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**SOCIAL MANAGEMENT OF PARENTHOOD:
FORCED STERILIZATION OF MENTALLY
DISABLED WOMEN****

The paper will present a retrospective overview of the practices of forced sterilization of mentally disabled persons in the USA and European countries, and will point to ethical dilemmas accompanying this practice. We have tried to understand forced sterilization through Foucault's concept of biopolitics - a series of practices and technologies used by the powerful in order to govern society. The application of forced sterilization in modern Western societies over those who are considered unable to make decisions regarding parenthood, reveals the nature of the parenthood discourse. This discourse points to sharp polarization between those who can be parents and those who cannot, although ultimately both groups are objects of disciplining. It is conducted by various techniques, which are justified by citing socio-utilitarian reasons and/or welfare. The question remains open as to whether social management of parenthood, either regarding its abolition or norming of parenthood practices, constitutes the violation of human rights.

Keywords: forced sterilization, mentally disabled persons, parenthood, women.

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Introduction

Mental disability, learning difficulties or, by all accounts, politically incorrect *term* retardation,¹ have been known since ancient times. The relationship towards people with such difficulties has, according to the claims, gone through three stages. It ranged 1. from complete rejection; 2. via partial acceptance and attempts to learn the reasons for this condition in a scientific manner. It was understood as a mistake of nature, and then the reasoning was found for establishing practices which required that such *faults* should be prevented, and then, in the 1970s, the process began of 3. integrating persons with mental disabilities in society (Ljubenović, 2007).

However, as it will be shown in this text, it seems that the last claim is rather unsteady. Namely, when it comes to integration in society and prevention of discrimination it certainly seems that the greatest progress has been made in the domain of language - denotation, so that nowadays there is a struggle over euphemisms used to denote these people. The agreement about the terminology we will use in order to describe them - the *popular* terms being handicap, disability, and impairment, to name but a few (Ljubenović, 2007), essentially does not make the nature of their condition different from the way it has been seen throughout history. We still speak about people who deviate from normal, healthy population² (Ljubenović, 2007). In fact, the modern biomedical model and vocabulary used by it do not take our perception farther from that we are already familiar with. People involved in this domain use their practices to convince us in the reality of impairment, while at the same time advocating the necessity of

¹ Gumbić (2005) states that the term “mental retardation” has not been used as of the 1990s because it is considered to have a negative meaning, since it reduces a mentally disabled child to a disorder.

² The terminological variety and rather frequently present vagueness (which is no doubt expressed in the syntagm *people in the first place*), make it almost impossible to try making a distinction between physical or intellectual disabilities. A direct consequence of that is the categorization of all into the same class, which ultimately makes them all individually invisible. Namely, we have come across the information that globally there are about 16% people with impairments (<https://reliefweb.int/report/world/2023-global-survey-report-persons-disabilities-and-disasters>). When it comes to persons with intellectual difficulties, the numbers vary significantly, so that some claim that about 1% of the world’s population belongs to this category (Pradhan et al., 2022), while others mention a substantially higher percentage, or 3% (<https://www.specialolympics.org/about/intellectual-disabilities/what-is-intellectual-disability>).

introducing inclusion in order to improve the quality of these people's lives. For that sake, owing to this model and practices deriving from it, the disabled encounter the multiplied supervision over their everyday lives. Therefore, the imperative that we should be politically correct does not make our acting politically correct, particularly not in the domain of respecting certain rights. We may claim without reservation whatsoever that we are still cruel, to say the least, to these people.

We will attempt to prove this claim by dealing with the sterilization practices of the mentally disabled and arguments serving to justify such practices.

We will start by the following order.

