

Michigan Journal of Race and Law

Volume 27

2021

The Enemy is the Knife: Native Americans, Medical Genocide, and the Prohibition of Nonconsensual Sterilizations

Sophia Shepherd

Follow this and additional works at: <https://repository.law.umich.edu/mjrl>



Part of the [Civil Rights and Discrimination Commons](#), [Indigenous, Indian, and Aboriginal Law Commons](#), [Law and Race Commons](#), and the [Sexuality and the Law Commons](#)

Recommended Citation

Sophia Shepherd, *The Enemy is the Knife: Native Americans, Medical Genocide, and the Prohibition of Nonconsensual Sterilizations*, 27 MICH. J. RACE & L. 89 (2021).

Available at: <https://repository.law.umich.edu/mjrl/vol27/iss1/3>

<https://doi.org/10.36643/mjrl.27.1.enemy>

This Article is brought to you for free and open access by the Journals at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Journal of Race and Law by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

THE ENEMY IS THE KNIFE:
NATIVE AMERICANS, MEDICAL GENOCIDE, AND THE
PROHIBITION OF NONCONSENSUAL STERILIZATIONS

Sophia Shepherd★

*They took our past with a sword and our land with a pen. Now they're trying to
take our future with a scalpel.*

—Native American Activist, American Indian Journal

I. INTRODUCTION

Supported by the Supreme Court's notorious decision in *Buck v. Bell* in 1927, states sterilized thousands of women who were viewed as undesirable through the 1930s.¹ The sterilizations were the culmination of the rise of the sham-science of eugenics, which attempted to improve the genetic pool by eliminating “imbeciles” and the “feeble-minded.”² However, after the Nazis used eugenics to justify the sterilization and killing of millions of people they considered to be unfit, eugenic policies were discredited and disappeared in the U.S.³ Or so the popular understanding holds.

This popular understanding is incorrect. After World War II, eugenics never died. Instead, like a mutating virus, it reemerged, but transformed. This time, the victims were no longer people with intellectual disabilities. Instead, the new victims were Native Americans and other women of color. The perpetrator of thousands of unconsented sterilizations was the federal government's Indian Health Service (IHS).⁴

★ I am grateful to Chuck Hoskin, Jr., Principal Chief of the Cherokee Nation, for helpful conversations and insights about the implications of the government's sterilization policies. I also greatly appreciate the direction and generous suggestions of Professor Martha Fineman, founding director of both the Feminism and Legal Theory Project and the Vulnerability and the Human Condition Initiative at Emory University. Finally, I am grateful to the National Park Service for awarding an earlier version of this research the 2020 National Native American History Prize.

1. See *infra* Part III.
2. See *infra* Part III.
3. See *infra* Part III.
4. See *infra* Part V.

This Article describes the legal history of how, twenty years after the sterilizations began, the U.S. Department of Health, Education, and Welfare, in 1978, finally created regulations that prohibited the sterilizations.⁵ It tells the heroic story of Connie Redbird Uri, a Native American physician and lawyer, who discovered the secret program of government sterilizations, and created a movement that pressured the government to codify provisions that ended the program.⁶ It discusses the shocking revelation by several Tribal Nations that doctors at the IHS hospitals had sterilized at least 25 percent of Native American women of childbearing age around the country.⁷ Most of the women were sterilized without their knowledge or without giving valid consent.⁸ It explains the obstacles that Connie Redbird Uri and other Native activists faced when confronting the sterilizations, including the widespread acceptance of eugenic sterilizations, federal legislation that gave doctors economic incentives to perform the procedures, and paternalistic views about the reproductive choices of women, and especially women of color.⁹ Finally, this Article describes the long-lasting impacts of the federally-sponsored sterilization of Native women.¹⁰ The sterilizations devastated many women, reduced tribal populations, and terminated the bloodlines of some Tribal Nations.¹¹

Thirty years after the end of the Nazi killing to create a master race, the U.S. government finally took administrative action to end a program that had had the effect of a brutal genocide against Native Americans. In the last decade, living victims of nonconsensual sterilization programs in other parts of the country have received compensation for their losses, but the more than 41,000 Native American women who were sterilized at federal IHS facilities have received no compensation.¹²

II. CONNIE REDBIRD URI AND THE DISCOVERY OF A MODERN U.S. GENOCIDE.

The 26-year old Native American woman who visited the California office of Dr. Connie Redbird Uri in 1972 was ready to have a family.¹³ She asked Dr. Uri, herself of Choctaw and Cherokee descent, to reverse

5. See *infra* Part VI.

6. See *infra* Part II.

7. See *infra* Parts V, VII.

8. See *infra* Part V.

9. See *infra* Part IV.

10. See *infra* Part VII.

11. See *infra* Part VII.

12. See *infra* Part VII.

13. *Woman: Concerns of American Indian Women* (WNED television broadcast Apr. 15, 1977), http://americanarchive.org/catalog/cpb-aacip_81-67wm3fxh [hereinafter *Woman*].

the hysterectomy that a doctor at the IHS had performed a few years earlier.¹⁴ The woman was devastated when Dr. Uri explained that a hysterectomy was not reversible.¹⁵ She insisted that she had agreed to the operation only because the IHS doctor had told her that she could reverse it when she decided to have children.¹⁶

Dr. Uri originally thought the woman's experience was isolated. However, as she began reaching out to other Native women, Dr. Uri heard similar stories of sterilizations that were performed without the women's knowledge or full consent.¹⁷ She became even more alarmed when she learned of sterilizations at the IHS facility in Claremore, Oklahoma, so she began a detailed investigation of the facility.¹⁸ Her conclusion was stunning. In recent years, Claremore doctors had sterilized hundreds of young Native American women, sterilizing one of every four women who came into the hospital to give birth.¹⁹ According to Dr. Uri, Claremore doctors were running a "sterilization factory."²⁰

