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Women Behaving Badly: Problematisation and Biopolitical Governance of Gender in the New Zealand Abortion Debate

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Abstract
Abortion in New Zealand is at a critical juncture as the current government pursues its decriminalisation. Since colonisation, access to abortion has been regulated in myriad ways, from capital punishment and hard labour to the tacit collusion between women and doctors represented by the mental health exception enshrined in legislation in the 1970s. This article employs the Foucauldian concept of problematisation to identify how women and abortion have been framed in key historical texts, such as laws and government inquiries and the rhetoric of the anti-abortion movement. I argue that these shifting problematisations reveal abortion regulation as a critical site of the biopolitical governance of gender, positioning women in deliberate and particular ways as befitting their proper gendered subjectivity—as mothers, nurturers, nation-builders, upholders of Christian morality. The corollary is women behaving badly, subverting their appropriate construction by seeking abortion. Thus, we meet women who are selfish, untrustworthy, murderous, unstable, victimised and vulnerable, but never a woman autonomous in her reproductive decision-making. On the eve of fundamental legislative and ideological reform, I question whether the proposed changes will really achieve a dissolution of the regime of reproductive control or whether they will merely reposition this control in a new site of gendered governance.

Keywords: abortion regulation; abortion reform; problematisation; biopolitics; governance of gender

Introduction

On 8 August 2019, the Abortion Legislation Bill 2019 passed its first reading in the New Zealand House of Representatives. For four decades the legal framework provided by the Crimes Act 1961 and the Contraception, Sterilisation and Abortion Act 1977 had prevailed in regulating access to abortion for New Zealand women. Since colonisation, abortion regulation in this country has manifested in varying ways. The transplanting of British law after 1840 saw abortion as punishable by death and imprisonment. Hard labour replaced death in 1867 and this prevailed in the legislative permutations of the Crimes Acts of 1908 and 1961. Exceptionality was introduced in 1977—severe illness, fetal abnormality, incest and, most recently, mental distress have been the conditions under which abortion was sanctioned. This historical variegation of regulation, however, has never stopped abortion from occurring. Rather, abortion has prevailed as an experience that one third of women in New Zealand have had, albeit with costs—ranging from death from sepsis in the nineteenth century, to self-pathologisation and forced collusion in the current era.

My research reviews the history of abortion in New Zealand and identifies the shifting problematisations that have underpinned state responses and the strategies of anti-abortion organisations. In doing so, I argue that abortion regulation is a critical site of the biopolitical governance of gender in that the state asserts control over women's bodies with the agenda of constructing and instructing women in appropriate gender behaviour and identities. In the laws, reports and auxiliary texts that I will outline, it can be clearly seen how abortion and women have been problematised in New Zealand since colonisation. The shifting problematisations implicit in these texts can be identified by examining their characterisation and representation in discourses of Christianity, nationalism, morality, family, motherhood, fetal rights and mental health. Within

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these discourses we find women who are selfish, untrustworthy, murderous, unstable, victimised and vulnerable, but we never find a woman who is autonomous in her reproductive decision-making. As New Zealand faces the prospect of reform, I ask if the proposed changes really represent the liberation of women from a regime of control, or merely shift the problem of women's reproductive autonomy to a new site of gendered governance. For while decriminalisation is imminent and shamefully overdue, the probability is high that abortion will still be regulated, albeit for women's 'well-being' rather than judicial reasons. And as the debate over decriminalised abortion administration plays out, we will see the emergence of a new problematisation—that of abortion 'on demand' and the attendant demanding woman. She can be seen as an aggregate of all the problematised women who have preceded her, and she will be no less maligned.

Problematisation, biopolitics and the governance of gender

The Foucauldian concept of *problematisation* asks how and why certain phenomena, behaviours and processes become problems. It is a method that involves studying problematised objects and subjects and the historical process of their production (Bacchi, 2012). Bacchi (2012, p. 4), following Foucault, puts it this way: it is an "inquiry into the terms of reference within which an issue is cast". Studying problematisations allows us to dismantle representations of objects and subjects that are taken for granted as 'truths' and show how they have come to assume that status (Bacchi, 2012). In doing so, we look to the established bodies of knowledge, and the political structures, laws and regulations that surround and inform the problematisation in question (Bacchi, 2015). Targets or subjects of state policy do not exist independent of their discursive construction within those policies (Bacchi, 1999). Thus, problematisations are "all those discursive practices that introduce something into the play of true and false and constitute it as an object for moral reflection, scientific knowledge or political analysis" (Foucault, 1984, cited in Bacchi, 2012, p. 2).

