

Cripwashing: Undermining Civil Liberties in the Name of Disability Rights in Contemporary Spain

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Abstract

My purpose in this paper¹ is to reflect on the perverse use of the “language of rights.” To do so I will analyze how the discourse of the Disability Rights Movement is being used by the Government of Partido Popular, the conservative party in Spain, to dismantle the young – and still precarious, when compared to the French or German – Spanish welfare system. My reflection will be focused on the abortion law reformation recently undertaken by the Spanish Minister of Justice, Alberto Ruiz Gallardón. I will argue that he is using disability rights to undermine civil liberties in Spain. I will propose that this use reflects a form of “Cripwashing.” I am using cripwashing with the same meaning that the CLAGS website² gives for pinkwashing: “using right protections for one group [in this case people with disabilities] to conceal rights and abuses to other people”.³

Keywords

Austeristy measures; Catholicism; bioethics; Spanish disability movement; abortion; Spanish welfare state.

¹ Acknowledgements: I’m grateful to my colleagues at CCHS-CSIC, Rosana Triviño, David Rodríguez-Arias and Ricardo Dorado. David and Rosana provided me with insight and bibliographical suggestions, and Ricardo helped me out with my precarious English. Patxi Lanceros, Txetxu Ausín and Maria José Guerra Palmero were very supportive with my original idea and encouraged me to make a research article out of it. This article was originally presented as a conference paper at the I Congreso internacional de la Red española de Filosofía; conference proceedings were published in *Actas I Congreso internacional de la Red española de Filosofía*, Vol VIII (2015): 47-56 and can be accessed at http://redfilosofia.es/wp-content/uploads/sites/4/2015/06/6.melania.moscoso@gmail.com_.pdf.

² The Center for Lesbian and Gay Studies (CLAGS) of the City University of New York. 2012. *Homonationalism and Pinkwashing: A Gathering of Scholars and Activists*. New York. Available at: http://web.gc.cuny.edu/clags/pages/conferences/homo_info.html [Accessed 19 Nov 2012]

³ Jasbir Puar, “Citation and censorship: The politics of talking about the sexual politics of Israel”, *Feminist legal studies* 19, no. 2 (2011);. See also Puar, *Terrorist assemblages: Homonationalism in Queer Times*, Duke University Press Books, (2007) for an in-depth analysis of the use of gay rights to justify imperial practices.

Cripwashing: Le minage des droits civils au nom des droits des personnes handicapées

Résumé

Mon intention dans cet article est de réfléchir à l'utilisation perverse du langage des droits. Pour ce faire, je vais analyser comment le discours des droits des personnes handicapées est utilisé par le gouvernement du Partido Popular, le parti conservateur en Espagne, afin de démanteler le système d'aide sociale qui, comparé à celui des Français ou des Allemands, est encore tout jeune et précaire. Je concentrerai ma réflexion sur la réforme de la loi sur l'avortement. Cette réforme fut récemment entreprise par le ministre espagnol de la justice, Alberto Ruiz Gallardón. Je soutiens qu'il utilise les droits des personnes handicapées pour miner les droits civils en Espagne. Je propose que cette utilisation reflète une forme de «Crip washing.» J'utilise cripwashing dans le même sens que donne le CLAGS au pinkwashing sur son site web [1]: «utiliser la protection des droits pour un groupe [dans ce cas, des personnes ayant des handicaps] to cacher les droits et des abus faits à d'autres personnes».

Mots clés

Mesures d'austérité; catholicisme; bioéthique; mouvement des droits des personnes handicapées espagnoles; avortement; État de providence Espagnol.

**Disability in Spain:
From family protection and church charity, to a welfare state**

With more than 47 million people, Spain is now a young democracy with a somewhat precarious welfare system when compared to France or Germany. Still, the Spanish Public National Health System was ranked seventh best in the world by the World Health Organization in 2000, and according the Newsweek ranking of “Best World Countries,” Spain is rated third in health matters⁴. Contrary to what is being said by the *Partido Popular*, sustainability is one of the strengths of Spanish Health Care, which only represents 8.5% of Spain’s GDP, compared to the 9% average in the OECD, and 16.7% in the US⁵. This allows for the provision of universal healthcare without the need for co-payment except for prescription drugs, as established in the Spanish Constitution of 1978, Article 43. The Spanish Constitution recognizes the right to health protection for every citizen and requires the public authorities to create a “universal, general, and free national health system that guarantees equal access to preventive, curative and rehabilitative services”⁶. Therefore, coverage has been granted to everyone, even undocumented migrants, up until recently⁷. One of the major

⁴ Thomas Kiepl and Adam Clarkson, “Interactive Infographic of the World’s Best Countries,” *Newsweek* 15 Aug 2010, available at: <http://www.thedailybeast.com/newsweek/2010/08/15/interactive-infographic-of-the-worlds-best-countries.html>.

