

THE CRIMINALIZATION OF A WOMAN'S BODY

CLARICE FEINMAN
EDITOR

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Introduction

Here is the truth, I tell you—see how right I am.
The woman you call the mother of the child
is not the parent, just a nurse to the seed,
the new-sown seed that grows and swells inside her.
The *man* is the source of life—the one who mounts.
She, like a stranger for a stranger, keeps
the shoot alive unless god hurts the roots.

(Aeschylus, *The Eumenides*.)

In *The Eumenides*, Apollo tells Athena and the Furies that Orestes is not guilty of killing his mother, Clytemnestra, because she is not his blood parent; his father, Agamemnon, is his blood parent, the sole source of Orestes' life. Although *The Eumenides* was written in the fifth century (before the common era), Apollo's belief about the value and role of *woman* has persisted and can be found in religious and secular literature, in laws and in court decisions. Those who hold these beliefs have little or no respect for women: their autonomy, their privacy, their bodily integrity. They would limit women's constitutional due process guarantees and formally and/or informally criminalize women's bodies to insure control over them, especially their reproductive capacities.

The laws and policies of our patriarchal legal, religious and secular institutions reaffirm Apollo's belief: women's value rests on their fulfilling their expected roles as wives and mothers. Although men are the dominant figures, both in numbers and power, in initiating and enforcing these social values and in punishing transgressors, many women agree with them. It appears that they fail to realize that the consequences of this lack of respect for women also affect them.

This special theme volume, *The Criminalization of a Woman's*

Body, addresses the concern many women have about the trend towards the criminalization of their bodies: the threat to their autonomy, their privacy, their bodily integrity and their constitutional guarantees. The contributors to this special theme volume bring international and interdisciplinary perspectives to this major problem facing all women.

The administrative implementing mechanisms of the abortion law in Israel are described by Delila Amir and Orly Biniamin. They explain that, although abortion is legal in Israel, the procedures required to obtain an abortion result in efforts to control women's sexual behavior by reinforcing normative attitudes toward women and especially toward motherhood. Tamar Pitch describes and discusses the current debate over the abortion law in Italy. The debate focuses on ethical terms rather than on social and political terms, and Pitch analyzes the implications of this ethical focus and the resultant divisions among the feminists.

United States Supreme Court Justice Byron White's antiabortion opinions, placing the right of the fetus over the right of the pregnant woman, are summarized by Sarah Slavin. She concludes that adoption of Justice White's position would curtail due process rights for pregnant women; such curtailment would tend to victimize women and also presume that they have committed a public offense, i.e., to criminalize their bodies.

Mary Gibson argues that contract motherhood must be seen not simply as a transaction among individual, but as a social practice arising in a particular social context. Consequently, she concludes that commercial contract motherhood should be prohibited and brokering criminalized. Michael Dahlem examines the judicial and legislative responses and the public policy implications of surrogate parenting contracts from the perspective of a morality of care. He presents arguments against the granting of specific performance of surrogate parenting contracts.

Joan Callahan and James Knight explore the moral and legal implications of interfering with the lives and bodies of pregnant women to protect the fetus. They believe that it is legally and morally unjustified and unacceptable to impose legal sanctions against pregnant women because these sanctions violate important moral

values captured in our legal system and would contribute to the harm they would be instituted to prevent.

The power of administrative agencies to control and informally criminalize pregnant women and mothers, especially poor women who are drug users, is described by Lisa Maher. She concludes that the focus on informal criminalization and control of women who are "crack pregnant," deflects attention away from the fissure of gender, race and class that render these women's lives as publicly problematic.

Wendy Chavkin discusses the recent mother vs. fetus debate. She explains that policies meant to protect the fetus against harm from pregnant women who deviate from medically, socially and legally sanctioned behavior threaten the autonomy, bodily integrity and constitutional status of women, and may undermine fetal and maternal health by deterring women from involvement with medical care.

The consequences of criminalizing pregnant women who use drugs and placing their children in congregate or foster care are explored by Drew Humphries et al. They review the lack of drug treatment programs for these women and recommend community-based drug treatment that keeps families together.

Readers will find that the articles contain the language usage, spelling and manuscript style common to the nationality and discipline of the authors.

