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Feminism, Abortion and Disability: Irreconcilable differences?

Keith Sharp and Sarah Earle

ABSTRACT

There has been considerable discussion of the political allegiance between the feminist and disability movements, but the question of abortion remains a thorny one. Disability rights advocates have been keen to demonstrate that it is possible to believe in a woman's right to sovereignty over the body and, yet, be opposed to the selective abortion of an impaired foetus – describing the latter as a form of 'weak' eugenics.

The aim of this paper is to show that whilst there may be some points of agreement between the feminist and disability movements on the question of abortion, there exist fundamental and irreconcilable differences.

Introduction

Several authors have recently drawn attention to the tension which exists between the feminist principle that a woman's right to control her own body must entail the right to terminate an unwanted pregnancy, and the concerns of the disability movement that to permit the abortion of foetuses on the grounds of suspected impairment is tantamount to endorsing an anti-disability eugenics (Hubbard, 1997; Shakespeare, 1998; Sheldon, 1999). The same authors have also sought to argue that this tension is in fact more an illusion than a reality and that, with careful reasoning, it is possible to show that the feminist and disability equality movements do not necessarily have to be at odds on this important issue. It is the aim of this paper to explore these claims in some detail, and to show that whilst there might be certain general points of ideological agreement between the two movements, on the central issue of abortion, a fundamental and irreconcilable conflict inevitably remains.

Of course to write of either *the* feminist movement, or *the* disability movement is to invite the justified criticism that neither can be regarded as homogeneous movements, capable of single definitions; they each include a diversity of perspectives, as well as a 'multiplicity of approaches, positions and strategies' (Kemp and Squires, 1997, p.3). Whilst this is obviously true, we do nonetheless believe that it is reasonable to use these terms in relation to the issue of abortion. This does not mean that one will never find someone who regards him or herself as a feminist but who also rejects the principle that women should have the right to terminate pregnancies at will. Neither does it mean that one will never encounter people who regard themselves as supporters of disability equality and who also defend the right of a woman to terminate a pregnancy. We do contend, however, that insofar as either the feminist or disability movements constitute coherent intellectual and ethical positions, they can be defined by their opposing stances on the issue of abortion.

Two Positions on Abortion

It will be useful to begin by setting out what we see as the defining features of the two positions on abortion. The crux of the feminist position, as we see it, is that women have a fundamental right to bodily integrity, and this includes the right to terminate an unwanted pregnancy. Indeed, Petchesky (1986) argues that this is one of the principal tenets of feminist thought, suggesting that women's need for personal autonomy in the decisions that affect their bodies is an indispensable condition of their full participation in society. Any assertion of a right invites a consideration of how the exercise of this right might interfere with the putative rights of others, and in this regard, the feminist

position is quite clear. Any rights which may be accorded either to the unborn child itself, or to its father, are thought to be subordinate to the rights of the woman to terminate the pregnancy at will. Either these rights simply do not exist, or they are 'trumped' by the rights of the mother.

Several things follow from this basic position. First, because the woman's entitlement to obtain an abortion is derived from her *right* to do so, it follows that there can be no differentiation between women who seek an abortion for one reason, and those who do so for another. Indeed, any discussion of the reasons for an abortion is quite redundant: women simply have a right to obtain an abortion, and that is that. If reasons for the abortion were held to be relevant in determining whether or not she should be permitted one, then we could not say that she had a *right* to obtain one. This is an important point to which we return below, since it establishes one very important point of agreement between the feminist and disability positions, but is also at the heart of the conflict between the two.

Secondly, and related to this, it would seem that the feminist position essentially rules out any discussion of whether one set of reasons for having an abortion are better than others. We could not say that even though two women have an equal right to have an abortion, we consider one to be more ethically justified in doing so than the other. We could not, for example, agree that a rape victim had more justification for an abortion than a career woman who was simply too busy to have children. There is of course nothing to stop any of us from holding such views, but the point is that they are not, from the feminist point of view, ethically relevant to anything either woman does.

This does of course mean that those adopting the feminist stance on abortion will sometimes be in a position where they do not agree that a particular woman's decision to terminate a pregnancy is in her best interests, or indeed in the best interests of her family or the wider community; the costs of women's reproductive choices have not gone unnoticed (Katz-Rothman, 1989; Hubbard, 1997; Press and Browner, 1997). But the whole point of the feminist position is that these views are irrelevant to the woman in question's right to choose, and therefore cannot be brought to bear on her actions. As Diprose suggests (1994, p.15), 'we can appreciate that the choices women make ... are embedded in their lives and interpersonal relations'. In this respect the feminist position on abortion is no different from any other rights-based position: those who advocate free speech as a fundamental right must accept, for example, that sometimes people will say things that they find objectionable or harmful.

