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Introduction

by

Sara De Vido

This issue of *Deportate, esuli, profughe* stems from the conference organised by our journal on 5-6 December 2019 on the topic of "(Non) reproductive freedom" (*La (non) libertà riproduttiva*). In the last conference before the pandemic, scholars came to Venice from different parts of the world to discuss the concept of reproductive freedom (and lack of freedom) from an interdisciplinary point of view. The discussion with students and participants was extremely fruitful and the idea to continue the exchange of views started on that occasion led to the preparation of this issue. It is undoubtedly impossible to consider all violations of women's reproductive rights that are occurring in various parts of the world in one issue. The purpose is rather to trace a pattern of violation of women's reproductive rights in profoundly different cultural and geographical contexts.

At the outset, before presenting the content of the issue, where we will consider topical examples of reproductive "unfreedom", we should first specify what we mean by reproductive freedom and reproductive rights, and the relation between reproductive freedom and medicine – based on stereotypes on the role of women in society.

Reproductive freedom and reproductive rights

First of all, what is reproductive freedom and why is it relevant to talk about this topic? With reproductive freedom, we do not simply mean women's right to choose, which is fundamental and thoroughly supported in this issue, but also the societal and the political context that creates the conditions to make a meaningful choice about reproduction and to exercise one's reproductive rights. The concept of reproductive rights was defined as the "composite of human rights that address matters of sexual and reproductive health":

> While reproductive rights are instrumental to achieving population, health, and development goals, they are also important in themselves as human rights intended to protect the inherent dignity of the individual. Reproductive rights consist of three broad categories of rights: (1) rights to reproductive self-determination, (2) rights to sexual and reproductive health services, information, and education, and (3) rights to equality and nondiscrimination (Joanna Erdman, Rebecca Cook, 2008).

It was 1994 when Mahmoud Fathalla, a professor of obstetrics and gynaecology, and Chair of the WHO Advisory committee on health research, acknowledged that "society is not neutral with regard to reproductive rights," and that in many societies,

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"the predominant objection against contraceptive use was directed at contraceptive control by women, rather than against contraception itself" (Fathalla 1994/95: 1181-1182). The same year, Rebecca Cook published her innovative paper commissioned by the WHO on *Women's health and human rights,* in which she emphasised the "pervasive neglect of women's health" (Cook 1994: 5). In 1995, Aart Hendriks contended that "woman's right to sexual and reproductive health is not only threatened by current expressions of deep-rooted, harmful practices-including sexual violence against women and girls, forced marriage, and female genital mutilation-but is also challenged by progress in reproductive medicine" (Hendriks 1995: 1127). It is noteworthy that almost twenty years after these outstanding contributions, Erin Nelson, in her remarkable work on the notion of reproductive autonomy, reflected on the fact that the "history of reproductive regulation is a history of attempting to enforce a traditional view of women as child-rearers" (Nelson 2014: 66). In 2016, the Working Group on the issue of discrimination against women in law and in practice, established at UN level, confirmed this view, by stating in its report that:

> Women's bodies are instrumentalized for cultural, political and economic purposes rooted in patriarchal traditions. Instrumentalization occurs within and beyond the health sector and is deeply embedded in multiple forms of social and political control over women. It aims at perpetuating taboos and stigmas concerning women's bodies and their traditional roles in society, especially in relation to their sexuality and to reproduction (WG 2016: 18).

Reproductive rights are not only a component of the right to health, but also a major health topic of global concern, a development and a human rights issue (Cook, Dickens, Fathalla 2003: 9). Yet the interest for the right to reproductive health only gained momentum in the 1990s. The right to health indeed, as originally conceived in human rights legal instruments, "reflect[ed] a male-oriented conception of health," where issues related to reproductive health were "conspicuously absent" (Chapman 1998: 397). In particular, feminists have been concerned about the role of "paternalistic medicine," which assumes the incapacity of women to make choices on their own without professional recommendations, and have highlighted the fact that many health problems specifically related to women have not received specific attention (Chapman 1995: 1174). Ruth Anna Putnam argued that medical research, in taking men's bodies to be the basic human bodies, has neglected women's health (1995: 313). Commenting on her thought, Christine Korsgaard contended that "this of course is not because either developing or developed societies have ignored gender. It is because they have ignored women. That is another matter altogether" (1995: 402).

This argument is partly correct if we take into consideration health policies that States have adopted over the centuries. The State has not traditionally interfered in matters concerning the private sphere of the individuals, where violence against women basically occurs, but has intervened in matters concerning reproductive decisions of women. When feminists reflected on the relation between the woman and the State, they argued that the State as person is a masculine actor, and that gender is central in the construction of sovereignty. The theory and the practice of international law are patriarchal. It has to be observed that it is not only a matter of "male" State institutions – which is of course a serious issue – but also, or mainly, the un-

derstanding of women as "instruments": instruments of war to attack a specific ethnic group through the rape of women; instruments of war on hunger, instruments of population policies. The accurate analysis conducted by several experts for the book *Reproductive States* offers an interesting overview of the invention and implementation of population policies after the Second World War in a comparative perspective, focusing on ten countries, namely Germany, the United States, Japan, India, Egypt, Iran, Brazil, Nigeria, Russia, and China, from which some common trends have been drawn. The most relevant aspect is that the degraded status of women in these ten societies facilitated State interventions after the Second World War "rendering the ordinary female body as a key political resource: available, malleable, and potent material to deploy in the bio-political project of shaping the state's size, character, and place in the world" (Solinger and Nakachi 2016: 3). Therefore, as Fathalla pointed out, there is little difference between coerced contraception and sterilisation and coerced motherhood, since in all cases governments focus on demographic objectives, rather than on empowering women to control their fertility (1995: 1185). According to Cook, "male-gendered" institutions – both at the political and religious level – "have justified intervention in women's reproductive self-determination, by invoking public order, morality, and public health" (Cook 1995: 348). In particular, laws that have been construed as male (such as the ones excluding husbands from criminal responsibility in cases of marital rape) "are enforced at a cost to women's health" (Cook 1995: 348).

When Cook wrote about the "pervasive neglect of women's health", and Virginia Leary affirmed that "women's health issues have been given less attention in medical research" (Leary 1994: 38), they described a situation, the one in the 1990s where the interest in reproductive rights started to rise, which is still present today, despite (or maybe also because of) the evolution of technology, and despite the change of habits, women's attitudes, women's consciousness of their bodies and their autonomy. A striking example is that of Italy, where in 2016 the Minister of Health proposed a campaign called "fertility day" in order to "invite women to procreate" and "advise", to say the least, women aged more than 35 to pay attention to the fact that their biological clock was ticking fast. The campaign was widely disapproved of by women of different political positions. The pervasive neglect not only of women's health, but also of women's autonomy, is still an issue which deserves in-depth studies using an interdisciplinary approach.

Reproductive rights and medicine

The female body has been perceived in different ways over time. Hence, for example, until the 18th century, physicians saw women as a "lesser" version of the male, whereas in mid-19th century male body was the "norm", and the "physiological events in women were often viewed as a source of weakness"[1]. The condition of "hysteria," which emerged in the 19th century and was associated to women, is a

[1] However, before the Enlightment, male and female bodies were inherently considered the same. See, in that respect, Thomas Laqueur 1987: 1.

clear example of "the manner in which medically defined and documented illnesses are embedded in social, political and historical conditions" (Lupton 1994: 136)[2]. The object of oppression has always been the female body. As stressed by Carole Bunch, "the importance of control over women can be seen in the intensity of resistance to laws and social changes that put control of women's bodies in women's hands: reproductive rights, freedom of sexuality whether heterosexual or lesbian, laws that criminalize rape in marriage, etc." (1990: 491).

The Women's Health Movement in the 1960s and 1970s in the US and Canada first challenged the medical profession's view of women's health, denouncing "the medical profession's authority to control women's reproductive lives by regulating access to abortion and contraceptives" (Weisman 1997: 181). Women told stories, gathered in the volume *Our Bodies, Ourselves*, of "condescending, judgmental treatment, and of being lied to, sexually abused, overtreated, and ignored by their doctors" (Oberman and Schaps 1998: 564)[3]. Societal perceptions regarding women's health status, and women's body, often disadvantaged women. Hence, "the female body is a biological body, but it is also a gendered body and as such has a history" (Mitchinson 1998: 126). In other words, biology is *one* factor that shapes differences in male and female patterns of morbidity and mortality, but not the only one. In a study regarding the United Kingdom dating back to 2003, it was clarified that gender differences in living and working conditions, including the woman being in charge of the household, "put males and females at differential risk of developing some health problems, while protecting them from others" (Doyal, Payne and Cameron 2003: 9).

Issues regarding women's reproductive health came up during the United Nations Women's Decade 1975-1985, groups of women organised the International Tribunal on crimes against women in Brussels in 1976[4], and the International Tribunal and Meeting on Reproductive Rights in Amsterdam in 1984 (Joachim 2007: 4).

Another wave of women's health activism emerged in the 1990s, led by women's health advocacy groups and women who had attained positions of influence in the government, medical profession, academia, and health care delivery organisations. Their purpose was to promote equality for women in biomedical research and in health care delivery (Weisman 1997: 181). They adopted a broad view of women's health, focusing on issues beyond reproduction: women have a womb, but they can-

[2] In literature, see Margaret Atwood 1996.

[3] Quoting the Boston Women's Health Book Collective, the *New Our Bodies, Ourselves* (rev. ed. 2011). In May 1969, 12 women from 23 to 39 years old met during a women's liberation conference at Emmanuel College in Boston, where they organised the workshop on *Women and their Bodies*. They published in 1970 the booklet *Women and Their Bodies,* reprinted the next year with the title *Our bodies, ourselves*. In the same direction, the Montreal Women's Health Book Collective of 1972.

[4] See, for example, in the final report of the Tribunal, a woman's testimony: "When R. tells us about her abortion, when she confesses the fears and inhibitions which she still has, when she talks about her constant sexual dissatisfaction, and when she reveals her state of submission, she also discloses the plight of each woman, dispossessed of her own body, submitting to the rules of a system which reduces her to a reproductive function or an object of pleasure" (Russell and Van de Ven 1976: 23).

not be identified in their womb. As posited by Catherine MacKinnon, women's capacity for and their role in childbearing have determined "the social disadvantages to which women have been subjected" (1991: 1308).

A broad view of health was also endorsed by Fathalla, Cook and Dickens, who included in the notion of reproductive health the ability of women to enjoy mutually fulfilling relationships, freedom from sexual abuse, coercion or harassment:

> Health for women is more than reproductive health. Being a woman has implications for health. Women have specific health needs related to their sexual and reproductive functions, collectively expressed in the reproductive health package. Women have an elaborate reproductive system that is vulnerable to dysfunction or disease, even before it functions or after it ceases to function. Women are subject to the same diseases of other body systems that can affect men, but their disease patterns often differ from those of men because of women's genetic constitution, hormonal environment, or gender-evolved lifestyle behaviour […] Because women are women, they are subject to social dysfunctions that impact on their physical, mental, or social health (Cook, Dickens and Fathalla 2003: 9-10).

Women's bodies are socially determined. Once "produced", the body "can then be invested with legal characteristics": ownership, property, autonomy (Stychin 1998: 216).

The perception of women's reproductive rights may differ from country to country. Lesley Doyal, who deeply analysed the impact of sexuality, fertility control, reproduction, labour and waged work on women's health, demonstrated how many health problems are reflections of discrimination against women, and emphasised in which sense the reproductive health status of women is affected by who they are and where they live (intersectional discrimination) (Doyal 1995)[5]. Moving to Asia, the first-wave Japanese feminists, for example, such as Hiratsuka Raicho and Ichigawa Fusae, already had in mind those instances and contributed to the creation of the Abortion law reform league in 1932 (Dales 2009: 19). The second-wave feminist discourse focused on the liberation of the body, and the women's liberation movement "made sexual liberation the central point of its theory" (Dales 2009: 19). In 1970, Tanaka Mitsu wrote the provocative article "Liberation from the toilet", where she rejected the binary construction of women "either the expression of maternal love or a vessel for the management of a lust: a 'toilet'" (Dales 2009: 19). At the end of 1972, the Shinjuku Women's Liberation Centre opened in Tokyo to provide a place where groups of women could plan their activities. In the following years, women proved to be aware of the importance of reproductive control asserted by the State and "they mobilized around the Japanese government's attempt to remove the 'economic reasons' clause for abortion from the Eugenic Protection Law" (Shin 2011: 181). In the late 1980s, the book *Our Bodies Ourselves* was translated into Japanese by the feminist bookstore Shōkadō. Beyond the 1980s, housewife feminism and single-issue activism prevailed, the former being based on the agency of women who had decided to leave a career to become housewives as a consequence of the negative perceptions of the workplace (Dales 2009: 21). In the 1990s, however, international development determined a change, and issues such as domestic violence and violence against women more generally sensitised Japanese women to mobilise

[5] See also Doyal 2000: 931; Doyal 2009: 433.

for gender equality. As stressed by Ki-Young Shin, a new phase of transnational activism started at that time (Shin 2011: 182).

Reproductive (un)freedoms

The "unfreedom" that we wanted to address in the conference two years ago, and we need to continue to examine today, concerns the failure of the State – where State also means health professionals, organs of the State, social workers, etc. – to guarantee the exercise of women's reproductive rights. These are failures to guarantee access to abortion, to prevent violations of women's and children's rights as a consequence of surrogacy, to prevent health professionals from committing obstetric violence.

In the first part of the issue, six essays analyse women's autonomy in reproductive matters. The first essay offers a very interesting historical perspective on neo-Malthusian feminists, who defended women's right to abortion and sexual pleasure, among others. Historian Anne Cova describes the work of Madeleine Pelletier (1874-1939) and Nelly Roussel (1878-1922), who extensively focused on and promoted free motherhood, as an autonomous decision of the woman and not as an imposition by society. It is a long – geographically and culturally – journey from France to China, from the turn of the 19th century to the present day, but the issue of reproductive autonomy remains crucial. Nicoletta Pesaro chose Sheng Keyi's novel *The Womb* to discuss the problem of reproductive freedom in contemporary China. Literature can well describe the heavy social and psychological burden women have on their shoulders in Chinese society. Two papers deal with surrogacy. Simona Novaretti explains surrogacy in China, contextualising it in the history of the country. She then analyses Chinese law and jurisprudence on the matter, in particular the trend towards the evaluation of the effectiveness of a surrogacy contract on a case-by-case basis, in light of the best interests of the child. Dealing with surrogacy contracts from the point of private international law, Arianna Vettorel's paper identifies human rights issues emerging during the negotiation and enforcement of these contracts and describes the potential of international harmonisation. International attempts to conclude a convention regulating (or prohibiting) surrogacy have failed so far.

Two papers deal with abortion in Poland and obstetric violence in Argentina. Karolina Prażmowska analyses the case of conscientious objection in Poland which hinders access to abortion, even when the practice falls under the cases allowed by law. She investigates the jurisprudence of the European Court of Human Rights, which, despite recognising a margin of appreciation to States while defining abortion policies, considers obstacles to abortion that cause mental anguish and stress as violations of the prohibition of torture, inhuman or degrading treatment or punishment. Belén Castrillo tackles obstetric violence in Argentina, in the city of La Plata most specifically, by answering the questions: what it is, how it manifests, when it materialises, where it is exercised, why it is perpetrated, who exercises it and who suffers from it. Obstetric violence has been given a name by legislation in Southern American countries, despite being a widespread phenomenon in all countries in the world. In both cases of abortion and obstetric violence, the stereotype of the woman as

mother is predominant, but also the myth that women's autonomy can be jeopardised because the society and/or the State believes that she is unable to make adequate choices for the well-being of her foetus[6].

The documents in this issue are related to the previous two articles. One is a transcription of *Cruelty in maternity wards*, which was published in the 1950s in the *Ladies' Home Journal*. For the first time the unspeakable was spoken: delivering a baby can be cruel and the stereotypes surrounding birth can be normalised both by the women themselves – who fear speaking out – and by health professionals. The second document is the statement drawn up by the Poznan Centre for Human Rights in response to the judgment by the Constitutional tribunal declaring the unconstitutionality of the termination of pregnancy due to fetal abnormalities. Katarzyna Stękowska-Kozlowska, one of the signatories of the statement, reflects on the situation of women in Poland, whose rights are constantly under threat by the State.

The relation between feminism, reproductive freedom and ecologism is explored by Bruna Bianchi in her review ("Strumenti di ricerca") of the work by Françoise d'Eaubonne, a French scholar whose research has been neglected for years and only recently has been used to read the effects of the pandemic. In *le féminisme ou la mort*, where the word "ecofeminism" was coined for the first time, in *Les Femmes avant le patriarcat* and in *Écologie/féminisme,* the author caught the relation between exercise of masculine power on the nature and power imposed on women's bodies. Her work should be read as a way to propose alternative ways of development and consumption, because immobility or imposition of population policies can be a source of violence against women. This part of the issue also contains the analysis by Francesca Fiore of some relevant international criminal law jurisprudence on the crime of forced pregnancy.

Moving to interviews and testimonies, the *Resilient Sisterhood Project* in Boston (US) shows and addresses the deeply layered and harmful racist and sexist narratives about Black women's reproductive health. It is interesting to note that one of the prospective projects concerns reproductive justice and how art can be a way to achieve it. The second contribution from the US describes the work by *Healthy and Free Tennessee*, a multiracial, statewide advocacy organisation that promotes sexual and reproductive health and freedom. It responds to the policies and laws of a conservative State that undermine women's autonomy. The organisation helped the promotion of an an anti-shackling bill that included prenatal care and access to breast pumps for incarcerated pregnant people[7].

Contributions and book reviews contain a reflection on eugenic laws in Japan and the complicated relationship between them and reproductive rights in the aftermath of the Second World War. Rin Odawara reproduces the debate in Japan between two different movements, which missed the opportunity to see eugenic protection laws

[6] In this sense also fetal protection laws in the United States (De Vido 2020b). Illustrative examples are fetal homicide laws (laws separately criminalising the killing of a fetus during an attack on a pregnant woman), policies aimed at countering the abuse of drugs by pregnant women, statutes regulating maternal conduct, and laws that authorise the confinement of pregnant women to protect the health of the fetus.

[7] On perinatal shackling as a practice that represents violence against women's health, Sara De Vido 2020a, 94.

for what they are: an intersection of the discrimination against women and the one against disabled people. Bianca Varesio reflects on reproductive justice in times of pandemic. Two reviews concern the relation between violence, reproductive health and gender. *Violence against Women's Health in International Law* is a legal analysis of two dimensions of violence: the horizontal dimension concerning interpersonal violence, and the vertical one, characterised by policies and laws in the field of health that affect women's health. *Gender*, *Global Health and Violence: Feminist Perspectives on Peace and Disease,* edited by Tiina Vaittinen and Catia Confortini, significantly contributes to the reflection on the relationship between Peace Research, global health and the concept of structural violence. The review of Bindel's *The Pimping of Prostitution* completes the issue.

It is clear that this issue cannot be considered as a complete analysis of the worldwide non reproductive freedom which can be found in different cultural and geographical contexts. However, in a moment in which a global pandemic has further jeopardised women's rights and autonomy, it seems essential to continue to reflect on and challenge the current patterns of domination on and objectification of women's bodies.

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Feminisms and neo-Malthusianisms during the French Third Republic:

Madeleine Pelletier and Nelly Roussel through the lens of their literary production[1]

by

*Anne Cova**

Abstract: Feminisms and neo-Malthusianisms emerged in France as movements at the end of the nineteenth century. The neo-Malthusian feminists were a minority among feminists and within the neo-Malthusians. Nevertheless, they defended original topics which remained taboo at their time like the right for women to access abortion and sexual pleasure. These demands were part of a broader agenda that two French neo-Malthusian feminists, Madeleine Pelletier (1874-1939) and Nelly Roussel (1878-1922), both qualified as "integral feminism", understood as the economic, intellectual, legal, political, religious, sexual and social emancipation of women. In such a wide range of claims, this article focuses on a comparative approach of how Pelletier and Roussel became neo-Malthusian "integral feminists", analysing the similitudes and differences in their trajectories and showing how their literary production was a significant part of their activism.

Feminisms and neo-Malthusianisms – in the plural to show their heterogeneity – emerged in France as movements at the end of the nineteenth century and peaked during the Third Republic. Another common characteristic they shared was that they formed an *avant-garde* and did not become mass movements. Furthermore, the neo-Malthusian feminists were a minority among feminists, and they were also few in numbers within the neo-Malthusians. Nevertheless, they defended original

[1] This article is dedicated to the memory of my mother, Kirsten Cova (1930-2020).

*Anne Cova is a research fellow at the Institute of Social Sciences of the University of Lisbon (ICS–ULisboa). She is currently working on a transnational gender history of women's activism in Southern Europe and Latin America, 1888-1939. Among her publications: *Comparative Women's History: New Approaches* (Columbia University Press, Boulder and New York 2006. I am grateful to Bruna Bianchi and Geraldine Ludbrook for their suggestion to focus on the literary production of Madeleine Pelletier and Nelly Roussel. Many thanks also to the anonymous reviewer and to Stewart Lloyd-Jones for editing this article financed by FCT – Fundação para a Ciência e a Tecnologia, I.P. within the research project PTDC/HAR-HIS/29376/2017. On Feminisms and neo-Malthusianisms under the Third Republic, see Anne Cova. 2011. *Féminismes et Néo-Malthusianismes sous la IIIe République: "La Liberté de la Maternité"*. Paris: L'Harmattan; Cova. 2016. "Feminism and Neo-Malthusianism", Encyclopédie pour une histoire nouvelle de l'Europe [online], 2016. Permalink :http://ehne.fr/en/node/1091.

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topics which remained taboo at their time like the right for women to abortion and sexual pleasure. These demands were part of a broader agenda that two French neo-Malthusian feminists, Madeleine Pelletier (1874-1939) and Nelly Roussel (1878-1922), both qualified as "integral feminism", understood as the economic, intellectual, legal, political, religious, sexual and social emancipation of women. In such a wide range of claims, this article focuses on a comparative approach of how Pelletier and Roussel became neo-Malthusian "integral feminists", analysing the similitudes and differences in their trajectories.

If an extensive bibliography, mentioned here after, has been published on Pelletier and Roussel, investigating them separately, there is a great lack of comparative studies between the two, with the exception of an unpublished Master degree, in History, written 46 years ago (Claude Maignien and Magda Safwan 1975). Therefore, much remained to be written and published to compare Pelletier's and Roussel's trajectories, and this article aims to stimulate further research: for example, they would deserve to be studied at a Ph.D. level. Among the numerous sources – Pelletier and Roussel were prolific writers – less studied by the historiography, is their literary production. Roussel wrote various theater plays such as *La Sœur de Comte Jean* and *La Passion du jeu* (1896); *Par la Révolte: Scène symbolique* (1903); *Pourquoi elles vont à l'Église* (1910); *La Faute d'Ève* (1913), and Pelletier was the author of two plays: *In Anima vili, ou un Crime Scientifique. Pièce en trois actes* (1920); *Supérieur! Drame des classes sociales en cinq actes* (1923) and three short stories, *Trois Contes* (undated). When Roussel passed away at the end of 1922, she had read the narrative that Pelletier published that year: *Mon voyage aventureux en Russie communiste.* Ten years later, Pelletier signed a utopian novel, *Une vie nouvelle* (1932), followed by a partly autobiographical novel, *La Femme vierge* (1933).

Comparing how Pelletier and Roussel became neo-Malthusian "integral feminists" and how their literary production was a significant part of their activism, is interesting because they were at their time preeminent figures abroad among feminists and neo-Malthusianists. This article aims to provide a more comprehensive approach of their outstanding contribution to both the history of feminisms and neo-Malthusianisms, as well as the relationships between the two and to comparative women's history (Anne Cova 2006).

Becoming a neo-Malthusian "integral feminist"

Having grown up in opposite *milieux*, Pelletier and Roussel presented themselves when they were adults as "integral feminists": they used this expression namely to underline that feminism was their first claim. Indeed, while also being freemasons – which they considered as a means for women to make their political education – and neo-Malthusians, their main concern was above all feminism. In her handwritten memoirs Pelletier asserted: "I can say that I have always been a

feminist, at least since I was old enough to understand"[2]; Roussel also defined herself in the first place as an integral feminist[3].

Two Parisians with opposite background

If Pelletier and Roussel belonged to the same generation of Parisian women born in the capital city during the 1870s, just less than four years apart: Madeleine Pelletier was born 18 May 1874 and Roussel 5 January 1878, the places where they lived were different. Pelletier grew up in the popular republican *II^e^ arrondissement*, while Roussel's home was located in the wealthy *XII^e^ arrondissement*. These peculiarities would last throughout their lives as Pelletier moved several times but often in poor neighborhoods, unlike Roussel.

Another difference between their background was the profession exercised by their parents. Pelletier came from a modest family: her parents and mainly her mother – since after a stroke, her father became hemiplegic when Pelletier was 4 years old – ran a greengrocer shop, whilst Roussel came from a bourgeois family: her mother was the daughter of a railroad engineer and her father was a building contractor. Their childhood also diverged in numerous ways as Pelletier in her autobiographical writings recalled mostly bad memories especially regarding her mother, whereas Roussel "was close to her mother" according to the historian Elinor Accampo (Accampo 2006: 16; see also on Roussel: Albistur and Armogathe 1979; Laurence Klejman and Florence Rochefort 1989; Cova 1992; Accampo 2000; Beach 2005a; Cova 2008, 2010 and 2011; Accampo 2017). On Pelletier's number of brothers and sisters, one of her biographers, Felicia Gordon, mentioned that it is uncertain but Pelletier's mother had eleven miscarriages (Gordon 1990: 8; see also on Pelletier: Maignien 1978; Boxer 1981; Largillière 1981 and 1982; Ev-Kurtz 1985; Bidelman 1986; Lesselier 1987; Barnel 1988; Sowerwine 1988; Mitchell 1989; Maignien 1990; Sowerwine 1991; Maignien 1991; Gordon 1992; Maignien and Sowerwine 1992; Maignien 1992a; Bard 1992 and 1992a; Klejman and Rochefort 1992; Lesselier 1992; Louis 1992; Coffin 1992; Zaidman 1992; Cova 1992a and 1993; Beach 2005b; Bard 2010; Cova 2011; Maignien 2012; Cova 2016; Sowerwine 2017; Cova 2018). On her side, Roussel was the first of two girls: her sister, Andrée, was born two years after her, in 1880.

In terms of education, Pelletier and Roussel stopped their studies when they were teenagers: Pelletier at the age of 13 years old left school and started to participate in anarchist and feminist circles, and Roussel went to school until she was 15 years old because her parents considered that for a girl coming from the bourgeoisie it was enough. Both lost their fathers when they were teenagers (Roussel was 16 years old when her father died, in 1894). This difficult period of adolescence was also marked by the fact that they did not have the chance to pursue the studies that would have allowed them to achieve what they wanted to do in terms of pro-

[2] Madeleine Pelletier, "Doctoresse Pelletier: Mémoires d'une féministe", manuscript in the Fonds Marie-Louise Bouglé, at the Bibliothèque Historique de la Ville de Paris, cited in Gordon 1990: 7.

[3] Nelly Roussel, "A propos de l'amour libre", *La Voix des femmes*, 31 March 1921.

fessional careers: Roussel would have liked to become an actress and Pelletier a researcher. It is not a coincidence if in Pelletier's utopian novel, *Une Vie nouvelle* (A New life), the main character, Charles Ratier, is a brilliant research scientist. Nevertheless, the distancing with their parents had also a positive impact: benefiting from her maternal grandfather's library, Roussel took refuge in literature and in particular in theatre. Pelletier also used to read a lot, built her personality against her mother and became independent.

Pelletier's and Roussel's educational paths diverged when Pelletier decided to prepare, on her own, the Baccalaureate, which she obtained with the highest grade, "mention très bien", at the age of 23, in 1897, while a year later, in 1898, Roussel got married, at the age of 20, to a freemason sculptor, Henri Godet (1863-1937). He was fifteen years older than her and encouraged Roussel to become freemason in the same mixed lodge of which he was part: La Grande loge symbolique Écossaise. Pelletier was also initiated in that lodge thanks to Paul-Maurice Legrain (1860-1939), renowned physician for his fight against alcoholism. Pelletier changed lodges several times but never ceased to be freemason. In 1904, she was initiated to La Philosophie sociale and then to the lodge Diderot where she met Gustave Hervé (1871-1944). Some members of La Grande loge symbolique Écossaise – including Pelletier and Roussel – gave lectures at universités populaires (popular universities). Indeed, Roussel first performed her play Par la Révolte: Scène symbolique (By the Revolt: Symbolic scene) at one of the popular universities in Paris, in 1903. Roussel started her career as a public speaker, encouraged by her husband. Godet strongly advised her to introduce herself to the audience as wife and mother (they had three children: Mireille, in 1899; André in 1901 and Marcel in 1904) while Pelletier remained single, praised celibacy and claimed to never have had sexual relations. If Pelletier and Roussel projected a completely different image of themselves, virgin and single versus wife and mother, nevertheless they both insisted on being integral feminists.

Pelletier and Roussel were Dreyfusardes and claimed the revision of the trial that condemned Dreyfus. On this occasion, Roussel questioned what true patriotism was and castigated the "fameux 'patriotes'" (famous "patriots"), the anti-Dreyfusards who predicted a war as an inevitable consequence of the revision of the trial and "en tremblent de peur" (trembled with fear)[4]. The feminist Marguerite Durand (1864–1936) who had founded, in 1897, a daily feminist newspaper, La *Fronde,* actively engaged it in favour of Dreyfus. Durand also struggled, a few years later, for Pelletier to obtain the right to apply to the psychiatry competition. The year 1903 was important for Pelletier as she became "*la première femme interne des asiles de la Seine*" (the first woman psychiatrist intern in the Seine asylums) after long studies of medicine (Barnel 1988). She was the first one, in France, to obtain the right to apply to the psychiatry competition, supported by *La Fronde* to which Roussel collaborated. Indeed, *La Fronde*'s campaign for Pelletier's admission was successful and opened this career to women.

[4] Bibliothèque Marguerite Durand in Paris, Fonds Nelly Roussel, manuscript of Nelly Roussel, *Patriotisme, Causerie* (undated), cited in Cova 1992: 665.

Despite their different backgrounds, Pelletier and Roussel were both marked by religion. Roussel came from a catholic family and received a catholic education; Pelletier, at the age of 7 years old, was sent to a religious school and five years later stated her "*volonté de quitter ce milieu hostile*" (her desire to leave this hostile environment)[5]. Pelletier's mother was very religious, and Pelletier described her a "*véritable fanatique*" (veritable fanatic), an anti-freemason and royalist[6]. Pelletier built her personality in opposition to her mother's: She became atheist, anticlerical, freemason and an extreme left-wing militant. Roussel also claimed to be atheist and strongly criticized the catholic church, namely in her comedy in one act entitled *Pourquoi elles vont à l'Église* (Why women go to church). Nevertheless, religious terms were often present in Roussel's lectures and plays, especially when she glorified the "mission" of motherhood convinced that a day would come when motherhood would be a "*espèce de sacerdoce*" (a kind of priesthood)[7]. Both Pelletier and Roussel rejected the holy Bible's principle "In pain you shall bring forth children".

Free motherhood

At the beginning of the twentieth century, Pelletier and Roussel were very active in their contribution to feminisms and neo-Malthusianisms: Roussel tirelessly travelled around France and abroad (Belgium, Hungary, Switzerland and the United Kingdom), giving 250 lectures throughout her career, and also writing more than 200 articles (Accampo 2017: 1270-1271) in particular in the feminist, freethinking and neo-Malthusian press: *L'Action*; *Génération consciente*; *La Femme affranchie*; *La Fronde*; *La Libre Pensée internationale*; *La Mère éducatrice*; *La Voix des femmes*; *Le Libertaire*; *Le Néo-Malthusien* and *Régénération*. Along her life, Pelletier also collaborated to various journals: *La Brochure mensuelle*; *L'Acacia. Revue des Études maçonniques*; *L'Anarchie*; *La Fronde*; *La Guerre sociale*; *La Revue socialiste*; *La Voix des femmes*; *L'Équité*; *Le Libertaire*; *Le Socialiste*; *L'Éveil de la femme*; *L'Idée libre*; *L'Insurgé*; *Le Semeur contre tous les tyrans*; *Les Documents du progrès. Revue internationale*; *Le Malthusien*; and founded her own monthly journal: *La Suffragiste*. She travelled to Portugal in 1910 and wrote articles, published in French and Portuguese, about her hopes that in this country women will soon obtain the right to vote but that did not happen[8].

[5] *Anne dite Madeleine Pelletier*, 23th November 1939, Notes écrites par Hélène Brion, dossier Madeleine Pelletier at the Bibliothèque Marguerite Durand, p. 9, cited in Cova 1993: 273.

[6] *Ibid*., p. 1.

[7] Nelly Roussel, "L'Église et la Maternité", *L'Action*, 6 December 1904. Nelly Roussel, "La Liberté de la maternité", in Nelly Roussel. 1930. *Trois conférences de Nelly Roussel*. Paris: Marcel Giard, p. 51, cited in Cova 1992: 663.

[8] Doutora Madeleine Pelletier, "Portugal e o voto das mulheres", *O Mundo*, 8 December 1910. Madeleine Pelletier, "La République portugaise et le vote des femmes", *Les Documents du Progrès. Revue internationale*, March 1911: 178-184.

In 1904, Roussel for the first time gave a talk in Paris on "La liberté de la maternité" (free motherhood), that became her "sujet favori" (favorite subject)[9]. For Pelletier also this topic was at the core of her concerns: "La Maternité doit être libre" (Motherhood must be free) was the title of a chapter in Pelletier's 1911 book, L'Émancipation Sexuelle de la Femme (The Sexual Emancipation of Woman). Free motherhood meant for Pelletier and Roussel that to give birth should not be an obligation for women and they should released to decide on their own bodies if they want to be mothers or not. Using the metaphor of a flower that blossoms and fades, Pelletier warned women against repeated pregnancies that weaken them: "C'est à la femme seulement de décider si et quand elle veut être mère" (it is up only to the woman to decide if and when she wants to be a mother)"[10]. Pelletier and Roussel were indefatigable in their fight against unwanted pregnancies and for the right not to have children. Furthermore, they dissociated reproduction from sexuality, and claimed women's right to sexual pleasure. Pelletier separated the sexual act, a source of pleasure, from maternity, reproductive function, synonymous for her with alienation. She claimed the right to pleasure for women, she who, according to her statements, had never had sexual intercourse. For Pelletier, sexuality is a physiological function, but it is inappropriate to display passions in public. It is not sexual freedom that she advocated but the end of women being considered as sexual objects. Recognition of women's sexual desires and the right to pleasure were her two leitmotivs. Roussel also advocated the right for women to love without fearing to become pregnant and the right to have carnal pleasure. Pelletier denounced motherhood, which "fait de l'amour une véritable duperie pour la femme" (makes love a real deception for the woman), suffering the risk of pregnancy and Roussel claimed the same: "L'Amour fécond, l'amour stérile" (Fertile Love, Sterile Love)[11].

Nevertheless, for those who have decided to become mothers, Pelletier and Roussel considered that it should not occupy their entire lives. In Pelletier's words, it should be only a simple "*épisode*" (episode)[12]. Pelletier and Roussel wanted motherhood to be no longer the *raison d'être* of women's lives and were also very critical regarding marriage. Roussel considered marriage as a "*vieille forteresse vermoulue*" (old worm-eaten fortress) and constantly fought against the power exercised by married men on their wives[13]. On several occasions, Pelletier considered

[9] Nelly Roussel, "Chemin faisant", *La Libre Pensée de Lausanne*, 28 November 1906, cited in Cova 1992: 663.

[10] Madeleine Pelletier. 1926. *L'Émancipation Sexuelle de la Femme.* Paris: La Brochure Mensuelle. (First edition 1911, Paris: Giard et Brière), chapter III: "La Maternité doit être libre", p. 42, cited in Cova 1993: 280.

[11] *Ibid*., p. 41. Nelly Roussel, "L'Amour fécond, l'amour stérile", *Régénération*, January 1903.

[12] Madeleine Pelletier, "Les Suffragettes anglaises se virilisent", *La Suffragiste*, October 1912, cited in Cova 1992a: 79.

[13] Nelly Roussel, "Propos Interrompus", *L'Action*, 23 November 1906, cited in Cova 1992: 664.

marriage as "*esclavage*" (slavery), symbol of the oppression women undergo within the family[14].

Pelletier and Roussel's personal experiences explained the importance they gave to free motherhood. In the space of less than five years, Roussel gave birth to three children, one of whom died at a young age – André died at the age of four and a half months – and she had complications during her second delivery. It was a decisive experience for Roussel and she later wrote that it was the fact to give birth in such difficult conditions that made her so "*pitoyable*" (pitiful) with regard to motherhood[15]. Roussel described in great detail the different states of what she called the "*épreuve redoutable*" (dreadful ordeal): pregnancy with discomfort and heaviness; childbirth, true torture and martyrdom; and convalescence, which can be slow[16]. For Pelletier, as a physician who performed abortions – in 1911, she published a brochure entitled *Pour l'abrogation de l'article 317. Le Droit à l'Avortement* (For the repeal of article 317. The Right to Abortion) –, a pregnant woman was, she argued, "*dans un état d'infériorité tant au point de vue physique que dans ses facultés intellectuelles*" (in a condition of a physical and intellectual inferiority)[17]. Pelletier evoked painful pregnancies and painful deliveries. Pelletier and Roussel were some of the few feminists of their time to insist so much on the female pains of motherhood. Roussel even went so far as to compare the pains of motherhood to the tortures of Christ. The language they used to describe different stages of pregnancy was eloquent as they made a comparison with animals: Roussel was convinced that repeated unwanted pregnancies make women comparable to animals and for Pelletier there was also an animal side of motherhood. Nevertheless, in her play, *In Anima Vili, ou un Crime Scientifique* (In a Vile Soul, or a Scientific Crime) Pelletier was against animal experiments. Also in one of her short stories *Trois contes*, entitled "*La Mort aux chats*" (Death to cats), she showed compassion towards the sufferings of animals. Feminists were, in general, very sensitive to the well-being of animals. This phenomenon was not unique to France, with Annie Besant (1847-1933) in the United Kingdom converted into an opponent of vivisection by Anna Kingsford (1846-1888).

To the pains that surrounded motherhood, Roussel had to add the pains of her own illness since she was diagnosed with neurastenia and "suffered from abdominal and digestive disorders, as well as insomnia, acute anxiety, depression, and menstrual pain during the last twelve years of her life" (Accampo 2006: 168). Pelletier also endured depressive episodes and did not hide that her disgust for women's bodies went back to when she was a teenager and had her menstruations

[14] Madeleine Pelletier, "Fille-mère", *La Fronde*, 15 July 1926; "Mariage ou célibat", *La Fronde*, 28 August 1926; See also Madeleine Pelletier, "Mariage", *L'Éveil de la femme*, 10 November 1932, cited in Cova 1993: 284.

[15] Nelly Roussel, "La liberté de la maternité", in Nelly Roussel. 1930. *Trois conférences de Nelly Roussel*. Paris: Marcel Giard, p. 34, cited in Cova 1992: 663.

[16] Nelly Roussel, *Le Néo Malthusien*, August 1919.

[17] Madeleine Pelletier. 1926 (First edition 1911. Paris: Giard et Brière). *L'Émancipation Sexuelle de la Femme.* Paris: La Brochure Mensuelle, chapter V: "La Femme et la race", p. 81, cited in Cova 1993: 280.

for the first time: "*Je n'avais jamais eu d'amour pour ma mère mais je sentais pour elle un certain respect; je le perdis à l'instant en me la représentant… comme moi et j'en eus un dégoût qui me resta très longtemps*" (I had never felt love for my mother but I felt a certain respect for her; I lost it instantly by representing her… like me and I felt a disgust which remained with me for a very long time)[18]. Pelletier and Roussel emphasized the discomfort that menstruations could give which was a taboo issue even among feminists and neo-Malthusians.

For Pelletier and Roussel pains were not inevitable during delivery, they were preventable. Pelletier in her utopian novel, *Une Vie Nouvelle*, stated that a simple injection should remove the pains of childbirth. The first part of the title of one of Roussel's plays, *Par la Révolte*, indicated the right to refuse to suffer. By questioning the taboo of maternal pains and by assigning to themselves the right to liberate women from unwanted pregnancies, Pelletier and Roussel provoked controversies, even among their supporters, and were under police scrutiny.

"Integral Feminism"

Defining themselves as "integral feminists", Pelletier and Roussel were highly active in the feminist written press and in various feminist groups. In 1900, when she was 22 years old, Roussel started to collaborate with the feminist journal *La Fronde* and a year later joined the feminist group *Union Fraternelle des Femmes* (Fraternal Union of Women, henceforth UFF) at its founding, in 1901. The UFF "was considered the 'daughter' of Marguerite Durand's *La Fronde* […] Its group identity formed around shared left-wing politics (pro-Dreyfus, anticlerical) and literary ambitions" (Accampo 2006: 40). Roussel also collaborated with other women's journals such as *La Femme affranchie* founded in 1904 by Gabrielle Petit (1860-1952); *La Mère éducatrice* created by Madeleine Vernet (1878-1949) in 1917, and *La Voix des femmes* whose first issue was also published in 1917, under the direction of Colette Reynaud (1872-1965).

If Pelletier started early, when she was a teen, to participate in feminist circles, she involved herself with some responsibilities much later, when Caroline Kauffmann (1840-1926) invited her, at the end of 1905, to the leadership of the group *La Solidarité des femmes,* which campaigned in favour of women's suffrage. In 1906, at the age of 31, Pelletier became general secretary of *La Solidarité des femmes* and simultaneously militated in socialist politics. Pelletier also collaborated in the feminist written press such as *La Fronde* but above all founded, in 1907, her own journal in order to claim women's suffrage, the most important demand for her as the title of her journal indicated: *La Suffragiste* (The Suffragist). During the municipal elections of 1908, Pelletier broke the windows of a polling room in protest against the fact that women could not vote; however, after this episode, she would no longer use violence. On her side, Roussel never participated in any violent action and concentrated her activism in giving lectures: In 1908, for that purpose, "she was

[18] *Anne dite Madeleine Pelletier*, 23th November 1939, Notes écrites par Hélène Brion, dossier Madeleine Pelletier at the Bibliothèque Marguerite Durand, p. 8, cited in Cova 1993: 274.

absent from Paris for fifty-one of the first ninety days" of that year (Accampo 2006: 141).

For Pelletier and Roussel the right for women to vote was the basis of their emancipation – the *sine qua non* claim of any freedom. Once women's suffrage had been obtained, they would be able to acquire other reforms like economic independence through education. Indeed, Pelletier and Roussel put a great emphasis on that topic and defended coeducation. Both were concerned about the education of young girls: in 1899 Roussel published in a literary journal, *Paris qui passe*, an article entitled "*Sur l'Éducation des jeunes filles"* (On the Education of Young Girls), and Pelletier wrote a brochure on *L'Éducation féministe des filles* (Feminist education for girls), in 1914. It denounced sexist education and offered a whole education programme for girls (of which sex education was a part), a fundamental issue for the emancipation of women. It was essential for the education of girls and boys to be similar for the simple reason femininity was a social construction: no dolls for little girls because they merely prepared them for the bondage of motherhood. According to Pelletier, women must become virile and educate themselves if they did not want to have a boring work. She was convinced sexual differentiation was the product of culture and education and Pelletier denounced – thirty-five years before Simone de Beauvoir (1908-1986) who published *Le Deuxième sexe* (*The Second Sex*) in 1949 – the social construction of femininity.

Civil code reforms were also fundamental for Pelletier and Roussel and were key issues since the birth of feminisms that demanded the recasting of the Napoleonic civil code of 1804. Pelletier and Roussel argued for the repeal of all articles in the civil code that established the inferiority of women. The importance of the code was paramount as it reached beyond France's borders to inspire civil codes across Europe. By the centenary of its promulgation that took place in Paris in 1904, at the official celebration banquet, Kauffmann threw balloons from the spectators gallery on which was written "The code crushes women; it dishonours the Republic". Roussel also participated in that protest. Pelletier and Roussel targeted the numerous articles of the civil code that make women eternal minors or in Roussel's words "eternally sacrificed", like article 213 which stipulated that married women must obey their husbands. *L'Éternelle sacrifiée* was the title of a famous lecture Roussel gave for the first time in Paris, in 1905. This title was inspired by the expression *L'Éternel féminin* that Roussel changed into "eternally sacrificed" to demonstrate how women were sacrificed at all levels. Between 1905 and until 1908, Roussel delivered sixty-four times this lecture.

Pelletier and Roussel strongly fought against social prejudices and deplored the use of the term "*fille-mère*" (single mother) which harmed the dignity of women. They lamented that single mothers were often corned to infanticide or prostitution and defended those on whom opprobrium weighed, coupled with the ban on the search for paternity until the law of 16 November 1912. The promulgation of this law did not satisfy them entirely because it was too restrictive. For Roussel, it was a "*palliatif très insuffisant*" (very insufficient palliative) and it was more important to allow the mother to be able to live without the father by the creation of a mater-

nity wage that she proposed (and which was not included in that law)[19]. Pelletier was against such a proposal but published an article in *La Suffragiste*, written by the feminist Remember (born Louise Deverly, 1845-1925), which deplored, vehemently, the inefficiency of this law: "*Le Sénat accoucha piteusement d'une loi dont la nullité le dispute à l'odieux… puisque la jeune fille séduite ne pourra établir la paternité de son enfant que si elle peut produire une lettre de son séducteur*" (The Senate gave birth pitifully to a law whose nullity disputes it with the odious... since the seduced girl can only establish the paternity of her child if she can produce a letter from her seducer)[20].

Pelletier and Roussel were critical of the majority of the feminist movement that, in their opinion, was too moderate. Pelletier blamed the "*féminisme en décolleté*" (feminism in the neckline) that men used, according to her, "*pour dauber entre eux le féminisme"* (to daub feminism between them) and Roussel reproached feminists for not daring to proclaim their feminism louder[21]. The strategy of the small steps of the reformist feminist movement such as the one adopted by the *Conseil National des Femmes Françaises* (National Council of French Women, henceforth CNFF) founded in 1901, in Paris, did not satisfy Pelletier and Roussel at all since they rejected tiny improvements. Furthermore, Pelletier denounced the struggles for power within the CNFF.

When the president of the CNFF, Julie Siegfried (1848-1922) asked women in August 1914 to involve themselves in the war effort, Pelletier and Roussel claimed their pacifism. Thus, they were against the war and criticized all the more the feminists that rallied the Sacred Union. Pelletier ironized on women that "*font des chandails*" (make sweaters) and Roussel qualified war as a "*crime*" (crime) and a "*monstre social*" (social monster)[22]. Roussel testified in favour of the feminist socialist Hélène Brion (1882-1962) – who was a friend of Pelletier – accused in 1918 of pacifist propaganda.

The impact of the war radicalized Pelletier and Roussel's commitment in activism. As a consequence, Roussel moved away from UFF and became the president of a group called *L'Action des femmes* (Women's Action) founded in 1915 and whose honorary president was Céline Renooz (1840-1928), defender of integral feminism. After the war, Pelletier and Roussel started to collaborate regularly with the journal *La Voix des femmes,* sympathetic to the communist cause. Following

[19] Nelly Roussel, "Manifestation en faveur de la Recherche de la Paternité, Présidée par M. René Viviani, Ministre du Travail, Salle des Sociétés Savantes (9 février 1910)", in Nelly Roussel. 1919. *Paroles de Combat et d'Espoir. Discours choisis.* Epône: Société d'Édition et de Librairie de l'Avenir Social, p. 40, cited in Cova 1992: 666.

[20] Remember. "La Recherche de la paternité", *La Suffragiste*, January 1912, nº 24.

[21] Letter of 2 November 1911 of Madeleine Pelletier to Arrya Ly, Fonds Marie-Louise Bouglé, at the Bibliothèque Historique de la Ville de Paris, série 83 féminisme, cited in Cova 1993: 276.

[22] Letter of 21 December 1914 of Madeleine Pelletier to Arrya Ly, Fonds Marie-Louise Bouglé, at the Bibliothèque Historique de la Ville de Paris, série 83 féminisme, cited in Cova 1993: 278. Nelly Roussel, "Créons la citoyenne, conférence faite à Paris, salle des Fêtes du 'Journal' le 16 mars 1914", in Nelly Roussel. 1930. *Trois conférences de Nelly Roussel*. Paris: Marcel Giard, p. 117; Bibliothèque Marguerite Durand, Fonds Nelly Roussel, manuscript of Nelly Roussel, *Le Monstre*, 2 August 1914, cited in Cova 1992: 667.

the split in the *Section Française de l'Internationale Ouvrière* (French Section of the Workers' International, henceforth SFIO) during the Tours congress held in December 1920, which resulted in the creation of the *Section Française de l'Internationale Communiste* (French Section of the Communist International) Pelletier voted in favour of joining the Third Communist International and affiliated herself to the new born *Parti Communiste Français* (French Communist Party, henceforth PCF), in which she remained until 1925.

During the last four years of her existence, Roussel despite her serious health problems, as she suffered from tuberculosis, regained strength and published "at least sixty-six articles in newspapers and gave twenty-six public talks" (Accampo 2006: 206). Among the topics she favoured, was the fight against the law of 31 July 1920 which prohibited the sale of abortifacients or to provide written or oral information on means of abortion. Pelletier also struggled constantly against this law which aimed to weaken the neo-Malthusians and to punish them with imprisonment.

Neo-Malthusianism: the first chapter of feminism

Pelletier and Roussel proclaimed that neo-Malthusianism was an integral part of feminism: its "chapitre premier" (first chapter) for Roussel and neo-Malthusianism's most important chapter is women according to Pelletier[23]. For both of them, neo-Malthusianism's insistence on free motherhood and on the right for women to control their bodies was fundamental. Pelletier even went further when she considered that this right was absolute and could go until suicide. Pelletier and Roussel wrote articles in the neo-Malthusian press: Roussel regularly contributed to Génération consciente, Le Néo-Malthusien, Régénération and Rénovation, and Pelletier to Le Malthusien.

Neo-Malthusianism entered Pelletier and Roussel's lives early. Since she was a teenager, Pelletier participated in anarchist meetings, where neo-Malthusians were present. Roussel was related by alliance with Paul Robin (1837-1912): Godet's sister married Robin's son, in 1900. Robin was the founder of the French neo-Malthusian movement and of the first French neo-Malthusian association, the Ligue de la Régénération Humaine (League of Human Regeneration), in 1896. According to Accampo, Robin had a decisive political influence on Roussel: "Nelly Roussel came to know Paul Robin at a time when she was already a feminist but had not yet converted her feelings about motherhood into a political ideology" (Accampo 2006: 45). In the obituary Roussel wrote in 1912 for Robin's death, she called him a "new Christ" using again a religious language. Women and free thought was a topic dear to Roussel and one of her lectures was entitled "*La Femme et la libre pensée*" (Woman and Free Thought), which she delivered thirty-nine times, between 1906 and 1910 (Accampo 2006: 109).

[23] Nelly Roussel, "Féminisme et malthusisme," *Génération consciente*, January 1911, cited in Cova 1992: 664. Madeleine Pelletier. 1935. *La rationalisation sexuelle. Paris: Éditions du Sphinx, chapter* VI: "Dépopulation et civilisation", p. 51, cited in Cova 1992a: 75.

A corollary of women having control over their own bodies was, for Pelletier and Roussel, the right for abortion. This right praised by the neo-Malthusians should be used in their opinion as a last resort, not as a contraceptive method but as an extreme means. Therefore, the neo-Malthusians were responding to the accusations of those who equated neo-Malthusianism with the theory of the right to abortion, claiming neo-Malthusian propaganda was designed precisely to help avoid abortion. Indeed, in practical terms, neo-Malthusian propaganda encouraged the dissemination of information about abortion and the sale of contraceptives. Pelletier and Roussel denounced the social inequalities of motherhood in which not all women are in the same situation, where those who knew how to restrict their fertility almost always come from privileged backgrounds. Thus, motherhood was less binding in wealthy areas than among the poor ones. Giving the example of breastfeeding, mothers who had financial possibilities were not obliged to breastfeed and could entrust their babies to nurses. As a matter of fact, Roussel put her last child, Marcel, during his first two years in a "*pouponnière*" (nursery). Pelletier and Roussel considered that mothers were not compelled to be exhausted by breastfeeding.

The neo-Malthusians were sued by the tribunals in the 1920s and 30s due to the promulgation of two laws that reinforced the pursuits: the already mentioned law of 31 July 1920 and the law of 27 March 1923, which saw abortion become a "*délit*" (misdemeanour) and consequently prison sentences were handed down in a much more systematic way. The 1920 law passed to the indifference of the left-wing political parties and Roussel publicly criticized the President of the *Ligue des droits de l'homme* (League of the Rights of Man) the freemason MP Ferdinand Buisson (1841-1932) for that attitude. On her side, Pelletier refrained from criticizing Buisson, maybe because she was grateful that, thanks to his support, she became a supply doctor for *Postes, Télégraphes et Téléphones* (Posts, Telegraphs and Telephones) in 1906, and exercised this profession until 1930, which allowed her to gain economic independence.

Pelletier and Roussel ironically targeted the "*repopulateurs*" (repopulators) that always encouraged more births, but themselves had very few children as they practiced birth control. They made fun of Jacques Bertillon (1851-1922), father of only two children, who symbolized this "repopulator" movement and was the founder, in 1896, of the *Alliance Nationale pour l'Accroissement de la Population Française* (National Alliance for the Growth of the French Population). Roussel revolted against this National Alliance that produced according to her "*élucubrations insensées*" (insane rantings) and managed to attract "*la sympathie facile des patriotes en chambre, des bourgeois hypocrites, et de tous les esprits superficiels*" (the easy sympathy of the patriots in the room, the bourgeois hypocrites, and of all superficial minds)[24].

[24] Bibliothèque Marguerite Durand, Fonds Nelly Roussel, manuscript of Nelly Roussel, *Fécondité!* Undated. cited in Cova 1992: 665.

From revolt to a utopian society

Pelletier and Roussel both revolted against the situation that women had to undergo in society and they favoured action in order to emancipate them. Roussel gave lectures all over France and abroad that ended many times with a representation of a militant theater play such as the one entitled *Par la révolte*, and Pelletier was deeply engaged in politics.

The revolt

At the age of 25, Roussel published her drama *Par la révolte*, but her passion for theater was aroused much earlier – she wrote her first play at the age of six – strongly stimulated by the readings in her maternal grandfather's library which represented a shelter, especially when her mother "remarried barely a year after Léon Roussel's [Nelly's father] death" (Accampo 2006: 21). Roussel's grandfather also motivated her not only to read but also to act. On the contrary, Roussel's husband "had encouraged her to pursue public speaking, rather than a career in the theater, a path actually more difficult for women than acting, because it was rare and made them more vulnerable to ridicule" (Accampo 2006: 127). Roussel declared various times that theater was her passion and before publishing *Par la Révolte*, she wrote, in 1896, two plays: *La Sœur de Comte Jean* (Count' John's Sister) and *La Passion du jeu* (The Passion for Gambling). In these plays, the setting was in Paris and some characters, two sisters, were similar as they both acted as moral guardians for their brothers, highlighting the importance of the moral influence played by women.

The topic of *Par la Révolte,* was significant of Roussel's trajectory. She revolted when she could not continue her studies after the age of 15 and could not pursue her professional dream to become an actress. Thus, the marriage with Godet gave her the opportunity to develop as a speaker of talent. Her charisma was evident by the success of her lectures which had an audience that oscillated between 150 and 2000 persons. The reading of her plays at the end of some lectures also contributed to her fame which reached its apogee at the beginning of the twentieth century. Between 1905 and 1908, out of the 122 lectures Roussel gave, including 74 outside Paris, 57 were followed by a dramatic reading of her short play *Par la Révolte* (Accampo 2006: 101). At the end of each performance, copies of *Par la Révolte* were sold in the form of brochures (from 25 to 150 copies each time) and a total of 3,964 copies of *Par la Révolte* were purchased between 1905 and 1907 (Accampo 2006: 101). *Par la Révolte* was a great success and went through five editions and was translated into Portuguese and Russian. The most important performance of *Par la révolte* took place in 1905 in conjunction with the Freethinkers international congress which totalized 20,000 participants from all over the world. In that performance, Roussel played the role of Eve accompanied by actresses from the renowned *Comédie Française*. The topic of the play was an allegory in which Eve was oppressed by the church and society, but managed to liberate herself by revolt. In another play written ten years later, in 1913, entitled *La Faute d'Ève* (Eve's Fault) and that Roussel "performed only for private audiences", Eve is no longer a

victim but is "already liberated, and she is eager to enter into battle from the outset" (Accampo 2006: 169). In both plays, the general idea defended was the necessity to revolt and to struggle for the progress of humanity.

