

[Unpublished articles]

Human rights and psychiatric power in dispute. Towards a radicalization of democracy?

Los derechos humanos y el poder psiquiátrico en disputa. ¿Hacia una radicalización de la democracia?

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Article received on 17/02/2022 and accepted on 01/10/2022.



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Abstract

This article analyzes the type of power that is disputed in contemporary debates on human rights, mental health and equal recognition before the law (Art. 12 of the Convention on the Rights of Persons with Disabilities: CRPD), where the most burning issue is the abolition of involuntary treatment and commitment. To do so, we intersect Foucault's and Agamben's perspectives on sovereign power and biopowers. We analyze the emergence of the psychiatric device as institution; legal medicine; biological determinism, and; line of thanatopolitical escape, the point of emergence of Nazi extermination. We connect this analysis with the emergence of human rights and UN regulations on "disability/mental illness" up to the CRPD. Among other things, we conclude that the authoritative interpretation of Art. 12 abolishes a state of exception to human rights, which is constitutive of modern democracy and of the emergence and deployment of the psychiatric device, whose competencies of sovereign power are in dispute.

Keywords: Mental health; Human rights; Sovereign power; Foucault; Agamben.

Resumen

Este artículo analiza el tipo de poder que está en disputa en los debates contemporáneos sobre los derechos humanos, la salud mental y el igual reconocimiento ante la ley (Art. 12 de la Convención sobre los Derechos de las Personas con Discapacidad: CDPD), cuyo punto más candente es la abolición del tratamiento e internamiento involuntarios. Para ello, entrecruzamos las perspectivas de Foucault y Agamben sobre el poder soberano y los biopoderes. Analizamos la emergencia del dispositivo psiquiátrico como institución; medicina legal; determinismo biológico y; línea de fuga tanatopolítica, punto de surgimiento del exterminio Nazi. Entroncamos este análisis con la emergencia de los derechos humanos y de las normativas de la ONU sobre "discapacidad/enfermedad mental" hasta la CDPD. Entre otros, concluimos que la interpretación autorizada del Art. 12 deroga un estado de excepción a los derechos humanos, que es constitutivo de la democracia moderna y de la emergencia y despliegue del dispositivo psiquiátrico, cuyas competencias de poder soberano están en disputa.

Palabras clave: Salud mental; Derechos humanos; Poder soberano; Foucault; Agamben.



1. Introduction¹

A democratic paradox has established the field of national action in “mental health” and has entered the human rights regime. On the one hand, mental health, on the basis of its medical codification as part of health (TOBIN, 2012), has been consolidated as a human right that the state must promote, respect, protect and guarantee, and which civil society can demand (OHCHR, 2022). On the other hand, it is vested in most states with "special competences" that allow them to suspend fundamental rights and freedoms and, thereby, to expose citizens with impunity to practices of violence, and torture, and the deprivation of liberty, which are legitimized by a medical rhetoric of "protection and care" (MINKOWITZ, 2012; WELLER, 2017).

This democratic paradox is blowing up in our contemporary world. It was evidenced by Dainius Pūras, UN Special Rapporteur on the Right to Health (2014-2020), when he called for a "revolution in mental health care to end decades of neglect, abuse and violence", which is a pattern of human rights dilapidation operating in both the global North and South (OHCHR, 2017). Pūras's interpellation is part of an "equivalent displacement" (LACLAU; MOUFFE, 1987) of the democratic values of equality, freedom and dignity contained in the *Universal Declaration of Human Rights* (1948) which asserted them in new domains: disability and mental health. This shift, to which the international movement of (ex)users and survivors of psychiatry contributed significantly (MINKOWITZ, 2012), has been realized in a binding human rights treaty ratified almost universally: the *United Nations Convention on the Rights of Persons with Disabilities* (CRPD, 2006).

Against all previous human rights regulations in the fields of disability and mental health the CRPD, in its authoritative interpretation of the right to *Equal recognition before the law* (Art. 12), requires the abolition of evaluative practices and legal concepts that have been suspending the exercise of fundamental rights and freedoms due to the

¹ This work has been carried out within the framework of the Doctoral Program in Person and Society in the Contemporary World of the Autonomous University of Barcelona (UAB), with funding from the Ministry of Education, Culture and Sport of the Government of Spain for University Teacher Training (FPU16/05459) granted for the doctoral thesis of Beatriz Pérez Pérez. We thank the members of the Lis-(De)Subjecting research groups of the UAB, led by Enrico Mora and Margot Pujal i Llobart, co-directors of the thesis, and JoanSubirats Humet, co-director of the thesis, for their intellectual and affective accompaniment during the thesis process in which this work is inscribed, and for their comments on the design of this article. We thank the members of the Laicos lapse research group of the UAB, and its director, Lupicínio Iñiguez Rueda, for their reading and comments on the first draft of this article. We also thank the anonymous persons who reviewed this manuscript in the peer review process and contributed to its improvement.



attribution of mental disorder or intellectual disability (CRPD, 2014). This radical paradigm shift, which is based on recognizing a universal legal capacity, and is defended by regional organizations of psychiatrized persons in Latin America, North America, Europe, Africa and Asia-Pacific², is being intensely disputed (ASHLEY STEIN et al., 2021). The hottest point of the dispute concerns the obligation to abolish forced mental health treatment and commitment, the constitutive locus of psychiatry, which several international and human rights bodies have positioned themselves against, including the World Psychiatric Association (APPELBAUM, 2019) and the Human Rights Committee (CCPR, 2014, parag. 19)³ of the *United Nations International Covenant on Civil and Political Rights* (ICCPR, 1966).

This article provides a framework of historical intelligibility for the contemporary dispute that operates at the intersection of human rights, mental health and the authoritative interpretation of Art. 12 of the CRPD. Our purpose, however, is not to analyze the arguments that sustain the opposing positions, but to reveal what *kind* of power is at stake, and how it refers to both the constitutive core of psychiatry and to the foundational structure of modern democracy. In order to do so, we interweave the perspectives of Michel Foucault and Giorgio Agamben on the confluence between sovereign power and bio-powers. Agamben's work in *Sovereign Power and Bare Life* (1995) -the first volume in the Homo Sacer series- which is the work we will employ, and especially the concepts of "state of exception" and "bare life", have proved fruitful on the one hand, for reinterpreting Foucault's approach to psychiatric power (CAPONI, 2009a; JACOB; FOTH, 2013), and, on the other hand, for analyzing the political effects of Art. 12 of the CRPD (WELLER, 2017), although no research has attempted to make them converge transversally.

