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Legal Governance of Abortion: Interdependencies and Centrifugal Forces in the Global Figuration of Human Rights

Marta Bucholc *

Abstract: *»Rechtliche Steuerung des Schwangerschaftsabbruchs: Interdependenzen und Zentrifugalkräfte in der globalen Figuration von Menschenrechten«.* Human rights are almost inseparable from the contemporary commonsense notion of civilization as a morally superior state of human society. In this article I argue that they are equally central to the concept of civilization as a reversible process of increasing social interdependence and cohesion as theorized by Norbert Elias. However, according to the theoretical statement included in the introduction to this special issue, the civilizing effect of human rights is accompanied by their inseparable decivilizing potential. Which of the two will be the stronger in any state of global human figuration depends on two principal factors: the resilience of human interdependencies (especially the prospects of widening the circles of intergroup identification) and the strength of centrifugal forces in the figuration, constituting a reduction of integrative effects of human rights and increasing their disintegrative influence. By tracing the emergence of global legal governance of abortion within the framework of human rights, I focus specifically on one aspect of it that is crucial for the interconnection of civilizing and decivilizing effects in this case: the status of the right to abortion law between women's rights and human rights, and, by extension, the relationship between women's rights and human rights in general. Drawing on the much-cited work of Norbert Elias and John L. Scotson, I the established-outsiders dynamics behind the old debate on whether women's rights are human rights or not, the consequences of which keep reverberating until today.

Keywords: Abortion, human rights, reproductive rights, Norbert Elias, decivilization, women's rights, established-outsiders.

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1. Introduction[1]

This article focuses on the emergent global legal governance of abortion within the framework of human rights as a case for discussing the civilizing and decivilizing potential of human rights in light of Norbert Elias's theory. My core question concerns the effect of human rights in the reduction of violence, increasing interdependencies, and fueling integration in the global figuration comprising the local level of nation-states, the regional systems for the protection of human rights, and the global United Nations level. I assume that the three-layered setup of interdependent organizations and institutions can be analyzed as a single figuration. Its particular dynamic allows us to demonstrate that civilization and de-civilization are indeed interwoven in the historical process of legal change, but not in the sense of being simultaneously present at each stage. Rather, they are linked as action and reaction, with civilizing processes and in particular civilizing offensives (see Mennell 2015) triggering the de-civilizing spurts that may in their turn destabilize figurations and cause their decomposition or, at least, weaken the interdependencies within them and facilitate out-balancing the power structures in favor of the strongest actors. I further show that this de-civilizing potential can be located at each level of the global figuration, but that the local level is the most likely to give rise to decivilizing forces.

I begin with a brief statement of my theoretical focus in reference to Elias's concept of civilization, to be followed by an overview of the advantages of figurational approach in the study of human rights. I further discuss the mechanics of the process that led to the emergence of global legal governance of abortion within the framework of human rights. I specifically point out one aspect of global legal governance of abortion that to my mind is crucial for its dialectic development in which civilizing and de-civilizing effects are interlinked, which concerns the status of abortion law between women's rights and human rights, and, by extension, the relationship between women's rights and human rights in general. I show how what I call the gender question in abortion regulation increases the de-civilizing potential of abortion law, indicating the established-outsiders dynamics (see Elias and Scotson

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1994) behind the old debate on whether women's rights are human rights or not, the consequences of which keep reverberating until today. In conclusion, I ponder the long-term balance sheet of the globalization of abortion regulation, and I venture a glimpse into its possible future developmental paths.

2. Theoretical Focus: Interdependence and Cohesion in the Process of Civilization

Elias's theory of the civilizing process offers an explanatory framework applicable to long term historical change, combining the analysis of the patterns of individual behavior with a study of institutional developments and normative orders. The central thesis of Elias's theory of civilization is that over sufficiently long periods, a process of change can be detected in human history that entails the elimination of uncontrolled and arbitrary violence by an increase in sensitivity to the suffering of others, accompanied by a rise of institutions effectively monopolizing the use of violence (see Mennell 1989; van Krieken 2019). The central concept in this theory is "figuration," which refers to the historically contingent set of positions of interdependent actors (Elias 2010, 20-1). Figurations differ in their complexity, the strength of interdependencies and power differentials between their parts, and, as a consequence, their level of integration. More complex figurations require more civilizational safeguards to stay integrated, while power struggles may result in de-civilization, leading toward less integration, and more violence (see Mennell 1995). Hence, from my point of view the crucial element of Elias's concept of civilization is the connection between civilization and interdependence in figurations.