⁵ John, Borkan, “Renewing primary care: lessons learned from the Spanish health care system,” *Health Affairs* 29. 8 (2010):1433 [Accessed 26 Oct 2012]. See also, Rosana Triviño, “Religious Minorities and Justice in Health Care: The Current Situation in Spain” in *Cambridge Quarterly of Healthcare Ethics* (2013): 1-7.

⁶ Constitución Española.1978, Art. 43rd. Available at: http://www.lamoncloa.gob.es/NR/rdonlyres/79FF2885-8DFA-4348-8450-04610A9267F0/0/constitucion_ES.pdf.

⁷ See the Royal Decree Law 16/2012 dated April 20th on urgent measures to warrant the sustainability of

accomplishments of the Spanish Health Care system is an extended network of primary care centers: one primary care center is located within fifteen minutes of every citizen⁸.

In this situation, people with disabilities have easy access to health care within the general care system and without the need for specific regulations, such as the Americans with Disabilities Act (ADA). Additionally, Article 49 of the Spanish Constitution establishes that public authorities shall carry out a policy of preventive care, treatment, rehabilitation and integration for People with Disabilities, providing them with specialized care and ensuring them the rights granted to any other Spanish citizen⁹. However, public authorities have failed to provide inclusive measures in the social domain with the same degree of success as in the Health Care realm. With more than 3.8 million people, people with disabilities comprise 9.8 % of the Spanish population.¹⁰ Unemployment among people with disabilities is significant, at forty points above the population average. Notoriously in 2012, 40% of the population between 18-30 years of age were unemployed. The vast majority live in family households, while 21% live on their own, and 14% live in institutionalized settings¹¹.

The oldest disability association of Spain is the ONCE, which stands for National Association for Blind People in Spain. Founded in 1938 by the Francoist side during the Spanish Civil war, it was centered on selling lottery tickets as a way of providing its

the National Health System, restricting health care for undocumented migrants to the treatment of medical emergency or accident until medical discharge, pregnancy and delivery related care or underage undocumented population. Available at: <http://www.boe.es/boe/dias/2012/04/24/pdfs/BOE-A-2012-5403.pdf>.

⁸ See Borkan op.cit.,1433.

⁹ “The public authorities shall carry out a policy of preventive care, treatment, rehabilitation and integration of the physically, sensorially and mentally handicapped by giving them the specialized care they require, and affording them special protection for the enjoyment of the rights granted by this Part to all citizens.” See Constitución Española Op.cit.

¹⁰ Instituto Nacional de Estadística (INE). Encuesta de Población Activa y de la Base Estatal de Personas con Discapacidad, Año 2008, available at: <http://www.ine.es/prensa/np635.pdf> [Accessed 5 Sept 2012].

¹¹ Instituto Nacional de Estadística (INE). Op.cit <http://www.ine.es/revistas/cifraine/1009.pdf>.

associates with some kind of financial support. It is still the largest disability association in the country and it has provided a model for other associations in Spain that provide services within the charity system. Since the 1960s many impairment-specific associations have appeared. More often, these are established by families of children with disabilities rather than by disabled people themselves, and the primary role of the person with disabilities is that of a service recipient with little chance of exercising decision-making in the association. Their role is basically that of a consumer¹². Their activity revolves around providing services for their associates and their families and competing with other associations to get funding from public administrations in an environment of increased budgetary restrictions. Instead of promoting self-advocacy or empowerment for their users, these organizations are assistance-centered and can be patronizing in the sense that they treat disabled people as service recipients and fail to foster further initiatives to support personal autonomy or political endeavors.

During Franco's Regime, disability-related associations run by the Catholic Church received most, if not all, of the public funding allocated for such purposes, which explains why charity was so pervasive in the associative realm. Institutions run by nuns and leisure clubs based in local churches were typical during the 39 years of the dictatorship¹³. Even though Catholicism is no longer the official religion of the nation as it was during Franco's dictatorship, some degree of paternalism still pervades disability-

¹² Díaz Velázquez, Eduardo "El asociacionismo en el ámbito de la discapacidad. Un análisis crítico", *Intersticios. Revista sociológica de pensamiento crítico* 2, no. 2, 2008, p. 186.

