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Friendly Persuasion? Legislative Enforcement of Male Responsibility for Contraception

NAOKO T. MIYAJI

Men play a key role in bringing about gender equality since, in most societies, men exercise preponderant power in nearly every sphere of life, ranging from personal decisions regarding the size of families to the policy and programme decisions taken at all levels of Government. It is essential to improve communication between men and women on issues of sexuality and reproductive health, and the understanding of their joint responsibilities, so that men and women are equal partners in public and private life.¹

The concept of reproductive health and its attendant rights is increasingly recognized internationally. Article 7.2 of the Programme of Action of the International Conference on Population and Development (ICPD), as well as Article 96 of the Beijing Declaration and Platform for Action (BDPA), declare that "reproductive health . . . implies that people are able to have a satisfying and safe sex life and that they have the capability to reproduce and the freedom to decide if, when and how often to do so."²

Nonetheless, women globally are gravely impacted by unwanted pregnancy and its consequences. Every year 50 million abortions are carried out, some 20 million of them under unsafe conditions. Between 70,000 and 80,000 women die from unsafe abortions every year.³ Major international documents quite reasonably emphasize the importance of education, access to information, and adequate health care to improve this situation, but until such measures produce changes, many women will continue to suffer.

In this chapter, I discuss the possibility of imposing a legal duty on men to practice both safe and contraceptive sex. Such a measure would serve to deter men from violating women's sexual and reproductive rights. Specifically, it would have a significant and quick impact on reducing the number of unwanted pregnancies, abortions, and deaths from them. Thus I view legal sanctions against men not as an end but as a means to change social norms and men's behavior with respect to sexual and reproductive issues. In a narrow sense, the end is simply responsible behavior by men regarding safe and contraceptive sex. In a wider sense, however, it is nothing less than a gender equal society that supports such responsibility.

Unwanted pregnancy is caused by and results from the unequal power relationship between women and men. Fear of both the imagined and the actual consequences of an unwanted pregnancy oppressively burdens women by restricting women's behavior and reminding women that many men lack respect for women's concerns.⁴ Women's self-awareness and empowerment are important and necessary but not sufficient to eliminate unwanted pregnancy or to achieve gender equality. It is the man's involvement that causes pregnancy. As the introductory quote states, men play a key role in bringing about gender equality, since they have more power. It is thus important to shift our attention from women to men in order to raise men's consciousness on sexual and reproductive issues, and cause men to think more seriously about these matters.

To achieve this end, I propose two possible legal formulations for imposing a legal duty on men to practice both safe and contraceptive sex; one is a "women's assertion" model, the other a "men's protection" model. Although I favor the second model in principle, in practice, I suggest using both models, employing one or the other depending on a woman's actual vulnerability at the social and individual level.

I expect criticism of legal enforcement as the best or most useful means to change men's behavior toward women, since I realize the kind of law I envision will not become a reality anywhere in the world without major changes in societal attitudes. Thus I view my proposal as a provocation, an opportunity for men and women everywhere to reflect on the patriarchal nature of current social arrangements, the use of male-female biological differences to control women, and the employment of social prejudices to bolster misconceptions about men's and women's supposed "nature." As I see it, exploring the possibility of making it men's rather than women's legal duty to practice both safe and contraceptive sex makes men's instead of women's behavior the object of social scrutiny, destabilizes current unexamined premises about reproductive issues, and promises a new way to achieve equality between women and men, thereby eradicating the suffering of women.

Although my argument is based on the situation in Japan and to some extent in the United States, I try to keep my perspective global. After all, women suffer from unwanted pregnancies throughout the world, with especially grave consequences in developing countries. Since I am well aware of how cultural complexity and variety shape sexual and reproductive issues differently in different areas of the world,⁵ I realize some of my specific arguments on sexual norms and legal arrangements might be peculiar to Japan. Nevertheless, I believe the basic mechanisms producing unwanted pregnancy are quite universal, and that a global consensus, as expressed in international documents, exists on the path toward gender equality. Much of the experience of women that I have found described in ethnographies of both developing and developed countries⁶ is quite similar to that of Japanese women. Therefore, strategies to change the situation of women in Japan should be of some use to women in other parts of the world eager to develop their own strategies to improve their status.

