

Governing the Body:  
Bodily Autonomy from Colonial America to the Early Twentieth Century

Bobbie J. Roshone  
University of Nebraska-Kearney  
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Bodily autonomy in early America did not begin as a settled right; it emerged piecemeal as a set of practices, permissions, and prohibitions that attached to different bodies in different places.<sup>1</sup> From the seventeenth century through the early 1940s, the law of marriage and coverture, the politics of empire and slavery, the discipline of churches and colleges, the governance of poor relief and child welfare, and, ultimately, the jurisprudence of eugenics collectively defined how people could move, marry, labor, reproduce, dress, and care for themselves. Historians reconstruct this world by reading statutes and cases alongside missionary records, benevolence archives, and material culture; they situate lived experience within borderlands, city neighborhoods, and institutional corridors. In this long history, the “body” appears not as the object of abstract rights alone but as the everyday site where sovereignty, kinship, welfare, and expertise converged. That premise organizes the narratives developed by Carol Berkin, Juliana Barr, Mary Ann Irwin, Adam Cohen, and Molly Ladd-Taylor, while secondary works—Linda Grant De Pauw, Diana DiPaolo Loren, François Furstenberg, James Mohr, and others—clarify the legal, cultural, and administrative textures that those narratives depend upon.

Beginning with the seventeenth century, in *First Generations: Women in Colonial America* Berkin’s portrait of European, Indigenous, and African women establishes the baseline: the scope of autonomy followed status and circumstance.<sup>2</sup> Berkin’s strength as a narrative historian: she translates specialized research into vivid biographical sketches that make structural themes—labor, law, kinship, and generational change—legible to modern readers.<sup>3</sup> Yet this

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<sup>1</sup> Furstenberg, François, “Beyond Freedom and Slavery: Autonomy, Virtue, and Resistance in Early American Political Discourse,” *Journal of American History* 90, no. 4 (2003): 1295–1325, at 1296.

<sup>2</sup> Berkin, Carol, *First Generations: Women in Colonial America* (New York: Hill and Wang, 1996), 3–10.

<sup>3</sup> Berkin, *First Generations*, xv–xvi.

strength is also the source of the book's limitations. The drive for breadth and accessibility often leads Berkin to flatten cultural distinctions, especially in her chapter on Native women, where reliance on generalized ethnography produces static portrayals that lack the nuance she brings to European women's lives.<sup>4</sup> Berkin's interpretive choices thus expose the methodological boundaries of synthesis itself: the book excels where the archive is rich and Anglocentric and falters where documentary scarcity demands ethnographic or Indigenous-centered approaches. Rather than breaking new theoretical ground, *First Generations* succeeds as a carefully crafted, pedagogically oriented survey whose analytic value lies in demonstrating how race, class, region, and time reshaped, primarily white, women's lives while still leaving intact a gendered structure of dependency at the heart of colonial society.<sup>5</sup>

The same legal order that permitted many *femes sole* to contract, sue, and own property denied married women such capacities under coverture; enslaved women's pregnancies and labors were folded into property regimes that collapsed autonomy into ownership.<sup>6</sup> For example, Chapter 4 of Berkin's work, showcases the difference in treatment that the Dutch women experienced in the Middle Colonies. In the Middle Colonies, under Dutch law Margaret Hardenbroeck did not have to choose between domestic life or work—she could be an equal partner with her husband. However, once English interests took control and the imposition of English law in 1664 her rights were curtailed.<sup>7</sup> Berkin's narrative strength lies in translating specialized research into vivid biographical sketches that render structural themes—labor, law, kinship, and generational change—legible in lived experience. Here, De Pauw's work on

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<sup>4</sup> Berkin, *Ibid.* 78; Berkin groups different language groups together further diminishing how these groups were independent.

<sup>5</sup> Berkin, *Ibid.* 165-170; 78 shows how Berkin contrasted white women/families to Native American groups.

<sup>6</sup> Berkin, *Ibid.* 14.

<sup>7</sup> Berkin, *Ibid.* 82, 86, 98.

colonial law supports Berkin’s conclusions: state courts and legislatures, not the distant federal government, defined women’s rights in inheritance, guardianship, and marital property, and those rules varied sharply by colony and state.<sup>8</sup> Additionally, and Salmon’s synthesis for the early republic reinforces Berkins narrative as well.<sup>9</sup> To see how discipline operated beyond statute, Loren’s analysis of dress and comportment in New England shows how clothing, ritual, and rulebook routines materialized moral order.<sup>10</sup> While Furstenberg’s reading of early American discourse explains why invocations of liberty coexisted with institutional guardianship.<sup>11</sup> Together these secondary studies underline Berkin’s central claim: autonomy in colonial society was a precarious arrangement, calibrated by marital status, race, and local law, and normalized by everyday disciplines.

