“INFORMED (BUT UNE DUCATED) CONSENT”
CHICANAS AGAINST STERILIZATION ABUSE IN CALIFORNIA

by

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Introduction

Between 1971 and 1974, ten working-class, Mexican-origin women living in East Los Angeles were admitted to the Women’s Wing at the Los Angeles County Medical Center. Each of the women gave birth to a child via Cesarean section, and additionally, they all received post-partum bilateral tubal ligations by their attendant physicians. Eight of the women did not speak English. Some of them were misinformed about the operation—they thought that “getting their tubes tied” was temporary, and that they could have their tubes “untied” later if they decided to have more children. In 1978, these ten women filed a class-action lawsuit in a federal district court to protest what they understood as instances of forced or coerced sterilization. Represented by Antonia Hernández and Charles Nabarrete of the Los Angeles Center for Law & Justice, the plaintiffs accused the ten physicians of illegally performing the surgeries without their informed consent, and on the bases of social rather than medical reasons. The presiding judge, Jesse Curtis, sided with the defendants, but in his closing statements, Judge Curtis decided that the sterilizations were “essentially a breakdown in communications between the patients and the doctors,” rather than an instance of medical malpractice or abuse.

This case, Madrigal v. Quilligan, was one among several lawsuits filed in federal courts in the United States during the 1970s that protested instances of forced sterilization at state hospitals. Almost all of the women who brought forth these claims were poor women of color—Black, Puerto

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Rican, and Native American women, in particular. Such cases charged that a large disbursement of funds from the Federal Office of Health, Education, and Welfare for use in family planning and birth control initiatives in state hospitals was being unethically used as a means of population control by limiting the fertility of working-class and low-income women who were dependent on public health services.

Earlier in the twentieth century, eugenic sterilization had been a popular medical procedure in state hospitals and prisons. Yet it was not until the late 1960s and 1970s that the U.S. government disbursed federal funds to subsidize sterilization procedures. Despite the widespread perception that eugenics existed solely in the pre-World War II era, most scholars nonetheless consider the sterilization abuses of the 1970s to be extensions of private eugenic sterilization programs from the early twentieth century. Madrigal v. Quilligan, specifically, suggests the need for a new interpretation of the debate over reproductive rights in California. In particular, it demonstrates the first time in history Mexican and Mexican-American women, who had long been the targets of eugenic health practices in California, publicly denounced their experiences of forced or coerced sterilizations at state institutions.

In her dissertation, Women Sterilized As They Give Birth: Population Control, Eugenics, and Social Protest in the Twentieth Century United States, historian Virginia Rose Espino argues that Madrigal v. Quilligan is a clear instance in which eugenics “moved from the front door to the back door with

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government officials and population control [activists] ‘quietly’ advocating for family planning and birth control to be brought to poor women at home and abroad” during the 1960s and 1970s.\textsuperscript{6} Movements for population control, both in the United States and abroad, posited the neo-Malthusian argument that poverty was caused by an excess of children, and that the lack of family planning in Third World nations was contributing to a problem of out-of-control population growth.\textsuperscript{7} Yet even though the case occurred in 1978, the victories associated with it have not put a definitive end to the use of forced or coerced sterilization in California. Therefore, it is important to revisit the history of such cases and examine their continued relevance.

Despite the fact that the plaintiffs in \textit{Madrigal v. Quilligan} did not win against the doctors, these women, their lawyers, and the community organizations that were in support of their demands effectively continued the fight against sterilization abuse outside of the courtroom. Antonia Hernández’s proposal to implement new guidelines for medical practitioners to obtain educated consent from candidates for sterilization was implemented by the State of California in 1975,\textsuperscript{8} and in 1979, the state also removed a law that permitted eugenic sterilization that had remained in place since 1909.\textsuperscript{9} Furthermore, the activism against sterilization abuse that the case inspired was fundamental in the development of a discourse on reproductive rights that challenged the prevailing understanding of reproductive freedom as solely being access to abortion and birth control.

Sociologist Elena Gutiérrez argues that the Chicanas’ activism against sterilization abuse in California represented a movement of “women who were taken advantage of because of their underprivileged status in society,” and who “challenged the medical establishment and the state


\textsuperscript{7} Alexandra Stern cites Ehrlich, Paul, and Anne H. Ehrlich, \textit{The Population Bomb} (San Francisco: Sierra Club Books, 1968)

\textsuperscript{8} Gutiérrez, \textit{Fertile Matters}, 42.

\textsuperscript{9} Stern, \textit{Eugenic Nation}, 32.
government head on.”¹⁰ In and around the Madrigal case, the plaintiffs and Chicana community activist groups all articulated the notion that their “underprivileged” status was not a product of cultural difference, but rather due to the systemic discrimination against of Mexicans in California. This case placed Mexican women’s health—a hitherto peripheral issue in both the mainstream women’s and Chicano rights movements—at the center of their conversation, and served as an event that fostered national coalitions with other anti-sterilization abuse groups.

Most scholars of Madrigal v. Quilligan focus on the resurgence of eugenics in the panic over population control during the 1970s. However, the case has not yet been fully examined as a catalyst for change within the history of feminism. Madrigal v. Quilligan brought the demands of Chicana women into the public sphere, and added texture and complexity to the idea of a unified women’s liberation movement. Furthermore, the amalgam of activists from different cultural backgrounds and social classes who organized in response to sterilization abuses demanded that the state respect women’s constitutional rights to bear children, and strove to de-institutionalize policies that regulated population growth by limiting the fertility of the poor. In a debate that still continues today, Madrigal v. Quilligan’s legacy is one that reveals the influence of Chicana women in expanding the definition of reproductive “choice.” The literature and activism about the case critiques any conversation on reproductive freedom that omits education and counseling for sterilization and birth control services, and that fails to see the politics of reproduction as indivisible from broader categories, such as race, ethnicity, gender, and class.

