Sterilisation by Stealth: The Involuntary Sterilisation of Disabled Women throughout Australia

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Contemporary Australia purports to have actualised cultural, political and social paradigms that permit the Australian community to claim that egalitarianism, respect and equal opportunity are guaranteed to each and every participant of the Australian community (Walter, 1989). Such discourse reflects a romanticised and idealistic construction of Australia, which I contend, is the direct product of Australia's conviction that as a community it practices theological and ethical humanitarianism. To classify Australia as a humanitarian nation is highly controversial (Dowse, 2004 & Frohmader, 2001). Whilst Australia is morally and legally obliged to administer and maintain a humanitarian ideology, there exists a plethora of individuals, groups and communities in Australia for which the application and practice of humanitarian ideals fails. The Federal and State Governments deficiency in appropriately applying humanitarian ideologies has resulted in the inhibition, threat or violation to these individuals innate human rights. One such group subjected to discrimination, inhumane treatment and disempowerment through a violation of their fundamental human rights are the two million disabled women of Australia (Frohmader, 2009).

In contemporary Australia disabled women are experiencing a serious violation of their human rights to bodily integrity and reproductive rights (Frohmader, 2009). The following paper is an examination of the unnecessary and dehumanising violence inflicted on disabled women through the secret performance of the illegal practice of involuntary sterilisation (Dowse, 2004)[1]. The purpose of this paper is to identify the nature of involuntary sterilisation in Australia, develop an understanding of the underlying motivations for involuntary sterilisation and how these underlying motives produce a lack of available resources to pregnant disabled women. Having developed a strong conceptual understanding of

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[1] Sterilisation is a medical procedure or surgical intervention imposed on disabled women in a direct or indirect effort to terminate the individual capacity to reproduce or sustain normal functioning of the reproductive system. (Dowse, 2004 & Anello, 2006)

involuntary sterilisation, the paper concludes in an investigation of potential strategies which could establish and cement disabled women's human rights to reproductive freedom.

Australia's legal approach to forced sterilisation

Despite Australia having a versed association with human rights issues, the involuntary sterilisation of disabled women is a relatively immature issue, having only been recognised and acknowledged by political and medical communities of Australia since the 1980's (Dowse, 2004). In recognition that the forced sterilisation of disabled women suspends and violates their fundamental human rights to found a family and to reproductive freedom, the current State Governments have developed an – internationally – unprecedented legalisation (Dowse, 2004). Contemporary legislation prohibits the non-therapeutic sterilisation of disabled women without a court order or in absence of informed consent – expect in circumstances in which the woman experiences a serious threat to her health or life[2] (Frohmader, 2009).

Australia's obligation to protect the reproductive freedom of disabled women is further cemented in several international human rights conventions and other instruments to which Australia is ratified and a signatory (United Nations, 2006). For example, under the Convention on the Rights of Persons with Disabilities (Article twenty-three), the International Convention of Civil and Political Rights (Article twenty-three) and the Universal Declaration on Human Rights (Article sixteen), Australia is obliged to recognise the innate human right of disabled women to reproductive freedom (United Nations, 2006).

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[2] It is necessary to acknowledge that the term disabled women within this paper refers to women be their impairment, physical, sensory, psychiatric or intellectual.

It is incontrovertible that despite criminal sanctions which explicitly inhibit forced sterilisation, disabled women throughout Australia are being “sterilised by stealth” (Dowse, 2004). Primary-care givers are requesting, and medical professionals are administering, the involuntarily sterilisation of disabled women without satisfying the legal requirement of consent mandated from the High Court or Family Court (Anello, 2006). The Family Law Council estimates that only three per cent of sterilisations performed on intellectually disabled women are done so through the necessary legal channels (Anello, 2006).

Motivations for forced sterilisations

The following is a discussion of the underlying issues that motivate the forced sterilisation of disabled women. Some forced sterilisations are motivated from an imagined fear that if disabled women reproduce, that the children will inherent genetic defects of the disabled mother, and thereby, be subjected a life of ‘abnormality’ (Dowse, 2004). This rationality can be understood as a fundamentalist interpretation of eugenics and biological superiority as the value or worth of a disabled child’s life is considered less than that of a non-disabled child’s. In reality, the imagined fear of hereditary disability is unjustified as there exists overwhelming empirical evidence – from a variety of professional fields – that disabilities in Australia are predominantly the product of environmental and social factors (Dowse, 2004). Therefore, hereditary disability and genetic defects are responsible for producing only a margin of disabilities in women.

An alternative argument proposed to justify the involuntary sterilisation of disabled women is premised on social perceptions of disabled women. Some scholars argue that if disabled women are permitted to reproduce, the state, community and (especially) the family, are morally mandated to adopt a significant and unsolicited role as primary care-giver for the child (Dowse, 2004). Such ‘rationality’ is the product of the Australian social consciousness conceptualisation of disabled women as sexless and exclusively care-recipients.