For Pelletier, her revolt aroused also early in her childhood and was as for Roussel a constant throughout her life. The main character in the novel she published in 1933, *La Femme vierge* (The virgin woman), Marie Pierrot, revolted against women's social position when her mother declared: "*Les femmes ne deviennent rien du tout; elles se marient et élèvent leurs enfants*" (Women become nothing at all: they marry and raise their children)[25]. In order to upset this "fate", Pelletier after her medical studies entered politics. For her, politics was a fundamental part of her activism, as it is well underlined by the title of the book written by the historians Maignien and Sowerwine: *Madeleine Pelletier: Une féministe dans l'arène politique* (Madeleine Pelletier: A Feminist in the political arena). Pelletier was a militant at the extreme left, in the different currents: first she was "*guesdiste*" in 1905–1906 and then "*hervéiste*" in 1907-1910. This move in her political *engagement* was significant of her desire of action and revolt as she was attracted, in her owns words, by the "*puissance révolutionnaire*" (revolutionary power) of Gustave Hervé's group[26]. She also wrote articles in the monthly journal founded by Hervé in 1906, *La Guerre sociale* (The social war). In her play entitled *Supérieur! Drame des classes sociales en cinq actes* (Superior! Social class drama in five acts), Pelletier denounced social injustices and praised revolt. She was elected at the SFIO in 1909, replacing Hervé at the *Commission administrative permanente* (Permanent administrative commission) which represented the summit within the party hierarchy, and she was the only woman to be part of it. Despite these achievements, Pelletier was very critical of the socialist party: "*Comme femme, j'étais un peu au Parti socialiste dans la condition des juifs décriés du Moyen Âge*" (As a woman, I was a bit in the socialist Party in the condition of the decried jews of the Middle Ages)[27]. Roussel, who did not enter politics, shared also this critical view against the socialists who considered that they should not ally with the feminists of the bourgeoisie to which she belonged. Pelletier was very much disappointed when she participated at the First International Socialist Women's Conference under the direction of Clara Zetkin (1857-1933), held in Stuttgart, in 1907, and Pelletier tried to oppose, in vain, to a resolution adopted, which stated that socialist women should not ally themselves with "bourgeois" feminists.

At the beginning of the twenties, Pelletier published a pamphlet entitled *Capitalisme et communisme* (Capitalism and communism), where she criticized capitalism. If Roussel shared her critiques against capitalism, she did not join the PCF like Pelletier. For her, the fight against capitalism was doubled with the one against masculinism, that Roussel defined as a "*doctrine de la suprématie, de la prédominance du principe masculin*" (doctrine of supremacy, of the predominance of the

[25] Madeleine Pelletier. 1933. *La Femme vierge*. Paris: Valentin Bresle, p. 25, cited in Cova 1992a: 78.

[26] Madeleine Pelletier, "Guesdisme ou Hervéisme?", *La Suffragiste*, nº 17, June 1910, cited in Cova 1993: 276.

[27] *Ibidem*.

masculine principle)[28]. Pelletier also considered that masculinism was the great enemy and was disappointed with her experience in politics. In the thirties, she turned to fiction and dedicated herself to the writing of a utopian novel, while performing abortions in secret.

A utopian society

In 1932, Pelletier published a utopian novel entitled *Une Vie Nouvelle* in which she recounted the establishment of a new world, in France, some years after a revolution. In this new society, there is no marriage and children are raised by official bodies; abortion is legalised; domestic work is industrialised; the working day is five hours and everyone is entitled to have three months holidays. For women who have decided by themselves to become mothers, pregnancies are happy events in which women give birth in maternity wards. In the novel, one of the characters goes to the maternity hospital to give birth, and during delivery she feels no pain thanks to a simple injection. Many expectant mothers give birth while reading a novel or listening to the radio. There are no longer any "*sages-femmes*" (midwives), but rather "*accoucheurs ou des accoucheuses spécialisés*" (birth attendants, women or men) who deliver the babies[29]. The mother does not necessarily see the child after giving birth, instead, should she wish, the child can be sent directly to a nursery or the mother can raise them herself. In addition to the right to maternity leave during her pregnancy, following birth the woman has the right to one entire year maternity leave. Women therefore are no longer reluctant to give birth to children, and the heroine of the book has four. In this new society, mothers are well paid and do not have to take care personally of their children: thus, they give birth without being worried.

Pelletier in her utopian society admits matriarchy, which she understands as the belonging of children to their mother. She does not believe in matriarchy as a system – Roussel was also not in favour of matriarchy – but considers that the father does not have rights over the child since his role is limited to just a second. For Pelletier, the only *raison d'être* of the family is the protection of the child and the society of the future will provide it. Assistance is a right, it is not a "*déchéance*" (forfeiture)[30]. Charity, according to her, is humiliating and she wishes state intervention through collectivization at all levels. Pelletier describes a model establishment, "*une maison de puériculture*" (a nursery), where all children benefit from the same care and therefore the same opportunities[31]. The goal being to raise children from an early age by the community. At the end of the novel *La Femme vierge*,

[28] Nelly Roussel. 1904. "Qu'est-ce que le féminisme?", La Femme affranchie, nº 2, September, cited in Cova 1992: 670.

[29] Madeleine Pelletier. 1932. *Une Vie nouvelle*. Paris: Eugène Figuière, p. 27, cited in Cova 1992a: 86.

[30] Madeleine Pelletier. Undated. *Aujourd'hui et demain. L'Assistance. Ce qu'elle est. Ce qu'elle devrait être*, Paris: Beresniak, p. 9, cited in Cova 1992a: 85.

[31] Madeleine Pelletier. 1923. *L'amour et la maternité*. Paris: La Brochure mensuelle, p. 19, cited in Cova 1992a: 85.

Marie Pierrot manages one of these institutions. After the "*maison de puériculture*" or the "*pouponnière*", the child is oriented towards a boarding school because the majority of the children enjoyed community life and in this new society many ask to their parents to send them to a boarding school. Once the internship is completed, the brightest students go to university and the others to vocational schools. Pelletier insists on meritocracy and on the joys of community life. In this perspective, abandonment is not a tragedy but a happy event since the state will replace the family. Pelletier admits that it is not easy, at the beginning, to convince parents to entrust their children to the state, but slowly women will recognize the benefits of education by the state and they will free themselves from the "*chaînes maternelles*" (maternal chains)[32]. Women who love children will become officials of social maternity, i.e. they will take care of children.

In many of her writings, Pelletier turns to the future and projects the image of a society as she would like it, without family structure. According to Pelletier, family prejudiced both sexes, but while men exercised a "*petite monarchie absolue*" (small absolute monarchy) by the power conferred by the laws and the customs, women must serve them in order to fulfill their duties as wives[33]. Pelletier considered that family is "*essentiellement conservatrice*" (essentially conservative)[34]. Hence in the future society that Pelletier envisages, the destruction of the family will take place gradually because of the very slow evolution of laws and customs. For her, the triumph of feminism implies the destruction of the family. In this new society, religion is abolished, and she mentioned the example of Russia where she had travelled in the twenties.

In 1922, ten years before publishing her utopian novel, Pelletier wrote a narrative entitled *Mon voyage aventureux en Russie communiste* where she related her six week stay in Moscow, in 1921, and her adventures to reach the "*terre promise*" (promised land)[35]. Before her departure, communist Russia represented for her the realization of the ideas for which she has militated. Once in Russia, she very quickly questioned the revolutionary sincerity of Bolshevik Russia, by noting that communism was the work of only a tiny minority of militants who imposed their ideas on the mass, which she described as "*pâte amorphe*" (amorphous paste)[36]. With regard to the situation of women, she approved the code which had been drawn up on marriage and welcomed the freedom of appearance of women. In this new code, women do not lose their names when they marry; equality is complete between the spouses; married women are not supposed to obey their husbands; adultery is not an offense and divorce is granted on the will of only one of the spouses. Pelletier

[32] Madeleine Pelletier, *Capitalisme et Communisme*. Undated (legal deposit in the National Library in 1926). Nice: Imprimerie Rosenstiel, p. 13, cited in Cova 1992a: 86.

[33] Madeleine Pelletier. 1926 (First edition 1911, Paris: Giard et Brière). *L'Émancipation Sexuelle de la Femme.* Paris: La Brochure Mensuelle, chapter II: "Le Féminisme et la famille", p. 14, cited in Cova 1993: 284.

[34] *Ibid*., p. 16, cited in Cova 1993: 284.

[35] Madeleine Pelletier. 1922. *Mon voyage aventureux en Russie Communiste*. Paris: M. Giard. p. 35, cited in Cova 1993: 284.

[36] *Ibid*., p. 103, cited in Cova 1993: 285.

mentioned the entry of women in several professional sectors, but noted their low number, even their absence in the higher functions of the state, with the brilliant exception of Alexandra Kollontaï (1872-1952) in Social Affairs, first woman People's commissar from 1917. Roussel had been critical towards the ideas of Kollontaï, namely when she solicited Russian women to take part in the military effort and Roussel ironically wondered by what means will the men participate in the maternity charges.

Pelletier managed some encounters with Kollontaï and related them in these terms: "Elle me dit assez peu de choses: bien que j'aie pu la voir plusieurs fois. Elle semble redouter de parler de questions politiques, parce qu'il y a toujours quelqu'un là" (She tells me very little: although I have been able to meet her several times. She seems to dread talking about political issues, because there is always someone there)[37]. Kollontaï has just written a book on the sexual question with which Pelletier finds many points of agreements including the right to abortion and the education of children by the state. But Pelletier expresses her divergences when Kollontaï makes the sexual act a moral obligation. Pelletier feared the logic of social control over the individual and came into conflict with her. Kollontaï's ideas on sexuality were a subject of controversy in Russia. The "new woman" she advocated and in particular the right to free union were not well accepted and, in 1920, Lenin expressed his disagreement with her. Pelletier noted the gap between Kollontaï's theory and her practical achievements during her visit to the Maison des enfants trouvés (Foundling house) in Moscow. She was shocked by the fact that mothers did not have the right to abandon their children there, due to overcrowding, while Kollontaï advocated education by the state. In addition, during this guided tour, breastfeeding was praised which did not please Pelletier and reminded her of Adolphe Pinard (1844-1934), defender of maternal breastfeeding in France. She noted that Russian women were confined to activities related to children and they passed, according to the expression of Lenin, from individual maternity to social maternity. Pelletier's assessment was that if, from the point of view of the law, equality was complete (except for military service), in practice many prejudices persisted, and Russia had not achieved the integral feminism that she advocated. Nevertheless, it was on an optimistic note that she ended her narrative by stressing that "peu à peu, des supériorités féminines se feront jour" (little by little female superiorities will emerge) and that we must aid Russian communism "de tout notre pouvoir" (with all our power)[38]. Thus, she supported the Soviet model but remained also skeptical because in her view, it was utopian to seek the regeneration of men and women in revolutions. Pelletier was elitist and individualist. Elitist because she considered that "En somme, la force du féminisme est dans l'élite intellectuelle de la nation" (In short, the strength of feminism is in the nation's intellectual elite) and she praised "une élite restreinte de femmes" (a small elite of women)[39]. Furthermore, various times in her writings, she mentioned "le peuple amor-

[37] *Ibid*., p. 142, cited in Cova 1993: 285.
[38] *Ibid*., pp. 217-218, cited in Cova 1993: 285-286.
[39] Madeleine Pelletier, "La République portugaise et le vote des femmes", *Les Documents du Progrès. Revue internationale*, March 1911: 184.

phe" (the amorphous people)[40]. Individualist in the sense that she gave primacy to the individual against the state: for example, when she performed abortions against the laws passed by the state which prohibited such practice (according to her the reason of the state was never a good motive). In In Anima Vili, ou un Crime Scientifique, Pelletier analysed individual superiority through the character of the brilliant scientist Charles Delage. Intellectual superiority was a leitmotiv in her other play: the first part of the title speaks by itself: Supérieur! The hero of that play came from a proletarian milieu and wanted to be an intellectual, therefore joined anarchist groups. Without doubts, Pelletier was inspired by her own youth. The same can be said of her short stories, Trois Contes (Three Tales), where in the first story entitled "Un Traître" (A Traitor), the main character had a terrible childhood and left school at 13 years old.

The disappearance, disintegration of the family will be carried out for the benefit of the individual. Pelletier ideal society turns around the development of the individual: Defence of freedom of thinking, of individualism and of women as individuals. In *Capitalisme et communisme*, Pelletier criticized the Russian revolution for having ignored individual freedom, the basic principle according to her. Roussel would certainly have agreed as she strongly believed in individual freedom, but she died precociously of pulmonary tuberculosis on December 18, 1922, three weeks before she would have turned forty-five. In 1919, she had published a collection of poems entitled *Ma forêt* (my forest) where she described the beauty of the forest of Fontainebleau and simultaneously her tiredness and sickness. Pelletier lived almost twenty years longer than Roussel, since she passed away at the age of sixty-five. Like Roussel, during the last years of her life, Pelletier had serious health problems: in 1937, after a stroke, she became half paralyzed. Nevertheless, with two women accomplices, she kept on performing abortions. Pelletier was charged by the police and the investigating judge considered it useful to have her examined by a doctor who claimed she suffered from mental disorders. A suit was then signed and Pelletier was declared "irresponsible" and was sent to Perray-Vaucluse asylum, in the Ile de France region, in June 1939. There, she learned about the outbreak of the Second World War, which she hoped would be a short conflict. She died at Perray-Vaucluse from another stroke on December 29, 1939, few months after her internment. It was a tragic end for the first woman psychiatrist intern in the Seine asylums. There is no evidence that she was insane and according to the last letters she wrote to her friend Brion, the doubt persists. The real reason of her internment was maybe to avoid a public trial[41].

A comparative approach of Pelletier and Roussel's trajectories shows that they were at the forefront of the feminist and neo-Malthusians movements. Pelletier and Roussel were charismatics and in their own words "integral feminists", which was their motto. Talented public speakers, they adapted their language to their audience, did not mince their words, were against all half measures, and defended free motherhood during their entire lives. Roussel crossed France and travelled abroad

[40] *Ibid*., p. 178. Madeleine Pelletier. 1922. *Mon voyage aventureux en Russie Communiste*. Paris: M. Giard. p. 103, cited in Cova 1993: 285.

[41] Cova 2018: 87.

giving lectures that frequently ended with the performance of one of her plays and Pelletier also travelled abroad and gave public lectures. Roussel's play *Par la Révolte* was translated into Portuguese and Russian and Pelletier travelled to Portugal and Russia. If Pelletier and Roussel dedicated a lot of their time to the writing of articles in the feminist and neo-Malthusian written press, their literary production was also a significant part of their militant propaganda. Both tried to conciliate feminism and neo-Malthusianism, which was not an easy task to achieve; similarly, it was difficult to bridge the gap between feminism and socialism. The revolt Pelletier and Roussel praised meant the fight against all kinds of injustices regarding women, especially they wanted women to have the right to control their bodies and sexuality. This claim will be the core of feminisms of the second wave – *Our Bodies, Ourselves* (1971) – and Pelletier and Roussel were pioneers in already advocating it at the beginning of the twentieth century.

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DEP Deportate, esuli, profughe
Rivista telematica di studi sulla memoria femminile

"Men control our vaginas; the state controls our wombs".

Sheng Keyi's novel The Womb (Zigong) and the representation of the female reproductive body

by

*Nicoletta Pesaro**

Abstract: This paper aims to provide an example of how contemporary Chinese literature represents women's role and identity in terms of "reproductive bodies", and of the heavy social and psychological burden they have to shoulder in Chinese society. Women's essential lack of freedom and autonomy in controlling their own body and their function as mothers is vividly depicted in some recent works by famous writers such as Ma Jian 马健 and Nobel laureate Mo Yan 莫言, in his acclaimed novel Frogs (2009). In my paper I will rather focus on the female narrative of this history of pain and violence, but also of women's reappropriation of their own reproductive rights, by referring to Sheng Keyi 盛可以. I will mainly draw upon her recent novel The Womb (2019), a sort of "reproductive history" of the People's Republic of China which, despite the recent abolition of the one-child policy, still provides a variety of stories about surrogate mothers, forced sterilization, and sex-selective and compulsory abortions.

The female body and literature: Historical background

Literature seems to be the best avenue to give expression to the body:

> authorities (medical and socio-economic and political) have powerfully vested interest in *constructing* bodies in particular ways; literature, throughout the ages, works to remind us of this fact and thereby to *deconstruct* these myths, often by reinstating the delirium and the scandalousness of the body (Hillmann and Maude 2015: 5).

I will stress these two terms "deconstruction" and "scandalousness", in relation to the body as pivotal to my analysis of how female Chinese writers depict the relationship between women and their reproductive life in contemporary China[1]. Fic-

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tion can shape powerful representations of social, gender and cultural disparity conveyed by the body. Indeed, women's centuries-old condition of social and cultural marginalisation has been enforced on the basis of their different biology and therefore their allegedly weaker and predetermined physiological identity.

Besides, in terms of socio-political context, Chinese literature has often been the privileged means to raise controversial concerns, as historically, but also recently, writers have addressed their works to the body politic, in order to convey criticism, anxieties, and utopian and dystopian visions of culture and society. One example is the novel from which I draw the quotation in my title, Ma Jian's *The Dark Road*, which depicts contemporary China's political and social malaise through the lenses of the lack of reproductive freedom for women. But this focus on the use and role of the female body is by no means a recent phenomenon in Chinese literature. In so-called May Fourth literature (from the first decades of the Twentieth century), many authors emphasise – among the other shackles imposed on individuals by traditional society – women's total lack of self-determination in terms of maternity and sexual life.

"For Kristeva, the maternal body is located at the intersection of biology and culture" (Hanson 2015: 95); but it was a phenomenologist such as Merleau-Ponty, later echoed by Simone de Beauvoir, who stressed the tight connection between the body and human beings' perceptual system of thought: "[t]he self, for phenomenologists, as for Freud, is necessarily corporeal, the body constitutes the self. It is not a separate entity to which the self stands in relation. This body, however, is not simply what biology offers us an account of" (Lennon 2019).

Traditional Chinese culture used to stress the continuity of the family line and therefore the importance of women's reproductive role; this dogmatic precept exercised a terrible power over the whole existence of women within the family and the community, especially in the countryside, by imposing a heavy cultural mark on each individual's biological essence. After the Communist revolution, the impact of traditional culture was considerably reduced, and the one-child policy (in force from the 1980s to 2013) contributed to dismantling the long-standing equation between sex and reproduction (Pan 2007: 28). Nevertheless, the need for political and social control over a rapidly growing population led to an even harsher hegemony over, and manipulation of, the female body, while traditional beliefs concerning women's function as tools for procreation were never completely erased. Even though recent regulations have put an end to State intervention in this field – the policy was lifted at the beginning of 2016 – the Chinese government must now face "worrying population trends [falling birth rates] and women's demands around re-

book on modern Chinese fiction: *Narrativa cinese del Novecento. Autori, opere, correnti* (*Twentieth-Century Chinese Fiction: Authors, works and schools*, Carocci, 2019) co-authored with M. Pirazzoli. She is the director of the book series Translating Wor(l)ds.

[1] I am exploring some examples of the representation of the female body in modern Chinese literature in my forthcoming article "Human/Inhuman/Posthuman Female Bodies in Modern and Contemporary Chinese Literature: Literary Descriptions of Psychological and Social Unease," in Victor Vuilleumier, Gérard Syari, Toshio Tokemoto and Yinde Zhang eds., *The Body in Asian Literatures in the 20th et 21st Centuries: Discourses, Representations, Intermediality*, Paris: Open Edition of the Collège de France, 2021.

productive rights" (Lau and Xie 2019). As in many other countries, despite the indisputable progress which women have achieved in terms of freedom of choice as regards their own body and sexual life, Chinese women – especially ones who are unmarried or live in peripheral rural areas – must still fight for complete self-determination and for the improvement of their reproductive rights.

One of the most crucial issues raised and debated at the beginning of last century in a China searching for modernity against a worrisome background of economic decline, semi-colonisation and social disruption, was the living conditions and position of women within a society still dominated by an obsolete yet pervasive patriarchal system. Traditionally confined to the inner space (*nei*) of the house and of society,[2] women were denied a complete education and freedom of choice in terms of marriage, motherhood and sexual life, subjected as they were to the indisputable power of men (mainly their fathers, brothers and husbands) and of other women (mothers-in-law). It was also in opposition to these elements that the Chinese revolution carried out radical social changes last century. Studies by both Chinese and Western scholars on the one hand highlight the impressive results of a cultural and social campaign which fought thoroughly against the marginalisation of women's position within Chinese society; on the other hand, they express a deep concern for the extremely forceful methods applied in order to make this marginalisation and exclusion of women effective: control over the body and its functions.

As recognised by many scholars, the unequal treatment of women in many societies has been historically based on "women's corporeal specificity", which

> is used to explain and justify the different (read: unequal) social positions and cognitive abilities of the two sexes. By implication, women's bodies are presumed to be incapable of men's achievements, being weaker, more prone to (hormonal) irregularities, intrusions, and unpredictabilities (Grosz 1994: 4).

Essays and literary works against the ancient dogmas of obedience and chastity, as well as the rigid norms of behaviour imposed on women, were central to early 20th century China's intellectual discourse on modernity. However, most of the criticism was instrumental to promotion of other ends. An important reformer and a representative of the enlightened literati of the late Qing period, Liang Qichao 梁启超 (1873-1929), wrote that to giving women an education and the possibility to find employment, thereby freeing them from their reclusion at home, was fundamental not for women as such but in order to "improve the species" and strengthen the nation: "Children's education begins with the mother's teaching, which is itself rooted in women's education. Therefore women's education fundamentally determines whether a nation will survive or be destroyed and whether it will prosper or languish in weakness" (Liang Qichao in Liu, Karl and Ko 2013: 194).

[2] In Chinese culture the concept of *nei* 内does not only refer to the physical space of the family and domestic sphere, but also encompasses the private sphere of emotions and subjectivity. On the contrary, the *wai* 外(outside) was dominated by men: this term refers to the public sphere, and, especially, the political and social one – in other words, the sphere of power. See Du, 2020.

Traditionally, women were obliged to avoid any sexual activity before marrying and after being widowed, some were even induced to commit suicide in the case of infringement of these strict precepts. We might recall here the words of Lu Xun 鲁迅 (1881-1936), one of the most important writers of the time, in order to describe what many progressive intellectuals thought about traditional women's condition in terms of coercion and patriarchal control:

> 便 是 "孝" "烈"
> 这类道德，也都是旁人毫不负责，一味收拾幼者弱者的方法。在这样社会中，不独老者难于生活，即解放的幼者，也难于生活。 (Lu Xun [1919]: 44)

> The virtues of filial piety and chastity are simply ways in which to persecute the young and frail while bystanders bear no responsibility. In this kind of society, it is not only the old who find that life is difficult, it's the same for the emancipated younger generation (Lu Xun 2017b: 136).

He once stated that "夫妇是伴侣，是共同劳动者，又是新生创造者"(Lu Xun 1919: 42) [husband and wife are companions, colleagues, and creators of new life] (Lu Xun 2017b: 129), while denouncing in another essay, in quite a sarcastic manner, the fact that:

> […]
> 父母之命媒妁之言的旧式婚姻，却要比嫖妓更高明。这制度之下，男人得到永久的终身的活财产。当新妇被人放到新郎的床上的时候，她只有义务，她连讲价钱的自由也没有，何况恋爱。[…]
> 至于男人会用"最科学的"学说，使得女人虽无礼教，也能心甘情愿地从一而终，而且深信性欲是"兽欲"，不应当作为恋爱的基本条件，因此发明"科学的贞操"，──那当然是文明进化的顶点了。"(Lu Xun 1933: 604).

> […] old style marriage that is ordered by parents and arranged by matchmakers is even cleverer than prostitution. Under this system, men obtain a perpetual, lifelong piece of living property. When the bride is placed into the bed of the groom, she has only her duty and lacks even the freedom to negotiate a price, to say nothing of love. […] Some men are able to use the "most scientific" theories to induce women to happily stay faithful unto death; they believe that sexual desire is itself bestial and should not be a fundamental precondition for romantic love. They've therefore invented "scientific chastity" (Lu Xun 2017c: 178-179).

An early feminist perspective which examines and challenges women's destiny as individuals reduced to their body – and its (ab)use for the sake of procreation – can be found in Xiao Hong's works 萧红 (1911-1942). Her odd descriptions of brutality in sexual relationships imposed on women, infanticide, the exposure of newborns and unwanted motherhood are among the most striking elements of her narrative representation of rural society in the northeast of China during the Sino-Japanese war.

Although many improvements to women's lives were introduced as the result of social reforms and intellectual engagement, the idea that a tightly regulated family and sexual life for women was the main guarantor of social order was kept alive for a long time and still exerts a certain influence on both the authorities and ordinary people. In 1942, the female writer Ding Ling 丁玲 (1904-1986) penned a piercing

essay on the various forms of discrimination Chinese women suffered, even within the areas liberated by the Communists:

> They got married partly due to physiological necessity and partly as a response to sweet talk about "mutual help". Thereupon they are forced to toil away and become "Noras[3] returned home". Afraid of being thought 'backward', those who are a bit more daring rush around begging nurseries to take their children. They ask for abortions, and risk punishment and even death by secretly swallowing potions to produce abortions. But the answer comes back: "Isn't giving birth to children also work? You're just after an easy life, you want to be in the limelight. After all, what indispensable political work have you performed? Since you are so frightened of having children, and are not willing to take responsibility once you have had them, why did you get married in the first place? No-one forced you to." Under these conditions it is impossible for women to escape this destiny of "backwardness" (Ting Ling 1975: 102).

This "destiny of backwardness" has been tenaciously resisted by women activists and officially opposed by policy makers since the founding of the People's Republic of China. However, such issues related to women's liberation almost disappeared from the national narrative about the new China during the Maoist era, obscured as they were by the achievement of social liberation. As is most clear in the Chinese literature of those years – a mirror of the dominant political discourse – "gender oppression gives way to class struggle" (Yue 1993: 121); consequently, the female figure, which had been widely represented in its bodily articulations in May Fourth literature, was completely erased or abstracted from its corporeality, often becoming only a symbol. This is apparent in a famous novel, most representative of so-called "revolutionary romanticism", Song of Youth (Qingchun zhi ge 青春之歌, 1958) by Yang Mo 杨沫 (1914-1995), which features the Bildungsstory of a young Communist activist. Although the plot is tightly connected to, and based on, the overlap between her intense sentimental life and her political accomplishments, her body and sexuality are only depicted as an object of the male gaze and of male lust – more specifically, those of a male member of the loathed landowner class, whereby sexual harassment metonymically epitomises class oppression. Throughout the Maoist period the topic of reproductive freedom was rarely touched upon, let alone problematised in literature; the role of women as biologically predetermined to support Mao's politics of demographic expansion was taken for granted. As far as female independence and rights were concerned, only adopting a masculine identity could allow women reach a certain degree of autonomy and independence from men, their family and the social role traditionally assigned to them.

Women's reproductive life in post-Mao literature

Contemporary China stands in striking contrast to that world so deeply imbued with long-standing cultural and social biases, while at the same time representing its controversial evolution. After the dramatic changes introduced by Mao's revolution and then by a rampant form of capitalism from the late 1970s onwards, women

[3] The character of Nora from Ibsen's *A Doll's House* was a symbol of women's liberation in republican China.

today continue to struggle to exercise complete control over their own body in a society that is still partly rural, despite the extensive urbanisation and industrialisation achieved over the last few decades. In the "new era literature" (after Mao), women and their biological fate are still mainly represented through the male gaze: the fiction produced by the most important literary schools of the 1980s – the "roots-seeking school" (*xungen* 新根文学) and the avant-garde (*xianfeng xiaoshuo* 先锋小说) – tends to reproduce this pattern. For instance, speaking of Mo Yan's novel *Red Sorghum* (Hong gaoliang jiazu 红高粱家族, 1987), Tonglin Lu elaborates on one of the leading female characters being only named after her family role, "Grandma":

> The absence of her name reveals the paradoxical nature of the author's desire for an eternally desirable female body that is simultaneously an efficient tool for the reproduction of male descendants. Because she is less a person of flesh and blood than a conceptualized object of male desire, the heroine must remain nameless (Lu 1995: 68).

Indeed, some important female authors of post-Maoist literature have rehabilitated the corporeal significance of women, in an effort to claim their right to subjectivity and self-determination beyond the traditional construction of the female subject based on the patriarchal bio-cultural bias. We should mention Wang Anyi 王安忆 (b. 1954), Tie Ning 铁凝 (b. 1957) and Zhang Xinxin 张辛欣(b. 1953) as clear examples of the attempt to reverse this trend. In the former case, "it was the first time that a woman writer chose for her protagonist women who were no longer passive tool for male satisfaction, but actually the active party in sexual love with their male partners" (Li 1994: 125). The female characters in both Wang Anyi and Tie Ning's fiction "belong to a new type of women: they endeavor to assert their own rights, including their right to sexual love" (Li 1994: 124).

More specifically, Zhang Xinxin has written short stories such as "Where did I miss you?" (Wo zai na'er cuoguo le ni 我在哪儿错过了你?, 1981), where abortion, while being described as a very unpleasant and lonely experience, is presented as the free choice of an independent woman who rejects the traditional role of wife and mother in the context of an unsatisfactory love affair. Eventually, the protagonist "decides to continue her current path because she is no longer able to— and indeed, perhaps does not intend— to take off the masculine mask, which has become the essence of her sense of self" (Wang L. 2020). Undoubtedly, yet surprisingly, the relative social and individual freedom brought to the Chinese people by Deng's economic reforms has ended up restoring old models:

> "Where did I miss you" perceptively articulates the historical and gendered transformation taking place in contemporary China, which moved away from the socialist gender equality that had promoted strong women and toward a sexual difference that valued traditional femininity (Wang L. 2020).

As far as maternity and motherhood are concerned, in the late 1980s, on a significantly different level of self-recognition, it was women poets who utterly reclaimed "the unique identity and role of their sex", as is "demonstrated by the abundant descriptions of pregnancy, childbearing and delivery in poetry" (Wong 2010: 97).

As has been stated in several recent publications, such as the collection of essays by Chinese scholars *Women, Family and the Chinese Socialist State*, 1950-2010 (Kang 2019), many results in terms of reproductive freedom were achieved from the Mao period and onwards: "The implementation of the new Marriage Law, the collectivization, and the new social order brought by the Communist revolution led to the decline of the traditional family hierarchy and loosened its tight grip of young people's marriage choices" (15) while "the post-Mao market economy provided fertile ground for the growth of individual autonomy in the pursuit of romance, courtship and marriage". The editor of the book then adds, "The state did, however, impose a tight control over sexuality and private life" (16). In the Mao era as Sheng Keyi shows in the novel *The Womb* (which is the core case study of this article), women "had to shoulder the double burdens of production and reproduction" (Kang 2019: 17). The real issue was that although the new attitudes adopted by the Communists and the modern practices deployed in the country had reduced the burden of a sexual life aimed only at procreation,

> the state family planning policy and law clashed with the tradition of male supremacy. […] many women in the countryside were still the tools for producing boys. When the restriction on birth ran into conflict with the desire for a boy, women's fates were more or less affected (Qin and Li 2019: 53).

This topic is at the centre of two important novels written respectively by Mo Yan and Ma Jian: *Frogs* and *The Dark Road*. They both focus their social criticism on the destiny of rural women obliged to abide by the existing one-child policy, often by means of violent birth control practices. Both writers succeed in providing a gloomy representation of women's physical and psychological suffering in their attempts to resist the limits imposed on their reproductive freedom. In particular, Ma Jian's heroine, Meili, embodies women's difficult struggle against both state oppression and the legacy of the traditional patriarch represented by her husband. Nevertheless, in these works the desperate and often silent rebellion of female peasants is still seen from a male standpoint, albeit an enlightened one and – as in the early republican era – it is instrumental to the two writers' specific political or cultural agenda. Mo Yan and Ma Jian's graphic descriptions of forced abortions and other abuses against women result in extensive criticism against the Chinese government as a whole (Ma Jian) or in a controversial attempt to explain and elaborate on the traumatic effects of China's one-child policy's (Mo Yan). But both authors fail to convey the more intimate and complicated aspects of female subjectivity, as well as the problematic issue of women's right to bear children or not, and to personally control their own sexual life, by freeing themselves from long-standing and devastating psychological, cultural, family, social and political shackles. Elisabeth Cullingford reflects on how the Chinese case described by Mo Yan and Ma Jian reverberates in other countries, producing different and unexpected effects:

> In the Chinese context, these novels appear subversive, and in the case of *The Dark Road*, even overtly feminist. They resonate with Hillary Clinton's 1995 Beijing declaration that "women's rights are human rights," itself a none-too-subtle condemnation of the one-child policy. But shoehorned into a preexisting discursive frame, these male authors' defense of women's freedom to reproduce paradoxically serves the ends of American antiabortion activ-

> ists who oppose women's freedom not to reproduce, both in America and in the developing world (Cullingford 2019: 77).

The literature on the concept of the body as an intersection of a variety of elements encompassing biology, psychology, society, religion, ideology and culture is boundless and extremely variegated. What also seems to be important in the analysis of the body's literary representation is the need to rethinking the body as a "political product". By rejecting the determinism often adopted in many previous studies and political practices, Grosz argues that bodies "must be understood through a range of disparate discourses and not simply restricted to naturalistic and scientistic modes of explanation" (1994: 20), as they "are always irreducibly sexually specific, necessarily interlocked with racial, cultural, and class particularities" (19).

Cultural and class particularities have always affected Chinese women's conditions in terms of reproduction. As observed by many scholars, in present-day China, with respect to the body, individual freedom and sexual identity, women seem to be haunted by both the offshoots of traditional practices and norms, and the social stigma attached to independent and unconventional behaviours based on the new concepts of femininity, physical appearance and sexuality. Indeed, Chinese women's condition of dramatic uncertainty, sometimes even powerlessness when it comes to controlling their own reproductive function, is something they share with women from other countries and cultures. What is interesting though is to analyse how reproductive freedom affects a variety of phenomena connected with women's ordinary lives, personal health, affective relationships and occupational goals in a country like China, where collective and individual needs are often deeply entangled. The long-standing gap between city and countryside also plays a fundamental role in influencing women's destiny and their right to control and handle their own body.

Sheng Keyi's bio-political narrative on women

I have chosen to focus here on some disconcerting representations of women bearing the consequences of invasive cultural and social policies directly on their own body. Writing at a time in which social positivism has conjugated with China's dramatically rapid technological and economic rise, resulting in even more pervasive and subtle methods of individual control, Sheng Keyi 盛可以 (b. 1973) stands out as one of the most impressive contemporary Chinese writers. This author adopts harshly critical and graphic tones to describe how, in a landscape of indisputably enlarged freedom and recognition for Chinese women, the burning issues of the body and reproduction are still a fruitful field for controversial and disrupting narratives. As we will see, for this writer the narrative technique of estrangement is instrumental in denouncing many women's low or non-existent self-awareness and education when it comes to reproductive matters. It is precisely by means of this technique that she manages to deconstruct a variety of cultural and political biases rooted in Chinese rural society.

Sheng Keyi adopts a narrative strategy which we might describe as "cartographic" (in Rosi Braidotti's sense, 2002: 2), one that combines the historical and

the geo-cultural, placing the individual vis-à-vis with power, understood as both the imposition of restrictions (*potestas*) and self-affirmation (*potentia*). In doing so, she builds images of women as victims of a long-standing socio-cultural (biopolitical) system of oppression and marginalisation, but also as agents of their own struggle against it.

While recognising women's political and economic contribution to the construction of the People's Republic of China and its present accomplishments, the Chinese Communist government during the 1950s and 1960s "failed to recognize gender differences and women specific issues" (Kang 2019: 7). Sheng Keyi's novels deeply explore these issues, extending them to present-day China and encompassing a variety of cultural restrictions, abuses, scandals and acts of violence inflicted on women as such, through social and cultural stigmas, and physical and psychological suffering, but also stressing the essential difference between women living in the city and ones dwelling in rural areas. Similarly to Xiao Hong, her primary concern is to stir the souls of the rural women; in her 1935 novel Xiao Hong had argued that:

"在乡村永久不晓得，永久体验不到灵魂，只有物质来充实她们" (Xiao Hong [1935]: 68). [In the village, they [women] would never know, they would never be able to experience their souls, only material aspects fulfilled their lives][4]. In Sheng Keyi's latest novel, *The Womb*, one of the main characters comments on the destiny of her grandmother, born in the Nineteenth century and still affected by her bound feet, during a TV interview held on March 8, International Women's Day:

> 一个人可能无法与时代战争　更不可能叫板庞大的社会制度　习俗也是一头凶猛的野兽　生理上的小脚不是最可怜的 女性精神上的小脚才是最悲哀的。(Sheng 2018a: 89)
>
> One cannot be at war with one's own epoch, challenging a gigantic social system is even harder, local customs too are a wild beast. Physical small-feet are not the most pitiable thing, women's psychological small-feet are the saddest thing.

Despite its sometimes dystopian quality, Sheng Keyi's narrative about women provides a different, more pro-active and nuanced perspective, especially compared to more pessimistic depictions such as those by male authors like Ma Jian and Mo Yan, both of whom address the topic of demographic abuses on women in their above-mentioned novels. Some of their descriptions and the comprehensive approach to the female reproductive body in their works can be encapsulated in the concept of "monstrous"; Braidotti emphasises the "unique blend of *fascination* and *horror*" inspired by the maternal body:

> Woman/mother is monstrous by excess; she transcends established norms and transgresses boundaries. She is monstrous by lack: woman/mother does not possess the substantive unity of the masculine subject. Most important, through her identification with the feminine she is monstrous by displacement: as sign of the in-between areas, of the indefinite, the ambiguous, the mixed, woman/mother is subjected to a constant process of metaphorisation as "other than" (1997: 67).

[4] All translations from Chinese are mine unless otherwise noted.

On the one hand, the two authors see female reproductive freedom as just one of the many social issues to be exposed and discussed: in their deeply political and cultural critique of the Chinese government and Chinese society they contribute to the process of "othering" the maternal bodies of their protagonists. On the other hand, Sheng Keyi is more focused on recognising the female body itself: we could say, borrowing Braidotti's words, that hers is a way of "think[ing] through the body and not in a flight away from it" (2002: 5).

Sheng Keyi condemns local communities and the state authorities for allowing female peasants to become victims of ignorant practices – the absurd vestiges of the patriarchal hierarchical system, which gave the husband and the mother-in-law almost life-and-death power over the bride, as well as the villagers' morbid curiosity and hostile judgement. At the same time, this writer succeeds in depicting the powerful, resilient reaction put up by more aware younger women. The essential difference we find in her novels is the acknowledgement of women's agency and empowerment through and not despite their body, something that Xiao Hong could not express in her gloomy fiction, set against the troubled background of China in the first half of last century.

Born in 1973 in a small village in Hunan province, like many other women from rural and rather backward areas of China Sheng Keyi moved to Shenzhen, in the more industrialised south, in the early 1990s, in search of better job opportunities, and eventually settled in Beijing. She has devoted much of her work to portraying women's social and personal world, also relying on her own experience as a migrant writer born in a rural region of central China. According to Schaffer and Song (2013):

> [h]er novels delineate how women struggle against stereotype, prejudice and marginalization; how their identities are shaped by contingencies of age, gender and place of origin, coupled with a lack of social or economic capital; and how their embodied desires are relegated to the fantasies, fears, desires and derision of men.

Sheng Keyi deals with such issues connected to Chinese women and their reproductive life in her short stories and other outstanding works, such as *Northern Girls* (Beimei 北美, 2004), a novel about female workers in Shenzhen which scrutinises the "migrant female body" (see Picerni 2019), and *Paradise* (Fudi 福地, 2016), a dystopian story about women detained in a procreation centre for surrogacy. But the most complete and punchy narrative is her latest, powerful novel, *The Womb*, also published as *Xirang* 熙攘 (Sheng Keyi 2018a), a title with the allusive meaning of "fertile soil" or "living earth".[5] As the author herself explains

> 《子宫》便是以老寡妇的大家族为蓝本的虚构作品。子宫孕育生命，对于农村女性来说，生育几乎是她们唯一的价值，子宫也是她们一生沉重的负担，然而她们一辈子也没能认识自己的身体，没能意识到自我与禁锢。(Sheng Keyi 2019)

[5] The word *xirang* refers to the "living earth", a myth from the ancient Chinese classic *Shanhaijing* 山海经 (The classic of mountains and seas, third century BC to second century AD), where it is described as a kind of black mud which saved people from floods, a sort of self-regenerating substance "which contains the vitality of the sky, is transmitted to earth, filling the function of an intermediary between sky and earth" (Ichirō 2009: 233).

> *The Womb* is a fictional work based on the big clan of an old widow. The uterus breeds life. For rural women, fertility is almost their only value. The uterus is also a heavy burden for them throughout their lives. However, throughout their lives they are unable to recognise their own bodies and they are not aware of their own self and confinement.

This situation of bewilderment and ignorance is deeply rooted in China's *xiangtu* 乡土 (native soil) reality and history. As stated by Li Zhongqing and Wang Feng, "[t]he disintegration of the family, the traditional unit for the population control, and collapse of the traditional check on reproduction led to the greatest population growth ever in Chinese history" (cited in Wang Y. 2019, p. 148). Therefore, the demographic explosion produced the conditions for the subsequent one-child-policy, which on the one hand made it possible to reduce the reproductive pressure on women, but on the other forced them either to passively accept often brutal contraceptive and sterilization methods, or to put up a painful struggle and resistance. To quote Kang, "the policy did unprecedently put women's body and family life under the total control of state power, thereby giving rise to myriad forms of resistance throughout the reform era" (2019: 18).

One of Sheng's most accomplished works so far, *The Womb*, is focused on the uterus, as a synecdoche of women's bodies, and also a metonymy for China's controversial evolution from a backward rural society to a modern industrial country over the last five decades. *The Womb* takes the form of a family saga and a coming-of-age novel, that tells the story of three generations of women, and in particular of seven female characters within the Chu family of Hunan (Sheng's own native province), from the late 1970s to the present day. The author mainly presents these women's intricate personal struggles both in the small village where they were born, and in the more challenging urban contexts of Beijing (Chu Yu) and Shanghai (Chu Xue). The novel recounts several stories of unhappy marriages, unwanted births and abortions, as well as the enduring of suffering in the name of chastity or lawful sterilisation.

The coming-of-age genre approach allows the writer to build a solid and well-structured "her-story" of contemporary Chinese women's reproductive life across four generations of women. Borrowing Kathleen Lennon's words, we might say that Sheng's narrative of the female experience in contemporary rural China "provides a phenomenology of the body as lived throughout the different stages of a woman's life" (Lennon 2019). By means of crude corporeal descriptions, the writer emphasizes how the sense of scandal still conventionally perceived in the free expression of women's sexuality and of their reproductive power should rather be shifted to the physical and mental abuses suffered by women because of their bodies.

Far from being the umpteenth example of Chinese *xiangtu xiashuo* 乡土小说or "nativist fiction" with a documentary style, the novel delves deeply into each character's individual story and inner motivations, creating a sophisticated literary portrayal of female subjectivity against a realistic social background, based on the author's own personal experience.

> 见过结紮完的妇女，被两轮板车拖回来，花棉被从头捂到脚；见过不想结紮的妇女如何挣扎，哭叫。结紮、上环、堕胎，这样的词汇像黑鸟般在天空低旋，让人心惊肉跳

。看着村里行走或劳动的妇女，就会想像她们肚皮上的伤疤，身体里的钢圈。(Sheng Keyi 2019)

I have seen women after a tubal ligation being dragged back on a two-wheeled cart, covered in cotton quilts from head to toe; I have seen women who didn't want to have their tubes ligated struggle and cry. Words like ligation, coil-insertion and abortion were whirling in the sky like black birds, so frightening. Looking at women walking or working in the village, I would imagine the scars on their belly and the steel ring in their bodies.

What we learn from this novel is that the very primary obstacle to Chinese women's pursuit of a full and self-determined reproductive life is still ignorance: the superstitious education received within rural families or the total lack of education. State policies and old cultural beliefs exert a terrible power, especially over poorly educated villagers' minds and bodies. Therefore, the key issue raised by Sheng is the lack of proper education among female peasants. I will refer to two episodes: the first one revolves around Chu Yun, the eldest daughter of the family, who gets pregnant at the age of 15 in 1982 and is then obliged to marry the peasant whose child she is bearing. Ruminating on the atmosphere of reticence surrounding sex and puberty in her family, Chu Yun exposes mothers' responsibility in perpetuating daughters' bafflement on matters related to their sexuality:

[…]
回想起少女时期对两性关系的盲目无知和母亲态度里的肮脏鄙视，仍然觉得浑身不适。母亲从没告诉过
她女孩子有月经，直到她放学回来裤子红了一片，才递给她一卷黄色的草纸；这时候她也没有教她停经和怀孕、月经和排卵的关系，更没有说过女人是怎么怀孕的——母亲根本不提及这些成长中的麻烦，这给她提供了行使责怪蠢货晚辈的权威与机会。(Sheng Keyi 2018a: 3)

Thinking of the blind ignorance and the dirty contempt for sexual relations in their mother's attitude when she was a girl, she still felt unwell. Mother never told her daughters about menstruation, only when Chu Yun's pants turned red after school, she handed her a roll of yellow rough straw paper; she never taught them the relationship between stoppage of menstruation and pregnancy, menstruation and ovulation, let alone how women got pregnant. Mother never mentioned to them the troubles of puberty, and this gave her authority as an elder and an opportunity to blame juniors for their naivety.

Another episode is taken from the sad story of Lai Meili, who marries Laibao, the dumb son of the Chu family: completely lacking any basic knowledge about sex and procreation, the young Meili gets pregnant twice after giving birth to her first daughter, Chu Xiu. The state birth-control system proves unable to reach the most inexperienced and vulnerable members of rural society: husband and wife do not know how to make proper use of the contraception tools they are given. Eventually, while hiding from the hospital staff to avoid a medical abortion procedure, the poor girl dies of miscarriage. In the following passage, Sheng Keyi's shows how the unaware husband, Laibao, mistakes a condom for a white balloon:

这时初来宝知道怎么让赖美丽的肚皮再次鼓起来了。他[…]，将剩下的白气球统统吹起来挂屋子里逗初秀玩[…]。他摸着赖美丽的肚子，感觉每天有人在往里吹气，吹一口就胀一点，慢慢地变成坟丘的形状。冬天恰好来打掩护，他往她身上套了很多衣服，就

像小时候他躲在柜子里干的。他们要让这件事情成为他俩的秘密，把肚子藏起来。但是气球越吹越大，好像马上就要爆炸，根本藏不住，连小孩子都看出来了。(Sheng Keyi 2018a: 41)

At this time Chu Laibao knew how to make Lai Meili's belly swell up again. He […] blew up the remaining white balloons and hung them up in the room to let Chu Xiu play. […] Touching Lai Meili's beautiful belly, he felt that every day someone was blowing air in it, little by little, and slowly it turned into the shape of a grave. Winter provided a kind of screen: he put a lot of clothes on her body, just as he would do in the wardrobe when he was a child [trying on his mother's dresses]. They wanted to make this their secret and hide her belly. But the balloon was blowing bigger and bigger, as if about to explode, and they couldn't hide it at all, even children could see it.

This narrative strategy of estrangement – already adopted in *Paradise*, which is narrated through the naive eyes of a mentally retarded girl – makes Sheng Keyi's desolate depiction of the weakest members of rural society even more striking and ironic. The family's and state's incomplete information and education about sex and reproduction are the main factors responsible for the tragic life and sometimes death of many women peasants, especially ones with weaker cognitive skills. In Sheng's words:

我的视野中，农村女性是最脆弱的群体。[…]
几十年的社会变革，女性参与生产劳动的机会增加，但获得经济增长的福利和其他权利相对较少。
In my eyes, rural women are the most vulnerable group. […] The social reforms carried out over the last few decades have increased women's opportunities to participate in productive labour, but the economic growth has brought them relatively few benefits and other rights (Sheng Keyi 2019).

Another compelling factor is the traditional moral burden: the two central figures in the story, the grandmother and the mother, are both the victims and the perpetrators of old norms that prevent them from living a healthy and full sexual life. As a widow, the grandmother lives a life of self-restraint, also obliging her daughter-in-law – when she becomes a widow at the age of thirty – to live as a prisoner to old-fashion biases in a tangled web of unfair ethical values.

Besides the more fragile and unaware people in the countryside, Sheng is also concerned about generational gaps in Chinese society: the elderly women living in rural villages, such as the one Sheng modelled after her own hometown, are the people who suffer the most from the legacy of the traditional culture and mentality. Qi Nianci, the old female head of the family, represents the ancient customs of subjection and sacrifice imposed on widows, and her condition is no different from that of the "ghost" described by Lu Xun in his essay on female chastity:

女子死了丈夫，便守着，或者死掉[…]寡妇是鬼妻，亡魂跟着，所以无人敢娶。(Lu Xun [1918]: 37; 38)

[I]f a woman's husband dies, she should stay a widow or die […] the widow was considered the wife of a ghost, and as she was followed by her ghost husband, nobody would dare marry her. (Lu Xun 2017a: 114;118)

The lives of two widows in Sheng's story do not seem so distant from the description given by Lu Xun:

> 吴爱香始终觉得体内的钢圈与丈夫的死亡有某种神秘关联，那东西是个不祥之物。此后缓慢细长的日子里，她从心理不适发展到身体患病，这个沉重的钢圈超过地球引力拽她往
> 下。好在生活分散了注意力，艰辛挽救了她。她听从丈夫的遗言，辅助婆婆，从不违逆。别人看到这对婆媳关系平和融洽，也看到戚念慈的厉害冷酷——
> 她也是三十岁上下死了丈夫， 懂得怎么杀死自己身体里的女人，怎么当寡妇 (Sheng Keyi 1918°: 6).

> Wu Aixiang always felt that the steel ring in her body had a mysterious connection with her husband's death and that it was an ominous thing. Since then, with the slow passing of the days, her psychological discomfort turned into physical illness and that heavy steel ring exceeded the gravity of the earth, dragging her down. Fortunately, life distracted her and hardships saved her. She obeyed her husband's last words and assisted her mother-in-law, without ever and disobeying her. Other people would see the peaceful and harmonious relationship between mother-in-law and daughter-in-law, and that cold-hearted Qi Nianci [had taught her] how to be a widow – her husband had also died when she was thirty, and she knew how to kill the woman in her own body.

The destiny of Qi's daughter-in-law, Wu Aixiang, is particularly sad as she is caught between two epochs marked by different political systems but identical forms of bio-political control over women's sexual life and reproductive function. The foreign body inserted into her womb – the intrauterine device which proves to be impossible to remove, causing her a lifetime of pain – is the symbol, both material and spiritual, of her eternal slavery.

When one day three daughters of the Chu family take their mother to the hospital for a check up because of her problems with the birth control ring that has been inserted into her body, they learn what the uterus is from a female doctor:

> 女人长了子宫， 这没什么好说的 […]
> 那天，初云初月初冰一行四人，收拾得干净整洁踏上去医院的长堤，就当是陪母亲做一次春游。
> 挽起母亲的手臂，打算带她去做B超检查。母亲正盯着着墙壁上的彩色图画。
> 那是什么东西初云问道。
> 图画看上去像一个动物脑袋，耳朵横向张开，仿佛正张嘴大笑。
> 长在你们身体里的 女医生回答 也是女人最麻烦的部分
> 是肺 初月说
> 是胃 初冰说
> 是子宫 女医生依然很亲切，她站到画前，和风细雨地讲解起来 看这个是子宫口，这一段是子宫颈 这是卵巢 这一个空地 就是子宫 胎儿在这里发育 也是放节育环的地方
> 母女四人凑到一块，像一群听到异响的鸡，伸长脖子静止不动，似乎在思考应对措施。
> 那东西 原来这个样子的啊 初冰摸着小腹，呼出一口气来
> 像朵喇叭花 初月对花有研究 也像鸡冠子花
> 初云没说话，她没法想像那是她身体里的东西，孩子是从这一丁点地方长大的。她的视
> 线停在 输卵管 的位置，思绪万千。
> 这个输卵管切断以后 卵子会到哪儿去 初月问出了初云心里的问题
> 卵子遇不到精子的话，过两三天衰亡，溶解，被组织吸收 医生回答

女人们似懂非懂，慢慢走出医务室，好像感觉身体里堆满了卵子的尸体，脚步滞重。(Sheng Keyi 2018a: 53-55)

A woman has a uterus, there is nothing to say […]
On that day, the three of them, Chu Yun, Chu Yue and Chu Bing packed up their things neatly and set foot on the long embankment leading to the hospital. They took their mother by the arm to get a B-ultrasound. Mother was staring at a colourful picture on the wall.
What is that, Chu Yun asked.
The picture looked like an animal's head, whose ears spread out of the sides, as if opening its mouth and laughing.
It's inside your body, the female doctor answered, *and it is also women's most troublesome part*. *It's the lungs*, said Chu Yue.
It's the stomach, said Chu Bing
It is the uterus. The female doctor was still very kind. She stood in front of the painting and explained it in a gentle and mild way. *Look, this is the uterus, this section is the cervix. These are the ovaries. This empty space is the uterus. The foetus develops here, and this is also the place of the birth control ring.*
The four of them, the mother and her daughters, gathered together, like a group of chickens after hearing some strange noises, stretched their necks and remained still, as if thinking about their next move.
Oh, so that thing is like this, Chu Bing touched her own belly and exhaled.
It looks like a petunia.
Chu Yun didn't talk, she couldn't imagine that it was something in her body, and that the child grew in that little place. She paused her gaze on the position of the fallopian tube, filled with thoughts.
After this fallopian tube has been cut off, where will the eggs go? Chu Yue asked the question that was in Chu Yun's mind.
If the egg does not meet the sperm, it will decay, dissolve, and be absorbed by the tissue after two or three days, said the doctor.
The women seemed to understand, and slowly walked out of the clinic, feeling as if their bodies were full of eggs and their feet unable to move.

Sheng Keyi's criticism also concerns the use and abuse of both old and new techniques and technologies for controlling the female body. The grandmother and the mother are both victims of these devices: the former had her feet bound as a child, while the latter's life is ruined by the birth control ring inserted into her after she had given birth to six children – five girls and a boy. Her oldest daughter who gave birth to two children before the age of thirty, and then underwent tubal ligation surgery, eventually decides to have a tubal reversal after realising her husband has had extramarital relationship: she is in love with another man and wants to have a child from him.

The only two fully educated women of the family, Chu Xue (a scholar) and Chu Yu (a doctor), who live in big cities, definitely display greater awareness and self-confidence with regard to sex and reproduction. However, they too experience a series of problems and setbacks, and have to face a range of moral, social and economic difficulties when it comes to their marital and reproductive life. At the age of thirty-three, at the early stage of a promising career as an academic, Chu Xue embarks on a relationship with an older professor who is already married, and when she gets pregnant, she decides to abort her child in order to save her career. She reflects that:

她了解了政策以及违反政策的处理办法，过去学校曾有人违返政策开除公职。生育是以夫妻为前提，法律并不支持非婚生子，不结婚就没有生育权利。如果失去刚刚获得的工作，便没有
能力抚养孩子。她知道可以花钱随便找个人登记假结婚。她不愿意她和夏先生的孩子还没出生就像个难民一样需要避难，过早地蒙上一股凄凉。她胆子大的时候，是因为单枪匹马无所顾忌，怀孕使她变得胆小与怯懦。(Sheng Keyi 2018a: 119-120)

She knew the policy very well and how the authorities dealt with members of the college that had violated it: they had been fired. Procreation was based on the existence of a husband and a wife, the law did not support having children out of wedlock, and there was no right to have children outside marriage. If she lost the job she just obtained, she would not have had enough money to raise her child. She knew that she could spend money on finding someone to register for a false marriage. She didn't want her child with Mr. Xia, who had yet to be born, to live as a refugee, prematurely shrouded in misery. When she behaved in a daring way, it was because as someone single she could be strong and unscrupulous. Pregnancy made her timid and fearful.

When she finally marries a colleague, at the age of forty-two, people are concerned about her childlessness, as she is unable to get pregnant again. Sheng Keyi informs us of what the people in the village used to say about the women from the Chu family: ironical proof of the endurance of superstitions and beliefs about women's destiny.

Here, Sheng Keyi seems to echo Braidotti's warning that "anatomy [alone] is *not* a destiny" (1997: 65). But this seems to be the general opinion of society. Throughout the novel, the author highlights in grey all the dialogues and inner monologues, as well as people's gossip, the external "voice" of the villagers and the family's fellow citizens, who – like an omniscient "big brother" or the chorus in a Greek tragedy – observes and mercilessly criticises the (female) members of the family:

当她超过四十二岁仍然没有生育时，人们开始替她着急。城里的人推荐不孕不育名医，村里人推荐草药偏方还有观音庙。她和财经丈夫一概谢过，他们决定做丁克夫妻。于是人们便不好意思再操心了。但村里人又有种言论，说初安运的坟址并不是真的好瞧瞧他们家　傻的傻　死的死　该生育的没生育　不该生育的挺着肚　该结婚的没结婚结了婚的闹离婚。 (Sheng Keyi 2018a: 126)

When she was forty-two and still had no children, people started worrying about her. People from the city recommended infertility doctors. People from the village recommended her to take herbal remedies and to visit the Guanyin Temple. She and her accountant husband thanked them all and decided to remain a childless couple. Thus people felt embarrassed to keep on worrying about that. But people in the village made another statement, saying that the site chosen for Chu Anyun's [their father] grave was not propitious. *Look at their family: some are idiots, some are dead; those who should have given birth didn't, and those who should not have given birth, their bellies swelled up; those who should have got married didn't marry and those who got married divorced.*

This passage gives us a sense of the huge weight that public opinion and the community's and family's moral standards still exert on individuals in rural – but sometimes even urban – China. In the author's own words:

城市女性虽可免于挨刀，但截然不同的境遇同样严峻，像《子宫》中初家四女儿初雪的故事，恐怕并不罕见。(Sheng Keyi 2018b)

> Although urban women could avoid undergoing surgery, their completely different situations are equally severe. Like the story of Chu's fourth daughter Chu Xue in *The Womb*, I'm afraid it is not uncommon.

