

2-2024

A Critical Race Theory Analysis: The Role of Racialization, the White Racial Frame, and Institutional Power in California Eugenics Sterilizations

Nicole Sequeira Tashovski

Follow this and additional works at: https://repository.uclawsf.edu/hastings_race_poverty_law_journal



Part of the [Law and Race Commons](#)

Recommended Citation

Nicole Sequeira Tashovski, *A Critical Race Theory Analysis: The Role of Racialization, the White Racial Frame, and Institutional Power in California Eugenics Sterilizations*, 21 HASTINGS RACE & POVERTY L.J. 157 (2024).

Available at: https://repository.uclawsf.edu/hastings_race_poverty_law_journal/vol21/iss1/6

This Article is brought to you for free and open access by the Law Journals at UC Law SF Scholarship Repository. It has been accepted for inclusion in UC Law Journal of Race and Economic Justice by an authorized editor of UC Law SF Scholarship Repository. For more information, please contact wangangela@uchastings.edu.

A Critical Race Theory Analysis: The Role of Racialization, the White Racial Frame, and Institutional Power in California Eugenics Sterilizations

NICOLE SEQUEIRA TASHOVSKI*

TABLE OF CONTENTS

Introduction.....	158
Part I: Background.....	161
<i>Skinner v. Oklahoma</i>	161
The Eugenics Movement	162
Part II: Dominant Critical Race Theory Themes in the Eugenics Movement	164
White Supremacy and Systemic Racism	165
The Construction of Race and Racialization	166
The White Racial Frame	168
Institutional Control.....	169
Control of the Sciences.....	170
Legal Institutions	171
i. Federal Immigration Law and Politics	171
ii. The Supreme Court	173
iii. State Statutory Law	174
iv. California Federal Courts and Medical Institutions	176
Conclusion	179

* Nicole received her Juris Doctor from the University of California College of the Law, San Francisco (formerly UC Hastings) in May 2022. There, she was a member of the Social Justice Lawyering concentration, and Hastings Students for Immigrants' Rights. Prior to attending law school, she received a Master of Social Work degree from the University of Southern California and worked as a medical social worker. Nicole was admitted to the North Carolina State Bar in September 2022 and currently serves as a judicial law clerk to the Honorable Anita Earls of the Supreme Court of North Carolina. The ideas and opinions expressed in this paper are those of the author alone and do not represent the ideas or opinions of Justice Earls or the Supreme Court of North Carolina.

INTRODUCTION

The right to have children became a fundamental right in 1942 in *Skinner v. Oklahoma*.¹ Before and after *Skinner*, eugenic sterilizations occurred in California in high numbers.² Following *Skinner*, in many ways, whether one could claim this right was contingent on who they were.³ This is because many California sterilizations targeted Mexican-origin,⁴ working class women who were “deemed unfit to procreate or parent.”⁵ These sterilizations took place against the backdrop of eugenic anti-Mexican rhetoric that permeated state and federal White-controlled institutions, including academia and the sciences, federal immigration law, state statutory law, and federal courts.⁶ The same eugenic ideology embedded within those institutions also infiltrated popular political opinions and imposed a White racial frame.⁷ Thus, this paper seeks to explain the forced sterilization of Mexican-origin women in California through an analysis of their racialization, imposition of the White racial frame, and White institutional power in the eugenics movement. In doing so, this paper will focus on two types of California forced sterilizations, occurring at different times from the 1920s through the 1970s.

1. *Skinner v. State of Okl. ex rel. Williamson*, 316 U.S. 535, 541 (1942).

2. Alexandra Minna Stern, *Sterilized in the Name of Public Health: Race, Immigration, and Reproductive Control in Modern California*, 95 AM. J. PUB. HEALTH 1128, 1128 (2005) (discussing California’s institutional forced sterilizations occurring from 1920 to at least 1950 and those occurring in the 1970s at Los Angeles County Medical Center, University of Southern California (LAC-USC)).

3. *Id.* at 1136 (discussing the sterilization of Mexican-origin women in California).

4. The term “Mexican-origin women” will be used throughout this paper and was adapted from the work of Natalie Lira. Natalie Lira, “*Of Low Grade Mexican Parentage*”: *Race, Gender, and Eugenics Sterilization in California 1928-1952*, 15 (2015) (Ph.D. dissertation, University of Michigan) (on file with University of Michigan Library). As Lira notes, citing the work of Elizabeth R. Escobedo, distinctions were rarely made regarding citizenship and second and third generation Mexican-Americans were considered “Mexicans.” See generally ELIZABETH R. ESCOBEDO, FROM COVERALLS TO ZOOT SUITS: THE LIVES OF MEXICAN AMERICAN WOMEN ON THE WORLD WAR II HOME FRONT 133 (2013). Thus, “Mexican-origin” is the most appropriate term to describe United States citizen and immigrant women from Mexico who were sterilized in California.

5. Stern, *supra* note 2, at 1128.

6. See Lynne M. Getz, *Biological Determinism in the Making of Immigration Policy in the 1920s*, 70 INT’L SCI. REV. 26, 26 (1995) (discussing anti-Mexican rhetoric in immigration policy); see also *Buck v. Bell*, 274 U.S. 200, 207 (1927) (using eugenic ideology to uphold the sterilization of Carrie Buck); R. C. LEWONTIN, *BIOLOGY AS IDEOLOGY: THE DOCTRINE OF DNA* 23 (1990) (discussing eugenic ideology in the sciences).

7. See Joe Feagin & Sean Elias, *Rethinking racial formation theory: a systemic racism critique*, 36 ETHNIC & RACIAL STUD. 931, 937 (2013) (discussing how Whites are central to systemic racism, by imposing community norms, scientific and medical categorizations and the ideologies that permeate science); *The Eugenic Aspects of Deportation, Hearings Before the Committee of Immigration and Naturalization House of Representatives*, 70th Cong. 3 (1928), <https://library.missouri.edu/specialcollections/exhibits/show/controlling-heredity/america/immigration>) (discussing eugenics ideology at a congressional immigration hearing).

The first eugenic sterilizations were those sanctioned under California state law and carried out by the state's Department of Institutions.⁸ These laws targeted people thought to have inheritable conditions and endured from 1920 to at least 1950, occurring both pre- and post-*Skinner*.⁹ Broad terms within the statute such as “feeble-minded[ness]” allowed the law to be disproportionately applied to Mexican-origin women, who were racialized and pathologized based on their deviation from the White racial frame.¹⁰

The second type of sterilization occurred after *Skinner* in the 1970s.¹¹ These came to light in 1978, following allegations by ten Mexican-origin women who had been sterilized at Los Angeles County, University of Southern California Medical Center (LAC-USC).¹² These allegations formed the basis for the class action lawsuit *Madrigal v. Quilligan*.¹³ The Plaintiffs all had similar stories. Most were poor, had immigrated to California from rural Mexico, were mono-lingual Spanish speakers, and their consent to sterilization was coerced following hours in labor that ended in difficult deliveries.¹⁴

Although these events may seem remote in time, they are not. In June 2014, a state audit and investigation into California prisons uncovered the sterilization of over 140 women from 2005–2013.¹⁵ These procedures were performed despite a preexisting law barring the use of federal funds for

8. Stern, *supra* note 2, at 1128. These forced sterilizations will be referred to as “California institutional sterilizations” because they occurred in California institutions.

9. *Id.*; S.B. 1190 § 1(b), Reg. Sess. (Cal. 2018) (discussing how institutional sterilizations targeted persons thought to have inheritable conditions).

10. *See* S.B. 1190 § 1(e), Reg. Sess. (Cal. 2018) (discussing how labels of “feeble-mindedness,” and “mental deficiency” were disproportionately applied to racial and ethnic minorities).

11. *See generally* *Madrigal v. Quilligan*, No. CV 75-2057-JWC, (C.D. Cal. June 30, 1978) (unpublished) (on file with author). These forced sterilizations will be referred to as the “*Madrigal* sterilizations” due to the lawsuit, *Madrigal v. Quilligan*, which was brought by ten women who were sterilized at LAC-USC.

12. *Madrigal*, No. CV 75-2057-JWC at 1 (1978).

13. *See generally id.*

14. *Id.* at 1134.

