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Reproductive Rights and State Institutions: The Forced Sterilization of Minority Women in the United States

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**Reproductive Rights and State Institutions:
The Forced Sterilization of Minority Women in the United States**

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Submitted to the Human Rights Program, Trinity College
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Reproductive Rights and State Institutions: The Forced Sterilization of Minority Women in the United States

Maggie Lawrence

Introduction

Throughout the 1900s, eugenics programs emerged in various countries as a way to rid societies of undesirable individuals. The ultimate goal of these programs was to craft the perfect citizen and thus to create the perfect nation. Scientists compiled research, conducted experiments in laboratories, and stored information about average citizens to learn about the ideal traits of an ordinary person. Using this information, they collaborated with political organizations and social associations to advance the eugenics movement. With the information discovered in these laboratories, local groups published and distributed newsletters and journals detailing race pseudoscience and the eugenics movement; they then educated citizens and youth on this material through propaganda and municipal events. Through a combination of propaganda, organizations, and social experiments, these eugenics programs targeted Jewish, Italian, and other immigrants; these minorities were moved from crowded cities and subjected to deportation, confinement, and/or forced sterilization.¹ The programs initially targeted immigrants, people of color, mentally or physically handicapped individuals, impoverished citizens, and anyone else who was considered a minority; eventually, the program spread to include women who were considered promiscuous, “oversexed”, or “sexually wayward”.² Ultimately, the eugenics campaign sought to rid the country of the unfit population in 10% increments.

¹ Edwin Black, “The Horrifying American Roots of Nazi Eugenics,” *History News Network*, last modified September 2003, <http://hnn.us/article/1796>.

² *Ibid.*

³ *Ibid.*

The aforementioned eugenics programs and sterilization campaigns are not a scene out of Nazi Germany. Instead, it is the United States in the early 1900s, and in fact, this American eugenics program was the foundation for Nazi racist pseudoscience and forced sterilization. Federal and state policies allowed for marriage restrictions, segregation, and forced sterilization of individuals who were considered ‘unfit’ in an effort to create the perfect nation.³ The Carnegie Institution organized and funded the aforementioned laboratories, stockpiles of information, and citizen identification cards located on Long Island. Jewish and Italian immigrants were deported from New York City and were forcibly sterilized by the New York Bureau of Industries and Immigration. American institutions like The Rockefeller Foundation funded German eugenics organizations and eugenicists like Josef Mengele, who went on to work in Auschwitz. The very same racial pseudoscience programs that inspired and gave way to the Holocaust were founded in and had flourished throughout the United States beforehand; it was through these programs that compulsory, state-sponsored sterilization campaigns in the United States gained momentum.

Forced sterilization as a eugenics movement in the United States was rampant throughout the late 1800s and especially the 1900s. By the mid- to late-20th century, an estimated 65,000 ‘unfit’ individuals had undergone forced or coerced sterilization.⁴ However, this history is not unknown: numerous articles, books, journals, and documentaries explore the dark past of reproductive choice in the United States. These sources uncover stories and statistics of targeted men and victimized women who were either forced or coerced into sterilization. The history is not hidden; the sad realities are outlined in old state laws that allowed for these injustices to occur. Despite this, the true extent of forced sterilization is lesser known. The stories of the

³ Ibid.

⁴ Rebecca Kluchin, “Fit to be Tied: Sterilization and Reproductive Rights in America, 1950-1980,” (New Jersey: Rutgers University Press, 2009), pg. 17.

victims and the sheer numbers of sterilizations are neglected because they are events that occurred in the 20th century and are thus forgotten with the turn of the new century.

Despite the perception that all of these events occurred in the past, cases of coerced and forced sterilization are still major abuses of human rights, reproductive rights, bodily integrity, and individual autonomy. As Radhika Coomaraswamy, a former UN Special Rapporteur on Violence Against Women, once stated, "...forced sterilization is a method of medical control... essentially involving the battery of a woman – violating her physical integrity and security... forced sterilization constitutes violence against women."⁵ Forced sterilization takes away a woman's agency and ability to make choices about her body. It forces a method of birth control on a woman that directly controls the number of children that she can decide to bear. This alone is a clear violation of an individual's right to health, which is outlined in Article 7 of the International Covenant on Civil and Political Rights; Articles 10, 12, 16, and 19 in the Convention on the Elimination of All Forms of Discrimination Against Women; and Article 94 in the Beijing Declaration and the Platform for Action.⁶ These rights treaties explicitly outline individuals' and women's rights to health, which include – but are definitely not limited to – individual choices in reproduction and sterilization. In extreme circumstances of widespread and systematic cases of coerced or forced sterilization, the Rome Statute even labels "enforced sterilization" as a "crime against humanity" in Article 7, likening the abuse to an international crime.⁷ This is not just on an international level, however; coerced and forced sterilization in the

⁵ "Violating Women's Rights: Forced Sterilization, Population Control and HIV/AIDS," *Association for Women's Rights in Development*, Last modified 06 July 2013, <http://www.awid.org/News-Analysis/Friday-Files/Violating-Women-s-Rights-Forced-Sterilization-Population-Control-and-HIV-AIDS>.

⁶ Ibid.

⁷ "Rome Statute of the International Criminal Court," *Prevent Genocide International*, Accessed 13 April 2014, <http://www.preventgenocide.org/law/icc/statute/part-a.htm>.

United States can be considered a crime against humanity because it is discriminatory, widespread, and systematic.

This is a topic concerning reproductive rights and reproductive choice, and as such, this topic is extremely gendered. While sterilization is a procedure that was and is imposed on both men and women, women have comprised over 60% of all forced sterilization procedures.⁸ Those who were labeled ‘unfit’ tend to be minority women: they were and are women of color, mentally and physically handicapped, impoverished, inmates, or immigrants. As such, minority women will be the main focus of this paper because forced sterilization is undoubtedly a gendered issue. Minority women were disproportionately coerced into sterilization, so this paper will include case studies from all minority women, not just one minority. It was a traumatic experience for all women who were forcibly sterilized; to highlight the experiences of Native American or African American women over impoverished or immigrant women would be a disservice to the victims.

There is much intersection among these minority statuses, so many of the women targeted fell into multiple groups: some were impoverished African American women or Latina immigrants. Because of the intersection between race, gender, and class related to state sanctioned sterilization, this paper will look at compulsory sterilization in the context of common constructs, ideas, and themes found in women’s rights literature and theory. These themes include the private versus public sphere, the question of consent, and the right to choose. All of these themes are very common in discourse on reproductive justice and so they naturally fit well in the discussion on forced sterilization. These themes will be used to show how forced sterilization is an exceptional abuse of reproductive justice and reproductive rights; it is not just infringing on a woman’s right to choose or her right to consent, but it is simultaneously violating

⁸ Kluchin, 13.

all her right to choose, her bodily integrity, her right to reproduce, and an array of human and health rights.

Because this thesis is solely looking at the coerced and forced sterilization of minority women, it will incorporate some race and feminist concepts. It will use theories of ‘othering’ and identity to explore the effect that racial and gendered targeting have on minority women. It attempts to answer the questions of: How were sterilization programs used as a form of population control against minority women who were considered to have undesirable characteristics? How did state-sponsored sterilization programs ‘other’ individuals based on their demographics? For women who were sterilized, how did this affect their identities as minorities or as women? What type of physical, mental, and emotional repercussions were results of this compulsory sterilization, and how do individuals, states, and countries move past decades of race- and gender-based abuses? This theoretical shift from history to race and gender is meant to show how these women were targeted and the effect that these procedures have on minority women.

Consider the case of Kimberley, an African American female who was once an inmate in California. When Kimberley was five months pregnant, she shoplifted from a store and was subsequently sentenced to six months at Valley State Prison.⁹ Prior to her incarceration, Kimberly pleaded to the Valley State Prison Board to reduce her sentence from six to five months: doing so, she said, would allow her to deliver her child outside of the prison infirmary. Her request was denied, and she and her unborn child were subjected to the harsh prison system. While incarcerated, Kimberley had heard gossip and horror stories about a doctor in the prison

⁹ Justice Now, “Let Our Families Have a Future: Kimberley,” last modified August 2013, <http://vimeo.com/70446357>.

who was “taking women’s uterus [sic].”¹⁰ Kimberley visited this doctor one day when she was experiencing abdominal pain and was diagnosed with two uterine fibroid tumors. The doctor told Kimberley that the tumors were huge and life threatening; if they burst, she could bleed internally. The only cure, according to him, was to remove the tumors through a hysterectomy after she gave birth. She asked if she could receive a second opinion about the issue or if the surgery could wait until she was released from prison, but the doctor insisted that she receive the operation. This was Kimberley’s first encounter with the famous doctor and the first time that sterilization was mentioned to Kimberley. Before this could occur, Kimberley went into labor. She was transported by police car from the prison to Madera County Hospital to undergo a Cesarean section. Doctors used Velcro to strap her to a surgical table and administered her epidural. Under the influence of anesthesia and moments before her surgery, the doctor told her that she was to receive a tubal ligation post-child birth. This was the second instance in a short period of time when prison employees and doctors tried to lead Kimberley into a sterilization procedure.

