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ARTICLE

Physicians Controlling Women’s Reproductive Choices: The Slow Liberalization of Abortion Laws in Finland

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Abstract

This paper provides an overview of the development and the sociopolitical background of legislation pertaining to abortion in Finland from the nineteenth century to the current day. The first Abortion Act came to force in 1950. Before that, abortions were handled under criminal law. The 1950 law was restrictive and allowed abortions in very limited circumstances only. Its main aim was to reduce the number of abortions and especially illegal abortions. It was not very successful in reaching these goals, but, significantly, it moved abortions from the realm of the criminal law to the hands of medical professionals. The birth of the welfare state and the prenatal attitudes of 1930s and 1940s Europe played their part in shaping the law. By late 1960s, with the rise of the women’s rights movement and other changes in society, there was pressure to change the outdated law. The new 1970 Abortion Act was broader and allowed abortions for limited social reasons too but left very limited, if any, room for a woman’s right to choose. After a citizen’s initiative in 2020, the year 2023 will see a significant amendment to the 1970 law; during the first 12 weeks of pregnancy, an abortion can be performed on the woman’s request alone. However, there is still a long way to go in terms of women’s rights and abortion laws in Finland.

Keywords: Abortion; Act 1950; Act 1970; Finland; women’s rights; medical paternalism

Introduction

In pre-Christian Finland, a child was considered not to have any value in herself (especially herself) until she became a part of the community. This was assumed to happen most often only after she was given a name. Abandoning or killing a child—or a fetus—before she had a name was accepted for a multitude of economic, social, cultural, and religious reasons.¹ It was only after Finns were converted into Christianity between the eleventh and thirteenth centuries that the old pagan beliefs started to disappear. However, it has been argued that, for instance, certain aspects of the Finnish baptism practices still echo the pagan ideals where the child’s soul becomes complete only after she is given a name.²

From Christian Values to Backstreet Abortions

Whatever pagan beliefs still lurked in the background, by the 1400s, the hold of the Christian church was strong, and infanticide (including abortion) was considered immoral and illegal. Infanticide was dealt with under the criminal law, and it was only after 1894 that abortion became a separate category in criminal statistics. Although abortions were illegal, the 1889 criminal code included an “exigency provision,” which some doctors started to interpret to allow abortions in the cases where the pregnancy posed a clear threat to the life of the mother.³ The demand for abortions, however, was much greater, and

the number of illegal terminations rose steadily in the beginning of the twentieth century, peaking in the 1930s and 1940s. Abortion was a widely acceptable choice, especially among the working classes, and, for instance, in Helsinki, the practice of illegal abortions was well organized with mainly lay persons, often female, providing the service. To give an idea of the scope of the practice, it is estimated that on average, between 1900 and 1950 for every 2.5 reported live births in Finland, an illegal abortion was performed.⁴ This was, for a multitude of reasons, a cause of great concern for governing bodies and eventually led to the 1950 Abortion Act. The most often cited reason behind the Act was an effort to decrease the number of illegal abortions and their health risks.⁵

The Finnish medical profession had a significant role to play in the development of the Finnish approach to abortion as physicians, even more so than lawyers, and physicians were the main experts nominated to legislative committees set to evaluate appropriate legal responses to abortions. In the beginning of the century, the Finnish medical professionals condemned abortions across the board and wanted nothing to do with them, but with the pronatalist thinking spreading in Europe in the 1930s and 1940s, they too started to become aware of the loss of potential life through illicit abortions and the untoward reproductive health consequences that illegal terminations caused. Hand in hand with the European pronatalist movement came the “vitality of a nation” thinking with its eugenic undertones. Finland ratified in 1935 a law that allowed, even encouraged, involuntary sterilizations based on mental and physical disabilities and assessments of being unsuitable for society because of addictions or criminal tendencies.⁶

With the “exigency provision” in the criminal law and an increased awareness of the problems caused by illegal abortions, by the 1940s, physicians started to become involved in the practices. Medical professionals were further concerned about quacks (those providing illegal abortions) providing the same services, even if arguably of poorer quality, than the medical professionals did—and getting paid for them. It was in the interests of physicians, as professionals, to draw a clear line between those with medical qualifications and those without. These considerations played a part in shaping the Finnish 1950 Abortion Act.⁷

The Act was restrictive, and abortions were allowed in exceptional circumstances only, which included a severe threat to the mother’s health or life (this had been accepted even before the Act), malformed fetus (eugenics), and the pregnant woman being under the age of 16 (sociomedical reasons). Rape or incest (ethical reasons) were acceptable reasons only if they had been reported to the police. The decision to abort in all cases required the consent of two doctors.⁸ The significant change was that the Act removed abortion from the realm of criminal law and effectively placed its control in the hands of medical professionals.

