

Abortion Law Repeal (Sort Of)

A Warning to Women

1970

ONE OF THE FEW THINGS THAT EVERYONE IN the women's movement seems to agree on is that we have to get rid of the abortion laws and make sure that any woman who wants an abortion can get one. We all recognize how basic this demand is; it sounds like a pretty clear and simple demand, too—hard to achieve, of course, but obviously a fundamental right just like any other method of birth control.

But just because it *sounds* so simple and obvious and is such a great point of unity, a lot of us haven't really looked below the surface of the abortion fight and seen how complicated it may be to get what we want. The most important thing feminists have done and have to keep doing is to insist that the basic reason for repealing the laws and making abortions available is **JUSTICE**: women's right to abortion.

Everyone recognizes the cruder forms of opposition to abortion traditionally used by the forces of sexism and religious reaction. But a feminist philosophy must be able to deal with *all* the stumbling blocks that keep us from reaching our goal, and must develop a consciousness about the far more subtle dangers we face from many who honestly believe they are our friends.

In our disgust with the extreme oppression women experience under the present abortion laws, many of us are understandably tempted to accept insulting token changes that we would angrily shout down if they were offered to us in any other field of the struggle for women's liberation. We've waited so long for anything to happen that when we see our demands having any effect at all we're sorely tempted to convince ourselves that everything that sounds good in the short run will turn out to

be good for women in the long run. And a lot of us are so fed up with “the system” that we don’t even bother to find out what it’s doing so we can fight it and demand what we want. This is the measure of our present oppression: a chain of aluminum *does* feel lighter around our necks than one made of iron, but it’s still a chain, and our task is still to burst entirely free.

The abortion issue is one of the very few issues vital to the women’s movement that well-meaning people outside of the movement were dealing with on an organized basis even before the new feminism began to explode a couple of years ago. Whatever we may like to think, there *is* quite definitely an abortion movement that is distinct from the feminist movement, and the good intentions of most of the people in it can turn out to be either a tremendous source of support for our goals or the most tragic barrier to our ever achieving them. The choice is up to us: we must subject every proposal for change and every tactic to the clearest feminist scrutiny, demand only what is good for *all* women, and not let some of us be bought off at the expense of the rest.

Until just a couple of years ago the abortion movement was a tiny handful of good people who were still having to concentrate just on getting the taboo lifted from public discussions of the topic. They dared not even think about any proposals for legal change *beyond* “reform” (in which abortion is grudgingly parceled out by hospital committee fiat to the few women who can “prove” they’ve been raped, or who are crazy, or are in danger of bearing a defective baby). They spent a lot of time debating with priests about *When Life Begins*, and *Which Abortions Are Justified*. They were mostly doctors, lawyers, social workers, clergymen, professors, writers, and a few were just plain women — usually not particularly feminist.

Part of the reason the reform movement was very small was that it appealed mostly to altruism and very

little to people's self-interest: the circumstances covered by "reform" *are* tragic but they affect very few women's lives, whereas repeal is compelling because most women know the fear of unwanted pregnancy and in fact get abortions for that reason.

Some people were involved with "reform" — and are in the abortion movement today — for very good reasons: they are concerned with important issues like the public health problem presented by illegal abortions, the doctor's right to provide patients with good medical care, the suffering of unwanted children and unhappy families, and the burgeoning of our population at a rate too high for *any* economic system to handle.

But the basis for all these good reasons to be concerned with abortion is, in the final analysis, simple expediency. Such reasons are peripheral to the central rationale for making abortion available: justice for women. And unless a well-thought-out feminism underlies the dedication of these people, they will accept all kinds of token gains from legislators and judges and the medical establishment in the name of "getting something done" **NOW** — never mind what that is, or how much it cuts the chances for real changes later by lulling the public into a false sense of accomplishment.

These people do deserve a lot of credit for their lonely and dogged insistence on raising the issue when everybody else wanted to pretend it didn't exist. But because they invested so much energy earlier in working for "reform" (and got it in ten states), they have an important stake in believing that their position is the "realistic" one — that one must accept the small, so-called "steps in the right direction" that can be wrested from reluctant politicians, that it isn't quite dignified to demonstrate or shout what you want, that raising the women's rights issue will "alienate" politicians, and so on.

