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# Abortion Legislation – What’s the problem represented to be?

*A critical policy analysis of the US abortion bans and  
Human Rights*

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## **Abstract**

Since the Supreme Court's decision of overturning *Roe v. Wade*'s protection of abortion in *Dobbs v. Jackson Women's Health Organization* in 2022, multiple states in the U.S. has put abortion bans into effect. "Problems" are not a fixed concept but rather changeable and dependent on who is looking at it. By using Carol Bacchi's "What's the problem represented to be?" approach to policy analysis, the problem representations in the U.S. abortion bans and in human rights are identified and contrasted. The problem representation in the abortion bans is identified as "violations of the rights of unborn children" and the problem representation in human rights is identified as "violations of women's equal rights." While the problem representations are found to be opposites, they can both still be critiqued by feminist theory and arguably create inequality for women in different ways. How the problem of abortion is represented to be, and the way rights are used and argued for in the abortion bans as well as in human rights shows how they are not giving women equal rights to rights.

## **Keywords**

Abortion bans, abortion rights, human rights, problem representation, feminist theory

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# 1. Introduction

Abortion is one of the most discussed and argued topics within sexual and reproductive health and rights in countries all over the world. 28% of women in the entire world live in countries where it is either completely prohibited to have an abortion or with laws only allowing abortions when the mother's life is at risk and 41% live under some restrictive laws.<sup>1</sup> 700 million women of reproductive age are unable to access safe and legal abortion care across the world and according to WHO 23,000 women die each year due to unsafe abortions.<sup>2</sup>

Access to safe abortions has been established as a human right by multiple international committees and courts. There are multiple different rights where abortion is included within the rights, as actualized by the Human Rights Committee and the CEDAW Committee. These are the rights to autonomy and privacy, the rights to liberty and security of person, the rights to equality and non-discrimination and equal protection of the law, the rights to health, life and to be free from torture and other ill-treatment, and the right to the enjoyment of the benefits of scientific progress.<sup>3</sup> Furthermore, abortion as a right is explicitly mentioned in both the International Covenant on Civil and Political Rights (ICCPR) in general comment no. 36 (2018) on article 6 and the Convention on the Elimination of Discrimination against Women (CEDAW) article 12.

The protection of the right to abortion in different circumstances is also an important distinction made for the protection of women's rights. This includes the right to abortion in the case of rape or incest, which has been protected in cases by both the Human Rights Committee in the case of *VDA, on behalf of her daughter LMR, v. Argentina* and the Committee on the Elimination of Discrimination against Women in *L.C. v. Peru*.

Abortion in the U.S., which is the focus of this thesis, is a complex and intense debate that has existed for a long time. It has gone back and forth over the years, but with the groundbreaking Supreme Court case of *Roe v. Wade* in 1973 abortion was a protected right nationwide. In

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<sup>1</sup> "The Worlds Abortion Laws." Center of Reproductive Rights. Accessed February 8, 2023 [https://reproductiverights.org/maps/worlds-abortion-laws/?category\[1348\]=1348&category\[1349\]=1349](https://reproductiverights.org/maps/worlds-abortion-laws/?category[1348]=1348&category[1349]=1349).

<sup>2</sup> "The Worlds Abortion Laws." Center of Reproductive Rights. Accessed February 8, 2023 [https://reproductiverights.org/maps/worlds-abortion-laws/?category\[1348\]=1348&category\[1349\]=1349](https://reproductiverights.org/maps/worlds-abortion-laws/?category[1348]=1348&category[1349]=1349).

<sup>3</sup> Amnesty International, *Abortion and Human Rights* (February 2022) <https://www.amnestyusa.org/wp-content/uploads/2022/02/human-rights-standards.pdf>.

2022 and the ruling in the Supreme Court case of *Dobbs v. Jackson Women's Health Organization* the *Roe v. Wade* decision was overturned and opening the right for states to ban abortions. Out of all 50 states, 44 prohibit abortion at some point during the pregnancy, 13 of the states ban abortion completely while 13 ban abortion at viability.

Due to the extensive and complex situation surrounding the abortion debate in the U.S., the separate sides of the debate are mentioned under many different names. For this thesis when discussing the two sides of the abortion debate, they will only be referred to as the pro-life movement and the pro-choice movement.

## 2. Research Problem

Approximately 25 million unsafe abortions are estimated to take place each year and about 7,9% of maternal deaths can be attributed to unsafe abortions where the most affected are girls and women who are poor and/or belong to marginalized and disadvantaged groups.<sup>4</sup> Almost all deaths from unsafe abortions happen in countries where abortion services are restricted by law or in practice.<sup>5</sup> In 2020, 287,000 women died during and following pregnancy and childbirth.<sup>6</sup> The large risks emerging from pregnancy and unsafe abortions is the grounding for protecting the abortion right as a human right for women as the abortion right is included in multiple rights including the rights to life and health.

In June of 2022, the U.S. Supreme Court decided on the *Dobbs v. Jackson Women's Health Organization* and overturned the decades-long protection of abortion of the *Roe v. Wade* decision. This overturn has led to multiple restrictive laws being passed in many states across the country. Some states with the most restrictive laws, for example, Alabama, Texas, Arkansas, Louisiana, and Tennessee, have complete bans on abortions from conception without any exceptions for rape or incest although there is an exception for when the

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<sup>4</sup> Office of the United Nations High Commissioner for Human Rights, Information Series on Sexual and Reproductive Health and Rights – Abortion (2020)  
[https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WRGS/SexualHealth/INFO\\_Abortion\\_WEB.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WRGS/SexualHealth/INFO_Abortion_WEB.pdf).

<sup>5</sup> Office of the United Nations High Commissioner for Human Rights, Information Series on Sexual and Reproductive Health and Rights – Abortion (2020)  
[https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WRGS/SexualHealth/INFO\\_Abortion\\_WEB.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WRGS/SexualHealth/INFO_Abortion_WEB.pdf).

<sup>6</sup> "Maternal Mortality," World Health Organization (World Health Organization, February 22, 2023)  
<https://www.who.int/news-room/fact-sheets/detail/maternal-mortality#:~:text=The%20global%20MMR%20in%202020,achieved%20at%20the%20national%20level.>

woman's life is at risk. These complete bans have caused debates and arguments regarding the effect on women and women's rights as a whole, but also women's sexual and reproductive rights as human rights. The Committee on Elimination of Discrimination Against Women (CEDAW) has urged the U.S. to adhere to the Women's rights convention and protect the right to access legal and safe abortion.<sup>7</sup>

While it has been argued and debated that abortion bans violate human rights obligations,<sup>8</sup> it is also made clear that restrictive abortion laws can and most likely will have huge effects and risks for women living under them, according to studies and research done on the topic, restrictive abortion laws do not prevent abortions but rather increases the number of unsafe abortions being performed.<sup>9</sup> Furthermore, previous research also shows how politics have played a role in making the abortion debate what it is today.<sup>10</sup> This interrelation between politics and the law is what will be further analyzed within this study to understand how the new abortion bans have come about and what the effects may be and looked at through a feminist lens.

### 3. Aim and Research Questions

To analyze the type of legislation that the five chosen U.S. abortion ban laws are, it is relevant to do a critical policy analysis and specifically turn to Carol Bacchi who has created the methodology that will be used in this thesis. With Carol Bacchi's "What's the problem

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<sup>7</sup> "Access to Safe and Legal Abortion: Urgent Call for United States to Adhere to Women's Rights Convention, UN Committee," United Nations (CEDAW, July 1, 2022) <https://www.ohchr.org/en/statements/2022/07/access-safe-and-legal-abortion-urgent-call-united-states-adhere-womens-rights>.

<sup>8</sup> Human Rights Watch, *Human Rights Crisis: Abortion in the United States After Dobbs* (April, 2023) [https://www.hrw.org/sites/default/files/media\\_2023/04/Human%20Rights%20Crisis%20-%20Abortion%20in%20the%20United%20States%20After%20Dobbs.pdf](https://www.hrw.org/sites/default/files/media_2023/04/Human%20Rights%20Crisis%20-%20Abortion%20in%20the%20United%20States%20After%20Dobbs.pdf); Risa Kaufman et al., "Global Impacts of Dobbs v. Jackson Women's Health Organization and Abortion Regression in the United States," *Sexual and Reproductive Health Matters* 30, no. 1 (November 16, 2022): 22–31, <https://doi.org/10.1080/26410397.2022.2135574>; Amanda Misasi, "Abortion Is a Right: Pursuing International Remedies for U.S. Human Rights Law Violations," Platform for Peace and Humanity, November 28 2022, <https://peacehumanity.org/2022/11/28/abortion-is-a-right-pursuing-international-remedies-for-u-s-human-rights-law-violations/>.

<sup>9</sup> Bela Ganatra et al., "Global, Regional, and Subregional Classification of Abortions by Safety, 2010–14: Estimates from a Bayesian Hierarchical Model," *The Lancet* 390, no. 10110 (November 25, 2017): 2372–81, [https://doi.org/10.1016/S0140-6736\(17\)31794-4](https://doi.org/10.1016/S0140-6736(17)31794-4); Ann M Starrs et al., "Accelerate Progress—Sexual and Reproductive Health and Rights for All: Report of the Guttmacher–Lancet Commission," *The Lancet Commissions* 391, no. 10140 (June 30, 2018): 2642–92, [https://doi.org/http://dx.doi.org/10.1016/S0140-6736\(18\)30293-9](https://doi.org/http://dx.doi.org/10.1016/S0140-6736(18)30293-9).

<sup>10</sup> Mary Ziegler, *Abortion and the Law in America: Roe v. Wade to the Present* (Cambridge: Cambridge University Press, 2020); Zakiya Luna, *Reproductive Rights as Human Rights: Women of Color and the Fight for Reproductive Justice* (New York: New York University Press, 2020).

represented to be?” (WPR) approach policies in legislation are being analyzed to understand how governing is taking place and what implications it has on those being governed.<sup>11</sup>

This thesis aims to analyze five chosen U.S. abortion ban laws and compare the problem representation within them to the problem representation that can be found in abortion policies in human rights. The five U.S. state laws chosen are from Texas, Alabama, Louisiana, Tennessee, and Arkansas. The human rights abortion policies that will be analyzed in comparison will be from the Convention on the Elimination of Discrimination against Women (CEDAW) and the International Covenant on Civil and Political Rights (ICCPR). With previous research making it clear that complete abortion bans violate human rights, the point is not to argue this but rather focus on how the problem is represented and what the implications are of the problem representation.

