

HUMAN RIGHTS^{3/4} ANOTHER LOOK AT ABORTION

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ACCORDING TO THE WORLD HEALTH ORGANIZATION SOMEWHERE between a quarter and half a million women die every year from illegal abortion (Short 1991). This is an 'epidemic' of gigantic proportions. Usually great efforts are made to curb tragic and unnecessary deaths, such as those from smallpox, malaria and AIDS. It is surprising then that almost nothing has been done about this shocking worldwide tragedy of the deaths of so many women from backyard abortion. While the deaths from epidemics are accidentally caused, these deaths from abortion result from government policies.

This is in itself a statement about the current status of women around the world. If the reasons abortion laws came into being could be established, it might explain why governments currently act, or do not act, in the way they do.

Feminists proclaim that the history of patriarchal societies and anti-feminist cultures has been about power and control in the family, and that abortion is part of this story. Others point out that the need to control women's sexuality is because men do not take responsibility for theirs.

Research into the history of abortion therefore results in somewhat confused and different views in relation to community use, acceptance, morality and the legality of abortion practice.

The Church

Over the last two centuries, with the centralisation of power in the Catholic church, various ideas on abortion have been standardised into a single inflexible position, that is, that the church is convinced all abortion is wrong (Pius IX—*Aclae Sanctae Sedis* 5298, *Conscience* 1991.)

The limited historical records suggest that the legal position on abortion has been uncertain. There are some records indicating that abortion was considered (by those in authority) a punishable offence, yet the practice appears to have been commonplace. Keown (1988) cites cases (1327, 1348, 1505, 1602, 1732, 1755) and a number of treatises asserting that abortion was punishable well before the first statutory publication of the offence in 1803 (Keown 1988, pp. 4-10). 'The Act of 1623 reversed common law presumption of stillbirth and provided that, if a woman concealed the

death of her illegitimate issue so that it might not be known whether it had been born alive, she should suffer death for murder unless she could prove stillbirth' (Keown 1988, p. 6). This adds emphasis to the suggestion that it is the sinful sex that is the crime.

In 1803, Lord Ellenborough's Act (England) restricting abortion was introduced. Keown says: 'There has as yet been no wholly satisfactory explanation of the restriction of the abortion law by this Act, which is perhaps understandable in view of the apparent absence of any popular or religious outcry over abortion' before it was passed and that there are 'three possible reasons for its enactment, namely: clarification of the law; perception of abortion as a social problem; and criticism by regular medical practitioners of the significance attached to quickening' (the time when the woman first feels movement of the foetus). The penalty was very severe. 'Attempted abortion after quickening was, between 1803 and 1837, punishable by death. So too was any felonious attempt which resulted in the woman's death. . . . It is suggested that the gradual extension of the law and its persistent severity can be seen not only as a reflection of the harshness of the contemporary criminal code as a whole but also as a response to proposals for reform, advanced by the emerging medical profession' (Keown 1988, p. 12, 25, 27).

The Medical Profession

Many women, particularly late twentieth-century feminists, have been critical of the (mainly male) medical profession, especially in the manner in which they have taken over women's traditional role in managing reproductive and birthing practices. These next findings are therefore quite illuminating.

There is substantial evidence that medical men were concerned not only for the welfare of the potential victims of abortion but also to further the process of establishing and consolidating their status as a profession. This process could only have been hindered by abortion, which provided an outlet for irregular practitioners such as herbalists and midwives. By turning away women seeking abortion, the regulars risked driving them to their less qualified yet more accommodating competitors, perhaps permanently. Increasingly restrictive legislation on abortion and on the obtaining and supplying of abortifacient means would serve not only to safeguard foetal and female life, but would also hinder irregulars from capitalising on the demand for a service which ethical precepts prevented the regulars from satisfying (Keown 1988, p. 40).

Hereafter Keown presents a description of the development of the use of craniotomy (destruction of the foetus during labour) in preference to (the life threatening) caesarean section, and later the use of abortion and induced premature labour (both prior to and after viability) as a way of avoiding the above procedures. One almost feels that these procedures were legally safer than early abortion and were commonly used to terminate unwanted pregnancy.

During the passing of the (English) Offences Against the Persons' Bill 1861, evidence is presented that the *Lancet* journal's uncompromising demand, (written in the most emotive and degrading language) for legislative action had a strong influence on public opinion. Yet obviously abortion continued to be available.

In the USA, after the middle of the nineteenth century, physicians became medical crusaders, attempting to influence public morality and behaviour. After 1840,

abortion came increasingly into view and abortion clinics were vigorously and openly advertised in newspapers and magazines. It appears that it was acceptable for 'poor and unfortunate' unmarried and desperate women to have abortions but 'white protestant middle and upper class native born women began to use these services as well' (Conrad & Schneider 1980).

