The Darkest Chapter in the Golden State:

A Legal History of Coerced Eugenic Sterilization in California

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Introduction

"In the light of California's experience, sterilization appears to be here to stay."[1] Paul Popenoe, a major figure in American eugenics movement, reported that sterilization was the new status-quo. Forced sterilization of those deemed "unfit" rightfully evokes dystopian fears. Many associate forced eugenic sterilization with the horrifying program of Nazi Germany, while others may link the practice with the works of dystopian literature which warn against it. Few, however, realize that such a terrifying reality had already been enforced for decades where they may have least expected it: the land of the free. In fact, many states within the U.S. enacted eugenic sterilization laws, with the goal of institutionalizing and sterilizing those who were deemed unworthy of their right to reproduce.

Eugenic sterilization was one of the darkest facets of the Progressive Era United States. As more people turned to science for objective answers to societal issues, a dangerous pseudoscience — eugenics — gained traction by promising to improve humanity through bettering the gene pool. The proponents of eugenics as a matter of policy gained audiences with legislators and an increasingly receptive public. Beginning with Michigan's failed attempt to enact a eugenic sterilization program in 1897, within less than a half-century, nearly half of the states in the nation implemented programs of their own. Over the course of the twentieth century, these states will have sterilized tens of thousands of Americans in total. This dark chapter of American history pervaded no state more than California, which pursued eugenic sterilization more ambitiously and ruthlessly than did any other.

[1] Paul Popenoe "Sterilization and Criminality." (1930), 9

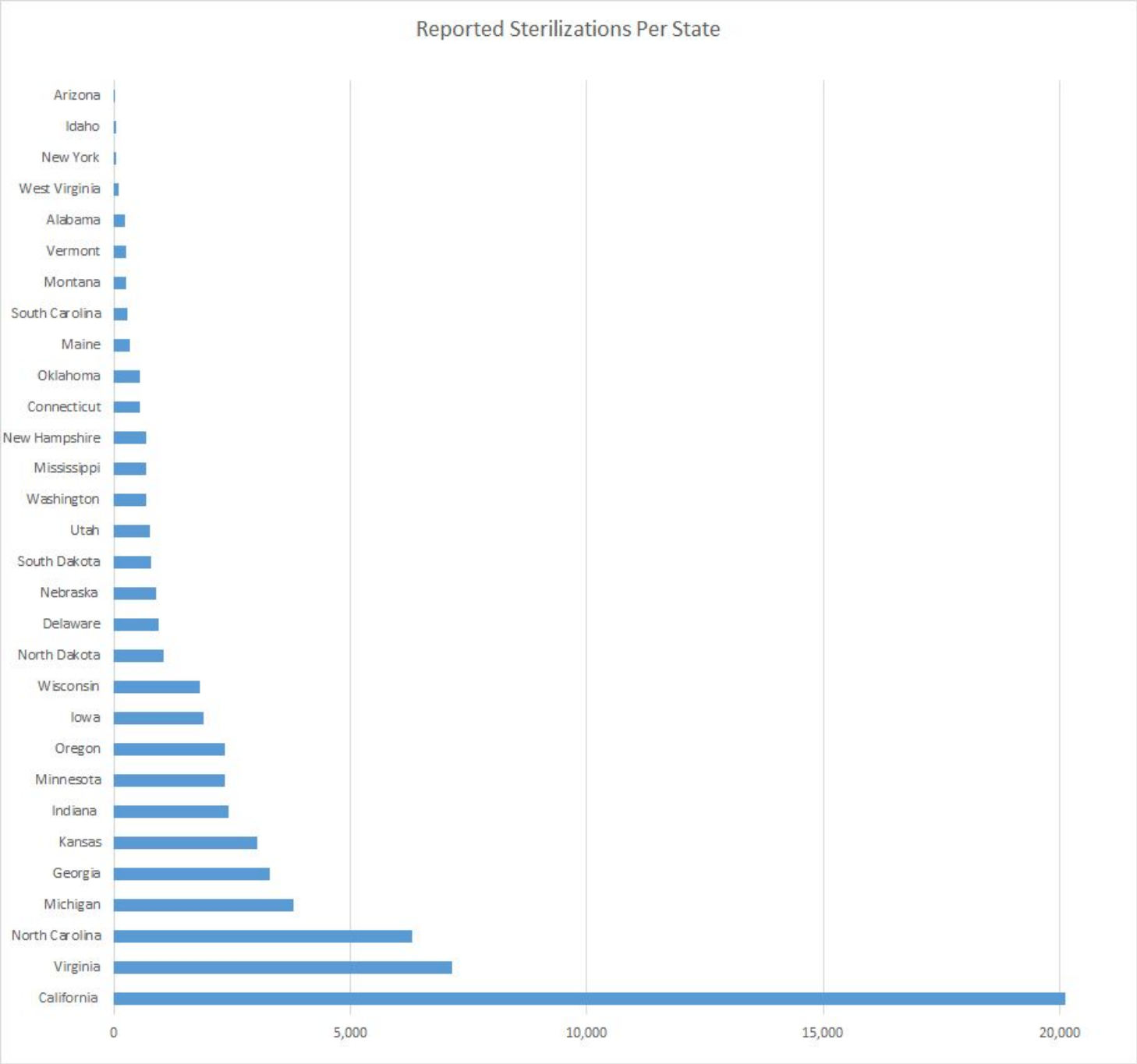

Figure 1. Reported sterilizations between 1907-1964. The number of sterilizations was almost certainly higher than these numbers indicate, as some operations likely went unreported. Nevertheless, it does demonstrate the aggressiveness of the California program.
Source: Dr. Alex Wellerstein "States of Eugenics: Institutions and Practices of Compulsory Sterilization in California," *Reframing Rights: Bioconstitutionalism in the Genetic Age*, p. 30.

In 1909, California passed a eugenic sterilization statute in Senate Bill 941— approximately only one paragraph long — which was an act to "permit the asexualization of inmates of the State hospitals and the California Home for the Care and Training of Feeble-Minded Children, and of convicts in the State prisons," thereby beginning an era of eugenic sterilizations in California.[2] The practitioners of eugenic sterilization enforced their newfound authority ambitiously — tens of thousands of Californians fell victim to the impact of this 1909 law and subsequent replacements throughout the twentieth century. California's program was unrivaled in its aggressiveness, its victims far outnumbered that of any other state in the nation. These sterilizations were ideologically driven by eugenics and institutionally implemented.

Historiography and Historical Context

The subject of eugenics and sterilization within the United States and specifically California has been the subject of significant historical study. Historians have increasingly turned their attention to these topics to reveal and discuss the various ways in which sterilization laws were implemented, enforced, and often resisted. In conversation with one another, the abundance of secondary sources on the topic of eugenic sterilization establishes a strong understanding of the policies both on statewide and nationwide scales.

However, the legal challenges to California sterilization laws have seldom been subject to historical analysis. Even then, the extent to which legal cases were brought to trial and the nature

[2] S.B. 941 (1909), California State Senate Journal

of these trials are still subject to mystery. Because the judicial system is one of the many outlets to resist laws perceived as unjust, Californians should rightfully have challenged these laws in courts. Yet, the historiography on this topic is lacking.

Thus, while the growing academic focus of sterilization and eugenics in the twentieth-century United States provides a substantial amount of resources to contextualize the subject of this thesis within a broader social and legal landscape, historians have yet to focus on uncovering and analyzing the full scope of the legal challenges to California sterilization statutes. With such a wide-scale sterilization program in California, one would expect that many of the tens of thousands of victims would have challenged the eugenics laws in court. Further, many states' sterilization programs were challenged and defeated by their respective judiciaries, despite having sterilized far fewer people than did the Golden State. How, then, did California's sterilization statutes survive their legal challenges? How often did targets of eugenic sterilization contest their perpetrators? How successful were these challenges? These questions undergirded my impetus to pursue this research. While I may not be able to answer all of these questions in full, I can reveal central facets of California's sterilization program which are vital to understanding the nature of legal challenges to California sterilization statutes.

Firstly, this thesis suggests that there may have been more challenges to California sterilization laws than traditional online legal such as LexisNexis have indicated. However, the extent to which these laws were challenged in court is difficult to ascertain and should be studied further. Even so, this thesis aims to establish that the challenges which did make it to court did so despite the barriers erected to prevent them. In fact, I aim to advance that the practitioners of sterilization made active and conscious efforts to suppress potential legal challenges to

California's sterilization laws whenever possible, and that this goal manifested in both the practitioners' actions as well as in their rhetoric.

For instance, the practitioners of eugenic sterilization exercised their discretion in deciding to sterilize a victim based on the perceived legal ramifications that sterilization may elicit. Accordingly, the frequency of eugenic sterilization shifted over time based on the practice was protected legally. When other states witnessed their laws defeated, superintendents employed caution and sterilized more selectively whereas sterilizations increased after the Supreme Court case *Buck v. Bell* affirmed eugenic sterilization in 1927. Thus, medical superintendents understood the legal status of the sterilization laws, sterilizing more liberally when the statutes seemed safe and, conversely, sterilizing more conservatively when they felt that the statutes which empowered them were vulnerable.

Another significant method used by the practitioners of sterilization to suppress legal challenges and win those which did arise was their obtaining consent forms for use as legal cover. This consent, I argue, was obtained coercively.

Practitioners of sterilization — ranging from social workers, judges, and medical superintendents — targeted groups for sterilization who were less able to challenge sterilization laws in courts, thereby reducing the risk of legal challenges being brought.

Legal History

The literature exploring the history of California's eugenic sterilization law is relatively sparse. Many historians and scholars studying the California program provide relatively brief discussions of these laws over time, mostly as a means of contextualizing a separate, non-legal research topic. While literature exploring the legal history of California eugenic sterilization laws are nearly non-existent, there are no scholarly sources whatsoever which illuminate the nature of legal challenges to these same laws.

Nevertheless, the historiography on eugenics in the United States and within California has grown in recent years. The relative abundance of secondary sources on eugenics both nationwide and within California is very useful.Through the work of other scholars, I can much more easily contextualize the California laws both in relation to their social implications and as a part of a national legal framework.

Adam Cohen's book entitled, *Imbeciles: The Supreme Court, American Eugenics, and the Sterilization of Carrie Buck,* is an analysis of the 1927 Supreme Court case *Buck v Bell*, which affirmed the right for a state to enact compulsory sterilization laws. Cohen is both a lawyer and a journalist by practice, educated at Harvard Law School. He accordingly utilizes his understanding of courtroom materials and uncovers evidence to establish a shocking narrative: that *Buck v. Bell* is rooted in fraud and conspiracy between Buck's own legal counsel and Strode, who represented the defense. In characterizing the Supreme Court case, Cohen argues that:

> there was a great deal about the trial that was odd or wrong, but one thing stood out above all: only one of the two sides put on a case.… Whitehead, who was challenging the colony's sterilization order on Carrie's behalf, did not call a single fact or expert witness, or introduce a single piece of evidence… If there was one fact that revealed how Whitehead, Strode, and Dr.

Priddy were allied against Carrie, it was that the court was never presented with a case for why she should not be sterilized.[3]

The apparent absence of any advocacy on Carrie's behalf from her own attorney, in Whitehead, rightfully raises suspicions of collusion; through investigating these suspicions, Cohen reveals the surreptitious intentions of Carrie's attorney. In fact, he subsequently supports his argument with damning evidence, including official minutes of the Board of Directors meeting for the colony responsible for institutionalizing Carrie, among other reliable primary sources.[4] Cohen's legal, historical, and journalistic investigation into the case not only deeply problematizes the already-problematic decision of *Buck v. Bell*, but provides a nationwide legal context under which the California statutes operated.

