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## Reproductive Abuse and the Sterilization of Women of Color

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# Articles

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## **Reproductive Abuse and the Sterilization of Women of Color**

By Bshara Alsheikh

*Abstract: Women of color have long suffered targeted and systematic racial discrimination and attempts to control their populations by the state. Well after eugenic rhetoric and policies' prime in the 1930s and 1940s, and the Civil Rights movements of the mid-century, Chicana, Black, and Indigenous women continued to be victimized by state-sanctioned eugenic policy. This paper examines the way that eugenic rhetoric and policy evolved from the first sterilization laws in the nation passed in California that targeted criminality to later legislation and rhetoric that explicitly targeted racial minorities.*

### **Introduction**

Historically, state-sanctioned reproductive abuse in the United States functioned as a tool of white supremacy to deny women of color access to reproductive health services and deprive them of bodily autonomy through oppressive government overreach, exemplified by eugenic policy and forced sterilizations. The eugenics movement operated on the precept that the human race was perfectible and used pseudo-science to rationalize white supremacy and the draconian Jim Crow laws of racial segregation.<sup>1</sup>

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<sup>1</sup> Loretta Ross and Rickie Solinger, *Reproductive Justice: An Introduction* (Oakland: University of California Press, 2017), 30.

California's history is fundamentally intertwined with the national eugenics movement; the state functioned as the nation's pioneer and architect of eugenic policy throughout the twentieth century.<sup>2</sup> Originally formalized by state law in 1909, eugenic ideals continued to victimize women of color by the end of the century. The policy makers and doctors that removed women's reproductive autonomy, used economic reasoning to justify the abuse, supposedly preventing their neutralized future progeny from burdening taxpayers.<sup>3</sup> Systematic reproductive abuse characterized federal and state legislation related to Chicana, Native American, and Black women.

### ***California's Eugenic History***

California was at the forefront of the national eugenics movement, between 1909 and the 1960s an estimated 20,000 sterilizations, approximately one-third of all those performed in the United States, were carried out in the state.<sup>4</sup> The original sterilization law passed by the California State Legislature in 1909 "permit[ed the] asexualization of inmates of the state hospitals and the California Home for the Care and Training of feeble-minded children, and of convicts in the state prisons."<sup>5</sup> The bill asserted that it is beneficial not just for the state of California, but to the moral and mental condition of the inmate to be "asexualized," or sterilized.<sup>6</sup> Initially, only patients or inmates that were convicted of two sexual offenses or three other crimes were eligible to be sterilized.<sup>7</sup> This law

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<sup>2</sup> Alexandra Minna Stern, *Eugenic Nation: Faults and Frontiers of Better Breeding in Modern America*, (Oakland, California: University of California Press, 2016), 84.

<sup>3</sup> Karina Cardenas, "Who Makes the Decision to Sterilize Mexican Women? : The Doctor-Patient Debate in *Madrigal v. Quilligan* in the 1970s." *California State University, Los Angeles, Perspectives*, 45 (2018): 72.

<sup>4</sup> Stern, *Eugenic Nation: Faults and Frontiers of Better Breeding in Modern America*, 115.

<sup>5</sup> California Statutes 1909, Chapter 720, §1, p. 1093-1094.

<sup>6</sup> California Statutes 1909.

<sup>7</sup> Stern, *Eugenic Nation*, 111.

empowered the state to commit reproductive abuses under the pretense of oversight and accountability to the public and under the rhetorical justification of criminal punishment. The bill required three people to approve sterilization: the Superintendent of the sterilizing facility, the Secretary of the State Board of Health, and the Resident Physician of said facility.<sup>8</sup> This layer of accountability ultimately meant little to nothing, particularly when considering fair treatment for people of color, when all of the components of the tribunal were convinced of their own racial superiority.

The 1927 Supreme Court ruling in *Buck v. Bell* gave the federal government the green light to sterilize women with impunity and assigned the label of imbecility to whomever they choose to sterilize.<sup>9</sup> According to the case, a Virginia state mental hospital accepted Carrie Buck (1906-1983), a “feeble-minded woman,” into their care, where she was sterilized.<sup>10</sup> Her mental condition was prominent in the last three generations of her family, which was considered justification to sterilize her to advance the supposed “health and the benefit of society.”<sup>11</sup> Justice Oliver Wendell Holmes, Jr. (1847-1935) defended the necessity of legislation in order to stop the country from “being swamped with incompetence... Three generations of imbeciles are enough.”<sup>12</sup> This abhorrent language shows the malignant indifference of authorities and provided the legal justification for the indignities forced upon many more women in the future.

The fear of the potential collapse of their Western society occupied the forefront of eugenicists’ mindset in the 1930s, which pushed those in positions of power to implement their theories.<sup>13</sup> Superintendents of California state orphanages and hospitals

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<sup>8</sup> Stern, *Eugenic Nation*, 111.

<sup>9</sup> Dorothy E. Roberts, *Killing the Black Body: Race, Reproduction, and the Meaning of Liberty* (New York, NY: Vintage, 1999), 69.

<sup>10</sup> “Buck v. Bell”, Oyez. Accessed December 8, 2022, <https://www.oyez.org/cases/1900-1940/274us200>.

<sup>11</sup> “Buck v. Bell,” Oyez.

<sup>12</sup> “Buck v. Bell,” Oyez.

<sup>13</sup> Stern, *Eugenic Nation*, 83.

argued for eugenic sterilization as a means to decrease the economic burden on society forced to treat defective traits in the general population's offspring. The elite of California considered eugenics a potential remedy to all the socio-economic issues of the state.<sup>14</sup> In the opinion of the elites, through eugenic policy, California would save thousands of dollars by avoiding the birth of defective children who would eventually overcrowd mental institutions. Still, most importantly, society would supposedly be able to protect itself from the continued contamination of humanity by preventing the reproduction of the physically and mentally unfit (which often meant non-white).

