Dagmar Herzog, Triangle Intellectual History Seminar, Durham, NC, September 30, 2018

I had already begun transnationally comparative research on postwar disability rights activism and the evolution of the memorialization of the mass murders (and had presented on this topic at a Holocaust conference in 2008) when, in the midst of writing the book that eventually appeared in 2011 – *Sexuality in Europe: A Twentieth-Century History* – I ran across the source material that served as the initial basis for the first chapter of a little book now forthcoming with University of Wisconsin Press, to be entitled *Unlearning Eugenics*. As I was collecting primary documents for the chapter on the sexual revolution, I found a cluster of texts by Christian theologians from the 1960s-1970s, both Protestant and Catholic, who favored abortion rights – and who did so with innovative theological arguments. This in itself seemed to me a remarkable find in view of the rollback underway against women’s rights to control their own reproductive lives being led, in the first decade of the 2000s, by religious leaders from formerly communist Eastern bloc nations (just at that moment – 2004-2007 – being incorporated into the European Union) and who were starting to make common cause with then-Pope Benedict XVI and also with antiabortion activists in western Europe. It was patently apparent that a newly empowered phenomenon of conservative Roman Catholics – part of a wider global revival of politically conservative forms of religiosity causing observers in the early 2000s to begin talking about a “postsecular” age and that included Jewish, Muslim, and Hindu trends as well – were, together with evangelical Protestants and Orthodox Christians, rewriting assumptions about what the content of Christian faith and its implications for politics, sexual and otherwise, should be. This rewriting had a great deal to do with a long-unwinding backlash against the leftist turn of both Protestantism and Catholicism – a multiplicity of dynamics sometimes bundled under the rubric of “liberation theology” – that had done so much in the 1960s-1970s, the era of civil rights and anti-Vietnam war activism, to rescue postwar Christianity’s reputation (in Europe well understood as besmirched by collaboration with numerous nations’ fascisms) as a force for moral good.

Yet as I researched further the debates about abortion in the 1960s-1970s, I noted as well the plethora of references to disability – both among opponents of the legalization of abortion and among both religious and secular proponents of liberalized abortion access. It turned out, indeed, as I soon discovered, that the debates of the 1960s-1970s over abortion rights in western European nations had been saturated by references to disability, although this fact had not been incorporated into scholarship on the era. The Nazi mass murder of the disabled was an overt reference point – perhaps especially in France, where a commitment to *laïcité* meant that religious arguments against abortion were less likely to be invoked by parliamentarians hostile to abortion rights. But also the possibility of, or perceived need for, abortion on grounds of fetal disability – the so-called eugenic indication for abortion – turned out to be a major focus of discussion. Many comments had a disdainful, unempathic tone, treating disability as a tragedy for families and a burden for societies.

Simultaneously, I was noticing that in the early 2000s it was precisely the availability of abortion on grounds of disability, once one of the few grounds for abortion that had seemed acceptable, indeed immediately comprehensible, to broad majorities across the ideological and religious spectrum (in a survey conducted in 1971, for instance, fully 80 percent of Catholics in West Germany approved of abortion on grounds of fetal anomaly), that was, in the 2000s, being used by opponents of all abortions as a new entry-point for regenerating a sense of moral conflictedness about abortion in general. In short, it was becoming unmistakable that unreflected insensitivities inherent in the pro-choice rhetoric of the 1960s-1970s had come to haunt the abortion politics of the twenty-first century. That starting-point ended up pulling me yet deeper into the riddle of the shifting lessons that were drawn from the Nazi past.

What you have here is the tail end of the first chapter draft (Abortion and Disability: Western Europe, 1960s-1970s), to orient you/prepare you for the middle chapter (Moral Reasoning in the Wake of Mass Murder: The Singer-Affair and Reproductive Rights in Germany, 1980s-1990s). The short version is this: The first chapter examines how negative attitudes about disability proved essential to advancing women’s rights to reproductive self-determination in the 1960s-1970s, across western European nations – with, as noted, significant consequences for how opponents of abortion are succeeding strategically in the 2000s-2010s. The second chapter homes in specifically on West and then united German discussions of the 1980s-1990s to explore how the (appallingly long-delayed) eruption of disability rights activism into mainstream politics and media discussion, coming at the particular juncture in postwar history and retrospective engagement with the Nazi (and more immediate post-Nazi) past of the 1940s-1950s that it did, caused – conversely to the developments of the 1960s-1970s – the new insistence on a more positive attitude toward disability to have adverse repercussions on women’s rights to abortion access.
counted as secular and what counted as an act of faith.) To treat God as the origin of a conception that was caused by rape, male ineptitude or irresponsibility, or technical failure (like a slipped condom or diaphragm) was, in Barczay’s eyes, “not only grotesque, but actually blasphemy,” and simply incompatible with Jesus’ teachings.37

Bringing in Disability

Finally, though, what stands out most now in rereading the texts from the 1960s-1970s is how prevalent references to disability were. To legalize abortion, West German Catholic opponents of abortion had contended in the 1970s, would be “the most disturbing attack on the moral foundations of our society since 1945” and “the largest Auschwitz in European history.”38 But in addition they expressly invoked the Nazi “brown thugs” and their “murder of the cripples and the sick.”39 French parliamentarians in the 1970s who were opposed to decriminalization also invoked “Nazi doctors,” “genocide,” “racial eugenics,” “organized barbarism protected by law, as it was, alas!, thirty years ago by Nazism in Germany,” “crimes perpetrated during the last war,” and “crematoria fires.” And they also argued that to legalize abortion would be the first step in a “monstrous regression” that would lead to the euthanasia of the handicapped, the murder of so-called “useless eaters [les bouches inutiles].”40 (It is notable that in laicité-oriented France, religious arguments were hardly used by the politicians. Instead, references to the horrors of Nazism fulfilled the moral function.)

