

The Case for Reparations in Puerto Rico: A Comparative Case Study of State-Sanctioned Sterilizations in Puerto Rico, North Carolina, and California

KATHRYN RUBIN*

ABSTRACT

Throughout the 20th century, eugenic sterilization policies and practices were widely implemented across the United States and the territories, sanctioned by the Supreme Court in its infamous *Buck v. Bell* opinion. It is estimated that during this time, one-third of women in Puerto Rico, 7,528 in North Carolina, and 20,000 in California were sterilized. While North Carolina and California have both since engaged in reparative efforts to address this harm, the same efforts have yet to be seen in Puerto Rico, despite having had the highest rate of female sterilization in the world. This article puts forth a case for reparations for these eugenics-based sterilizations in Puerto Rico by analyzing both the sterilization programs and subsequent reparative attempts in Puerto Rico, North Carolina, and California. As two of the few states who have made attempts to repair the harm caused by sterilization programs, North Carolina and California provide robust models for advocates in other regions looking to do the same. These two reparations programs have several commonalities, including lawsuits, formal government apologies, media publications, and compensation packages developed by the legislature. This article provides an opportunity for future advocates to improve upon these models by critiquing the various methods of repair used by these two states. Finally, this article explores the distinguishing characteristics of Puerto Rico's sterilization program to better understand the unique hurdles that advocates may face in securing reparations.

“In a country that is deeply delusional about its own history, so committed to a willful amnesia, that our memory has survived at all is no minor miracle. Remembering is an act of defiance.”

- COLE ARTHUR RILEY

* J.D., Northeastern University School of Law (2024). Kathryn is a Trial Attorney at the Committee for Public Counsel Services in the Mental Health Litigation Division. Acknowledgments: This article was made possible with the guidance and support of Professor Margaret Burnham and Malcolm Clarke at Northeastern University School of Law. A special thank you to Chelsea Diaz, for sharing this particular history of Puerto Rico with me, planting the seed for this article.

ARTICLE CONTENTS

INTRODUCTION	77
I. STATE-SANCTIONED STERILIZATIONS	79
A. Puerto Rico	79
1. Coerced Sterilization and Medical Experimentation	79
2. Contributing Factors to Widespread Sterilization Policy	80
B. North Carolina	82
C. California	84
II. REPARATIONS	86
A. North Carolina	86
B. California	89
C. Puerto Rico	94
1. Advocacy Efforts	94
2. Challenges to a Reparations Claim	95
III. COMPARATIVE ANALYSIS OF PUERTO RICO, NORTH CAROLINA, AND CALIFORNIA	96
A. Geographic and Political Context	97
B. Racial and Ethnic Makeup	97
C. Target Groups	98
CONCLUSION	99

INTRODUCTION

This paper analyzes the state-sponsored eugenic sterilization policies that were enacted across the United States throughout the 20th century, specifically focusing on Puerto Rico, California, and North Carolina.¹ It then

¹ International examples of forced sterilization as a tool of population control include China, India, and Singapore. See Sam Rowlands & Pramod R. Regmi, *The Use of Forced Sterilisation as a Key Component of Population Policy: Comparative Case Studies of China, India, Puerto Rico, and Singapore*, 68 INDIAN J. PUB. ADMIN. 271 (2022). The first countries to introduce laws sanctioning involuntary sterilization were the United States, Japan, and Canada. See Jean-Jacques Amy & Sam Rowlands, *Legalised Non-Consensual Sterilization — Eugenics Put into Practice Before 1945, and the Aftermath. Part 1: USA, Japan, Canada, and Mexico*, 23 EUROPEAN J. CONTRACEPTION & REPROD. HEALTH CARE 121, 123 (2018). Nine other countries in Europe followed suit: Switzerland, Denmark, Germany, Norway, Sweden, Finland, Estonia, Iceland, Austria. See Jean-Jacques Amy & Sam Rowlands, *Legalised Non-Consensual Sterilization — Eugenics Put into Practice Before 1945, and the Aftermath. Part 2: Europe*, 23 EUROPEAN J. CONTRACEPTION & REPROD. HEALTH CARE 194, 194–98 (2018). Latvia, Kenya, Hungarian Roma, Czech/Slovak Roma, Peru, and Uzbekistan also had sterilization programs. Paul J. Weindling, *Too Little, Too Late: Compensation for Victims of Coerced Sterilization*, in PSYCHIATRY AND THE LEGACIES OF EUGENICS 181, 184–86 (Frank W. Stahnisch & Erna Kurbegović eds., 2020).

explores what, if any, reparations have been provided as a form of redress.² Sterilization policies such as these were by no means limited to these three locales; thirty-three other states enacted sterilization policies grounded in eugenic principles.³ This paper focuses on these locations in particular for three main reasons: first, both North Carolina and California have since engaged in various reparative efforts;⁴ second, the widespread nature of Puerto Rico's sterilization program demands exploration; and third, despite having had the highest rate of female sterilization in the world,⁵ there is no documentation of the survivors of the program in Puerto Rico having received reparations, as has occurred in North Carolina and California.

The eugenics movement swept the nation during the 20th century, emerging in response to several factors noted by Scholar Alfred Brophy: first, concern that government care was being directed towards disabled individuals; second, prioritization of public funds over personal autonomy; and finally, fear of threats towards white supremacy.⁶ Although many of these sterilization laws were repealed in the latter half of the 20th century, the issue is far from obsolete.⁷ Rather, it is of continued importance not only because of the lack of reparative efforts, but because those driving factors of the eugenics movement persist today and because forced sterilization is situated within the broader context of reproductive control. In part, this article argues that these harms have persisted throughout history because of the erasure of the violence from our collective memory as a society. Rendering such harms as invisible then fosters the environment in which such violence grows, unaccounted for, culminating in modern-day assaults on personal autonomy. To understand the current climate of reproductive control, it is critical to be grounded in this country's history of forced sterilization. Why? Because it reminds us of a question at the heart of such

² Among the various countries that legalized involuntary sterilizations, few have taken responsibility or provided reparations. See Weindling, *supra* note 1. Alberta, Canada compensated those who litigated claims. See *id.* at 184. Germany provided a partial apology and compensation, and both Sweden and Austria compensated victims. See *id.* at 184–85.

³ Sarah Brightman, Emily Lenning & Karen McElrath, *State-Directed Sterilization in North Carolina: Victim-Centredness and Reparations*, 55 BRIT. J. CRIMINOLOGY 474, 476 (2015).

⁴ In 2015, Virginia passed compensation for victims of forced sterilization, becoming the second state to do so, after North Carolina. Alexandra Minna Stern, Nicole L. Novak, Natalie Lira, Kate O'Connor, Siobán Harlow & Sharon Kardia, Commentary, *California's Sterilization Survivors: An Estimate and Call for Redress*, 107 AM. J. PUB. HEALTH 50, 53 (2017). In 2021, California created a compensation program for survivors, becoming the third state to do so out of the thirty-three states that had eugenic sterilization laws. See Amanda Morris, 'You Just Feel Like Nothing': California to Pay Sterilization Victims, N.Y. TIMES (July 11, 2021), <https://www.nytimes.com/2021/07/11/us/california-reparations-eugenics.html>; see also Brightman, Lenning & McElrath, *supra* note 3, at 474.

⁵ LA OPERACIÓN, at 33:11–33:17 (Ana María García, Latin American Film Project 1982).

⁶ Alfred L. Brophy & Elizabeth Troutman, *The Eugenics Movement in North Carolina*, 94 N.C. L. REV. 1871, 1949 (2016).

⁷ Linda Villarosa, *The Long Shadow of Eugenics in America*, N.Y. TIMES MAG. (June 8, 2022), <https://www.nytimes.com/2022/06/08/magazine/eugenics-movement-america.html>.

efforts to control reproduction: **who is entitled to have children?**⁸ The buried history of forced sterilization calls out from its shallow grave, reminding us of a past that is still playing out today: that the decision-making power to have or to not have children is an entitlement not yet held by the people but by the lawmakers.

