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# An Ethical Analysis of Reproductive Justice in the Context of the Egenics Movement in the United States

Bernetta Welch

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AN ETHICAL ANALYSIS OF REPRODUCTIVE JUSTICE IN THE CONTEXT OF THE  
EUGENICS MOVEMENT IN THE UNITED STATES

A Dissertation

Submitted to the McNulty College and Graduate School of Liberal Arts

Duquesne University

In partial fulfillment of the requirements for  
the degree of Doctor of Philosophy

By

B. De Neice Welch

May 2019

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B. De Neice Welch

2019

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Approved March 21, 2019

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## ABSTRACT

# AN ETHICAL ANALYSIS OF REPRODUCTIVE JUSTICE IN THE CONTEXT OF THE EUGENICS MOVEMENT IN THE UNITED STATES

By

B. De Neice Welch

May, 2019

Dissertation supervised by Professor Henk ten Have, MD, PhD

The history of forced sterilization and the American cultural agreement with this practice robbed women of color of control of their own bodies, destinies, and communities. Negative eugenics as genetic proof of low intelligence, low possibility, and low productivity fed the system of compulsory sterilization even though the science proved faulty and incorrect. As advances in medical technology and genetic science increases, eugenics is making a return into the American psyche. Vulnerable populations which include women of color make reproduction and the subsequent control of their bodies vulnerable once again.

The Reproductive Justice Movement is a collaboration of organized women of color who fight for the full range of reproductive rights, health services, and parenting options for women. The movement formed by the group SisterSong, forged partnerships based on an expanded vision of reproductive rights beyond pro-choice or pro-life politics. The Movement produced a “March for Women’s Lives” which is the largest single civil rights march in the history of the

United States. One major strategic move was the decision to position reproductive rights as “human rights with a connection to the UNESCO Declaration on Human Rights. It is necessary to ethically justify their framework according to traditional health care ethics principles. The framework was also analyzed against the traditional protections for women of color who are medical research subjects and who are vulnerable according to their intersectionality.

## DEDICATION

I humbly submit this work in dedication to my grandmother Bernice and her loving sisters who provided love and nurture for me, but who were never able to have children of their own. I dedicate this work to my husband, the Rev. Dr. John C. Welch who has always gone before me and lead me through and who carried me when I could go no further. To my gifts called my children: Aja, Jordan, John Christopher, and Ian, who are also my greatest teachers. To my grandchildren: Ayauna, Genesis, and Aiden, may you see this as motivation and proof that you can do anything you set your mind and heart to do. To Florence, Darlene, Phyllis, Mrs. Diggs, and Audrey, and my Bidwell Church family, who fed me, prayed for me, and encouraged me; I dedicate this work as gratitude for all the time you granted me to write. To the countless women of color who were robbed of the ability to have children, because of this project, I consider you all my mothers. To my God whose leading felt at times like holy inspiration, I am eternally grateful.

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## Chapter One: Introduction

### A. The Need for the Ethical Analysis of the Reproductive Justice Movement

On April 25, 2004, over one million people participated in the “March for Women’s Lives” in Washington, D.C., making it the largest march in United States history. Initially, the march was designed to be an expression of the demand for women’s reproductive choices, but the voices of women of color influenced the nature of the march to focus on a new dynamic: “*reproductive justice*.” The new dynamic shifted the thinking of the traditional pro-choice leaders to link reproductive rights to reproductive health: and reproductive health to social justice.<sup>1</sup> This link expanded the single focus of reproductive rights efforts to include the experiences of women of color that includes a racialized view of black women, their access to quality health care, their reproductive limitations beyond choice, and the political exclusion from the national platform. SisterSong Women of Color Reproductive Health Coalition (SisterSong) has forged a national organization that leads the activism for the expanded pursuit of achieving a spectrum of human rights for women versus the ability to make a personal decision to have an abortion.<sup>2</sup>

The tenets of the Reproductive Justice Movement, as defined by SisterSong, are well documented and expressed, but since the organization has targeted its efforts as a health care initiative positioned as a human right, the principles of health care ethics must be employed to either validate or refute these claims. The result of this research presentation is that the tenets and fundamental values of the Reproductive Justice Movement are indeed valid according to the principles of health care ethics. The historical roots of eugenics, efforts by liberal pro-choice and pro-life leaders, as well as legal and political policies have been detrimental to the health and lives of women of color globally and nationally. These historical realities have undergirded the need for activism in the area of justice in the reproductive lives of women around the globe.

This research will focus specifically on the United States, but will also use efforts from coalitions of women of color globally to boost its claims and its cautions, as current eugenic activities have resurfaced.

This presentation will highlight the historical roots of forced sterilization as a means of reproductive punishment, and will also show some of the ways forced sterilization has emerged from the shadows of history. The California State Auditor to the Joint Legislative Audit Committee concerning the sterilizations of female inmates during the fiscal years of 2005-2006 through 2012-2013. In short, 144 female inmates were surgically sterilized, informed consent requirements were ignored, and physicians who were required to sign these consent forms failed to affix their signatures. The procedures were done unlawfully and the protections set in place to safeguard against these occurrences failed.<sup>3</sup> Project Prevention, run by Barbara Harris, pays addicted women \$300 to get sterilized. Betsy Hartmann, Director of the Population and Development Program and Professor of Development Studies at Massachusetts's Hampshire College, has openly accused Harris of racism and states that her organization targets specific vulnerable populations and that it is also trying to build support for eugenic and population control measures.<sup>4</sup> Mark Waller, a reporter for the Times-Picayune, reports that State Representative John LaBruzzo proposed before the Louisiana State Legislature that poor people, defined as people on welfare, should be paid \$1000 from the State budget to be sterilized.<sup>5</sup> Governor John Kitzhaber of Oregon formally apologized for that state's participation in eugenic sterilization that took place from 1917 until 1983. More than 2500 Oregonians were sterilized including poor women and girls.<sup>6</sup> These are current examples of the re-emergence of forced sterilizations in the United States.

The troubled history of forced sterilization in America expands the conversation around race,

class, and patriotism in our current climate. The discovery that we do not live in a post-racial society as proposed by the election of the first African American president as a surprise to some and very familiar to others. The notion of race, deeply embedded within the eugenics movement, fueled an era of societal hatred and terrorism directed at people of color in general, and African Americans in particular. The womb of the African American female became the locus of intentional violence thought to be the origin of criminality, low intelligence, and moral depravity. The result, however, was not the elimination of crime or the heightening of American intelligence, but women robbed of their reproductive freedom.

Forced sterilizations are not simply a part of American history, but are a continuation of negative eugenic ideals that continue to pepper the American psyche with racist beliefs about women of color and their reproductive habits. This thought is reinforced by the fact that the State of North Carolina admitted its participation in forced sterilization against its citizens, but has yet to pay out the promised reparations.<sup>7</sup> Reproductive punishments are currently transpiring in certain American institutions, such as the welfare system<sup>8</sup> and the prison system.<sup>9</sup> The birth of the Reproductive Justice Movement by women of color was established to address a broader range of women's reproductive health issues, a larger political stance geared more towards reproductive rights, and reproductive justice that targets forced sterilization, combats reproductive punishment, and the criminalization of pregnancy.<sup>10</sup>

There is an emerging dialogue about the politics of race. Despite its historical roots and its inability to be resolved, its inclusion in public dialogue is problematic for those most vulnerable.<sup>11</sup> This new understanding of race is dubbed "a new racial common sense" that believes that since there is no biological reality to race to make valid the concept of race, it no longer has any social meaning. In other words, since race does not exist, it does not matter. This

is a political argument that has sparked rigorous debate and is pointing toward a contemporary understanding as a questionable social category that perpetuates forms of false consciousness.<sup>12</sup>

There is yet another form of “common sense” racial understanding is a public call to “get beyond it.” And “get over it.” The use of the race card; of social activists “essentialize” race, while others on the opposite end of the political spectrum declare an end to race. Those who continue to fight against racism in social structures are accused of using race as a “smokescreen” that causes the average citizen to lose focus on “real” issues of class based economic inequality or disempowerment.<sup>13</sup> As a result, there are widespread claims of many Americans as “anti-racist.”

There is the belief among political progressives as well as some people of color who believe the goals of the civil rights movement have been achieved and we do indeed live in a post-racial society. Our supposed color-blindness was solidified in the election of America’s first African American president. The real danger is that the remedies to social discrimination is now leading to the erosion of protections that leveled the playing field for people of color, such as affirmative action, redistricting, and the voting rights act.<sup>14</sup> The concern for women of color is this ambiguity of race and racism makes it more difficult to prove its existence and its participation in the continuing disenfranchisement of women of color and poor women. This vulnerable population understands very clearly how race and racism affects their lives, their opportunities, and their ability to control their own bodies. The danger of the eradication of race as a social concept presents a clear and present danger to women of color who must fight to control the destinies of their communities.

The human genome study and the progressive ability to choose characteristics of children based on genetic preferences and desired physical characteristics make a decision to not

acknowledge race a slippery slope. Artificial insemination can be continued as a eugenic mode of eliminating the unpopular and unwanted. Euteleogenesis was used in the 1930s as a way of selecting preferred donors for positive eugenic improvement.<sup>15</sup> Even with the ability to select donors to improve the human stock, it was positioned as a way to remove love relations out of the arena of choosing to have children. Offered to war widows and labeled “scientific mothering,” genetic and eugenic scientists began planning a Foundation of germinal choice in California, opening its doors in 1980. Over two hundred and fifteen children were born during the twenty years of the foundation’s operation. Still most couples preferred to use natural means for reproducing children within the confines of their marriages and disregarded choices based on eugenic ideals.<sup>16</sup>

The history of the enslavement of African Americans began in the slave industry, then transmuted into the share cropping industry, and is now resident within the prison industrial complex supported by negative eugenics. Creating a superior race through genetic technology has been defined as the “new eugenics” but has the same ideology of the negative eugenics of the past.<sup>17</sup> As stated earlier, the Reproductive Justice framework links health and rights to other social justice issues that affect women of color and poor women. These issues include poverty, economic injustice, welfare reform, prisoner’s rights, environmental justice, immigration policy, drug policies, and violence.<sup>18,19</sup> The authors of the Reproductive Justice Movement have described it as a paradigm shift that encompasses a broader reproductive health agenda.<sup>20</sup>

From the early part of the American experiment, laws of miscegenation were woven into the discriminatory fabric of the United States.<sup>21</sup> Vestiges of Jim Crow and these laws scratch the surface of the national fears concerning race mixing. The broader health agenda proposed by the women of color of the Reproductive Justice Movement cites the discrimination common during



this part of American history is the fodder for continued activism, lest history repeat itself. Overturning the laws of miscegenation in *Loving v. Virginia* was a significant accomplishment, particularly when considering the law was not just another statute enforcing racism, but was enforced by those who argued for the law in the name of eugenics.<sup>22</sup> The historical perpetuation of the theory that women of color produce detriments to American society, public health law typified uncontrolled procreation among these socially inadequate women as an epidemic.<sup>23</sup> The broader health agenda is a necessary step to address the deeper roots of systemic discrimination for women who have experienced the depth of eugenic assumptions.

It is also necessary to examine why Black leaders re-constituted eugenics for racial uplift among their own community. Eugenics among Black scholars was an attempt to create a social movement to counteract “Old Negro” stereotypes that fed racism, colorism, black-face minstrelsy, and Darwinism.<sup>24</sup> By the ideals of new Negro eugenicists, racial fitness became linked to such characteristics as behavior, class, color, and education. Negro eugenicists advocated for sterilizations because of increases of “feeblemindedness” among poor southern residents.<sup>25</sup> While these were efforts at reversing racist practices that further inhibited Black life, the result was the additional community by-in to freely sterilize black women. These women lived within the added tension of both trusted blacks and powerful whites that their uncontrolled procreation caused the negative effects of poor health, poor education, and criminal activity in their neighborhoods.

It is within this broader health agenda that the ethical analysis will occur. Three ethical questions will be presented for consideration: (1) Does the Reproductive Justice movement deliver on its promises as an expanded health care program for marginalized women? (2) Does it address the ethical health care conflicts present within the Pro-Choice and Anti-Abortion

movements? And finally, (3) is the movement ethically justified based on its claims and comparison to recognizable health care ethics norms?

### **B. The Reproductive Justice Movement Defined**

The movement contains three major components in its struggle against reproductive oppression. They are *Reproductive Health*, *Reproductive Rights*, and *Reproductive Justice*.<sup>26</sup> Women of color have organized and ignited activism among themselves and their constituents in order to fight for the physical, mental, spiritual, social, and economic well being of women and girls.<sup>27</sup> The first framework is Reproductive Health, which is a service delivery model that addresses the apparent lack of reproductive services, information, current research, and health data. It is aimed at improving and expanding services, access to research, and to develop prevention mechanisms that are culturally competent for women of color.<sup>28</sup>

The second framework is Reproductive Rights, which is the legal and advocacy based service delivery model. Its major function is to protect legal rights already established for women and to claim these protections to health care services as constitutional. The current lack of legal protections for reproductive rights are most experienced by incarcerated women; women in the assistance programs of this country, and women and girls of color in poor communities with no recourse of fighting structural and institutional racism concerning their bodies, their voice, and their needs.<sup>29</sup>

The third framework is Reproductive Justice. It is the movement-building arm of the organized women of color. Reproductive justice connects reproductive rights to the struggle for social justice and human rights. It is within this framework that environmental issues, societal institutions, culture, economics, and politics intersect to affect the reproductive rights of women and girls.<sup>30</sup> For women of color, the control of their bodies and their reproductive freedom

depends on such a framework to obtain full rights as citizens of this country.<sup>31</sup>

Key terms in the Reproductive Justice Movement will promote the founders need for the expansion. Each term builds the essence of the reproductive justice movement and its connection to human rights as described by the UNESCO declaration.<sup>32</sup> **Reproductive Punishment** is the manner in which the state and other governmental agencies deny supportive services and resources to women of color while simultaneously interfering in the personal reproductive decision making process.<sup>33</sup> It is implemented through discriminatory foster care placement, the criminalization of pregnancy and forced abortions of incarcerated women, and immigration restrictions. It is a means of controlling the destiny of entire communities.<sup>34</sup>

**Reproductive Politics** is the activism associated with garnering political strength to create a sustainable movement that intersects with other social justice movements. Reproductive politics widens the arena of the abortion debate and creates a mechanism to address unfair policies and legal interpretations that places limits on women's reproductive freedom.

Linda Ross of the Reproductive Justice Movement has articulated three core principles in this way: (1) Every woman has the right to decide when she will have a baby and the conditions under which she will give birth; (2) every woman has the right to decide if she will not have a baby and to exercise her options for preventing or terminating a pregnancy, and (3) every woman has the right to parent her children with the necessary social supports in safe environments and healthy communities without fear of violence from the government or individuals.<sup>35</sup> The core problem that Reproductive Justice addresses is its claim of "reproductive oppression," which is defined as systematic population control through the means of women's bodies. Reproductive Justice also positions the rights of the LGBTQ community to adopt and parent as an area of discriminatory practice. Reproductive Justice has defined these problem areas as examples of a

newer and a more subtle form of negative eugenics.<sup>36</sup> Intersectionality is a major theme of the Reproductive Justice movement. It is the fundamental reason for the splinter with the Pro-Life Movement.<sup>37,38</sup> It is the apparatus that integrates human rights, economic inequity, access to quality care, and safety from violence perpetrated by government policies and individuals who disagree with the basis of the movement.<sup>39</sup>

### **C. The Struggle To Form A Movement**

The Pro-Choice movement failed to mount a significant opposition and refused to join women of color in connecting sterilization abuse and abortion rights.<sup>40</sup> The struggle for reproductive freedom lead by white women proceeded with a narrow political agenda that centered on women's choice.<sup>41</sup> The formation of the SisterSong organization to build a movement began with the expansion from a single-issue campaign to a much broader political movement. The broader agenda mobilized women of color around court decisions that denied access to reproductive choices; coercive sterilization practices that targeted African American women and girls, denial of health and human services for the poor; and a cultural disrespect for family configuration.<sup>42</sup>

While Loretta Ross's research showed that in the early 1900's, college-educated middle class African American women were indeed involved with the birth control movement, their motive was racial up lift, believing that birth control was the key to economic and social mobility.<sup>43</sup> The struggle however, narrowly focused on Pro-Choice mechanisms and Pro-life anti-abortion supporters. For several years, organizations formed on both sides of the issue.<sup>44</sup> The Catholic Church's activism against birth control helped form the Right to Life Movement and had as its essential position the moral claim regarding the sanctity of life.<sup>45</sup> As a political backlash against the Pro-Life Movement, the Pro-Choice Movement arose due to the lack of efficacy and

complete solvency of the vulnerabilities of *Roe v. Wade*.<sup>46</sup> Several advocacy groups emerged from the political fray in an effort to address the broader issues concerning reproductive choice by women of color. The National Black Feminist Organization (NBFO), the Third World Women's Alliance, and the Committee for Abortion Rights Against Sterilization Abuse (CARASA) expanded their platform to include activism against forced sterilization.

In 1985, some women of color speaking of organizing around the particular reproductive issues of women of color wrote, "The ferocity of the opposition to abortions rights has served to solidify commitment to reproductive freedom within the Feminist Movement."<sup>47</sup> Racialized control of the bodies of these women have robbed them of choices, the development of families, and the birthing of children who were often sold off as property.<sup>48</sup> Negative stereotypes emerged to help color the political wrangling, such as Latina women as "breeders of immigrants" and African American women as "welfare queens:" each group supposedly manipulating the government to provide assistance to women who were unable to properly care for their children independently of this assistance.<sup>49</sup>

The legal historiography of reproductive rights often stratified reproduction by race and class and proved to curtail the rights of communities of color through marriage laws, through property rights, through the definition of families, which structurally became a dividing line between black and white women. A white woman could lay claim to the children born by enslaved black women, or were deeded to them through marriage contracts.<sup>50,51</sup> Legal renderings that focused on women's fertility sought to establish legitimate parentage and to avoid the bearing of children with no active fathers who would then become a financial burden on the community.<sup>52,53</sup> Declining birthrates among non-immigrant whites caught the attention of Margaret Sanger and the Birth Control League and led to an increase in the regulation of birth control, restricting its

access to allow for more white births.<sup>54</sup> The Comstock Act sought to regulate contraception and criminalize birth control advocacy in 1916.<sup>55</sup> Reproductive rights remained a legal enterprise and reproductive freedom became a social justice enterprise.<sup>56</sup>

#### **D. The Human Rights Thrust to the Movement**

According to the United Nations Convention on the Prevention and Punishment for the Crime of Genocide, held December 9, 1948, defines genocide as “imposing measures intended to prevent births within the group, and forcibly transferring children of the group to another group.”<sup>57</sup> This definition matched the experiences of countless African American women who suffered sterilization without knowledge or consent, who lost children to an unfair foster care system, and to those whose pregnancies were criminalized. These forms of reproductive allows oppression resulted in detrimental outcomes for these women. The framework of human rights for the placement of reproductive freedoms into a body of work generally accepted by participating nations. The United Nations’ Convention on the Prevention and Punishment on the Crime of Genocide sought to protect not only this generation but also future generations in light of advancing medical technology, genetic scientific advancements, and perhaps the proliferation of negative eugenics.

In an effort to promote population control, some programs have shown blatant disrespect for individual rights.<sup>58</sup> All population control programs begin with the premise that in order to improve the lives of a society, the urgent need is to reduce human reproduction. The aim becomes to affect female fertility and any and all birth control means are disseminated through a health care delivery system.<sup>59</sup> After the 1935 Oklahoma Habitual Criminal Sterilization Act arose from the eugenic idea that criminal behavior is genetically transmitted, accused women with several children could be sterilized, as long as her general health was not compromised.<sup>60,61</sup>

It is important to recognize the legal implication of the eugenics movement on the reproductive rights of women when discussing the individual rights infringed upon. Eugenics contributed language, concepts, and arguments that helped make reproductive rights a constitutional issue. Constitutional boundaries surrounding reproductive rights can be traced to language borrowed from eugenics cases.<sup>62</sup> Population control was embraced from a systematic standpoint through laws, social policy, and social systems.

While organizers for the Reproductive Justice Movement have decided to position reproductive rights as human rights, many United States social justice organizations have been reluctant to integrate human rights language into their work. This is because United States policy makers define human rights differently than the international community, citing that even the same words can lead to different actions.<sup>63</sup> Without the human rights emphasis, women activists of color have claimed that reproductive rights remain in the realm of private life and results in their claims of violations are not taken seriously.<sup>64</sup> But what constitutes women's human rights are women's bodies. When violations of human rights are combined with race, class, and other forms of discrimination, a deadly form of the denial of the right to life and liberty for women, and reproduction falls in the range of "other oppressions."

#### **E. Applied Ethics as Justification for Analyzing the Reproductive Justice Movement**

Bioethics is the "application of general ethical theories, principles, and rules to problems in therapeutic practice, health care delivery, and medical and biological research."<sup>65</sup> In the discipline of bioethics, applied ethics supplies the methodology for analyzing the apparent ethical conflicts<sup>66</sup> that the Reproductive Justice movement proposes to address. Applied ethics is useful in moving the theory of bioethics from the abstract to the concrete<sup>67</sup>, particularly in investigating the dilemma created by the practice of forced sterilization by the medical

community and the need for protection by the establishment of the Reproductive Justice Movement. Applied ethics is the tool that utilizes systematic efforts to analyze and resolve moral problems that become apparent in fields such as medicine.<sup>68</sup> Applying the principals of bioethics to the reproductive justice movement is the activity of moving the discussion from the abstract to a tested methodology of providing better health care to marginalized women.

The notion of vulnerability is a bioethical interest when certain factions of the population are more given to negligence, human experimentation, and overly exposed to egregious research practices. Social vulnerability has been determined to be a factor in the interference of self – determination and results in significant increased exposure to risk due to social exclusion. Issues like poverty, economic disparities, conditions of underserved neighborhoods, educational disparities and the like are experiences created by other human beings but result in a violation of human rights. These situations often result in medical technologies and advances, research and information gathering to manifest in lax standards to ward vulnerable people, an increase in unethical behavior, and an inability for people to protect themselves.<sup>69</sup> This aspect of social vulnerability has plague poor women and women of color for decades and is one of the principle reasons for why women of color sought to organize.

#### **F. Conclusion**

The most general definition of moral autonomy is when a person’s moral principles are determined to be his or her own. A person is said to be morally autonomous if certain determinations are made:

- (1) If he or she is originator of his or her own moral principles
- (2) If he or she chooses his or her own moral principles
- (3) If the source of his or her moral principles originates from the will



- (4) As he or she decides which moral principles to accept as binding upon themselves individually
- (5) If he or she accepts the responsibility for the moral principles accepted as applied
- (6) If he or she does not accept the judgment of others what is morally correct without independent consideration<sup>70</sup>

These features of moral authority and moral autonomy were not considered in the case of African American women, who through eugenics were not thought to be capable of such high order moral arrangement. Other authorities thought for them; consented in their stead, and immorally acted without the consideration of deep truth, considering only private racism with public consequence. This unethical behavior also left these without recourse to protect themselves, complain, confront the systems that enforced a racialized view of their humanity. Thus, the organization of women of color stood even against other proponents of women's rights that did not include a confrontation of the medical systems and health care delivery systems that robbed women of the potential to procreate.

Each individual's constitutional right allows for the pursuit of autonomy within the bounds of the law. Citizens of the United States are allowed to make procreative decisions of their own free will. Any state intrusions into these decisions, violates government neutrality that protects its citizens rights as long as it does not harm another.<sup>71</sup> In order to address the insufficiency of the reproductive rights movement, a more comprehensive human rights based approach is necessary.<sup>72</sup> There are historic divisions among women's activism. The SisterSong group and other feminine rights groups have often divided and been unwilling to work together, particularly when it comes to defining the activism as a movement for women of all races.<sup>73</sup> Some women of color have discussed the experience of isolation around issues more important to their

communities. Diversity of interests within organizations of women are fraught with continuing challenges that hampers women's activism successes.<sup>74</sup>

Feminist organizing after the women's suffrage movement would be described as "waves" of movements. The suffrage movement is described as the First Wave of feminist activism. The Second Wave was also reformed because of the fierce opposition to simply focus on protecting abortions rights.<sup>75</sup> The New Feminist Movement is the next generation of activism that solidified a commitment to reproductive freedom. Women of color have noted historic denigration of their bodies from both a gendered and a racialized stereotype.<sup>76</sup> The focus is on targeting specific needs and fighting deep stereotypes that lead to continued divisions among women seeking justice.

The ethical justification for the analysis of the Reproductive Justice Movement will be presented in the following manner. In Chapter two, a description of the reason why women of color formed the Reproductive Justice Movement will be presented. This chapter will detail the negative depiction of women originating from American slavery until the present. These negative images became fodder for the eugenics movement and became a part of the non-scientific dimorphic philosophy resulting in practiced racism. Chapter three discusses the combining of eugenic theory and genetic science. It details the difference between positive and negative eugenics and how the resulting theory became the foundational thought behind for forced sterilization.

The fourth chapter identifies the ethical conflict that manifested in several American public systems. These ethical conflicts appeared in the health care system, the legal system, the educational system, and was ratified through complicity by prominent black leaders.

Deontological ethics and consequentialism will also be discussed to help identify the proper

ethical responsibility of those practitioners in public institutions. Chapter five presents the formal analysis of the Reproductive Justice Movement through applied ethics, the principles method of Bioethics, reproductive ethics, religious ethics, and womanist ethics. Chapter six applies tradition ethical protections to the Reproductive Justice Movement. This is an effort to see if current protections are adequate and are addressed by the claims of the Movement. Finally, chapter seven will present the conclusions of this research and suggestions for further advocacy.

Eugenics has been at the forefront of some significant social movements in the twentieth century. Its foundation of sex and race; intelligence, racial hygiene and an American ideology of race improvement made it very appealing across lines of social class and background.<sup>77</sup> The seduction of eugenic thought captured the imagination of scientists, physicians, teachers, Black scholars, politicians, and theologians. Eugenics was a way of talking about and dealing with social problems through a biological mechanism. Eugenic thought was not a set of hard scientific rules, but the theory was a way of opposing social and political forces to view society as an organism that needed to be guided by biological laws.<sup>78</sup> This theory lent scientific authority to racial fears and moral panic that the dark race of Negroes would somehow change the power structure of the United States. Eugenics provided legitimacy and authority to sterilization laws carried out as each state desired. Utilizing the prestige of science, modern elites were able to ground their ideas about social order as objective statements based in the laws of nature.<sup>79</sup> An ethical analysis of the Reproductive Justice Movement with an understanding of the participation of eugenic science that resulted in the sterilization of many women of color in the United States is the focus of this research presentation.

## NOTES

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<sup>15</sup> Martin Richards “Artificial Insemination and Eugenics/celibate Motherhood, and Euteleogenesis and Germinal Choice.” *Science Direct*, Volume 39 Issue 2; June 2008, 211-221

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<sup>37</sup> Rebecca J. Cook and Bernard, M. Dickens. “From Reproductive Choice to Reproductive Justice.” *International Journal of Gynecology and Obstetrics*. Vol. 106 (2009): 106 – 109.

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<sup>46</sup> Robin West. “From Choice to Reproductive Justice: De-Constitutionalizing Abortion Rights.” *Yale Law Journal Co., Inc* . Vol. 118, No.7. (2009): 1394 – 1432.

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## **CHAPTER TWO: Why Women of Color Formed the Reproductive Justice Movement**

The Reproductive Justice Movement is an effort to galvanize the voices of women of color.<sup>1</sup> Often as the subjects of the horrors of medical experimentation<sup>2</sup>, denial of access to quality care, racialized assumptions concerning moral values, lifestyles, bodily control, and parenting<sup>3</sup>, and exclusion in efforts to obtain the human rights of dominant culture women, a movement has been established to address these lived experiences of women of color.<sup>4</sup> This movement, however, must be ethically evaluated in order to ensure that the vision it has created will be lived out in the lives of the women it seeks to aid.<sup>5</sup>

This chapter will present the factors that contributed to the decision to form a movement by women of color to establish and protect their rights to have children, in spite of societal and medical practices to eliminate their reproductive choice. Within the context of slavery and continued racism, the development of the negative view of women of color helped fuel eugenic ideals and gave rise to sterilization programs across the United States. Ownership of their bodies, personhood, and family development were affected by several factors that resulted in the need for reproductive social activism.

### **A. Slavery as an Institutional Foundation of Stereotyping Black Women**

The dignity of human life and the theological principles nestled within health care concerning the gift of life<sup>6</sup> are embedded within the protests of women of color, who largely feel the health care system has not treated them according to ethical norms. The dignity of human life must apply to all life, and perhaps this form of reformation can help. The varied forms of ethical analysis will prove useful to promote Reproductive Justice as a viable movement for the health of marginalized women. This research will overlay the fundamental premises of the Reproductive Justice Movement with the foundational principles of healthcare ethics. It is

critical for an analysis of the movement to refute or support its claims to be a more holistic approach to improve the health and welfare of women of color and poor women. Since the movement claims to be more expansive than a pro-choice political stance, and since it claims to provide a more comprehensive reproductive health program, a health care ethical analysis will assist in validating or dismissing the claims of the Reproductive Justice Movement. The evolution of the depiction of black women's bodies, morality, and parenting skills is important to the development of eugenic theory.

Understanding the evolution of the negative imagery of the black female body is vital because embedded within that evolution is a dangerous connection between science and culture that produced negative eugenic activity. Evolutionary science was used as proof that Africans indeed evolved from apes, with an intellectual inferiority displayed in a propagandistic environment.<sup>7</sup> The history of the public display of black bodies as aberrant, inferior, exotic, and ape-like is a part of the American psyche that did not assign human status to people of color. Ota Benga, an enslaved Pygmy was placed in a cage with an orangutan and a gorilla as a part of public display during the 1906 World's Fair. Benga was displayed as an example of the supposed evolution of the black body and mind, complete with intellectual and physical deficiencies.<sup>8</sup> Not least of these deficiencies was skin color. "Negritude" was a term coined by Dr. Benjamin Rush, considered the father of American psychiatry, believed dark skin was a form of leprosy. While not considered a racist, he believed blacks were diseased and could be cured; that vitiligo-stricken blacks were proof that one could become "healthily white." Eliminating black skin would erase the societal ill of racism and the primary social argument for enslavement.<sup>9</sup>

For the black female, not only was she an aberrant evolutionary creature and of diseased skin mutation, she was classified as descendants of the "Hottentot Venuses." Hottentot was a

derogatory term used to depict short African people and culturally evolved into the description of American blacks as well.<sup>10</sup> Saartjie Baartman is the most famous example of this visioning of the female black body. The hour-glass shaped of the Khoi women with what was described as over-developed genitalia was falsely reported as proof of sexual prowess and voluptuousness that made her prey for lustful men and medical curiosity. She suffered invasive medical examinations that alternated between rape and curious intrusions into the most private parts of her being.<sup>11</sup> In the early 1700's, medical theories swirled about the physical attributes of Khoi women from the region we now know as South Africa. As slave traders and others were introduced to the nakedness of these indigenous people, highly sexualized interest grew among these men, and also medicalized interest grew among scientists. Khoi women were regarded as the missing link between humans and apes, placing them at the bottom of the evolutionary scale.<sup>12</sup>

Sadly, when Saartjie died, the ruthless treatment of her body did not stop, but further continued the sexualized and medically invasive treatment she suffered when she was alive. Upon her death, her genitals were removed and kept in glass jars. A physical cast was made of her body, her skin was removed and stuffed, and she remained on display until 2004.<sup>13,14</sup> Nicknamed "Hottentot Venus", after the abolishment of Apartheid, the South African government rigorously lobbied for her remains to be returned to her homeland but the French who owned her remains removed them from public viewing, but kept the organs in more private rooms and allowed only medical professionals to view those remains.<sup>15</sup> The French eventually returned her remains to South Africa and on August 9, 2002 she received an honorable burial during the country's Women's Day celebration.<sup>16</sup>

The next section will begin the descent of the value of the Black woman's body through the

history and culture of the United States. This descent became the social problem of the United States to be solved through the mechanism of forced sterilization. Dimorphic negative eugenic ideals set in motion a targeted activity that some would describe as genocide.<sup>17</sup>

### **B. The African Woman's Slave Body**

Entering the United States as slaves, Black women have never fit the model of the ideal white American woman.<sup>18</sup> The texture of her hair, the wideness of her hips, the color of her sunbaked skin along with other physical attributes did not match the American standard of beauty. Far more detrimental than standards of beauty and attractiveness was the fact that these physical characteristics were regarded as proof of being less than human. While White women were described as “pure” and “delicate,” an African woman was seen as of a “strong and robust constitution” and “able to serve their lovers “by night as well as by day.”<sup>19</sup> Because of her physical attributes, wanton sexuality was ascribed to her character. Blame for this sexuality supposedly exuded by these enslaved women became the excuse for White masters to rape and abuse them. Karla Holloway argues that the bodies of Black women began with a compromised relationship to privacy and identity.<sup>20</sup> Privacy and dignity were stripped away as the enslaved woman's body was literally owned by the traders and masters. The changing of birth names, in an effort to erase their history, to the slave master's name to mark ownership, further erased their identity.<sup>21</sup>

White women's reproduction was crucial to society as a whole. The harsh environment of the new American frontier made the viability of infants and the proliferation of reproduction a necessity. Early settlements in America thrived under religious and political dictates of societal principles: success in reproduction and the biblical narrative to be “fruitful and multiply” was the responsibility of white women. A black women's reproductive responsibility was not to society,

but to the wealth generated from her procreation for the Southern plantation owner. Her responsibility was to bear offspring so that the labor force was maintained and the economic enterprise remained in tact.<sup>22</sup> By law, her children were the property of the slave owner; her ability to reproduce increased his wealth and avoided the additional cost of purchasing additional enslaved people. Reproduction also replaced deceased slaves or slaves too frail for manual labor. The enslaved African woman's body was a much a manufacturing tool or property that advanced the wealth of the individual plantation owner and the economic position of the South.

It cannot be overstated that slavery was an economic institution. As such, female slaves were more valuable because of their reproductive potential. Since slave laws made slave masters owners of their slaves progeny. Consequently, enslaved women were purchased for fieldwork, house work, and breeding potential.<sup>23</sup> Frederick Douglass reports in his own autobiography that a slave master, Edward Covey purchased a twenty-year old enslaved woman named "Caroline" as a "breeder."<sup>24</sup> An enslaved woman's womb was treated as a procreative vessel and in 1662 the State of Virginia enacted laws that made their offspring slaves.<sup>25</sup> In the United States, the slave population maintained itself through reproduction, which is in opposition to how other countries relied on the importation of slaves.<sup>26</sup>

Enslaved women were chosen for breeding based on their physical strength and ability. The weight and larger size enslaved Black women made her a key choice for breeding. Barrenness was a fearful state for a woman on the plantation. Often men and women were forced to copulate and were bred like chattel. Men were sometimes hired specifically for breeding and women were forced to submit to the will of the master for slave reproduction.<sup>27</sup> Bred slave to slave, neither women nor men were able to legally marry, exercise choice over their reproduction, or possess any personal dignity concerning sexual engagement.<sup>28</sup> Many enslaved

women experienced the sexual advances and eventual rape by their white masters.<sup>29</sup> Considered no more than simple chattel, black women could breed more slaves, fulfill the sexual desires of their owners, and were forced to endure the ire of the slave master's wife.<sup>30</sup>

There were several reasons for the intentional construction of African women as hypersexualized. First, it was necessary to support the sexual abuse of her body. The budding narrative concerning African women and men became an American story that served the purpose of creating the theory of anti-blackness. Anti-blackness was the webbed story that denigrated everything and anything black. The negative stereotype of the black female body gave permission to her subsequent abuse and casting an image of guilt upon her and superiority upon her captors.<sup>31</sup> Second, the narrative of a hypersexualized black female body further added verification of the moral difference between blacks and whites. Blacks are ruled by passion not virtue, and white people are ruled by virtue not passion. Therefore, those who are virtuous, reasonable, and moral should rule society, not those who are incapable of reason.<sup>32</sup> Finally, the phenomenon of rape could occur without impunity. Sexual pleasure was as much as reason for the rape of these women as procreation to reproduce a labor force. Stories are told of men who raped women in front of slave husbands or orgies that included other area slave owners who would rape and torture young female slaves. But always, these occasions were cast as the fault of the female slave and the moral lack of those with black skin.<sup>33</sup>

The South was a particularly unhealthy region during the time of slavery. Ninety percent of enslaved Blacks however, lived in this part of the country. The purchase of enslaved Africans continued until 1807, and by 1860 there were four million enslaved Blacks living in the United States. Captured African females were particularly examined for breeding purposes once importing slaves was prohibited.<sup>34</sup> All children produced, bred, and born into the economic

system of slavery – human bodies, belonged to the plantation master’s, and slave laws that enforced the practice protected this phenomenon. Regulating Black women’s reproductive decisions have been a central aspect of racial oppression in America.<sup>35</sup> The display of Black bodies as oddities and opposite to the standard of beauty and humanity was also an element in the further denigration of black women. The public controls of race and gender are so strong that privacy and the owning of the body is an opportunity removed from them.<sup>36</sup> As sexual advances progressed into sexual attacks, United States law offered no protection because the rape of black women was not considered a crime.<sup>37</sup>

Slavery and medical science evolved into an odd marriage that became a mutually beneficial partnership. Slave owners could not waste money on sick slaves, but a slave’s health was only as valuable as his or her ability to work. But medical science was primitive at best during this era. So access to slaves enabled physicians to practice, study, research, and document body processes otherwise unavailable to them. This began a history of an antagonistic relationship between doctor and enslaved patient.<sup>38</sup> It was the slave owners who determined the level of care or if a particular ailment should be treated at all. Physicians often complained that owners waited too late to have an enslaved person treated. Enslaved Africans were often overworked and underfed. Southern doctors report that the enslaved people were often accused of “malingering” – pretending to be sick and therefore not worth the cost of summoning a physician.<sup>39</sup> This was money lost by the examiner and money saved by the enslaver, but could mean death for the enslaved human.

For the slave woman, there was no more example of an antagonistic relationship between doctor and patient than Dr. J. Marion Sims.<sup>40</sup> Dr. Sims was a gynecological surgeon who refined his method of securing the cervix, by operating on slave women without the benefit of

anesthesia.<sup>41</sup> The beneficiaries of this type of surgery was not the enslaved women, but White women who were unable to successfully deliver their babies due to physiological challenges. Again, the African woman's body type was reportedly good for breeding and therefore of increased value to the slave owners. The slave owner decided when and with whom she would engage in sexual relations. Enslaved African women had no legal protections or social protection. Harriet Jacobs, a former slave, wrote that she would acquiesce to the sexual demands of her master because it was less humiliating to give in than to be violently raped.<sup>42</sup> But upon pregnancy, most slave women were kept in the fields until the fifth month. Young, strong, and able-bodied pregnant women were given a level of care denied to older and weaker women because of their reproductive potential and their ability to work in the fields to bring in more money. Once a slave women passed child bearing abilities, she became more vulnerable and could be sold off or allowed to die believing she was not worth the money spent necessary to return her to health.<sup>43</sup>

The slave system and the medical system of that time became mutually supportive. Slave medicine was an income generating enterprise that not only paid in financial remuneration but also with research and biological material for experimentation. In an odd twist of relationship, it was the slave owner who was the actual patient. The slave owner called for and paid for the physician's services, and the physician made sure the owner was pleased. The slave was a non-entity. Because of the vicious relationship of owner to slave, South Carolina and Virginia insurance companies would not insure a slave's life for full value but kept a careful watch that the slave owner had slaves medically treated for ailments in order to keep pay outs accurate. The insurance companies required medical examinations of slaves and charged higher premiums for those who did especially hazardous work.<sup>44</sup> These requirements of insurance companies actually



provided some level of care for these enslaved people.

Black midwives were used widely to deliver babies born in slavery. African medicine men and midwives employed an encyclopedic knowledge of herbs, roots, and other natural medications used for illness and childbirth. Often, white doctors eyed suspiciously the practices of these natural healers, who also used spirituality and prayer as a form of treatment. While considered uneducated and unqualified, many of their methods ended up in professional journals or family records.<sup>45</sup> The care and the delivery of enslaved infants belonged to black women, confined to the plantation under the watchful eye of the slave master and the white physician.

What some slave owners perceived as infertility, there are records that some women knew how to abort a fetus or perform a self-induced miscarriage as an act of rebellion against the enslaver.<sup>46</sup> Bearing children was a difficult thing given the harsh conditions: hard physical labor, malnutrition, and cruel punishment. A few recorded findings in medical journals found that enslaved women used several means to interrupt their pregnancy. Methods such as violent exercise, medicine, and external and internal manipulation were used to affect a miscarriage. Most women preferred herbal methods that were highly effective in aborting the pregnancy.<sup>47</sup> Tragically, some women practiced infanticide. It was the most extreme form of defiance. The reason was to keep their children from becoming chattel, from experiencing the harsh life of slavery, and in perpetuating the system of slavery. It will never be known the depth of desperation that overtook these women, but what is known is that it was an attempt to refuse the will of their masters.

While medicine formed an odd union with the institution of slavery, the legal system also formed an odd relationship with the institution of slavery. Legal principles were molded in order

to help support the interest of the slave owners.<sup>48</sup> The law had to form around the notion of human slaves being treated legally as property. This principle was juxtaposed against the notion of equality and human rights. Conflicting values and morals influenced the law to be flexible enough to maintain the chattel status of human beings when it suited slave owners, but bend when the law was needed to punish individual behavior by an enslaved man or woman. Just as medicine was primitive and forming during the time of slavery, so too was the law forming with legal precedents having yet to be created. For example, in 1831, a Missouri slave named Jane was charged with knowingly, willfully, feloniously and of malice aforethought,” preparing a deadly poison to feed to her infant daughter Angelique, who died not of the poison, but of strangulation when the poison did not work. Judge A. Leon Higginbotham, Jr. presided over the case. He asked two very pertinent questions, as no precedent existed at the time. Did Missouri pursue legal avenues against Jane because it cared about the dignity and life of the child born into slavery, or did the state choose to prosecute because Jane’s enslaver was denied the profit he would have gained through the exploitation of the life of this child? <sup>49</sup>

Family law did not recognize a marriage between slaves. The definition of a marital unit was of consenting, interdependent adults, and permanently linked.<sup>50</sup> Since the slave family was constructed outside of the law, the law did not recognize it nor could it support it. Each slave was treated as an individual unit under the law. The interests of the slave owner manipulated all pivotal events such as the marriage ceremony, the birth of children, and sexual relations. Enslaved men and women still married according to their own traditions and had children by the owner’s permission, but were not covered under Southern Family Law.<sup>51</sup> Playing on the female sensitivity toward family and children, slave owners began to believe that a married slave woman would be more docile and less apt to run away or abort a pregnancy.

For the enslaved woman, the slave owner by law held her as chattel property but also as sexual property. The owner often asserted his control over all aspects of her life. She was forced to marry, forced to procreate, forcibly raped with impunity by the owner, his sons, the overseer, or any other white man given permission by the owner. The purchased female was brought into or born into a world of fear, licentiousness, and cruel punishment.<sup>52</sup> Expected to be a good breeder, she was also to acquiesce to the sexual advances of a slave owner and a forced husband. There was no recourse for her under the law. The slave owner governed her internal and external life: so her rebellion had to take other forms, or she simply preferred death to her situation. The owner could at any time dissolve an arranged marriage and give her to a different man as a wife. She had neither the ability to consent or refuse, and faced a life sentence of vulnerability.

The last bastion of cruelty faced by enslaved African women was the ire of the white wives of the slave owners. Chosen enslaved women were picked specifically to work in the slave owner's home, under the direction of the wife. Knowing of the sexual activity of her husband, southern law held that the rape of a slave was grounds for divorce. Affection for enslaved women was cause for marital discord.<sup>53</sup> Often, the slave owner's cruelty was not enacted upon the enslaved woman only, but also on his wife. The enslaved woman was forced to be in the house with an angry wife. One such case of this phenomenon was a female petitioner who described the conditions of her relatively new marriage. Her husband had forced a sexual relationship with a female slave who worked as a cook and general housekeeper. The slave owner forced the slave to bed with him in the same bed as his wife. The wife silently submitted and the slave silently submitted. When the wife could not reclaim the affections of her husband, she filed for divorce.<sup>54</sup>

Southern white women frequently cited their husbands' sexual predatory activity with

enslaved African women as reason for their opposition to slavery. But their objection was for the benefit of their own pride and humiliation rather than the plight of enslaved women. What could have been a forged bond to stop the institution of slavery became a direct blame of the stereotyped temptress activity blamed on African women. While many sued their husbands for divorce, many remained silent. Instead, their ire was directed as these poor women who were whipped, taunted, and suffered other cruel mistreatment.<sup>55</sup>

### **C. Jezebel: The Promiscuous Black Woman**

The 1863 Emancipation Proclamation was an executive order signed by President Lincoln to eradicate slavery in ten Southern rebellious States of the Union. The executive order freed over three million slaves, but did not make them citizens of the Union.<sup>56</sup> It was not until the 13<sup>th</sup> Amendment was ratified in 1865 that slavery and indentured servitude became illegal.<sup>57</sup> While it was illegal to own the physical bodies of the recently freed African people, culturally there was no shift in the American ideology of slavery. The freedmen and women were forced to escape the plantation and make their way through advancing federal troops. The proclamation itself was issued as a war goal during the Civil War to suppress rebellion, it did not address those states in the Union *not* in rebellion.<sup>58</sup> Consequently, four states that held slaves but not a part of the rebellion included Maryland, Kentucky, Delaware, Missouri, and parts of Louisiana and Virginia were excluded from the executive order. While the United States Constitution held that “unfree” persons only counted as “three-fifths” of a person, further dehumanization of the freedmen continued once the re-uniting of the Union occurred.<sup>59</sup>

After the emancipation of slaves, the negative imagery of black women continued. The stereotype persisted that their femininity was considered outside of the normal image of the ideal of womanhood.<sup>60</sup> One of the most prevalent images of black women was the biblical character

“Jezebel” named for her sexual prowess and seduction of men.<sup>61</sup> The descriptive words associated with the caricature were meant to sexualize her being and becoming the complete permission to rape, molest, and force her into prostitution. Propagandized as seductive, alluring, tempting, lewd, and beguiling, the freed African enslaved woman was compared to the caricature of white women: chaste, pure, and virtuous.<sup>62</sup>

According to the biblical narrative, Jezebel is the daughter of Ethbaal, king and priest of all Baal worshippers from the region of Tyre. He is a Phoenician and his daughter was set to marry the Ahab, the King of Israel. This marriage was a great sin against the Hebrew God, who forbids intermarriage between followers of Yahweh and the followers of Baal. Jezebel, whose name means “chaste; free from carnal connections,”<sup>63</sup> is typically characterized as one of the worst women in biblical history. While ignoring her great strength, leadership abilities, and decisiveness, she is reduced to her attention to dress, “painting the face,” and harlotries.<sup>64</sup> It is only her sexual proclivity that gets passed on to characterize black women. The name Jezebel has come to depict wanton sexual immorality and has been used to signify black woman as innately promiscuous, predatory, and without sexual purity.

The Jezebel imagery in the early life of the Emancipation Proclamation was used to describe a particular type of black woman. The “tragic mulatto” conceptualized the contemporary Jezebel as one of thin-lips, long straight hair, slender nose, thin figure, and fair complexion.<sup>65</sup> While it is true that many of the slave era mulatto women were sold into prostitution, this depiction was far too narrow. The Jezebel stereotype was used during slavery as a rationalization for sexual relations between white men and black enslaved women. She was thought to have an insatiable appetite for sex and preferred white men to black men. Based on this rationalization, rape was not a criminally actionable offense. She was property, and yet during the Civil War era, no

compensation was given to slave owners who were forced to release their slaves, but also no law challenged the forceful sexual advances of white men. James Redpath, an abolitionist, wrote that slave women were “gratified by the criminal advances” of white men.<sup>66</sup> These forcible advances were not limited to slave owners only, but also included the activity of the sons, the brothers, or anyone given permission by the slave owner himself.

Within the Emancipation Era, black women used the Jezebel stereotype to their supposed advantage. There were instances of freeborn light-skinned black women who became the willing “concubines” of wealthy white men in the South.<sup>67</sup> Storyville, New Orleans opened the first “red-light” district in the United States. Storyville offered illicit sex, bordellos, and a low “high-life” but author Emily Epstein Landau believes Storyville was a stage that allowed white men to act out cultural fantasies of white supremacy, patriarchal power, and a renewed sense of manhood for the twentieth century. White men understood themselves on the plantation as ruler and owner; now in this era, they had to realize their sexual and cultural privileges in a new form.<sup>68</sup> In virtually every American city, with a population over 100,00, there was a red-light district. These were city blocks or sections of the town where illicit behavior was allowed, yet criminalized outside of the designated district.<sup>69</sup>

A system called “Placage” was a formal institution of New Orleans. Placage was an arrangement whereby a white customer would promise to financially support a Black woman and her children, in exchange for a long-term sexual arrangement. These contracts were solidified at occasions called “Quadroon Balls.” These events were sex markets, where women bargained for the support of their children born to these unions and the exclusive sexual rights of the male customer. The women were labeled concubines and were distinguished from prostitutes but served a great economic benefit to the “Southern Babylon.”<sup>70</sup> The City of New Orleans saw a

great economic boost as renters of bordellos, bars, nightclubs, and other “low establishments” paid high rents and politicians to allow them to stay in red light districts, while the citizenry either looked away or supported the activity of such places.<sup>71</sup>

Placage was a way for Black women to capitalize on the Jezebel stereotype to their economic credit. While maintaining the power of the stereotype, these women sought to live free from worry about supporting children or living in poverty themselves. Some of these women were also able to collect inheritances of land and money once the contracted gentleman expired. There are historical records of court cases logged in city records that describe battles between families who did not wish to release property to these women.<sup>72</sup> The women became known as “Quadroons” and children born to them were known as “Octoroons” because they were of 1/8 African descent.<sup>73</sup> As time progressed, the backlash increased over mixed race sexuality and family formations became more problematic as white men remade their identity and the definition of respectfulness.<sup>74</sup> The personal toll of playing into the Jezebel stereotype was evidenced in the fact that some women indeed became prostitutes in the illegal commercialized sex industry. Some Quadroons passed for white and influenced their children to live white lives as well, expressing its relative safety in comparison to living “black.”

