Global Campus Europe

UNESCO CHAIR

ON EDUCATION FOR HUMAN RIGHTS, DEMOCRACY AND PEACE

ARISTOTLE UNIVERSITY OF THESSALONIKI

European Master's Programme in Human Rights and Democratisation

A.Y. 2020/2021

Involuntary soft sterilization for 'unfit mothers': Best interests of the child or latent eugenics?

A historical comparative approach to the Dutch Law proposal and its legitimation

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Word count: 22.267

Acknowledgements

I would like to thank every member of the Global Campus that has contributed and made possible for us to take part in this program during this year of pandemic, despite the chaos and madness there was around us. We have found a family and a home in Venice thanks to you.

I feel also grateful for my experience at the UNESCO Chair of the Aristotle University in Thessaloniki, for my supervisor Prof. Aspasia Tsaoussi, who has guided me along this journey, and for Stella, who has been taking care of us during this semester and making sure we had everything we needed.

And last, but not least, I would like to sincerely thank my family and friends, who have encouraged me to work hard and enjoy the process of writing a thesis. Especially, my sister Paula and my boyfriend Ander, who have become experts in eugenics and reproductive rights after having read every page of my thesis several times and giving me their honest feedback. I could not have done this without your support. Maite zaituztet.

Abstract

Due to the atrocities that resulted from the Nazi eugenic rhetoric, many states have been reluctant to implement policies that could be read as eugenics. However, the reality is that eugenic thought is still among us. In fact, with the advent of modern technologies, the ways in which the state influences women's rights have become more subtle and sophisticated. We can no longer speak about forced sterilization in the terms that were used in the 19th and 20th centuries, but this study will show the alarming similarities between past rhetoric and current policies involving Long-Acting Reversible Contraceptive methods (LARCs). In particular, this paper will analyze the Dutch proposal that has been submitted calling for forced contraception for unfit mothers, a measure that is supposed to safeguard the best interests of the child and prevent vulnerable parenthood. Furthermore, this paper will attempt to establish whether the proposal's intentions are legitimate and its means valid, or whether it entails latent eugenics. The methodology used will consist of a historical and comparative approach of the eugenic practices of the 20th century and their evolution—particularly, in the USA—to highlight the worrying similarities between past and present attitudes and logics.

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1. INTRODUCTION

We have witnessed throughout history the willingness to control and influence women's decisions in terms of their reproductive rights. We have experienced massive forced sterilizations as one of the strategies used in the eugenic movement of the 19th and 20th century neglecting women's reproductive freedom. Far from learning the lesson, we are going towards a new direction: restricting women's reproductive rights through forced and coerced contraception, using Long-Acting Reversible Contraception (LARCs), which can be regarded as soft sterilization.

Since the 1990's, when the Norplant implant was introduced in the market, the idea of a contraceptive that "did not require the patient's cooperation to be effective" (Taylor 1992, p. 8) opened the door to the possibility of imposing its use to those women that were considered "unfit" to raise children. This practice allegedly aimed at protecting the unborn is now jeopardizing reproductive rights of women in the Netherlands, as the introduction of forced contraception for "vulnerable motherhood" is currently being discussed in the Dutch Parliament. The transcendence of this research is not the Dutch proposal *per se,* but the fear that if it were to be approved in the Netherlands, it could soon spread to other European countries and become a well-accepted practice.

This paper, thus, will examine the ethical dilemmas encompassed in the issue, namely the discussion whether the alleged protection of children would somehow justify the violation of women's human rights in relation with their own bodies and their right to choose when, how and if to have children. Furthermore, we will explore whether these measures constitute a discriminatory policy based on sex, as they place a burden exclusively on women. For this purpose, the paper will not only apply a gender perspective on the issue, but also an intersectional approach, as it is fundamental to understand how the application of this policy would affect disproportionately the most marginalized groups within the already vulnerable group of women. In the words of Currell,

> it is critical to acknowledge a historical legacy, perpetrated by calculated acts of White supremacy, colonialism, classism, able-ism, and misogyny that pushed for and legislated policies that were said to be aimed at the public good, but overrode the rights of some individuals, particularly the most vulnerable women, to curb or stop their reproduction. (Currell 2006, as cited in Kaitz, Mankuta, and Mankuta 2019).

The essay will start by briefly presenting the importance of reproductive rights and, what is more, reproductive justice, and explaining why it is essential to apply a gender perspective and an intersectional approach to the study of reproductive freedom. Then, it will present the origins of the eugenic movement and its development throughout the 19th and 20th centuries, as well as one of the main tools of the negative eugenic policies, namely, the sterilization of the "unfit". Afterwards, it will introduce current forms of eugenics and forms of involuntary sterilization and contraception, to shed some light on the fact that it has been, and still is, a widely-spread practice all around the world, and that women's human and reproductive rights are often compromised in the interest of a more "competent" and "fit" society.

The focus of this paper will lie on the ethical dilemmas that the aforementioned policy entails: on the one hand, it will attempt to settle whether the underlying intentions of such a measure are genuinely protecting vulnerable motherhood and the rights of the unborn, or if this is just another latent strategy of eugenics. On the other hand, it will try to determine whether the rights at stake and the potential dangers of not interfering could actually justify a violation of a list of women's rights and non-discrimination principles, and if prevention of the suffering of those children should legitimize such a barbaric policy in any of the different contexts presented by the Dutch proposal. Despite the fact that it may be easy to agree with the need to protect vulnerable motherhood and children born into those contexts, it must be examined whether the methods of this kind of policy respect human rights instruments, ethical standards of what is right, morally valid and necessary in a democratic society.

Ultimately, the question we should ask ourselves is, if we did open the door to the judges arbitrarily determining who should and should not bear children, are we comfortable with the possible outcomes of this decision? Is that the world we want to live in? A world where there is no room for those who are not fit enough, a new form of social Darwinism?

2. REPRODUCTIVE RIGHTS VS. REPRODUCTIVE JUSTICE: THE IMPORTANCE OF GENDER PERSPECTIVE AND INTERSECTIONALITY

"Has a woman a right to herself? It is very little to me to have the right to vote, to own property, etc., if I may not keep my body, and its uses, in my absolute right. Not one wife in a thousand can do that now, and so long as she suffers this bondage, all other rights will not help her to her true position"

Lucy Stone (Hasday, 2000, cited in UNFPA 2021)

2.1. Are reproductive rights human rights?

When it comes to determining the content of reproductive rights, the International Conference on Population and Development (ICPD) Programme of Action explains that they are not a new set of rights, but a "constellation of freedoms and entitlements that are already recognized in national laws, international human rights instruments and other consensus documents" (Pitanguy 1999, p. 21). That is why there is not a human rights instrument dedicated exclusively to reproductive rights (Pitanguy, 1999). However, the lack of a specific instrument regulating the concept does not mean that the set of reproductive rights are not protected internationally but rather the opposite; reproductive rights are made up of non-discrimination and equal treatment principles, the right to life, the right to physical integrity, to marry and found a family, to privacy and family life, to information and education, to the highest attainable standard of health and to benefit from scientific progress, all of which are protected both in the national and in the international spheres (Pitanguy, 1999).

Likewise, one of the central elements of reproductive rights is the concept of bodily autonomy, that emerged during the 1970s in the context of women's empowerment, and that "is included, implicitly or explicitly, in many international rights agreements, such as the Programme of Action of the International Conference on Population and Development, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of Persons with Disabilities" (United Nations Population Fund, 2021). It has been argued that bodily autonomy is not a human right, but the United Nations Population Fund (UNPF) –the UN agency aimed at protecting and guaranteeing reproductive and maternal health worldwide– continues to insist that it is not only a human right, but also the foundation upon which all the other human rights are built. Without the possibility to make informed choices about what could affect one's own life and future, all the other human rights become void (United Nations Population Fund,

2021). In other words, reproductive rights can be explained as the right of couples and individuals to decide freely whether to have children, how often and when to do so (UN Population Division n.d.).

In a report published by the UNFPA under the title "My Body Is My Own: Claiming The Right To Autonomy And Self-Determination" (UNFPA, 2021), the following ideas are brought together: the first one is that, athough there are many different aspects that affect women's bodily autonomy and integrity, one of the main ones is gender discrimination. The second idea claims that gender discriminatory norms are even more harmful when combined with other forms of discrimination (race, sexual orientation, disability…). Thirdly, the report explains that "being free from discrimination and enjoying equal treatment means that States may not make any distinction in law or policy on the basis of characteristics such as sex, age, race, ethnicity, gender expression, religion, nationality, marital status, health or disabilities (UN CESCR, 2009)". Additionally, it establishes that "the right of a woman or girl to make autonomous decisions about her own body and reproductive functions is at the very core of her fundamental right to equality and privacy" (UN Working Group on Discrimination Against Women in Law and Practice, 2017). For this reason, in the framework of reproductive rights it is essential that States respect individuals' bodily autonomy and integrity "irrespective of social context". The report concludes that, in light of the rights to bodily integrity and autonomy, states should refrain from "intruding on someone's physical body without obtaining free and informed consent".

As important as reproductive rights may be for the empowerment of women, historically the pro-choice movement has been mainly used as a synonym to the right to *not have* children, and more precisely, in relation with abortion, leaving out many other issues that comprise reproductive freedom. Indeed, the reason behind the lack of protection of other rights, such as the right *to have* children, is the difference in the lived experiences of those women leading the feminist pro-choice movement in the 1970s. White middle-class women could not relate to what women of color were experiencing, which was, among other mass violations, involuntary or forced sterilizations, so their agendas did not include protection for class and race oppression (Ross & Solinger, 2017). As a consequence, those women who felt their rights were not being included in the feminist fight started to assemble and created a new movement, giving a name and content to the term "Reproductive Justice".

2.2. Beyond pro-choice: the broader framework of Reproductive Justice

The Reproductive Justice movement goes beyond the pro-choice debate; it can be understood as a political movement that unites reproductive rights and social justice and it is based on these three basic principles: the right not to have a child, the right to have a child and the right to parent children in safe and healthy environments (Ross 2007, p. 18).

SisterSong Women of Color Reproductive Justice Collective is an American national membership organization formed in 1997 by already existing organizations of women of color from different communities with the aim to combine reproductive rights and social justice (Ross 2007). They define Reproductive Justice as “the human right to maintain personal bodily autonomy, have children, not have children, and parent the children we have in safe and sustainable communities”. SisterSong explains that the access to abortion is just one of the many obstacles women of color and other marginalized women have to face, but they aim at a more comprehensive reproductive justice agenda that targets “two of the methods frequently employed by the racially motivated family planning apparatus that have undermined women of color’s right to have children: coercive sterilization and invasive long-term birth control technologies” (Jael Silliman, Marlene Gerber Fried, Loretta Ross 2004, p. 7). The Reproductive Justice movement has, some say, democratized and enriched the reproductive rights movement by including other voices and different struggles in the field of reproductive freedom (Jael Silliman, Marlene Gerber Fried, Loretta Ross 2004). This new movement does not necessarily benefit only women of color and other marginalized women, but rather the feminist movement as a whole (Ross & Solinger, 2017). One example of how the Reproductive Justice activism improved the already existing reproductive rights movement is the achievement of regulation and inclusion of guidelines in matters of sterilization, which was initially advocated by women of color to end its coercive use, but in the end favored and afforded protection for all women (Silliman et al., 2004).

2.3. Intersectional feminism

In the last decades, a growing number of scholars (i.e., Hilary Charlesworth, Christine Chinkin and Shelley Wright) have been arguing the importance of rethinking how laws are configurated, as the current lens only take into consideration the experiences of those who used to draft those laws, that is, male experiences. Feminist legal theory insists on the importance of including women's interests when designing laws, especially when the matter they are regulating affects mainly and almost exclusively women's rights and lives, as with reproductive rights and bodily autonomy. In an androcentric system composed by patriarchal legal institutions, there is little room for gender perspective (Charlesworth et al., 1991). For this reason, feminist legal theory considers fundamental the "restructuring of traditional international law discourse and methodology to accommodate alternative world views". The aim of this change would be, according to Elizabeth Gross, "to render patriarchal systems, methods and presumptions unable to function, unable to retain their dominance and power" (cited in Charlesworth 2016). Only from that starting point would it be possible to achieve substantive equality.

Another element that has to be taken into account when analyzing the issue of reproductive rights and, in particular, the coercive uses of sterilization and contraception, are, as explained above when discussing reproductive justice, the factors that worsen gender discrimination. Intersectional feminism is described by Kimberlé Crenshaw, who coined the term, as "a prism for seeing the way in which various forms of inequality often operate together and exacerbate each other" (UN Women, 2020). Crenshaw points out that race inequality cannot be considered as something separate from inequality based on gender, class, sexuality or immigrant status; they cannot be categorized as singular issues (Crenshaw, 1989), but rather as overlapping sources of discrimination that make it even harder for those women. bell hooks already anticipated that the feminist revolution alone could not solve all the problems women face; it must also target racism, class elitism and imperialism in order for it to be effective (hooks, 2000).

To sum up, what the Reproductive Justice movement aims to achieve is "the right to be recognized as a legitimate reproducer regardless of race, religion, sexual orientation, economic status, age, immigrant status, citizenship status, ability/disability status, and status as an incarcerated woman" (Ross 2007, p. 42). As rightly expressed by Loretta Ross, "to meet human needs, intersectionality is the process; human rights are the goal" (Loretta Ross; Rickie Solinger 2017, p. 85).

3. THE EUGENICS MOVEMENT: A HISTORICAL APPROACH TO THE LIMITATION OF WOMEN'S REPRODUCTIVE RIGHTS

3.1. History of the Eugenics movement in the 19th and 20th centuries

3.1.1. Concept and origins

Francis Galton, Darwin's cousin, is considered the father of eugenics (Aubert-Marson, 2009). He first coined the term in his publication "Inquiries into Human Faculty and its Development" in 1883, although he had already been playing around with the idea of heredity since the 1860s and had published several articles in the MacMillan magazine, as well as one of his most influential books—"Hereditary Genius" (1969)—advocating for further research on the topic and claiming that there was great potential in the field. Eugenics, in the words of Galton, came from the Greek word *eugenes –eu* means 'good' and the suffix genēs stands for *genes*, explains Phillipa Levine, so the concept literally means "good in stock, hereditarily endowed with noble qualities". Therefore, the basic foundation of the eugenic faith relies on the idea that, using the principles of heredity and statistics, through good breeding, it was possible to improve the human race (Levine, 2017). Daniel Kevles, one of the most prominent scholars in the field of eugenics, explains that the eugenic movement began to flourish after the rediscovery of Mendel's theory at the beginning of the 20th century, according to which, if applied to human beings, we are determined almost entirely by our "germ plasm" (Kevles, 1998).

