaluate the abortion procedure and policy, offering some ethical solutions that would change the abortion policy and provide men with rights that are similar to the existing rights of women. This paper does not seek to take a political stance nor does it argue against a woman's right to have an abortion. The central question of my research: to what extent can a financial or "paper" abortion help men that have been negatively affected by U.S. abortion policy that only protects maternal rights?

History of abortion

While the U.S. abortion debate is a modern and new topic that has been developed in the past century, the history of abortion techniques and their usages have a far longer history. One of the oldest written records of contraceptive medicine and abortion techniques dates back to 1550 BC, in the Egyptian Ebers Papyrus (Potts). Abortion knowledge and techniques were still limited and the state of pre-modern medicine made surgical and medical abortions much more complicated. Malcolm Potts mentions three different abortion techniques that were developed along with other fertility techniques. One reference refers to the usage of an herb called silphion or silphium in the ancient Greek city of Cyrene, where the depiction of the herb can still be seen on Cyrene coins. The second reference is to the usage of embryotomy in ancient Jewish writing, in which a mechanical abortion was used to mutilate and remove the fetus in order to save the mother's life, which can be seen as a predecessor of the surgical abortion that is used now. The last reference is to the usage of massage abortion that was developed in multiple parts of Asia over a millennia ago. This procedure takes place when the women is twelve to twenty weeks pregnant and uses external pressure with the hands or an instrument to kill and remove the fetus. This technique has the oldest visual representation of abortion, which can be seen in the Ankor Wat temples of Suryavarman II that were built around 1150 AD (Potts). While it may not be as safe as modern surgical or medical abortions, it is still widely used today in parts of Asia as an abortion alternative, especially in underdeveloped and poor regions. Overall, there was little research done in the field of contraception before America was founded due to the Christian critique of contraception and abortion that was dominant in Europe and its colonies for centuries.

In North America, Native Americans had used the herbal medication of black root and cedar root to induce abortions before the arrival of the European colonists. These colonists

were restricted by the ideology and laws of the European country that governed that part of North-America and views on contraception were therefore diverse. The English common law allowed abortions before "quickening", which was the first fetal movement that could be felt and usually happened after the fourth month of pregnancy (Gold, 9). This principle was the main source of legislation for early American society, as no new legislation was introduced until mid 19th century. While most colonists and early Americans saw abortion as unnatural or unethical, it was still widely in use during the 19th century, due to the fact that the laws and authority were often unclear about this subject or did not have the oversight to apprehend abortion apothecaries, which pushed abortifacients. Contraception and abortion drastically reduced the number of children married women in America had in the 19th century. At the start of the 19th century, married women had around seven children but this was almost halved by the end of the century (Potts). When Massachusetts introduced legislation that severely restricted legal abortion in the middle of the 19th century, other states were quick to follow suit and had implemented similar legislation by the start of the 20th century (Gold, 9). This pushback came from Christians but also from law and medical professionals who were aware how dangerous abortion procedures were at that time. Due to this legislation, many women turned to illegal abortion providers which were even more dangerous, resulting in the deaths of thousands of women per year until the arrival of antibiotics in the 1940s (Gold, 8). In the 1960s, forty-four states only allowed abortion if the life of the women was endangered when carrying the pregnancy to term, resulting in calls for change by groups such as the American Law Institute (ALI), which recognized the possibilities of safe abortions and recommended decriminalization (Gold, 9). When the case of *Roe v. Wade* arrived at the Supreme Court, most states had already implemented legislation that decriminalized abortion in response to the ALI recommendation.

When the Supreme Court had made its verdict, it had created the first national boundaries for abortion law which states had to adhere to. The decision made abortion restrictions illegal during the first trimester, limited restrictions during the second trimester, and made abortions possible in the third trimester if the woman's health was in danger (*Roe*). The decision for such a framework was highly unusual and controversial for the judicial power, since this would typically be performed by Congress, being the legislative power. Critics of *Roe v. Wade* have argued that the verdict of the Supreme Court was unconstitutional and even a staunch proponent of women's rights such as current Supreme Court judge, Ruth Bader Ginsburg has criticized this legal decision. She has argued that the

decision should not have been made by the courts and that it was not centered around women's rights, stating that "it's about the doctor's freedom to practice … it wasn't woman-centered, it was physician-centered" (Seelinger). *Roe v. Wade* created the national abortion debate and later judicial cases that are essential for the rights of men when it comes to abortion. In previous history, states tended to give the same rights to the father and mother of the fetus in abortion decisions, which was dismantled by the courts in three distinct cases. The first is *Planned Parenthood v. Danforth*, which stated that the decision to abort belongs solely to the women since the fetus grows inside her, taking away the vote of men (*Danforth*). The second is *Planned Parenthood v. Casey*, which argued that women who want an abortion should not have to notify their partner of this decision, creating many obstacles for the fathers to be kept in the loop of the pregnancy, if they were informed at all (*Casey*). The final case is *Dubay v. Wells*, which was not heard by the Supreme Court but is essential to paternal rights since it addressed and rejected the possibility of the financial or paper abortion for men that did not want to become a father (*Dubay*). The post-Roe era and these cases will be the focus of my research since they have caused the inequal distribution of abortion rights that we have today. I will discuss the judicial cases in more detail in the next two chapters.