Legal Formulations

Women's Assertion Model

In this model, if a woman has not taken contraceptive measures, does not want to get pregnant, and clearly requests her male partner to use contraceptive measures, then her male partner should face legal sanctions for causing a "forced pregnancy" if he fails to comply with her request, engages in noncontraceptive sex, and impregnates her. The term "forced pregnancy" has been applied to a rape, the intentional aim of which is to impregnate a woman so that the child she carries will be ethnically mixed.⁷ In other words, the purpose of such a rape is for one nation to "ethnically cleanse" another nation. However, even in intimate, supposedly consensual sex, a pregnancy resulting from a male's practice of non-contraceptive sex in spite of his partner's request can be considered forced. In fact, the sex here is not truly consensual but is analogous to rape. Only sex that includes agreement as to the type of sex, the desirability or undesirability of pregnancy, and the use or nonuse of a specific method(s) of contraception is fully consensual in my estimation.⁸

I call this legal formulation a "women's assertion" model because it is based on the idea that, under ordinary circumstances, women can and should be able to protect themselves against an unwanted pregnancy, either by employing contraception themselves or by asserting their preferences for contraceptive sex to their male partners and refusing to have sex with them if such preferences are not respected. As in a traditional rape case, a woman in an unwanted pregnancy case would have to prove

that she did not consent to noncontraceptive sex. In Japan, evidence concerning the degree to which the female partner resisted an act of noncontraceptive sex would probably be required. (Article 176 of the Japanese penal code defines rape as intercourse forced by a man on a woman by either physical violence or the threat of it.) Among other defenses, it could be argued that the woman could have protected herself with contraceptives if she had really wanted to avoid pregnancy rather than take the riskier course of asking the man to take contraceptive measures. It is a weakness of this model that I return to in my discussion of liberal legal individualism.

Men's Protection Model

Many questions arise from the "women's assertion" model, since not all women have access to safe and affordable contraceptives or have the power to say no to men pressing for noncontraceptive sex. Why should *women* have to use contraceptives that may be unsafe, ineffective, and expensive? Why should *women* have to explain the danger of pregnancy and ask men to take precautions against pregnancy? And why should *women* bear the burden of proving their resistance against noncontraceptive sex in order to pursue a legal remedy in case of pregnancy? Men should know that women are usually fertile and that intercourse without contraception very often results in pregnancy.

Because of these questions, I propose a second formulation, a "men's protection" model. Under this model, unless a woman expresses explicitly her desire for a reproductive outcome, in the event of impregnation her sex partner would face legal sanctions for his practice of noncontraceptive sex. A man must thus protect not only his partner from unwanted pregnancy but also himself from the aftermath of noncontraceptive sex.

There are at least two justifications for such a measure. The first one is a shared responsibility argument. Major international documents emphasize that men and women should share responsibility equally in sexual and reproductive matters.⁹ Among other things, men and women should share the burdens of an unwanted pregnancy equally. These include the burden of avoiding it (i.e., contraception) and the burden resulting from the failure to use contraception (i.e., pregnancy and its consequences). Since women are disproportionately burdened when a pregnancy occurs, it would seem only fair that men assume the burden of contraception. Without this kind of rebalancing of the "natural" burdens of reproduction, responsible action by men is unlikely, and women and men won't achieve equality. Consider how burdensome the impact of noncontraceptive sex is to women: the fear of getting pregnant; the physical and psychological consequences of pregnancy, including the visible

signs of pregnancy, the resultant social stigma, and the loss of educational and career development opportunities; the physical and psychological consequences of abortion, including not only the actual complications of abortion but also fears about such possible complications as infertility and even death; and the physical and psychological consequences of unwanted delivery and unwanted motherhood.¹⁰ Because men do not have to bear any comparable burdens, most men are largely indifferent to these problems. Only by requiring men to take full responsibility for contraception is there any possibility of coming even close to equalizing men's and women's sexual and reproductive responsibilities.