The science of eugenics has often been described as "a pseudo-scientific doctrine based on an erroneous interpretation of the laws of heredity, swept across the industrialised world" (Amy and Rowlands 2018, p. 2). Indeed, what made eugenic principles and practices so appealing to the general public was that they "offered an explanation for contemporary pathologies (increasing crime, more recidivist criminals, sexual offending, social manifestations of 'deficiency') and a means for their remedy" (Macdonald 2018, p. 235). The logic behind this was the thought that society's ills, the new and growing sense of unease (Renwick, 2011), the urban danger and the widespread pessimism (Levine, 2017) could be easily blamed on the "strangers", on those who because of the Industrial Revolution were now living among them, but who "clearly" could not keep up with the modern life (Facing History & Ourselves, n.d.; Renwick, 2011). However, in practice, the solutions offered by eugenicists "all too often trod a fine line between treatment and punishment" (Levine 2016, p. 2). Many authors claim that, rather than a scientific scheme, it was a social policy.

Francis Galton inspired on his cousin's ideas of evolution, presented first in his work "On the Origin of Species", and later on in the sequel "The Variation of Animals and Plants Under Domestication", but ironically, Darwin and Galton had a complicated relationship: on the one hand, when Darwin first read his cousin's theories, he had an internal conflict, as everything Charles had suggested challenged the Biblical interpretation of the creation, one that he had been supporting even in his previous works as the man of faith he was (Fancher, 2009). However, later on in his life, Galton admitted that he considered his older cousin as the most important influence in his personal transformation (Fancher, 2009). As for Charles, he was always "politely skeptical about the realistic prospects of eugenics" and never really supported his cousin's theories on race betterment, but it can be said that both Galton and Darwin "had agreed to disagree and to remain on friendly and respectful terms" (Fancher, 2009). But as Natalie Ball rightly argues, "whether or not he would have agreed with it, the theory of evolution and natural selection, formulated by Darwin, provided a scientific and theoretical basis for eugenic ideas and actions" (Ball, n.d.). Indeed, based on Darwin's formulations on evolution, Galton insisted that, in contrast to what happens in nature, natural selection does not or cannot work in human societies because people interfere with the process (Ball, n.d.; Leonard et al., 2005).

The core idea of eugenic thought can be found in the words of one of its leading figures, Karl Pearson (On the Laws of Inheritance in Man: II. On the Inheritance of the Mental and Moral Characters in Man, and Its Comparison with the Inheritance of the Physical Characters, 1904):

> We are ceasing as a nation to breed intelligence as we did fifty to a hundred years ago. The mentally better stock in the nation is not reproducing itself at the same rate as it did of old; the less able, the less energetic are more fertile than the better stocks. No scheme of wider or more thorough education will bring up, in the scale of intelligence, hereditary weakness to the level of hereditary strength. The only remedy, if one be possible at all, is to alter the relative fertility of the good and the bad stocks in the community.

Even though it is *a priori* presented as a scientific scheme, based on the science of heredity (Levine, 2017), Galton never really focused on the scientific approach to the matter, and it is no surprise considering he did not have a scientific background; he was a statistician. And when he did, the research was concluded as a failure, as happened with the pangenesis experiments with his cousin. Galton's intention, as Chris Renwick remarks, was to demonstrate *that*, rather than *how*, characteristics are inherited (Renwick, 2011). "In so doing, he developed his research programme in a way that enabled him to study heredity without reference to questions about heredity of the

kind that interested biologists" (Renwick 2011, p. 17). As a matter of fact, it has been proven in later times that many of the types of traits that were studied by Galton and his eugenic colleagues, in reality, do not have a genetic basis (Billinger, 2014). Eugenics, particularly during the first periods was too simplistic and reductionist in its approach to the complexities of heredity and genetics.

Regarding the implementation of eugenic policies, this essay will show how it worked both ways: either through the encouragement of healthy reproduction (positive eugenics) or the discouragement of unfit procreation (negative eugenics). For the purpose of this paper, the focus will be solely on the measures that involved negative eugenics. The most essential one, both because of its widespread acceptance and its practical application, being the sterilization of those deemed unfit, a topic that will be further discussed later on in a different section. But first, who were the target of these eugenic policies?

3.1.2. The "unfit" according to eugenic standards

Early eugenic theory was based on the idea that certain traits were hereditary and certain evils then passed on to future generations, which led them to believe that, by selective human breeding, those negative traits could be removed from society and consequently, could result in the betterment of the race. Some of the traits targeted by the eugenicists can be found in the North American sterilization legislation: idiocy, imbecility, feeble-mindedness, epilepsy, insanity, mental illness, mental defectiveness or disease, moral depravity or perversity, sexual depravity or perversity, incestuousness, pedophilia, syphilis, neurosyphilis, criminality, alcoholism, and Huntington's chorea (Wilson, 2014a).

Philippa Levine explains that the term feeble-minded, which at that time had a tremendous momentum, encompassed a disturbingly large population: the definition adopted in Britain defined feeble-minded people as "capable of earning a living under favourable conditions but not of competing on equal terms… or of managing himself and his affairs with ordinary prudence". They were "less disabled than the idiot or the imbecile, but nonetheless subnormal" (Levine, 2017). However, the reality shows that the term allowed for many other categories of people that were opposing the norm of "fitness" to be considered "feeble-minded" and thus, victims of eugenic policies. The high success of the faith of eugenics relied on the fact it "promised a future in which crime, disease, and poverty would decrease, lofty social values would flourish, and taxes would all

but disappear"(Lombardo 2008, p. 10). The solution for them was clear: if those evils obeyed to hereditary forces, the problems could be easily removed from our societies by stopping those responsible for them to procreate.

In some countries, the reach of eugenic practices included also blindness, deafness, muteness (Levine, 2017) as well as "people with perceived genetic disorders such as colour blindness, haemophilia, ichthyosis, epilepsy and mental illness", as happened in Japan (Amy & Rowlands, 2018). As it can be grasped, it was a very broad umbrella of people (Levine, 2017).

In addition to this, closely related to the eugenic movement is the social hygiene movement, which originated during the early 1900s and brought together different groups with the common concern about venereal disease, prostitution, society's moral standards, and family life (Wuebker, 2020). The two movements were closely related and intertwined. Indeed, the rise of commercialized prostitution was seen as a "social evil" (Luker, 1998), and it functioned as one of the links between the social hygiene movement and eugenics. The fight against prostitution turned out to be quite convenient for eugenicists, as the line between "inadequate sexual behavior", also known as "promiscuity", and prostitution was increasingly blurred (Wuebker, 2020), and what used to be merely socially wrong, now posed the threat of incarceration (Luker, 1998). Some of the reasons why women could be regarded as promiscuous are to "have been engaged in "irregular" intercourse, or even engaged in behavior such as being out late, being in public places, or offending middle-class standards of female propriety" (Luker 1998, p. 24). In other words, the term referred to any unmarried woman who was sexually active (Wuebker, 2020), and for the eugenicists "being promiscuous was not only a "symptom" for diagnoses like "feeble-mindedness," "sexual deviancy," or juvenile delinquency but also the result of these mental "disabilities" (Wuebker, 2020).

It is the dangerous link created by the eugenic theory between the most dreaded social evils (such as criminality, pauperism, alcoholism and prostitution) that made eugenic solutions so appealing to the general public. However, it will be analyzed in the section dedicated to forced sterilizations how these fitness standards only reinforced the existing gender, class and race prejudices, and how the criteria were often biased.

3.1.3. Eugenics as a widespread movement: different currents of thought

Contrary to what may seem now, eugenics was not a minority interest, but rather a mainstream international science that had advocates all around the world (Levine, 2017). Recently, scholars have agreed on the fact that "the central ideas of eugenics surfaced 'more or less simultaneously across many parts of the world', with enthusiasts in various countries attending the same congresses, reading the same texts, exchanging ideas, and monitoring developments elsewhere" (Diane B. Paul 2018, p. 15).

Indeed, one of the reasons why eugenic thought became so widespread during those years was because it encompassed a wide range of policies and practices, which made it very flexible. G. K. Chesterton (1922), one of its main critics, explained the success of eugenics as follows:

> I know that it means very different things to different people; but that is only because evil always takes advantage of ambiguity. I know it is praised with high professions of idealism and benevolence; with silver-tongued rhetoric about purer motherhood and happier posterity. But that is only because evil is always flattered, as the Furies were called "The Gracious Ones.
>
> The movement consists of two parts: a moral basis, which is common to all, and a scheme of social application which varies a good deal. For the moral basis, it is obvious that man's ethical responsibility varies with his knowledge of consequences.

a) Latin v. Anglo-Saxon eugenics

As Chesterton rightly said, if it was possible for eugenic theories to thrive and conquer different territories it was only because it was flexible and easily adaptable to different landscapes and their different needs. This led to a main division between two different branches of eugenic thought: on the one hand, the more predominant Anglo-American-Teutonic version, which was a proponent of hard-heredity based on Mendelism. On the other hand, Latin eugenics, in favor of soft-heredity principles, which prevailed in Latin American countries, as well as in France, Romania, Italy and Spain (Flyn, n.d.). The main difference between the mainstream eugenics and the Latin eugenics was that the former, which had high immigration rates, opted for a more radical approach, based on genetic engineering, racial selection, making use of compulsory sterilization to achieve their aim, often as racially specific migration controls (Levine, 2017). The latter, on the contrary, did not contemplate sterilization practices as tools for race betterment. Instead, they advocated for positive measures, based on Neo-Lamarckism, such as puericulture, biotypology and homiculture,

which aimed at the betterment of the race by means of preventive medicine, social hygiene, demographic studies and public health (Turda and Gillette 2014). The tendency towards a less radical approach arises from their cultural and political landscape: in Latin countries the idea of interfering with procreation was unthinkable, either because of traditional cultural and religious values or because the population rates were so low that they had to adopt pro-natalist campaigns instead (Turda and Gillette 2014). As a consequence, this branch of eugenic thought appealed a wide range of views, as explained by Marius Turda and Aaron Gillette: from Catholicism to anarchism and from fascism to communism (2014).

b) Eugenics within the anarchist movement in Catalonia (Spain)

There is still the misconception that eugenic thought is always linked to conservative or fascist politics, but the truth is that eugenics was very much promoted by left-wing and socialist groups as well, especially in countries where positive eugenics dominated (Levine, 2017). In fact, it is interesting to mention the study of Richard Cleminson of the anarchist working-class eugenic movement in Catalonia, Spain, that advocated for eugenic measures operated outside the State (Cleminson, 2008). As the author explains, eugenic anarchists argued that there were no natural illnesses, but that they were all just the result of capitalism, the Church, and the State; their bad organization had had let to "a 'race of the poor', overcome with poverty, tuberculosis and venereal disease". In consequence, their mission was to promote a society founded on economic independence and the wellbeing of all. To achieve this, the social organization had to provide all members with food, clothing, housing, education and technical provision'. Cleminson explains that Catalan anarchists believed that, rather than imposing eugenic negative measures, it was necessary to promote preventive eugenics, such as the cultivation of the personality and the broadening of one's *conciencia*, which would naturally lead to the individual being more conscious of his or her own acts and especially of the reproductive act. For them, the solution was to "destroy sexual ignorance and the privatization of knowledge in the hands of doctors" and instead, encourage a more aware society capable of taking their own right decisions without the need of coercion. Although there was discussion around the issue of sterilization, overall, it was considered a tool of the oppressor (Cleminson 2008).

c) Eugenic feminism

Last but not least, it is worth mentioning the complicated and contradictory relationship eugenics had with the feminist movement. Even though eugenic faith was blatantly anti-feminist—it promoted women's biological functions and their role as child bearers (Levine, 2017), and therefore, rejected educated women—, eugenics also attracted feminist activists of the time, considering that women had a central role to play in the eugenic movement: they were the "bearers of the next generation" (Porreca, 2019).

The concept of "eugenic feminism" emerged as a reaction to the gendered moral codes underlying some of the eugenic policies (Ziegler, 2008) which they recognized as "a societal tool for controlling women's sexuality and consequently embraced an approach to eugenics that diverged from the traditional and predominant theorists of the time" (Ziegler 2008, p. 10). Thus, eugenic feminists highlighted the central role of women in the eugenic fight and the importance of their participation in the political life (Ziegler, 2008). Some authors claim that eugenic feminists redefined eugenic science, but that its great influence on the eugenic movement has often been underestimated (Ziegler, 2008).

However, "eugenic feminism existed distinct from, and in increasing tension with, mainstream eugenic science and policy" (Ziegler, 2008). The first dilemma eugenic feminists encountered was that, when fighting for other human rights, the argument was easy: they demanded the same rights men had, but with reproductive rights this simple extension was not possible (Allen 2000). Instead, they took an interesting approach and emphasized the importance of motherhood in the betterment of the race, claiming that its decline "could be prevented only if women were granted greater political, social, sexual, and economic equality" (Ziegler, 2008). To their eyes, the reason why the quality (and quantity) of the offspring was decreasing could not be blamed on women, as some eugenicists were suggesting. On the contrary, women that decided not to have children were actually being responsible, as the social conditions would condemn many children to poverty (Allen, 2000). Some feminists, like Woodfull and Gilman, even took the risk to claim that the explanation for the social decline was that women were getting married and procreating with unfit partners due to social pressures, and that it was those men's bad heredity the cause of defective offspring. For this reason, they went on to say, women had to be sexually liberated in order to produce better children (Ziegler, 2008).