**Reporting Abuse**

The instances of sterilization abuse in California during the 1970s—of which Madrigal v. Quilligan was the most publicized and visible court case—served as a rallying cry for more radical activism for reproductive health in the state. In her essay “We Will No Longer Be Silent’: Latinas

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Organizing for Reproductive Justice,” sociologist Elena Gutiérrez discusses the emergence of Latina organizations that coalesced both within and on the margins of Latino nationalist and women’s rights movements during the 1960s and 1970s. She argues that Latina’s views on reproductive health were more “radical” than mainstream women’s liberation movements because they asserted that “broader issues, such as racism and classism, [necessitated] an end to all forms of social inequality.”

The issues that Madrigal v. Quilligan brought to the public eye served as the catalyst for a growing body of literature on reproductive justice, and for community organizing around the issue of adequate education and counseling on reproductive healthcare.

Furthermore, the 1978 Madrigal v. Quilligan trial is not simply a sobering narrative of the kinds of abuses that women underwent at the state hospitals in Los Angeles and others across the country. The case may also be seen as the end result of extensive community activism that had been galvanized by the reports of the abuses. The immediacy of the issue and the intersecting problems of poverty, racism, and unethical medical practices brought together an unlikely but cohesive group of social actors to challenge the hospital and public health officials. Activists from such diverse camps as the Chicano rights movement, Marxist Leninists, radical legal activists, and burgeoning Chicana feminist groups converged on the issue of sterilization abuse and effected lasting reforms.

Virginia Espino and Elena Gutiérrez both acknowledge Dr. Bernard Rosenfeld, a gynecologist and former resident at the Los Angeles County Medical Center (hereafter known as LACMC), for having brought the instances of abuse forth in a Health Research Group study titled A Health Research Group Study on Surgical Sterilization: Present Abuses and Proposed Regulations in 1973. His report described over 180 cases of women with Spanish-sounding surnames whose medical charts revealed clear indications of coercion, and instances where doctors and interns at the state hospital would ask “women about sterilization when they were in the act of labor, when they could

12 Espino, “Women Sterilized as They Give Birth”, 215
get them to just sign something without them really knowing."¹³ Dr. Rosenfeld worked tirelessly to publicize the documentation of abuse. He indicted the Department of Health, Education and Welfare (hereafter known as HEW) for not enforcing guidelines that would establish informed consent for sterilization surgeries. It was not until February 6th 1974, a year after the report’s publication, that a federal judge ruled that HEW needed to “stiffen its then newly-promulgated sterilization regulations to prevent intimidation and coercion of patients.”¹⁴ Espino calls Rosenfeld an “activist doctor,”¹⁵ someone who began as an apolitical actor, but who brought the instances of abuse to light, and fueled the fight for legislative reforms that would protect women’s freedom from unnecessary or undesired medical practices.

Initially, Rosenfeld was displeased with the judge’s ruling on the HEW sterilization guidelines. Later in 1974, he contacted Charles Nabarrete, who was working as an attorney for the Mexican American Legal Defense Fund (MALDEF). Nabarrete initially declined Rosenfeld’s entreaty to pursue legal actions against the case because he thought it was too daunting of a task to go against the Medical Center and the County. That same year, however, Dr. Edward James Quilligan, the lead plaintiff in the Madrigal case and head of obstetrics and gynecology at the Women’s Hospital at LACMC issued a letter to the obstetrics house staff about sterilization procedure protocol at the hospital. The letter read: “effective immediately, patients will not be approached for the first time concerning sterilization when they are in labor… This includes those individuals undergoing a cesarean section regardless of the number of previous cesarean sections.”¹⁶ This was, evidently before the HEW regulations were released to him, and clearly admits to the fact that his hospital staff was making a common practice of asking women if they wanted tubal ligations while they were in labor.

¹³ Ibid., 36.
¹⁴ Ibid., 215
¹⁵ Ibid., 217
¹⁶ Quilligan, E. J. “22 February, 1974 Form Letter To: All Obstetrics House Staff, From: Dr. Quilligan Clarifying Sterilization Procedure,” Carlos Vélez-Ibañez Sterilization Collection, Box 5, Folder 21.
In a later letter to the staff, Dr. Quilligan released the HEW guidelines for sterilization at the hospital. It is clear, from this second letter, why Rosenfeld or any other advocate against sterilization abuse would have been unsatisfied with the HEW’s guidelines. In it, Quilligan wrote that “all individuals must have informed consent” and that “there must be at least a 72-hour period between the consent and sterilization.” However, in parentheses, Quilligan had written that at LACMC in particular, the 72-hour waiting period would be “between discussion and the actual sterilization” and that “it should be documented in the chart that this was discussed with the patient at least 72 hours prior to signing the informed consent.”17 Thus, it would not have mattered if the women in the case did not speak English or misunderstood the full nature of the operation when discussing sterilization with their physicians. The physician could have noted that they had “discussed” sterilization with the patient, but they were not required to note whether or not the candidate for the surgery had been fully informed as to the operation’s effects, or even its permanence. The HEW left room for the hospital to interpret the guidelines, and would have allowed for the continuation of abuse.

