IRSTI 10.07. 21.31. 76.01 https://doi.org/10.26577/JAPJ.2023.v105.i1.01

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RELIGION, MORALITY, LAW AND ABORTION POLICY

The abortion controversy often affects both religion and politics. Abortion is a highly politicized issue, as governments often seek to amend abortion laws according to elected leaders' preferences or the electorate's mood. However, few studies establish a causal relationship between leader preferences and abortion outcomes. In this article, we reveal whether the religious affiliation of legislators affects the number of abortions in the districts they elect, provided their party affiliation.

The question is why the debate about abortion does not stop, why it becomes an arena of intense struggle not only around changes in the family, where politics is at stake.

Regulation of abortion was not widespread at the time of the republic's founding, but it became pervasive within the next century. By the twentieth century, abortion had become strictly regulated throughout the nation. As time progressed, numerous states relaxed their laws in response to pressure for political change.

Typical grounds for allowing abortion included pregnancies that presented a danger to the mother's life, resulted from rape or incest, or carried the likelihood of congenital disabilities, to establish a woman's freedom to choose as a fundamental national right, advocates for a woman's freedom to choose expanded their plan from the legislature to the courts.

A natural person explains this by a lack of political commitment. We investigate the role of preferences of legislators around the world. In particular, since Muslims express more tremendous opposition to abortion than Hindus, we ask whether Muslim legislators are more effective in reducing sexual intercourse.

Key words: abortion rights, politics, liberal views, conservative views, embryo.

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Түсік жасатуға қатысты дін, мораль, заң және саясат

Түсік жасау туралы даулар көбінесе дінге де, саясатқа да әсер етеді. Түсік жасау – бұл өте саясаттандырылған мәселе, өйткені үкіметтер көбінесе аборт туралы заңдарға сайланған көшбасшылардың қалауына немесе сайлаушылардың көңіл-күйіне сәйкес түзетулер енгізуге тырысады. Алайда, аз ғана зерттеулер көшбасшының қалауы мен түсік түсіру нәтижелері арасындағы себеп-салдарлық байланысты анықтайды. Бұл мақалада біз заң шығарушылардың діни көзқарасы олардың партияға тиесілі болған жағдайда сайлайтын округтердегі түсік жасату санына әсер ете ме, жоқ па, соны ашамыз.

Мәселе мынада, түсік жасау туралы пікірталас неге тоқтамайды, неге олар саясат қауіп төндіретін отбасындағы өзгерістер төңірегінде ғана емес, қарқынды күрес алаңына айналады деген сұрақ туындайды.

Мемлекеттер құрылған кезде түсік жасатуды реттеу кең таралмады, бірақ ол келесі ғасырда кең таралды. XX ғасырға қарай түсік түсіру бүкіл елде қатаң реттеле бастады. Уақыт өте келе көптеген мемлекеттер саяси өзгерістерді қажет ететін қысымға жауап ретінде өз заңдарын жеңілдетті.

Түсік түсіруді шешудің әдеттегі негіздері жүктілік болды, бұл ананың өміріне қауіп төндірді, зорлау немесе қан араласу нәтижесінде пайда болды немесе туа біткен ауытқулардың ықтималдығын тудырды. Әйелді негізгі ұлттық құқық ретінде таңдау еркіндігін нығайту үшін әйелді таңдау еркіндігін жақтаушылар өз жоспарларын заң шығарушы органнан бастап соттар арқылы кеңейтті.

Жеке тұлға мұны саяси міндеттеменің жоқтығымен түсіндіреді. Біз бүкіл әлем бойынша заң шығарушылардың қалауының рөлін зерттейміз. Атап айтқанда, мұсылмандар индустарға

қарағанда түсік жасатуға қатаң қарсылық білдіргендіктен, біз мұсылман заң шығарушылары жыныстық қатынасты азайтуда тиімдірек пе деп сұраймыз.

Түйін сөздер: түсік жасау құқықтары, саясат, либералды көзқарастар, консервативті көзқарастар, эмбрион.

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Религия, мораль, закон и политика в отношении абортов

Споры об абортах часто затрагивают как религию, так и политику. Аборты – это крайне политизированный вопрос, поскольку правительства часто стремятся внести поправки в законы об абортах в соответствии с предпочтениями избранных лидеров или настроением электората.

Однако лишь немногие исследования устанавливают причинно-следственную связь между предпочтениями лидера и исходами абортов. В этой статье мы раскрываем, влияет ли религиозная принадлежность законодателей на количество абортов в округах, которые они избирают, при условии их партийной принадлежности.

Вопрос в том, почему дебаты об абортах не прекращаются, почему они становятся ареной напряженной борьбы не только вокруг изменений в семье, где на карту поставлена политика.

Регулирование абортов не было широко распространено во время основания республики, но оно стало повсеместным в течение следующего столетия. К двадцатому веку аборты стали строго регулироваться по всей стране. С течением времени многие государства смягчили свои законы в ответ на давление, требующее политических перемен.

Типичными основаниями для разрешения абортов были беременности, которые представляли опасность для жизни матери, были результатом изнасилования или кровосмешения или несли в себе вероятность врожденных отклонений. Чтобы закрепить свободу выбора женщины в качестве основного национального права, сторонники свободы выбора женщины расширили свой план от законодательного органа до суды.

Физическое лицо объясняет это отсутствием политической приверженности. Мы исследуем роль предпочтений законодателей по всему миру. В частности, поскольку мусульмане выражают более решительное несогласие с абортами, чем индуисты, мы спрашиваем, являются ли мусульманские законодатели более эффективными в сокращении половых сношений.

Ключевые слова: права на аборт, политика, либеральные взгляды, консервативные взгляды, эмбрион.

Introduction

The debate around abortion has not subsided yet. The public, from the Supreme Court to the tabloid press, 1989 declared abortion «an internal legal problem that has politically divided society to the maximum extent» (Justice Blackmun, 1989:3079) in the United States. Today, this issue has firmly taken its place in politics.