Jurisprudence and abortion law

It is almost impossible to look at abortion law on a state-to-state level, considering that states have a considerable amount of freedom in determining how they implement abortion law. However, there are national abortion restrictions and guarantees that states have to adhere to. Most legal and societal issues are shaped by the national legislative branch – in this case Congress – which is later implemented by the states and checked by the judiciaries. However, when it comes to abortion law, judicial precedent has had a bigger impact on state legislation than Congress. The only instance of congressional law that impacts the abortion procedure is the 2003 Partial-Birth Abortion Ban Act, which prohibits the use of the intact dilation and evacuation procedure, a controversial, late-term abortion procedure. This ban was upheld by the Supreme Court in 2007 after it was deemed unconstitutional by lower federal courts, since the ban did "not impose an undue burden from any overbreadth" (Stout). All other national abortion regulations have come from the Supreme Court, as we have established with the four aforementioned judicial cases. We have already discussed the legal aspects of *Roe v. Wade* and the court's intent to protect the freedom of physicians to practice,

but it is imperative that we recognize that this was “based on the right to privacy contained in the Due Process Clause of the Fourteenth Amendment” (*Roe*). This “right to privacy” protected the interests of the physician against certain governmental restrictions but it also established that the mother has a right to privacy in her decision to have an abortion, which created tension between paternal and maternal abortion rights. This tension is settled by the Supreme Court in the cases of *Danforth* and *Casey,* which restricted paternal abortion rights in order to protect the established right to privacy of the mother. The remainder of this chapter will focus on these two cases and the next chapter will focus on the Matt Dubay case, since this case introduces the paper abortion concept to the courts, which we will discuss in more detail next chapter.

Planned Parenthood v. Danforth was not a major victory for the anti-abortion movement nor for the abortion-rights advocates, since it allowed some provisions of the original Missouri statute, such as an expansion of the legal concept of “viability”, while prohibiting others, such as parental and spousal consent (*Danforth,* 53). The Missouri statute argued that viability should be interpreted as “that stage of fetal development when the life of the unborn child may be continued indefinitely outside the womb by natural or artificial life supportive systems”, which was accepted by the Supreme Court since artificial life supportive systems were a new development that could offer “meaningful life outside the mother’s womb” and the decision to abort should ultimately be made by the attending physician (*Danforth,* 52). The Supreme Court interprets this case similarly to the case of *Roe v. Wade*, arguing that artificial life supportive systems can provide the viability of the fetus but leaving this up to the physicians to determine, protecting the autonomy of attending physicians. This line of argumentation is repeated in the prohibition of parental and spousal consent, arguing that “the abortion decision and its effectuation must be left to the medical judgment of the pregnant woman's attending physician" (*Danforth,* 72-75). Although, the Supreme Court did not completely prohibit parental consent requirements, stating that “the State may not constitutionally impose a blanket parental consent requirement” without “significant state interests”, leaving the option open for milder restrictions (*Danforth*). On the other hand, spousal consent was completely prohibited, “since the state cannot “'delegate to a spouse a veto power which the [S]tate itself is absolutely and totally prohibited from exercising during the first trimester of pregnancy’”” (*Danforth*, 67-72). It is vital that we discuss how the Supreme Court has come to the decision to declare paternal ‘veto power’ unconstitutional. For instance, the mother already has veto power over the decision not to

have an abortion, since a spouse cannot force his wife to have an abortion against her will. If we want true equality, should the father – under normal circumstances - not have the same right when his wife wants to have an abortion against his will? This decision of the Supreme Court highlights how the attending physician and the mother of the fetus have solid legal standing, while the partner's interests are neglected, reducing him to nothing more than a sperm donor.

This analogy may seem like a slippery slope but it fits the bill when we look at the case of *Planned Parenthood v. Casey*. This case was actually a major victory for the anti-abortion movement, with the Supreme Court reinterpreting *Roe v. Wade* and retaining many of the restrictions of the original statute except for one. The case starts with the possibility to overturn *Roe,* which would create much controversy and highly diminish the stature and functioning of the Supreme Court (*Casey*, 836). This opinion did not get the votes it needed, but a reexamination of *Roe* was deemed necessary. This reexamination led to multiple guiding principles that should be in place instead of some of the original notions of *Roe*, namely: the employment of the "undue burden" standard before viability instead of the "strict scrutiny" standard, the rejection of *Roe*'s trimester framework, and it allowed states to restrict the abortion procedure after viability has been reached (*Casey*, 837). These new principles greatly increased the power of states to enact new abortion policy, which is why abortion-rights advocates were displeased with the result. There is however another group that should be displeased, namely the partners. The Supreme Court's conclusion retained the definition of a medical emergency, recordkeeping and reporting requirements, informed consent requirements, and one-parent consent requirements, but they overturned the spousal notification requirement (*Casey*, 837-838). They argued that it constituted an undue burden, since the husband's interests are "irrelevant" and "it cannot be claimed that the father's interest in the fetus' welfare is equal to the mother's protected liberty, since it is an inescapable biological fact that state regulation with respect to the fetus will have a far greater impact on the pregnant woman's bodily integrity than it will on the husband (838). This phrasing showcases how paternal abortion rights have been stripped away, arguing that spousal rights are 'irrelevant' and nothing more than a burden on the mother. The sperm donor analogy even seems to understate the severity of the situation, since a donor has fulfilled his obligation after the donation, while a partner is highly impacted by the mother's decision. The father may never be aware of the pregnancy and has no say in the outcome, yet he bears financial and parental responsibility if a baby is delivered and faces psychological

