

THE SOCIAL CONSEQUENCES OF THE LEGAL REGIME OF ABORTION: A COMPARATIVE VIEW

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Abstract: *In this paper, we will analyse the legal regimes of abortion, in different period of times and in different countries, as we try to reveal the influence of a certain legal regime of abortion in people's lives, as well as at social and legal level. Unlike other aspects closely connected to humans, the abortion issue has known a very wide range of legal regimes. In ancient times, people tolerated abortion, and sometimes considered that abortion was necessary. The rise of Christianity has brought the idea that the fetus must be valued, therefore abortion was banned. The 20th century knows the emergence of some social and ideological movements, such as feminism, which claimed that the regime of abortion must be liberalized. These movements, along with the change of social mentalities, have lead to the liberalization of abortion. The landmark of the liberalization of abortion in western societies is thought to be the decision ruled by the Supreme Court of the United States of America in the case Roe v. Wade, in 1973. Since then, many states adopted a liberal regime of abortion. As regards the social consequences of the different ways to regulate abortion, it was proved that a severe prohibition of abortion leads to an increased number of illegal abortions, often with negative consequences on the pregnant women. Due to this fact, we believe that the liberal regime of abortion is the right choice, because it offers real solutions to people's problems concerning abortion.*

Keywords: *Abortion, Christianity, feminism, 20th century, social context.*

1. DEFINING THE ISSUE

The legal status of abortion is different than the legal status of other human actions. The difference comes from the fact that, unlike other human activities, which have an obvious antisocial character, abortion has an intricate moral regime. This lack of a consensus on the moral status of abortion generated an extraordinary variety of legal forms in regulating abortion. Each state has tried to find the best way to deal with abortion, according to the general context of a specific country, taking into account political, and economic, social or religious factors. Abortion issue has some specific features, which made it possible to appear a wide range of legal solutions, unlike other domains closely related to humans. For example, in what concerns the act of murder, countries unanimously drastically sanction such an act. But, when it comes to abortion, legislations have significant differences. Thus, it is extremely interesting to analyse the

differences, but also the similarities of the legal regime of abortion around the world; the interest of such a comparative analysis consists in finding a better way to understand the abortion issue, therefore in finding solutions to the existing problems surrounding abortion. It is also useful to analyse the effect of the legal regimes of abortion in people's lives; this way we can observe which of the legal regimes of abortion have been improving people's lives or, contrary, have been deepening the problems that the abortion issue has already brought in people's lives.

Usually, law is meant to solve the problems which people are confronting with and to organize society, in order to improve people's lives. Our researches on the abortion issue, however, revealed that, as concerns the abortion problem, the situation is different than other issues. Sometimes, the legislation on abortion, instead of making life easier for people, actually deepened or created problems. Often, the abortion policies have become a trademark for a certain period of time or for a certain political regime. Often, the legislation on abortion was just a way to implement a certain political view, regardless of people's real needs. In this paper, we will analyse the legal regimes of abortion, in different period of times and in different countries. Our goal is to reveal the influence of a certain legal regime of abortion in people's lives, as well as in the dynamic course of social evolution.

In order to achieve our goal, we will follow the two major directions in the legal regulations on abortion: the restrictive regime of abortion and the liberal regime of abortion. We will take into account the context which favored one or another type of legislation, as we try to reveal the social consequences of the legal regimes of abortion.

2. THE RESTRICTIVE REGIME OF ABORTION

2.1 The context that generated the expression of restrictions in regulating abortion

The legal restrictions on abortion are not as old as we might think. Actually, in ancient times, it seems that people tolerated abortion and sometimes considered abortion a necessary procedure, although regrettable [1]. Actually, we can identify some factors which generated the evolution of the severe regimes in regulating abortion. These factors are: religion, ideological or political interests, and demographic reasons. Although abortion has been the subject for intense philosophical debates, we cannot identify a direct link between philosophical views on abortion and the legal regime of abortion. Rather, philosophy has been a place where different authors have tried to justify the religious or the political view. Often, in philosophy, a certain view on abortion was rather a premise, and not a conclusion [2]. This is why, in discussing the sources for the legal restrictions of abortion, we choose to analyse the three elements presented above. In the following lines we will point out the role of these elements in shaping legislation on abortion.