Closely linked to this idea of quality over quantity, was the advocacy for birth control. Feminist eugenics, as Philippa Levine explains, saw in the possibility of spacing pregnancies a way of preserving maternal health as well as fitter progeny, which attracted many eugenicists. Margaret Sanger would refer to pregnancy as "biological slavery" (Levine, 2017). However, more radical and conservative eugenicists, and even the feminist hygienist Lydia Allen DeVilbiss, feared that the introduction of birth control was a double-edged sword: it could also reduce births among the fit, which were considered to be already less fertile and more reluctant to have children, and so it would lead to the unfit overtaking (Porreca, 2019). According to her, in order to overcome this risk, it was fundamental that birth control was legal and not expensive, so that less well-off women could afford to buy it. Not all birth control advocates supported the idea of hereditary unfitness, but it is true that they did find in eugenics a useful ally for their own purposes (Levine, 2017). Maybe that is why some of the eugenic feminists, like Margaret Sanger, soon realized that to achieve what they wanted, that is, the legalization of birth control, in return they had to subdue to eugenic policies based on racial hygiene. "No one wanted to talk about women's sexual freedom; policies to encourage public betterment was a better sell", says Melissa Jeltsen in an article about Margaret Sanger (2020). This would explain the relationship and correspondence between Sanger and the sociologist Edward A. Ross, who was known for his racist rhetoric, although he never identified himself as an eugenicist (Castillo, 2008). Whether the complicated relationship between feminists and eugenicists was born of necessity or because they shared their values and principles (Jeltsen, 2020), the truth is that, regardless of their efforts to attract racial theorists of mainstream eugenics, Sanger never received great support (Ziegler, 2008).

In spite of the fact that eugenic polices targeted mainly vulnerable women, many others that were considered morally inferiors o "moral imbeciles" (Levine, 2017) were also at risk of being diagnosed as feeble-minded and so deemed unfit. As explained by Ziegler, "this label did not denote mental disability but, rather, a social status of irredeemable 'immorality' or 'unfemininity'" (2008), and the gender bias of eugenic theory was hard to reconciliate with feminist ideologies.

Finally, as Sebastian Porreca concludes, it is fundamental to acknowledge all these contradictions and the darker side of the story to get a bigger picture and to understand how some of the breakthroughs in the feminist movement, like contraception, were achieved, as well as to "learn from our past in order to make social movements and medical advocacy more ethical and inclusive for all", and this is where intersectional feminism becomes necessary: a feminism that only benefits middle-class white women, is not feminism at all (Porreca, 2019).

3.2. Negative eugenics and sterilization policies

As has already been mentioned, eugenics came in many sizes and shapes, and hard heredity proponents were reluctant to rely exclusively on positive eugenic measures. In their opinion, explains Philippa Levine, environmentalist and welfare solutions were bound to fail because they did not address the real problem—hereditary flaws—and, instead, encouraged the "reproductive profligacy of the poor" and allowed them to live at the expenses of society (Levine, 2017). Based on the misconception that the undesirables were more fertile, they feared a "future swamping of the better by the worse" as described by the British socialist Harold Laski (Levine, 2017). To prevent this "race suicide" from happening—a term coined by Edward A. Ross (Ross 1901)—, they favored more radical policies aimed at discouraging the procreation of those deemed unfit.

The most prominent and more widely recognized practice among the negative eugenic ones is undoubtedly the sterilization of the undesirable. Levine reports that, even before sterilization laws were passed, there were already doctors discreetly performing surgeries as a way of controlling epilepsy and other conditions. The arguments in favor of doing so were many: there was an increasing fear that the lifestyle and behavior of the poor would endanger people's standard of living (Levine, 2017; Nikoukari, 1980) so the idea of sacrificing private human rights in the sake of an allegedly greater public good became quite appealing. However, the economic argument was even more powerful and successful among the general public, who saw the "unfit" as a burden to society (Kevles, 1998). Kevles claims that many of the sterilizations were actually carried out on economic grounds, rather than on merely eugenic ones: "Sterilisation raised the prospect of reducing the cost of institutional care and of poor relief. Even geneticists who disparaged sterilisation as the remedy for degeneration held that sterilising mentally disabled people would yield a social benefit because it would prevent children being born to parents who could not care for them" (Kevles 1998). It was precisely the invocation of such arguments that allowed sterilization practices to continue for several decades, even after heredity had disappeared as a reasonable basis to justify those measures. This paper will try to illustrate how these arguments reappear in current discourses of modern soft-sterilization practices (Lombardo, 2008).

Once the eugenic ideas had been welcomed in society, the next step was to legalize the practice of sterilization. The first country to do so was the USA and, in particular, the State of Indiana in 1907 (Kaelber, 2012), though other states had already attempted to introduce such laws (Michigan in 1897 and Pennsylvania in 1905) with no success (Wilson, 2014b). Although the initial idea was to

start by implementing those measures only in institutions, it soon became obvious that such a discriminatory policy could challenge the constitutionality of the law (Lombardo, 2008), so they had no other choice than to make the laws appliable to the general public. In any case, the reality shows that, in practice, those confined in institutions were the most vulnerable ones to eugenic sterilizations. As a matter of fact, even in countries that did not pass sterilization laws, it was nonetheless common to perform them in mental institutions, as happened in Argentina (Levine, 2017). In some places, it was a precondition for release and in others, there is even evidence that proves sometimes women were taken to institutions for a short period of time, just enough to sterilize them and release them (Levine, 2017).

Another important matter when discussing forced sterilizations, is that they targeted the so called "feeble-minded", a concept that encompassed many categories of people that did not necessarily have any medical condition. Levine accurately remarks that "privilege was an index of eugenic fitness". Indeed, evidence shows that those mostly affected by compulsory sterilization and eugenic practices in general were the less well-off, the less educated, and the less privileged (Levine, 2017). In the documentary "Surviving Eugenics" (Miller; Fairbrother and Wilson 2015), survivors of compulsory sterilizations performed while they were confined in eugenic institutions in Alberta, Canada, tell the stories of their lives: how they got there, why they were considered feeble-minded, how was their lives inside, etc. They also narrate what they can remember about the surgery, what they were told about it—often, that they were getting their appendix removed—and how those experiences changed their lives forever. They all recall that the interviews in which it was determined that they had to be sterilized lasted less than five minutes. That is all it took for the Eugenic Board—the organ in charge of taking those decisions—, to conclude those people did not deserve to have a normal life. Likewise, it is mentioned in the documentary, as well as in other studies about sterilization practices of the time, that the "diagnosis" of feeble-mindedness was often based on the results of IQ tests (Levine, 2017). For this reason, people that could not read well or that did not speak English properly, either because they were illiterate or non-English speakers, were directly labelled as mentally defective (Nikoukari 1980).

All these stories show that the bias in eugenic policies is undeniable: women, racial minorities and the underclass were disproportionately affected. In the USA, Stern analyzes the data of sterilization surgeries in California and concludes the prototype of person that would be at higher risk, according to eugenic standards, was that of female gender, Spanish surname and age younger than eighteen (Stern 2015). Therefore, gender, age and ethnicity or race were some of the factors that contributed

to the likelihood of being forcibly sterilized. Class played an important part too in the eligibility criteria. Levine remarks the cases of two important public figures that, in spite of meeting the objective requirements to be sterilized, because of their positions, eluded the surgery. The first one is the case of John, the son of the English King George V, who was diagnosed with epilepsy and learning disabilities. The second one is the case of Rosemary, President John F. Kennedy's sister, who presented intellectual disabilities since she was a child and later on underwent a lobotomy surgery that left her brain-damaged and institutionalized. None of them were sterilized.

The gender and racial bias in the criteria could also be seen in other parts of the world, and adapted to the circumstances and landscapes of each country: in California, the target was on Latin women because of the growing number of immigrants crossing the Mexican border. In other parts of the USA, black women were more likely to be targeted, whereas in others, the danger relied on Native-American women. In Europe, for instance, the focus was on racial or ethnic minorities, such as Roma women (Levine, 2017). In any case, the common denominator was the gender bias: "In 13 countries, the national- or regional governments passed laws before 1945 authorising or requiring the sterilisation of various groups, with or without consent of the individuals concerned. In each of those countries except for the State of Veracruz, in Mexico, the law was applied, with more women than men being submitted to these practices" (Amy & Rowlands, 2018). One of the most notorious examples of the class-based sterilization abuse is the *Relf v. Weinberger*[1] case of 1974, in which two young black sisters living in Alabama were sterilized through a federally funded family planning program (Blake, 1995). Their mother, who was illiterate, was told to sign her consent "under the intentionally misled belief that her girls were only there to have preventive vaccinations" (Blake 1995, p. 12).

To further understand which were the main arguments that supported eugenic thought, it is interesting to examine the reasoning of the US Supreme Court in one of the most iconic cases of eugenic sterilization, the *Buck v. Bell* case of 1927:

> We have seen more than once that the public welfare may call upon the best citizens for their lives. It would be strange if it could not call upon those who already sap the strength of the State for these lesser sacrifices, often not felt to be such by those concerned, in order to prevent our being swamped with incompetence. It is better for all the world, if instead of waiting to execute degenerate offspring for crime, or to let them starve for their imbecility, society can prevent those who are manifestly

[1] Relf v. Weinberger, 372 F. Supp. 1196 (D.D.C. 1974)

> unfit from continuing their kind. The principle that sustains compulsory vaccination is broad enough to cover cutting the Fallopian tubes… Three generations of imbeciles are enough.

As Kimberly A. Smith sharply argues, “these individuals were not considered just ‘unfit to procreate’; ‘their kind’ were viewed as ‘unfit to live’” (Smith, 2002). The reasoning provided by the Supreme Court of the USA set a dangerous precedent and blatantly legitimized compulsory sterilization of the unfit. Indeed, Stern guarantees that “the resurgence of eugenic sterilization in Indiana could not have taken place without one of the most famous and infamous US Supreme Court decisions, *Buck v. Bell*[2]” (Jason S. Lantzer and Stern 2007; cited in Lutz Kaelber 2012). Thus, spurred on the one hand by this decision and on the other by the economic difficulties resulted from the Depression, sterilizations peaked in the States from 1935 to 1945 and by the first half of the twentieth century, 32 American states had passed sterilization laws (Stern 2015).

Unfortunately, this was not happening only in the American continent: it was the general idea in many countries around the world during the interwar periods, when sterilization laws began to gain traction. Countries as diverse as Canada, Germany, Sweden, Finland, Japan, Switzerland, Estonia and Mexico followed the lead of the Americans (Amy & Rowlands, 2018; Levine, 2017) and others, such as Poland, Romania, the Netherlands, China, Australia, Britain, and even France, seriously considered the possibility of introducing sterilization laws (Levine, 2017).

However, eugenic sterilizations were not welcomed everywhere. There was a strong opposition coming from France and Italy (Levine, 2017), and Britain, despite being the birthplace of eugenic faith, never really implemented sterilization laws, perhaps because they had other concerns at the time (Macnicol 1992).

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[2] Buck v. Bell, 274 U.S. 200, 47 S. Ct. 584 (1927)

3.3. The decline of the eugenic rhetoric after the second world war and current forms of eugenic coercive sterilization

3.3.1. Eugenics after WWII

During the Nazi regime, German scientists expressed their willingness to take eugenic-inspired ideas of racial improvement to the next level and implemented not only massive forced sterilizations, but also euthanasia programs (Levine 2016; Turda and Gillette 2014), which gave rise to the international criticism of eugenic policies. As Kevles maintains, "the revelations of the holocaust strengthened the moral objections to eugenics and sterilisation, and so did the increasing worldwide discussion of human rights, a foundation for which was the Universal Declaration of Human Rights that the General Assembly of the United Nations adopted and proclaimed in 1948" (Kevles 1998, p. 4), all of which tarnished eugenics' reputation considerably (Levine, 2017). However, and as it has already been proved, many other countries around the world were performing forced sterilizations. In fact, during the Nazi Doctors' Trial, some of the arguments that were mentioned by the German lawyers were that Americans "were doing a lot of this too" and that they inspired on those ideas (Levine, 2017). As a consequence, eugenicists around the world tried to distance themselves from what the Nazis represented and to argue that what they were doing was different, that their sterilization programs were nothing like the Nazis (Flyn, n.d.) but they had trouble defending that. On the contrary, the unpopularity of eugenics did not affect Latin eugenics as strongly: as they relied less on race, they were easily adaptable to current policies and indeed, were fully integrated into the social welfare and public health systems of many countries (Turda and Gillette 2014).

One may expect that, given the circumstances, after World War II, negative eugenics would disappear completely from public practices, but nothing further from the truth (Lieman, 2018). In the USA, involuntary eugenic sterilization was still in existence in over twenty-five states during the 1960s (Smith, 2002). Still today, Levine, when asked if she believes that eugenics has disappeared, she answers: "I would say that I don't think eugenics has disappeared. We call it different things because we are frightened of the term, quite rightly. I don't know that it should have a place in science, but I think it does still have a place in science" (Flyn, n.d.). Indeed, after World War II, the term 'eugenics' disappears from the literature, but not from the practice. "We actually have conversations, written notes and memos, from the late 1940s and the 1950s in which eugenicists say, 'We have to find a way to make this palatable after the Nazis'" (Flyn, n.d.). One

of the changes they decided to implement was to switch the target for negative eugenics, that is, sterilization practices, and to avoid explicitly offensive terms such as “unfit” or making reference to racial differences; instead, they talked about reproduction control as a means to achieve better quality of life and for population control purposes (Wuebker, 2020). Moreover, more recent studies about genetics were proving that heredity was not a strong argument anymore and was replaced by the idea that “poor people would be unable to care for their children”, which became very popular during the 1950s and 1960s (Lieman, 2018). Despite this makeover of eugenic rhetoric, the reality is that in many places forced sterilization practices continued to target poor and disabled women, women of color and even those women considered promiscuous (Lieman, 2018) at least until the 1970s. Indeed, Andrew Lieman explains that it was not until the 70s that many states in North America decided to outlaw compulsory sterilization of the “retarded” and that even in 1985 there were 19 states still legally performing such surgeries, in spite of the fact that it was already considered unconstitutional by many scholars.