The Australian Medical Association passed a resolution condemning abortion in 1859 and was instrumental in having laws passed (1866-1877) making it a criminal offence. The reasons given were threefold:

- undoubtedly they believed in the moral rightness of their cause;
- concern was growing about the dropping birthrate (by the 'better classes');
- migrants were arriving with big families and 'middle-upper class men (physicians and legislators) . . . were deeply afraid they were being betrayed by their own women' (Mohr 1847, cited in Conrad & Schneider 1980).

Penalties related to the 'sin of illicit sex' in the church and to some degree in the state, gives weight to the feminists' argument of the desire to control women. Retention of the current laws on abortion and prostitution confirm their argument.

The church's position on morality moves increasingly to protect the foetus. However we are more a pluralist society now than ever before and the influence of any church, Catholic or otherwise has been diminished.

The emerging medical profession was anxious to develop and protect its status and area of practice. There seems little evidence that this was out of a strong concern for women's health, otherwise they would have also banned Caesarean section, forty-five women out of forty-nine dying in one series (Keown 1988). If safety was the rationale, there is certainly no justification for keeping the current laws, given that abortion options are many times safer for women than birthing.

What attempts have been made by governments around the world to review the rationale for abortion laws and the laws themselves? Countries collectively, have been able to make decisions. At the international level recognition has been given of choice about child bearing being a basic human right. In 1948 in the aftermath of world war, the International Human Rights' document was adopted. The Universal Declaration of Human Rights Articles 1, 3, 12 and 23 are relevant to the individual's right to determine the course of their life including child bearing.

In 1968 the International Conference on Human Rights in Teheran recognised that 'parents have a basic right to decide freely and responsibly on the number and spacing of their children'. The World Population Plan of Action agreed to at the Bucharest Conference of 1974 reaffirmed that right and expanded on it, stating: 'All couples and individuals have the basic right to decide freely and responsibly the number and spacing of their children and to have the information, education and means to do so . . .'. The document also states that governments should 'respect and ensure, regardless of their over-all demographic goals, the right of persons to determine in a free informed and responsible manner, the number and spacing of their children' (*Reproductive Health* 1991, p. 11).

In July 1980, the world body adopted the Convention on the Elimination of all forms of Discrimination Against Women. This Convention, referred to as CEDAW was signed by Australia in 1980 and ratified in July 1983.

The Convention is legally binding on ratifying countries. Although several articles imply a right to abortion, Article 12 is most relevant.

Article 12

1. States Parties shall take all appropriate measures to eliminate all discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.
2. Notwithstanding the provisions of paragraph 1 of this Article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

Abortion Law Reform: A Human Rights Issue

No country has approached abortion law reform as a basic human rights issue for women. Even in the USA through the high court ruling (*Rowe v. Wade* 1973), abortion was ruled to be a privacy issue (not a human rights issue).

Do governments around the world offer more than a token commitment to women's equality as a basic human right? Indeed, are women so devalued that women's rights are not human rights? Bunch (1990) states 'Significant numbers of women are routinely subject to torture, starvation, terrorism, mutilation and even murder simply because they are female'. She goes on to state that if this was happening to any other group of people it would be considered a gross violation of human rights.

Abortion is first and foremost a human rights and social justice issue. Social justice is not what is administered when all else fails, it is about full citizenship. It is a state of being. Rights are only rights when they can be exercised in an unfettered way. It is therefore dictatorial, degrading and an insult to the intelligence of a woman to have the decision on whether she will become a mother imposed on her by law or by a panel, or a doctor, or a priest, then leave her to carry out the responsibility of that decision. Abortion is at least eleven times safer than childbirth. Now would any man accept that anyone could force him to take a course of action eleven times more dangerous to his life than the course he was prepared to take? There is no comparable field of human activity where such a decision is made on another's behalf.

By July 1991, after eighteen months of government, the Labor government in Queensland, has achieved or is in the process of reforming the laws in relation to homosexuals, animal welfare and Aboriginal land rights. However, despite the majority public support for abortion law repeal in Queensland and across Australia, there has not been any positive reaction from government.

We have been distracted by the fertility choice/abortion rights argument and have failed to see the real issue which is that women are not trusted. Women are not considered capable of making good and right decisions. The truth is that women are not accepted as full human beings. It is society's inability to trust the judgment of women that causes governments to continue to (try to) control women's behaviour with repressive laws that bear on their sexuality.