As the map of “America” widens, the next transition moves from Anglo-Atlantic households to the Indigenous borderlands of the eighteenth century. Juliana Barr’s *Peace Came in the Form of a Woman* stands as a major reorientation in the historiography of the North American borderlands, challenging long-standing narratives that position Europeans as the dominant force in colonial Texas.<sup>12</sup> Barr’s reconstruction of Spanish–Indian relations in Texas shows that sovereignty in the interior did not flow from European institutions outward; it was negotiated on Indigenous terms. In her account, gender operated as a diplomatic language: women’s presence signaled peaceful intent; marriages and kinship ties anchored alliance; female

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<sup>8</sup> De Pauw, Linda Grant, “Women and the Law: The Colonial Period,” *Human Rights* 6, no. 2 (Winter 1977): 107–113, at 109.

<sup>9</sup> Salmon, Marylynn, “The Legal Status of Women, 1776–1830,” *History Now* (Spring 2006).

<sup>10</sup> Loren, Diana DiPaolo, “Bodily Protection: Dress, Health, and Anxiety in Colonial New England,” in *The Archaeology of Anxiety*, ed. Jeffery Fleisher and Neil Norman (New York: Springer, 2016), 141–145.

<sup>11</sup> Furstenberg, “Beyond Freedom and Slavery,” 1310–1315.

<sup>12</sup> Barr, Juliana. *Peace Came in the Form of a Woman: Indians and Spaniards in the Texas Borderlands*. Chapel Hill: University of North Carolina Press, 2007. 1-7.

mediators and household authority transformed strangers into kin.<sup>13</sup> The turn to gendered diplomacy helps correct the limitations of broad colonial syntheses; where a survey might flatten Native specificity, Barr's ethnohistorical approach recovers the codes by which Indigenous polities compelled Spaniards to adapt. Anthropology, archaeology, and close reading of colonial records support her conclusion that Indian authority in Texas was not exceptional but representative of wider continental patterns—a reminder that bodily autonomy, for Native women and men alike, was embedded in political orders that Europeans had to enter rather than invent.<sup>14</sup>

Moving westward and forward in time, Irwin and Brooks's *Women and Gender in the American West* demonstrates how the nineteenth-century expansion layered new forms of constraint and agency onto that earlier terrain. The essays move fluidly between microhistorical case studies and broader structural analyses, illustrating how intersectional and decolonizing frameworks have reshaped the field.<sup>15</sup> Together, these studies show that western women's history has matured into a historiography attentive to power, identity, and historical contingency, rejecting mythic frontier narratives in favor of nuanced accounts of diversity and change. The anthology rejects a single archetype of "western woman," instead tracing lives across captivity, interracial marriage, benevolent work, sexuality, labor militancy, and craft production. Irwin's own study of San Francisco benevolence anchors the point: women's civic labor—care, charity, reform—helped build local governance, even as respectability norms and surveillance constrained behavior.<sup>16</sup> The collection's methodological breadth—court records, newspapers,

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<sup>13</sup> Barr, 289.

<sup>14</sup> Barr, 314-320.

<sup>15</sup> Irwin, Mary Ann, and James F. Brooks, eds. *Women and Gender in the American West*. Albuquerque: University of New Mexico Press, 2004, x.

<sup>16</sup> Irwin, Mary Ann, "Going About and Doing Good: The Politics of Benevolence, Welfare, and Gender in San Francisco, 1850-1880," in Irwin and Brooks, *Women and Gender in the American West*, 87-105.

government documents, voluntary association minutes, ethnohistorical sources—shows that western autonomy was negotiated through associational life and communal institutions as much as through courts, and that race, class, and region remained decisive.<sup>17</sup> Read after Barr, the West appears less as a stage for European institutions and more as a contested civic landscape where gendered authority moved between households, missions, voluntary associations, and town halls.