The second justification for a "men's protection" model is a harm-to-others argument. If men practice noncontraceptive sex, it can cause serious harm to women, but the converse is not true so long as men are not criminally sanctioned or civilly liable for the harm of an unwanted pregnancy. Men may negotiate with women about contraceptive measures, but they should have no right to expect or require that women protect themselves from unwanted pregnancy. Of course, women may use their own contraceptive methods, but they would be under no legal obligation to do so since, unlike the case with men, noncontraceptive sex may cause harm to women but, as it stands, not to men. Similar and more detailed discussions of these justifications are found in Numazaki,¹¹ who argues that intravaginal ejaculation constitutes sexual violence against women.¹²

The basic rule of such a statute would be that, in order to avoid complete liability for a pregnancy and the resulting legal sanctions, a man must take contraceptive measures or obtain explicit consent from his partner for noncontraceptive sex. Consent may be given when she wants to become pregnant, prefers to use her own contraceptive measures, or chooses to take a risk. Even in these situations, if a man has no intention of becoming a father, is unsure of the safety and reliability of his partner's contraceptive measures, or does not wish to cause another a risk of harm, he has the right to use contraception. Explicit consent might take a written form if either partner anticipates trouble with the other in the future.

Compensation for Forced Pregnancy

If the concept of forced pregnancy is accepted under either the "women's assertion" or "men's protection" model, pregnancy resulting from a man's engaging in noncontraceptive sex without the partner's consent could be subject to either criminal or civil penalties, or both, providing tort remedies for negligent and/or intentional violations of the law, and/or criminal penalties to punish commission of a sexual assault-type offense. A woman who suffered an unwanted pregnancy would be able

to claim compensatory and perhaps punitive damages from the man who failed to employ contraception. Such damages would compensate the woman for all of the injuries—including psychological, social, and economical harm—suffered from the forced pregnancy and birth or, should she choose, the abortion.

In any given case of unwanted pregnancy, the woman should be completely free to choose abortion or birth. If a woman decides not to abort the fetus, her decision should not entail any obligation on her part to raise the child. If she wishes, she may play the role of a surrogate mother, with responsibility for raising the child borne by the man causing the unwanted pregnancy. If the woman instead chooses to bear and raise the child, she would be entitled to receive compensation for child-rearing expenses from the genetic father. As I discuss more fully below, the welfare of the child should be considered an issue separate and distinct from that of who is responsible for raising the child.

The Two Legal Formulations and Women's Vulnerability

In my view, the shared responsibility and harm-to-others arguments would justify using the second legal formulation based on the men's protection model, but in order to avoid contributing to the view of women as powerless and dependent on men this model might reinforce, I would propose using one or the other formulation depending on the degree of vulnerability of women at the social as well as individual level.¹³

The proposed two legal formulations are both based on the idea that a man should pay a price for impregnating a woman by noncontraceptive sex when the woman has not consented to such sex.¹⁴ The difference between the two is the assumption of consent. The women's assertion model presumes that a woman has consented to noncontraceptive sex unless she makes it known that she does not want it. This model might work well enough in societies where (1) sufficiently safe and reliable contraceptive measures are easily accessible to women, (2) women's status is reasonably equal to men's, (3) women's assertiveness is viewed positively, (4) women's desire for sex is openly acknowledged and women can initiate sexual relationships (i.e., a free sex ideology is strong and a double standard for men and women does not exist), (5) safe abortion is available, and (6) men's responsibilities for child rearing as fathers are well recognized.

In contrast to the women's assertion model, the men's protection model, which presumes the woman's lack of consent to noncontraceptive sex and requires the man to prove that the woman consented, seems more appropriate in societies where (1) women do not have adequate in-

formation about and/or access to safe and reliable contraceptive measures,¹⁵ (2) differences between men and women are significant both on the educational and economic level, (3) women are encouraged to be obedient to men, (4) men are supposed to take the initiative in sexual relationships, (5) abortion is either prohibited by law or dangerous, and (6) pressure on women to assume a traditional maternal role is strong. On an individual level, the men's protection model would, no doubt, serve socially vulnerable women,¹⁶ such as adolescent girls and young women (the exact age might differ slightly depending on the nation or community), and women who are poor or with limited education, especially when their male partner is an adult,¹⁷ is richer, and is more educated.

