THE PILL—A ROSE RINGED BY A THORN BUSH? PAST AND PRESENT RAMIFICATIONS

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I. INTRODUCTION

Throughout history we can see evidence of humans trying to control fertility, the ancient Egyptians make reference to a bullet-shaped contraceptive device that is inserted into the vagina containing crocodile dung, honey and fermented dough which slowly dissolves and is released into the system with body heat.[1] 1500 years later Aristotle suggested rinsing the vaginal cavity with cedar oil mixed with frankincense to avoid pregnancy.[2] During the Roman classical times the first evidence of oral contraceptive was recorded with the use of Silphium from northern Africa.[3]

Historically, the main use of birth control was to conceal illicit love affairs. Sex outside marriage might be sinful but it was more sinful that it be revealed by pregnancy. The illegitimate birth rather than the affair was what attracted the heaviest shame and stigma. Although history records some famous illegitimate children, extramarital births were not only unwelcome; they put severe strain on the woman having to rear an illegitimate child without support. "Courtesans, mistresses, prostitutes, the unfaithful husband or wife, these people had to know, and were expected to know, about birth control".[4] The constantly recurring theme among those opposed to the spread of information on contraception was that it encourages promiscuity.

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[1] S. Ainsworth, 'Oral contraception: past, present and future' (2006/2007) 4(11), *Nurse prescribing* 476, 476-8.
[2] Ibid.
[3] Ibid.
[4] S. Siedlecky & D. Wyndham, *Populate and Perish: Australian Women's Fight for Birth Control* (1990).

During the 19th Century, three significant factors on the reproductive landscape had the effect of putting birth and population control on the mainstream agenda. First, the use of birth control spread to the married population a process that commenced with the upper classes and later diffused to the working class thus serving to legitimate contraception by rubbing off the stigma that it had borne for centuries as a vehicle for illicit sex. Secondly, the study of reproduction was emerging as a scientific discipline with biologists recasting 19th Century inquiries about heredity, development, and evolution into the 20th Century subjects of genetics, embryology, and reproductive science. Concurrent progress in the new field of hormone research also spurred studies of reproductive physiology, as scientists discovered the importance of chemical messengers in the mammalian reproductive cycle. Lastly, the acceleration of economic and social factors pertaining to population control spurred by the rise of the eugenics and neo-Malthusian movements with their emphasis on controlling the proliferation of a teeming under class in the West, a philosophy that in the course of the 20th Century would form the basis for a crusade to rein in the population explosion in the Third World as modern medicine sharply cut infant mortality rates and spiked accelerated population upwards.

The development of contraceptive technology has been a gradual process, but the advent of the oral contraceptive pill over fifty years ago was so dramatic that we tend to think of two stages in birth control—before and after the pill.[5] In 1957 the United States ("US") American Food and Drug Administration ("FDA") approved the first use of the oral contraceptive pill—Enovid. However this was primarily distributed as a treatment for menstrual disorders,[6] mainly owing to the political, moral, and social baggage that would be generated with an outright pitch of the drug as a contraceptive. Nonetheless pharmaceutical companies, backers, and doctors were keenly aware that it was, first and foremost, a contraceptive and well understood that acceptance would only come via

[5] Martha Richardson, 'By The Way Doctor Is It Safe to Take a Pill That Eliminates Periods?', (2007) 15(1) *Harvard Women's Health Watch,* 8.
[6] K. Leitzell, 'The passions behind the pill; helping women in poverty is what drove the development of the oral contraceptive' (2007) 143(5) *U.S News & World Report* 68.

mobilisation of consensus of the pill as another wonder drug. The bet that the public would be receptive to a wonder drug was a good one. Acceptance was not long in coming and within five years Enovid was the most popular form of birth control in the United States (prescribed by 95 percent of obstetricians and gynaecologists). By 1965, six and a half million married women and hundreds of thousands of unmarried women had obtained prescriptions for oral contraceptives (the number of unmarried users cannot be determined accurately because they were not included in official reports).[7]

In 1968, barely a decade after the advent of the pill, a popular writer reflecting on the pill ranked its importance alongside other major milestone's in humanity's history—the discovery of fire, the developments of tool-making, hunting, agriculture, urbanism, scientific medicine, and nuclear energy.[8] The accolades did not ebb. Twenty-five years later as the 20th Century was coming to a close, the pill still held the awe of society on the contraceptive spectrum. In 1993 leading British weekly, *The Economist*[9] listed the pill as one of the seven wonders of the modern world. The image of the oral contraceptive as one of the icons of humanity continues to persist in popular culture today, writing in 2006 leading writers describe the modern oral contraceptive as the instrument of a true social revolution—the "first reproductive revolution" in the history of humanity.[10]

The history of the pill has been as interesting as it has been controversial as a pivot of changing conceptions of sexuality, medicine and technology (particularly in Western society). Though a contraceptive and thus seemingly firmly in the realm of birth control, interpretations of the pill have dominated discourse over the decades across several socio-economic and cultural spheres. It has been seen as a crucial pivot in the liberalisation of sexual attitudes and practices, the medicalisation of birth control and the rise of new feminism but invited clashes in matters of population control, religion and thus inevitably

[7] E. Watkins, *On the Pill: A Social History of Oral Contraceptives 1950-1970* (2001).
[8] A. Montagu, 'The Pill, the Sexual Revolution and Schools', (1968) 480(49) *Phi Delta Kappan*.
[9] 'The Age Of The Thing: In The Second Century BC, Antipater Of Sidon Drew Up His List Of Seven Wonders Of The World, Here Is Ours', *The Economist* (London), 25 January 1994, 329 (7843) 47.
[10] G. Benagiano, C. Bastianelli & M. Farris, 'Contraception Today', (2006) 1(32) *Annals New York Academy of Sciences.* 1092.

legal and political discourse.

It is evident from the foregoing paragraph that the pill has been a lightening rod for a whole range of discourse across several spectra of societal activity and evolution. Each of these spectra in and of themselves would be threads for full blown discussions if not books. However, this Article sets itself a relatively modest target—an evaluation of commonly held assumptions about the impact of the pill on society and explores the changing perceptions of the pill from its discovery in the mid-20th Century into the 21st Century. In adopting what is a general overview, the Article does not seek to gloss over the finer details rather the authors seek to present a broad but incisive overview of the impact of the pill through a robust sketch that engages its impact on the socio-cultural, medico-political and legal landscape. One of the thorny themes that will be engaged will be the controversial issue of the intersection of "rights" and "choice" since these two concepts are often obfuscated in the parlay between contraception and women's rights on one hand and the heady simplicity of "to pill or not to" as a consumer choice divorced from a much more complex rights landscape. The authors' readily admit that the complex mosaic wrought by the pill does not readily render itself to an extensive and intensive analysis. That said it is the authors' belief that the various aspects canvassed are discussed in sufficient detail to not only amplify the diverse spectra that the pill has 'intruded' upon but also offer a nuanced, crisp analysis that is underpinned by a steady theme.

