Preying on the Marginalized: U.S. Political Control of Mexican Reproduction

by

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ABSTRACT

This thesis explores the influence of U.S. political elites and special interest groups on the reproduction of Mexican-origin people both within the United States and Mexico. I studied reproductive rights as a human right which demands both non-interference from the government and the provision of favorable conditions to guarantee the exercise of reproductive choice. I then compare domestic policy that affects Mexican reproduction with foreign population control policy. I find that foreign policy uses more overt anti-abortion language and singles out Mexico as the target of population reduction programs. Meanwhile, domestic policy methods of controlling Mexican reproduction take the form of intentional policy side effects which do not explicitly refer to Mexico but primarily and negatively affect those of Mexican descent. Finally, I determine that political elites and special interest groups do not represent public opinion and yet co-opt the policy-making process. Indeed, I conclude that reforms to the policy-making process are needed to enhance democratic authority and protect reproductive autonomy as a human right.
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INTRODUCTION

“Power always privileges its own discourse while marginalizing those who would challenge it or that are the victims of its power.”
— Junot Díaz

Overview

In 1978, one sole reporter stood outside the Los Angeles district court steps. Only one reporter determined that the Madrigal v. Quilligan court proceedings were noteworthy. To the Mexican-origin community of L.A., this class action case was responsible for the forced sterilization of ten Mexican women. Even though the Judge sided with the County Hospital, the Mexican-origin immigrant community understood the case to be crucial to the creation of the Chicana identity and the demand for the recognition and respect of their bodies and rights. Thanks to this case, Chicana activists were able to successfully push for a three-day waiting period between signed consent and sterilization operations. White feminists, who did not see the need for protection against coercive sterilization, were vocally opposed to what they saw as an infringement of their rights.

Often, the violations of Mexican-origin reproductive rights have gone unnoticed in popular awareness. During Madrigal v. Quilligan, other debates took precedence in the public eye, notably the abortion debate that had riveted the country since the U.S. Supreme Court had accepted the appeal in Roe v. Wade, 410 U.S. 113

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(1973). Following the landmark decision in which the Court invalidated a Texas statute barring abortion and upheld the constitutional rights of women to terminate a pregnancy so long as the fetus had not yet reached viability, the country entered an ensuing period of controversial debate. In the American public sphere, questions over reproductive rights were largely subsumed by the holding in *Roe v. Wade* and did not focus on questions of reproductive rights for marginalized immigrants.

Since the 1973 Court decision of *Roe v. Wade*, lawmakers in both the federal government and state governments have been remarkably efficient in balancing against unlimited rights to reproductive autonomy. U.S. lawmakers and special interest groups hold much of the decision-making power in the abortion and reproduction debate, effectively shutting out affected marginalized women from the conversation. In many cases, immigrant women, especially Latinas and Mexican-origin women, have been vulnerable as special interest groups and political elites work to implement regulations and policies that control the sphere of women’s reproductive autonomy. U.S. policies have not been uniform in their effects across racial dimensions and across immigration status; rather, the effects of state-regulation and state-policy have been different for Mexican-origin women. The differential effects of U.S. government policies on Mexican-origin bodies needs to be heightened within the debate over reproductive rights in the United States.
Why Mexicans Bodies?

Mexican-Americans are not fully integrated into U.S. mainstream society, but due to their large numbers, they threaten the white, Protestant culture of U.S. society which makes them ideal scapegoats for U.S. economic and social issues. Indeed, those of Mexican descent are often seen as threats. For instance, political scientist Samuel Huntington claims “Mexican immigration looms as a unique and disturbing challenge to [American] culture integrity, [American] national identity, and potentially to our future as a country.” Mexican immigrants and those of Mexican descent are seen as threats due to the long border with Mexico, the geographic concentration of Mexican-origin residents, and the fear of an uncontrollable undocumented population. The border between the U.S. and Mexico is a total of 1,951 miles long; it is the only border between a “developed” and a “developing” country, and is the most frequently crossed border in the world. This long border leads to fear that it cannot be well defended, and that many people are entering without proper documentation. In 2014, estimates based on Government data showed there was around 5.8 million undocumented people of Mexican origin residing in the United States. However, not all of them crossed the border illegally and in fact there are 5.3 million undocumented immigrants of other nationalities. That reality is not

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7 Ibid.
well understood and in the March 2018 omnibus spending bill, 1.6 billion dollars were designated towards replacing and building barriers between U.S. and Mexico, and additional funding was designated for both the U.S. Customs and Border Protection and for U.S. Immigration and Customs Enforcement.8 The idea of a so-called “Mexican threat” comes in part from the idea that the long border allows undocumented people to enter en masse and that the undocumented population is exclusively Mexican.

As the number of those who identify as Mexican or of Mexican descent increases, so too does the fear felt by some sectors of society that Mexicans are trying to create a “new” Mexico in the Southwest. In 2013, almost 10% of the U.S. population identified as Mexican (34.6 million,) a third of whom are foreign born.9 In the Southwest, Latinos make up 34.3% of the population (here the Southwest includes only: California, Nevada, Arizona, Colorado, New Mexico, Texas), and nearly half of Arizona is Latino (48%).10 These high percentages create fear that people of Mexican descent are trying to take back land that once belonged to Mexico to form a new Spanish-speaking country.11 Much of the Southwest did in fact belong to Mexico

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before the 1848 Treaty of Guadalupe Hidalgo. Even those who do not believe that Mexicans are taking back the land officially, are concerned that they are transforming the South of the United States into another Mexico with “the maintenance of the Spanish language and traditional ‘Mexican’ values.”

Setting these fears aside, it is nevertheless undeniable that Mexican immigration has changed the political landscape. Politicians now strive to get the Mexican and Hispanic vote in U.S. elections. Most Latinos live in California, Florida, Texas, New York and New Jersey. In a presidential election, those states are worth 171 electoral votes or 63% of the 270 electoral votes needed to win the presidency. As academic Neil Foley says, “if you can’t get Texas, California and Florida, you’re going to have a hard time getting the presidency.” The number of Mexican people and their social influence particularly in the Southwest of the United States create fear for some that the Mexican culture will overpower the current majoritarian white, protestant culture of the United States.

Since the Great Depression, those of Mexican descent have been scapegoats for American social and economic problems. During the Great Depression, many U.S. citizens as well as the U.S. government blamed Mexican-origin people for the lack of jobs. They blamed the Mexican population, even the American citizens of Mexican descent, for taking jobs that did not belong to them as well as for

12 Ibid.
15 Ibid.
introducing disease into the country.\textsuperscript{16} The U.S. government, to deflect criticism about the high unemployment rate, deported Mexican-origin people by the thousands. In what was termed “repatriation,” the U.S. government deported over a million Mexicans and Mexican descendants.\textsuperscript{17} Indeed, 60\% of those deported were American citizens, many of whom had never been to Mexico before.

Part of the reason Mexicans were singled out was for the relative ease with which the U.S. government could send people to Mexico and for the simple reason that Mexicans were part of the then most recent immigration wave.\textsuperscript{18} Instead of paying for planes, the U.S. government was able to send people of Mexican descent on buses and trains to Mexico, and some Mexican-origin families decided to leave in their own vehicles.\textsuperscript{19} The U.S. government used the deportation of Mexicans as a way to convince other citizens of its efforts to mitigate the economic crisis.

Today, under the Trump administration, Mexicans and Mexican-Americans are used as scapegoats once again. President Trump has blamed Mexicans for increases in crime, low wages, unemployment and the increase in the presence of drugs.\textsuperscript{20} In a six-page report titled “Immigration Reform that Will Make America Great Again,” Trump proposes, among other things, mass deportation and detention

\textsuperscript{16} Ibid.
\textsuperscript{18} Ibid.
\textsuperscript{19} Ibid.
of Mexicans, building a wall along the border and tripling the number of U.S. Immigration and Customs Enforcement (ICE) officers.\textsuperscript{21} These things would make not only the U.S. poorer but also businesses, Mexico and the Texas economy.\textsuperscript{22} However, Trump was elected in part due to this xenophobic rhetoric which made him appealing to working-class, white voters, among others, who wanted a simple explanation for their economic struggles. “Globalization, automation, ‘skill-biased technical change,’ though more to blame, do not give them “an illusion of understanding, the comfort of blame, [or] false hope for a better life.”\textsuperscript{23} Indeed, it is simpler to identify a foreign group as the reason for economic difficulty rather than more global market shifts which are not easily explainable or reversible. Throughout U.S. history, different immigrant groups have played the role of the scapegoat, most infamously, the Irish community who faced the brunt of xenophobia and discrimination when they came to the U.S. in significant numbers.\textsuperscript{24} As Mexicans dominate the most recent immigration wave, they have been vilified and chosen as the next target of xenophobic political factions.

Mexican-origin women are also singled out for discrimination because of the negative stereotype against them as “over-breeders” and border-hoppers having “anchor babies”. These are two misconceptions from which it has been hard for Latina women and chiefly Mexican-origin women to disassociate. Contrary to the

\textsuperscript{22} W., “Blame Mexico!”
\textsuperscript{23} Ibid.
concept of anchor babies, immigrant women who give birth in the U.S. are not able to receive U.S. public services merely for having children born in the United States. Even when services are attainable, many immigrant women are wary of accessing them for fear that it might jeopardize their immigration status or that of a family member.25

As to the claim of high fertility rates, Mexican-origin women only have slightly higher numbers of children than white women in the United States. In 2016, per 1000 women, Hispanics in the United States had 2092.5 children, while white (non-Hispanic) women had 1719 babies and black (non-Hispanic) women had 1832.5.26 In addition, there is a double standard against the higher birth rate for Hispanics and women of color versus the higher-than-average birth rates of predominantly white religious groups. In 2006, Utah, a state that is over 70% Mormon and only 8% foreign-born, reported the highest birth rate in the country.27 Latina reproduction is neither out of control nor part of some great conspiracy in which women are having children to access public funds and services. Yet a persistent stereotype exists which limits the social acceptance of Latina women and children and labels them unfairly as producing too many children.

27 Huang, 20.
The Pendulum of Reproduction Movements

The history of reproductive control politics in the United States has not been linear, each step towards liberalization and giving women control over their own bodies and their reproduction has been met with backlash and countermeasures. The recent history of reproduction movements can be summarized by four distinct periods detailed in Linda Gordon’s thrice-revised *The Moral Property of Women: A History of Birth Control Politics in America*.

The first major moment is the “voluntary motherhood” movement which started in the second half of the nineteenth century. Feminists, whose numbers included suffragists, moral reformers, and members of the free love movement, created this movement centered on preserving a woman’s choice and autonomy out of concern that the industrial revolution was taking away their independence and disintegrating the family. They believed giving women political power and the choice over motherhood would help reinforce the family. The next stage, lasting from 1910 to 1920, was a period when the birth control movement rose to ascendance. While the women of the “voluntary motherhood” movement advocated practicing abstinence or coitus interruptus, members of the birth control movement advocated for contraceptive use. This idea was not accepted by all women or even all feminists. Without birth control, male supremacy was assured but so too was male responsibility for their own sexual behavior. Birth control placed the onus of

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29 Ibid., 59.
30 Ibid., 3.
reproduction on the woman, her actions and her choices. However, the movement had growing popular support and helped separate sexual activity from reproduction.31

The third movement, “family planning,” was more conservative in response to the first two radical steps and lasted from 1920 to 1970.32 It positioned reproduction and reproductive control back in the family context. Organizations like Planned Parenthood framed new technologies in birth control as tools for planning - not as helping young adults be more promiscuous, but rather as helping loving families decide how many children they wished to raise.33

Gordon describes the fourth and most recent movement as “reproductive rights,” which started in the 60s.34 It created the legalization of abortion. Women called for “control over [their] own bodies,”35 condemned sexual and gender inequality and campaigned for the economic and social liberation of women. In 2007, when Linda Gordon last revised her book (the first edition was in 1976), she determined that the backlash to reproductive rights came largely from the Christian Right starting in the 1970s.36 Although the pushback was presented as religious, the underlying tensions remained - others sought to control women’s reproductive rights.

I argue that this backlash is still occurring today but involves more than the Christian right’s “flagship campaign” centered on the claim of a “right to life.”37 Indeed, the reproductive rights movement created an environment where political elites who wished for the continuation of government control over reproduction could

31 Ibid., 128.
32 Ibid., 4.
33 Ibid., ix.
34 Ibid., 4.
35 Ibid., 297.
36 Ibid., 4.
37 Ibid.
join forces with anti-abortionists in an attempt to control reproduction. Since controlling mainstream abortions in the U.S. has been largely unsuccessful, these political elites turned to the control of immigrant women’s bodies and, in particular, the easy to target Mexican-origin woman.

**U.S. Policy and the Question of Agency: Determining Who Sets Policies**

Though officially the stances adopted by the U.S. Government are represented by laws and policies, more than just legislators or judges have a role in determining the content and practices embodied in public policy. Interest groups also play an important role in the creation of reproduction policy. Interest groups represent the “attentive public” which is a cause for concern as their opinions and actions are often the most visible and yet not fully representative of the population. Indeed, interest groups “distort aggregate public opinion significantly” and yet hold the most influence over legislators’ votes. Moreover, political parties and economic elites also exert influence over public policy decisions. Therefore, although in theory public opinion should shape public policy, in practice, policy is actually more influenced by political elites and special interest groups.

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39 Ibid., 709.
As a result, the desires and intentions of “the United States” as expressed by these groups takes into account the values and interests of the most vocal of society. The voices of those who are not vocal are not necessarily represented or respected. This puts in jeopardy the voices and opinions of the marginalized such as the poor, people with disabilities, immigrants, LGBTQ communities, and members of ethnic, indigenous and linguistic minorities.\textsuperscript{41}

Although citizens and individuals do shape public opinion, their voices are not the most influential when it comes to shaping policy.\textsuperscript{42} Since many religious groups have clear stances on the issue of abortion and reproduction, legislators who identify as religious, have personal views that a) differ from their constituents b) are stronger or more extreme than their constituents, and c) make them more inclined to listen to likeminded interest groups, thus distorting their image of the values held by their constituents.\textsuperscript{43} Legislator policy decisions can also be influenced by ascriptive factors such as gender\textsuperscript{44} or party affiliation\textsuperscript{45}. It is therefore not unsurprising that political elites, who are both tied to a political party and entitled to their own personal beliefs, tend to take more extreme ideological positions than their electorate on issues like abortion policy.\textsuperscript{46}

\textsuperscript{43} Norrander and Wilcox, “Public Opinion and Policymaking in the States,” 309.
**Literature Review: Conditions for Reproduction Abuses**

No comprehensive examination of Mexican reproductive violations would be complete without delving into the investigative work of both Elena Gutiérrez and Alexandra Minna Stern. Both women cover the *Madrigal v. Quilligan* case in detail; however, the scope of their analysis ends in the domestic sector. Gutiérrez determines that the case was the result of a “perfect storm,” or a set of favorable, xenophobic conditions which include the rise in popularity of the 1968 book, *Population Bomb*, fears about Mexican over-consumption of public services and the ready availability of federal family planning funds. Though I too have observed the influence of these trends, I find them insufficient to explain the systematic violations of Mexican reproductive rights occurring not solely in the United States, but also in Mexico.

