

1-1-2018

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Recommended Citation

Sweeney, Kelly (2018) "Race and Reproductive Rights: Eugenic Practices Throughout 20th Century American History," *Susquehanna University Political Review*: Vol. 9 , Article 4.

Available at: <https://scholarlycommons.susqu.edu/supr/vol9/iss1/4>

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Race and Reproductive Rights: Eugenic Practices

Throughout 20th Century American History

By: Kelly Sweeney

I. Introduction

“...sabes todo está mal...”³ Maria Hurtado, one of numerous victims of coerced sterilization during the twentieth century, returned in 2015 to the surgical ward where she had been sterilized as a young woman. Her daughter asked what made her sad about being there, and Maria replied, tears streaming down her face, “...pues, sabes? Pero tengo *tristeza*.”⁴

The cold, systematic approach that Los Angeles County Hospital took with its obstetrics patients throughout the twentieth century created an atmosphere of fear for Hispanic mothers. Dr. Karen Benker was a surgical resident at LA County during this era, and she described the obstetrics ward as an impersonal assembly line that left patients feeling like they had been raped. Maria Hurtado described the traumatic circumstances surrounding her emergency cesarean, saying that the doctors refused to operate before the consent paper for a tubal ligation procedure was signed. She was told “...you better sign those papers or

³ Translation: “You know everything looks bad...” Quoted from Renee Tajima-Peña, *No Más Bebés*.

⁴ Translation: “Who knows why? But I do feel sad.” Quoted from Renee Tajima-Peña, *No Más Bebés*.

your baby probably could die here.”

Hurtado and the nine other plaintiffs in the *Madrigal v Quilligan* case were undocumented immigrants who were sterilized at the Los Angeles County-USC Medical Center without informed consent. Consuelo Herмосillo described awakening after a tough delivery to find a note on her chart that read “No más bebés por vidas.”⁵ These stories are representative of hundreds of women who experienced sterilization abuses in California.

Throughout the 20th century, American cultural values highlighted the perceived need for population control, which eugenicists promoted as “family planning” efforts. Eugenicists’ focus on white women’s fight for reproductive freedom and family planning meant a silencing of Latina women’s simultaneous fight for reproductive justice. A representative example is the case of *Madrigal v Quilligan*, in which ten women fought against the injustice they had suffered at the LA County Hospital. By examining concurrent experiences of white and Latina women throughout the twentieth century, we can observe the dissonance between these two groups and what they were trying to accomplish.

Throughout this project, I will use Supreme and Circuit Court decisions to aid in the discussion of the debate over sterilization. I will track the progression of scholarly conversation about eugenics and reproductive rights throughout the twentieth century, and how it impacted white and Latina women differently. Using Critical Race Theory, which applies a critical examination of society and culture to the intersections of law, race, and

⁵ Translation: “No more babies for life.” Quoted from Renee Tajima-Peña, *No Más Bebés*.

power, I will analyze second wave feminism and its impacts on Latina women. As scholars of Critical Race Theory have discussed, it is not possible to ignore the influence of racism in eugenic policies.

I have compiled primary source information related to court decisions that will be important in understanding the debates I am discussing. These cases had significant influence on the discussions and discord that developed between white and Latina feminists. I will also explore scholarly conversation that illustrates these issues, before relating the concepts to the specific experiences of the ten plaintiffs in the *Madrigal v. Quilligan* case.

The historiography of this topic relates to societal attitudes about eugenics. I track the progression of eugenic policy making in America from its foundation as a revered scholarly position in the beginning of the twentieth century to its de jure removal in the Post-World War II period. Finally, I look at the legacy of eugenics and the modern development of intersectionalism in the end of the twentieth century.

II. Early 20th century

The concept of eugenics, which is sometimes referred to as “scientific racism,” was introduced during the late nineteenth century as an outgrowth of Darwinism.⁶ By the beginning of the twentieth century in America, eugenics was a very popular subject in the public discourse – the Human Betterment Foundation and the American Eugenics Society were both founded before the end of the 1920s.⁷ Prominent scientists and politicians

⁶ Alexandra Stern. *Eugenic Nation: Faults and Frontiers of Better Breeding in Modern America*. University of California Press, 2005.