trauma if his child is forcibly taken away from him through an abortion. We will discuss the psychological impact on fathers in a later chapter.

Matt Dubay and the 'financial abortion' concept

The case of *Dubay v. Wells* is different than the aforementioned cases. Dubay is challenging the Michigan Paternity Act, which establishes paternal filiation in order to hold the father financially accountable for a child born out of wedlock and "a defendant who fails to comply with an order to pay child support faces serious consequences, including wage garnishment, suspension of drivers or professional licenses, or jail" *(Dubay*, 4). Dubay is not backed by abortion-rights advocates or big organizations like Planned Parenthood - although he did receive help from Mel Feit and the National Center for Men - which might explain why he expected his "Roe v. Wade for men" claim to be rejected twice and why he did not appeal the case to the Supreme Court ("US men fight child support laws"). It is also not focused on any aspect of abortion policy that affects the abortion procedure or that restricts the mother's rights in any way. Dubay argued that the Michigan act was in violation of the Equal Protection Clause of the Fourteenth Amendment since the mother can choose to have the child or give up her motherhood via an abortion, a decision he has no influence over (*Dubay*, 1, 4-5). Dubay has a solid argument, given the fact that the case of *Planned Parenthood v. Danforth* has taken away the right of men to vote in abortion decisions but has not provided the father with other means to give up his fatherhood. The proposed concept of a financial or 'paper' abortion would provide fathers with the ability to legally give up their fatherhood, relinquishing them from their financial responsibilities. However, there are some concerns with the application of such a concept, such as legal implications related to other responsibilities and rights fathers have. It is also not in line with the established jurisprudence, since it requires the spousal notification that was rejected in *Planned Parenthood v. Casey* and a highly liberal interpretation of *Roe.* As such, the district court argued that "the right to abortion, as articulated in *Roe*, derives from the woman's right to bodily integrity and her privacy interest in protecting her own physical and mental health", therefore rejecting his line of argumentation (*Dubay*, 5).

I agree with the judges that an abortion decision is not solely based on financial motives, but disagree that it can't be the primary reason for an abortion. The same year that Dubay's child was born, the Guttmacher Institute published a study showcasing the motives

of women that were having an abortion (Fine, 110). This study showed that during 2004 only 4% of the women that underwent an abortion did so to prevent possible complications with their physical health, consistent with the 3% that was established in a 1987 survey (Fine, 114). These same surveys showed that "wrong timing" was the most powerful motivator for having an abortion, with 25% in 2004 and 27% in 1987, while financial insecurities were listed as the second biggest reason, with 23% in 2004 and 21% in 1987 (Fine, 114). While this argument is more relevant to politics, the judges should have known that abortions are mostly performed for other reasons than the protection of physical health. The majority of abortions are motivated by issues that affect both parents, yet only the women is granted a legal right that forfeits her parental obligations. Therefore, I would argue that Dubay rightfully claimed that the Equal Protection Clause of the Fourteenth Amendment had been violated. Nevertheless, I understand why the judges rejected Dubay's claim, since challenging *Roe* and overturning *Casey* would go against the established jurisprudence and would create unforeseen consequences for the children. This utilitarian approach to justice protects the need of children, since they cannot represent themselves, but fails to protect the equal rights of men and women. It is unfortunate that the National Center for Men was not able to convince Dubay to appeal to the Supreme Court, since they are the only governmental body that can legally challenge and overturn previous jurisprudence. However, there are ways in which a legislative body could successfully implement a policy that would make a paper abortion for men possible.

We have discussed in detail how the judicial branch has dominated abortion policy since *Roe v. Wade*, which has created a rigid system that is unable to protect the rights of men without tearing down the established system. The rigidity of judicial power makes it unable for the courts to deal with the tension between the legal rights of the father and the mother, since the judiciary can only interpret cases based on constitutional law and jurisprudence. The legislative body is more flexible and can work in the grey area of law, which gives them the potential to create a loophole or workaround that can establish paternal abortion rights, without having to change the entire abortion system. This can be done by creating laws that minimally challenge established maternal rights, which the Supreme Court may accept and adopt in the established jurisprudence. The government should be motivated to create such legislation, since they should represent and act in the interest of the public of the United States, therefore their actions should be based on popular consensus. While the issue of a paper abortion has not been explored enough to show how the general public thinks about it,

the Pew Research Center has published a study that highlights how the established jurisprudence goes against the popular consensus. The study showed that the general public was in favor of a law that would enforce spousal notification when the mother wants to abort, which goes directly against the verdict of the Supreme Court in *Casey* (Pew). The study highlights the need for the legislative branch to challenge the Supreme Court, with 79% of men and 67% of women favoring such a law, as well as 80% of Republicans and 64% of Democrats (Pew). In congress, this kind of majority would be enough to amend the constitution, should this not be enough to amend legislation that challenges the Supreme Court jurisprudence? The U.S. government should take action to ensure that they represent the popular consensus and can provide equal opportunity, even if this shakes up the status quo.