This connects to further theoretical points. Interdependencies – that can be understood as functional links between individuals, groups, organizations, and institutions differing in power – are not benevolent bonds of cooperation. In fact, power differentials that are their main structuring force in figurations result in the ubiquity of the potential for conflict. The reduction of this potential is achieved by the relative alignment of individual personality and behavior and large-scale social structures by way of habitus formation instigated by the normative orders produced in the figuration. Law is one of them, but Elias does not see it as a privileged or dominant normative order. To the contrary: good manners, esthetic standards, fashions, and morals seemed to Elias to carry more information about the normativities supporting figurations, which in turn form the habitus on which figurations depend for integration. This relationship of mutual correspondence between habitus and figuration, however, is complicated owing to the chronological discrepancies between

individual biographies and the duration of large-scale structures. This results in the so-called drag effects of habitus and in outbreaks of individualism such as those shown by Elias in *Mozart* (see Ernst, Weischer, and Alikhani 2017; Rommel 2017, 147ff).

Habitus consists of various layers corresponding to the effects of figuration, which are connected to collective identities and we-images of social groups. One crucial mechanism of producing we-images and intergroup dynamics that Elias described together with John L. Scotson (1994) is known as the established-outsiders model: even minor differences of habitus, especially combined with different levels of moral and economic resources, can foster intergroups hostility, resulting in exclusion and discrimination based on inadequate, strongly emotionally laden we-images fostered by the sense of threat and what we would today call "moral panics" (Goode and Ben Yehuda 1994).

The established-outsiders model offers an opportunity to introduce the concepts of involvement and detachment that form the core of Elias's sociology of knowledge. The ability of individuals to think and communicate beyond their immediate emotional concerns, to cross the boundaries of their own groups and assume others' perspectives, would be a sign of detachment. A detached view of social affairs results in their more reality-congruent assessment, that is one not dictated and limited by particularistic, group-oriented perspective but directed towards the problem at hand viewed in a disengaged, multi-perspectival way. This detachment can be juxtaposed to involvement, the other end of the continuum ranging from problem-oriented, reality-congruent knowledge to a group-oriented, fantastic one. Involvement is thinking in terms of group belonging and the we-image of the own group. Detachment allows humans to move beyond the immediate group identification, while involvement reinforces it (Elias 2007; see Mennell 1992, 165ff). Thus, more detachment is naturally more favorable to more universalistic modes of thinking, while more involvement favors the more particularistic ones.

In this paper, I will focus on the modes of thinking about human rights as a normative order in which meanings are mobilized toward an integration of humans by fostering pacification and extending chains of interdependence between various components and levels of the global figuration. My reasoning is as follows: human rights emerge as an aspiring universal normative order once the global figuration has achieved a certain critical mass of integration. The expected result of the rise of human rights would be a quantum of uniformization and the emergence of a common standard of treatment of humans, supported by a common human identification by a perspective of "humanity as whole," from which to assess the mutual positions of individuals and groups. In this sense, my figurational approach does not lie far from the positions taken in history of human rights by authors such as Lynn Hunt, who stress the novelty and the inventiveness of the concept of universal rights for

all humans and the aspirational nature of human rights as "our only commonly shared bulwark against" the evils of "violence, pain, and domination" (Hunt 2007, 212). Similarly, to view the emergence of human rights as a form of sacralization of a human person (Joas 2013) – any person – would also not be at odds with the concept of the incipient global process of civilization marked by a rise in the readiness to identify with humans as such, whoever they may be.

Regarding the historical development, theoretical assumptions described in this section would suggest that the pacifying effect of human rights should get stronger as time goes by: the standard has been in force for many decades now, certainly a timespan of more than three generations, which Elias believed to be a minimum duration in which the habitual effects of power relations may occur (Ernst 2016, 66). A habitus-based conformity with this standard may remain in place as long as there is no attempt to test the force of the standard and the distribution of power supporting it. Once such an attempt is successfully made, a new power-arrangement could result in a different figurational setup and, ultimately, in the standard becoming obsolete or becoming a part of the habitus dragging on behind.

3. For a Figurational Sociology of Human Rights

Over ten years ago, Bryan S. Turner (2013, 82-3) declared sociology of human rights to be slow in advent because of sociology's general difficulty to deal with "overtly normative issues" due to its embedding in the neo-Kantian tradition. However, the study of law and other normative orders was the centerpiece of sociology from its very nascence (see, e.g., Deflem 2008). Therefore, it is probably not as much the adversity to studying normative phenomena as the universalist claims of human rights that stood in the way of their sociological understanding (Turner 2013, 84). Arguably, as Samuel Moyn insists, our today's association of human rights with a universalist agenda is a late product of the historical development in which human rights finally emerged as the last utopia facing no viable competition (2010; criticized in Slaughter 2018; Quataert and Wildenthal 2019). Today, despite the manifold critique of underpinning cultural and political particularities, the universalist claim holds strong. But it has not become easier to accommodate it within the framework of sociology of law.