Stern, on the other hand, links the women’s sterilizations to the long U.S. history of eugenics. She thus implies that such actions occurred as an extension of past eugenic directives. Though I do not disagree that this history makes marginalized women vulnerable to continued reproductive abuses, I believe many of the reproductive rights violations, like the ones present in *Madrigal v. Quilligan*, are the result of systemic problems with the U.S. policy-making process. Indeed, the policies pursued by the political elite are not influenced by the average citizen, but

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rather by “an unrepresentative universe of interest groups.” 49 In a 2014 study, Gilens and Page determine that special interest groups, not average citizens, influence policy and that members of these groups are part of what E.E. Schattschneider termed a “heavenly chorus” with “upper-class accents.” 50 In this thesis, I will determine that political elites and domestic special interest groups set the direction of reproductive control policy even in the international field. Unlike the comparative thinker, Peter Gourevitch, who is inclined to believe that the international system can be the explanatory variable for domestic structure, 51 I identify the beliefs of domestic political actors and the actions of special interest groups as the primary cause for Mexican population control in both domestic and foreign policy.

Thesis Overview by Chapter

In Chapter One, “Reproductive Freedom,” I argue that reproduction should be understood as a human right. Understanding reproductive freedom as a human right rests on the premise that individuals are awarded assurances of non-interference by state and other actors and that governments should provide services and the necessary conditions to make reproductive decisions favorable. These assurances should only be voided if an individual’s choice severely harms another. However, reproductive liberty entails freedom of choice which extends to decisions about if, when and how to give birth and how many and what kinds of children to have.

50 Ibid.
I determine that reproductive freedom allows for greater self-determination, increased welfare, and a stronger equality within a society. Despite the universal requirement that every person have the freedom to make autonomous reproductive decisions, not every person in the United States is protected the same way under the law. Indeed, though *Roe v. Wade* relies on the 14th Amendment and the right to privacy that guarantees every woman the right to make her own reproductive choices, the Judge in *Madrigal v. Quilligan* was unwilling to extend these universal protections provided by *Roe* to the Mexican-origin sterilized women in Los Angeles who were arguing that the right to terminate a pregnancy should imply the right to become pregnant.

Though the ruling of *Roe v. Wade* had public support, in particular from feminist groups who had been pushing for cases on abortion to be heard by state and federal courts, the case created an opportunity for anti-abortionists to rally and join forces.\(^{52}\) Anti-abortionists tried to obtain a constitutional ban on abortion. They lobbied in state and national elections but ultimately were most successful at persuading Congress to eliminate abortion services from many federal programs such as prohibiting it in countries receiving foreign aid.\(^{53}\)

*Roe v. Wade* created a fervor in certain sectors of the U.S. population to control women’s bodies and reproduction. One way to do so, was to focus on controlling the bodies of those most vulnerable; those newly arrived, not-yet-

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\(^{53}\) Ibid.
assimilated foreign bodies. My analysis will show how Mexican-origin bodies became primary targets for control given the contentious politics of reproductive freedom in the United States.

Finally, I explain how reproductive rights and eugenics are connected in order to point to potential vulnerabilities within minority rights. Indeed, the intertwined history of reproductive rights and eugenics creates apprehension over a potential risk of renewed legal ethnic discrimination and subsequent violations of reproductive rights. Given this, it is important that reproductive rights are conceived in a way that claiming them results in the same protection for both majority and minority groups. The history of eugenics in the United States highlights how marginalized groups are often the first to be targets of discriminatory reproductive control policies.

In Chapter Two, “Forced Sterilization and the New Wave of Immigration,” I discuss the various domestic forms in which the U.S. has attempted to control Mexican reproduction. The chapter is centered around, Madrigal v. Quilligan, one of the most emblematic cases of the violation of Mexican-origin reproductive rights which dates from 1975. I argue that the opinion of the court demonstrates the outwardly racist and discriminatory opinions held by some that led not only to the policies and violations of rights but also to mainstream society’s acceptance of these practices. Lawyers, expert witnesses, former staff members and the plaintiffs—10 sterilized Mexican-origin women—attest to the coercion by the doctors to manipulate the women into consenting to their own sterilizations. However, the case’s only Judge, Judge Curtis, ruled that the doctors were not abusing their powers, but that the
incidents were the result of an unfortunate “clash of culture”\textsuperscript{54} between the Mexican-origin women and the white doctors.

In the 1970s, an era of xenophobia exploded across the country, in part due to the rise in immigration and also due to the popularity of the 1968 book \textit{Population Bomb}. These social factors set the conditions that led to the sterilization of the Mexican-origin women. \textit{Population Bomb} created mass hysteria in the U.S. around the increase of population around the world, the high rate of Mexican fertility and the false claim that world population would outgrow the food supply. Members of the neo-Malthusian movement, to which this book belongs, lobbied Congress and was responsible for an increase in family planning and changes in immigration policies.\textsuperscript{55} These programs furthered Mexican discrimination in immigration, healthcare, and social inclusion.

The discrimination against immigrant bodies has not been lessened under the current Trump Administration. Indeed, since the start of his term, Mexican-origin women and families have been the focus of several policy changes and discriminatory actions. First, the President has tried to associate negative characteristics to Mexican immigrants while attempting to limit the family reunification system which has benefited Mexican migrants. Second, prominent members of his Administration, have attempted to prevent the abortion of multiple pregnant Latina girls residing in

\textsuperscript{54} Gutiérrez, \textit{Fertile Matters}, 50.

detention centers.\textsuperscript{56} Due to their vulnerability within American society, Latina women have become particular targets for discriminatory policies enacted by political actors holding xenophobic and anti-abortionist agendas. Many domestic policies control Mexican-origin reproduction either through healthcare measures, immigration reform or general coercion.

In chapter Three, "NSSM-200 and U.S. Foreign Policy," I show that the violation of Mexican-origin reproduction is not limited to the domestic arena. In addition to the domestic policies and practices that have limited the reproductive freedom of Mexican-origin women, U.S. political elites and interest groups have influenced Mexico’s fertility rate and reproduction as well. The United States official population policy, the “National Security Study Memo” (NSSM-200), was created due to John D. Rockefeller’s influence on President Nixon and other political elites. The policy targets population growth in its overseas interests and explicitly singles out Mexico as having the most important population trends for the United States.

Despite international support for many of the policy recommendations, the influence of the Catholic Church in the United States prevented all the abortion-related recommendations from being implemented. However, political elites were able to satisfy both their population control agendas and the Catholic Church by enacting anti-abortion amendments to foreign assistance programs. Most recently, President Trump reinstated the Mexico City policy which denies funds to any clinic

or provider that performs or recommends abortions to its patients, while at the same time, certain explicit *NSSM-200* recommendations implemented population control programs in Mexico. Indeed, at the start of USAID intervention in Mexico in 1975, the average family included 7 children; however, when USAID left the country in 2003, the average family only had 3 children.\(^{57}\) All in the name of reducing population and creating stability within Mexico, the many directives of U.S. foreign policy have harmed Mexican women seeking abortions, on the one hand, and limited their ability to have as many offspring as they desired, on the other.

Finally, I will conclude my thesis by emphasizing how U.S. domestic and foreign policy include provisions that restrict and control Mexican-origin reproduction. U.S. political elites and special interest groups have coopted the policy-making process, placing the rights of minority and Mexican-origin women in jeopardy. The domestic policies disproportionately hurt marginalized groups. Because white, mainstream society often is not affected negatively by these policies, it has been challenging for marginalized groups to refute discriminatory practices that undermine their human rights to procreate and make reproductive planning decisions. Very few of the violations suffered by Mexican-origin women and families have had mainstream outcry and recognition. This thesis attempts to shed light on some of the more problematic and emblematic violations of reproductive rights in order to encourage mainstream society to take notice and discourage such policies and others like it from continuing.

CHAPTER ONE: REPRODUCTIVE FREEDOM AS A HUMAN RIGHT

“Reproductive freedom is critical to a whole range of issues. If we can’t take charge of this most personal aspect of our lives, we can’t take care of anything. It should not be seen as a privilege or as a benefit, but a fundamental human right.”

— Faye Wattleton

Reproduction as a Human Right

This thesis argues that Mexican Americans and Mexican immigrants have faced reproductive rights violations as a result of elite actors and groups institutionalizing discriminatory rules and norms. This claim rests on the idea of reproductive freedom as a basic human right. This universalist perspective that every member of society desires and is deserving of reproductive autonomy is fundamental for understanding the obstacles faced by minority women. However, the difficulty of determining what reproductive rights entail poses a challenge when explaining the gap of protection that exists for marginalized communities. I contend that reproductive rights are composed of both a negative right of non-interference and a positive right of protection and provision of services. Indeed, the rights of Mexican-origin women are violated on both counts.

Human Right

Reproductive rights have been understood as a human right by the international community since 1966. Indeed, numerous international declarations and

Though reproductive freedom is not officially acknowledged in either the United States Constitution or the United Nations Universal Declaration of Human Rights, it can be assumed. The Declaration of Human Rights includes Article 16: “Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family.” Though the article does not explicitly use the word “reproduction,” one can conceivably infer from it the right to control one’s reproduction to create a family. Likewise, though the Constitution does not have an amendment overtly protecting procreation or abortion, Roe v. Wade does argue that the Fourteenth Amendment guarantees the right to privacy and thus for women to make autonomous choices over reproduction. Theoretically, Mexican-origin women’s reproductive rights should be recognized regardless of immigration or citizenship status because of its protected status as both a human right and a civil

59 Ibid.
Furthermore, the reproductive decisions of Mexican-origin women should be respected regardless of legal provisions. Ronald Dworkin and John Harris argue that a right need not be guaranteed by law to be respected and awarded to individual citizens. John Harris starts his argument with the democratic presumption that “citizens should be free to make their own choices in the light of their own values, whether or not these choices and values are acceptable to the majority.”62 The government should only restrict these choices if their exercise leads to serious danger to other individuals or to society. Abhorrence or lack of comfort is not enough to restrict the choices of others. With this logic, political elites’ population fears or concerns with Mexican women fertility rates are not enough justification to permanently alter the bodies of Mexican-origin women. Elite lack of comfort should not lead to the sterilization of Mexican women as we shall discuss in the subsequent chapter. Harming others to satisfy one’s own beliefs is contrary to democracy and curtails the desires and choices of others.63

However, reproductive freedom is restricted by any action that causes serious harm to others or society, and thus it can be said that “the burden of proof is not on those who defend liberty but on those who would deny it.”64 Indeed, Julian Savulescu believes that reproduction should be protected as a right since it is so controversial and easily violated: “freedom is important only when it is the freedom for people to

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63 Ibid., 73.
64 Ibid.
do what is disagreeable to others.” Only concern over the serious harm of the progeny could conceivably be justification to act contrary to a person’s reproductive desires. Indeed, *Roe v. Wade* permits the government to intervene and restrict abortions only once the fetus becomes “viable.” Of course, “viability” is never defined by the Court, putting in jeopardy the rights of women when conservative political elites are in power and desire to restrict access to abortions. However, for Harris, reproductive liberty is a fundamental human right and the arguments against its exercise must therefore be “proportionately stronger and the harms that are claimed to result from its exercise must be proportionately greater.”

Political elites thus cannot prevent another’s reproductive choice simply by proving them less desirable parents or even belonging to a less desirable race; they would have to prove that Mexican-origin women’s reproductive actions and choices were creating real and serious harm to others rather than just altering the demographics of U.S. population. Mexican-origin women are vulnerable in this respect since they do not have proportional representation among political elites and lawmakers who decide the conception and definition of serious harm.

Savulescu argues, however, that couples have the right to “act on their own value judgment of what constitutes a life of prospect.” The right to bear children should not be superseded by government intervention or the decision made by political elites that Mexican-origin women will not be able to care properly for their

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65 Ibid.  
66 Harris, “Enhancing Evolution,” 75.  
children. Furthermore, Catherine Mills argues that reproductive freedom’s ability to override other freedoms such as “the right of a medical practitioner not to provide treatments that they personally find morally offensive,” help classify it as a basic right.\(^69\)

In order to defend reproductive freedom, lawmakers should be passing laws that not only prohibit government interference but also provide necessary services to honor the autonomous choices of individuals. Negative freedoms require that people not prevent others from exercising their desired choice, for example, the government should not prohibit a woman from obtaining an abortion. Positive freedoms, on the other hand, require that others intervene to enable an individual to access a service or exercise her choice; for example, the government should provide abortion clinics for a woman if she chooses to have an abortion. Even authors who understand reproductive liberty to be a negative freedom should not disregard the potential need for protecting positive freedom. John Harris’s argument that reproductive liberty relies on the ability of citizens to make their own choices without interference effectively requires the “cooperation of medical experts and others to ensure the success of” any technologies that reproductive liberty includes.\(^70\) Indeed, according to Robert Sparrow, reproductive liberty cannot be just “honored,” but rather must be “promoted.”\(^71\) With this logic, the government is required to actively contribute to the creation of favorable situations for reproductive liberty to be possible and attainable.

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\(^70\) Mills, "Reproductive Autonomy as Self-Making," 644.

by all. Therefore, the Mexico City Policy, a policy that restricts U.S. funds from financing any Mexican clinic that provides or recommends abortions, is problematic. Though political elites are not able to make abortion illegal in Mexico, they are able to limit the services from which Mexican women can achieve the realization of their reproductive choices. Thus, the U.S. government is, in fact, decreasing the favorability of achieving one’s autonomous reproductive decisions in the countries in which it intervenes. This is a violation of both the positive and negative freedoms associated with reproductive rights and is a violation of a fundamental aspect of human rights: reproductive choice.

