

He Said, She Said: Søren Kierkegaard and Simone De Beauvoir's Divergence on
Existentialism and Feminism's Role in Abortion

by
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Abstract

In an attempt to strengthen the right to privacy regarding abortion as outlined in *Roe (1973)*, *Casey (1992)* significantly eroded its core principles. Ultimately, the recent *Dobbs (2022)* decision overruled both cases. While both Søren Kierkegaard and Simone de Beauvoir were existentialist philosophers, their writings diverge when applied to *Dobbs (2022)*. Although initial examination of Kierkegaard's consistent push towards human subjectivity and personal choice leans toward a legitimate right to privacy, further analysis shows that he viewed women as incapable of making decisions regarding abortion. Women are likely to remain within the aesthetic arena, and valid choices are only made within the ethical stage. So, the immediate choices they make in the aesthetic are null and void. De Beauvoir decried such a perspective on women. She critiqued women's otherness relative to men in society, pushed for female autonomy, and rejected gender norms. When their philosophies are applied to the majority, concurring, and dissenting opinions in *Dobbs (2022)*, they arrive at different conclusions.

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CHAPTER 1: INTRODUCTION

Background

Throughout the long-standing debate on the right to privacy concerning abortion, there have been two leading Supreme Court Decisions: *Roe v. Wade*, 410 U.S. 113 (1973) and *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992). However, both cases were preceded by and partly established by *Griswold v. Connecticut*, 381 U.S. 479 (1965). Conversations surrounding bodily autonomy do not only exist in the political sphere. Søren Kierkegaard wrote most of his works in the 1840s and he never referred to abortion or female autonomy. Nevertheless, his core philosophy depends on the importance of choice, identity, and autonomy. He has provided an analysis of the female condition only in relation to a man. On the other hand, Simone de Beauvoir spoke extensively on the topic of abortion and female autonomy as it relates to her liberation in her 1949 book, *The Second Sex*. Also, neither writer discussed any of the aforementioned Supreme Court cases; however, their philosophies surrounding autonomy and identity are the core issues presented in abortion debates. Therefore, this research interprets *Dobbs (2022)* through the existentialists' philosophical frameworks on choice, identity, and autonomy.

An 1879 Connecticut law prohibited the counseling on and use of contraceptives. In *Griswold's* (1965) 7-2 decision, the Court affirmed that although the Constitution does not explicitly express the right to privacy, the Bill of Rights' penumbras possesses several amendments that imply it. The right to privacy was extended to the First Amendment in *Stanley v. Georgia*, 394 U.S. 557

(1969), the Fourteenth Amendment in *Meyer v. Nebraska*, 262 U.S. 390 (1923), marriage in *Loving v. Virginia*, 388 U.S. 1 (1967), and reproduction in *Skinner v. Oklahoma*, 316 U.S. 535 (1942). In *Skinner (1942)*, Justice William J. Douglas argued that a man's right to reproduce was contained within the Fourteenth Amendment's Equal Protection Clause. Furthermore, the Third Amendment provides another facet of the right to privacy by abolishing the quartering of troops without the property owner's consent. The Fourth Amendment right against unreasonable searches and seizures and the Fifth Amendment guarantee against self-incrimination also establish another facet to privacy rights through *Boyd v. United States*, 116 U.S. 616 (1886) and *Mapp v. Ohio*, 367 U.S. 643 (1961), respectively. Lastly, the Ninth Amendment states that not all rights are explicitly stated within the Constitution.

Justice William O. Douglas explained that the Connecticut law delves directly into the relationship between a married couple and their physician (*Griswold v. Connecticut*, 1965). While the Constitution's language does not confer the right to contraceptive use or the right to privacy, the Constitution does contain implied rights. "Enumerated rights contain a penumbra in which implied rights are also protected," (O'Brien, 2020, 352). Despite the mention of married couples in *Griswold (1965)*, *Eisenstadt v. Baird*, 405 U.S. 438 (1972) extended the right for contraceptive use to unmarried individuals as well. In *Eisenstadt's (1972)* majority opinion Justice William J. Brennan argued:

If the right to privacy means anything, it is the right of the individual, married or single, to be free from unwarranted governmental intrusion into

matters so fundamentally affecting a person as the decision whether to bear or beget a child. (*Eisenstadt v. Baird*, 1972)

Built on *Griswold's* (1965) foundation, *Roe* (1973) established a trimester test outlining abortion permissibility in each pregnancy stage. The *Roe* (1973) Court also considered technological progress in medicine that created a safer abortion procedure (*Roe v. Wade*, 1973). The case set the right to privacy as an implied, fundamental constitutional right and extended it to abortion rights. However, *Casey* (1992) significantly eroded the standards set by *Roe* (1973) with its “undue burden” test. This test established that if a law does not propose a significant obstacle to women seeking abortions prior to viability, that law is constitutional (*Planned Parenthood v. Casey*, 1992). *Casey's* (1992) Court claimed it was abiding by precedent. The Court considered that overturning such an important precedent would ruin its legitimacy (*Planned Parenthood v. Casey*, 1992).

The recent landmark case in 2022, *Thomas E. Dobbs v. Jackson Women's Health Organization*, 597 U.S. __ (2022), overruled the standards set by *Roe* (1973) and *Casey* (1992). *Dobbs* (2022) established that abortions are not a constitutionally protected fundamental right, and determining when an abortion is legal will be left to the states. The controversy surrounding the right to privacy and abortion is not merely legal and political; it has significant moral and philosophical implications.

Concepts such as personal autonomy and individual existence are central to existentialist philosophy and critical in discussing reproductive rights. It is

important to note that the mention of autonomy alone in *Roe (1973)*, *Casey (1992)*, and *Dobbs (2022)* does not establish the existentialist connection. In some way, all three cases deliberate over the importance of how a woman's autonomy can shape her life. While analyzing the cases alongside the philosophy, there is a dichotomy in how individual experience is defined. Individual existence could only refer to the pregnant woman but also include the unborn child. There are many philosophers under existentialism's umbrella. Soren Kierkegaard, the father of existentialism, and Simone de Beauvoir, a feminist existentialist, offer insight into how abortion and privacy rights fit into a philosophy centered around autonomy and personal choice.