Kimberley’s story is not an exceptional case of compulsory sterilization: in fact, it is a common story of many women who are coerced into these surgeries. Her story is important, however, because it is a modern case study. It is not a story from a state eugenics program from the 1960s. Instead, it is the most recent story of forced sterilization that happened in California in the late 2000s. For a topic that is so typically thought of as a problem of the past, modern case studies prove that this is a topic of the present. Stories of forced sterilization are not solely historical narratives but are instead lived realities.

This thesis will use a multitude of sources ranging from legal codes and eugenics pamphlets to news articles and interviews to examine stories of forced sterilization from a human

¹⁰ Ibid.

rights perspective. In discussing the history of coerced and forced sterilization, this paper aims to uncover an unsettling realization: the codified history of eugenics programs and forced sterilization in the United States is not the only narrative. Current writings on forced sterilization ignore the stories of the victims and modern case studies. Combined with the known history of American eugenics, these three histories give new light to this topic.

The first history is the common and well-known history. This includes the start and progression of American eugenics movements on a social and political level in the 1900s. It will describe how these movements were translated into laws and how these laws transpired into state-led sterilization movements. It is important for the reader to understand how this movement emerged because this is the foundation of the topic: it is the reason why victims are still suffering and why sterilization campaigns continue to occur in the United States and across the globe. The reader must first learn and understand the 20th century history before he can acknowledge other aspects of the topic.

Second, this thesis will uncover the histories of the victims. Kimberley, the inmate whose story was told above, was lucky. Through her anesthetic fog, Kimberley was able to tell the doctors – who were prepared to perform a tubal ligation – that she was only consenting to a Caesarian section.¹¹ From there, she had to sign a consent form waving off the tubal ligation. Kimberley was lucky, and not all women in the California prison system had the same fate. In all, some 150 Californian female inmates were sterilized between 2006 and 2010.¹² It is also estimated that approximately 40,000 women and 65,000 individuals total were sterilized through

¹¹ Justice Now, “Let Our Families Have a Future: Kimberley.”

¹² Corey G. Johnson, “Female inmates sterilized in California prisons without approval,” The Center for Investigative Reporting, Last modified 7 July 2013, <http://cironline.org/reports/female-inmates-sterilized-california-prisons-without-approval-4917>.

American eugenics programs between 1930 and 1970.¹³ The victims from this eugenics era are numerous, and those who are still alive continue to live with psychological trauma and physical loss. They are still angered by the fact that they were misinformed about their tubal ligations when the procedure was performed; they live with the mental anguish of having no offspring to carry on their family name; and even now, they continue to dwell on how their reproductive rights and choices were stolen from them.

Whether these women were sterilized in 1960, 1970, 1980, or 2010, they are still coping with the trauma that occurred decades ago. To speak of coerced sterilization as a topic of the past does a disservice to all living victims, whether their sterilizations occurred fifty or five years ago. It minimizes their suffering and diminishes the fact that these procedures have affected their entire lives. Therefore, this thesis seeks to reexamine the history of forced sterilization to give more focus to the victims and their struggles.

To prove that this still is a modern topic, this paper will thirdly incorporate case studies from more recent eras. Drawing on these more modern American case studies, this paper aims to show that coerced and forced sterilization is a still sometimes a state-initiated practice that threatens women's rights and reproductive choices. It is important to note, however, that most of the case studies in this paper – even those deemed 'historical' – are fairly modern. Approximately 25% of Native American women were sterilized in the 1970s.¹⁴ While this decade is indeed the past, it only occurred forty years ago. These are human rights abuses that are not even half a century old. In proving that this is a modern topic, however, this paper will emphasize more recent case studies with the hope that it will change the perception that forced sterilization is only a historical topic.

¹³ Kluchin, 13.

¹⁴ Jane Lawrence, "The Sterilization of Native American Women," *American Indian Quarterly*, Vol. 24, No. 3. (Summer, 2000), <http://www.jstor.org/stable/1185911>, pg. 400.

Through racial, socioeconomic, and gendered perspectives, this thesis ultimately aims to look at this topic as an egregious violation of reproductive justice, women's rights, bodily integrity, and human rights. In addressing it as a human rights violation, this paper will also address how restorative justice and retribution can help bring justice to victims. This paper will conclude with ideas about how the human rights principles of restorative justice and retribution – combined with legal counsel, psychological services, and lobbying through non-governmental organizations – can be employed to provide monetary and emotional support and compensation for the victims. In looking at the restorative aspect of this topic, this paper aims to honor victims of the past and present and provide them with a better future.

Chapter One

The History of State-Sponsored Sterilization Programs in the United States

Sterilization as a reproductive choice became a popular form of birth control for both women and men during the 1950s; today, it is the most common mechanism of contraception among individuals with 25% of people - especially married couples - undergoing sterilization.¹⁵ From that decade on, tubal ligations as a contraceptive choice skyrocketed among women. For example, in 1970, only 4.7 out of 100,000 women were sterilized, but by 1980, this number had almost tripled.¹⁶ Tubal ligations were especially common among lower-income women because this form of contraception was relatively inexpensive. Both private insurance and government programs like Medicaid paid for many of these operations. Between 1994 and 1996, for example, Medicaid paid for approximately 32.6% of all sterilization procedures; this is in contrast to the 57.9% of women who paid for the operations through private insurance and the 2.3% who paid on their own.¹⁷ Government-sponsored programs allowed for lower-income women to afford the operation, while private insurance companies allowed middle- and upper-class women also have the surgery. Overall, one surgery is less expensive and more permanent than relying on monthly contraceptives. Ultimately, this is another reason why tubal ligations became so popular during the mid- to late-1900s: the surgery is permanent and foolproof. There are no unwanted pregnancies after a woman undergoes tubal ligation. Between 1971 and 1973 alone, it is estimated that tubal ligation prevented an estimated 800,000 unwanted pregnancies, so it is apparent that this method of contraception was highly accepted and wanted by women.¹⁸

¹⁵ Ian Dowbiggin, *The Sterilization Movement and Global Fertility in the Twentieth Century*, (Oxford: Oxford University Press, 2008), pg. 3.

¹⁶ Andrea P. McKay et al., "Tubal Sterilization in the United States, 1994-1996," *Family Planning Perspectives*, Vol. 33, No. 4 (Jul. - Aug., 2001), <http://www.jstor.org/stable/2673719>, pg. 163.

¹⁷ *Ibid*, 164.

¹⁸ Charles F. Westoff and James McCarthy, "Sterilization in the United States," *Family Planning Perspectives*, Vol. 11, No. 3 (May - Jun., 1979), <http://www.jstor.org/stable/2134232>, pg. 147.

Vasectomies were sterilization procedures for men, and they were also immensely popular during the 1900s. Vasectomies were a guaranteed method of birth control, and they tended to be less expensive than tubal ligations, as well. Despite this, tubal ligations remained steadily popular throughout the 20th century, meaning that more women chose to become sterilized than their male counterparts.

It is no wonder why this became such a popular mode of birth control throughout the 1900s. Tubal ligation was affordable, accessible, and permanent. These three characteristics are then major factors in why tubal ligation and other methods of sterilization were taken up by the state. Starting in the 1950s until the 1970s, there was a shift in how this form of contraception was offered. Instead of issuing sterilization as a reproductive choice, state- and federally-funded institutions began compulsory sterilization initiatives for ‘unfit’ citizens. These unfit citizens were typically minority women, meaning that the state was beginning to regulate women’s bodies and reproductive functions.

