Maternal Health and Rights:

How The New Abortion Bill Has Impacted Women's Reproductive Rights in Chile.

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Abstract

Every woman has the right to have autonomy over their body. This thesis explores the theoretical basis of the consequences of being denied an abortion, where conscientious objection is a vital cause. Mapping consequences of being denied abortion services will show whether these are infringing women's liberties and whether women are withheld from living a 'good life' , this will be determined based on the 'capabilities approach', thru the capabilities of 'life', 'bodily health', 'emotions' and 'control over one's political and material environment', the concepts applied includes: maternal mortality, conscientious objection, emotional consequences and the relation between citizenship participation and the right to autonomous decision-making.

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List of Abbreviations

AMR- Abortion Mortality Rate

CEDAW- Convention on the Elimination of Discrimination Against Women

CIDT- Cruel Inhuman Degrading Treatment

ICCPR-International Covenant on Civil and Political Rights

ICESCR- International Covenant on Economic, Social and Cultural Rights

LAC- Latin America and the Caribbean

MDG- Millenium Development Goal

MMR- Maternal Mortality Rate

SR- Stillbirth Rate

UN- United Nations

HRC- Human Rights Committee

WHO- World Health Organization

WoW- Women on Web

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1. Introduction

Women are entitled to autonomy over their body. Denial of an abortion service a woman is entitled to, does not only take away the autonomy of their body, but this can also cause negative effects on women both economically and psychologically. The newly passed abortion bill in Chile added a conscientious objection clause, which may be the fundamental cause of being denied an abortion. The negative consequences will be explored through methodological underpinnings by using Nussbaum's capabilities approach. These consequences will be mapped through several capabilities including life, bodily health, emotions and control over one's political and material environment. This is helpful as a tool as capabilities approach are the core to focus on the improvement of the well-being of humans, in this particular case, women. Throughout this thesis, several consequences will be focused on. Firstly, the hypothesis relating maternal death is being dealt with, as the hypothesis assumes that maternal death is a consequence of being denied abortion services. As previously mentioned, a recurring theme in this thesis is conscientious objection. The concept of conscientious objection will be examined as it is vital as the right of obtaining an abortion may be denied through this clause. Third, the impact on women that have been through the process of denial of an abortion, will be analyzed through secondary interviews that have been conducted amongst university students, also statements of a doctor, midwife, psychiatrist and a neonatologist will be included. Last, the relation between citizenship participation and the right to make autonomous decisions will be explored.

1.1 Background

Chile has one of the strictest abortion laws comparing to the rest of the world. Abortion has constituted a crime in Chile since 1874, the 1874 (Article 342-345) penal code prohibited abortion at all times. However, in 1931 a national health law (Código Sanitario) gave doctors the possibility to provide abortions, where women could obtain an abortion considering the maternal and the fetus' health (therapeutic abortion). This type of abortion was not penalized, only if the mother had consent from two doctors. The 1931 Código Sanitario stated in Article 119: *''No action may be taken which provokes abortion as a result''*.

In 1989 under Augusto Pinochet's dictatorial rule, abortion became again illegal under all circumstances.[1] This illegality changed again after August 2017, when Michelle Bachelet was in office, and permitted abortion under restrictions. This entails that women only are permitted to obtain an abortion under three circumstances: when the mother's health is at risk, when the fetus is unlikely to survive the pregnancy and during the first 14 weeks of the pregnancy in case of rape.[2] Although, the new legislation does protect women's fundamental rights, a clause is added where doctors have the right to refuse performing an abortion on the basis of conscience. The court allowed entire private hospitals to invoke conscience and refuse to provide abortions. The UN pointed out that such conscientious objections may cause barriers for women and girls who have the right to an abortion. Although, the private hospitals did have to articulate to the court the reasons why they would refuse the particular abortion. In 2018, after Sebastian Piñera became president, the rules have changed, and all hospitals can refuse performing abortions claiming conscientious objection, as they only have to notify the Health Ministry that the doctors will no longer provide any abortions, without any additional explanation.[3] The majority of hospitals and clinics refuse abortions, as from the 69 public hospitals, 41 object the abortion laws.[4]

1.2 Aim and Research Question

The aim of this thesis is to explore the consequences of being denied an abortion in Chile after the abortion bill had passed in 2017 to find how certain concepts impacted women, by using the theory of Nussbaum's capabilities approach. The initial approach was to explore the consequences of being denied an abortion after the new

[1] Human Rights Watch *''Women: Abortion Chile'',* Human Rights Watch

[2] Lidia Casas & Lieta Vivaldi (2014) *Abortion in Chile: the practice under a restrictive regime*, Reproductive Health Matters, 22:44, 70-81.

[3] J.M. Vivanco (2018) *''A Backward Step for Reproductive Rights in Chile''*, La Tercera

[4] G. Pizarro (2018) *''Todos los Obstáculos y Presiones Que Impiden a las Mujeres Acceder al Aborto por tres Causales''*, Ciper

law had passed. As there was little material available after the legalization of abortion, information provided before the legalization has been used.

⇒*Is it enough to legalize abortion in order to improve women's reproductive rights, to fulfill the human capabilities of; life, bodily health, emotions and control over one's political and material environment in Chile after 2017?*

1.3 Relevance to Human Rights

1.3.1 The Right to Privacy (ICCPR Art. 17)

As previously mentioned, there are several rights being violated by denying an abortion. One of these rights being violated, is the right to privacy. Art. 17.1 of the ICCPR states that: ''No one shall be subjected to arbitrary or unlawful interference with his privacy, home, family or correspondence, nor to unlawful attacks his honor.'' Art. 17.2 of the ICCPR states that: ''Everyone has the right of protection of the law against such interference or attacks.''[5] The United Nations Human Rights Committee (HRC) stated that women are able to make autonomous decisions over her body and reproductive functions, as this is the core of her fundamental right to privacy and equality concerning matters of physical and psychological integrity. Making such a decision will shape her future, personal and family life and has a key impact on the enjoyment of her human rights.[6]

1.3.2 The Right to Life: The Right to be Free from Torture (ICCPR Art. 6 and Art. 7)

The UN has found denial of an abortion is a form of cruel, inhuman or degrading treatment (CIDT). The right to life is the most important right a human has. This also means that every human has the right to live a torture free life. Human rights bodies have found that restrictive abortion laws may inflict CIDT by depriving women of an

[5] M. K. Eriksson, O. Mårsätter (2015) *''Documents in Public International Law''*, 3rd edition, Norstedts Juridik p. 159

[6] United Nations Human Rights Special Procedures (2017) *''Women's Autonomy, Equality and Reproductive Health in International Human Rights: Between Recognition, Backlash and Regressive Trends''*, OHCHR

abortion in cases of rape or when a woman's and/ or the fetus' life is in danger. Therefore, can human rights bodies hold states accountable for a denial of accommodating abortions, when they are legally available.[7]

1.3.3 Right to Equality Before the Law and Equal Protection (ICCPR Art. 3 and Art. 26)

Piñera, the current president of Chile, has implied a new law which allows all health care institutions, both public and privately owned, to refuse to perform abortions, on ground of the conscientious objection. This means that even though women have the right to have an abortion, following the regulations, that they can still be denied.[8] As Art. 3 of the ICCPR requires: ''States to provide for equality between all men and women in the enjoyment of all Covenant Rights''. Furthermore Art. 26 requires parties to ''review their legislation and practices and take the lead in implementing all measures necessary to eliminate discrimination against women in all fields''.[9] This implies that women are being denied access to reproductive health care, and thus do not have equal access as men have to reproductive health care.

1.3.4 The Right to Health (ICESCR Art. 12(1))

Article 12 (1) of the ICESCR states that ''States Parties to the Covenant must guarantee the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.''[10]Criminalizing abortion without exception is a violation of the right to health. Although, Chile does not prohibition in its totality, as previously mentioned, the current president made it possible to refuse performing an abortion on basis of conscientious objections. Criminalizing or refusing termination of pregnancies, increases the risk of maternal morbidity and mortality.[11] Furthermore,

[7] A. Zureick (2015) *''(En)Gendering Suffering: Denial of Abortion as a Form of Cruel, Inhuman or Degrading Treatment''*, Fordham International Law Journal, Vol. 38 pp. 99-140
[8] H. Summers (2018) *''Conscientious Objection: When Doctors Beliefs Are a Barrier to Abortion''*, The Guardian
[9] M. K. Eriksson, O. Mårsätter (2015) *''Documents in Public International Law''*, 3rd edition, Norstedts Juridik p. 160
[10] M. K. Eriksson, O. Mårsätter (2015) *''Documents in Public International Law''*, 3rd edition, Norstedts Juridik p. 169
[11] Center for Reproductive Rights, *''Supplementary information on Chile, scheduled for review by the Committee on Economic, Social and Cultural Rights on its 55th Session.'',* p. 5

CEDAW has highlighted that access to reproductive health care is a basic right, traditional attitudes by which women are regarded as subordinate to men and stereotyped are a violation of Article 2 of CEDAW. Moreover, CEDAW Committee's General Recommendation N° 19 states that ''States Parties should ensure that women

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are not forced to seek unsafe medical procedures such as illegal abortion because of lack of appropriate services in regard to fertility control''. Additionally, CEDAW Committee's General Recommendation N° 24 notes that ''other barriers to women's access to appropriate health care include laws that criminalize medical procedures only needed by women punish women who undergo those procedures.'' This shows States Parties to ensure the rights of women by securing access to sexual and reproductive health services.[12]

1.4 Delimitations

The topic of maternal health, specifically abortion laws is broad and applicable to many areas. Though, this thesis is specifically focusing on Chile, as it is mainly conservative country, where abortion services has been legalized before, only for it to become illegal again when Chile turned into a dictatorial state. Until a short period of time ago Chile was one of the handful countries that had the strictest abortion laws in the world, where abortion was not permissible under any circumstance. Therefore, this study is primarily focusing on exploring the consequences of women being denied reproductive health services, particularly abortion services, in Chile after abortion has been legalized.