⁷ E. S. Gosney. 1855-1942. Sterilization for Human Betterment: a Summary of

promoted the theory of racial hierarchy, which influenced commonly held attitudes about different groups in our society. Societal attitude about social hierarchy has waxed and waned throughout decades, but remained particularly salient throughout the twentieth century in American life.

In 1910, the Senate Immigration Commission released their *Dictionary of Races or Peoples*.⁸ This document was created in order to establish the basis of racial categorization of immigrant populations moving into the United States. The introduction brags that “...no work of this nature has ever before been published in the English language, although related works have been printed in the French, German, and other languages.”⁹ The Dictionary takes great care to codify each ethnic and national grouping of people by categories such as Caucasian, Mongolian, Alpine, Ethiopian, etc. It is presented as a reliable, scientific document.

In 1924, the legislature of Virginia passed a law legalizing the sexual sterilization of individuals in the care of state institutions.¹⁰ Virginia was far from unique in establishing this type of legislation. Many states had laws on the books that effectively did the same thing, allowing for the legal sterilization of inmates and patients of psychiatric care facilities without their informed consent prior to the procedure. This was not perceived by society as

Results of 6,000 Operations In California, 1909-1929. New York: The Macmillan Company, 1929. Original from University of California.

⁸ U.S. Congress. Senate. Immigration Commission. *Dictionary of Races or Peoples*. Immigration Commission: Report. 61st Cong., December 5, 1910.

⁹ *Ibid.* 2.

¹⁰ Chapter 46B of the *Code of Virginia*. 1095h-m (1924).

a heinous crime, but rather as normal, as it continued to be throughout the following years.¹¹

Both the Dictionary and the legal basis for forced sterilization hint at our society's views on eugenics in the early part of the twentieth century. Another telling example is found in the writings of Margaret Sanger, a prominent feminist writer and activist. In her book *Woman and the New Race*, Sanger explored the solution to the problem of overpopulation – contraception. This solution was not presented as wholesomely as we might assume given our modern biases, but rather as a promotion of eugenics.¹² In the book, Sanger refers to African Americans as “defectives” and contraception as the solution to a problem. The influence of race is clear regarding those that Sanger wrote about accessing contraceptives.

E.S. Gosney, founder of the Human Betterment Foundation, released a report on the progress of his organization in 1929. The book referred to the “modern, economic and eugenic problems” of society.¹³ It discussed voluntary and involuntary sterilization and provided a statistical analysis of the hundreds of such operations performed in California in the previous twenty years. These contemporary reports were incredibly positive in tone about the process of eugenics, portraying it as a force of empowerment and progress in society. Modern historians are not in agreement with this assessment.

In *Eugenic Nation*, Alexandra Stern acknowledges the role that eugenic practices

¹¹ “Forced Sterilization is on the Increase,” *The Brownsville Herald* (Brownsville, TX), Mar. 12, 1969.

¹²Margaret Sanger. *Woman and the New Race*. New York: Brentanos, 1920.

¹³E. S. Gosney 1855-1942. *Sterilization for Human Betterment: a Summary of Results of 6,000 Operations In California, 1909-1929*. New York: The Macmillan Company, 1929. Original from University of California.

played in the creation of the Panama Canal.¹⁴ She explains that some scholars of the early twentieth century created distinctions between the practices of eugenics and public health campaigns. These scholars set up public health campaigns (and by extension, family planning efforts) as a positive, people-centric movement. However, Stern argues, these campaigns were in fact established on the basis of eugenic thought, which the movement was trying to separate itself from. While eugenics was an ugly part of the past, public health was branded “under the Progressive banners of improvement, efficiency, and hygiene, with all being motivated by the idea that the application of wide-ranging scientific knowledge could optimize American society.”¹⁵ Underneath, however, lurked the “promotion of the sterilization and segregation of the ‘unfit’.”¹⁶ “Public health” was used as a form of capitalistic conquest by the powerful over the poor, and by groups artificially deemed racially ‘superior’ over the inferior groups.