- Based on Bacchi’s ”What’s the problem represented to be?” approach, what type of problem representation is represented in the new U.S. abortion bans compared to the problem representation in human rights law in ICCPR and CEDAW?
- How are rights being argued and viewed within the problem representation that can be found in the material?
- How can the problem representation be critiqued from a feminist perspective?

## 4. Previous Research

Women’s SRHR is related to multiple different human rights; “the right to life, the right to be free from torture, the right to health, the right to privacy, the right to education, and the prohibition of discrimination.”<sup>12</sup> The Committee on Economic, Social and Cultural Rights (CESCR) and the Committee on the Elimination of Discrimination against Women (CEDAW) have both indicated that sexual and reproductive health is included in women’s right to health. Due to the issues and controversy regarding this specific right, there is a lot of information and research existing about the field. By looking further into previous research and information we will get a clearer view and understanding of the research field to be able to find patterns and gaps for future research.

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<sup>11</sup> Carol Bacchi, *Analysing Policy: What’s the problem presented to be?* (Australia: Pearson Australia, 2009) p. ix.

<sup>12</sup> “Sexual and Reproductive Health and Rights.” OHCHR. United Nations. Accessed October 25, 2022 <https://www.ohchr.org/en/node/3447/sexual-and-reproductive-health-and-rights>.



## 4.1 Global Abortion Rights

Researching global abortion rights is a broad topic and has many views and focuses but there are some common aspects and conclusions that can be found. One main point found when looking at abortion research is the common conclusion that restrictive abortion laws do not make abortions disappear instead the number of unsafe abortions being performed will increase exponentially.<sup>13</sup> This is shown in a study made by the Guttmacher-Lancet Commission which shows that an estimated 25 million unsafe abortions take place each year.<sup>14</sup> Another conclusion that is commonly found is that restrictive and/or criminalized abortion does not adhere to international human rights law, especially when the pregnant woman's life is at risk, or when the pregnancy is a result of rape or incest, as well as in cases of severe fetal abnormalities.<sup>15</sup> For example, this has been discussed by Johanna B. Fine, Katherine Mayall, and Lilian Sepúlveda in their article "The Role of International Human Rights Norms in the Liberalization of Abortion Laws Globally".<sup>16</sup> It has been further pointed out that restrictive abortion laws violate women's rights to health, privacy, and also in some cases the right to be free from cruel, inhumane, and degrading treatment.<sup>17</sup> Another point that has been made is that abortion can be viewed differently based on factors such as race, class, religion, and history. This is an important thing to keep in mind for all research about abortion, especially in countries such as the U.S. This is something that is brought up and further investigated in *Abortion Rights, Reproductive Justice and the State: International Perspectives* by Keertana Kannabiran Tella, where she also makes the statement that the

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<sup>13</sup> Bela Ganatra et al., "Global, Regional, and Subregional Classification of Abortions by Safety, 2010-14: Estimates from a Bayesian Hierarchical Model," *The Lancet* 390, no. 10110 (November 25, 2017): 2372-81, [https://doi.org/10.1016/s0140-6736\(17\)31794-4](https://doi.org/10.1016/s0140-6736(17)31794-4).

<sup>14</sup> Ann M Starrs et al., "Accelerate Progress—Sexual and Reproductive Health and Rights for All: Report of the Guttmacher–Lancet Commission," *The Lancet Commissions* 391, no. 10140 (June 30, 2018): 2642–92, [https://doi.org/http://dx.doi.org/10.1016/S0140-6736\(18\)30293-9](https://doi.org/http://dx.doi.org/10.1016/S0140-6736(18)30293-9).

<sup>15</sup> Office of the United Nations High Commissioner for Human Rights, *Information Series on Sexual and Reproductive Health and Rights – Abortion* (2020) [https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WRGS/SexualHealth/INFO\\_Abortion\\_WE\\_B.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WRGS/SexualHealth/INFO_Abortion_WE_B.pdf); Amnesty International, *Amnesty International's Policy on Abortion: Explanatory Note* (September 28, 2020) <https://www.amnesty.org/en/wp-content/uploads/2021/05/POL3028472020ENGLISH.pdf>.

<sup>16</sup> Johanna B. Fine, Katherine Mayall and Lilian Sepúlveda, "The Role of International Human Rights Norms in the Liberalization of Abortion Laws Globally," *Health and Human Rights Journal* 19, no. 1 (June 2, 2017): 70-71.

<sup>17</sup> Office of the United Nations High Commissioner for Human Rights, *Information Series on Sexual and Reproductive Health and Rights – Abortion*; Amnesty International, *Amnesty International's Policy on Abortion: Explanatory Note*; Fine, Mayall, Sepúlveda, "Role of International Human Rights".

political environment in America and the overturn of *Roe v. Wade* will have significant transnational ripple effects.<sup>18</sup>

## 4.2 The U.S. Abortion Right Before *Dobbs v. Jackson Women's Health Organization*

Abortion in the U.S. has been a controversial and heated debate for a very long time, making it no surprise of the vast amount of research that exists on the topic before *Dobbs v. Jackson Women's Health Organization* where the topic is researched, viewed, and discussed from many different viewpoints and focuses. One common focus that can be found specifically in the U.S. regarding the abortion debate is the importance of politics. A lot of research looks at how politics have played a role in making the abortion debate look the way it does and how politics will influence how it will come to look in the future. The common denominator in research is the conclusion that the abortion debate will change according to how the politics flows, who is in office will determine which side of the pro-life v. pro-choice movements is dominant. This is argued by Robin Marty and Jessica Mason Pieklo in *The end of Roe v. Wade: inside the right's plan to destroy legal abortion* where they go over the instances where the conservative right wing of politics has been able to chip away at the abortion right with different cases.<sup>19</sup> One of the leading authorities on the legal history of abortion in America, Mary Ziegler, in her book *Abortion and the Law in America: Roe v. Wade to the Present* also discusses the many cases related to the abortion right and how the results of these have been influenced by the politics and who has been voted into office.<sup>20</sup> Ziegler also makes a note regarding the over-focusing on *Roe v. Wade* in the abortion debate, she argues that the possible overturn will not make anything better but rather open up the debate to more problems.<sup>21</sup>

Another focus that is also a common aspect in much research is the consideration of marginalized groups of women, women of color, and native women specifically. As the abortion issue does not affect all women equally, it is noted how important it is to focus on

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<sup>18</sup> Keertana Kannabiran Tella, *Abortion Rights, Reproductive Justice and the State: International Perspectives* (New York: Routledge, 2023).

<sup>19</sup> Robin Marty and Jessica Mason Pieklo, *The End of Roe v. Wade: inside the right's plan to destroy legal abortion* (New York: Ig Publishing, 2019).

<sup>20</sup> Mary Ziegler, *Abortion and the Law in America: Roe v. Wade to the Present* (Cambridge: Cambridge University Press, 2020).

<sup>21</sup> Ziegler, p. 207-212.

those groups who are already marginalized and face greater disadvantages than other women when it comes to their sexual and reproductive health and rights. This has been argued by Zakiya Luna in *Reproductive Rights as Human Rights: Women of Color and the Fight for Reproductive Justice*. Luna also brings up the importance of religion in the abortion debate in the U.S. which can also be found as a common factor discussed and argued within the research.<sup>22</sup>

### **4.3 The U.S. Abortion Right After Dobbs v. Jackson Women's Health Organization**

After *Dobbs v. Jackson Women's Health Organization* was decided and states across the U.S. started banning abortion in 2022 there has been a lot of research done on the topic. A vast majority of the so far existing research about abortion with regards to the decision look at the decision and consequential bans with the view of the negative effects and aspects. Focusing on what the different effects will be, both on women and society, and how they correspond and work with human rights. One point made, a common point to Ziegler, is the fact that *Roe v. Wade* was not the only thing keeping the abortion debate in chaos and the debate is just as heated, if not more, now than it was before the overturn. This point that was made before the overturn has been proved by research done after, for example by Yvonne Lindgren in her journal article "*Dobbs v. Jackson Women's Health and the Post-Roe Landscape*" where she concludes that *Roe v. Wade* was never the problem.<sup>23</sup>

Furthermore, the main common point and conclusion found in most research is the fact that the decision and consequential bans do not adhere to international human rights law and that the U.S. does not fulfill its obligations to human rights.<sup>24</sup> The restrictive legislations are argued and stated to violate the right to privacy, health, and healthcare under Article 12 of the UDHR,<sup>25</sup> the right to equality and nondiscrimination under both Article 26 of the ICCPR and CEDAW,<sup>26</sup> CEDAW Article 16.e,<sup>27</sup> the right to life under Article 6 of the ICCPR,<sup>28</sup> the right to

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<sup>22</sup> Zakiya Luna, *Reproductive Rights as Human Rights: Women of Color and the Fight for Reproductive Justice* (New York: New York University Press, 2020) p. 3.

<sup>23</sup> Yvonne Lindgren, "Dobbs v. Jackson Women's Health and the Post-Roe Landscape," *Journal of the American Academy of Matrimonial Lawyers* 35, no. 1 (2022): 235-283.

<sup>24</sup> Human Rights Watch, *Human Rights Crisis*; Risa Kaufman et al., "Global Impacts of Dobbs v. Jackson": 22–31.

<sup>25</sup> Kaur Chhabra and Kaur, "Comparative Analysis of Abortion Laws": 47-57.