Conclusions

In this modern family saga, Sheng Keyi manages to tackle the complicated question of Chinese women's sexuality and their struggle to survive in a male-dominated world, or to achieve complete control over their reproductive life, by means of an unconventional style enriched with a strongly female tone that is neither stereotyped nor rhetoric. Through the multiple female experiences narrated in this "herstory", one realises that in the last few decades, compared to previous epochs, Chinese society has undergone a general improvement in terms of cultural and economic resources which has provided Chinese women with new tools to express themselves and their self-determination in the reproductive sphere. However, as Sheng Keyi demonstrates, the uterus is still at the centre of a continuous "war" both in the rural and in the urban context. "一场子宫的战争——她就是这么理解刚刚结束的家庭危机的。" [A war on the uterus. That's how she [Chu Xue] interpreted the family crisis that had just ended] (Sheng Keyi 2018a: 166).

Moreover, while the new material conditions and laws seem to guarantee better conditions for Chinese women in terms of their reproductive and sexual life, what is still missing is a far more tolerant and open spiritual understanding of their rights. In *The Womb* some of the female characters persist in having children, while others struggle not to have them; some wish to marry and to live a full reproductive life, while others, even more sophisticated and educated ones, lack the time or money to choose when and with whom to have children. These are certainly universal issues, but Sheng Keyi's narratives have the unique merit of exploring and revealing the many culturally, historically and socially-specific obstacles that women have to face in coping with their reproductive reality. The coexistence of ancient beliefs and post-modern elements, typical of the present-day People's Republic of China, are highlighted by this writer, who at the same time undertakes the challenge of awakening the mind and conscience of women through her fiction of empowerment, starting precisely from the physical and psychological emotions conveyed by the body. Again, "anatomy [alone] is *not* destiny" – and this is precisely Sheng's concern:

> 女性的生育负担，一直没有得到应有的尊重与重视。女人的命运受子宫拖累，生育之荣辱，性事之愁苦，而且子宫又是一个疾病高发之地，像一颗定时炸弹随时会夺去女人的生命。子宫像重轭卡在女性的脖子上，她们缺乏必要的关注，缺乏更多的温暖。尤其是过往几十年中，对于她们的身体和精神所经历的创伤，甚至都没获得得言语的抚慰。(Sheng Keyi 2019)

> Women's burden of childbirth has never received the respect and attention it deserves. The fate of a woman is entangled with her uterus, the honor and disgrace of childbirth, the sorrow of sexual affairs, and the uterus is a place with a high incidence of diseases, like a time bomb that can kill women at any time. The uterus is stuck on women's neck like a heavy yoke. They

> lack the necessary attention and lack more warmth. Especially in the past few decades, they have not even received verbal comfort for the trauma they have experienced physically and mentally.

Indeed, China has adopted a new approach and a new practice in dealing with women's reproductive life, more out of concern about its plummeting birth rates and the consequent ageing of its population – which is already causing many problems to the welfare system for old people in a modern country of almost 1,440 billion inhabitants – than for the sake of women's rights and freedom (Lau and Xie 2019).[6] As a socially engaged writer, Sheng Keyi has brought about a radical change of perspective in the literature on women, putting them on the stage as subjects and agents, despite the enduring difficulties and obstacles to their freedom. She has refused to follow the traditional scheme (at work throughout the last century and still common in the new one) of depicting them as mere victims of hegemonic state policies and men's enduring biases.

An appropriate conclusion to this analysis may be drawn from the ending of an article by the author herself, which is full of both nightmarish perceptions and positive expectations:

> 昨晚有梦，梦见被困在某个人口稀少的荒凉之地，当地向阎王租赁女鬼的子宫繁殖人口，同时设立配种集中营，处于排卵期的女性在工作人员的监督下，在规定的时间内完成配种。路上的女人变成了一个个子宫，她们弹跳着前进，没有发出任何声音。我在逃跑中惊醒，意识到性别恐惧的幽灵依然紧附。这意味着我必须继续以写作的方式对抗这个幽灵。(Sheng Keyi 2018b)

> Yesterday I had a dream. I was trapped in a sparsely populated and desolate place. The locals bred the population of Yama, the king of Hell, by renting women's wombs. At the same time, they had set up a breeding concentration camp, where women in the ovulation period would complete the breeding within the specified time under the staff's supervision. Every woman on the road was turned into a womb. They walked ahead bouncing, without any sound. I was running when I woke up and realised that the ghost of gender-fear is still closely following us. This means that I must continue to fight this ghost through my writing.

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[6] The PRC government has just recently announced it will allow its citizens to have a third child, in order to contrast the unprecedented decline of fertility in China.

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"You were an Embryonic Dragon, Temporarily Nurtured in the Belly of a Bitch".

Surrogacy in China: Tradition, Ideology, Gender, and the Law

by

Simona Novaretti[*]

Abstract: On 27th December 2015 the Standing Committee of the National People's Congress of the People's Republic of China passed the amendments to the "Law of the People's Republic of China on Population and Family Planning", removing the prohibition of "any form of surrogacy" contained, instead, in previous NPC's drafts. The national legislator's decision reflects the tendency recently showed by some People's courts and shows the growing attention dedicated by the Chinese leadership to this reproductive technology that may potentially increase satisfaction "within the people" and improve social stability. In this paper, I will analyse Chinese legislation, jurisprudence and Courts' decisions on the matter using the comparative method to better understand the complex relationship among legal transplants, tradition, ideology and gender issues in a socialist market economy.

On 27th December 2015 the Standing Committee of the National People's Congress of the People's Republic of China (hereinafter NPC) passed the amendments to the "Law of the People's Republic of China on Population and Family Planning" (中华人民共和国人口与计划生育法 *Zhonghua renmin gongheguo renkou yu jihua shengyu fa*, hereinafter LPFP). The new law has been globally welcomed for ending the Chinese one-child policy inaugurated by Deng Xiaoping in 1979. How-

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ever, its latest version aroused the interest of Chinese citizens and legal scholars also for another reason: the removal of the prohibition of "any form of surrogacy" (禁止以任何形式 代 孕 *jinzhi yi renhe xingshi daiyun*) contained in the drafts previously discussed by the NPC (睢素利，李京儒，刘欢，中国计划甚于学杂志 Sui Suli, Li Jingru, and Liu Huang 2017: 804).

The Chinese legislator's choice has left room for further regulation allowing surrogacy, or – as it is also called – "surrogate motherhood". This expression generally refers to a woman bearing a child on behalf of someone else, waiving her parental rights (Gervasi 2018: 213). Surrogacy can be carried out in many ways, the most significant distinction being the one between "traditional surrogacy" and "gestational surrogacy" (Gervasi 2018: *ibid.*). In the first case, the surrogate mother provides her own genetic material. She becomes pregnant through sexual intercourse with the intended father or through in vitro fertilisation and she is biologically related to the newborn baby (Gervasi 2018: *ibid.*). In the case of gestational surrogacy, instead, the embryo is always generated through in vitro fertilisation. The oocyte and the sperm can be provided by the intended parents or by donors. The surrogate mother, thus, has no genetic links with the child (Gervasi 2018: *ibid.*). It is worth noting that both kinds of surrogacy can imply an "altruistic" or "commercial" arrangement or contract (Gervasi 2018: *ibid.*). In altruistic surrogacy the surrogate mother will only be reimbursed medical costs incurred. In commercial surrogacy the intended parents will also remunerate the surrogate mother (Gervasi 2018: 213-214). In many countries – mainly of the Western Legal Tradition – problems stem from the evolving concept of parenting and from the broadening of the legal and cultural definition of "father" and "mother". In the case of China the debate is characterised by cryptotypes established in millennia of patrilineal and polygynic society.

Somehow, such cryptotypes – which became illegal after the foundation of the PRC as they were perceived as "feudal" relics – are coming back due to a combination of factors. These include falling fertility rates caused by decades of "only child" campaigns, reforms and economic development, coupled with the availability of new reproductive techniques and the recent emphasis on traditional Chinese values introduced by President Xi Jinping. What do "motherhood" and "surrogacy" mean in contemporary China? What are Chinese legal scholars' opinions on the subject, and what are the proposals put forward to reconcile the legitimate expectations and rights of all parties involved, in particular the "supreme interest of the child"? To put these questions in context, it is necessary to examine the evolution of these concepts over the centuries, with a brief analysis of some Chinese traditional family law institutions.

Surrogacy in China: traditional legacy

> [Xu Yingkui] was Governor-general of Fujian in 1897 […]. Xu was born to a concubine of his father's, who died after he had just passed the imperial examination. Xu's request to let his natural mother's (生母 *sheng mu*) coffin pass through the main entrance of the house during

> the funeral procession was repeatedly denied by his formal mother (嫡母 *di mu*). […] At last, Xu asked, "Will my own coffin be allowed to pass through the main entrance after my death?". The formal mother answered: "Yes, of course it will. You were an embryonic dragon temporarily nurtured in the belly of a bitch (儿乃龙胎狗肚 *er nai long tai gou du*) […] (Kiung Jai Koh Clan Association 1971: 63).

The above passage is reminiscent of Marilyn Strathern's (1993: 23) position on the relationship between reproduction and kinship. In particular, the British anthropologist criticises the emphasis placed on the bodily process, rejecting the axiom that the biological aspect should prevail in the social recognition of parenthood. According to her, this is rather limited in both space and time, being, in reality, nothing more than a Euro-American Twentieth-century view. In fact: "[…]*While everywhere social arrangements attend to the production and rearing of children, it is not the case that everywhere the facts of procreation are taken to be of prime significance*" (Strathern 1993: *ibid.*).

Certainly, due to reproductive technology innovations, in the last decades the link between procreation and parenthood has started to be questioned even in the Euro-American context. Legal systems, in particular of the Western Legal Tradition, are now forced to (re)define the notions of "mother" and "father", adapting them to situations in which the conception of a child is not always the result of intercourse between two individuals of opposite sex (possibly) in the privacy of their marital bed, but can involve a plurality of subjects in the public space of a hospital (Carmen Shalev 1989: 16).

The latter aspect is part of the broader debate on the ever-increasing medical control over matters of life and death. In this paper, however, I would like to focus on another aspect: the capacity of ART technologies, in particular gestational surrogacy, to break down the concept of parentage and "motherhood", splitting them into distinct genetic, gestational and social functions (Shalev 1989: *ibid.*).

While interference of technology and science is unprecedented, the dissociation between biological and social parenting can be traced in history, as the Late Imperial China dialogue between Xu Yingkui and his "formal mother" shows, in a crude but rather effective way.

In fact, as Francesca Bray (2009: 182) pointed out, Late Imperial China was "*a patrilineal, polygynous society, with its own forms and practices of surrogacy or multiple parenthood*". The principle of patrilineal descent was at the basis of the Chinese socio-political system at least since the Western Zhou's era (1100 BC-771BC) and it became an imperial cornerstone under the Han dynasty (206 BC-8 AD) when Confucian thought was transposed into government ideology. A man's greatest duty was to provide his lineage with at least one (preferably male) heir, who would inherit his ancestors' *qi* 气, take care of the ritual offerings to their spirits, and contribute sons to continue the lineage (Bray 2009: 185). "Blood continuation" (血缘延续 *xueyuan yanxu*) and "son and grandson pervaded the hall" (子孙满堂 zisun mantang) represented the traditional Chinese view of a perfect family life (石 雷 ， 占泸霞 Shi Lei, Zhan Luxia 2019: 79). Furthermore, Confucian orthodoxy considered "continuing the lifeline of the family" (延续家族命脉 *yanxu jiazu mingmai*) at the core of the

concept of "giving birth" (石 雷， 占泸霞 Shi Lei, Zhan Luxia 2019: ibid.), and "having no male heir" as "the gravest of the three cardinal sins against filial piety" (不孝有三 无后为大 *buxia you san wu hou wei da*) (石 雷, 占泸霞 Shi Lei, Zhan Luxia 2019: ibid.). Moreover, regarding women, "The rites of Dai the Elder" (大戴礼记 *Da Dai Liji*) listed "being childless" among the "seven out" (七去 *qi qu*), i.e.: the seven reasons that allowed a man to legally repudiate his wife) (大戴礼记–本命， Dadai Liji – Benming, n. 13).

In this context, multiple parenthood, generally stemming from adoption or polygyny, often appeared as the only solution for childless couples eager to avoid the shame of infertility. Indeed, not only adoption, but even concubinage could benefit at the same time husbands and wives, as the law considered the father's principal wife as the biological mother of all the children recognised by him (杨海超 Yang Haichao 2020: 13). The principal wife would become, in all respects, the only legal and ritual mother (嫡母 *dimu*) of the family (杨海超 Yang Haichao 2020: *ibid.*), and the children had to mourn and worship her as their full parent (Bray 2009: 186), regardless of who (concubine 妾 *qie,* or maid, 女佣 *nüyong*) had given birth to them (Bray 2009: 185). Hence, both concubinage and adoption served principal wives as socially (and legally) approved forms of "surrogate motherhood" or "surrogacy", allowing them to appropriate the biological labour of less privileged women. The reason why in Chinese imperial society such behaviour was accepted as perfectly "natural" could be more easily understood considering the value attributed by Confucian orthodoxy to education and, on the other hand, the dual understanding of women's fertility. According to Confucius, education was, at the same time, a means of transformation and cultivation of the self, and a way to acquire the Dao (Charlene Tan 2017: 3). It was only through learning and practice that people could differentiate themselves: "By nature, men are alike. By study, men become far apart (性相近也，习相远也 *xing xiang jin ye, xi xiang yuan ye*) (孔子， Kongzi ch. 17 n. 2). That means that people could only develop their potential if and how they preserved their heart-and-mind and cultivated their character (Rita Mei-Ching Ng 2009: 3). It is through education that one could grow into a true gentleman (君子 *junzi*), a person at the same time worthy and morally obligated to serve the people and the state (Ng 2009: 3). Not surprisingly, therefore, during imperial times the quintessence of motherhood was not to give birth, but to provide a child a moral education that would encourage him to pursue honourable goals and achieve social success.

That is not to say that "biological" contribution was considered of little importance. On the contrary, according to Chinese traditional reproductive medicine, it was one of the two fundamental aspects of female fertility: the ability to reproduce life (生 sheng), or to give birth (产 *chan*), counterbalanced by the ability to nurture life and successfully bring up a child (养 *yang*) (Bray 2009: 189). In the case of multiple motherhood, this yin-yang (阴阳) duality was embodied in the different roles assigned to concubines and maids on the one hand and to principal wives on the other. Being strong and fecund (阳 *yang* characteristic) the former

were fit to give birth but unsuitable to educate the master's heir because of their humble origins (阴 *yin* characteristic). Principal wives were, instead, too weak to conceive and deliver a child (阴 *yin* characteristic), but had the social status, authority and culture required to bring up and educate their husbands' offspring (阳 *yang* characteristic) (Bray 2009: *ibid.*). In this sense, multiple motherhood not only allowed the master of the house to give continuity to his lineage; through the (harmonious?) combination of the yin-yang characteristics of the household women, multiple motherhood also secured him a healthy, properly cultivated progeny, that would bring honour to family and ancestors.

Besides concubinage and adoption, Ancient China knew at least one other kind of "surrogacy" and multiple motherhood: the custom of "renting out" (出借 *chujie*) wives, also referred to as "borrow a woman's belly to produce offspring" (借腹生子 *jiefu shengzi*) or, more technically, "pawning wife" (典妻 *dian qi*).

This practice – which comes from the even more ancient custom of "selling a wife" (嫁妻/卖妻 *jiaqi/maimai*) (徐海燕 Xu Haiyan 2005: 77) – is mentioned for the first time in the "Book of Southern Qi: The Biography of Wang Jingze (南齐书・王敬则传, Northern and Southern Dinasties era (approx. sec. half of the 6th Century) (徐海燕 Xu Haiyan 2005: *ibid.*; 李群 Li Qun 2010: 42). It is worth remarking that as other forms of *dian*, in the first phases of its development the *dianqi* was a kind of mortgage, or a sale with redemption agreement (李群 Li Qun 2010: *ibid*.). In particular, it was a contract according to which a man (the original husband 原夫 *yuanfu*) could pledge an asset (his wife, who became the *dian* wife 典妻 *dianqi*) to another man (the *dian* husband 典夫 *dianfu*) for a certain amount of time (generally between three and five years) (徐海燕 Xu Haiyan 2005: 78).

The wife was a sort of collateral for a loan; thus, once the term expired and the loan was reimbursed, she was supposed to return to her husband's home. However, due to the "ordinary depreciation" of the woman after the years spent in *dian*, few husbands were willing to redeem their wives when the contract expired (徐海燕 Xu Haiyan 2005: 78). Due to the inherent risks for the *dian* husband, this type of contract was not very common. It was only later, approximately during the Tang dynasty (618-907), that the *dianqi* changed its social function, becoming more appealing and spreading throughout China. In practice, it was transformed into a kind of contract of employment or leasing (徐海燕 Xu Haiyan 2005: *ibid.*), the characteristics of which could be slightly changed according to the will of the parties or local customs (徐海燕 Xu Haiyan 2005: 79). In its basic structure, it was a contract pursuant to which a man could rent out his wife for a certain time (five, ten or fifteen years, generally depending on the wife's fertility) to a childless man in exchange for a certain amount of money. The main purpose of this agreement was to let the *dian* husband perpetuate the *qi* (气, vital energy) of his family, so the *dian* wife had to have sex with him and get pregnant. In order to avoid confusion, she could not live with the original husband and sometimes she was not even allowed to look after her original children (徐海燕 Xu Haiyan 2005: 78).

The parties (i.e. the original husband and the *dian* husband) also specified whether the *dian* wife had to live in the *dian* husband's home, or to meet the *dian* husband in another place (徐海燕 Xu Haiyan 2005: *ibid.*). Moreover, they established the ownership of the children she would give birth to during the *dian*. In fact, the *dian* husband could decide to keep all the children or choose to retain only the boys. In the latter case, once the *dian* period expired, the girls would have to follow their mother, and go back to the original husband's house. In any case, the son born during the *dian* would take the dian husband's surname, inherit his estate and be included in his genealogy (徐海燕 Xu Haiyan 2005: *ibid*.).

This practice, which was always considered immoral and contrary to the Chinese rites (礼 li) (李群 Li Qun 2010: 43), became illegal starting from the Yuan dynasty (李群 Li Qun 2010: 42). Nevertheless, and even though the Ming and the Qing Codes harshly punished the crime of "Facilitating and tolerating the wife's or concubine's fornication" (see arts. 391and 367, The Great Qing Code) under which the case of *dianqi* fell (Matthew H. Sommer 2000: 227; 李群 Li Qun 2010: *ibid.*), the custom of "pawning a wife" continued over the centuries (徐海燕 Xu Haiyan 2005: 78). This happened perhaps also because imperial magistrates often failed to follow the law when deciding on such cases, especially in times of famine, or when the wife was the very last asset of a family, and renting her out was the family's only hope of survival (李群 Li Qun 2010: 43-44). The above custom was finally wiped out as was any other "feudal" residue after the foundation of the PRC. However, infertile couples have always continued to look for solutions, due to the pressure of traditional culture, and the sense of inferiority and social discredit caused by the lack of children.

Surrogacy in Today's Chinese Law and Practice

According to recent studies, China's current infertility rate reaches 15%-20% (40-50 million) in women and 10%-12% (45 million) in men of reproductive age (15-45 y.o.) (Logan, Gu, Li, Xiao, Anazodo 2019: 1). Among the possible causes of these high rates, the interplay among the institutions of marriage and family, economic development and government policies seems to have particular importance. This interplay could also be at the root of the Chinese attitude towards the regulation of ARTs in general, and surrogacy in particular. As we have seen, the 2015 amendment to the LPFP put an end to the "one-child policy" and introduced the "two children policy". Moreover, in 2016 the Chinese government stopped the incentives for couples who decided to marry "late" (Global Times 2016). Nevertheless, many couples are still reluctant to get married – not to mention to procreate – at a young age, due to career pressure, intense competition, and the rising costs of buying a house (China Daily 2018). Unfortunately, the right time to conceive in a social and economic perspective does not always coincide with the most fertile phase of life. It is worth remembering that the first Chinese test-tube baby was born at the Third Hospital of Beijing University in 1988 (傅适野 Fu Shiye 2018), and the first test-tube surrogate baby was born at the same

hospital in 1996 (李晓宁，章晓敏，徐欢 Li Xiaoning, Zhang Xiaomin, Xu Huan 2013: 245). Thus, since the beginning of the new century, an increasing number of people have been turning to ART(s), and – once all the other infertility treatments appear ineffective – to surrogacy. Among these families, there are the ones meeting the conditions provided for by LPFP to have a second child but too old to procreate (tens of millions, according to the People's Daily), and parents whose single child died (睢素利，李京儒，刘欢 Sui Suli, Li Jingru, Liu Huang 2017: 804). For the last two groups, surrogacy could be the last chance to fulfil the desire to have a(nother) biological child.

Not surprisingly, then, in the last two decades in the People's Republic of China surrogacy has boomed, as shown by increasing numbers of surrogacy agencies springing up in big cities (Shi Lei 2019: 360), and the huge number of advertisements offering surrogacy services available on the web or even written on the walls (Ding Chunyan 2015: 34). Nevertheless, at the time of writing (May 2021) in PRC's national laws there are no specific rules governing surrogacy. Actually, in the draft of the above-mentioned 2015 amendment to the LPFP, article 6 explicitly prohibited "any form of surrogacy" (任何形式的代孕 *renhe xingshi de daiyun*), but the provision was deleted in the final version (杨海超 Yang Haichao 2020: 14). At present, therefore, the matter is only regulated by some administrative documents issued by the Ministry of Health. I am referring in particular to the Measures on the Administration of Human Assisted Reproductive Technology (人类辅助生殖技术管理办法 *Renlei fuzhu zhengzhi jishu guanli banfa 2001;* hereinafter: Measures)*;* the Code of practice on Human Assisted Reproductive Technology (人类辅助生殖技术规范 *Renlei fuzhu shengzhi jishu guifan*, 2001, revised in 2003); Basic Standards for Human Sperm Banks (人类精子库基本标准 *Renlei jingzi ku jiben biaozhun*, 2001, revised in 2003); Code of Practice of Technology Concerning Human Sperm Bank (人类精子库技术规范 *Renlei jingzi ku jishu guifan*, 2001); Ethical Principles of Performing Human Assisted Reproductive Technology 实施人类辅助生殖技术的伦理原则 *Shishi renlei fuzhu shengzhi jishu de lunli yuanze*, 2001, revised in 2003).

The Measures make it clear that ART(s) can only be implemented in medical institutions approved by the administrative department of health (art. 1), and no medical staff should ever participate in surrogacy (art. 3). The other documents mentioned reiterate the prohibition of any form of surrogacy and forbid other reproductive technologies, such as stimulating ovulation to achieve multiple births or providing oocytes for commercial purposes. Being sectoral rules, these provisions only regulate medical institutions and doctors' activities. Therefore, they do not apply to surrogacy agencies, surrogate mothers or commissioning parents, nor can they be of any help when the validity of a surrogacy contract is at stake. Besides, no Chinese Law provides for legal parenthood at the time of birth. This loophole was not eliminated by the promulgation of the Civil Code of the People's Republic of China (民法典 *Minfa dian*, enacted on 28th May, 2020 and effective from 1st January, 2021). The only articles of the Civil Code dealing (indirectly) with the matter are art. 1071, pursuant to which an illegitimate child

will have the same right as a legitimate child, and art. 1073, which regulates the right of standing in lawsuits for affirmation or denial of maternity or paternity.

Since no definition of a legitimate child can be found in the Civil Code or in any other Chinese law, the judges of the People's Republic of China can only follow the guidelines on the determination of parenthood issued by the Supreme People's Court (hereinafter SPC) from the 1950s (Shi Lei 2019: 363). In practice, as summarized by Shi Lei (2019: *ibid.*), the basic rules on the parent-child relationship applied by Chinese courts are: a) couples in a marriage are the legal parents of children born in that marriage; b) a child born out of marriage is an illegitimate child. The legal mother is the woman who gave birth to the child. The legal father is the man who acknowledges paternity or the one who is proved to be the genetic father by a DNA test; c) a child born through ART agreed by both husband and wife is that couple's legal child. Most of these principles were formed well before the spread of ARTs, and in fact they work perfectly in "normal" circumstances, when a child's biological mother, gestational mother, and intended mother are the same person. However, they are difficult to apply to surrogacy cases, i.e. cases in which intended mother and gestational mother are always two different women, and sometimes even the gestational mother and the biological mother are not the same person.

In these situations, the absence of specific rules has led to recurrent inconsistency in courts' decisions. For example, in a guardianship dispute case heard by the People's Court of Dingcheng District (Changde City, Hunan Province) in 2009, the judge awarded the surrogate child's guardianship to commissioning parents, stating that the content of the surrogacy agreement was true and did not violate laws or administrative regulations (杨海超 Yang Haichao 2020: 14), while in a similar case decided in 2012, the People's Court of Siming District (Xiamen City) declared a surrogacy agreement null and void, affirming that it was against public order and common decency (杨海超 Yang Haichao 2020: *ibid.*). To be fair, in recent years this position has become increasingly common among Chinese courts, both in commercial surrogacy contract cases and in (rarely brought before a court) traditional surrogacy contract cases (Xiao Yongping, Li Jue, Zhu Lei 2020: 8-14). On the contrary, the issue of legal parenting is still quite controversial, even after the decision of the case Chen Yin v. Luo Ronggeng and Xie Juanru (2015). Considered as the first case on custody of a surrogate child, this lawsuit was published in the SPC's Journal, Renmin Sifa (人民司法 People's Judicial) as an "example-case" (侯卫清 Hou Weiqing 2017: 4-11), and it was even mentioned in the SPC's annual report to the National People's Congress as a showcase for the protection of the "best interest of the child". The facts are as follows: on 28th April 2007, Ms. Chen Yin and Mr. Luo Xin registered their marriage, the second one for both of them. At the time of the wedding, Mr. Luo already had a son and a daughter, while Ms. Chen suffered from infertility. They decided to have children through surrogacy. The embryo(s) were created using Mr. Luo's sperm and a third-party donor's oocytes, and were eventually transplanted into the womb of a surrogate mother through IVF. On 13th February 2011, the surrogate mother gave birth to twins, who lived with Mr. Luo and Ms. Chen. On 7th February

2014 Mr. Luo died. On 29thDecember 2014, having learnt that the twins had no blood relationship with Ms. Chen, Mr. Luo's parents filed a lawsuit, claiming the sole care and control of the surrogate children. On 29th July 2015, Shanghai Minhang District People's Court fully accepted the plaintiffs' claims: according to the court, there was neither a natural nor a social parent-child relationship between Ms. Chen and the twins. Since the twins' biological father was dead, and their mother was unknown, their father's parents should have custody of them. On appeal, the Shanghai First Intermediate People's Court reversed the decision and awarded Ms. Chen the custody of the surrogate children. The court held that Ms. Chen had formed a step-parent-child relationship with the children, and therefore she should take precedence over her husband's parents. Besides, she could guarantee a more comfortable and peaceful life to the children. According to the judge: "In the case of unclear legal provisions or loopholes […] the judge has to apply the functionalist approach, taking the 'best interest of the child' as reference" (侯卫清 Hou Weiqing 2017: 11). At the same time, the court made it clear that the decision should not be taken as a judicial legitimation of surrogacy. In fact, it was merely a recognition of the fact that Ms. Chen's guardianship was more conducive to the healthy growth and development of the twins, and more consistent with the children's "best interest" (侯卫清 Hou Weiqing 2017: *ibid.*). In my opinion, such interpretation recalls the traditional idea of double motherhood, and the view according to which a child's "social mother" is the woman who acts as the "de facto" caregiver.

As shown by the analyses above and commented by many Chinese authors (Xiao Yongping, Li Jue, and Zhu Lei 2020: 19), the PRC's lack of regulation on surrogacy has made it risky, full of ambiguity, and even dangerous. The problem could only be solved by adopting a regulated approach that would bring certainty in Chinese law and increase harmony in what has been considered, from Ancient Times to Xi Jinping's era, the "basic cell of society i.e.: family (社会的基本细胞 *shehui de jiben xibao*)" (Maurice Freedman 1961-1962; 刘忠世 Liu Zhongshi 1997; An Baijie 2018). What are the options and the legal models – if any – currently taken into account by the Chinese legislator?

Surrogacy in China: New Tendencies?

The Chinese legislator's choice not to express an opinion on the issue in the 2015 LPFP seems odd, considering the total ban on surrogacy implemented since the beginning of the new century by the PRC's government agencies in charge of health and family planning and the 2013 and 2015 national campaigns against abuse of ART(s) (Shan Juan 2013; Global Times 2015). The latter was launched in April 2015 (i.e. only eight months before the final approval of LPFP's amendment), and explicitly targeted surrogacy (Xiao Yongping, Li Jue, and Zhu Lei 2020: 19). Involving twelve government departments, it focused on identifying and punishing medical staff and intermediary agencies performing surrogate maternity services, shutting down web pages and prohibiting traditional media from presenting surrogacy advertisements, and strictly controlling the sale and circulation of

ARTs drugs and related medical equipment (Xiao Yongping, Li Jue, and Zhu Lei 2020: *ibid.*).

Undoubtedly, the silence of the authorities opens more than one possible future scenario. It is worth noting that, due to its special state structure, Greater China encompasses various legal systems that differ in their attitude towards surrogacy (Vera Raposo, and Sio Wai 2017: 136). I am referring to the Hong Kong Special Administrative Region (hereinafter: SAR), the Macau SAR and, even if formally not recognised, the Republic of China (RoC or, as it is called in the PRC, the Province of Taiwan). Due to the profound influence of UK legislation, Hong Kong is the only SAR that provides a complete set of rules on the matter, allowing surrogacy just under certain conditions. In particular, Part III (Prohibitions) of the Hong Kong SAR's Human Reproductive Technology Ordinance (2000, last time revised: 2021, hereinafter: HRTO) forbids providing ARTs, including surrogacy, to people who are not married, and prevents posthumous children (art. 15 HRTO). The HRTO also prohibits commercial dealings in prescribed substance (as a gamete, embryo, fetal ovarian tissue etc.) (art. 16) and surrogacy arrangements on a commercial basis (art. 17 HRTO) "whether in Hong Kong or elsewhere" (art. 16 and 17, (a)) (Daisy Cheung 2019). The Portuguese influence had the same effect in Macao, even if with opposite results. Indeed, for several years after its return under PRC's sovereignty, in 1999, Macau continued to follow the Portuguese legal attitude towards surrogacy (Rute Teixeira Pedro 2019) not explicitly banning it, but letting the courts infer its prohibition from the interpretation of general norms (Vera Rapos, Sio Wai 2017: 144). Things changed only in 2016, with the promulgation of the Macau Civil Code. Indeed, even if, in general, the latter law replicates the Portuguese Civil Code, it differentiates from it adding to article 1726 a provision by which agreements for procreation or gestation on behalf of a third party are invalid (Vera Rapos, Sio Wai 2017: *ibid.*). It is worth mentioning that, in any case, surrogacy does not seem very common in Macao, nor does it seem that many Macanese citizens relied on surrogacy abroad (Vera Rapos, Sio Wai 2017: *ibid.*).

In terms of numbers of people concerned in comparison to the total population, the situation in Taiwan is completely different, and more similar to that of Mainland China. Moreover, Taiwan, as well as the PRC, lacks specific regulations on the matter (Chih-Hsing Ho 2019: 378). Unlike Mainland China though, it seems that this legal void in Taiwanese system is about to be filled. In fact, on 1st May 2020 legislator Wu Ping-jui of the ruling Democratic Progressive Party presented an amendment to the law on assisted reproductive techniques, the Artificial Reproduction Act (人工生育法 *Rengong shengyu fa*, 2007, hereinafter: LAR), which legalises surrogacy (UCA News reporter 2020). That was only the last of the many draft amendments to the LAR proposed in recent years by Taiwanese legislators, and even by the Ministry of Health and Welfare, in order to ease restrictions on surrogacy. These attempts were certainly driven by the results of polls carried out on the issue by the government of the ROC in 2010 and 2013, according to which 86% of respondents agreed that under specific conditions, and following a medical examination, altruistic surrogacy should be legally permitted for infertile couples (Chih-Hsing Ho 2019: 381-82).

It is maybe too early to say if Mainland China will follow the same path. Indeed, the decision of repealing the provision contained in art. 6 of the 2015 LPFP draft was a consequence of the heated debate among law-makers and academics on whether to totally ban surrogacy, and pressure from ordinary citizens not to include such a prohibition in ordinary legislation (Duan Tao 2017; 时永才，庄绪龙 Shi Yongcai, Zhuang Xulong 2016). In general, Chinese advocates of surrogacy remark that a prohibition would be useless, as it would not eliminate demand for surrogate maternity services but, on the contrary, it would drive surrogacy activities underground, with actions performed in black market clinics, increasing exploitation and health risks for the most vulnerable members of society. Therefore, scholars propose to differentiate altruistic surrogacy and commercial surrogacy, legalising the former while prohibiting the latter. This would be beneficial for commissioning parents, surrogate mothers and even the State. First, Women affected by a womb condition would not be denied their reproductive rights, thus safeguarding family harmony, possibly put at risk by their infertility. Then, surrogate mothers would be protected from exploitation, since their decision to "rent out" their womb would only depend on their wish to help another woman have a child. Finally, from the State's perspective, the legalisation of altruistic surrogacy would not affect the common good or threaten the social order. The same scholars admit that such choice would involve a change in the definition of parenting, that should be broadened in order to include social aspects (i.e. the willingness to raise a child, the relevant responsibilities after birth or long-term responsibility and the formation of a family) alongside the biological ones (Xiao Yongping, Li Jue, and Zhu Lei 2020: 19). Undoubtedly this choice implies the acceptance of some kind of "multiple parenthood", but not even this consequence is seen as a shortcoming. On the contrary, it will benefit the social value of "parenting", maximise the interest of the children concerned and, by improving the stability of the family (杨海超 Yang Haichao 2020: *ibid.*), increase the stability of Chinese society as a whole.

It is especially the last aspect that could drive the PRC's legislator to consider such advice; if, how and to what extent are only a matter of time.

Conclusions

In this paper I used the tools offered by comparative law to understand if and to what extent Chinese legal-cultural characteristics and socio-economic aspects could have an impact on the PRC's current attitude towards surrogacy. Indeed, the analysis of Chinese legal history has showed interesting parallels between this reproductive technique and some traditional Chinese legal institutions, specifically the concepts of "multiple motherhood" and the custom of "pawning wife" (典妻 *dianqi*) or "borrowing a belly to produce offspring" (借腹生子 *shengfu shengzi*). Of course, this is not to say that in Ancient China there was such a thing as surrogacy. However, the diachronic and synchronic examination of Chinese legal and social context indicated that, despite the country's frequent changes of ideology over the twentieth century, the principles at the basis of the traditional remedies to

female infertility have not disappeared. On the contrary, they have become part of the Chinese cultural approach to reproduction, turning out to be even more evident in the last decade due to the interplay between demographic factors and President Xi's emphasis on "Chinese cultural tradition". The values, or cryptotypes, I am referring to are all reflected in the sentence by Xu Yingkui's formal mother quoted in the title of this work: "You were an embryonic dragon, temporarily nurtured in the belly of a bitch". They are, in particular the moral duty to continue one's patrilineal bloodline, the social discredit caused by the lack of children, and (last but not least) the split between cultural and biological motherhood, with the former taking precedence on the latter. It seems to me that these very concepts can explain some of the internal inconsistencies we found in our analysis of Chinese regulations on surrogacy, especially the reluctance of the national legislators to take a clear stand against it, and the tendency of Chinese courts to attribute surrogate children's sole care and control to intended parents, using "the best interest of the child" as the basis of their judgement. As repeatedly noticed, the legislators' decision to leave a window open to surrogacy seems particularly incongruous, since it conflicts with the total ban on surrogacy implemented by the Chinese governmental agencies in charge of health and family planning from the beginning of the new millennium. However, and as we have seen, surrogacy is often the last hope to secure descent for tens of millions of Chinese families. The risk perceived by the Party is probably that, without offspring, these people could easily lose interest in the goals the leadership has set to regain public trust, in particular the "building of a moderately prosperous society" (建设小康社会 jianshe xiaokang shehui). Considered in this perspective, the silence of the law appears to reflect the increasing attention the PRC's leadership is currently dedicating to the practice, taken as a possible way to increase satisfaction "within the people" and, therefore, social stability. Anyway, and whatever the reasons, the legislators' choice is certainly not without cost. In the absence of an explicit prohibition on individuals and intermediaries, and without a precise definition of motherhood, in the most sensitive cases relating to surrogacy such as those concerning legal parenting and/or custody of the surrogate child, the balancing of values and interests is left entirely to the discretion of the courts. It is true that by considering the Chen Yin v. Luo Ronggeng and Xie Juanru as an "example-case", the Supreme People's Court has given the judges useful guidance on how to deal with surrogacy. Unfortunately, however, the case does not address all the questions on the matter. In particular, it cannot be applied in cases in which it is the surrogate mother who seeks custody rights in court. In these circumstances, the judge would very likely consider her as the "real" mother, and the commissioning parents would have little (if any) chance to obtain custody of the surrogate child. The problem is that, in the present legal framework, the surrogate mother could always change her mind, and decide to claim parentage and custody rights at any moment, even years after the child's birth. This leads to insecurity and confusion in a matter that touches the most intimate aspects of a person's life, and seriously threatens, rather than protecting, the best interest of surrogate children. Moreover, the principles at the basis of "Chen v. Luo" case seem to me questionable even when the ruling of the case is applicable. In fact, and at least in my opin-

ion, it can lead judges to consider a person's social and cultural status as the most important criterion for deciding legal parenting. This attitude, as I have already remarked, recalls the traditional division between "cultural" and biological mother, but could also confirm the idea that "only the rich can have children", a concept that is hardly acceptable everywhere, but particularly in a "socialist country of law" as the PRC is defined by art. 5 of its Constitution.

However, gestational surrogacy remains widely practiced by Chinese citizens, in China or abroad. I believe that this proves that the prohibitive approach until now implemented in the PRC has not only been ineffective, but it risks jeopardising the rights of the persons at stake. When choosing the path to follow, Chinese legislators should consider such failure, and possibly quickly provide the country with clear rules on the matter, also taking into account the experiences of the other legal systems encompassed in Greater China, especially the Taiwan Province (also known as Republic of China)'s one. Making clear what is restricted and what is not can ensure legal certainty, protecting at the same time the "best interest of the child", and the dignity of all the women concerned. In fact, if all the children, no matter how conceived, are baby dragons, no woman should ever be considered a bitch.

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Surrogacy Contracts and International Human Rights Law

by

*Arianna Vettorel**

Abstract. This paper analyses human rights-related concerns which arise when individuals enter into surrogacy contracts with each other. As is well known, surrogacy is a peculiar reproductive technique involving carrying and delivering a child by a surrogate mother on behalf of other intended parents. This method is forbidden in many European countries, because it could facilitate child trafficking and women's exploitation. These risks are quite evident by the reading of sample surrogacy contracts, which usually contain detailed provisions regulating rights of the intended parents and duties of the surrogate. These clauses are likely to seriously impair the dignity, life and health of the surrogate, the children and the unborn. From an international human rights perspective, these kinds of provisions affect the human rights of women and children, established by several international conventions. This article will outline human rights issues emerging during the negotiation and enforcement of surrogacy contracts, and it will describe the achievements of the international harmonization process to suggest the need for further attention to human rights-related risks involved in surrogacy.

Introduction

Surrogacy is a peculiar reproductive technique involving carrying and delivering a child by a surrogate mother on behalf of other intended parents. This method, which was known even in ancient times as a tool to grant the continuation of dynasties[1], is nowadays forbidden in many European countries[2]. Thanks to facilitated transnational mobility, however, numerous couples living in States, which do not permit surrogacy, go abroad for the purposes of having a surrogate child, thus cir-

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[1] References to surrogacy can even be found in the Bible (see Genesis16 and Genesis30), as pointed out by Lagarde 2009: 512. References to peculiar reproductive techniques have been also made in relation to the dynasty of Prince Max von Baded and are known also as "Die Terapie auf Capri". See Machtan 2013: 159; Vettorel 2015: 523.

[2] A study of surrogacy regulations of European Union Member States was carried out in 2013 by the European Parliament. Specifically, see the Policy Department on Citizens' Rights and Constitutional Affairs of the European Parliament 2013.

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cumventing European bans. Ukraine, Russia, India and California are the surrogacy destinations commonly chosen by Europeans. For example, numerous Italian couples travel to Kiev. Indeed, Ukraine as a Euro-Asiatic country is relatively close to Italy, and it offers cheap packages and services. Italian intended parents can pay only 50,000 Euros for surrogacy in Ukraine, certainly a low price relative to the $100-150,000 of a U.S. surrogacy.

In spite of its global popularity, however, surrogacy raises serious human rights issues and leaves numerous problems unresolved (Thomale 2015). First of all, it brings the risk of treating children as commodities, as well as the risk that poor women will be exploited by the wealthy, the former being treated as modern slaves. These risks are inherent to surrogacy, and become evident when looking at certain contractual clauses and issues related to their enforcement. Secondly, surrogacy also leaves open human rights concerns regarding recognition of foreign civil status acquired abroad, to the detriment of child protection. Indeed, once a couple returns home, national authorities invoke public policy in order to not recognize the surrogated baby as the child of the intended parents. These situations have come to the attention of the European Court of Human Rights and of several European domestic courts. As of yet, such issues are not univocally resolved (Vettorel 2015)[3].

As far as this analysis is concerned, however, this paper will not address this latter topic, i.e. human rights concerns arising at the recognition stage of civil status acquired abroad. Rather, it will focus on human rights issues arising during the negotiation and implementation of the surrogacy contract. To this end, the article will first outline human rights-related problems emerging in the stage of enforcement of the contract, as shown by certain domestic case-law (section 2). It will then specify human rights which could be adversely affected by surrogacy clauses (section 3), and it will describe the ongoing international harmonization efforts aimed at regulating surrogacy (section 4). The final section will highlight the final remarks and, in particular, the need for further attention to surrogacy-related risks by international legal scholars (section 5).

Human rights concerns and surrogacy contractual obligations

As mentioned above, the regulation and implementation of surrogacy agreements raises serious human rights concerns, which are clearly evident by a simple reading of surrogacy contractual provisions. Specifically, this is the case of contractual clauses which oblige the surrogate mother to deliver the baby as well as clauses which permit the intended parents to demand a specific diet or lifestyle during pregnancy or, and primarily, to compel the surrogate mother to abort or to reduce the number of fetuses, as emerged in the famous *Baby Gammy* case, concerning an intended couple from Australia, who asked the Thai surrogate mother to

[3] On civil status issues related to surrogacy see Thomale 2015. On Italian issues related to the recognition of the legal status acquired abroad on the basis of a surrogacy contract see, inter alia, Feraci 2015, 2019.

abort one surrogate twin with Down's Syndrome[4]. Since the intended parents did not succeed in compelling the surrogate to abort the fetus, they refused to keep the developmentally impaired twin once he was born and abandoned him.

To date, requests to enforce obligations provided in surrogacy contracts are regulated in different ways depending on the national law applicable to the case (A. (Teun) V. M. Struycken 2012: 249-254; Cyra Akila Choudhury 2016). Some countries, such as the United Kingdom, admit surrogacy but do not enforce the obligations established therein; by contrast, in other countries some form of enforcement is at times granted, as happened to Melissa Cook, in the *MC v. CM* case[5].

Melissa Cook ("Melissa" or "M.C.") was a surrogate mother, who entered into a surrogacy agreement and become pregnant with triplets. Since the triplets were not desired by the indented father ("C.M."), the latter asked Melissa to abort one of the fetuses. His request was based on the selective reduction clause set forth in the surrogacy contract. According to the intended father, pregnancy reduction was necessary because of his critical financial situation and alleged health problems of the fetuses. By contrast, Melissa argued that the fetuses were all healthy and rejected the intended father's request, offering to raise one of the children herself. Notwithstanding Melissa's proposal, C.M. continued to request that Melissa abort one of the fetuses. At this point, Melissa and the intended father started several lawsuits in different domestic courts; in the meantime, the three babies were born prematurely and, notwithstanding the intended father's claims, were released to his care. Indeed, the competent Californian Children's Court, with a decision then confirmed by the California Court of Appeal, granted C.M.'s petition for parental rights and terminated Melissa's parental rights.

The issue related to selective reduction is not rare in surrogacy contracts, and it has also happened that intended couples asked the courts to issue a specific performance order, i.e. an order which obliges the surrogate to perform her contractual duties as agreed in the contract assuming that money compensation is not an adequate remedy. This emerged in the case involving Helen Beasley, a gestational surrogate who contracted with a married couple and refused to selectively reduce the pregnancy when it was discovered that she was carrying twins. The intended couple sought specific performance. In light of fundamental rights considerations, the complaint was dismissed, and the twins were adopted by a third party (Jones 210: 610).

Human rights potentially affected by surrogacy contracts

The aforementioned examples highlight the tensions that could arise in implementing surrogacy contracts. Specifically, from an international human rights perspective, surrogacy could affect human rights protection provided by several international legal documents on human rights.

[4] Permanent Bureau of The Hague Conference on Private International Law, *The Parentage/Surrogacy Project: an Updating Note*, February 2015, Annex II, p. i, available at http://www.hcch.net (accessed October 7, 2021).

[5] C.M. v. M.C., 7 Cal.App.5th 1188, 213 Cal. Rptr. 3d 351 (Cal. Ct. App. 2017).

First of all, the aforementioned surrogacy contractual terms can impinge the human right to be free as well as dignity of human beings. On this latter regard, it has been noted that *"[s]urrogacy compromises the dignity of the child by making the child the object of a contract – a commodity. It further compromises the dignity of the mother, even if her participation is voluntary, by merely treating her as a gestational oven. The exploitive reality of surrogacy arrangements and the resulting commodification of women and children have united unusual allies"* (ECLJ 2012:5). Indeed, *"[r]eligious fundamentalists, the Roman Catholic Church, and feminists alike have condemned the practice of contractual surrogacy as 'baby selling' – one that demeans and threatens women"* (Ciccarelli, Beckman 2005: 22-23). Given this, several international human rights provisions could be infringed, such as the Universal Declaration of Human Rights, which sets outs in Article 1 that *"all human beings are born free and equal in dignity and rights"*. Similarly, the Charter of Fundamental Rights of the EU also sets out in Article 1 that *"Human dignity is inviolable. It must be respected and protected"*; its Article 3 then establishes that *"1. Everyone has the right to respect for his or her physical and mental integrity. 2. In the fields of medicine and biology, the following must be respected in particular: (...) the free and informed consent of the person concerned, according to the procedures laid down by law, (...) the prohibition on making the human body and its parts as such a source of financial gain"*. Moreover, it is worth recalling that the Convention on Human Rights and Biomedicine sets in its Article 21 that *"[t]he human body and its parts shall not, as such, give rise to financial gain"*.

In addition, it has been noted that surrogacy compensation schemes could lead to women's exploitation, which put women at risk of falling into a kind of modern slavery. This concern is enshrined in the Model Law against Trafficking in Persons ("Model Law"), developed by the United Nations Office on Drugs and Crime to assist States with the implementation of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Trafficking Protocol)[6]. The commentary related to Article 8 of the aforementioned Model Law mentions the *"use of women as surrogate mothers"* as possible examples of *"exploitation"* that States may wish to consider when legislating to criminalize *"trafficking"*.

The adverse impact of surrogacy on human dignity and the risks of exploitation of the human body in turn jeopardize women's reproductive freedom, which has been encompassed within human rights by way of interpretation[7]. Furthermore, surrogacy also potentially undermines the prohibition of sale of children, which is clearly stated in Article 1 of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography[8]. Specifically, Article 2 (a) of said Optional Protocol defines sale of children as *"any*

[6] See the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Trafficking Protocol), signed in New York on 15 November 2000 and entered into force on 25 December 2003.

[7] On the conceptualization of reproductive rights as human rights, see The Danish Institute for Human Rights 2014.

[8] The text is available at https://www.ohchr.org/(accessed on October 7, 2021).

act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration". Moreover, Article 35 of the Convention on the Rights of the Child requires that *"States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form"*. Similarly, the 1993 Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption requires States to create safeguards to prevent the sale of or traffic in children from being used as a means of family formation. On this latter regard, it is worth noting that the Committee on the Rights of the Child stated that if not properly regulated, surrogacy can constitute sale of children[9].In light of these considerations, any enforcement of surrogacy contracts, even in the form of monetary damages compensation, would impair protection included in said legal documents. Finally, it is worth noting that any eventual enforcement request cannot be justified on the basis of an alleged "right to a child". Indeed, although some international and regional human rights instruments protect the right to "found a family" or the right to "respect for private and family life", there is no "right to a child" under international law[10]. As stated also by the UN Special Rapporteur on the sale and sexual exploitation of children, in its Report of 26 February – 23 March 2018, *"[a] child is not a good or service that the State can guarantee or provide, but rather a rights-bearing human being. Hence, providing a "right to a child" would be a fundamental denial of the equal human rights of the child. The "right to a child" approach must be resisted vigorously, for it undermines the fundamental premise of children as persons with human rights"*[11].

Because of the aforementioned human rights concerns and political choices based on ethical values, in the majority of EU States, surrogacy is prohibited and punished by criminal law. In this realm, and in order to avoid problems that arise in surrogacy cases and depend mainly on differences in domestic legal regulation of surrogacy (or on the lack of such a domestic regulation), a growing interest for international harmonization has emerged.

International attempts towards harmonization: which protection for women, children and the unborn?

At the international level, it is the Permanent Bureau of the Hague Conference on Private International Law, which has intensely been working on this topic, together with a group of experts ("Experts"). Thus far, its documents and studies affirm the need for common solutions and provide some hints at how to prevent limping personal and family civil status conditions.

[9] Human Rights Council 2018: 11. See also CRC/C/OPSC/USA/CO/2, para. 29; CRC/C/IND/CO/3-4, para. 57 (d); CRC/C/MEX/CO/4-5, para. 69 (b); CRC/C/OPSC/USA/CO/3-4, para. 24; and CRC/C/OPSC/ISR/CO/1, para. 28.

[10] Human Rights Council 2018: 15-16.

[11] Human Rights Council 2018: 64.

These studies are certainly a precious contribution towards uniform solutions. However, whilst focused on the need to prevent limping situations, they fail to examine in depth matters of applicable law, in spite of these matters' apparent utmost importance. Indeed, in the absence of broader conventions, concrete law applicable to the cases is the only means to address human rights concerns arising in surrogacy contracts' enforcement.

Admittedly, most of the Experts acknowledged the importance of discussing matters other than prevention of limping situations when it comes to legal status, such as, among others, the prevention of sale and trafficking of children, the prevention of exploitation and trafficking of women, and the eligibility and suitability of the surrogate and intending parents. Nevertheless, to date, this opportunity has only been mentioned but not meaningfully acted by the Experts[12].

These crucial concerns have been addressed by Trimmings and Beaumont instead, who suggested adopting a convention on surrogacy, including, beyond rules on regulation of recognition of surrogacy arrangements and parental relationship established abroad, also substantive safeguards against trafficking in women and children and regulation of administrative authorities and private intermediaries (Trimmings, Beaumont 2001: 635)[13]. Specifically, according to them *"[r]ather than focusing on traditional rules on jurisdiction and applicable law, the Convention should establish a framework for international co-operation with emphasis on the need for substantive safeguards and on procedures for courts, administrative authorities and private intermediaries"* (Trimmings, Beaumont 2001: 535).

Notably, the UN Special Rapporteur encouraged the international community to develop *"international principles and standards governing surrogacy arrangements in accordance with human rights norms and standards and particularly with the rights of the child […], recognizing that there is no "right to a child" in international law"*[14]. In particular, he highlighted the need to *"[c]reate safeguards to prevent the sale of children in the context of commercial surrogacy, which should include either the prohibition of commercial surrogacy […], or strict regulation of commercial surrogacy which ensures that the surrogate mother retains parentage and parental responsibility at birth and that all payments made to the surrogate mother are made prior to any legal or physical transfer of the child and are non-reimbursable (except in cases of fraud) and which rejects the enforceability of contractual provisions regarding parentage, parental responsibility, or restricting the rights (e.g. to health and freedom of movement) of the surrogate mother"*[15].

[12] See, for instance, the Report of the July 2021 meeting of Experts' Group on the Parentage / Surrogacy Project (9th meeting), and the Report of the October 2020 meeting of the Experts' Group on the Parentage / Surrogacy Project (7th meeting). Both reports are available at https://www.hcch.net/en/projects/legislative-projects/parentage-surrogacy (accessed on October 7, 2021).

[13] On the need for a convention on surrogacy see also Engel 2014; Boele-Woelki 2013. According to these scholars, such a co-operative convention could be modeled after the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague Adoption Convention). On this topic see also Hannah Baker 2013.

[14] Human Rights Council 2018: 20.

[15] Human Rights Council 2018: 19.

Final remarks

The analysis has shown numerous human rights concerns emerging in the enforcement of surrogacy contracts. Indeed, surrogacy contractual clauses providing rights on the side of intended parents and duties on the side of the surrogate mother can lead to the exploitation of women, children and the unborn, impairing their fundamental right to be free and their dignity. This is particularly the case of selective reduction contractual provisions.

In light of human rights concerns surrounding surrogacy, some efforts to find harmonized solutions have been conducted by the Hague Conference on Private International Law. To date, however, these works have dealt mainly with recognition issues rather than applicable law concerns. These latter aspects should be further investigated instead, and concrete proposals should be presented, as suggested by Trimmings and Beaumont as well as by the UN Special Rapporteur.

The dialogue on this matter certainly involves political decision and could lead either to the adoption of a convention regulating surrogacy or even to a convention prohibiting this practice worldwide. Without opting for a specific political choice, which is not at the core of this paper, it is nevertheless important to foster the academic and social dialogue on this topic so that any political decision could be taken paying attention to the need to protect human rights of the most fragile people involved in surrogacy.

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Conscientious Objection in relation to reproductive health care

Poland before the European Court of Human Rights

by

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Abstract: The paper discusses the notion of personal and religious objection or conscientious objection (CO) and its repercussions on women's health when it comes to access to legal abortion. Conscientious objection has been defined as a refusal to participate in an activity that an individual considers incompatible with their religious, moral, philosophical, or ethical beliefs. The aim of the article is to demonstrate that even when fulfilling the requirements for legal abortion, the access to this medical procedure maybe severely impeded by the use of conscientious objection by the health professionals. Conscientious objection in the context of access to reproductive health care is at the center of legal and policy debates around the world, especially in the countries which still retain highly restrictive laws that forbid women's access to abortion except in extremely limited conditions, as illustrated by the case of Poland, where abortion is banned except in three circumstances.

Introduction

Although there is no single human rights instrument dedicated to reproductive rights, various elements of reproductive rights are protected by the main United Nations (UN) and regional human rights instruments, such as, for example, the UN Convention on the Elimination of All Forms of Discrimination against Women which obligates the States Parties to ensure "access to health care services, including those related to family planning" and mentions appropriate services in connection with pregnancy and the right to decide on the number and spacing of children[1]; or article 12 of the International Covenant on Economic, Social and Cultural Rights, which protects the general right to the highest attainable standard of

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[1] UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13, article 12 and 16.

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health[2]. In its General Comment No. 14, concerning the right to the highest attainable standard of health, the Committee on Economic, Social and Cultural Rights defined reproductive health as meaning "that women and men have the freedom to decide if and when to reproduce and the right to be informed and to have access to safe, effective, affordable and acceptable methods of family planning of their choice as well as the right of access to appropriate health-care services that will, for example, enable women to go safely through pregnancy and childbirth"[3]. Another important document, also adopted by consensus and endorsed by the United Nations General Assembly is the Beijing Declaration and Platform for Action, adopted in 1995 at the Fourth World Conference on Women[4]. Furthermore, the 2005 World Summit Outcome, adopted by the United Nations General Assembly in 2005[5], and the commitment to both sexual and reproductive health in the outcome document of the 2010 United Nations Summit on the Millennium Development Goals, adopted by the United Nations General Assembly in 2010[6], further confirmed the commitment to reproductive health. In June 2012, the United Nations reaffirmed its commitment to reproductive rights in the United Nations Conference on Sustainable Development, Rio+20[7].

Reproductive rights are especially difficult as they touch upon the female body directly. A body that for centuries has been stereotyped. Stereotypes can be understood as a generalized view or preconception of attributes or characteristic possessed by, or the roles that are or should be performed by members of a particular group[8]. As a generalization, stereotypes do not take into account the abilities or characteristics of individual members of the social group. As such, by solely belonging to a certain group, perceived always as a homogenous one, the individual has to share the same characteristic, values and needs as other members of the group. Gender stereotypes are concerned with the social and cultural construction of men and women, due to their different psychical, biological, sexual and social functions; conventions that underwrite the social practice of gender[9]. Gender stereotyping becomes problematic when it operates to ignore individuals' characteristics, abilities, needs and wishes. Stereotypes are dangerous in private life, with their special contribution to violence against women, but they are even more dangerous when all the state policies are built on stereotypes of inferiority of women, or motherhood as an inherent aim of every women or for example women as "intrin-

[2] UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, article 12.

