Grievance Formation, Rights and Remedies

In the last century, the treatment of victims of involuntary sterilisation and castration in Nordic countries has varied drastically from state to state, across time and victim groups. Considering why this is the case, Daniela Alaattinoğlu investigates how laws and practices of involuntary, surgical sterilisation and castration have been established, abolished and remedied in three Nordic states: Sweden, Norway and Finland. Employing a vast range of primary and secondary sources, Alaattinoğlu traces the national and international developments of the last 100 years. Developing the concept of grievance formation, the book explores why some states have claimed public responsibility while others have not, and why some victim groups have mobilised while others have remained silent. Through this pioneering analysis, Alaattinoğlu illuminates issues of human and constitutional rights, the evolution of the welfare state and state responsibility in both national and global contexts.

Daniela Alaattinoğlu is an Assistant Professor of Law at the University of Turku. She has previously held an Icelandic Research Fund postdoctoral fellowship at the University of Iceland and visiting fellowships at the Åbo Akademi Institute for Human Rights, the Max Planck Institute for Social Anthropology and the University of Melbourne. She is the co-editor of Contesting Femicide: Feminism and the Power of Law Revisited (2019).
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Grievance Formation, Rights and Remedies

Involuntary Sterilisation and Castration in the Nordics, 1930s–2020s

DANIELA ALAATTINOĞLU
University of Turku
To be in the margin is to be part of the whole but outside the main body.¹

Bell Hooks

¹ Hooks 1984: 8.
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Foreword

Nordic feminist legal scholars have long questioned the Nordic countries’ commitments to gender equality, particularly their self-acclaimed status as protectors of women’s human rights – often by contrasting lived experiences with law and policy ‘in the books’.

This monograph, which builds on Dr Alaattinoğlu’s doctoral thesis, for which I was an external examiner, follows and develops this critical tradition of investigating the law beyond the books.

Bringing together the experiences of three marginalised groups who have been subject to involuntary sterilisation and castration – socially disadvantaged women, sexual offenders and transpersons – the book juxtaposes legal promises and realities in three Nordic countries – Sweden, Norway and Finland. It provides a compelling picture of how groups marginalised by contemporary societies and deemed unworthy of reproduction, or whose sexual orientations or gender identities have been considered dangerous or deviant, have been the targets of practices of forced and otherwise involuntary sterilisation and castration (1930s–2020s). As such, it uncovers a ‘skeleton in the closet’ of the welfare states in question.

The work provides an original analysis of the inconsistent way in which these practices have been framed and remedied within international law and how these weaknesses are reflected at the level of national law in the Nordics. The comparisons between the three countries, the different victim groups and the different historical contexts focus on factors and forces that have influenced the regulation of rights and responsibilities in the three countries. These comparisons provide a fresh perspective on tensions between the state prerogative to define the common good through regulation of reproduction and sexuality on the one hand and the human rights narrative emphasising the freedom, autonomy, integrity and equality of all individuals regardless of social status, race, ethnicity, health, sex, sexual orientation and gender identity on the other hand. While on paper acceding to human rights instruments, Dr Alaattinoğlu’s detailed study of each country uncovers gaps and inconsistencies.

This criticism has particularly come from scholars within the ‘women’s law’ and ‘gender and law’ disciplines in the Nordic countries.
Foreword

Most importantly, the analysis shows how the emerging human rights conceptions of harm, rights and remedies have a different effect on legal recognition of harm claims made in the three countries investigated. Drawing on an impressively wide range of sources – including case law, legislation, travaux préparatoires, interviews and secondary literature – Dr Alaattinoğlu points to legal, historical, political and cultural factors that shed further light on the different ways in which the rights claims of sterilisation and castration victims are promoted, adopted or resisted in the Nordics.

All in all, this is a timely, independent and highly original monograph that makes an important and much-needed theoretical and methodological contribution to the fields of socio-legal studies and law in context. By innovatively combining frame analysis, grievance formation and rights development and comparative methodology, Dr Alaattinoğlu develops new knowledge and original analytical tools to investigate how rights are promoted, used, adopted, challenged and resisted in different contexts and settings. Far from confining herself to describing evolving practices and legal standards, the author embraces the socio-legal context and the emergence of social, political and cultural notions and utilizations of rights in the twentieth and twenty-first centuries. This contextual insight is crucial to understand why some victims in some cases have been remedied by states, and why some groups have resorted to legal mobilisation while others have not. It sets the scene for an empirically informed discussion as to why states consider some oppressive practices dark chapters of their history books, while other, comparable practices go unchallenged.