Community Response and Legal Action

Because of Dr. Rosenfield’s testimonies, the instances of forced or coerced sterilization at LACMC were more and more widely publicized in Los Angeles newspapers by the end of 1974. Charles Nabarrete left MALDEF in September of that same year, and became a partner at Model Cities Center for Law and Justice—a War on Poverty funded legal aid center.18 Nabarrete and Antonia Hernández, a graduate of UCLA Law School, took on the case in 1974. The 1978 case was in fact an appeal of an earlier trial that had been decided in favor of the doctors in 1976. In the 1978 trial the plaintiffs brought in Dr. Carlos Vélez-Ibañez, a prominent cultural anthropologist from UCLA and a founding member of the University’s first Chicano Studies undergraduate and graduate

17 Quilligan, E. J. “29 March, 1974 Form Letter To: All Obstetrics House Staff, From: Dr. Quilligan Concerning the Sterilization Guidelines,” Carlos Vélez-Ibañez Sterilization Collection, Box 5, Folder 22.
programs to testify.\textsuperscript{19} He was called, Espino writes, because Hernández and Nabarrete “believed that his assessment of the women would offer social scientific data to the court to substantiate the women’s own testimony to the social and cultural ramifications of their sterilizations.”\textsuperscript{20}

Furthermore, the lawyers asked Dr. Karen Benker, a former medical student at LACMC, to testify as to the experiences she had had with doctors who encouraged interns to pressure Mexican and Black women to agree to tubal ligations so that they could have more experience practicing surgery.\textsuperscript{21}

The public furor that the case sparked, as well as the testimonies by new witnesses, revealed new and hitherto unexpected unions between “various [individuals and] organizations with diverse ideologies” who all organized against sterilization abuse.\textsuperscript{22} After the publication of the HRG report, groups such as the Marxist-Leninist organization the Comité to Free Los Tres, the white middle-class group of leftist legal activists called the Ban Sinister Law Collective, and the Chicana-led Committee to Stop Forced Sterilization (CSFS), all rose to the forefront of the movement against sterilization abuse at LACMC. On November 23 1974, the CSFS staged a heavily-attended protest outside of the Women’s Hospital at LACMC.

\textsuperscript{19} “Deposition of Carlos Vélez, PhD, a Witness, taken on behalf of the Defendants, at 10:00 a.m., Friday, November 4, 1977, at 3435 Wilshire Boulevard, Suite 2600, Los Angeles, California 90019, before Lewila Cheskes, CSR, a Notary Public in and for the State of California, Pursuant to Notice.” Carlos Vélez-Ibañez Sterilization Collection, Courtesy of UCLA Chicano Studies Library, 15.

\textsuperscript{20} Espino, “Women Sterilized As They Give Birth”, 254.

\textsuperscript{21} Gutiérrez, \textit{Fertile Matters}, 40.

\textsuperscript{22} Espino, “Women Sterilized As They Give Birth”, 257.
Hernández and Nabarrete had originally intended to press charges against the doctors to gain compensation for the women. To do so, they had to build a case that would indict government agencies for violating the plaintiff’s rights under the Civil Rights Act of 1871, and for that, they needed a class plaintiff.\(^{23}\) Nabarete and Hernández then asked the Comisión Femenil Mexicana Nacional—a prominent Chicana rights organization that had formed in 1971 for the cause of greater political representation for women in all areas and within the Chicano rights movement in particular—if they would serve alongside the ten women who were testifying against the doctors.\(^{24}\)

Though the trial judge did not in the end allow the Comisión to serve as the class plaintiff, the relationship between the Comisión and the lawyers and women ultimately informed the Comisión’s

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\(^{23}\) Espino, “Women Sterilized As They Give Birth,” 250.

mission and activities. In 1975, the national arm of the Comisión held a fundraiser in conjunction with the Mexican-American Bar Association of Los Angeles County, and brought in $3,000 to support the Madrigal case. The president of the Comisión’s Los Angeles chapter, Gloria Molina, was later elected to the Board of Supervisors for the County of Los Angeles, where she still serves today. Her activism in conjunction with the Madrigal case, was one of her first major accomplishments as a public figure.

Molina was not the only community actor working on the Madrigal case who rose to prominence in Los Angeles Chicana politics. In an interview with Virginia Espino, attorney Antonia Hernández stated: “I lost the case in court, but I won the case of public opinion.” Indeed, Hernández’s article “Chicanas and the Issue of Involuntary Sterilization: Reforms Needed to Protect Informed Consent” appeared in the journal Chicano Law Review in 1975, was instrumental in developing the specific provisions for ensuring more protection for sterilization candidates, both men and women. Together with Nabarrete, the Comisión, the other supporting organizations, and the ten plaintiffs who testified in court, Hernández successfully pushed through new HEW guidelines in 1975. These guidelines emphasized the need for “legally effective informed consent” for sterilization patients. Doctors were required to provide sterilization candidates with information that would assure that any and all federal benefits would remain available whether they underwent surgery or not. Also, they demanded clear and thorough statements of the full nature of the sterilization procedure itself, including its effects, risks, and permanence—all at a sixth-grade reading level, and in the primary language of the patient. Finally, the new provision required medical providers to ensure extensive counseling on other forms of birth control, as well as a 72-hour waiting period between consent from the patient for sterilization and the actual surgery. Indeed,

25 Gutiérrez, Fertile Matters, 102.
26 Espino, “Women Sterilized As They Give Birth,” 255.
Gutiérrez notes that it was because of the implementation of these guidelines that MALDEF ultimately decided not to further appeal Judge Curtis’s decision in favor of the doctors.  

