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FEMINISM AND THE RIGHT TO LIFE

Summary

Feminism as a movement is strongly connected with a political and philosophical reality which came after the French Revolution. The feminist movement in the 19th and early 20th century was focused on obtaining for women the right to vote and equal salary for work of equal value. The activists of this movement were called suffragettes. After their victory, the majority of feminists started to present abortion as a human right, thereby in fact refusing unborn children the right to life. The modern term „reproductive rights”, in contemporary feminist understanding of these words, means a right to decide about procreation both in morally acceptable and unacceptable way (e.g. allowing abortion). However, some feminist initiatives are worth to analyse as a way to protect human dignity, e.g. the prohibition of prostitution in France, which was supported by the French feminists. Finally, it should be said that feminism is a very differentiated movement and some feminists do not accept abortion. Also, not all women, or probably even not the majority of women, feel represented by the feminists.

KEYWORDS

abortion, feminism, right to life, reproductive rights, human dignity, suffragettes

SŁOWA KLUCZOWE

aborcja, feminizm, prawo do życia, prawa reprodukcyjne, ludzka godność, sufrażystki

1. INTRODUCTION

In the title of this article the terms „right to life” and „feminism” are used. When using the words „right to life” we recognize that there exists a possibility to require respect and protection of life. Ways of establishing and the scope of this right will be explained further in this article. Feminism is a family of political and sociological movements born after the French Revolution. Feminism, according to the word’s etymology, relates to women. Obviously, there are connections between women and life, starting from their own rights. Also, it is worth noting that not all women, or probably even not the majority of women, identify with feminism. In this article I would like to analyse firstly, what, in fact, is the „right to life”, and what, actually, are the biggest threats for its implementation. Then, I hope to successfully describe history, present diversification of feminism, and the feminine organisations which are not part of the feminist movement. Next, I would like to analyse feministic way of looking at the scope of the right to life. Finally, I describe other solutions of dilemmas relating to the right to life, offer my own opinion on the subject, and conclude with a recapitulation.

2. WHAT DOES „RIGHT TO LIFE” MEAN?

It is interesting what we precisely mean when using the term „right to life”. According to the traditional division between rights and freedoms, we can expect some role of state in providing this right. In fact, the rule of state power is to protect life and punish breakers of its rule. Firstly, we have to define the subjective area of this right. We talk about the right to life in relation to human beings. This is worth to be underlined today, because there are some philosophical movements which are trying to present differentiation between human and animals as a species chauvinism¹. Other important thing is to define when a human being starts

¹ J. Woleński, *Szowinizm gatunkowy, humanitaryzm i animalocentryzm*, „Przegląd Filozoficzny – Nowa Seria” 2015, Vol. 94, No. 2, p. 25.

its existence. In fact, it happens at the moment of conception², when genetical specialisation of a particular person is being established. How do we refer to the differentiation of the right to life during the development of a human being? Some people argue that the fetus has no rights because he/she does not feel. In order to demonstrate the flaw of such a point of view it is enough to notice that a sleeping person also does not feel and it is possible to kill them not generating their pain or fear. Another important question is to decide if the right to life is independent of any human actions. In my opinion, killing an innocent person is in all cases morally unacceptable³. In some cases it is possible to tolerate the death of an innocent one to avoid some greater evil, but never when it is caused intentionally. As to the death penalty, I think that the present-day stage of development of the penitentiary system has given us possibility to totally eliminate this punishment from the Penal Code and penal policy⁴. Additionally, I think also health and conditions of living should be seen as protected under the same right. Therefore, the creation of conditions of living that result in much higher mortality (e.g. lack of food) is also a violation of this right, similarly as the injuries that make a person unable to perform some essential activities (e.g. the amputation of a hand or sterilization). So we can speak about the narrow (concerning only the life as such) and wide (considering also health and the living conditions) meaning of the right to life.