We divide the article into three parts. First, we present the main Foucauldian and Agambenian theoretical tools with which we operate, and which make a complementary

² The main regional or consultative organizations committed to the defense and implementation of the CRPD, in addition to the World Network of Users and Survivors of Psychiatry, which represented psychiatrized persons during the drafting and negotiation of the treaty, are: Redesfera Latinoamericana de la Diversidad Psicosocial; Pan African Network of Persons with Psychosocial Disabilities; Transforming Communities for Inclusion of Persons with Psychosocial Disabilities-Asia Pacific; European Network of (Ex)Users and Survivors of Psychiatry; Center for the Human Rights of Users and Survivors of Psychiatry, and MindFreedom International.

³ Paragraph 19, CCPR/C/GC/35: "[...] any deprivation of liberty must be necessary and proportionate, for the purpose of protecting the individual in question from serious harm or preventing injury to others" in which case "programmes of treatment and rehabilitation that serve the purposes that are asserted to justify the detention" must be offered.



analytical contribution. Secondly, we characterize, from the Foucault-Agamben intersection, psychiatric power in four acts and a line of escape. We start from the reinterpretation of the microphysical basis of power on which psychiatry was founded according to Foucault (2007a), by stating the hypothesis from the Foucault-Agamben junction that we will apply to a genealogical chain of historical events of *emergence* concerning the psychiatric device. In the words of Foucault (2004, p. 34), emergence refers to "the point of arising. It is the principle and the singular law of an apparition", whether it be a concept, a practice, a device or a regime of rights: an arising that "always occurs in a certain state of forces" producing a substitution, a replacement, a displacement, asystematic turn.⁴ We will address the emergence of psychiatry, as: a) an institution, b) legal medicine, c) biological determinism, and, d) line of thanatopolitical escape, that is, the point where the massive deployment of the sovereign power to make die emerges in the Nazi regime. Thirdly, we connect the previous analysis with the emergence of human rights, based on the intercultural condemnation of the Nazi holocaust, to evidence a regime of invisibility in its constitution against the domination that affected the first victims of extermination. We then show how this was explicitly enshrined in the UN declarations and recommendations on disability and mental illness until the appearance of the CRPD, whose genealogical and interpretative keys we analyze from the Foucault-Agamben crossroads with respect to the mandate of equality before the law.

2. Sovereign Power and Biopowers: Between Foucault and Agamben

In *The Will to Knowledge* (1976) -the first volume of *The History of Sexuality*- Foucault (2007b, p. 165) introduced the contrast between the sovereign power to "make die or to let live" and the biopower to "make live or to let die", which consolidated the transition to capitalism: "destined to produce forces, to make them grow and order them rather than to hinder, bend or destroy them". Such biopower was organized around two interpenetrating poles: (a) *anatomopolitics*, which emerged in the 17th century, and took as its object the individual body as a machine, and applied disciplinary and individualizing

⁴ This article is an English translation of the original version written and published in Spanish. Quotations, with references in a language other than English have been translated by the authors.



technologies to it (the subjection and production of docile bodies); and (b) *biopolitics*, which emerged in the mid-18th century, linked to the development of statistics and centered on the collective body as a species, and the application of regulatory controls to population phenomena: births, the level of health, mortality, and so on (that is, control and regulation of populations). The relationship between sovereign power and biopowers -which is central to our analysis- was ambiguous, Foucault posed it both in terms of "complementarity" and in terms of "substitution", however, it was the hypothesis of complementarity, which explained the unprecedented power of death deployed in the wars and holocausts of the twentieth century, that would be continued in his later research (CASTRO, 2011).

In *The Sovereign Power and the Bare Life* Agamben developed a theory to explain the point of convergence between sovereign power and biopowers on the basis of the concepts of "bare life" and "state of exception" applied to the study of Nazism. He warned that this point of convergence remained "overwhelmed" in Foucault's investigations due to his determined abandonment of the juridical-institutional model of sovereignty in favor of the innovative analysis of the microphysics of power. Agamben's work complements the governmental perspective -conduct of conduct- which was subsequently developed by Foucault and followers (WELLER, 2017).

Given that the governmental approach assumes a generative matrix of power that requires the freedom and agency of the other as a condition of possibility, the limit that Foucault (1988, pp. 15-16) recognizes it is the closure of all possibility for action; the reduction of the other to impotence through coercion and violence. He exemplifies this limit with "chaining" and "physical constriction": practices that, in their medicalized versions (mechanical or chemical restraint), are significantly common in mental health institutions. This limit can be conceptualized from the same Foucauldian perspective as the exercise of sovereign power that "murders" freedom, agency, and possibilities of action. In the *Collège de France* lesson that is contemporary to *The Will to Knowledge*, Foucault (2001, p. 232) clarified that the "making die" characteristic of sovereign power included all "indirect murder: [...] exposing to death, multiplying the risk of death [...] or, simply, political death".

Political death is precisely the starting point from which Agamben operates to develop his theory. He interweaves the perspectives of Foucault and Hanna Arendt, which connect in the growing involvement of merely biological life in the modern political



sphere, departing from Aristotle's definition of "man", that is, the ancient Greek distinction between the terms *zoé*, the merely biological life shared with animals, and *bios*, a politically qualified life. Agamben operationalizes this distinction in the framework of sovereignty by departing from the figure of the *Homo Sacer* belonging to archaic Roman law. This original figure of the "bare life" identified someone who could not be sacrificed according to the rites, but who, nevertheless, could be killed with impunity by anyone, placing himself in a double-exclusion relationship with respect to human and divine Roman law. Agamben identifies this relationship as the form of the "state of exception" that defines the sovereign structure of law.

The relationship of exception is a relationship of "inclusive-exclusion" in the legal system created by means of an *exceptio*, the effect of which is the suspension of the validity of the general rule. It is an extreme form of relationship that only includes something in order to exclude it. The sovereign decision for Agamben, as a foundational act of the law, is that which draws the threshold of indifference defining which lives are going to be deprived of political existence (bare lives), and by being excepted from normal law and the protections it confers are thrown into regimes of unpunished violence. For Agamben (2019, p. 16), the implication of the bare life in the Western political sphere is "the original -albeit hidden- core of sovereign power", and that "on whose exclusion the city of men is founded." He will therefore defend, unlike Foucault, the idea that "the production of a biopolitical body is the original act of sovereign power" and that this power over life, which Agamben identifies with the term biopolitics,⁵ is as old "as the sovereign exception".

3. Psychiatric power in four acts and an escape line

3.1. First act: the basis of power relations

In the lessons on *Psychiatric Power* (1973-1974) Foucault sought the *microphysics of power* on which psychiatry laid its foundations, before its institution. These lessons inaugurated the Foucauldian shift from knowledge-centered archaeology to genealogy, which would shine a light on the generative dimension of power, against the model of

⁵ On the use of the term "biopolitics" in Foucault and Agamben, see Ferreira (2022).



sovereignty, the theory of the State and the concept of repression (MOREY, 2014). He sought to move away from the analysis carried out in *Madness and Civilization* by rejecting some of the central concepts that had guided it, institution, violence, and the family model, and to incorporate microphysics of power, tactics, and strategy.

