The Beneficial Potential of Soft Biopolitics: Transplantation and Donation Policy in the EU

Abstract

To ensure public safety, preserve public order, and protect the rights of citizens, states must introduce measures of control and restriction. In the modern world, biopolitical policies such as mandatory vaccination, organ transplantation rules, and birth control measures are key mechanisms for doing so. However, scholars as well as average citizens are anxious about the dangers posed by biopolitics, especially in light of historical abuses (e.g., the ethnic cleansing and grotesque experimentation of the Third Reich) and the potential for authoritarian uses in contemporary society (e.g., use of DNA sequencing in state surveillance). Rejecting these forms of "hard" biopolitics, this paper argues that, in the 21st century, states must consider the need for soft biopolitics: that is, biopolitics implemented with the help of soft power and aiming to improve the wellbeing of the population and create conditions for the realization of the individual's potential. The paper presents the transplantation and donation policy of the EU as a good example of such a soft biopolitics strategy, which regulates a medical practice in a way that is respectful of human rights and geared toward increasing the wellbeing of the population. Soft biopolitical policies can benefit citizens (such as through increasing life expectancy), as well as states (by enabling control of population size, maintaining law and order, and improving public health). Additionally, while classical constraints imposed by the state involving forms of coercion and explicit control of human capital might lead to resistance or unrest, soft biopolitical policies can fulfill similar goals while avoiding such forms of conflict. Soft forms of biopolitics may benefit state policy and may potentially increase democracy development.

Biopolitics, as introduced by Michel Foucault, helps to analyze how state power is related to reproduction, population, public health, individual bodies, and public welfare. As an area of study, it allows us to understand the ways in which a more equitable political system could be created. There are several reasons why biopolitics should be taken into consideration within political theory and practice. To start with, applications of biopolitics can help with the governance of the population: institutions may manage and regulate human capital flow, especially in relation to reproduction and public health, in turn helping to comprehend how governments exert power and influence over death and birth rates and overall well-being. Secondly, biopolitics shapes public health policies, helping to understand how and why governments implement sanitary regulations and vaccination programs, conduct disease surveillance, and manage the whole system of healthcare. Also, it's important to trace who aid recipients are and how aid requests are processed by public health systems. Thirdly, biopolitics investigates how power may be exercised over bodily autonomy, such as in the areas of sexual and reproductive choices, HIV/AIDS prevention policy, sexual education, and LGBTQ+ rights. In addition to the above, ethical questions about biopolitical limits and boundaries along with socio-political inequality (such as gender, race, disability and socioeconomic status [SES]) are topical issues for democratic development and human rights.

biopolitical potential vs biopolitical backlash

However, despite the beneficial promise of biopolitics addressed above, in much of the twentieth century biopolitics was abused by politicians to gain political supremacy and power. Some prominent examples include the Third Reich's crimes against mankind, the one-child policy in China, the sterilization policy of Gypsy women in Czechoslovakia since 1973, and other sterilization practices in Russia, the USA, Canada, Japan, India, and China directed against racial

minorities and mentally disabled people. For instance, sterilization was first introduced in the United States at the beginning of the 20th century. In California alone, from 1909 to 1964, 20,000 citizens underwent sterilization surgery. And in North Carolina, there were 8,000 thousand people who had been sterilized by the state by 1973.

The contrast between these abuses and the earlier-discussed benefits of biopolitics can be understood by distinguishing what we might call “hard” biopolitics from “soft” biopolitics. The main features of a hard biopolitics are: coercive nature, threat to human health and reproduction, danger to life, targeting certain groups of the population, and unethical research or procedures. In contrast, soft biopolitics is characterized by being voluntary (rather than coercive), being directed toward the whole population (rather than discriminating against specific groups), and being invested in increasing the democratic development and overall well-being of the population. Unfortunately, the abuses of hard biopolitics have led biopolitics as a whole to be perceived as a more negative phenomenon in the political system. It can be said that the twentieth century inflicted a huge reputational shock regarding biopolitics rooted in the physiological damage that hard biopolitics inflicted on many populations, contributing to the unpopularity of biopolitics and its negative perception.