White women were placed on moral and almost virginal pedestals while every black woman was defined as a “slut” according to racist mythology.<sup>75</sup> Social practices reinforced this thought of a morally loose and lascivious woman by refusing to assign black women the title “Miss” or “Mrs.” not allowing black women to try on clothing in stores, and assigning single bathroom use to both black males and females.<sup>76</sup> Black female degeneracy was strengthened by popular societal views that without the moral discipline imposed by white slave masters; black women and men would regress to their natural immoral state.<sup>77</sup> Bruce argued that black women’s

lascivious impulses were loosed by Emancipation. He also reasoned that the promiscuity of black women provoked black men to rape white women and raised their children to follow suit. Racist science proffered that black women mature faster and ovulate more often than their white counterparts.<sup>78</sup> Black women were believed to procreate with abandon and therefore require government intervention to control their fertility.<sup>79</sup> Ultimately, standard bioethical principles were twisted in order to justify beneficence, autonomy, and justice to say that sterilization was actually a morally justifiable act on behalf of the oversexed black female.<sup>80</sup>

Unfortunately, neither Emancipation nor Reconstruction stemmed the tide of sexual victimization of the black female. During the Reconstruction Era, most freed slaves married, legitimizing their illegal slave marriages. Mass wedding ceremonies and individual weddings proliferated during this time.<sup>81</sup> Sexual promiscuity was not found in the emerging black community where monogamous relationships were the norm.<sup>82</sup> Black women were raped and yet no Southern white male was ever convicted of raped or attempted rape from the Civil War to the mid 1960's. There was little legal recourse for black women raped by white men compounded by the fact that they were reluctant to report this sexual victimization by black men, fearing they would be lynched.<sup>83</sup>

Popular culture continued the negative Jezebel stereotype of black women. During the 1950's and beyond, household items portrayed caricatures of the black Jezebel woman. Items such as ashtrays, postcards, drinking glasses, swizzle sticks, and others display barely dressed, seductive, or totally nude woman adorned these typical articles. One such item was "Zulu-Lulu." They were a series of swizzle stick for drinks that bore different slogans such as, "Nifty at Fifteen," "Spiffy at 20", "Sizzling at 25", "Perky at Thirty", "Declining at 35", and "Droopy at 40." Zulu-Lulu was a party gag but defamed black women as sexually promiscuous and without restraint.<sup>84</sup>



The iconic images of black women during this time were of two categories: *pathetic others* and *exotic others*. Pathetic others portray African American women as physically unattractive, unintelligent, and uncivilized. This furthers the thought that black women are not normal and are physically and socially aberrant.<sup>85</sup> These images were seen in ads, commercials, household items, magazines, and food labels as a means of trying to counteract the notion that white men were attracted to black women. Yet, these images were highly sexualized: the images were placed in sexual contexts display her nude or partially nude body. She is the one longing for sexual contact with white men, but her lack of physical beauty is not what white men would want.<sup>86</sup> Cultural memorabilia is replete with pathetic other images of black females during the first half of the twentieth century. There is a collection of these images in the Jim Crow Museum of Racist Memorabilia at Ferris State University.

Objects that depict black women as exotic other display them as physically attractive but socially deviant. Again, novelty items, ashtrays, drinking glasses, magazines, and other forms of advertisement also displayed a more physically attractive black female. Exotic other images, however, served purposes in the homes of whites, so these proliferated images left a mark in the American psyche. The exotic other imagery extended to children and young black girls. Young girls were displayed with oversized body parts exposed or scantily clad. One particular postcard has an image of a young girl with developed breasts hiding her genitals with a large fan and the caption that reads, “Honey, I’se Waitin’ Fo’ You Down South.” The sexual suggestion is impossible to miss. Pregnant black women were also displayed in sexual imagery. Certain greeting cards carried the image of black pregnant teens, children, and women suggesting that black women of all ages are promiscuous, even at a young age. One particularly troubling iconic image is a 1964 presidential license plate that caricatured black pregnant female. The female is

literally painted black with red lips, with emphatic lines drawn around her swollen belly and a captioned reading, “I Went All De Way Wif L.B.J.”

#### **D. Sapphire: The Angry Black Woman**

The Jezebel stereotype was continued in American Cinema. In the 1970s, black movie-goers demanded to see different images of black women other than Tragic Mulattoes, Mammies, and Picaninnies. Unfortunately, all that happened was one negative stereotype was exchanged for another. The new stereotype of the black woman was Sapphire. This image was popularized by two hundred b-grade films labeled “Blaxploitation Movies.”<sup>87</sup> The movies depicted realistic modern day experiences of black people living in slum conditions; however, these films were produced and directed by white men. Whites packaged, financed, and distributed these films, and received the greater share of the profits. Actors and actresses who could not find work in mainstream productions because of the color of their skin, often found work in these Blaxploitation films. Black life was portrayed as deviant, where black men were drug dealers, corrupt police officers or politicians, pimps, and violent criminals. Black women were portrayed as whores, prostitutes, and sexually available to anyone. The success of these films came about because the storyline usually showed a “black hero” who was fighting against the white racist establishment, assertive action, and the ability to have a “normal” sex life.<sup>88</sup>

Actresses such as Pam Grier and Tamara Dobson became standards in the exploitation industry. Their roles expanded beyond running a household, but they were to clean up the ghetto, serve as a surrogate mother for abandoned children, and protect the neighborhood from corrupt officials and drug dealers. Yet, they were highly sensualized in these roles as sexual objects, lascivious, often aggressively taking lovers at whim.<sup>89</sup> The Sapphire imagery morphed into the “black whore” imagery due to these urban-themed films. The pornography industry

picked up on the theme and portrayed black women as “things” with no minds, emotions, or abilities to act as responsible members of mainstream society. In this industry, there is a color delineation that highlights internal as well as external racism. The industry often employs dark skinned and brown skinned women, while the mainstream media tends to highlight fairer skinned women, even when they play Sapphire roles.<sup>90</sup> History records many examples of the stereotypical Jezebel woman that appeared in homes, on screen, and in all forms of media.

The prolific use of the Sapphire stereotype has been a mechanism that gave expression to exercise the sexual appetite of white men. The stereotype also massaged the eugenic ideals that gave rise to the pseudo-science that produced mass, forced sterilizations. In order to legitimize and justify the approach to genocide of the African American population, the attack on the black female was crucial. She cannot be portrayed as a human being; she must be portrayed as a bad mother, incapable of producing citizens of value and worth. The lack of moral fortitude possessed by African Americans in general, and black females specifically was never scientifically proven; but instead was a dimorphic<sup>91</sup> attitude that assisted in producing programs that effected the reproductive activities of black women. It is this attitude that the Reproductive Justice Movement fights against and makes claims of providing protection against.

#### **E. Mammy: The Ideal Black Woman**

The first recognized use of the word “Mammy” occurred in 1810 in a travel narrative about the American South. It is a blending of the words “ma’am” and “mama.” By 1820 the word was used exclusively to described black women serving as wet nurses and caretakers of white children.<sup>92</sup> The basic duties of the Black Mammy could range from care and nurture of the children, to preparing meals, to shopping and cleaning the homes of whites. Under the laws of the Jim Crow south, these duties were the best ways for black women to co-exist with civilized

society.<sup>93</sup>

The Mammy figure was the complete opposite of the Jezebel characterization of the black female and was considered the ideal female.<sup>94</sup> The Mammy was an outgrowth of the house slave whose main job was to care for the Master's children. Mammy was both a passive and asexual woman whom whites assumed was a nurturer and therefore a perfect mother figure. She gave all of her attention to the white woman's children but could be seen as human enough to raise her own. She understood and accepted her inferiority to whites, but she also gave loyalty and love to those who owned her. There are several layers to the Mammy figure and each layer served to further dehumanize her. This dehumanized state allowed her to work in the homes of whites without being a sexual threat to the white female of the house.

She was an overweight, head-scarved, asexual being. Her image appeared on household items such as pancake mix boxes and assorted cleaning products. She was the embodiment of the ideal black woman with her dark skin and her largely round body, presumed to be sexually unappealing.<sup>95</sup> She was pictured as an older woman, whose only joy was not in her appearance or in her self, but only in pleasing and serving her white family. Large red lips and a half or full smile was imaged to show her complete happiness with being the servant of whites. She became a cult figure during the Jim Crow era, a reinforced stereotype during the Reconstruction era, and we see vestiges of her in modern day film and television shows.<sup>96</sup> She was a good-natured woman with a soothing voice with no hint of personal desire. She had a raucous laugh, and self-deprecating wit.<sup>97</sup> This asexual imagery was vital to allowing the black woman into the home to rear their children and essentially run the household. This is a "safe" Black woman who does not have the moral fortitude to raise her own children or care for her own family, but is also not the temptress who will lure the dominant white male into shameful behavior.

While the round head scarved dark skinned woman was the depiction of the southern imagination, the actual women serving as house and wet nurses to white women and children were young, strong, and often mother themselves.<sup>98</sup> She was always held at the mercy of the man of the house fearing her livelihood was on the line if she did not comply. The specter of miscegenation in the reconstruction of America met with the Southern memory of the faithful mammy. The mulatto mammy was a reminder of the not so distant era of the quadroon and gave rise to the re-imagining of how a loyal black employee looked. She became safe from sexual connotations in the wider American propaganda, but in actuality, not much had changed for her since leaving the plantation.

Her size and shape help to ground the mythology of the devoted woman to the white family of which she is employed. But her imagery was a duplicitous stereotype that benefitted white families but was detrimental to her own family. She size and shape endeared her to the family she worked for but cast her as a neglectful mother to her own children. This imagery gave her the ability to more than adequately care for the white children in her charge but unable to care for the children she birthed. No concern was given for her offspring or her late work hours or being at the constant demand of her White mistress.<sup>99</sup> Children left unattended or cared for by neighbors, extended families, or left by themselves was the proof of Mammy's inability to parent her own children, and white society used it as fodder for eugenic thought that developed into forced sterilization.

The paradox of the Mammy was that she was fit to raise her employers children but unfit to raise her own. The casting of Mammy as mother has important implications. She has to be viewed as a trusted nurturer and not as a temptress. She was to be passive and obedient far beyond what the image of her suggested.<sup>100</sup> While these women worked to support their

families, working outside of the home cast any mother as negligent: for Black women, negligence was a label that would help define her forever as a bad mother. The bad mother stigma fed into the eugenic notion that black women birthed criminals and therefore should be sterilized. Victorian era thinking imaged white women as dutiful housekeepers and gentle companions to their husbands. Yet the black women that supported them, actually performed the duties of cleaning the homes and raising the children were not acknowledged as the force behind the image. This work, performed by the black Mammy, undermined her ability to adequately parent her own children. Her domestic skills were valued but reserved for her employ. Her home was the responsibility of neighbors, relatives, or sometimes left to wander the neighborhood.<sup>101</sup>

The love for her white charges was set in comparison to how she supposedly felt about the children she birthed. Whites described black mothers as incompetent and bad. According to white women, black mothers indulges her children shamefully when she is in good spirits and beats them cruelly when she is angry. She does not brood over them or long for them when they leave her sight. In comparison to the white mother, the black mammy was only as good as her closeness to her white female mentor, her mistress, who was morally superior and nearby to give her proper instruction. Those lessons did not translate to the mammy's home, where she was unable to continue the lessons taught.<sup>102</sup>

The mixed understanding of the role of the black mammy was matched by the further descent of the stories of her inept mothering abilities. As time went on, Black unwed mothering was seen as a major social dilemma. Over time, there was little hope of any sort of redemption possible for these women. Sadly, the stereotype followed the enslaved African woman to the plantation of the South; through Emancipation and Reconstruction. She is steadily moving

toward a plan conceived by eugenicists and racist whites who believe the only solution to the growing population of African Americans are to sterilize the breeders of the race. And the stories of the re-membered white South are the same stories that feed the program that will rob them of their right to procreate.

In 1910, the Black Mammy Memorial Association was created in Athens, Georgia. The association capitalized on the southern fantasy created around the Mammy figure. The effort was to solicit financial support for a Black vocational school after the order of the Tuskegee Institute. It was named by the chancellor of the University of Georgia to train the Negro “in the arts and industries that made the ‘old Black Mammy’ valuable and worthy.”<sup>103</sup> This institute was to train black men and women to work, how to do their work and how to love doing their work. The idea was the myth that Black domestics so loved their white employers and their children that the association could continue to train and reproduce Black Mammies all over the country. The cult status is a way of preserving the southern past as denying the racist servitude forced upon people with little to no economic opportunities.<sup>104</sup>

The black mammy assisted in transferring the emphasis from slave labor to slave loyalty. This campaign was a deliberate effort to “correct history.”<sup>105</sup> The United Daughters of the Confederacy donated a monument located in Arlington Cemetery as a “token of reconciliation,” allowing black soldiers to be buried next to white soldiers. The southern effort to erase the harsh memory of slavery included turning black women from Jezebel to Mammy and promoting stories of the love white children held for these strong women who were instrumental in their upbringing. The various versions of the mammy imagery and symbolism were a major factor in combating conceptualizations of the old South.<sup>106</sup>

The interplay of race, gender, and southern memory are woven through various media forms.

Essays, articles, statues, sculptures, advertisements, and books are record this significant effort to rewrite the historical truth of the harshness of slavery, but also the recasting of the black woman. Two pivotal works that examine the breadth of this campaign are “*Monuments to the Lost Cause: Women, Art, and the Landscapes of Southern Memory*” by Cynthia Mills and Pamela Simpson<sup>107</sup> and *Sites of Southern Memory: The Autobiographies of Katherine Du Pre Lumpkin, Lillian Smith, and Pauli Murray*” by Darlene O’Dell.<sup>108</sup> These literary works help to give voice to both southern women and African American women who lived during that era. These works also point to the many examples of statues honoring the southern sites that honored the southern way of life through Confederate graveyards, ceremonies, and monuments. Monuments that included the significance of the mammy figure and the rituals of that time period are also showcased.<sup>109</sup> These works of art also significantly highlight the presence of mammy and her significance to the created storyline.

The commercial Mammy appeared in the depiction of her imagery on pancake boxes. “Aunt Jemima” was the human/mythical figure domesticated but used to sell all sorts of common household products. She was the most successful commercial mammy but there were others. “Aunt Sally” appeared on cans of baking powder. “Aunt Dinah” was a mammy type who appeared on coffee cans, detergents, and containers of molasses. At one point, there was a live model used to portray Aunt Jemima. Nancy Green, born a slave in 1834 in Kentucky. She played the role of Aunt Jemima at county fairs, expos, and local grocery stores. She played this role until her death in 1923. In 1933, 350lb darker skinned Ana Robinson became the second Aunt Jemima. Edith Wilson played the third Aunt Jemima. She is known for her portrayal of the icon between 1948 through 1966. The Quaker Oats Company acquired the pancake mix and has updated the mammy image. She is now lighter skinned, does not wear a head wrap, and weighs



much less.<sup>110</sup> Her image has been altered, but the vestiges of the mammy remain. The commercial mammy was yet another way to legitimize the black woman's presence in the white homes of her employer, yet not highlight her own mothering skills or ability to care for her own home. The commercialization of Mammy functioned as a means of spreading her fame.

The American film industry was a powerful tool in reinforcing the docile yet useful Mammy. The ability to define, promote, and alter a stereotype is a particular form of power and the authority to use that power was in the hands of white producers. Mammy appeared in popular films such as *Gone With the Wind* and the *Birth of a Nation*. Controlling these images were a mechanism to make racism, sexism, and social injustices seem normal.<sup>111</sup> The 1927's movie *The Jazz Singer* featured actor Al Jolson performing a song entitled "Mammy" in blackface. The 1934 movie *Imitation of Life*, the mammy figure, "Aunt Delilah" gives her prized family pancake recipe to her boss Miss Bea. Miss Bea makes a fortune from the recipe and gives to Aunt Delilah 20% of the pancake company. When told that she could have her own house and her own car, Aunt Delilah pleads with Miss Bea to not send her away because she cannot bear to live separate from her white mistress. She pleads to continue her life as a housemaid while neglecting her own daughter. The daughter grows up in self-hatred and passing for white, estranged from her mother, who dies of a broken heart. Again and again, mammy is the perfect mother and servant but a negligent mother to her own children.

While earlier mammies were subservient and slow witted, later versions of mammy were sassy and quick-tempered. Hattie McDaniel, who won an Oscar for her portrayal of mammy, changed the role to a more saucy and prominent figure. She was criticized by blacks for furthering the stereotype found in many films and television series. She claimed she would prefer to make \$7k per week for her portrayal of a maid than to make \$7 per week actually being

one.<sup>112</sup> The duplicitous actions by Hattie and others caused social confusion among blacks. Some were vigilantly fighting for the power to break free of the stereotype, while others were allowing their images to become twisted into maintaining those very stereotypes. Mainstreaming Mammy was an intentional design to prove that black women were happiest as servants in white households.

It is evident that the Mammy figure, while somewhat evolved in appearance, has carried through the contemporary black woman's psyche. She is still seen, as she has always been, the bad mother, even as the mammy image becomes transformed. Author Michele Wallace describes the "superwoman" as a black "woman of inordinate strength, with an inordinate ability to tolerate an unusual amount of misery and heavy distasteful work." This woman is considered less feminine because of her workload and the ability to push past pain, but more feminine because she is mother to the world with an infinite reserve of love, sex, and nurturing.<sup>113</sup> The superwoman imagery describes the contemporary black woman's plight but is a modern representation of the mammy. Aside from the reference of a sexual appetite; she is the over-worked dutiful woman who is able to care for everyone else's needs but her own. Her health suffers, her family suffers, but she tends to her duties with a smile. She is a redressed, sassier, more independent version of mammy, yet she is plagued with the same issues of bad parenting, service with a personal cost, and a lack of self-care.<sup>114</sup>

Civil rights leader W.E.B. Du Bois printed in his 1912 edition of his monthly newspaper named *The Crisis* that black women must care for their own children. He highlighted the irony of the demand for the Mammy to care for the children and the home of her white employers while not able to adequately care for her own.<sup>115</sup> The economic conditions that forced black women to work outside of her home was not considered a factor in the rearing of black children.

Blame was placed upon the shoulders of the black woman and this phenomenon has occurred since she was enslaved from the shores of Africa. Du Bois is quoted as saying, “Let the present-day mammies suckle their own children.” The mammy became a fixed public image of the capabilities of the black women as worker, loyalist, and caregiver. In all of its various forms, the mammy served to commercialize and soften the image of the black woman allowed in the white home without fear of overt sexuality. Whether real or imaged, the mammy became an acceptable form of racism and sexism normalized for the American public.

#### **F. Matriarch: The Single Head of Household**

As the Mammy stereotype began to fade around the early 1960’s, a new denigration of black motherhood emerged. The black female matriarch was the private name for “single, black, female head of household.” This label became the new way to describe the perils of American society by black women. Promiscuity and work outside of the homes became the social descriptor of black unwed mothers who supported their children and demoralized black men.<sup>116</sup> News outlets began to join the denigration of the black mother and black family by becoming the voice of local and national politicians in singling out the black family as the “single most destructive social pathology in modern American society.”<sup>117</sup>

In order to fully understand the dysfunction of the black family and the societal need for the perpetuation of black women as bad mothers, a survey of American law is necessary. United States law was used to undergird the institution of slavery, and the study of the law will help reconstruct the historical social reality of slavery.<sup>118</sup> When the institution of slavery began in 1619, American law had not yet been formulated enough to establish precedent or guidelines for settling situations between slave owners and enslaved people. Judges and legislators had to create a system of laws flexible enough to legalize their actions and prevent the equality of slaves

as fellow human beings. The law going forward also had to keep the enslaved humans as the property of their masters, so conflicting values of equality for others could not interfere with the property rights of these masters.<sup>119</sup> The development of family law in the nineteenth-century and its relationship to the southern slave law is what gave birth to the Matriarch label.

The body of laws regarding the American family sought to define family life: to give the legal roles of husband and wife. This body of laws also governed divorce, procreation, sexuality, and also defined bearing children in and outside of the marital relationship. The crucial element of family law is that it regulated and defined the family as a legal, autonomous entity protected by these laws but they governed *publically* the *private* lives of families.<sup>120</sup> The slave family did not exist within the legal system of family laws. These were not autonomous individuals with choice: the slaves were property not an organic unit of love and future hopes of living within the American ideal. The right to marry, bear children, and self-support was not a choice of the slave; those human elements were manipulated for the slave industry to the benefit of the slave master. Therefore, even though slaves did marry and bore children, they did so outside of family law and everything produce within the bonds of that illegal family unit was the property of the slave master.<sup>121</sup>

As the Black female faced the stereotypes of the past, her ability to raise a family, support her children, and economically struggle for survival also posed a problem for family law that worked against the reality of her family and her very being. The law worked against her as capable of forming a family, even post-emancipation as well as post-reconstruction. She was a partially human being, incapable of morality or chastity and the law had to bend itself to deny her full humanity and her ability to reproduce productive citizens of this country. The law, even up until the twentieth century, simply could not support her existence as a wife, dutiful mother, and

autonomous unit.<sup>122</sup> Public institutions, such as the welfare system, the criminal justice system, the health care system, the court system, and the educational system negatively cast her as a degenerate and made it difficult for her to thrive in American society.

In 1968, the United States Supreme Court heard the first welfare case in *King vs. Smith*.<sup>123</sup> The essential details of the case is that the State of Alabama and elsewhere in the United States, welfare systems were using the sexual behavior of poor black women to exclude them and their children from cash benefits. If the social worker found that the female was engaging in sexual behavior in or out of the home, with her husband or with a committed lover. The State of Alabama defined the hetero sexual relationship of black women as a marital relationship, therefore this “husband” should be forced to take on the financial responsibility of the household, regardless of his blood relationship to the children present.<sup>124</sup> The same rules did not apply to white recipients of welfare benefits and the Supreme Court overturned this application of family law.

The unwed black mother image was fully developed by the 1960’s. This matriarch was domineering and emasculated black men. These women who supposedly demoralized black men, were the primary reason for the demise of the black family.<sup>125</sup> With the demise of the black family, the matriarch becomes the target of blame and the failure of black achievement in American society. Since there was no male figure in the home, these women also transmitted to their degeneracy to their children. Being without morality and a sense of chastity, they could not reproduce the white mode of family, because they were no longer ruled by the white matriarch. They were considered the source of a pathological lifestyle and perpetuation of the cycle of poverty from generation to generation.<sup>126</sup>

In 1965, Daniel Patrick Moynihan produced a report entitled “The Negro Family: The Case

for National Action.”<sup>127</sup> As the Assistant Secretary of Labor, he produced this report as the Director of the Office of Policy Planning and Research under President Lyndon Johnson. The report summarized what was thought to be the problem: the problem was the missing black father and the lack of family structure resembling a white family structure. Moynihan described the black matriarch as the culprit. The matriarchal structure was not only out of line with American society, the single, black, female head of household was thought to seriously retard the progress of the race as a whole.<sup>128</sup>

The duplicity set forth in the report is that it labeled black women as culprits but empowered them to be the head of the household. It put black women in charge of a social grouping while denigrating them at the same time.<sup>129</sup> The empowering element of the report, while still negative, gave rise to a different way of being stereotyped for black women. The Sapphire imagery rose quickly to depict black women as mouthy, threatening, of lower socio-economic standing, and completely intimidating to black men.<sup>130</sup> She is rude, angry, emasculating, overbearing, and still the single head of household.<sup>131</sup> She ranges from an unemployed welfare recipient with multiple children to a sexually promiscuous single woman abusive to neighbors, lovers, and whites in general. Sapphire is hyper sensitive to injustice, but simply uses her anger as a means to complain rather than as a means to correct the injustice.<sup>132</sup> She is the exact opposite of the Mammy imagery, and she is the proof that black women are not in control of their emotions, their sexuality, their mothering, or their economic situations and fed the plan to sterilize women on behalf of the American idea of a proper society.

The Matriarch symbolizes the black woman in her home. Usually, no man or husband is present: welfare laws prevented him from being in the home. His presence meant no or shortened benefits for her children. At any rate, she was cast as the mammy gone badly. She

was a failure because she spent time away from home, and consequently has not properly supervised her children and they have in turn, become criminals. She is so aggressive, according to the stereotype that she cannot hold onto a man or is not wife material because of her constant emasculation of men.<sup>133</sup>

The more the Matriarch symbol immersed itself into American folklore the Sapphire symbol emerged. Sapphire was the punisher of the passive, servile, and docile black female. The Sapphire symbol is allowed to break certain social norms; her sassiness was a means of chastising white men and being a part of the white family. This caricature of the black woman becomes popular in the radio series *Amos 'n' Andy*. Freeman Gosden and Charles Correll developed the show. These men were white actors who mocked black behavior and dialect in minstrel form. The rest of the cast was also white and played to a mixed audience of black and white listeners. It aired on the radio from 1928 – 1960 with a modicum of brief interruptions.<sup>134</sup>

The *Amos 'n' Andy Show* turned into a television series aired on CBS from 1951-1953. Syndicated reruns ran from 1954-1966. This time, the series featured an all black cast. One of the main characters was Sapphire Stevens, who constantly berated her husband as a failure. In this setting, the African American male was essential. He had to be present in order for the Sapphire character to have meaning and place within the segment. This translated into the American psyche both the worthlessness of the black male and the angry nature of the black female. Both portrayed degeneracy in the minds of white America and reinforced negative stereotyping in American culture.<sup>135</sup>

The impact of the negative Sapphire and Matriarch imagery is that it created a depiction of the black family. The heart of the deterioration of the black life was seen as a result of the deterioration of the black family.<sup>136</sup> As the basic unit of social life, the family shapes the

character of the individual. The white family has achieved a high degree of stability, while the black family has not. The reason for this disparity is not defined by racialized public policy, or unfair economic practices, or even the determination to maintain power. The degeneracy of the Black family is solely the fault of the black woman. The narrative created around her character resulted in an unstable family condition in which Moynihan sought the assistance of the government.<sup>137</sup>

Moynihan states that as a direct result of divorce, separation, and desertion, Black females head a large percentage of Negro families. He stated that this family disorganization continued to increase among black families while diminishing in white families. This head of household status made the black family increasingly dangerous and costly to American society. This was another means of degrading Black Americans and justifying the need to subdue this population and ultimately, eliminate it from the American populace. Proper preparation for citizenship could not be established among them, so stricter measures to control reproduction had to be performed, in order to preserve resources, and not spend money on useless social programs.<sup>138</sup> Black mothers were seen as the “bearers of incurable morality” and therefore reproduction had to be exploited.<sup>139</sup>

White childbearing has generally been thought to be a beneficial activity in society. Black childbearing is viewed in the opposite manner. The Black mother is viewed as having corrupted the process of pregnancy and birth at every stage. They are seen to transmit inferior physical traits through genes. Babies are damaged in the womb through their mother’s bad habits. Deviant lifestyles and behaviors are imparted in child rearing are the stereotypical reasons as to why black pregnancy is a form of degeneracy. In 1986 a special CBS new report continued the castigation of the black family entitled, “The Vanishing Family: Crisis in Black America.” Bill



Moyers reported the repeated rhetoric about the moral depravity of black women, single, and head of households who continue to produce criminals, vagrants, and a constant drain on American resources.<sup>140</sup>

The report highlighted the statistics on illegitimacy among black women. It was *the* social problem of the time. It was seen as “more important than crime, drugs, poverty, illiteracy, welfare, or homelessness” because it drove all of the other social ills.<sup>141</sup> The great fear was that this degeneracy would creep into the homes and psyche of whites, and the problem would reproduce in white families. Former Education Secretary William Bennett described it as the “single most destructive pathology in modern American Society.”<sup>142</sup> White single motherhood is a personal matter to be taken up by the family. She is shamed within the family structure. Within the black culture, unwed motherhood was a cultural and racial defect at the public expense. The major social problem of the single head of household was that she was publically blamed and there could be no redemption for her as she was already less than human, of no moral character, and too unintelligent to be in control of her reproduction.<sup>143</sup>

As fingers pointed at black unwed mothers for the drain on American society, white illegitimacy rates increased.<sup>144</sup> Fear increased that the crime, drugs, and low employment rates among blacks would spread to white America. The matriarchal structure of the Black family was so out of line with the rest of American society that lawmakers and public officials believed it was impossible for the Black family to rise above its dire circumstances. At the point of Moynihan’s study, (1965), the research showed alarming realities: approximately one quarter of urban Negro marriages were dissolved; about one quarter of negro births were illegitimate; almost one fourth of Negro families were headed by black females, and the breakdown of the black family led to a high increase in welfare dependency. The expansion of black families on

the welfare assistance program was deciphered as a measure of the steady disintegration of the black family structure over the past generation in the United States.<sup>145</sup> No accountability for racist policies, prohibitive laws, or societal practices that put the black family in jeopardy. The fault of the disintegration of the black family was the fault of the angry black female, known as the matriarch.

Media reinforced the imagery of the matriarch and subsequent sapphire. Several popular sitcoms and movies showcased the negative stereotype, which also proved to be profitable. While the target of her anger is most often the black male, the two in conjunction provide a ideology about black life in general. Those who have never engaged African Americans tend to believe as truth the negative typecasting of black families, black women, and black men. Characters such as “Aunt Esther” from the sitcom *Sanford and Son*, Florida Evans in the sitcom “*Good Times*,” and Pam James in the series “*Martin*.” These were strong, angry, loud, and rude Matriarchs who played opposite a black male figure dominated by the matriarch. A Sapphire type character, Florence, who was the wisecracking maid that often talked back to her employer, countered even the positive image of a black male in the “*Jeffersons*.”<sup>146</sup> Lastly, the era of “Blaxploitation” cinema also featured racialized characters aimed at highlighting black life in urban areas. In these films, the Jezebel and Sapphire typologies merged into a hybrid character that was sexually attractive, aggressive, concerned about her children, but used guns and any other weapon available to her to confront injustice perpetrated by unethical public officials and Mafioso characters.<sup>147</sup> Her over-sexualized imagery of these two black women shaped public opinion of black women and allowed them to be targeted for abuse. These internalized images make up the narrative concerning black life, black worth, and black citizenship as degenerate, un-American, and continues into the twenty first century.

## G. Sassy Mammy: The Bridge Character

The Sassy Mammy was a fictional character displayed on television, some movies, and some advertisements. She is the bridge character that communicated to Blacks and white the cultural acceptance of some black women into white families. Within the family setting, the Sassy Mammy could “sass” her white family members whom she worked for as a domestic. She could stand up to her white male employer and push the envelope with other white members of the family, Her curators were careful enough to not make her a sexy: she is almost asexual. She simply has a sassy mouth with witty remarks and a less than cooperative spirit. While the Sassy Mammy ruled white households, real black women and black men were being lynched, killed, burned, tortured, and prevented from realizing the “American Dream.” The point of the caricature was to pretend that slavery, Jim Crow, and other forms of discrimination was not overly oppressive.<sup>148</sup>

Examples of the Sassy Mammy are Hattie McDaniel, a black actress who played feisty, quick-tempered mammies in many movies, including *Judge Priest* produced by Wurtzel & Ford in 1934; *Music is Magic*, produced by Stone & Marshall in 1935; *The Little Colonel*, produced by DeSylva & Butler in 1935; *Alice Adams* produced by Berman & Stevens in 1935; *Saratoga*, produced by Hyman & Conway in 1937; *The Mad Miss Manton*, produced by Wolfson & Jason in 1938, and *Gone With the Wind* produced by Selznick & Fleming in 1939. In these roles she was sassy but always loyal.<sup>149</sup> The point of the long list of movies is to show how the prevalence and how profitable the stereotype of the Sassy Mammy has been. Another example of the Sassy Mammy is Isabel Sanford who played Tillie in the movie *Guess Who's Coming To Dinner*. In all of these films, these women played an outspoken, quasi member of the family, who was a paid employee that usually cooked, cleaned, raised the children, and performed the duties

expected by the family. The important thing to consider that as sassy as she was, she was not a threat to the existing social order. She was allowed to speak but had no actual power to affect change.

### **H. The Twenty-First Century Sapphire**

The current stereotype that makes black women vulnerable is the “angry black woman” who is now the twenty–first century Sapphire.<sup>150</sup> Congress women Maxine Waters and Cynthia McKinney are routinely characterized as angry black women who complain and rage at everything. Black female television personalities, popular actresses, and popular activists are often accused of being overly angry because of societal injustices they disclose in the public arena. The angry black female contrasts with the black female mule that carries the burdens of many.<sup>151</sup> This character permeates American culture in all forms: movies, television, print media, social media, etc. Even Michelle Obama, who breaks the mold, has at one time during her husband’s campaign, caricatured as a “fist-bumping” terrorist poised to take America down.<sup>152</sup> The fear created by these stereotypes and caricatures continue to leave black women vulnerable to eugenic ideas and resulting abuses. The damage done by these characterizations is immeasurable. To continually mistreat black women based on bias and the specter of eugenics makes these women susceptible to unethical treatment in all aspects of American society.

This imagery also depicts women as loud, angry, rude, and basically without class but offering unwanted opinions. She is basically and intentionally emasculating to black men, and demoralizing white men, which makes her a target to be subdued. Her anger is said to be irrational: there is no end to it. She is simply mad all of the time for any and every reason, and yet no one seems to be able to trace her anger to a real life situation. Her predicament or the cause of her anger is never traced and she is never understood as a reactionary to her condition or

the condition of her community. She is unendingly bitter. The Sapphire Caricature is a harsh portrayal of African American women, but it is more than that; it is a social control mechanism that is employed to punish black women who violate the societal norms that encourage them to be passive, servile, non-threatening, and unseen.<sup>153</sup>

### **I. Cassandra: The Lying Black Woman**

Black women who complain about their situations in any way are considered Sapphire. The contemporary strong and independent black woman is still viewed through the lens of the Sapphire imagery, *particularly* when she is calling attention to injustice. Sapphire however has also spun into a new caricature of the black woman. Sapphire is still present but her imagery has added to her facing injustice as “Cassandra.”<sup>154</sup> Cassandra is the black woman labeled as “liar.” She has no creditability in spite of her education, profession, standing in the community, or public ethics.<sup>155</sup> The interpretation of Cassandra is that she represents the fact that black women, as a racial and gendered identity, represents the least powerful people in American society, and therefore are the least believable. In short, black women are liars and most susceptible to being distrusted.<sup>156</sup>

Cassandra has an interesting origin. In Greek mythology, Cassandra was the daughter of King Priam and Queen Hecuba of Troy. She was so beautiful that the Greek god Apollo fell in love with her. Apollo attempted to woo her by granting her the gift of vision, an ability to foresee the future. When Cassandra ignored his sexual advances, he turned against her. Cassandra's gift of prophecy would forever be overshadowed by Apollo's curse. As a consequence of this curse, no one believed in her visions or listened to her warnings. She foresaw the fall of Troy. She warned the Trojans that the Greeks were hiding in the wooden horse. But she was powerless to prevent the war because no one believed her predictions.

Similarly, in Aeschylus' play, Agamemnon, Cassandra foresaw her own death, but the audience is led to ignore her vision. Despite Cassandra's accurate predictions, her community insisted on seeing her as a liar.<sup>157</sup>

The Cassandra imagery has been used most often as African American women bring lawsuits of sexual harassment. The legal community views an African American female defendant as unbelievable and discredits in whole or in part her testimony or recounting of events.<sup>158</sup> This character diminishing translates to women who claim their anger and sadness at the loss of the possibility of having children based on stereotypical views of the moment concerning black women. The “Cassandra Curse” is a linear caricature that has been used to describe the evolution and elevation of black women. She is dis-empowered by this stereotype so that she is not able to collapse the power of white men and women whom she accuses in the public arena of different forms of racism, dehumanization, and sexual punishment. The familiar forms of racism and gender bias are elicited to bring the power of a historical “curse” upon the heads of women of color as they fight legal systems, medical systems, and other public institutions aimed at maintaining their submissive stance.

Reinforcing power structures in the United States is the resistance to the change being demanded by women of color. Forced sterilization and even temporary forms of sterilization are easily engaged in the struggle for power maintenance based on the new forms of eugenic ideals that will aim at eliminating problematic people groups.<sup>159</sup> The incarcerated woman, who is now the most vulnerable to the occurrence of forced sterilization, is conflated with the professional woman by use of these images and stereotypes. The level of education, professionalism, skin tone is disregarded when the current power structures are threatened. In the public sphere, distrust runs deeply in black communities as a response to these varying levels of eugenic beliefs

manifested in negative stereotyping. When powerful institutions' or individuals' claims are juxtaposed against those of less powerful or powerless institutions and individuals, the attachment of credibility to the powerful itself becomes an indicator of where the power resides. Those who challenge that power, through testimony, through the relaying of stories about being coercively sterilized, through courageously reporting past immoral behavior of the use of sterilization, as well as, suspiciously eyeing the advances in artificial insemination and genetic predisposition of embryos, can be accused of attempting to dismantle that basis of power.

### **J. The Welfare Queen**

The label “Welfare Queen” further denigrated the image of the black mother. This is the lazy black mother who inflates her public assistance check by intentionally having more children.<sup>160</sup> The impression was created that black women on welfare were also neglectful mothers who spent their payments on themselves rather than caring for their children. While welfare recipients included poor whites; most Americans associated welfare with African Americans.<sup>161</sup> In the 1990’s, a study was done that found that most white Americans believed that Blacks preferred to live on welfare. When Aid to Dependent Children (ADC) was first provided through the Social Security Act of 1935, racialized work rules in the South kept poor white, widowed, divorced, or abandoned mothers to stay at home and collect the benefits. The same body of work rules forced non-white workers; domestic and agricultural workers to stay in the field – either full or part time, to keep them from collecting benefits.<sup>162</sup> These rules were meant to foster the important work of raising their children.

As a new decade approached, the Federal Bureau of Public Assistance worked to increase the non-white recipients.<sup>163</sup> But law officials, social service officials, and lawmakers worked harder to form public policy that enforced white supremacy and the notion that black people were not fit

for American citizenship. The public officials used the sexual and reproductive occurrences of African American women to intentionally create a structure to do several things:

(1) To reduce the idea of African American women as capable of being cash managers. A non-cash system would preclude them from handling their finances and force them to use a non-cash system in a world where dependency on unfair white employers and a hostile welfare system.

These white employers profited from the apartheid labor system where blacks could not mingle, work next to, or associate with their white counterparts. Black workers were not paid equal wages for equal work and were often cheated out of fair wages.<sup>164</sup>

(2) These policies were to reduce the privilege of human sexuality to the privileged, the wealthy, and those who were white. Public policy made it a basis for the denial of benefits.

(3) Prohibiting the participation of African American male lovers and fathers was used as a means to denigrate the institution of marriage and prove the community is not fit for civil rights. The entire idea was to degrade the quality of motherhood in black women and to enforce the cultural notion that honorable motherhood was also a race-class issue reserved for the white, wealthy, and privileged.<sup>165</sup>

The duplicity of the argument that formed public policy is that these poor white and African American women were denied access to effective contraception. This contraception along with education could have limited the number of children these women had, but to deny them access and then penalize them for being poor and creating barriers through their humanity to aid for their children. In the case of *King v Smith*, Sylvester Smith and her sexuality displayed for the whole country how the reproductive and sexual capacity of poor women and women of color were under surveillance and always targeted for sanctions. Their status as poor, sexual, pregnant, mothers, wives, workers, welfare recipients, and citizens were constantly degraded in



the American psyche. While the case originated in Alabama, the findings of the case were indicative of women of color across the United States. These women were deprived human dignity and at the core of this depriving system was their right to reproduce and their expressed sexual activity that was used to re-enforce white supremacy.<sup>166</sup>

In the State of Alabama alone, 2,894 public assistant cases were closed. The families involved were all African American and all the cases involved what the white welfare administrator labeled “morality issues.”<sup>167</sup> Sylvester Smith was one of the women for whom those benefits were terminated. Ms. Augusta Wilkerson, empowered by the state, dehumanized and degraded Ms. Smith’s experiences with the welfare office as often as she could. Her reception of benefits depended on how Ms. Wilkerson interpreted Ms. Smith’s life. Ms. Wilkerson and others like her, often coerced community members to inform her as to whom and how often Ms. Smith had male company and with whom was she engaging in sexual relations. Since many of the women in the neighborhood also depended on these benefits, these tactics eroded community trust and communal dependencies.<sup>168</sup> These women, however, depended on each other because their benefits were so meager, their take-home pay was equally meager, and borrowing and assisting each other was a community necessity for survival. The catch-22 situation sent anxiety among these women, jeopardizing their ability to pay their bills and leaving them few alternatives to becoming independent. The continuing issue of black women being labeled as “welfare Queens” was their human sexuality, their management of money, and their procreative ability.

At the heart of the anti-welfare for people of color rampage was the misconception that African American women were paid to breed through the system. Senator Russell B. Long described women who received welfare benefits as “brood mares.”<sup>169</sup> The nefarious naming and

shaming was a method of accusation against poor women of having sex in order to get money such as they would as prostitutes.<sup>170</sup> Casting aspersions on the sex lives of black women on welfare became the focus of welfare officials in every region across the country. Welfare officials would conduct “mid-night” raids to see if men were in the house. Sometimes these officials would pressure clergy, grocers, and family members, in addition to neighbors to supply information on a woman’s sex life. She simply was not allowed to express human sexuality if she were also a welfare recipient. She had no right to privacy or human dignity.<sup>171</sup> This collection of data enforced the attitude that blacks were not human, therefore not capable of responsible citizenship.

The idea of the “no-sex” public policy was to reduce the amount of children these black unwed mothers produced for which white middle-class citizens would have to pay. The violation of civil rights, however, came in the form of chastity in exchange for benefits. African American women would be forced to sign documents to the affect that as long as she was receiving benefits she would not have sexual relations or gentleman callers in her home.<sup>172</sup> When signed, the two entered a type of morality contract that allowed her children to receive what the mother earned through chastity and the money earned from her employment. This incentive forced a secretive sex life aimed at survival. The supposed deviant nature of black women was heightened by the responses to welfare incentives.<sup>173</sup>

The prohibitions against sexual relations among black women were reminiscent of the plantation. Whites in powerful positions controlled the lives of these women and reinforced white supremacy by defining the intimate relations of the black family. The power exerted by these social workers and workers of the state to be able to define, manipulate, and threaten the development of the black family. The term “welfare queens” served the purpose of allowing

whites to punish them for sexual activity, to deny her and her children cash benefits to aid in their survival, and to undermine their efforts at achieving full citizenship.<sup>174</sup> Poor Black women were forced to lie, declare an invasion of privacy, but doing these things risked the economic future of her family. The natural affection and eventual linkage between two people is a human event, but under the watchful eye of the state, sex was a degrading unnatural event reserved for whites. Welfare queens were malleable women that could have their relationships defined at the whim of a social worker.<sup>175</sup>

Welfare Queens and marriage was an oxymoronic American anomaly. Welfare workers could define a lover as “husband” and deny benefits, claiming that he should take responsibility for the care of those children even if there is no genetic relationship.<sup>176</sup> Managing intimate relations among enslaved people made them easier to trade as commerce. The state invested powers in public institutions to maintain white authority and supremacy to control racial separation and the standards of fitness that lifted up white life as superior.<sup>177</sup> Even after emancipation, white officials treated black marriage as a vehicle for domesticating black people, and particularly black men. Providing welfare benefits to women meant two different things to the different races. To white women, these were benefits given to citizens who were in distressed situations. No moral judgments of character were linked to receiving the benefits. To black women, the negative stereotyping linked a negative or deficient moral character to needed benefits even if though worse economic conditions were present for these black women. Statistically, there have always been more white women received ADC benefits, numerically speaking. The percentage of black women receiving ADC was higher in comparison to the black population in America.<sup>178</sup> But the state of black women receiving ADC and the solution to the problem of her procreation was to be come inextricably linked to forced sterilization.

Racist myths persisted concerning the welfare queen and the solution to the degrading social policies affecting her. As these myths proliferated and added to the steady negative portrayal of black women increased, a gathering media storm aimed at punishing these women began to grow. Bob Grant, a local radio host put forth a welfare reform proposal called the “Bob Grant Mandatory Sterilization Act.”<sup>179</sup> Wahneema Lubiano, an English professor at Princeton continues the rhetoric of the bad black mother in an essay entitled “Black Ladies, Welfare Queens, and State Minstrels.”<sup>180</sup> She describes the welfare queen as an agent of destruction and the creator of the pathological, black, urban family, from which all societal evils originate. Lubiano further describes her as a “monster” that creates crack dealers, addicts, rapists, and muggers who exist in her culture of poverty.<sup>181</sup> One case in particular is an example of how the media fortified the notion of the neglectful, criminal mothering skills of the welfare queen. The “Chicago 19” was a story in the Chicago Times about the police raid on a home where nineteen children lived in a rat-infested apartment with five unmarried sisters. The children were malnourished and the women were collecting over \$5000 per month. This situation became the representation of all black families supported by welfare.<sup>182</sup>

President Bill Clinton put forth a welfare reform that comprised the most sweeping changes to the welfare system ever attempted. His bill essentially shifted the power of distribution and determining the amount of aid to the individual states. This responsibility was to be shared by the federal government, but the bulk of the bill gave vast authority to states. It put in place a lifetime limit of five years of payments, and every head of household had to find a job within two years of enrollment. President Clinton capitalized on his campaign promise to “end welfare” as it was known.<sup>183</sup> This bill severely cut benefits and criminalized any abusers of the system.<sup>184</sup>

It must always be understood, that welfare was never intended to end poverty. It was a

systemic way of creating the perpetual underclass that could be perpetually subordinated. It was a system that undervalued the work of women, and denied them economic advancement.<sup>185</sup> The system sought to exclude black women from the beginning and yet lifted them as a culturally, socially, and morally unfit. The distributed benefits were never adequate enough to fulfill the needs of the black female head of household. White women were encouraged to stay at home and receive the benefits, while black mothers were forced to stay in non-family sustaining wages. The system was based on myths about black women and their reproduction and ultimately, their humanity. Welfare reform, aimed at welfare queens, were based on myths that perpetuated the stereotype and targeted her for sterilization programs. The first myth is that welfare payments induced reproduction. Taxpayer resentment against black women receiving benefits was supported by the belief that women were having babies as a means of receiving more money in aid. Researchers have found no significant causal relationship between welfare benefits and childbearing.<sup>186</sup> The second myth was that welfare causes dependency. This supposed dependency is immoral and creates long-term reliance. The problem with this myth for reformers, is that poverty created the dependency – not welfare. Public policies laced with racism created an underclass – not welfare. The third myth is that marriage is the answer for welfare queens and children caught in cycles of poverty. Reformers view single motherhood as an immoral state. The proliferation of this status is viewed as the cause of poverty. Welfare is no incentive for women to create single parent households. Efforts to discourage single motherhood by black women by cutting benefits have failed, not because of immorality, but because of the economic realities in this country.<sup>187</sup>

#### **K. Colorism and Other Forms of Self-Hatred**

It has long since been established that shades of Black skin have been depicted differently.

During the period of enslavement in the United States, darker skinned Africans were sent to work in the fields. Lighter skinned Africans whose pigmentation was lightened after generations of enslaved babies were produced through the rape and the forced reproduction of enslaved women, were sent to work in the plantation house, taking care of children, taking care of the house, cooking, sewing, and maintaining the household. But acceptance of skin tone among Blacks had changed over time. In the beginning years of slavery, all skin tones were acceptable. The “paper bag” test was a way of deciding who was worthy of privileges in the black community. If your skin tone was darker than a standard brown paper bag, you were denied privileges in fraternities, sororities, churches, etc. If you were lighter than the bag, you were accepted as more beautiful, more “marriageable”, more refined, more assimilated.<sup>188</sup>

Over time self hatred began to replace a deep sense of belonging to each other and a shared suffering of the fate of enforced labor even though from different African countries. The ways of the plantation taught African Americans to hate themselves in a psychological and predictable turning inward in an attempt to explain why such torture has befallen them. An aesthetic distaste for extremely lighter skin and darker complexions developed slowly. Anger developed over extremely light skinned blacks who could pass for white and lived secret lifestyle considered “crossing the color line.”<sup>189</sup> Colorism in its simplest forms can be described as discrimination based on the shade of skin tone. Colorism in its fullest form can then be defined as the psychological event of self hatred based on the practice of discrimination guided by the societal and cultural norms of the political definitions of skin color.

The manifestations of colorism appeared in literary works though authors such as Zora Neale Hurston who began to describe the behavior of dark skinned and poor women as being a dysgenic fit from middle class black women. She describes black women’s sexuality in two very

different ways. Hurston writes about a “lower class peacock” in this manner:

*A Negro girl strolls past the corner lounge. Her whole body panging and posing. A slight shoulder movement that calls attention to her bust that is all of a dare. A hippy undulation below the waist that is a sheaf of promises tied with conscious power. She is acting out “I’m a darned sweet woman and you know it.” These little plays by strolling players are acted out daily in a dozen streets in a thousand cities, and one never mistakes the meaning.<sup>190</sup>*

Yet Hurston describes middle class black women as having flair and “etiquette” versus the “peacocking” of poor black women.<sup>191</sup> This notion of coloring did not simply mean skin shade for Black people; it carried the social definition of status, intelligence, and opportunity to grow beyond one’s current status. As Black scholars and theologians began to search for ways to uplift Negro life, borrowing eugenic theory and reinterpreting it became a way of believing it could happen, but it also manifested self hatred.

