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Will Focusing on Men's Moral Calculus Make Abortion Less "about" Gender?

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Will Focusing on Men's Moral Calculus Make Abortion Less "about" Gender?

BY LINDA MCCLAIN · APRIL 6, 2017

Decades ago, feminist leader Gloria Steinem quipped that, "if men could get pregnant, abortion would be a sacrament." As President Trump reinstates restrictions on women's reproductive rights that the Obama Administration lifted (such as the "global gag rule"), the visual imagery of Trump signing executive orders while surrounded by an audience of white men raises – once again – the question of how gender shapes the abortion issue. In the recent unsuccessful Republican effort to repeal "Obamacare," when Kansas Senator Pat Roberts was asked whether he supported removing the mandate that insurance companies cover "essential health benefits" such as maternity care, he joked, "I certainly don't want my mammogram benefits taken away." Senator Roberts subsequently tweeted an apology, after swift criticism by some Democratic Congresswomen, one of whom quipped that she wouldn't want to lose her screenings for prostate cancer and another mentioned not only the number of women who die from breast cancer each year. That he could make such a "joke" seemed to suggest that women's distinctive health needs related to their

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reproductive capacity were something men simply did not "get." The male body is still the normal and normative one (as in anatomy classes and medical texts of old), with the female body having those messy, mysterious, and problematic "extras."

Tempting as this gendered explanation for the precarious state of women's reproductive rights and for the seemingly endless legislative and executive appetite to pile on more restrictive regulations of women's constitutional right to decide whether to terminate a pregnancy, it is too simple. For decades, women have been on the proverbial "both sides" of the battle over abortion. A recent illustration was the flare up over whether "pro-life" women's groups were unfairly excluded from the massive Women's March on Washington, held in Washington, DC (and supported with "sister" marches across the country) to protest the Trump Administration. At the subsequent March for Life, presidential advisor Kellyanne Conway assured attendees that the Trump Administration stood with them, as did she, as "pro-life," and as a "wife, a mother, a Catholic, and as a Counselor to the President of the United States."

Abortion is, nonetheless, "about" gender, as Carol Sanger's new book, *About Abortion*, recognizes. For one thing, it is "about" women's "reproductive bodies" in a way it is not about men's. As shaped by the U.S. Supreme Court's decisions, abortion is also, Sanger argues, "about" women's – rather than men's – "power" to make a personal decision about "the place of pregnancy and motherhood in their lives at this particular moment in time." In striking down state efforts to require that a pregnant woman notify or get the consent of her husband, the Supreme Court has invoked the "inescapable biological fact that the state regulation with respect to the fetus will have a far greater impact on the pregnant woman's bodily integrity than it will on the husband" to explain that the "father's interest in the fetus' welfare" cannot be of equal weight to the "mother's protected liberty." Sanger does not challenge this "allocation of authority," which responds "to an intuitive sense of fairness;" but she does argue that "the steady focus on women's reproductive bodies as the nub of what abortion is about has costs."

Abortion, in all these ways, then, is about "gender." As one way to "shake abortion loose from gender's grip," Sanger proposes the question: "what would men do if the fate of a pregnancy or an



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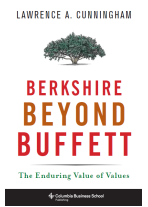
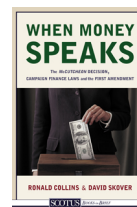
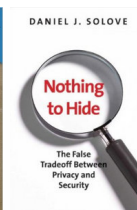
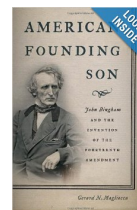


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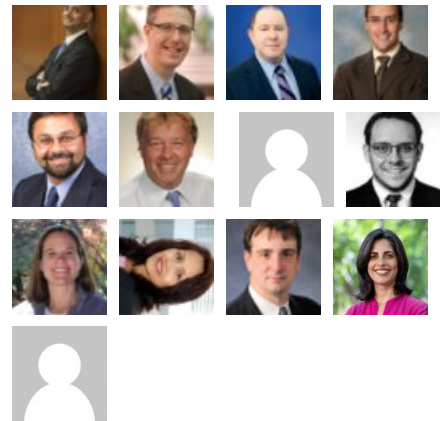


embryo was up to them?" Unlike Steinem's prediction that men would elevate abortion to be a "sacrament," Sanger – as I read her – does not pose this question to argue that if men could get pregnant, the right to abortion would be robust and subject to far fewer restrictions, although she hopes the comparison will help to "pull women out from" the grip of such regulations. She instead proposes that "taking women out of the picture" and focusing on how actual men have made decisions about the fate of embryos and fetuses helps us see that "the decisions that people make about becoming parents turn out to be in some ways more generic than gendered."