15. CAL. STATE AUDITOR, STERILIZATION OF FEMALE INMATES 1 (2014), <http://www.auditor.ca.gov/pdfs/reports/2013-120.pdf>. The report explained that of the 144 women who were sterilized by bilateral tubal ligation from 2005–2013, adequate consent was not obtained in thirty-nine cases. *Id.* Lack of adequate consent was the failure of not only the physicians who failed to sign the required forms certifying the women were competent to consent, but also the Department of Corrections and the Federal Receiver's office who oversaw these procedures. *Id.* at 1–2. The audit also noted concerns regarding the amount and quality of counseling the women received prior to sterilization. This was based on the absence of any physician progress notes that adequately reflected informed consent or counseling. *Id.* at 2–3. Following advocacy efforts by the women affected and Justice Now, a nonprofit organization providing legal services, California passed Senate Bill 1135, which prohibits prisons and jails from conducting sterilizations for the purpose of birth control. S.B. 1135 § 3440(a) Reg. Sess. (Cal. 2014). *See also* BELLY OF THE BEAST (an Erika Cohn film 2020) [hereinafter Cohn, BELLY OF THE BEAST] (recounting the advocacy of Kelli Dillon, who was sterilized without her consent in a California prison).

sterilization as a form of birth control.¹⁶ The women affected had stories similar to the *Madrigal* Plaintiffs and reported being targeted for sterilization during labor, delivery, and other gynecological procedures.¹⁷ “The majority of these women were Black and Latina.”¹⁸

This most recent type of California eugenic sterilization highlights the ongoing and pervasive nature of eugenics ideology.¹⁹ Although this paper will only focus on two types of California eugenic sterilizations, the arguments made here can help explain the forced sterilization of women of color across the United States. This is especially pertinent following allegations that immigrant women were forcibly sterilized in a Georgia detention center in 2020.²⁰ Further, this paper can be used to understand why eugenics ideology continues to permeate the United States today in insidious

16. 42 U.S.C. § 50.206 (banning sterilization of institutionalized persons if federal funds are used for the procedure). Instead of using federal funds, California used state funds. The use of state funds for these procedures required approval from “top medical officials in Sacramento,” but no such requests were made since 2008. Corey Johnson, *Female inmates sterilized in California prisons without approval*, REVEAL (July 7, 2013), <https://revealnews.org/article/female-inmates-sterilized-in-california-prisons-without-approval/>.

17. Shilpa Jindia, *Belly of the Beast: California’s dark history of forced sterilizations*, THE GUARDIAN (June 30, 2020), <https://www.theguardian.com/us-news/2020/jun/30/california-prisons-forced-sterilizations-belly-beast> (reporting “at least 148 pregnant women received tubal ligations shortly after giving birth while incarcerated at two California prisons.”); Cohn, *BELLY OF THE BEAST*, *supra* note 15 (detailing the experience of former inmate Kelli Dillion who was sterilized without her consent during a surgery to remove an ovarian cyst).

18. Jindia, *supra* note 17.

19. Bill Chappell, *California’s Prison Sterilizations Reportedly Echo Eugenics Era*, NPR (July 9, 2013), <https://www.npr.org/sections/thetwo-way/2013/07/09/200444613/californias-prison-sterilizations-reportedly-echoes-eugenics-era> (noting concerns that women who were targeted for sterilization were those seen as likely to serve another jail term). Additionally, when prison doctor, Dr. James Heinrich, was asked about the sterilizations he performed, he expressed that the state’s cost in paying \$147,460 was reasonable when “compared to what you save in welfare paying for these unwanted children—as they procreated more.” *Id.* This is similar to the way Mexican-origin women were racialized as dependent on the state during the eugenics era. See Stern, *supra* note 2, at 1128 (describing one physician’s justification for sterilizing Mexican-origin women at LAC-USC as being based in part on the notion that Mexican-origin women and their babies were a strain on the California welfare system).

20. See PROJECT SOUTH: INSTITUTE FOR THE ELIMINATION OF POVERTY & GENOCIDE, *Re: Lack of Medical Care, Unsafe Work Practices, and Absence of Adequate Protection Against COVID-19 for Detained Immigrants and Employees Alike at the Irwin County Detention Center* (Sept. 14, 2020), <https://projectsouth.org/wp-content/uploads/2020/09/OIG-ICDC-Complaint-1.pdf>. In 2020, a whistleblower and nurse at Irwin Immigration Detention Center raised concerns regarding the high number of hysterectomies being performed on immigrant women at the detention center. *Id.* 1–2. She stated that women were mostly sent to one gynecologist who performed hysterectomies on “just about everybody” he saw. *Id.* at 19. According to the nurse, detained women expressed confusion as to why they received a hysterectomy. *Id.* at 18. The nurse also described the experience of one woman who underwent a surgery to remove her left ovary due to a cyst, yet the doctor removed the right one. *Id.* at 19. In the end, after the doctor performed the correct surgery, the patient “wound up with a total hysterectomy.” *Id.* Because the doctor did so many hysterectomies he was known as “the uterus collector” among detention center staff. *Id.*

and less obvious ways than forced sterilization.²¹ It is the author's hope that policy makers will consider critical race theory and the arguments made in this paper when enacting reproductive health laws.

Part I of this paper will introduce *Skinner* and discuss how despite the existence of a fundamental right to have children, sterilization programs continued in California. This section will also provide background on the eugenics movement and its underlying pseudo-scientific theory, biological determinism. Part II will introduce and discuss dominant critical race theory themes present during the eugenics movement. This section will also argue that these themes contributed to the sterilization of Mexican-origin women through the control of prominent United States institutions such as the sciences, legal system, and medical care.

PART I: BACKGROUND

Skinner v. Oklahoma

In 1942 the Court decided *Skinner v. Oklahoma*, declaring the right to have children a fundamental right.²² Yet, by categorizing it as a fundamental right, the Court did not determine that forced sterilization was unconstitutional.²³ Instead, it only expressed that a law sanctioning these procedures must pass strict scrutiny to be upheld.²⁴ This was a departure from an earlier case, *Buck v. Bell*, which sanctioned forced sterilization without

21. See EQUAL JUST. INITIATIVE, *Tennessee County Coercive Sterilization Program Recalls Racial Eugenics Policies of the Past* (July 24, 2017), <https://eji.org/news/tennessee-county-sterilization-program-recalls-past-racial-eugenics-programs/> (discussing how a Tennessee judge provided shorter jail sentences for people who agreed to undergo sterilization in the form of contraception implants and vasectomies.); see also *Nashville Assistant DA fired amid reports of sterilization in plea deals*, CBS NEWS (Apr. 1, 2015), <https://www.cbsnews.com/news/nashville-prosecutor-fired-amid-reports-of-sterilization-in-plea-deals/> (discussing the use of sterilization as part of plea agreements in four child abuse and neglect cases). These first two examples highlight the insidious nature of coerced sterilization by authorities in the legal system. Yet the government also uses “negative eugenics” to discourage the procreation of marginalized groups. Mary Elizabeth Dial, *Two Steps Forward, One Step Back: The Story of Eugenics in America, Past and Present*, 11 ALA. CIV. RTS. & CIV. LIBERTIES L. REV. 177, 197–8 (2019). This can be seen in the Temporary Assistance for Needy Families (TANF) program and the treatment of pregnant Medicaid patients in the medical system. *Id.* (citing Khiara M. Bridges, *Quasi-Colonial Bodies: An Analysis of the Reproductive Lives of Poor Black and Racially Subjugated Women*, 18 COLUM. J. GENDER & L. 609 (2009) [hereinafter Bridges, *Quasi-Colonial Bodies*]). In her article, Dial explains the requirement under TANF and the health care system as evoking the stereotypes of the “welfare queen,” the “wily patient,” who is too “simpleminded to raise children ... but clever enough to scheme their way into advantages they have not earned.” See Bridges, *Quasi-Colonial Bodies*, *supra* note 21, at 609 (describing the “problematization of poor Black women’s fertility.”).

22. *Skinner*, 316 U.S. at 541.

23. *Id.* (providing strict scrutiny should apply to classifications regarding sterilization).

24. *Id.* Strict scrutiny requires the government to justify its classification under the highest burden used to determine constitutional violations. See *id.*

such procedures.²⁵ In *Skinner*, the Supreme Court reversed course from *Buck*, but only slightly, when it ruled against the state of Oklahoma.²⁶ There, the Court reasoned Oklahoma's compulsory sterilization law violated the Equal Protection Clause. It distinguished the case from *Buck*, which in contrast was upheld on equal protection grounds.²⁷ In distinguishing *Skinner* from *Buck*, the Court chose not to overrule *Buck* and it remains good law today.²⁸ *Skinner* did not mark the end of eugenics ideology in the Supreme Court, or America more generally, and California sterilization programs in place pre-*Skinner* continued.²⁹

The Eugenics Movement

The eugenics movement was based on the pseudo-scientific theory of biological determinism.³⁰ This theory had three parts. First, the theory posited that people differed in ability because of innate differences.³¹ Second, innate differences were biologically inherited, and third, human nature guaranteed the formation of a hierarchical society.³² Under biological determinism,

25. *Buck*, 274 U.S. at 207 (discussing how Ms. Buck's and society's welfare would be promoted by her sterilization).