The construction of disabled women as sexless is premised on the unjustified assumption that disabled women retain a diminished capacity for maturation into adulthood (Anello, 2006). Subsequently, disabled women are conceptualised as retaining child-like characteristics, such as, being asexual (Dowse, 2004). In being perceived as children, society appropriates and imposes on disabled women attitudes of protectionism and paternalism. In the adaptation of such rationality disabled women’s perspective’s and voices are inherently worthless and undermined as disabled women are deemed as incompetent (Dowse, 2004).

Furthermore, disabled women are also conceptualised as exclusively care-recipients. Such a conceptualisation is derived from an understanding that participants of the Australian community are exist in a dichotomy of acting as either recipients of care or as care-givers (Frohmader, 2009). Contingent with the former is an understanding that recipients of care are dependent, incompetent and incapable (Frohmader, 2009). Therefore, disabled women are perceived as incapable of exercising the role of care-giver, “The problems we [disabled women] face, are because there is a perceived contradiction between being a parent and being disabled, as if you can’t actually be both” (Frohmader, 2009). The social construction of disabled women as exclusively care-recipients suggests that disabled women’s reproductive system serve no necessary function, and is thereby redundant. The fundamental product of the social perception of disabled women as asexual and care-recipients, is the development of a “disablist culture” which denies disabled women their rights to autonomy, individual value, opportunity to parent and retain a functioning reproductive system (Frohmader, 2009).

The social perceptions which understand disabled women as asexual and exclusively care-recipients are partially responsible for the failure of the Australian government to protect disabled women’s human rights. The following is a brief discussion of how the prejudice inherent in the social perception of disabled women contributes to development of inappropriate legislation and the deficient provision of pregnancy-related services to disabled women.

To the former, the perception of disabled women as incapable of child rearing has such an inherent influence that the conceptualisation of relevant policies embraces the discrimination and prejudice purported by the Australian social consciousness (Frohmader, 2009). There is an absolute absence of additional financial support for disabled pregnant women from the State or Federal Government’s (Frohmader, 2009). The contemporary Australian legalisation fails to recognise that the costs for a pregnant disabled woman or disabled mothers to provide their offspring with standard care are substantially higher than that necessitated by non-disabled pregnant women (Frohmader, 2009). The lack of financial government support or benefits is a reflection of the conceptualisation of disabled women as incapable of motherhood (Anello, 2006).

The discriminatory legislation of Australia produces rigid and inflexible agencies and services that fail to provide equal and adequate assistance to disabled women (Anello, 2006). Disabled women encounter substantial difficulty in accessing appropriate information, services and support concerning pregnancy or family planning (Anello, 2006). The significant shortcoming in the provision of such information, services and support is that agencies fail to engage with the dual factor of pregnancy and simultaneously accommodate the physical, social, economic and psychological barriers produced by a woman’s disability

(Frohmader, 2009). Disabled women are systematically excluded from acquiring appropriate reproductive health care, accurate sexual health education, contraceptive information, family planning and sexual health screenings (Anello, 2006). The inaccessibility of such knowledge and assistance for disabled women further imbues an inaccurate social perception of disabled women as having an innate incapacity for motherhood.

The failure of the government and community to recognise and accommodate disabled women's unique needs produces a disabling culture (Anello, 2006). It is this disabling culture that encourages and justifies involuntary sterilisations.

Strategies

Having developed a substantial understanding of the contemporary situation of involuntary sterilisation in Australia, it is appropriate to suggest means through which Australia could fulfil and promote the human rights of disabled women. The following is a proposal of four distinct strategies that despite being mutually exclusive desire a universal and mutually dependent goal. The shared goal is to dramatically alter and enlighten the dominant social consciousness of an accurate – and thus alternative – conceptualisation of disabled women as competent and capable as well as sexual and mothers. The strategies employ education as a means of diminishing the incentive to perform involuntary sterilisation, and thereby, are an effort to prevent illegal and forced sterilisation.

Whilst political and public knowledge of involuntary sterilisations is a relatively recent development, the Australian government has produced virtually no research concerning disabled women and parenting, or, the psychological and biological effects of menstrual suppression practices (Frohmader, 2009). Firstly to the former, the limited scholarly and academic literature concerning sterilisation requires immediate addressing, and thus, it is appropriate to propose that the government funds a national research project concentrating on the advancement of professional knowledge in managing and understanding disabled women’s maternity and parenting needs (Frohmader, 2009). The immediate product of such an initiative would be the implementation of accessible resources and support networks for disabled women desiring or presently rearing children. In researching the latter (i.e. the biological and psychological effects of involuntary sterilisation) medical practitioners, the Australian community and involved families could acquire a greater knowledge of the inhumanity of involuntary sterilisation, and thus, research could encourage stakeholders to discontinue the illegal practice of involuntary sterilisation.