International abortion laws

The United States is not the only nation that has trouble providing equal abortion rights to men and women. Many modern nations that have implemented abortion policy have done so with a disregard for paternal rights, heavily based on the jurisprudence that America has established. Fearing controversy, the European Union has refrained from implementing legislation or jurisprudence that would force abortion policy on the European states. Although, In the case of *A, B, and C v. Ireland*, the dissenting opinion of the European Court of Human Rights did argue that the Irish abortion policy should be under more scrutiny, given the fact that most other states had a less restrictive abortion policy and that this should guide the "European consensus" (*A, B, and C,* 84-86). The case also showcases how the challenged amendment was established to deter this exact kind of judicial influence; the government enacted the Eight Amendment to the Irish Constitution in the 1980's, fearing that the previous abortion policy was inadequate and might get expanded by judicial interpretation, similar to *R. v. Bourne* in England and Wales or to *Roe v. Wade* in the United States (*A, B, and C,* 7-8). In recent years, Ireland has repealed the Eight Amendment for a less restrictive abortion policy and Northern Ireland has decriminalized abortion earlier this year, so we will have to wait and see how this impacts paternal rights. In the 1939 case of *R. v. Bourne*, the King's Bench expanded the previous policy that only allowed abortion in order to save the life of the mother arguing that "where a doctor was of the opinion that the woman's physical or mental health would be seriously harmed by continuing with the

pregnancy, he could properly be said to be operating for the purpose of preserving the life of the mother" *(A, B, and C,* 7). Currently, the British abortion policy is very similar to that of the United States, given the fact that the British Pregnancy Advisory Service (BPAS) states that the abortion decision is up to the woman and the father does not need to be notified ("Partners"). However, they do offer counseling and advice for the father on how to deal with and support the mother's decision, but only if the mother wants this too.

The Dutch abortion policy is identical to that of the United States, "De Nationale Adviesbalie" - a judicial help organization in the Netherlands - has stated that a pregnant woman does not need to convince or inform the father of the fetus if she wants to have an abortion, while the father is obligated to pay child support if she carries the child to term ("onverwachte zwangerschap"). They also argue that fathers should refrain from steering the mother towards an abortion, since this might diminish their legal standing in custody cases when the child is born and that child support payments do not guarantee any parental rights. Contrary to the judicial influence in U.S. abortion policy, the Dutch policy is mainly based on legislation in the "Wet Afbreking Zwangerschap", which establishes Dutch abortion rights (WAZ). The reason why Dutch fathers have no say in the abortion decision is because they are never mentioned in this legislation. The policy never mentions "men" or "fathers" and therefore they have no rights, only the physician and the pregnant woman are mentioned and are granted rights that pertain to the abortion procedure (WAZ). Although it is never expressed in the legislation, it is clear that this policy was created to protect the bodily integrity of the woman and the right of the physician to perform the procedure, which are the same issues that determined the Supreme Court's verdict during *Roe*. The obligation of Dutch parents to financially support their children until they become of age is established in article 404 (1) of the Dutch Civil Code or "Burgerlijk Wetboek" and offers no way for parents to relieve themselves of this obligation once the child is born (BW1). It seems that many modern nations have implemented abortion policy in similar ways, protecting the rights of physicians and mothers, while paternal rights are non-existent. We have already seen that American women were generally not in favor of the Supreme Court's rejection of spousal notification, just like there have been women who are openly supporting and arguing for a paper abortion for men.

One of these women is Haitske van de Linde, a Dutch politician for the liberal "Volkspartij voor Vrijheid en Democratie" (VVD), who has expressed that she supports a "paper" abortion for men (Van de Linde). Although she is unsure of the legal details, she

