

HEGEMONIC MASCULINITY AND REPRODUCTIVE FREEDOM

Rick Mula*

TABLE OF CONTENTS

I. Introduction.....	204
II. Hegemonic Masculinity.....	204
A. Defining Hegemonic Masculinity..	204
B. Hegemonic Masculinity Plays a Role in Reproductive Freedom.....	208
C. Dynamics of Hegemonic Masculinity	209
III. Responses to Crisis Tendencies Implicated by Reproductive Freedom.....	212
A. Legislatures and Courts Stabilize Hegemonic Masculinity by Forcing Women to have Unintended, Unwanted, and Unaffordable Babies	213
B. Legislatures Stabilize Hegemonic Masculinity by Restricting Access to Abortion and Contraception.....	215
C. Courts Stabilize Hegemonic Masculinity by Upholding Restrictions on Access to Abortion and Contraception.....	217
D. Legislatures Additionally Stabilize Hegemonic Masculinity by Reducing Welfare Benefits for Families in Need.....	218
E. Arguments of Pro-Life Women Also Stabilize Hegemonic Masculinity and Other Systems of Oppression	219
IV. Consequences of Relating Hegemonic Masculinity to Reproductive Freedom.....	226
A. The Relationship of Hegemonic Masculinity to Reproductive Freedom Provides the Normative Basis for Sex Equality Arguments for Reproductive Freedom.....	226
B. The Relationship of Hegemonic Masculinity to Reproductive Freedom Suggests that Advocates Should Promote a Masculinity that Supports Reproductive Freedom	229
V. Conclusion.....	232

I. INTRODUCTION

Some men, women, legislatures, and courts advocate restrictions on reproductive freedom as a means of inscribing themselves into hegemonic masculinity. Elucidating this relationship of hegemonic masculinity¹ to reproductive freedom has two consequences. First, the relationship provides a normative basis for sex equality arguments for reproductive freedom. Second, the relationship suggests that advocates of reproductive freedom should promote a masculinity that supports women's "ability to choose whether, when, how, and with whom [they] will have children."²

In Part I of this paper, I offer an account of hegemonic masculinity and suggest that access to contraception and abortion aggravates crisis tendencies in masculinity. In Part II, I identify restrictions on access to contraception and abortion as responses to these crises. In Part III, I explain the consequences of the observations made in Parts I and II.

II. HEGEMONIC MASCULINITY

A. *Defining Hegemonic Masculinity*

The term "hegemonic masculinity" is a product of masculinities theory.³ Masculinities theory "derives directly from feminist theory, emerging in the 1970s and 1980s to explore the construction of manhood and masculinity, to question the real circumstances of men, to explore how privilege is constructed, and to examine what price is paid for privilege."⁴ Masculinities scholars have defined hegemonic masculinity as the "currently most honored way of being a man. It

* J.D. Candidate, 2015, University of Pennsylvania Law School.

¹ See R.W. CONNELL, *MASCULINITIES* 77 (1995) (defining hegemonic masculinity "as the configuration of gender practice which embodies the currently accepted answer to the problem of the legitimacy of patriarchy, which guarantees (or is taken to guarantee) the dominant position of men and the subordination of women").

² Dorothy Roberts, *The Future of Reproductive Choice for Poor Women and Women of Color*, 14 *WOMEN'S RTS. L. REP.* 305, 309 (1991) (quoting Kathryn Kolbert, *Developing a Reproductive Rights Agenda*, in *REPRODUCTIVE LAWS FOR THE 1990S: A BRIEFING HANDBOOK* 8 (Nadine Taub & Sherrill Cohen eds., 1988)) (defining reproductive freedom as "the ability to choose whether, when, how, and with whom one will have children").

³ See NANCY E. DOWD, *THE MAN QUESTION* 3 (2010) (defining masculinities theory and its origins).

⁴ *Id.*

requires all other men to position themselves in relation to it, and it ideologically legitimates the global subordination of women to men.”⁵

Hegemonic masculinity relies on two central assumptions: first, there exists a plurality of masculinities, and second, these masculinities are organized hierarchically, with hegemonic masculinity subordinating all other forms.⁶

As the plural title of masculinities theory suggests, “[t]here is not a single masculinity, but rather multiple masculinities.”⁷ Black masculinities, white masculinities, gay masculinities, and working-class masculinities are all forms of masculinity that then, like Russian nesting dolls, contain dominant and marginalized masculinities within themselves.⁸ The plurality of masculinities is important to masculinities theory because “[a]ntiessentialism is recognized as critical to the development of masculinities theory”⁹ Masculinities theory focuses on the plurality of men’s experiences, noting that “[i]nstead of seeing men as a single entity, and only described in terms of domination and power, the study of masculinities reveals ways in which the dominant gender system subordinates and differentiates among men.”¹⁰

Some masculinities are marginalized. Gay masculinities, for example, are at the bottom of a gender hierarchy among men.¹¹ But various heterosexual masculinities, such as heterosexual Black masculinities, are marginalized, too.¹² While some heterosexual masculinities are subordinated for reasons other than their femininity, in general, the more feminine a masculinity is, the more it is oppressed among all the masculinities.¹³

Conversely, within any given set of masculinities, one is culturally exalted and hegemonic, meaning it is the most empowered masculinity and at the top of the male hierarchy.¹⁴ Hegemony

⁵ David S. Cohen, *Keeping Men “Men” and Women Down: Sex Segregation, Anti-Essentialism, and Masculinity*, 33 HARV. J. L. & GENDER 509, 523 (2010) (quoting R.W. Connell & James W. Messerschmidt, *Hegemonic Masculinity: Rethinking the Concept*, 19 GENDER & SOC’Y 829, 832 (2005)); see also CONNELL, *supra* note 1.

⁶ CONNELL, *supra* note 1, at 76-77.

⁷ DOWD, *supra* note 3, at 26.

⁸ CONNELL, *supra* note 1, at 76.

⁹ DOWD, *supra* note 3, at 27.

¹⁰ *Id.* at 4.

¹¹ CONNELL, *supra* note 1, at 78.

¹² *Id.* at 80.

¹³ See *id.* at 79 (“Some heterosexual men and boys too are expelled from the circle of legitimacy. The process is marked by a rich vocabulary of abuse: wimp . . . nerd . . . sissy . . . and so on. Here too the symbolic blurring with femininity is obvious.”).

¹⁴ *Id.* at 77; DOWD, *supra* note 3, at 27.

generally “refers to the cultural dynamic by which a group claims and sustains a leading position in social life,” and denotes the dominant masculinity of a given set of masculinities.¹⁵ Whether a given masculinity is hegemonic depends on the set of masculinities being examined.¹⁶ For example, while Black masculinities are marginalized in the context of all U.S. masculinities, there exists a hegemonic masculinity among Black masculinities.¹⁷ Consequently, a Black masculinity may be locally hegemonic, but globally marginalized.¹⁸ Similarly, a masculinity that is hegemonic in one culture may be subordinated in another culture. For example, as a result of the feminization of Asian men in the United States, the hegemonic masculinity in Japan may be a marginalized masculinity in the U.S.¹⁹ The hegemonic nature of a given masculinity is thus contingent upon geography and culture.²⁰

Hegemonic masculinity is an aspirational standard. In the United States today, hegemonic masculinity may be characterized as heterosexual, physically aggressive, and not feminine.²¹ Other characteristics might include breadwinner, father, husband, white, cisgender, able-bodied, and wealthy.²² Few people exhibit all of these traits, but hegemonic masculinity “need not be the commonest pattern in the everyday lives of boys and men.”²³ Instead, “hegemony works in part through the production of exemplars of masculinity (e.g., professional sports stars), symbols that have authority despite the fact that most men and boys do not fully live up to them.”²⁴

Few men live up to the hegemonic form of masculinity. For instance, most young men do not grow up to play professional football.²⁵ And, since the feminist movement in the United States

¹⁵ CONNELL, *supra* note 1, at 77.

¹⁶ *See id.* at 76.

¹⁷ *Id.* at 80-81.

¹⁸ *Id.*

¹⁹ *See, e.g.,* Chiung Hwang Chen, *Feminization of Asian (American) Men in the U.S. Mass Media: An Analysis of The Ballad of Little Jo*, 20 J. OF COMM’N INQUIRY 57, 57 (1996) (“[R]acist, sexist, and Orientalist discourses . . . come together to feminize Asian men.”).

²⁰ *See* Cohen, *supra* note 5, at 523-24 (“These characteristics change over time and vary depending on culture and other identity characteristics.”).

²¹ *Id.* at 522.

²² *Id.* at 522-23.

²³ R.W. Connell & James W. Messerschmidt, *Hegemonic Masculinity: Rethinking the Concept*, 19 GENDER & SOC’Y 829, 846 (2005).