2.1. SOURCE OF HUMAN RIGHTS

We can present two points of view on the question of law and human rights. First, according to the legal positivism, that right is only what is ordered by state⁵. The other position is assumed by the theories accepting natural law (*ius naturale*). They perceive natural law as standing higher than positive law and even envisage the possibility that the latter is overruled by the former⁶. In fact, nowadays the constitutional legislators see human rights as independent of anyone's will, which we can see for example in the Constitution of the Republic of Poland⁷ or in the American Declaration of Independence⁸. The doctrine accepting the *ius naturale* perceives its source differently. It is the authors of the Declaration of Inde-

² M. Stepulak (ed.), *Małżeństwo i rodzina wobec aborcji*, Lublin 2010, p. 132.

³ Encyclical of Holy John Paul II *Evangelium vitae*, No. 53.

⁴ Catechism of the Catholic Church (from 1992 with changes), canon 2267.

⁵ A. Dyrda, *Realizm prawniczy a pozytywizm prawniczy*, „Avant” 2018, Vol. IX, No. 1, p. 49.

⁶ D. Drapiewski *Prawo naturalne w ujęciu św. Tomasza z Akwinu*, „Perspectiva. Legnickie Studia Teologiczno-Historyczne” 2005, Vol. IV, No. 2, p. 20.

⁷ The Constitution of the Republic of Poland of 2 April 1997, “Journal of Laws” 1997, No. 78, item 483, Art. 30.

⁸ The United States Declaration of Independence of 4 July 1776.

pendence or Catholic thinkers⁹ who clearly perceive the source of human rights in the God's act of creation. Considering the fact that not all people believe in God, consensus is achieved by accepting that the source of human rights is human dignity, without penetrating this source in more detail, as in the UN documents¹⁰. In fact, I agree with the ideas recognizing natural law as a source of human rights and duties.

2.2. RIGHT TO LIFE IN HISTORY

As we can see, according to natural law theory, some rights exist independently of their recognizing. However, it is interesting to see how so fundamental a right as the right to life was perceived during history. In ancient times equality of all human beings was not a popular idea. It resulted in differentiation of penalty for killing a person according to the perpetrator's status. For example, in ancient Mesopotamia killing a citizen of equal status resulted in death penalty, while the life of a slave was less worth. The death of a house owner, caused by a faulty construction of the house, resulted in a death penalty for the builder of the house, but in case of death of a slave, the builder could give another, similar slave as compensation¹¹. In ancient Israel protection of life was really strong. For intentional murder of another person the murderer was obligatory sentenced to death penalty. Accidental killing of someone resulted in expulsion of the perpetrator to a city of exile. According to that law, the accidental killer was ordered to live there until the death of the high priest. There was also a necessity of having no less than two witnesses to be sentenced to death¹². In ancient Rome and Greece the right to life was protected for citizens, while slaves were regarded as "talking things". Additionally, father of family had a right to kill his child in case of illness. In ancient Sparta ill children were killed by decision of the local power¹³. As we can see, in ancient times it was clear that killing another person is something bad, but the right to life was not granted to all people, especially it was refused to slaves and small children. Christianisation of the Roman Empire changed this situation. Abortion and, of course, killing born children were regarded as great sins¹⁴. Interestingly, in these times the moment of soul animation was not placed

⁹ E. Dudziak, *Kościół katolicki wobec praw człowieka. Ewolucja stanowiska*, „Studia Prawa Wyznaniowego” 2007, Vol. 10, p. 386.

¹⁰ Preamble, Universal Declaration of Human Rights, United Nations General Assembly Resolution 217 A of 10 December 1948.

¹¹ Code of Hammurabi, §229–231.

¹² The Holy Bible, Num. 35, 9–34.

¹³ G. Nowińska, J. Nowiński, *Disability in ancient times*, „Przegląd Medyczny Uniwersytetu Rzeszowskiego i Narodowego Instytutu Leków w Warszawie” 2014, No. 1, p. 121.