1. Sterilization of the mentally disabled: a short historical overview and the current state of affairs

Eugenic sterilization - or sterilization in the name of eugenics - was largely practiced in the first half of the 20th century, actually through to the 1970s, while most historical evidence referring to sterilization of women³ with intellectual impairment comes from those societies in which this practice was legally permitted and from institutions in which these women were placed (and sterilized). However, when it comes to numbers, one must be particularly cautious - it is not easy to find accurate data and, moreover, one must bear in mind the absence of legal regulation which did not prevent the implementation of forced sterilization of mentally disabled persons.⁴

For the first time in history, it was legalized in the state of Louisiana in 1907 (Carlson, 2011, according to: Chaparro-Buitrago, 2024). Between 1907 and 1939, 32 American federal states followed suit and allowed the sterilization of the residents of institutions for mentally handicapped persons and persons with mentally disorders. It is estimated that until the beginning of the Second World War, minimum 60,000 people were sterilized in the USA: forced sterilization was

³ Sterilization is also practised among men, but, as it is asserted, to a much smaller extent (Ending forced sterilization of women and girls with disabilities, 2017). It seems that much less is known about this topic than concerning sterilization of women.

⁴ For example, in the United Kingdom, the law on forced sterilization of mentally disabled persons has never been enacted, but it does not mean that there has been no forced sterilization. It is proved by oral history (Tilley, Earle, Walmsley, 2012).

stipulated by law for certain categories - “criminals”; “rapists”, “epileptics”, “the mad and idiots” (Ending forced sterilization of women and girls with disabilities, 2017: 9).

After gruesome discoveries related to Nazi eugenics⁵, with German hereditary health medical courts allowing minimum 400,000 operations of this kind in less than one decade⁶, sterilization programs in the USA lost their popularity (Reilly, 2015). Nevertheless, judging by insufficient data, this claim must be taken with reservation. For example, in the Virginia State Colony for the Epileptics and Feeble Minded, a state-run institution intended for the mentally disabled and persons with mental disorders, in which the greatest number of sterilizations was performed in the state of Virginia, this practice continued until as late as 1973. In 1985, when twenty-eight residents raised collective charges against the institution⁷, cruel details were brought to the light of day: these people were subjected to brutal, dehumanizing practices, with forced sterilization being only one of them. They described sexual abuse they were exposed to; experiments were performed on them, and one of the cruellest practices was assisting during operations (Tromblei, 1988, according to: Rowlands, Amy, 2017).

The practice of forced sterilization in the USA has survived until today. Thus, it is stated that in two women’s prisons in California, in only four years (2006-2010), about 150 women were sterilized, mostly migrants, without their consent (Johnson 2013, according to: Lira, Minna Stern, 2014). Finally, the information that during the first half of the 20th century in California, among the

⁵ In 1935, the Nazi regime accepted the program of an extreme version of positive eugenics (*Lebensborn*), which was supposed to compensate for the casualties in the First World War and to ensure racial purity. Medical experts and social workers willingly participated in this program, sending suitable girls and boys to conception and family care camps. Apart from positive eugenics, there is also negative eugenics which was practiced both in Nazi Germany and elsewhere - it implies that some people, based on their characteristics (racial, national, mental, intellectual etc.) are deprived of the right to reproduction (Reilly, 2015). There are much more examples of the application of negative than of positive eugenics.

⁶ In Nazi Germany, the Law on the Prevention of Progeny with Hereditary Diseases or the Sterilization Law, was adopted in 1933 and was used to cleanse the Aryan race. It was applied with the aim of eradicating bad genes of paupers, epileptics, alcoholics, mentally disabled and impaired (Roy et al., 2012).

⁷ In the meantime, this institution changed both its name and the composition of its residents. In the beginning, this institution accommodated only white people, and only later Afro-Americans. Both races had the same diagnoses: epilepsy, mental disorders or mental disabilities.

people whose sterilization was sponsored by the government, there was the largest number of those of Mexican origin, who were marked by the *truth* of being promiscuous and mentally deficient in comparison to the white race (Lira, Minna Stern, 2014). This certainly speaks in favour of the existence of specific biopolitics which survives, with minor changes in its discourse, to date, which will be discussed further in another place.

In 1928, Canada - its two provinces, Alberta and British Columbia, introduced the Law on Eugenic Sterilization which was similar to the US law. Until 1972, when this Law was abolished, more than 2,800 people were sterilized, and after the lawsuit initiated against the government in 1995 by a group of women⁸, we learn that they were deprived of the possibility to become mothers without their consent (Roy et al., 2012). The example of Japan is interesting, since it is one of the few, and perhaps the only country which adopted the Law on Eugenic Protection after the Second World War. This Law allowed for the sterilization, as a rule forced, of 16,500 of mostly residentially institutionalized people. Good news is that since 2015 there have been no state programs which can implement forced sterilization for eugenic reasons (Reilly, 2015), while in Australia, despite the fact that there is no law directly regulating this issue, there is ample evidence about the forced sterilization of women, mostly intellectually disabled (Ending forced sterilization of women and girls with disabilities, 2017).