However, the theoretical foundations of biopolitics do not involve a necessary connection to the abuses of hard biopolitics. “Biopolitics" as a term was introduced into scientific use by the French philosopher Michel Foucault in the last third of the 20th century. Foucault defined the concept in 1976 in his work *The Birth of Biopolitics* as follows:

> I understand that starting from the XVIII century, they (governments) tried to rationalize the problems posed to government practice by

> phenomena inherent in all living people who make up the population: health, hygiene, fertility, life expectancy, offspring... We know what increasing place these problems have occupied since the 19th century and what political and economic goals they constitute to this day. It seems to me that these problems are inseparable from the framework of political rationality in which they arose and found their sound.

Thus, in Foucault's original formulation, biopolitics is related to the main issues of political philosophy, such as power, good governance, social norms, and values. Biopolitics involves considering a person in the context of society, identifying and analyzing those mechanisms that allow society to evenly distribute biological resources and manage the medical, ethical, and legal spheres of people's lives. Despite the political backlash associated with biopolitics historically, particularly in the 20th century, I want to consider the positive aspects of a soft biopolitical policy aimed at improving the well-being of the population. In other words, by implementing soft forms of biopolitics instead of hard ones, modern states may successfully prioritize the well-being of the population. In particular, I will examine the transplantation and donation policy of the EU as a good example of such a soft biopolitics strategy, which regulates a medical practice in a way that is respectful of human rights and geared toward increasing the wellbeing of the population.

biopolitics for human rights

Nowadays, with the population boom, people need health services more. States are committed to ensuring that their citizens have equal rights to access to medical care. According to the UN Universal Declaration of Human Rights, everyone has a right to an adequate standard of living for themselves and their families and the right to social security. They are entitled to economic, social

and cultural help from their government. And we can bridge soft biopolitics and human rights. Here, I would like to start with how democracy and human rights are usually perceived today.

Steven C. Poe and C. Neal Tate in their quantitative research "Repression of Human Rights to Personal Integrity in the 1980s: a Global Analysis". They demonstrate the dependence of two variables: political repression and the level of democratic development. The more repressions there are, the less democratic society is and vice versa. Technically, this is an undeniable truth, but is this how we should understand democracy in the modern world? The authors pay attention to personal autonomy. In other words, if a person is not repressed, his body is safe from interference by the political system, everything is in order, and society is democratic. If you have not been directly abused, it means democracy and human rights. However, there is another approach we can find in Tony Evans's "If Democracy, then Human Rights". Evans stated that since the beginning of the XXI century, democracy and human rights are usually similar. But in fact, it's incorrect. Potential economic, social, and cultural rights associated with specific development projects supported by international and domestic institutions may be abused.

The idea is that human rights are not only about personal autonomy but also a set of social-economic and political rights the state provides. People should have various rights to make choices, participate in political life, express their opinions and demand the fulfillment of duties from the system that took specific responsibility for them. Not just personal autonomy alone, but political and socio-economic rights are the bedrock of democracy.

States have to create special conditions in which citizens can have the opportunity and choice to benefit themselves using the resources from the

system. Then, they do have human rights. Biopolitics is a great tool to carry it out. People should have a right not to be abandoned by the system in a difficult life situation. The state can offer one of the most tempting solutions - an attempt to increase life expectancy to signal that it cares about its citizen's well-being.

Interestingly, biopolitics may be deeply rooted in democratic development. The demand for justice and respect for democratic norms and human rights is steadily growing. For example, the "justice cascade" research highlights the trend of holding political leaders accountable for human rights violations through domestic and international prosecutions, which has expanded in the past three decades and resulted in convictions of high-level state officials. While people demand justice, governments must develop a policy to support the population's needs. A policy that respects and develops human rights and freedoms affects democratic development, creating a more just society.

