

What is the *actual* problem with abortion
in Texas? The Texas Heartbeat Act's
problematization of women's right to
abortion

Mathilde Thiele

(study no. 20136414)

Master's thesis

Aalborg University

Development and International Relations - Global Gender Studies Specialization

June 1st 2022

10th Semester Spring

Supervisor: Sif Lehman Jensen

Abstract

Background: U.S. women's constitutional right to abortion appears to be in a jeopardy after it was leaked in May 2022 that the country's highest court, The Supreme Court, was in the process of debating a potential overturn of *Roe v Wade* (1973).

Objective: The objective of this thesis is to analyze the first anti-abortion law that managed to work around *Roe* in 2021 as this law problematizes women's right to abortion.

This law is called the Texas Heartbeat Act and it was passed in May 2021. It prohibits the performance and inducement of abortion as soon as fetal cardiac activity has been established regardless of the pregnancy is a result of incest or sexual assault. The only legal exception to receive the procedure post-fetal cardiac activity is due to medical emergencies. This law has managed to bypass *Roe* because its enforcement relies on the public, which means people can litigate against each other, but not the woman, if there is a suspension someone has carried out, aided, abetted the woman to get an abortion after the detection of fetal cardiac activity. The plaintiff can receive a minimum \$10,000 payment for each violation of the law plus the benefit of the defendant is required to pay for its own legal expenses as well as the plaintiff's.

Theoretical framework: The law's problematization of women's right to abortion is analyzed and discussed through the theoretical frameworks of norm theory, the ambivalent sexism inventory theory, the theory of intersectionality. These contribute to make sense of how abortion emerged as a constitutional and normative right, how the law's frames the (pregnant) woman and fetus as it discards abortion as this right, and how the law's discarding influences both parties, but also socially.

Method: Carol Bacchi's analytic policy approach '*What's the problem represented to be?*' will be used as a framework to conduct uncover the manner the law's problematizes women's right to abortion in an interplay with chosen theories.

Results: This thesis concludes and argues the Texas Heartbeat Act perceives women's right to abortion as morally wrong as it considers fetal cardiac activity as synonymous with the fetus constitutes a human being, who has a legal claim to right before the (pregnant) woman,

and abortion comprises murder of a human life. The law depicts the (pregnant) woman and the fetus through two interconnected frameworks, which shows how it favors the fetus having rights above her, and this favoritism has been trickled down to the public as it enforces the law.

Table of contents

1. Introduction	6
2. Literature review	9
3. Methodology	12
3.1. Research strategy	12
3.2. Qualitative research approach	12
3.3. Case study	13
3.4. Choice of theoretical framework	14
3.5. Method	16
3.1.5. Policy analysis	16
3.6. Choice of empirical data and its limitations	18
4. Theoretical framework	19
4.1. Norm Theory	20
4.2. The Ambivalent Sexism Inventory Theory	21
4.3. Intersectionality	22
5. Analysis/discussion	23
Subchapter 5.1. The underlying aspects tied to the law’s problematization of women’s right to abortion	23
<i>5.1.1. What is the problem of women’s right to abortion represented to be in The Texas Heartbeat Act?</i>	23
<i>5.1.2. Abortion as a component of a medical norm and practice pre-Roe</i>	25
<i>5.1.3. Abortion as an altered medical norm and practice between the (pregnant) woman and her doctor</i>	26

5.1.4. <i>Abortion as a state-regulated norm and practice in The Texas Heartbeat Act – setting the precedent for the (pregnant) woman as a human being and her right to abortion</i>	28
5.1.5. <i>Abortion as a state-regulated norm and practice with a sexist framework</i>	29
Subchapter 5.2. The taken-for-granted, or silenced underlying aspects tied to the law’s problematization of women’s right to abortion	31
5.2.1. <i>Fetal cardiac activity as a framework constituting human life</i>	32
5.2.2. <i>The effects of this framework</i>	33
5.2.3. <i>The law’s limited recognition of the (pregnant) woman’s existence</i>	34
5.2.4. <i>The lived marginalized, economic, and bodily effects on the (pregnant) woman’s existence</i>	35
5.2.5. <i>Moral republicanism as influencing the problematization of women’s right to abortion</i>	38
5.2.6. <i>Moral republicanism vs. abortion anno 2021-; an ideological paradox toward a different problematization of women’s right to abortion in Texas</i>	39
6. Conclusion	41
7. Bibliography	44

1. Introduction

The news site *Politico* generated shockwaves across the United States when it published that the Supreme Court was discussing the possible abolition of *Roe*. Chief Justice John Roberts confirmed the validity of the draft but clarified the leak did not represent a final decision (Treisman, 2022).

Abortion has been a very contentious topic with the U.S. since this landmark ruling and *Planned Parenthood v Casey* (1992). Shivaram writes the latter allowed states implement abortion restrictions during the first trimester to protect states' interest in potential life. However, *Roe* persisted, and the states could not add an extra burden or a substantial obstacle upon the pregnant woman's right to exercise her constitutional right to abortion (Shivaram, 2022). Sociology professors Koralewska & Zielińska (2021) note the debate about abortion often revolves around the (pregnant) woman's right to privacy and to make a reproductive choice about her body (Pro-choice) versus the fetus's right to life (Pro-life) (pp. 2-4; Kelly et al. 2017, p. 76). According to Kelly et al., (2017) conservative politicians and voters (primarily Republicans, some conservative democrats, and conservative independents) fought to repeal *Roe* since its enactment by limiting access or placing abortion statutes with invasive procedures to obtain abortion (p. 81). Domestically, after *Roe* and in response to it, The Helms Amendment of the Foreign Assistance Act (1973) was introduced by Republicans and passed to restrict U.S. foreign aid to fund abortion (Freedman & Issacs, 1993) to promote the fetus's right to life. Assistant Professor of Political Science Eager (2004) explains, internationally, the Reagan administration took the same approach to advocate the right to life on behalf of the fetus during the 1980s. This administration issued the Mexico City Policy. The latter stipulated the U.S government would not earmark funding through USAID targeted to foreign NGOs that performed, or advocate abortion as a coercive method of family planning other countries (pp. 157-158; Flowers, 2018, pp. 394-395). The Mexico City Policy has been rescinded and reinstated depending on the administration in office (Lo & Barry, 2017; Runyan & Sanders, 2021).

In the year of 2021, states have authorized 106 abortion restriction which are the highest numbers of restriction passed since *Roe's* authorization (Nash, 2021). In the state of Texas, the seated Republican legislature has managed to limit the access to abortion with the same

rationale as the Helms Amendment and the Mexico City Policy. The state passed the Senate Bill 8 (Senate Bill 8) (House Bill 1515), more commonly known as the Texas Heartbeat Act into law in May 2021. Associated Professor of Baylor College of Medicine and M.D., Ivey (2021) explains this law bans abortion within the state as soon as a fetal heartbeat (cardiac activity) has been detected. The procedure is only permissible in case of medical emergency wherein the doctor evaluates whether the pregnancy aggravates or causes life-threatening physical conditions that can result in fatal outcome from the (pregnant) woman, or if she is in a risk of substantial deterioration of a major bodily function. It means that it is completely illegal provide the service after the fetus's heartbeat has been detected regardless of the pregnancy is a result of incest or sexual assault (p. 17). Heartbeat Act, or heartbeat laws have been introduced since 2011, where state officials enact this type of law. Yet they were often sued for violating *Roe* as the woman has the private right to obtain an abortion until fetal viability. However, this Texas Heartbeat Act has a different approach as it is enforced through private enforcement which means people can sue each other, not the pregnant woman, if someone aids or abets her getting an abortion after fetal cardiac activity establishment (Haining et al., 2022, p. 536; Tanne, 2021).

Consider the state of Texas has passed a Pro-life legislation that almost bans the right and access to abortion, since most women do not notice they are pregnant until after fetal cardiac activity - such as six weeks. This thesis's objective is to examine and understand the underlying aspects tied to the Texas Heartbeat Act's problematization of women's right to abortion through the following problem formulation:

What is the problem of women's right to abortion represented to be in the Texas Heartbeat Act?

This thesis is divided into six chapters. The first chapter concerns the presented introduction. The second chapter depicts a short literature view over state-of-the-art of the problematization of women's right to abortion. The third chapter presents the methodological framework of the thesis' chosen scientific approaches to conduct research. The fourth chapter

gives an account of the chosen theories and concepts that will engage with the chosen scientific approach to conduct the analysis. The fifth chapter contains the thesis's analysis and discussion of law's problematization of women's right to abortion. The sixth chapter entails the conclusion and the answering of the thesis's problem formulation based on the results from the analysis and the discussion. The seventh chapter shows the thesis's bibliography

2. Literature review

The purpose of this thesis is to analyze and examine the Texas Heartbeat Act's problematization of women's right to abortion. This section provides a brief state-of-the-art about this problem. One outlines states solve this problem by surveilling the pregnant woman's body in multiple instances because states perceive the fetus as human. Another investigates the framework of anti-abortion laws to counter this problem. The third reflects on the consequences of the Texas Heartbeat Act and its problematization.

Chancellor of Professor of Law, Michele Goodwin (2016), argues in “- SYMPOSIUM- THE PREGNANCY PENALTY -” (2016) that states police women's bodies and limit their right to abortion through the elevation of a legal (human) stature of the fetus/embryo (Goodwin, 2016, p. 20). This elevation occurs via Fetal Protection Laws which in turn generate a pregnancy penalty against the pregnant woman – she can be prosecuted if she commits any actions that harm the fetus (Goodwin, 2016, pp, 25-27). Committing in this context also entails the notion of if she suffers a miscarriage, she can be held legally liable. Goodwin (2016) explains *fetal protection* is incorporated in abortion statutes that monitor and require women to undergo a vagina probe as precondition to receive an abortion, or long waiting periods before obtaining it. Clinics are state mandated to provide medically inaccurate information about the risk of abortion such as the procedure causes cancer. Private insurance companies are also prevented from helping the women in covering abortion costs (2016, p. 19) because state proclaim the (human) legality of the fetus. These requirements, or rules police women's bodies as they determine their access to get an abortion. Goodwin (2016) also outlines the policing of women is mediated by moral commitments and status bias, which disguise discrimination. The poor pregnant woman who uses drugs during her pregnancy is at risk of being incarcerated while the supplier goes free, and the white and wealthy pregnant woman who uses prescription drugs is most likely to evade this threat (p. 29). In that sense, Goodwin displays that states' policing of this body is not only contingent upon restricting the access to abortion, this policing is mediated by marginalization where,

besides gender, race and class also play a part in this corporal surveillance of pregnant women. Goodwin published *Policing the Womb: Invisible Women and the Criminalization of Motherhood* in 2020, Ahmed (2022) explains the book draws on the same themes as pregnancy penalty and Fetal Protection Laws in relation to the pregnant (marginalized) body. Goodwin proposes a ‘*Reproductive Justice Bill of Rights*’ as a legal framework for states to ensure basic human rights and reproductive justice, or this framework can be used as a conceptual framework for lawyering and future organizing around these ideals (pp. 551-522).