Eugenic classification was a double edged sword as it made its way into American identity. For the enslaved African, the darker the skin the more vivid reminder of the history and culture from which they were taken. On the plantation, the lighter skinned was more suitable to house work and presentation before company and visitors, yet it was a reminder that the women were being raped. Often the slave mistress would blame the black female as having seduced the husbands into illicit relationships over which her husband was deemed powerless. The acrimony of the slave mistress forced a psychological torture upon a black woman left with very few choices for survival: conform or risk death.

Colorism has always been more significant for black women. It is the assigning of beauty and aesthetics but also advantages, privileges, and perceptions about intelligence. There are shameful

words used to describe women of color based on their skin tone. For lighter skinned women words like half-white; half breed, red-bone; and high yellow are extremely painful words to hear on an everyday basis. For darker skinned women, words like “jigaboo,” monkey, blue black, and midnight black also meant more than unintelligence; it meant the future prospect of having a loving relationship, the beauty of children born in a loving relationship, and the prospect of economic wealth when opportunities were denied because of a woman’s skin color.

There has been no significant research to suggest that perhaps the skin tone of many of the women forcibly sterilized could be categorized by skin color and what effect on vulnerability skin tone played, if any, on the occurrence of sterilization among black women. Colorism adds to the thoughts disseminated by Black scholars who reinterpreted eugenics and attempted to use the same rhetoric as eugenics to direct the lifestyles of African Americans and lend support to the sterilization of black women.

#### **L. Conclusion**

Women of color who wanted the freedom to bear children in safe environments and receive the services necessary to live healthy lives fueled the development of a movement. The importance of organizing for the sake of their lives and their humanity cannot be overstated. The movement itself is not based on frivolity, but is based on an expanded ideal of the right to procreate: the right to control their own bodies, and the right to obtain access to quality health services for all women. The combination of slavery, segregation, and racism has given African Americans a different lens to view bioethical concepts such as personhood, bodily integrity, autonomy, and consent.<sup>192</sup> A movement based on an expanded health care agenda beyond pro-choice or pro-life political agendas, places the Reproductive Justice Movement within the system of health care ethics for evaluation, analysis, and procedure.



The reasons for an expanded women's health movement must understand its roots. The systematic racialized stereotyping of the Black woman's body is at the heart of readjusting the movement. Following the denigration of her body, a racialized view of her morals, her behaviors, her parenting skills, and her ability to a responsible member of American society became the standard of racist practices against her. Her very being was thought to be at odds with the American ideal of womanhood.

The American ideal of womanhood changed with its ability to subjugate her or enslave her. On the plantation, she was perfectly suited to care and nurture the white children of her master and mistress, yet she was barred from raising her own children. Once emancipated, she was re-imagined as a bad mother, but then when seeking domestic work in white households, she was again re-imagined to be the perfect mother figure for white children. The re-imagining occurred through films, television, cinema, and media advertisements. The propaganda was useful in denigrating her image but also making her palatable as a perpetual servant. She was cast as unintelligent and incapable of mothering her children, but perfectly suited to care for the homes of whites, as long as she was under the supervision of her white mistress.

The crime ridden and poor neighborhoods, to which Black women were relegated, were viewed as an example of her lack of morals and her inability to parent her children. The Black woman became the single cause for increased crime rates and poverty in America. No examination of structures and public policy that affected the lives of the poor, the Black female became the realized target for the nation to propose sterilization as the means for solving societal ills. This realization, combined with the history of her demeaned image, formed the political will for systemic action aimed at her womb. Eventually, American society could be rid of this people group they themselves enslaved, causing a movement to be forged by those most affected by the

egregious practice of genocide in the form of forced sterilization.

The twenty-first century black female as her own stereotypes and imageries to contend with. The lessening of her humanity through these negative images leaves her vulnerable to coercive sterilization even today. While the targeting seems aimed at incarcerated women, it is only so because of easy access. Without the full compliment of reproductive and health care services, all women of color are vulnerable to egregious immoral behavior concerning control over their own bodies, which results in the control over their communities. Health care ethical analysis of the Movement trying to prevent such historical occurrences as labeling black women feeble-minded as justification for the removal of the potential to procreate, these new negative images creates a new narrative about the character, nature, and intelligence of women of color and reinforces the power structures that seeks to render black women powerless to change their situations. The ethical evaluation of the Reproductive Justice Movement is vital to assisting the Movement to struggle against the dangerous practice of negative dimorphic attitudes that can lead to the repeating of history as evidenced by the sterilization of incarcerated women in modern society.

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<sup>141</sup> Charles Murray, “The Coming White Underclass,” *Wall Street Journal*, (Oct. 29, 1993), A14.

<sup>142</sup> House Subcommittee on Human Resources, “*Illegitimacy and Welfare: Hearings on H.R. 4, 104<sup>th</sup> Congress, 1st session*”, (January 20, 1995)

<sup>143</sup> Rickie Solinger. *Wake Up Little Susie: Single Pregnancy and Race before Roe v. Wade* (New York: Routledge, 1992), 24-25.

<sup>144</sup> Lee Smith, “The New Wave of Illegitimacy,” *Fortune*, (April 18, 1994), 81.

<sup>145</sup> House Subcommittee on Human Resources, “*Illegitimacy and Welfare: Hearings on H.R. 4, 104<sup>th</sup> Congress, 1st session*” (January 20, 1995)

<sup>146</sup> The Jim Crow Museum of Racist Memorabilia, “*The Sapphire Imagery: Anti -Black Imagery*” Ferris Sate University: [www.ferris.edu](http://www.ferris.edu); 2/13/2018.

<sup>147</sup> Ibid.

<sup>148</sup> The Jim Crow Museum of Racist Memorabilia, “*The Sapphire Imagery: Anti -Black Imagery*” Ferris Sate University: [www.ferris.edu](http://www.ferris.edu); 2/13/2018.

<sup>149</sup> Ibid.

<sup>150</sup> Ibid.;

<sup>151</sup> Walker-Barnes, Chanequa. *Too Heavy a Yoke: Black Women and the Burden of Strength* (Eugene: Cascade Books), 88.

<sup>152</sup> The Jim Crow Museum of Racist Memorabilia, “*The Sapphire Imagery: Anti -Black Imagery*” Ferris Sate University: [www.ferris.edu](http://www.ferris.edu); 2/13/2018.

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<sup>154</sup> Marilynn Yarbrough “Cassandra and the "Sistahs": the Peculiar Treatment of African American Women in the Myth of Women as Liars” *The Journal of Gender, Race, and Justice* No. 3-2 May 2000.

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<sup>156</sup> Ibid.; 626

<sup>157</sup> Amy D. Ronner, “The Cassandra Curse: The Stereotype of the Female Liar Resurfaces in Jones v. Clinton: 31 U.C. DAVIS L. REV. 123,130 (1997).

<sup>158</sup> Marilynn Yarbrough “Cassandra and the "Sistahs": the Peculiar Treatment of African American Women in the Myth of Women as Liars” *The Journal of Gender, Race, and Justice* No. 3-2 May 2000.

<sup>159</sup> King, David. S. “Preimplantation Genetic Diagnosis and the “New” Eugenics.” *Journal of Medical Ethics* 25 (1999): 176-182.

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<sup>162</sup> Rickie Solinger, “The First Welfare Case: Money, Sex, Marriage, and White Supremacy in Selma, 1966, A Reproductive Justice Analysis. *Journal of Women’s History*, Vol. 22, No.3 Johns Hopkins University Press (Fall 2010), 13-38.

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<sup>165</sup> Ibid.; 15

<sup>166</sup> Ibid.; 16

<sup>167</sup> King v. Smith, Records and Briefs, 567.

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<sup>169</sup> Senator Russell B. Long. Social Security amendments of 1967, Hearing before the Committee on Finance, U.S. Senate, 90<sup>th</sup> Congress, 1<sup>st</sup> session, on H.R. 12080, Part 3, Washington, D.C., 20, 21, 22, and 26 September 1967 (Washington GPO, 1967), 1647.

<sup>170</sup> Rickie Solinger, "The First Welfare Case: Money, Sex, Marriage, and White Supremacy in Selma, 1966, A Reproductive Justice Analysis. *Journal of Women's History*, Vol. 22 No. 3: 23 Johns Hopkins University Press, Vol. 22, No. 3 (Fall 2010) 13-38.

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<sup>172</sup> Felicia Korhbluh, *The Battle for Welfare Rights: Politics and Poverty in Modern America*. (Philadelphia, University of Pennsylvania Press: 2007)

<sup>173</sup> Charles Murray, "The Coming White Underclass," *Wall Street Journal*, (Oct. 29, 1993), 14.

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<sup>175</sup> Nancy F. Cott, *Public Vows: A History Marriage and the Nation* (Cambridge, MA: Harvard University Press, 2000)

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<sup>179</sup> Philip Gourevitch, "Dial Hate," *New York Magazine*, (October 24, 1994), 28-30.

<sup>180</sup> Wahneema Lubiano, "Black Ladies, Welfare Queens, and State Minstrels, in Toni Morrison, ed., *Race-ing Justice, En-Gendering Power: Essays on Anita Hill, Clarence Thomas, and the construction of Social Reality* (New York: Pantheon, 1992), 323-329.

<sup>181</sup> *Ibid.*, 329.

<sup>182</sup> Lucy A. Williams, "Race, Rat Bites, and Unfit Mothers: How Media Discourse Informs Welfare Legislation Debate," *Fordham Urban Law Journal* 22 (1995), 1159.

<sup>183</sup> Dorothy Roberts, *Killing the Black Body: Race, Reproduction, and the Meaning of Liberty* (New York: Pantheon Books, 1997), 202.

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<sup>184</sup> Lucy A. Williams, "Race, Rat Bites, and Unfit Mothers: How Media Discourse Informs Welfare Legislation Debate," *Fordham Urban Law Journal* 22 (1995), 1164-1166.

<sup>185</sup> Mimi Abromovitz. *Regulating the Lives of Women: Social Welfare Policy from Colonial Times to the Present* (Boston: South End Press, 1988)

<sup>186</sup> Center for Reproductive Law and Policy, *Punishing Women for Their Behavior During Pregnancy: An Approach that Undermines Women's Health and Children's Interests* (Feb 14, 1996), 4.

<sup>187</sup> Christopher Jencks, "Reforming Welfare," *Rethinking Social Policy: Race, Poverty, and the Underclass* (Cambridge: Harvard University Press, 1992), 204, 205-211.

<sup>188</sup> Audrey Elisa Kerr. *The Paper Bag Principle: Class, Colorism, and rumor and the Case of Black Washington, D.C.* University of Tennessee Press

<sup>189</sup> Shantella Y. Sherman. "In Search of Purity: Popular Eugenics and Racial Uplift Among New Negroes 1915-1935." Doctoral Dissertation. University of Nebraska, 2014. Pg. 61

<sup>190</sup> Zora Neale Hurston, "The Characteristics of Negro Expression," in *Negro: An Anthology*, ed. Nancy Cunard (London: Wishart, 1934), 58.<sup>[L]</sup><sub>[SEP]</sub>

<sup>191</sup> Chuck Jackson, "Waste of Whiteness: Zora Neale Hurston and the Politics of Eugenics," *African American Review* 34, no. 4 (Winter, 2000), 643.<sup>[L]</sup><sub>[SEP]</sub>

<sup>192</sup> Leonard Harris, "Autonomy Under Duress" *African-American Perspectives on Biomedical Ethics*, eds. Harley E. Flack and Edmund D. Pellegrino (Washington, D.C.: Georgetown University Press, 1992), 134-135.

## Chapter Three: Combining Eugenics and Genetic Science in Forced Sterilization

### A. The Development of Eugenic Theory

In 1864, Francis Galton published his research concerning the frequency with which prominent men achieved eminence. The work was entitled “Hereditary Talent” and appeared in Macmillan Magazine.<sup>1</sup> It was, however, his 1869 published book, *Hereditary Genius* that laid the foundation that would become the cornerstone of the coming eugenics movement. In his book, he stated that he did not believe that human beings are born of natural equality.<sup>2</sup> In spite of his critics, he produced a second work that proved his thesis that heredity was the factor that determined talent.<sup>3,4</sup> By 1883, Galton coined the term *eugenics*. It was a Greek word meaning “good in birth” or “noble in heredity.” Galton pioneered a mathematical structure for determining heredity with the intention of trying to improve the stock of more suitable races. It was originated as a “science” to prevail over the less suitable and less fitting strains of blood.<sup>5</sup>

Influenced by his cousin’s work, Charles Darwin’s *Origin of Species*, his increasing interest in heredity drove much of his research, writings, and his constant probe of the nature vs. nurture debate. The fundamental principle of eugenics was that it could eliminate defective gene material by controlling the sexual behavior of affected individuals through isolating them into institutions or by preventing them from giving birth, through sterilization.<sup>6</sup> In 1907, Galton founded the **Eugenics Society** for the purposes of spreading eugenic teaching and forcing human parenting under the control of eugenic ideals.<sup>7</sup> Galton described eugenics as the science of improving stock: giving the favored races the possibility of prevailing over the less desirable.<sup>8</sup>

During the first half of the twentieth century, social prejudice overrode scientific objectivity in formulating theories about human capabilities. Social ideologies that produced distinctions of class and race were used to support biological merit.<sup>9</sup> Since Galton’s development of eugenic

theory, eugenics has advanced with an ugly implication that has produced oppressive barbarous results. Its history continues to cast a shadow over contemporary discourse concerning human genetic manipulation. Those who continue to argue that there is a racial basis of intelligence form their concepts based on Galtonian premises.<sup>10</sup> Eugenics ultimately involved merging science, social, cultural, and political histories based on the rationalizations of race and class prejudice. This merging happened most sharply in the United States among powerful whites, but surprisingly not as much in Britain where the theory was born. We are most familiar with eugenic ideals practiced in Nazi Germany; however, it is incomplete to view eugenics solely through the lens of the Holocaust.<sup>11</sup>

Galton's penchant for the shapely women of Africa is well documented. In one of his letters, he quipped about the bodies of these women would put English women to shame, and he himself actually began to measure them.<sup>12</sup> Lending a slightly sexualized flair to his passionate curiosity, Galton came to believe that genius was an inherited trait. The natural abilities of human beings, particularly intelligence, are biological traits that are passed on through generations of families.<sup>13</sup> But the racialized view of black women; the sexual intimations concerning black women, and ultimately faulty science built a movement that those in the Reproductive Justice Movement seek to correct.

The practice of eugenics in America has been particularly vicious and has failed to be completely erased from American discourse. While Galton founded the Eugenics Society in 1907, in 1926 eugenics theory went on to further the idea of sterilization as the answer to the problems of reproduction and its control.<sup>14</sup> As sterilization gained popularity in both England and the United States, the permanent solution to the underclass out reproducing the more privileged class was punitive sterilization and compulsory sterilization. These measures were



aimed at parents who resorted to public assistance in order to support their children, and for those in the United States who remained on assistance beyond a certain length of time. Through the merging of racial prejudice, social order, and scientific developments, researchers on both sides of the Atlantic believed sterilization to be humane as well as practical. A 1937 Fortune Magazine poll stated that sixty-three percent of Americans were in favor of sterilizing mental defectives and habitual criminals as a means of “biological housecleaning.”<sup>15</sup>

By definition, eugenics divides human beings into categories of being well bred or negatively bred. Genetic choices and advances in biotechnology have continued to support the genomic control of human life and public support for positive eugenic ideals.<sup>16</sup> This chapter will argue that the combination of eugenic theory and genetic science provided the necessary foundation to an American ideology that sought to eliminate those whom they deemed less desirable in society.<sup>17,18</sup> This ideology was used to promote various ways of reducing and preventing reproduction among the poor, the feeble-minded, and eventually the African American population.<sup>19,20</sup> In the interest of reducing the “less fit” of society, negative eugenic theory proffered that those of less intelligence would be able to spread their lack of intellect if something was not done to prevent births among that group of people.<sup>21,22</sup> There was also considerable fear that the less desirable were reproducing at a faster pace than those of “noble birth.”

The science of biology grew rapidly in the late eighteenth century. The contributions of other scientists in other disciplines helped gather the brewing storm of the eugenics movement. Degeneracy was alleged to be transmitted through heredity. Most often, that degeneracy originated through the defective genes of black women and caused their children to be predisposed to crime, poverty, and prostitution. Johann Gregor Mendel’s work on the basic laws

of inheritance was foundational to the birthing of the science of genetics.<sup>23</sup> This new discipline, in partnership with mathematics, anthropology, and Darwinian theory provided great appeal for surgically sterilizing women for the cause of the elimination of degeneracy.<sup>24</sup> It was the formation of eugenic theory, however, that brought the partnering disciplines into a quest for biological improvement through reproductive control.<sup>25</sup>

Eugenic enthusiasts believed the best way to stop the proliferation of the feeble-minded were to simply isolate and or sterilize these individuals.<sup>26</sup> Sterilizations were performed in various states of consent: many without the consent of the patient and many without the full understanding of the patient. Informed consent as defined by the health care ethics discipline, demands more than just mutual decision making between physician and patient. Informed consent is the patient's autonomous authorization of a medical or surgical procedure or participation in research.<sup>27</sup> It is the second definition of informed consent that may cause some minor difficulties in the analysis of the Reproductive Justice Movement. The *social rules of consent* allow for a lower standard of consent in certain situations as opposed to completely autonomous decision-making. This form of consent conforms to institutional rules by which physicians and other medical professionals only need warn of risks that may result from the procedure.<sup>28</sup> Some could argue that the space between the respect for autonomous decision-making and the social rules of consent in the form of institutional consent may be where forced sterilization could ethically occur. The social rules of public institutions; the shared racial values within the context of American society, and the negative view of the African American woman perhaps produced a different view of ethical standards and moral behavior that made forced sterilization morally acceptable.

The combination of negative eugenics and genetic science only added proof of a

dimorphic racialized social norm that negatively labeled African American women for many years. The resulting practice of sterilization took a historical journey through medicine, religion, science, politics, and public institutional will. The history of surgical sterilization without valid consent illustrates the relationship between medicine and the pressure of societal rules.<sup>29</sup> The strong belief that culture was shaped and influenced by biology rather than environment is the platform for a medical solution to be developed to eliminate the less desirable. The targeting of black women, as those whose wombs incubate and produce degeneracy through heredity is what America came to believe must be terminated. This practice of medicine as the provision of solving a social issue spread from mental institutions where thousands upon thousands of mentally retarded and mentally ill individuals were forcibly sterilized, but the practice spread to focus solely on poor women and women of color in its eventual practice.<sup>30</sup>

Scientific racism helped shaped the performance of reproductive control over black women and their bodies. This was a means of protecting the intellectual level of the well bred, high achieving, wealthy individuals considered eugenically preferable. Science became the tool that reinforced racial ideals of who was worthy of life and who was not; who was a drain of American philanthropic and social assistance; and how dangerous the population had become because it was filled with those who were not of good breeding.<sup>31</sup>

Surgical sterilization was not the only form of controlling the reproduction of black women. Contraceptive use and the development of the pill was also a form of controlling reproduction when made available to poor women of color. Long lasting contraceptives such as Norplant and Depo-Provera were also used to control the reproductive practices of young women, married women, and imprisoned women.<sup>32</sup> The development of family planning clinics was also another way of controlling and monitoring the rate of births in the Black community. Family Planning

clinics had duplicitous uses. In some communities, these clinics were there to give married women choice to have children or not and to give them more control over their bodies. In poor communities, these clinics monitored the sexual activities of poor women and sought to limit the amount of children they bore. These efforts put at odds the desire to empower white women and the need to bring government control over the bodies of black women. Clinic advocates worked with social workers, religious leaders, politicians, and local physicians to either help women or coerce women into using the services the clinics provided.<sup>33</sup>

### **A.1. Positive Eugenics**

The aim of eugenics was twofold: to breed desirable people for the benefit of humankind and the prevention and elimination of breeding undesirable people for the benefit of humankind. Positive eugenics was the term used to plan and implement actions that would result in the breeding of the socially meritorious, and negative eugenics would describe the efforts used to prevent socially undesirable people from breeding.<sup>34</sup> Galton had principally been a positive eugenicist.<sup>35</sup> Galton and his long list of supporters believed it was socially responsible to have more children in order to perpetuate the race and indeed was a man's inescapable duty. They were to increase the numbers of the fit.<sup>36</sup>

Biological manipulation was set against the theological understanding of natural selection, with God as the giver of intellectual capacity. Selective breeding could be the only means to permanently improve good human stock. Karl Pearson, a friend and colleague of Galton, helped develop a journal entitled *Biometrika* for biologists to learn of statistical theory clothed in biological language. The American biological community resisted Pearson's biometry as the mathematization of evolution and heredity.<sup>37</sup> Pearson made statistics more than a tool for analyzing simple plant variations.<sup>38</sup> In his laboratory, he calculated the variability of groups of

people and the correlations among relatives for various diseases, disorders, and all sorts of human traits. He also studied the relationship between physique and intelligence; the resemblance between first cousins; the effects of parental employment upon children and the rate of birth of subsequent children, and whether or not heredity plays a role in alcoholism, tuberculosis, or defective sight. From 1903 – 1918, Pearson and his staff published over three hundred findings of eugenic works.<sup>39</sup>

Eugenic science in the United States followed Gregor Mendel more than Karl Pearson. Mendel's laws of segregation posited that sexual union made possible the recombination of various elements to be determined by the laws on combinatorial probability.<sup>40</sup> He named certain elements "dominants" and other traits "recessive," however, Mendelian inheritance theory seemed to conflict with male to female ratio of reproducing character traits. Many traits presented as blended characters rather than dominants or recessives, usually in what came to be known as intermediate traits between the parents.<sup>41</sup> It appeared that natural selection would have kept mental defectives in check, but that had not worked at all. Medicine and public charity had now helped them to thrive. To stop the propagation of the feeble-minded for the welfare of the American public and its future generations was the goal of early eugenicists. While a certain percentage of defective genes would have to be eliminated, every case saved is a gain and is a worthwhile effort.<sup>42</sup>

In the spirit of trying to improve the stock of the well bred, Galton founded the Eugenics Society in 1907. His mission was to spread the teaching of eugenics and to bring human parenthood under its domination.<sup>43</sup> The superior race would be one without disease or defect that would decrease the drain on philanthropy and social agency to care for that particular population. There would be a mass effort to increase the population of the well bred among

every sector of the current population. There were also mass efforts to increase reproduction among the wealthy and prominent. Positive eugenics was a movement to reduce disease and to encourage increase breeding among those who displayed positive social and intellectual characteristics. By eliminating class distinctions, human and social evolution could proceed by a conscious act of the collective will.<sup>44</sup>

Scientifically, eugenicists actually believed mental deficiency could be eliminated through sterilization or segregation as stated earlier. Mathematics would prove them wrong. Through an observation of the Mendelian inheritance principle and the Hardy-Weinberg principle, those thoughts of isolation and sterilization as a solution was disproven.<sup>45</sup> Still, the theory of eugenics continued and was supported by a faulty interpretation of science and borrowed scientific principles to further surgical solutions to eradicate and suppress reproduction among the undesirable. Early eugenicists attributed mental defects to a recessive Mendelian allele, however if the Hardy-Weinberg formula,  $p^2 + 2pq + q^2 = 1$ , is closely observed, it becomes apparent that most deleterious genes will be hidden in normal carriers. It would be nearly impossible to determine who could be born with a negative trait. It would take hundreds of generations before the deleterious negative trait would disappear.<sup>46</sup>

Even though a close application of the Hardy-Weinberg principle showed the futility of isolation and sterilization to prevent feeble-mindedness, the principle was used to further the scope of eugenics. Henry H. Goddard argued that “normal-mindedness” is a dominant trait and those lacking that trait would be defined as feeble-minded.<sup>47</sup> He defined feeble mindedness as an inability to perform duties as a member of society in the position of life to which the person was born. Charles Davenport, a noted geneticist, advised that prevention of feeble mindedness would best be accomplished by precluding drunkards, paupers, sex offenders, criminals, and those

already considered feeble-minded from marrying their cousins or any like person with the similar neuropathic strain. He further advised separating such people for one generation during the reproductive period. The result should be the reduction to practically nothing of the crop of defectives.<sup>48</sup>

Galton meant for eugenics to be an “applied” science in the search for the “good.” Eugenics was a method of practical research as a means to help men and women move themselves toward a higher state of perfection. His studies would evolve in the science known as “genetics,” and both eugenics and genetics would develop into a social program that would control marriage, immigration, and eventually forced sterilization. Historically, marriage, sex, and reproduction had been under the realm of the Church. As an agnostic, he hoped his theory would poke holes in the Church’s teachings concerning sexuality and reproduction. He saw eugenics as a hopeful rational treatment of sexual reproduction and human destiny.<sup>49</sup> Eugenics gave him a theological substitute for Church orthodoxy; a scientific measure instead of faith, and a defensible theory rather than a religious obligation.<sup>50</sup>

While there was a strong theological resistance to Darwin’s thesis, the American public gravitated towards Galton’s eugenic theory. What Americans found so attractive was the implication that evolutionary thought held for race relations.<sup>51</sup> The American brand of slavery was in conflict with the creed that all men are created equal. Eugenics provided a way to prove that blacks were inferior to whites by natural selection. Scripture was ultimately rejected as the authoritative word on human typology<sup>52</sup> and the physical measurements of human variability became the answer some needed to irrefutably prove race difference. Physical and cultural differences were seen as a result of degeneration, and differences in color provided proof of that degeneration, according to researchers such as German anatomist Johann Blumenbach.<sup>53</sup> The

concept of racial degeneration was seen as the only theory that could explain the inferiority and cultural weaknesses of the African. If God made a single perfect human being, then degeneracy such as skin color, feeble-mindedness, and insanity is the only way to explain the resulting differences.<sup>54</sup>

The Mendelian pattern of inheritance was a mathematical predictor of well-bred individuals based on the traits of the carrier parents. The breeding of two carrier parents produced a probable pattern of traits in the carrier offspring. Mendelian patterns also discovered the expectations were true of genetic anomalies as well. Sickle cell Anemia, color blindness, and others chronic conditions, were discovered to be produced through affected children but unaffected parents.<sup>55</sup> As both eugenic and genetic theory progressed, research settled on the study of feeble mindedness in particular families through the work of Henry Goddard. Other researches also began to study the prevalence of mental retardation, and other forms of hereditary defectiveness.

The Kallikak family is a well-known example of the study of inherited feeble mindedness. The name “Kallikak” was a pseudonymous word constructed from the Greek word *kalos* (good) and *kakos* (bad).<sup>56</sup> Martin Kallikak was the progenitor of the Kallikak line. He fathered a son with a young woman who lived in Piney Woods, a small town in New Jersey but never married her. He later married a “respectable” young woman and settled on a large farm not far away from the woman who birthed his son and became very prosperous. Eventually a daughter, Deborah, was born who was considered feeble minded and lived as a resident of the Vineland Training School for the mentally defective. One side of the family produced judges, professors, and yet the other side was assumed to be a product of the degenerate line of the young woman Martin did not marry, simply because she was a resident of Piney Woods. Piney Woods was a



settlement about twenty miles away from the Kallikak farm and certainly not a considered a city full of desirables. Goddard, along with an associate, Elizabeth Kite, studied the two strains of the Kallikak line for the insights into the roles of heredity and environment as causes of feeble mindedness.<sup>57</sup>

Goddard and Kite began in a somewhat dimorphic manner. While both families grew up in relatively the same environment, their separate personalities changed their environment. The side of the Kallikak's that boasted of judges and professors were labeled as the "normal" side and the other as the "bad" side before the research began.<sup>58</sup> The field worker who assisted Goddard traced family members assessing their mental and moral conditions, however, since so many family members were deceased, much of their findings were based on hearsay and were considered highly subjective.<sup>59</sup> Also, Goddard used the Binet-Simon intelligence test brought over from Europe to categorize his research results.<sup>60</sup> Two major conclusions resulted from the study of this family: feeble mindedness can be transmitted as a dominant trait, and that the feeble minded are very fertile.<sup>61</sup> His basis of proof was that the Piney Woods side of the family produced a large of amount of children for each generation, while the prominent side of the family produced only four and five children per family unit.

It is important to note the shades of meaning of feeble mindedness. That term was used to describe a wide range of mental deficiencies and socially deviant behavior. Utilizing the results of field study and testing, Goddard developed categories to classify specific information about individuals. His classifications included terms such as "idiots": those whose mental age was determined to be one or two; "imbeciles" or those who mental age ranged from three to seven; and those whose mental age was found to be between eight and twelve he dubbed as "moronic", taken from the Greek for<sup>62</sup> "dull" or "stupid."

Returning to Deborah Kallikak, she was determined to be, according to Goddard's assessment, as moronic. She was compared to the "normal" side of the family in Goddard's publication with pictures that were later proven to be doctored for effect. But Goddard's work touched the fears of the American public that the feeble minded were overtaking the country and would cause a great deal of financial strain on the nation as well as diminish the strength of the American intelligence. Housing them in isolation would not prevent subsequent births and so a surgical solution might be the necessary answer to a growing problem. Castration would be considered too brutal; but a new method, surgical sterilization, may be a more logical and acceptable choice.<sup>63</sup>

## **A.2. Negative Eugenics**

If positive eugenics was to be the way to "add to" the current population of well bred individuals; then negative eugenics was to be the way to "subtract" undesirables from the American gene pool. In 1904, Galton established the Eugenics Record Office at the University of London. Through this office he attempted to establish an official definition of what he referred to as "natural eugenics" which came to mean "the study of the agencies under social control that may improve or impair the racial qualities of future generations either physically or mentally."<sup>64</sup> While Galton never actually visited the United States, his work contributed greatly to the developing science of eugenics. The definition of natural eugenics contained the word "race" for which Americans continued to be preoccupied. While largely dismissing Darwinian theory, natural selection provided a method to rationalize the superiority of the Caucasian, consequently, Americans were concerned with the origin of species.<sup>65</sup> American theologians and scientists of the early nineteenth century held a monogenist view that human beings evolved from a single species, so an explanation was needed to explain physical and cultural differences

among races. If God made a single, perfect human being, only degeneration could explain the physical and intellectual weakness of the African.<sup>66</sup> Color provided minimal proof of degeneration and allowed scientists and theologians to hold to their scriptural beliefs.

Other scientists and theologians believed that degeneration was not a factor of natural selection but of environment. Inherited traits were environmentally induced under this notion, and as an example of this theory, Rev. Samuel Stanhope Smith, professor of Moral Philosophy at Princeton University, proposed that since light-skinned people freckled in the sun, then Negroes were the result of an inherited “universal freckle.”<sup>67</sup> Dr. Samuel George Morton, a Philadelphia physician, explored racial differences by conducting systematic physical exams of skulls of the five major races: Caucasian, Mongolian, Malaysian, American, and Ethiopian. He measured the volume of each skull and concluded the average Caucasian skull had a larger capacity than the others, so indeed God had created the Caucasian superior by deeding to them “bigger brains.”<sup>68</sup> Dr. Morton’s work was later proven to be biased towards Caucasians, but that did not stop the quest to prove white superiority in America.

The original thought was that it was the duty of white men to populate each class so as to erase class division, however, it became clear that undesirables were out producing the well bred, so a strategy to reduce and eventually eliminate the inferiors was needed. The 1840’s census was the first to highlight the insane and the idiot. Dr. Edward Jarvis analyzed the information collected and supposedly found that the prevalence of idiocy and insanity of Negroes in the North was much higher than their white counterparts, but also Negroes in the South fared much better than those who migrated North. He reported in a published paper that freedom was not conducive to the black man’s tranquility.<sup>69</sup> Shortly thereafter, he published a paper refuting his own findings and sought tirelessly to have Congress reject his official report. Unfortunately, his

original report aligned with the American determination to classify Negroes as deficient.<sup>70</sup>

Consistent with the American mindset concerning Black people and Black women, miscegenation rose to a cultural paranoia. Since Blacks were thought to be inferior to whites, the mixing of the races must be prevented so as to not weaken the strain of good genes.<sup>71</sup> The American mindset now changed from infiltrating each social class with desirable genes, to strict social distinctions to protect desirable genes.

The debates continued over heredity and environment; nurture verses nature as the cause of crime, vagrancy, fecundity, and feeble mindedness. No matter how prolific the arguments or supposed research, Americans held strong to the belief that blacks were inferior and whites were superior. To that end, degeneracy was a social malady that began with the isolation of those labeled insane, and ended with sterilization programs that targeted Native American women and Black women. Isolation was reserved for the feeble minded, but sterilization came to rest upon all undesirables based on racialized attitudes. The cost of isolating degenerates was increasingly high for state institutions and contributed to utilizing a surgical solution.<sup>72</sup> During the last part of the nineteenth century, legal restrictions against miscegenation became more strict. A broader definition of “Negro” was formulated and many states amended their laws making it illegal for whites to marry anyone with “one-sixteenth or more of Negro blood; for others it only needed to be proven that there was a single drop of Negro blood, setting the stage for forced sterilizations.<sup>73</sup>

### **A.3. Laissez faire Eugenics**

Advances in biotechnology has brought about shadows of past eugenic theory into contemporary discussions about human betterment. These discussions raise important ethical concerns. A report from the European Commission Technology Forecasting Office published in 1980 that in twenty to thirty years two major changes will occur: the computerization of society,

and that biotechnology could control the development of the human embryo. Perhaps the sex of a child could be determined, and also certain “malfunctions” could be prevented.<sup>74</sup> Some scientists argue that such techniques are a return to eugenic maneuvers because they see it as a rational management of population and could be used for a more sinister end and not simple selection of desired traits or the elimination of deleterious genes. But since people are free to choose or discard these technologies and since the states are not involved in the decision making, this type of eugenics has been termed “lais-sez-faire eugenics.”<sup>75</sup>

Because potential parents are free to choose to endure genetic testing and are given non-directive genetic counseling, this process is not considered traditional positive or negative eugenics. David S. King, however, describes such counseling as eugenic in both purpose and outcome, since the goal is to reduce the number of children with congenital birth disorders. King suggests that the mention of the test itself along with its possible benefits is a soft coercion toward a eugenic bias. Should an abnormality be discovered, there is a presupposition that the pregnancy will be terminated, and some physicians will refuse to perform amniocentesis unless termination is agreed to prior to performing the test. The aim to eliminate a disabled baby, and genetic counseling offering non-directive instructions amount to eugenics of the *lais-sez-faire* brand.<sup>76</sup>

There is a growing concern among the disabled community that *lais-sez-faire* eugenics contains a social pressure for couples terminate pregnancies where the fetus is determined to have deficiencies, believing that bringing the child to full term will lead to expensive care for disabled individuals. It would be difficult to argue against genetic testing for disorders, but it is also difficult to rule out the presence of eugenic thinking in such instances.<sup>77</sup> Opening the door to such eugenic thoughts also leaves open the door to other possibilities as to what is acceptable

and what is not. The same mentality and faulty science that led to the Holocaust and the constant fears of genocide among African Americans seemingly provide caution in genetic testing for deleterious genes.

Yale professor Irving Fisher wrote that eugenics is hygiene raised to the highest power.<sup>78</sup> Fisher believed and wrote that hygiene and eugenics ought to be considered together for the cleansing of the generations from feeble-mindedness and other physical abnormalities. He believed these abnormalities could be eliminated in one generation through selective marriages of people without genetic defect<sup>79</sup> He did not insist on arranged marriages, but knew through the union of people and the production of children within the bonds of a faithful marriage, certain defective characteristics could not be passed down genetically and would halt the proliferation of the unwanted. Bordering on the laissez faire brand of ethics, Fisher believed that eugenics would be the essential foundation of ethics, but at the time, it was a method of discerning America's desire for the type of society it wanted to be and its reputation around the globe.

## **B. Genetic Science**

Mendelian elements, renamed "genes," were believed to exist somewhere in the human chromosome. The word "genetics" was a term used to describe heredity and trait variation. Unit characters, an expansion of Mendelian principles, became the foundation for all eugenic research.<sup>80</sup> In its early stages, those who studied human heredity asserted that human genetic explorations had to be distanced from the prejudicial manner in which it approached its research. At issue was the reliance on hearsay or gossip concerning deceased family members.<sup>81</sup> In the early 1930's, genetics had few practitioners and was in its earliest stages. Early geneticists had to do their research from direct clinical experience, medical journal reports and hospital records, and surveys of selected subjects.<sup>82</sup> A knowledge of the theory of probability was extremely

important when considering human genetic analysis.<sup>83</sup> There was a deep understanding of the budding science of heredity and genetics that it could not be as predictable as the genetic study of animals and plants. Human beings could not be subjected to controlled experimental breeding, therefore statistical analysis of the possibilities of offspring produced through sexual activity that occurred within the population became what could be studied and predicted.<sup>84</sup>

The laws of probability can predict the frequency of possible genetic combinations in offspring, but the offspring present only a sample of the possibilities between the two parents. The prevalence of recessive genes or dominant traits could be narrowed to a certain predictability. Mathematical correctors were needed to account for “ascertainment bias”<sup>85</sup> among these early geneticists who were trying to track the incidence of disease among infants.

The use of mathematics in genetic science assisted in analyzing the genetic occurrences of human populations. G. H. Hardy and Wilhelm Weinberg authored the mathematical formula later named the “Hardy Weinberg” principle. As stated earlier, some researchers used this principle to support the theory of being able to predict the presence of deleterious genes in offspring. None-the-less, mathematics in the form of probability was a major element in the development of genetic science early on. Early studies analyzed mathematical data concerning schizophrenia, believed to be a Mendelian dominant gene and juvenile amaurotic idiocy, believed to be a Mendelian recessive.<sup>86</sup>

There were difficulties in studying human subjects for the present and possible genetic combinations in offspring. Plant and animal geneticists had the advantage of working with organisms that satisfied at least two requirements: the subjects must be able to reproduce often and rapidly in order to have a long series of generations to analyze. Human beings satisfied neither requirement, so human geneticists struggled<sup>87</sup> Again, mathematic predictors were

heavily relied upon to forecast and observe the likelihood of traits being passed on. Population genetics provided a method to assess the effects of the evolutionary development of the occurrence of dominant and recessive mutations and changes in genetic health.<sup>88</sup> This allowed different types of human genetic data to be used for research. Observed trait frequencies and what predictions could be made about the frequencies, lent a means of testing genetic scientific hypotheses. Previous advances in the study of blood groups greatly influenced human genetics.<sup>89</sup>

The contribution of nature and nurture was still a question that needed to be sorted out. Human traits such as intelligence did not neatly segregate as traits like eye color. Inadequate attention to environmental effects could lead to a misinterpretation of acquired data. It could be as simple as observing a child with rickets and determining the child is from a deficient gene pool, ignoring the fact that the child developed rickets from poor dietary habits. A close examination of a family where rickets were prevalent might demonstrate that the malady was hereditary.

While eugenics began as a quest to battle disease and ease human suffering, the definition of suffering changed over time. Suffering evolved into labeling certain individuals as feeble minded, which covered a wide range of issues. The field of genetics helped to determine and define the class of people who would be considered to be afflicted with this condition. Science was illuminating the intricacies of nature and the way microscopic forces passed on human traits.<sup>90</sup> Genetics helped to identify those were seemingly locked into poverty, criminal behavior, ignorance, and immoral actions for generations due to low-grade mental deficiency defined as “feeble mindedness.”<sup>91</sup> The shift ushered in by genetics was not that this class of people were actually imbecilic or insane; but a population of people that were acting immorally as mental



dullards without fully developed moral consciences. These were the people who frequented bars, saloons, whore houses and filled prisons and homes for the needy. The most important aspect of these people was the fact that they passed these genes to their children. Genetics combined with eugenics developed the theory that the greatest hazard to the future of the human race was fertile, feeble minded females.<sup>92</sup>

Through genetic engineering, the human race could not only be saved but *perfected*. Public charity and medical advances combined with social policy had caused the feeble minded to live longer and be sheltered. The wealthy and well bred were enjoying their lives and producing fewer children. Social servants, scientists, and physicians approached lawmakers to do something to rescue humanity from the overgrowth of the weak. Backed by science, the probability of the transference of deleterious genes could be predicted, and the case could be reinforced that something drastic and permanent needed to be done. Through Mendelian patterns, some claimed that character issues were hereditary in nature, so that things like “pauperism” was claimed to be the result of a “shiftless character” gene. This gene prevents a person from living a decent and productive life.<sup>93</sup>

As the science of genetics progressed, the question of the origins of race remained. Eugenicists held fast to the notion of racial differences being the result of degeneration, and the science of heredity seemingly proved the heredity of feeble mindedness through the occurrence of low intelligence, pauperism, criminality, and promiscuity genes. Whiteness was the American self understanding of a peculiar people who transcended the spiritual and environmental wilderness to conquer the new land. Purity of soul, Puritan social utopianism, and transcendent solitude of the soul was the American identification that rejected any kind of difference. American literature, politics, and social structures were filled with this understanding

of what it meant to be American. Keeping the American stock “pure” became a eugenic quest that fueled the fear of being the failed exile from England.<sup>94</sup>

Preserving the idea of the correctness of “whiteness”, it became necessary to genetically prove this to be true. The suspicion that criminality resides in the genes had a persistent attractiveness in the scientific community.<sup>95</sup> Returning to the new definition of Negro, as a person with one drop of Negro blood, eugenics and genetics were now a combined ideology that pursued the American interest of racial purity and a better world. The genetic revolution and advancements on human eye color, skin, and hair color bled into character traits, morality assessments, and judgments concerning human behavior without consideration for environment.<sup>96</sup> The new definition of Negro took on the definition of inherited deleterious gene pools that threatened the whiteness of America. Genetic science became the mechanism used to prove eugenic ideals, particularly when it became clear that isolation and selective breeding would not produce the desired result. Consequently, eugenics, supported by genetic science took an ominous turn, and the surgical sterilization was the means used to attempt the eradication of the degeneration of human kind.

As eugenic ideals flourished and as genetic science advanced, it took the work of many others for the method of population control to advance to a surgical instrument. Social policies that criminalized marriage between individuals where one partner was an epileptic, or a pauper who slept with a young woman under the age of forty five, grew in American popularity. The campaign against dysgenic marriages were reinforced by state laws, social services, the penal system, and public policy. Castration of persons convicted of certain crimes was normalized in the early 1900's.<sup>97</sup> Kansas began legislation that allowed for the castration of Negro and Mulatto men convicted of rape, attempted rape, or the kidnapping of a white woman. The bill passed the

House but died in the Senate. Texas legally castrated a Negro man convicted of rape, however, castration was considered socially unacceptable to curbing the fecundity of the feeble minded. Surgical sterilization seemed more human and politically more acceptable.<sup>98</sup>

The eugenics movement was energized by issues of race. In the early 1930's, attention went from eliminating the influx of undesirable immigrants to the Black populace of the South. The uplift of the Negro threatened southern segregationists who borrowed eugenic theories from the North to deal with Black political advancement. Evolution was not bringing the Black race to extinction, so government programs were being suggested to reduce the black birthrate.<sup>99</sup> Laws against miscegenation were increasing in order to keep the national blood pure. Eugenicists found allies in the Ku Klux Klan<sup>100</sup> but also with crusaders for birth control.<sup>101</sup> Whatever the method, the biological advancement and preservation of the white race was of primary concern.

### **C. Sterilization as the Application of Negative Eugenic Thought**

Carrie Buck was a heavy set, twenty-one year old woman who was a resident of the Virginia Colony for Epileptics and Feeble Minded. Carrie's claim to fame is that she is the first young woman to undergo compulsory sterilization under the laws of the State of Virginia that had been tried in the United States Supreme Court.<sup>102</sup> During the years following the *Buck v. Bell* decision, thirty states enacted laws for compulsory sterilization.<sup>103</sup> The surgery was performed on October 19, 1927 by Dr. John H. Bell at the institution located in Lynchburg. The Act of Assembly of 1926 provided for sterilization of mental defectives and Carrie was recommended by the Board of Directors at the Colony. Dr. Bell was a confessed eugenicist who believed the goal of sterilization was a humane way of purging America of its mental and physical handicaps.<sup>104</sup> In 1961, Fannie Lou Hamer, an African American sharecropper looking forward to having a family of her own, entered a hospital to have a knot in her stomach removed. She

thought it to be a fibroid tumor, common among African American women. After surgery she returned home to her family and discovered through rumor that she had been sterilized without her knowledge or her consent. Carrie remained a patient at Colony; Fannie Lou used her rage to become a national political leader, citing her “Mississippi Appendectomy” as the motivating force behind her work.<sup>105</sup>

Carrie, a young white woman and Fannie Lou, a young African American woman were both classified as a danger to the American population by having the potential of passing on defective genes. Fannie Lou was literate, religiously devout, charitable, and dependable. Her crime was being Black. Carrie’s crime was that she labeled promiscuous; Fannie Lou never had a chance to procreate. Eugenic theory was now constitutionally valid means of purging societal defectives for the benefit of the Country and the world.<sup>106</sup> Physicians such as Dr. Bell, backed by genetic science began a quest for racial purity through forced sterilization. Before Carrie Buck, around 1907, 8,500 Americans had been sterilized as feeble minded: but this number represents only what surgeons chose to report. They represented, however, the determination to eliminate “the three D’s”: dependency, delinquency, and mental deficiency. The United States became the pioneer of state sanctioned sterilization programs to free society of the unfit.<sup>107</sup>

In 1915, the Panama Pacific International Exposition held in San Francisco, stood a statue of a woman 160 feet in the air. The statue was named “Mother of Tomorrow;” and above her was a stone “spirit” named “Enterprise.” These two images had the purpose of issuing a challenge for future generations to adopt a pioneer spirit.<sup>108</sup> This was considered a new advancement since the 1893 Columbian exposition in Chicago featured the “White City” in which human advancement was filtered through the lens of white men. In the late 19<sup>th</sup> century America, white men would lead the way toward human perfection, but in 1915, women assumed a major role as “mother of

the world” because she controlled the racial makeup of future generations.<sup>109</sup> In twentieth-century America, white female fertility was moving toward being a panacea for the problems of racial degeneracy. With this turn of cultural ideology, white women were expected to fulfill their responsibilities as productive citizens, but to also recognize their racial importance as makers of white men.<sup>110</sup>

White men were living in distress from a condition called “Neurasthenia.” It was white male middle class syndrome that affected the manhood of these men during this same time frame. It is simply defined as a “lack of nerve force.”<sup>111</sup> Economic factors, changing roles for women, and the virility of black men, who still worked manual labor caused white men to feel out of place, a need to redirect their skills, and the inability to contend with the “woman issue.”<sup>112</sup> As women began to fill the work force and moved away from the traditional roles in the home, sexual roles and morals began to give way to new standards, but Victorian social norms of sexual repression created a tension that white men had difficulty surmounting, thus, neurasthenia was the manifestation of a loss of virility.<sup>113</sup>

African American men seemingly possessed powerful masculinity. In the white male mindset of both the North and the South, it was a problem that had to be restrained. Lynching became the most popular way of subduing black men and protecting white women from the “Negro Rapist.” Black male virility threatened the sanctity of southern white womanhood and its importance of chastity as a middle class value.<sup>114</sup> The strength and the numbers of Africans in America were increasing at that time, the strength and numbers of the white middle class were decreasing. White birth rates were decreasing, and female fecundity was called into question., negative imagery of the black male persisted and represented the stock of degenerate human beings, and could only produce more of the same.

Increasingly, as women expanded their interests beyond marriage and the traditional family structure, President Theodore Roosevelt labeled able bodied well bred women as “race criminals” for failing to procreate.<sup>115</sup> He believed that the white race needed good soldiers as well as good breeders in order to secure a dominant place on the world stage.<sup>116</sup> A profound amount of national pressure was placed on white women to reproduce, calling the problem “race suicide”<sup>117</sup> if they did not fulfill their national responsibility.<sup>118</sup> To stem the tide of race suicide, intelligent procreation was encouraged to bring about a more prosperous race of human beings. A millennial vision of a perfected race and gender specialization<sup>119</sup> prompted by eugenic ideals and supported by genetic science, cast a national sense of responsible procreation on the white race in general: white women in particular.

### **C.1. Negative Eugenic Initiatives**

In 1904, Harvard trained biologist Dr. Charles Davenport convinced the Carnegie Institute to fund and establish a laboratory for the study of evolution in Cold Spring Harbor, New York. This first office was called the Station for Experimental Evolution, (SEE).<sup>120</sup> Within six years, he built an addition onto his laboratory entitled the Eugenics Record Office. He built this addition with financial support from Mrs. E. H. Harriman, a railroad heiress. He employed 250 fieldworkers to collect information via interviews of families suspected of possessing defective genes.<sup>121</sup> From his original passion of the quantitative study of evolution, his interest developed into the numerical mapping of human traits. He published the *Eugenical News* and several articles and books about reducing hereditary degeneracy.<sup>122</sup>

Davenport concluded that heredity determined the presence of feeble mindedness, diseases, and other character abnormalities. He published his findings in 1911 in a book entitled *Heredity in Relation to Eugenics*.<sup>123</sup> Like Galton, Davenport decided that there were differences between

the races according to character and intellect as well as character and shape. These genetic distinctions fell highly negative to Negroes, depicting them as possessing strong, impulsive passions. They were described as having no patience or dignity. The Negro is gregarious; incapable of proper speech and is always dancing or clowning. The Negro is prolific, so much so, that the race is irrepressible.<sup>124</sup> Davenport, as well as other eugenicists carried Galton's racist ideas forward. Grippled by a fear of race suicide, racism provided a theoretical framework for eugenic initiatives.