Components of Reproductive Liberty

To ensure that political elites do not encroach people’s rights, one must be conscious of the whole array of protections reproductive liberty entails. Reproductive freedom is more than just acting on the desire to have or not have children. It involves choices such as when to have children, if to have children, how many children, what kind of children, whether to be a parent, and how much society should influence these decisions. For example, reproductive timing is increasingly important as women work outside of the home and female identity grows beyond that of motherhood. It is therefore imperative that information about contraceptives and birth control choices be shared, and that women and their families be enabled to make informed decisions about their own child-bearing.

Often, as we will see in the third chapter, doctors recommend either
sterilization or the IUD as a form of family planning. These methods are both controlled by doctors and remove some of the autonomy from the woman and the families whose timelines and motivations vary differently. In addition, though the choice of how many children to have is limited in some countries by population-growth counter measures, family planning and contraceptives can also be used to help individuals decide how many children to have. Women can also decide to give birth and yet not become parents. Furthermore, with advances in scientific knowledge and in technologically-assisted practices of prenatal genetic screening, it is increasingly possible to know whether children will have a particular genetic disease, which allows parents to decide whether to conceive.

Although these decisions will end up affecting society at large, they are decisions for parents to make. Government policies should not make these determinations in place of families. In *Madrigal v. Quilligan*, the women had been sterilized because the doctors, who were concerned with overpopulation and the higher rates of Mexican fertility, determined of their own volition that the women had enough children. When Judge Curtis decided that doctors had the right to persuade patients to be sterilized, he removed parental choice. Due to the power held by doctors because of their profession and perceived expertise, patients are susceptible to agreeing to doctor recommendations because they think it is what is best for them, though it is not necessarily what they want. The doctors’ actions denied the women the right to decide for themselves if they wanted further children. The doctors alone

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72 Gutiérrez, *Fertile Matters*, 40
74 Ibid., 210.
determined the family size of their women patients. The Court violated the women’s rights and made negotiating with physicians a barrier to achieving one’s reproductive choice.

Reproductive freedom provides opportunities for advancement. To restrict reproductive freedom would not only violate a person’s rights but also would increase inequality in society. Indeed, reproductive freedom is associated with three moral values: self-determination, welfare, and equality. Nikolas Rose argues that “modern individuals are not merely ‘free to choose,’ but obliged to be free.”75 People need to be free to make their own reproductive choices in order to form their own identities and live as individuals. Humans are entitled to self-formation, and to have their reproductive choices respected by others.

Self-determination is the ability for individuals to make decisions about their own lives “according to their own values or conception of a good life” and have those choices respected.76 However, individuals revise their conception of leading a good life throughout time.77 Humans are unique in that they exhibit more than just goal-directed behavior. They have also the ability to “engage in reflection about their aims, ends, and motivations, and to affirm or deny them as their own and as defining not just who they happen to be, but also what kind of persons they want to be or value.”78

When people’s actions no longer correspond with their desired behavior, they can take steps to remedy the discrepancy between projection of self and present self.

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76 Ibid., 214.
78 Buchanan, *From Chance to Choice*, 215.
Policies that encourage sterilization as a primary method of birth control are therefore particularly worrisome, as it prevents people from revising their family goals and choices later in life; indeed, according to one study, 32% of sterilized white women regret being sterilized, as do 41% of sterilized Latinas and 60% of sterilized Native American women.\textsuperscript{79} Moreover, as illustrated in the case of \textit{Madrigal v. Quilligan}, the pain experienced while giving birth might make some women agree to an on-spot sterilization which they might not desire as soon as labor has ended.

In addition, the practice of liberty, as described by Foucault, is not the lump-sum achievement of freedom, but rather the practical exercise of freedom for oneself.\textsuperscript{80} It is a process of self-reflection and self-awareness. Foucault’s understanding of liberty can be applied directly to an understanding of reproductive liberty since the reproductive subject engages in self-formation through the enactment of personal values and beliefs in everyday practice.\textsuperscript{81} Self-formation and personal values are not the only components that go into reproductive freedom. People’s values do not stand alone; they are influenced by the social and natural environment. However, by having their decisions respected by others, even those who disagree with them, individuals are able to take control and responsibility for the lives they lead.\textsuperscript{82} The value of self-determination within reproductive freedom includes taking responsibility for choices and practices such as the use of contraceptives, medical procedures, the selection of traits in children, and the maintenance of a successful

\textsuperscript{82} Buchanan, “From Chance to Choice,” 215.
pregnancies.\textsuperscript{83} When Judge Curtis in \textit{Madrigal v. Quilligan} ruled in favor of the doctors and not the sterilized women, he was once more taking away their right to self-determination. Not only were the women’s voices and choices ignored when it came to not electing tubal ligations, but also their complaints and allegations of abuse were ignored. Actions that offended their rights were then determined legal. Their decisions were not respected and their autonomy and responsibility were taken away.

Values of welfare and equality are also indispensable when thinking about how to actualize reproductive freedom and must be protected. Reproductive freedom should contribute to the well-being of individuals. Preference or desire satisfaction theories hold “that what is good [for a person] is the satisfaction of people's desires or preferences.”\textsuperscript{84} People’s overall happiness increases when they have the ability to exercise their reproductive choices since “competent individuals typically are the best judges of what reproductive choices will best promote their happiness.”\textsuperscript{85} Conversely, when their choices are not respected or when they face obstacles pursuing those desires, people face displeasure and frustration.

Equal treatment is also straightforward and yet vital to the reproductive freedom argument. The main premise of this clause is that a person should be able to obtain their desired positions and opportunities in life regardless of their gender. Women suffer inequalities either in the form of clear gender discrimination or are disadvantaged socially, psychologically or economically by the sole fact that women are the only ones to get pregnant.\textsuperscript{86} Reproductive freedom can mitigate those

\textsuperscript{83} Mills, “Reproductive Autonomy as Self-making,” 651.
\textsuperscript{84} Buchanan, “From Chance to Choice,” 219.
\textsuperscript{85} Ibid.
\textsuperscript{86} Ibid., 221.
inequalities by giving women the control over their own reproduction. Women can decide whether they would like to undertake “the disproportionate share of the burdens of having […] a child.” Reproductive freedom allows women to decide whether they are willing to accept the inequalities (excluding forms of discrimination) associated with reproduction. Reproductive freedom is incredibly important for any society that values equality, positive welfare for its constituents and the freedom for its individuals to be self-determining. Thus, protecting reproductive freedom is paramount to reducing the obstacles faced by marginalized women.

**Reproductive Rights in the United States**

Though universal in tone and applicability, the Supreme Court’s holdings, in practice, do not offer the same protections for marginal women as they do white women in the United States. With the exception of Title X of the 1970 Public Health Service Act, which provides individuals with family planning resources, Congress has not passed any legislation that grants broad reproductive rights. Therefore, Supreme Court decisions are what make up the American understanding of reproductive rights. In the last century, the Court has ruled on several cases that have given shape to the modern conception of reproductive rights. However, these cases have not been sufficient to protect minority women against the violation of their reproductive rights. Of the five landmark cases in the timeline of reproductive liberty, the first three, *Griswold v. Connecticut, Roe v. Wade,* and *Planned Parenthood v. Danforth,* were not sufficient in protecting the rights of the sterilized women in *Madrigal v.*

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87 Ibid.
Quilligan. The last two cases, City of Akron v. Akron Center for Reproductive Health, and Planned Parenthood of Southeastern Pennsylvania v. Casey, were not strong enough to deter political elites from attempting to remove abortion access for undocumented minors in cases like Garza v. Hargan.

The plaintiffs’ lawyers argued that sterilization of the women in Madrigal v. Quilligan was unlawful rested on several Supreme Court holdings from reproductive rights cases from the second half of the 20th century. One case, the 1965 Griswold v. Connecticut guarantees the “right to privacy” of individuals in the matter of reproduction by denying states the right to prohibit the sale or use of contraceptives even by married couples.88 The 1973 decision for Roe v. Wade relied upon the Griswold precedent and also upheld a woman’s right to privacy in pursuing her reproductive decisions. The Supreme Court found that the right to privacy was “broad enough to encompass a woman’s decision whether or not to terminate her pregnancy.”89 According to Judge Blackmun, who delivered the opinion of the court, this right to privacy is derived from the Fourteenth Amendment’s concept of personal liberty—though he does not reverse the District Court’s opinion that the Ninth Amendment also provides the right.90 The case recognized that the right to make reproductive choices is essential for women’s “ability to participate fully and equally in society.”91 Indeed, to deny women that choice would be to create a “distressful life

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89 Roe v. Wade, 410 U.S. 113 (U.S. 1973)
90 Ibid., VIII.
and future” through potential psychological and physical harm.\textsuperscript{92} Furthermore, to deny the termination of a pregnancy would be to bring a child into a family that is unable to care for it either psychologically or economically. The Supreme Court ruled that the “right of personal privacy includes the abortion decision, but that this right is not unqualified” and includes consideration of the fetus, were it to become “viable”.\textsuperscript{93}

The lawyers for the plaintiffs used these holdings to argue for procreation, by contending that if the right to privacy allows a woman to decide on the termination of her pregnancy, it should also allow her to decide to become pregnant. However, this logic was not sufficient for Judge Curtis who did not determine that the doctors had violated the women’s rights in convincing them to undergo tubal ligations. The Judge was unwilling to extend the universal protections provided by \textit{Roe} to the Mexican-origin sterilized women in Los Angeles.

In addition, the 1976 case \textit{Planned Parenthood v. Danforth} should have protected the women in \textit{Madrigal v. Quilligan} from coercive sterilization. \textit{Planned Parenthood v. Danforth} made it unconstitutional to require spousal consent for abortions, but required full and informed consent from the patient.\textsuperscript{94} However \textit{Danforth} did not specify the need for bilingual consent forms or additional protections for non-native English speakers. Though most all the women in \textit{Madrigal v. Quilligan} were presented with consent forms, none of them could comprehend them and no doctor took the necessary steps to ensure that they fully understood the repercussions of the operation they would undergo. \textit{Danforth} did not exclude

\textsuperscript{92} \textit{Roe v. Wade}, 410 U.S. 113 (U.S. 1973), VIII.
\textsuperscript{93} Ibid.
\textsuperscript{94} Ibid.
immigrants; however, its language left many of women vulnerable to abuse or deliberate misinterpretation.

Similarly, the 2017 undocumented minor Jane Doe abortion cases occurred because political elites did not think that they should be afforded the same protections as the white citizens in *Casey* or *Akron*. In 1983, the Supreme Court decided in the *City of Akron v. Akron Center for Reproductive Health* (462 US 416) that the city cannot attempt (through physicians or otherwise) to dissuade women from seeking abortions, require minors under age 15 to obtain judicial or parental consent for an abortion or impose a 24-hour waiting period between signing a consent form and undergoing an abortion.\(^\text{95}\) Despite the explicit stipulation that a woman should not be dissuaded from seeking abortions by any governmental organization or person, in 2017, Scott Lloyd, the director of the Human and Health Services (HHS) within the Office of Refugee Resettlement (ORR), visited detained-undocumented-pregnant girls who were requesting abortions, to try to convince them otherwise. In spite of the explicit legal mandate to desist from such activities, the director of HHS thought that because these girls were immigrants, he could ignore the law.

Finally, *Planned Parenthood v. Casey* makes it unconstitutional to place an “undue burden” on a woman’s right to an abortion and removes the prerequisite of spousal notification to terminate a pregnancy—though it did re-approve 24 hour waiting periods and the need for parental consent.\(^\text{96}\) In both the Mexico City Policy and the Jane Doe cases, political elites circumvented a Supreme Court holding by

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\(^\text{95}\) American Civil Liberties Union, “Timeline of Reproductive Freedom Cases”.

creating undue burdens on a woman’s ability to have an abortion. The Mexico City Policy, which denies U.S. funds to foreign organizations who promote or perform abortions, does not fall under the scope of Casey as it concerns actions in foreign countries. However, it shows that political elites are not interested in providing women of other nationalities, the same basic provisions assured to domestic residents. Through foreign policy, political elites place undue burdens on Mexicans (and those of other USAID recipient countries) who seek an abortion. Furthermore, political elites such as those in the Office of Refugee Resettlement, placed an undue burden on the Jane Doe girls who had to visit different religious clinics, find a willing legal guardian to support them and receive unnecessary ultrasounds in order to have their abortion requests approved.

The Supreme Court has been engaged in the struggle to chisel out the scope of reproduction and the government’s role in its control. Though Supreme Court decisions are applicable to women of Mexican-origin residing in the United States, they are not always fully protected by the holdings. The Court is not always a defender of minority rights and even when it is not intentionally exclusionary, it does not protect the rights of minority women to the same extent as it does those in the white majority. As the Court bears the main responsibility in determining the limits of government intervention in reproductive rights, it is very important that the Court have the best interest of all, and especially vulnerable minorities, at heart. Minorities are differently situated and their rights need additional protection.

*Roe v. Wade*

*Roe v. Wade* deserves deeper analysis as the foundational case that gives
women the right to control their own reproduction. *Roe v. Wade* has had important consequences beyond the ruling itself. It sparked and helped grow the anti-abortion movement which has had major consequences for the Latina community. Though the case was celebrated by women and feminists throughout the nation, it created a breeding ground on which anti-abortionists could rally and organize. Opposition immediately appeared from the religious right, as well as from right-wing politicians who wished to “attack the ‘judicial activism’ of the Supreme Court.” The Roman Catholic Church as well as fundamentalist protestant groups and other citizen groups protested against the legalization of abortion.

Senator Jesse Helms was among those who immediately fought to reverse the consequences of *Roe v. Wade*. He first attempted to pass a “Human Life Amendment” to the Constitution which ultimately failed, but he did successfully push through the Helms Amendment to the Foreign Assistance Act later in the year of 1973. The Amendment prevents federal funds in foreign assistance programs from financing or encouraging abortions. In 1976, Congressman Henry Hyde also tried to restrict *Roe*, this time targeting poor women. Congress passed the Hyde Amendment which disallows Medicaid funding from being used for abortions except in the case of rape or medical necessity.

The consequences of *Roe v. Wade* and its opposition have had lasting effects on the Latina and Mexican community. In 1977, a year following the passage of the

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98 Gordon, *The Moral Property of Women*, 303
Hyde Amendment, Rosaura (Rosie) Jimenez died from an illegal abortion; the first recorded case post-Hyde Amendment.\textsuperscript{101} Rosie Jimenez was a student of Mexican descent who was a single mother to a five-year-old daughter. She was also six months away from achieving her teaching credential. Instead of using the $700 scholarship check she was saving to pay for her last semester of schooling towards getting a safe and legal abortion at a clinic, she drove to Mexico where she obtained an illegal abortion from a physician who used unsterilized equipment.\textsuperscript{102} She died from an infection within a week at the age of 27. \textit{Roe v. Wade} might have given her the right to seek an abortion, but the Hyde Amendment took away and placed an undue burden on her ability to obtain a safe and healthy one.

