

The State, Friend or Foe?: Distributive Justice Issues and African American Women

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Introduction:

This essay is about social constructions about African American women's sexuality, laws, policies and actions of the state, the exercise of privacy rights, motherhood and distributive justice. This essay is also about what happens when we consider the intersection of race, sex, and class, hence, what happens when we put African American women at the center of a discourse about distributive justice. Historically, most Black females have been deprived of the right to speak for themselves. Rendered largely invisible, others have insisted on representing Black females, most often from a desire to control Black females, and popular beliefs about Black females and Black families. As the only population of women in America ever defined by law as chattel property, African American women are indeed very vulnerable to enduring beliefs, attitudes and actions that attitudinally undermine, and structurally expropriate self-determination from Black females, often by the state itself.

Whether cast in the social policy rhetoric of a deep and abiding concern for the fate of African American females without insuring a substantive equality of opportunity or substantive measures of economic redistribution, or the paternalistic political jargon of the state's responsibility to better "control" especially poor African American females for their own good, through much of this century the state has been undertaking to scrutinize, severely limit, and some instances collapse the privacy rights of poor African American women and by extension their children. Indeed, through the decades of Jane Crowism, and even since the civil rights movement, at the same time that agencies of the state, much of the press in the country, a substantial amount of the social science scholarship, and much of the construction of popular culture has characterized poor Black women as promiscuous, lazy, and lacking self-help motivation as a time honored cultural imperative for moral deservability, the marginalization of Black women has very often been presented as evidence of African American female inertia and unworthiness.

From a normative point of view, the ideological legacy that has derived from the intersection of racism and sexism is that poor and working class African American women are most often represented as lacking the moral right, political authority, economic power or cultural know-how to represent themselves as single source authorities in their own lives. This ideological legacy can aptly be called paternalism in its most benign manifestation, and oppression in its most disempowering manifestation. Either way, African American women have seldom ever experienced their lives surrounded by the protection of the state's interest in their empowerment. Instead, generations of African American women have repeatedly attempted to construct a liberating and legitimizing basis for interactions with the state.

The state's role in including or marginalizing any group's interest in society is particularly revealing for what it tells us about the social construction of the state's interests. When the state represents its compelling interests as inclusive of the civil and human rights of African American females, then there is a basis in law, jurisprudence, ethics, and social policy taken together by which even poor African American women are accorded the right to the exercise of constitutional provisions of freedom, privacy, equal protection and due process under the law. The virtual refusal to recognize such rights for poor African American women, given the historical legacy of the constructed rationales explored in this essay and in other scholarship on the issue, is the driving force behind state intrusion into the privacy rights of African American women.

In contemporary society, the ideological rationale for why the state now often presents its interests in controlling and repressing many Black females derives from beliefs that have persistently popularized and institutionalized representations of Black female irrationality, promiscuousness, laziness and negative emasculating temperament. The consequence of state abandonment of Black female civil rights has been to intensify the marginalization and invisibility of poor Black females, and the intensification of poverty for poor Black children..

Essentially, this essay considers the question of what happens when we place African American females at the center of discourses about: a) the exercise of constitutional rights regarding privacy, equal protection under the law, and due process, and b) innovations in genetic biomedical technology that raise troubling questions about the potential for the abuse of poor African American women. This essay's chief contribution is its examination of the historical factors that have contributed to the social construction of African American women as "other," as undeserving of state protection. Ranging from the letter of the law and social custom in the American colonies to eugenics driven public policies in the twentieth century, racist and misogynist ideologies and theories in law, medical science, public health, much of social science scholarship, the provision of social services, and the criminalization of motherhood have served as reflections of the social constructions of Black women as "other". No contemporary discourse of this issue should proceed without a candid evaluation of pervasive import and impact of this legacy of exclusion. And no discussion of at risk populations in an age of genetic experimentation should naively suppose that poor African American women's constitutional rights are safeguarded.

It is important to say at the outset that the social consequences of pejorative beliefs about poor African American females have derived from theories of biological determinism. In their many guises, theories of biological determinism have generally served to construct and legitimize racist, sexist and classist beliefs and actions against the poor, women, and people of color. As it has been constructed and used, biological determinism is at the root of the idea that those who have been most marginalized from the sources, structures and institutions of authority and privilege are least deserving of the exercise of rights because they are believed to be genetically inferior, and hence less valuable to society. Throughout this century and now the marginalized have been the most vulnerable as the agencies of the state undertake to define "compelling interests," and construct social policies predicated on racially and sexually prescribed normative and ethical considerations of "worthiness" and "deservability". In this regard, theories of biological determinism have been complicit in constructing all women, but especially poor African American women as "undeserving other."