That is probably the reason why most research in the growing sociology of human rights seeks to explain not their binding force but their violations (see Blau and Frezzo et al. 2012; Frezzo 2015; O'Byrne 2012, 839). Lea David (2020, 37) writes, "[l]imitations of any such approach are immediately obvious: binding human rights to legal remedies leaves a whole range of social issues either neglected, or treated methodologically and theoretically in unsatisfactory

ways." Sociologists who offer a systematic theory-driven account of human rights beyond the study of their violations tend to focus on the institutional perspective and the tension between local diversity and global integration. In fact, we made little progress in understanding them as legal rights (Madsen and Verschraegen 2016, 282ff). Some scholars examine the foundations of sociology for guidance (Deflem and Chicoine 2011), while at least some conclude that sociological tradition "ignored the problem of human rights" altogether (O'Byrne 2012, 830).

Norbert Elias's theory of the process of civilization is one of the manifest exceptions to that ignorance (see Turner 2013, 92ff). Although adamant in stressing the role of the state as a civilizing agency, Elias was aware of its "Janus face" as both the controller and perpetrator of violence (Vaughan 2000). Human rights were for him a sign of "a new global sense of responsibility for the fate of individuals in distress, regardless of their state or tribe" (Elias 2010, 151, 207). In this connection, Robert van Krieken (2019, 276) stresses the role of non-state agencies in the emergent "empire of humanity." The correlate of the emergent global figuration of humanity as a whole would be the ability of individuals to think and communicate beyond their immediate emotional concerns, to cross the boundaries of their own groups and assume others' perspectives, a more detached approach to problems of social life. Human rights thus require a quantum of detachment to allow for a "widening of the circle of social identification" (de Swaan 1995; see Bucholc 2015, 161ff).

It is true that the very concept of humanity as a whole also implies a paradoxical, universalist form of involvement (Bucholc 2015, 147ff). Moreover, involvement in human rights can also be based on group particularities, especially if adherence to human rights and their universalist claim is perceived as a foundation of group identity, or if human rights are identified as group-specific by an appropriation of the universalist claim. This has been demonstrated in a range of studies showing uses of human rights as an instrument of political power struggles (see Arat 2008; David 2020).

While involvement may stem from new figurations in which new group identities emerge (see Delmotte 2007, 101ff), the resilience of such involvement would be debatable in complex figurations that are not only ostensibly in the making but also subject to strong centrifugal forces. Andrew Linklater argued that in international relations the long-term passage could be observed from a "pluralist international society" to a "solidarist international order, in which states cooperate to protect agreed moral principles such as basic human rights" (Linklater 1998, 7-8). Nonetheless, the solidarity did not blend out the differences between three distinguishable levels of the global figuration: the local, the regional, and the global one.

The local level comprises nation-states. It is the level on which people live in state societies and where human rights take effect on human lives (Callaghy 1984; Cardenas 2012; Neve and Berkovitsch 2007; Simmons 2009; Welch

2017). It is also where the most dynamic expansion of human rights organizations takes place (Koo and Ramirez 2009). The global level includes the United Nations, along with ten specialized bodies that monitor the protection of human rights. Some of them are relevant for the global governance of abortion, in particular the Committee on the Elimination of Discrimination against Women (CEDAW) (Hunt and Gruszczynski 2019). Some of the UN specialized agencies also have competence in matters of human rights. The intermediary level of the global figuration is made up of regional systems for the protection of human rights. It is commonly accepted that there are currently three fully-fledged regional systems: the African, the European, and the American one (Engstrom 2017; Huneeus and Madsen 2018).

Human rights as a domain of international law have developed dynamically since the 1970s, with international litigation fueling the growth. The "retrenchment and repossession of human rights" (Slaughter 2018) coincided with the beginning of the high wave of juridification and constitutionalization of human rights, but the legal landscape of human rights cannot be easily sorted out into three levels. On the one hand, nation-states remain the ultimate resort in human rights enforcement. On the other hand, the jurisdiction of regional courts of human rights is a point in which the national and regional levels intersect. However, the treaty base for the operations of regional courts differs from system to system, as does the standing of individuals before them. While in the Council of Europe, all 46 state parties recognize the competence of the European Court of Human Rights in complaints by individuals,[2] in the Organization of American States 23 out of 35 states recognize the competence of Inter-American Court of Human Rights.[3] In the African Union, as of February 2023, only 34 out of 55 states recognize the jurisdiction the African Court on Human and Peoples' Rights and only 12 of them have ever submitted the declarations required under the 1998 Ouagadougou protocol establishing the Court which allows for individual complaints (with four states subsequently withdrawing).[4] Moreover, there is also a global-level jurisdiction in human rights matters since the entry into force in 1976 of the First Optional Protocol to the International Covenant on Civil and Political Rights of 1966, which gives the United Nations Human Rights Committee (UN HRC) the competence to examine individual complaints against states. A further rise in legal complexity came with the adoption of the EU Charter of Fundamental Rights (2000) (de Búrca 2013).

