

# The Legal Contestation of Abortion Rights

## Why Abortion Should be Theorized as a Gender-based Comparative Right

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### 1. Introduction

The global contestation of women's and gender rights begs the question of the normative and socio-cultural foundations of law and jurisprudence in different contexts worldwide. It particularly raises the question of the extent to which law and jurisprudence are gendered and contribute to the reproduction of gendered hierarchies. In this chapter I approach this question by critically reflecting on two judicial constitutional frameworks for abortion regulation that are paradigmatic for 'Western', European perspectives on abortion rights. Specifically, I focus on the 1973 American Supreme Court decision in *Roe v. Wade* and the *German Constitutional Court* decision from 1975 which is known as the first legal abortion case in a European context. I argue that the theorization of abortion rights in these paradigmatic legal contexts provides a powerful illustration of the manner in which women's inequality is forged, secured, and maintained with the force of law.

More precisely, my central claim is that the 'Western' legal analysis of a woman's right to end an unwanted pregnancy, as reflected in these court decisions, portrays the right to life of the fetus as inevitably supreme to every right a woman seeking an abortion might possess. As part of this analysis, the relevant rights of women are considered to derive from constitutional values that are inherently inferior to the values associated with the fetus. Furthermore, the entire abortion legal dilemma is framed in both contexts as not comparable to any other constitutional challenge that has been already resolved by law. Put differently, the right to abortion is theorized as a unique feminine right that consequently seems to require the implementation of a new, dis-

tinct legal standard. This conceptual legal framing has a negative impact on women's bodily integrity and freedom because even when abortion rights are recognized, courts and legislators are not obligated to justify, in a broader comparative context, the ultimate scope of these rights. Hence, the implemented standard for abortion regulation is never measured against other, potentially analogous legal standards. The outcome is a legal regime that subjects women seeking to terminate an unwanted pregnancy to a standard that pertains only to them – a gendered standard that unjustly imposes significant restrictions on their bodily integrity, subjectivity and legal autonomy.

The chapter proceeds in two parts. Part one explains how a woman's right to terminate her pregnancy was theorized by the constitutional courts in the United States and Germany in the 1970s. This part clarifies why the right to abortion was born as a relatively fragile right in both countries. It also uncovers the shared gendered normative pillars on which the two Court's decisions rest. Primarily, this part points to the way the devaluation of women's rights over their bodies, as well as the implicit understanding of the abortion dilemma as unique, sustain the conclusion regarding the inevitable supremacy of the right to life of the fetus over the rights of the pregnant woman. Part two advocates an alternative theorization of a woman's right to end an undesired pregnancy that is based on analogizing abortion to other lived human experiences. It explains why adding a comparative perspective to the abortion debate can strengthen women's rights in this context and argues that a woman's right to have an abortion will rest on a more solid legal ground only when it is theorized and understood as a comparative right that is grounded in well-established legal protections that are equally applied to both genders.

## **2. Judicial theorizing of abortion: a woman's right to terminate an unwanted pregnancy between private choice and self-determination**

The following two case contexts, the US and Germany, each exemplify how a gender-specific hierarchy of rights has emerged against the backdrop of two distinct socio-historical legal paths of development.

## 2.1 *Roe v. Wade* and the conceptualization of abortion as a privacy right

In the United States, abortion was conceived and born as a privacy right in 1973 in the famous decision of the Supreme Court in *Roe v. Wade* (410 U.S. 1973). The Court held that the constitutional right to privacy, grounded in the *Fourteenth Amendment's* concept of liberty, encompasses a woman's decision whether to terminate her pregnancy. The Court explained that although the constitution does not explicitly mention any right to privacy, a line of Court decisions going back as far as the end of the 19th century recognized a fundamental right to personal privacy as being implicit in the concept of liberty, and as extending to activities related to marriage, procreation, contraception, family relationships, child rearing and education. This right to privacy was extended in 1973 to include a woman's right to abortion. The Court further determined that the fetus cannot be considered a 'person' within the language and meaning of the *Fourteenth Amendment* and clarified that the appellant's case would indubitably collapse if personhood were established. Specifically, the Court determined: "If this suggestion of personhood is established, the appellant's case, of course, collapses, for the fetus' right to life would then be guaranteed specifically by the Amendment" (*Roe v. Wade* 1973: 156-157). Hence, the assumption was that a woman's newly recognized right to terminate an unwanted pregnancy stood or fell by the status of the fetus. Once the Court concluded that a fetus is not a 'person' entitled to the constitutional right to life, the woman's right was then balanced against state interests that the Court identified as important and legitimate: protecting the health of the woman as well as the potential human life of the fetus. Based on these interests, the Court created a trimester framework for legalizing abortion. Abortions before the end of the first trimester performed by a licensed physician were legalized. After the first trimester, the state was authorized to regulate abortion to such an extent that it relates to the preservation and protection of maternal health. With respect to the state interest in protecting prenatal life, the Court determined that the 'compelling' point was at viability, i.e., when the fetus has the capability for meaningful life outside the mother's womb. The state could then proscribe the performance of all abortions except those necessary to preserve the pregnant woman's life or health.