Others, however (especially in centers of stylish lib-

eralism like New York City), are interested in abortion because they are essentially political fashion-mongers. Some of them aspire to public office and some just like to play around the pool. For them, it's "groovy" to be for something racy like abortion. You can make a name for yourself faster in a small movement, such as this one still is, than in something huge like the peace movement, and it's sexier than supporting the grape strikers in their struggle.[†]

Unfortunately, the "good people" share with these pseudo-militants an over-awed attitude toward politicians, doctors, lawyers, and traditional "experts" of all kinds: they tend to view the women's movement as rather eccentric troops they can call upon to help them with colorful things like unavoidable demonstrations, rather than as the grassroots force whose feminist philosophy should be leading *them* in the right direction. Even those who have begun to say that the woman's right to abortion *is* the central issue show a good deal of half-concealed condescension toward the very movement that has brought this issue to the fore and inspired the fantastic change in public opinion witnessed in the last year or so.

Because of course, it *is* the women's movement whose demand for *repeal*—rather than "reform"—of the abortion laws has spurred the general acceleration in the abortion movement and its influence. Unfortunately, and ironically, the very rapidity of the change for which we are responsible is threatening to bring us to the point where we are offered something so close to what we want that

† [United Farm Workers, led by Dolores Huerta and César Chávez, went on strike from 1965–1970 against California table grape growers, seeking higher wages and union bargaining for farmworkers. The UFW's campaign became a fashionable cause in the late 1960s, as they asked liberals and Leftists for support with a boycotts of nonunion grapes and secondary boycotts against grocery stores carrying nonunion grapes. — CJ.]

our demands for radical change may never be achieved.

Most of us recognize that “reforms” of the old rape-incest-fetal deformity variety are not in women’s interest and in fact, in their very specificity are almost more of an insult to our dignity as active, self-determining humans than are the old laws that simply forbid us to have abortions unless we are about to die. But the *new* reform legislation now being proposed all over the country is not in our interest either: it looks pretty good, and the improvements it seems to promise (at least for middle-class women) are almost irresistible to those who haven’t informed themselves about the complexities of the abortion situation or developed a feminist critique of abortion that goes beyond “it’s our right.” And the courts are now handing down decisions that look good at a glance but that contain the same restrictions as the legislation.

All of the restrictions are of the kind that would be extremely difficult to get judges and legislators to throw out later (unlike the obvious grotesqueries in the old “reform” laws, which are already being challenged successfully in some courts and legislatures). A lot of people are being seriously misled because the legislation and the court decisions that incorporate these insidious limitations are being called abortion law “repeal” by the media. It’s true that the media are not particularly interested in accuracy when they report news of interest to women, but the chief reason for this dangerous misuse of language is that media people are getting their information from the established abortion movement, which wants very badly to think that these laws and decisions *are* somehow repeal. (It seems pretty clear that when you repeal an abortion law you just get rid of it; you do not put things back into the statutes or make special rules that apply to abortion but not to other medical procedures.)

The following are the four major restrictions that have been cropping up lately in “repeal” bills, and some

highly condensed reasons why feminists (and indeed anyone) must oppose them. No one can say for sure whether sexist ill-will, political horse-trading, or simple ignorance played the largest part in the lawmakers' decisions to include them, but all of them codify outmoded notions about medical technology, religion, or women's "role":

1. *Abortions may only be performed in licensed hospitals.* Abortion is almost always a simple procedure that can be carried out in a clinic or a doctor's office. Most women do need a place to lie down and rest for a while after a D&C or even a vacuum aspiration abortion, but they hardly need to occupy scarce hospital beds and go through all the hospital rigamarole that ties up the woman's money and the time of overworked staff people.

Hospital boards are extremely conservative and have always wanted to minimize the number of abortions performed within their walls: the "abortion committees" we now have were not invented by lawmakers but by hospital administrators. New laws that insure a hospital monopoly will hardly change this attitude. (The same committees regulate which women will be able to get the sterilizations they seek — even though voluntary sterilization is perfectly legal in all but one or two states.) The hospitals and accreditation agencies set up their own controls on who will get medical care, and doctors who want to retain their attending status quite careful not to do "too many" abortions or sterilizations.

Hawaii's new law has this kind of restriction, and hospitals there are already busy setting up a new catechism of "guidelines," none of which insures that women will get more abortions and all of which insure that they will have to ask a lot of strangers for "permission" before they are allowed to spend the considerable amount of money hospitalizations inevitably cost. Maryland's new bill and the legislation proposed in several other states contain the same provisions that essentially shift the locus

of control over women's decisions from the state to the hospital bureaucracies and their quasi-legal "regulations."

