

BOOK REVIEW

DATAI KINSHI TO YUSEIHOGOHO
(The Prohibition of Induced Abortion
and the Eugenic Protection Law)

TENREI OTA

Tokyo, Keio-shakagaku Kyokai, 1967, 358 pp. in Japanese.

This is one of two important works on induced abortion recently published by the Japanese. The other work is a monograph in English (translated from the Japanese) that reports the findings of a series of studies recently conducted on side-effects of induced abortion.¹ These publications are extremely timely; they begin to answer some of the many questions the rest of the world has long had in regard to the induced abortion situation in Japan. This reviewer for one has hoped for nearly a decade now that the Japanese would report on their experience more systematically than they had been reporting and help clarify our understanding of it. Now that induced abortion has come into sharp focus in many places throughout the world, including the United States where liberalization has taken place in three states and is being debated in many others, the need for the Japanese story to be told is greater than ever.

That the story which focuses on the historical aspect of the problem is told in this volume by Ota enhances the importance of this work. Ota, a gynecologist, is the inventor of the intrauterine ring that bears his name. The Ota ring was in use in Japan and some of the neighboring countries long before the newer intrauterine devices (the coil, the loop, etc.) appeared as many developing countries

have recently adopted them for their national programs of family planning. Few know, however, that he is also a co-sponsor (as a Socialist member of the Lower House in the Diet in the late 1940's) of the original Eugenic Protection Law, which liberalized abortion in post-war Japan, and gave the law the title it bears. Given this background of the author, it is understandable that this book is a statement of a position on induced abortion as well as a narration of history on the enactment of the Eugenic Protection Law.

His position on induced abortion merits careful attention whether one agrees with it or not. To know his position is to understand the original intent of the often misunderstood Eugenic Protection Law. An earlier version of the law was drafted by Ota, but the one passed in 1948 was a compromise version to win support from the more conservative elements of the Diet. Although the later amendments virtually brought the law back to what was originally intended by Ota and his liberal colleagues, it is worthwhile here to spell out Ota's own position on the matter. His position would seem to be based on his observation from many years back that persons in the lower strata of society are handicapped by their life conditions and cannot enjoy good health, especially because of the pressure of large families. Both mothers and children of these families are likely to suffer from substandard health that is worsened by the unchecked growth of their families. To help alleviate this condition, contraception should be made available to them. The contraceptive techniques to be offered them, however, should be medical techniques, such as sterilization and the intrauterine device, which are highly effective. In the absence of effective techniques or their use, induced abortion by a competent specialist should be easily available to these mothers. This position is consistent with his left-wing political affiliation (common among many of the leading advocates of birth control in the pre-war years) and his preoccupation, in the 1920's, with the development of an effective contraceptive technique. His basic conviction, in short, has been that mothers, especially in the disadvantaged strata, deserve help in protecting their health, which is intimately related to their childbearing experience. This help can be given most effectively if medical doctors are allowed by law to

prescribe the most effective contraceptive techniques available and to resort to induced abortion at their discretion. The latter discretion would not be confined to strictly medical indications, but would be extended to include social and humanitarian indications as well.

Ota further takes the position that both induced abortion and sterilization of either the male or the female are advisable for eugenic purposes. He develops this position fully in the last chapter of the book, where he boldly proposes a system by which members of society be classified by their genetic qualities and reproduction be restricted to those of superior qualities, but without denying marriage and sexual relations to the others. Although this proposal may be dismissed as visionary or ideologically distasteful by some, it does spell out the logical implications of some of the eugenic premises that underlie the law under review in this book. The law encourages and permits and even provides for compulsory induced abortion and sterilization for those with hereditary defects. Clearly, it was inspired by eugenic as well as health considerations; hence, the words "eugenic" and "protection" in the title of the law. Demographic arguments were foremost in the discussion of the law, and to be sure they had their appeal given the conditions of the time, but they were secondary to the eugenic and health arguments.