¹³ According to Foucault, Franco "exercised the right of death and life with great savagery, was the bloodiest of all dictators, wielded an absolute right of life and death over forty years". Foucault, Michel "Society Must Be Defended": *Lectures At The College De France, 1975-1976* New York, Picador, p. 248.

related associations. Despite major advancements produced by the Constitution of 1978, Spain retains some barriers when it comes to the social perception of disability. Since the Spanish Constitution of 1978, the public services provided to its population have undergone a dramatic improvement. Even though social services are not on par with the remarkable quality of healthcare provided by the National Health Service, the community-based social services network manages to provide some kind of attention to people with disabilities living in urban areas. The close-knit family system, along with the reluctance of Spaniards to change their place of residence, makes community-based social service networks very efficient. They ensure that no person with a disability is left unattended or out of reach of the Administration.

The LISMI (Ley de integración Social del Minusválido) was passed in 1982, with the aim of providing services to the families of people with disabilities. The LISMI did not regard people with disabilities as rights-holders, nor did it address the underlying causes that made their lives unbearable. People with disabilities were considered as nothing but service receivers from public administrations. The assistance spirit of this law encountered strong resistance from several organizations. For instance, the Catalonia-based *Asociació Pro Personas Subnormales* submitted a letter in 1983 to the King, stressing that “the cognitively disabled person is not only a full person but a fully-fledged citizen who has the very same fundamental rights as any other citizen, that are summarized in living with dignity”¹⁴. Subsequent demonstrations in downtown Barcelona with the motto “This is everybody’s issue: no more discrimination,” emerged in the form of political activism concerning disability.

The protest spirit developed further throughout the decade of the eighties, and many associations understood that if they wanted to have some political strength they

¹⁴ Jordi Planella, Soledad Moyano and Asun Pié, “Activismo y lucha encarnada por los derechos de la personas en situación de las personas en situación de dependencia en España: 1960-2010,” *Intersticios. Revista sociológica de pensamiento crítico* 6, no. 2.55.

had to remain as independent from the Administration as possible¹⁵. It was not until the 1990s that the FVI (*Foro de Vida Independiente*) began. The FVI is a virtual community of Spanish-speaking disabled people who struggle against discrimination. Within the general philosophy of *Independent Living*, they actively fight against oppression through writings that can be accessed on their website and through public appearances. The appearance of *Foro de Vida Independiente* in 2001 was a definite milestone towards the politicization of disability in Spain.

Reactions to the dismantling of the welfare system in Spain: popular perspectives and those of the Disability Rights Movement

After eight years of the Social Democratic Party government, Mariano Rajoy's *Partido Popular*, the conservative party, won the 2011 Spanish elections with an absolute majority. Enduring unemployment and living with the austerity measures put in place by the government, Spain is now facing severe restrictions on the social protection benefits that came along with democracy. The *Partido Popular* increased the retirement age from 65 to 67, and cut unemployment protection benefits on the grounds of reducing State deficit. The budgetary cuts ended funding for 39/2006 Law on Personal Autonomy and Dependent Care, and eliminated provisions for orthotics and dietary complements that many of us need. As the government insisted on injecting large quantities of public money into struggling Spanish banks while unemployment subsidies were restricted, popular discontent grew all over the country. In the spring of 2011 a virtual platform under the name of *Democracia Real Ya* (Real Democracy Now!) called for a massive

¹⁵ Ibid., 57.

demonstration at Madrid's Puerta del Sol on May 15th. The demonstration was indeed massive with over 50,000 people attending in Madrid alone and an estimated 130,000 all over the country. As the demonstrators formed strong camps, the new government tried to discredit them as anti-establishment or radical leftist, further attempting to stop the demonstrations by prohibiting calls to action through the Internet, and giving the demonstrators exemplary punishments.

Not only did the *Partido Popular* criminalize the pacifist protesters who gathered in Madrid's Puerta del Sol and other squares all over Spain to protest against the bailout, they also launched an offensive strike against civil liberties that included social network monitoring, the prohibition of calls to demonstrate, and restrictions on the use of public spaces. In an attempt to save face in front of voters, the *Partido Popular* discredited the mobilizations as being promoted by radical anti-establishment protesters. The Sol mobilizations were compared with *kale borroka*, which is the Basque name for urban riots organized by the supporters of Basque independence, some of them akin to the terrorist group ETA.