Foucault (2007a, p. 44) found "the basement of power relations that constitute the nuclear element of psychiatric practice" from which we will see the erection of "institutional buildings" and "discourses of truth" in the scene of the de-crowning of Mad King George III of England (1788), disseminated by Pinel in his *Traité médico-philosophique*. He approached the power relations staged there by thinking of them against the model of sovereignty -which he had not yet defined as opposed to biopower- and characterized them as an exercise of *disciplinary power*. This led him to some contradictions, however, such as speaking of "articulation" and "replacement" to situate, in the same scene, the relationship between sovereign power and discipline. These ambiguities are resolved if we complement Foucault's reading with his later developments on biopower and with the Agambemian apparatus. The scene comprises three episodes: the uncrowning of the King, the role of the pages and the confrontation between the King and the doctor.

The first thing that happens to the King, Pinel affirmed, is that he is locked in a chamber of an isolated castle "whose windows and walls are covered with mattresses", and in addition "whoever directs the treatment informs him that he is no longer sovereign [...] he must show himself docile and submissive" (apud FOUCAULT, 2007a, p. 36). Foucault (2007a, p. 37) conceptualized the above as a "ceremony of destitution" in which the physician is "the operator of this de-crowning". The first thing the King loses is thus, in Agambemian terms, his *political existence*, at the hands of the physician who places himself at the center of the sovereign decision. Foucault (2007a, p. 38) further notes that "instead of the scepter, the crown and the sword" the King is left with only the mattresses that reduce him "to what he is, that is, to his body": to his *bare life*, as Agamben would say.

Two Herculean pages, -writes Pinel- "are left to attend to his needs" and "to convince him that he is entirely dependent on them," and that henceforth the King "must obey them" (apud FOUCAULT, 2007a, p. 36). Foucault (2007a, p. 41), notes that these "over-powerful" pages, who previously served the king's needs under his sovereign will, now continue to serve him against that will in "the mechanical demands [...] of the body."



The King has thus been reduced to his mere biological life, which, however, must be preserved. Foucault (2007a, p. 39) interpreted the role of the pages as the installation of a disciplinary power that functions in a network that is "anonymous, multiple, gaunt" consisting of falling "solely on its target", the body of the King "de-crowned whom this new power must make 'docile and submissive'". This coincides with the effect of reduction to the bare life, that is, to be constituted as a locus, over which anyone can act provisionally as sovereign.

In the last episode Pinel indicates that the King "in his fiery delirium receives with great harshness his former doctor" smearing him with filth and excrement. In the face of such an attack, which leaves the King "reduced to a state of disgusting filth" a page enters and "without saying a word takes him by the waist and throws him vigorously on the mattresses, undresses him, washes him [...] changes his clothes and looking at him haughtily, leaves in haste" (apud FOUCAULT, 2007a, p. 36-37). As Foucault (2007a, p. 42) indicates, here the King who "for weapons has nothing but the dejections of his body", reproduces the secular gesture of the insurrection against the powerful of which he had been the victim: throwing mud, garbage, and so on: it is then no longer "the dispossession of the attributes of sovereignty, but the total inversion of it", the King recognizes in the doctor a sovereign. However:

Whereas whoever attacked sovereignty, threw stones and filth at it, would have been executed, hanged and quartered according to English law [...] the discipline that intervenes now embodied in the pageboy goes [...] to tear down, to strip, to wash, to make the body clean and true (FOUCAULT, 2007a, p. 43).

In an intriguing comment, Foucault stated (2007a, p. 39): "the essential of the scene: confrontation, submission, the articulation of a sovereign power with a disciplinary power". Indeed, what seems to be the core of psychiatric practice is the *paradoxical synthesis* "to make die (sovereignty) and to make live (biopower)". A *sovereign power* that kills politically by reducing the individual to a bare life is perfectly articulated with a disciplinary *biopower* that takes this semi-living being into its charge, preserving its biological reproduction, and applying to its body through multiple actors, the necessary force to bend a destitute will, which will have to show itself "docile and submissive". The lack of differentiation between treatment and punishment (JACOB; FOTH, 2013) is thus present in all forced interventions, which have been historically and currently denounced



by psychiatrized persons as forms of torture.⁶ The idea of the semi-living, moreover, resonates with the usual descriptions given by psychiatrized people in our contemporary world of the effects of high doses of neuroleptics, such as zombification, and also with its historical genealogy, as encapsulated in a "politics of indifference" (CAPONI, 2019a).

3.2. Second act: emergence of the psychiatric device

Robert Castel (1980) demonstrated that the point of institutional emergence of alienism is located in "article 9 of the law on the abolition of the *lettre de cachet*" (1790), dictated by the same Constituent Assembly of the French Revolution that had issued the *Declaration of the Rights of Man and of the Citizen* (1789). This direct antecedent of the UDHR transplanted the sovereignty of the King to a multiple body comprised of "the citizens" (sovereign subjects of rights), giving rise to multiple exceptions that will not reach such status -enslaved persons, women, infants, foreigners, the convicted, the poor- among which the experience of madness, which had been emptied of meaning and identified with pure unreason since the mid-seventeenth century (FOUCAULT, 2015), is a specific case (AGAMBEN, 2019).

The abolition of the *lettre de cachet* put an end to royal orders authorizing the confinement of a person, disrupting a highly consolidated policy of the French colonial *Ancien Régime*. According to Foucault (2015) the Great Confinement emerged in Europe in the mid-seventeenth century, entrenching, through an imperative of work and a condemnation of idleness, the transition to capitalism, so that we can place it in the anatomopolitical space of discipline. It succeeded the expropriation of common lands and the Witch Hunts in Europe that accompanied the conquest and colonial expansion -a deadly power without a doubt- in the common objective of implementing the "patriarchy of the wage" (FEDERICI, 2010). It implied the relatively undifferentiated confinement under the same walls, in the words of the time, of criminals, the mad, cripples, old wives, people accused of debauchery or idleness, prostitutes, indigents, imbeciles and so on, and in its beginnings, when convictions for witchcraft had become very rare, and the "disenchantment of the world" was consolidating (FEDERICI, 2010), also sorceresses, fortune tellers and other practitioners of magic (FOUCAULT, 2015).

⁶ The CRPD framework (2014, parag. 42) recognizes "forced treatment" as a violation of Article 12 and a breach of the right to protection from torture (Art. 15), among other things.