[3] UN Committee on Economic, Social and Cultural Rights, *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant)*, 11 August 2000, E/C.12/2000/4, par. 14, footnote 12.

[4] United Nations General Assembly Resolution A/RES/50/203.

[5] United Nations General Assembly Resolution A/RES/60/1.

[6] United Nations General Assembly Resolution A/RES/65/1.

[7] UN Doc. A/CONF.216/16.

[8] Cook, Rebecca J., Cusack Simone. 2010. Gender Stereotyping: Transnational Legal Perspectives. Philadelphia: University of Pennsylvania Press. p. 10.

[9] *Ibidem*, p. 20.

sically unreliable", what results in belief that women are more likely to lie about cases involving sexual assault[10].

The ability to become pregnant is a highly stereotyped phenomenon. According to Catharine A. MacKinnon, the capacity for and the female role in child-bearing had become the source of many of the social disadvantages to which women are subjected[11]. The most common stereotype is the one that motherhood is women's natural role and destiny, thus all women should be treated only as mothers or potential mothers, and not according to their individual needs. Stereotypes limit the ability of individual women to make autonomous decisions about their health and their private that could conflict with their role as mothers or future mothers.

The stereotypes had become unfortunately a basis of many legal systems, which have not adequately conceptualized pregnancy and legalize abortion. As the creation of laws, belonging to the so-called "public domain" has mainly been the male domain, the social conception of pregnancy that has formed the basis for its legal treatment has not been evolved from the point of view of the pregnant woman, but rather from the point of view of the observing outsider[12], usually men. Thus, criminal abortion laws hurt no men the way they hurt only women[13]. They make women criminals for a medical procedure only women need, or make others criminals for performing a procedure on women that only women need[14]. Male providers can avoid liability by refusing to perform the procedure, relying on Conscientious Objection (CO), while pregnant women who seek to abide by the law must continue the pregnancy. And forced motherhood is gender inequality[15].

The explanation provided by Katherine MacKinnon, although accurately describing the widely held view (and its consequences) that the main social role of a woman is to become a mother, it misses one important element of CO – religion. Conscientious objection, or as referred to by Christiana Fiala et. al – dishonourable disobedience[16] – in reproductive health care is usually defined as the refusal by health care professionals to provide a legal medical service or treatment for which they would normally be responsible, based on their objection to the treatment for personal or religious reasons[17]. Conscientious objection derives from the right to freedom of thought, conscience and religion, and it is a relatively new phenomenon

[10] *Ibidem*, p. 16.

[11] MacKinnon, Catharine A. 1991. "Reflections on Sex Equality Under Law." *Yale Law Journal* 100(5): p. 1308.

[12] *Ibidem*, p. 1309.

[13] *Ibidem*, p. 1321.

[14] *Ibidem*, p. 1319.

[15] *Ibidem*, p. 1319.

[16] See Fiala, Christian, Gemzell Danielsson, Kristina, Heikinheimo, Oskari, Guðmundsson, Jens A. and Arthur, Joyce. 2016. "Yes we can! Successful examples of disallowing 'conscientious objection' in reproductive health care." *The European Journal of Contraception & Reproductive Health Care*, 21(3): 201-206.

[17] Fiala, Christian, Joyce, Arthur. 2017. "There is no defence for 'Conscientious objection' in reproductive health care." *European Journal of Obstetrics & Gynecology and Reproductive* Biology 216: p. 254.

that began only with the legalization of abortion in the UK and the United States[18]. As such, the most commonly invoked basis for CO are not stereotypes, but rather religious grounds. However, in the author's opinion, it is highly important not to be eluded by this simple explanation – it is not only religion that prohibits some professionals from carrying out their duties, but rather stereotypes that were born in a certain social environment, as there is no doubt that religion influences the way we form stereotypes as a society, considering that Christianity is still prevalent in Europe. Although CO was supposed to be a consensus between patients' rights and doctors' individual ethics, if not well regulated, e.g. allowing the patients to receive the medical procedure timely, it places doctors in a privileged position, while undermining the patients' rights, further increasing their already vulnerable position, as they are the ones who fear for their life and health.

Abortion in Europe

Despite a wide variation of provisions, abortion is legal in most European countries. Only six European countries retain highly restrictive abortion laws and do not permit abortion on request or on broad social grounds: Andorra, Malta and San Marino do not allow abortion at all, while Liechtenstein allows abortion only when a woman's life or health is at risk or the pregnancy is the result of sexual assault. Two states, Monaco and Poland, allow abortion only when a woman's life or health is at risk, the pregnancy is the result of sexual assault or involves a severe fetal anomaly[19].

However, one of the biggest obstacles in exercising the right to legal abortion is the Conscientious Objection (CO). Invoking CO is granted by law in twenty-one countries in the European Union, as well as Norway and Switzerland. Refusing to perform abortion on moral grounds is not legally granted in Sweden, Finland, Bulgaria, the Czech Republic, and Iceland[20].

It is a term taken from military CO; however, it has very little in common with it. For example, soldiers are drafted into compulsory service, are relatively powerless, and accept punishment or alternate service in exchange for exercising their CO. While doctors choose their profession, enjoy a position of power and authority, and rarely face discipline for exercising CO[21]. Therefore, it may represent an abuse of medical ethics and professional obligations to patients.

As was mentioned beforehand, European countries may be divided based on the access to legal abortion. We can further divide the European states between those which allow the medical staff to invoke CO and those which do not allow such an

[18] *Ibidem*, p. 255.

[19] Center for Reproductive Rights. European Abortion Laws: A Comparative Overview. 2021. https://reproductiverights.org/european-abortion-law-comparative-overview-0/ [last accessed: 20.06.2021].

[20] Tamma, Paola. "Even where abortion is legal, access is not granted," European Journalism Data Network, https://www.europeandatajournalism.eu/eng/News/Data-news/Even-where-abortion-is-legal-access-is-not-granted [last accessed: 04.10.2021].

[21] *Ibidem*.

invocation (e.g. Romania v. Sweden)[22]. Going further, there are countries which provide a legal framework for CO (e.g. Portugal)[23] and those which only allow it, without enacting adequate legislation, enclosing any referral mechanism to ensure access to legal abortion in cases of CO by medical practitioners (e.g. Poland, as demonstrated subsequently).

The impact of CO on woman's life will thus differ according to the country she lives in. In a country with a restrictive abortion law, the woman who qualifies to a legal abortion may be forced to travel to another region or even country, forced to organize her travel and funds. It may also have a negative impact on her private and work life, as she may need to take leave of absence. She might also have to recourse herself to the clandestine abortion, risking her live and health. But that would only apply to a woman having enough financial resources – as clandestine abortions are expensive, the ban on abortion has even more negative effect on women with limited means[24]. As a result, a woman will be denied the right to make a decision and she will be ultimately forced to give birth against her will.

However, even in a country that provides a sufficient legal framework for CO and the medical personnel appropriately refer the patient to another doctor and she receives service promptly, refusals are still inherently wrong and harmful. The provider is deliberately refusing to do part of their job for personal reasons, thereby abandoning patients, while still expecting no negative consequences. Finally, the act of refusal may also have a negative psychological impact on woman by undermining her dignity and autonomy, and sending a negative message that stigmatizes her and the health care she needs, as granting CO also gives legitimacy to the religiously-based assumption that abortion is wrong.

Thus, CO in general poses a threat for women to access safe abortion and it is a serious obstacle, in those countries where abortion is permitted only on certain grounds, it can actually impede women to access abortion at all, making a right guaranteed by law completely illusory, which is reflected in the case-law of the European Court of Human Rights (ECHR).

Access to reproductive healthcare in the case-law of the European Court of Human Rights on the example of Poland

The European Court of Human Rights' jurisprudence regarding women's reproductive health and rights continues to evolve and until now has been developed under the scope of article 3 (prohibition of torture and degrading treatment), article 8

[22] See Fiala, Christian, Gemzell Danielsson, Kristina, Heikinheimo, Oskari, Guðmundsson, Jens A. and Arthur, Joyce. "Yes we can!"… op. cit.

[23] See Chavkin, Wendy, Swerdlow Laurel, Fifield Jocelyn. 2017. "Regulation of Conscientious Objection to Abortion: An International Comparative Multiple-Case Study", *Health and Human Rights Journal* 19(1): 55-68.

[24] Autorino, Tommaso, Mattioli, Francesco, Mencarini Letizia, 2020. "The impact of gynecologists' conscientious objection on abortion access", *Social Science Research* 87, https://doi.org/10.1016/j.ssresearch.2020.102403 [last accessed: 04.10.2021].

(right to respect for private and family life), article 13 (right to an effective remedy) and article 14 (prohibition of discrimination) of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention)[25].

The following sections are dedicated to the analysis of three judgements – all of them concern access to medical procedure, autonomy, exercising the right to decide about one's own body and life, and unfortunately long-lasting stereotypes, unwillingness of doctors to perform legal abortion and inherent risks related to the invocation of CO. All the judgments have also one more thing in common – the State accused of violation of the rights protected by the Convention is Poland, which is still one of those few countries in Europe that does not provide access to legal abortion, except in three circumstances. According to the 1993 Law on Family Planning, Protection of the Human Foetus and Conditions Permitting Pregnancy Termination (the 1993 Act):

> An abortion can be carried out only by a physician where:
> 1. pregnancy endangers the mother's life or health;
> 2. prenatal tests or other medical findings indicate a high risk that the foetus will be severely and irreversibly damaged or suffering from an incurable life-threatening disease;
> 3. there are strong grounds for believing that the pregnancy is a result of a criminal act[26].

In the cases of malformation of a foetus, an abortion can be performed until such time as the foetus is capable of surviving outside the mother's body; in cases of pregnancy being a result of a criminal act, until the end of the twelfth week of pregnancy. Circumstances in which abortion is permitted in first and second case shall be certified by a physician other than the one who is to perform the abortion. The circumstances in the last case shall be certified by a prosecutor[27]. Termination of pregnancy in breach of these conditions constitutes a criminal offence, although it applies only to the one who terminates a pregnancy in violation of the Act or assists in such a termination. The pregnant woman herself cannot be punished for an abortion performed in contravention of the 1993 Act.

Under the Medical Profession Act of 199628, a doctor may refuse to carry out a medical procedure, citing their objections on the ground of conscience. They are obliged to inform the patient where the medical procedure concerned can be obtained and to register the refusal in the patient's medical records. Doctors employed in health-care institutions are also obliged to inform their supervisors of their refusal in writing[29].

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[25] Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950, ETS 5.

[26] Ustawa z dnia 7 stycznia 1993 r. o planowaniu rodziny, ochronie płodu ludzkiego i warunkach dopuszczalności przerywania ciąży, Dz.U. 1993 nr 17 poz. 78 (The Family Planning, Human Embryo Protection and Conditions of Permissibility of Abortion, Act of 7 January 1993), article 4(a).

[27] *Ibidem.*

[28] Ustawa z dnia 5 grudnia 1996 r. o zawodach lekarza i lekarza dentysty, Dz.U. 2011 nr 277 poz. 1634 (Act of 5 December 1996, the professions of doctor and dentist).

[29] *Ibidem*, article 39.

In the cases Tysiąc v. Poland[30], R.R. v. Poland[31], P. and S. v. Poland[32] the Court had to decide whether the State's failure to provide effective mechanisms for a woman to obtain a legal abortion safeguarded by law constituted a violation of applicants' rights to private and family life (article 8 of the European Convention) and the prohibition of inhuman or degrading treatment (article 3).

Tysiąc v. Poland

The case Tysiąc v. Poland is a landmark decision as it is one of the first times that the Court had to pronounce on the access to abortion in one of the Member States. The judgment, which became final in 2007, was so powerful in Poland that until now Alicja Tysiąc is one of the faces of the pro-choice movement in Poland. Alicja Tysiąc is a Polish woman who has suffered for many years from severe myopia. Before the pregnancy, she was diagnosed as suffering from disability of medium severity. In February 2000 she became pregnant. She was already a mother of two, who were born through Caesarean section[33].

When she discovered that she was pregnant for the third time, she consulted several doctors in Poland to determine what impact this might have on her sight. Although doctors concluded that there would be a serious risk to her eyesight if she carried the pregnancy to term, they refused to issue a certificate authorizing termination. During the pregnancy, her sight deteriorated significantly. She received a referral for a termination on medical grounds, but the gynecologist refused to perform it. There was no procedure through which Ms Tysiąc could appeal this decision and she gave birth to the child[34].

Six weeks after giving birth the applicant was informed that she was at serious risk of going blind. While doing a counting-fingers test, she was only able to see from a distance of three meters with her left eye and five meters with her right eye, while before the pregnancy she had been able to see objects from a distance of six meters[35]. In 2001 the disability panel declared that she needed constant care and assistance in her everyday life[36]. Moreover, she was not entitled to a disability pension as she had not been working the requisite number of years before the disability developed because she had been raising her children[37]. With respect to the article 8 of the European Convention, the Court established and recognized that "legislation

[30] *Tysiac v. Poland*, Appl. No. 5410/03, Council of Europe: European Court of Human Rights, 20 March 2007.

[31] *R.R. v. Poland,* Appl. no. 27617/04, Council of Europe: European Court of Human Rights, 26 May 2011.

[32] *P. and S. v. Poland,* Appl. no. 57375/08, Council of Europe: European Court of Human Rights, 30 October 2012.

[33] *Tysiąc v. Poland, op. cit*., par. 9.

[34] *Ibidem*, par. 9-15.

[35] *Ibidem*, par. 16-17.

[36] *Ibidem*, par. 18.

[37] *Ibidem*, par. 19.

regulating the interruption of pregnancy touches upon the sphere of private life, since whenever a woman is pregnant her private life becomes closely connected with the developing foetus"[38].

Subsequently, the Court decided that the state has a positive obligation to effectively secure the physical integrity of a pregnant woman, including by adopting a comprehensive legal framework regulating the termination of pregnancy that takes into account the woman's views and it is not structured in a way which would limit real possibilities to obtain legal abortion[39]. Moreover, the Court further noted that the legal prohibition on abortion, taken together with the risk of criminal responsibility, can have a chilling effect on doctors when deciding whether the requirements of legal abortion are met in an individual case. The provisions regulating the availability of lawful abortion should be formulated in such a way as to lessen this effect[40]. And finally the Court recognized that the State is required to ensure that measures affecting fundamental human rights of pregnant women are subject to some form of preventive procedure at the national level that should meet the following minimum requirements: (1) the procedure is performed by an independent and competent body[41]; (2) a pregnant woman is heard in person and her views are considered[42]; (3) the independent body issues the grounds for its decision in writing[43], and (4) the decision is timely[44].

The Court concluded that it has not been demonstrated that Polish law as applied to the applicant's case contained any effective mechanisms capable of determining whether the conditions for obtaining a lawful abortion had been met in her case. Hence, the Court concluded that the authorities failed to comply with their positive obligations to secure to the applicant the effective respect for her private life, and therefore there has been a violation of Article 8 of the Convention[45]. Although in relation to article 3 the Court simply noted that the facts alleged did not disclose a breach of article 3, in a four years' time span, in the case R.R. v. Poland, the Court made the article 3 the central point of its reasoning.

R.R. v. Poland

The case R.R. v. Poland concerns the second premise for a legal abortion – the malformation of the foetus. The applicant stated that she was deliberately refused genetic tests during her pregnancy by doctors who were opposed to abortion. The woman and the doctors suspected a severe genetic abnormality in the foetus[46]. R.R.

[38] *Ibidem,* par. 106.

[39] *Ibidem*, par. 116.

[40] *Ibidem*.

[41] *Ibidem*, par. 117.

[42] *Ibidem*.

[43] *Ibidem*.

[44] *Ibidem*, par. 118.

[45] *Ibidem*, par. 120-130.

[46] R.R. v. Poland, *op, cit*., par. 9.

tried desperately to obtain the relevant genetic tests, allowing her to make an informed decision about whether or not to terminate her pregnancy. She saw five different doctors and went to several hospitals and clinics, she even travelled to doctors in other regions than her own – at one point she was even hospitalized for a few days, during which time the doctors only carried out irrelevant tests[47]. Only when it was too late for an abortion, in the twenty-third week of pregnancy a genetic test was performed, and the applicant was told that she had to wait two weeks for the results[48]. The results confirmed her suspicion that the foetus she was carrying had a genetic abnormality[49]. However, on that date the doctors refused to carry out an abortion, saying that it was too late as the foetus was able to survive outside the mother's body[50]. The child was subsequently born with Turner syndrome[51].

The Court stated that the right of access information about one's health falls within the ambit of the notion of private life and that during pregnancy the foetus' condition constitutes an element of the pregnant woman's health[52]. The effective exercise of this right is often decisive for the possibility of exercising personal autonomy, also covered by Article 8 of the Convention[53]. In relation to article 3 of the European Convention, which contains the prohibition of inhuman and degrading treatment, the Court observed that the ill-treatment must attain a minimum level of severity if it is to fall within the scope of article 3. The assessment of this minimum level depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim[54]. The Court recognized that the applicant found herself in a situation of great vulnerability[55]. As a result of the procrastination of the health professionals, she had to endure weeks of painful uncertainty concerning the health of the foetus, her own and her family's future and the prospect of raising a child suffering from an incurable condition. She suffered severe anguish through having to think about how she and her family would be able to ensure the child's welfare, happiness and appropriate long-term medical care[56]. As the Court noted: "it is a matter of great regret that the applicant was so shabbily treated and humiliated by the doctors dealing with her case"[57]. Thus, in the Court's opinion, the applicant's suffering reached the minimum threshold of severity under article 3 of the Convention and therefore there has been a breach of that provision[58].

[47] *Ibidem*, par. 12-26.
[48] *Ibidem*, par. 28.
[49] *Ibidem,* par. 33.
[50] *Ibidem*.
[51] *Ibidem*, par. 37.
[52] *Ibidem,* par. 197.
[53] *Ibidem*.
[54] *Ibidem,* par. 148.
[55] *Ibidem,* par. 159.
[56] *Ibidem*.
[57] *Ibidem*, par. 160.
[58] *Ibidem*, par. 161-162.

P. and S. v. Poland

The last case chosen for the analysis, P. and S. v. Poland, is especially remarkable as it touches upon a whole set of important issues, such as unlawful detention, the reproductive rights of adolescents and disclosure of the applicant's personal and medical data. The timeline starts on 8th April, when P., fourteen years old at that time, is raped by a classmate**.** On 9th April, P. for the first time goes with her friend to a public hospital. The medical staff tells her that they could neither examine her nor provide medical assistance because she was a minor and she needs the consent of her legal guardian. The case is being reported to the police and her parents are notified[59].

As the rape resulted in pregnancy, on 20th May the prosecutor issues a certificate stating that the first applicant's pregnancy had resulted from unlawful sexual intercourse with a minor under 15 years of age[60]. The mother of P., the second applicant in this case, contacts Dr. O, a regional consultant for gynecology and obstetrics, to ask for a referral for an abortion[61]. He tells her that he is not obliged to issue a referral and advises the second applicant to "get her daughter married"[62]. After an argument, the doctor tells her to report to Jan Boży Hospital.

On 26th May, the applicants refer to that hospital. They are told that they have to wait until the head of the gynecological ward, Dr. W. S., returns from holiday[63]. On 30th May Dr. W.S. returns from holiday and she says she needs time to make a decision. She asks them to return on 2nd June. She then calls the second applicant separately to her office and asks her to sign the following statement: "*I am agreeing to the procedure of abortion and I understand that this procedure could lead to my daughter's death*"[64].

On 2nd June the first applicant returns to the hospital alone, as her mother is working. Dr. W.S. takes her to talk with the Catholic priest, K.P. The applicant is not asked if she wishes to see the priest and what her faith is[65]. The priest tries to convince her to carry the pregnancy to term. He asks her to give him her phone number, which she does. The applicant is given a statement written by Dr. W.S. to the effect that she wants to continue with the pregnancy and she signs it. She will later say that she signs it as she does not want to be impolite to the doctor and priest[66]. The second applicant arrives to the hospital. Dr. W.S. tells her that she is a bad mother and that she will adopt both P. and the baby that will be born[67]. The

[59] *Ibidem*, par. 6.

[60] *Ibidem*, par. 8-10.

[61] *Ibidem*, par. 11.

[62] *Ibidem*, par. 13.

[63] *Ibidem*, par. 14.

[64] *Ibidem*, par. 15.

[65] *Ibidem*, par. 17.

[66] *Ibidem*, par. 19.

[67] *Ibidem*, par. 20.

first and the second applicant leave the hospital as the doctor says she will not perform an abortion.

On an unspecified date the Jan Boży Hospital issues a press release to the effect that it would not perform an abortion in the applicants' case. Journalists who contacted the hospital were informed of the circumstances of the case. The case becomes national news. A number of articles are published by various local and national newspapers. It is also the subject of various publications and discussions on the internet[68]. On 3rd June the applicants go to Warsaw and contact the doctor recommended by a non-governmental organization and P. is admitted to the hospital. On 4th June they are informed that P. has to wait three days before having an abortion. The same day P. receives a message from the priest that he is working on her case. She also receives numerous texts from unknown parties. The priest comes to the hospital in Warsaw together with an anti-abortion activist. They are allowed to talk with P. in her mother's absence[69]. The doctor who admitted the girl to the hospital says that they are receiving a lot of pressure to discourage the staff from performing the abortion[70]. On 5th June the applicants decide to leave the hospital. They are harassed by anti-choice activists waiting at the hospital entrance. The police arrives and takes both applicants to the police station[71].

On the same day the applicant are questioned from 4 p.m. to 10 p.m. at the police station. The officers show them the family court decision restricting S. parental rights and order to place P in a juvenile shelter[72]. P. is taken to the police car, driven around Warsaw. As no juvenile shelter accepts her, the girl is driven back to her hometown, where around 4 am she is placed in a shelter, in a locked room, without her mobile phone[73]. On 6th June the priest visits her and tells her that he will lodge an application with the court requesting to transfer her to a single mother's home run by the Catholic church. Later that day the first applicant starts to experience bleeding. She is taken again to the Jan Boży Hospital. A number of journalists come to see her and try to talk to her[74]. On 14th June she is discharged from the hospital and due to the court decision, she is allowed come back home with her parents[75]. Meanwhile, between 9th and 13th June, the second applicant, S., files a complaint with the Office for Patient's Rights of the Ministry of Health asking to help her daughter obtain a legal abortion that she is entitled to[76]. On 16th June S. is informed by a Ministry Official that the issue was resolved and that her daughter can undergo an abortion. However, she will have to go to Gdańsk, 500 km from her hometown. On 17th June the Ministry of Health sends a car for the applicants and

[68] *Ibidem*, par. 23-24.

[69] *Ibidem*, par. 25-26.

[70] *Ibidem*, par. 27.

[71] *Ibidem*, par. 28.

[72] *Ibidem*, par. 29.

[73] *Ibidem*, par. 30

[74] *Ibidem*, par. 32.

[75] *Ibidem*, par. 33-38.

[76] *Ibidem*, par. 39.

they are driven to Gdańsk. The first applicant has an abortion there in a public hospital. The applicants submitted that the trip to Gdansk and the abortion were carried out in a clandestine manner, despite the termination being lawful. When the applicants came back home, they realize that information about their journey to Gdańsk has been put on the Internet by the Catholic Information Agency that day at 9 a.m.[77].

Firstly, the Court observed that there is a consensus amongst majority of the Member States of the Council of Europe towards allowing abortion and that most Member States have resolved the conflicting rights of the foetus and the mother in favor of greater access to abortion[78]. The existence of the European consensus means that there exists an agreed practice between the Member States and this has a legitimizing potential.

As in the case of P. the CO was one of the crucial factors in her access to legal abortion, it is also reflected in the reasoning of the Court. The Court noted that States are obliged to organize their health service system in such a way as to ensure that the effective exercise of freedom of conscience by health professionals in a professional context does not prevent patients from obtaining access to services to which they are entitled under the applicable legislation[79]. In this regard, the Court noted that Polish law has acknowledged the need to ensure that doctors are not obliged to carry out services to which they object, and put in place a mechanism by which such a refusal can be expressed. This mechanism includes elements allowing the right to conscientious objection to be reconciled with the patient's interests, by making it mandatory for such refusals to be made in writing and included in the patient's medical record and, above all, by imposing on the doctor an obligation to refer the patient to another physician competent to carry out the same service. However, it has not been shown that these procedural requirements were complied with in the case of P. or that the applicable laws governing the exercise of medical professions were duly respected[80].

The Court found that the staff involved in P.'s case did not consider themselves obliged to carry out the abortion expressly requested by the applicants on the strength of the certificate issued by the prosecutor. The events surrounding the determination of the first applicant's access to legal abortion were marred by procrastination and confusion. The applicants were given misleading and contradictory information. They did not receive appropriate and objective medical counselling which would have due regard to their own views and wishes. No set procedure was available to them under which they could have their views heard and properly taken into consideration with a minimum of procedural fairness[81]. Thus the Court stated that there has been a violation of the article 8 of the European Convention.

[77] *Ibidem*, par. 41.

[78] *Ibidem*, par. 97.

[79] *Ibidem*, par. 106.

[80] *Ibidem*, par. 107.

[81] *Ibidem*, par. 108.

In analyzing the breach of article 3 of the Convention, the Court pointed out the very young age of the applicant at the material time and the fact that the medical certificate issued immediately after reporting the rape confirmed bruises on the applicant's body and concluded that physical force had been used to overcome her resistance[82]. These circumstances, together with the state of unwanted pregnancy, created a situation of great vulnerability for the applicant[83]. This state was aggravated by the way the applicant had been treated by the medical and law-enforcement authorities, who failed to provide protection to her, having regard to her young age and vulnerability. It is also striking that that the authorities decided to institute criminal investigation on charges of unlawful intercourse against P. who, according to the prosecutor's certificate and the forensic findings, should have been considered to be a victim of sexual abuse[84]. Thus, the Court concluded that the suffering of the applicant reached the minimum threshold of severity under article 3 of the Convention and that there has therefore been a breach of that provision[85].

International obligations of Poland

As was mentioned beforehand, although reproductive rights are not expressed in one single human rights instrument, various elements of reproductive rights are protected by the main United Nations and regional human rights instruments, such as for example the UN Convention on the Elimination of All Forms of Discrimination against Women or the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Poland as a state party to these international treaties has taken responsibility to comply with international standards, including those developed by diverse treaty bodies.

In previously mentioned General Comment No. 14 on the right to the highest attainable standard of health, expressed in the article 12 of the International Covenant on Economic, Social and Cultural Rights, the Committee on Economic, Social and Cultural Rights, not only defined the reproductive health, but also noted that in order to fully safeguard and realize women's rights to health, the removal of all barriers interfering with access to health services, education and information, including in the area of sexual and reproductive health is necessary. The Committee also underlined that "it is also important to undertake preventive, promotive and remedial action to shield women from the impact of harmful traditional cultural practices and norms that deny them their full reproductive rights"[86].

In 2010, the Human Rights Committee, the body of independent experts that monitors implementation of the International Covenant on Civil and Political

[82] *Ibidem*, par. 161.

[83] *Ibidem*, par. 162.

[84] *Ibidem*, par. 165.

[85] *Ibidem*, par. 169.

[86] UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 14…, op. cit*. par. 21.

Rights by its state parties, reviewed Poland's sixth periodic report. In its Concluding Observations, the Committee called for greater information on the use of the conscientious objection clause. The availability of such information would make it possible to monitor the effects of the clause being used: "the Committee is concerned that, in practice, many women are denied access to reproductive health services, including contraception counselling, prenatal testing and lawful interruption of pregnancy. It notes with concern that procedural safeguards contained in article 39 of the Act of 5 December 1996 on the Medical Profession ("conscience clause") are often inappropriately applied"[87] and that Poland "should introduce regulations to prohibit the improper use and performance of the "conscience clause" by the medical profession. The State party should also drastically reduce medical commissions' response deadline in cases related to abortions"[88]. In 2016, the Human Rights Committee reiterated its concerns about widespread use of CO in Poland, noting that: "(a) the so-called "conscience clause" in article 39 of the Act on Medical and Dental Professions has, in practice, often been inappropriately invoked, with the result that access to legal abortion is unavailable in entire institutions and in one region of the country; (b) as a result of the judgment of the Constitutional Tribunal of October 2015, there is no reliable referral mechanism for access to abortion following the exercise of conscientious objection; and (c) in some areas of the State party, few if any health providers are willing to offer legal abortion services"[89].

The other UN treaty body, Committee on the Elimination of Discrimination against Women, responsible for monitoring the implementation of the Convention on the Elimination of All Forms of Discrimination against Women, in 2014 was also concerned about the extensive use, or abuse, by medical personnel of the conscientious objection clause in Poland and recommended the state party to "establish clear standards for a uniform and non-restrictive interpretation of the conditions for legal abortion so that women may access it without limitations owing to the excessive use of the so-called conscientious objection clause by doctors and health institutions and ensure effective remedies for contesting refusals of abortion, within the revision of the Act on Patient Rights"[90].

Furthermore, Poland as a member state of the Council of Europe and a party to European Convention on Human Rights is obliged to respect and comply with the judgements of the ECHR. The attitude of Poland, however, continuous to shift further from the views expressed by the ECHR. As a response, on 11th March 2021, the Committee of Ministers, made up of the Ministers for Foreign Affairs of the Council of Europe member States, which ensures continuous supervision of the ex-

[87] HRC, Concluding Observations of the Human Rights Committee on Poland's 6th Periodic Report, UN doc. CCPR/C/POL/CO/6, 2010, par. 12.

[88] *Ibidem*.

[89] HRC, Concluding Observations of the Human Rights Committee on the seventh periodic report of Poland, UN doc. CCPR/C/POL/CO/7, par. 23.

[90] CEDAW, Concluding observations on the combined seventh and eighth periodic reports of Poland, UN doc.

CEDAW/C/POL/CO/7-8, 2014, par. 37(b).

ecution of judgments and decisions of the ECHR issued an Interim Resolution calling on Poland to adopt clear and effective procedures on steps women need to take to access lawful abortion[91]. The Interim Resolution relates to Poland's implementation of the three judgments that were the object of analysis in this article and the lack of compliance with them. It urges the Polish authorities to ensure that lawful abortion and pre-natal examination are effectively accessible across the country without substantial regional disparities and without delay caused by the refusal to perform it due to the use of the conscience clause or to restrictions due to the COVID-19 pandemic.

Conclusions

Sexual and reproductive rights, including the right to sexual and reproductive health, are essential elements of the human rights framework. Without it, our ability to make autonomous and informed decisions about our bodies, our health, our sexuality, and whether or not to reproduce, is seriously weakened.

The right to enjoyment of the highest attainable standard of physical and mental health is enshrined *inter alia* in articles 12 of the International Covenant on Economic, Social and Cultural Rights and the Convention on the Elimination of All Forms of Discrimination against Women. Although the European Convention on Human Rights does not include the right to health, as the ECHR has repeatedly noted, the Convention is a living instrument. Thus, the Court's jurisprudence regarding women's sexual and reproductive health and rights continues to evolve and until now has been developed under the scope of article 3 (prohibition of torture) and article 8 (right to respect for private and family life) of the European Convention. In all the cases presented above the applicants had a right to obtain a legal abortion, yet this right was denied to them. Although the Polish Law provides that if a doctor wants to refuse a medical treatment based on their conscience, they need to issue a written statement and above all – refer a patient to another doctor, in none of the analyzed cases, though the doctors clearly refused the abortions due to their religious beliefs, were the patients were referred to another doctors or hospitals. On the contrary, the medical staff did all they could to prevent access to lawful abortion.

The analysis of the three cases against Poland provides an overview of an evolution in the approach of the Court to the cases concerning the women's reproductive rights, setting some standards that should be taken into account by the Member States. First of all, in the case Tysiąc v. Poland the Court stated that under Article 8 of the Convention, "private life" includes decisions to have or not to have children and decisions by a pregnant woman to continue her pregnancy or not. And the States are under positive obligation to provide an efficient legal framework and

[91] Council of Europe, Committee of Ministers, Interim Resolution CM/ResDH(2021)44, Execution of the judgments of the European Court of Human Rights Tysiąc, R.R. and P. and S. against Poland, Adopted by the Committee of Ministers on 11 March 2021 at the 1398th meeting of the Ministers' Deputies.

mechanisms to make the rights envisaged in the Convention effective, not only theoretical or illusory.

Furthermore, the Court noted that the legal prohibition on abortion, taken together with the risk of criminal responsibility, can well have a chilling effect on doctors when deciding whether the requirements of legal abortion are met in an individual case. As such, the States, once they decide to allow abortion, they must not structure their legal framework in a way that would limit real possibilities to obtain it.

In the case R. R. v. Poland the Court agreed with the applicant that the way she was treated by the medical staff, intentionally delaying genetic tests that would confirm or exclude the possibility of the malformation of the fetus, resulting in hindering her the possibility of making an informed decision about termination of her pregnancy amounted to degrading treatment and constituted violation of art. 3 of the Convention.

In the case P. and S. v. Poland the Court observed that the freedom of thought is not an absolute right and that States are obliged to organize their health service system in such a way as to ensure that the effective exercise of freedom of conscience by health professionals in a professional context does not prevent patients from obtaining access to services to which they are entitled under the applicable legislation.

Thus, the analysis of the case-law of the ECHR makes evident that access to legal abortion is demonstrably affected by a high prevalence of conscientious objection and strict and clear regulations are necessary if the conscientious objection is not to jeopardize the women's reproductive rights.

Moreover, it has to be noted that the access to the ECHR is not effortless, as it requires time, determination and unfortunately money. As such, not everyone can afford to have his or her case heard by the ECHR. The fact that there are three similar cases that were ultimately delivered to the ECHR can well mean that there may be thousands of similar stories that we will never hear about.

This is somehow demonstrated by the official data by Polish Ministry of Health: in 2017 there were 1057 procedures of legal abortion nationwide. In 1035 of those cases the termination was caused by embryopathological factors; 22 procedures were conducted in order to protect the life and health of the pregnant woman and no abortion was carried out on grounds of the registered pregnancy having been caused by a criminal act[92]. And according to the Polish NGO dealing with reproductive health, Federation for Women and Family Planning, only 10% of hospitals perform legal abortions[93].

[92] Sprawozdanie Rady Ministrów z wykonywania oraz o skutkach stosowania w 2017 r. ustawy z dnia 7 stycznia 1993 r. o planowaniu rodziny, ochronie płodu ludzkiego i warunkach dopuszczalności przerywania ciąży, Druk sejmowy nr 3185 Warszawa, 10 stycznia 2019 r. [Report on the Implementation of the the Family Planning, Human Embryo Protection and Conditions of Permissibility of Abortion, Act of 7 January 1993 in 2017] p. 105.

[93] ASTRA Network 2020. *The fight hidden in plain sight. Sexual and reproductive health and rights in Central and Eastern Europe and Central Asia.* Warsaw: ASTRA Network Secretariat. p. 82.

It is hard to believe that in a whole year there have not been any single cases of rape that would result in an unwanted pregnancy. Especially having in mind that the statistical data on sexual assaults in Poland is also quite alarming. Have the victims been refused legal abortion due to CO? Have they turned towards the clandestine abortion in Poland or travelled to the Czech Republic or Germany to have the abortion performed there? Have they given birth to the child they did not want?

In the upcoming years the situation may worsen significantly considering the recent ruling of the Polish Constitutional Tribunal. On 22nd October 2020 Constitutional Tribunal issued a ruling (K 1/20) finding abortion on the grounds of "severe and irreversible foetal defect or incurable illness that threatens the foetus' life" unconstitutional. As represented by the data from 2017, most of the lawfully performed terminations of pregnancy in Poland were done on the premise of severe and irreversible fetal defect or incurable illness that threatens the foetus' life. The issue of the ruling and its subsequent publication on 27th January 2021 sparked massive protests in Poland. The ruling clearly violates international treaties Poland is a party to. In particular, it fails to take into account the need to protect the inherent dignity of women and it violates the prohibition of cruel treatment and torture, the right to the protection of private life and the right to health. It also goes contrary to the judgments of the ECHR, which establish the minimum and necessary standards of reproductive health care. As such, one of the pending issues towards regulation of sexual and reproductive rights should be more comprehensive regulation, if not a complete removal of conscientious objection, especially in the countries where access to legal abortion is highly limited, as CO makes this access completely illusory.

DEP Deportate, esuli, profughe
Rivista telematica di studi sulla memoria femminile

Violencia obstétrica: qué, cómo, cuándo, dónde, por qué y quiénes.

Reflexiones a partir de una investigación situada en Argentina

di

Belén Castrillo[*]

Abstract: Following the 5w method, this article approach to obstetric violence and presents answers to the questions (*what* it is, *how* it is expressed, *when* it materializes, *where* it is exercised, *why* it is reproduced and *who* exercises it and suffers it) through an extensive bibliographic reconstruction of the) social sciences and the results of a doctoral research in the city of La Plata, Argentina (2013-2021).

Introducción

El *método de las 5w* (what, why, where, when, who) *y la h* (how) es una técnica utilizada en el mundo de la comunicación que permite comprender las aristas principales de un problema, previo a pensar sus posibles soluciones o con el objetivo de presentar una comprensión acabada del mismo. Entre sus ventajas, contribuye a generar una representación clara y universal de un tema, y como herramienta de gestión para las áreas de planificación aboga por devenir en planes de acción estructurados, basados en una sistematización y jerarquización de datos.

Para el caso de la violencia obstétrica (VO), un significante surgido en Latinoamérica en el nuevo milenio – según reconoce la ONU (Simonovic 2019), que aglutina actores/as, instituciones, quehaceres profesionales, saberes, experiencias, políticas públicas y relaciones de poder, propongo la aplicación de esta técnica periodística con el objetivo de contribuir a su comprensión, desde una mirada sociológica que interesecciona género, salud y derechos humanos (DDHH).

En este sentido, el presente artículo presenta respuestas a las seis preguntas guías (*qué* es la VO, *cómo* se expresa, *cuándo* se materializa, *dónde* se ejerce, *por*

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qué se reproduce y *quiénes* la ejercen y la sufren) a través de la reconstrucción bibliográfica que realicé en los años de investigación en el área. Asimismo, me apoyaré en los resultados de la tesis doctoral (Castrillo 2019) en la que investigué experiencias de mujeres-madres[1], varones-padres y profesionales de la salud obstétrica sobre intervenciones médicas en embarazos y partos en la ciudad de La Plata – capital de la provincia de Buenos Aires, Argentina – entre 2013 y 2019. Dicha tesis de referencia analizó diversas instancias de la atención médica del proceso perinatal en la ciudad de La Plata, con técnicas metodológicas complementarias: observaciones con distintos grados de participación en seis cursos de preparto y salas de espera; veinte entrevistas en profundidad a mujeres-madres, varones-padres, profesionales de la salud y funcionarios/as sanitarios/as; y un extenso corpus de charlas informales y presencias en el campo, desde mayo de 2013 hasta marzo de 2019[2].

A continuación se presenta un apartado por cada pregunta, como dimensiones de análisis, que pretenden contribuir a la comprensión de esta violencia de género en salud, basada en relaciones de poder médico-paciente asimétricas, con expresiones situadas en cada contexto particular. Además, en cada apartado y según corresponda, se dará cuenta de datos correspondientes al trabajo de investigación empírico mencionado.

What: ¿qué es la violencia obstétrica?

La violencia obstétrica, categoría nacida en Latinoamérica para nominar las formas de maltrato, abuso y sobremedicalización presente en la atención perinatal, tiene su origen en el proceso de hegemonización de la definición médica de su abordaje. Esto es: la construcción del nacimiento como un evento médico – y no ya social, sexual, privado, comunitario –, que encuentra su origen en la hospitalización y la profesionalización de su atención ocurrida hace poco más de un siglo, ha devenido en la patologización del proceso y la dominancia de la intervención médica como la única legítima para definirlo y abordarlo.

En 1985, la Organización Mundial de la Salud en la *Declaración de Fortaleza* (surgida en la reunión realizada en dicha locación brasilera) estableció la primera declaración pública[3] que recoge lo que diversas organizaciones comunitarias feministas venían señalando: el modelo médico hegemónico había transformado los embarazos y partos en hechos de enfermedad, plausibles de ser sobreintervenidos

[1] La autora de este trabajo reconoce que en la actualidad, en el caso de Argentina, se utiliza el sujeto "personas gestantes/con capacidad de gestar" para incluir las diferencias genéricas existentes. De todos modos, y a los fines de este capítulo, se unificará el uso en "mujeres" por el recorte elegido de las unidades de investigación de la investigación de base. Asimismo es preciso establecer que trabajar solo con parejas heterosexuales fue una decisión metodológica.

[2] Posterior a esta primera etapa, actualmente la indagación se concentra en la formación médica obstétrica como nicho de condensación y cristalización de ciertos factores que reproducen la VO.

[3] https://aesmatronas.com/wp-content/uploads/2017/12/DECLARACION_DE_FORTALEZA.pdf.

bajo esta mirada biomédica patologizante. La epidemia de cesáreas y episiotomías[4], la naturalización de partos como eventos traumáticos, la soledad de las mujeres gestantes en salas de parto e internación puerperal, el aumento del maltrato, la sobre medicación e inducción farmacológica del evento fisiológico, son solo algunos de los índices que marcaban la necesidad de repensar los modos en que parimos y nacemos.

En ese marco, la lucha por la necesidad de humanizar la atención obstétrica se combinó con la necesidad de visibilizar y denunciar las experiencias que a diario viven las mujeres en las salas de parto, controles prenatales, atención de abortos incompletos e internaciones puerperales. Así, en 2007 en Venezuela se oficializó la primera definición mundial de VO, presente en la Ley orgánica sobre el derecho de las mujeres a una vida libre de violencia, que la enunciaba como

> [...] toda conducta, acción u omisión, realizada por personal de la salud que de manera directa o indirecta, tanto en el ámbito público como en el privado, afecte el cuerpo y los procesos reproductivos de las mujeres, expresada en un trato deshumanizado, un abuso de medicalización y patologización de los procesos naturales.

Esta definición, que incluye acciones, ámbitos de atención, victimarios/as y víctimas, es la carta insignia de muchas legislaciones que surgieron luego. Para el caso argentino, se da una situación particular: en 2004, se legisla sobre los "Derechos de padres e hijos durante el proceso de nacimiento" (Ley N° 25.929/04, conocida como Ley de parto respetado[5]) y, recién cinco años después, se incluye la VO como una de las seis modalidades de violencia contra las mujeres en la Ley N° 26.485/09 (Ley de Protección Integral para Prevenir, Sancionar y Erradicar la Violencia contra las Mujeres en los ámbitos en que desarrollen sus relaciones interpersonales). Así, se genera un entramado legislativo que supone que la violación a los derechos establecidos en la primera ley implica VO en términos de la segunda, en tanto se define esta violencia como "aquella que ejerce el personal de salud sobre el cuerpo y los procesos reproductivos de las mujeres, expresada en un trato deshumanizado, un abuso de medicalización y patologización de los procesos naturales".

Si bien reproduce lo central de la definición venezolana, en Argentina la consideración de la VO como una violencia de género implica una apuesta simbólica y política fundamental, porque permite comenzar a vislumbrar de qué modos la institución médica, ligada al bienestar y a la salud, reproduce patrones patriarcales, de subordinación de las mujeres, bajo la primacía de la dominación biomédica sobre los modos de nacer y parir.

Junto a las definiciones legales que, como ha advertido la ONU en 2019 (Simonovic 2019), dan cuenta de que VO es un concepto nacido en Latinoamérica, es en estas latitudes también donde han florecido fructíferas problematizaciones académicas de las ciencias sociales al respecto. Los estudios socio-antropológicos so-

[4] Se refiere al corte quirúrgico que se realiza en la zona del periné para ampliar el canal vaginal durante el período expulsivo. Su epidemia, es decir, su realización rutinaria y sin indicación, es considerada la mutilación genital de occidente.

[5] La Ley, resultante de la articulación de un proyecto de una organización feminista y de un proyecto del ejecutivo nacional, se sancionó en septiembre de 2004 pero se reglamentó once años después: en octubre de 2015.

bre la atención médica de embarazos y partos, si bien tienen sus orígenes en la segunda mitad del siglo XX, adquieren en las últimas décadas la particularidad de una explosión bibliográfica en torno a la pregunta por la VO: experiencias situadas, posibles causas y soluciones, abordajes teóricos diversos y distintos aspectos iluminados, entre otros.

Estas definiciones académicas de la VO, amparadas en los estudios sociales del proceso salud-enfermedad-atención (Menéndez 1992; Castro 2011), tienen como punto de partida la consideración de que la práctica médica en tanto práctica social (y no técnico-inocua) expresa relaciones de poder, posiciones de clase, jerarquías, incluso sujeción y formas de violencia, y supone, entre otras cosas, a los/as pacientes como sujetos subalternizados y pasivos. En esas relaciones de poder asimétricas se dan condiciones para que se ejerzan violencias sobre las mujeres-madres, los varones-padres y los/as recién nacidos/as. Se trata de formas específicas de violencia que se dan en la atención obstétrica, que constituyen violaciones a los derechos humanos y (no) reproductivos de las mujeres "y es producto de un entramado multifactorial en donde confluyen la violencia institucional y la violencia de género" (Medina 2010, p. 121).

Arguedas Ramírez (2014) entiende la VO como el "conjunto de prácticas que degrada, intimida y oprime a las mujeres y a las niñas en el ámbito de la atención en salud reproductiva y, de manera mucho más intensa, en el período del embarazo, parto y posparto" (p. 3). En efecto, las definiciones académicas permiten vincular la cuestión de la violencia de género que enmarca la VO a la violencia institucional en salud, y explican, como Magnone Alemán (2011, p. 3), que ambas violencias "son posibles porque las sostienen sistemas de poder jerárquicos de género y de salud, respectiva e interconectadamente".

Así, a partir de la lente socio-antropológica ha sido posible establecer que este tipo de violencia es resultante del cruce entre sistemas desiguales de género y violencia institucional en salud (Magnone Alemán 2010); que se ampara en mecanismos de desautorización de las mujeres y sus saberes en el momento de la atención de su proceso gestacional (Sadler 2003); que puede pensarse en sus dimensiones física y psicológica (Medina 2010); que es la expresión de una violencia básica en la atención de la salud (Camacaro Cuevas 2000); o, más claramente, la institucionalización de una violencia de género (Canevari 2011). En términos generales, desde un abordaje sociológico, que propone una mirada de género en salud y de derechos humanos, entendemos la VO como violaciones a derechos humanos, resultante de la estructura de poder del campo médico y del habitus médico autoritario que genera (Castro 2014).

Castro y Erviti (2014, 2015) trabajan en aportar una conceptualización sociológica de la VO, entiendiéndola no como una cuestión de calidad en la atención médica, como se sostiene desde una mirada de la salud pública, sino como una violación a derechos sexuales y reproductivos de las mujeres inherente a la estructura del campo médico. En este sentido, entiende la violación de estos derechos humanos a las mujeres durante la atención obstétrica "como un epifenómeno del campo médico que se manifiesta en las prácticas cotidianas que resultan del rutinario encuentro entre la estructura de poder de dicho campo y el habitus de los médicos" (Castro y Erviti 2014, p. 40). O, en otras palabras, como "un efecto de la estructura

de poder del campo médico y de la lógica-práctica que caracteriza el habitus de los prestadores de servicios" (Castro 2014, p. 176). Esto quiere decir que hablar de calidad de atención reduce el problema y supone soluciones técnicas y de recursos humanos, y, en cambio hablar de vulneraciones a derechos humanos requiere conceptos sociológicos, políticos y cambios de paradigma.

Entonces, ¿qué es la VO? Es la violación a derechos sexuales, reproductivos, no reproductivos y humanos que se da durante la atención de los procesos perinatales (embarazo, parto, puerperio y aborto), en manos de profesionales de la salud e instituciones sanitarias, que se origina en la medicalización, intervencionismo y patologización de los nacimientos y la gestión biomédica de los mismos.

Situando el significante VO para el caso empírico analizado, es preciso destacar dos cuestiones: primero, que Argentina en su definición legal contempla que no solo el evidente maltrato, sino la construcción misma del parto como evento médico susceptible de intervención, puede constituir VO, por exceso de medicalización. Y segundo que, como advertí y concluí en mi trabajo doctoral, la apropiación subjetiva de esta definición y la autopercepción de las víctimas como tales, es casi nula, en tanto la hegemonía de una mirada que privilegia las decisiones médicas sobre la atención y experiencias obstétricas, se encuentra enquistada en distintos ámbitos de atención y sectores socioculturales. Así, se pudieron recabar experiencias que, a las luces de lo que establece el entramado legal, constituían formas leves y graves de VO, pero eran acompañadas por justificaciones por parte de sus relatores/as. Al respecto, y como decisión metodológica, en el último capítulo de la tesis, consideré mencionar aquellos ejemplos que en los relatos de parto constituían violaciones a derechos, aunque las personas indagadas no los hubieran considerado como tales. Entre ellas, por ejemplo:

> El obstetra me cargaba "sos de campo, sos fuerte" o cosas así (…) y me decía "te la estoy cosiendo…" porque me hizo un punto, "te la estoy dejando divina para el pelado [el esposo]", o sea me hacía, como chiste en ese momento, yo calculo que era también para distraerme mientras veían si la llevaban a neo o no, que en realidad enseguida, la sacaron y dijeron "no, no va a neo, está divina, está re, es re grandota" (Entrevista a Natalia y Lito, atención en institución privada).

"El punto para el marido", nombre que le puso la militancia, implica achicar el tamaño de la vagina en el momento de la sutura de la episiotomía. Intervención, la episiotomía, que responde a una epidemia intervencionista que también ha sido denunciada por la OMS y que resulta de la posición litotómica para parir, que no permite el trabajo de los músculos del suelo pélvico y del miedo profesional al desgarro natural. La desexualización del parto al convertirlo histórica y simbólicamente en un acto médico, se rompe al resexualizar la vagina una vez ocurrido el nacimiento, presentada como un nuevo pacto patriarcal entre varones: el obstetra y la pareja. El regalo del doctor al padre del/la bebe: el cuerpo virgen, como si aquí no hubiera pasado nada, de su mujer, para aumentar el placer sexual de él.

En este sentido, los trabajos de campo de situados – y ejemplos como el recién plasmado – nos permiten dar cuenta de las brechas, obstáculos y distancias entre ciertas normativas de avanzada, y la escasa apropiación subjetiva de lo que nominan.

***How*: ¿cómo se expresa?**

La imagen de los icebergs nos ha servido a las teóricas feministas para explicar las violencias de género que nos atraviesan socialmente: una pequeña parte visible que oculta el gran trasfondo que la sustenta. Para el caso de la VO es justamente la definición médica del evento perinatal (y la construcción de la institución biomédica como la única legítima para abordarlo, con sus técnicas, actores/as y métodos) eso que no vemos pero que la sostiene.

A su vez, es preciso distinguir las materializaciones de esta violencia en formas sutiles y formas visibles. Esto es, por un lado las formas visibles o notorias de VO, ligadas al maltrato en la relación médico-paciente o a efectos extremos (muerte perinatal, heridas físicas, incapacitación, histerectomías, entre otros) más enlazados a la mala praxis que tienden a desviar las discusiones, en tanto la VO y la mala praxis son dos cuestiones distintas. El asunto es que, a nivel comunicacional y político se buscan estos casos de alto impacto para justificar la importancia de trabajar en la erradicación y prevención de esta violencia, desconociendo lo negativo de centrar su conceptualización en casos extremos. El costo es, básicamente, invisibilizar que es en la (sutil y enraizada) definición médica del evento perinatal que se encuentra el núcleo de la (re)producción de la VO, encarnado en relaciones de poder asimétricas entre médicos/as y pacientes, y el predominio de las normas institucionales sanitarias por sobre la fisiología, los cuerpos, los procesos reproductivos y los DDHH de las mujeres.

En este sentido, por otro lado, distingo lo que entiendo como formas sutiles de VO, vinculadas a la estructura de dominación médica e investidas de carácter clínico: es decir, prácticas aparentemente necesarias en la gestión biomédica del parto que, sin embargo, han sido cuestionadas y discutidas mundialmente por entidades científicas y médicas hace más de cinco décadas. Entre estas intervenciones que se realizan de forma masiva y rutinizada, en la literatura y en el trabajo de campo empírico se repiten, algunas de carácter pretendidamente clínicas (cesáreas innecesarias, episiotomías didácticas o "por prevención", inducciones farmacológicas masivas – y algunas sin consentimiento –, goteos de oxitocina sintética, rotura artificial de bolsa, vías intravenosas obligatorias, monitoreos fetales continuos, tactos repetidos, anestesia compulsiva o no oferta de analgesia) con otras que responden a usos y costumbres institucionales, en cuyo carácter simbólico de dominación y reproducción de la jerarquía médica por sobre los derechos de la mujer y la fisiología del evento perinatal, reposa la VO. Entre estas últimas, la inmovilización, la prohibición de comer, beber y moverse, la soledad (el aislamiento obligatorio por no permitirle estar acompañada) o la falta de intimidad en salas de internación conjuntas, la prohibición de gritar/gemir/llorar y expresar emociones, la no comunicación de la evolución del trabajo de parto, el parto y la salud del/la recién nacido/a, el maltrato verbal durante todo el proceso.

En este sentido, retomando a Villanueva Egan (2010), se puede pensar la VO en un continuo que va desde regaños, burlas, humillaciones, manipulación de la información y negación al tratamiento, hasta daños mayores a la salud de las mujeres. Incluye, además, la no consulta (ni la posibilidad de participación) sobre decisiones que se toman en el curso del trabajo de parto, su utilización como recurso

didáctico sin autorización y el manejo del dolor durante el proceso como castigo. Todo esto enmarcado en la imposibilidad de negarse, dado que "desde el momento en que ingresan a la sala de labor, las mujeres reciben una serie de mensajes, que las instruyen sobre la conveniencia de someterse a las órdenes de los médicos" (Villanueva Egan 2010, p.148).

Para el caso de Argentina hay un modo esquemático de advertir cuándo estamos frente a casos de VO: cuando se violan los derechos que establece la ley de parto respetado lo que, lógicamente, no es exclusivo ni excluyente. En este sentido, si no se permite el acompañamiento de la persona que la gestante elija en toda la internación perinatal, si no se le permite elegir la posición para parir, si no se la informa sobre la evolución de su estado de salud y ni se le pide consentimiento para cada una de las intervenciones médicas que se le quieran realizar, si se le prohíbe moverse, comer y beber durante el trabajo de parto, si se la utiliza como objeto de estudio sin su autorización6, si se la separa de su bebé y no se le permite el contacto inmediato, si no se respeta su derecho a un parto que respete sus tiempos fisiológicos y psicológicos, se le interviene innecesariamente, estamos frente a situaciones de VO. La apropiación subjetiva de estos derechos y sus violaciones en términos de ciudadanía reproductiva permitirían visibilizar aún más esta violencia estructural y sistémica.

En síntesis, considero que existen dos niveles básicos de definición que nomino como formas evidentes y sutiles de violencia. En las primeras ubico los actos que cualquier testigo podría pensar como agresivo o violento y se relacionan a cuestiones de maltrato o destrato, y claramente aquellos casos que desencadenan en muertes perinatales o graves daños a la salud de la madre o los/as recién nacidos/as. La mayor dificultad política y simbólica se relaciona a nominar como violentas las formas más sutiles. En ellas están las prácticas médicas, con aparente justificación clínica-científica lo que parece volverlas inevitables o necesarias, pero como constituyen excesos de medicalización y patologización del proceso (tanto de su comprensión como de su forma de abordarlo) son pasibles de ser significadas como violencias, en tanto responden a un quehacer profesional que vulnera derechos humanos de las mujeres y por ello constituyen VO (su fuerza simbólica es la que las convierte en violentas). Disputar que un modo de trabajar, pensar e intervenir un proceso puede ser significado como violencia, es el quid de la cuestión y la disputa de la definición. Finalmente lo visible es que la VO tiene su eje (y la posibilidad de su reproducción) en las prácticas masivas, revestidas de cientificidad. Se trata de un ejemplo más del "iceberg de la violencia de género": lo visible es el maltrato, lo invisible y que está abajo, sosteniendo, es la definición médica del

[6] Para mi caso de estudio (la ciudad de La Plata) este es uno de los derechos más vulnerados en el ámbito público en tanto las cuatro maternidades que corresponden al subsistema de atención pública son "hospitales-escuela" en los que los/as egresados/as de las Facultades de Ciencias Médicas realizan sus prácticas y residencias. El proceso de enseñanza-aprendizaje de la obstetricia conlleva el trabajo sobre los cuerpos de las mujeres gestantes como si fueran objetos pedagógicos sobre los que "practicar" suturas, maniobras, técnicas, métodos.

evento perinatal, travesado por intervenciones médicas[7] y simbólicas rutinizadas e innecesarias.