Positive eugenic initiatives included the use of intelligence tests to prove the superiority of whites. Those same tests were used to prove the inferiority of the Negro race. Laws were passed to outlaw the mixing of races in favor of more desirable marital unions. By 1913, twenty four states and the District of Columbia, forbid the marriage of imbeciles, drunkards, criminals, and the feeble minded. In 1924, Congress passed the National Origins Act that not only limited marriages but also limited the entrance of immigrants into the United States.<sup>125</sup> To improve the survival of the white race, eugenicists began to oppose social programs that improved the lives and living conditions of the poor. They advanced the ideas that medical care, better working conditions, and the minimum wage harmed society by enabling inferior people to live longer and reproduce prolifically. These were all ideas circulated through the highly popular book *The Passing of the Great Race*.<sup>126</sup> The Eugenics Record office contributed greatly to the legal opinions concerning the implementation of immigration policies and was written by Davenport himself.

As Davenport continued to conduct eugenic experiments, the thought that biology and evolution could be controlled by human intervention gained considerable popularity. College courses, organizations, published articles, and lectures on hereditary degeneracy and race

purification were attended by a public who embraced this theory backed up by genetic science. The American Eugenics Society, the American Genetics Association, the Human Betterment Association are examples of the several organizations that formed during this time. Ideas for the quest of racial wholesomeness moved towards the coercive enforcement of negative eugenics, which did not rely on nature to weed out the undesirables. The efforts at making the case for white preservation became very easy with the proliferation of materials concerning eugenic principles. Some eugenicists believed that even providing prenatal care and obstetrical services to the poor through hospitals and clinics was biologically unsound because these services interfered with the natural elimination of the unfit.<sup>127</sup>

The American Eugenics Society was established in 1926 by Madison Grant, Henry Crampton, Irving Fisher, and Henry Osborne.<sup>128</sup> The Galton Society, formed in 1918, represented the inner circle of American eugenics. These budding organizations worked diligently and academically to move the country to more permanent solutions to the reproduction problems facing the nation. Steadily, the nation began to accept birth control measures, and ultimately sterilization as an answer to the problems America faced during this time. Immigration, fecundity among the feeble minded, the outgrowth among the poor over and above those of a higher social order culminated in the sterilization of women toward the aim of racial purity.

## **C.2. Margaret Sanger and the Eugenics Alliance**

### **i. Sanger the Feminist Activist**

Margaret Sanger remains a complicated figure in the historical pursuit of reproductive freedom for all women. Her efforts at affording women the liberation from compulsory motherhood is greatly recognized. Interviewing and observing poor women raising children in overcrowded slums while their husbands worked in factories during the industrial era, she



concluded the real bearers of the economic revolution were the under-fed, undernourished broods of children born to these overburdened parents. The real force that must be controlled was the sexual instinct that continued to produce children that contributed to the misery of the world.<sup>129</sup>

For Sanger, America and other countries around the world struggled with the same blindness: hunger was not simply an economic issue, but hunger would not be solved until the world recognized the “titanic strength” of the sexual urge.<sup>130</sup> Organizing labor unions and orchestrating strikes for better wages and safe work conditions would always locate the problems of poverty outside of the worker himself. In fact, Sanger concluded that to approach the avenue of sex and reproduction is to reveal the fundamental relationship to the whole economic and biological structure of society.<sup>131</sup> She considered the evidence of this thinking was male-dominated and that the masculine point of view that excluded sexuality, ignored the relationship of women and children in the problem of hunger had existed too long, therefore in 1914, she dedicated herself to the control of reproduction and launched the Birth Control League in the living room of her own home.

The American Birth Control League was dedicated to the purposeful, responsible, and self-directed guidance of the reproductive power. Birth control, to Sanger and the League was not a negative or destructive idea: it was not a means of merely limiting births but the application of intelligent guidance over reproductive power, substituting reason for wantonly fulfilling sexual desire.<sup>132</sup> Sanger and her group coined the phrase “birth control” in 1921 and joined with other groups in 1939 to form the Birth Control Federation of America, which became the leading reproductive rights organization in America.<sup>133</sup> Sanger began her career as a strict feminist: freeing women from being saddled with unwanted pregnancies and endangered by self-induced

abortions.

During the early twentieth century America, women were expected to marry, bear children, and care for the husband and home. The only other professional opportunities for women were of the vein of teaching other women to do these things. Nursing and teaching were the only professions accessible to women. A woman's satisfaction was to be wrapped in serving her husband and her children. Women could not compete for jobs with men returning home from the war and if they exhibited the desire for work outside the home, they were to wipe these desires away as if cleaning the kitchen counter of germs. Sex was also a reason for marrying for young women because to do so outside of marriage was culturally and morally dangerous, and birth control was religiously and morally unacceptable. To be unmarried was to live a joyless and unfulfilled life and unmarried women without children were considered pathetic.<sup>134</sup>

Sanger worked against this cultural ideal of womanhood. She faced strong opposition from the Catholic Church and from the laws of the land. The Comstock Law, passed in 1873 by Congress, classified information about contraceptives obscene and made it illegal to circulate information about it through the mail.<sup>135</sup> But Sanger intentionally violated the Comstock Law and was arrested in 1914 charged with violating federal and state anticonception laws. She published her ideas in her magazine, *The Woman Rebel*, and opened the first contraceptive clinic in the United States where she distributed "pessaries" or diaphragms to women who bought into her ideals.<sup>136</sup> She expanded her distribution of contraceptives to condoms, to selling directly to physicians, and to distributing pamphlets convincing women of their right to have sex without marriage or reproduction.

Sanger's mission became to disconnect sex from childbirth. She saw contraception as a way of helping women control their family size. Her thoughts then expanded to believe that women

could be liberated in far more significant ways. Her views were in direct conflict with the views of the Church, which considered *onanisma*, or sex without a procreative end a sin. If successful, her work could change human relationships, theology concerning procreation, career paths for women, and the culture concerning the roles of women in society. She related a story of a woman who died after a self-inflicted attempt at abortion. After her doctor warned her that another pregnancy could prove fatal, his only advice was for her to sleep on her roof away from her husband. Sadie became pregnant again and died in childbirth. Sadie Sach's death propelled her to continue to fight for the right to the contraceptive prevention of pregnancy. She simply had her fill of watching women dying against the strain of producing so many babies under the conditions of poverty, the violence of frustrated husbands, and butchers who posed as abortionists.<sup>137</sup>

## ii. The American Birth Control League

The principles and aims of the American Birth Control League (ABCL) were clearly spelled out in purpose and deed. In 1921, when the League was born, it was deemed necessary due to the burgeoning class of the unfit surpassing the white race. As Sanger began her efforts for the sexual liberation of women, over time her goals shifted to include eugenic ideals. The League linked poverty, hunger, and economic disadvantage to reckless procreation encouraged by the Church and the State.<sup>138</sup> Funds that should be used to better civilization were instead being diverted to care for feeble minded and dysgenic individuals who could not support themselves. Women who are forced to perpetuate unwanted pregnancies risk their health, their lives, and reduce the standard of living for all. Motherhood, according to the ABCL must be the dignified expression of an intelligent woman in control of her sexual expression and regeneration.<sup>139</sup>

To that end, the ABCL organized itself in eight departments: research, investigation, hygienic

and physiological instruction, sterilization, education, political and legislative activism, organizational support, and international cooperation.<sup>140</sup> Each department had its own distinct function to further the cause of contraceptive use and acceptance and to promote the benefits of sterilization of those considered unfit to reproduce. It is easy to detect the eugenic ideals swirling through the ABCL's principles and aims. The ABCL also held annual conferences to bring together the various departments to educate the public at large and to continue to change the American ideology of charity to the poor to one of self reliance and independence.<sup>141</sup> The League distributed its message through lectures by Sanger, the invitation to open chapters in several states, and published its own monthly magazine, *The Birth Control Review*.

The ABCL ,with Sanger as its first president, was in direct conflict with the teaching of the Catholic Church. In addition to onanism, the Church declared masturbation or any sexual expression without the purpose of procreation a carnal sin. The Church without understanding the human reproductive system, believed that only the male seed produced a baby and therefore spilling the seed or unprocreative sex actually amounted to lust, and lust was definitely a sin. While the Church had no official position on contraception until 1930, it advocated the “rhythm method” and birth rates declined among the faithful. Sanger and the ABCL would not stop at this method but continued to seek sexual freedom for women not relegated to certain times of the month.<sup>142</sup> The Church and the ABCL fought extensively on the role of family and gender roles in the public arena. Sermons on chastity and replenishing the earth began to flourish, while the sexual revolution for women fed their determination to be in control of their bodies thrived.

The history of preventing pregnancy had long been practiced. The ancient Egyptians fashioned vaginal plugs out of crocodile dung. Aristotle advocated cedar oil and frankincense as a spermicide. Casanova suggested half of a lemon as a cervical cap, and the common condom

was an evolution of the Falloppio linen cloth.<sup>143</sup> It seems as if there had been a desire to prevent pregnancies early on though not widely discussed in the open. The League, championed by Sanger, promoted the idea that unless a woman was in control of her own body without aid or interference of a man, she would not be truly free. The work of the League was met with constant controversy even as clinics increased across the country. But Sanger's alliances began to shift in order to continue the search for reproductive technologies to find reproductive emancipation for women.<sup>144</sup>

### **iii. Eugenic Alliance**

Sanger's message of sexual freedom clashed with the message of the women's movement after WWI. The women's movement emphasized maternal virtue and marriage. The feminist movement sought to uplift motherhood as a morally superior stance. Sanger wanted women to control their own bodies and participate in sexual freedom free from the fear of unwanted pregnancies. The clash of the two ideologies was causing Sanger to lose ground. Eugenics gave the birth control movement a national mission and the authority of science.<sup>145</sup> Her fundamental belief that women were burdened with unwanted motherhood and these children were born into abject poverty as a drain on national resources aligned with eugenic theory that racial betterment could be achieved through birth control. It was in the nation's best interest to adopt birth control as a means of acquiring racial betterment, the improvement of women's health, and was an aid to public health.<sup>146</sup>

Eugenicists of the day gave Sanger and the League language to formulate public arguments for the need of negative eugenics over positive eugenics. Positive eugenics would be unable to stem the tide of burgeoning births among the unfit. Negative eugenics would do more to curb and eventually, prevent the births of genetically undesirable people. She argued that reckless

breeding caused an imbalance that politically endangered the stability of the nation. No argument could be presented to people who feel they have enough children to produce more, therefore negative eugenics would push less children for the poor as a means to stop the multiplication of the unfit. It appeared to Sanger to be the most important and greatest step toward race betterment.<sup>147</sup>

To quiet the fears of some eugenicists, the ABCL moved way from legislative lobbying to organizing clinics, because they felt through the clinics would be an efficient way of reducing the birth rates of their socially inadequate patients.<sup>148</sup> Alignment of the principles of the ABCL and the eugenicist movement resulted in a joint focus on the problems of birth rates in the Black community. Racism had long been a part of eugenic ideals, and is now becoming a part of the work of the ABCL. In 1939, the ABCL and the Clinical Research Bureau joined forces to become the Birth Control Federation of America. The first effort of the joint board was to establish a Division of Negro Service. There was a racist motivation behind the birth control's movement to educate Black women about controlling their fertility.<sup>149</sup> The Black community is where the bulk of the unfit lived; where social charity was greatly expended, and where poverty and large families go hand in hand.<sup>150</sup> There were known and confessed racists who were members of this combined organization: Lothrop Stoddard, author of *The Rising Tide of Color* and C.C. Little, president of the Third Race Betterment Conference.<sup>151</sup>

#### **iv. The Negro Project**

If white women were considered the salvation and betterment of the human race, then black women were considered the opposite. White motherhood was a national value; black motherhood was an aberrant occurrence and a reality that must be extinguished. Disparaging images of black mothers fed into the fear of producing a bio underclass of children that would

need state support through welfare programs and other philanthropic efforts.<sup>152</sup> The degeneracy of black motherhood outlined in the first chapter is directly set in opposition to the idyllic imagery of white motherhood. Black women were seen as the bearers of an “incurable morality.”<sup>153</sup>

A very explicit example of the demonization of the black mother was in the film *The Black Stork*. Dr. Harry J. Haiselden gained fame and wealth by exploiting the evil legacy of the black mother through this film showcased in 1915.<sup>154</sup> Haiselden reportedly hastened the death of infants considered unfit for life. Haiselden preyed on sick and defective infants. He practiced negative eugenics openly by encouraging parents and other physicians to following his example of killing or allowing the death of genetically inferior infants. During the course of his career, he killed at least five babies. He memorialized his efforts by posing for photos with the deceased babies. The effects of his marketing caused parents of handicapped and deformed children to recruit doctors to kill their children. This practice of infanticide was highlighted on November 12, 1915 when Dr. Haiselden announced to the local newspapers that he allowed the ailing Bollinger infant to die because he would have faced life as a defective.<sup>155</sup>

The film, starring Haiselden himself, is the story of a white wealth slave owner. In a moment of drunkenness, he is seduced by his “vile, filthy” black servant. The child born of this evil seduction is a genetic taint to his family line, rendering the rest of his potential children unfit to marry. The movie opens with an image of a black child and consequential scenes portray what would have been several children of mixed heritage, supposing the continuous pollution of the slave owners genetic line and also that taint of the American population. Haiselden’s use of the word “black” verses “Negro” was an intentional mechanism to associate blackness with evil, ugliness, and undesirability. The storyline of the film also made a point of showing that the

white slave master had to be drunk in order to have sexual relations with the black servant, who needed no alcohol to aid her depravity. The end of the film shows a robed Jesus character giving his approval to the euthanasia of the genetically defective infant while in its crib.<sup>156</sup>

The effect of the film was a heightened sense of racial purity that could best be achieved by eliminating the defectives in society and preventing the birth of a genetically inferior race. Black men and women presented a threat to all that is pure in American ideology. Haiselden's film stirred the eugenic imagination of the American public, and eugenic policies began to proliferate in other countries as well. But for the American psyche, black motherhood was a dysgenic event.

In 1938, Margaret Sanger proposed to the Birth Control Federation of America the "Negro Project." Borrowing a quote from W.E.B. Dubois, she asserted that Negroes, especially those in the South, still breed carelessly and represent the least intelligent and fit as well as least able to raise children properly.<sup>157</sup> Her attention toward Black women began in 1929 after Lothrop's book. She began researching birth patterns in Harlem where 224,760 of New York City's 330,000 African Americans lived.<sup>158</sup> In 1916, she opened the first birth control clinic in the United States, but it was opened in Brooklyn, New York. In her June 1932 *Birth Control Review*, she named her article "The Negro Number" and began working on setting up "family planning centers" to find the best ways of practicing eugenic principles to reduce the black population. The first specifically black family planning centers were opened in Harlem, and Macon County, Alabama. By 1942 these centers were renamed "Planned Parenthood."<sup>159</sup>

The Negro Project, from its inception, was to supposedly educate black women about the need for family planning and to curb unwanted pregnancies. Information and birth control methods and devices were disseminated. In the segregated South, the first clinics were for white



women only. But prominent black thinkers pressed for the need of such clinics in the black community. Sanger obtained a \$20,000 grant to finance an education program to carry put the project. At the insistence of Dubois, Mary McLeod Bethune of the National Council of Negro Women, Walter White, executive director of the NAACP; Rev. Adam Clayton Powell, Jr. famed pastor of the Abyssinian Baptist Church of Harlem, and Professor E. Franklin Frazier, Negro field workers were hired to disseminate birth control information to the uneducated black population of the South. They also trained Negro doctors believing the black population would hear their message coming from them as opposed to white doctors whom they greatly distrusted.<sup>160</sup> These prominent black leaders contributed articles in support of these clinics because they saw black women being denied access to city health services. Charles S. Johnson, Fisk University's first black president, joined his opinions with the others that "eugenic discrimination" was necessary for blacks as a means to reproduce its well bred stock thoughtfully and with concern for the betterment of the Negro race.

The second focus of the Negro Project was gaining the support of Black preachers. Black ministers were to be trained so that they could influence their congregations to execute wise family planning. It is difficult to prove whether or not these clinics sought to eliminate the black population, but it safe to say the clinics advanced eugenic ideals. Whatever the case, Sanger wrote a letter to Dr. Clarence J. Gamble, a member of the Federations board that their mission must be safeguarded. They wanted to be careful that the word did not get out that they wanted to "exterminate" the Negro population. If it did, then the Black minister would be the best person to "straighten out" that idea.<sup>161</sup> Black doctors and black ministers, partnered with black field workers and black nurses and were the faces of the negative eugenically focused mission.

What Sanger and others missed was that many Black women were already practicing birth

control when the birth control movement began. Black women in the South used folk methods of contraception and also abortion.<sup>162</sup> The Black press was a source of abundant birth control methods, drug stores in black communities sold various types of ‘preventative devices’, and a great number of abortions were being performed by “back ally” practioners , doctors, and quacks.<sup>163</sup> As a result, the disparity between birth rates for black and white women nearly disappeared. Demographers with a racist lens attributed the declining rates to black women to higher rates of venereal disease, tuberculosis, rickets, and other infections. Data shows that fertility rates declined because black couples were using a variety of contraceptive methods.<sup>164</sup>

#### **v. The Development of the Birth Control Pill**

In 1950 Margaret Sanger met with Gregory Goodwin Pincus to develop a biological method for birth control without the participation of a man. It was to be a pill for a woman to swallow every morning with ease. The method should be something that could leave sexual activity spontaneous and without sacrifice of pleasure; it should allow her to have children when she was ready to and did not take messy preparation and could be used by any woman any where. She had met with several scientists who refused her request or thought what she wanted was impossible to develop. Pincus said he could do it and set out to develop the birth control pill to replace the clumsy methods of contraception in the United Sates and the world.<sup>165</sup>

So far birth control methods were limited to individual interactions. Developing what Sanger asked for would be a huge undertaking. Scientists were just beginning to understand the inner workings of the body and the mechanism of how pregnancy occurs were discovered. There had already been a few experiments with progesterone, but proper dosages needed to be established and a delivery method developed. Sanger’s quest was a complicated layer of women’s issues and Pincus’ was a quest for significance in the scientific world. Young women at that time

feared becoming pregnant, but Sanger, at seventy-one years old, still sought population control, family planning, sexual liberation, racial uplift.<sup>166</sup>

There were vast differences of opinions about the use of contraceptives in the black community. Upper-class prominent black voices approved birth control measures for reasons of racial uplift.<sup>167</sup> Others, such as Marcus Garvey, founder of the Universal Negro Improvement Association, a nationalist organization, condemned birth control as attempting to interfere with the course of nature in accordance with the purpose of God.<sup>168</sup> Debates between leaders, the press, the clergy, and Sanger's organization continued for decades. Public lectures, several art forms, and sermons reflected the conflict between support for birth control measures to be disseminated or anti-birth control measures to be enforced.<sup>169</sup> As Black women continued to be in charge of their own procreation in secret, the debate about its need and its use continued in public.

The Harlem clinic boasted serving two thousand patients in its inaugural year, however, it was discovered that half of these patients were white women referred from the downtown clinic.<sup>170</sup> The Harlem clinic offered the same services as the main branch, which included gynecological examinations, contraceptive information, and diaphragms. But the Harlem clinic, however, had a separate advisory board in order to gain trust and respectability within the black community. The greatest obstacle to overcome was the growing suspicion among the black female potential clients that the clinic was there to promote racial suicide rather than racial betterment. Sanger believed that it was imperative to use black professionals to gain the trust of those who lived in that community. Community activism was also a means to spread this message, but the distrust persisted. As a result, independent, privately funded clinics were formed all over the country.<sup>171</sup>

The mounting suspicion grew for several reasons. Black activists believed that race progress depended on the numerical proliferation of the race and birth control would hasten the extinction of the race. Others feared that white doctors would conduct medical experiments on them without their knowledge or consent when utilizing the main clinics resources. With these suspicions in mind, Sanger's organization hired a black physician, two black nurses, and a black social worker for the neighborhood clinic.<sup>172</sup> The use of this clinic increased after these measures were taken, but it did not solve the race issue. Black personnel were used to entice black patients but were not given leadership roles, were not invited in national planning sessions, and they had no positions of decision making authority to manage the clinic in Harlem. Consequently, when fundraising became difficult and resources few to continue to support the Harlem clinic, the management was turned over to the Mother's Health Centers of the New York Committee in 1935 and the clinic closed one year later.<sup>173</sup>

On May 9, 1960 the FDA approved the birth control pill. It was ten years after the initial conversation between Sanger and Pincus. The pill was revolutionary and had been the culmination of Sanger's original request.<sup>174</sup> Enovid was the name of the pill marketed to women that imitated nature to prevent pregnancy. But the pill meant different things to white women than it did to black women. For women of color, the pill was made available free or cheaply through government sponsored programs distributed through planned Parenthood clinics. The specter of genocide still overshadowed the efforts to distribute the pill. The black leadership mentioned earlier had switched their opinions to also believe that the clinics were in their neighborhoods to erase the black presence in America.<sup>175</sup> At a 1967 Black Power Conference held in Newark, New Jersey, a resolution was passed that labeled the distribution of birth control methods in low income and black neighborhoods as "black genocide." Negative

eugenic ideals could not be separated from whites intentions to eliminate the black population and it developed into an ingrained idea in the minds of black citizens. After much debate, it was decided that the presence of the Planned Parenthood clinics in black neighborhoods could not constitute genocide because black women widely embraced contraceptive use.

The United Nations General Assembly of 1948, Resolution 260 (III) defines genocide as the act of destroying with intent, in whole or in part, a national, ethnical, racial or religious group by killing members of the group; causing serious bodily or mental harm to the group, deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group, and forcibly transferring children of the group to another group...<sup>176</sup> Many black people argued the birth control movement was in fact a genocidal movement that had already been successful in greatly reducing the American Indian population. Dr. Charles Bacon, M.D. stated that the “Black Belt” will be defined as a negro reservation similar to the Indian reservations. He further stated, “...the plan has worked so well in its treatment of the Indian question until it has practically eliminated the question with the race.”<sup>177</sup> The negative eugenic stance had consistently targeted blacks for decades, so by 1972, forty percent of blacks surveyed believed that birth control clinics were a mere front for eugenic practices through abortion clinics, birth control programs, and sterilization programs run by whites.<sup>178</sup>

#### **D. Forced Sterilization**

Sanger’s success in initiating the search for a convenient biologic for preventing births cannot be described as a simply means of obtaining sexual freedom for women. Her activism also focused on intelligent breeding and she believed the only way to achieve the goal of eliminating the prolific fecundity of the black race was through negative eugenics. Positive eugenics in her

words, would lose the interest of those wealthy whites who felt they had enough children. It was imperative and of national importance that a more permanent solution to end the social disease created by blacks and immigrants be utilized. Sterilization laws formed and proliferated across the United States in spite of the fact that genetic testing failed to root out unwanted genes and that eugenic measures were immoral. Negative eugenics supported by genetic science rendered racial purging goals scientifically invalid, yet they persisted.<sup>179</sup>

Sanger often told the story of a dysgenic black family that proved her point. She details the history of the family of a young black girl housed at the Kansas State Industrial Farm because of vagrancy. She was twenty years old, born to feeble minded parents and considered feeble minded herself. Her parents gave birth to sixteen live children and experienced one miscarriage. All of the children ended up in prison or state institutions for theft, vagrancy, or prostitution. Lawmakers cited where they lived – the “thickly populated Negro district, which was considered the “headquarters for the criminal element.” Rather than discuss the policies that placed the family and many like it into the living conditions they were forced to endure, the family was described as “dysfunctional” and as a representative of the problem and fecundity of the feeble minded.<sup>180</sup>

Mass sterilization began as a crime deterrent directed toward men. Physicians were performing eugenic vasectomies led by Dr. Harry C. Sharp. His most important medical journal article served as a eugenic sterilization manifesto published on March 8, 1902. He produced his report before knowing of the work of Mendel and Davenport, but agreed that degenerate traits were hereditary.<sup>181</sup> Dr. Sharp’s work gave reason for the continued sterilization programs for three reasons: it highlighted the benefits of vasectomies and gave reason for other physicians to do the same. Second, his paper organized other physicians to lobby for sterilization laws. Third,

it documented the fact that mass sterilizations had already occurred on institutionalized individuals without consent.<sup>182</sup> In a presentation to the National Prison Association, Sharp reportedly sterilized 223 prisoners as a clear duty to the future of the white race to ensure that the diseased and the defective do not multiply.<sup>183</sup> He identified these people as habitual criminals and worked to eliminate the possibility of these criminals reproducing. Ultimately, he convinced many of his colleagues of the efficacy of this surgical solution.

On April 9, 1907 J. Frank Hanly, governor of Indiana, signed a law authorizing the compulsory sterilization of any confirmed criminal, idiot, rapist, or imbecile in a state institution who was deemed “unimprovable” by an appointed panel of physicians.<sup>184</sup> From 1907 to 1913, sixteen states passed sterilization bills. Most eugenicists at the time were utterly convinced that sterilization supported by genetic science was the only social weapon available to combat social ills caused by the socially and physically defective. By 1932, twenty-seven states legally practiced negative eugenic human sterilization.<sup>185</sup>

There were many problems discovered with the early testing and use of the pill. It was discovered that the high level of hormones were harmful and deadly to black women. Those who suffered from hypertension and for those who smoked, the pill carried greater risks for stroke. If a dose was forgotten, the efficacy of the pill was lowered. The invention of the intrauterine device (IUD) also proved disastrous for black women. Unsure of how the device actually worked, it was believed to irritate the lining of the uterus so a fertilized egg could not be implanted. For black women who suffered exponentially with fibroid tumors, endometriosis, and cancer, an irritated lining was unhealthy. Eventually the IUD was taken off the market when it was associated with causing a deadly infection from bacteria breeding on the braided string to help with the removal of the device. These methods were temporary methods; eugenicists wanted

permanent methods to eliminate the unfit from American society. With *Buck v. Bell*, in 1927, the way was made for the legal compulsory sterilization of unfit individuals. The unfit were defined as the mentally ill, the feeble minded, those on welfare, and those with genetic defects. By 1941, 70,000 to 100,000 had been sterilized.<sup>186</sup>

Most sterilizations of black women occurred outside of the legal means and in violation of medical ethics. One example is that of Mary Alice and Minnie Relf, twelve and fourteen years old sisters respectively. The girls with their mother and father received relief after leaving work as field hands and hoping for more opportunity in the city of Montgomery, Alabama. A Montgomery Community Action Agency nurse took the girls to the local hospital for a federally funded contraceptive shot. The girl's parents, who were illiterate affixed their "X"s on the consent form had no idea they were giving the hospital permission to surgically sterilize both girls. When the Atlanta Southern Poverty Law Center filed a class action suit to stop the use of federal funds to perform involuntary sterilizations, they discovered 100,000 to 150,000 women had been sterilized without their knowledge, half of whom were black.<sup>187</sup> In 2006, one-third of all adult Mississippi women and 57% of all Mississippi women sixty-five and older had been the victims of this practice.<sup>188</sup>

The "Mississippi Appendectomy" came to be the code word written on the charts of Black women to signal they actually had a sterilization procedure. Sometimes the women underwent the removal of her uterus while unconscious and without her consent. Other procedures including snipping the fallopian tubes while undergoing a supposed examination. "Mississippi" denoted the practice in the South, but the North also routinely practiced sterilization procedures. For years doctors at hospitals in New York and Boston cavalierly sterilized black women and Puerto Rican patients to train their residents.<sup>189</sup> Students at Boston City Hospital and Columbia



University complained about the unethical practices in which they were expected to participate. They complained about falsified medical records, the coercion of patient signatures, and performing experimental procedures that were unnecessary for the patient's health.<sup>190</sup>

Black women who trusted their obstetricians were being sterilized during the birthing procedure. Discovering this practice caused a deeply imbedded distrust between black women and doctors. These physicians had lied to their patients, forged consent forms, and misrepresented sterilization operations as "appendectomies" or "gall bladder removals." Because of this, we will never know how many women have actually been sterilized in this country. This fact is compounded by an inability to distinguish between medically justified hysterectomies from those performed without the patients knowledge. In Fannie Lou Hamer's hometown, at least 60% of the women there had undergone the sterilization without being informed.<sup>191</sup> One particularly successful tactic was to offer tubal ligations to women while in labor. Many were threatened with the removal of welfare benefits if they did not consent to sterilization. Some, like Marietta Williams and Dorothy Waters, were coerced into submitting to sterilization before the doctors would agree to deliver their babies or perform an abortion.<sup>192</sup>

The American idea of who was unfit and who was undesirable included black women, Indian women, and Latino women. Negative eugenics were practiced among vulnerable populations as a means of permanently exterminating the unfit from American society. While these women were being coerced into sterilizations, or unwittingly the recipients of these operations, white middle-class women found it impossible to find doctors who would sterilize them. Hospitals followed the "120 formula" prescribed by the American College of Obstetricians and Gynecologists. If a woman's age multiplied by the number of children she had totaled 120, only then was she a candidate for sterilization. She would also need the endorsement of two doctors

and a psychiatrist.<sup>193</sup> According to eugenic ideals, a white middle-class woman should want to have children for the betterment of the race and the protection of white supremacy.

### **E. Conclusion**

The Reproductive Justice Movement claims to be a correctional paradigm shift from pro-abortion rights to a more holistic approach for the health and welfare of women of color in the United States. Its three core beliefs are that every woman should have the right to decide when she will give birth and under what conditions; parent the children she already has in safety and with social supports without fear of violence, and decide for herself the options of preventing or ending a pregnancy. The organized group of women of color fight against what they have defined as “reproductive oppression” that is a means of selectively controlling the destiny of entire communities through the bodies of women as a form of negative eugenics.<sup>194</sup> They feel certain that practiced reproductive oppression in the United States meets the standard of genocide as defined by the United Nations Convention on the Prevention and Punishment of the Crime of Genocide.<sup>195</sup> Certainly, the history of compulsory sterilization practices bolstered by negative eugenic practices supports their theory.

Institutional support for eugenic theory was widespread. Politics, medicine, social services, and state law and constitutional approved sterilization as a means of purifying American stock. Sterilization was a developed practice based on the partnering of eugenic theory and genetic science. Mendelian principles gave credence to the heritability of defective genes. The racial component of negative eugenics gave activists, politicians, and lawmakers the legal permission to prevent undesirable people the right to procreate. Those considered unfit for society was expanded from those suffering with mental illness to those who have committed crimes, those considered imbecilic, people with epilepsy, and those considered feeble minded. Feeble minded

was expanded to include poor women, black women, and other women of color. There is much evidence to support the direction that the Reproductive Justice Movement has taken.

The right to control one's own body has never been granted to black women since the inception of American slavery. The economic enterprise of slavery forced black women into motherhood at the insistence of the slave owner. Once emancipated, black women were considered not capable of moral mothering. While compulsory vasectomy and sterilization procedures were lawful means of stopping procreation for those imprisoned or in state run facilities, the overwhelming majority of those undergoing these procedures were black. It was not enough: sterilization needed to expand in order to reduce the racial disparity outside of institutions and protect the white race within the general population.

Being worthy of American citizenship meant being born of well bred, white middle to upper-class families, which were not choosing to breed as quickly as the culture would like. Positive eugenics targeted these families by making motherhood respectable, desirable, and a responsibility for the continued supremacy of the white race. Positive eugenics did not achieve its goals, as well-to-do whites refused to have more children than they wanted and did not value this plan as a way of sustaining the balance of power of whites. The better idea was to prevent and eliminate the birth rate among blacks.

The development of contraceptives revolutionized family planning and family development. The distribution of these contraceptives by eugenically based groups such as the American Birth Control League and the American Eugenics Society, was the result of careful planning. The clinics were located in low income neighborhoods to push the goals of negative eugenics. The methodology employed was manipulative in that white patrons were allowed to utilize services in black neighborhoods for anonymity purposes, and black facilities employed black "faces" to

cover up the true mission of the family planning clinics. With the dual purpose of sexual liberation for white women and the prevention of birth for black women, a more convenient method of birth prevention was established. With the presence of the birth control pill, expedience was granted to white women, but fears of genocide were granted to black women. The community suspected eugenic elimination of the potential births of black babies, and the dogged belief that criminality was a hereditary trait that would take such measures to achieve resided solely in places where black people resided.

Concurrently, while negative eugenic ideals gained scientific credence from genetics, temporary solutions to compulsory motherhood was developed, a permanent solution was created to address social ills. Sterilization had been performed for years in state run institutions as a crime deterrent. Laws regulated the practice of compulsory sterilizations under these conditions, however, physicians who were also eugenicists performed sterilization procedures on black women who were neither feeble minded nor criminals. Often hidden by code words on surgical charts, women who had undergone such surgeries were listed as having gall bladder removals, appendectomies, or in the South, “Mississippi Appendectomies.” The comprehensive use of sterilization to purify the American white race is well documented and cannot be separated from its eugenic underpinnings. The practice of sterilization outside of the law had its support from black pastors and leaders which caused a duplicitous standpoint for which black women had to wade through. To that end, the Reproductive Justice Movement makes its claim to advance the health and well being from a class of women who had no safety or control over their own bodies.

While this movement makes great claims about offering a more comprehensive approach to the care and dignity of women of color, its health care claims must be ethically evaluated. From

a health care standpoint, its corrective claims must adhere to ethical principles established for the protection of patients and the value of all human beings. Women of color must be able to trust the approach proffered by the Movement's leaders, which also help to eliminate the continued health disparities found in this population of women. The ethical principles and values as set forth in bioethical standards are the means by which a measure of assurance can provide women of color with security as she seeks reproductive control over her own body.

Black women have lived with a cultivated fear that resided deep in spirit because of their own womb. The American psyche has blamed her womb as a toxic extension of her history, her personhood, and her inheritance of bad genes damaged by her race and continued through her procreation. It was far more than the color of her skin that was problematic; it was the power over her being and a backlash of white rage that followed her off the plantation. The history of forced sterilization traces the African American womb as the battleground for American supremacy and how science mixed with the public resolve helped to eliminate the promise her womb held.

## NOTES

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<sup>4</sup> Francis Galton, *English Men of Science: Their Nature and Nurture* (London: Macmillan, 1874)

<sup>5</sup> Daniel J. Kevles, *In the Name of eugenics: Genetics ad the Uses of Human Heredity*" (Cambridge: Harvard University Press, 1985): xiii.

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<sup>6</sup> Diane B. Paul and Hamish G. Spencer, “The Hidden Science of Eugenics” *NATURE*, Vol. 375 (April 1995): 302.

<sup>7</sup> David T. Cartwright, *Forces of Habit: Drugs and the Making of the Modern World* (Cambridge: Harvard University Press, 2001): 89.

<sup>8</sup> *Ibid.*, 86.

<sup>9</sup> Daniel J. Kevles, *In the Name of eugenics: Genetics and the Uses of Human Heredity* (Cambridge: Harvard University Press, 1985): xiii.

<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.*; xiv.

<sup>12</sup> Harry Bruinius, *Better for All the World: The Secret History of Forced Sterilization and America's Quest for Racial Purity* (New York: Vintage Books, 2007): 82

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<sup>14</sup> *Ibid.*; 114.

<sup>15</sup> *Ibid.*

<sup>16</sup> Michael Dorsey, “The New Eugenics” *World Watch* July/Aug Vol. 15 No 4 (2002): 21-43

<sup>17</sup> Harriet A. Washington, *Medical Apartheid: The Dark History of Medical Experimentation on Black Americans from Colonial Times to the Present* (New York: Doubleday Broadway Publishing Group, 2006)

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- <sup>38</sup> Ibid.; 37.
- <sup>39</sup> Ibid.; 39-40.
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## **CHAPTER FOUR: The Ethical Conflicts Disclosed**

The Reproductive Justice Movement has made strident claims about the need to formulate a more comprehensive health care plan for women of color. The movement has highlighted egregious health care practices of the past, but rather than disregard the health care system in total, it seeks to reform it in a way that is beneficial, helpful, and ethical. Before the ethics of the proposed reproductive, holistic, health care plan can be evaluated, the ethical dilemmas must be determined, faced, and discussed. This chapter will focus on the ethical dilemmas revealed and prepare the way forward for the movement to be evaluated according to health care ethics principles. This chapter will focus primarily on the ethical conflict created by the participation of the medical community<sup>1</sup>; the duplicitous actions of prominent African American leaders<sup>2</sup>, and how United States law functioned in compulsory sterilization. This chapter will also discuss evaluating the consequences of actions taken from an individual view or a community benefits view, and if those consequences can be deemed moral or immoral within the racialized American context. Choices made and actions pursued during the early to mid twentieth century produced a combination of powerful forces that were inherently dangerous to young women of color, poor women, and women diagnosed with mental illness<sup>3,4</sup>.

### **A. Do No Harm and the Hippocratic Oath**

Some would argue that the rudimentary elements of the Hippocratic oath are being consciously compromised in light of modern medicine.<sup>5</sup> But at the turn of the twentieth century, racism framed the American context and skewed scientific objectivity, and thus, skewed the administering of medicine. Traditionally, the physician/patient relationship was rooted in the Hippocratic Oath and was an extreme version of paternalism.<sup>6</sup> The normative principles contained within the Hippocratic ethic are meant to be a combination of humanistic concern

coupled with practical wisdom as the physician functions within a given society.<sup>7</sup> The ethic served to guide the doctor in service to the community and to the individual patient. In short, the ethic describes the relationship between the student and the teacher; advises to never harm the patient; maintain confidentiality; disallows abortion, euthanasia, and the use of the knife. It also forbids sexual encounters with the women in the household of the sick and it makes the physician a member of the select brotherhood dedicated to the care of the infirm, with his reward being “a good reputation.”<sup>8</sup> The ethics of the profession as a whole is to be guarded by the moral behavior of each individual physician and there is no corporate responsibility for the ethical behavior of individual doctors.<sup>9</sup>

There are some missing dimensions to the Hippocratic Oath in its application today. Historically, medical ethics were obscured by strict adherence in its function. The Oath is a mixture of high ideals, common sense, and practical wisdom, but depends largely on individual morals within the society of physicians.<sup>10</sup> While the ethic guided the doctor/patient relationship, other factors affected the type of care provided and the priority of the physician’s resources. The missing dimension to focus on here is the tension between individual ethics and social ethics in regards to analyzing compulsory sterilizations and the ethic to “do no harm.” The question remains how moral and ethical physician care could include sterilization, particularly when loosely defining feeble mindedness and when patients presented no physical condition that required such surgery.

The very word “ethics” carries a variety of meanings based on context and profession. As understood by Aristotle, ethics is the knowledge of the “Supreme Good” which guides the conduct of life.<sup>11</sup> Conventional norms and professional standards can guide the ethical behavior of persons either toward the pursuit of excellence or normative professional moral behavior.<sup>12</sup> In

the field of medicine, the industry standards are called into question in their application. Do the normative standards pertain to the actual behavior of individual doctors or to the rules that doctors ought to follow in their relationships to patients and colleagues? Should doctors be expected to obey social norms of common morality or should the expectations of a doctor's behavior conform to a set of rules authored by the profession unknown to the public? Who then will hold them accountable to unethical practices and how can the public find safety and trust in their advice, treatment plans, research, and the practice of medicine? Are there some industry standards that allowed doctors to knowingly sterilize thousands of women for which the practice was ever deemed "unethical?"

Those who have reflected on ethics have delineated several consistent themes. These themes have been categorized into three main domains of ethical and moral behavior: decorum, deontology, and political ethics.<sup>13</sup> Decorum can include human virtues such as politeness, courage, and respectfulness. It describes outward behaviors that reflect inner virtues. Deontology is the part of morality that guides what one ought to do and finds its manifestation in rules and principles. Political ethics extends beyond the individual to the community in which the individual lives and operates. It is the working of justice outward from the personal morality that seeks the welfare of the public.<sup>14</sup>

It is simple enough to extend these three dimensions to the field of medicine. Physicians have certain duties toward others that includes patients but also the community at large and to fellow physicians. The manner in which medicine is administered is through the comportment of the individual physician whose character and manner should be a display of professionalism mixed with knowledge and compassion. Confidentiality and trustworthiness are elements of decorum that bleed into deontology but are affected by cultural morality blended with personal morality.

The political ethic in the realm of medicine is a bit more complicated. The Hippocratic ethic has no reference to physicians having a responsibility to serve all persons in need of medical attention. Research shows that physicians served citizens; their assistants tended to slaves.<sup>15</sup> The Oath makes no distinction between classes of people, specifically between slaves and free men.<sup>16</sup> It is culture that dictated who was treated and who the client actually was. In the case of slavery, the client was the slave owner and so the responsibility of dedicated service was to owner versus the sick slave. Whatever the will of the owner, as expressed to the physician, was the directive to be followed, regardless of the condition or level of sickness apparent in the slave. The political ethic was highlighting this fact and then determines whether or not the physician was indeed following the mandated ethic proscribed by the profession or operating outside of the established principles.

Of greatest ethical conflict is the theory of “do no harm.” This theory has often been described as the basic principle of the Hippocratic ethic in the practice of a physician toward the patient.<sup>17</sup> The practice of medicine has moral implications. The physician is to use his or her skills in order to affect change for the better of the patient, but those same skills can be used to debilitate a patient. The mandate to “do no harm” is intended to call the physician to consider the use of their skills as a ‘moral enterprise’.<sup>18,19</sup> In comparison and contrast with the oath, an ethical dilemma becomes apparent when physicians practiced sterilizations, which were detrimental to the individual patient yet good for society based on eugenic premises within the context of racism.

To do no harm is considered one of the primary principle of ethics in the practice of medicine, and yet many are unaware of its broad prospect and varied meanings.<sup>20</sup> While it is attributed to the Hippocratic ethic, it really is not. Expressed in the Oath is a similar ethic but actually says I

will use medical treatment to help the sick but will never use it to injure or wrong them.<sup>21</sup> While the no harm ethic is not in the Oath, it does appear in the literature entitled “The Epidemics”, which are clinical observations made by Greek physicians during the “epidemia” or rounds.<sup>22</sup> As the doctors traveled to islands and various cities they were to ascribe to a particular way of documenting their patients conditions to capture their reflections and observations: (a) Declare the past; (b) Diagnose the present; (c) Foretell the future; (d) To help or at least, do no harm.<sup>23</sup>

Medicine performed as a moral enterprise uses all form of treatment as a means to affect a change for the better physical condition of a patient. The same skills used to improve a person’s condition can also be used to bring about a defective state in the patient from a healthy position.<sup>24</sup> Such is the case of the performance of sterilizations on healthy women. Considering the moral enterprise of medicine, is the dictum to do no harm directed at a particular patient or at the physician to uphold societal values? In the case of sterilizations, it was believed that the country’s intelligence, financial welfare, and moral standing was constantly at risk by the preponderance of children born according to the principles of negative eugenic ideals. Medical skills are assumed to be used for patient benefit and not to solve a societal issue through surgical means. The Hippocratic authors may have viewed abortion very differently from physicians centuries later and an examination of how sterilization fit into the rubric given these historic and traditional understandings of medical ethics at a given time.

American societal norms deemed that black mothers produced criminals<sup>25</sup>; mentally deficient women should not reproduce because of the lowering of intelligence measures of the U.S. population<sup>26</sup>, and poor women were burdens of society<sup>27</sup>. In some cases women of color fit all three categories<sup>28</sup>. Should the physicians have protected the autonomous reproductive rights of women or were the physicians right to do what they thought was for the good of the country? To

whom should their “duty” have been directed? The Hippocratic authors may have viewed abortion very differently from physicians centuries later and an examination of how sterilization fit into the rubric given these historic and traditional understandings of medical ethics at a given time.

It is suggested that medicine as a moral enterprise means that it should only be guided by the needs of the patient. All other calls to duty must be secondary. The doctor should be so strongly motivated by the needs of the patient so that the greatest good can be accomplished. “Do no harm”: would suggest here that the physician only acts for the benefit of the patient, focusing on the wellbeing of the patient versus the wellbeing of a community or society at large.<sup>29</sup> The ethics of “care” by the etymology of the word is to be “troubled by another’s trouble.” The doctor/patient relationship is activated by the illness and sets in motion the moral act of initiating activities designed to affect the well being of the sick one. To do anything else violates the moral enterprise and affects the meaning of “do no harm” into “do no mischief.”<sup>30</sup>

Another basic principle of medical ethics within the context of the Hippocratic oath is to exercise “due care.”<sup>31</sup> A physician is expected to continuously improve their medical skill.<sup>32,33</sup> If we continue with the premise that medicine is a moral enterprise, then care taken by the physician would also mean that physicians are applying the best standard of care with the goal of benefitting the patient, both by what is done and by what is not done.<sup>34</sup> Erik Erikson advocates the Golden Rule as the baseline for the performance of medical art in relationship to any patient. According to his personal ethic embodied within the profession, one should do or not do what one wishes to have done or not done to oneself.<sup>35</sup> According to Erikson, the Hippocratic Oath subordinates all medical method to a humanistic ethic, in which the welfare of the patient in his/her care receives not only what the profession calls for, but the individual doctor’s guiding

value.<sup>36</sup> Aquinas wrote that good is to be done and promoted: evil is to be shunned and avoided.<sup>37</sup> The Golden Rule as translated into the arena of medicine further defines its practice as a moral undertaking for the benefit and welfare of the sick. It further calls into question the actions of physicians who performed a surgical act against women of color, enslaved women, and poor women that did not improve a sick physical condition but benefitted their personal opinions shaped by societal factors. In the case of compulsory sterilizations, the factor of racism, negative eugenics, and science formed a different ethic that redefined a physician's deontology: the community of the majority overrode the traditional Hippocratic ethic.

In the case of research, experimentations of all sorts were conducted on the poor and people of color to enhance the skills of doctors. Without proper consent and full disclosure, people/patients were subjected to surgical procedures and experimentations of medicines that were then refined for the benefit of others in society.<sup>38</sup> Dr. J. Marion Sims perfected his surgical technique on slave women without benefit of anesthesia, but whose perfection benefitted only wealthy white women.<sup>39</sup> The ethical dilemma is that while benefiting one faction of society, great harm was caused to a different faction of society. The history of experimentation includes an attitude toward Blacks that brashly characterized them as "bodies for experimentation and dissection." Dr. Thomas Murrell in the 1940's suggested that the future of the Negro lies more in the research lab than in schools.<sup>40</sup> Delivering a speech at Tulane Medical School, Dr. Harry Bailey said to the crowd that it was cheaper to use "niggers" than cats because they were everywhere and cheap experimental animals.<sup>41</sup>

The ethical breeches found in experimentation and research with human subjects can be evaluated within the Hippocratic ethic as a means to an end in the case of due care and do no harm. Due care requires statistics and other pertinent information be collected in order to match

therapy to disease. Other important factors in this matching is the doctor's clinical experience and intuition to evaluate the risk versus the benefit.<sup>42</sup> When the approach to research with human subjects involves a dimorphic and racial belief, the subject is most at risk for abuse. "Due care" is focused upon those whom will benefit from the research while negligence describes the care given to the human subject.

The Oath guides the physician to guard against the dehumanization of patients, research subjects, or anyone else within the scope of the physician's care.<sup>43</sup> The doctor's views on suffering, race, and poverty can be vastly different from that of the patient. The views of the doctor cannot be defined as "the good" to override the values and the needs of the patient. Individual ethics pitted against social ethics are not to overcome the responsibility toward the individual patient in need. The racialized social idea of what Black people represented through negative eugenics meant the deontological focus was on the country's needs and not on the sterilized patient at all. The unnecessary procedures were harmful to the patient but represented a social good. The ethical conflict of "do no harm" appears to be violated in deference to a social value that caused the Hippocratic ethic to be suspended, or at the very least, repurposed.

The presence of knowledge is thought to be virtuous: but the attainment of knowledge can be violent.<sup>44</sup> A return to a discussion of J. Marion Sims is warranted here. Sims is representative of the philosophical approach to the black body that highlighted his patriarchal regard for women's bodies in general. They were so similar in form that the lowest form of female could represent the highest social order of female. Therefore, practicing and experimenting on enslaved black women would produce the most favorable results for white elite women. The racial implication of difference was a social construct not an actual physical construct.<sup>45</sup> In essence, the black female body was a throw away, but served in form as an adequate representation of the



surgically repairable maladies of all women: specifically white women.

Sims becomes a standard that not only represents what occurred on plantations he served, but in the mindset of physics that represented a cultural norm that allowed them to reinterpret their work and the ethical standard of “do no harm.” There is an embedded deception of the concept of essentialism in the way these doctors performed: science and medicine were to observe the expression of difference, instead they coerced women into categories where violence was tolerated, expected, and performed depending on the category. Black women were not human therefore incapable of pain. It was fine to perform surgeries in sensitive areas of the body without regard to modesty. Social status dictated how a woman was treated and with what level of care. Gendered categories of human beings were ascribed different meaning according to their shades of flesh, national origin, or legal status.<sup>46</sup>

Black enslaved women were relegated to ungendered statuses. This fact existed as a utilitarian social construct. Enslaved women produced wealth through manual labor, reproducing the labor force through childbearing, and performed the function of child care for the plantation mistress.<sup>47</sup> For Sims and other physicians, the female enslaved woman was an object through which knowledge was acquired but was not the beneficiary or the agent of that knowledge. The examination and use of the black female body produced a negative use of knowledge and maintained the existence of domination over the black community.