The policy regarding abortion in the United States is full of contradictions. However, this contradiction is a relatively recent event in the history of the practice. This analysis aims to clarify this and demonstrate that most of the problems associated with this issue arise from violations of individual rights. Today, despite landmark legal precedents, this violation exists institutionally, from the letter of federal and State laws to the whims of individual doctors and practitioners.

Considering the problem of abortion, it should be noted that it has always been at the center of moral discussions. It traces the confrontation of the polar positions of opponents and defenders of artificial termination of pregnancy concerning each other. Since humankind realized the connection between sexual intercourse and the onset of pregnancy, it has tried to regulate fertility and population in the same way as food production. Not considering abortion the best means of birth control, we believe it is inevitable reproduction's social reality.

Historically, this was one of the ways to increase the interval between the appearance of children since, on average, a woman had seven births, and in some cases up to twenty, as a result of which she turned into a childbearing machine. The right to abortion has firmly taken its place in politics. The attitude towards it determines the unique position between ***liberals and conservatives.*** Its change indicates changes in the distribution of power.

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Its change indicates changes in the distribution of power. The key questions here are: is abortion justified, is it not essentially murder, and does a fertilized egg, the embryo, have the right to life?

The orthodox-prohibitive position on abortion is based on the moral values of religious culture. The church and mosque are still the most robust rear of opponents of artificial termination of pregnancy, drawing their arguments from the source of religious morality. Different points of view have developed within the latter framework, but they are all united by a negative attitude toward abortion. Under English law, birth control and abortion were legal, acceptable, and applicable (Sanger A., 2005).

Two positions can be distinguished: extreme (Catholics, Buddhists) and softened anti-abortion (Protestants, Orthodoxy, Islam). Although they differ in the degree of categorical attitude to abortion, the initial central thesis remains unchanged: the embryo is a human being. Since the right to life is inalienable for every human being, the origin also has such a right, according to anti-abortion advocates. Naturally, *we disagree* with such conspiracies.

Result and discussion

The Catholic Church is guided by the thesis of the Vatican, according to which the life that begins with the fertilization of an egg is not a continuation of the life of the mother or father – it is the life of a new human being. It could never have become human if it had not already been. Another argument of the Catholic Church is the following thesis: the human body does not have an impersonal character but represents unity with its individual *«I» («I have a body», but also «I am my body»,* because the body and spirit form one substance, a kind of unified whole).

The following thesis is formulated based on the awareness of the importance of the human body: physical life is a fundamental value compared to other, even very significant values (freedom, solidarity, etc.) because all of them are possible only with the physical existence of a person (Callahan D., 1973).

A highly irreconcilable attitude to abortion also characterizes Buddhism because one of the central ideas of Buddhist ethics is not to take anyone's life but to choose whether to be a person or an animal.

So, supporters of the extreme position do not recognize any exceptions, no mitigating circumstances: abortion is unacceptable, even if pregnancy and childbirth are dangerous to the mother's life, for example, with heart disease, kidney disease, etc.; abortion is intolerable even if pregnancy occurred as a result of rape. The argument is simple: the child is not to blame in either case. Why should he suffer? How can you kill an innocent being who had no conscious intention of killing his mother and was not involved in the circumstances of conception, therefore does not bear any responsibility for them, and does not deserve such punishment as deprivation of life?

We want to refute this argument by saying, «If a rapist commits a crime against sexual integrity against girls or women, it does not mean that they have already become pregnant or the sperm has reached the egg. In any case, the rapist of the victim [the woman] does not want to give birth to a child, regardless of who the child is from. This is quite acceptable from the point of view of jurisprudence».

For women of color – one-third of the patients of abortion clinics – both the experience of abortion itself and the meaning that opponents of abortion put into it differ from what it means for white women. The absence of people of color in the crowds of demonstrators of the «rescue operation is striking». Apart from the rare black preachers and their followers, it is overwhelmingly a white Christian movement. Despite all the troubles that their colored friends had from abortions and from white feminists («for choice»), it is felt that they realize that there is racism behind the anti-abortion campaign.

It manifests itself in at least three directions: in the sexual «denigration» of people of color, especially black women, in the patriarchal ideology preached by white opponents of abortion; in the existence of legal racial discrimination in access to abortion, and the eugenic background of the doctrine of pronatalism.

The desire of ardent opponents of abortion to restore the purity of white daughters hides a constant perception of the sexual «uncleanness» of black daughters. The definition of «bad black women» as «promiscuous, immoral, and available» dates back to the first slave traders and, beyond any doubt, to sexual violence against black women during slavery (Gloria Joseph, 1981:196). As a result of the historical legacy of sexual violence, shame, and insults from white society, young black women are brought up in an atmosphere of ambiguous sexual attitudes that they receive in the family and from other women.

The so-called softened anti-abortion position in religious morality supporters includes Orthodox, Protestant, and Muslim religions. We emphasize

that these denominations are against abortion but recognize the existence of exceptional cases (medical indications, pregnancy resulting from rape, etc.).

The Orthodox Church acknowledges that the embryo has human dignity at any stage of development, including blasticidin. «The one who will be a man is already a man», Tertullian argued at the turn of the II and III centuries (Tertýllıan K.S., 1984:180). «We have no distinction between the fruit of the formed and the uneducated», wrote St. Basil the Great (IV century) in his First canonical Epistle in the Book of Rules of the Orthodox Church (Sv. Vasılıa Velıkogo Pravılo 2, 1992:309-310). Proceeding from this, the Orthodox Church considers intentional abortion at any stage of pregnancy murder as a criminal encroachment on the sacred gift of human life. At the same time, considering abortion seems morally acceptable when fetal development threatens maternal life. Of course, in cases where a choice is needed between the mother's and the fetus's life, Orthodox ethics orients the mother to self-sacrifice as the highest manifestation of love for her neighbor (mainly for her child). Nevertheless, the preference given in such circumstances to the mother's life falls into the category of involuntary sins when the harm of the deed is recognized. Still, the personal guilt of the individual is mitigated (Harakas S., 1994:93).