I. STATE-SANCTIONED STERILIZATIONS

A. Puerto Rico

1. Coerced Sterilization and Medical Experimentation

In 1937, Law 116 was enacted, which authorized sterilization and birth control experimentation in Puerto Rico.⁹ The program has been described in the following way: “sterilisations were carried out under the auspices of an eugenic law with a distinct flavour of ethnic targeting.”¹⁰ Law 116 was based in eugenics principles, which promoted the reproduction only of those deemed fit to have children.¹¹ By the mid-1970s, about 35% of women in Puerto Rico had been sterilized,¹² more than ten times the rate among women living in the 50 states of the U.S.¹³ By 1980, Puerto Rico had the highest rate of female sterilization worldwide.¹⁴ This procedure was such a common occurrence that it was widely known as “la operación.”¹⁵ Overall, it is currently estimated that one-third of all women in Puerto Rico have been sterilized.¹⁶

Consent for this procedure was frequently lacking altogether or inadequate, as many people were either uncertain about what the procedure was or felt that they had no choice in the matter.¹⁷ Many women were told that this was a reversible procedure, while others were told by their physician that sterilization was “in style.”¹⁸ One Presbyterian Hospital refused to admit women for delivery if they had three or more children, unless that person

⁸ The reproductive justice framework is grounded in the following three principles: “[T]hat all women have (1) the right to have children; (2) the right to not have children and; (3) the right to nurture the children we have in a safe and healthy environment.” *Reproductive Justice*, IN OUR OWN VOICE: NAT’L BLACK WOMEN’S REPROD. JUST. AGENDA, <https://blackrj.org/our-causes/reproductive-justice/> (last visited May 16, 2024).

⁹ Rowlands & Regmi, *supra* note 1, at 278.

¹⁰ *Id.* at 273.

¹¹ LA OPERACIÓN, *supra* note 5, at 7:57–8:23.

¹² LA OPERACIÓN, *supra* note 5, at 29:03–29:14.

¹³ Rowlands & Regmi, *supra* note 1, at 281.

¹⁴ LA OPERACIÓN, *supra* note 5, at 33:11–33:17.

¹⁵ *Id.* at 2:11–2:14.

¹⁶ *Id.* at 2:07–2:10.

¹⁷ Rowlands & Regmi, *supra* note 1, at 278–79.

¹⁸ LA OPERACIÓN, *supra* note 5, at 4:30–4:38, 10:18–10:27.

agreed to sterilization.¹⁹ One woman shares that she got the operation, in large part, because she wanted to go back to work, and while it was never explicitly required by her supervisor, she recalls that it was understood that to come back to work, she needed to receive the procedure.²⁰ There are countless other examples that illuminate how deeply coercive these practices were in trying to increase rates of sterilization.²¹

Forced sterilization was not the only infringement upon bodily autonomy. During the same time period, Puerto Rico was also being used as a laboratory for the development of birth control,²² which Nancy Ordover describes as “perhaps one of the most notorious abuses of medical power in birth control technology’s history.”²³ Beginning in 1956, birth control trials began in Puerto Rico and were largely tested on poor women.²⁴ The pill was a highly experimental drug at the time, and despite this, women were neither informed of any potential side effects or risks²⁵ nor were they told that they were a part of a clinical trial.²⁶ Women reported symptoms including nausea, headaches, and dizziness, but their complaints were dismissed as “coincidences.”²⁷ It is now estimated that the contraceptives tested at that time were twenty times as strong as they are today.²⁸

2. Contributing Factors to Widespread Sterilization Policy

There are several factors that contributed to the implementation of the sterilization policy in Puerto Rico. At the time, there was concern that the large population contributed to the high rates of unemployment and poverty.²⁹ This then led to the notion that Puerto Rico had a “surplus population,” which required population control.³⁰ Sterilization was one such mechanism for controlling population growth in Puerto Rico.³¹ However,

¹⁹ Rowlands & Regmi, *supra* note 1, at 278. One fieldworker reported that “[t]he policy of the hospital is to carry out sterilizations if the woman has three living children. In his [the acting director’s] private practice[,] two are enough . . . It is the unofficial policy of the hospital not to admit (uncomplicated) multiparae [women who have given birth at least two times] if they do not submit to sterilization.” NANCY ORDOVER, *AMERICAN EUGENICS: RACE, QUEER ANATOMY, AND THE SCIENCE OF NATIONALISM* 151 (2003) (alterations in original) (quoting LINDA GORDON, *WOMAN’S BODY, WOMAN’S RIGHT: A SOCIAL HISTORY OF BIRTH CONTROL IN AMERICA* 300, 304 (1976)).

²⁰ Jaquira Díaz, *Let Puerto Rico Be Free*, THE ATL. (Sept. 20, 2022), <https://www.theatlantic.com/magazine/archive/2022/11/puerto-rico-independence-not-statehood/671482/>

²¹ See LA OPERACIÓN, *supra* note 5, at 4:30–4:38, 10:18–10:27.

²² *Id.* at 22:58–23:06.

²³ ORDOVER, *supra* note 19, at 151.

²⁴ LA OPERACIÓN, *supra* note 5, at 21:05–21:17.

²⁵ *Id.* at 21:14–22:36.

²⁶ *The Puerto Rico Pill Trials*, PUB. BROAD. SERV., <https://www.pbs.org/wgbh/americanexperience/features/pill-puerto-rico-pill-trials/> (last visited Aug. 29, 2024).

²⁷ ORDOVER, *supra* note 19, at 152.

²⁸ LA OPERACIÓN, *supra* note 5.

²⁹ Bonnie Mass, *Puerto Rico: A Case Study of Population Control*, 4 LAT. AM. PERSPS. 66, 68 (1977).

³⁰ *Id.*

³¹ *Id.* at 69.

“U.S. officials casting an eye on island poverty overlooked their own culpability in undermining the Puerto Rican economy.”³²

Sterilization was also propped up as a tool for improving health outcomes—supported in large part by the medical community.³³ The economic hardships of a nation colonized by the United States contributed to poor health outcomes, including malaria and dietary deficiencies, among several others.³⁴ In the 1930s, medical professionals argued that sterilization provided a mechanism by which such health outcomes could be improved.³⁵ Physicians were surveyed about their opinions on sterilization, with startling results: “80 percent of those who responded favored sterilization as a medical solution to malnourishment and poor health.”³⁶

Beyond the specific conditions of Puerto Rico at the time Law 116 was enacted, the United States’ legal landscape in the 1920s paved the way for the enactment of Law 116. In 1927, a Supreme Court decision upholding the constitutionality of a Virginia sterilization law changed the course of reproductive rights across the nation.³⁷ *Buck v. Bell* illustrates the Court’s efforts not only to police who is fit to reproduce but also control sexuality and sex outside the confines of marriage. The plaintiff in the case, Carrie Buck, was a 17-year-old girl who was raped by her foster parents’ nephew and became pregnant as a result.³⁸ Her foster parents then had her deemed epileptic and “feeble-minded,” despite the fact that Carrie was neither,³⁹ and had her sent away to Virginia State Colony for Epileptics and the Feeble-minded.⁴⁰

Around the same time, Virginia passed a sterilization law and was looking for a plaintiff to bring a case forward to test whether the law would be upheld.⁴¹ Carrie effectively functioned as the pilot case for the hospital to test the law before sterilizing more people. Once at the Colony, Carrie was examined by a physician who deemed her a good candidate for sterilization after considering the following facts: both Carrie and her mother had been deemed feeble-minded, Carrie’s baby was potentially feeble-minded, and Carrie had become pregnant out of wedlock.⁴² At the requisite hearing,

³² ORDOVER, *supra* note 19, at 150.

³³ Mass, *supra* note 29.

³⁴ *Id.*

³⁵ *Id.* at 69.

³⁶ *Id.*

³⁷ *Buck v. Bell*, 274 U.S. 200, 207 (1927).

³⁸ Terry Gross & Adam Cohen, *The Supreme Court Ruling That Led to 70,000 Forced Sterilizations* at 18:35, 21:00 (NPR broadcast on *Fresh Air* March 7, 2016), <https://www.npr.org/sections/health-shots/2016/03/07/469478098/the-supreme-court-ruling-that-led-to-70-000-forced-sterilizations>; see also *Buck v. Bell: Inside the SCOTUS Case that Led to Forced Sterilization of 70,000 & Inspired the Nazis*, DEMOCRACY NOW!, at 32:10 (March 17, 2016), https://www.democracynow.org/2016/3/17/buck_v_bell_inside_the_scutus.

³⁹ *Buck v. Bell: Inside the SCOTUS Case that Led to Forced Sterilization of 70,000 & Inspired the Nazis*, *supra* note 38, at 32:23.

⁴⁰ *Id.* at 32:20.

⁴¹ *Id.* at 32:30.