26. See Michael G. Silver, *Eugenics and Compulsory Sterilization Laws: Providing Redress for the Victims of a Shameful Era in United States History*, 72 GEO. WASH. L. REV. 862, 869 (2004) (discussing eugenics ideology in the Court's concurring opinions).

27. *Skinner*, 316 U.S. at 541 (reasoning the law violated the Equal Protection Clause because a person convicted of larceny three times could be subject to forced sterilization, but a person convicted of embezzlement three times could not).

28. See *id.*; *Skinner* pointed out that *Buck* was upheld on equal protection grounds because people who were sterilized could be released back into society. *Id.* This created room for others to be institutionalized and brought within the scope of the statute. *Id.* No such "saving feature" was present in *Skinner* because "[e]mbezzlers are forever free" and "those who steal or take in other ways are not." *Id.*

29. *Id.* Additionally, Chief Justice Stone's concurrence advocated invalidating the law under the Due Process Clause. In reaching this conclusion, eugenics ideology was used to distinguish *Skinner* from *Buck* noting the "law had recognized that there are certain types of mental deficiency associated with delinquency that are inheritable." But even if science supported this, due process was still required. *Id.* at 545. Justice Jackson's concurrence also supported eugenics ideology, noting the Court had sustained biological experiments "with respect to an imbecile, a person with definite and observable characteristics, where the condition had persisted through three generations." *Id.* at 546. See Silver, *supra* note 26, at 869 (discussing the eugenics ideology present in the *Skinner* Court's majority and concurring opinions).

30. Getz, *supra* note 6, at 26 (discussing biological determinism's relationship to eugenics ideology).

31. Lewontin, *supra* note 6, at 23.

32. *Id.* The claims espoused by biological determinists are scientifically false. *Id.* at 26. Rather, the notion that "humankind can be divided along [racial lines] reveals the social ... origin of race." Ian F. Haney Lopez, *The Social Construction of Race: Some Observations on Illusion, Fabrication, and Choice*, 29 HARV. CIV. RTS.-C.L. L. REV. 1, 4 (1994). Further, although people may be influenced by their genes, their potential is not determined by them alone. *Id.* Instead, people are a complex combination of genes and environment which interact to create an unpredictable manifestation of that interaction. *Id.* at 6.

people of color and those without power were told that their position in society was due to their own innate predetermined deficiencies.³³ Thus, biological determinism was used to legitimize inequality in the United States by putting a “biological [and pseudo-scientific] gloss” on inequality.³⁴ It had the effect of disseminating and maintaining White supremacy by situating Whites at the top of the racial hierarchy.³⁵ By propagating the belief that society had attained the highest possible level of equality, biological determinism discouraged oppressed persons from questioning their own oppression because any resulting inequalities were the product of innate differences.³⁶

The eugenics movement had a racist intent.³⁷ Because eugenicists, like biological determinists, believed that people were considered either superior or inferior based on “fixed and unchangeable biological and behavioral characteristics,” they aimed to improve the quality of the human race by controlling the traits they thought could be reproduced.³⁸ Put another way, eugenicists believed that people who were successful in society had good genes, and those who were unsuccessful had bad genes.³⁹ Whether one had good or bad genes was determined in part by race.⁴⁰ To that end, eugenicists intended to “save society” by controlling the gene pool and ensuring that only good genes were carried into future generations.⁴¹ This was achieved by the “careful selection of parents” which promoted the sterilization of parents deemed unfit—namely, parents of color.⁴²

33. Lewontin, *supra* note 6, at 20.

34. *Id.* at 37. Lewontin explains that this “biological gloss” acted to create confusion about the role of genetics and environment in human development. *Id.*

35. *See id.* at 20 (discussing how biological determinism contributed to the oppression of people of color); *see also* Feagin & Elias, *supra* note 7, at 941 (discussing how the United States’ racial hierarchy system situates Whites at the top and people of color at the bottom).

36. Lewontin, *supra* note 6, at 21. Yet it is important to note that many Mexican-origin people who were targeted for sterilization questioned and fought back against these procedures. *See* Lira, *supra* note 4, at 3 (discussing one mother’s challenge against her daughter’s sterilization by the Department of Institutions).

37. Melanie Fong & Larry O. Johnson, *The Eugenics Movement: Some Insight into the Institutionalization of Racism*, 9 ISSUES CRIMINOLOGY 89, 96, 98 (1974) [hereinafter *The Eugenics Movement*].

38. *See* Khiara M. Bridges, *White Privilege and White Disadvantage*, 105 VA. L. REV. 449, 462 (2019).

39. *Id.* at 462.

40. *See id.* (discussing how eugenicists planned to better the gene pool through anti-miscegenation laws, immigration laws, and eugenic sterilizations).

41. *Id.* at 462–463.

42. Fong & Johnson, *supra* note 37, at 99. Eugenicists also propagated the idea that non-Whites, who were considered “unfit,” were reproducing at a higher rate than Whites who were considered “fit.” Although “lower-class” Whites were also considered unfit, they were considered more fit than people of color. *Id.*

PART II: DOMINANT CRITICAL RACE THEORY THEMES IN THE EUGENICS MOVEMENT

There were at least five critical race theory concepts present during the California eugenics movement: systemic racism, the social construction of race, racialization, imposition of the White racial frame, and White institutional control. At the center of these themes was a belief in White supremacy, and each theme played a role in upholding it. White supremacy explains that Whites are superior, and non-Whites are inferior.⁴³ This means that being White carries benefits that are not afforded to other racial groups.⁴⁴

White supremacy is upheld by systemic racism, which is the umbrella term for macro level racism that occurs through institutions.⁴⁵ Systemic racism is upheld in part through the social, political, and legal construction of race and the racialization of racial groups.⁴⁶ Once a racial group is constructed, it can be racialized by attaching traits that later become associated with that group.⁴⁷ This upholds systemic racism and White supremacy by justifying a non-White racial group's lack of access to benefits (i.e. oppression) based on the traits assigned to them through the racialization process.⁴⁸ Systemic racism is also upheld by imposing the White racial frame, which forces a comparison of everything and everyone to Whiteness.⁴⁹ Through that frame, Whiteness is used as a baseline and ensures that non-White groups always fall short of the norms it imposes. In effect, this further

43. Merriam-Webster defines “[W]hite supremacy” as “the belief that the [W]hite race is inherently superior to other races and that [W]hite people should have control over people of other races.” *White supremacy*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/white%20supremacy> (last visited Nov. 16, 2023).

44. In her article, *Whiteness as Property*, Cheryl I. Harris described “[W]hite identity and [W]hiteness as sources of privilege and protection while their absence meant being the object of property.” Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1707, 1721 (1993). In the context of eugenic sterilizations, Whiteness made it less likely one would be subject to sterilization, unless another part of their identity, such as ability or socioeconomic status, was implicated. See Fong & Johnson, *supra* note 37, at 99 (discussing how although “lower-class” Whites were deemed unfit, they were considered more fit than people of color).

45. Feagin & Elias, *supra* note 7, at 931–32, 936 (defining systemic racism as a social science theory that sees racism as a “foundational and inescapable, hierarchical system of United States racial oppression devised and maintained by [W]hites and directed at people of color.”).

46. See Michael Omni & Howard Winant, *Resistance is futile?: a response to Feagin and Elias*, 36 ETHNIC & RACIAL STUD. 961, 963 (2013).

47. See Harris, *supra* note 44, at 1721 n. 45 (explaining how the racialization of Native Americans as “savages” was used to classify them as “the opposite” of Whites).

48. See *id.* (detailing how the racialization of Native Americans was used in part to justify confiscating their land).

49. George Yancy & Joe Feagin, *Confronting Prejudice Isn't Enough. We Must Eradicate the White Racial Frame*, TEX. A & M UNIV.: COLL. OF ARTS & SCI. (July 3, 2020), <https://liberalarts.tamu.edu/blog/2020/07/03/confronting-prejudice-isnt-enough-we-must-eradicate-the-white-racial-frame/>. Here, George Yancy interviews sociologist, Joe Feagin. Feagin defines the White racial frame as a dominant worldview that includes “racist narratives about society” and casts Whites as generally superior, and racial “others” as inferior. *Id.*

perpetuates racialization and creates a justification for why non-White groups should lack access to benefits afforded to Whites.⁵⁰ Lastly, White institutional control also upholds systemic racism by serving as the vehicle to impose White supremacist ideology through the sciences and legal systems.⁵¹

White Supremacy and Systemic Racism

White supremacy situates Whites at the top of the racial hierarchy and grants them benefits, while relegating non-Whites to the bottom and denying them the same.⁵² White supremacy is upheld by systemic racism, which refers to an omnipresent and “inescapable” racial hierarchy devised and maintained by Whites in power.⁵³ Under the framework of systemic racism, Whites are the “racial rulers,” and people of color are the “ruled.”⁵⁴ This system largely benefits Whites while harming non-White racial groups.⁵⁵ The system’s structure was created, and is now maintained, through the control of institutions.⁵⁶ In effect, systemic racism controls prominent U.S. institutions through the propagation of racist laws, policies, and established practices.⁵⁷ This allows rhetoric aimed at the subordination of non-White racial categories to be disseminated through the entire system.⁵⁸ This is what makes it inescapable.