It should also be stated that this control and domination over freed Blacks included the children borne to them. As property for slave owners or purchasers of domestic help, children and infants were also subjected to the cruelties of experimental medical treatment by Sims and others. Sims wanted to study the movement of the skull bones of infants during delivery, so he purchased the infants as needed and with a shoemaker’s awl, he tried to pry their bones back into

place, again without any form of anesthesia, blaming nurses and mothers for the suffering of these children.<sup>48</sup> Owning their bodies in life, gave him access to their bodies in death. He often performed autopsies on those whom he “owned” furthering his studies against the cultural norm of respecting the dead and the African customs of burial and modesty. He has been given the nick name “Father Butcher”<sup>49</sup> but is yet lauded as the “Father of Modern Gynecology.”<sup>50</sup>

The contractual agreement struck between Sims and the slave masters he worked for infused that relationship with a sense of ownership over the body and personhood of an enslaved woman from a science lens that should have produced a different ethical stance. Rather than consider the enslaved woman as a patient, she was merely a commodity that increased the wealth of both entities and provided a perpetual source of medical experimental material for the one and a labor force for the other. The act of owning the body calibrated the negative effects of a lack of moral approach to research that diminished a sense of care and respect for the treatment of the enslaved woman while producing useful results in treating abnormalities within the arena of reproduction.

### **B. Ethical Conflicts and the Law**

The Thirteenth Amendment to the United States Constitution abolished slavery and involuntary servitude but with one crucial exception: *except as a punishment for a crime*. Through this loophole, the criminalization of Black people revived slavery in a new form and kept Blacks from participating in the economic rebirth of the country. The economic institution of slavery kept Southern plantation owners extremely wealthy, but the Reconstruction Era would give rise to a new economy in the United States. Freeing the slaves meant a reduction in labor necessary to maintain plantation wealth, but other unethical and indecent forms of economic injustice, such as sharecropping. Sharecropping was particularly hard on women, as the hard labor forced upon them was coupled with childrearing. Women such as Fannie Lou Hamer were

subjected to abuses by physicians, who sterilized them when given the opportunity.<sup>51</sup>

In 1865, Congress passed the Civil Rights Act of 1866 guaranteeing citizenship without regard to race, the condition of slavery, or color. This was an assault on the Black Codes, which were a set of laws passed by Southern States to limit the freedom of freed slaves and force them to work low wage hard labors jobs. Black Codes were a part of Southern whites insistence on domination and control of black people even after emancipation. Northern states such as Ohio, Illinois, Michigan, New York, and Indiana used Black Codes to discourage Blacks from settling in those states. The Black Codes denied voting rights, equal rights, the right to public education, and the right to equal treatment under the law. Free Blacks presented a challenge to white supremacy and the law was used to ensure power over the newly freed community of ex-slaves.

Black Codes severely restricted the life and freedoms of freed slaves. There were laws against assembling for worship, bear arms, learn to read and write, free speech, and testify in court against a white person.<sup>52</sup> One of the more strident laws was around vagrancy. States would convict men who did not work, could not find work, or worked at jobs white men did not recognize as prudent. Vagrancy laws led to a system called “convict leasing”, in which states leased out prisoners as hired forced labor. This incentivized the arrest of black men and left black women vulnerable. The women often found domestic work in the household of white women, which ended up being a different form of slavery.<sup>53</sup> The Thirteenth Amendment’s loophole actually enforced the critical mass of imprisoned and reformed enslavement of Black and affected the economic condition for Black women.

The Fourteenth Amendment to the United States Constitution was proposed to address the issue of former slaves during the Reconstruction Era after the American Civil War. The assassination of President Lincoln left President Andrew Johnson to preside over the

complexities of returning Confederate States back into the Union and establishing former slaves as free and equal citizens. The first section of the amendment includes several clauses: the Equal Protection, Citizenship, Due Process, and Privileges or Immunities clauses. The Fourteenth Amendment was adopted on July 9, 1868 during a hotly contested debate led by the states of the Confederacy as they were forced to ratify the amendment in order to have representation in Congress.

The most effective tool of eugenic ideology was not medicine; it was the law.<sup>54</sup> In the years between 1900 and 1970, 100 statutes proposed by eugenicists had been adopted in state legislatures.<sup>55</sup> Many women, such as those in Mississippi and North Carolina, were sterilized without their consent.<sup>56</sup> In the United States, by the year 1941, close to 100,000 poor, mentally challenged, and black women had been forcibly sterilized.<sup>57</sup> The infamous 1927 court decision rendered in the case of *Buck v. Bell*, Justice Oliver Wendell Holmes made forced sterilizations compulsory for those who were considered “imbecilic.”<sup>58</sup> African American women were unfortunately largely targeted by surgical procedures fed by eugenic publications, societies, and racist ideology. Combined with a public health alarming spin<sup>59</sup>, physicians proved to be the most ardent advocates of the eugenic movement that demanded laws to reflect eugenic ideals and encouraged medical school to include eugenics as a part of the curriculum.<sup>60,61</sup> Two other key pieces of legislation based on eugenic ideals are *Skinner v. Oklahoma* (316 U.S. 535, 1945), which argued against forcibly sterilization repeat criminals, and *Loving v. Virginia* (388 U.S.1967) which sought to overturn the prohibition of interracial marriages as a means to control reproduction.

Each American president from Theodore Roosevelt to Herbert Hoover either publically endorsed eugenic laws, was a member of a eugenics society, or signed eugenic legislation

without public opposition.<sup>62</sup> Every piece of legislature was established to eliminate supposed inheritable defects such as crime, poverty, or mental disorder. Physicians were the most avid eugenics advocates who campaigned for laws that reflected eugenic theory and defended its basic tenets.<sup>63</sup> The physicians adopted the language of public health law, characterizing unrestrained procreation among the “socially diseased” as an epidemic. Eventually, the Supreme Court heard three cases that challenged laws written by self-proclaimed eugenicists.<sup>64</sup> Harry Laughlin, who named dysgenic groups as “socially inadequate”, underscored three major eugenic precepts:

- (1) the socially inadequate’s qualities are genetically transmitted in predictable patterns
- (2) the human race can be improved by selective mating
- (3) that social ills can be eradicated by discouraging at the least and preventing if possible, the reproduction of deviant individuals.<sup>65</sup>

The physicians and other eugenicists were successful at incorporating those principles into American law. They did this by portraying these principles as a matter of public health and therefore enlisted the coercive power of public health law. This form of law set aside the usual restrictions that encase medical jurisprudence. This was the basis of the effort for using the law to eliminate social problems.<sup>66</sup> Public Health became one of the leading areas of medicine, public health officials used eugenic principles to explain, solve, and politicize the issues of morality. The law, based on these eugenic premises, could provide the compliment approach to sterilization for eliminating defective “ger-plasm” that threatened American idealism.<sup>67</sup>

The classification of the socially inadequate as dysgenic had medical implications and legal implications. Both implications were formed within the context of public health problems. Within that context, two methods were often applied to combat public ills: segregation and

sterilization to keep the public protected against undesirable “ger-plasm.”<sup>68</sup> These people were institutionalized and segregated from the general population, which is the infectious disease model of quarantine. Sterilization was an entirely medical procedure, but the recommendations to sterilize were offered by physicians in court. Doctors often initiated litigation to reinforce eugenic principles through the court structure.

Harry Laughlin, previously discussed, periodically conducted in-depth surveys of the states that maintained and enacted sterilization laws.<sup>69</sup> The basic support for sterilization laws emanated from four sectors of society: physicians, judges and lawyers, prominent scientists, and wealthy philanthropists. Editorials advocating sterilization laws were published frequently in scientific journals, newspapers, and popular public magazines. Public opinion was largely swayed by the media, but eugenic foundations for judicial support came largely from prominent lawyers and senior judges.<sup>70</sup> These laws did not go unopposed. Other prominent citizens dismissed eugenic sterilization as the fantasy of the elitists<sup>71</sup> and others argued that sterilization would actually lead to more licentiousness.<sup>72</sup>

### **B.1. *Buck v. Bell* : Sterilizing the Social Unfit vs. Patient Autonomy**

Dr. John Bell completed the sterilization of Carrie Buck in far less time than it took to fight for the permission to do so in court. He cut and ligated her fallopian tubes, rendering her permanently sterile as a test case for the social welfare of the nation. Carrie was only meant to be the first in the legal permission for compulsory sterilization of the institutionalized. He had obtained the authority to do so from the Act of Assembly of 1926 and the Board of Directors of the state run Virginia Colony for Epileptics where he worked and she lived. While the procedure was a simple one, Dr. Bell took extra care because this case may draw more attention than any other. While they mildly knew each other through casual conversation at the institution’s

cafeteria, they were legal opponents in a case that would go through the State courts and ultimately the Supreme Court of the United States, testing the constitutionality of the Virginia Act for Compulsory Sterilization.<sup>73</sup>

Dr. Bell would later muse that “Racial improvement” was a practice as old as the first civilization: the weaklings of the flock must perish; the elimination of those disqualified as physically or mentally unfit should be expected.<sup>74</sup> *Buck v. Bell* would prove to be the means of elimination at the time. *Buck* was the first and only incidence where the Court allowed a physician, as an agent of the State, to perform an operation that was neither necessary for medical reasons, or desired by the patient.<sup>75</sup> Prior to *Buck*, coercive medical procedures had been denied except for vaccination as a protection from the spreading of infectious diseases. *Buck v. Bell* was a radical departure from prior Supreme Court decisions. In fact, the Court stated that no right is held more sacred than the right of every individual to possess and control his own person, free from the restraint or interference of others.<sup>76</sup>

There are several ethical conflicts implicit in this case. A physician sworn to do no harm has now been given the right to permanently alter a woman who has no illness or physical symptoms that warranted such surgery. An argument can be made that her disease of being feeble-minded was the justification for performing the surgery because of the national will to eliminate this segment of the American population. The extension of the practice of isolation and the housing of such people diagnosed with this social disorder, took the public health model and transformed it into an economic enterprise. The true nature of sterilization arose because the housing of the feeble minded, in all of its forms, was too costly when the surgical procedure was more economically advantageous. Physicians now led the charge, via the United States Supreme Court, to interpret their oath differently and to use the surgical method as a cost saving means to

address a supposed social problem.

Also at ethical conflict was to position the feeble minded issue at women, the vulnerable among the American population. Given the low economic position of most women during the early twentieth century, the low wage jobs afforded them made them least able to control their own destinies. The *Buck v. Bell* decision made it relatively impossible to fight the medical system and/or the court system. The most vulnerable, who should be protected, were now the targets of a medical system where physicians did not protect them but actually sought the recommendations for procedures they would also perform. The boards of directors of institutions, lawyers, physicians, social workers, and the courts formed a larger institutional system that protected society against the vulnerable.

Finally, the Supreme Court overturned its own insistence on protecting the inviolable right for any person to be in control and possession of his own person, free from all restraint and the interference of others.<sup>77</sup> Dr. Albert Priddy who preceded Dr. Bell had sterilized a woman and her daughter brought to the Virginia institution because they had been accused of prostitution. Being sued for damages, he claimed the operation as a therapeutic necessity and his prerogative to perform whatever procedures the Colony required. He won the case but was warned not to continue until he had the proper legal authority to do so, consequently, the Virginia Sterilization Law was written. It was this law that eugenically informed the decision in the Supreme Court case *Buck v. Bell*. The law was essentially written not to protect vulnerable patients but physicians from law suits.<sup>78</sup> Justice Oliver Wendell Holmes wrote in his *Buck* opinion, that it would be better for all the world if we sterilize the unfit now rather than waiting to execute them later. It is better to prevent them from reproducing their own kind.<sup>79</sup> The law remains in effect today.<sup>80</sup>



## B.2. *Skinner v. Oklahoma: Sterilization of Hereditary Criminals vs. 14<sup>th</sup> Amendment*

In the offices of the Psychopathic Laboratory of the Chicago Municipal Courts, surveys were conducted of criminals that correlated their crimes, race, ethnicity, and I.Q.<sup>81</sup> Eugenists insisted that a criminal's past history could not be ended or cured by a prison sentence. Since criminality was hereditary and stemmed from defective genes, a timed sentence could never be the determinant of a cure.<sup>82</sup> Proceeding from this thought was the second Supreme Court case urged by the eugenics movement that mandated involuntary sterilizations for convicted criminals.<sup>83,84</sup>

In Oklahoma, at the turn of the nineteenth century, the laws there assumed heritability of mental illness and forced patients of the Territorial Sanitarium to answer questions about insanity in their families. Based on the answers to those questions, the Oklahoma Institution for the Feeble-minded was established for the stated purpose of segregating female imbeciles, between the ages of sixteen and forty-five so that the Institution would be in control of her during her child bearing years.<sup>85</sup> Oklahoma lawmakers and other eugenists found the Virginia Sterilization Act contained language that the Oklahoma Act did not. They urged the judicial system to amend the prior law to cover criminals and other degenerate classes as being worthy of the "surgeon's knife."<sup>86</sup> The new law, adopted in 1933 named specific institutions where the broadened application of sterilizations could take place.

No case ever tested the expanded law, but Oklahoma legislatures authored the Oklahoma Habitual Criminal Sterilization Act.<sup>87</sup> The habitual criminal was one who was twice convicted of crimes involving "moral turpitude."<sup>88</sup> The earlier version of the law defined the habitual criminal as one who had been convicted *three* times,; now they were given rights to legal representation, several chances at appeals, and lengthy trials before permission was granted to

sterilize. The Oklahoma law also included men up to the age of 65 as well as the women of child-bearing age. White collar crimes, such as embezzlement, political offences, and revenue acts were excluded from the definition. The Oklahoma Attorney General Williamson chose Jack T. Skinner to test the new law.

The Supreme Court of the United States heard the case on May 6, 1942 and a decision was rendered on June 1, 1942. Jack's father died when he was young and his mother remarried when he was ten years of age. Jack lost his foot in an accident at age nineteen and was convicted of stealing six chickens to feed himself and his wife, since it had been difficult for him to support them. He was sentenced to eleven months of hard labor. In 1929 and in 1934, Jack was again convicted for armed robbery,<sup>89</sup> just before the passage of the sterilization law.

The question before the Court was the exclusionary crimes from the expanded Oklahoma law. Skinner was a three times convicted felon but did his crimes consist of a lack of moral turpitude? The defense presented to the Court that there was no evidence of hereditary criminality but it ruled inadmissible. The Supreme Court would only look at Skinner's personal felony record. Because Skinner had been convicted of theft amounting to above twenty dollars, he qualified for sterilization. In his appeal to the United States Supreme Court, Justice William O. Douglas was the first to describe the right to procreation as a basic civil right, citing marriage and procreation as necessary to the perpetuation of the race. Douglas then analyzed the difference between theft and embezzlement, defining Skinner's case as embezzlement and therefore, he was released from the demand for sterilization according to the law the State of Oklahoma Court Oklahoma changed.<sup>90</sup>

Justice Douglas also established another term; "strict scrutiny" refers to the careful clarification of the individuals facing sterilization so as not to indiscriminately sterilize unfairly,

or groups of people, or races of people in violation of equal protection of the law. Eugenics is not a true factor in determining criminality from a hereditary standpoint, nor can it distinguish between larceny and embezzlement from a legal standpoint. The Court struck down the Oklahoma law in *Skinner v. Oklahoma* by a unanimous vote. Two justices also wrote opinions about the case. Chief Justice Stone agreed with the eugenics foundations of the case stating that any state should have the right to interfere with a person's ability to bear children in order to prevent the transfer of delinquency.<sup>91</sup> He wanted to argue due process instead of the equal protection clause. Justice Robert Jackson approved of both due process and equal protection, believed that the *Buck* case was a more clear case of eugenic theory than *Skinner*. While disagreeing about the merits of the case, all of the justices held that the Oklahoma law was unconstitutional.<sup>92</sup>

The ethical conflict present is that the language in the *Skinner* case and the decision rendered should have made sterilizations null and void. It was assumed that eugenic arguments would not be stringent enough to be sustained by the Court. Instead, eugenically founded hereditary transmissions from the standpoint of the law remained in tact. Eugenics may not have been proven beyond a scientific doubt, but it was still enough for the justices to rely on it to decided the outcomes of cases and to allow states to continue to sterilize patients without their consent. Due process was violated by not allowing the *Skinner* team to provide evidence that showed there was no heritability resulting in his crimes. Equal protection was violated forward because of its recognition that biological evidence of heritability could not be proven in certainty, but the decision did not affect state rights to condemn and continue the practice.

### **B.3. *Loving v. Virginia*: White Purity and Miscegenation by Law**

This case stems from the 1924 Virginia Racial Integrity Act. It is an anti-miscegenation law

that prohibited Blacks and Whites from marrying. Proponents of the law used medical records and statistics that included data on births, deaths, and communicable diseases in the context of interbreeding as a public health problem.<sup>93</sup> The Supreme Court invalidated the Virginia law and as a result, struck down three hundred years of the American apartheid system of oppression.<sup>94</sup> The decision rendered in the *Loving* case occurred as the law was changing the American landscape. The decision came thirteen years after *Brown v. Board of Education*; laws that opened voting rights, housing rights, and access to public accommodations to Black citizens. The *Loving* decision has been considered the final straw in the unraveling of “Jim Crow” laws that ruled the South during the Reconstruction Era. The import of the Virginia Act, however, was not a law that upheld the tradition of racism: it was a law based on the “science” of eugenics.<sup>95</sup>

There were two great proponents of the Virginia Act. John Powell and Walter A. Plecker fought with the weapons of eugenics and white supremacy to lobby for its passage. Powell founded the Anglo-Saxon Clubs of America and was an original sponsor of the Act. Plecker was a physician and also an administrator in the Virginia Bureau of Vital Statistics. Through his position, Plecker had access and a platform to spread the eugenic idea that race mixing was a threat to the health of the white gene pool.<sup>96</sup> Eugenics provided a façade to cover personal racial biases long held before the Virginia miscegenation law. The Racial Integrity Act of 1924 was a tool in the maintenance of the white supremacy and black economic and social inferiority.<sup>97</sup>

The first challenge to the Virginia Act came a few months after its passage. Atha Sorrells was the granddaughter of a woman whose birth record designated her a “free colored person.” She attempted to marry Robert Painter, a white man. When applying for the marriage license, the clerk refused to issue it because of the miscegenation law. Sorrells argued that “colored”

could have meant part Indian not part Black; meaning additional ancestry work would have to be performed. The case focused on who had the burden of proving racial purity: the State of Virginia or the person applying for the marriage license. Judge Henry Holt ruled in favor of Sorrells and ordered the clerk to issue the license, stating that the Racial Integrity Act was constitutionally infirm. Due process within the need to prove racial purity was cited as a problem and proving a negative: a person does not have “mixed blood.”<sup>98</sup>

Mildred Jetter (a black woman) and Richard Loving ( a white man) were indicted for violating the Virginia ban on interracial marriage. They married in 1958 in the District of Columbia. After their marriage, they moved to Virginia where they were charged and sentenced to one year in jail. The judge suspended their sentence on the condition that they leave Virginia and not return together for at least twenty five years. The trial judge stated that God did not intend for races to mix by the mere fact that he created them in separate continents. The case went to the United States Supreme Court when the Lovings returned to Virginia in 1963 and asked to have their convictions vacated. They argued that the Racial Integrity Law violated their Fourteenth Amendment guarantee of equal protection under the law.<sup>99</sup> The Virginia court denied the petition. An appeal to the federal courts referred the case back to the Virginia court for disposition. The Virginia Supreme Court banished the twenty-five year ban and returned the case to the Virginia court for re-sentencing. An appeal finally landed the case in the United States Supreme Court as *Loving v. Virginia*.<sup>100</sup>

The Supreme Court decision was unanimous in favor of the Lovings. The Court was not persuaded by the eugenic argument cited in the previous decisions. It noted that at the time of the consideration of the case, fourteen states had already repealed laws prohibiting marriage according to racial lines. The opinion of the case, written by Justice Earl Warren cited the

fourteenth amendment guarantees that race cannot be used to restrict the freedom to marry. He stated marriage as a basic civil right fundamental to the existence and survival of the human race. His opinion went on to say that the choice to marry cannot be restricted by racial discrimination by the State. The Supreme Court of the United States rendered the Racial Integrity Act of 1924 unconstitutional.<sup>101</sup>

The ethical conflicts embedded within the decision is that equal protection was applied through the works of the eugenic proponents. The information did not sway the courts but some of the writings of the attorneys were used to support their decision. Specifically, *The New Family and Race Improvement* document was cited, which was a eugenic tract written by Plecker. The tract did not mention the eugenic underpinnings of the Virginia Act, but described its racist tenets as “nativism.”<sup>102</sup> The decision protected marriage between the race but did not confront “sex” between the races. Couples could still be arrested for intercourse if not married. The second ethical complexity is where the decision cited fourteen states had repealed their laws did not state that sixteen states continued to punish and prohibit marriages on the basis of race, but classifications.<sup>103</sup>

While the eugenicists were successful in establishing laws in various states, these laws were usually overturned by challenges in the United States Supreme Court. The eugenic and racist undertones were usually exposed or ignored at the federal level, but it left the States to continue to engage in the act of sterilization. Because of ethical conflicts embedded in the court decisions, the practice continued even when proven to be in violation of equal protection and due process.

### **C. Consequentialism vs. Deontological Ethics**

A consequentialist would argue that choices defined as “acts” and/or “intentions” are to be morally evaluated singularly by the consequences that result. They specify the consequences

that are valuable and desired and identify these values as “the good.”<sup>104</sup> Those choices that maximize the good are considered morally right.<sup>105</sup> The theory of utility demands that the greatest positive value be sought and achieved through moral action without regard to personal perspectives, but to give legitimate weight of interest to each affected party.<sup>106</sup> Could it be that the actions of the medical community and others, based on eugenic ideals, can be described as a utilitarian ethical stance? Nozick claims that choices to act or not to act are a part of “the good” to be maximized. He defines it as the “utilitarianism of rights.”<sup>107</sup> The behavior of each physician, nurse, lawyer, social worker, and scientist is not easily explained through racism alone, but an expanded view of forced sterilization requires a deeper analysis of values: values that include the state of American life: the reduction and subsequent removal of people who are unfit for proliferating the best of American society.<sup>108</sup> The prevalence of American thought that sterilization was a surgical solution for the prevention of the drain was necessary to produce the desired consequences for a better America. It became the duty of American scientists, physicians, mathematicians, and the courts to eliminate what it collectively felt was the means to producing a better race of people.<sup>109,110</sup>

The ethical conflict with utilitarianism in the case of compulsory sterilization, is that it deems as “good” what is considered an immoral act.<sup>111</sup> By its own analysis, the medical profession violated its own ethical principles and performed unnecessary procedures not based on the patients health, but on personally subscribed social policy. If the only way to achieve socially moral principles was the perform the evil surgical procedures, consequentialism would say it is morally demanded.<sup>112</sup> Looking backward at the use of eugenics and genetics as scientific theory permitting - even demanding these procedures be performed is to at least agree that the concept of utilitarianism is not fully adequate to judge the moral permissibility of forced sterilization.

The demand of maximum value from a utilitarian standpoint can praise the surgery as ideal but should not require the surgery as obligatory.<sup>113</sup> United States law assisted in deciding what was a public good but made that assessment based on faulty science, racism, and the changing culture after Emancipation.

Consequentialism is a theory intended to balance the maximized good with beneficence as well.<sup>114</sup> The goal is to promote the welfare of the public. It can be argued that the American public was the recipient and the patient concerning the maximized good. The lowering of public assistance, the economic cost of housing the feeble minded, the intelligence drain on America, and the belief that criminality was an inherited trait produced the idea that surgery could reduce and eventually eliminate this societal problem. The ethical violation present is that the needs of the human beings undergoing this compulsory surgery were not considered: no beneficence applied to the patient herself, nor to her family as members of society.

It is perhaps unfair to apply ethical theory that began its development after the legal permission to perform these surgeries. It is best to say that these ethical theories used as its basis the occurrence of sterilization, the Tuskegee Experiment, the Nuremberg Trials to help prevent further abuses to human beings. Medical ethical theory has been an evaluative tool to examine and ultimately prevent such abuses from occurring. The use of looking backward to apply bioethical theories is useful in examining historical perspectives on how and why such actions were taken and to see forward how and why bioethicists are needful so as to prevent a return to values that would deny human beings the right to thrive.

Deontological theory is the opposite of utilitarianism. With respect to forced sterilization, the choices made by professionals could be considered normative by the professional community as that which ought to be done<sup>115</sup> From a deontological perspective, what ought to be done is what



would improve the quality of American life, regardless of personal consequences but would maximize the national potential.<sup>116</sup> A deontological normative theory overlay of the systematic sterilizations of poor women and women of color cannot be morally right by the consequences that result. Deontologists believe that some choices are morally forbidden.<sup>117</sup> Deontological theories can be parsed into agent-centered theories or patient-centered theories.<sup>118,119</sup> An agent-centered choice of action is based on the moral value of the agent and does not necessarily become normative for others. Patient-centered theories are premised on a patient's rights. Basically it posits that the greater good cannot be morally achieved by using one's body without consent. This moral theory prohibits producing the good, if that good can only be produced by intruding on the patient's rights that include the body, talents, and labor.<sup>120,121,122</sup>

One way to use deontological theory is an agent-centered theory versus patient centered ethic. Agent-centered theory is based on his or her own reason and does not need support from anyone outside of the agent's reason for action or inaction.<sup>123</sup> The stock of physicians that acted as surgeons, lobbyists, and law makers all acted with a sense of agent-centered urgency with a deontological focus on maintaining the American well bred stock. Patient-centered ethics would have perhaps caused these physicians and others, such as judges, social workers, lawyers, and scientists to be concerned for the patient's welfare. The patients themselves were not "humans" worthy of compassion, but "drains" on society, with a limited purpose in that society. Paternalism would describe the interference with the autonomous choices of patient's who suffered surgeries from no physical ailment. Overruling even an incompetent patient's autonomous choices is justified. That decision must consider whether or not the harm avoided is greater than the harm resulting from depriving the patient's freedom of reproduction.<sup>124</sup>

It is easy to look backward and apply ethical judgments on these prior actions. The ethical

requirements of each profession should have served to focus all human services toward patient care and benefit, but social pressure and eugenic proliferation of information served to stir up the existing racist ideology that turned upside down the proper focus of all services provided. These public servants and private practitioners would not agree that they performed an immoral act; they performed services of a public nature on behalf of American society. Moral actions were performed under the guise of nationalism and patriotism, however, these actions were immoral against individual patients, groups of citizens, and finally black women and institutionalized poor women.

#### **D. Black Complicity**

At the 1914 National Conference on Race Betterment, the only African American present sat among a sea of white attendees with the intention of sharing with his educated friends the way forward for the black race.<sup>125</sup> Booker T. Washington was among many prominent African American leaders in the early twentieth century who embraced certain aspects of eugenics. The social uplift of the race since emancipation was the goal of the New Negro Eugenicist.<sup>126, 127</sup> The conference placed in the hands of the Negro elite the responsibility of influencing and policing Negro reproduction. It was Mr. Washington's task to re-interpret eugenics for the black race for social uplift. Black scholars were employed to integrate eugenic science into a social movement among the Negro population in the early twentieth century. Based on the dysgenic notion that assigned negative characteristics to black people, the re-interpretation of eugenics maintained some of those negative assignments from within the community itself.<sup>128</sup> This is the element of black complicity that adds to the complex history of compulsory sterilization and the need to analyze the claims of the Reproductive Justice Movement.

In a 1985 speech, Washington assured whites that emancipated black remained their social

inferiors and remained in need of their paternalistic support.<sup>129</sup> As a result, at the 1914 Conference on Race Betterment, Washington and other black academics of the time, literally received the charge to police and racial hygiene of their own community. Noted intellectuals such as William Hannibal Thomas, Kelly Miller, and W.E. B. Dubois who began to promote marriage and reproduction between physically and intellectually superior Negroes over their poorer counterparts. They used social engagement to educate and transform the marginally fit into progressive members of the race. They also used segregationist methods to isolate people deemed “unfit” in order to prevent mating between the unfit and the more socially superior members of the race.<sup>130</sup>

The resulting “New Negro Eugenics” was the melding of a parts of eugenic theory offered by these three prominent thinkers mentioned earlier. William Hannibal Thomas believed that all “dark-skinned” blacks displayed the same characteristics which were different from the rest of the human race.<sup>131</sup> Kelly Miller was the Dean of the College of Arts and Sciences at Howard University. He eugenically discerned only two classes of blacks: the intellectual and the “bulk of the race” as recorded in an article entitled “Eugenics of the Negro Race” in a 1909 edition of *Scientific Monthly*. Several groups became products of Washington’s mentoring and evolved as reinforcements for Negro containment. Washington labeled the “Talented Tenth” and the “Submerged Tenth” as the polar opposites of the spectrum of acceptable blacks with hopes for future uplift. Washington’s “Mis-Leaders” are those who are of the criminal element among blacks at that time. They were of the bad germ plasm that was leading the race in the wrong direction.<sup>132</sup> These prominent leaders influenced the health and welfare of the black community but embraced eugenics in order to ensure the best of black stock would proliferate.

The Tuskegee Syphilis Experiment remains one of the most stark examples of black

complicity. Nurse Eunice Rivers, the prominent black figure in the study between the men and the PHS, she can be treated as both traitor and victim. Without her, the PHS would have no access to these black males subjects. Without her, the men would have no hope of future treatment. As a black female, she had very little power, but as a participant gained knowledge that could empower her subjects, but the evidence of black complicity was clear.<sup>133,134</sup> Nurse Rivers, was renamed *Evers* in a film about her work with the men of the study. The film entitled, “*Miss Evers’ Boys*” in dramatic fashion, chronicled the study as a research project to study the affects of “untreated” syphilis. At best, she provided a sense of “moral ambiguity” to the continuance of the study, while caring for and withholding pertinent information from the men in her care.<sup>135</sup>

Dr. Eugene Dibble, Jr. thought the study would be remembered forever. Dr. Dibble, an African American who served as the head of the John Andrew Hospital where the study was conducted, became a controversial figure when he pledged the cooperation of nurses, interns, equipment, and office space under the supervision of Dr. Raymond Vonderlehr, the Public Health official overseeing the experiment.<sup>136</sup> Macon County at that time, was 82.4% black and spread over 650 square miles. It represented the “broad extremes of the development of the Negro Race.”, according to Taliaferro Clark, the head physician of the Venereal Disease Division of the Public Health service.<sup>137</sup> Dr. Dibble thought of the vast amount of learning his budding doctors, nurses, and clinicians could learn, but for many years, it was not known whether he understood the true nature of the study or if he was uninformed that the men of the study would not be treated. Sadly, after his death in 1968, letters were found that he had written exposing the fact that he was well aware of nature of the study and remained a supporter of it until he died. He is labeled as a “race traitor”, selling out his patients for the advancement of

Tuskegee Institute and himself. Others point to his dichotomous nature: shred and sage; selfless and self-centered, advancing the cause of medicine among black physicians yet doing so at the expense of poor, rural, uneducated black men.<sup>138</sup> While not known to have participated in compulsory sterilizations, his participation in the syphilis study and his complicity demonstrates the racialized system of medicine in the country at the time. His colleagues and contemporaries contributed to the harmful treatment of black people in the name of race, eugenics, genetics, and science.

Charles S. Johnson, Fisk University's first black president, wrote that "eugenic discrimination" was necessary for blacks. Influenced by Margaret Sanger, Johnson, Du Bois, Adam Clayton Powell, Jr. sought the cooperation of area ministers and clergy among black neighborhoods to spread their eugenic ideas, but covering the fact that reduction of the Negro population was the aim of the black participants: extermination was the goal of Sanger.<sup>139</sup> Information about "family planning centers" as places for black women to receive health care, however they were guided toward nefarious practices in order to reduce or eliminate their ability to reproduce. These practices sometimes included the pressure of pastors to women in the congregation to limit their sexual engagements so as to conform to white society's notions as to what is proper. Yet this contradicted what other Catholic clergy were telling their parishioners: to multiply as a sign of God's will.

For over three decades, babies born to single, black, poor women in a segregated St. Louis hospital were stolen at birth and given to wealthier black families who could not have children of their own. During labor and child birth, the black nurses and doctors at the Homer G. Phillips hospital told these single mothers that their babies had died shortly after birth. The hospital opened in 1937 to service the black population of St. Louis, since blacks could not be treated at

white hospitals at that time. While eighteen mothers and children have been found, each story was similar: no birth certificates or death certificates were ever issued. Federal investigators claimed baby trafficking was prevalent at this hospital and it closed in 1979. In one instance, the child ended up in foster care and told by her foster parents, that her mother abandoned her at birth. The unethical trafficking of human babies is only made worse by the complicit behavior of black nurses and doctors who preyed on the unsuspecting young women and knew they would not be questioned. Authority was not questioned, especially by young women who had no power or voice or support for the larger community. It was simply accepted out of trust and belief that these authority figures had relayed truthful information and was sparing them the heartache of holding deceased infants.<sup>140</sup>

Zella Price Jackson was a twenty-six year old single woman in St. Louis who went to the Homer G. Phillips Hospital to deliver her child. A few hours later she was told her infant daughter died. Her attorney wrote to the Governor of Missouri and to the Mayor of St. Louis that he suspected the hospital was selling black babies for adoption. An initial investigation found eighteen women who claimed that what happened to Mrs. Jackson also happened to them. Mrs. Jackson was reunited with her daughter in April of 2015, after conclusive DNA tests. This transaction occurred in 1965 and the hospital has now been accused of participating in stealing black babies for marketing them in private adoption schemes.<sup>141</sup> It seems that wealthier black families also believed poor black mothers were not capable of raising healthy, moral, and responsible participants in American society. Perhaps not steeped in traditional eugenic principles, the negative stigma of black motherhood remained upon black women but could be prevented if a black family could raise the child.

Gussie Parker, who gave birth to a premature child in 1953, and Otha Mae Brand, who gave

birth to a girl in 1967, are two of the eighteen mothers who have filed a complaint after reading Mrs. Jackson's story. Each of the litigants are suing for birth, death, or adoption records. They are not suing for compensatory damages. They simply want the chance to reunite with their children if at all possible before they pass away. Mrs. Jackson's daughter Diane, was fifty years old when they reunited. She somehow ended up in a foster care situation rather than an adoptive home and she had been told that her mother abandoned her. After the airing of this story on ABC's 20/20 program, Debra Roberts discovers the lawsuit has grown to over seventy women, with another seventy five women pending. While the hospital has been reformed into a senior citizen's center, the records still exist and the expectation is that those records will become public.

Attorney Al Watkins who represents these women discovered the scheme was a pay for play transaction that occurred in the hospital parking lot. He discovered forged documents and claims that the women gave birth in the white's only city hospital and then abandoned their babies after giving birth. Tearful testimonies of what the women experienced as they were informed, sometimes up to three days later that the babies were now deceased. While the protocol was for doctors to inform the women of the instances of death, no doctor was found to have performed that protocol. In each case, it was a nurse who came in, removed the live baby, but would come back in at a later time to inform the mother that her child had died. Attorney Watkins discovered the hospital was a publically funded institution that was always searching for money, administratively weakened by turnover amongst staff, and that perhaps, selling babies for needed money was the solution to keep the doors open. Taking advantage of poor, black, unwed mothers is a population that would have put up the least resistance. Since St. Louis had boasted of having a large middle-class African American population, and there were very few agencies

across the country that handled adoptions for black families. Homer G. Phillips become one institution that provided illegally acquired infants to fill this need.<sup>142</sup>

The ethical problems here are many but are compounded by the fact that the care providers were also black. The moral and ethical dilemma present within this situation includes trafficking human beings, lying to patients, and forging documents and medical records. Denying these poor women the truth about their newborns deprived them of mothering their children but also placed pressure on nurses to perform the task of lying to the patients. The drive to raise money through these illegal means also meant the hospital would remain open and able to serve the African American patients of St. Louis who would otherwise be refused treatment at the whites only city hospital. The principle of double effect may serve to explain the behavior of the administration of the hospital. They also believe in the inadequacy of the young, Black, unwed mothers and their ability to raise responsible children, so they were not harming but helping to relieve these mothers of the strain, while saving the government of the financial support of this family. The hospital would use the funds of the illegal sale of humans to fund the hospital and help train and prepare medical personnel in service to the wider community. The intended good was for the hospital that benefitted the community: the minimized harm was stealing infants from a eugenically characterization of young, poor, unwed black mothers.<sup>143</sup>

The Homer G. Phillips Hospital and others like it around the country constituted what was known as the “Black Hospital Reform Movement.”<sup>144</sup> One of the chief aims of the hospital reformers was to raise funds to support black hospitals. Government payments and third-party support was uncommon and private donations and patient revenues were greatly reduced because of the Depression during the 1920’s through the 1930’s. Black hospital reformers recognized early on that black hospitals could not survive without the philanthropic help of whites. Three



national charitable foundations, the Julius Rosenwald Fund, the Duke Endowment, and the General Education Board assisted in keeping these hospitals afloat and influencing the direction of the black hospital movement.<sup>145</sup> However, over time, this type of support came at a price. It allowed the white support to have a key role in controlling the function of the black hospitals it supported over and above the voice of the black community. The facilities would be “for blacks” but supervised by whites. Black doctors seemed to be inferior to their white supervisors, reinforcing the racial hierarchy found in the rest of American society.<sup>146</sup> Racism in several forms continued to be problematic for this funding relationship which added to the behavior of the administrators at the Homer G. Phillips institution to embark upon ideas for self funding. Homer G. Phillips closed in 1979 but boasted it trained the largest number of black doctors and nurses in the world.<sup>147</sup>

#### **E. Religious Ethics and Conflicts**

Author Imani Perry writes of a concept called “curating.”<sup>148</sup> This concept describes the activity of collecting objects, words, or images and arranging them to tell a story, evoke an emotion, or produce an understanding. In this sense, the priest, minister, rabbi, or spiritual leader may be a curate by the tending of souls in their care, hopefully without dogma.<sup>149</sup> To be deliberate about the practice of curating is to step away from the persistent noise of the world clamoring for our attention and be deliberate about what we place in our collection as individuals. The individual curator is to gather the things that will produce a just and moral relationship with the world and with the self. The blindness of passively accepting what has been deduced to the self by culture or by family allows for the continued practice of repeating a non-person status assigned to black women throughout the history of the United States. Curation of this sort must include the ugliness of history as well as the beauty of history. Resisting the

history of the non-personhood; the less-than-human assumption of the African American woman, and the stubbornness of stereotypes that allows for the disproportionate eugenic type theories that plague the black womb, will permit a transformative human relatedness on an even keel. Humanness: complete and awful, spectacular and flawed, holy and fleshly is inalienable characteristics of all women, all people. The religion of “body” is embedded within the simulacra of the sacred work of the Divine.

Moral theology from the Catholic perspective argues that ethics and anthropology drive moral Behavior: ethics represented by what we ought to do, and anthropology represented by who we are as human beings. The meaning of human life is supported by the theological interpretation of the intentions of God as expressed in human life that leads us to understand human dignity.<sup>150</sup> Human beings are created with a dignity that allows them to be creatures and co-creators with God, agents that God uses to bring God’s plan for creation to fulfillment.<sup>151</sup> The value and dignity of life is to be respected and medicine is to care for the human creation that was made in the image of God.

By contrast, post-Enlightenment moral agency was seen to be possible outside of religion.<sup>152</sup> In the public realm, the Enlightenment discipline posited that moral behavior could be attained without divine revelation in the public arena. Religion divides, Enlightenment thought unites and provides a means of moral decision making without the press of religion upon human thought. Decision making based on moral philosophy offered the possibility of agreement between factions across ideological discords.<sup>153</sup>

The division between pro-life and pro-choice advocates in the abortion debate have not been resolvable in the light of post Enlightenment moral reasoning. The principle of Double Effect continues to preserve the life of the fetus at all cost with the exception of preserving the life of

the mother. The dignity of human life also extends to the fetus as fully human and can never be attacked by direct action.<sup>154</sup> Feminist theology begins and ends with the wellbeing of women as also created in the image of God, deserving the protection of the sanctity of life. Feminist theologians seek the female experience in bioethics that focus on the experiences of women and the universality of the human experience.<sup>155</sup> Religion, however, is a crucial element in the African American bioethics perspective. Religion, then, has a weightier moral derivative and guides behavior far more thoroughly than in perhaps other ethical perspectives.<sup>156</sup>

Women of color rejected the simplified struggle of the feminist controlled reproductive rights movement.<sup>157,158</sup> The thrust of the Reproductive Rights movement focused on abortion and a woman's right to choose.<sup>159,160</sup> Centered in *Roe v. Wade*, that movement did not address the needs of poor women and black women concerning health care issues around parenting, the right to have children in safety, the right to control their own reproduction, and the right to access quality health care.<sup>161,162</sup> Not only did the reproductive rights movement face criticism from women of color but also from the faith community. Religious scholars, and church officials railed against sought after abortion rights and right to life groups. Religion, theology, and health care ethics entered the discussion and offered moral language and theological ethics for guiding behavior, both personally and as through the health care system.<sup>163</sup>

Healthcare ethics has become increasingly secularized in spite of its beginnings, but Christian ethics can fill moral gaps left void by traditional bioethical thought.<sup>164</sup> Christian ethics, in the realm of health care, can address the meaning of life and not just the conditions of life. Key issues that Christian ethics addresses that intersects with the Reproductive Rights movement are religious ethics and its value in examining the expanded claims of the Reproductive Justice Movement, the relationship between God and moral behavior is a depiction of what

faithful living can look like.<sup>165</sup>

The importance of Black theology was exploited by eugenic sympathizers in the black community and by black preachers. Margaret Sanger targeted the Black Church as a place to effectively spread the message of family planning without disclosing the plan as a measure toward genocide.<sup>166</sup> Black leaders also suggested that the best way to spread the message of responsible family planning with a eugenic agenda was to declare the Black Church congregant as open to intelligent propaganda of any sort. Du Bois and other community leaders sought ways to get Sanger's message before church congregations. Sanger expressed the need for the Negro minister to be the one who could calm down the community if they were to discover their plan to exterminate the black population. She actively recruited ministers to help spread the favorable idea of visiting her family planning centers, and many complied.<sup>167</sup>

Very vigorous arguments were offered for the sanctity of life for the fetus, the religious and theological opposition to abortion, the constraints on proper sexual relations, and the religious duty to procreate. The ethical conflict is that no arguments were given that these religious ethical principles applied to black women. Instead, the bible, religious thought, and religious teachings reinforced the notion that black people in general and women, in particular were not even human, therefore no ethical consideration was afforded them – religiously, morally, ethically, or medically.<sup>168</sup> The development of Womanist theology was a means of resisting the simplified abortion/pro-life debate, but also to image black women as not only human, but as also created in the image of God.<sup>169</sup>

An ethical dilemma exists in the denying of personhood to the enslaved African; in the development of a theology of race; and in the extension of the denial of personhood to the black female and her progeny. What could , through scared texts, allowed for the diminution of

humanity assigned by culture to these very human people in society? How could men and women of Christian faith and other sacred traditions all come to believe that black flesh was no flesh and rob it of its divine character, nature, created in the image of God? In African American religion and spirituality, there is one bible story that has been used as an answer for the above questions. It comes from the book of Genesis 9:18-25:

*<sup>18</sup> The sons of Noah who came out of the ark were Shem, Ham and Japheth. (Ham was the father of Canaan.) <sup>19</sup> These were the three sons of Noah, and from them came the people who were scattered over the whole earth.<sup>20</sup> Noah, a man of the soil, proceeded to plant a vineyard. <sup>21</sup> When he drank some of its wine, he became drunk and lay uncovered inside his tent. <sup>22</sup> Ham, the father of Canaan, saw his father naked and told his two brothers outside. <sup>23</sup> But Shem and Japheth took a garment and laid it across their shoulders; then they walked in backward and covered their father's naked body. Their faces were turned the other way so that they would not see their father naked.<sup>24</sup> When Noah awoke from his wine and found out what his youngest son had done to him, <sup>25</sup> he said, "Cursed be Canaan! The lowest of slaves will he be to his brothers."<sup>170</sup>*

This biblical story has been the single greatest justification for slavery for more than one thousand years.<sup>171</sup> After the application of much scholarship and exegetical interpretive work that includes language, it has been determined that there is no reference to Blacks or African Americans in this passage at all. Western theology has appropriated this story to mean that all African Americans are the descendants of Ham and are therefore meant to be slaves eternally. But the curse of Ham has been most deeply ingrained in the African American psyche and has manifested toward an equally ingrained self hatred. The American Black carried a visible sign of its cursed nature and therefore can never escape its grip on the soul, the nation, and perhaps the

world.

The association of black with evil and white with good is not an American phenomenon. The symbolism of the negativity associated with blackness is evident in people groups all over the globe.<sup>172</sup> The connection between blackness and slavery became enshrined in the story of the curse of Ham.<sup>173</sup> Some scholars suggest that the associations with blackness, based on the psychological association with darkness and fear undergirded that negativity and manifested in enslavement for the Africans transported to America. At any rate, Ham became the father of Black Africans and slavery has been justified ever since. Over time within the Christian mind, blackness became associated with darkness. God is only light can have no fellowship with darkness and therefore an association was made with blackness as sin.<sup>174</sup>

As for the theological depiction of women, a second level of the negative imagery of skin color is the shade of color. The development of the ideation of beauty is further complicated by the lightness or degree of darkness of the skin's shade, which translates into feminine beauty, a perception of intelligence, and a distancing of the lighter skinned woman from her darker family members. Even the Christian allegorical exegesis of Song of Songs, introduced by Origen which spoke of symbolic blackness as "sin" and whiteness as "God's grace", reflects the values of even the Christian world in which whiteness of skin tone was generally regarded as an *essential* element of beauty.<sup>175</sup> Gregory of Elvira (late fourth century) was confused with Origen's interpretation of the "dark skinned" woman in Song of Songs as allegorically meaning the gentiles who are black and beautiful: "I confess to being troubled. How can the church be at once black and beautiful? How can it be black if it is beautiful or beautiful if it is black?"<sup>176</sup>

The extension of this line of argument actually runs through slavery and has come to be represented in a form of self-hatred known by the moniker "StrongBlackWoman."<sup>177</sup> Author

Chanequa Walker-Barnes coined the term without spaces to create the visual image of being held together by tension and no room to breathe. By the act of caregiving for all others, she tends to ignore herself, but exhibits incredible strength, adding to the stereotype of not being human. The “unhumaning” form of the StrongBlackWoman is also the form that can endure pain –physical and emotional without regard to characteristics associated with humans. She has no feelings; she has no morals; she is simply whatever society needs her to be at any given point in time. This “unhuman” form also has no opinions, no thoughts, and is only present to serve the interests of whiteness.<sup>178</sup> The “unhuman” cannot be taken advantage of because it is not part of the collective human community. It must be dominated in order to promote wealth or function as a means to an end. There is no guilt associated with the treatment of this prototype and therefore no national apology for eugenic practices, thoughts, or theories that led to unethical and immoral behavior.

#### **F. Conclusion**

While there was no system of normative ethics that would protect patients from medical Experimentation.<sup>179</sup> Other forms of moral obligations should have intervened in the conscious deliberate act of removing from poor women and women of color their ability to procreate. To simply assign that to racism alone is misleading. While the conclusion discovered may indeed point to racism, further study is necessary to understand the wider culture that existed in the United States in the early 1900’s. Without a full scope of the ethical violations and considerations, the how and the why of forced sterilizations will be left unexplained and the phenomenon can be repeated.<sup>180</sup>

There are several ethical conflicts that are at issue with the practice of forced sterilization. These ethical conflicts are a main focus of the reproductive justice movement. At ethical issue are human rights and human dignity<sup>181</sup>, moral autonomy: respecting the presence of conflict

between paternalism and autonomy.<sup>182</sup> The dark history of sterilizations calls for an examination of maleficence and the distinction between it and beneficence in these cases of sterilizations without consent and informed consent.<sup>183</sup>

While consent and autonomy are current ethical health issues, the context in which these ethical principles were developed was very different.<sup>184</sup> National interests, such as the intelligence stock of the American population, drove praxis as societal facets dealt with crime, overpopulation, disease, and immigration.<sup>185,186</sup> The heart of the ethical evaluation may lie in the context and the culture of America during those days. However, given the revelation of the offenses created by the Tuskegee Syphilis<sup>187</sup>, the American consciousness grew and demanded change in the research, medical, and biomedical ethical community.<sup>188</sup> Christian ethics and African American spirituality also spoke into the secular approach to ethics to expand the ethical conversation with theology and compassion.<sup>189,190,191</sup>

## NOTES

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<sup>3</sup> William A. Darrity and Castellano B. Turner, "Family Planning, Race Consciousness, and the Fear of Genocide." *American Journal of Public Health*. No. 62, 1972.

<sup>4</sup> Philip, R. Reilly. *The Surgical Solution: A History of Involuntary Sterilization in the United States* (Baltimore: The Johns Hopkins University Press. 1991)

<sup>5</sup> Roger J. Bulger, M.D. *Hippocrates Revisited: A Search for Meaning*. (New York: Medcom, 1973)



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<sup>7</sup> Edmund Pellegrino. “Toward and Expanded Medical Ethics: The Hippocratic Oath Revisited.” Bulger, Roger J. M.D., *Hippocrates Revisited: A Search for Meaning*. (New York: Medcom Press, 1973): 95.

<sup>8</sup> Ibid.; 96.

<sup>9</sup> Ibid.; 97.

<sup>10</sup> Ibid.; 96-97.

<sup>11</sup> Aristotle, *Ethics I*, ii, 1094a22, trans. H. Rackham (Cambridge: Harvard University Press, 1926): 5.

<sup>12</sup> Albert R. Jonsen. *A Short History of Medical Ethics* (New York: Oxford University Press, 2000): ix – xi.

<sup>13</sup> Ibid.; x.

<sup>14</sup> Ibid.

<sup>15</sup> Ibid.; 8

<sup>16</sup> Andre Bonnard, *Greek Civilization*, vol. II, trans. A Lytton Sells (New York: The Macmillan Company, 1962): 170.

<sup>17</sup> Albert R. Jonsen. *Do No Harm*. *Annals of Internal Medicine*. Vol. 88 (1978): 827-832.

<sup>18</sup> Ibid.

