

ABORTING LAW: AN EXPLORATION OF THE POLITICS OF MOTHERHOOD AND MEDICINE

Gail Kellough. Toronto: University of Toronto Press, 1996.

BY MARIA BONANNO

In this thorough and challenging work, Kellough examines the abortion issue within the context of the larger hegemonic legal and social discourse in our culture. She emphasizes that "the relationship between legal and social codes is not closed or one-way because each strand contradicts and relies on the other, and it is precisely because the legal code interlocks with the social code that law has ideological power in the construction of inequality." Kellough argues that contemporary legal reasoning has not excluded women but has *presupposed* their necessary contribution related to "reproductive labour," defined as "work that produces human beings and human relationships, a labour that creates human value." Using Rawls' justice theory as a basis, Kellough outlines the two types of rights in society: liberty (primary) rights and welfare (secondary) rights. Rawls' theory assumes the autonomy of each independent member of society whose primary motivation is self-interest. This autonomous being has any and all rights of liberty until those rights come into conflict with another's liberty rights. Only then can the state interfere to mediate and/or resolve the conflict. Welfare rights are those which can be claimed by individuals who have somehow lost or are unable to achieve their full liberty rights. In this case a right to compensation (welfare) may be petitioned from the state. According to Kellough, the flaw in Rawls' theory is that he does not consider the work necessary in creating, nurturing, and

supporting this independent citizen. And, of course, this "taken-for-granted" labour is primarily done by women. Also, because this work requires the suspension of self-interest (the prime motivation for the autonomous citizen), women are placed in a *responsive* position. In this way, women are integral to the legal and social order because the independent citizen *depends* on their reproductive labour.

Abortion subverts the dominant legal and social discourse, because a woman seeking abortion is *refusing to participate in her expected reproductive labour*. In responding to a female autonomous citizen's right to liberty (i.e. self-determination, choice) the legal code has decided to grant full liberty rights to the unborn foetus. Therefore, because a conflict exists between the woman's rights and the foetus' rights, the state has the authority to make decisions regarding abortion. This result reinforces the social code that requires

women to be in a responsive position, by forcing them to petition for the welfare (secondary) right to abortion. The status quo is thereby protected.

Kellough uses this theoretical basis for an in-depth examination of *Roe vs. Wade* in the United States and the 1969 amendment to the Canadian Criminal Code which created Therapeutic Abortion Committees (TACs). Although both were credited with making abortion legal in their individual countries, Kellough structures a very convincing argument that both of these events put women in the position either of having to declare themselves "unfit" in some way in order to qualify for an abortion (Canada) or severely restrict practical access, particularly for the poor (U.S.). In both instances ultimate control over abortion was simply transferred from the state to the medical profession; no additional rights were given to individual women.



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Using this premise, Kellough continues with a detailed account of the struggle for abortion rights by Dr. Henry Morgentaler and the work of the Ontario Coalition for Abortion Clinics (OCAC). As a "participant-observer" in this process, Kellough's vantage point allows the reader access to the intricacies of a struggle by a group of people dedicated to bridging the gap between ideology and practice. Throughout her cogent and illuminating discussion, Kellough examines these events within her theoretical framework. For example, the Morgentaler defence was not really centred on a woman's right to abortion, but on the premise that the TAC requirement restricted Dr. Morgentaler's liberty to practice medicine as he saw fit. However, "Morgentaler's willingness to respond to women on their own terms was an important component in the struggle for reproductive freedom, even though it did not itself constitute such freedom." Clearly, Morgentaler's victory would benefit his patients. Kellough presents the OCAC strategy because she believes that "the political work of this group of women provides an example of a feminist process designed to mediate the inevitable tension between moral vision and practical reality."

Ultimately, Kellough's vision includes the interpretation of established discourses as a "political tool that we can use to disclose or create a space for change ... and each time we use these spaces to promote strategies that reconnect agency and responsiveness, we will once again be faced with the reality of our own power as social beings." If women are to overcome the inequality inherent in the current legal and social hegemonic discourse, the right to reproductive freedom, however individual women choose to exercise that right, must be at the core of any discussion.

KILLING THE BLACK BODY: RACE, REPRODUCTION, AND THE MEANING OF LIBERTY

Dorothy Roberts. New York: Pantheon Books, 1997.

BY EVELYN MARRAST

Roberts' *Killing the Black Body* traces the effects of the classic tension in American constitutional discourse between the principles of liberalism and equality. The central question asked by Roberts is: "How does Black women's experience change the current interpretation of reproductive freedom?" Her answer is that factoring in black women's reproductive rights could change the meaning of liberty for everyone.

Beginning her survey with a perhaps too extensive history of the excesses of slave breeding, Roberts fixes the abuses of slavery as the beginning of a continuous assault on the reproductive rights of black women. Most of this is familiar ground to scholars of nineteenth-century American and African-American history. Her ability to connect past abuses with current debates on reproductive and abortion rights is, however, a refreshing addition to contemporary feminist legal discourse around foetal rights, reproductive rights, and the role of the state in determining women's control over their bodies.

The crux of Roberts' book turns on a critique of the sacred cow of American constitutional and legal ideology: liberalism. For the most part she is careful in negotiating a path between the rights of individuals and the rights of groups and communities such as black women. This she does with remarkable sensitivity. For example her treatment of the controversial mother of the early birth control movement, Margaret Sanger, is at least ambivalent rather than con-

demnatory, making her one of the few black scholars to show such regard.

The position of black women as the poorest segment of American society has placed them closest to state mechanisms and agencies which continuously violate the very principles of liberalism so important to the more privileged members of the mainstream society. The War on Poverty which began with Lyndon Johnson's reform of the welfare system in the late 1960s has become, through continuous state intervention, tantamount to a war on the poorest and most disadvantaged members of society, most of whom are black women. Some 30 years later, and caught in the new rhetoric of Clinton's welfare reform, some blacks as well as whites are only too willing to relinquish the right of the poor to privacy and self-determination in their attempt to get poor people off the welfare rolls. Since many welfare recipients are black single mothers, the War on Poverty has become a war on black motherhood.

Differential treatment under the law, by the medical establishment and by the media, have all contributed to the persistent denigration of black motherhood. Black and Latina women in the United States, in their struggle against abusive and excessive state and medical intervention, have a great deal more in common with other non-white women in developing countries than with affluent white American women. Medical interventions such as the distribution of and coercive implanting of Norplant in the poor, forced sterilization, and the withholding of proper birth control information, do not merely infringe on the reproductive rights of visible minority women, they also contribute to poor health care and a higher than average infant mortality rate.

One of Roberts' avowed intentions in the book is the undertaking of a redefinition of reproductive liberty. In attempting to do this she takes on the abortion rights movement and