The Eugenics Movement: Creating the Perfect Society

‘Eugenics’ is a term and scientific philosophy that was brought about in 1883 when scientist Gregor Mendel began to cross-breed plants.¹⁹ This hybridization of plants had the end goal of taking the best genes from two different plants and combining them into one plant. In theory, this hybridized plant would have the best genes, making it stronger and more likely to survive. What began as botany quickly turned into a topic of human genetics; in the early 1990s, ‘eugenics’ then turned from a science concerning plants to a subject of breeding and producing the best citizens. In the early 1880s, researcher Francis Galton studied British ruling classes and questioned why these families became dominant. He concluded that it was their biology and

¹⁹ Mark A. Largent, “Breeding Contempt: The History of Coerced Sterilization in the United States,” (New Jersey: Rutgers University Press, 2011), pg. 47.

superior genetics that made them “good in birth.”²⁰ It was through Galton that the eugenics movement came to the United States and flourished. Influential American biologist Charles Davenport quickly became a main proponent of the eugenics movement, promising Americans that certain traits (for example, intelligence, cleanliness, and work-ethic, among others) were pre-determined by race, temperament, and status. He argued that you could indeed hybridize strong individuals to create the best human, and so eugenics policies became a way to prove that genetics, heredity, and manufactured evolution could improve the country and its citizens.²¹

These fathers of eugenics determined what ideal traits should be genetically between generations. These characteristics included intelligence, leadership, good hygiene, and a sound moral code, among many other attributes.²² In the name of nationalism, the eugenics movement gained much popularity, and quickly, eugenics organizations and lobbyists became rampant throughout the United States: The Race Betterment Society was founded in 1906 (with donations from J.H. Kellogg, the founder of Kellogg’s cereal); the Eugenics Record Office (ERO) was established in 1910; the Galton Society - named after Francis Galton - had its very first meeting (under the command of Davenport) in 1918; and the American Eugenics Society (AES) was founded by 1921 under the control of Davenport, as well.²³ It is apparent that the fathers of eugenics had much influence in the field and greatly drove the eugenics movement and its subsidiary organizations. These eugenics organizations brought together clergymen, educators, policy makers, immigration regulators, and policemen to influence public policy and popular culture. They organized events and movements across the country to teach about eugenics.

²⁰ Steven Selden, “Transforming Better Babies into Fitter Families: Archival Resources and the History of the American Eugenics Movement, 1908-1930,” *Proceedings of the American Philosophical Society*, Vol. 149, No. 2 (Jun., 2005), <http://www.jstor.org/stable/4598925>, pg. 202.

²¹ Largent, 40.

²² Selden, 205.

²³ *Ibid*, 202.

The message of eugenics quickly changed from “What good traits should society cultivate to pass on?” to “What bad traits can we stop?” It became less focused on cultivating strong genetics and began placing more emphasis on ridding society of “defective” and “unfit” citizens.²⁴ Traits of defective and unfit citizens were associated with certain demographics: immigrants, racial minorities, and mentally and physically disabled individuals were viewed as the most socially unfit. They were tied to socioeconomic problems like illiteracy, crime, and economic inequality; the roots of these issues were not social but were instead attributed to the genetic qualities of “imbeciles, weaklings, paupers, and hoboes.”²⁵ Social problems were blamed on the undesirable traits of certain individuals who reproduced and afflicted the rest of the population; if society could stop the root of the problem – or the carriers of the bad traits – the problems could be eliminated completely.

State- and Federally-Funded Sterilization Programs

The philosophy and science behind eugenics soon turned into a monumental social movement on a national level. Through lobbying and social events, eugenics organizations like the Race Betterment Society, the ERO, the Galton Society, and the AES began a movement that promoted ridding society of ‘genetically inferior’ individuals. These social movements soon crossed into the public sphere, and compulsory sterilization quickly became legally permitted on a state-level.

In 1907, Indiana was the first state to pass a eugenics law to “prevent the procreation of confirmed criminals, idiots, imbeciles, and rapists.”²⁶ Before this legislation was even passed, hundreds of individuals - particularly incarcerated men - had undergone sterilization, and the

²⁴ Kluchin, pg. 10.

²⁵ Selden, 205.

²⁶ Paul Lombardo, “A Century of Eugenics in America: From the Indiana Experiment to the Human Genome Era,” (Indiana: Indiana University Press, 2011), pg. 98.

passage of this legal text made room for more cases of sterilization. The wave of compulsory sterilizations to rid society of certain demographics became known as the “Indiana Plan”, and the legalization of compulsory sterilization to stop certain individuals from procreating became commonplace.²⁷ California followed suit in 1909, and soon, 29 other states provided funding for sterilization programs. Within state institutions, the primary populations targeted for forced sterilization at the beginning of the eugenics movement were incarcerated and mentally ill individuals. In Indiana, for example, a 1927 addendum to the 1907 law noted that sterilization was “progressive” and “a precondition for a patient’s release”, showing that it was viewed as a legitimate remedy to certain illnesses or problems.²⁸

Quickly after the acceptance of sterilization programs for mentally ill individuals, policy makers and eugenics movements shifted their focus to minority women. This shift namely happened between 1930 and 1960. Of the over 62,000 cases of compulsory sterilization during this thirty year period, approximately 61% were forced on women.²⁹ The reasons for compulsory sterilization truly saw a shift during these three decades: before, sterilization was used to treat aggression and ‘attempt to cure’ institutionalized individuals (especially mentally ill men); by the 1960s, however, sterilization became a way to control women’s reproduction. By inhibiting a woman’s sexuality and reproductive capacities, the state was able to limit the population growth among certain individuals. Low-income and minority women were targeted, typically through state- and federally-funded health and social programs like Medicaid. One young woman who was sterilized in North Carolina even though she did not consent to the operation; her parents consented gave consent because social workers threatened that her family’s welfare benefits

²⁷ Ibid.

²⁸ Ibid, pg. 99.

²⁹ Kluchin, pg. 17.

would end if they did not sterilize the “mentally deficient” girl.³⁰ In other instances, state-mandated aptitude tests were given to individuals, and if the person did not receive above a certain score on the test, she would be sterilized. This disproportionately affected people who were unemployed and poorly educated, which was typical to lower-income groups. In some instances, like Native American cases, doctors would have women consent to contracts written in advanced English; because this was not the women’s first language, they often did not comprehend the contract.³¹ The hospitals would not provide translators or doctors who could speak these indigenous languages. This left many women confused and unsure of what procedures they were receiving or what consent forms they were signing.³² The intersections between education, socioeconomic status, and race are well-known; these categories are not mutually exclusive, so a person who is uneducated and poor can also be a racial minority or immigrant.

While some cases, like some of the Native American ones, involved consent forms, many did not. It is a common story for women to expect to have one procedure and to actually have received another. Likewise, it was ordinary for women to be given anesthesia and then to be coerced or told about another operation that was going to be performed; even while under the influence of anesthesia, consent – even when misjudged or misinformed – is considered consent. This situation almost happened with Kimberley (the Californian inmate mentioned above), and it happened in many past cases, as well. In one case, a Native American woman named “Sarah”

³⁰ Kim Severson, “Thousands Sterilized, a State Weighs Restitution,” *The New York Times*, Last modified 9 December 2011, http://www.nytimes.com/2011/12/10/us/redress-weighed-for-forced-sterilizations-in-north-carolina.html?pagewanted=all&_r=1&.

³¹ Lawrence, pg. 412.

³² Myla Vicenti Carpio, “American Indian Women and Sterilization Abuse,” *Social Justice* Vol. 31 No. 4 (2004): <http://www.jstor.org/stable/29768273>, 48.

reported on her story involving Indian Health Services, the national health care provider for Native Americans:

...I had a cyst in my stomach, my womb, and I had appendicitis. I went in for my six weeks check up and he [the doctor] was pushing in my stomach and I started getting pains and that's when he said I had to go to the hospital to get the operation, to have the cyst taken out... I think I did sign a piece of paper to get the operation, to have the cyst taken out... I think I did sign a piece of paper that said I have to have the appendix and cyst taken out; that's all they told me and nothing else.³³

While on the operating table, it was especially uncommon for some women to consent to these new surgeries at all. Many women report going to state healthcare institutions because they were feeling ill, receiving anesthesia, and undergoing a completely different surgery. Once again involving the Indian Health Services, Barbara Moore tells her story:

I was pregnant myself and I went to a public health service to deliver my baby. For one reason or another, I was not able to deliver it in a normal way. They delivered my child by caesarian [sic], that is all I remember. When I woke up the next day after the operation I was told that my child was born dead.... Besides this, they told me that I could not have any more children because they have had to sterilize me... I was sterilized without my knowledge or without my agreement.³⁴

Most commonly, the women are under the control of the state in some way: they are a part of the foster care, they are on welfare, they are incarcerated, or they are living in a state mental institution. In these cases, the state has control of the woman's health and can decide which procedures she undergoes and at what time. When controlled by the state, these women are deemed incompetent or unfit to make their own choices, so the state decides their reproductive fate. Janet and Sadie Ingram were two sisters living in the Virginian foster care system. Janet tells her sterilization story that occurred when she was just sixteen-years-old:

The social worker came and got us and took us to the training school... to get a physical examination... They said, 'get in bed,' and we did. Then the nurse came

³³ Ibid, 46.