Fred Hogue (1872-1941) was a prominent leader in the California eugenics movement and a contributor to the *Los Angeles Times* from 1920-1939 where he provided counsel to readers concerned about the passing of genetic flaws. Hogue exhorted his readers to breed "intelligently" and take into account the fate of children yet to be born.<sup>15</sup> Furthermore, and more ominously, he argued that the state had a fundamental right and moral duty to end the cycle of hereditary degeneracy. To implement his eugenic views, Hogue backed unsuccessful measures proposed in 1935 and 1937 that would have expanded the original 1909 sterilization law and created a State Board of Eugenics. These laws also extended the reach of the sterilization statute to include jails, correctional institutions, reformatories, and detention camps, in addition to mental hospitals and homes for the feeble-minded.<sup>16</sup>

The proposed legislation granted superintendents, wardens, and directors of all state run institutions the authority to request the sterilization of any patient or convict who, upon release, appeared likely to have children prone to severe physical or mental deficiencies, for which the metrics to diagnose were ambiguous with no set parameters or guidelines.<sup>17</sup> The changes to the 1909 law would have also removed the tribunal as a layer of oversight,

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<sup>14</sup> Stern, *Eugenic Nation*, 83.

<sup>15</sup> Stern, *Eugenic Nation*, 83.

<sup>16</sup> Stern, *Eugenic Nation*, 83.

<sup>17</sup> Stern, *Eugenic Nation*, 83-84.

leaving state authorities in those institutions a *carte blanche* to sterilize whomever they wished.<sup>18</sup> The new provisions also required documents related to the sterilization procedure to be kept from the public to shield doctors and governmental officials from civil lawsuits.<sup>19</sup> These expanded statutes, advocated for by Hogue, practically eliminated all civil and criminal culpability for state authorities or institutions. Even though these 1935 and 1937 bills were defeated in the legislative process, the breadth and depth suggested demonstrated the will exerted by eugenicists attempting to directly influence the law and government of California at the time.<sup>20</sup>

To increase social and political pressures to implement eugenic policy, individuals eventually formed groups such as The Human Betterment Foundation (HBF), one of California's prominent eugenic organizations.<sup>21</sup> The HBF advertised sterilization as "one of the greatest advances in modern civilization" and that "It is not a novelty or an experiment" in a pamphlet published in 1939 in the city of Pasadena.<sup>22</sup> The document boasts about the usefulness of sterilization as "a surgical operation, which prevents parenthood without in any way or degree unsexing the patient or impairing his or her health."<sup>23</sup> It contrasts contemporary practices to the "Primitive and pagan peoples [who] castrated boys to produce eunuchs" and assured readers that, as practiced since 1899, "modern sterilization is not a mutilation in any sense of the word."<sup>24</sup> The HBF contextualized sterilization in words that made the procedure seem benign to convince the public of the need to sterilize undesirable people for the common good of society.

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<sup>18</sup> Stern, *Eugenic Nation*, 84.

<sup>19</sup> Stern, *Eugenic Nation*, 83.

<sup>20</sup> Stern, *Eugenic Nation*, 83.

<sup>21</sup> Human Betterment Foundation, "Human Sterilization Today," (Pasadena, CA: Human Betterment Foundation, 1938), 2, <https://www.loc.gov/item/rbpe.0020380g/>.

<sup>22</sup> Human Betterment Foundation, "Human Sterilization Today," 2.

<sup>23</sup> Human Betterment Foundation, "Human Sterilization Today," 2.

<sup>24</sup> Human Betterment Foundation, "Human Sterilization Today," 3.

The HBF, from what could be read in their pamphlets, did not outwardly single out racial groups, however, their advocacy of sterilization as a solution to society's maladies was adopted by white supremacists. Race-based eugenic sterilization appealed to white supremacists who saw people of color as an aberration and a threat to their society. Thus, racially targeted sterilization was used by white supremacists to exterminate racial minorities through the suppression, regulation, and termination of women of color's ability to reproduce.<sup>25</sup>

### ***Chicana Women in Los Angeles***

Medical institutions served as the frontlines for California's 20th-century eugenic battles against women of color.<sup>26</sup> The doctors at Los Angeles County Medical Center (LACMC) sterilized Chicana women with coercion and deception tactics up to the 1970s.<sup>27</sup> These sterilizations were not unintentional, accidental, or medically required, instead, they were deliberate actions taken by the LACMC's medical staff to lower the birth rate of women of Mexican descent.<sup>28</sup> As explained in a 1969 document produced by The American College of Obstetricians and Gynecologists (ACOG) for physicians performing surgical sterilizations on women, "A Compendium of Policies and Legal Actions Pertinent to Female Sterilization," these doctors were empowered by the state to maim these women. The document states, "The organization contends that although good professional judgment will usually require that sterilization be discussed with both spouses, the doctor is nevertheless free to decide whether the operation is in this patient's best interest despite the spouse's

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<sup>25</sup> Human Betterment Foundation, "Human Sterilization Today," 3.

<sup>26</sup> Elena R. Gutiérrez, *Fertile Matters: The Politics of Mexican-Origin Women's Reproduction* (Austin: University of Texas Press, 2008), 2.

<sup>27</sup> Gutiérrez, *Fertile Matters, The Politics of Mexican-Origin Women's Reproduction*, 2.

<sup>28</sup> Gutiérrez, *Fertile Matters*, 2.

objection.”<sup>29</sup> The state of California concurred with the ACOG guidelines and insisted that doctors use their good judgment to decide whether the patient should be operated on.<sup>30</sup> While the document from ACOG *recommends* discussing the procedure with the spouse, at the end of the day, the physician was considered the individual best situated to decide whether the patient should receive the operation and made the final call.<sup>31</sup>

In the ACOG guidelines there is no concern expressed to ensure that the patient is in the right mindset to consent without coercion.<sup>32</sup> The vagueness of the ACOG guidelines allowed doctors at LACMC to coerce Chicana women into procedures that took away their reproductive autonomy. Coercive practices pressured half-conscious, drugged, and uninformed women to sign away their rights, which became commonplace. However, in the 1960s, The Association of American Medical Colleges (AAMC) emphasized that signing a form did not constitute informed consent.<sup>33</sup> Instead, comprehensive methods of communication between the patient and the physician are baseline requirements for “informed consent.”<sup>34</sup> This idea of informed consent should have been a hallmark of any new guidelines issued by the ACOG. There must be a great emphasis on the choice of the women being operated on, and consent must be given when they are clear of mind, not when medications or the pains of their procedure are clouding their judgment. Unfortunately, even if the laws or ACOG

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<sup>29</sup> The American College of Obstetricians and Gynecologists, “Compendium of Policies and Legal Actions Pertinent to Female Sterilization” (Department of Special Collections, Charles E. Young Research Library, UCLA., 1969), 2.