Additionally, Cohen provides a significant amount of historical and legal commentary on state sterilization statutes and their respective challenges in state courts. Namely, he cites examples of instances where state eugenic sterilization laws were overturned or otherwise defeated, such as in the South, as well as in Michigan and New Jersey.[5] These legislative and judicial defeats would therefore reveal which challenges sterilization laws were most often struck down by. In particular, it is useful in understanding the most common legal arguments which resulted in sterilization laws being struck down, as they likely reflect the debate which would have taken place in Californian courts. Cohen's contextualization of these laws therefore provides an excellent basis for comparison with California's respective statutes. Cohen's book reveals one of the most prominent constitutional objections responsible for defeating many state sterilization laws: the right to equal protection, as endowed in the Fourteenth Amendment. This

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[3]Adam Cohen, *Imbeciles: The Supreme Court, American Eugenics, and the Sterilization of Carrie Buck* (Penguin Books, 2017). 196, 197.
[4] Ibid. 208
[5] Ibid. 68

pattern extends across state lines, and better-informs the line of reasoning potentially brought in Californian challenges to sterilization laws within the courts may have looked like.

His particular article, unlike Cohen's book, focuses on sterilization in the Golden State. "States of Eugenics: Institutions and Practices of Compulsory Sterilization in California" by Dr. Alex Wellerstein is a scholarly analysis of California's sterilization statutes within the context of eugenics as an intellectual movement. However, rather than focusing on a single court case as the basis for his article, he instead discusses the enforcement of sterilization statutes in California and provides a broad, data-based overview of California sterilization statutes. Wellerstein uses a wide array of sources in his discussion, including statistical analysis — which he compiles into graphical visualizations and will be reproduced later in the thesis — as well as commentaries of contemporary figures. Wellerstein's expertise as a historian of science lends him a unique analytical overview of California's sterilization laws. In particular, Wellerstein's article is extremely helpful in quantifying the number of sterilizations which took place in California — approximately 20,000 throughout the twentieth century — and also discusses the implications of the sterilization law, reflecting on how it was enforced as well as its evolution throughout the century.[6]

Wellerstein argues that the massive number of sterilizations that took place in California was "less about sweeping, science-driven ideas about individual and social health than they were about the idiosyncrasies of an enabling system; they were less about the overall coordination of a grand plan than they were about unchecked local authority and discretion."[7]He provides useful information, including graphs, to illustrate the distribution of reported sterilizations in each state.

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[6] Alex Wellerstein, "States of Eugenics: Institutions and Practices of Compulsory Sterilization in California." *Reframing Rights: Bioconstitutionalism in the Genetic Age*, 30.
[7] Ibid. 53

[8] This is important to contextualizing my own thesis, as it confirms that California sterilized many more people than any other state. Wellerstein qualifies his data, saying that the reports are "misleadingly precise" and that, in reality, California sterilized more than 20,000 people, as many inevitably go unreported.[9] It would then follow that the large number of sterilizations would be proportionally followed by a larger number of legal challenges. But, as will be discussed later in this thesis, that may not have been the case. These sources are therefore extremely insightful in establishing the context of the legal history of sterilization laws in California.

Importantly, Wellerstein directly interacts with California sterilization statutes and provides analysis on the statutes' implications in enforcement. According to Wellerstein, the most consequential phrase in the California sterilization statute of 1909 is "whenever in the opinion," as it "defines the character of sterilization in California: operations were ordered at the discretion of hospital superintendents. Though the laws would change, this fundamental delegation of judgment would not."[10] This indicates that the California legislature intended for the sterilization law to empower physicians and place authority in their hands. In fact, Wellerstein attributes the huge number of California sterilizations to exactly this bureaucratic architecture:

> In California, the policies of relatively few individuals with long tenures had massive statistical effects in a system that delegated power over the bodies of mental patients to the institutions that held them. This decentralization of power—or perhaps more accurately its distribution into independent nodes—is a familiar feature of American bureaucracy.[11]

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[8] Ibid.
[9] Ibid.
[10] Ibid. 4
[11] Ibid. 52

Functionally, Wellerstein helps to establish the importance of the California bureaucracy, portraying the system as responsible for enabling sterilization on an institutional scale using only an individual's discretions.

Scholarly literature providing a legal context within California itself for the purpose of studying its sterilization statutes and respective legal challenges are somewhat limited; however, both Adam Cohen and Alex Wellerstein provide some commentary on the state statutes' construction and implementation, respectively. Cohen's book briefly identifies California as the second state to enact and implement a compulsory sterilization law, and attributes responsibility for drafting the statute to F. W. Hatch, Secretary of the State Lunacy Commission.[12]

Ultimately, in conversation with each other, these secondary sources provide a significant insight into the implications and nature of the California statutes and help to contextualize sterilization statutes. In conjunction, these sources help place California in a larger legal setting while contextualizing the California law itself. Because my thesis is concerned with studying legal challenges to California's sterilization statutes, it benefits from these understandings.

My thesis illuminates how California sterilization laws survived their court battles — a question which is doubtlessly important, but which historians have yet to answer. Legal challenges to California sterilization laws have not been a centrepiece in secondary sources. While some do discuss a higher-profile and better-known case in *Garcia v. State Dep't of Institutions* — to which my thesis will be no different — scholars have yet to tackle the topic of legal challenges to the California program as a topic in itself. This research therefore aims to not

[12] Ibid. 70

only contribute to historians' understanding of eugenic sterilization in the Golden State, but also to open new avenues for future research into the topic.

Social Context and Implications in California

While Cohen and Wellerstein provide the necessary legal context for approaching the topic of this thesis, it is vital to review and be informed by historiography surrounding the lived experiences and social implications of these sterilization laws. Namely, it is extremely important to understand these laws within the social context of California, taking race, gender, and age, for instance, into account.

States of Delinquency: Race and Science in the Making of California's Juvenile Justice System by Dr. Miroslava Chávez-García is excellent in accomplishing this. In her work, Dr. Chávez-García discusses the extent to which many families attempted to resist Californian laws that would institutionalize and subsequently sterilize delinquent minors. Additionally, she reveals that California sterilization laws disproportionately targeted Mexicans and people of color within California.[13] Many Californians of Mexican origin justified their resistance to and protestations against sterilization on religious grounds.[14] Unfortunately, these religious justifications were often met with very little understanding from those wielding the discretion to decide the reproductive fate of others.[15]

However, that is not to say that those who attempted to mount resistances did not enlist relatively influential, albeit ultimately ineffective, allies. Rather, Dr. Chávez-García brings attention to two institutions that took stances against these sterilization laws and did, at least to a

[13] Miroslava Chávez-García, *States of Delinquency: Race and Science in the Making of California's Juvenile Justice System* (Berkeley: University of California Press, 2012).
[14] Ibid. 146
[15] Ibid. 147

degree, attempt to curb them. On religious grounds of resistance, the Catholic Church attempted to intervene and "vehemently opposed sterilization in California and around the country," but nevertheless could not affect the outcomes of sterilization statutes either statewide or nationwide.[16]

The other institution which attempted to intervene on behalf of Mexican families in California who sought to resist these laws was the Mexican Consulate located in Los Angeles. The consulate had, in fact, a long-standing reputation of advocating for the interests of Mexican and Mexican-Americans in Southern California.[17] Dr. Chávez-García cites one such example in 1940 when the consulate "responded to a family's request for assistance in halting the sterilization" of a family's nineteen-year-old Mexican-American daughter.[18] She provides the account through the response of the Pacific Colony — the state institution responsible for the daughter's sterilization — and therefore provides an insight into challenges to the sterilization law of this kind.[19] As outlined by Dr. Chávez-García, the family

> opposed sterilization on religious grounds'… even had sought the assistance of the Mexican consul, who, in turn, had contacted the institution, affirming the parents' resistance. Unfortunately, the Mexican Consulate was misinformed of the parents' legal rights, telling them that procedure would not take place if they opposed it.[20]

The actions of the Mexican consulate demonstrate that there were to an extent some institutional resistances organized against sterilization. However, it also reveals the elusive nature of understanding the law itself. Even many of those who wanted to use legal options, such as refusing to consent to sterilization, and managed to find some legal counsel in the form of the

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[16] Ibid. 147
[17] Ibid. 147
[18] Ibid. 147
[19] Ibid. 147
[20] Ibid. 147, 148.

Mexican Consulate, ultimately could not access the necessary information they may have needed to effectively protect themselves from California's program. As a result, the nineteen-year-old girl was tragically sterilized shortly thereafter.[21] This misunderstanding of the law's legal implication is extremely important. Because the California statute "granted the state discretionary power to override the family's resistance to the procedure, a fact many Californian's failed [to] realize," many were evidently willing but ultimately unable to challenge the court using the legal resources available to them.[22]

Dr. Chávez-García provides an insight into the lived experiences of many Californians as a result of these sterilization laws and reveals the large extent to which discrimination affected who was ultimately targeted for these sterilizations. This information is extremely important; individuals targeted for sterilization are, after all, the people who would sue and resist these laws in court. As a result, the demographics of those who were victim to these sterilization laws would reflect their means of resisting the law. For instance, poorer Californians would be less able to hire the legal counsel necessary to successfully challenge the law in court.

Additionally, this work extensively discusses common beliefs held by eugenicists and the practitioners of California sterilization laws who incorrectly assessed one's intelligence by holding them to different standards based on which combination of ethnic, gender, and class demographics any given person would fall into. This was under the proclaimed pretense that the metrics and tests used to quantify any person's intelligence were objective and standard — as Dr. Chávez-García demonstrates, this is far from the case.[23] In fact, a revised version of the Binet-Simon Measuring Scale of Intelligence, which was used in researching and studying the

[21] Ibid. 148
[22] Ibid. 130
[23] Ibid. 64

perceived "feeble-minded," proved extremely problematic.[24] These test administrations often failed to account for language barriers, and the subject matter within these tests were biased against those who lacked access to education.[25] These exam formats are of central importance in understanding California sterilization in relation to race. Dr. Chávez-García highlights that "in the early twentieth century, the use of intelligence tests and other biometric measurements [were employed] to identify youth of color as mentally deficient and to segregate them on that basis."[26]

In this discussion, Dr. Chávez-García also reveals another factor which influenced sterilization policy: age. The popularity of eugenics was in part driven by a growing perception that the "feeble-minded" of society were a pertinent threat to the well-being of American civilization.[27] The danger, many eugenicists argued, was that people in this category were much more likely to become criminals. These assertions were bolstered by problematic studies, linking lower intelligence to delinquency, as well as to race.[28] Consequently, demands mounted that the state intervene on these grounds to address juvenile delinquency. In fact, by the 1920s, a majority of medical superintendents "made it a policy not to release any" victims without first being sterilized.[29]

The experience and processes which took place on the ground is also contextualized and discussed by Dr. Chávez-García. In particular, *States of Delinquency* brings attention to the fieldworkers. These workers — predominantly college-educated women — travelled the state and conducted much of the fieldwork for research for the Eugenics Record Office.[30] These

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[24] Ibid. 63
[25] Ibid. 63, 64
[26] Ibid. 67
[27] Ibid. 68, 69
[28] Ibid. 5
[29] Ibid. 70
[30] Ibid. 83-85

fieldworkers proclaimed objectivity in their assessments of individuals, families, and communities alike. However, in doing so they based evaluations on how closely each respective subject conformed to white, middle-class American expectations and values.[31] For instance, a mother in a family who does not keep a tidy house or behave according to middle-class expectations for women would likely be branded as lesser-than.[32] In contrast, men who did not uphold masculine expectations were harshly evaluated. Such characterizations, which were given authority by supposed objectivity, attempted to label groups and individuals as morally inferior for not conforming.[33] Disturbingly, these assessments, as provided by Dr. Chávez-García, were often accompanied by family trees, written and annotated by these fieldworkers, which ostensibly claimed to track the heredity of perceived feeble-mindedness. In discussing these, Dr. Chávez-García demonstrates the common presumptions made by these fieldworkers, who, often equipped with little-to-no information on an individual's personal history, assumed feeble-mindedness or other negative qualities in many family-members.[34]

[31] Ibid. 89
[32] Ibid.
[33] Ibid. 90
[34] Ibid. 91

Terminology

Because of the nature of this thesis topic, I believe it is important to review the language used by medical and social practitioners of eugenic sterilization in the early twentieth century. This is not just to better understand their discussions and discourse. Moreover, it serves the important function of characterizing these terms as dehumanizing and unscientific. Consequently, this section is also a rebuttal of the language practitioner of forced sterilization used in describing, discussing, and characterizing their own practices.