During the eugenics movement, White supremacy was upheld through biological determinism, which provided pseudo-scientific support for White superiority. In California, systemic racism, present in scientific, medical, and legal institutions, allowed those in power to force sterilization upon Mexican-origin women who were deemed inferior to Whites. For example, biological determinism was at the root of California institutional sterilizations whose

50. See Harris, *supra* note 44, at 1721 n.45.

51. See Feagin & Elias, *supra* note 7, at 935. Race is present everywhere and institutions are no exception. See *id.* (explaining that “United States legal and political institutions have a long history of establishing racist laws and policies that actively segregated and subordinated racial groups.”).

52. *Id.* at 941 (discussing the United States’ racial hierarchy); see Harris, *supra* note 44, at 1721.

53. Feagin & Elia, *supra* note 7, at 936. It is important to note that “prejudiced attitudes are not the essence of racism.” Individual prejudiced attitudes can have a psychological and social component that includes feelings of “hatred, superiority, and fear, based solely on differences of color, religion, or ethnic origin.” Fong & Johnson, *supra* note 37, at 93. Although individual prejudice occurs in America, and in many ways has been the foundation for systemic racism, the two differ from one another because one refers to the ways in which racist social structures are maintained, while the other refers to individual racist attitudes towards racial groups. *Id.* at 94.

54. Feagin & Elias, *supra* note 6, at 941.

55. See Harris, *supra* note 44, at 1721.

56. See Feagin & Elias, *supra* note 6, at 936.

57. Paula Braverman et al., *Systemic and Structural Racism: Definitions, Examples, Health Damages, and Approaches to Dismantling*, 41 HEALTH EQUITY 171, 172 (2022).

58. See *id.*

goal was to keep those considered eugenically inferior from reproducing.⁵⁹ Based on that ideology, institutions targeted Mexican-origin women.⁶⁰ This same concept was present in the *Madrigal* sterilizations where the Plaintiffs' allegations substantiated the presence of systemic racism at LAC-USC.⁶¹ There, the hospital staff had as their primary goal the sterilization of Mexican-origin women they deemed inferior and thus unfit to parent.⁶²

Thus, because they were deemed inferior to Whites, Mexican-origin women were denied the right to have children. This right continued to be denied to them, even after *Skinner*.⁶³

The Construction of Race and Racialization

White supremacy is upheld in part by the social, legal, and political construction of race. Under the umbrella of social construction, race is “historically flexible and politically contested.”⁶⁴ This means that racial categories have changed significantly throughout United States history.⁶⁵ But racial classifications are not constructed by accident and instead are a strategic means to further White supremacy.⁶⁶ Once a racial category is constructed, it can be racialized by assigning to it traits that subsequently become associated with that race.⁶⁷ These traits are then used as justification to deny non-Whites the benefits of Whiteness.⁶⁸

The racial categorization of Mexicans has evolved over time due to social and political pressures.⁶⁹ In the early nineteenth century, “Mexican” was considered a nationality, but later evolved into a racial group.⁷⁰ War propaganda, following the independence of Texas in the 1830s and 1840s,

59. See S.B. 1190 §1(b), *supra* note 9.

60. See *id.* at § (b) & (e).

61. See Stern, *supra* note 2, at 1135.

62. See *id.* This is based on comments made by the director of Obstetrics and Gynecology at LAC-USC, that in effect acted as an implicit rule, favoring the sterilization of Mexican-origin women. See *id.*

63. See Stern, *supra* note 2, at 1135.

64. Feagin & Elias, *supra* note 7, at 933 (discussing Racial Formation Theory).

65. Ian F. Haney Lopez, *The Social Construction of Race*, in CRITICAL RACE THEORY: THE CUTTING EDGE 191, 197 (Ricard Delgado ed. 1994) (detailing the evolution of “Mexican” from a nationality to a race).

66. Feagin & Elias, *supra* note 7, at 941–42.

67. Harris, *supra* note 44.

68. *Id.*

69. Lopez, *supra* note 65, at 197 (explaining that the “transformation of ‘Mexican’ nationality to a race came about through a dynamic interplay of myriad social forces.”); see Nicole L. Novak & Natalie Lira, *Forced sterilization programs in California once harmed thousands—particularly Latinas*, THE CONVERSATION (Mar. 22, 2018), <https://theconversation.com/forced-sterilization-programs-in-california-once-harmed-thousands-particularly-latinas-92324> (noting that the racial categories used to classify Mexicans during the institutional sterilization period were in flux, thus data analyzing the forced sterilization of these women relied on Spanish surnames to identify them).

70. Lopez, *supra* note 65, at 197.

exerted social and political pressure to categorize Mexicans as their own racial group.⁷¹ Courts have also taken an active role in categorizing Mexicans racially.⁷² Some courts have expressed that Mexicans should not be considered White, while other courts have assigned Whiteness based on a treaty which allowed Mexicans to become citizens.⁷³ At that time, only Whites were eligible for citizenship, and because the treaty allowed Mexicans to become citizens, the court reasoned that they were White.⁷⁴

Federal agencies, such as the United States Census Bureau, have also been inconsistent in classifying Mexicans racially. In 1930, it categorized Mexicans as “other”—a non-White designation.⁷⁵ However, in 1950, after the Mexican government and the United States Department of State objected to that categorization, Mexicans were classified as White.⁷⁶

Yet, despite being categorized as White in some instances, Mexican-Americans were not afforded the benefits of Whiteness. For example, Mexican-Americans were excluded from neighborhoods and public facilities and segregated in public schools.⁷⁷ They have also been subject to racial slurs and experienced employment discrimination.⁷⁸ And, they were subjected to forced sterilization in California at high rates.⁷⁹

Additionally, the racialization of Mexican-origin women was used to justify their eugenic sterilizations.⁸⁰ During the eugenics movement, Mexican-origin women were racialized as hyper fertile, racially inferior,

71. *Id.* (discussing how “distaste” for Mexicans “conflated and stigmatized their race and nationality.”). In California specifically, the legislature passed the “Greaser Act,” a vagrancy law targeting Mexicans who were considered “armed and not peaceable and quiet persons.” *Id.*

72. *See id.*

73. *See generally* *Inland Steel Co. v. Barcena*, 39 N.E. 2d 800 (Ind. 1942); *In re Rodriguez*, 81 F. 337 (W.D. Tex. 1897); *see also* George A. Martinez, *The Legal Construction of Race: Mexican Americans and Whiteness*, 2 HARV. LATINO L. REV. 321, 326 (1997) [hereinafter Martinez, *The Legal Construction of Race*] (detailing the role of courts in categorizing Mexicans as White).

74. *Id.* at 326.

75. *Id.* at 329.

76. *Id.*

77. *Id.* at 336. In California, the state school code allowed for separate schools for “Indians under certain conditions and children of Chinese, Japanese or Mongolian parentage.” *Westminster Sch. Dist. of Orange Cnty. v. Mendez*, 161 F.2d 774, 780 (1947). Schools interpreted the term “Indian” to include Mexicans. Ariela J. Gross, *“The Caucasian Cloak”: Mexican Americans and the Politics of Whiteness in the Twentieth Century Southwest*, 95 GEO L.J. 337, 358 (2007).

78. *Id.* Additionally, in California specifically, there were also concerns of police brutality against Mexicans. *Id.* (describing the words of one Los Angeles Police Officer in 1945 who shouted, “that he was going to ‘kill any son of a bitch Mexican.’”).

79. S.B. 1190 § 1(e), *supra* note 10. From 1909 to 1952, male Latinos were twenty-three percent more likely than non-Latino males to be sterilized, while Latina females were fifty-nine percent more likely to be sterilized than non-Latina females. *Id.* at § 1(h)(1). Additionally, from 1965 to 1975 at least 240 women, overwhelmingly of Mexican-origin, were sterilized against their will at LAC-USC. *Id.* Ten of these sterilizations formed the basis for *Madrigal v. Quilligan*. *See generally* *Madrigal*, No. CV 75-2057-JWC (Cal. June 30, 1978).