Carrie Buck was a young woman who lived in the Virginia State Colony for Epileptics and Feeble-minded and was ordered to undergo compulsory sterilization for being “feeble-minded.”¹⁷ The justification for this procedure was found in Virginia state law. Carrie’s case went to court. In 1927, Justice Oliver Wendell Holmes Jr. ruled in the *Buck v Bell* case that compulsory sterilization of those deemed ‘unfit’ did not violate the Fourteenth Amendment.

¹⁴ Alexandra Stern. *Eugenic Nation: Faults and Frontiers of Better Breeding in Modern America*. University of California Press, 2005.

¹⁵ Ibid.

¹⁶ Ibid

¹⁷ *Buck v. Bell*. 274 U.S. 200 (1927).

The decision effectively endorsed the use of negative eugenics in the United States by upholding as constitutional the action of sterilizing someone deemed unfit. This case was important in the precedent of sterilization abuse, and the ruling has never been overturned. Justice Holmes wrote in his opinion that:

...it is better for the world, if instead of waiting to execute degenerate offspring for crime, or to let them starve for their imbecility, society can prevent those who are manifestly unfit from continuing their kind. The principle that sustains compulsory vaccination is broad enough to cover cutting the Fallopian tubes. *Three generations of imbeciles are enough.*¹⁸

This chilling last point – “...three generations of imbeciles are enough,” is especially telling about commonly held beliefs about reproductive rights at this time. If the people in question weren’t considered desirable by prominent eugenicists or policy makers in society, their reproductive rights were not respected.¹⁹ It is clear based on contemporary evidence that Justice Holmes was not the only person that felt this way; in fact, numerous states had laws in place that allowed physicians and institutions to forcibly sterilize patients in order to prevent overpopulation.²⁰ This concern about overpopulation began with eugenicists, and would continue throughout the century. Birth control was still in the developing stages, but

¹⁸ *Buck v. Bell*. 274 U.S. 200 (1927).

¹⁹ Jennifer Nelson. *More than medicine: a history of the feminist women’s health movement*. New York: New York University Press, 2015.

²⁰ “Forced Sterilization is on the Increase,” *The Brownsville Herald* (Brownsville, TX), Mar. 12, 1969.

it was more available to white women, while women of color were encouraged or coerced into taking more permanent steps to limit future conception.²¹

III. Mid-late Twentieth Century

Moving into the latter half of the twentieth century, the question of reproductive rights and race remains just as salient. In many ways, societal attitudes about race and bodily autonomy remained the same in this period as it had been during the 1920s. This is ironic, considering America's great 'moral victory' over the eugenicists in Germany during World War II. The Third Reich utilized negative eugenic policies by killing or sterilizing all undesirable citizens (i.e. Jews, homosexuals, and many other groups) from reproducing. They also utilized positive eugenic policies by encouraging young Germans who fit the Aryan ideal to reproduce in order to create the Master Race.²² American citizens condemned these behaviors as atrocities while ignoring the legal structures that upheld eugenics in America – a system which actually formed the basis and inspiration for the Third Reich's eugenic campaign.²³

In the post war period, American physicians were still performing involuntary or coerced sterilization procedures in hospitals and institutions. Additionally, American eugenicists and pharmaceutical companies were engaging in a sterilization campaign

²¹ Julius Paul. 1965. "Three Generations of Imbeciles Are Enough: State Eugenic Sterilization Laws in American Thought and Practice." Unpublished manuscript. Washington, D.C.: Walter Reed Army Institute of Research.

²² Ko, "Unwanted Sterilization and Eugenics Programs in the United States," on pbs.org. January 29, 2016. Accessed April 4, 2017.

²³ Ibid.

throughout the U.S. territory of Puerto Rico.

Clarence Gamble was President of the Pennsylvania Birth Control Federation, founding member of the Human Betterment League and later of Birthright, heir to the Proctor & Gamble/Ivory Soap fortunes, and correspondent and colleague of Margaret Sanger.²⁴ He had a lot of vested interest in eugenics and the conversation about reproductive rights in America and its territories.