Para el caso estudiado, tanto en las entrevistas con profesionales y funcionarios/as sanitarios/as como con las parejas de padres, se advierte cierta naturalización de protocolos de atención obstétrica basados en prácticas rutinizadas. El proceso que comienza desde el ingreso a la institución médica – tan bien conceptualizado por Sadler (2003) en sus mecanismos de desautorización – sea pública o privada, incluye el apego a la definición médica del proceso de nacimiento. Lo de las vías intravenosas de rutina, los tactos a repetición en casos de los hospitales escuelas, el dato de 90% de episiotomías a primerizas en la maternidad pública más grande de la ciudad por necesidad de los/as estudiantes de practicar sutura, la obligación de parir acostadas y con manos y pies atados, la falta de información (y la sospecha) sobre los fármacos administrados por la vía y la fijación de deadlines, son datos reales que surgieron en el trabajo de campo. Estos son solo algunos de los ejemplos que tanto miembros de los equipos de salud como usuarios/as de los servicios obstétricos narraron en la investigación doctoral de referencia (Castrillo 2019).

When: ¿cuándo se concreta?

Dado que entendemos la VO como la violación a derechos humanos en procesos reproductivos y no reproductivos es posible situar su origen desde la medicalización de la menarquía en las niñas, cuando no en el propio nacimiento[8]. Es la medicalización y sobreintervención de cada uno de los eventos fisiológicos sexuales y (no) reproductivos femeninos la materialización concreta de esta VO. De todos modos en lo específico del término se refiere a las violaciones de derechos en la atención obstétrica de procesos de embarazo-parto-puerperio y aborto[9].

En concreto, en cada interacción con profesionales de la salud obstétrica y con instituciones sanitarias puede haber expresiones de VO. Por ejemplo, durante el embarazo, ya desde el primer contacto médico para su confirmación (mediante análisis de laboratorio o ecografía); durante las consultas y controles prenatales a través del manejo de la información y la (im)posibilidad de tomar decisiones sobre el propio proceso y su abordaje (profesionales dilatando la conversación sobre cómo suelen asistir partos, si tienen tendencias más quirúrgicas, por ejemplo); e, incluso, los cursos de preparto, operan como espacios en los que, como desarrollé en la tesis de referencia, se reproducen mecanismos de socialización para la obe-

[7] Canevari Bledel (2016) hace un interesante análisis retomando la definición que hace la Ley de violencia de género (25.485) de las seis *modalidades* de violencia contra las mujeres (obstétrica, doméstica, institucional, contra la libertad reproductiva y mediática) que a su vez pueden asumir cinco tipos cada una. Así, la VO puede ser física, psicológica, sexual, económica/patrimonial y simbólica.

[8] En el trabajo de campo incluí indagaciones en torno al propio nacimiento de los/as entrevistados/as y de mí misma, confirmando la naturalización y cristalización de la VO en los nacimientos.

[9] No se desarrolla en este artículo, pero los legrados sin anestesia y otras formas biomédicas de castigar a las mujeres que ingresan con abortos inconclusos a los hospitales constituyen VO postaborto y son de las que más se denuncian, según datos de la Defensoría del Pueblo de la Provincia de Buenos Aires (2016).

diencia a las normas biomédicas e institucionales (que, la mayoría de las veces, vulneran los derechos humanos). Muchas mujeres narran experiencias en las que, durante el embarazo, son objeto de distintas formas de maltrato en torno a su supuesto no-saber lo que ocurre en su cuerpo. Asimismo, si bien las prácticas clínicas durante los dos primeros trimestres de la gestación tienden a ser "necesarias" para garantizar un completo control prenatal, durante todo el embarazo se va estableciendo una dominancia simbólica de la situación por parte de la autoridad biomédica que deviene en que las decisiones de las últimas semanas, vinculadas al momento del parto – por ejemplo la indicación de cesáreas innecesarias – sean arrogadas por dicha figura de poder. "Te espero hasta el viernes y sino inducimos" o "en esta clínica si no nace antes de la semana 41, vamos a cesárea"10 dan cuenta de dos intervenciones completamente normalizadas que no se amparan ni en la fisiología del proceso perinatal ni en los derechos que regulan su atención. Sino en un sentido común instalado en la práctica médica y en las instituciones sanitarias que supone que el desencadenamiento el trabajo de parto es voluntario, consciente y a merced de deseo institucional y profesional. Este es solo uno de los escenarios inhóspitos e incoherentes en los que nacemos y parimos hoy.

De todos modos si durante el embarazo se van estableciendo el terreno para la pérdida total de autonomía de las decisiones reproductivas, es en el momento del parto cuando mayormente se expresa la VO. Desde que la mujer entra a la institución se da lo que considero que es el ingreso a un Estado de hecho institucional excepcional, que desconoce las normas del Estado de derecho general (en particular, los derechos sobre el proceso perinatal). En los días que transcurren entre el desencadenamiento del trabajo de parto, la internación y el alta definitiva (en caso de que el nacimiento ocurra en una institución, sea pública o privada), se activan una serie de mecanismos y procedimientos prácticos y simbólicos que pueden configurar VO. Una vez que comienza el período expulsivo se asiste a un acrecentamiento de intervenciones innecesarias que pueden constituir VO: episiotomía, cesáreas con dudosas o inexistentes indicaciones médicas, maniobra de kristeller[11], pujo dirigido, maltrato verbal, soledad, separación con el/la recién nacido/a, etc. A su vez, durante todo el periodo perinatal, la infantilización, negación de información, experimentación médica con el cuerpo de las mujeres y los/as bebés, y negación de consentimiento, por ejemplo, dan cuenta de formas sutiles de VO que resultan de la definición médica patologizante del nacimiento. Y luego del parto, ciertas prohibiciones en la internación puerperal (básicamente la no garantía del derecho al acompañamiento) así como intervenciones en la crianza o la lactancia (su no promoción/apoyo o su mandato, por ejemplo) constituyen VO.

Además, esta violencia se expresa cuando vemos películas, leemos libros, escuchamos relatos en los medios que insisten en normalizar esta visión eminente-

[10] Ambas frases surgieron en el trabajo de campo de la autora. Según protocolos nacionales e internacionales, un parto de bajo riesgo ocurre entre la semana 37 y 42 de gestación. El límite en la semana 41 es una arbitrariedad institucional biomédica.

[11] Es una maniobra desaconsejada por la OMS y diversos organizamos nacionales y provinciales de salud en la que una persona ejerce fuerza con el brazo o el codo sobre la panza de la mujer, que está acostada, con el propósito de "ayudar" en el descenso del feto por el canal de parto.

mente médica de los nacimientos, en la que el protagonismo está vinculado a los/as profesionales y las instituciones sanitarias, y las mujeres asumen características pasivas o secundarias en la escena del parto. Se trata de formas simbólicas de internalizar socialmente formas intervenidas y anti-fisiológicas de nacer y parir, que aseguran la reproducción del modelo médico hegemónico de atención obstétrica.

En el trabajo de campo realizado en la ciudad de La Plata entre 2013 y 2020, se hizo evidente que los CPP operan como espacios en los que circulan ciertos "deberes ser" y ciertas conductas esperables y sancionables por la institución y los/as profesionales. Y en ese repaso de los itinerarios y formatos de atención se va normalizando la versión biomédica del tránsito perinatal. Allí se establece si es "por protocolo" la aplicación de vías, la participación de acompañantes, el corte tardío del cordón umbilical, la posibilidad de moverse durante el trabajo de parto, entre muchas otras cuestiones.Y se confirma también que en la internación, durante la dilatación y ya en sala de partos, las posibilidad de tomar decisiones autónomas – avanzado el proceso de parto – disminuyen, acrecentándose el poder médico para intervenir. El cansancio, el dolor, el desconocimiento y el temor a las complicaciones juegan un lugar central en este proceso.

Where: ¿dónde se materializa?

Al pensar el territorio donde se concretiza la VO es posible pensar un conglomerado articulado que va desde lo micro (los cuerpos de las mujeres y los/as recién nacidos/as), pasando por lo meso (las salas de parto, los consultorios, los quirófanos, las habitaciones de internación) hasta lo macro~~:~~ (las instituciones de salud y los domicilios donde ocurren los nacimientos, y, por supuesto, las geografías mayores (nacional, provincial, local) que implican políticas sanitarias particulares. En este punto es preciso recordar que la VO es producto de un *modelo* de atención obstétrica intervencionista y patologizante que se desarrolla en distintos *ámbitos* de asistencia. Esto es relevante en tanto tiende a confundirse (no ingenuamente, sino como parte de una operación simbólica) el parto respetado con el parto domiciliario, cuando en realidad el primero es un modelo y el segundo un ámbito de atención. En este sentido, sostengo que el dónde de la VO se vincula a la entrada de la mujer a la institución de asistencia o a la entrada de la asistencia biomédica al domicilio (si se eligió este espacio). Lo determinante es la primacía de la norma institucional y definición medica del evento por sobre los derechos y la fisiología.

Retomando la clasificación recién expresada en términos de lo micro, la VO se puede cristalizar en los cuerpos de mujeres que gestan, que paren, que amamantan, que crían y que abortan. Asimismo, la atención dispensada a ellas afecta la salud de los/as recién nacidos/as: por ejemplo, la aceleración de los tiempos del parto mediante la indicación de cesáreas innecesarias o inducciones medicamentosas, o la falta de atención a tiempo, impacta notable y comprobadamente en la salud neonatal.

Respecto al nivel meso, las salas de parto, los quirófanos, los consultorios obstétricos, los espacios de ecografías, los laboratorios de análisis clínicos, los lugares donde se dictan los cursos de preparto y las salas de espera, son algunos de los territorios por los que discurren los itinerarios asistenciales (Blázquez Rodrí-

guez 2009) de las mujeres en período perinatal, por tanto plausibles de ser escenografías de hechos de VO.

Y en paralelo es preciso, a la hora de cartografiar la VO, dar cuenta de qué expresiones comunes y cuáles diferenciales asume cada ámbito de atención, en términos de subsectores público o privado de salud y la opción de domicilio. A modo de pantallazo, es posible establecer que en el ámbito público el hecho de ser hospitales-escuelas, la falta de insumos y recursos humanos, la no adecuación de la infraestructura y la dificultad en el acceso a la atención, son algunos de los factores que propenden a la VO, aunque, como se ha expresado, no proponemos una concepción reduccionista que considere esta violencia estructural y sistémica como mero problema de recursos, con soluciones técnicas. De todos modos, el proceso de enseñanza-aprendizaje médico es generador del habitus médico autoritario (Castro 2014) que reproduce las condiciones de posibilidad de la VO. Y en el caso de estudio, estos procesos de enseñanza ocurren en las maternidades públicas, utilizando como objetos pedagógicos los cuerpos de las mujeres usuarias.

Asimismo, en el ámbito privado se asiste a un mayor intervencionismo con fines de lucro (mayores tasas de cesárea implican mayor tiempo de internación en habitación y neonatología, y mayor indicación de medicamentos también aumenta la cuenta final de ingresos) amparados en la libertad de empresa. De todos modos en ambos ámbitos la norma institucional tiende a buscar la *mejor* gestión de los tiempos de los partos que no solo implica beneficios a nivel de planificación, sino que se sostiene en la desigualdad estructural médico-paciente. Por ello se ponen *deadlines* a los embarazos ("te espero hasta la semana 41"), se inducen farmacológicamente los partos, se indican o programan cesáreas innecesarias, entre otros. Finalmente, el ámbito domiciliario si bien tiende a corresponder con una mayor garantía de derechos y un respeto de la fisiología del nacimiento, existen algunas cuestiones que pueden ser significadas como VO: el incumplimiento de acuerdos previos, el abandono de persona o la negación de ciertas prácticas, por ejemplo.

Al respecto, en la tesis de referencia se presenta la complejidad y heterogeneidad de experiencias en los diversos ámbitos de atención. Lo decible es, a los fines de este trabajo, que la VO atraviesa las distintas espacialidades en las que ocurren los nacimientos, en tanto constituye un elemento inherente a la atención médica de los mismos. Y, del mismo modo, en todos los ámbitos se pueden recabar experiencias placenteras, de respeto de derechos y de la fisiología de los partos. Analizar la espacialidad del parto y de la atención obstétrica en general permite pensar las relaciones de poder, los/as actores/as, las normas, las experiencias y expectativas, las tecnologías y técnicas biomédicas que se entrecruzan y que, en muchos casos, por su cristalización estructural, constituyen catalizadores de formas de VO.

Why: ¿por qué y para qué se (re)produce?

Pensar los fundamentos ontológicos de la VO es uno de los aportes de la mirada sociológica con perspectiva de género y derechos humanos en salud. En tal sentido, existen referentes teóricos/as – mencionados/as en el primer apartado – que han cubierto estos interrogantes desde hace décadas, provenientes del campo

de estudios feministas y han contribuido con respuestas para pensar por qué y para qué se (re)producen esta violencia estructural y sistemática.

No es el objetivo de este trabajo profundizar en este punto pero sí es preciso mencionar que causas de la VO se encuentran en el proceso de medicalización mundial que comenzó a fines del siglo XIX, que implicó la conversión del parto en hecho médico, a partir de una doble ocurrencia: la hospitalización y la profesionalización de su atención, borrando del esquema el domicilio como lugar de nacimiento y el actuar de parteras y matronas en el mismo. A la entrada del parto en la jurisdicción médica se sumaron su patologización, el predominio de un enfoque de riesgo médico y la consolidación de una atención intervencionista. En este marco, desde las ciencias sociales se ha explicado que la doble dimensión de la medicina (como práctica médica y como estructura de dominación) fomenta una formación y estructura del campo médico que tienden a generar una asistencia obstétrica andrógina, patriarcal y misógina. Castro (2014) con su concepto "habitus médico autoritario" ha dado cuenta de cómo los mensajes y castigos que reciben los/as estudiantes en sus años de formación respecto a cómo pensar y vivir el género, la relación médico-paciente, el cuerpo, los procesos fisiológicos, entre otros, contaminan y moldean su quehacer profesional futuro.

Esta sobremedicalización de la vida que afecta todas las áreas de la vida social, encuentra en la VO una práctica ejemplificadora para mujeres. Esto es, actúa a modo de norma que se internaliza hace décadas respecto a cómo parir/nacer, a la importancia de la reproducción social (generar ciudadanos/as dóciles para las exigencias del capitalismo) y a qué lugares ocupamos en la estructura médica, entre otros aspectos. Es el castigo ejemplificador respecto al ejercicio de la ciudadanía y autonomía reproductiva. La doble relación asimétrica de poder que implica la atención obstétrica (por la desigualdad de poderes entre médico-paciente y de género, sobre las mujeres) es condición para el ejercicio de esta violencia.

Finalmente, y tal como reconstruyo en la tesis doctoral de referencia, la VO está en el centro de la disputa histórica entre dos modelos de atención obstétrica: intervencionista y humanizado. El primero la causa, el segundo la visibiliza y busca combatirla.

Who: ¿quiénes la ejercen y quiénes la sufren?

Por último, es preciso establecer quiénes la ejercen y quiénes la sufren, aunque no lo reconozcan como tal y no se identifiquen ni como victimarios/as ni como víctimas. Respecto a los/as primeros/as, son claramente identificables los distintos miembros de los equipos de salud obstétrica (enfermeros/as, anestesistas, neonatólogos/as, parteras/o, médicos/as obstetras, pediatras) así como otro personal de las instituciones de salud (administrativos/as, limpieza, maestranza, etc.). De igual modo los/as jefes/as de servicio de las instituciones que vulneran derechos humanos en la atención de los partos son victimarios/as de VO. Finalmente y a nivel macro, los ministerios de salud locales, provinciales y nacionales y otros poderes del Estado que, a través de políticas públicas, proyectos de ley y normativas, (re)producen las condiciones para que se ejerza VO (por acción u omisión) también

son parte de quienes la ejercen. Del mismo modo, las carreras de ciencias médica que no actualizan sus currículas hacia paradigmas humanizadores.

Respecto a las víctimas, es preciso mencionar a las mujeres gestantes, mujeres madres, mujeres que abortan, recién nacidos/as y acompañantes, por la violación a sus derechos durante la atención obstétrica. Del mismo modo es preciso establecer que hay castigos contra los/as profesionales de la salud que no se ajustan al modelo médico hegemónico y buscan dispensar una atención más respetuosa.

En Argentina nace un/a bebé por minuto. Guiándonos por los datos y experiencias recabados por la propia y otras investigaciones[12] es preciso decir que la mayoría de ellos ocurren en contextos donde se vulneran derechos humanos y se incurre en violencia obstétrica.

A modo de cierre: propuestas de cambio

El abordaje sociológico de la VO permite dar cuenta de sus sustentos ontológicos, sus expresiones, sus interseccionalidades con otras formas de violencia, sus factores facilitadores y obstaculizadores, los modos en los que ocurre, los lugares y quiénes la protagonizan. A modo de presentación de una problemática multidimensional y compleja, el presente artículo se propuso, a través de la estrategia comunicacional de las 5w, dar cuenta de algunos tópicos de este fenómeno mundial al que le puso nombre y apellido Latinoamérica.

Junto a su caracterización, es posible identificar algunas propuestas de cambio para su prevención y erradicación. En primer lugar, reasignarle a la VO su entidad de violación a derechos humanos es primordial, en tanto a partir de ello podrán vehiculizarse algunas medidas tendientes a penalizar o sancionar dichas vulneraciones. Las capacitaciones obligatorias en género, salud, derechos perinatales y derechos humanos son ineludibles si lo que queremos es nacer y parir sin violencia. Lo que propongo es poner el foco en los/as victimarios/as y no en las víctimas como se viene realizando, responsabilizándolas de exigir sus derechos en uno de los momentos más vulnerables de la vida. De las violaciones a derechos humanos, el Estado y las instituciones son responsables. Junto a ello, considero que sería importante incluir estos contenidos en la Educación Sexual Integral desde la infancia, en tanto articula saberes y prácticas con relación al cuerpo, los derechos, la fisiología, el deseo, el cuidado, la salud y la sexualidad, entre otros. Finalmente, es urgente intervenir las currículas de la formación médica para dejar de intervenir los cuerpos de las mujeres gestantes.

Un afamado médico francés, Michel Oden, popularizó una frase que sostiene que "para cambiar el mundo hay que cambiar la forma de nacer". Actual-

[12] Argentina no cuenta con estadísticas oficiales al respecto, pero diversas organizaciones de mujeres (Las Casildas, Dando a Luz, Observatorio de Violencia Obstétrica) han llevado a cabo relevamientos que, aunque con muestras no representativas, dan cuenta de la naturalización e invisibilización de esta violencia. La falta de datos oficiales es un dato en sí mismo y da cuenta de la escasa prioridad que se le da a nivel gubernamental a la visibilización, prevención y erradicación de la VO. Las investigaciones socioantropológicas sobre la atención del parto que se llevan a cabo en el país (en nombre de autoras como Cecilia Canevari Bledel, Karina Felitti, Celeste Jerez y Valeria Fornes) si bien son de corte cualitativo como la propia, confirman este escenario.

mente, y tras varios años de especializarme en el área, considero que sigue siendo preciso invertir la fórmula: primero cambiar un mundo que viola derechos humanos para alcanzar el propósito de cambiar la forma en la que venimos a él.

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DEP Deportate, esuli, profughe
Rivista telematica di studi sulla memoria femminile

Journal Mothers Report Cruelty in Maternity Wards (part I, 1957)

Trascrizione e cura

di Laura Pangrazio

Nel 1957 il "Ladies' Home Journal", una delle riviste americane al tempo più diffuse, ricevette e pubblicò la lettera di un'infermiera di Chicago nella quale venivano denunciati una serie di soprusi e negligenze a cui l'infermiera aveva assistito in prima persona, e che affermò essere comuni all'interno di diversi ospedali[1]. L'infermiera dichiarò di essersi rivolta al "Ladies' Home Journal" in quanto sostenitore dei diritti delle donne, nella speranza che, richiamando l'attenzione pubblica sulla questione, si potessero compiere passi avanti verso una maternità più sicura per partorienti e neonati. La notevole popolarità della rivista le consentiva di raggiungere un pubblico ampio ed eterogeneo, grazie anche al suo orientamento – a tratti, va sottolineato, contradditorio – diviso tra promozione della famiglia e dei valori tradizionali da un lato, e sostegno all'emancipazione e ad una nuova definizione di femminilità dall'altro[2]. Il periodico, nato come rivista femminile nel 1883, riuscì in poco tempo a diventare indispensabile per centinaia di migliaia di famiglie americane, diventando così la rivista di maggiore successo dell'epoca[3]. La lettera dell'infermiera ricevette una vastissima eco e nei mesi seguenti centinaia di madri, infermiere e medici da tutti gli Stati Uniti scrissero al periodico per raccontare la propria esperienza nelle strutture ospedaliere. Molte di queste lettere miravano a difendere il proprio lavoro o a raccontare un'esperienza positiva, ma altrettante, se non persino più numerose, erano quelle che denunciavano trattamenti sconsiderati o negligenti. Le testimonianze, raccolte e pubblicate nella rivista l'anno seguente, mostravano come la stessa esperienza del parto potesse essere vissuta come un momento di gioia e, al contempo, come un incubo. Le madri sottolineavano, in particolare, come dei semplici accorgimenti potessero cambiare radicalmente la situazione in sala parto.

Dell'inchiesta si occupò Gladys Denny Schultz, esperta dell'assistenza all'infanzia che scrisse sia per il Journal, dal 1946 al 1961, sia per la rivista "Better Homes

[1] Gladys Denny Shultz, *Journal Mothers Report on Cruelty in Maternity Wards*, in "Ladies' Home Journal", LXXV, 5, 1958, pp. 44-45.
[2] Jennifer Scanlon, *Redefining Thrift: The Ladies' Home Journal and the Modern Woman*, in "Pennsylvania Legacies", XII, 2, 2012, pp. 12-17, consultabile in internet all'indirizzo https://www.jstor.org/stable/10.5215/pennlega.12.2.0012
[3] Jennifer Scanlon, *op. cit*., p. 12.

and Gardens", dal 1927 al 1945. I risultati dell'inchiesta furono pubblicati nel maggio e nel dicembre 1957 e nel dicembre dell'anno successivo. La parte apparsa nel 1958 sarà pubblicata in un prossimo numero della rivista.

Nel testo, riportato di seguito l'autrice affianca alle "accuse" avanzate dall'infermiera di Chicago le numerose testimonianze delle lettrici, che a tratti si rivelarono persino più gravi di quelle denunciate inizialmente. Nell'articolo, gli abusi denunciati dall'infermiera e dalle lettrici del Journal vengono suddivisi in sette "accuse" ("charges", termine del diritto penale che può essere tradotto come "capi di imputazione"), accompagnate ciascuna da una relativa opinione medica. Medici e infermiere vengono accusati di legare la partoriente nella posizione litotomica preventivamente e spesso per svariate ore (Charge 1); di ritardare il momento del parto in modo artificioso a causa dell'irreperibilità del medico (Charge 2); di operare senza aver somministrato alcun anestetico (Charge 3); di lasciare le donne in travaglio senza supervisione per ore, spesso negando loro persino la compagnia del marito o di un familiare (Charge 4); di trattare con cinismo e crudeltà il dolore delle partorienti (Charge 5); di gestire il momento del parto come una sorta di catena di montaggio, seguendo una routine prestabilita e mancando, così, di umanità (Charge 6); infine, di privare le donne della loro dignità con commenti e atteggiamenti immorali (Charge 7). Schultz raccolse inoltre alcuni suggerimenti formulati da madri e personale sanitario per rendere più confortevole – o quantomeno più umano – il momento del parto.

Testimonianze come quelle pubblicate sul "Ladies' Home Journal" raccontano di esperienze che non sono sconosciute alle donne di tutto il mondo, dopo oltre sessant'anni. Persino negli Stati Uniti, dove l'articolo suscitò grande scalpore, le partorienti denunciano ancora oggi casi di soprusi nelle sale parto. Un'inchiesta pubblicata dopo cinquant'anni dall'articolo di Schultz evidenzia come, nonostante gli sforzi intrapresi a livello nazionale per riformare l'esperienza del parto, le partorienti continuino ad essere vittime di abusi fisici e verbali, a subire procedure mediche non necessarie o negligenti, e a vedersi negato il diritto ad una piena informazione[4].

Oggi, a questa "crudeltà" è stato dato un nome: violenza ostetrica. Con il termine violenza ostetrica si intende una serie di comportamenti fonte di abusi nei confronti della donna, sia sul piano fisico che su quello psicologico. Oltre ai casi di violenza fisica e abusi verbali, sono considerati violenza ostetrica anche la pratica di procedure mediche senza il consenso della donna o tramite coercizione, il rifiuto di fornire analgesici durante il parto e la reclusione all'interno di istituti nel caso di incapacità di sostenere le spese sanitarie[5]. Un elenco di raccomandazioni atte a rendere l'esperienza del parto più sicura venne adottata dall'Organizzazione Mondiale della Sanità (OMS) nel 1985, in seguito ad una conferenza organizzata in collaborazione con l'Organizzazione Sanitaria Panamericana. La conferenza mirava a stabilire quali fossero le procedure appropriate da adottare durante l'intera degenza della donna nella struttura ospedaliera, sconsigliando al contempo le pratiche ritenute dannose[6]. Alla

[4] Henci Goer, *Cruelty in Maternity Wards: Fifty Years Later*, in "The Journal of Perinatal Education", XIX, 3, 2010, pp. 33-42.
[5] Sara De Vido, *op. cit*., p. 90.
[6] Sara De Vido, *Violence Against Women's Health in International Law*, Manchester University Press, Manchester 2020, pp. 89-91.

lista di raccomandazioni, l'OMS ha fatto seguire, nel 2014, una dichiarazione, denunciando i trattamenti irrispettosi, negligenti e fonte di abusi operati nelle strutture ostetriche, indicando al contempo una serie di azioni da intraprendere, a livello globale, per prevenirli[7].

Sul piano giuridico, la violenza ostetrica e le sue implicazioni in termini di violazione dell'autonomia della donna e dei suoi diritti fondamentali trovano riconoscimento per la prima volta in Venezuela nel 2007, nella "Legge Organica sul diritto delle donne ad una vita libera dalla violenza". La Legge, oltre a stabilire quali atti rientrino tra i casi di violenza ostetrica, prevede il pagamento di una multa da parte del/la responsabile e la possibilità che vengano presi ulteriori provvedimenti nei suoi confronti. Nel 2009, il congresso argentino ha adottato la "Legge Integrale per prevenire, sanzionare e sradicare la violenza contro le Donne", nella quale vengono riconosciuti come perseguibili anche i casi di violenza ostetrica. In Italia, un passo avanti nella protezione delle madri e dei neonati durante il parto e nel riconoscimento della violenza ostetrica è stato compiuto grazie ad un disegno di legge presentato nel 2006[8]. Sul piano internazionale, invece, al di là della lista di raccomandazioni rilasciata dall'OMS, i provvedimenti al riguardo sono piuttosto limitati.

La violenza ostetrica può avere conseguenze sulla salute fisica e psichica della madre e, come sottolineato dall'OMS, in molti casi può rappresentare una violazione dei diritti umani della donna[9]. Nel corso degli anni sono stati compiuti passi avanti sul tema della sicurezza della donna e del neonato, ma l'obiettivo di una maternità sicura a livello globale è ancora lontano.

Gladys Denny Shultz, *Journal Mothers Report on Cruelty in Maternity Wards*, in "Ladies' Home Journal", LXXV, 5, 1958, pp. 44-45.

Motherhood should be a happy and reassuring experience, yet it is questionable whether all modern hospitals make it so. Last November, the reader-mail column of the Journal contained a brief letter from a registered nurse asking for an investigation of "the tortures that go on in modern delivery rooms." Few full-length articles have elicited such a flood of letters from Journal readers. Many relate childbirth experiences which are so shocking that Journal editors feel, after consulting leading obstetricians, that national attention should be focused on such conditions wherever they exist in order that they may be ended – since the Journal does not question that the overwhelming majority of both obstetricians and maternity hospitals resent such practices as much as the victimized mothers.

Few full-length articles have elicited such a flood of letters as this brief plea, published in the mail column of the JOURNAL in November, 1957.

[7] Organizzazione Mondiale della Sanità, *La Prevenzione ed eliminazione dell'abuso e della mancanza di rispetto durante l'assistenza al parto presso le strutture ospedaliere*, 2014, https://tinyurl.com/ksykrrxr.
[8] Sara De Vido, *op. cit*., pp. 90-91.
[9] Organizzazione Mondiale della Sanità, *op. cit.*

Chicago, Illinois

Dear Editor; I feel compelled to write you this letter asking you to investigate the tortures that go on in modern delivery rooms. When I first started in my profession, I thought it would be wonderful to help bring a new life into this world. I was and am still shocked at the manner in which a mother-to-be is rushed into the delivery room and strapped down with cuffs around her arms and legs and steel clamps over her shoulders and chest. At one hospital I know of it is common practice to take the mother right into the delivery room as soon as she is "prepared." Often she is strapped in the lithotomy position, with knees pulled far apart, for as long as eight hours. On one occasion, as obstetrician informed the nurse on duty that he was going to a dinner and that they should slow up things. The young mother was taken into the delivery room and strapped down hand and foot with her legs tied together. I have seen doctors who have charming examination-table manners show traces of sadism in the delivery room. One I know does cutting and suturing operations without anesthetic because he almost lost a patient from an overdose some years ago. He has nurses use a mask to stifle the patient's outcry. Great strides have been made in maternal care, but some doctors still say, "Tie them down so they won't give us any trouble." I know that thousands of women are expertly and considerately treated during child-birth for every one that endures cruel treatment. But that one is too many. You of the JOURNAL have long been a champion of women's rights. I feel that an exposé of this type of medical practice would go a long way to aiding child-bearing women. – Registered Nurse

We occasionally hear of discourteous, inconsiderate or, as in this case, downright inhumane treatment of young mothers and others in hospitals. We hopefully assume it is extremely rare. Would other readers care to report? ED.

"Recently I had the most delightful time giving birth to a son with the aid of natural childbirth. My husband was allowed to be with me during labor and was made to feel a part of the whole process". – R. N., Urbana, Illinois

"So many women, especially first mothers, who are frightened to start out with, receive such brutal inconsiderate treatment that the whole thing is a horrible nightmare. They give you drugs, whether you want them or not, strap you down like an animal. Many times the doctor feels too much time is being taken up and he either forces the baby with forceps or slows things up. I know, because the former happened in my own case. Please, can't something be done?" – Elkhart, Indiana

"Just let a few husbands into the delivery rooms and let them watch what goes on there. That's all it will take – they'll change it!" – former teacher, Detroit, Michigan

"I've seen patients with no skin on their wrists from fighting the straps. As a nurse of thirty years' standing in both Canada and the US, I can surely testify to real cruelty in the delivery room". – Ontario, Canada

"My baby arrived after I had lain on the table in delivery position nearly four hours. When I asked why I couldn't be put into a bed the nurse told me to quit bothering her so much." – West Covina, California

"If I have another baby, I would rather have my husband with me than any specialist. A loving husband's hand in yours is by far the best sedative in the world". – Marietta, Georgia

"We do not believe that mothers should be strapped to the delivery table, except as is necessary to keep the patient from contaminating the sterile area. Further, we do not believe that the mother's legs should be strapped together to keep the baby from delivering, nor do we believe that general anesthesia should be used to prevent the patient from delivering. To my knowledge these practices do not occur in hospitals under the jurisdiction of the Chicago Board of Health. If they occur in any hospital anywhere, the patient should lodge a complaint with the head of her local Board of Health, or the hospital head or other responsible medical authority so that disciplinary action can be taken.

"According to the rules and regulations of the Chicago Board of Health all procedures in the delivery room shall be in accordance with generally accepted principles. We in Chicago interpret these to mean medical care, personnel and facilities must be of the highest type, as well as that no mother shall be treated with brusqueness or indifference.

"You are to be commended for your desire to improve maternity care to patients throughout the country and have our best wishes for success in your endeavors". – Dr. Herman N. Bundesen, President, Board of Health, Chicago, Illinois

"Medical students, interns and nurses should note especially that the morale of women in labor is sometimes shattered by careless remarks. Thus, comments outside the rooms of patients are often overheard to their discomposure. Laughter in the environs of the patient (about some entirely different matter) is inevitably interpreted by the patient in the light that is she who is being laughed at. For some fifteen years the famous lines of Oliver Wendell Holmes have had a prominent place on the wall of the doctors' office on our delivery floor. Medical students and interns would do well to memorize these words and take them to heart: 'The woman about to become a mother, or with her new-born infant upon her bosom, should be the object of trembling care and sympathy, wherever she bears her tender burden or stretches her aching limbs. God forbid that a member of the profession to which she trusts her life, doubly precious at that period, should hazard it negligently, unadvisedly or selfishly". – Dr. Nicholson J. Eastman, Professor of Obstetrics, Johns Hopkins University, and Obstetrician-in-chief to the Johns Hopkins Hospital.

How To Make Childbirth A Joy

"My first two deliveries were pure torture; the third had unnecessary unpleasantness. But the fourth was all that the joyful ushering of a child into the world should be – a wonderful experience in every way. I had the best prenatal care and was treated like a human being – not a cog on an assembly line. During labor my husband was allowed to be with me constantly until the moment of delivery. A cheerful nurse came in often to check my progress. I had pain, but it was bearable in such sympathetic surroundings. The delivery went off smoothly. I had no anesthesia and needed none – I was given a rubber apparatus to hold in my hand and to take a whiff of when I was too uncomfortable. To my amazement I even carried on a conversation during the delivery and never lost control of myself. I felt my baby being born and then the world became radiant and I felt like singing! My baby was brought to me whenever he was hungry and we all got along fine. My stay in that hospital was like a lovely vacation. I even had meals served to me in front of the television in the lovely modern sitting room and also received visitors there as though I were a hostess in my own living room. The doctors and nurses there acted as though they actually liked babies!" – Jeffersonville, N.Y.

How To Make Childbirth A Nightmare

"I have had three children and three different doctors who delivered my children in three different hospitals.

"The practice of obstetrics is the most modern and medieval, the kindest to mothers and the cruelest. I know of many instances of cruelty, stupidity and harm done to mothers by obstetricians who are callous or completely indifferent to the welfare of their patients. Women are herded like sheep through an obstetrical assembly line, are drugged and strapped on tables while their babies are forceps-delivered. Obstetricians today are businessmen who run baby factories. Modern painkillers and methods are used for the convenience of the doctor, not to spare the mother. There is so much that can be done to make childbirth the easy natural thing it should be, but most of the time the mother is terrified, unhappy, and foiled in every attempt to follow her own wishes about having the baby or breast-feeding (most hospitals consider this an unusual quirk on the part of the mother which should be squelched at once)". – Columbus, Ohio

> "Childbirth at best is not pleasant. But there is no reason to make it a hell on earth".

This statement from an Overland Park, Kansas, woman summarizes the feeling expressed to us by hundreds of Journal mothers. They wrote us – from east coast and west coast and all the states in between – commenting on the letter we printed from Registered Nurse.

A number of nurses and doctors deny indignantly that any tortures ever take place in modern delivery rooms, and attack Registered Nurse for having written to us. An equal number of nurses confirm that they do take place, and applaud us for bringing the facts to public attention.

A doctor's wife in San Marino, California, stands up for her husband and his colleagues: "I have broken many an engagement, kept many dinners warm, and cut vacations short because of my husband's concern for his patients. The first thing a doctor guest does when he enters our home is to go to the phone to 'see how everything is'".

But a registered nurse in a Hudson River town tells us: "Because of what is politely termed 'medical ethics', the truth of much bad practice is kept from the public. Personally I feel it is compatible to the 'ethics' which keeps criminals from telling on their accomplices. I know from personal experience that a great majority of doctors, nurses and hospital personnel are good and devoted people who are doing their best under difficult conditions. What makes me angry is that the incompetent and unscrupulous people get away with so much".

There were the same contrasts in the letters from mothers. A number spoke in glowing terms of the kindness and sympathy, the considerations for their comfort, that they had encountered in maternity wards.

A woman formerly from Chicago felt that Registered Nurse should have named the Chicago hospital where she had witnessed cruel treatment of mothers, in fairness to other hospitals in the city. "I have had four babies delivered at the Presbyterian Hospital. I was treated like a queen, never shown any impatience. I had all births without anesthetic, watched the birth of my twins, and those residents really worked for me. I could never repay in money the courtesy and kindness extended in the delivery room. Dr. Bundesen is a great and good man and a fair man. He would rapidly change any wrong treatment of patients in a hospital if he were told about it". St. Luke's Hospital in Chicago was commented by another mother.

Women in several parts of the country came with militant loyalty to the defense of doctors, hospitals and all hospitals practices because their own doctors have been men of high humanity and sensitive understanding.

> "My doctor allowed my husband to stay in the delivery room, in violation of the hospital rules," wrote a woman from The Dalles, Oregon. "He had tears in his eyes when he told us that he feared our baby, as yet unborn, was dead. Because he thought enough of me as a patient to prepare me before the delivery of my stillborn baby, I was able to stay in the maternity ward, see the babies every day, and leave the hospital with plans to return as soon as possible for another baby".

However, the majority confirmed one or more of the charges, and added others. Of these mothers, a significant number had had several babies, in different hospitals and under the charge of different doctors. Many reported fine treatment on one or more occasions, as against coldness or actual brutality on others. These mothers were

not complaining because it is the lot of womankind to endure pain in bringing forth a child. They asked only that the inescapable suffering should not be made worse[10].

Gladys Denny Shultz, *Journal Mothers Report on Cruelty in Maternity Wards*, in "Ladies' Home Journal LXXV, 5, 1958, pp. 152-155.

There can be no disagreement on one point: If women in childbirth are subjected to needless pain or discomfort or danger for the convenience of a hospital or a doctor; if what at best must be an ordeal is turned into a veritable hell, as many of our readers tell us, the situation must be corrected!

Charge No. 1. "At one hospital I know of it is common practice to take the mother right into the delivery room as soon as she is 'prepared.' Often she is strapped in the lithotomy position, with knees pulled far apart, for as long as eight hours." – Registered Nurse.

This charge aroused considerable indignation among other nurses. A number wrote to give reasons for the strapping down.

> "Lay people often do not understand why hands are tied. They are cuffed comfortably at the patient's sides to prevent contamination of the sterile field. Is it so difficult to understand why her legs are in padded stirrups? From waist to toes she is covered with sterile drapes. The doctor uses sterile gloves and a sterile gown. Infection was the greatest cause of death not too many years ago, so with the elimination of contamination mother and child are healthy and alive!" – R.N., Esmond, Rhode Island.

> "Registered Nurse probably never had a baby or she would know that the lithotomy position is quite comfortable during labor. As a matter of fact, nothing she mentioned is too painful, speaking from experiences on both ends of the delivery table". – R.N., Van Nuys, California.

> "The steel shoulder braces used at time of delivery are for the mother's protection. They keep her from falling off the table in case of an emergency – if her head has to be lowered quickly, as in shock". – R.N., Houston, Texas.

> "As for keeping the patient in stirrups for eight hours – first, the pain and misery to the poor woman are obvious; I have yet to see a doctor deliberately increase these. And, to introduce a practical note, it would be difficult to tie up the delivery room for that long. What would they do with other mothers who delivered in the meantime?" – R.N., Long Beach, California.

And now let us see what our Journal mothers had to say about being strapped down. Many told of having been kept in restraints for hours.

> "My husband brought me to the hospital six hours after my labor pains began, and I was immediately rushed into the labor room. A nurse prepared me. Then, with leather cuffs strapped around my wrists and legs, I was left alone for nearly eight hours, until the actual delivery". – Jackson Heights, N.Y.

[10] Gladys Denny Shultz, *Journal Mothers Report on Cruelty in Maternity Wards*, in "Ladies' Home Journal", LXXV, 5, 1958, pp. 44-45.

"My obstetrician wanted to get home to dinner. When I was taken to the delivery room my legs were tied way up in the air and spread as far apart as they would go. The tight band put across my chest and shoulders made me feel as though each breath would be my last. When I was securely tied down, I was left alone". – Walnut Creek, California.

"I had by baby six months ago. My legs are just now beginning to feel normal, after having been held in that position for hours". – Bozeman, Montana.

Medical opinion on strapping down: It is approved obstetrical practice, when delivery is imminent, to put the mother's hands in cuffs, her feet in stirrups. This is to prevent contamination of the sterile area. But it should be done only at the very last, and for a period which generally runs around twenty minutes, seldom more than thirty. To strap the mother long in advance of delivery and leave her there is indefensible.

Charge No. 2. "On one occasion, an obstetrician informed the nurses on duty that he was going to a dinner and that they should slow up things." – Registered Nurse.

Strangely, this charge that babies are held back from being born in order to suit the doctor's convenience drew few denials from nurses and doctors, though it is a far more serious one than strapping down in advance of delivery.

Fully half of our mother correspondents wrote us that they had endured the ordeal of having their babies artificially held back from birth because their doctor was not on hand.

"I was strapped on the delivery table. My doctor had not arrived and the nurses held my legs together. I was helpless and at their mercy. They held my baby back until the doctor came into the room. She was born while he was washing his hands". – Marietta, Georgia.

"One of my babies lowered before the nurses were expecting her (I was just put on a delivery table with no attendants). When the nurse finally examined me she called for another nurse to call the doctor immediately while she strapped my legs together to hold the baby until the doctor arrived. The doctor had to come eight miles, and by the time he arrived and prepared for delivery it was a miracle the baby was still alive". – Avalon, Wisconsin.

"When my baby was ready the delivery room wasn't. I was strapped to a table, my legs tied together, so I would 'wait' until a more convenient and 'safer' time to deliver. In the meantime my baby's heartbeat started faltering. At this point I was incapable of rational thought and cannot report fairly the following hour. When I regained consciousness I was told my baby would probably not live.

"She did live. She is healthy, normal and took her first steps last week. I am grateful to the doctors and nurses who worked so hard and skilfully to save her. I am grateful that she is alive and happy. I do not believe the treatment I received was intentionally cruel – just 'hospital routine'". – Hamilton, N. Y.

A well-balanced woman indeed, who can discount the unnecessary peril to which her baby was exposed, because the baby was saved. Unfortunately, not all such cases had so happy an outcome.

"The granddaughter of a neighbor is hopelessly brain-injured because nurses tied the mother's legs together to slow down the birth until the doctor arrived". – Phoenix, Arizona.

Medical opinion on holding the baby back, pending the doctor's arrival: completely indefensible. Says one leading obstetrician, "It is never done in my hospital. I would not tolerate it".But the nurses should not be blamed in such cases. They must carry out the orders or wishes of the patient's doctor.

Charge No. 3. "One [doctor] I know does cutting and suturing operations without anesthetic. He has nurses use a mask to stifle the patient's outcry." – Registered Nurse.

This charge also received little attention from defense witnesses. The exception was a blanket denial of all of Registered Nurse's charges, signed by six resident doctors at a hospital for Women in Washington, D.C. "I have never witnessed or heard of an act in a delivery room that could be considered inhumane. Steel clamps over shoulders and chest? Eight hours in lithotomy position? Legs tied together? Cutting without anesthetic? Masks to stifle outcries? This is too incredible to be seen even in horror comics!"

While our nurse in Van Nuys, California, explained and defended the practice.

> "There are times following delivery when anesthesia is contraindicated despite the necessity for sutures, and anyway, at the time of the delivery the perineum is literally without feeling".

What do our Journal mothers testify on this point? A few mentioned it – in comparison with the number who had been strapped down for long periods, or had had babies held back.

> "I was a newcomer to this country, and was not prepared for the way we mothers were herded like sheep, strapped down and cut and sewed – without being given anything to ease the pain". – New York City.

> "When the doctor began to cut, I screamed. It was the final indignity of so many. The doctor snapped at me, 'You may as well shut up; we've run out of Novocain.' By that time I was too exhausted and dispirited to care very much". – St. Louis, Missouri.

Medical opinion: It is hard to believe that any doctor would perform an episiotomy on a patient who is not already under general anesthesia, without first applying a local anesthetic. Such an act would be indefensible. The point should be made, however, that women do not always realize they have had a local anesthetic, for they are aware of the cutting even though they do not feel the pain.

Thus Journal mothers, as well as a number of nurses, confirm the charges made by Registered Nurse. They add a number she did not mention.

Charge No. 4. That women undergoing labor are left alone for long periods of time, even in the delivery room. The husband often is excluded from the labor room at the time when the wife needs him most.

This, again, was a charge brought by many of our mothers.

"When I had my first baby I was left entirely alone for most of my sixteen hours of labor". – Haddonfield, New Jersey.

"I have had eight children in the past fifteen years, in four different hospitals, and have no reason to think that other mothers were treated better than I. I was left all alone most of the time although I begged to have my husband with me. They would not allow him in". – Waseca, Minnesota.

"My first child was born in a Chicago suburban hospital. I wonder if the people who ran that place were actually human. My lips parched and cracked, but the nurses refused to even moisten them with a damp cloth. I was left alone all night in a labor room. I felt exactly like a trapped animal and I am sure I would have committed suicide if I had had the means. Never have I needed someone, anyone, as desperately as I did that night.

"My second child, thanks heavens, was born in a wonderful Georgia hospital. My dear wonderful doctor sat in a rocking chair by my side in the labor room. Following the delivery, when I was moved to my room, my baby and my husband went with me and we had a cozy get-together in the middle of the night. Everything about this experience was simply marvelous and I'd be so happy to go through it again". – Somewhere in Georgia.

Many mothers who had had contrasting hospital experiences reported smoother, easier deliveries just because some sympathetic person was with them.

Medical opinion: It is admittedly a harrowing experience for a woman in labor to be left alone, particularly at night. The bravest, most maternal woman cannot help having some apprehension as her baby's birth approaches. To be left alone as the pains grow harder, and she becomes tired, thirsty, hungry, is calculated to increase her fears. On this account, the first stage of labor is the worst for many women. It frequently lasts ten to twelve hours with nothing much happening: staff members, therefore, are inclined to give their attention to patients who need them more. Few hospitals have enough nurses so that one can be with the mother at all times. But wherever possible, nurses should be on call, and should drop into the labor room often to cheer and reassure the mother. A mother should on no account be left unattended in the delivery room.

Charge No. 5. That childbirth suffering is treated callously, in some instances to the point of actual brutality.

Incidents were reported under this charge that would be unbelievable if they had not come so spontaneously from such obviously intelligent mothers in so many different parts of the country. From nurses too.

"The cruel treatment expectant mothers often receive in both the labor and delivery rooms would make many civilized people shudder. As a young nurse, I was shocked and quickly disillusioned that humanitarians could be so inhuman. So often a delivery seems to be'job-centered' – that is, get the job done the easiest, quickest way possible with no thought to the patient's feelings. In too many cases doctors and nurses lose sight of their primary concern – the *patient*". – R.N., Los Angeles, California.

"During my second baby's arrival, I was strapped to a table, hands down, knees up. I remember screaming, 'Help me, help me!' to a nurse who was sitting at a nearby desk. She ignored me.

With my third baby, the doctor said at one point, 'Stop your crying at me. I'm not the one who made you pregnant!'" – Haddonfield, New Jersey.

"As a registered nurse, I have seen nurses who themselves had children become impatient (or worse) with a patient and express their feelings, often within her hearing. 'She got herself in this fix and now is a poor time to change her mind.' Or, 'They have to suffer.' This, to me, is untrue, and the poorest of psychology". – R.N., Urbana, Illinois.

"A patient recently came to the hospital where I nurse, with a fractured hip, incurred in the delivery room of another hospital. She had complained of pain but had been unable to get anyone to pay any attention to her". – Practical Nurse, South Carolina.

"The anesthesist hit me, pushed my head back, sticking her fingers into my throat so I couldn't breathe. She kept saying, 'You're killing your baby. Do you want a misfit of a dead baby? You're killing it every time you yell for the doctor.' … When my husband saw my bruised neck, face and arms, he questioned the doctor and was told that first mothers knock themselves around. Perhaps I shouldn't complain – my baby boy is healthy and not a misfit as I worried he would be. But I have listened to nurses laughing at other new mothers who were crying out in pain, I have heard other mothers being slapped and threatened with dead babies and misfits. I heard these things while I waited for the births of my second and third babies. What happens to the women who are threatened this way and then do deliver a misfit or a stillborn? Do they spend the rest of their lives blaming themselves? Do the words of these sadistic nurses and doctors forever ring in their ears?" – Homewood, Illinois.

Medical opinion: Unfortunate things can happen when staffs are obviously overtired. Nurses who slap patients or abuse them verbally should be fired; a doctor who takes out his weariness and irritations on patients has no place in obstetrics. However, women in labor sometimes misunderstand and misinterpret what happens around them. A nurse may quite properly suggest to a woman that she stop screaming and use her strength instead to push. There is no excuse for the attendants in the case last cited.

Charge No. 6. That mothers are treated with cold indifference – run through the birth process by "assembly-line" techniques.

This was one of the more frequent complaints, and many mothers seemed to feel that to be viewed as mere mechanisms, somehow subhuman, was worse than actual sadism. The phrases "assembly line", "not treated as if I were a human being" figured in many letters.

"The sadism described in Registered Nurse's letter is but one aspect. There are also the terribly apathetic manner of many doctors and nurses, the abrupt separation from loved ones and the total lack of emotional preparation (in some cases) which make childbirth a traumatic experience for many women". – Manhasset, Long Island, N.Y.

"Many normal deliveries are turned into nightmares for the mothers by 'routine' obstetrical practices. I have had two such experiences. My third baby will be born at home, despite the sterile advantages of a hospital confinement, for I feel the accompanying emotional disadvantages are just not worth it". – Columbus, Ohio.

And another Columbus, Ohio mother:

"More babies *are* born than ever before; doctors are hurried; there aren't enough nurses to go around. But our biggest enemy is smugness and indifference – the smug belief that everything

will be all right, the shutting out of husbands at this crucial time. And locking us up in lonely labor rooms, shutting us off to delivery rooms among brusque strangers like sacks of potatoes for the A&P. Grandma had her man with her, and a doctor that cared about *her*, *knew* her".

A woman doctor writes,

"I have been associated with several obstetrical departments as a medical student, an intern, a medical resident and twice as a patient. The most critical thing that can be said of them is that because of overfamiliarity with childbirth and the establishment of necessary routines, they perhaps neglect some of the tender loving care which a woman in childbirth might enjoy". – Wilmington, Delaware.

Medical opinion: With so many women being delivered in hospitals, there is a possibility that the care may become mechanical. This is something that must be watched for and prevented all the time by alert heads of hospitals and obstetrical departments.

Charge No. 7. Degradation of motherhood and womanhood. An attitude that because she is bearing a child, a woman forfeits her right to womanly dignity and respect.

Today's women accept the fact that the usual rules of modesty must be suspended insofar as necessary examinations and services by nurses and their doctor are concerned. But some of our mothers had the feeling that attendants carried this to the point of indignity and outrage.

"And what about the nameless parade of 'interns' who appear unannounced, probe our trapped bodies and 'scan' our progress? … Since my husband is a veterinarian, I happen to know that even animal maternity cases are treated with a little more grace than is accorded human mothers". – Detroit, Michigan.

"I reached the point where I wouldn't have been surprised if the man who was washing the windows had suddenly laid down his sponge and come over to 'take a peek.' It seemed that everyone else connected with the hospital was doing it!" – Des Moines, Iowa.

"I am a registered nurse with postgraduate experience almost entirely in obstetrics. I am also the mother of three children. I have never seen gross cruelty. I have, however, seen careless and callous treatment of obstetrical patients, along with indifference and discourtesy. I have seen nurses more interested in flirtatious conversations with the doctor than in the patient's comfort. I have seen nurses be careless in screening patients from public view during procedures requiring their bodies to be exposed, to the outrage of the patients' feelings and modesty. I have heard such unthinking remarks as 'You had your fun, now you can suffer' made by a nurse to a mother in great distress, damaging the spiritual nature of the childbirth experience and showing the nurse's ignorance of the sacramental nature of sex in marriage". – R.N., Long Island, New York.

Medical opinion: Indeed, the heavy flow of patients through maternity wards today may lead to some carelessness unless those in authority are constantly on the watch. It should be said, however, that failure to appreciate the spiritual aspects of marriage and childbirth, failure to respect the woman in childbirth as a woman, is an indefensible violation of medical ethics.

We have presented the testimony for and against the general charge that in some maternity wards, childbirth is rendered a greater ordeal than it needs to be, because of attitudes of attendants or because of unnecessarily painful practices.

We believe the nurses and doctors who tell us they have never seen brusqueness, much less sadism, in a labor or delivery room. A nationally famous doctor calls attention to the magnificent record of his profession in cutting down maternal and infant mortality – a record to which the Journal has also called attention many times. We fully endorse this doctor's comment that this "has not been accomplished by careless or brutal obstetrics nor by neglect." Readers in many sections of the country have borne witness to great kindness and sympathy in busy maternity wards.

But the response from nurses and mothers indicates inescapably that this is not always the case, and that instances of callousness toward suffering, or unethical measures that actually increase suffering, are not so rare as our editors had hoped they are. We believe responsible doctors and nurses will join us in insisting that these violations of human and medical ethics must be stopped. We would also call the attention of responsible doctors and nurses to another danger pointed up vividly by our readers' letters. This is a trend toward *de*humanizing the greatest emotional and spiritual experience given to a woman – the bringing of her baby into the light, into her arms.

Until a generation ago, a normal childbirth was a natural, essentially happy event, attended by the husband and a kindly neighbor or two. Even in hospitals, friends might cheer the mother in the labor room; her husband, or some other person close to her, could stay with her until the baby was born. Now childbirth has been turned into a medical mystery, conducted in secret. In most hospitals, the woman in childbirth is cut off from those who love her, at her time of greatest travail.

A number of psychiatrists have been concerned at the disturbance to family solidarity and maternal instincts brought about, so they believe, by excluding the father from participation in the birth of his child. How much worse when the mother, thus isolated, is denied ordinary kindness and sympathy; is subjected to tortures completely contrary to good medical practice!

Nurses cannot question the orders or procedures of doctors; they cannot openly criticize hospital routines or the behavior of colleagues. Hospital heads may be unaware of the treatment accorded patients in labor or delivery rooms. Many of our readers accepted indignities or abuses as unavoidable – until they read Registered Nurse's indignant letter.

A number, including nurses, suggested a return to home deliveries as a solution. But it is hard to find a doctor nowadays who will consent to a home delivery, even when the mother is perfectly well and normal and no complications are anticipated. (No one would dispute that dangerous or difficult births call for hospital facilities.) Today most women in comfortable circumstances are required to go to hospitals to have their babies.

Our mothers do not ask for pampering.

> "We don't expect to have our hands held by understandably busy nurses and doctors. But it doesn't seem unreasonable to look for a certain degree of respect for the patient's feelings". So a Houston, Texas, woman expressed it.

Around 90 per cent of the women who wrote to us pleaded, however, "Let us have our husbands with us." Is it such an unreasonable request? This one change in present hospital rules would abolish practically all the nightmare features of which mothers have complained. With a husband present, there is little likelihood that a woman will be slapped or yelled at or subjected to uncalled-for tortures. It will give the mother the support and reassurance of a loving presence. It will provide her with the small comforts that mean so much, yet without taxing the hospital staff. Someone to hold her hand or rub her back; to wipe the perspiration away or bring the cooling drink.

We earnestly urge the medical profession to review the rule which bars the husband from his wife's side. We believe he should be allowed to be there at least until the doctor arrives to take personal charge. If the wife wants her husband in the delivery room – not all women do – he should be permitted to be there. If the husband cannot be present for some reason, some relative or friend should be allowed to take his place. Many mothers who had their husbands with them tell us in lyrical terms of the help this was. Whatever the reasons for placing at the mercy of strangers the woman undergoing childbirth, are they vital enough to offset these factors?

Other excellent suggestions have been offered by mothers, doctors and nurses:

1. Mothers should "shop around" a bit before selecting an obstetrician. An Independence, Missouri, mother remarks sensibly, "When buying a new home, a car or even appliances you check several before buying. You should check a doctor as well".

From a medical school in your state, or a big hospital or from your local medical association, you can obtain a list of skilled obstetricians in your vicinity. Learn something about these men, ask your women friends what reputation they bear among their patients. If a physician habitually fails to get there when the baby comes, if he "puts mothers under anesthesia regardless," these things very soon get noised about among women. It is also proper to visit several doctors, obtain their ideas about conducting childbirth, then choose.

2. There should be more explaining of childbirth to mothers in advance. They should be prepared for such discomforts as are necessary for their welfare and that of their babies. A number of hospitals hold classes in the techniques of childbirth, quite a number conduct tours through the maternity ward for mothers who expect to be delivered in the hospital. More of this kind of thing should be done for expectant mothers.

Expectant mothers, too, have a responsibility to take initiative in finding out what childbirth entails.

3. There should be freer communication between doctors and their patients. Mothers should feel at liberty to express their fears to their doctors; to tell the doctors what they would like them to do.

4. If a mother is subjected to treatment that she considers cruel or unethical, it is her duty to report it to the local board of health, or the hospital head, or some other persons in authority. A criticism made of Registered Nurse was that she had not

reported the outrages she had witnessed to the American Medical Association. Doctors concur that a nurse cannot do this – if she wants to continue in the nursing profession. The patient can, and all reputable physicians would like her to do so.

The greater part of the medical profession is as interested as laymen could possibly be in wiping out bad practices where they exist. This has been amply proved. But let us not lose sight of another need.

A Frankfort, Kentucky, reader has phrased this need admirably: "Every woman should be treated like a queen, even with her tenth! Not with excessive attention (yes, I know we're short of nurses) but with good humor and joy in the occasion!"

We at the Ladies' Home Journal agree.