With that western civic world in view, the essay turns to the nineteenth-century hinge: reproductive governance. Mohr's history of abortion law traces how practices long regulated by common-law quickening became targets of a professional campaign by the American Medical Association, as physicians sought to elevate "regular" medicine over midwives and lay healers.<sup>18</sup> Criminalization spread in the 1860s–1880s. The Comstock Act of 1873 extended the regime by criminalizing the circulation of "obscene" matter through the mails—including contraceptive and abortion information—so that the state policed not only reproductive acts but also reproductive knowledge.<sup>19</sup> New York's "little Comstock" statute, and the Court of Appeals' decision in *People v. Sanger* (1918), tightened censorship even as they carved out narrow medical exceptions.<sup>20</sup> These developments illuminate the long transition from household and community management of reproduction to state management through law, medicine, and censorship—precisely the institutional groundwork that later welfare and eugenic policies would exploit.

Seen against that backdrop, Ladd-Taylor's analysis of the twentieth century reframes eugenic sterilization as ordinary governance rather than ideological aberration.<sup>21</sup> Molly

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<sup>17</sup> Irwin & Brooks, 1-5.

<sup>18</sup> Mohr, James C. *Abortion in America: The Origins and Evolution of National Policy, 1800–1900*. New York: Oxford University Press, 1978. 36.

<sup>19</sup> United States Code, 18 U.S.C. § 1461.

<sup>20</sup> *People v. Sanger*, 222 N.Y. 192 (1918).

<sup>21</sup> Ladd Taylor, Molly. *Fixing the Poor: Eugenic Sterilization and Child Welfare in the Twentieth Century*. Baltimore: Johns Hopkins University Press, 2017. 1-8.

Ladd-Taylor's *Fixing the Poor: Eugenic Sterilization and Child Welfare in the Twentieth Century* represents a major historiographic intervention into the study of eugenics, welfare administration, and the gendered politics of reproductive control. Rather than treating eugenic sterilization as a discrete scientific or ideological movement, Ladd-Taylor reframes it as an ordinary component of everyday statecraft—embedded in the bureaucratic routines, fiscal pressures, and administrative logics of child welfare systems. Her analysis of Minnesota, a state she deliberately presents as unexceptional, uses this ordinariness to powerful effect: the state becomes a case study in how eugenic practices operated through mundane decisions by local judges, welfare workers, and institutional administrators. Ladd-Taylor shows that determinations of “feeble-mindedness” were shaped less by scientific expertise than by local prejudices, financial incentives, and social norms, particularly those governing female sexuality and motherhood.<sup>22</sup>

By focusing on how judges, welfare workers, and administrators translated those norms into policy, an uncanny statement spells out the real driving force—control, “the existence of an acceptable plan for community supervision and control.”<sup>23</sup> Women, particularly unmarried mothers and young women who deviated from middle-class domestic expectations, were disproportionately targeted.<sup>24</sup> Tracing policy across Depression, war, and postwar reform, Ladd-Taylor shows that even as scientific eugenics waned, the administrative capacity to regulate reproduction endured, migrating into the routines of child welfare and the wider “helping” state. Read alongside Berkin’s colonial constraints and Irwin’s civic frameworks, her findings mark a continuity: a state that once governed women’s bodies through coverture and respectability now did so through bureaucratic technologies of eligibility, supervision, and surgery.

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<sup>22</sup> Ladd-Taylor, 85-90.

<sup>23</sup> Ladd-Taylor, 119.

<sup>24</sup> Ladd-Taylor, 105.

Adam Cohen's *Imbeciles: The Supreme Court, American Eugenics, and the Sterilization of Carrie Buck* contributes significantly to the historiography of American eugenics by reframing *Buck v. Bell* not as an aberration but as a product of the cultural, scientific, and administrative logics that structured early-twentieth-century governance.<sup>25</sup> Cohen's account of *Buck v. Bell* brings the judicial dimension of that continuity into focus. He reconstructs how physicians, institutional superintendents, legal actors, and eugenic theorists conspired—through selective evidence and collusive strategy—to present Carrie Buck as the “perfect case.”<sup>26</sup> The Supreme Court's opinion, narrowing bodily autonomy to the formal adequacy of a hearing, constitutionalized compulsory sterilization under police powers and legitimized the convergence of medical authority and administrative ambition.<sup>27</sup> In a surprising turn for Associate Justice Oliver Wendell Holmes, publicly known for fighting for civil liberties and individual freedoms, showed true contempt for citizens.<sup>28</sup> Holmes becomes elitist and quite ableist during this case and fully diminishes Carrie's intelligence by stating she's an ‘imbeciles,’ and applying that moniker to both her mother and daughter.<sup>29</sup> Cohen's analysis underscores the ordinariness of the forces driving the case: fear of poverty, racialized anxiety, moral panic surrounding female sexuality, and a state eager to minimize social costs. In doing so, he exposes how eugenic logic—already cultivated in nineteenth-century criminalization and early twentieth-century welfare practice—entered constitutional doctrine. The result was both vast in practice—tens of thousands sterilized, disproportionately poor women and girls—and enduring in principle.<sup>30</sup>

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<sup>25</sup> Cohen, Adam. *Imbeciles: The Supreme Court, American Eugenics, and the Sterilization of Carrie Buck*. New York: Penguin Press, 2016. 25-40.