believes that men should be able to relieve themselves of their paternal obligations by putting in writing that the pregnancy was unwanted. She also refers to the paper abortion concept of the Swedish Liberal Party (LUF Väst), who have argued that the father should be able to have a paper abortion up until the same time a pregnant woman can have an abortion (Van de Linde). Van de Linde proclaims that she is a proud feminist, arguing that all feminists should concern themselves with true equality and not the kind of feminism that picks and chooses the rights and obligations they like best. As a previous supporter of the VVD, I admire Van de Linde's efforts to advocate for a new and possibly controversial viewpoint on Dutch abortion rights. Another woman who has expressed similar views on a paper abortion is Catherine Deveny, an Australian writer and comedian. She argues that both women and men should have the ability to "opt out" of parenthood. "I believe a woman should not be forced to become a mother any more than a man should be forced to become a father" (Deveny). Deveny also uses a sperm donor analogy, showcasing how a paper abortion would give the father the same status as a sperm donor, without rights and obligations to the child. Instead of allowing men to abort up until women can, she argues that we should use the "litmus test", which would be an affirmation of the father's wishes for fatherhood that can be put in legal writing, determining his wishes even before his partner is pregnant (Deveny). Her argument is that this would make the parental desires of both parties more transparent, empowering the mother and creating a less traumatic experience for the child by informing women early on of this rejection of fatherhood, instead of fathers leaving later in the child's life (Deveny). Deveny expertly explains the nuances and history of the paper abortion debate, offering the best implementation of such a policy that we have discussed so far.

The psychological impact of abortion

We have already determined that the judiciary and legislative body have neglected paternal abortion rights since men cannot biologically carry the child or experience the mental and physical pain that comes with a pregnancy and are therefore not influenced by abortion decisions. However, while men's bodies might not be influenced by abortion decisions, their minds are. The stereotypical misconception that men are less emotional and less affected by trauma has made the psychological impact of abortion on men seem irrelevant, as we have seen from the earlier argumentation of the judge in *Casey.* This is also evident from the phrasing of "Fiom" - a Dutch specialist in unwanted pregnancies – regarding

the way men process abortion, stating that men have a “back to business” attitude and are used to solving problems by themselves (“Mannen en abortusverwerking”). Catherine Coyle and other experts on mental health have argued that most of the studies regarding mental health and abortion have been targeting women, leading to a lack of knowledge on how the male psyche is affected by abortion (Coyle)(Nagy)(Reich)(Kero). In her study, Coyle reviews empirical reports on this issue, which highlighted frequent post-abortion emotions but also “that after miscarriage men evidenced higher “difficulty coping” and “despair” scores on the Perinatal Grief Scale than did women” (Coyle, 2). Therefore, the argument that men are not as emotionally involved in the unborn child as the mother seems to be challenged. Coyle’s empirical research showcases how little is known about how men are affected by the abortion process, further establishing the need for more research in this area. Coyle does manage to propose some suggestions for clinicians if they want to help the father; namely, “1) to include questions related to pregnancy loss when taking men's psychosocial or medical history, 2) to keep in mind men's possible need for counseling before, during, and/or after abortion, and 3) to take into account men's preferred coping mechanisms” (Coyle, 12). I agree with Coyle that society needs to pay more attention to the vulnerability of the male psyche, which is not only relevant to abortion policy. This problem becomes especially evident in the global suicide rate, with men being twice as likely to commit suicide compared to women (Ritchie).

Where Coyle used a quantitative analysis of the available research to highlight the disparity between abortion studies that are focused on the women’s experience compared to the men’s experience, Kero and Reich performed their own research, hoping to expand the research and knowledge available on the abortion experiences of men. Both experts not only refer to the limited research that is available, they also explain why this issue is not easily solved. With Kero noting the “notably thin” academic writing on men and abortion and Reich declaring men “invisible” in abortion research, it would seem that they are just underscoring the importance of their research; however, both authors stress the limitations of their research, given the fact that the men they want to research are hard to reach and often not present in abortion clinics (Reich, 5-6)(Kero, 2673). Both researchers used a similar methodology but a different execution for their research. They both went to an abortion clinic in order to find men that were having an abortion with their partner, with Kero using an enquiry and Reich using one-on-one interviews. Kero acquired a higher number of participants but had no physical contact with them, since the enquiries were given to the men indirectly by their partner, which might affect the accuracy of the information. Reich’s in-

depth interviews allowed for more experiences to be discussed, although the limited number of participants does not guarantee that these results are objective and applicable to all men. Both studies might not have been able to establish the database of information they were hoping for, but they have addressed a major obstacle in establishing such a database, namely the underrepresentation of men in abortion clinics (Reich, 6). Kero concludes that "it is ethically difficult to contact these men, as they are not patients" and Reich seems to agree with this conclusion, stating that "not enough is known of the men who did not accompany partners, including those informed of the pregnancy only after its termination" (Kero, 2673) (Reich, 6). The inconclusiveness of their research is not only proof of the academic neglect of the abortion experience of men, it also highlights how men lack a medium and support groups to express their experience, making it even harder for researchers to come to conclusive results.