Patient:

Medical superintendents and others often refer to victims of coercive sterilization as being "patients" rather than victims. The term "patient" may mislead modern readers — and some contemporary ones — into believing that those individuals subjected to these procedures provided some form of consent. As a result, victims of sterilizations were too often characterized as "patients." Consequently, I will refrain from using the term "patient" unless through direct quotation, and will instead describe them as victims or targets of the California eugenic sterilization program.

Feeble-Minded:

The term "feeble-mindedness" is two-pronged. Firstly, it was used as a vague catch-all term for those with perceived mental and social deficiency in the United States during the late 19th and early 20th centuries. Secondly, "feeble-minded" represented the highest categorized "tier," so-to-speak, on the IQ scale as assigned by eugenicists. Those with lower assigned IQs

similarly qualified for sterilization, but the "feeble-minded" were described as the most problematic and in need of control. This vague group — the "feeble-minded" — was associated with immorality, criminality, and stupidity; the people in this group represented a social threat, eugenicists argued, and so developed extremely negative perceptions. Accordingly, victims of coercive sterilization were often subject to the operation based on being branded — again, problematically — as "feeble-minded" and therefore undeserving of their rights to reproduce.

Moron & Imbecile:

While the terms "moron" and "imbecile" are typically used disparagingly in the modern day, they functioned as intellectual classifications within the context of the early twentieth century. Individuals who scored substantially lower than average on contemporary IQ tests — which were, as discussed, extremely problematic — were often placed into these categories, with modifiers such as "high-grade" or "low-grade" attached. These classifications were typically used in justifying the so-called "feeble-mindedness" of the victims of sterilization, and provided the perception of medical objectivity which carried significant weight.

Primary Sources

This thesis evaluates several different types of primary sources to deepen its understanding of the legal history of California sterilization. It's important to understand the origin of these sources and their respective uses and limitations for the purposes of this research.

Human Betterment Foundation — Documents & Publications:

A significant source of materials for this thesis is found in what was the Pasadena-based Human Betterment Foundation — a nonprofit organization that studied and promoted eugenic sterilization policies both in California and across the nation. The Foundation and its individual members' publications — such as those of its founder, E.S. Gosney, and prominent contributor Paul Popenoe — were made available through the California Institute of Technology's archives.

Because the Human Betterment Foundation focused on researching eugenic sterilization, it collected many documents that were relevant to California's policy, which may not have otherwise been preserved. However, it is vital to keep in mind that the Foundation was strongly biased and advocated for eugenic sterilization in its publications. This bias, from the perspective of a researcher, required that I employ caution in evaluating the Foundation's materials, remain mindful of which materials the Foundation chose to collect and those it did not, and question its research practices and conclusions' scientific validity. This same bias can also be informative. Because the Foundation was interested in supporting eugenic sterilization, it carefully recorded and discussed threats to sterilization laws, including that of California.

Newspapers

Newspapers play a significant role in revealing the extent to which the California sterilization laws were challenged in courts in the early twentieth century. Newspapers, including the *Los Angeles Times,* occasionally reported lawsuits referencing sterilization, though the details of the cases and results were typically omitted. Nevertheless, newspaper coverage of eugenic sterilization contextualizes its legal status during the time. Coverage on the topic of eugenics itself and the role of judges in the intellectual discourse in the newspaper is similarly helpful.

However, the lack of newspaper coverage on sterilization laws and their challenges is also important. Coverage of legal challenges to eugenic sterilization in California is apparently sparse and, in instances where papers did publish on the topic, such coverage was extremely brief, reflecting that eugenic sterilization was not controversial enough to warrant consistent coverage or media exposure and outrage. Certain challenges to eugenic sterilization laws were likely not covered in the media, as they represented challenges to what may have been accepted as the status quo.

Court Documents:

The primary source this thesis originally sought to rely on most was legal material. Court documents, legal opinions, legislative hearings, committee documents, and many other documents are necessary for this thesis. However, these primary sources have been difficult to locate, suggesting they either do not exist — that is, that there were extremely few legal challenges — or were rarely preserved in the court system. Nevertheless, those few court

documents that are available, which I have found, do help to inform this research and provide a direct insight into the perspective of the judicial branch on the issue of eugenic sterilization.

Law Journals:

Various contemporary legal journals discussed the implications of sterilization statutes within the legal context of the time they were written. These journals are helpful in not only understanding the laws this thesis studies, but also in revealing the legal status of and questions about eugenic sterilizations statutes at the time these respective journals and reviews were published.

Timeline of California Sterilization Legislation

To understand the legal history of California's sterilization programs and the legal challenges brought to resist them, it is important to first review the timeline of legislation allowing for sterilization and their respective implications. California enacted its first sterilization law in 1909, passing the state assembly and senate with almost no resistance whatsoever — there was merely one vote against it in the latter legislative body. This first law had several issues — seemingly perceived by eugenicists and legislators alike — which led to the law's replacement four years later. The 1909 statute did not ascribe a specific motivation for sterilizations. Rather, the metric was that it was "beneficial and conducive to the benefit of the physical, mental or moral condition" of the victim.[35] Wellerstein argues that because the requirement "centered around value to the individual" instead of "a collective 'germ plasm,' 'gene pool,' or 'future stock,'" the law may have ran contrary to the wishes of eugenicists.[36]

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[35]Alex Wellerstein, "States of Eugenics: Institutions and Practices of Compulsory Sterilization in California." *Reframing Rights: Bioconstitutionalism in the Genetic Age*, 34

[36] Ibid. 34

The legislature followed its first 1909 with a revised law in 1913.[37] According to Wellerstein, "the 1913 statute provided that the centralized bureaucracy that administered the mental hospitals (the State Commission in Lunacy, whose name changed successively to the Department of Institutions and then the Department of Mental Hygiene) could, at its discretion, sterilize a patient."[38] This solidified the authority of the bureaucratic figures responsible for authorizing sterilizations and provided a somewhat more centralized structure from which the California eugenics program could aggressively pursue eugenic sterilization.

Other sterilization statutes were passed again in 1917 and 1923, expanding the groups of people who could be sterilized to include "those suffering from perversion or marked departures from normal mentality or from disease of a syphilitic nature" and prisoners who had committed sexual abuse on girls, respectively.[39] Neither of these statutes, according to Wellerstein, changed the bureaucratic mechanisms driving eugenic sterilization, and instead expanded the reach of its practitioners.

Sterilization statutes would only see substantial change in 1951 when the law was completely rewritten, as opposed to amended.[40] Sterilization laws in California were finally repealed in 1979, some seven decades after the initial statute. However, rather than focus on the entirety of the 70-year-long program, this study will focus on the legal facets of California sterilization statutes preceding and leading up to World War II. Because the vast majority of eugenic sterilizations took place before World War II, it would be most productive to study the

[37] Ibid. 33, 34
[38] Ibid. 34
[39] Ibid. 35
[40] Ibid. 35

era in which the sterilization laws affected the most people who, in turn, could challenge the laws in court.

Sterilization: When and Where

The minimum of 20,000 sterilizations that took place in California between 1909 and 1979 were not distributed equally over time. Rather, eugenic sterilization in California ran most rampant from 1920s until the early 1940s. With the end of the Second World War, both sterilization and eugenics as an ideology lost popularity in the United States due to their associations with Nazi Germany. In fact, Nazi Germany even pointed to California's eugenic sterilization program as inspiration for establishing one of their own.[41] Other scholars such as Dr. Alexandra Stern have further indicated German practitioners of eugenic sterilization had even come to California first to study its program in implemented their own. Thus, the number of sterilizations in California increased over time beginning after the passage of the initial 1909 law and ramping up over subsequent years before abruptly plummeting following the Second World War.

Understanding the frequency of Californian eugenic sterilization over time could presumably provide a template to understand how often victims of sterilization — or the victims' family members — would have challenged these laws in court. One would expect that an increase in the number of sterilizations would correlate with an increased risk of legal challenges. Because of this, many of the available cases that I was able to locate took place in the 1920s and 1930s.

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[41] Stefan Kuhl, *Nazi Connection Eugenics, American Racism, and German National Socialism* (Cary: Oxford University Press, USA, 2014), 39-44. Cited in Alex Wellerstein's "States of Eugenics: Institutions and Practices of Compulsory Sterilization in California," 30.

Legal Challenges to California Sterilization

The only case that has been preserved on online databases such as LexisNexis, and which has been widely available for scholars to review is *Garcia v. State Department of Institutions*, wherein Sara Rosas Garcia attempted to intervene on behalf of her daughter, who was targeted for sterilization, to prevent the operation from taking place.[42] This primary source is extremely valuable in that it is one of very few cases which were preserved and made available by the California court system, likely because this case was decided in the Appellate Court. As such, it provides an insight into the California judiciary's logic, both in affirming with the law and dissenting. Unfortunately, Sara Rosas Garcia was ultimately unable to obtain the writ of prohibition from the court, which denied her request in a 2-1 vote.[43] Because the vote was not unanimous, there are opinions written expressing the reasoning of judges on both sides. On the affirming side, Judge York, with Judge Doran concurring, wrote the opinion which upheld the law. However, it is merely one sentence long, stating that "the petition for a writ of prohibition is denied upon the ground that it does not state facts sufficient to justify this court in issuing its writ as prayed."[44] Evidently, the law was upheld despite the scarce legal reasoning to do so. Nevertheless, there are implicit assumptions to extrapolate.

For instance, the assertion that Garcia failed to provide enough facts to justify a writ of prohibition reflects a very high standard for a court's intervention to prevent sterilization. Functionally, the law was seen as acceptable in itself, taking for granted the coercive nature of the law rather than question it. Interestingly, the opinion opts not to discuss any of the evidence

[42] Garcia v. State Dep't of Institutions (Court of Appeal of California, Second Appellate District, Division One December 18, 1939) (LexisNexis, Dist. file).
[43] Ibid.
[44] Ibid.

presented in the petition itself. Additionally, the opinion demonstrates an important point regarding the California judicial system: judges had an extreme discretion in deciding their cases.