<sup>26</sup> Cohen, 35.

<sup>27</sup> Cohen, 250-263.

<sup>28</sup> Cohen, 214.

<sup>29</sup> Cohen, 270.

<sup>30</sup> Cohen, 12.

Even in the courts, correction came partially and late. *Skinner v. Oklahoma* (1942) invalidated criminal-class sterilization on equal-protection grounds and warned that sterilization touches a sensitive area of human rights.<sup>31</sup> Yet *Skinner* left *Buck* intact and framed protection as “procedural safeguards,” not a substantive guarantee of bodily integrity.<sup>32</sup> The legal record thus registers an awakening to the gravity of sterilization without a doctrine robust enough to bar reproductive coercion outright—leaving policy shifts to statutes and administration rather than constitutional reversal.<sup>33</sup>

A wider legal-humanities lens helps unify these episodes. It shows how constitutional equality falters where bodies meet administration, and how order, expertise, and punishment routinely trump autonomy, dignity, and care. Read backward, that lens clarifies how nineteenth-century censorship of reproductive knowledge, early twentieth-century welfare sterilization, and the jurisprudence of *Buck* and *Skinner* form variations on a single theme: regulation as the state’s default response to embodied difference and social risk.<sup>34</sup>

The evidentiary base sustains the arc’s coherence. Colonial legal syntheses explain state-level control over marital and property rights; Berkin’s microhistories reveal how race and status reproduced inequality in households; Barr’s borderlands study shows sovereignty residing in women’s kin relations; Irwin’s western anthology exposes the mutual-aid foundations—and moral limits—of benevolence; material-culture studies demonstrate discipline at the level of dress and routine; histories of abortion and Comstock codification make visible the criminalization of reproductive information; and the works of Cohen and Ladd-Taylor tie

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<sup>31</sup> *Skinner v. Oklahoma*, 316 U.S. 535 (1942).

<sup>32</sup> Cohen, 318.

<sup>33</sup> Cohen, 318.

<sup>34</sup> Sarat, Austin, and Susanna Lee, eds. *Regulating the Body: Autonomy, Control, and the Broken Promise of Equality in American Law*. New York: New York University Press, 2025. Chapter 1, 3,11.

sterilization to expert testimony, welfare budgets, and courtroom doctrine. Together, these materials show a continuity in method and theme: a body governed across different regimes that nonetheless share a preference for hierarchy and regulation over autonomy and choice.

Carrying the story beyond 1942 reveals that the regulatory logic established from the colonial period through the early twentieth century did not disappear; instead, they were absorbed into new institutional forms that continue to shape bodily autonomy in the present. Late-twentieth- and early-twenty-first-century investigations into non-consensual sterilizations in women’s prisons, guardianship-based sterilizations of disabled adults, and coercive reproductive policies in foster care and welfare settings demonstrate that the administrative habits forged in the era of eugenics remain surprisingly durable.<sup>35</sup> These practices persist not because eugenics survives as explicit ideology, but because the bureaucratic infrastructures that enabled reproductive control—casework files, eligibility assessments, medical clearances, risk evaluations, and judicial deference to administrative “expertise”—still structure how institutions manage poverty, sexuality, disability, and dependency.<sup>36</sup> The same assumptions that underwrote earlier sterilization regimes—that certain bodies generate social disorder, that motherhood must be supervised, that poor families pose fiscal burdens, and that institutional placement requires population management—continue to animate policies governing prisons, juvenile justice systems, immigration detention, and social services. Contemporary reproductive-justice advocates therefore repeatedly encounter the residue of older legal categories: the classification of individuals as “unfit,” the medicalization of deviance, the differentiation between “deserving” and “undeserving” parents, and the belief that state intervention can solve social problems by

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<sup>35</sup> The 19th News. “California Promised Reparations to Survivors of Forced Sterilization. Few People Have Gotten Them.” September 5, 2023.