²⁴ *Id.*

²⁵ *See, e.g.,* *Estimated Probability of Competing in Athletics Beyond the High School Interscholastic Level*, NCAA RESEARCH (Sept. 24, 2013), <https://www.ncaa.org/sites/default/files/Probability-of-going-pro->

began, it is less certain that a young man will grow up to be the breadwinner in his family, as women have entered the workforce.²⁶ Men who embody marginalized masculinities, such as Black men, may even face restrictions on access to marriage, a component of hegemonic masculinity as a signifier of wealth and heterosexuality,²⁷ because of high rates of incarceration.²⁸

In fact, bearers of hegemonic masculinity may not live up to their own culturally exalted status—“They may be exemplars, such as film actors, or even fantasy figures, such as film characters. Individual holders of institutional power or great wealth may be far from the hegemonic pattern in their personal lives.”²⁹ For example, “a male member of a prominent business dynasty” in Sydney, Australia in the 1950s was also a key figure in the queer social scene.³⁰ Connell further explains that “[t]he number of men rigorously practicing the hegemonic pattern in its entirety may be quite small. Yet the majority of men gain from its hegemony, since they benefit from the patriarchal dividend, the advantage men in general gain from the overall subordination of women.”³¹

Although most men aspire to hegemonic masculinity, few live up to its exacting standards of whiteness, wealth, or heterosexuality. Black men are not white. Unemployed men often cannot be the breadwinner in their households. Gay men are not straight. Most men

[methodology_Update2013.pdf](#) (indicating that less than one tenth of a percent of high school athletes go on to play professional football).

²⁶ *Facts Over Time: Women in the Labor Force*, U.S. DEP’T OF LABOR, http://www.dol.gov/wb/stats/facts_over_time.htm#labor (last visited Nov. 2, 2015) (showing that 57.7% of women participated in the labor force in 2012, while 43.9% of women participated in the labor force in 1972).

²⁷ See, e.g., David Mayeda, *Hegemonic Masculinity in Super Bowl Commercials*, SOC. IN FOCUS (Feb. 20, 2012), <http://www.sociologyinfocus.com/2012/02/20/hegemonic-masculinity-in-super-bowl-commercials/> (“[I]t is important to also note that [David] Beckham carries other cultural traits that ad [sic] to his hegemonic masculine status—he is globally recognized, financially wealthy, and married to a woman who also holds currency in popular culture. This last point is critical. By being married, Beckham confirms his heterosexuality, and her extraordinary beauty and international popularity raise his standing as a ‘real man.’”).

²⁸ See MARC MAUER & RYAN S. KING, THE SENTENCING PROJECT, UNEVEN JUSTICE: STATE RATES OF INCARCERATION BY RACE AND ETHNICITY 4 (2007) (“The American prison and jail system is defined by an entrenched racial disparity in the population of incarcerated people. The national incarceration rate for whites is 412 per 100,000 residents, compared to 2,290 for African Americans, and 742 for Hispanics.”).

²⁹ CONNELL, *supra* note 1, at 77.

³⁰ *Id.*

³¹ *Id.* at 79.

simply cannot live up to the masculinity that is idealized in America. Consequently, “[m]en, although powerful, feel powerless.”³²

B. Hegemonic Masculinity Plays a Role in Reproductive Freedom

Two observations suggest a relationship between masculinity and reproductive freedom. First, restrictions on reproductive freedom only target women, as indicated by the exclusive focus of reproductive rights organizations on women; for example, the Center for Reproductive Rights “envisio[n]s a world where every *woman* is free to decide whether and when to have children; where every *woman* has access to the best reproductive healthcare available; where every *woman* can exercise her choices without coercion or discrimination.”³³ The National Women’s Law Center similarly “works to ensure that *women* have access to the full range of reproductive health services . . . to help protect their health and improve their lives.”³⁴ Advocates of reproductive rights focus on women because activists, legislatures, and courts in America do not interfere with men’s decisions regarding parenthood. Instead, they interfere with women’s decisions about parenthood by restricting access to abortions and contraception. While men may lack absolute reproductive freedom,³⁵ it is women whose reproductive freedom suffers at the hands of courts and legislatures.³⁶ Because the United States government interferes with women’s and not men’s ability to control a critical aspect of their lives, the issue of reproductive freedom appears ripe for analysis as a negotiation of power relations among genders.

³² DOWD, *supra* note 3, at 63 (remarking that, although this idea is counterintuitive, “[w]hat may be most important is to understand that this conviction is real and stands in the way of changing consciousness of men about men and of women about men so that movement forward toward equality is possible”); *see also* SALLY ROBINSON, MARKED MEN: WHITE MASCULINITY IN CRISIS 3 (2000) (“Invisibility is a privilege enjoyed by social groups who do not, thus, attract modes of surveillance and discipline; but it can also be felt as a burden in a culture that appears to organize itself around the visibility of differences and the symbolic currency of identity politics.”).

³³ *Our Mission*, CTR. FOR REPROD. RIGHTS, <http://www.reproductiverights.org/about-us/mission> (last visited Nov. 2, 2015) (emphasis added).

³⁴ *About the National Women’s Law Center*, NAT’L WOMEN’S LAW CTR., <http://www.nwlc.org/about-national-womens-law-center> (last visited Nov. 2, 2015) (emphasis added).

³⁵ *See, e.g.*, Michael J. Higdon, *Marginalized Fathers and Demonized Mothers: A Feminist Look at the Reproductive Freedom of Unmarried Men*, 66 ALA. L. REV. 507, 509 (2015) (noting that “a mother can dictate what degree of reproductive freedom a nonmarital father may enjoy”).

³⁶ *See infra* Part II.

Second, reproductive freedom is critical to the social process that continually reproduces gender. As R.W. Connell explains, gender and reproduction are inextricable: “In gender processes, the everyday conduct of life is organized in relation to a reproductive arena, defined by the bodily structures and processes of human reproduction.”³⁷ If gender is organized in relation to reproduction, changing the amount of control a gender group has over its reproduction changes the social practice of gender.³⁸ Consequently, when someone argues for or against reproductive freedom, they are also implicitly arguing about gender itself, or the “way in which social practice is ordered.”³⁹

These observations suggest a connection between masculinity and reproductive freedom that I argue functions in the following way: hegemonic masculinity, as it exists today, is an ideal that most men aspire to, but many fail to embody. Those who closely conform to hegemonic masculinity tend to wield the greatest economic, social, and legal power.⁴⁰ Yet hegemonic masculinity, along with its correlate power, is inherently unstable because masculinity results from social practice.⁴¹ Indeed, individuals of varying gender identities in the United States constantly renegotiate what masculinity is and which form is hegemonic merely by interacting with one another. Thus, American men who do not embody hegemonic masculinity may reduce the power of women in an effort to stabilize their own masculinity. Restricting reproductive freedom reduces women’s power by limiting their ability to challenge men’s hegemony in power relations, production relations, and relations of cathexis—or emotional attachment.

C. *Dynamics of Hegemonic Masculinity*

Rather than forming a static standard, hegemonic masculinity evolves.⁴² The current hegemonic form of masculinity is susceptible to challenge, and “[n]ew groups may . . . construct a new

³⁷ CONNELL, *supra* note 1, at 71.

³⁸ See Roberts, *supra* note 2, at 307 (“Throughout American history the subordination of women has been tied to their reproductive capacity.”); see also CATHARINE A. MACKINNON, TOWARD A FEMINIST THEORY OF THE STATE 184 (1989) (“In women’s experience, sexuality and reproduction are inseparable from each other and from gender.”).

³⁹ CONNELL, *supra* note 1, at 71.

⁴⁰ See *id.* at 77.

⁴¹ See *id.*

⁴² See *id.* (“When conditions for the defence of patriarchy change, the bases for the dominance of a particular masculinity are eroded. New groups may challenge old solutions and construct a new hegemony.”).

hegemony.”⁴³ As Koritha Mitchell explains, “hegemony is never complete; it must continually reassert itself.”⁴⁴ Consequently, hegemonic masculinity is subject to disruption and transformation⁴⁵ in at least three areas: power relations, production relations, and relations of cathexis.⁴⁶

Hegemonic masculinity has been disrupted in many ways since the 1960s due to the “historic collapse of the legitimacy of patriarchal power, and a global movement for the emancipation of women.”⁴⁷ With respect to production relations, women’s entrance into the workforce after World War II contributed to changing gender relations.⁴⁸ Where women’s production formerly took place in the home, women’s production now takes place in business, manufacturing, and other work outside and inside the home. Finally, relations of cathexis, or emotional attachment, have changed with the establishment of “lesbian and gay sexuality as a public alternative within the heterosexual order.”⁴⁹ It is no longer axiomatic that women will have sexual and emotional relationships with men only.

Rights to abortion and contraception threaten hegemonic masculinity by pressuring Connell’s crisis tendencies. First, these rights place pressure on power relations because women gain the ability to leverage resources, which would otherwise be expended bearing and rearing children, to compete with men for legal, social, and economic power. All women, including those with children, may pursue political office, engage in entrepreneurship, or participate in

⁴³ *Id.*

⁴⁴ Koritha Mitchell, *Love in Action: Noting Similarities Between Lynching Then and Anti-LGBT Violence Now*, 36 *CALLALOO* 688, 701 (2013).

⁴⁵ Because gender relations and masculinities are dynamic and thus inherently unstable, it is perhaps inappropriate to talk about a change in masculinity as a crisis—masculinity, technically, is always in crisis. CONNELL, *supra* note 1, at 84. (“The concept of crisis tendencies needs to be distinguished from the colloquial sense in which people speak of a ‘crisis of masculinity.’ As a theoretical term ‘crisis’ presupposes a coherent system of some kind, which is destroyed or restored by the outcome of the crisis. Masculinity, as the argument so far has shown, is not a system in that sense. It is, rather, a configuration of practice within a system of gender relations. We cannot logically speak of the crisis of a configuration. We can, however, logically speak of the crisis of a gender order as a whole, and of its tendencies toward crisis.”). *But see* ROBINSON, *supra* note 32, at 5 (“The idea that dominant masculinity is ‘in crisis’ is evidenced in widely divergent discursive registers, from scholarly histories of American masculinity to popular newsmagazine coverage of the Lorena and John Bobbitt incident.”).