History of *Roe (1973)*

Prior to the *Roe (1973)* decision, Texas law banned abortions unless the procedure was medically advised to save the mother's life. In a 7-2 decision, the Supreme Court determined that any statutes banning abortions unless performed as life-saving procedures are void as an unconstitutional invasion of privacy (*Roe v. Wade, 1973*). The Court affirmed the states' rights to their interest in preserving life, but the pregnant woman's life should be kept in balance with the unborn child's life (*Roe v. Wade, 1973*). Although the Constitution does not mention a right to privacy or abortion, the Court averred its implicit existence through *Griswold (1965)*. The trimester test stemmed from *Roe (1973)*. In the first trimester, the pregnant woman's privacy rights override the state's interest in protecting life. In the second trimester, there is an increased balance between the pregnant woman's privacy and the state's interest in protecting life. In the third

trimester, the state's interest in protecting life takes importance over the pregnant woman's expectation of privacy unless her health is threatened. Overall, both cases held that privacy rights regarding personal relationships should be protected by the Constitution. During and up to the end of the first trimester, a pregnant woman may have an abortion, and the state is not permitted to restrict or ban the procedure at this point. The woman and her physician make the decision, because at this point the mother's expectation of privacy is greater than that of the fetus. During and up to the end of the second trimester, the state may regulate and restrict abortions, but it may not prohibit them. During and up to the end of the last trimester, states may ban abortions unless they are medically necessary to save the mother's life.

Griswold's (1965) precedent paved the way for *Roe's (1973)* landmark decision. The *Roe (1973)* Court acknowledged that although there is no explicit reference to privacy rights or abortion in the Constitution, *Griswold (1965)* reasoned that it stemmed from the Bill of Rights' penumbra. The concept of deriving rights from the penumbra did not materialize in *Roe's (1973)* decision. Reproductive privacy rights through the Bill of Rights' penumbrae possessed a legal precedent in *Griswold's (1965)* majority reasoning. Both landmark cases were strong 7-2 decisions that were made across the Justices' ideological boundaries. *Griswold (1965)* and *Roe (1973)* discussed the right to privacy within reproductive rights. While the former extended the rights to contraception, the latter took *Griswold's (1965)* line of reasoning and applied it to reproductive rights that encompass abortion rights.

History of *Casey* (1992)

After 1992, *Roe's* (1973) trimester test was no longer the controlling law regarding abortions. In 1988 and 1989, Pennsylvania began restricting its abortion laws. The Pennsylvania law required doctors to inform a pregnant woman of fetal development before her consent, a twenty-four-hour minimum waiting period before the procedure, specific reporting and disclosure requirements to the doctors performing the abortion, spousal consent if the patient is married, and parental consent if the patient is a minor (*Planned Parenthood v. Casey*, 1992). In *Casey* (1992), the Supreme Court upheld every provision except the spousal consent requirement. The tight 5-4 decision showed most Justices concurring and dissenting in part, leaving behind a weak precedent. Also contributing to the weak precedent, *Casey's* (1992) plurality decision was authored by three Justices in a rare step.

The “undue burden” test replaced *Roe's* (1973) trimester test. It is critical to consider that the “undue burden” test did not expand on *Roe's* (1973) trimester test. *Casey* (1992) established a brand-new standard while still adhering to *Roe's* (1973) central point. This test states that unless abortion laws present a substantial obstacle to pregnant women seeking abortions before viability, such laws are constitutional (*Planned Parenthood v. Casey*, 1992). Instead of regulating abortions through the trimester timeline, states will have to create and interpret abortion laws based on whether they create an undue burden on the mother. *Casey* (1992) hadn't inadvertently eroded the pregnant woman's expectation of privacy in the first and second trimesters that *Roe* (1973) had established. The Court did

so specifically because medical standards of viability changed since *Roe's (1973)* decision; viability is now earlier. However, while *Roe's (1973)* precedent is outdated, it is not unworkable (*Planned Parenthood v. Casey, 1992*). The *Casey (1992)* Court argued that the rules of law surrounding viability are the same in *Roe (1973)* and *Casey (1992)*; viability still informs the Court's decision on abortion even if the timeline changed. Moreover, *Casey (1992)* emphasized that if *Roe (1973)* is overruled, the American public would experience great consequences as a result. Therefore, *Roe's (1973)* factual foundation is sustained.

Casey (1992) plainly stated that a woman's right to an abortion exists, but it is not unlimited or absolute, similar to the logic presented behind *Roe's (1973)* trimester framework (*Planned Parenthood v. Casey, 1992*). The Court's determining factor for deciding abortion legality is viability. However, viability is a constantly changing concept; in 1973, viability was at twenty-eight weeks, but in 1992, it was at twenty-three to twenty-four weeks. The viability line did not change arbitrarily, but medical innovations have increased the potential for life outside of the womb before birth. Thus, *Casey's (1992)* plurality argued that outdated viability standards rendered *Roe's (1973)* trimester test inapplicable. This discrepancy is considered in the *Dobbs (2022)* opinion and is one of the driving forces behind the Court's reasoning to overturn *Roe (1973)* and *Casey (1992)*.

Facts Behind *Dobbs (2022)*

While the viability line in *Roe (1973)* and *Casey (1992)* was at twenty-eight weeks and twenty-three to twenty-four weeks, respectively, the Mississippi

Gestational Age Act of 2018 set viability at fifteen weeks. The law left an exception for medical emergencies or severe fetal abnormalities (Dobbs v. Jackson, 2022). In the 6-3 decision, the Court ruled that there is no constitutional right to abortion, *Roe (1973)* and *Casey (1992)* were overruled, and the subject of abortions shall be left up to the states (Dobbs v. Jackson, 2022). While *Roe's (1973)* and *Casey's (1992)* decisions saw bipartisanship from both conservative and liberally appointed Justices, the opposite is true in *Dobbs (2022)*. *Dobbs' (2022)* decision is divided strictly on partisan boundaries. The six conservative Justices (who were also appointed by conservative Presidents) argued in favor of the absence of the right to abortion in the Constitution. The three liberally appointed Justices argued against the overturning of *Roe (1973)* and *Casey (1992)*.