In the ethics of Islam, the attitude to abortion is determined by the moral and legal status of the embryo. In verse 228 of the second Surah of the Quran, it is written that a divorced woman cannot remarry before 90 days, which avoids doubts about paternity. For the same reason, a widowed woman should wait 130 days, or four months and ten days, before she decides to get married again. Therefore, by setting the time limits from 90 to 130 days, the Quran indirectly determines the period during which the embryo acquires the status of a human personality. Based on these provisions and the legend of the Prophet Muhammad, according to which Allah breathed «al rukh», i.e., the soul, into the embryo, whose age reached three months and one week, it can be concluded that the embryo as a human being can be talked about from the first week of the fourth month, i.e., on the hundredth day of pregnancy.

Hence, the supposed moral «justification» of abortion is performed for medical reasons. Only in the last two decades, «when traditional justifications for abortion restrictions have become a cultural anachronism and are constitutionally unacceptable, the moral value conferred on the embryo has turned out to be a central issue of American culture and law» (William L., 1988:1-2, 11-25).

The American cultural space and the abortion discourse have been saturated with embryo images as never before. The idea of a natural embryo pales in front of a symbol that reflects several losses – from sexual innocence and «good» mothers to imperial America in the context of current U.S. reproductive policy. The more familiar this symbolic embryo becomes to society – in civil lawsuits as a victim, in hospitals as a patient, in the media as a video star – the more independent it evolves from a pregnant woman, who is generally displaced from the epicenter of the abortion problem.

Without endowing such images with moral significance, we must understand where they draw their magical power. In the last 15 years, it has become clear that the neoconservative state has played a role comparable to the position of fundamentalists and the Catholic Church in advertising the «people's embryo». Just as the abortion debate in many posts can be defined as a manageable crisis – a conscious strategy of the right-wing conservatives who use abortion issues to consolidate their power and strengthen their positions among the masses – in the same way as the conservatives of the 1980s used images of the embryo to solve broader problems.

The difference that shows Islam is the absence of the institution of clerics. Therefore, the responsibility for making a decision falls on the believer himself. The concept of «ijtihad» in Islam (the ability and correct to interpret) allows a Muslim believer to comprehend the problems that arise himself. Hence, changing one's attitude to abortion becomes possible, considering new circumstances connected with the progressive achievements of medicine, biology, and biotechnology.

The embryo plays a symbolic role in shaping the electorate's consciousness and identifying the legal wing. At this point of some ideological intersection of the opposing sides, we come close to the border separating the traditionalist (orthodox) position on abortion from other parts.

A series of arguments in defense of abortion originates in the depths of civil morality and begins to gain strength and form a liberal position.

A liberal approach to the problem of abortion

Civil, or public, morality, of course, reflects the ethical confrontation on the issue of abortion, which has developed in the traditions of various religious

denominations. Since the landmark Roe v. Wade judgment found that the Fourteenth Amendment «right to personal privacy includes an abortion decision» (410 U.S. 113, 153-54 (1973)), courts and lawyers have tried to balance women's privacy rights with government interests in the health and safety (Whole Woman's Health v Hellerstedt, 136 S. Ct. 2292, 2309) of women, professional ethics, and fetal life.

At the same time, as a result of the process of secularization, it increasingly relies on the so-called liberal, democratic values, which are based on the autonomy and self-determination of the individual, the right and freedom of choice in those cases when it comes to consent or refusal from medical intervention. The legislation of the states of Europe and America, which prohibited the medical practice of abortion until the first half of the 20th century, was formed under the influence of moral and religious institutions. In that case, modern legislation legalizing abortion is based on a liberal ideology. Not sharing the ideas of traditional morality, the liberal consciousness builds its argumentation of the «morality of abortion».

The fundamental flaw of the inappropriate burden standard in its current form is that it treats abortion rules in isolation, which allows for a gradual encroachment on the right of access to abortion. Similarly, when a State declares its interest in preventing morbidity or mortality, the question should be whether the regulation of abortion is different from procedures with a similar degree of risk.

The starting point of this argument is the principle that «a woman has the right to an abortion». This principle was recognized as key in the struggle of liberalism with conservative legislation pursuing an abortion. Under the domination of liberal legislation permitting such operations, the principle of «a woman has the right to an abortion» as a value imperative loses its positive meaning. The uniqueness and importance of the liberalism argument lie in the fact that it demands the liberating and egalitarian promises of Kantian liberalism and the rule of law in liberal societies very seriously and takes the possibility of extending these liberating and egalitarian promises to citizens who turn out to be women and those women who turned out to be pregnant.

She concludes that consent to the risk of harm does not imply consent to its occurrence. In our opinion, potentially more dangerous; if we agree to the risk of pregnancy when engaging in consensual sexual intercourse. A liberal society demands recognition and rethinking of our universality.- we share universal character traits that require respect – and the rule of law in a liberal society requires that the same cases be solved similarly. From a liberal point of view, equality and freedom depend on recognition, and equal treatment ensures our universality. Consequently, in a liberal society, pregnant women should be treated equally to non-pregnant women.

Therefore, the principle of *«man is the master of his body»* appears in the arsenal of liberal ideology, which implies the need to recognize the right to dispose of everything that happens in this body. To illustrate this principle, proponents of a position justifying abortion usually cite examples of this kind.

Young women have standard features that, in turn, require equal respect and dignity, and the heart of liberalism is to give this equal respect and the fulfillment of healing despite their apparent distinguishing characteristics: pregnant women and only pregnant women have physical and biological attachment or are connected to another human life. And this is necessary from the liberal legal point of view that the State, through its laws, treats pregnant women in the same way as other persons in a similar situation should be treated equally (Judith Jarvis Thomson, 1986).

From a legal point of view, it is legitimate to ask the question: does anyone (the society of music lovers, the director of the hospital, etc.) have the right to dispose of your organs? Only you can grant this right yourself and voluntarily because the right to your own body is an exclusive, inalienable right of every person.

The core belief in liberal legalism is that our common humanity requires equal treatment; the law should treat us equally because of the essential aspects we are similar. To do otherwise is chauvinistic, nationalistic, racist, alienating, subjugating, discriminating, and from a liberal perspective, illegal. Liberalism requires public and State recognition. Our common universal nature and liberal legalism need the rule of law and treatment equally.