Judge White, who wrote the dissenting opinion, argued much more fervently for his position. White's dissent included the law in question: Section 6624 of the Welfare and Institutions Code, stating that "when a person has been lawfully committed to any state hospital who is afflicted with or suffers from certain mental and physical ailments, 'before any such person is released or discharged from a state hospital, the State Department of Institutions may, in its discretion, cause such person to be sterilized.'"[45] This already presented issues to Judge White:

> It seems to me that the legislature is without authority to authorize a purely administrative board to deprive a person of the right of procreation without the opportunity of having the finality of such action passed upon by a court of law, and that in so doing there is probable violation of the due process clause of the federal Constitution. It is to be noted that without notice to the inmate upon whom the operation is to be performed and without notice to his next of kin the State Department of Institutions is clothed with absolute unrestricted power to sterilize.[46]

White's argument, which is critical of the sterilization law, is also notable in its lack of criticism of sterilization as a practice in itself. He was not arguing against the idea of sterilization as an abusive practice. Rather, Judge White expressed that the sterilization law fails to provide rights guaranteed under the federal Constitution and that the nature of how sterilizations are decided on and enforced are abusive and in need of more oversight. White nevertheless expressed a very strong stance against the nature of the California law, arguing that providing "legislative agencies with this plenary power, withholding as it does any opportunity for a hearing or any opportunity for recourse to the courts, to my mind partakes of the essence of

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[45] Ibid.
[46] Ibid.

slavery and outrages constitutional guaranties."[47] Consequently, he prescribed a corrective measure to this law, saying that "the grant of such power should be accompanied by requirements of notice and of hearing at which the inmate might be afforded an opportunity to defend against the proposed operation."[48]

Judge White's dissenting opinion is extremely valuable, in that it reveals criticisms of the California law by a contemporary judge within the legal system. It also provides a potential explanation of how it was that the California sterilization law may have been able to suppress legal challenges so effectively for decades. However, there were still other challenges, many of which are revealed and alluded to through secondhand reporting.

Other Legal Challenges

While court documents are remarkably scarce, it is still possible to discuss some California-specific cases challenging its sterilization statutes, using uncovered court documents and newspaper reports to better understand the nature of the legal battles this thesis seeks to study.

One remarkable instance of a legal challenge to California sterilization was brought by Concepcion Ruiz in 1930.[49] Ruiz, the *Los Angeles Times* article reveals, was a 16-year-old schoolgirl who was sterilized despite her protest at the Sonoma State Home at the order of a local Superior Court.[50] The article also presents some facts of the case as stated in the complaint, including that Ruiz was arrested for delinquency and that Judge Scott "failed and neglected to inform" her of "the cause of her arrest or of any complaint or require her to plead."[51] The article

[47] Ibid.
[48] Ibid.
[49] Unknown, "Girl Files Suit Over Operation," *Los Angeles Times* (Los Angeles), November 29, 1930.
[50] Ibid.
[51] Ibid.

continues, revealing that Judge Scott did not inform her of her right to a jury trial or an attorney, that she did not have to testify against herself, and that she was entitled to cross-examine witnesses against her and call witnesses of her own.[52] The complaint claims that the sterilization operation — performed despite Ruiz' protests — violated the Fourteenth Amendment to the United States Constitution and did not provide Ruiz due process of the law.[53]

Not only did Ruiz demand $150,000 in damages, but also directly challenged the practitioners of her coerced sterilization in the lawsuit. In fact, it was reported that eleven Los Angeles county and state officials were named, including Superior Judge Scott (in charge of the Juvenile Court), W.H. Holland (the county's chief probation officer), Viva Mae Carr and Ethel B. Cummings (juvenile probation officers), F.O. Butler (the medical superintendent of the Sonoma State Home), and Earl E. Jensen (State Director of Institutions) among others.[54] Such a notable list of defendants for this lawsuit attacked eugenic sterilization in California at all levels of its enforcement by attacking the statute, the institutions, and the individual practitioners of the law. These practitioners may have had some reason to feel intimidated, as they could possibly be made personally accountable for their actions alongside the institutions they belonged to.

Rather than challenge the law in California's state judiciary, Ruiz attacked the constitutionality of the law in federal court.[55] The decision and events which took place in this case is unknown. However, the lack of any court documents of the case on LexisNexis does insinuate that the case was either settled outside of court or was dropped entirely. It is also possible that the case was removed from the public arena because of the matter of sterilization,

[52] Ibid.
[53] Ibid.
[54] Ibid.
[55] Ibid.

ostensibly to protect the privacy of the "patient." Alternatively, if the documents are preserved but not through online archives such as LexisNexis — such as in the LA Court Superior Records — locating the source would be not only difficult, but also time-consuming. Unfortunately, the limitations of this thesis preclude me from investigating this further.

Suppressing the Dissent

While it is clear that there were challenges to California sterilization laws, they were nevertheless fewer in number than they otherwise could have been. Because of an active effort to prevent legal challenges to California sterilization laws by the practitioners of these laws, many potential challenges may never have moved forward, whereas those that did were more likely to suffer defeat. Broadly speaking, it is not the design of the laws themselves which staved off such challenges, but the ways in which the laws were enforced by its practitioners.

The former tactic to prevent legal challenges from occurring is explicitly demonstrated by a notorious practitioner of eugenic sterilization within California. F. O. Butler, the medical superintendent at the Sonoma State Home for the Feeble-Minded in Eldridge, California — one of the state institutions that enforced coerced sterilization — openly revealed many of the concerns medical superintendents had in avoiding legal challenges when he presented at the National Conference of Juvenile Agencies in Jackson, Mississippi.[56] According to Butler, by the time of his presentation in November 1925, sterilization laws had been struck down as unconstitutional in approximately seven of the seventeen states in which they were passed.[57] However, these developments in other states did not cause their conviction to falter, as Butler

[56] F. O. Butler, "Sterilization Procedure and Its Success in California Institutions" (address, National Conference of Juvenile Agencies, Mississippi, Jackson, November 1925).
[57] Ibid.

asserts that "such action in other States did not change our views in the matter."[58] Rather, he admitted that "perhaps we did operate on fewer cases for a time, [but] we have gradually increased the work and are sterilizing a greater number than ever before."[59] In this admission, Butler expressed that he and other medical superintendents attempted to remain cognizant of the legal status of sterilization, and were for a time apprehensive that their state may have witnessed its law defeated if they were not careful. Furthermore, he reveals that the medical superintendents were ideologically unswayed by the vulnerabilities of sterilization from a legal perspective. If the laws of other states were struck down for violating their victims' rights, the practitioners of sterilization worried instead that their own authority to sterilize may be taken away by their own state courts.

Among the most pertinent threats to the California sterilization statutes was not necessarily the victims themselves. Rather, it was the family members of the victims of coercive sterilization that posed the most immediate threat. While the so-called "patients" in state institutions for the "insane" and "feeble-minded" had few rights and little capability to resist sterilization by themselves, their family members were fully capable citizens of the state. Further, some family members had both the intentions and financial means to defend their institutionalized loved ones from sterilization. This fact was not lost on the medical superintendents. Medical superintendents at the state institutions had the legal right and immense bureaucratic discretion to decide the fates of their "patients."

Medical superintendents and other practitioners of eugenic sterilization in California accordingly adapted the ways in which they enforced the sterilization laws to address the

[58] Ibid. 3
[59] Ibid. 3

potential legal threat. Butler, who himself often exercised his right to coercively sterilize inmates at the Sonoma State Home for the Feeble-Minded, revealed through his presentation some of the ways in which sterilization practices shifted to protect the statute from victims' families. Namely, practitioners first sought to obtain consent, and, in some cases, even submitted to the demands of indignant families.

Consent served an important function for the practitioners of sterilization in that it provided legal protection, even though the statute granted the power to sterilize an individual to a board of medical practitioners over those of the victim and/or their parents or guardians. Ostensibly, obtaining consent would severely cripple a lawsuit brought against them, though the potential role of consent in the courtroom will be elaborated on in a later section. Nevertheless, because of the powerful legal use of consent, medical superintendents made it a matter of policy to try to obtain consent before performing sterilization procedures. Butler provided a typical overview of the policy procedure before sterilizing inmates. He revealed that "after it ha[d] been decided by the institution" that an individual will be sterilized, the nearest guardian or relative was asked to consent to the operation.[60] It is interesting to note that even though Butler was the authority with the discretion to decide the inmates' reproductive fates, he ascribed responsibility for these decisions to the broader institution, the Sonoma State Home.

The consent of the "patient" is hardly ever a factor in the eyes of the superintendents, as they had little legal right of their own and were categorized as being incapable of providing informed consent. Consequently, they posed no legal threat in themselves. However, E.S. Gosney revealed the underlying purpose of obtaining consent from patients' relatives. Gosney

[60] Ibid, 4

wrote, “the primary purpose of this was to protect the law by avoiding the possibility of litigation.”[61] In fact, “almost from the first application of the law, it has been the custom to get the written consent of the nearest relatives, when any such were to be found.”[62]

Thus, it was important for superintendents to obtain consent from the victims’ families, which did have the legal right to attempt to intervene on behalf of their loved ones.

> After consent is obtained, we secure permission from the Director, Department of Institutions (formerly known as the State Commission in Lunacy) and the Secretary of the State Board of Health, who are the present State authorities whose signatures legalize the operation. It is not necessary to obtain the patient’s consent, although it is done in the same instances. When permission is granted by the above authorities, we are at liberty to proceed with the operation.[63]

Firstly, this suggests that medical superintendents initially sought to obtain consent from the families before then seeking approval from medical officials. It is alternatively possible that the decision to sterilize had already been made verbally, followed by seeking the applicable signatures. While these state institutions likely succeeded in obtaining signed forms of consent for most of their eugenic sterilization operations, this is not to say that most families of the victims of sterilization actually supported the operation. There are several reasons to doubt that this was the case.

Whenever families were indignant and refused to consent, medical superintendents took notice. Gosney explains that there are cases of people successfully avoiding sterilization due to family intervention. Legal threats were particularly effective, as some institutions opted to “discharge a few patients unsterilized” even though the practitioners of sterilization felt

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[61] E. S. Gosney, *Eugenic Sterilization in California*, “Attitude of the patient’s relatives towards the operation,” 1, 2.
[62] Ibid. 1, 2
[63] F. O. Butler, "Sterilization Procedure and Its Success in California Institutions," 4, 5

otherwise.[64] Functionally, the use of law — or simply the threat of a lawsuit — caused medical superintendents to consider backing down. From the perspective of fierce eugenicists, it was in their best interest to recognize when a "compulsory sterilization might provoke a lawsuit and jeopardize the usefulness of the whole law."[65] The extent to which these threats were used are unknown and unreported but represent a vital component of the group of people in California that were both willing and able to challenge California sterilization laws in court. By systematically responding and often conceding to demands of families who used the threat of litigation, Californian eugenic sterilizations' practitioners prevented lawsuits from the most threatening rivals of sterilization. This tactic also helps to explain why there seem to have been so few legal challenges to California sterilization laws.

Obtaining consent, from the perspective of the institutions enforcing sterilization, only required a signature from the victim's family. Consent was never required under the sterilization statutes in California — the superintendents could exercise their power to coercively sterilize a victim despite the victim's own protests or those of family members. However, obtaining consent was nevertheless preferred and became a procedural part of the laws' enforcement. Whenever possible, institutions reached out to the family members of the institutionalized individual they sought to sterilize. Subsequently, some practitioners of the sterilization would explain the reasons for the procedure and what it entailed. It is not clear which individuals were responsible for explaining the reasoning behind the sterilization procedure; however, much of the underlying reasoning justifying sterilization procedures is fairly clear.