<sup>30</sup> The American College of Obstetricians and Gynecologists, “Compendium of Policies,” 2.

<sup>31</sup> The American College of Obstetricians and Gynecologists “Compendium of Policies,” 2.

<sup>32</sup> The American College of Obstetricians and Gynecologists “Compendium of Policies,” 2.

<sup>33</sup> Stacy Weiner, “What ‘Informed Consent’ Really Means,” AAMC, accessed May 18, 2023, <https://www.aamc.org/news-insights/what-informed-consent-really-means>.

<sup>34</sup> Weiner, “What ‘Informed Consent’ Really Means.”



regulations stipulated the necessity of consent and women's safety, there is no certainty that these laws would be implemented to protect women of color. In the hands of racist institutions, it is possible such care would only be applied to white women because their reproduction is seen as virtuous and beneficial to society.<sup>35</sup> Women of color were not seen as equal to white women and their reproduction was considered a societal problem that needed to be solved.<sup>36</sup> Doctors often tried to talk white middle-class women out of sterilization surgery, glaring evidence that the physicians racialized eugenic ideals exempted white women from their sterilization efforts and focused on Chicana women in the Los Angeles metropolitan area.<sup>37</sup>

Several interests converged throughout the 1960s and 1970s to construct perceptions of Mexican women's supposed hyperfertility as problematic.<sup>38</sup> The state sought to fix issues of overpopulation that led, in their opinion, to the sapping of resources and state funds, meanwhile eugenics groups pushed for government action to stop further population growth because of their fears for their safety and the state of the environment.<sup>39</sup> In 1966 the American Medical Association (AMA) directed physicians to become more involved in the reproductive behavior of their patients and counsel them on matters of family planning, regardless of the physician's specialty.<sup>40</sup> The AMA commented directly on overpopulation by saying, "Only if the medical profession recognizes its opportunity and responsibility can it meet its clear obligation to help solve what is now widely regarded as the world's number one problem."<sup>41</sup> Physicians were designated the responsibility to fix the supposed issue of overpopulation, and

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<sup>35</sup> Gutiérrez, *Fertile Matters*, xi.

<sup>36</sup> Gutiérrez, *Fertile Matters*, xi.

<sup>37</sup> Gutiérrez, *Fertile Matters*, 38-39.

<sup>38</sup> Gutiérrez, *Fertile Matters*, 15.

<sup>39</sup> Gutiérrez, *Fertile Matters*, 18.

<sup>40</sup> Gutiérrez, *Fertile Matters*, 18.

<sup>41</sup> Gutiérrez, *Fertile Matters*, 20.

served as tools of the state to enact the reproductive abuses seen in the LACMC.

Under the guidance of Dr. Edward James Quilligan (1925-2009), the hospital began pushing birth control to their female patients immediately. In this case, birth control meant widespread sterilization. Dr. Quilligan commented that he wanted his department “to show how low we can cut the birth rate of the Negro and Mexican populations in Los Angeles County.”<sup>42</sup> The repeated act of forced or coercive sterilizations and other reproductive abuses on Chicana women at LACMC led to the civil case *Madrigal v. Quilligan* (1978).<sup>43</sup>

### ***Madrigal v. Quilligan***

According to Virginia Espino, author of “‘Woman Sterilized As Gives Birth’: Forced Sterilization and Chicana Resistance in the 1970s,” the ten women represented in the 1978 civil suit stated that they were deceived, forced to sign the paperwork, and not given enough time to think about the surgery. They requested compensation for the irreversible surgery and assurances that hospitals provide better access to information for future patients.<sup>44</sup> Antonia Hernandez (b. 1948), one of the attorneys who represented the women, remarked that each victim belonged to an ethnic minority, was impoverished, and could not readily grasp English.<sup>45</sup> The patient’s inability to communicate in English allowed the doctors at LACMC to take advantage of them. This was one aspect of the coercive measures victims faced. Chicana activists claimed that the victim’s economic status, ethnicity, and immigrant background motivated physicians to recommend treatment based

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<sup>42</sup> Gutiérrez, *Fertile Matters*, 45.

<sup>43</sup> Virginia Espino, “‘Woman Sterilized As Gives Birth’: Forced Sterilization and Chicana Resistance in the 1970s,” ed. Vicki Ruíz, *Las Obreras: Chicana Politics of Work and Family*, 2000, 65.

<sup>44</sup> Espino, “‘Woman Sterilized As Gives Birth’: Forced Sterilization and Chicana Resistance in the 1970s,” 65.

<sup>45</sup> Espino, “‘Woman Sterilized As Gives Birth,’” 65.

on their own eugenic philosophy more than the patient's medical needs.<sup>46</sup> Furthermore, there were no written consent forms or documentation of the women's assent to the sterilization, which was carried out as women underwent emergency cesarean sections.<sup>47</sup>

Espino explains that Dr. Bernard Rosenfeld, a resident physician, secretly observed women being cajoled, persuaded, and occasionally bullied into submitting to surgical sterilization.<sup>48</sup> Dr. Rosenfeld found that some physicians had deep-seated personal opinions about overpopulation amongst the undesirable races.<sup>49</sup> Others had strong views about class bias, and still, others thought that all welfare recipients should have their tubes tied.<sup>50</sup> One of the staff doctors instructed his resident by saying, "I don't care how old they are, remember everyone you get to get her tubes tied means less work for some poor son of a bitch next year."<sup>51</sup> Dr. Rosenfeld gave Hernandez information on more than 180 cases where women were sterilized after delivery, most of whom had Spanish surnames.<sup>52</sup> The doctors' behavior at LACMC highlights the fact eugenics was thriving in California as late as the 1970s, and had begun explicitly targeting women based on race rather than earlier criminal justifications, and caused Chicana women irreparable harm.

