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Paper DSA 2003

A full version of this article should appear in Social Politics 2004

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### **“Disabling” Femininities and Eugenics: Sexuality, Disability and Citizenship in Modern Switzerland**

The basis of this paper is the nexus of female sexuality, ideas about normalcy and eugenics, and the way in which these influenced the regulation of female sexuality in early twentieth century Switzerland. In what follows I want to juxtapose practices of regulating female sexuality through institutionalisation, sterilisation and marriage restriction and an outline of how eugenic concerns influenced the new national regulations of sexuality in Swiss Criminal Law. The debates from 1893 until 1931 about the Swiss Penal Code provide a framework within which the rising importance of eugenic ideas can be examined. This was also the same time in which eugenic ideas were widely applied in Switzerland. Switzerland is particularly interesting to the history of eugenics because some eugenic practices were pioneered in Switzerland, such as sterilization as a eugenic measure. Furthermore, a number of eugenic fore thinkers were Swiss and several eugenically influenced pieces of legislation were first passed in Switzerland: the canton of Vaud was the first European jurisdiction to provide a legal basis for sterilization in 1928, while marriage restriction and guardianship rulings for the “mentally deficient” had a national legislative basis in its Civil Code since 1907.

While the Criminal Law, apart from explicit regulations on sterilization has rarely been perceived as a locus for the implementation of eugenic principles, it was, although maybe not as saliently as the Civil Law, also informed by social hygienic and eugenic principles. Concerns about reproduction and its regulation increasingly found their way into the Criminal Law debates after the 1900s as the regulation of sexualities was, partly, about inclusion and exclusion from the national collective and the future of the nation. Swiss Criminal Law included two articles regulating sexual relations with “mentally deficient” women and it is my contention that this had little to do with a desire to protect and much to do with a desire to control sexual relations between those deemed “healthy” and those deemed “unfit”. (note on “mental deficiencies”).

These regulations significantly shaped ideas about the regulation of female sexuality, particularly those on the margins, not so much in terms of their application but with regard to contributing to ideas about normative womanhood. The regulation of “feeble-minded” women ought to receive more interest in histories of sexuality because rather than being merely a medical term, “feeble-mindedness” was a moral term used to delineate any derivation from normative femininity, thus posing a threat to all women who did not fit the norm. As I will try to show, far from being an

objective scientific category “mental deficiency” was instilled with social norms and values, potentially subsuming all women deviating from the norm under categories of “mental deficiency”, particularly “feeble-mindedness”.

Swiss Criminal law was generally perceived to be truly “modern” and received high appraisal because it indiscriminately gave “all women the right of disposal over their bodies in sexual affairs” (Zeller, 1919: 122), and because its protection was extended to include men on occasion (Mittermaier, 1907). Yet a closer inspection of “every woman” reveals that what was in fact new was that prostitutes were included who, until then, were excluded from protection against rape or violation. But while no distinction was made between “respectable” and “fallen” women, at least in theory, married women were excluded from protection. The category of “every woman” was further restricted in that sexual relations with women with “mental deficiencies” were criminalised a priori, thus not giving women with mental or intellectual disabilities “the right to dispose over their bodies” and negating them sexual subjectivity. (note on use of “mental deficiencies”).

Towards the end of the nineteenth century heredity was increasingly stressed as a cause for social ills although it was never the case (Jones 1986). The conception of health improvement which focused on the individual and domestic behaviour of the poor proved to be an enduring legacy of the political economy approach and much investment in hygiene in Switzerland concentrated on moral, individual and domestic reform (Mesmer, 1988). Racial hygiene and eugenics only emerged when older ideas about hygiene were merged with hereditarian ideas. The attempt to curtail the spread of venereal diseases and the propaganda about sex hygiene thus were, like other issues such as alcoholism, vagrancy or “feeble-mindedness”, increasingly seen as an issue and in need of urgent treatment (Jones, 1986).

Comprehensive programs of health reform were being advanced and implemented including housing, sanitation, nutrition, infant and child care, domestic and personal cleanliness and mental health targeting particularly the poor (Mesmer, 1988; 1997). Continuously framed as a response to the social problems emanating from urbanisation, industrialisation and the cleavages between middle-class sexual practices and working-class reality eugenic ideas took hold. During the second half of the nineteenth century it became rather popular to lay the blame for almost anything from poor social conditions, to prostitution and alcoholism at the feet of working-class women and, in response, the voluntary organisations saw education of the working-class housewife through domestic training as crucial to the solution (Mesmer, 1988).