Many of the abundant conceptual difficulties regarding human rights pertain to the centrifugal forces in global figuration. The functioning of the

[2] https://www.echr.coe.int/documents/d/echr/Convention_Instrument_ENG (Accessed 18 August 2023).

[3] https://www.corteidh.or.cr/que_es_la_corte.cfm?lang=en#collapse1-3 (Accessed 18 August 2023).

[4] https://www.african-court.org/wpafc/declarations/ (Accessed 18 August 2023).

regional systems is the crucial issue, even though the potentially disintegrative effect of the First Optional Protocol is also debated, sometimes reviving the discussion about the creation of the World Court of Human Rights (Steiner 2000; Deprez 2019; de la Rasilla 2019). Some welcome the emergence and development of the jurisdictional competences of the regional systems as a key instrument of protection, allowing for a greater adaptability of human rights to regional practice (Shelton 2018), and having a positive effect on their promotion (Weston, Lukes, and Hnatt 1987). An influential argument has it that the universalist claim of human rights could in fact undermine their implementation (Kennedy 2002). On the other hand, some perceive the progress of regionalization as a threat to the integration of the global system (O'Sullivan 1998). One additional argument for treating the regional systems as centrifugal is that they differ greatly in their jurisprudence – but also in their efficiency and impact – thus interacting variously with the global system and their immediate environment (Buergenthal 1977; Barelli 2009–2010; Shelton 2017). The newest African system is often described as mostly "promotional" and less jurisdictional than the other two (Engstrom 2017). The question whether their existence hinders or advances global integration remains still open.

4. Legal Governance of Abortion in the Global Figuration of Human Rights

The vicissitudes of the global legal governance of abortion best demonstrate the civilizational relevance of centrifugalism and inconsistency, but also of supranational integration. In the very beginning, abortion did not feature as a human rights concern. It was governed by customary and religious laws as well as by state laws, and by the latter it was typically criminalized to some extent, although differently and with differing severity in various legal systems; the array of social and cultural approaches to abortion varied substantially when considered in global comparison (Shain 1986). Over time, as Rebecca Cook and co-authors put it, abortion laws moved "from placement within criminal or penal codes, to placement within health or public health legislation, and eventually to submergence within laws serving goals of human rights" (Cook, Erdman, and Dickens 2014, 1).

Today, Alicia Ely Yamin, Neil Datta, and Ximena Andion (2018, 535) observe that "there is no arena of human rights that presents more pitched drama than legal battles over sexual and reproductive rights, with both sides casting the other as villains and themselves as heroes. These battles have transcended international borders and threatened the stability and legitimacy of the international human rights system." O'Byrne (2012, 835-6) depicts the

abortion debates as "often couched in terms of the 'right to life of the unborn child' […] against the 'right to choice of the mother' […], while rights-language is central to the positions of both those who favor censoring hate speech and those who oppose it." While the use of human rights in abortion debates engages a far longer list of contradictory propositions, it is a good point: today, abortion is the crux of understanding human rights because it fully unveils their ambivalence.

The human rights that currently seem to form the basic frame for abortion law are the right to life (of the pregnant woman and of the fetus); the right to be free from torture and ill-treatment; and the right to health, privacy, and bodily integrity, along with the prohibition of discrimination. A consequence of the right to health is the development of reproductive rights, referring to sexuality and sexual reproduction (Cook, Dickens, and Fathalla 2003; Pizzarossa 2018; Reichnbach and Roseman 2009). CEDAW has repeatedly expressed a view that access to safe and legal abortion – along with related services and information – are essential aspects of women's reproductive health (see Cook 1991). References to human rights remain important for the movements for reproductive justice. Among the many other rights which also feature in abortion debates are children's rights (rights of pregnant minors), right to privacy, right to education (sexual education), right of parents to raise their children according to their worldview, and freedom of religion and conscience. Legal regulation of abortion also tends to connect to other seemingly remotely connected issues, as has been shown by Atina Krajewska (2021) for the case of Poland where abortion law and the rule of law became a part of the same politico-legal conundrum, or in the case of Columbia where the rights of migrant women featured in the recent abortion debates. While all these rights display some level of ambiguity, the main systemic inconsistency regards the very status of the right to abortion as a human right.