II. A NEW ICON ON THE FERTILITY LANDSCAPE: GENESIS OF THE PILL—A TALE OF SEXUALITY, SCIENCE & SOCIETY

For centuries marriage was a prerequisite for sex and pregnancy. Society frowned upon women who engaged in premarital sex; nevertheless, some women chose to ignore social mores. These women faced the double threat of unwanted pregnancy and the disapproval of family and friends. Even so, very few of them used contraception. Not only was it difficult for single women to obtain birth control, its use implied premeditation, which was unthinkable in the context of the times. Many national laws combined with cultural and

religious factors that militated against contraception and abortion lent support to society's simultaneous encouragement of childbearing for married women and disapproval of sexual activity for unmarried women[11].

What contraceptive options did women have in the 1950s? The most effective method of birth control was a diaphragm used in combination with spermicidal jelly. The next most effective method, the condom, could be purchased at the drugstore. Other commonly used methods—withdrawal, douching, and rhythm—were relatively fallible. Although in theory the diaphragm and the condom effectively prevented pregnancy, in practice they were less reliable. In order to obtain a diaphragm, a woman had to ask her physician to fit and prescribe one for her, which meant that in essence she had to ask him for permission to plan her family. Condoms required the cooperation of the male partner, and both methods entailed touching the genitalia, which many people found troublesome.

By the late 1950s, the large majority of married people in most Western countries with the exception of those dominated by the Roman Catholic Church gradually began to accept and use birth control. In fact in many countries, particularly the US—the "birth place" of the pill, people were becoming less and less troubled by the moral implications of contraception and the separation of sexual intercourse from procreation. The problem was that existing methods of birth control offered neither high efficacy nor convenience with women largely having to make do with what was available. Some couples, particularly the more affluent, would not have despaired if birth control failed a couple of times and they ended up with five children rather than three. Or, if a woman did despair, she kept it to herself, and instead paid lip service to the cult of domesticity and motherhood. In the restrained culture of the 1950s, ordinary women did not speak out for the development of a better contraceptive.

The oral contraceptive pill emerged from the passionate efforts of four identified individuals; activist Margaret Sanger who founded "planned parenthood" in the early

[11] E. Watkins, above note 7.

1900's, millionaire financial backer Katharine McCormick who funded the project, scientist Gregory Pincus who discovered the oral contraception pill and medical doctor John Rock—a Roman Catholic—who assisted to bring the pill into the main stream.[12] Each of these dedicated individuals paved the way to establishing a safe, reliable and female controlled contraceptive.

2.1. Why the Pill: The Quest for a "Wonder Drug"

Why the pill? That is, what factors influenced the choice of this particular contraceptive technology as opposed to other possible methods? Three primary factors can be distilled.

Firstly, the climate of the 1950s favoured scientific and technological solutions to social problems. In the early part of that decade, for example, most Americans still approved of the use of the atomic bomb to end World War II (the full implications particularly of the negative effect of nuclear weapons and other forms of scientific technology were not yet sources of robust concern). Considering that in the field of medicine, scientists working in the laboratory produced antibiotics, the cure for bacterial infections, and a host of other new "panaceas" to alleviate societal maladies, many in the West eagerly anticipated the next wonder drug. Given the popular optimism and enthusiasm for science and its products, it made sense that birth control advocates would look to science for a new contraceptive technology instead of focusing their efforts on public education or the improvement of existing barrier contraceptive methods.

Secondly, intellectual, economic, and socio-cultural factors conspired to preclude the development of a male contraceptive. Scientists were daunted by the task of inactivating the millions of sperm produced by the human male each day; instead, they focused their efforts on preventing the female's monthly release of a single ovum. One scientist commented dryly on the dearth of male volunteers for contraceptive research:

[12] K. Leitzell, above note 6.

> "Male volunteers for fertility control studies may be numbered in the low hundreds whereas women have volunteered for similar studies by the thousands ... he [the human male] has psychological aversions to experimenting with sexual functions, perhaps experimental studies of fertility control in men should be preceded by a thorough investigation of male attitudes".[13]

Social convention echoed the sentiment that contraception, like pregnancy and child rearing, was considered to be a female responsibility. Men could dictate the circumstances of these "feminine" activities (e.g. the appropriation of childbirth by the medical profession), but the responsibility remained solidly within women's social sphere.

Thirdly, while science could have offered several possible avenues for the development of a new contraceptive; research focused on steroid hormones instead of other possible methods, such as an anti-sperm vaccine. This was due to the fact that scientific knowledge in the areas of steroid chemistry and female reproductive biology had advanced in recent years by several important developments particularly the linkage of research in reproductive physiology, endocrinology, and steroid chemistry which formed the foundation for applied research toward a hormonal contraceptive. Availability of scientists experienced with both steroids and reproductive physiology also directed the path of research toward a new contraceptive.

Scientists and birth control advocates conceived of the pill as a scientifically based, technological solution to the social problems of family planning and population control. Its rapid acceptance as the preferred method of birth control among both women and doctors in the first half of the 1960s far exceeded anyone's expectations. Yet, later in the decade, this early popularity clashed with publicity on the pill's adverse health effects, producing a forceful feminist critique of the pill and, more broadly, of the male medical profession and its role in women's reproductive health. Along the way, the pill generated great interest among the medical profession, the pharmaceutical industry, governments, family planning

[13] G. Pincus, *The Control of Fertility* (1965).

organisations, feminist groups, the media, and the public, and the missions of these groups sometimes conflicted as they interpreted the meaning of the pill differently. As a specimen of medical technology, the pill offered powerful benefits to outweigh its risks. In the eyes of many contemporaries, science and medicine made significant contributions to the quality of life, which overshadowed their negative aspects. Although Americans might have expressed scepticism toward medical science and its products, for example, the pill, they continued to embrace the culture of "modern" medicine and technology after the 1960s.

III. THE PILL: AN ENIGMATIC SOCIO-MEDICAL & CULTURAL "THORNED" ROSE

An evaluation of the inconsistent meanings and perceptions of the pill during the 1960s provides insights into the social and cultural attitudes toward sex and sexuality at that time. In the mid-1960s, the use of the pill by an unmarried woman was judged differently, depending on her social class. Many people frowned upon single women from the middle or upper classes using the pill, or any form of birth control, because it implied, correctly, not only that these women were having sex but also that they were planning ahead for it.

A number of factors conspired in the post war years to encourage women to have several children. The relative economic prosperity of the late 1940s and 1950s promoted larger families than those of the previous Depression-era generation. For many middle-class women, personal success was to be found at home, in contrast to the achievement sought by their husbands in the workplace. If motherhood was a full-time career, then women could extend the period of fulfilment by having more children. Nevertheless, in spite of the pro-natalist climate fostered by psychologists, physicians, and other experts and popularised by women's magazines, most women did not plan or desire to have six or eight or ten children.

On the other hand, the moral implications of sexual activity among lower-class unmarried women elicited less concern than did the economic effect of unwanted babies. Demographers in the 1960s successfully focused the public's attention on the potential

"crisis" of overpopulation; in that climate, advocates of population control urged widespread use of birth control, including the pill, to slow population growth in the US and abroad.