But both secular and religious advocates for decriminalization also invoked disability recurrently.41 Britain was the first country in Western Europe outside of Scandinavia fully to decriminalize abortion – already in 1967, really a prefeminist moment – and there is no question that this was not just due to the hope of reducing the incidence of illegal abortions and the
damages they did to women’s health, but also to the early 1960s scandal of thousands of birth defects caused by the morning sickness pill thalidomide. Not until 2012, fifty years too late, did the Grünenthal group formally albeit inadequately apologize and establish a memorial in Stolberg Germany.\textsuperscript{42} [Fig. 1.5 Stolberg memorial] 1000 children in Britain (at least 10,000 worldwide) had been born with truncated limbs. And although this is less well known, a further 1000 children in Britain had died within a few months of birth because the drug could also cause malformed inner organs.\textsuperscript{43} Many of the women carrying these children had sought abortions but been denied them. Additional scandal surrounded birth defects such as mute- and deafness caused when the pregnant woman had a case of the disease rubella. But it was especially the scandal surrounding the deaths of children with malformed organs that made the inclusion of the eugenic indication in the 1967 Abortion Act appear to be imperative and self-evidently moral.

Already for years in the run-up to the 1967 decision, the British press had carried articles expressing outrage specifically at the lack of availability of abortion in cases of fetal disability. Also the Anglican commission, in its reflections in 1965, spent extensive time arguing that the thalidomide case and other cases of anticipated fetal abnormality or deformity could certainly make abortion be the \textit{moral} choice – especially in view of a couple’s anxieties about their capacities to raise a disabled child effectively. In Italy, disability would become a factor as well, though on a far smaller scale – due to a chemical factory explosion in Seveso near Milan. [Fig. 14 priest advising about therapeutic abortion on grounds of 1975 mental health provision] Many women had sought abortions because they feared fetal damage.\textsuperscript{44}

But eugenics would come to factor in the discussion of abortion in multiple and not only ethically sensitive ways. \textit{Der Spiegel} in its pro-abortion writing in 1971 expressed glib disgust that 15 percent of West German medical doctors had argued that “children should be born
against the will of the mother, even if they will come into the world as cripples or mental idiots [Krüppel oder Schwachsinnige]." The French team writing in Études opined – with remarkable tactlessness – that it was actually immoral for those children to be forced to be born who would end up being a “heavy burden” to society. Less crassly, and with more anguish, West German and Swiss theologians emphasized the importance of compassion for women requesting abortion due to concern about fetal disability. While recognizing that sometimes, for instance, a Down syndrome child (at the time they referred to “mongoloid idiocy”) could bring great love and joy to its parents (noting that Down syndrome children did have “a happy consciousness”) and while expressing worry about sliding “onto the slippery slope to the killing of so-called ‘life unworthy of life,’” they nonetheless emphasized the extraordinary weight that a disabled child could become for the mother, for her marriage especially if it was labile already, for the surrounding society – and indeed for itself.

Much can be said about this unfortunate but important phenomenon. One point, as noted, is that it is certainly a sign of how difficult it apparently was for defenders of abortion rights to argue unapologetically and forthrightly for sexual pleasure without reproductive consequences as a human right also for women. A similar sign of that difficulty were the many gestures that were made at the time to the purported danger of global overpopulation as somehow a significant moral justification for the use of the birth control pill within the West.

But several further points need to be made. The first is that eugenic argumentation was part of the history of battles for contraception and abortion from the very beginning of the twentieth century on – and it was racist in its inception: in its condescension towards the lower classes within Europe; in its worry that the brown, black and yellow peoples of the world were “outbreeding” the white peoples; and in its contempt for the disabled. What becomes –
disturbingly but revealingly – clear when one reads pro-contraception arguments from the 1910s–1930s is how completely eugenic assumptions saturated the common sense of the era. It was in those decades more difficult – for many, apparently impossible – to argue for women’s rights to sexual pleasure than it was to use denigration of the disabled as a seemingly moral argument for the value even of contraception. This could partially be seen as sympathetic to poor women and the damage done to their bodies by repeated pregnancies and illegal abortions. This was certainly, for instance, what motivated the German gynecologist Wilhelm Mensinga of Flensburg, son of a pastor and himself a believing Christian, who invented the diaphragm – and also recommended abortifacient strategies if contraceptives failed. And that is what motivated the Dutch contraception activist Aletta Jacobs, the first female doctor in the Netherlands, who promoted the Mensinga pessar among the Dutch working classes. But the defense of contraception could also be expressed in very ugly terms. In the early twentieth century, the Swiss physician Auguste Forel was especially blunt: “The sick, the incapable, the mentally deficient, the bad ones, the inferior races must be systematically educated to birth control. The robust, good, healthy and mentally higher standing ones, however, must be, as I have repeatedly argued here, encouraged to multiply strongly.” In the early 1930s, the Spanish socialist and feminist sex radical Hildegart Rodríguez advocated for legislation that would allow women to prevent the birth of children who were “retarded, epileptic, degenerate, insane.”

Moreover, eugenic argumentation against the lower classes and against the disabled continued also after Nazism was defeated – and also in continuously democratic nations. Inquiries in postwar Britain about views on contraception recurrently triggered responses which revealed the ongoing significance of eugenic attitudes and utter lack of self-consciousness in expressing those. One woman, headmistress of a school, in response to a query about “your
attitude to birth control,” spontaneously offered this: “Unaesthetic, but probably necessary in many cases. Proper social training should deter physically-unfits from having children. Mentally-deficients should be prevented if necessary.” And a schoolmaster opined that birth control was “being used by the wrong people. Intelligent people should procreate and give us more of their sort. But it is the semi-morons who breed like rabbits.”

It was, in short, apparently quite hard to unlearn eugenic thinking. It is indeed an enormous achievement for justice and human rights that disability rights are now at long last on the agenda not just of activist organizations but of European governments and the European Union as well, and extraordinary – although still inadequate – progress has been made just in the last fifteen years. [Fig. 1.6 FRA website] But just as disability rights have gained a belated – although still too fragile – hold on public consciousness, they are almost instantly being pitted against women’s rights to abortion access. Antiabortion activists are specifically presenting the availability of abortions on the grounds of fetal disability (and now also the possibility within IVF not to implant a fertilized egg with Trisomy 21 or another genetic condition) as in and of themselves a horrendous affront to disability rights. Reproductive rights activists are very much on the defensive.

