Preface to the Second Edition

In July 2013 the Sacramento-based Center for Investigative Reporting (CIR) released an article alleging that 150 female inmates in California state prisons had been sterilized without proper authorization between 2006 and 2010.[1] The outcome of more than one year of investigative journalism, this article exposed a broken and unjust system of reproductive health services in California women's prisons. Senator Hannah-Beth Jackson, Democrat from Santa Barbara and vice-chairwoman of the Legislative Women's Caucus, was one of the first lawmakers to respond to these revelations. She evinced dismay that such reproductive abuse could have transpired in the twenty-first century. Jackson lambasted the federal Receiver's Office for failing to maintain medical standards of care in California prisons: "Pressuring a vulnerable population—including at least one instance of a patient under sedation, to undergo these extreme procedures erodes the ban on eugenics. In our view, such practice violates Constitutional protections against cruel and unusual punishment; protections that you were appointed to enforce."[2] In the same breath, Jackson requested an investigation by the California state auditor.

A comprehensive audit was issued one year later. Corroborating and expanding on the CIR's findings, it confirmed that 144 women had been sterilized between fiscal years 2005–6 and 2012–13 without adherence to required protocol and that "deficiencies in the informed consent process" had occurred in 39 of these cases.[3] Some of the irregularities

included inadequate counseling about sterilization and its lasting consequences, missing physician signatures on consent forms, neglect of the mandated waiting period, and destruction of medical records in violation of records retention policies. After the release of the audit, Jackson, with ample support from other legislators and the guidance of Justice Now, a prisoners' rights group, drafted legislation (SB 1135) to ban sterilizations in state prisons except in extreme cases when a patient's life is in danger or when there is a demonstrated medical need that cannot be met with alternative procedures. This legislation moved easily from committee to the floor, where it received unanimous approval (77 ayes and 0 noes), and finally to the desk of Governor Jerry Brown, who signed it in September 2014.[4]

The CIR's coverage of this story, and the additional information that emerged during the legislative process, unmasked a carceral environment characterized by a haphazard mixture of disregard and undue pressure, coupled with inconsistent supervision that allowed medical staff to act with little procedural accountability. Particularly disturbing were the prejudices expressed by Dr. James Heinrich, a physician who performed many of the tubal ligations. He indifferently explained to a reporter that the money spent sterilizing inmates was negligible "compared to what you save in welfare paying for these unwanted children—as they procreated more."[5] This callous attitude about the reproductive lives of institutionalized women, the majority of whom were low income and women of color, was not new to California. In the 1930s, at the height of eugenic sterilization, superintendents of California state homes and hospitals repeatedly discussed the need to reduce the economic burden of "defectives" and their progeny through reproductive surgery. In the late 1960s the University of Southern California/Los Angeles County General Hospital obstetrician who oversaw more than one hundred nonconsensual postpartum tubal ligations of Mexican-origin women purportedly spoke to his staff about "how low we can cut the birth rate of the Negro and Mexican populations in Los Angeles County."[6]

Looking back over more than one century, we can map three overlapping chapters of sterilization abuse. Most dramatically from the late 1900s to the early 1950s, about twenty thousand people in state homes and hospitals were sterilized. By the 1960s, as approaches to mental health and disability evolved, sterilization fell into disfavor and annual rates dropped to the single digits. Yet sterilization abuse appeared in another domain. Newly available federal programs that could finance tubal ligations in public facilities converged with readily circulating

stereotypes of women of color, above all Mexican-origin women, as hyperbreeders.[7] This potent combination set the stage for the sterilization abuse that occurred in the late 1960s and early 1970s in the University of Southern California/Los Angeles County General Hospital, which in turn triggered two lawsuits and street protests. In tandem with similar cases throughout the country, rising awareness of sterilization abuse among women of color, low-income women, and female minors paved the way for the development of federal and medical guidelines to ensure against such violations in the future.