We can best assess fairness requirements by studying the similarities and responding to them. If other people in a similar position are allowed the right of self-defense, it should be the same. If others legitimately expect the protective assistance of the State. At the same time, her expectations should also be honored. To do less is to treat her differently

when she is in a similar position to kick her out of the legal community or to let her stay, but only at the cost of exploiting her, is to use her, not equally respect her.

If a born child attacks a man (or woman) to appropriate some necessary part of the body against his will, this person will be allowed to repel the attack, and he can expect the State to help him in this. Why should a pregnant woman be treated or looked at differently? If we make a treat and view it differently, perhaps it will be because we are so carefully accustomed to treating pregnant women as natural nurses of human life and their bodies as unaffected carriers for this function, which are convenient to us concerning her will, her consent or lack of it, her motives, interests, and subjectivity, which may be contrary to this, just not the case? Suppose we insist on the absolute difference between a woman who is pregnant not by mutual consent from a man who was attacked, maybe because for two millennia, we have considered women, but not men, as beings who make their earthly contribution to human survival and to do this without their «consent». In that case, their will or desire to do so someday becomes a severe problem.

Analogies emphasize the differences and the similarity of what is being compared, which occurs here. Thus, there are differences between the fruits of one side and born people, grizzly bears, and natural disasters on the other, which analogies quite dramatically draw our attention. Of course, not all differences matter. But I think there are at least three such differences; it could be noticeable.

Firstly, an attack by a natural-born person, primarily from a narrowly political one, threatens the world – and, consequently, the State – in such a way that an invasion of an unwanted fetus in a woman does not. Perhaps this is not the difference that should matter to a liberal state, which probably should care more about protecting rights than its safety. Still, there may well be at least one of the reasons why a person is given much greater protection from overt violence by a born person than against covert violence by a fetus, even under a liberal regime.

Subordination of a woman to the needs of the fetus, even if this subordination constitutes an invasion and appropriation of her body, can happily coexist with a regime that ensures the legal equality of born citizens by enforcing measures between them.

The second difference concerns the nature of the harm. Even recognizing the profound changes in a woman's physical body caused by a normal pregnancy, this pregnancy, even if it proceeds without consent, usually does not threaten death, prolonged bodily injury, or even immediate disruption of a woman's life, plans and projects as it most often happens with a violent attack by a natural person.

Women whose pregnancy does not occur by mutual consent are usually not afraid for their lives; they are not worried that the fetus will kill them. To a large extent, they can lead their everyday lifestyle during pregnancy. The fear of death or serious bodily injury, which makes up most of the harm caused by attacks by natural-born people, is not such an essential part of the attack, caused almost certainly not by pregnancies without consent.

This is not to underestimate the physical changes caused by all pregnancies: desired, unwanted, consensual, and without consent. But these changes are simply different from the changes we usually associate with violent attacks. And the differences, by definition, will have to be solved in some other way than the same.

How can a conservative society, through a judicial body, undermine abortion rights?

For years, conservative lawmakers have passed increasingly strict abortion laws, knowing the Court would overturn them. Now Republicans will have to defend their views at the ballot box. And it might not be suitable for them. In early September, the Supreme Court allowed the Texas abortion law for six weeks (Whole Woman's Health et al. v Austin Reeve Jackson, Judge, et al., 594, S. Ct. 1-12); it was presented as a significant victory for anti-abortion conservatives. After all, Republican lawmakers in dark red states have long passed increasingly stringent abortion laws, only to see many of them taken to Court later. One direction has finally been given (at least for now).

For decades, Republican state legislators had the opportunity to vote and pass strictly restrictive abortion laws without experiencing political consequences. The courts usually ordered the statutes even before they took any effect. Politicians had to tick the «pro-life» box, which is essential for some of their voters, while their voters have never lived following these strict laws. This minimized the political reaction to their votes.

A woman's right to terminate a pregnancy has its roots in the U.S. Supreme Court. The earliest court cases on the establishment of a «privacy zone»

(Griswold v. Connecticut, 381 US 479, 485 (1965)). In the Roe case, the Court overturned the absolute ban on abortion in Texas, ruling that it violated the due process clause of the Fourteenth Amendment. The subsequent trial was mainly focused on the restrictions imposed before viability. In assessing the constitutionality of these restrictions, the Court developed a test to determine whether the regulation imposes an «undue burden» on the right to early abortion.

Starting with Casey, the Court continued to apply the unreasonable burden standard. First, in the case of Stenberg v. Carhart, the Court considered a Nebraska law prohibiting a particular type of abortion procedure called «dilation and extraction», which the legislature named «partial-birth abortion» (Casey, 505 U.S. at. 846).

The Supreme Court again raised the issue of an undue burden on the right to access abortion two terms ago in Whole Woman's Health v. Hellerstedt (136 S. Ct. 2292 (2016)). More importantly, changing data may be difficult to attribute to a specific law or policy for courts and plaintiffs. A decrease in the number of abortions may mean that women themselves perform illegal abortions or seek them out of the State rather than abandon them altogether.

Even when the number of abortions is declining, it is difficult to say whether this is despite the need for women to access abortions and not for other reasons, such as personal beliefs, better access to contraceptives, or economic changes. There is another fundamental problem with the number of abortions: women who have had abortions and report abortions can overcome barriers to access. This is a discrepancy between the courts' issues and the data they look at, not only abortion rights.

The same is true with the rules aimed at protecting the integrity of the medical profession. In terms of safety, abortion is as safe as – if not safer than – many other medical procedures. An analysis of the legislations of various countries shows that there is no disagreement on the question of whether someone has the right to arbitrarily dispose of another person's body (or organs): granting such a right is an exclusively voluntary decision of the donor (in this case, the mother).

The ideology of abortion opponents has a more extraordinary aura of righteousness than theology, separating the pleasing from them, displeasing to God, and the innocent from the sinners. It equips the neoconservative government with a banner of moral legitimacy and a new political language to legitimize its aggressive policies. The embryo itself becomes a powerful symbol of helplessness that requires patriarchal protection. *«Saving the Embryo»* is inseparable from *«Saving America»* and needs a strong male leader. And therefore, the ongoing martyrdom of the embryo is as necessary for a patriarchal conservative state as the communist threat or hostage-taking in the third world.

