

THE LONG HISTORY OF WOMEN'S RIGHTS CAMPAIGNS IN THREE SOUTH AMERICAN COUNTRIES; THE RECENT LEGAL HISTORY OF ABORTION LAW IN URUGUAY, ARGENTINA, CHILE.

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I would like to thank Professor Jonathan Miller and the Southwestern Law School for inviting me to comment on the sparkling presentation of Professor Nayla Vacarezza. I have read many of her works and I think this paper ranks among one of her best. How fortunate we are to have her here with us in Los Angeles! Her discussion on abortion rights, legal limitations, politics, and the impact of vibrant Latin American women's movements, complicates legal issues associated with abortion rights as well as offers strategies to expand these rights all over the Americas.

After I finished reading this terrific study, I asked myself what could I add or critique? How could I possibly add new perspectives? Should I claim illness and recuse myself? I so wanted to meet Nayla and see

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Jonathan again, the latter option would have been impossible. I decided to think more about the early history women's movements and popular action that led everyday women in Latin America, as in the United States, to challenge their societies through education and participation in international activities. I am as inspired by their efforts as those who led the proabortion movement. I am also fascinated at how female sterilization along with the day-after-pills, around since 1980, have enabled women to take charge of their reproductive needs despite opposition from the state, the medical community, and the church. Everyday women, rich and poor are part of the solutions in both regions of the world paralleled by legal reforms that succeeded with the efforts of feminist politics that have shifted over time.

BRIEF HISTORY OF SOUTH AMERICAN REPRODUCTIVE RIGHTS CAMPAIGNS

Since the 19th century, the three countries under Vacarezza's study, Argentina, Uruguay and Chile, have had high rates of literacy for both men and women as a result of public education. The 19th and 20th centuries' waves of European immigrants helped develop the agriculture industry, such as cattle raising in Argentina and Uruguay. In Chile, although European immigration was more modest, mining became the engine of progress. Yet, female education was still important to Chile. European ideas of eugenics and the science of promoting healthy characteristics in children led campaigns in South America to focus on mothering and childrearing; these campaigns were often led by women.¹

By the mid-19th century, the plight of unwanted babies and children was precarious at best. With few legal rights, they totally depended upon their parent's recognition, but many men refused to do this. At that time, abandoned illegitimate children often ended up in orphanages after being abandoned at foundling wheels, and illegal abortions occurred. Both led to high levels of child mortality. The local and national archives, as well as statistical reports, attested to the need to reduce this level, and municipalities in large cities such as Montevideo and Buenos Aires hired public health physicians to improve children's conditions and enable them to reach adulthood. They, too, supported campaigns for educating women to care for their offspring. Bad parents often found themselves in court.

The value placed upon healthy children with parents to populate the relatively empty lands, along with religious institutions operating orphanages, later promoted reproduction, mothering, and laws against

1. NANCY LEYS STEPAN, "THE HOUR OF EUGENICS": RACE, GENDER, AND NATION IN LATIN AMERICA (1st ed. 1991); JULIA RODRIGUEZ, CIVILIZING ARGENTINA: SCIENCE, MEDICINE, AND THE MODERN STATE (2006).

abortion. High levels of female education, however, also led to campaigns for female suffrage in South America in the 1940s, as well as reproductive rights and divorce campaigns thereafter. This quick historical discussion provides a background for South American campaigns for reproductive rights.

COMPARISON BETWEEN U.S. AND LATIN AMERICAN FEMINIST CAMPAIGN HISTORIES

While legal decisions in the U.S. Supreme Court in 2022 removed women's constitutional right to an abortion available from 1975 to 2022 in a democratic regime, in South America, the pro-abortion movement now flourishes in a region that has long been dominated by alternating democratic and military regimes, as well as strong anti-abortion religious, eugenic and paternalistic influences. How did this come about?

I would like to contextualize the current feminist campaigns in the U.S. and Latin America by talking about the early histories of feminisms in both regions that include not only suffrage, but also highly popular feminist campaigns that defend mothers' and children's rights. In the early years of the U.S. suffrage movement, campaigns for the vote outpaced those for child rights, but both existed and were interlocked. Katherine Marino's prize-winning 2019 book, *Feminism for the Americas: The Making of an International Human Rights Movement*, makes it clear that secular Latin American feminism was marked by maternal feminism, long before battles for suffrage and abortion.² Their countries, influenced by positivism and eugenics, endorsed scientific campaigns to reduce infant mortality, protect child rights, and promote scientific maternal child raising. Heavily influenced by the male-dominated Pan American Child Congresses, a group of male physicians, lawyers, and educators who promoted programs to reduce infant and child mortality and prevent juvenile delinquency among the many boys who lived in the streets peddling papers and stealing. It began as a group parallel to the more politically oriented Pan American Congresses. Initially only men attended, but many had educated wives who also had expertise in these issues. After, Latin American educated women insisted on attending the meetings as full members. They were officially