Societies in Western Europe were perceived to be undergoing huge social changes which threatened traditional forms of the social order. Society itself was under a massive threat from the outside but also from within. The fear of “being swamped by foreigners”, which emerged for the first time after the 1900s attests to this threat from the outside. Equally, threatening the order within, there was an unprecedented upsurge of nervous disorders such as neurasthenia and hysteria. Perturbed by a perceived increase of unruly sexualities, doctors warned against dissolute and

licentious behaviour and advised to maintain retention for health reasons (Puenzieux and Ruckstuhl, 1994).

After 1900 the medical profession started to contest the abstinence model and argued for sexual reform in order to fight the prevalent problems associated with sexuality. This emerging concept of sexuality was crucial to the ideas of racial hygiene and after 1900 various groups endorsed this perspective (Jones (1986). Far from representing a particular political perspective racial hygienic concerns were reiterated across the political spectrum: nationalists feared that the future of the nation's stock which was threatened by the poor physique of the working-classes while some socialists used the prevalent fears about "national degeneracy" to push for more substantial social welfare changes.

The perception of intelligence also changed dramatically during the second half of the nineteenth century (Jackson, 1996). Before there was a belief that there was no sharp divide between normal and abnormal intelligence, concomitant with a view that the "mentally deficient" population could therefore be successfully educated. By the turn of the century, however, "mental deficiencies" such as "feeble-mindedness" had come to constitute a permanent and immovable feature of an individual's life. Thus, there was a shift from a continuous conception of mental impairment towards a dichotomous conception of impairment. In addition, (Jones, 1986; Wecker, 1998), perceptions of mental impairments became also connected with economic concerns as questions of economic efficiency and productivity repeatedly arose. "Feeble-mindedness" was increasingly not only seen as part of the wide spectrum of social problems but it came to be perceived as the root of problems such as crime, vagrancy, poverty, unemployment, alcoholism, prostitution and so on (Jackson, 1996; Jones, 1986). Perceived to be outside of rehabilitation by the 1900s due to their hereditary character "feeble-minded" people and people with other "mental deficiencies" were subsumed under the state's interest in reproductive control and those deemed "mentally deficient" were added to the sexual regulation agenda.

Eugenic fears of criminality and violence, a rising tide of illegitimacy and racial degeneracy coupled with more humanitarian concerns about neglect and abuse of vulnerable individuals prompted a heightened policy interest in people with learning disabilities at the turn of the twentieth century. While definitions of various "mental deficiencies" were largely absent from any Swiss discussions in Britain, meanwhile, Royal Commission report of 1908 produced some definitions. 'Insane' denominated those suffering from feeble-mindedness as a result of senility, 'idiot' came to be reserved for those with severe impairments, 'imbecile' for those unable to earn a living, 'moral imbecile' for those convicted of an offence upon whom punishment had little or no effect and who consistently displayed "immoral or vicious tendencies" and 'feeble-minded' denominated those suffering from less severe mental defects able to earn their own living in propitious circumstance (Jones, 1986: 30; Walmsley and Rolph, 2001: 65). 'Mental defective' was a generic term.

The control and management of bodily desires was connected to work efficiency and eugenic ideas connected physical health with thrift, discipline and economic productivity to make up a general concept of "fitness". Laissez-faire politics was dropped in favour of rationalisation on the basis that simple competition alone would not ensure that the most efficient survived, rather population and birth rate needed to be planned and managed by state policy. Thus, women's sexuality was subsumed under an obligation for 'rational, responsible and healthy motherhood', as Bland (1982: 373) demonstrated, and 'women were seen as having a *duty* to fulfil their role as "guardians of the race"'. This discourse of responsible motherhood was prevalent across Europe.

