

Abortion, The Eugenic Protection Law, And Women's Reproductive Rights In Japan¹

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ABSTRACT

A historical overview of abortion rights in Japan since the 1930s, this article chronicles women's struggles for autonomy and reproductive control in a society willing to promote abortion for eugenic and pro-family values.

RÉSUMÉ

Cet article, une rétrospective couvrant les droits à l'avortement au Japon depuis 1930, fait la chronique de la lutte des femmes pour accéder à l'autonomie et au contrôle de la reproduction dans une société qui tend à promouvoir l'avortement pour des raisons eugéniques et pro-familiales.

Following the defeat in World War II, amid starvation and confusion, people of Japan resorted to illegal abortion, child abandonment, and infanticide to deal with unwanted pregnancies. Under such circumstances the Eugenic Protection Law was passed in 1948. Its strange name has its origin in the National Eugenic Law, which, patterned after the 1933 sterilization law of Nazi Germany, was promulgated in 1940 as part of Japan's wartime pronatalist policy. The 1948 law declared that induced abortion was legitimate not only for eugenic reasons, rape, or leprosy of the pregnant woman or her spouse, but also "when the continuation of pregnancy or childbirth would be physically detrimental to the health of the mother." In 1949, the phrase "or economically" was added to further extend legitimate reasons for

abortion. Since there were no guidelines regarding economic criteria, Japanese women were thus practically given abortion on request.

Although there is no doubt that the early legalization of abortion from above helped Japanese women to control the number of children they produced and thus facilitated survival and economic recovery, this has also had less desirable consequences. Early legalization of abortion affected the consciousness and contraceptive patterns of Japanese couples, weakening their motivation for effective contraception. Despite an increase in the practice of contraception and a decline in abortions, abortion is still regarded as a quick and easy way of terminating unwanted pregnancy. In Japan it is not teenaged girls or unmarried women but married women who

constitute the majority of the aborting population.

In all of the research conducted from 1947 to the present, it has been condoms that stand overwhelmingly first as the contraceptive method of couples. Condoms are chosen because they are easiest to obtain and use, because "everybody else uses them," and because many Japanese couples find it embarrassing or troublesome to consult health care specialists about alternative contraceptive methods. Accordingly, use of so-called "modern methods" such as IUDs, diaphragms, and the pill is remarkably low in comparison with other countries. In fact, the pill is not officially approved for contraceptive use in Japan because of fear of side effects, and women who want to take the pill have to get a prescription from gynecologists under the pretext of menstrual irregularity. Furthermore, since the low-dose pill which is widely used in other countries is not available, Japanese women have to take older varieties of pills which contain higher doses of synthetic hormones. The rates of both male and female sterilization are also low.

Although condoms are relatively effective as long as they are used correctly, many Japanese men dislike using them and tend to neglect using them in spite of objections from women. Economically dependent on their husbands, many wives find it difficult to object. Furthermore, women are often socialized not to be self-assertive towards men or to act knowledgeable about sexual matters. This is another factor leading to unwanted pregnancies and induced abortions.

Thus, abortion for many Japanese women did not develop in the context of "a woman's right to choose." Since the early 1970s and

1980s, a movement to revise the Eugenic Protection Law has continued to develop, threatening to eliminate the "economic reasons" clause and with it free access to abortion. At that time a religious sect, Seicho no Ie (House of Life), launched a vehement anti-abortion campaign in collaboration with some conservative politicians. This anti-abortion campaign found considerable sympathy among political and business leaders who had become increasingly worried about falling birth rates, labor shortages, and disintegration of "the traditional family."

The major points of the revised bill submitted twice to the Diet in 1970 and 1972 were: a) to delete the "economic reasons" clause; b) to allow abortion if the fetus was suspected of having a serious disease or mental or physical defect; and c) to advise Japanese women to give birth to their first child at a suitable age. Aimed at increasing fertility rates of Japanese women, the bill advocated, however, that eugenically "inferior" children should not be born.