Hospital staff likely knew that if these women were aware of what was happening to them, they would have refused the sterilization. Along with the language barrier, they heavily medicated the women and manipulated them at their weakest moments to rob them of their biological capacity for reproduction. In many cases of these coercive sterilizations, hospital staff recommended the procedure in the late stages of labor after the

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<sup>46</sup> Espino, "Woman Sterilized As Gives Birth," 65.

<sup>47</sup> Gutiérrez, *Fertile Matters*, 35.

<sup>48</sup> Espino, "Woman Sterilized As Gives Birth", 65-66.

<sup>49</sup> Espino, "Woman Sterilized As Gives Birth", 65-66.

<sup>50</sup> Espino, "Woman Sterilized As Gives Birth", 65-66.

<sup>51</sup> Espino, "Woman Sterilized As Gives Birth", 68.

<sup>52</sup> Espino, "Woman Sterilized As Gives Birth", 68.

women already received significant doses of sedatives and pain relievers such as Valium or Demerol.<sup>53</sup> While these women were under the influence of these drugs, they were then forced to sign consent papers for their sterilization while they were too disoriented to understand or notice.<sup>54</sup> Dr. Karen Benker of the LACMC, recalled that nearly every day, the doctor, holding a syringe, would ask the laboring mother whether she wanted pain medication, “Do you want the pain killer? Then sign the papers. Do you want the pain to stop? Do you want to have to go through this again? Sign the papers.”<sup>55</sup> The attempts at coercion highlight the power and influence these doctors had over women, particularly women of color.

Helena Orozco, one of the plaintiffs in the *Madrigal* case, said of her experience giving childbirth, “I just wanted them to leave me alone, sign the papers and get it over with...I was in pain on the table when they were asking me all those questions, and they were poking around my stomach, and pushing with their fingers up there. I just wanted to be left alone.”<sup>56</sup> When Orozco consented to the sterilization, she only did so because she believed she could later “untie” them, which was false.<sup>57</sup> Orozco mentioned that if she knew the surgery was permanent she would not have gone through with it, and only found out she was permanently infertile a year and a half after her surgery.<sup>58</sup> From the beginning of her time at the LACMC, Dolores Madrigal, the namesake of the civil case, rejected sterilization.<sup>59</sup> Physicians who sought to undermine her agency then spoke with Mr. Madrigal in another room and lied that his wife “would die if she had another child.”<sup>60</sup> In the words of Gutierrez, through “manipulative gender

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<sup>53</sup> Gutiérrez, *Fertile Matters*, 41.

<sup>54</sup> Gutiérrez, *Fertile Matters*, 41.

<sup>55</sup> Gutiérrez, *Fertile Matters*, 41.

<sup>56</sup> Gutiérrez, *Fertile Matters*, 42.

<sup>57</sup> Gutiérrez, *Fertile Matters*, 42.

<sup>58</sup> Gutiérrez, *Fertile Matters*, 42.

<sup>59</sup> Gutiérrez, *Fertile Matters*, 42.

<sup>60</sup> Gutiérrez, *Fertile Matters*, 42.

dynamics” the hospital obtained consent from Mr. Madrigal, bypassing Dolores’ wishes.<sup>61</sup> Physicians actively manipulated and misled their patients by falsely claiming that California state law only permitted three cesarean sections and that, as a result, sterilization was necessary after delivery. Maria Hurtado, another plaintiff in the case, recounted that her doctor brought an intimidating third person with him during their consultation, and asked her invasive questions about why she needed so many children.<sup>62</sup> After giving birth, Hurtado received a tubal ligation surgery against her will and while incapacitated.<sup>63</sup> She did not find out that she was sterilized until her postpartum follow-up where the receptionist informed her, “Lady, forever you will not be able to have any more children.”<sup>64</sup>

During the trial, lawyers for the plaintiffs called in Dr. Carlos Vélez, a Professor of Anthropology at the University of California, Los Angeles, who testified that procreation was “the core of social identity not only of the women, but interdependently it extends to Mexican males as well, in their ability to sire children.”<sup>65</sup> Dr. Vélez further highlighted the cultural significance since, according to him, Chicana women were recognized as valuable, in large part, because of their ability to bear children.<sup>66</sup> Many women experienced depression, difficulties in their marriages, and loss of social status due to their sterilization.<sup>67</sup> The court dismissed Dr. Vélez’s expertise with little consideration.<sup>68</sup> Judge Jesse W. Curtis (1905-2008), who oversaw the case, specifically questioned the need for a witness who specialized in Mexican culture, stating that any information that such a person could contribute would likely be self-evident.<sup>69</sup> Unsurprisingly,

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<sup>61</sup> Gutiérrez, *Fertile Matters*, 42.

<sup>62</sup> Gutiérrez, *Fertile Matters*, 43.

<sup>63</sup> Gutiérrez, *Fertile Matters*, 43.

<sup>64</sup> Gutiérrez, *Fertile Matters*, 43.

<sup>65</sup> Gutiérrez, *Fertile Matters*, 47.

<sup>66</sup> Gutiérrez, *Fertile Matters*, 47.

<sup>67</sup> Gutiérrez, *Fertile Matters*, 47-48.

<sup>68</sup> Gutiérrez, *Fertile Matters*, 48.

<sup>69</sup> Gutiérrez, *Fertile Matters*, 48.

given his dismissal of Mexican culture, Judge Curtis sided with the physicians of the LACMC.

Judge Curtis reviewed each plaintiff's case individually and decided that the physicians acted in good faith and with each patient's knowledge and consent.<sup>70</sup> The judge of the *Madrigal* case ascribed the women's sterilization to a "communication failure" rather than unlawful action.<sup>71</sup> The ruling, with no consideration for the insurmountable damage done to the women of the *Madrigal* case, showed that even women of color who were able to take their accused to court were easily dismissed. The state was not trying to better the lives of all Californians; they were ensuring the supremacy and superiority of the white race over all other races, which Quilligan's comments on cutting minority birth rates above clearly demonstrate. Doctors were the foot soldiers of the state's sterilization policy, largely free from oversight or consequence, likely emboldened by the *Madrigal v. Quilligan* ruling.