<sup>19</sup> M.B. Etziony. *The Physician’s Creed*. (Springfield: Charles C. Thurman, 1973)

<sup>20</sup> Albert R. Jonsen. *Do No Harm*. *Annals of Internal Medicine*. Vol. 88 (1978): 827-832.

<sup>21</sup> WHS Jones. *Hippocrates I*. (Cambridge: Harvard University Press, 1923): 165.

<sup>22</sup> Albert R. Jonsen. *Do No Harm*. *Annals of Internal Medicine*. Vol. 88 (1978): 827-832.

<sup>23</sup> WHS Jones. *Hippocrates I*. (Cambridge: Harvard University Press, 1923): 165.

<sup>24</sup> Albert R. Jonsen. *Do No Harm*. *Annals of Internal Medicine*. Vol. 88 (1978): 828.

<sup>25</sup> Frank G. Lydstom. *Diseases of Society* (Philadelphia: Lippincott, 1906): 564.

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- <sup>30</sup> Ibid.
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- <sup>32</sup> Albert R. Jonsen. *Do No Harm*. *Annals of Internal Medicine*. Vol. 88 (1978): 829.
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## **Chapter Five: The Ethical Analysis of the Reproductive Justice Movement**

The Reproductive Justice Movement has made strong claims about providing women of color with a more comprehensive menu of health care treatment. This expanded list of provisions covers needs beyond what feminists were seeking in the public arena. Since it is a health care issue, it must be evaluated according to the ethics of health care. This evaluation will produce a type of validity over the aims of the movement and can be used to assure women of the claims of the movement. If the movement is not deemed ethically warranted, then that result can be used to direct women of color elsewhere for health care justice, or reform the movement so that it addresses ethical concerns. The ethical analysis of the Reproductive Justice Movement is the focus of this chapter.

### **A. The Principles of Biomedical Ethics**

Respect for autonomy, nonmaleficence, beneficence, justice and professionalism<sup>1</sup> will be the guides to analyzing the claims of the Reproductive Justice movement and will also formulate possible ways in which the movement enforces or does not protect ethical responsibility in the triad of individuals, populations, and government; as well as the moral actions of physicians. Personal interpretation and application of the principles could be somewhat clouded as displayed in the abortion debate where it was believed that sexual license were moral evils that weakened American society.<sup>2</sup> Given the nature of racial attitudes toward black women and the eugenic ideals of the time, developing ethical norms were not formulated enough to help. With the assistance of the UNESCO Universal Declaration on Bioethics and Human Rights, the aim of reproductive justice can be compared to the movement's previous form. Also, the UNESCO Declaration moves the ethical framework from a theoretical discussion of morality to a mode of standard setting for human rights on a global platform for a broader range of application.<sup>3</sup>

## **A.1. Applied Ethics as Justification for Analyzing the Reproductive Justice**

### **Movement**

Bioethics is the “application of general ethical theories, principles, and rules to problems in therapeutic practice, health care delivery, and medical and biological research.”<sup>4</sup> In the discipline of bioethics, applied ethics supplies the methodology for analyzing the apparent ethical conflicts that the Reproductive Justice movement proposes to address.<sup>5</sup> Applied ethics is useful in moving the theory of bioethics from the abstract to the concrete<sup>6</sup>, particularly in investigating the dilemma created by the practice of forced sterilization by the medical community and the need for protection by the establishment of the Reproductive Justice Movement. Applied ethics is the tool that utilizes systematic efforts to analyze and resolve moral problems that become apparent in fields such as medicine.<sup>7</sup> Applying the principals of bioethics to the reproductive justice movement is the activity of moving the discussion from the abstract to a tested methodology of providing better health care to marginalized women.

## **A.2. Public and Professional Morality**

In medicine, there are generally accepted rules of conduct that guide patient-physician relationships and colleague-to-colleague relationships. These codes of conduct help to create an atmosphere of trust and professionalism by the public as they seek these services.<sup>8</sup> To act morally in medical situations is to guide one’s actions by generally understood moral principles to which one can be held accountable. A moral theory, or set of principles, used in the public arena means that the physicians understand it and that all agree that it is acceptable to be guided by the set of moral principles.<sup>9</sup> Specifying the rules becomes the moral framework to understand the accepted rules in the medical profession. These principles, however, become complicated when adding the context of the American culture, and the acceptable counter-cultural ways in

which those who practiced medicine behaved when sterilizing women without the consent of the women involved. Public health ethics also adds an additional tripartite layer of participation and accountability: the government, the population, and the individual. The needs of each individual component can clash with the needs of the other components, and ethical theories are critical to help situate the best possible outcome.<sup>10</sup>

### **B. The Reproductive Justice Framework**

Reproductive Justice is an expansion of the theory of *intersectionality*. Intersectionality is a feminist theory that acknowledges the fact that most people live layered lives and belong to more than one group at a time. Women, for instance, can be both privileged and oppressed at the same time depending on social power structures and to which group their identity is found. The goal of intersectional analysis is to uncover discrimination and disadvantages associated with the consequences of multiple identities.<sup>11</sup> As applied to the lives of women, a woman can be a respected professional, yet due to race, she can also experience oppression when seeking to buy a home, when shopping in local stores, or feel excluded among her white professional colleagues. The use of intersectionality analysis is not to show who is more privileged or who is more oppressed, but to reveal the distinctions and similarities this group experiences in order to overcome discriminations that prohibited equal opportunities and conditions so that all women can experience “equal rights.”<sup>12</sup>

Reproductive Justice acknowledges the intersectionality of the lives of women of color who participate in multiple communities and experience a complex set of reproductive oppressions.<sup>13</sup> Intersectionality helps the women of the Reproductive Justice Movement to understand how race, class, gender, and sexual identity impact access to quality reproductive care and expands the context of abortion rights into a larger focus of women’s health issues. Because of the

intersectionality approach to identifying the multiple layers of the identity and social participation of women of color, the intersectionality approach proved useful in formulating the comprehensive health program for this same group of women. Reproductive Justice links sexuality, health, and human rights as opposed to narrowing the framework to abortion rights, right to life politics, and feminism.<sup>14</sup> This framework is hopeful for marginalized women in distressed communities where human rights are just one of many basic rights not easily afforded to those living under strained economics conditions.

A review of the crucial elements of the Reproductive Justice framework is necessary here. It is essentially a new paradigm that allows the examination of reproductive issues through the women's human rights framework.<sup>15</sup> There are three core beliefs:

- (1) Every woman has the right to decide when and if she will bear a child and under what conditions she will birth the child;
- (2) Every woman will decide her options for preventing pregnancy or ending a pregnancy if she chooses not to bear a child,
- (3) Every woman will be able to parent her existing children with the necessary supports in a safe environment without fear of violence from individuals or government.<sup>16</sup>

Women of color in the Reproductive Justice Movement are organized to fight for these rights against one core problem: **reproductive oppression**.<sup>17</sup> It is defined as the control and exploitation of women and girls through their bodies, sexuality, labor, and reproduction. As a result, entire communities are controlled. Systems of oppression are then formed based on race, ability, class, gender, sexuality, age, and immigration status.<sup>18</sup> Reproduction oppression includes **reproductive punishment**, which describes the way the government and others refuse to support women of color with quality services and resources while simultaneously interfering with



reproductive decisions.<sup>19</sup> This takes the form of discriminatory foster care placement and enforcement, criminalizing pregnancy, immigration restrictions, forced abortions and sterilization of incarcerated women. It is a more subtle form of negative eugenics: a means of selectively controlling the health and wealth of entire communities through structural racism. The bodies of women and girls are continuously being used as the battleground for the maintenance of power by the dominant culture.<sup>20</sup> According to the United Nations Convention on the Prevention and Punishment of the Crime of Genocide, reproductive oppression meets the agreed upon global definition of genocide of imposing measures intended to prevent births within the group, and forcible transferring children of one group to another group.<sup>21</sup>

It is necessary to understand how white supremacy in the United States reinforces reproductive oppression in white communities also. The individual decisions made by white men also affect white women. Racist fears that white women are being out-produced by women of color, resulting in the increasing fear of becoming a minority community in the changing American landscape. This unsubtle form of positive eugenics is designed to encourage white women to have more babies through restrictions on abortion, contraception, and stem-cell research. While children of color are thought to be a threat to American society, unwanted, and excessive; white children are prized, valued, and the salvific means to maintaining white supremacy.<sup>22</sup>

Three main strategies are used to support the Reproductive Justice framework and fight reproductive oppression. **Reproductive Health** deals with service delivery for women of color. It assesses the needs of this group and focuses on the lack of quality health care, services, information and research that includes current health data. The goal is to acquire culturally competent care for communities of color; to improve and expand health care services; provide

more comprehensive information on research, and increase access to treatment based on that research.<sup>23</sup> The central theme of this service delivery model is the creation and development of progressive health care clinics that will ensure women will have access to the full range of reproductive health services and educated to understand their health care needs. These health care clinics will deliver competent, well-rounded, current, and professional care at low cost or no cost depending on their availability to pay. Unfortunately, for many women of color, reproductive health care is their first and sometimes the only contact with the health care system. This fact highlights the lack of access to not just reproductive services, but to health care in general.<sup>24</sup>

**Reproductive Rights** is the legal advocacy aspect of the Reproductive Justice Movement. It serves to protect women's legal rights to abortion but also increases access to family planning services. The legal teams fight for the right to choose, the right to privacy, and women's rights to privacy. The legal aspects of the movement have worked to oppose the 2004 Violence Against Unborn Children's Act due to the fact that it establishes a precedent of "fetal personhood." This ruling can effectively be used to overturn laws protecting abortion rights. A subset of the movement was called "Reproductive Freedom" that challenged the government to decrease its restrictions on abortion. The problem is that this focus of the legal advocacy did not allow much for fighting for the expansion of health care services for poor women and women of color.<sup>25</sup> The "pro-abortion" – "pro-life" argument that spilt the feminist movement repeated the feeling of exclusion for women of color.

The **Reproductive Justice** portion of the framework is grounded in the acknowledgement of the history of reproductive oppression and abuse in vulnerable communities. This element is the activism element of the framework. It organizes women and girls of color to change structural

power inequities.<sup>26</sup> This arm focuses on the fighting against the control and exploitation of women's bodies, their sexuality, and by extension, their communities. The oppression of women has manifested domination through race and gender, as intersectionality suggests, and determines her future. It allows women to organize and realize their power for the freedom of self-determination by redefining the pro-choice paradigm.<sup>27</sup> The redefining aspect of this framework also allows women of color to link reproductive health and rights to other related social justice issues. As an example of the Reproductive Justice framework in action, on April 25, 2004, 1.15 million people participated in the protest entitled "March for Women's Lives" – the largest protest march in United States history.<sup>28</sup>

The importance of analyzing the Reproductive Justice Movement is to examine its core claims against historical egregious systemic beliefs, decisions, and behaviors wrought against poor women and women of color. Native American, Asian and Latina women, and African American women were critical thinkers that helped to form the Reproductive Justice platform as a means of expanding the abortion issue to claim a more comprehensive health care plan that includes reproductive health care measures, but extends to health care in general. It is understood that many poor women and women of color traditionally use the limited services offered by clinics. For some women, it is their only contact with the health care system. The definitions, historical and current perspectives, as well as the intersectional approach must be understood in terms of health care ethics to ensure it can offer an ethical alternative to the reality of reproductive health for women oppressed by race, gender, class, sexuality, and status. The ethical issues that seem to have been apparent before the formation of the movement include informed consent, patient autonomy, human rights violations, competing stances on abortion and pro-life beliefs, religious ethics, and systemic racism fed by negative eugenic ideals.

### C. The Analysis by the Bioethical Principles Method

The bioethical principles method is an analytical framework used to compare and contrast the extension claims of the Reproductive Justice Movement. The principles method expresses general norms of common morality that function as general guidelines to examine specific rules of biomedical ethics,<sup>29</sup> but are also useful in the formation of rules to guide reproductive justice activism. The earlier work of formulating bioethical principles yielded four clusters of rules:

- (1) the respect for autonomy – norms supporting autonomous decision making
- (2) nonmaleficence – norms that avoid the causing of harm
- (3) beneficence – norms that promote avoiding harm and balancing risks and costs against benefits
- (4) justice – norms fairly distributing benefits, risks, and costs<sup>30</sup>

In the work of Thomas Beauchamp and James Childress, the framework of principles includes rules, obligations, and rights as well as principles. Rules, according to this principles method, are content specific and more restricted in scope. Principles do not function as stringent guides of action in the ways rules function, but it is the framework that is more important to analyzing reproductive justice.<sup>31</sup>

A systematic approach to the analysis of reproductive justice is not consistent with the seemingly identical needs of the Movement going forward in a just way. The authors of the systematic approach to medical ethics seem to promote an “impartial rule theory” that claims to account for the systems in which moral rules are embedded. This is a “messy” way of examining the need for a more comprehensive health agenda for Black women and other women of color. In the expanded vision of women’s reproductive rights, no role of impartiality will adequately address the targeted efforts to destroy the reproductive capabilities of Black women.

Resolving controversial problems in medical ethics, such as forced sterilization, will most likely not be done from a wide systematic approach; but an application of principles will help focus moral action for the benefit of these women.<sup>32</sup>

Consideration must also be given to what Dr. Karla Hardaway calls “cultural ethics,” which is an interdisciplinary theory comprised of literature, legal studies, and bioethics. It focuses on the use and meaning of “subjectivity”: meaning taking into account the habits, patterns, and practices in medicine and in law that constitute the discipline’s subjects. Cultural ethics acknowledges that the complexities of history, institutions, and their texts produce the field.<sup>33</sup> Bioethics has been placed in the disciplinary list of subjects within cultural ethics, but bioethics with its particular concern for the body makes it a body of contextual practice. Utilizing the work of Margaret Washington’s *Medical Apartheid* places narratives that engage race and gender directly into the subject of bioethics.<sup>34</sup> The danger is in objectifying the stories of patients’, and women, and physicians so as to erase the contextual feature of both bioethics and cultural ethics. This research acknowledges the ethical demands of analyzing the myriad cultural features that comprise the reproductive justice framework and the further evident of the effectiveness of using the principles method to bioethically justice the Movement.

### **C.1. Respect for Autonomy and Informed Consent**

#### ***I. Does the Reproductive Justice framework address issues of patient autonomy in the form of informed consent?***

The Reproductive Justice framework describes every woman as having the right to choose when and if she will have a baby and under which conditions she will give birth. She also has the right to exercise control over her own body and how she wishes to prevent or end a pregnancy. She also has the right to parent her existing children in safe communities without

fear of violence and the government as stated earlier. The respect for patient autonomy, under the theory of health care ethics, is a principle that allows autonomous agents to acknowledge their right to take action based on their personal values and beliefs. It involves respectful action and not mere respectful thinking.<sup>35</sup> It involves self-rule that is not hampered by controlling individuals or structures that prevent choice through the manipulation of information, withholding information, or a limited understanding of available options.<sup>36</sup>

Feminists have affirmed autonomy through relationships. “Relational Autonomy” comes from the fact that a person’s identity is shaped through social relationships and intersectional determinants such as race, class, gender, ethnicity and their relationship to authority structures. Feminists also recognize that some relationships can also be oppressive and interfere with autonomy.<sup>37</sup> There are two essential conditions for autonomy to be in its purest form: *liberty* or the independence from controlling influences and *agency*, which is the capacity for intentional action. The consistent use of feeble-mindedness erased the capacity of poor women to make choices about their bodies. The government, social assistance structures, and the legal system continued to erode the reproductive rights of individuals based on faulty science. Both liberty and agency were removed from these unsuspecting women. Within a medical context, it is somewhat more difficult to judge autonomous action because of the patient’s dependence on the physician’s knowledge and opinion.<sup>38</sup> The doctor’s professional authority causes a pressure that cannot be ignored or easily moved aside. In the case of forced sterilizations, physicians assumed a larger degree of authority that was unwarranted by the situation but in line with the cultural context. Also, the exercise of excessive authority over the reproductive rights of women occurred in a context where a medical procedure was not needed or warranted.

There are other considerations that must be addressed before deeming the framework

ethically justified. Autonomous action is analyzed in terms of acting with intent and understanding, therefore with *informed consent*. Bioethicists have named “building blocks” that must be present if consent is ethically achieved. Those building blocks are: competence, disclosure, understanding, voluntariness, and consent. In order to make an autonomous decision, a woman can give an informed consent to a medical procedure if she is competent to act, receives a thorough disclosure, comprehends the disclosure, acts voluntarily, and consents to the procedure.<sup>39</sup> Within the framework of the reproductive justice movement, the declarations of rights over her own body is clearly stated within its mission and course of action. While informed consent is certainly more complex than stated here, it is easy to determine that all of the elements were missing within the context of forced sterilization. The social structures used the systemically created term “feble-mindedness” as the catch-all to eliminate autonomous choice.

The fight against reproductive oppression targets the abuses of power, the controlling of entire communities, keeping women safe from governmental abuses, and human rights violations that diminish or denies their voices, disclosure of the true nature of medical procedures, and then gives consent as a means of controlling her own destiny and by default, the destiny of the community around her. The Reproductive Justice framework essentially gives every woman the freedom to do this without the threat of violence or control of other social structures. The voluntary choice to eliminate her ability to procreate by surgically removing her organs was not consented to in many cases, not even with her knowledge, and was ethically unjustified. The Reproductive Justice framework clearly and definitively aligns with the ethical principle of the respect for autonomy through informed consent because of the specter of negative eugenics and all it entailed.

There is also a case to be made for the vulnerability of incarcerated women of color.

Research requested by the State Auditor General revealed egregious practices from its health care provider. The report revealed three major areas of concern:

- (1) The California Correctional Health Care Service failed to ensure that its staff and others always obtained an inmate's informed consent lawfully prior to sterilization.<sup>40</sup>
- (2) Protocols designed to ensure that sterilization is medically<sup>[L]</sup><sub>[SEP]</sub>necessary failed,<sup>41</sup>
- (3) The Receiver's office must take additional steps to rectify failures<sup>[L]</sup><sub>[SEP]</sub>that led to inmates being sterilized by bilateral tubal ligation<sup>42</sup>

Title 15 of the California Code of Regulations stipulates a review process for what is termed "excluded services" for inmates.<sup>43</sup> These excluded service include bilateral tubal ligation. If there is a pressing need to perform the surgery, approval must be given by the Headquarters Utilization Management Committee. It was discovered that the approvals were not obtained,; forms were not completed by physicians properly – some unsigned; and the Receiver's Office, who controlled the protocols and adherence to the rules, failed to properly train medical staff on the correct procedures. This resulted in inmates sterilized without permission, a full understanding that the surgery was permanent; the waiting periods were violated, and state regulations were ignored.<sup>44</sup>

Title 22 of the California Code of Regulations concerning informed consent for sterilizations also regulate the manner in which informed consent is obtained:

- The patient must be at least 18 years old or independent.<sup>[L]</sup><sub>[SEP]</sub>
- The patient must consent at least 30 days before the sterilization, but not more than 180 days.<sup>[L]</sup><sub>[SEP]</sub>
- The exceptions are:

- (1) Sterilization may be performed at least 72 hours after consent if the patient

either:



(2) Waives the 30-day waiting period in writing.

(3) Undergoes emergency abdominal surgery or premature delivery and consent was at least 30 days before the expected date of surgery or delivery. [L] [SEP]

- The patient must be given an opportunity to have a witness of her choice present at the time of consent. [L] [SEP]
- The patient must consent by signing the California Department of Public Health form
- The following persons must also sign the form certifying that consent was informed:
  - (1) Interpreter, if one was provided. [L] [SEP]
  - (2) Person who obtained consent. [L] [SEP]
  - (3) Physician who performed the sterilization, or an alternate physician. [L] [SEP]

The prison culture created by mass incarceration that affects more people of color than any other population is far too large of a subject to tackle in this research project, however, the criminal justice system is fraught with abuse. It is also daunting when women of color are subjected to detailed foregoing of procedures put in place to protect them and their reproductive rights as human beings. Addressing the historical lack of obtaining informed consent in an ethical manner is helped by the health care ethics framework. It should also be consulted for women within the criminal justice system who should not be subjected to the eugenic practices of the past nor the eugenic thoughts of modern society. Because of the realities of how the criminal justice system actually works, some have likened it to be eerily familiar to the institution of slavery. The “New Jim Crow” , some have surmised, is the equivalent of forced labor, dehumanization of people of color, medical injustice,<sup>45</sup> and once again, a return to a system that will sterilize women against their will.

## C.2. Beneficence

### II. *Does the framework of the Reproductive Justice Movement address the principle of beneficence?*

The principle of beneficence is the moral obligation to act for the benefit of others.<sup>46</sup> Gert, Clover, and Glosser challenge that notion by the distinction between duty that is required in all cases prompting moral action and having no moral obligation to perform all acts of generosity or charity that would benefit others.<sup>47, 48</sup> Even so, the rules of positive beneficence are<sup>49</sup>:

1. To protect and defend the rights of others
2. To prevent harm from occurring to others
3. To remove conditions that will cause harm to others
4. To help persons with disabilities
5. To rescue persons in danger

Specific beneficence is directed at specific groups and general beneficence is directed to all people. Beauchamp and Childress also make a distinction between obligatory and ideal beneficence. The concept of duty are deontological restraints as rules of common morality to specify what cannot be justifiably done even if the goal is worthy and beneficial to others.<sup>50</sup>

There are recognized conflicts between autonomy and beneficence. The assertion of patient's rights can sometimes flare up against paternalism in medicine. The right to receive information, to consent or refuse procedures can run against the knowledge and professional judgment of a physician who has sworn an oath to help, or at least do no harm. Autonomous choices by the patient can be incorporated into a plan of treatment that benefits the patient, but a cooperative spirit must be fostered between the individual patient and the individual physician. This relationship still may not eliminate paternalism, but can greatly safeguard against it.<sup>51</sup>

The Reproductive Justice framework addresses beneficence through its reproductive health care model. Clinics that offer a broader spectrum of information and health services beyond reproduction are a communal benefit and a specific benefit to women and children. Medical personnel employed there would understand the nature of their service and the goal of fostering a safe and trustworthy environment in which to assist pregnant women and mothers of existing children.<sup>52</sup> The principle of beneficence is also addressed through the Reproductive Justice movement- building piece of the framework. It empowers women to organize against paternalism and other social structures that limit choice and liberty through protests, writings, and its intersectional approach that links the movement to appropriate partners to help with their cause. Leaders of the movement promote activism as a means of empowerment for the benefit of women and girls who have suffered reproductive oppression.<sup>53</sup> In conclusion, the principle of beneficence is addressed and found to be ethically justified within the framework of the Reproductive Justice Movement.

### **C.3. Non-Maleficence**

#### ***III. Does the Reproductive Justice framework address the principle of non-maleficence?***

Non-maleficence is the duty to not inflict harm or evil.<sup>54</sup> The difference between non-maleficence and beneficence is this: beneficence requires taking action; non-maleficence requires refraining from actions that cause harm. Non-maleficence distinguishes between causing injury and harm that unjustifiably causes setbacks to a quality of life, bodily injury, pain, disability, suffering, and/or death. Part of the principle of maleficence is a moral obligation to exercise due care, which is taking sufficient and appropriate steps to avoid causing harm. Harm caused by a breach of duty is specified here. It must be determined that the medical professional had a duty to aid the health of the individual and not cause harm or evil that can result.

The Reproductive Justice framework recognizes the vulnerability of women of color and focuses one of its core values embedded within the occurrence of maleficent behavior in the form of forced and coerced sterilizations. It also occurred in the secret mission of Margaret Sanger's Negro Project. It occurred in the naming healthy women as feeble-minded. It occurred in the naming of Black mothers as incompetent and lascivious. So when the women of the Reproductive Justice Movement cite reproductive punishment as a practice that has to be eliminated, but acknowledges that non-maleficence must be a moral way forward. Fighting reproductive oppression is fighting the negative control over the bodies of women and girls. Malevolent actions have targeted against Black women and the Reproductive justice framework acknowledges that fact, therefore the Reproductive Justice framework is ethically justified by its commitment to non-maleficent moral action.

#### **C.4. Justice**

#### ***IV. Is the ethical principle of justice addressed in the Reproductive Justice framework?***

The concept of justice in health care focuses on access to care. Inequality poses a threat to women who have been denied care based on race and gender. This inequality was a major factor in the success of the early forms of the Planned Parenthood clinics. Women who frequented the early clinics did so because they were prohibited from seeking care and treatment from hospitals and clinics in affluent neighborhoods because of race. Standards of justice are necessary when people who are due fairness and equity do not receive it. Injustice involves a wrongful act or omission that results in the denial of recourses to which they have a right.<sup>55</sup> The principle of justice is then broken down into what is termed, "distributive justice." It is defined as the fair, equitable, and appropriate distribution of resources determined by justified norms of social cooperation.<sup>56</sup> It includes civil and political rights as to the distribution of all rights and

responsibilities in society.

According to the principle of justice, properties distributed by the chances of social and biological life cannot be grounds for morally acceptable discrimination. If people do not have the same opportunity to acquire social allocations, such as health care, then the system that denies people these rights is not morally justified. The fair-opportunity rule under the ethical principle of justice states that people in general, poor women in particular should receive benefits to amend the unfortunate effects of inheritability.<sup>57</sup> Health care disparities based on racial and gender identities fall under the fair-opportunity rule. There have been many studies performed that indicate black women and poor women have less access to various forms of health care compared to their white counterparts. Race and gender issues that are apparent in the workforce has an impact on job-based health insurance and the same identities of race and gender often impact the engagement between patient and physician, affecting health outcomes, quality of care, and health maintenance.<sup>58</sup>

The concept of vulnerability also must be considered. Poor women and women of color may be economically or socially disadvantaged due to many factors. Whatever the reasons, internal or external, they are susceptible to coercive tactics, inducement by paternalistic pressure, which could result in harm as described earlier. A true study of risk may not be possible in tense situations such as these when presented with options not in accordance with a woman's values or her internal sense of fear.<sup>59</sup> While vulnerability is often associated with human experimentation and research, this concept can clearly be used to acknowledge tactics used in compulsory sterilization. As in the case of Fannie Lou Hamer, her race, status, and gender did not allow her to question the physician who sterilized her without her consent for fear of death. Carrie Buck, a poor white woman could not comprehend what was happening to her so others made decisions

for her concerning her own body. The harm resulted is immeasurable and an ethical violation against the principle of justice.

The Reproductive Justice framework address justice not just by its name, but also according to the bioethical principle of justice. It seeks the fair distribution of health care services and access to those service across racial, economic, and geographical lines. It states its acknowledgment of the lack of access in the past as its proscription for change. The framework calls for the improvement and expansion of services. The movement is a struggle for social justice and human rights. The legal arm of the framework is a professional piece of the structure that fights issues in the courts to ensure the legal protect of women's rights in the form of self determination.<sup>60</sup> According to the principle of justice and the fair-opportunity rule, the Reproductive Justice movement is ethically justified.

### **C.5. Professionalism**

#### ***V. Does the Reproductive Justice framework address the ethical rule of professional – patient relationships?***

Veracity in a health care context refers the accurate transmission of information. It also refers to the way in which physicians fosters the patient's understanding. It has been linked to the respect for patient autonomy. It is more rule than principle, but is applicable to the history of forced sterilization and must be ethically analyzed. G. J. Warnock believes that veracity is an independent principle and virtue that ranks in importance with beneficence, non-maleficence, and justice.<sup>61</sup> It is assumed that medical professionals will be truthful and forthright, but there are cases and there are situations where a lack of veracity is ethically justified, as in the disclosure of bad news.<sup>62</sup> A 2001 revision of the AMA's principles of medical ethics indicates that physician's shall be honest in all professional transactions.<sup>63</sup> Beauchamp and Childress

outline three supporting arguments for veracity that are not exclusively based on the respect for autonomy:

- (1) Obligations of veracity are based on respect owed to others
- (2) Obligations of veracity are connected to obligations of fidelity, promise keeping, and contract
- (3) The relationship between patients and physicians are based on trust enhanced by veracity.<sup>64</sup>

Within the concept of professionalism in health care ethics, the right to privacy is also an element. This would include the right to not be looked at, the right to not have conversations listened to, not to have distress caused to patients, and not to be harmed, hurt, or tortured. Confidentiality is also a part of the professionalism principle. It speaks of retaining some form of personal information concerning our bodies, even though we release some through examination, and access to written files concerning our medical condition. Confidentiality is informational privacy within a confidential professional relationship. The necessary element of trust that confidentiality can support.<sup>65</sup>

In the transition from securing abortion rights to a more broader women's health agenda, Rosalind Petchesky writes of the need to include privacy and autonomy for the poorest of women within the Reproductive Justice framework. If these virtues are not included, the single focus of abortion rights will continue to function as a class-biased and racist concept as it will deny social responsibility to improve conditions for all women.<sup>66</sup> Privacy is recognized as an element that will improve the wider range of health needs of women in general, and women of color in particular. Petchesky went to say that an organized political movement can move the agenda to become more centralized to achieve the goal of including autonomy and privacy.<sup>67</sup>

The Reproductive Justice framework connects human rights principles to its health agenda. By doing so, the respect for confidentiality, privacy, and a professional relationship is an expectation of a justice oriented health care system for all women. The historical evidence of reproductive punishment highlights the lack of confidentiality and professionalism as medical conditions were shared with neighbors, colleagues, without a concern for privacy. Such was the case of Fannie Lou Hamer, who after the removal of her reproductive organs, was informed by a neighbor after a family member of the physician gossiped about it at the family home.<sup>68</sup> Because of its legal work, and because of its intersectionality partnering with human rights language, the Reproductive Justice framework is ethically justified in its recognition of the principle of professionalism.

#### **D. Reproductive Rights and Reproductive Ethics**

#### ***VI. Is there a “right” to reproduction? Is there a intersection between the Reproductive Justice framework and the Reproductive ethic framework?***

The ethics of reproduction examines whether or not there is a “right” to reproduce. To declare a right to reproduce is to identify reproductive freedom as a core value.<sup>69</sup> Sexual discrimination aimed at women continues to limit their freedom, but when combined with race, class, and other forms of oppression, the result is a deadly form of the denial of women’s rights to life and liberty around the world.<sup>70</sup> While technology continues to advance at a rate beyond imagination, an ethical analysis must take into the procreator and the offspring. “rights” must therefore take into account both sides of the human equation. If new technologies come forth to alleviate suffering from fertility issue and genetic diseases, the we applaud the efforts. If these technologies allow the increase control of some people over others, as was the case in the promotion of negative eugenics, then ethical structures must be in place to prevent dominance.<sup>71</sup>



Feminists and proponents of the Reproductive Justice Movement are also concerned as to whether or not new technologies will increase or decrease control over women's bodies and lives. Justice and autonomy are also important considerations when thinking of future generations, such as when considering a right to healthcare that includes treatment for infertility, surrogacy, and the use of pre-embryos.<sup>72</sup>

Proponents of reproductive ethics have suggested there is a fundamental human right to reproduce but need an ethical framework to work out the conflicts between the rights of the women to control their own bodies and the rights of the lives they produce. The framework suggested would have three considerations: assessing and exploring the significance of reproductive freedom; it should take into account the interests of offspring in the preembryonic, embryonic, fetal and postnatal stages of development; and the framework should develop an approach or course of action when there are conflicts in values.<sup>73</sup> The Reproductive Justice framework address this by its expansion to deal with more than just abortion issues, but seeks an expanded network of services, as it clearly states the right of reproductive or not to reproduce as a core value.

To address procreation as a "right" is to make a claim that moral principles put one in a position to demand one's due.<sup>74</sup> After the 1935 Oklahoma Habitual Criminal Sterilization Act arose from the eugenic idea that criminal behavior is genetically transmitted, accused women with several children could be sterilized, as long as her general health was not compromised.<sup>75, 76</sup> In an effort to promote population control, some programs have shown blatant disrespect for individual rights.<sup>77</sup> All population control programs begin with the premise that in order to improve the lives of the people of a given society, the urgent need is to reduce human reproduction. The aim becomes to affect female fertility and any and all birth control means are

disseminated through a health care delivery system.<sup>78</sup> Sterilization was an obvious attempt at population control and some in the African American community labeled the practice and that of birth control disseminated through family planning clinics as “genocide.” Population control is a means of reducing the African American population and is one the aims of the Reproductive Justice framework and intersects with the hopeful framework of reproductive ethics.

Both frameworks are bolstered by the UNESCO Declaration. Lending its research to the Reproductive Justice Movement will assist in the protection of women to reproduce without fear from the government, the medical community, and other threats to health. Connecting the Reproductive Justice to the human rights framework of the UNESCO Declaration aligned its mission with the current wave of morality valuing human life and human dignity. The agenda of the UNESCO Declaration validates the Reproductive Justice’s idea of human rights protection for women who decide to have children and those who decide to not to have children. The autonomous choice lies in the competency of women to choose to exercise her reproductive choice. This connection assures the ethical validity of the Reproductive Justice framework.

It is necessary to hear the voices of women of color in the advancement of the movement. The historic divide between feminism and womanism contains the claim that feminism ignored the more specific needs and cultural racism that plagued women of color. The feminist consciousness born in black women came from a constant struggle to survive in a white society that devalued her life, her offspring, and her humanity.<sup>79</sup> Even when access-related hindrances are removed, racial and ethnic minorities tend to receive a lower quality of health care than their white counterparts.<sup>80</sup> The study performed by the Institute of Medicine assessed the extent of the differences in health care *not* attributable to health insurance and ability to pay; to examine the role of bias, discrimination, stereotyping at the institutional, individual, and health system level;

and to provide recommendations for eliminating the disparities. Still, reproduction put forth as a right is a moral claim to the human process of procreation unhindered by government, social structures based on eugenic determinations of human value.

The issues of disparity in health care for women and women of color must also be a part of the conversation concerning reproductive rights and reproductive justice. To rationalize why one segment of American society to receive prejudicial treatment at the expense of others is the dehumanizing factor embedded within the American health care system.<sup>81</sup> Emilie Townes, a womanist ethicist describes human lives as dehumanized commodities in the face of healthcare systems becoming business enterprises. Western medicine reduces people into body parts, separates the body from the mind, and narrowly defines health as the absence of disease.<sup>82</sup> Women of color seem to be more vulnerable to the objectification than others due to race, socioeconomic status, and cultural background, due to structural inequities within the United States healthcare system.<sup>83</sup> Worse yet, when women of color internalize the racism directed against them, it presents a barrier to their activism.<sup>84</sup> Internalized oppression is akin to black complicity discussed in chapter six. Internalized oppression can impede cooperative activism against a health care system that does not serve their needs. Its results are further disenfranchisement and manifests in furthering the dehumanized stereotype.<sup>85</sup>

The UNESCO Declaration becomes a useful mechanism to ethically evaluate the strength of the claims if the Reproductive Justice framework in light of internalized oppression. The Declaration outlines so many necessary elements for the reproductive and human rights of women, and as stated in the goals of the Reproductive Justice movement. Both recognize an ethical responsibility to non-discrimination, but the UNESCO Declaration also outlines non-stigmatization specifically. It defines stigmatization as a violation of human dignity, human

rights, and fundamental freedoms.<sup>86</sup> Article Eleven of the Declaration is meant to impress upon scientific community the unfounded nature of generalizations that fed eugenic ideals in the past. Human rights groups, such as proponents of the Reproductive Justice movement have properly aligned their mission with the principles of the UNESCO Declaration.

The Reproductive Justice's claim of redefining the pro-choice paradigm is strengthened by its coalition work with other marginalized groups. The Black Women's Health Imperative (; the National Black Feminist Organization; the Third World Women's Alliance, and the Committee for Abortion Rights and Against Sterilization Abuse, and the National Association for the Repeal of Abortion Laws, along with several other organizations of women of color banded together to design the expanded health agenda.<sup>87</sup> The early reproductive rights turned justice framers were particularly inspired by the work of the United Nations. Women of color led the reorganization of the pro-choice agenda. The SisterSong Women of Color Reproductive Health Collective is the latest attempt to create a national network of women fighting for reproductive justice. It is comprised of over eighty national and local allied organizations, headquartered in Atlanta with funding from the Ford Foundation.<sup>88</sup> Its size is a signal to the importance of this movement for women of color in the United States.

The power of the Reproductive Justice framework lies in its alliance and congruity with the ethics of the UNESCO Declaration and Reproductive ethics. The right to reproduce is a valid right and a reasonable expectation for all women. This right is reinforced by an ethical framework that recognized women's rights as human rights. The plight of women of color to achieve access to an expanded health care model is outlined and distinctive within the Reproductive Justice framework. There are self-inflicted barriers like internalized oppression that can hinder the work of bring about the full measure of reproductive justice, but there is an

ethical framework to help others discern the presence of discrimination and stereotyping that borders on the eugenic theories of the past. The Reproductive Justice framework is an ethically justified mechanism to ensure reproduction continues as a basic human right.

#### **E. An African American Perspective on Bioethics**

#### ***VII. Is an African American perspective on bioethics necessary in the Reproductive Justice Framework? What different ethical justification would it provide?***

The Department of Energy Office of Science states there is no scientific basis for “race” and there is no genetic determinations that categorize human beings into classes of race.<sup>89</sup> The promise of genomic medicine still causes scientists to look for possible connections between genetic differences and racial categories. The Human Genome Project has brought for the questions of the viability of race as a category for genetic study and the research and development of genomic technologies. The specter of eugenics looms over these ideas as the history of medical research produced negative eugenic results. An African American bioethics perspective can analyze current research and insistence on the moral proceeding of the categorizing of human groups. America not only has a history of negative eugenic activity through sterilizations, but also in the development of new technology. There are many documented examples of new technologies that when discovered to benefit African Americans, the development of the technology ceased. The BiDil trial<sup>90</sup> and the AbioCor trial are examples of new technology tested within the African American community but then not available to them once the trial was completed despite stats that say African American suffer more frequently from the disease under trial.<sup>91</sup>

Not only were genetics used to improperly group African American females as degenerate, their offspring were also classified in the same way. Science can be used to reinforce these

unproven genetic dysfunctions and race can continue to shade research outcomes and participation in new technology. This can be vital for women of color seeking care options in reproductive technologies when infertility is a diagnosed problem. A perspective from an African American bioethical lens can be essential in monitoring access to new technology and fairness of distribution of medical resources. In the twenty first century, American society is still plagued with issues of color and race; without the watchful analysis of the Reproductive Justice movement, authored by women of color, benefitting from bioethicists of color who understand the presence of race within the context of a health care system.

An African American perspective of bioethics includes a careful analysis of culture and how moral meaning is understood in this context. The weight of culture in the discussion of bioethical analysis is a different perspective from principlism and other forms of bioethical disciplines. Moral norms can be viewed from a particular cultural viewpoint: in this case, moral behavior can be ethically judged through the lens of the African American experience. There is a tension between cultural beliefs about good and right and the traditional norms of bioethics.<sup>92</sup> The fear and distrust of the American medical health care system is not taken into account in the traditional bioethics model. Beauchamp disagrees that an African American bioethical perspective because values and beliefs held by African Americans are also held by other oppressed groups. Since shared values and beliefs can be shared with groups such as Native Americans, there can be no African American bioethical perspective.<sup>93</sup> So shared experiences with an oppressed group is not cause for a distinct bioethical perspective and does not change the discourse on race, class, and gender shaped by the American experience.<sup>94</sup>

There is an important omission from Beauchamp's viewpoint: perspective is a *subjective* evaluation of the "relative significance of something; a point of view."<sup>95</sup> For African Americans,

the experience of slavery, segregation, racism, and oppression have given a different set of “background assumptions” about fundamental bioethical concepts such as personhood, body integrity, morality, and how life is lived and fulfilled in this community.<sup>96</sup> There is no question that African Americans have experienced something the dominant culture has not.

Consequently, the principles of autonomy, beneficence, maleficence, and justice have been applied to the African American community in general, and African American women specifically. Because behavioral patterns, value sets, standards, and differences in assigned meanings to different occurrences, there is a difference in the normative application of bioethical principles.<sup>97</sup>

An African American bioethical perspective incorporates cultural context and power into its reflection on what constitutes moral and just behavior within a health care model. African American culture has acquired a significant portion of its roots from its African moorings. That manifests as a belief system that is of a humanistic orientation and a holistic orientation. A high value is placed on community, extended family, and both personal and social responsibility. The experiences of women who culturally have significantly less power than their white counterparts, a bioethical practice has to consider that fact. The history of unethical experimentation must also be credited for shaping some behaviors that resist participating in the health care system when other groups do not have that experience.<sup>98</sup> American culture has also shaped the African American experience which provides some shared beliefs systems with the wider culture. American culture cannot be eliminated from this sub-group, but bioethical discourse must understand that values of the dominant culture are not normative for all.

The abortion issue was the impetus for women of color to organize for a more holistic health agenda. The abortion issue was not as simple for African American women. The abortion issue

failed to address prenatal care, infant mortality (which is highest among Black women), or teenage pregnancy rates. Black women have mixed ideas about the right to choose and the right to life agenda. Some black women feel abortion is an genocidal tool, used to diminish the African American population. It is suspiciously viewed as a push in poor communities based on negative eugenics.<sup>99</sup> The 1967 Black Power Conference equated birth control measures with genocide: current activists see the easy access to abortion in poor communities as a more current form of genocide. The Reproductive Justice framework cites choice as the optimal benefit for women of color which includes the right to legal abortion, but also cites the right to reproduce in safe environments without governmental pressure. Normative bioethical discourse does not take into account the social fears driving black women to seek abortion to choose to give birth. An African American bioethical structure can expand the normative ethic to include this set of values driven behavior for this subset of the American population.

#### **F. Health Care Ethics and Religion**

#### ***VIII. Does Religious Health Care ethics justify the Reproductive Justice framework? Does the abortion issue nullify the ability of Religious Ethics to analyze the Movement?***

The dignity of human life and the theological principles nestled within health care concerning the gift of life<sup>100</sup> are embedded within the development of what is now known as bioethics. All bioethical discourse owes its beginnings to the intra-religious study of the morality of medical practice.<sup>101</sup> The relationship between religion and medicine was most extensively fostered by the Catholic Church and Jewish scholars for the purpose analyzing the moral procedures and structures of approaches to the care of human beings. The core questions of human existence as related to issues of healing; human beings as embodied spirits and the physical and spiritual aspects to sickness, treatment, and wholeness.<sup>102</sup> Sanctity and quality of life takes the dignity of



human life and places it on a spectrum used in ethical analysis. The question presented by these spectral poles is deciding whether or not life is to be judged on the basis of its quality, meriting health care or its intrinsic sanctity makes all life to merit care.<sup>103</sup> At any rate, health care ethics establishes a theological basis useful when interpreting the meaning of human life in its dignity, integrity, and its creative mystery. Religious ethics are useful for making moral judgments based on the best theological anthropology.<sup>104</sup>

Public theology, however, is in constant tension with the public aspect of health care and the religious interests. Some argue that religion in the public arena of health care causes compromise of basic theological convictions.<sup>105</sup> Others believe that moral obligation is meaningless apart from God.<sup>106</sup> Within the context of Reproductive Justice are issues that are not easily resolved through religious ethics but certainly can lead to a critical analysis of said issues. Also problematic is the fact the Reproductive Justice framework has no direct and specific language that speak to a religious ethic. Strong inferences and similar values are evident within the framework. The dignity of human life; the right to control a woman's body because of its creation in God's image, and the right to be treated fairly and equitably because of the intrinsic value of every life are values reinforced by the religious bioethical context. Public bioethical discourse can be a meeting ground for the diverse moral traditions that make up American society. Faith commitments can motivate others to come to a moral consensus consistent with their person faith traditions.<sup>107</sup>

The protest of women of color, who largely feel the health care system has not treated them according to any form of ethical norms, have experienced a lack of being treated with value and dignity. The dignity of human life must apply to all life; the framework becomes problematic when activists push for abortion rights and seemingly deny the human dignity of the unborn

child. Public law has protected the rights of the woman over that of the fetus, but the religious ethical framework, particularly in the Catholic tradition, does not agree with that position. In certain circumstances the Principle of Double Effect can apply, if all four conditions are met. But within the framework of “choice”, direct abortion choice is considered immoral.<sup>108</sup> The other side of the “choice” portion of the Reproductive Justice framework is the fact that a woman ought to be able to give birth and dignifies the life of the child and the mother. If the religious ethic can bring into conversation both sides of the abortion issue – choice and abortion rights, then it will have accomplished all it can and still maintain its position on abortion. Before the Reproductive Justice movement became what it is today, it was simply entitled the “Reproductive Rights” movement.<sup>109</sup> Not only did the reproductive rights movement face criticism from women of color but also from the faith community. Religious scholars, and church officials railed against sought after abortion rights and right to life groups. Religion, theology, and health care ethics entered the discussion and offered moral language and theological ethics for guiding behavior, both personally and as through the health care system.<sup>110</sup>

There is a vast difference between African American spirituality and religious understanding than the normative culture would suggest. While largely Christian, it has been shaped by the African brought to America through the system of slavery. We widely use the term “Black Church” to describe a sociological and theological pluralism of Black Christians in the United States.<sup>111</sup> The denominations vary, but a general reference to the independent religious body that was active in the Civil Rights Movement, the Abolitionist Movement, and other civil acts of disobedience that led to freedom for all African Americans. It is well documented that Black people created their own unique and distinct forms of culture and worldviews that ran parallel not replicate the culture in which they involuntarily emerged. Freedom is the central value of the

African American spirituality, but also important are the values of justice, equality, and the individual conversion of each person. Much of morality and ethical behavior is given over the pulpit through the pastor, who serves as the theological voice of the church. He or she is involved in major decisions a family or parishioner may face.

For women of color who organized this movement, Black Church was the place where systematic faith affirmations and principles of biblical interpretation have been revealed.<sup>112</sup> But for the woman color, there has been a history of history of sexual abuse and sexual power enacted over her life. White traditional Christian theology speaks nothing of this; addresses it in no way, and has never challenged its white male members or pastors to discontinue this behavior or even repent of it. Instead, the White church ignored it and normalized it by dehumanizing black women. The Black Church became the only place where she could find succor in the company of other women who had experienced the same type of terrorism. Black religion and Black Church served as a sustaining force, assuring them all that justice was a human right that included them.<sup>113</sup> The struggle for reproductive freedom is the search for relief from the historical bondage that has controlled black women's bodies since their presence in America. It has a different cultural and historical dimension for white women seeking access to abortion.

For most Black women, the bible remains the highest source of authority. Biblical precepts have even taught them to rise above the patriarchy in the Black Church. But it was in the Black Church where Black women learned to refuse the stereotypes placed on them by American society. Knowing the stories of Jesus, they found similarities in their situations and how liberated they felt by his actions toward women.<sup>114</sup> Black feminist consciousness developed from that interaction with biblical theology and then developed into Black womanist<sup>115</sup> theology. This theological position empowers women of color to actively fight against structures within

American society that are oppressive. They have learned to fight or to refrain from fighting according to the biblical interpretation that speak to the freedom that is a deeply embedded value. It also empowers Black women to craft a set of values of their own and on their own terms.

The women of the Reproductive Justice Movement have had access to a rich spiritual heritage that taught them to seek the rights due them as human beings. While it is impossible to know the religious affiliations of the women connected with the Movement individually, it is safe to state there is a spiritual connection to the lessons of activism taught by biblical precepts. It remains problematic to the framework that religious precepts are not directly expressed, but is indirectly assumed given the history and nature of African American life in the United States. It is equally problematic to affirm African American spirituality as simply pro-life or pro-choice, when the central value is freedom. Abortion is considered immoral according to African American spirituality, but it is not given the weight equal to, but there is no mechanism to hold individuals accountable. There are times within the Black Church experience where “sin” can be confessed and forgiveness assured through scriptural interpretation. Freedom to control one’s own body and destiny; the freedom to live without the sexual dehumanization and rape of one’s body and spirit is a weightier matter than the narrow definition afforded by pro-life or pro-choice political stances. Religious ethics cannot affirm the right to abortion in its simplistic form. What a religious ethical framework can do is support women color in the right to seek recognition as human beings with endowed human rights.

### **G. Conclusion**

There were three questions this research dissertation sought to answer in order to ethically justify or deny justification to the Reproductive Justice Movement. These questions found in the first chapter are repeated here for clarity and for the reader to understand the full scope of the

answers that were discovered. It is of particular interest to those who are active in studying the ways in which eugenics is reappearing in medicine and genetics, particularly through forced sterilization among incarcerated women, women who live on subsidies, and women who utilize Medicare and Medicaid.

**(1) Does the Reproductive Justice Movement deliver on its promises as an expanded health care program for marginalized women?**

The Reproductive Justice Movement is ethically justified in its claims for an expanded health care program for marginalized women. Participants in the movement have set up clear objectives and has worked to mobilize appropriate frameworks to move its agenda forward. Architects of the Movement have aligned themselves with appropriate partners and have managed to market their ideas in communities where the need is greatest. The March for Women's Lives is the example of messaging that resulted in mobilizing one million women and sympathetic men for their cause.

**(2) Does it address the ethical health care conflicts present within the Pro-Choice and Anti-Abortion movements?**

The Reproductive Justice Movement is ethically justified in that it does not consider itself a political movement as being forced to land on any side. It has promoted itself as an advocate of women in control of their own bodies and to promote parenting in safety. It does not narrowly define itself as needing a political definition, but seeks justice on behalf of women who also do not want the narrow definition of pro-choice or pro-life. It declares that women have the inalienable right to reproduction and should not be threatened by government, racism, sexism, or health disparities created by access. The human rights thrust as opposed to a civil rights thrust also gave added to validity to their foundational principles. Utilizing the essence of human rights

also added the voices of women of color to a global effort at recognizing principles of the UNESCO Declaration and aligning them with women all over the globe.