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Chicanas Clash With the National Women’s Organization

Despite the extralegal success of the Comisión and the lawyers, the road to visibility and change for sterilization procedures was not a smooth one. The issue of sterilization abuse divided feminist groups among those who sympathized with Rosenfeld and the Chicanas’ demands for greater protection against possible abuse or coercion, and those who were unwilling to compromise their recently-gained access to birth control and abortion services. In 1975, several of the Comisión members and supporters of the new HEW restrictions met resistance from the prominent feminist group, the National Women’s Organization (NOW). They opposed the waiting period, and argued that women who would go in for a sterilization surgery would be discouraged by an intervening waiting period.  

29 Evelyn Martínez, board member of the Comisión, is quoted in *Fertile Matters* saying:

> We found quickly that NOW was the group that said, ‘No, when we go in and want sterilization procedures, we don’t want to wait 48 hours, we want it on demand.’ But that is what happened here. Women were being sterilized without their consent, consent forms being shoved in front of them in the middle of labor, in English, a language they didn’t understand and read, and they were just totally against that process.

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Gloria Molina recalled feeling that “it was a touchy situation.” She was disillusioned that NOW didn’t “seem to understand [Chicana] issues and [weren’t] sympathetic.”


The Comisión had originally been formed as both a critique of women's lack of visibility in the Chicano rights movement and as a response to NOW’s narrow and “bourgeois” feminist politics.32 An influential librarian, Chicana feminist writer, and Chicano Civil Rights Movement activist, Martha P. Cotera, published an essay titled “Feminism: The Chicana and Anglo Versions,”

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32 Landeros, Pablo E, “The Birth of Her Causa: The Construction, Development, and Ideology of Comisión Femenil Mexicana Nacional, Inc., 9173—1993” (PhD. Diss., University of California, Santa Barbara, 2012). “Some Chicanas were first introduced to gender issues by participating in NOW activities throughout the U.S. Legislation such as the Hyde Amendment and the Equal Rights Amendment often bridged [CFMN and NOW] in a common cause,” 102.
which was written in 1980. Though she was working and organizing in El Paso, Texas, she managed to capture the nation-wide feeling of frustration that Chicana feminists felt towards women’s liberation movements at the time. Her more well-known titles include *Diosa y Hembra: The History and Heritage of Chicanas in the U.S.* (1976) and *The Chicana Feminist* (1977), both of which emerged as part of a prominent Chicana feminist literary movement during the 1970s and 1980s. A graduate of University of Texas at El Paso, Cotera articulated the long history of division between the mainstream women’s liberation movement and the struggle for recognition of Chicana feminist identity. Cotera argued that Chicanas had long been organizing in the U.S., ever since Mexican-origin women began organizing with labor and civil rights movements in the early-twentieth-century. In this way, Cotera challenged the mainstream feminist view at the time of Chicanas as being apolitical actors, and incompatible with feminist causes. She critiqued the “new wave” of the women’s movement in the 1960s as being “firmly anchored in Alice Paul’s Woman’s Rights Party platform of achieving an equal rights amendment” in which “working women, housewives, and minority women’s needs were not addressed.”

Though NOW was then and remains a progressive women’s rights organization, their opposition to the HEW restrictions for sterilization—a reform that they saw as limiting women’s access to birth control—demonstrates the group’s middle-class ideology, and marks the history of collusion between “mainstream” feminist groups advocating for birth control and the eugenics movement in America. Historians often characterize the second wave feminism of the 1960s primarily in terms of the politicization of women’s bodies, and their rights to reproductive autonomy. Understandably, with the recent legalization of abortion with *Roe v. Wade* in 1974, feminist groups in general were wary of introducing any legislation that would roll back what they considered to be “progress” or aid for “women’s liberation.” Though the birth control and eugenics were two

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separate movements with distinct constituent supporters, historians have effectively traced the intersecting genealogies of the two throughout the twentieth century. Importantly, Virginia Espino also notes that the historic cooperation between former eugenicists and liberal feminists was in fact politically advantageous for both groups. The rhetoric of birth control became a “back-door” means by which eugenicists could liberalize sterilization surgeries in the midst of the population growth panics of the 1970s.34

There is a relative wealth of literature that examines the influence of eugenics on women’s liberation movements during the early twentieth century. Linda Gordon’s landmark history of the birth control movement, The Moral Property of Women: A History of Birth Control Politics in America, critiques the frequent and fraught interactions between feminist activists and scholars, and eugenically-minded scientists and policymakers. Published for the first time in 1976 as Woman’s Body, Woman’s Right: Birth Control in America, Gordon was instrumental in adding to the historiography of birth control as a political issue, by asserting that reproductive rights activism needed to include more than simply women’s rights to abortion. She even states that the movement against sterilization control represented the “peak of feminist power” in the way that organizations “succeeded in eliminating some of the worst abuses and raising the consciousness of medical workers about patients’ rights to informed consent.”35 Like Ziegler, Gordon acknowledges that “ultimately, eugenic thought did more harm than good to feminism and voluntary motherhood.”36 Both demonstrate how eugenicists adopted feminist arguments for freedom to self-regulated reproduction during the first wave to promote their ultimate goal of regulating the births of society’s

34 Espino, Virginia, “Women Sterilized As They Give Birth,” Chapter 2, “From the Front Door to the Back Door: Eugenic Sterilization in the Twentieth Century.” Though I do not discuss it at length in this paper, population control issues were a very pressing issue that reached a fever pitch in the 1970s. Elena Gutiérrez does an extensive analysis of the different population control groups like Zero Population Growth that primarily targeted immigrants, and how the social science community portrayed Mexican women as “hyper-breeders”. See Chapter 5, “Controlling Borders and Babies: John Tanton, ZPG, and Racial Anxiety of Mexican-Origin Women’s Fertility” in Fertile Matters. These factors all contributed to the perception of Mexican women as irresponsible mothers in the case at LACMC.