The Court established that there is no right to privacy regarding abortion. In Justice Samuel Alito's majority opinion, he claimed that the Court's reasoning was flawed in *Roe (1973)* because it failed to present any constitutional or statutory basis for abortion (Dobbs v. Jackson, 2022). However, *Roe (1973)* presented an argument that stated the right to privacy is contained within the First, Third, Fourth, Fifth, Ninth, and Fourteenth Amendments. *Roe (1973)* extended abortion privacy rights from contraceptive privacy rights that were established in *Griswold (1965)*. Justice Alito is referring to the specific lack of direct Constitutional reference to abortion in the Constitution. "The Constitution makes no reference to abortion, and no such right is implicitly protected by any constitutional provision..." (Dobbs v. Jackson, 2022). Thus, Justice Alito argued

that the *Roe (1973)* Court made a decision that was too close to legislative regulation.

Justice Alito's majority opinion argued that stare decisis does not require the Court always to accept precedent; some cases have a long-standing legacy, yet they have been overturned. Furthermore, the judgment on both previous cases was incorrect, according to the majority opinion. Alito's reasoning alleged that upholding *Roe (1973)* and *Casey (1992)* would prove to be detrimental to state sovereignty and democracy. "The Court short-circuited the democratic process by closing it to the large number of Americans who dissented in any respect from *Roe*" (Dobbs v. Jackson, 2022). Justice Alito asserted that *Roe (1973)* and *Casey (1992)* had no constitutional basis, and the Court's credibility would see severe repercussions if it upheld two cases that had no constitutional foundation. Despite *Roe (1973)* drawing upon the Bill of Rights' penumbras to interpret a right to abortion, Justice Alito did not agree with *Roe's (1973)* argument. In fact, he claims that *Roe's (1973)* and *Casey's (1992)* deduction of the right to abortion creates critical faults in the Constitution's principles.

The Court's abortion cases have diluted the strict standard for facial constitutional challenges. They have ignored the Court's third-party standing doctrine. They have disregarded standard *res judicata* principles. They have flouted the ordinary rules on the severability of unconstitutional provisions, as well as the rule that statutes should be read where possible to avoid unconstitutionality. And they have distorted First Amendment doctrines. (Dobbs v. Jackson, 2022)

Casey's (1992) precedent proved unworkable because it caused chaos among the lower circuit courts (Dobbs v. Jackson, 2022). The undue burden test was not interpreted the same by lower courts, causing conflict between what is considered a legal abortion and what is not. Simply, the undue burden test was impractical as "determining whether a burden is 'due' or 'undue' is 'inherently standardless'" (Dobbs v. Jackson, 2022). The Court argued that with one side preferring to protect the woman's life and the other looking after the unborn child's life, it is not the Court's place to take a side (Dobbs v. Jackson, 2022). Thus, Justice Alito emphasized the importance of giving the state legislatures power to decide on abortion permissibility. The *Dobbs (2022)* decision claims that since the Constitution takes no side on the matter of abortion, then neither can the Court. The Court's majority assumes that allowing some states to withhold the operation entirely, except in life-threatening situations, does not take a side or force a decision on pregnant women.

Research Focus

The objective of this study is to extract and analyze Kierkegaard and de Beauvoir's perspectives, apply them to the reasoning in *Roe (1973)* and *Casey (1992)*, and examine the implications the philosophers have on *Dobbs (2022)*. Despite navigating the same field of philosophy, Kierkegaard and de Beauvoir disagree on many issues, such as the conflict between personal freedom and religious responsibility and their differences in assessing women's agency. It is necessary to note that while Kierkegaard did not offer a position on abortion, his philosophy is placed as a backdrop on which *Dobbs (2022)* will be analyzed.

Ultimately, this study will present *Dobbs (2022)* through the lens of both philosophers' views and whether or not their perspectives encompass a right to privacy regarding abortion.

CHAPTER 2: KIERKEGAARD'S CHRISTIAN EXISTENTIALISM

Subjectivity and Choice

Kierkegaard's philosophy calls on individuals to grapple with their subjectivity and make authentic personal choices when faced with crises. He stated that "truth is subjectivity" (Kierkegaard, 1946d, 203). Kierkegaard argued that "the subjective thinker is aesthetic enough to give his life aesthetic content, ethical enough to regulate it, and dialectical enough to penetrate it with thought," (Kierkegaard, 1946a, 314). Therefore, subjectivity is the key to a genuine human experience and is contained within each individual. According to Kierkegaard, truth resides within God for "...God is a subject, and therefore exists only for subjectivity in inwardness" (Kierkegaard, 1946a, 179).

With his emphasis on subjectivity, at first glance, the implications of Kierkegaard's writings suggest that he would recognize a right to abortion. Viability is a constantly changing line, and there is no objective answer to when life begins; its truth is unknowable. The philosopher despised a hyper-intellectualist attitude and preferred to place more emphasis on the individual's life. Reasoning wears away at the human experience. Hyper-intellectualism and the lack of subjectivity cause human dullness. On the topic of objective reasoning, Kierkegaard questions: "What would be the use of discovering so-called objective truth...what good would it do to me to be able to develop a theory of the state and combine all the details into a single whole, and so construct a world in which I did not live?" (Kierkegaard, 1959, 44). Hence, Kierkegaard believed that hyper-intellectualism transforms the person into a puppet going with societal standards

without developing an identity. Subjectivity must not be a simple preference, but the individual must be responsible for their moral choices.