Indeed, before \textit{Roe v. Wade}, 5,000 to 10,000 women died each year from illegal abortions, and many others suffered physical and mental injury from those operations.\textsuperscript{103} Though \textit{Roe} helped decrease that number, to this day many uninsured women and Latina women, in particular, still attempt unsafe abortions. In 2013, 37\% of Latinas were uninsured which is more than women from any other racial or ethnic group. More than a quarter live in poverty.\textsuperscript{104} In 2016, 25\% of all abortion recipients were Hispanic and 75\% of patients were poor or low-income women.\textsuperscript{105} Furthermore, not only are Latinas disproportionately having abortions but also, they are disproportionately at risk for losing access to assistance. Since the mid-70s, the

\begin{footnotesize}
\textsuperscript{101} Center for Reproductive Rights, \textit{Roe v. Wade and the Right to Privacy}, 96.
\textsuperscript{103} Center for Reproductive Rights, \textit{Roe v. Wade and the Right to Privacy}, 7.
\textsuperscript{104} Gutiérrez, “Latinas and Roe v. Wade”
\end{footnotesize}
number of abortion providers has declined.\textsuperscript{106} In the 1990s there was a wave of violence against physicians willing to provide abortions,\textsuperscript{107} and between 2009 and 2014 there have been 288 new abortion restriction laws.\textsuperscript{108} The lack of providers paired with the lack of public funding for abortions may motivate more women to attempt to self-induce an abortion or take risks with their health.\textsuperscript{109} It is important to understand current reproductive rights and gaps in coverage so as to identify those who are most affected and in greater need of assistance.

**Eugenics in America**

The eugenics movement precedes and led to the creation of reproductive rights. This historic connection causes great concern over the respect of marginalized people’s reproduction. Before the rise of Nazism, eugenics was considered a “reputable science” to which many academics and special interest groups subscribed.\textsuperscript{110} Margaret Sanger, the founder of Planned Parenthood and a leader of the birth control movement, is often classified as a eugenicist. Indeed, while promoting birth control and helping families achieve the levels of reproduction that they desired, she was also attempting to “weed[] out the unfit [and] prevent[] the birth


\textsuperscript{107} Ibid.


\textsuperscript{109} Ibid.

of defectives.” She focused on reducing the fertility of racial minorities who had higher fertility rates than white upper-upper class Americans. Indeed, she created the “Negro Project” as an attempt to “promote contraceptive use among Southern blacks.”

Though this project is no longer operational, it does raise concerns about the location of Planned Parenthood clinics which could be overrepresented in minority communities as an attempt to reduce low-income minority population. This concern, according to Supreme Court Justice Ruth Bader Ginsburg, was shared by many, in particular black men, following the Roe v. Wade decision. Before Justice Ginsburg joined the Supreme Court, she was asked to comment on abortion litigation during a conference. She recalls being asked by black men whether she believed that the legislative reform centered on abortion “might have less to do with individual autonomy or discrimination against women than with restricting population growth among oppressed minorities.” This fear was justifiable considering that Judge Blackmun, who delivered the opinion of the Court in Roe, cited three eugenics cases: Buck v. Bell, Skinner v. Oklahoma and Loving v. Virginia in his opinion. Indeed, the intertwined history of reproductive rights and eugenics creates apprehension over a potential risk of renewed legal ethnic discrimination and subsequent violations of reproductive rights.

112 Franks, Margaret Sanger's Eugenic Legacy, 41.
113 Ibid., 43.
114 Kelly, “Fact Check.”
CHAPTER TWO: FORCED STERILIZATION AND THE
NEW WAVE OF IMMIGRATION

“The harder you swing the pendulum one way, the more violently it will
swing back.”

― A.E. Samaan

The Case

On June 18, 1975, a federal class-action civil rights lawsuit was filed in Los
Angeles. The plaintiffs were ten Mexican-origin women living in the U.S. legally,
none of whom were on Medicare, all of whom were monolingual Spanish speakers
and had been forcibly sterilized.¹¹⁶ These women were surgically sterilized between
1971 and 1974 after giving birth by cesarean section at the Los Angeles County
Hospital and University of Southern California Medical Center (hereby referred to as
the County Hospital). With help from their lawyers, Antonia Hernández and Charles
Nabarette, they filed a class action suit against the County Hospital, twelve doctors,
the State of California and the U.S. Department of Health, Education, and Welfare.¹¹⁷

The plaintiffs charged that their civil and constitutional rights to bear children had
been violated by the practices of the County Hospital’s obstetricians who coerced
them into agreeing to sterilization in the final stages of labor.¹¹⁸ Furthermore, they
claimed that their sterilization reflected the hospital philosophy of accepting
government funding to remedy perceived overpopulation through the sterilization of

¹¹⁶ Alexandra Stern, Eugenic Nation: Faults and Frontiers of Better Breeding in Modern America
(Berkeley: University of California Press, 2001), 164.
¹¹⁷ Gutiérrez, Fertile Matters, 67.
¹¹⁸ Ibid, 68.
Mexican women. Indeed, the sterilization of these women resulted from the hospital taking advantage of incentives created by racist and xenophobic political elites to control the population of “undesirable” members of society.

The case revolved around two questions: did the obstetricians perform sterilizations on patients without their proper consent? and did doctors target Latinas for these procedures? Ultimately, on June 22, 1978, the sole judge ruled against the plaintiffs. He claimed he found “no evidence of concerted or conspiratorial action” and was not convinced that the doctors would perform any operations unless they believed the patient to be consenting and requesting the procedure. However, the experiences recounted by the plaintiffs, the testimony of hospital staff and expert witnesses and even the commentary provided by the judge suggest that these women were in fact victims of both xenophobic biases and forced sterilization.

At the time of the sterilizations, the County Hospital was receiving federal family planning grants. The Hospital was the recipient of state and federal funds for the surgical sterilization of low-income persons as well as for the study of the effectiveness of contraceptive agents. The grants were funded through federal agencies in conjunction with the family planning initiatives of the War on Poverty, launched by President Lyndon B. Johnson in 1964. In addition, the 1970 Family Planning and Population Research Act provided funds for contraceptives, education,

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119 Ibid.
120 Valdes, “When Doctors Took Family Planning Into their Own Hands.”
121 Stern, *Eugenic Nation*, 165.
123 Ibid., 9.
124 Valdes, “When Doctors Took Family Planning into Their Own Hands.”
125 Stern, “Sterilized in the Name of Public Health.”
research and training for family planning. Though it helped create programs that provided forms of birth control for women who could not afford it, it also provided incentives for hospitals, like County Hospital, to apply for tubal ligation grants. These grants partly explain the large increase in the number of sterilizations performed.\footnote{126}{Meraji, “Film Portrays a ‘Perfect Storm.’”}

Indeed, the lawyers for the plaintiffs found that there was a 700 to 800\% increase in the number of sterilization-tubal ligations between July 1968 and July 1970.\footnote{127}{Madrigal v. Quilligan, No. CV 74–2057-JWC, Report’s Transcript of Proceedings, Tuesday, May 30, 1978, SA 230–240, Papers of Carlos G. Vélez-Ibañez (CGVI), Sterilization Archive (SA), Item 5, Chicano Studies Research Library (CSL), University of California at Los Angeles (UCLA), 703}

During his time at County Hospital, one medical resident, Dr. Bernard Rosenfeld, coauthored a Health Research Group report on sterilization abuse following funds from the Department of Health, Education and Welfare (HEW) for family planning and overpopulation concerns.\footnote{128}{Stern, Eugenic Nation, 162}

He identified County Hospital as among the three gravest offenders of abuse and saw a “742 percent increase in elective hysterectomies, a 470 percent increase in elective tubal ligations, and a 151 percent increase in postdelivery tubal ligations”\footnote{129}{Robert McGarrah, Bernard Rosenfeld, and Sidney Wolfe, “A Health Research Group Study on Surgical Sterilization: Present Abuses and Proposed Regulations” (Washington, DC: Health Research Group; 1973), 1.} as well as a de-prioritization of informed consent.

According to Dr. Karen Benker, the Hospital had just received a federal grant of two or four million dollars “to show how low we can cut the birth rate of the Negro and Mexican populations in Los Angeles County.”\footnote{130}{Madrigal v. Quilligan, 797.} She claims this statement was uttered by Dr. Edward James Quilligan, the head of obstetrics and gynecology, and was intended to provide an explanation for the new funds and the changes underway.
at County Hospital. In defense of this explicit statement, a professor said something to the effect of “there is a lot of poverty […] [and] overpopulation.” Furthermore, Renee Tajima-Peña, who made the 2015 documentary, _No más bebés_, which brought this case back into the public eye, uncovered an incriminating training video from the Agency for International Development. The 1965 video, _Fertility Control and the Physician_, encouraged doctors to “start taking responsibility for lowering the birthrate of these populations,” referring to poor minorities. Not only was there discriminatory language circulating openly in the hospital, but also there were federal funds available to pay for sterilization procedures which allowed doctors and medical staff to act upon those discriminatory feelings.

At the time of the sterilizations, the hospital required its doctors to adhere to a policy that mandated informed consent for sterilization operations; however, this policy did not include provisions to help protect Spanish-speakers or illiterate, uneducated persons such as the Mexican-origin plaintiffs. Sterilization is an elective procedure and is never necessary to save the life of a woman, thus consent forms are required for such an operation. An expert witness, Dr. John Sloan, testified for the court as to the components of informed consent. The lawyers for the plaintiffs attempted to use this definition to show the Court that the doctors did not adequately obtain the Mexican women’s consent. Dr. Sloan’s definition includes telling a patient that the operation is permanent and irreversible, and that there are possible

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131 *Madrigal v. Quilligan*, 797.
133 *Madrigal v. Quilligan*, 554.
complications to the surgery, discussing alternative forms of birth control, ensuring that the patient understands the procedure, desires the operation, and is not under undue emotional or psychiatric stress or under the influence of drugs which could alter her ability to process information. It also requires a signed consent form. This form had to explain the benefits and costs of the surgery and clarify that the potential patient would not lose any federal benefits by withdrawing from the surgery. The components of informed consent are not controversial or unclear, and yet the doctors sterilized their Mexican patients without valid forms of consent.

The hospital policies of informed consent left Mexican women vulnerable as they had to overcome language and education barriers which led them to place blind trust in Spanish-speaking doctors and nurses who delivered inaccurate or partial information and knowingly left women in stages of confusion or misunderstanding. Understanding the procedure and the consequence of the operation is crucial to giving informed consent. The procedure, consequences and available alternatives must be communicated to the patients in a way that they understand, namely in Spanish. However, all the women who signed consent forms did so in English without being able to understand the words and the conditions described in the release and without the aid of adequate translation services.

The doctors and translators used unclear language when speaking with the women and explaining the operations. Maria Figueroa understood that the operation involved the tying, not cutting, of her fallopian tubes leading her to believe that the

136 Madrigal v. Quilligan, 531.
tubes could later be untied. She reluctantly agreed to the tying of her tubes once under the influence of strong pain medication, but only on the condition that she deliver a baby boy. She gave birth to a girl but was still sterilized.\textsuperscript{137} Several other women were also under the assumption that their tubes could be untied and that they could give birth to more children once they went in for a reversal surgery. Thought the doctors were required to ensure that their patients understood and desired the operations, they did not take any additional provisions to overcome the language or education barrier.

Indeed, according to Dr. Karen Benker, who was a medical student and obstetrical technician at Country Hospital between 1969 and 1971, it was not the practice of the hospital “to invite the woman to participate in the decision,” rather “it was a practice to tell women that they had to have a tubal ligation.”\textsuperscript{138} The judge of the case reasoned that,

\ldots if that person agrees and is willing to be sterilized, then I cannot see anything wrong with the doctor having suggested it or having convinced the patient, so long as he does not use his powers, his ability, his circumstances to override what would be a reasonable decision on the part of the patient.\textsuperscript{139}

However, this reasoning does not take into account the sway that a medical practitioner has over their patients. Plaintiff Consuelo Hermosillo would come home crying after her appointments at the clinic where they were trying to convince her to consent to sterilization. She explained that, “one becomes dependent to the advice of a doctor. One places themselves in the doctor’s hands because one believes.”\textsuperscript{140}

\textsuperscript{138} Madrigal v. Quilligan, 806.  
\textsuperscript{139} Ibid., 825.  
\textsuperscript{140} Madrigal v. Quilligan, 841A.
Indeed, doctors have the power to persuade because they have specialized knowledge which these women do not have. These plaintiffs in *Madrigal v. Quilligan* were “in a state of dependency on a professional person,” because they did not speak English, they did not have the same knowledge as their caretakers, and when they were in labor they were “under immense pain and shock” and relied on the doctor for treatment and assurance.\(^{141}\)

The doctors took liberties with these women which would never have constituted informed consent for white English-speaking women. Some of the women were asked to consent to the sterilization once under the influence of tranquilizers and other pain medications. According to Dr. Sloan in his expert testimony, that practice is outlawed in many hospitals and is not a good medical practice because after a woman is given a sedative, her central nervous system is affected and she is deemed uninformed and incapable of signing.\(^{142}\) Indeed, a woman who has just given birth is required to wait until the effects of her narcotics wear off before she can sign a release form for the circumcision of her newborn.\(^{143}\) However, Maria Figueroa was “very sleepy,”\(^{144}\) when the nurse brought her a book to write on, and indicated, without telling her to read anything, on which line she should sign her name.\(^{145}\) Similarly, Consuelo Hermosillo was delusional when both a doctor and a nurse held her in place and dictated to her what she should write and sign.\(^{146}\)

Likewise, most of the women were irresponsibly made to give consent in the

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141 Ibid., 959.
142 Ibid., 575, 576.
143 Ibid., 576.
144 Ibid., 200.
145 Ibid., 203.
146 Ibid., 670.
late stages of giving birth. Dr. Sloan strongly emphasized that women cannot give consent, especially for elective, non-life-threatening procedures, while in those stages. While in labor, a woman undergoes emotional and psychological stresses and cannot give a “valid and informed consent” to sterilization, especially if she is being approached for the first time regarding the topic.\footnote{Ibid., 27.} He compares a woman deciding to never give birth again while in labor to fearing for one’s life in an airplane:

\begin{quote}
...it’s sort of kind of a likening of it to someone having fear of being in an airplane and swearing when the airplane buffets a little that you’re never going to fly again and swear you’d made that decision if you only get to the ground.\footnote{Ibid., 571.}
\end{quote}

He explains that it would be easy to convince a woman in labor pain to never give birth again, particularly when you can provide an easy way out: sign a form for sterilization. In that moment, a woman’s judgment is impaired and has trouble foreseeing future desires. He insists that “the doctor’s role, in a sense, really either should be to tide her over rather than to encourage her toward this way”\footnote{Ibid.} of sterilization.