<sup>26</sup> Misasi, "Abortion Is a Right".

health under Article 12 of the ICCPR,<sup>29</sup> the right to be free from torture and cruel, inhuman and degrading treatment which has been solidified by UN treaty bodies,<sup>30</sup> and lastly, the right to privacy as stated by Article 17 of the ICCPR.<sup>31</sup> These articles being violated are being argued by for example Ramanpreet Kaur Chhabra and Dr. Varinder Kaur in their article “Comparative Analysis of Abortion Laws Through the Lens of Human Rights” as well as Amanda Misasi in her article “Abortion Is a Right: Pursuing International Remedies for U.S. Human Rights Law Violations.” The Human Rights Watch briefing paper mentions the conventions that the U.S. are in violation of with abortion bans, listing the ICCPR, ICERD (International Convention on the Elimination of All Forms of Racial Discrimination), the CAT (Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, being the conventions ratified by the U.S. but also mentions CEDAW, ICESCR (International Covenant on Economic, Social and Cultural Rights), CRC (Convention on the Rights of the Child), and CRPD (Convention on the Rights of Persons with Disabilities).<sup>32</sup> Even different treaty bodies, specifically CEDAW, have made statements about the new legislation in the U.S. not following the obligations to human rights.<sup>33</sup>

## 4.4 Summary

As mentioned, women’s right to reproductive rights and abortion rights are an expansive field of study with a lot of research and information already existing both in a general arena as well as the more specified field within the U.S. A few things that will be kept in mind for the writing of this thesis is the major factor that no matter what kind of abortion laws exists, liberal or restrictive, abortions will not disappear, but women will instead turn to have unsafe abortions when legal and safe ones are banned by law. Another point to bring into this research is the fact that it has already been established that abortion bans are a violation of women’s human rights.

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<sup>27</sup> Kaur Chhabra and Kaur, “Comparative Analysis of Abortion Laws”.

<sup>28</sup> Misasi, “Abortion Is a Right”.

<sup>29</sup> Misasi, “Abortion Is a Right”.

<sup>30</sup> Misasi, “Abortion Is a Right”.

<sup>31</sup> Misasi, “Abortion Is a Right”.

<sup>32</sup> Human Rights Watch, *Human Rights Crisis*.

<sup>33</sup> “Access to Safe and Legal Abortion: Urgent Call for United States to Adhere to Women’s Rights Convention, UN Committee,” United Nations (CEDAW, July 1, 2022) <https://www.ohchr.org/en/statements/2022/07/access-safe-and-legal-abortion-urgent-call-united-states-adhere-womens-rights>.

In continuation, to find gaps within the research of the specific topic of the abortion laws in the U.S. following the Dobbs decision is, at the point of writing this, both difficult and not. It has been less than a year since the landmark decision was made and there are already many scholars and researchers who have written about the topic, although the field is not yet too broad, although there are certainly many more on the way during the process of this thesis. With the analyses existing examining the Dobbs decision with regards to human rights, they are mostly generalized with what articles of the different conventions are being violated with abortion restrictions. This thesis will contribute to the field by offering an analysis through the WPR approach with a feminist legal theory lens of five specific state laws and what the problem representation that can be found in them can tell us about how the governing is being done to create these policies and how it will affect the women being governed by them and compare this to the problem representation in international human rights law in the ICCPR and CEDAW.

## **5. Theoretical Framework**

### **5.1 “What’s the problem represented to be?”**

This thesis will focus on Carol Bacchi’s “What’s the problem represented to be?” (WRP) approach, which critically analyzes policy and legislation. The approach put the idea of policy under interrogation.<sup>34</sup> But the approach is not only a method and tool of analysis but is based on the theory of a new way of thinking about “problems.” To be able to correctly use the tool of the WPR approach, one must first understand the way of thinking that guides the approach. The thinking moves from simple “problem-solving” into instead understanding the problem representation and problematization. Because “problems” are not fixed, but rather changeable and connected to governing and society. What the focus of the “problem” is depends on who is looking at it which makes this analysis interesting to see how the “problem” of abortion is being looked at in two different ways. Bacchi uses the theoretical concept of problematizations in the WRP approach to analyze policy.

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<sup>34</sup> Carol Bacchi, *Analysing Policy: What’s the problem presented to be?* (Australia: Pearson Australia, 2009) p. ix.

Problematization is a term that has been used a lot in contemporary social theory and is often introduced to indicate the need for critical interrogation.<sup>35</sup> Paulo Freire discusses problematization as “a pedagogical practice that disrupts taken-for-granted ‘truths’”<sup>36</sup> and “as a ‘strategy for developing a critical consciousness’.”<sup>37</sup> Foucault uses the concept of problematization in two ways, the first, as Freire, is the understanding of problematization as putting accepted “truths” into question; the second, is “a way into thinking behind particular forms of rule.”<sup>38</sup> Bacchi also cites Foucault’s exact description of problematization:

Problematization doesn’t mean the representation of a preexisting object, nor the creation through discourse of an object that doesn’t exist. It is the set of discursive and non-discursive practices that makes something enter into the play of the true and the false and constitutes it an object for thought (whether under the form of moral reflection, scientific knowledge, political analysis, etc.)<sup>39</sup>

The WPR approach relies on three key propositions:

1. “We are governed through problematization.
2. We need to study problematization (through analyzing the problem representations they contain), rather than ‘problems’.
3. We need to problematize (interrogate) the problematizations on offer through scrutinizing the premises and effects of the problem representations they contain.”<sup>40</sup>

With the key components in mind, Bacchi’s WPR approach uses problematization in two ways. For propositions 1 and 2 the term refers to how specific issues are conceived as ‘problems’, revealing the underlying thought process that shapes particular modes of governance. In proposition 3, the term means to interrogate, which is stated in the proposition itself.

Problem representation refers to comprehending the underlying ‘problem’ implied in policies and rules.<sup>41</sup> In the context of the WPR approach, representation is not in opposition to the

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<sup>35</sup> Bacchi, p. 30.

<sup>36</sup> Carol Bacchi, “Why Study Problematizations? Making Politics Visible,” *Open Journal of Political Science* 2, no. 1 (April 2012): p. 1.

<sup>37</sup> Bacchi, “Why Study Problematizations?” p. 1.

<sup>38</sup> Bacchi, p. 30.

<sup>39</sup> Bacchi, p. 35.

<sup>40</sup> Bacchi, p. 25.

<sup>41</sup> Bacchi, p. xii.

‘real’, they are rather a way in which a specific policy ‘problem’ is established ‘in the real’.<sup>42</sup> Further, discourse plays a crucial role in developing problem representations. Within the framework of the WPR approach, discourse is identified as “socially produced forms of knowledge that set limits upon what it is possible to think, write or speak about a ‘given social object or practice’.”<sup>43</sup>

The WPR approach is based on questions that guide the analysis of the policy or legislation, these questions will be presented and discussed in the method chapter, and to be able to fully answer the question the concept of problematization will be used. When answering the questions, we will keep in mind that policies and legislation are not simply about “problem-solving” but focuses rather on the problem representation and how it makes the policy the way it is.

## 5.2 Feminist Legal Theory

To further analyze the laws chosen for this thesis feminist legal theory will be used to see how certain feminist critiques are relevant in the laws. The critiques will be used to understand how the laws are considering the female voice and the role of women in society. Feminist theory is extensive and cannot be thoroughly explored within this thesis, rather for this purpose there will be a focus on specific feminist critiques, these being the absence of women, the privileging of the male perspective, public/private dichotomy, and intersectionality.

To begin, two share features within all feminist theories can be identified, “the first is *an observation* – the world has been shaped by men, particularly white men, who for this reason possess larger shares of power and privilege; the second is an aspiration – all feminists believe that women and men should have political, social, and economic equality.”<sup>44</sup> This simply explains the basis of all feminist theories, the world is made by men for men and what feminists want is equality. Although, while all feminists agree on the common goal of equality, the different theories disagree about its meaning and how we can achieve it.

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<sup>42</sup> Bacchi, p. 35.

<sup>43</sup> Bacchi, p. 35.

<sup>44</sup> Alice Edwards, *Violence Against Women Under International Human Rights Law* (New York: Cambridge University Press, 2011) p. 36-37.

### 5.2.1 The Absence of Women and Liberal Feminism

The first feminist critique that will be used is the absence of women and women's voices in law and the human rights system. Feminists argue that the extent to which women have been and continue to be excluded from decision-making processes in the human rights system results in women's rights, interests, concerns, needs, and desires being failed by the system. When the law is interpreted by men, which it often is, or by women who have been socialized to accept the norms and interests of the male elite, women's lives within the law are created only from a male-centered perspective.<sup>45</sup> This feminist critique can be broadly classified as liberal feminism. Liberal feminism has the focus and main goal to achieve equality of treatment between women and men in all public areas, including political participation and representation, as well as equal access to paid employment, education, and market services. Liberal feminists work to reform the law, "dismantling legal barriers to women being treated like men in the public sphere."<sup>46</sup> The approach is to treat women and men equally, but a criticism of this is that it requires women to conform to a world that is male-defined. Further criticism of the approach with "the promise of equality as 'sameness' to men only gives women access to a world already constituted by men and with parameters determined by them."<sup>47</sup>

### 5.2.2 Privileging of the Male Perspective and Cultural Feminism

The second critique that will be used is the privileging of the male perspective. In human rights law, the realities of men's lives are privileged while it ignores and/or marginalizes the realities of women's lives. Feminists have argued that the international human rights norms were from the start articulated and continue to be interpreted and applied as a reflection of men's experiences while overlooking harms that most often or majorly affect women.<sup>48</sup> This critique can be tied to cultural feminism, in which feminists have argued that just like traditional psychological theories have valued a male perspective and marginalized the perspective of women, the law as well privileges a male perspective of the world. The law is

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<sup>45</sup> Edwards, p. 43-45.

<sup>46</sup> Hilary Charlesworth and Christine Chinkin, *The Boundaries of International Law: a feminist analysis* (Manchester: Manchester University Press, 2000) p. 39.

<sup>47</sup> Charlesworth and Chinkin, p. 39.

<sup>48</sup> Edwards, p. 51-52.



an intensely patriarchal institution because of the hierarchal organization of the law, its antagonistic format, and the aim to abstractly resolve competing rights.<sup>49</sup>

### **5.2.3 Public/Private Dichotomy and Radical Feminism**

The third critique that will be used focuses on the distinction drawn between the public and private spheres where men are most commonly in the public while women are in the private. The argument is that the law privileges the public sphere and by doing so refuses to recognize the “specificity of the female life in the private sphere.”<sup>50</sup> The public/private dichotomy is argued to be the source of women’s exclusion from the law, especially because it manifests within the theory of state responsibility for human rights abuses. Moreover, the hierarchical view of the male-gendered conception of the public sphere as superior to the private sphere contributes to a system of oppression where men fear being oppressed by the government, while women fear being oppressed by men in the private sphere. This dichotomy explains why violations against women are trivialized and often dismissed as insignificant.<sup>51</sup> The public/private dichotomy is a big part of radical feminism. A feminist perspective argues that the distinction between the public and private spheres serves to obscure and justify men’s domination of women. Catherine MacKinnon, a well-known radical feminist, views social relations between men and women to be organized in a way for men to dominate and women to submit. She continues to argue that preserving a hierarchical system based on gender and sex continues to keep women down. The central question from this view is whether the policy or legislation contributes to maintaining a deprived position because of gender or sex. An alternative legal analysis described how “the law should support freedom from systematic subordination because of sex rather than freedom to be treated without regard to sex.”<sup>52</sup>

### **5.2.4 Essentialized Women and Intersectionality**

The last critique focuses on the essentializing of women and that the legal system relies on and reinforces a collective female identity. This collective identity is often seen as mothers and wives and is dependent on men in their various forms. Essentialism becomes a problem in the law as women cannot be both women and legal subjects at the same time since the law only offers the old view of sex differentiation “the strong man, the weak woman; the male

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<sup>49</sup> Charlesworth and Chinkin, p. 40-41.