It is important to examine the consequences of how the state has increasingly defined society's good as increasingly inimical to the rights of privacy in motherhood, medical confidentiality for at-risk women, and civil rights protections from coercion in the context of ethical considerations of informed consent and choice for poor and marginalized females. In this vein, historical representations of African American female sexuality are singularly compelling in any assessment of twentieth century social policies directed at Black women, for at the root of much of contemporary decision-making that affects social policy are beliefs about Black women that remain mired in decades old, but firmly entrenched attitudes and forms of misogyny directed towards African American females.

A word about the social construction of the "state" is in order here, for this essay challenges a narrow and limited theoretical definition of the "state." To begin with, the state is often referenced as an impersonal structure charged with overseeing the administration of government. As feminist scholars have pointed out, such a theory of the state focuses on the state as a "thing" rather than as a "process." The "state" is a governing entity comprised of values, beliefs, traditions of male ownership and control, and the expropriation, domination and selective representation of citizenship rights, thereby establishing selective participatory democracy. In the context of this essay, the social services system represents an example of an institution of the state that operates to prioritize beliefs constructed and legitimized according to racial, sexual, and class values and mores.

Pejorative references to many poor African American females as "welfare queens" even when the majority of women receiving social service assistance are white, represent the ways in which perceptions of welfare recipients who are the very poor are made sexual and racial. As the discourse about welfare is racialized, poor women receiving state cash and non-cash assistance have been represented as undeserving, and even as doing too well to be assisted by the dollars of others. Such a pejorative emphasis on poverty caused entitlement -- while entitlement for the middle class like the form of upward redistribution of income that derives from income tax deductions for real estate taxes and home mortgages, and corporate entitlements flourish -- are ideas that derive from culturally reinforced ideas about the "undeserving poor" and "bad mothers." Hence, for the most part popular perceptions of poor African American females on welfare are

responsible for much of the belittling and austere treatment many poor Black females often receive from social service agencies, law enforcement institutions, and many scholars and policy analysts in the business of constructing public policy.

Historical Background:

From the colonial era to the decades of suffrage reform and then civil rights protest in this century, most state and federal laws were created as entitlement vehicles for actualizing self-determination for white males of European ancestry. Throughout those many decades, the state has operated to establish institutional structures and operations that legitimized white skin privilege, and through the institution of the family, male sexual ownership of women. Indeed, where white males have exercised sex and skin color privilege, white women have exercised white skin privilege. Since skin color and religious affiliation defined "freedom" and "humanity" in the colonial era, white women were among the "free" and "human" in a social setting where African women were without human rights, being defined as "chattel". Until this century, Native American women were treated as the enemy.

This is a careful and measured consideration that is important to note, for where white skinned women lacked property rights and separate personhood under law until well into the 19th century, women of color were denied human rights, that is, any "presumed" right of personhood extended by a Christian religion from baptism through marriage and old age. During these many decades, enslaved African females were defined as "movable property". Harvard sociologist Orlando Patterson has characterized the absence of rights for enslaved Africans as the "social death" constructed into social custom and statutory law by European settlers.

The point is that the absence of any human rights for enslaved women abrogated their fundamental humanity and reduced them to "movable property" and units of production and reproduction. While there is little dispute that enslaved women often did the same work as enslaved men, the expropriation of enslaved African women's reproductive sexuality for the financial gain of white males is important to note because of the ways in which social custom and law opened the way for white males to financially profit from the pregnancies that were often the consequence of interracial reproductive sex with enslaved women.

In this vein, white settler males established social customs in the colonial era around which they fashioned laws that prescribed social relations based on the desire to physically exploit captive African men and women. Responding to the presence of increasing numbers of mulatto children borne from interracial sexual relations between white men and enslaved African females, the Virginia House of Burgess in 1662 led the colonies with a statute that rendered the paternity of children born to enslaved African females inconsequential, at the same time as extending enslavement beyond the generation of enslaved women bearing interracial children. Both intentions were responsible for beginning the process of institutionalizing the expropriation of Black female reproductive sexuality for the purpose of breeding a slave population born in the colonies with both European and African fathers. Statutory law clearly reflected the relatively early decision to expropriate the reproductive sexuality of enslaved African women:

1662 Act XII. Children got by an Englishman upon a Negro

woman shall be bond or free according to the condition of

the mother....