Even last year, Beáta Nagy published a study that underscored the limited research available on the paternal abortion experience, establishing it as a current problem for men's rights (Nagy, 1). Nagy also stresses the difficulty of sampling men on this issue, which leads to biased sampling due to certain male groups being overrepresented and because researchers often rely on women to express the emotional state of their partner (Nagy, 4). In order not to sound like a broken record, let us take a look at the research that is available in Nagy's research that describes the psychological response of men. These studies show "that men, similarly to women, frequently experience anger, shame, sadness, or guilt after an abortion, especially when the decision raised ambivalent feelings in them" (Nagy, 8). Moreover, ambivalent feelings are highly likely since men are powerless and neglected in the decision-making process but still feel like they failed in their paternal role by abandoning their child. To avoid feelings of abandonment and failure men often engage in impulsive risk-taking behavior or get frustrated by their non-involvement in the decision, while men that are given that opportunity felt sad and ashamed that they pressed for abortion (Nagy, 8). Another study in Nagy's research established that the main feelings of men after abortion related to loss and grief, helplessness and victimhood, and a need for spiritual healing (Nagy, 8). Based on the research – or rather the lack thereof – it is evident that we do not know enough about the male demographic, the psychological impact, or even how to produce accurate and large-scale case studies. This chapter does not argue that men are more likely to be impacted by the abortion process, it only establishes that there is a significant impact on the male psyche that should be taken into account when discussing the role and care of men in abortion decisions.

As a society, we should consider exploring this issue more thoroughly, which might help the academic debate and research, raise the awareness and support for men during abortion, and could change the legal and political stature of men in regards to abortion. In this next, and final chapter, I will address the ethical challenges of paternal abortion rights, the experience and expertise of American writer and activist Warren Farrell, and my own solution to the paper abortion debate.

An ethical solution for paper abortion policy

While we have covered the legal arguments and motivations for the current abortion policy, it is just as important to think about the ethical challenges on which abortion policy has been formed. Peter Alward extensively discusses the ethical nuances that determine whether men have an obligation to provide for an unintentional child, based on popular and philosophical interpretation. (Alward, 273-274). The popular argument presupposes that the father has no right that relieves him of financial responsibility, while the mother does have this right, which is unfair and should indicate that either the maternal abortion rights or paternal support obligation are invalid (Alward, 274-275). Pro-choice supporters would be inclined to relieve the father of paternal support obligation, while pro-life supporters would use this argument to take away maternal abortion rights. Alward argues that both can exist together, since the woman is not forcing an obligation on the man but is refraining from relieving him from this obligation by not having the abortion (Alward, 275). However, this interpretation gives the mother the right to relieve financial obligations, which would again be in violation of the principle of fairness since the father has no such right. The philosophical argument is based on consent, stating that the mother's abortion right is an arrangement between her and the fetus, in which she gives consent to the fetus for using her body (Alward, 276). However, this ethical theory argues that this consent should also be given to the father, meaning that he needs to give consent to the fetus for the use of his resources as well (Alward, 276-277). While Alward does not completely agree with these lines of argumentation, he does admit that fathers should have the ability to transfer their obligation to their partner or another relative if they consent to this (Alward, 287-288). On another note, Joona Räsänen argues that "ectogenesis" or artificial wombs will solve the abortion debate for good, since this upcoming technology would make abortions morally wrong, given the fact that the fetus can continue its life in the artificial womb, unless both

parents want to refrain from parenthood (Räsänen, 701). In this way, the father can decide autonomously to "carry" the child to term, since the fetus can now be detached from the mother and placed in the artificial womb (Räsänen, 702). If the technology for artificial wombs can reach this kind of level, I believe its implementation might indeed solve most abortion issues. However, it might take years or even decades before this technology is viable enough for such uses ("the world's first artificial womb for humans").

When discussing abortion, it is almost impossible not to mention other aspects of family life that are impacted by abortion decisions. The whole idea of the paper abortion is centered around financial responsibility and issues such as divorce, custody, and alimony are impacted by abortion policy. While this paper was not able to focus on other areas of family life where male issues are deemphasized, Warren Farrell's book "Father and Child Reunion" talks about the many challenges Farrell faced as a father and husband. Farrell has been activist and author on gender issues for over half a century, during which he slowly pulled away from the evolving feminism and started to focus more on men's issues. He noticed that men's issues were being neglected by activists and politicians up to the point that they were almost invisible in the gender issue debate. His book is an excellent source of information for people that are interested in men's issues, which underscores the important role fathers play in family dynamics and family life. Moreover, he has devoted an entire chapter to the challenges men face during conception and childbirth (Farrell, 154). He showcases how the pro-life vs. pro-choice debate has neglected the role of the father, which he does by highlighting that issues such as abortion are seen as unequal by everyone. By displaying that most women think men's reproductive rights have been overlooked and that men should have a right to be notified of abortion decisions, he shows how current laws are out of touch with the public at large (Farrell, 158). Farrell cleverly uses monologues, questions, analogues, and case studies to display how absurd it is that certain rights and obligations of men are seen as irrelevant in the gender debate. For example, he talks about a man that wrote to him who was forced to get a filled consent form from his wife for his vasectomy, which seemed baffling since this choice was aimed at preventing an unintentional pregnancy and only concerned his body, while his wife could end an unintentional pregnancy with an abortion and would not even need to tell him (Farrell, 160). While he does not explicitly talk about a paper abortion for men in his book, his work and the contact I've had with him makes me believe he would gladly support this concept.