2. KATHERINE MARINO, *FEMINISM IN THE AMERICAS: THE MAKINGS OF A HUMAN RIGHTS MOVEMENT* 6 (2019). *See also* LUCIA LIONETTI & DANIEL MIGUEZ, *LAS INFANCIAS EN LA HISTORIOGRAFIA ARGENTINA: INTERSECCIONES ENTRE PRACTICES, DISCURSOS E INSTITUCIONES* [CHILDHOODS IN ARGENTINE HISTORIOGRAPHY: INTERSECTIONS BETWEEN PRACTICES, DISCOURSES AND INSTITUTIONS] (2010).

welcomed after 1927 to the Pan American Child Congresses.³ All were deeply influenced by the role of the U.S. Children's Bureau and in 1937, they welcomed Katherine Lenroot to the Pan American meetings.⁴ Together, they energetically promoted the protection of minors and mothers in the U.S., as well as the scientific teachings of *puericultura*, or scientific mothering and childrearing. They also introduced these teachings in public schools, while U.S. educators focused on home economics.⁵

Because these were prestigious international meetings, women returned to their homelands determined to pass laws, giving them more power over their children and their household. This was an elitist group of feminists, but their impact led to the passage of Children's Codes and insisted on greater attention to juvenile delinquency.⁶ They also arranged to have the meetings occur in their own homelands thereby empowering women even more.⁷ The power of these women could be seen easily until the 1960s, when they began to retire while young supporters of female suffrage began to impact each country, and women of diverse backgrounds served in legislatures.⁸

PRESENT DAY U.S. AND INTERNATIONAL ANTI-ABORTION LAWS

The new anti-abortion laws in the United States, both national and state-wide, have forced reproductive clinics to close and threaten to eliminate the right to obtain contraceptive pills by mail. The Supreme Court and unwritten abortion rights and current debates are more responsive to political ideologies and do not mention, but are influenced, by patriarchal and religious beliefs. I truly believe that in both cases, this anti-abortion movement represents the negative vestigial elements of 20th century maternalist campaigns. Amid these differences, feminists and women in the Americas from all walks of life have clearly marked their desire to control their own wombs; and their choices can be seen by the frequency they have chosen different anti-contraceptive methods.

Nayla's discussion begins with a 2018 report from the Guttmacher Institute, a U.S. foundation that has been tracking reproductive rights all

3. See DONNA J. GUY, WHITE SLAVERY AND MOTHERS ALIVE AND DEAD: THE TROUBLED MEETING OF SEX, GENDER, PUBLIC HEALTH, AND PROGRESS IN LATIN AMERICA 33, 36 (2000).

4. *Id.*

5. *Id.* at 43.

6. *Id.* at 54-56.

7. *Id.* at 57-58.

8. *Id.* at 56-58.

over the world since 1992.⁹ Its 2022 report noted the challenges facing reproduction rights all over the world, especially in the United States due to the *Dobbs v. Jackson Women's Health Organization* case that eliminated national constitutional abortion rights for women.¹⁰ But in terms of Latin America, the situation had improved remarkably since 1918, when women had few legal choices. The proportion of all pregnancies in Latin America and the Caribbean ending in abortion increased between 1990-1994 and 2010-2014, from 23% to 32%.¹¹ Women, especially those who had already given birth, often chose tubal ligation—female sterilization—usually after giving birth.¹² They were not about to wait for permission to use new legal contraceptive methods, although in some countries like Peru, Bolivia, and Chile, forced tubal ligation became a state tactic to control proliferation of non-whites, HIV-infected babies and leftists.¹³ In 2018, approximately 23% of South American women listed sterilization for birth control, compared to 18% who used birth control pills. What do these statistics mean? Either reversible forms of birth control such as the pill, IUDs, and injectable contraceptive were too expensive or had undesirable side effects, or those involving male contraceptives lacked female input. As more reliable contraceptive methods become available, sterilization has become less frequent in South America, but the day-after-pills are not free and often cost as much as 22 USD.¹⁴

Colombia, an exception to this, chose the implementation of free sterilization as part of public family planning programs that began in the 1960s, and represents the principal agent promoting family planning since 2011.¹⁵ Nevertheless, accusations of forcible sterilization of developmentally disabled girls have been made in Colombia.¹⁶ Female

9. *Fact Sheet: Abortion in Latin America And the Caribbean*, GUTTMACHER INST. (Mar. 2018), https://www.guttmacher.org/sites/default/files/factsheet/ib_aws-latin-america.pdf.