DEP Deportate, esuli, profughe
Rivista telematica di studi sulla memoria femminile

Statement of the Poznan Centre for Human Rights on the decision of the Constitutional Tribunal of 22 October 2020 (K 1/20)

by

*Katarzyna Sękowska-Kozłowska**

Banning abortion, dismantling democracy: a message from Poland

In October 2020, a near-total ban on abortion was introduced in Poland. This is one of the final steps in an ongoing process of restrictions on the reproductive freedom of Polish women. Change began in 1993, when abortion was limited to three situations: when a pregnancy was the result of a criminal act, when the woman's life or health was at risk, and when there was a high probability of severe and irreversible foetal defect or incurable illness that threatened the foetus's life. This legislation, later called a "compromise", was related to the highly influential position of the Roman Catholic Church in Polish society and politics. "The compromise" was in fact never seriously respected by the state, regardless of the political forces in power: access to legal abortion was often restricted in practice, for example by refusal to perform legal termination, on the basis of conscientious objection, and many women were denied or demeaned while seeking to access the medical services that they were entitled to[1].

Although in the past there have been several attempts to restrict or liberalise access to abortion, overall this issue was perceived by most politicians as too controversial and too risky to handle. However, in recent years, the situation has dramatically changed. Since 2015, when the conservative Law and Justice Party was elected to power, Poland has faced backsliding of the democratic process[2]. This in-

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[1] See judgments of the European Court of Human Rights: Tysiąc v. Poland, 20 March 2007, 5410/03; R.R. v. Poland, 26 May 2011; 27617/04; P. and S. v. Poland, 30 October 2012, 57375/08 and concluding observations of the UN treaty bodies, more e.g. here: Sękowska-Kozłowska, Katarzyna. 2020, "Concluding Observations of the UN Human Rights Treaty Bodies in the Field of Equality and Non-discrimination. Does a Common Standard Exist and is it Implemented? Example of Poland". *Polish Review of International and European Law* 8(1): 65-89.

[2] See e.g. Wyrzykowski, Mirosław. 2019, "Experiencing the Unimaginable: the Collapse of the Rule of Law in Poland". Hague Journal on the Rule of Law 11: 417-422.

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cludes, inter alia, attacks on judicial independence, restrictions on media freedom, and state-sponsored homophobia. The most dramatic challenge to democracy is related to the takeover of the Constitutional Tribunal by the ruling party, replacing its three elected judges and changing the law regulating the functioning of this institution and its judges. Since then, the Constitutional Tribunal has been issuing decisions that are seen as politicized, and the legal value of which has been questioned[3].

This is also the case of the decision on abortion[4]. At the request of a group of ultra-conservative parliamentarians, The Constitutional Tribunal pronounced that the abortion law was unconstitutional in cases of high probability of severe and irreversible foetal defect or incurable illness that threatens the foetus's life. As a result, a near-total ban on abortion was introduced, as until this point around 98% of legal terminations in Poland had been made due to foetal defects. Moreover, the Constitutional Tribunal based its reasoning on the dignity of a human being from conception prevailing over women's human rights. It opened the way for further restrictions on abortion law, in particular in case of pregnancy in result of rape or incest.

After this decision thousands of people protested across Poland, gathering despite pandemic restrictions and their own fears of leaving home. Many individuals were detained by the police. Activists from "All-Poland Women's Strike", one of the driving forces behind these protests, are facing charges and repression. This decision also resulted in a situation of legal uncertainty for many women and medical personnel. As a result of the mass protests, the government did not officially publish the decision of the Constitutional Tribunal, a condition for its entry into force. This unconstitutional situation of legal uncertainty lasted for three months – there was no indication of when the decision would become binding, and doctors were afraid to perform abortions even though they were technically still legal. As a consequence, a movement of support and self-help for women who seek abortion was implemented by civil society and various activists at an unprecedented scale. Additionally, several thousand women joined an action submitting complaints to the European Court of Human Rights. They claimed that uncertainty related to the possibility to terminate pregnancy in case of foetal defects seriously affected their reproductive choices and private life. Twelve of these complaints have already been communicated to the Polish government[5].

Restrictions on abortion law are another critical example of the situation of human rights violations in Poland since 2015. This decision can be specifically related to attacks on democracy and the rule of law. This is not merely the manifesta-

[3] See e.g. Radziewicz, Piotr. 2017, "On Legal Consequences of Judgements of the Polish Constitutional Tribunal Passed by nn Irregular Panel". *Review of European and Comparative Law 31*(4): 45-64.

[4] Gliszczyńska-Grabias, Aleksandra, & Sadurski, Wojciech. 2021, "The Judgment That Wasn't (But Which Nearly Brought Poland to a Standstill): 'Judgment' of the Polish Constitutional Tribunal of 22 October 2020, K1/20", *European Constitutional Law Review 17*(1): 130-153.

[5] Applications nos. 1819/21, 3682/21, 4957/21, 6217/21, 3639/21, 4188/21, 5876/21, 6030/21, 3801/21, 4218/21, 5114/21 and 5390/21, Press release issued by the Registrar of the Court, ECHR 217 (2021), 08.07.2021.

tion of strongly-held moral convictions, it is the manifestation of power, and the willingness to eliminate a political culture based on freedom, tolerance and rights of entity, and to establish a new order. We cannot allow it to happen.

The English version of the statement of the Poznan Centre for Human Rights follows.

Statement of the Pozanan Centre for Human Rights (Institute of Law Studies of the Polish Academy of Sciences) on the decision of the Constitutional Tribunal of 22 October 2020 (K1/20)

We, the undersigned scholars of the Poznan Centre for Human Rights (Institute of Law Studies of the Polish Academy of Sciences), express our strongest objection to the decision of the Constitutional Tribunal issued on October 22, 2020 in the case ref. no. K 1/20. The Constitutional Tribunal, while deciding the case, was composed partly of persons illegally appointed as judges of the aforementioned Tribunal. It declared the **unconstitutionality of the termination of pregnancy due to fetal abnormalities** on the grounds of Article 38 (legal protection of life) in connection with Article 30 (protection of the inherent and inalienable dignity) and Article 31(3) (limitation clause) of the Constitution of the Republic of Poland.

Legal framework concerning admissibility of termination of pregnancy was a 'compromise' reached al1nost 30 years ago between various political actors. Although termed as a 'compromise' the hitherto applicable pro visions have placed Poland among countries with the most restrictive abortion laws in Europe.

The Constitutional Tribunal, which lacks democratic legitimacy, has not only entered into the exclusive competence of the legislature, but also exceeded the limits of legal discretion and arbitrarily imposed the beliefs and views of some on the whole of society. The reasoning of the Tribunal does not recognize the mental and physical suffering of Polish women and their families caused by forced birth of children with serious, often fatal illnesses.

According to the international human rights protection standards, everyone should be able to decide for themselves, especially in such a sensitive area as reproductive rights. For this reason, the accessibility of prenatal screening and safe abortion procedures are fundamental parts of the legal framework of women's rights that guarantees, among others, the right to respect for p1ivate and family life, protection against violence and discrimination, and absolute prohibition of torture and other cruel, inhuman and degrading treatment. The decision of the Constitutional Tribunal grossly violates all these fundamental human rights.

The fact that this decision has been made in a European state, which belongs to the major international human rights protection systems, is another proof that the current Polish authorities are turning away from the fundamental principles and

values protecting human dignity. At the same time, the way and the moment of resolving this extremely sensitive issue is another blow to the already battered social contract, which is based on the trust that constitutional equal protection applies to all citizens, not just those of certain beliefs.

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DEP Deportate, esuli, profughe
Rivista telematica di studi sulla memoria femminile

Fertilità della terra e fecondità femminile.

Il pensiero di Françoise d'Eaubonne negli studi recenti[1]

a cura di

Bruna Bianchi

Se ci sarà un futuro per il "Nuovo Eco-femminismo" dovrà essere più consapevole del suo ricco e preveggente passato (Gaard 2011, p. 44).

Alla riscoperta di Françoise d'Eaubonne

Nel 1978 ho pubblicato il mio libro *Ecoféminisme* che è stato accolto con derisione. Mi dissero che avevo unito due concetti moderni che non avevano niente in comune (Puleo 2006, p. 16)[2].

[1] Ringrazio Julie Le Men dell'Institut mémoires de l'édition contemporaine (IMEC) per l'aiuto e Vincent d'Eaubonne per avermi consentito di pubblicare la fotografia della madre.

[2] Françoise d'Eaubonne si riferiva con tutta probabilità alla sua opera uscita vent'anni prima *Écologie et féminisme. Révolution ou mutation?*.

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Così scriveva nel 1998 sulle pagine della rivista "Silence" Françoise d'Eaubonne (1920-2005), la prima autrice ad aver compiuto una sintesi del pensiero femminista del XX secolo con l'ecologia e il pacifismo. Menzionata di sfuggita come colei che coniò il termine ecofemminismo nel 1974 in *Le féminisme ou la mort*, Françoise d'Eaubonne è stata per lo più ignorata o svalutata, e quell'omaggio rituale, spesso relegato in una nota, che compare nella letteratura ecofemminista prevalentemente in lingua inglese, raramente si è accompagnato ad un'analisi del suo pensiero. Ne è un esempio l'opera di Maria Mies e Vandana Shiva, *Ecofeminism*, apparsa nel 1993. Nell'*Introduzione* le autrici riconoscevano a Françoise d'Eaubonne la maternità del termine, ma si affrettavano a precisare che il pensiero e l'attivismo ecofemminista aveva preso forma negli anni successivi (Mies-Shiva 2014, p. 13). Ancora nel 2009 in uno studio sui rapporti tra letteratura ed ecologia in America Latina Beatriz Rivera-Barnes e Jerry Hoeg scrissero che il termine ecofemminismo era stato coniato da Françoise d'Eaubonne ancor prima che esistesse una coerente teoria dell'ecofemminismo; quella della femminista francese, infatti, era una teoria incompiuta,

> perché fu solo alla fine degli anni Ottanta che l'ecofemminismo divenne un discorso accademico con Ariel Salleh e Val Plumwood che gli diedero una dimensione globale e una presenza negli Stati Uniti, in Canada, in Europa, in India e in Australia (Rivera-Barnes e Hoeg 2009, p. 139).

Anche l'attribuzione del termine ecofemminismo ha sollevato perplessità e talvolta, come ha scritto Greta Gaard, persino risentimento (Gaard 1998, p. 13). Quel termine, si disse, non era nato dalla mente di una donna bianca, una intellettuale e un'attivista isolata, bensì dai movimenti spontanei delle donne che si erano sviluppati a livello mondiale; non da una donna "immersa nelle biblioteche, ma dall'impegno di molte donne nelle foreste, di fronte alle basi militari e alle centrali nucleari" (*ivi*, p. 14).

> Nel corso degli anni Ottanta, continua Gaard, molte donne pensavano di essere state loro ad aver inventato il termine "ecofemminismo" per descrivere il loro attivismo e il loro modo di pensare. Altre, che avevano sentito la parola per la prima volta, riconobbero immediatamente che aveva una risonanza profonda con i loro valori e le loro convinzioni […]. Quello che è certo è che "ecofemminismo" non era il prodotto della mente di una singola donna ben identificata (*ibidem*).

Per coloro che volevano estendere e rafforzare il movimento, un'origine del termine legata all'attivismo sembrava una scelta strategica efficace, ma rispecchiava solo in parte la realtà. Come ha scritto nel 1998 Barbara Gates, in *A Root of Ecofeminism: Écoféminisme*, riflessione e attivismo sorsero e si svilupparono contemporaneamente. Nello stesso saggio la studiosa britannica invitava a riflettere su quanto anglicizzati fossero gli studi ecofemministi. L'inglese, affermava, "è diventato la "lingua franca" dell'ecofemminismo (Gates 1998, p. 16). Già nel 1991, riferendosi alla letteratura ecofemminista, Ariel Salleh, aveva messo in rilievo che ricerche e articoli in altre lingue avevano scarsa visibilità e considerazione:

> Non è facile documentare adeguatamente questa nuova letteratura. Ricerche pubblicate in Finlandia o articoli pubblicati in riviste venezuelane o australiane, raramente superano la soglia del mercato editoriale internazionale "metropolitano". Per ragioni politico-economiche le visioni delle ecofemministe che lavorano nelle nicchie più visibili della cultura dominante in

> lingua inglese sono state le più diffuse – anche il femminismo è toccato dal suo contesto imperialista. Così è accaduto che i fondamenti classici dell'ecofemminismo siano stati riconosciuti in *New Woman, New Earth* di Rosemary Ruether (1975), *Green Paradise Lost* di *Elizabeth Dodson-Gray* (1979) e *The Death of Nature* di Carolyn Merchant (1981). L'isolata apparizione a Parigi di *Le féminisme ou la mort* di Françoise d'Eaubonne (1974) è un'eccezione la cui mancata traduzione in inglese più o meno conferma la regola (Salleh 1991, p. 206).

Secondo Ariel Salleh, al contrario, furono le opere di Françoise d'Eaubonne e di Rosemary Ruether ad aver dato impulso intellettuale all'ecofemminismo (Salleh 2017, p. 52). Lo stesso parere è stato espresso da Alicia Puleo che in numerosi scritti ha dato risonanza al pensiero della femminista francese, ne ha sottolineato le radici libertarie e il rilievo per l'ecofeminismo (Puleo 2011; 2012; 2017).

Benché D'Eaubonne fosse stata invitata in più occasioni a tenere conferenze in Canada e negli Stati Uniti, negli anni Novanta il senso acuto della catastrofe imminente e dell'urgenza di agire di cui erano pervasi i suoi scritti non trovarono ascolto in ampi settori dell'ecofemminismo che si erano smarriti nelle dispute accademiche. Non stupisce quindi la scarsità delle traduzioni in lingua inglese delle opere di Françoise d'Eaubonne. Negli Stati Uniti, infatti, dopo la traduzione di un breve estratto da *Le féminisme ou la mort* nella raccolta curata da Isabelle Courtivron ed Elaine Marks nel 1980 e la traduzione nel 1994 dell'ultimo capitolo dello stesso volume (*Les temps de l'écoféminisme*) nell'antologia curata da Carolyn Merchant (Merchant 2008, pp. 201-214), non è più stata pubblicata alcuna traduzione dei suoi scritti e solo per il 2022 è annunciata la traduzione integrale di *Le féminisme ou la mort* a cura di Carolyn Merchant e Ruth Hottell. Del tutto assenti i riferimenti all'opera del 1978 *Écologie et féminisme. Révolution ou mutation?*, se si fa eccezione del saggio di Danielle Roth-Johnson (2013) che mette in luce alcune linee del suo pensiero che saranno al centro della riflessione ecofemminista degli anni successivi. Tra le riviste l'unica ad ospitare uno scritto della femminista francese – *What Could an Ecofeminist Society Be?* – è stata "Ethics and Environment" (Eaubonne 1999).

Poche le traduzioni in altre lingue, pubblicate prevalentemente negli anni Settanta e nei primi anni Ottanta[3], mentre nel 2019 è apparsa la traduzione in spagnolo di *Le sexocide des sorcières.*

In Francia Françoise d'Eaubonne è stata a lungo ignorata o dimenticata e i suoi scritti sull'ecofemminismo fino a tempi molto recenti non sono stati riediti. Eppure, a partire dagli anni Sessanta, ella si era soffermata su tutti i temi cruciali per il femminismo: la libertà riproduttiva, l'omosessualità, l'ecologia, l'ingiustizia nei confronti ti tutte le minoranze, la religione, il lavoro femminile, la prostituzione, temi affrontati con un orientamento radicale, con una voce energica e irriverente e con uno stile in cui il rigore della studiosa si fonde con i toni accesi dell'attivista.

Un silenzio altrettanto sorprendente ha avvolto la sua carriera letteraria iniziata a vent'anni in piena guerra e proseguita tutta la vita, come ha rilevato Nicolas Longtin-Martel nel suo lavoro di tesi sul romanzo *Les bergères de l'apocalypse* (2016). Ugualmente trascurati gli studi biografici. Da quando, nel 1993 e 1994, so-

[3] Nel 1981 è apparsa la traduzione italiana di *Les femmes avant le patriarcat;* nel 1975 quella in tedesco di *Le féminisme ou la mort.*

no apparsi quelli di Hélène Jaccomard sui primi tre volumi della autobiografia di Françoise d'Eaubonne, nessun'altra ricerca si è soffermata sulle sue memorie, né sul romanzo autobiografico *Le Temps d'apprendre à vivre*.

Negli ultimi anni, tuttavia, nel contesto della crisi climatica e pandemica, della rinascita dei movimenti, dello sviluppo della riflessione ecofemminista (Burgart Goutal 2016a, 2016b, 2018, 2020; Hache 2016; Goldblum 2017) e degli studi sulle proteste contro il nucleare degli anni Ottanta (Zitouni 2014), Françoise d'Eaubonne ha ricevuto una crescente attenzione (Goldblum 2018, 2019; Cambourakis 2018; Thiébaut 2021) e le recensioni e i saggi introduttivi alle riedizioni dei suoi scritti (Goldblum 2018; Bahaffaou 2019; Bahaffou-Gorecki 2020; Derzelle 2020) si sono interrogati sull'attualità del suo pensiero. Momento di svolta è stata la COP21 che ebbe luogo a Parigi nel 2015.

Nel 2018 la casa editrice Libre & Solidaire ha proposto una nuova edizione di *Écologie/féminisme. Révolution ou mutation?*, corredata da una prefazione di Serge Latouche, che colloca l'autrice nella tradizione di pensiero della decrescita, e di una postfazione di Caroline Goldblum che ripercorre la vita e il percorso intellettuale e politico di Françoise d'Eaubonne. Nel 2020 la casa editrice le passager clandestin ha riedito *Le féminisme ou la mort* introdotta da Myriam Bahaffou e Julie Gorecki che, nel quadro di una visione ecofemminista decoloniale, hanno messo in rilievo l'assenza del tema del colonialismo nell'opera del 1974. "I paesi del Sud del mondo, hanno scritto le autrici, sono raramente visti come culle del femminismo, ma piuttosto come luoghi di un sessismo tragico" (Bahaffou-Gorecki 2020, p. 30).

Nel settembre 2021 è apparso il capitolo finale di *Le féminisme ou la mort*[4] introdotto e commentato da Caroline Lejeune. Nello stesso anno è stata ripubblicata una delle sue prime opere: *Le complexe de Diane. Érotisme ou féminisme* (1951).

Lo studio più ampio è quello di Caroline Goldblum: *Françoise d'Eaubonne & l'écoféminisme* (2019) arricchita da una antologia di scritti. Sulla base delle opere, delle memorie e della documentazione conservata presso l'IMEC[5], Goldblum ha tracciato un profilo articolato della scrittrice francese, della sua riflessione e del suo attivismo. Alle ricerche apparse negli ultimi anni, si è aggiunta nel 2021 la biografia a cura della giornalista e scrittrice Élise Thiébaut, *L'amazone verte. Le roman de Françoise d'Eaubonne.* Di carattere divulgativo, e a tratti romanzato, che indulge sui tratti del suo carattere e sulle sue relazioni amorose, il volume si basa prevalentemente sugli scritti autobiografici, su numerose interviste, nonché su alcune opere, saggistiche e letterarie.

Nel loro insieme gli studi recenti hanno delineato un ritratto della donna, della femminista e della scrittrice assai più nitido rispetto al passato, ritratto che le pagine che seguono cercano di restituire interrogandosi sull'eredità che Françoise d'Eaubonne ha lasciato all'ecofemminismo.

[4] I primi capitoli dell'opera sono dedicati alle tematiche al centro del MLF: la condizione femminile, il matrimonio, la prostituzione, il lavoro.

[5] Institut mémoires de l'édition contemporaine che conserva un fondo su D'Eaubonne.

Vita di una ribelle "irriducibile"

> La base del mio temperamento è l'emozione, la passione, che ci posso fare? Furiosa, veemente fino alla disperazione, contorta dalle risate, scossa dai singhiozzi, sgangherata e ancora furiosa, ecco il mio autoritratto (Jaccomard, p. 490).

Così scriveva nel 1965 Françoise d'Eaubonne nel primo volume della sua autobiografia. Attribuirà lo stesso carattere ribelle e passsionale alle protagoniste delle sue numerose biografie (tra cui quelle di Emily Brontë, Isabelle Eberhardt, Jiang Quing, Louise Michel) e a quello dei profili contenuti in *Les grandes adventurières* (1988) e *Les scandaleuses* (1990).

Françoise Piston d'Eaubonne nacque a Parigi nel 1920 da padre bretone e da madre aragonese. Terza di cinque figli, trascorse i primi anni della vita nella periferia parigina e in seguito, dal 1931, presso Toulouse dove la famiglia si trasferì a causa della crisi economica. Gli anni dell'infanzia e della giovinezza furono rattristati dalle sofferenze fisiche del padre, un reduce della Grande guerra che era stato esposto ai gas, e dalla sua morte nel 1947. Della madre, Rosita Martinez, nell'autobiografia ricorda il distacco; le rimprovera di non averla desiderata, di averla fatta sentire un ostacolo per la sua felicità coniugale e, in definitiva, di non averle offerto un modello di femminilità (Jaccomard 1994, p. 491). "L'orgoglio, la passione, il terrore, tutte le meschinità e tutte le sublimità dell'amore materno le ho viste esprimere da mio padre (Eaubonne 2001, p. 26).

Nel 1938 si iscrive alla facoltà di Diritto e Belle arti, ma lascia gli studi e si impiega come istitutrice. Il padre, vicino all'anarcosindacalismo, la coinvolge nel suo impegno politico e in quelle esperienze precoci di militanza si plasma lo stile impetuoso caratteristico del suo impegno e della sua scrittura (Jaccomard 1994, p. 340). Nel 1942 si unisce a un piccolo gruppo di resistenti e nel 1943, all'età di 23 anni, sposa Jacques Aubenque, colui che l'aveva aiutata a pubblicare sulla rivista "Confluence" le sue prime poesie. Lo sposa per dare un nome al figlio che aspetta da lui; una gravidanza non desiderata da Françoise che vuole dedicarsi alla letteratura, ma l'aborto è illegale e punito severamente. Poche settimane dopo, il 30 luglio 1943, in nome della famiglia e della patria, verrà ghigliottinata Marie Louise Giraud, accusata di aver procurato 27 aborti, una delle ultime condanne alla pena capitale (Le Maguet 1996).

Ben presto Françoise lascia il marito e con "sorprendente allegria" porta a termine la gravidanza nella casa dei genitori; partorisce sola e allatta la sua bambina, ma quando le giunge il contratto per il suo primo romanzo, *Le coeur de Watteau* che uscirà l'anno successivo, la affida a una balia e parte per Lione per poi stabilirsi a Parigi. Fin dall'età dell'adolescenza aveva desiderato di "fuggire dalla piccola periferia meschina di una città i cui abitanti, con la loro mentalità e il loro accento [le] erano sgradevoli al massimo" (Eaubonne 2001, p. 72).

Indiana è la prima di tre figli avuti da tre diverse unioni; il secondo, nato nel 1947, viene dato in adozione; il terzo, Vincent, nato nel 1958, visse a lungo con la famiglia della sorella di Françoise. "Nella vita, scrive Thiébaut, aveva dato la priorità alla scrittura, riservandosi il diritto di amare i figli da lontano" (Thiébaut 2021, p. 130). Alla vita sentimentale tormentata di Françoise d'Eaubonne, ai legami per lo più di breve durata con uomini anche molto più giovani di lei che le inflissero pesanti umiliazioni è dedicato ampio spazio nell'*Amazone verte*. Françoise tratterà per la prima volta il tema della supremazia maschile, dell'esercizio violento del potere, in primo luogo nelle relazioni amorose, in *Y a- t-il encore des hommes?* (1965). Nel 1976 si sposerà una seconda volta con un carcerato per protestare contro a sua condanna per omicidio.

Nel 1947 ottiene il prix des lecteurs per il romanzo storico *Comme un vol de gerfauts*, un ulteriore incoraggiamento a seguire il suo talento di scrittrice. Nel 1949 è folgorata da *Le seconde Sexe* di Simone De Beauvoir, di cui diviene amica e poi biografa (*Une femme nommée Castor*, 1986). Due anni dopo appare *Le complexe de Diane* in cui l'autrice pone l'accento sulla costruzione sociale della virilità e della femminilità e sostiene la tesi della bisessualità originaria. Da allora inizierà a raccogliere l'imponente documentazione sulla fine del neolitico che sfocerà nell'opera del 1976, *Les femmes avant le patriarcat*, in cui troviamo per la prima volta il termine e il concetto di "sexocide" (femminicidio), oggetto di uno studio sulla caccia alle streghe, *Le sexocide des sorcières* (1999).

Nel primo dopoguerra inizia la sua militanza nel partito comunista da cui si allontanerà dieci anni dopo indignata per l'adesione del partito alla politica repressiva in Algeria. La delusione provata nel corso della sua militanza la porta a rivolgersi "alle radici paterne", ovvero all'anarchismo, una tradizione di pensiero più sensibile ai temi della pace, dell'ecologia, e del femminismo (Puleo 2011).

Nel 1956 si reca in Algeria, visita un campo in cui sono ammassati uomini, donne e bambini che paragona ai "fantasmi di Dachau", i deportati che aveva visto al loro ritorno dai campi, e incontra le attiviste delle organizzazioni femminili algerine. Nel 1960 è tra le firmatarie del *Manifeste des 121* sul diritto alla disobbedienza nella guerra d'Algeria.

Gli anni Sessanta sono anni di intensa attività letteraria; nel complesso, dal 1942 al 2003, Françoise d'Eaubonne ha pubblicato oltre cento opere tra romanzi, saggi, biografie, racconti utopici, polizieschi e per l'infanzia. Il tratto che unifica la sua produzione, ha scritto Helène Jaccomard, è l'anticonformismo, la denuncia dell'ingiustizia, la difesa delle minoranze, una vera e propria "letteratura dell'indignazione" (Jaccomard 1993, p. 55).

Nel 1970 è tra le fondatrici del Mouvement de Liberation des femmes (MLF) e nel 1971 tra le firmatarie di un manifesto pubblicato su "Le Nouvel Observateur" in cui 343 donne si autodenunciavano per aver fatto ricorso all'aborto (per due volte Françoise scelse di abortire) e chiedevano la depenalizzazione e la legalizzazione dell'interruzione volontaria di gravidanza.

In quello stesso periodo, per sostenere i diritti degli omosessuali, contribuisce alla fondazione del Front homosexuel d'action révolutionnaire (FHAR) e pubblica una storia dell'omosessualità maschile, ai suoi occhi la trasgressione estrema (*Éros minoritaire* 1970). Nel rifiuto della eterosessualità ella vedeva una sfida alle basi

stesse del potere patriarcale e negli-nelle omosessuali potenziali alleati-e delle femministe.

La scarsa sensibilità del movimento femminista per i problemi ambientali la induce, nel 1973, a fondare Le Front Féministe, un piccolo gruppo che dal 1974 prolungherà la sua attività nel "movimento di riflessione" Écologie-féminisme, un laboratorio di idee che le permetterà di giungere alla formulazione della sua teoria ecofemminista.

Françoise d'Eaubonne ha fatto risalire la sua presa di coscienza della questione ecologica al 1971 quando un militante del FHAR, l'artista Alain Fleig, affermò che il capitale era giunto allo stadio suicida e che avrebbe annientato tutto il mondo; di fronte all'urgenza ecologica, aggiunse, il problema della rivoluzione doveva passare in secondo piano (Cambourakis 2018).

"Mi ci volle più di un anno, ha scritto D'Eaubonne, data la mia lentezza di spirito, per assimilare in profondità questa verità" (Goldblum 2019, pp. 27-28). L'anno successivo, infatti, nel capitolo conclusivo di *Féminisme*: *histoire et actualité*, benché non apparisse ancora il termine ecofemminismo, compaiono già tutte le premesse del suo pensiero sulla natura della catastrofe ambientale, ovvero il dominio patriarcale sulla terra, sulle donne e su tutti coloro posti in condizioni di "féminitude".

Due opere, entrambe apparse nel 1973, furono per lei fonte di ispirazione: *La société contre nature* dello psicologo rumeno Serge Moscovici[6], in cui l'autore affermava che l'essere umano non era esterno alla natura bensì un suo prodotto, e *L'utopie ou la mort* dell'agronomo francese René Dumont, candidato ecologista alle elezioni presidenziali che Françoise d'Eaubonne sostenne nella sua campagna e con il quale strinse legami di amicizia. *Le féminisme ou la mort* (1974) è una risposta diretta all'opera di Dumont che nel lanciare l'allarme per la distruzione planetaria non prendeva in considerazione l'oppressione femminile.

L'incertezza nell'azione che tanto il movimento ecologista che quello femminista avevano dimostrato derivava, a parere di Françoise d'Eaubonne, dai loro limiti culturali; nell'analisi della catastrofe, infatti, avevano trascurato di esplorarne l'origine.

> Solo un'analisi rigorosa, basata su uno studio storico senza concessioni ci potrà aprire la via a un modo di pensare e di agire di tipo nuovo […] solo allora si potrà prevedere una società di **democrazia diretta**[7]**,** obiettivo mai raggiunto dalle rivoluzioni che [hanno ignorato] 'la metà del cielo"… E la totalità dell'ambiente" (Eaubonne 1978, pp. 22-23).

Per contrastare il senso di impotenza, ritrovare la forza di immaginare un altro mondo e di cambiare le cose, Françoise d'Eaubonne volle sfidare quelle narrazioni che, ponendo l'uomo come l'unico agente della storia, cancellavano il femminile anche dalla lingua e dalla coscienza.

> Valéry diceva: "ciò che noi abbiamo di più profondo è la nostra pelle". Grammatica, linguistica, ecco la pelle del pensiero, l'epidermide della coscienza (Eaubonne 1976, p. 14).

[6] Sul tentativo di D'Eaubonne di fondere il pensiero di De Beauvoir con quello di Moscovici si veda Gandon 2009.

[7] Nelle citazioni dalle opere di D'Eaubonne ho sempre conservato grassetti, corsivi e maiuscole – segni della radicalità del pensiero e della scrittura dell'autrice – così come compaiono negli originali.

Questa volontà di ritrovare un legame vivo con la propria storia attraversa tutte le sue opere più importanti sull'ecofemminismo degli anni Settanta, incluso il romanzo apocalittico *Les bergères de l'Apolalypse* (1978).

Mentre dunque il suo pensiero si articolava e si approfondiva, il suo attivismo si radicalizzava. Nel febbraio 1975, quando migliaia di donne protestarono a Whyl in Germania al confine con la Francia contro la costruzione di una centrale nucleare ottenendo la prima e più grande vittoria contro "l'abominevole demenza nucleare", ripenserà ancora una volta alle parole di Alain Fleig: "il prossimo atto realmente rivoluzionario sarà l'attentato contro una centrale nucleare in costruzione". Poche settimane dopo, il 3 maggio, con la complicità di alcuni amici, D'Eaubonne mise in atto un attacco dinamitardo alla pompa idraulica di una centrale nucleare in costruzione a Fessenheim che ne ritardò l'avvio per un anno. Lo confessa nelle sue memorie inedite consultate da Caroline Goldblum (2018, p. 218).

Il comunicato che rivendicava l'attentato al gruppo Puig Antich - Ulricke Meinhof[8] si concludeva con la "condanna di una società costruita senza le donne e contro di loro che aveva creato quelle tecniche di morte solo per mantenere un'economia di profitto" (Eaubonne 2018, p. 36). Alla necessità della "contro-violenza", ovvero di atti terroristici, è dedicato il saggio *Contre-violence ou la Résistance à l'État* (1978).

Questa scelta accentuò ancor più la sua marginalità nei movimenti. In quello femminista, molto pesò l'influenza esercitata dalla tradizione razionalista e dal pensiero di Simone de Beauvoir. L'autrice del *Secondo sesso*, infatti, aveva teorizzato l'incompatibilità tra la società e la natura legando la prima alla trascendenza e alla libertà e la seconda all'immanenza e alla schiavitù e nel seguire il modello maschile, ovvero trasformare e dominare la natura, vedeva l'unica prospettiva di liberazione per le donne. Adottando pienamente il pensiero dicotomico maschile tra natura e cultura, immanenza e trascendenza, De Beauvoir considerava la natura un principio da superare e trascendere. Non ci poteva essere libertà che contro la natura (Gandon 2009; Derzelle 2020). Era il concetto stesso di natura a dividere le due femministe; la natura era il regno della staticità e della normatività per Simone de Beauvoir e principio di vita per Françoise d'Eaubonne. Commentando l'influenza di De Beauvoir nel femminismo francese Jeanne Burgart Goutal ha scritto: "A parlare di natura in Francia si posa il piede su un terreno minato" (2020, p. 53).

Solo un piccolo gruppo raccolto intorno alla rivista "Sorcières: les femmes vivent" affrontò le tematiche dell'ecofemminismo e nel 1980 il periodico pubblicò un numero speciale (n. 20), *La nature assassinée*, che accoglieva un saggio di Françoise d'Eaubonne, *La nature de la crise*.

La rivista, che si proponeva come un luogo in cui le donne potessero esprimere la loro creatività, era stata fondata nel 1976 da Xavière Gauthier, scrittrice, giornalista e studiosa di Louise Michel che considerava una ecofemminista ante litteram. In una recente intervista Gauthier ha dichiarato:

> La nostra celebrazione della natura e del potere femminile passava per la creazione artistica. […] Noi avevamo una coscienza ecologica, lottavamo contro il nucleare […] e collegavamo

[8] Rispettivamente il militante antifranchista giustiziato nel 1974 e la rivoluzionaria tedesca che morirà in carcere nel 1976.

> esplicitamente femminismo ed ecologia […] ci volevamo distinguere dal femminismo "egualitario" o meglio "assimilazionista" […] volevamo che la società cambiasse dalle fondamenta[9].

"Vorrei – scriveva Gauthier nell'editoriale del primo numero – che "Sorcières" fosse una rivista viva e in movimento, per questo non ho voluto creare un comitato di redazione fisso, definitivo, ristretto e rigido, ma […] diverso per ogni numero" (Gauthier 1975, p. 5). Così, tra le curatrici del numero 20 troviamo Anne-Marie de Vilaine, giornalista e scrittrice, autrice nel 1977 di un manifesto ecofemminista dal titolo *La femme et/est l'écologie* nella rivista "Le Sauvage". Accanto all'articolo di Françoise d'Eaubonne, a quello di Anne-Marie Vilaine (*Un soleil de mort*) e di Xavière Gauthier (*La force des végétaux*), compare uno scritto di Gloria Orenstein (*La réémergence de la Grande Déesse dans l'art féminin contemporain*), l'artista ecofemminista statunitense che nel 1990 avrebbe curato l'antologia *Reweaving the World. The Emergence of Ecofeminism*[10]. Anche in Francia, dunque, esisteva un piccolo gruppo di donne che, come scrisse Vilaine, "avevano voglia di lottare per la vita in un mondo anti-vita" e che "aveva[no] trovato una 'causa' che non tradiva né il [loro] corpo né il [loro] sesso, ma al contrario vi si radicava" (Vilaine 1977, p. 49), ma esse non riuscirono ad allargare la propria influenza e i contatti con le ecofemministe a livello internazionale furono sempre sporadici (Burgart Goutal 2020, p. 49). "Sorcières" cessò le pubblicazioni nel 1981 e negli anni successivi Françoise d'Eaubonne si lanciò nell'avventura delle radio libere e si dedicò alla causa omosessuale; continuerà a scrivere, saggi e romanzi, fino all'inizio degli anni Duemila, ma non proseguirà la sua riflessione ecofemminista. Uno dei suoi ultimi saggi, scritto tra il 1996 e il 1998, *L'homme de demain. A-t-il un future?*, in cui affrontava i temi della globalizzazione, del lavoro e della tecnologia, si concludeva con un senso di impotenza. Erano le speranze dei giovani, convinti di "avere un passato, ma di non avere un futuro", che le sembravano ormai definitivamente svanite.

> Impotenti come siamo a cambiare attualmente il corso delle cose, malgrado la nostra consapevolezza acuta del disastro che si annuncia, la nostra unica risorsa è quella di aiutare con l'analisi, la riflessione e l'indicazione della via verso un futuro possibile che sarà la nuova pelle della società di "fratelli umani che vivranno dopo di noi" (Eaubonne 2002, p. 157).

Alle origini del dominio patriarcale

> Da quando [l'uomo] scoprì le sue due possibilità di agricoltore e procreatore, instaurò quello che Lederer chiama "il grande rovesciamento" a suo profitto. (Eaubonne 2020, p. 282).

[9] *Les Sorcières sont de retour. Entretien avec Xavière Gauthier & Danièle Carrer*, "Multitudes", 2, 67, 2017, p. 91, https://www.cairn.info/revue-multitudes-2017-2-page-90.htm.

[10] L'intero numero si può consultare in rete all'indirizzo https://femenrev.persee.fr/issue/sorci_0339-0705_1980_num_20_1.

Al controllo patriarcale della fertilità della terra e della fecondità femminile Françoise d'Eaubonne faceva risalire la causa diretta della distruzione ambientale. Quando (tra il 3500 e il 2500 avanti Cristo) l'uomo sottrasse alle donne la produzione agricola, le tecniche conservative e le diversificazioni colturali lasciarono il posto a quelle sempre più intensive; alla zappa si sostituì l'aratro e fu introdotta l'irrigazione. Quando l'uomo scoprì di avere un ruolo nella riproduzione, la natalità iniziò ad aumentare; credendosi l'unico agente della procreazione, non solo un collaboratore, egli considerò la donna e la terra come ricettacoli della sua forza vitale. Da allora il predatorio modo di appropriazione divenne il paradigma dell'economia e di tutte le relazioni di sfruttamento; la donna, "schiava prima della schiavitù", fu ridotta all'insignificanza e la terra a materia inerte da sfruttare (Eaubonne 2018, p. 103).

Come riconobbe lei stessa, Françoise d'Eaubonne non era stata la prima ad aver studiato le società pre-patriarcali, società ecoconsapevoli basate sull'agricoltura e sulla collaborazione delle donne con la natura. Le ricerche di Bachofen, Lewis Morgan, Friedrich Engels, per citare solo le più note, avevano suscitato grande interesse e accesi dibattiti nel XIX secolo[11] (Taylor Allen 1999). A differenza di Bachofen Françoise d'Eaubonne rifiutava l'idea di un potere femminile; le donne non erano all'apice di quelle società, bensì al centro. Agli studiosi marxisti rimproverava di aver ignorato o minimizzato le conseguenze della scoperta da parte dell'uomo del proprio ruolo nella procreazione. Ai loro occhi una tale sfumatura psicologica non poteva alterare i rapporti di produzione e pertanto non meritava di essere presa in considerazione (Eaubonne 1978, p. 34). Con queste parole nel 1980 criticava la centralità della lotta di classe nelle analisi marxiste:

> La millenaria lotta di classe non è iniziata che dopo la vittoria di un sesso su un altro; tutti i socialisti del XIX secolo, compresi Marx ed Engels, lo sapevano e lo hanno detto. Ma oggi i partiti nati dall'analisi marxista fanno della lotta dei sessi – quando non possono negarla, malgrado tutti i loro sforzi – un semplice aspetto della lotta di classe; e della questione ecologica una vaga recriminazione in più contro la gestione del Capitale (Eaubonne 1980, p. 69).

Negli studi classici sulle società antiche l'avvento del patriarcato era per lo più presentato come una trasformazione graduale che non aveva incontrato resistenza, una interpretazione che negava fondamento storico all'esistenza delle amazzoni relegandole nella sfera del mito. Al contrario, "È la difesa, armi alla mano, delle ricchezze agricole, ad essere all'origine delle supposte "leggende" delle Amazzoni e della loro lotta contro gli uomini cacciatori e pastori" (Eaubonne 2020, p.159).

Ma è nelle riflessioni sui quadri concettuali patriarcali all'origine del dominio sulle donne e sulla natura che risiede l'eredità più rilevante della femminista francese all'ecopacifismo femminista. In *Écologie et féminisme* affermò che la scoperta del ruolo maschile nella procreazione indusse nuove strutture mentali caratterizzate

[11] Jakob Bachofen, *Das Mutterrecht*, Kraid und Hofmann, Stuttgart 1861; Lewis H. Morgan, *Ancient Society; or, Researches in the Lines of Human Progress, from Savagery through Barbarism to Civilization*, Macmillan, London 1877; Friedrich Engels, *Der Ursprung der Familie, des Privateigentums, und des Staates Schweitzerische Volksbuchhandlung*, Hottingen-Zürich 1884.

dall'"illimitimisme", ovvero l'assenza di limiti nella ricerca del potere: sulle donne, sulla natura, su altri gruppi e popoli, uno sfruttamento estremo basato sulla sete dell'assoluto, un'illusione prometeica che nel suo delirio di appropriazione avrebbe portato all'annientamento della vita. In questa "corsa verso l'infinito, l'aggressività competitiva è indispensabile […] e la competizione comporta la progressiva intensificazione della violenza e il massacro" (*ivi*, p. 163). Il patriarcato, concludeva, è una società di adulti contro i bambini, di un sesso contro l'altro, di una classe contro l'altra, di una nazione contro l'altra, una lotta di tutti contro tutti. Fin dal suo sorgere il sistema patriarcale aveva imposto una logica intrinsecamente conflittuale e manichea in tutte le forme di pensiero.

> Questo modo di ragionare che chiamiamo logica maschile, senza alcun sciovinismo sessuale, perché appartiene anche alle donne che si sono formate in questo sistema, quello che ci proponiamo di studiare qui è, storicamente, il patriarcato millenario. Questo modo di ragionare consiste nello sviluppare due dimensioni contraddittorie in cui l'una esclude l'altra (*ivi*, p. 97).

La critica di Françoise d'Eaubonne al dualismo oppositivo, un modo di pensare che rende l'eguaglianza e la relazione impensabili, ha osservato Roth Johnson, sarà sviluppato negli anni Novanta da Karen Warren (1990), Vandana Shiva (1993) e Val Plumwood (2002).

Nel richiamarsi alla struttura logica del dualismo Françoise d'Eaubonne evitava di cadere nell'essenzialismo: maschio e maschile sono termini che la femminista francese usa senza uno stretto riferimento alla biologia, ma per designare coloro che aderiscono ai valori patriarcali distruttivi o che ne traggono vantaggio.

Alla visione ristretta del femminismo che si era cristallizzato sulla questione dell'uguaglianza tra uomini e donne e sulla libertà sessuale, un femminismo dell'inclusione, che rivendicava "l'uguaglianza in un mondo di disuguaglianza" – e che D'Eaubonne chiamava "le féminisme de maman" – opponeva la necessità di un mutamento radicale di civiltà. Si trattava di andare alla radice del dominio, di restituire all'intero pianeta la parte femminile che gli era stata sottratta, ovvero di affermare un nuovo umanesimo ecofemminista in grado di superare le basi misogene ed ecocide della civiltà occidentale.

> Questa volta si tratta di una questione ben più ampia della "liberazione della donna", e "della libertà sessuale". Si tratta dell'avvenire stesso dell'umanità. Meglio: della possibilità di avere ancora un avvenire. La continuazione della nostra specie è minacciata oggi dal compimento delle culture patriarcali, da una follia e da un crimine. La follia: la crescita demografica. Il crimine: la distruzione dell'ambiente (Eaubonne 1972, p. 352).

L'appropriazione patriarcale della "fecondità terrestre", persistita attraverso i secoli in tutti i regimi economici, era sfociata nel capitalismo industriale "mortifero e superinquinante". Il profitto era "l'ultimo volto della sete di potere e il capitalismo l'ultimo stadio del patriarcato" (Eaubonne 2018, p. 118). Avanzando il concetto di patriarcato capitalista Françoise d'Eaubonne anticipava le idee che Maria Mies avrebbe articolato un decennio più tardi in *Patrirachy and Accumulation on a World Scale* (1986).

La riscoperta delle eredità che D'Eaubonne ha lasciato all'ecofemminismo si è accompagnata alla riflessione sugli aspetti critici del suo pensiero. Jeanne Burgart Goutal ha osservato che l'attribuzione al "sistema maschile", alla "fallocrazia" della responsabilità del dominio sulle donne, sulla natura e altre categorie inferiorizza-

te, secondo una matrice originaria, stabilita una volta per tutte, è eccessivamente semplificante, incapace di rendere ragione della complessità e degli intrecci dei rapporti di dominio, di genere, di classe, di razza, di specie e di spiegare la natura di quegli intrecci.

> D'Eaubonne scrive così: "il rapporto tra l'uomo e la natura è più che mai quello tra l'uomo e la donna" […]. Ciò che rende questi due rapporti analoghi, è essenzialmente che essi sono oppressivi, "coloniali" e dualistici. […] un tale modo di pensare i legami tra i differenti assi di dominio è insoddisfacente. L'idea dell'analogia è troppo fluida: dire che due rapporti sono simili non basta a mostrare che essi sono davvero legati e che dipendono l'uno dall'altro (Burgart Goutal 2016b, p. 31).

Da quando D'Eaubonne scriveva quelle parole la connessione tra i rapporti di dominio è stata indagata in numerose direzioni teoriche e gli orientamenti ecofemministi si sono affinati, sono stati riformulati e messi in discussione. Oggi si può dire che in questo continuo processo di elaborazione il contributo di D'Eaubonne non si limita più all'invenzione di un termine; il suo pensiero, di volta in volta rivalutato e criticato, è entrato a far parte a pieno titolo della storia dell'ecofemminismo.

La questione demografica

> ESIGIAMO: la fine del saccheggio dei beni della VITA di cui siamo le detentrici (*Appel des femmes à la grève de la procréation*, Goldblum 2019, p. 96).

Eccesso di natalità e ipersfruttamento delle risorse, temi che il femminismo trascurava, negli anni Settanta erano al centro delle analisi ecologiste. Due opere in particolare influenzarono il pensiero di Françoise d'Eaubonne: quella di Paul Ehrlich, *The Population Bomb* (1968) e il rapporto del Club di Roma *Limits of Growth* (1972), opere che tuttavia considerava manchevoli sia dal punto di vista dell'analisi che dell'azione:

> Che cosa strombettavano queste Cassandre? Molto semplicemente che il punto di non ritorno era praticamente raggiunto, che non si può fermare un veicolo lanciato a cento all'ora contro un muro di cemento quando si è a venti metri di distanza e che tutto ciò si poteva concludere con il motto molto virile "Si salvi chi può, che Dio cela mandi buona!" O ancora: "Abbandonate le zone industrializzate" (Eaubonne 2020, p. 281).

La pressione demografica, la distruzione ecologica, la "follia nucleare" e quella della manipolazione genetica, le minacce più gravi del futuro, dovevano diventare questioni femministe; occorreva in primo luogo porre con urgenza il tema della libertà riproduttiva delle donne, ovvero il diritto alla contraccezione e all'aborto, niente più di quanto le donne da sempre avevano tentato di attuare, attraverso la loro conoscenza del mondo vegetale, ben prima che si affacciasse il problema della pressione della popolazione umana sul pianeta.

> La storia maschile non parla che di amuleti per la "fecondazione"; le donne, tuttavia, ne conoscono altri. Le francesi portavano in segreto una salamandra, le spose tedesche un testicolo di donnola; le inglesi del rosmarino e del mirto e questo fino al XIX secolo […]. A queste pure

> superstizioni si univano sperimentazioni di metodi medici, come l'infusione di cortecce di salice (*ivi*, p. 136).

Benché Françoise d'Eaubonne ponesse un'enfasi particolare sull'eccesso di natalità, incluse nella sua analisi anche la progressiva compromissione del patrimonio genetico femminile e degli altri esseri viventi, temi che si sono andati progressivamente aggravando e che oggi si presentano in tutta la loro drammaticità[12].

Nel 1974, a Bucarest, in occasione della conferenza mondiale ONU sulla popolazione, il gruppo Écologie-féminisme, che aveva coniato lo slogan provocatorio "famiglia nucleare, società nucleare, stessa lotta!" (Glodblum 2018, p. 216), lanciò in quattro lingue *l'Appel à la grève de la procréation*, una protesta che rivela l'influenza che ebbe su Françoise d'Eaubonne il femminismo anarchico di Emma Goldman, colei che aveva sostenuto le posizioni neomalthusiane e la "grève des ventres" (Puleo 2011, p. 28).

Le attiviste si introdussero nel Palazzo della Repubblica dove si teneva la conferenza e consegnarono il documento sottoscritto da oltre 1.000 donne. "Noi dichiariamo, si legge nell'appello,

> La nostra decisione di prendere in mano, con **il controllo del nostro destino**, quello della demografia, in solidarietà con le nostre sorelle del Terzo-Mondo e la **nostra volontà di dare la caccia e combattere a tutti i livelli il sistema patriarcale universale che lega strettamente la nostra oppressione con TUTTE LE ALTRE** (*Appel*, cit., p. 96).

Mentre a livello internazionale si biasimavano le donne dei paesi "del terzo mondo", considerate le principali responsabili del problema ecologico ed erano investite da programmi aggressivi e coercitivi di "pianificazione famigliare", ovvero contraccettivi e sterilizzazioni, Françoise d'Eaubonne affermava l'inseparabilità della questione della natalità con quella dello sfruttamento economico. Indurre le donne a limitare la propria fertilità senza modificare modelli si produzione e consumo non avrebbe condotto ad alcun mutamento, al contrario, avrebbe rappresentato un'ulteriore forma di violenza sulle donne.

Le firmatarie dell'appello esigevano anche la limitazione del "lavoro produttore di beni inutili e di inquinamento", la distruzione o la chiusura delle centrali nucleari, l'abolizione delle industrie di guerra.

La decrescita demografica doveva andare di pari passo con la decrescita economica e avrebbe dovuto prendere in considerazione le responsabilità storiche nella distruzione della natura e i livelli di consumo dei paesi ricchi resi possibili dallo sfruttamento dei paesi poveri. L'ONU, osservava D'Eaubonne, faceva della demografia una questione di potere su quei paesi e sulle donne senza mettere in discussione la distruzione delle risorse naturali. Dietro alle preoccupazioni degli organismi internazionali per l'aumento della popolazione si nascondevano dunque il razzismo e le antiche pratiche coloniali.

> Se consideriamo il comportamento dei maschi al potere nella nostra società, cosa vediamo? Consapevoli del pericolo rappresentato dall'eccesso di popolazione, si sforzano di far credere

[12] Nel corso degli ultimi decenni, infatti, la distruzione della forza rigenerativa della terra si è andata gravemente ripercuotendo sulla fertilità di tutti i viventi e l'inquinamento creato dalla crescita economica ha alterato in modo irreversibile il patrimonio genetico di umani e non umani (Swan 2021).

> "che si tratta di un problema del terzo mondo" e di indirizzare i loro sforzi verso la parte più sfavorita del pianeta, dunque quella che consuma meno (Eaubonne 2020, p. 303).

La decrescita demografica doveva avvenire sulla base di principi di ecogiustizia e a questo proposito Françoise d'Eaubonne non mancava di osservare che l'impronta ecologica di un bambino dei paesi capitalistici era di venticinque volte superiore a quella di un bambino dei paesi poveri.

Nel considerare la situazione di svantaggio di quei paesi, tuttavia, non si dovevano dimenticare le relazioni di potere all'interno della famiglia. Gli uomini del "terzo mondo", infatti, erano allo stesso tempo oppressi e oppressori, vittime e complici, vittime del razzismo e del sistema economico basato sul profitto e complici "del sistema patriarcale universale e fino ad ora i più docili funzionari all'interno della struttura di base detta famiglia" (Eaubonne 2018, p. 66).

L'unica possibilità di uscire dalla morsa distruttiva del potere patriarcale universale era quella del "rovesciamento" di quel potere che aveva portato all'ipersfruttamento agricolo e alla mortale espansione industriale. Non "il matriarcato" o "il potere alle donne" – una contrapposizione che avrebbe riproposto un dualismo oppositivo –, ma la distruzione del potere da parte delle donne[13] per una gestione ugualitaria del mondo, un mondo che avrebbe dovuto rinascere, non un mondo "da proteggere" come credevano ancora gli "ecologisti dolci" della prima ora (Eaubonne 2020*,* pp. 282-283).

L'enfasi di Françoise d'Eaubonne è sulla rigenerazione dei cicli vitali della natura non già sull'intervento umano che "conserva" o "protegge", sulla necessità di un mutamento completo dei quadri concettuali, delle strutture politiche e dei modelli economici sviluppatisi in cinquemila anni di storia, non su riforme effimere. Scriveva nel 1980 in *La nature de la crise:*

> Ecco perché non credo "alla natura in crisi", infatti la natura che fu la condizione necessaria per la vita dell'uomo, viene progressivamente cancellata a vantaggio dei suoi artefatti in un processo demenziale e suicida; credo piuttosto che la natura della crisi sia la crisi dell'uomo stesso, della sua società, della profonda patologia del suo rapporto con l'ambiente che riflette così bene il suo rapporto con il femminile (Eaubonne 1980, p. 70).

"Perché ci possa essere ancora un mondo"

> Si tratta di passare davvero all'età post-industriale, perché il tenerla in vita […] significa la fine del mondo terrestre tra trenta-cinquant'anni. Non si può andare oltre queste date conservando il sistema del profitto. Non si può abolire il sistema del profitto conservando una società di classe, ovvero il bisogno del potere. Non si può abolire il potere conservando il mondo patriarcale e maschile (Eaubonne 1980, p. 278).

[13] Affronterà questo tema anche in *Les bergères de l'Apocalypse*, un'epopea che racconta la fine del patriarcato e si interroga su quale società ne potrebbe seguire da una prospettiva ecofemminista. L'opera non ha avuto neppure una recensione (Longtin-Martel 2016, p. 18). Si può ascoltare la presentazione di Françoise d'Eaubonne del libro all'indirizzo: https://tinyurl.com/4w2fzpu.

Mutazione, trasformazione, sono i concetti al centro del pensiero ecofemminista di Françoise d'Eaubonne: trasformazione del rapporto con la natura, di tutte le condizioni oppressive nella vita delle donne e, al fondo, trasformazione della struttura del dominio e del concetto stesso di dominio, "l'unica possibilità per la specie di avere ancora un avvenire" (*ivi,* p. 280).

Tutte le rivoluzioni del XX secolo, che Françoise d'Eaubonne chiama "les révolutions de papa", non avevano fatto uscire l'umanità dal millenario dominio del patriarcato che "esaurisce le ricchezze della natura, distrugge la biosfera, compromette la genetica, **capitale delle donne,** e non rimette in causa la molto abominevole demenza dell'energia nucleare, né la continua crescita della produzione" (Eaubonne 2018, p. 21).

Il tema dell'economia occupa una parte importante di *Écologie et féminisme.* La critica al sistema patriarcale capitalistico ha anticipato, a parere di Caroline Goldblum, il pensiero della decrescita e a parere di Roth Johnson le riflessioni sul carattere ideologico dei concetti economici espresse da Marilyn Waring in *Counting for Nothing: What Men Value and What Women Are Worth* (1999).

> Concetti come quelli di equilibrio generale, di prodotto interno, di "crescita economica" si impongono come altrettanti fatti indiscutibili, basi di un discorso che si svolge solo sulla base di questi concetti, segni evidenti di una "realtà" immaginaria che si sostituiscono immediatamente a uno studio del reale. Nel momento stesso in cui [l'economia] si presenta come scienza, l'ideologia la sostituisce con una straordinaria scaltrezza (*ivi*, p. 68).

Fra tutte le discipline solo l'economia pretendeva di essere l'unica "scienza pura", l'unico fondamento di tutte le altre scienze umane; essa presentava la crescita non solo come condizione della felicità, ma come la felicità stessa (*ivi,* p. 73). Nello scritto del 1978, inoltre, Françoise d'Eaubonne metteva in guardia contro "l'impostura" e le "impudenti" promesse degli organismi internazionali come l'OCDE che nel suo *Progetto di politica ambientale* del gennaio 1974 affermava che le politiche ambientali non negavano la crescita economica, ma cambiavano semplicemente la natura della crescita spostando la domanda dalle produzioni inquinanti a quelle non inquinanti. "E chi riuscirà a farci credere, commenta Françoise d'Eaubonne, per quanto stupidi-e possiamo essere, che si può nello stesso tempo mantenere lo stesso livello di affari che ci uccide e fermare l'assassinio?" (*ivi*, p. 58). Pertanto, concludeva, qualsiasi studio teorico di economia avrebbe dovuto prendere l'avvio da una critica del concetto di crescita, di quella "febbre del sempre più forte, sempre più grande, sempre di più" (Eaubonne 1980, p. 68).

Solo le donne, una maggioranza ridotta a minoranza, avrebbero potuto realizzare la rivoluzione ecologica ed economica in grado di spezzare il "ciclo infernale consumo-produzione che è l'alibi [della] enorme massa di lavoro inutile, alienante, mistificato e mistificante fondamento della società maschile […]. È stato dimostrato, continuava Françoise d'Eaubonne, che dal 7 al 10% del lavoro attuale basterebbe ampiamente a soddisfare i bisogni legati al cibo, all'abbigliamento, alla casa" (Eaubonne 2020, p. 312).

Il lavoro così liberato avrebbe potuto essere applicato al rimboschimento intensivo, alla depurazione delle acque, all'agricoltura biologica, agli "ateliers di creatività", un lavoro inteso come servizio o cura, come si direbbe oggi.

L'ultima parte di *Écologie et Féminisme* è dedicata ad "alcuni obiettivi dell'anti-patriarcato" in una prospettiva che può essere accostata alla "prospettiva della sussistenza" elaborata dalle femministe della scuola di Bielefeld, una prospettiva che può guidare l'agire nella società e in ogni sfera dell'attività umana e che si basa sulla consapevolezza che l'oppressione e l'inferiorizzazione delle donne, lo sfruttamento del loro lavoro, della natura e dei popoli dei paesi del Sud del mondo sono le precondizioni per il funzionamento del paradigma della crescita (Mies - Bennholdt-Thomsen 2005).