This device of domination operated, undoubtedly, as a form of tutelage. Internment did not seek physical extermination, even though it might entail a greater risk of death, and, in fact, consummate a political death, since it provided food and shelter, that is, the reproduction of biological life. It was a way of "enclosing" in "the outside" what could not be assimilated "as an interiority of waiting or exception" (BLANCHOT, 2008, p. 252). The royal power of confinement functioned mainly as a transmitter and regulator of the police exercise that operated in the families who requested most of the internments (CASTEL, 1980; FOUCAULT, 1996). The King responded to the plea coming from below, making his sovereign power available to anyone who had the cunning and the means to use it, while appealing for confinement came from a clearly gendered and hierarchical matrix of subject-subject relations (FARGE; FOUCAULT, 1982; FOUCAULT, 1996). It was thus not about giving effect to a massive liberation, but mainly about removing the confinements' qualifier of arbitrariness linked to the denunciation of the despotic *Ancien Régime* (CASTEL, 1980). Articulation then, between sovereign power and biopower, where sovereignty, through the mediation of the monarch, is exercised among subjects essentially through the family institution, which is the main nucleus promulgating the patriarchal and disciplinary matrix of capitalist relations (FEDERICI, 2010).

Madness, which problematically affected both sexes, posed a capital problem of legitimacy to the nascent bourgeois contractual order, when the perpetuation of its confinement was perceived as more necessary than ever. Since it had been dispossessed of reason, that precious good that defined the human and connected contractual relations, and therefore also of responsibility, mad people could not participate in the bourgeois social contract, but nevertheless, their transgressions could neither be punished by criminal law (CASTEL, 1980). Moreover, as is well known (ÁLVAREZ-URÍA, 1983; CASTEL, 1980; FOUCAULT, 2015), internment centers were being problematized from a new perspective of labor in the nascent industrialization that marked the decline of the *Ancien Régime*, as spaces that maintained and perpetuated proletarian idleness and misery with public money, which led to the implementation, in many of them, of compulsory labor. Under this imposition, mad people were distinguished for being difficult to subordinate to the common rules, and were conceptualized from a compassionate attitude linked to the loss of reason, as "animals" or "savages", "incapable of working" and, thus, of carrying out their assigned gender roles.



According to Castel (apud 1980, pp. 14-15), using *article 9 of the law on the abolition of the "lettre de cachet"* as a contingency solution, the men of the revolution ascribed a status of "disease" to madness, to be verified by "physicians under the supervision of district directors", and established its "care" in "hospitals to be indicated for that purpose", in order to avoid the qualification of arbitrariness and legitimize confinement as a right of assistance: this despite the fact that the medical code lacked of particularity to give to madness a scientific status of disease.

Alienists built the initial knowledge of "mental illness" by drawing it under the articulating node of "delirium", which also encompassed what we know today as intellectual disability, using the objectification of persons locked up whom they aimed to "cure", and for whom they developed moral treatment, where confinement ended up being rationalized as the essential curative principle of a disciplinary order (ALVAREZ-URÍA, 1983; CASTEL, 1980; FOUCAULT, 2007a, 2015).

We see how alienism is born from a juridical inscription in the constitutive space par excellence of modern democracy: after the absolute affirmation of the power of the people and the triumph of the French Revolution. Madness, identified as unreason and dispossessed of all meaning and utility, is captured in the republican legal order as an *exceptio*. However, this extreme form of inscription, which aims to legitimize the perpetuation of its confinement, is clothed in a humanitarian logic which does not propose the exercise of unpunished violence -even if it has the effect of producing it- but rather "to cure". A state of exception thus emerges, which, although it dispossesses people of political existence and practice their confinement, is attributed with the Hippocratic duty not to harm those lives, and to try to cure them. Once again, the formula of power, inherited from the *Ancien Régime*, responds to an articulation between sovereignty and discipline (biopower), in which "making people die and making them live" merges in a new medicalized logic.

Moreover, this legislative inscription gives rise to what Agamben (2019, p. 222), called a "camp", and conceived as the political paradigm of modernity: that is, a geographically delimited space -in this case the asylum- in which the state of exception becomes the rule, and in which the fact that "atrocities are committed is not something that depends on the law but only on the civility and ethical sense" of someone who "acts provisionally as sovereign". Perhaps this explains why, under Nazi rule, psychiatric institutions were the first centers of mass extermination, for which the gas chamber was



invented; a technology of death later applied in the Holocaust (FRIEDLANDER, 1995; LIFTON, 1986; MÜLLER-HILL, 1998). For psychiatrists to dedicate themselves to murdering their patients, however, a radical change had to take place in psychiatric knowledge; it had to free itself from the mandate to cure (to make people live) or remove it from the asylum. We will approach this dark episode later.

3.3. Third act: emergence of forensic medicine

According to Foucault (2007c), the quarrel around "homicidal monomania" is the one to which we must genealogically refer the transition between the psychiatry of unreason, inscribed on the "truth-error-consciousness" axis, and that of abnormality organized around the "passion-will-freedom" axis (FOUCAULT, 2007a, p. 387). This passage will allow us to situate the locus from which psychiatry began to conquer the juridical competences that characterize it today, that is, the possibility of issuing binding judgment on the inclusion/exclusion of a person in the normal jurisdiction or in a state of exception, where the suspension of the subject of rights and the reduction to bare life, allows the exercise of violence with impunity: space par excellence for "the sovereign decision" (AGAMBEN, 2019, p. 32).

Homicidal monomania, first proposed by Esquirol (1772-1840) in the early nineteenth century (DE SAUSSURE, 1946), defined a form of unpredictable madness, an instinctive and irresistible possession that seized the *will* of men and women and led them to kill with no apparent reason for the monstrous crime, while the qualities of understanding were preserved, so that, paradoxically, this new category of madness seemed like sanity, deceiving the most sublime and refined senses (ÁLVAREZ-URÍA, 1983; CASTEL, 1980).

Alienists claimed people who had committed atrocious murders for themselves. According to Foucault (1996, p. 106), the invention of this "absolutely fictitious identity [...] a crime that is all madness [...] a madness that is nothing but crime", responded to the alienist eagerness to conquer new areas of power and professional competence within the nascent justice system. They faced strong resistance from magistrates, jurists and lawyers because of the tautology that could not hide this argument: the crime committed was explained and "exempt from punishment" by an "invisible" madness and above all, by a "rational" madness (CASTEL, 1980; DE SAUSSURE, 1946). However, homicidal



monomania allowed alienists to conquer the special competence to differentiate between insanity and criminality (criminal unimputability), and to decide who should be judged and potentially punished/acquitted, and who should go directly and indefinitely to the insane asylum,⁷ thanks to the fact that the asylum was equally effective in neutralizing social dangerousness, but also due to the impotence of the nascent subjectivism of justice "to determine the punishability of a crime without having determined the motives" (FOUCAULT, 1996, p. 110).