After a Native-American newspaper, *Akwesasne Notes*, reported on Uri's findings in 1974, members of other tribes began to investigate other IHS facilities.²¹ They too found that hundreds of young women in their tribes had been sterilized in recent years.²² For some tribes, the sterilization rate was even higher than Dr. Uri had reported for Claremore. A member of the Northern Cheyenne Tribe, Mary Ann Bear Comes Out, determined that one-third of her tribe's women of childbearing age were sterilized during a three-year period.²³ Cheyenne tribal judge Marie Sanchez conducted a study of the women in her tribe and found that more than half had been sterilized.²⁴

At the same time, Dr. Uri expanded her own investigation beyond Claremore to examine records of twenty-six of the thirty-five IHS

14. *Id.*

15. *Id.*

16. *Id.*

17. KPFK, *Indians and Medicine: sterilization and genocide*, PAC. RADIO ARCHIVES (Sept. 25, 1974), https://archive.org/details/pacifica_radio_archives-BC1963.

18. *Id.*

19. *C.f. Indian Health Care: Hearing before the Permanent Subcomm. on Investigations of the Comm. on Gov't Operations of the U.S. S., 93rd Cong. (1974)* (statement of Dr. Connie P. Uri); see also *Theft of Life*, AKWESASNE NOTES, Sept. 1977, at 30.

20. KPFK, *supra* note 18.

21. *Sterilization of Native Women Charged to I.H.S.*, AKWESASNE NOTES, Early Winter, 1975, at 6-7.

22. Jane Lawrence, *The Indian Health Service and the Sterilization of Native American Women*, 24 AM. INDIAN QUARTERLY 400, 410 (2000).

23. *Id.*

24. *Id.*

hospitals across the country that had obstetric wards.²⁵ She found that these IHS hospitals – run by the federal government purportedly to serve Native Americans – had sterilized 25 percent of all Native women of childbearing age in the United States.²⁶

When the women were interviewed, it became apparent to the investigators that many were sterilized without their knowledge or without understanding the procedure. Like the woman who first approached Dr. Uri, many women were not told that sterilization was irreversible when they agreed to the procedure.²⁷ Others reported believing they were receiving a different surgery, such as an appendectomy, when they were actually being sterilized.²⁸

Many Native women reported that they consented to sterilization only when they were under sedation or experiencing labor pains and thus were not able to freely consider the consequences.²⁹ Many others were minors and, therefore, unable to legally consent.³⁰

For other sterilized Native women, the IHS obtained consent only through coercion. Some doctors specifically threatened their patients that, unless they agreed to sterilization, they would lose custody of their children. Other doctors threatened loss of welfare benefits.³¹

Moreover, because many of the women did not speak English as their first language, they could not understand what their doctors told them about the procedure. Although a 1969 IHS report acknowledged that “communication is further complicated, in many instances, by the Indians’ inability or limited ability to speak English,” interpreters were rarely engaged to ensure that the women understood what the doctors said to them about sterilization.³² Likewise, many women could not understand the consent forms that were written in twelfth-grade English without translation into Native languages.³³

25. *Doctor Raps Sterilization of Indian Women: Claims that Many are Pressured at Government Hospitals*, L.A. TIMES, May 22, 1977, at 3.

26. *Id.*

27. *Killing our Future: Sterilizations and Experiments*, AKWESASNE NOTES, Early Spring, 1977, at 4.

28. *Growing Fight Against Sterilization of Native Women*, AKWESASNE NOTES, Late Winter, 1979, at 29.

29. KPFK, *supra* note 18.

30. U.S. GEN. ACCT. OFF., HRD-77-3, INVESTIGATION OF ALLEGATIONS CONCERNING INDIAN HEALTH SERVICE 20-21 (1976).

31. *Theft of Life*, *supra* note 20, at 30; BRIANNA THEOBALD, REPRODUCTION ON THE RESERVATION: PREGNANCY, CHILDBIRTH, AND COLONIALISM IN THE LONG TWENTIETH CENTURY 157, 159 (2019).

32. U.S. DEP’T OF HEALTH, EDUC., & WELFARE, U.S. PUB. HEALTH SERV., INDIAN HEALTH PROGRAM 1 (1969) [hereinafter U.S. PUB. HEALTH SERV.].

33. *Sterilization of Native Women Charged to I.H.S.*, *supra* note 22, at 6.

The sterilizations of Native women were known by the IHS doctors and nurses who performed the procedures and by the IHS personnel that approved and funded the procedures.³⁴ However, it would fall on the Native women themselves to identify the scale of the sterilization practices, prompt the government to investigate, and eventually push through protections to prevent future sterilization abuse. Dr. Uri was eventually joined by other Native American women activists who responded to her warning that “[w]e have a new enemy, and the enemy is the knife.”³⁵ These women confronted widespread acceptance of eugenic sterilizations, economic incentives promoting the procedure, and paternalistic views about women’s reproductive choices.³⁶ Yet they persisted in their advocacy and eventually ended the nonconsensual sterilization of Native American women.³⁷

III. EUGENICS RELABELED

The roots of the IHS sterilizations can be traced back to the eugenics movement of the first half of the twentieth century. The founder of the eugenics movement, Francis Galton, who was Charles Darwin’s cousin, defined eugenics as “the science which deals with all influences that improve the inborn qualities of a race.”³⁸ American support for eugenics was widespread. By the late 1920s, over 70 percent of high school biology textbooks endorsed the movement and 375 universities offered full courses on eugenics.³⁹

Although Galton and his supporters initially supported only eugenic marriages to encourage desirable offspring, their ideas eventually evolved toward preventing undesirable births.⁴⁰ By 1933, twenty-seven of the forty-eight states had eugenic sterilization laws that required sterilization of people that the states considered “unfit.”⁴¹ The compulsory sterilization

34. See *infra* Part VI.

35. Dr. Connie Uri, Remarks at the Oklahoma City IHS Area Advisory Board Meeting (Nov. 9, 1974) (transcript available at Costco Archive, MS 170, Box 34, Folder 034.001.001, Special Collections and University Archives, University of California, Riverside).