For Switzerland, Auguste Forel (1848-1931) presents a key figure in discussing eugenics as his book *The Sexual Question* (1905) was hugely influential. Forel was an internationally known scientist, a psychiatrist, a brain anatomist and forensic medic, an ant researcher, a social reformer, a promoter of temperance, socialist, pacifist and a supporter of women's franchise and women's rights. His hagiographic biographies have only recently been challenged and the point has been made that he was also a eugenicist, pioneered eugenic sterilisation and castration and promoted "rational breeding" (Tanner, 1999). Forel pioneered eugenic sterilization in 1886, three years after Francis Galton coined the term eugenics, and he remained a leading national and international figure in the field. He also intervened in the regulation of sexuality in his capacity as a psychiatrist on a regular basis. He promoted the rationalisation of reproduction and sexuality which he perceived to be part of the solution to the social problems at the time and, together with others, Forel was highly critical towards moral appeals which he saw as insufficient in dealing with the problems facing society.

Forel's support for women's rights, for instance, was informed with eugenic ideas as he believed that more rights would make women better judges of sexual partners and illuminate them about the importance of selective reproduction. He had a strong belief that, if helped along, natural selection would again favour the propagation of the "able, good and healthy". As a socialist Forel's estimate of who was "able, good and healthy" was, however, not based on class but on "worthiness" resulting in a perception of society divided into "biological classes" rather than social classes. Equally, his pacifist stand was due to his belief in eugenics and racial hygiene:

'Wars are a terrible factor in human breeding selection. They outright destroy and mutilate the best in age and quality and leave cripples, sick people and old people alive. Besides, as we have already seen, the soldier is often impaired in his reproductive capacities, particularly qualitatively but also quantitatively, by venereal diseases and alcohol. [...] It is without doubt that wars damage the sexual conditions of people and thus gravely damage not only quantity but also quality of a nation.' (Forel, 1905: 454, my trans.)

The beginnings of a eugenic discourse in Switzerland can be located in the 1890s although its practices particularly flourished in the inter-war years through issues such as abortion, sterilisation, marriage prohibition and guardianship. By a way of a short summary only one canton in Switzerland, notably Forel's canton of origin,

knew a legal basis for sterilisation between 1928 and 1985. Yet for the fifty years during which this law was in place “only” 187 sterilisation applications were granted and carried out. In Zurich, by contrast, one hospital carried out 67 sterilizations in 1926 and 122 in 1927. The guardianship office records in Zurich show that between 1908 and 1935 60 sterilizations and six castrations were carried out in relation to people already under guardianship, most of whom were women (Schneider in Rosenow, 1991). Half of the operations were carried out on the basis of a diagnosis of “feeble-mindedness”. Furthermore, some 480 sterilizations were conducted in connection with an abortion in Zürich in two years between 1929 and 1931 (Wecker 1998).

The provision of a legal basis in Criminal Law for sterilization was highly contested among psychiatrists and most preferred being left to their own devices. In fact, the absence of legal provisions proved more useful to psychiatrists in maintaining their role as “gatekeepers” of female sexuality. Although the principle of voluntariness was maintained with regard to sterilization in all cantons other than Vaud, records and testimonies show that women were often presented with a choice between sterilization, the referral to a workhouse, the threat that their poor relief would be withdrawn or under pressure that an abortion would only be carried out or marriage licence would only be granted if women agreed to a “voluntary” sterilization (Wecker 1998). Access to abortion, of course, was also firmly in the hands of psychiatrists as two medical assessments were (until 2002) required to obtain an abortion.

Most women who were sterilised came to the attention of welfare authorities and psychiatrists in connection with illegitimate pregnancies or unlawful conduct (Grossenreiter et al., 1994). Women were more likely to get into the machinery of welfare authorities and psychiatric care on the basis of their sexual comportment and prostitutes could legally be referred to psychiatric care when picked up. Furthermore, there was a preconception that “feeble-mindedness” was easier inherited in women than in men and there was a widespread belief beyond the realm of psychiatry that many prostitutes were inclined to pathologies. Indeed, Eugen Bleuler, Forel’s successor, maintained that the term “mental illness” was not a medical term but a social term which rendered the holder socially (and economically) incapable (Grossenreiter, 1995). Thus, uncontrollable sexuality and illegitimate pregnancies could be quite enough for severe intervention.