80. *See Harris, supra* note 44; S.B. 1190 § 1(e), *supra* note 10; *see Stern, supra* note 2, at 1128.

unfit to reproduce, and likely to need financial assistance.⁸¹ Through racialization, “scientists, social workers, court officials, and institutional authorities pathologized Mexican-origin women and advocated for both their confinement and sterilization.”⁸² This led to a high number of California institutional sterilizations.⁸³ This same discourse undergirded the *Madrigal* sterilizations in the 1970s.⁸⁴ There, a witness testified to concerted action by LAC-USC to sterilize Mexican-origin women who were deemed to have high birth rates and be of low socioeconomic backgrounds.⁸⁵ In conversations, the head of Obstetrics and Gynecology described Mexican women as “poor,” “having too many babies,” being “a strain on society,” and expressed “it was good that they be sterilized.”⁸⁶

The White Racial Frame

Systemic racism and White supremacy are upheld through imposition of the White racial frame, which forces a comparison of everything and everyone to Whiteness.⁸⁷ Through this frame, Whiteness is used as a baseline and ensures that non-White racial groups always fall short of the norms it imposes.⁸⁸ This further perpetuates racialization and solidifies the notion that non-White groups should be deprived of access to benefits afforded to Whites.⁸⁹

Specifically in California, Mexican-origin women became the target of eugenicists who perceived them as having a high birth rate and prone to needing the state’s financial resources.⁹⁰ Through the imposition of the White racial frame, Mexican-origin women’s birth rate was categorized as high.⁹¹

81. Lira, *supra* note 4, at 2, 63.

82. *Id.* at 2.

83. *See id.* (arguing the racialization of the Mexican-origin women contributed to the sterilization of Mexican-origin women in California institutions).

84. Stern, *supra* note 2, at 1128. The *Madrigal* sterilizations took place in the West’s eugenic epicenter, Los Angeles, and many USC doctors were affiliated with these eugenic organizations. *Id.* at 1136.

85. *See Madrigal*, No. CV 75-2057-JWC (Cal. June 30, 1978); Stern, *supra* note 2, at 1128.

86. Stern, *supra* note 2, at 1128. These statements also exemplify how Mexican-origin women were racialized as hyper fertile and likely to require financial assistance.

87. *See Feagin & Elias, supra* note 7, at 937, 939 (discussing how the White racial frame “buttress[es]” the oppressive systems and related social structures of systemic racism.”).

88. *See id.* at 937, 939.

89. *See id.* at 937; Harris, *supra* note 44.

90. Lira, *supra* note 4, at 63.

91. *See Jessica Vasquez-Tokos & Priscilla Yamin, The racialization of privacy: racial formation as a family affair*, 50 THEORY & SOC’Y 717, 718, 729 (2021). There, Vasquez-Tokos and Yamin discuss the racialization of Native American women as having a high birth rate, describing it as a “racialized judgement that holds White women’s fertility as a benchmark.” *Id.* Although their discussion focuses on Native American women, their argument is pertinent to Mexican-origin women who were compared to White women through the imposition of the White racial frame.

This stigmatized these women's fertility as non-normative.⁹² They were viewed as "a threat to the [W]hite race['s] numerical dominance and cultural hegemony" and this was used to deny Mexican-origin women the right to family formation.⁹³

Mexican-origin women were also deemed unfit mothers.⁹⁴ Motherhood is defined by class and race privileges, and what was considered a good mother was based on a norm established by White middle class mothers.⁹⁵ This standard involved "child-centered, emotionally demanding, labor intensive, and financially draining methods of mothering."⁹⁶ Poor and working class mothers could not meet this standard.⁹⁷ They worked outside the home and had less time to spend with their children.⁹⁸ Many also had low paying jobs which did not allow them to purchase services to assist with child rearing tasks.⁹⁹ The issue of low wages may also have been exacerbated for non-citizen mothers who found it difficult to obtain higher paying positions without United States citizenship.¹⁰⁰ Accordingly, Americanization programs were constructed to teach Mexican-origin women domestic and parenting skills aimed at meeting White-middle class standards.¹⁰¹

Thus, the White racial frame was used to pathologize and racialize Mexican-origin women and mothers, while at the same time elevating White women and mothers who met the norm imposed by the White racial frame.¹⁰²

Institutional Control

Institutional control by Whites in power acts as a vehicle to uphold White supremacy and systemic racism by using the power of institutions (e.g. the sciences and legal system).¹⁰³ Since the United States' founding, Whites have had the most resources and the most political and economic influence.¹⁰⁴ This has allowed them to control and exert influence over important United

92. *Id.* at 730 (discussing how "Mexican women's reproduction [was] represented as excessive and out of control in relation to the norm (White women's fertility)).

93. *Id.*

94. Mary Romero, "Go after the Women": Mothers Against Illegal Aliens' Campaign Against Mexican Immigrant Women and Their Children, 83 *IND. L.J.* 1355, 1364 (2008).

95. *Id.*

96. *Id.* "In contrast, working class women and poor parents viewed children's development as unfolding spontaneously, as long as they were provided with comfort, food, shelter, and other basic support." *Id.*

97. *See id.* at 1364–65.

98. *Id.*

99. *Id.* at 1365.

100. *Id.*

101. *Id.* at 1366.

102. *See id.*; see also Feagin & Elias, *supra* note 7, at 937.

103. *See* Feagin & Elias, *supra* note 7, at 937 (discussing how prominent United States institutions, such as the social sciences, not only continue to be White controlled today, but also "regularly pathologize and dehumanize people of color, [while] repeatedly exalt[ing] Whites.").

104. *Id.* at 940.

States institutions.¹⁰⁵ Through the control of these institutions, rhetoric aimed at subordination, such as racialization and imposition of the White racial frame, is used to shape the prevailing meanings of race, organize hierarchical racial relationships, and promote dominant racist ideas and practices.¹⁰⁶ This results in a system of racial domination where control can be exerted over other racial groups, preventing them from full participation in society.¹⁰⁷

The establishment of eugenics as “scientifically” based led to the use of eugenic ideology to influence federal immigration law, politics, medical institutions, California state law, and both the federal Supreme Court and California Courts.¹⁰⁸ What resulted is akin to a concerted action, with each institution playing a prominent role in the sterilization of Mexican-origin women in California.

With the support of those systems, the eugenics movement violently thrust sterilization upon thousands of Mexican-origin women in California.¹⁰⁹ Specifically, through its control of scientific institutions, eugenics ideology was used as the basis for social research designed to confirm its underlying theory—biological determinism.¹¹⁰

Control of the Sciences

Through control of the sciences, eugenicists conducted and disseminated research aimed at confirming White superiority.¹¹¹ These studies, conducted using racially biased tests, confirmed what eugenicists thought to be true—that Whites were superior and non-Whites were inferior.¹¹² Intelligence studies, such as one conducted at the University of Southern California, advocated using IQ tests as the basis for a eugenics program to keep “inferior races from reproducing.”¹¹³ Specifically, through

105. *Id.* at 939, 942.

106. *See id.* at 942.

107. Fong & Johnson, *supra* note 37, at 100.

108. *See generally* Buck, 247 U.S.; *see also* Feagin & Elias, *supra* note 7, at 937 (discussing eugenic ideology in the sciences); Lewontin, *supra* note 6, at 23 (discussing biological deterministic theory).

109. *See* Lewontin, *supra* note 6, at 23 (discussing the underlying pseudo-scientific theory of the eugenics movement.); S.B. 1190 § 1(e), *supra* note 10 (discussing how California state law was used to sterilize institutionalized Latina women); *see also* Buck, 274 U.S. at 207 (ruling against Ms. Buck and legitimizing the eugenics movement); Madrigal, No. CV 75-2057-JWC (Cal. June 30, 1978) (finding the Plaintiffs’ sterilizations were the result of a breakdown in communication).

110. Elizabeth A. Segal & Keith M. Kilty, *The Resurgence of Biological Determinism*, 5 RACE, GENDER & CLASS 61 (1998) (discussing how science was used to reinforce oppression during the eugenics movement).

111. *Compare* Charles Davenport, *Race Crossing in Jamaica*, 27 THE SCI. MONTHLY 225, 235 (1928) (reporting the results of an intelligence study stating Whites were the most intelligent), *with* Lewontin, *supra* note 6, at 35 (stating that intelligence testing gave an “objective or scientific gloss to the social prejudices of ... institutions.”).

112. *See* Davenport, *supra* note 111, at 235.

