Introduction

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This book explores the themes of Vulnerability, Violence, and Control around childbirth. This might seem incongruous to some readers. Even if one does not accept the glorified accounts of childbirth as involving joy and wonder, but rather agony and distress; the terms violence and control might seem an exaggeration. Yet, in 2014 the World Health Organization (WHO) released a statement recognising that there is a growing body of research that 'paints a disturbing picture' of women's childbirth experiences:[1]

> Many women across the globe experience disrespectful, abusive or neglectful treatment during childbirth in facilities. … While disrespectful and abusive treatment of women may occur throughout pregnancy, childbirth and the postpartum period, women are particularly vulnerable during childbirth. Such practices may have direct adverse consequences for both the mother and infant.[2]

Research reveals that women face discrimination within facilities, and they are sometimes sexually, physically, verbally, and/or emotionally abused by healthcare professionals.[3] Communication between women and healthcare professionals is sometimes inadequate and medical professionals give insufficient attention to women's concerns. This can lead to professionals failing to provide supportive care in general, objectifying women, and treating them as passive participants in their births.[4] There is evidence that health professionals fail to meet professional standards by neglecting to obtain women's informed consent and by performing procedures without due regard for women's right to privacy.[5] At times healthcare professionals perform painful procedures without appropriate care and compassion and women

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[1] World Health Organization, 'The Prevention and Elimination of Disrespect and Abuse During Facility-based Childbirth' (2014) <https://apps.who.int/iris/bitstream/handle/10665/134588/WHO_RHR_14.23_eng.pdf?sequence=1> accessed 11 February 2019.

[2] ibid.

[3] Meghan A Bohren and others, 'The Mistreatment of Women during Childbirth in Health Facilities Globally: A Mixed-Methods Systematic Review' (2015) 12(6) PLOS Med e1001847.

[4] ibid.

[5] ibid.

are denied access to pain relief medication. Some women have reported being neglected or completely abandoned during childbirth.[6] Further, facility and system deficiencies create birthing environments that compromise respectful and dignified care. Toxic facility cultures, caused by staff shortage, constraints on necessary supplies, problematic facility policies, are not women-centred, and objectify women.[7] Women and their babies may survive childbirth but reports reveal that women's experience of facility-based care has left them traumatised and these circumstances have dire consequences for mental wellbeing and ability to bond with their babies.

In many ways these findings are surprising. Around the world there is greater awareness of and acceptance of women's rights.[8] There is a growing awareness of the problem of violence against women and a determination to address it. The quality of training for medical professionals is improving, including more importance being given to ethics. It is not hard to find fine sounding professional and governmental documents setting out support for respecting women's choices in relation to childbirth.[9] Yet, despite all of this, it is clear that on the ground all too often women are abused during their labour.

Of course, these issues are not new. Abuse during facility-based childbirth has been occurring for decades; arguably for as long as childbirth became a medical event.[10] However, Hodges explains:

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[6] ibid.

[7] ibid.

[8] United Nations High Commissioner for Human Rights, 'Women's Human Rights and Gender Equality' (*United Nations*, 2019) <www.ohchr.org/en/issues/women/wrgs/pages/wrgsindex.aspx> accessed 11 February 2019.

[9] Department of Health, 'Maternity Matters: Choice, Access and Continuity of Care in a Safe Service' (Department of Health 2007); The Royal College of Obstetricians and Gynaecologists, 'Providing Quality Care for Women: Obstetrics and Gynaecology Workforce' (The Royal College of Obstetricians and Gynaecologists 2016).

[10] For instance, see Henci Goer, 'Cruelty in Maternity Wards: Fifty Years Later' (2010) 19 J Perinat Educ 33; Marsden Wagner, 'Confessions of a Dissident' in Robbie E Davis-Floyd and Carolyn F Sargent (eds), *Childbirth and Authoritative Knowledge* (University of California Press 1997) 366.