In sum, abortion was framed as a privacy right that centers on the right of the woman to make personal choices such as terminating an undesired pregnancy. This privacy right was perceived as worthy of constitutional pro-

tection only because the fetus was not considered a 'person' deserving the constitutional right to life. Moreover, it appears that what further sustained the proclaimed hierarchy of constitutional values was a judicial understanding that the abortion dilemma is unique and therefore its resolution requires a new and distinctive legal standard. The underlying assumption was that there is no comparative legal dilemma that could assist the Court in outlining a proper balance between the conflicting rights and interests. Hence, the Roe Court did not only conceptualize abortion as a privacy right; it also portrayed this right as inherently different from all other fundamental rights previously recognized by the Court because of the unique involvement of considerations relating to state obligations to protect potential human life. Specifically, Justice Blackman, delivering the majority opinion, explained:

The pregnant woman cannot be isolated in her pregnancy. She carries an embryo and, later a fetus. [...] The situation therefore is inherently different from marital intimacy or bedroom possession of obscene material, or procreation or education. [...] As we have intimated above, it is reasonable and appropriate for a State to decide that at some point in time another interest, that of health of the mother or that of potential human life, becomes significantly involved. The woman's privacy is no longer sole and any right of privacy she possesses must be measured accordingly (*Roe v. Wade* 410 U.S., 1973: 159).

Hence, a supplementary theme on which *Roe v. Wade* rests is that considerations relating to state obligations to protect potential human life make the abortion dilemma unique and therefore allow subjecting the woman's right to terminate an unwanted pregnancy to various restrictions without having to justify these restrictions in a broader comparative context. This supplementary theme can explain why subsequent Court decisions further undermined women's right to terminate an unwanted pregnancy. In *Planned Parenthood v. Casey*, the Court substituted the trimester approach to legalizing abortion with an "undue burden" test that makes it constitutional for the state to regulate abortions as long as such regulations do not constitute "a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus" (505 U.S. 1992: 833, 876-877). As part of this redefined test, the Court affirmed as constitutional state regulations that compelled women seeking abortions to receive information about adoption options as well as about the exact state of fetal development of their pregnancy. Additionally, the Court affirmed a regulation that required a twenty-four-hour waiting period before a woman

could obtain a requested abortion. More recently, the Court also used the undue burden test to uphold a federal law prohibiting so-called ‘partial birth abortions’ that involve second trimester pre-viability abortions (Gonzales v. Carhart, 550 U.S. 2007: 124).

The Court decision in *Planned Parenthood v. Casey* also reaffirmed the portrayal of the abortion dilemma as unique and entirely distinct from other issues relating to a person’s rights over his or her own body. This framing relieved the Court of the burden of addressing the issue of abortion in the larger relevant context of available legal analogies and precedents. Specifically, the Court determined:

*Abortion is a unique act.* It is an act fraught with consequences for others: for a woman who must live with the implications of her decision; for the persons who perform and assist in the procedure; for the spouse, family and society which must confront the knowledge that these procedures exist, procedures some deem nothing short of an act of violence against innocent human life. [...] [T]he liberty of the woman at stake is in a sense unique to the human condition and so unique to the law (Parenthood v. Casey, 505 U.S.: 852).