Today, such a policy is being implemented by the European Union, which seeks to create a system that can provide citizens from different European countries with a centralized donation and transplantation system. By doing that, the EU proves Evans' idea of human rights and demonstrates that this political-economic entity (the EU) cares. Ensuring public health by giving a chance to increase life expectancy and enhance life quality is a soft form of biopolitics. It benefits the people themselves, and therefore, they may support it.

transplantation and donation policy in the EU

Organ donation and transplantation are two of the critical issues of the European Union in the framework of biopolitics. Vaccination programs, standards of hygiene, and improvement of urban and rural infrastructures within the

framework of biopolitics are now being supplemented by a new developing phenomenon - transplantation policy. The problem of organ transplantation is relevant in modern medicine, and states are trying to optimize their medical systems to provide transplantation services more efficiently. In 2008-2015, the European Parliament implemented a program to increase the accessibility of human organs for health needs (transplants). The main principle of the EU transplantation policy is to allocate organs to patients based on medical criteria without any discrimination or bias (such as age, race, or gender). To achieve this, the EU provides a standard set of guidelines for procuring and distributing organs. This system aims to connect all member states. The EU established the European Donation and Transplantation Network (EDTN) to facilitate cooperation and coordination among EU Member States in organ donation & transplantation and developed a European Action Plan to promote such a policy in the EU. This plan outlines measures to raise awareness, improve infrastructure and improve quality and safety standards; designation of European Reference Networks (ERNS), which are virtual networks bringing together healthcare professionals and experts from all over Europe to share knowledge and coordinate care for patients with rare and complex diseases, including those requiring organ transplantation.

Access to the Donation and Transplantation Politics of the EU is available on the FOEDUS platform (Facilitating the exchange of organs donated in EU member states). According to the European Parliamentary Research Service (EPRS), 34,221 organ transplants have been performed by 2018, and another 150,000 patients are on the waiting list. 20% of the transplanted organs are kidneys. Next is the liver, and third place is the heart, then follows the lungs, stomach, etc. This breakdown happens because European donation policy consists of three types: Donor after brain death (DBD) - a donor with severe mental disorders who continues only physical existence; donor after circulatory

death (DCD) - a donor after actual death and living donor - a living donor who is ready to donate body tissues, organs, etc . not ending his life. A living donor is a severe problem that researchers should study more because scientific ethics prohibit conducting experiments that may cause physical or moral harm to the research object. The EU uses a legal framework to regulate donations, transplants, and the transfer of organs.

The following essential aspect is the donation systems used by the EU member states. Today, EU member states have national or regional donation systems. Currently, there are three systems: an opt-in system or explicit (informed) consent system and an opt-out system, which is related to the principle of presumed consent and requires a specific request to refuse transplantation before death. The third system is a mixed system in which it is possible to document personal wishes regarding particular organs. The opt-out system is dominant in the EU and was implemented by Austria, Belgium, Bulgaria, Czech Republic, Croatia, France, Greece, Spain, Sweden, Italy, Latvia, Luxembourg and others. Today's exceptions are Cyprus, Denmark, Germany, Ireland, Lithuania, the Netherlands, and Romania. Slovenia adheres to a mixed system, but all these systems are flexible and adjustable. For instance, in 2020, the Dutch parliament tried to change the system to opt-out and sent notifications to citizens with a proposal to switch to a new system. It caused a backlash and sparked a discussion about the forced removal of organs from citizens. As a result, on July 1, 2020, the legal status of the donor in the Netherlands changed from informed consent to presumed consent. We can observe that despite the discussion on the issue of switching to the opt-out system, the government eventually adopted a more convenient system for collecting transplant material. The opt-out system is preferable for the EU since it eliminates the additional collection of each consent (as in the opt-in system), automatically sending transplant material and assigning each donor status. The EU has more

transplants available for public healthcare needs. The opt-out solves this problem radically by automatically replenishing the number of organs available. As a result, during the European Parliament's Transplantation and Donation policy from 2008 to 2015, the number of available organs increased by 21% and the number of transplant operations by 17%.

Cross-border transplant exchange plays a crucial role in optimizing transplantation. Nowadays, there are three central organ exchange organizations in Europe: Eurotransplant (Austria, Belgium, Croatia, Germany, Hungary, Luxembourg, the Netherlands and Slovenia), Scandia Transplant (Scandinavian countries) and The Southern Alliance for Transplants (SAT) (France, Italy, Portugal, Spain, Switzerland and the Czech Republic as an observer). Together, they cover approximately 400 million people. The Southern Alliance (SAT) is the most significant agent covering the needs of European healthcare. The most active donor participants are France, Spain, and Italy. The reason could be population breakdown. More people of retirement age need organs more, and demand for transplant system services is growing faster here.