In domestic politics, embryo images are used to justify the *«reprivatization»* campaign of the neoconservative government – its relentless twenty-year efforts to destroy the social protection system. Focusing on the embryo creates a contradiction between it and the pregnant woman, implicitly extended to all mothers and their children, especially the poor. The bad image of *«mothers killing their children»* becomes an integral part of the background noise accompanying the policy of discrediting the right of women to speak on behalf of their children, as well as social programs to help poor mothers and children. Saving embryos from their mothers perfectly distracts attention because society cannot provide millions of children with food, housing, education, work, and health care, not to mention such problems as AIDS, drugs, and environmental destruction.

Unlike poor mothers and children, the embryo does not require social security and services and does not need to go to school or look for work or shelter. It is unlikely that any other social program would have created the Reagan and Bush administrations a reputation for *«morality»* at such a small cost. So, the embryo protection policy becomes an indicator, an identifier not only of *«morality», «Christian»* values, and protection of the (traditional, patriarchal) family but also of financial constraints and their consequence – stubbornness towards the poor.

An ever-increasing role in the development of the image of the embryo and indirectly in how the State uses it has been played since 1984 by the media, in particular, the propaganda film *«The Silent Critic»,* showing an ultrasound recording of the aborted fetus 12, which marked a dramatic change in the abortion dispute. With extraordinary skill, statistical and frozen ultrasound images of the embryo are transformed into a *«child»* that exists in real-time, linking these images with electronic media, translating anti-abortion rhetoric from religious-mystical to medical-technological and *«reviving»* the idea of the embryo, the embryo.

To date, a curled-up profile with a large head and handles like fins floating in formaldehyde have become so familiar that even the most ardent

feminists do not doubt its reality. It can also explain the switch of pregnancy and abortion policy in the United States to the embryo in the context of new medical technologies. Opponents of abortion use the data of neonatologists, the results of ultrasound examinations, prenatal diagnostics, fertilization, electronic tracking of embryo development, and a whole range of means of heroic «embryo therapy» to create, if not an embryo-personality, then at least an embryo-patient.

Undoubtedly, the opportunity to observe an embryo in the womb at increasingly early stages of development, to see how it kicks, spits, defecates, and grows, would seem to confirm its «separateness». At the same time, the complete subordination of a pregnant woman to the power of obstetric *«management»* and the requirements of its modern technologies comes from an embryo-centered culture and a policy of hostility to the *«choice of a woman».* Infertile women and families feel obliged to solve their problems through expensive and lengthy courses of treatment.

Doctors and district attorneys feel entitled to force women to have a cesarean section and prosecute them for behavior that *«violates»* the fetus's rights.

An essential aspect of these trends is the increasing attention to the «viability» of the embryo. From the moment when retired U.S. Supreme Court Justice Sandra Day O'Connor stated in Roe v. Wade that the division of pregnancy into trimesters «contradicts itself», as modern technologies push the point of *«viability»* further and further, images of increasingly premature and small *«rescued»* embryos and aborted *«live births»* literally captured the imagination of the press, courts, television.

Such images blur the boundaries between the embryo and the child; they reinforce the idea that from the beginning, the source has an independent and separate personality from the mother (as they call it, *«Mute Cry»*). The problem is not only considering late abortions in favor of the embryo, not the pregnant woman, but rather that all abortions fall under the category of late, and all embryos are endowed with the aura of the myth of «viability».

To resist embryo centrism, feminists insist that we should not talk about the non-existent viability of embryos but only about the fact that some of them can be *transplanted* at some stage. The embryo is biologically dependent on the pregnant woman and will most likely be socially reliant on her after birth. This dependence is the basis of her moral obligation to take care of the embryo and her moral right to decide whether to leave it. The technical ability to transfer an embryo into some artificial life support system does not matter for determining the rights and responsibilities based on social and lie-in relations.

But even within recognized medical definitions, such increased attention to the embryo's viability during late abortions is greatly exaggerated.

Contrary to these objective facts, the images of the embryo – in popular culture, medical technology, and public policy – create an atmosphere in which abortion as a «woman's choice» has become even more fragile than ever since the legalization of abortion in 1973.

Religion, morality, and abortion policy

Comparing fertility and birth outcomes by districts with and without Muslim legislators will not consider the influence of legislators' preferences if the presence of Muslim legislators correlates with voter preferences or other geographical, political, or demographic characteristics. Since aggregation problems do not allow us to use the standard regression gap design, we are instrumenting the faction of Muslim legislators in the district with the section of Muslim legislators who won the close elections of non-Muslims.

Islam attaches the utmost importance to the sanctity of life, and this principle guides all schools. Islam opposes abortions after the first 120 days of pregnancy. Views vary depending on schools and scientists about the acceptability of abortions up to this stage, and many scientists believe that life begins from conception.

Currently, our society is going through a sexual revolution, which has brought the issue of abortion to the forefront of religion, medical fees, and legal thought. Throughout history, religious faith has had a vital influence on society's attitude to abortion. Religious issues touch upon perhaps the most frequently discussed aspects of abortion.

Many Catholics believe that the soul is a gift from God given at conception. This leads to the conclusion that terminating a pregnancy at any time is equivalent to taking a human life and, therefore, against the will of God. Some Catholics believe that abortion should be legal until the child becomes viable, i.e., it can support itself outside the uterus. Most ancient civilizations forbade abortions. Ancient Judaism forbade the observation of the birth of a child, except during famine. Assyrian law provided the death penalty for anyone involved (Abortion Act 1967).

Doctors have not yet reached a consensus about when the fetus becomes a human life. Some doctors argue that abortion should be allowed with impunity before the sixth month of pregnancy since, until that time, the fetus is no more than a growing plant (Just How Great Are the Risks of The Pill? 1986). On the other hand, many prominent doctors believe that a fertilized egg has a human life from conception. They refer to the International Code of Medicine and Healthcare to support this argument. Cal ethics states that a doctor will show maximum respect for a person's life from conception. The third point is that the circumstances should decide to terminate a pregnancy in a particular case.