Although the men's protection model is the more difficult one for current societies to accept, paradoxically, I think a male sexual and reproductive responsibility argument has a better chance of being heard and being accepted in a strongly patriarchal society than in a society that is more gender egalitarian. In a society where men's authority is largely uncontested, a "male responsibility" argument can be phrased in terms such as "if men are wiser than women, then men should take more responsibility for sex than women"; "if abortion is a sin, then the men who cause unwanted pregnancy and compel women to end pregnancy are the sinful ones"; "if sex should be only for procreation and contraception is against God's will, then men should control their sexual behavior"; and "if fathers have rights to their children, then they also have responsibilities for all their children, including those who are the products of an unwanted pregnancy." Without close knowledge of a given culture, these examples remain speculative and could be counterproductive if they reinforced paternalistic attitudes. But, at least in the short term, a male responsibility argument may afford to women their best chance to reduce unwanted pregnancies in precisely those strongly patriarchal societies where the notion of women's control over their own bodies is weak.¹⁸

Prevention of STDs, Including HIV/AIDS

In a society (or relationship) in which the possibility of contracting sexually transmitted diseases (STDs), especially HIV/AIDS, exists, the second approach, which imposes a heavier responsibility on men, is more logical from a public health standpoint. Since a condom is the only effective tool to prevent the infection, and since it is virtually impossible for a woman to force a man to wear a condom, it is men who must take the responsibility to protect women and/or themselves from STDs, especially HIV/AIDS. Men should have the duty to wear condoms, particularly if they choose to have sex with sex workers whose risk of contracting STDs, especially HIV/AIDS, is high and with respect to whom there is a pre-

sumption of no reproductive intent. Although sex workers can use their own contraceptives to protect themselves from an unwanted pregnancy, there is no widely accessible female contraceptive that they can use to protect themselves from an STD or HIV/AIDS. For this reason, it is clear that condom use by men is literally vital for sex workers. Sex workers, either male or female, should have a right to safe and contraceptive sex that is not waivable through the use of money.

Concerns About the Two Models

The kinds of laws I am proposing are, of course, subject to major concerns about their implementation, including (1) proof of paternity, (2) dependence on biotechnology, (3) emphasis on biological connection, (4) emotional resistance to obtaining explicit consent in an intimate relationship, (5) individualistic liberal legal thinking, and (6) child welfare. Analysis of these problems will illuminate current social arrangements and conceptions that have contributed to the perpetuation of gender inequality, as well as the implications my proposed laws have for feminist strategy.

Proof of Paternity

The primary technical difficulty under such legislation would be proving that a particular man engaged in unlawful, noncontraceptive sex and that he is the father of the fetus (or child). This difficulty, however, has been substantially reduced by advances in the technology of genetic analysis. In the near future, a woman will be able to have fetal DNA analyzed through her own blood. If a woman suspects that the man with whom she has had sex will refuse to cooperate and provide a blood sample, she can preserve his semen after noncontraceptive sex. In the event of pregnancy, she can request genetic analysis of the semen sample and have it matched against that of the fetus. In possession of such powerful evidence, legal authorities will find it easier to obtain the man's cooperation in subsequent fact-gathering and legal proceedings.

Dependence on Biotechnology

As is apparent from the preceding discussion, the proposed legal scheme requires heavy dependence on biotechnology. Feminists and others have long cautioned against being controlled by biotechnology, especially in matters of reproduction. Since the advance of biotechnology is unlikely to stop, however, those who have concerns about its being used in ways that harm women should work to regulate it so that it is used to benefit

women. Moreover, they should encourage the development of biotechnologies that positively benefit women.¹⁹ The legal framework proposed here might have the consequence of directing biotechnology toward the goal of gender equality by stimulating the development of many good male contraceptives. Current research and development of contraceptives is confined mainly to those that affect the functioning of the female body. The gaze of medicine and science has focused on people who are easily—in a social, not a biological sense—controllable.²⁰ The important issue may not be the advance of biotechnology itself, but rather who controls its direction. However, severe limits still exist; in countries where such advanced techniques are not available or for individuals who cannot afford their cost, the proposed statutory scheme has little or no real use. In some countries, assuring the availability of affordable condoms to everyone might be the first difficult step in the direction of such a scheme.