36 Ibid., 73.
“unfit” populations. Yet Ziegler, Gordon, and Dowbiggin have also documented that the ties between the eugenic and birth control movements were not only proximal, but reciprocal as well.

The most commonly cited example of the convergence of birth control and eugenics is Margaret Sanger. Though much more popularly known for her work to legalize abortion, Sanger was a prominent proponent for birth control as a form of eugenics, particularly for poor families and single mothers.37 Ironically, Sanger and other feminists from the first wave campaigned fiercely for women’s rights to voluntary motherhood, while also supporting the sterilization of “unfit” females that would only burden the cause of women’s liberation. Ziegler shows how many first wave feminists believed that “eugenic decline of the race could be prevented only if women were granted greater political, social, sexual, and economic equality.”38 Yet even after the supposed obsolescence of eugenics, Ian Dowbiggin demonstrates how eugenic organizations persevered by relinquishing their explicit support of racial purity and “better breeding” programs in favor of support for birth control. By the 1950s and 1960s even New York’s Alan Guttmacher, for whom the national Guttmacher Institute is named, held fundamentally eugenic beliefs. Guttmacher became the Chair of Medical and Scientific Committee of the Association for Voluntary Sterilization—formerly known as the Human Betterment Association of America, an explicitly eugenic organization— in 1952, and served as the elected president of Planned Parenthood World Population board in the 1960s. Guttmacher’s reputation within the family planning movement, states Dowbiggin, was “so enviable that he was often mentioned as the unofficial successor to Margaret Sanger herself.”39 He was wise,

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37 For more about Margaret Sanger’s support for eugenics in birth control, see Franks, Angela, *Margaret Sanger’s Eugenic Legacy: The Control of Female Fertility*, (Jefferson, N.C.:McFarland, 2005).
Dowbiggin notes, to avoid “discussing publicly his striking affiliation with eugenic, euthanasia, and birth control organizations for fear of alienating any prospective followers.”

Historian Rebecca Kluchin argues that it is precisely such a willingness to avoid expressing eugenic ideology that created the neo-eugenic movement in America—not a formal movement, but rather a theory and praxis that saw “culture rather genes [as] the method of transmission” of degeneracy. Her analysis of the neo-eugenics movement is useful in understanding why feminists in NOW would have opposed the Comisión’s proposals for a waiting period for sterilization surgeries. Unfortunately, it was precisely because feminism throughout the early twentieth century was seen as radical and controversial that feminists felt the need to form “rational” coalitions with organizations that supported their demands for greater access to reproductive control. Yet such associations with eugenics organizations, whose attitudes toward reproduction were built on a racist and paternalistic platform, created predominantly white and middle-class feminist organizations who held “monist political views” that did not recognize the differences between their reproductive demands and those of women of color or women from lower socioeconomic statuses. Chicanas, in particular, had long been the targets of eugenic sterilizations throughout California’s history.

**Californian Histories of Eugenics to Forced Sterilization in California**

Historians have given the eugenics movement in the United States considerable attention within the past decade. Alexandra Stern’s *Eugenic Nation: Faults and Frontiers of Human Breeding in Modern America* and Paul A. Lomardo’s edited collection *A Century of Eugenics in America: From the Indiana Experiment to the Human Genome Era* are two histories that examine eugenics’ influence in contemporary social and medical thought. Both works challenge the notion that eugenic science and ideology vanished after World War Two and the United States’ condemnation of eugenic

40 Ibid.
42 Roth, Benita, *Separate Roads to Feminism*, 167.
sterilizations in Nazi Germany. Certainly, *Madrigal v. Quilligan* supposedly took place in a “post-eugenic” era. Alexandra Stern claims that this case was actually the “concluding link in California’s protracted history of eugenics,” directly linking the federally funded sterilization abuse cases of women in the 1970s to the broader sweep of the history of eugenics in America.

In 1909, California was among the first American states to pass a law that sanctioned the use of compulsory sterilizations as punishment for crimes, or for individuals deemed genetically “insane”. The 1927 case *Buck v. Bell*, however, changed the nation’s approach to sterilization procedures by approving the constitutionality of sterilization for eugenic “medical” purposes and outlawing them as criminal punishments. The Supreme Court established the use of eugenic sterilizations as being beneficial to both the community and the individual. In a landmark decision that would profoundly impact the nature and intents of human sterilization throughout the twentieth century, Justice Oliver Wendell Holmes stated that “it is better for all the world if instead of waiting to execute degenerate offspring for crime, or to let them starve for their imbecility, society can prevent those who are manifestly unfit from continuing their kind.”

The *Buck* decision led to a proliferation of private eugenic organizations and the expansion of eugenics programs in colleges and universities all across the nation. The most prominent organization in Los Angeles was the Human Betterment Foundation, which was established in 1928 in Los Angeles by the philanthropist Ezra Seymour Gosney. Like many other eugenic institutions, the primary function of Gosney’s Human Betterment Foundation was to record the number of sterilization operations for “feebleminded” and “insane” patients at state mental hospitals and prisons. They also collected information on the progress of sterilization legislation in the U.S. and California, and published articles by doctors who verified that sterilizations produced “no change in

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46 Ibid., 272.
the patient’s sexual life” and had no negative side effects.47

Figure 3. PHN (Public Health Nurse) attempting to distribute birth control, and being stopped by a Catholic priest. Source: Papers of E. S. Gosney and The Human Betterment Foundation at the Caltech Archives. Box 15, Folder 3.