### ***Native American Experience***

Eugenicists in the federal government also targeted Native women across the country, contributing to the long history of discrimination and genocidal population control. Native families were singled out for family planning services by United States government employees, particularly those in the Indian Health Services (IHS), due to their high birth rate.<sup>72</sup> In contrast to the median of 1.79 children for all populations in the United States, the 1970 census showed that the average Indian woman gave birth to 3.79 children.<sup>73</sup> The abuses suffered by Native American women across the country mimicked the experiences of Chicana women in California, demonstrating how California pioneered eugenic policy

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<sup>70</sup> Gutiérrez, *Fertile Matters*, 49.

<sup>71</sup> Gutiérrez, *Fertile Matters*, 49.

<sup>72</sup> Jane Lawrence, "The Indian Health Service and the Sterilization of Native American Women," *American Indian Quarterly* 24, no. 3 (2000): 402.

<sup>73</sup> Lawrence, "The Indian Health Service and the Sterilization of Native American Women," 402.

for the nation. In another parallel to the fears of Chicana hyperfertility, the federal government enacted these policies out of fear of the booming Native population.<sup>74</sup> Therefore, to suppress their numbers, the sterilization of Native American women seemed an obvious solution. However, Native women were even easier targets for the federal government because it is functionally the overlord of Native people due to their non-existent representation in Congress and lack of sovereignty.<sup>75</sup>

The federal government used its extensive, exhaustive, and near endless resources to impede the reproductive freedoms of Native women.<sup>76</sup> Through the Indian Health Service (IHS), the Department of Health, Education, and Welfare (HEW), and the Bureau of Indian Affairs (BIA), Native nations became dependent on the federal government for their welfare and health, and ultimately allowed the government to successfully implement sterilization policies against Native women on their supposed sovereign land.<sup>77</sup> These federal agencies were directly involved in the reproductive abuse against Natives funded by the American taxpayers.<sup>78</sup>

In 1965, with HEW approval, the IHS started offering family planning services to Native Americans.<sup>79</sup> These programs offered women the opportunity to learn about the various birth control options, including how they work, and how to use them.<sup>80</sup> The IHS was expected to help patients choose the most appropriate kind of contraception by informing them about various options such as spermicidal jelly and creams, the intrauterine device, sterilization, and the birth control pill.<sup>81</sup>

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<sup>74</sup> Lawrence, "The Indian Health Service", 402.

<sup>75</sup> Lawrence, "The Indian Health Service," 402.

<sup>76</sup> Lawrence, "The Indian Health Service," 402.

<sup>77</sup> Sally J. Torpy, "Native American Women and Coerced Sterilization: On the Trail of Tears in the 1970s," *American Indian Culture and Research Journal* 24, no. 2 (January 1, 2000): 1.

<sup>78</sup> Torpy, "Native American Women and Coerced Sterilization," 1.

<sup>79</sup> Lawrence, "The Indian Health Service," 402.

<sup>80</sup> Lawrence, "The Indian Health Service," 402.

<sup>81</sup> Lawrence, "The Indian Health Service," 402.

The attempts to curb the Native birth rate and population were so successful that they could be seen in the subsequent Census Reports of 1970 and 1980. According to the Bureau of the Census, The Apache Tribe decreased from 4.01 children in 1970 to 1.70 in 1980, and the average of all Native tribes went from 3.29 children to 1.30.<sup>82</sup> These numbers reveal the efficacy of eugenic policy in decreasing the population of any race the government targets.<sup>83</sup> One of the decisive policies, The Family Planning Services and Population Research Act, enacted by Congress and signed by President Richard Nixon (1913-1994) in 1970, provided Medicaid and IHS patients with financial assistance for sterilizations.<sup>84</sup> After the Family Planning Act, sterilization rates sharply increased for Native women.<sup>85</sup> For instance, these operations doubled in the Navajo Nation between 1972 and 1978.<sup>86</sup> According to Brianna Theobald, a History professor at The University of Rochester, and author of *Reproduction on the Reservation: Pregnancy, Childbirth, and Colonial in the Long Twentieth Century*, “Scholars estimate that beginning in 1970, physicians sterilized between 25 and 42 percent of Native women of childbearing age over a six-year period.”<sup>87</sup>

The sterilizations of Native women irreparably harmed their roles in Native society, and Native ceremonies, and damaged the cohesion within the families of the women sterilized. For example, women are required to participate in religious rites among some Pueblo tribes, where a woman is defined as someone who has given birth.<sup>88</sup> Additionally, the Cree believe that if a

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<sup>82</sup> Lawrence, “The Indian Health Service,” 403.

<sup>83</sup> Lawrence, “The Indian Health Service,” 403.

<sup>84</sup> Brianna Theobald, *Reproduction on the Reservation: Pregnancy, Childbirth, and Colonialism in the Long Twentieth Century*, (Chapel Hill: University of North Carolina Press, 2019), 154.

<sup>85</sup> Theobald, *Reproduction on the Reservation: Pregnancy, Childbirth, and Colonialism in the Long Twentieth Century*, 153.

<sup>86</sup> Theobald, *Reproduction on the Reservation*, 154.

<sup>87</sup> Theobald, *Reproduction on the Reservation*, 1.