The reviewer's impression is that the "eugenic" aspect of the law is a survival of the National Eugenic Law that was passed in 1940 after the fashion of the 1936 Sterilization Law of Nazi Germany. The Eugenic Protection Law was ostensibly a revision of this earlier law, which prescribed induced abortion and sterilization for eugenic purposes, but proscribed their use for any other purposes. Very few abortions and sterilizations have been performed for eugenic reasons under either of these laws. The Eugenic Protection Law, however, has served the purpose of making induced abortion available to those who want it. The clause that permits economic considerations as justifiable cause for induced abortion (which was in Ota's original draft, but was deleted in the law as it was passed in 1948 and again introduced as a revision in 1949) has practically removed any barrier to a woman's seeking an abortion, although a directive from the Ministry of Health and Welfare in 1953 specifies that

economic considerations apply only to those on welfare or who are medically indigent. Interestingly, the "economic" clause does not apply to sterilization, which incidentally is referred to in the law as "eugenic operation." This is especially so since the deletion, in 1952, of the original requirement that each application for induced abortion be reviewed by a local screening board.

The law as revised in 1952 recognizes the need to consider contraception as a more desirable alternative to induced abortion. It provides for the training and certification of family planning instructors. The insertion of an intrauterine contraceptive device, though not formally approved by the government, is specifically restricted to medical doctors. Ota asks whether this specification implies a tacit approval of the use of his ring.

In any case, Ota urges the government to approve the use of intrauterine devices under medical supervision. Only by such an approval does he see the original purpose of the Eugenic Protection Law being fulfilled. Otherwise, the law must suffer the criticism frequently directed against it that it is merely a law "to encourage induced abortion." He is unsparing in his criticism of the family planning movement in Japan for having long neglected the more effective, medical techniques of contraception and the government for not having approved the intrauterine device in spite of its official encouragement of contraception avowedly to reduce the incidence of induced abortion.

Ota regards as one of the most important conditions that facilitated the passage of the Eugenic Protection Law as early as 20 years ago the sympathetic position taken by American public health officials on the staff of the Occupation Government, which then included many persons of liberal political views. They were in a position to block its passage if they wished, but their own views apparently precluded their taking that option. Other facilitating conditions are mentioned by him, such as: 1. the economic difficulties of the time, 2. the history of wide-spread resort to induced abortion and infanticide as recently as in the nineteenth century, and 3. the lack of organized opposition from the Catholic minority in Japan. The law that made induced abortion a crime in Japan

was of recent origin; it was established in 1880 after the French law. Lacking a Christian tradition on which the law was obviously based, it never won complete acceptance in Japan. Several efforts were made, even before the war, to have that law liberalized, though to no avail. The post-war law did not come out of the blue. It probably is no accident that the original proposal for the Eugenic Protection Law came from a handful of Socialist members of the Lower House of the Diet at a time when Japan had a Socialist Government under Prime Minister Katayama. But the fact that the final version was a compromise bill with the conservatives of the Upper House and was presented as a non-partisan proposal betrays the mood of the time. Significantly, eight of the ten legislators who became sponsors of the bill in 1948 were medical doctors and the two non-medical persons were women, one of whom, Mrs. Shizue Kato, had been prominent in the birth control movement since the early 1920's.

Although the reviewer has focused on the author's polemics in this review, the book is rich in historical materials on the techniques of induced abortion and contraception in pre-modern Japan, the evolution of the law on induced abortion, pre-war attempts by some legal scholars and medical doctors to liberalize the law and to expand the medical indications for induced abortion, and an all-too-modest review of the development of the author's own intrauterine device. No future studies on induced abortion can afford to ignore this important contribution from Japan.

JOHN Y. TAKESHITA

REFERENCE

¹ Family Planning Federation of Japan, HARMFUL EFFECTS OF INDUCED ABORTION, 1966.