The Human Betterment Foundation was a strong proponent of the use and distribution of birth control. Ian Dowbiggin examines the “curious combination of humane and illiberal motives that inspired these people [eugenicists]” and their commonality of “well-intentioned concerns about how to make America a better society and the world a better place.”48 Indeed, the Human Betterment Foundation, though not mentioned in Dowbiggin’s study, helped to popularize the use of birth control to regulate the reproduction of poor or otherwise “unfit” citizens. Figure 2 depicts a public health nurse attempting to distribute birth control to an impoverished woman with five children. The woman is obviously of a darker complexion than the nurse, and is apparently willingly

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48 Dowbiggin, “‘A Rational Coalition’”, 226.
receiving the birth control. She is unaccompanied by a man, as were the women in the *Buck* case, and countless other supposedly “low-grade morons” and “feebleminded” women who were sterilized merely for giving birth out of wedlock. The figure of an imposing Catholic priest stands in the way of the nurse’s attempts to deliver the birth control to the woman. Images such as these laid the foundations for the pro-choice and pro-life movements for birth control in America, and arguably helped to polarize the two camps.

Dowbiggin’s article does not only focus on the ways in which eugenic organizations formed “rational coalitions” with birth control and euthanasia advocacy organizations as a means of “shaking their eugenic reputation.” He also examines the rise of liberal organizations that prized “individual choice” and secularism in direct opposition to the political power of the Catholic Church, which had become “the dominant cultural institution in the country” after the Great Depression and the mid-1950s. Gutiérrez notes that feminists in women’s liberation movements often saw Mexican women as being opposed to birth control because of their Catholic beliefs, and overly dependent on their identities as mothers. The Catholic Church’s opposition to birth control became the driving force for the activism of the Association for Voluntary Sterilization, an organization that promoted the use of sterilizations as a highly effective means of birth control. Indeed, Dowbiggin notes that “well into the 1960s, the AVS was simultaneously a eugenic and noneugenic organization,” that represented an alliance between those who believed that “eugenic purposes could be fulfilled more efficiently through voluntary sterilization” and those who were also “convinced that greater access to sterilization services would provide women with wider

51 Gutiérrez, “We Will No Longer Be Silent,” 217.
52 “Catholics had opposed the enactment of eugenic laws… Catholic hospitals… routinely denied physicians ward privileges if they belonged to any family planning organizations, such as the Planned Parenthood Federation of America (PPFA) or the Association for Voluntary Sterilization itself.” Dowbiggin, “A Rational Coalition,” 230.
reproductive choice.”

In their testimonies, the ten women in the *Madrigal* trial directly challenge the portrayal of sterilization as being benign and benevolent. Guadalupe Acosta, the first witness for the plaintiffs, gave a harrowing account of her experience at the Los Angeles County Medical Center. After several return visits to the County hospital, Acosta was past-due at 11-months pregnant, and in the middle of heavy labor pains. She said she had been strapped to a bed by a doctor who spoke some Spanish, before being left alone in the room for over three hours. Finally, she was taken to the delivery room where she said “four doctors were pushing on my stomach... It hurt very badly… they just said ‘don’t push.’” She had not met any of the doctors previously. When she tried to push one of the doctors away, he came back and slapped her on the stomach. After this bizarre exchange, Guadalupe was left alone for another three to four hours again, “screaming and crying” from pain, until the same men returned to give her what she thought might have been pain medication and wheeled her to the operating room. They restrained her arms and legs, and then put her under anesthesia.

Guadalupe stated that she had not had a single conversation with any doctor about a sterilization operation, nor even about delivering her child via C-section. When she awoke in the recovery room, her husband initially told her that she had delivered “a little girl and that she was in the incubator.” However, after eight days of not seeing her baby, she asked the doctor who came to take out her stitches about the child, to which the doctor responded “What girl? The girl has died.” Forty days after her release from the hospital, Acosta had returned to the hospital for her post-partum examination. During her appointment, she asked for birth control pills, and was asked by the attendant nurse, “What do you want the pills for when your tubes have been tied?” After Acosta’s experience, she suffered dizzy spells, headaches, and nerve attacks that made her scream at her other

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children, when she “never screamed at them before.”\textsuperscript{56} Her husband left her about a year and a half after her surgery.

Though one of the doctors spoke Spanish, Acosta remained uninformed as to the rationale behind her treatment. Her experience was possibly the most violent and extreme case of abuse among all of the women, and the use of restraints demonstrated the doctors’ need to exert a large degree of physical control over Acosta.\textsuperscript{57} Her treatment belies a long history of the criminalization and medicalization of Mexican women’s fertility. Eugenic sterilizations were legal as long as they were used to reform criminal behavior or “improve the racial stock,” as Paul Popenoe and E.S. Gosney had described. Though the rationales for performing sterilizations were different in the 1970s than in the first half of the twentieth century, the results were the same.