Hence, from the colonial era until well into the 19th century, the vast majority of enslaved African or mixed race women exercised no human rights based either on skin color, sex, religious affiliation or national origin.

The fact that many poor white Englishwomen were indentured should not be misconstrued to mean that the social reality of indentured servant status for white women approximated the social meaning of the entire

absence of human rights. And while we can certainly find some examples of the deplorable treatment of some poor white female servants, no one in either the colonies or in the creation of the Republic legislated the expropriation of the sexual and reproductive organs of white women, no matter how poor, for the personal and economic use of a different race of men. References to Black females as "wenches" remind us that enslaved African women were referenced, legislated and treated as non-sentient "things," non-humans in a property system. The legacy of this legally sustained social custom spanning 200 years into the 19th century, is still with us in this century, as persistent racism and sexism often continues to influence white male and female perceptions of Black female sexuality even today.

Historically, more than any other experience between white men and Black women, it was the socially and legally sustained expropriation of control over Black female sexuality that shaped white attitudes about who should be in control of Black female sexuality. The rationalization for this expropriation, crafted by white settler males, followed the physical act of enslaving African females in their capacity as workers, and also as females capable of being used for sexual intercourse and bearing children. In essence, since slave law dictated that white males owned enslaved African females, then all children born to enslaved women regardless of paternity were enslaved at birth and thereby also the economic property of white males. The rape of enslaved women went unnamed as rape, but became inextricable from economic profit making as each child borne to an already enslaved women did not have to be purchased on an auction block. In a now classic work on the nature of Black female oppression under slavery Professor Angela Davis contends:

In confronting the Black woman as adversary in a sexual contest, the master would be subjecting her to the most elemental form of terrorism distinctly suited for the female: rape. Given the already terroristic texture of plantation life, it would be as potential victim of rape that the slave woman would be most unguarded. Further, she might be most conveniently manipulated if the master contrived a random system of sorts, forcing her to pay with her body for foods, diminished severity of treatment, the safety of her children, etc.

As the decades passed and only the enslaved and abolitionists talked of the rape of enslaved women, many white men and women denied that enslaved women could be raped as they were incapable of decent womanhood. What is hidden from scrutiny in the pronouncements by which white men in the 19th century constructed Jezebel and Sapphire, and expounded on their medical and pseudo-scientific beliefs about the sexuality of Black females, was the fact of white male physical domination of females who held no constitutional rights or social custom rights to "choice" and "consent" about how and with whom they used their sexuality.

In this age, the social construction of enslaved women as "other" was handed its most potent weapon by white male medical and scientific professionals. Reflecting on the representations of Black females as akin to the "Hottentot Venus," leading white male medical professionals were amongst the professionals who positioned themselves to speak in ways many whites regarded as definitive.⁶ The southern white male doctors who laid the intellectual groundwork for still later beliefs about Black females, were often men convinced that living in a system of social conduct whereby they saw themselves and other white men as controlling and possessing property rights over Black female sexuality, qualified them as experts on Black female sexuality. Discussing Black female genitalia, a leading medical publication proclaimed Black female sex as reflecting the "atrophic condition of the external genital organs in which the labia are much flattened and thinned, approaching in type that offered by the female anthropoid ape..."⁷

Reflecting on Black female and male sexuality and mental capacity three medical views surfaced that are revealing of how white constructed beliefs about Black females influenced the range of concerns white doctors and scientists pondered. Commenting on Samuel George Morton, "empiricist of polygeny," biologist Stephen Jay Gould implicates the prejudices and biases of Morton in his largest, most copious and influential work *Crania Americana*, published in 1839. Morton is quoted as representing a female Hottentot prototype as "the women are represented as even more repulsive in appearance than the men."⁸ Indicating the preeminent authority that physicians exerted on topics related to race and sex relations, John S. Haller,

Jr.'s now classic study of scientific attitudes in the second half of the 19th century represents a scientific view of interracial sex:

One of the characters of the Ethiopian race consists in the length of the penis compared to that of the Caucasian race. This dimension coincides with the length of the uterine canal in the Ethiopian female, and both have their cause in the form of the pelvis in the Negro race. There results from this physical disposition, that the union of the Caucasian man with an Ethiopian woman is easy and without any inconvenience for the latter. The case is different in the union of the Ethiopian with a Caucasian woman, who suffers in the act....⁹