Central to his emphasis on subjectivity is the notion of personal choice. Choices are not merely to be made through intellectual thought; science and logic do not provide the answer to every issue. Too much reasoning is flawed and will kill the soul, “As a form of abstract thought reasoning is not profoundly dialectical enough; as an opinion and a conviction it lacks full-blooded individuality” (Kierkegaard, 1946e, 116). To Kierkegaard, authentic subjectivity comes from rejecting social norms and expectations. The choices one makes are essential in shaping one’s life. An individual’s experience ties into the choices they make. Freedom of choice does not come without anguish resulting from choices made. Thus, individuals begin to shape their values, beliefs, identity, and separate themselves from the masses.

The crowd, in fact, is composed of individuals; it must therefore be in every man's power to become what he is, an individual. From becoming an individual no one, no one at all, is excluded, except he who excludes himself by becoming a crowd. (Kierkegaard, 1946c, 5)

Kierkegaard recognizes that the individual may make an incorrect decision, however, acknowledging the fault one makes, causes individuals to grow in their individuality. As individuals make decisions regarding their existential crises, they must also take ownership of the resulting consequences. Ascending in one’s relationship with God will lead to the individual’s ascension to higher stages of existence. If individuals seek their subjective truth with

genuine passion, they will ultimately achieve it (Kierkegaard, 1946a, 210). One achieves genuine subjectivity and freedom of choice when strengthening one's spiritual relationship with the Christian God. Faith, to Kierkegaard, is the fundamental aspect of human existence.

A Leap of Faith

Kierkegaard established three distinct stages of life: the aesthetic, the ethical, and the religious. The stages he described are not biological or psychological development stages but a natural process the spirit undergoes (Kierkegaard, 1946b, 55). Kierkegaard criticized the instant choices commonly made in the aesthetic stage. The aesthetic is characterized by external pleasures and immediate decisions. The problem with aesthetic decisions is the fact that they are instant, according to Kierkegaard. Thus, the individual only briefly considers a fraction of their life experience and fails to examine the implications of good or evil. He characterized an aesthetic decision as dangerous because "to think...that...one can break off and bring to halt the course of the personal life, is a delusion" (Kierkegaard, 1946b, 103). Kierkegaard claimed that what is called a "choice" made in the aesthetic stage is a misuse of the word; "the act of act of choosing is essentially a proper and stringent expression of the ethical," (Kierkegaard, 1946b, 105). For example, one can choose either to stand or sit, one can choose either to wear black or brown, or one can choose either to go left or right. It is these immediate decisions that do not take room in Kierkegaard's category of "choice." While existence in the aesthetic is necessary to rise to the

ethical stage, remaining in the aesthetic stage “prevents [one] from choosing,” (Kierkegaard, 1946b, 105).

Once individuals have been exposed to the ethical, they must choose the ethical life. If individuals have become aware of their personal responsibility to do good for themselves and others and remain at the aesthetical level “[they are] sinning and is subject to ethical determinants even though [their] life may be described as unethical,” (Kierkegaard, 1946b, 107). In the ethical, the either/or presented to the individual is not a decision between good and evil, but a decision to have the will to choose (Kierkegaard, 1946b, 107). The ethical, however, is not meant to be the final stage.

Kierkegaard focused overwhelmingly on the religious stage as the final and most important of the three. The religious stage is centered around transcending morals and making a leap in reason to reach the ultimate stage of existence. To him, faith is paradoxical, but it does not require blind obedience. Ethics universally apply to everyone; faith is “the particular individual...and its task is to express itself constantly...” (Kierkegaard, 1946c, 129). It is the paradox of faith in which subjectivity plays a larger role. Kierkegaard believed there must be a teleological suspension of the ethical stage to reach the religious realm. That is, when making decisions during existential crises, logic and morals may be suspended to become elevated spiritually. “...To him who follows the narrow way of faith no one can give him counsel, him no one can understand. Faith is a miracle...for that in which all human life is unified is passion, and faith is a passion,” (Kierkegaard, 1946c, 134). A leap of faith requires the individual to

make a decision that may seem to abandon reason to confront them with their freedom and responsibility.

Kierkegaard used the example of God testing Abraham and ordering him to kill his son, Isaac. Abraham suspended reason and morals, which ultimately drew him spiritually closer to God. God called Abraham directly to kill Isaac. In his situation, there is no question of a teleologic suspension of reason. The individual must make decisions that consider each situation as unique. Faith is not objective, it is unreasonable. The decisions that one must make to leap into the religious realms are decisions that defy moral laws. Kierkegaard's leap of faith is not limited to religious dilemmas. It extends to the personal life, professional life, and moral predicaments.

Confronting the idea of abortion may present itself in different stages for different situations. Kierkegaard expressed a disdain for the aesthetic, claiming that the notion of choice is not present there. One can only begin to make choices when the ethical has manifested itself to the individual (Kierkegaard, 1946b, 103). He characterized aesthetic decisions as immediate decisions of the heart and established that the notion of a "choice" is nonexistent in this particular stage. "Thus, when a young girl follows the choice of her heart, this choice . . . is in the strictest sense no choice . . ." (Kierkegaard, 1946b, 87). Awareness of moral values, good, and evil marks the entrance into the ethical stage. However, if a woman is exposed to the ethical and chooses an abortion procedure as an immediate decision, or a choice of the heart, her choice would be condemnable against Kierkegaard's reasoning as she does not have the will to participate in the

either/or question. The aesthetic is also identified as avoiding responsibility for the difficulties of life. If her decision to have an abortion derives from her wish to avoid the burden of motherhood, Kierkegaard's philosophy would not consider her choice valid. If a woman is in the ethical stage, would her decision to have an abortion be a suspension of the ethical to move her into the religious stage? However, many instances could lead a pregnant woman to consider abortion. Women could have pregnancies resulting from rape or incest. A pregnant woman might choose to terminate her pregnancy because of her lack of financial resources, or because she is otherwise unable to care for the child. Kierkegaard's framework centers on the importance of considering one's situation surrounding each potential decision. Kierkegaard notes that the importance lies not in deliberation but in actively partaking in the ethical or religious (Kierkegaard, 1946c, 16). Taken for its surface value, Kierkegaard's philosophy implies that standards of subjectivity and the freedom of choice also apply to women. His principles seem like they would support a woman's right to choose an abortion. However, that would apply if Kierkegaard believed that women could ascend to the different stages and were considered individuals.