113. Getz, *supra* note 6, at 31.

intelligence testing, Mexicans were racialized as less intelligent than the Japanese and Chinese, with an intelligence level most similar to “[African Americans] and certain Mediterraneans.”¹¹⁴ Later, a 1934 study of households receiving public aid reported that Mexicans not only had one of the largest family sizes, but also “eugenically inferior children” who were not of “superior quality.”¹¹⁵ A proposed solution to the “Mexican problem”¹¹⁶ was for families receiving public aid to be given information on contraceptives and that sterilization be provided for those who desired it.¹¹⁷

Control of the sciences was instrumental in furthering the eugenics movement and the sterilization of Mexican-origin women.¹¹⁸ Scientific studies became the foundation for eugenics sterilization legislation and a defense against challenges to forced sterilization in court.¹¹⁹

Legal Institutions

i. Federal Immigration Law and Politics

Eugenics and biological determinism formed the basis for early immigration policy in two ways. First, its influence determined who could enter the United States and second, how those allowed to enter would be treated upon arrival.¹²⁰ In 1924, the Johnson Reed Act passed quotas to curb immigration from non-English speaking countries in Southern and Eastern Europe and to exclude Asian immigrants altogether.¹²¹ Although Mexican immigration was not included in the Act, eugenicists viewed Mexicans as a threat, and one Indiana congressman stated that, keeping out “undesirables from Europe” was useless if Mexicans were still permitted to enter the United States.¹²² Politicians also used White racial superiority as a justification for extending the Johnson Reed Act quotas to Mexicans¹²³ and prominent

114. Randall D. Bird & Garland Allen, *The J.H.B. Archive Report: The Papers of Harry Hamilton Laughlin, Eugenicist*, 14 J. HIST. BIOLOGY 339, 344 (1981) (quoting correspondence between two prominent eugenicists, Harry H. Laughlin, the director of the Eugenics Record Office and C.M. Goethe, president of the Eugenics Research Association, a real estate entrepreneur in California, and President of the Immigration Study Commission in Sacramento, California).

115. Stern, *supra* note 2, at 1135.

116. *Id.* (describing how in “editorials, pamphlets and personal correspondence, prominent eugenicists foregrounded the ‘Mexican problem’ as a danger to the state’s fiscal health.”).

117. *Id.*

118. See Segal & Kilty, *supra* note 110, at 61 (discussing how science was used to reinforce oppression during the eugenics movement).

119. See Buck, 274 U.S. at 207 (upholding the sterilization of Ms. Buck under eugenics ideology); S.B. 1190, *supra* note 9, at § 1(a) (describing the passage of California’s eugenic sterilization law).

120. Getz, *supra* note 6, at 27.

121. The Immigration Act of 1924, 8 U.S.C. § 204 (repealed 1952).

122. *Id.* (listing Mexicans as non-quota immigrants); Gross, *supra* note 77, at 356.

123. See Remsen Crawford, *The Menace of Mexican Immigration*, 31 CURRENT HIST. 902, 902–07 (1930) (discussing an immigration bill authored by Texas representative John C. Box, a

eugenicists were given great deference in immigration related congressional hearings.¹²⁴ There, they too argued that Mexican immigration should be subject to quotas because Mexicans were “of mixed racial descent” and considered non-White, making them inferior to Whites.¹²⁵

At the same time, business owners employing Mexican laborers used eugenics arguments to support Mexican immigration.¹²⁶ They did not argue against Mexican inferiority, rather they noted that being biologically inferior and docile is what made Mexicans good workers.¹²⁷ Until the mid-1920s most immigrants from Mexico were men looking for employment.¹²⁸ However, this soon changed, and immigration restrictionists used eugenics arguments to argue against increased immigration.¹²⁹ They asserted that Mexicans reproduced in high numbers and commented on Mexican women’s fertility as high and a deviation from the baseline.¹³⁰

Initially, under eugenics ideology, Mexican immigrant women were inferior and thus in need of help from those who were superior—Whites.¹³¹ Places like Los Angeles, that had many Mexican immigrants, targeted Mexican-origin women for “Americanization programs” to cure their “ills,”

member of the House Immigration Committee, that advocated for an immigration quota for Mexican immigrants). Representative Box was also known for stating that “[f]or the most part Mexicans are Indians, and very seldom become naturalized. They know little of sanitation and are very low mentally and generally unhealthy.” NATALIA MOLINA, *FIT TO BE CITIZENS? PUBLIC HEALTH AND RACE IN LOS ANGELES, 1879–1939*, 119 (2006) [hereinafter MOLINA, *FIT TO BE CITIZENS?*]. This language not only echoes biological deterministic theories, but it also racialized Mexicans as being mentally and physically inferior, and unsanitary.

124. See *The Eugenic Aspects of Deportation*, *supra* note 7. There, Harry H. Laughlin, a eugenicist, testified before Congress about the inherent criminality and undesirability of “non-Nordic” immigrants. Laughlin believed excluding certain immigrant groups from the United States was the first line of defense “against contamination of American family stocks by alien hereditary degeneracy.” *Id.*

125. Getz, *supra* note 6, at 26, 30.

126. Getz, *supra* note 6, at 26, 29–30.

127. *Id.* Further, the *Los Angeles Times*, which was a strong proponent of labor interests, used eugenics arguments in favor of Mexican labor. They expressed that because Mexicans were “children of the sun” they could perform outdoor labor that people born in colder climates could not. *Id.* at 30. Similar arguments were previously made to justify the enslavement of African American people in the United States. See *JOURNAL OF THE STATE CONVENTION AND ORDINANCES AND RESOLUTIONS ADOPTED IN JANUARY 1861*, 22 (1861) (stating “none but the Black race can bear exposure to the tropical sun.”).

128. MOLINA, *FIT TO BE CITIZENS?*, at 125.

129. *Id.*

130. *Id.*

131. Romero, *supra* note 94, at 1366 (describing the United States’ strategic Americanization program, which targeted Mexican-origin women as a means of instilling White-middle class values in their children to “save the second generation for America.”).

which “made them obstacles to national progress.”¹³² The message was clear: without guidance Mexican-origin women could not be good mothers.¹³³

Eventually, as the Great Depression took hold, the already negative views toward Mexicans changed for the worse, and repatriation programs were instituted.¹³⁴ Across the United States, approximately one million Mexican-origin people were removed and sent to Mexico.¹³⁵ Almost sixty percent were American citizens.¹³⁶ Repatriation resulted from Mexicans being racialized as depriving White Americans of resources and jobs.¹³⁷ This increased hostility toward Mexicans raised concerns regarding citizenship for the children of Mexican immigrants born in California.¹³⁸ Based on this, politicians argued that an open immigration policy with Mexico would be “disastrous to the nation.”¹³⁹ They reasoned that even if Mexican immigrants eventually returned to their country of origin, any children born in California would be American citizens.¹⁴⁰ Eugenics ideology also spread to the United States Supreme Court.¹⁴¹ There, the Court’s endorsement of eugenics was used to further the movement’s sterilization objectives.¹⁴²

ii. The Supreme Court

In *Buck v. Bell*, the Supreme Court of the United States upheld the forced sterilization of eighteen-year-old Carrie Buck and legitimized the eugenics movement in America.¹⁴³ Ms. Buck challenged her sterilization under the

132. *Id.* These programs also imposed the White racial frame on Mexican-origin women who were taught “domestic and mothering skills to meet White-middle-class standards.” *Id.*

133. *See* Romero, *supra* note 94, at 1363–66 (describing White-middle class standards of motherhood and the length Americanization programs went to force this on Mexican-origin mothers).

134. Kevin R. Johnson, *The Forgotten “Repatriation” of Persons of Mexican Ancestry and Lessons for the “War on Terror,”* 26 PACE L. REV. 1, 2 (2005). In his article, Johnson also explained that the term “repatriation” is misleading because Mexican-origin people were not “repatriated to their native land.” *Id.* Instead, they were removed involuntarily. *Id.*

135. *Id.* at 5.

136. *Id.* at 4.

137. *See id.* at 2 (explaining how during severe economic crises, the United States targeted Mexicans for repatriation to save jobs for “true Americans”).

138. MOLINA, FIT TO BE CITIZENS?, *supra* note 123, at 118.

139. *Id.*

140. *Id.*

141. *See* *Buck*, 274 U.S. at 207; *Skinner*, 316 U.S. at 541 (Stone, J. and Jackson, J., concurring).

142. *See* Harry H. Laughlin, *Draft of Model Eugenical Sterilization Laws*, 1928 (stating that following *Buck*, “the constitutionality of the matter having been decided, it is now possible for any state in the Union . . . to enact a satisfactory eugenical sterilization statute, if it desires to do so.”) [hereinafter Laughlin, *Draft*].

