

Public Health Law Teaching Example: Forced Sterilization Law & Policy

Developed in Women, Gender and Health 207: Advanced Topics in Women, Gender, and Health
Harvard T.H. Chan School of Public Health, Spring 2017
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Appropriate Courses:

The HSPH core course in which the teaching example could be used is HPM 213 Public Health Law. It could also be used in Constitutional Law, Bioethics, or Biotechnology and Law classes at a law school. The teaching example is meant to improve knowledge of public health law and teach students how to read cases and write a memorandum.

Brief Background:

Students are expected to have read and attended lectures about the individual rights protected by the Bill of Rights in the Constitution, and to have a basic understanding of the due process and equal protection frameworks and the levels of scrutiny required for government action—topics that would be covered in the Public Health Law class. Students will know that compulsory public health interventions have been imposed—justified as beneficial for society over individual rights, these include quarantines, vaccinations, and forced sterilization. In addition, public health interventions have shared history with eugenics movements as people have attempted to promote reproduction on the basis of race, intelligence and other characteristics. The United States has a history of eugenics in legal and public health discourse, as well as in the practices of medicine and law. Before completing this assignment, students are expected to have read the assigned readings on intersectionality and gender based analysis and the assigned historical cases, and to have either read the optional assigned readings on reports of forced sterilization or to have conducted their own research on other compulsory public health events compromising individual rights.

Learning Objectives for Students:

- To be able to effectively read, understand, and analyze legal cases in order to identify key takeaways, including the issue, rule, holding, and arguments forming the basis for both the majority opinion and dissenting opinions.
- To identify and explain the importance of intersectionality of gender and identity in regards to legal cases and their impact on health.
- To understand the different ways that the law is used with the rationale of improving public health, the potential negative consequences for these types of interventions, and the ways that gender and other intersecting identities matter with respect to who are targeted by public health law interventions.

Teaching Methods:

The assignment below asks students to apply their knowledge about the Constitutional protections for individual rights and their understanding of the role of government and public health as protectionist to assess the assigned cases. The assignment requires students to use their knowledge of intersectionality and gender based analysis to inform their analysis and write a memorandum based on the holdings or court discussion in the assigned cases.

Homework Assignment:

Based on the assigned readings in the area of forced sterilization and eugenics, write a memorandum (max 3 pages, double spaced, 12 pt. font) addressing the ways in which multiple identities have played a role in one of the

assigned cases. Use two intersecting identities for the analysis. Once identity must be gender and the other can be selected from the list below or be another identity of the student's choosing. Look critically at the language used by the courts and the rationales put forth. What are some examples of the ways that this kind of reasoning is continuing to inform public health law decisions today?

- For example, you could look at gender and mental health/disability status in *Buck v. Bell* and the ways in which these intersecting identities may have played a role in the court's decision. Consider the Court's reference to the plaintiff as "feeble-minded" and its determination the plaintiff was not fit to make her own reproductive decisions. What are the ways that gender play into this language and decision? What about mental health status? How do these two identities intersect to make the plaintiff more vulnerable to having her rights stripped away? A paper could compare this to the ways that courts refer to minors today who are seeking judicial consent to obtain an abortion.

Potential identity categories to think about:

- Immigration status
- Incarceration
- Language skills
- Gender
- Sex
- Sexual orientation
- Mental health/ Disability status
- Age
- Marital status

Students will use the IRAC/CRAC (Issue/Conclusion, Rule, Analysis, and Conclusion) method to format their memo (Details available at: http://www.law.columbia.edu/sites/default/files/microsites/writing-center/files/organizing_a_legal_discussion.pdf)

Required readings:

- *Buck v. Bell*, 274 U.S. 200 (1927)
- *Skinner v. Oklahoma*, 316 U.S. 535 (1942)
- *Stump v. Sparkman*, 435 U.S. 349 (1978)
- Guidelines for Gender Based Analysis of Health Data for Decision Making (pages 7-12)

Additional readings (reading at least one of your choice is required):

- Elise Knutsen, *Israel Forcibly Injected African Immigrants with Birth Control, Report Claims*, Forbes (Jan. 28, 2013), <https://www.forbes.com/sites/eliseknutsen/2013/01/28/israel-foribly-injected-african-immigrant-women-with-birth-control/>
- California State Auditor, *Sterilization of Female Inmates Report* (June 2014), <https://www.auditor.ca.gov/pdfs/reports/2013-120.pdf>
- Zakiya Luna, *From Rights to Justice: Women of Color Changing the Face of US Reproductive Rights Organizing*, 4 Societies Without Borders 343-65 (2009)

Optional reference materials:

- Lisa Bowleg, *The Problem with the Phrase Women and Minorities: Intersectionality—an Important Theoretical Framework for Public Health*, 102 Am. J. Pub. Health 1267-73 (2012)
- Legal Information Institute, *Due Process*, Cornell Univ. Law School, https://www.law.cornell.edu/wex/due_process
- Legal Information Institute, *Equal Protection*, Cornell Univ. Law School, https://www.law.cornell.edu/wex/equal_protection