Dr. Sloan is clear that women like Mrs. Figueroa who, on top of the stress of labor, was awaiting major surgery in the form of a cesarean section, considering the uncertainty of the survival of her baby and herself, and unable to contact her husband or children, could not have given consent.\footnote{Ibid., 973.} She did not have “the proper judgment, the clear thinking, […] and understanding of what her alternatives were.”\footnote{Ibid., 974.}

Regardless of language or background, these women should never have been deemed
able to give informed consent. They were coerced into signing their own sterilization forms.

Dr. Karen Benker offered testimony that further corroborated the image of the hospital as being openly hostile to the Mexican women. She claims that many directives were based on the assumption that Mexican women were “hyper-breeders” and “welfare mothers in waiting.”\textsuperscript{152} She recalled a talk given by Dr. Quilligan to the medical residents, in which he stated that “these minority women -- in L.A. County were having too many babies; that it was a strain on society; and that it was good that they be sterilized; that this was [...] socially desirable.”\textsuperscript{153} On another occasion, she was told by a professor: “two children are enough for any woman to satisfy her maternal instincts, so I think that a sterilization should be done at the time of cesarean section.”\textsuperscript{154} One of the plaintiffs, Georgina Hernandez, shared that her doctor, Dr. Munch, had told her to get her tubes tied “because in Mexico people were very poor – […] and that we should not have any more children because we could not support them.”\textsuperscript{155} Certain doctors openly discussed their contempt for large Mexican families and pushed for sterilization.

For the doctors and medical students of the public hospital, overpopulation might have seemed a credible threat. In the early 1970s, the 800-bed County Hospital oversaw over 1000 births per month often for low income African-American and Mexican-American women.\textsuperscript{156} Hospital policy encouraged birth control and

\textsuperscript{152} Stern, \textit{Eugenic Nation}, 164.
\textsuperscript{153} \textit{Madrigal v. Quilligan}, 802.
\textsuperscript{154} Ibid., 803.
\textsuperscript{155} Ibid., 901.
\textsuperscript{156} Valdes “When Doctors Took Family Planning into Their Own Hands.”
aggressive family planning. Bilingual family planners met with patients after they
gave birth and did not let them leave until they committed to some form of birth
control, often forcing IUDs on patients. IUDs are intrauterine devices that women
cannot regulate on their own.\textsuperscript{157} Assembly lines were formed on gurneys after
patients gave birth or came for their postpartum checkup, so that doctors could insert
IUDs.\textsuperscript{158} Though it might have been a patient’s first time at the hospital and though
she might not have been on welfare, the women were still victims of the physicians’
“racially slanted ideas about population control” and Mexican women.\textsuperscript{159}

The Mexican women had to face injustice and racism at the hands of their
doctors during their pregnancies but also at the hand of Judge Curtis who also had
preconceptions about Mexicans and their propensity for large families. An expert
witness was called to explain the consequences of the sterilization on the lives of the
women by highlighting their cultural background. The expert was Dr. Vélez, a
professor of anthropology at the University of California, Los Angeles, who
conducted interviews and fieldwork for seven months. He determined that procreation
was core to these women’s self and social identities.\textsuperscript{160} The women came from rural,
agricultural communities in Mexico where large families with an average of 7.5
children are the norm and where a woman’s prestige and status extends to her ability
to bear and raise children.\textsuperscript{161} After sterilization, the plaintiffs lost standing in their
community, and some faced backlash from their husbands and relatives. Although Dr.

\begin{footnotes}
\item[158] Ibid, 63.
\item[159] Stern, “Sterilized in the Name of Public Health.”
\item[160] Gutiérrez, \textit{Fertile Matters}, 47.
\item[161] Ibid, 48.
\end{footnotes}
Vélez was well-meaning and compassionate in offering his expert testimony, he corroborated Judge Curtis’ already established opinions of Mexicans as “Others” and as family-loving, multiple-children-having people. Indeed, Judge Curtis questioned whether Dr. Vélez was even able to add anything to the case, claiming:

…the Court knows, and everybody knows, the Mexican people have strong feelings about a big family, and how they have an intense love and affection for children and that sort of thing. I do not consider his testimony very helpful […] I do not anticipate anything that he will tell me that I do not already know.  

He thus reduced the Mexican-Origin women to a homogeneous and foreign group; the expert was not able to help him see past stereotypes into the real lives and tragedies of these women’s experiences.

The judge’s attitude towards the information provided by the key witnesses and the lawyers’ decision to skip trial by jury points to anti-Latina biases within the community and the legal branch. Lawyers Antonia Hernández and Charles Nabarette opted to have their case tried by a single judge rather than a jury because they feared a jury could not reach a fair verdict. In fact, the single judge proved to be worse. Judge Curtis manipulated the expert witness’s testimony to demonstrate, not racial or ethnic discrimination by the physicians at County Hospital, but that the ethnicity of these women made them hypersensitive and thus turned their sterilization into an ethnic problem. Indeed, in his closing remarks, Judge Curtis said “the cultural background of these particular women has contributed to the problem in a subtle but

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162 Madrigal v. Quilligan, 393.
163 Gutiérrez, Fertile Matters, 72.
164 Ibid., 50.
significant way” and went on to absolve the doctors of any wrongdoing.\textsuperscript{165} He concluded that since the anthropologist expert witness testified that he could not have known that these women would have had such negative responses to the sterilizations without the 450 hours of study, then the doctors, who cannot possibly spend that much time with each patient, could not have known either.\textsuperscript{166}

Furthermore, the lawyers for the plaintiffs rested their case on the assumption that the holding in \textit{Roe v. Wade}, which gave women the right to terminate their pregnancies, also gave them the right to procreate.\textsuperscript{167} If women have the right to make autonomous choices to decide when to procreate, then their coerced sterilization is not only an act of control but also a deprivation of their right to reproduce. However, the Judge did not address this argument, but chose instead to focus on the legality of the actions of the individual doctors. The Judge determined that doctors have a right to an opinion on family planning and could legally encourage patients to undergo the operation.\textsuperscript{168} He even allowed that some “young physicians [are] very overzealous and some [see] saving the world by advocating sterilization.”\textsuperscript{169} He also found it natural that a doctor would want to persuade a person not to have a large family\textsuperscript{170} and did not see anything wrong with a doctor convincing a patient to get sterilized “so long as he did not use his powers, his ability, his circumstances to override what would be a reasonable decision on the part of the patient.”\textsuperscript{171} Since he did not find this to be happening, Judge Curtis determined that grievances were due to a “clash of

\textsuperscript{165} Ibid., 50.
\textsuperscript{166} Ibid.
\textsuperscript{167} Valdes, \textit{When Doctors Took Family Planning Into their Own Hands}.
\textsuperscript{168} Gutiérrez, \textit{Fertile Matters}, 50.
\textsuperscript{169} Madrigal \textit{v. Quilligan}, 762.
\textsuperscript{170} Ibid., 824.
\textsuperscript{171} Ibid., 825.
cultures”\textsuperscript{172} between the doctors and the Mexican-origin women who desired larger families.

The ten Mexican-origin women of the Madrigal v. Quilligan class action faced discrimination in the exercise of their reproductive freedom given the policies in place in the Los Angeles County Hospital which competed to receive federal funds and in their search for justice in the court system. The County Hospital policies reflected the Johnson Administration’s expectation that any efforts to curb overpopulation would be directed first at the poor Latino population. Meanwhile the Judge, whose role might have been to be a defender of the reproductive autonomy provided in Roe v. Wade or to be a protector of the marginalized and minority communities as upheld by the Fourteenth amendment, corroborated the racist policies and upheld the actions of the doctors as irreprehensible. The Court contributed to the institutionalization of discriminatory policies against Mexican-origin women.

**Public Reception to the Verdict**

In an interview in 2007, Antonia Hernandez summarized the 1975 case with these words: “We lost the battle, but we won the war.”\textsuperscript{173} Indeed, though the case was decided against the plaintiffs, it did bring the injustice of violating reproductive freedom to the public’s attention. The judge might not have found the actions of the doctors to be reprehensible, but the California Department of Health as well as the California State Legislature clearly saw them as problematic enough to rush to

\textsuperscript{172} Gutiérrez, Fertile Matters, 50.
overturn troublesome sterilization laws, pass more inclusive legislation and ensure that such practices of dubious consent could not happen again on such a large-scale.

The case was successful at obtaining reform and at creating changes in medical practices. First and foremost, it led the California Department of Health to create a booklet on sterilization in Spanish to be given as material for potential Spanish-language sterilization patients. The Department also created a 72-hour waiting period between informing a physician of the desire for sterilization and the operation itself, thus decreasing the risk of abuse. Importantly, consent forms were also made available in both English and Spanish. County Hospital, after being implicated in the case, began to comply strictly with federal regulations including the 72-hour waiting period, a near moratorium on sterilization of women under 21 years of age and written and signed consent forms indicating that the patient understood the irreversibility of the procedure and that welfare benefits would not be terminated because of a refusal to be sterilized.

Additionally, the case brought to the attention of Assemblyman Art Torres the fact that a sterilization law in California was still on the books. The “Asexualization Act” was passed in 1909 and was responsible for at least 20,000 forced sterilizations in California. Those sterilized were patients and inmates who embodied a “marked departure from normal mentality,” and were often poor,

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174 Valdes, “When Doctors Took Family Planning into Their Own Hands.”
175 Ibid.
176 Stern, Eugenic Nation, 165.
177 Ibid, 165.
178 Ibid, 159.
marginalized women.\textsuperscript{180} Assemblyman Torres’ bill to repeal the law was
unanimously approved in August 1979.\textsuperscript{181} In 2008 more positive consequences
occurred; the County Hospital approved a policy requiring the 24/7 availability of
interpreters for the Spanish speaking and the deaf, free of cost.\textsuperscript{182} The repeal and new
policy helped change the status quo for many Latina women.

\textit{Exploring the Conditions for Sterilization}

\textit{The Overpopulation Factor}

The conditions for the sterilization of these women and others like them were
created by a wave of xenophobia felt around the nation and expressed in the policies
of political elites. The rise in popularity of the 1968 book, \textit{Population Bomb} led to a
renewal of xenophobic and Neo-Malthusian thought. Thomas Robert Malthus was an
English economist in the late 18\textsuperscript{th} and early 19\textsuperscript{th} century. His theory was that
population would outgrow the food supply and that limits on reproduction were
necessary for the “betterment of humankind.”\textsuperscript{183} The industrial revolution, which
brought about the agricultural revolution, debunked his theory. Nevertheless, in the
1970s, following an upshot in food prices, neo-Malthusian thought reemerged,
especially among the American upper-class.\textsuperscript{184} Malthusian thought proved convenient

\textsuperscript{180} Stern, \textit{Eugenic Nation}, 159; Andrews, “We Can’t Ignore the Ugly Face of Forced Sterilizations in
the U.S.”
\textsuperscript{181} Stern, \textit{Eugenic Nation}, 159
\textsuperscript{182} Attending Staff Association Executive Committee and Senior Executive Council, 2008, “Interpreter
Services,” Los Angeles County and University of Southern California Medical Center Policy.
\textsuperscript{183} Donald MacRae, “Thomas Malthus,” Encyclopaedia Britannicas, Accessed February 18, 2018,
\textsuperscript{184} “Malthus, the False Prophet,” \textit{The Economist}, May 15, 2008,
to elites because its central idea “absolved the upper classes of any responsibility”
and placed the blame of poverty on the poor themselves for engendering more
children than they could feed. Instead of attempts to increase food production or
reduce consumption – for which the U.S. should have been the leader, as in the 1970s
it had 6% of world population but consumed over 50% of its raw materials – it
placed the burden on the issue of fertility in the developing world and the
“undesirable’ sector in developed countries,” notably the poor and the immigrants of
color.

The neo-Malthusian *Population Bomb*, written in 1968 by Dr. Paul R. Ehrlich,
contributed to the rise of hysteria surrounding fertility and overpopulation. Originally,
Dr. Ehrlich was a Stanford biologist whose work focused primarily on butterfly
 genetics. Indeed, his human population theory parallels trends and models found in
the insect world, not taking into consideration humankind’s ability to adapt, and
modify behavior to avoid certain outcomes. He predicted that the “breakdown of
the capacity of the planet to support humanity” would occur by 1985. His solutions
include sterilizing part of society, creating government regulations that dis-
incentivizes reproduction by taxing large families and making diapers, cribs, and toys

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185 Latin American Working Group and the Women’s Press, “Preface” in *Population Target: The
Political Economy of Population Control in Latin America*, (Ontario, CA: Charters Publishing Co.,
1977), xii
(Ontario, CA: Charters Publishing Co., 1977), 73
187 Latin American Working Group and the Women’s Press, “Preface,” xi
188 Clyde Haberman, “The Unrealized Horrors of Population Explosion,” Retro Report, (New York:
*The New York Times*), documentary, minutes 8:14- 8:40, accessed February 18, 2018,
https://www.nytimes.com/2015/06/01/us/the-unrealized-horrors-of-populationexplosion.html?
_r=0&module=ArrowsNav&contentCollection= U.S.&action=keypress&region
=FixedLeft&pctype=article.
189 Ibid.
into luxury goods. He advocated for sterilization and population control including “by compulsion if voluntary methods fail,” and stated “coercion in a good cause” is worth limiting people’s liberties and equates it to cutting out cancerous cells for “a chance of survival.” His book, which became a bestseller, contributed to the rise of xenophobia and mass hysteria around immigration. The book had widespread effects on the nation. In Washington, the book inspired lobbyists to demand more funding for family planning programs and as well as for a dramatic reduction in immigration. A presidential commission was even formed to study overpopulation that funded family planning programs and studies at hospitals such County Hospital. These programs created an opportunity for systematic coercive sterilization in at least a dozen of states where the victims “tended to be poor white women and women of color.”