143. *Buck*, 274 U.S. at 207–08; *see* Dial, *supra* note 21, at 182 (explaining that although the outcome in *Buck* was an effect of the eugenics movement and not its cause, the Court’s express endorsement of eugenics legitimized the movement in America).

Fourteenth Amendment Due Process and Equal Protection Clauses.¹⁴⁴ The Court ruled against Ms. Buck and declined to hold that sterilization could not be justified in any circumstance.¹⁴⁵ The Court rested its explanation on eugenics ideology, noting that sterilization could be justified if it would promote societal welfare.¹⁴⁶ In Ms. Buck's case, sterilization would promote her own, as well as society's, welfare because it would prevent her from parenting "socially inadequate offspring."¹⁴⁷

This case signified the Supreme Court's support for the eugenics movement and forced sterilizations.¹⁴⁸ Although Ms. Buck was White, her experience helps contextualize the eugenics arguments made in favor of sterilization and the Court's support for the eugenics movement.¹⁴⁹ Further, the same eugenics arguments endorsed by the Court in *Buck* were used to disproportionately target Mexican-origin women for sterilization in California.¹⁵⁰

iii. State Statutory Law

Indiana was the first state to pass a eugenics law in 1907.¹⁵¹ By 1914, twelve states had passed eugenic sterilization laws to restrict those considered undesirable from reproducing and passing on their traits.¹⁵² At the time, there

144. *Id.* at 205.

145. *Id.* at 207.

146. *Id.* In reaching this conclusion, the Court compared forced sterilization to compulsory vaccination, thereby equating the two as an exercise of state police power. *See Jacobsen v. Massachusetts*, 197 U.S. 11, 25 (1905) (holding state authority to enact a compulsory vaccination law is within a state's police power); *see also* Phillip Thompson, *Silent Protest: A Catholic Justice Dissents in Buck v. Bell*, 43 CATH. L. 125, 129 (2004) (discussing how rhetoric regarding civic duty was combined with eugenics to produce public policy justifications for sterilizations).

147. *Buck*, 274 U.S. at 207 ("it is better for the world, if instead of waiting to execute degenerate offspring for crime, or to let them starve for their imbecility, society can prevent those who are manifestly unfit from continuing their kind.").

148. *See generally id.*

149. Ms. Buck's case also helps contextualize other important critical race theory concepts, such as White privilege and intersectionality. For a discussion on how the focus in preserving the White gene pool and Ms. Buck's White privilege contributed to her forced sterilization, *see generally* Bridges, *supra* note 38. For a discussion on intersectionality, *see generally* Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241 (1991).

150. *See* S.B. 1190 § 1(e), *supra* note 10.

151. 1907 Ind. Acts 377–78. This law was in effect until 1974. *Eugenics: Its Origin and Development (1883–Present)*, NAT'L HUMAN GENOME RSCH. INST. (Nov. 30, 2021), <https://www.genome.gov/about-genomics/educational-resources/timelines/eugenics>. During that time, approximately 2,500 people were sterilized in Indiana. *Id.*

152. *Controlling Heredity: Eugenics and Sterilization*, UNIV. OF MO.: SPECIAL COLLECTIONS & ARCHIVES (Michael Holland ed., 2011), <https://library.missouri.edu/specialcollections/exhibits/show/controlling-heredity/america/sterilization>.

were concerns regarding the constitutional validity of these laws.¹⁵³ Accordingly, some states did not use their laws, fearing constitutional challenges, while others advanced test cases to court and had their laws overturned on constitutional grounds.¹⁵⁴ One eugenicist saw constitutional validity as a matter of semantics, believing the statutes' language could be changed to pass constitutional muster.¹⁵⁵ To that end, model legislation was drafted and used in eighteen states, including Virginia.¹⁵⁶ The Court upheld that law in 1927 in *Buck*.¹⁵⁷

California was an active proponent of the eugenics movement and passed its first eugenics law in 1909.¹⁵⁸ This law sanctioned the first of the two types of sterilizations discussed in this paper. These sterilizations were conducted by the Department of Institutions and allowed for hospital superintendents to sterilize people in state homes and hospitals.¹⁵⁹ The law gave state institutions the power to forcibly sterilize a broad group of people thought to have inherited mental diseases transmittable to their children.¹⁶⁰

Broad terms such as “mental deficiency” and “feeble-mindedness” allowed California law to be disproportionately applied to racial and ethnic minorities, especially Mexican-origin women who were targeted at higher rates.¹⁶¹ In order to fall within the scope of the statute, Mexican-origin women were racialized as sexually deviant and mentally defective.¹⁶²

153. See Edward Manson, *Eugenics and Legislation*, 13 J. SOC'Y COMPAR. LEGIS. 123, 128 (1912) (“the question has been raised whether sterilization is not within the constitutional prohibition against “cruel and unusual punishment”).

154. See *In re Thomson*, 103 Misc. 23, 36 (Sup. Ct. 1918) (invalidating a New York sterilization law); see also *Smith v. Bd. of Examiners of Feeble-Minded*, 85 N.J.L. 46, 55 (Sup. Ct. 1913) (holding the statute invalid on equal protection grounds).

155. See Laughlin, *Draft*, *supra* note 142.

156. Harry H. Laughlin, *Historical, Legal and Statistical Review of Eugenic Sterilization in the United States*, THE AM. EUGENICS SOC'Y, 64,65 (1926) [hereinafter Laughlin, *Historical*] (providing the full text of the model eugenical sterilization law). Laughlin's laws were also later used as the basis for Nazi sterilization programs. Silver, *supra* note 26, at 870–71.

157. *Buck*, 247 U.S. at 207; see also Laughlin, *Draft*, *supra* note 142 (stating that following *Buck*, “the constitutionality of the matter having been decided, it is now possible for any state in the Union ... to enact a satisfactory eugenical sterilization statute, if it desires to do so.”).

158. See S.B. 1190, *supra* note 9, at § 1(a) (discussing California eugenic sterilization laws and creating a eugenics sterilization compensation program in California).

159. Stern, *supra* note 4, at 1136 (discussing forced sterilizations in California institutions).

160. S.B. 1190 § 1(b), *supra* note 9.

161. S.B. 1190 § 1(e), *supra* note 10; Dial, *supra* note 21, at 187 (discussing how the term “feeble-minded” allowed for sterilization laws to be applied to people who were illiterate, uneducated, poor, and immigrants who did not speak English).

162. See Natalie Lira & Alexandra Stern, *Mexican Americans and Eugenic Sterilization: Resisting Reproductive Injustice in California, 1920–1950*, 39 AZTLÁN: J. CHICANO STUD. 9, 10 (2014). There, Lira and Stern described the story of one Mexican-origin woman who was diagnosed as “high moron,” and sexually and socially deviant after experiencing poverty, rape, and a sexually transmitted infection. *Id.* at 9.

Although Mexicans made up only four percent of the census in 1920, they comprised seven to eight percent of those sterilized.¹⁶³

iv. California Federal Courts and Medical Institutions

The second type of California forced sterilizations occurred between 1971 and 1974 in a federally funded hospital and formed the basis for the case, *Madrigal v. Quilligan*.¹⁶⁴ Although these sterilizations occurred years after California's institutional sterilizations, they cannot be separated from the eugenics movement based on the population affected, the affiliation of LAC-USC doctors with the eugenics movement, and the hospital's location in Los Angeles, one of the main eugenic "epicenter[s]."¹⁶⁵ Further, the court opinion ruling against the women raises critical race theory themes such as the White racial frame, White superiority, and the hierarchical nature of America.¹⁶⁶

Madrigal was a class action suit filed by working class Mexican-origin women who were coerced into postpartum tubal ligations while in the hospital for caesarean delivery.¹⁶⁷

At LAC-USC, between July 1969 and July 1970 there was a 742% increase in elective hysterectomies, a 470% increase in elective tubal ligations, and a 151% increase in post-delivery tubal ligations.¹⁶⁸ These procedures were described as "sold" to consumers with "deceptive marketing strategies" and with little evidence of consent.¹⁶⁹

The *Madrigal* Plaintiffs alleged LAC-USC pressured its obstetric residents to meet a sterilization quota at the direction of physicians in charge who favored racially biased ideas about population control.¹⁷⁰ They alleged they were coerced into signing consents just before delivery, were not told the procedure was permanent, or were sterilized without giving any consent.¹⁷¹ The head physician at LAC-USC's Obstetrics and Gynecology

163. Stern, *supra* note 2, at 1131. These are low estimates due to the forced repatriation of hundreds of Mexicans by the Deportation Office of the Department of Institutions. *Id.* African Americans were also disproportionately affected by sterilizations in California. *Id.* They accounted for almost four percent of sterilizations but only one percent of the population. *Id.*

164. *See generally* *Madrigal*, No. CV 75-2057-JWC (Cal. June 30, 1978).