1.5 Previous Research

Previous research in the United States have shown that women who are denied access to an abortion may face threats to her mental and financial well-being. Research has shown that having an abortion is not detrimental to women's health, rather being denied an abortion is even more impactful. Overall health of women is affected as it

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[12] Supplementary information on Chile, scheduled for review by the Committee on Economic, Social and Cultural Rights on its 55th Session. p. 6

has been repeatedly reported that those who have been denied abortion services are more likely to have chronic diseases, persistent pain and poor overall health five years later.[13] According to another study women who do have an abortion experience a less short-term anxiety and depression issues than women who have been denied an abortion, as most women who receive an abortion feel a relief. Though, women can feel regret in their first week after their abortion, still the vast majority of the women still feel relief and do feel that they have made the right decision. The Turnaway Study interviewed women in the United States for five years the effect on a group of women having had an abortion and a group of women being denied an abortion. The interviewers interviewed the women a week after obtaining an abortion and twice a year over the course of five years. The study concluded that women who were denied an abortion experienced more anxiety and lower self-esteem. However, over time women of both groups experienced the same level of depression and anxiety levels. Still, the conclusion of the researcher reads that those who are denied an abortion might be worse for a woman's mental health.[14]

2. Theory

In this section the underlying structure of thesis is outlined. Firstly, Sen's approach to global justice will be discussed to understand the underlying thought of the capabilities approach as he created the foundation of the capabilities approach, which Nussbaum has expanded. Hereafter follows an explanation of Martha Nussbaum's capabilities approach, which represents the theoretical fundamental of this thesis, where also will be a brief overview of which capabilities has been selected for the methodological use of this thesis. Lastly, this section will explore a utilitarian critique on Nussbaum's capabilities approach.

[13] J. Ducharme (2019) *''Women Who Are Denied Abortions May Face Long-Lasting Health Problems, Study Says''*, Time

[14] R. Becker (2016) *''Being Denied an Abortion Could Be More Traumatic Than Getting One'',* The Verge

2.1 Sen's Approach to Global Justice

Sen's capabilities approach is the fundament for Nussbaum's capabilities approach, which is used for the methodological underpinnings of this thesis. Capabilities approach are a concept in which lays the foundation to reach global justice through the universal application of the framework. This approach upon global justice lays the foundation for understand the starting point of the capabilities approach. Sen argues that he agrees with Martin Luther King Jr.'s social thinking, as he looked into injustices globally. King explained that people everywhere had reason to help those

suffering from injustices, deprivation and discrimination, no matter where they live in the world. Sen argues that 'We cannot have an adequate conceptual grip on injustice if we only focus on what happens locally, ignoring what happens in the rest of the world.' The base of global justice Sen shows this through Rawls' idea of justice, as this approach can accommodate concerns about the scope and feasibility of global justice. First, the demands of public reasoning need to be confined to people across borders, this can occur in many cases e.g. dealing with pandemics in Africa. Sen argues that, it could be argued that some people may be pessimistic of an international discussion due to different cultures, but it is unrealistically optimistic to think that everyone understands each other perfectly within a given country as traditions, political, social, economic and scientific thinking diverges from one another. Second, the use of theories for as well global as national judgement, lie in comparing social alternatives, where the superlative quality is not necessarily the ideal or perfect, e.g. abolition of slavery would make the world radically less unjust, not that the world would be perfect when slavery was abolished. Third, the basic relation of evaluative gradation may be of a partial order rather than a complete ordering, people who have agreed on the necessity of abolishing slavery may have disagreed on other comparisons of social institutions, as the roles given to public and private enterprises. Fourth, the domain of discourse on justice, must include behavioral patterns, which can influence the social states to emerge. Ignoring the fact that there is no need for addressing behavioral patterns, may ignore patterns such as greed (power), corruption and cupidity (money and possessions).[15]

[15] A. Sen (2017) *''Ethics and the Foundation of Global Justice''* Ethics & International Affairs, 31, no. 3pp. 261-270

2.2 Nussbaum's Capabilities Approach

In order to show what the consequences are of denial of an abortion Nussbaum's capabilities approach will help showcase this. In many parts of the world women have a disadvantaged position comparing to men. Nussbaum suggests that women in developing countries, often lack fundamental functions, are illiterate, less healthy and more vulnerable to physical and sexual abuse. If they have attempted to enter the workplace, women generally face obstacles such as; intimidation from family and the spouse, sex discrimination in hiring and sexual harassment. This is similar to political

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participation. All in all, this has a strong effect on women's mental and physical wellbeing.[16] In the framework, are the set of things a person can command, or access given their current rights and opportunities. Entitlements are setting the level for functionings and capabilities a person may enjoy. Functionings are the combinations of things a person may value doing or being; such as having a job. Capabilities are the alternative combinations of functionings that a person can achieve.[17] Capabilities are universal and focus on improving the well-being of humans, particularly in this case women will be focused on. Capabilities are universal, on the grounds of that they can be applied to all humans, as it applies cross-cultural. Capabilities is what humans are able to do and to be, generally this is focused on the individual as a human being rather than a group of individuals. As Nussbaum argues that women usually have been seen as a group of individuals rather than an individual possessing their own rights. Failure to fulfill human capabilities, sees Nussbaum as unjust.[18]

Nussbaum believes that listing a set of functionings and capabilities are not universal enough. Therefore she draws further upon Aristotelian conceptions of human nature and human experience, this will give the opportunity to identify the basic functionings that are essential for each individual to have in their capabilities set, regardless of their social location or cultural background, these functionings are also called ''central human functional capabilities''. Furthermore, she adds threshold as to

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[16] M. Nussbaum & J. Glover (1995) *'' Women, Culture and Development: A Study of Human Capabilities'',* Oxford: Clarendon Press, p.1

[17] S. Charusheela (2009) *Social Analysis and the capabilities approach: a limit to Martha Nussbaum's universalist ethics,* Cambridge Journal of Economics vol. 33, 1135-1152, p. 1136-1137 [18] Women and human development p.

measure the minimum level of each of the functionings.[18] This led to identifying 10 different capabilities;

1. Life- Being able to live a human life of normal length; not dying prematurely, or before one's life is reduced as to be not worth living.
2. Bodily health- Being able to have a good health including reproductive health; to be adequately nourished; to have adequate shelter.
3. Bodily integrity- Being able to move freely from place to place; being able to be protected against assault, this includes sexual assault, child sexual abuse and domestic violence; having opportunities for sexual satisfaction and for choice in matters of reproduction.
4. Senses, imagination and thought- Being able to use the senses and to do these things in a ''truly human'' manner, a way informed and cultivated by an adequate education.
5. Emotions- Being able to have attachments to things and people outside ourselves. To love, to grieve, to experience longing, gratitude and justified anger. Not having one's emotional development disrupted by overwhelming fear and anxiety, or by traumatic events of neglect or abuse.
6. Practical reason- Being able to form a conception of the good and to engage in critical reflection about the planning of one's life.
7. Affiliation
    A. Being able to live with and toward others, to recognize and show concern, to engage in various forms of social interaction; to be able to imagine and have compassion for a situation: to have the capability for justice and friendship.
    B. Having the social bases of self-respect and nonhumiliation; being able to be treated with dignity, whose worth is equal that of others. This includes, at a minimum, protection against discrimination, on the

[18] S. Charusheela (2009) *Social Analysis and the capabilities approach: a limit to Martha Nussbaum's universalist ethics,* Cambridge Journal of Economics vol. 33, 1135-1152, p.1138

basis of race, sex, sexual orientation, religion, caste, ethnicity or exercising practical reason and entering into meaningful relationship of mutual recognition as other workers.