What happened in California women's prisons in the early 2000s represents a contemporary link in the chain of a history of reproductive injustice in public facilities and demonstrates that the hard-won safeguards developed by the 1980s could buckle under the weight of a troubled prison system. In 2006, after countless cases of mistreatment and abhorrent neglect, a district court judge placed the delivery of inmate health care in California under federal receivership. In the words of the judge, "The harm already done in this case to California's inmate population could not be more grave, and the threat of future injury and death is virtually guaranteed without drastic action."[8] This court order, ironically, helped to usher in the Gender Responsive Strategies Commission, established to address the needs of female inmates. Despite a promising name and in breach of both California law and federal law, this commission loosened policies around sterilization.[9] In a crisis-ridden and overcrowded prison system with multitudinous administrative problems, the results of this policy relaxation and reorientation were extreme. Prison officials pursued sterilization lackadaisically, and Heinrich was contracted to provide obstetrical services despite a long trail of "medical controversies and expensive malpractice settlements both inside and outside prison walls."[10] In addition to carrying out many of the unauthorized tubal ligations, Heinrich was investigated by the Receiver's Office after two pregnancies ended in infant deaths. In one case he administered the wrong medicine; in the other he failed to identify a common bacterial infection. At Valley State, many of the inmates described Heinrich as creepy, spooky, and inappropriate. According staff members, he was unhygienic, often eating popcorn, cheese, and crackers while carrying out vaginal examinations. Some inmates recounted instances in which he pressured them into tubal ligations, telling them they already had enough children.[11]

As distasteful as Heinrich was, he was not an aberration but the acute manifestation of a system that undervalued the reproductive and maternal

lives of incarcerated women. The prison staff and administration at Valley State and the California Institution for Women in Corona, the two institutions where sterilizations took place, appear to have either consciously pursued or irresponsibly ignored a high volume of tubal ligations among inmates. Crystal Nguyen, a former inmate who worked in the infirmary at Valley State in 2007, told the CIR that she frequently overheard "medical staff asking inmates who had served multiple prison terms to agree to be sterilized." Nguyen was shocked by these exchanges: "Do they think they're animals, and they don't want them to breed anymore?"[12]

According to the state audit, 94 (65 percent) of the 144 women sterilized at Valley State and the Corona facility were women of color (black, Hispanic, Mexican, or other, using the audit's terminology). The majority, 101 (70 percent), were in prison for the first time; only 13 (9 percent) had been incarcerated for the third time.[13] These figures are reflective of California's overall prison profile, in which African American women, who make up approximately 7 percent of the state's female population, constitute 30 percent of the female prison population, and Latinas constitute 27 percent. The majority of female prisoners in California institutions have been imprisoned for nonviolent offenses, most often drug related.[14] The skyrocketing rates of incarceration in California, and around the country, followed the implementation of mandatory sentencing laws in the 1980s. For example, from 1982 to 2000, California's prison population grew almost 500 percent, and approximately two-thirds of those incarcerated were African Americans and Latinos.[15] From 1986 to 1998, female incarceration in California shot up 305 percent.[16] These decades of neoliberal restructuring saw a flurry of prison construction. For example, the state built twice as many prisons, twenty-three, between 1985 and 2005 as it had over the 130 preceding years (between 1852 and 1984), when twelve prisons were constructed.[17]

The upsurge of California's prison population was related to another dynamic—the deinstitutionalization of state homes and hospitals. From the 1910s to the 1960s, these institutions housed a heterogeneous mix of patients that today we would recognize as ranging from people with serious psychiatric disorders to people punished for transgressing sexual norms, from people with a spectrum of intellectual disabilities to people charged with minor offenses such as truancy and petty crime. The deinstitutionalization of the 1970s and 1980s involved the release of most of these patients to developmental centers, family care networks, or sometimes the streets. As places such as the Sonoma State Home and Stockton State Hospital were shuttering their doors, left abandoned

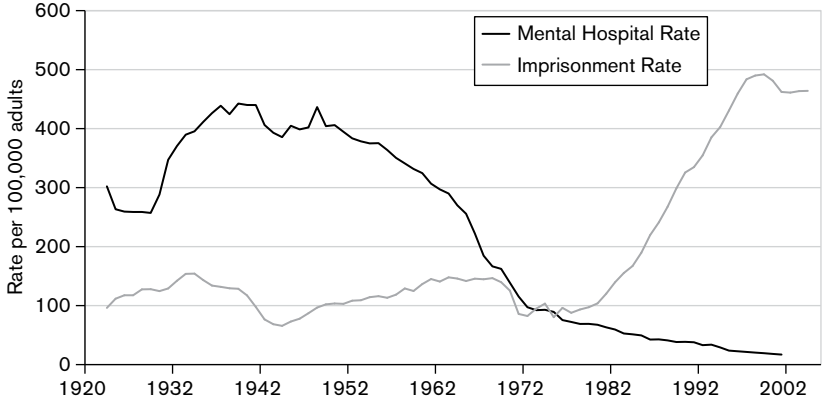

FIGURE 1. Deinstitutionalization of California mental hospitals and feebleminded homes and the concomitant rise of incarceration, 1922–2005. This process of transinstitutionalization accelerated rapidly starting in 1975. Source: Prepared by researcher Nicole Novak using data from Bernard Harcourt, "An Institutionalization Effect: The Impact of Mental Hospitalization and Imprisonment on Homicide in the United States, 1934–2001," ICPSR34986-v1, Inter-university Consortium for Political and Social Research, Ann Arbor, MI.