2. *Abortions may only be performed by licensed physicians.* This restriction sounds almost reasonable to most women who have always been fairly healthy and fairly prosperous, who are caught up in the medical mystique so many doctors have cultivated, and who accept the myth that abortion is incredibly risky and thus should cost a lot. But it is one of the most insidious restrictions of all, and is most oppressive to poor women.

Most doctors are not at all interested in performing abortions: even the ones who don't think it's dirty and who favor increasing the availability of abortion generally consider it a pretty boring procedure that they don't especially want to do. One reason they do find it tedious is that it is basically quite a simple operation, especially when the new vacuum aspiration technique is used, rather than the old dilation and curettage. The physicians who would like to see paramedical specialists trained to perform abortions with the aspirator (or who would like to perfect other promising methods, such as hormone injections) would be completely thwarted by this restriction in their desire to provide efficient, inexpensive care on a mass basis. The general crisis in the medical delivery system in fact demands that paramedical people be trained to do a great many things that physicians do now.

If physicians themselves were to try to perform all the abortions that are needed, they would be swamped with requests and would have to charge a great deal for their specialized training. Childbirth is statistically eight or ten times more dangerous than abortion, and yet nurses are now being trained as midwives in many medical centers. Why can't they and other medical personnel also be specially trained to use the aspirator so that five or six of them can perform clinic abortions under the general supervision of one physician? Only if paramedicals are allowed

to do abortions can we expect to have truly inexpensive (and eventually free) abortions available to all women.

In the fall of 1969 a Washington, D.C. court threw out the District's limitations on a doctor's right to perform abortions — but upheld the conviction of the doctor's paramedical aide who said she had wanted to help poor women. Anyone who knows what the present situation in D.C. is will know that abortion is *not* readily available when its performance is limited to doctors only. The public hospital where poor women go has clamped down on abortions almost completely; private hospitals that serve middle-class women still operate restrictively and charge a lot; a few doctors willing to brave the stigma of being "abortionists" are performing abortions in their offices for \$ 300 or so. Although they work long hours, they are inundated with patients (one has a backlog of five weeks). Another is so swamped, partly because he continues to muddle through with D&C, that he does not even take the time to give the women an anesthetic (although they are assured before they arrive that they will get one).

Several attempts have been made to get D.C. doctors to devote a few volunteer hours each week to a free clinic for the poor; doctors have refused, expressing either indifference or fear of professional censure.

Some women insist that because *they* would prefer to go to a doctor, *all* women must be compelled by law to go to one. It is each woman's right to spend \$ 300 for an abortion from a doctor, but she is obviously oppressing other women when she insists that all must do as she does. An abortion performed by a paramedical person with special training in a given modern procedure could easily, in fact, be safer than a D&C performed by a physician who hasn't done many abortions before.

In any case, it is only when doctors have the right to train the people they need to help them meet the demand, and women have the right to get medical care at a price

they can afford, that butchers and quacks will be put out of business. Existing medical practice codes provide for the punishment of quacks, but as long as poor women cannot find good abortions at a price they can pay, so long will butchers elude the law and women continue to die from their ministrations.

Looking not so far into the future, this restriction would also deny women themselves the right to use self-abortifacients when they are developed—and who is to say they will not be developed soon? The laws regulating contraception that still exist in thirty-one states were made before contraceptive foam was invented, at a time when all effective female contraception involved a visit to the doctor. That visit was frozen into a legal requirement in some states, and we still have the sad and ludicrous example of Massachusetts, where non-prescriptive foam cannot legally be bought without a prescription.

The “doctors only” clause is a favorite in legislation that masquerades as repeal. Hawaii, Maryland, Washington State, and New York are among the important states where this restriction was (rather quietly) included.