10. Rachel K. Jones et al., *Long-Term Decline in US Abortions Reverses, Showing Rising Need for Abortion as Supreme Court Is Poised to Overturn Roe v. Wade*, GUTTMACHER INST., <https://www.guttmacher.org/article/2022/06/long-term-decline-us-abortions-reverses-showing-rising-need-abortion-supreme-court> (last updated Dec. 1, 2022).

11. *Abortion in Latin America and the Caribbean*, GUTTMACHER INST. tbl.1 (Mar. 2018), <https://www.guttmacher.org/fact-sheet/abortion-latin-america-and-caribbean>.

12. Apoorva Jadhav & Emily Vala-Haynes, *Informed Choice and Female Sterilization in South Asia and Latin America*, 50 J. BIOSOCIAL SCI. 823 (2018).

13. *Id.*

14. Luis Bahamondes et al., *The Use of Long-Acting Reversible Contraceptives in Latin America and the Caribbean: Current Landscape and Recommendations*, 2018 HUM. REPROD. OPEN 1 (2018).

15. Jadhav & Vala-Haynes, *supra* note 14.

16. *Id.*

sterilization remains extremely popular in Latin America and in other parts of the world, and we must explore this reality.¹⁷

Even in the United States, between 2015 and 2017, female sterilization was the most common form of birth control for women aged 30-49.¹⁸ A recent study showed that almost 40% of women aged 40-49 have been sterilized, compared to 21% for those aged 30-39.¹⁹ I was astonished by these figures and they raise important issues about abortion accessibility even in the 21st century.

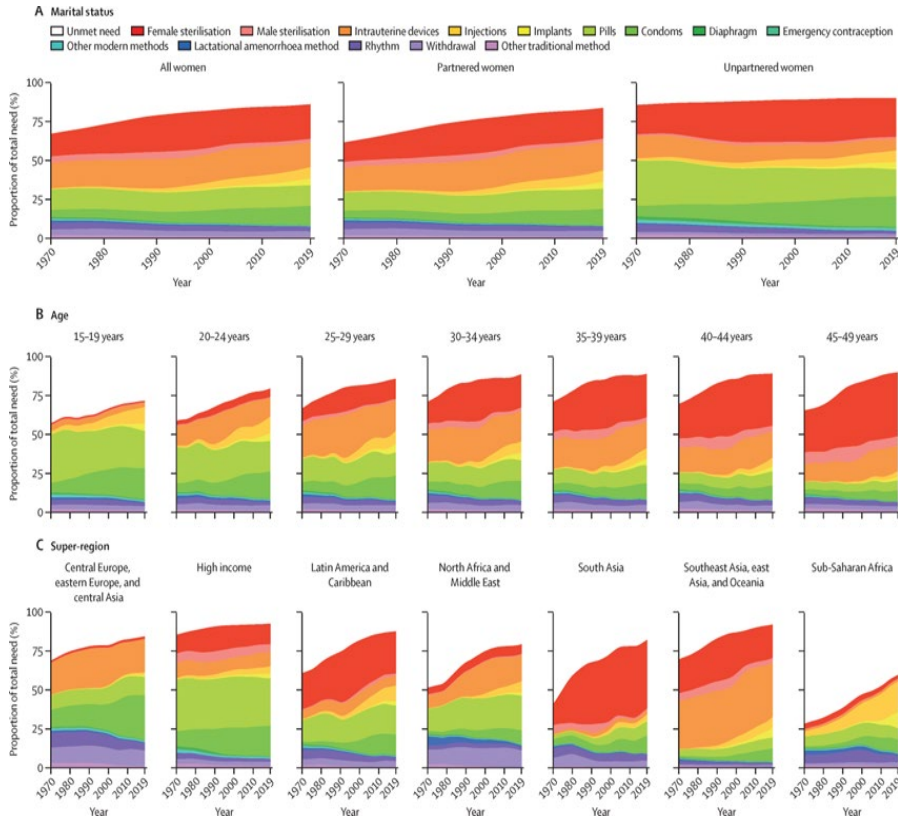
For women in South America who did not have access to temporary birth control or sterilization, illegal abortions equaled the percentage of pregnancies prevented by sterilization. But unsafe abortions meant continued high maternal and infant death rates as well as poor medical care, especially in rural areas.