This artificial identification between madness and social dangerousness, which is a stigma that has not been overcome today, and in most countries connects orders of forced commitment and treatment under the criterion of "risk of harm to oneself or to others" (SAYA et al., 2019), was initially translated into the *French law of June 30, 1838 on alienated persons*. This law effected "the synthesis between danger and madness that monomania, in the past, had to demonstrate theoretically [...] in all individuals whose internment is ordered" (FOUCAULT, 2007c, p. 36). The Law of '38, established that psychiatry should "receive and cure" in asylums "any person, incapacitated or not, whose condition could compromise public order or the safety of persons" (apud CASTEL, 1980, p. 331). This was an important shift, insofar as the articulating node will pass from the old disorder of conscience (incapacity) to social defense, and the biopolitical attribution of the care of the body of the nation (security and public order).

This law oriented the "medical certificate" of the alienists to the examination of pathological indications that revealed a person's dangerousness and potential to compromise public order, and populated the asylums with suspiciously dangerous bodies that wandered without roots in the public space, without the alienists being able to do more than keep them in custody and issue their pathological judgment a posteriori (CASTEL, 1980; FOUCAULT, 2007c). They also inherited the King's prerogatives, but to enable "non-arbitrary" confinement, they had to pathologize all types of behavior, giving rise to the psychiatry of abnormality; their scientific-technical knowledge was the new element that linked the policy of confinement inherited from the old regime with "the immanent justice of the families" (FOUCAULT, 2007c, p. 140).

⁷ Before Esquirol, those who had committed crimes were only considered "mentally ill" if they were in a state of delirium (disorder of consciousness), which did not entail any effort or expertise, since judges, juries and physicians agreed on the attribution of insanity (DE SAUSSURE, 1946).



3.4. Fourth act: biological determinism and displacement to the body-species

In 1857 Benedict Morel published "the great theoretical piece of the medicalization of the abnormal" (FOUCAULT, 2007c, p. 293): the *Traité des dégénérescences*. Here he conceived "degeneration" as an abnormal and morbid state affecting those who, for "acquired or congenital" causes, deviate from the "normal type of the human species", that is, "the masterpiece and the synthesis of creation" (MOREL, 1857, p. 1). Degeneration is incurable, and threatens the human species "with destruction and degradation" (MOREL, 1857, p. 3). Regardless of its causal origin, it is transmitted hereditarily to subsequent generations in a random way in the expression of its effects, extinguishing the lineage through sterility in the fourth generation (CAPONI, 2009b). The "causal laxity" of this theory enables "establishing the most fantastic hereditary networks", and places the reproductive mechanism responsible for the aberrations verified in the descendants in the sexuality of the ascendants (FOUCAULT, 2007c, p. 291).

The theory of degeneration gave rise to The Hunt for degenerates, as bodies carrying a biological danger that corrodes the human species, and which is expressed in patterns of physical, intellectual and moral stigmata. Morel's reconceptualization of confinement as "defensive prophylaxis", that is, internment and moral treatment, with no pretension to cure, exclusively aimed at protecting social and family interests from morbid influence (MOREL, 1857, p. 391), transmuted asylums into warehouses for people considered "incurable" or "ineducable", that is, "great places of death" (CASTEL, 1980, p. 291). On the other hand, the "preventive prophylaxis" that Morel (1857, p. 682) proposed as a "universalization of moral treatment to the social masses", opened an infinite field of extra-manicomial hygienic interventions for psychiatric power/knowledge, aimed at preventing what is incurable (CASTEL, 1980). In addition to freeing itself from the mandate to cure women, men and infants at their care, and gaining new fields of competence, the organicist character of degenerationism (its biological determinism), allowed psychiatry to be legitimized as a medical discipline (CASTEL, 1980).

This psychiatry was devoted to defending society against the "degenerate inheritance" left in its wake by any human being whose immoral behavior, corporeality, capacities, sexuality, or even political ideas, challenge the "normal type of the human species", and would be hegemonic until the beginning of the twentieth century (FOUCAULT, 2007c). It was projected as a neutralizer against all kinds of social



movements, pathologizing, among others, anarchists, suffragettes, and animal defenders (CAPONI, 2019b; FOUCAULT, 2007c; HUERTAS, 1993). Through the apparatus for verifying "stigmas", the "normal type of human being" will acquire, in the image and likeness of its sculptors, whiteness, adulthood and masculinity as characteristic marks, and woman herself will be typified as a morbid deviation from the "hominal type" (CAPONI, 2019b, p. 27). During this process the theory of degeneration was desacralized and inter-penetrated by social Darwinism, which had already been introduced by its earliest systematizer, Valentin Magnan (CAPONI, 2012), and by the main disseminator at the end of the 19th century in the field of physical anthropology, criminology and forensic medicine, Cesare Lombroso (HUERTAS, 1993; PESET, 1983).

The function of degenerationist psychiatry was, according to Foucault (2007c, p. 294), the "biological protection of the species". According to the matrix of biopower that he later proposed (FOUCAULT, 2001, 2007b), this was a curative displacement (to make live) from an anatomopolitical sphere (disciplinary, based on the body-individual) to a strictly biopolitical one: what must be preserved is the life of the body-species, threatened by "degenerates", who are the enemy to be eradicated (to make die).

3.5. Escape line: the unfolding of Nazi extermination

Both Foucault and Agamben conceived the Nazi regime as an entirely paroxysmal expression of the articulation between the sovereign power to make die and the biopowers, that is, a "making to die and making to live" as operating on the Aryan national body of the *Volk* (body-race), and for which Agamben (2019) adopted the term thanatopolitics. Foucault asserted that the biological racism that Nazism brought to its maximum expression had a psychiatric origin that must refer historically to the theory of degeneration, and that Nazism connected it with the ethnic racism endemic in Europe (FOUCAULT, 2007c), thus unleashing "the mechanics inscribed in the functioning of the modern state" (FOUCAULT, 2001, p. 235).

At the beginning of the twentieth century, eugenics, inspired by Francis Galton (1822- 1911) and by the rediscovery of the mendelian laws on the transmission of genetic inheritance, took charge of advocating the systematic application of new biological knowledge as a State policy against degeneration. There was already a fundamental shift, as Galtonian eugenics sought to curb degeneration and "improve the human race",



abandoning the term "species" from a supposedly universalist position (MAZUMDAR, 2005, p. 1). In 1907, with the forced sterilization of "defective" and "criminal" individuals (KEVLES, 1986), the United States (Indiana) inaugurated a new strategy of defense against degeneration that would become endemic.

In Germany, Emil Kraepelin, was one of the most important disseminators of eugenicist degenerationism, which there adopted the qualifier of "racial hygiene" (*Rassenhygiene*) (CAPONI, 2012; ENGSTROM, 1991). In 1908, he alerted governments to the uselessness of assistance programs for the "self-purification" of "our race", defined in contrast to another "race" that he already considered degenerate given its predisposition to "mental illness": the Jews (CAPONI, 2010). For Kraepelin (2007, p. 404) racial "self-purification" depended on the "poorer ability to survive" of the degenerated individuals of the *Volk*, so that, "unfortunately, our ever-expanding social welfare programmes have the effect of impeding" such a process. The strategy underlying this rationality involves "throwing to death" the carriers of degeneration (sovereignty) to "make live" the healthy body of the *Volk* (biopolitics).