Standards of Abortion in Kierkegaard's Time

While Kierkegaard was writing in 1840s Denmark, European Christian standards of abortions did not prosecute pre-quickening terminations (Peterson, 2012). Once the fetus quickens, at around sixteen to twenty weeks, the pregnant woman was held accountable for an abortion. While Kierkegaard was not Catholic, this was the agreed-upon standard of abortions among European

churches until the Catholic Church established a new position penalizing a pregnancy termination at any point with ex-communication in 1869. Prior to that, if a woman terminates her pregnancy without ever feeling the fetus's movement, she is not condemned (Peterson, 2012). The American Medical Association challenged the notion of the quickening in the mid-1800s. In 1857, the AMA ruled that the "quickening could not be relied upon as an indicator of fetal life because it did not occur at a standard moment. Many women never quicken at all, though their children are born living" (Reagan 12). Then, in 1869, Pope Pius IX published the encyclical "Apostolica Sedis Moderationi" that "dismissed the quickening as a standard for determining the right to life of the fetus" (Brind'Amour, 2007). There is no consensus, in either the medical, religious, or political communities, on when life begins (Reagan 10).

A Woman's Choice

The events leading up to a woman's life driving her to choose an abortion differ for every woman. Furthermore, analyzing Kierkegaard's reasoning does not grant a carte blanche to justify an abortion in every situation. In fact, using his philosophy, there needs to be hesitation in completely condemning or supporting abortions. One cannot ignore Kierkegaard's portrayals of women in his writing when analyzing a gendered process such as abortion. While Kierkegaard did write from various pseudonyms, one must not write off those characters as unconnected to the philosopher. He creates characters and stories to present multiple perspectives and make a specific point. For example, in "The Seducer's Diary" in *Either/Or*, Kierkegaard wrote through the perspective of a young man named

Johannes in the aesthetic stage. Kierkegaard, through Johannes, argued that a woman does not have meaning by herself. Women are prescribed as “being” rather than existing. “...The word existence is too rich in meaning, since woman does not persist in and through herself,” (Kierkegaard, 1946b, 74). Where men are characterized by their spirit and rising above the instinctual response, women are only “aesthetically free” through their own nature; a woman only gains freedom from her relation to man (Kierkegaard, 1946b, 74). Kierkegaard’s character seems to be confining a woman into the aesthetic stage. It seems almost inevitable that a young, aesthetic man would deny women’s subjectivity while claiming his superiority. However, this is a truncated outlook. Kierkegaard focused on human subjectivity and refused to universalize his arguments. His analysis of women was his subjective experience with them, but he seemed to become a universalist where women’s autonomy was concerned.

A woman is obligated to be feminine and to remain that way. However, if a woman makes a decision after long deliberation, “then this choice is unfeminine,” or she has betrayed her natural designation in the aesthetic phase. For Kierkegaard, a woman’s spirit does not manifest as it does in a man, so she does not fully achieve self-hood as a man would. “Woman, with genuine femininity, abandons herself, throws herself into that to which she devotes herself” (Kierkegaard, 1946d, 50). A woman’s lack of selfhood contributes to an undeveloped subjectivity, leaving her within the aesthetic realm unable to rise to the ethical. Kierkegaard’s reasoning only permits women to exist within the aesthetic stage where “she does not therefore choose independently,”

(Kierkegaard, 1946b, 75). Why, his reasoning would ask, would she consider an abortion when she is not the one who can make that decision?

Kierkegaard's notion of the "eternal feminine" suggests that women, by nature, are submissive and derived. Through his writings, one can surmise that a woman is considered secondary to men. If she cannot reach full selfhood, she cannot thoroughly choose between terminating her pregnancy. Until a man touches a woman, she has no substance. She is only in the state of being, not yet existing. The man's touch is what wakes up her dormant state of being. A pregnancy, resulting from a man's erotic touch, promotes the woman's meaning and identity. Through analysis of his work, one can conclude that Kierkegaard's principles of subjectivity and freedom of choice do not apply to women. The pregnancy raises a true woman's status as the fetus originated from the man and gives her relevance. If she were to receive an abortion she would be designated as lacking genuine femininity and devotion. Thus, the woman would not be able to rise into the limited self-hood she is allotted.

In Volume II of *Either/Or*, Kierkegaard wrote from the perspective of an older, ethical man named Judge Wilhelm. The Judge attempted to persuade Johannes to the ethical stage. While Wilhelm addressed Johannes's claims, he did not approach Johannes's description of women. Kierkegaard declined to criticize Johannes's analysis either because he did not disagree or because he was unable to go against the general male opinion of women at the time. Kierkegaard's patriarchal-centered view of women is reflective of his time. However, the time he comes from does not make his descriptions any less problematic.

While Kierkegaard champions the philosophy of personal choice, individuality, and autonomy, his analysis eliminates about half of the world's population. Elimination is not the only concern. Kierkegaard's portrayals of women as "being" and not "existing," beings that must always be feminine, and beings that are not able to triumph against the aesthetic stage without men serve to dehumanize and degrade women. His narrative on female nature rips away any semblance of agency that a woman might possess. His framework privileged the male experience over the female experience in the same way the Supreme Court elevated men's right to reproduce in *Skinner (1942)* over women's right to reproduce in *Dobbs (2022)*.