However, there was now strong opposition: many people were increasingly rejecting old labels of “retarded” or “insane” and realizing how people considered “abnormal” or disabled were awfully treated and confined in public institutions (Stern 2015). Contemporarily, second wave feminism started to challenge these practices, an approach that was followed by other civil rights movements. Finally, the parents and advocates of handicapped children worked really hard to remove the social stigma of "defectiveness" and started to advocate for the acceptance of the different, which had a great impact on how disabilities are treated today (HISTORY, 2017; Lieman, 2018; Vermont Eugenics, n.d.).

Accordingly, in these past decades, there has been a strong movement of “recognition of the wrongs carried out in the name of eugenics”, followed by a wave of gubernatorial apologies, legislative acknowledgments and economic compensation in many parts of the world, and in particular, in North America (Stern 2015; Amy and Rowlands 2018). Both the United States and Canada have established monetary reparations for the victims of forced sterilization programs (Stern 2015; Amy and Rowlands 2018).

This historical journey should help the reader understand the context in which current forms of eugenic thought have to be read and interpreted and how racist and *able-ist* policies are still applied nowadays underlying apparently innocent and “well-intended” measures, in the name of greater goods.

3.3.2. A view into the contemporary situation

Since the end of the 20th century, as a result of more advanced and modern technologies, the ways in which women's fertility is controlled have become more subtle and sophisticated, though not less aggressive, giving rise to new concerns regarding reproductive justice. Many argue that we are going towards a new form of eugenics (Wilson, 2017) and that the pseudo-science that was once condemned because of its fascits connotations is again resurfacing, adopting different and disturbing forms (Wilson, 2017).

In the last decades, the different scenarios in which governments have regarded appropriate to interfere with women's reproductive choices have been innumerable. The reasons to do so vary depending on the country, but they all have something in common: they all target women and not men, and as Lisa Hallgarten argues, "they are all indicative of a fundamental disregard for women's lives" (Hallgarten, 2013). On the one hand, the growing awareness of the importance of family planning programs has allowed governments to legitimately implement measures that clearly violate women's reproducive rights and freedom. Indeed, family planning is internationally recognized as a positive tool, given that it allows "people to attain their desired number of children, if any, and to determine the spacing of their pregnancies" according to the World Health Organization (WHO). However, this positive measure aimed at empowering women by providing them with the necessary means to make reproductive choices, has often been used for the wrong purposes. Family planning programs promoted by governments combined with population control policies have been used in countries such as India or China to restrict women's reproductive rights. Indeed, this is one of the main challenges of our times: to find the balance between "the right to choose birth control, a precondition for women's freedom, and the coercive use of birth control as a means of population control" as explained by Molly Ladd-Taylor (Ladd-Taylor, 2014).

Another context in which women's reproductive rights have been limited is in times of war and as a means of genocide. Two recent examples of this kind of violation are the cases of the Yazidi women in Syria and Iraq, and the Uighur in China. In the case of the Yazidi women, a New York Times article of 2016 explained that forced contraception enabled the rape of Yazidi women and girls for ISIS fighters (Callimachi, 2016). According to a report by the Human Rights Council, "Measures intended to prevent births within the group include rape; sexual mutilation; the practice of sterilisation; forced birth control; separation of the sexes; prohibition of marriages; impregnation of a woman to deprive group identity; and mental trauma resulting in a reluctance to procreate"

(Human Rights Council 2016, p. 27). Dieneke De Vos argues that these crimes could be prosecuted by the International Criminal Court (ICC) as crimes against humanity (De Vos, 2016). Conversely, the Uighur women, which are a Muslim minority group in China, have been limited in the number of children they could have, while the majority ethnic group in China was not suffering from this instrusion (Hood, 2020). One of the specific actions that amount to genocide, according to the 1948 Convention on the Prevention and Punishment of Genocide is "imposing measures intended to prevent births within the group", which perfectly captures the measures implemented by the Chinese government in relation to Uighur women (Hood, 2020).

Last, but not least, reproduction control has been used as a bargaining chip to control minority groups and those collectives that are considered "undesirable" under the new terms. Although there are still examples of poor and minority women during the 1970's that were coerced into sterilization practices (Jekanowski, 2018), this compulsory sterilization can no longer be interpreted as surgeries carried out without women's *objective* consent. Rather, women consent in circumstances where they are not completely aware of the consequences of such a decision: in hospitals right after labor, being "informed" in a language they did not fully understand, or without receiving proper and complete information about the procedure they would undergo and about the long-term effects it involved, refusing to treat them unless they accepted the surgery, offering welfare incentives, as well as parole instead of jail in exchange of undergoing sterilization, etc.

Meredith Blake argues that even doctors often encourage black women to undergo sterilization procedures because of racist stereotypes. The reason is that they "view black women's family sizes as excessive and believe they are incapable of using contraceptives" (Blake 1995, p. 7). In effect, there is a harsh but powerful quote presented by Blake that accurately covers the current situation in many parts of the world and, in particular, in the United States: "[the] state makes it easier for a mother on welfare to obtain sterilization than to keep warm in winter, find child care, or provide nourishing meals for her children" (Blake 1995, p. 30). Though in these cases, there might be a document signed by those women consenting to being sterilized, we certainly cannot affirm that such a choice would actually represent a free and informed consent, as guaranteed in several national and international legal instruments, and among them, article 7 of the International Covenant on Civil and Political Rights (1976). In fact, several studies show that the "rates of tubal ligation are enormously stratified by both education level and race" (Higgins, 2014).

These are just some of the new ways in which vulnerable women have been forced into a decision about their own bodies and future in the last decades. Additionally, there is another factor that has undoubtedly affected women's reproductive rights and that is the increasing awareness of child abuse cases that started during the 1970s, together with the concern about fetal rights and the potential harm of drug abuse during pregnancy in the 1980s (Gehlert and Lickey 1990). These new controversies that are jeopardizing women's reproductive freedom still reproduce the myth of the woman as a maternal body and "often rest on imagery of and assumptions about marital status and maternal responsibility", which in other words, dictates who is and who is not a "good mother" (Henley, 1993), a question that, however, is never raised in relation to parenthood. "Judicial focus on single motherhood is an essential predicate to the creation and perpetuation of the mother/body myth. The single mother raises judicial ire, and yet fathers' absences are not explicitly addressed by the courts" (Henley 1993, p. 28).

Regardless of the fact that eugenic policies are no longer publicly supported and that, in the last instance, most laws and court-order decisions permitting eugenic sterilizations have been repealed or judicially invalidated, this only explains that the means in which reproductive control are monitored have been rejected, but not the myths that inform them (Henley, 1993). This last scenario, the one that presents new ways of institutional control of women's bodies due to their "motherly fitness", is the most important one for the purpose of this study, as it is analogous to the case study of the Netherlands, where vulnerable women from marginalized groups are discriminately targeted by state policies, now with the justification of the best interests of the child. The similarity between the most recent US policies in relation with forced sterilization and contraception and the Dutch proposal is undeniable. Both claim to be in the name of a greater good, but the truth is that such an invasive measure that blatantly violates women's reproductive rights and that goes against reproductive justice principles, can hardly be defended.

3.4. Long-Acting Reversible Contraceptives (LARC's) as a means of soft sterilization: the Norplant Implant

Although forced sterilizations of vulnerable women continued for decades—and in some instances, even today—the ways in which governments influence women's reproductive choices became more subtle and sophisticated as a result of the introduction of modern contraceptive methods (Higgins, 2014). These new methods are the so-called LARCs (Long-Acting Reversible Contraceptives), which consist of "intrauterine contraception (IUC), implants, and other in-development methods that prevent pregnancy for extended time periods without user action" (Higgins 2014, p. 1). Their success relies on the fact that they offer a high durability efficacy, even similar to that of tubal sterilization, but with the advantage of being reversible (Trusell 2011, as cited in Kaitz, Mankuta, and Mankuta 2019). For this reason, they are considered as a means of soft-sterilization.

Many women across the world have benefited from the introduction of these contraceptives, as they offer a wide variety of advantages: they are the most effective ones in the market, as well as the most convenient; they eliminate human error in contraceptive use since they do not require additional action by the user after insertion (Winters & McLaughlin, 2020). Additionally, they can be cheaper than other contraceptives in the long-run, and they provide greater sexual enjoyment, considering that women can be more spontaneous and disinhibited when it comes to their sexual encounters knowing that they are protected against unintended pregnancies (Higgins, 2014).

As positive as all this may sound, LARCs do present critical drawbacks that have to be seriously taken into consideration when deciding to promote and encourage their use: their insertion and removal require medical intervention, which means two different things: the first one is that it has a dangerous potential for coercive use (Gehlert and Lickey 1990), as the necessity of a practitioner to remove it makes it optimally designed for enforcement purposes (Henley, 1993). The second is that the mandatory intervention of a practitioner for removal entails the lack of freedom to decide when exactly to stop using it. In contexts where women depend on governmental funding, there have been cases in which some women have faced obstacles to have the device removed "unless they are very insistent" (Kaitz et al., 2019; Mertus & Heller, 1992). Therefore, it can be said that "the ability to remove a LARC is dependent upon the social privilege of the user" (Winters and McLaughlin 2020, p. 9) and, as a consequence, produces the same effect of sterilization: infertility without the woman's acceptance.

Moreover, not all women can safely use it, as there are several medical conditions that do not allow the use of some kind of contraceptive (Mertus & Heller, 1992). Even those women who can safely use it, may present unpleasant side-effects (Higgins, 2014; Kaitz et al., 2019). Not to mention that, for some women, this kind of contraceptive may not be the most convenient one: some do not want to have something in their bodies that their partners might notice, or maybe they want to be protected also against STDs, or simply do not want a long-term solution (Kaitz et al., 2019). There are several contraceptive methods and the final goal of the reproductive health system should be to provide each woman with the necessary resources and information to decide the option that best suits their needs and wishes (Higgins, 2014):

> I encourage us to celebrate and promote a holistic reproductive health approach in which individual women and their partners have the ability to choose what method(s) they want, and when they want them—as well as to continue our efforts to both counsel for and develop a wide array of contraceptive options and services for both women and men. I hope we can also continue to partner with other social justice movements in addressing the cultural and socio-economic inequalities such as poverty, sexism, and racism that can contribute to unintended pregnancy and reproductive ill-health in the first place.

For this reason, several scholars and advocates have been claiming the importance of a Reproductive Justice approach to LARC methods (Gubrium et al. 2016, as cited in Strasser et al. 2016). In fact, Higgins explains that "the main reproductive challenge facing poor women of color is not unintended pregnancy by itself, but rather socio-economic and cultural inequalities that provide some people with easier access to self-determination and bodily autonomy than others". As a consequence, the main goal of the RJ movement is to assist in the access to LARCs to those women who really wish to, as well as removed them if and when they wish to (Higgins, 2014), in the same way that these methods should become accessible and affordable for every woman that wants them (Higgins, 2014; Kaitz et al., 2019; Strasser et al., 2016). Therefore, in the RJ framework, the idea of getting fully informed and free consent is fundamental: "it means assuring health literacy and leaving the choice to women to decide without pressure or skewed advice about the full range of contraceptives that are available", that is, putting the patients' priorities, needs, and preferences first (Kaitz et al., 2019). Again, RJ shows that assuring choice may not be enough and that women need to be guided and correctly informed in order to make the right decision.

However, the most alarming aspect of the introduction of LARCs is the way they have been misused by the authorities to ineffectively control and cure social ills: from high unintended pregnancies rates, to poverty, drug or child abuse concerns (Higgins 2014; Mertus and Heller 1992; Gehlert and Lickey 1990). Julie Mertus and Simon Heller argue that LARCs are no solution, since they do not “address the underlying causes of poverty, drug abuse or child abuse” and that it “only serves to deprive women of reproductive autonomy, particularly the right to bear children” (Mertus and Heller 1992, p. 4). Other authors dare to support the idea that controlling a woman’s procreative power is just the perfect way to control the woman as a whole, turning their bodies in a “point of entry for social norms” (Henley, 1993). Moreover, unintended pregnancies are often erroneously identified as the “cause, rather than a consequence, of social inequality” (Winters & McLaughlin, 2020).

All things considered, it is hard to disagree with Higgins when she says that “it would be unwise to depend on any one method to accomplish these social goals; it would also be unfair to place the burden of such social change on women’s bodies and contraceptive behaviors” (Higgins 2014, p. 4). Additionally, “forced contraception assumes that child abuse is caused by the bearing of children and ignores the myriad underlying factors that can be addressed in ways more productive and less intrusive of individual rights” (Ginzberg 1992, p. 7). Sadly, this is not new and as Janet F. Ginzberg states, “to undervalue this concern is to ignore a historical reality and an ever-present danger” (Ginzberg 1992, p. 6). Higgins highlights that the introduction of soft sterilization practices should not mean the negation of existing theories of sterilization but rather the opposite: it is a way “to build upon the foundational work on sterilization to amplify the experiences of marginalized groups targeted for reproductive control through LARCs” (Winters and McLaughlin 2020, p. 8).

To further understand how the introduction of LARCs has affected women and, in particular, those belonging to minority groups, and how it has altered substantially the socio-political and demographic landscape, this paper will now focus on the USA. In view of the fact that the North-American context presents concerning similarities with the Dutch proposal, the study will aim at presenting the justified concerns regarding the aforementioned Dutch proposal that introduces the idea of forced contraception for unfit mothers. For this purpose, this essay will start commenting on the Norplant case, as it revolutionized the whole system of Reproductive Justice when it was approved in the 1990s.

The Norplant Implant

Norplant (also known as Jadelle), is a subdermal implant first introduced in the market in 1983 in Finland—the first new contraceptive in 25 years—and approved in the States in December of 1990 (Jekanowski, 2018). The device consists of six match-stick size silastic rods or capsules that need to be surgically inserted in the upper arm of the woman, which requires a local anesthetic (Henley, 1993). The effectiveness of Norplant once inserted last up to five years, and its effects are supposed to be completely reversible after removal. The participation of a practitioner is absolutely necessary both for insertion and removal, a factor that makes it particularly appealing for judges and legislators (Henley, 1993). Although the idea of compulsory contraception was not new, in the past there was no specification regarding the kind of birth control that had to be used; rather, it was an obligation to “obey the terms”, meaning not to get pregnant (Ginzberg, 1992). On the contrary, Norplant present itself like the perfect solution to the problem of enforcement, as well as an alternative to the severity of irreversible sterilization (Ginzberg, 1992): its continuity is dependent upon a practitioner, making the woman’s cooperation irrelevant. Likewise, the fact that the implant can be detected by sight and touch makes it easily monitorable by the authorities (Henley, 1993).