<sup>88</sup> Myla Vicenti Carpio, “The Lost Generation: American Indian Women and Sterilization Abuse,” *Social Justice* 31, no. 4 (2004): 42.



family produces fewer children than others, this family is making up for any wrongs that have been done.<sup>89</sup> Sterilizations also impacted the families and friends of the affected women; marriages broke up, and friendships drifted apart or stopped altogether.<sup>90</sup> Higher rates of marital issues, alcoholism, drug misuse, psychiatric issues, and feelings of shame and guilt continue to haunt Native women victimized by sterilization.<sup>91</sup> According to the Women of All Red Nations (WARN), “the real issue behind sterilization is how we are losing our personal sovereignty”, and communities with high rates of sterilizations lost the respect of other tribal groups as a result of the tribe’s inability to safeguard Native American women.<sup>92</sup>

Native American women, medical professionals, and Native periodicals like the “American Indian Journal” and *The Akwesasne Notes*, which was a newspaper issued by the Mohawk Nation in Akwesasne, whose territories bordered both New York and Canada, helped raise awareness of the abuse of sterilization.<sup>93</sup> Thanks to their advocacy, sterilization, and other issues within the IHS and public health system started to gain the attention of hospital workers and sterilized women.<sup>94</sup> The 1976 General Accounting Office (GAO) study ordered by South Dakota Senator James Abourezk (1931-2023) and Dr. Connie Uri, a Choctaw and Cherokee woman, began investigations into the abuses of sterilization procedures.<sup>95</sup> Dr. Uri became involved when one of her patients came to her and asked for a womb transplant; she notes:

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<sup>89</sup> Carpio, “The Lost Generation: American Indian Women and Sterilization Abuse,” 45.

<sup>90</sup> Carpio, “The Lost Generation,” 45.

<sup>91</sup> Lawrence, “The Indian Health Service,” 410.

<sup>92</sup> Lawrence, “The Indian Health Service,” 411.

<sup>93</sup> “The Online Books Page,” Akwesasne Notes archives, <https://onlinebooks.library.upenn.edu/webbin/serial?id=akewsasnenotes>.

<sup>94</sup> Carpio, “The Lost Generation,” 42.

<sup>95</sup> Carpio, “The Lost Generation,” 42.

At first, I thought I had discovered a case of malpractice... There was no good reason for a doctor to perform a complete hysterectomy rather than a tubal ligation on a 20-year-old, healthy woman. I began accusing the government of genocide and insisted on a congressional investigation.<sup>96</sup>

The patient, twenty-six at the time, was pressured by her primary doctor to be sterilized because according to the doctor, she was an alcoholic and thought that she should not reproduce.<sup>97</sup> Six years later, having dealt with her drinking problem with plans to marry, she mistakenly thought she could get a womb transplant, just like a kidney, however, she was unfortunately left sterile for the remainder of her life.<sup>98</sup> Dr. Uri was horrified by what the Native women experienced and saw a need for congressional oversight administered by the GAO.

The GAO investigation from 1976 concentrated on charges involving the Indian Health Service, but found none of the complaints were substantiated, and the only suggestion was a change in the regulations and processes of sterilization.<sup>99</sup> According to the GAO investigation report, published on November 23, 1976, there was no proof that IHS sterilized Indians without having a patient permission form on file.<sup>100</sup> However, the study itself was fundamentally flawed because GAO investigators disregarded claims of abuse stemming from coercive sterilization without consent.<sup>101</sup> This deeply restricted the scope of the investigation by not considering the absence of a woman's consent to sterilization as evidence of malice by the doctors.

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<sup>96</sup> Carpio, "The Lost Generation," 42.

<sup>97</sup> Carpio, "The Lost Generation," 42.

<sup>98</sup> Carpio, "The Lost Generation," 42.

<sup>99</sup> Carpio, "The Lost Generation," 45.

<sup>100</sup> Carpio, "The Lost Generation," 45.

<sup>101</sup> Carpio, "The Lost Generation," 42-43.

Furthermore, GAO investigators neglected to speak with sterilized women or hospital workers.<sup>102</sup> The investigators instead relied upon one published paper that utilized unsubstantiated eyewitness accounts of sterilizations on Native women.<sup>103</sup> With its congressional authority, the GAO could have efficiently collected the testimony of witnesses and gotten some answers with little effort on their part. Information about uninformed consent and involuntary sterilizations may have been revealed if these women had been interviewed.<sup>104</sup>

These sterilizations brought irreparable harm to the families of the sterilized women while casting a shroud of shame on them and their perspective of Native nations and tribes. Furthermore, the dismissal of indigenous women's first-hand testimony and the disappointing conclusion of the GAO investigation mirrors the *Madrigal* court case's dismissal of Chicana women's experience.

### ***African American Women***

Sterilizations granted some southern whites new opportunities to assert their racial dominance after Jim Crow segregation ended.<sup>105</sup> An estimated 100,000 to 150,000 low-income women in the South were sterilized annually, and due to the severity and widespread nature of this abuse these procedures were given the popular euphemism of "Mississippi appendectomies."<sup>106</sup> Although the category of low-income is not racially determinative, Black women were often at the blade's end of the scalpel. Southern doctors employed a variety of tactics to assert their dominance

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<sup>102</sup> Carpio, "The Lost Generation," 45.

<sup>103</sup> Carpio, "The Lost Generation," 45.

<sup>104</sup> Carpio, "The Lost Generation," 45.

<sup>105</sup> Rebecca M. Kluchin, *Fit to Be Tied: Sterilization and Reproductive Rights in America, 1950-1980*, (NJ: Rutgers University Press, 2011), 93.

<sup>106</sup> Roberts, *Killing the Black Body: Race, Reproduction, and the Meaning of Liberty*, 90-93.

over the Black community demanding equality.<sup>107</sup> The sterilizations that doctors conducted were usually not documented, which prevented women from directly relating the doctors' actions and medical procedures to the abuses of their bodies.<sup>108</sup> In other cases, patients were unaware they had even been violated for years, perhaps indefinitely.

The Relfs, a family of Black illiterate farmworkers from Montgomery, Alabama, made their way to the city and survived off relief payments totaling \$156 per month.<sup>109</sup> Among the six children in the family, the youngest Minnie Lee Relf, 14, and Mary Alice Relf, 12, were mentally underdeveloped and ultimately victims of coercive sterilization.<sup>110</sup> When the younger Relf sisters needed renewed injections of the long-acting experimental contraceptive Depo-Provera in June 1973, nurses from the government-funded Montgomery Community Action Agency requested approval from the Relf family.<sup>111</sup> Mrs. Relf, unable to read or write, and presented with the forms regularly required for the Depo-Provera shots, signed the permission form with an "X."<sup>112</sup> However, the nurse administering the Depo-Provera believed these young girls' race, mental capacity, and impoverishment made them prime candidates for sterilization, leaving the Relfs to eventually discover that their daughters had been medically sterilized.<sup>113</sup>

After the Relfs' discovery, they turned to the Southern Poverty Law Center (SPLC) to file a class action lawsuit in federal court that demanded a moratorium on government-funded sterilizations. The SPLC contended in *Relf v. Weinberger* (1974) that the federal government, under the direction of the Department

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<sup>107</sup> Kluchin, *Fit to Be Tied: Sterilization and Reproductive Rights in America*, 93.