¹⁴ M. Wojciechowski, *Starożytne głosy przeciw aborcji*, https://opoka.org.pl/biblioteka/Z/ZR/starozytne_paborcji.html (accessed 19.10.2019).

in the moment of conception, but after it¹⁵. Generally, in the Middle Ages intentional killing of someone was persecuted with death penalty, with a possibility to avoid this penalty by paying a fine¹⁶. In modern times the popularity of death penalty increased and it was obligatorily sentenced for murder, in the 18th-century Poland even for killing a peasant¹⁷. This strictness of law, because of weakness of the then penitentiary system, should be positively evaluated as strengthening the protection of human life. Late 18th century, and the 19th and 20th centuries are important because of establishing the right to life in different documents, e.g. in the European Convention on Human Rights from 1950¹⁸. Another positive process taking part in the perspective of the last 200 years has been the development of a penitentiary system, which has permitted legislators to eliminate the death penalty from criminal codes¹⁹. As regards abortion, the 19th and early 20th centuries can be assessed quite optimistically: abortion was strictly prohibited by criminal laws²⁰, and popes clearly declared excommunication as penalty for this action²¹. Unfortunately, the 20th century witnessed also legalisation of this procedure, as well as one-child policy and both German-Nazi and communist extermination of whole ethnic or social groups. To summarize contemporary situation regarding the respect for life, life is verbally accepted but it would be doubtful to say that the situation is better than at the end of the 19th century.

2.3. MAIN DANGERS FOR HUMAN LIFE TODAY

Today there are various sources of danger to human life. The state can violate the human right to life not only by undertaking a direct action against it but also by permitting people to do so or by tolerating fatal environmental conditions. In a wide perspective the following problems are worth attention:

¹⁵ G. Hołub, *Potencjalność embrionu a koncepcja duszy ludzkiej*, „Rocznik Tomistyczny” 2016, Vol. 5, p. 237.

¹⁶ R. Hube, *Prawo salickie podług rękopisu Biblioteki Głównej Warszawskiej*, Warszawa 1867, p. 24.

¹⁷ Prawa Kardynalne z 1793 roku, Art. XIII (The Polish-Lithuanian Commonwealth).

¹⁸ Convention for the Protection of Human Rights and Fundamental Freedoms, Rome 4 November 1950, Art. 2.

¹⁹ M. Mierzwa, K. Niewęglowski, *Trend abolicjonistyczny w polskim prawie karnym w XX w.*, „Studenckie Zeszyty Naukowe” Lublin 2018, Vol. XXI, No. 38, s. 67–68.

²⁰ J. Markiewicz, *Przestępstwa przeciwko rodzinie w Kodeksie Karzącym Królestwa Polskiego z 1818 r. i Kodeksie Kar Głównych i Poprawczych z 1847 r.*, „Teka Komisji Prawniczej OL PAN”, 2008, pp. 115–117.

²¹ J.T. Noonan, Jr., *Abortion and the Catholic Church: A Summary history*, „Natural Law Forum” 1967, Vol. 12, issue 1, p. 115.

a. Abortion. In fact, although precise number of abortions done every year is very difficult to determine, it is estimated at about 56 million annually²².

b. Wars and military conflicts. It is easy to see that during military conflicts a lot of people die, not only soldiers, but also civilians, despite the fact, that aggressive war is recognized not only in particular laws as a crime, but also is prohibited by the international law²³. In 2019 there were more than 35 military conflicts in the world (of course precise number depends on methodology of measuring)²⁴.

c. Criminal activity. Murders are still common cause of death mainly in Latin America. In some countries a big problem is home violence, mainly against women, sometimes causing death. The scale of this problem significantly differs between countries²⁵.

d. Experiments on human embryos and their use in connection with the *in vitro* conception procedure. A big problem is violating human dignity e.g. by creating hybrids of humans and other species. As a result of *in vitro* conception procedure often several embryos are created and some of them are subsequently destroyed or frozen after implantation of the others²⁶.

e. Bad living and environmental conditions. In fact many people nowadays die of hunger or diseases which are curable in developed countries. Approximately 15,000 children die of hunger everyday. Also air pollution causes, in Poland alone, thousands of untimely deaths annually²⁷.

f. Direct killing ordered by state organs. The biggest problem occurs in the totalitarian countries like North Korea and People's Republic of China, where government orders to kill many people in official executions or secret murders. In PRC the right to honest trial is not always respected and the estimated number of executions varies between 1500 and 8000²⁸.

We can see that the majority of dangers for human life are caused by inefficient state policy against direct violations done by people. Serious problems cause also environmental condition, hunger and poverty, mainly in the developing countries. Definitely bad situation is in the developing countries affected by civil wars.