8. Other species- Being able to live with concern for and in relation to animals, plants and the world of nature.
9. Play- Being able to laugh, play and enjoy recreational activities.
10. Control over one's political and material environment

A. *Political.* Being able to participate effectively in political choices that govern one's life; having the right of political participation, being protected of free speech and association.
B. *Material.* To be able to have property (both land and movable goods); having property rights on an equal basis to others; having the right to seek employment equally as to others; and having the freedom from unwarranted search and seizure.[19]

This thesis will be focusing on several capabilities: life, bodily health, emotions and control over one's political and material environment. Capability of life will particularly be focusing on maternal deaths, as women should not be dying prematurely, this is an important component as this might be one of the consequences of being denied an abortion. Another capability focused on is bodily health, in order to fulfill to have a good reproductive health, conscientious objection will be analyzed, this could be interfering as conscientious objection denies access to reproductive health care if this is claimed. Third, the capability of emotions is being examined as it is applied to interviews, where will be focused on the emotional reactions of being denied an abortion, as women have to turn to the illegal path of having an abortion clandestinely. Finally, control over one's political and material environment will be explored, applying citizenship as a fundamental notion in order to argue for women

[19] F. Comim & M. Nussbaum (2014) *Capabilities, Gender, Equality: Towards Fundamental Entitlements,* Cambridge University Press, p. 460-461

making autonomous decisions over their bodies relating to active citizenship participation.

2.3 Utilitarian Critique

Utilitarianism is a benefit-maximizing theory. The difference between Nussbaum's capabilities approach and utilitarianism is that capabilities approach requires a big sum of people or animals receive little benefit from efforts to raise them toward a capability threshold.[20] The two key critiques will be 'the absolute priority for the

below-threshold interests and her failure to supply principles of resolution of conflicts amongst below-threshold interests'.[21]

According to Stein, it is impossible to raise everyone to the threshold of all capabilities. This is not a problem in itself, rather the problem lies with that it is not possible to spend an unlimited amount of resources raising people toward the threshold, this is the so-called ''bottomless-pit problem''. Arrow states: 'There can easily exist medical procedures which serve to keep people barely alive but with little satisfaction and which are yet so expensive as to reduce the rest of the population to poverty.' The bottomless-pit problem involves diminishing returns to social spending. Stein points out that Nussbaum seems not to be aware of the bottomless-pit problem, for any nation, perhaps just the very poor nations, in which they cannot secure the capabilities up to the threshold level. Furthermore, Nussbaum suggests that it may not be possible for a nation to secure the capabilities in desperate situations. However, this situation is fairly universal, as in every nation there will be people who do not live to a normal lifespan.[22] Another issue according to Stein is that Nussbaum claims that her theory is only a partial account of justice, one that is compatible with different views about how to handle issues of justice, that would achieve all citizens arise above the threshold level, which not any of the citizens will not be able to do.

[20] Mark S. Stein (2009) *Nussbaum: A Utilitarian Critique*, 50 B.C.L. Rev. 489, p. 490
[21] Mark S. Stein (2009) *Nussbaum: A Utilitarian Critique*, 50 B.C.L. Rev. 489, p. 499
[22] Mark S. Stein (2009) *Nussbaum: A Utilitarian Critique*, 50 B.C.L. Rev. 489, p. 500

Referring to health-related capabilities she observes that the government only needs to provide the social basis. The social basis includes money this means that society could spend an unlimited amount of money to satisfy the bottomless-pit problem. The closest Nussbaum comes in addressing the bottomless-pit problem, is when she discusses that the threshold should be adjusted for those with severe mental disabilities, where society has the duty to give as many of the capabilities as possible directly.[23]

As Nussbaum has a clear rule for cross-threshold conflicts, she does not have an explicit rule for below-threshold interests. Due to the bottomless-pit problem belowthreshold conflict will always prevail. Nussbaum states 'if the capabilities list and its threshold are suitably designed, we ought to say that the presence of conflict between

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one capability and another is a sign that society has gone wrong somewhere'. Stein puts this statement by Nussbaum as ignorance, as the bottomless-pit problem guarantees below-threshold conflict, because it is a universal issue. Also, because she does not provide any distributive principles for resolving conflicts within a single capability. [24]

This utilitarian critique concerning the bottomless pit problem, is not influencing the application of the theory to this thesis, as the bottomless pit problem is focusing on the issue of prioritization of whom to help or maximizing the improvement of the capabilities. However, this thesis is solely focusing on mapping the possible consequences of being denied an abortion, and thus this critique will not be interfering with the research problem.

3. Method

The central question of this thesis being addressed is attempted to answering through determining the impacts of the consequences of being denied an abortion. These consequences are defined in the public sphere, participation in the labor market as

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[23] Mark S. Stein (2009) *Nussbaum: A Utilitarian Critique*, 50 B.C.L. Rev. 489, p. 501-502
[24] Mark S. Stein (2009) *Nussbaum: A Utilitarian Critique*, 50 B.C.L. Rev. 489, p. 505

well as politically, and in the private sphere. In order to effectively answer this question, there have been several considerations relating to the question. The notion of 'conscientious objection' being a recurring concept, as well as maternal deaths and the importance of the notion of 'citizenship' has been elucidated. The presumption of maternal death as a consequence of being denied an abortion has been examined as a hypothesis, this has been analyzed through the capability of life. The provided quantitative data may be outdated as the numbers are from between 1999 and 2009[25] on top of that these numbers have been argued by pro-life activists[26], and thus may have to be accounted for a strong biased catholic religious perspective. An example of the support of religious thinking where abortions are objected to, has been used during the Bachelet presidential campaign. The case was important to show that pregnancies

in that case can be dangerous and that objection towards abortion in some cases may become fatal for the health of the women.

Secondly, conscientious objection is the core of refusal of abortion services. This section will explore the application of bodily health, as women have the right to reproductive health care, through conscientious objection this has been denied and therefore this section will explain that access to reproductive health care has become a hurdle for women. This first will be done by explaining the term of conscientious objection. The second part of the analysis, consequences will be called attention upon, although as the material is of secondary source, one of the researches is based upon assumptions of a previous research in Uruguay.[27] Also, an interview has been used, in order to shine a different light on conscientious objection, however, this may be contingent to subjectivity.

Third, capability of emotions is applied through interviews, these interviews are of a secondary source. Interviews are a useful source, as they are depicting the experiences of people, which may help explain and better understand situations such as why women chose to turn to clandestine abortions, and/or helping to understand the emotional damages it may inflict, however as previously mentioned it should be

[25] E. Koch (2013), *Impact of Reproductive Laws on Maternal Mortality: The Chilean Natural Experiment, The Linacre Quarterly 80 (2) 2013, 151–160*

[26] L.M. Morgan (2017) *Special Sections: Abortion and Human Rights Drug Control and Human Rights,* Health and Human Rights , Vol. 19, No. 1 pp. 41-53

[27] A. Montero & R. Villarroel (2018) *A Critical Review of Conscientious Objection and Decriminalization of Abortion in Chile*, J Med Ethics, Vol. 44, pp. 279-283

[28]considered that this may show subjectivity. These interviews are implying the consequences of women being in the position of being denied an abortion, where the university students turned to illegal abortion medication. Another interview included a woman that had been denied an abortion, while she was entitled to getting one. The third interview included a doctor, helping women accommodating abortions. The last interview is related to fetal anomalies, a psychiatrist, a midwife and a neonatologist, commented upon the relationship of not having an abortion and women carrying fetal anomalies, which is said by these health care professionals to be traumatizing.[29] Though two of the interviews that have been conducted are before the era of the legalization of the law. Nonetheless, one of the interviews has been conducted after the legalization of the abortion. The importance of these interviews is to draw attention to the severity of the consequences of being denied an abortion.

Last, citizenship is explained through utilizing the capability of control over one's political and material environment this is an important notion as this gives all people access to participate within society, and particularly important for this paper, as these are fundamental rights of the people. Generally, the material used is of a strong feminist perspective, it discusses how being unable for women making autonomous decision that this interferes with active citizenship participation. [30]

4. Analysis

In the following section, consequences and effect of denial of an abortion will be presented and explained. Firstly, there is a discussion on the hypothesis whether maternal deaths are an actual consequence of being denied an abortion, where the capability of life is used. In the second section the capability of bodily health has been used in order to elaborate further upon conscientious objection. Third, the capability of emotions is used in order to explain the interviews that have been conducted amongst university students in the capital area in Santiago de Chile, and another

[28] I.P. Manríquez et. al (2018) *''Experience of Clandestine Use of Medical Abortion Among University Students in Chile: A Qualitative Study''*, Contraception, Vol. 97, Issue 2

[29] L. Casas & L. Vivaldi (2017) *''Pregnancies and Fetal Anomalies Incompatible with Life in Chile''*, Health and Human Rights Journal, 19(1): 95-108

[30] E. Bachiochi (2011) *Embodied Equality: Debunking Equal Protection Arguments for Abortion Rights*, Harvard Journal of Law and Public Policy, p. 908-911

interview conducted amongst adolescent girls exploring the option of illegal abortion. Fourth, the capability of control over one's political environment has been used to analyze the notion of 'citizenship' as it is of its importance for women to be functioning within society.