> [W]e are in about the same position we were in the 1950s and 1960s regarding domestic abuse and violence against women. Abuse and violence were happening, but we did not have a name for it. If your husband or boyfriend was verbally or physically abusive, well, that was just the way he was. It probably was your fault, and in any case, there was not much you could do about it.[11]

The World Health Organization's statement (quoted above) makes it very clear that relevant stakeholders must do more to establish mechanisms to prevent and eliminate abuse during childbirth.

The theme of abuse and violence during childbirth has connected researchers, activists, organisations and other stakeholders across the globe from diverse disciplines. However, most of the literature available on the subject of abuse and violence during childbirth originates from disciplines other than law. In fact, debates in law are glaringly absent,[12] short of a small selection of contributions considering international human rights law and the different positions in South Africa, the United States, and Kenya.[13] Our hope is that this book can provide a starting point for legal debates over responses to this issue. This collection arose out of the need to initiate further legal debates on abuse during childbirth through the lens of violence, vulnerability, and control. Since this edited collection is one of the first contributions to take on this role, we considered it important to adopt an interdisciplinary approach by including contributions from other disciplines that are intended to provide much-needed

[11] Susan Hodges, 'Abuse in Hospital-Based Birth Settings?' (2009) 18 J Perinat Educ 8.

[12] This is the case for English speaking countries. Several Latin American countries have enacted laws that recognise obstetric violence as a form of violence against women. Some recognise it a crime while others create a form of statutory right of action. See Grupo de Información en Reproducción Elegida, 'Obstetric Violence: A Human Rights Approach' (2015) <https://gire.org.mx/en/wp-content/uploads/sites/2/2015/11/ObstetricViolenceReport.pdf> accessed 11 February 2018.

[13] Beatrice Odallo, Evelyne Opondo, and Martin Onyango, 'Litigating to Ensure Access to Quality Maternal Health Care for Women and Girls in Kenya' (2018) 26(53) Reprod Health Matters 123; Elizabeth Kukura, 'Obstetric Violence' (2018) 106 Georget Law J 721; Maria T R Borger, 'A Violent Birth: Reframing Coerced Procedures during Childbirth as Obstetric Violence' (2018) 67 Duke Law J 827; Farah Diaz-Tello, 'Invisible Wounds: Obstetric Violence in the United States' (2016) 24(47) Reprod Health Matters 56; Rajat Khosla and others, 'International Human Rights and the Mistreatment of Women During Childbirth' (2016) 18 Health Hum Rights 131; Camilla Pickles, 'Eliminating Abusive "Care": A Criminal Law Response to Obstetric Violence in South Africa' (2015) 54(1) SACQ 5. Carlos Vacaflor provides a detailed account of the Argentinian position in Carlos Herrera Vacaflor, 'Obstetric Violence: A New Framework for Identifying Challenges to Maternal Healthcare in Argentina' (2016) 24(47) Reprod Health Matters 65.

context. These contextualising chapters unpack and explore the different dimensions and complexities of vulnerability, violence and control during childbirth.

We certainly, have come a long way in developing and understanding facility-based abuse and violence. We have a better grasp of how it manifests and why. We highlight here three aspects in particular. First, it is now recognised that abuse and violence during childbirth occur at an individual *and* structural level.[14] That is, we are not dealing with only a few bad apples but a system that is structured in a way that oppresses women because it enables abuse and violence. The individual and structural systems interrelate. Because the structures permit and authorise abusive practices against women, these are practised by medical professionals; and this practice is seen to normalise and justify the structures in place. For example, the structures may perpetuate a view that women are not competent to make decisions during labour and so professionals do not seek to involve women in making decisions, a practice which silences women or against which women rebel, which reinforces the view that women are not competent.

Second, violence and abuse during childbirth is a gendered phenomenon shaped by hierarchical relationships of power and broader social inequalities.[15] Women's treatment during childbirth reflects their position in society because a health system 'wears the inequalities of the society in which it functions.'[16]

[14] For instance, see Miltenburg Solnes and others, 'Disrespect and Abuse in Maternity Care: Individual Consequences of Structural Violence' (2018) 26(53) Reprod Health Matters 88; Michelle Sadler and others, 'Moving beyond Disrespect and Abuse: Addressing the Structural Dimensions of Obstetric Violence' (2016) 24(47) Reprod Health Matters 47.