Emphasis on Biological Connection

When the biological father can be identified scientifically, many issues arise as well. First, despite the imposition of legal liability based on the father's act of noncontraceptive sex, and not on his biological link to the fetus as such, such liability may contribute to perpetuating the importance given to the biological link between parent and child.

Second, the fact that the biological father can be identified may in itself be a great incentive for men to employ contraceptive measures. No longer will men have the option of evading responsibility for an unwanted pregnancy by denying having had sex with the woman or by asserting that some other man is the biological father. Biological fathers will have to assume responsibility for their biological fetuses and children. However, the same technology that can identify the biological father may make it difficult for women to exert power based on their more obvious biological link and/or to secretly choose a social father regardless of his biological link to the child or fetus.

Third, patriarchal systems and the surveillance of women's sexual behavior are said to exist in part to safeguard the biological link of father and child. The use of biotechnology may help free women from such sexual surveillance, but this might be too optimistic. Patriarchal systems have also tried to evade the biological link of father and child in some contexts. By categorizing women as Madonna or whore, wife or prostitute, and by forcing some women into monogamy and assuming others to be promiscuous, men have controlled the evidence and claims of the biological link made by women.

Depending on the rules governing who may initiate an analysis of the biological link, with whose cooperation, and who may have access to the

results, greater or lesser surveillance of women's sexual behavior will be the outcome. How such rules would affect patriarchal systems needs further analysis, and legislative provisions regulating these matters must be drafted with great care.

*Emotional Resistance to Obtaining
Explicit Consent to Noncontraceptive Sex*

Some would feel awkward requesting explicit, especially written, consent for noncontraceptive sex in order to be free from the risk of legal sanction. Sexual conduct is usually considered an act of passion, desire, and biological urge rather than a rational and calculated action. It is also considered intimate, informal, and implicit rather than formal and contractual. This is the case even where the idea of family planning is widespread. Thus emotional resistance to explicit consent may be hard to overcome.²¹

Some may argue that explicit consent should be necessary in the case of contraceptive sex because it requires extra effort over "natural" sex, which is noncontraceptive. In practice, however, it makes more sense to require that such consent be required for noncontraceptive sex. After all, in most societies the vast majority of sexual encounters are those in which pregnancy *is not* desired. Moreover, encounters in which pregnancy *is* desired are more likely to take place in the context of a firmer, probably more rational relationship between the partners. In such circumstances, meaningful consent can be established through ongoing communication and thus is less of an issue.

Marriage has historically been considered a contract, implying mutual consent to sex and procreation. However, marriage quite often exists in the context of unequal power relationships. As a result of this awareness, the concept of marital rape has acquired greater legal recognition in some countries, mandating that the marriage contract does not entail the obligation to comply with the partner's sexual wishes all the time. And, of course, sex in marriage (except in some religious traditions) is not always for procreation. Thus obsolete notions of the marriage contract should not be used as a substitute for explicit consent to noncontraceptive sex in couples.

Liberal Legal Individualism

For a feminism espousing liberal legal individualism, what has been at stake is the woman's right to her own body, as well as autonomy. Since an unwanted pregnancy can be avoided without the man's cooperation, and since many women do not trust men to take their contraceptive du-

ties seriously, a self-protection strategy seems the easiest and most reliable course of action for a prudent woman. Since such a strategy meshes well with an ethic of individual autonomy, which includes the idea of preventing the state from interfering with women's (and men's) privacy, it is not surprising that feminists (especially in the United States) have favored it and put a high priority on ensuring their right to contraception and safe abortion.²² On the surface, this self-protection strategy seems to maximize women's autonomy. The woman can, if she wants, choose to protect herself from or end an unwanted pregnancy without letting anyone, including her partner, know that she has made this choice.

However, for all its apparent advantages, there are severe limits to the self-protection approach. Sexual and reproductive issues are deeply relational: intercourse and pregnancy arise in the context of a relationship between a man and a woman. Furthermore, they contain the possibility of creating a relationship not only between a woman and a fetus but also between a man and a fetus. In downplaying the relational aspects of intercourse and pregnancy, certain liberal feminists have bolstered women's autonomy but have weakened men's sense of relational responsibilities in regard to their female partner and their fetus. If feminists want to achieve relational equality between men and women, they cannot do so simply by emphasizing pregnancy as under women's control; they must also stress men's responsibilities. Demanding that men be more responsible in "private" relations does not negate women's autonomy or weaken women's power of self-protection. The autonomy of women can be truly realized only when it is conceptualized in terms of their relationships, and only when the men to whom they are related value women's autonomy as much as men's autonomy. The possibility of communicative and trusting relationships between women and men should be more envisioned and promoted.