Unfortunately for the government, foreclosure executions and rising unemployment rates triumphed over attempts to manipulate public opinion by discrediting the demonstrations as urban riots organized by ETA supporters. In fact, the M15 movement that spread beyond Spain's borders wreaked havoc on their attempts. As their austerity measures proved detrimental, and their electoral promises went unfulfilled, the government turned to their most conservative supporters allied to the Catholic Church. In a context of austerity policies, Madrid's regional government, also led by the *Partido Popular*, spent large amounts of money in hosting over a million¹⁶ young visitors coming from all over the world to attend the World Youth Day events of

¹⁶ The official budget for the WYD 2011 was 50 million Euros, but according to some estimations much more was spent. According to *Europa Laica* the 61 private sponsors of the WYD will enjoy tax relief of 80%. For more information see: <http://www.laicismo.org/detalle.php?pk=8642>.

2011. The celebration of this Catholic Church gathering did not go uncontested. On August 17th, a march from Tirso de Molina to the Puerta del Sol was violently repressed with police charges: over 15,000 demonstrators, convoked by the association *Europa Laica*, were protesting against the use of taxpayers' money on a confessional celebration. Even though the demonstration was authorized, 11 people were injured as a result of police charges and reports alleging police brutality filed in the Provincial Courts are still awaiting resolution. As the economic forecast for Spain worsened, the government attempted to woo Catholic supporters. Similarly, in the 2004 US election when the Republican Party proposed referendums to ban gay marriage, the *Partido Popular* tried to gain support from their religious social base. In the name of "family values"¹⁷, the Spanish Minister of Justice announced the Abortion Law reform that would ban abortions based on congenital malformations.

Abortion law and the rights of people with disabilities

Since the beginning of democracy Spain has undergone deep social transformations, some of which have to do with reproductive rights. Abortion had been legal during a short period between 1931-1936 during the Second Spanish Republic, when the anarchist Health Minister Federica Montseny wrote a draft to regulate to voluntary termination of pregnancy in 1932. When Franco came into power in 1938 abortion became clandestine again. It was not until 1985 that abortion became legal in the 9/1985 Act. This law allowed abortion based within the first 12 weeks under three

¹⁷ I follow Nancy Fraser on the analysis of the 2004 US election. See Fraser, "Mapping the Feminist Imagination: From Redistribution to Recognition to Representation," *Constellations* 12, no. 3 (2005). The parallel drawn between the American Republican party and the *Partido Popular* is however mine.

provisions: rape, hazard for mother's health or fetal malformation. As journalist Patricia Campelo said, the attempted reformation of Ruiz-Gallardón took Spain back to 1937. In an interview given to the conservative newspaper *La Razón* on July 20th, exactly seven months after the election night that gave the *Partido Popular* victory over the Socialist Party, the Spanish Minister of Justice, Alberto Ruiz-Gallardón, announced the upcoming reform of the Sexual and Reproductive Health and Voluntary Termination of Pregnancy Law, in force since 2010. In the interview Gallardón explicitly mentioned the rights of the people with disabilities. This law would ensure reproductive freedom by making abortion readily available within the first 14 weeks and pushing the limit to terminate pregnancy to 22 weeks in case of congenital malformations. In an interview, Ruiz-Gallardón stated,

I do not understand why the unborn are unprotected, permitting them to be aborted, because of the fact that they have some kind of handicap or deformity. It seems to me ethically unconceivable that we have lived so long with this legislation and I think that the same level of protection that is given to an unborn child without any type of handicap or deformity should be given to those that are verified as lacking some of the abilities that other unborn children have¹⁸.

According to the Sexual and Reproductive Health and Voluntary Termination of Pregnancy reform, Gallardón is assuming that the only legitimate reason for allowing abortion would be the psychological impact on the mother's health. It is not clear what the time period for legal abortion will be, nor it is clear how the psychological impact on the mother would be assessed. Reactions followed, and on August 26th, Agustín Matía stated in an interview that abortions based on birth defects should be banned¹⁹. Matía, president of *Federación Española de Personas con Síndrome de Down* (the largest association in Spain for people with Down syndrome and their families, comprising 83

¹⁸ *La Razón*, 20 July, 2012.