For the American Supreme Court abortion was hence without parallel to any other situation previously recognized by law as deserving constitutional protection. Women were subjected to a unique gendered standard of their own. In this respect, the right of every woman to choose to terminate her pregnancy was born not only as a sole issue of constitutional privacy that is inherently inferior to the constitutional right to life. It was also conceived as a unique female right, and the situation of pregnancy was perceived as ‘inherently different’ from other constitutional dilemmas. Moreover, once abortion was portrayed as a unique dilemma without analogy or comparison to other legal rules and standards, gender equality considerations that mandate that men and women be subjected to similar and equal legal treatment became irrelevant to the discussion.

## 2.2 Abortion in Germany: the conceptualization of a woman’s right to terminate her pregnancy as a self-determination right

Until the early 1970s, the West German law made the termination of a pregnancy a punishable offense. Paragraphs 218 to 220 of the penal code placed abortion among the crimes against life. West Germany basically took over the penal code as it had existed in the Weimar Republic, with only very restricted

possibilities for legal abortion based exclusively on medical grounds (Maleck-Lewy 1995). In 1974, shortly after the American Supreme Court decision in *Roe v. Wade*, the German legislature enacted the *Abortion Reform Act* (Kommers 1997). The new liberalized statute provided that abortion would no longer be punishable if performed by a licensed physician during the first twelve weeks of the pregnancy and with the consent of the pregnant woman, after she had received counseling concerning available assistance for pregnant women, mothers and children. The reformed law also provided that criminal penalties would continue to be enforced, as before, for abortions performed after the third month of pregnancy, except in those instances in which medical, embryopathy-related and ethical indications would justify the termination of the pregnancy. Immediately after the enactment of the law, a petition to the *German Constitutional Court* challenged the law's constitutionality on the grounds that it violated several provisions of the *Basic Law*, including the provisions on human dignity and the right to life. The Court struck down the proposed law and determined that the German state was under an affirmative obligation to protect the constitutionally guaranteed right to life and human dignity of the fetus by criminal means (39 BVERFGGE 1 1975).<sup>1</sup>

Compared to the Court decision in *Roe v. Wade*, there are several important aspects in the German judicial decision to be observed. First, as already noted, the German Court determined that the constitutional right to life protects 'everyone', including prenatal life. The Court equally determined that developing life also enjoys the protection that the *Basic Law* accords to human dignity because of the inseparable link between human life and human dignity. Hence, in addition to the right to life, the fetus was accorded the supreme and absolute right of human dignity that is listed first in the *Basic Law*.

As opposed to the fetus, the right of a pregnant woman seeking an abortion was defined as secondary and marginal. The Court determined that the woman has a right to free development of her personality, and this right allows her, in theory, to make a free decision against parenthood and the responsibilities arising from it. However, since Article 2 (1) of the *Basic Law*, which guarantees the right to free development of one's personality, determines that this right can be exercised only insofar as its subject "does not violate the rights of others or violate the constitutional order or the moral code", the scope of protection that was ultimately awarded to women seeking to terminate an unwanted pregnancy was very narrow. The Court explained

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1 Translated in Robert E. Jonas and John D. Corby (1976).

that “a compromise which guarantees the protection of the life of the one about to be born and permits the pregnant woman the freedom of abortion is not possible since the termination of pregnancy always means the destruction of the unborn life.” (Jonas/Gordy 1976: 643).

In further substantiating this conclusion, the Court referred to the fetus as a ‘child’ and argued that under the current regime of constitutional norms, the human dignity of the fetus and its right to life must take precedence over the right to self-determination of the pregnant woman for the entire duration of pregnancy.

Moreover, in holding that the condemnation of abortion must be clearly expressed in the legal order, the Court also stressed that the abortion dilemma could not be compared to any other voluntary decision every person is entitled to make. Specifically, the Court explained:

The false impression must be avoided that the interruption of pregnancy is the same social process as, for example, approaching a physician for healing an illness or indeed a legally irrelevant alternative for the prevention of conception (Jonas/Gorby 1976: 644).

After presenting the proposed hierarchy of constitutional values as inevitably correct and stressing the distinctiveness of the legal dilemma, the Court went on to outline a constitutionally acceptable framework for abortion regulation that would best express a clear disapproval of abortions. The Court pointed to four circumstances in which the rights and interests of the pregnant woman justify providing some legal access to abortion. These circumstances included a medical indication (threats to the life or health of the pregnant woman), a criminal indication (a pregnancy that was the result of a criminal act), an embryopathy related indication (a fetus suffering from severe birth defects) and a social indication (situations in which the continuation of the pregnancy would impose exceptional hardships on the woman). The Court explained that in such circumstances, it was too much to expect women to carry the pregnancy to term.