[15] Lydia Zacher Dixon, 'Obstetrics in a Time of Violence: Mexican Midwives Critique Routine Hospital Practices' (2015) 29 Med Anthropol Q 437, 440-41.

[16] Joanna N Erdmann, 'Bioethics, Human Rights, and Childbirth' (2015) 17 Health Hum Rights 43, 48. Also see, Stephanie Rose Montesanti and Wilfred E Thurston, 'Mapping the Role of Structural and Interpersonal Violence in the Lives of Women: Implications for Public Health Interventions and Policy' (2015) 15 BMC Womens Health 100, 103.

Thirdly, abuse during childbirth reflects a particular model of doctor-female patients' relations. It is not just in childbirth, but in a range of medical and quasi-medical interventions that we see medical power exercised over women's bodies.

So, the issue of abuse during childbirth should be recognised as reflecting and being reinforced by wider social and institutional forces. It means also that we need to adopt a multipronged approach to tackling this issue. Adequate resources are essential but so too is the need to reshape embedded norms through improved training of professionals and effective accountability.[17] However, the broader issue requires responses at a wider social level. We must be committed to developing and providing women-centred, evidence-based care.[18]

As the chapters in this book demonstrate, the conceptualisations of violence, vulnerability and control are contested. Indeed, not all contributors are equally comfortable with the use of these three words in this context. However, we deliberately did not confine contributors to a particular conception of the concepts of violence, vulnerability or control, for two reasons. First, this is an interdisciplinary collection and conceptualisations of these terms will naturally vary according to discipline. Second, we consider 'conceptual freedom' necessary in this context because we are venturing into unchartered terrain. Most of the themes considered in this collection have not been aired before a court and this freedom brings with it innovative arguments and contributions, and we leave it to each individual contributor to define for themselves these terms according to the direction of their contribution. What we will do here is very briefly explore the three words used and highlight some of the tensions around them, particularly as applied to childbirth.

Violence

[17] Diana Bowser and Kathleen Hill, 'Exploring Evidence for Disrespect and Abuse in Facility-Based Birth: Report of a Landscape Analysis' (*USAID-TRAction Project and Harvard School of Public Health*, 20 September 2010) <www.ghdonline.org/uploads/Respectful_Care_at_Birth_9-20-101_Final1.pdf> accessed 18 October 2018.

[18] Suellen Miller and others, 'Beyond too Little, too Late and too Much, too Soon: A Pathway Towards Evidence-Based, Respectful Maternity Care Worldwide' (2016) 388.10056 The Lancet 2176.

Violence is typically understood to involve an intentional act of excessive physical force used to cause suffering or injury.[19] However, this conceptualisation is increasingly recognised as being far too narrow for three main reasons.[20] First, there is increasing recognition of the importance of mental and emotional well-being. In some cases, the emotional or psychological impact of being hit will be far more significant than the physical pain. The criminal law was traditionally built around crimes of violence being attacks on the body (in the English context an assault occasioning actual bodily harm; inflicting grievous bodily harm etc.). However, we are more recently seeing offences of stalking, coercive control, online abuse and harassment recognising the importance of relational or psychological harms.[21] Second, and linked to the first point, there is a challenge to the division between mind and body. The argument that the body and mind can be separated (known as Cartesian Dualism in the philosophical literature) now has few supporters. Biology is clear that such a separation cannot be maintained. This indicates that restricting violence to attacks on the body and not including attacks on the emotional well-being cannot longer be supported. Third, there is growing acknowledgement that violence need not be intentional, as traditionally understood. Harassment, for example, may be understood by the perpetrator as an expression of love. Indeed, it is common for men to fail to appreciate (or claim to fail to appreciate) that their wrongful and harmful conduct against women is such.