3.1. The Roar of the Feminist Movement

There are several forms of feminist theories. These include liberal feminism, Marxist feminism, socialist feminism, radical feminism, psychoanalytical feminism, existentialist feminism and post-modern feminism.[14] It is important to note that this do not represent episodic phases but rather various aspects of the spectra that underpin women's rights. That said and for the purposes of the Article, the authors will mostly focus on two broad movements that underpin female empowerment and which have been enunciated in various forms by feminist theories—political empowerment and socio-cultural/economic emancipation.

The first generation "women's movement" focused on suffrage—the political right to vote: equality meant sameness—the assumption that women can be viewed as essentially the same as men, and thus they should have the same rights, opportunities, and privileges as men. The second generation that heated up in the 1960s, incidentally coinciding with the pill's advent was premised on the sameness movement but to this discourse was the significant addition of issues of sexuality, reproductive rights, and pregnancy.[15] This challenged the power and legitimacy of the traditional family and changed women's role within the public realm, which had become, by now, part of mainstream culture.[16]

The pill certainly ushered in a contraceptive revolution when it came onto the market in 1960. In the 1960s and early 1970s, demographers focused on the contraceptive habits of married women to document the contraceptive revolution, while sociologists surveyed the

[14] Ellen R. Klein, *Undressing Feminism: A Philosophical Exposé* (2002) 4-5.
[15] See Nancy Levit & Robert R. M. Verchick, *Feminist Legal Theory: A Primer* (2006) 15-39.
[16] Renee C. Wyser-Pratte, 'Protection of RU-486 as Contraception, Emergency Contraception and As an Abortifacient under the Law of Contraception', (2000) 1121 *Oregon Law Review*, 106-183.

sexual attitudes and practices of unmarried women to study the sexual revolution. Journalists combined the two contemporaneous changes and developed the lasting image of the pill as a symbol of the sexual revolution; scientists and the public accepted and promoted this interpretation of the pill. The image of the oral contraceptive pill as revolutionary and a cultural icon that represents women's social advancement took hold in the 1960s and persists to the present. Because the pill's popularity coincided with the beginnings of the feminist movement,[17] it became a symbol of the sexual revolution[18] and a base (albeit not basis) in women's subsequent "liberation".[19]

What makes the pill exceptional is that it was the first new method of birth control developed in the modern era. All other methods available in the 1950s had antecedents that dated back to ancient times. Intrauterine devices, vaginal suppositories and pessaries, douches, condoms, withdrawal prior to ejaculation, periodic abstinence based on the menstrual cycle, surgical sterilisation, abortion, and infanticide had been used in different cultures for centuries.[20] The hormonal contraceptive developed in the 1950s was based on an understanding of the physiology and biochemistry of reproduction. Of course, it could not offer 100 percent protection; pregnancies could and did occur in women on the pill. However, the 98 or 99 percent effectiveness of the pill was considerably greater than that obtainable with any other contraceptive device or practice.[21] The other methods, in spite of their lower rates of efficacy, represented age-old attempts to control fertility. The oral hormonal pill introduced highly reliable contraception and, for the first time, made voluntary pregnancy a real possibility for women.

Early analyses of the pill reflected the social climate in which they were written. Feminists in the 1950s extolled the birth control pill as a scientific triumph for women in their efforts to gain control over their reproductive lives; the next generation of feminists interpreted the

[17] K. Leitzell, above note 6.
[18] Kara Granzow, 'The Imperative To Choose A Qualitive Study Of Women's Decision Making And Use Of The Birth Control Pill', (2008) 6(1-17), *Theory & Health 1477-8211/08.*
[19] Ibid.
[20] C. E. Skitch, *Woman's Destiny and Birth Control: An Essay* (1928).
[21] E. Watkins, *On the Pill: A Social History of Oral Contraceptives 1950-1970* (2001).

pill quite differently. Starting in the 1970s, feminist scholars articulated a new critique of the birth control pill. The radical version of this argument portrayed the pill as an ill conceived, poorly tested contraceptive foisted on women through the collusion of the drug industry and the medical profession. The problem with these claims is that they rested upon assumptions about the 1950s and early 1960s rooted in the logic and social politics of the 1970s. Some feminists viewed the pill wholly as a male conspiracy, which seemed unnecessarily simple. Writing in 1977, Gena Corea noted, "in developing contraceptives, male physicians and researchers have devalued women,"[22]her retrospective interpretation of scientists' motivations and women as needs in the pre-pill era did not consider the very different social climate of the 1950s nor the role that feminist leaders of the 1950s played in the pill's development. Feminists of the next decade began to move away from this narrow indictment of men and correctly identified woman's desire to control their fertility and their important role in the acceptance of the pill in the early 1960s.[23]

The motivations of scientists and birth control advocates to create a new technological solution to the social problems of family planning and population control become clear when viewed through the lens of enthusiasm about science so pervasive in the 1950s. Similarly, women's rapid acceptance of the pill in the early 1960s must be considered in the context of contemporary attitudes toward technology and medicine. While scepticism about the benefits of the applications of the physical sciences grew (particularly in the wake of the development of such war-related technologies as chemical weapons in World War I and atomic bombs in World War II), the biomedical sciences enjoyed a high level of public approval into the early 1960s as a result of the successes of wonder drugs such as antibiotics and the polio vaccine.

One of the most enduring assumptions about the oral contraceptive credits, or blames, the pill for giving rise to the sexual revolution of the 1960s. Contemporary commentators proclaimed that the pill encouraged the loosening of sexual attitudes and behaviour during

[22] Gena Corea, *The Hidden Malpractice: How American Medicine Mistreats Women* (1977) 32.
[23] Ibid.

the turbulence of that decade. In an article written by Leitzell, Watkins argues that the pill alone did not cause the sexual revolution, but, she says, it did cause a contraception revolution.[24]

3.2. The Socio-Medical Dimension: Gender/Professional Relations

The story of oral contraceptives is about more than the development and distribution of a new method of birth control. It reveals much about the evolution of gender relations, particularly the professional relationship between women and their doctors. The debate over the pill's safety posed larger questions about the roles of physicians and patients in health care and helped to produce a new feminist ideology of the body, particularly with regard to reproductive health.[25] This study of a medical technology designed to meet a social need affords an opportunity to examine attitudes toward sex and sexuality, women's health and medicine, and science and technology in late 20th Century culture.