Recent Trends

In Germany in 2009, for example, the law was changed to intensify restrictions on abortions undergone on grounds of fetal disability. Christian Democrats had attempted to implement these restrictions already in 2001, and again in 2004; the change succeeded in 2009 in winning the support also of Social Democrats and Greens because the issue was framed as one which advanced the cause of disability rights. In 2013, the British parliament held an “Inquiry
into Abortion on the Grounds of Disability” to investigate whether the contrast between the extended deadline for terminations on grounds of the “eugenic indication” when compared with the earlier-in-pregnancy deadline for abortions on other grounds constituted, in and of itself, an injustice to individuals with disabilities and hence a violation of nondiscrimination legislation in the form of the Equality Act of 2010. In Spain in 2014 the ruling conservative Partido Popular strove to reverse the freshly (in 2010) achieved liberalization of abortion law, in part on the grounds that Spain needed to come into compliance with the United Nations Convention on the Rights of Persons with Disabilities (adopted in 2006). In the Partido Popular’s proposed law, abortions on grounds of disability would be only allowed under the condition that the “deformities” are “deformities incompatible with life,” which would have limited women’s access to abortion even more than it had been under the restrictive 1985 Spanish law. Alberto Ruiz Gallardón, Spain’s Minister of Justice and author of the Bill, had declared that it would be “ethically inconceivable” to provide an “unborn baby with deformities” reduced protection.

Also in formerly communist nations like Hungary and Poland the anti-“eugenics” argument against abortions has gained momentum – in the case of Hungary in the form of articles inserted in the Constitution formulated in 2011 and promulgated in 2012; in the case of Poland articulated by none other than the Prime Minister Beata Szydło herself. Already in the more immediate aftermath of the collapse of communism, scholars pointed out that in many former nations of the Eastern bloc, nativist pride and antagonism toward Western culture was manifesting in the form of vociferous demands for a return to conservative notions of gender roles, and that hostility to abortion was fueled both by the strong emotional association between legal abortion and the communist past and by deliberate fanning of demographic anxieties. The addition of concern with “eugenics” and disability is far newer.
The Hungarian constitution blends invocations of the nation’s Christian tradition with declared opposition to both Nazism and communism. It enshrines heterosexual marriage as normative, and expressly declares that the state encourages childbearing. In addition, Article II states not only that “human dignity shall be inviolable” and that “every human being shall have the right to life and dignity,” but also that “embryonic and foetal life shall be subject to protection from the moment of conception.” Article III adds that “all practices aimed at eugenics… shall be prohibited.”62 The promulgation of the Constitution has not changed Hungarian law permitting abortion.63 But it provides the possibility that it could be – and certainly it is understood that way both by proponents and opponents of legal abortion access.64

In Poland, in 2013, an effort to get rid of the fetal anomaly indication for abortion was defeated – by just one vote in parliament.65 Again in 2016, Polish lawmakers attempted to outlaw all abortions, but this time were met by massive nationwide protests and were forced to withdraw the legislation. In the wake of the defeat of the initiative, Prime Minister Szydlo – in a telling indication of just how potent the pro-disability argument has become internationally for antiabortion activists – announced that “by the end of the year, the government would prepare a national program to support families with disabled children and women who give birth even after their fetuses have been found to have genetic disorders.”66 The news was widely covered in the international press, with the right-wing Fox News in the US headlining their contribution “Anti-abortion Poland offers payments for disabled newborns” (although also explaining that the initial plan was for a one-time payment of 4,000 zlotys (approximately $1000)).67

Many critics of abortion on grounds of disability – including Down syndrome advocacy groups like “Don’t Screen Us Out” in the UK – are undoubtedly sincere in their conviction that such abortions are profoundly immoral and unacceptable. [Fig. 1.7 DSUO website] But there is
no question that the only so recently achieved – and in many locales still quite shaky – consensus that the rights of individuals with disabilities deserve passionate defense (not to mention substantive financial investment) is also being instrumentalized by individuals and groups with broader sexually conservative agendas. And it remains an open question whether this instrumentalization can in turn be used by disability rights advocates to generate greater support post-birth and across the lifespan.

Notably, the newest configuration in what is politically sayable and defensible with regard to “eugenics” or “abortion” has consequences for people far beyond those directly affected in some way by disability. This becomes clearest when we look at another of the most significant current trends among individuals and groups committed to a sexually conservative agenda: It increasingly involves transnational, even transcontinental, mobilization. The changes have been rapid. Indicatively, when the European Parliament met in Strasbourg in 2002 to vote on a measure which would have encouraged all member countries to legalize abortion, the measure passed only narrowly – with a vote of 280 in favor versus 240 against – but it did pass. Eleven years later, the Estrela Report (“Report on Sexual and Reproductive Health and Rights” presented by the Portuguese Member of the European Parliament Edite Estrela), which called on all European nations to support reproductive and sexual self-determination for its citizens, including by providing sex education, was rejected. (Instead, an alternative conservative proposal which gave more rights to determine sex-related law and policy, on the basis of the principle of “subsidiarity,” to individual nation-states – the concept better known in the US context as “states’ rights” – was accepted by a vote of 334-327, with 35 abstentions.)