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[64] Gosney, "Attitude of the patient's relatives towards the operation," 1, 2.
[65] Ibid.

Justifications for sterilization can broadly be divided into three categories, each of which is described by Butler. First and foremost, sterilization procedures were used for eugenic ends: namely, preventing the propagation of the mentally and physically unfit.[66] This reasoning was supplemented with the idea of improving "both sexes."[67] Additionally, sterilization procedures were justified as ostensibly being medically beneficial to the victims — presented as "patients" — and thereby making the concept of sterilization policies less controversial to the public. In other words, the policy aimed at preventing the reproduction of those seen as genetically inferior was also presented as humane to those it directly affected. There are two primary prongs to this medical benefit claim which are worth addressing and dispelling. The first is the claim that the sterilization operations were safe and noninvasive. Secondly, sterilization was presented as a treatment or outright remedy for perceived mental diseases. Each of these problematic notions was reinforced by the Human Betterment Foundation publications and the direct opinions of the physician practitioners of the sterilization procedures.

Safe and Noninvasive Procedure

The idea that the widespread use of sterilization procedures "would protect the community at large without harming the criminal" allowed physicians to conclude that it "reasonably be suggested for chronic inebriates, imbeciles, perverts, and paupers."[68] However, the application of sterilization for these reasons in part rested on the promise that the surgical procedures did not harm the individuals who were performed on. The sterilization procedures and their respective risks differed based on sex. Women targeted for sterilization underwent a

[66] Ibid. 9
[67] Ibid. 9
[68] W.M. Kantor, "The beginning of Sterilization in America"

salpingectomy procedure whereas men underwent vasectomy.[69] In either case, the procedures were presented as noninvasive and almost risk-free. However, the salpingectomy operation, in particular, was and is a more invasive and risky operation than is the vasectomy. The former requires more time, is more complex, and carries a higher risk of complications than the latter in all regards.

The sterilization procedure — particularly for women — was far more invasive than physicians who conducted the sterilizations may have initially let on. This is particularly demonstrated by Human Betterment Foundation questionnaires, which were sent to physicians throughout California to collect information on sterilization procedures and their respective effects for both men and women. These questionnaires are therefore extremely revealing and valuable sources that show a glimpse into the perspective of physicians who performed the operations and reported their interpretations of the results. These interpretations could presumably reinforce or undermine the authority of sterilization as a medical practice. If sterilization procedures yielded unambiguous and unanimous support among doctors, this could also support the procedure in law. It is important to briefly note that the ostensible goal of the Human Betterment Foundation, to understand and research eugenic policies and their respective outcomes, is nevertheless betrayed by an outward bias supporting eugenics. Accordingly, the questionnaires as sources, while useful in understanding the individuals who answered them, may not reflect the whole of the physician population. Further, the questions asked reflect the interests of the Foundation itself, with a lack of questions which would have promoted a critical perspective on the topic of sterilization.

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[69] Justin Miller and Gordon Dean, "Liability of Physicians for Sterilization Operations," *American Bar Association Journal*, March 1930, 158.

As a Treatment for Medical Diseases

The Human Betterment Foundation provides extensive coverage of the perception that sterilization was not only noninvasive to the victim, but that it was even medically beneficial. In fact, questionnaires of the physicians who performed sterilizations affirmed this notion and may provide an insight into the perceptions of the procedure from the medical authorities who justified their use. These questionnaires were sent in October 1926, shortly before the 1927 Supreme Court affirmation of sterilization; as a result, these questionnaires were sent at a time of uncertainty of the legal status of sterilization.[70] The vast majority of questionnaires sent out by the Human Betterment Foundation which received responses portrayed vasectomy and salpingectomy as not just non-invasive, but beneficial to the "patients" subjected to sterilization. This in turn reflects that the actual medical practitioners of sterilization supported the practice as beneficial to the victims of sterilizations themselves — a perspective which would be taken as fact in legal discourses.

Sterilizations for men in particular were portrayed as uniquely beneficial. Namely, vasectomies were prescribed as credible treatments for men's excessive libido. In an interview with Dr. Sharp — who was a physician based in New Jersey and among the first to use the vasectomy as a treatment — he reveals the positive perceptions he came to have of the procedure and in doing so problematized its actual use in the early twentieth century.[71] Dr. Sharp discusses an "inmate" who had "complained of excessive masturbation" and insisted on castration.[72] Dr. Sharp offered to conduct a vasectomy instead, as he felt uncomfortable castrating the inmate.In

[70] Paul Popenoe, "The Opinions of Some California Physicians on the Mental and Physical Effects of Sterilization," in Eugenic Sterilization in California, 1.
[71] W.M. Kantor, "The beginning of Sterilization in America"
[72] Ibid. 2

obtaining consent for the vasectomy, Dr. Sharp admitted that "perhaps I misrepresented the facts to him," subsequently qualifying that "we did not know as much about sexual science in those days as we do now."[73] The situation wherein an inmate would seek castration to prevent masturbation is, needless to say, an extreme outlier. However, it does demonstrate the commonly-held belief that masturbation was unhealthy. The vasectomy could therefore be pitched as a noninvasive remedy for men to stave off what they believed was an unhealthy habit. The perception that Dr. Sharp had on the vasectomy was evidently pervasive among California physicians — at least the physicians who mattered.

One prominent respondent to the physician questionnaires was the medical superintendent of Norwalk State Hospital, who reported sterilizing over 2,000 individuals over nearly two decades.[74] When asked what the physical side-effects of the sterilization procedures were, he responded that no person suffers as a result, and boldly claimed that "on the contrary, numerous patients improve physically as a result," and, later in the questionnaire, made the same claims of the mental effects of the sterilization operations.[75]

One physician at the Stockton State Hospital reported sterilizing approximately 500 men over the course of ten years portrayed sterilization as physically invigorating, responding that the victims "became more alert and showed more interest in things and useful employment."[76] Yet, this same physician also took the opportunity to express his personal doubts and, in fact, warn of the dangers of eugenic sterilization. He remarked that "I am not convinced that eugenics makes

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[73] Ibid. 2
[74] Edwin Wayte, Questionnaire for Physicians #3400, Human Betterment Foundation.
It's worth noting that the questionnaire numbers are handwritten and often illegible, as are the responses of many respondents themselves. As such, I cannot provide a fully comprehensive overview of the questionnaires, but instead highlight notable examples.
[75] Ibid.
[76] Fred J. Gonzelmann, Questionnaire for Physicians #5000, Human Betterment Foundation.

or mars civilization," and that "some scientific minds, medical and legal call it a 'barbarous practice.' Such a pronouncement would suggest extreme caution in applying the laws of eugenics."[77]

He was not the only physician to simultaneously affirm the idea that sterilization was beneficial while conveying doubts. Another physician, having practiced sterilisation for a reported sixteen years, returned a questionnaire which affirmed the idea that sterilization procedures were not harmful, but nevertheless expressly stated that "I would add that I am much opposed to [the] indiscriminate… application of sterilization."[78] The extent to which he may have sterilized is unknown — not only by me, but by himself, having reported that he "cannot estimate with any accuracy" how many individuals he was responsible for sterilizing.[79]

However, the qualifications from physicians who performed these operations which warned — even explicitly — *against* eugenic sterilization, were conveniently removed from the Human Betterment Foundation publication on the questionnaires. While the short synopsis of the results of the questionnaires presented itself as ostensibly neutral, claiming that neither to accept or reject the opinions of the physicians, the ways which facts are presented to the reader betray the authors' proclaimed intentions.[80] For instance, Popenoe presented the 54 questionnaires as equivalent to "223,262 years of observation," having multiplied the years each physician reported practicing sterilization operations for by the number of operations reported before adding each.[81] This is extremely problematic not only statistically, in that there was no

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[77] Ibid.
[78] Name Illegible, Questionnaire for Physicians #1600, Human Betterment Foundation
[79] Ibid.
[80] Paul Popenoe, "The Opinions of Some California Physicians on the Mental and Physical Effects of Sterilization," in Eugenic Sterilization in California, 3.
[81] Ibid.

methodology reported on how they calculated each physician's total time of observation, but it also brazenly violated the claim of neutrality. Popenoe clearly presented the physicians' accumulated years of practice as an unobjectionable and ridiculously high number, to which no reader — or perhaps lawyer or judge — could object to. The subsequent tabulations of physicians' reports of the physical effects of sterilization operations beyond that of reproductive sterility ultimately portray sterilization in positive terms: of the 54 responding physicians, 34 reported the operation elicited "no change," 15 reported "better in some cases," whereas a mere 3 reported "worse in some cases," and 2 refused to respond.[82] These numbers misleadingly presented sterilization operations as almost unambiguously harmless or beneficial, with only extremely rare negative effects. However, in this article — titled "The Opinions of Some California Physicians on the Mental and Physical Effects of Sterilization" — the opinions of physicians warning against eugenic sterilization were seemingly tabled or ignored.

Misrepresenting the Victims

The Human Betterment Foundation attempted to characterize sterilization as non-invasive and even beneficial not only through surveying the physicians responsible for performing these operations, but also by seeking advocates for the procedure from among those who were sterilized. Shockingly, there are many instances wherein the Foundation used victims of coercive sterilization to portray the eugenic practice as not only harmless, but even desirable. A draft publication reveals that the Human Betterment Foundation had also sent surveys to 4,000 victims of sterilization ostensibly to learn their first-hand responses to their ordeal.[83]

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[82] Ibid.4
[83] Paul Popenoe, "Attitude of patients toward the operation," *Eugenic Sterilization in California*, 3

Of the 4,000 questionnaires sent out to the victims of eugenic sterilization, the Human Betterment Foundation received a mere 173 responses, comprising just over four percent of the victims.[84] Such a small proportion of responses immediately illuminates concerns surrounding the usefulness of the questionnaires from a statistical perspective, and limits the validity of any broad claims relying on these responses alone. It is therefore extremely important to analyze whether the 173 respondents are representative of the overall 4,000 victims. Paul Popenoe — a centrally important member of and contributor to the Human Betterment Foundation — attempted to evaluate this small sample size and how representative it may have been. However, the factors which he attributes to the low response rate crucially fail to consider the perspectives of the victims of coerced eugenic sterilization. While Popenoe does acknowledge that 173 responses "furnishes a very small sample," he downplays its importance, saying that it "is as large as should have been expected."[85] Popenoe asserts that "most of the persons in the state hospitals were not available" to answer these questionnaires for two reasons: "either because [they] were still mentally disturbed and in the hospital, or because they had been lost to sight after discarheg [sic]."[86] Popenoe asserts that "of the 821 who, it was thought, might be reached, it is not surprising that more than one0fourth [sic] of the addresses proved to be incorrect, for the population of California is a shifting one, and the psychopathic part of it is the most shifting of all."[87] Popenoe seemingly attributed the low response rate in part to the "psychopathic" character of the victims, who he characterized as shifting more so than any other group in California. Popenoe failed to provide a methodological reasoning as to why he believed that only 821 of the

[84] Ibid. 3
[85] Ibid. 3
[86] Ibid. 3
[87] Ibid. 3

4,000 victims could have been possibly reached and how it was the perceived, and already problematic, characterization of victims as "psychopathic" would have contributed to the shifting population to the extent that Popenoe claims.