²² S. Singh, L. Remez, G. Sedgh, L. Kwok, T. Onda, Report of Guttmacher Institute Abortion worldwide 2017: Uneven progress and unequal access, p. 53.

²³ United Nations Charter of 26 June 1945, Art. 2.

²⁴ *Mapa konfliktów zbrojnych*, <http://gisplay.pl/gis/8043-mapa-konfliktow-zbrojnych-na-swiecie.html> (accessed 14.06.2019).

²⁵ *Hiszpania – kraj szowinistów?*, <https://www.mamawbarcelonie.pl/2018/01/hiszpania-kraj-szowinistow/> (accessed 31.01.2018).

²⁶ T. Wasilewski, *In vitro – cała prawda*, <https://milujciesie.org.pl/in-vitro-cala-prawda.html> (accessed 26.08.2019).

²⁷ *Dramatyczny raport PAH: Codziennie z głodu umiera 15 tys. dzieci!*, <https://www.new-sweek.pl/polska/dramatyczny-raport-pah-codziennie-z-glodu-umiera-15-tys-dzieci/qewhgx5> (accessed 28.02.2018).

²⁸ K. Mrozwicz, *Kara śmierci w Chinach*, <https://www.polityka.pl/tygodnikpolityka/swiat/1503788,1,kara-smierci-w-chinach.read> (accessed 12.03.2010).

3. HISTORY OF FEMINISM AND ITS VARIATIONS

Feminism was born in the 18th century²⁹, but it achieved its first big successes in the second half of the 19th century. What is worth to admit is the fact that firstly women's movements did not use the name „feminism”. When analysing the position of a woman in society we should pay attention to anthropological traits, e.g. the visible biological differences. In the majority of ancient societies patriarchal system of family was strongly supported by law. For example, in the archaic period of Roman Law a wife was under power of her husband. She also did not have property. Christianity brought recognition of ontological equality of women and men and established patriarchal system of family based on mutual love of spouses³⁰. In ancient Arabia it was popular in poor families to kill small girls after birth. Muhammad strictly prohibited it³¹. Also in the period of Jahiliyya (before Islam), polygamy was allowed without restrictions. Muhammad limited the number of wives to 4. Although Islam and Christianity established much better position of women compared to the ancient times, they still were not able to secure women public and economic part of life on equal rights with men. Particularly in the period of French Revolution feminism inspired womens' desire to achieve the same rights as men. Hence one can admit that just after the French Revolution the difference between men's and women's rights was less accepted than before – in absolute monarchy the right to vote did not matter and legal subjectivity became more important only in the period of free-market economy than it was in the feudal times.

In the 19th century the ideal solution was to separate public and private spheres, which resulted in the public and job activity of men and housekeeping by women. However, in that situation women movements and state policy stipulated that women played a role in public sphere by patriotic education of children, responsible consuming or charity activity. For example, women were engaged in the boycott of products manufactured using slave work. Additionally, they had big influence in promoting the prohibition of slavery. At the end of the 19th century the most important thing was the right to vote. The first success was establishing this right for women in the New Zealand in 1893. In the United States it was guaranteed in 1920³². Subsequently, women movement was focused on establishing this right in other countries, and this happened in many of them after World War II. Also in the colonised countries feminists were actively engaged in independence movements. They differed in their opinion as to wearing *hijabs* and other

²⁹ J. Hannam, *Feminizm*, Poznań 2010, p. 21.

³⁰ Col. 3, 18–19.

³¹ A. Wąs, *Arabia przed islamem*, <https://religie.wiara.pl/doc/472209.Arabia-przed-islamem> (accessed 30.06.2009).

³² Amendment XIX to the US Constitution, passed by Congress on 4 June 1919.

traditional clothes. Some women opposed them perceiving them as part of patriarchal system, while other supported them pointing to the fact that they were elements of their own culture.