State practices—such as exclusion or differential treatment of certain populations and methods of regulation and punishment—reveal how an issue is problematised (Bacchi, 2012). These practices are enshrined in what Foucault calls "prescriptive texts" (Foucault, 1986, cited in Bacchi, 2012, p. 2), such as laws, reports and policy. These texts are created to communicate "rules, opinions and advice on how to behave as one should" (Foucault, 1986, cited in Bacchi, 2012, p. 2). Within the process of governing, such texts act as guides to how an issue is problematised and thus to how it is consequently governed (Bacchi, 2012). These guides are "problematizing moments" (Foucault, 1984, cited in Bacchi, 2012, p. 2) in which important shifts in practice are represented. Thus, a genealogical examination of abortion in New Zealand identifies those moments that manifest shifts in the problematisation of abortion and women.

How prescriptive texts govern appropriate behaviour in response to problematisations provides a theoretical link to the governance of gender. Brush (2003, p. 52) defines the governance of gender as "the ways in which states…not only regard and reward, but also position and produce masculinity and femininity". She argues that through practices such as making laws, the state constructs women and men as properly gendered subjects and guides them in appropriate identities, behaviours, expectations, opportunities and spheres of power (Brush, 2003). Moreover, rather than merely reflecting patriarchal gender relations, states deliberately contribute to the preservation of differential power, privileging masculinity and subordinating femininity (Brush, 20013). The texts I examine clearly manifest this governance as they position women in deliberate and particular ways—as mothers, nation-builders, upholders of Christian morality, and firmly ensconced in the domestic sphere. The corollary—equally writ large in the gendered discourses of the critical texts—is women behaving badly, subverting their appropriate construction by seeking abortion. Butler (1988) asserts that gender is iteratively performed, the performances compelled and regulated by social reward or punishment. Those who

'do' their gender in accordance with correct conventions dictated by state practices are reassured of the 'truth' of their performance, reinforcing implicit gender essentialism (Butler, 1988). Feree et al. (2002) assert that the state is a gendered institution due to patriarchal assumptions of natural differences between men and women. They identify individual autonomy— that is, the degree to which state governance enables men and women to be self-determining—as the key target of state control in governing gender. Abortion regulation by the state is a clear expression of the governance of gender through the limitations it puts on female autonomy.

I argue that abortion regulation constitutes a particular manifestation of gender governance: a biopolitical governance of gender. This iteration links the aforementioned ideas of Brush (1988), Butler (1988) and Feree et al. (2002) to an interpretation of Foucault's concept of biopolitics. This latter has been subject to significant multidisciplinary and discursive appropriation since its inception (Takács, 2017). Broadly, Foucault identified a shift in the eighteenth century from sovereign power—embodied in a top-down power differential employing punishment as a means of control—to disciplinary power, whereby control is achieved in societal institutions, diffusing regulatory power across the social milieu (Takács, 2017). This new mode of power encompasses a focus on the human body as a political site, subject to state interventions at both the individual level and that of the population as a collective (Takács , 2017). Biopolitics thus refers to the exercise of state power to control and discipline the human body, and to regulate biological processes in order to exert influence over whole populations. Although Foucault made scant reference to abortion specifically, he did identify female reproductivity as a source of biopolitical anxiety, reflecting state "hystericization and preoccupation with women's bodies" (Deutscher, 2008, p. 57) and manifesting in relentless measures to control it. Reproduction became a biopolitical space. Following Foucault, Deutscher (2008) asserts that female biology became the instrument responsible for the health and success of populations and nations. Thus, I use the concept of biopolitical governance of gender to refer to the exercise of state power specifically upon women—the control of their reproductivity in the pursuit of defining and producing appropriately gendered subjects. Abortion is seen as a direct threat to nationhood as it enables women to defy their prescribed roles and reproductive customs (Deutscher, 2008). Regulatory abortion law is thus a critical site of a biopolitical governance of gender.

I will now turn to an examination of the history of abortion regulation in New Zealand to identify the shifting problematisations and their consequences for female reproductive autonomy. My methodology is to examine salient "prescriptive texts" (Foucault, 1986, cited in Bacchi, 2012, p. 2) across the history of the abortion story in New Zealand to identify the changing problematisations of women that manifest therein, and to demonstrate how these texts entrench abortion regulation as a site of biopolitical governance of gender. These texts are the laws, inquiries and commissions that represent the most significant "problematizing moments" (Foucault, 1984, cited in Bacchi, 2012, p. 2) spanning the decades from colonisation to the current proposed legislative reform.