2.2 Severe legislations on abortion based on religious ground

The emergence of Christianity brought in the rise of the social awareness towards the value of the unborn child and, therefore, the tendency to ban abortion. Going further on this attitude, the Catholic Church imposed a highly severe regime of abortion, since the 19th century, when Pope Pius the 9th established that abortion must be forbidden in all circumstances, as being the equivalent of a murder [3]. In the countries where Catholicism was a major religion, the legal regime of abortion was influenced by the religious view. As a consequence, in many legislation systems, abortion has been banned. Today, in most countries that have a severe legal regime of abortion legislation is heavily influenced by religion. The countries which have the most radical view in terms of banning abortion are those influenced by the Catholic Church. For example, in Vatican, Chile, El Salvador, Malta, Nicaragua, abortion is prohibited in all circumstances, even if abortion would have been necessary to save the life of the pregnant woman [4].

Other countries, also under the influence of the Catholic Church, allow abortion only in very few circumstances, usually when the life of the pregnant woman is endangered, when pregnancy is the result of a rape or of incest, or when the fetus has severe abnormalities. The majority of states in Latin America have such a regime of abortion [4].

In a rather tolerant Europe, there are still some countries with a severe regime of abortion. This is the case in Ireland and Poland. In Ireland, although abortion is banned, the Constitution provides that women have the right to go abroad and have an abortion in another country [5]. It is a strange solution, which proves that the will to maintain an ideology, even an obsolete one, can be stronger than a state's duty to protect its own citizens. It turns out that, in what concerns abortion, often ideology came first, and legislation did not accomplish its basic mission, which is to create a better background for the full development of people.

It is important to mention that, in some countries where abortion is severely restricted, it seems that authorities silently tolerate the practice of illegal abortions. For example, in Brazil, although legislation forbids abortion in almost all circumstances, there are some procedural requirements in order to sanction abortion, which are hard to be fulfilled. These requirements consist, among other, in proving that there was a pregnancy in progress, when the abortion was performed. But the evidence for a pregnancy is hard to pursue, because women who undergo abortion procedures are also punished for having an abortion. Therefore, no woman is willing to undergo a medical examination, in order to reveal that she had been pregnant. As a consequence, a very small number of persons are actually condemned for performing illegal abortions [4].

2.3 Severe legislations on abortion based on ideological or political ground

As we have already shown before, abortion policies were used in order to promote the official political views. For example, in Nazi Germany, the legal regime of abortion was different, depending on the category of population it was directed to. For native Germans, abortion was prohibited, in order to preserve the purity of the 'superior' race,

and also to create human combatants, in view of the future war. As concerns the Judaic population, abortion was largely permitted. Even more, abortion was compulsory for Jewish people in certain circumstances. This ideology took extreme forms and, in order to promote abortion for Judaic people, some Nazi thinkers even claimed that the maternal instinct was not real; therefore the decision to have an abortion should not emotionally affect women [6].

The example above proves that abortion policies have been used as a tool to promote certain ideologies. The specific nature of the abortion issue allowed a kind of adaptation of views regarding abortion, according to the political and ideological interests. The reason for such a versatility of the abortion issue is the fact that people had and still have many questions about what happens during pregnancy. Even today, in spite of the great development of the medical sciences, there are still many questions about how human life begins. Maybe some questions will always remain without answer, as far as we accept that life is a miracle that transcends reason. Due to this nature of the abortion matter, there were enough empty spaces, which different theories tried to fill up, offering possible explanations. This offered the base for creating theories that sustained certain ideologies.

2.4 Severe legislations on abortion based on demographic reasons

But restrictions on abortion were not always connected to the religious view on abortion, and sometimes they had other explanations, for example the demographic needs. In the 20th century, in a Europe preparing for war, an increased number of military forces were needed. Especially after World War I, as Europe prepared for World War II, the legislators in different countries grew in understanding the implications of the abortion policies in shaping the military forces [6].