In fact, he claimed that "the half which apparently received the letter but failed to answer offers the greatest problem in selection."[88] This immediately contradicts his earlier assessment, implying that 2,000 letters were received — much higher than the claim that 821 victims could have responded. Nevertheless, Popenoe further provided what he perceived as contributing to the low response rate. Namely, he assumed that "many of these are again disturbed (since it is generally calculated that not more than one-fourth of the patients discharged as cured from hospitals for mental diseases represent permanent cures)" whereas other recipients were simply dead, though he did not specify or approximate how many.[89] However, Popenoe's use of "disturbed" to characterize the victims and in interpreting statistics is extremely problematic. The broad categorization of "disturbed" which Popenoe relied on rests on his assertion that a significant portion of those who were sterilized as a means of treating mental ailments relapsed into being "disturbed."

This is itself problematic, as he did not provide any information on which ailments — or perceived ones — comprised those who were sterilized and released who he offhandedly diagnosed as "disturbed." Some of these perceived mental "defects," would have had no bearing on one's capability to respond to a questionnaire or have made them more likely to, as the study attempts to say, "shift." For instance, hypersexuality was an especially prominent perceived

[88] Ibid. 3
[89] Ibid. 3

malady that caused thousands of Californians, particularly women, to be institutionalized, potentially sterilized, and subsequently released.

Popenoe attributed most responsibility for the small sample size to the fact that perhaps most "did not care to discuss what is a particularly personal matter."[90] While his assessment of coerced sterilization as "personal" is undoubtedly true, Popenoe's characterization implied that most chose not to respond because they may have been uncomfortable discussing something private. This aspect of Popenoe's analysis is correct, but nevertheless misleads in one crucial respect. Namely, Popenoe misses a significant factor which would have greatly reduced the number of responses. After all, it is reasonable — if not blatantly obvious — that the lived experience of being forcibly sterilized would have traumatized countless victims. The trauma of the experience was tragically a prerequisite for the so-called "feeble-minded" and other victims' release and return to their families. Should these victims receive a questionnaire from the foremost institution decidedly in favor of the policy which advocated their sterilization, they may reasonably have wanted nothing to do with it. As a result, the responses that the foundation received were likely highly skewed due to a self-selection bias, as victims would rightly have had extremely negative opinions of the operation were likely to exclude themselves from the sample and not respond to the questionnaire. As a result, the sample which Popenoe based his analysis on is likely highly biased and erroneously portrays sterilization in positive terms. The coerced nature of the sterilizations that the Human Betterment Foundation wanted to study was not a factor in Popenoe's analysis. If it was not a deliberate oversight, it was best reflective of his lack of empathy for these victims not to consider their experiences. Regardless, the omission was

[90] Ibid. 3

a useful one, as this factor — the trauma to the people Popenoe characterized as "patients" — should disqualify the statistical usefulness of the surveys. The tiny fraction of responses, therefore, do not represent the whole. However, with this in mind, it is useful to study the responses Popenoe did receive and the ways he chose to analyze them.

Of the 173 responses, 51 were men and the remaining 122 were women.[91] The Human Betterment Foundation draft report asserts that 33 of the men and 99 of the women were "satisfied or pleased," 11 men and 11 women were "indifferent," and a mere 7 men and 12 women were "displeased or regretful."[92] Popenoe's characterization of many of the respondents reflects his own bias, as he downplayed those negative responses which he did receive while condescendingly reporting that many women in the "pleased" category were "pathetic in their expression of gratitude" about having been sterilized — these women, he asserts, felt positively because they no longer feared the possibility of pregnancy.[93]

Because the Human Betterment Foundation played a significant role in influencing the perceptions of authorities elsewhere on the topic of eugenics, publications which muffled the negative consequences of eugenic sterilization while highlighting positive outliers ultimately prolonged the validity of eugenic sterilization itself in the eyes of the law. Discussions of the legal implications of sterilization often reflect the authority that the Human Betterment Foundation had accumulated and the extent to which the foundation may have informed legal opinions on eugenic sterilization. For instance, a Yale Law Review article (the contents of which will be discussed in a later section) cites the Human Betterment Foundation as a source and

[91] Ibid. 4
[92] Ibid. 4
[93] Ibid. 4

reproduces its assertions that cast eugenic sterilization in as positive a way as was possible.[94] California sterilized more people than any other state, and therefore the Foundation, which had carved itself out as an authority on the topic, managed to influence the national conversation on the legal implications of eugenic sterilization. This reflects the extent to which the Human Betterment Foundation influenced legal discourse. By establishing itself as an authority on the topic of eugenic policies and their outcomes, the foundation functionally inserted pro-eugenics claims as given facts into a nationally-respected law review. The extent to which these influences manifested themselves in the courtroom is unclear due to the limited access to court proceedings for this research.

Liability for Sterilizations

Legal journals did in fact pick up on the scale of California's sterilization program and therefore provided commentary on the legal implications. The American Bar Association's (ABA) 1930 Journal, in fact, provided an analysis of the California program and the extent to which it could make physicians liable. In doing so, the journal revealed many perceived facts and assumptions — which prove problematic — regarding the sterilization program as well as its respective legal implications.

In this there is an immediate contradiction between contemporaries' opinions on the effects of sterilization. Namely, the article claimed that "we are assured by the members of the medical profession who developed these techniques that, unlike castration and spaying, vasectomy and salpingectomy do not desexualize the individual or produce other physical or

[94] "Constitutionality of State Laws Providing Sterilization for Habitual Criminals," Yale Law Review (June 1942), 1380

mental changes except such as may grow out of a realization that the child-producing function has been destroyed."[95] The most obvious and immediate discrepancy in this assessment of the medical repercussions of sterilization procedure is that the questionnaires collected by the Human Betterment Foundation frequently claimed that there were changes which result from the procedure that are not a result of knowing one can no longer have children. While these changes are typically presented as positive by these physicians — such as in claiming, albeit problematically, that the sterilized men experienced reduced libido — they would nevertheless imply that the sterilization operation was not ineffectual, but instead one of consequence to the individual's mind. It is difficult to ascertain the exact legal implications that different characterizations of the emotional and physical impacts of sterilization operations had, if any such implications exist. Nevertheless, it is still important to keep in mind in evaluating the remaining claims of the ABA article on the sterilization procedure.

Beyond this, however, the ABA article recognizes that "the increasing number of such operations, both in public institutions and in private practice, suggests the importance of determining the civic and criminal liability, if any there be, of physicians who perform them."[96] In discussing the law's implications for physicians, the article asserts that "an operation for sterilization would clearly result in criminal liability in many cases."[97] To demonstrate this point, the article argues that "death resulting from such a cause, if no justification or excuse were present, would make the perpetrator guilty of a homicide, varying in degree according to the malice and intent in his mind at the time of the act."[98] The authors of the article quickly move

[95] Justin Miller and Gordon Dean, "Liability of Physicians for Sterilization Operations," *American Bar Association Journal*, March 1930, 158.
[96] Ibid. 158
[97] Ibid. 158
[98] Ibid. 158

beyond this point, as they characterize the considerations of homicide cases fairly standard and not in need of particular interpretation to analyze the California law.

However, sterilization can also result in other charges for the physicians who perform them, as "such an operation might result in liability for mayhem or maiming."[99] The authors then demonstrate the concept of how maiming could apply to sterilization through asserting that a maiming claim "would be clearly true in case of castration because the effect of the operation is to change the entire physical character of the individual."[100] The authors provide a general definition of mayhem as "'when one shall diminish the strength of another's body..." and that "the gist" was that the injured person was less able to defend himself.[101] Significantly — for both homicide and mayhem offenses — the article clearly asserts that "even the consent of the person castrated would not serve to excuse the physician, for it is clearly established that consent of the injured person in this type of case does not operate to prevent criminal liability."[102] This underlying legal reasoning, if true for the time, helps reveal why it was that medical superintendents did not seek out the consent of the victims. Not only were the eugenically sterilized perceived as incapable of providing informed consent, but their consent may have been meaningless in any case. Furthermore, the article mentions that there was some precedent for courts to characterize the vasectomy and salpingectomy as "cruel and despoiling operations" that violate common law.[103]

However, the article swiftly changes its tone to make clear that the physicians conducting these sterilization procedures should not be held liable for mayhem. For instance, the article

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[99] Ibid. 158
[100] Ibid. 158
[101] Ibid. 158, 159
[102] Ibid. 158, 159. The standard the article cites is from a full discussion in *People v. Clough*.
[103] Ibid. 159

characterizes the decision of the court which criticized sterilization procedures as simply based on "a misunderstanding" of the sterilization procedure and its effects.[104] In doing so, the authors make their opinion clear: they believe that the court's decision was uninformed and anomalous. The reasoning the article utilized to defend sterilization laws rested on its previous assumption that sterilization procedures had no negative consequences beyond sterility. Consequently, the ABA Journal's article assesses mayhem as very unlikely to represent a threat in the courtroom, should such a challenge rise.[105] This is largely because "if the consent of the person were given, it is probable under present-day statutes that there would be no liability" as "consent given would usually warrant the conclusion" that malice — a necessary element of the crime — was not present in the mind of the physician.[106] This, in fact, helps to explain the extent to which medical superintendents sought to obtain consent from the victims' families. Merely through obtaining consent, physicians and superintendents protected themselves from liability while also supporting the eugenic sterilization statute in court. Thus, while the California sterilization laws' statutes' language did not require consent, consent did function as a tool for the practitioners of sterilization to avoid both personal liability and maintain the enforceability of the eugenic sterilization laws which empowered them. Obtaining consent, then, provided a powerful tool to the practitioners of sterilization. The process of obtaining consent, however, was itself deeply troubling and is well-deserving of its own section.

[104] Ibid. 159
[105] Ibid. 159
[106] Ibid. 159

Obtaining "Consent"

The ways in which the eugenic sterilization program in California was enforced ultimately forced families to consent to their loved ones' sterilization. The alternatives for these families were, unfortunately, not promising; tragically, the most effective means of resisting eugenic sterilization in California was through law — a prohibitively expensive method simply beyond many families' means. Reviewing Human Betterment Foundation documents' commentary on the policies of the institutions responsible for eugenic sterilization reveals not only the coercive nature of the consent, but also the outcomes for those victims whose families could not challenge the law in court but nevertheless refused to consent.

Gosney's writings provide insight into the policies' coercive nature; while it was possible for inmates in State Homes for the "insane" to avoid sterilization — such as through their families' legal threats — the prospects were grim for those institutionalized in Homes for the Feeble-Minded. State homes for the feeble-minded used a different policy.[107] For those in homes for the feeble-minded, Gosney remarks, "no one is allowed to go out of this institution, even for a short vacation, unless sterilized."[108]

Gosney attributes the different policies of the institutions to the demographics of the people who inhabit them. For instance, eugenic sterilization was not seen as necessarily applicable to all institutionalized "insane" inmates, whereas most of the "patients" in the homes for so-called "feeble-minded" were young enough to potentially have children and were more often the targets of eugenicist practitioners of sterilization.[109] Gosney also assessed that authorities typically found it simpler not to make any exceptions regarding eugenic sterilization

[107] Gosney, "Attitude of the patient's relatives towards the operation," 6
[108] Ibid. 6
[109] Ibid. 6

of those deemed "feeble-minded." Nevertheless, these same authorities sought out consent from the families of the victims. What happened, then, if these families refused to consent?