In the case of 'obstetric violence' we see the above listed themes reflected in the volume. Obstetric violence is usually defined as the appropriation of women's bodies and reproductive processes by health personnel which brings with it a loss of autonomy and the ability to decide freely about their bodies and sexuality, and which has a negative impact on the quality of women's lives.[22] Those who use this term use it to describe the wide range of abuses during

[19] Vittorio Bufacchi, 'Two Concepts of Violence' (2005) 3 Polit Stud Rev 197.

[20] For instance, see Vittorio Bufacchi, *Violence and Social Justice* (Palgrave Macmillan 2007); Willem de Haan, 'Violence as an Essentially Contested Concept' in Sophie Body-Gendrot and Pieter Spierenburg (eds), *Violence in Europe: Historical and Contemporary Perspectives* (Springer 2007). Johan Galtung, 'Violence, Peace, and Peace Research' (1969) 6 J Peace Res 167.

[21] For a more detailed discussion of this see Jonathan Herring, *Law and the Relational Self* (CUP 2019) ch 6.

[22] Rogelio Pérez D'Gregorio, 'Obstetric Violence: A New Legal Term Introduced in Venezuela' (2010) 111 Int J Gynaecol Obstet 201.

childbirth, including unintentional and neglectful care and structural inadequacies. Clearly these kinds of harms do not fit within the traditional image of a typical act of violence being one person hitting another. Yet they can be understood as violence in the sense outlined above as an attack on the psychological and emotional integrity of the person.

In this volume several chapters explore how different harms inflicted in childbirth can be understood as violence. In fact, the contributions in this collection go beyond the *usual* definition of obstetric violence and venture into more challenging areas of 'violence'. For instance, Chadwick offers an intersectional analysis of marginalised South African girls' experiences of 'silencing' during childbirth and she explores how modes of silencing amount to obstetric violence. Similarly, Cohen Shabot extends the scope of obstetric violence to instances of 'gaslighting', women during labour, and thereafter by loving family and friends. She draws from her personal experience of care during her miscarriage to theorise the experience of gaslighting as a form of obstetric violence. Pickles considers whether obstetric violence can occur in the case of an omission and Herring innovatively teases out the unique harms associated with obstetric violence through an analogy with domestic violence.

Rucell and Downe and Stone's contributions remind us to broaden our focus to include considerations of care providers and the oppressive contexts in which healthcare professionals are expected to work. Rucell, of example, shifts our focus to the structural dimensions of obstetric violence and pinpoints important institutional failings, particularly in the context of accountability mechanisms, that foster violence more generally and that maintain an environment the allows violence to persist.

These chapters are all a 'first' within the obstetric violence literature landscape; they directly challenge conventional conceptualisations of violence and work to problematise the conventional conception of violence. Nevertheless, it must be admitted that the traditional understanding of violence still holds sway, particularly, among the public. The WHO's researchers are expressly set on avoiding the use of 'violence'[23] in the context of childbirth and

[23] Bohren and others (n 3) 21; J P Vogel and others, 'Promoting Respect and Preventing Mistreatment During Childbirth' (2016) 123 BJOG 671.

that is why it is possible to identify concerns about the terminology of violence in some chapters. For instance, Downe and Stone raise important issues with the current use of 'obstetric violence'. They explain that some midwives consider themselves excluded from the 'obstetric' scope and they are concerned by the fact that it is shaped by essentialist claims that this type of violence against women is rooted in male power, rendering birthing women and midwives subservient and subject to abuse by male obstetricians.

Despite there being a measure of pushback or resistance to expanding how we are to understand violence during childbirth, Horsch and Garthus-Niegel's exploration of post-traumatic stress disorder following childbirth highlights the severity of the consequences of inappropriate 'care' during childbirth. This contribution makes it clear that the traditional understanding of violence needs to be under constant consideration and it may also support understanding of violence in the broad ways presented in this collection.

Vulnerability

At one level is an obvious point that a woman in childbirth is in a vulnerable state. Her movements may be limited; she may be attached to medical technology; she may be in considerable pain; and she may face some medical risks that are associated with childbirth. All of these put her in a position that she is at risk of harm and with limited authority to protect herself. However, a vulnerability analysis of the issue is more complex than this.