The timing of the Abortion Act coincided with the first steps of the Finnish welfare state. In terms of reproduction, the important new policies included child support, which the government started to pay in 1948 and the maternity package (a box of basic items necessary for a baby) that has been given to all mothers-to-be since 1949. It had been offered to low-income mothers since 1938. A prerequisite for receiving the free maternity package is a visit to a prenatal clinic “to ensure adequate prenatal care.” Somewhat controversially, the visit also includes, for instance, a syphilis test.⁹ The test, especially when syphilis was more common, was justified in the name of health and well-being of both the mother and the child, but it also represented a form of medical control. The point of the new Abortion Act, too, was to get more mothers-to-be under medical supervision. Although arguably the aim was to ensure the health and well-being of both the mother and the child, the social democratic welfare state’s public health ideal of a vital nation was the primary motivation. With medical professionals responsible for abortions, the abortion decisions were controlled by personal support and guidance by professionals of maternity care and medicine. And not surprisingly, in the beginning, most abortion requests were denied (in 1955, only 16% got their wishes), but as years passed, the decisions became more lenient, and by 1968 the percentage had risen to 42%.¹⁰

During the 1950s, the Abortion Act did not have the desired consequences. With very few pregnant women being granted the legal abortions they sought for, many resorted to illegal services. The law further failed to increase equality as it remained more difficult for working class women and those living

in remote rural areas of the country to even get an appointment with a doctor who, in theory, could offer the termination of their pregnancy.¹¹

1970 Abortion Act

Although Finland (the Grand Duchy of Finland) had been the first in Europe to give women equal voting rights in 1906 and the first country in the world to elect women to the parliament in 1907, women's rights were otherwise still limited. In the 1960s, things started to change. The women's rights movement reached Finland; contraceptive pills and other means to prevent unwanted pregnancies started to give women more choice and, in general, sexuality became less of a taboo. Public discussion on the unfairness of the 1950 Abortion Act was prompted by the Finnish Broadcasting Company, a discussion program on illegal abortions in 1965.¹²

After heated debates in the parliament, the 1970 Abortion Act was passed on March 24, 1970, with the support of an overwhelming majority. Those against the act raised concerns about the "hippie ideology" destroying Christian morality and the very foundations of the Finnish society and reminded others about the absolute sanctity of human lives. Interestingly, women's rights as such did not play a visible part in the discussions, rather the emphasis was, again, on the aim to reduce illegal abortions.¹³ When it came to discussions about rights, the reasoning behind the act seemed to rely on a child's right to be born rather than on a woman's right to choose.

The 1970 Abortion Act¹⁴ retained the requirement of written consent statements by two physicians for the abortion to be performed—except in cases where the pregnant woman was under the age of 17, over 40 years old, or already had four children or more. In these cases, the performing physician's statement would suffice. Other acceptable grounds, requiring approval by two physicians, for abortion under the new law were:

- 1) Pregnancy or childbirth would risk the woman's life or health (medical grounds).
- 2) Caring for the child would be a considerable strain on the woman and her family economically or socially (social grounds).
- 3) There was a reason to expect that the child would be mentally or physically disabled (eugenic grounds).
- 4) Illness or other factors would seriously limit the woman and her family's ability to care for the child (limited capacity grounds).

Originally, the law disallowed all abortions, except those performed on medical grounds, after the 16th week of pregnancy. However, in special circumstances, the National Board of Health could allow abortions up to the 20th week. In 1975, the general limit was lowered to the 12th week and since 1985, in the case of presumed mental retardation or severe illness or defect in the child, the National Board of Health can grant permissions to abort up until the end of the 24th week.¹⁵

In the first few years after the law came into force, the number of (legal) abortions rose briefly but significantly and reached their peak in 1973. After that, the number of abortions started a steady decline that continued until 2019; after that, the numbers have leveled off.¹⁶ Although the law was clearly more successful than its predecessor in reducing the number of illegal abortions—and of abortions in general—and even in reducing inequality in access, it has not been without its critics. As soon as the law came into force, Sexpo (a nonprofit sexual-policy foundation est. 1969) criticized it for not giving every woman the right to decide whether they would want to bring their pregnancy to term.¹⁷ Nowhere in the Act is a woman's right to choose mentioned. The requirement of obtaining consenting statements from two physicians has also been questioned from time to time. For those in rural areas or relying on public healthcare services alone, the requirement has created obstacles that have, on occasions, led to delays that have rendered the abortion impossible (pregnancy has advanced past the 12th week cutoff point). Furthermore, it has been repeatedly argued that since, for instance, the better educated can more eloquently make their case for requesting abortions for social reasons than people with lesser verbal

skills, the system remains unequal. The fact that physicians have been gatekeepers for abortions for social reasons has been seen as problematic. Although, in general, the medical professionals have been lenient in accepting the social reasons given to them, that is not always the case and some women have been humiliated by judgmental physicians and others have been denied their valid requests.¹⁸

In Article 7, the law states that if deemed appropriate, the father of the child should be given an opportunity to voice his views on the matter.¹⁹ The vagueness of the wording leaves it open to interpretations, but what is clear is that the fact that the father has a say (whether it will be followed or not) further illuminates the reality that the Finnish Abortion Law 1970 was not about women's rights (to decide what happens to their own bodies).