All these appealing characteristics—effective, nonagentive, and provider controlled (Winters & McLaughlin, 2020)—made Norplant very a widely accepted choice from the beginning: it was seen as a “potential magical bullet” (Higgins 2014, p. 3). This quickly led to abusive uses of the implant to achieve the reproductive control of marginalized women (Winters & McLaughlin, 2020). The paper will now analyze two different ways in which the state has implemented the compulsory use of Norplant as a eugenic strategy: through the welfare system and through court-ordered decisions.

Welfare incentives

From the beginning, there were fervent advocates for Norplant coercive use on behalf of the public good. As a matter of fact, the same month Norplant was accepted, the *Philadelphia Inquirer* published an article under the name "Poverty and Norplant-Can Contraception Reduce the Underclass?"[3] where it was suggested that poor women should be offered welfare incentives to use Norplant (Gehlert and Lickey 1990). The editorial was highly controversial and they even apologized afterwards, but the truth is that it was just a reflection of the myths rooted in society,

[3] Go to Annex, page …

and soon after its approval, in 1991 and 1992, 13 states were either attempting or offering already incentives and disincentives for women on welfare (Jekanowski, 2018). These measures consisted of different strategies aiming at encouraging certain types of women—poor—to take Norplant and so to be reversibly, but until further notice, sterilized in exchange of cash (Gehlert and Lickey 1990). Soon they moved from encouraging its use to imposing it: in 1992, North Carolina representatives introduced a bill mandating the implant for those women on Medicaid that had an abortion (Jekanowski, 2018).

It was pictured as a non-coercive policy, claiming that women had the freedom to choose whether or not to accept, but the idea of choice has to be carefully analyzed: if a woman is put in the position to choose between something she needs to sustain life, she is ready to pay the price, no matter how high it is (Fennel 1994, as cited in Blake 1995). Besides, many women may be indeed interested in getting contraceptives and if the only fully funded and accessible one is Norplant, one should question what that kind of choice it entails (Blake, 1995).

The similarities between eugenic thought and these new policies are irrefutable: although the rhetoric of heredity is no longer used, they still link poverty with fitness: "today's 'unfit' appear to be poor, minority women who are being subjected to a form of state sponsored" (Blake 1995, p. 32). It is precisely this idea that legitimizes the promotion of Norplant's coercive use: the misconception based on the prejudice that the traditional welfare recipients are urban, African-American women eternally getting public help and that the system is flawed because it creates "perverse incentives" that encourage those poor, lazy, single and "unfit" women to have more children dependent on welfare (Blake, 1995). Even though studies proved it wrong and showed that if there had to be a prototypical woman on welfare, it would be a white woman without a high school diploma or job experience, and having less than two kids (Blake, 1995), society still believes in the myth and continues to blame social ills and to resent women on welfare. Whatever the case may be, what Meredith Blake suggests is that "the public should be skeptical about reform measures that only burden poor women and based on stereotypes designed to target minority women". Other scholars, such as Dorothy Roberts, follow the same line of thought and confirm that "any policy directed at women on welfare will disproportionately affect Black women because such a large proportion of Black women rely on public assistance" (Jekanowski, 2018). It is also important to note that even the Medical Association of America has taken a stand against Norplant's coercive use in its 1992 Board of Trustees Report (Blake, 1995):

> it would not be appropriate to tie the amount of a person's welfare payment or other government benefits to his or her decision to use a longacting contraceptive. Individuals should not be required to assume a potentially serious health risk as a condition of receiving government benefits, particularly when those benefits may be needed for basic human needs like housing, clothing, and food.

This use of Norplant's coercive potential against a specific group of people—particularly vulnerable women—constitutes without doubt a discriminatory policy. Many authors, such as Lenore Kuo, have been claiming that social policies that will inevitably have a disproportionate impact on different classes of individuals due to historical discrimination is a way of secondary discrimination and should not be allowed (Kuo, 1998). In the present case, a contraceptive method that can only be burdened on women because there is no analogous device for men is *per se* discriminatory, as the burden relies solely on women. Additionally, welfare incentives or disincentives affect only poor women and, in most cases, women from minority groups and, especially, black women, who are forced to rely on public assistance at disproportionally higher rates because of the existing racial wage gap (Jekanowski, 2018).

> By imposing and enforcing the morality of dominant society on poor and minority women, the welfare state, through compulsory contraception, furthers division along class lines. The ultimate effect, like that of the Eugenic movement, is to equate social class with genetic worth and reproductive value. These compulsory contraception proposals give politicians and the government the power to decide who can and cannot bear children and, consequently, provide the potential for far-reaching and devastating abuse of power and social control (Blake, 1995).

Although these measures were always delegitimized in court, as Elizabeth Jekanowski concludes, "their ideological function of controlling Black reproduction and upholding white supremacy continues to appear in present policies" (Jekanowski, 2018).

Court-ordered Norplant as a condition for probation

As has already been presented, the idea of imposing contraception as an alternative to incarceration was not new, but Norplant made it much easier to enforce it, and so less than a month after Norplant's approval by the FDA (Ginzberg, 1992), the first court-ordered use of Norplant was

implemented in *People v. Johnson*[4]: Darlene Johnson, a 27-year-old mother of four and pregnant with the fifth, was convicted of child abuse by Judge Howard Broadman and given the choice of either using Norplant during a three-year probation or spending seven years in prison (Gehlert and Lickey 1990).

The case of Darlene Johnson is the exemplification of the prejudice behind this kind of decision: she was a single mother, of color, on welfare, and having several children who receive public assistance (Henley, 1993). She was the first one sentenced to probation conditioned on acceptance of Norplant, but surely not the last one. Many other judges and Broadman himself continued ordering the use of Norplant as an alternative to jail. Many argued that Darlene was not forced into the decision of accepting Norplant, but as James H. Taylor says "when the alternative is jail, this decision is hardly uncoerced" (Taylor, 1992).

Not content with forcing Norplant on women convicted of child abuse, they moved to new scenarios in which it was considered appropriate to order that measure: they also targeted drug-abusers with the excuse of preventing a potential harm on the future fetus. Although these concerns about the safety of children are completely legitimate and constitute a major issue of modern societies, what is in question here is the methods used to solve the problem: as Henley argues, it "punishes women for their procreative conduct, not their criminal conduct" (Henley, 1993), and that is not justifiable. In other cases, it has also been approved in relation with crimes that were unrelated to the woman's ability to be a mother, such as cases of robbery or forgery (Henley, 1993). In this context, it is fundamental to understand the importance of an anti-carceral feminism. This movement intends to "shift resources from policing and corrections into community-directed harm", as it acknowledges how the different personal circumstances of a woman directly affect their choices, including their participation in criminal activities (Winters and McLaughlin 2020, p. 7). Again, the idea of intersectionality and Reproductive Justice resurfaces, evidencing that Carceral Feminism is the reproduction of the same patterns: "white feminists who center their own experiences as universal experiences of womanhood (…) without acknowledging the differential experiences of economically disadvantaged and racialized women" (Winters & McLaughlin, 2020).

[4] People v. Johnson, E056661 (Cal. Ct. App. Jan. 25, 2013)

Another surprising element of these sentences is how judges often link probation to other questions unrelated to criminality: in *People v. Dominguez*[5], the defendant, a 20-year-old mother of two and pregnant with her third child, was convicted of robbery and sentenced to probation under the following terms:

> '[Y]ou are not to live with any man until after you become married and you are not to become pregnant until after you become married. Now this will develop just by becoming pregnant. You are going to prison unless you are married first. You already have too many of those. Do you understand that [sic] I am saying? (Henley, 1993).

The question whether a woman's ability to have or not have children should depend on their marital status had already been settled in the case *Eisenstadt v. Baird*[6] (Smith, 2002), but apparently judges still believe in the myth of the woman as a maternal body that is, however, unreliable and lacks self-control, and requires the aid of a paternal assistant, either a husband or the State (Henley, 1993). It is also interesting to note how there are certain characteristics of women that are perceived as automatically typical of a "bad mother":

> The woman who receives public assistance is associated with "incompetents" and "criminals"-with irresponsibility. Evidence of the welfare mother's irresponsibility is the reproductive behavior that is perceived to impinge on the taxpayer. Thus conceived, remedies enforcing procreative control take on the cast of rationality -the punishment seems perfectly to fit the crime (Henley, 1993)

However, judges should not base their decisions on prejudices and myths. As Janet F. Ginzberg highlights, Broadman's decision is just the result of "the highly subjective-opinion that, aside from her crime, society would be better off if Ms. Johnson were prevented from having any more children.", an opinion disguised by the best interests of her children and of Darlene herself (Henley, 1993). In fact, Broadman claimed that "the Norplant condition would alleviate Johnson's stress so that she could become a better mother" (Henley, 1993). However, if that was genuinely the aim of the Norplant condition, to truly empower women, the best way would be to solve the underlying circumstances of an abuse case because, as pointed out by Ginzberg, it usually arises in circumstances more tragic than evil, and to focus on enhancing the financial and administrative resources for addressing the problem at its roots. But compulsory contraception is just the easy way out or the perfect excuse for the intrusion in women's reproductive choices (Ginzberg, 1992).

[5] People v. Dominguez, 256 Cal.App.2d 623, 64 Cal. Rptr. 290 (Cal. Ct. App. 1967)
[6] Eisenstadt v. Baird, 405 U.S. 438 (1972)

Fortunately, these decisions have been struck in higher courts as both unlawful and unconstitutional, as they clearly fail the test of acceptance—reasonableness and constitutionality:

(i) Reasonableness:

In order for a probation condition to be lawful and reasonable, it has to be reasonably related to the goals or probation, that is, to rehabilitate the offender and to protect society against future harm (Taylor, 1992). The *People v. Dominguez* case established the requirements for a valid probation condition: "A condition of probation which (1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality does not serve the statutory ends of probation and is invalid" (Taylor, 1992). In accordance with this test, the Norplant condition for probation in typical child abuse cases has been considered unreasonable and, therefore, illegitimate by several courts. On the other hand, in the case of a drug-abusing mother, that condition may also be considered unreasonable if it would be impossible for the woman to adhere to it (Taylor, 1992).

(ii) Constitutionality:

Additionally, a probation condition must respect constitutional rights and can only burden them in the case of a "compelling interest" (Taylor, 1992). In relation with the Norplant condition, one of the rights at stake is the right to privacy, which is a fundamental right contained in several international as well as national legal instruments. On the one hand, in the international sphere, privacy is considered a qualified fundamental human right, included in Article 12 of the Universal Declaration of Human Rights (Privacy International 2017). On the other hand, in the US legal system, it is alluded in the Fourth Amendment to the US Constitution[7] and the Supreme Court has recognized that individuals have a fundamental right, protected by the Fourteenth Amendment's safeguards of human dignity and autonomy, to make personal decisions about childbearing and contraception (Ginzberg, 1992). Likewise, the Supreme Court has recognized and protected an individual's right to self-determination, which means that every woman has the right to control decisions that have an impact on her own body (6). Other rights related to privacy include the right to bodily integrity and autonomy, and the right to make one's own decisions about medical treatment, which are closely linked to informed consent (Ginzberg, 1992).

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[7] https://en.wikipedia.org/wiki/Right_to_privacy

Given the supreme importance of these rights, any interference with them must be carefully balanced and, therefore, courts are limited by those constitutional safeguards (Ginzberg, 1992). In regard to this requirement, perhaps the most illustrative example is the *Pointer*[8] case, in which the court determined that "even if the condition is reasonably related to the crime committed and rehabilitation, it may still be inappropriate if it burdens a constitutional right", and that includes those conditions that are invasive on a woman's fundamental right to procreate (Ginzberg, 1992). It is fundamental to remark that the use of Norplant presents some risks and requires the use of anesthesia, and that there are women that cannot use the device safely due to medical conditions. As a matter of fact, there have been cases of women that have died during the removal of Norplant, as it happened to a twenty-one-year-old woman in Alabama (Blake, 1995). All things considered, it does not sound appropriate for a judge to act as a doctor (Mertus & Heller, 1992) and order unwanted medical treatments that involve such a potentially detrimental intrusion to women's health (Ginzberg, 1992). Nor is it wise for a judge to act as a social engineer of sorts (cf. Roscoe Pound's theory) and predict "natural" outcomes (like a woman's likelihood of becoming "a better mother"). These predictions are nothing more than projections, embodying a judge's own preconceptions and biases.

On a different note, the biased and discriminatory nature of these measures has to be taken into account. Based on the excuse that Norplant is a contraceptive designed only for women, the Norplant condition targets exclusively women, which is again a form of secondary discrimination, and, consequently, makes these policies particularly objectionable (Mertus & Heller, 1992). Moreover, Madeline Henley reports that an increasing range of women are being targeted by State initiatives, aiming to include only women on welfare and certain probationers, but also girls considered at high risk for pregnancy and, most recently, at all high school girls over the age of twelve (Henley, 1993). Similarly, the race and class bias are undeniable, no matter how race-neutral they might seem at first glance (Blake, 1995). Edson Stich anticipated that the application of the Norplant condition would result in equal protection abuses due to judicial bias and prejudice, the same way it had occurred before with the application of fetal protection laws: women of color and the poor are disproportionately singled out (Stich, 1993).

For all the reasons mentioned above, measures that interfere with these rights "cannot be upheld unless it is narrowly tailored to advance a compelling governmental interest" (Mertus and Heller

[8] People v. Pointer, 151 Cal.App.3d 1128, 199 Cal. Rptr. 357 (Cal. Ct. App. 1984)

1992, p. 14). In other words, for a court to deprive a probationer of a constitutional right, “the probation condition must be directly related to the offense, the restriction's benefit to society must significantly outweigh the defendant's loss of a fundamental liberty, and the condition must achieve its end in a manner that minimizes the impact on the defendant's exercise of constitutional rights” (Mertus and Heller 1992, p. 15). In this sense, there is no proof that the insertion of Norplant will rehabilitate a woman or help her become a better mother; it is an overbroad and merely punitive measure and goes directly against the presumption of innocence, assuming that a woman convicted of a child abuse case or drug-related crimes will automatically become a repeat offender (Ginzberg, 1992; Mertus & Heller, 1992).