Studies of the Nazi extermination coincide in highlighting a crucial event related to the deployment of the sovereign right to kill, which has a special significance for our analysis insofar it is produced from the assemblage between psychiatry and justice (FRIEDLANDER, 1995; LIFTON, 1986; MÜLLER-HILL, 1998). In 1920, the jurist Karl Binding and the psychiatrist and neuropathologist Alfred Hoche published a pamphlet that was widely discussed on in interwar German medical-psychiatric circles: *Allowing the Destruction of Life Unworthy of Life (Die Freigabe der Vernichtung Lebensunwerten Lebens)*. There, they proposed the concept of "lives unworthy of being lived" or "worthless lives" (*lebensunwertes leben*), on which the deployment of Nazi extermination would pivot two decades later, to defend as a State right, specifically, the murder of "those ballast lives and empty human husks that fill our psychiatric institutions" (apud READ; MASSON, 2005, p. 36). They conceived such murders as "a curative treatment" that would relieve the body-nation of having to sustain existences seen as having negative value (LIFTON, 1986, p. 46).

In this pamphlet Agamben (2019, p. 173) glimpsed "the first juridical articulation" between the sovereign power to kill and the biopolitical management of life, which reveals "the fundamental biopolitical structure of modernity" that is "the decision on the value (or on the disvalue) of life as such". He pointed out that modern biopolitics is "at



the crossroads between the sovereign decision on that life suppressible with impunity and the assumption of the care of the biological body of the nation", where the crossroads represents "the point at which biopolitics is necessarily transformed into thanatopolitics" (AGAMBEN, 2019, p. 180). He did not explain, however, why it was specifically from the juncture between psychiatry and justice that the "crossroads" was first expressed. In fact, his analysis initially excluded the asylum as a "state of exception", and then proposed a definition of "camp" that included it. Degenerationism does not appear in his study, only eugenics, but his very apparatus allows us to understand why, after this pamphlet, the first centers of extermination in Nazism would be psychiatric institutions (FRIEDLANDER, 1995; LIFTON, 1986; MÜLLER-HILL, 1998).

The "racial basis" that Hitler (2013, p. 276) intended to deploy against the principle of equality comprised a double axis: inequality between "peoples on the basis of the race to which they belong" and between "individuals within a given collectivity [...] on the basis of capacity and ability." It should come as no surprise that the ableist/sanist axis linked to the asylum was chosen by Hitler to deploy the first mass extermination. In this geographically delimited space where the state of exception constituted the rule (the asylum as a camp), there was already a concentration of imprisoned people reduced to a bare life, while the extermination of the non-Aryan population (mainly Jews and Gypsies) first required a legislative process for the dispossession of political existence (denationalization) in order to imprison them in concentration camps (AGAMBEN, 2019; ARENDT, 1999). If we also understand that psychiatry, whose constitutive core we have located precisely in the articulation between sovereign power and biopower (to make die *and to make live*), in its degenerationist turn had shifted its curative mandate to the body-race of the *Volk*, with respect to which the "incurables" were the enemy, then the broad collaboration and the scarce resistance of psychiatry in the slaughter is not surprising either (LIFTON, 1986; MÜLLER-HILL, 1998).

4. The Human Rights Regime

After World War II, the first human right formulated by the United Nations was that of non-discrimination on grounds of "race, sex, language or religion", set forth in the *Charter of the United Nations* (1945) during the San Francisco Conference, which subverted what



was agreed by the United States, Great Britain and the Soviet Union at the first Dumbarton Oaks Conference (1944) (LAUREN, 2013, p. 173). The second was the right to the "enjoyment of the highest attainable standard of health", defined as "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity", which was formulated in the preamble of the WHO Constitution, approved in July 1946 and effective as of April 7, 1948.

Brock Chisholm (1896-1971), the Canadian psychiatrist and delegate elected as the first director general of the WHO (1948-1953), in addition to being a decisive promoter of the international conversion of "mental hygiene" into "mental health" (BRODY, 2004), had a great influence on the conceptualization of the "right to health", which appeared in the first draft of the Constitution that he wrote and presented on April 5, 1946 (FARLEY, 2008). His response to the question of whether it would be positive to promote lasting world peace was also published in 1946. Chisholm defended the peace, although for him "a case might be made for wars if they could be fought by the old men and the mental defectives" since they motivate an economic growth, but this is not "even a remote possibility" and "the killing off of large numbers of physically fit, intelligent and socially minded younger men" is undoubtedly disadvantageous (CHISHOLM, 1946, p. 4). At the same time, the biologist and first Director General of the UNESCO, Julian Huxley (1946, p. 16-21), recognizing that human variability in terms of race and mental endowments was desirable to a certain extent, defended adjusting the "principle of democratic equality" to the eugenic fact of "biological inequality" as a task of world relevance for UNESCO, since "the existence of weaklings, fools, and moral defectives, cannot but be bad".

The progressive thinking of the time was closely connected to Nazi eugenic thanatopolitics: it agreed that its first victims of extermination -people labeled as "defective" and "unproductive"- were "worthless lives" that could be thrown or abandoned to death. In fact, the idea of killing "defectives", the "insane" and "criminals" had been raised both before and during the Nazi extermination in democratic states (JOSEPH, 2005; MÜLLER- HILL, 2000).

The UDHR, whose intercultural consensus was based on the common condemnation of the Nazi holocaust (MORSINK, 1999, p. 37), incorporated a regime of invisibility against oppression, which is perceptible both in the nature of "the human" on which it was based (Art. 1) and in the axes of non-discrimination it included (Art. 2). This



would perpetuate, among other things, sanism, ableism and heterosexism, without condemning the Nazi extermination that affected human beings captured in the psychiatric spectrum of "degeneration".

In the 1970s, this began to translate into an internal "state of exception" to the human rights regime, applicable to those who are codified under retardation, deficiency and mental illness, the psychiatric field par excellence. The *Declaration of the Rights of the Mentally Retarded* (DRMR, 1971), which enshrines legal incapacitation, criminal unaccountability and perpetuates confinement in total institutions, contains the original formulation in its Art. 7. This was extended to the "mentally disabled" as opposed to the "physically disabled", by means of the *Declaration on the Rights of Disabled Persons* (DRDP, 1975), which merged the old psychiatric differentiation of retardation vs. mental illness, in the same exceptional destiny:

Whenever mentally retarded persons are unable [...] to exercise all their [human] rights in a meaningful way or it should become necessary to restrict or deny some or all of these rights, the procedure used for that restriction or denial of rights [...] must be based on an evaluation of the social capability of the mentally retarded person by qualified experts [...] (DRMR, Art. 7.)