In “Women Deserve Better:” The Use of the Pro-Woman Frame in Anti-abortion Policies in U.S. States” (2021), Assistant Professor of Department of Political Science, Amanda Roberti (2021), uses a qualitative content analysis to examine the rhetorical frame of anti-abortion bills (p. 211) from 2008-2017 as this period saw a rise in the amount of anti-abortion-related bills introduced at the state level. Bills have been articulated through the rhetorical frame of pro-woman while the dominant rhetorical frame around the fetal as human with right has been toned down (fetal personhood) (pp. 201-202). The pro-woman frame relates to pro-choice’s arguments about women’s health and welfare– the ability to privately make a reproductive choice, and anti-abortion bills through this frame has become synonymous with harm prevention for women i.e., abortion is portrayed as causing harm (p. 211).

Her analysis (2021) finds two subframes under the pro-woman frame within these bills - education and protection language which use separate rhetoric while focusing on the woman. Education language recognizes women have the right to exercise their right to bodily autonomy yet they lack proper pre-abortion education about alternatives to abortion such as having ultrasounds images, counseling, receive information that their abortion provider otherwise will not give them. The protectionism language is more direct and explicates abortion as an injurious medical procedure, and if women are not physically harmed by it, they can experience emotional or psychological harm because providers are careless and uneducated (p. 212). She finds the pro-woman frame was visible in 556 out of 794 bills (ca. 70%), and the protectionism language comes at 60% while the education language appears at 36%. Some bills use more than one frame aside from the fetal personhood frame, the latter was used in 300 bills (ca. 38%) (pp. 214-215). Roberti (2021) argues the presence of both frames and the subframes permit lawmakers avoid criticism of being anti-woman because their anti-abortion bills represent the state as a nurturant parent (p. 218) who

protectively regulates the access to abortion as the latter is dangerous and carried out by incompetent people (p. 211). As such, it is possible people are more susceptible to anti-abortion bill's regulative nature because these bill and legislators work in the woman's interest, and there is a chance these types of bills will pass with this soft approach (p. 218). Consequently, Roberti reminds the *framing* of states' anti-abortion bills has a significance in legitimizing abortion restrictions socially.

In "The Unethical Texas Heartbeat Law" (2022) Health Care researchers Casey Michelle Haining, Louise Anne Keogh, and Julian Savulescu (2022) consider the ethical effects of The Texas Heartbeat Act in relation to abortion provider's medical authority, the (pregnant) woman's lack of bodily autonomy, and society.

Haining et al., (2022) outline abortion providers characterize the heartbeat law as an unjustified asymmetry because this type of law does not take into account providers are positioned in moral dilemma which prevents them for denying the procedure after fetal heartbeat (cardiac activity) has been detected (p. 536). Additionally, Haining et al., (2022) also highlight that the law undermines medical expertise as providers not only are placed in this moral puzzle. They might discard clinical standards and weaken their expertise, if they are cautious to terminate a pregnancy - in fear of violating the law - if a risk of maternal morbidity or mortality in the pregnancy has appeared post-fetal cardiac activity, but it did not show at the time pre-fetal cardiac activity in diagnosis of the pregnant woman. The law confines abortion provider's ability to make clinical decision-making based on evidence-based health care, and the law impedes their ability to affirm proper health care in the best interest of the (pregnant) woman (pp. 537-538).

Haining et al., (2022) state the law undermines women's autonomous right to privately make a decision about their bodies in relation to continue a pregnancy, to have the ability to book an important in proper time for the procedure, get a lawful abortion, or receive a prenatal screening for fetal abnormalities as the latter emerges later post-fetal cardiac activity. The consequence of the law can force women to seek (unsafe) self-managing methods to induce abortion on themselves as the prevalence of unsafe abortion is higher in jurisdictions that have restrictive access to the procedure. However, contemporary reports of self-management showed medication such as mifepristone and misoprostol have been used, primarily in the Hispanic population in Texas as the internet provides the go to guide. Nevertheless, the law

also imposes an infringement of women's right to bodily autonomy and decision-making, which also has been underpinned by Texas Governor, Greg Abbott. He signed a separate law after the Act took effect on September 1, 2021. This new law narrows the window for when doctors are permitted to prescribe and mail abortion-inducing medicine to 7 weeks, and violations are punishable by 2 years in prison plus a fine up to \$10,000 dollars (pp. 537-538). Lastly, Haining et al., (2022) define the law as unethical because it encourages a paranoid system of justice and an incentive to spy on women and abortion providers, but it also harms both parties (pp. 538-539) and therefore they argued it "ought to be squashed" (p. 539). Haining et al., (2022) remind that this law damages society as everybody can be a potential culprit and an enforcer (vigilantes) of the law.

This thesis takes inspiration from this literature to situate itself in feminist studies to examine the law's positioning of the (pregnant) woman's gender equality in relation to fetus and society as well as the effects of this positioning.

3. Methodology

This chapter provides a presentation and motivations for this thesis's chosen scientific approaches to conduct research in answering the problem formulation.

3.1. Research strategy

3.2. Qualitative research approach

To examine and answer the presented problem formulation, this thesis operates from a qualitative research approach. The latter contains an intrinsic interpretivist and constructivist paradigm. Interpretivism advocates in the study of the social world, it requires a procedure that acknowledges and "respects the differences between people and the objects of the natural sciences and therefore requires the social scientist to grasp the subjective meaning of social action" (Bryman, 2016, p. 26). Constructionism positions knowledge and truth (social

phenomena) as constructed, not uncovered externally through perception, but through, by, and amongst people's (social agents) interplay (Andrews, 2012; Bryman, 2016). Reality is also socially constructed with some essence, but never in a monolith version since social phenomena and their meanings frequently reshape and renew (Bryman, 2016, p. 29). The fusion of the respective epistemology stance of interpretivism and the ontological stance of social constructionism into the one research paradigm of qualitative research approach along with the actual Texas Heartbeat Act give this thesis the opportunity. Firstly, to understand and interpret the law's descriptive and underlying problematization of women's right to abortion. Secondly, to collect descriptive data in relation to this problematization because the law, its problematization and data concerning that, women, abortion, and rights are perceived as socially/interrelated constructed phenomena. In that sense, the law's descriptive problematization is not a definite one despite the law itself constitutes a material product of this problematization. Rather, these phenomena can be contextualized to other socially/interrelated constructed phenomena such as if other states problematization of women's right to abortion which has generated a heartbeat law, The Helms Amendment of the Foreign Assistance Act, and The Mexico City Policy .

3.3. Case study

A single case study analysis of the Texas Heartbeat Act will be conducted to facilitate an in-depth study of this state's problematization of women's right to abortion. Flyvbjerg (2011) refers to case studies as an employable tool of qualitative research approach to conduct a comprehensive analysis of a particular case, or phenomena (pp. 301-302) since case study analysis takes an interest in the complexity of phenomena, or object of inquiry (Bryman, 2012, p. 66). This law's problematization can be characterized as case study situated in-between stances of Pro-life and Pro-choice paradigms.

The Pro-choice stance and activism pushed for the national and legal right to abortion where women's right to abortion was considered a question of the right of privacy to make a choice about their bodies, which *Roe* encapsulates (Jelen & Wilcox, 1997, Stark, 2011; Koralewska & Zielińska (2021). The Pro-life stance perceives the fetus as a human with rights (Koralewska & Zielińska, 2021, pp. 2-4) which has led to state-wide attempts to limit women's access to abortion by requiring them to have at least two visits to abortion

providers, imposing waiting periods, enforcing obligatorily ultrasound, or counselling against the procedure (Tanne, 2021, p.1)

This new Texas Heartbeat Act has ensured the Pro-life paradigm, or cause has prevailed as Republican Governor of the state, Greg Abbott's, made predictions that the law would "save the lives in the state of Texas" (Ivey, 2021, p. 17) when it was approved in May 2021. As mentioned before, the state's enforcement of the law occurs via private citizens. The law imposes a legal precedent for private citizens to sue each other (civil liability) e.g., abortions (health care) providers, clinic staff, but not the pregnant woman, private drivers, if they aid, abet, or advise the (pregnant) woman to get the procedure as soon as the fetus's heartbeat has been located (Ivey, 2021 pp. 17-18; Tanne, 2021). Also mentioned before, usually, with this type of Pro-life legislation, abortion providers have sued the state for implementing restrictive abortion legislation which has resulted the given legislation has been blocked by federal courts because it violates *Roe* (Tanne, 2021, p. 1; Haining et al., 2022, p. 536).

The Texas Heartbeat Act is not only a physical outcome of the state's problematization of women's right to abortion, but it also represents a single case study that constitutes the very first piece of Pro-life legislation that has managed to bypass *Roe* in which the Supreme Court could not block the law. As such, the state of Texas and its heartbeat law were chosen as a single case study because this law is the first example, in this context, where a state has contested the notion of who has rights – which is already firmly described in the Bill of Rights - with a clear demarcation of when the fetus's right start and the (pregnant) woman's constitutional right to abortion stops. Secondly, since the law has made this contestation, it has altered and modified the manner the problematization of women's right to abortion is approached. This law has created a new incentive, or a model for other conservative states to problematize women's right to abortion in relation to heartbeat laws through this civil liability premise. The most recent example is in Oklahoma in 2022, where Zernike et al., (2022) report abortion has been banned as soon as conception has occurred, and the implementation of this ban is the same strategy as Texas (private civil enforcement) (Zernike et al., 2022).

3.4. Choice of theoretical framework

The section gives a quick overview and reflection of the chosen theories of norm theory, ambivalent sexism inventory theory, and intersectionality as well as their usage in analysis and discussion.

In 1998, Martha Finnemore and Kathryn Sikkink, scholars of International Politics and Professor of Human Rights Policy, theorized a norm emerges due to a specific context through a life cycle that consists of three phases (1998, pp. 891-895). Norm theory and its concept of *the norm life cycle* will be applied, via its phases of this cycle, to depict the historical context and the social structures connected to how abortion as norm went from being one regarding the establishment of medicine and state-regulation to a norm detailing women's right to bodily autonomy. This theory will display the historical context connected to abortion as an un-regulated norm and practice, to a medical and a state-regulated norm and practice, and to the normative practice and right it is today, which the law takes for granted as it has returned abortion to be norm and practice regulated at the state-level.

The Ambivalent Sexism Inventory Theory was developed by social psychologists, Peter Glick and Susan T. Fiske, in 1996. They argued that in relationships between men and women (heterosexual), the prejudice of sexism - often targeted at women - is not solely marked by antipathy, but also influenced by an ambivalence. Sexism is a multidimensional construct deriving from biological sexual dimorphism i.e., biological deterministic thinking about gender and gender roles, which contains two concepts called *hostile* and *benevolent sexism*. Hostile sexism is the most well-known one, it generates negative reactions towards the woman who does not conform to conventional gender roles. Benevolent sexism repeats this pattern while it benevolently favors the woman who does conform as well as maintains these roles; both genders "positively" discriminate in favor of the woman who conforms while reacting negatively to the non-conforming woman (Glick & Fiske, 1996, pp. 491-494); Huang et al., 2016, p. 971).

This theory will build on the former theory's result and use them as a springboard to investigate the law's articulation of the (pregnant) woman and fetus's presence, and whether this articulation is mediated by hostile and benevolent sexism that favors the portrayal of the fetus.

The theory of intersectionality was formulated the American law professor, Kimberlé Crenshaw, in 1989 when she conceptualized that a person comprises of various identities

wherein experiences of discrimination and stigmatization intersect and are highly influenced by content of these identities; marginalization is multi-faceted (Tormos, 2017, p. 708).

Intersectionality will depict and debate the marginalizing effects of this articulation of the (pregnant) woman's presence as well as talk about the potential social effects of the civil enforcement of this law, which is connected to its articulation of the (pregnant) woman and fetus's presence.