Throughout this period, physicians jealously guarded and claimed birth control unduly as a medical service requiring medical supervision and were unwilling to yield power in this realm.[26] In spite of concerns over health effects and the lack of adequate information on the relative risks and benefits of oral contraceptives, millions of women continued to visit their physicians each year to obtain pill prescriptions.[27] "Both the medical profession and the pharmaceutical industry successfully weathered the storm of concern about the safety of the pill in the late 1960s"[28]

The controversy over the safety of the pill and the subsequent debate about package inserts for patients spurred feminists to action. In her study of the women self-images health

[24] K. Leitzell, 'The Passions Behind The Pill; Helping Women In Poverty Is What Drove The Development Of The Oral Contraceptive' (2007) 143(5) *U.S News & World Report* 68.
[25] Van Vliet H et al, *Triphasic Versus Monophasic Oral Contraceptives For Contraception* (2006). Cochrane Database of Systematic Reviews, 3. Art. No.: CD003553. DOI: 10.1002/14651858.CD003553.pub2.
[26] E. Watkins, above note 7).
[27] P. Campbell & S. Pickard, 'Prescribing and advising on oral contraception', (2007) 5(1) *Nurse Prescribing*, 8, 8-14.
[28] E. Watkins, above 7 at 28.

movement, Sheryl Burt Ruzek noted a transformation in the amount of women who took part in the general feminist movement of the late 1960s. These women used their newfound self-confidence and assertiveness to challenge the practices and assumptions of the traditional, male-dominated medical system in that had been in place for decades.[29] They did not recommend that the pill be banned; as Barbara Seaman said, "you can't put the genie back in the bottle".[30]Instead, they championed women's right to full disclosure and informed consent, not only in birth control but in all drug therapies and medical treatments.

Starting in the 1970s, health feminist scholars articulated a new critique of the birth control pill. The radical version of this argument portrayed the pill as an ill conceived, poorly tested contraceptive foisted on women through the collusion of the drug industry and the medical profession. The problem with these claims is that they rested upon assumptions about the 1950s and early 1960s rooted in the logic and social politics of the 1970s. Some feminists viewed the pill wholly as a male conspiracy, which seemed unnecessarily simplistic. Writing in 1977, Gena Corea noted, "[i]n developing contraceptives, male physicians and researchers have devalued women."[31] Corea's retrospective interpretation of scientists' motivations and women's needs in the pre-pill era did not consider the very different social climate of the 1950s nor the role that feminist leaders of the 1950s played in the pill's development.

The goals of health feminists in the 1970s differed dramatically from those of their predecessors. The women's health movement rejected the hegemony of the medical-pharmaceutical complex and instead advocated lay control over the delivery of health services. Health feminists objected to the birth control pill on several grounds: Insufficient clinical trials, potentially fatal side effects, and a lack of informed consent among its millions of users worldwide. In 1970, feminists interpreted the pill as representative of patriarchal control over women's lives; it was this issue that catalysed the rise of the

[29] S. Ruzek, The Women's Health Movement: Feminist Alternatives to Medical Control (1978).
[30] B. Seaman, *Free and Female* (1973) 106.
[31] G. Corea, above note 22 at 32.

women's health movement.[32]

Although not as well organised or as powerful as the established medical profession and the pharmaceutical industry, health feminists were determined to take on these male-dominated institutions and their traditional assumptions and practices. In the decades to follow, the interests of feminists, female patients, physicians, drug manufacturers, and government officials would clash many times over issues such as diethylstilbestrol ("D.E.S."), intrauterine devices, Depo-Provera, Norplant, and abortion.[33] All of these debates had their own unique set of concerns; however, in each one the matter of informed consent, as articulated in the controversy over the safety of oral contraceptives, remained central.

> "For historians of the 1950s and 1960s, the pill serves as a barometer of changes in attitudes toward science, technology, and medicine. At the same time that eager acceptance of the pill gave way to caution and concern, trust and confidence in medical research and its products also yielded to questioning and uncertainty. However, concern about the safety of the pill did not lead to its wholesale abandonment. In a similar fashion, broader questions about the practice of medicine and medical research did not result in an overhaul of the existing system or in rejection of the applications of medical science".[34]

Oral contraceptives also played a role in the increasing "medicalisation" of women's health care and the growing critique of medicine in the late 1960s. The feminist critique of medicine grew from several sources of dissatisfaction, but the controversy over the safety of the pill and the importance of informed consent in its use served as a catalyst for the growth of the women's health movement. In the early 1960s, women who requested oral contraceptives from their physicians became more active participants in their medical care and in so doing ultimately helped to shift the balance of power in the traditional doctor-patient relationship professionally and largely had a flow on effect in the male-female relationship socially.

Gloria Steinem, in an article on sex and the single woman in the *Esquire*[35], took a different

[32] E. Watkins, above note 7 at 131.
[33] Ibid
[34] Ibid.
[35] G. Steinem, 'The Moral Disarmament of Betty Co-ed', *Esquire* (1962) 154, 154-5.

position in addressing her mostly male audience. She acknowledged sweeping changes in sexual attitudes and behaviour, but did not wholly attribute them to the advent of the pill. Steinem wrote:

> "The pill is obviously important to the sexual and the contraceptive revolutions, but it is not the opening bombshell of either one...The fact that the contraceptive revolution is already in such an advanced stage may explain why the invention that marks its height and perhaps its completion—the first completely safe and foolproof contraceptive pill-is being accepted so quietly"[36]

For this feminist, sexual freedom represented just one aspect of the liberation of women. She applauded the new breed of "autonomous girls" who, "like men are free to have sex, gain an education, work and chose when and to whom they marry" and questioned the theory that women's roles were biologically determined. The message to her male readers consisted of both a challenge and a warning. "The real danger of the contraceptive revolution", she concluded, "maybe the acceleration of woman's role change without any corresponding change of man's attitude toward her role". [37]

Steinem's outspoken prescience was a rare exception in the early 1960s. Others may have been concerned about the impact of oral contraception on single women, but they did not discuss the topic in the pages of the popular press at this time. Instead, and in keeping with the assumption that only married couples practiced birth control, reporters directed their attention to the debate within the Roman Catholic Church over the morality of oral contraception as a method of family planning.[38]

Feminists of the next decade began to move away from this narrow indictment of men and correctly identified woman's desire to control their fertility and their important role in the acceptance of the pill in the early 1960s.[39] The "women's' right to choose" movement after some soul searching began to re-focus on the feminist struggle for freedom of women to make decisions on when and with whom to have children with as a specific aspect of

[36] Ibid.
[37] Ibid.
[38] E. Watkins, above note 7.
[39] G. Corea, above note 31.

women's right.[40] In the shadow of many critics who declared that universal "human rights" had lost its appeal, feminist scholars and activists revised their agenda. They addressed the claim that the idea of "human rights" is a myth, an ideology that seeks universality and offers security only to those who fit within a selected particular version of "human"—the mold of male, western, European, civilised which underpinned an individual who is autonomous, intelligent and free willed. The agenda harnessed the notion of "women's rights" as linked into women's more broad arrival at self-determination and/or liberation.[41]

"New Morality" was in part an emanation towards recognising specific women's rights within the broad and often sweeping generic human rights provisions at the domestic and international level. "New Morality" was anti Freudian, rationalist and possessed a fundamentally optimistic view of human nature.[42] In time this would inspire the modern sex education movement, the utopian middle class effort to abolish jealousy, shame and other "irrational" aspects of sexuality and importantly governments to embrace birth control programs not simply as an economic issue but as an issue that also underpinned women's reproductive and sexuality rights.[43]

[40] K. Granzow, above note 18.
[41] Ibid.
[42] Allyn David Smith, 'Make Love Not War The Sexual Revolution In America, 1957-1977', (1996), *Ph.D Harvard University* 372 pages, AAT 9710393.
[43] Ibid.