Anne Hellum

Dr Juris, Professor at the Department of Public and International Law
University of Oslo
Acknowledgements

This work would not have been possible without the support of multiple people and institutions. The first words of gratitude are dedicated to my doctoral supervisor Ruth Rubio-Marín, who encouraged me to take on this challenging topic and to develop my skills as a socio-legal academic. She continues to inspire me through her rigorous, engaged and engaging scholarship. The members of the thesis jury, Laura Downs, Anne Hellum and Dinah Shelton, thank you for your thoughtful comments. Thank you, Adrienne Stone, for selecting me as a Kathleen Fitzpatrick Visiting Fellow at the Laureate Programme in comparative constitutional law at Melbourne Law School (2018). The stay provided me with excellent chances to discuss this work in a vibrant academic environment. Special thanks also to Marie-Claire Foblets and the Max Planck Institute for Social Anthropology for hosting me as a guest in January 2019.

I am deeply grateful to the knowledgeable and kind people who have spent their time reading and commenting the text and supported the project. I would especially like to thank Stefano Osella, Kristina Čufar, Nicola Hargeaves, the late Sally Engle Merry, Reva Siegel, Adrian Howe, Hilary Charlesworth, Dianne Otto, Aeyal Gross, Shazia Choudhry, Jemima Repo, Raimo Lahti, Markku Mattila, Veronica Pimenoff, Per Haave, Anniken Sørlie, Malin Arvidsson, Karin Åhman, Mårten Schultz, Mattias Tydén, Jens Rydström, Maija Runcis, Paulina de los Reyes, Nehal Bhuta and the late Reza Banakar.

I am indebted to my interviewees, who have made me understand the topic of this monograph so much better, with all its underlying complexities.

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Finally, to my friends and family, my partner and child, I am forever thankful for your love and support.
## Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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</thead>
<tbody>
<tr>
<td>ACHPR</td>
<td>The African Commission on Human and Peoples’ Rights</td>
</tr>
<tr>
<td>ACHR</td>
<td>The American Convention on Human Rights</td>
</tr>
<tr>
<td>CAT</td>
<td>The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</td>
</tr>
<tr>
<td>CAT Committee</td>
<td>The Committee against Torture</td>
</tr>
<tr>
<td>CEDAW</td>
<td>The Convention on the Elimination of All Forms of Discrimination against Women</td>
</tr>
<tr>
<td>CEDAW Committee</td>
<td>The Committee on the Elimination of All Forms of Discrimination against Women</td>
</tr>
<tr>
<td>CERD</td>
<td>The Convention on the Elimination of All Forms of Racial Discrimination</td>
</tr>
<tr>
<td>CERD Committee</td>
<td>The Committee on the Elimination of Racial Discrimination</td>
</tr>
<tr>
<td>CESCR Committee</td>
<td>The Committee on Economic, Social and Cultural Rights</td>
</tr>
<tr>
<td>CJEU</td>
<td>The Court of Justice of the European Union</td>
</tr>
<tr>
<td>CoE</td>
<td>The Council of Europe</td>
</tr>
<tr>
<td>CPT</td>
<td>The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment</td>
</tr>
<tr>
<td>CRC</td>
<td>The Convention on the Rights of the Child</td>
</tr>
<tr>
<td>CRC Committee</td>
<td>The Committee on the Rights of the Child</td>
</tr>
<tr>
<td>CRPD</td>
<td>The Convention on the Rights of Persons with Disabilities</td>
</tr>
<tr>
<td>CRPD Committee</td>
<td>The Committee on the Rights of Persons with Disabilities</td>
</tr>
<tr>
<td>ECHR</td>
<td>The European Convention for the Protection of Human Rights and Fundamental Freedoms</td>
</tr>
<tr>
<td>ECmHR</td>
<td>The European Commission of Human Rights</td>
</tr>
<tr>
<td>ECOSOC</td>
<td>The United Nations Economic and Social Council</td>
</tr>
<tr>
<td>ECSR</td>
<td>The European Committee of Social Rights</td>
</tr>
<tr>
<td>ECtHR</td>
<td>The European Court of Human Rights</td>
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### List of Abbreviations