Among the regional systems, only the African one expressly recognizes access to legal abortion as a human right under certain circumstances. The Maputo Protocol to the African Charter on the Rights of Women in Africa of 2003, which entered into force in 2005, "is the very first treaty to recognize abortion, under certain conditions, as women's human right which they should enjoy without restriction or fear of being prosecuted" (ACHPR 2014, 2). Its Article 14 Section 2(c) obliges state parties to "protect the reproductive rights of women by authorizing medical abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the foetus." The Maputo Protocol was a symbolic breakthrough (see Ngwena 2010). In the European and American systems, the right to abortion has no express treaty basis and is only governed by jurisprudence. Article 4 Section 1 of the American Convention on Human Rights of 22 November 1969 stipulates that "every person has the right to have his life respected. This right shall be protected by law and,

in general, from the moment of conception." While the protection of life from the moment of conception would seem to prohibit abortion, some have argued that the jurisprudence of the Inter-American Court of Human Rights actually involves the incipient construction of the right to abortion (Gómez 2022). In the European system, there is no treaty provision mentioning the protection of life from the moment of conception. Nonetheless, some argue that "the ECHR record on access to abortion is largely one of avoidance" of the problem of abortion (Ní Ghráinne and McMahon 2019, 561-84). The Court never questioned state legislation on abortion, focusing on the human rights violations resulting from denying access to legal abortion under domestic law (see, e.g., *A, B and C v. Ireland*).[5]

On the global level, in 2016, based on the First Optional Protocol, the UN HRC found that the prohibition of torture and other forms of ill-treatment allows for the right to abortion in circumstances of fatal fetal abnormality (*Mellet v. Ireland*).[6] While the common denominator of the previous jurisprudence was to stress that arbitrary denial of access to legal abortion violated women's rights, in *Mellet*, the UN HRC went a step further, addressing the right to abortion as such. A later UN HRC General comment No. 36 of 3 September 2019 on the right to life introduces the obligation of states to "provide safe, legal and effective access to abortion" in specified cases (UN HRC 2019, 2).

The context of civilization and decivilization is frequently evoked in national debates about abortion law, and over the recent two decades we have seen many changes and sometimes relatively rapid turn in the legal regulation of abortion on the local level of the global figuration. The case of the US is certainly the most mediatized, and the worldwide reactions to the US Supreme Court ruling in *Dobbs v. Jackson Women's Health Organization* (2022) bear evidence to the position of the US in the global system of nation-states, but also to its role as a potential trend-setter in the global regulation of abortion (Kaufman et al. 2022; Morgan 2023).

The variety of abortion debates is further augmented by the intensive contest of nation-states projecting power, advocacies, and engaging politicians, experts, and religious communities along with global, regional, and local NGOs. The role of the global NGOs remains the key problem for studying human rights as "law in action." Global organizations as agents of legal change play various roles on all levels of the global figuration. They are reporting agencies and information sources, organizers of support, nodes in and funders of transnational networking, international whistleblowers, and also providers of funding, know-how, and international media interest for local activists and organizations. This pertains to global NGOs such as Ipas, the Center

[5] A, B and C v. Ireland, no. 25579/05, § 212, ECHR 2010-VI.
[6] Mellet v. Ireland, UN HRC, Commc'n No. 2324/2013, U.N. Doc. CCPR/ C/116/D/2324/2013.

for Reproductive Rights, or United Families International, and to global churches and religious organizations.

Among the many intricacies of the global NGO system, one refers to the "global gag rule" (Mexico City Policy), which prohibits foreign NGOs that receive US funding from providing legal abortion support or advocating for abortion law reforms. The impact of the gag rule under Donald Trump's administration was noticeable globally (Roose-Snyder, Honermann, and Gonese-Manjonjo 2020; Champions… 2018). Some argue that the rule weakens the global governance of abortion (McGovern et al. 2020). However, it could be seen as an instrument in the indirect global governance of abortion in an anti-liberal direction. While the gag rule was rescinded by Joe Biden (White House 2021), its past impact illustrates the problem in distinguishing local and global NGOs as actors of legal change. This difficulty can be addressed by focusing entirely on direct communication on the local level. At the global and regional levels, NGOs are "norm-setters" (Guns 2013), their impact grows constantly, as does the complexity of the spectrum of worldviews that they represent. In the making of soft law and in the litigation of abortion cases, the role of NGOs remains crucial, but their direct participation as meaning-setters is contingent on their joining the local communication.

5. Processual Mechanics of the Global Legal Governance of Abortion: The Gender Question

The historical overview of the emergence of global legal governance of abortion seems to point towards a discrepancy in the human rights figuration, with the global level heading toward a qualification of the right to abortion as a human right in certain circumstances, the regional level failing to follow suit, and the lowest, national level showing no consistency with either regional or global developments. This shows the pivotal importance of abortion law as a trigger to or an arena of disintegration of the global figuration of human rights and, by the same token, as a field in which both the civilizing and de-civilizing effect of the legal governance of abortion can be studied.