In the next chapter, these theories and their concepts will be elaborated further, but their application will not be repeated in that chapter. The nexuses between these theories and their concepts are that they engage with the thesis's research paradigm and its qualitative research approach to do a critical, logical, and in-depth analysis and discussion.

3.5. Method

3.1.5. Policy analysis

The political scientist, Carol Bacchi's analytic policy approach '*What's the problem represented to be?*' (WPR) will be applied as framework to investigate and comprehend the Texas Heartbeat Act's problematization of women's right to abortion. Bacchi argues policies can be understood as a political mechanism that socially regulates and affects people's lives in the world (Bacchi & Goodwin, 2016, pp. 5-6), because policies are social intersubjective phenomena that construct or represent a distinct form of problems (Bacchi & Goodwin, 2016, p. 6, p. 16). Policies do not react to problems, rather, policies create a problem along with a proposal and guide to change behavior of the given problem(s) (Bacchi & Goodwin, 2016, p. 18). Given a policies' doing, it is important to interrogate the manner they represent these problems. Thus, it becomes attainable to examine the underlying assumptions tied to these representations (Bacchi & Goodwin, 2016, p. 6), because subjects, objects, and places are constructed and represented in policies (Bacchi & Goodwin, 2016, p. 14), whilst to make these assumptions comprehensible as well as the consequences which follow for how lives are conceived and lived (Bacchi & Goodwin, 2016, p. 6). Since the Texas Heartbeat Act constitutes a political mechanism (law) that controls women's bodies and live in terms of the access to abortion, this approach is a suitable method to provide a framework to dissect this law's *actual* problematization of women's right to abortion and to be critical of the manner

the law creates this problematization, its underlying assumptions, and the solution to alter the behavior of what it problematizes.

The WPR approach consists of six questions that draw upon intersubjective meanings (Bacchi & Goodwin, 2016, pp. 5-6) to investigate a policy's problematization:

1. 'What's the problem represented to be in a specific policy or policies?'
2. 'What deep-seated presuppositions or assumptions underlie this representation of the "problem" (*problem representation*)?'
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 conceptualized differently?'
5. 'What effects (discursive, subjectification, lived) are produced by this representation of "the problem"?''
6. 'How and where has this representation of the "problem" been produced, disseminated and defended? How has it been and/or how can it be disrupted and replaced?'
7. Step 7: Use this list of question to your own problem representations (Bacchi & Goodwin, 2016, p. 20)

Given the contextualization between the WPR approach as a framework (method) to examine the underlying aspects of the Texas Heartbeat Act's problematization of women's right to abortion, step 7 has been applied. The questions have been translated in the following manner, the first question represents this thesis's problem formulation, and the five remaining ones represent research questions to answer the problem formulation:

1. What is the problem of women's right to abortion represented to be in The Texas Heartbeat Act?
2. What deep-seated presuppositions or assumptions underlie the representation of women's right to abortion in the law?
3. How has the representation of women's right to abortion come about?

4. What is left unproblematic in the representation of women's right to abortion such as silences, and can the problem of women's right to abortion be conceptualized differently?
5. What effects (discursive, subjectification, lived) are produced by the representation of women's right to abortion in law?
6. How and where has the representation of women's right to abortion been produced, disseminated and defended? How has it been and/or how can it be disrupted and replaced?

The chosen theories and their concepts will engage with this thesis's inquiry, the WPR approach provides a clear framework to operationalize it. As such, the thesis's analysis and discussion will be based on the interplay between the content of the law, the WPR approach, and these theories plus their conceptions to analyze and discuss the law's problematization of women's right to abortion.

3.6. Choice of empirical data and its limitations

The thesis is based on a qualitative research approach, as the first section of this methodological chapter has explained and, and it relies on qualitative data. Bryman (2016) categorizes this data as entailing descriptive details from a specific context (p. 394), and it has been selected and collected in a strategic manner through purposive sampling in accordance with the single case study of the Texas Heartbeat Act's problematization of women's right to abortion and the problem formulation's inquiry to dissect this problematization.

The case study section has explained the reason, or benefits behind the selection of the state of Texas and this law. Therefore, the readable and accessible Texas Heartbeat Act has been chosen as the leading primary source, which in combination with the presented theories and the WPR approach carry out the analysis and discussion of its problematization of women's right to abortion. These benefits of this case study and the law can also be argued to narrow the analysis of how women's right to abortion is problematized. The Texas Heartbeat Act is a renewal of the Texas House Bill 2 from 2013 with had the same purpose to limit the access to abortion (Tanne, 2021; Smith, 2016). Parts of the Texas House Bill 2 was achieved (Smith,

2016), but it did not reach as far as this new law due to juridical blocking. The incorporation of Texas House Bill 2 could have provided latitude to display the manner the problematization of women's right to abortion has been addressed incrementally within the state instead of relying of this sample of this finish product of this problematization.

The analysis also draws upon human rights as a principle. Professor of Political Science, Andrew Heard, depicts human rights as outputs of abstract philosophical debate, which rhetorically constitute a descriptive and controversial set of ideals of ethical treatment (Heard, 1997). This principle will be used to understand the rationale behind the law's threshold for determining the fetus's claim of rights in the sense of what constitutes a human being, and how this measurement provides the fetus will right above the (pregnant) woman despite *Roe* has afforded her the reproductive right of abortion.

Secondary sources have been selected and collected in relation to the same parameters as the Texas Heartbeat Act in the sense they do not diverge from its problematization of women's right to abortion. One journal comments on the rationale of the law from a medical perspective, another depicts previous measure to restrict the access to abortion. A third provides an overview to past enacted legislation with the goal to access abort domestically and internationally post-*Roe*. One academic book gives a historical contextualized between politics, religion, and implicitly human rights in the criminalization of abortion. Another academic book details the historic approach to abortion discourse in respectively Germany and the United States, an academic blog post details the socioeconomic cost of the law's ban. Newspaper articles and other blog posts also detail the socioeconomic effects, while providing context to other states which have introduced heartbeat laws and comment on the Supreme Court leak from May 2022. These secondary sources work around the law's problematization and attempt to add some latitude to display the manner the problematization of women's right to abortion has been contextualized nationally.

Consequently, these secondary sources will operate similarly as the presented theories, the WPR approach, primarily sources as components to argue the findings in the analysis and discussion of Texas Heartbeat Act problematization of women's right to abortion.

4. Theoretical framework

This chapter gives an overview of chosen theories of norm theory, ambivalent sexism inventory theory, and intersectionality.

4.1. Norm Theory

Martha Finnemore and Kathryn Sikkink conceptualized norms because they were interested in the influences they have on International Politics and governance (Finnemore & Sikkink, 1998, p. 888). They (1998) define a norm as “a standard of appropriate behavior for actors with a given identity” (p.891), and their concept ‘*the norm life cycle*’ provides an overview to understand how norms emerge as well as their characteristics, which can impact their livelihood and influence. This cycle consists of three phases: *norm emergence*, *norm cascade acceptance* (norm acceptance), and *internationalization* (the internationalization of a norm) (p. 895). In the first phase, norms emanate because of norm entrepreneurs (agents) who vocalize a strong opinion about proper or desirable behavior in their community by using persuasion tools such as empathy, altruism, ideal commitment to equally frame issues, or create new ones in relation to regulating behavior (pp. 895-898). The norm entrepreneurs’ goal is to convince the community to become norm leaders who will accept and adopt a new form of suitable behavior i.e., norm. These norms can have the characteristics as being *regulative*, *constitutive* (enable actors, interest, categories of action), and *prescriptive* (containing moral obligation) (p. 891) which also can influence their goal to convince others. Finnemore & Sikkink (1998) state if the norm entrepreneurs manage to reach this goal, the norm gets to a tipping point (threshold) - it is difficult to estimate a concrete reason and the how, where, when for the tipping point - but the author highlight type of community and its degree of criticalness play a part (p. 901). The second phase concerns after the tipping point in which the norm has cascaded because of a process of socialization by norm entrepreneurs and norm leaders with the intention (p. 902) “to induce norm breakers to become norm followers” (Finnemore & Sikkink, 1998, p. 902). A well-known method of socialization is diplomatic praise for conduct that reflects conformance with the norm, or a ridicule for lack of it. Motivations for norm breakers and non-conform parties to adhere to the norm relate to

authority, reputation, esteem (pp. 902-903), and these are components that ensure a norm cascade. After cascading, in the final phase, norm internalization has been achieved (p. 895) through professions and state bureaucracies of norm entrepreneurs and norm leaders (p. 905). Thus, the norm “acquired a taken-for-granted quality” (Finnemore & Sikkink, 1998, p. 895) in the sense conformance with the norm automatically happens without questioning its content (the proper/desirable behavior it asserts) nor this taken-for-granted and automatic reaction to conform (p. 904). The transition between phases of the norm life cycle does not happen chronologically, a norm can reach the first and/or second phases without immediately getting on to the two last ones because it depends on the context (Finnemore & Sikkink, 1998, pp- 896-897).

4.2. The Ambivalent Sexism Inventory Theory

Peter Glick and Susan Fiske developed this theory to measure and depict sexism connected to gender roles attitudes in heterosexual relationship (Glick & Fiske, 1996, pp. 491-492; Huang et al., 2016, p. 971). Glick and Fiske (1996) theorized sexism as a prejudice where antipathy influences a fallible and resolute generalization about someone. They make a note of sexism as frequently targeted at women in these relationships because of biological and social conditions where biological sexual dimorphism i.e., systemic differences such as size and strength between both parties socially ascribe essentialist and different gender roles and expectations. However, sexism is mediated by two concepts called *hostile* and *benevolent sexism*, which culturally has been illustrated from ancient to modern times. Women have been portrayed as lionized (greatness) and shamed depending on the way they have accommodated themselves in the role of womanhood (pp. 491-492). The Madonna-Whore Dichotomy is a classic example of this portrayal. According to Glick and Fiske (1996) sexism targeted at women has simultaneously been impacted by antagonism (hostility) and admiration (benevolence). Hostile sexism contains an aspect of dominant paternalism, and both generalize women as a homogenous group being incompetent at socially (public) agentic tasks because they are, roughly put, small and only have the strength to birth children (biological sexual dimorphism). Women are deemed unfit in roles “to wield power over economic, legal, and political institutions” (pp. 491-493). The authors (1996) state in this view that the women’s agency is confined to work and maintaining the home (domestic sphere). Oppositely, men as a homogenous group, due to size and strength, are regarded to fit

roles of domination and thereby preside over these aforementioned public institutions while constituting the leading domestic authority. Women who do not conform to the essentialist expected gender roles and stay in the domestic sphere are in all probability to experience stereotyping - forms of (sexist) discrimination. Benevolent sexism derives from hostile sexism, but in the other way round in the sense it uses protective paternalism, as an aspect, to benevolently value, honor, and defend women who proudly conform to the expected gender role 'fitting' to the former's apathetic and paternalistic generalization of them as only the domestic and family-oriented homemakers (gender differentiation) all the while non-conformers most likely experience sexist discrimination. Benevolent sexism is not to be perceived as a benign thing as sexist discrimination against those who do not conform occur either way, but the antagonism within benevolent sexism can be difficult to pinpoint, therefore, it might not be perceived as discriminatory. Thus, the naming behind these kinds of sexism rests on the assumption they have different implications (pp. 491-494).