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<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>EEA</td>
<td>The European Economic Area</td>
</tr>
<tr>
<td>EFTA</td>
<td>The European Free Trade Association</td>
</tr>
<tr>
<td>EU</td>
<td>The European Union</td>
</tr>
<tr>
<td>FPES</td>
<td>Full Personality Expression Sweden</td>
</tr>
<tr>
<td>FRI</td>
<td>The Norwegian Association for Gender and Sexuality Diversity (previously LLH) <em>(Foreningen for kjønns- og seksualitetsmangfold)</em></td>
</tr>
<tr>
<td>FTPN</td>
<td>The Norwegian Association for Trans People <em>(Forbundet for transpersoner i Norge)</em></td>
</tr>
<tr>
<td>HBRs</td>
<td>The Norwegian Patient Organisation for People Experiencing Gender Dysphoria, Gender Incongruence and Gender Identity Challenges <em>(Harry Benjamin Resursenter)</em></td>
</tr>
<tr>
<td>IACHR</td>
<td>The Inter-American Commission on Human Rights</td>
</tr>
<tr>
<td>IACtHR</td>
<td>The Inter-American Court of Human Rights</td>
</tr>
<tr>
<td>ICC</td>
<td>The International Criminal Court</td>
</tr>
<tr>
<td>ICCPR</td>
<td>The International Covenant on Civil and Political Rights</td>
</tr>
<tr>
<td>ICESCR</td>
<td>The International Covenant on Economic, Social and Cultural Rights</td>
</tr>
<tr>
<td>ICTR</td>
<td>The International Criminal Tribunal for Rwanda</td>
</tr>
<tr>
<td>ICTY</td>
<td>The International Criminal Tribunal for the Former Yugoslavia</td>
</tr>
<tr>
<td>ILGA</td>
<td>The International Lesbian, Gay, Bisexual, Trans and Intersex Association</td>
</tr>
<tr>
<td>JK</td>
<td>The Swedish Chancellor of Justice <em>(Justitiekanslern)</em></td>
</tr>
<tr>
<td>JO</td>
<td>The Swedish Parliamentary Ombudsmen <em>(Riksdagens ombudsmän)</em></td>
</tr>
<tr>
<td>KHO</td>
<td>The Finnish Supreme Administrative Court <em>(Korkein hallinto-oikeus)</em></td>
</tr>
<tr>
<td>KKO</td>
<td>The Finnish Supreme Court <em>(Korkein oikeus)</em></td>
</tr>
<tr>
<td>LGBT(IQ)</td>
<td>Lesbian, Gay, Bisexual, Trans (Intersex and Queer/Questioning)</td>
</tr>
<tr>
<td>N/A</td>
<td>Not applicable</td>
</tr>
<tr>
<td>NGO</td>
<td>Non-governmental organisation</td>
</tr>
<tr>
<td>OHCHR</td>
<td>The United Nations Office of the High Commissioner for Human Rights</td>
</tr>
<tr>
<td>PACE</td>
<td>The Parliamentary Assembly of the Council of Europe</td>
</tr>
<tr>
<td>PCIJ</td>
<td>The Permanent Court of International Justice</td>
</tr>
<tr>
<td>PKI</td>
<td>The Norwegian Patient Organisation for Gender Incongruence <em>(Pasientorganisasjonen for Kjønnsinkongruens)</em></td>
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<td>Abbreviation</td>
<td>Description</td>
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<tr>
<td>RFSU</td>
<td>The Swedish Association for Sexuality Education (Riksförbundet för sexuell upplysning)</td>
</tr>
<tr>
<td>RFSL</td>
<td>The Swedish Federation for Lesbian, Gay, Bisexual, Transgender, Queer and Intersex Rights</td>
</tr>
<tr>
<td>TGEU</td>
<td>Transgender Europe</td>
</tr>
<tr>
<td>UN</td>
<td>The United Nations</td>
</tr>
<tr>
<td>UNGA</td>
<td>The United Nations General Assembly</td>
</tr>
<tr>
<td>WPATH</td>
<td>The World Professional Association for Transgender Health</td>
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