⁴² *Id.* at 20:20.

which has been described as a “sham,” Carrie was deemed suitable for sterilization.⁴³ This order for Carrie Buck’s involuntary sterilization was the order challenged in the Supreme Court case *Buck v. Bell*.⁴⁴

Buck v. Bell was an 8–1 decision, and in the opinion, Justice Holmes infamously stated that “[i]t is better for all the world, if instead of waiting to execute degenerate offspring for crime, or to let them starve for their imbecility, society can prevent those who are manifestly unfit from continuing their kind. The principle that sustains compulsory vaccination is broad enough to cover cutting the Fallopian tubes. Three generations of imbeciles are enough.”⁴⁵ Justice Holmes’s language and the majority support for the decision illuminates the Court’s ideology that certain groups of people are unfit to reproduce and that the government ought to be afforded the power to decide who those people are. In other words, the Court revealed its support for eugenics via reproductive control,⁴⁶ which was then reinforced in a subsequent Supreme Court case.⁴⁷ In 1942, the Supreme Court was presented with the opportunity to overturn *Buck v. Bell*, when it heard *Skinner v. Oklahoma*, a case involving a state statute permitting the sterilization of a certain classification of “habitual criminals.”⁴⁸ The Court ultimately struck down the state law. However, rather than prohibiting forced sterilization altogether, the Court held that the state *could* interfere with someone’s right to procreate, as long as it had a compelling interest.⁴⁹ The Court failed to prohibit eugenics and instead merely said it could no longer go unpunished.⁵⁰ Scholars have since highlighted that around the time of this decision, Nazi Germany was adopting its eugenics policies from U.S. law and policy.⁵¹ Those on trial in Nuremberg later used this as a defense, challenging their prosecution for perpetrating mass sterilizations on the grounds that the U.S. Supreme Court had expressly supported forced sterilization.⁵²

B. North Carolina

Between 1929 and 1974, 7,528 people were sterilized under a North Carolina law⁵³ “as a way to keep welfare rolls low, reduce poverty and

⁴³ *Id.* at 21:10.

⁴⁴ *Buck v. Bell*, 274 U.S. 200, 205 (1927); *see also* Gross & Cohen, *supra* note 38, at 18:35, 21:35.

⁴⁵ *Buck*, 274 U.S. at 207 (1927).

⁴⁶ *See* *Buck v. Bell: Inside the SCOTUS Case that Led to Forced Sterilization of 70,000 & Inspired the Nazis*, *supra* note 38.

⁴⁷ *See* *Skinner v. Oklahoma*, 316 U.S. 535 (1942).

⁴⁸ *Id.*

⁴⁹ *Id.* at 541 (holding that “strict scrutiny of the classification which a State makes in a sterilization law is essential”).

⁵⁰ *See id.* (holding that a state was permitted to authorize sterilizations as long as they had a compelling interest).

⁵¹ *See* *Buck v. Bell: Inside the SCOTUS Case that Led to Forced Sterilization of 70,000 & Inspired the Nazis*, *supra* note 38, at 39:07.

⁵² *See id.*

⁵³ Brightman, Lenning & McElrath, *supra* note 3, at 477.

improve the gene pool by preventing the ‘mentally deficient’ from reproducing.”⁵⁴ Black and Native American women were disproportionately targeted by North Carolina’s eugenics program,⁵⁵ which has been termed “one of the country’s most aggressive eugenics programs.”⁵⁶ Nial Ruth Cox, a survivor of North Carolina’s program, was sterilized at 18 after being told by her doctor that the effects of the procedure would “wear off.”⁵⁷ Cox and her mother resided together and received welfare.⁵⁸ To coerce Cox into compliance, the welfare worker threatened to kick the family off the welfare rolls if Cox’s mother did not agree to have her daughter sterilized.⁵⁹ Thirteen-year-old Elaine Riddick, another survivor of sterilization, was raped and then forcibly sterilized at 14 while giving birth.⁶⁰ She had no knowledge of the procedure until she was older and wanted to become pregnant.⁶¹

Many who were sterilized were from impoverished communities and were classified as “feebleminded,”⁶² but the scope of sterilization expanded, targeting not only those who were institutionalized but also the general population.⁶³ In fact, those who had never been institutionalized made up the majority of sterilizations.⁶⁴ Part of this expansion occurred when the state authorized social workers to file petitions for the sterilization of those on their welfare rolls.⁶⁵ The Eugenics Board, made up of five state officials, was then responsible for reviewing petitions and issuing determinations on whether to authorize sterilization.⁶⁶ The Eugenics Board was formed in 1933, in large part because the 1929 sterilization law had been struck down as unconstitutional because of the lack of an appeal process.⁶⁷ The Eugenics Board resolved this by creating such a process,⁶⁸ and individuals who had not provided informed consent were given this right to appeal.⁶⁹ To authorize a petition for sterilization, the Board was not required to obtain informed consent from the individual set to be sterilized.⁷⁰ Rather, consent only

⁵⁴ Linda Villarosa, *The Long Shadow of Eugenics in America*, N.Y. TIMES MAG. (June 8, 2022), <https://www.nytimes.com/2022/06/08/magazine/eugenics-movement-america.html>.

⁵⁵ *Id.*

⁵⁶ Eric Mennel, *Payments Start for N.C. Eugenics Victims, But Many Won’t Qualify*, NAT’L PUB. RADIO (Oct. 31, 2014), <https://www.npr.org/sections/health-shots/2014/10/31/360355784/payments-start-for-n-c-eugenics-victims-but-many-wont-qualify>.

⁵⁷ Villarosa, *supra* note 54.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ Morris, *supra* note 4.

⁶¹ *Id.*

⁶² Brightman, Lenning & McElrath, *supra* note 3, at 477.

⁶³ Lori Wiggins, *North Carolina Regrets Sterilization Program*, THE CRISIS (2005).

⁶⁴ *Id.*

⁶⁵ Brightman, Lenning & McElrath, *supra* note 3, at 476.

⁶⁶ *Id.*

⁶⁷ Troy L. Kickler, *Eugenics Board*, N.C. HIST. PROJECT, <https://northcarolinahistory.org/encyclopedia/eugenics-board/> (last visited Apr. 24, 2023).

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ Brightman, Lenning & McElrath, *supra* note 3, at 479.

needed to be obtained from either the person's next of kin or legal guardian.⁷¹ At the hearings, supporting documents presented to the Board included, among other things, evidence illustrating a person's mental capacity, whether they presented a danger to society, and a hypothesis about the person's promiscuity and chances of procreation.⁷² The rate at which the Board authorized petitions was remarkably high: between 1933 and 1935, 96% of petitions were authorized, and during a two-year period in the 1950s, that number increased to a 97% approval rate.⁷³

C. California

California's sterilization law was passed in 1909, authorizing the sterilization of those committed to state institutions who suffered from a "mental disease."⁷⁴ Those who authorized the sterilizations considered a myriad of factors, including sexual or criminal delinquency and family history of alcoholism, adultery, or poverty.⁷⁵ About 68%—or 566—of those sterilized under California's sterilization policies were 17 years old or younger.⁷⁶ Between 1920 and 1945, about 20,000 people were sterilized under this state law, a disproportionate number of who were of Mexican descent.⁷⁷ The most aggressive period of sterilizations in California occurred between 1945 and 1949, with 48.5% of the total sterilizations taking place during this time period.⁷⁸ Similar to North Carolina, informed consent from the patient was not a requirement, and sterilization sometimes functioned as a pre-requisite for release from these state institutions.⁷⁹ Even when consent forms were signed, the conditions under which they were signed demands further inquiry into whether true informed consent was given.⁸⁰ An example of such coercive conditions occurred in 1978 when several Mexican-American women were sterilized in a Los Angeles hospital.⁸¹ Although consent forms had been provided, the women argued that a lack of safeguards, including consent forms in Spanish, resulted in a violation of their constitutional right to procreate.⁸² Beyond consent forms, the conditions under which these women were sterilized was inherently

⁷¹ *Eugenics Board, North Carolina Highway Historical Marker Program*, N.C. DEP'T OF CULTURAL RES., <http://www.ncmarkers.com/Markers.aspx?MarkerId=H-116> (last visited Nov. 8, 2024).

⁷² *Id.*

⁷³ Brightman, Lenning & McElrath, *supra* note 3, at 477–78.

⁷⁴ Stern, Novak, Lira, O'Connor, Harlow & Kardia, *supra* note 4, at 50.

⁷⁵ *Id.* at 52.

⁷⁶ *Id.*

⁷⁷ Villarosa, *supra* note 54, at 5.

⁷⁸ Stern, Novak, Lira, O'Connor, Harlow, & Kardia, *supra* note 4, at 52.

⁷⁹ *Id.* at 50.

⁸⁰ *See No Más Bebés* (Moon Canyon Films 2015); *see also* Marcela Valdes, *When Doctors Took 'Family Planning' Into Their Own Hands*, N.Y. TIMES (Feb. 1, 2016), <https://www.nytimes.com/2016/02/01/magazine/when-doctors-took-family-planning-into-their-own-hands.html>.

⁸¹ Maya Manian, *Coerced Sterilization of Mexican-American Women: The Story of Madrigal v. Quilligan*, REPROD. RTS. & JUST. STORIES 98 (Melissa Murray, Katherine Shaw & Reva B. Siegel, eds.)