CHAPTER 3: DE BEAUVOIR'S RESPONSE

Kierkegaard and de Beauvoir's Relationship

Søren Kierkegaard and Simone de Beauvoir possessed an indirect rather than a direct relationship. Kierkegaard, the nineteenth-century Danish philosopher credited with laying the groundwork of existentialist philosophy, explored the individual subjective experience as it relates to forming identity and the importance of choice. De Beauvoir, a twentieth-century French feminist existentialist, critically engaged with Kierkegaard's ideas and extended them to matters of gender. A key connection between the two thinkers lies in their emphasis on individual freedom and personal choice. While de Beauvoir was influenced by Kierkegaard's existentialism, she heavily critiqued his emphasis on human subjectivity and religion, particularly in relation to the role of women in society. Kierkegaard's framework did not sufficiently address the social and cultural dimensions of human existence and gender. De Beauvoir's existentialist feminism sought to address the ways in which societal structures and norms inhibit autonomy. Moreover, while Kierkegaard argued that the existential challenge is an individual one, de Beauvoir believed it was not just an individual, but a collective social challenge that involves women's liberation from oppressive structures.

In her book, *The Second Sex*, she rejected Kierkegaard's concept of the "eternal feminine" or the ideal woman. Kierkegaard expressed his disgust with "experienced, intriguing, dissolute women" and claimed that there is "no creature so abominable as such a woman" (Kierkegaard, 1946b, 83). De Beauvoir was an image of the abominable woman that Kierkegaard loathed. She made unfeminine

decisions and chose against behaving as the subservient woman that the patriarchy favors. Her book is the main evidence of this. She confronted his analysis with the exact opposite of the ideal woman that Kierkegaard praised. She was the unfeminine that came to haunt Kierkegaard's existentialist framework.

The "Other" and Autonomy

As de Beauvoir was also an existentialist thinker, she asserted the individual's freedom of choice and subjectivity. She extended this freedom to everyone, regardless of gender. Her argument centered on the claim that men define women exclusively in opposition to them, thus perpetuating women's oppression and alienation by men. De Beauvoir observed that a woman gains relevance from men but does not have any on her own. "She is nothing other than what man decides...She is determined and differentiated in relation to man, while he is not in relation to her" (de Beauvoir, 2011, 6). Men are not seen as a particularity by virtue of their maleness. However, the woman's femininity condemns her to a lesser position when she is put up against a man. It is through man's efforts that a woman is degraded against men and is stripped of her autonomy, not her own. Thus, she is set as secondary to man. A woman must fight against the designation of the "other" (de Beauvoir, 2011, 22). "But what singularly defines the situation of woman is that being, like all humans, an autonomous freedom, she discovers and chooses herself in a world where men force her to assume herself as the other" (de Beauvoir, 2011, 17). This process corresponds to existentialist morality as it subjects the individual to accomplish their freedom.

Contrary to Kierkegaard's concept, a female is not born as a woman but is groomed and socialized to become one. She is not intrinsically submissive or passive. De Beauvoir found no justification for women's inferiority and concluded that it results from injustice. A woman's inferiority is not inherent but forced. Her biology does not determine her character; her situation determines her character. As de Beauvoir argued, a woman is not born passive, secondary, and unnecessary. "One is not born, but rather becomes, woman" (de Beauvoir, 2011, 283). She is forced to grow into that. Kierkegaard's eternal feminine strips women of their humanity and further alienates them from men. Because of her alienation and assumed secondary nature, a woman's subjectivity leads to her dismissal. On the other hand, a man's application of subjectivity demonstrates an authentic existentialist practice. De Beauvoir presented a paradox present in a young girl's socialization through Kierkegaard's eternal feminine. A young girl may dilute herself to become more feminine and palatable in the patriarchy, but doing so will deny her of her true identity. However, if she chooses to abandon gender expectations, her status as a woman is denied. In either situation, her identity is dehumanized and othered.

To be feminine is to show oneself as weak, futile, passive, and docile. The girl is supposed not only to primp and dress herself up but also to repress her spontaneity and substitute it for the grace and charm she has been taught by her elder sisters. Any self-assertion will take away from her femininity and her seductiveness. (de Beauvoir, 2011, 128)

A fundamental instrument in women's oppression is religion, specifically the Christian Church. The Church is not only an instrument in her oppression, but a form of deception as well. Religion creates the distortion that forces women to remain submissive to mistreatments in the current world for heavenly rewards in the afterlife. Furthermore, de Beauvoir maintained that religion tricks the woman into believing that she is not oppressed because "...she is equal of the Lordly male..." (de Beauvoir, 2011, 137). "Woman is asked in the name of God to accept her inferiority as to believe and thank Him...even the temptation to revolt is suppressed by the claim that the injustice is overcome" (de Beauvoir, 2011, 137).

Motherhood

De Beauvoir's writings on existentialist freedom revolved around women reclaiming their autonomy. Furthermore, women's otherness robs them of their autonomy by enforcing strict gender roles. Femininity and the necessity of motherhood are social constructs, she argued. In a girl's childhood, she is aware that "accepting herself as a woman means resigning and mutilating herself" (de Beauvoir, 2011, 308). Childbirth is a natural process, and de Beauvoir was not decrying biology. She was criticizing the social norms that force a woman into a condition of motherhood which she did not consent to. This mutilation, de Beauvoir argued, will lead the woman to resent herself, her child, and her husband (de Beauvoir, 201, 309). As she goes from childhood to womanhood, she is thrust into a world in which "the sphere she belongs to is closed everywhere, limited, dominated by the male universe" (de Beauvoir, 2011, 311). As she ages from a girl to a married woman, she willingly or unwillingly develops into a mother.

When confronted with the argument that “[a woman] is made to bear children,” de Beauvoir argued that designation reduces the woman to an incubator, not a human (de Beauvoir, 2011, 547). Women are forced into a mold of motherhood; if they refuse, they are viewed as incomplete women. She condemned the lack of accessible contraceptives and the presence of unsafe abortions. Prohibiting abortion led to women undergoing dangerous, unregulated “back-alley” procedures and home remedies. As a result, women have died, experienced severe physical side effects, or received trauma (de Beauvoir, 2011, 532-533).