³⁴ Ibid, 45.

back, and she had a needle. She gave us a shot, and we went to sleep. And then my stomach was hurting. I looked down there, and it was stitches in it [sic]. The nurse came in and said, “Why are you crying?” I said, I’ve got stitches in my stomach.” She said, “ Oh you’ve just been sterilized.”³⁵

As evidenced, sterilization programs disproportionately targeted minority women. While nation-wide statistics do not greatly exist, specific state statistics on compulsory sterilization are very telling. In California, for example, 31% of compulsorily sterilized women were foreign born.³⁶ Furthermore, minority women in the state were being sterilized at rates that were disproportionate to their population: while Mexican women only made up 4% of California’s population in 1920, they were 8% of coerced sterilization cases that same year. California’s African American population was even more affected. While they only made up 1% of the population, they constituted 4% of all forced sterilizations. These numbers for compulsory sterilization are not just found in California but also across the country. In North Carolina, nonwhite minorities comprised 40% of all forced sterilization cases in the state between 1945 and 1977; women and girls made up 85% of the total compulsory sterilizations during the same years.³⁷ In some cases, entire populations were affected nation-wide: the Indian Health Service - a nationally chartered entity - has been accused of forcibly sterilizing a quarter of all Native American women.³⁸ Some even put this number as high as 50% of all Native American women.

Eugenics laws were outlawed by all states in the same century that they were created; Indiana’s 1907 law that allowed for sterilization was finally struck down and deemed

³⁵ Ray Reed, “50 years on, victims of forced sterilization still await justice,” *The News and Advance*, Last modified 15 March 2014, http://www.newsadvance.com/news/local/years-on-victims-of-forced-sterilization-still-await-justice/article_762f8436-aca9-11e3-9d40-001a4bcf6878.html.

³⁶ Alexandra Minna Stern, “Sterilized in the Name of Public Health: Race, Immigration, and Reproductive Control in Modern California,” *Am J Public Health*, Vo 95, Issue 7, July 2005, <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1449330/>.

³⁷ Severson.

³⁸ Lawrence, pg. 400.

unconstitutional by the Indiana Supreme Court in 1974.³⁹ Other states quickly followed in Indiana's footsteps.

California's Prison System: A Modern Case Study

While coerced sterilization is often viewed as a practice of the past, recent case studies have shown that it is still a sad reality for some women. While it is not as common as it was decades ago, it is still a violation of reproductive justice that many women face. Similar to past examples, the victims are minority women who are considered unfit citizens by the state; used as population control, this modern sterilization seeks to rid unwanted individuals from society. The most recent case study was uncovered in California, where female inmates in the state prison system were coerced into sterilization.

Between 2006 and 2010, approximately 150 female inmates were sterilized through tubal ligations in Californian prisons.⁴⁰ These ligations were given to women who were inmates at the Valley State Prison for Women or the California Institution for Women in Corona; in most cases, these surgeries were performed on women who had several children, meaning that the tubal ligations were to prevent mothers from bearing more children. Of the 150 sterilized, an estimated 148 sterilizations violated prison rules and procedures. This means that the procedures were not state-sanctioned and simply were imposed by doctors or prison employees; these prisons avoided state authorization of these surgeries because California and federal laws explicitly prevent state budgets from funding inmate sterilizations. This policy is outlined in "Subpart B - Sterilization of Persons in Federally Assisted Family Planning Projects" under "Title 42: Public Health".⁴¹ This federal code explicitly prevents these reproductive surgeries, stating "Programs or

³⁹ Lombardo, pg. 37.

⁴⁰ Johnson, "Female inmates sterilized in California prisons without approval,"

⁴¹ "Title 42: Public Health," Electronic Code of Federal Regulations, Last modified 12 March 2012, <https://www.documentcloud.org/documents/724320-federal-and-state-law-on-sterilization-using.html>.

projects... shall not perform or arrange for the performance of a sterilization of any mentally incompetent individual or institutionalized individual.”⁴² Prior to this definition, the same Title 42 defines an institutionalized individual as one who is “involuntarily confined or detained, under a civil or criminal statute, in a correctional or rehabilitative facility...”⁴³ As such, state and federal law prohibits federal funds to be used for the sterilization of incarcerated women; it is then illegal for the California prisons to have contracted and paid local OBGYNs \$147,460 over thirteen years to perform these sterilizations.⁴⁴ Additionally, these tubal ligations are illegal because a 1979 California law outlawed the coerced sterilization of prisoners, the poor, and the mentally and physically disabled.

Doctors reportedly pressured two different types of women into agreeing to sterilization procedures. The first was women who had many children and doctors believed wanted more. Christina Cordero, a former inmate at Valley State who was imprisoned for car theft, was pressured to have a tubal ligation by the prison OBGYN. Cordero gave birth to a child while incarcerated, and once the OBGYN discovered that she had five children at home, Cordero was repeatedly told to consider receiving a tubal ligation. Cordero told reporters, “...[the OBGYN] suggested that I look into getting it done... He made me feel like a bad mother if I didn’t do it.”⁴⁵ The other women were targeted because they were believed to become repeat offenders. Women who were expected to end up back in prison were more likely to be pressured into sterilization. Former inmate and worker at the correctional infirmary Crystal Nguyen reported, “she often

⁴² Ibid, pg. 5.

⁴³ Ibid, pg. 2.

⁴⁴ Johnson.

⁴⁵ Ibid.

overheard medical staffs asking inmates who had served multiple prison terms to agree to be sterilized.”⁴⁶

Ironically, prison officials and doctors argued that the coerced sterilization of these female inmates was actually a fight for reproductive justice and equality. Dr. James Heinrich, an OBGYN at Valley State Prison for Women, stated that the option of sterilization provided an important health service to low-income women who were incarcerated. Daun Martin, the head physician at Valley State, even noted that this was an issue of female empowerment, allowing incarcerated women the same reproductive options as women who were not imprisoned. Martin noted, however, that not all prison physicians accepted these surgeries; some regarded the reproductive services as “nonessential medical care”.⁴⁷

It is interesting that women’s rights and reproductive justice were cited as reasons for why sterilizations should both be allowed in prisons and funded by state and federal budgets. It is not the topic of sterilizations that is so controversial in either the modern or historical cases; instead, it is the factor of choice. A woman’s choice in sterilization is the key factor in the procedure as an issue of reproductive justice. These scenarios, however, do not display reproductive freedom: one of many examples includes Kelli Thomas, a former inmate, who had both of her ovaries removed during an operation that was meant to biopsy her ovarian cysts. She told doctors that they were allowed to remove her ovaries only if they found cancer, and medical records from the operation do not mention cancerous cells or a legitimate reason for her oophorectomy.⁴⁸ It is important to note that in all sterilization cases, the inmates consented through writing; despite this, many of the women felt that they were misled or misinformed

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Patrick McGreevey and Phil Wilson, “Female inmate surgery broke law,” Los Angeles Times, Last modified 14 July 2013, <http://articles.latimes.com/2013/jul/14/local/la-me-prison-sterilization-20130714>.

before the procedures. As Thomas told reporters, “I feel like I was tricked,”⁴⁹ and Cordero told other reporters, “Today, I wish I had never done it.”⁵⁰ That is not choice but is instead another example of how state institutions intentionally misled these female inmates to alter their reproductive practices.

Forced Sterilization on a Global Scale

The main focus of this paper is forced and coerced sterilization in the United States, but this rights and reproductive abuse is also common internationally. International cases of coerced sterilization are actually more modern than those in the United States. This modernity illustrates that forced sterilization is still a lived reality for many women on a global scale.

One location that has recently received a lot attention from media outlets and human rights organizations is Uzbekistan. In Uzbekistan, doctors have a quota of how many sterilizations they must perform each month; in urban areas, this quota is typically four per month, but in rural areas, it can be as many as eight per week.⁵¹ Used as a form of population control, the first case of forced sterilization was recorded in 2005 when young and healthy uteri were brought to a mortuary. Since then, it is estimated that tens of thousands of women have been forcibly sterilized through state-run hospitals and prisons. While the women targeted are not racial or ethnic minorities, there are similar patterns to the situation in the United States: they are usually lower-income women, planning to have more children in the future, and are dependent on the state for medical care (either through prison health centers or rural medical clinics).

⁴⁹ Ibid.

⁵⁰ Johnson.

⁵¹ Natalia Antelava, “Uzbekistan’s policy of secretly sterilizing women,” *BBC News*, last modified 11 April 2012, <http://www.bbc.com/news/magazine-17612550>.

A similar situation has been occurring in Namibia since 2008. HIV-positive women (a minority group because of their medical status and subsequent marginalization) were told that sterilization was required to gain employment. Therefore, these women were coerced into consenting to sterilization procedures for employment purposes. As of 2012, records show that 55 women have been coerced into this procedure; the Legal Assistant Centre of Namibia estimates that this number could actually be much higher.⁵²

In Peru, episodes of forced sterilization have been recorded since the election of President Alberto Fujimori. Between 1990 and 2000, it was recorded that 370,754 individuals were forcibly sterilized in the country, with women making up 346,219 of that number.⁵³ The initiative was created by the government as an anti-poverty measure: by reducing the birth rate of the country, the number of people to provide for would ultimately decrease, leaving more money for less people. Low-income women and minority Quechuan women were targeted under the initiative. Some Peruvian women tell stories of how they were forcibly captured by nurses, detained in ambulances, and forced to sign a consent form. Others tell stories of how medical staff enticed women by telling them they would be arrested and imprisoned if they denied the form of birth control and continued to have more children. Quechuan Peruvian women tell stories where their consent forms were read to or given to them in Spanish, which is not their spoken language, making it impossible to understand. As Gloria Cano, a human rights activist at Aprodeh (a rights organization in Peru), said, “[this is] a problem that has affected poor and indigenous women for the most part.... It was disregard for the poorest people, not medical negligence.”⁵⁴

⁵² “Violating Women’s Rights: Forced Sterilization, Population Control and HIV/AIDS.”