⁴⁶ CONNELL, *supra* note 1, at 85.

⁴⁷ *Id.* at 84.

⁴⁸ *Id.*

⁴⁹ *Id.*

community organizing. However, control over whether, when, how, and with whom one will have children augments women's ability to plan for these ambitions.⁵⁰ Most women with children expend a significant amount of resources bearing and rearing their child.⁵¹ Women who have the option to postpone or avoid pregnancy better compete with men for power.⁵² Thus, power relations change in favor of women when women control their reproductive lives.

Second, reproductive rights pressure production relations. When women have access to abortion and contraception, they can avoid, postpone, or plan around pregnancy. Women who fully control their reproductive lives may postpone motherhood until after they achieve goals such as leading companies, working on assembly lines, or practicing public interest law, which can be difficult while raising children.⁵³ While some may achieve career goals while managing an unexpected pregnancy, reproductive options give women greater autonomy and choice over their work lives. Consequently, women who have access to abortion services and contraception can more freely take on traditionally male-dominated jobs by avoiding, postponing, or planning around pregnancy and child-rearing—their socially prescribed domain of production.

Third, reproductive rights place pressure on relations of cathexis. Laws restricting access to abortion services “force the goodness of good girls” by punishing them with pregnancy for attempting to gain sexual experience.⁵⁴ Simultaneously, “[a]nti-abortion laws treat women as blameworthy for becoming pregnant and penalize them for their sexual transgressions: they presuppose and punish the badness of bad girls. Good girls never need abortions, and bad girls do not deserve safe, legal abortions.”⁵⁵ When women have access to abortion

⁵⁰ See Roberts, *supra* note 2, at 309.

⁵¹ See generally Emily Thomas, *This Is How Much It Costs To Raise A Child In The U.S.*, HUFFINGTON POST (Aug. 18, 2014, 4:39 PM), http://www.huffingtonpost.com/2014/08/18/cost-of-raising-a-child_n_5688179.html (estimating the “average cost of raising a child born in 2013 up until age 18 for a middle-income family in the U.S. is approximately \$245,340”).

⁵² See, e.g., Mary Ann Mason, *In the Ivory Tower, Men Only*, SLATE (June 17, 2013, 5:30 AM),

http://www.slate.com/articles/double_x/doublex/2013/06/female_academics_pay_a_heavy_baby_penalty.html (“The most important finding is that family formation negatively affects women’s, but not men’s, academic careers. For men, having children is a career advantage; for women, it is a career killer. And women who do advance through the faculty ranks do so at a high price. They are far less likely to be married with children.”).

⁵³ See *id.*

⁵⁴ Frances Olsen, *Unraveling Compromise*, 103 HARV. L. REV. 105, 110 n.24 (1989).

⁵⁵ *Id.*

and contraception, they may gain a greater ability to “enjoy sex freely” and “explor[e] sexuality as a realm of pleasure or as an expression of intimacy.”⁵⁶ When unencumbered by the “supremely consequential procreative potential of the sexual act,” women gain greater capacity to explore their sexuality.⁵⁷ Thus, access to abortion services and contraception may dissolve the double standard of sexual morality that “denies sexual freedom to ‘good girls’ while it legitimates the sexual exploitation of ‘bad girls.’”⁵⁸ In the absence of laws restricting access to abortion, women could enjoy greater sexual exploration without fear of punishment by pregnancy.⁵⁹

III. RESPONSES TO CRISIS TENDENCIES IMPLICATED BY REPRODUCTIVE FREEDOM

Assuming threats to the hegemony of masculinity exist, men’s responses to these disruptions diverge: some men have sought to legitimize patriarchy, and others have supported feminist reforms.⁶⁰ Men may make use of “symbolic masculinities,” or “strong affirmations of alternative aspects of hegemonic masculinity, made in an effort to downplay the significance of areas where they do not meet the hegemonic standard.”⁶¹ For example, “men who defined . . . masculinity through economic leadership, if faced with wage parity, may instead define themselves through spiritual leadership in the household, as a protector, or other symbolic acts.”⁶²

⁵⁶ *Id.* at 110 (contending that antiabortion laws “constrain women’s ability to enjoy sex freely and inhibit women from fully exploring sexuality as a realm of pleasure or as an expression of intimacy”).

⁵⁷ Erika Bachiochi, *Embodied Equality: Debunking Equal Protection Arguments for Abortion Rights*, 34 HARV. J.L. & PUB. POL’Y 889, 914 (2011).

⁵⁸ See Olsen, *supra* note 54, at 110 n.24.

⁵⁹ See Mary Ziegler, *Women’s Rights on the Right: The History and Stakes of Modern Pro-Life Feminism*, 28 BERKELEY J. GENDER L. & JUST. 232, 240 (2013) (explaining that, historically, legal abortion has been viewed as problematic in part “because it made promiscuity costless”). *But see* Catharine A. MacKinnon, *Reflections on Sex Equality Under Law*, 100 YALE L.J. 1281, 1300 (1991) (arguing that abortion rights enable men to sexually exploit women free of consequence).

⁶⁰ See, e.g., CONNELL, *supra* note 1, at 85; Dan Cassino, *Changing the Subject: Abortion and Symbolic Masculinities Among Young Evangelicals*, 1 J. OF MEN, MASCUINITIES & SPIRITUALITY 201, 202 (2007) (reporting results from a study of young evangelicals and their adoption of antiabortion stances with respect to masculinity).

⁶¹ Cassino, *supra* note 60, at 202.

⁶² *Id.*

Men may also “embrace symbolic stances on social issues.”⁶³ Dan Cassino explains that “men threatened by changes in the hegemonic masculinity during the late 1960s and early 1970s could embrace symbolic issue positions against [gay rights or abortion rights].”⁶⁴ Cassino concluded that young men who oppose abortion rely on a pro-life stance as symbolic masculinity.⁶⁵

Understanding that some male pro-life advocates embrace symbolic masculinity in response to challenges to hegemonic masculinity leads to a different understanding of abortion rights. Although implicating moral and religious ethos, restrictions on access to abortion and contraception are sex equality issues at their core.⁶⁶ Some American men are inscribing themselves into hegemonic masculinity by opposing abortion.⁶⁷ Acting through legislatures and courts, men and even some women stabilize hegemonic masculinity by restricting access to abortion and contraception while simultaneously making it more difficult for low-income women to support their families.

A. Legislatures and Courts Stabilize Hegemonic Masculinity by Forcing Women to have Unintended, Unwanted, and Unaffordable Babies

Currently, courts and legislatures are restricting access to abortion services and contraception more than ever. Legislatures have passed more laws restricting access to abortions in the past three years than in the entire previous decade.⁶⁸ Lawmakers have strongly resisted insurance coverage for contraception, and courts have upheld abortion restrictions.⁶⁹ These barriers to reproductive freedom disproportionately prevent some of the most marginalized women in our society—women of color with low incomes—from avoiding pregnancy and obtaining abortions. As a result, women are forced to bear unwanted babies. In addition to laws restricting access to abortion, state legislatures and Congress have reduced welfare benefits

⁶³ *Id.* at 203.

⁶⁴ *Id.*

⁶⁵ *See id.* at 202.

⁶⁶ *See id.* at 202-03.

⁶⁷ *See id.*

⁶⁸ *More State Abortion Restrictions Were Enacted in 2011-2013 Than in the Entire Previous Decade*, GUTTMACHER INST. (Jan. 2, 2014) [hereinafter GUTTMACHER INST., *State Abortion Restrictions*],

<http://www.guttmacher.org/media/inthenews/2014/01/02/index.html>.

⁶⁹ *Id.*

for low-income families suffering from the Great Recession.⁷⁰ Consequently, some women are forced to bear and rear children they not only do not want, but also cannot afford.

Of course, these attacks on women's reproductive freedom have engendered substantial opposition. In June 2013, for instance, Wendy Davis, a member of the Texas Senate, filibustered for eleven hours in an attempt to prevent the passage of a law that would close down almost ninety percent of the women's clinics in Texas.⁷¹ Law professors,⁷² reproductive advocacy organizations,⁷³ physicians,⁷⁴ LGBT organizations,⁷⁵ religious organizations,⁷⁶ and others submitted

⁷⁰ See, e.g., *Arizona Legislature Votes to Cut Off Welfare Benefits After 12 Months*, THE GUARDIAN (May 18, 2015), <http://www.theguardian.com/us-news/2015/may/18/arizona-legislature-votes-cut-off-welfare-benefits-12-months> ("Arizona's Republican-led legislature has reduced the lifetime limit for welfare recipients . . . drop[ping] at least 1,600 families—including more than 2,700 children—from the state's federally funded welfare."); Summer Ballentine, *Missouri OKs 15-Month Reduction in Lifetime Welfare Benefits*, WASH. TIMES (Apr. 16, 2015), <http://www.washingtontimes.com/news/2015/apr/16/missouri-legislature-passes-15-month-cut-to-welfar/?page=all> (stating that "[m]ore than 3,000 low-income Missouri families could lose monthly welfare assistance").

⁷¹ See Caitlin MacNeal, *Wendy Davis Pens Op-Ed on 'Draconian' Abortion Bill, Says It's Not What 'Real Texans' Want*, HUFFINGTON POST (July 12, 2013, 5:04 PM), http://www.huffingtonpost.com/2013/07/12/wendy-davis-oped-abortion_n_3587445.html.