Two preliminary points can be made here. First, since human rights have been with us for a long time as an emergent and progressively solidifying normative order, it could be expected that they would become a part of social habitus in many regions, and notably in those parts of the world where human rights in the post-war form have been a part of the legal order the longest, notably the Council of Europe countries. However, especially recent developments in refugee policy and treatment of gender and sexual minorities bear evidence to the limitations of the human rights-based universalist identification structures in Europe. Second, not just the habitus-forming effect of

human rights seems to have been weaker than expected, but also the global normative integration that had been rampant in the golden age of globalization seems to take a U-turn nowadays. Regional foci of interdependence such as the EU are living through harsh times with events like Brexit and the prolonged rule-of-law crises in Poland and Hungary. The post-1989 rise of human rights in East Central Europe is coming to a halt or reversing in many countries all over the world, Russia's leaving the Council of Europe in March 2023 being among the most flagrant and radical recent example. The "global democratic recession began in 2006 and has persisted – and deepened – over the past 14 years" (Diamond 2021, 22); today, if anything, it seems to speed up, dragging along the global condition of human rights. The legal governance of abortion is but one sign of this centrifugal tendency: it is heading towards stricter rules in many jurisdictions on all continents, which in turn contributes to an increase in the call for liberalization as well as for more guarantees to secure that right to abortion cannot be taken from women who have won it in the past.

Cases of a reversal of the apparent liberalization trend in abortion law act as triggers to such new developments. The US Supreme Court decision in *Dobbs* in 2022 was arguably the most powerful and universally valid of all such triggers. In two resolutions of June and July 2022, the European Parliament has reacted to the situation in the US, defined in the titles of the resolutions as a "global threat to abortion rights" causing the "need to safeguard abortion rights and Women's health in the EU" by an appeal to the EU executive bodies to work towards an introduction of the right to abortion into the EU Charter of Fundamental Rights[7] (see Bucholc and Peroni, forthcoming). The most recent example of a reaction to the perceived global threat to the right to abortion is the Senate vote in France in February 2023, which brought the country one step closer to the constitutional amendment stipulating for the right to abortion to be enshrined in the French constitution. At the same time, while abortion laws have been made more restrictive in relatively few countries, including Poland, the United States, Nicaragua, and El Salvador, many countries have created additional hurdles in the access to abortion, including Hungary and, at the moment of writing this, Russia (Parfitt 2023). At the same time, the attempts for liberalization fail repeatedly in many other places, like Senegal, or are curtailed, like in Malta. Even though the global trend for liberalization seems to hold, the countereffects are undeniably gaining momentum.

[7] European Parliament resolution of 9 June 2022 on global threats to abortion rights: the possible overturning of abortion rights in the US by the Supreme Court (2022/2665(RSP)); European Parliament resolution of 7 July 2022 on the US Supreme Court decision to overturn abortion rights in the United States and the need to safeguard abortion rights and women's health in the EU (2022/2742(RSP)).

While these selected examples might speak for the emergence of a truly global political and legislative exchange regarding abortion regulation, it is by no means an amiable or orderly one. Polarization of views and attitudes translates into deep regulatory differences, bound to become even deeper in the future. Global figuration gets divided by the matter of reproductive rights and the views on abortion are thereby increasingly marked by group perspectives. This would bespeak a decivilizing potential of abortion debates, as a trigger to the global figuration becoming less integrated.

I would argue that one vital question arises that is central to the divisive potential of reproductive rights and abortion law in particular, which I call here the "gender question." It points out the centrifugal tendencies in the global figuration of human rights and to the double edge of the discursive frame in which the meaning of abortion is now argued under the human rights framework.

The gender question in abortion regulation consists, very simply, in connecting abortion to the legal status of women or, to put it differently, in construing it as a women's issue and women's problem. Reva Siegel (2014) has taken the effort to show that the link between the woman question and the legal treatment of abortion is not self-evident historically: it emerged at a certain point in a long historical process of meaning-making, in the United States (which is her case) as anywhere else:

> A campaign to reform the laws criminalizing abortion began in the 1960s, well before mobilization of the second-wave feminist movement. The campaign was not conducted in the name of women's rights. Instead, the drive to reform abortion law was led by doctors advancing concerns of public health. Public health advocates emphasized that laws criminalizing abortion subjected women to risk of death and infertility. [...] Initially, at least, public health advocates did not challenge the criminalization of abortion. Rather they offered paternalist justifications for expanding and codifying exceptions to the criminal ban. Public health advocates helped enact laws allowing women to obtain an abortion if women could persuade a committee of doctors that certain excusing "indications" were present: that abortion was necessary for the pregnant woman's physical or mental health, or that the pregnancy was the result of rape, or that the fetus was severely impaired. (Siegel 2014, 1366)

In the process of the decriminalization of abortion as reconstructed by Siegel for the United States, public health created a counterbalance for religious and moral norms and sentiment fueling criminal law approaches to abortion. Similar dynamics have been observed elsewhere (Boy-Zelenski 1958; Veil 1974; Teklehaimanot 2002). However, even though some of the actors in these debates were feminists or proto-feminists, it was only with the 1970s that the feminist argument on abortion took full swing in introducing another new discourse on abortion: that of women's rights (which, in the US American

context, would be treated and defended as civic rights). The right to abortion became a hallmark of the women's liberation movement.