Gosney answers this question, and in doing so reveals the tragedy underlying the paperwork which ostensibly provided consent. He asserts that "if relatives do not wish a patient sterilized, he or she may be kept there indefinitely in segregation, the interests of the state being thus equally protected. If, however, the relative wish their patient back with them, they must permit sterilization first."[110] Functionally, consent from families was coerced through what amounted to holding their loved ones hostage; should someone be deemed "feeble-minded" and institutionalized, their families could only secure their freedom through allowing their loved one's sterilization.

Thus, the families of the institutionalized individuals targeted by eugenicist practitioners of sterilization had few alternatives to consent, should they wish to secure their loved ones' freedom. While the pseudoscientific reasons for eugenic sterilization were described to the families of these individuals, Gosney's coverage of the process of obtaining consent indicates that the families were also told their alternative: if they do not consent, their institutionalized loved one will remain in custody indefinitely. If this was the case, it is reasonable to conclude that families felt coerced to consent to the procedure on behalf of their loved ones, who were legally incapable of providing consent due to having been (problematically) diagnosed as "feeble-minded."[111]

Tragically, what little choice there was for these families could itself have been a farce. A family that refused to consent to the operation on an institutionalized loved one believed that this

[110] Ibid. 6
[111] Ibid. 6

lack of consent prevented the operation; yet, the operation advanced despite their protest — as was previously highlighted in the discussion of Dr. Chávez-García's book.[112] This demonstrates the extreme amount of discretion wielded by the medical superintendents of the state institutions who performed these operations. Seeking consent neutralized legal threats and protected the sterilization statutes while conceding to the demands of the most threatening and indignant families avoided potential lawsuits altogether. However, families which were indignant and wanted to protect their loved ones from eugenic sterilization were evidently not always able to do so. If the superintendent decided that a family's protests were not legally threatening, the operation was performed nevertheless, without concern about liability or the defeat of the statute.

Casting a Wide Net

A major and problematic facet of these consent forms, which provided essential legal cover to the practitioners of sterilization, is their broad allowance of consent to sterilization by family members of the institutionalized individual. In fact, Gosney's publication discussing the attitudes of the so-called "patient's" families provides an insight into which family members the practitioners targeted for the problematic consent to eugenic sterilization; namely, just about anyone. For the "feeble-minded" and "insane," parents, spouses, and siblings were among the groups eligible to consent to their loved ones' sterilization; however, in many cases, "other relative or guardian," was cited as sufficient in status to consent to the operation.[113] The categorization is extremely ambiguous, but apparently allowed for even more distant relatives to consent to the operation.

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[112] Chávez-García, *States of Delinquency: Race and Science in the Making of California's Juvenile Justice System*, 147, 148.
[113] E. S. Gosney, "Attitude of the Patient's Relatives towards the Operation," in *Eugenic Sterilization in California*, 4.

The implications of this are not clear. One possibility is that in instances wherein immediate family members — such as spouses or parents — refused to consent to the operation on behalf of a loved one, the practitioners expanded their search to find a further removed relative willing to consent instead. Alternatively, practitioners may have immediately reached out extensively to seek consent from any relative willing to do so. Regardless, the policy that allowed relatives to consent to the operation on behalf of loved ones provided a broad definition to include as many potential family members as possible. In doing so, institutions could increase the probability of obtaining consent and, consequently, securing legal cover for the operation.

Even so, Gosney reveals in his publication that one-fourth of the sterilizations that took place in California moved forward with no consent from family members. However, he disregards this staggering number as largely due to relatives being either dead or otherwise inaccessible.[114] Gosney subsequently attempted to reframe the scale of autonomy-violating sterilization procedures, approximating that "probably not in 1 case in 10," operations moved forward over the consent of the relatives.[115] Even though Gosney's approximation relies on problematic characterizations and assumptions, he also reveals the extent to which practitioners managed to acquire the consent of the victims' families. One-in-ten operations having proceeded over the protest of families — all the members of which were capable of providing consent on behalf of an institutionalized loved one — is used in Gosney's conclusion to portray resistance to eugenic sterilization as a rarity. However, the number instead resulted from a combination of practices which coerced families into consenting to family member's sterilization and often

[114] Ibid. 14
[115] Ibid. 14

allowed distant relatives or siblings to consent, thereby inflating the proportion of operations that ostensibly obtained "consent."

Court-Ordered Sterilization

Surprisingly, rather than function as a check and balance, the California courts directly took part as practitioners of eugenic sterilization in California. While California sterilization statutes provided medical superintendents an extreme amount of discretion, these same laws also extended the decision-making power to judges. This was reflected in statutes that made sterilization a punishment for certain types of criminals. The 1942 Yale Law Journal provides some commentary on the concept. However, it is important to note that even the legal commentary of Yale Law was informed in part by the information collected by the Human Betterment Foundation. The law journal bases its brief synopsis of sterilization history up until June of 1942 — the date of its publication — on the claims communicated to them by the Human Betterment Foundation, and went as far as to claim that "probably almost all persons affected were feeble-minded or insane."[116] The eugenic aims of the compulsory sterilization statutes, according to the journal, had been increasingly combined with the "more immediately practical objectives of reducing public welfare and punishing crime."[117] However, these statutory provisions having differing aims have, as expressed by the journal, conflicted with one another in judicial review.[118] Sterilizations of the "feeble-minded" were authorized in approximately thirty

[116]"Constitutionality of State Laws Providing Sterilization for Habitual Criminals," Yale Law Review (June 1942), 1380
[117] Ibid. 1380
[118] Ibid. 1380

states by this point, and courts were generally "willing to take judicial notice of the strong scientific evidence of the inheritability of feeble-mindedness."[119]

Before *Buck v. Bell* in 1927, the statutes' largest judicial roadblock was their intent to utilize eugenic sterilization to reduce the cost of public care. In doing so, some courts argued, these statutes violated the Fourteenth Amendment's equal protection clause.[120] Since *Buck v. Bell*, however, courts have largely upheld sterilization laws. However, the judiciary's decisions shared a common theme which the review highlights. Namely, that the courts insisted that sterilization laws receive a thorough hearing in each case, to allow each individual to dispute the question whether their children are likely to be feeble-minded.[121] Consequently, judicial review, while supporting sterilization laws, had set a precedent for mandatory individual hearings. For the most part, the Yale Law Review glosses over the legal implications of eugenic sterilization of the "feeble-minded" to pivot and discuss the sterilization of criminals, which the review believed to have raised different, more serious concerns.[122] However, the Human Betterment Foundation did take an interest in exploring the topic of individual hearings and the ways in which the precedent set by the judiciary could be circumvented. In fact, a skeleton brief held by the Foundation reveals that the Foundation investigated this precedent, presumably to see if it was possible to mount a legal defense if a victim was sterilized without a hearing.[123] Nevertheless, the Yale Law Review characterizes some of these state laws as aimed at punishing the "habitual and sex criminals," and were invalidated as cruel and unusual punishment, as happened in Nevada;

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[119] Ibid. 1380
[120] Ibid. 1381
[121] Ibid. 1381
[122] Ibid. 1381
[123] Author unknown, Skeleton Brief, "Re: 'Day in Court' by Right to Appeal From Board's Decision to Sterilize Without Appearance of Patient at Hearing"

however, California and Washington statutes — while both described as purely punitive in intent — nevertheless were not struck down in court by the time the Yale Law Journal discussed them.[124]

Interestingly, the Yale Law Review took a more critical stance in discussing the legal validity of sterilization laws that applied to criminals. Rather than adopt the viewpoint of the most enthusiastic eugenicists, the Yale Law publication asserts that it is instead "a many-sided maladjustment between an individual and his environment," which was recognized as the "typical background of criminality."[125] The publication characterizes the position linking crime to genetics as being extreme enough to have given even the most ardent eugenicists pause.[126] These doubts reflected by the Yale Law publication are used to explain why criminals were not widely sterilized. As a result, the statutes allowing for criminals' sterilization would have been likely to suffer defeat if brought in court, and were therefore only enforced conservatively.[127] The balance between eugenic and punitive aspects of the criminal sterilization laws made it significantly more difficult to navigate the legal landscape. Should a state — such as California — choose to target all "habitual" criminals, the statute would take a clear eugenic purpose, which the Yale Review argues would not have been affirmed reliably in court, whereas explicitly targeting a certain group of criminals could violate the equal protections clause that had defeated several sterilization statutes prior.[128] Consequently, the risk that the sterilization law would be struck down was high enough to cause the practitioners of sterilization nationwide — and therefore within California — to enforce the statute with discretion as a means of protecting it.

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[124] "Constitutionality of State Laws Providing Sterilization for Habitual Criminals," Yale Law Review, 1382
[125] Ibid. 1383
[126] Ibid. 1383
[127] Ibid. 1383
[128] Ibid. 1384

The Yale Law Review further marks a key difference between sterilizing criminals and the perceived "feeble-minded," in that the article questions the use of an individual hearing to ascertain hereditary criminality whereas it remains in lockstep with eugenic beliefs through asserting that a hearing could indeed indicate hereditary "feeble-mindedness."[129]

The Yale Law Review was not particularly specific to California; certain aspects of the California sterilization program are therefore left out of the discussion. Another major facet of eugenic sterilization in the Golden State which does not receive discussion in law publications is the fact that California judges used their power to authorize sterilizations. One case of particular interest was reported by the *Los Angeles Daily Journal*.[130] In this case, a 23-year-old male who pled guilty to the statutory rape of a 13-year-old girl was given probation provided that he submitted to a sterilization procedure. However, when the defendant violated probationary terms and argued that submitting to sterilization was too extreme, he was brought to court once again. Yet, criminals such as the 23-year-old man were not the only ones compelled to the operation by court judges.

Another report in the Human Betterment Foundation saw court-ordered institutionalization and sterilization as a frequent enough topic to warrant its own study. Paul Popenoe reveals that a significant number of girls incarcerated in the Sonoma State Home for the Feeble-Minded were forcibly placed there under court-orders, many of which specifically demanded sterilization.[131] Some girls were sent by social workers for sterilization only, with the expectation that they would be sent back to their original community. The logic, Popenoe

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[129] Ibid. 1386
[130] Caryl Warner, "Conditional Sterilization Upheld: Medical Action as Part of Probation Said Reasonable," *The Los Angeles Daily Journal*, October 21, 1936.
[131] Paul Popenoe, "Patients Sent to State Institutions for Sterilization Only," *Eugenic Sterilization in California*, 7

reveals, was that the social workers likely believed that the girls sent for sterilization were "qualified to get along successfully in the community."[132] Even when these girls were coerced by social workers or others into being institutionalized and sterilized, the ultimate authority on the girls' fates after reaching the institution was the medical superintendent. Popenoe ominously praised this situation, remarking that "fortunately, the medical superintendent is the sole judge of the proprieties, once a girl has been committed legally, and he can refuse to release her if her record while in the institution does not warrant it."[133] Because some social workers — who themselves were practitioners of eugenic sterilization — were deemed "too optimistic" in their assessment of the victims of sterilization — many were incarcerated indefinitely.[134]

This presents a certain hierarchy among the practitioners of sterilization, wherein some were empowered by the law more than others. Medical superintendents occupied the highest rung of power, with very few authorities capable of challenging their judgement. Social workers could themselves be overruled whereas the victims' non-consenting families often had no sway. Arguably the only power that was capable of checking the unmitigated power held by medical superintendents into question was the court system. This reflects why it was the medical superintendents who acted to prevent cases from reaching the court. Not only was the action of coerced eugenic sterilization one with dubious legal standing, but the process by which the laws were enforced in California could have caused some otherwise eugenicist judges to overturn the law on procedural grounds. Judge White's dissenting opinion in the *Garcia v. State Department of Institutions* case was one such reflection of this concern, as his opinion attacks the California law's procedures without questioning the practice. Thus, the best means of protecting the law,

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[132] Ibid. 14
[133] Ibid.
[134] Ibid.

from the perspective of eugenicist practitioners, was to prevent cases from reaching the court. In doing so, these practitioners sought to win the legal battle before it began; the targets for sterilization reflected exactly this ruthless legal concern.