Colonisation and early laws

Abortion has existed "since time immemorial" (Kumar et al., 2009, p. 625). Across human history and culture, women have developed ways to end unwanted pregnancies, and there is evidence that in Egypt, China and Ancient Rome, at least, abortion was viewed and practised as a medical procedure attracting no moral opprobrium (Kumar et al., 2009). In the New Zealand context, it is difficult to understand traditional Māori abortion practices and attitudes as colonisation and Christianity condemned and forbade Indigenous practices through the Tohunga Act of 1907. However, it is known that abortion and miscarriage are synonymous in te reo Māori (materoto whakarerea), suggesting it was considered a natural gynaecological experience (Le Grice & Braun, 2017). European accounts of traditional Māori practices obfuscated and misrepresented reality in the

pursuit of a narrative of colonisation and Christianity 'saving' Māori from savagery (Le Grice & Braun, 2017). The Māori experience of abortion thus went the way of myriad normative Indigenous practices as colonisers sought to "criminalize an old practice" (Bacchi, 1999, p. 150).

English common law was imported wholesale to New Zealand following the signing of Te Tiriti o Waitangi. Abortion was not criminalised until the point of quickening; that is, the first detection of fetal movement and the point at which the soul was considered to enter the fetus (Sparrow, 2014). Not even the church recognised fetal life pre-quickening, and the practice of abortion was considered a medical intervention to restore menstruation rather than to terminate pregnancy (Reagan, 1997). Following quickening, however, the woman had a moral obligation to continue the pregnancy to term and to procure an abortion was punishable by death (McCulloch, 2013). This abrupt demarcation was premised on both medical and religious belief in the presence of a soul that conferred moral authority to the fetus and, therefore, the woman became the vessel and conduit of this new life, her own life contingent on its protection (Reagan, 1997).

The first New Zealand legislation concerning abortion was the Offences Against the Person Act of 1867. This law replaced the death penalty with life imprisonment and hard labour and eliminated the quickening distinction. Abortion was thus criminalised from the point of conception and permitted only to save the life of the woman. Discourses of religious morality and White nationalism problematised abortion as "an evil practice" (Sparrow, 2014, p. 17) that endangered the growth and expansion of the White settler population. A colonial woman's role was as helpmeet and mother, obliged to embody and espouse Christian morals and to increase the settler population (Sparrow, 2014). Women achieving the vote, and thus political agency, and entering the workforce in greater numbers, led to fears that a rejection of their domestic duties would threaten settler dominance (McCulloch, 2013). Criminalising abortion thus tightly restricted female reproductive autonomy in the pursuit of constructing and instructing women as mothers and nation-builders, representing the governing of gender and the biopolitical objective of population control.

The McMillan Inquiry 1937: Nationalism and the selfish woman

The legacy of nineteenth-century English law cast a long shadow. The legislative status of abortion access enshrined in the Offences Against the Persons Act of 1867 were maintained in the Crimes Acts of 1908 and 1961 (McCulloch & Weatherall, 2017). Despite its illegality, however, abortion prevailed. For instance, doctors risked prosecution by applying a liberal interpretation to what it meant to save the life of the woman (Brookes, 1981). However, many women did not trust doctors to help them, and were thus forced to end their pregnancies by secret and unsafe means. By 1937, the rate of death from sepsis among women following illegal abortion was so high that the government convened the Committee of Inquiry into the Various Aspects of the Problem of Abortion in New Zealand—better known as the McMillan Inquiry—to investigate (McCulloch, 2013). Its report was riven with discourses of nationalism and duty. Abortion was problematised as a threat to New Zealand's population and women as selfishly abrogating their sacred duty as mothers of the nation (Leask, 2013). "We...appeal to the womanhood of New Zealand, so far as selfish and unworthy motives have entered into our family life, to consider the grave physical and moral dangers, not to speak of the dangers of race suicide" (McMillan et al., 1937, cited in Brookes, 1981, p. 130).

Thus, womanhood was synonymous with motherhood, family and nation. A woman's responsibility for the preservation of family and for the continuation of the (White) population eclipsed any consideration of her individual needs. The biopolitical governance of gender is thus manifest in both the intimate, domestic, individual space—under threat from women abandoning their moral duty—and the macrosphere of population control. It was never entertained by the Committee that women may be seeking abortion under duress from

their husbands (Brookes, 1981). Selfish and unworthy motives were the impetus of selfish and unworthy women. Intrinsic to this problematisation was a discourse of women's frivolity and immorality in shirking their duty in favour of "the modern desire for pleasure and freedom from responsibility" (McMillan et al., 1937, cited in McCulloch, 2013, p. 145) and "the preservation of the female figure and youthful charm" (McMillan et al. (1937), cited in Leask, 2013, p. 105).