⁸² *Id.* at 104.

coercive: one physician recalled observing a medical resident tell a woman in the midst of labor that if she wanted painkillers she needed to sign the sterilization consent forms.⁸³

This violence reappeared in California state prisons between 2006 and 2010, when roughly 150 female inmates who were incarcerated were sterilized,⁸⁴ despite California's sterilization law being overturned in 1979.⁸⁵ The majority of those sterilized were Black and Latina.⁸⁶ Prison records indicate that between 1997 and 2013, about 1,400 people in Department of Corrections (DOC) custody were sterilized either during labor or other medical procedures.⁸⁷ At the time these sterilizations were occurring in California state prisons, both federal and state law prohibited the use of sterilization on women in prison as a form of birth control.⁸⁸ Despite this, in meeting minutes leaked by a whistleblower, the California Department of Corrections discussed the cost effectiveness of sterilizing inmates during labor and delivery, as well as ways to reclassify the procedure as medically necessary so that it could be covered by state funds.⁸⁹

Reporter Corey Johnson interviewed the doctor who performed most of these sterilizations, and when confronted with the fact that over \$100,000 of taxpayer money was funding these sterilizations, Dr. James Heinrich replied that it was "cheaper than welfare."⁹⁰ As demonstrated by Heinrich's response, justification for these sterilizations was grounded in the belief that it saved the state money.⁹¹ Corey Johnson reflected on Heinrich's statement: "That attitude tracked precisely to the historical attitude of the California leaders of the eugenics movement. They had always used cost benefits as the justifier for why they were doing what they were doing. And so, in that

⁸³ See *No Más Bebés* (Moon Canyon Films 2015); see also Valdes, *supra* note 80.

⁸⁴ Villarosa, *supra* note 54, at 6. Formerly incarcerated folks who have spoken out about this practice note that the program specifically targeted those who were deemed likely to return to prison. See *BELLY OF THE BEAST* (Erika Cohn 2020). The surgery became so frequent that it was commonly referred to as "the surgery of the month." *Id.* Kelli Dillon was one of many who was sterilized while incarcerated, and who was deliberately misinformed about what procedure had been performed on her. *Id.* Cynthia Chandler, an attorney at Justice Now, notes, "[t]hanks to Kelli's organizing, we were able to uncover a dozen instances of people being sterilized during other kinds of surgeries." *Id.* Another woman went in to see the doctor for back cramps. *Id.* She was told she had tumors and endometriosis which increases your chances of cervical cancer. *Id.* She was subsequently given a hysterectomy, despite the absence of cancer. *Id.* Kimberly Jeffrey, who was pregnant at the time of her incarceration, shared that she was forced to undergo a C-section, rather than vaginal delivery, for security purposes, and while handcuffed to the bed and under heavy anesthesia, was asked to place an X indicating approval for tubal ligation. See *id.*

⁸⁵ Villarosa, *supra* note 54.

⁸⁶ Shilpa Jindia, *Belly of the Beast: California's Dark History of Forced Sterilizations*, GUARDIAN (June 30, 2020), <https://www.theguardian.com/us-news/2020/jun/30/california-prisons-forced-sterilizations-belly-beast>.

⁸⁷ *Id.*

⁸⁸ *BELLY OF THE BEAST*, at 27:58–28:05 (Erika Cohn 2020).

⁸⁹ *Id.* at 27:23–27:58.

⁹⁰ *Id.* at 42:04–42:18.

⁹¹ See *id.* at 48:00–48:38.

way, Heinrich was part of a legacy. If you just stop and make him the face of it, do you really get at the problem?"⁹²

II. REPARATIONS

A. North Carolina

North Carolina provided various forms of redress for the state-sponsored sterilizations that took place throughout the mid to late 1900s.⁹³ Such measures would not have come about if not for the brave and persistent efforts of those who were victims and survivors of the sterilization policies.⁹⁴ In addition to the incredible work of survivors, the efforts of community members who fought alongside them to raise awareness and hold the government accountable are also deserving of recognition. These community members included researchers, journalists, and lawyers, among countless others.⁹⁵

In 2002, the Winston-Salem Journal published a four-part series about the sterilization program that took place in North Carolina throughout the 1900s.⁹⁶ Prior to this series, no concrete steps had been taken to address the harm brought about by this program, and this series served as a major catalyst for the subsequent reparative efforts that took place afterwards.⁹⁷ It wasn't until years later that North Carolina became the first state to compensate victims of forced sterilization.⁹⁸ More recently, in 2017, PBS aired *The State of Eugenics*, which documented the forced sterilizations in North Carolina through records filed with the Eugenics Board and interviews with journalists, researchers, and surviving victims of the sterilization.⁹⁹

In the early 1970s, Nial Ruth Cox, then 26, reached out to Brenda Feigen, anti-discrimination attorney, at ACLU's Reproductive Freedom Project to pursue legal action against the state for the involuntary sterilization she had been subjected to in 1965.¹⁰⁰ In 1973, Brenda Feigen and Ruth Bader Ginsburg filed a lawsuit on behalf of Cox, seeking \$1 million in damages and a declaration that North Carolina's sterilization program was unconstitutional.¹⁰¹ The case was ultimately barred by the

⁹² *Id.* at 48:55–49:17.

⁹³ Villarosa, *supra* note 54, at 6.

⁹⁴ *Reel South: The State of Eugenics* (PBS television broadcast Jan. 26, 2017), <https://www.pbs.org/video/reel-south-state-eugenics/>.

⁹⁵ See Editorial, *Against Their Will*, WINSTON-SALEM J., Dec. 10–14, 2002; see also Ria Tabacco Mar, Opinion, *The Forgotten Time Ruth Bader Ginsburg Fought Against Forced Sterilization*, WASH. POST, Sept. 19, 2020.

⁹⁶ Editorial, *Against Their Will*, WINSTON-SALEM J., Dec. 10, 2002.

⁹⁷ See Jonathan Michels, *Breaking the 'Wicked Silence' of Eugenics in North Carolina*, TRIAD CITY BEAT (June 18, 2014), <https://triad-city-beat.com/breaking-the-wicked-silence/>.

⁹⁸ Villarosa, *supra* note 54, at 6.

⁹⁹ *Reel South: The State of Eugenics*, *supra* note 94, at 4:30.

¹⁰⁰ *Id.* at 27:55–28:18.

¹⁰¹ Mar, *supra* note 95.

statute of limitations, despite the fact that Cox had not even known the procedure was irreversible until 1970.¹⁰² The case did, however, attract national attention, appearing on *60 Minutes*, which likely contributed to the ultimate dissolution of the eugenics sterilization program years later.¹⁰³

In 2002, Governor Mike Easley issued a formal apology, likely brought about by Winston-Salem Journal's publication revealing North Carolina's sterilization program.¹⁰⁴ In his apology, Governor Easley stated, "[o]n behalf of the state I deeply apologize to the victims and their families for this past injustice, and for the pain and suffering they had to endure over the years[.] This is a sad and regrettable chapter in the state's history, and it must be one that is never repeated again."¹⁰⁵

In *Truth Telling as Reparations*, Margaret Urban Walker explores the role of public apologies, highlighting the importance of an apology including an acknowledgment of the facts and the harm that occurred, as well as acceptance of responsibility.¹⁰⁶ Similarly, in 2013, the Caricom Reparation Commission developed a 10-Point Reparations Plan, noting the conditions of an apology: "A full apology accepts responsibility, commits to non-repetition, and pledges to repair the harm caused."¹⁰⁷ The report distinguishes between statements of regret and apologies, noting that statements of regret fall short on two grounds: first, such a statement fails to acknowledge that crimes were committed; and second, fails to demonstrate an acceptance of responsibility.¹⁰⁸

Under both Urban Walker and Caricom's theories, Governor Easley's apology for the sterilization abuse in North Carolina falls short for several reasons. First, while he apologizes for the pain and suffering the victims and their family members endured, he uses passive language, thus failing to acknowledge that the harm occurred at the hands of the North Carolina government and demonstrating a lack of accountability for the harm. Second, the Governor states that such abuse should never be repeated but goes no further in detailing what the government will do to prevent such abuse in the future. An important component of reparations are guarantees of non-repetition (GNR), which include "specific actions that reduce the likelihood of recurrence."¹⁰⁹ GNR is less about putting the victim back to

¹⁰² Cox was repeatedly told by her doctors at the time of the sterilization that it was a reversible procedure. She did not learn that this was untrue until years later, when she wanted to have children and was informed by her gynecologist that this was not possible. As a result, her fiancé left her, and she was then unable to adopt because she was not married. *Id.*

¹⁰³ *Id.*

¹⁰⁴ See Editorial, *Against Their Will III*, WINSTON-SALEM J., Dec. 12, 2002.

¹⁰⁵ N.C. Governor Apologizes to Sterilization Victims, ACCESS WDUN (Dec. 13, 2002), <https://accesswdun.com/article/2002/12/186617>.

¹⁰⁶ Margaret Urban Walker, *Truth Telling as Reparations*, 41 METAPHILOSOPHY 525, 527 (2010).