Perceiving abortion as an important right started between World Wars I and II. One of the most important feminists who promoted contraception, eugenics and abortion was Margaret Sanger, foundress of Planned Parenthood. In fact, numerous feminists support legal abortion, e.g. those associated in the Feminist Initiative (in Polish 'Inicjatywa Feministyczna')³³. Nevertheless, some feminists recognize fetus as a subject of right to life and are in opposition to legal abortion³⁴. What is worth mentioning is the fact that, mainly in India and China, where son is seen as worthier than daughter, much more girls are killed by abortions than boys³⁵. Actually, attention of feminists is focused primarily on: reproductive rights, violence in families, civil and political rights in Middle East, respect of women dignity in sexual contexts (like prohibition of prostitution in France)³⁶, economical inequalities, and environmental problems. So one can observe that in fact feminism is not only focused on problems strongly linked with gender sphere. Sometimes the proposed ways of implementing equality could be seen as limiting freedom of economy or political activity, e.g. the obligatory quotas in election lists³⁷. Main trends of feminism are: liberal feminism, socialist feminism, radical feminism, ethnical feminism, lesbian feminism, ecofeminism, and other³⁸.

4. FEMINISTIC PERSPECTIVE ON RIGHT TO LIFE AND FAMILY

As I have mentioned above, the majority of feministic movements are strongly supporting the right to abortion and *in vitro* conception. We have to note that they don't recognize the fetus's right to life, as a result of which they accept violating its rights. Additionally, a popular idea is to provide free (refunded by state)

³³ <http://inicjatywafeministyczna.pl/zdrowie/> (accessed 24.10.2019).

³⁴ L. Kopytowska, *Feministki stanowczo przeciw... aborcji*, <https://www.gosc.pl/doc/3521472>. Feministki-stanowczo-przeciw-aborcji (accessed 27.10.2016).

³⁵ *Przez selektywne aborcje na świat nie przyszło 23 mln kobiet*, <https://www.tvp.info/42232144/przez-selektywne-aborcje-na-swiat-nie-przyszlo-23-mln-kobiet> (accessed 16.04.2019).

³⁶ *France passes law that makes paying for sex a crime*, <https://www.thelocal.fr/20160407/france-to-finally-make-it-illegal-to-pay-for-sex> (accessed 07.04.2016).

³⁷ Ustawa z dnia 5 stycznia 2011 r. o zmianie ustawy Ordynacja wyborcza do rad gmin, rad powiatów i sejmików województwa, ustawy Ordynacja wyborcza do Sejmu Rzeczypospolitej Polskiej i do Senatu Rzeczypospolitej Polskiej oraz ustawy Ordynacja wyborcza do Parlamentu Europejskiego, „Journal of Laws” 2011, No. 34, item 172.

³⁸ J. Helios, W. Jedlecka, *Urzeczywistnianie idei feminizmu w ogólnowsiatowym dyskursie o kobietach*, Wrocław 2018, pp. 105–133.

contraception for teenage girls and easy access to emergency contraception³⁹. It is not a means to promote real responsible family building, where both spouses sacrifice to each other after marriage. The feminists, mainly in western countries, see how present sexualisation of women's body endangers their dignity and makes more difficult starting normal family life⁴⁰. In accordance with other threats for human life, feminist movement generally recognizes and opposes them.

I would like to exemplify this with the activity of the Polish feminists in this area. Firstly, I would like to mention that in Poland the abortion law from 1993 is in force which permits to perform abortion in three cases: danger for mother's health or life, pregnancy resulting from crime, and serious, permanent defect of the fetus. Mother of the conceived child who commits abortion is not punished. The feminists repeatedly propose liberalisation of the abortion law, impermissible by the Polish Constitution, demanding abortion for request in the first 3 months of pregnancy⁴¹. They also are fighting for a refund of contraception and its availability to teenage girls without parents' permission⁴². One may observe that considerable part of the Polish feminists do not recognize the right to life guaranteed by the Arts. 2 and 38 of the Constitution of the Republic of Poland also for unborn children⁴³. Additionally, they often express their skeptical opinion on the institution of family, speaking of a "patriarchal system". In fact, however, there are strong feminist prolife organisations, mainly in the US, while in Poland prolife movement is established mainly around the Catholic point of view.