La trasformazione di una economia distruttiva che poggiava sul lavoro invisibile e non remunerato delle donne avrebbe comportato l'inversione della curva della natalità, la riduzione del tempo di lavoro, la dissoluzione della famiglia nucleare, il ritorno a una agricoltura dolce ed estensiva, il superamento della divisione del lavoro, l'abolizione del denaro, la sostituzione dell'autorità governativa con consigli autogestiti. Non si trattava del ritorno al matriarcato,

> ma del ritorno in forze di quelli che chiamiamo, usando il linguaggio sessista del nemico, i "valori femminili", ovvero i valori pre-patriarcali attribuiti da allora **arbitrariamente** e in blocco al genere femminile intero, in teoria per conservarli, in pratica per disciplinarli: **il pacifismo** in opposizione all'aggressività, **l'egualitarismo** in opposizione al dominio, **il ludico** in opposizione allo sfruttamento illimitato (nel nome del profitto o del progresso), **la coscienza dei limiti** in opposizione alla loro negazione (Eaubonne 2018, p. 164).

Pensare e praticare l'ecofemminismo significava immaginare ed esplorare le vie politiche e le pratiche in grado di mettere in atto il mutamento della società al di fuori delle logiche strutturali del potere. A partire da un'esperienza radicale di "specie separata e reificata", le donne avrebbero affermato la loro volontà di cambiare il mondo, non per migliorarlo, ma perché ci potesse ancora essere un mondo.

> Allora, con una società finalmente al femminile che sarà il non-potere (e non il potere alle donne), si dimostrerà che nessun'altra categoria umana avrebbe potuto compiere la rivoluzione ecologica; perché nessun'altra vi era altrettanto direttamente interessata a tutti i livelli. E le due fonti della ricchezza deviate verso l'interesse maschile ritorneranno ad essere espressione di vita e non più elaborazione di morte; e l'essere umano sarà finalmente trattato come persona, e non soprattutto come uomo o donna. E il pianeta al femminile rinverdirà per tutti (Eaubonne 2000, pp. 318-319).

Conclusioni e prospettive

Françoise d'Eaubonne è stata a lungo ignorata dagli studi ecofemministi, da quelli ecologisti, dai movimenti e dalla critica letteraria. Tutte le ricerche recenti si sono interrogate sulle ragioni di un tale silenzio, un silenzio "crudele", come lo ha definito Myriam Bahaffou (2019): l'estremismo di alcune sue scelte personali e politiche – prima fra tutte quella della contro-violenza –, la sua veemenza, il gusto per i gesti eclatanti, il suo spirito indipendente e, più in generale, la lunga e "inquietante estraneità" del femminismo francese dalle questioni ecologiche (Burgart Goutal 2018).

Oggi, tuttavia, si inizia a riscoprire e a valorizzare la sua forza visionaria, la sua chiara percezione della catastrofe imminente, la sua capacità di cogliere le connessioni tra le oppressioni, di inventare nuovi linguaggi e coniare nuovi termini, e si

comprende che molte delle sue idee sulle origini e la natura del dominio, sull'economia, la demografia e sui quadri concettuali patriarcali hanno conservato la loro forza critica e la loro preveggenza e meritano di essere riprese, discusse e incluse nelle analisi e nelle strategie ecofemministe.

Questa tendenza a rivalutare il pensiero di D'Eaubonne si coglie anche al di là dei confini della Francia. "Parlando dal sud dell'Europa"[14], Alicia Puleo ha sostenuto in più occasioni la necessità di rivolgere un'attenzione particolare alla questione demografica. Infatti, l'idea di Françoise d'Eaubonne che la sovrappopolazione del pianeta sia il risultato del rifiuto patriarcale del diritto delle donne di disporre del proprio corpo si è andata affievolendo sino a scomparire nel pensiero delle ecofemministe che sono venute dopo di lei.

> L'avvenire dell'ecofemminismo – continua la filosofa spagnola – passa attraverso una presa di posizione chiara per l'accesso delle donne a una libera scelta in materia riproduttiva. Le donne devono essere riconosciute come soggetti capaci di decidere delle questioni demografiche, come i soggetti della loro stessa vita, capaci di scegliere se vogliono o non vogliono bambini, nel quadro di una cultura ecologica dell'eguaglianza (Puleo 2017, p. 77).

Nel quadro di una "cultura ecologica dell'eguaglianza" le idee di Françoise d'Eaubonne sulla demografia possono essere ampliate alla luce di principi di ecogiustizia riproduttiva che includano le preoccupazioni per il declino della fertilità di tutti i viventi, per l'ipersfruttamento crudele della riproduzione animale e per tutto ciò che limita la libertà di avere e nutrire bambini sani: povertà, guerre, colonialismo, razzismo, inquinamento, distruzione degli ecosistemi, aspetti che anche oggi la retorica della sovrappopolazione tende a ignorare (Gaard 2010).

Nel contesto latinoamericano di espropriazioni, estrattivismo su larga scala, conflitti armati e violenza alle donne, le riflessioni di D'Eaubonne sull'appropriazione della "fertilità terrestre" trovano oggi un'eco nei femminismi di quei paesi che nel binomio corpo-terra fondano la loro visione di liberazione. Ha scritto recentemente la femminista uruguaiana Alicia Migliaro-González:

> Siamo le prime a essere spogliate della terra fertile, dell'aria sana e dell'acqua pulita. Siamo mano d'opera a basso costo e precaria di cui si serve l'industria agroalimentare per produrre alimenti tossici. Siamo quelle che sopportano gli abusi sessuali quando la mascolinità egemonica domina nel nostro territorio […]. E quella perspicacia che ci viene da Françoise ci fa comprendere perché siamo noi quelle che si ribellano e che sostengono con dignitosa collera le proprie utopie (2021).

I processi di appropriazione violenta della terra, per lo più coltivata dalle donne, in atto in alcuni paesi del Sud del mondo riportano in primo piano anche la questione delle origini del dominio patriarcale. Riappropriarsi del proprio corpo e del proprio rapporto con la natura, attuare quel rovesciamento culturale, sociale ed economico invocato da Françoise d'Eubonne richiede oggi più che mai di riappropriarsi anche del proprio lontano passato (Hache 2017) con lo stesso spirito che aveva guidato la femminista francese nelle sue ricerche sulle società pre-patriarcali: opporre alle narrazioni che rendono impotenti e che presentano il futuro come inevitabile, narrazioni che diano fiducia, che offrano risorse culturali, storiche e psicologiche per "distruggere ciò che ci distrugge" (Eaubonne 2018, p. 30).

[14] Riprendo qui il titolo del suo saggio del 2012, *Speaking from the South of Europe.*

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The crime of forced pregnancy in international criminal law jurisprudence

by

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Introduction

International Criminal Law (ICL) is an evolving field. Considering its early origins, dating from the end of the First World War (WWI), ICL has developed substantially. From dismissing the reality of rape during wartime, to considering rape as a property crime or a crime against honour, to then again classifying it as a crime against humanity in the Rome Statute, ICL has indeed developed according to the times.

Nevertheless, though sexual violence has been acknowledged extensively in international criminal law as a crime against humanity (Rome Statute, Article 7) and as a war crime (Rome Statute, Article 8), this particular form of violence fails to cover a whole other set of forms of violence suffered by women.

One crime with which ICL still has failed to catch up is that concerning reproductive violence on women. Like a spectrum, this kind of violence can manifest itself in many different ways. Still, one thing which these "representations" all have in common is the way in which they are centred as an attack on women's reproductive capacity to get pregnant. These attacks can therefore be focused on ways to prevent pregnancy – by forcing contraceptives or by damaging the reproductive system so that it cannot sustain a pregnancy – or to make sure that it does not come to an end – by forcing an abortion through chemical or physical means. Another representation, which is even more disregarded than the former, is situated on the opposite side of this spectrum: it encompasses those kinds of violence that force women to get pregnant – such as the crime of forced impregnation – or that allow no autonomy over their reproductive system while pregnant. These "representations", besides the violence caused when inflicted, bear long-terms consequences or "secondary harms" (Grey 2017: 907) on women. These include, for example, the permanency of a sterilization; the dangers arising from miscarriages and abortions; the risk of death during childbirth; the likelihood of being "left with the burden of raising any children born as a result of the violence"; and the "social stigma that women who become pregnant by 'the enemy' and their children often face" (Grey 2017: 907).

By their very nature, these are crimes which, by being centred on pregnancy, only affect women with the reproductive capacity to get pregnant. As this is a sub-

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stantial subset of the population, it is important that such crimes are not dismissed under the wider field of sexual-related crimes.

As such, this paper focuses on the right to reproductive autonomy and sexual equality, seeing how important the principle of fair labelling is in gender-based crimes, and how the field of ICL still has a long way to go in order to finally catch up.

Hence, this paper will dwell on the crime of forced pregnancy as part of a wider spectrum of reproductive crimes, focusing on its birth, evolution, and practice. Firstly, it will introduce the reality of reproductive crimes in ICL, seeing how they have been represented by different International Criminal Tribunals (ICTs). In particular, it will concentrate on the crime of forced pregnancy which, despite instances of it being reported throughout history, has never been prosecuted, as such, by any ICT.

Secondly, it will present the crime of forced pregnancy as represented in the Rome Statute. By presenting the particularly contentious negotiations for the crime, it will follow by analysing its various elements. Thirdly, it will provide an analysis of how the crime of forced pregnancy has been treated in practice. By addressing the attempts to prosecute the crime before the Extraordinary Chambers in the Courts of Cambodia (ECCC), it will examine the first ever ICT case successfully charging the crime of forced pregnancy: the Ongwen case. In particular, by addressing the Court's reasoning, it will provide an analysis of what this case's judgment means for the future role that reproductive violence will play in ICL.

Thence, this paper will argue that forced pregnancy, as charged in the Ongwen case, has paved the way to a revolutionary ICL understanding of reproductive violence. It aims to give importance to other reproductive crimes and emphasize the need for reproductive autonomy and freedom.

Forced pregnancy as part of the wider spectrum of reproductive crimes

Reproductive Violence in ICL

ICL has made considerable progress in shedding light on gender-based crimes. Special ICTs such as the International Criminal Tribunal for Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) are important examples of ways in which the international community began (even before the Rome Statute) to pay attention to the role that sexual violence (and rape in particular) plays during conflict. It is thanks to these tribunals that the narrative of ICL started to change, recognizing women as victims of specific kinds of violence, and considering sexual violence, for the first time, as a tactic of war. Before these tribunals, though gender-based violence always existed during conflict, it had been significantly dismissed or considered as an attack on honour (Fourth Geneva Convention, Article 27).

However, what these tribunals have failed to shed light upon, is a different kind of harm: that arising from reproductive violence. This violence, like sexual violence, has been traditionally reported in all kinds of conflict. Still, as opposed to sexual violence, it has been often disregarded in the Statutes of different ICTs throughout history.

In fact, during the Second World War (WWII), reproductive violence, perpetrated under many different forms, was seldom recognized as a gender-based crime. For example, though there have been reports of reproductive violence perpetrated by Nazi Germany – such as forcibly sterilizing Jewish women by means of experimental x-ray machines, surgery, and various drugs – these have been treated as "medical" crimes, in relation to ethnic cleansing, and not as a specific attack on the reproductive capacity of women.

To further illustrate, reproductive violence during WWII has been reported also in the Japanese Imperial Army's "comfort stations", where so-called "comfort women" were detained for the purpose of sexual slavery. For these women, reproductive violence took many different forms ranging from forced contraception (The Prosecutors and the Peoples of the Asia-Pacific Region v. Hirohito Emperor Showa et al, §340), to forced abortion (The Prosecutors and the Peoples of the Asia-Pacific Region v. Hirohito Emperor Showa et al, §342). These crimes, however, have been taken into consideration only 54 years after the establishment of the International Military Tribunal for the Far East (IMTFE) by the Women's International War Crimes Tribunal on Japan's Military Sexual Slavery, created expressly because, in the IMTFE, reproductive crimes (and sexual crimes) had been considerably dismissed.

A final example, occurring many years after the end of WWII, has been reported in Rwanda. There, Hutu men reportedly raped Tutsi women until they became pregnant with children from the Hutu ethnicity. Also, there have been reports that Hutu men killed or enforced abortions on Hutu women pregnant with a baby whose biological father was of Tutsi ethnicity. Considering the circumstances, though no reference to reproductive violence was made in the ICTR Statute, the Prosecutor v. Akayesu case provided a very insightful analysis of various kinds of reproductive violence, but only in relation to the crime of genocide. In fact, when charging the crime of genocide, it treated the practice of sterilization, forced birth control, and deliberate impregnation as measures to prevent births within the "other" group, or to induce births by impregnating women from that group (Prosecutor v. Akayesu, §507). The main issue is that the judgement never mentioned these crimes as a form of reproductive violence *per se*, or as a particular form of gender-based violence. In particular, it never dwelled on the particular consequences of these crimes on the victims, leaving references to these only in the indictment (2017: 911).

Forced Pregnancy as Reproductive Violence

Though forced pregnancy is a fairly new crime in terms of codification, like other kinds of reproductive violence, it has frequently been perpetrated both during conflict and peacetime.

During conflict, one instance of such violence was perpetrated during the Bosnian war in the so-called Serbian rape camps, where Bosnian Muslim women were forced to bear Serbian babies. Though sexual violence (and rape in particular) has been charged in numerous cases before the ICTY, no reference was made to the reproductive violence (and its consequences) suffered by Bosnian Muslim women in those rape camps. In so doing, it limited the spectrum of the violence they had suffered to sexual violence (Brownmiller 1975; Boon 2001: 626).

The practice of forced pregnancy was also reported in Cambodia under the Khmer Rouge. During the late 1970s, the Communist Party of Kampuchea (CPK) established a regime based on control. While the country was failing and food was short, troops gathered people from many different villages and put them to work in rice fields. In these working sites, the CPK also established a policy for marriage regulation. In order to solve the country's low birth rate and enforce further control on the population, this policy forced men and women to marry and consummate their marriage that same night.

Unfortunately, when these conflicts were carried out, the crime of forced pregnancy was still not codified, and the only references to the crime were made in the 1993 Vienna Declaration and the 1995 Beijing Platform for Action. That is why, though there was extensive evidence of the crime, it has not been prosecuted, as such, neither by the ICTY – prosecuting it as rape – nor by the ECCC – prosecuting it as rape during forced marriage.

Forced pregnancy under the Rome statute

Though the Rome statute was drafted and signed on 17 July 1998, its drafting history goes back a few years. Considering the complexity of the Statute, the need to take into account the historical context of the time, and the most recent international criminal judgments and practice, the process lasted about four years. Interestingly, out of all the crimes codified in the statute, the most complex to draft was precisely that of forced pregnancy.

Negotiating History

The intention behind drafting the crime of forced pregnancy emerged from one tragic historical circumstance. The negotiations for the Rome Statute began only a few years after receiving reports of the violence committed in Serbia's so-called rape camps.

At the beginning of the negotiations, the definition of the crime relied heavily on the circumstances of this case, where the intent behind those rapes was that of affecting the ethnic composition of the Bosnian Muslim population. In fact, the initial definition of the crime covered only the intent to change the ethnic composition which, ultimately, began to be considered as being too reductive. As such, this definition would have allowed the prosecution of forced pregnancy only (or for the most part) in cases of genocide. In order to encompass also other reasons for which such crime might be perpetrated, the drafters agreed to include also the intent of carrying out other grave violations of international law.

During the negotiations, as a result of the evidence collected at the ICTY, a necessity emerged to shed light on a crime which differed extensively from the act of rape. Abiding to the principle of fair labelling, rape – though it is more encompassing – does not adequately represent the extent to what Bosnian Muslim women endured in Serbia's rape camps. In particular it fails to give the adequate insight into the reproductive violence they suffered in conjunction with the crime of rape. That

is, the attack on their reproductive capacity under the form of unwanted pregnancies and, subsequently, the inability to choose about the fate of their pregnancy.

During the negotiations, most issues arising from the codification of the forced pregnancy crime were very contentious. In particular, the Holy See – along with other states – feared that the original formulation of the crime would interfere with national legislation regarding abortion and the "broader right to reproductive self-determination" (Boon 2001: 658). In particular, it feared that the *actus reus* of keeping a woman pregnant – through unlawful confinement – would go against its anti-abortion principles forbidding women to terminate their pregnancies.

In the end, in order to make the crime more comprehensive and to bypass the issues on abortion and marital sexual relations, the negotiations led to a compromise. Its definition is provided in article 7(2)(f) of the Statute:

> "Forced pregnancy" means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy (Rome Statute, Article 7).

Elements of the crime

Actus Reus

The *actus reus* of this crime is the unlawful confinement of a woman forcibly made pregnant. As a result, various requirements must be satisfied: the victim was unlawfully confined; the victim is a woman; the victim was pregnant during any time of the confinement; and the pregnancy was caused by a forcible act.

The element of unlawful confinement is perhaps the most contentious material element to assess. Since no such definition exists under international criminal law, this element is subject to interpretation. According to a human rights law interpretation, unlawful confinement amounts to any violation of the right of liberty including, but not limited to, unlawful imprisonment (HRC, 2014: 34). Also, given that the definition does not provide any specific duration of the confinement, as stated by Amnesty, "[...] it is [...] sufficient that the person who has been made forcibly pregnant is unlawfully confined for *any* period of the pregnancy" (Amnesty International, 2020: 11).

In order to satisfy all these elements, it is necessary that the woman was confined in the time frame beginning from when she is thought to be pregnant and until the termination of the pregnancy. The termination can occur "by giving birth, by miscarriage, by abortion or by the limit permitted by local laws for obtaining an abortion" (Boon 2001: 662–63).

1) Mens Rea

Since the actus reus non facit reum nisi mens sit rea, as provided by article 30(1) of the Rome Statute, it is necessary that the material elements previously outlined need to be conducted with specific knowledge and intent.

Firstly, the perpetrator must be aware that the victim was pregnant and that she has been made pregnant forcibly: that can be through the use of physical force (or

the threat thereof), psychological coercion, and deception – such as deceiving the victim into getting a certain treatment without informing her that it is artificial insemination, or not using (or stopping) contraceptives without the knowledge of the victim.

Secondly, the alternate intent of the crime, as according to the definition, is to either affect the ethnic composition of any population, or to carry out other grave violations of international law. The first intent, clearly inspired by the case of Yugoslavia, allows this crime to be prosecuted especially (but not specifically) in relation to cases of genocide or ethnic cleansing. The second intent, instead, broadens the scope of the crime, allowing its prosecution also in cases where the intent was to carry out other grave violations of international law, "whether related to the pregnancy or not" (2020: 20) or whether they are expressly criminalised in international criminal law or any other international law instrument.

2) Additional Provision

The last component of the definition that it "shall not in any way be interpreted as affecting national laws relating to pregnancy" is perhaps the most surprising (2020: 20). Nonetheless, it has become more understandable, and less surprising, given the issues which emerged during the negotiations. In fact, given the need to find a compromise that would suit all parties, this provision has somewhat ensured that the right of abortion would not be taken under the jurisdiction, or scrutiny, of the International Criminal Court (2020: 20).

Forced Pregnancy in Practice

After having explained how the definition of the crime of forced pregnancy came into being, it is interesting to see that it is one of the few crimes contained in the Rome statute which has never been charged, as such, by any international tribunal, including the International Criminal Court (ICC). That is, until the Prosecutor v. Ongwen case, whose trial began on 6 December 2016.

Efforts prior to the Ongwen case

The crime of "forced pregnancy" was officially codified in ICL when the Rome Statute entered into force on 1 July 2002. Since then, neither the ICC nor any other tribunal had prosecuted the crime. This, however, does not mean that no efforts were made.

Namely, the ECCC, established in 2006, included no provision for the crime of forced pregnancy in its statute. Still, many – though inconclusive – efforts were made to charge it in its Case 4. On 4 March 2016 the Civil Party Lawyers (CPL) filed a request for investigative action against Ao An and Yim Tith before the Office of the Co-investigating Judges. In particular they requested "supplementary investigations to determine the intent [...] to carry out grave violations of international law through the confinement of one or more women made forcibly pregnant"(Civil Party Lawyers, 2016: 2). Since no such crime exists in the Statute of the ECCC, the CPL proposed to prosecute the crime of forced pregnancy under its

"crimes against humanity of other inhumane acts" provision (ECCC Treaty, Article 5).

As introduced in the first part of the paper, the CPK established a marriage policy forcing men and women to marry and consummate their marriage that same night. These acts were prosecuted, and subsequently charged, by the Trial Chamber in the Case 002/2 as "forced marriage" and "rape in the context of forced marriage" under the crimes against humanity provision of "other inhumane acts"(ECCC, 2018: 18).

Nevertheless, according to the CPL, such crimes did not fully reflect the extent of women's suffering. In particular, they did not adequately represent the physical and psychological consequences of the pregnancies arising from those rapes. These – thoroughly described in the CPL's request for further investigation – describe dreadful living conditions where "the vast majority of the Cambodian population was forced to perform hard physical labour and subjected to physical violence while having no access to sufficient food or medical treatment" (2016: 11). These conditions remain unchanged for pregnant women, who were held to the same standards of all people: having to work as much, and not receiving the medical assistance they required.

> Pregnant women would get [...] feet with open wounds and scabs from working in the paddy. Some of the pregnant women were swelling because of lack of basic nutrition [...]. Khmer Rouge did not care about the health of pregnant women they focused only on forcing everyone to work to follow the rule (de Langis, 2013).

After the pregnancy, the consequences of it put an additional burden on their victimisation. Women and their new-born babies, as reported by the CPL, rarely received any assistance. They were forced to work right after the delivery and, due to the fatigue and anxiety, many women were unable to breast-feed their babies (2016: 13). Also, along with the stigma arising from a pregnancy forcibly conceived during a forced marriage, these conditions contributed to the psychological harms suffered by women.

During the pregnancy, other issues emerged with the lack of medical assistance. As a result, many pregnancies followed in miscarriages and stillbirths, bearing critical psychological and physical consequences on the women. Furthermore, due to the inexistence of safe abortion measures, women who felt they could not bear the consequences arising from a pregnancy in those conditions, had no other choice than to perform abortion themselves, or helped by others, using unsafe methods which could result in physical and psychological traumas. These, as reported by the CPL, included "using a branch of a palm tree to open the stomach", "jumping down from heights", punching the abdomen, and rolling down a hill (2016: 15).

In their request, the CPL used the Rome Statute definition of forced pregnancy. This meant that various elements needed to be covered: the unlawful confinement, the forced impregnation, and the *mens rea*.

The first was assessed on the basis of the nature of the CPK rule. That is, according to the words of the CPL, one that established policies forcing nearly all citizens to live in cooperatives and worksites, whilst physically or morally restraining them under threats of violence (2016: 21).

The second requirement concerns the knowledge of the perpetrator that the victim was forcibly made pregnant. This knowledge rests in the policies adopted by the CPL. In fact, the enforced consummation of the marriage was intrinsic of the wider policy of forced marriage. Also, considering that no access to contraceptive methods was provided (2016: 21), the situation, according to the CPL, met the requirement of forced impregnation (2016: 21).

The last element, instead, concerns the mental intent to carry out the crime. In this case, the CPL found evidence that the CPK intended to carry out "other grave violations of international law". Namely, "the intention [...] to impose forced labour, forced conscription, restriction of movement, and other forms of serious human rights violations on the children born out of the forced marriages" (2016: 21).

The Ongwen Case

The Ongwen case was revolutionary according to many aspects: one of these is that it was the first international tribunal ever charging the crime of forced pregnancy. This means that future interpretations of this crime would base themselves on the interpretations provided for this case.

On 4 February 2021, the ICC Trial Chamber IX found Dominic Ongwen guilty of 31 counts of war crimes and 30 counts of crimes against humanity, charging the crime of forced pregnancy as both a crime against humanity and war crime against two women.

These women were both abducted, while still minors, in Northern Uganda and taken into Dominic Ongwen's household. There, they became Ongwen's so-called "wives", threatened with murder if they ever decided to leave (Prosecutor v. Domnic Ongwen §206). As "wives", they mainly had to provide for Ongwen's wellbeing, including treating his wounds, bathing him, and pleasing him sexually. They were both forced to have sexual relations with him, under threat and against their will, suffering great pain and fear (Prosecutor v. Domnic Ongwen §2027, §2048).

> Dominic Ongwen [...] asked [...] "[h]ave you seen this gun? If you refuse to sleep here, then you're going to face the consequences". [The first woman] told him that she was young and had never had sexual relations with any man. Dominic Ongwen's escorts then held her hands as Dominic Ongwen held her by force and penetrated her. [She] cried and bled a lot (Prosecutor v. Domnic Ongwen §2046).

> [...] Dominic Ongwen told [the second woman] he wanted her to be his "wife" and to come to his room. She refused to go. She then saw three escorts with sticks in front of Dominic Ongwen's house and decided to obey. [...] Dominic Ongwen [...] got on top of her and put his penis into her vagina. [She] felt pain and fear because she had never slept with a man before. (Prosecutor v. Domnic Ongwen §2048).

As a result of these rapes, the two women became pregnant and were forced, while pregnant, to keep serving Ongwen.

The Court's Interpretation

Before assessing whether the collected evidence amounted to forced pregnancy, the Chamber began its analysis by commenting on the crime of forced pregnancy, its history, and its meaning. It begins with an impactful phrase: "The crime of forced pregnancy is grounded in the woman's right to personal and reproductive autonomy and the right to family" (Prosecutor v. Domnic Ongwen §2717). It proceeds, with no less impact, to qualify the definition codified in the Statute as "too narrow", and stated the importance of interpreting forced pregnancy "[...] in a manner which gives this crime independent meaning from the other sexual and gender-based violence crimes in the Statute." Prosecuting it as a combination of other crimes, according to the Chamber, would not be enough. As such, they could not encompass the extent of the woman's deprivation of reproductive autonomy – a direct effect of the forced pregnancy crime (Prosecutor v. Domnic Ongwen §2722).

After this "comment", it proceeds by interpreting, element by element, all the material and mental requirements listed in the crime's definition, providing new interpretations for these. Firstly, while interpreting the material elements, it held that "[t]he forcible conception of the woman could occur prior to or during the unlawful confinement" and that "[t]he perpetrator need not have personally made the victim forcibly pregnant [...]" (Prosecutor v. Domnic Ongwen, §2723). Also, what is particularly interesting is the importance given to *consent*, including circumstances in which she is physically or mentally threatened or coerced through "violence, duress, detention, psychological oppression or abuse of power, against her or another person" (Prosecutor v. Domnic Ongwen, §2725).

Secondly, it interpreted the mental elements by clarifying something very important: that "the crime of forced pregnancy consists in the confinement of a forcibly pregnant woman [...], regardless of whether the accused specifically intended to keep the woman pregnant" (Prosecutor v. Domnic Ongwen, §2729). The only intent which should be considered, in this case, is that of carrying out other grave violations of international law: namely, to keep confining them with the intent to continue raping, sexually enslaving, enslaving, and/or torturing them (Prosecutor v. Domnic Ongwen, §2727).

The impact on "reproductive violence"

Though the judgement was a real breakthrough for the way in which reproductive violence, and forced pregnancy in particular, would be considered in the future of criminal law, it could have relied more on its Pre-Trial judgment where more emphasis was put on choice and, especially, on the lack thereof in getting pregnant, and in the fate of the pregnancy (2017: 925).

Also, the judgement made no reference to the wider spectrum of consequences that reproductive violence like forced pregnancy might cause. Though these were briefly mentioned in the Pre-trial phase, more importance could have been given to both the physical and psychological consequences of this crime without limiting the suffering to the act of forcible impregnation.

Nonetheless, the references made to reproductive autonomy and consent in the final judgement were still able to give a sign of openness and regard to the generally overlooked reality of reproductive violence. Essentially, this judgment emphasized the need to acknowledge the extent of women's deprivation of reproductive autonomy, possibly taking the whole extent of reproductive crimes under the spotlight and, finally, providing the accountability these crimes deserve.

Conclusion

This paper has presented the reality of reproductive violence in ICL. By focusing on the crime of forced pregnancy, it has provided an insight into one of the most contentious crimes ever to be drafted. By examining its origins and negotiating history, this paper has provided an analysis of the various elements that make up forced pregnancy crime. In so doing, it has paved the way towards understanding its complexity and its emergence as the one of the few reproductive crimes represented in the Rome Statute.

Finally, this paper has represented the crime of forced pregnancy in practice. Since this crime has been one of the most neglected in the history of ICL, the acknowledgment of such efforts to prosecute it represents a reality of ICL which gives hope. A hope that, over time, reproductive violence centred on the reproductive autonomy of women will be represented and prosecuted by the various ICTs, effectively carrying out accountability.

What the Ongwen case has demonstrated, is that reproductive autonomy is under attack and that it should be prosecuted as such, "calling the crime by its true name" (Prosecutor v. Domnic Ongwen, §2722). Still, this case has also demonstrated that the ICC still has a long way to go into fully acknowledging the extent of this particular kind of violence: the consequences and "secondary harms" (2017: 907) that women suffer as a result of the forced pregnancy.

Only when these are acknowledged and given suitable importance, will a charge of forced pregnancy be able to properly represent the reality of women's sufferings.

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Resilient Sisterhood Project: Black Women's Reproductive Health

by

*Lilly Marcelin and Charlene Galarneau**

In 2022 the Resilient Sisterhood Project (RSP) will celebrate its 10th year anniversary in Boston, Massachusetts, USA. This New England city – infamous for its anti-Black racism, renowned for its world-class health care and educational institutions, and home to both the Combahee River Collective as well as the Boston Women's Health Book Collective – is the fertile ground from which RSP has flourished. Today, as in the past, RSP envisions "transforming communities to find solutions for diseases of the reproductive system that disproportionately affect Black women"[1]. Why and how RSP came to be with its particular understanding of Black Women's reproductive health justice is the story we tell here.

* Lilly Marcelin is a community activist and organizer who has dedicated her lifelong journey around racial and social justice equity. Ms. Marcelin has worked on a broad range of issues from gender-based violence, human trafficking, health and socioeconomic disparities to women's reproductive health and rights. She is the Founder and Executive Director of the Resilient Sisterhood Project (RSP) with a mission to inform and empower women and young adults of African descent about the common diseases of the reproductive system that disproportionately affect them. Ms. Marcelin strongly prefers to work in partnership with – rather than on behalf of – black women in order to address deeply rooted systemic racism. Ms. Marcelin holds educational degrees from: Wellesley College - B.A. Women's and Gender Studies with a concentration in science, public health, and Global health; Tufts University – Masters in Public Policy Boston University School of Management – Certificate from the Institute for Nonprofit Management and Leadership (INML) program.

Charlene Galarneau is Senior Lecturer at Harvard Medical School, Department of Global Health and Social Medicine, and Center for Bioethics; Emerita Faculty at Wellesley College, Women's and Gender Studies; and Affiliate Researcher at Boston University, Center for Antiracist Research. Her teaching and research explore the ethics of health care, public health, and health policy, in particular concepts and practices of justice that take seriously multiple and diverse communities and their intersecting social relations including gender, race, and geography. Research topics include racism in bioethics, USPHS STD experiments in Guatemala, ACA exclusions and exemptions, reproductive justice, and FDA blood donor deferral policies. Galarneau's 2016 book, *Communities of Health Care Justice*, cultivates a concept of community justice that understands communities as critical participants in determining the nature of just health care. Her initial interest in ethics was motivated by her work with rural community/migrant health centers and the communities they serve.

This article is co-authored following a series of interviews of Lilly by Charlene.

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Listening Beyond the Silences

In her decades of work with survivors of gender-based violence, Lilly Marcelin noticed that many of these women were also dealing with reproductive health problems. Considering that these health issues might be impacting many women in the Black community, Lilly wondered about her family members, friends, and peers. Did they too struggle with these health concerns?

Drawing on a rich oral and cultural tradition of wisdom circles, Lilly invited close family members, friends, and colleagues to gather in circles and one-on-one to speak about their experiences. Professional and working class, young and old, they talked and cried around kitchen tables, in public libraries, and on playgrounds in Boston, Mattapan, Hyde Park, Dorchester, and Cambridge. They invited their loved ones and friends, women who too shared their stories about dealing with diseases of the reproductive tract including uterine fibroids, endometriosis, infertility, polycystic ovary syndrome (PCOS), and gynecologic cancers. Early onset puberty of the young girls in their families was also a concern. They disclosed their feelings of confusion, shame, fear, and anxiety as they struggled daily with these health issues. One woman who worked as a hotel housekeeper-standing on her feet all day revealed that out of fear of staining her clothes, she refused to sit on the bus on her way to work and home due to the prolonged and heavy bleeding of her uterine fibroids.

Over time and throughout the many conversations, common themes arose. Women spoke of multiple visits to different doctors in their attempts to figure out what was wrong. They spoke of feeling that their pain and other concerns were minimized or met with indifference by health care providers. Some women with endometriosis explained that it took many years and seeing seven or more gynecologists before they received a proper diagnosis. Another common theme was their experience of health care providers' use of racist stereotypes of Black women as highly sexualized, for example, by assuming that these women's pain was caused by pelvic inflammatory disease (PID), an illness often caused by sexually transmitted infections (STIs).

Many women spoke of leaving their medical appointments with little information about their conditions. They often felt ill-equipped to ask questions in their next visit. Stories of medical contempt and neglect abounded. Meanwhile these women's undiagnosed ailments worsened and they felt overwhelmed in managing these health issues. Indeed, many felt alone. And they wondered aloud, why was there so much silence, secrecy, and inaction about these reproductive health issues?

As Lilly listened, she began to research Black women's reproductive health issues – in the medical and public health literatures and as addressed by reproductive health organizations. What she learned horrified her. Some reproductive health conditions, such a uterine fibroids appeared to disproportionately affect African American women, while other conditions such as endometriosis appeared to be un-

[1] Rsphealth.org. "Black women" is understood to mean women of African descent; women means all persons who identify as women.

derdiagnosed among Black women[2]. And there was much that was simply unknown and/or unattended to in the scientific literature[3]. Furthermore, Lilly found that Black women's health issues were not central issues to most reproductive health organizations. Rather they tended to center their work around middle-class White women's priorities. Black women's reproductive health issues were generally limited to abortion, teen pregnancy, and STIs which, like the clinical stereotypes, stigmatize women of African descent as hyper-sexualized.

It was becoming clear to Lilly that the stigma, silence, and inaction discouraged women from seeking and receiving high quality care in a timely manner. She became convinced that overt and subtle, deeply layered and harmful racist and sexist narratives about Black women's reproductive health needed to be addressed. It became apparent that other societal conditions affected health and thus also needed attention: the stress of chronic racism, inequitable incarceration, harsh anti-immigration policies, unequal exposure to environmental toxins, and access to affordable and healthy foods also contributed to adverse reproductive health outcomes.

Given the troubling data and narratives about reproductive health and social conditions, Lilly began to understand that deeper forces were at work in these women's experiences and stories.

Overwhelming though it was, Lilly felt a deep moral responsibility and commitment to do something to address these interlocking systems of injustice.

After three years of listening to women and learning the research, Lilly knew that she had the collective momentum of a village supporting a vision of action. With great audacity and invoking the spirits of her ancestors for strength and vision, Lilly realized that she needed to start an organization to inform and empower Black women on issues regarding their reproductive health. It would be a grassroots organization focused on community-centered education and advocacy for Black women's reproductive health through a social justice framework. The first activities of the organization would be to focus on education that supported rethinking and reframing the dominant negative and limited narratives around Black women's reproductive health. The organization's advocacy work would center on challenging medical/social inequities that are harmful to Black women's reproductive health. Lilly believed that an advocacy platform was necessary to start a transformative movement of well-informed women who could articulate their reproductive health concerns and needs to their medical providers and influenced social and public health policies.

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[2] Jacoby Vanessa L, Fujimoto Victor Y, Giudice Linda C, Kuppermann Miriam, Washington A. Eugene. Racial and ethnic disparities in benign gynecologic conditions and associated surgeries. Am J Obstet Gynecol. 2010;202(6): 514-521, https://tinyurl.com/4w58va22.

[3] More information has become available in the last decade. See, for example, Eltoukhi Heba M, Modi Monica N, Weston Meredith, Armstrong Alicia Y, Stewart Elizabeth A. The health disparities of uterine fibroid tumors for African American women: a public health issue. *Am J Obstet Gynecol*. 2014;210(3):194-199. https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3874080/; Sophia King, "Rx For Change: Racial Disparities in Cervical Cancer Mortality," National Women's Health Network, Jan 8, 2021, https://nwhn.org/13810-2/.

Naming the organization took months. In honor of the resilience so prominent in Black women as they met reproductive health crises and challenges, and in honor of the close relationships formed among Black women as they shared their stories, the new organization was called "The Resilient Sisterhood Project"[4].

The Resilient Sisterhood Project Emerges: The First Five Years (2012-2016)

In the summer of 2012, Lilly sublet a small office space in the South End of Boston from an organization that runs an English to Speakers of Other Languages (ESOL) school for immigrants. With seed money awarded by the Katherine W. Davis Foundation and two Wellesley College student volunteers, Lilly launched a peer leadership program entitled "Empowering Black Female Adolescents"[5]. This six-week education and training program for teens 14-19 years old had dual goals: to educate them about the reproductive health of Black teens and women, and to train them as peer leaders in reproductive health. The Davis grant enabled RSP to compensate these teens throughout their training, a reflection of RSP's valuing of their time.

In the fall of 2012, RSP moved into Boston's historic Harriet Tubman House which would become RSP's home for the next eight years. With a great sense of determination, many supporters in "the village" helped out with RSP's first brochure, donation of office furniture, small financial contributions, and so much more -- Lilly's daughter designed and built the first website. To provide governance and leadership, Lilly strategically convened an Advisory Council to guide the mission and vision of RSP. The demographic characteristics of Council members varied in race, ethnicity, sexual orientation, age, religious, and socioeconomic backgrounds and included women had been personally affected by serious reproductive health concerns.

Having a dedicated office space and community support provided a moral boost and invigorated RSP's energy and vision. The new location became a space where Black women could come to question social stereotypes, the culture of silence, and the lack of attention to the health impacts of these reproductive diseases. In order to manage the many financial details of a nonprofit and to lend credibility to RSP as it sought grants from foundations and other funding sources, Lilly chose the Black Ministerial Alliance of Greater Boston to serve as their fiscal agent from 2012-2019.

Lilly began to hold educational workshops in schools, churches, and women's organization spaces. These workshops focused on the specific reproductive health conditions of Black women including, but not limited to, diseases of the reproductive tract, health equity, reproductive rights/justice, health impacts of racial chronic

[4] Lilly notes that this name: The Resilient Sisterhood Project, is bittersweet as these women should be able to thrive with less resilience, in other words, to thrive without being burdened by unjust racial and social relations.

[5] Davis Projects for Peace, "Empowering Black Female Adolescents" last accessed August 11, 2021 at https://www.davisprojectsforpeace.org/projects/projects/node/2198.

stress on women's reproductive health, maternal health, unequal and cumulative exposure to toxic chemicals, environmental racism, gender-based violence, and oppressive cultural and racial norms. These spaces were revelatory for many attendees as they learned, for example, about the connection between their health and their toxic exposures to common household and personal care products. Given that these issues are not frequently discussed in the Black communities, these workshop participants realized that they were not alone in their lack of knowledge about reproductive health matters. Over time RSP became increasingly well-known as a reliable educational resource.

Collaborating with health care providers would be essential to improving health outcomes. Thus RSP worked to expand providers' understandings of these reproductive diseases and the social determinants of health that contributed to them. Specifically RSP attempted to raise awareness about the impact of racism in health care settings including health diagnoses and prevention, comprehensive information regarding health conditions, and clinician-patient interactions based on empathy, respect, and trust.

As Executive Director, Lilly worked to create, renew, and strengthen strategic collaborations with numerous area nonprofit organizations, colleges, and health institutions. For example, the Silent Spring Institute (SSI), a Boston-based science institution, works on research with physicians, scientists, public health and community organizations to identify and break the links between environmental chemicals and, for example, breast cancer. RSP has partnered with SSI as well as Boston Medical Center, Beth Israel Deaconess Medical Center, and a variety of community-based organizations. Working with Families For Justice As Healing, for example, has enabled RSP to highlight the reproductive health challenges of currently and formerly incarcerated Black women.

In these early years, RSP worked diligently to expand its educational and advocacy work with more workshops, conferences, and collaborative research. RSP became well established in Boston and continued to build relationships across public and private sectors. Reflecting on that expansion, RSP engaged in more significant partnerships with environmental justice organizations such as Clean Water Action and with related academic programs at Northeastern University. In collaboration with these entities and the Environmental Protection Agency, RSP cosponsored a major environmental justice conference in 2016 that centered racial and ethnic minority groups, particularly those from low-income neighborhoods that are adversely affected by multiple toxic exposures.

This conference was the first such community-based and academic convening in Boston to focus on the relationship between the health and well-being of women of color and environmental toxins. A conscious decision was made to invite women physicians and scientists of color who were doing notable research linking reproductive health and the environment as the lead conference speakers. Conference attendees, largely women of color, were elated to engage with these brilliant minds and asked RSP to bring them back in other contexts so that they could learn more and engage further. This unexpected conference outcome has catalyzed new RSP strategies for community engagement.

Lilly, her Advisory Council, and the other RSP volunteers trusted that the significance of their work would be recognized and that additional needed funding would come. And it did. In 2015 RSP received a private multi-year gift that leveraged future foundation grants and allowed RSP to pay staff including consultants and interns. Perhaps as importantly, it deeply affirmed their work. Since that time, most of RSP's funding has come from private foundations and major and individual donors.

The Next Five Years (2017-Present)

At the five year mark, Advisory Council members gathered to create a Vision Statement which continues to guide RSP's work today: "transforming communities to find solutions for diseases of the reproductive system that disproportionally affect Black women." Consistent with this vision, RSP reaffirmed its core education, training, and advocacy goals focused on the reproductive health needs of Black women, and added new education and advocacy efforts in support of social science research on Black women's reproductive health. Moreover RSP aims to raise public awareness of contemporary research and to contextualize it within the history of medical abuse of Black women's bodies.

In 2018, RSP created the Young Advisory Leadership Council [YALC]. This group of young Black women between the ages of 18 and 45 actively supports RSP efforts to raise awareness regarding reproductive health issues prevalent in their communities. Members of the YALC are bright, dedicated, motivated individuals highly committed to furthering RSP's mission and strategic plan through hands-on initiatives.

Drawing on the Sankofa principle of looking to the past to understand the present[6], RSP organized a particularly memorable event in May 2019 at Wellesley College, with the instrumental support and contribution of the Wellesley Centers for Women[7]. Medical experimentation is part of the historical legacy of Black women's enslavement in the U.S. In 19th century rural Alabama, Dr. J. Marion Sims practiced surgical techniques for fistula repair on enslaved women. We know the names of three of these women: Anarcha, Lucy, and Betsey. While Sims is honored as the "father of gynecology," Anarcha, Betsey, and Lucy are largely unknown and faceless. Wanting to celebrate and honor these women and to elevate their humanity, RSP commissioned three paintings representing them. In a special Mother's Day celebration titled "Remembering Our Foremothers in Gynecology: The Hidden Contributions of Anarcha, Betsey, and Lucy," these paintings were publicly displayed for the first time[8]. Amidst presentations, song, poetry, dance, food, and spoken word performance, this historical truth-telling revealed continuities to con-

[6] Sankofa is an African word from the Akan tribe in Ghana meaning that the knowledge of the past must never be forgotten.

[7] For information on the Wellesley Centers for Women, see: https://www.wcwonline.org.

[8] A Zoom recording of this Mother's Day Ceremony is available at https://rsphealth.org/webinars-events/.

temporary medical abuses such as the forced sterilization of Black and other women including incarcerated women.

Organizationally, RSP took a big step in 2019 and became a tax-exempt charitable organization. More changes took place in early 2020 with the onset of the COVID-19 pandemic. Adapting to on-line modalities, RSP went entirely virtual. Webinars replaced in person gatherings and an active presence on social media led to RSP drawing even more Black women and allies into its circle, women from across and outside the U.S. This broader exposure has meant that RSP is being invited to speak to a wider range of groups on a wider range of topics. As such, RSP is expanding its influence.

Looking Ahead

Planning is in the works for three new RSP programs with 2022-2023 launch dates. One centers on developing a protocol for health care providers to address the reproductive health needs of formerly incarcerated women. Understanding that women's incarceration is often related to experiences of gender-based violence, racism, and poverty, and that health care in prison is minimal and often dehumanizing, this new protocol will be a collaboration between RSP and national organizations that are currently serving formerly incarcerated women as they reintegrate into their communities. Incarcerated women report that at times they are able to see health care providers only if specific health needs can be proven, and even then, the wait times are long and diagnosis and treatment are often difficult to obtain[9]. Conditions such as fibroids, endometriosis, and gynecological cancers may remain undiagnosed or untreated. This protocol will help assure that these women receive dignified, comprehensive, and appropriate reproductive health care services.

A second upcoming project involves the development of a two-track mentorship program that supports Black adolescents and young adults in becoming the next generation of U.S. health care leaders. RSP believes that more racial-ethnic diversity in the health professions and science fields are an asset not only for communities of color but for the country as a whole.

One track of the project will support young adults aged 15-22 years old who are interested in health and science careers. This project will blend didactic and interactive teachings about the contributions made by Black women doctors and scientists. It will also address historical and contemporary racist policies in medicine and science related to Black women's reproductive health. Participants will be paired with mentors with whom they will explore career directions and optimally, career selection.

A second track of the project will provide mentors for Black women students at various stages of health-related training including medicine, nursing, various therapies, and the environmental sciences. This endeavor will honor the legacy of Dr.

[9] Rachel Roth. "She Doesn't Deserve to Be Treated Like This": Prisons As Sites of Reproductive Injustice. In RADICAL REPRODUCTIVE JUSTICE: Foundations, Theory, Practice, Critique, ed. Loretta J. Ross, Lynn Roberts, Erika Derkas, Whitney Peoples, and Pamela Bridgewater Toure (New York: The Feminist Press, 2017), https://tinyurl.com/szpun4ut

Immacula Cantave, one of the first Haitian women admitted to a Haitian medical school. Dr. Cantave became a successful physician in Haiti and in 1968 moved to the US to practice medicine first in Chicago and later in Boston. She mentored many Black medical students in navigating the arduous aspects of medical school as well as their professional careers[10].

The third program RSP is launching considers how art can be a form of reproductive justice. It extends the visual representation of Anarcha, Betsey, and Lucy to include other foremothers in the movement for Black women's reproductive health. RSP will commission additional works of, for example, Fannie Lou Hamer, Henrietta Lacks, and Dr. Rebecca Crumpler. Dr. Crumpler was the first African American woman to earn a medical degree in the US and she practiced medicine in Boston among other places[11]. This art will be used by senior health care providers in the education of health care providers in training. An RSP dream is to create a viewing space for art related to Black women's reproductive health issues.

As RSP approaches its tenth anniversary, it will engage in another reflective visioning process, inclusive of some of the resilient sisters who a decade ago shared their stories. Part of this reflection will be to re-member the past and to honor these courageous women who broke the silence and lit the fire that became the Resilient Sisterhood Project.

Mindful of Lilly's mother and grandmother who often said, "Let's see if we can do a little something," Lilly speaks these Talmudic words at each RSP workshop – and thus we end here: "Do not be daunted by the enormity of the world's grief. Do justly, now. Love mercy, now. Walk humbly, now. You are not obligated to complete the work, but neither are you free to abandon it".

[10] To learn more about Dr. Cantave's life, see https://www.davisofboston.com/obituary/DrImmacula-Cantave.

[11] To learn more about Dr. Crumpler's life, see https://rsphealth.org/blog/2021/06/22/acknowledging-dr-rebecca-crumpler/.

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Fighting for a Healthy and Free Tennessee By Starting With Ourselves in the U.S. South

by

*Anna Carella and Briana Perry**

Our Challenge

Healthy and Free Tennessee (HFTN) is a multiracial, statewide advocacy organization that promotes sexual and reproductive health and freedom[1]. In Tennessee and the United States (U.S.) South especially, but across the U.S. more broadly, the

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Briana Perry is the Co-Executive Director of Healthy and Free Tennessee, a statewide organization working to promote sexual and reproductive health and freedom. While an undergraduate student at Vanderbilt University, Briana developed a passion for Black feminism and community organizing, with a focus on Black women and reproductive justice. Before obtaining her master's degree, she taught English, science, and social studies for two years in Memphis, TN. While teaching, she was also involved in organizing efforts around reproductive health, sexual assault awareness, and racial justice. Today, she organizes around Black feminism, reproductive justice, abolition, and racial justice. In her free time, Briana enjoys writing, traveling, food, and going to concerts.

[1] Healthy and Free Tennessee is a statewide advocacy organization that promotes sexual and reproductive health and freedom in Tennessee. In the United States due to racial capitalism, the mainstream reproductive rights movement has not been attentive to issues affecting women and people of color, poor people, disabled people, and others who live at the margins of multiple oppressed identities. The term "reproductive justice" was coined in 1994 by Black women. Healthy and Free Tennessee uses the term "freedom" rather than "rights" or "justice" because we situate ourselves very carefully and intentionally as a multiracial and Black women-led organization that was not founded as a reproductive justice organization, but one that centers the reproductive justice framework and those most impacted by systems of oppression in our work. For more on the differences between these movements and terms see Asian Communities for Reproductive Justice (2005) "A New Vision for advancing our movement for reproductive health, reproductive rights and reproductive justice", https://forwardtogether.org/tools/a-new-vision.

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reproductive freedom movement is facing difficult challenges and extreme conditions, both internally and externally.

Externally, we as a movement are facing a maternal health crisis, with rising maternal mortality rates in the U.S. and a horrific racial disparity in outcomes. Black women are three to four times more likely to die of pregnancy-related causes than white women[2]. Sex workers are facing dangerous and hostile working conditions due to SESTA-FOSTA and other carceral approaches to ending sex trafficking[3]. Black families and children continue to be disproportionately involved with the family regulation system[4] and other forms of policing, surveillance, and incarceration[5]. Migrant arrests at the U.S. Southern border have reached a fifteen-year high with thousands of immigrant children being separated from their parents and kept in U.S. custody[6]. We have seen state anti-abortion legislation increase exponentially in the U.S. since the rise and success of the Tea Party in 2010 that heralded in a conservative sweep of state governments, Tennessee included. As the Guttmacher Institute reports, more than 25% of all state anti-abortion restrictions passed since abortion was legalized by the *Roe v. Wade* Supreme Court decision in 1973 were enacted between 2011 and 2015[7].

Internally, our movement is challenged by racial divides driven by capitalism and white supremacy. The mainstream reproductive rights movement privileges issues affecting white, elite women - namely, access to birth control and the legal right to an abortion (the right not to have a child), excluding conversations around ensuring access to abortion care and other reproductive freedom issues. Funders and donors tend to support larger, well-known organizations dominated by white women's leadership with a narrow focus on abortion rights. As a result, attacks on other reproductive, sexual, and parental rights and community policing and control often do not receive the same level of attention or sense of urgency from the mainstream reproductive rights movement. While the right not to have a child is a critical component of actualizing reproductive justice, the framework also calls for abortion and birth control to be put into a larger context around sexual and repro-

[2] Centers for Disease Control and Prevention (2020) "Pregnancy Mortality Surveillance System" https://www.cdc.gov/reproductivehealth/maternal-mortality/pregnancy-mortality-surveillance-system.htm.

[3] Chamberlain, Lura (2019) "FOSTA: A Hostile Law with a Human Cost" Fordham L. Rev. 87/5: 2171-2211. D Blunt and A Wolf (2020) "Erased: The impact of FOSTASESTA and the removal of Backpage on sex workers" Anti-Trafficking Review 14: 117-121. Bernstein, Elizabeth (2010) "Militarized Humanitarianism Meets Carceral Feminism: The Politics of Sex, Rights, and Freedom in Contemporary Antitrafficking Campaigns" *Signs: Journal of Women in Culture and Society* 36/1: 45-71.

[4] Alan J. Dettlaff, Kristen Weber, Maya Pendleton, Reiko Boyd, Bill Bettencourt & Leonard Burton (2020) "It is not a broken system, it is a system that needs to be broken: the upEND movement to abolish the child welfare system." *Journal of Public Child Welfare* 14/5: 500-517.

[5] Hinton, Elizabeth, LeShae Henderson, and Cindy Reed (2018) "An Unjust Burden: The Disparate Treatment of Black Americans in the Criminal Justice System" *Vera Institute of Justice*, NY, NY.

[6] Hackman, Michelle (2020) "Arrests of Unaccompanied Immigrant Children at Southern Border Surge" Wall Street Journal Feb. 26, 2021.

[7] Guttmacher Institute (2016) "Last Five Years Account for More Than One-quarter of All Abortion Restrictions Enacted Since Roe", www.guttmacher.org/article/2016/01/last-five-years-account-more-one-quarter-all-abortion-restrictions-enacted-roe.

ductive health and freedom and other social justice issues. Erasing other social justice issues and their connection to reproductive and sexual freedom is part of a long legacy of white, upper class women activists sacrificing communities of color to negotiate shallow wins for an elite group of white women[8]. Meanwhile, organizations working to achieve reproductive justice in the U.S. South, which is where the majority of Black people in the country live, are chronically underfunded by philanthropic foundations[9].

In Tennessee, where conservatives have a supermajority control over our state legislature, we are facing some of the most severe attacks on reproductive and sexual freedom in the country. Last year, Tennessee passed a law allowing adoption agencies to discriminate against LGBT parents[10]. This year Tennessee banned transgender athletes from participating in girls' sports and became the first state in the country to to require facilities to post a sign if they allow transgender people to use multiperson bathrooms.The legislature also banned the teaching of critical race theory in schools[11] and created a civil liability for anyone who by act or omission causes the death of a fetus at any stage of gestation, with serious impacts on pregnant people who use substances and potentially on abortion providers[12]. Tennessee is deemed one of the most hostile states for reproductive rights[13] and there is no end in sight to these extreme policies.

Politically we are on the back foot, barely able to respond to attacks while facing new ones every day. Large foundations are less eager to invest in cross-movement work that will be critical to shift the conditions necessary to win reproductive freedom. In this context, it is easy to get drawn into reacting to attacks and working in a state of ongoing rapid response that appeals to national funders. Yet, Healthy and Free Tennessee, the organization we co-lead, is committed to another way forward.

Healthy and Free Tennessee's Approach

Because of the U.S.'s central role and leadership in the United Nations and the creation of the U.N. Commission on Human Rights, the struggles for social justice in the United States have rarely been framed in the context of human rights. In fact, since its founding, Black Americans have been discouraged from taking their

[8] Davis, Angela (1981) *Women, Race and Class*. New York: Random House.

[9] McCambridge, Ruth (2017) "Where in the World is Big Philanthropy? Not in the Deep South" *Nonprofit Quarterly* April 14, 2017 https://nonprofitquarterly.org/philanthropy-deep-south.

[10] Ebert, Joel (2020) "In first bill of the year, Tennessee Senate passes legislation allowing adoption agencies to deny gay couples" *Tennessean* Jan 20, 2020 https://tinyurl.com/ryh3nvw8.

[11] Kruesi, Kimberlee (2021) "Tennessee bans teaching critical race theory in schools" *AP News* May 25, 2021, https://tinyurl.com/8n27bkxc.

[12] Kruesi, Kimberlee and Johnathan Mattise (2021) "Tennessee Governor Signs Two New Anti-Trans 'Bathroom Bills' Into Law" *TIME* May 18, 2021 https://time.com/6049595/tennessee-anti-trans-bathroom-bill.

[13] Center for Reproductive Rights (2020) "What If Roe Fell?" https://tinyurl.com/yczprw5

grievances to the UN out of fear of making the U.S. look badly on the global stage[14]. In spite of this censorship, in 1994 a group of Black women developed the reproductive justice framework and embedded it in the language of global human rights. Its three core tenets are 1) the human right to have a child 2) the human right to not to have a child and 3) the human right to parent children in a safe, healthy, and well resourced community. This is the framework that guides our work at Healthy and Free Tennessee.

We believe that in order to grow the reproductive rights and justice movements to be influential enough to shift power, we need to unite. For us, that means that white-dominated reproductive rights organizations must reorient to focus on the fight against racial capitalism, and to center marginalized communities in doing so. That's what Black feminist theory instructs us to do[15] and it is what we must do so that we can win. This means shifting our lens and work to align with the reproductive justice framework. However, we cannot be effective reproductive justice advocates on the large scale when we are still operating organizations dominated by white supremacist culture and practices, and individually if we have not done the work to excavate these from our internal expectations of professionalism in the workplace. We must practice on the small scale what we want to see on the large scale: we can only make this shift on a movement level when we put in the work to transform ourselves and our organizations.

Within Healthy and Free Tennessee, that has looked like shifting our leadership, our programming, and our internal processes to reflect a commitment to dismantling white supremacy culture. Over the past several years, we have taken a number of steps to change the way our organization operates to situate ourselves more firmly in solidarity with Black and Brown liberation movements. We hope that by sharing our story of wrestling with white supremacy within ourselves and our organization, we will inspire others to join us in working towards transformational change.