This turn of events, between 2002 and 2013, was not only due to the incorporation, in the interim, of formerly communist nations into the European Union. Instead, credit was due, very specifically – and this
despite the “subsidiarity”-based claim advanced that individual nation-states should have more leeway in the development of policy – to a number of transnationally organized right-wing NGOs. Among the most significant of these are a group registered in Belgium and calling itself “Human Dignity Watch,” and the Spanish-based “HazteOír” (Make Your Voice Heard). Both are hostile to LGBT advocacy in combination with their opposition to reproductive self-determination. (For instance, Sophia Kuby, executive director of “Human Dignity Watch,” has declared that “sexuality only in a certain order has its proper place, namely in the marriage of a man and woman, in which there is the possibility of passing on new life. Homosexuality is thus always in deficit.”) But the most effective countermobilization to the Estrela Report came from the movement “One of Us,” which defends the protection of every fertilized egg as though it were already a citizen. Although supported by many Roman Catholic church leaders, “One of Us” makes its arguments for the protection of the fertilized ovum in entirely secular terms. “One of Us” is an example – indeed the single most successful example – of a new phenomenon called “European Citizens’ Initiative” designed to encourage democratic grassroots participation. “One of Us” is, additionally, represented by Grégor Puppinck, a French lawyer and director of the European Centre for Law and Justice, a right-wing NGO based in Strasbourg but founded (in 1998) by the US-based lawyer Jay Sekulow, head of the American Center for Law and Justice (itself in turn founded by the US American right-wing evangelical minister and media mogul Pat Robertson) – and it is clear that there is plenty of transatlantic cooperation and sharing of ideas between the two institutions and their directors. Puppinck sits on various Council of Europe committees involved with questions relating to reproductive and sexual politics. The European Centre for Law and Justice initiates and supplies briefs in a steady stream of lawsuits involving reproductive and sexual issues at both national and supranational levels; it
also holds conferences on such matters as late-term abortions (under the rubric of “neonatal infanticide”), “transgender marriage” (the individual seeking to marry is described as having undergone surgery in order to “resemble” a woman), surrogacy (referred to as “maternity traffic”) and reproductive testing and technology (summarily criticized under the rubric of “eugenics”), as well as on “religious conscience” clauses. In addition, Puppinck regularly writes commentaries on legal and policy developments in European nations. For example, in his commentary of 2011 on the new Hungarian constitution, including its assertion that life begins at conception and is under the protection of the state from that point on, Puppinck reiterated what he saw as the constitution’s merits. Evident was his appreciation for demographic concerns, his invocation of “Christian values” and of general gender and sexual conservatism (including a side swipe at LGBT rights activism); and an affirmation that “eugenics” must be resisted.

That same year of 2012, the European Centre for Law and Justice and Puppinck weighed in on cases from Italy and Latvia. The European Court of Human Rights had just ruled that the Italian law against screening of embryos conceived through in vitro fertilization should be overturned, with the argument that it was “incoherent” to permit abortion on eugenic grounds whilst forbidding preimplantation genetic diagnosis (PGD). The case in question had involved a couple who had chosen to abort a fetus carrying cystic fibrosis (a life-threatening genetic disorder) after they had been denied the right to have the embryo tested before implantation. The court had found – as an antiabortion website summarized – “that the ‘wish’ to have a healthy child ‘constitutes an aspect of their private and family life and comes under the protection of Article 8’ of the European Convention on Human Rights” and that among the rights guaranteed by the convention was “a ‘right to give birth to a child who does not suffer from the disease they are carriers of.’” Puppinck, in his amicus brief, expressed deep concern, noting that a “wish” had
with the ruling become a “right.” This, he contended, represented “a conception of human rights as a projection of the individual will in the social order.” And this was unacceptable. The court’s ruling had created, he said, “a right not to transmit bad genes, a right to eugenics.”

In another, far more painful case (an instance of the type often grouped under the – awfully named – rubric of “wrongful birth”), a mother in Latvia had contended that her rights had been violated “when she was not offered genetic screening to help her decide whether to abort her daughter” (who had been born with Down syndrome). The child had been born in 2002, but the mother had sought damages from the doctor for having failed to provide prenatal testing that would have permitted her to decide whether or not to terminate the pregnancy (for lost income due to her inability to work as she had to care for the child, and for assistance with the cost of care itself), and subsequently from the Latvian state for failing to prosecute the doctor. The mother already had an older son who suffered from schizophrenia. The case had gone to the European Court (which decided against granting the mother damages, but which did find that there had been procedural problems in the handling of the case at the national level – and while it did not find a right to abortion, it did find a right to “information”). As the Court was deciding, the European Centre for Law and Justice had intervened, joining with – in Puppinck’s words – “a large number of European Down’s Syndrome organizations… in a coalition opposing the creation of [what the Centre called] a ‘human right to eugenics.’” Together “they published a declaration named ‘Stop Eugenics Now’ presented at a conference hosted at the Council of Europe in July 2012.” Most recently, in March 2016, “One of Us” held a Pan-European Forum in Paris where 1200 participants from 28 European nations attended, and the Thai surrogate mother, Pattaramon Chanbua, who had kept the Down syndrome son, “Gammy,” that she had borne for an Australian couple, was given the “ONE OF US Award” as a “humble hero of life.”
The world of “reproductive torts” and “gen-etiquette” is changing daily. But it is clear already that the European Convention on Human Rights’ provisions, which do still include the right to privacy, the right to be self-determining in forming a family, and the right to dignity understood also as a “protection from the use of women’s bodies” for purposes against their will are under growing pressure. In these circumstances, a handful of commentators, in various nations, have sought to engender greater capacity for empathic identification with potential parents as well. Some are lawyers, others bioethicists, philosophers, politicians, historians, and theologians – and still others counselors or affected parents, or affected individuals, themselves. Some use reason, others appeal directly to emotions. All of them work to articulate a right to termination on grounds of disability that need not be interpreted as insensitive to disability rights. [Fig. 1.8 ARC British termination testimonials]

One such individual is a woman named Jane Fisher, who works for ARC (Antenatal Results and Choices) in the UK. This is an organization which runs a telephone hotline for parents who have received a diagnosis of a fetal anomaly and which provides non-directive, supportive counseling to help parents navigate the ensuing decision-making process about whether or not to terminate. Called to testify before the UK Parliamentary Inquiry on Abortion and Disability, Fisher reiterated again and again that choosing to terminate a pregnancy on grounds of a fetal anomaly like Down syndrome, with its broad and unpredictable spectrum of possible outcomes, or on grounds of a late-in-pregnancy discovery of severe brain damage, by no means signaled any disrespect to living individuals with disability.

As is becoming gradually more evident, what has in the current climate become most difficult but most necessary to say is that the demand that affected women, or parents, must not
terminate and instead must enthusiastically embrace disability parenthood is morally
presumptuous, both sadistic and hypocritical, and intensely insensitive to the vulnerability and
precarity also of parents (whether they are potential carriers of predictable genetic vulnerability,
exposed to environmental toxicity or to a disease like Zika – not to mention socioeconomic or
emotional precarity, or confronted with a randomly appearing anomaly). Across Europe – and,
increasingly, also in the US and worldwide – it has become ever more difficult to celebrate
diversity (including neurodiversity) and passionately to defend disability rights and adequate
government financial support for dignified and flourishing lives for the physically, cognitively,
and emotionally disabled and simultaneously to argue for the rights of pregnant women and their
partners to choose whether or not to carry a disabled fetus to term. Yet – most especially with
regard to dignified and flourishing lives for adults with cognitive disabilities – in no nation are
funding and supports remotely adequate. Love and money both are all too often in short supply.
This is a most pressing moral challenge for the present and future.