⁷² Amicus Curiae Brief of Corporate & Criminal Law Professors in Support of Petitioners, *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. ____ (2014) (Nos. 13-354, 13-356), 2014 WL 333889; Brief for Foreign & Comparative Law Experts Lawrence O. Gostin, et al., as Amici Curiae Supporting Petitioners in No. 13-354 and Respondents in No. 13-356, *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. ____ (2014) (Nos. 13-345, 13-356), 2014 WL 334442.

⁷³ Brief of the Guttmacher Institute & Professor Sara Rosenbaum as Amici Curiae in Support of the Government, *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. ____ (2014) (Nos. 13-345, 13-346), 2014 WL 333890.

⁷⁴ Brief of Amici Curiae American College of Obstetricians & Gynecologists, Physicians for Reproductive Health, American Academy of Pediatrics, American Nurses Association, et al. in Support of the Government, *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. ____ (2014) (Nos. 13-345, 13-346), 2014 WL 333893; Brief of Amici Curiae the Ovarian Cancer National Alliance & its Partner Members in Support of the Government, *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. ____ (2014) (Nos. 13-345, 13-346), 2014 WL 333894.

⁷⁵ Brief of Amici Curiae Lambda Legal Defense & Education Fund, Inc., et al. in Support of the Government, *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. ____ (2014) (Nos. 13-345, 13-346), 2014 WL 334441; Brief of the U.S. Women's Chamber of Commerce & the National Gay & Lesbian Chamber of Commerce as Amici Curiae in Support of Kathleen Sebelius et al., *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. ____ (2014) (Nos. 13-345, 13-346), 2014 WL 342619.

⁷⁶ Brief Amicus Curiae of American Jewish Committee & Jewish Council for Public Affairs in Support of the Government, *Burwell v. Hobby Lobby Stores, Inc.*, 573

amicus briefs in support of the Affordable Care Act's (ACA) birth control coverage requirement in the *Hobby Lobby* cases. And court decisions such as *Isaacson v. Horne* have held that state restrictions on abortion beginning with fetal pain are unconstitutional.⁷⁷ However, legislative attacks on reproductive freedom persist.

B. Legislatures Stabilize Hegemonic Masculinity by Restricting Access to Abortion and Contraception.

For decades, legislatures have sought to wrest control over the reproductive capabilities of women,⁷⁸ and these efforts have recently intensified.⁷⁹ In the past several years, state legislatures have restricted access to abortion at an unprecedented rate.⁸⁰ From 2010 to 2013, states enacted 205 abortion restrictions, while in the entire previous decade, states enacted only 189 abortion restrictions.⁸¹ These restrictions range in approach, but the four most common restrictions in 2013 were “targeted regulation of abortion providers (TRAP), limits on the provision of medication abortion, bans on private insurance coverage of abortion and bans on abortion at 20 weeks from fertilization.”⁸² Some states also required increased parental involvement, reduced public funding for abortion, instituted waiting periods and counseling, and required ultrasounds.⁸³ Restrictions on abortion have also come at the federal level. In 2003, Congress enacted the Federal Partial-Birth Abortion Act, prohibiting physicians from performing intact dilation and extraction of fetuses.⁸⁴

Legislatures have further restricted access to abortions by blocking the use of federal and state funds for abortion. At the federal level, the Hyde Amendment prohibits the use of Medicaid funds for abortions, except in cases of rape or incest, or when a pregnant

U.S. ___ (2014) (Nos. 13-345, 13-346), 2014 WL 333892; Brief of Religious Organizations as Amici Curiae Supporting the Government, *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. ___ (2014) (Nos. 13-345, 13-346), 2014 WL 333898.

⁷⁷ *Isaacson v. Horne*, 716 F.3d 1213, 1225 (9th Cir. 2012).

⁷⁸ See GUTTMACHER INST., *State Abortion Restrictions*, *supra* note 68.

⁷⁹ See *id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² Heather D. Boonstra & Elizabeth Nash, *A Surge of State Abortion Restrictions Puts Providers—and the Women They Serve—in the Crosshairs*, GUTTMACHER INST. (2014), <http://www.guttmacher.org/pubs/gpr/17/1/gpr170109.html>.

⁸³ GUTTMACHER INST., *State Abortion Restrictions*, *supra* note 68.

⁸⁴ Partial-Birth Abortion Ban Act, 18 U.S.C. § 1531 (2013).

woman's life is endangered.⁸⁵ Federal law also restricts Title X funds from use in "programs where abortion is a method of family planning."⁸⁶ At the state level, "only seventeen states fund abortions for low-income women on the same or similar terms as other pregnancy-related and general health services."⁸⁷ These restrictions disproportionately impact women of color because they are overrepresented among people with low incomes,⁸⁸ and more likely than white women to obtain abortions.⁸⁹

Contraception has also come under attack, astounding national leaders in the reproductive justice movement.⁹⁰ The U.S. House of Representatives forced a shutdown of the national government in 2013, in part, because of the ACA's requirement that employer-provided healthcare plans offer coverage for prescription contraception without cost-sharing.⁹¹

⁸⁵ See Ziegler, *supra* note 59, at 265; *Public Funding for Abortion*, AM. CIV. LIBR. UNION (July 21, 2004), <https://www.aclu.org/reproductive-freedom/public-funding-abortion>.

⁸⁶ Ziegler, *supra* note 59, at 265 n.251 (quoting 42 U.S.C. § 300a-6 (2006)).

⁸⁷ *Public Funding for Abortion*, *supra* note 85.

⁸⁸ David Robert Baron, *The Racially Disparate Impact of Restrictions on the Public Funding of Abortion: An Analysis of Current Equal Protection Doctrine*, 13 B.C. THIRD WORLD L.J. 1, 7-8 (1993).

⁸⁹ In 2010, non-hispanic Black women had the highest abortion rates (31.8 abortions per 1,000 women aged 15-44 years) and ratios (483 abortions per 1,000 live births) of the racial/ethnic categories used by the Centers for Disease Control and Prevention. Karen Pazol et al., *Abortion Surveillance – United States 2010*, CTRS. FOR DISEASE CONTROL & PREVENTION (2013),

http://www.cdc.gov/mmwr/preview/mmwrhtml/ss6208a1.htm?s_cid=ss6208a1_w.

⁹⁰ Nick Baumann, *The Republican War on Contraception*, MOTHER JONES (Feb. 9, 2012, 4:00 AM), <http://www.motherjones.com/politics/2012/02/republican-war-birth-control-contraception> ("Contraception is under attack in a way it really wasn't in the past few years," says Judy Waxman, the vice president for health and reproductive rights at the National Women's Law Center. "In 2004, we could not find any group—the National Right to Life Committee, the Bush campaign, anyone—that would go on the record to say they're opposed to birth control," adds Elizabeth Shipp, the political director for NARAL Pro-Choice America. "We couldn't find them in 2006 either, and in 2008 it was just fringe groups. In 2010, 2011, and this year, it's just exploded.").

⁹¹ Adele M. Stan, *House GOP Threatens Shutdown Over Contraception, Obamacare*, RH REALITY CHECK (Sept. 30, 2013, 7:56 AM), <http://rhrealitycheck.org/article/2013/09/30/house-gop-threatens-shutdown-over-contraception-obamacare/>.

*C. Courts Stabilize Hegemonic Masculinity by Upholding
Restrictions on Access to Abortion and Contraception*

The legislative branch is not the only branch of government reducing women's reproductive freedom for the purpose of stabilizing hegemonic masculinity. In the four decades since *Roe v. Wade*, courts have chipped away at the privacy interest women have in termination.⁹² In *Gonzales v. Carhart*, for example, the Supreme Court held that the Federal Partial-Birth Abortion Ban Act passed constitutional muster, even though it lacked a maternal health exception.⁹³ In *Hodgson v. Minnesota*, the Supreme Court upheld a parental notification statute that required notice be given to both parents.⁹⁴ In 2012, the Fifth Circuit held that a Texas statute requiring abortion providers to "perform [an] ultrasound, display and describe the ultrasound images to the patients, and make the fetal heart sounds audible to the patient . . . neither violated the First Amendment nor imposed an 'undue burden' on women seeking an abortion."⁹⁵

Courts continue to limit not only abortion rights, but also rights to contraception. While the ACA "guarantees that women receive health insurance coverage for all FDA-approved methods of birth control, sterilization, and related education and counseling without cost-sharing,"⁹⁶ by early 2014, over forty for-profit businesses challenged the birth control coverage requirement for violating the federal Religious Freedom Restoration Act (RFRA) and the Free Exercise Clause of the First Amendment.⁹⁷ In the most widely known example,

⁹² See *Roe v. Wade*, 410 U.S. 113, 153 (1973) ("This right of privacy, whether it be founded in the Fourteenth Amendment's concept of personal liberty and restrictions upon state action, as we feel it is . . . is broad enough to encompass a woman's decision whether or not to terminate her pregnancy.").

⁹³ *Gonzales v. Carhart*, 550 U.S. 124, 163 (2007) (upholding the Act in spite of medical uncertainty surrounding the advantages of intact dilation and evacuation (D & E) over D & E for maternal health).

⁹⁴ See Selina K. Hewitt, *Hodgson v. Minnesota: Chipping Away at Roe v. Wade in the Aftermath of Webster*, 18 PEPP. L. REV. 955, 956 (1991).

⁹⁵ *A History of Key Abortion Rulings of the U.S. Supreme Court*, PEW RESEARCH (Jan. 16, 2013), <http://www.pewforum.org/2013/01/16/a-history-of-key-abortion-rulings-of-the-us-supreme-court/#regulations> (citing *Tex. Med. Providers Performing Abortion Servs. v. Lakey*, 667 F.3d 570 (5th Cir. 2012)).