As to the implementation of a paper abortion, we have seen different formats that use existing concepts as inspiration. Van de Linde's implementation was based on the period that a woman could have an abortion, but this concept would need the spousal notification that has been rejected by the Supreme Court in *Casey*. Deveney's concept is more attractive, since it uses the litmus test to establish a legal desire for parenthood before the conception that could be legally binding. However, couples are unlikely to access or be aware of this kind of information and this would turn a court case into a hearsay argument since both parties could deny that they were notified of their partners desire. Considering the abortion policy, jurisprudence, and literature, I would argue that there is a better implementation of a paper abortion that uses a loophole in *Casey,* which is similar to the 1998 legislation proposed by Melanie McCulley, which she presented even before Goldscheider had coined the term "financial abortion" (McCulley, 40-44). The undue burden standard of *Casey* rejected spousal notification for an abortion since the influence of the partner would be an undue burden on the pregnant mother's decision. However, Mculley and I purpose that a partner notification be implemented for a pregnant woman's decision not to have an abortion. In this way, there would be no undue burden since the partner has no influence on the abortion decision. John Hardwig made a similar statement in his ethical paper when he argued that "a discussion between the two [partners] is morally required only if she is planning to have the child" (Hardwig, 43). This legislation would give women the autonomy they need to make up their mind about an abortion decision and their desire for motherhood. After she has made her decision, she should notify the father so he can make a similar decision. He will still become a biological father by nature, but now he can decide if he wants to become a father in the legal sense. This implementation would highly increase the autonomy and legal standing of men in abortion decisions, while it minimizes the burden it places on women. In my opinion, giving men this right to know and right to choose will bring us closer to true equality.

Conclusion

The central issue of this paper has been loosely captured in Hardwig's lead, stating that "Whether to go forward with a pregnancy is often viewed as the decision solely of the woman. but much as motherhood should not be imposed on a woman, fatherhood should not be imposed on a man" (Hardwig, 41). The legal analysis and ethical interpretation of abortion policy highlights the unequal distribution of parental rights in abortion decisions, challenging

the existing structure. Although there is still much to discover about the impact abortion decisions have on men, it is safe to say that further academic and journalistic research is not guaranteed. The issues highlighted in this paper have been overlooked for decades and meaningful change will require a greater degree of social awareness and political support. On this note, I would conclude that the implementation of McCulley's legislation would provide men with a right that is almost identical to the right of women to autonomously decide whether they want to become a parent or not, protecting the right of men to equal treatment under the law. As to social awareness, I would recommend that people closely follow the National Center for Men, who are currently shooting a documentary film on the paper abortion concept and Matt Dubay's court case ("Documentary film: "Paper Abortion""). This documentary will highlight stories and interviews of men that have been affected by the current abortion policy, hopefully raising awareness and providing academics and activists with a new source of information. How abortion rights should be distributed between the sexes to create true equality is still unclear and requires more academic research, but this paper shows that the implementation of a paper abortion will provide men with the same autonomy that has been granted to women, which will be a step in the right direction.

Bibliography:

A, B and C v. Ireland. ECLI: CE: ECHR: 2010:1216JUD002557905. 2010, pp. 1-87. hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-102332%22]}

Alward, Peter. "Abortion Rights and Paternal Obligations." *Public Affairs Quarterly*, vol. 26, no. 4, 2012, pp. 273–291. jstor-org.ru.idm.oclc.org/stable/41697908?seq=1#metadata_info_tab_contents.

BW1:17:2:404:1. *Personen en Familierecht,* 2015. https://wetten.overheid.nl/jci1.3:c:BWBR0002656&boek=1&titeldeel=17&afdeling=2&artikel=404&z=2019-01-29&g=2019-01-29.

Coyle, Catherine. "Men and Abortion: A Review of Empirical Reports Concerning the Impact of Abortion on Men." *The Internet Journal of Mental Health,* vol. 3 no. 2, 2006, pp. 1-17. print.ispub.com/api/0/ispub-article/3683.

Deveny, Catherine. "Financial abortion: Should men be able to 'opt out' of parenthood?" *ABC News,* 18 Dec. 2016. abc.net.au/news/2016-12-04/financial-abortion-men-opt-out-parenthood/8049576?nw=0.

"Documentary Film: "Paper Abortion." *National Center for Men*, 2019. nationalcenterformen.org/paper-abortion/.

Dubay v. Wells. 506 F.3d 422, 6th Cir. 2007. opn.ca6.uscourts.gov/opinions.pdf/07a0442p-06.pdf.

"Father's Rights and Abortion." *FindLaw*, accessed 10 Feb. 2020. family.findlaw.com/paternity/fathers-rights-and-abortion.html.

Farrell, Warren. *Father and Child Reunion*. NY: Tarcher, 2001, pp. 1-307.

Fine, Lawrence B. et al. "Reasons U.S. Women Have Abortions: Quantitative and Qualitative Perspectives." *Guttmacher Institute: Perspectives on Sexual and Reproductive Health,* vol. 37, no. 3, Sep. 2005, pp. 110-118. guttmacher.org/sites/default/files/pdfs/pubs/psrh/full/3711005.pdf.