The most named reason for assessing women’s “deviance” was “sexual unsteadiness”, a characteristic that was perceived to be contrary to the economic and social purpose of women’s reproductive capacities, their housekeeping duties and their child rearing duties. In a society dominated by rigid moral norms and conceptions of female sexuality as passive it was easy to depart from the norm, particularly for working class women. A recent study of the Vaudois sterilisation law supports the view that the conception and utilisation of the law was a form of sexual regulation of women whose comportment seemed simply inadequate. Boundaries between undesirable comportment and illness such as alcoholism, unsteadiness, sexual licentiousness, dissoluteness and squandermania were often as blurred as

boundaries between being socially conspicuous and “feeble-minded”. But whereas the boundaries between diagnosis and moral values was fluid at best, in the concept of “moral feeble-mindedness” they were completely dissolved. Thus “feeble-mindedness” was often diagnosed in relation to any derivation from normative femininity. Invested with ascertaining the boundaries of health psychiatrists consolidated their role as “gatekeepers” of “healthy femininities” and “disabling femininities”, as I have come to call them, and they took on the role of “protecting” those individuals from themselves and wider society from them.

I have tried to show that the category of “mental deficiency” was a moral category and dependent on gendered and classed norms, rather than being a purely medical/psychiatric evaluation. Resulting in a widespread pathologisation of women and their sexuality this merely followed on from earlier perceptions which held that uncontrolled bodies made women prone to “inadequate” sexual activities, “excitation” or “hysteria” (Wecker, 1998).

Returning to Swiss Criminal Law, the need to regulate “feeble-minded” women’s sexuality was largely based on a consensual view as there was never much heated debate around these issues. The following quote from a psychiatrist (Steck 1938) exemplifies a widely held view:

‘the male feeble-minded will be rejected by healthy girls [...]. However it is different with the feeble-minded of the female sex. They not only easily find a male normal partner but they are, because of their deficiency, often an easy and thus welcome victim of men and male youth. One is surprised about the possibilities presented in cases where otherwise respected, married men make advances towards idiotic, and sometimes even deaf and dumb, girls and impregnate them’. (Steck, 1938)

The quotation indicates that it was “unfit” women not “unfit” men who were seen as the problem which in turn exemplifies that the problem really was one of reproduction rather than one of protection. Women who were otherwise constructed as passive were here seen as active in sexual matters, yet with a double bind. Whereas “healthy” women were seen as (appropriately) rejecting “unfit” men “feeble-minded” women were seen as weak yet seductresses who (inappropriately) “easily find” sexual partners. “Feeble-minded” women were thus, like prostitutes, constructed as dangerous females who brought “respected, married” men to the fall. Yet what seems to have been perceived as dangerous here was, far more than the threat to marital relations and morality, the threat posed by pregnancy, and thus the threat to the stock of the nation.

An emerging narrative throughout the debate on the regulation of “feeble-minded” women was the assertion that the collective was in need of protection from “mental defectives”. Commenting on Zurich’s new cantonal Criminal Law from 1897, one of the legal experts involved in the unification of the criminal law argued (Zuercher 1897): ‘the protection of feeble-minded and other deficiently developed persons against sexual abuse appeared not only to be a duty towards those worthy of protection but also lay in the interest of the state in healthy and strong descendants’ (Zürcher, 1897:

250, my trans.). Equally, a message from the Federal Council upon passing the Bill over to Parliament in 1918 points to eugenic concerns: 'Indeed, throughout the consultations there was a sincere aim to create a law [...] which is indirectly and directly concerned with racial hygienic interests inherent in sexual relations and which particularly grants youth strong protection from the dangers of premature sexual relations'<sup>1</sup>.

Ten years beforehand, in 1908, when a set of explanations was published, a legal expert positively noted that there were 'sparse beginnings of racial hygienic goals' (Zürcher, 1908: 208). He also made clear what was subsumed under these goals, namely 'the prohibition of sexual relations not only with idiots or insane but also with the feeble-minded or in their mental health significantly impaired women'. Whilst, legally, the reason for this prohibition was that "mental defectives" did not have a free will and could therefore not assert it he also explained that 'concomitant are also the considerations for the descendants of such relations' (Zürcher, 1908: 214, my trans.). Some people reaffirmed the notion that some mentally impaired people, 'particularly the deaf and dumb, are erotically predisposed' (Stooss, 1894) and only few people warned against such preconceptions. In 1927 the Swiss draft was considered to be more progressive than the German draft by a German lawyer (von Lilienthal) who asserted that 'the "offences against morality" have been delicately dealt with in terms of the conceptions of the new time and the basically imperturbable demands which have to be put forward in the interest of the state and of society.' (Lilienthal, 1927: 347, my trans.).