It is the way that the issues of abortion and prostitution are handled that really matters. These issues are the measuring sticks by which we can gauge a government's

attitude to women and the status of women in that community. If women were considered equal human beings, it would be unthinkable to have laws like our abortion and prostitution laws.

Who Decides What a Woman Does With Her Body and Life?

Historically, with the control exercised by church and state, men have been and are still in positions of power and control over families and the opportunities open to women. Do most men still consciously seek control over women and their sexuality or is this subconscious behaviour?

Petchesky's premise is that 'Abortion is the fulcrum of a much broader ideological struggle in which the very meanings of the family, the state, motherhood and young women's sexuality are contested' (Petchesky 1986). This can be brought down to simple language and actions that all can understand and act upon. Men must be challenged to review their behaviour and the society to recognise what it condones. Current attitudes derive from what the author calls the 'Adam and Eve' complex, the belief deep down that women are seductive and destructive, and they will damage and destroy our society. Thus, their (sexual) behaviour must be controlled (by law). Never mind that these same women will risk poverty, death and starvation to bear and/or rear a child they want (and incidentally would never be challenged about their decision to do this).

There are those who say 'but if women can freely choose abortion, they'll run off and have it at twenty-five to thirty weeks!' This attitude again shows total disrespect for women's judgment. Research shows that women do not do this, but that when abortion is freely available they present early. Even if they did present late, almost always they have very grave reasons and are certainly desperate and need support.

No amount of equal opportunity legislation will ever give women equality if we do not trust them to make fundamental decisions about their sexuality and their reproductive lives. If women are not considered good decision makers, (at this most fundamental and personal level), how can they confidently be regarded as good managers or good politicians, good judges or policy makers? 'Human rights are still considered different and more important than women's rights. This separation perpetuates the idea that women's rights are of a lesser order than rights of man' (Bunch 1990).

Yet the most basic of all political and human rights is the right to control fertility. If we use the Universal Declaration of Human Rights, to which Australia is a signatory, as the baseline of human rights, a woman who is unwillingly pregnant loses these rights in Article 1, 3, 12 and 23. These women are not allowed to exercise their reason and conscience; they do not have liberty and security of person; they suffer arbitrary interference to their privacy and family and they do not have the right to work or free choice of employment. Compulsory motherhood is to be her occupation irrespective of her choice. Even access to adequate food and shelter can be jeopardised if she is unable to work or already has more children than can be managed by the family.

World population growth, safer births (requiring fewer therapeutic abortions), thalidomide publicity, the appearance of the long awaited birth control pill in the early fifties, together with women's improved education and employment opportunities have caused a re-examination of sex roles and sexuality, particularly in developed

countries. Better health programs for women and the new abortion pill RU486 will add to this momentum.

However, it still seems very important for society to have control over women or to 'use' women for its own ulterior purposes. For instance, of the United States Petchesky says:

Legal abortion plays a (more) symbolic function in the formation of a right wing constituency . . . Antiabortion presents an aura of religiosity more than actual theology, separating the Godly from the Ungodly, the innocent from the damned . . . providing a banner to the claim of absolute morality . . . The foetus becomes the most potent symbol of helplessness . . . 'Saving the foetus' and 'Saving America' go together and both require a strong male leader (Petchesky 1986).

One wonders what would happen if abortion was made illegal again. What would keep the conservative right together?

Women's great hope, CEDAW—the Bill of Rights for Women, adopted by the United Nations in 1979, has failed to address the issue of abortion in the reporting procedures of member countries.

Here in Australia only the South Australian Liberal Government in 1970 and the Whitlam Government in 1973 (with the establishment of the Royal Commission on Human Relationships), have attempted to positively address the abortion issue, and certainly not from a human rights commitment. That women can get an abortion in Australia anywhere (except marginally in South Australia) is no thanks to our law makers, governments or politicians. They have remained consistently and cowardly silent.

Whatever their rationale, the rights of women: freedom from violence and the right to work, are not treated as basic human rights.

Conclusion

Social justice requires that the starting point for women must change. They must have the same starting point as men. When women have equal human rights then the way we think about providing services in areas that affect women's lives will change. We will stop 'sticking on band-aids' and stop 'closing stable doors after horses have bolted', and begin to look at preventing trauma and providing life affirming services. We will analyse real cause and effect rather than apportion blame. For instance, the child-bearing role of women might be valued to a point where, as a society, we do all we can to provide an environment where women are able and willing to give birth to healthy and wanted babies.

Failure to repeal laws against abortion is a flagrant example of man's inhumanity to woman. It is men who still dominate the politics of abortion and frame the legal codes. This results in our collective failure to recognise the primary human rights of women and women as equal human beings.

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