⁵³ Mattia Cabitza, “Peru women fight for justice over forced sterilization,” *BBC News*, last modified 6 December 2011, <http://www.bbc.co.uk/news/world-latin-america-15891372>.

⁵⁴ *Ibid.*

These cases of forced sterilization across the globe greatly echo the history (both past and modern) of coerced sterilization in the United States. It is a gendered issue that primarily affects women over men; it is a racial issue that affects ethnic minorities – like the Quechua – more than ethnic majorities; it is an economic issue that predominately affects impoverished and poor citizens over financially stable ones, as seen in Uzbekistan. Overall, it targets minorities, which is a category that is not always limited to socioeconomic classes, as seen in the Namibian situation where women are targeted because of their medical statuses. Coerced and forced sterilization is a domestic and global human rights issue that continues to afflict large populations of women.

Chapter Two

The Effects of Coerced and Forced Sterilization

Victims' stories often go untold in the history of forced sterilization either because their story was forgotten or - more likely - ignored. The victims are marginalized based on their minority status from the beginning, and it is likewise common for them to be marginalized after the event. Their sterilizations and violations lead to significant psychological trauma, including Post Traumatic Stress Disorder and depression. Another type of psychological trauma that many victims face is a loss of their identity as a human, woman, mother, and minority. These victims are targeted because they are women, because of their race, and because of their status as some kind of minority. It is not arbitrary choosing, but instead is systematic and rooted in cleansing society of unfit and degenerate citizens. These women are targeted because they are minority women; in becoming victims, many of these women become uncomfortable with their gender and race. Post-sterilization, they have an altered identity as a mother or an ethnic minority because they were victimized based on this demographic. By examining the real-life accounts of women who underwent this forced sterilization, one can easily see the effect that these operations have on a woman's identity.

Loss of Identity

Coerced and forced sterilization often results in the loss of identity: some females lose their identity as women and would-be mothers; others lose their identity as minorities. In extreme - and not uncommon - cases, many women even lose their identity as humans, comparing their surgeries to neutering animals. No matter how the sterilizations shaped women, it shows that these operations had more than just a physical impact: it left emotional damage that cannot be fixed within these women's lifetimes. A majority of the following stories occurred

through the North Carolina sterilization program of the 1900s; this is simply because North Carolina has been hearing victims' testimonies in its pursuit of restorative justice (which will be discussed later). Therefore, these are some of the only published accounts of women who had been sterilized, which detail the physical, emotional, and psychological trauma that these female victims face following their sterilizations.

Identity of Woman- and Motherhood

The most common psychological problem discovered after forced sterilization procedures pertain to a woman's identity as both female and a mother. Sterilization takes away a woman's most basic reproductive abilities. For women, tubal ligation - the most common sterilization procedure - involves blocking, severing, and/or tying the fallopian tubes.⁵⁵ It is a permanent form of birth control that cannot be done, meaning that once the surgery is complete, a woman is no longer able to become pregnant and give birth. At this point, a woman's choice of reproducing and becoming a mother is taken from her. In examining the accounts of women who were sterilized, it is obvious that this is the most upsetting part of the forced sterilization.

The loss of identity as a mother can be explicitly seen in the story of Elaine Riddick, a woman who was forcibly sterilized in North Carolina. In 1968, Riddick - then a poor African American girl - gave birth to her first and only child.⁵⁶ She was fourteen-years-old when she was raped by her neighbor, resulting in this unwanted pregnancy. Her situation caught the attention of North Carolina social workers, who labeled Riddick as "feeble-minded" and "doomed to 'promiscuity.'"⁵⁷ As a minor, the social workers could not have Riddick consent to the operation, so they approached her illiterate grandmother, who signed a consent form simply by marking an

⁵⁵ "Tubal Ligation and Tubal Implants," WebMD, Last modified 14 August 2012, <http://www.webmd.com/sex/birth-control/tubal-ligation-and-tubal-implants>.

⁵⁶ David Zucchino, "Sterilized by North Carolina, she felt raped once more," Los Angeles Times, Last modified 25 January 2012, <http://articles.latimes.com/2012/jan/25/nation/la-na-forced-sterilization-20120126>.

⁵⁷ Ibid.

‘X’ on the paper. Over 44-years-later, Riddick is alive and healthy, other than her inability to give birth. Riddick told journalists that she was shattered when she learned of her infertility when she was just nineteen-years-old. She had always planned on having many children and now was - and still is - unable to. She told journalists, “No one knows the pain and humiliation I had to go through,” and when asked about compensation money, she asked, “How much are the kids I never had worth? How much?”⁵⁸

The longing for motherhood when a woman is physically unable to reproduce is a common sentiment expressed by women who underwent forced sterilization. Marni Rosner - a doctor at the University of Pennsylvania who extensively researched infertility’s impact on a woman’s identity - has rightly said that infertility is “an assault to a woman’s identity.”⁵⁹ In her research, Rosner found that women who are unable to birth children often feel social anxiety, as many questions and everyday activities surrounding adult women are related to the family unit. This social anxiety is especially heightened when one considers that adult relationships are typically built around the nuclear family unit; parents befriend others with children (and sometimes even their children’s parents), and these familial relationships often turn into social ties. Without children to sculpt that bond, infertile women often feel alone. Otherwise, infertility affected women in six different ways: “the denial of motherhood as a rite of passage; the loss of one’s anticipated and imagined life; feeling a loss of control over one’s life; doubting one’s womanhood; changed and sometimes lost friendships; and, for many, the loss of one’s religious environment as a support system.”⁶⁰ Overall, infertility manifests itself within females as a womanly loss that is naturally devastating.

⁵⁸ Ibid.

⁵⁹ “Penn Researcher Looks at Infertility’s Impact on Women,” University of Pennsylvania, Last modified 15 June 2012, <http://www.upenn.edu/pennnews/news/penn-researcher-looks-infertility-s-impact-women>.

⁶⁰ Ibid.

That is not to say that all women ‘naturally’ want to be mothers, but women are indeed devastated that they will never even have the *choice* to have children. As Virginia Brooks, a woman living in North Carolina who was forcibly sterilized at the age of eighteen, said, “I would have liked to know what it would’ve been like to have a baby. I look at other people, why couldn’t I have been like that?”⁶¹ While Brooks did go on to marry and adopt a child, the most devastating part is the ‘*what if?*’ She looked at mothers and thought, *What if I could have children? What if I could be a mother? How would life be different?* Even when she did not always want children, she was always upset when she remembered that it was physically impossible to bear children. For some women, it seems as if the inability to reproduce was devastating not always because they wanted children but because they were robbed of their choice to become a mother.

To return to Rosner’s study, it is important to note that she only focused on women who were naturally infertile; that is, their infertility was not brought on by external factors like coerced or forced sterilization. Despite this, both studies and situations parallel one another. Neither women - the naturally infertile or the forcefully infertile - chose this situation. In both cases, the decision has been predetermined for these women, and not by their own will. It is an issue that cannot be reversed, and it goes against a woman’s biological ability to conceive. In noting this, it is arguable that one can draw many parallels between natural infertility and infertility via coerced sterilization. It negatively shapes a woman’s identity as both female and a mother, which can leave years of psychological trauma.

Identity as Human

⁶¹ “US eugenics victim: ‘I didn’t know what they were doing to me,’” *RT*, last modified 11 December 2011, <http://rt.com/usa/eugenics-sterilization-victims-us-806/>.

Another commonly expressed sentiment of women who were forcibly sterilized in the 1900s is the feeling of ‘not being human.’ By taking away their basic freedoms and not allowing women to make their own reproductive choices, the state and doctors made women feel less than human. This is one area where this loss of identity is very specific to victims of forced and coerced sterilization; women who are naturally infertile - as compared to these victims in the section on female and motherly identity - do not feel inhuman like these targeted women.