Sterilization of mentally disabled persons as a practice is not (and was not) is not unfamiliar to Europeans either. At the beginning of the 20th century, it was legalized in Sweden, Island, Switzerland, Austria, Denmark and Norway (Tilley, Earle, Walmsley, 2012). The program of eugenic sterilization in Sweden was implemented in the period 1934-1976. And, judging by the report of the Swedish government from 2000, it included 27,000 institutionalized people. Out of that number, 6.000 consented willingly to sterilization, while it was forced in the case of all others. It should also be said that consent to sterilization both in Sweden and in Iceland was the precondition for leaving the institution, as well as that the procedure was rather routinely performed (Stefansdottir & Hreinsdottir, 2011, according to: Tilley, Earle, Walmsley, 2012).

⁸ It is not such a small number of persons undergoing forced sterilization - 850 of them.

Although it is claimed that forced sterilization of the mentally disabled has been restricted since the 1970s, the data obtained from different sources, e.g., reports of the media and non-governmental organizations, lead us to suspect that this practice has been abandoned. For example, we can see that, in France, women and girls with intellectual difficulties were subjected to forced sterilization until as late as the 1990s. In fact, it has been found out that about 15,000 institutionalized mentally disabled persons in this country underwent forced sterilization. A similar practice is implemented in Spain over women and girls with intellectual disabilities and other forms of psycho-social disabilities, without their consent and/or without clear understanding of the finality of the intervention to which they were subjected. The UN Committee for the Rights of Persons with Disabilities has found that, in Europe, sterilization is implemented in Estonia, Switzerland and Iceland, while there is a particular concern over the practices existing in Croatia and Germany, where sterilization is implemented over children and adults with disabilities without their consent in case their custodians/parents demand it.⁹ The situation is similar in Italy, while the above-mentioned Committee, in its report mentions the Lithuanian civil code as an example of an inadequate legal solution (and practices deriving from it), because it allows for the possibility of mentally disabled persons, deprived of business capabilities, being subjected to surgical interventions (including sterilization or castration), abortions, and organ removal operations (with the court approval) (Ending forced sterilization of women and girls with disabilities, 2017; Nikolić, 2022). In Portugal, Hungary and the Czech Republic, forced sterilization can also be implemented on minors (Uldry, 2022).

Among the European Union member-states, there is no uniform legislative framework regarding forced sterilization,¹⁰ but the states themselves regulate this issue (https://www.edf-feph.org/content/uploads/2022/09/Final-Forced-Sterilisation-Report-2022-European-Union-copia_compressed.pdf). Forced sterilization is legal or, at least, not strictly prohibited in 12 out of 27 EU member-states.

⁹ It can be an extremely traumatic experience for a person subjected to sterilization because “the attack comes from those we love” (Cyrulnik, 2002: 100).

¹⁰ The Law on the Protection of Persons with Mental Disabilities of the Republic of Serbia (2013) prohibits forced sterilization (Article 56) over insufficiently mentally developed persons with mental disorders or addiction diseases (Article 2).

Those are Bulgaria, Cyprus, Croatia, Denmark, Estonia, Hungary, Finland, Latvia, Lithuania, Portugal, Slovakia and the Czech Republic. In these countries, despite the fact that they are also signatories to the so-called Istanbul Convention and the International Convention on the Rights of Persons with Disabilities, mentally disabled women are deprived of the right to motherhood. Namely, in both above-mentioned conventions, forced sterilization of mentally disabled women is considered the violation of their human rights to freedom, respect and personal integrity, and the implementation of such procedures, in case they are forced, is sharply criticized (<https://www.coe.int/en/web/gender-matters/council-of-europe-convention-on-preventing-and-combating-violence-against-women-and-domestic-violence>; Pradhan et al., 2022). In fact, regardless of whether the decision about sterilization has been made by the court or not, before the person in question gives consent, this is considered a forced and unethical practice (Ending forced sterilization of women and girls with disabilities, 2017). It is an act of violence, a form of social control, cruel, inhuman or degrading treatment or punishment, but it is the fact that this unnecessary and non-therapeutic medical intervention is still performed over young women with intellectual disabilities throughout the world (Ending forced sterilization of women and girls with disabilities, 2017).