Finally, the Court added that the categorical inclusion of the inherently self-evident right to life in the *Basic Law* may be explained as a reaction to the destruction of lives that were deemed ‘unworthy’, the ‘Final Solution’ and the liquidations committed by the National Socialist regime in the guise of government measures. However, when referring to the Nazi era, the Court failed to mention that the unspeakable violations of human rights of these dark times included not only mass murder, but also severe restrictions on

women's reproductive freedom in a manner that deprived them of liberty and human dignity. During the Hitler years, the availability of contraceptives and access to legal abortions was severely restricted. Moreover, during World War II, special courts in Vichy France and Nazi Germany had the authority to impose the death penalty for the illegal termination of unwanted pregnancies. Women who were imprisoned in concentration camps experienced a different treatment. SS physicians were expected to perform abortions on so-called 'racially alien' pregnant women who were capable of hard physical labor. Since pregnant Jewish women were immediately dispatched to the gas chambers, physicians amongst the Jewish inmates performed secret abortions (David/Fleischhacker/Hohn 1988). Hence, the complete deprivation of women's bodily integrity, human dignity and liberty was another horrific aspect of the Nazi era that also impacted the exact terminology of the *Basic Law* in the post-war era. Women's bodies and reproductive capacities were subjected to the needs and concerns of the Nazi regime. They were denied the basic liberty to make autonomous decisions about their bodies, which may explain not only the categorical inclusion of the right to life in the *Basic Law*, but also the inclusion of human dignity and liberty as inviolable constitutional values. Put differently, the German Court's conclusion that human dignity protects only the fetus and that the central constitutional value that protects the rights of the pregnant woman is self-determination, is questionable considering the abortion experience in the Nazi era. This past legal experience also demonstrates that the gendered bias of law has a history. Hence, when we consider the full implications of the National Socialist regime's government measures for determining a proper framework for abortion regulation, it becomes more obvious why inviolable values such as human dignity and liberty should also provide strong protection to women's autonomous decisions regarding reproduction.

In complete disregard of this context, the German Parliament complied with the ruling of the Court almost to the letter. A revised version of the *Abortion Act* passed in 1976 and recriminalized all abortions with the exception of the four judicially authorized indications. The abortion law issue was not revisited until after German reunification. As opposed to West Germany, East German abortion law had allowed abortion on demand in the first twelve weeks of pregnancy. In an attempt to find a middle ground between the conflicting policies of East and West Germany, the first all-German Parliament reached a compromise, passing the *Pregnancy and Family Assistance Act* by a broad majority (Kommers 1997: 348). The new statute departed from the Constitutional Court's earlier ruling in one crucial respect. It decriminalized abor-



tion in the first twelve weeks of pregnancy and specified that abortions could be performed during this period following a woman's request after compulsory counseling and a three-day waiting period. A necessary precondition for a legal abortion, however, was that the pregnant woman was experiencing serious hardship or conflict; this law was soon challenged on constitutional grounds.

In 1993, the Court issued a second ruling on the proper constitutional boundaries of abortion legislation (88 BVerfGE 23: 1993).<sup>2</sup> In its judgment, the Court insisted on revising some features of the proposed law to make it more protective of unborn life, with a special focus on creating a refined system of affirmative counseling oriented toward preserving the life of the fetus. While declaring that mandatory counseling that encourages the woman to continue her pregnancy could now substitute criminal penalty during the first trimester, the Court held that these abortions must remain illegal (although unpunishable). Interestingly, in outlining the relevant constitutional values that support the rights of the pregnant woman, the Court acknowledged a broader scope of relevant rights and mentioned human dignity and physical inviolability. However, these additional rights were so narrowly interpreted that they did nothing to change the ultimate judicial characterization of abortion on demand as morally objectionable and therefore illegal. A revised bill that provided for compulsory pregnancy-affirmative counseling, as mandated by the Constitutional Court, was passed by the German legislature in 1995.