<sup>50</sup> Edwards, p. 65.

<sup>51</sup> Edwards, p. 65-66.

<sup>52</sup> Charlesworth and Chinkin, p. 42-43.

subject, the female object.”<sup>53</sup> The further criticism of essentialism is that law oftentimes sees women’s experiences as one single shared experience by all women, which is not the case. To overcome this issue multiple discrimination and intersectionality can be useful analytical tools if used correctly. Different women experience life differently, which is where intersectionality comes into play. Intersectionality describes how people’s multiple different identities interact and can create different modes of privilege and disadvantages. Feminists argue that an intersectionality approach is essential to understanding and addressing the complex and unique experiences of women who are marginalized by multiple identities. These concepts also challenge the gendered presumptions about how women should behave and respond to violence. Advocates and decision-makers must be aware of the possibility of the old gender-based stereotypes simply being replaced by new victim categories such as sex/race, sex/class, or sex/sexuality. Intersectionality is the main point of intersectional feminism.<sup>54</sup>

The feminist critiques introduced will all be used to analyze the problem representations that can be found in the five chosen U.S. abortion bans and in abortion policy in human rights. The first three critiques about women being excluded from the law, the privileging of the male perspective, and the public/private dichotomy will be used to see how or if the laws and the problem representation can be subject to criticism from these critiques. Multiple discrimination and intersectionality will be used as analytical tools in the analysis to be able to comprehend how the problem representations will or can affect different groups of women with multiple identities in different ways of disadvantage.

## **6. Method and Material**

### **6.1 Method**

#### **6.1.1 “What’s the Problem Represented to be?”**

The method of analysis for the thesis that will be used is Carol Bacchi’s “What’s the problem represented to be?” approach. The approach is a critical analysis of policy and rules based on analyzing material with the help of 6 questions.

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<sup>53</sup> Edwards, p. 73.

<sup>54</sup> Edwards, p. 76-85.

1. What is the problem represented to be in a specific policy?
2. What presuppositions or assumptions underlie this representation of the ‘problem’?
3. How has this representation of the ‘problem’ come about?
4. What is left unproblematic in this problem representation? Where are the silences?  
Can the ‘problem’ be thought about differently?
5. What effects are produced by this representation of the problem?
6. How/where is this representation of the ‘problem’ produced, disseminated, and defended? How could it be questioned, disrupted, and replaced?

For this thesis, question 3 will not be discussed due to it not giving enough relevant information for the analysis as well as the difficulty of getting an accurate and concise picture of the history of how the problem representation of abortion has come to be in human rights. Therefore, the focus will instead be on questions 1, 2, 4, 5, and 6 which will be introduced and explained below. There is an important note to make before further delving into the questions, which is the need for reflexivity. Reflexivity is a self-analysis that is crucial to use throughout the process. Already when choosing material, you will partake in analysis since you will make choices that reflect your interest or will choose material to develop specific arguments. The challenge with the approach is the need to not simply accept problem representations without questioning and reflecting on where it comes from, what purposes it has, and the potential effects of it.<sup>55</sup>

***Question 1: What is the problem represented to be in a specific policy?***

The opening question of the approach is a matter of clarification. Bacchi argues that one’s feelings regarding an issue will determine how you suggest dealing with it, meaning it is possible to look at proposed policy intervention and reveal how the issue is being considered. Therefore, the WPR approach recommends that you ‘work backward’ from the concrete proposal or policy to see what is represented as the ‘problem’ within the proposal. One way Bacchi suggests to assist in finding the dominant problem representation within a policy is to find how funds are being directed. Where is the money being spent, to whom or where?<sup>56</sup>

“The goal of question 1 in a WPR approach is to identify implied problem representations in specific policies or policy proposals.”<sup>57</sup>

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<sup>55</sup> Bacchi, p. 1-2.

<sup>56</sup> Bacchi, p. 2-4.

<sup>57</sup> Bacchi, p. 4.

***Question 2: What presuppositions or assumptions underlie this representation of the ‘problem’?***

For question 2 the point is to start looking into the understanding of the identified problem representations. The presuppositions and assumptions mentioned in the question refer to the background knowledge that is assumed and taken for granted behind the problem representation. By examining the assumptions, we can identify the conceptual premises that underpin the specific problem representation. It is important to note that the assumptions are not once held by legislators, rather they are assumptions that “lodge within problem representation.”<sup>58</sup> A starting point to help with the challenging task to uncover these deep-seated assumptions is to recognize that policies and legislations are elaborated in discourse. Policies are expressed in language, but discourse is more than just language and the task is to identify how meaning is created with the use of language which can be done by identifying the binaries, key concepts, and categories within the policy.<sup>59</sup>

“The goal of Question 2 of a WPR approach is to identify and analyze the conceptual logics that underpin specific problem representations. The term ‘conceptual logic’ refers to the meanings that must be in place for a particular problem representation to cohere or to make sense.”<sup>60</sup>

***Question 4: What is left unproblematic in this problem representation? Where are the silences? Can the ‘problem’ be thought about differently?***

Continuing with question four we begin exploring the limits of the underlying problem representation. The key is to ask: “What fails to be problematized?”<sup>61</sup> The argument is not simply to find other ways of thinking about the issue but rather that specific policies are constrained by the specific way they represent the ‘problem’, rather the objective is to explore and highlight issues and perspectives that are silenced in the existing problem representation. One way to help find these gaps and silences is through cross-cultural comparisons. Looking at how the ‘problem’ is being thought of in one country compared to another can help reveal

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<sup>58</sup> Bacchi, p. 5.

<sup>59</sup> Bacchi, p. 4-7.

<sup>60</sup> Bacchi, p. 5.

<sup>61</sup> Bacchi, p. 12.

institutional and cultural contexts that contribute to making a specific representation dominant and silencing others.<sup>62</sup>

“The objective of Question 4 of a WPR approach is to raise for reflection and consideration issues and perspectives silences in identified problem representations.”<sup>63</sup>

***Question 5: What effects are produced by this representation of the problem?***

The WPR approach has the purpose of finding the specific problem representation, with the assumption that some problem representations will create difficulties, and forms of harm, for members of some social groups in comparison to members from other social groups.

Examining the effects will help uncover who is being harmed by the problem representation and who is being benefitted. First, *discursive effects* refer to the view that discourse can limit the kinds of social analysis that can be produced. Second, *subjectification effects* refer to the idea that social relationships and our place within them are determined within policies. This setting up of social relationships happens within the discourse that also makes subject positions available. When a position is assumed, people tend to make sense of the social world from that point of view. Therefore, who we are and how feel about ourselves as well as others is to an extent an effect of the subject positions made available in policies. The third and last is *lived effects* refers to the effects ‘in the real’ by materially affecting people’s lives.<sup>64</sup>

“The goal of Question 5 of a WPR approach is to identify the effects of specific problem representations so that they can be critically assessed.”<sup>65</sup>

***Question 6: How/where is this representation of the ‘problem’ produced, disseminated, and defended? How could it be questioned, disrupted, and replaced?***

This question builds upon Question 3 which focuses the attention on the practices and processes that allow specific problem representations to be dominant. This stage focuses on “the means through which particular problem representation reach their target audience and achieve legitimacy.”<sup>66</sup> Once again drawing from Foucault’s ideas, the point is to question

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<sup>62</sup> Bacchi, p. 12-14.

<sup>63</sup> Bacchi, p. 13.

<sup>64</sup> Bacchi, p. 15-18.

<sup>65</sup> Bacchi, p. 15.

<sup>66</sup> Bacchi, p. 19.

what individuals, groups, or classes have access to a specific discourse and what the relationship looks like between discourse, speakers, and the destined audience. The media's role in disseminating and supporting specific problem representation is also important to consider here.<sup>67</sup>

"The goal of Question 6 in a WPR approach is to pay attention both to the means through which some problem representations become dominant, and to the possibility of challenging problem representations that are judged to be harmful."<sup>68</sup>

### **6.1.2 Feminist Analysis**

When doing the analysis, the feminist critiques presented in the previous chapter will be used to do a feminist analysis of the answers to the questions of the WPR approach that is presented above. In question one where the focus will be on the laws and what the problem representation is the feminist critiques will look at how women are being represented and what critiques are relevant within them. For question two and the presuppositions and assumptions in the policies, the feminist critiques will look at how the biases and assumptions play a role in creating issues for women from a feminist perspective. In question four when considering the silences, the feminist critiques will be used to analyze how the women's perspective may be one of those silences. Moving into question five and the effects of the problem representation will be analyzed through an intersectionality lens to see how different groups of women may be affected differently by the problem representation. Lastly, in question six when analyzing how the problem representation became dominant and the possibilities of challenging it, feminist critiques can be used as arguments for how the laws can be challenged.

## **6.2 Material**

### **6.2.1 Material**

The materials that will be used for this analysis consist of five different state laws banning abortion with limited exceptions, these being: Texas, Alabama, Louisiana, Tennessee, and Arkansas. The laws chosen are only laws that are currently in effect and were chosen due to

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<sup>67</sup> Bacchi, p. 19.

<sup>68</sup> Bacchi, p. 19.

their lack of exceptions and the similar wording within the laws. The reasoning behind the choice will be further discussed under limitations.