¹⁰⁷ 10-Point Reparation Plan, CARICOM REPARATIONS COMM'N, <https://caricomreparations.org/caricom/caricoms-10-point-reparation-plan/> (last visited Nov. 10, 2024).

¹⁰⁸ *Id.*

¹⁰⁹ Naomi Roht-Arriaza, *Measures of Non-Repetition in Transitional Justice: The Missing Link?*, LEGAL STUD. RSCH. PAPER SERIES (UC HASTINGS, 2016).

where they would have been had the violation not occurred in the first place, but rather transforming the status quo and providing assurances that the status quo will not be returned to.¹¹⁰ Finally, the apology leaves out altogether any plans to repair the harm. While apologies alone are insufficient to repair harm, they can play a critical role in providing accountability and advancing reconciliation.¹¹¹ However, to accomplish this, apologies should only be offered when they can be done with sincerity and intentionality.

In 2003, North Carolina's sterilization law was overturned, and in 2009, a historical marker commemorating the victims was placed in Raleigh.¹¹² The marker text states, "Eugenics Board: State action led to the sterilization by choice or coercion of over 7,600 people, 1933–1973. Met after 1939 one block E."¹¹³ In 2010, the Governor formed the North Carolina Justice for Sterilization Victims Foundation, which was tasked with finding the survivors of the sterilization practices.¹¹⁴ The following year, the governor appointed a task force to begin exploring what a compensation package for survivors might consist of.¹¹⁵ The task force faced various challenges in the drafting of the bill, including issues of the constitutionality of the bill, whether the bill could accomplish the desired goal, and means of identifying victims.¹¹⁶ In exploring the option of compensation for victims of sterilization, a state panel held a public hearing for sterilization victims in 2011.¹¹⁷ Several surviving victims, including Willis Lynch and Elaine Riddick, stood before the panel and shared their experience of being deemed unfit to produce and subsequently sterilized as a result.¹¹⁸ The hearing garnered national attention, appearing on several news outlets.¹¹⁹

After the Winston-Salem publications, Representative Larry Womble relentlessly sought redress for the harm brought about by these eugenic sterilization policies, filing several bills seeking compensation for survivors.¹²⁰ Such efforts were largely unsuccessful due to a lack of support, until 2011, when Representative Tillis joined Representative Womble in the fight for compensation for survivors.¹²¹ Representatives Womble and Tillis

¹¹⁰ *10-Point Reparation Plan*, *supra* note 107.

¹¹¹ See Daniella Stoltz & Beth Van Schaack, *It's Never Too Late to Say "I'm Sorry": Sovereign Apologies Over the Years*, JUST SECURITY (Mar. 16, 2021), <https://www.justsecurity.org/75340/its-never-too-late-to-say-im-sorry-sovereign-apologies-over-the-years/>.

¹¹² Villarosa, *supra* note 54, at 6.

¹¹³ *Eugenics Board*, *supra* note 71.

¹¹⁴ Villarosa, *supra* note 54, at 6.

¹¹⁵ *Id.*

¹¹⁶ *Reel South: The State of Eugenics*, *supra* note 94, at 38:15–39:00.

¹¹⁷ *Id.* at 24:20–24:27.

¹¹⁸ *Id.* at 24:30–25:28.

¹¹⁹ *Id.* at 25:29–26:19.

¹²⁰ *Id.* at 17:00–18:28.

¹²¹ *Id.* at 33:00–31:10.

continued to push for compensation during the 2012 Legislative Session by introducing H.B. 947, but the bill never made it out of committee.¹²²

Finally, in 2013, the Legislature voted to allocate \$10 million to compensating survivors,¹²³ which breaks down to payments of \$20,000 per person.¹²⁴ This was brought about, at least in part, because of “a rare moment of unanimity across the political spectrum in terms of outrage about the state’s actions, even if not a complete consensus on the morality of paying reparations.”¹²⁵ While such reparative efforts are noteworthy, as of 2018, of the roughly 7,000 North Carolinians sterilized, only 220 have been compensated.¹²⁶ Additional challenges have arisen regarding who receives compensation.¹²⁷ To be eligible for compensation, a person’s sterilization must have been approved by the Eugenics Board (i.e., under state authority).¹²⁸ One critique of the compensation program is that dozens, if not hundreds, of people were sterilized at county-run facilities—approved by judges and social workers—rather than at the state level.¹²⁹ Consequently, for the sterilizations that occurred at a county-run facility, the survivors are ineligible for compensation.¹³⁰ Debra Blackmon is one of those struggling to receive compensation.¹³¹ She was just 14 years old when she was subjected to a full abdominal hysterectomy but is now categorically barred from receiving compensation because her sterilization was approved by a judge, rather than the Eugenics Board.¹³² To address this gap, Senator Jackson introduced Senate Bill 532 in 2015, which sought to expand the language of the compensation program to include those who were sterilized in county facilities; however, the bill never made it out of committee.¹³³

B. California

Reparations in California have been far more limited than in North Carolina. In 2003, Attorney General Bill Lockyer issued an apology for California’s eugenics policy during the 20th century.¹³⁴ Lockyer provided a

¹²² H.B. 947, Gen. Assemb., 2011–2012 Sess. (N.C. 2012); see *Reel South: The State of Eugenics*, *supra* note 94, at 41:09–42:25.

¹²³ Villarosa, *supra* note 54.

¹²⁴ Eric D. Smaw, *Uterus Collectors: The Case for Reproductive Justice for African American, Native American, and Hispanic American Female Victims of Eugenics Programs in The United States*, *BIOETHICS* (Special Issue) 1, 4 (2021).

¹²⁵ Brophy & Troutman, *supra* note 6, at 1943.

¹²⁶ Smaw, *supra* note 124 at 6.

¹²⁷ See Mennel, *supra* note 56, at 2:30–2:50.

¹²⁸ *Claims & FAQs*, N.C. DEP’T OF ADMIN., OFF. OF JUST. FOR STERILIZATION VICTIMS, <https://ncadmin.nc.gov/about-doa/special-programs/office-justice-sterilization-victims/claims> (last visited Nov. 10, 2024).

¹²⁹ See Mennel, *supra* note 56, at 2:15–2:22.

¹³⁰ *Id.* at 2:50–3:12; see also *Claims & FAQs*, *supra* note 128.

¹³¹ Mennel, *supra* note 56, at 0:41.

¹³² *Id.*

¹³³ S.B. 532, Gen. Assemb., 2015–2016 Sess. (N.C. 2015).

¹³⁴ Letter from Bill Lockyer, Cal. Att’y Gen., to Dedee Alpert, Chair, Cal. Senate Select Comm. on Genetics (Mar. 11, 2003).

brief overview and impact of the program and then apologized for the harm inflicted:

I cannot change the past, but as Attorney General, I am moved to offer an apology for the injustice done to California men and women when the state permitted and promoted involuntary sterilization . . . [i]t is never too late to search our conscience, to protest discrimination, and to reject injustice inflicted by public policy or statute on helpless minorities. At the dawn of an era when cloning and genetic engineering offer both great promise and great peril, we must learn from our history, teach our children about our past and be mindful for our future. The apology offered today speaks to the past bigotry and intolerance against the disabled, developmentally disabled or others who happened to be seen as misfits of the time. It also stands as a warning to policymakers of the 21st century. We must remember and honor our common humanity and treat people with respect, no matter their race, ethnicity, religious belief, economic status, disability[,] or illness.¹³⁵

A few hours later, Governor Gray Davis issued a formal apology of his own: “To the victims and their families of this past injustice, the people of California are deeply sorry for the suffering you endured over the years. Our hearts are heavy for the pain caused by eugenics. It was a sad and regrettable chapter . . . one that must never be repeated.”¹³⁶

Attorney General Lockyer’s apology was more comprehensive than the apology offered by North Carolina’s governor for several reasons.¹³⁷ For starters, Lockyer acknowledged the role of the state in permitting and promoting involuntary sterilization, thus demonstrating an understanding that the government bears responsibility for the harm.¹³⁸ Additionally, he provided an overview of the facts, detailing what occurred under this sterilization law and who was most heavily impacted, and rejected the bigotry that led to such violence in the first place.¹³⁹ However, under Urban Walker and Caricom reparation theories, Lockyer’s apology still falls short for several reasons. First, he made broad commitments to non-repetition but such sweeping statements are difficult to enforce later on, if and when the

¹³⁵ *Id.*

¹³⁶ Carl Ingram, *State Issues Apology for Policy of Sterilization*, L.A. TIMES (Mar. 12, 2003), <https://www.latimes.com/archives/la-xpm-2003-mar-12-me-sterile12-story.html>.

¹³⁷ Letter from Bill Lockyer, Cal. Att’y Gen., to Dede Alpert, Chair, Cal. Senate Select Comm. on Genetics (Mar. 11, 2003).