Advocates of disability equality begin from a quite different position. Although on many issues one will find advocates of the disability movement talking about rights, the position on abortion does not arise from a concern with individual rights. Instead the concern is essentially about the eugenic implications of aborting foetuses thought to have some impairment. Tom Shakespeare makes a distinction between 'strong' and 'weak' eugenics:

Strong eugenics could be defined as population-level improvement by control of reproduction via state intervention.

(Shakespeare, 1998, p.669)

whereas weak eugenics is:

promoting technologies of reproductive selection via non-coercive individual choices. It is motivated by the medical judgement that disabled lives involve unacceptable suffering.

(Shakespeare, 1998, p.669)

We shall have more to say about these definitions later, but for present purposes it is important to notice that the disability equality objection to abortion stems from a wider concern with attitudes towards, and treatment of, disabled people in society. For such authors, their quarrel is not with abortion *per se*, but with the specific case of abortion on the grounds of impairment. Disability equality advocates need not, therefore, align themselves with 'pro-life' campaigners (as suggested by Davis, 1987), who generally base their objection to abortion either on abstract ethical principles concerning the sanctity of life, or on the specific assertion of foetal rights. Consequently much disability equality writing focuses on the issue of pre-natal screening, and the advice – both explicit and tacit – which surrounds this (Crow, 1996; Kallianes & Rubinfeld, 1997; Drake, 1998). Indeed, the medicalisation of pregnancy and childbirth in the modern Western world and the routinisation of prenatal screening and diagnosis is widely documented (Green and Statham, 1996; Press and Browner, 1997; Press *et al*, 1998). Research shows that pregnant women are strongly 'encouraged' to abort fetuses that are thought to be impaired in some way. For example, Katz-Rothman (1994) found that the majority of genetic counsellors in her study believed selective abortion to be a 'good thing' and Green's (1995) study of Consultant Obstetricians showed that the majority favoured selective abortion on the basis of 'serious foetal abnormality'.

Ultimately, the disability rights objection to abortion on the grounds of impairment (and the institutional practices which promote this) stems from the social model of disability itself. Once a distinction is made between impairment (an individual's physical condition) and disability (the particular social consequences of impairments) the medical establishment's claim that disabled lives are not worth living, is placed in its social context. That is, it may be that in the current social and economic environment, disabled lives are not worth living; however, that is not a consequence of impairment itself, but instead of prevailing social and economic conditions which militate against impaired individuals leading full and satisfying lives.

The fact that the disability rights objection to abortion is so specifically directed at abortion on the grounds of foetal impairment, means that it is not as straightforwardly translated into policy as the feminist objection to abortion on the grounds of women's rights. The principal difficulty is this: since there is no objection to abortion *per se*, but only to abortion on the grounds of suspected or proven impairment, it would seem to follow that policies should be directed at preventing abortion on these grounds whilst permitting it on every other. Whilst this appears to be the logical consequence of the disability equality position, the practical difficulties it raises are very obvious, and are well documented by disability equality writers themselves (for example, Shakespeare, 1998; Morris, 1991). Notwithstanding ethical difficulties, which we shall explore further below, it is far from clear that such an arrangement could work in practice. Presumably, the only person who could have access to the true grounds on which an abortion is being sought is the pregnant woman herself. Therefore, a policy which sought to deny abortion on the grounds of impairment, but permit it on any other, would

be so easy to circumvent as to be effectively pointless. As Petchesky (1986) notes, to be meaningful, any right must carry with it the enabling conditions that will make that right *concretely realisable and universally available*.

Whatever the practical implications of these two positions, it is clear that feminist and disability equality approaches to abortion begin from very different assumptions. Before we go on to examine in more detail the extent of the incompatibility between these assumptions, we shall first examine a very significant point of agreement between the two positions.

Abortion and the Law in the United Kingdom

A key feature of current British legislation on abortion concerns the point beyond which abortions are only permitted in exceptional circumstances. Currently, under the provisions of the 1992 Human Fertilisation and Embryology Act, abortions are only permitted beyond 24 weeks if there is evidence of 'severely handicapping' mental or physical abnormalities. It is notable that of the 170 countries that currently permit abortion, the majority have some provision for terminating pregnancy on the grounds of severe impairment (Coward, 1994; Drake, 1999). It seems quite clear that this provision offends both the feminist and disability equality stance on abortion.