<sup>36</sup> KQED, “Survivors from California’s Period of Forced Sterilization Denied Reparations,” November 1, 2023

intervening in reproduction itself. The endurance of these categories reflects how deeply American law entwined bodily autonomy with administrative risk management long before the vocabulary of modern rights emerged.

At the same time, the cultural and moral assumptions that shaped early American governance continue to inform struggles over bodily autonomy. Debates over abortion access, gender-affirming care, contraception, surveillance of pregnant people, and the criminalization of substance use during pregnancy reveal the ongoing power of moral frameworks that connect bodily conduct to ideas of social order, citizenship, and national identity. In many states, legislative efforts to restrict reproductive choices rely on the same rationales that once justified coverture, moral policing, and eugenic intervention: the protection of the family, the safeguarding of children, the preservation of public resources, and the maintenance of community “values.”<sup>37</sup>

Likewise, contemporary conflicts over whose bodily autonomy requires protection—and whose bodies may be regulated—echo earlier struggles over race, class, and gender. Black, Indigenous, immigrant, disabled, and low-income communities continue to face heightened state surveillance in medical settings, welfare offices, and criminal courts, demonstrating the persistence of the hierarchical structures that Berkin, Barr, Irwin, Ladd-Taylor, and Cohen trace across earlier centuries. If the historical arc shows anything, it is that bodily autonomy in the United States has always been shaped by layered sovereignties: domestic, communal, institutional, and legal. Those layers continue to overlap in ways that render some bodies legible as fully autonomous and others as subject to protection, discipline, or correction. Understanding

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<sup>37</sup> Kelty, Ryan, and Cohen, Adam. *Teaching Sociology* 46, no. 2 (2018): 178-80, pg. 78.

how deeply these assumptions are embedded in laws, policies, and social norms is essential for recognizing why modern debates over bodily autonomy return again and again to questions first articulated in the colonial period—questions about authority, dependence, risk, and whose freedom the state is designed to secure.

Across this broad historiographic landscape, the history of bodily autonomy in America emerges not as a linear narrative of expanding rights but as a deeply ingrained system in which bodies have long served as instruments through which society, law, religion, and state power defined order. From the earliest colonial settlements onward, coverture, slavery, and borderlands diplomacy bound autonomy to status and kin, embedding corporeal governance within household economies and kinship structures. Churches, colleges, and local communities created material cultures of discipline that linked bodily comportment to moral worth and spiritual fitness.<sup>38</sup>

As the nineteenth century unfolded, professionalization in medicine and the rise of moral-reform movements transformed reproductive knowledge and sexuality into matters of legal oversight, while censorship regimes such as the Comstock laws made control over information itself a form of bodily regulation. With the advent of the modern welfare state, these older patterns were absorbed into administrative systems: child-welfare agencies, courts, and institutional bureaucracies converted longstanding anxieties about poverty, sexuality, and dependency into routine mechanisms of supervision and sterilization.<sup>39</sup> Twentieth-century jurisprudence added constitutional force to these practices; *Buck v. Bell* authorized administrative ambition under the banner of public welfare, and even the partial restraint offered by *Skinner* left

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<sup>38</sup> Ladd-Taylor, 119. Community control, while Ladd-Taylor is focusing on Minnesota, but community control would become a nationwide ideal.

<sup>39</sup> Ladd-Taylor, 148, 177. Ladd-Taylor shows over the course of three chapters how the movement changed from fears over poverty causing ‘feeble-mindedness’ during the Great Depression to a need to help “the innocent mentally retarded child,” in 1945 after World War II.

intact the core logic that the state might regulate reproduction under carefully managed procedures.<sup>40</sup> What emerges from the scholarship of Berkin, Barr, Irwin, Ladd-Taylor, Cohen, and the studies that support them is a portrait of bodily autonomy as something continually shaped—and often curtailed—by overlapping jurisdictions, social hierarchies, and moral expectations. In this view, autonomy is not a natural right simply asserted or bestowed; it is a contested practice formed in the friction between lived experience and the institutions that govern it, revealing how deeply the regulation of bodies has been woven into the fabric of American society.<sup>41</sup>

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<sup>40</sup> Ladd-Taylor, 224. Ladd-Taylor built a case that the foundations of eugenics have led to a modern system that has eugenic strategies that are “bureaucratic and mundane,” within the daily operation of child welfare and the criminal justice system.

<sup>41</sup> Sarat and Lee, *Regulating the Body*, 10–15.

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United States Code. 18 U.S.C. § 1461 (Comstock Act).