Legislators saw Latinas and Mexican Americans as responsible for the surge in population which led to the creation of policies designated to remove their incentives and abilities to reproduce. Stereotypes of Latinas as “over-breeders” with high fertility rates as well as the idea of undocumented and uncontrolled immigration, created a fear that Latinas were overusing medical services and migrating en masse to have American children. Latina women were seen as “sexually loose and irresponsible” and dependent on welfare. This image translated into a concern felt

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193 Meraji, “Film Portrays a ‘Perfect Storm.’”
194 Ibid.
195 Chavez, "A Glass Half Empty."
by some Americans that they might be paying for public services used by undocumented immigrants. This fear culminated in ballot initiatives like Proposition 187 where anti-immigrant interest groups in California banded together to influence legislation and try to bar undocumented immigrants from “receiving public entitlements and services, including non-emergency health care, welfare, and public-school education.”\(^{197}\) They succeeded at passing this proposition in 1994, though it was ultimately deemed unconstitutional on the grounds that only the federal government could regulate immigration.\(^{198}\) The same xenophobia and overpopulation concerns that created the conditions necessary for the 1978 unfavorable verdict and coerced sterilization continued to exist in the late 90s as legislation was enacted to limit Mexican-origin women from accessing necessary services to live and reproduce in the United States.

Similarly, the 1986 Immigration Control and Reform Act (IRCA) was passed by anti-immigrant, sexist political elites who intended to deprive Mexican-origin women of services. IRCA made it hard for undocumented immigrants to gain employment while at the same time expanding the seasonal worker program. The senators involved in enacting this legislation were focused on immigrant “women’s fecundity and dependency.”\(^{199}\) While writing the potential provisions of IRCA, legislators discussed their fears of undocumented immigrant women abusing state services and citizenship statuses through reproduction. Even supporters of the act

\(^{197}\) Gutiérrez, *Fertile Matters*, 114.


were “anxious that [undocumented] immigrants […] perceive themselves as being ‘rewarded’ for their ‘illegal behavior’” by “giving birth to tiny U.S. citizens in public (or "welfare") hospitals.”200 Others, like Senator Dreier, were concerned with the financial burden posed by these births, stating:

…Los Angeles is home to more than 1-1/2 million of these illegal citizens [sic] and the legalized children which they have produced.... A total of 48,000 children whose mothers are illegal aliens receive $8 million a month from county taxpayers.... [T]here remains an urgent need ... to supplement the ability of the Border Patrol to intercept the illegals...201

That being said, this fear of taxpayers financing immigrant benefits is largely unfounded, as Mexican-Origin women, even if legally allowed into the country, are often ineligible for most public benefits202 and tend to underutilize the services they are allowed, partly out of fear that it might affect their citizenship status.203 Senator Dannemeyer, on the other hand was concerned with the proximity of his district with the Mexico border, connecting Mexican reproduction and immigration to the undocumented births in the United States.

…The district I represent ... is but a few hours away from the porous United States-Mexico border.... Approximately 70 percent ... of the babies born in country [sic] hospitals are to undocumented alien women. These babies are automatically American citizens, and are therefore eligible for all the welfare benefits available to any US citizen.204

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201 Chock, “No New Women,” 3.
204 Chock, “No New Women,” 3.
However, by strengthening the seasonal worker program, the legislators hoped to reduce the incentive for Mexican-origin women to move to the United States with their spouses which would prevent the addition of new Mexican-American citizens and reduce the social services they might have to provide. Their spouses could now return when the season was over. Thus, the “sites of production and reproduction” were once again separated.\textsuperscript{205} The concern that Mexican women were the leading cause for overpopulation in the United States set the conditions for the forced sterilization of the women in \textit{Madrigal v. Quilligan} and set the stage for immigration reform and numerous restrictions in access to state services for Mexican women immigrants.

\textit{Immigrant Demographics and Increased Public Attention}

The change in immigrant demographics also contributed to the conditions that led to the sterilization of the Mexican women. The rise in Mexican immigration triggered xenophobia and fears of overpopulation among the public and law-makers in the late 20th century. Immigrants to the United States before 1965 were typically from Europe. In the 60s, the largest nationality of legal immigrants was Italian (12.9%); eight out of the top ten immigrant groups were European.\textsuperscript{206} In 1960 Mexicans made up only 5.9\% of immigrants.\textsuperscript{207} In 1965, however, the U.S. passed the Immigration and Nationality Act (INA.) It changed the demographics of incoming

\textsuperscript{205} Wilson, "Anti-Immigrant Sentiment," 200.
\textsuperscript{207} Ibid.
immigrants and rewrote the U.S. immigration policy. Instead of reserving 70% of visas for immigrants from Great Britain, Ireland and Germany, visas were distributed by a system of prioritization. The highest priority was given to applicants with family ties, followed by those with occupational skills and political refugee status. This system ended up helping non-European nationals obtain visas at higher rates than Europeans, although this was not the original intention. The Johnson Administration originally desired to change the immigration policy in order to phase out language of “second-class citizens” that was present in U.S. law until passage of the 1964 Civil Rights Act; however, conservatives did not intend for the new policy to prioritize Asian, African or Latin American applicants over Europeans. In fact, by prioritizing family reunification they thought that Western Europeans would continue to be the main recipients of the visas. Instead, the naturalization of one Asian or African or Hispanic person led to possibility that their siblings or spouse could obtain visas who then in turn could sponsor other family members. The family reunification system led to the increase of Mexican immigrants and created the perception that Mexican immigration needed to be controlled by policies restricting either immigration or reproduction.

Indeed, Mexican immigration dramatically increased as a result of the new system. By 1980, Mexicans made up 15.6% of immigrants, only five European countries made the top ten immigrant groups and for the first time, Koreans, Filipinos

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209 Ibid.
211 Ibid.
and Cubans were also represented in the top ten. In 1990, 21.7% of immigrants were Mexican, and only three European countries were included in the top ten (UK, Germany and Italy totaling 9.7% of immigrants.) In 2000, 29.5% of immigrants were Mexican. Germany was the only European country in the top 10 with 2.9% of immigrants; Latin American and Asian countries appeared instead. In 2010, 29.3% of immigrants were Mexican and no European country made the top ten. In 2016, Mexican immigration decreased slightly to 26.5%. Half of the top ten immigrant groups were Asian and the other half were Latin American.\textsuperscript{212} For further contrast: in 1965, 84% of Americans were non-Hispanic whites, 4% were Hispanic, and less than 1% were Asian while in 2015, 62% of Americans are white, 18% of Americans are Hispanic, and 6% are Asian.\textsuperscript{213} In 2003, Hispanics became the largest minority group, surpassing African Americans.\textsuperscript{214}

Adding to the perception of Mexican-origin people as more numerous and powerful than ever, was the increased news coverage of Mexican Americans during the Chicano movement in the 60s and 70s. The most popular stories that focused on Mexican Americans covered César Chavez and the United Farm Workers, the first farm worker labor union, as well as the National Chicano Moratorium, an anti-Vietnam War group. Both national and regional media outlets covered these topics—though they dedicated less space to them than did the \textit{L.A. Times} or the daily Spanish newspaper, \textit{La Opinion}.\textsuperscript{215} Chicano coverage peaked with Hunter S. Thompson’s

\begin{footnotesize}
\textsuperscript{212} Migration Policy Institute, “Largest U.S. Immigrant Groups over Time, 1960-Present.”
\textsuperscript{214} PBS, “Timeline of Important Dates.”
\textsuperscript{215} Elvia Rodriguez, “Covering the Chicano Movement: Examining Chicano Activism Through Chicano, American,” (PhD diss., University of California Riverside, 2013), 218
\end{footnotesize}
article “Strange Rumblings in Aztlan” and the shooting of Ruben Salazar, in 1971 and 1970 respectively. Not only was the Mexican presence more noted than ever, the images associated with them were of group unity opposing the white mainstream social structure which was concerning to legislators who wished to preserve the status quo.

The Reconquista

Finally, the prevalence of Chicanos in the news and the change in immigrant demographics created another fear to which the policy answer would be population control and limits on Mexican reproduction: the fear of the Reconquista. The peak of the Reconquista theory coincided with the separatist movement of Quebec in Canada. In 1980 and 1995, Quebec, the largest French-speaking province of Canada, implemented referendums and attempted to become their own French speaking country. French Quebec’s separation struggles drew parallels to the increasingly Spanish-speaking regions of the United States – especially of southern California. The fear was that the growing Mexican and Spanish-speaking population were also interested in separating and reclaiming old Mexican land to form a new Spanish-speaking country.

This fear was not unfounded, as Chicano radicals questioned the validity of the 1848 Treaty of Guadalupe Hidalgo and began to demand land for Mexican-

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216 Ibid, 168.
Americans.\textsuperscript{219} The United States acquired land that belonged to Mexico first in 1836, then in 1846 and in 1853. Only the first two occasions were violent, but all three resulted in the United States acquiring both territory and the residents of those lands.\textsuperscript{220} Those former-Mexican residents, who were given U.S. citizenship, became “foreigners in their own lands;” they lost the titles to their land, were subjected to discrimination, held minority status and were subjected to an economic and legal system that catered to white anglophiles.\textsuperscript{221} In 1966, coinciding with the civil rights movement, Reies López Tijerina petitioned the governor to investigate land-grants in the 1800s when land was given away despite being already owned by Mexican Americans.\textsuperscript{222}

Though most Mexican Americans who were part of the land-grant movement were not trying to establish a new country for themselves, there were activists who pushed for an independent country, Aztlán. Chicanos used Aztlán, the name of the original Aztec homeland, as a unifying symbol of shared history, but for some it represented a physical land mass between northern Mexico and southwestern United States that could become a new nation for Chicanos.\textsuperscript{223} The underlying message of the \textit{Reconquista} theory for some Americans was that immigrants from Mexico “were ultimately ‘unassimilable,’” fundamentally un-American, and united in their


\textsuperscript{221} Ibid.

\textsuperscript{222} Nittle, “History of the Chicano Movement.”

opposition to American values.\textsuperscript{224} Political elites feared the growth and power of the minority group which stimulated legislation to limit Mexican reproduction and power such as the federal family planning programs which funded County Hospital’s attempts at reducing Mexican fertility.

\textit{Continued Reproductive Discrimination}

The socio-political conditions that existed in the 1970s to make \textit{Madrigal v. Quilligan} possible still exist today. Mexican-origin reproductive rights are as vulnerable as ever. The overwhelming presence of xenophobia in the 1970s is still a reality, a reality propagated by the current President. Current President Donald Trump was elected on a platform of xenophobia and anti-Mexican sentiment. On June 16, 2015 when he announced that he was running for President, he said the following about Mexican immigrants:

\begin{quote}
…When Mexico sends its people, they’re not sending their best. They’re not sending you. They’re not sending you. They’re sending people that have lots of problems, and they’re bringing those problems with us. They’re bringing drugs. They’re bringing crime. They’re rapists, and some, I assume, are good people.\textsuperscript{225}
\end{quote}

On more than one occasion he has classified the average Mexican as being a rapist, a killer, or part of a drug cartel. Upon becoming president, he has continued to make racist and xenophobic comments. Indeed, on January 12, 2018, President Trump, in a meeting discussing a bipartisan immigration deal, asked why people from “shithole countries,” referring to countries in Africa as well as Haiti and El Salvador, were

\textsuperscript{224} Hondagneu-Sotelo, \textit{Gendered Transitions}, xv
\textsuperscript{225} Edelman, “A Look at Trump’s Most Outrageous Comments.”
being prioritized in the U.S. immigration system. Instead, he would have preferred for more people from countries like Norway to receive preference. With such comments, it is hard not to draw parallels to Lyndon B. Johnson’s INA which attempted to allow more pathways for white Europeans and impede the immigration of African and Latin American countries.

However, the Johnson Administration’s immigration reform created the concept of family reunification in which citizens can sponsor family members who can sponsor others and create a chain of immigration. President Trump has spoken out against this system as recently as his State of the Union address. On January 30th, 2018, President Trump called for the end of “chain migration” which he claimed will protect the nuclear family as well as prevent terrorism, deciding that the two January terrorist attacks in New York were made possible by the family reunification system of immigration. Political actors are once again using Mexican-origin people and immigrants to explain the negative trends in the news and in society. This political environment is similar to the one in the 1970s - and causes concern for the respect of Mexican-origin reproduction.

Indeed, Mexican-reproduction continues to be vulnerable in American society. American women of Latina descent still face discrimination when receiving medical care. Race, ethnicity, gender and language impact the quality of the doctor-patient

227 Ibid.
relationship.\textsuperscript{229} Minority patients, especially those not proficient in English, do not receive as much information, have as good relationship with their doctors, or feel encouraged to participate in the medical decision process.\textsuperscript{230} In one study, researchers found that white doctors experience a racial bias towards white patients and against minorities. In the study, the physicians rated African Americans as less likely than white patients to be free of substance abuse problems or to be interested in an active lifestyle and cardiac rehabilitation;\textsuperscript{231} they even found that African Americans were 60\% more likely to receive no anesthesia when resetting long-bone fractures.\textsuperscript{232}

In addition, since September 2017, the ACLU has gone to court four times to stop the Trump administration from blocking undocumented minors’ rights to have abortions.\textsuperscript{233} The main obstacle for these women is the Office of Refugee Resettlement Agency’s no-abortion policy. Jane Doe, the first of the pregnant undocumented minors, went to court with her appointed guardian where she obtained the legal authority to receive an abortion from a Texas State judge.\textsuperscript{234} However, the federal government blocked her from being transported to an abortion clinic. Instead, they required her to visit a religiously affiliated “crisis pregnancy center” for the sole purpose of dissuading her from having an abortion.\textsuperscript{235}

\textsuperscript{231} Ferguson, “Culture, Language, and the Doctor-Patient Relationship,” 257.
\textsuperscript{232} Ibid., 359.
\textsuperscript{234} ACLU, “Garza v. Hargan”
\textsuperscript{235} Ibid.
In a case that was uncovered in a December 2017 deposition of Scott Lloyd of the Human and Health Services (HHS) Office of Refugee Resettlement (ORR), a 17-year old girl was almost made to take progesterone to reverse an abortion. She had taken the first of two doses of an abortion medicine when the ORR intervened, made her get an ultrasound to verify that the fetus’ heart was still beating and considered making her take the hormone progesterone in an attempt to reverse the abortion. The American Congress of Obstetricians and Gynecologists called the attempt “unethical” and “dangerous” with no scientific basis. Thankfully, the young woman was not harmed and was allowed to complete her abortion.