As previously identified the social perception of disabled women as exclusively care-recipients contributes significantly to encouraging involuntary sterilisation. It is appropriate to propose that the ways of thinking about disabled women by mainstream Australia requires urgent redressing (Anello, 2006). Through an educative program, mainstream Australia could engage with alternative conceptualisation’s of disabled women as capable and sexual beings. It is paramount to educate the wider community that to discriminate and subjugate disabled women to involuntary sterilisation is an explicitly brutal and inhumane practice that violates their fundamental human rights. Furthermore, an official national apology would contribute to the wider Australian society understanding the inhumanity and injustice of sterilisation practices (Dowse, 2004). A national apology would also encourage the Australian community to recognise their contribution – be it active or inactive – to this inexcusable practice.

Whilst Australia has developed a comprehensive legislation which illegalises the involuntary sterilisation of disabled women, the contemporary legal procedures have incontrovertibly failed to discontinue involuntary sterilisations (Dowse, 2004). It is a priority of politics and disabled women's rights to develop a universal legislation that prohibits involuntary sterilisation (Frohmader, 2009). Currently, Australia has no coherent national approach to the prohibition of involuntary sterilisation as each State assumes responsibility to develop its own policies (Dowse, 2004). A co-ordinated approach to policy and legislative development is an immediate requirement (Dowse, 2004). Furthermore, it is absolute necessity that disabled women are provided an opportunity to assume a fundamental role in the development of a federal policy and legislation. The inclusion of disabled women's perspective's and experiences would produce an alternative understanding of involuntary sterilisation, which is paramount to the production of an effective legislation. Additionally, it is critical that the legal, ethical and human rights mechanisms which enact policies are reviewed, so as to identify and revise the fundamental cause(s) of the failure of the current legalisation (Dowse, 2004).

Since the 1980's disabled women have been disempowered and silenced through a rationale of paternalism. Disabled women have been provided no opportunities to meaningfully participate in literature, legislative and program developments, despite, disabled women retaining an incomparable expertise and unique experiences concerning issues of forced sterilisation (Frohmader, 2009). To address this issue of disempowerment "we must listen to women and learn from them [disabled women] so that healing can take place for those already affected, and, safeguards can be put in place to prevent others being denied their human rights" (Dowse, 2004). Subsequently, it is an absolute necessity that a mechanism is developed which encourages and permits disabled women to act as autonomous agents and share their opinions, experiences and perspectives with the Australian community and political leaders (Frohmader, 2009).

Conclusion

In an “era of human rights” the practice of involuntary sterilisation is an absolutely unacceptable practice (Dowse, 2004). The persistence of this illegal practice is responsible for the significant depreciation of disabled women’s lives. For Australia to genuinely and rightfully claim to uphold discourses of humanitarian ideologies, the involuntary sterilisation of disabled women requires immediate revision by the government. Immediate change is an inexcusable necessity. Through the implementation of the four suggested strategies disabled women throughout Australia could be empowered to act as autonomous agents, as suggested by Berman Bieler who stated: “If you are a disabled woman from any culture, with the desire to have or adopt a child, go ahead. It’s your right. Don’t leave this decision for somebody else to make or for society to judge. Take for yourself the very enjoyable responsibility of exploring all of your human and social roles” (Frohmader, 2009).

Summary of Paper

The fundamental purpose of this paper was to reveal that a horrendous, brutal and inhumane practice of involuntary sterilisation is performed in and by a community which genuinely contend to be humanitarian. Through a discussion of the contemporary legal situation in Australia, motivations for involuntary sterilisations and the exposure of the fallibility of the current policies, this paper purports the undeniable reality that Australia is far from picture-perfect.

The intention of this paper was two-fold. Primarily the paper aspired to expose the ineffectiveness of the Australian Government to monitor and enforce human rights policies. Through the discussion of the human rights issue of involuntary sterilisation, it was intended that the audience would become critical of those who represent – or construct – Australia.

Furthermore, the paper endeavours to encourage the reader to re-conceptualise their own understanding of disability. Our contemporary society identifies disabled individuals as vulnerable and as requiring protection; however, as emphasised by this paper, it is necessary that such a paternalistic interpretation of disabled people is severely questioned. Furthermore, the papers encourages the reader to recognise their role in contributing to the persistence of involuntary sterilisation. Whilst, not all participants of the community are affected by disability, we as a society have the responsibility to recognise social and humanitarian injustice and advocate for change.

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