As for state interference with individual freedom, all law contains this danger, to which we must be alert.²³ But as cases of domestic violence and child abuse show, appropriate social and legal intervention plays an essential role in preventing abuse in private relationships inappropriately protected by a "sanctity of the family" concept.²⁴

Child Welfare

The major concern about the legal remedy proposed here has to do with the consequence of pregnancy: the child. What will happen to the child if it is given to a biological father who did not voluntarily choose to become a father? To be sure, some children might suffer from being given to men who did not want to be fathers. But such children might not fare any better in the custody of women who did not want to be mothers. Just be-

cause women in most countries might be, on the average, better and more responsible caregivers than men does not mean that all women are better carers than men. Nor does it mean that women are by nature better carers than men. Cultural ideology and social pressure are probably the main reason why women rather than men are children's primary caregivers.²⁵ Because this is so, if human beings wished, they could transform cultural ideology and social pressure, directing men rather than women to be children's primary caregivers. Men's ability to love and care for children may be vastly underestimated; these abilities should be promoted.²⁶

Burdened with an unwanted pregnancy, a woman who does not want her life changed coercively but detests sacrificing the fetus's life should have the choice of passing the child to the father, whose responsibility would be to provide good care for it. Blame and social disapproval should be directed at the man who fails to practice contraceptive sex and refuses to take responsibility for the care of the child, not at the woman if she chooses abortion. If women, including sex workers, start leaving babies with the babies' fathers, men may finally realize the serious effect of noncontraceptive sex and begin to shoulder their sexual and reproductive responsibilities.

I expect this argument to be criticized on the basis of cruelty and irresponsibility to a child in terms of using a child as a mere means in a power game between women and men. In response, I would say that I am quite optimistic that most men will act responsibly once they are forced into the situation of taking care of the child, although I am pessimistic about men's behavioral change in matters of contraception and child care without any compulsory measures. First of all, taking care of a child is not a "punishment" but can be a great fulfillment, as many women have been enjoying up until now. To be sure, there will be some men—hopefully very few—who will be unable or unwilling to take responsibility for the consequences of their actions. In such cases, some societal measures other than relying on the mother's care will need to be taken, as has been done for the support of single mothers in various countries. No woman should be forced to rear a child that a man forced her to have by his failure to use contraceptives. The child is the man's and society's "problem," not the woman's.

Conclusion

Although the difficulties and concerns linked to enforcing legal responsibility for men's contraception are numerous and serious, I hope the analysis here provides a clearer and more precise vision of the abstract moral claim of "shared responsibility of men and women in sexual and

reproductive issues" and a more specific agenda for changing men's behavior and social attitudes.

Even if legal enforcement is not achieved, once the concept of male responsibility for contraception is understood and accepted, many things will change. Male contraceptives will be more aggressively developed. Research in population control, AIDS prevention, and child health will focus more on men's sexual behavior and paternity bonding than on women's reproductive behavior. Sex education projects will target boys rather than girls, male clients rather than female sex workers, husbands rather than wives. If a state is aggressively working on population control, men's abstinence, contraception, or voluntary sterilization will be more seriously considered as an alternative to women's forced sterilization or forced abortion. Statistics on male contraceptive practice will become an important part of indicators of gender equality. (They might be even better and more sensitive indicators than the Gender-Related Development Index [GDI] or the Gender Empowerment Measure [GEM], indexes the U.N. Development Program offers for each country's status of gender equality.)²⁷

Not only the political but also the medical and the scientific gaze has been fixed on women. Those who have more power, and thus are able to resist becoming the target of education and training for behavioral change, were often left alone, even though changing their behavior would have been very effective in the long-term prevention of unwanted pregnancies and the spread of STDs such as HIV/AIDS. In addition to the traditional moral view that reproductive issues are *women's* issues, this supposedly scientific gaze needs to be changed in the interests of attaining true equality between women and men.