Meanwhile, the most extensive transplants happened in the Czech Republic, Italy and France. As of May 2023, 18 EU countries have one or more FOEDUS EOEO organizations in their territories. The absence of organizations in certain countries can be explained by the size of some countries, which makes it economically impractical to create an organization while it is possible to reach another state in a short time. The FOEDUS EOEO platform is an innovative IT resource where patients and doctors can request the organ. After this, they launch the process of organ search. Nowadays, Portugal is the leader in the number of FOEDUS organizations and has six offices. The FOEDUS transplantation system is highly standardized. The way it was designed on the territory of the whole European Union increases the effectiveness of the

transplantation policy and builds a flexible system of organ mobility across all European regions: south, center, and north.

In October 2023, 25 European medical organizations from different countries called to renew the EU action plan on organ donation and transplantation in the 2024-2029 mandate. The argument is that during the period of the EU's policy to increase the availability of organs, the number of organs from living donors increased by 29 percent and by 12 from deceased donors. But those numbers dropped after the first EU action plan expired and COVID-19 happened. As a result, organ shortages remain high in the EU and 18 patients die every day while waiting for a transplant. Having demonstrated success, the leaders of science and medicine in Europe insist on updating the EU action plan to stabilize the transplantation policy. More than 91 stakeholders requested the European Commission to realize an enhanced action plan without delay.

Conclusion

What we can observe is that increasing human organ availability is a challenge governmental institutions are solving to optimize health care systems. On the one hand, it saves lives and money. The policy requires constant updates and renewals otherwise it cannot be legally authorized. Because of that, it requires special attention from the European Commission to make European transplantation a new priority. It is highly recommended to continue the policy of transplantation and donation as a soft biopolitical force within the European Union because it impacts equity and trust in public institutions. Soft biopolitics should again become a priority in the 2024-2029 mandate to benefit the system itself and draw positive attention from the public. Potentially, the implementation of soft biopolitics will help to mitigate social inequality by increasing the accessibility of medical care for all regardless of socioeconomic status. This will greatly benefit public institutions and create a more just

society. The case of the EU donation and transplantation action plan demonstrates the interstate level of such interaction which can be further developed to a very high standard. In the future, this may become the basis for guiding the implementation of soft biopolitics around the whole world. Still, on the other hand, it is a debatable issue since it affects the ethical aspects.

Sources

1. "Directive 2010/53/EU of the European Parliament and of the Council on quality and safety of organs intended for transplantation" Accessed December 7,2023

2. "Eurotransplant membership. Eurotransplant" Accessed December 15, 2024. URL: https://www.eurotransplant.org/region/new-member-states/

3. "Eurotransplant region. Eurotransplant" Accessed December 15, 2024. URL: https://www.eurotransplant.org/region/eurotransplant-region/

4. "FOEDUS Participating countries". Accessed December 15, 2023. URL: foedus-eoeo.eu/#/public/country/AT

5. "Guide to the quality and safety of organs for transplantation, EDQM, Council of Europe, 2018" (as adapted from the Commission's 2017 study on the uptake and impact of the EU action plan) Accessed January 5, 2024.

6. "NEWSLETTER TRANSPLANT International figures on donation and transplantation 2018". Accessed January 15, 2024. URL: www.europarl.europa.eu/EPRS/Newsletter_Transplant_2019.pdf.

7. "Open Letter Call for a Renewed EU Action Plan on Organ Donation and Transplantation in The." n.d. Accessed February 2, 2024. https://ekha.eu/wp-content/uploads/2023/10/EKHA_Open-letter-on-ODT_October-2023_PDF-2.pdf

Literature

1. Foucault, Michel. 2008. *The Birth of Biopolitics Lectures at the College de France, 1978-1979*. New York: Palgrave Macmillan.

2. Kathryn Sikkink and Hun Joon Kim, "The Justice Cascade: The Origins and Effectiveness of Prosecutions of Human Rights Violations," *Annual Review of Law and Social Sciences* 9 (2013): 269-285.

3. Steven C. Poe and C. Neal Tate. 1994. "Repression of Human Rights to Personal Integrity in the 1980s: A Global Analysis" *American Political Science Review* 88 (4): 853-872.

4. Tony Evans. 2001. "If Democracy, Then Human Rights?" *Third World Quarterly* 22 (4): 623-642.