4.3. Intersectionality

Kimberlé Crenshaw formulated the theory of intersectionality on the basis African American feminist critique of antidiscrimination law, feminist theory, antiracist politics (1989, p. 139), but also in relation to identity politics as a source to engage in social justice politics (Crenshaw, 1991, pp. 1241-1242); Crenshaw specifically focuses on African American women and their experiences of discrimination are often depicted or treated as one-dimensional pertaining to either race or gender (1989, p. 139). She stipulates these women consist of a variety of identities where categories such as, not limited to, gender, race, ethnicity, ability, class, and sexuality intersect and influence their experiences (Tormos, 2017, p. 708) as well as shape their existence in the world (Collins, 2000, p. 299). Crenshaw's (1989) notion about discrimination being many-sided is contextualized to an analogy about traffic in an intersection, arriving and leaving in all four directions. If an accident happens in the intersection, it is either a result of cars coming from different directions or from all of them coming. If an African American woman are discriminated against, this discrimination is not one-dimensional, rather, it is at least influenced by these two intersecting categories of race and gender as well as various others (Crenshaw, 1989, p. 149; Collins, 2000, p. 18, Tormos, 2017).

To examine the Texas Heartbeat Act's problematization of women's right to abortion, step 7 of the WRP-approach has been applied to arrange the analysis and discussion in the following way. The analysis and the discussion consist of two broad subchapters wherein the adjusted and presented question of the WPR approach will be used as a framework to question and debate the way the law problematizes women's right to abortion, all the while the theories, their concepts, and the presented primary and secondary sources will collectively support to investigate the underlying aspects behind this law's problematization.

In the first subchapter, the first question of the WPR will be answered by showing the law's solution to what it problematizes. Afterwards, question two and three, the theoretical framework of norm theory, and theoretical framework of ambivalent sexism inventory theory along with their inherent concepts will dive into how abortion arose a constitutional right, and the law responds to abortion is this type of right. In the second subchapter, question four, five, and six build upon the three first questions. The theoretical framework of ambivalent sexism inventory and theoretical framework of intersectionality will critically assess effect of this problematization's framing and mediation, as well as consider if there exists a different approach to the law's problematization of women's right to abortion.

5. Analysis/discussion

Subchapter 5.1. The underlying aspects tied to the law's problematization of women's right to abortion

This first part of this analytic and debating subchapter will find the Texas Heartbeat Act perceives women's right to abortion as wrong and legally punishable due to the fact the fetus comprises a human life. Afterwards, the analysis and discussion will find the historical context of how abortion became a normative practice and a legal right, which are something the law ignores. Rather, it portrays (pregnant) through a framework that allows it to rhetorically control abortion as a state-regulated norm and practice.

5.1.1. What is the problem of women's right to abortion represented to be in The Texas Heartbeat Act?

The Texas Heartbeat Act (SB8) (HB1515) starts by defining itself as “An ACT relating to abortion, including abortions after detection of an unborn child’s heartbeat; authorizing a private civil right of action” (Texas Heartbeat Act, 2021, p. 1, l. 1-4; Texas Heartbeat Act 2021, p. 1, l.17-19). This authorization is depicted in ‘Sec. 171.208. CIVIL LIABILITY FOR VIOLATION OR AIDING OR ABETTING VIOLATION.’ This section provides citizens, except state employees and local government entities, a legal precedent that sanctions an approval to take civil action against anyone who carries an abortion into effect as soon as the fetus’s heartbeat is detected - because activity constitutes a key medical predictor of a potential live birth of fetus -; the law is aimed at anyone who performs or induces an abortion after this detection (Texas Heartbeat Act, 2021, p. 6, l.8-13) including health care providers. Additionally, any person also constitutes anyone who consciously participates in behavior which aids or abets the performance or inducement of an abortion after this detection (Texas Heartbeat Act, 2021, p. 6, l.14-1). Private and insurance payment for abortion and reimbursing to the expenses of an abortion are also illegal regardless of the donor is aware of the purpose of the payment (Texas Heartbeat Act, 2021, p. 6, l. 12-20). Everyone and anyone can potentially be targeted in a civil lawsuit if an abortion knowingly has been carried out after fetal cardiac activity. The defendant can risk injunctive relief to impede further violations of the law (Texas Heartbeat Act, 2021, p. 6, l.25-27) as well as statutory damages of no less than \$10,000 per abortion the defendant has performed/induced or aided/abetted. Additionally, the defendant is also at risk to cover costs and attorney's fees of the claimant (Texas Heartbeat Act, 2021, p. 7, l. 1-6) along with the defendant’s own legal expenses (Ivey, 2021, p. 18)

With this opening statement and this actual legal framework (Sec. 171.208.) of the right to litigating a lawsuit (private civic right of action), it can be argued the authorization of the latter represents a concrete solution to the law’s problematization: women’s right to abortion is wrong and legal punishable, especially after post-fetal cardiac activity, as the fetus constitutes a human life (an unborn child). To underpin the solution of what it problematizes, the law explicates below this opening statement that the state of Texas has never repealed or expressed a retraction of statutes that completely prohibited and criminalized abortion. Before

Roe, the exception pertained to when the pregnant woman's life was at stake (Texas Heartbeat Act, 2021, p. 1, 1.8-12). The law declares the state has at no point in time acknowledged abortion regardless of the Supreme Court's landmark ruling in 1973 (Texas Heartbeat Act, 2021, p. 5, 1. 4-6). Thereby, it also expresses that it objects that each state is legally obliged to comply with the Supreme Court's ruling.

Consider the law's position, contesting abortion as a constitutional right, and thereby a legal and establish normative practice within the U.S., it makes sense to uncover and scrutinize the genealogy, deep-seated presuppositions, and social structures that have resulted in abortion to become this type of practice.

5.1.2. Abortion as a component of a medical norm and practice pre-Roe

As mentioned before, Finnemore and Sikkink (1998) define a norm as "a standard of appropriate behavior for actors with a given identity" (p.891). Abortion can firstly and historically be characterized as an unregulated norm and practice which anyone could induced and perform, as Professors of sociology Ferree, Gamson, Gerhards & Rucht (2002) state there was not much controlled with abortion providers within the U.S. in the first two-thirds of nineteenth century (pp. 24-25). In the last third of this century, physicians began campaigning to secure their medical authority against the healers who were associated with quackery and labeled charlatans. It became illegal for anyone besides physicians to carry out an abortion while physicians also had the monopoly to decide when abortion was medically necessary. Thereby, as a legal necessity each state made its own regulation of abortion based on a physician's expertise. Some states did not permit abortion under any circumstances, and the exceptions for therapeutic abortions were determined by a hospital committee based on an appraisal of whether a continuation of the pregnancy endangered the life of the (pregnant) woman (pp. 24-25).

It can be argued that abortion as practice became part of a medical norm that entailed a standardized a code of conduct of who was medically authorized assess and treat people. This medical norm and thereby the practice of abortion went through what Finnemore and Sikkink (1998) has coined *the norm life cycle* (p. 895). The physicians in the last third of the nineteenth century comprised norm entrepreneurs who used campaigns against non-laymen to persuade their community to verify their medical authority. Physicians' campaigns were a

mean to support this medical norm as these campaigns had the deep-seated presupposition of ideal commitment wherein the physicians positioned themselves as these authorized laymen to medically assess as well as to treat people (induce/perform abortion) compared to non-laymen who were positioned as uneducated and unskilled to manage these tasks. One can suggest the physicians' medical norm had the characteristics of what Finnemore and Sikkink (1998) outline as regulative, constitutive (enable actors, interest, categories of action), and prescriptive (moral obligation) (p. 891) features. With this type of norm, these physicians wanted to control (regulate) the uneducated and their unskilled behavior to prevent them from treating people. An additional point is these features also facilitated constitutive and prescriptive aspects in relation to other physicians to socialize or enlist each other to become moral actors (norm followers) of action - since physicians take the Hippocratic Oath - to ensure this regulation. Ferree et al., do not specify who supported or were against these physicians' quest to affirm their medical authority nor detail a reaction about the fact abortion was unregulated. Given, Ferree et al., (2002) do emphasize physicians sought to verify their medical license in the last third of nineteenth century (p. 24-25), it can be asserted the establishment of abortion as a medical norm and practice occurred somewhere between 1866-1899 - which also constitutes thirty-three period where the medical science was in the process of being founded. Due to this period and the physicians - most likely white males - who had the position and status to run these campaigns, they can simultaneously be characterized as norm entrepreneurs and norm leaders of their own cause as well as the ones who made the medical norm reach the tipping point to eventually cascade. The process between the latter and the tipping point can be suggested to be mediated by the medical norm's regulative, constitutive, prescriptive characteristics, and the mentioned campaigns. These components collectively and socially separate physicians from the uneducated and unskilled. Basically, anyone who was not white, bourgeois, male i.e., social structures such as class, gender, and race intersect while physicians united under these social structures to encourage each other to become these moral norm followers, securing their authority and reputation plus displaying non-laymen as norm breakers, or nowhere socially adequate to embody this medical norm, nor represent conventional physicians and medicine. Physicians established their medical authority, and abortion became part of a medical norm of treatment as well as a state-regulated practice that achieved societal internalization when states began to legislate the parameters, or statutes of which abortion could be induced and performed in congruence with physicians and hospital committees' assessment.

5.1.3. Abortion as an altered medical norm and practice between the (pregnant) woman and her doctor

It was not until the late 1950s (pre-*Roe*), the NGO Planned Parenthood Federation of America (PPFA), the U.S. NGO supplying reproductive health care domestically and internationally, articulated abortion through a new norm life cycle. According to Ferree et al., (2002), at end of the 1950s - Planned Parenthood disclosed innumerable physicians induced and performed abortions beyond life-threatening complications for the pregnant woman in cases of mental illness, depression, sexual assault, and incest at a medical conference on abortion (pp. 24-26). As such, it can be suggested abortion as a state-regulated medical norm and practice were challenged by a new emerging norm wherein the unity between the pregnant woman and doctor set a new principal regarding the behavior of inducing and performing an abortion. Ferree et al., (2002) describe how the American Law Institute sometime after the conference drafted a model abortion law that legally allowed exceptions for abortion in case of the horrific and gloomy instances which were revealed at this conference (p. 26). In this context, the pregnant woman, and the doctor can be defined as the norm entrepreneurs at this conference who drew upon benevolence, empathy, altruism, and ideal commitment. Hereby, this patient and doctor unity plus the conference's purpose might have persuaded the critical mass such as the attendees (doctors) at this conference to become norm leaders and followers in the advancement of this new edition of abortion as a state-regulated medical norm and practice, which honor this relationship between the women (patient) and her doctor. This alternative version of abortion contained characteristics of constitutive and prescriptive qualities. It can be asserted these characteristics as well as the conference sphere led to doctors and their colleagues who attended this conference became moral actors of action, or moral norm follower's ones again, but in compliance with the (pregnant) woman instead of moral norm followers who regulated abortion upon the women, and against quackery and healers. It can also be argued that the tipping point of this modified type of abortion as a state-regulate medical norm and practice happened because the doctors who attended this Planned Parenthood conference in the late 1950s became aware of the fact, they did not honor this patient and doctor unity before conference's public articulation as well as endorsement of this unity. As such, it can be asserted doctors socializing at this conference amongst each other and Planned Parenthood's revelation contributed to a census wherein it became legitimize for doctors to become norm breakers and norm followers that honored this

new edition of abortion as a state-regulated medical norm and practice which focus on the patient and doctor unity. In that sense, abortion as a state-regulated medical norm and practice regarding patient and doctor unity cascaded into bureaucratic internalization with different content - but remained state-regulated - when the American Law Institute drafted this new standard for when abortion was legal beside the endangerment of the pregnant woman's life. Ferree et al., (2002) outline this law passed in California in 1976, North Carolina, and Colorado and Southern states passed it between late sixties and 1970. New York in the last-mentioned year, the stated passed a law legalizing abortion in the first trimester. New York's enactment of this law caused controversy and led to the Christian Right began to mobilize against abortion as practice (pp. 28-29; Hagel & Mansbach, 2016, pp. 20-21). Consequently, abortion started as a medical norm and practice, and it became a state-regulated by physicians/medical committees and state authorities through a top-down approach onto the pregnant woman's body. It can be suggested after the Planned Parenthood's conference and the American Law Institute's regulation of legal exception to carry out an abortion, the pregnant woman was included a bit more in this top-down regulation of abortion because it was based on patient and doctor unity. Her presence did not alter abortion was a state-regulated medical norm and practice, but her presence laid important groundwork for abortion as a state-regulated medical norm and practice entered a new norm life cycle with new norm entrepreneurs, such as the 1960s-1970s women's movement and those who affiliated with it. Ferree et al., (2002) state that this movement and its associates sought to repeal abortion laws based upon women's right to decide, by drawing on the doctor and patient unity but going around the medical committees and state authority as well as to make the procedure safe and affordable for women. *Roe v Wade (1973)* overruled state's individual abortion statutes as abortion became a constitutional right based on the right to privacy while the other goals were not fulfilled with this landmark ruling (pp. 29-30).