Scott Lloyd also visited another young, detained, undocumented Latina to ask her to reconsider her abortion decision. Brigitte Amiri, the woman’s lawyer, called this act of an important official visiting a detained and unaccompanied teenager, “an abuse of power to coerce and use immigration status as a bargaining chip.” Latinas in the United States still face coercion and the undue influence of officials who try to impose their own beliefs and restrict their reproductive choices.

Indeed, in Jane Doe’s case, Garza v. Hargan, the government agreed to let her have an abortion if she surrendered “all legal claims to remain in the United States and return to the country of her abuse.” The dissenting opinion of this case, given by Judge Millett, tried before the Court of Appeals for the District of Columbia,

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237 Ibid.
238 ACLU, “Garza v. Hargan.”
stated: “that is wrong and that is unconstitutional.” Judge Millet argued that the government has no right to “use immigration custody to nullify J.D.’s [Jane Doe’s] constitutional right to reproductive autonomy prior to viability” and that the government “cannot condition the exercise of a constitutional right by women and girls on their surrender of other legal rights.” The Court ultimately decided the case in her favor and she was allowed to proceed with an abortion.

These cases show that the lessons learned in *Madrigal v. Quilligan* have not been implemented. Mexican-origin voices continue to be ignored, in favor of louder political actors who implement their belief system to the detriment of Mexican-origin reproductive rights. Latina women have faced and continue to face obstacles that prevent them from making their own decisions about their reproduction. They were coerced into getting sterilized in the seventies and fifty years later are still being coerced; this time it is their choice not to have children which is not being respected. Due to their vulnerability within American society, Latina women have become particular targets for discriminatory policies enacted by political actors holding xenophobic and anti-abortionist agendas. Thankfully, the legal verdicts that protected the reproductive rights of these Latina women do provide some hope for the future. The American judiciary finally did intervene to protect these women’s human rights.

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241 Ibid.
242 Ibid., 4
243 Ibid., 5
244 ACLU, “Garza v. Hargan.”
CHAPTER THREE: NSSM-200 AND U.S. FOREIGN POLICY

“How can I play baseball when I'm worried about foreign policy?”
— Charles M. Schulz

Rockefeller, Nixon and the NSSM-200

American control of Mexican reproduction does not end in the domestic sector, but rather can be observed in U.S. foreign policy as well. Indeed, I argue that the domestic debate over population, reproduction and abortion extends into the international arena. The effects of political elites and special interest groups continue to mold the reproductive control policies even as they extend to the international arena. Indeed, it was domestic special interest groups which made the U.S. government start crafting population control policies such as the NSSM-200, but despite growing international approval and interest in such programs, another special interest group managed to influence the nature of the discussions and prevented the implementation of several of the recommendations. Special interest groups and political elites continue to influence Mexican-origin reproduction even outside of the United States.

Rockefeller’s Influence

The National Security Study Memorandum-200: Implications of Worldwide Population Growth for U.S. Security and Overseas Interests (NSSM-200) is both the most comprehensive population control document created by the U.S. government and an example of domestic special interest groups influencing foreign policy. The
report was commissioned in 1974 by President Nixon and endorsed by President Ford in 1975 through the National Security Decision Memorandum 314 (NSDM 314). The NSSM-200 was written by Secretary of State Henry Kissinger as well as officials in several Government departments including USAID, the Office of Management and Budget, the Council on Environmental Quality and the President’s Science Adviser. It was intended to be an interagency study of the effect of overpopulation on U.S. security.\textsuperscript{245} It describes the demographic changes in worldwide population as well as their effect on the food supply and several key resources, it also outlines a series of policy recommendations for future government action. These recommendations are still representative of the United States population policy though different president have made population control different priorities for their administrations.\textsuperscript{246}

The NSSM-200 was commissioned due to the tremendous lobbying and research effort undertaken by John D. Rockefeller III. It was a domestic push that made the government not only take population control seriously but also verbalize and endorse a collection of policy recommendations on the issue. John D. Rockefeller III started lobbying Congress as early as the 1950s to push for population control policies.\textsuperscript{247}

Rockefeller was influenced by the Neo-Malthusian movement and drafted several plans to increase the production of agriculture and limit the population growth of developing countries. In Mexico, he implemented the Mexican Agriculture Project

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This project rested on the belief that overpopulation—of which Mexican population was of concern—threatened human life and ecological resources and that improvements in agriculture techniques and yields were required to sustain life.\textsuperscript{248} Rockefeller used philanthropy as “a vehicle for promoting American interests globally.”\textsuperscript{249} He also founded the Population Council with the goal of supporting “medical research in reproduction and to train demographers and population experts.”\textsuperscript{250} The Population Council was a grant-giving, research-based, lobbying agency that used its Rockefeller connections to push for increased federal spending on family planning programs and population education.\textsuperscript{251} The Council first tried to influence the Eisenhower administration. A member of Eisenhower’s staff did propose that “population-control programs in developing countries be funded through the military-assistance program.”\textsuperscript{252} However, after the National Conference of Catholic Bishops opposed all public assistance at home or abroad to promote birth control, abortion or sterilization, Eisenhower backed down and declared that “the population problems of other countries were their own and not the problem of the United States government.”\textsuperscript{253} Rockefeller and the Population Council were aggressive in their outreach to political elites and lawmakers.

Though, Rockefeller III’s influence would ultimately be strongest during the Nixon Administration, he did affect the policy being passed in previous

\textsuperscript{249} Ibid., 66.
\textsuperscript{250} Critchlow, \textit{The Politics of Abortion and Birth Control in Historical Perspective}. 9.
\textsuperscript{252} Critchlow, \textit{The Politics of Abortion and Birth Control in Historical Perspective}, 10.
\textsuperscript{253} Ibid.
administrations as well. Interestingly, it was under President John F. Kennedy, a Roman Catholic, that Rockefeller made the first successful strides towards an American population policy. Kennedy was able to obtain an increase in federally sponsored research into reproduction and made assurances that the U.S. would assist family planning programs. The Johnson Administration was also influenced by Rockefeller, signing his “World Leader’s Declaration on Population,” though President Johnson proceeded slowly as he was “concerned with the potential of a Catholic and black backlash.” It was, however, under Johnson that the Foreign Assistance Act would be passed and that the Committee on Population and Family Planning was created with John D. Rockefeller III appointed as co-chair. Finally, under President Nixon, Rockefeller’s influence reached a peak. President Nixon gave the first presidential message on population in 1969 which called for increased research on birth control methods, expanded programs for training more people in the fields of population and family planning, expanded research on the environmental effect of population growth, and increased domestic family planning services especially for low income Americans. It received bipartisan support in Congress and committed the nation to supporting family-planning programs. In his speech, Nixon also appointed the Commission on Population Growth and the American Future which Rockefeller headed. This Commission published the “Population and the American Future” report which though eventually denounced by President Nixon,

254 Ibid.
255 Ibid., 11
257 Ibid.
258 Mumford, "National Security Study Memorandum 200,” 2.
259 Ibid.
was important in informing “subsequent activities of Congress and various
government agencies responsible for family planning” including the NSSM-200. ²⁶⁰
Rockefeller’s tremendous influence started the policy conversations and
recommendations concerning population control.

**NSSM-200 Effect on Mexican Reproduction**

The content of the NSSM-200 shows the attempt of political elites like Henry
Kissinger to give tactical and strategic reasons for the control of Mexican
reproduction. The report outlines U.S. strategies and motivations for population
control throughout the world, but it specifically details elite concern with Mexico and
potential recommendations. Though the report concerns the increase in global
population, it focuses solely on those of developing countries. Mexico is one of the
thirteen countries the U.S. report singles out as having a “special U.S. political and
strategic interest.”²⁶¹ The countries it expands upon are all countries whose
population purportedly threaten the United States. It elaborates on the danger of U.S.
mineral dependence in developing countries who, faced with an increase in
population, may become unstable and unable to trade with the U.S., of mass
immigration which might pollute U.S. rivers, or of general population growth in
allied or special-interest states from which political unrest or instability might cause a
retaliation against the United States.²⁶² Political elites define Mexico as a threat
whose population the United States must control. In fact, the report claims that

²⁶² Ibid., 40, 63, 64.
Mexico’s population growth is “the most significant population trend from the viewpoint of the United States.”\textsuperscript{263}

By describing Mexico as a national security threat, Kissinger and the other authors were justifying their actions to control and limit Mexican reproduction. According to the report, Mexico is most threatening to the United States in terms of potential conflict that might occur with an increase in population. The rise in population cumulates in dramatic and negative hypothetical situations such as border incidents, wars and illegal mass migrations.\textsuperscript{264} The idea is that the increasing number of Mexicans will correlate to an “increase [of] illegal emigration to the U.S.,” and that this will create “friction in […] political relations with Mexico.”\textsuperscript{265} In addition, the increase of population, especially to the southwestern states of the U.S., is linked to an increase of the domestic use of the Colorado River which might make the salinity levels rise in Mexico to the point of reopening a political conflict.\textsuperscript{266} Another reason given by Kissinger to encourage the U.S. to adopt population control programs in Mexico and other Latin American countries was to avoid the formation of alliances against the United States. Several countries with rising populations formed alliances such as the Special Committee for Latin American Coordination that “appear to reflect a common desire to launch economic attacks against the United States.”\textsuperscript{267} He mentions a “potential for collusions of interest among the developing countries”\textsuperscript{268} to help advance industrial output. This collusion might take the form of claims for

\textsuperscript{263} Ibid., 32.
\textsuperscript{264} Ibid., 57.
\textsuperscript{265} Ibid.
\textsuperscript{266} Ibid., 63.
\textsuperscript{267} Ibid., 64.
\textsuperscript{268} Ibid.
expanded territorial waters or a declaration of national sovereignty over mineral resources. The scenarios described in the report, though plausible, are not very realistic and could be prevented before such nefarious things occur.

The language of the report, besides tending towards the dramatic, is also paternalistic. Indeed, aware of the implications of an industrialized country demanding the restriction of developing country populations, the authors of the report recommended the document stay classified for five years. In the end it was classified for close to fifteen years. The authors even recommend a set of policies specifically to “minimize charges of an imperialist motivation behind its support of population activities.” These policies include recognizing that couples have the right to choose the number of children they desire and the right to the education and resources to fulfill their choices, provisions often not afforded the marginalized within the United States. The report tried to convey that curbing “population growth is in the mutual interest of the developed and developing countries alike” while not attempting to limit their own growing population and consumption. The paternalistic and pessimistic language clearly demonstrates that the political elites behind the report were concerned with the growing population of developing countries but the excessively dramatic language raises questions about the true motivation for reducing Mexican population. Is curbing Mexican population growth really the logical solution to the potential over-salination of the Colorado River?

\[269\] Ibid.
\[271\] Ibid.
\[272\] Kissinger, “NSSM-200”, 81.
\[273\] Ibid., 82.
The World Population Conference and the Domestic Catholic Influence

The international community supported many of the policy recommendations found in the *NSSM-200*; however, instead of capitalizing on this support, the United States did not implement all the policy recommendations and reduced the priority of population control in the U.S. due to the influence of Catholic special interest groups on lawmakers. The *NSSM-200* included the policy recommendations adopted in the *World Population Plan of Action* (WPPA) written during the World Population Conference at Bucharest, Romania in 1974. The conference regrouped 136 members states who came together to amend the WPPA, a population plan prepared by the United Nations Population Division.\(^{274}\) It is a comprehensive document which includes policy recommendations on population control and attempts to create bilateral and multilateral channels to support the reduction of population and increase socio-economic growth.\(^{275}\) The plan was ultimately approved by all states in attendance with the exception of the Holy See. It involves recognizing the prevention of unwanted pregnancies and the elimination of involuntary sterility in family planning services so that families can have the number of children they desire.\(^{276}\) However, it also recommended allocating funding towards abortion research and recognized abortion as a method of family planning.\(^{277}\) This rhetoric was morally offensive to the Catholic church who lobbied and worked extensively to reduce the

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\(^{275}\) Kissinger, “NSSM-200,” 91.

\(^{276}\) Ibid., 69.


The Catholic Church was so successful in influencing the direction of population policies because of the sway it held over the Presidential elections. Indeed, Nixon believed he needed the Catholic vote in order to be elected. He thought in 1972 that he must “carry Southern whites and Northern Catholics.”\footnote{Kissinger, “\textit{NSSM-200},” 196.} In order to do so, he needed Roman Catholic bishop support. At that time, the Catholic Church was committing their resources (people, money and location), to “the fight against abortion.”\footnote{Ibid.} In order to tap into those resources Nixon could not be seen endorsing studies recommending abortion among other forms of birth control. Therefore, in May of 1972, Nixon renounced Rockefeller’s Commission on Population Growth’s report recommendations. By renouncing the study, Nixon was “reelected with the bishops’ support.”\footnote{Ibid.} However, once reelected, President Nixon resumed his interest in population growth and on April 24th, 1974, he directed, in the \textit{NSSM-200}, that a new study be “undertaken to determine the ‘Implications of World Population Growth for the US Security and Overseas Interests.’”\footnote{Mumford, “National Security Study Memorandum 200,” 8.} He wished it to be “a definitive study of the national and global security implications of overpopulation [to] show[...] that the very security of the United States were seriously threatened.”\footnote{Ibid.} He was not concerned with ideology but rather with National Security and hoped that

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\item \footnote{Kissinger, “\textit{NSSM-200},” 196.}
\item \footnote{Ibid.}
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\item \footnote{Mumford, “National Security Study Memorandum 200,” 8.}
\item \footnote{Ibid.}
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such a report would “generate public demand for action to curb U.S. and world population growth.”\textsuperscript{284} Though Nixon, through the influence of Rockefeller, had been in support of population control measures, in the end, his desire to be reelected made him publicly renounce one of the first population study reports in order to satisfy politically important special interest groups.

Presidents Carter and Ford faced similar pressures as President Nixon when vying for election. They both believed that “the bishops influenced the Catholic vote” and that they would need it for the success of their campaign.\textsuperscript{285} In exchange for support, President Carter agreed to place two federal agencies with family planning programs “under Catholic control.”\textsuperscript{286} These two programs were USAID and the Office of Population. Several Catholics were offered positions including Joseph Califano who became Secretary of Health, Education and Welfare, and Father Theodore Hesburgh who was President Carter’s first choice for the USAID Administrator position, although the post ultimately went to another Catholic, John Gilligan. In addition, John H. Sullivan, a Catholic who worked with Senator Helms to develop the Helms amendment, was “given a key role in selecting Carter’s political appointees.”\textsuperscript{287} Sullivan selected Sander Levin who was not a Catholic but was “an opportunistic lawyer without previous family planning experience.”\textsuperscript{288} Levin took direction from his “political superiors” to “maul and discombobulate AID’s population program.”\textsuperscript{289} President Ford’s attempt to win over the Catholic bishops for

\textsuperscript{284} Ibid., 196.  
\textsuperscript{285} Ibid., 199.  
\textsuperscript{286} Ibid., 201.  
\textsuperscript{287} Ibid.  
\textsuperscript{288} Ibid.  
\textsuperscript{289} Ibid.
his reelection campaign included supporting the “so-called local option amendment that would reverse Roe v. Wade and return responsibility for abortion to the individual state legislatures.”