Just prior to this movement to revise the Eugenic Protection Law, women who had been dissatisfied with the sexism in the students' movement and the New Left movement had already raised the banner of women's liberation in Japan. In November, 1970, a teach-in entitled, "We Protest Against Sexism", was held where over five hundred women gathered and participated in heated discussion for more than seven hours. The following summer, three hundred women gathered for the Women's Liberation Training Camp at a mountain retreat. Numerous small groups of women mushroomed spontaneously all over the nation. For these women, the controversy over the revision of the Eugenic

Protection Law immediately became an important opportunity for articulation of "women's autonomy" and "women's right to control their own bodies." The proposed ban on legal abortion would mean a return to prewar days when women were treated as childbearing machines for the state. In the anti-revision campaign these women coined the slogan "It is I, a woman, who decides whether or not to bear a child" and they fought vehemently against elimination of the "economic reasons" clause.

Another group also fiercely opposed revision. Composed of people with disabilities, mainly those with cerebral palsy, this group felt that the new provision for "defective" fetuses would infringe upon their fundamental right to live. In the 1950s and 1960s, the number of children with congenital diseases or deformities had increased, a problem linked to industrial pollution and hazardous products. There were also cases of mentally or physically handicapped children being killed by parents who were exhausted caring for them without public support. Public opinion was generally sympathetic towards these parents reasoning that it was better for "unfortunate children" not to have been born and that parents killed them not for their own convenience but for "the poor children's sake." People with cerebral palsy protested, arguing that social tolerance for killing a disabled child is synonymous with saying to those living with disability, "You are not supposed to exist in this world. You'd better die."

Supporters of disability rights feared that inclusion of the proposed provision would further justify discrimination by legitimizing eugenic selection. At the same time, they questioned the fundamental validity of

abortion sanctioned by the Eugenic Protection Law and criticized the claim that abortion was a woman's right to choose, saying this was nothing but a "healthy person's egoism" and a denial of the fundamental right to life. As the title of a book published by one of the leaders of disability rights movement stated, "Mothers Don't Kill!" Thus, two marginalized minority groups--women and the disabled--were placed in awkward confrontation in the efficiency- and profit-oriented Japanese society.

Although women advocating reproductive freedom listened sincerely to the criticism of disabled people, they were by no means prepared to give up their right to abortion. They coined another slogan: "There are times when women cannot bear children (even if they want to)", as a kind of apology to the disabled. The two groups formed a tentative joint struggle in collecting anti-revision signatures, lobbying, and holding protest assemblies. In 1974, they succeeded in defeating the pro-revision forces when the bill was withdrawn after being shelved in the Legislature.

There have been some new moves since then. Independently from male leaders of the disabled, more and more women with disabilities have come to argue that, while the oppressive character of the Eugenic Protection Law is unbearable for them, as women with reproductive potentialities, they cannot totally deny women's right to abortion. The abolition of the Eugenic Protection law and legalization of abortion have to be considered as separate issues. Thus gender differences among people with disabilities suggested a possible new way for compatibility of women's reproductive rights and disabled people's rights.

In the early 1980s, Seicho no Ie

resumed the campaign for revision of the Eugenic Protection Law. This time they avoided mention of "fetal disability" and focused exclusively on the "economic reasons" clause. Seeking collaboration with other Pro-Life groups throughout the world, Seicho no Ie collected pro-revision signatures, distributed films such as "The Silent Scream," ran TV ads, invited Mother Teresa to give lectures, and published books with such titles as "Are Not Fetuses Human Beings?" and "Please Don't Take My Life."

Although most women's groups that participated in the radical liberation movement of the 1970s had disbanded by the 1980s, the ideas of feminism had more widely infiltrated the thinking of Japanese women by this time. Not only women's liberation activists but also women belonging to more traditional and conservative women's organizations and women in the anti-war and anti-nuclear weapon movements responded to the issue. Thus women of diverse occupations, ages, and ideologies spontaneously gathered their forces into a nation-wide coalition against revision of the law. Numerous protest meetings and demonstrations were held, signatures were collected, and many books and pamphlets were published. In March 1983, seven women went on a hunger-strike for six days in front of the Ministry of Health and Welfare. In the National Diet, six female members of the Liberal Democratic Party, the ruling party which submitted the revision bill, rebelled against the policy of the party and joined the supra-party resolution against the proposed revision. Due to the efforts of anti-revisionists, the second campaign of Seicho no Ie failed. It was at this time that many women read for the first time the provisions of the Eugenic

Protection Law as well as the Penal Code's anti-abortion clause which had remained on the books even after the passage of the Eugenic Protection Law. Women realized that the legal grounds for abortion availability in Japan was far more fragile than generally imagined. Abortion was not an acknowledged right but something tentatively allowed from above for reasons of national interest that may change. Realizing this, some women activists launched a campaign to abolish the existing legislation and to draft a new abortion bill based on a woman's point of view. This effort continues today.