5.1.4. Abortion as a state-regulated norm and practice in The Texas Heartbeat Act – setting the precedent for the (pregnant) woman as a human being and her right to abortion

The two former parts presented the historical context, the genealogy, deep-seated presuppositions, and social structures that played a part in abortion has been through various

norm life cycles with modified alterations to become the nationally and currently normative practice of the right to private to bodily autonomy. However, the Texas Heartbeat Act has managed to disrupt and work around *Roe* to make abortion a state-regulated norm and practice due to this private civic lawsuit if anyone helps the (pregnant) woman to obtain an abortion post-fetal cardiac activity. Thus, the last two subjects at issue of this subchapter concern the deep-seated presuppositions and social structures that form part of the (pregnant) woman's presence after the law has accomplished this.

The law mentions the (pregnant) woman's presence in relation to the inducing and performing abortion after fetal cardiac activity in cases of medical emergencies if the woman has a medical condition that requires instant medical intervention (Texas Heartbeat Act, 2021, p. 4, l. 24-27; Texas Heartbeat Act, 2021, p. 17, l. 19-27; Texas Heartbeat Act, 2021, p. 18, l. 1-17). She is also mentioned in the state's abortion statutes, which have been implemented after before this law (Texas Heartbeat Act, 2021, p. 20 l.7-12; Ivey, 2021 p. 17; Smith, 2016) as *Planned Parenthood v Casey*(1992) allowed states to regulate the access abortion (Shivaram, 2022). Furthermore, the law stipulates that the (pregnant) woman can be included as a third-party defense on behalf of the defendant of a private civil lawsuit, if the defendant can provide evidence an award relief will avert the (pregnant) woman, or a group of (pregnant) women from obtaining abortion, or an award relief can place a substantial hindrance in the path those (pregnant) women seeking an abortion (Texas Heartbeat Act, 2021, pp. 9-10, l. 26-27; Texas Heartbeat Act, 2021, p. 10 l. 8-17). Yet, the most significant mentioning of the (pregnant) woman is she cannot figure directly into the private civil right of action, if an abortion is induced or perform after the detection of fetal heartbeat (Texas Heartbeat Act, 2021, p. 5, l.7-11).

5.1.5. Abortion as a state-regulated norm and practice with a sexist framework

The law primarily describes the (pregnant) woman as 'the pregnant woman' (x21), 'the woman' (x30), in some places as 'mother' (x2) (Texas Heartbeat Act, 2021), and as "the unborn child's mother" (x1) (Texas Heartbeat Act, 2021, p. 8, l. 8). The former describes the fetus as an 'unborn child' (Texas Heartbeat Act, 2021, p. 1, l. 23), a 'developing human offspring' (Texas Heartbeat Act, 2021, p. 2, l. 9), and a "human fetus or embryo in any stage of gestation from fertilization until birth" (Texas Heartbeat Act, 2021, p. 2, l. 15-16). It

appears in these descriptions that her presence has no objective significance. However, when she is otherwise mentioned vaguely throughout the law, and in connection to the latter's problematization and legislative agenda, it can be argued that her presence is contingent upon an ambivalent sexist presupposition wherein there is a nexus between her existence, her identity as a woman and motherhood. Glick and Fiske (1996) outline sexism as a prejudice and the former is often targeted at women and impacted by sexual dimorphism, essentialist (biological determinism), and paternalistic generalizations about gender and gender roles (pp. 491- 492). At first sight, the (pregnant) woman's omission as an individual outside of the fetus and her pregnant condition point to that there is presupposition where only *hostile sexism* and dominant paternalistic features rule, presenting her as part of a homogenous group which are biologically inferior to men. Moreover, women emerge as only belonging to the domestic sphere with the rest of their group. In hostile sexism's perception, if the (pregnant) woman does not fulfill her essentialist prescribed gender role for the homogenous group she belongs in, she is categorized as a bad person. Yet, given the (pregnant) woman and other (pregnant) women cannot be prosecuted, if the procedure occurs after fetal cardiac activity (Texas Heartbeat Act, 2021, p. 5, 1.7-11) and despite abortion is criminalized after this detection (Texas Heartbeat Act, 2021, p. 1, 1.8-12), these features do not solely mediate her gender and existence in the law. Rather, hostile sexism and dominant paternalism operate through *benevolent sexism* and protective paternalism (four elements). Glick and Fiske (1996) translate protective paternalism to "women are to be loved, cherished, and protected (their "weaknesses" require that men fulfill the protector-and-provider role)" (p. 493). Returning to the law's problematization and purpose, the presented and interrelated description between the (pregnant) woman and the fetus, and these four elements, it can be argued these collectively and subtly nudge the (pregnant) woman toward the presupposition that in the social structure such of gender- and expectations regarding women. The latter is categorized as highly valued and cherished as wholesome human beings when they *respect* there is an interrelationship between their identity as a woman and motherhood. The presupposition of this interrelationship can be perceived as a framework, which sets the parameter for the *degrees* of respectable human being that the (pregnant) woman is, if she fulfills the role because hostile/benevolent sexism and these features of paternalism define the parameters which that should be measured on - the already mentioned interrelationship. As mentioned before, the state of Texas had its own statutes in place before the law was passed (Texas Heartbeat Act, 2021, p. 20 1.7-12; Ivey, 2021; Shivaram, 2022; Smith, 2016). It can be argued these statutes underpin the state's glorification of this correlation of the (pregnant) woman's

existence. Ivey (2021) notes that the state restricted access to abortion by demanding transvaginal ultrasound, long pre-procedure waiting periods (24 hours), burial of fetal remains, as well as provision of state-authorized medically imprecise information to patients in the necessity of an abortion, regulation for abortion providers and their practices (facilities) (p. 17; Leach, 2020)

Thus, it can be argued the law is not only a physical glorification of the (pregnant) woman who exemplifies a positive degree of a decent human being by linking her identity as a woman with motherhood (interrelationship), but also a maternal glorification. Additionally, the law uses gender as social structure and *hostile/benevolent sexism* to send a strong message of binary about the (pregnant) woman who then does fulfill this role and sticks to her essentialist ascribed gender and gender role (honor this hostile/benevolent sexism). As such, the former is categorized as having earned the right to be loved, cherish, protected, and glorified because she ultimately relinquishes her constitutional right to abortion – cherishes this interrelationship. Oppositely, the (pregnant) woman who does get an abortion before fetal cardiac activity detection in Texas, but also (pregnant) women who get abortion - within the parameters *Roe* allows - are shamed for exercising this right and categorized as unworthy of this glorification as these women do not adhere to their essentialist ascribed gender and gender roles (reject this hostile/benevolent sexism).

Evidently, the law does not articulate abortion as sexist practice, but it uses *hostile/benevolent sexism* as a framework to distinguish between the (pregnant) women who exercise the constitutional right of abortion and those who do not to make a presupposition of who constitutes the decent human being, the law also uses this framework as a rhetorical mean to regulate abortion as a state-regulated norm and practice.

Subchapter 5.2. The taken-for-granted, or silenced underlying aspects tied to the law’s problematization of women’s right to abortion

This last part of this analytic and debating subchapter will draw on the three previous questions. It will find the law takes three things for granted. 1. The law produces a framework around being human that entitles it to human rights. 2. This framework and the claim of

human right silence the fact that the (pregnant) woman does not derive from a fertile homogenous group nor are heterogeneous human beings with different societal points of departure and existence. 3. This framework around the fetus and against the (pregnant) woman is mediated by a religious and political ideology that prevents a different conceptualization of what the law's problematizes. The legal premise for people to sue each other – if abortion is carried out after fetal cardiac activity - makes it clear the state of Texas's goal has been to completely ban abortion.

5.2.1. Fetal cardiac activity as a framework constituting human life

Professor of Political Science, Andrew Heard (1997) describes the notion of what constitutes a human being is abstract whereas the distinction between homo sapiens as race and other animals is that the former has a larger brain that provides us with higher forms of thinking, perception, and cognitive range which can lead to intellectual query and spirituality as well as to communicate with each other. He emphasizes the life cycle of homo sapiens begins from conception and ends with death and decay, yet, prior to conception, semen and eggs exist and they contain incomplete sets of human genetic material and cells. He refers to these cells a human life, but not an actual being, while the human being label is first given after conception

(Heard, 1997). The human being is entitled to human rights which comprise a rhetorically, descriptive, and controversial set of ideals prescribing moral standards of ethical human behavior. The notion of human rights is simple to comprehend, however, human rights are complex to navigate as discussions about human rights frequently concern who possesses and can lose (what comprises a human being?) them as well as whether humans are naturally and inherently endowed with rights provided by deity, or are rights given by the law of a civil society (Heard, 1997).

The law refers to the fetus as an 'unborn child' (Texas Heartbeat Act, 2021, p. 1, l. 23), a 'developing human offspring' (Texas Heartbeat Act, 2021, p. 2, l. 9), and a "human fetus or embryo in any stage of gestation from fertilization until birth" (Texas Heartbeat Act, 2021, p. 2, l. 15-16) on the basis of medical assessment that fetal cardiac activity within the gestational sac provides a medical indicator that the fetus will not reach a stillbirth (Texas Heartbeat Act, 2021, p. 2, l. 19-20). Furthermore, Governor Greg Abbott from the Republican

Party characterized the law as having the ability to save lives in Texas (Ivey, 2021, p. 17). It can be asserted when the law categorizes the fetus through these references that it perceives fetal cardiac activity as a sign of human life, but it also co-optates the biological sexual dimorphism (biological difference between the genders) from *hostile/benevolent sexism*. Glick and Fiske (1996) state the biological sexual dimorphism, subcomponent, that determines the essentialist gender and gender roles expectation for heterosexual couples as well as being the leading force in perpetrating this type of sexism (pp. 491-492). Thereby, the law relies on this motion and this subcomponent in the sense the (pregnant) woman's body and reproductive system are different from a man's yet her body's potential ability to become pregnant after conception, if she does, and give birth have been produced to a fetal cardiac activity constitutes a human life. Therefore, it can be suggested the law has put this demarcation of when abortion is legal to save what it details as a human life.