Additionally, when considering Norplant as a condition for probation, courts must assess whether there exists an alternative condition less restrictive of the probationer's constitutional rights (Taylor, 1992). In *People v. Pointer*, even though such a condition was considered reasonable for the purposes of prevention of harm, it was finally established that there were less restrictive methods to prevent such a future harm: the probationer would have to submit to regular pregnancy testing and, in case of a positive result, she would have to follow a program of prenatal and neonatal care, as well as other measures related to the scenario of a woman giving birth while still in probation. In conclusion, the alternative would be a system that monitors the woman’s compliance with a set of conditions, which could be useful also in cases of drug-abuse during pregnancy, while not eradicating a woman’s right to procreate. In situations of child abuse, a no-custody condition could also be available, making Norplant again unnecessary (Taylor, 1992). Since a Norplant condition fails Dominguez's third prong as well, it is unreasonable and invalid in a typical child-abuse case. As a consequence, James H. Taylor concludes that “because there is an alternative to a Norplant condition in child abuse cases, the need for Norplant does not outweigh the probationer's right to procreate” (Taylor 1992, p. 35). Other authors add that it is fundamental that the root causes of child abuse are correctly addressed and that “courts should and must focus more on these circumstances themselves as a means to rehabilitate the offender and prevent further abuse” (Ginzberg 1992, p. 41).

Discussion and conclusions

By reviewing the Norplant condition during the 1990s in the US, this paper attempts to expose the different ethical dilemmas and injustices perpetuated by the continuation of a eugenic theory that still tries to leave the decision about who *is* and who *is not* fit to procreate in the hands of the State and of a judge, allowing them to adopt the role of a medical practitioner.

Despite the decisive advantages this device—and the rest of the LARCs—offers for the empowerment of some women, it is equally important to acknowledge the social and reproductive injustices these new methods may involve, and, in particular, its potential coercive use. Even the creator of Norplant, Sheldon J. Segal, confessed his disagreement with the coercive use of the implant:

> Hold everything! I am totally and unalterably opposed to the use of Norplant for any coercive or involuntary purpose. It was developed to improve reproductive freedom, not to restrict it. My colleagues and I worked on this innovation for decades because we respect human dignity and believe that women should be able to have the number of children they want, when they want to have them. Not just educated and well-to-do women, but all women.
>
> Those who suggest using Norplant for coercive sterilization or birth control will find me leading the opposition (New York Times, 1991).

Norplant was later removed from the US market due to some controversies related to its medical use and effectiveness, but since then, other implants have replaced it, giving rise to the same ethical dilemmas and its questionable validity for coercive uses. And although higher courts have generally invalidated the Norplant condition, both in relation to welfare and for probation purposes, the doubts raised by Norplant still prevail and the eugenic movement that defends the sterilization of those "unfit" to procreate persists.

> The more precarious a woman's positionality, the more likely her victimization will not be recognized as legitimate. Carceral feminism, then, reproduces the patterns of white feminists who center their own experiences as universal experiences of womanhood—or the "cult of true womanhood" (Giddings, 1996, p. 47)—without acknowledging the differential experiences of economically disadvantaged and racialized women (Ocen, 2013) (Winters and McLaughlin 2020, p. 7).

4. THE DUTCH PROPOSAL AND ITS UNINTENDED CONSEQUENCES

The Netherlands is often perceived as the country where progressive laws are passed and where rights are highly protected (Stone 2020). In fact, in matters of reproductive rights, the Dutch government has recently adopted a very groundbreaking approach to the issue of forced sterilization for trans people. In November of 2020 the government apologized and agreed to compensate about 2,000 trans people that were forced to undergo sterilization as a requirement for their legal gender recognition during the period from 1985 to 2014. The Dutch approach is in accordance with the landmark decision by the European Court of Human Rights (ECtHR) in *A.P and Others v. France*[9] (Schaps, 2020; TGEU, 2020). "Such a violation of physical integrity is no longer imaginable today," explained Sander Dekker, Dutch minister for legal protection. However progressive this may sound, some people in the Netherlands—and politicians—still consider that there are some people that simply do not deserve to reproduce.

Contemporarily, in October of the same year, a group of experts known as the Standing Committee on Compulsory Contraception, founded by Cees de Groot, former juvenile court judge (Séveno, 2020), submitted a petition to the House of Representatives calling for mandatory contraception for those women deemed "unfit" to raise children: *Beraadsgroep verplichte anticonceptie* (Séveno, 2020). Although the measure has only been backed by some members, for instance, the retired professor of medical ethics and former cabinet minister, Heleen Dupuis, who was also chair of the Netherlands Association for Disability Care and who argued that the measure meant "choosing the lesser of two evils," the most disturbing part is that it is a recurring idea in the Dutch discussion. It had already been proposed in 2008 (McAdams, 2008), 2012 and 2016, presented by the current Health Minister, Hugo de Jonge with no success (Dutchnews.nl, 2016). However, the consistency with which this policy is proposed only confirms that it is part of the discourse and rationale by some political parties and that they do not seem willing to stop proposing this initiative. The study of forced contraception for unfit mothers, thus, appears fundamental.

The first idea that has to be presented is *why* they believe in forced contraception, what are the alleged advantages and why such a violation of women's rights is considered justified. According to De Jonge, forced contraception is aimed at protecting the best interests of the child; it 'concerns children who are born into families where it turns everybody's stomach to think that they're having

[9] CASE OF A.P., GARÇON AND NICOT v. FRANCE (Applications nos. 79885/12, 52471/13 and 52596/13)

a child' (Dutchnews.nl, 2016). The example offered by him was that of a prostitute with a psychiatric disorder who wants to conceive because her clients prefer pregnant women (Burger, 2020). Likewise, René Hoksbergen uses the example of a family with many generations in the disabled institution that continue to have children (Burger, 2020). Despite the concerning similarities of the proposal with eugenic sterilization, Cees de Groot justifies himself by saying that a woman who falls within one of the categories is not automatically going to be forcibly injected, but that it would be established by the judge. Again, the idea of the judge acting as a doctor reappears in a similar way to that of the Norplant condition for probation. But are judges in the position to decide who *is* and who *is not* fit to have children? Which are the parameters to measure fitness? Does a medical condition or an addiction by itself make you a bad mother? Will the line get blurred and eventually someone without any of the conditions mentioned in the proposal be judged by her ability as a mother? These are just some of the initial questions that should come to one's mind when reading about the proposal and, unfortunately, the plan does not offer answers.

The proposal itself is quite preliminary, but from what has already been explained, it could be described as follows: prosecutors and child protection officials could apply to a court in cases of mothers with addiction, mental health problems or psychiatric illnesses, mental disabilities and learning difficulties, Hepatitis B or C infection and HIV, or history of child abuse. The first key aspect of this policy, then, is that it would exclusively target women, and second, that the contraceptive method used would be a LARC, either injections or implants. According to the plan, the measure would be temporary, "until the problem was alleviated", which does not seem to make sense in cases of medical conditions that are chronic. Similarly, as it has already been presented, the temporality and reversibility of LARCs can be challenging, considering that the removal of the device is entirely dependent on a practitioner and not on the woman herself.

On the other hand, the fact that it exclusively targets women places a disproportionate burden on them. If the idea is truly to protect vulnerable parenthood, should not they implement measures aimed at fathers too? Why is the focus solely on women? If the excuse is that there are no LARCs available for men at the moment, the argument does not uphold. As Lenore Kuo rightly explains, a law that creates a "disparate impact" on a specific group in relation to others, amounts to secondary discrimination: "policies of state-mandated birth control are unacceptable on the basis of the standard of secondary discrimination defined above, that is, that no policy would be acceptable that would limit the rights of individual members of one population rather than another as a result of past discrimination" (Kuo, 1998).

4.1. Arguments in favor: the right not to be born

De Jonge explained that, although there is a right to procreate, it sometimes collides with the right of some children not to be born (DeVolkskrant, 2020). This would apply, according to his view, to the cases where there is risk of child abuse or serious neglect (College voor de Rechten van de Mens, 2017). The proponents of mandatory contraception for unfit mothers argue that it is not a major intervention and that it is justified from the point of view of future harm prevention. There is, in fact, a Standing Committee on the Rights of the Child, including its rights before birth. [10]

The right not to be born has been invoked, in particular, in relation to children born with disabilities that could have been prevented if it had not been by a *mala praxis* of the doctors, or if, had the family been informed of the situation, they would have opted for an abortion. The best two examples of this provision are the French cases of Perruche and Lionel. In the case of Perruche, the doctor failed to diagnose the mother with German measles while pregnant, although it had been brought to his attention that her four-year-old was presenting symptoms, and that if she also had the disease, she would want to get an abortion, considering that the risks of a baby born with rubella are quite high. The baby was indeed born with the disease and, as a consequence, deaf, part-blind and with severe brain damage (Spriggs & Julian Savulescu, 2002). In the case of Lionel, the mother claimed that the gynecologist missed the signals of the fetus having Down Syndrome and that, had she known, he would have been aborted (Spriggs & Julian Savulescu, 2002).

The question, then, was whether it was right to compensate Nicholas Perruche for being born with congenital rubella and Lionel for being born with Down's Syndrome (Savulescu, 2002). In cases of serious and incurable conditions, such as Huntington's disease, the idea of trying to prevent a human being from suffering might be more understandable, as the likelihood that the condition will be hereditary[11] and fatal is too high. However, nowadays there are ways in which individuals carrying or being at risk of carrying the disease can safely have children without passing the gene to their offspring, (C.E.M. de Die-Smulders et al., 2013), in a similar way to that available for people with HIV, which will be analyzed later.

The right not to be born has also been brought up in cases of sex selection during pregnancy, as having a daughter is seen as a burden in some countries, and the heated discussion is still ongoing.

[10] https://www.kinderbescherming.nl/themas/bescherming-nog-niet-geboren-kinderen/bescherming-van-nog-niet-geboren-kinderen

[11] According to Alice Wexler, around 50% https://eugenicsarchive.ca/discover/tree/535eec597095aa0000000232.

Disability activists claim that there is inconsistency when it comes to deciding to what extent parents can decide which kind of children they want: it is not valid to choose the sex of the baby, but they are given the choice to do prenatal testing to see if their child is going to be born with Down Syndrome, a mild to moderate intellectual disability, and decide to terminate the pregnancy if the result is positive (Savulescu, 2002).

Nonetheless, it seems hard to connect a right not to be born in cases of potential and future harm, where there is no clear evidence that the child will suffer; it is merely based on subjective opinions, suspicion and prejudice. A judge is not a doctor. And in any case, it is hard to predict whose life will be a good and happy one and whose will not. What is more, the notion of "quality of life", a newly emerging argument in medical ethics, is however very subjective: "People in different places and at different times, with diverse upbringing and expectations, will have different ideas of what quality of life means for them. Can we speak of a "standard" or "normative" quality of life, which is ignored or respected?" (Rispler-Chaim, 1999).

Moreover, in cases of handicapped women who are, however, completely in their right mind, the idea of imposing forced contraception sounds quite suspicious. Does the state want to prevent the suffering of children that lack the love and care of a "healthy" mother, or is it just the classic fear of letting people that do not fit in the mainstream standards live and procreate? This question will be addressed in greater detail over the next few pages, but as a spokesman for the "Collective Against Handiphobia" has put it, there are still certain judges that believe "it is better to be dead than handicapped" (Spriggs & Julian Savulescu, 2002). Should this able-ist conception of a fit society influence reproductive freedom of women? And if it *does* influence it, then in exactly what ways?

4.2. Parameters of "unfitness"

4.2.1. Mental disability and learning difficulties

One of the categories mentioned by the proposal is that of women with mental disabilities or learning difficulties. Although the way in which people with disabilities are treated has changed considerably in the past years and there appears to be a "slow but definite move to uphold the rights of people with intellectual disability" (Roy, Roy, and Roy 2012, p. 5), it remains a vulnerable collective that is still disproportionately targeted by restricting reproductive policies (Center for Reproductive Rights, 2002).

However, when people with disabilities are forced into sterilization without their consent, Article 5 (*no one shall be subjected to torture or cruel or degrading treatment or punishment*) and Article 16 (*the right to marry and found a family*) of the Universal Declaration of the United Nations are violated (Roy et al., 2012), as well as Article 23 of the UN Convention on the Rights of Persons with Disabilities (*to decide freely and responsibly on the number and spacing of their children and to have access to age-appropriate information, reproductive and family planning education are recognized, and the means necessary to enable them to exercise these rights are provided*) and other similar provisions contained in national and regional instruments.

On the other hand, the notion of consent in the case of people with disabilities might present particular challenges. To this respect, the Center for Reproductive Rights establishes that "women with mental disabilities should be involved in decision-making about their reproductive rights to the fullest extent allowed by their capacities", meaning that if the woman is able to give her informed consent, she should do so. They also set guidelines about how to proceed in cases of extreme mental disability: "If it has been determined that a woman has no ability to consent, those making reproductive decisions on her behalf must respect her individual needs as paramount. Any action which limits her reproductive rights must be as minimal as possible, and not based on the convenience of others".

Taking these provisions into account, the judge's decision to impose some kind of LARC on a "mentally incompetent" woman appears, as Martha E. Jennings rightly argues, as "thinly disguised eugenics, justified and made socially acceptable by saying it is in the best interest of the person" (Jennings, 2015).

As a reaction to this denial of disabled women's sexuality and mothering, who are typically seen as asexual, and as "unfit" mothers (Kallianes & Rubenfeld, 2010), activists have started to advocate for the inclusion of disability rights in feminism:

> Begum argues that the issues raised by disabled women `strike at the core of both the disability rights and feminist movements' (1992, p. 70) because their experiences in a sexist and ableist [1] society highlight some major factors that play a critical role in understanding the social construction of women's lives, particularly gender roles and sexuality. Boylan, in fact, characterizes disabled women' s rights as `human rights' (1991, p. 52) (cited in Kallianes & Rubenfeld, 2010).