The selfish woman was made more egregious by the simultaneous problematisation in the McMillan report of the deserving woman. She who had earned the right to control her fertility by "bearing and rearing a large family… having done her duty to family and race… having lived an exemplary self-sacrificing life…" (McMillan et al. (1937), cited in Leask, 2013, p. 106). For these women, the McMillan Inquiry grudgingly accepted that abortion may be justified.

The conclusions of the McMillan Inquiry confirmed abortion as a crime against family and nation (McCulloch, 2013). Declining social and moral standards and economic hardship were identified as the reasons for the increase in abortion rates, as well as an "abandoned faith in God" (McMillan et. al, 1937, cited in Brookes, p. 127). The Committee's response was increased state assistance for mothers, the prohibition of contraception for young people, and the aforementioned 'appeal' to New Zealand women to do their biological duty to race and nation. That the approach and outcomes of the McMillan Inquiry served to further entrench state control of women's reproductive capacity clearly illustrates Brush's identification of the state's interest in instructing women of their appropriate identities and responsibilities as dutiful wives, mothers and citizens with no agency in their reproductivity. Following the Inquiry, abortion remained criminalised, maintaining state control of women's lives.

SPUC and The Royal Commission 1977: Murderous women

The discourse that emerged in the 1960s was dominated by what Taylor (2008, p. 28) refers to as the "fetishism of the fetus". This chapter was the most heated and furious in the New Zealand abortion story, represented forcibly by the Society for the Protection of the Unborn Child (SPUC), the pro-life organisation formed by the anti-abortion lobby in 1967. SPUC harnessed technological advances in fetal sonography and heartbeat recordings to argue strenuously and graphically for fetal personhood. This technology represented a direct biopolitical intervention in the regulation of reproduction by bringing 'to life' the unborn, thus rendering the fetal population vulnerable and in need of protection (Rodrigues, 2014). The emergence of the personified fetus was a critical convergence of the prior problematisations of abortion as morally reprehensible and women as selfish on the one hand and the contemporary means by which the 'unborn child' could be seen and thus humanised on the other (Leask, 2013). This historical juncture achieved strong cultural resonance as SPUC's leadership—medical doctors—could make claims to scientific objectivity by presenting 'proof' of the fetus's independent life through sound and images broadcast to large audiences.

SPUC claimed that these recordings dispelled any doubt that life begins at the moment of conception and that the fetus must therefore be seen as separate from the woman and as a patient-citizen in its own right (Lowe, 2016). This deliberate and strategic separation of woman and fetus was capitalised upon by SPUC in the publication of leaflets which bore doomed cartoon fetuses trapped in hostile wombs. The fetuses commiserated on their misfortune of being carried by a mother who planned to kill them. In one such comic, titled "Who Killed Junior?", a fully grown baby is shown inside a disembodied womb being chopped to pieces by a knife wielded by a disembodied hand. The caption reads: "The doctor just slices the baby to pieces inside his mother" (SPUC, 1980, cited in McCulloch, 2013, p. 122). This discourse of the unborn 'child' as separate from its 'mother' constructs the fetus as pre-eminent, endangered and imbued with independent rights.

Conversely, the woman is problematised as the enemy and potential murderer, whose rights to bodily integrity would come at the cost of the life of her child. These problematisations are writ large in statements such as: "You and your baby have been completely separate from the moment of conception. Your baby lives in a warm and weightless capsule, inside you" (SPUC, 1970, cited in McCulloch, 2013, p. 121), and "The most dangerous place for a New Zealander is a mother's womb" (SPUC, 1970, cited in McCulloch, 2013, p. 121).

By the 1970s, the call for liberalisation of abortion in New Zealand became louder as reform occurred in Europe, Australia, Canada and the United States. McCulloch (2013, p. 3) refers to this decade as a time of "abortion wars". New Zealand society was deeply divided on the issue; the pro-choice movement rallied and the pro-life movement was galvanised in response. The escalating controversy prompted the newly elected National Government of 1975 to convene the Royal Commission on Contraception, Sterilisation and Abortion to review the law. McCulloch (2013, p. 132) argues that SPUC "colonised" the Commission's inquiry by using its considerable largesse to hire barristers to prepare submissions, import overseas experts, and mount a massive and aggressive advertising campaign. SPUC's influence is perhaps most evident in the Commission's preoccupation with fetal status and its need for protection. The report attempted to navigate a path between banning abortion outright, which would have been politically untenable, and framing it as so unpalatable that only stringent exceptions would be considered justifiable reasons to terminate a pregnancy. The nexus of this compromise was the status of the fetus:

> The fetus has a status from implantation which entitles it to preservation and protection (p. 192)
> Once it is recognised that the unborn child has a status, the rights of the pregnant woman cannot be regarded as absolute (p. 194)
> To allow abortion as of right would be to deny to the unborn child any status whatever (p. 273).
> (All quotes from the Royal Commission on Contraception, Sterilisation and Abortion, 1977, cited in McCulloch, 2013, p. 154)

This framing of abortion pitted the rights of the woman against those of the fetus (Leask, 2013), with the woman representing a threatening and competing sovereign power (Deutscher, 2008). Awarding status to the fetus eroded the woman's entitlement to rights the moment she became pregnant. This inferred enmity was premised on fetal rights prevailing, because "the unborn child, as one of the weakest, the most vulnerable, and most defenceless forms of humanity, should receive protection" (Royal Commission on Contraception, Sterilisation and Abortion, 1977, cited in McCulloch, 2013, p. 154). The problematisation of women as murderous can clearly be seen in such statements. Reference to the fetus as a vulnerable child infers that what it requires protection from is its traitorous mother, who fails in her prescribed role as nurturer. The Royal Commission, with the influence of SPUC, contrasted the ideal of women as mothers with women as murderous deviants, reinforcing the gender essentialism assumed by the state in the promotion of motherhood as the default position for women (Butler, 1988).

Untrustworthy women in the Royal Commission Report

Further to portraying women as murderous, the Royal Commission Report also depicts women as untrustworthy. This is most evident in their selective approach to exemptions that would allow women to terminate unwanted pregnancies. In their pursuit of instituting the most restricted access to abortion that would be politically and publicly acceptable, the Royal Commission recommended that abortion on the grounds of rape was to be excluded from the list of exemptions. The Commission contended that women would lie about

having been raped in order to terminate an unwanted pregnancy. Thus, women were problematised as dishonest and untrustworthy, willing to falsely claim sexual violation in order to secure an abortion. Pregnancy following incest, however, was included, presumably because it is so morally egregious as to be rare, and too universally abhorrent to lie about (Leask, 2013). The motivation of the Royal Commission to distinguish between exceptions based on rationing abortion as stringently as possible is clear: it prioritises the regulation of women rather than their well-being, let alone their reproductive autonomy.

Such problematisations of women as untrustworthy can also be seen in the Commission's discourse of female irrationality and gullability. In this discourse, a woman's own biology was the culprit for her inability to make a rational decision: "It is well known that the natural biological changes in a mother during early pregnancy may, whether the pregnancy is expected or not, cause her to become somewhat unstable emotionally" (Royal Commission on Contraception, Sterilisation and Abortion, 1977, cited in Leslie, 2010, p. 16). Not only were women problematised as unable to make rational decisions due to hormonal changes during pregnancy, but also because they may simply not know what they want. As illustrated in the submission below, by a doctor describing a colleague's experiences with a woman through her four pregnancies, the report assumed that (male) authority figures were able to make women 'come to their senses':

> As so many do, she rejected totally the idea of pregnancy each time it occurred. She said she would kill herself, she would do anything, that the doctor must get rid of it. Being a wise man, he got her through it, and by the time each baby was approaching delivery she and the doctor were able to laugh heartily over her former feelings. (Royal Commission on Contraception, Sterilisation and Abortion, cited in Leslie, 2010, p. 17)

The problematisation of women as capricious and rendered irrational by their biology was thus employed by the Royal Commission to reconfirm that the state knows best and must continue to deny female reproductive autonomy (Feree et al., 2002).

Crucially, the Royal Commission's report defined when abortion could lawfully be performed. These conditions were then legislatively enshrined in Section 187(A) that was inserted into the Crimes Act. Abortion before 20 weeks was only permitted in the following instances: if continuing the pregnancy would place the physical or mental health of the woman at risk; in cases of severe fetal abnormality; in cases where pregnancy was the result of incest; or if the woman was "severely subnormal" (Royal Commission on Contraception, Sterilisation and Abortion, 1977, cited in Leslie p. 13). The Royal Commission's report also informed the creation of the Contraception, Sterilisation and Abortion Act 1977, which governed procedure and administration of abortion access (McCulloch & Weatherall, 2017). Under this Act, a woman seeking abortion had to gain the separate approval of two certifying consultant doctors. These doctors must, in turn, have been approved by the state-appointed Abortion Supervisory Committee. These layers of regulation served to mitigate the seeming relaxation of access that came with Section 187(A). The mental health exception, in particular, meant that women were forced to convince state gatekeepers of their eligibility to terminate unwanted pregnancies.