Since the 1970s, it has been a strategy applied by the advocates of a more liberal approach to abortion worldwide to stress the connection between abortion law and women's rights and positing the right to abortion as a women's and girls' right. Abortion has long become an item in the debates on women's empowerment as the weaker social category. In the activist discourse, as in the legal debates and in the social-scientific studies all over the world, the consideration of the access to legal and safe abortion has been linked to the economic outlooks, political participation, and cultural and educational self-fulfillment of women and girls.

Moreover, in the abortion debates, the opposition between men and women, male control over female body, and – by extension – the male hegemonic power over the legal orders discriminant to women or burdening them unduly has been frequently highlighted as a key context in which the regulation of abortion should be considered. This shows a double-edged established-outsiders dynamic: women as the outsiders seek to build moral resources, using the language of rights to overcome the male established domination. However, a side effect of this strategy is to strengthen the discursive divide between men and women and the perception of their respective interests as binarily opposed. It is a kind of double-bind in which the outsiders may find themselves when trying to contextualize the power of the established. One way to outbalance an established-outsiders figuration is by fostering group cohesion amongst the outsiders that is based on moral resources which the established cannot control. However, in order to do that, the difference between the established and the outsiders needs to be augmented and enhanced.

From this perspective, the language of rights is a polyvalent tool. It can be used to stress the commonalities between the established and the outsiders ("we have the same rights"), but it can also serve to enhance the difference between them ("we are different, therefore we have different rights"). The latter use of the language of rights is frequent in abortion debates in which the right to abortion is postulated and discussed as a right of women. There is one obvious way for this means of arguing for the right to abortion to backfire: its opponents may easily misrepresent this strategy as an immoral individualist and egoistic quest for narrowly perceived personal comfort of the members of one particular social category. The focus on women as entitled to decide in matters of abortion is construed, especially in conservative discourses all over the world, as a refusal to account for the broader context in which the decisions regarding abortion are made, which may variously, depending on the setting, include family, nation, religious group, or race (see, e.g., Castle 2011; Hou 2022; Maffi 2018; Mikirtichan et al. 2021). The link between abortion rights advocacy and women's liberation movements triggered

the conservative opposition to liberalizing abortion laws that was no longer limited to just the Catholics, traditionally opposed to abortion, but included a broad spectrum of conservative attitudes (Siegel 2014, 1370ff; Cooper 2023). This often resulted in strategic alliances transcending the divisions of religions and worldview, notably between Islamic and Christian fundamentalist and traditionalist organizations (see Muthumbi 2010). Anti-abortion and anti-women movements coalesced, frequently under the aegis of "anti-gender."

The debate using the language of rights continued when the concept of reproductive rights emerged as a new general category under which abortion has since been increasingly conceptualized (Cook 1993; Pitanguy 1995; Cook, Dickens, and Fathalla 2003; Reichenbach and Roseman 2009; Pizzarossa 2018). In this connection, some scholars have shown that the concept of reproductive rights in general have long been almost exclusively considered in relation to women, with people of any other gender being left out of the discussion (cf. Totz 1994).

While the discussion on women's rights was well on the way, the link between women's rights and human rights was not firmly established until the 1970s and the 1980s. The issue has long been addressed in feminist scholarship, notably in the seminal 1990 article by Charlotte Bunch. Her point of departure is the universal prevalence of violence against women, which fails, however, to lead to a recognition that the link between violence and the group characteristic of its victims constitutes a reason to construe the violent deeds as an infringement of human rights of the victim's group:

> "Despite a clear record of deaths and demonstrable abuse, women's rights are not commonly classified as human rights. This is problematic both theoretically and practically [...]. Why women's rights and human rights are viewed as distinct [...]?", Bunch asks. (1990, 486)

The argument here is more about the intellectual (legal and political) construction of the meaning of human rights in general, which Bunch argues does not include women's rights, as though the category of humans excluded women, thus exposing women to abuse unrestrained by human rights considerations. This point has been frequently made at the time (Romany 1993; Charlesworth 1995).

Bunch's article cites the benefits for the cause of women's rights that can be gained by their inclusion in the notion of human rights: "Promotion of human rights is a widely accepted goal and thus provides a useful framework for seeking redress of gender abuse. Further, it is one of the few concepts that speaks to the need for transnational activism and concern about the lives of people globally" (1990, 487). It is an excellent point which still remains valid: the mobilizing potential and the moral authority of human rights remains an important component of advocacy strategies in many contemporary debates (see Simmons 2009; Sutton and Borland 2013; Morgan 2015; Carnegie and Roth 2019; Taylor, Spillane, and Arulkumaran 2020), and various rights may be

mobilized for similar causes depending on the socio-cultural context. Nonetheless, the core of Bunch's argument is to show that violations of women's rights entail *ipso facto* violations of women's human right (for example, she writes [1990, 489], "The denial of women's rights to control their bodies in reproduction threatens women's lives, especially where this is combined with poverty and poor health services"). After more than 30 years, Bunch's call (1990, 492), sadly, cannot be deemed to have fully lost its edge:

> The human rights community must move beyond its male defined norms in order to respond to the brutal and systematic violation of women globally. [...] It does require examining patriarchal biases and acknowledging the rights of women as human rights.