36. See *infra* at Part III.

37. See *infra* at Part VI.

38. Francis Galton, *Eugenics: Its Definition, Scope, and Aims*, 10 AMERICAN JOURNAL OF SOCIOLOGY 1, 1 (1904).

39. VICTORIA F. NOURSE, IN RECKLESS HANDS: SKINNER V. OKLAHOMA AND THE NEAR TRIUMPH OF AMERICAN EUGENICS 20 (2008).

40. See Mary Ziegler, *Reinventing Eugenics: Reproductive Choice and Law Reform After World War II*, 14 CARDOZO J. L. & GENDER 319, 320-321 (2008).

41. NOURSE, *supra* note 40, at 20.

laws “called for sterilizing anyone with ‘defective’ traits, such as epilepsy, criminality, alcoholism, or ‘dependency’—another word for poverty.”⁴²

The legality of eugenic sterilization was upheld by the United States Supreme Court in the infamous case of *Buck v. Bell* in 1927.⁴³ The case involved the state of Virginia’s attempt to sterilize a woman of supposedly low intelligence under its compulsory sterilization law.⁴⁴ The Court allowed the forced sterilization, with Justice Oliver Wendell Holmes asserting that “it is better for all the world if instead of waiting to execute degenerate offspring for a crime, or to let them starve for their imbecility, society can prevent those who are manifestly unfit from continuing their kind.”⁴⁵

During World War II, Americans began to associate eugenic sterilization with Nazism, and compulsory sterilization fell from favor.⁴⁶ However, sterilization re-emerged in the 1960s, but no longer under the banner of eugenics. Instead, it was promoted as a way to end poverty. President Lyndon B. Johnson created family planning programs to help poor people control their fertility as part of his “War on Poverty.”⁴⁷ Although most programs focused on providing contraception, concerns about overpopulation and the burden of public welfare costs led to renewed support for sterilization.⁴⁸

In the 1960s and 1970s, thirteen states proposed sterilization laws to reduce the number of poor and illegitimate children.⁴⁹ Although the state proposals differed in what triggered a sterilization, all were based on the underlying assumption that poor women giving birth to multiple children was an “injustice to the children and an injustice to society.”⁵⁰ In addition, lawmakers expressed paternalistic views about poor women’s inability to make good reproductive choices. For example, in 1973, an Ohio representative defended a bill mandating sterilization for women on welfare with

42. ADAM COHEN, *IMBECILES: THE SUPREME COURT, AMERICAN EUGENICS, AND THE STERILIZATION OF CARRIE BUCK* 5-6 (2016).

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

44. *Id.*

45. *Id.* at 207.

46. NOURSE, *supra* note 40, at 32-36.

47. See Ziegler, *supra* note 41 at 331-335; see also Jennifer Nelson, “Breaking the Chain of Poverty”: Family Planning, Community Involvement, and the Population Council—Office of Economic Opportunity Alliance, 69 J. HIST. MED. & ALLIED SCIS. 101, 109-11 (2014).

48. See sources cited *supra* note 48.

49. JENNIFER NELSON, *WOMEN OF COLOR AND THE REPRODUCTIVE RIGHTS MOVEMENT* 68-69 (2003).

50. See Julius Paul, *The Return of Punitive Sterilization Proposals: Current Attacks on Illegitimacy and the AFDC*, 3 LAW & SOC’Y REV. 77, 82 (1968); See also Meg Devlin O’Sullivan, *Informing Red Power and Transforming the Second Wave: Native American Women and the Struggle Against Coerced Sterilization in the 1970s*, 25 WOMEN’S HIST. REV. 965, 967 (2016).

two children by arguing that “[i]f a man decides to live like an animal he should be treated like an animal.”⁵¹

Thus, although the eugenic rhetoric had declined, states’ rationales for this new sterilization program resembled the rationales for earlier eugenic sterilization. Both prescribed sterilization to prevent poverty. Both indicated that sterilization was necessary because poor women could not be trusted to make good choices about family size. And both used dehumanizing language about the poor.

As the Chief of the Cherokee Nation, today’s largest tribe, recently explained, “A good portion of a generation of Native Americans was wiped out as a result of the sterilizations, which is a familiar theme in American history. But, it takes on a particularly sinister connotation when we’re talking about sterilizations by the government. There’s another government in world history that did that too.”⁵²

IV. BARRIERS TO CONFRONTING STERILIZATION

Several institutions and groups enabled the sterilization of Native women. They created barriers to confronting sterilization practices that included the widespread acceptance of eugenic sterilizations, economic incentives promoting the procedure, and paternalistic views about women’s reproductive choices.

A. *The Federal Government*

In addition to efforts by many states to promote the sterilization of poor women, the federal government increased attention to and funding for sterilization throughout the 1960s and 1970s. During the 1960s, the federal government grew increasingly concerned about the growing U.S. population, especially the growing population of the poor.⁵³ Various federal organizations, including the Office of Economic Opportunity and the Commission on Population Growth and the American Future, were created to study population growth and devise plans to reduce it.⁵⁴ These groups soon focused on sterilization of poor women and identified

51. Sandra Haggerty, Letter to the Editor, *Some of the Stuff in the Mail*, AMES DAILY TRIB., Aug. 15, 1973, at 4 (statement of Rep. Gene Damschroder).

52. Interview with Chuck Hoskin, Jr., Principal Chief of the Cherokee Nation, in Tulsa, Okla. (Feb. 3, 2020).

53. Sally J. Torpy, *Native American Women and Coerced Sterilization: On the Trail of Tears in the 1970s*, 24 AM. INDIAN CULTURE & RES. J. 1, 4 (2000); Ziegler, *supra* note 41, at 344.