One puzzle is how this predicament and the perplexing constellation of alliances
surrounding it first emerged, and by what circuitous routes and unexpected intersections of
historical trends particular interpretations of the lessons of the past ascended and have thereby
now come to trouble the present. To begin to make sense of those issues, the next chapter turns
to the specifically post-Nazi German dimensions of the present impasse. The final chapter will
expand out again geographically to explore a variety of imaginative and inspirational forms of
activism concretely advancing disability rights across the European Union.
which they could ask for a “therapeutic abortion” in accordance with a 1975 law). 26 underwent abortions.

Evans states: “The origin

See James Meikle, “Thalidomide ‘caused up to 10,000 miscarriages and infant deaths in UK,”’

For a terrific analysis of the simultaneous trends

For a revelatory assessment of the broad popular support

Recently, it has been reported that

The Thalidomide UK Agency has reported that “there are 458 people currently in the UK who were affected by

The Thalidomide UK Agency reports on the case of a man


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The Thalidomide UK Agency has reported that “there are 458 people currently in the UK who were affected by the drug, but that for every thalidomide baby that lived there were 10 that died.” Recently, it has been reported that in addition to the survivors, “about 6,000 were miscarried, 2,000 were stillborn and a further 2,000 died in infancy.” See James Meikle, “Thalidomide ‘caused up to 10,000 miscarriages and infant deaths in UK,”’ The Guardian, March 6, 2016, available at: https://www.theguardian.com/society/2016/mar/06/thalidomide-caused-up-to-10000-miscarriages-infant-deaths-uk (accessed October 7, 2016). See also Harold Evans, “Thalidomide: how men who blighted lives of thousands evaded justice,” The Guardian, November 14, 2014, available at: https://www.theguardian.com/society/2014/nov/14/-sp-thalidomide-pill-how-evaded-justice (accessed October 7, 2016); and the website of the Thalidomide UK Agency, http://www.thalidomideuk.com/ (accessed October 7, 2016). Evans states: “The original catastrophe maimed 20,000 babies and killed 80,000: war apart, it remains the greatest manmade global disaster.”

Following the explosion and knowledge of the toxic cloud “infecting” the area, 604 women in Seveso asked for advice and help at clinics; of these, 414 of were pregnant and 192 were within the first 90 days of pregnancy (within which they could ask for a “therapeutic abortion” in accordance with a 1975 law). 26 underwent abortions.

“Ich habe nur Umgang,” p. 141.

“Pour une réforme.”


children have important health problems. Unsurprisingly, the ‘poster people’ for Down’s syndrome are among the remaining 60% are somewhere between these extremes. Moreover, a significant proportion of Down’s syndrome individuals with Down’s syndrome are defined as having a mild intellectual disability. Giric (2016) observed that preimplantation diagnosis should be accepted.


See for example Ann Furedi, “‘Disability Cleansing’ – or a reasonable choice?,” Spiked, August 29, 2001, available at: http://www.spiked-online.com/news/article/11261#.V_gfcCQ0-Uk (accessed October 7, 2016); Carine Vassy, “How prenatal diagnosis became acceptable in France,” Trends in Biotechnology 23.5 (May 2005); the debates in Germany in Gisela Notz, “Guter Tag für ‘Lebensschützer,’” SoZ—Sozialistische Zeitung 6 (2009), p. 6; and “Gentests an Embryonen: ‘Es gibt keinen Dammbruch,’” Spiegel Online, July 13, 2010, available at: http://www.spiegel.de/wissenschaft/medizin/gentests-an-embryonen-es-gibt-keinen-dammbruch-a-705997.html (accessed October 7, 2016); the Italian cystic fibrosis case discussed in “European court ruling creates ‘right to eugenics,’” Life Site News (August 31, 2012), available at: https://www.lifesitenews.com/news/european-court-ruling-creates-right-to-eugenics (accessed February 18, 2017); and the arrival of the trends in the US in Stefanija Gric, “Strange bedfellows: anti-abortion and disability rights advocacy,” Journal of Law and the Biosciences 3.3 (2016): 736-742. For a defense of preimplantation diagnostics from the perspective of an individual with disabilities, see the remarks of the Swiss politician Luc Recordon in 2005: “I do not pretend to deliver here an objective point of view. I am much too emotionally involved in what I am going to tell you to be able to do it. But I believe that a testimony should be given here. I was born with a very heavy congenital disability [Holt-Oram syndrome]. I was very lucky, because I was surrounded by responsible and loving parents who committed themselves with determination so that I could develop my activities and my personality. But I think it was a rare chance, and I’ve seen a lot of people in hospitals, in rehabilitation centers in Switzerland and Germany in particular, in the United States too, who have not had this chance, nor have they had the moral strength to resist disability, which crushed them. I believe that when one reads, in the words of some organizations of the disabled, that to accept preimplantation diagnosis, is to despise disability and the disabled, I believe deeply that it is quite the opposite. That is because we need to recognize that it is something humanly very heavy and that it is a misfortune, a terrible calamity for the majority of those who experience it…. I am a little annoyed to hear the question: is there a right to a healthy child? …. Can a human being have a right to the life of another human being, even if it is in the positive sense of giving life? I certainly hope not! To make a child, that is to take on a terrible responsibility; and not to do anything possible to ensure that this every prospect of good fortune, that is a terrible way of not assuming responsibility. So I do not ignore that there are risks in the sense of eugenics; I have pondered them – they are weighty, to be sure – and it is important to take all precautions. [Yet] I appeal to you, on behalf of those children who, like me, would have preferred, if that had been possible, not to be born rather than be born heavily disabled, that preimplantation diagnostics should be accepted.”