3. Abortions may not be performed beyond a certain time in pregnancy, unless the woman's life is at stake. Significantly enough, the magic time limit varies from bill to bill, from court decision to court decision, but this kind of restriction essentially says two things to women: (a) at a certain stage, your body suddenly belongs to the state and it can force you to have a child, whatever your own reasons for wanting an abortion late in pregnancy; (b) because late abortion entails more risk to you than early abortion, the state must “protect” you even if your considered decision is that you want to run that risk and your doctor is willing to help you. This restriction insults women in the same way the present “preservation-of-life” laws do: it assumes that we must be in a state of tutelage and cannot assume responsibility for our own acts. Even

many women's liberation writers are guilty of repeating the paternalistic explanation given to excuse the original passage of U. S. laws against abortion: in the nineteenth century abortion was more dangerous than childbirth, and women had to be protected against it. Was it somehow less dangerous in the eighteenth century? Were other kinds of surgery safe then? And, most important, weren't women wanting and getting abortions, even though they knew how much they were risking? "Protection" has often turned out to be but another means of control over the protected; labor law offers many examples. When childbirth becomes as safe as it should be, perhaps it will be safer than abortion: will we put back our abortion laws, to "protect women"?

And basically, of course, no one can ever know exactly when *any* stage of pregnancy is reached until birth itself. Conception can take place at any time within about three days of intercourse, so that any legal time limit reckoned from "conception" is meaningless because it cannot be determined precisely. All the talk about "quickenings," "viability," and so on, is based on old religious myths (if the woman believes in them, of course, she won't look for an abortion) or tied to ever-shifting technology (who knows how soon a three-day-old fertilized egg may be considered "viable" because heroic mechanical devices allow it to survive and grow outside the woman's uterus?). To listen to judges and legislators play with the ghostly arithmetic of months and weeks is to hear the music by which angels used to dance on the head of a pin.

There are many reasons why a woman might seek a late abortion, and she should be able to find one legally if she wants it. She may suddenly discover that she had German measles in early pregnancy and that her fetus is deformed; she may have had a sudden mental breakdown; or some calamity may have changed the circumstances of her life: whatever her reasons, *she belongs to*

herself and not to the state.

This limitation speaks to the hangups many people have, and it would be almost impossible to erase from a law once it were enacted — despite its possible constitutional vulnerability on the grounds of vagueness. It is incorporated in New York State’s abortion bill, among many others, and in a recent Federal court decision in Wisconsin that has been gravely misrepresented as judicial “repeal.” The Washington, D.C. decision discussed the “issue,” and concluded that Congress should probably enact new laws for different stages of pregnancy. This is not repeal, it is a last-ditch attempt at retaining a little of the state ownership of pregnant women provided for under the worst laws we have now.

4. *Abortions may only be performed when the married woman’s husband or the young single woman’s parents give their consent.* The feminist objection to vesting a veto power in anyone other than the pregnant woman is too obvious to need any elaboration. It is utterly fantastic, then, to hear that some women’s liberation groups in Washington State have actually been *supporting* an abortion bill with a consent provision. Although such a debasing restriction is written into law in most of the states that have “reform,” some legal writers consider it of such little consequence that they fail to mention it in otherwise accurate summaries of U. S. abortion laws. The women’s collective now putting out *Rat* in New York[†] recently printed a very good map of the U. S., showing in ironic symbols the various restrictions on abortion in each state. For their source these radical women had used a

† [*Rat Subterranean News*, a counter-culture underground paper in New York founded in 1968. Contributors included Jane Alpert, Wm. S. Burroughs & R. Crumb. In 1970, radical women in the publishing collective took over the newspaper office & reissued the paper as *Women’s LibeRATion*, with poetry by Marge Piercy and Robin Morgan’s broadside “Goodbye to All That.” —CJ.]

legal checklist that did not include a mention of husband's consent—so their map didn't show this sexist restriction existing anywhere.

This may be the easiest of these restrictions to challenge constitutionally, but why should we have to? Instead we could prevent its enactment and fight to eradicate the hospital regulations that frequently impose it even where the law does not.

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All women are oppressed by the present abortion laws, by old-style “reforms,” and by seductive new fake repeal bills and court decisions. But the possibility of fake repeal—if it becomes reality—is the most dangerous: it will divide women from each other. It can buy off most middle-class women and make them believe things have really changed, while it leaves poor women to suffer and keeps us all saddled with abortion laws for many more years to come. There are many nice people who would like to see abortion made more or less legal, but their reasons are fuzzy and their tactics acquiescent. Because no one else except the women's movement is going to cry out against these restrictions, it is up to feminists to make the strongest and most precise demands upon the lawmakers—who ostensibly exist to serve *us*. We will not accept insults and call them “steps in the right direction.”

Only if we know what we *don't* want, and why, and say so over and over again, will we be able to recognize and reject all the clever plastic limitations of our goal.

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