In 1937, Puerto Rico enacted Law 116, which was a eugenics sterilization law that was not repealed until 1960. This law, along with the forces of U.S. colonialism in Puerto Rico, created the conditions for a eugenics campaign in Puerto Rico. The economic situation in Puerto Rico was abysmal – 2% of the population owned 80% of agricultural lands by 1925.²⁵ This created a population that was massively impoverished and without resources. American pharmaceutical companies and other agents, like the Pennsylvania Birth Control Federation and the Human Betterment League, blamed overpopulation for these ills and convinced women that the only way to control the situation was to undergo sterilization procedures to control the population.

By 1976, the U.S Department of Health, Education, and Welfare reported that over 37% of women of childbearing age in Puerto Rico had been sterilized. The procedure was so common that it was known simply as “*la operación.*” The vast majority were in their

²⁴ Briggs, “Debating Reproduction: Birth control, eugenics and overpopulation in Puerto Rico, 1920-1940,” in *Reproducing Empire: Race, Sex, Science, and U.S. Imperialism in Puerto Rico* (Berkeley: University of California, 2002): 74-108.

²⁵ *Ibid.*

twenties.²⁶ Many hospitals in Puerto Rico, which were owned by Clarence Gamble, would not admit women for childbirth unless then consented to the procedure. Scholar Harriet Presser described the economic conditions created by massive Puerto Rican immigration to the mainland United States and sterilization of the remaining population, calling the situation economic genocide.²⁷

In 1965, the Supreme Court ruled on the *Griswold v Connecticut* case, a landmark case in the exploration of privacy rights and the Fourteenth Amendment. This case had significant implications in the reproductive rights movement. Its primary focus, however, was on white women and their experiences.²⁸ The case was a landmark in interpretations of privacy and due process.

In 1968, Paul Ehrlich published a book called *The Population Bomb*. He asserted in this book that the world needed to be making major changes to the way that population growth was handled. Ehrlich described his ideas about food insecurity and how it would increase if the population continued to increase.²⁹ While this argument sounds ridiculous in modern context, it was very persuasive, and represented the prevalent fear of overpopulation that many Americans shared. Further, a lot of Americans were convinced that they were in danger of being outrun. A lot of the fear and anger expressed by this book

²⁶ Ibid.

²⁷ Harriet B. Presser. "The Role of Sterilization in Controlling Puerto Rican Fertility." *Population Studies* 23, no. 3 (1969): 343-61. doi:10.2307/2172875.

²⁸ *Griswold v. Connecticut*. 381 U.S. 479 (1965).

²⁹ Paul Ehrlich. *The Population Bomb*. San Francisco: Sierra Club/Ballantine Books, 1968.

was directed at immigrant populations. Ehrlich wrote that “We must have population control at home, hopefully through a system of incentives and penalties, but by compulsion if voluntary methods fail.”³⁰

Filmmaker Renee Tajima-Peña explores the contempt with which white Americans viewed undocumented immigrants during this period.³¹ A 1965 training film for doctors discussed “the need for population control, (which) is an obligation of responsible medical practice.” There was increasing panic about population growth concurrent with the publishing of Paul Ehrlich’s “The Population Bomb,” which was the impetus for creating the population control lobby.³² Ehrlich’s views in this context express the commonly held beliefs that something needed to be done about population growth in America.³³

In 1973, the Supreme Court ruled on *Roe v. Wade*. This case was a landmark on the issue of abortion. The Supreme Court ruled that the right to privacy guaranteed by the Fourteenth Amendment extended to a woman’s right to decisions about her reproductive health and abortion rights. This case did not reference eugenic policies, but it did make progress on a woman’s right to bodily autonomy. Just 3 years after the ruling in *Roe v Wade*, in which a woman’s right to choose was protected, the decision in the *Madrigal v Quilligan*

³⁰ Ibid.

³¹ Renee Tajima-Peña, *No Más Bebés*.

³² Paul Ehrlich. *The Population Bomb*. San Francisco: Sierra Club/Ballantine Books, 1968.

³³ Jenna M. Loyd. "Population Scares and Antiviolence Roots of Reproductive Justice." In *Health Rights Are Civil Rights: Peace and Justice Activism in Los Angeles, 1963–1978*, 153-80. University of Minnesota Press, 2014.

case was made.