During these various debates, there was no organized effort to make the contraceptive pill more readily available. In fact, except for one small group of women who campaigned for legalization of abortion and the pill in the 1970s, most feminists and women's health activists in Japan were unenthusiastic about official approval of the pill for contraceptive use. Many were strongly against the pill, believing that continuous use of synthetic hormones can be hazardous to women's health. It is only recently that some women's health activists have been rethinking the possibility of the pill as a contraceptive alternative.

An important factor in the defeat of the 1980s revision campaign was the religious or moral climate of Japan in which a clear-cut confrontation between fetal right and woman's right is very difficult. The traditional concept of life in Japan makes the abortion issue quite complex. Life is thought to circulate back and forth between this world and the other world, and the soul of an aborted fetus or child killed at birth can return to the other world and wait there for rebirth at a more appropriate time and

place. Life and death are not considered to begin or to end at a fixed point in time but are thought to be part of a more gradual and continuous process. For example, a newborn infant is said to belong to the realm of the gods until seven years of age while the soul of a dead person is believed to remain in this world until one year after death. Accordingly, although abortion and infanticide are considered the termination of life, they are not condemned as sins. Rather, they are tolerated as necessary deeds as long as they are done for the purpose of ensuring familial welfare. The sorrow and guilt a woman might feel for an aborted fetus or dead child can be eased through special rituals for consolation of their souls. Although modern scientific notions of life now exist in Japan, these traditional views persist. In such a culture, it is difficult for a pro-life movement to find wide support for its over-simplified, self-righteous position.

At the same time, this climate makes it difficult for women to claim an absolute right to control their own bodies at will. For many Japanese such a claim sounds too individualistic or egocentric. That is why the 1970s slogan "It is I, a woman, who decides whether or not to bear a child" was greeted unfavorably not only by the disabled but also by the general public. In other words, abortion is widely recognized as necessary in Japanese society, but calling it "a right" somehow stirs up uneasiness and antagonism. Having learned this from experience, abortion rights activists in Japan have come to use the English term "reproductive rights" without translating it into Japanese. This tactic--using an unfamiliar foreign term--attempts to alleviate the public's fear of self-assertive women.

During the 1994 Cairo International

Conference on Population and Development, the problematic character of the Eugenic Protection Law was brought to international attention by Yuho Asaka, a Japanese woman activist with a disability. She reported that in Japan the law, or rather the eugenic idea embodied in it, has been used by doctors to prevent disabled women from having children, sometimes conducting unnecessary hysterectomies on women with physical or mental handicaps.

Partly as a result of the stir caused by Asaka's report at the conference and partly due to the pressure from the organization of families of the disabled, another bill to reverse the Eugenic Protection Law was suddenly brought forward to the Diet by the Liberal Democratic Party in June 1996. It proposed to eliminate all the clauses pertaining to people with disabilities and to change the name of the law to the Maternity Protection Law (a strange name for a law that only provides for sterilization and abortion!).

For women, the proposed revision was not enough because it did not abolish the anti-abortion clause of the Penal Code or affirm women's reproductive rights. Again, women were trapped in a dilemma. Should they reject revision as a whole or accept it for the sake of the welfare of people with disabilities? While women were still debating the issue, the bill was passed quickly without substantial discussion, and the name of the law was altered to The Maternal Body Protection Law.

Was this a defeat of women's movement for reproductive rights and freedoms? It appears not. Activists for women's reproductive rights now seem resolved to use this revision as the first step to

demolish finally the abortion law imposed from above. They hope to realize legislation that truly guarantees women's autonomy and control of their own bodies. The battle is still going on.

ENDNOTE

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