First of all, as we have seen, the feminist position on abortion is based exclusively on the assertion of a woman's right to terminate a pregnancy. As such, the grounds of the

termination are strictly irrelevant: the right exists in any case, and cannot be altered by any other consideration. Of course, the issue of at what stage a pregnancy should no longer be terminated is controversial. Plainly, no feminist would argue that it is legitimate to terminate a *child's* life at will, but on the question of foetal rights, mothers' rights inevitably trump those of the foetus. This position is exemplified by the way in which feminists have recently challenged cases where pregnant women have been maintained on life support (without prior consent) whilst the foetus continues to gestate (Hartouni, 1997). It is very clear that there is no room within the feminist position for the distinction which the law currently makes: if it is legitimate to terminate a pregnancy on the grounds of impairment after 24 weeks, then so should it be on any other grounds.

In the same way, it is obvious that the current legal distinction offends against the disability equality principle that abortions should not take place on the grounds of foetal impairment. Indeed, as we have seen, it represents the exact opposite of what disability equality advocates would appear to want. It does seem, therefore, that both feminists and disability equality advocates are in agreement that the law should not, as it presently does, make a distinction between abortion on the grounds of impairment and abortion on any other grounds. It is important to notice, however, that this agreement is essentially accidental, stemming, as it does, from two quite different positions on the question of abortion.

Structures, Discourse and Individual Choice

As already noted, the tension between the feminist and disability equality positions on abortion has been acknowledged by disability equality writers themselves. There seems to have been a reluctance, however, to acknowledge just how fundamental this tension is. In a very interesting discussion of the matter, Shakespeare has suggested that it is possible to retain a feminist emphasis on the role of individual choice, whilst still critiquing the 'weakly eugenic' ways in which medical discourse and practice prioritises and justifies the abortion of impaired foetuses (Shakespeare, 1998).

Shakespeare's analysis is explicitly sociological in character, and focuses on the wider sources of individual choice. He shows, for example, following Marteau *et al* (1994), that the vast majority of professionals likely to be involved in counselling women pre-natally, believe that termination is desirable where foetuses have open spina bifida, anencephaly, Huntington's disease, Down's syndrome and Duchenne muscular dystrophy. These beliefs underwrite a prevailing professional discourse which systematically undervalues disabled lives. Similarly, he argues that prevailing economic arrangements for the care of disabled people might also influence individual choices which pregnant women make. In this way, he suggests that the individual choices which women make to abort impaired foetuses cannot be considered free choices; instead they are heavily influenced by wider cultural and economic forces. As he puts it:

Both these factors militate against the possibility of a free choice, and suggest that an individual model of decision making obscures the wider social context.

(Shakespeare, 1998, p.676)

This move allows Shakespeare, on the one hand, to accept the ethical legitimacy of the feminist emphasis on the rights of individual women to choose their reproductive destiny, whilst on the other, to claim that prevailing social circumstances undermine the freedom of this choice and hence, in practice, make such choices illegitimate. Arguably, it would seem to follow from this position that whilst in principle women have the right to choose, they should only be allowed to exercise this right once the discriminatory culture and its supporting structures have been eradicated. However, this ignores the demand for abortion as a fundamental human right, which would override any respect for the demands of other social, cultural, or even religious groups (Abeyesekera, 1997).

Whilst Shakespeare's analysis appears to allow him a way out of the apparent *impasse* between the feminist and disability rights positions on abortion, it is our contention that this apparent resolution is in fact illusory. We now turn to a consideration of why such a reliance on the effects of prevailing economic and cultural circumstances fails to resolve the tension between feminist and disability rights positions.

Freedom, Rights and the Wider Social Context

The line taken by Tom Shakespeare on this issue draws attention to a much broader problem concerning the relationship between the assertion of individual rights to freedom of choice, and the role of wider social, cultural and economic conditions in the determination of individual action. The problem, in a nutshell, is this: if it can be shown that individual actions result from, or are in large measure influenced by, wider social, cultural and economic forces, then it is difficult to conclude that they also reflect the individual's true interests. If it can be shown, for instance, that a woman's desire to abort

an impaired foetus results not from her own genuine interests, but instead from the distorting influences of a medical establishment which is deeply prejudiced against disabled people, then it seems difficult, ethically, to accept that she should indeed be permitted to go ahead with the termination. Fundamentally, the termination would not be in her interests, but in those of the prejudiced medical establishment.

Shakespeare does not go so far, of course, as to suggest that it is in practice legitimate to ignore the preferences of women when they seem to reflect such wider, culturally based prejudices or discriminatory economic practices. Indeed, it seems difficult to see how one could, in practice, distinguish between a legitimate expression of a woman's 'true' interests and illegitimately held prejudices of wider social origin. Nevertheless, it does seem to be implied by Shakespeare's argument that were such wider culturally based prejudices and economic conditions to be eliminated, then women would simply cease to seek terminations on the grounds of foetal impairment. If this is not to be the implication of his argument, then it is difficult to see how his intervention has advanced the debate at all. This is because if he acknowledges that a woman could, in principle, make a free and unconstrained decision to abort an impaired foetus (that is, a decision not influenced by wider cultural prejudices etc.) then he would seem to be siding, pretty unambiguously, with the pro-abortion feminists in his acceptance of her right to make such a choice.