Notes

This paper is a revised version of my arguments published in Japanese. Naoko T. Miyaji, "Haramaseru sei to haramu sei: Hinin sekinin no jittaika no kanousei o saguru" [Impregnating sex and pregnant sex], *Gendai Bunmeigaku Kenkyu* 1 (1998): 19–29; and Miyaji, "Haramaseru sei no jikosekinin wa dou jittaika shiuruka" [How can responsibility of impregnating sex be substantiated?], *Impaction* 108 (1998): 144–151. They were written as a critique of Ichiro Numazaki's paper, "Haramaseru sei no jiko sekinin" [The self-responsibility of the "impregnating sex"], *Impaction* 105 (1997): 86–96. A draft of this paper was presented at the Second Conference of the International Association of Feminist Approaches to Bioethics (FAB2) in 1998. I thank participants of FAB2 for their valuable comments. I also thank Jack Tobin for his insightful comments and linguistic as well as legal advice.

1. *Programme of Action of the International Conference on Population and Development* (ICPD), Art. 4.24 (Cairo: September 1994).

2. *Beijing Declaration and Platform for Action (BDPA)*, Fourth World Conference on Women, September 15, 1995, United Nations; and *Programme of Action of the International Conference on Population and Development*.

3. World Health Organization, *Life in the 21st Century: The World Health Report, 1998. Report of the International Forum for the Operational Review and Appraisal of the Implementation of the Programme of Action of ICPD*, Netherlands Conference Centre, The Hague, Netherlands, February 8–12, 1999.

4. BDPA, Art. 94, states that “the limited power many women have over their sexual and reproductive lives and lack of influence in decision-making are social realities which have an adverse impact on their health.” Art. 95 notes that “young men are often not educated to respect women’s self-determination and to share responsibility with women in matters of sexuality and reproduction.”

5. Malcolm Potts, Peter Diggory, and John Peel, *Abortion* (Cambridge: Cambridge University Press, 1977).

6. For example, see Faye D. Ginsburg and Rayna Rapp, eds., *Conceiving the New World Order: The Global Politics of Reproduction* (Berkeley: University of California Press, 1995); and Emily Martin, *The Woman in the Body: A Cultural Analysis of Reproduction* (Boston: Beacon, 1987).

7. BDPA, Arts. 13, 115.

8. The meaning of consent in unequal power relationships is developed from my research on informed consent and truth telling in medicine. Naoko T. Miyaji, “The Power of Compassion: Truth Telling Among American Doctors in the Care of Dying Patients,” *Social Science and Medicine* 36, no. 3 (1993): 249–264.

9. *Programme of Action of ICPD*, Arts. 4.27, 7.8, 7.14(e), 7.34, 7.41, 8.27. For example, Art. 4.27 reads, “Special efforts should be made to emphasize men’s shared responsibility and promote their active involvement in responsible parenthood, sexual and reproductive behaviour, including family planning; prenatal, maternal and child health; prevention of sexually transmitted diseases, including HIV; prevention of unwanted and high-risk pregnancies . . .”

10. See M. Koblinsky, J. Timyan, and J. Gay, eds., *The Health of Women* (Boulder: Westview, 1993); and Robert Desjarlais et al., *World Mental Health* (New York: Oxford University Press, 1995), pp. 179–206.

11. Numazaki, “Haramaseru sei” [The self-responsibility of the impregnating sex].

12. I use the term “noncontraceptive sex” instead of “intra vaginal ejaculation” because extravaginal ejaculation is not necessarily contraceptive.

13. Numazaki invokes a “vulnerability thesis” in support of the men’s protection model. See Ichiro Numazaki, “The Moral Responsibility of the Impregnating Sex: An Autocritique of the Sexual and Reproductive Ethics of Men” (paper presented at the second international Feminist Approaches to Bioethics Conference, Japan, 1998).

14. Here I discuss only instances in which pregnancy has occurred because of the greater evidentiary difficulties where noncontraceptive sex has not resulted in pregnancy, although strictly speaking, forced noncontraceptive sex itself needs to be outlawed because it causes fear of pregnancy by women even if it does not actually result in pregnancy.