The Catholic Church had a big effect on population control policies, all because it disagreed with the NSSM-200 liberal authorization of abortion in other countries. Yet, despite its influence, the NSSM-200 has not become irrelevant. It was officially endorsed by President Ford on November 26th, 1975 (three months after its release) and still represents the official U.S. position on population control. However, no one interest group should hold so much sway over the policy-making system that lawmakers contradict recommendations by the international community, as well as domestic health and security advisers. Indeed, several of the NSSM-200 recommendations have since been overturned by Catholic or Catholic-friendly senators and law makers through anti-abortion amendments to foreign policy legislation.

Anti-abortion Amendments in Foreign Policy

Political elites, in response to the Catholic influence as well as to the Roe v. Wade holding, have attempted to restrict abortion through anti-abortion clauses in foreign policy and assistance programs. Roe v. Wade had an immediate impact on legislation. Before Roe v. Wade, political elites focused on debate surrounding the domestic authorization and appropriation of abortion; after Roe, however, “the

290 Ibid., 202.
291 Mumford, “NSSM 200, the Vatican, and the World Population Explosion.”
controversy spread to U.S. foreign assistance” which led to the “enactment of abortion and voluntary family planning restrictions in foreign assistance authorizations.”

292 For example, though the Foreign Assistance Act (FAA) was first passed in 1961, it was not until 1973, the same year as Roe, that the first anti-abortion amendment would be added to it.

The Foreign Assistance Act was passed by President John F. Kennedy right during the height of the cold war. 293 He sought to “organize and implement U.S. foreign assistance programs with a commitment to long-range economic assistance to the developing world” during a time when new nations were forming and were “under Communist pressure.”

294 On January 22nd, 1973, following more than two years of national debate over abortion rights, Roe v. Wade was decided. In the same year, shortly following the holding, Senator Helms introduced and passed an amendment to the FAA. The Helms Amendment prohibits U.S. foreign assistance funds to “pay for the performance of abortions as a method of family planning or to motivate or coerce individuals to practice abortions.”

295 In practice, the Amendment meant that U.S. funds could not be used overseas towards abortions.

Furthermore, the Catholic influence was felt in other amendments such as the Biden Amendment which contradicted the NSSM-200. The Amendment was added to the Foreign Assistance Act in 1984, which ended the debate over whether the U.S. government should provide financial assistance for abortion research. The

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294 Ibid., 1.
295 Ibid., 3.
amendment, authored by the Catholic Senator (and subsequent Vice President) Joe Biden, prohibits U.S. funds to be used “for biomedical research related to abortion.”296 By contrast, the NSSM-200 made a case for the continued use for research relative to abortions. It claimed it would be “unwise to restrict abortion research” because of the prevalence of its use, the lack of existing safe abortion technique, and because restricting the research could possibly end the development of the IUD or other drugs which could have other beneficial uses (such as methotrexate which was developed as an abortifacient and is now used as a cure to fatal uterine tumors).297 However, political elites were less focused on attempting to provide safe abortions or new scientific breakthroughs than they were in either counter-balancing the liberalism of the new reproductive protections mandated by the Court or gaining the support of the Catholic Church.

Political elites continue to enact anti-abortion legislation. Indeed, the Mexico City Policy which was first enacted under the Reagan Administration, was just reinstated by President Trump in January 2018. The Mexico City Policy goes further than the Helms Amendment by restricting funding to any organization that conducts abortions even if performed with non-U.S. funds.298 Organizations are required to sign a waiver that “they did not, and would not during the time of the funding agreement, perform or actively promote abortion.”299 The Policy, also known as the “Global Gag rule,” was first invoked during the 1984 International Conference on Population held in Mexico City. At the conference, the Reagan Administration

299 Ibid.
announced that it would deny USAID funds to foreign NGOs, though not foreign governments, who perform or recommend abortions, even if they do not use U.S. funds to do so. President George H. W. Bush did not remove the policy. However, President Clinton, in 1993, lifted the restriction in a memo to USAID. President George W. Bush reinstated it for the full eight years of his Presidency and added a restriction to State Department programs. President Obama revoked it in a presidential memorandum to the USAID Administrator and Secretary of State. On January 22nd, 2018, at the start of his term as president, Trump reinstated the Mexico City Policy. The Mexico City Policy is indicative of political elites using reproductive rights as tools to set legislative agendas instead of respecting the rights of women and families.

Indeed, many of the anti-abortion legislation carries the name of the policy-makers who authored the amendments. The political elites use the creation of such amendments as a way to pursue their policy prerogatives. Indeed, the following foreign policy amendments target reproduction and abortion and include the names of their authors: the Siljander Amendment, the DeConcini Amendment, and the Kemp-Kasten Amendment. The Siljander Amendment, for example, prohibits funds to lobby for or against abortion; the DeConcini Amendment, requires funded organizations to provide “either directly or through referral” to a “broad range” of family planning methods including “‘natural’ […] methods and services, such as abstinence.”

Finally, the Kemp-Kasten Amendment, denies funding to any organization that has

300 Ibid.
301 Ibid., 2.
302 Ibid., 5.
303 Ibid., 6.
conducted coercive abortion or involuntary sterilization.\textsuperscript{304} Political elites in Congress have passed a steady stream of legislation that has systematically restricted access to abortion and complete family planning services. Though population control policies like the \textit{NSSM-200} once included abortion as a method of family planning, more recent policies satisfy both population-control enthusiasts and the Catholic anti-abortion stance by attaching amendments to foreign assistance population control packages that deny the use of abortions.

\textbf{USAID in Mexico}

American political elites pushed for a foreign assistance program in Mexico to reduce Mexican fertility rates despite the lack of support from the Mexican government. Indeed, according to the \textit{NSSM-200}, the first attempted Mexican family planning programs were limited by a “lack of strong government interest in population reduction programs.”\textsuperscript{305} To that end, the reports policy recommendations do not include bilateral assistance but rather center on partnerships the U.S. can create with private agencies and multilateral organizations.\textsuperscript{306} However, the U.S. was ultimately successful at gaining the support of the Mexican Government. Starting in 1977, Mexico became an official part of USAID’s family planning program until 2000. During this time, the number of children had by Mexican families was cut by more than half; from 7 children in 1975 to 3 children in 2003.\textsuperscript{307} The number of women using contraceptives also increased: 17\% of married women reported using

\textsuperscript{304} Ibid., 7.
\textsuperscript{305} Ibid., 88.
\textsuperscript{306} Kissinger, \textit{“NSSM-200,”} 77.
\textsuperscript{307} USAID, \textit{Issue Brief: USAID’s Partnership with Mexico.}
some form of birth control technology in 1970 while 68% claimed the same in 2003.\footnote{308}{Ibid.}

In addition, political elites, through the shaping of foreign policy, were able to dictate the methods of birth control used by Mexican women. For example, the U.S. refused to fund any clinics or health care centers which encouraged or performed abortions. This restricted Mexican women who otherwise benefitted under the 1931 penal code which allows a woman to seek an abortion after rape if her life is in danger without fearing legal repercussions.\footnote{309}{Ibid.}

In 2003, a study was released that showed that half a million Mexican women undergo abortions every year.\footnote{310}{Ibid.} Women who wish to control their family size often resort to abortions “usually under unsafe and often lethal conditions,” but no U.S. funds were used to improve those conditions or protect the abortion-seeking woman.\footnote{311}{Ibid.}

Political elites were also influential in the types of technologies given to Mexican women. Indeed, the \textit{NSSM-200} mandated that fertility be reduced in developing countries through a variety of “safe, effective, inexpensive and attractive” methods which must be available to both men and women.\footnote{312}{Ibid.} The forms of birth control most recommended to women were both sterilization and the Intra-Uterine Device (IUD); two methods controlled by doctors, thus restricting the amount of responsibility Mexican women could have over their own reproduction.\footnote{313}{Shapiro, \textit{Population Control Politics}, 10.}

Another consequence of U.S. involvement and political elite desire to

\begin{footnotes}
\footnote{308}{Ibid.}
\footnote{310}{Ibid.}
\footnote{311}{Kissinger, “NSSM-200,” 77.}
\footnote{312}{Ibid, 108.}
\footnote{313}{Shapiro, \textit{Population Control Politics}, 10.}
\end{footnotes}
“improve fertility control methods” and provide inexpensive methods of birth control was the testing and use of technology on Mexican women.\textsuperscript{314} Indeed, lawmakers and special interest groups in the US were so keen to achieve results in their Latin American population control programs that they pushed oral contraceptives that were known to have harmful side effects.\textsuperscript{315} USAID supplied programs with at least “$2.5 million worth of questionable oral contraceptives;” meanwhile, 3-month injectable contraceptive drugs became “one of the most widely used contraceptive methods in Mexico”, although they were “subsequently withdrawn from the US market because they caused cancerous breast nodules in experimental animals.”\textsuperscript{316} By both providing services to limit and control the number of births had by women and by dictating which methods were most desirable, U.S. political elites became very involved in Mexican reproduction. They ultimately dictated the reproductive methods used by Mexican women.

\begin{footnotesize}
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\item Ibid.
\item Mass, \textit{Population Target}, 54.
\item Ibid.
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CONCLUSION

“Of course, the aim of a constitutional democracy is to safeguard the rights of the minority and avoid the tyranny of the majority”

- Cornel West

This thesis has argued that Mexicans and Mexican-origin people residing in the U.S. have been susceptible to reproductive rights violations as a result of U.S. elite political actors and special interest groups coopting the policy-making process. These actors and groups who have had an outsized impact on policy-making have enacted restrictive policies against Mexican-origin women to balance against unlimited reproductive autonomy. The domestic policies disproportionately hurt marginalized groups, in particular racial minorities and immigrants who might not have the opportunity or the credibility to denounce the perceived injustice.

In addition, foreign policy directed at Mexico has been very effective at controlling both birth rates and reproductive methods among poor and rural communities. White, mainstream society often is not affected negatively by these policies and thus resulting violations are not included in reproductive rights conversations. Indeed, national debate on the issue of reproduction is centered around the general provisions of cases such as *Roe v. Wade* and *Casey v. Planned Parenthood*, which legalize or restrict abortion for all women. Since policies have different effects on the various ethnic and racial communities in the United States, it has been challenging for marginalized groups to refute discriminatory policies that undermine reproductive autonomy and the human right to procreate. Debate over the meaning of reproductive freedom is dominated by the voices of political elites and
special interest groups who do not represent the opinions of the general population, nor of affected marginalized groups who are the most vulnerable to rights-restrictions.

I determined, in Chapter One, that in order for reproductive rights to be respected as a human right, the U.S. Government cannot interfere in an individual’s reproductive choice, but also must provide the necessary services and conditions for the choice to be possible. Without providing those conditions, reproductive rights cannot be guaranteed to all. In Chapter Two, the *Madrigal v. Quilligan* case was representative of reproductive right abuses caused by domestic policy. The legal reasoning that decided *Roe v. Wade* and the right to an abortion, was not extended to the right to procreation when Mexican-origin women were concerned. The xenophobic and discriminatory era promoted by political elites and special interest groups led to legislation like Proposition 187, changes in the immigration system and federal funding for family planning targeted at hospitals, like County Hospital in Los Angeles, where the patients are primarily minorities. These policies led directly to reproduction violations or situations of control over Mexican reproduction despite almost never explicitly targeting Mexicans. Meanwhile in Chapter Three, I found that political elites were open and explicit about their desire to control reproduction and its methods. This was demonstrated by the number of anti-abortion amendments referred to by the policymaker’s name. Furthermore, population control has been defined in foreign policy, such as the *NSSM-200*, and pursued in foreign assistance programs, such as USAID.

Foreign policy uses overt anti-abortion language and does not hesitate to single out Mexico as the target of population reduction programs. Indeed, the average
American does not follow foreign policy news so law-makers do not have to hide their intentions as they will face little backlash from their pro-choice constituents or civil rights groups. Meanwhile, domestic reproduction control policy is more subdued in that control is in the form of intentional side effects not explicit directives to reduce Mexican population. Like the federal funding to County Hospital which was understood by all as grants to “cut the birth rate of the Negro and Mexican populations” but was never formally referred to as such. These differences between foreign and domestic policy show that political elites are aware of the opinions of the general public as they try to conceal the true intentions of their domestic policies. However, this awareness does not translate into a change in public policy to respect Mexican-origin reproduction or the interest of the majority.

The policy-making process is corrupted if the voices of the vulnerable are not audible. The United States is a self-proclaimed democracy and thus the voices of the elite should not be the only ones heard. Often, special interest groups do not counter the effects of political elites but rather exacerbate them. The Catholic influence after the NSSM-200 is an example of such behavior as policy-makers, who were already motivated to balance the Court’s abortion legalization, had extra incentives to create anti-abortion legislation that would affect other countries. These special interest groups do not represent public opinion, just the strong—and financed—voices of their members.

Reforms to the policy-making process are needed in order to enhance

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318 Madrigal v. Quilligan, 797.
democratic authority and provide a way toward the greater protection of reproductive autonomy as a human right. We should be concerned about the ability of domestic-national courts to protect immigrant reproductive rights, and we should be especially interested in providing democratic oversight to policy-makers abilities to design inclusive reproductive protections. Reproductive rights are not given by a democracy but rather upheld by it. Democratic legitimacy comes from protecting the rights to which all are entitled.

Though not a long-term solution, an increase of Latina women in policy-making, be it as political elites or through influential advocacy groups, would help mitigate these effects. Women in these positions should be able to advocate for themselves and the interests of those in their community as well as change the image of sexual depravity and criminal intent which surrounds Mexican-origin people. Of course, this solution is only temporary as it does not address the needed structural policy-making changes that should lessen the power of political elites and special interest groups. In addition, Latina women may not stay marginalized forever as demographics change and a new wave of immigration may bring in the next American scapegoat. For these reasons, the structure and mentality around reproductive rights must evolve to ensure the protection and liberty for anyone residing in the United States now and in the future.
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