Indeed, eugenicists had long portrayed Mexican women as being culturally depraved, morally loose, and sexually deviant. A sterilization record from the Human Betterment Foundation illustrated how Mexican women had not only been sterilized for giving birth out of wedlock, but also by the nature of the characterization of Mexicans as criminals. In the record, it is striking how Mexican women had suffered instances of sterilization abuse much like Acosta’s since the 1920s—in which they were sterilized not only without their consent, but without even their knowledge. This report described an operation for a female of Mexican birth, who had been sterilized in 1925. Several parts of the record were not filled out. In particular, “Type of Operation” and “Reason for Operation” are also left blank, but under “Consent Given By” is a typewritten sentence that says: “Doesn’t know she was sterilized. Gave consent merely to operation.” The rationale for the surgery becomes evident upon turning the page over, as the records for “Patient’s Social Condition Before”

\textsuperscript{56} Acosta, Guadalupe. Acosta—Direct,” 82.
are described as “Dope peddler; in jail a number of times; long record of delinquency.” Clearly, the perception that sterilization was a useful surgery for reforming deviant behavior was in play in terms of classifying Mexicans as criminals as well. The record stated that she had “straightened up considerable [sic]” after the surgery.  

**Contesting “Choice”**

Thus, when the women in the *Madrigal v. Quilligan* case protested their treatment and demanded restitution, they were challenging the constitutionality of the eugenic sterilization law that had been ratified in *Buck v. Bell*, and the long history of sterilization abuse within the Mexican-American population. These accounts place the court’s decision in favor of the LACMC doctors within the history of legally sanctioned sterilizations. The Association for Voluntary Sterilization was only one organization among many that supported the use of sterilizations as the means by which to ameliorate social ills; medical journals also promoted the benefits to families of “choosing” sterilizations. Dr. James Quilligan himself had been a powerful voice in the medical community, serving as an associate editor for the American Association for Obstetrics and Gynecology from 1969 until 2003. Other doctors explicitly promoted the use of “socioeconomic sterilizations.” An anonymous note taken from a medical journal article on sterilization from 1974 read: “the initial costs [of sterilization] are relatively large, but should be measured against continuing expenses for temporary methods over the remainder of the reproductive span, as well as the tangible and intangible costs of having an unwanted pregnancy because of failed contraception.” Indeed, supporters of the liberalization of birth control found that they too could form a “rational coalition” with the federal government, by supporting this effort in conjunction with their demands for

60 Author unknown, Carlos Vélez-Ibañez Sterilization Collection 1974 p. 37
women’s liberation.

In the sterilizations at LACMC, doctors demonstrated that they had believed that it was their responsibility to limit women’s fertility, for the women’s own economic benefits—even if it meant doing so without their consent. Dr. Karen Benker’s testimony described a culture of punitive sterilization for poor women and women of color that she had observed firsthand during her time there. Though she had not been at the hospital between 1971 and 1974, she nonetheless described the times that she had seen Dr. James Quilligan himself proclaim that LACMC was using federal money to reduce the number of birth rates for Blacks and Hispanics.\(^\text{61}\) Furthermore, in the testimony of Dr. Julian Thomas Parer, the doctor defended his decision to sterilize patients by stating: “if [the patient] seem[ed] to be somebody in whom a tubal ligation would be appropriate, then you would probe the subject completely. If she is a 15-year-old with one child, I wouldn't ask the question. Mrs. Orozco [one of the plaintiffs] is a 33-year-old, with five or six children. In fact, it would be appropriate to ask the question. In fact, it would be wrong not to ask the question.”\(^\text{62}\) Such a testimony illustrated the doctors’ belief that women would be better off having fewer children, which was inseparable from the belief they should not have any more. Whether it was appropriate to ask the question while the woman was in the middle of labor pains or even in the woman’s first language was not addressed in the court’s final ruling.

The activism of women like Antonia Hernández and those in the Comisión Femenil Mexicana Nacional and CSFS was remarkable in that it challenged the court and the doctors’ assertion that it was a medical practitioner’s right to prescribe surgeries or other treatments on the basis that they believed it to be appropriate. Indeed, Chicanas in Los Angeles continued to fight for reforms in reproductive health care for poor women and women of color even after the trial ended.

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Chicanas made up a prominent element in the nationwide movement against sterilization abuse that challenged popular notions of reproductive “choice.” They became powerful participants in a debate on women’s rights that would incorporate their unique position of cultural separatism and difference even if medical authorities, the government, and the law sanctioned beliefs that reduced Mexican Americans to pathological, irrational, “over-breeding” patients. The Comisión forged alliances with a Puerto Rican group in New York called the Committee for Abortion Rights and Against Sterilization Abuse (CARASA), the National Black Feminist Organization, and others. Chicanas were active in the establishment of the Reproductive Rights National Network in 1981 that came to include over 80 different groups across the country.

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63 Alma Garcia describes in-depth how Chicanas rejected the “breeder” stereotype that Gutiérrez had described, while also attempting to refute the characterization of women as abnegated mothers that was constructed by men in the Chicano movement. Women, Garcia states, were supposed to give birth to as many children as possible in order to support the cause of Chicano liberation. Furthermore, she explores the divisions among women in the Chicano movement who saw themselves as being oppressed by this ideology, and the others who agreed with the men’s stance. Her article explores these issues and more. Garcia, Alma M., “The Development of Chicana Feminist Discourse, 1970-1980,” *Gender and Society* 3, no. 2 (1989): 234.

