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Birth Law

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Birth Law

Anne Hellum, ed.

Oslo: Scandinavian University Press, 1993, 149 pp.[†]

Reviewed by Shona R. Lake–Crossley[‡]

Birth as a moment is an experience common to each and everyone of us. *Birth Law* is a collection of articles which uses the idea of birth to key into a broader process with legal significance. Tove Stang Dahl identifies the moments of the birth process as menstruation, ovulation, copulation, alienation, conception, gestation, labour, birth, appropriation, and nurture. Only two of these moments, copulation and nurture, are common to men and women.¹ Thus, the process from a physical, if not emotional, point of view is unique to women. This truism is the focal point for Hellum's effort in this collection to carve out birth law as a specialized field of women's law.

The opening essay by Dahl, entitled "Equal Status and Birth Law," is well-placed because it establishes a theoretical foundation which the reader can use to locate the more narrowly topical essays in their social context. Dahl advocates that areas of law, such as birth law, which so intimately impact on women, should be grounded in an understanding of the "female life context"² and reflect the "more female and circular ways of understanding."³ Legal rights and duties in this area should be based on female, not male, norms.

The articles are as much descriptive as they are analytical. There is a strong focus on the impact of Norwegian legislation on rights and duties in birth law; as an initial effort to construct a new legal paradigm, a discourse on rights and duties is appropriate in order to define the substance and parameters of the legal

[†] Published outside Norway by Oxford University Press, Oxford.

[‡] B.A. (SMU), LL. B. anticipated 1995 (Dalhousie).

¹ T. S. Dahl, "Equal Status and Birth Law" in A. Hellum, ed., *Birth Law* (Oslo: Scandinavian University Press, 1993) 1 at 10.

² *Supra* note 1 at 3.

³ *Supra* note 1 at 5.

relationships that arise in birth-related situations. The article by Marianne Fastvold considers whether existing legislation adequately ensures that the mother, as a "birth-worker,"⁴ has a voice in establishing the legal safeguards which govern her experience. Fastvold concludes that for mothers to effectively have such a voice would require a greater emphasis on the granting of positive rights to her in the birth process.

The article by Kirsti Stroum Bull on stillbirth is a striking illustration of the practical value of this book. Stillbirth is a relatively frequent occurrence, but is infrequently discussed in the legal literature. It is as much a reality of the birth experience of many women as the more prominent issues of fertility and abortion. The discussion in her article reveals the way in which the general notions of medical non-maleficence and beneficence are not adequate to handle such ambiguous situations. Rather, Bull tackles the issues by discussing the benefits of specific policies and guidelines for securing legal rights.

The book includes two articles on the more common legal issues surrounding abortion. Ragnhild Olsnes details the legal evolution of the right to self-determined abortions and discusses some of the ethical and legal issues involved. The article by Henriette Sinding Aasen takes a slightly different approach and addresses the moral implications of legalizing unconstrained access to prenatal diagnosis together with a right to abortion. Specifically, she is concerned about issues of "quality control of the foetus" through selective abortions.⁵

The final two articles are by Anne Hellum and consider some of the larger social issues that arise in birth law. The sixth article focusses on the effect that legal regulation of new reproductive technology has on the perception of women's reproductive capacity. Specifically, she expresses concern about its possible negative impact on reproductive freedom and bodily integrity. The final article focusses on the more positive role of reproductive technology in a world where completely natural reproduction is being increasingly threatened by environmental degradation. Diminishing reproductive capacity as a result of pollution and

⁴ M. Fastvold, "Legal Safeguards During Birth" in A Hellum, ed., *supra* note 1, 31 at 31.

⁵ H. S. Aasen, "What Kind of Children?" in A Hellum, ed., *supra* note 1, 93 at 96.

industrialization is forcing Western societies to reconsider the way they have conceptually separated man from nature. Hellum argues that the female relational method of thinking is more likely to incorporate a holistic approach to the legal analysis of these issues.

Birth Law serves the dual purpose of being informative and thought provoking. It is accessible enough to serve as an outline of some of a patient's legal rights. This may be important at those times in their life which are characterized by overwhelming emotions. This illustrates one of the more positive roles of law in our society; the law can offer support at a time of uncertainty by clearly defining rights and obligations.

For the health professional, *Birth Law* provides a focus on the broader issues of medical practice, which sometimes get lost in the day to day routine of patient care. For the legal practitioner, the book raises questions about the prescriptive role of law in an area saturated with ethical implications.

Although *Birth Law* is grounded in the Norwegian context, it nonetheless has potential significance for Canadian law; it illustrates the essential fact that at each stage in the birth process there are choices to be made and each of these choices has profound legal, ethical, and moral consequences. These consequences impact on society as a whole, and equally important, they shape the way that women's bodies and women's reproductive role is viewed by society. In the words of Anne Hellum, "[t]he process of law [in this area] may be seen as interplay between law, medicine, politics, culture, social organization and economy."⁶ The fact that the substantive law is not Canadian is immaterial in light of the true value and function of this book. *Birth Law* provides a foundation for meaningful and constructive dialogue in the development of legal policy in an area that profoundly impacts on issues of equality, dignity, and human value.

⁶ A. Hellum, "Legal Regulation of New Reproductive Technologies: Continuity and Interconnectedness versus Freedom and Justice" in A. Hellum, ed., *supra* note 1, 109 at 119–120.