The mental health exception: Forced collusion

Section 187(A) of the Crimes Act and the Contraception, Sterilisation and Abortion Act 1977 conspired to create the arrangement that for 41 years enabled "de facto abortion on demand" (McCulloch & Weatherall, 2017, p. 92). Ninety-eight per cent of abortions are approved using the mental health exception whereby two doctors must agree that a woman's mental health will be so compromised by continuing her pregnancy that an abortion is the only option. Leslie (2010, p. 1) refers to this as the "psychiatric masquerade" in which the state maintains legislative censure while tacitly sanctioning access to abortion through the mental health exception. This pragmatic but duplicitous arrangement is neatly summed up by Deutscher (2008, p. 65): "In contexts enamoured of this particular structure of exceptionality, there is almost never an illegal abortion, while it is just as true that there is almost never a legal one." Thus, abortion became problematised as a medical issue rather than a moral one, and its regulation took on the neutrality of a clinical judgement (Leslie, 2010). The arbiter is the medical expert, acting for the state. However, women continue to be problematised as vulnerable and delicate subjects, deserving of abortion only upon the surrender of their rationality. They must collude by manufacturing and declaring mental fragility in order to conform to the exception.

The mental health exception is a particularly insidious manifestation of the state's biopolitical governance of gender. It further erodes women's reproductive autonomy by conferring the decision-making authority to not one, but two doctors, reflecting the subordination of women to a gendered hierarchy of power. And whether or not it enables more access to abortion, the mental health exception deems this access tenuous by reinscribing abortion as a crime, as succinctly expressed by Deutscher (2008, p. 65): "The exemption both suspends and reconfirms the harshest rule". The broad access that the mental health exception has engendered sufficient complacency such that four decades have passed without significant moves to decriminalise abortion. The Damocles Sword of criminality thus dangles over women forced to subsume their rationality to take part in the psychiatric masquerade.

Post-abortion syndrome: Vulnerable women

The shift in problematisation of abortion from morality to medicine inherent in the mental health exception was mirrored in anti-abortion discourses that emphasised the opposite: that abortion can cause psychological harm. As it became clear that the mental health exception had effectively facilitated open access to abortion, anti-abortion discourses of fetal rights and the consequent condemnation of women as murderers lost momentum (Leask, 2013). Instead, cultural legitimacy and political efficacy were sought through repositioning the woman as the primary concern and relegating the fetus to second place (Leask, 2013). Despite the conundrum presented by the contradictory problematisation that saw the law allowing abortion to *prevent* mental illness, post-abortion syndrome (PAS) was manufactured to link abortion with mental health problems *following* abortion. PAS was presented as a version of post-traumatic stress disorder (PTSD), with the added caveat that a lack of symptoms was itself a symptom—of denial (Leask, 2014). No woman could escape some adverse psychological repercussions of abortion, even if they were latent or seemingly absent.

Problematising abortion as a mental health risk rests on discourses that frame abortion as a traumatic and aberrant experience (Leask, 2014). That one third of New Zealand women will have an abortion in their lifetime belies the claim that abortion is an unusual event that lies outside a normal life trajectory and experience. Leask (2014) reviews the exhaustive body of research on the psychological effects of abortion and concurs with their findings that there is no inherent link between abortion and adverse mental health effects. In 2006, a study by Fergusson et al. (cited in Leask, 2014) at Otago University reported findings that indicated some connection.

This research was seized upon by the anti-abortion community. It was also relied upon heavily in several challenges to the mental health exception launched by SPUC's successor Right to Life, who cited it repeatedly in their awareness campaigns comprising television advertising, pamphlets and billboards. Even though the research was inconclusive at best, Right to Life stated the link between abortion and adverse mental health effects as fact: "Women who obtain abortions are at increased risk of subsequent mental health issues, including major depression, anxiety, suicidal thoughts, and drug and alcohol related problems" (Right to Life, 2012, cited in Leask, 2014).