In her chapter, "Fathers and Fetus– What Would Men Do?" Sanger innovatively examines three contexts in which the Supreme Court's usual rules that the decision must rest with the pregnant woman does not apply: (1) disputes between a woman and man – typically, in a divorce – concerning "cryogenically frozen embryos" where it is the "male progenitor who wants them destroyed;" (2) surrogacy contracts in which a man seeks to bring a biological child into the world and specifies – in the contract – that the woman who agrees to act as a surrogate will "abort the pregnancy in certain circumstances;" and (3) cases in which a pregnant woman has become brain-dead or comatose and her male partner (the biological father) must decide whether to refuse or withdraw medical care, "understanding that to do so ends the fetus's life as well."

This comparison of men's reasoning in these contexts with women's reasoning about pregnancy is innovative and informative. It allows Sanger to highlight her "most striking" finding of the degree of overlap between men's and women's moral calculus (my term, not Sanger's) about becoming a parent. Even so, will this creative attempt to show that decision making about becoming a parent is less "gendered" and "more generic" make a theoretical or practice difference? Will men's moral reasoning make women's moral reasoning seem more "moral" or "responsible"? If a man offers heartfelt reasons why he is not ready to be a father, will that be any more persuasive than when such reasons are offered by a woman? In other words: is the moral calculus in a man's decision about when to become a parent likely to change the mind of someone who believes abortion decisions are primarily made for reasons of "convenience"?

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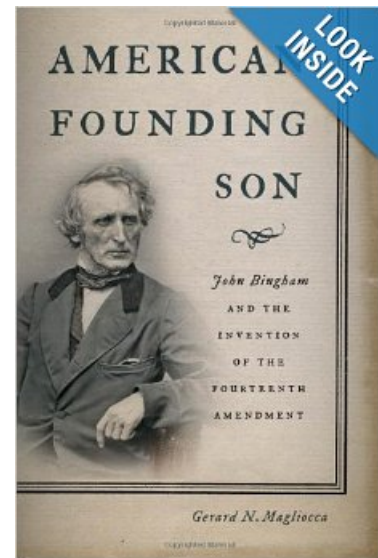
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A consistent and troubling feature of public opinion about abortion is (as I observed in *The Place of Families* (Harvard, 2006)) a gap between the circumstances in which various majorities approve of abortion and the most common reasons that women seek abortion. Can learning more about men's decision shrink that gap? Over the decades, feminist legal theorists (and here I include myself) and abortion rights advocates have attempted to defend women's right to reproductive autonomy against the charge that such a right "licenses irresponsibility" and to argue for women's responsible moral agency. In the context of constitutional litigation, the various "Voices of Women" stress women's moral reasoning as they confront the concrete circumstances that make a particular pregnancy unwanted. As one such brief filed in *Gonzales v. Carhart* concluded: "These women rely upon intimate moral, religious, and personal values to make the right decision for themselves and their families." As James Fleming and I argued in *Ordered Liberty* (Harvard, 2013): "empirical studies of women's decision indicate the centrality of considerations of responsibility and relationship, challenging the depiction of women as 'lone rights-bearers' insulated from family and community or as incapable of responsible decisions." Sanger's discussion of women's reasoning resonates with the studies I have read. Indeed, researchers observe striking consistency over time in women's reported reasons for ending pregnancies. These reasons relate to a women's sense of responsibility to self and others: concerns to avoid single motherhood or a woman's relationship problems; financial limitations; obligations to existing children or other dependents (in the case of the many women who were already mothers); and not being ready to be a mother (in the case of a young women still pursuing education or concerned about the impact upon employment).

When Sanger compares women's moral calculus with that of men deciding the fate of an embryo or fetus, particularly eye-opening are the many vivid quotes from men about why they sought to prevent their partner from implanting frozen embryos or giving them to someone else to do so. In explaining in litigation why they did not wish to become fathers, such men cited "relationship issues, children's welfare, and the interruption of one's own life or plans." As do many women, such men cited relationship problems with the partner who would be the other



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biological parent, leading them not to wish to have a child with that partner. Men also expressed concern about "the imagined relationship – or nonrelationship – with the future child." Men's concern about the gatekeeping role of the mother – in terms of access to the child – does not have a precise parallel, but Sanger finds an analogy between men's concern about there being a child "out there" with whom they do not have a relationship and a similar concern by pregnant woman that make adoption an unattractive option.