17. *Id.*

18. Kimberly Daniels & Joyce Abma, *Current Contraceptive Status Among Women Aged 15-49: United States, 2015-2017*, CDC (Oct. 2020), <https://www.cdc.gov/nchs/products/databriefs/db388.htm>.

19. *Id.*

WORLD-WIDE TOTAL CONTRACEPTIVE USE BY AGE, PARTNERED AND UNPARTNERED WOMEN, AND REGION, 1970-2019²⁰



TUBAL LIGATION AND STERILIZATION AS A COMMON CONTRACEPTIVE CHOICE

As a result of increased contraceptive use, the frequency of abortion has decreased in Latin America. In the last thirty years, tubal ligation has been the principal cause.

According to the Guttmacher organization, the number of unintended pregnancies in Latin America and the Caribbean have gone from 94 per

20. Annie Haakenstad et al., *Measuring Contraceptive Method Mix, Prevalence, and Demand Satisfied by Age and Marital Status in 204 Countries and Territories, 1970–2019: A Systematic Analysis for the Global Burden of Disease Study 2019*, 400 THE LANCET 295, 311 (2022).

1,000 women in 1994 to 69 per 1,000.²¹ Abortion, however, has only been reduced by 3%.²² We can probably conclude from this data that birth control measures, both surgical and mechanical, have been extremely successful in lowering unintended pregnancy, while the number of abortions have only been reduced since 2014 from 33 per 1,000 to 32 per 1,000 women aged 15-49.²³ The need for accessible abortion services has not diminished.

CONCLUSION

We have all seen the picture of Lady Law envisioned as a blindfolded woman using scales to measure justice, right and wrong, crime and innocence. The fact that abortion issues are particular to women, while the laws have, until recently, been promulgated and adjudicated by men, raises the fundamental issue of how and when abortion laws can be fairly and evenly applied. As Nayla has pointed out, legal mandates to appear before judges, be interviewed, and, in the case of rape, forced to denounce the rapist, all invade women's privacy. Abortion is still directly linked to privacy rights, often of the poor and minors, of married, single, LGBT, and rural women as well as those living in urban areas. But not all women share the same views on abortion rights. So how does Lady Law guide and inform abortion needs, politics and law? Only through constant revisions of abortion legislation and turning public knowledge of reproduction, laws, and custom into power.

This was recognized by Chilean feminists in 2010 when they published *Everything You Want to Know About Getting an Abortion with Pills*, a campaign followed by organized demand for access to safe and free abortion.²⁴ Pro-Abortion feminists in Argentina followed suit. Argentine feminists also found out about misoprostol from feminists and public health officials involved in abortion politics in neighboring countries.²⁵ The pill could be purchased in Argentina in modified forms, and soon the news spread to women all over the country. At the same time, Argentina's anti-abortion campaign became ever more important. However, the difficulty

21. *Unintended Pregnancies and Abortion in Latin America and the Caribbean*, GUTTMACHER INST. (2022), <https://www.guttmacher.org/fact-sheet/unintended-pregnancy-and-abortion-latin-america-and-caribbean>.

22. *Id.*

23. *Id.*

24. *See* LESBIANAS Y FEMINISTAS POR LA DESCRIMINALIZACIÓN DEL ABORTO, TODO LO QUE QUERÉS SABER SOBRE CÓMO HACERSE UN ABORTO CON PASTILLAS [EVERYTHING YOU WANT TO KNOW ABOUT GETTING AN ABORTION WITH PILLS] (2010).

25. *Id.*

remains for poor women to access these drugs without going through the same steps as other contraceptives.

The question I wish to raise regards future strategies for the feminist birth control movement is: how will changing reproductive strategies, ones that may cast aside the need for current restrictions on women, affect the future of abortion politics? If women increasingly rely on new forms of birth control and the day-after-pill, what will happen to conservative demands to link abortion to legal and medical specialists? What will happen to married women's desire for tubal ligation? This question is relevant not only to Latin American feminist politics, but also to legal efforts to control abortion rights in the United States. Already the day after pill, mifepristone, along with a second pill, misoprostol, are sold in U.S. public pharmacies and on university campuses without constitutional protection. In Argentina, only misoprostol is sold. In Chile, these pills are not available outside clinics, and in Uruguay, both pills are available but with restrictions. I would argue that free access to both pills will mark future campaigns along with safer birth control pills and injections. However, tubal ligation represents the most stable form of permanent birth control for women in difficult familial or political situations.