Texas – Human Life Protection Act of 2021, HB 1280, 2021

Alabama – The Alabama Human Life Protection Act, HB 314, 2019

Louisiana – The Human Life Protection Act, RS Tit. 40 §1061, 2019

Tennessee – The Human Life Protection Act, SB 1257, 2019

Arkansas – Arkansas Unborn Child Protection Act, SB 6, 2021

The other material that will be used is two different human rights conventions with both articles and comments from the conventions being used. These two, the Convention of Elimination of Discrimination Against Women (CEDAW) and the International Covenant on Civil and Political Rights (ICCPR) were chosen due to the relevance to the subject and the relevance to the U.S. since the U.S. has signed both treaties although only the ICCPR has been ratified.

Convention of Elimination of Discrimination Against Women (CEDAW)

International Covenant on Civil and Political Rights (ICCPR)

### **6.2.2 Limitations**

The five U.S. laws chosen to be analyzed in contrast to human rights were chosen based on multiple factors to best limit the analysis in a cohesive way. Firstly, since the *Dobbs v. Jackson* decision many states have created abortion bans, but there are still some pending that are not yet in effect, to narrow down the selection only laws that are currently in effect were considered. Furthermore, the laws were then narrowed down further to laws chosen due to their lack of exceptions as well as similar language being used within the laws. While it could be interesting with an analysis also comparing laws and bans with more exceptions, the similarity between the ones chosen gives strong proof behind the analysis of the laws in the questions of the WPR approach. Furthermore, since the analysis will be contrasting these laws to human rights based on the questions of the approach, the use of similar laws gives a more cohesive and in-depth analysis.

## **6.3 Ethical Considerations**

For this study, ethical principles have been taken into consideration. The Swedish Research Council asserts that research is important and necessary for the development of individuals as

well as society. Therefore, there is a legitimate expectation from society and its members that research should be carried out with a focus on crucial topics and of high quality. This criterion is referred to as the research requirement and implies that existing available knowledge is developed and deepened, and methods are improved. However, society's member also has a right to protection against undue intrusion, for example into their living condition. Individuals must also not be subjected to psychological or physical harm, humiliation, or violation. Before every scientific investigation, the responsible researcher must weigh the value of the expected addition of knowledge against any possible risks, such as harm to research participants, informants, and/or third parties.<sup>69</sup>

These ethical considerations have been considered for this study concerning the possible risks and harms that could come from it. As the focus lies on the laws, there is no risk of harm. Although, as specific court cases will be used in the analysis the risks to the parties have been considered and will only be referred to by initials or last name as it is referred to within the official public documents posted by the Human Rights Committee and the Committee on the Elimination of Discrimination Against Women.

## 7. Analysis

### 7.1 Policies

#### 7.1.1 U.S. Abortion Ban Policies

Since the overturn of *Roe v. Wade* by the Supreme Court in the case of *Dobbs v. Jackson Women's Health Organization* there have been multiple states enacting bans on abortion across the country. Out of all 50 states, 44 prohibit abortion at some point during the pregnancy, 13 of the states ban abortion completely while 13 ban abortion at viability.<sup>70</sup> To begin understanding the bans on abortion that will be analyzed here within, we must look at what the laws state.

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<sup>69</sup> Vetenskapsrådet, "Forskningsetiska principer inom humanistisk-samhällsvetenskaplig forskning" (Sverige: Elanders Gotab, 2002) <https://www.vr.se/analys/rapporter/vara-rapporter/2002-01-08-forskningsetiska-principer-inom-humanistisk-samhallsvetenskaplig-forskning.html>.

<sup>70</sup> "State Bans on Abortion throughout Pregnancy," Guttmacher Institute, March 1, 2023, <https://www.guttmacher.org/state-policy/explore/state-policies-later-abortions>.



To begin, one of the many arguments surrounding the discussion about abortion regards when a fetus is considered a child. The concept that life begins at the point of conception is stated clearly in all the chosen laws. For example, the Louisiana law definition is “every unborn child is a human being from the moment of conception,”<sup>71</sup> and the Tennessee definition is “‘Unborn child’ means an individual living member of the species, homo sapiens, throughout the entire embryonic and fetal stages of the unborn child from fertilization until birth.”<sup>72</sup> The importance of making this definition is what gives meaning to the law itself because the bans were created and enacted to protect human life.

The rights of the unborn child and the beginning of life is a debate that has existed for a long time and arguments that the unborn child should have equal rights to ‘born humans’, or children and adults, have been discussed for just as long. There have also been many laws made on arguments to protect groups of people that have not previously been protected under the law. Legislation that promotes rights to groups that have previously been excluded has historically led to vulnerable groups becoming protected, for example, the protection of native people or the abolishment of slavery. This is a point that Alabama’s House Bill argues.

In the United States Declaration of Independence, the principle of natural law that "all men are created equal" was articulated. The self-evident truth found in natural law, that all human beings are equal from creation, was at least one of the bases for the anti-slavery movement, the women's suffrage movement, the Nuremberg war crimes trials, and the American civil rights movement. If those movements had not been able to appeal to the truth of universal human equality, they could not have been successful.<sup>73</sup>

They compare the unborn children with that of other groups that have historically suffered injustices, arguing that the unborn child deserves equal rights to protection as the vulnerable groups that have strived for and gained it before. Arkansas, like Alabama, also uses a comparison to the African-American community and the injustices they faced by claiming that the Supreme Court upholding segregation in the court case of *Plessy v. Ferguson* was a crime against humanity due to its severe deprivation of rights for black people, and that equally so upholding *Roe v. Wade* should be considered a crime against humanity for the

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<sup>71</sup> RS 40:1061.1, 2019.

<sup>72</sup> TN SB1257, 2019-2020.

<sup>73</sup> HB314, 2019, p. 2.

deprivation of rights for the unborn child.<sup>74</sup> While Arkansas' and Alabama's laws both argue for this point, the other three do not mention this specifically.

What is made clear by the five legislations chosen for this analysis, the common denominator is the heavy emphasis on the right of the unborn child. To start; Alabama, Texas, Louisiana, and Tennessee all refer to their bans as the *Human Life Protection Act*<sup>75</sup> while Arkansas is even more specific calling their legislation the *Arkansas Unborn Child Protection Act*.<sup>76</sup> This specific language proves the purpose of their legislation but is also further proven within the legislation and the language used.

(b) On November 6, 2018, electors in this state approved by a majority vote a constitutional amendment to the Constitution of Alabama of 1901 declaring and affirming the public policy of the state to recognize and support the sanctity of unborn life and the rights of unborn children.<sup>77</sup>

(Alabama)

It is the intent of this subchapter to ensure that abortion in Arkansas is abolished and to protect the lives of unborn children.<sup>78</sup> (Arkansas)

The language used in the paragraphs continues to strengthen the point that the abortion debate is not about the woman's right to choose as has been argued by the pro-choice movement, but rather that abortion is a violation of the rights of the unborn child. That there is a need to "recognize and support the sanctity of unborn life and the rights of unborn children."<sup>79</sup> With this in mind, the lack of consideration for women's rights can also be assumed by the language used in the legislation when the woman is only mentioned in the context of exceptions to the law being at the risk of the woman's life or risk of severe injury. This is mentioned in all laws.

It shall not be a violation of Subsection C of this Section for a licensed physician to perform a medical procedure necessary in reasonable medical judgment to prevent the death or substantial

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<sup>74</sup> SB6, 2021.

<sup>75</sup> HB1280, 2021; HB314, 2019; RS 40:1061, 2019; TN SB1257, 2019-2020.

<sup>76</sup> SB6, 2021.

<sup>77</sup> HB314, 2019, p. 2.

<sup>78</sup> SB6, 2021.

<sup>79</sup> HB314, 2019, p. 2.

risk of death due to a physical condition, or to prevent the serious, permanent impairment of a life-sustaining organ of a pregnant woman.<sup>80</sup> (Louisiana)

Furthermore, when it comes to funding within the policies it is only mentioned in the context of where public funding will not be allowed or only allowed in the case of exceptions for abortions. “Arkansas Constitution, Amendment 68, states that the policy of Arkansas is to protect the life of every unborn child from conception until birth and that public funds shall not be used to pay for any abortion, except to save the life of the mother.”<sup>81</sup> Only Arkansas, Alabama, and Louisiana mention this within their laws while the other two do not have any referral to funds within the laws.

### **7.1.2 Human Rights Abortion Policies**

Abortion policies within human rights are a little more complex. There is no specific right to abortion in any convention of human rights, but it has been argued and interpreted by the committees that the right to abortion is included in multiple different human rights for women. To start, the Convention of Elimination of Discrimination Against Women (CEDAW) mentions abortion as a right with the perspective of the right to family planning as well as the protection of women against unsafe abortions. Article 16 (e) states “The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;”<sup>82</sup> which has openly been declared to refer in part to the right of abortion, including other sexual and reproductive health rights. In the court case of *L.C. v. Peru*,<sup>83</sup> it was argued and upheld that being denied access to abortion violated the victim’s rights under articles 1, 2, 3, 5, 12, 16 (e) as well as General Recommendation No. 24.

CEDAW General Recommendation No. 24: Article 12 of the Convention (Women and Health), 31 (c), discusses the issue of maternal mortality rates for the right to abortion.

Prioritize the prevention of unwanted pregnancy through family planning and sex education and reduce maternal mortality rates through safe motherhood services and prenatal assistance. When

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<sup>80</sup> RS 40:1061, 2019.

<sup>81</sup> SB6, 2021, p. 3.

<sup>82</sup> CEDAW, Article 16 (e).

<sup>83</sup> *L.C. v. Peru*, CEDAW/C/50/D/22/2009, 4 November 2011.

possible, legislation criminalizing abortion should be amended, in order to withdraw punitive measures imposed on women who undergo abortion.<sup>84</sup>

Continuing to the International Covenant on Civil and Political Rights, where abortion only recently, in 2019, was specifically added to General Comment No. 36 on Article 6: right to life.

Although States parties may adopt measures designed to regulate voluntary termination of pregnancy, those measures must not result in violation of the right to life of a pregnant woman or girl, or her other rights under the Covenant. Thus, restrictions on the ability of women or girls to seek abortion must not, inter alia, jeopardize their lives, subject them to physical or mental pain or suffering that violates Article 7 of the Covenant, discriminate against them or arbitrarily interfere with their privacy.<sup>85</sup>

Even before the general comment specifically stating this, the right to abortion connected to other specific rights has been an accepted fact by the Human Rights Committee, shown by the cases from before 2019 that regard the right to abortion in relation to multiple other rights. Article 2: protection against discrimination, Article 3: equal rights of men and women, Article 7: protection against torture or cruel, inhuman, or degrading treatment or punishment, and Article 17: the right to privacy have all been used in 4 existing cases; *K.L. v. Peru* (2005)<sup>86</sup>, *V.D.A. on behalf of her daughter L.M.R. v. Argentina* (2011)<sup>87</sup>, *Mellet v. Ireland* (2016)<sup>88</sup>, and *Whelan v. Ireland* (2017)<sup>89</sup>. Article 6: the right to life, is also mentioned and discussed in the case of *K.L. v. Peru*.