5. COMPARISON WITH OTHER PHILOSOPHICAL MOVEMENTS, RELIGIONS AND LEGAL SYSTEMS

Perception of abortion is different in different philosophical movements and religions. For instance, Catholicism has definitely negative attitude towards abortion⁴⁴. According to Catholicism, life starts at the moment of conception and after that nobody can intentionally destroy it. Other Christian denominations

³⁹ *Federacja na rzecz Kobiet i Planowania Rodziny o ograniczeniu do antykoncepcji*, <https://publicystyka.ngo.pl/federacja-na-rzecz-kobiet-i-planowania-rodziny-o-ograniczeniu-do-antykoncepcji> (accessed 16.02.2017).

⁴⁰ *Współczesne konkursy piękności*, http://www.bbc.co.uk/polish/specials/1619_beauty/index.shtml (accessed 24.10.2019).

⁴¹ Druk 2060 Sejm RP, Obywatelski projekt ustawy o prawach kobiet i świadomym rodzicielstwie, Art. 8, 24.11.2017.

⁴² *Zabójcza klęska feministek. Wywiad z Mariuszem Dzierżawskim*, <http://www.legitymizm.org/klaska-feministek> (accessed 24.10.2019).

⁴³ Judgment of the Constitutional Tribunal of 28 May 1997, K 26/96.

⁴⁴ Code of Canon Law, 1983, canon 1398.

not always adopt as strict a position, but generally they are against abortion. In fact, some Protestant groups accept abortion. Islam is also against abortion, but it accepts it in reasonable circumstances, precisely depending on the theological opinion⁴⁵. Judaism has not one common opinion in that matter. Buddhism and hinduism strongly support human life since conception. On the other hand, shintoism and confucianism do not see a big problem in the termination of pregnancy. The analysis of the law systems demonstrates that in the 19th century nearly all of them provided penalties for doing abortion. In the 20th century in Soviet Russia a process of legalising abortion started. Contemporary laws in this matter vary from total prohibition in Malta, Vatican and a few Latin American countries, to no restriction regimes in Canada and People's Republic of China⁴⁶. As to other aspects of the right to life, the majority of legislations approve *in vitro* conception and do not have death penalty in their criminal codes. No one state officially accepts aggressive war as a way of solving international problems.

6. RECAPITULATION

In order to sum up the information about feminism and the right to life it is necessary that I present how I understand the right to life myself. So, for me it definitely means safety from intentional killing of innocent people. Further, it also means creation of possibly good conditions for human living, its development, avoiding untimely deaths and respecting human dignity. Today's world declaratively respects human right to life, but in practice, in many cases, even the developed countries do not respect this basic human right. Feminism is not a monolith and we can encounter different feminist points of view on problems related to the right to life. Generally, although feminists have a positive attitude towards humanitarian aid and avoiding wars or tortures or extrajudicial executions, they in majority support abortion as one of the reproductive rights. Of course, no one should be obliged to have children, it has to be one's personal free decision, but after conception we can speak of human life of fetus which should be protected by criminal law. On the other hand, not all feminists accept abortion, as prove the *Feminists for Life of America*. Additionally, the postulate of abortion was nearly absent in the mainstream feminism and firstly, in modern times, was realized in Communist Russia in 1920. Of course, not all women, or probably not

⁴⁵ *Islam a aborcja*, <http://muzulmanki.blogspot.com/2009/03/islam-aborcja.html> (accessed 15.03.2009).

⁴⁶ *Gdzie na świecie aborcja jest legalna, a gdzie kobiety muszą ją wykonywać w podziemiu?*, <https://www.polityka.pl/tygodnikpolityka/swiat/1657220,1,gdzie-na-swiecie-aborcja-jest-legalna-a-gdzie-kobiety-musza-ja-wykonywac-w-podziemiu.read> (accessed 26.05.2018).

the majority of women, support the feminist movement and often associate in conservative organizations such as the World Union of Women's Organisations. Feminism is an interesting idea and, surely, the fight for the right to vote was an important step forward on the way to make human rights common reality. Some postulates, like the quotas on electoral lists, are controversial. Sometimes, like in case of abortion, the majority of feminists simply stay in opposition to the human right to life.

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