3.3. The Medical Dimension: Saint or Devil

Any examination of the influence of the pill must include its impact on medical practice and the doctor-patient relationship. Women's contraceptive choices in the late 1960s involved a difficult risk-benefit calculation: the benefit of a highly effective contraceptive versus the risk of potentially fatal complications, or the benefit of a barrier contraceptive with no side effects (e.g., the diaphragm, the condom) versus a higher risk of pregnancy. The absence of safe, legal abortion as a reliable, ultimate backup measure further complicated the risk assessment. Women wanted more information so that they could decide whether to use oral contraceptives, but in light of inconclusive scientific evidence, doctors struggled with what or how much to tell them. Women's requests for information and their physicians' inability or reluctance to provide adequate information strained relations between women patients and doctors and by 1970 increased the distance between consumers and providers of health care.

Commencing in the late 1960s and peaking in the 1970s, the safety of the pill came into question as women felt confident enough to doubt their physicians' judgment and to demand full disclosure so that they could make their own informed decisions about whether to take the pill. Coupled with this, the rise of active consumer movements critical of new technologies and the multinational companies that profit from them helped launch "medical activism". These different groups responded to issues in particular, birth control and women's health care. The new voices presented interpretations of the pill that were not anticipated by its developers and advocates of the previous generation.

At first, discussion of the health consequences focused on the associated side effects. Most writers reported that some 20 percent of all women taking oral contraceptives experienced headache, breast tenderness, bloating, weight gain, dizziness, nausea, and breakthrough bleeding, but the figures given varied from as low as 5 percent up to 70 percent. Although they were presented as drawbacks, the gravity of side effects was minimised because both scientists and physicians considered the symptoms merely inconvenient annoyances that

would disappear after a few months. In an article in *Ebony*, the president of Planned Parenthood noted that most pill-induced problems could be alleviated by medication. Thus, he recommended antacids for gastrointestinal disturbance, appetite depressants or diuretics for weight gain, and a doubling of the oral contraceptive dosage for breakthrough bleeding. These prescriptions implied that medicine had an answer in tablet form for any minor discomfort associated with oral contraceptive use.

Journalists took the allegations that the pill could cause debilitating and perhaps even fatal diseases more seriously. Reports of women who had suffered from thrombophlebitis and thromboembolism while taking oral contraceptives emerged in 1961 and 1962, and received immediate attention by the press. Following so closely on the heels of the disclosure that thalidomide caused birth defects; the possibility of a link between the pill and blood-clotting disorders was not to be taken lightly. The *New York Times* reported almost daily on developments concerning the pill and thromboembolic disease both in the United States and abroad.[44]

The flurry of alarm died down after an investigation by the Food and Drug Administration failed to find any cause-and-effect relationship between Enovid and abnormal blood clotting, and the number of women taking the pill continued to increase in spite of the health scare. Along with effects of women's health, the pill also came under scrutiny for its potential to impact female morality.[45] A cartoon in *Playboy* summed up the public's nonchalant response to medical concerns about the pill in 1963. It showed a scantily clad cigar girl offering "cigars, cigarettes, pills" to a couple in a nightclub.[46]Still, concern was kept alive by the popular press and would be revived a few years later by studies published in medical journals.

In 1964, *Newsweek* noted acerbically: "All the flurry seemed to prove was that when it

[44] *New York Times*, 7 April, 1967, p.84).
[45] E. Watkins, above note 7.
[46] *New York Times*, 7 April, 1967, p.84.

comes to analysing medical research, Wall Street is woefully inept".[47] Thus the public received the message that financiers and journalists ought not to be trusted on medical matters. Only scientific experts had the authority to judge the merit and significance of research, and they firmly rejected any causal link between the pill and cancer. Through the end of 1964, the media publicised the possibility that oral contraceptive use could protect against cancer; they dismissed concerns that the pill might promote cancer. This view matched the mood of optimism surrounding the pill; when popular opinion turned toward scepticism in the late 1960s, the relationship between the pill and cancer would be re-examined.

The debate over informed consent and oral contraceptives also had the effect of increasing government regulation in the practice of medicine. Although the government had become involved in some areas, such as the licensing of physicians, funding of medical research, and regulation of drugs, physicians had successfully blocked government intervention in the doctor-patient relationship before l970. Although the story of the pill continues to the present, the negative dimension was attenuated after the pill's first decade, in the watershed year of 1970, when the FDA ordered manufacturers to include an informational pamphlet on the health risks of oral contraceptives in every package of birth control pills. The lengthy inserts in tiny type found in many prescription drug packages today are the legacy of that crusade.

3.4. Population Control: The Making of the Fertility "Atom Bomb"?

The roots of population control can be traced back to the Reverend Thomas Malthus at the end of the 18th Century.[48] Malthus pointed out a discrepancy between the rate of growth of a population and the rate of growth of its food supply. According to Malthus, since the amount of food increased arithmetically, that is at a fixed rate (a statement since proven incorrect); the potentially geometric rate of population growth had to be controlled by

[47] 'Enovid Exonerated', *Newsweek* (New York), 29 June 1964 at 80.
[48] T. Malthus, *an Essay on the Principle of Population* (1973).

either positive or preventive checks.[49] The former consisted of premature deaths from causes such as disease, war, and famine; the latter consisted of the forestalment of births by delayed marriage and abstinence.[50] Malthus did not include birth control as a preventive check on population growth; he considered the notion of contraception to be abhorrent. His gloomy forecast of the ebb and flow of population growth was not merely a theoretical treatise; Malthus used his thesis to argue against charity in the form of England's poor-laws.[51]

In the early 20th Century, the eugenics movement in America played on similar fears that had inspired Malthus in the 18th Century—a teeming underclass. Eugenicists drew attention to differential fertility rates of different social classes and ethnic groups within the United States and expressed alarm that the upper-class, native, white population had a lower birth rate than the lower-class, immigrant population.[52] Many who embraced the ideology of eugenics in the 1910s and early 1920s sought to restrict immigration into the United States. "In 1924, their efforts resulted in the passage of the Johnson Act, which set strict limits on the number of immigrants from countries other than those of northern Europe".[53] Eugenicists also proposed to counteract the alleged "race-suicide" by encouraging those they deemed "fit" (middle- and upper-class whites) to have lots of children (positive eugenics) and those they deemed "unfit" (immigrants, the poor, the handicapped) to control their fertility (negative eugenics).[54]

In spite of the warnings from demographers, neither the US government or the newly established United Nations, nor the major foundations were initially willing to include family planning in their programs. Birth control was not only a delicate issue because it pertained to sex, but was also a religiously sensitive issue particularly with the powerful and combative Catholic Church. Western nations and philanthropic organisations did not

[49] Ibid.
[50] Ibid.
[51] Ibid.
[52] See generally E. Watkins, above note 7.
[53] Ibid.
[54] Ibid.

want to be accused of political, cultural or religious insensitivity in their crusade to spread the population control message particularly in the Third World. In any case the pill then was still very expensive in the West, and doubly so in the Third World where low incomes were prevalent and it was felt that energies be focused on the development of the Intra-Uterine Device ("I.U.D.")—an inexpensive, low-maintenance method of birth control.