Indefensible: Targeting the Defenseless

Californian practitioners of sterilization routinely and disproportionately targeted groups of people who were less likely to have the means to resist. Namely, minorities and women were more likely to violate eugenicists' metrics of intelligence and civility based on white and middle-class American values.[135] In fact, practitioners responsible for institutionalizing the "feeble-minded" used several problematic metric to measure intelligence, such as the modified version of the Simon-Binet IQ test. They even went as far as to assign a so-called "moral rating" to inmates based on moral values held by the white, middle-class practitioners.[136]

Tragically, the targets of the eugenic sterilization program were themselves the most vulnerable in the state and among the least able to protect themselves through the court process. Because the victims of sterilization were disproportionately women and minorities, many victims and their families simply had no means to resist.

Women were very often a target of institutionalization and sterilization for what eugenicists and middle-class Americans saw as "sex offenses." Functionally, expressing one's sexuality violated the moral codes of the practitioners of sterilization, who used it as a metric for intelligence and "feeble-mindedness." Sexual restraint was especially important for women — the lack thereof was accordingly particularly dangerous. In fact, in the Sonoma State Home for

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[135] Miroslava Chávez-García, *States of Delinquency: Race and Science in the Making of California's Juvenile Justice System*, 90

[136] Paul Popenoe, "Patients Sent to State Institutions for Sterilization Only." *Eugenic Sterilization in California,* 8

the Feeble-Minded, which institutionalized many perceived sex offenders, reflected how gender strongly influenced institutionalization. In the institution, 65% of white, 87% of African-American and 70% of Mexican-American inmates deemed "sex offenders" were women.[137]

The author of this Human Betterment Foundation draft report attributed the huge gap between men and women institutionalized for sex offenses to, he argues, the link between intelligence and sexuality. The "mentally deficient" man was characterized as being "undersexed" whereas their female counterparts were institutionalized for being "persistent sex offenders," whose "equally deficient but better-behaved sisters" were allowed to stay at home.[138] These characterizations imply that the perceived intelligence of men and women was thought to be reflected in their sexuality. It further reveals that many of these women institutionalized as "sex offenders" were seen as dangerous to society. The characterizations based on gender were defined by double-standards. While the "mentally deficient" man lacked the aggressiveness and qualities of sex offenders (and, the author noted, were also unattractive to women), "the mentally deficient female, on the other hand, is easily exploited, is lacking in inhibition, and is a typical sex offender."[139]

Alongside gender, race played a significant role in deciding one's fate. Another Human Betterment Foundation report reveals, for instance, that a disproportional 4% of the sterilized "feeble-minded" victims were African-American, while only 1.4% of Californians were African-American.[140] Furthermore, the report claims that 9% of the sterilized "feebleminded"

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[137] Author unknown, "Sex Offenders Before Commitment," Human Betterment Foundation
[138] Ibid.
[139] Ibid.
[140] Author unknown,, "Feebleminded—nationality and birth." 1

were Mexican, who comprised a mere 6.5% of the California population.[141] In contrast, the author notes, whites were underrepresented among the sterilized population. According to the report, only about one-third of the "patients" were "native American [white] stock," and even fewer were of "old American ancestry."[142]

Not only were women and minorities more likely to fall victim to the institutionalization of the California eugenic sterilization program, but they were more likely to be sterilized. An untitled document analyzing consent found in the Human Betterment Foundation documents alludes to exactly this. The author reported that 11% of white American girls were sterilized without consent, whereas 28% of Mexican-American girls were sterilized without any written consent.[143] It is important to note that the source of this information is a draft of an analysis whose author is unknown and which may have been subsequently edited. The figures should not be interpreted as exact, but may instead indicate what was a larger, but extremely sinister practice — namely, that the established legal cover that consent forms provided the practitioners of sterilization reflected which groups of people were seen as more legally threatening than others, and that vulnerable groups were accordingly targeted for sterilization.

Two previously established tactics to suppress legal challenges — consent forms' legal coverage and the discretion of medical superintendents not to sterilize when an indignant family is too legally threatening — reveal that sterilization outcomes were in part decided by the legal threat represented by the race of the victims. Practitioners were more than twice as likely to sterilize Mexican girls than their white counterparts when families refused consent; Mexican

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[141] Ibid.
[142] Ibid. 1, 2
[143] Author unknown, untitled draft analysis of consent figures written and preserved by the Human Betterment Foundation. It isn't clear when this was written, or by whom.

families must not have represented as significant a legal threat to California sterilization laws as did their white contemporaries. White families were more likely to have access to the financial means to present a strong legal challenge to California sterilization laws, and likely gave medical superintendents pause. In contrast, Mexican-Americans and other minority groups in California had access to far fewer opportunities and financial resources to follow through on a legal threat. Consequently, the practitioners of sterilization were more likely to disregard the protests of Mexican-American families and continue with the operation.

Conclusion

The findings of my research reveal the ruthlessness of the Californian practitioners of eugenic sterilization. The Golden State notoriously deprived tens of thousands of people throughout the twentieth century of their right to reproduce, empowering a group of practitioners to enforce the eugenic law. The state's sterilization program was enforced in many ways that extended beyond the letter of the law as a means of propagating itself. The practitioners who enforced the same sterilization statutes which empowered them exhibited an ambition to not only aggressively pursue eugenic sterilization, but the initiative to suppress, avoid, and otherwise hamper potential legal challenges to the law.

The discretion of the medical superintendents who were keen to protect their ability to sterilize allowed them to selectively enforce their rights. If a so-called "patient," or more likely his or her family members, represented a legal threat to the California sterilization laws, then the superintendents could respond accordingly and opt to avoid risky procedures. In doing so, the most significant legal threat — families with both the intention and financial means to stop their

loved ones' sterilization through court — was appeased and functionally benign to the legal status of California eugenic sterilization. In other words, the most threatening lawsuits may simply never have gone to court.

The practice of obtaining consent functioned to further safeguard California's sterilization laws and became commonplace across the state. If the practitioners' other methods to suppress legal challenges failed and the laws were challenged in court, the consent forms would have exonerated the physicians from personal liability under some laws while also having weakened the case of the victim. The victims, too, were targeted based on the threat they posed to the sterilization laws. Tragically, people of color and particularly women, were disproportionately targeted for institutionalization and sterilization. The idea of white racial purity had already been a large motivation within the eugenics movement; pursuing this end, from the eugenicists' callous perspective, was also more legally convenient.

Limitations

The historiography covering the legal history of California sterilization is extremely limited. This is in part because of the accessibility, or lack thereof, of court case proceedings. Accessible online legal archives lack materials for California sterilization cases. Many court cases may simply not have been preserved at all, while others are inaccessible, ostensibly to protect the privacy of the victims. This lack of accessibility is problematic. Not only does it hamper or completely prevent aspiring researchers from approaching the topic, but it also utilizes the troubling logic that the targets of eugenic coercive sterilization were "patients" rather than victims. The practice of ostensibly protecting their privacy instead functionally suppresses a dark history and muffles victims' individual stories.

Newspaper coverage does reveal that more lawsuits took place to challenge California sterilization laws than online legal archives would initially suggest. However, the results of these lawsuits are unclear, and the proceedings unknown. The court documents and opinions that have been preserved through the Human Betterment Foundation supplement this conclusion and provides some insights into the ways in which the judicial system in California interacted with sterilization laws. Regardless, the lack of obvious court proceedings relegated the legal history of California sterilization to the sidelines, and has only been touched upon in tangential ways.

However, knowing that lawsuits challenging Californian sterilization have taken place, and that the practitioners of sterilization made conscious efforts to suppress these legal challenges, indicates an avenue of historical research which has yet to be fully explored. In this, there is a new facet of Californian history that has immense importance, but of which historians have too little of an understanding. This thesis as an initial academic study of the legal history of California sterilization is simultaneously limited in the specificity of its conclusions and sweeping in its implications. Namely, my research indicates that Californian practitioners of sterilization suppressed legal challenges in a variety of ways, but that the particulars of each practice they used in pursuing this end should be subject to further inquiry.

Moving Forward

I sincerely hope this is a topic which will be expanded on. There are many different and intriguing ways to expand on this topic which I had hoped to explore, but could not due to time constraints. For instance, while I did utilize newspaper coverage discussing challenges to California sterilization laws, my use of media coverage is far from exhaustive. Many newspaper archives have reported on such challenges, with articles archived digitally and physically waiting

to be discovered. Further, documents covering court proceedings may be accessible to those with the time, resources, and tenacity to pursue them. The state courts in Los Angeles, for instance, may allow scholars to access their archived materials. A major caveat is that some state archives may apply strict limitations in accessing documents, such as imposing a prohibitively high cost to receive copies or only allowing prospective academics to view cases one at a time. As a student researcher with time and money constraints, these barriers to access were impractical to overcome.

Lastly, my research relied heavily on documents preserved by the California Institute of Technology Archives, which allowed me to access the Gosney Papers and a vast amount of information on California sterilization. The archives provided a large amount of material which my research draws upon. However, my thesis is still far from exhaustive in exploring it. Thus, students and historians interested in pursuing the history of eugenic sterilization — be it in studying its legal facets or otherwise — would likely find useful or even pivotal primary sources here.

Final Points

When I first began researching this topic, I was fascinated by the scarcity of sources. It appeared as though tens of thousands of Californians fell victim to a horrifying eugenics program and that the court system, which presented a final hope as the last check-and-balance, had simply never heard a case on the topic. For an aspiring public interest lawyer, this was chilling. The implications of laws on individual freedoms demand attention and the thousands of marginalized peoples affected by these laws deserve representation. In making this the topic of my senior history thesis, I hope to highlight the need to move forward by looking back at the darkest

chapters of our history. That the Golden State suppressed court challenges in part by targeting those without the means to access legal resources illuminates a much-needed, if still inadequate solution: having civically-engaged public interest attorneys to represent those without the means to defend themselves.

By gleaning wisdom from this legal history, one can recognize the importance of the legal practice and its ability to stave off authoritarian practices. However, it is similarly important to implement solutions through policy. Because the practitioners of sterilization surreptitiously suppressed legal challenges to preserve the laws which empowered them, it's vital to recognize the causal factor that facilitated the practice: absolute practitioner discretion. Medical superintendents and other individual practitioners of sterilization were cognizant of their immense discretionary power and used the same authority to propagate itself. Consequently, policymakers must be wary as to not empower individuals with the unchecked discretion that enabled the abusive practices revealed in this thesis. Thankfully, Californians today need not worry about eugenic sterilization. The experience of looking back to this history has provided me with both the perspective and motivation to aspire to ensure that we continue to move forward.

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