Feeling ‘less human’ can be seen in most cases of forced sterilization, one of which is the story of Janice Black, a woman who was forcibly sterilized in North Carolina in 1971. She was eighteen-years-old when doctors convinced Black’s stepmother to consent to her sterilization.⁶² With the IQ equal to that of a seven-year-old, Black was forced to sign a consent form and was not even told the reason why she was going to the hospital when the procedure happened. Now 59-years-old, Black told the *Charlotte Observer*, “Sometimes I wish I hadn’t been born... Sometimes I feel like I wasn’t treated fairly. Like I was a human being. I was treated like I’m not no human being” [sic].⁶³ Riddick, the woman in the previous example, also attested to feeling as ‘less-than-human’ after the procedure. She compared herself to being treated as an animal, stating, “[The doctors] butchered me up like a hog,” and “Of course I’m still bitter. The state wants me to lie down like a dog and just take it.”⁶⁴ In both of these testimonies, both women address their inhumane treatment. One admits that the state treated her like an animal, while the other claims that the state did not treat her as a human; in both instances, these forced operations changed each woman’s identity. Since they were treated as less than human, they felt less than human.

⁶² The Associated Press, “N.C. woman tells her story of forced sterilization,” PilotOnline.com, Last modified 6 November 2011, <http://hamptonroads.com/2011/11/nc-woman-tells-her-story-forced-sterilization>.

⁶³ Ibid.

⁶⁴ Zucchini, “Sterilized by North Carolina, she felt raped once more.”

Identity as a Minority

The ties between coerced sterilization and race cannot be disputed. The figures alone show that there is a clear correlation between minority races and women who are coerced into sterilization. In 1990, for example, some 24% of black women were compulsorily sterilized in the United States; meanwhile, only 17% of white women faced the same reproductive fate.⁶⁵ The targeting of racial minorities even spread across other socio-economic lines: the same year, 9.7% of college-educated African American women had been sterilized compared to 5.6% of college-education white females; simultaneously, 31.6% of black women and 14.5% of white women without high school diplomas were forcibly sterilized. From these statistics alone, it is obvious that sterilizations are coerced onto lower-educated and -income women; despite these glaring socioeconomic differences, however, there is one constant that remains true throughout these sterilization cases: a victim's status as a minority. Victims who identify as a minority (typically a racial minority) are 'othered' because of this categorization; thus, this othering and subsequent sterilization leads them to alter their own identity as a minority because their bodily integrity is under assault from this systematic categorization.

Whether sterilized women consider themselves as racial, economic, or social minorities, they have been targeted because of their minority status. Minorities can include black women, Native American women, immigrants, incarcerated individuals, mentally or physically handicapped individuals, and even impoverished women; often these women are marginalized because of their minority status. When targeted for sterilization simply because she is considered 'unfit' as a minority, a women's view of her minority status – be it race, income, or country of origin – is completely redefined and altered.

⁶⁵ Dorothy Roberts, *Killing the Black Body*, (United States: Pantheon Books, 1997), pg. 97.

In her book Killing the Black Body, author Dorothy Roberts explores this issue of minority identity in the fight for reproductive rights. Although she primarily focuses on abortion and how this reproductive freedom is a fight for black women, the effects on identity can easily be applied to cases of forced sterilization as well. She argues that self-definition is extremely important for black women in the United States because “[b]lack women have had to learn to construct themselves in a society that denied them full selves.”⁶⁶ Black women have primarily constructed their own identities based on their race and gender, and “[t]his affirmation of personhood is especially suited for challenging the devaluation of Black motherhood underlying the regulation of Black reproduction.”⁶⁷ Overall, her nuanced argument looks at how the state disciplines the body through contraception, abortion, and control of reproductive choice; as such, the topic of state-led sterilization against minority women is especially relevant to her argument.

When a minority woman - whether she is black, Latina, or Native American - is targeted both because of her gender and her race, how is she supposed to construct herself? When she has defined herself as a black woman but then is reproductively restricted as a black woman, how is she supposed to view herself in a positive light to ‘challenge the devaluation of black motherhood’? When she defines herself as a black mother but then is no longer able to carry out the basic biological functions behind motherhood, can and how does she reconstruct her identity? How does one subscribe to the principle of self-definition when the state has already defined what it means to be a minority woman?

All of these questions attempt to explain the trauma of identity that a minority woman can face after undergoing forced sterilization. These spheres of identity - be it woman, mother, human, or minority - are not mutually exclusive. There are intersections between all of them, and

⁶⁶ Quoted in Roberts, pg. 302.

⁶⁷ Roberts, pg. 303.

a woman who faces an identity crisis as a minority is also likely to face the same problem of female identity. Minority women who are coerced into sterilization are being attacked because of their gender and socioeconomic status; they are then likely to be unsure of their own identity after surviving these traumatic experiences.

Identity and 'Othering'

'Othering' is a social process that seeks to marginalize some minority - some 'other' - in contrast to a majority. One of the effects of othering is that it creates a hierarchy of socioeconomic, ethnic, and cultural characteristics that places one category above another; the lower category (or lowest category, in some cases) is viewed as inferior to the other(s). Spivak provides a nice definition, stating,

...[O]thering concerns the consequences of racism, sexism, class (or a combination hereof) in terms of symbolic degradation as well as the processes of identity formation related to this degradation. To sum up, the theory of identity formation inherent in the concept of othering assumes that subordinate people are offered, and at the same time relegated to, subject positions as others in discourse. In these processes, it is the centre that has the power to describe, and the other is constructed as inferior.⁶⁸

As such, it is easy to see how othering directly relates to coerced sterilizations and formation of identity.

A person is targeted for sterilization because of a racist, classist, and/or sexist structure; this was true during the early eugenics era, and it remains to be true even during more modern coerced sterilization case studies. Those targeted are 'unfit' and not ideal, and because of their status as undesirable and 'other' than the norm, they are told that they are not worthy. They are relegated to a status of inferiority that makes them and others view the victims as lesser beings. As unfit minorities or impoverished undesirables, these women are categorized as racially, socially, and - even during the eugenics movement - biologically inferior. To be

⁶⁸ Sune Qvotrup Jensen, "Othering, Identity Formation and Agency," *Qualitative Studies*, 2(2): pg. 65.

considered inferior by both society and the state has a major impact on an individual's value of self and society's value of an individual. When one is targeted and made to be inferior, that tends to be the identity that one is given and takes on.

Chapter Three

Reproductive Justice and the Right to Choose

There is no denying that coerced and forced sterilization of all individuals - no matter their gender, race, class, or mental capabilities - is an egregious violation of human rights: it is forcing a medical operation on a woman that takes away her right to reproduce. She does not consent to the medical procedure, and she does not agree that she should not be allowed to have children solely based on her race, socioeconomic status, or mental abilities. It generalizes the experiences of all women, no matter their socioeconomic background or history, and categorizes them as “women”; it ignores the individual circumstances and will of each woman and forces her into sterilization based on her identity as a minority woman. As Freedman and Isaacs writes,

...the particular social, economic, and cultural conditions in which each [woman’s] lives are central to their own reproduction. Thus, health policies and programs cannot treat reproduction as mere mechanics, as isolated biological events of conception and birth; rather they must treat it as a lifelong process inextricably linked to the status and roles of women in their homes and societies.⁶⁹

Coerced and forced sterilization, however, ignores this reality. It groups all racial minority and low-income women into one category and lumps them together as a group that needs to be fixed. Forced sterilization is an interesting violation of reproductive rights because it targets women based on their “particular social, economic, and cultural conditions”, but it does not factor these conditions into her rights.⁷⁰ It feeds off of women’s and minorities’ statuses as inferior in society; the gender and racial social hierarchy allows for these abuses to occur. Reproductive justice must factor in these statuses and hierarchies or else injustices like coerced sterilization will continue to occur.

⁶⁹ Lynn P. Freedman and Stephen L. Isaacs, “Human Rights and Reproductive Choice,” *Studies in Family Planning* 1993, 24(1): 18.

⁷⁰ *Ibid.*

While undoubtedly a violation of reproductive justice, coerced and forced sterilization reflects a departure from normal ‘othering’ structures and women’s rights violations. For example, women’s rights, which are typically infringed upon in the private sphere, are now jeopardized by the state, which represents the public sphere. It is important to analyze exactly how this is a departure from typical violations of women’s rights, reproductive justice, and bodily integrity because forced sterilizations are such an exceptional human rights violation.

Public Sphere Versus Private Sphere

As mothers and symbols of the family, women in many countries and cultures are typically relegated to the household, and thus the men become known as figures outside of the household. This dichotomy of inside and outside the household is also addressed as the public and private spheres; the public sphere can be regulated by the government, while the private sphere typically is out of government or societal control.⁷¹ As such, violations of women’s rights and integrity more commonly happen in the private sphere because it is more hidden. This is especially true in a patriarchal government where men construct the policies: domestic violence and rape are less likely to be not prosecuted when they happen in the private sphere, even though it is against the law in the United States.

