THE ALL-AMERICAN WITCH HUNT

EXAMINING THE CONSTITUTIONALITY OF VENEREAL DISEASE CONTROL FROM 1918 TO THE 1970'S

Dana Athmann | Dr. Patricia Turner | Dr. Adam Kunz | Department of History

INTRODUCTION

Beginning in 1918, women across the United States became the government-endorsed target of suspicion as potential carriers of what is now referred to as Sexually Transmitted Infections (STI's), especially syphilis and gonorrhea. The Chamberlain-Kahn Act of 1918, and the Venerereal Disease Control Act of 1938 provided a source of funding for states to carry out their own campaigns against STI's. These campaigns included the detention, quarantine, and mandated treatment of suspected 'prostitutes.' The Fourth Amendment, which guarantees citizens the right 'to be secure in their persons' against unreasonable searches and seizures, and the Fourteenth Amendment, which guarantees citizens the right of due process, would both seem to render unconstitutional.

Federal Legislation that was passed:

- The Chamberlain-Kahn Act (1918)
- The Venerereal Disease Control Act (1938)

JUDICIAL FACTORS:

The court system affirmed the validity of the violation of these women’s constitutional rights through setting precedents of Procedural Due Process rulings.

- No substantive due process case was ever proven when questioning venereal disease control.

- Meaning, the officer may have been mistaken, but the legislation was still valid.
  - Wragg v. Griffin (1919)
  - Rock v. Carney (1921)
  - Ex Parte Fowler (1947)
  - Reynolds v. McNichols (1973)

LEGISLATIVE FACTORS:

Venereal Disease Control Legislation provided the template for the impeding of constitutional rights of women by framing control of STI’s as a public health necessity. Sex work was also defined as ‘commerce’, meaning the federal government had jurisdiction through the Interstate Commerce Clause to pass legislation.

States were the true proponents of VD control. The federal government only provided a portion of the funding used by states, and federal funding was almost completely cut off from state access between the years 1923 and 1935.

- Federal Legislation that was passed:
  - The Chamberlain-Kahn Act (1918)
  - The Venerereal Disease Control Act (1938)

FINANCIAL FACTORS:

- States were the true proponents of VD control. The federal government only provided a portion of the funding used by states, and federal funding was almost completely cut off from state access between the years 1923 and 1935.

CONCLUSION

This research finds that through their use of legislative and judicial precedent, as well as continual funding from the states, the US government was able to enforce anti-venerereal laws that clearly discriminated against women and violated their constitutional protections.

However, in the wake of the HIV/AIDS crisis, the concept of quarantining and detaining individuals with a harmful infection began to sound justifiable yet again. In most cases, similar, if not the original language used in 1920’s venereal disease doctrine still exists in public statutes even today. This is the case with both Minnesota’s statute 144.12, and Wisconsin’s 2011 statutes regarding isolation and quarantine. And even case rulings from the era are still used today. In 2007, the state of Michigan issued a report detailing their readiness plan in the possible event of an influenza outbreak, and cited Rock as a precedent for an Officers right quarantine individuals. Though this story began over a century ago, the ability of courts and legislatures to reflect on the precedents of this era in order to justify regulations and rulings in the 21st century serve as a reminder; the potential for a modern-day witch-hunt is never far from reality.