¹³⁸ *Id.* at 1.

¹³⁹ *Id.* at 2.

government fails to hold true to those commitments.¹⁴⁰ Second, Lockyer failed to note any plans to repair the harm.¹⁴¹ The power of including such language in an apology is perhaps best reflected in what happens when it is absent, which is that there is no enforcement mechanism for holding the government accountable and ensuring that they follow through on their commitments to ensure that reparative measures are pursued and that such violence never happens again. Governor Davis's apology is even more lacking than Attorney General Lockyer's and more closely resembles the apology offered in North Carolina.

After the public apologies by Attorney General Lockyer and Governor Davis, nearly two decades passed before survivors saw any form of compensation,¹⁴² and it was a long and arduous road to get there. There was a myriad of advocacy efforts that ultimately led to the passage of a compensation package for remaining survivors of California's sterilization policies, including those by survivors, reporters, lawyers, legislators, and filmmakers. In 2013, Corey Johnson investigated and reported on the allegations of involuntary sterilizations at California prisons.¹⁴³ Released in 2020, Erika Cohn's documentary, *Belly of the Beast*, exposed the forced sterilizations that took place in California prisons and grounded these events in the history of state-sanctioned sterilizations in California.¹⁴⁴ The documentary depicted the story of Kelli Dillon, who was unlawfully sterilized at the age of 24 while she was incarcerated in Central California Women's Facility.¹⁴⁵ The film followed the story of Dillon in the subsequent years, and her fight for redress alongside lawyer Cynthia Chandler.¹⁴⁶ During testimony before the Assembly Health Committee, Dillon posed the following question to the legislature: "Did this happen to me because I was African American? Did it happen to me because I was a woman? Did it happen to me because I was an inmate? Or did it happen to me because I was all three?"¹⁴⁷

Due in large part to Dillon and Chandler's persistent advocacy, Senate Bill 1135 was passed in 2014, which prohibited sterilization for purposes of birth control in prisons.¹⁴⁸ The bill was approved by the Governor in September of 2014.¹⁴⁹ In 2019, Assembly Bill 1764 was brought before the

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² Villarosa, *supra* note 54, at 6.

¹⁴³ Corey G. Johnson, *Female Inmates Sterilized in California Prisons Without Approval*, REVEAL (July 7, 2013), <https://revealnews.org/article/female-inmates-sterilized-in-california-prisons-without-approval/>; *see also* BELLY OF THE BEAST, at 32:46–33:12 (Erika Cohn 2020).

¹⁴⁴ BELLY OF THE BEAST (Erika Cohn 2020).

¹⁴⁵ *Id.* at 5:30–7:10.

¹⁴⁶ *Id.* at 7:40–8:52.

¹⁴⁷ *Id.* at 1:09:07–1:09:17.

¹⁴⁸ S.B. 1135, 2014 Leg., Reg. Sess. (Cal. 2014); *see also* BELLY OF THE BEAST, at 1:10:51–1:11:02 (Erika Cohn 2020).

¹⁴⁹ S.B. 1135, 2014 Leg., Reg. Sess. (Cal. 2014); *see also* BELLY OF THE BEAST, at 1:10:51–1:11:02 (Erika Cohn 2020).

California Sterilization Reparation Hearing, which sought to provide redress to those who were sterilized under California law, including both those who were sterilized throughout the 1900s as well as those who were sterilized during incarceration.¹⁵⁰

Finally, in 2021, California established a compensation program for survivors of forced or involuntary sterilization, setting aside \$4.5 million.¹⁵¹ There are an estimated 600 surviving victims who will receive roughly \$25,000 each.¹⁵² This includes both individuals who were sterilized throughout the 1900s as well as those who were more recently sterilized in state prisons.¹⁵³ In addition to the \$4.5 million to be split among survivors, the state approved \$2 million for program outreach and \$1 million to establish markers that commemorate the sterilizations.¹⁵⁴ In the announcement of the launch of California's compensation program, Governor Newsome stated, "California is committed to confronting this dark chapter in the state's past and addressing the impacts of this shameful history still being felt by Californians today. . . . While we can never fully make amends for what they've endured, the state will do all it can to ensure survivors of wrongful sterilization receive compensation."¹⁵⁵

Several challenges have arisen regarding eligibility for and accessibility of the compensation program. One provision of California's Forced or Involuntary Sterilization Compensation Program is that survivors must apply for compensation before December 31, 2023.¹⁵⁶ This creates challenges for several reasons, including the fact that medical records are notoriously challenging to access and that many people may be entirely unaware that they were sterilized until years later, as happened in Kelli Dillon's case.¹⁵⁷ Additionally, procedures were performed on some individuals that effectively sterilized them, but were not medically

¹⁵⁰ BELLY OF THE BEAST, at 1:17:25–1:18:00 (Erika Cohn 2020).

¹⁵¹ CAL. HEALTH & SAFETY CODE § 24210; *see also* Villarosa, *supra* note 54, at 6.

¹⁵² Morris, *supra* note 4.

¹⁵³ *California Launches Program to Compensate Survivors of State-Sponsored Sterilization*, OFF. OF GOVERNOR GAVIN NEWSOME (Dec. 31, 2021), <https://www.gov.ca.gov/2021/12/31/california-launches-program-to-compensate-survivors-of-state-sponsored-sterilization/>.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Recovery from Forced Sterilization*, CAL. VICTIM COMP. BD., (last visited May 26, 2023), <https://victims.ca.gov/fiscp/> [<https://web.archive.org/web/20230526203854/https://victims.ca.gov/for-victims/fiscp/>].

¹⁵⁷ *See* BELLY OF THE BEAST, at 7:52–8:05 (Erika Cohn 2020). Dillon had been under the impression she was having a cyst removed from her ovary, but instead she was given a hysterectomy. *Id.* at 5:30–6:43. Her physician not only failed to inform her about what procedure had been performed on her but outright lied to her when she inquired into whether she would be able to have children in the future, answering in the affirmative. *Id.* at 7:00–7:10. Months later she began experiencing symptoms of surgical menopause and contacted Justice Now, an organization that provided advocated on behalf of incarcerated women. *Id.* at 7:40–8:15. It wasn't until Justice Now helped to obtain her medical records that she learned she had been sterilized. *Id.* at 8:15–8:52.

documented as a sterilization procedure, rendering them ineligible for compensation under California's program.¹⁵⁸

In addition to legislative efforts, litigation also raised awareness and served to hold the State accountable for its harms. In 1978, class action *Madrigal v. Quilligan* was filed by attorney Antonia Hernández and brought by ten Mexican American women who had been forcibly sterilized by the State.¹⁵⁹ One of the Plaintiffs was Dolores Madrigal, who had been in labor when she was coerced into signing consent forms for sterilization.¹⁶⁰ The Court ruled in favor of Defendants, stating that the case was merely about a miscommunication between the patients and the doctors that resulted from the language barrier.¹⁶¹ The Court further asserted that Plaintiffs' emotional distress could be contributed to Plaintiffs' "cultural background" rather than as a direct result of being forcibly sterilized.¹⁶² In stark contrast, cultural anthropologist Carlos Velez-Ibanez's described the women's pain in the following manner: "For each women her sense of continuity with the past had been fractured, her sense of self-worth had been shattered, self-blame had been internalized, and a new social identity of impotence had been generated The final effect was acute depression."¹⁶³

Despite the loss in court for these plaintiffs, positive reforms were accomplished as a result of the various advocacy strategies that were deployed in response to these sterilizations.¹⁶⁴ For example, California's Department of Health carved out additional protections for sterilization procedures by requiring materials be provided in numerous languages detailing the procedure as well as the potential consequences.¹⁶⁵ Additionally, one year after the ruling in *Madrigal*, California revoked its sterilization law.¹⁶⁶

¹⁵⁸ See Victoria Law, *Sterilization Survivors Who Won Reparations Now Face Another Challenge—Getting It*, THE NATION (Jan 3, 2023), <https://www.thenation.com/article/society/sterilization-survivors-reparations-california/>. Thus far, two trans men have been denied compensation due to such circumstances. One man received an ablation, which does not count as sterilization, but given that the procedure dramatically reduces one's chances of getting pregnant in the future, it was in effect similar to sterilization. *Id.* The second man had both of his ovaries removed, but medical records only document the removal of one of his ovaries. Because the medical records do not reflect a complete removal of both ovaries, he is ineligible for compensation. *Id.*

¹⁵⁹ Valdes, *supra* note 80.

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ Manian, *supra* note 81, at 10–11.

¹⁶⁴ *A Latinx Resource Guide: Civil Rights Cases and Events in the United States*, LIBR. OF CONG., <https://guides.loc.gov/latinx-civil-rights> (last visited April 24, 2023).