IV. *Madrigal v. Quilligan*

“You speak English they treat you one way, you don’t speak English they treat you another way.” This was Maria Hurtado’s account of her experiences in the obstetrics ward at LA County Hospital, but also more broadly about her experiences in America in general. She and the other plaintiffs in *Madrigal v Quilligan* all reported similar, disturbing stories of their treatment. Consuelo Hermosillo, for example, overheard a doctor telling a nurse “...we’re saving the planet by keeping these people from reproducing any more than they already are.”³⁴ Another plaintiff heard the doctors outside her room saying “...this one has so many kids. We’ll just sew her up, so she won’t know that we did the operation.” These statements are representative of their treatment of these women as well as their perceived value in society.

Dr. Bernard Rosenfeld was a surgical resident during the time of the sterilization abuses at LA County. He became a whistleblower when he became aware of how patients were being treated in this ward. Rosenfeld’s own grandfather was a survivor of the Holocaust, and he spoke about the way that Nazis sterilized unworthy Jews and gypsies.³⁵ He spoke out against Dr. Quilligan and the procedures because he felt an obligation to look out for these women whose rights were being violated.

Attorney Antonia Hernández was a young lawyer when she heard about the case. She

³⁴ Renee Tajima-Peña, *No Más Bebés*.

³⁵ *Ibid.*

spent weeks going through the relevant files and trying to find her plaintiffs in order to build the case against Dr. Quilligan. There were a lot of obstacles in her way, including incomplete or missing records, women for whom the statute of limitations had expired, and women who were unwilling to relive the trauma or tell their husbands about what happened to them. Finally, she found the ten women that became plaintiffs in the case and began to work with them.³⁶

Hernández described Quilligan as being incredibly precise, cold, and indignant that he was being challenged by this lawsuit.³⁷ According to Karen Benker, a resident, Dr. Quilligan had spoken about getting a grant to see “how low they could cut the birthrate of the negro and Mexican population.”³⁸ When questioned during court proceedings, he insisted that he and his doctors never pushed everyone to get a procedure they didn’t want or understand. He asserted that every woman had the right to make her own choice. He said that he “wasn’t there for each one” and therefore could not make any sure statements, but he “(doubted) seriously” whether any of the stories were true.

All of the injustices that these patients faced in the hospital mirrored the treatment they received outside of the hospital. The narrative of overpopulation and draining collective resources was especially common when it came to Mexican immigrants. Immigrant workers were viewed as lazy and viewed with suspicion, accused of trying to have an “anchor baby”

³⁶ *Madrigal v. Quilligan* 9 629 F.2d 789 (1978).

³⁷ *Ibid*

³⁸ *Ibid*

on American soil or collect welfare benefits.³⁹ This was why sterilization was such a popular argument – to keep immigrants from becoming a drain on the economy.

Hernández based her case on the precedent set by *Roe v. Wade* just two years earlier. She argued that just as women have the right to control their own bodies when it comes to accessing abortion care, they should be able to make decisions about their future ability to bear children as well.⁴⁰

A key point included in the discussion of the *Madrigal v Quilligan* case is the lack of informed consent on behalf of the patients. It is impossible to get informed consent when, as in the case of Consuelo Herмосillo, the procedure is not described within the patient’s own language. Women were not told what they were signing, they were just instructed to sign. Hurtado described the way that the consent form was presented – she was not asked to “firma” or even “sign,” the doctor just pointed at the form and said “mama.” When Herмосillo did not immediately sign the form, she was told that “...if you don’t sign, you’ll die.” When she still refused to sign without her husband present, the nurse simply grabbed her hand and signed for her.

Another concern is the inaccuracy of language used in describing the tubal litigation procedure. Putting aside women who were not given proper consent, the ones who did agree to sign believed they were getting their “tubes tied.” There is an implication given by the word “tied” that the procedure is reversible; it is only natural to assume that later, tubes can

³⁹ Renee Tajima-Peña, *No Más Bebés*.