Sociologists have found themselves in a similar predicament because of the problem. Some social philosophers claim that man is not just a chemical machine and has a soul from the earliest stage of fetal development (Meeting of the Ass'n for the Study of Abortion, 1986). Consequently, the fetus cannot be destroyed with impunity. Control of human reproduction following this view, attention should be focused on preventing conception instead of abortion.

Even though religious beliefs continue to permeate our atmosphere regarding abortion, most people today agree with Judge Holmes that «we should not allow moral biases to influence our minds in settling legal differences. This is confirmed by the fact that attitudes towards abortion have now changed, while the need for abortions has decreased the number of ways to save the mother's life or health or prevent fetal deformities. According to experts, the demand for abortions has grown astronomically» (O.W. Holmes, 1881). The main factor contributing to this change in attitude was the growing antagonism towards double standards, which allowed those with social status and financial opportunities to have an abortion (Howells, 1967). Those in the lower social and economic classes are deprived of this opportunity. We are at the epicenter of the worldwide pill movement, and abortions are available in the slums and Fifth Avenue.

The growing number of abortions exposes doctors to increased risk, the danger of liability for misinterpretation of the law. It seems that doctors face an uncertain fate when performing an abortion. This uncertainty will continue unless the legislature or the courts amend the exemption. Very few states repeal all abortion laws, as the Abortion Research Association recommends.

The U.S. Supreme Court has gone too far – some critics are taking individual action too far in the Bill of Rights areas. However, he did not directly address the problem, or the cases under discussion, while the solved patients do not shed much light on his decision. The best we can do is study the related areas and draw some analogies. Suppose the State does not have convincing secondary interests that outweigh individual human rights. In that case, this cannot prevent worrying about marriage, home, children, and a person's daily life or habits. This is one of the most fundamental concepts that the Foundation-This was meant by the fathers when they drafted the Constitution.

Reconciliation with a controversial doctrine is more challenging to achieve in the judicial process than in the legislative process. The courts cannot come out to reform our society. The problem reaches the Court as a judicially considered issue and is drawn up narrowly; therefore, the Court's decision is contractual and punitive. On the other hand, legislative bodies have such opportunities for investigation in hearings. They can address broad social conditions and correct evil as probable and existing.

Regulation of issues such as abortion, euthanasia, assisted insemination, and the death penalty, among others, is usually negotiated about moral values rather than distribution requirements. As such, they are commonly referred to as «moral politics». Abortion is the quintessence of honest politics, capable of causing conflict with other moral policies and causing massive disputes with minor changes in its regulation (Engeli, I., Green-Pedersen, C., Thorup Larsen, L., 2012). Since moral politics is based on a battle over basic principles, it loses legitimacy when it becomes incompatible with social values. Moral politics is devoid of legitimacy by two mechanisms: «voice», when social movements and mobilization rise to challenge politics, and «exit», when people stop following politics.

Thus, a change in morality policy is likely caused by cultural pressure and widespread non-compliance. This process is evident in the trajectories of abortion policy in Europe: they have generally moved towards permissiveness driven by lifestyle changes, strong feminist social movements, pressure caused by unsafe abortions, government efforts to reduce abortions without banning them, and the ability of women to access abortion while traveling; severe reversals are rare.

However, in Poland, the public delegitimization of the abortion law did not lead to liberalization; even though mass protests against further restrictions did not allow legislation bills prohibiting abortions,

persistent attempts are being made to introduce additional restrictions, and legislators practically do not support liberal reforms. What explains the difference in policy outcomes here? A comparison of these cases shows that the framework of moral policy is missing a critical component that can explain the obstacles to liberalization in Poland: we argue that this is the persistent political influence of the Catholic Church, where the church has an effective veto over politics and can hinder the liberalization of abortion even in the face of its delegitimization, which must be taken into account.

Catholicism is intertwined with Nationalism in Poland, while religious and national borders coincide (Brubaker, R., 2012:2-20). In Poland, the Catholic Church took a direct and active part in the legislative process and restricted access to abortion by extra-legal means. At the same time, church officials and Catholic activists demonstrated strong unity in their uncompromising position against abortion.

Is abortion a constitutional right?

The current Supreme Court is not following the U.S. Constitution. In Dobbs v. Jackson Women's Health Organization (2022), the Supreme Court overturned Roe v. Wade (1973), which guaranteed the constitutional right to abortion. However, the constitutions of some states independently protect the right to abortion.

In Roe v. Wade, the Supreme Court ruled that the right to privacy implied by the 14th Amendment protects abortion as a fundamental right. However, the Government has retained the right to regulate or restrict access to abortions depending on the stage of pregnancy. And after the fetus's viability, immediate bans on abortions were allowed if they contained exceptions to preserve life and health.

For the next 49 years, states, healthcare providers, and citizens fought over what restrictions the Government could impose on access to abortions, especially in the second and third trimesters. But at that time, abortion was legal in all 50 states.

In his article for the majority in Dobbs, Justice Samuel Alito said that the only legitimate rights not listed, that is, rights not explicitly specified in the Constitution, are those that are «deeply rooted in the history and traditions of the nation» and «implied in the concept of orderly freedom». Abortion, according to the majority, is not such a right.

Sarah Weddington, who was only 26 years old when she appeared before the Supreme Court judges on December 13, 1971, built her arguments in favor of the constitutional right to abortion based on the 9th and 14th Amendments, arguing that «meaningful» freedom should include the right to terminate an unwanted pregnancy.

Although the justices largely accepted Weddington's arguments, Judge Byron White demanded to know whether the right to abortion extends up to the moment of birth. After some hesitation, Waddington replied in the affirmative. According to Weddington, legal personality begins at conception. Until then, there should be an unlimited constitutional right to abortion.