¹⁶⁵ *Id.*

¹⁶⁶ *Id.* See also Villarosa, *supra* note 54, at 6 (stating that California overturned its sterilization law in 1979).

C. Puerto Rico

1. Advocacy Efforts

Helen Rodriguez-Trias, a grassroots organizer, activist, and physician, played a crucial role in exposing the mass sterilizations that took place in Puerto Rico and the subsequent development of reproductive rights guidelines.¹⁶⁷ In 1975, Rodriguez-Trias founded the Committee to End Sterilization Abuse (CESA),¹⁶⁸ which eventually became the Committee for Abortion Rights and Against Sterilization Abuse (CARASA).¹⁶⁹ This committee was “the first grassroots organization developed to combat forced sterilization.”¹⁷⁰ In its statement of purpose, CESA asserted its commitment to working on a number of issues, including establishing guidelines on sterilization, raising awareness around the issue of sterilization abuse, demanding access to birth control, and engaging in legal action in defense of patients’ rights.¹⁷¹ CESA grounded these commitments in the history of sterilization in the United States:

Population control programs have been pushed by the U.S. for people in the United States as well as in many countries abroad to do exactly that: control people and keep us from understanding the real causes of our suffering and thus keep us from dealing with the problems by eliminating oppression and exploitation. By pushing population control programs, the United States government and corporations hope to stave off the struggles of people for liberation from direct and indirect domination by the U.S.¹⁷²

In addition to Rodriguez-Trias’s efforts to raise awareness around the state-sanctioned sterilizations that were occurring across United States’ states and territories, other advocacy efforts also exposed the sterilizations, including Ana María García’s 1982 documentary film *La Operación*.¹⁷³ García interviewed numerous women who underwent sterilization, government officials who authorized the sterilizations, and advocates such as Helen Rodriguez-Trias.¹⁷⁴ The film depicts scenes of the surgeries obtained from archival footage,¹⁷⁵ which García asserted she included for

¹⁶⁷ Laura Newman, *Obituaries: Helen Rodriguez-Trias*, 324 BMJ 242 (2002).

¹⁶⁸ *CESA Statement of Purpose*, CHI. WOMEN’S LIBERATION UNION (Aug. 30, 2016), <https://www.cwluherstory.org/health/cesa-statement-of-purpose>.

¹⁶⁹ Newman, *supra* note 167.

¹⁷⁰ *Reproductive Coercion and Sterilization Abuse*, NAT’L WOMEN’S HEALTH NETWORK (Oct. 3, 2022), <https://nwhn.org/reproductive-coercion-and-sterilization-abuse/>.

¹⁷¹ *CESA Statement of Purpose*, *supra* note 168.

¹⁷² *Id.*

¹⁷³ *LA OPERACIÓN*, *supra* note 5.

¹⁷⁴ *Id.* at 2:37–3:24, 17:32–18:08, 23:56–25:00.

¹⁷⁵ *Id.* at 36:26–37:12.

two main reasons: first, the “scenes prevent sterilization from degenerating into a concept or an intellectualization;” and second, given the continuing misconception that these procedures merely tied the tubes resulting in a reversible procedure, García wanted her audience to visibly see the tubes being cut.¹⁷⁶ When asked why she made her first film about the sterilizations that occurred in Puerto Rico, García shared, “[t]he film really isn’t just about sterilization, although that is its focus. Its wider context is the colonization of Puerto Rico and the politics of population control. Sterilization and emigration were the results of a political and economic situation forced on Puerto Rico by the United States.”¹⁷⁷ To date no reparative efforts have been made to address the harm of forcibly sterilizing one-third of the population.¹⁷⁸

2. Challenges to a Reparations Claim

A challenge that often arises in reparations claims is determining who is owed; the answer quickly becomes complicated given that the degree of consent to these sterilizations is still disputed. Much of the literature notes that the program was inherently coercive in nature and can therefore never truly be consented to, while others warn against the equation of mainland feminism with Puerto Rican feminism, noting that sterilization in Puerto Rico was a mechanism for Puerto Rican women to have agency over their own reproductive choices.¹⁷⁹ Brightman asserts that “[c]onsent is not possible alongside coercion,”¹⁸⁰ and coercion was so deeply imbedded into these practices that it quickly becomes difficult to disentangle a truly voluntary choice from a choice made in response to coercive methods.

Nial Ruth Cox, a survivor of the North Carolina eugenics program, notes “my choice was to either let my sister and brother starve[] or take the surgery.”¹⁸¹ Can a choice such as that truly ever be extricated from the inherent pressure? When asked about her interpretation of the women who chose sterilization, García responds that in addition to being highly accessible and affordable as a contraceptive, “I can only speculate that sterilization gave some women the opportunity to take control of their lives under circumstances in which—because of their condition as women in a colonized situation—control of their lives was in someone else’s hands.”¹⁸²

Although states, in developing a plan for monetary reparations, may hope to obtain evidence of coercion, this will be quite difficult to prove for

¹⁷⁶ Kimberly Safford, *La Operación Forced Sterilization*, 29 JUMP CUT 37 (1984).

¹⁷⁷ Iraida López, *Interview with La Operación’s Ana María García: “Not Many Options for Contraception,”* 29 JUMP CUT 38 (Kimberly Safford trans.) (1984).

¹⁷⁸ LA OPERACIÓN, *supra* note 5.

¹⁷⁹ LAURA BRIGGS, *REPRODUCING EMPIRE: RACE, SEX, SCIENCE, AND U.S. IMPERIALISM IN PUERTO RICO* 143–45 (2002).

¹⁸⁰ Brightman, Lenning & McElrath, *supra* note 3, at 479.

¹⁸¹ *Reel South: The State of Eugenics*, *supra* note 94, at 4:33–4:40.

¹⁸² López, *supra* note 177.

a variety of reasons, not the least of which may be the absence of records nearly a century later.¹⁸³ Alfred Brophy briefly addresses this question of consent and coercion: “Given how much effort the state spent to facilitate ‘consent,’ as well as the limited efforts the state made to protect those being sterilized, it is reasonable to presume that victims and their families were coerced. At any rate, any ambiguities should be at least resolved in favor of those who were sterilized.”¹⁸⁴

Simply because the question of “who is owed” presents a challenge, given the complexity around consent, does not mean that the question cannot be answered. There is, perhaps, a straightforward way to resolve this challenge. How important is it to distinguish between those who truly consented to these sterilizations versus those who were coerced or forced into the procedure? One way to reframe the answer is that because these practices were grounded in eugenics, it is less relevant to separate out those who consented versus those who did not, and rather, because the policy itself was inherently violent in nature, reparations are owed regardless of the degree of voluntariness. Alternatively, if states are adamant about limiting compensation to those forcibly sterilized—thus excluding individuals who obtained sterilization as a form of family planning—it is critical to incorporate into such program a rebuttable presumption that persons sterilized under this state eugenics program are eligible to receive compensation, shifting the burden to the government to prove voluntariness.¹⁸⁵

III. COMPARATIVE ANALYSIS OF PUERTO RICO, NORTH CAROLINA, AND CALIFORNIA

North Carolina’s sterilization programs operated from 1929 until 1974, during which time 7,528 people were sterilized, a disproportionate number of whom were Black and Native American.¹⁸⁶ California’s sterilization law was enacted in 1909 and wasn’t overturned until 1979,¹⁸⁷ during which time the State sterilized about 20,000 people, disproportionately targeting persons of Mexican descent.¹⁸⁸ Comparatively, Puerto Rico enacted its sterilization law in 1937 and the programs operated well into the 1980s.¹⁸⁹ At one point, the rate of sterilization among Puerto Rican women was 10 times that of women living in the United States.¹⁹⁰ That reparative measures have occurred in both North Carolina and California raises the question of why such measures have not been taken in response to the eugenic-based

¹⁸³ See Brophy & Troutman, *supra* note 6, at 1946.

¹⁸⁴ *Id.* at 1946.

¹⁸⁵ *Id.* at 1947.

¹⁸⁶ Villarosa, *supra* note 54, at 5.

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ Rowlands & Regmi, *supra* note 1; see also La Operación, *supra* note 5.

¹⁹⁰ Rowlands & Regmi, *supra* note 1.

sterilizations in Puerto Rico. This article puts forth several contributing factors (non-exhaustive) that help to explain the lack of reparations in Puerto Rico. These factors are broken down into the following categories: geographic and political context, racial and ethnic makeup, and target groups.¹⁹¹

A. Geographic and Political Context

In contrast to North Carolina and California, Puerto Rico is physically separated from the mainland of the United States. It is possible that this physical separation has created a sense of psychological separation, which functions to (falsely) legitimize the federal government's lack of acknowledgment and accountability for its promotion of eugenic sterilizations. Because Puerto Rico is a U.S. Territory and not a state, it also receives differential treatment by the federal government than do the 50 states, particularly within the political context. The political autonomy that Puerto Rico has been stripped of by the federal government presents additional challenges. While Puerto Rico has a Resident Commissioner authorized to represent Puerto Rico before the federal government, the Resident Commissioner cannot vote for the final passing of bills, including bills directly related to Puerto Rico.¹⁹² Thus, in the event that a reparations bill makes it to the floor of Congress, Puerto Rico is not even entitled to have its elected official vote on its behalf.