It is therefore important to note that coerced and forced sterilization is a complete departure from the private sphere. While these operations were typically behind closed doors, they were not secretive, and the government sponsored these sterilizations; even in secretive examples, like the recent case of incarcerated women in California, there was still some state-run institution (be it a prison or federal hospital) that carried out the sterilizations. Therefore, this was either a public issue or one that did not fit the binary of public versus private. State-led

⁷¹ Charlotte Bunch and Samantha Frost, “Women’s Rights as Human Rights,” *Routledge International Encyclopedia of Women: Global Women’s Issues and Knowledge*, (Routledge, 2000), pg. 2.

human rights violations are typically more scrutinized by public and social organizations which work to end the injustices; in the case of forced sterilization during the 1900s, however, many public movements - namely the eugenics organizations - were ones that lobbied the state to make this movement a national priority.⁷² Legally and socially, coerced sterilization is - and continues to be - a public issue that openly infringes on the bodily integrity and rights of women; the fact that this violation did and continues to occur in the public sphere despite legislation preventing it makes the issue an even larger concern for victims and women who could be targeted.

The Question of Consent

One extremely important aspect of this topic is the question of consent. Consent, in this context, is whether or not women agreed to undergo these sterilization procedures. It is usually thought of as a ‘yes’ or ‘no’ answer, but often in cases of coerced sterilization, it does not fit into this clear binary. Whether or not a woman consented to her surgery is not obvious. Does it count as consent if she was misinformed about her surgery but signed the legal documents anyways? Is it consent if the patient is a minor and her legal guardian signs for her? Is it consent when women are given the choice of signing or losing their welfare benefits? Is it legitimate if a woman is unable to read a consent form and the hospital does not provide her translators or readers? Is consent simply a legal term and anytime there is a signed legal document we are to consider it legitimate? There is an ongoing debate about the validity of consent that is extremely relevant to the topic of coerced sterilization.

In her article titled “Rape: On Coercion and Consent”, Catharine MacKinnon explores this discussion on consent in the context of rape. MacKinnon writes:

Consent is supposed to be women’s form of control over intercourse, different from but equal to the custom of male initiative. Man proposes, woman disposes. Even the ideal in it is not mutual. Apart from the disparate consequences of

⁷² Ibid.

refusal, this model does not envision a situation the woman controls being placed in, or choices she frames.... The law of rape presents consent as free exercise of sexual choice under conditions of equality of power without exposing the underlying structure of constraint and disparity.

Essentially, MacKinnon is trying to argue that sex is never mutual, and as such, consent is never truly consent. The hierarchy of power between men and women and gender norms – for example, that women are submissive to men - make it impossible for sex to be free will and for women to consent. Both parties are subject to gendered expectations, and within those expectations, women are expected to be an object and to consent. This alone means that she cannot actually consent: a woman might consent because she feels she is expected to, but that is not real consent; likewise, a woman might not consent, but a man might continue to initiate sex because it is expected, which is also nonconsensual. MacKinnon's debate is nuanced and extremely controversial, but ultimately she argues that consent is a fallacy because it is so ingrained in structures of gendered power and inequality.

While MacKinnon does not discuss forced sterilization, there are direct ties when MacKinnon analyzes the constraint on and disparity between the equality of power when a woman consents. This is incredibly important in cases of coerced sterilization. These are cases of state-led initiatives versus an individual initiative. It is nothing more than one person – typically a poor individual who is already marginalized by the state to begin with – against a government entity. In this situation, the hierarchy of power is clear. The individual has nothing against the state, and in some of these situations (where women were on welfare, in prisons, and subject to state health systems, among other), women were completely at the disposal of the state. They are constricted, or to use MacKinnon's language, literally constrained by the state. When having to choose between healthcare benefits or their child and their reproductive rights, the state has complete power over the woman.

The relationship between disparities and power struggles also can be related to forced sterilization because these women, as minorities, are considered inferior. This relates back to how women are ‘othered’ because they are considered subordinate; as minorities in race, sex, class, or mental capabilities, these women are automatically relegated as inferior in society. This inferior-superior relationship between those who are subjected to coerced sterilization and everyone else is a struggle of equality within itself. These victims are constrained because of their socioeconomic status; they had no choice to fight the state, and they continued to be targeted because of the obvious disparities between victim and ‘fit’ citizens’ in education, income, and mental capabilities. When they are thought of as inferior and when they have been told their whole life that they are subordinate, the question of consent is completely null. A woman’s consent to sterilization is greatly shaped by cultural norms, power relations, and social expectations; additionally, it is shaped by legal loopholes and moral inconsistencies, as mentioned before. This means that when the state coerces women into sterilizations, it is upholding these gendered cultural norms, power relations, and social expectations. In asserting these values, the state is relegating women – especially minority women – as inferior citizens. In instances where sterilization is coerced, therefore, consent should never be considered legitimate.

Restorative Justice and Retribution

Like other human rights violations, there is always a question of what kind of restorative justice and compensation should be given to these victims. In a human rights framework, restorative justice can take many forms like Truth and Reconciliation Commissions, political trials, and/or reparations. All of these forums of restorative justice have one purpose: to right the wrongs of the past. As Minow writes,

A common formulation posits the two dangers of wallowing in the past and forgetting it. Too much memory or not enough; too much enshrinement of

victimhood or insufficient memorializing of victims and survivors; too much past or too little acknowledgement of the past's staging of the present; these joined dangers accompany not just societies emerging from mass violence, but also individuals recovering from trauma.⁷³

This is the common struggle that governments and survivors have to face following a period of mass human rights violations. Ultimately, the victim seeks to make claims against the state to receive either public recognition or monetary compensation for their trauma.

Unfortunately for the victims of forced sterilization, however, restorative justice has not been in the forefront of sterilization discourse. To date, only seven of 33 states have acknowledged and apologized for their eugenics legislation that led to the forced sterilization of thousands.⁷⁴ Only two states, North Carolina and Virginia, have set out to bring justice to the few thousands of victims who are still alive. In 2011, the state government of North Carolina created a five-person panel that aimed to address the history of coerced and forced sterilization and decide on some type of retribution to be paid to the remaining victims.⁷⁵ The board settled on a monetary compensation of \$20,000 per victim, totaling to a state fund of approximately \$10 million. The reparation of \$20,000 was an outrage to many victims and their families and/or friends. As the Executive Director of the North Carolina Justice for Sterilization Victims Foundation Charmaine Fuller Cooper stated, "How can you quantify how much a baby is worth to people? It's not about quantifying the unborn child, it's about the choices that were taken away."⁷⁶ In this situation, Fuller Cooper is correct that retribution will be nearly impossible. How can a state tell an individual what their future and family was worth? How can a state compensate for the significant loss that all sterilization victims face? How can a state ensure that

⁷³ Martha Minow, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence*, (Boston: Beacon Press, 1998), pg. 2.

⁷⁴ Roberts, 97.

⁷⁵ Severson, "Thousands Sterilized, a state weighs restitution."

⁷⁶ *Ibid.*

all victims are accounted for when only 68 of the approximately 3,000 remaining victims are documented as sterilized by the state?⁷⁷ Is it practical to provide monetary compensation to an elderly victim who - because of state policies - does not have children of her own to pass the money on to? It is in deciding how to compensate the victims that these cases also have close ties to human rights. Such an extreme violation of basic human rights can never be forgiven or corrected, either through monetary compensation, public trials, or vocal forgiveness. In that case, what can be done to ensure that the victims receive the justice that they have been seeking for decades?

These debates are common in the case of sterilization victim compensation in Virginia as well. In this state, there is a large struggle over how financially responsible and fiscally practical it is to provide monetary compensation to victims during times of economic stress. In 2001, the Virginia General Assembly created and passed a resolution that acknowledged their regret for past “selective breeding policies.”⁷⁸ The following year, Virginia Governor Mark R. Warner issued an official apology on behalf of the state for its eugenics programs. Eleven years later, the Virginia House of Delegates debated the plan of paying compensation to each living victim of its eugenics program. Under bill HB 1529, the state of Virginia would have to pay each living victim at most \$50,000 in monetary compensation through a surplus of state funds. HB 1529 would expire on 1 July 2018, and any victims would have to come forward to claim their compensation, meaning the state would not actively seek out victims. Of the over 7,000 people who were sterilized in Virginia from 1924 through 1979, there are approximately 1,465 victims

⁷⁷ Ibid.

⁷⁸ Fredrick Kunkle, “Va. Eugenics victims would receive compensation for sterilization under bill,” *Washington Post*, last modified 30 January 2013, http://www.washingtonpost.com/local/va-politics/va-eugenics-victims-would-receive-compensation-for-sterilization-under-proposed-bill/2013/01/30/eebad4de-6b0d-11e2-95b3-272d604a10a3_story.html.

living today, amounting to as much as \$73.3 million in state funds to be paid as compensation.⁷⁹ The fiscal impact of this bill caused it to remain stagnant and not move forward through the state government. In 2014, Terry McAuliffe, the most recently elected state governor, promised to address this continuing issue during his term.⁸⁰ Most recently, the Virginian House of Delegates reduced the compensation cap to just \$25,000 per victim, half of what was originally proposed and half of North Carolina's compensation. This compensation has been labeled as "throwing the victims a bone" because it is perceived as "sweeping the issue under the rug."⁸¹

⁷⁹ Ibid.