However, it was not long before contraceptive research was given a great stimulus with the growing perceived need by the developed countries to halt the rapid growth of population in the Third World. Partly this was as a reaction to simple technological, relatively inexpensive public health measures introduced by various aid agencies which had seen Third World countries experience sharp decreases in infant and adult death rates and a corresponding major increase in population growth. Vast sums of money were poured into research in human reproduction with a new generation of demographers shifting their focus beyond the West to the international scene, where they identified a trend of rapid population growth in underdeveloped nations. The new advocates of population control assumed that overpopulation would hinder economic development, which in turn could lead to political instability. In the context of the Cold War, American strategists considered it vital to foster economic progress in the capitalist tradition within developing countries in order to prevent their defection to the Communist bloc.

The population crusade drew criticism for its insensitivity to individual needs and its palliative approach to problems requiring more complex social and economic solutions. During the 1960s, advocates first based their policies on the pill on cost. Later in the decade, the population control position shifted in response to the emerging debate over the safety of the pill. Part of the advocates' concern focused on the pill's use as a technological "fix" to the complex social problems of overpopulation and poverty. Controlling the fertility of women, they argued, was more than a matter of providing access to contraception; it required that the social, cultural, educational, and economic situation of

women be addressed as well.[55] This issue dovetailed with the reaction of the women's health movement against the excessive use of technology in medicine.

It is to be borne in mind that decision-making around pill use as an element of reproductive rights and control is in the words of Kara Granznow "complicated, embodied, relational and dynamic.[56] Even with the advent of the crusade of "women's right to choose", the movement also functioned as a key political rallying call for activists/entities working towards the development of women's control over reproduction.[57] The growth of the women's "rights" movement has been about a lot of different things. In North America for example the famous landmark case of *Roe v. Wade*[58] started a specific relationship in North America between women's rights and women's right to choose.[59] However, this case was soon to be drawn into the embrace of politics despite its pedigree as a constitutional and hence legal settlement on a key aspect of women's reproductive rights. Increasingly, since then the U.S.A. and many governments across the world now asserts the term "pro-choice" as primarily a political objective towards safe, accessible and legal abortion care for women and secondarily as a legal issue.[60]

The "discursive move from a 'rights-based' to a "choice-based" argument is one that demotes the priority placed on women's social positions and reproductive work.[61] After all it is of note that the discursive union of "rights" with "choice" continues to be on the discussion table. The thorny issue that abounds is whether consumer culture has a role to play in the realm of women's' reproductive rights and access to contraception. If so if it is a question of choice and there is a hierarchy of guarantees, then choice would be at the

[55] Ibid.
[56] K. Granzow, above note 18.
[57] Ibid.
[58] 410 U.S. 113 (1973).
[59] Solinger, *Social Theory & Health, 2008, 6, (1–17) 2008 Palgrave Macmillan* available at www.palgrave-journals.com/sth2001.
[60] K. Granzow, above note 18.
[61] Solinger, Social *Theory & Health*, 2008, 6, (1–17)r 2008 Palgrave Macmillan Ltd available at www.palgrave-journals.com/sth2001.

bottom of all "guarantees".[62] After all choice is a consumer driven derivative that is in turn lorded over by individual preference. The Article now turns to enunciate in detail, the matter of the pill, women's rights to reproduction and sexuality against the landscape of rights discourse.

3.5. Not Right Enough? Fleshing out Women's Rights within the Cradle of Human Rights

Contraception and family planning may well seem to fall largely in the sphere of medicine and of course socio-cultural discourse. This however undermines the reality that it does also engage rights discourse. As Dorothy Shaw notes:

> The reduction of commitment to family planning is a denial of several rights, and aggravates economic challenges in low income countries. These include the right to decide freely whether or when to have children, and the right to liberty and security for women, who have the right to not die from pregnancy related causes. The right to life has been marketed by religious groups with a narrow definition not intended in the scope of international law, but shows how effective the marketing of rights can be.[63]

The oral contraceptive pill is a cultural icon and has come to represent women's social advancement. The pill (rightly so) is often credited as a major factor in the 1970s' Western "sexual revolution" and in women's subsequent "liberation".[64] Most importantly though is that the pill forms part of the complex mosaic that was at the vanguard of women's attainment of the sexual and professional rights and freedoms long exclusively belonging to men . Women are able to have babies later in life, achieve higher career status, make more money and live outside a traditional nuclear family. In this section the authors turn to consider the issue of reproductive and sexuality rights within extant regional and international human rights regimes as well as within the domestic sphere.

3.5.1. Into the Ring: Hollowing out Universalist Human Rights

[62] Ibid.
[63] Dorothy Shaw, 'Sexual And Reproductive Health: Rights And Responsibilities' (2-8 December 2006) 368 (9551), *The Lancet* 1941.
[64] K. Granzow, above note 18.

As noted in Section 3.4. of this Article, the "discursive move from a 'rights-based' to a "choice-based" argument is one that demotes the priority placed on women's social positions and reproductive work.[65] If so if it is a question of choice and there is a hierarchy of guarantees, then choice would be at the bottom of all "guarantees".[66] However the reality was, is and remains that matters relating to contraceptive use and (the pill) for that matter go to the very heart of a distinct subset of human rights that is unique to women. In this regard, from the late 1960s various feminist scholars and activists in domestic and international fora began facing the need to distinguish rights and choice and hence consolidate women's rights as a specific subset of the universal human rights regime not beholden exclusively to matters of choice and politically/religiously driven moral crusades. Feminists argue sexual equality cannot exist without procreative freedom. "Unwanted or miss-timed childbearing can curtail a woman's educational and work opportunities, constrict her social role, and exclude her from full participation in 'the marketplace and the world of ideas'."[67] This reality informed (from the 1960s) the move towards specifically recognising sexual and reproductive rights as a central part of basic human rights. Regional and international human rights instruments include express guarantees of freedom of association,[68] rights against arbitrary or unlawful interference with privacy,[69] protection of family life[70] and the right to marry.[71] In this context, the right to privacy is usually