These non-binding but discursively universalizing declarations were enshrined in subsequent UN resolutions specific to "disability", until the CRPD. In parallel, the UN proclaimed *The Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care* in 1991. These discursively universalized legal incapacitation, and "admission" and "treatment" against a person's will in institutions whose "primary function is mental health care". The criterion that was reiterated to legitimize entry into the state of exception was that of dangerousness, which we find genealogically linked to "homicidal monomania": "to prevent immediate or imminent harm to the patient or to other persons". The same criterion is being defended by the ICCPR Human Rights Committee and the World Psychiatric Association, among others, against the mandate to abolish involuntary commitment and treatment derived from Art. 12 of the CRPD, where the dispossession of political existence and the production of the bare life on which it is possible to exercise violence with impunity (sovereignty) is articulated with the assumption of the care of the individual and of the national body, both in its anatomopolitical form (preventing harm to the individual-patient) and in its biopolitical form (preventing harm to third parties).



Ernesto Laclau and Chantal Mouffe (1987) demonstrated that the driving force of democratic culture is based on "equivalent displacements" of the enlightened principles of equality and freedom to new domains claimed by political identities organized around the denunciation of a common oppression. The common characteristic of these oppressed groups is that they were historically constructed as an otherness with respect to the privileged subject of Western-centered modernity, namely: the white, property-owning, heterosexual, sane, able-bodied man. Human rights, which enshrine a democratic order, as a product of historical contingency, and as rights based on the same enlightened values, do not escape this logic.

On the elaboration of the CRPD diverse struggles against oppression converged under the same medical-administrative category of governance, that is, disability, which historically brought together a wide heterogeneity of conditions and ways of being in the world as equally defective or incomplete on the basis of a normative type of human (TREMAIN, 2001). The CRPD is recognized as the convention with the greatest participation of organizations of people whose human rights were in question, and whose wide heterogeneity in terms of human conditions, histories of struggle and territorial realities, led them to constitute themselves in a *Disability Caucus* to prevent fragmentation and support each other in a single representative voice (REINA, 2008; WILDEMAN, 2013).

The *World Network of Users and Survivors of Psychiatry* participated in the founding and coordination of the *Disability Caucus*, where it stood out as the organization advocating for a more radical change with respect to previous regulations (MINKOWITZ, 2012). Its main lines of advocacy, the "legal capacity to make one's own decisions; prohibition of discriminatory detention; and prohibition of non-consensual interventions/treatment" (MINKOWITZ, 2015, p. 173), converge and are sustained in the authoritative interpretation of the CRPD Committee on Art. 12, *Equal Recognition before the Law*: a prerequisite for the exercise of civil, political, economic, social and cultural rights.

The Committee's interpretation recognizes universal legal capacity as an inherent attribute of the human condition that encapsulates, to paraphrase Hanna Arendt (1999), the "right to exercise one's rights". It breaks with the distinction between legal personality (being a holder of rights and obligations) and capacity to act (recognition of the agency to exercise them), on which the legal concepts that suspend the exercise of fundamental



rights and freedoms through the attribution of mental disorder or intellectual disability have been based: that is, legal incapacity, forced commitment and treatment, and criminal unimputability. It also repeals the medical-psychiatric criteria that underlie the sovereign decision to enter into the state of exception, including those of: "status or condition" (diagnoses), "functional" (assessment of mental capacity or competence), and "outcome" (dangerousness or anticipation of harm to oneself or others) (CRPD, 2014, para. 15).

Moreover, in order to enable the full inclusivity of persons with disabilities in the legislative apparatus, Art. 12 of the CRPD obliges states to establish support systems for the exercise of legal capacity and decision-making, which are conceived as the exercise of a positive right that can be rejected, based on the *will and preferences* of the person, and not on what is perceived as their best interests (CRPD, 2014, para. 29). The only *exceptio* it incorporates to allow substitution in decision-making of persons with disabilities about their own life is "when, despite considerable effort, it is not possible to determine [their] will and [...] preferences", a case in which the criterion of "best interests" must be replaced by the "best possible interpretation" of will and preferences (CRPD, 2014, para. 21).

If, like Foucault (2016, p. 78) we consider that, although "all power relations are invested by desires and [...] by schemes of rationality" and that fundamentally "what they put at stake, are wills", we have an hermeneutic principle through which to understand the mandate of the CRPD from the Foucault-Agamben intersection. This mandate has respect for the will of the person as its principle and limit. According to Foucault, the will is "the pure act of the subject", not because of its pre-foundational character, but because the subject is "an effect of the will", insofar as it is the act that fixes and determines the subject's own position in a more or less delimited framework of power relations and alternatives of action (FOUCAULT, 2016, p. 79). It is thus understood that the mandate of Art. 12. fundamentally restores agency and freedom, sealing the threshold that separates the exercise of power over a free subject, which is intrinsic to any social relationship, from the exercise of domination over a human being reified and reduced to impotence (FOUCAULT, 1988), for having been constituted as bare life, excepted from the human right, and thus thrown into regimes of violence with impunity (AGAMBEN, 2019).



5. Conclusion and final considerations

In this paper we have approached, by interweaving Foucaultian and Agambemian tools, and from a genealogical perspective, the *type of power* that is currently in dispute in the debates on human rights, mental health and the CRPD's mandate of equality before the law. We began the article by pointing out the democratic paradox of mental health, the fact that it was historically constituted at the same time as a human right, and as an exceptional field of human rights dilapidation. We can now affirm that this aporia merely expresses the articulation between sovereign power and biopower, which, under the paradoxical formula "to make die and to make live", is the core of psychiatric practice.

We have applied this hypothesis in various historical events of emergency concerning the psychiatric device; institutional emergence, forensic medicine, biological determinism, and in a line of thanatopolitical escape in the Nazi regime. Our hypothesis has proved productive in tracing and connecting these events. Significantly, it has explained how, with the degenerative notions of heritability and incurability, which identified patients as a biological danger to be eradicated (to make die), the curative mandate of psychiatry (to make live) was displaced through the preventive logic to the body-species, and later, with the emergence of eugenics, was projected in the German case onto the body-race of the *Volk* (racial hygiene). Our hypothesis has allowed us to explain from the understanding of the asylum as a "camp", that is, as a geographically delimited space where the state of exception becomes the rule, why the first Nazi mass extermination was deployed from the psychiatric space, which was the locus of invention of the gas chamber.