or converted to limited-term treatment facilities, prisons were appearing throughout the state, usually in the distant rural, semisuburban areas that had been chosen for the asylums of yesteryear. Valley State, built in 1995 and located in Chowchilla, a small city in the San Joaquin Valley, was one of these new facilities and exemplifies the new era of institutionalization in California.

This dynamic is most aptly described, not in terms of book-ended patterns of deinstitutionalization and concomitant escalating incarceration, but as a process of transinstitutionalization that started in the 1970s and was consolidated by the 1990s.[18] Figure 1 demonstrates the overlap between declining population rates in California's feebleminded homes and mental hospitals and the state's rising prison population.

Although the populations we would have found in Sonoma or Stockton in the 1930s do not correspond identically to populations today at Valley State or Corona, there are striking similarities, including elevated numbers of racial minorities, people with limited education, youth committed for minor offenses, and a substantial number of inmates diagnosed with mental illness.[19] Moreover, both then and now, sterilization abuse was facilitated by a staggering lack of oversight and the cultivation of

institutional milieus where administrators and medical directors could dictate the terms for reproductive surgery with little worry about scrutiny.

The similarities between the homes and hospitals of the first half of the twentieth century and the prisons that appeared starting in the 1970s are demonstrated by historical analysis using a novel and recently available resource. In 2007, while visiting the Department of State Hospitals in Sacramento, I discovered nineteen microfilm reels containing eighteen thousand sterilization recommendations and supplemental documents for the period 1921 to 1952. Several years later, after digitizing these materials, receiving institutional review board approval, and setting up an interdisciplinary team capable of qualitative and quantitative data entry and analysis, we are beginning to generate findings about patterns and experiences of sterilization in California state institutions during the height of the eugenics era. Chapter 4, written for this revised second edition, is based principally on these new data. It demonstrates that racial and gender bias undergirded eugenic sterilization and explores the contradictions of a system that foregrounded consent even though it was not a legal requirement. Because parole or release from an institution was contingent on sterilization, patients and families could find themselves in an excruciating bind, making an impossible choice between either accepting reproductive surgery to leave the institution or insisting on bodily autonomy by objecting to the procedure even though that meant forfeiture of the opportunity to be discharged. This voluminous set of sterilization records shows that superintendents regularly took advantage of legal prerogatives to override resistance to sterilization, which was most vigorously mounted by Mexican-origin parents whose children were placed in state facilities.

Perhaps the new law prohibiting sterilization in California prisons will fulfill its proscription. But even if it does, we can now map more than one hundred years of episodic sterilization abuse in the Golden State. This extended history has ramifications for the pursuit of reproductive justice and offers compelling evidence for why sterilization safeguards are still needed in the twenty-first century.[20] Yet overreacting to California's prisons sterilizations, as appalling as they are, has the potential to counterproductively limit the reproductive freedom of marginalized women who seek tubal ligations as a preferred mode of birth control.[21] Cumbersome paperwork and mandated waiting periods for sterilization are a significant issue, especially for Latinas who face multiple obstacles to obtaining access to other options such as long-acting reversible contraception.[22] Recent hysteria over "anchor babies" or

children born to undocumented Mexican and Central American women on US soil who acquire *jus soli* citizenship evokes and rekindles eugenic anxieties about the supposed fecundity of Latinas, whose reproductive bodies yet again become targets of concern and control.[23]

Compulsory sterilization was a critical and integral component of eugenics in twentieth-century California; and eugenic assumptions about parental fitness and worth were conspicuous in Valley State and Corona when tubal ligations were performed improperly and sometimes coercively on female prisoners. Nevertheless, eugenics is not a necessary ingredient of sterilization abuse. Nor does eugenics always pivot around policies and practices of reproductive regulation. As *Eugenic Nation* shows, theories of better breeding in the United States affected many other domains, including immigration, education, and environmentalism, in explicit and implicit ways that reverberate into the present.

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