There is a powerful strand of feminist critiques of the use of vulnerability in political and popular discourse.[24] This strand claims that groups of people are labelled as vulnerable and this is used to subject them to paternalistic interventions designed to protect them from hurting themselves, being taken advantage of, or to restore them to a non-vulnerable state. This is clearly a concern in this context. Halliday tackles this very issue in her contribution on court-ordered obstetric interventions on women living with serious mental illness. She reveals how the clinical construct of 'insight' is used to assess capacity of women living with serious mental illnesses, particularly when they refuse medical advice during obstetric care. Their capacity to

[24] Vanessa Munro and Jane Scoular, 'Abusing Vulnerability? Contemporary Law and Policy Responses to Sex Work in the UK' (2012) 20 Fem Leg Stud 189.

make decisions about their births is undermined if women are perceived to 'lack insight' and choice in maternity care becomes illusionary for them. The more the powerlessness of the woman is emphasised the greater the risk that she is in 'need of protection' and interferences in her autonomy can be justified. This in part may explain the 'silencing of women' and 'epistemic violence' which is discussed in the chapter by Chadwick. It is also reflected in the infantilisation explored by Cohen Shabot in her chapter.

The concept of vulnerability is drawn on by another strand of feminist critique and that is universal vulnerability. This approach is most prominently favoured by Fineman.[25] She claims that everyone is in their nature vulnerable:

> The vulnerability approach recognizes that individuals are anchored at each end of their lives by dependency and the absence of capacity. Of course, between these ends, loss of capacity and dependence may also occur, temporarily for many and permanently for some as a result of disability or illness. Constant and variable throughout life, individual vulnerability encompasses not only damage that has been done in the past and speculative harms of the distant future, but also the possibility of immediate harm. We are beings who live with the ever-present possibility that our needs and circumstances will change. On an individual level, the concept of vulnerability (unlike that of liberal autonomy) captures this present potential for each of us to become dependent based upon our persistent susceptibility to misfortune and catastrophe.[26]

This approach recognises the universal nature of everyone's vulnerability. It is therefore sceptical of attempts to identify those who are particularly vulnerable and in need of protection and elevation from vulnerability.

This universal vulnerability approach might seem to be rather unhelpful to the issue of childbirth as it appears to argue against giving special protections to women in labour.

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[25] Martha Albertson Fineman, 'The Vulnerable Subject: Anchoring Equality in the Human Condition' (2008) 20 Yale J Law Fem 177.

[26] ibid.

However, even though we are in our nature all vulnerable, society distributes resources to give different degrees of resilience to different groups.

It is true that at different times and in different circumstances we may be more overtly in use of societal resources, should not disguise the fact that we are in need of communal and relational support for all our lives. We may be differently positioned within a web of economic and social relationships and this will impact on our experience of vulnerability and the resources at our disposal.[27]

The significance of this observation is that there is nothing about being in labour which in and of itself renders a woman more vulnerable than everyone else, rather it is the social power structures that render a woman open to abuse. The chapters in this contribution certainly support this understanding.

There are two reasons why this way of explaining the vulnerability is helpful. First, it makes it clear that the source of the particular vulnerability is not the woman, but the structure of medical and societal force acting on her during childbirth. Part of this theme is explored in Downe and Stone's chapter. They reveal that institutional management of maternity care prevents midwives from 'being with women' and instead results in the 'othering' of women and rendering them enemies of the system thus creating fertile ground for abuse during childbirth. Second, it means that the legal protections should not be designed to remove the vulnerability by rendering the woman fully autonomous and putting her in sole charge of the situation as that would be impossible and undesirable. The message of universal vulnerability is that we need to co-operate together in respectful ways to find solutions to the challenges we face as we lack the resources alone to respond to them.[28]

Control

[27] Jonathan Herring, *Vulnerability, Childhood and the Law* (Springer 2018) 34.