Confronting Our History

In September 2012, nine state-based organizations came together to form Healthy and Free Tennessee as a coalition to fight the wave of anti-abortion legislation following the rise of the Tea Party and the 2010 conservative sweep of state governments. For the first two years of our history, our work was focused on defeating an anti-abortion measure, which ultimately was approved by Tennessee voters in November 2014[16]. Eight out of nine of our founding organizations were led by white people, and the leadership on our steering committee[17] at the time was most-

[14] Kakwar, Jamil (2017) "W.E.B. Du Bois's Historic U.N. Petition Continues to Inspire Human Rights Advocacy" American Civil Liberties Union October 25, 2017, https://tinyurl.com/m6tdv65p

[15] "The Combahee River Collective Statement. United States" (1977) Web Archive. Retrieved from the Library of Congress https://www.loc.gov/item/lcwaN0028151.

[16] https://tinyurl.com/9z3kws5t

[17] Our governing body. We do not have a board because we are fiscally sponsored.

ly white women. Because there was not an intentional effort to decenter whiteness and white supremacy culture during our founding, elements of white supremacy culture were baked into the organization's processes and expectations. Okun (2001) describes white supremacy culture as[18] "norms and standards… [that] promote 'white supremacy thinking' such as perfectionism, quantity over quality, worship of the written word, and fear of open conflict." These characteristics were of course implicit – the founders did not decide the organization would have this culture. However, they didn't intentionally set up a culture that would resist these dominant and insidious practices, and so they prevailed by default. As a result, white supremacy began to show up in our structures and decision-making.

For example, in 2014, we received a grant to hire full time staff and promoted a staff member to State Director who was white, and later hired a Black woman as part-time Field Organizer. Because we were such a small organization at the time, these women in practice had very similar workloads despite a difference in title and pay. In 2015, one of the few Black women on our steering committee resigned after a racially charged incident.

This was our organization's first moment of reckoning. In response, our steering committee developed a subcommittee known as Team Liberation, whose role would be to lead us toward centering anti-oppression in our organizational practices and culture. For years, Team Liberation has led the steering committee and staff in candid conversations about white supremacy culture within the organization and within ourselves. This helped to normalize and institutionalize self-reflection and it also increased the level of comfort in speaking about racism and white supremacy for the white people who were part of the organization at the time.

In response to the inequity in staffing, in 2016 Healthy and Free Tennessee shifted to a Co-Executive Director model with a Black woman and white woman sharing leadership starting in 2017 (that's us, the co-authors). Even though there was an intentional decision to shift to this model in order to be more rooted in anti-oppression, white supremacy culture still undergirded the organization. Healthy and Free Tennessee made the error that other social justice organizations often do when it becomes evident that there needs to be an organizational shift – bring in a "diverse" person in hopes that they can and will shift the organization instead of uprooting the white supremacist structures. Hiring a person of color without drastically transforming the conditions of the organization can actually cause additional harm. There was no plan in place to nurture Briana's leadership over what was still a white-dominated organization, and as a result she was largely unsupported. As we continue to ground our work in anti-oppression, we now understand that organizations should begin putting an anti-oppression structure in place that is supportive of Black, Indigenous, and other people of color before recruiting them into positions.

At the legislature in 2014, Tennessee was the first state in the country to pass legislation to criminalize drug use and pregnancy. Programmatically, we shifted our organization's focus to work at the intersections of incarceration, pregnancy

[18] https://www.dismantlingracism.org/uploads/4/3/5/7/43579015/okun_-_white_sup_culture.pdf

and parenting surveillance. From 2014 to 2016, we worked with a coalition of reproductive justice leaders, drug policy reform advocates, substance use disorder treatment centers, public health officials and workers, and directly affected people to defeat the law, which sunset in 2016. This marked a pivot in our work to a more cross-movement orientation.

Admittedly, this shift was more reactive than proactive at first, precipitated by political attacks rather than a change in strategy. However, because of our ongoing efforts to uproot white supremacy culture, our leadership began to examine the need to more intentionally and permanently center our work at the intersections of criminalization and reproductive oppression since marginalized people, including Black mothers, are often swept up in the criminal legal system.

In 2017, we began a partnership to do regional work in the Southeastern U.S. with SisterSong and SPARK Reproductive Justice NOW in Georgia, and Women's Rights and Empowerment (WREN) in South Carolina to align the reproductive rights and justice movements by dismantling white supremacy. It was exciting to see that national funders were starting to see the need to invest in this kind of work. In the first year of the project, Healthy and Free Tennessee was tasked with mapping the southeastern region. As a group we decided that we would engage white-dominated reproductive rights organizations first because these would need more support in dismantling white supremacy.

We tried to identify which white-dominated reproductive rights and health organizations were already centering communities of color in their work and leadership. We used websites and social media to gauge this and through this process, we realized that our own organization's external presence didn't adequately reflect or communicate our internal and external commitment to dismantling white supremacy. In response, we created more explicit anti-racist organizational values and added them to our website in early 2019. Though seemingly a small change, an explicit commitment that is public-facing is important because it allows supporters and communities to hold us accountable.

In 2019, Healthy and Free Tennessee worked with progressive state lawmakers to introduce proactive legislation for the first time in our organization's history - an anti-shackling bill that included prenatal care and access to breast pumps for incarcerated pregnant people. Rather than merely reacting each year to the vile bills introduced by our Tennessee legislature, we wanted to be intentional and proactive in our work to center the intersections of incarceration and reproductive oppression. We began to take on the abolition framework as an organization and did some public education about the connections between abolition and reproductive freedom[19].

Also in 2019, Healthy and Free Tennessee voted to raise our Co-Executive Director salaries to be more in line with the cost of living for our area. This raise was not in response to bringing in significantly more funding, but rather was a move to put us more in line with our values to offer all of our staff a living wage, even if that meant cutting back on other areas of spending.

[19] "What is the Prison Industrial Complex? What is Abolition" 2021 *Critical Resistance* http://criticalresistance.org/about/not-so-common-language/

Although we had been reflecting about white supremacy and shifting our culture, programming, and leadership, we had not done much yet to institutionalize these changes apart from the creation of Team Liberation and some language about prioritizing diverse communities in the recruitment of our steering committee. Wanting to adopt more equity-enhancing internal policies, our steering committee voted to approve a $100 a month student loan repayment benefit for staff, knowing that Black graduates have twice as much student debt as white graduates[20].

We also adopted a paid family leave policy, which surprisingly a number of organizations are unable to offer because of funding. In 2020, our steering committee for the first time became majority Black and other people color led. In March of that year, we launched 30 days of collective journaling about anti-capitalism and paid leave (since it was one of the key demands that emerged in the first wave of the COVID-19 lockdowns)[21]. We also lost a big chunk of our funding from a funder who was no longer aligned with the cross-movement work in which we had become grounded. We are still in the process of seeking out funders who are willing to invest in our vision.

Because of our commitment to abolition, and the importance of building our capacity to address harms outside of the criminal legal system, in 2020 we decided to host a virtual (due to COVID-19) transformative justice training with Mia Mingus for Tennessee-based social justice organizations. In partnership with the Official Black Lives Matter Memphis chapter, we plan to anchor the formation of a statewide transformative justice collective, with hubs in Nashville and Memphis in 2022. This collective and hubs are vital in working to divest from the carceral system and supporting communities in shifting approaches to addressing sexual and reproductive harm with adequate resources and tools.

However, the cumulative impact of our marginal organizational advances have not gone far enough; this year in 2021 we will be undertaking a five-year anti-racist strategic planning process that will provide an overhaul and new roadmap towards more institutionalized changes and greater focus.

Onward

This practice of dismantling white supremacy is an ongoing process. The events of the past five years and the growth and popularity of the Black Lives Matter movement and protests at Standing Rock have uplifted the racism and settler colonialism inherent within U.S. society. At Healthy and Free Tennessee, we are pushing ourselves even further to think through what role we can play in building alternatives to white supremacist, capitalist structures that dominate our state, our nation, and the global system. We will continue to dig deeper and work harder to unroot

[20] Scott-Clayton, Judith and Jing Li (2016) "Black-white disparity in student loan debt more than triples after graduation" *Brookings* October 20, 2016 https://www.brookings.edu/research/black-white-disparity-in-student-loan-debt-more-than-triples-after-graduation/.

[21] "30 Days of Collective Journaling" (2020) Healthy and Free Tennessee April 30, 2020 www.healthyandfreetn.org/collective_journaling.

white supremacy within us and our organizations, and we hope other reproductive freedom organizations both in the U.S. and globally will join us.

DEP Deportate, esuli, profughe
Rivista telematica di studi sulla memoria femminile

Rin Odawara, A challenging conversation between feminists and people with disabilities: fight for the reproductive rights and fight against eugenics in post-war Japan

In July 2016, a young man stabbed 19 people with disabilities living in a facility in Sagamihara of Kanagawa prefecture, Japan. The perpetrator, Satoshi Uematsu, then 26 years old, a former worker at the facility, had maintained in a letter addressed to the Speaker of the House of Representatives that he could wipe out 470 people with disabilities in total. His future goal was to make a world where the person with severe multiple disabilities would be euthanized with the protector's consent, as he said in the letter. He said that people with disabilities could only be unhappy and cause unhappiness for Japan and the world. On other occasions, he said that people with disabilities pose an economic burden to society (so he should remove them). At midnight of July 26, he entered the facility, calling the names of the residents one by one, and if they couldn't respond, he killed them.

Consequently, he killed ten women from 19 to 70 years old and nine men from 41 to 67 years old. All of them had severe intellectual and other disabilities. The incident is the worst mass killing in post-war Japan. But what shocked me considerably was not only the number of the dead and the eugenic thought of the murderer, but some other facts that occurred after the incident. First, the killer's attitude toward people with disabilities seems widespread in a broader community. On the internet, you could see that some agreed with his thought and even praised his action. Second, the victims' names have not been made public to this day due to "the will of the bereaved family". It is supposed that the families would be afraid of being discriminated against for children or siblings with disabilities even after their death. Third, the then Prime Minister Abe has published no official statement about the 19 innocent dead and the other 27 injured people. Finally, we should note that the mass killing was able to happen because the victims, the people with severe disabilities, lived together in a facility specialized for caring, apart from their families. In other words, they were segregated from the "normal" community. These things altogether reveal the hidden eugenics of Japanese society.

After the incident of Fukushima, which reminded us of the history of nuclearization of Japan under the Cold War system and provoked the fear for the health hazard by radiation, in recent years Japan is undergoing reflection on its eugenic thoughts embedded in the institutions since the Asia-Pacific War. Victims of the forced sterilization allowed under the former Eugenic Protection Law went to court for state compensation in 2018. People with disabilities and feminists have been discussing the intersection of heterosexuality, fertility as a role of women, and able-ism. I will present the dialogue of the people with disabilities and the feminists to consider the specificity and difficulty of eugenics in our society.

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"We deny love and justice"

Many arguments about the Sagamihara stubbing refer to a disability rights movement, *Aoi Shiba no Kai*, Association Green Grass (*Gendai Shiso* 2016; Shinya Tateiwa and Shunsuke Sugita 2017). *Aoi Shiba no Kai* was founded in the 1950s for the interaction of people with cerebral palsy. Its turning point came in 1970 when a mother killed her two-year-old daughter with cerebral palsy in Yokohama and the petition for mitigation of penalty to the mother. The members of Aoi Shiba strongly protested the petition and the sympathy to the mother. If the murder of a person with a disability would be punished less than the murder of a "normal" person, it could mean the life of a disabled person is less worthy. That was the first protest by the disability movement against this kind of killing and common sympathy (Koichi Yokozuka 2007).

An executive member, Hiroshi Yokota, wrote the famous platform of Aoi Shiba in the same year.

> We identify ourselves as people with Cerebral Palsy (CP).
> We assert ourselves aggressively.
> We deny love and justice.
> We do not choose the way of problem-solving.
> We deny able-bodied civilization Koichi Yokozuka[1].

Yokota and the members criticized the society, which regarded them as "those should not exist," so in the first clause, they proudly affirmed themselves as people with disabilities.

The mother thought that her daughter would never be cured and could be better off dead instead of living with her CP. Koichi Yokozuka, another critical figure of Aoi Shiba, argued that her (and our) sense of values that equate the worthiness of a human being with the ability to be healthy enough to labour was problematic (Koichi Yokozuka 2007). The Aoi Shiba movement considered that people with disabilities should establish themselves by denying the protection/control imposed on them in the name of love and justice. The struggle turned to be radical in the 1970s, from occupying busses opposed to the refusal of passengers with the wheelchair, sitting in a railroad crossing because the railway company denied to set up slopes in the stations, then claim the right to independent living based on the people with disabilities' own needs and desires.

Controversy on Eugenic Protection Law

One of the arenas of their struggles was Eugenic Protection Law. The Eugenic Protection Law, enacted in 1948, recognized forced sterilization and abortion to people with intellectual and mental illness and severe disabilities. However, the

[1] Translated by Nagase Osamu. http://www.arsvi.com/o/a01-e.htm (accessed on November 28, 2019). The fifth point was added later.

doctors often operated without the patients' consent and forced abortion if a pregnant woman or the spouse had a hereditary mental or physical illness. Besides, abortion for reasons of economic difficulty and rape was approved. Since then, financial reason accounts for 90% of abortions.

We should note that legal abortion for some limited reasons is not the right that the women of Japan obtained through their struggle, but was given them by the authorities to control the population in the food shortage right after the war. Because of the lack of acknowledgement of women's rights to reproduction, the penal code still criminalizes abortion for reasons other than the conditions in the Eugenic Protection Law and its following law.

In 1972, a proposal to revise the law was introduced to the Diet. It mentioned removing economic reasons and approving selective abortion if the fetus's disability is found by prenatal diagnosis. It was the moment in which the disability movement and the women's movement came across.

On the one hand, the Women's Liberation Movement, one of the protest movements that emerged around 1970, opposed the bill regarding removing economic reasons as a substantial prohibition against abortion. The feminists had to fight to protect the right to abortion and decriminalizing it at the same time.

On the other hand, for the disability rights movement, the law was to deprive them of the right to life as an "inferior offspring" in the first place. Then they considered that the introduction of the fetus article could have meant their own murder before birth (Yukako Ohashi 2016).

While both movements were opposing the amendment, the latter also criticized the former. Some people with disabilities, especially male activists, thought that the freedom of abortion could allow women not to choose to give birth to a child with a disability. They insisted that the reproductive right could lead to denying the existence of disabled people (Yoshio Hasegawa 1996). It was a highly gendered notion about reproduction in the disability rights movement. One of the symbolic mottos of the movement is "Mother, don't kill," which shows that their criticism over reproductive rights was not directed at fathers who urge mothers to undertake child-rearing and at the society which has maintained the gender roles (Noriko Seyama 2002).

Two movements tried to have discussions and dialogues with each other, and the effort continues until today. For example, a feminist activist with minor impairment in her leg – so she belongs to both communities in a sense – Tomoko Yonezu talked in a gathering against the amendment in 1973:

> I think that the people with disabilities and the women are forced to be opposed each other, as one to be killed and as another to kill. And I know well the anger of people supposed to be killed against the suspected executioner of the killing. Because I hate healthy women walking briskly…however…I guess we can connect only by pointing our anger at the authority which urges us [to be confronted each other]… (Tomoko Yonezu and Yukako Ohashi 1998).

The amendment to remove the economic reasons was proposed again in 1982. The individuals and groups of the feminist movement and disability movement acted together against it. A feminist writer, Yukako Ohashi, remembered that the feminists attempted to keep the dialogue with the disability movement because they thought it would be impossible to abolish the Eugenic Protection Law and to de-

criminalize abortion for achieving reproductive freedom unless the two activities went together (Tomoko Yonezu and Yukako Ohashi 2017).

Despite being eager to oppose the ban of abortion, expressing the experience of abortion by their own words, the Japanese feminist movement has not asked for safer and more accessible medical treatment of abortion like other developed countries (Kumi Tsukahara 2014). As for the lack of demands for medical innovation in abortion, it is interesting that Ohashi refers to the influence of criticism against the selective abortion argued in the dialogue with the disability movement (Kumi Tsukahara 2014, p. 162). Trying to develop the concept of reproductive rights through the conversation with people with disabilities is one of the characteristics of the Japanese feminist movement.

In 1996 Eugenic Protection Law was reformed into the Maternal Protection Law with the deletion of the eugenic articles. However, there had been no official investigation into the number of forced abortions and sterilization and no apology or relief for violation of human rights until the victims raised their voices and sued the government for compensation in 2018. In the following year, the government made a special compensation law for the victims.

The feminists and the female activists of the disability movement realized that the Eugenic Protection Law was an intersection of the discrimination against women and that against disabled people. Today, pregnant women concerned with the issue are sensitive to prenatal diagnosis as a possible selection of life. The activists of the disability movement understand how society utilizes non-handicapped women's bodies to exclude people with disabilities. At the same time, the women acknowledge that their 'self-determination' is possibly mobilized to maintain the present able-ist society. Therefore, they keep struggling to cut their unique and challenging path to criticism of eugenics, able-ism and concept of self-determination, and the right to choose (Kumi Tsukahara 2014, pp. 156-157).

"Inner Murderer"

The problem is that the experiences and thoughts accumulated through the dialogues and cooperation between two movements have been closed within them. The knowledge could not go beyond two minority groups, the women and the disabled, into a broader community. It was embarrassing to see some eugenic discourses return in the shape of fear for the future in 2011, after the nuclear incident in Japan. The disability rights activists naturally protested the discrimination in the discourses. The feminist activists regarded the situation as a problem of women's reproductive rights intervention, seeing women only in maternity. Both of them tried to deny being forced to confront each other as they had done. But their voices, their criticism on eugenics and the able-ism in the society are still ignored.

People have got together in social movements that started in the 1970s, principally based on each specific issue. Still, it is strongly related to identities such as gender, race, ethnicity, sexuality, disability, etc. We shall recall a clause of the platform of Aoi Shiba, which claims strong identification of themselves as people with CP. Identity politics is efficient to bring out the needs of people whose voices oth-

erwise are not heard. However, it works to close the arguments in minority groups in question at the same time. Instead, more precisely, sometimes it helps the more extensive society not to face the questions by labelling those minority groups as "others". The mass killing in Sagamihara also seems to follow the same path. Uematsu had worked in the facility where he committed the murders, but he leant nothing from the experience of interaction with the residents. Ironically, he had been forcibly hospitalized as a legal measure before the killing because of the possibility of harming himself or others.

The final report published by the special team for preventing the recurrence of the incident composed of experts and put under the government, claims the importance of wiping out the discrimination in society against people with disabilities and sharing the values that every life is equally precious. But three-fifths of the report is about making the forced hospitalization of people with mental illness and control after that stricter[2]. Society does not have to face inner eugenics – which the disability movement accuses, and the women ask themselves – as far as it regards the perpetrator as an unusual case. As I mentioned before, the government failed to "show the attitude to aim at the construction of an Inclusive Society based on diversity of ways of living regardless of having disabilities or not", despite the recommendation of the special team.[3] At least since 1968, when various kinds of social movements arose, the issue of eugenics has been neglected for nearly a half-century. Then Uematsu killed the people whom he knew well because of their worthlessness for society in the name of their happiness. Is it possible to avoid the recurrence if we take our eyes off our "inner eugenics"? Unless you don't know the present, the future should always be unclear. And we don't know even the names of the victims yet.

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DEP Deportate, esuli, profughe
Rivista telematica di studi sulla memoria femminile

Bianca Varesio, *COVID-19 and Reproductive Justice. Abortion: an essential service and a human rights imperative*

On 11 March 2020, the coronavirus disease was declared a pandemic by the World Health Organization. In the past, similar global emergencies have shown to have the potential of hampering reproductive justice of women and girls1. In this brief contribution, I will focus on the risks faced by women through a comment to the OHCHR literature on the issue and specifically the Covid-19 Guidance of 15 April 2020; I will further concentrate my attention on Italy and its response to the crisis in an already conservative environment regarding abortion rights.

The pandemic has proved detrimental for the human rights of women and girls in many ways. Restriction of movement and the "stay at home" order have in many countries exposed women to an increased level of domestic violence, impairment of individual freedoms and posed them before the inescapable dilemma of choosing between their job and their socially devised role of main carer for their family. In this context, the need for a safe and confidential access to abortion services has never felt more pressing. However, lockdowns, travel bans and quarantine orders restricting the movement of people exacerbated the harm of existing abortion restrictions that require multiple clinic visits and mandatory waiting periods, as well as impeding confidentiality and disrupt supply-chains for abortion medication (Jamie Todd-Gher and Payal Shah 2020, pp. 28-30).

Under international human rights law, if States are allowed and even required to take extraordinary measures to face health emergencies, they cannot arbitrarily restrict the human rights of their citizens. This has been codified in the Siracusa Principles (UN Commission on Human Rights 1984), where it is stated that human rights limitations following a health emergency have to be lawful, proportionate and not discriminate against a specific group or a minority. It is therefore clear how restricting abortion access in the Covid crisis does violate States' human rights obligations. With numerous declarations, the OHCHR has declared that the impediment to access abortion can actively infringe a woman's human rights. States' international human rights obligations in this sense cannot be suspended in a time of crisis. The positive obligation to ensure required information and care related to a legally accessible abortion, and to remove unnecessary barriers, is in fact non-derogable.

A study dated 22 October 2020 that collects data from 46 European countries (Caroline Moreau, Mridula Shankar, Anna Glasier et al. 2020) revealed the unequal and inconsistent response of European countries to the issue of abortion care during the pandemic. The lack of a unified policy response to COVID-19 restrictions has indeed widened inequities in abortion access in Europe. Some countries, such as Italy, simply did not consider abortion rights a fundamental issue to be considered in their response to the pandemic, causing delays and inefficiencies and putting

[1] As in the case of Ebola. See for example Laura Sochas, Andrew Amos Channon and Sara Nam 2017, pp. 32-39.

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women's lives at risk. Nevertheless, new measures implemented in some countries during the outbreak, such as telemedicine, could have served in fact as a wake-up call for innovation in the field and a catalyst to ensure continuity of abortion care. Hopefully, the best practice of some European countries will be seen as an incentive for follow-up in other more conservative neighbors.

UN Office of the High Commissioner for Human Rights: COVID-19 and Women's Human Rights

International human rights law explicitly recognizes the rights to sexual and reproductive health and bodily autonomy. As recognized by the CESCR Committee in General Comment No. 22, the right to sexual and reproductive health is indivisible from and interdependent with other rights (UN. Committee on Economic, Social and Cultural Rights 2016). During the Covid-19 pandemic, the WHO has explicitly classified reproductive health care as an essential health service that must be accorded high priority (WHO 2020a). Ensuring safe termination of a dangerous or unwanted pregnancy is a human rights imperative which translates into a positive obligation to ensure required information and services and to remove medically unnecessary barriers.

To prevent or at least circumvent the risks associated with restrictions of abortion-related care during a global health emergency, on 15 April 2020, the OHCHR issued the Guidance Note "Covid-19 and women's human rights". In this document, the attention is focused on women and the impact Covid-19 may have on their human rights in different situations. Notably for this field of inquiry, reproductive rights and abortion services are on top of OHCHR priorities in the disruptive wave of health services restrictions that countries can face in the aftermath of the outbreak. In particular, the document points out to how safe and confidential access to abortion services can be undermined, and pre-existing barriers can be exacerbated in the health emergency (UN Office of the High Commissioner for Human Rights 2020).

One of the indicated key actions that States and stakeholders can take in this respect is precisely to "ensure continuity of sexual and reproductive health services, including access for everyone to maternal and new-born care; safe abortion and post-abortion care; contraception; antiretrovirals for HIV/AIDS; and antibiotics to treat STIs" (UN Office of the High Commissioner for Human Rights 2020). In fact, this innovational document makes it clear how prioritization of covid-related health issues can reallocate resources intended for reproductive services, cause shortages of medical supplies and disrupt global supply chains. This can actively undermine the sexual and reproductive health and rights of women and girls and can only be complicated by the practice of States to include abortion among "non-essential surgeries and medical procedures"[2] during the COVID-19 response.

The Committee on the Elimination of Discrimination against Women (CEDAW), recalling the above presented Guidance Note, further urged States par-

[2] See for example: Laurie Sobel, Amrutha Ramaswamy, Brittni Frederiksen, and Alina Salganicoff 2020; Ronny Linder 2020.

ties to uphold women's rights in providing sexual and reproductive health as essential services through its Guidance note on CEDAW and Covid-19 (UN Office of High Commissioner for Human Rights 2020a). This document presents practical guidelines for States to mitigate the devastating impact that the pandemic is having on women's and girls' health. In fact, considering that our societies are unequal in the first place, the current crisis has impacted women in a disproportionate and more severe manner.

There is now a concern that COVID-19 and its impact will push back fragile progress on gender equality (UN Office of High Commissioner for Human Rights 2020b). Unfortunately, this is true especially for reproductive rights of women and girls (De Vido 2020). For this reason, the WHO accorded high priority to abortion care during the Covid-19 response (WHO 2020b). In fact, abortion restrictions following the health emergencies declared in several countries do infringe women's human rights. These restrictions target a specific group of individuals and they do not respect the proportionality requirement, considering the health conditions of women at stake and acknowledging that abortion is a time-sensitive procedure. The bottom line is that abortion services are to be considered essential medical services, which must be available in time of emergency.

On 28 September 2020 we celebrated International Safe Abortion Day, an initiative sponsored by the WHO that served as a timely reminder in the current global health crisis of the importance of a fair access to legal and safe abortion. This is fundamental to attain the highest standard of sexual and reproductive health. In fact, while it is too soon to know the repercussions of abortion restrictions on women, providers have expressed concern that women will delay their abortions, risk their health by travelling long distances, with no respect for their privacy and at high cost (Laurie Sobel, Amrutha Ramaswamy, Brittni Frederiksen, and Alina Salganicoff 2020).

Italy and the exacerbation of obstacles to legal abortion

The pandemic pushed the essential vs. non-essential categories of health services into the political debate over abortion and led some States to exploit the chance offered by the pandemic (Kate Hunt 2021) to restrict abortion services by classifying them as non-essential. This phenomenon can be observed both in countries that condemn abortion and in those in which abortion is already recognized as a fundamental right. Examples of this behaviour can be observed in Argentina and Ireland (Miriam Berger 2020), which delayed the adoption of the bill legalizing abortion, and notably in the United States (Laurie Sobel, Amrutha Ramaswamy, Brittni Frederiksen, and Alina Salganicoff 2020), where some States such as Alabama and Oklahoma suspended abortion services ascribing it to the pandemic by considering them elective medical procedures. Nevertheless, in countries like France and England, Scotland and Wales, the response to the danger of limited access to abortion during the pandemic for women and girls was prompt and effective: telemedicine and online consultants were made available as soon as April 2020 (Miriam Berger 2020), and self-managed abortion care quickly took hold as the safest way to access abortion care for both women and doctors.

In Europe, the need for safe and confidential abortion services is likely to have increased in the wake of the COVID-19 pandemic, given economic uncertainties, rising reports of sexual violence and limited access to contraception due to supply shortages. However, responses from European countries have not followed a united pattern. Where the approach of making telemedicine available for abortion rights has been implemented in a handful of countries, the rest has made access to abortion services, intentionally or not, more complicated or even suspended it altogether. With this behaviour, several countries can be said to be in breach of their positive obligations to ensure safe and confidential abortion services to their citizens. Incorporating measures to ensure safe abortion services into state pandemic responses and eliminating barriers to abortion is not just a matter of harm reduction – it is a human rights imperative (Jamie Todd-Gher and Payal Shah 2020, p. 28). In Italy, Human Rights Watch accused the government of failing to ensure time-sensitive reproductive care: on 30 July 2020, Human Rights Watch denounced the inaction on account of the Italian government that left women and girls facing very avoidable obstacles in accessing abortion during the Covid-19 pandemic, putting their health and their lives at risk (Human Rights Watch 2020a).

Abortion in Italy is authorized by Law 194 during the first ninety days of pregnancy for health, economic, social or personal reasons (Angela Spinelli and Michele Grandolfo 2001). However, amidst burdensome requirements and the widespread use of "conscientious objection" by medical staff to deny treatment, women and girls find themselves scrambling to find medical services within the time allowed by law, often having to visit to multiple structures, in Italy or abroad. Of course, during the pandemic restrictions, such travel was prevented by local and international travel bans in order to avoid the spread of Covid-19. To add further complications, some facilities suspended health services for abortion during the pandemic, or even reassigned gynecological staff to the departments dedicated to Covid-19.

Unlike other European governments, the Italian authorities have not adopted measures to facilitate access to abortion-inducing drugs during the pandemic. The widespread notion, supported by the WHO, that care regarding medical abortion can be safely self-managed by women up to the twelfth week of pregnancy, when detailed information and the support of a doctor are available, has not yet made its way in the Italian common opinion. In fact, medically induced abortion in Italy is only permitted by law up to the seventh week of pregnancy, when some people may not know they are pregnant, and national guidelines require the drugs to be administered over the course of a three-day hospitalization. While surgical abortion can be performed in day hospital or outpatient clinic, only 5 regions out of 20 (Human Rights Watch 2020b) in Italy allow drug-induced abortion on an outpatient basis.

The already labyrinthine, to say the least, system of accessing abortion in Italy has been further complicated by the failure of the government to understand the possible impact of movement restrictions to abortion care for girls and women. Although on 31 March 2020 the Italian Ministry of Health published guidelines on women's health during the response to the Covid-19 outbreak, abortion regulations

were not included, and the establishment just turned a blind eye to the matter. Hillary Margolis, Human Rights Watch researcher, explained: "The Covid-19 pandemic has done nothing but highlight how the country's outdated restrictions cause damage instead of guaranteeing protection". People interviewed by Human Rights Watch reported that travel restrictions, lack of information and the closure of services during the Covid-19 pandemic exacerbated delays in accessing abortion within the time frame required by law (Human Rights Watch 2020a).Italy's failure to guarantee consistent access to abortion, including the excessively widespread practice of invoking conscientious objection, constitutes a violation of the right to health protection and non-discrimination in violation of the European Social Charter. The Council of Europe declared that all Member States must ensure full access to reproductive health, including abortion, in their response plans to the Covid-19 pandemic, and called on Member States to "urgently remove all residual obstacles that prevent access to safe abortion" (Council of Europe. Commissioner for Human Rights 2020. In the case of Italy, the situation was already serious before the pandemic hit. Before the outbreak of Covid-19, only 20% of Italian hospitals offered medical abortion care, which covers only 21% of abortions in Italy because of the requirements in terms of hospitalization. In many other European countries, this number rises to 80%, since it is considered simpler and safer than an invasive surgical procedure. The picture that has been tragically uncovered by the pandemic impact on women's rights is that abortion regulations in Italy are based on out-of-date notions that need updating and innovating. In this sense, the pandemic could be seen as a wake-up call in order to advance and improve the system of accessing abortion and bring it more in line with international standards. A first step forward has been observed by Human Rights Watch in August 2020, when Minister of Health Roberto Speranza announced revisions to outdated national guidance, which will ease restrictions on medical abortion (Human Rights Watch 2020b).

Conclusions

The extraordinary measures adopted by national governments around the world in response to the COVID-19 pandemic have revealed glaring political, social and economic inequalities that continue to pervade many societies. Over the past months it has become clear that women and girls have been disproportionately impacted by these inequalities (De Vido 2020) with lockdown measures highlighting pre-existing gaps and exacerbating deeply rooted gender-based discrimination and violence. The pandemic has uncovered unambiguously the ways in which existing legal frameworks continue to undermine access to abortion. Abortion is still considered a "non-essential" health service in many countries, despite the UN clearly defined it a human rights imperative, a positive obligation from which states cannot derogate. The crisis exploitation used by some countries to overcomplicate or suspend access to abortion services should be condemned by the international community. In a time of medical emergency, where shortage of supplies hinder access to contraceptive options, movement restrictions and quarantine expose women to domestic violence and job losses hamper their independence, a safe and legal access to abortion services is of the utmost importance.

In Italy, Human Rights Watch denounced the inaction of the government in taking measures to ensure abortion services during the pandemic. The failure to understand the relevance of abortion services during the pandemic unveiled the underlying issue at heart of the Italian system, that fails to see abortion as an essential health service. The country rests on out-of-date premises that include limitation to the seventh week of pregnancy for a legal abortion, a vast majority of doctors making use of "conscientious objections", an unequal distribution at national level of hospitals in a position of offering abortion care, a burdensome three-day hospitalization for medically induced abortion. The pandemic did nothing but exacerbate the difficulties in accessing the already intricate Italian system.

A simple question we need to ask ourselves regarding the issue of abortion restrictions due to the Covid-19 outbreak is: are these restrictions justified? International conventions, UN reports and international human rights treaties differ on this point. Abortion rights are considered to be non-derogable human rights. It is a sheer hypocrisy to argue that they are to be considered elective medical procedures that can be halted or altogether banned during a health emergency crisis. The impacts of crises are never gender neutral, and the COVID-19 crisis is no exception (Inter-Parliamentary Union 2021).

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DEP Deportate, esuli, profughe
Rivista telematica di studi sulla memoria femminile

Sara De Vido, *Violence Against Women's Health in International Law*, Manchester: Manchester UP, 2020, pp. 262.

One need not be a feminist to notice that personal violence of any type affects people's health, as it results in short and long term physical and psychological injuries. One needs a feminist analysis, however, to understand both the gendered dimensions of these harms, and the relationship between violence and unequal gender relations. And one needs a feminist legal analysis to highlight how these harms can be perpetuated by the law, insofar as health and health care laws, policies, and procedures lead to violence against women. With these two premises, Sara De Vido's book, *Violence Against Women's Health in International Law* (Manchester University Press, 2020), offers a rigorous and detailed feminist legal analysis of violence against women, while at the same time proposing a human-rights-based framework to shape legal responses to it. Through this framework, which De Vido calls Violence Against Women's Health (VAWH), the author reconceptualizes states' legal obligations in preventing and combating violence against women (VAW) as linked to the rights to health and reproductive health. She does so through the examination of international and regional cases related to domestic violence, rape in peacetime, and female genital mutilation/cutting. These cases allow De Vido to explore the horizontal dimension of VAWH, that is where VAW caused violations of the rights to health and reproductive health. She also investigates the vertical dimension – violations of the rights to health and reproductive health directly caused by state health laws, policies, and procedures – through legal cases on abortion, involuntary sterilization, and maternal health (including obstetric violence). While the sheer array of cases analyzed and the careful details of the analysis could make one dizzy, De Vido's narrative is lucidly argued and skillfully assembled, with signposts, reminders, appropriately placed and never redundant repetitions, effective organization, and compelling illustrative examples.

To be clear, a right to health (including reproductive health) is not explicitly safeguarded in international or regional human rights instruments, except in the Convention on the Elimination of Discrimination Against Women (CEDAW), which includes the principle of non-discrimination in health and obligates states to provide for pregnancy and post-natal care (arts. 12.1 and 12.2). International law, however, recognizes violence against women as a violation of human rights and a form of discrimination. In pivotal cases involving VAW that reached international or regional judicial or quasi-judicial bodies, the right to health or reproductive health has been only indirectly invoked either in the case itself or in the decision over possible reparations. The legal dissection of these cases allows De Vido to argue that existing jurisprudence and international human rights law as a whole can provide a strong foundation to appeal directly to VAWH as "a violation of women's right to health and right to reproductive health" (p. 134). In other words, VAWH could emerge and evolve from existing cases, conventions, and instruments potentially leading to the eventual eradication of VAW and its causes.

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Given that international human rights is the basis for De Vido's argument, naturally a discussion of one of the central debates in the field – the one between universalist and cultural relativist views – is necessary. And De Vido does not eschew it. Rather, she proposes – alongside other feminist legal scholars – that "contextualized universalism" offers a way to consider and appreciate differences among women (cultural or otherwise), as well as realize the full enjoyment of human rights for all women. Through a contextual universalist view, "it is not a matter of which culture is at the basis of the violation of women's rights, but rather across which grounds – gender, ethnicity, class, social and economic conditions – discrimination is perpetrated" (p. 10).

Viewing cases through contextualized universalism allows De Vido to tackle head-on the issue that has preoccupied (one may say obsessed) feminists and non-feminists alike, female genital mutilation/cutting (FGM/C) – a practice generally associated with some communities from the Global South. For De Vido, FGM/C constitutes VAW and it is a form of discrimination, insofar as it "impair[s] a woman's or a girl's bodily integrity," and to the extent that it is performed without the girl's or woman's consent. Similar considerations apply to genital cosmetic surger, which, De Vido argues, is "culturally embedded in Western societies" (p. 159), whose standards of beauty reflecting gender stereotypes limit a woman's ability to give fully informed, uncoerced, and genuine consent. For De Vido, consent is crucial to the conceptualization of VAWH. Insofar as it is hard to disentangle consent from social pressure, fully informed, uncoerced, and genuine consent is hard to determine: a woman can be fully informed of the adverse health consequences of cosmetic genital surgery or genital cutting and still choose the procedure rather than end up socially shunned. De Vido does not offer, and rightly so, easy solutions on matters of consent in either these or other cases she examines (e.g., abortion). She does, however, note that consent is an expression of, and "gives strength to" women's autonomy (p.164). Drawing once again from feminist scholarship, De Vido clarifies that autonomy cannot be viewed in purely individualist terms. Rather, a woman's right to make decisions about her body needs to be considered in the "context of relationships that inevitably affect" those decisions (p.164). In any case, "the very idea of autonomy is inseparable from the rights to health and to reproductive health" (p. 164).

The major contributions of this book lie in the possibilities it opens in regards to international human rights law. Specifically, the framework of VAWH allows for the consideration of the vertical, as well as the horizontal dimensions of VAW, a possibility that cannot be overestimated. Current international human rights law on VAW can only address violations perpetrated by individuals, and hold the state accountable only indirectly for condoning, tolerating, or failing to prosecute private actors. This is the case even when state agents are themselves responsible for VAW (for example, rape by security forces or police). De Vido, however, points out how states can themselves be responsible for VAW through laws, policies, and procedures on health and health care, which "might cause – or create conditions for – violence against women" (p. 2). There are, for example, numerous laws and policies across the world, which do not adequately safeguard women from obstetric vio-

lence (e.g., procedures on perinatal shackling in detention). Obstetric violence, however, "has been dealt with by judges more in terms of negligence of health personnel than of violation of women's human rights" (p.91). De Vido refers to such cases as the vertical dimension of VAW. Peace Studies scholars will recognize in the vertical dimension of VAW elements of structural violence. Violence against women exists and is allowed to continue through interconnected patterns of discrimination rooted in societal norms, customs, and habits. It is embedded in unequal and intersectional relations of power, and the "product of an institution" (p. 138), which De Vido does not name, but we can assume to be patriarchy. It is also gender-based because it is founded on gender stereotypes about women as vulnerable, incapable of autonomous decisions, naturally prescribed to fulfil certain domestic and reproductive roles in the family, and dependent on male relatives. Violence, in other words, is embedded in structures, regardless of the presence of a specific, identifiable, and prosecutable actor intending to cause harm. These structures are then reflected in laws, policies, and procedures leading directly to VAW.

The usefulness of the socio-legal notion of VAWH lies precisely in its ability to capture all these structural elements of VAW, making the rights to health and reproductive health justiciable in international human rights law. Specifically, by appealing directly – rather than indirectly – to the rights to health and reproductive health, positive obligations emerge for the state to promote the rights to health and reproductive health via laws, policies and procedures along both the horizontal and vertical dimension; to exercise due diligence in protecting and promoting rights; and to progressively take steps toward the elimination of VAW. Through the framework of VAWH, in other words, one can derive states' obligations under international law, and hence put in place mechanisms that address the structural character of violence, regardless of personal intent or even the identification of a culpable person to prosecute. This is a groundbreaking contribution of the book, one that has the potential to reshape international law to capture multiple forms of violence beyond individualist frameworks. And it is a reflection of its relevance that this book has been published by one of the most prestigious and influential international law series, the Melland Schill Studies of Manchester University Press.

Despite being a legal scholar, De Vido is not naïve about the limits of international law itself. She honestly admits that these limits, including its weak enforcement and monitoring mechanisms, may themselves causes VAW. Her belief in the possibilities of the law is tempered both by her caution and by her historical knowledge of the power of civil society and feminist groups to advocate for change. This hope and trust in the feminist movement conclude the book, almost as an invitation for us, in the feminist movement, to take up these suggestions and start making the rights to health and reproductive health a reality for women.

Catia Confortini

DEP Deportate, esuli, profughe
Rivista telematica di studi sulla memoria femminile

Tiina Vaittinen and Catia Confortini (a cura di), *Gender, Global Health and Violence: Feminist Perspectives on Peace and Disease*, London-New York, Rowman & Littlefield, 2020, pp. 288.

Il volume curato da Tiina Vaittinen e Catia Confortini contribuisce in maniera significativa ed innovativa alla riflessione sulla relazione tra *Peace Research*, il tema della salute globale e il concetto di violenza strutturale. La nascita della *Peace Research* risale agli anni Quaranta, benché femministe di tutto il mondo, riunite alla conferenza del Congresso internazioanle delle donne tenutasi all'Aja nel 1915 avessero già posto le premesse per una riflessione mondiale sul pacifismo[1]. Di violenza strutturale aveva parlato il sociologo Galtung; questi, in uno scritto del 1969, affermava che, sostenendo relazioni di potere ineguali tra (gruppi di) persone, la violenza risultava radicata nelle strutture sociali della società e concorreva allo sfruttamento e alla marginalizzazione di coloro che erano strutturalmente oppressi[2]. Benché il volume sia stato concepito e concluso prima della pandemia, le argomentazioni presentate dagli autori e dalle autrici invitano ad analizzare la situazione attuale con l'approccio innovativo suggerito nelle pagine del volume.

La collettanea, preceduta da introduzione delle curatrici, è suddivisa in tre parti: la prima propone una rivisitazione del concetto di "violenza strutturale"; la seconda esplora forme di violenza "entangled" – termine molto interessante in lingua inglese, tratto dalla fisica quantistica, che lascia intendere la stretta correlazione, quasi sovrapposizione tra fenomeni; la terza parte traccia un sentiero verso la pace e la giustizia nel sistema di salute globale.

Nell'introduzione, le autrici spiegano come le politiche di salute globale non tengano conto nella loro formulazione delle questioni di genere, con la conseguenza che il maschile è normalizzato, mentre il femminile, le minoranze sessuali, il non-binario sono completamente messi a tacere. Questo silenzio si traduce spesso in una forma di violenza, poco esplorata. In un recente scritto, ho fatto riferimento dal punto di vista giuridico alla "violenza contro la salute delle donne" proprio per identificare politiche dello Stato che causano o contribuiscono a causare violenza di genere nei confronti delle donne[3]. Anche io mi ero interrogata sul concetto di violenza, così presente nel diritto internazionale, ma mai accuratamente indagato. È interessante notare come, contemporaneamente, senza che ci sia stato uno scambio di visioni sul punto, quali studiose di ambiti disciplinari piuttosto diversi siamo giunte a conclusioni estremamente vicine. In questo passaggio, ad esempio, ho ritrovato i miei studi giuridici: "violent structures are continuously (re)produced by

[1] Jane Addams, *Le memorie delle donne sfidano la guerra (1916)*, in "DEP", 31, 2016, pp. 320-329. Traduzione e introduzione di Bruna Bianchi.

[2] Johan Galtung, *Violence, Peace, and Peace Research*, in "*Journal of Peace Research", 6, 3, 1969, pp. 167-191*.

[3] Sara De Vido, *Violence against women's health in international law*, Manchester University Press, Manchester, 2020.

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identifiable actors and political decisions, including actions by the State, one of whose tasks is the protection of its population from violence" (p. 7). Questa frase si traduce giuridicamente in obblighi in capo agli Stati e nella responsabilità di questi ultimi per violazione dei medesimi. Le curatrici riflettono anche sul pericolo di una "securitisation" della salute globale, che tende – lo si è visto chiaramente durante la pandemia da COVID-19 – a concentrarsi sulle malattie trasmissibili che possono avere un impatto sul c.d. *Global North*, trascurando invece quelle malattie non trasmissibili, che causano violazioni dei diritti umani ed enfatizzano differenze strutturali e discriminazioni intersezionali già presenti.

Nella prima parte, il saggio di Maria Tanyag riflette sulla salute sessuale e riproduttiva in contesti di crisi ed emergenza. L'attualità di questo capitolo è del tutto evidente. In particolare, l'autrice sottolinea il continuum tra la violenza di genere che viene compiuta in tempi di crisi da un lato e le insicurezze di genere che sono radicate in forme di violenza strutturale racchiuse nelle restrizioni all'accesso alla salute sessuale e riproduttiva delle donne. La violenza accade per fasi: la violenza può essere direttamente collegata a crisi ed emergenze e dunque essere più immediata e visibile; o può accadere prima o dopo le crisi e quindi essere meno visibile, strutturale e normalizzata. Le risposte alla crisi sono state spesso caratterizzate da quella che è stata definita la tirannia dell'urgente, momento in cui altri bisogni vengono considerati prioritari e le esigenze delle donne e delle ragazze poste sistematicamente in secondo piano. Il caso studio proposto è quello dell'Asia sudorientale, dove le sfollate subiscono gravi forme di violenza e dove la salute delle donne è marginalizzata dalla distribuzione diseguale di risorse e dall'accesso ai servizi prima, durante e dopo le crisi (p. 42). Néstor Nuño Martínez affronta nel suo capitolo il caso dell'accesso alla salute e alle cure mediche dei *Waria* in Indonesia: si tratta di persone nate in un corpo biologicamente maschile che non si conformano agli stereotipi di mascolinità e indossano abiti che la società considera femminili. La violenza subìta da questa minoranza sessuale consiste nella loro quasi totale assenza dalle politiche di salute contro l'HIV, che tradizionalmente si sono concentrate su altri gruppi.

Lo stigma che circonda l'HIV è ulteriore fonte di violenza strutturale. L'indagine dell'autore ha dimostrato che i *Waria* incontrano grandi difficoltà ad avere accesso ai servizi di salute, con conseguenti profonde dinamiche di marginalizzazione. Anche laddove politiche di intervento si siano ottenute, queste non hanno considerato la dimensione relazionale e collettiva dell'HIV, tra cui lo stigma. Sono forme di violenza anche dinamiche sociali e di potere che impediscono alle donne di identificare in tempi brevi un cancro al seno. Deborah Ikhile, Linda Gibson e Azrini Wahidin hanno indagato il caso dell'Uganda per sostenere che la costruzione sociale del cancro al seno quale esperienza individuale e soggettiva può ritenersi una forma di violenza strutturale (p. 71). Si parla di violenza statale anche nel capitolo di Elina Oinas, che affronta il caso dell'HIV in Sudafrica sostenendo che negligenza e disattenzione sono forme di violenza statale. L'HIV, come correttamente rileva l'autrice, è stato il primo problema di sicurezza legato alla salute rilevato dal Consiglio di Sicurezza delle Nazioni Unite. La mancanza di politiche dello Stato accessibili a tutte/i in Africa, in particolare alle donne in gravidanza, è stato definito da alcuni attivisti un crimine del governo e un genocidio. Dal punto

di vista giuridico, la qualificazione non è corretta, avendo il genocidio dei tratti molto precisi. È tuttavia chiaro si tratti di una forma di violenza, letta, come fa l'autrice, attraverso una visione tridimensionale: violenza materiale, simbolica e epistemica.

La seconda parte del volume si apre con il capitolo di Dragana Lukić e Ann Therese Lotherington, che attraverso storie vissute spiega la violenza della comprensione biomedica della demenza quale fattore che rende il suicidio e l'assistenza al suicidio delle scelte per i malati. Questa violenza affligge tutti i generi, in particolare le donne, ed è caratterizzata da una discriminazione fondata sull'età. Le autrici ritengono che il diritto a morire, proprio di alcuni movimenti femministi, si basi su questa comprensione biomedica della demenza. Nell'arte si possono tuttavia individuare forme di connettività con il mondo esterno che vanno oltre le abilità cognitive delle persone affette da demenza e possano essere fonte di vita. Di violenza causata da politiche sanitarie in materia di aborto discute invece il capitolo di Camilla Reuterswärd, che affronta il caso del Messico.

Lo Stato, come struttura "gendered" e "gendering", controlla le donne e i loro corpi attraverso leggi, politiche e prassi e produce diverse forme di violenza simultaneament (p. 141). Attraverso l'incarcerazione delle donne che abortiscono, lo Stato compie una violenza diretta, indiretta e culturale, legittimata da stereotipi di genere. Gli emendamenti sul "diritto alla vita" in varie leggi di stati messicani hanno ad esempio prodotto un clima di confusione e paura con riferimento allo status giuridico dell'aborto, tanto che non sembrava chiaro se la pratica fosse o meno ammessa e se sì in quali circostanze.

Denunce contro donne sospettate di essersi sottoposte ad aborto sono aumentate esponenzialmente in un clima di incertezza diffuso. Si sono prodotti casi di autoincriminazione (violazione del principio *nemo tenetur se detegere*), con donne costrette a confessare di aver avuto un aborto, in evidente violazione del diritto umano ad un equo processo. La violenza statale, di natura strutturale, riposa su stereotipi ben radicati nella società, il mito della donna il cui destino è essere madre.

È violenza di matrice statale anche quella sessuale durante i conflitti, esplorata nel capitolo di Elise Féron. Il focus dell'articolo è sulla violenza contro uomini e ragazzi, spesso trascurata tanto negli studi scientifici quanto da organizzazioni internazionali che condannano violazioni prodottesi nei conflitti. L'autrice argomenta che la violenza sessuale contro gli uomini viene spesso definita come "tortura", mentre i casi di violenza sessuale contro le donne vengono riconosciuti come "violenza sessuale" vera e propria. Il riconoscimento della violenza sessuale contro le donne quale forma, tra le più gravi, di crimine commesso durante il conflitto è contemplata dal punto di vista maschile, che vede le donne come persone bisognose di aiuto e sostegno.

Tale riconoscimento determina l'assenza di servizi specifici per uomini e ragazzi vittime di violenza sessuale durante i conflitti. L'autrice parla di violenza contro gli uomini, chiamata "tortura", e violenza contro le donne definita come "strumento di guerra". Il pregio indubbio di questo capitolo è quello di spiegare come la violenza sessuale sia percepita spesso solo contro le donne e le ragazze con la conseguenza che le politiche sanitarie, spesso ispirate alla logica della donna vittima vulnerabile, dimenticano le altre vittime della violenza, appartenenti ad altri generi,

e che le donne subiscono altre forme di violenza durante i conflitti, che passano in secondo piano. Va detto tuttavia che dal punto di vista giuridico la violenza sessuale è un crimine contro chiunque essa sia commessa. Anzi, la conquista di riconoscere la violenza sessuale come crimine autonomo, nel quadro dello Statuto della Corte penale internazionale, è stato un enorme passo avanti, in quanto ha permesso di riconoscere forme di violenza che altrimenti venivano sussunte nel quadro di altri crimini senza comprenderne la specificità e l'impatto disproporzionato su alcuni generi. È altresì vero che poco e male sono considerate le conseguenze della violenza sessuale sulla salute riproduttiva, in particolare di donne e ragazze, e sui figli nati dalle violenze compiute durante i conflitti nelle risoluzioni *Women, peace and security* del Consiglio di Sicurezza.

La terza parte del volume inizia con il capitolo di Debra L. DeLaet, Shannon Golden e Veronica Laveta sulla "giustizia teraupetica" per i sopravvissuti di violenza durante i conflitti. Le autrici argomentano che i processi di giustizia transizionale dovrebbero contemplare forme di giustizia terapeutica e altre forme di partecipazione dei sopravvissuti e delle sopravvissute. La giustizia transizionale è spesso stata accusata di non tenere in considerazione le necessità dei sopravvissuti al punto di non riconoscere la violenza di genere compiuta durante i conflitti. L'esempio che viene fornito è quello del centro per vittime di tortura in Minnesota, US, che attua il "diritto alla riabilitazione" come previsto dall'articolo 14 dalla Convenzione ONU contro la tortura.

Il capitolo successivo, di Laura Finley, affronta la violenza domestica quale questione di salute pubblica, criticando l'approccio puramente penale contro i perpetratori adottato negli Stati Uniti (e per la verità nella maggior parte dei paesi al mondo). Allo stesso modo, il modello "shelter" (case rifugio) è importante ma non è in grado di trasformare le norme sociali e rispondere alle disuguaglianze di genere che costituiscono la causa della violenza domestica (p. 207).

Questi due approcci / modelli, nati come risposta all'eccessiva medicalizzazione della violenza domestica criticata da movimenti femministi, può essere superata solo considerando la violenza domestica come violazione dei diritti umani e come questione di salute pubblica. In tal senso, sarebbe opportuno (e la Convenzione di Istanbul del Consiglio d'Europa lo prevede per gli Stati ratificanti) che gli Stati Uniti, così come altri Stati, allocassero fondi e dessero priorità alla violenza domestica sul piano legislativo.

Il modello di salute pubblica sarebbe dunque collegiale e non gerarchico. Il capitolo di Tiina Vaittinen affronta un altro tema poco analizzato, quello della violenza subita dalle persone che forniscono cura. L'autrice parla di "caring self-protection" per identificare le tecniche, imparate durante il lavoro e mai parte di corsi di formazione, per rispondere alla violenza di persone con demenza nei confronti delle persone che forniscono la cura. Questa auto-protezione viene considerata una strategia di "conflict transformation", che considera i conflitti come parte naturale delle relazioni umane e quindi non cerca di annientarli ma di trasformarli.

Le conclusioni sono affidate a Sophie Harman, che riflette in particolare sul paradosso della salute globale: un ordine sociale che enfatizza la cura e la salute per tutti quali principi fondamentali, ma che allo stesso tempo riproduce diverse forme di violenza che lo limitano (p. 263).

Il volume dimostra molto bene come definizioni di violenza proprie della *Peace Research* abbiano un certo rilievo per lo studio della salute globale. La lettura di genere offerta, sebbene non sconosciuta agli studiosi di salute globale, non è mai adeguatamente esplorata. La ricerca svolta dagli studiosi e dalle studiose che hanno contribuito a questo volume dovrebbe essere il punto di inizio di una serie di studi che possano determinare un cambiamento nel modo in cui viene condotta la *Peace Research* e nel modo in cui si concepiscono e sviluppano politiche di salute globale, a tutti i livelli.

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Julie Bindel, *The Pimping of Prostitution: Abolishing the Sex Work Myth*, Palgrave Macmillan, London 2017, pp. 353.

Based on an impressive body of testimony and accumulated knowledge, Julie Bindel's book *The Pimping of Prostitution: Abolishing the Sex Work Myth* exposes the scope and the main tenets of misinformation and mythology associated with the sex trade. Relying on first-hand accounts from experts, scholars, law enforcement, activists, pimps and madams, and most importantly, victims and survivors of sex trafficking and the sex industry, the author convincingly argues in favor of discarding the legalization and decriminalization approach to prostitution and abolishing it once and for all.

According to Bindel, in the last decades, the neoliberal stance on sex trade has been becoming increasingly vocal and popular. By depicting prostitution as the result of women's free choice to sell their bodies, the proponents of this position essentially try to normalize prostitution and sex trade through legalization and decriminalization policies and practices. The author claims that this approach is harmful and should be done away with for three main reasons.

Starting from the most "practical" argument, not only do legalization and decriminalization not work, they have actually failed in those countries that decided to adopt such policies. In The Netherlands, Bindel reports, legalization has been described as an "abject failure" (p.92), as trafficking in women into the country and drug dealing have increased. The author also discusses numerous cases where decriminalization in New Zealand did not eliminate abuse and trafficking from its sex industry (p.114). Decriminalizing practices often allow for an even more serious and painful exploitation of women by traffickers and pimps – this is why the latter are among the most vocal supporters of the neoliberal view of prostitution as a manifestation of free choice.

Bindel's second argument, which we could think of as more "philosophical", is embedded in her attempt to change the essence and the direction of the discussion of prostitution as a phenomenon. Why instead of trying to prove that women feel empowered and free when deciding to sell sex, we do not ask why men can buy and sell these women, Bindel wonders. In this sense, prostitution exists because men can and wish to exploit women, driven and encouraged by "institutionalised oppressions of gender, race and class" (p. xix) and institutionalized power relations.

Thirdly, and most importantly, legalizing and decriminalizing prostitution does not alleviate women's suffering. On the contrary, as the sex trade flourishes, they are more exposed to physical and psychological violence, harm, and diseases, often not sure how and where to seek help and assistance. Bindel's interviews with victims and survivors clearly demonstrate this – in fact, interviewees share that it is exactly this argument of pro-prostitution activists, about the lack of harm and abuse, that angers them the most (p. 86). Prostitution should not be considered the "oldest profession" of choice but finally acknowledged as a social evil and eradicated.

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Talking about the accusations she received, and personal attacks she experienced, Bindel touches upon another grave problem: the difficulties, which women's rights advocates, campaigners and researchers often encounter because of what they do. Thus, the author underscores the significance of their work and the value of building networks of professionals who can sustain and support each other. The voices of the abolitionists should not be silenced, because it is usually they who succeed in making the voices of victims and survivors heard.

Besides being thought-provoking and deeply informative, Bindel's book inspires and calls for critical thinking and looking at the sex trade through the victims' eyes. Therefore, it is an excellent reading for not only scholars, researchers and advocates of abolitionism but also students and those interested in women's rights.

Gergana Tzvetkova