Repeated review of Fergusson et al.'s (2006) study has shown its inherent methodological flaws and the researchers themselves have concluded that their failure to account for significant extraneous variables render their findings questionable (Leslie, 2010). The most glaring oversight was the failure to distinguish whether the subject's pregnancies were wanted or unwanted when comparing the mental health of the women who had abortions and those who gave birth (Leask, 2014). The study assumed that abortion was the causal variable, thus precluding the experience of unwanted pregnancy as a factor. Despite recognition of the study's limitations, Fergusson et al. (2006) continued to claim that abortion was an "adverse life event" (cited in Leask, 2014, p. 79), reinforcing the problematisation of abortion as a universally negative experience. That one flawed piece of research can hold discursive sway demonstrates the powerful cultural resonance of a problematisation that makes claims to objective scientific truth (Feree et al., 2002). Leask refers to the persistent and spurious linking of abortion with adverse mental health effects as a "strategic truth" (Leask, 2014, p. 81). As such, what is revealed is a concerted effort to create and maintain doubt in women's credibility and rationality in decision-making, and therefore continue to deny them reproductive autonomy.

PAS problematises women as victims of a catastrophic trauma who need to be protected from this harm by being told the 'truth' about abortion. This framing purports to be pro-woman, rather than anti-abortion (Furedi, 2016). It masks opposition to abortion behind a professed concern for the well-being of women. In doing so, it cleverly echoes the rhetoric of the pro-choice movement, discursively distancing itself from the condemnatory fetal-based discourses of the past that had dwindled in legitimacy (Leask, 2013). This facade of concern is particularly insidious because behind it lurks the same objective of controlling women's reproductive autonomy. It justifies restricting access to abortion for the woman's 'own good', once again seeking to deny women autonomy in decision-making, rendering them irrational and incapable of knowing their own minds, and thus in need of guidance. It represents a rather slier biopolitical governance of gender than the preceding blunt instruments of moral condemnation and criminality because it seeks reproductive control through sympathetic and benevolent means, premised upon 'objective' psychological knowledge that is employed to more gently erode women's autonomy (Leask, 2014). The decriminalisation and reform of abortion administration in New Zealand bears echoes of this problematisation.

The Law Commission Report 2018 – Decriminalisation and the demanding woman

In February 2018, Justice Minister Andrew Little ordered the Law Commission to provide alternative options for the legal administration of abortion to align with a health approach. The Law Commission reported back in October 2018 with three models (outlined below) which could potentially be adopted. All three options would remove abortion from the Crimes Act, but two retained a statutory test.

> Model A
> There would be no statutory test that must be satisfied before an abortion could be performed. The decision whether to have an abortion would be made by a woman in consultation with her health practitioner.
>
> Model B
> A statutory test would need to be satisfied before an abortion could be performed, but the test would fall under health legislation rather than the Crimes Act.
> The statutory test: the health practitioner who intends to perform the abortion would need to reasonably believe the abortion is appropriate in the circumstances, having regard to the woman's physical and mental health and well-being.
>
> Model C (combines aspects of Models A and B)
> *For pregnancies of not more than 20 weeks gestation: the same as Model A.*
> There would be no statutory test that must be satisfied before an abortion could be performed. The decision whether to have an abortion would be made by a woman in consultation with her health practitioner.
> *For pregnancies of more than 20 weeks gestation: the same as Model B.*
> The same statutory test as in Model B would need to be satisfied before an abortion could be performed. The test would be in health legislation rather than the Crimes Act.
> The statutory test: the health practitioner who intends to perform the abortion would need to reasonably believe the abortion is appropriate in the circumstances, having regard to the woman's physical and mental health and wellbeing.
>
> (Law Commission, 2018, p. 12)

Pervading the history of the abortion debate in New Zealand is a meta-problematisation that Furedi (2016, p. 10) calls the "awfulisation" of abortion. The myriad problematisations of abortion and women are universally negative and pathologising. Abortion is never framed as a positive option or considered an empowering or liberating experience. Kumar et al. (2009) suggest that this pervasive framing of abortion as deviant underpins abortion stigma, which is far more likely to be the cause of any adverse mental health effects than the experience of abortion itself. While the current era of reform in New Zealand will achieve decriminalisation, it will not eliminate the overarching problematisation of abortion as a negative phenomenon. This meta-problematisation is deeply embedded in the Law Commission's report, the objective of which is to position decriminalised abortion as "safe but rare, available but stigmatised, useful but preferably not needed, right to provide but wrong to use" (Furedi, 2016, p. 10). The Law Commission report achieves the milestone of reframing abortion as a health procedure but still treats it as something to be avoided, as illustrated by the following statement: "The strategy focuses on reducing unintended/unwanted pregnancies by ensuring easy access to contraceptives and educating the public about safer sexual practices. Reducing unintended/unwanted pregnancies is likely to reduce the number of abortions" (Law Commission, 2018, p. 137). Such statements imply that abortion represents failure. They continue to problematise women as irresponsible and abortion as the regrettable consequence of that irresponsibility (Condit, 1990). The document also reflects the PAS-induced problematisation of women as requiring guidance to make appropriate decisions in the face of abortion's presumed danger to their mental health. As such, it proposes that "potential mental health consequences of abortion can be disclosed to the woman as part of the process of obtaining informed consent" (Law Commission, 2018, p. 143).