54. See Torpy, *supra* note 54, at 4.

federally-funded family planning services as an effective means to promote such sterilization.⁵⁵

In 1965, federal IHS facilities began family planning programs that included sterilization.⁵⁶ Initially, the programs provided doctors with little reimbursement for sterilizations.⁵⁷ However, Congress changed this by passing the Family Planning Services and Population Research Act of 1970.⁵⁸ With this Act, the government began subsidizing 90 percent of the cost of sterilizations performed through the IHS.⁵⁹ Although doctors and hospitals received only small subsidies for most forms of birth control, a sterilization could earn as much as \$720.⁶⁰ Not surprisingly, the number of federally-funded sterilizations increased by more than five times during the next decade.⁶¹

B. Physicians

Doctors claimed that, by sterilizing poor women, they were helping both society and the women themselves.⁶² For example, in interviews, doctors admitted they believed that as “physicians we have obligations to individual patients, but we also have obligations to the society of which we are a part. . . . The welfare mess cries out for solutions, one of which is fertility control”⁶³ and that “a girl with lots of kids, on welfare, and not intelligent enough to use birth control, is better off being sterilized.”⁶⁴ One cannot help but note the echoes of earlier eugenicists who promoted both the sterilization of the unintelligent and the sacrifice of individuals’ interests for society’s betterment. Surveys of doctors confirmed that they were more than twice as likely to recommend sterilization for women on welfare than for women not receiving any public assistance.⁶⁵

Women of color were especially targeted for sterilization. Some doctors claimed that Black women, Puerto Rican women, and Native

55. See O’Sullivan, *supra* note 51, at 967.

56. *Sterilization of Native Women Charged to I.H.S.*, *supra* note 22, at 7; Lawrence, *supra* note 23, at 402.

57. O’Sullivan, *supra* note 51, at 967.

58. Family Planning Services and Population Research Act of 1970, Pub. L. No. 91-572, 84 Stat. 1504-08.

59. O’Sullivan, *supra* note 51, at 967-68.

60. *Id.* at 969.

61. 123 CONG. REC. 39,381-82 (1977).

62. Barbara Caress, *Sterilization*, 62 HEALTH/PAC BULLETIN 1, 11-12 (1975); O’Sullivan, *supra* note 51, at 969-970.

63. H. Curtis Wood, *The Changing Trends in Voluntary Sterilization*, 1 CONTEMP. OBSTETRICS & GYNECOLOGY 31, 39 (1973).

64. O’Sullivan, *supra* note 51, at 970.

65. Caress, *supra* note 63, at 4.

American women were more fertile than white women.⁶⁶ As a result, many policy makers asserted that sterilization efforts should be focused on women of color who were both disproportionately poor compared to white women and were believed to have higher fertility rates.⁶⁷ Their efforts were largely successful. For example, 1970 study of national sterilization practices determined that, even after controlling for education and age, Black women were approximately twice as likely to be sterilized as white women.⁶⁸

C. Physicians' Boards

In the late 1960s, the American College of Obstetricians and Gynecologists took steps to liberalize sterilizations by dropping its so-called age-parity standard, which provided that the only women who should be sterilized were those who were older and had many children.⁶⁹ Although only a recommendation, most institutions had followed this standard that held that women should be sterilized only if their number of living children multiplied by their age equaled or exceeded 120, such as a thirty-year-old woman with four children.⁷⁰ Without this standard to guide doctors, many younger women and women with fewer children were sterilized.⁷¹

In addition, private licensing groups created incentives that further encouraged doctors to perform sterilizations.⁷² The American Board of Surgery required residents to perform a certain number of surgeries to complete their residencies.⁷³ Sterilizations of the poor offered an easy way for residents to meet their surgery requirements. As one physician admitted, “[w]e practice on the poor so we can operate on the rich. Hysterectomies and simple tubal ligations are performed all the time just for the practice.”⁷⁴

Physicians confessed to using various methods to pressure women into sterilizations so they could meet these surgical requirements. Many described their conversations as a “soft-sell” and used phrases like “Band-

66. Ziegler, *supra* note 41, at 335-37.

67. *Id.* at 337.

68. See Charles F. Westoff, *The Modernization of U.S. Contraceptive Practice*, 4 FAM. PLAN. PERSPS. 1, 9-11 (1972).

69. Susan Peck, *Voluntary Female Sterilization: Attitudes and Legislation*, 4 HASTINGS CTR. REP. 8 (1974).

70. See *id.*

71. See *id.*

72. Caress, *supra* note 63, at 4-6, 9-11; O’Sullivan, *supra* note 51, at 969-70.

73. Caress, *supra* note 63, at 4-6, 9-11; O’Sullivan, *supra* note 51, at 969-70; Torpy, *supra* note 54, at 11.

74. 123 CONG. REC. 39,386 (1977) (statement of Dr. Donald Sloan, Metropolitan Hospital in New York, submitted for the record by Senator Edward Kennedy).

aid surgery” or “stitch” to make the procedure seem less serious than it was.⁷⁵ Others reported that the best time to “make a pitch” for sterilization was when a woman was groggy from anesthesia.⁷⁶ One physician suggested these practices were pervasive when he stated, “Let’s face it, we’ve all talked women into hysterectomies who didn’t need them, during residency training.”⁷⁷

D. *The IHS*

Because the IHS was effectively the only provider of healthcare to most Native Americans, IHS doctors were in a powerful position to increase sterilizations. Beginning with a treaty with the Winnebago Indians in 1832, multiple treaties have required the federal government to provide medical services to Native Americans.⁷⁸ In 1955, the government established the IHS to take responsibility for all health services provided to Native Americans.⁷⁹ By 1970, “virtually all Indian births” took place in IHS facilities.⁸⁰ Although the federal government subsidizes the healthcare of many people in the United States, Native Americans receive free healthcare through the IHS, that is provided by government doctors in government facilities.⁸¹

Because of the IHS’ dominance, Native women had few opportunities to escape the aggressive promotion of sterilization in IHS facilities. For these women, there was no place to turn for a second opinion.