⁹⁶ *Challenges to Birth Control Coverage Benefit*, NAT'L WOMEN'S LAW CTR., <http://www.nwlc.org/challenges-birth-control-coverage-benefit> (last visited Nov. 2, 2015).

⁹⁷ *The Birth Control Coverage Cases Before the U.S. Supreme Court: An Overview of the Legal Issues*, NAT'L WOMEN'S LAW CTR. (Mar. 19, 2014), <http://www.nwlc.org/resource/birth-control-coverage-cases-us-supreme-court-overview-legal-issues>.

the *Hobby Lobby* cases, the Supreme Court considered whether the birth control coverage requirement of the ACA substantially burdened the respondents' free exercise of religion.⁹⁸ By holding the contraceptive mandate unlawful under RFRA,⁹⁹ the Supreme Court colluded in the maintenance of existing systems of oppression based on race, class, and sex.

D. Legislatures Additionally Stabilize Hegemonic Masculinity by Reducing Welfare Benefits for Families in Need

Legislatures stabilize hegemonic masculinity by reducing the resources available to low-income mothers and women who may become mothers.¹⁰⁰ In early 2014, Congress cut Supplemental Nutrition Assistance Program (SNAP) benefits by \$8.7 billion.¹⁰¹ In early drafts of the bill, Congress considered cutting up to \$16.5 billion from SNAP, which would have caused nearly 300,000 children to lose their free school lunches.¹⁰² State legislatures also cut funding for Temporary Assistance for Needy Families (TANF).¹⁰³ In 2011, for example, Washington cut monthly TANF benefits for a family of three with no other income from \$562 to \$478, and South Carolina cut monthly benefits for a family of three from \$270 to \$216.¹⁰⁴ Additionally, as of early 2014, almost half of U.S. state governments refused to expand Medicaid under the ACA.¹⁰⁵ While these policies do not directly impact access to abortion, they reduce the already limited resources of low-income mothers and women who may

⁹⁸ Brief for Respondents at 34, *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. ____ (2014) (Nos. 13-354), 2014 WL 546899.

⁹⁹ See *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2785 (2014).

¹⁰⁰ See *supra* text accompanying note 70.

¹⁰¹ Ned Resnikoff, *Congress Passes \$8.7 Billion Food Stamp Cut*, MSNBC (Feb. 4, 2014, 3:13 PM), <http://www.msnbc.com/msnbc/congress-passes-farm-bill-food-stamp-cuts> (noting that Congress cut food stamp benefits by \$8.7 billion in early 2014).

¹⁰² *Feeding America Warns Cuts to the SNAP Program Will Overwhelm Food Pantries and Hunger Relief Charities*, FEEDING AM. (Aug. 14, 2012), <http://www.feedingamerica.org/hunger-in-america/news-and-updates/press-room/press-releases/feeding-america-warns-cuts-to-the-snap-program-will-overwhelm-food-pantries-and-hunger-relief-charities.html>.

¹⁰³ Liz Schott & LaDonna Pavetti, *Many States Cutting TANF Benefits Harshly Despite High Unemployment and Unprecedented Need*, CTR. ON BUDGET & POL'Y PRIORITIES (Oct. 3, 2011), <http://www.cbpp.org/cms/?fa=view&id=3498>.

¹⁰⁴ *Id.*

¹⁰⁵ *Where the States Stand on Medicaid Expansion*, THE ADVISORY BD. CO. (Feb. 7, 2014, 12:44 PM), <http://www.advisory.com/daily-briefing/resources/primers/medicaidmap>.

become mothers, resulting in hardship for women burdened by unwanted pregnancies.¹⁰⁶ Consequently, restrictions on access to abortion services and contraception disproportionately force marginalized women to use their scarce resources to bear and rear unintended, unwanted, and unaffordable children.¹⁰⁷

E. Arguments of Pro-Life Women Also Stabilize Hegemonic Masculinity and Other Systems of Oppression

Women as well as men have pushed for laws limiting access to abortion.¹⁰⁸ Sarah Palin is one prominent example.¹⁰⁹ During her 2008 campaign as the Republican candidate for vice president of the United States, Palin identified herself as a pro-life feminist.¹¹⁰ She argued that abortion did not further sex equality and that, because men and women were already equal, women did not need access to abortion—they could “give their child life in addition to pursuing [careers and education].”¹¹¹ Before Palin began asserting her position as a pro-life feminist, though, activists and legal scholars “defined and defended” pro-life feminism.¹¹² In the early 2000s, Mary Ann Glendon, for example, emerged as one of the most influential legal scholars explaining the “intellectual underpinnings of conservative antiabortion feminism.”¹¹³ Prior to that, pro-life feminists organized throughout the 1970s in groups such as the American Citizens Concerned for Life, Feminists for Life of America, and the National Right to Life Committee.¹¹⁴

Feminist anti-choice activism in the name of women’s equality is puzzling if restrictions on access reify women’s inequality by limiting women’s ability to challenge their subordination to men in power relations, production relations, and relations of cathexis.¹¹⁵ Women forced to bear unwanted children are less likely to compete with men

¹⁰⁶ See *supra* notes 88-89 and accompanying text.

¹⁰⁷ See *supra* notes 88-89 and accompanying text

¹⁰⁸ For an insightful history and analysis of pro-life feminism, see generally Ziegler, *supra* note 59.

¹⁰⁹ See *id.* at 258-60 (documenting Sarah Palin’s pro-life feminism).

¹¹⁰ *Id.* at 258.

¹¹¹ *Id.* at 259.

¹¹² *Id.* at 258.

¹¹³ *Id.* at 257. For a comparative legal history of abortion regulation from a pro-life feminist scholar, see MARY ANN GLENDON, *ABORTION & DIVORCE IN WESTERN LAW: AMERICAN FAILURES, EUROPEAN CHALLENGES* (1987).

¹¹⁴ See Ziegler, *supra* note 59, at 238-41 (documenting the history of pro-life feminist organizations).

¹¹⁵ See *supra* Part I.

for employment, elected office, and other positions of social, legal, and economic power. They are also less likely to command their own sexuality when limits on access to abortion legitimize sexual double-standards.¹¹⁶

Moreover, limiting access to abortion and contraception perpetuates inequality among women. For example, laws restricting access will disproportionately impact women of color because they are overrepresented among people with low incomes,¹¹⁷ more likely than white women to unintentionally conceive,¹¹⁸ and more likely to obtain abortions.¹¹⁹ In addition, laws restricting access to abortion and contraception will disproportionately burden poor women of all races and ethnicities, who “had an unintended birth rate nearly six times as high as that of higher-income women” in 2008.¹²⁰

Restrictions on reproductive freedom also collude with gender stereotypes that disproportionately burden women with low incomes and women of color. Women are expected to be mothers to their children, thus women who give their children up for adoption are not culturally exalted and idealized.¹²¹ The social expectations placed upon pregnant women to raise their children affect all women, but it has a disparate impact on women of color with low incomes because they are more likely to unintentionally conceive and be unable to afford care.¹²² Consequently, in the face of baseline pan-racial social expectations of women as mothers,¹²³ restrictions on access to abortion and contraception will perpetuate inequality among women.

¹¹⁶ *See id.*

¹¹⁷ *See* Baron, *supra* note 88, at 7-8.

¹¹⁸ *Unintended Pregnancy in the United States*, GUTTMACHER INST. (Dec. 2013) [hereinafter GUTTMACHER INST., *Unintended Pregnancy*], <http://www.guttmacher.org/pubs/FB-Unintended-Pregnancy-US.html#6a>. Among women of color, Black women are more likely than white women to unintentionally become pregnant. *Id.* (“In 2008, black women had the highest unintended pregnancy rate of any racial or ethnic groups. At 92 per 1,000 women aged 15-44, it was more than double that of non-Hispanic white women (38 per 1,000).”).

¹¹⁹ *See supra* note 89 and accompanying text.

¹²⁰ GUTTMACHER INST., *Unintended Pregnancy*, *supra* note 118.

¹²¹ The reality is that women often will not give up their children for adoption, but instead will have their children forcibly removed from their care, particularly if they are Black women. *See* Dorothy E. Roberts, *Is There Justice in Children’s Rights?: The Critique of Federal Family Preservation Policy*, 2 U. PA. J. CONST. L. 112, 125-26 (1999) (documenting the race and class implications of the foster care system). Their parental rights are often terminated against their will, disparaging the biological bonds of children and their parents. *Id.* at 128-29.

¹²² *See* GUTTMACHER INST., *Unintended Pregnancy*, *supra* note 118.