In particular, we find it necessary to underline the conclusion reached by some authors - that this topic has been put aside: by far the largest number of our contemporaries do not think about it, nor are aware of forced sterilization being a reality for some people. It is interesting to mention that the most agile in combatting this practice are activists. Their message is clear: forced sterilization does not only belong to the past, but is still present as a form of subtle eugenics (Yupanqui-Concha, Aranda-Fariasa, Ferrer-Perez, 2021).

But how should the presence of such inhumane practices be understood in modern time? The arguments used (now and in the past) to justify negative eugenics will be further discussed below.

2. Forced sterilization: the justification of “good violence”

Sterilization - as we will see, not only of the intellectually disabled, but also of the unaccepted of all sorts - has been allowed for by surgery practice as well as, conditionally speaking, medical findings, for example those about deficient germinal plasma,¹¹ on the one hand, and the public discourse about the causes of poverty, degeneration and economic burden placed on taxpayers by the *different ones*, on the other hand. Richard Dugdale was among the first who began proving the latter thesis in his 1877 study about the Jukes family, whose many descendants were not only had the burden of mental disorders and retardation, but were also socially dangerous. A doctor from Massachusetts described the feeble-minded as “parasites unable to provide for themselves” (Holmes, 1930, according to: Lira, Minna Stern, 2014). He saw a special danger in the fact that they had children who were feeble-minded as well, and that these children should not be born because they are burden both for the family and the state, and even for the whole civilization. In the following four decades, numerous studies were written with similar conclusions, and the codification¹² of forced sterilization of the mentally disabled was only a logical step from theory towards practice (Reilly, 2015; Chaparro-Buitrago, 2024).

Negative eugenics which relies on the idea that it is necessary to *defend* a society’s genetic fund from deficiencies, reached its peak in the 1920s and 1930s. Then the rhetoric changed: forced sterilization was supposed to protect vulnerable women from unwanted pregnancy. Namely, they were considered persons who could not take care of themselves at all, or control their sexuality (unlike “normal” girls or women) and their “leaky” bodies. The norms of body regulation which make us human beings are not valid for the intellectually impaired: the functions of their bodies make them closer to animals, and their instincts and behaviour must be carefully directed and controlled, otherwise they may become an object of abuse (Steele, 2014).

¹¹ The term “gene” was still not in use at the time (Reilly, 2015).

¹² Largely relying on the vasectomy program initiated by Doctor Harvey Sharp, a surgeon in the prison Jeffersonville, in 1905, convinced that in that way he would prevent intergenerational transmission of criminality (Reilly, 2015).

Such discourse and practice were supported by a number of myths, for example the one about intellectually impaired women's inability to be good mothers (Ending forced sterilization of women and girls with disabilities, 2017). Moreover, the advocates of sterilization claimed that this intervention should enable the intellectually disabled to live outside institutions, independently, without fearing pregnancy or sexual abuses (Reilly, 2015). However, behind these, we may discern certain different motives and policies of reproduction management. Sterilized women no longer constituted an economic burden to society: they could not have offspring, nor was it necessary for them to be institutionalized.

Furthermore, the legitimacy of such acting is also given by the fact that this is not considered violence, at least not bad violence (Steele, 2014), for minimum to *self-explanatory* reasons. The first one starts from the belief that medicine cannot act with an evil intention, which is a motto contained in the imperative "do not cause harm" (Pradhan et al., 2022). Every practice, including this surgical and medical practice, has a halo of being objective, benign and therapeutically beneficial, and placed into such discourse, sterilization becomes an act of saving (by removing the risk of pregnancy), and not invasion (Steele, 2014).