Gold, Rachel Benson. “Lessons from Before Roe: Will Past be Prologue?”. *The Guttmacher Policy Review*, vol. 6, no. 1, 1 Mar. 2003, pp. 8-11. guttmacher.org/sites/default/files/article_files/gr060108.pdf.

Goldscheider, Frances K. “Men, Children and the Future of the Family in the Third Millennium” *Brown University Op-Ed Service,* Dec. 1998. brown.edu/Administration/News_Bureau/Op-Eds/Goldscheider.html.

Hardwig, John. “Men and Abortion Decisions”. *Hastings Center Report,* Vol. 45, No. 2, 2015, pp. 41-45. onlinelibrary-wiley-com.ru.idm.oclc.org/doi/pdfdirect/10.1002/hast.432.

Kero, A., et al. “The male partner involved in legal abortion”. *Human Reproduction,* vol. 14, no. 10, 1999, pp. 2669–2675. academic-oup-com.ru.idm.oclc.org/humrep/article/14/10/2669/2913111?searchresult=1.

“Mannen en abortusverwerking.” *Fiom,* 2020. fiom.nl/ongewenst-zwanger/abortusverwerking/mannen-abortusverwerking.

McCulley, Melanie G. “The Male Abortion: The Putative Father's Right to Terminate His Interests in and Obligations to the Unborn Child.” *Journal of Law and Policy,* vol. 7, no. 1, 1998, pp. 1-55. brooklynworks.brooklaw.edu/jlp/vol7/iss1/1/.

Nagy, Beáta, and Adrien Rigó. “The Psychosocial Aspects of Induced Abortion: Men in the Focus.” *Men and Masculinities,* 2019. Pp. 1-19. journals-sagepub-com.ru.idm.oclc.org/doi/pdf/10.1177/1097184X19856399.

“Onverwachte zwangerschap en de rechten van de vader.” *NAB,* 6 June 2014. alimentatiewijzer.nl/nieuws/onverwachte-zwangerschap.html.

“Partners - Abortion and Men.” *BPAS,* 2015. bpas.org/abortion-care/supporting-someone-having-an-abortion/partners/.

Planned Parenthood of Southeastern Pa. v. Casey. 505 U.S. 833. 1992. supreme.justia.com/cases/federal/us/505/833/.

Planned Parenthood v. Danforth. 428 U.S. 52. 1976. supreme.justia.com/cases/federal/us/428/52/.

Potts, M, Campbell, M. “History of Contraception”. The *Global library of women's medicine,* May 2009, glowm.com/section_view/item/375.

"Public Opinion Supports Alito on Spousal Notification Even as It Favors *Roe v. Wade*." *Pew Research Center*, 2 Nov. 2005. people-press.org/2005/11/02/public-opinion-supports-alito-on-spousal-notification-even-as-it-favors-iroe-v-wadei/.

Räsänen J. "Ectogenesis, Abortion and a Right to the Death of the Fetus." *Bioethics*, vol. 31, no. 9, 2017, pp. 697–702. onlinelibrary-wiley-com.ru.idm.oclc.org/doi/pdfdirect/10.1111/bioe.12404.

Reich, Jennifer A. "Not Ready to Fill His Father's Shoes: A Masculinist Discourse of Abortion." *Men and Masculinities*, vol. 11, no. 1, Oct. 2008, pp. 3–21. journals-sagepub-com.ru.idm.oclc.org/doi/pdf/10.1177/1097184X06291914.

Ritchie, Hannah, Max Roser, and Esteban Ortiz-Ospina. "Suicide." *Our World in Data,* 2015. ourworldindata.org/suicide.

Roe v. Wade. 410 U.S. 113. 1973. supreme.justia.com/cases/federal/us/410/113/.

Seelinger, Lani. 'Ruth Bader Ginsburg's Roe V. Wade Opinion Might Surprise You (Seriously)'. *Bustle, 9* July 2018. bustle.com/p/ruth-bader-ginsburgs-roe-v-wade-opinion-might-surprise-you-seriously-9695841.

Stout, David. "Supreme Court upholds ban on abortion procedure." *New York Times,* 18 Apr. 2007. nytimes.com/2007/04/18/us/18cnd-scotus.html.

"The men who feel left out of US abortion debate." *BBC News*, 28 Aug. 2019. bbc.com/news/world-us-canada-49240582.

"The world's first artificial womb for humans." *BBC News,* 16 Oct. 2019. bbc.com/news/av/health-50056405/the-world-s-first-artificial-womb-for-humans.

"US men fight child support laws." *BBC News,* 9 Mar. 2006. news.bbc.co.uk/2/hi/americas/4789090.stm.

Van de Linde, Haitske. "Mannen hebben recht op een 'papieren' abortus." *The Post Online,* 8 Mar. 2016. cult.tpo.nl/2016/03/08/papieren-abortus-voor-mannen/.

WAZ. *Wet Afbreking Zwangerschap,* 1981. wetten.overheid.nl/BWBR0003396/2011-10-10.