Two of the three models (Models B and C) proposed by the Law Commission maintain significant gatekeeping by doctors. The requirements under these options regulate abortion more closely than comparable

medical procedures. Only Model A enables women to decide autonomously and seek treatment without permission or provision of a reason. Thus, in two of the three reform options, abortion is still problematised as a negative experience, and women seen as vulnerable, irrational and untrustworthy. Moral concerns of right and wrong that characterised prior discourses are merely replaced with concerns of safety and appropriateness (Furedi, 2016). Women's reproductivity is still regulated, albeit under the guise of well-being rather than criminality. Models B and C maintain biopolitical governance of gender by regulating women's reproductivity, just through a different mechanism—the health rather than the legal system.

The prospect of decriminalisation and the complete dismantling of state regulation of abortion represented by Model A heralds the re-emergence of the problematisation of 'abortion on demand'. This phrase has been used intermittently throughout New Zealand's abortion history, especially in the context of criminalised abortion and tightly restricted access. Now that change is imminent, the phrase is becoming ubiquitous. For instance, it was used consistently by the MPs who spoke against unregulated abortion during the Bill's first reading, and it also began to appear regularly in social and mainstream media discussions on the proposed reform. The choice of words is critical in discourse (Bacchi, 2012). Describing legal and free access to abortion as abortion on demand is a linguistic trick that clearly infers a very particular problematisation of women as consumers of abortion as though it were a product or service of convenience to be accessed at whim. The demanding woman can be seen as an aggregate of the women who have preceded her—selfish, untrustworthy, capricious, uncaring. It perpetuates, therefore, the lack of trust in women to make good decisions or to bring the requisite thought and consideration to such a grave decision, by problematising them as demanding abortions as readily as they might order a takeaway.

Conclusion

As New Zealand grapples with how decriminalised abortion should manifest, notions of abortion on demand and the associated demanding woman will become the latest incarnations in the history of problematisation. In presenting this critical genealogical review, I have attempted to demonstrate how problematisations of abortion and women have shifted and how these shifts have been both produced and represented by laws, inquiries, commissions and auxiliary texts such as anti-abortion leaflets and research studies. I have argued that the state regulation of abortion informed and decreed by these texts is a critical site of a biopolitical governance of gender. By consistently denying women reproductive autonomy, the state has constructed women primarily as mothers and instructed them in behaviours appropriate to this role. A woman deciding not to continue a pregnancy constitutes an abhorrent deviation from this prescribed gender identity, and so the state has maintained restriction to abortion to deter women from this deviation. This restriction has been premised on discourses of nationhood, family duty, the sanctity of human life represented by the fetus, and the need to protect women from trauma, but the essential objective has always been the control and subordination of women. This truth is articulated in an astonishing statement made by the Coalition of Concerned Parents, a constituent of SPUC: "If a woman does not have children to care for, she is free to exercise her power" (McCulloch, 2013, p. 205). Complacency engendered by the mental health exception has deterred any significant challenge to the status of abortion as a crime. This system of tacitly sanctioning wide access to abortion while maintaining its criminality, represents the nadir of abortion problematisation, forcing women to pathologise themselves in collusion with doctors. The shift to problematising abortion as a mental health issue was fundamental insofar as it heralded the onset of repositioning abortion as a well-being concern, to be addressed within a health paradigm, rather than a moral problem to which criminalisation was the solution. The

ramifications of this shift are evident in the recommendations for reform. While this constitutes a long overdue progression, it would have only been a significant challenge to the biopolitical governance of gender if absolute autonomy is the objective guiding the reform and Model A is adopted. Otherwise, regulation—albeit for reasons of health and well-being—will prevail and doctors will remain the arbiters of abortion access. It is likely that debate about the 20-week demarcation will be particularly fierce. In this context, the vulnerable fetus will likely return to centre-stage while the demanding woman discourse will emerge in contrast. As long as women who seek abortions remain problematised and pathologised, there will likely be regulatory consequences and thus the biopolitical governance of gender will prevail.

Note

Since the writing of this essay, abortion was decriminalised in Aotearoa New Zealand with the passing of the Abortion Legislation Act 2020 on 24 March 2020. The Act updated the primary legislation for abortion, as had been set out in the Contraception, Sterilisation, and Abortion Act 1977 and the Crimes Act 1961. The updated provisions are based on Model C from the Law Commission Report 2018.

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