4.1. Life

Discussion on Maternal Deaths

In this chapter, the hypothesis whether a high amount of maternal deaths is a consequence of being denied an abortion will be examined. In developing countries maternal healthcare poses a concern as abortions are often illegal and unsafely performed. Despite the fact that termination of unwanted pregnancies is illegal in most of Latin America and the Caribbean (LAC), 40-42% of unwanted pregnancies result in an abortion. As abortions performed clandestinely are performed outside of proper medical facilities in unsanitary conditions this can result in maternal deaths, genital trauma, post abortion-sepsis and haemorrhage.[31] Though, there has not been scientifically found cause-effect relations between abortion restrictive laws and maternal morbidity and death. Between 1909 and 2009 the Maternal Mortality Rate (MMR) in Chile has been reduced with 93.8%.[32] In 1931 abortion laws were liberalized, however, it did not cause any reductions in MMR. As a matter of fact, in the period of the liberalization of the law, the MMR peaked in 1937 with 989 deaths per 100.000 live births, comparing to 1931 with 749 per 100.000 live births. A rapid fall of maternal deaths first occurred in 1957 (288 deaths per 100.000 live births), where there was a new nutrition system implemented for pregnant women and their children. Though, these deaths are overall maternal deaths, this includes; Abortion Mortality Rate or abortion-related deaths (AMR) and Stillbirth Rate or stillbirths (SR). In addition to the nutrition plan, after 1960, there has been an introduction in universal health access to early prenatal care and an introduction of family planning

[31] L.Bahamondes et. al. (2018) *''Use of Long-Acting Reversible Contraceptives in Latin America and the Caribbean: Current Landscape and Recommendations'',* Human Reproduction Open (1).

[32] E. Koch (2013), *Impact of Reproductive Laws on Maternal Mortality: The Chilean Natural Experiment, The Linacre Quarterly 80 (2) 2013, 151–160, p. 153*

component for women after hospitalization due to complications of induced abortion. Consequently, MMR fell again hereafter to 42 per 100.000 live births.[33] In 1989 abortion became illegal, according to Koch AMR subsequently should have increased if this is a direct cause-effect relation, unexpectedly AMR continued to decrease, to eventually 16.9 per 100.000 live births in 2009. Interestingly, Chile and Canada are the countries having the lowest maternal mortality rates on the American continent.[34] Most importantly, this rapid decrease of maternal mortality, according to Koch, is a result of improving educational levels amongst Chilean women. Higher educational levels, empower women improving access and navigate through the healthcare system and therefore enable their chances to control their own fertility.[35]

Furthermore, also pro-life activist claim that legalizing abortions do not have a relation to maternal deaths, where the Dublin Declaration is being used within Chile's case study. The Dublin Declaration is created through the catholic morals, which is also known as ''doctrine of double effect''. The doctrine double effect in The Declaration emphasizes the outcome of an action may be judged by the actor's intention. The Dublin Declaration holds abortion on any ground non permissible. Morgan argues that there is a difference between intended abortion and an unintended death of the child, as a secondary consequence of certain treatments. ''Abortion that is directly intended termination of pregnancy before viability or the directly intended destruction of a viable fetus is never permitted. If fetal death is a result from medical intervention that is required to cure a proportionately pathological serious condition of a pregnant woman and it cannot be safely postponed until the unborn child is viable then the clinician and the pregnant woman may be absolved culpability, because the

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[33] E. Koch (2013), *Impact of Reproductive Laws on Maternal Mortality: The Chilean Natural Experiment, The Linacre Quarterly 80 (2) 2013, 151–160, p. 154*

[34] E. Koch (2013), *Impact of Reproductive Laws on Maternal Mortality: The Chilean Natural Experiment, The Linacre Quarterly 80 (2) 2013, 151–160, p. 156*

[35] E. Koch (2013), *Impact of Reproductive Laws on Maternal Mortality: The Chilean Natural Experiment, The Linacre Quarterly 80 (2) 2013, 151–160, p. 157*

fetal death was unintended'', this shows the underlying perception of the double doctrine effect. [36]

Maternal mortality became politicized as activists believed that governments should be held accountable for maternal deaths, due to the fact that abortions are illegal, and thus need to be legalized. A Millennium Development Goal (MDG) is set on reducing maternal mortality to 75% worldwide, as 13% of the MMR is abortion related. Prolife activists claimed that the movement of liberalizing the abortion laws 'come in the guise of reducing maternal mortality'.[37]

An example of support of the Dublin Declaration has been set during the presidential campaign of Michelle Bachelet, where she was striving to liberate abortion laws. An 11-year old girl was repeatedly raped by her stepfather and became pregnant. However, the mother of the child claimed that the sex between the stepfather and the daughter was consensual and claimed that the arrest was unjust. As a result of the girl's age, the doctor recommended an abortion as her life was in danger. Despite that she had been raped, she had told the media that she was going to love the baby. Though, the current president Piñera, stated that an abortion was unnecessary and that the baby could be prematurely induced, if the pregnancy endangered her life. Piñera claimed that the double effect provides a better and more consistent framework and is a better alternative. Chile would be able to maintain a ban on abortion and would offer legal protection to medical personnel, while saving the pregnant women's life at the expense of fetal lives.[38]

Thus, according to research, there has not been found a direct connection between maternal deaths being a consequence of refusion of abortion services, on the contrary the numbers have significantly decreased over the years. This is the cause of women being higher educated and therefore having better access to the healthcare system. The

[36] L.M. Morgan (2017) *Special Sections: Abortion and Human Rights Drug Control and Human Rights,* Health and Human Rights , Vol. 19, No. 1 pp. 41-53 p. 43

[37] L.M. Morgan (2017) *Special Sections: Abortion and Human Rights Drug Control and Human Rights,* Health and Human Rights , Vol. 19, No. 1 pp. 41-53 p. 44

[38] L.M. Morgan (2017) *Special Sections: Abortion and Human Rights Drug Control and Human Rights,* Health and Human Rights , Vol. 19, No. 1 pp. 41-53 p. 48-49

Dublin Declaration justifies the claim through the double doctrine effect as there is no connection related.

4.2. Bodily Health

4.2.1 Definition of Conscientious Objection

The concept of conscientious objection includes several concepts: conscience, belief, objection, forum internum (freedom of conscience) and forum externum (freedom of belief). Conscience is the practical origin of personal beliefs. It has both a psychological and moral function, where judgements about the morality of practical situations and is therefore able to judge social and religious norms. There are two types of conscience, a psychological conscience and a moral conscience. Its existence of the psychological conscience is made possible of reflecting nature of human intelligence, to know that he/she has a knowledge, hence has the ability to possess a self-knowledge. In contrast to animals, humans are able to self-apprehend and distinguish themselves from the world. Moral conscience goes a step further, it adds the ability for moral judgements. A person not only knows what he does but he also assesses the morality of his action. Kant refers to the ‘’expression of the practical reason’’. He believes that every person exercises their reason in practical, with a view

to do good. Puppinck states that ‘’everything that contributes to self-accomplishment is driven by a desire to do good and by a rejection of evil’’.[39]

Conscientious objection is a component of freedom of conscience. Conscience is subject to rights only insofar it included duties on the person. Thus, conscience first imposes a duty before it becomes a right. The duty of conscientious objection is provided for in domestic law under certain conditions. In France, the legislation for civil services recognizes the duty of a civil servant disobeying a legitimate authority if the orders are illegal and will compromise with public interest. Furthermore,

[39] G. Puppinck (2017) *Conscientious Objection and Human Rights: A Systematic Analysis*, BRILL, p.3-4 [41]Ibid. p.16

Puppinck points out that lawyers, physicians cannot be subject to a hierarchical power, because they conduct their jobs with conscience. A physician has the duty to exercise his profession with ‘’conscience and dignity’’ that his ‘’duty to refuse his care for professional or personal reasons except in case of an emergency or if doing so he would fail his duty in humanity’’ is recognized.[41]

Conscientious objection as a right can conflict with domestic law as it implies a contradiction. The legal order sets an obligation, but at the same time sets a possibility for not meeting it. However, in domestic laws of several countries in case of abortion doctors are not obligated to perform an abortion, unless it is an emergency.[40]

The Human Rights Committee states: ‘’ the right to freedom of conscience does not as such imply the right to refuse all obligations imposed by the law, nor does it provide immunity from criminal liability in respect of every such refusal’’. To determine whether the claim to conscientious objection is valid several criteria is being considered:

- whether the refusal comes from a reasonable person.
- whether the situation implies a positive freedom (power to act) or negative freedom (not being obliged to act) of conscience and religion.
- whether the objection originates in simple personal conveniences or in a prescription of conscience.
- whether conscientious objection obeys moral or religious prescriptions
- whether there is proximity between the act and the objection’s content.[41]

First, to determine whether the refusal originates from a reasonable person, this determination involves the person’s behavior who has the use of reason. A person that does not yet acquired (a child) or no more enjoys (a madman) the use of reason is unable to claim conscientious objection. Communities cannot claim conscientious objection, as a community does not possess a reason. Though, they may be able to refuse to perform certain practices as it is opposed to their beliefs.[42]

[40] Ibid. p.17
[41] Ibid. p.31-32
[42] Ibid. p.32-33

Secondly, positive freedom is related to the faculty of manifesting one's beliefs by external acts, such as teaching, worshipping, practice and observance. These can affect competing rights and interests. It does not guarantee the right to act in a manner dictated by a belief, this does not justify individuals to not comply rules, such as assisted suicide.
Negative freedom, or the freedom not to hold a religious belief or not to practice a religion. This negative freedom entails to refuse to take a religious oath, to participate in a religious class or indoctrination, this negative freedom generally applies to religious minorities.

The third step in order to determine conscientious objection convictions and personal conveniences are distinguished, the quality of the conviction in the name of which the subject expressed his objection is distinct from the quality of objection. Criteria are set to determine this;

- The beliefs must be a genuine-held religious belief.
- The content of the belief must be identifiable.
- When they are of religious nature, they must be linked to a widely known religion.
- When the beliefs are not of religious nature ''the expression of philosophical convictions denotes such convictions that are worthy to respect in a democratic society and are not incompatible with human dignity.[43]

In order to determine conscientious objection, the criteria named above are examined. The first quality criterion, a person cannot object only intermittently or out of opportunism. An example of this is a doctor could object on performing an abortion in the hospital but not in the private sphere. Secondly, ''The objection should result from a serious and insurmountable conflict between the obligation and a person's conscience or his deeply and genuine held religious or other beliefs.'' Lastly, the objection should not be based on ''reasons of personal benefit or convenience but on the ground of his genuinely held convictions.[44]

[43] Ibid.p.40
[44] Ibid. p.41-42

Fourth, to determine conscientious objection distinguishing moral objection and religious objection will be examined. This distinction is not always perceptible by someone who has doubts about rationality or who does not conceive the difference between faith and reason, between natural and supernatural orders. Moral objections are a consequence by conscience upon the nature of the act objected to in the light of the basic moral standard (doing good and avoiding evil), this is independent of religion. ‘’Religious objection results from a religious or cult-related prescription, the acceptance of which by individual’s conscience necessitates an act of faith and does not impose itself on reason’’. Religion solely prescribes guiding principles. Religious objection does not directly question the act objected to, since the latter is unjust only from the point of view of the religion. There is also a mixed objection, some people invoke only on their religious beliefs when they are objecting, however this mainly comes from their moral nature. This can conflict of the concept of conscience objection, it also weakens the objection in question, tainting whether the objection is of a moral nature or of a religious nature.[45]

In order to recognize whether an objection is claimed on moral grounds, there are four criteria for this. Firstly, the objection should be aiming at justice and/or good, it should oppose an attack against a fundamental right (e.g. the right to life) or against an objective good (e.g. the natural environment). Secondly, the commandment objected to derogates from a right or a basic principle. This objection can be noted from positive laws or in the history of its norm, the application of which is refused.

For example, abortion is the only exception on the principle of respect for human life. Laws that allow abortion, often include a conscience clause. Abortion is not necessarily decriminalized out of respect of widespread opinions about abortion, rather so no one would have to participate in an objective of evil, which is alien to the normal practice of medicine. Thirdly, the objection is universalizable, Kant adds an extra criterion to rationality and justice: ‘’Act only according to that maxim whereby you can, at the same time, will that it should become a universal law’’. This universalizable is related to respecting others’ rights, it is directed towards common

[45] Ibid. p.45-48

good. A non-universalizable objection will be aimed at a particular good, and therefore will not express a rational moral conviction focused on justice. Finally, the objection is about an ethically sensitive question. It is difficult to judge morality in some fields where consensus on the matter no longer exists. Society may not agree about what is good, though some questions are debatable due to the high ethical sensitivity of the nature of the objection. [46]

To judge an objection, object (the act) and motive (the conviction) must be taken into account. There must exist a close a direct nexus between the motive and object of the objection. If the objector is forced to commit the act he is objecting to, he is morally committed, and the question of distance is irrelevant (when a physician is ordered to perform an abortion). On the other hand, if he does not perform the act, but plays a role in the procedure of the act, the distance must be evaluated. Direct nexus means that the person would be forced to commit an act he is morally opposed to. This allows to take situations into account that create a double effect, an act that produces both good and bad outcomes. An evil act can be justified if the price to be paid for it is morally good or at least equal to it, the sought good must not result from the evil, thus the evil should only be a side-effect from the act. There is a need for close nexus as it must be determined whether the collaboration in the act must be sufficiently close or near for the objection to be justified. Since the objector's collaboration is needed for the performance of the act, it is morally committing, and the objection is justified. For example, a doctor that does not want to perform the abortion himself, but he does give out information on a doctor who does perform the abortion. He is morally committed, and contributes to the abortion, since he contributes to the information.[47]

In the end the state has a positive obligation to fulfill, aiming to protect the conscience objector rights, and to reconcile in contradictory rights and interests.[48]

[46] Ibid. p.49-53
[47] Ibid. p.53-55
[48] Ibid. p.62

4.2.2 Conscientious Objection

The Chilean Constitution ensures free and equal access to programs designed to promote, protect and improve health. The state must ensure that everyone is offered access to both private and public health care institutions. Though, private health care providers are more likely to refuse abortion services to patients. The only option to access abortion is through the overcrowded public health care system. Recent estimates of abortion performances in Chile is approximately 100.000 per year.[49] The Abortion Bill got passed in 2017, although the bill eventually also elevated conscientious objection to status of a right. This allowed physicians to register as objectors by providing a written notice to hospital administrators. Registered objectors are not required to perform abortions, unless there are no other physicians available to assist in a life-threatening situation requiring immediate pregnancy termination.[50]

Introduction of the abortion bill caused a debate on conscientious objection that involved ranging from heads of the public and private universities to scholars, top government officials, legislators, members of society and representatives of the medical profession. When Bachelet called for an open-minded debate, within hours the Chile's largest Catholic hospital network warned in the media that the entire institute would claim conscientious objection and refuse to consider legislation. Montero and Villarroel, argued that the discussion shows that conservative groups hold conscientious objection as a weapon to fight new legislation, and will be used again when the new bill has been passed to keep women away from accessing legally guaranteed abortion services. The bill allowed physicians performing the procedure

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the right to assert objector status, however, institutions were not granted this right. Also, it disallowed to refuse rape cases if these were expiring. Conservative lawmakers applied to the Constitutional Court, arguing that the constitutional rights were violated under the three cases that abortion was allowed, the Court ruled that the constitutional rights were not violated. The bill was signed into law in September

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[49] A. Montero & R. Villarroel (2018) *A Critical Review of Conscientious Objection and Decriminalization of Abortion in Chile*, J Med Ethics, Vol. 44, pp. 279-283, p. 280

[50] A. Montero & R. Villarroel (2018) *A Critical Review of Conscientious Objection and Decriminalization of Abortion in Chile*, J Med Ethics, Vol. 44, pp. 279-283, p. 280

2017, in its final form the law allows conscientious objections of both physicians and institutions. Though physicians and institutions must refer a patient to a non-objector physician. Furthermore, physicians are not allowed to refuse a patient in a lifethreatening situation, where removal of the fetus is a consequence thereof. [51]

Montero and Villarroel have argued that Uruguay portrays a similar situation as Chile in the future, might find themselves in. Uruguay passed an abortion law recognizing conscientious objection. The law guaranteed women being able to make their choices on a reproductive level, without any interference. However, it was expected that 30% of gynecologists were going to claim conscientious objections. The case was that eventually in Salto all gynecologists claimed this, and thus denied access for women to reproductive health choices in this particular area. [52] Numbers in Chile of conscientious objectors show that 50% of the doctors will not carry out an abortion if a woman has been raped, 29% of the doctors will not perform an abortion if the fetus is unlikely to survive and 21% of the doctors will not provide abortion services if the mother's health is jeopardized.[53]