64 Luna, Luker, “Reproductive Justice,” 337.


Madrigal v Quilligan and the activism against sterilization abuse that surrounded it are considered key case studies in the emergent field of reproductive justice. Indeed, Zakiya Luna and Kristin Luker name Madrigal v. Quilligan as one of the legal cases that impelled reproductive justice as a movement that would “go beyond the courts” to ensure that reproductive freedom entailed “the right to have a child and the right to parent” on equal footing with “the right to not have
children.” They note that it was precisely the oversight of the courts that led to the creation of a community-based movement that included a racial and class-based analysis in order to solve complex issues that threatened women’s reproductive health and well-being. Indeed, they state that reproductive justice itself is a critique of “(middle-class) able-bodied White women’s presumption that their experience adequately represented all women’s experiences.” Madrigal v. Quilligan and conflict between the Comisión and NOW shows how government and feminist groups alike failed to account for the potential for abuse in their advocacy for the liberalization of birth control. NOW and other middle-class and white feminist groups did not acknowledge sterilization as a threat because of their demand for control over their own reproduction—a demand that effectively limited the fertility of other women.

Conclusions

The need for reproductive justice remains a struggle and debate today. Dorothy Roberts’ essay, “Who May Give Birth to Citizens?” from Juan F. Perea’s edited collection of essays Immigrants Out!: The New Nativism and the Anti-Immigrant Impulse in the United States describes the convergence of anti-immigrant sentiment with the perception of immigrant women as irresponsible mothers and susceptible to unintended pregnancies. She emphasizes the need to purge nativist impulses from the public health care system, and in particular, warns of the danger of a resurgence of discriminatory reproductive health care policies that restrict prenatal care for immigrant women. Roberts’ critique does not exist in isolation, because indeed, in 2013 NOW began organizing in solidarity with immigrant women for commonsense immigration reforms.

66 Ibid., 328.
67 Ibid., 335.
However, abortion tends to continue to dominate the national conversation on reproductive issues. Indeed, abortion was a prominent topic in the 2012 Presidential election, yet sterilizations and tubal ligations were not mentioned in the 2010 Patient Protection and Affordable Health Care Act. They remain under the jurisdiction of the Title X National Family Planning Programs that were established in 1970 as a part of the U.S. Department of Health and Human Services’ (formerly HEW) Office of Population Affairs (OPA). Title X’s mission is to “assist [low-income] individuals and couples in planning and spacing births, contributing to positive birth outcomes and improved health for women and infants.”

Elena Gutiérrez, and other scholars on forced sterilizations alleged that sterilization abuse in the 1970s was the product of a need to control over-population. For Mexicans in particular, the “rhetoric and imagery of an impending catastrophic situation of world poverty brought about by excessively fertile women and immigrant invasions from Mexico” is a central element of Gutiérrez’s sociological perspective on the instances of abuse in the Madrigal case.

Unfortunately, it has become important and necessary to challenge Alexandra Stern’s assertion that Madrigal v. Quilligan was a “bookend” in the history of eugenics in America. In 2013, several news sources reported over 180 instances of sterilizations performed under “questionable circumstances” on women in California state prisons between 1997 and 2010. The popular

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71 Gutiérrez, Fertile Matters, 34.

response to the date of the Madrigal trial is shock—1978, much later than the period of history associated with eugenic sterilizations and breeding for “racial purity.” Yet in 2013, Dr. James Heinrich, an OB-GYN at Valley State Prison for women, stated that “over a 10-year period, [spending $147,460 public tax dollars on sterilizations] isn’t a huge amount of money compared to what you save in welfare paying for these unwanted children.” This quote smacks eerily of neo-eugenics, in particular the notion that the prison guards believed that incarcerated women would pass on their criminality through negligent and irresponsible mothering practices associated with poverty.

In the early twentieth century, eugenic sterilizations took place primarily in state prisons and hospitals under the sanctions of the Buck v. Bell decision. Though the decision was declared unconstitutional in 1979, a year after Madrigal, the protections extended to patients in state hospitals may not be reaching the incarcerated population. It is important now, more than ever, to examine of Madrigal v. Quilligan, and the way that the medical system may still forcibly restrict the fertility of men and women across the country. Andrea Smith, a scholar and activist in the reproductive justice movement, advocates for a “commitment to criminal justice interventions in reproductive justice issues.” She argues that the pro-life/pro-life paradigm has created a false dichotomy, because “neither position endows women with inherent rights to their body [by] assum[ing] a criminal justice

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74 “The current system of control permanently locks a huge percentage of the African American community out of the mainstream society and economy. The system operates through our criminal justice institutions, but it functions more like a caste system than a system of crime control. Viewed from this perspective, the so-called underclass is better understood as an andercaste—a lower caste of individuals who are permanently barred by law and custom from mainstream society. Although this system of racialized social control purports to be colorblind it creates and maintains racial hierarchy much as earlier systems of control did.” Alexander, Michelle, The New Jim Crow: Mass Incarceration in the Age of Colorblindness, New York: New York Press, 2012, 13.

Title X programs provide services through a variety of state, county, and local health departments, and emphasize the need for education about sterilization prior to surgery. In California, there is now a thirty-day waiting period between consent to sterilization and the date of the surgery. Yet the role of language translation and fully educated consent to any form of birth control is still in need of support and reform, not only in family planning, but also in medical fields more broadly. The “rational coalition” now must be between community organizations and health care providers, as they work to ensure that patient-oriented reproductive services are rendered in a culturally sensitive, anti-nativist fashion. The claims of any reproductive rights group are in danger of ignoring the needs of women from different backgrounds and socioeconomic classes if they are not built upon a theory and praxis of decriminalization, with the goal of allowing men and women themselves to be in charge of their own reproductive decisions.

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76 Ibid., 134.
Archival Collections.


The E. S. Gosney papers and Records The Human Betterment Foundation Collection 1880-1940. Caltech Archives, Pasadena, California.

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