Kierkegaard’s framework of the eternal feminine renders a woman to a provisional existence. Within the eternal feminine, de Beauvoir described women’s roles as strictly primitive. A woman is confined to reproduction and housework. Her roles give her meaning relative to a man’s more robust household support. Thus, a woman does not feel accomplished in her labor. “So, the woman who gives birth does not take pride in her creation; she feels like the passive plaything of obscure forces...” (de Beauvoir, 2011, 73). Women can overcome their makeshift existence and reclaim their autonomy by tramping over the social constructs they have been accustomed to since birth. Within the heart of women’s liberation lies reproductive rights. Debates on women’s duty to childbirth and motherhood contribute to their oppression. Women can only achieve autonomy if they can take control of their bodies and reproductive organs.

De Beauvoir considered the risk associated with the procedure and the physical toll it may have on a woman. De Beauvoir expressed that whether or not abortions are legal, women will continue to have them. “A point of agreement for

both partisans and enemies of legal abortion is the total failure of repression,” (de Beauvoir, 2011, 526). However, De Beauvoir’s reasoning also supports government regulation to ensure the procedure’s safety. She criticized “back-alley” abortions, or unregulated and unsafe procedures, and their propensity to inflict terrible trauma or death. Before *Roe (1973)*, physician offices experienced raids, healthcare workers were convicted, and women would seek the procedure in dangerous ways because they could not safely and legally terminate their pregnancy (Reagan, 1997, 24). De Beauvoir called “birth control and legal abortion [to] allow women [to] control their pregnancies freely” (de Beauvoir, 2011, 533). Preventing a woman from choosing between terminating her pregnancy undermines her bodily agency. However, abortion prohibition takes away the notion of a choice and makes the decision for her. Furthermore, de Beauvoir pointed out the hypocrisy society and government foster towards abortions. “It must be pointed out that the same society so determined to defend the rights of the fetus shows no interest in children after they are born...” (de Beauvoir, 2011, 525). She disparaged a government that starts by banning abortions rather than starting at repairing public structures that may support a mother and her child. A government will refuse to legalize abortions, convicting the unborn child to a miserable life (de Beauvoir, 2011, 525). Governments will voice their responsibility to children until the mother gives birth. At that point, children exclusively become their parents’ responsibility.

CHAPTER 4: EXISTENTIALISM AND *DOBBS* (2022)

Points of Agreement

Both Kierkegaard and de Beauvoir emphasized the importance of choice and subjectivity. Kierkegaard and de Beauvoir acknowledged that individuals are unable to fulfill themselves or achieve selfhood if they do not experience life and their choices subjectively. They recognized that existentialism resides beyond philosophic deliberation as it is to be lived and experienced. Each individual must define their identity for themselves away from pre-existing cultural and social trends. Central to existentialism and the two thinkers, individuals are free and exist only for themselves (Aho, 2023).

Kierkegaard and de Beauvoir warned their readers to abandon social norms as compliance with them undermines the individual's authenticity (Aho, 2023). While Kierkegaard fought against social norms to combat hyper-intellectualism and reason, de Beauvoir advised women to break out of patriarchal ideals. The only place where their ideas fall along the same points is in this attachment to subjectivity and personal choice. Their ideas begin to diverge from Kierkegaard's description of the ideal woman. There is a fundamental difference in de Beauvoir's and Kierkegaard's perceptions of how women are considered in existentialist philosophy. Furthermore, it would be difficult to reconcile their contrary ideas as each thinker conflicts on foundational points and denies what the other argues for.

Dobbs (2022) through Kierkegaard

Kierkegaard and de Beauvoir's main conflicting ideas cover the woman and her capability over herself. In his works, Kierkegaard has made mocking comments on women's nature and was often "sneering at the possibility of her emancipation" (Sipe, 2003, 1). Although Kierkegaard often wrote under pseudonyms, one must not use them as a scapegoat. If his pseudonymous works discussing ethics and the self are reliably examined, then his pseudonymous works discussing women's status should also be interpreted reliably. To reiterate a previous point, his pseudonyms are not arbitrary. He used male characters in a story to make a specific argument. Sometimes, the argument is about transcending the ethical; sometimes, it is about his vision of female subservience. With Kierkegaard's eternal feminine, he argued that women achieve pinnacle femininity when they procreate (Kierkegaard, 1947c, 83). Kierkegaard's conception that women are not able to rise to the ethical stage in the same way that men do is the central point. His reasoning takes a step further than *Dobbs (2022)*. The section in Mississippi's law regarding spousal agreement should not be nullified as it is essential to have the woman's more elevated spouse aware of the pregnancy termination, assuming a heterosexual relationship. After all, she cannot make that decision herself. Within the theme of undermining female liberation, his rationale, on the same line as the majority opinion, determines that abortion is not worth being examined under such strict scrutiny (Sipe, 2003). Kierkegaard's problematic view of women directly informs the cross-analysis of his philosophy and *Dobbs (2022)*.

Kierkegaard's portrayal of women and the time he existed in views the woman as unqualified to decide on her reproductive processes. Kierkegaard also stated that one must not "break off" situations and view them in a vacuum (Kierkegaard, 1946b, 103). Instead, one must consider the potential consequences in the same way the *Dobbs (2022)* majority considered the potential loss of credibility that the Court will endure if it chooses to uphold *Roe (1973)* and *Casey (1992)*. On the other hand, the dissent claimed that *Roe (1973)* and *Casey (1992)* created a balance between a woman's life and the life of the unborn. However, to Kierkegaard, their lives were never balanced if the child was who elevated the woman, according to Kierkegaard's eternal feminine. The unborn child is the result of the woman's relation to a man. Thus, a woman must not destroy what raises her status, because she is not able to raise her own status.

The ethical dilemma posited by *Dobbs (2022)* reflects a core existentialist principle of navigating difficult moral situations and the decisions these situations propose. *Dobbs' (2022)* majority opinion discussed "good" and "bad" precedents in the manner Kierkegaard approached decision-making in the ethical stage. While Justice Kavanaugh's concurring opinion stated that the Court is not questioning abortion's morality, Justice Alito's description of the "faulty" precedent present in *Roe (1973)* and *Casey (1992)* is parallel to Kierkegaard's argument toward the universality of the ethical stage. According to Justice Alito, the Court's decision eliminated illusions concerning the right to privacy for abortion and pushed for responsibility from the pregnant woman to her unborn

child. While the right to privacy is important to maintain individuality, that right does not encompass a woman receiving an abortion.