⁴⁰ *Madrigal v. Quilligan* 9 629 F.2d 789 (1978).

be untied. However, this is not the case. During the procedure, fallopian tubes are severed and the ends cauterized.⁴¹

There is also the concern that “esterilización” does not directly translate to a reproductive health decision. One woman interviewed described her belief that during the “esterilización” procedure, her womb would be cleaned. She did not understand that this was a permanent decision that meant tubal ligation.⁴²

The decision in *Madrigal v Quilligan* did establish waiting periods and an expectation that women would be given informed consent about procedures in their own language, and would not be coerced into signing forms while actively in labor. This has made an impact on the way that patients are treated. However, the ruling did not serve as a complete victory for the plaintiffs. The judge found that Dr. Quilligan and his colleagues had not violated any patient’s rights or acted maliciously. This ruling was upheld by the Court of Appeals for the Ninth Circuit, and has never been overturned.⁴³

Throughout the entire twentieth century, discussions about birth control access and reproductive rights dominated the public discourse. One particular hot button issue for white feminists was the concept of waiting periods, which were viewed as being paternalistic because they placed undue burdens on women making choices about their bodies. However, this viewpoint failed to take into account the experiences of Latinas and other women of color, who were simply trying to protect themselves from the abuses that they had been

⁴¹ Renee Tajima-Peña, *No Más Bebés*.

⁴² *Madrigal v. Quilligan* 9 629 F.2d 789 (1978).

⁴³ *Ibid.*

experiencing throughout the twentieth century.

In June of 1978 the verdict in *Madrigal v Quilligan* was released. In an unpublished opinion, the Judge sided with the County Hospital, citing that the doctors had the intent of the patients in mind when deciding to pursue these procedures and that the doctors did not do anything wrong. He conveyed that the procedure was not objectionable if a physician believed that a tubal ligation could improve a perceived overpopulation problem, as long as said physician did not try to "overpower the will of his patients."⁴⁴ In considering the facts of the case, this verdict is both ironic and outrageous – these women were certainly overpowered and had no chance to understand what was happening to them until it was too late to do anything about it. Their voices were silenced when the sterilization abuse first occurred, and again when they failed to receive adequate justice for their suffering.

V. Conclusion

The topic of eugenics has been of particular concern in American culture throughout the twentieth century. Sterilization abuses in America, particularly in California and Puerto Rico as discussed in this project, have had a profound impact on Hispanic-American culture. Promulgation of “population control” narratives throughout the twentieth century have led to mass sterilization in institutions and hospitals alike, and these abuses have been perpetuated against women who had no understanding of what was happening.. In recent years, this practice has become a timely debate concerning reproductive rights violations

⁴⁴ Ibid

and reparations to be made.⁴⁵ While some states like Virginia have made an effort to uncover these stories and make things right with the victims, other states like California have yet to acknowledge the wrong that was done.⁴⁶

The eugenics movement in the United States is important and often downplayed in public culture. The impacts of this movement are significant. Forced sterilization campaigns in this country have disproportionately targeted women of color. This research is important in understanding the extent of the abuses that were perpetrated against women in these communities.⁴⁷

The last few years of the twentieth century and the beginning of the twenty-first have seen a development in the way that our country perceives these issues. Kimberlé Crenshaw's writings on the impact of race and the development of the concept of intersectionalism have impacted the way that feminist theorists think about reproductive rights and their intersection with race. For the women who experienced these horrors, there is no real way to make amends, or to give them back what was taken from them. At the end of the *Madrigal v Quilligan* trial, one of the plaintiffs stated that "for me, the song is over."⁴⁸

⁴⁵ Briggs, "Debating Reproduction: Birth control, eugenics and overpopulation in Puerto Rico, 1920-1940," in *Reproducing Empire: Race, Sex, Science, and U.S. Imperialism in Puerto Rico* (Berkeley: University of California, 2002): 74-108.

⁴⁶ United States. Congress. House. Committee on the Judiciary. (2008). Department of Justice: hearing before the Committee on the Judiciary, House of Representatives, One Hundred Tenth Congress, second session, February 7, 2008. Washington: U.S. G.P.O.

⁴⁷ Ko, "Unwanted Sterilization and Eugenics Programs in the United States," on pbs.org. January 29, 2016. Accessed April 4, 2017.

⁴⁸ Translated from "me acabo la canción." Renee Tajima-Peña, *No Más Bebés*.

For future women, it doesn't have to be.

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