5.2.2. The effects of this framework

Suffice to say that the fetus does constitute a part of the (pregnant) woman's body as she has a different body and reproductive system than a man. Yet, the law's personified reference to, or categorization of the fetus makes a framework around the former that immediately equates conception with the production of not only a human life, but a fully developed human being, as mentioned before, simply because the (pregnant) woman has different reproductive system and body that can in all probability carry a fetus and eventually birth a child. However, it can be disputed that fetal cardiac activity does establish a human life/being because human life such as genetic material and cells, not an actual person, exist before conception in not only the (pregnant) woman's body but in terms of everyone's bodies while genetics play in role in people's fertility.

This framework - within the law - around the fetus not only contains this biological sexual dimorphism subcomponent and narrow definition of what constitutes sign of human life (fetal cardiac activity), but also a connotation of what Hagel and Mansbach (2016) refer to as religious perception of human life in which the Bible dictates all life is sacred (p. 2; Koralewska & Zielińska, 2021). Hagel and Mansbach (2016) depict this 'sanctity for life' (p. 2) has been vocalized by a broad coalition post-*Roe* (1970s/1980s) of Christian Right encompassing of Protestant Evangelicals and Conservative Catholics who have positioned

abortion as a particular evil and sinful (pp. 20-21; Ferree et al., 2002, pp. 28-29; Flowers, 2018; Kelly et al., 2017) symbolizing a lack of morality. On the one hand, Haining et al., (2022) describe one gynecologist who is critical of state-regulating heartbeat law's interpretation of fetal cardiac activity as a sign of human life and an actual human being. Medically, this motion has been defined as a simple pulsing whereas the laws often equate fetal cardiac activity with the pumping of a fully developed heart with tubes and ventricles (p. 536). Another gynecologist describes the term 'fetal cardiac activity' as misleading since this motion is flickering electrical activity whereas the sound people hear derives from the ultrasound machine (Simmons-Duffin & Feibel, 2022). On the other hand, Hagel and Mansbach (2016) explain the Church Amendment (1973) allows doctors to refuse to perform and induce abortion, and services related the procedure due to religious morality (pp. 1-2). If doctors refrain from carrying out this procedure as well as participating in doings related to it based on 1st Amendment and freedom of religion because they perceive fetal cardiac activity as comprising a human life, which they do not want to harm, while other doctors, or gynecologist consider this activity as a mere motion, or a sound effect of an ultrasound machine. It can be argued the law takes for granted that not even medically trained people share an absolute agreement about when human life begins and nor the notion behind it as both parties interpret this motion within the (pregnant) woman's gestational sac differently. This poses the question whether the law's framework around the fetus as comprising a human being (discursive subject) sets a civil right and thereby an effect for the state to claim the 'human' fetus has a natural and inherent legal claim of human rights, and an injunctive relief silencing and limiting the (pregnant) woman's constitutional right to abortion.

5.2.3. The law's limited recognition of the (pregnant) woman's existence

The law asserts that the state of Texas "(...) has compelling interests from the outset of a woman's pregnancy in protecting the health of the woman and the life of the unborn child (...)" (Texas Heartbeat Act, 2021, p. 2, l. 24-26). This statement simultaneously describes the (pregnant) woman as in the state of being pregnant, but also as existing beyond this state as it refers to her as a person with health.

As shown above with the religious influenced biological sexual dimorphism- subcomponent of *hostile/benevolent sexism*. It seems paradoxical that the law, firstly, groups her into one

homogenous faction it religiously and ideally views as a mother based upon the perception this faction has the same wired biological bodies that not only make everybody fertile, but if conception occurs, and when fetal cardiac activity (contraction) means the fetus comprises a human being who receives the (pregnant) woman's right to abortion. Yet, the law knows the (pregnant) woman can exist beyond her body and reproductive system i.e., essentialist gender- and expectations regarding women when it mentions her health. She does exist as a fully developed person who can be affected by this law. According to The Lancet (2021), the women who will be affected by the Texas Heartbeat Act are those who live in poor rural areas such as predominantly African American, brown, and Hispanic ones (p. 1461) (minority women) (The Lancet, 2021). It can be suggested it is not only the (pregnant) minority women's health that is at risk of being affected as their identity is not only mediated by that and the social structure of gender. The social structures of race and class also intersect in their identity. Akin to Crenshaw explaining that African American women experiences with discrimination cannot be separated between their identity as a woman (gender) or black (race), these social structures (categories) intersect with others in their identity such sexuality, ethnicity, ability, and class (Tormos, 2017; Crenshaw, 1989, p. 149; Collins, 2000, p. 18). These stick to African American women and form their reality (Collins, 2000, p. 299). In that sense, the Texas Heartbeat Act not only legislates on behalf of the (pregnant) minority women's gender and health, but also on behalf of their race and class.

5.2.4. The lived marginalized, economic, and bodily effects on the (pregnant) woman's existence

Pettus and Willingham emphasize minority women in Texas such as African American and Hispanic women comprise 59% of the population while 74% of women generally receive abortion (Pettus & Wilingham, 2022). This percentage sets these women apart from presumably wealthier women, it is not pinpointed within the article, not only getting the procedure as well as having the financial resources to do it. Carrazana outlines Diana Foster has conducted a study over a decade on U.S. women who has been denied and able to access abortion care, wherein the study showed women the effect of women being denied the access to the procedure led to them to fall deep below the poverty line (72%). It took them four years to economically catch up to women who had the procedure and lived above this line

(55%) because the median annual cost of child care is more expensive than the cost of in-state college tuition in 33 states and Washington D.C. (Carrazana, 2021).

Given 59% of African American and Hispanic women do receive abortion (Pettus & Wilingham, 2022), it can be asserted the law puts these two groups of women in a vulnerable position because their identity is mediated by the social structures of gender, race, and class. Evidently, these social structures stick to both parties whether the latter encompasses African American or Hispanic women, or mixture of both which can contribute to different and similar experiences of discrimination for both. Ultimately, these (pregnant) minority women are racialized within the US society and exist in marginalized spaces, which can affect their financial resources as the minimum wage within the U.S. is not high - though, it varies from states - the minimum wage in Texas is low. Johnson outlines minimum workers in the state often earn \$7.25 per hour (Johnson, 2022, para. 4), and minority women often work in lower-paying jobs such as care and retail jobs (Carrazana, 2021). Grand that the (pregnant) minority women in Texas work in this type of low-paid job plus the average annual cost of childcare may be more expensive than college tuition in Texas, they are not only marginalized in within country and the state due to gender/race/class, these also influence their ability to earn an sufficient income and have funds to paid for Medicaid and to take care of their health, but also to cover expenses of for example abortion within the period its legal in Texas. Blumenthal and Zephyrin outline Texas as a state that has not properly defined Medicaid's qualification rules (Blumenthal & Zephyrin, 2021, para. 3). As such, it is hard to predict whether the state of Texas has granted the (pregnant) minority women the opportunity to have Medicaid, if they have it there is the risk of losing it because in their case marginalization influences job opportunity and wages. On the other hand, if the state does not have rules that eligible them to receive Medicaid, it begs the question whether the (pregnant) minority women have the funds to travel out state to get an abortion. Johnson (2022) provides an example of minorities women's economic struggles in Texas to access abortion out of state in following manner:

SB8 will close a significant number of abortion clinics across the state and will increase the average one-way driving distance to an abortion clinic by fourteen-fold, from 17 miles to 247 miles.[10] If driving nonstop at 70 miles per hour, this means the average drive time will increase by almost 3.5 hours each direction and could require an overnight stay.[11] Considering just the average increase in distance, a

minimum wage worker (earning \$7.25 per hour) would have to pay \$34.50 for gas, or five hours' wages, driving a car that gets twenty miles per gallon at three dollars per gallon.[12] This would be more than a full day's earnings just to pay for the additional gas for a round trip. Neighboring states like Louisiana and Oklahoma require multiple visits to an abortion provider, so costs for women traveling to either state for an abortion are even higher. In addition to the cost of gas and the cost of the abortion, a woman from Texas driving to Louisiana or Oklahoma may have to factor in child care, lodging, and lost wages from time off work amongst a host of logistical considerations. (Johnson, 2022, para. 4).

The law portrays itself as recognizing the (pregnant) woman as having a child and existing above this state in terms of a person with health (Texas Heartbeat Act, 2021, p. 2, l. 24-26), it can be argued its failure to recognize marginalizing factors (social structures) as gender, race, and class equally mediate the (pregnant) woman's existence within the state of Texas point to the contrary. As such, the law discards the (pregnant) woman's existence beyond her gender and body as it silences or takes for granted the (pregnant) minority women's race and class also intersect and stick to their reality. As stated, the (pregnant) minority women may not be in a well-paid job and earn enough wages to either provide for a child who can be a result of incest or sexual assault, to financially support another child, possess/maintain Medicaid to maintain a health, or being in the position to have additional money to pay for an abortion in another state plus paying for expenses connected to this trip, if a pregnancy is discovered after fetal cardiac activity in Texas. Most women do not realize they are pregnant until after six weeks. Thus, it can be suggested the law not only dismisses the (pregnant) minority women's marginalized reality as it legislates with a sexist policing framework, but it also does that with a colorblind (see no race), and liberal (everybody's equal/no class) agenda toward them. The law copies the approach of the (white) physicians in the last third of nineteenth century who made abortion as medical norm and practice about the establishment of their medical authority. All the while, the law makes abortion a matter of state-matter without a regard of the discrimination it perpetrates when it ignores these women's reality.

Fuentes et al., (2020) describe pregnant minority women living in Texas on the border to Mexico have attempted to self-manage their abortion, if lack financial resources prevented them for obtaining abortion in another state, by using methods such as alcohol, drugs, herbs,

vitamins, birth control pills, different types of food products, and abortion pills (p. 2; Haining et al., 2022). Thus, the law contains a discriminatory aspect against the (pregnant) minority women its policies their bodies as it enforces mother onto them in its state-regulation of abortion as a norm and practice. It can be argued the effects of this range from marginalization of the (pregnant) minority women to they inflict self-harm to either escape this policing and mother simply because it is unwanted or coping with the marginalizing circumstances which do not allow them to facilitate a healthy motherhood.

It should be noted that the (pregnant) white middle- and lower-class women 's bodies also are policed in the sense that motherhood is forced upon them because they share the same gender with the (pregnant) minority women. Despite race and class also intersecting with the (pregnant) white middle- and lower-class women's identity, they stick in a different manner that produces another effect. It is possible the (pregnant) white middle- and lower-class women earn a higher wage than the (pregnant) minority women, and they are either able to provide for a child, have Medicaid, and/or go to a neighbor state to have the procedure, if they do not want a child, or the pregnancy is a result of sexual assault or incest. The counter argument can be that the (pregnant) white lower-class woman is in a different financial position than the (pregnant) white middle-class woman that produces similar socioeconomic effects to the (pregnant) minority women. Nevertheless, gender, race, and class intersect for these women and stick to them - and their constitutional right to private bodily autonomy – with distinct effects which are amplified by the law.