The second justification lies in the belief in the legality of court acting which starts from the doctrine *parens patriae*. According to it, the state and/or the court provides protection to its citizens and, in case someone is unable to decide about the matters of their rights (due to mental, intellectual or other handicap), decisions are made instead of them. Thus, the state, family or Supreme Court has the competence to approve the requests of custodians¹³ of the mentally disabled asking for the implementation of different medical interventions over them. It transpires that the law protects intellectually disabled women from bad violence (e.g., illegal abortion) by doing what is allowed by the law. In other words, from the viewpoint of medicine as well as law, such acting is aimed at protecting a mentally impaired person (by all accounts, from himself/herself).

Looking at this practice, Chaparro-Buitrago (2024) claims, from the feminist point of view, that forced sterilization is an instrument of supervision and closing, and observes that the state uses typical mechanisms to keep potentially

¹³ Sterilization also enters into the domain of family law, which implies that parents' obligation is to take care of their mentally disabled children (Komodromou, 2019).

unsuitable ones under control, conditioning their freedom or material existence by renouncing the right to having children. It is specific biopolitics which governs the reproduction rights of the vulnerable ones (as well). Such practices always go along with the discourse about danger and/or burden potentially posed to taxpayers by the impaired, the poor or the coloured. As a matter of fact, although one would expect these ideas to belong to the past, we learn that modern practices of sterilization which cover all those recognized as a threat to social cohesion - migrants, members of minorities, and all other socially unacceptable ones - are organized around the topics of economic stagnation, costs, peace threats and immigration (Chaparro-Buitrago, 2024). Thus we are occasionally shocked by the findings about forced sterilization of people at the bottom of the social ladder. We will list several examples: in 2005, an independent counsellor of the Czech Republic's government found out that dozens of women of Roma origin had undergone forced sterilization in the period between 1979 and 2001. Consent to sterilization was a condition for the continuance of their receiving the government aid in the future. During Fujimori's ten-year long reign (1990-2000), hundreds of thousands of forced sterilizations were performed on the members of autochthonous peoples Quechuas and Aymaras. We should also add that this program was recognized not only as part of the public health package for the Peruvian nation, but was also financially supported by the USA and the United Nations Population Fund. There are similar reports about Brazil as well: the female members of the Pataxó tribe in Bahia were subjected to forced sterilization, whereas Israel is also accused of implementing birth control over minorities without their consent (Reilly, 2015). In the USA, doctors employed in the Indian Health Service within the Department of Health sterilized about 150,000 Indian women in the ten-year period (1960-1970) - (it is claimed that this was on a voluntary basis, but the authors do not agree with this claim). It is stated that from 1947 to 1951 in Iowa about 145 women, mostly poor and living in villages, were sterilized annually. Sterilization was not aimed at preventing the birth of children with intellectual disabilities, but the staff of the clinic (Birthright) in which sterilization was performed tried to convince young women that, due to poverty, they would not be able to raise their children and that they should renounce the right to have children. It is also necessary to mention the so-called *family caps* - the service in the social protection system existing in 24 federal states in the USA since 2015,

which is in charge of supervising reproduction and placing restrictions for the payment of welfare assistance in case families have a certain number of children (Reilly, 2015; Ljubičić Dragišić Labaš, 2024). Pradhan et al. (2022) state the finding about a judge from Tennessee who conditioned the reduced prison sentence by a voluntary consent to sterilization. There is also a case of a woman from Oklahoma who was convicted of cashing a forged check in 2018, but whose sentence was reduced after she had undergone sterilization (Pradhan et al., 2022). Finally, in 2020, terrifying stories were revealed about forced sterilizations and reproductive abuse over Uyghurs in China and female immigrants in the USA, particularly those who were deprived of freedom (Chaparro-Buitrago, 2024).

How should these practices be understood? How can we understand the paradox that, in the world in which human rights have the halo of sanctity (Joas, 2018), those rights are not available to some people?