## 7.2 What's the problem represented to be?

### *Question 1: What is the problem represented to be in a specific policy?*

When looking at the U.S. policies and the language used within them, it is made clear that the abortion debate has moved from being about women and women's rights into the focus on unborn children. This is made clear in the language when talking about the unborn child and

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<sup>84</sup> CEDAW, General Recommendation No. 24: Article 12 of the Convention (Women and Health), 31 (c).

<sup>85</sup> ICCPR, General Comment No. 36 on Article 6: right to life.

<sup>86</sup> *K. L. v. Peru*, CCPR/C/85/D/1153/2003, 22 November 2005.

<sup>87</sup> *V.D.A. representing L.M.R. v. Argentina*, CCPR/C101/D/1608/2007, 28 April 2011.

<sup>88</sup> *Mellet v. Ireland*, CCPR/C/116/D/2324/2013, 17 November 2016.

<sup>89</sup> *Whelan v. Ireland*, CCPR/C/119/D/2425/2014, 11 July 2017.

protecting their rights and lives, using both the specific language in referring to the bans as the *Human Life Protection Act*<sup>90</sup> or as in Arkansas' case the *Arkansas Unborn Child Protection Act*.<sup>91</sup> The naming of the laws shows clearly enough that abortion is no longer a women's issue but rather shifts the focus toward unborn children. This is further shown in the language within the laws that argues for the protection of the right and/or the lives of unborn children. The focus of the problematization on the protection of the unborn child is made even more evident from their use of comparing unborn children to historically marginalized and oppressed groups of people.<sup>92</sup> This all shows the clear point that all five abortion ban laws have in common the focus on the protection of unborn children.

Furthermore, the absence of mention of the pregnant woman in the law further goes to show that the policy is no longer considered to be about women and their rights, as argued by the pro-choice movement, and instead is about something completely different. The problem represented within the policies can simply be put as the violations against the rights of unborn children. The legislators have found that abortion is a problem because it terminates a pregnancy and therefore ends the life of an unborn child. Their definition of the concept of the beginning of life being at the point of conception creates the problem that having an abortion and terminating one's pregnancy, in layman's terms, 'kills' a child who has their own rights.

This problem representation can be subject to feminist critiques because of the obvious absence of women within the law. The only mention of the woman and her rights is in referral to the exception when her life is at risk or if she is at risk for severe damage or injury. Removing women's voices from the law results in women's rights, needs, and desires being failed by the system. Furthermore, another feminist critique that is relevant is the privileging of the male perspective. The laws indirectly privilege the male perspective by ignoring the realities of the women's lives who are being affected by the problem representation. Abortion is a female 'problem' but instead the laws focus on the male perspective of protecting the innocent unborn children while completely overlooking the harms surrounding abortion and childbirth that only affect women.

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<sup>90</sup> HB1280, 2021; HB314, 2019; RS 40:1061, 2019; TN SB1257, 2019-2020.

<sup>91</sup> SB6, 2021.

<sup>92</sup> HB314, 2019; SB6, 2021.

Another way that Bacchi mentioned to find the represented problem is by looking at funds, where they go or where they do not go. In the cases of these near-total bans, the legislation only mentions the money in the context of limiting the access to government insurance with regards to abortions, that public funds will not be available or used for abortions. While not giving any indication of where funds should be directed, we can instead draw conclusions from where the funds are being withdrawn.

When instead looking at the abortion issue within international human rights law the problem representation looks quite different. The problem representation can be molded and changed depending on which specific article or comment is being looked at. When looking at Article 16 (e) in CEDAW the use of language clearly shows how the problem representation of abortion in this case is the threat to the right to family planning, for the woman to choose herself and have the means to decide how her family should look like. When instead looking at CEDAW General Recommendation No. 24: Article 12 the article moves the problem representation to be about maternal mortality. Meaning that it considers abortion a solution to the specific problem representation of high maternal mortality rates. Looking at the ICCPR and the language being used in the articles and comments, the problem representation moves to the threat of violation against multiple rights of women and girls.

To summarize, within CEDAW and ICCPR the problem representation of the abortion right looks slightly different, but also similar in some respects. While neither treaty has an individual article specifically dedicated to the abortion right, both include abortion rights into different rights making it about different focuses. The common denominator is the focus on women's equal right to protection of their human rights. While the focus may be on different rights, one could argue that the shared problem representation is the violation of equal protection of women's human rights.

A feminist critique that could be argued here would be from liberal feminism and the fact that adding the abortion right into already existing male rights forces this women's right of abortion into conforming to the male-defined norm of human rights. As cultural feminism argues, laws are generally made with the male perspective being privileged. Human rights can be argued to not be an exception and have been made from a male-centered perspective focusing on issues that largely affect men. Adding the specific female issue of abortion into

the already existing rights forces it to conform to the male-centered norm rather than giving women their own rights separate from men and male-defined rights.

***Question 2: What presuppositions or assumptions underlie this representation of the ‘problem’?***

After determining the problem representation in the U.S. policies to be the violations of the rights of unborn children and the solution being the banning of abortion we move into the second question to analyze the presuppositions and assumptions that are underlying. We are looking for the background knowledge that is assumed and taken for granted behind the problem representation. It is once again crucial to note that the assumptions are not ones held by legislators, but rather to try to identify cultural values, a kind of social unconscious.<sup>93</sup>

The valuing of the rights of the unborn child is sitting upon the undervaluing of the rights of women. Pitting the rights of children and women against each other to compare which one is considered most important and most valued. It can be argued that these policies are valuing the rights of the unborn child above the rights of the woman and come from the deep-rooted belief that women are in a way second-class citizens. Historically, women have always been considered less than with a lack of rights and oppression. For example, in the U.S. it was only in 1963 that they wrote into law the prohibition of sex-based wage discrimination between men and women doing the same job in the workplace<sup>94</sup>, only in 1972 did it become prohibited to exclude people based on sex from education<sup>95</sup>, and first in 1974 were women allowed the right to have credit cards in their own name.<sup>96</sup> While this shows that women’s rights have slowly improved with time, it also shows how oppressed women have been historically. Furthermore, even with laws in place to protect equal rights for women, the reality is that it is still not followed. In 2022 women earned only 82% of what men earned according to a study done by Pew Research Center.<sup>97</sup> This further shows the undermined position of women in society. Society has deeply ingrained thoughts and ideas of women and their place in society, which oftentimes put women in an inferior position.

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<sup>93</sup> Bacchi, p. 5.

<sup>94</sup> United States. Department of Labor. Office of the Solicitor. Legislative History of the Equal Pay Act of 1963, Amending Section 6 of the Fair Labor Standards Act of 1938, as Amended, Public Law 88-38, 88th Congress, H.R. 6060 and S. 1409. Washington :U.S. G.P.O., 1963

<sup>95</sup> Title IX, Education Amendments of 1972, 20 U.S.C. §§ 1681-1688

<sup>96</sup>The Equal Credit Opportunity Act, 15 U.S.C. §§ 1691-1691f, 1974

<sup>97</sup> Rakesh Kochhar, “The Enduring Grip of the Gender Pay Gap,” Pew Research Center’s Social & Demographic Trends Project, March 1, 2023, <https://www.pewresearch.org/social-trends/2023/03/01/the-enduring-grip-of-the-gender-pay-gap/>.

To further analyze the deep-rooted cultural assumptions behind the problem representation, Bacchi suggests identifying the binaries, key concepts, and categories within the policy. A binary is characterized by one side being distinct from and excluded from the other side. In addition, binaries have a hierarchy implied to them, one side is more privileged and considered more important or valued than the other.<sup>98</sup> As the problem representation is the violations of the rights of the unborn child the binaries in this case could be considered child/woman. As mentioned, the policies rely upon the evaluation of rights and whose rights should be valued higher. Considering the policies, it shows that between the two existing binaries of child/woman, the side considered more important and valued is that of the child.

Policies are filled with key concepts that are relatively open-ended and can have different meanings to different people. The meaning of key concepts differs due to competing political visions.<sup>99</sup> Two key concepts that can be found within these policies, the first one being the controversial concept of life and when life begins as previously discussed under Policies. For these policies and the language used, the concept of the beginning of life is at conception, which is made clear in the definitions found in the legislation. This understanding of the concept functions to give weight to the second key concept, which is rights. Rights, just like the concept of the beginning of life, is a relatively open-ended concept, but in the bills, rights are referred to only in relation to fetal rights and rights of the unborn child without any mention or regard to women's rights. This focus and understanding of rights function to argue the importance of banning abortion to protect the rights of the unborn child.

Categories, in specific people categories, exist in policies and it is important to examine them closely because of their crucial role in how governing takes place. In the bills, two specific people categories are identified. On one side we have the group of "people seeking or performing abortions" and on the other side we have the group of "unborn children". In the bills, unborn children are presented as a vulnerable group suffering grave injustices and violations of their rights. This is argued by comparing the situation of abortions of unborn children to that of the holocaust or segregation.<sup>100</sup> The people seeking or performing abortions are merely presented as possible violators of the rights of the unborn child, with the only

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<sup>98</sup> Bacchi, p. 7.

<sup>99</sup> Bacchi, p. 8.

<sup>100</sup> HB314, 2019, p. 3; SB6, 2021, p. 2.



exception being as they are mentioned with the exception to the rule in the case of risk to life. And women specifically are not mentioned as individual beings but rather carriers of the unborn child.

When looking at the presuppositions and assumptions behind the policies of the abortion bans, we can once again consider the feminist critiques and refer to radical feminism and how the law is made to keep women in an inferior position. With these assumptions of women being inferior the laws that derive from these assumptions will continue to keep women down, which is what radical feminism argues is the reason for inequality under the law.