5.2.5. Moral republicanism as influencing the problematization of women's right to abortion

The final question and discussion point consider whether the Texas Heartbeat Act could have access its problematization of women's right to abortion differently, so it recognizes the (pregnant) woman does have a right to abortion, she does not elicit from homogenous fertile group, but she does exist beyond her body and in a marginalized reality.

As mentioned before, Texas Republican legislature passed this law with the remark it has capability to save life in the state of Texas (Ivey, 2021, p. 17), yet Smith (2016) states this legislature has been at forefront to limit the access to abortion as restrictions began to emerge nationally in 2011 and 2013. The state legislature passed Texas House Bill 2 in 2013 abortion

statute which demanded doctors to counsel patients on abortion alternatives, to conduct research about fetal development, and to show a sonogram minimum 24 hours before the procedure was carried out. Physicians were also required to have admitting privileges at hospitals within 30 miles (Smith, 2016, p. 447; Ivey, 2021, Leach, 2020, Tanne, 2021) (Goodwin, 2018). Smith (2016) outlines the state of Texas preceded and banned abortion at 20 or more weeks and limited medical abortions to seven weeks in 2013 (pp. 447). This state has been loyal to its forty-six old Republican voters (Daniel & Batheja, 2016) and often religious voters as religion and politics intersect tremendously in this red state. More specifically, Hagel and Mansbach (2016) state the 1970s and the 1980s marked a period where the merger between the Christian Right and the Republican party found each other due to political ideological shifts and societal changes in the wake of the 1960s and the 1970s where the Republican became more conservative towards the limitation of the federal government (against federal budget spending), free market, and private property rights. The contempt for the authority of the federal government was replaced with a faith in social and moral authority deriving from religion the fact that it advocated for traditional family values (pp. 20-21; Kelly et al., 2017) in which this notion of sanctity for life (Hagel and Mansbach, 2016, p. 2) arose.

5.2.6. Moral republicanism vs. abortion anno 2021-; an ideological paradox toward a different problematization of women's right to abortion in Texas

It can be suggested that the Texas Heartbeat Act is not only a product of this religious influenced biological sexual dimorphism, which effects already have been discussed in relation to the (pregnant) (minority) woman and the fetus in the enactment of abortion as state-regulated norm and practice. The law is a product of white and moral republicanism that originated in the wake of 1960s youth rebellion, Vietnam, economic crisis, and a focus on an unsatisfied social policy spending for minorities. According to Flowers (2018), this type of republicanism was at its peak during the 1980s and the then Republican presidential candidate (and later president), Ronald Reagan, embodied this republicanism when he proclaimed it was immoral to take a human life unless the (pregnant) woman's life was at stake (pp. 394-395). Thus, his administration implementation of Mexico City Policy reflected this statement (Eager, 2004, pp. 157-158). The latest Republican candidate to carry this republicanism on was President Donald Trump who declared himself pro-life and he

managed to appoint three conservative judges to the Supreme Court to stamp out abortion (Smith, 2022).

The law relies on this private civil right of action lawsuit as a behavior to stop women's right to abortion, to enforce the law (Texas Heartbeat Act, 2021, p. 1, 1.17-19) to install this moral conservatism republicanism, or moral law and order perspective i.e., return to Christian moral and traditional family values in modern day Texas. Drawing on the intersectional perspective again and this moral law and order, The Texas Heartbeat Act contains this ambiguous marginalizing double discrimination effects. It, as mentioned before, dismisses women in marginalized existence as well as those in less marginalized ones' constitutional right to private bodily autonomy as they cannot exist as good human beings if their identity as women is not linked to motherhood. Yet, the law is aware they can exist as people with a health – beyond their gender identity and reproductive system. Additionally, the law uses this moral law and private civil right of action to create a possible discriminatory surveillance atmosphere where people through each other, despite social intersecting identity's structures such gender, race, class, sexuality, and ability (these categories are inexhaustible), can monitor each other to see if everybody complies with the manner the state enforces abortion as a state-regulated norm and practice. It does not mean the law discriminates against the white Texan middle- and lower class, who potentially aids or abets the (pregnant) (minority) woman, on the line with the (pregnant) minority women nor minorities of different gender identity, race, and class who aid and abet. Again, it is likely the white middle- and lower-class, due to race and class, are in a more economically favorable position – than minorities - to combat a potential lawsuit, if either of the former people assist or aid; these minorities' gender, race, class will always intersect and influence their circumstances. However, Ivey reminds (2021) the law ensures the plaintiff a minimum \$10,000 reward for each violation plus a payment of for the plaintiff's legal fees as well as the defendant's (p. 18; Luthra, 2021; Texas Heartbeat Act, 2021 2021, see 'Sec. 171.208. CIVIL LIABILITY FOR VIOLATION OR AIDING OR ABETTING VIOLATION.' pp. 6-9) if a private civil right of action is launched. As an outcome of this moral republicanism, it could be suggested the law has established these ambivalent discriminatory police system (with very different implication for people) that not only make people comply and enforce abortion as state-regulated norm and practice, the potential civil- threat and reward of a lawsuit ensure no one can challenge it, but this vigilante system and this political ideology also homogenize Texan residents. These not only ignore the marginalized people with a multifaceted identity

and their (socioeconomic) circumstances within the state, but they also generate a threat of gender and class discrimination as well as financial burden onto the white middle- and lower class.

Texas has been a Republican state for forty-six years (Daniel and Batheja, 2016), and the moral republicanism has resided within the state since. Additionally, Republican front figures and ex-presidents have been vocal about their resistance against abortion from a Pro-life stance, such as President Reagan and President Trump, make it difficult to imagine the Texas Heartbeat Act - as a Republican legislature - could have problematized women's right to abortion in different manner. Especially as Smith (2016) outlines, Texas has passed incremental legislation that restricted the access abortion starting nine years ago (p. 447), and the Texas Heartbeat Act was a reassessment of Texas House Bill 2 from 2013 which already placed restriction on women's constitutional right to abortion. In other words, the state has been hellbent to outlaw women's right to abortion for several years. Beside this, it also challenges to conceive the manner the problematization of women's right to abortion in Texas could have been disrupted because many Bible-belt states, which Texas belongs to, have introduced, and passed similar heartbeat laws with the same civil enforcement. According to Zernike et al., (2022), in the Bible-belt state of Oklahoma - the Republican legislature has now gone a step further than Texas and introduced and passed a heartbeat law on May 19th, 2022. It prohibits abortion as soon as fertilization has occurred, and it relies on the Texas' model of civil implementation, contrary to Texas, it makes a legal exception for abortion in cases of sexual assault and incest yet if these crimes have been reported to law enforcement (2022). Furthermore, *Reuters* reports 26 out 50 states are certain or likely to limit the access to abortion if *Roe v Wade (1973)* is overturned (Reuters, 2022). It will mean many women outside of Bible belt states such as those from Southwest and Midwest states soon will be in the same position as the (pregnant) women in Texas, generally, a large demographic of women will have no close access to get the produce done.

6. Conclusion

When the Texan Republican legislature introduced and passed the Texas Heartbeat Act in May 2021, the law set new approach for states to work around *Roe v Wade (1973)* limiting women's constitutional right and access to abortion. The implementation of the law occurs through and amongst private citizens which means the Texan Republican legislature cannot be sued for violation of *Roe* nor submitted to juridical questioning of why the law problematizes women's right to abortion. Therefore, this thesis's goal has been to examine and understand the underlying aspect tied to this law's problematization of women's right to abortion through the following problem formulation:

What is the problem of women's right to abortion represented to be in the Texas Heartbeat Act?

This thesis concludes the problem with women's right to abortion represented to be in the Texas Act is the latter perceives abortion as not only wrong, especially after fetal cardiac activity, but morally wrong – almost an evil because the fetus constitutes a human life (an unborn child) who has the legal claim of human rights to life above the (pregnant) woman. In other blunt words, the law perceives abortion as constituting killing a human being. Therefore, is abortion legally and socially punishable. The law's perception pulls strings to the fact that the law is a Republican conservative and Pro-life legislation which is influenced by a contempt towards American women having a federally sanctioned right to privately to decide about their bodies and lives, because the act of abortion also allows these women to disrupt and reject conservative republican morals and values, such as minimal federal intrusion, law and order guided by morals, and the ideal of the traditional family. The law solves what it problematizes by creating two rhetorical frameworks respectively one *against* the (pregnant) woman and one on *behalf* of the fetus in which these conservative republican morals and values mediate these frameworks. The ability to litigate against anyone who assists, performs, and induces an abortion after fetal cardiac activity constitutes a real and civic enforcement of these frameworks and of the actual law.

The first framework bears sexist connotations towards the (pregnant) woman because of her gender and biological gender essentialism (biological sexual dimorphism). She is only glorified and considered as a proper human being, who possesses and (re)produces moral and order, when she honors her body's (potential) ability to give birth and leans into sexist traditional family values by equating her identity as a woman with motherhood (essentialist

gender expectations). This framework stipulates a one-sided ideal of how the (pregnant) woman constitutes and exists as a good person in the world. It neglects abortion was established as a normative practice and right to respect women's heterogeneity in terms of how their bodies comprise a complex item as well as how their individual existence occurs above their bodies with multiple identities intersecting wherein women not only disagree with this narrow ideal while having their own definition of what constitutes a good human being, but women also might not have the socioeconomic circumstances to fulfill this ideal.

The second framework emerges as an outcome of the first one against the (pregnant) woman and the morally and essentialist/sexist expectations of her. It depicts the fetus as a fully developed human being as soon as fetal cardiac activity has been detected because the fetus is a natural result of these the morally and essentialist/sexist expectations of the (pregnant) woman's biology. The fetus is the component which makes the traditional family persist as its existence (re)affirms the (pregnant) woman's identity as a woman and mother as well as depicts her as a decent (morally/orderly) human being. In this framework, their dependency upon each other also sets a premise wherein the fetus has the claim of (human) rights in line, or above the fully developed and legally recognized (pregnant) woman. In other words, their dependency provides the law with a loophole to ignore the symbolization that is attached to when abortion was authorized as a constitutional right for women.

The law's last incentive to take away the (pregnant) woman's right to make a deliberate choice about her body and life plus to socially enforce conservative republican morals values occurs through a civil implementation of these frameworks, the threat of a lawsuit. The law's implementation of this threat constitutes an invitation and a legal premises for the public to become moral keepers that resist federal intervention in the regulation of abortion as a state-regulate norm and practice, to install moral law, and to protect traditional family values. This incentive has most likely created a financially profitable and state-sanctioned big brother system at the expense of women - and women across multiple states as some states themselves have introduced heartbeat laws while other plan to implement similar steps to restrict the right and access to abortion.

Thus, this incentive of the Texas Heartbeat Act and the law itself have assisted in triggering a Supreme Court discussion about depriving women of their constitutional right to abortion and bodily autonomy, and possibly helped downgrading US women to second-class citizens with the removal of this right, if SCOTUS overturns *Roe v Wade*(1973).