Moreover, because there was no other source of healthcare, many Native Americans feared that rejecting an IHS doctor’s recommendation of sterilization might anger the doctor, leading to lower-quality care.⁸² Indeed, after Dr. Uri published her findings about sterilizations at the Claremore IHS facility, the Association of American Indian Physicians issued a press release expressing its concern that if the Indian activists continued complaining about the problems at Claremore, the Oklahoma area IHS might close it down completely.⁸³

75. Caress, *supra* note 63, at 4-5.

76. *Id.*

77. *Id.*

78. Treaty with the Winnebagoes, U.S.-Winnebago, art. V, Sept. 15, 1832, 7 Stat. 370.

79. See Abraham B. Bergman, David C. Grossman, & Angela M. Erdich, *A Political History of the Indian Health Service*, 77 MILBANK Q. 571, 572, 579 (1999).

80. U.S. PUB. HEALTH SERV., *supra* note 33, at 7.

81. *Id.* at 3-8.

82. See O’Sullivan, *supra* note 51, at 970.

83. *Sterilization of Native Women Charged to I.H.S.*, *supra* note 22, at 6.

E. *Feminists and Native American Men*

Native women opposing sterilization received little support from other groups that might normally have been allies. During the 1960s and 1970s, most feminist groups were working to secure women's rights to abortion and birth control.⁸⁴ The majority of the feminist groups' members had endured a radically different experience with sterilization than Native women. At this time, white women generally had difficulty convincing doctors to perform a sterilization or give them any form of contraception, so the problem of doctors performing too many or nonconsensual sterilizations seemed unimaginable to them.⁸⁵ Moreover, many feminist groups thought that opposing the overuse of sterilization was in direct conflict with their primary goals of improving women's access to contraceptives.⁸⁶ Challenging sterilization was aimed at promoting childbirth while their other initiatives aimed at preventing it.⁸⁷

Similarly, established Native American advocacy groups and movements, such as the Red Power and American Indian Movements, offered little support to Native women fighting sterilization abuse.⁸⁸ During the 1960s and 1970s, these groups were focused on broad issues such as tribal sovereignty and the forced assimilation of Native Americans.⁸⁹ They were engaged in significant political activism, such as occupying Alcatraz and the Bureau of Indian Affairs headquarters in Washington, D.C. and establishing transnational alliances based on perceived similarities between the U.S. treatment of Native Americans and U.S. imperialism during the Cold War.⁹⁰ With this full agenda of other initiatives, challenging nonconsensual sterilizations was not a priority.⁹¹

V. THE GOVERNMENT INVESTIGATES

After uncovering the widespread sterilization practices at Claremore and other IHS facilities, Dr. Uri realized the powerful forces Native women faced when fighting for their reproductive autonomy. She quickly

84. See NELSON, *supra* note 50, at 1-3; Jael Miriam Silliman, Marlene Gerber Fried, Elena Gutiérrez, & Loretta Ross, *UNDIVIDED RIGHTS: WOMEN OF COLOR ORGANIZE FOR REPRODUCTIVE RIGHTS* 16-18 (2004).

85. See NELSON, *supra* note 50 at 74; *c.f.* SILLIMAN, ET AL., *supra* note 85 at 16-19.

86. ANNEISE ORLECK, *RETHINKING AMERICAN WOMEN'S ACTIVISM* 100 (2015).

87. *Id.*

88. O'Sullivan, *supra* note 51, at 973-975.

89. *Id.*

90. ALVIN M. JOSEPHY JR., *RED POWER: THE AMERICAN INDIANS' FIGHT FOR FREEDOM* 13-64 (Joane Nagel & Troy Johnson eds., 2d ed. 1999).

91. O'Sullivan, *supra* note 51, at 974.

became the leader of the opposition to sterilization abuse. She quit her medical practice and enrolled in law school, becoming the first Native American woman to obtain both medical and law degrees.⁹² She spoke to newspapers, medical associations, and legal groups, arguing that the U.S. government was “using the vehicle of healthcare as a way of genocide.”⁹³ Dr. Uri also began pressing the government to investigate their own IHS facilities.⁹⁴ In 1976, she convinced Senator James Abourezk of South Dakota to request an investigation by the federal government’s General Accounting Office (GAO).⁹⁵

The GAO investigation confirmed that the IHS had sterilized a substantial proportion of Native American women. For its study, the GAO investigated the sterilization practices in four of the twelve IHS areas and for only four years, 1973–1976.⁹⁶ It found that 3,406 Native women had been sterilized, 3,001 of whom had been of childbearing age.⁹⁷

The impact of these sterilizations when there were only approximately 780,000 Native Americans in the United States was significant.⁹⁸ According to the GAO report, an average of approximately 52,800 women of childbearing age resided in the four service areas during the years it had investigated.⁹⁹ The sterilization of 3,001 of these women meant that almost six percent of the women of childbearing age were sterilized in just a four-year period.¹⁰⁰ If citizens in the general population had been sterilized at this same rate, over 2.5 million women would have been sterilized in four years.¹⁰¹ Moreover, sterilization abuse had been occurring since 1965, eight years before the studied period, and continued on for at least three years after that, until 1979.¹⁰² If the IHS’ rate of sterilization stayed relatively constant over the fifteen years, the cumulative effect would have

92. *Woman*, *supra* note 14; NATIVE AMERICAN WOMEN: A BIOGRAPHICAL DIRECTORY 242–43 (Gretchen Bataille & Lisa Laurie eds., 2001).

93. *Woman*, *supra* note 14; KPFK, *supra* note 18.