¹²³ This is not to say that expectations of women as mothers have no racial dimensions. Black women’s motherhood is subject to far greater scrutiny than any

If feminism is “the struggle to end sexist oppression,”¹²⁴ how can women who claim to be feminists oppose abortion rights when limiting access perpetuates women’s subordination to men and inequality among women? Foundational to the pro-life feminist response is a belief in the moral personhood of fetuses.¹²⁵ Many pro-life feminists see abortion as the unjustified killing of innocent children.¹²⁶ In an effort to persuade individuals who do not believe in the personhood of fetuses, pro-life feminists express their arguments against abortion rights in terms of the harms that abortion rights inflict on women.¹²⁷

Some female pro-life feminists argue that abortion and contraception rights inflict harm on women by threatening “their social and gender roles as housewives and caretakers,”¹²⁸ and see such rights “as symptomatic of an increasingly undervalued realm of maternal and feminine nurture.”¹²⁹ Sarah Palin espoused this viewpoint in a 2010 speech for the Susan B. Anthony List, a national pro-life organization founded in 1992,¹³⁰ where she “described pro-life feminism as a law-reform movement that grew from and was shaped by women’s natural role as mothers and caregivers.”¹³¹ Though this argument purports to be feminist, it is anything but. It relies on and promotes gender stereotypes so historically harmful to women that it required intervention by Congress and the Supreme Court.¹³² While women

other women’s motherhood. *See, e.g.*, Roberts, *supra* note 121, at 125 (“The class and race dimensions of foster care magnify this problem—virtually all of the parents who lose custody of their children are poor, and a startling percentage are black.”). Presumably there exists some baseline expectation that all women will take care of their children, but women of color, and especially Black women, will be required to do it perfectly.

¹²⁴ BELL HOOKS, *FEMINIST THEORY: FROM MARGIN TO CENTER* 26 (2d ed. 2000).

¹²⁵ *See* Linda C. McClain, *Equality, Oppression, and Abortion: Women Who Oppose Abortion Rights in the Name of Feminism*, in *FEMINIST NIGHTMARES: WOMEN AT ODDS* 159, 164 (Susan Ostrov Weisser & Jennifer Fleischner eds., 1994).

¹²⁶ *See, e.g., id.* (suggesting that the Feminists for Life of America believed more strongly that abortion is unjustified killing of children than that abortion is bad for women).

¹²⁷ Ziegler, *supra* note 59, at 263.

¹²⁸ McClain, *supra* note 125, at 163-64.

¹²⁹ *Id.* at 164.

¹³⁰ *SBA List Mission: Advancing, Mobilizing and Representing Pro-Life Women*, SUSAN B. ANTHONY LIST, <http://www.sba-list.org/about-sba-list/our-mission> (last visited Nov. 2, 2015).

¹³¹ Ziegler, *supra* note 59, at 259.

¹³² *See, e.g., Price Waterhouse v. Hopkins*, 490 U.S. 228, 251 (1989) (“As for the legal relevance of sex stereotyping, we are beyond the day when an employer could evaluate employees by assuming or insisting that they matched the stereotype associated with their group, for in forbidding employers to discriminate against

should be free to value maternal nature, so too should women be able to pursue positions of social, legal, and economic power outside the home. Foreclosing abortion as a means of control over women's reproductive lives limits the ability of women, in the aggregate, to compete with men for positional power. Moreover, the anti-abortion argument that Palin promotes relies on gender stereotypes that disproportionately burden women with low incomes and women of color.¹³³ Such results are inconsistent with the aims of feminism and actually align with the aims of hegemonic masculinity to subordinate women.

Other women have argued that the right to abortion itself subordinates women. Erika Bachiochi, for example, argues that abortion is sexist:

Abortion rights actually hinder the equality of women by taking the wombless male body as normative, thereby promoting cultural hostility toward pregnancy and motherhood. Only prolife feminism can promote the equality of women because it does not embrace the falsehood that equality requires women to deny their fertility and reject their children.¹³⁴

Bachiochi's argument echoes the arguments of early pro-life feminists. The Feminists for Life of America claimed, in the 1970s, that "the female body, with its natural physical process of pregnancy, is forced through abortion to conform to a male norm."¹³⁵

Bachiochi's argument has some superficial appeal—why should men's bodies be the norm after which women's equality is patterned? Women should not have to deny their fertility and reject having children to achieve positions of power. Having children should not preclude women from pursuing an idea of flourishing that includes, for example, raising children and enjoying a successful, fulfilling career. And while Sarah Palin believes that "women today have every opportunity that a man has to succeed and to try to have it all,"¹³⁶ the reality is that poor women and women of color do not have the same opportunity to flourish as many men, or many white, wealthy women.

individuals because of their sex, Congress intended to strike at the entire spectrum of disparate treatment of men and women resulting from sex stereotypes.") (citation omitted) (internal quotation marks omitted).

¹³³ See *supra* notes 117-23 and accompanying text.

¹³⁴ Bachiochi, *supra* note 57, at 893.

¹³⁵ McClain, *supra* note 125, at 168.

¹³⁶ Ziegler, *supra* note 59, at 258.

Limiting abortion rights in our current social and legal framework perpetuates women's subordination to men and inequality among women themselves.¹³⁷ Although Bachiochi's vision of a world in which women have the same opportunities as men to flourish, without denying the realities of their bodies, is appealing, restricting access to abortion fails to accomplish this goal.

Still other women contend that abortion perpetuates subordination by permitting men to sexually exploit women.¹³⁸ Catharine MacKinnon, for example, has argued that "women get abortion rights" only when it is "convenient [for men] to do away with the consequences of sexual intercourse (meaning children) . . . Women can have abortions so men can have sex."¹³⁹

Without abortion and contraception, the possibility of pregnancy may deter some men from sexually exploiting women, but restricting access also punishes women. For example, as discussed above, Frances Olsen argues that restrictions on access to abortions "constrain women's ability to enjoy sex freely and inhibit women from fully exploring sexuality as a realm of pleasure or as an expression of intimacy."¹⁴⁰ Laws restricting access to abortions "force the goodness of good girls," punishing them with pregnancy for attempting to gain sexual experience.¹⁴¹ Simultaneously, "[a]nti-abortion laws treat women as blameworthy for becoming pregnant and penalize them for their sexual transgressions: they presuppose and punish the badness of bad girls. Good girls never need abortions, and bad girls do not deserve safe, legal abortions."¹⁴² In short, women who lack access to abortion services cannot explore their sexuality for fear of pregnancy, while women who have access cannot explore their sexuality for fear of rape.

This double bind will exist as long as hegemonic masculinity requires men to control sex.¹⁴³ Catharine MacKinnon's argument rests on the assumption that men control sex to a greater degree than women.¹⁴⁴ Presumably, if sex were "coequally determined," abortion

¹³⁷ See *supra* notes 117-23 and accompanying text.

¹³⁸ McClain, *supra* note 125, at 171-72.

¹³⁹ MacKinnon, *supra* note 59, at 1300.

¹⁴⁰ Olsen, *supra* note 54, at 110.

¹⁴¹ *Id.* at 110 n.24.

¹⁴² *Id.*

¹⁴³ See, e.g., CATHARINE A. MACKINNON, FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW 94 (1987) ("The political right, imagining that the intercourse preceding conception is usually voluntary, urges abstinence, as if sex were up to women, while defending male authority, specifically including a wife's duty to submit to sex.").

¹⁴⁴ *Id.*

rights would discourage male exploitation of women.¹⁴⁵ In order to escape the double bind of rape and pregnancy, advocates for abortion rights should encourage men to aspire to a masculinity that favors women's equality.

Regardless of which argument they advance, prominent pro-life feminist advocates have one thing in common—they are well-educated, wealthy, white women.¹⁴⁶ And because of their status, they are privileged to ignore or discount the disparate impact of abortion-restrictive laws on low-income, minority women. The interaction of race, class, and gender compounds the crisis of unintended pregnancy for low-income women of color, and restricting access to abortion will only conflate the problem. It will entrench low-income, minority women and their children in poverty.

Many pro-life women conclude that an unborn fetus has a moral personhood status that should be respected through abortion-restrictive regulation, despite negative impacts on women's autonomy and social status, as well as disparate impacts on low-income women and women of color.¹⁴⁷ This decision seems rational, if privileged women are ignorant to the realities of marginalized women. When white, wealthy, educated women forego abortion in favor of a moral high ground, they usually have resources to absorb the cost of bearing and rearing unintended children. Poor women, however, do not. The morality of white, wealthy, educated women is costly, and some women cannot afford it.¹⁴⁸

If society embraces the belief that a fetus is a person and abortion is tantamount to homicide, there is still an anti-racist, anti-capitalist, anti-sexist solution to the problem of abortion: increase resources available to mothers. For example, guarantee all women free prenatal healthcare and childcare; increase SNAP and TANF benefits, and lower eligibility standards for mothers; mandate paid maternity and paternity leave. If we believe in the moral personhood of fetuses, we

¹⁴⁵ *Id.* at 95.

¹⁴⁶ See, e.g., *Leadership*, NAT'L RIGHT TO LIFE COMM., <http://www.nrlc.org/about/leadership/> (last visited Nov. 2, 2015). Photographs of Mary Ann Glendon, Sarah Palin, and Erika Bachiochi, widely available through internet image searches, indicate that they are also white.

¹⁴⁷ See generally T.J. Scott, *Why State Personhood Amendments Should Be Part of the Pro-life Agenda*, 6 U. ST. THOMAS J.L. & PUB. POL'Y 222, 223 (2011) ("Some in the pro-life movement view [personhood] amendments as ways to reduce or eliminate abortion.").

¹⁴⁸ But see generally *About-Us*, NAT'L BLACK PRO-LIFE UNION, <http://www.nationalblackprolifeunion.com/About-Us.html> (last visited Nov. 2, 2015) (displaying a Black woman, Dr. Day Gardner, as president of a national Black pro-life organization as an exception to the rule).

surely must believe in the moral personhood of postnatal humans. We should allow neither babies nor mothers to suffer from the economic cost of bearing and rearing children. If society reaches a reasoned conclusion that all fetuses are unborn humans with a right to live, we should not force them into a world of inadequate healthcare, nutrition, and other financial resources. Instead, we should welcome them into a world where they are healthy and cared for.