⁸⁰ "McAullife Vowing to Fight for Sterilization Victims," *ABC News*, last modified 5 March 2014, <http://www.wric.com/story/24896326/mcauliffe-vowing-to-fight-for-sterilization-victims>.

⁸¹ Ibid.

Conclusion

Moving Forward

The eugenics movement and subsequent forced sterilization of ‘undesirables’ had a life-changing impact on countless women and men across the country. Targeted for their race, gender, class, or status as a disabled individual, these people were subject to invasive surgeries that violated their bodies, took away their right of choice, and altered the course of their lives. No longer able to reproduce, many of these sterilized individuals continued their lives furious and in shame. For the countless individuals – especially women – who underwent this coerced sterilization, many of them wondered how they could overcome this loss of identity and violation of bodily integrity.

While coerced sterilization is still rarely practiced, the major concern now is how to compensate those women who were forcefully sterilized. The case of North Carolina’s retribution mentioned above is a prime example of compensation for the victims. It is a major step forward in compensating victims for their losses. While not as progressive, other forms of restorative justice have also emerged to assist the victims of sterilization. Most of this assistance comes from non-profit organizations that seek to provide social help and legal counsel. Justice Now, for example, is a law clinic that helps incarcerated women. Following the outing of the recent sterilization cases in California, Justice Now created a petition that demanded “notification and reparation for all people illegally sterilized in prison.”⁸² It cited that sterilization was a form of violence against women and further called for a state budget hearing to uncover instances where public funds paid for forced sterilizations within prisons. To date, the petition has over 1600 signatures. In the meantime, Justice Now continues to educate the public on the

⁸² “Speak out against sterilization abuse,” *Justice Now*, Accessed 22 August 2014, <http://www.jnow.org/>.

relationship between incarceration and forced sterilization by interviewing victims, publicizing their testimonies, and hosting public events on the topic.

Another instance where non-governmental organizations are emerging to join the discussion is the National Latina Institute for Reproductive Health (NLIRH). The NLIRH has the main goal of advancing health, dignity, and justice for Latina women and communities across the United States; a smaller focus of the NLIRH includes the topic of sterilization. The organization looks at the topic of sterilization, providing an in-depth history of the topic in the context of Latino communities. The purpose of this, however, is to change the discourse surrounding coerced sterilization. NLIRH writes, “the information [on sterilization] today is either outdated or focuses on statistics rather than women’s stories and voices... the NLIRH has started a sterilization project and is interested in learning more about women of color’s experiences.”⁸³ Thus it is shifting the focus from sterilization as a historical topic to sterilization as a real problem from which many women are still suffering. The NLIRH is attempting to uncover the victims’ voices, which have been drowned in statistics and legal texts. The organization is trying to commemorate the victim, not just the eugenics period, which is so often done in text concerning sterilization. This in itself is a form of restorative justice. By allowing each victim to tell her story, it helps her accept the past and look to the future.

These two steps from advocacy groups are positive steps, but they alone are not enough. Other social organizations that fight for minority and women’s rights must step forward in the fight for restorative justice. Whether they can lobby and provide legal aid like Justice Now or simply provide an outlet for truth like the NLIRH. These are forms of social justice and advocacy that are helping those who were forcibly sterilized.

⁸³ Jessica Gonzales-Rojas and Taja Lindley, “Latinas and Sterilization in the United States,” *National Women’s Health Network Women’s Health Activist Newsletter*, Last modified May/June 2008, <http://latinainstitute.org/latinandas-sterilization-article>.

It is arguable that advocacy groups in other groups are more progressive in lobbying for and promoting victims rights. In the case of Namibia, local HIV/AIDs and human rights organizations are providing legal counseling and aid to targeted women to sue the government over these cases. The AIDS Law Unit at the Legal Assistance Centre represented three of these women in court, asking for 1.2 million Namibian dollars (totaling to around \$150,000) in monetary compensation for these victims.⁸⁴ Ultimately, these three victims won a partial victory: the High Court of Namibia ruled that the women were indeed sterilized against their will but not because of their HIV-positive status.⁸⁵ Because of the case, more HIV-positive Namibian women are coming forward with stories of coerced sterilization. The phrase “My Body; My Womb; My Rights” became the slogan against coerced sterilization and for the reproductive rights movement.⁸⁶ The case of Namibia is an excellent example of how advocacy groups – like the Legal Assistance Centre – can help in the fight for victims’ rights. This is a huge victory for women in Namibia and the reproductive rights movement globally; advocacy groups in the United States must mirror those in Namibia and become more proactive in seeking legal assistance for those forcibly sterilized by government institutions.

Another form of restorative justice that can and should be taken up both by non-governmental organizations and the state is legal scrutiny. While targeted and forced sterilization is now outlawed by all states, there are still loopholes or infractions that are allowing these practices to occur. One prime example is the use of federal funds in California to illegally pay for forced sterilizations; this is an egregious violation in use of public funds, and more transparency must occur. All states that have histories – especially recent cases - of forced sterilizations should

⁸⁴ Nkepile Mabuse, “Namibian women were sterilized without consent, judge rules,” *CNN News*, Last modified 31 July 2012, <http://www.cnn.com/2012/07/30/world/africa/namibia-forced-sterilization/>.

⁸⁵ Tunomukwathi Asino, “Namibia: Victory for Sterilised Women,” *All Africa News*, Last modified 31 July 2012, <http://allafrica.com/stories/201207311001.html>.

⁸⁶ *Ibid.*

adopt the idea proposed by Justice Now: that is, to create a state budgetary committee that investigates how public funds have been used in coerced sterilizations. This will both show how much funding is spent on these rights violations and how widespread practices of forced sterilization are. These budgetary committees will increase transparency of funds to make sure that they are always used legally. While this seems like a small step, it is an important step in making sure that sterilizations do not happen again: without funding, state institutions do not have the resources to carry out these forced sterilizations.

The last and most important form of restorative justice is retribution, and it is modeled on North Carolina's monetary compensation for victims, with Virginia hopefully following behind. All 33 states that once had eugenics programs should adopt this form of retribution and compensation within their own states. To do so would acknowledge the trauma that state initiatives caused throughout the 1900s. Verbal and public acknowledgement alone is a step forward in easing the trauma of the victims. This forum of recognition is especially helpful because it allows victims to come forward with their own stories. By publicly telling their stories and recognizing that the state caused them an injustice, many sterilization victims will be able to receive some justice. Lastly, the North Carolina sterilization forum and compensation provides monetary compensation to the victims; while this a gesture that seeks to pay retribution, it is not the most important step of restorative justice. In fact, monetary compensation is very controversial, as discussed above. The gesture serves as a symbol of moving forward, which is also a positive step. All states should adopt a similar forum and mechanism of retributive justice to help identify victims, let them share their stories, and provide the social, legal, and financial justice that they deserve.

These are just four of many ways to address the needs of victims of forced sterilization. They are based on mechanisms that have been used and have worked in the past to transition between periods of trauma and periods of peace. Many of the conversations surrounding restorative justice in this context have been in the form of monetary compensation: this is not the best way to ameliorate the situation. No sum of money can right the wrongs of the past. Despite this, monetary compensation is a step in the right direction; it is a state acknowledging its rights abuses, which is small progress in providing full justice for the victims. It makes the state and its citizens realize that minority women were and continue to be treated as inferior citizens. This compensation brings light to a reproductive issue that uncovers many other topics surrounding reproductive rights. In acknowledging that states compulsorily sterilized minority women, it can lead to citizens realizing that minority women are also marginalized when it comes to other reproductive issues like birth control and abortion. Therefore, it is important to note that forced sterilization is only one example of how the state uses gender and racial hierarchies and social norms to control women's reproductive choices. In exposing the injustices related to coerced sterilization, more attention will be brought to inequities and power relationships between the state and women's bodies.

While the state must accept responsibility for its actions, it is also the role of community groups and non-government organizations to assist the victims. This assistance can be in the form of legal assistance or psychological services; any type of counseling is useful in helping the victims move forward. It is their role to assist these women and simultaneously hold the state accountable for its actions. While the United States is past the eugenics period, or the period of trauma, the victims are not: in dealing with their own psychological and physical scars, they have not yet been able to find peace. States and organizations must adopt these methods of restorative

justice to end the trauma still stemming from eugenics. Only by doing this can states right the wrongs of the past and bring justice to those victims who truly deserve it.

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