For a differentiated recent analysis – in the face of a rising tendency to castigate and shame women who choose to terminate a pregnancy after Trisomy 21 has been identified – of the wide variety of possible outcomes and the important point that the celebrated “poster people” are not necessarily typical, see the observations of French historian of medicine Ilana Löwy: “A prenatal diagnosis of three 21 chromosomes does indicate that the child has a Down’s syndrome, but not the severity of her/his intellectual and physical disability. Approximately 20% of individuals with Down’s syndrome are defined as having a mild intellectual disability, 20% a profound one; the remaining 60% are somewhere between these extremes. Moreover, a significant proportion of Down’s syndrome children have important health problems. Unsurprisingly, the ‘poster people’ for Down’s syndrome are among the high-performing ones. Usually they are also those who… were able to benefit from supportive family and from
public aids, frequently secured thanks to their families’ skill in navigating the official support system. To claim that the most successful cases should represent the future of every Down’s child is, however, deeply misleading. It does not take into account important differences in public resources available for education and medical care of disabled people, important differences between socioeconomic status of mothers and families of such people and their psychological makeup, and above all important differences in the severity of impairment of individuals with Down’s syndrome: some people with this condition can keep a regular job, but some never learn to speak. And many will need a high level of parental support until the end of their parents’/mother’s life. As a rule, parents take care of their children when they are small, and not infrequently are helped by their children when they grow old. Parents/mothers of intellectually disabled children know, however, that they will always stay on the giving end. It is not rare today for a woman in her 70s to have the sole responsibility of an adult child with Down’s syndrome who, in addition, may suffer from an early onset of Alzheimer’s disease, one of this condition’s late effects. And, in today’s economic and political climate, it may be difficult to tell a pregnant woman that she should count on an important increase in the level of public support for people with intellectual disabilities in the near future. A woman diagnosed with a Down’s syndrome fetus nearly always faces a very painful personal decision, but also a risk that she be negatively judged for that decision. If she decided to maintain the pregnancy, she may be criticized for potential harm to her family and society. If she decides to interrupt it, she may be criticized for selfish behavior, absence of maternal virtues and a ‘eugenic’ rejection of the diversity of human kind.... A book which – with the best possible intentions – minimizes the real-life problems of care of people with Down’s syndrome, and implicitly condemns women who elect to terminate a pregnancy with a trisomic fetus, can make a very difficult situation of these women even more challenging.” Ilana Löwy, review of David Wright, Down’s: The History of a Disability, New Genetics and Society (March 2014): 229-231, available at: http://www.tandfonline.com/doi/abs/10.1080/14636778.2014.892826 (accessed February 24, 2017).

57 See the press release of Pro Familia: “Rückschritt im Abtreibungsrecht” (May 15, 2009): “True assistance for women, who after the twelfth week of pregnancy decide for a termination, which they will only receive with a medical indication, will not be provided by this new change in the law. To say that it will is nothing but hypocritical pretense. We ask instead, what difficulties will result from the change in the law for affected women in the future? Here it is important to differentiate between women who are pregnant in their thirteenth week and women who are, after the major ultrasound and later, pregnant after the twenty-second week. It will not be a relief for women to be subjected to a fixed period of days in order ‘quietly’ to be able to think about their decision – what an ignorant, contemptuous image of women lies behind such a concept! They will have three days of fear to worry about whether the doctor will grant them a medical indication. Also the doctor gains three days to reflect on whether he wants to subject himself to the risk of providing a – possibly contestable – medical assessment, additionally threatened with a fine of 5.000 Euro if found guilty. He will tend only then to provide the medical indication if the patient is in danger of actually losing her life. This division of the medical indication is a definitive setback for women’s health politics.” See: http://www.profamilia.de/?id=2461 (accessed July 31, 2011).


One of the most recent entries into the newfound concern for disability—joined with demographic worries—can be seen in Belarus in 2016: Lizaveta Kasmach, “Pro-life Vs Pro-choice In Belarus,” Belarus Digest (October 10, 2016), available at: http://belarusdigest.com/story/pro-life-vs-pro-choice-belarus-27507 (accessed February 6, 2017).


On the voting-down of “the bill to ban abortion for foetal malformation” in Poland in September 2013, see Colin Francom, Unsafe Abortion and Women’s Health: Change and Liberalization (London: Routledge, 2016), p. 38.

Rick Lyman and Joanna Berendt, “Poland steps back from stricter abortion law,” New York Times (October 6, 2016), available at: http://www.nytimes.com/2016/10/07/world/europe/poland-abortion-law-protests.html (accessed October 7, 2016). One reason for the focus on disability is that it remains one of the few grounds on which abortion is permitted at all in Poland. Of the only 1,040 abortions performed legally in Poland last year (others are performed illegally, or women travel to Slovakia or Germany or other nations), it is estimated that—as the Washington Post reported— “many are linked to Down syndrome.” Andrew Roth, “Her Story Is My Story: How a harsh abortion ban has revives feminism in Poland,” Washington Post (November 18, 2016), available at: https://www.washingtonpost.com/world/an-anti-abortion-bill-revives-poland’s-feminist-movement/2016/11/17/4d2afca4-a04a-ad66-8864-6f892cad0865_story.html?utm_term=.2245e82c1ee8 (accessed February 19, 2017).

“Anti-abortion Poland offers payments for disabled newborns,” Fox News World (November 4, 2016), available at: http://www.foxnews.com/world/2016/11/04/anti-abortion-poland-offers-payments-for-disabled-newborns.html (accessed February 18, 2017). The British Guardian ran an article explaining that the law would have made women who terminated their pregnancies, for any reason, punishable with up to five years in prison. It also quoted statements from protesters against the proposed law who not only deemed it “barbaric,” and “really cruel,” noted that resistance to the law was about “basic dignity of a woman,” and worried that “they will add to current legislation that foetuses with Down’s syndrome are not severely damaged so pregnancies with those children won’t be allowed to be terminated.” One woman quoted observed that “People do not understand how this legislation would affect the lives of Polish families. They do not understand the lives of families with disabled children. Raising a disabled child in Poland is very hard. Benefits are just 35 euros a month.” See: Carmen Fishwick, “It’s about basic dignity: six women on protesting Poland’s anti-abortion proposal,” Guardian (October 6, 2016), available at: https://www.theguardian.com/world/2016/oct/06/its-about-basic-dignity-six-women-on-protesting-polands-anti-abortion-proposal (accessed February 18, 2017). The British Daily Mail provided additional numbers: “Government figures say 1,040 abortions were performed in Poland last year, while experts say some 150,000 abortions a year are done illegally and secretly. The government says most of the legal abortions are performed on fetuses with genetic defects like Down syndrome and wants that stopped.” “Anti-abortion Poland offers payments for disabled newborns,” Daily Mail (November 4, 2016), available at: http://www.dailymail.co.uk/wires/ap/article-3905382/Anti-abortion-Poland-offers-payments-disabled-newborns.html#ixzz4XvXkeL8T (accessed February 18, 2017).