Sanger finds overlap but also difference with respect to financial concerns. Men speak about how an obligation to a new child would have an impact on existing financial obligations or bring unwelcome entanglement with the child's mother. However, a new child was imagined as economically "disruptive," rather than "economically catastrophic." By comparison, studies of women's decisions show that "financial concerns are paramount" – women frequently say that they cannot afford to have a baby at this time. Sanger recognizes that "post-divorce implantation" disputes typically involve men in a more secure economic position than women facing an unwanted pregnancy. A more informative comparison, were it available, would be what the partners of such women think about becoming a father and what reasons they would give either for supporting or opposing an abortion decision (as I suggest below).

Men expressed concerns about "disruption" of their lives, but as Sanger observes, these narrative are not that close to women's frequent concerns about how having a child would disrupt education or employment or caretaking responsibilities for existing children. A common reason women give for abortion – particularly, young women – is that they are not "ready" for the responsibility of being a mother. Abortion opponents usually interpret this as a matter of "convenience" or an evasion of responsibility. To my knowledge, women typically don't talk about a child interrupting their life as a single on the dating and mating scene, as some of the men Sanger quotes do. One man with a rising salary, for example, speaks of wanting to "go out and enjoy himself," and "be himself and live on his own." And another distinctive concern without a ready parallel in women's abortion decisions is a man's worry that, if the frozen embryo were donated, he would be at risk for "accidental incest" with the

future child (!), since he was a "single male who openly has relationships with any woman at or above the age of eighteen."

In the context of surrogacy contracts, the most typical circumstance in which would-be-fathers specify that the woman acting as a surrogate agree to terminate the pregnancy is fetal disability. Here, Sanger finds a clear parallel in the fact that "over 90 percent of pregnant women who receive a fetal diagnosis for Down syndrome, anencephaly, or spina bifida decide to abort."

Thus, while Sanger finds some differences in women's and men's moral calculus, she also finds that "most of men's reasons for terminating a pregnancy or destroying an embryo . . . are strikingly similar to the reasons given by women for ending an unwanted pregnancy." In her words: "Both sexes want to do right by the children they already have and the ones they expect in the future. Recognizing that parenthood is not just a change in parental status but a change in everything, they also want to do right by themselves." Concluding it is possible to shift from the "gendered" to the "generic," she adds: "Differences seem to fall less along absolute gender lines than along such markers as situational stability, relationships, support networks, finances, and stamina."

I am skeptical about whether this shift to men's moral calculus about parenting will produce a net gain in terms of greater respect for – and less punitive regulation of – women's right to decide the outcome of a pregnancy. What persuades a judge in a hearing about frozen embryos may not persuade legislatures or "pro-life" activists, who may regard men's stories as about "convenience," not "responsibility." In particular, the narrative of the man who wants to enjoy the single life fits well with the right to life movement's reminder of the role of the Playboy foundation in supporting abortion rights (a role also noted by Andrea Dworkin in her memorable quip, "Getting laid was at stake.") Nor is a man's desire to avoid having a child "out there" likely to persuade those who insist that adoption is the humane alternative to abortion.

Even so, I think this move to look at the broader category of decisionmaking about parenting is promising; it might be fruitful to examine still more contexts in which men make such decisions. Given that (as Sanger observes) the majority of women facing an unwanted pregnancy do speak with their partner, how do those

partners view the moral calculus? From time to time, media reports have highlighted how a couple that faced a complication in a pregnancy – such as a diagnosis of fetal disability or an unexpected life circumstance – had to reconcile their initial moral opposition to abortion with their ultimate decision to terminate the pregnancy. As I noted in *The Place of Families*, often, their parents or other close relatives who disapprove of abortion support this discussion. It might be fruitful to study men's and women's reasoning in this "situational morality," that is, to examine how they refine and sharpen their moral convictions in the crucible of concrete situations requiring judgment. To the extent women seek the counsel of male friends or family members when they face an unplanned or unwanted pregnancy, what sort of advice do such friends or family members give – does it differ from the advice of female friends or relatives? How do men explain their decisions to get a vasectomy? These are a few possible ways to carry further Sanger's worthy effort to shake abortion loose from the grip of gender.

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