After Weddington sat down, Texas Assistant Attorney General Jay Floyd stood up to defend the State's law. He began inexplicably with a misogynistic joke: «It's an old joke, but when a man argues like that with two beautiful ladies, they have the last word». The stunningly inappropriate comment was followed by three seconds of deathly silence.

Abortion as a tool prohibiting the selection of signs

According to current judicial doctrine, the State cannot do this: Roe and Casey believed that a pregnant woman has a constitutional right to an abortion; that this right can be exercised for almost any reason that a woman considers appropriate; and that the State cannot issue or apply laws whose purpose or result is to restrict a woman's choice regarding abortion. The State cannot prohibit the reason – any reason – for which an abortion is performed or performed.

The cases considered by the Court make the right to abortion unlimited – clearly so, before viability and, in fact, so, as a result of a radical «exclusion for health reasons» even after viability. As a result, according to court disputes, abortion should be allowed as a matter of constitutional law, which should be carried out for almost any reason during the entire nine months of pregnancy, up to the moment of live birth.

Bans on the selection are based on a challenge: does the Constitution grant the right to abortion when the only reason is the race, gender, or disability of an unborn human child? Is there a constitutional right to kill a living human fetus because they are a colored child because they have Down syndrome, or because (in a perverse inversion of the traditional expression of joy) «it's a girl!»?

Thus, at a superficial doctrinal level, prohibitions on the selection are based on a direct challenge to

Court decisions on abortion. And at a deeper level, bans on an assignment based on a trait undermine the legal and moral assumptions underlying the judicially created constitutional right to abortion uniquely: they refute «this» human fetus.

The unborn human embryo has human traits, qualities, and abilities – a distinctive feature of a person. Bans on abortions based on selection by sex force impartial people (including judges) to confront and combat the alleged «ethos» of the human fetus in light of its – or her – undeniable human qualities. And this struggle tends to trigger a moral intuition: the unborn fetus is part of our shared humanity. Moral intuition is a powerful intuition that combines the sometimes differing moral instincts of the traditionalist right and the progressive and feminist left.

This potentially changes the rules of the game. If the intuition about the wrongness of abortion based on the selection of signs has a moral significance – the intuition that it is simply wrong to kill a fetus for a race, gender, or disability – then this is because of the implicit recognition of the humanity of the fetus. If killing a fetus because it is female (or black or disabled) is considered terrible, then it can only be because it is believed that the human fetus has the moral status of a person – because «it» is a girl or a boy, a member of the human family.

Constitutional law tends to follow moral intuitions. And the legal instinct that follows from the recognition that the fetus has human characteristics – a distinctive, individual human identity – is that it should not be permitted to kill the fetus based on such human qualities.

Thus, bans on abortion based on a trait represent significant, severe, and apparently, inevitable legal and moral challenges to the constitutional and legal regime. Moreover, there is no doubt that today abortions are sometimes performed for eugenics reasons – quite often even to choose a gender and eliminate disability. Abortion rights once had proponents of eugenics (among others). The right to abortion can be used for eugenics purposes (among other things). Indiana's Trait Selection Law was partly a response to this story and this reality.

None of this denies that for the prohibitions on abortions based on sex to remain in force, quite profound changes will be required in the current judicial practice of the Court regarding abortions. The legal prerequisites necessary to maintain such a ban would almost inevitably seriously undermine, if not directly contradict, the provisions and doctrines. These are profound changes. It is difficult to consider them fully compatible with the modern philosophy of abortion, even if this doctrine is plausibly distinguishable or can be reformed to accommodate such shifts.

Do the principle of stare decisis require the abolition of bans on abortions based on selection based on? Does stare decisis prohibit making severe changes to the Court's practice regarding abortion or altogether abandoning it? With almost any concept of the power of precedent, prohibitions on selecting traits present a different and distinguishable problem.

But in a broader and fundamental sense, the judicial doctrine of stare decisis cannot – according to the Constitution, it cannot – prevent the Supreme Court from reviewing and rejecting principles and past decisions that, as it is convinced, contradict what the Constitution provides and permits. Put: if the proper task of constitutional interpretation is to interpret and apply the document itself accurately, then past court decisions that contradict this document cannot be used as binding in a subsequent case.

This is a simple principle of the supremacy of the Constitution – the same code that fuels arguments in favor of judicial review in cases. It follows from this that a precedent can inform, guide, convince – and perhaps even serve as a starting point from which a subsequent interpreter should justify a departure – but it cannot revise the Constitution itself.

Any version of the stare decisis doctrine that links the Court to past decisions and principles contradicting the Constitution is unconstitutional. The Court recognizes that the stare decisis doctrine is in no way required by the Constitution but is simply a general judicial policy and practice. The declaration is not required by any rule of law to be fairly traceable to the Constitution's text, structure, or history – and the Court has repeatedly stated that this is not the case. It is well known that the Court often overturns its past decisions.

The judicial doctrine of stare decisis remains in constant motion, and different judges struggle to formulate their formulations and changes of the principle.

Conclusion

Perhaps abortion and the embryo act as empty signifiers, bearing several meanings at once. The attitude to the image of the root can be determined by the social status of people (gender, race, class, age). However, the social and demographic reality of abortion shows a more specific choice of fears

explaining who and why has been having abortions lately.

If we look at who is doing abortions today, we will understand what caused the ambiguity of answers to questions about abortion and what it means. In other words, we are talking about young, single, working, or studying women, most of whom are poor or belong to the working class – women who want to get an education, improve their skills, and have a sexual life before tying the knot and having children.

More than anything else, it is a fact that explains why, despite the legality, the availability of abortion causes such fierce rejection in a society still permeated with racist and patriarchal values in matters of gender relations.

Contrary to racism and patriarchal attitude toward the family, a deep-rooted belief in *«personal choice»* and *«independence, secrecy»*, intimate personal life runs through the red thread in American political culture. For conservatives and liberals, the concept of *«personal intimate»* in constitutional law is associated with procreation, bearing children, and sexuality.

Criticism of the violation of the «personal» sphere as the core of the feminist approach to reproductive rights is essential for women. Today, this criticism has become especially significant. In the era of deepening neoconservatism, many progressive-minded people feel a contradiction between the need to protect the right to privacy since they are constantly under attack and the need to go beyond the usual theoretical and political framework.