We have shown how the human rights regime participated in this rationality, inserted in the production of the human, and of the liminal and degraded conditions of humanity (worthless lives). It was fundamentally done through the interweaving of eugenics with the right to health, and through the progressive constitution of a state of exception in the framework of human rights specifically applicable by attribution of mental deficiency, disability or illness. We have also shown how the mandate of equality before the law of the CRPD recognizes the international historical struggle of psychiatricized persons, restoring freedom and agency through respect for the will and preferences of the person, and the unconditional recognition of their political existence, a threshold that



separates the exercise of power, intrinsic to all social relations, from the exercise of domination.

We conclude that the CRPD's mandate of equality before the law involves the abolition of a "state of exception", long inscribed in the human rights regime, which is constitutive of the modern democratic regime, and of the emergence and historical deployment of the psychiatric device, whose competencies of sovereign power are at stake in the contemporary dispute around Art. 12. This implies that the "making die politically" that partially forms the constitutive core of psychiatric power is in dispute. What is left if we eliminate it from the equation? "Make live or let die", characteristic of the discipline and biopolitics, which opens a potential space of "abandonment" to death. Nevertheless, the CRPD is completely contrary to the "fantasy of self-sufficiency" that underlies this individualistic logic whose point of attachment is (andro)western-centric and ableist (BUTLER, 2021, p. 47). Precisely because it starts from one of the subjects on which the "dependence" and "vulnerability" that characterizes our existence as bodies has historically been unilaterally deposited, and incorporates claims of the political subject of disability, it is the first convention whose conceptualization of freedom and autonomy maintains the anti-paternalistic "non-interference" obligation, characteristic of liberal autonomy, while recognizing that the exercise of agency is based on multiple relationships of interdependence, which include not only other persons, but also systems in which material, social and communicative infrastructures are imbricated.⁸ States must therefore implement support systems for the exercise of civil, political, economic, social and cultural rights of disabled persons, including community life, which is effectively a way to deepen the democratic values of equality and freedom.

The mandate of equality before the law particularly obliges states to provide persons with disabilities with support -voluntary- for the exercise of legal capacity, decision-making and community life, including in situations of "crisis" or intense suffering, repealing the traditional response that makes possible the exercise of violence with impunity, forced commitment and treatment. Practices justified by those who seek to perpetuate them -including the Human Rights Committee of the *International Covenant on Civil and Political Rights of the United Nations*- appeal to a principle of protection and

⁸ This wager, straddling between "liberal autonomy in its negative dimension" and "relational autonomy in its positive dimension", has been called "autonomy with support" by M. Àngels Porxas Roig (2019, p. 253). For a theoretical discussion about the problems of fully embracing relational autonomy without the limits imposed by the principle of non-interference, see Christman (2019), and, with respect to the CRPD, Beaupert (2018).



care that ultimately hides a securitarian and biopolitical locus that attributes to the state the preservation of the integrity of the body-individual and the body-population, "preventing a risk to oneself or to others". Is violence justifiable in the name of care? Or better, what legitimizes the instrumental use of violence, and how can its spirals be stopped?

Following Judith Butler (2021), who bases her analysis of state violence for the case of migratory and police racism on a recognition of the connection between sovereignty and biopolitics through the Benjamin-Fanon-Foucault crossroads -among others-, we can understand the trope that legitimizes forced commitment and treatment as a "tactical attribution" of violence, which is based on the construction of the experience of madness as a threat to "us", and of the subject of madness as an essentially violent being. We have shown that the identification of madness with social dangerousness is an artifice genealogically inherited from the concept of "homicidal monomania" as a discursive node that allowed the first French alienists to conquer the competences held by psychiatry in justice, whose knowledge-power effects led to the creation of the psychiatry of abnormality and the degenerative policies of social defense. In Butler's words (2021, pp. 11-20), we would be faced with a mechanism inverting" the relationship of violence based on the discursive node of "self-defense", which is what makes it possible to justify state violence as a *means* to achieve the more laudable end of "self-preservation".

In the particular case of madness, however, unlike in the cases of racism and war, the framework for the production of otherness does not completely conform to the antagonistic "us/them" scheme. States interpellate in the same gesture (risk to oneself or to others) the protection of the "you" (subject of madness) and the protection of the "we" (the rest of the bodies who are citizens of the state). This is because, as Foucault (2001, 2007) demonstrated, madness and abnormality cannot be entirely externalized as the other, and are constructed as an internal threat that stalks the identity of "the human" as a species, particularly with regard to the constructs of reason and will.

It is from this place that the CRPD is inscribed in a project of radical democracy that aims to recognize the multiplicity of the human. The abolition of forced commitment and treatment opens the possibility of imagining and deploying forms of support and accompaniment free of violence, de-medicalized, de-judicialized and radically democratic



for those who undergo experiences of intense suffering or madness (MINKOWITZ, 2021), which increases their recognition as constitutive of the human.

At the ontological level of the human, the mandate of equality before the law affects instrumental reason (CUNHA, 2017), the locus on which the legitimization of the various forms of exclusion and domination in colonial, patriarchal and capitalist modernity has pivoted. This has been shown, among other approaches, by decolonial theory through the concept of the "coloniality of being" (MALDONADO-TORRES, 2007; MIGNOLO, 1995; WYNTER, 2003) that has operated differentially in terms of gender and sexuality (LUGONES, 2011) and from the epistemologies of the south, through the concept of the "abyssal line" (SANTOS, 2007), and which has also been used with respect to the construction of the human in human rights (SANTOS; MARTINS, 2020). These approaches coincide in pointing out that the historical production of categories of subhumanity operated with the advent of western-centered modernity from the ontological attributions of "irrationality", "animality" and "savagery", which have proved capable of inscribing human groups in the project of the appropriation and domination of "nature", that great otherness of (andro)western-centered modernity, of which, however, we are part. The point of the dialogue here, which should be explored with greater attention in future works, lies in the fact that the experience of madness has also involved being constituted in the transition to (andro)western-centric modernity as an otherness of the human from its identification with "unreason", and with the "savage" and lurking world of "animality" (ÁLVAREZ-URÍA, 1983; CASTEL, 1980; COMELLES, 1981; FOUCAULT, 2015).

In our contemporary world, the abolition of forced commitment and treatment could curb the ubiquitous spirals of violence in which precarious, suffering and divergent bodies are embedded. Contemporary mental disorders often transmute the precarity and differentially distributed exposure of bodies to politically induced violence, which intersect with multiple axes of oppression, into neurochemical imbalances that neutralize the political. Psychiatrization, wherever it operates, captures any source of suffering and difference, showing itself especially incisive for those who still resist the contours of the privileged subject of modernity: women, racialized people, dispossessed classes, the criminalized, those with non-binary sexualities and identities, trans, infants, the elderly, disabled and of course, those who destabilize the constructs of reason and mental capacity, in whose axis of naturalized oppression this alchemy lies.



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Beatriz Pérez Pérez led the preparation of this article, and Margot Pujal i Llobart and Enrico Mora participated substantially in their diverse phases.