[28] Jonathan Herring, *Vulnerable Adults and the Law* (OUP 2016).

The concept of control is a complex one in relation to the birth process. For one thing it is in the nature of birth that the body cannot be controlled and contained. The process is about moving through bodies. It is a process that challenges the image of the body as a contained, static entity. The simple call for a woman to be in control of her childbirth is unrealistic in that sense.

However, the experience of birth, as outlined above, is all too often an experience of other people taking control of a woman's body. That she becomes a baby producing machine for medical professionals to manipulate, tear, cut and force at their bidding. Of course, this is typically done 'in order to produce a healthy baby' and is justified on the basis that it is what the woman would want. Halliday notes in this collection that 'women are supposed to remain in control, but what is actually meant is compliant.' Herring considers the concept of coercive control and uses it to explore the nature of obstetric violence as misuse of a trustful relationship to abuse the woman. Forsberg's chapter highlights how denying women access to information because it is too complex, or too distressing, or it cannot be processed, undermines women's autonomy.

As these points indicate, the issue of power and who controls the process is complex. Too often the medical professionals take control of the woman's body during childbirth. However, women, through birthing, are in a position of power whether 'others' accept this or not. They bring life into the world and that is an incredibly powerful physiological and psychological process. Yet this is not power as it is commonly understood in patriarchy. First, because this power challenges patriarchal depictions of femininity.[29] Second, because it is not power in the sense of exercising control or domination over someone, as the concept is commonly understood in patriarchy. It is a generative power creating new life and new relationships. Similarly, in relation to control, birth is at one level a brute uncontrollable process. Yet it is one that only the woman concerned should be making decisions over. Again, not in the patriarchal sense of control as exercising domination over or subduing something, but in the sense of having the moral and legal authority to make decisions about the physiological process.

[29] Sara Cohen Shabot explores this issue in Sara Cohen Shabot, 'Making Loud Bodies "Feminine": A Feminist-Phenomenological Analysis of Obstetric Violence' (2016) 39 Human Studies 231.

Legal responses to obstetric violence

One of the aims of this collection is to explore legal tools that could be used to provide an effective response to obstetric violence. One option is the use of human rights. Khosla and others argue that childbirth has not been adequately addressed or analysed under international human rights law.[30] This, they argue, is an essential first step because 'Human rights standards are an important accountability tool for recognizing and protecting the human rights of women during childbirth in facilities, and for supporting health system reform to prevent mistreatment in the future.'[31] Prochaska offers a practitioner's perceptive on this issue in the collection. She traces important international case law relevant to childbirth and reflects on their significance in the context of violence, vulnerability and control during childbirth. She explains that human rights law offers women in the United Kingdom an opportunity to challenge hospital decisions through litigation but she urges that the full might of human rights law lies in its potential to shape hospital culture. This is best achieved through the injection of human rights values within the maternity care context.

A second option is tort law. Borger and Diaz Tello consider this in the United States context.[32] They emphasise that individual tort litigation is ineffective in the context of abuse, violence, or coercion. Dias Tello reveals that this avenue remains out of reach for many women and tort law tends to frame the issue as an individual problem rather than a structural one and it therefore hides the gendered dimensions of this phenomenon.[33] Kukura has earlier argued that 'obstetric violence will continue as long as doctors perceive that they risk liability by not intervening and thus force treatment on unwilling women out of fear of malpractice exposure. Courts must recognize and enforce informed treatment refusals as a necessary part of robust and meaningful informed consent'. [34] She emphasises that professional standard setting is an important avenue

[30] Khosla and others (n 13).

[31] ibid 138.

[32] Borger (n 13); Diaz-Tello (n 13).

[33] Diaz-Tello (n 13).

[34] Kukura (n 13) 800.

that needs further attention.[35] In this collection, Forsberg moves beyond these debates. She explores violations of women's autonomy during childbirth in relation to being deprived of information about treatment options and their risks. She demonstrates that depriving women of information or of the opportunity to decide amounts to a harm in and of itself, and negligence laws are ill-equipped to offer redress in this context.