German abortion law is often depicted as a positive compromise that practically responds to the needs of most women seeking to terminate an unwanted pregnancy in terms of access and state funding (Glendon 1987; Case 2011). Indeed, the German welfare state provides a network of benefits that include funding to some abortions as well as a comprehensive system of parental support. Moreover, it appears that German women had learned to live with their abortion law and find ways to get around it (Maleck-Lewy 1995). Some even argue that the mechanism for mandatory counseling and public funding that was ultimately drafted by the legislature appears to be less vigorous than what the Court intended (Kommers 1997).

However, the practical fact of access to abortion does not resolve the normative problem that surfaces when analyzing the American and German legal

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2 An official English translation is available at [http://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/1993/05/fs19930528\\_2bvfo0029oen.html](http://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/1993/05/fs19930528_2bvfo0029oen.html).

frameworks for abortion regulations from a critical rights perspective. As the discussion above revealed, both legal frameworks rest on shared normative grounds that consist of three fundamental themes.

First, both cases single out the right to life as unavoidably superior to every right a woman seeking an abortion might possess. Indeed, the *American Supreme Court* concluded that a fetus is not a 'person' entitled to the constitutional right to life under the *American Bill of Rights* and the *German Constitutional Court* determined that according to the *Basic Law*, the right to life is granted to everyone, including the unborn. This substantive distinction led to the establishment of two different constitutional legal regimes. In the US, a woman has a formal constitutional right to choose to have an abortion in the early stages of her pregnancy. In Germany, on the other hand, a woman's decision to terminate an unwanted pregnancy is overshadowed completely by the rights of the fetus, and there is no right to abortion on demand. As the protection of unborn life remains the foremost constitutional value for abortion regulation, a woman's decision to end an unwanted pregnancy is officially perceived as morally objectionable although not punishable. Hence, German women seeking an abortion are subject to mandatory counseling that is expected to attempt to persuade them to carry the pregnancy to full term. At the same time, and as explained, despite this significant distinction, both legal regimes embrace a similar assumption regarding the absolute primacy of the right to life in the context of abortion and agree in principle on the proper hierarchy of relevant constitutional values.

The second theme that characterizes both legal frameworks for abortion regulation is the portrayal of the woman's right over her body in the context of abortion as relatively marginal. Both judicial decisions belittle and devalue the significance of the relevant fundamental rights and interests of a woman seeking to end an unwanted pregnancy. In the US, the judicial rhetoric centers on a woman's private decision to choose to terminate a pregnancy. In Germany, the Court, at most, acknowledges the woman's right to self-determination. As part of this judicial discourse, fundamental rights such as human dignity, gender equality, bodily integrity and liberty are not associated with the woman. The outcome is a very thin, gendered constitutional rights discourse that disguises the harsh consequences of an unwanted pregnancy and particularly its impact on the human dignity, liberty and bodily autonomy of the pregnant woman when access to abortion is restricted. As a result, this gendered constitutional discourse further legitimizes the assumption regarding the proper hierarchy of relevant rights and strengthens the American

and German legal frameworks for abortion regulation as inevitably justified from a constitutional point of view.

Finally, both Court's decisions outline a legal framework for abortion regulation that lacks any comparative perspective. The explicit or implicit assumption that underlies these frameworks is that the abortion dilemma is not comparable to any other constitutional challenge previously resolved by courts or legislators and therefore, its resolution requires a new standard of its own. This assumption of uniqueness relieves both Courts from justifying, in a broader context, the ultimate scope of the right to abortion and its subjection to the rights of the unborn. In other words, what makes the right to abortion particularly fragile is an intrinsic assumption of uniqueness that underlies both frameworks for abortion regulation. This gendered assumption allows greater flexibility in defending the current hierarchical structure of rights on which the legal standard for abortion regulation rests. It renders the decision to define the woman's right as a sole matter of private choice or self-determination, immune from criticism, and makes it easier for both Courts to present their ultimate framework for abortion regulation as necessarily justified.

Considering the normative themes explored above, the following questions arise: Is it possible to frame abortion in comparative equality terms? Can abortion be compared to other lived human experiences, or more precisely, can a woman's right to terminate an unwanted pregnancy be compared to other rights possessed by men? The following part discusses these questions. It offers a comparative perspective for abortion regulation and explains why adding a comparative perspective to the abortion debate can strengthen women's rights in this context.