[65] Solinger, above note 59.
[66] Ibid.
[67] The Centre for Reproductive Law and Policy Celebrates FDA Approval of Emergency Contraception Pill (Ctr. for Reprod. L. & Pol'y, Wash., D.C.), September 1998.
[68] See, e.g., African Charter on Human and Peoples' Freedoms, OAU Doc. CAB/LEG/67/3 rev. 5, art. 10(1), 21 I.L.M. 58 (1982), entered into force 21 October 1986 [hereinafter African Charter]; International Covenant on Civil and Political Rights art. 22(1), opened for signature 9 December 1966, 999 U.N.T.S. 171 [hereinafter ICCPR]; Convention for the Protection of Human Rights and Fundamental Freedoms art. 11, opened for signature 4 November 1950, 213 U.N.T.S. 222 [hereinafter ECHR]; Universal Declaration of Human Rights, G.A. Res. 217 A (III), art. 20(1), U.N. Doc. A/810 (10 December 1948) [hereinafter UDHR]; Charter of Fundamental Rights and Freedoms of the European Union art. 12 (1), 2000 O.J. (C 364) 1 [hereinafter European Charter].
[69] See, e.g., American Convention on Human Rights art. 11, opened for signature 22 November 1969, 1144 U.N.T.S. 123 [hereinafter ACHR]; ICCPR, ibid. art. 17; ECHR, ibid. art. 8; UDHR, ibid., art. 12; American Declaration of the Rights and Duties of Man art. V, O.A.S. Res. XXX, 2 May 1948.
[70]Aaron Xavier Fellmeth, 'State Regulation Of Sexuality In International Human Rights Law And Theory' (2008) 50, *William and Mary Law Review*,802
[71] African Charter, above note 68, art. 18; ACHR, above note 69, art. 17; ICCPR, above note 68, art. 23; ECHR, supra note 68, arts. 9 and 12; American Declaration, above note 69 art. VI.

construed not merely as the freedom to maintain secrecy, but as freedom of intimate conduct, association, and expression without fear of arbitrary state interference.[72]

The Universal Declaration of Human Rights (U.D.H.R.) adopted in 1948 lists rights and freedoms that "everyone is entitled to…without distinction…such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."[73] Of particular importance is that fact that the Declaration calls for equality in marriage [74] and equality in the workplace.[75] The authors' note however that the U.D.H.R. did not specifically protect or proclaim these rights for women but rather couched this within the general and generic terminology of human rights. As, has been noted in Section 3.2. of this Article the initial shortcomings of this premise seemed to be that it was based on the male (European/Western)—as the epitome of the autonomous, intelligent and free willed individual. While the U.D.H.R fails to specifically address women's rights the two subsequent legally binding international covenants that it generated fleshed out its general provisions to echo with women's rights (albeit at a generic level). For the first time special protections/guarantees for women were included. The International Covenant on Economic Social and Cultural Rights[76] calls on States "to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights."[77] Hand in hand, the International Covenant on Civil and Political Rights [78] encourages member States "to ensure the equal right of men and women to the enjoyment of all civil and political rights."[79] Specifically, the Covenant provides that "State Parties…shall take appropriate steps to ensure equality of

[72] See Derek McGhee, 'Persecution and Social Group Status', (2001) 14 *Journal of Refugee Studies* 20, 25 (2001).
[73] Universal Declaration of Human Rights art. 2, para. 1 (1948) [[hereinafter Universal Declaration].
[74] Ibid, art. 16.
[75] Ibid. art. 23. Article 23 simply states that "[e]veryone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment [and] to equal pay for equal work."
[76] ICESCR, International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 315 (entered into force 3 January 1976) [hereinafter ICESCR].
[77] Ibid.
[78] See International Covenant on Civil and Political Rights {hereinafter ICCPR], 19 December 1966, 999 U.N.T.S. 172, 173 [hereinafter ICCPR].
[79] ICCPR, See International Covenant on Civil and Political Rights, Dec. 19, 1966, 999 U.N.T.S. 172, 173 [hereinafter ICCPR].

rights and responsibilities of spouses as to marriage, during marriage and at its dissolution."[80]

Critics of regional and international human rights law regimes and their efficacy in addressing women's reproductive and procreative rights point to the fact that far from offering clear guidance on sexuality, "these documents merely state general norms of personal and familial privacy and free association intended to protect individuals from arbitrary government intrusion into intimate relations."[81] There is always a risk that states will rely on these broadly drawn exceptions to intrude into interpersonal relations unnecessarily. Aaron X. Fellmeth offers an incisive example: "the state may claim that outlawing the use of contraceptives in private sexual relations advances an important public policy of maintaining population growth or preventing condemned fornication, and thereby constitutes permissible state regulation of sexuality and other intimate relations."[82] It was with this in mind that from the late 1960s, various international fora sought to address the specifics of reproductive and sexuality rights through the prism of women's rights rather than the generalities of broad, generic human rights provisions.

The concept of sexual and reproductive rights—the right to freely make childbearing decisions—was first recognized at the 1968 World Conference on Human Rights in Tehran, Iran, and was embraced by the vast majority of nations at subsequent United Nations conferences on population and development.[83] Some three decades later, the International Conference on Population and Development (ICPD) held in 1994 in Cairo, Egypt a clear consensus emerged in policy formulation regarding matters of population and economic development. The move was essentially from "a demographic-centred approach to one of human rights, gender equality, and social and economic development in connection with sexual and reproductive health and rights".[84] This significant gathering agreed that policies

[80] Ibid.
[81] A. X. Fellmeth, above note 70.
[82] Ibid.
[83] Serra Sippel, 'Achieving Global Sexual and Reproductive Health and Rights', (2008) 35(1) *Human Rights Chicago 13, 13-18.*
[84] See Sippel, Ibid.; s*ee also* D. Shaw, above note 63.

related to voluntary family planning and population are essential in promoting informed choice, quality of care, and freedom from coercion.[85] A major pronouncement was the recognition of women's individual rights and responsibilities in reproductive decision-making as a key to advancing economic development.[86]

In the course of the 1990s, United Nations (U.N.) conferences in Nairobi, Istanbul and Beijing focused in large part on issues affecting women, including reproductive rights, poverty, armed conflict, and participation in the political and economic arenas. The result has been that in many subsequent documents one finds the inclusion of language in U.N. Convention documents which focuses attention on specific women's rights and aspirations in the concerted bid to change women's position in society, and seems to arguably recognise new women's human rights.[87] As Professor Hillary Charlesworth notes: "'Women's human rights' is a term designed to highlight the inclusion of women's issues into the mainstream of international rights discourse. It refers to those rights which deal either directly or indirectly with women".[88]

3.5.2. Sparring in Court: Old Battles, New Outcomes

Most of the legal discourse on women reproductive rights has turned mostly on the axis of the fundamental right to privacy whether at the domestic or international arena. The U.S. Supreme Court has led the way in favour of procreative autonomy as both a legal and importantly a constitutional right. Although limits have been placed on this freedom, the fundamental right to privacy, inherent in procreative autonomy, has been repeatedly

[85] Ibid.
[86] Ibid.
[87] See e.g. Diane Otto, A Post-Beijing Reflection on the Limitations and Potential of Human Rights Discourse for Women, in Kelly D. Askin & Dorean M. Koenig (eds.), 1 *Women and International Human Rights Law*, (1999) 115, 126-31; Christopher Preston & Ronald Z, Ahrens, 'United Nations Convention Documents In Light Of Feminist Theory' (2001) 8, *Michigan Journal of Gender Law*, 1, 1-43.
[88] Hilary Charlesworth, General Introduction, in 1 *Women and International Human Rights Law*, ibid. at xix.

