

Biopolitics of disability and gender – symptoms from Finnish Law

In *Right to Maim* (2017) Jasbir K. Puar argues, that "[t]he globalization of disability as an identity through human rights discourses contributes to a standardization of bodily usefulness and uselessness" (p. xiv). Some, mainly white "able-disabled", says Puar, are able to inhabit this identity and gain usefulness while other, typically racialized bodies, are expected and accepted to become impaired as a normal consequence of labouring (p. xvi). Puar names this type of impairment debilitation, a framing beyond the ability-disability-binary, exposing the violence of the normalization processes in play.

Similarly to Puar, who is very critical of neoliberalism, Jemima Repo has in her *Biopolitics of Gender* (2015) argued that gender equality "entered EU policy as a technology of biopower that connected the reoptimization of gender with the prominence, competitiveness, and adaptability of Europe in an era of global neoliberalism" (p. 136). According to Repo, the incentive for policies and legal reforms has been the optimizing of fertility rates in aging Europe and the effective use of women as labour force.

In this paper, I investigate how these neoliberal biopolitical technologies are at work in gender equality and non-discrimination law and legal practice in Finland. Finnish law has been influenced both by international human rights law and EU law, but it does have its own peculiarities. In the field of disability law, the United Nations Convention has had a revolutionary impact. Both the definition of disability and the doctrine of reasonable accommodation have changed the legal landscape remarkably. On the other hand, drawing from Puar's theoretical analysis, the definition of disability closes off debilitated persons. In contrast to EU Law, Finnish Non-Discrimination Act does include also state of health, but it does not include an obligation to reasonable accommodation based on a person's state of health. State of health is thus a conflicted concept, on the one hand protecting against discrimination but on the other hand providing employers a legally valid reason of termination of employment contract. Whereas disability can be turned into a concept for inclusion on an individual level, state of health as a permanent debilitation leads to exclusion from working life.

Similar tensions can be seen in the field of gender equality law between maternity and parenthood. Drawing from EU Law, prohibition of discrimination based on maternity is very strong, but its scope of application is narrow. Discrimination based on parenthood is only considered indirect even though in Finland over 90% of parental and child care leaves are used by women. I argue that this is a mechanism described by Repo, dividing women into those who follow the neoliberal logics and to those who by their 'own free will' exclude themselves from its benefits and legal protection. In conclusion, even though disability-debility and maternity-parenthood binaries seem distant from each other at the first glance, the same logic of neoliberal normalizing violence dividing bodies into useful and useless, could be seen behind both of these legal problems.