A third option is the use of fiduciary law. In her contribution to this collection, Kukura explores the use of this doctrine in the context of United States jurisprudence. Its attraction lies in the highlighting of the importance of trust in the medical professional-patient relationship and the strict liability approach. However, as the chapter shows the American courts have been reluctant to develop the concept of fiduciary obligations within a medical context. Despite this, her chapter offers a glimmer of hope to those seeking to employ the law in innovative ways.

A fourth option is the use of targeted legal interventions. Borger makes the case that obstetric violence laws are the most effective way to address current shortcomings; she recommends importing to the United States the obstetric violence law framework adopted in Latin America and thereby develop a criminal and civil law regime.[36] Pickles emphasises this point in her chapter on evidence-based guidelines and obstetric violence by omission. She argues that, in fact, governments are obligated by international human rights laws to enact legislation to tackle this very particular manifestation of gender-based violence.

A fifth option is the use of criminal law.[37] Brennan's chapter explores this in detail. She advocates for a specific offence of obstetric violence to ensure the wrong done to the victim is fully captured. She highlights how traditional criminal offences do not capture the severity of the issue. Nevertheless, as she acknowledges, there are limits to the role of the criminal law. It will be rare where sufficient *mens rea* can be proved and a jury may well be reluctant to convict a medical professional if they were seen as 'doing their best in a difficult situation'.

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[35] ibid.

[36] Borger (n 13).

[37] Pickles (n 13).

Concluding reflections

Abuse, violence, and control during childbirth and women's vulnerability during childbirth remain ill-defined and under-theorised from a legal perspective but this collection offers a promising start. It is necessary to see ourselves at the start because there are many themes not covered in this collection.

In the main, the more legally focussed chapters in this collection have focused on the visible forms of violence and abuse during childbirth rendering structural violence free from legal analysis. This is a particularly pressing issue because individual manifestations of violence are a consequence of structural inequalities.[38] It is not entirely clear what role the courts can play in the broader context of structural violence. The Kenyan experience in relation to strategic litigation brings home this point. The Centre for Reproductive Rights represented Majani; she was abused and neglected during childbirth in a Kenyan facility and the High Court of Bungoma found in her favour.[39] Nevertheless, Odallo, Opondo, and Onyango highlight several failures. They argue that the court failed to make an order that would facilitate much needed *structural changes* such as mandating human rights training for nurses, mandating the government to actively share information about complaints procedures for aggrieved patients, and failing to mandate the government to develop and implement policy guidelines on health care.[40] While this judgement reflects a promising development it also lays bare the reality that courts can play only a limited role in the fight against abuse and violence during childbirth. This limitation deserves deeper analysis and interrogation.

Further, we left open the question of whether medical negligence itself can constitute a manifestation of obstetric violence. Research reveals that the obstetric violence is used to

[38] Johan Galtung, 'Cultural Violence' (1990) 27 J Peace Res 291.

[39] Odallo, Opondo, and Onyango (n 13).

[40] ibid 127.

describe instances of medical negligence[41] and medical negligence is recognised as a manifestation of obstetric violence in some Mexican states' laws.[42] However, it is not clear whether contemporary theories of violence are broad enough to include negligent conduct and what the law should do if negligence comes to be accepted as a form of violence.

This book seeks to start a discussion on where the violence in obstetric violence starts and where it ends. It has opened up debates about the nature and definition of obstetric violence. Until we are able to capture its multi-faceted nature we will not be able to identify its core wrong(s) or produce an effective legal response to the issues raised. Our hope is that this volume and work flowing from it will generate a more effective legal response to violence in childbirth and more respectful treatment of women in labour.

[41] For instance, see Simone Grilo Diniz and others, 'Abuse and Disrespect in Childbirth Care as a Public Health Issue in Brazil: Origins, Definitions, Impacts on Maternal Health, and Proposals for its Prevention' (2015) 25 J Hum Growth Dev 377.

[42] See Grupo de Información en Reproducción Elegida (n 12).

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