Dobbs (2022) claimed that there were no reliance interests at stake in repealing *Roe (1973)*. Reliance interests refer to the laws that citizens have become dependent on. However, an unwanted pregnancy in a state that does not recognize women's right to abortion presents several obstacles. *Dobbs (2022)* brought "concrete" examples of reliance interests from "cases involving property and contract rights" (*Dobbs v. Jackson, 2022*). However, they did not include other cases, nor did they suggest that such concrete reliance interests do not exist in other cases. The *Dobbs (2022)* Court failed to consider the side effects the decision would have had on women who were pregnant at the time as well as women in the military. Also, the existence of reliance interests in *Roe (1973)* and *Casey (1992)* was discussed by the dissenting Justices: Elena Kagan, Sonia Sotomayor, and Stephen Breyer.

"Countless women will now make different decisions about careers, education, relationships, and whether to try to become pregnant than they would have when *Roe* served as a backstop. . . To recognize that people have relied on [rights like that to abortion] is not to dabble in abstractions, but to acknowledge some of the most 'concrete' and familiar aspects of human life and liberty." (*Dobbs v. Jackson, 2022*)

***Dobbs (2022)* through de Beauvoir**

Simone de Beauvoir rejected Kierkegaard's perception of women and advocated for female liberation. She asserted that women are only submissive

because they are conditioned to be from girlhood. Women must retrieve their agency, including their bodily autonomy. Her themes of personal freedom and self-determination are present in the dissenting opinion. Existentialism tasks the individual with creating meaning and purpose in life instead of relying on external forces. Against de Beauvoir's reasoning, the *Dobbs (2022)* Court eliminates the autonomy that was considered in *Casey (1992)* and *Roe (1973)*. *Dobbs (2022)* curbs women's ability to make a decision regarding abortions. Due to women's historical oppression, the interpretation of de Beauvoir's writing suggests that the Court was flawed in refusing to consider abortions with strict scrutiny. In terms of female liberation, *Dobbs' (2022)* decision significantly restrains the women's movement toward emancipation. The Court's decision sees a country where some states acknowledge a right to privacy for abortion, but others do not because an abortion is not a fundamental right. However, her writings could be analyzed to condemn *Casey's (1992)* legal reasoning as well. *Casey (1992)* weakened *Roe's (1973)* precedent and set a new standard instead of the trimester framework. The *Casey (1992)* Court also failed to consider the consequences of its decision in how future Courts will interpret the "undue burden" test.

With the *Dobbs (2022)* Court's action of not considering the consequences of leaving abortions up to states, the implications of de Beauvoir's writings criticize their decision as it will likely have several adverse effects on pregnant women living in states where abortions are mainly illegal. De Beauvoir mentioned the dangers of unregulated abortions, previous government efforts to discourage the procedure have failed because women will resort to "back-alley" abortions

instead (de Beauvoir, 2011, 532). De Beauvoir's reasoning addresses the necessity of the right to privacy to be included within a woman's bodily autonomy. While Justice Alito critiqued picking sides in the conflict, de Beauvoir would argue that with his decision he also chose a side on abortion. Furthermore, she would insist on the necessity of choosing to acknowledge the right to abortions as fundamental. *Dobbs'* (2022) dissenting opinion stated, "To give a woman the authority over her own body and choices is to grant her the choice to have an abortion or not," (*Dobbs v. Jackson, 2022*). The reasoning in Justices Kagan, Sotomayor, and Breyer's dissent mirrors de Beauvoir's argument that to maintain a woman's autonomy and identity, she must be given the choice of whether to have an abortion or not. *Roe (1973)* and *Casey (1992)* presented the woman with a choice. *Dobbs (2022)* forced one specific decision on the woman based on her state's boundary.

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Appendix: Definitions

Aesthetic Stage: Kierkegaard's first stage of life. Its characteristics include pursuing pleasure, immediate gratification, and a lack of responsibility.

Concurring Opinion: An opinion drafted by a Justice(s) who joined the majority, but for reasons not stated in the majority opinion.

Controlling Law: The laws and statutes with mandatory authority that are relied upon in deciding judicial disputes.

Dissenting Opinion: An opinion drafted by a Justice(s) not within the majority who disagrees with the Court's reasoning.

Ethical Stage: Kierkegaard's second stage of life. It shows more development than the aesthetic as individuals begin to make morally informed decisions.

Existentialism: A form of philosophical inquiry that focuses on the confrontation of human existence and emphasizes free will and agency.

Leap of Faith: It refers to making decisions that transcend logical reasoning but impact one's relationship with God. It is within the religious stage.

Majority Opinion: In a Supreme Court decision, it is the case's final judgment and reasoning behind the decision.

Ordered Liberty: The aspects of rights that must be limited to ensure societal order.

Otherness: De Beauvoir's idea that women are treated in opposition to men which has led to their alienation and oppression.

Precedent: A previous legal decision that is considered in a current case.

Quickening: The time when a pregnant person feels the baby's movement in the womb. The baby usually quickens at sixteen to twenty weeks of the pregnancy; however, it may happen sooner or later.

Religious Stage: Kierkegaard's third and ultimate stage of life. This stage is the highest stage of existence in which one must grapple with religious and philosophical questions to achieve a stronger bond with God.

Stare Decisis: A philosophical commitment that courts shall follow precedent when making rulings on similar cases.

Telos: The overall goal.

The Eternal Feminine: Kierkegaard's portrayal of the ideal woman as passive, silent, and submissive.

Trimester: A period of three months used in the division of the duration of a pregnancy.

Viability: The capability of a fetus to grow, live, and develop outside of the uterus.