In the 1970s, before *Roe*, these arguments formed the common ground between pro-life feminists and feminists advocating for abortion rights.¹⁴⁹ The nation's largest pro-life organization, the National Right to Life Committee (NRLC), committed itself to a statement of purpose "call[ing] for expanded government support for post-birth maternal health care and improved support services for children whose parents were not willing to raise them."¹⁵⁰ And pro-choice feminists working in organizations such as the Reproductive Rights National Network "also called for greater governmental support for caretaking and health care."¹⁵¹ This vision formed the foundation of one organization's antiabortion activism. American Citizens Concerned for Life (ACCL) stressed that opposing abortion required making abortion unnecessary, and endorsed medical assistance for unwed mothers and children, school retention programs for pregnant teenagers, childcare, contraceptive funding, and protections against pregnancy discrimination.¹⁵²

Such a solution is still problematic, however. Increasing resources available to mothers while prohibiting abortion sidesteps the interests of women in autonomy and control over their bodies. Even if women are materially supported throughout their pregnancy and beyond, they are still, in the absence of access to abortion and contraception, forced to bear unwanted children. Under such circumstances, women become less able to challenge men's hegemony in power relations, production relations, and relations of cathexis. Such a solution would not change the gender stereotypes that continue to confine women to domesticity, and it might strengthen the social expectation that women should be mothers first and foremost. Moreover, such a solution would fail to undo the sexual double standard that punishes women for exploring sexuality. Removing the financial burden of childbirth and child rearing obviates neither the

¹⁴⁹ See Ziegler, *supra* note 59, at 239 ("Feminist women's health activists and pro-lifers with dramatically different views of abortion agreed that the state needed to do more to support mothers and their dependents.").

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.* at 242.

health risks of pregnancy and childbirth, nor the emotional obligations placed upon mothers forced to bear unwanted children.¹⁵³ Providing material support to pregnant women does not make motherhood costless.¹⁵⁴

Pro-life feminist arguments are not without some merit. Women should be socially, legally, and economically supported when they choose to become mothers, and no woman should be castigated for becoming a mother. But restricting abortion access is not the answer. Limiting abortion rights perpetuates subordination to men and inequality among women.¹⁵⁵ Even limiting abortion rights while supporting mothers and children imposes costs upon women.¹⁵⁶ Although there are costs associated with abortion rights, the costs associated with the denial of reproductive freedom are much higher, especially for marginalized women.

IV. CONSEQUENCES OF RELATING HEGEMONIC MASCULINITY TO REPRODUCTIVE FREEDOM

A. The Relationship of Hegemonic Masculinity to Reproductive Freedom Provides the Normative Basis for Sex Equality Arguments for Reproductive Freedom

In *Roe v. Wade*, the Supreme Court found a liberty interest in a woman's right to terminate a pregnancy under the Fourteenth Amendment's concept of personal liberty.¹⁵⁷ But many scholars, and even amicus briefs submitted to the court in *Roe*,¹⁵⁸ argued that a

¹⁵³ See, e.g., Jennifer S. Barber et al., *Unwanted Childbearing, Health, and Mother-Child Relationships*, 40 J. OF HEALTH & SOC. BEHAV. 231, 232 (1999) (“[U]nintended child bearing has been linked to a variety of negative outcomes for both mothers and their children.”).

¹⁵⁴ See generally ANN CRITTENDEN, *THE PRICE OF MOTHERHOOD: WHY THE MOST IMPORTANT JOB IN THE WORLD IS STILL THE LEAST VALUED* 1-12 (2001) (explaining the high emotional and mental cost of motherhood); Allison Linn, *The High Cost of Motherhood Worldwide*, TODAY (Dec. 18, 2012, 11:04 AM), <http://www.today.com/money/high-cost-motherhood-worldwide-1C7660648> (“Motherhood has many rewards, but as many women already know, they aren’t usually the financial kind.”).

¹⁵⁵ See *supra* Part II; *supra* notes 117-23 and accompanying text.

¹⁵⁶ See *supra* notes 153-54 and accompanying text.

¹⁵⁷ *Roe v. Wade*, 410 U.S. 113, 153 (1973).

¹⁵⁸ Reva B. Siegel, *Sex Equality Arguments for Reproductive Rights: Their Critical Basis and Evolving Constitutional Expression*, 56 EMORY L.J. 815, 823-24 (2007) (“In *Roe* itself, an amicus brief challenged the Texas and Georgia statutes on sex equality grounds; the brief invoked the Fourteenth Amendment’s Due Process and Equal Protection Clauses, as well as the Eighth Amendment . . . Invoking equal

woman's liberty interest in termination should be located in the Equal Protection Clause of the Fourteenth Amendment.¹⁵⁹

The typical sex equality argument proceeds on two assumptions. First, "[t]he creation or perpetuation of a socially subordinate group through law violates the most central command of the Fourteenth Amendment, and any law or practice that creates or maintains such subordination is contrary to the spirit of our Constitution."¹⁶⁰ This assumption is not universally accepted; cases such as *Washington v. Davis*, *Personnel Administrator of Massachusetts v. Feeney*, *City of Richmond v. J.A. Corson Co.*, and *Adarand Constructors v. Peña* applied the anti-classification principle, at least nominally, to equal protection jurisprudence.¹⁶¹ Second, "[b]y refusing women a significant choice in the direction of their lives, as well as by denying them control of their bodies, restrictions on abortion reinforce women's subordinate status in society and therefore deny them equal citizenship."¹⁶²

The sex equality argument has not always been embraced. In fact, it was abandoned shortly after *Roe*.¹⁶³ Reva Siegel cites "the growth of modern sex discrimination law, the elaboration of the abortion right, and backlash against the women's movement" as principle causes of the failure of the equal protection argument for abortion rights after *Roe*, *Frontiero v. Richardson*, and *Geduldig v. Aiello*.¹⁶⁴ Siegel also points to the fight over the Equal Rights Amendment (ERA) as a cause.¹⁶⁵ Advocates for the ERA sought to separate arguments for women's equality from abortion rights, as the New Right conflated the two in an effort to prevent ERA passage.¹⁶⁶ But once the ERA failed, feminists such as Sylvia Law, Ruth Bader Ginsburg, and Catharine

protection, the brief argued that 'laws such as the abortion laws presently before this court in fact insure that women never will be able to function fully in the society in a manner that will enable them to participate as equals with men in making the laws which control and govern their lives,' and invoking the Eighth Amendment, the brief argued that abortion laws inflicted cruel and unusual punishment on women not imposed on men for conduct no longer fairly understood as criminal . . .").

¹⁵⁹ See *id.* at 828-29 (citing Sylvia Law and Ruth Bader Ginsburg as proponents of the equal protection argument for abortion rights).

¹⁶⁰ Jack M. Balkin, *Judgment of the Court, in WHAT ROE V. WADE SHOULD HAVE SAID: THE NATION'S TOP LEGAL EXPERTS REWRITE AMERICA'S MOST CONTROVERSIAL DECISION* 44 (2007).

¹⁶¹ Jack M. Balkin & Reva B. Siegel, *The American Civil Rights Tradition: Anticlassification or Antisubordination?*, 58 U. MIAMI L. REV. 9, 12-13 (2003).

¹⁶² Balkin, *supra* note 160, at 45.

¹⁶³ See Siegel, *supra* note 158, at 824.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.* at 827-28.

¹⁶⁶ *Id.*

MacKinnon were free to pursue sex equality arguments for abortion rights again.¹⁶⁷

Sex equality arguments for reproductive freedom are once again flourishing.¹⁶⁸ And scholars find protections for reproductive freedom in sources other than the Fourteenth Amendment's Equal Protection Clause, such as international treaties,¹⁶⁹ comparative constitutional analysis,¹⁷⁰ and administrative law.¹⁷¹ Scholars also continue to explore the possibility of sex equality arguments in the context of the Equal Protection Clause itself as well as in conjunction with the Due Process Clause.¹⁷²

The sex equality arguments for abortion rights extend to arguments for contraception as well. Cornelia T.L. Pillard argues, "Proponents and opponents of abortion rights alike, if they are committed to sex equality, should join forces in supporting full and equal access to contraception for women and men."¹⁷³ Notably, contraception is generally preferable to abortion because contraception is "safer, easier on women's bodies, more private, less expensive, and draws fewer religious or moral objections."¹⁷⁴ Moreover, much like restricting access to abortion services, when women lack access to contraception, they are forced to bear unwanted children.

At their core, sex equality arguments share similar concerns. As Siegel explains:

Sex equality arguments ask whether abortion restrictions are shaped solely by the state's interest in protecting potential life, or whether such laws might also reflect constitutionally suspect judgments about women. For example, does the state act consistently to protect potential life outside the abortion context, including by offering prenatal care and job protections to women who want to become mothers? Or is the state selective in protecting potential life? If so, might

¹⁶⁷ *Id.* at 828-29.

¹⁶⁸ *Id.* at 816 (referencing numerous articles from a 2007 symposium edition of the Emory Law Journal, organized in conjunction with the Center for Reproductive Rights).

¹⁶⁹ *Id.* at 838.

¹⁷⁰ *Id.* at 839.

¹⁷¹ *Id.*

¹⁷² *See id.*

¹⁷³ Cornelia T.L. Pillard, *Our Other Reproductive Choices: Equality in Sex Education, Contraceptive Access, and Work-Family Policy*, 56 EMORY L.J. 941, 964 (2007).