For an effort to defend, from a Catholic theological perspective, the retention of a woman’s right to decide to terminate a pregnancy on grounds of disability, to explain that in some cases such a termination could be the more moral choice, and to encourage the Catholic bishops of Poland to understand the deleterious effect on physicians in Poland already of current law—as many of the physicians are even afraid to provide prenatal testing for fetal abnormalities for fear of prosecution—see “Academic urges Polish bishops to support ‘early, safe and legal’ abortion for disabled babies: Prof Tina Beattie has signed a letter to Polish bishops opposing plans to ban abortion in the country,” Catholic Herald (April 25, 2016), available at: http://www.catholic herald.co.uk/news/2016/04/25/academic-urges-polish-bishops-to-support-early-safe-and-legal-abortion-for-disabled-babies/ (accessed February 24, 2017).


Kuby quoted in “European Dignity Watch.” Although the NGO is registered in Belgium, the president and founder of EDW, Jorge Soley Climent, is Spanish, and Kuby is German.

On “One of Us,” see: [link](http://www.oneofus.eu/) (accessed October 7, 2016).


On Puppinck, see: [link](http://www.archons.org/conference/bio-puppinck.asp). On Sekulow, see: [link](http://aclj.org/jay-sekulow). On the ECLJ, see: [link](http://eclj.org/). On the ACLJ’s original founding by Pat Robertson, see Feder, “The Rise.” On US evangelical involvement in “religious freedom” and other cases brought to the European Court of Human Rights, as well as on the broadly influential role of Puppinck and the European Centre for Law and Justice, see: Pasquale Annicchino, “Winning the Battle by Losing the War: The Lautsi Case and the Holy Alliance between American Conservative Evangelicals, the Russian Orthodox Church and the Vatican to Reshape European Identity,” *Religion and Human Rights* 6 (2011): 213-219. Annicchino has summarily described the ECLJ as “a Conservative Christian pro-life law firm, associated to the American Center for Law and Justice” (216). On the ACLJ’s involvement in Europe – and more generally on current battles to redefine the meanings of “religious freedom” in
77 At one point Puppinck listed as the “values” enshrined in the constitution: “The Rejection of the National Socialist and Communist Dictatorship; _ The Nation based on ethnic origin; _ The Reaffirmation of the Underlying Christian Values of the Hungarian State and Society; _ The Cooperation between Church and State; _ The protection of the right to life and human dignity from the moment of Conception; _ Protection of the family and the institution of heterosexual marriage; _ The condemnation of practices aimed at eugenics.” At another moment he observed: “While some radical pro-LGBT lobbies may not appreciate the new Hungarian constitution, it is the sovereign and legitimate choice of the Hungarian people. This choice, which includes protecting life from conception, is especially justified by the serious demographic problem that Hungary suffers regarding an exceedingly low fertility rate—around 1.3 children per woman.” Puppinck, “Memorandum,” pp. 4, 17.
78 “European court ruling creates ‘right to eugenics.’”
80 See “1st ONE OF US Forum and 1st ONE OF US Award,” available at: http://righttolife.org.uk/news/success-one-us-pan-european-forum/ (accessed February 19, 2017); as well as “Success of ‘One of Us’ European Forum,” available at: http://righttolife.org.uk/news/success-one-us-pan-european-forum/ (accessed February 19, 2017). A Bulgarian website – proudly offering “non-religious reasons to advocate for life” – also reported on the Pan-European Forum and summarized the challenges that “One of Us” sees itself as responding to: “Eugenics, research on embryo, gestational surrogacy, euthanasia, transhumanism: there are many challenges faced by this new force for life and human dignity in Europe.” “Първи форум на европейската федерация ‘ЕДИН ОТ НАС,’” Избор за живот, available at: https://www.pro-life.bg/en/2016/03/1st-one-of-us-forum-and-1st-one-of-us-award/ (accessed February 19, 2017). The story of “Baby Gammy” is complicated, and versions conflict. “One of Us” praises Chanbua for refusing to abort Gammy, but actually it appears that it was only after the twins were born that the parent couple that had contracted with Chanbua – David Farnell and Wendy Li – said that they would have asked for him to be aborted if his condition had been known sooner. In some accounts the Farnells wanted both Gammy and his non-Down twin sister Pipah (whom they brought to Australia and are now raising), in other accounts Chanbua wanted to keep both children and the couple took the sister in fear that they would not be able to take both children (Gammy was still in hospital and simultaneously there was political unrest in Thailand), and at some point it also emerged that the father had a record as a convicted child sex offender. By 2015, a story emerged that the Farnells had tried to lay claim to some of the money that individuals from around the world had donated to Chanbua to help her in raising Gammy, but ultimately a judge in Australia found them innocent of this charge and also affirmed their right to keep Pipah. Cf. Kathy Marks, “Baby Gammy: Australian father who abandoned Down syndrome surrogate child now tries to access funds donated for his care,” _Independent_ (May 19, 2015), available at: http://www.independent.co.uk/news/world/australiasia/baby-gammy-australian-father-who-abandoned-down-syndrome-surrogate-child-now-tries-to-access-funds-10261916.html (accessed February 19, 2017); and “Baby Gammy: Surrogacy row family cleared of abandoning child with Down syndrome in Thailand,” _ABC_ (April 14, 2016), available at: http://www.abc.net.au/news/2016-04-14/baby-gammy-twin-must-remain-with-family-wa-court-rules/7326196 (accessed February 19, 2017).