¹⁹ In the original Spanish, Matía said: "tienen que suprimir el aborto por malformaciones. No es algo opinable". See: <http://nosotrasdecidimos.org/down-espana-creo-que-hay-que-prohibir-aborto-por-malformaciones/>.

associations nation-wide), reminded Gallardón's opponents that abortion on the grounds of birth defects is prohibited by the UN Convention on the Rights of Persons with Disabilities of 2003. According to the 10th article of this Convention, Spain, having signed this convention on May 30th, 2007, is committed to ensuring the right to life of people with disabilities on an equal basis to others. Furthermore, Matía pointed out that the Human Rights and Disability Report 2011, which was carried out by the CERMI (*Comité Español de Representantes de Personas con Discapacidad*), requested the amendment of Article 15 in the Organic Act 2/2010 of March 3rd on Sexual and Reproductive Health and Voluntary Termination of Pregnancy, on the grounds that it is discriminatory to make an exception to the limit for a termination of pregnancy based on the disability of the fetus²⁰.

The *Foro de Vida Independiente* initially supported the Spanish Minister of Justice's position. The *Foro de Vida Independiente* interpreted the banning of fetal malformation as a valid reason to abort meant that the Minister of Justice had acknowledged that the lives of people with disabilities were worth the same as anyone else's²¹. In a more nuanced way, Catalonia Activist Antonio Centeno posted on his blog²² a lengthy piece under the title: *Aborto libre sí: Aborto eugenésico no* ("Yes to free

²⁰ Comité Español de Representantes de Personas con Discapacidad (CERMI).2012, *Human Rights and Disability, Spain Report 2011*, available at: http://www.convenciondiscapacidad.es/Informes_new/III%20%20INFORME%20DDHH%202011%20eng.pdf.

²¹ Maria Eugenia R Palop, "¿Qué esconde la reforma de la ley del aborto? In *El diario.es* featured December 5th, 2012, accessed at http://www.eldiario.es/zonacritica/esconde-reforma-ley-aborto_6_75652445.html.

²² See Antonio Centeno, "Aborto Libre Sí. Aborto eugenésico No", *El Blog de Antonio Centeno 3 August*, available at: <http://antoniocenteno.blogspot.com.es/>.

abortion: no to eugenic abortion”). In it he stated that, while it might be true that the Minister of Justice was using Disability Rights language to push forward his party’s conservative agenda, more women’s rights advocates were opposed to the prohibition to abort based on birth defects than to the banning of free abortions during the first 14 weeks of pregnancy.

Centeno points out that the Minister of Justice’s reform of the Abortion Law came also means a continuation of Criminal Code Article 156.2, which allows for the forced sterilization of people with disabilities who are declared to be incompetent in court. However, he then goes on to say that some of the arguments supporting the reform of the Organic Law on Sexual and Reproductive Health and Voluntary Termination of Pregnancy hit the mark when mentioning the core idea of the Declaration of Human Rights, whose first article points out that “All human beings are born free and equal in dignity and rights”. Centeno goes on to state that the acceptance of birth defect as a valid reason for legal abortion conveys the idea that a baby with congenital impairments will be an undue psychological and financial burden to the mother. Within the context of the massive budgetary restrictions which characterize contemporary Spain, this places the responsibility of the decaying Welfare State on the unborn baby with disabilities and makes a “natural tragedy” out of a situation of sheer social injustice. Centeno also warns that most physicians opposing the proposed restriction to the abortion law do so under the assumption that life with a disability is a fate worse than death, a statement contested by the fact that many people with disabilities lead fulfilling lives.

An example of this medical viewpoint is relayed in an article by the Spanish neurosurgeon Javier Esparza²³, published in the newspaper *El País* on July 24th, who, after having treated children with congenital malformations such as Spina bifida and

²³ Esparza, Javier. 2012. Nadie tiene derecho a obligar al sufrimiento. *El País 24 July*, available at: http://sociedad.elpais.com/sociedad/2012/07/24/actualidad/1343153808_906956.html.

anencephalia, considers that these anomalies cause enormous suffering the families and to the children themselves. Esparza writes,

I'll summarize the vital prognosis and the life quality of these children: as a result of so many interventions, their stay in hospital can be a very prolonged one, even, in some cases, reaching several years of hospitalization: proper schooling is therefore impossible. But, worst of all, these sanitary, social, familial, and the child's own efforts will end before the second decade, for most of these children will have passed away, since this malformation presents numerous late and difficult to solve complications.