94. *Theft of Life*, *supra* note 20.

95. *See id.*

96. U.S. GEN. ACCT. OFF., *supra* note 31, at 27.

97. *Id.* at 28.

98. U.S. DEP’T. OF HEALTH, EDUC., & WELFARE, U.S. PUB. HEALTH SERV., PUB. NO. 78–12009, INDIAN HEALTH TRENDS AND SERVICES 42 (1978).

99. U.S. GEN. ACCT. OFF., *supra* note 31, at 28.

100. *See id.* at 18, 28.

101. In 1970, the U.S. population was about 203 million with about 20.8% (42.3 million) women of childbearing age. If 6% of those women were sterilized, there would have been 2.5 million sterilizations over four years. U.S. DEP’T OF HEALTH, EDUC., & WELFARE, *supra* note 99, at 42, 45.

102. *See* Lawrence, *supra* note 23, at 402; *see also* O’Sullivan, *supra* note 51, at 976–77.

been that 22.5% percent of Native women were sterilized—close to the percentage that Dr. Uri claimed were sterilized.¹⁰³

Moreover, the GAO found that many of the sterilizations violated the law and government regulations. Even though the U.S. Department of Health, Education, and Welfare (HEW) mandated that the federal government not pay doctors for underage sterilizations, the IHS continued to make payments.¹⁰⁴ The GAO study found that, although the government had banned underage sterilizations, doctors sterilized thirty-six¹⁰⁵

The GAO investigation also concluded that the majority of the sterilizations were illegally performed without the patients' informed consent, despite a federal court order that "federally assisted family planning sterilizations are permissible only with the voluntary, knowing, and uncoerced consent of individuals competent to give such consent."¹⁰⁶ In fact, the GAO concluded that every consent form it reviewed was invalid because it neither described the sterilization procedure nor explained what the women were told before signing the form.¹⁰⁷ Additionally, although the court order and guidelines from HEW required that consent forms state that women could decline sterilization without losing their welfare benefits, the forms did not inform women of this right.¹⁰⁸

VI. IHS PASSES REGULATIONS THAT PROHIBIT NONCONSENSUAL STERILIZATIONS

After the GAO study confirmed that nonconsensual sterilizations were occurring at federal IHS facilities across the country, Dr. Uri continued to give interviews, lead protests, provide speeches, and help with lawsuits against sterilization abuse.¹⁰⁹ She brought her activism to Tribal Nations around the country:

103. *Doctor Raps Sterilization of Indian Women: Claims that Many are Pressured at Government Hospitals*, *supra* note 26, at A3.

104. U.S. GEN. ACCT. OFF., *supra* note 31, at 22; NANCY ORDOVER, *AMERICAN EUGENICS: RACE, QUEER ANATOMY, AND THE SCIENCE OF NATIONALISM* 172 (Univ. of Minnesota Press ed. 2003).

105. U.S. GEN. ACCT. OFF., *supra* note 31, at 20-21.

106. *Relf v. Weinberger*, 372 F. Supp. 1196, 1201 (D.D.C. 1974).

107. U.S. GEN. ACCT. OFF., *supra* note 31, at 23-26.

108. *Relf v. Weinberger*, 372 F. Supp. 1196, 1203 (D.D.C. 1974); Policies of General Applicability: Restrictions Applicable to Sterilization Procedures in Federally Assisted Family Planning Projects, 39 Fed. Reg. 13887 (Apr. 18, 1974).

109. Letter from Dr. Connie Redbird Uri. to Margarite Smith, Attorney at the NLRB (Dec. 19, 1974) (on file with the University of California, Riverside, Special Collections & University Archives). This letter details several of the lawsuits that Dr. Uri planned to bring against the Indian Health Service related to the nonconsensual sterilizations occurring at IHS facilities.

I am known to be a fighter. I don't know why, I don't carry a knife or a gun, I carry a stethoscope and I carry in my head the education of the white man. I stayed an Indian. The beat of the drum is like the beat of my heart. I will fight if need be . . . anywhere a tribe needs me – I have been called to go to Alaska, the Eskimos, I have been called to go to North Dakota, I have been called to go to South Dakota and I have been called to go to Arizona. Claremore is not the only hospital in trouble.¹¹⁰

Soon, more Native American women joined Dr. Uri's fight.¹¹¹ Some organized grassroots movements to protest nonconsensual sterilizations.¹¹² The most important of these was the Women of All Red Nations (WARN), which was founded in 1974 by several female members of the American Indian Movement who wanted a group focused exclusively on women's issues.¹¹³ Composed of hundreds of women from more than 30 tribes across the country, WARN held conferences, participated in protests, and distributed newsletters about issues affecting Native American women, with a focus on sterilization.¹¹⁴ In 1978, several members participated in the 3,000 mile "Longest Walk" from San Francisco to Washington, D.C to bring attention to sterilization abuses.¹¹⁵ In front of 30,000 people rallying on the Washington Mall, WARN and other Native American leaders gave speeches about the nonconsensual sterilization of Native American women.¹¹⁶

Because the federal government did not immediately take action on the GAO's findings, other Native American activists tried to bring inter-

110. Dr. Connie Redbird Uri, Statement at Oklahoma City IHS Area Advisory Board Meeting, at 8 (Nov. 9, 1974) (transcript available in the University of California, Riverside, Special Collections & University Archives).

111. Although Dr. Uri was the hero of the movement to end the illegal sterilization of Native Americans, her identity has been confused in the few secondary sources that mention her. She is incorrectly referred to as "Connie Pinkerton-Uri." My own research revealed that she was born Connie Pinkerman, not "Pinkerton," and used the name "Connie Pinkerman, Esq." in her legal practice (Uri was her married name). Research using her correct name reveals that she continued fighting for the legal rights of Native Americans until her death in 2009. STATE BAR OF CAL., ATTORNEY LICENSES PROFILES, <http://members.calbar.ca.gov/fal/Licensee/Detail/94666> (last visited Nov. 21, 2019); NATIVE AMERICAN WOMEN: A BIOGRAPHICAL DIRECTORY, *supra* note 93, at 242-43.