An example of a doctor claiming conscientious objection is Dr Luis Jensen, he says that '' 40 years ago in medical school we were meant to serve life, to restore health and cure illnesses. We were never taught to give treatments to kill.'' Further he says that, if the mother's life is at risk, he would perform an early Cesarean Section, in his view this does not constitute a termination as the aim of the operation is not to destroy the fetus. He argues that, if a woman had been raped or her fetus is unviable, he would encourage her to continue the pregnancy, as this would be better than knowing you have killed your own child.[54]

[51] A. Montero & R. Villarroel (2018) *A Critical Review of Conscientious Objection and Decriminalization of Abortion in Chile*, J Med Ethics, Vol. 44, pp. 279-283, p. 281
[52] A. Montero & R. Villarroel (2018) *A Critical Review of Conscientious Objection and Decriminalization of Abortion in Chile*, J Med Ethics, Vol. 44, pp. 279-283, p. 282
[53] G. Livingstone (2019) *''The Women Seeking Abortions Turned Away by Doctors in Chile'',* BBC Santiago
[54] G. Livingstone (2019) *''The Women Seeking Abortions Turned Away by Doctors in Chile'',* BBC Santiago

Certainly, there are limitations of conscientious objection, though, there are still barriers created by conscientious objection. The World Health Organization (WHO) has recognized that a barrier to lawful abortion can impede women from reaching the services which they are eligible for, this could potentially lead to unsafe abortion. Furthermore, the WHO points out that ''health services should be organized in such a way to ensure that effective exercising the freedom of conscience, of health professionals does not prevent patients from obtaining access to services to which they are entitled under the applicable legislation. It recommends the establishment of national standards and guidelines facilitating access to and provision of safe abortion care, including the management of conscientious objection''.[55]

According to Chavkin et. al. women in countries where abortions are widely available and find themselves in a position where an abortion will be rejected are more likely to find a new provider than in those where services are restricted. Widespread conscientious objection limits the numbers of providers, and thus access to safe health care, after legalization of abortion numbers of unsafe abortion have not decreased. The second example shows that even though that there is a post abortion care program to mitigate the damages that unsafe abortions can inflict, conscientious objection is often invoked when abortion is suspected of being induced rather than spontaneous.[56]

To conclude, Chile is under the spell of the Catholic Church, as they were trying to stop the new abortion law to be passed. Due to conservative lawmakers, conscientious objection was taken into consideration when passing the new abortion bill, which can cause women to be rejected from safe abortion. Widespread conscientious objection limits the number of providers, and thus are being denied access to safe health care.

[55] C. Zampas (2013), *Legal and Ethical Standards for Protecting Women's Human Rights and the Practice of Conscientious Objection in Reproductive Healthcare Settings*, International Journal of Gynecology and Obstetrics S63-S65, p. 64-65

[56] W. Chavkin et. al. (2013), *Conscientious Objection and Refusal to Provide Reproductive Healthcare: A White Paper Examining Prevalence, Health Consequences and Policy Responses*, International Journal of Gynecology and Obstetrics S41-S56, p. 45-46

4.3. Emotions

4.3.1 Interviews Illegal Abortions

One of the studies that show the effects of illegal abortion, is this study, which includes interviews conducted amongst university students. This particular study explores how abortion pills are obtained through the university network. Women often turn to illegal pills as they are either not eligible for an abortion or they are refused abortion services. 30 students from different universities in the Santiago de Chile metropolitan area have participated in this interview, who have had a medical abortion between 2006 and 2016 while attending university, aged between 17-26 years. All women were single at the time of abortion, all but five became pregnant with their partner at the time of their study, two with ex-partners and three who had occasional partners. [57]

These women believed medical abortion was the right choice due to two reasons. Firstly, their knowledge accurate or not of its clinical attributes it seemed to be the safe method. Secondly, its use is self-managed, thus in their own hands. To proceed with the abortion women first have to go the doctor to determine how far along their pregnancy is. From peers they learned how much time they had to obtain the pills for the abortion. Several organizations, such as Women on Web (WoW) and Linea Aborto Chile (Chile Safe Abortion Hotline) offer information and are the main source for this type of abortion.[58] Issues arise as often the authenticity of the pills should be questioned, as these pills are on the black market. However, women often found a pill seller in their university network. Through the network of the students, they learned to recognize the authenticity of the medication, as counterfeit pills risks both parties of denunciation to the police. A second manner to obtain the pills is through Internet purchase. There is usually an instruction on dosage, effectiveness, use and recognition of completion of the abortion enclosed, needless to say contact details are of an anonymous seller. Hereafter follows a face-to-face encounter in a public space with many people circulating. Though, this can bring consequences of, if there is police involvement in the transaction, a plant by the police. This brings many fears for young

[57] I.P. Manríquez et. al (2018) *''Experience of Clandestine Use of Medical Abortion Among University Students in Chile: A Qualitative Study''*, Contraception, Vol. 97, Issue 2
[58] I.P. Manríquez et. al (2018) *''Experience of Clandestine Use of Medical Abortion Among University Students in Chile: A Qualitative Study''*, Contraception, Vol. 97, Issue 2

people. The third manner whereby pills can be obtained is through organizations as WoW or Aborto Linea Chile, these organizations provide answers to questions, instructions and monitors what happens, though WoW restricts sending medication to pregnancies less than 10 weeks at the time of abortion, usually this takes 4 weeks for the medication to arrive. Only four women have used this method, however half of the women asked for instructions or advice to either of the organizations. [59]

As these pills are self-monitored, every woman reacts differently on these pills which can make it hard to observe whether the abortion is completed. Some thought the abortion was not completed or had failed as they claim to not start to bleed soon enough or with enough blood loss. Others had prolonged and excessive bleeding claiming that the abortion had not ended yet. Natalia stated that *''The whole night I had terrible pain. I thought I was going to die of bleeding. It's not possible to imagine the suffering it was a horrible physical pain''*.[60] Pain is part of the abortion, although complications might be hard to detect as women only can have perceptions, as it can be problematic to consult a doctor.

Pills are also extremely expensive taking in mind that the medication costs around 250 US dollars, when an average monthly salary in Chile is approximately 800 US dollars. As the line is drawn by 10 weeks in order to take the pills, this can cause women in delaying getting hold of the medication as money is a problem, this can result in getting fake pills, or waiting for a shipment abroad. Money is also needed for medical consultations. Elisa stated *''Being delayed made the abortion a very heavy experience, because I saw the fetus. I'm sure that wouldn't have happened earlier, but the money was just not there''*[61] Most women having access to misoprostol, are coming from wealthy families.

[59] I.P. Manríquez et. al (2018) *''Experience of Clandestine Use of Medical Abortion Among University Students in Chile: A Qualitative Study''*, Contraception, Vol. 97, Issue 2
[60] I.P. Manríquez et. al (2018) *''Experience of Clandestine Use of Medical Abortion Among University Students in Chile: A Qualitative Study''*, Contraception, Vol. 97, Issue 2
[61] I.P. Manríquez et. al (2018) *''Experience of Clandestine Use of Medical Abortion Among University Students in Chile: A Qualitative Study''*, Contraception, Vol. 97, Issue 2

Clandestinity brings three major issues of fear and risk with abortion: failure, death and prison. First, the fear of continuation of the pregnancy and having a baby. Second fear is hemorrhaging and death. The third fear is the fear of being discovered by the police when buying pills illegally or being reported if hospitalized. Florence stated *''I was afraid of everything. At one point I thought I might die. Afraid of being taken to the police station, afraid of having a D&C, afraid of infertility, afraid of anybody knowing because I was still bleeding, afraid of people and loneliness. It's you and your decision, and even though there is someone next to you, you are always alone.''* Most of these women had not mentioned that they had induced an abortion, when they were in need of medical attention. Renata said: *''This was a clandestine situation… I would have to act surprised, put on a performance. I was not going to say I had an abortion or expose myself to abuse or be denounced.''* Some were still afraid to be discovered, though none of them were reported to the staff, either because the abortion was not detected or the staff, maintained confidentiality.[62]

4.3.2 Statements of Consequences of Being Denied An Abortion

Adriana's fetus was unviable, and thus unlikely to survive, she sought for an abortion, since her situation is an exception, and she should be able to obtain an abortion. Adriana asked her doctor to help her terminate her pregnancy, but he refused. She said 'he gave me two options: to wait until the fetus dies or to pray. Hereafter she went to a public hospital in Santiago, but the staff seemed have no knowledge of the abortion law, thus they would not help her terminate the pregnancy. The third hospital she visited agreed to carry out an abortion, however they needed the original diagnosis from her first doctor, which he refused. Eventually she had to contact the ministry of health, which arranged for her to have an abortion. By the time she was 26 weeks pregnant, where she eventually gave birth to a dead fetus.[63]

In another interview medical staff had been questioned relating to fetal anomalies and their opinions regarding therapeutic abortion (abortion in case of fetal anomalies).