Finally, Centeno argues that allowing for the termination of pregnancy on the basis of any feature of the unborn is a flawed way to protect women's rights, since many women with the very same conditions as those of the fetuses deemed eligible for abortion on the basis of birth defects are being rendered as lives not worth living. Arguments similar to those expressed by Romañach and Centeno have been given by Erik Parens and Adrienne Asch in *Prenatal Testing and Disability Rights*, and others like Eva Feder Kittay. However, unlike the American Disability Rights movement, forged in a common struggle with other progressive forces, such as LGTBQ and feminism, Spanish disability activist claims have found support in the disciplinary area of bioethics, which in Spain is strongly influenced by the Catholic Church.

Disability, Catholic bioethics, and the legacies of pre-democratic Spain

According to the CERMI, there are significant infringements of Equal Opportunities that are evidenced by the unemployment figures for people with disabilities. Austerity measures have rendered the independent living programs set in motion by the Social-democratic Party ineffective. It leads one to wonder why many Disability Rights activists

are so concerned with the unborn with disabilities, when there are so many children and adults with disabilities facing difficulties. It also begs the question as to how the Disability Rights Movement's discourse in Spain came to be so complimentary to the Conservative Party agenda. Answering this question requires some knowledge of Spain's recent history and the legacy of 39 years of National Catholicism in Spain. During its cultural hegemony under Franco's Regime, the Catholic Church gained control of many of the educational and sanitary institutions of the country. This was the experience of the *Universidad de Navarra*, a private pontifical university based in Pamplona and run by Opus Dei. *The Universidad de Navarra* is well known for its University Hospital or *Clínica Universitaria* which was accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) in 2004 as reputedly one of the best clinical research centers in the country. The *Universidad de Navarra* is home to the first University Department on Bioethics, *Instituto de Bioética y deontología médica* (Institute of Bioethics and Medical Deontology) in the country. It was not, however, the first Catholic institution to show interest in these matters.

In 1976, Francesc Abel, a Jesuit educated at Georgetown University, founded the *L'Institut Borja de Bioètica, linked to the Universitat Ramon Llull* in Barcelona. In 1987, another Jesuit, Javier Gafo, created the *Cátedra de Bioética de la Universidad de Comillas*²⁴. Since their inception, these religious institutes have taken part in public debates related to abortion, contraception, euthanasia, and more recently, to research on embryo stem cells. The *Instituto de Bioética y Deontología Médica* of the *Universidad de Navarra* sticks firmly to the dogmas of the Catholic Church, while *L'Institut Borja de Bioètica and Cátedra de Bioética de la Universidad de Comillas* engages in public debates with the civil society. As María José Guerra Palmero

²⁴ See María José Guerra, "Bioética en España: treinta años de interdisciplinariedad y controversias", (1975-2005) in María Teresa López de la Vieja, *Bioética, entre la medicina y la ética* (Salamanca: Ediciones Universidad de Salamanca, 2005).

suggests, in an attempt to compensate for the decline of its influence since the transition to democracy, the Catholic Church has increased its pressure on the Spanish democratic government to prevent civil society from reaching democratic agreements on abortion and euthanasia²⁵. It is also important to note that people who oppose the Sexual and Reproductive Health and Voluntary Termination of Pregnancy Law do so on the basis of eugenic thinking.

This is the case with the magistrate of the Constitutional Court who was appointed to study the appeal made by the *Partido Popular* against the aforementioned law. According to Andrés Ollero, a member of Opus Dei, a Spanish Catholic organization well-known for its conservative tendencies, when a woman decides to abort, she is committing “an act of war against her own son or daughter”²⁶. Ollero insisted, in an article from 2007²⁷, that allowing the termination of pregnancy on the basis of birth defects opened the door to liberal eugenics. Some activists like Antonio Centeno go even further in advancing this reading. Centeno writes in his blog that support for abortion based on birth defects on the grounds of undue suffering resembles views expressed in Nazi propaganda²⁸. Ollero, who was a Member of Parliament for the *Partido Popular* between 1983 and 2003, will be in charge of drawing

²⁵ “The transition towards Democracy called forth other non-Catholic points of view. Due to its loss of influence, the Catholic Church has increased its pressure on the different governments in order to guarantee, basically, its own presence in public education and the State financial support of confessional private education and to stop, as much as possible, the reaching of democratic consensus / agreements on abortion, euthanasia, or, more recently, research with embryo(nary) cells” Ibid.,186.

²⁶ Ollero, Andrés, “Los no nacidos no han ganado para sustos”. *El País* August 13.2012 Available at: http://politica.elpais.com/politica/2012/08/13/actualidad/1344892603_108028.html.