4.2.2. Hepatitis B or C infection and HIV

Another typical target of reproductive restrictions is the group made up of women with sexually transmitted diseases. The Dutch proposal also mentions women with Hepatitis B or C infection and HIV. Here can be found one of the first inconsistencies of the Dutch initiative: it is said that the main goal of the proposal is to prevent vulnerable parenthood and, specifically, to prevent women that are incapable of raising children from having them. What is the explanation then in the cases of HIV or Hepatitis? Are they implying that women with those conditions are not capable of caring for their children? Or in this case the logic is that the government wants to interrupt the cycle of illness through violating women's rights? It has already been discussed that there are cases in which the high risk of inheriting the disease linked to its high mortality may have an impact on how these cases should be treated. However, nowadays HIV and Hepatitis, though still serious and chronic diseases, can be treated and alleviated to a point where they can be undetectable: "from a very dramatic disease, HIV has become a chronic infection" (Bujan & Pasquier, 2016).

Moreover, technologies have brought about alternatives by which couples can safely have children without transmitting the affliction to the baby: "Antiretroviral therapy administered to women during pregnancy and to the newborn during the first weeks of life as well as the avoidance of breastfeeding will reduce transmission risk to <1% (British HIV Association guidelines, 2014, cited in (Bujan & Pasquier, 2016).

In view of the fact that studies conclude there is no reason anymore to deny the right to procreation to people living with HIV or Hepatitis (Bujan & Pasquier, 2016), should imposing contraception for women with Hepatitis or HIV be allowed and justifiable in the best interests of the child?

4.2.3. Mental health problems/psychiatric illness

Women that suffer from mental health problems or that are diagnosed with psychiatric illness are also at the center of attention. It is not an easy topic, as on the one hand, it is true that mental stability is a fundamental factor when it comes to parenting, and that the lack of it can have immeasurable impact on children. In an interview by the CCeit called "My parents shouldn't have had children" the daughter of two people with psychiatric disorders tells her story and supports the measure proposed by Cees de Groot (CCEIT.com, 2020). On the other hand, however, it is fundamental to respect women's reproductive and autonomy rights.

In an article about respecting the autonomy of chronic mentally ill women, several authors approach the ethical dilemmas involved in this issue and argue that clinicians must attempt to remove the barriers preventing women from exercising a maximum level of autonomy, that is, by treating those factors that are affecting them in that particular situation (Coverdale et al., 1993). This is linked to the fact that the circumstances of people that suffer from psychiatric disorders may vary, and so can their level of autonomy (Coverdale et al., 1993). For this reason, it is fundamental that patients participate in the process of informed consent as much as possible. Physicians tend to adopt a paternalistic approach and impose their views on women's reproductive rights, especially when it comes to not fully competent women:

> An alternative to the paternalistic response is to treat factors underlying the variable nature of impaired autonomy to improve the patient's capacity to participate in the informed-consent process. Simply deciding about contraception for a patient cannot be justified, especially in the absence of an attempt to remove the barriers preventing them from exercising a maximum level of autonomy (Coverdale et al., 1993).

Another interesting aspect mentioned by the article is that it is simply not possible to certainly predict the dangers of a pregnancy. "Dangerous behaviors, even if present during a previous pregnancy, are neither easily predicted non necessarily irreversible during a subsequent pregnancy", which means that a possible future harm that is reversible, for example, by taking the child away from their mother, until the illness is under control, should not justify such a violation of women's rights.

Experts stress that implants such as Norplant present particular ethical dimensions in the study of mental health problems and reproduction (Coverdale et al., 1993). What happens if a woman gives

her consent to the implant and then regrets it during a psychotic episode? Which decision prevails in that case?

> Even though the patient is acutely psychotic, her request may be sufficiently autonomous to warrant removal of the implant. Thus, from the perspective of the patient's rights, the potential abuse of contraceptive implants involves a failure to honor a request that the implant be removed (íd.)

Again, respecting women's wishes and truly deciding what is best for them, instead of what is best for their caretakers or easier for practitioners, should be the final aim when approaching contraception (Coverdale et al., 1993). Eunice de la Vega, who suffers from schizophrenia, was persuaded by her mother and her psychiatrist to get an abortion. She decided to keep the child and was able to manage her symptoms. The child is now five years old, but if someone had chosen for her, that would not have been possible (Muller, 2015). This should make clinicians and families think twice when it comes to making life-changing choices for them.

4.2.4. Addiction

Women struggling with addiction, either to drugs or alcohol, are another target of the Dutch proposal. It is not clear, however, if the reason to consider them unsuitable to procreate is that it is feared that substance abuse during pregnancy will harm the fetus, or if it is because addiction is thought to automatically imply poor parenting skills.

Policymakers started considering the former during the last decades, when the boom of "crack babies" started in the United States and the War on Drugs was exploding (Litzke, 2005). Since then, a powerful movement that advocates for fetal rights and the criminalization of women that endanger their fetuses during pregnancy has been at the center of attention of many discussions (Center for Reproductive Rights, 2000). In fact, the alleged protection of fetal rights has even led doctors and judges to criminalize women for refusing to undergo a cesarean section (Paltrow & Flavin, 2013).

On the other hand, mothers struggling with addictions are, pregnant or not, treated as criminals. Studies show that from 1995 to 2005, there was an increase of 45% of women in prison, and the numbers made reference mainly to minor drug offenses like possession (Litzke, 2005). It is interesting to note how these policies focus only on women and on maternal behaviors, completely

ignoring any kind of paternal misconduct (Welch, 1997). “Men are never referred to as ‘substance-abusing fathers’”, suggests Litzke, and this can only be read as heavily discriminatory.

However, and as it has already been discussed in previous chapters, carceral state and the criminalization of women for drug abuse is no solution in the fight against child abuse and neglect. Experts emphasize that punitive measures fail to solve the problem of addiction and only stigmatize those women, treating them as criminals, instead of actually trying to prevent future and present harm to both women and their children (Center for Reproductive Rights, 2000). What many experts suggest is that, instead of punishing women for their addictions and coercing them to use contraceptives, there are other ways in which these women can positively be incentivized to use them without making it mandatory: “Incentives, however, need not be financial. The best ones consist of contraceptive education, motivation enhancement strategies, provision of free contraceptive measures at easily accessible locations, and psychological counseling”, argues the psychiatric Mary V Seeman. According to her, the best approach would be to reduce the barriers to information and means about preconception care, contraception and post conception, to provide free psychological counseling, and a non-discriminatory, culture-sensitive care (Seeman, 2015). She maintains that there is a common misconception that believes there is a difference between the best interests of the child and what the woman wants, whereas she assures that what all women want is healthy babies; they simply need help to make it possible. It has also been proved that criminalizing behaviors during pregnancy only leads to women being scared of prenatal care which eventually leads to them avoiding it, consequently, putting themselves and their babies in danger (Welch, 1997).

So, what is the final purpose of preventing women that struggle with addiction from having children? If there are less restrictive alternatives to avoid the suffering of children, such as prenatal care and education, as well as targeting the root problems of addiction—considering that “most addicted women come from backgrounds replete with trauma and loss” (Litzke 2005, p. 7)—would forced contraception appear necessary and reasonable?

> The primary utility of stigmatizing and punishing poor drug-addicted black women lies not in the prevention of fetal harm, but in the defense of normative standards of gender and motherhood, the resuscitation of public innocence concerning the plight of the black poor, and the legitimization of a status quo, characterized by continuing oppression and inequality. (Logan, 1999)

4.2.5. Child abuse

Proponents of forced contraception argued “the measure was intended to prevent child abuse by mothers who were unable to cope with raising them” (Burger, 2020). Therefore, it can be understood that all the other categories are thought to lead to a situation of child abuse and neglect. Additionally, it is specified that in cases of history of child abuse, mothers could also be imposed mandatory contraception to prevent further harm to a future baby.

This idea has already been studied in the chapter related to court-ordered Norplant condition, and the conclusion reached was that there was no foundation for such a measure: it just assumes future criminality, going against the basic principle of presumption of innocence (Ginzberg, 1992; Mertus & Heller, 1992). Moreover, mandatory contraception cannot be considered effective, as there are other alternatives aimed at preventing future harm that involve a less restrictive approach to women’s rights.

When discussing child abuse in the hands of the mother, it is important to highlight that the scenarios that may lead to a conviction of that crime are very diverse: in the United States, Tabitha Walrond, a nineteen year old, was found guilty of “criminally negligent homicide” because she failed to adequately breastfeed her baby and, as a result, he died of malnourishment (D’Amico, 2011). This type of cases, together with mothers being recently convicted for exposing their children to drugs in utero, presents, according to Suzanne D’Amico, “an even greater challenge to the criminal justice system because these offenses are "inherently female" in that only females can perpetrate these crimes, yet these crimes are so reprehensible that they completely contradict society's feminine ideal of women as docile, passive caregivers.” For this reason, scholars have recently advocated for a gender-neutral approach to criminal matters related to the concept of motherhood: “This approach focuses on the crime rather than the criminal, the action rather than inaction, and parenthood rather than motherhood” (D’Amico, 2011).

It is likewise fundamental to bear in mind that child abuse, as Ginzberg points out, “most often arises in circumstances more tragic than evil”. For this reason, experts suggest the following approach when dealing with the complicated issue of vulnerable motherhood:

> child abuse, like alcoholism or drug addiction is a disease and should be treated as such. Sterilization does not cure the deeply rooted psychological problems of people like Debra Williams, who were themselves physically, sexually and psychologically abused as children: psychotherapy does. Ms. Williams is not only an aggressor, she is a victim. (Coyle, 1989).

4.3. Support and validity of the measure

Although the near future does not seem so bright for the prospects of the Dutch proposal (Heldens, 2020), it is true that it has been brought up so often that its validity and legitimation must be carefully measured and analyzed. Maud Heldens maintains that there is a lot of understanding for distressing situations, but that “mandatory contraception seems a bridge too far” for the time being. Emily Burger explains in an article about mandatory contraception in the Netherlands that, Carlo Leget, ethicist and chair of the advisory board of the *Now Not Pregnant* project, disagrees with the proposal: “I understand very well that people say: we want to prevent suffering. We try that too. But I am shocked by such a proposal. With such a law you cross a lot of borders. I think that is really a step too far.” (Burger, 2020).

Regarding its validity, the Dutch Institute for Human Rights has taken a stance against the proposal, arguing that mandatory contraception for women is at odds with human rights (College voor de Rechten van de Mens 2020; Heldens 2020). The legal arguments provided by the Institute are that it constitutes a violation of the right to privacy, Article 8 European Convention of Human Rights (ECHR), which also includes the right to physical integrity and the right to self-determination, all of which are connected to the basic principle of human dignity. These rights are also laid down in the Dutch Constitution in Articles 10 and 11 (College voor de Rechten van de Mens, 2017). In the Institute’s view, placing an implant or an IUD violates the integrity of the body. They argue that there is a settled case law of the ECtHR that recognizes involuntary medical treatment as a violation of the right to privacy. Moreover, Article 12 of the Women's Convention protects women's right to health. This includes the right to dispose of the body oneself, which also includes sexual and reproductive freedom (College voor de Rechten van de Mens, 2017).

However, they go on explaining that not every infringement is automatically a violation of the law. There are certain conditions that have to be met in order for it to be valid and justifiable: first of all, the measure has to be effective, that is, does forced contraception for “unfit” mothers contribute to combating child abuse? Unless there is uncontested evidence that it is effective, such a violation of women’s rights should not be allowed (Heldens, 2020), according to international, regional and national standards. In this case, there are a wide range of alternatives that could prevent future harm of the baby without neglecting women’s rights.

Finally, the Institute notes that the fact that there is no inclusion of responsibility for men amounts to discrimination (Heldens 2020). Similarly, they completely condemn the treatment of disability rights in the proposal and how it is evidently against the provisions of the UN Disability Convention that specificly establishes “the right to freely and consciously decide on the desired number of children and birth distribution” (Heldens, 2020).

They conlude that, as long as other effective, but less restrictive resources to prevent child abuse are available, mandatory contraception, a measure of questionable legitimacy that constitutes a blatant violation of a set of women’s rights cannot be upheld:

> Child abuse is a serious and major problem that requires a decisive approach. Human rights treaties oblige the government to take a package of measures. The Convention on the Rights of the Child is especially important here. States must do everything in their power to prevent and combat child abuse. However, the use of mandatory contraception is ineffective and unacceptable from a human rights perspective (College voor de Rechten van de Mens, 2017)

5. DISCUSSION AND CONCLUSIONS

It has been stressed throughout this paper that modern technologies result in new possibilities that have the potential to empower individuals, but that also present new challenges and ethical dilemmas. Several authors claim that many of the contemporary practices, such as prenatal screening, constitute a backdoor to eugenics (Wilson, 2017). These practices, similarly to the rhetoric used in the 20th century to advocate the pseudo-science of eugenics, rely on the conception that new generations should aim at perfection, at the improvement of the race, and this similarity should be interpreted as a red flag. Scholars call this a transition from eugenics to *newgenics* (Wilson, 2017).

In this new fashion of eugenics, views of human variation, disability and normalcy are at the center of attention, explains Robert Wilson:

> When all is settled, however, the fact remains that people with disabilities, especially intellectually disabled people, are disproportionally targeted by newgenic practices. Many disability advocates, echoing the view of those with the corresponding disabilities, argue that such eugenic targeting is inherently subhumanising. Cognitive disability may no longer be a subhuman kind in the scientific and bioethics literature as feeble-mindedness was, but it remains an especially undesirable trait (Wilson 2017).

Wilson continues to argue that the final goal of *newgenics* (and of course, eugenics in general) is *eliminativism*, that is, to achieve a state where undesirable traits—such as disabilities—, do not exist anymore. Therefore, disabilities are, as Wilson says, "subhumanising, alienating us through pain, stigma, suffering, dependency and limitations from our status as proper humans" (Wilson, 2017). One of the contemporary paradigms of this logic is the practice of prenatal screening as a form of prevention of Down Syndrome and other diseases (Wilson, 2017). What is more worrying about this is that the views of those who live with those conditions are hardly ever listened to, and the result is the imposition on society of what some people think that has to be the rule. Wilson cites what Marsha Saxton, a disability studies scholar who has spina bifida herself, said: 'The message at the heart of widespread selective abortion on the basis of prenatal diagnosis is the greatest insult: some of us are too flawed in our very DNA to exist; we are unworthy of being born.' (Saxton, 2000, p. 391).