**(3) is the movement ethically justified based on its claims in comparison to recognizable health care ethics norms?**

The Reproductive Justice Movement is ethically justified as its claims are easily evaluated in terms of the principles method of bioethics. The desires of the proponents of the movement based on the needs of women of color are specifically addressed in light of the history of eugenics and forced sterilization. The specifics of informed consent, respect for autonomy, codes of ethics between physician and patient, professionalism, and privacy are directly examined and are correct to be a concern of the Movement. Other ethical codes are also examined under the terms set by the activists in the Reproductive Justice Movement. The principles of beneficence and non-maleficence are partnered with the “do no harm” medical code of ethics for physicians. It is important that all aspects of health care violations are respected and addressed to avoid similar historical violations.

Women of color rejected the simplified struggle of the feminist controlled reproductive right movement.<sup>116, 117</sup> The thrust of the Reproductive Rights movement focused on abortion and a woman’s right to choose.<sup>118, 119</sup> Centered in *Roe v. Wade*, that movement did not address the needs of poor women and black women concerning health care issues around parenting, the right to have children in safety, the right to control their own reproduction, and the right to access quality health care.<sup>120, 121</sup> The evolution of the Reproductive Justice Movement produced a framework that defines their mission and fuels their activism. Since expanding their goals beyond abortion issues, they have placed the Movement into the context of health care, hence their framework must be ethically analyzed to see if it conforms with a structure that will

validate its claims. In order to be taken seriously, the Reproductive Justice Movement and its framework must be analyzed through the Health Care bioethical construct.

The principles method of analysis was chosen because of the ethical violations present. Informed consent within the context of the respect for patient autonomy ethically justifies the Movement's claims to protect women and their bodies from abusive power structures. The principle of maleficence ethically justifies the Movement's claims to push for culturally competent health care and reproductive services from health care providers. Its push for clinics that take into account their unique cultural and physical needs is justified. Beneficence is a justified expectation in a healthcare context for women seeking reproductive services, parenting assistance, and quality treatment from qualified professionals. The pursuit of justice is ethically justified within the framework by the justice principle of health care ethics. The expectation of professionalism to include confidentiality and the right to privacy is an outlined claim of the Movement's framework. The varied forms of ethical analysis will prove useful to promote Reproductive Justice as a viable movement for the health of marginalized women.

Healthcare ethics has become increasingly secularized in spite of its beginnings. But Christian ethics can fill moral gaps left void by traditional bioethical thought.<sup>122</sup> Christian ethics in the realm of health care can address the meaning of life and not just the conditions of life. Key issues that Christian ethics address that intersect with the Reproductive Rights movement are abortion, in vitro fertilization, and the just allocation of health care resources.<sup>123</sup> To understand religious ethics and its value in examining the expanded claims of the Reproductive Justice Movement, the relationship between God and moral behavior is a depiction of what faithful living can look like.<sup>124</sup>

Religious ethics also has justified the claims of the Reproductive Justice framework in so far

as it seeks to assert the value of all human life and its inherent dignity. The line gets drawn at supporting abortion rights from a Catholic perspective. Catholic and Jewish health care ethics have historically participated in the formation of moral behavior in medicine. The tension of public theology has been problematic to defend its positions fully and tends to lead to compromises and some wish to refrain from public discourse on morality. Catholic ethics in health care can also not support abortion access or practice and therefore cannot fully justify the Reproductive Justice framework in its entirety, however, it can foster dialogue and help clarify issues and examine the use of the Principle of Double Effect. Making the choice for an abortion would certainly rule out PDE.

The Reproductive Rights movement, before evolving into the Reproductive Justice Movement sought to answer the question as to whether or not reproduction is a “right.” Determining that it is, reproductive rights proponents used that right to situate women’s rights as human rights. The Reproductive Justice framework included the language of the UNESCO Declaration as an ethical structure to argue for the basis for their activism. Aligning with the Declaration gave powerful validity to their human rights expectations and added strength to their claims. The Declaration serves as another layer of ethical justification along with the health care ethics structure.

An African American bioethical perspective is also a necessary justification of the Reproductive Justice Movement’s framework. While early developers of the health care ethics principles did not think this perspective was valid, African American bioethicists argued for the inclusion of culture and the specific experiences that shape the African American experience in the United States. Values, definitions, and oppression have shaped behaviors and resulted in unique aspects of bioethical understanding not shared by the dominant white normative culture.



The history of negative eugenics that helped foster the forced sterilization of countless African American women is the experience that fuels the activity against its reoccurrence. Consequently, the Reproductive Justice Movement is an ethically justified framework for women of color in the United States.

## NOTES

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<sup>3</sup> Henk ten Have, A.M. J. and Michele S. Jean, eds., *The UNESCO Universal Declaration on Bioethics and Human Rights: Background, Principles, and Application*, (France: UNESCO Publishing, 2009), 19-20.

<sup>4</sup> Tom L Beauchamp and James F Childress. *The Principles of Biomedical Ethics. Sixth Edition*. (New York: Oxford University Press, 2009): ix – x.

<sup>5</sup> Ruth Chadwick, Henk ten Have, Eric M. Meslin, eds. *The Sage Handbook of Health Care Ethics: Core and Emerging Issues* (Sage, Los Angeles: 2011)

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<sup>10</sup> Stephen Holland. *Public Health Ethics*. (Malden: Polity, 2007)

<sup>11</sup>“Intersectionality: A Tool for Gender and Economic Justice” *Association for Women’s Rights in Development*. No. 9, August 2004: 1-2.

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<sup>13</sup> Loretta Ross. “Understanding Reproductive Justice.” Trust Black Women. November 2006. <http://trustblackwomen.org>.

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<sup>15</sup> Zakiya Luna and Kristin Luka. “Reproductive Justice.” *Annual Review Law Society and Science*. Vol. 9, (2013): 327.

<sup>16</sup> Loretta Ross. “Understanding Reproductive Justice.” Trust Black Women. November 2006. <http://trustblackwomen.org: 2>.

<sup>17</sup> Ibid.

<sup>18</sup> Asian Communities for Reproductive Justice, et al. *A New Vision for Advancing Our Movement for Reproductive Health, Reproductive Rights, and Reproductive Justice*. Oakland: ACRJ, 2005.

<sup>19</sup> Kimala Price. “What is Reproductive Justice? How Women of Color are Changing the Pro-Choice Paradigm.” *Meridians: feminism, race, transnationalism*. Vol. 10, No. 2, (2010): 42–65.

<sup>20</sup> Loretta Ross. “Understanding Reproductive Justice.” Trust Black Women. November 2006. <http://trustblackwomen.org: 3>.

<sup>21</sup> United Nations Office on Genocide Prevention and the Responsibility to Protect, “Genocide”, United Nations Press, Accessed 8/16/2018.

<sup>22</sup> Loretta Ross. “Understanding Reproductive Justice.” Trust Black Women. November 2006. <http://trustblackwomen.org: 3>.

<sup>23</sup> Ibid.; 4.

<sup>24</sup> Asian Communities for Reproductive Justice, et al. *A New Vision for Advancing Our Movement for Reproductive Health, Reproductive Rights, and Reproductive Justice*. Oakland: ACRJ, 2005: 2.

<sup>25</sup> Ibid.; 2.

<sup>26</sup> Asian Communities for Reproductive Justice, et al. *A New Vision for Advancing Our Movement for Reproductive Health, Reproductive Rights, and Reproductive Justice*. Oakland: ACRJ, 2005: 2.

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<sup>28</sup> Loretta Ross. “Understanding Reproductive Justice.” Trust Black Women. November 2006. <http://trustblackwomen.org: 5>.

<sup>29</sup> Tom L Beauchamp and James F Childress. *The Principles of Biomedical Ethics. Sixth Edition.* (New York: Oxford University Press, 2009):12

<sup>30</sup> Ibid.; 13

<sup>31</sup> Ibid.; 12-14.

<sup>32</sup> Bernard Gert, Charles M. Culver, K. Danner Clouser. *Bioethics: A System Approach Second Edition* (New York: Oxford University Press, 2006):100-101.

<sup>33</sup> Karla FC Holloway. *Private Bodies, Public Texts: Race, Gender, and a Cultural Bioethics* (Durham: Duke University Press, 2011):xv – xviii

<sup>34</sup> Ibid.; xvii

<sup>35</sup> Ibid.; 103.

<sup>36</sup> Ibid.; 99

<sup>37</sup> Ibid.; 103

<sup>38</sup> Ibid.; 102

<sup>39</sup> Ibid.; 120

<sup>40</sup> California State Auditor. *Sterilization of Female Inmates.* Elaine M. Howle, CPA. Report 2013 – 120. Sacramento: June, 2014

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<sup>42</sup> Ibid.

<sup>43</sup> Ibid.; 26

<sup>44</sup> Ibid.

<sup>45</sup> Michelle Alexander.. (2010). *The New Jim Crow: Mass Incarceration in the Age of Colorblindness.* New York: The New Press, 2012.: 3

<sup>46</sup> Karla FC Holloway. *Private Bodies, Public Texts: Race, Gender, and a Cultural Bioethics* (Durham: Duke University Press, 2011): 197

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<sup>48</sup> Bernard Gert, Charles M. Culver and Danner K. Clouser. *Bioethics: A Systematic Approach. Second Edition.* (New York: Oxford University Press, 2006): 118

<sup>49</sup> Ibid.

<sup>50</sup> Ibid.; 119

<sup>51</sup> Tom L Beauchamp and James F Childress. *The Principles of Biomedical Ethics. Sixth Edition.* (New York: Oxford University Press, 2009): 207-208.

<sup>52</sup> Asian Communities for Reproductive Justice, et al. *A New Vision for Advancing Our Movement for Reproductive Health, Reproductive Rights, and Reproductive Justice.* Oakland: ACRJ, 2005: 2.

<sup>53</sup> Loretta Ross. "Understanding Reproductive Justice." Trust Black Women. November 2006. <http://trustblackwomen.org: 4>.

<sup>54</sup> Tom L Beauchamp and James F Childress. *The Principles of Biomedical Ethics. Sixth Edition.* (New York: Oxford University Press, 2009): 150-151.

<sup>55</sup> Ibid.; 241

<sup>56</sup> Samuel Fleishaker, *A Short History of Distributive Justice* (Cambridge: Harvard University Press, 2005).

<sup>57</sup> Tom L Beauchamp and James F Childress. *The Principles of Biomedical Ethics. Sixth Edition.* (New York: Oxford University Press, 2009): 248.

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<sup>60</sup> Asian Communities for Reproductive Justice, et al. *A New Vision for Advancing Our Movement for Reproductive Health, Reproductive Rights, and Reproductive Justice.* Oakland: ACRJ, 2005: 2.

<sup>61</sup> G. J. Warnock, *The Object of Morality* (London: Methuen, 1971): 85.

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<sup>72</sup> Ibid.

<sup>73</sup> Ibid.; 3.

<sup>74</sup> Joel Feinberg, "The Nature and Value of Rights" *Journal of Value Inquiry* 4 (1970): 243-257.

<sup>75</sup> Carson Strong. *Ethics in Reproduction and Perinatal Medicine: A New Framework* (New Haven: Yale University Press, 1997)

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## CHAPTER SIX: Applying Traditional Ethical Protections to the Reproductive Justice Movement

As mentioned in the previous chapter, there are three frameworks to the overall strategy for the Reproductive Justice advancement. The Reproductive Justice Movement framework contains a legal arm to its activist agenda. The legal strategy is to preserve and protect the full reproductive rights of women and girls. It advocates for a woman's right to choose, a woman's right to privacy, and a woman's right to the full array of family planning services.<sup>1</sup> It will also work to influence public opinions and use political means to achieve its goal of a full complement of available services to protect a woman's body from undue interference from the government, from researchers, and from those who would do harm.

Two components of this legal strategy is to legally contest any legislation that jeopardizes a woman's reproductive choice, and to affect or influence public policies that also affect a woman's right to choose. Participants in this part of the legal framework also seek to create new legislation that promote reproductive rights. Women who are sympathetic to the movement as well as women who participate in the movement are encouraged to exercise their voting rights and join in the struggle by employing their voices in the public arena, and organizing themselves to exert their collective power.<sup>2</sup> This strategy also uses the power of alliances with other women's groups and depending on the issues, and also mobilizes state power through these collaborations.

The need for the legal arm is the lack of laws, enforcement of laws that already exist, and a woman's right to be free from discrimination by government interventions or legislative powers.<sup>3</sup> A woman's right to her own body and choices concerning her body is impacted by power inequities inherent in social structures and institutional configurations. Strategies developed to

gain her freedom must be intersectional, meaning realizing that the environment, her status, her economic situation, and culture must all be included in decisions about a woman's struggle for reproductive freedom.<sup>4</sup> There is strong criticism of this strategy, however. One critic has said that this form of activism has at its core "individual rights." This idea says that control over one's own body is the means to liberty and freedom. The simplistic form of this statement ignores the context in which individual choices are made. It also ignores the way government and social policies make it difficult for choices to be made for the benefit of a community, as decisions about population control are being considered that affect communities established through procreative justice.<sup>5</sup>

#### **A. The Case for Protections**

These apparent vulnerabilities to full protection is the focus of this chapter. While there is ethical strength to the framework of the movement, there are some additional protections needed to support the claims of the movement. The exploitation of women and their bodies is also a means of controlling her community, so there must be adequate protection and access to information and services to prevent the practice of coerced sterilizations, compulsory sterilizations, and unwarranted surgery to correct a social problem based on racism and oppression. Women of color and poor women and girls constitute a vulnerable segment of the American population. The health care delivery system is reported to be a part of the problem.<sup>6</sup> Poverty coupled with race can equate to inadequate health care provision and less promising prognoses for people of color.<sup>7</sup> A lack of trust in healthcare providers, specifically between doctors and patients has severely eroded the belief that when accessing care, the best quality will be given.<sup>8</sup> An important book written by a collective of women, argued that the male-dominated medical profession could not be trusted to oversee childbirth and other women-oriented medical

conditions without engaging in the demeaning and destructive treatment of women's bodies.<sup>9</sup> The construct of race depends upon the existence of social hegemony<sup>10</sup> and can only be given meaning within a system of inequality.<sup>11</sup> While race relations in America have progressed and regressed, the Reproductive Justice Movement claims to take the current racial climate into account as it fights against the historic medical abuses against marginalized women. To that end, ethical constructs currently in place are vital to ensure a climate of justice in reproductive health. Improving a climate of trust will take more than just better relationships between physician and patient, but an acknowledgement of past violations and a will to implement a just health care delivery system.<sup>12</sup> There are contemporary reasons for why the Reproductive Justice Movement must be strengthened by traditional protections in conjunction with the activities of its legal undertakings. The following represents some of the reasons why ethical protections are really important and one of the greatest ideologies that bear heavily on those needs of protection are a rise in eugenic theory. Here are some of the ways eugenic theory and forced sterilizations are returning to American society.

### **A.1. Birthright U.S.A. - Deceptive Clinics**

There are "crisis pregnancy centers" (CPC's) that began to appear after the *Roe v. Wade* decision. They are deceptive office structures meant to deceive unsuspecting women seeking reproductive services. Women choose to go to these "fake clinics" to receive prenatal care, birth control, or abortion services. There are an estimated 3,000 of these false clinics across the country. The only medical procedure performed at these clinics are ultrasounds. They counsel women against abortion, and may also counsel her against birth control. Most women are directed to one of these centers as part of the application process for Medicaid, who are by and large, women who cannot afford healthcare. In many of their reported shared experiences, it has

been determined there was no physician, no prenatal care given, and no blood test performed to confirm or repudiate pregnancy.

One woman interviewed described her experience as being in a well lit facility where everyone wore medical scrubs. The CPC had an on-line footprint and nothing seemed out of the ordinary. She handed over to a staff member, her license, her medical forms, her social security number, and a urine sample. As it turned out, no one there had a medical degree of any kind. No one there was able to give sound medical advice. The woman was lectured for hours about her engagement in pre-marital sex, her sexual habits, and the insistence that her boyfriend marry her in order to make her life pleasing to God. Being stunned the woman recalled that according to their advertisements, this clinic offered free pregnancy screenings, free ultrasounds, and free health care. It appears the clinics target women who do not know what to do or where to turn.

The true goal of the CPC is to direct women away from having abortions, berate them for engaging in sex outside of marriage, and to evangelize them according to the evangelical fundamentalism that gave rise to the clinics. They are targeting young African American women and are intentionally positioning themselves in black communities. Rather than focus on the social problems that contribute to unintended pregnancies, they want to eliminate reproductive options. It is a deceptive practice that lures poor women and women of color into their establishment, believing them to be immoral, non-religious, and incapable of proper mothering. Private centers, such as Birthright, provide “compassionate care to millions of vulnerable women.” Government funded clinics are supported by taxpayers through the Department of Health and Human Services, and millions of dollars have been diverted away from family planning centers to these deceptive fake clinics.

The National Institute of Family and Life advocates (NIFLA) is suing the state of California

to stop the enforcement of the state’s Reproductive FACT (Freedom, Accountability, Comprehensive Care, and Transparency) Act. The California law was meant to prevent women from being deceived when searching for reproductive services. The law requires centers to disclose their stance on abortion and whether or not there is a licensed medical professional running the facility. Attorneys for the centers argue that the law forces them to post disclosure signs that tell women about their rights to abortions is a violation to their freedom of speech. The posting, they argue, has an unmistakable “advocacy component” which is a message that is incongruent with their purposes.

NARAL Pro-Choice American Foundation is fighting against the actions of NIFLA. According to NARAL Pro-Choice America, NIFLA is intentionally deceiving women who come into their clinics but setting themselves in Black neighborhoods, in Black establishments and Black radio stations. Their intentions are suspected to be shared by Justice Neil Gorsuch, the latest Trump appointee to the Supreme Court. Many in the organization are fearful that he will vote in NIFLA’s favor and set back women’s reproductive options backward. One woman who entered the clinic unaware was told that she was two months pregnant. In actuality, she was much further along but also had an incompetent cervix. Eventually she lost the baby due to the misinformation. It was especially difficult but if discovered early, her cervix could have been repaired and her baby could have been saved.<sup>13</sup>

## **A.2. Project Prevention – C.R.A.C.K.**

Barbara Harris has run Project Prevention for over twenty years. She has received millions of dollars in donations and operates out of her RV. She pays drug addicted women \$300 to be sterilized or have an implanted IUD. It is estimated that Harris has paid for over 7,000 women to be sterilized or receive long term birth control. She proclaims herself to be an advocate for

children who are born to addicted parents after having adopted four children from a similar circumstance. The initial name for the project was C.R.A.C.K.: Children Requiring a Caring Kommunity.<sup>14</sup> Harris' operation has extended its work to the United Kingdom as well as across the United States.

According to Harris, she does not sterilize women, she only guides them to receive tubal ligations or long term birth control methods. She does not force women to come to her; according to her claim, they come voluntarily. She uses the term sterilization because it causes more attention in communities and with the media. She continues the name Project Prevention in the public arena, but the legal name of the organization is still C.R.A.C.K. She does not consider her payment a bribe, it is an incentive. The incentive is not meant to affect the problem of addiction, it is just to keep women from giving birth to addicted babies.<sup>15</sup> The organization is not anti-abortion or pro-choice, it is attempting to spare children from the suffering of addiction cause by an addictive parent.

Harris also attempted to affect the politics around pregnancy and drug use in California. It was entitled Assembly Bill 2614. The bill was initially authored by a senator in Ohio, and Harris found someone in California willing to write the bill for that state. According to Harris, the California bill was to compel addicted women to use long-term birth control. The final form of the bill required for women to be imprisoned if it was determined they were not on an approved birth control method. Harris claims she did not want to see women go to jail and if a hospital determined no birth control hormones in a woman's system, perhaps women would not seek the care they needed and would refrain from giving birth or seeking treatment in a hospital, which would be a required reporter.<sup>16</sup>

When asked if she considered herself a eugenicist or a Nazi, she replied no but does not mind

the moniker. She has stated that she has been called worse, but the terms “eugenicist or “Nazi” do not express the true motivation behind her work. However, Harris only drives her RV or advertises in Black neighborhoods; she only visits clinics in low income neighborhoods, and she places ads in hospitals that cater to the homeless and those who cannot afford quality care.<sup>17</sup> She “trols”<sup>18</sup> particular places based on what she thinks is the character and nature of an addicted woman and ends up in Black neighborhoods with slogans such as “Don’t let pregnancy get in the way of your crack habit!” and “She has her daddy’s eyes and her mommy’s heroine addiction!”<sup>19</sup> In interviews Harris said "We don’t allow dogs to breed. We spay them. We neuter them. We try to keep them from having unwanted puppies, and yet these women are literally having litters of children," and that "we campaign to neuter dogs and yet we allow women to have 10 or 12 kids that they can’t take care of."<sup>20</sup>

There are many critics to Harris’s work through the C.R.A.C.K. organization. One such critic is Dr. Stephen R. Kandall<sup>21</sup>, who became personally involved with a case in Florida. Dr. Kandall pediatrician was a witness who testified on behalf of “Ms. Johnson”, a young African American mother of two who was tried for the presence of a tiny amount of cocaine in her system during the birth of her third child. While the other two children were perfectly fine and well cared for, she was charged with the “delivery of a controlled substance to a minor,”<sup>22</sup> even though no trace of the drug had been detected in the newborn. Dr. Kandall knew that jail nor removing her children nor preventing her subsequent ability to reproduce would solve the problem, but the State of Florida convicted Ms. Johnson anyway, sentencing her to a one year drug treatment program, which she had already begun on her own; fourteen years of probation, and two hundred hours of community service. If she became pregnant again, she would have to undergo court sponsored prenatal care and was banned from attending bars, drinking alcohol, or associating

with those who did. None of the punishments rendered had taken into account her economic situation or her difficult personal experiences. While an appellate court upheld her conviction, the Florida State Supreme Court unanimously overturned her conviction, stating the State was not willing to walk down a path that the law, public policy, and common sense forbid.<sup>23</sup> Similar court cases were going on all over the United States based on a United States drug trafficking law, which inordinately affect African Americans under the war on drugs declaration.<sup>24</sup> Dr. Kandall's basic premise is that treatment options positioned to alleviate suffering and reduce drug addiction among mothers must take into account her economic, personal experiences, race, and any other vulnerabilities that contribute to her ability to parent in safety, deliver in safety, and receive the assistance she needs in a quality manner.

### **A.3. The State of California – Incarcerated Women**

Between the fiscal years of 2005-2006 and 2012 – 2013, it was reported that 144 female inmates had been sterilized by tubal ligation without the proper consent procedures followed by those in charge.<sup>25</sup> Staff at the four correctional facilities repeatedly sterilized female inmates without following established procedures to obtain consent from the inmate before the surgery was performed. The list of violations included failing to obtain the proper consent; the physicians' failure to sign the consent forms stating mental capacity of comprehension of the procedure by the inmate; failing to wait the required amount of time between the signing of the consent form and the performance of the procedure; and failing to see if permission was granted from the state to perform the surgery.<sup>26</sup>

Title 15 of the California Code of Regulations requires an approval process and a review process for what are considered “excluded services”, which are medical services that cannot be provided to inmates.<sup>27</sup> Tubal ligations fall under the exclusion clause. The Headquarters



Utilization Management Committee issues the permission to perform the sterilization procedure when the requests come from the Corrections and the Receiver's Office. A memo dated October of 1999 sent to the prison medical staff from the Corrections division stated that tubal ligation surgeries would be offered to inmates as a part of the regular obstetrical care already offered. Confusion of the meaning of the memo seemed to move tubal ligation from the excluded category to the non-excluded category, removing the need for the legal approval process. As a result, many of the sterilization procedures performed were done so without the proper consent channels obtained. It was determined that in only one instance, out of all 144, was the proper authorization given and all procedures followed.<sup>28</sup>

The process for performing the sterilization surgeries conformed to a regular pattern. Physicians did not perform the procedures because an inmates health dictated its need: most were performed because prison officials sought after women who already had at least two children and those who were to give birth behind bars. The purpose for the tubal ligations were to prevent the women from having any more children. The women reported being pressured to ask for the procedure, sometimes at the time of birth. Sometimes the women were sent back to the operating room days after giving birth. Sometimes the women were not aware that they had been sterilized until much later.<sup>29</sup> While the State of California has reported its problems; this may be a problem for incarcerated women all over the prison system in the United States. These stories are examples of egregious treatment toward women who are in the prison system. It is problematic to suggest that the prison system is a place or a condition under which informed consent can take place. These stories also present the notion that medical ethics, legal procedures, and federal policy did not serve to protect these women who are imprisoned.

Because of the history of California participating in forced sterilization in the past, it is

especially troubling that it has reoccurred. That history led to state regulations preventing forced sterilizations and Medicare banning tubal ligations on institutionalized people. Federal regulations also prohibit the use of federal dollars to pay for tubal ligations or other sterilization procedures on people in prison. Researchers agree that the practice of coercive sterilization is still occurring in the prison system in the United States and the current legal and medical structures are enforcing the illegal practice.<sup>30</sup>

#### **A.4. Medicaid Postpartum Tubal Ligation**

It bears repeating that Black women, women of color, and poor women constitute a vulnerable population. This part of the citizenry has had a troublesome experience accessing the payment from Medicare for postpartum tubal ligation services. In 1978, Medicare put regulations in place that were to protect women from the history of abuse through compulsory sterilizations. The new policy was to add in a waiting period, thereby increasing their ability to prove consent and respect for their personal autonomy. The result has been a barrier to these women receiving services promised by Medicare at the most critical time possible: after giving birth.<sup>31</sup> The policy requires a thirty day waiting period after consent has been given and the performance of the procedure. The barrier leads to a loss of efficacy in the same population it was intended to protect.<sup>32</sup> The problem is two-fold:

- (1) The 30 day waiting period begins at the signing of the consent form. The optimal effect of the tubal ligation to prevent further pregnancy is right after birth. The waiting period can last between thirty days and one hundred and eighty days. Medicare's coverage expires after sixty days. For women who are caring for newborns, it is difficult to make arrangements for childcare when the postpartum tubal ligation is difficult to schedule.
- (2) The consent form is difficult to understand for women who are educationally challenged.

The reading level and the overall design of the form is not patient friendly. This, in spite of the fact, that federal guidelines require all forms to conform to a sixth grade reading level.<sup>33</sup> The form has to be presented at the time of the procedure, which also causes problems when scheduled on weekends when certain personnel are unavailable.<sup>34</sup>

The barrier imposed by the waiting period and the complicated form has resulted in unwanted pregnancies among women who sought sterilization.<sup>35</sup> It is an odd occurrence for the prevention or a difficulty raised in the prospect of sterilization, when in other contexts, sterilizations were forced, coerced, compulsory, and performed without full consent. It is further proof that the welfare of vulnerable populations are at the whim of those in power. It is evident that protections that address inequities, regulatory barriers, and illegalities are quite necessary.

#### **A.5. The Women of North Carolina – Victims of Sterilization**

The State of North Carolina sterilized over 7,600 women through its eugenic sterilization program. Thirty states had eugenic sterilization programs, but North Carolina was one of the last to remove the law from its statutes. In 2014, North Carolina became the only state to input \$10 million dollars in its budget to distribute as reparations to surviving victims.<sup>36</sup> In its past, North Carolina allowed social workers to recommend clients for sterilization and were intricately involved in the high prevalence of black women to be slated for the irreversible procedure. The program ended in 1974 and it is believed that over 3,000 women are still alive today. For more than forty years, North Carolina ran one of the nation's largest and more aggressive sterilization programs in the country. The women affected were wives, daughters, sisters; guilty of nothing more than being unwed mothers.<sup>37</sup>

One example is Debra Blackmon. She was fourteen years old when a social worker visited her home. The social workers described her as “severely retarded” and had “physical problems”

that made her difficult to manage during her menstrual cycle. The social workers convinced her parents that it would be best for Debra to be sterilized to prevent her from giving birth to children who would end up like her and be a drain on her family's resources. They took her to Charlotte Memorial Hospital, where a full abdominal hysterectomy was performed as opposed to the simple tubal ligation that was promised to Debra's parents. Debra's niece, Latoya Adams, found the official court records that included the names of the social workers, the physician who performed the surgery, the post-op notes, and the label "eugenics sterilization" written in her file.<sup>38</sup>

In 2010, Governor Bev Perdue established the \$10 million dollar budget line item to provide compensation for qualified victims. But the barrier to qualifying was unfortunately high. Victims had a deadline of June 30, 2014. It only applied to living victims. The budget item would be effective in the 2012-2013 budget, but it was immediately cut from the budget with the new incoming administration. Governor Perdue had established the North Carolina Justice for Sterilization Victims Foundation, but without funding, there was no money to pay staff, and with the new budget from the new administration, it was unclear what the future plans were to staff and fund the office. Consequently, the foundation had to stop intake activities and cease performing services for victims.<sup>39</sup>

To further complicate things, the victims had to fill out extensive paperwork. In order to be approved for compensation, victims records must list the fact that the sterilization was performed under the direction and permission of the state's Eugenics Sterilization Board.<sup>40</sup> It has been determined that some sterilizations had been performed without proper documentation and without the court renderings written in the files. If the file does not say the procedure was approved by the North Carolina Board, the application was denied, rendering the victim

ineligible for compensation. There was an appeals process, and Debra Blackmon is applying for an appeal. So far 220 victims have received checks for twenty thousand dollars each.<sup>41</sup>

As it turns out, the records that were retrieved on Ms. Blackmon's behalf were not the records the Foundation needed to fulfill her request for compensation. She needed the records from the Eugenics Records Office located in Raleigh, North Carolina. If not located there, she and all other applicants would be ineligible.<sup>42</sup> Added to that barrier, there is much resistance to paying these claims on the part of the legislature. Many believed that if they paid reparations, it would be a signal to the rest of the country to do so and to begin the conversation about unpaid reparations promised to former slaves. The defunding of the Office of Justice for Sterilized Victims was also responsible for finding victims to apply for the compensation: without staff this was an impossible task. Still other legislators said the eugenics programs is a shameful part of North Carolina's history but throwing money at the problem will not alleviate the situation. What the state did amounted to genocide, but it was unwilling to fulfill its promise of reparations in a fair and equitable way.<sup>43</sup>

Cases such as these are why proponents of Reproductive Justice focus on an expanded vision of health care and ethical protections, as well as understanding the need to have a legal model for activism. The intricacies of legal terminology, the interpretation of laws and ordinance, as well as the different laws according to the specific State in question, is not for the average citizen or activist. This part of the framework requires legal experts in order to have any chance of victory for victims. These examples help others outside of the movement to see the need to continue to fight. The ethical structure that guides and corrects behavior must be matched by ethical protections when violations occur to ensure the human dignity and reproductive freedom and safety of women in the United States and around the globe.

## B. The Nuremburg Code

Nazi medicine was aimed at racial hygiene by sterilization and other means based on negative eugenics as a form of applied biology in honor of National Socialism.<sup>44</sup> The code has ten points and concerns itself primarily with obtaining the informed consent of individuals who have the right to be guardians of their own bodies.<sup>45</sup> Just as on American soil, miscegenation became illegal in Germany. Interracial marriage slowly became illegal during the Nazi Regime; utilizing eugenic ideals, “Rhineland Bastards” were forcibly sterilized to preserve the purity of the German race.<sup>46</sup> On December 20, 1946, twenty-three German physicians were brought to trial for unethical medical conduct during human experimentation on imprisoned Jews held in concentration camps; disabled peoples, Slavic races, and Romani races.<sup>47</sup> In 1947, the International Military Tribunal in Nuremburg charged Nazi physicians with war crimes, which included experimentation on prisoners of war.<sup>48</sup> The trials culminated in the conviction and execution of many of the doctors charged. Also, as a result of the trials, the Nuremburg Code was written; devised to protect human subjects in research experiments.<sup>49</sup> Elements of the code as follows:<sup>50</sup>

1. The voluntary consent of the human subject is absolutely essential.<sup>[1]</sup> This means that the person involved should have legal capacity to give consent; should be so situated as to be able to exercise free power of choice, without the intervention of any element of force, fraud, deceit, duress, over-reaching, or other ulterior form of constraint or coercion; and should have sufficient knowledge and comprehension of the elements of the subject matter involved, as to enable him to make an understanding and enlightened decision. This latter element requires that, before the acceptance of an affirmative decision by the experimental subject, there should be made known to him the nature, duration, and purpose of the experiment; the method and means by which it is

to be conducted; all inconveniences and hazards reasonably to be expected; and the effects upon his health or person, which may possibly come from his participation in the experiment.

The duty and responsibility for ascertaining the quality of the consent rests upon each individual who initiates, directs or engages in the experiment. It is a personal duty and responsibility which may not be delegated to another with impunity.

2. The experiment should be such as to yield fruitful results for the good of society, unprocurable by other methods or means of study, and not random and unnecessary in nature.
3. The experiment should be so designed and based on the results of animal experimentation and a knowledge of the natural history of the disease or other problem under study, that the anticipated results will justify the performance of the experiment.
4. The experiment should be so conducted as to avoid all unnecessary physical and mental suffering and injury.
5. No experiment should be conducted, where there is an a priori reason to believe that death or disabling injury will occur; except, perhaps, in those experiments where the experimental physicians also serve as subjects.
6. The degree of risk to be taken should never exceed that determined by the humanitarian importance of the problem to be solved by the experiment.
7. Proper preparations should be made and adequate facilities provided to protect the experimental subject against even remote possibilities of injury, disability, or death.
8. The experiment should be conducted only by scientifically qualified persons. The highest degree of skill and care should be required through all stages of the experiment of those who conduct or engage in the experiment.
9. During the course of the experiment, the human subject should be at liberty to bring the

experiment to an end, if he has reached the physical or mental state, where continuation of the experiment seemed to him to be impossible.

10. During the course of the experiment, the scientist in charge must be prepared to terminate the experiment at any stage, if he has probable cause to believe, in the exercise of the good faith, superior skill and careful judgment required of him, that a continuation of the experiment is likely to result in injury, disability, or death to the experimental subject.

The elements of the Code are listed for emphasis. Each element points to the fact that the lessons of the Holocaust were thorough and pointed specifically at preventing the horrific events of the period from ever happening again. The Code was also meant to set up ethical standards for research that is necessary and useful, rather than punitive and inhumane. The Code is also meant to accentuate the elements and the demand for informed consent. At each developmental stage of a research project, the subject is allowed to stop participating at any moment, and the researcher is ethically bound to stop an experiment if it can cause harm or death. These elements of the Nuremberg Code, play a key role in the prevention of the illegal sterilization of poor women and girls of color.

In their defense, the physicians on trial publicized that they were being tried for the very same things that American doctors were also doing: regularly subjecting prisoners to painful and involuntary experiments. It has been determined to be true. American doctors were performing unethical research on incarcerated individuals. One year after the Nuremberg Trials, the *Journal of the American Medical Association* discovered that doctors at the Statesville Prison conducted malaria experiments on inmates there, which is a violation of the Nuremberg Code.<sup>51</sup> It has also been discovered that American scientists recruited 700 Nazi scientists as experts to conduct experiments on unsuspecting American prison inmates. The scientists were granted immunity



and new identities in a resettlement program designed specifically for these Nazi scientists.<sup>52</sup>

Operation Paperclip was an operation under the State Department to resume their old habits and conduct secret nonconsensual research projects on American subjects.<sup>53</sup>

American doctors at that time, around 1947, believed the code was for “barbarians” and not for them. American scientists replaced the code with a hollow representation of the Nuremberg Code meant to assure the American public that its doctors could be trusted. The Code has been described as “toothless” carrying no penalties for its breach and therefore is widely ignored.<sup>54</sup> To date, no one has ever been held accountable for violations of the code on American soil or within the American penal system. Ethically, however, the elements of the code are viable and can be used in the context of forced sterilization. The eugenic surgeries of the past were not experiments from a pure sense, but were based on a premise of eugenic theory combined with faulty genetic science. But with the purposes of reducing the population of African Americans in the United States, there were experiments done using different forms of contraception on a different vulnerable population. The elements of the Nuremberg Code can speak into this context.

While sterilization is a form of contraception, the development of the pill also led to other forms of birth control and family planning. The convenience of the pill led to wide use by women, but still other forms continued to emerge. In 1978, physicians began to experiment with a drug called “Depo-Provera” exclusively to poor women of color.<sup>55</sup> The drug had been approved for use as a cancer therapy. The FDA pulled its funding for further testing once it was determined the drug caused breast cancer in the animals upon which it was first tested. It is entirely legal, however, for physicians to use approved drugs for any use they deem necessary, so it continued to test Depo-Provera as an experimental contraceptive to healthy Native American

and Black patients. A 1978 study showed that the highly carcinogenic drug was given to over 4,700 women Black women needlessly endangering their lives.<sup>56</sup> It was eventually discontinued.

When Depo-Provera was discontinued as a contraceptive, a different drug gained popularity among American physicians. The drug Norplant (progestin levonorgestrel) comes in six small tubes which are implanted into a woman's upper arm and is a time released contraceptive effective for up to five years. It is administered using special tools and a local anesthetic. Norplant was developed by the Population Council, a New York foundation that tests and researches contraceptives on poor women of color abroad.<sup>57</sup> Frederick Osborn of the Population Council said that birth control methods are turning out to be major eugenic steps. But if they had been advertised as a eugenic means, that would have retarded or stopped their acceptance.<sup>58</sup> The drug was not only used to prevent unwanted pregnancies in young women but also had the hidden agenda of eugenicists trying to control the population of Blacks in America.

The research aspect of the Nuremburg Code and the experimentation of contraceptives on unsuspecting women is proof of the need for protection. The Norplant story is even more dire as the story goes on. Based on the unscientifically tested theory that Black teens represented the racial group with the largest amount of unwed mothers, they became a test group for the hope of lowering the teenage pregnancy rate among African American girls between the ages of thirteen to nineteen years of age. Fifty thousand Norplant kits were implanted into African American middle school girls in Baltimore public schools between the years of 1991-1992 without parental consent. These middle schools girls were injected with Norplant and constituted a national experiment for the Population Council who did not know that pregnancy rates for Black teens was decreasing rapidly.<sup>59</sup>

Media outlets such as *The New York Times*, *The Philadelphia Inquirer*, and *The National*

*Review* all praised the experiment as being better than an “abortion later.”<sup>60</sup> They also agreed that the bio-underclass of black children should be reduced in a December 12, 1990 editorial. Each assumed Norplant was a safe drug to administer, but it had never been tested in children so young. It is contraindicated for women with diabetes, hypertension, and cardiovascular disease. It produces weight gain and severe mood swings, which is dangerous for black women with these conditions. But the issues to keep in mind is that these young girls could not get an aspirin administered without the consent of their parents, yet in the name of eugenics and experimentation, these girls were implanted with a contraceptive, a local anesthetic, and watched without anyone’s consent, approval, or full knowledge.<sup>61</sup>

To those women who work within the Reproductive Justice’s legal framework, these issues of experimentation are post illegal sterilization. These ethical violations are not without historical roots, which is why the Nuremburg Code was written. The Code can be used as a means of confronting unethical physicians and as a means to demand justice. While largely ignored by American doctors, the Code can be a building block in an argument to target this type of egregious behavior on the part of researchers. It was not used by the physicians but it can be used by attorneys and others who are fighting for the ethical behavior of physicians.

In relation to the history of forced sterilization and the eugenics movement in America, the Code directly speaks to the ethical violations of informed consent, the lack of beneficent action, and maleficence.<sup>62,63</sup> While the code speaks to the violations, in its early days, it was not accepted as law or endorsed by the American Medical Association.<sup>64</sup> It has gained global attention, however, as an important document in the protection of humans in research experimentation.<sup>65</sup> The Nuremburg Code was instrumental in the formation of two other documents: the Declaration of Helsinki, and the Declaration of Geneva.<sup>66</sup> While not a legal

document, its elements can be used to formulate legal adjudication where violations occur and can form the basis of patient expectation when seeking treatment for reproductive health.

### **C. The Belmont Report**

The Belmont Report was generated partially because of the troublesome Tuskegee Syphilis Experiment. The longest human experimentation project in the United States, the Tuskegee experiment was a bungled and fatal experiment that resulted in the death of over 300 African American males between 1932 and 1972 without ever being treated for the disease, even though penicillin could have been used to cure the disease.<sup>67</sup> Under Public Law 93-348, a commission was formed and given the mission of following the mandate set within the body of this law. The commission was charged to develop a set of ethical guidelines to follow when conducting research with human subjects. The commission was also charged with providing guidelines to make sure the ethical principles were enforced.<sup>68</sup> The completed report was presented to the United States President, Congress, and the Secretary of Health, Education, and Welfare.

The Report was commissioned by the passing of the National Research Act (Pub. L. 93-348) and resulted in the formation of the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research.<sup>69</sup> After the shocking and embarrassing media reports of the details of the experiment on unsuspecting poor men in Alabama, the government's role in conducting the research became the fodder for unrelenting mistrust in the government, in research, and in the medical system by African American's. The Tuskegee Syphilis Experiment began with the racist dimorphic belief that syphilis would present differently in black men than in the white counterparts. Since black men's brains were believed to be not as developed as white men's brains, they wanted to see how the disease worked in black men. There was no scientific basis for that belief that initiated the study. The Commission was set up to ensure that

this did not happen ever again and in any way during research involving human beings within the American medial structure. The study was yet another example of eugenic theory concerning the negative evolutionary position of African Americans.

For the women of the Reproductive Justice Movement, the Belmont Report is the body of work that furthered the protections of the Nuremburg Code. Citing the report itself, the Commission stated they believed the Nuremburg Code did not cover complex situations and became difficult to interpret and apply, especially when found to be in conflict with other ethical principles.<sup>70</sup> The Belmont Report, however, did contribute the language of vulnerability into the field of bioethics in 1978.<sup>71</sup>

The Belmont Report outlines three specific areas of ethical considerations: respect for persons, including informed consent and respect for autonomy, justice, and beneficence.<sup>72</sup> In modern principle ethical terms, it would be labeled the respect for patient autonomy, justice, and beneficence. The report is meant to provide an ethical framework to guide decision making when problems arise and a resolution is needed.<sup>73</sup> The report makes a careful definition of “research” and how ethical protocols apply. According to the report, “research” designates an activity designed to test an hypothesis, draw relevant conclusions, and contribute to generalized knowledge. The project is usually described and a formal objective to be achieved, along with a set of procedures to reach the stated objective.<sup>74</sup>

The first ethical objective outlined in the report is the *respect for persons*. It encompasses two theories:

- (1) the individuals involved in the research be treated as autonomous decision makers
- (2) that people with “diminished autonomy” be protected.<sup>75</sup>

Middle school and high school African American girls in Baltimore were not old enough to

make a decision to allow a high powered temporary sterilization drug be tested on them as Phase I of human testing. Those who could have made the decision on their behalf, such as parents or legal care takers, were not consulted or contacted. Not only were these girls a part of a vulnerable population by reason of gender, race, and age<sup>76</sup>, their diminished autonomy was not protected but exploited and ignored. The vulnerability of these girls should have been cause for extra precaution but no such extra care was provided. One parent stated that her daughter could be implanted with Norplant via the school based clinic but her suburban colleagues must give permission for something as small as an aspirin to be given to their daughters.<sup>77</sup>

Respect for these young girls as research subjects would have demanded that they voluntarily participate in the temporary sterilization trial with adequate information to make a decision to volunteer. What is also troubling is not only were they given Norplant without the proper information, they were put under a local anesthetic without proper permission from a responsible adult. Healthy girls were placed in a medical procedure with no protection nor concern by the researchers. In such a case, where the research subject is deemed too vulnerable and the probability of harm can result, the report stipulates they are to be excluded from the research.<sup>78</sup> The information gained from the research project was used to force older women entering the criminal justice system to either be injected with Norplant, permanently sterilized, or face the consequences of being cut off from aid for their dependent children or extra time in prison.

The second ethical principle outlined in the report is *beneficence*. Within the context of the report, beneficence is not mere charity; it is an obligation. It also has a two-fold emphasis:

- (1) do no harm,
- (2) maximize possible benefits and minimize possible harms.<sup>79</sup>

The obligations of beneficence as defined by the report, are meant to affect individual

researchers and the larger society as it reflects on the business of research. The research conducted must in particular and in general must benefit society and at least not harm the research subjects. The research project with the young black urban teens was done from a racist point of view without the benefit of research, that benefitted society from the supposed harm of having to support dependent offspring. The result of the Phase I testing on these young girls, along with the Tuskegee Experiment and other nefarious research experiments on African Americans has caused this group to not participate in further research projects, even though protections are in place. Much needed information that could improve the health of African Americans have been difficult to obtain because of fears associated with the history of research among them. Health disparities continue to exist among this people group even today.<sup>80</sup> This is why the duty of beneficence is vital.

The third ethical principles outlined in the report is *justice*. In the context of research with human subjects, the principle of justice foreshadowed early experiments that used poor people, and people of color for burdensome or dangerous experiments, while wealthy patients benefitted from research that held the promise of benefits to their health alone. So justice becomes a question of the fairness in the distribution of benefits among people treated as equals. There are criteria that distinguish equality among participants, but there must be a structure to help distribute benefits and burdens.<sup>81</sup> Injustice occurs when someone is wrongfully denied a benefit they deserve without good reason. Also an injustice is defined as an undue burden placed on someone in the context of a research experiment. There are systematic formulas to help select categories of people and how resources should be developed among them. The following outlines accepted industry ways of distributing benefits and burdens:

(1) to each person an equal share

- (2) to each person according to individual need
- (3) to each person according to individual effort,
- (4) to each person according to societal contribution, and
- (5) to each person according to merit.<sup>82</sup>

Scrutiny is necessary to prevent some populations from being overly targeted for research. Scientists argued that data collected from fifteen years of testing on 55,000 women in 170 clinical trials should have proven how safe the contraceptive injection was, but the drug had never been tested on girls so young. While researchers monitored their reactions to the drug and reported the data to the Population Council. Of all the girls tested, 345 out of the 350 were African American,<sup>83,84</sup> and the objective was not disclosed. The selection of these girls violated protocol that should have surveyed the selection of the girls to ensure a broader group of participants. Classifications such as race, gender, and age can represent groups of people that are unfairly and overly made to bear the risk and the burden of the research. The framework of the Belmont Report has stated an ethical principle of justice to assist with making decisions that will benefit the general population.

One author has suggested a critique of the Report stating that the report does not prioritize its three principles and offers only a uniformed approached vs. a specific case approach for IRB's (Institutional Review Boards).<sup>85</sup> The three principles outlined in the report drive the activities of the United States Department of Health and Human Services<sup>86</sup> and the final draft of the Report was published in September of 1978.<sup>87</sup> The survivors of forced sterilization; the remaining family members of horrible research experimentations, and the women who are seeking a broader menu of reproductive health services must be assured that the ethical protections provided by this and other documents can provide the proper ethical context in which these services will be performed.<sup>88,89</sup>



#### **D. Institutional Review Boards**

Because a procedure is “experimental” does not automatically make it research. When a physician departs from a standard practice, the innovation also does not in and of itself constitute research. New procedures, new medical innovations, and advances in technology should be formalized as a research project in order to determine their safety and benefit. The evaluation of risks and benefits should be ascertained before the project moves forward to secure the public’s good will. This assessment allows for opportunities to acquire comprehensive information about the proposed research project. As the object of formal research, it is the task of medical practice committee to evaluate the protocols within the research project.<sup>90</sup>

Institutional Review Boards are commonly used to evaluate the proposed research project. These IRB’s are also known as independent ethics committees (IEC’s). Their purpose is to ensure that appropriate steps are taken to protect human research participants.<sup>91</sup> There is evidence that some of the sterilization procedures not only occurred in hospitals but were used to teach medical students how to perform the procedure.<sup>92</sup> This occurred in hospitals in New York, Boston, and California. The evidence produced disclosed falsified medical records that hid the true nature of the surgeries by labeling it as an “appendectomy” or “gallbladder removal,” coerced patient signatures, forged consent forms, and other practices.<sup>93</sup> IRB’s are organized to prevent such things from happening in the current medical context.

While sterilization procedures were widely practiced, these women were not made aware that they were more likely to experience complications from the surgery, including a higher incidence of death over their white counterparts.<sup>94</sup> By this time, the use of Black women’s bodies had taken a complete turn: throughout slavery, these women were forced to reproduce, but now were being forced to relinquish their reproductive ability.<sup>95,96</sup> Can the tools, methods, and protocols of

IRB's be applied to situations in which women are coerced into being sterilized in institutions, confinements, and imprisonments? Is the work of IRB's confined to hospitals and medical experimentations? What can be borrowed from their work?

By 1980, sterilization was the most common form of birth control applied, edging out condom use.<sup>97</sup> While this statistic includes male sterilizations, ethical principles were encoded with different cultural meaning in order to justify the castration of slaves, the sterilization of women, and the perpetration of genocide.<sup>98,99</sup> The level of distrust by African Americans in the healthcare system is not unfounded superstition, but is based on these historical practices. This distrust has shaped lives and keeps this segment of the population from the full menu of health care services it desperately needs.<sup>100</sup> Since some of the dangerous and dehumanizing procedures occurred in American hospital systems, then ethical considerations such as oversight for procedures, proper documentation, and accountability for physicians and nurses who violate ethical standards can help provide a context of trust.<sup>101,102</sup> IRB's can be an institutional tool to help curb distrust as well as protect vulnerable and marginalized populations.<sup>103,104</sup>

Under FDA regulations, IRB's have the authority to approve, stop, or require modifications to a proposed research project.<sup>105</sup> Aside from sterilization practices, the testing of Norplant on young girls could have been disapproved or regulated by providing the right conditions for the trial to be conducted. Research with human subjects is socially important but is a difficult moral undertaking. In the interest of advancing science and developing technologies that will advance patient care, most trials will result in the care of future patients while the current patient incurs the risk.<sup>106</sup> An ethically justified research project will have the following criteria met:

- (1) a goal of valuable knowledge
- (2) a reasonable prospect that the research will generate the knowledge that is sought

- (3) the necessity of using human subjects
- (4) a favorable balance of potential benefits over risks to the subjects
- (5) fair selection of subjects
- (6) protection of privacy and confidentiality<sup>107</sup>

While regular reports were made to the Population Foundation concerning the effects of Norplant on the young African American subjects, there was no oversight or evaluation by an IRB board or ethics committee that could have regulated the activity of the foundation. The drug was forced upon these young girls without proper protocols, informed consent, assessment, oversight, or contribution to general knowledge.