[62] I.P. Manríquez et. al (2018) *''Experience of Clandestine Use of Medical Abortion Among University Students in Chile: A Qualitative Study''*, Contraception, Vol. 97, Issue 2

[63] G. Livingstone (2019) *''The Women Seeking Abortions Turned Away by Doctors in Chile'',* BBC Santiago

They did downplay physical or health risks, but they did agree that this could have significant negative impact on their mental health. A neonatologist said: *'The issue put me in quandary… Before I started here, I was against abortion, but I've seen so much suffering in these mothers that go through nightmarish pregnancies … Those brainless patients that only breathe for three hours and then die, the poor mothers have to carry those pregnancies to full term- it's heart rending.'* A midwife noted that not providing reproductive health care is inconsistent with women's sexual and reproductive rights. A psychiatrist said: *'It's abhorrent that in this country we've made so much progress in biomedicine but still think as if we were back in the Middle Ages … If we have prenatal diagnostics, if medicine has made such progress, then we ought to have therapeutic procedures that are consistent with such progress. A therapeutic abortion ban does unthinkable violence, is unethical, and contradicts the basic principles of bioethics.'* Though, not all health care providers agree with these statements as some are opposing to the abortion bill as they say that women are strong enough to deal with experiences such as these.[64]

Not all doctors are objecting to perform abortions, on the contrary some doctors help obtaining illegal pills for women. Dr. Eduardo Ramirez, explains that the cultural impacts of machismo, impacts women from all socioeconomic backgrounds. He helps accommodating illegal abortions for free, across all socioeconomic classes. He notes that most of the patients are from wealthy backgrounds, usually they are strict Catholic, 'they do it all alone as they cannot tell anyone what is going on in their lives, this can be profoundly psychologically damaging'. He serves one patient per week he only provides misoprostol to perform an abortion. He buys the pills himself, then gives them to women, where he checks up on them every couple hours. He offers house visits after they have taken the medication and support in case of complications.[65]

Overall, these interviews of being denied an abortion, first the interviews with the students show that these women have to turn to illegal resources of having the option

[64] L. Casas & L. Vivaldi (2017) *''Pregnancies and Fetal Anomalies Incompatible with Life in Chile''*, Health and Human Rights Journal, 19(1): 95-108

[65] E. Hellerstein (2013), ''*In Pursuit of Choice'',* Berkeley Review of Latin American Studies.

of obtaining an abortion. Women often do not know how the use of the illegal pills is going to affect them physically while using the pills, the danger of using these is that are unable to detect complications. They are often afraid that if there are complications they may be caught by a doctor and will be send to prison. Furthermore, they may obtain fake illegal pills, their abortion will fail. As these pills

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are expensive this may cause in delaying an abortion, which causes one of the women to see the fetus, which made the experience more traumatic. Adriana experienced giving birth to a death fetus as it suffered from anomalies, while she was denied having an abortion twice. A psychiatrist, midwife and neonatologist stated that this could be severely impactful on women's mental health. Another doctor even accommodates abortions illegally for women of all socioeconomic backgrounds.

4.4. Control Over One's Political and Material Environment

4.4.1 Definition of Citizenship

Citizenship has been an important principle in history and nowadays still is. In this part the importance of citizenship will be explained, as citizenship is important in order to participate in society. Citizenship can be defined as a defined legal or social status, a means of political identity, a focus of loyalty, a requirement of duties, an expectation of right and a yardstick of good social behavior.[66]

Membership is the broadest quality of citizenship, as this makes a citizen a member of a political community. Citizenship does entail certain rights or privileges and a set of duties and obligations. Though, Pierson notes that clearly there are privileges included in citizenship, this then also means that some of the population is also dis-privileged, by exclusion. Formal membership, in the modern state is not restricted on basis of gender, employment status or religious affiliation. However, often is that long standing residents, who are subject to the same duties as citizens are excluded from participation in political decision-making.[69]

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[66] C. Pierson (2011) *The Modern State*, 3rd edition, Routledge, New York, p.111 [69]
Ibid. p.112-114

Citizenship is also a form of a status it is an ascribed quality obtained at birth. Citizenship identifies political citizenship, with ethnic identity and marrying citizenship not just to the nation but also to the 'imaginary community' of nationalism, thus it is also important part of identity. Often in former colonial states, national citizenship may not be perceived as a set of legal rights rather as a badge if national identity. Banishment of citizenship rights is the most severe sanction that can be imposed after having committed a criminal act.[67]

Citizenship is also defined as a positive legal status it is attached to set of justifiable rights and duties. Citizenship is a French Revolutionary tradition 'Rights of Man and the Citizen', to be a citizen is being a bearer of a set of fundamental rights. Marshall identifies three components within citizenship rights: political, social and civil rights. Pierson denotes that Marshall's form of citizenship is too passive as there a no duties, and the relationship between the state and its welfare beneficiaries is too clientelistic. As citizens of welfare-states have become too ready to press their entitlements of welfare benefits without recognizing that they have corresponding duties. Citizenship needs to be balanced therefore it entails both duties and rights. There are two types of duties, a civic duty is ''something a good citizen ought to do'' and a legal duty ''something which the citizen is required to do by law''. [68]

Often is argued that the first virtue of citizenship is active participation. Individuals in modern states have become consumed with private interests and their private wellbeing. People became less concerned with the good of the community, which should be the first consideration to be a good citizen. Kymlicka and Norman draw a distinction between two concepts of citizenship: 'citizenship as a legal status', this is a full membership in a political community and 'citizenship as a desirable activity', this is where the extent of one's citizenship is a function of one's participation in the community. [69]

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[67] Ibid. p.115-116
[68] Ibid. p. 117-121
[69] Ibid. p. 129

4.4.2 Citizenship Debate

Latin American history suggests that women always have had equality problems in society. This was then also not different in Chile, due to the Catholic Church interfering within politics Chile remained conservative regarding to women's emancipation. Jaquette suggests that women have been absent from institutional power for decades. Political culture in Chile has a sexual division as men are to produce and women to reproduce, this sets norms and shapes identities that stereotypes and discriminates against women. These norms and stereotypes in social and political participation make women feel that their social interest and demands are not being taken seriously, therefore women are less likely to be committed to political active participation than men.[70]

Poverty is then also a consequence thereof. Many women participate on the labor market to break this conservative pattern. However, women find themselves often experiencing subordination and discrimination. Majority of the women that have a job are poorly paid, lack job security, require fewer qualifications and are not ensured social security. Furthermore, women experience issues to participate fully in the labor market as they often have pressure from their families, cultural orientations, increasing educational requirements and need to take care of young children.[71]

These patriarchal structures interfere with women making their own reproductive choices. Women that cannot fully participate in society, and thus cannot fully enjoy their right to citizenship, this then interferes with the right to have an abortion. The right of abortion is needed in order for women to participate equal citizens. Siegel states that ''abortion laws treat women as citizens who are expected perform the work of parenting as dependents and nonparticipants in the citizenship activities in which men are engaged''. Siegel's vision on citizenship implies that women should have the autonomy to make decisions and participate equally in the spheres of education, work and politics as to men. Anti -abortion laws and in this case a denial of an abortion contravenes this guarantee by forcing pregnant women to become mothers. Siegel's

[70] Jaquette, Jane S. ed. 2009. *Feminist Agendas and Democracy in Latin America*, Duke, University Press, Durham, London p. 173
[71] Ibid. p. 174

definition to ‘fully participation’ of citizenship includes activities in which dependent mothers cannot participate in, thus dependent mothers are not full citizens. She further argues that core pursuits of citizenship have been designed for those unburdened by the obligations of family care. The core rights and duties of citizenship: the right to vote; to appeal and to be heard by one’s public representative and to assemble in favor of political cause, these core rights and duties do not conflict with active participation in citizenship in itself. The issue that conflicts is labor, ‘in the spheres of work, education and politics.’ Bachiochi points out that Siegel’s argument then also means that unemployed men and women are excluded from active participation. Further Bachiochi argues that this approach is not an approach for an ordinary citizen, but solely focused on restrictive abortion laws. She goes on that if Siegel means that the

children the women have raised are not presidents, legislators or judges then most of the men are not equal either. Camille Williams quotes ‘’many of us see our work in the family the first and most important contribution we make to a humane and caring community. The notion that women are home isolated from society is archaic and offensive.’’[72]

In short, women in Chile are being disadvantaged within society, as they face discrimination due to patriarchal systems. They are often pressured by their families, cultural orientation and the need to take care of younger children, this causes women to be strongly underpaid and lack job security. Women cannot fully participate in society as they are not being taken seriously and can therefore not make their reproductive choices. Siegel notes that being denied an abortion contravenes the autonomy to make decisions, as citizenship is designed by those unburdened by the obligations of family care. Thus, in order for women to be autonomous citizens and fully enjoy citizenship abortion should be accessible.