OwnWill 2020 and a Partial Legal Reform

Regardless of its shortcoming, the 1970 Abortion Act has been in force for over half a century. It was only the 2020 citizen initiative OmaTahto [OwnWill] that brought the issue of abortion back to the legislators. The initiative called for establishing the woman's right to choose as the cornerstone of the abortion law. It obtained the required 50,000 signatures in less than a month and reopened the public discussions on abortion. The few sanctity-of-life voices aside, it was clear that the people wanted to see the law updated.²⁰

The Social Affairs and Health Committee of the Finnish Parliament released their statement considering the initiative on October 6, 2022. They were unwilling to uphold the initiative to its full extent (replacing the 1970 law with a completely new one) but stood behind its main suggestion. The reasons for declining the initiative itself were twofold. First, since the Abortion Act is linked to other laws and some of the OwnWill suggestions clash with other existing laws, they argued that it would be easier to amend the existing abortion law rather than to replace it completely.²¹ The second reason seems to be that the committee simply did not agree with many of the suggested changes. The Finnish Parliament voted on the OwnWill initiative and on the amendments to the Abortion law as suggested by the committee. The OwnWill initiative was dismissed, but the amendments were approved. A fully amended Abortion Act is expected to become a law in early 2023.²²

The main change to the Abortion Law applies to requests to terminate one's pregnancy before the 12th week. The committee agreed that to respect women's right to self-determination, women should be given an abortion based on their request alone and without the need to consult two physicians. Furthermore, for abortions during the first 12 weeks, the clause about the father's views to be heard should no longer apply.²³

Not being required to give reasons for having an abortion during the first 12 weeks of pregnancy is a clear win in Finland for women's right to decide what happens to their bodies. Unfortunately, that is the extent of respect given to women's right to choose in the amended Abortion Act.

Excluding the early abortions, the law will continue to include a clause according to which, the prospective father's voice should, in appropriate circumstances, be heard. This is clearly contrary to a woman's right to choose what happens to her own body and it is also a violation of her privacy. Furthermore, it leaves the physicians with a decision that is not a medical one. The "when appropriate" father clause is paternalistic toward both the mother-to-be and the prospective father. In addition, the whole idea behind the clause is outdated. Not all children have a clearly defined mother and a father. It is unclear whether "father" here refers to biological fatherhood or to a social one. What about same-sex couples? Or pregnancies that combine genetic material from three people?

Another very unfortunate aspect of the Abortion Act is the requirement for guidance on contraceptives for those who have their pregnancies terminated. To add to this, in the statement by the Social Affairs and Health committee, the guidance is now supplemented with psychosocial counseling.²⁴ The reasons given for guidance and counseling include further reduction in the need for abortions and the well-being of the woman who goes through an abortion. However, like the National Council of Women in Finland notes in their official comment to the new Abortion Act, required guidance and counseling can easily turn into moralistic pressure. It would be good if women had a *right* to guidance and

counseling *if they so choose*, but to make them a requirement, goes, again, against women's right to self-determination.²⁵ To require women to sit through guidance on where to get and how to use contraceptives, and to be the recipients of psychosocial counseling, whether well intentioned, is highly paternalistic. The exact wording of the amended Abortion Act regarding these aspects, at the time of writing this article, is still unknown, so the lengths to which the Act goes against women's right to self-determination in these respects remain to be seen.

As was argued in the above, the Finnish legislators have been slow to acknowledge women's rights over their own bodies, but, finally, a significant step has been taken by giving women the choice during the first 12 weeks of pregnancy. It is important, especially in an era when the Supreme Court of the United States in the ruling on *Dobbs v. Jackson Women's Health Organization* took away women's constitutional right to abortion,²⁶ that as many countries as possible explicitly base the right to abortions on rights of self-determination. Very restrictive abortion laws or laws that outright ban abortions directly undermine the rights of women, that is, the rights of roughly half of the human population. Not all women will ever need an abortion, but all fertile women face the risk of finding themselves in a situation where they would need an abortion. By framing the abortion laws in terms of women's rights, like they should be, as pregnancy is something that happens in a woman's body, makes it obvious how restrictive laws violate rights of self-determination.

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