<sup>108</sup> Kluchin, *Fit to Be Tied*, 93-94.

<sup>109</sup> Roberts, *Killing the Black Body*, 93.

<sup>110</sup> Roberts, *Killing the Black Body*, 93.

<sup>111</sup> Roberts, *Killing the Black Body*, 93.

<sup>112</sup> Roberts, *Killing the Black Body*, 93.

<sup>113</sup> Roberts, *Killing the Black Body*, 93.

of Health, violated the Relf sisters' right to privacy guaranteed in the Due Process Clause under the Fourteenth Amendment of the United States Constitution.<sup>114</sup> In its civil lawsuit, the SPLC stated that the court must order the United States to halt all further sterilizations until a constitutionally adequate standard for sterilization was set forward, but the consequential legal change was tempered by later appellate court rulings.<sup>115</sup>

According to Dorothy E. Roberts, a professor of Law and Sociology at The University of Pennsylvania, and author of *Killing the Black Body: Race, Reproduction, and the Meaning of Liberty*, *Relf v. Weinberger* revealed the alarming extent of sterilizations throughout the South. In one prominent example, civil rights activist Fannie Lou Hamer (1917-1977) was involuntarily sterilized in 1961 at Sunflower City Hospital in Alabama, where she sought to have a uterine tumor removed.<sup>116</sup> Teaching hospitals used impoverished Black women as living cadavers for their medical residents to practice on through unnecessary and unwanted hysterectomies.<sup>117</sup> According to Fannie Lou Hamer, in an October 1970 *New York Times* article by June Jordan titled "Mississippi 'Black Home'":

The reason I would rather go to Mound Bayou if I take sick, is that women go up to that hospital [the white hospital in Ruleville] and be sterilized, without signing anything. And to be perfectly honest, see, I can give you medical proof: It happened to me. And it happened to so many others. This is nothing beautiful to say, but I want

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<sup>114</sup> "Relf v. Weinberger," Southern Poverty Law Center, Accessed September 28, 2022, 16, <https://www.splcenter.org/seeking-justice/case-docket/relf-v-weinberger>.

<sup>115</sup> "Relf v. Weinberger," 21.

<sup>116</sup> Roberts, *Killing the Black Body*, 90.

<sup>117</sup> Roberts, *Killing the Black Body*, 90.

people to know what's going on. They [Black women] be sterilized without knowing it...."<sup>118</sup>

June Jordan chronicled her journey throughout Mississippi and the struggles Black people suffered from the scars of Jim Crow laws and segregation; it demonstrated that actionable knowledge of the abuses available to the public at the time. While Mound Bayou was known to be a haven for Black people, an uneven dirt road made the journey potentially hazardous for someone with a medical emergency, despite this Fannie Lou Hamer urged African Americans to make the trip to Mound Bayou.<sup>119</sup> Hamer emphasized that the hospital in Ruleville sterilized her without her consent and made it her mission to inform people of the uninformed sterilizations in government hospitals.

Despite the fact that hysterectomies - the removal of a woman's entire uterus - resulted in a twenty times higher risk of death, surgeons were financially motivated to conduct them because Medicaid priced them at \$800.<sup>120</sup> In contrast, a tubal ligation, a safer and less invasive option with similar results, was priced at only \$250.<sup>121</sup> The indifference towards Black women by the authorities demonstrates that they viewed Black women as more of an object, and at best sub-humans that needed their populations controlled.

The Social Security Act of 1935 created the Aid to Families with Dependent Children (AFDC) grant program that allowed states to offer cash welfare benefits for underprivileged children who had been denied parental support or care because their father or mother was absent, ill, sick, or unemployed.<sup>122</sup> The inclusion of

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<sup>118</sup> June Jordan, "Mississippi 'Black Home'," (The New York Times, October 11, 1970), <https://www.nytimes.com/1970/10/11/archives/mississippi-Black-home-a-sweet-and-bitter-bluesong-mississippi.html>.

<sup>119</sup> Jordan, "Mississippi 'Black Home'".

<sup>120</sup> Roberts, *Killing the Black Body*, 90.

<sup>121</sup> Roberts, *Killing the Black Body*, 90.

<sup>122</sup> "Aid to Families with Dependent Children (AFDC) and Temporary Assistance for Needy Families (TANF) - Overview," ASPE (Office of The Assistant Secretary for Planning and Evaluation), accessed December 09, 2022,

Black families in such social welfare programs, previously only available to Whites, was quickly vilified as evidence of dependency and Black people's lack of a work ethic and social degradation.<sup>123</sup> The previous perception of a virtuous White widow was rapidly replaced by the supposedly immoral Black welfare queen as the standard stereotype of the welfare mother.<sup>124</sup> As these progressive welfare reforms were linked with Black women, already stigmatized as careless, irresponsible, and too fertile, the AFDC was gradually burdened with behavior modification guidelines, employment restrictions, and lower adequate benefit levels.<sup>125</sup> This explicitly tied Black women, already marginalized and disliked by many White Americans, to taxpayer dollars emphasizing the fear of Black women siphoning off public money. However, this concern for public funds shrouded their racist and eugenic intentions to control women of color's bodies and repress their reproduction.

### ***Population Control Through Racial Lawfare***

Beyond direct sterilization, which ultimately fell out of fashion along with outright eugenic policy, the state attempted other more subtle methods of population control for those deemed undesirable. New Jersey was the first state to implement a family cap provision in 1992.<sup>126</sup> The term family cap is misleading and could be more appropriately referred to as a child exclusion provision. A family's welfare payment often increased by a predetermined amount upon the birth of a new child; the family cap provision denied the increase if the child was born after acquiring welfare.<sup>127</sup> These provisions made no exception for birth caused by rape, incest, or

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<https://aspe.hhs.gov/aid-families-dependent-children-afdc-temporary-assistance-needy-families-tanf-overview>.