Clarice Feinman

Abortion Approval as a Ritual of Symbolic Control

Delila Amir
Orly Biniamin

SUMMARY. The variability of abortion laws and particularly, of the mechanisms employed to implement them attests to the socio-cultural specificity of the concrete solutions to the universal problem of reproductive control. The present study examines the implementing mechanisms of the abortion law in Israel, which is a medical committee. Based on interviews with 29 social workers (all women) who serve on the committees, this paper examines how the committees operate. At one and the same time it describes the "control culture" which emerges within the legal procedure; that is, the mechanism's structure, language, accepted discourses and rituals. Foucault's concepts of power/knowledge were found to be most enlightening in this context of regulating abortions.

The analysis of the abortion approval procedures portray characteristics of a ritual. A ritual that is analogous to a juvenile court on the one hand, threatening but not really punishing, and on the other hand, a confessional situation in which the woman has to confess her normative wayward behavior such as extra-marital relations, not using contraception, and enjoying sex with no reproductive intentions. The reinforcement of normative attitudes toward women and especially toward motherhood is manifested in the expressions used by the committee members referring to the pregnant woman's future behavior and the expectations from her to abide by them.

These two ritualistic facets are central components of symbolic control which the Israeli "reproductive deviant" woman is faced with.

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INTRODUCTION

The issue of reproductive control has been the focal point of the struggle of women to control their lives. One specific issue within the broader problem of reproductive control is that regarding a woman's right to abortion. Since the mid-1960s women's movements have centered around this issue, making it a major target of their struggle with political and religious establishments (Dhalerup, 1986; Lovendunski & Outshoorn, 1986). These movements have transformed the issue of abortion from the personal to a major political level, and as a consequence of their efforts, abortion legislation has been liberalized in most Western countries.

The variability of abortion laws and, particularly, of the mechanisms employed to implement them attests to the socio-cultural specificity of the concrete solutions to a universal problem. Research papers recently presented at conferences (Grela, 1990; Bortner, 1990; Germaine, 1990) have pointed not only to the specificity of these laws and their implementing mechanisms, but also to the subtleties of the control exerted by means of the regulations. Studies have also shown that the mechanisms regulating abortions reflect overt and covert social stances towards women's reproductive rights (Petchesky, 1984; Gordon, 1977; Kaufman, 1984). The present study examines the implementing mechanisms of abortion law in Israel in an attempt to reveal a process that contributes to the preservation of the structural position of women in Israeli society.

Israeli law defines four situations in which a pregnancy may be defined as socially "undesirable" and therefore can be legally terminated: (1) when the woman is under the legal age of consent (17) or is over forty years old; (2) when the pregnancy results from relations forbidden under criminal law, or from incestuous relations, or is out of wedlock; (3) when the newborn is liable to be handicapped in body or mind; and (4) when continuation of the pregnancy may endanger the woman's life or cause her physical or mental harm. The same law requires that a medical committee must decide upon the eligibility of each abortion candidate. This committee, which meets with the pregnant woman, is to be made up of two doctors and a social worker, one of whom must be a woman.¹ (In the large majority of cases, it is the social worker who fits this criterion.

Indeed, in the committees investigated in the present study, not one included a female doctor.) Women who seek an abortion and who can convince the committee that they fall into one of these four categories obtain approval for the abortion.

On the surface, this is a simple classification procedure and "a people processing setting" (Hasenfeld, 1974). In reality, it is a normalizing mechanism exerted over women and over issues of reproduction, to employ Foucault's terminology. In the present study, we examine how the committees operate and describe the "control culture" (Cohen, 1989) which emerges within the legal procedure, that is, the structure, language, accepted discourse and rituals of the regulating institution.

In examining the construction of this control culture, we raise two main questions. What is the normative sexual and reproductive behavior expected of women in contemporary Israeli society? And how is the woman who deviates from these expectations treated?

CONCEPTUAL FRAMEWORK: POWER/KNOWLEDGE AND SOCIAL CONTROL

In his analysis of power usage in modern society, Michel Foucault challenges the idea that power operates only by means of prohibitions, and draws attention to the complex network of disciplinary systems and technologies through which power is channelled. The power attached to these systems goes hand in hand with knowledge. In the words of Smart, who elaborated upon Foucault's analysis:

Power produces knowledge; . . . power and knowledge directly imply one another; . . . there is no power relation without the correlative constitution of a field of knowledge, nor any knowledge that does not presuppose and constitute at the same time power relations. (Smart, 1985: 76)

Foucault's analysis of power in modern society is built upon two basic theoretical concepts which are pertinent to an understanding of social control over women: the discourse and absence of the subject.