For important reflections on changes in values already underway in the cultural paradigm shift from a desire for a right to privacy to more concern with a right to health, infertility treatment, etc. – but also with important suggestions for as yet untapped judicial approaches – see Judit Sándor, “Reproduction, self, and state,” Social Research 69.1 (2002): 115-141. Also see: Rebecca J. Cook and Bernard M. Dickens, “Human Rights Dynamics of Abortion Law Reform,” Human Rights Quarterly 25.1 (February 2003): 1-59. And for a clarifying philosophical position on law and ethics in relation to new reproductive technologies, which starts from the premise that we owe respect to “future persons” but that “embryos that do not have mothers willing to continue to assist their growth have no way of developing into persons,” see: Anja Karnein, A Theory of Unborn Life: From Abortion to Genetic Manipulation (New York: Oxford University Press, 2012).

For example, Austrian law professor Erwin Bernat in 2007 – in the context of defending pre-implantation diagnostics for in vitro fertilization – observed: “Whoever does not want a disabled child demonstrates just as little hostility to the disabled as the politician who advocates for a zero-tolerance-for-alcohol policy in operating an automobile – a policy that, in its tendency, surely contributes to lowering the number of severely disabled victims of traffic accidents.” In general, he analogized: “A person can prefer the life-situation A to the life-situation B. He can decide to give up smoking in order to extend his life expectancy. Likewise he can shift from being an agnostic to being a religiously affiliated person, because he ‘starts to believe.’ Does this person discriminate against smokers and the religiously non-affiliated, if he ceases smoking and commits to a religion? The answer should be self-evident for everyone.” In sum, then – and although he was referring to Austrian not German law the point holds: “The constitutionally guaranteed prohibition against discrimination of the disabled… thus does not mean that it can be morally right to evaluate the illness or the disability of human beings per se as positive. For if the illness or the disability per se had a positive value then measures to heal or prevent illness or disability would be not only completely incomprehensible. We would actually be required, should the occasion arise, to produce people with disabilities. Nobody, however, can for good reasons want such a consequence [Eine solche Konsequenz kann aber niemand mit guten Gründen wollen].” Erwin Bernat, “Pränatale Diagnostik und Präimplantationsdiagnostik auf dem Prüfstand des österreichischen Rechts,” in Christian Dierks et al., eds., Rechtsfragen der Präimplantationsdiagnostik (Berlin: Springer, 2007), pp. 25-63, here p. 53. For a more intimate and personal perspective, see the article by Gillian Relf, “I wish I’d aborted the son I’ve spent 47 years caring for’: It’s a shocking admission – but read on before you judge,” Daily Mail (October 22, 2014), available at: http://www.dailymail.co.uk/femail/article-2803834/I-wish-d-aborted-son-ve-spent-47-years-caring-s-shocking-admission-read-judge.html#ixzz4ZHiv23n7 (accessed February 20, 2017).

See the remarks by Jane Fisher of Antenatal Results and Choices, testifying in the UK Parliamentary Inquiry into Abortion on the Grounds of Disability, 2013. Among other things, in response to MPs’ questions, Fisher noted: “I would add that I certainly don’t think when they [parents] make that very difficult and very personal decision that they are making any kind of statement on those that are actually living with disability or impairment. This is a decision that’s incredibly pertinent to their individual circumstances, and certainly outside the scope of post-24 weeks we’ve supported many couples who have first-hand experience of living with disability because they carry genetic conditions or have family members or work with people with disabilities, and I know so well from my personal experience that they’re certainly not wishing to devalue those living with disability when they make their
own decision…. What parents know is that it is a spectrum. So there are many children that do very well and lead semi-independent lives. There are others that struggle much, much more with their level of learning disability and with associated health issues, and there often is the crux of the difficulty for the parents involved, and it’s why I think we’ve seen in these years where quite rightly the disability rights lobby have made huge inroads in encouraging a more inclusive society -- we still see that the majority of people who are given a prenatal diagnosis of Down’s Syndrome make the difficult decision to end the pregnancy. They certainly do not make that decision lightly. They do not say to themselves, ‘Oh, my baby is not perfect, I no longer want it.’ They agonize over that decision. But they look at their own family circumstances, what that diagnosis might mean to them, because they cannot have a definitive prognosis, an absolute prognosis, and the majority think, because we really don't feel able to cope and we don't want our child to cope with the worst case scenario, we feel we're going to end the pregnancy ourselves…. Yes. I mean, I can accept this on many levels, that people living with a particular disability will feel very uncomfortable with the fact that some women choose to end a pregnancy on the strength of that disability. But they're two separate situations. And I’ve certainly spoken to many people with disabilities who, yes, would articulate that philosophical difficulty with it, but would also say, ‘I cannot say that, by withholding that woman's right to make her reproductive choice, I am furthering my cause in any way.’ I don't think that those two things work, and I do genuinely believe, and I think again my experience has borne this out, that there's not a tension for me in having a society that is empathetic, that is inclusive and enabling women to make their own autonomous reproductive choices. Those things to me go hand in hand….."

85 Just to give one example: 60 percent of adults with cognitive disabilities in Europe still live with their parents. See Inclusion Europe, Families and Intellectual Disability in Europe (2002), available at: http://inclusion-europe.eu/ (accessed October 7, 2016); everywhere the creation of joyful communities and “assisted freedom” (Sigrid Graumann’s term) requires indefatigable parental initiatives. For an example, see: Cigdem Akyol, “Mein Kind ist eine Belastung” (interview with Morlind Tumler and Götz Aly about the life they have created for their daughter Karline), in Wiener Zeitung (June 6, 2013), available at: http://www.wienerzeitung.at/themen_channel/literatur/autoren/552453_Mein-Kind-ist-eine-Belastung.html (accessed October 7, 2016); and Tumler and Aly’s testimonial: http://www.zukunftssicherung-ev.de/testimonials/ (accessed October 7, 2016); as well as Sigrid Graumann, Assistierte Freiheit: Von einer Behindertenpolitik der Wohltätigkeit zu einer Politik der Menschenrechte (Frankfurt/Main: Campus, 2011).