7. Bibliography

Ahmed, A. (2022). Policing the Womb: Invisible Women and the Criminalization of Motherhood. By Michele Goodwin. Cambridge: Cambridge University Press, 2020 [Review of *Policing the Womb: Invisible Women and the Criminalization of Motherhood*. By Michele Goodwin. Cambridge: Cambridge University Press, 2020]. *Signs*, 47(2), 551–552. University of Chicago, acting through its Press. <https://doi.org/10.1086/716650>

Andrews, T. (2012, June 1). *What is Social Constructionism? Grounded Theory Review: An international journal*. University College Cork. Issue 1, volume 11

Blumenthal, D., & Zephyrin, L. (2021, September 22). Texas's New Abortion Law Will Harm People of Color, Further Entrench Racist Policies [Web blog post]. *The Commonwealth Found*. Retrieved from <https://www.commonwealthfund.org/blog/2021/texass-new-abortion-law-will-harm-people-color-further-entrench-racist-policies>

Bryman, A. (2012). *Social Research Methods*. (4th ed). New York: Oxford University Press

Bryman, A. (2016). *Social Research Methods*. (5th ed.). London: Oxford University Press

Bacchi, C. & Goodwin, S. (2016). *Poststructural Policy Analysis: A Guide to Practice*. New York: Palgrave Macmillan US

Carrazana, C. (2021). How abortion restrictions like Texas' push pregnant people into poverty. *The 19th**. Retrieved from <https://19thnews.org/2021/09/abortion-economy-poverty-texas-law/>

Collins, P. H. (2000). *Black feminist thought : knowledge, consciousness, and the politics of empowerment*. (2nd ed.). New York; Routledge

Crenshaw, K. (1989). Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics. *University of Chicago Legal Forum: Vol. 1989*, Article 8. Retrieved from <https://chicagounbound.uchicago.edu/uclf/vol1989/iss1/8>

Crenshaw, K. (1991). Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color. *Stanford Law Review*, 43(6), 1241-1299

Daniel, A., & Batheja, A. (2016). Here's how Texas voted in every presidential election since 1976. *The Texas Tribune*. Retrieved from <https://www.texastribune.org/2016/11/08/heres-how-texas-voted-every-presidential-election-/>

Eager, P. W. (2004). From Population Control to Reproductive Rights: Understanding Normative Change in Global Population Policy (1965-1994). *Global Society: Journal of Interdisciplinary International Relations*, 18(2), 145–173. <https://doi.org/10.1080/1360082042000207483>

Ferree, M., Gamson, W., Gerhards, J., & Rucht, D. (2002). *Shaping Abortion Discourse: Democracy and the Public Sphere in Germany and the United States* (Communication, Society and Politics). Cambridge: Cambridge University Press
doi:10.1017/CBO9780511613685

Finnemore, M., & Sikkink, K. (1998). International Norm Dynamics and Political Change. *International Organization*, 52(4), 887-917

Flowers, P. (2018). ‘A Pro-life Disaster’: The Reagan Administration and the Nomination of Sandra Day O’Connor. *Journal of Contemporary History*, 53(2), 391–414. <https://www.jstor.org/stable/26416694>

Flyvbjerg, B. (2011). Case Study. *The Sage Handbook of Qualitative Research*. (4th edition). Thousand Oaks, CA: Sage, Norman K. Denzin and Yvonna S. Lincoln, eds., pp. 301-316
Ginsburg, F.D., & Rapp, R. (Eds.). (1995). *Conceiving the new world order: the global politics of reproduction*. University of California Press

Francis, R. (2020). *Equality in Theory and Practice A Moral Argument for Ethical Improvements* (1st ed. 2020.). Springer Singapore. <https://doi.org/10.1007/978-981-15-3488-1>

Freedman, L. P., & Isaacs, S. L. (1993). Human Rights and Reproductive Choice. *Studies in Family Planning*, 24(1), 18–30. <https://doi.org/10.2307/2939211>

Fuentes, Baum, S., Keefe-Oates, B., White, K., Hopkins, K., Potter, J., & Grossman, D. (2020). Texas women’s decisions and experiences regarding self-managed abortion. *BMC Women’s Health*, 20(1), 6–6. <https://doi.org/10.1186/s12905-019-0877-0>

Glick, P., & Fiske, S. T. (1996). The Ambivalent Sexism Inventory: Differentiating hostile and benevolent sexism. *Journal of Personality and Social Psychology*, 70(3), 491–512. <https://doi-org.zorac.aub.aau.dk/10.1037/0022-3514.70.3.491>

Goodwin, M. (2016). The Pregnancy Penalty. *Health Matrix: Journal of Law-Medicine*, 26, 17-40

Goodwin, M. (2020) *Policing the Womb: Invisible Women and the Criminalization of Motherhood*. Cambridge University Press

Hagel, A.V., & Mansbach, D. (2016). The Fight over Abortion: Fetal Rights in the Post-Roe Era. In: *Reproductive Rights in the Age of Human Rights*. Palgrave Macmillan, New York. https://doi.org/10.1057/978-1-137-53952-6_2

Hagel, A.V., & Mansbach, D. (2016). The Reproductive Rights Debate in the Age of Human Rights. In: *Reproductive Rights in the Age of Human Rights*. Palgrave Macmillan, New York. https://doi.org/10.1057/978-1-137-53952-6_1

Haining, K, L. A., & Savulescu, J. (2022). The Unethical Texas Heartbeat Law. *Prenatal Diagnosis*, 42(5), 535–541. <https://doi.org/10.1002/pd.6136>

Heard, A. (1997). “Introduction.” *Human Rights: Chimeras in Sheep’s Clothing*. Retrieved from: <https://www.sfu.ca/~aheard/intro.html>

Huang, Y., Davies, P. G., Sibley, C. G., & Osborne, D. (2016). Benevolent Sexism, Attitudes Toward Motherhood, and Reproductive Rights: A Multi-Study Longitudinal Examination of Abortion Attitudes. *Personality and Social Psychology Bulletin*, 42(7), 970–984.

<https://doi.org/10.1177/0146167216649607>

Ivey, R. T. (2021). Texas Senate Bill 8 (SB 8): Not just another anti-abortion bill. *Contemporary OB/GYN*, 66(10), 17–18.

Jelen, T. G., & Wilcox, C. (1997). Attitudes toward Abortion in Poland and the United States. *Social Science Quarterly*, 78(4), 907–921. <http://www.jstor.org/stable/42863739>

Johnson, L. (2022, February 24). The Disparate Impact of Texas’ Abortion Ban on Low-Income and Rural Women [Web blog post]. *Georgetown Journal on Poverty Law & Policy*. Retrieved from <https://www.law.georgetown.edu/poverty-journal/blog/the-disparate-impact-of-texas-abortion-ban-on-low-income-and-rural-women/>

Kelly, J., Johnson, G. S., Mathews, T. J., Gray, L. D., & Bowman, L. E. (2017). Criminalizing Abortion During President Obama’s Administration: An Exploratory Study. *Race, Gender & Class*, 24(3–4), 73–99. <https://www.jstor.org/stable/26529224>

Koralewska, I., & Zielińska, K. (2021). “Defending the unborn”, “protecting women” and “preserving culture and nation”: anti-abortion discourse in the Polish right-wing press. *Culture, Health & Sexuality*, ahead-of-print(ahead-of-print), 1–15. <https://doi.org/10.1080/13691058.2021.1878559>

The Lancet. (2021). Abortion bans in the USA harm health equity. *The Lancet (British Edition)*, 398(10310), 1461–1461. [https://doi.org/10.1016/S0140-6736\(21\)02307-2](https://doi.org/10.1016/S0140-6736(21)02307-2)

Leach. (2020). Abjection and mourning in the struggle over fetal remains. *Contemporary Political Theory*, 20(1), 141–164. <https://doi.org/10.1057/s41296-020-00400-w>

Lo, N. C., & Barry, M. (2017). The perils of trumping science in global health — the Mexico City policy and beyond. *The New England Journal of Medicine*, 376(15), 1399-1401.
doi:<http://dx.doi.org/10.1056/NEJMp1701294>

Luthra, S. (2021). Even if Texas' six-week abortion ban is overturned, clinics will close. *The 19th**. Retrieved from
<https://19thnews.org/2021/08/texas-abortion-six-week-ban-clinics-close-their-doors/>

Nash, E. (2021) For the First Time Ever, U.S. States Enacted More Than 100 Abortion Restrictions in a Single Year. Guttmacher Institute. Retrieved from
<https://www.guttmacher.org/article/2021/10/first-time-ever-us-states-enacted-more-100-abortion-restrictions-single-year>

Pettus, E. W., & Willingham, L. (2022,). Minority women most affected if abortion is banned, limited. *AP News*. Retrieved from
<https://apnews.com/article/abortion-us-supreme-court-business-health-race-and-ethnicity-3fff455cce7ef0d8694f5371f805ea18>

Reuters. (2022). Factbox: Abortion in America if Supreme Court overturns Roe v Wade. *Reuters*. Retrieved from
<https://www.reuters.com/world/us/abortion-america-if-supreme-court-overturns-roe-v-wade-2022-05-03/>

Roberti. (2021). “Women Deserve Better:” The Use of the Pro-Woman Frame in Anti-abortion Policies in U.S. States. *Journal of Women, Politics & Policy*, 42(3), 207–224.
<https://doi.org/10.1080/1554477X.2021.1925478>

Runyan, A. S., & Sanders, R. (2021). Prospects for Realizing International Women's Rights Law Through Local Governance: the Case of Cities for CEDAW. *Human Rights Review* (Piscataway, N.J.), 22(3), 303–325. <https://doi.org/10.1007/s12142-021-00635-z>

Shivaram, D. Roe established abortion rights. 20 years later, Casey paved the way for restrictions. *NPR*. Retrieved from

<https://www.npr.org/2022/05/06/1096885897/roe-established-abortion-rights-20-years-later-casey-paved-the-way-for-restricti>

Simmons-Duffin, S., & Feibel, C. (2022). The Texas Abortion Ban Hinges On ‘Fetal Heartbeat.’ Doctors Call That Misleading. *NPR*. Retrieved from <https://www.npr.org/sections/health-shots/2021/09/02/1033727679/fetal-heartbeat-isnt-a-medical-term-but-its-still-used-in-laws-on-abortion?t=1653502711219>

Smith, C. (2016). Change over time in attitudes about abortion laws relative to recent restrictions in Texas. *Contraception (Stoneham)*, 94(5), 447–452. <https://doi.org/10.1016/j.contraception.2016.06.005>

Smith, D. (2022). Trump the hero for anti-abortion movement after bending supreme court his way. *The Guardian*. Retrieved from <https://www.theguardian.com/us-news/2022/may/05/trump-abortion-supreme-court>

Stark, B. (2011). The women’s convention, reproductive rights, and the reproduction of gender. *Duke Journal of Gender Law & Policy*, 18(2), 261–34.

Tanne, J. H. (2021). Texas promises \$10 000 for people who enforce the state’s new limit on abortions. *BMJ : British Medical Journal (Online)*, 374
doi:<http://dx.doi.org/10.1136/bmj.n1801>

Texas Heartbeat Act, TX S.B. No. 8. Chapter 62. (2021). Retrieved from <https://capitol.texas.gov/tlodocs/86R/billtext/pdf/HB01500I.pdf>

Tormos, F. (2017). Intersectional solidarity. *Politics, Groups & Identities*, 5(4), 707–720. <https://doi.org/10.1080/21565503.2017.1385494>

Treisman, R. The original Roe v. Wade ruling was leaked, too. *NPR*. Retrieved from <https://www.npr.org/2022/05/03/1096097236/roe-wade-original-ruling-leak?t=165363041116>

Zernike, K., Smith, M., & Ploeg, V. L. (2022). Oklahoma Legislature Passes Bill Banning Almost All Abortion. *The New York Times*. Retrieved from <https://www.nytimes.com/2022/05/19/us/oklahoma-ban-abortion.html?searchResultPosition>

2