When instead looking to the presuppositions and assumptions within CEDAW and ICCPR one could argue that the additions and comments to include abortion into the rights rely on the very assumption that women and girls do not enjoy their rights equally to men and need more protection. There is an underlying assumption that even with articles in the treaties to protect against discrimination, it is not followed, that women are always being discriminated against or biased against. On the international level, like the national level, there is still the underlying subconscious view of women as inferior. But on the international level, this inferior view of women relies on the idea of women as victims in need of protection. This can be tied to the feminist critique of essentializing women, seeing women as weaker and in need of protection rather than fully capable legal subjects. The idea is that women are not capable of protecting themselves and must therefore be protected by men. Another underlying assumption that has been commonly argued by all human rights bodies is the underlying privileging of the Western perspective that does not take into consideration other cultures and norms that exists in other areas of the world. This is true especially when it comes to women from parts of the world other than Western, where in international human rights legal exchanges women are largely excluded as agents of change and instead are portrayed as victims of culturally depraved or primitive or backward harms.<sup>101</sup> This is to say that these assumptions of women as being weaker and victims and in need of protection are what the additions and comments to the articles are based on.

When looking to identify the binaries within these policies you find with the issue being about the threat to women's equal rights that the binaries could be considered women/state. Since

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<sup>101</sup> Edwards, p. 75.

the woman is the one with rights and the state is the one threatening the rights with policies and regulations that would limit women's rights. CEDAW and the ICCPR with their abortion rights make it clear that the privileged side of these two groups is the women. Furthermore, the key concept within both is the concept of rights, specifically women's right to rights. Because abortion is not a law itself but is a part of multiple rights that women should all have equal rights to. When continuing to the people categories they could be considered the same as the binaries, one side being "women" and the other side being "states" where women are portrayed as rights-holders with equal right to rights, and states are portrayed as the possible threat against women's equal rights.

***Question 4: What is left unproblematic in this problem representation? Where are the silences? Can the 'problem' be thought about differently?***

With the problem representation of the abortion bans being violations of the rights of unborn children, we can also, as mentioned under question 1, notice that a huge silence exists regarding the rights of women. With the laws so focused only on the rights of the unborn child the mention of the woman's rights is almost non-existent in almost all senses. The only right of women that is being taken into consideration in the laws is the woman's right to life as the risk of life is the only exception to the law. But what is left unproblematic is all the other rights of women that are usually being considered regarding abortion, for example, bodily autonomy and choice, as well as many other rights. This silence becomes even more obvious when looking at the problem representations of other abortion laws across the U.S. where the woman's rights are in the focus.

For example, in New York, the state continues to actively strengthen the law to protect abortion rights and the protection of those performing and receiving abortion care. Governor Hochul of New York expanded the Family Planning Grant Program for 2023 to maintain the state funding of reproductive health services.<sup>102</sup> The abortion policies also focus highly on the reduction of maternal mortality and morbidity and the reduction of racial disparities in maternal mortality.<sup>103</sup> The problem representation in New York that only surround the rights of women shows the clear difference to the problem representation of the abortion bans. The

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<sup>102</sup> "Protecting & Strengthening Abortion Rights," The State of New York, accessed April 17, 2023, <https://www.ny.gov/abortion-new-york-state-know-your-rights/protecting-strengthening-abortion-rights>.

<sup>103</sup> "Protecting & Strengthening Abortion Rights," The State of New York, accessed April 17, 2023, <https://www.ny.gov/abortion-new-york-state-know-your-rights/protecting-strengthening-abortion-rights>.

comparison to another state makes the silence even more deafening within the bans. This, as previously mentioned in question 1, can be connected to feminist critique as it clearly shows how the female voice is removed from the law. If a female voice had been included in the creation of these laws, the woman's rights would arguably have been considered further than merely her right to life.

Furthermore, another issue that is left unproblematic is the problem of unsafe abortions. Women have throughout history continued to have abortions even when it has been criminalized and continue to have abortions in countries where it still is illegal. The main problem in most countries with abortion bans is the high number of unsafe abortions that can cause a lot of harm to the women receiving them. According to a study made by WHO and the Guttmacher Institute approximately 25 million abortions each year between 2010 to 2014 were unsafe, 45% of all abortions done.<sup>104</sup> The issues and risks surrounding unsafe abortions are often brought up in abortion debates in countries and states, for example in New York where the abortion right is protected with arguments to ensure safe abortions. Banning abortion has never stopped the practice and never will, which has been argued in previous research, this fact is not brought up or considered in the bans. Continuing, another silence within the bans can be taken from the feminist critique of intersectionality is the fact that the policies do not take into consideration how different women with multiple different identities will be affected differently and faces different types of disadvantages by the bans. This would be considered a silence and is left unproblematic within the policies.

Looking instead to CEDAW and the ICCPR one could instead flip the argument around. While both CEDAW and ICCPR focus their discussion and policies around abortion on the rights of women in multiple aspects, they lack the inclusion of consideration for the unborn child or fetus. The regulations and policies all discuss a woman's right and the right to choose abortion but make no definitions or limitations. Unlike the abortion bans, international human rights laws only grant rights to people from the point of birth,<sup>105</sup> meaning that the unborn child does not have a right to life or any other rights that could be competing with the woman's. This silence of the fetus or unborn child can be left open to interpretation and discussion. Most countries have some limitations on abortions, even when very liberal, there are often laws limiting abortions to the time before the unborn child could survive outside the

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<sup>104</sup> Ganatra et al., "Classification of Abortion".

<sup>105</sup> Universal Declaration of Human Rights, Article 1.

mother and the womb. But because the abortion right has not been defined as a right by itself and is only connected to other rights, no definitions and limitations have been made and make the right open to debate. This point is something that can be argued to be left unproblematic as well.

Not explicitly giving the right to abortion in and of itself gives the view that women not having an abortion as a right is not actually a problem. Because if abortion is supposed to be a basic human right and the denial of access to abortion is a problem, should it not be explicitly given as a right in itself? By not making abortion right its own right, the issue is being trivialized as not being as important as other rights. A feminist critique that can be brought up regarding the fact that abortion is not being defined as a right within human rights is the connection of this to the public/private dichotomy. The idea is that abortion is a problem in the private sphere of women and is therefore not considered as much of a problem as something that would affect more men in the public sphere. This would explain why abortion is not being created as its own right and rather being connected to other, more male-defined, rights in the public sphere to make it more important. A further feminist critique that can be drawn, like the U.S. policies, is intersectionality in the silence that can be found with the lack of consideration for different groups of women that are all being affected differently and faces different types of disadvantages and needs. Furthermore, in the way that the abortion right has only been made into an addition to other rights, it also essentializes women assuming all women are one single collective identity.

***Question 5: What effects are produced by this representation of the problem?***

Looking at abortion as a violation of the right of the unborn child problem and excluding women from the discussion creates an environment trying to erase women. The *discursive effect* that can be found within this problem representation, which is closely connected to the previous question with silences in the problem representation, is the erasing of women from the discussion. Portraying abortion as an issue and violation of the unborn child's rights closes off the consideration of the woman and the effects on her from an unwanted pregnancy. This can also be tied into feminist critiques and how the female voice is missing and silenced from the conversation and the privileging of the male perspective and the marginalization of the woman's perspective. When focusing such a female-based "problem" not on women but rather on the unborn child the law ignores and marginalizes the realities of women's lives and the effect and consequences on them from an unwanted pregnancy.

Problem representation in policies often sets different groups against each other to stigmatize one group while encouraging the other's behavior. Figuring out which group is being stigmatized within the policy makes it possible to understand the *subjectification effects* in the problem representation. Setting up the two groups within the laws as women v. unborn children and presenting the issue to be women seeking abortions killing unborn children who have their own rights creates a clear stigmatization against women. The problem representation creates the view that women are the problem because they are the ones at fault for getting pregnant and then they are at fault for wanting to kill an innocent unborn child that is supposed to have their own rights. This representation stigmatizes women seeking abortions, wanting the women to feel bad and ashamed for considering not continuing with an unwanted pregnancy and causing the people around these women to alienate them. Creating such an environment can cause women or girls seeking abortion services for an unwanted pregnancy to be ostracized from society, due to the view that the pregnancy is their fault to begin with, and all they are doing is taking away the rights of an unborn child. This can further be tied into the feminist critique of essentialism as this view of women turns them into perpetrators, objects of state intervention, rather than subjects with rights.

Lastly, the *lived effects* are the direct effects the policies have on people's lives, which in this case are many. To start, as previously mentioned, abortions have always happened and will continue to happen even when banned, they will just end up being clandestine unsafe abortions rather than safe medical ones. This will cause maternal mortality and morbidity to rise, and the complications and risks from unsafe abortions to increase as well. Furthermore, this basic right to safe abortion services will no longer be for all women, but rather only for those who can afford to leave these states with abortion bans to travel to other so-called "safe haven" states, for example, California and New York, that perform abortions on out of state women.<sup>106</sup>

This issue of who will be able to have an abortion and who will not in the states with abortion bans opens the analysis to look at intersectionality and how different groups of women are all being affected in different ways of disadvantage. The ban on abortion in one's home state will cause a great divide in who can and cannot receive an abortion, creating a class issue where

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<sup>106</sup> Simone Shah, "What Abortion Safe Haven States Can Do," Time, June 27, 2022, <https://time.com/6191581/abortion-safe-haven-states/>.

only the rich have the right to health while the poor must either go through an unwanted pregnancy or go through an unsafe home abortion. In a survey done by the Guttmacher Institute in 2014 49% of abortions were done by women who were living at less than the federal poverty level and 26% of abortions by women of low income, while only 25% of abortions were done by women with middle or high income.<sup>107</sup> This shows how the low-income women will be the ones mostly affected by the abortion bans, while still not having the means to receive the care by going somewhere else. Furthermore, the class issue ends up being about more than just class because the people with the lowest income are people of color, black people and Hispanic people, making it into a race issue as well. In 2019-2020, according to the Social Security Administration, the median annual income for black non-Hispanic women between ages 20-29 was only at 19 200 dollars and for Hispanic women at 20 600 dollars in comparison to white women at 25 500 dollars and Asian women at 31 900 dollars.<sup>108</sup> This specific age group of 20-29 year-olds is also the specific age group that had the majority of abortions in 2014 at 60%.<sup>109</sup> With these statistics it can be argued that the group of women that will be most affected by the abortion bans are specifically women of color, black or Hispanic, in the age range of 20-29 since the age group has a majority of abortions but these women specifically will have more difficulty accessing care due to their limited funds.