Additionally, a question perhaps more pertinent to reparations in Puerto Rico is that of who owes. Reparations in both North Carolina and California came about because of legislation that carved out protections and compensation programs for survivors. This may present a greater challenge in Puerto Rico than in North Carolina and California for several reasons. Compensation in both North Carolina and California was paid out by the state. While the sterilization in Puerto Rico was expressly supported by the Puerto Rican government as a way to control population growth, the high rates of unemployment and poverty that led to "concerns" about population control can only be properly understood within the larger history of colonization and U.S. occupation of Puerto Rico. In accordance with this history, a deeper inquiry may be required to determine who bears responsibility for the sterilizations and therefore who owes.

B. Racial and Ethnic Makeup

Some scholars posit that because certain sterilization programs targeted people cross-racially, legislators were able to garner the bipartisan support

¹⁹¹ Several of these categories were inspired by the work of Rowlands and Regmi's comparative study. See Rowlands & Regmi, *supra* note 1 at 279–81.

¹⁹² *What is a Resident Commissioner?*, U.S. CONGRESSWOMAN JENNIFFER GONZÁLEZ-COLÓN, <https://gonzalez-colon.house.gov/about/what-resident-commissioner> (last visited April 24, 2023).

that may otherwise have presented more of a challenge had the programs strictly targeted one race in particular.¹⁹³ California's sterilization, in both the 20th and 21st centuries, disproportionately impacted Latina¹⁹⁴ and Black women,¹⁹⁵ with Latina women sterilized at a rate 59% higher than non-Latinas.¹⁹⁶ During the initial phases of North Carolina's eugenic sterilizations, poor white individuals were targeted at higher rates, accounting for nearly four-fifths of all sterilizations between 1929 and 1940.¹⁹⁷ However, there was a significant uptick in the sterilizations of Black individuals during the 1960s, with Black Americans accounting for 64% of sterilizations.¹⁹⁸ Scholars have linked this dramatic shift to the expansion of civil rights in the 1960s, which provided greater access to public assistance for Black Americans at a time when social workers were petitioning for the sterilization of individuals on their welfare rolls.¹⁹⁹ Although North Carolina and California disproportionately targeted people of color, the demographic of persons sterilized was cross-racial, and some scholars argue that this component was a critical element in garnering the bi-partisan political alignment that made it possible for the reparations programs to pass in the legislature.²⁰⁰

C. Target Groups

The California sterilization programs primarily targeted individuals who were either in mental institutions²⁰¹ or prisons.²⁰² North Carolina, for the first few years, exclusively targeted persons deemed "mentally deficient" or "feeble-minded."²⁰³ Comparatively, although Puerto Rico's policies did target poor women, it did not narrow the scope to institutionalized persons as occurred at various points in both North Carolina and California. As it relates to a reparation claim, this may present an additional challenge in terms of obtaining records and identifying victims.

¹⁹³ Brophy & Troutman, *supra* note 6, at 1942 ("[T]he sterilization program was not geared towards one particular race, though in practice, one race may have been more affected.").

¹⁹⁴ Villarosa, *supra* note 54, at 5.

¹⁹⁵ Jindia, *supra* note 86.

¹⁹⁶ Paola Alonso, *Autonomy Revoked: The Forced Sterilization of Women of Color in 20th Century America*, 13 *IBID.: STUDENT HIST. J.* [1], [6] (2020); *see also* Juliana Jiménez J., *California Compensates Victims of Forced Sterilizations, Many of Them Latinas*, NBC NEWS (July 23, 2021), <https://www.nbcnews.com/news/latino/california-compensates-victims-forced-sterilizations-many-latinas-rcna1471>.

¹⁹⁷ Kickler, *supra* note 67; *see also* Brightman, Lenning & McElrath, *supra* note 3, at 477.

¹⁹⁸ Brightman, Lenning & McElrath, *supra* note 3, at 477.

¹⁹⁹ *Id.*; *see also* Kickler, *supra* note 67.

²⁰⁰ Brophy & Troutman, *supra* note 6, at 1942.

²⁰¹ Stern, Novak, Lira, O'Connor, Harlow & Kardia, *supra* note 4, at 50.

²⁰² Jindia, *supra* note 86.

²⁰³ Brightman, Lenning & McElrath, *supra* note 3, at 477.

CONCLUSION

There ought to be a sense of urgency for reparations for the state-sanctioned sterilizations that took place in Puerto Rico for several reasons, not the least of which is the importance of addressing the harm before more surviving victims die. Reparations schemes used in both North Carolina and California, although flawed, can serve as models for other states and territories aiming to redress such harm. Reparative measures may include a myriad of approaches. Collective memory is one such approach, and one that is critical not only for reparative purposes but as a guarantee of non-repetition.²⁰⁴ Rendering certain experiences as invisible allows the violence to not only persist throughout time and space, unaccounted for, but to be reimaged.²⁰⁵ Villarosa writes:

Accounts of medical violence dating back to slavery and outlandish, supposedly scientific theories by physicians . . . are greeted with shock and presented as a throwback to the past or as an aberration, the work of a few bad actors. Still, the concept of biological and psychological differences based on race and some of the deeply questionable medical theories and practices from slave times have clung stubbornly to the present, normalized in today's medical theory and practice.²⁰⁶

The failure to develop a collective memory around the horrors of this violence heavily contributes to the perpetuation of it,²⁰⁷ but developing a collective memory is one tool to disrupt these cycles of misremembering. To

²⁰⁴ See Joachim J. Savelsberg & Ryan D. King, *Law and Collective Memory*, ANN. REV. L. SOC. SCI. 189, 189–211 (2007); see also Roht-Arriaza, *supra* note 109, at 5.

²⁰⁵ See Transitional Justice in America, *Transitional Justice in Practice: Lessons for Change-Makers*, PODBEAN, at 15:01 (July 21, 2022). Sterilization abuse in the United States is grounded in a long and violent history of medical abuse against Black women and cannot be properly and wholly understood outside of this historical context. See LINDA VILLAROSA, UNDER THE SKIN: THE HIDDEN TOLL OF RACISM ON HEALTH IN AMERICA 22, 24–25 (2022); see also *Medical Exploitation of Black Women*, EQUAL JUSTICE INITIATIVE (Aug. 29, 2019), <https://eji.org/news/history-racial-injustice-edical-exploitation-of-black-women/>.

²⁰⁶ VILLAROSA, *supra* note 205, at 39.

²⁰⁷ We have seen this violence repeated more recently against immigrant women detained at Irwin County Detention Center (ICDC) in Georgia. See Complaint from Project South, et al., to Joseph V. Cuffari, Inspector General, Dep't of Homeland Security, et al. (Sept. 14, 2020) (on file with author), <https://projectsouth.org/wp-content/uploads/2020/09/OIG-ICDC-Complaint-1.pdf>. In 2020, there were reports of alarming rates of detained women having hysterectomies performed on them without informed consent, such that it raised red flags both for the women who were detained as well as the nurses providing care. *Id.* Many women were confused about what procedure had even taken place, with one woman reporting she was given three entirely different responses about what the procedure would entail and what it was in regards to. *Id.* at 18–20. One woman detained at ICDC commented: “When I met all these women who had had surgeries, I thought this was like an experimental concentration camp. It was like they’re experimenting with our bodies.” *Id.* at 19. In response to these shocking reports, several groups filed a complaint on behalf of the women and the nurses, demanding an investigation into the allegations, as well as immediate correction of such practices. See *id.*

prevent such harms from continuing, public memory must be reshaped by developing a collective memory that acknowledges events of state-sanctioned violence. As scholar Alfred L. Brophy states, “[t]his dark chapter of [] history is critical to the legal community’s collective conscious, lest we again allow an administrative apparatus of the state to overshadow and obliterate our most dearly held freedoms.”²⁰⁸

Of equal importance are dual considerations: what should be done to both repair the harms of the past, that have been erased from public narrative and left unaddressed, and what can be done to equip ourselves for a future that is committed to ensuring that such violence is never repeated. The marker of any just society is its willingness to bear responsibility and respond in accordance when confronted with the harm it has perpetrated. Evolution demands reflection, and reflection is the natural predecessor of accountability. We will not truly evolve as a society until we have reckoned with and made repairs for our violent history.

²⁰⁸ Brophy & Troutman, *supra* note 6, at 1872.