²⁷ Ollero, Andrés, “Los no nacidos no han ganado para sustos”. *El País* August 13.2012 Available at: http://politica.elpais.com/politica/2012/08/13/actualidad/1344892603_108028.html.

²⁸ See Centeno Op. cit.

up the Amendments to the Sexual and Reproductive Health and Voluntary Termination of Pregnancy Law raised by the *Partido Popular*. However, it is still unclear whether those who choose to terminate the pregnancy of a fetus with congenital impairments espouse notions of racial hygiene similar to those held dear by Nazi doctors. Moreover, there are some noteworthy differences between Nazi eugenics and the current law regulating voluntary termination of pregnancy in Spain. Unlike the Sexual and Reproductive Health and Voluntary Termination of Pregnancy Law, the *Gesetz zur Verhütung erbkranken Nachwuchses*, passed by the III Reich on July 14th, 1933, was a law that led to the forced sterilization of children and adults with disabilities, and to the *Aktion T4* euthanasia program that murdered more than 70,000 people²⁹.

In Spain, termination of pregnancy under law 2/2010 of the Sexual and Reproductive Health and Voluntary Termination of Pregnancy Law was voluntary and allowed as an act of free will up until week 14, and was permitted under the privacy model for up to 22 weeks. There is nothing in the text of the law suggesting mandatory abortion when the fetus has congenital impairments, as the expression “eugenic abortion” might suggest. In fact, the preamble of the law mentions the 23rd article of the UN Convention on the Rights of Persons with Disabilities of 2003³⁰. This might help to explain the opposition of the current government to the Sexual and Reproductive Health

²⁹ For the *Aktion T4* program, see G. Aly, P. Chroust, and C. Pross, *Cleansing the Fatherland: Nazi medicine and racial hygiene* (Johns Hopkins University Press, 1994). See: Snyder, Sharon and David Mitchell, “Eugenic Atlantic” in Snyder and Mitchell (eds.) *Cultural locations of disability*, (University of Chicago Press, 2006). There is a Spanish translation of the text by myself, available at request. Please contact me at: Melania.moscoso@gmail.com.

³⁰ Ley Orgánica 2/2010, de 3 de marzo, de salud sexual y reproductiva y de la interrupción voluntaria del embarazo. Available at : <http://www.boe.es/boe/dias/2010/03/04/pdfs/BOE-A-2010-3514.pdf>. The text of the 23rd article in the UN Convention mentioned in the preamble says “The rights of persons with disabilities to decide freely and responsibly on the number and spacing of their children and to have access to age-appropriate information, reproductive and family planning education are recognized, and the means necessary to enable them to exercise these rights are provided; c) Persons with disabilities, including children, retain their fertility on an equal basis with others”. See: United Nations.2003. *Convention on the Rights of People with Disabilities* Available at: <http://www.un.org/disabilities/default.asp?id=283>.

and Voluntary Termination of Pregnancy Law of the former social-democratic government, since the *Partido Popular* bias is in favor of the Catholic Church. However, this does not answer the question as to why they oppose pregnancy termination in the name of Disability Rights. One tentative answer to this question might be that the Disability Rights Movement in the *Foro de Vida Independiente* has assumed the principles of independent living as developed in the United States. Undoubtedly more developed, the independent living movement in the US could have some influence in the American Administration due to the presence of stakeholders such as war veterans. Conversely, the Spanish counterpart, *Foro de Vida independiente*, has been held hostage by Spanish Catholic tradition. People with disabilities in Spain live with their families and have their health care provided by an efficient National Health System, just like people without disabilities. Now that the young Spanish welfare system is under attack, people with disabilities in Spain might start to have the very same problems as their American counterparts who are facing similar austerity measures, except with the added burden of a conservative Catholic tradition. Spain may become a place where neo-liberalism and Catholic conservatism work hand-in-hand, and a country where people with disabilities and nondisabled people alike are being denied a functioning healthcare system in the name of disability rights. To paraphrase Nancy Fraser, one might say that in the case of Spain, Disability Rights claims dovetailed all too neatly with a hegemonic neo-liberalism that wanted nothing more than to repress all memory of a welfare state, which in Spain, unlike many other countries in Europe, lasted only 35 years³¹.