### **3. Abortion as a gender-based comparative right**

In the early 1970s, Judith Jarvis Thomson (1971) argued that, even if the fetus is a person, a woman's right to terminate her pregnancy should prevail, since it is a well-established legal and moral principle that the state cannot compel a person to use her body to keep another person alive. Likewise, Donald Regan (1978-1979) contended that a corollary principle that further sustains the primacy of a woman's right to abort the fetus is that a parent cannot be forced to donate a kidney or even blood to keep a child alive. Just as the law does not require people to be Good Samaritans and to donate their bodily organs to save other people's lives, the state should also not require a woman

to donate her body against her will to house a fetus. Others have pointed to common principles of self-defense as similarly justifying the termination of an undesired pregnancy (Willis 1983; West 1999).

Eileen McDonagh (1996) took this argument one step further. She added that the issue is not simply that the woman has a right to be a Bad Samaritan, but rather that, in cases of undesired pregnancy, the fetus intrudes on the woman's body and liberty against her will. In such cases, women must therefore not only have a right to self-defense – comparable to others in our society – which includes the right to use deadly force on one's own behalf to stop the fetus from taking over the body, but she must also have a right to equal access to the resources of the state to provide for that self-defense, by means of abortion funding. According to this view, the key right involved in abortion is not just a woman's right to choose whether to terminate her pregnancy, but also her right to consent to what another party, the fetus, does to her body. Once the focus shifts from choice to consent, it becomes clear that well-established legal principles in the area of self-defense justify not only her right to abort the fetus, but also her right to expect state assistance in defense of her bodily integrity and liberty.

This comparative approach to abortion challenges the assumption regarding the primacy of the humanity of the fetus in a way that the common approach to abortion fails to do. It also highlights why conceptualizing abortion as a sole matter of privacy or self-determination devalues the significance of the dilemma from the woman's perspective and obscures additional fundamental rights such as human dignity, bodily integrity and liberty, and most of all, gender equality, that should protect her right to have full control over her body. The comparative argument, again, is that a fetus's imposition, even in a medically normal pregnancy, exceeds the latitude recognized by the law for one person to intrude on the bodily integrity and liberty of another. Since well-established constitutional standards do not protect some already-born people by requiring other already-born people to donate their bodies to them, even when they are next of kin, the same should apply for the pregnant woman seeking to abort a fetus.

In sum, by measuring abortion rights against other well-protected interests and values, the comparative approach to abortion exposes the double standard of the law. It highlights how women are subjected to legal standards that are perceived as unacceptable in comparable contexts. Thus, subjecting abortion law to a comparative analysis reveals that respect for human life at all costs is not absolute in the eyes of the law. Rather, the unwanted intrusion on

one's body is always prohibited; individuals are never obliged to donate their bodies to come to the aid of others, even if it would be morally desirable. In sum, in other legal contexts, the right to life does not justify requiring bodily sacrifices from others, even from one's own kin. This insight thus provides an additional powerful illustration of the manner in which women's inequality is forged, secured and maintained with the force of law.

#### 4. Conclusion

Over years of theorization on abortion rights, a comparative analysis approach has had no impact. Instead, abortion is commonly perceived as raising legal and moral questions that are *not* analogous to other issues previously resolved by law and therefore require a unique legal standard. As part of this gendered legal framing, constitutional courts on both sides of the Atlantic fail to acknowledge that abortion *can* be compared to other situations already recognized by the law, in which people have the right to be protected from wrongful intrusions or injuries of their bodies imposed by third parties. Moreover, these judicial frameworks for abortion regulation legitimize the portrayal of the rights of the fetus as inevitably trumping any right the pregnant woman seeking to end an unwanted pregnancy might possess, which means that abortion rights are constantly disputed by the law. Rather than protecting women's human dignity, bodily integrity and liberty, contemporary legal frameworks for abortion regulation reinforce the global contestation of women's rights and sustain patriarchal power structures. Hence, advocates of gender equality should strive to undermine the gender bias of abortion law – a task that can only be achieved by adding a comparative perspective to the abortion debate. Securing women's reproductive rights and freedoms thus requires theorizing abortion as a gender-based comparative right and guaranteeing the equal application of deeply rooted legal standards to both genders.

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