15. Where both men and women lack access to accurate knowledge on sexual and reproductive issues, dissemination of information would be necessary before the law is brought into force.

16. BDPA, Art. 99, states, "They (adolescent girls and young women) often do not have the power to insist on safe and responsible sex practices and have little access to information and services for prevention and treatment. Women, who represent half of all adults newly infected with HIV/AIDS and other sexually transmitted diseases, have emphasized that social vulnerability and the unequal power relationships between women and men are obstacles to safe sex, in their efforts to control the spread of sexually transmitted diseases."

17. Boys and young men need to be educated at an early age about the possibility of their harming women by noncontraceptive sex, so that they would not face legal sanction unknowingly.

18. Here I am considering how the social situation can be changed in Japan. Using the above mentioned vulnerability criterion, Japan should choose the first formulation based on (5) and the second stricter formulation based on (1) and (6) (transitional state on [2], [3], [4]). In Japan, abortion is still a criminal act but is allowed under a broad interpretation of "physical or economic reasons." See the Penal Code, Arts. 212–216 and the Maternal Protection Law (former Eugenic Protection Law), Art. 14.1. The spouse's consent is required for abortion, (Maternal Protection Law, Art. 14) although in practice no inquiry is made as to who signed the consent as a spouse. The rate of contraception use is reported as 60–70 percent, with the most common contraceptive being male condoms (70–80 percent). See Teruko Inoue and Yumiko Ehara, eds., *Women's Data Book* (Tokyo: Yuhikaku, 1995), p. 69. Low-dose contraceptive pills were not available for women with the official reason that releasing of the pill might increase the prevalence of HIV/AIDS. The pill was finally approved for use in late 1999 after criticism of the differential and quick approval of Viagra. According to the official record, the number of abortions is gradually decreasing, but still about 340,000 abortions are carried out a year (338,867 in 1996). For the overview of maternal and child health in Japan, see Naoko T. Miyaji and Margaret Lock, "Monitoring Motherhood: Sociocultural and Historical Aspects of Maternal and Child Health in Japan," *Daedalus* 123, no. 4 (1994): 87–112.

19. Genetic diagnosis of the fetus is now much debated, and methods of determining the father-child biological link are already commercially available in many developed countries. Careful monitoring and regulation of such commercial activity may be necessary with respect to access to the information analyzed.

20. Development of antisperm vaccination as a contraceptive is a good example of this bias, since it is safer and simpler to kill sperm than to create a vaccination against it.

21. This also applies to rape. Most of the time, couples understand each other's consent through interpretation of nonverbal communication. The problem arises when the gap between the two partners' interpretations is large.

22. Anita L. Allen, "Privacy in Health Care," in Warren T. Reich, ed., *Encyclopedia of Bioethics* (New York: Simon & Schuster/Macmillan, 1995).

23. One of the possible forms of the state's abuse of the law envisioned here would be disallowing some types of men, I would call them "vulnerable men," to become fathers based on their socioeconomic and educational level.

24. Frances E. Olsen, "The Myth of State Intervention in the Family," *University of Michigan Journal of Law Reform* 18, no. 4 (1985): 835-864.

25. See Elisabeth Badinter, *L'Amour en plus* (Flammarion: 1980); Donna Bassin, Margaret Honey, and Meryle Mahrer Kaplan, eds., *Representation of Motherhood* (New Haven: Yale University Press, 1994); and Jane Swigart, *Myth of the Bad Mother: The Emotional Realities of Mothering* (New York: Doubleday, 1991).

26. The recent Czech film *Kolya* is intriguing in this sense. A middle-aged man who has enjoyed being single and never thought of raising children is left with a stranger's child. His sudden new circumstance leads to communication and an emotional bond with the child, and he ends up discovering that his responsibilities are meaningful, even joyful.

27. U.N. Development Program, *Gender and Development: The Human Development Report* (Oxford: Oxford University Press, 1995). The WHO Regional Office for the Western Pacific (WPRO) proposes to "gender disaggregate all data collected and collated by WPRO and develop gender sensitive and gender specific indicators of health." See WPRO, *Women in Development: A Position Paper* (Manila, 1997), p. 27.