Despite all the intentions to make a law that would be understandable to lay people and be clear and simple the two regulations on "mental deficiency" in the Swiss law remained full of terms whose distinction was never clear neither to juridical experts nor to lay people. Furthermore, no other regulation subsumed quite such an array of pathologies in one group and, what is more, the legal experts never seemed to make a substantial effort to clarify the differences and left definition as well as assessment firmly in the hands of the medical profession. While they were critical at times as to how dependent the courts should be on psychiatric experts with regard to other offences here the question was never even posed.

The concepts with which the legislators worked were at best contradictory. On the one hand "feeble-minded" women were constructed as worthy of special protection and, on the other hand, they were constructed as "erotically predisposed" and "luring men into sexual relations". Perceptions of female sexuality at the time predominantly perceived women's active sexuality in terms of danger, either to men or to the whole nation. And as the short summary on eugenic practices before has shown "mental deficiency" could be used against women who departed from any norm, often the norm of female passive sexuality. Although framed as protective measures *for* women deemed to be "mentally deficient" the discussion has shown that the motivation was often based on a desire to control and to restrict (some)

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<sup>1</sup> Message from the Federal Council to Parliament upon passing them the Bill for discussion in 1918. Bundesarchiv E 4410 (A) -/42 Bd. 56.

women's sexual relations. Crucially these regulations contributed to the shaping of the national imagination, as another comment on the Swiss law shows (Mittermaier 1906), 'the dangers are generally those to the health, but also to the inner mental and economic force of the individual and, as such, to the state' (Mittermaier, 1906: 4, my trans.)

It has been argued that eugenics has been constructed as Swiss exceptionalism because the perception prevailed that eugenic ideas were applied through the medical route rather than through the political route which has resulted in broader acceptance. Eugenics was not part of a wider public political discussion, rather an exclusively bureaucratic and elite affair with the medical profession as gatekeepers. Yet the relegation of eugenics out of the political sphere into the lap of the medical profession is also implicitly made responsible for the fact that psychiatric treatment and research continued without profound ruptures after World War II in Switzerland (Rufer, 1991).

With regard to sexuality and the Criminal Law, fierce opposition was mounted in Parliament only by catholic-conservatives. Religion was, it seems, one of the main reasons why explicit eugenic motivations with regard to abortion were not adopted in the final legal text. Proposals by psychiatrists to introduce national legislation with regards to sterilisation practices were rejected, not least because psychiatrists themselves were rather critical about the need for legislation. Indeed, some argued that legislation would only increase the bureaucracy involved. Other psychiatrists called for more use of the existing legislation provided by the Civil Code. By being dependent upon reaching consensus Switzerland could not pass the same kind of legislation as other countries have.

The debates around the Criminal Law about the sexual regulation of "mentally deficient" women in, together with eugenic practices prevalent at the time, indicate that ideas of "mental deficiency" in connection sexuality were salient themes at the time. Dangerous female sexualities were seen to pose a threat to the nation and thus needed to be subsumed under a regime of regulation. Boundaries between mental insanity, moral insanity and thus deviance in general were fluid enough that any derivation from normative femininity was potentially subject to legal intervention. The fleeting categories which were at the basis of explaining female sexual behaviour were largely moral categories which potentially subsumed all femininities which departed from the norm under this rationalised approach to sexual regulation. Invested with a gatekeeper role, psychiatrists but also civil servants granting marriage licences and dealing with guardianship orders, became the regulators of what I've called "disabling femininities". The women, and also the men, subjected to these regulatory efforts were not seen as part of the national imaginary and all too often, they were excluded from the collective and had their citizenship rights withdrawn. The point of this paper then is that the sexual regulation of "feble-minded" women is as central to the regulation of female sexuality as it is to the construction of nationhood and citizenship. The widespread acceptance of eugenics was due to a belief in science delivering solutions to social problems prevalent at the time. As such, eugenics was merely seen as a rational approach and a

social technology working towards a different society. And some of these elements remain incredibly prevalent to this day.

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