165. Stern, *supra* note 2, at 1136.

166. *See infra* note 178, 181 and accompanying text.

167. Stern, *supra* note 2, at 1128. These sterilizations were financed by federal agencies as part of President Lyndon B. Johnson's "War on Poverty." *Id.* at 1133. At the time, the federal government's Office of Economic Development was introducing contraception, including sterilization, to underserved communities and Medicaid was authorized to reimburse up to ninety percent for a sterilization operation. *Id.*

168. *Id.* at 1134.

169. *Id.*

170. *Id.*

171. *Id.* Hospital staff approached the women for consent during the "most painful stages of labor." The pain they experienced was used to coerce consent. Cristina A. Quiñonez, *Exposing the*

department racialized the Mexican-origin women as poor, having too many babies, and being a strain on society.¹⁷² Those perceived traits were then used to justify their sterilizations.¹⁷³ Despite having witness testimony supporting this, the court ruled against the women and declined to find they were sterilized without consent, or that any concerted action was instituted on the part of hospital attendants and doctors to sterilize them.¹⁷⁴

The court's analysis explained that the Plaintiff's sterilizations must be understood in the context of their cultural background and the lack of time staff at a busy hospital had to explain the procedure to them, provide advice, and interpret their consent.¹⁷⁵ The court noted that "the cultural background of these particular women contributed to [this] problem."¹⁷⁶ To support this proposition, the court summarized the testimony of an anthropological expert who interviewed the women. The expert's findings emphasized the importance the women's culture placed on their ability to produce children and have large families.¹⁷⁷ Accordingly, the court stated that the decision to proceed with sterilization is "much more traumatic [for these women] ... than it would be with a *typical* patient."¹⁷⁸ In ruling against the women, the court cited a "communication breakdown" between patients and doctors, which

American History of Applying Racial Anxieties to Regulate and Devalue Latinx Immigrant Reproductive Rights, 54 U.S.F. L. REV. 557, 566 (2020). "The doctor would hold a syringe in front of the mother who was in labor pain and ask her if she wanted the pain killer; while the woman was in the throes of a contraction the doctor would say, Do you want the pain killer? Then sign the papers." *Id.*

172. Stern, *supra* note 2, at 1134. The *Madrigal* Plaintiffs also argued there was a widespread belief throughout the hospital that overpopulation by Latina immigrants should be remedied through sterilization. Quiñonez, *supra* note 171, at 567.

173. Stern, *supra* note 2, at 1134.

174. *Id.* The Plaintiff's key witness, then medical student, Karen Benker, testified to an "entrenched system that forced sterilizations based on stereotypes of Mexicans as hyper breeders ... and welfare mothers in waiting." *Id.* at 1135.

175. *Madrigal*, No. CV 75-2057-JWC at 7 (Cal. June 30, 1978).

176. *Id.* at 6.

177. *Id.* at 7.

178. *Id.* (emphasis added). Although we cannot know for certain what the court meant by "typical," it is clear that "typical" creates a comparison between the Plaintiffs, their culture, and the "typical" patient. *See id.*

occurred because the women were primarily Spanish speakers.¹⁷⁹ This finding came despite the availability of a hospital interpreter.¹⁸⁰

At the end of the opinion, the court stated:

“There is no doubt but that these women have suffered emotional and physical stress because of these operations. One can sympathize with them for their inability to communicate clearly, but one can hardly blame the doctors for relying on these indicia of consent which appeared to be unequivocal on their face and which are in constant use in the Medical Center.”¹⁸¹

In effect, the court blamed the women for their own oppression, rather than finding the doctors at fault.¹⁸² In doing so, it imposed the White racial frame by designating both the English language and non-Mexican culture as the norms.¹⁸³ According to the court, the emotional distress the plaintiffs

179. *Madrigal*, No. CV 75-2057-JWC at 6 (Cal. June 30, 1978). The Court used this “communication breakdown” to rule against the Plaintiffs, expressing that doctors performed the sterilizations under “a bona fide” or “good faith belief” that the Plaintiffs had consented to the procedure. *Id.* at 10-18 (discussing the cases of Dolores Madrigal, Maria Hurtado, Jovita Rivera, Helena Orozco, Georgina Hernandez, Consuelo Hermosillo, and Estela Benavides). The situation faced by the *Madrigal* Plaintiffs, and ultimately endorsed by the Court, seemed to expose a preference for the English language. This preference dates back to the treatment of enslaved Africans in North America who were forbidden from speaking their native languages. See Teresa Pac, *The English-Only Movement in the US and the World In the Twenty-First Century*, 11(1) *PERSPS. ON GLOB. DEV. & TECH.* 192, 193 (2012). At that time, English was romanticized as a symbol of national unity and English-only measures were used to target linguistic and ethnic minorities through education. *Id.* Restrictive language policies aimed at assimilating immigrants, were used against foreign-born groups, including Mexican immigrants. *Id.* at 194. Language discrimination has also been used against Latinx people more broadly. For example, in *Hernandez v. New York*, the Supreme Court approved the use of peremptory challenges to exclude Spanish speakers from the jury because they “would not accept the translator’s version of the trial testimony.” 500 U.S. 352, 371 (1991). This was considered a “race neutral” reason for exclusion. *Id.*

180. *Madrigal*, No. CV 75-2057-JWC at 6 (Cal. June 30, 1978). The 1964 Civil Rights Act prohibits national origin discrimination by federally funded institutions. 42 U.S.C. § 200(d). The Court has used language as a proxy for national origin, finding that people who speak another language are entitled to equal treatment to that of English speakers when receiving services in federally funded institutions. See *Lau v. Nichols*, 414 U.S. 563, 566–69 (1974) (finding the San Francisco school system denied students the meaningful opportunity to participate in public education in violation of the Civil Rights Act of 1964 by not providing English language instruction to students of Chinese ancestry). In 2000, President Clinton signed Executive Order 13166, *Improving Access to Services for Persons with Limited English Proficiency*. 65 Fed. Reg. 50121 (Aug. 11, 2000). Despite these efforts, many institutions still fail to provide adequate language services for non-English speaking patients. Melody Schiaffino et al., *Language Services in Hospitals Vary By Ownership and Location*, 35 *HEALTH AFF.* 1399, 1399 (2016).

181. *Madrigal*, No. CV 75-2057-JWC at 19 (Cal. June 30, 1978).

182. See *id.* at 6–7, 19.

183. See *id.*; Pac, *supra* note 179, at 193 (discussing an English language preference in the United States). It is important to note that the Immigration Act of 1924 also considered the English language the norm and sought to expand immigration from English speaking countries in Europe,

experienced was due to their limited English proficiency and cultural background—not because they experienced forced sterilization.¹⁸⁴

CONCLUSION

Although *Skinner v. Oklahoma* declared the right to have children a fundamental right, whether one could access this right was based, in part, on who they were. Mexican-origin women's sterilization in California was justified by eugenics ideology that aimed to improve the quality of the human race by restricting the procreation of those considered to have “bad” genes. This led to the careful selection of parents and the forced sterilization of those who were deemed unfit—parents of color.

By controlling prominent U.S. institutions, such as the sciences and the legal system, established practices were used to further the forced sterilization of Mexican-origin women. To uphold White supremacy and systemic racism, Mexican-origin women were racialized as hyper fertile, racially inferior, unfit to reproduce, and likely to need financial assistance. Imposition of the White racial frame ensured that Mexican-origin women would always fall short of established White-middle class norms. The critical race theory themes present during the eugenics movement help explain not only the forced sterilization of Mexican-origin women in California from 1920 to 1979, but also provide a framework through which to analyze more recent forced sterilizations of women of color across the United States.

The author hopes the arguments made in this paper will be considered by policy makers when passing reproductive health laws implicating the fundamental right of all people to have children.

while limiting immigration from non-English speaking countries. *See* The Immigration Act of 1924, *supra* note 121.

184. *Madrigal*, No. CV 75-2057-JWC at 6–7, 19 (Cal. June 30, 1978). Marcela Valdes, *When Doctors Took “Family Planning” Into Their Own Hands*, N.Y. TIMES (Feb. 1, 2016), <https://www.nytimes.com/2016/02/01/magazine/when-doctors-took-family-planning-into-their-own-hands.html>. While the *Madrigal* plaintiffs did not win their case, their advocacy led to the formal repeal of California eugenics laws in 1979. Stern, *supra* note 2, at 1128.