To this respect, it is important to note how this same logic could be applied, as it has been proved before, to sex selection. In some countries, this could lead to abortions based on the fact that the

baby is not a boy, and as a consequence, considered undesirable. Should this be allowed? "When we only allow testing and termination of pregnancy for Down's syndrome and other disabling conditions, we do engage in unjustifiable eugenics and discrimination", answers Julian Savulescu (Savulescu, 2002).

In other words, this paper has attempted to prove how society's *able-ist* logic is discriminatory and ill-advised. Moreover, this question leads to another ethical dilemma, namely, what the parameters of fitness are. In the case of this study—the Dutch proposal—, it has been explicitly listed which are the categories of women that are thought to be "unfit" to reproduce, but can these parameters become universal? Who would be qualified to make such a decision about peoples' lives, about who deserves to procreate or not?

The philosophical dimension of the notion of quality of life and of "wrongful life"—that is, an impairment congenital so severe that makes one's life unlivable and that makes one believe it was better not to have been born at all (Bell, N. K. & Loewer, 1985)—, are at the core of this discussion. However, courts and scholars have long determined that afflictions such as Down's Syndrome or congenital deafness cannot be considered as wrongful lives, but that they outweigh a preference for nonexistence (Bell, N. K. & Loewer, 1985). "At the same time, however, such an approach acknowledges that some impairments are so severe as to outweigh whatever benefit is conferred by life", argue Nora K. Bell and Barry M. Loewer. This could be the cases of people that suffer from Huntington's disease or other similar afflictions.

With respect to this last idea, however, it is fundamental to embrace how new technologies have made possible for people with certain diseases to have the chance to reproduce without transmitting the disease to their offspring. That is the case of people with Huntington's Disease. Firstly, for those people that already know they carry or may carry the disease, there is the possibility of prenatal testing, which means that the fetus can be tested to see if it has the expanded gene that causes the affliction, as the Huntington's Disease Youth Organization (HDYO) explains, and in those cases, consider abortion. Secondly, the Preimplantation Genetic Diagnosis (PGD), that is, a procedure in which a woman's eggs and her partner's sperm are taken and fertilized in a laboratory, is also available (HDYO, n.d.). Moreover, other techniques such as egg, sperm or embryo donation in place of that of the affected parent can be used (HDYO, n.d.). In sum, as it can be noted, there are several alternatives in stock for those who suffer or might be carriers of Huntington's disease and still want to have biological children safely.

Another interesting example in the field of contemporary eugenics is the case of β-thalassemia in Cyprus, also known as Cooley's Anemia (Loma Linda University Health, n.d.). The thalassemias, according to the Thalassemia International Federation, are inherited blood disorders characterized by decreased hemoglobin production and β-thalassemia is the clinically most important form, especially in Cyprus, where more than 1 in 10 Cypriots are carriers of the disease (in-cyprus, 2019; Thalassemia International Federation, n.d.). What makes this case particularly interesting for the purpose of this study is that it is one of the few cases where preventive medicine is mandated and abortions encouraged not only by the State, but also by the Orthodox Church (Cowan, 2008). Since 1973, population screening for the identification of carriers has been operating in the island (Angastiniotis & Hadjiminas, 1981) and it is considered one of the most effective prevention programs for thalassemia or any other genetic disease (Ioannou, 1999). The reasons behind the intervention of the State in this matter are that the disease, which affected 15% of the population, had no cure: "the result was that most patients were dying in the first few years of life without any specialised support, although some patients with mild thalassemia intermedia survived to adulthood" (Ioannou, 1999).

Later on, it was discovered—and up to date it is the only treatment available—, that regular blood transfusions helped and improved life expectancy, so that was the adopted policy for a long time. However, it was evident that this strategy would not be enough in the long-run: "thalassemia patients were consuming more than 50% of the available blood supplies, while more than 20% of the total drugs budget of the Ministry of Health was used for the purchase of Desferal" (Ioannou, 1999). Another solution had to be found urgently, and that was made possible thanks to the introduction of population screenings and prenatal diagnosis. Different policies have been implemented in Cyprus during the last decades, from voluntary screening of students and in the army, to mandatory premarital and prenatal testing (Cowan, 2008). However, critiques on this approach argue that abortion should not be the only viable long-term option, especially, since there are many cases of quite mild forms of the disease. For this reason, preimplantation diagnosis is thought to be a possible answer to this problem:

> Every individual human being has a unique combination of about three billion bases in its genetic code, yet the decision for abortion after pre-natal diagnosis is based in most genetic disorders on the change of one or another base, without any regard to the potential encoded by the rest of the genome. It may be sometimes that other genes can complement the missing function, but a diagnosis based on detecting specific molecular changes will most often fail to detect such possibilities, leading to

> abortion of fetuses that would otherwise have had prospects for a good quality of life (Ioannou, 1999).

In any case, the conclusion reached by this study is that reproductive choices are so profoundly related to one's privacy and soul that no one should be given the power to impose their viewpoint on the rest. Decisions related to reproduction should be based on independent, autonomous and free choice by women. What is important in these cases, though, is that such choices are based on full and clear information about the possibilities and alternatives, as well as the risks and consequences of each of the possible choices. All of them should be made free of coercion. Of course, as society, everyone is entitled to their own opinion in relation to what should be done or what one would decide in certain circumstance, namely, being told after a prenatal screening that your child will suffer from a certain disease and that you may want to consider getting an abortion. However, having a personal opinion on a very delicate and private matter, such parenthood, should never mean imposing those values and choices on the rest of the population. Just as it happens with abortion, each individual and, in particular, women, must be able to make individual choices based on their particular circumstances. That is what pro-choice means: having the possibility to choose what is best for you in that particular moment. And as Mary V Seeman argues, society should stop assuming that there is conflict "between what is best for the woman and for her child-to-be", but that all women want healthy babies. Whether the choice is deciding that you are not capable of having that baby or that you are ready to have it, those choices should be respected. No one knows better than the woman herself what is best for her and her children. As HDYO explains:

> it is important to highlight that having children at risk is an option too. Many people have children at risk for various reasons. A person may feel that with Huntington's disease research going very well, that there will be good treatments, or even a cure, by the time the child grows up. Another reason people have children at risk is the fact there is always a chance the child will not have the expanded gene and will never get Huntington's disease. Some people may want to have a child without the risk, but feel that the options to do that are not available to them – this could be as a result of fertility techniques not being available in their country, a lack of financial support or a religious belief for example.

In any event, what seems clear at this point of this research is that every woman, or couple, should be able to make individual choices, according to their personal circumstances, free from coercion. That is another key aspect that can be drawn from this study: that coercion is particularly dangerous when policymakers and judges find a way to exercising it by targeting a specific group of people,

most often, a vulnerable collective. As it has been examined throughout this paper, it is undeniable that forced sterilization has been used to further oppress women and, in particular, low-income women from racial or ethnic minority groups, though women in general would benefit form a coercion-free approach to reproduction. In fact, not so long ago, on 23 June of 2021, the singer Britney Spears revealed to the world that she had told the court she wanted to get her IUD removed so that she could "start trying to have another baby", but that she was told in the conservatorship that she would not be able to get married or have another baby (Jacobs, 2021). Britney Spears, who has been under a conservatorship for almost twelve years, is the perfect example of how a woman can be easily trapped into forced sterilization, based on an alleged lack of legal capacity.

It was already argued during the study of mental disabilities and psychiatric illnesses that the issue of incompetence and contraception can be particularly tricky, but that practitioners and families should aim at doing what is best for the patient. But what happens when that is not the case, when the woman's wishes are completely disrespected under the argument that she is mentally impaired? And if that can happen to a very well-known artist that is surrounded by hundreds of reporters all the time, it does not bear thinking what could happen to a person that is not only oppressed based on her gender, but who is also black and has a mental disability. That is where intersectionality becomes fundamental. Targeting again only women, and classifying as "unfit" and implicitly as "bad mothers" women from vulnerable collectives, such as women with disabilities or mental problems, with AIDs or struggling with drugs, only confirms that the focus is again on "cleaning" society and getting rid of babies that, because of their mother's characteristics, continue to further burden society, as our efficiency-obsessed society believes.

Another important element of this discussion is the concept of fitness. It has already been proved that it is a highly subjective and changing-over-time notion, and that is precisely why decisions about reproductive freedom should never depend on it. In the past, women that presented "promiscuous" attitudes and lifestyles were considered unfit and, therefore, were sterilized, a policy that today would be unthinkable. Yesterday's feeble-minded are today's healthy and mentally sane people that tell us about how they were "erroneously" deemed as incompetent and deprived of their right to have a family, as the documentary *Surviving Eugenics* shows. So, who is entitled to decide who reaches the standards of fitness and who does not? The journalist Charlie Stone leads this discussion in a very rough way. He insists that, if we opened the door to the eugenic rhetoric of fitness, why stop there and not expand the list to other targets, also based on parameters of fitness and efficiency. "Fat people cost public health systems a fortune, don't they? Smokers? What about

people with ginger hair, bad breath...And hey, there are almost eight BILLION people on planet Earth, we are constantly being told that our little blue and green ball cannot sustain all these folks", he continues to say (Stone, 2020).

Finally, it cannot be forgotten that technologies, more often than not, come with ethical dilemmas and discussions that have to be taken into serious consideration. This is, as it has already been mentioned, the case of LARCs, which can be very positive and empowering for many women, but dangerously oppressing for others. Similarly, the dream of genetic perfection and human enhancement that could promote the use of technologies to prevent conditions such as Huntington's disease or β-thalassemia, never come alone. Transhumanists argue that we should use technology to radically enhance human beings, and that includes not only the prevention of fatal diseases, but also the improvement of the race in other more controversial aspects, such as intelligence, longevity, happiness, and virtues (Walker, 2014). In the past years, we have witnessed how in some fields, this is already happening. "Common examples of newgenics practices included pre-implantation genetic diagnosis (PGD) and selective abortion after prenatal testing. This label would also extend to the not yet fully-developed field of genetic engineering", explains, Caroline Lyster (Lyster, 2013). "Designer Babies", that is, the idea that parents can decide the sex of the baby, the level of intelligence, the color of the eyes…, etc. already exists in some countries (Levine, 2017). This, as Levine explains, is the product of consumer eugenics, and they are as alarming as their predecessors. Notwithstanding the ethical discussion of interfering with nature and playing God, the practical consequences of those interventions are unimaginable, especially considering that these practices are, for now, private. What would be the impact on those that do not have the means to participate in this new trend? Dr David King confirms that human gene editing will only lead to greater social inequality:

> Once you start creating a society in which rich people's children get biological advantages over other children, basic notions of human equality go out the window. Instead, what you get is social inequality written into DNA. Even using low-tech methods, such as those still used in many Asian countries to select out girls (with the result that the world is short of more than 100 million women), the social consequences of allowing prejudices and competitiveness to control which people get born are horrific (King, 2017).

The Dutch proposal is the reflection of this current of thought and the first step to achieving its final goal: human enhancement at its most efficient, cost-effective exponent, a society that is flawless and does not depend on the state for support. The best interests of the child are just the perfect excuse to make this strategy socially acceptable, as it has been proved that there are many other alternatives to prevent children from suffering due to “vulnerable parenthood”. However, once again, the rights and interests of someone that has not even been born yet, are prioritized over the rights of individuals that already exist, women, whose freedoms and entitlements are completely neglected. What we can never forget is that forced sterilization, even in its soft version, is a massive violation of bodily integrity, and that it deprives individuals, and particularly, women—it is still undoubtedly a gendered issue—, of their fertility. As Amy and Rowlands argue, the “deprivation of the possibility of motherhood, in itself, is stigmatizing” (Amy & Rowlands, 2018). Finally, in the words of Winters and McLaughlin: “The historical patterns of reproductive control centered on permanent, involuntary sterilization are critical to tracing the rhetorics of reproductive control through new forms of soft sterilization”.

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ANNEX

Poverty and Norplant

Can contraception reduce the underclass?

Two stories from yesterday's newspaper:

- The U.S. Food and Drug Administration approves Norplant, a contraceptive that can keep a woman from getting pregnant for five years.
- A black research organization reports that nearly half the nation's black children are living in poverty — and that the younger the child, the more likely he or she is to be living with a single mother on welfare. "Growing numbers of them will not succeed," the study's author says.

As we read those two stories, we asked ourselves: Dare we mention them in the same breath? To do so might be considered deplorably insensitive, perhaps raising the specter of eugenics. But it would be worse to avoid drawing the logical conclusion that foolproof contraception could be invaluable in breaking the cycle of inner city poverty — one of of America's greatest challenges.

The main reason more black children are living in poverty is that the people having the most children are the ones least capable of supporting them. (The black middle class is growing, but its birth rate is very low.) This trend, as Children's Defense Fund president Marian Wright Edelman has said, "practically guarantees the poverty of the next generation of black children."

Now there are many ways to fight back — from better prenatal care to better schools. But it's very tough to undo the damage of being born into a dysfunctional family. So why not make a major effort to reduce the number of children, of any race, born into such circumstances? (More whites than blacks live in poverty, though poor blacks make up a higher percentage of people who are more or less permanently on welfare.)

No one should be compelled to use Norplant, which involves a doctor implanting matchstick-size capsules in a woman's upper arm. But there could be incentives to do so. What if welfare mothers were offered an increased benefit for agreeing to use this new, safe, long-term contraceptive? Remember, these women already have one or more children. And they can change their minds at any point and become fertile again. (This is not Indira Gandhi offering portable radios to women who agree to be sterilized.) At the very minimum, Norplant, which will probably cost $600 to $1,000, should be made available for free to poor women.

All right, the subject makes us uncomfortable, too. But we're made even more uncomfortable by the impoverishment of black America and its effect on the nation's future. Think about it.

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