It can be assumed that those who support the right to abortion in public opinion polls do so regarding personal freedom and privacy. On the one hand, the statement about abortion as a *«matter of personal freedom»,* and statements like *«women are also people»* and «*a woman's body is her business, and she knows better what is right for her»,* inspire hope from the point of view of feminism because they indicate respect for a woman as a moral carrier, as well as the right of a woman to discuss decisions related to procreation and sexuality. The values contained in these statements seem to be extremely important, for example, to protect women in cases of the consent of a spouse or a possible father to an abortion (which American courts have not done so far) or to protect lesbians and homosexuals from court orders on sodomy, *allowing the State to break into their bedroom and check with whom they have sex.*

At the same time, the idea of abortion as a purely personal matter, which should not allow state intervention, is attractive to such a wide circle of the population precisely because, being part of the liberal tradition of the United States, it is so conservative. The U.S. Supreme Court does not decide to ban abortions ultimately reflects the weight of this idea in American political culture: it is impossible to interfere in decisions affecting a person personally.

Legal doctrine can be a helpful tool. In the end, however, it is not technically legal nuances or clever doctrinal moves that matter – in such matters as, for example, whether stare decisis is a strict rule (but with a racial loophole) or whether it is possible to compress prohibitions on the choice of traits within the current «unjustified burden». Doctrines are just tools, tools of decision-making. Reality and results are essential.

The reality is that our current constitutional law allows abortions for any reason, including eugenics. As a result, abortions can and do be performed because of the race, gender, or disability of a child who would otherwise have been born.

Литература

Abortion Act 1967, c. 87, at 2033.

Brubaker, R., 2012.Religion and nationalism: four approaches. Nations and Nationalism, 18(1), pp. 2–20.

Casey, 505 U.S. at. 846.

Justice Blackmun (1989) Dissent, Webster v Reproductive Health service, 109 S. Ct. 3040, 3079.

How Great Are the Risks of The Pill, MEDICAL WORLD NEWS, May 24, 1968, at 23.

Howells, Legalizing Abortion, 1 LANCET 728 (1967).

Meeting of the Ass'n for the Study of Abortion, Hot Springs, Va., November 18, 1968, reported in N.Y. Times, November 24, 1968, at 77, col. 1.

O.W. Holmes, The common law (1881).

Sanger A *(2005), «Beyond choice: reproductive freedom in the 21st century» New York: Public Affairs.*

Callahan D*. (1973) Abortion: law, choice, and morality. New York: Macmillan.*

Gloria Joseph (1981) Styling Profiling and Pretending: The Games Before the Fall. P. 196.

Тертильян Т.С. Аппология III V 8, Боголовские триады. – 1984. – С. 180.

Св. Василий Великий. Правило 2 «Книга правил святых апостолов, святых соборов вселенских и поместных и святых отцов». -1992). – С. 309-310.

Каракас С. Православие и биоэтика. -1994. – С.93.

William L. Webster v Reproductive Health Sevices «Brief of 281 American Historians as Amici Curiae Supporting Appellees» [1988] 1-2, 11, 25.

410 U.S. 113, 153-54 (1973).

136 S. Ct. 2292 (2016).

Whole Woman's Health v Hellerstedt, 136 S. Ct. 2292, 2309.

Judith Jarvis Thomson, Abortion protection, rights, restitution and risks (William Parent Ed., 1986).

Griswold v. Connecticut, 381 US 479, 485 (1965).

Engeli, I., Green-Pedersen, C., Thorup Larsen, L., 2012. Morality Politics in Western Europe: Parties, Agendas and Policy Choices. Basingstoke: Palgrave MacMillan.

References

Abortion Act 1967, c. 87, at 2033.

Brubaker, R., 2012.Religion and nationalism: four approaches. Nations and Nationalism, 18(1), pp. 2–20.

Casey, 505 U.S. at. 846.

Justice Blackmun (1989) Dissent, Webster v Reproductive Health service, 109 S. Ct. 3040, 3079.

How Great Are the Risks of The Pill, MEDICAL WORLD NEWS, May 24, 1968, at 23.

Howells, Legalizing Abortion, 1 LANCET 728 (1967).

Meeting of the Ass'n for the Study of Abortion, Hot Springs, Va., November 18, 1968, reported in N.Y. Times, November 24, 1968, at 77, col. 1.

O.W. Holmes, The common law (1881).

Sanger A *(2005)*, *«Beyond choice: reproductive freedom in the 21st century» New York: Public Affairs.*

Callahan D. (*1973) Abortion: law, choice, and morality. New York: Macmillan.*

Gloria Joseph (1981) Styling Profiling and Pretending: The Games Before the Fall. P. 196.

Tertýllıan K.S. (1984) Apologıa III V 8, Bogoslovskıe trýdy [Theological Triads]. P. 180.

Sv. Vasılıa Velıkogo (1992). Pravılo 2 «Knıga pravıl svıatyh apostolov, svıatyh soborov vselenskıh ı pomestnyh ı svıatyh ottsov» [Rule 2 «The Book of Rules of the Holy Apostles, the Holy Councils of the Ecumenical and Local and the Holy Fathers»] P. 309-310.

Harakas S. [1994] Pravoslavıe ı bıoetıka [Orthodoxy and Bioethics] P.93.

William L. Webster v Reproductive Health Sevices «Brief of 281 American Historians as Amici Curiae Supporting Appellees» [1988] 1-2, 11, 25.

410 U.S. 113, 153-54 (1973).

136 S. Ct. 2292 (2016).

Whole Woman's Health v Hellerstedt, 136 S. Ct. 2292, 2309.

Judith Jarvis Thomson, Abortion Protection, Rights, Restitution And Risks (William Parent Ed., 1986).

Griswold v. Connecticut, 381 US 479, 485 (1965).

Engeli, I., Green-Pedersen, C., Thorup Larsen, L., 2012. Morality Politics in Western Europe: Parties, Agendas and Policy Choices. Basingstoke: Palgrave MacMillan.