<sup>123</sup> Roberts, *Killing the Black Body*, 212.

<sup>124</sup> Roberts, *Killing the Black Body*, 207.

<sup>125</sup> Roberts, *Killing the Black Body*, 207.

<sup>126</sup> Roberts, *Killing the Black Body*, 210.

<sup>127</sup> Roberts, *Killing the Black Body*, 210.

failed contraception.<sup>128</sup> In other words, a mother receiving welfare for one child with a second child cannot include the second child for calculating benefit levels, while a mother applying for welfare for the first time with two children can include both.<sup>129</sup>

New Jersey required federal approval to implement the family cap provision because the exclusion conflicted with federal AFDC eligibility standards.<sup>130</sup> The Social Security Act of 1935, which authorized the Secretary of Health and Human Services (HHS) to waive necessary compliance with federal guidelines for experimental projects that promote the act's objectives to care for needy children and to strengthen their families, was used to skirt these AFDC standards.<sup>131</sup> With the federal government's approval of the New Jersey family cap provision, similar policies were adopted by multiple states and Congress aimed to implement similar changes to welfare nationwide.

In 1996, President Bill Clinton (b.1946) signed the Personal Responsibility and Work Opportunity Reconciliation Act, which, along with a federal family cap provision, included The Temporary Assistance for Needy Families (TANF) block grant system that completely overhauled the AFDC welfare system for the worse giving more power to individual states.<sup>132</sup> The TANF regulations placed a five-year lifetime limit on cash assistance and prohibited unmarried parents from acquiring it.<sup>133</sup> Clinton's legislation also limited welfare benefits for noncitizens, including requirements

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<sup>128</sup> Roberts, *Killing the Black Body*, 210.

<sup>129</sup> Roberts, *Killing the Black Body*, 211.

<sup>130</sup> Roberts, *Killing the Black Body*, 211.

<sup>131</sup> Roberts, *Killing the Black Body*, 211.

<sup>132</sup> Congress.gov, "H.R.3734 - 104th Congress (1995-1996): Personal Responsibility and Work Opportunity Reconciliation Act of 1996," August 22, 1996. <http://www.congress.gov/>.

<sup>133</sup> Gene Falk, "The Temporary Assistance for Needy Families (TANF) Block Grant: A Legislative History," Congressional Research Service reports, November 22, 2022, <https://sgp.fas.org/crs/>, 6.



that noncitizens must reside in the country for five years to become eligible for TANF, demonstrating a racial slant to the legislation.<sup>134</sup>

Congress also made it clear that its welfare reform initiatives paid particular attention to issues in the Black community. To support the necessity for its policies, the House Republicans' Contract with America referred to the growing numbers of fatherless children amongst the Black population. House Speaker Newt Gingrich (b.1943) blamed Black people's poverty on their apathy while pushing this Contract with America.<sup>135</sup> It noted that a young Black man's chances of engaging in criminal activity roughly quadrupled if they were raised without a father and tripled if he lived in an area with a high concentration of single-parent homes.<sup>136</sup>

The House Republican rhetoric about the behavior of the Black community is not based on any legitimate study. In the eyes of House Republicans like Gingrich, dependency only happens when a woman of color asks for help. Conservatives' long-term reliance on family wealth, life insurance earnings, government agriculture subsidies, and Social Security payments are not similarly condemned. When rich white people get tax cuts on their enormous wealth, it is not a form of welfare, when white farmers get government subsidies on their corn harvest, it is not considered welfare. They do not consider this kind of financial help as a dependency.<sup>137</sup> Yet, if a Black mother requests financial and material aid from the government it is conditional, and they are often labeled as lazy or the derogatory Welfare Queen. She is then penalized if she is a single mother and has additional children by the new TANF laws, so she is not easily tempted to increase the supposed economic burden on the government and maintain her eligibility.

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<sup>134</sup> Falk, "The Temporary Assistance for Needy Families (TANF) Block Grant: A Legislative History," 6.

<sup>135</sup> Roberts, *Killing the Black Body*, 215.

<sup>136</sup> Roberts, *Killing the Black Body*, 215.

<sup>137</sup> Roberts, *Killing the Black Body*, 220.

## **Conclusion**

Women of color in particular have been subjected to a variety of reproductive abuses and manipulation designed to marginalize their reproductive rights and control their populations. California was a pioneer in the eugenic movement, one of the first to craft eugenic legislation in 1909. However, these initial laws in California targeted not women of color, but incarcerated mentally challenged individuals for sterilization to supposedly protect the public from the convicts' assumed sexual deviance. White supremacists quickly caught onto the eugenic rhetoric's ability to control women of color's reproduction, and thus the overall minority population, and then justified racist policy to supposedly protect the majority white population. Doctors at the LACMC sterilized Chicana women without their consent and evaded responsibility in court. Native women were also a target of systematic reproductive abuses. The federal government utilized the Indian Health Service (IHS), the Department of Health, Education, and Welfare (HEW), and the Bureau of Indian Affairs (BIA) to sterilize Native women without their consent, resulting in a significant drop in census numbers of the indigenous populations in the following decades.<sup>138</sup> Black women, longtime victims of American white supremacy and sexual violence, did not escape similar reproductive abuses such as sterilization. Black women's reproductive activity was also regulated through targeted welfare stipulations. The systematic reproductive abuses that these women of color were subjected to share many similarities in method, outcome, and motive.

All the women mentioned were tricked and manipulated into sterilizations that took away their reproductive autonomy. Their reproduction was seen as a problem putting too much burden on the welfare system. However, the concern for public safety often professed as the motivation for discriminatory policies, hid politician's racist intentions. By suppressing people of color's

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<sup>138</sup> Torpy, "Native American Women and Coerced Sterilization," 1.

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ability to reproduce, and asserting authority over the bodies of Chicana, Black, and Indigenous women, systematic reproductive abuse continued the United States' unfortunate history of state-sanctioned racial discrimination.

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