112. Torpy, *supra* note 54 at 15.

113. JOSEPHY, *supra* note 91, at 51-52; Torpy, *supra* note 54 at 15.

114. Torpy, *supra* note 54 at 15-16.

115. *Longest Walk: Spirituality, Sovereignty, Land, Freedom, Justice, Survival, the Future Generations, Dignity, Self-Sufficiency, Rebirth, all of our Relatives Walk in Harmony*, AKWESASNE NOTES, Summer, 1978, at 6-12.

116. ORLECK, *supra* note 87, at 143-44; *see also* WILLSON CTR. DIGILAB, *Dr. Lehman Brightman LED THE LONGEST WALK 1978*, <https://digilab.libs.uga.edu/exhibits/items/show/550> (last accessed Nov 7, 2021).

national attention to the widespread sterilizations of Native women. For example, Marie Sanchez, a tribal judge of the Northern Cheyenne Indians, organized a group of Native American women to travel to Geneva, Switzerland in 1977 to testify about the IHS sterilizations at a meeting of the United Nations. There she proclaimed that “Indian women of the Western Hemisphere are the target of [a] genocide that is ongoing... the modern form [is] called sterilization.”¹¹⁷

The Native American advocates eventually joined other women of color who were also organizing to oppose sterilization abuse in their own communities.¹¹⁸ Although Native women were especially vulnerable to sterilization abuse because of the concentration of Native healthcare in the IHS and financial incentives to perform federally-funded sterilizations, non-Native women of color had also experienced nonconsensual sterilizations.¹¹⁹ Efforts to reduce poverty and beliefs that women of color were more fertile than white women resulted in physicians sterilizing not only Native women without their full consent, but also many Black and Latina women.¹²⁰

In 1975, organized groups representing different populations of women of color officially joined together under the National Women’s Health Network (NWHN).¹²¹ The groups comprising NWHN included those representing Black women, Mexican-American women, Puerto Rican women, and Native American women.¹²² The ten-person board had three Native American board members, including Dr. Connie Uri and Marie Sanchez.¹²³ NWHN distributed publications informing women both of the permanent effects of sterilization and of their right to refuse the procedure.¹²⁴ The publications also helped to alert policy makers to the problems of sterilization abuse.¹²⁵

Prompted by the activism of NWHN and other grassroots organizations, Congress held hearings about sterilization abuse in 1978.¹²⁶ During the hearings, lawmakers acknowledged that sterilizations after a woman is “admitted to a hospital for childbirth, or is in labor, or under sedation for labor pains” are “among the most common forms of sterilization abuse – particularly in women who because of educational or linguistic deficits, or

117. *Marie Sanchez: For the Women*, AKWESASNE NOTES, Dec. 1977, at 14.

118. ORLECK, *supra* note 87, at 99-100.

119. *Id.* at 95-100.

120. *Id.*

121. O’Sullivan, *supra* note 51, at 975-76.

122. *Id.* at 975.

123. *Id.*

124. See generally NATIONAL WOMEN’S HEALTH NETWORK, *STERILIZATION: RESOURCE GUIDE* (1980).

125. O’Sullivan, *supra* note 51, at 975-76.

126. *Id.*

cultural differences, cannot under these stressed conditions always understand what is being proposed to them.”¹²⁷ Asserting the need for stricter regulations, they cautioned that “[w]here federally-funded sterilizing operations are concerned, this is a time for prudence. . . . Poverty is not a crime of individuals against society, and does not call for such punishments as sterilization abuse of poor individuals by an affluent society.”¹²⁸

Following the hearing, HEW published new guidelines to prevent nonconsensual sterilizations.¹²⁹ They mandated that consent forms explain alternative birth control methods, state that federal benefits would not be withdrawn for refusing sterilization, and include an interpreter’s signature.¹³⁰ The guidelines stated that consent was impossible if a woman was in labor or under the influence of medication.¹³¹ They also extended the waiting period between consent and procedure from 3 days to 30 days.¹³² Finally, the guidelines eliminated federal funding for hysterectomies done for sterilization purposes, removing a significant financial incentive of physicians to perform the procedures.¹³³

Moreover, Congress also noted the unique harm that nonconsensual sterilizations imposed on Native Americans by recognizing that “[f]or Indian people and their tribal governments, sterilization abuse is not only a matter of individual human rights, but also one of political survival. As such, the right of Indian people to freely self-determine their reproductive lives is a necessary pre-condition to all other rights they possess individually and as tribal members.”¹³⁴

After a period of public comment, the guidelines went into effect in February, 1979.¹³⁵ Although they were a victory for the Native American women activists and other women of color that had advocated for increased federal oversight, they were not supported by many feminist organizations who feared that the extended waiting period intruded on reproductive choice.¹³⁶

Despite the mixed support for the HEW guidelines, nonconsensual sterilizations began to decline soon after the guidelines’ publication.¹³⁷

127. 124 CONG. REC. 6,908-09 (1978).

128. *Id.*

129. U.S. Department of Health, Education, and Welfare, Policies of General Applicability: Provision of Sterilization in Federally Assisted Programs of the Public Health Service, 43 Fed. Reg. 52,146, 52,174 (Nov. 8, 1978) (to be codified at 42 C.F.R. pt. 50.202).

130. *Id.*

131. *Id.*

132. *Id.*

133. *Id.*

134. 124 CONG. REC. 7,840 (1978).

135. THEOBALD, *supra* note 32, at 164.

136. *Id.*

137. *Id.* at 171.