Discourse

Foucault saw discourses as

ways of constituting knowledge, together with the social practices, forms of subjectivity and power relations which inhere in such knowledges and the relations between them. Discourses are more than ways of thinking and producing meaning. They constitute the "nature" of the body, unconscious and conscious mind and emotional life of the subjects which they seek to govern. Neither the body nor thoughts and feelings have meaning outside their discursive articulation, but the ways in which discourse constitutes the minds and bodies of individuals is always part of a wider network of power relations, often with institutional bases. (Weedon, 1987:108)

While Foucault's concept of discourse is pertinent to the issue of control over abortion, it is not wholly applicable to the case of the pregnant woman. From her point of view, the unborn child is a reality which has meaning beyond any discourse. Rather, we suggest that the institutional discourse reflects a power struggle over the meanings of the body, thoughts, and emotions, and does not actually produce these meanings.

Absence of the Subject

For Foucault, "there is no subject." The existence of the subject is an illusion resulting from the practices of certain "normalizing" disciplines and the modern world's discourses of rationalizations. The problem with the concept of the "individual as a subject," according to Foucault, has become more significant in our time (Diamond & Quinby, 1988). The assumption of the existence of subjectivity legitimates a whole set of moral rules that dominate our life. All "human sciences" have formed theories of the subject which turn human beings into chronic foragers in the individual's deepest hiding places, seeking his or her identity and the source of his or her meaning. By turning the person into a subject, by controlling the discourse through which his or her physical and emotional essence is sought, these disciplines have been able to accumulate

immense bodies of knowledge about human beings, which have become a means of control:

... professional practices in modern society both create moral boundaries and serve gatekeeping functions, demarcating good and evil, deviance and normality, insiders and outsiders. Because professionals police the social margins, as it were, they often control values, beliefs, and their related social practices that are in turmoil. (Davis, 1985:14)

Social Control and Abortion

Several feminists have pointed to the relevance of the concept of social control to the issue of depriving women of the right to choose abortion (Hutter & Williams, 1981; Chilman, 1987; Figueria-McDonough & Sarri, 1987). In this vein, Schur claims that "restrictions on abortion epitomize the control of women through gender norms" and that "abortion forcefully poses for women the question of personal autonomy" (1984:98). Davis (1985) and Petchesky (1984) both consider the issue from the perspective of state mechanisms which negate or control the individual. Davis considers the institutions responsible for controlling birth rates as highly complex social institutions which exercise social control over reproduction according to ideologies and interests prevalent among public policy-makers (1985:19). Petchesky explains that public abortion policy is usually characterized by the denial of the woman's right to be the final authority on reproductive decisions (1984:89).

Notwithstanding the validity of these approaches, they fail to take into account the control mechanisms themselves and how these wield power over women (Cohen, 1989). The issue at hand requires a discussion of social control within a real anthropological context, that is, in term of the complexity of the control situation. Rather than considering control as a rational action, well-calculated and guided by the state's centralistic system, there is a need to examine the "control culture" that emerges out of the structure of the interaction and the concrete discourse (Cohen, 1989). In Cohen's words, "The project to elevate the sociology of social control into a subject with its own internal trajectory" can be achieved by "de-

picting the content of control cultures, doing ethnographies of control agencies or watching control agents at work" (1989: 350).

Actually, Foucault and feminist writers alike have claimed that power and control over individuals (in our case over women) is exercised not only through the power of the state, but also in the intimacy of face-to-face formal encounters (Diamond & Quinby, 1988). Both approaches focus on the discourse and its potential to create and to maintain hegemonic power. In opposing the idea that power is exercised only through prohibitions and regulatory laws, Foucault turns our attention to the complex network of disciplines and technologies which, besides representing the state, exercise their localized power mainly through their discourse. Discourse is used as a technique of social control, especially owing to the institutionalization of such "normalizing" professions as medicine, psychology and education (in Diamond & Quinby, 1988). Foucault uses the term "normalizing disciplines" to emphasize their controlling functions, such as returning sinners and deviants to the fold, making them "normal" and insuring their normative behavior. This concept also encompasses the authority granted to such disciplines to define and classify individual behavior in "proper" or moral terms.

The Abortion-Approval Committee Meeting

The above conceptual framework serves as a point of departure in examining one means of social control over women in Israeli society. The situation that evolves in the committee meetings which decide on abortion approval or denial can thus be described in Foucault's terminology. The committee is a "micro mechanism of power" in which nurturance and care professionals participate, bringing with them their professional ethics and knowledge about the "subject" and hence of what is good or bad for her, and exerting power to rehabilitate her behavior.

METHODOLOGY

Data Source

The present paper is based on interviews with 29 social workers serving on 13 abortion approval committees out of the 19 commit-