3. Biopolitics and reproductive rights

If we try to understand the above-described practices from the perspective of biopolitics - a specific phenomenology of the physical and the political (Jurić, 2022: 238), which regulates the way of thinking and behaviour, which determines us in relation to extremely intimate matters, depriving one man of the right to govern his own life, in the name of the government's care for its citizens (Isanović, 2022), we will agree that it is a governance technique aimed at population control and regulation. Those are political strategy and intervention mechanisms (Žitko, 2020). This Real-politik practice is called biopolitical neo-totalitarianism by Koljević Grifit (2023: 67), who notices that it is not only comprehensive - targeting the space of the public, the private, the individual, and the collective, but it is also dichotomous at the same time. There are friends and enemies, and an opinion different from the official discourse is placed in the category of the unacceptable. From that perspective, the state determines who is suitable for reproduction and who should be deprived of that right (Alavi, 2021). Bodies become an object of state intervention and reproductive legislation (Alavi, 2021) and the basis for building racism, discrimination and marginalization.

Biopolitics was previously founded on the ideas of negative eugenics - the prevention of transmitting deficient genes, while nowadays the deprivation of

the right to parenthood is justified by welfare, security and reproductive responsibility.¹⁴

However, are human rights violated in that manner?

According to a number of authors, the answer is affirmative. Joas (2018: 51) presents a claim with which we fully agree: although a person is sacralised in today's world, the processes leading to its beatification are fragile and easily inverted into their opposite. Thus, although motherhood and pregnancy are recognized as part of the rights of women with disabilities, they are not considered a right, particularly by custodians (Pradhan et al., 2022).

Finally, when we shift from the macro level to the individual, personal level, we observe a dimension which we have not discussed so far. It is human suffering of a number of the mentally disabled and forcefully sterilised women who were deprived of the right to motherhood (Hurtes, 2023). Exploring the matters of motherhood and intellectual disability, Hillier, Johnson & Traustadóttir (2007) have learnt about women's moving testimonies. They speak about the felling of loss and sorrow because of being forced to have an abortion and/or being deprived of the possibility to become mothers. The key argument - that they cannot take sufficiently good care of their children - was denied in rare studies. The findings speak in favour of the fact that women with intellectual disabilities are aware of the possibility of their children being taken from them because they do not take sufficiently good care of them; they are concerned by this possibility and, with adequate support, they manage to raise their offspring (Hiller, Johnson & Traustadóttir, 2007; Beltran-Arreche, Fullana Noell, Pallisera Díaz, 2024). Furthermore, the researchers find that these women want to be mothers, that being mother is an empowering role for them, that they love their children, as well as that family support is not only welcome to them, but also a challenge they are faced with (Shpigelman, Bar, 2023).

¹⁴ The Chinese government justifies forced sterilization of Uyghur women by the danger from Islam extremism and poverty (Reilly, 2015).

Instead of a conclusion

The modern discourse about motherhood, which allows someone's right to parenthood and prohibits someone else's right parenthood, is based on technologies related to reproduction, relying on a set of disciplinary techniques. They include the system of knowledge: classification, measurements, testing etc., as governing technologies over reproduction. The power of knowledge - at least not an openly repressive mechanism, is based on subtle techniques of supervision, control, and conditioning (Sawicki, (2017). Disciplining power is exercised both over those who are allowed to be parents and those who are deprived of that right, e.g., the mentally disabled, since they are considered unable to be responsible. Although it may seem that the disciplining strategies are in favour of both the individual and society, they are basically governing. That is why it is not surprising that, thanks to them, the desirable and the undesirable are often redefined, including conventions which were never doubted beforehand. Ultimately, it means that our human rights are not an inviolable value (Ljubičić, 2021; Ljubičić Ignjatović, 2022; Pavlović, 2022), but a variable category (Ljubičić Ignjatović, 2022; Ljubičić, Dragišić Labaš, 2024), largely shaped by specific social constellations and the moment.

It can be seen particularly in the example of forced sterilization of mentally disabled persons: although they should be entitled to their body integrity, decisions about their bodies are, as a rule, made by others. It undoubtedly leaves consequences on them, both physical and emotional.

We know very little about it because this group, as well as many others vulnerable ones, is still invisible. As long as it stays like this, as long as one "social situation remains outside social reach, it can be denied" (Cyrulnik, 2002: 111). Finally, the whole truth is contained in the instruction given by Cyrulnik to prevent us from making mistakes in acting towards those who suffer. For someone to heal, it is not necessary for us to act on his injury but on his environment (Cyrulnik, 2002: 249).

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