protected. In *Griswold v. Connecticut*,[89] the Supreme Court found a married couple's decision to use contraception to be a private matter, a decision to be made "within a zone of privacy."[90] The Connecticut law at issue in the case, which banned the use of contraception by a married couple, was held unconstitutional because it deprived liberty without due process of law. In a robust enunciation, Justice Douglas wrote that the Court was faced "with a right of privacy older than the Bill of Rights"[91] asserting that decisions regarding marriage and reproduction are "intimate to the point of being sacred."[92] This robust position was reiterated seven years later in *Eisenstadt v. Baird*[93] where the Court noted that that privacy and procreative freedom were fundamental rights in a judgment that struck down a Massachusetts statute forbidding the distribution of contraceptives to unmarried individuals.

In *Erickson v. Bartell Drug Co*,[94] the U.S. District Court for the Western District of Washington ruled that Bartell's omission of prescription contraception from its prescription drug plan was contradictory with the requirements of the Pregnancy Discrimination Act (PDA).[95] This decision has wider ramifications over and above simply as an as a highly important stride forward in the battle for equal drug coverage for women. Rulings of this nature have a flow on effect to administrative tribunals and also feed into the legislative process for contraceptive equity and the mainstreaming of women's health needs as a matter of women's rights.[96] In the words of Preston and Ahrens: "Birth control, abortion, counselling, sex education, and sexual orientation are all areas in which society has denied women power over their own bodies. By controlling their power of choice in these areas, women reclaim autonomy".[97] All in all it is clear that access to contraception is the most

[89] 381 U.S. 479 (1965).
[90] 381 U.S. at 484.
[91] Ibid. at 486.
[92] Ibid.
[93] 405 U.S at 453.
[94] 141 F. 2d 1266 (W.D. Wash. 2001).
[95] Ibid. at 1271.
[96] Tamar Lewin, "The Pill" Must Be Part of Insurance, Intelligencer J., 15 December 2000 *available at* 2000 WL 3828147.
[97] Christopher Preston & Ronald Z, Ahrens, 'United Nations Convention Documents In Light Of Feminist Theory' (2001) 8, *Michigan Journal of Gender Law*, 1-43

important step towards gender equality. One need only recall the rather anodyne yet seemingly prevalent statement expressed in *Loving v. Virginia*,[98] where the court opined that: "The freedom to marry has long been recognised as one of the vital personal rights essential to the orderly pursuit of happiness by free men."

IV. CONCLUSION

A number of social and demographic changes can be attributed to the pill directly or indirectly: the expansion of sexual liberalisation: the rising age of marriage, equality of education for men and women, increased autonomy for women, the increase in the number of single people as the baby boom generation came of age, and the reaction of the baby boom generation against the perceived "hypocrisy of their elders." Many of those trends had begun in the 1960s and continued to expand in the following decade. In the 1970s, fewer people felt obliged to wait until marriage. Sex became "democratised" as premarital sex spread to the mainstream population.[99]

Five decades on the pill is still going strong and looks set to stay the course. Public concern about its adverse health effects has died down or is at least in a state of quiescence until the next medical report appears. In spite of its lack of protection against the HIV virus, the pill remains the most popular reversible method of birth control among women; given the trend in contraceptive use, it seems unlikely to lose its first-place ranking to any other method. After decades, of physicians' authority in the realm of birth control and subsequently the appropriating of control over contraceptive services, the pill along with other methods played a significant role in eroding this monopoly. Modern contraceptives are now largely over-the-counter items sold alongside perfume, tissue and magazines.

Failure to promote sexual and reproductive rights has a particularly devastating impact on women. Currently there are alarmingly high rates recorded globally of women experiencing

[98] *Loving v. Virginia*, 388 U.S. 1, 12 (1967) [Emphasis the authors'].
[99] S. Coontz, *The Way We Never Were: American Families And The Nostalgia Trap* (1992).

illness and death related to sex and reproduction. In addition to the emotional, financial, and human costs, unintended pregnancy damages the national and world economies and communities. The adverse social and economic consequences of unintended pregnancy fall most harshly on women.[100] The U.S. Supreme Court recognized that reality when it upheld a woman's right to choose abortion in *Planned Parenthood v. Casey*,[101] stating that "[t]he ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives."[102] Improving women's political, social, economic, health status and empowering them by allowing autonomy is highly important in all societies.[103]

A great deal of progress has been made in the last two decades or so, however governments have often displayed a schizophrenic attitude to reproductive health and women's rights. Often, some have impeded to implement widespread approaches to sexual and reproductive health and rights.[104] For example U.S. domestic and importantly foreign policy on this matter under the stewardship of the George Bush Jr. administration was restrictive and at times obstructive to global sexual and reproductive health rights"[105] To this must be thrown in the other heavyweight—The Vatican—whose very significant weight and authority inevitably always cast a long ominous shadow on international conferences focusing on reproductive rights either through its very presence or its reaction.

Liberty and recognition of the sanctity of life collectively lies within equality and universal respect for bodily integrity of both sexes. Liberty and personhood require autonomy in making procreative decisions. Bodily integrity is thus about permitting and respecting an individual's own moral decisions. In essence the ability to make procreative decisions means the ability to define oneself in profound way and thus those attributes of an

[100] Sylvia A, Law. 'Sex Discrimination And Insurance For Contraception', (April 1998), *Washington Law Review* 368
[101] *Planned Parenthood v. Casey,* 505 U.S. 833, 856 (1992).
[102] Ibid.
[103] Serra Sippel, 'Achieving Global Sexual And Reproductive Health And Rights' (Winter 2008) 35(1) *Human Rights Chicago 13, 13-18*
[104] S. Sippel, 'above note 83.
[105] Ibid.

individual which are irreducible to selfhood.[106] This means that the need to incorporate a more collaborative approach that promotes and protects women around the world on matters of sexual and reproductive health rights must remain part of the agenda in advancing sexual and reproductive health and rights globally.[107]

The next big thing in the future of oral contraceptives seems likely to be the recently developed male oral contraceptive pill. Proclaimed to be 99% effective when used as a pregnancy preventative,[108] this form of contraceptive may well herald a shift of emphasis from the female-centric method of contraception and empower males more in the contraceptive use spectrum. One can only hope that this two-way avenue will create an arena for positive interactions but more importantly create an added co-relative responsibility on males to ensure that the imbalance that often exists between sexes and tends to weigh more on females is re-adjusted.

[106] Betty Taylor et al., Feminist Jurisprudence, Women and the Law: *Critical Essays, Research Agenda, and Bibliography, Reproductive and Sexual Health* 451-52 (1999).
[107] S. Sippel, above note 83.
[108] S. Ainsworth, above note 1.