Indeed, it is this issue which is really at the crux of the problem. All the while Shakespeare characterises women's decisions to abort impaired foetuses as the result of a wider anti-disability culture, he is able to accept the idea that women have a right to

choose whilst simultaneously criticising choices (i.e. to abort impaired fetuses) which are not made 'freely'. However, once the possibility is acknowledged that women might, in principle, make genuinely free choices to abort impaired fetuses, then the grounds for objecting to such choices evaporate. It seems to us, therefore, that if Shakespeare's position is to differ in any significant way from that advanced by pro-abortion feminists, it must inevitably entail the assumption that women cannot, in principle, make a completely free (and therefore legitimate) decision to abort an impaired fetus. In this sense Shakespeare, and others like him, are simply characterising women as 'the duped victims of false consciousness' (Davis, 1997, p.105); denying them any form of genuine agency. Furthermore, it could even be argued that such an ideological position, which plainly interferes with women's sovereignty over the body, is little more than a thinly veiled example of patriarchal hegemony (Diprose, 1994).

But what are we to make of such an assumption? One very obvious practical difficulty with it has already been alluded to: how are we to establish criteria for distinguishing between choices which have been made quite freely, and those which have been driven by external social influences? At the very least, such a distinction will be influenced by the personal beliefs and prejudices of the person making the distinction. More fundamentally, it is difficult to see how the whole distinction can avoid collapsing into tautology. If we assume, as Shakespeare seems to, that no one free of the distorting effects of an anti-disability culture could ever make the choice to abort a fetus on the grounds of impairment, it must always follow that anyone who seeks an abortion on such grounds is not acting freely.

Given this, in spite of his claims to the contrary, it seems difficult to distinguish Shakespeare's position from one which would seek to deny abortion on the grounds of impairment, and hence one which denies the primacy of the woman's right to choose.

More generally, there are difficulties associated with challenging the legitimacy of individual choices on the grounds that they emanate from wider beliefs and values. It seems to us to be self-evident that all human beliefs, attitudes, and preferences are unavoidably bound up in the particular social, political, economic and cultural circumstances in which they are found, and therefore that it simply makes no sense to distinguish between those which are the product of wider influences and those which are not. Equally, it seems rather dangerous to imply that because one's beliefs, attitudes and preferences are influenced by wider social factors, one's entitlement to hold them and to have them taken seriously should be undermined. On this argument, a case could be made for denying virtually any individual the right to exercise virtually any preference.

The fundamental point is that none of this carries any weight at all as far as the feminist position on abortion is concerned. Whilst we accept that, in practice, the realisation of any right is based on the existence of realisable conditions, for example legislation, the right to abortion 'on demand' is grounded in the assertion of the woman's inviolable right to choose. It is interesting that those who hold this view would probably be in general agreement with Shakespeare's analysis of how individual choices are influenced by the social contexts in which they are made – indeed many, particularly those who endorse the 'patriarchal' model of society, would probably go further (Himmelweit,

1988). It is highly significant, however, that this view of society has not led feminists to reject their basic assertion of women's rights in connection with abortion.

Conclusion

We have argued that the feminist position on abortion rests on the fundamental assertion of a woman's right to choose. Whilst rights are often enacted and ensured via legislation, the assertion of this right is otherwise unconditional; it cannot be undermined by the grounds on which abortion is sought, nor the wider social, cultural, economic or political origins of the woman's desire to terminate the pregnancy. We may dislike the fact that women sometimes choose to terminate pregnancies on grounds of which we disapprove – such as foetal impairment – but this dislike has no moral force against her fundamental right.

We conclude from this, therefore, that attempts to reconcile the feminist position with that of disability rights advocates must fail. We have explored Tom Shakespeare's attempt to show that the two positions are in fact reconcilable; he suggests a position 'which accepts women's right to choose, but opposes social and cultural pressures for selective termination of disabled people' (Shakespeare, 1998, p.666). We have concluded that his reliance on the social origin of individual desires to abort impaired fetuses fails, ultimately, to resolve the conflict between them.

It has not been our intention in this paper to present a defence either of the feminist or disability equality position on abortion. We have instead sought to demonstrate that,

whatever ideological allegiances between the two positions may exist, on this important point the two positions remain in fundamental opposition.

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