¹⁷⁴ *Id.* at 963.

abortion restrictions reflect traditional sex-role stereotypes about sex, caregiving, or decision-making around motherhood?¹⁷⁵

Abortion restrictions, even if shaped by state interest in protecting potential life, maintain patriarchy by limiting women's ability to challenge men's hegemony in power relations, production relations, and relations of cathexis.¹⁷⁶ In addition, abortion restrictions maintain white supremacy and capitalism by disproportionately penalizing low-income women and women of color for unintended, unwanted pregnancies.¹⁷⁷

The sex equality argument for reproductive freedom proceeds from the relationship of hegemonic masculinity to women's reproductive freedom. As Part I of this paper demonstrated, women's reproductive freedom is incompatible with current hegemonic masculinity in the United States.¹⁷⁸ Rights to abortion and contraception subvert hegemonic masculinity by: (1) freeing resources to compete with men for social, legal, and economic power that women might otherwise expend bearing and rearing unwanted children; (2) destabilizing production relations by granting women greater ability plan to take on traditionally male-dominated jobs; and (3) destabilizing relations of cathexis by permitting women to explore their sexuality. The sex equality argument for rights to contraception and abortion proceeds from the relationship between hegemonic masculinity and women's reproductive freedom because hegemonic masculinity stabilizes itself by coercing unintentionally pregnant women to carry to term, thereby preventing women from challenging men's hegemony. Men are able to maintain their dominance, in part, because some women are knocked out of the running for power by unintended, unwanted pregnancies.

B. The Relationship of Hegemonic Masculinity to Reproductive Freedom Suggests that Advocates Should Promote a Masculinity that Supports Reproductive Freedom

As discussed above, restrictions on access to abortion and contraception stabilize patriarchy by limiting women's ability to

¹⁷⁵ Neil S. Siegel & Reva B. Siegel, *Equality Arguments for Abortion Rights*, 60 *UCLA L. REV. DISC.* 160, 162-63 (2013).

¹⁷⁶ See *supra* Part I.

¹⁷⁷ See *supra* Part II.

¹⁷⁸ See discussion *supra* Part I.

challenge men's hegemony in the domains of power relations, production relations, and relations of cathexis.¹⁷⁹ Thus, men benefit when women lack reproductive freedom.¹⁸⁰ Indeed, some men oppose abortion for the sake of gaining or retaining the benefits that are coupled with masculinity and manhood.¹⁸¹

Framing abortion-restrictive regulation as a social practice that confers unearned advantages upon men has intrinsic and strategic value.¹⁸² Understanding abortion-restrictive regulation as men's unearned advantage is intrinsically valuable because it makes the invisible visible, since masculinity only retains its power as long as it is "opaque to analysis."¹⁸³ Naming the unearned benefits men gain when women lack access to abortion and contraception helps "tackle the mentalities that support current conditions."¹⁸⁴

Focusing on the benefits men gain when women lack access to abortion also has strategic value. By identifying abortion as an instrumentality of hegemonic masculinity, advocates attacking other instrumentalities of hegemonic masculinity can find commonality with reproductive freedom advocates, joining forces to dismantle systems of oppression.¹⁸⁵

Moreover, elucidating the relationship of masculinity to reproductive freedom suggests another potential strategy for advocates of reproductive freedom. If abortion rights threaten current hegemonic masculinity, advocates should encourage men to aspire to masculinity that is not threatened by abortion rights.¹⁸⁶ Although hegemony of a masculinity that supports reproductive freedom is not necessary to promote reproductive freedom, because only some men seek to

¹⁷⁹ See *supra* Part I.

¹⁸⁰ *Id.*

¹⁸¹ See *supra* Part II.

¹⁸² Mitchell, *supra* note 44, at 706 ("One way to tackle the mentalities that support current conditions is to change our language . . . I therefore propose using language that focuses less on the disadvantage of oppressed groups and more on the *unearned advantage* of privileged ones.").

¹⁸³ ROBINSON, *supra* note 32, at 1.

¹⁸⁴ *Id.* ("Much of the recent work on specifying, theorizing, or analyzing masculinity and whiteness in society and culture takes as its starting point the notion that *invisibility* is a necessary condition for the perpetuation of white and male dominance, both in representation and in the realm of the social.") (emphasis added).

¹⁸⁵ See, e.g., Ziegler, *supra* note 59, at 239 (discussing how "[f]eminist women's health activists and pro-lifers" were able to join forces, despite opposing ideologies, to accomplish a common goal during the pre-*Roe* advocacy days).

¹⁸⁶ See, e.g., Seth Millstein, *I'm Pro-Choice and I'm a Man—Why More Men Need to Speak Up for Reproductive Rights*, HUFFINGTON POST (Feb. 11, 2014, 3:20 PM), http://www.huffingtonpost.com/bustle/im-prochoice-and-im-a-man_b_4767399.html (describing such pro-abortion masculinity).

reassert masculinity by restricting women's access, current strategies of pro-choice advocates, nevertheless, are failing.¹⁸⁷ Indeed, legislatures have passed more laws restricting access to abortion in the past three years than in the entire previous decade.¹⁸⁸ If encouraging men to aspire to a masculinity that supports women's equality will reverse this trend, such a strategy seems worthwhile.

This begs the question, what forms could support of a hegemonic masculinity that favors reproductive freedom take? We have already seen some examples among advocates. In 2013, NARAL Pro-Choice America encouraged "male supporters of abortion rights to tweet about their position with the hashtag #MenForChoice."¹⁸⁹ Similarly, Unite for Reproductive and Gender Equity (URGE) supports hegemonic masculinity that accommodates women's equality through its "Bro-Choice" campaign, which "seeks to significantly expand the number of young men actively and vocally engaged in" its chapters.¹⁹⁰ Future strategies might also include seeking out bearers of hegemonic masculinity, such as male politicians, business leaders, and celebrities, to convey messages to the public in support of abortion rights. Advocates for reproductive freedom might also work with filmmakers, television producers, and news outlets to promote positive imagery of men who support abortion rights.

Whatever strategies advocates pursue, they should avoid supporting a form of masculinity that favors abortion rights to encourage sexual intercourse with women free of consequence.¹⁹¹ Because sexual activity is not co-equally determined in our society, a

¹⁸⁷ See, e.g., GUTTMACHER INST., *State Abortion Restrictions*, *supra* note 68 (describing the influx of abortion restrictions in the past five years, indicating that current strategies to promote reproductive freedom are unsuccessful).

¹⁸⁸ *Id.*

¹⁸⁹ Tara Culp-Ressler, *Why Reproductive Rights Groups Want to Woo Men*, THINKPROGRESS (Sept. 18, 2013, 1:19 PM), <http://thinkprogress.org/health/2013/09/18/2640611/reproductive-rights-male-supporters/>.

¹⁹⁰ *Bro-Choice: Pledging to be Part of the Solution*, URGE, <http://urge.org/programs/bro-choice/> (last visited Nov. 2, 2015). Another similar campaign, though not specifically focused on abortion, is HeForShe. See HEFORSHE, <http://www.heforshe.org/> (last visited Nov. 2, 2015).

¹⁹¹ For an example of such a derogatory form of masculinity, see Ben Sherman, *Bro-Choice: How #HB2 Hurts Texas Men Who Like Women*, BURNT ORANGE REP. (July 3, 2013, 10:49 AM), <http://www.burntorangereport.com/diary/13734/brochoice-how-hb2-hurts-texas-men-who-like-women> ("Your sex life is at stake. Can you think of anything that kills the vibe faster than a woman fearing a back-alley abortion? Making abortion essentially inaccessible in Texas will add an anxiety to sex that will drastically undercut its joys. And don't be surprised if casual sex outside of relationships becomes far more difficult to come by.").

masculinity that promotes abortion rights to advance the sexual interests of “MSW”¹⁹² is detrimental to women’s equality and sexual freedom.¹⁹³ Instead of promoting such men who support abortion rights, advocates of reproductive freedom should promote masculinity that finds intrinsic value in women’s autonomy, regardless of the implications of such autonomy for the sexuality of MSW.

If men aspire to hegemonic masculinity, it should be something worthy of aspiration. Hegemonic masculinity would be more valuable to our society if it supported reproductive freedom and the equality of women. Fortunately, the hegemony of a new form of masculinity among men is achievable because hegemonic masculinity constantly changes. Thus, advocates for reproductive freedom should create and take advantage of opportunities to influence social interaction in favor of a hegemonic masculinity that supports reproductive freedom. By encouraging men to aspire to a masculinity that embraces reproductive freedom for women, advocates can help to obviate men’s need to reassert their masculinity by denying reproductive freedom to women. Moreover, advocates can cause men to aspire to a renegotiated and more socially beneficial hegemonic masculinity—one that creates opportunity and privilege for as many people as possible.¹⁹⁴

V. CONCLUSION

Acting through legislatures and courts, men and even some women stabilize hegemonic masculinity by restricting access to abortion and contraception. This relationship of hegemonic masculinity to reproductive freedom provides a normative basis for sex equality arguments for reproductive freedom. In addition, the relationship suggests that advocates of reproductive freedom should promote a masculinity that supports women’s reproductive freedom.

¹⁹² “MSW” refers to “men who have sex with women.”

¹⁹³ See MacKinnon, *supra* note 59, at 1300.

¹⁹⁴ The accommodating hegemonic masculinity this article proposes is hegemonic only among masculinities. In other words, we can advocate a hegemonic masculinity that does not presuppose the supremacy of masculinity.