[72] E. Bachiochi (2011) *Embodied Equality: Debunking Equal Protection Arguments for Abortion Rights*, Harvard Journal of Law and Public Policy, p. 908-911

5. Conclusion

5.1 Possible Considerations

As this thesis is focused on exploring and map the consequences of being denied an abortion, it still may be important to review certain considerations and add other views as they may be contingent to subjectivity of opinions.

5.1.1 Conscientious Objection or Dishonorable Disobedience?

Fiala and Arthur imply that conscientious objection, once the clause is accepted in reproductive health care it becomes impossible to control or limit. Conscientious objection laws require doctors to refer to another doctor who will provide the service, though this often does not happen, as they believe that giving out information or a referral, means that they are participating in the service, thus violates their conscience. This may cause malpractice as they may refuse to refer, make a referral to an antichoice counselling agency, treat the patient disrespectfully, fail to disclose the services they will not provide or why, refuse to give any information on option, to provide misinformation on options or delay a referral until it is too late for an abortion.[73] An example of this was the interview with Adriana as her doctor refused to hand over her original diagnosis in order to receive an abortion at another doctor. Another requirement to abide conscientious objection is to provide emergency care, although some doctors will risk a woman's death than perform an abortion. Fiala and Arthur argue that this legal requirement of providing services in a life-threatening situation is unworkable, as some medical staff have a 'wait and see' approach until it is too late. Another argument is that to serve the public there is an ethical obligation, those entering these professions are expected to subordinate their own interests and beliefs in order to serve others. Health care professionals have entered such careers of their own free will after successfully competing for training and positions, knowing in advance the full range of duties they will be expected to perform and their responsibility to patients who depend on them.[74] Fiala and Arthur argue further that

[73] C. Fiala and J.H. Arthur (2014) *''Dishonourable Disobedience- Why Refusal To Treat in Reproductive Healthcare Is Not Conscientious Objection''* Woman- Psychosomatic Gynaecology and Obstetrics, Vol.1, pp. 12-23 p. 13-14

[74] C. Fiala and J.H. Arthur (2014) *''Dishonourable Disobedience- Why Refusal To Treat in Reproductive Healthcare Is Not Conscientious Objection''* Woman- Psychosomatic Gynaecology and Obstetrics, Vol.1, pp. 12-23 p. 15

conscientious objection is unworkable, inappropriate, unethical and unprofessional in reproductive health care, this refusal to treat should therefore be called dishonorable disobedience. Women search medical help from doctors as they want to obtain an abortion, which medical staff can provide for them, but women cannot carry them out save themselves. If women are unable to access abortion from doctors, they are likely to perform unsafe do-it-yourself abortion, which may be more harmful for the women's lives than having an abortion carried out by a professional safely that protects her life. This principle discriminates against patients, as they are in need of services which is legally available but being refused. A health care provider's personal right of conscience should be limited to protect the rights of others including their safety and health.[75]

5.1.2 Dublin Declaration

The Dublin Declaration has been used to form doubts relating to legalizing abortion and maternal deaths. This is generally used by pro-life activists framing that legalizing abortions will not reduce maternal mortality. According to Proctor the goal of this strategy is to deceive the public and produce public ignorance by intentionally generating statements that will mislead the public for commercial, political or ideological purposes. He argues further that, this is extremely effective when especially the topic is technically complicated. Though, the success of this strategy depends on the publicity that will take the message to the highest rank of policymaking.[76]

5.2 Concluding Remarks

This thesis aimed at exploring and mapping the consequences of being denied abortion services in Chile and how this influenced women by answering the research question whether it is enough to legalize abortion in order to fulfill the capabilities,

[75] C. Fiala and J.H. Arthur (2014) *''Dishonourable Disobedience- Why Refusal To Treat in Reproductive Healthcare Is Not Conscientious Objection''* Woman- Psychosomatic Gynaecology and Obstetrics, Vol.1, pp. 12-23 p. 18-19

[76] L.M. Morgan (2017) *''The Dublin Declaration on Maternal Health Care and Anti-Abortion Activism'',* Health and Human Rights Journal, 19 (1): pp. 41-53

for women to live a ‘good’ life. Firstly, this thesis has addressed through the capability of life defined as: ‘living a full life’ or ‘not dying prematurely’ the hypothesis whether legalizing abortions will reduce maternal deaths. Research shows that this is not the case, as a matter of fact, numbers between 1909 and 2009 have significantly decreased with 93.8% over the years, while abortion was still illegal. Therefore, it has been argued through the Dublin Declaration, that it is unnecessary to legalize abortion.

The second discussion which has been argued through the methodological underpinnings of the capability of bodily health, is conscientious objection, which has been said previously that this has been the fundament, to determining whether women’s reproductive rights may have been infringed. This is confirmed, as conscientious objection is a clause that has been introduced through the Catholic Church, which has given the possibility for health care professionals to reject performing and accommodating abortion services. Villaroel and Montero had carried out a research in Uruguay where in the Salto area all gynecologists had claimed conscientious objection, this is the reason that Montero and Villaroel are predicting a similar situation will occur in Chile. Doctors claiming conscientious objection are arguing that they have learned to save lives rather than killing lives. Though, Chavkin, Montero and Villaroel are arguing that conscientious objection is an obstacle for

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women in order for them to claim their reproductive rights, as they are legally entitled to abortion services, still, they are being denied this right. Furthermore, claimers of conscientious objection may *not* be rejecting a patient in a life-threatening situation, thus in case of emergencies doctors *must* refer the patient to another doctor who does not claim this particular clause.

Further, the third section of the analysis, has been analyzed through the capability of emotions as this is defined as: ‘Not having one’s emotional development disrupted by overwhelming fear and anxiety, or by traumatic events of neglect or abuse.’ There have been interviews conducted amongst university students, who are discussing, what options they are turning to since they are not eligible to have an abortion. As they are turning to illegal pills obtained and information on pill use through connections in the university, or through organizations helping women obtaining pills and spreading sources of information. Women are scared for three things with this clandestine option: failure of abortion, death and prison. Some students experienced this as traumatic, as they cannot trace complications, they are afraid to be admitted to

the hospital, where they can get caught and convicted. Another issue is that there are illegal pills on the black market, some women cannot identify whether it is a real or a counterfeit pill, though often information is enclosed regarding this matter through organizations as WoW. In another interview a doctor has admitted helping women accommodating and helping them to get through these abortions, in case of complications he is able to assist. Another interview shows that Adriana, sought for an abortion, but she got denied twice, where her doctor committed malpractice as he violated the need to hand over the original diagnosis because he believed that he was still accommodating the abortion. Since conscientious objectors must refer them to another doctor that wants to carry out an abortion. A psychiatrist, a midwife and a neonatologist confirm that in the case of Adriana that this is a traumatic experience. Thus, these interviews show that being denied an abortion can cause traumatic experiences where women often turn to illegal resources, which may jeopardize their health.

Finally, exploring the final consequence has been carried out through the capability of having control over one's political and material environment, meaning: 'having the right of political participation'. In this section the notion of citizenship has been examined. Patriarchal structures in Chile are often discriminating women, as women are often suffering under poverty, as they lack job security, are poorly paid and usually have lower qualifications than men. These structures are interfering with their political life as well. Siegel is arguing that women cannot fully enjoy political participation and thus make not fully use of their citizenship rights, if they are unable to make autonomous decisions of their body. This implies that women in Chile being denied an abortion or are unable to access abortion services, cannot fully enjoy political participation and thus being denied an abortion is a violation on women's citizenship rights.

All in all, this thesis shows that only legalizing abortion is not sufficient, as these findings show that conscientious objection has a tremendous role in preventing women from accessing an abortion, because women's mental and physical health can be at stake in certain circumstances.

5.3 Future Research

The problem of being denied an abortion requires further research. One of the difficulties in addressing the issue is determining the exact numbers of how many

women actually realize the consequences of being denied an abortion. Studies could merely focus on the quantitative research relating to maternal deaths as numbers are latest updated 10 years ago, which requires a transparent source from the government to properly research the maternal deaths relating to a clandestine performed abortion. The debate surrounding maternal deaths is strictly divided and generally influenced by conservative influences within the government. As the studies surrounding maternal deaths are strongly rejecting any relation between these, and therefore are concluding that abortion performances are unnecessary to legalize this also excludes subjectivity. Combining a more subjective view upon the conclusion of pro-life activist this may shed a new light upon solutions that might be exposed and implemented.

Furthermore, in light of the research question and the answer to this, further discussion is applicable relating to the matter of conscientious objection, in order to find out how it is possible to improve the circumstances relating to this clause. As it not sufficient to only have abortion legalized in order to gain access to reproductive rights. In order to continue this research, interviews *after* the change of the abortion laws would be needed to map the real effects, and perhaps a debate to add requirements that protect those who are eligible for abortion services.

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