References

- Aly, G., Chroust, P., and C. Pross. (1994). *Cleansing the Fatherland: Nazi medicine and racial hygiene*. Baltimore: Johns Hopkins University Press.
- Borkan, J., Eaton, C. B., Novillo-Ortiz, D., Corte, P. R., & Jadad, A. R. (2010).
Renewing primary care: lessons learned from the Spanish health care system.
Health Affairs, 29.8.
- Boletín Oficial Del Estado. (2012). No. 98. Available at:
<http://www.boe.es/boe/dias/2012/04/24/pdfs/BOE-A-2012-5403.pdf>
- Centeno, A. (2012). Aborto Libre Sí. Aborto eugenésico No. *El Blog de Antonio Centeno* 3 August 2012. Available at: <http://antoniocenteno.blogspot.com.es/>.
- The Center for Lesbian and Gay Studies [CLAGS] of the City University of New York. (2012). *Homonationalism and Pinkwashing: A Gathering of Scholars and Activists*. New York. Available at:
http://web.gc.cuny.edu/clags/pages/conferences/homo_info.html
- Constitución Española. (1978), Art. 43rd. Available at:
http://www.lamoncloa.gob.es/NR/rdonlyres/79FF2885-8DFA-4348-8450-04610A9267F0/0/constitucion_ES.pdf [Accessed 22 Oct 2012]
- Comité Español de Representantes de Personas con Discapacidad [CERMI].(2012).
Human Rights and Disability, Spain Report 2011. Available at:
http://www.convenciondiscapacidad.es/Informes_new/III%20%20INFORME%20DDHH%202011%20eng.pdf.
- Díaz Velázquez, E. (2008). El asociacionismo en el ámbito de la discapacidad: Un análisis crítico. *Intersticios. Revista sociológica de pensamiento crítico* 2. 2.

³¹ See Fraser, (2005) Mapping the Feminist imagination: From Redistribution to Recognition to Representation, *Constellations* 12.3, p. 299.

Esparza, J.(2012). Nadie tiene derecho a obligar al sufrimiento. *El País*, 24 July.

Available at:

http://sociedad.elpais.com/sociedad/2012/07/24/actualidad/1343153808_906956.html.

Foucault, M. (2003). *Society Must Be Defended*. Lectures At The College De France, 1975-1976, Trans. D. Macey. New York, Picador.

Fraser, N. (2005). Mapping the Feminist Imagination: From Redistribution to Recognition to Representation. *Constellations* 12.3.

Snyder, S. and D. Mitchell. (2006). Eugenic Atlantic. In Eds. Snyder and Mitchell, *Cultural Locations of Disability*. Chicago: University of Chicago Press.

Kiepl, T. and Clarkson, A. Interactive Infographic of the World's Best Countries.

Newsweek 15 Aug 2010. Available at:

<http://www.thedailybeast.com/newsweek/2010/08/15/interactive-infographic-of-the-worlds-best-countries.html> [Accessed 19 Nov 2012].

Guerra, M. J. (2005). Bioética en España: treinta años de interdisciplinariedad y controversias, 1975-2005. In Ed. María Teresa López de la Vieja, *Bioética, entre la medicina y la ética*. Salamanca: Ediciones Universidad de Salamanca.

Instituto Nacional de Estadística [INE]. (2010). Encuesta de Población Activa y de la

Base Estatal de Personas con Discapacidad, Año 2008. Available at:

<http://www.ine.es/prensa/np635.pdf> [Accessed 5 Sept 2012].

Instituto Nacional de Estadística [INE]. (2009). Panorámica de la discapacidad en

España, Año 2008. Available at:

<http://www.ine.es/revistas/cifraine/1009.pdf> [Accessed 4 Sept 2012].

Ollero, A. (2013). "Los no nacidos no han ganado para sustos". *El País*, August 13, 2012. Available at:

http://politica.elpais.com/politica/2012/08/13/actualidad/1344892603_108028.html.

Palop M. (2012). ¿Qué esconde la reforma de la ley del aborto? In *El diario.es* featured December 5th, 2012. Accessed at:

http://www.eldiario.es/zonacritica/esconde-reforma-ley-aborto_6_75652445.html.

Planella, J. Moyano, J. and Pié, A. (2012). Activismo y lucha encarnada por los derechos de la personas en situación de las personas en situación de dependencia en España: 1960-2010. *Intersticios. Revista sociológica de pensamiento crítico* 6. 2.

Puar, J. (2011) Citation and censorship: The politics of talking about the sexual politics of Israel. *Feminist legal studies* 19.2.

Triviño, R. (2013). Religious Minorities and Justice in Health Care: The Current Situation in Spain. *Cambridge Quarterly of Healthcare Ethics*.