As it turns out, Norplant caused menstrual changes, weight gain, headaches, mood changes, and acne. Black women with higher incidences of hypertension, diabetes, obesity and greater risks associated with breast cancer are not good candidates for Norplant use. The effectiveness of Norplant decreases in women over 155 pounds because it is calibrated for smaller women.<sup>108</sup> Physicians generally were not trained for Norplant insertion or removal, and it turns out that removal is more difficult than it appeared. For African American women, who keloid more often, the surgery to remove the tubes has proven to be far more complicated.<sup>109</sup> One in three women implanted with Norplant sought removal within the first year. In three years, more than half sought to have it removed. But there was one more hurdle. For those women who used Medicaid to pay for the procedure, had no problems being approved for the payment found that Medicaid did not want to pay the \$500 removal fee. Norplant was recalled in in 2000 and taken off the market in July of 2002.<sup>110</sup> It is hopeful that IRB's and Ethics Committees can provide protection for women of color and the legal arm of the Reproductive Justice Movement can be both watchdog and provide legal expertise when seeking justice.

There are some criticism of the IRB system. A 1998 Department of Health and Human Services report states that IRB staff is not properly trained, not well equipped for ethical conflicts of interest, and overwhelmed with too many cases.<sup>111</sup> The Office of Protection from Research Risks requires IRBs to have at least five members; one with scientific interests, one with no scientific interests, and one more with no affiliation with the IRB institution.<sup>112</sup> The development of the UNESCO Declaration sets out requirements for ethics committees that render them irreplaceable.<sup>113</sup> The further level of protection provides a framework to refer to , to help settle ethical conflicts and to provide further training for members of IRB's.

#### **E. The UNESCO Universal Declaration on Bioethics and Human Rights**

The UNESCO Universal Declaration on Bioethics and Human Rights has become a reference text adopted by Member States to apply ethical standards to medicine, life sciences, and technologies as applied to human beings.<sup>114</sup> Concerned with the moral issues relating to science, there is wide agreement that the need for ethical protections in the areas of concern specific to women is of global importance. One of the principle aims of the Declaration is to “promote the respect for human dignity” and to “protect human rights” consistent with international human rights laws.<sup>115</sup> The evidence shows that Asian women, Latino women, African women, and African American women, and at a certain point in history, Jewish women have experienced attempts at genocide. American medicine can be a global leader in reproductive health and safety if it abides by the ethical standards embodied in the Declaration.

The Reproductive Justice Movement added human rights to its framework as a means of connecting the health and wealth of women to their basic human rights recognized in the global arena. The leaders of the movement recognized that the safety of women in medical research or in medical practice are limited by their social and economic status. They decided to connect

with the human rights agenda in order to have the full expression of their needs addressed versus aligning themselves with the limitations of “choice” or pro-life” politics. This is important because for women of color, the natural choice would have been to engage in the civil rights movement: but the leaders recognized that the struggle for civil rights was ongoing and only achieved limited success.<sup>116</sup> Civil rights and human rights are often confused and reproductive justice activists make the distinction between the two concepts. They describe human rights as those entitlements held by all humans, regardless of any rights a person may have as citizens, members of families, workers, or parts of any other public or private organization or organization.<sup>117</sup> Civil rights are adjustments to an already established structure that is acceptable.<sup>118</sup> Civil rights were advanced to protect African Americans within the racist culture in the United States. The structure did not change; it was adjusted to accommodate African Americans, protecting them from active discrimination.<sup>119</sup> A human right implies that any system of government that denies the full expression of the natural, inalienable rights of human beings is unacceptable.<sup>120</sup>

The UNESCO declaration connects bioethics and human rights and seeks to provide a universal framework of principles and procedures to guide member states in the protection of human dignity and the fair distribution of medical advances, new technologies, life sciences, but also the social aspects of medicine: access to healthcare.<sup>121</sup> There are fifteen articles that comprise the heart of the Declaration. Its principle aim is to guide the actions of individuals, groups, communities, institutions, and corporations, public and private into the ethical standards of bioethical concerns in the area of public debate and policy-making.<sup>122</sup> Since the bioethical principles have human rights and fundamental freedoms as its foundation, the Reproductive Justice Movement was right to connect its agenda to that of UNESCO’s. The Movement also

recognizes women's reproductive rights as a human right and therefore the past grievous experiences of women of color, particularly in the context of medical practice, should advance their cause through this mechanism.

Articles 5 – 10 are of particular concern for the Reproductive Justice framework:

- (1) Article # 3 – Human Dignity and Human Rights
- (2) Article # 4 – Benefit and Harm
- (3) Article # 5 – Autonomy and Individual Responsibility
- (4) Article # 6 – Consent
- (5) Article # 7 – Persons Without the Capacity to Consent
- (6) Article # 8 – Respect for Human Vulnerability and Personal Integrity

Several other articles, such as “Ethics Committees”, “Social Responsibility and Health”, “Non-Discrimination and Non-Stigmatization”, “Respect for Cultural Diversity and Pluralism”, and still others address the vulnerabilities faced by women of color as they seek to control their own bodies. The UNESCO framework, through these articles, align perfectly with the justice the activists are seeking for the protection of women, their communities, and future generations. The fear of genocide and the thrust to have genocidal societal practices acknowledged has been a difficult trajectory. Utilizing the UNESCO Declaration extends the reach of the Movement to a global arena that will perhaps have implications for the United States, as a member State.

Reproduction has become a biological as well as a political endeavor.<sup>123</sup> The subject matter has moved from the privacy of decision into the public arena for either support of critique and government intervention by legislation and policies. It cannot be ignored that images and stereotypes also influence how policies and public opinion that influences policies. The battlefield continues to be women's bodies as the public struggles to define what constitutes

women's rights.<sup>124</sup> The Movement use of the human rights framework is an attempt to do three things: (1) to spread the human rights agenda into the United States ideology of reproductive rights from the international political arena; (2) to expand activism concerning women's bodies by acknowledging its urgency based on historical abuses within the development of medicine, exploitations in research, and the government's participation in that history, and (3) to contrast the narrow prior activism around civil rights to human rights in the public space and move reproductive rights and discussions from a private matter to the reality of its public narrative.<sup>125</sup>

The UNESCO Human Rights Declaration supports the ethical framework of the principles method of establishing bioethical principles. Its expansion into reproductive justice politics in the United States places a layer of examination upon American medical ethical practice from a global standpoint. Further protection and areas of activism could be to stop the erosion of informed consent<sup>126</sup>, respecting a woman's right to say yes or no to research, to certain procedures, and to permanent sterilization without government force. This ethical standard should apply to incarcerated women, women in the general population, and young girls who do not yet have the capacity to consent. The Declaration also supports the suggestion that participants in IRB's, ethical committee's, and researcher and other medical personnel must receive education in the ethics and practices of conducting bioethical research. Perhaps some form of formal education also be included within the prospectus of patient or proposed subjects in research projects.<sup>127</sup> American credibility is at stake globally if our ethical standards are not also met. We have no moral standing to criticize any other nation about research and medical abuses if our ethical house is not in order.

#### **F. Federal Funds Prohibited to Pay for Sterilizing Incarcerated Women**

In 1974, the federal health department issued regulations to restrict the use of federal fund for

sterilization.<sup>128</sup> In 1975 Congress passed a law forbidding people who are administering or working in federally funded programs from coercing anyone to be sterilized or have an abortion. These workers are also not allowed to threaten women who refuse with lessening their benefits.<sup>129</sup> Women who were members of the National Welfare Rights Organization challenged the law in court citing that the regulations were inadequate. This suit that ultimately led to the adoption of the current federal regulations in 1979.<sup>130</sup> The sterilization regulations attempt to carefully guard the interests of people at risk for coercive sterilization. There is a loophole, however: Medicaid will pay if the physician obtains informed consent from the patient. This permission is granted to women who are not imprisoned, or under detainment in any way. Basically the federal government regulates sterilizations to protect women in prison, therefore, Medicaid and other federally funded programs cannot be used to sterilize institutionalized people under any circumstances, even when obtaining consent.<sup>131</sup>

By the circumstance of confinement, imprisoned women are living in a hostile environment that limits their decisions about the full range of reproductive services. Medicaid's rules prohibiting sterilizations of imprisoned women meant that women have the right to refuse such a permanent method of birth control by the refusal of the use of federal funds for this purpose. Medicaid's regulations against sterilization has helped to form rigorous consent requirements when other funds are utilized for sterilization intentions. It is simply not realistic to assume that consent could be given under detainment circumstances.<sup>132</sup> Eliminating coercion is the goal of the federal regulations and removing the governmental participation in the historic eugenic sterilization programs.

Yet, with rigorous consent requirements in place, and with the prohibition of Medicaid and/or Medicare funds to be used for sterilizations of incarcerated people, more than 100 women were



sterilized in California between 2006 and 2010.<sup>133</sup> It has been discovered that physicians and prison medical personnel by-passed the strict regulations and received payment from the State as opposed to the federal government for their participation in performing these coerced procedures. The actions of physicians in sterilizing women from prison raise serious questions about medical ethics and professional responsibility and must be addressed as part of the solution.<sup>134, 135</sup>

The deeply coercive environment of prison is the context in which improper consent for sterilization is obtained. Prisons are hostile to women's reproductive health and safety. Countless news reports, human rights investigations, and lawsuits document the depth of suffering experienced by women in prisons in the United States.<sup>136</sup> Inadequate medical care is often highlighted and high on the list of complaints as evidenced by the demonstrated by the filing of formal grievances and litigation. Prisons are also places where many forms of sexual violence occur. Incarcerated women report high levels of sexual assault, most often by the very people whose job it is to maintain safety in the prison. Routine pat searches and strip searches trigger memories of trauma and abuse but are also experiences of trauma and abuse. Prison rules and personnel control every aspect of women's lives and daily routines—from what to wear to what feminine hygiene products to use and this control takes away the rights of women to make any decisions for themselves. In this punitive environment, where arbitrary, degrading, and dehumanizing tactics are perpetrated on women who many believe are deserving of behavior and attitudes toward them. In this environment, truly voluntary and informed consent to the irrevocable loss of procreative capacity is not realistic.<sup>137</sup>

While Medicaid and Medicare backed by the legal aspects of the use of federal funds have provided a strong attempt at protection for incarcerated women, there must be the will on the part

of prison personnel to adhere to those regulations. Eugenic theory still seems to inform bias and stereotypical beliefs about black women, poor women, and other women of color. Similarly, race bias at every stage of the criminal process—from arrest, to charging decisions, to jury selection, to sentencing recommendations—has resulted in a heightened risk of incarceration for African-American, Latina, and Native-American women<sup>138</sup>, heightening the need for continued protections from ethical, medical, and physical abuse.

### **G. Conclusion**

The traditional ethical protections summarized in this chapter indeed provide the necessary language and barriers to health care violations. The industry standards and expectations of moral behavior are outlined in professional codes, research codes, and government ordered reports, such as the Belmont Report. Research that involves human subjects is monitored by IRB's, which survey the research content, context, and research protocols. Ethical protections are also bolstered by the backing of powerful authorities such as the United Nations, whose Declaration of Bioethics and Human Rights aligns the moral behavior of its member nations. The Department of Health and Human Services continues the activities of ensuring informed consent, justice, and autonomy, as well as the ethical principle of beneficence.

The concern is the resurgence of negative eugenics that is reinterpreting traditional ethical protections. Illegal and immoral behaviors are not eliminated through the protections set in place because the codes and reports are not legal documents. However, the codes, the reports, and the ethical committees outline expected industry behavior for health care service providers. The legal framework of the Reproductive Justice Movement can use protections in place to frame legal arguments that provide reparations for abuse victims and for those whom justice has been denied. The language of the codes and the professional standards outlined therein can

provide the legal basis for legal enforcement and punishment for violations reported and uncovered with the support of precedence set by the U.S. Supreme Court. As for the Reproductive Justice Movement, there are strong ethical protections currently in place to address any violations and to promote the health and welfare of vulnerable women.

As a result of the Nuremberg Trials, the Nuremberg Code was established as a set of ethical principles regarding human research.<sup>139</sup> It helped to form other documents for the protection for human beings in research trials. The young middle and high school girls in Baltimore were not afforded protections or consideration and treated without concern for health risks associated with a Phase I trial. It would appear that ethical considerations are only as good as the will to abide by them. IRB's are meant to be a layer of protection against improper research protocols, but it will have to be the work of the Reproductive Justice Movement to ensure the medical community is held accountable for actions contrary to the ethical principles of bioethics. The UNESCO Declaration normalizes the claims of the Movement's seeking of justice and framing women's rights as human rights. The use of human rights principles moves the needs of women of color to be supported by a framework that is global in nature.

For incarcerated women who are more susceptible to coercion concerning sterilization, laws have been put in place to prevent federal dollars from being used for such purposes, have a layer of protection that prevents the government from diminishing their safety. However, research has discovered that women are still being coercively sterilized because of prison culture, eugenic biases toward women of color, and state funds that pay physicians to do this work. An internal system has developed in recent years to by-pass strict regulations concerning obtaining proper consent. Also, an internal culture of dehumanizing female prisoners to the point that they feel they have no ownership over their own bodies or their own lives. This is no environment of

which informed consent can take place. Unless there is a will on the part of prison personnel to change the culture within the penal system, reproductive justice will continue to be in jeopardy. Like the State of California, an in depth study of all women's institutional correctional facilities must be performed, including a complete audit of the financial practices that are in place to trace payments to physicians and other medical staff that will disclose abuses to the current protection systems.

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## Chapter Seven: Conclusion

In 1847, authors J.C. Nott and George Gliddon published a book entitled *Types of Mankind*. It suggests that there are superior and inferior races created by God. The book upheld the notion of white exceptionalism which fit with America's national identity.<sup>1</sup> They claimed history showed that racial traits are "fixed and unalterable."<sup>2</sup> Given this premise, the races were created with distinct destinies by a Creator God who inspires a pure *spiritual Christianity*.<sup>3</sup> This idea supported the Manifest Destiny of the Anglo-Saxon; an idea promoted by Protestant Clergyman Josiah Strong.<sup>4</sup> Having been endowed by God with Darwin's theory of "natural selection" any other of the inferior races' survival will depend on a "ready and pliant assimilation" but their extinction appears probable.<sup>5</sup> American identity has borrowed the theological framework of the Manifest Destiny theory by the use of the biblical Exodus story. America has justified its societal ideology of superiority by its understanding of itself as God's new Israel and the conviction that the inhabitants of the land were to be driven out as they sought freedom from England's oppression. Freedom, however, meant the conquering of an occupied land. This same story is the basis of African American spirituality as well. The two purveyors of the story clash when African American spirituality claims it is not chattel but a beloved humanity created by God. The Anglo-Saxon holds to the theology that it is the intentional community of God and meant to rule all others. Black people have been seen as the scorned Canaanite body; the body that God allows to be destroyed; to be subjected to violence and sanctioned by God for extinction. The whites – favored by God; the blacks hated and scorned by God.<sup>6</sup>

This wider lens explaining the reason for the behavior by whites toward blacks in America becomes particularly important as to what has occurred to black women in this country.

Believed to be nothing more than chattel; to breed or to be prevented from breeding at the whim

of those who considered themselves God's chosen people endowed with superior humanity, the black community was comprised of inferior humans destined for domination and control. Black women are the key to their community through their procreative choices, but a black woman's reproduction has always been controlled by an American societal structure that has left her constantly struggling for recognition as human and capable of raising productive American citizens. This exposition is an ethical examination of that part of American society that should have acted morally in the seeking the health and welfare of women, but instead grossly participated in the denial of her inalienable rights. The health care delivery system of the United States failed to protect women of color but tried to use surgery to solve what was considered a social problem. The Reproductive Justice Movement is a means for women of color in the United States to recover their reproductive freedoms in a context enlarged to include access to quality health care and above the political arguments of pro-choice and pro-life. The ethical analysis of the of Reproductive Justice in the Context of the Eugenics Movement in the United States is intended to be research that will ethically justify or make recommendations to have the claims of the movement ethically justified for the benefit of women of color. This exposition does this by examining claims of eugenic involvement in the history of compulsory sterilizations in America. With this understanding, this research uses the information gathered to help understand the ways in which negative eugenics is resurfacing in the community of women of color once again.

#### **A. Summary**

SisterSong is the name of the collection of women's groups leading the Reproductive Justice Movement in the United States. The Movement has outlined three major components: reproductive health, reproductive rights, and reproductive justice. Reproductive health is a

health care delivery model that is broad based and includes access to information, services, and competent care. The Movement recognizes an intersectional approach, taking into account the myriad of ways the lives of women of color are impacted by society. Reproductive rights are the legal arm of the framework. This is the section of the movement that defends the current reproductive laws and seeks to protect the rights of women to control their own bodies. The reproductive justice arm of the movement represents the activism and the organizing of like-minded women and organizations to gather power to fight for the full compliment of reproductive freedoms.

The addition of the framing of the Reproductive Justice Movement as a struggle for human rights was an effort to expand the significance of the issues around the health of women of color. The definition of genocide is proposed by the United Nations Convention on the Prevention and Punishment for the Crime of Genocide, held on December 9, 1948. The Movement borrowed the term to describe how forced sterilization was an effort to annihilate the black community. The United Nations work group defines genocide as “imposing measures intended to prevent births within the group, and forcibly transferring children of the group to another group.”<sup>7</sup> The acknowledgement of that definition was one aspect of the formation of the Movement that fueled the decision to give their efforts a human rights thrust.

Applied bioethics is the discipline that examines bioethical conflicts, medical and health care delivery systems, and medical and bioethical research. It uses the methodology of applying traditional health care ethics principles to ethically justify the claims of the Reproductive Justice framework. This ethical justification is necessary since the activism of SisterSong has its focus in the medical arena. Applied ethics helps the claims of the Reproductive Justice Movement from the abstract to the concrete context of actually fulfilling the aims of the Movement. The



principles method aligns neatly with the ideology of the movement and provides the moral justification to identify health care services and research projects that do not conform to ethical standards. Since negative eugenic ideals are resurfacing and with advances made in genetic science based on the human genome project, it is imperative that reproductive rights be protected, not racially motivated, and be guided by moral decision making for the sake of society, not the privilege of preserving power.

Another important reason for the formation of the Reproductive Justice Movement is to eradicate the stereotype of women of color in all of its many forms. Beginning with slavery, black women were thought to be less than human, but basically breeders to enlarge the workforce on a plantation. While white slave owners could dehumanize her body through rape and harsh servitude, she was seen as more of a lascivious immoral creature. The combination of slavery, segregation, and racism has given African Americans a different lens to view bioethical concepts such as personhood, bodily integrity, autonomy, and consent.<sup>8</sup>

The reasons for an expanded women's health movement must be appreciated from its origins. The systematic racialized stereotyping of the Black woman's body is at the heart of readjusting the movement. Following the disparagement of her body, a racialized view of her scruples, her behaviors, her parenting skills, and her ability to be a responsible member of American society became the standard of racist practices against her. Her very being was thought to be at odds with the American ideal of womanhood. On the plantation, she was perfectly suitable to care and nurture the white children of her master and mistress, yet she was stripped of the ability to raise her own children. Once emancipated, she was re-cast as a bad mother; but then when seeking domestic work in white households, she was again staged as the perfect mother figure for the white children in her charge. The changeable image of black women continued through films,

television, cinema, and media advertisements. The propaganda was useful in maligning her image but also making her satisfactory as a perpetual servant. She was typified as unintelligent being and incapable of mothering her children, but perfectly suited to care for the homes of whites, as long as she was under the supervision of her white mistress. Her mistress was her teacher and was to lead her in the process of assimilation.

The poor neighborhoods, to which Black women were consigned, were viewed as an example of her lack of morals and her crime ridden community was the fault of the loosely principled black woman. Because of her moral inability to parent her children, she became the single cause for increased crime rates and poverty not just in her own neighborhood but in all of America. Without examination of structures and public policy that affected the lives of the poor, the Black female became the realized target for the nation to propose sterilization as the means for solving societal ills. This realization, combined with the history of her demeaned image, formed the political will for systemic action aimed at her womb. Eventually, American society could be rid of these people through negative eugenics. They themselves were transported and enslaved. Consequently, a movement was forged by those most affected by American policy and the egregious practice of genocide, in the form of compulsory sterilization.

The three core beliefs of the Reproductive Justice Movement are:

- (1) that every woman should have the right to decide when she will give birth and under what conditions
- 2) parent the children she already has in safety and with social supports without fear of violence
- (3) decide for herself to choose among the options of preventing or ending a pregnancy.

“Reproductive Oppression” has been defined as a means of selectively controlling the destiny of entire communities through the bodies of women as a form of negative eugenics.<sup>9</sup> The activists

and women of the Reproductive Justice Collective feel certain that practiced reproductive oppression in the United States meets the standard of “genocide” as defined by the United Nations Convention on the Prevention and Punishment of the Crime of Genocide.<sup>10</sup> Certainly, the history of obligatory sterilization practices bolstered by negative eugenic practices supports their theory.

Social institutional support for eugenic theory was widespread. Politics, medicine, social services, and state law approved sterilization as a means of purifying the American gene pool. Sterilization developed into a practice based on the association of eugenic theory and genetic science. Mendelian codes gave credence to the heritability of defective genes. Negative eugenics gave proponents, politicians, and lawmakers the scientific basis to actively seek to eliminate undesirable people and to prevent them from reproducing. The category of those considered unfit was expanded from those with mental illness to include those who have committed crimes, those considered imbecilic, people with epilepsy, and those considered feeble minded. Feeble mindedness was expanded to include poor women, black women, and other women of color. There is much evidence to support the direction that the Reproductive Justice Movement has taken against these national ideologies.

Black women have never been granted the right to control their own bodies since their colonization on African shores to the inception of American slavery. While enforced vasectomy and sterilization procedures were lawful means of stopping procreation for those imprisoned or in state run facilities, the overwhelming majority of those undergoing these procedures were black women. It was not enough to sterilize the institutionalized: sterilization practices needed to expand in order to reduce the racial disparity outside of institutions and protect the white race within the general population.

Being worthy of American citizenship meant being born of well bred, white middle to upper-class families, however, this part of American society was not choosing to breed as quickly as the culture would like. Positive eugenics targeted these families by constructing a narrative that motherhood was respectable, desirable, and a responsibility for the continued supremacy of the white race. Affluent whites refused to have more children than they wanted and did not value this plan of increased procreation as a way of sustaining the balance of power of whites. The better idea to them and to the wider society was to prevent and eliminate the birth rate among blacks.

The development of contraceptives revolutionized family development. The distribution of these contraceptives by eugenically based groups such as the American Birth Control League and the American Eugenics Society, was the result of intentional planting of family planning clinics. The clinics were located in low income neighborhoods to push the goals of negative eugenics. This approach was manipulative in that the facilities employed black “faces” to cover up the true mission of the family planning clinics. The clinics also engaged a dual purpose: the sexual liberation of white women and the prevention of births for black women. The revolutionary birth control pill represented a much more convenient method of achieving the dual purpose. The Black community suspected genocide and the elimination of its population across America. Activists against the clinics stated the remains of the dogged belief that criminality was a hereditary trait and that negative eugenics falsely targeted them as the sources of anti social behavior

Concurrently, while negative eugenic ideals gained scientific credence from genetics, the birth control pill was only a temporary solution to the problem of blacks in the United States. Systematic compulsory sterilization was developed as a permanent solution to address the social

ills created by these “evolutionary laggards.”<sup>11</sup> While sterilization had been performed for years in state run institutions, physicians who were also eugenicists performed sterilization procedures on black women who were neither feeble minded nor criminals. Often hidden by code words on surgical charts, unsuspecting patients were listed as having gall bladder removals, appendectomies, or in the South, “Mississippi Appendectomies.” The comprehensive use of sterilization to purify the American white race cannot be separated from its eugenic foundations. Sterilization had its support from black pastors and leaders which caused a duplicitous standpoint through which black women had to wade. To that end, the Reproductive Justice Movement makes its claim to advance the health and well being from a class of women who had no control over their own bodies, nor proper support from some of their contemporary leaders.

Black women have lived with a cultivated fear that was represented by far more than the color of her skin: but a spiritual fear of the violence targeting her womb. American consciousness has labeled her womb as a toxic extension of her history, her personhood, and bad gene inheritance. A backlash of white rage followed her off the plantation making her womb the battleground for American supremacy. The fuel that fed national fear over a black woman’s ability to procreate was the science of genetics, negative eugenic theory, and public will to eliminate the promise held within her womb.

Based on the principles of bioethics, the ethical conflicts embedded within the practice of forced sterilization must be disclosed. While there was no formal system of normative ethics that would protect patients from medical experimentation at the time,<sup>12</sup> other forms of moral obligations could have intervened. The conscious deliberate act of removing the ability to reproduce from poor women and women of color had the societal permission of society in a twist that honored such a practice. To simply assign that societal permission to racism alone is

misleading. While the conclusion discovered may indeed point to racism, further study is necessary to understand the wider culture that existed in the United States in the early 1900's. Without a full scope of the ethical violations and considerations, the how and the why of forced sterilizations will be left unexplained and the phenomenon can be repeated.<sup>13</sup>

At ethical issue are human rights and human dignity<sup>14</sup>, moral autonomy: respecting the presence of conflict between paternalism and autonomy;<sup>15</sup> maleficence and beneficence in these cases of sterilizations without consent and informed consent.<sup>16</sup> While consent and autonomy are current ethical health issues and given the revelation of the offenses created by the Tuskegee Syphilis Experiment<sup>17</sup>, the American consciousness grew and demanded change in the research, medical practice and experimentation.<sup>18</sup> Christian ethics and African American spirituality also contributed to the secular approach to ethics in an effort to address ethical considerations from a theological and compassionate standpoint.

Centered on *Roe v. Wade*, the women's rights movement did not address the needs of poor women and black women. Its narrow focus excluded concerns for health care issues around parenting, the right to have children in safety, the right to control their own reproduction, and the right to access quality health care.<sup>19,20</sup> Since expanding their goals beyond abortion issues, they have placed the Reproductive Justice Movement into the context of health care; subsequently their expanded framework must be ethically analyzed to see if it conforms with a bioethical structure that will authenticate its claims. The principles method of bioethical analysis was chosen because of the ethical violations present. These violations are addressed in the health care ethics structure and seem to conform to conscientious standards.

Healthcare ethics has become increasingly secularized in spite of its beginnings. But Christian ethics can fill moral gaps left void by traditional bioethical thought.<sup>21</sup> Christian ethics

in the realm of health care can address the meaning of life and not just the conditions of life. Key issues that Christian ethics address that intersect with the Reproductive Rights movement are abortion, in vitro fertilization, and the just allocation of health care resources.<sup>22</sup> To understand religious ethics and its value in examining the expanded claims of the Reproductive Justice Movement, the relationship between God and moral behavior is a depiction of what faithful living can look like.<sup>23</sup>

The current ethical protections already formulated indeed provide the necessary barriers to ethical health care violations. These protections outline the proper approach to research and medical care, as well as, reminding practitioners of the considerations that must be taken into account. The expectancies of moral behavior are outlined in professional codes, research codes, and government ordered reports, such as the Belmont Report. As a result of the Nuremberg Trials, the Nuremberg Code was established as a set of ethical principles regarding human research.<sup>24</sup> It helped to form other documents for the protection for human beings in research trials. Research that involves human subjects is monitored by IRB's, which survey the research content, context, and research protocols. Ethical protections are also augmented by the support of dependable authorities such as the United Nations, whose Declaration of Bioethics and Human Rights aligns the moral behavior of its member nations. The Department of Health and Human Services continues to reinforce the guidelines of obtaining informed consent, of promoting justice, and respect for autonomy, as well as the practice of beneficence by health care operatives. The UNESCO Declaration normalizes the claims of the Movement's seeking of justice and framing women's rights as human rights. The use of human rights principles moves the needs of women of color to be supported by a framework that is global in nature.

#### **A. Conclusion: Is the Reproductive Justice Movement Ethically Justified?**

Women of color must be able to trust the approach tendered by the Reproductive Justice Movement's leaders. Trust in this approach will help to eliminate the continued health disparities found in this population of women. While this Movement makes great claims about offering a more comprehensive approach to the care and dignity of women of color, its claims must be ethically justified. From a health care standpoint, the claims of the Reproductive Justice Movement and its framework are indeed ethically justified. Its corrective assertions adhere to ethical principles established for the protection of patients and the value of all human beings. The ethical justification of the Movement's framework and values as set forth in bioethical standards gives a measure of assurance that can provide women of color with the security that they seek for the reproductive control over their own bodies.

Informed consent within the context of the Movement's framework for patient autonomy is ethically justified within the Movement's declarations to protect women and their bodies from abusive power structures. The principle of non-maleficence is ethically justified within the Movement's declarations to push for culturally competent health care and reproductive services from health care providers. The Movement's drive for clinics that take into account their unique cultural and physical needs is ethically justified. Beneficence is a justified expectation in a healthcare context for women seeking reproductive services, parenting assistance, and quality treatment from qualified professionals without fear of violence. The pursuit of justice is ethically justified within the framework by the justice principle of health care ethics. The expectation of professionalism to include confidentiality and the right to privacy is an outlined claim of the Movement's framework and is justified according to standard principles. The assorted forms of ethical justifications will prove useful to promote Reproductive Justice as a viable movement for the health of marginalized women.



Religious ethics also has justified the claims of the Reproductive Justice framework. The thrust of the Movement is to assert the value of all human life and its inherent dignity. Catholic health care ethics cannot support abortion rights and will clash with the assertion of human rights from this perspective. Both Catholic and Jewish health care ethics have historically participated in the formation of moral behavior in medicine, however, a different theological position by women of color is where a line is drawn between the understanding of the value of all human life. Theologians have recognized the tension of public theology and have agreed that it has been problematic to defend its positions fully. Many avoid speaking publically about the issues of abortion, pro-life, and reproductive rights to avoid compromises that can lead to an apparent lack of clarity or a dissemination of bifurcated opinions in the public arena. Catholic health care ethics cannot fully justify the Reproductive Justice framework in its entirety, however, it can foster dialogue and help clarify issues and examine the use of the Principle of Double Effect.<sup>25</sup>

The Reproductive Justice Movement determined that reproduction among women is a “**right.**” Reproductive Justice activists used that “right” to situate women’s rights as “**human rights.**” The Reproductive Justice framework included the language of the UNESCO Declaration as an ethical structure to argue for the basis for their attachment to human rights. Aligning with the UNESCO Declaration gave powerful validity to their human rights expectations and added strength to their statements. The UNESCO Declaration serves as another layer of ethical justification for the Movement.

The African American bioethical assessment also provides an ethical justification of the Reproductive Justice Movement’s framework. While early developers of the health care ethics principles did not think this perspective was valid, African American bioethicists argued for the inclusion of culture and the specific experiences that shape the African American experience in

the United States. Values, definitions, and different forms of oppression have created a difference in comprehension of procedures and events in treatment, research, and practice. The difference in comprehension has led to a cultural division that negatively affect health outcomes for African Americans. For black women, the intersectionality of experience, status, economic condition, and the perspective of African American bioethics relates to her intersectionality and ethically justifies her search for justice and equality. The history of negative eugenics that helped promote the involuntary sterilization of countless African American women is the experience that fuels the activity against its reoccurrence. Consequently, the Reproductive Justice Movement is an ethically justified framework for women of color in the United States.

### **B. Suggestions for Revision**

There is widely held concern that compulsory sterilization is making a resurgence. A new enthusiasm for eugenics is evolving in genetic science.<sup>26</sup> The young middle and high school girls in Baltimore were not afforded protections and treated without concern for health risks associated with a Phase I trial. It would appear that ethical considerations are only as good as the will to abide by them. Illegal and immoral behaviors are not eliminated through the protections set in place because the codes and reports are not legal documents. However, the codes, the reports, and the ethical committees outline expected industry behavior for health care service providers.

The legal framework of the Reproductive Justice Movement can use protections already in place to do several things:

- (1) frame legal arguments that can provide damages for abuse victims and for those whom justice has been denied.
- (2) The language of the codes and the professional standards outlined therein can provide the

legal basis for legal enforcement for ethical principles determined to be violated.

- (3) Establish standard penalties for violations reported and uncovered with the support of precedencies set by the U.S. Supreme Court.

Those who are working within the legal framework of the Movement must partner with bioethicists to properly frame legal arguments that explain violations and industry standards. The Movement would also do well to publish its accomplishments and current activities in order to further ensure the trust of women of color who have been historically abused by the medical and social system of America. With the reality of the ethical justification of the Reproductive Justice Movement, the continued activity of its activists will not only accomplish change for women in the United States but for women across the globe.

### **C. The Missing Voices**

The aims and goals of the Reproductive Justice Movement has largely played out as a women's health initiative and a heavily political campaign. Utilizing the bioethical framework to legitimize its claims is useful to garner trust among women of color and provide a professional authenticity to the work of fighting for reproductive justice. There are three voices that must be added to this research in order to capture the full range of affective results of eugenics, forced sterilization, and activism. Without the addition of these voices, the Reproductive Justice Movement and its justification remain an political exercise without human merit. For one voice to ignore the other voice is to maintain power and dominance over the other without regard for the rights of each. The full voices that have been missed so far are:

- (1) The voice of pain of sterilized women of color
- (2) The voice of the unborn
- (3) The voice of tension that gives rise to the dismantling of women's movements.

(4) The voice of the incarcerated woman

### **D.1. The Voice of Pain of Sterilized Women of Color**

North Carolina is one of the few states in America that has acknowledged its participation in eugenic sterilization. It has offered an official state apology to its victims. It has held mourning ceremonies to express its profound regret for its participation, and it has offered reparations for some of its victims; but it held onto its sterilization laws long past the discovery of Nazi sterilization, and even took twenty-nine years to officially rescind its sterilization laws. What North Carolina has done is scrubbed its records, making it very difficult for survivors to receive their reparations and perhaps decades from now, no one will be able to prove its active sterilizing of poor, black, female citizens.<sup>27</sup> The North Carolina program, like all others around the country, assumed preventing the births among the least liked in American society, would prevent more of “them” being born. It is not records, reparations, or state apologies that have been ignored: it is the ravaged bodies and remaining scars of women robbed of the opportunity to give birth. The ensuing pain has not been heard because it has been given no chance to speak.<sup>28</sup>

Elaine Riddick Jessie was fourteen years old when raped by a twenty year old man. The social worker who attended Jessie’s family discovered the pregnancy and recommended to the State Eugenics Board that Jessie be sterilized under the “feebleminded” clause of the law. After delivering her one and only child, she was promptly sterilized and robbed of her chance to appeal, consent, or even understand fully what was being done to her. As she recites her story to the Winston Salem Journal reporters, she does so with tears and anger even though the procedure occurred over thirty years ago. She describes how she feels about the State of North Carolina; how she feels about herself, and how she still cannot come to grips with her pain. After all these years, she describes herself as “hiding”; “feeling asexual”; “disliking herself; feeling

“humiliated, degraded, and angry that someone took away her God - given right.”<sup>29</sup>

With her son by her side before an arranged Eugenic Study Committee, organized by then Governor Mike Easley, Elaine Jessie told her story in a packed room in front of media, politicians, and other victims of sterilization. It was reported that even the committee began to tear up and a very emotional list of women began to share their pain. She could not finish her testimony because she dissolved into tears. Her only child, Tony Riddick stood by her side and finished speaking with the committee on his mother’s behalf. He wondered what a sibling might have meant to him and his mother. He has lived his life trying to make up for what the state has done to her. She has battled severe depression, has been divorced, sees a therapist regularly but is still unable to be around large families.

She went through the ordeal of trying to sue the State of North Carolina with help from the local ACLU, but to no avail. The lower courts decision was that Jessie “was not unlawfully or wrongfully deprived of her right to bear children as the proximate result of any one of the defendants.”<sup>30</sup> Jessie’s attorney’s also lost on appeal and the United States Supreme Court declined to hear or review the decision of the lower court. This added more pain to Jessie’s life and caused further isolation. She has since moved away from North Carolina, now living in Atlanta because of much anger directed toward the State of North Carolina.

Since becoming pregnant at fourteen through the process of rape, after giving birth to her son, Jessie moved to Long Island, New York , leaving her son with her grandmother. She met and married a man who wanted to have children. After trying and being unsuccessful at conceiving, she went to a doctor in New York complaining of severe pain and hemorrhaging. It was then, at eighteen years of age that she discovered she had been sterilized. Her husband cruelly called her “barren and fruitless” and they divorced shortly after. She describes herself as living a barren

and fruitless life.<sup>31</sup> Jessie married once again, but the same problems around bearing children interfered in her relationship and she was unable to maintain her marriage. She lives now in a modest apartment in Atlanta and has a boyfriend and her son who loves her dearly, even through her pain. As he spoke to the committee, he said money and apologies are one thing, but who will help me with this? He was referencing her constant tears.

The research of this phenomenon could not possibly give full credence to the pain of all survivors. Jessie is but one example. The pain of lost relationships; the pain of an overwhelmed son; the pain of the rape that produced the son; the pain of a system that deemed her unintelligent enough to raise children, and an unjust system that targeted other young women of color has left a trail of tears that cannot be erased, but can only be prevented from repeating itself through unchecked history. The ethical justification of the Reproductive Justice Movement will lend strength to the mechanism within its structure to honor the pain of these women and help prevent it from happening to other women.

## **D.2. The Voices of the Unborn**

Reproductive Justice has embedded within it vestiges of both a pro-life political stance and a pro-choice political stance. Its framework embodies a woman's right to exercise control over her own body, but it also declares a woman's right to parent in safety without pressure from governmental forces that seek to deny or limit her ability to do so. Women of color must give birth in safety or choose to not give birth in equal safety. It is one thing to do so by choice: it is quite another to have the will of society, enforced by law and medicine, to decide who is and who is not worthy to reproduce. No one can estimate the number of children denied birth through eugenic sterilization, but room should be given to acknowledge the lost potential of the those not permitted to be born through sterilization. Choice taken away from women of color is

equal to the silencing of the voices of the unborn lost through forced sterilization. How would they speak and what would they say?

American Author Toni Morrison's novel *Beloved* was written in 1987 and depicts an imaginary story based on a real life experience recorded after the release of enslaved blacks in the post Civil War period. The story gives life and voice to a child murdered by her mother who could see no other way to keep her safe from the ravages of re-enslavers at that time. The story is based on the life of an enslaved woman, Margaret Garner, who escaped her plantation and resettled in Ohio, which was a free state. Margaret, her husband, and three children were caught and apprehended at an abolitionists' home that was surrounded by slave catchers. Before they could take Margaret, she had killed her two year old daughter, and wounded her other children, hoping to kill them as well as herself before being returned to slavery. Margaret and her husband's trial went on for two weeks because the judge in the case could not decide if the former slaves were considered human, and therefore capable of murder, or as property, therefore guilty of theft.<sup>32</sup>

The novel *Beloved*, focuses the readers attention on the baby who was killed but continued to haunt its mother and family for a long period of time. The revenant grows in its insistence on being seen and having place within the family because it does not want to be forgotten. When the community discovers what the mother has done, she replies "I was trying to put my babies where they would be safe... in the hands of God."<sup>33</sup> While the circumstances are wildly different, it causes us all to pay attention to the voice of those who have the right to live. Morrison's novel give us the ability to imagine what the empty womb is desperate to see and it gives us the opportunity to imagine what the unborn have to say. At the very least, we are warned not to exclude their r humanity and potential while becoming embroiled in political

backlash. Health care ethics pushes us to see the human and not just the disease, and the unborn deserve to be considered when engaging in this type of activism. The empty womb haunts us as citizens of a civilized nation who allowed faulty science to reinforce medical racism.

Karla Hardaway's cultural bioethics cites literary agents as part of the cultural ethical framework. Morrison's novel points to the telling of story to help humanize what would otherwise be ignored. As Margaret's baby grows larger and more demanding, it can be viewed as a reminder to not let life move on without remembering this horrible past. Other works can be cited to exemplify the genocide performed by desperate mothers during their enslavement, but it is Morrison's novel that gives voice to the deceased baby. It calls for the activists of the Reproductive Justice Movement to be the voice of the unborn who cannot speak for themselves. Jessie's Son, Tony said that perhaps his brother or sister could have been the one who discovered the cure for cancer, and so he speaks for his unborn siblings. American does not know the potential it has lost by sterilizing what was thought to be undesirable. The silence of the hushed womb contains a silence that is deafening and eternal; the world must speak for them. As poet Debsfiscus writes:

Many voices are heard  
Around the world.

The politician cries for war, while the activist calls for peace.

The poor cry for recompense, while the hounds sniff for plunder.

But, there is one voice  
The world cannot hear. The robin unhatched from its egg cannot sing.  
the seed buried underground cannot grow. The fish trapped in its roe cannot swim.

If a fox takes the egg from its nest, The robin cannot protest,

For no sweet song can escape its barrier blue.

If a flood takes the seed from its ground, the seed cannot protest,

For no flower can break its sodden earth.

If a snake takes the roe from its pond, the fish cannot protest,

For no writhing can defeat its predator possessed.



Therefore, I am the voice for the egg of innocence. I am the voice for the seed of life.  
I am the voice for the roe of righteousness. For, I am the voice for those with none:  
The voice of the unborn.<sup>34</sup>

### **D.3. Fissures of Race and Class that Continue to Plague Women's Movements**

History attests to the fact that women's movements have been plagued by their own refusal to consider race within the bounds of their respective organizations and their activism. In recent months the #MeToo Movement has dominated the news. Its basic fight is against sexual assault in all forms against women in the work place.<sup>35</sup> The Movement spread virally in October of 2017. Actress Alyssa Milano, who is white, was credited for causing the movement or hash tag to go viral after encouraging many high profile women to tweet their experiences and resulted in the downfall of wealthy producer Harvey Weinstein. The movement has been credited with the removal of over 200 men and having over half of their prominent positions replaced by women.<sup>36</sup>

It was discovered that an African American woman, Tarana Burke, who coined the phrase in 2006 on the social media page *MySpace*.<sup>37</sup> She used the words "me too" to express empathy for those black girls and women who had suffered sexual abuse.<sup>38</sup> She worked largely in poor communities with girls who shared their horrific stories and older women who had been harassed by white men as these women were employed as domestic workers. She listened as a thirteen year old girl shared her story of a sexual assault. When the young girl finished her story, Tarana could not speak. She later said that she wished she had simply responded to the young girl, "me too."<sup>39</sup>

The "MeToo" Movement has been criticized for ignoring the plight of black women who by and large represent the most vulnerable to sexual harassment in the work place. The Movement continued as a white woman's movement, leaving the plight of black women struggling for recognition. Tarana started the movement ten years before it was popularized by Hollywood

stars. To heal the breach, organizers began to meet with Tarana and her staff in order to discuss what steps they could take in order to restore confidence to the public and to black women for the early take over of the movement. It is another example of the vulnerabilities of women's movements usually fracturing along lines of race.

The Reproductive Justice Movement emerged from a split along lines of race and an unwillingness to appreciate the deeper issues expressed by Black women. Women of color made the clear argument that the activism of white women centered around the protection of abortion rights, ignoring the needs of the other women involved in the movement. This becomes important because the separation of the women involved tends to lessen the power of both groups. Also, women of color tend to not fare as well as their white counterparts. This unfortunate split has occurred in the women's suffrage movement, the women's political organizing where black women broke away and began movements like the National Council of Negro Women, a political rights activist organization started by Dorothy Height.<sup>40</sup>

It is particularly difficult for any women's movement based on coalition forming and partnership building to maintain the unity among diverse women's groups. Appropriate language must be found and agreed upon so as to capture the real life experiences of the participants of the organizing.<sup>41</sup> Language can be a barrier if not properly representative of the women involved. During the planning of the march, a re-framing occurred that almost split the march into two: if the re-framing had not occurred, black participants would have walked away from the organizing table. The women of the Reproductive Justice Movement learned some very important lessons during the coalition building that resulted in the march going forward.

**(1)Begin with the question, “Who are the women represented by the women’s movement?”**

Care must be given to appropriately listen, record, and express the diversity of women's experiences so that no one sector of the movements interests override the needs of the other women involved. The way in which social movements develop discourse will help mobilize supporters around social problems.<sup>42</sup> Marketing that reflects the messaging of the movement is crucial. Messaging must relate to the participants historical experiences.<sup>43</sup> Appropriate language must be chosen to talk about the targeted issues in a way that is inviting and causes a personal investment to work for change. An example of the right language and messaging is changing the name from reproductive rights to reproductive justice.

**(2) Coalition forming does not mean each organization has to loose its identity.**

Coalition forming is a complex decision with high risks. It involves diverting financial and human resources to the coalition for a political movement that may not be successful.<sup>44</sup> Tension must be expected, especially when evaluating the separate organizations definitions and interpretations of the existing problems.

**(3) Coalitions diagnose a social problem but also provide a solution to the problem in a way that elicits support from the broader community that can be called into action.**

Framing alignment by the individual groups that form the coalition is done best by a four step process: frame amplification, frame bridging, frame extension, and frame transformation.

These four processes make clear how the frame connects to participant's lives, the perceived relationships between ideas and the events to help solve the social problem, Coalitions builders must amplify the belief and the value of the issue in larger crowds of people while maintaining the importance of the issues at hand.<sup>45</sup> The women of SisterSong who led by the framing change provided a way for the coalition to provide a successful march for supportive men and women protested for a broader range of reproductive health service for women of color and also for all

women across America.

#### **D.4. The Voices of Incarcerated Woman**

The stigma attached to men and women who have been incarcerated stays with them long after being released from the penal system. For women, it is far more than stigma, but actually destroys families, potential, opportunities for economic uplift, and the ability to raise children in safety. Emma Faye Stewart, a thirty year old mother of two was arrested in a drug sweep in Hearne, Texas.<sup>46</sup> Knowing she was innocent, she was unprepared for the deal offered to her as the only way to get out of jail. Having her children placed in foster care and facing ten years in jail, she held onto her innocence and already spending one month in jail, she went ahead and pleaded guilty after a promise by her court-appointed attorney that she would get to go home. What she did not know is that she would be responsible of a \$1000 fine plus court costs, spend the next ten years on probation, fighting for the return of her children. She lost her public housing, the right to vote for twelve years, and must pay for the device that alerts her probation office of her every move. If she misses a payment, she risks immediately being returned to jail.<sup>47</sup>

Added to her risk is the fact that when in prison, if she has more than two children, or is pregnant while incarcerated, she will be pressured to under tubal ligation. Women are reporting they are stressed into giving consent to these procedures, not for health reasons, but eugenically they are described as society's unwanted. While giving birth or while enduring their sentences if they cannot afford bail, because the physicians receive money for these procedures, and because their ideas about black motherhood are unchecked, these procedures happen without peril of penalty or without even the protection of medical ethics. The voice of the incarcerated woman is ignored and is unheard because of her supposed criminality, the stigmatization of incarcerated people, and eugenic theory that makes them vulnerable without protection.<sup>48</sup>

It is difficult to imagine consent taking place within prison walls. While consent is ethically and legally required, incarcerated women are situated differently while in prison. Misty Rojo, an advocate for incarcerated women testified before the state legislature of California that women in prison have no autonomy and their bodies are basically owned by the state.<sup>49</sup> This is in spite of federal legislation that prohibits the use of federal funds to sterilize imprisoned women. These regulations also prohibits the government involvement in sterilizing people who are institutionalized<sup>50</sup> The ethically justified Reproductive Justice Movement is a necessary mechanism to protect, respect, and continue to fight for the human rights of women of color, and women all around the globe.

## NOTES

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<sup>1</sup> Kelly Brown Douglas. *Stand Your Ground: Black Bodies and the Justice of God* (Maryknoll: Orbis, 2015) 102-103.

<sup>2</sup> J.C. Nott and G.R. Glidden. *Types of Mankind or Ethnological Research Based upon the Ancient Monuments, Paintings, Sculptures, and Crania of Races, and upon Their Natural, Geographical, Philological, and Biblical History* (Philadelphia: Lippincott, Rambo & Co., 1854), 54 -56.

<sup>3</sup> Ibid.

<sup>4</sup> Josiah Strong. *Our Country: Its Possible Future and Its Present Crisis* (New York: Baker & Taylor Co., 1885): 159-160.

<sup>5</sup> Ibid.; 175-177.

<sup>6</sup> Kelly Brown Douglas. *Stand Your Ground: Black Bodies and the Justice of God* (Maryknoll: Orbis, 2015) 105-107.

<sup>7</sup> Loretta Ross. "Understanding Reproductive Justice." Trust Black Women. November 2006:3 <http://trustblackwomen.org>.

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<sup>8</sup> Leonard Harris, "Autonomy Under Duress" *African-American Perspectives on Biomedical Ethics*, eds. Harley E. Flack and Edmund D. Pellegrino (Washington, D.C.: Georgetown University Press, 1992), 134-135.

<sup>9</sup> Loretta Ross. "Understanding Reproductive Justice." Trust Black Women. November 2006:2 <http://trustblackwomen.org>.

<sup>10</sup> United Nations Office on Genocide Prevention and the Responsibility to Protect, "Genocide", United Nations Press, Accessed 8/16/2018.

<sup>11</sup> Harriet A. Washington, *Medical Apartheid: The Dark History of Medical Experimentation on Black Americans from Colonial Times to the Present* (New York: Doubleday Broadway Publishing Group, 2006): 190.

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