Another group that will most likely also face greater disadvantages by the bans are women with disabilities, firstly because while pregnancy always comes with risk for all women, women with underlying health issues and disabilities run a higher risk of complications and about 11 times the risk for maternal death.<sup>110</sup> The second issue that women with disabilities face is that they may not have the capabilities, physically or mentally, to travel somewhere else to receive abortions if that is the only option in their state. This creates a greater risk for

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<sup>107</sup> Jenna Jerman, Rachel K. Jones, and Tsuyoshi Onda, “Characteristics of U.S. Abortion Patients in 2014 and Changes since 2008,” Guttmacher Institute, August 24, 2022, <https://www.guttmacher.org/report/characteristics-us-abortion-patients-2014>.

<sup>108</sup> “Statistics at a Glance: Earnings of Women Aged 20–59, by Age Group and Race/Ethnicity, 2019–2020,” Research, Statistics & Policy Analysis, May 2022, <https://www.ssa.gov/policy/docs/factsheets/at-a-glance/earnings-women-age-race-ethnicity.html#:~:text=In%20the%202%2Dyear%20period,55%25%20higher%20than%20Hispanic%20women>.

<sup>109</sup> Jenna Jerman, Rachel K. Jones, and Tsuyoshi Onda, “Characteristics of U.S. Abortion Patients in 2014 and Changes since 2008,” Guttmacher Institute, August 24, 2022, <https://www.guttmacher.org/report/characteristics-us-abortion-patients-2014>.

<sup>110</sup> Linda Huynh and Robert Bock, “NIH Study Suggests Women with Disabilities Have Higher Risk of Birth Complications and Death,” National Institutes of Health, December 15, 2021, <https://www.nih.gov/news-events/news-releases/nih-study-suggests-women-disabilities-have-higher-risk-birth-complications-death>.

women with disabilities who will be forced to go through unwanted pregnancies with severe risks to both themselves and the fetuses or unborn children.

Turning around to look at abortion under international human rights we can see other effects come forth. Regarding *discursive effects*, one could argue that even in the CEDAW and ICCPR the woman's point of view still becomes marginalized to some extent due to the focus of the abortion issue not being on abortion as a right itself but rather should be included in other rights. Furthermore, the *subjectification effects* that are created by the problem representation is the stigmatization of states and governments that argue for the pro-life movement and bans of abortion. These effects would become an issue on an international scale where the human rights society would alienate the states and governments without taking into consideration what the population may want or what role the culture and norms play in decisions limiting abortion. For example, a state may put in effect a ban on abortion because the birth rate is far too low, and they want to increase the population or limit abortions due to excessive rates of gender-based abortions. Although a positive *subjectification effect* coming from CEDAW and the ICCPR is the view of women as equal rights-holders. Creating an environment where women should be allowed equal rights to rights. Although, a competing view of this that can also be argued is, as mentioned previously, the view of women as passive victims who need men's protection. With this view, women become objects of protection rather than subjects of rights, which draws from essentialism.

Moving into the *lived effects* of the regulations, the effects on women specifically would be positive if the laws are followed in the countries. With the right to abortion for all women being protected and enacted it would open more opportunities and possibilities for women of all kinds. As has been mentioned, abortions will always happen even when not legal, meaning that if all women had easy access to legal and safe abortion the complications and risks existing with unsafe abortions would be decreased. Furthermore, in an ideal world, if abortion care and reproductive health care were easily accessible and affordable for everyone the maternal mortality and morbidity rates would arguably also significantly decrease. On the other hand, those with cultural and religious beliefs that argue that life begins at the point of conception will face the reality that many unborn children are being killed. Continuing with that argument will be the issue of all unborn children, if life truly begins at the point of conception, the unborn children will face violations against their rights to life.

***Question 6: How/where is this representation of the ‘problem’ produced, disseminated, and defended? How could it be questioned, disrupted, and replaced?***

The problem representation of the abortion bans is often argued and debated from the viewpoint of religion and morality. Both have played a major role in the pro-life movement over the years. In media and demonstrations and debates there are often many referrals to religion and Christ and how the bible is pro-life. This use of religion and morality to strengthen the problem representation plays a huge role depending on where in the U.S. you reside. It is no coincidence that the five laws analyzed here, as well as most other complete bans, all are in states that lie within what is commonly known as the “bible belt” where religion, specifically conservative Christianity, is highly valued and has a strong hold on social society.<sup>111</sup> With religion being such a huge part of social society, using it to support a problem representation makes it easy to ensure its dominance over other available problem representations. While this heavy weight on religion and morality is not brought up in the laws themselves, social media has made it clear that it is one of the major points in the debate. When seeing demonstrations or debates there will always be mentions of religion, the bible, and morality.<sup>112</sup>

On the other hand, one could twist this argument on its head with arguments of rights to religious freedom. Other religions may support the right to abortion and the right to choose, or people without religion who believes that they should have the right to choose abortion. Using the argument of religion in any debate can always be argued against, which is most likely why the laws themselves instead argue for the right of the unborn child without any mention of religion. Using this specific problem representation of the violations against the rights of the unborn child creates a bigger hurdle to overcome when arguing against it because there can always be counterarguments questioning the pro-choice side’s morality when they are unwilling to protect the rights of the unborn child and only care about the rights of women.

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<sup>111</sup> Mark Abadi, Shayanne Gal, and Lloyd Lee, “Map: From the Bible Belt to the Rust Belt, the United States Has 13 Distinct ‘Belts,’” Business Insider, February 20, 2023, <https://www.businessinsider.com/regions-america-bible-belt-rust-belt-2018-4?r=US&IR=T>.

<sup>112</sup> CBS News, “Trump makes history as anti-abortion rally headliner,” *YouTube* video, 1:31, January 25, 2020, <https://youtu.be/OXMC5z83NMY>; Catholic Diocese of Arlington, “March for Life 2023 – Onward for Life,” *YouTube* video, 3:12, January 21, 2023, <https://youtu.be/blO2mm7LeMA>.



One point is clear though, many arguments can question, disrupt, or replace the problem representation. Arguing for the multiple human rights of women that are being violated by these types of bans is one major point. And furthering that discussion an argument can be made drawing from feminist critique in how the ban creates inequality and disadvantage for women. Considering the many arguments made through the analysis of how the laws can be critiqued through a feminist lens with regards to how women are not being fairly treated through the laws by erasing the female perspective and ignoring women. A further discussion to disrupt the problem representation is the definition of when life begins. There is no commonly accepted definition of this concept anywhere, some arguing it begins at the point of conception<sup>113</sup> and others define it as being at the point we are born,<sup>114</sup> while some are more unsure if life begins when the heartbeat does or if it starts at viability.<sup>115</sup> This discussion that has never been agreed upon is one of the major points that can disrupt the problem representation of violations against the rights of the unborn child. Because if life does not actually begin at conception but rather at the point of viability or when one is born, these complete bans on abortions do not have a legitimate argument since one only has rights at the beginning of life.

Moving onto human rights and violation of the equal protection of women's human rights as a problem representation it is often being argued from a feminist perspective that women deserve equal rights. If men have the right to all these rights, so should women in all senses even when it concerns issues that do not affect men but are still included in the rights. Although this argument is strong and can be easily defended as a point of equality, it can still be questioned as well. For example, by using the same arguments that support the abortion bans regarding the immorality of the practice and how it goes against religion. Furthermore, using the not agreed-upon definition of the beginning of life can also be used as an argument here. While the UN and human rights bodies have defined that rights begin at the point we are born, there are arguments from the other standpoint that the concept of when life begins may not be at birth.

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<sup>113</sup> HB1280, 2021; HB314, 2019; SB6, 2021; RS 40:1061, 2019; TN SB1257, 2019-2020.

<sup>114</sup> Universal Declaration of Human Rights, Article 1.

<sup>115</sup> "State Bans on Abortion throughout Pregnancy," Guttmacher Institute, March 1, 2023, <https://www.guttmacher.org/state-policy/explore/state-policies-later-abortions>.

## 8. Conclusions

In answering the first research question with a look into the different problem representations that are being represented in both the new abortion bans in the U.S. and in the abortion rights in human rights, there are a few conclusions that can be drawn. The problem representations are complete opposites of each other due to how they are viewing and considering rights within the policies. The U.S. bans make it clear that the unborn children, that they consider having already begun life at the point of conception, should have their right to life valued above the multiple rights that a woman's right to abortion entails with their problem representation of the violations against the unborn children's rights. Human rights abortion policies on the other hand show how they value the importance of women's equal right to rights with the problem representation of the violations against women's equal human rights. These problem representations answer the second question about how rights are being viewed and argued, in the U.S. valuing unborn children's rights, and human rights valuing women's rights. Furthermore, this brings the important discussion of whose right is more important and makes it clear that one of the major pillars in the debate creating this great divide relies on how people define when life begins differently. Because the big question about whose rights is more important cannot have an answer without first defining if the unborn child has rights at all. The fact that the problem representations between the bans and human rights are found to be such complete opposites with the different valuing of rights further strengthens the conclusions made in previous research that state that the abortion bans do not correspond with and violates human rights.

Answering the last question about how the problem representations can be viewed from a feminist perspective, a few more conclusions that can be drawn is how the problem representation within both the U.S. abortion bans and the human rights abortion policies can be viewed from feminist critiques as not creating equality for women. For example, the problem representation of the U.S. abortion laws tries to erase women from an issue that is inherently female and the problem representation in human rights essentializes women into one collective identity who are victims needing protection. Multiple feminist critiques are relevant in both problem representations, making it obvious that both need to evolve to include women and the feminist voice to ensure women's equality within the laws.

This analysis gives a new view on how the laws have been created and why, as well as looking at the possible and probable effects that can or will come from them, but the effects can at this point not be fully understood due to the laws coming into effect less than a year ago. There is not yet enough data or information about how women specifically are being affected by the bans in these areas. Further research that will be needed with regards to the subject is vast, especially focusing on the actual real-life effects of the women living in states with these complete abortion bans with such few exceptions. Important numbers and statistics that need to be studied in the future are the maternal mortality and morbidity rates as well as trying to get as accurate of a study as possible on the number of unsafe abortions being performed in these areas. How these statistics will change with the bans can at this point mostly be speculated around with educated guesses from comparison to other places with similar bans but needs to be further studied and analyzed to see whether or not the unborn children's lives should be valued over the women's.

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