VII. STERILIZATION'S LEGACY

With the publication of the HEW guidelines in 1979, the IHS practice of nonconsensual sterilization declined significantly.¹³⁸ However, the federally-sponsored sterilization of Native women between 1965 and 1979 had long-lasting impacts on the Native American population.

Multiple investigations, including one by the federal government's own GAO, indicate that as much as twenty-five percent of Native American women of childbearing age were sterilized during this period.¹³⁹ Subsequent studies suggest the percentage may have been even higher, possibly over forty percent.¹⁴⁰ Given the population of Native Americans at the time, these percentages mean that between 41,000 and 66,000 Native American women were sterilized, and some unknown number of Native American children were never born.¹⁴¹

Many of the sterilized women suffered psychologically and experienced higher rates of addiction and divorce.¹⁴² The sterilizations were especially traumatic because of the importance of reproduction to tribal survival.¹⁴³ As Katsi Cook of the Mohawk Nation indicated, "women are the base of the generations. Our reproductive power is sacred to us."¹⁴⁴ Similarly, Mary Crow Dog of the Lakota tribe explained that many Native women believed they had a responsibility to "make up for the genocide suffered by [their] people in the past."¹⁴⁵

Tribes in which a significant number of women were sterilized suffered both by losing power in tribal councils whose representation was based on population and by losing federal services based on population.¹⁴⁶ They also lost the respect of other tribes because the IHS sterilizations were

138. O'Sullivan, *supra* note 51, at 977.

139. See discussion *supra* Parts II and IV.

140. Lee Brightman, United Native Americans President, estimated that 42 percent of the women of childbearing age were sterilized. *Growing Fight Against Sterilization of Native Women*, *supra* note 29, at 29.

141. According to IHS data, 21.1% of the Native American population of 780,000 were women of childbearing age. If 25% - 40% of those women were sterilized, there would have been 41,000 - 66,000 sterilizations. U.S. DEP'T. OF HEALTH, EDUC., & WELFARE, *supra* note 99, at 42, 45.

142. Lawrence, *supra* note 23, at 410.

143. *C.f.* ANN L. CLARK, CULTURE, CHILDBEARING, HEALTH PROFESSIONALS 26, 28 (1978).

144. Katsi Cook, *A Native American Response*, in BIRTH CONTROL AND CONTROLLING BIRTH: WOMEN CENTERED PERSPECTIVES 251, 253 (Helen Holmes, Betty B. Hoskins, & Michael Gross eds., 1980).

145. MARY CROW DOG & RICHARD ERDOES, LAKOTA WOMAN 244 (1990).

146. See Lawrence, *supra* note 23, at 411.

viewed as a direct affront to a tribe's sovereignty and ability to protect its members.¹⁴⁷

Sterilization devastated some tribes. In 1977, Dr. Uri predicted that “[a]ll the pureblood women of the Kaw tribe of Oklahoma have now been sterilized. At the end of this generation, the tribe will cease to exist.”¹⁴⁸ She was correct. The last pure-blood Kaw died in 2000.¹⁴⁹ For the Kaw and other small tribes, sterilization threatened tribal bloodlines. As Dr. Uri herself explained “we are not like other minorities. We have no gene pool in Africa or Asia. When we are gone, that’s it.”¹⁵⁰

Seen in this context, the IHS sterilizations during the 1960s and 1970s fit with the 500-year history of mistreatment of Native Americans. The current Chief of the Cherokee Nation noted that whether it was “the removal of Indians from their lands,” the “taking of Indian children from their families,” or the “stopping of Indian reproduction,” all “fit, unfortunately, with the historical relationship between tribes and the United States.”¹⁵¹

In the last decade, living victims of nonconsensual sterilization programs in other parts of the country have received compensation for their losses. In 2013, North Carolina agreed to compensate the 7,600 women it sterilized throughout the 1970s.¹⁵² In 2015, Virginia promised compensation for the 7,000 women it had sterilized.¹⁵³ Most recently, in 2018, California agreed to compensate any living victims of the 20,000 people it had sterilized.¹⁵⁴ In contrast, the more than 41,000 Native American women who were sterilized at federal IHS facilities have received no compensation. The government should repair this injustice.

147. *Id.*; Interview with Chuck Hoskin, Jr., Principal Chief of the Cherokee Nation, in Tulsa, Okla. (Feb. 3, 2020).

148. 123 CONG. REC. 39,383 (1977) (information from Connie Uri, submitted for the record by Senator Edward Kennedy).

149. Douglas Martin, *William Mehojah, a Kaw Leader, Dies at 82*, N.Y. TIMES (May 5, 2000), <https://www.nytimes.com/2000/05/05/us/william-mehojah-a-kaw-leader-dies-at-82.html>.

150. *Theft of Life*, *supra* note 20, at 30.

151. Interview with Chuck Hoskin, Jr., Principal Chief of the Cherokee Nation, in Tulsa, Okla. (Feb. 3, 2020).

152. Scott Neuman, *North Carolina Set to Compensate Forced Sterilization Victims*, NPR (July 25, 2013), <https://www.npr.org/sections/thetwo-way/2013/07/25/205547272/north-carolina-set-to-compensate-forced-sterilization-victims>.

153. Jenna Portnoy, *Va. General Assembly Agrees to Compensate Eugenics Victims*, WASH. POST (Feb. 27, 2015), https://www.washingtonpost.com/local/virginia-politics/va-general-assembly-agrees-to-compensate-eugenics-victims/2015/02/27/b2b7b0ec-be9e-11e4-bdfa-b8e8f594e6ee_story.html.

154. Samantha Young, *California Lawmakers Seek Reparations for People Sterilized by the State*, WASH. POST (Apr. 25, 2018), https://www.washingtonpost.com/national/health-science/california-lawmakers-seek-reparations-for-people-sterilized-by-the-state/2018/04/25/2a873578-4869-11e8-8082-105a446d19b8_story.html.