AIMS For a better birth...

Human Rights in Childbirth

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Gill Boden reports on the International Conference of Jurists, Midwives and Obstetricians. June 2012, The Hague

Five members of the AIMS Committee made the journey to The Hague for this historic conference, full of high expectations, we were not disappointed in any way. Lawyers, midwives and childbirth activists gathered to discuss the role of the law in birth and maternity services.

One of the main triggers was the case of Ternovsky v Hungary, which established the human right of a woman to choose the circumstances in which she will give birth. The case is binding across all European states and arose out of the wish of Anna Ternovsky to have her second baby at home, attended again by the midwife Agnes Geréb. Realising that Agnes Geréb was being persecuted for the crime of assisting women to give birth at home, she took her case to the European Court of Human Rights in Strasbourg and won. The court condemned the state of Hungarian birth policies and ordered the country to create the necessary regulations as soon as possible. Anna was with us at the conference and spoke movingly of her two births at home and her dismay when Agnes Geréb was later imprisoned.

Elizabeth Prochaska, a barrister from Matrix Chambers in London, underlined the importance of this legal precedent; the UK government could be fined for failing to respect a woman's right to determine the circumstances in which she gives birth, so we need to take our cases to the British Courts under Article 8, Respect for Family Life. Elizabeth has already worked with AIMS to successfully mount a legal challenge to an NHS Trust in London which withdrew its home birth service. In the Autumn of 2012 she will launch the organisation Birthrights, to offer help to women being denied their human rights.

The other main focus of the conference was the potential conflict between the interests of mother and unborn baby. In fact, in most people's minds, and indeed in English law and the law of many other counties, the interests of mother and baby are indivisible before birth (unless the mother clearly lacks mental capacity) and so, in that sense, the fetus has no independent rights. However, there was agreement that the world is becoming more 'fetus-centric' (perhaps because of the belief that life can be sustained outside the womb and so the mother is only a temporary container) and presentations from around the world illustrated the range of interpretation of this.

Two contrasting accounts, by Ina May Gaskin from the USA and Karen Guilliland from New Zealand, highlighted different approaches to the human rights of women. Summarising the situation in the USA, Ina May has seen caesarean section rates rise from 5% in1970 to 33% nationally, while at the same time, in California, maternal mortality has tripled in the decade between 1996 and 2006. The USA is one of the

four countries in the world where maternal mortality is increasing whilst at the same time the rights of the unborn child are put forward in ways that can criminalise women whose decisions and behaviours are questioned by the medical establishment. In New Zealand, where by 2020 most women giving birth will be of Maori, Pacific or Asian origin, women are accorded their human rights and babies have none before birth. This is not law but, in Karen's view, the result of the women's movement. In a population similar to Wales, (4 million), there are 52 small birthing units and midwives' pay is broadly the same as doctors' (although obstetricians can charge for extras as well). Women have whomever they want with them and midwives can be self- employed and enjoy the power of partnership. Karen put the point strongly that our argument is 'no longer about data, it's about safety in a different way, we must talk up midwifery skills not just crude surgery.' She urges midwives to insure themselves, get together across Europe, and 'grow' their own lawyers, alongside a system of no fault compensation.

Robbie Davis-Floyd, a medical anthropologist from the USA, talked of the emergence of the post-modern midwife, describing her as an autonomous practitioner dedicated to the midwifery model, a vision of political awareness, with an investment in women's emotional needs. Robbie shared a vision where the post-modern midwife is in place of the modern midwife, described as a technician in the medical model. Robbie praised the Albany midwives as heroes, causing much applause. Becky Reed, from the Albany practice, then spoke with great feeling about her philosophy and present situation.

The second day of the conference looked particularly at the state of midwifery in the Netherlands, where home birth rates have been the envy of the western world. We learned that the 30% home birth rate of the 1980s and 90s is now down to 23%; rates of caesarean section are up to 16% (still the lowest in the developed world) and that during this time caseloads had reached 110 (although they are now down to 90). Perinatal mortality rates have been worryingly high around 2004 (but calculated from 22 weeks, when babies are not routinely resuscitated before 25 weeks) but now have reduced to probably the lowest in Europe aside from Finland.

The picture of over-stretched midwives losing autonomy; obstetricians, who used to champion the Dutch system, finding their status becoming dependent on international research, moving from being the colleagues of midwives to being their supervisors; coupled with women working long hours outside the home and becoming more fearful of childbirth, is a familiar one across much of Europe. My highlight of the conference was to be part of a gathering which asserted vigorously the inalienable rights of a woman to control what others do to her body and to resist blackmail and bullying by others who claim to know better than she what are the interests of her unborn baby: I certainly won't look back.