In Romania, the Decree nr.770/1966 introduced an extremely severe regime of abortion, mainly for demographic reasons. Before this Decree, a tolerant legislation on abortion coexisted with a dramatic decrease of population (although not necessary linked to the liberal regime of abortion) [7].

3. THE LIBERAL REGIME OF ABORTION

At one point, this biased attitude towards abortion could no longer stand, as society began to shift its attitude, and became more open in accepting reality instead of fake appearances. Although, as we have shown before, liberalization of abortion is not a modern concept, in the 20th Century the question of liberalization of abortion would be raised again, after centuries of domination of the anti-abortion ideologies.

The raise of the pro-abortion movements in the 20th century is closely linked to the feminist movement, which gradually grew in claiming that women must have the right to decide over the opportunity to have an abortion. After being ignored for a long time, the inextricable link between the abortion issue and women became more and more acclaimed, and so was the idea that women must have the right to choose to have an abortion, if that was their will [8].

At the same time, society became aware of the fact that, despite being illegal, abortion occurred in many cases, sometimes with fatal effects on the pregnant woman. For example, the death of Gerri Santoro, as a result of an illegal abortion, generated intense debates in the United States of America over the liberalization of abortion [9].

All these changes in social mentalities evolved simultaneously with the affirmation of human rights. In the struggle to identify and to define the content of the human rights, people wondered if women had the right to have an abortion or whether the fetus had the right to be born.

Although there are still many questions today, it is certain that the last decades have brought a liberalization of abortion unknown before. The landmark of the liberalization of abortion in western societies is the decision ruled by the Supreme Court of the United States of America in the case *Roe v. Wade*. Through this decision, the door was opened for a liberal legislation of abortion, as it was ruled that abortion was available by simple request, until the fetus became viable [10].

The consequences at the social level were significant. Feminists considered this a victory, which encouraged other claims of the feminist movement and of generally of all women. This helped women to gain rights in different fields, where they began to have roles previously recognised only to men, such as the leading positions in private and public institutions.

Today, many countries have a liberal regime of abortion. Still, the degree of permissibility knows great variations from country to country. Thus, some countries allow abortion by simple request, up to a certain age of pregnancy (for example, Romania, Germany, France, Italy, Russia, South Africa, Tunisia). Other countries, although they actually widely allow abortion, require the fulfillment of some conditions; still, in many cases, these conditions can be widely interpreted, so they include almost every conceivable situation (for example, Great Britain, Hungary, Israel, Australia, Japan) [4].

4. CONCLUSIONS ON THE SOCIAL CONSEQUENCES OF THE LEGAL REGIMES OF ABORTION

Generally, a severe legislation on abortion creates the premise for a large number of illegal abortions. The illegal abortion procedures are performed, in almost all circumstances, by unqualified persons, in unhealthy conditions. It results that the legal prohibition of abortion puts the health and the life of the pregnant women at great risk. Often, this risk is materialised, when the illegal abortion procedures lead to severe injuries of the pregnant woman or even to her death.

Overall, we believe that severe restrictions on abortion have a negative social effect. History has proved that abortion has been a constant practice in human society, no matter how severe the legislation on abortion has been. Thus, banning abortion alone cannot lead to the decrease in the number of abortions. If nothing else changes in the society, women who face an unwanted pregnancy would choose to have an abortion. In order to prevent a woman from having an abortion, legislators would rather take measures to promote the use of contraceptive methods and, simultaneously, encourage

people to freely want to have children. As economic factors are often very important in taking the decision to have children, legislators should pay attention to the economic element.

An indirect effect of a certain legal regime of abortion is the raise of social awareness towards the consequences of that regime. In other words, one of the effects is actually the experience gained in understanding whether that way to regulate abortion is good or bad. Regarding this aspect, we can say that the world has known all possible legal regimes of abortion. In some cases, great variations of legislation on abortion occurred in the same country, along the time, for example in Romania. States must learn from their own history of regulating abortion, but also from other countries' experience. Due to the fact that the severe regimes of abortion had so many negative effects, as we have shown above, we believe that the liberal regime of abortion is the right choice, because it brings solutions to people's real problems concerning abortion.

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