But this is easier said than done, since there is a long history of disjointedness of human and women's rights. Moreover, it is not entirely clear that referring to human rights will always serve the cause of more independence, coordination, and protection for the weakest due to the human rights' antagonizing and centrifugal effects. In some cases, a return to public health debates that Siegel (2014) described as the intermediary stage in the US American debate turned out to be more efficient. This was especially true in some African countries where the argument for liberalization of abortion was framed in economic and public health terms instead of politically and culturally risky language of individual rights (de Vries et al. 2020; Matshalaga and Mehlo 2022). New discursive challenges thus emerged to the established male domination seeking to keep women's rights at bay for cultural and, especially, religious reasons.

In general, the important issue of the relationship between second-generation human rights and abortion regulation may be solved in many various ways. Historically, the connection between women's socio-economic rights and the liberalization of abortion laws (Rahman and Pine 1995; van Leeuwen 2013) seems indisputable, but it can feed into many various ways to argue about abortion today. Also, a relatively new contribution to the understanding of abortion which may with time become a game-changer in its connection with human rights, at least in some countries, is the realization that although the vast majority of people who can become pregnant are women, there are also persons who are not women (transgender and intersex persons), yet who can get pregnant and claim abortion as their own right without at all adhering to the category of women (Pikramenou, forthcoming). The introduction of a non-binary optic into abortion debates and to the lawmaking may reduce the tension between women's rights and human rights in the context of abortion, even though the current state of debate regarding the relationship between feminism and support for trans- and intersex rights does not seem to point towards the amiable solution in the nearest future.

6. The Civilizational Outlooks of the Global Legal Governance of Abortion

The net result of the established-outsiders dynamics involved in the legal regulation of abortion is that two model situations are possible: some people can be so engaged in human rights that they will support not only separate rights but the order of them and the institutions standing for that order. However, the involvement in particular separate rights (right to life, women's rights, reproductive rights, etc.) can also become stronger than the involvement in the order of human rights as such. People can be very strongly engaged in one right or a set or cluster of rights, and as a result lose view of the human rights order in general. Thus, human rights framing can be strategically used to support diverse and highly involved positions: the practice that could be called the "opportunistic use" of human rights is at the same time a sign of the very real ambiguity of their meanings. This dialectic of involvement and detachment is crucial to the sociological understanding of the centrifugal tendencies prevailing in the global figuration of human rights.

This brings back the old question of the relationship between human rights and women's rights in the established-outsiders perspective. By strong attachment to women's rights, regulation of abortion became a part of a cluster of rights which are vehemently attacked by the opponents of strengthening women's position. In particular, the postulated right to abortion can be rejected based on its having allegedly no real connection to equality and improving the women's chances in life; strategic connection to other rights, like right to health, may result in mobilizing more generalized involvement patterns and provide stronger support for the right to abortion than is clustering with women's rights. However, I would argue that in a longer perspective a strategic limitation of human rights concerns involved in the regulation of abortion would need to be replaced by a more universalist approach to the nature of the rights involved, notwithstanding the gender of their bearers, if global legal governance of abortion is to move to another level of detachment allowing for an increase in the universalist identification of human rights subjects. The tension between the focus on abortion as a women's right on the one hand, and its consideration under the universalist framework of human rights on the other, has possibly never been as acute as today. How this question can be resolved is not for this article to predict. However, we are clearly in need of a new conceptual synthesis to update our understanding of the civilizing and decivilizing dimensions of abortion regulation.

The urgency to seek synthesis follows the point made by Stephen Mennell (1995, 10):

> There is a certain asymmetry between civilising and decivilising processes. When people live together relatively more peacefully, the resulting changes

> in habitus - a more inclusive measure of mutual identification and greater habitual demands upon emotion management - come about only slowly, through gradual changes in the socialisation process from generation to generation. But the reverse process is able to happen much more quickly. As Elias warned, the armour of civilized conduct would crumble very rapidly if, through a change in society, the degree of insecurity that existed earlier were to break in upon us again, and if danger became as incalculable as once it was. Corresponding fears would soon burst the limits set to them today.

If we agree that abortion law as one of the reproductive rights is the focal point of human rights debates nowadays and that it is also the point of bitter contention, dissent, and hostile mobilization, it is reasonable to view the situation as a case of decivilization. However, as opposed to the long process of development of human rights, their embedding in the global legal order and in the habitus of some societies, the decivilizing spurt reversing this historical change may be rapid, and the fears unleashed on all sides of the polarized global figuration may become unstoppable.

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