Later, according to Professor Haller, when writing on Black female sexuality at the turn of the twentieth century, a leading medical journal published an article that decried Black female and male sexuality by projecting onto Black females and Black males a white belief that Blacks possessed an "the utter contempt and cynical disbelief in the existence of chastity."¹⁰ The consequences of these debasing views of Black female sexuality were serious, as these very influential white males wrote and published their views on Black sexuality with alarming frequency and determination. As such, Black female sexuality was objectified, and over the course of many decades, many of these beliefs and attitudes have "bled" into politics, social policy and popular culture primarily through specialized medical and scholarly journals, and cinema, radio, television and most recently, mtv.¹¹

Given the denial level that has operated in most white scholarship with regard to frankly discussing white male sexual interests in Black female sexuality, it is not surprising that most scholars have missed the link between white male representations of Black female sexuality and enduring representations, both in popular culture and in medical and scientific circles, that have in the 19th and 20th centuries characterized Black female sexuality as out of control, and requiring the kind of control imposed by white male directed social agencies and institutions.

Many of the nation's health care practitioners and providers, scientists and scientific researchers were trained or influenced by the racist and misogynist beliefs about Black female sexuality, even as they set about to further disparate treatment for Black females, particularly in the area of reproductive rights. So widespread and pervasive was the vilification of Black female sexuality that many professionals in the public health movement, the birth control movement, and still later, the social welfare movement internalized many of the pejorative racist and sexist beliefs constructed into humanities, science, and social science scholarship and popular culture in earlier decades.

In the late 19th and early 20th centuries, the eugenics age appropriated the ideological defense of the control of Black female reproductive sexuality. For those unfamiliar with the term eugenics or the movement and its underlying tenets:

Eugenic comes from the Greek word eugenes (eu [well] and genos [born]). The term refers to improving the race by the bearing of healthy offspring. Eugenics is the science that deals with all influences that improve the inborn quality of the human race, particularly through the control of hereditary factors. A eugenic program is a public policy structure designed to have its effect on gene frequencies in whole populations. Negative eugenics is a systematic effort, whether decisional or programmatic, to minimize the transmission of genes that are considered deleterious....Another term that is relative is genocide, which is the deliberate extermination of an entire human ethnic, political, or cultural group.¹²

In most instances involving eugenics in this century, ideology has reigned over science, and white racist and misogynist beliefs about Black female mental inferiority and backwardness, promiscuity, sexual licentiousness and irresponsibility has dominated much of the thinking of medical, scientific, population control and social welfare professionals. Often, these professionals linked being professionals -- their

ability to do a good job as public servants in promotion of the good of society -- with overseeing and controlling the sexual behavior of Black females. Most revealingly, many of those in charge of overseeing public welfare on behalf of the African American poor were professionals who internalized much of the racism and misogyny directed at Black women.

Over time, race has continued to distinguish the experience of gender oppression in profound ways. White females were never denigrated to the level of pejorative belief directed at Black females, for anyone to have done so would have run counter to emerging eugenics beliefs about white skin supremacy. Established on the belief in biological rank ordering of humans based on skin color, ethnicity and sex, the pseudo-scientific theories of the eugenics movement were intended to reinforce beliefs about white skin color and cultural supremacy. In such a manner, theories of white biological supremacy were put to the service of justifying a rigid system of de jure and de facto jim and jane crow segregation in the United States.

Racist and misogynist beliefs thus were held onto tenaciously by whites in the age of jim and jane crow segregation, principally by the manner in which the eugenics movement influenced and inflamed people's sensibilities about who and what constituted decency. White professionals, scientists, social scientists, historians, theologians, and politicians, raised the specter of Black male bestiality and Black female promiscuity as ever present reminders of white cultural supremacy and black cultural inferiority. These social constructions and allegations were racist and misogynist cornerstones in the institutionalization of "cultural female inferiority" into the popular imagination in this century. Consequently, in a society that values maleness, it was the intersection of racial and sexual oppression that rendered Black females subordinate and subservient to white men and women, and Black males in all contexts and situations.

For example, just when white public officials raised alarms about the emerging Birth Control Movement as giving rise to white race suicide and declining white fertility rates, many of these very same public health officials often viewed Black female sexuality as something aberrant, and in need of containment and repression. Indeed, white racism constructed and sustained the harrowing movement for "nativism" that produced the restrictive immigration of the Johnson Restrictive Immigration Act of 1924. It was the eugenics movement's emphasis on eclipsing the right of reproductive freedom and choice from those deemed "unfit" that signalled its danger to African Americans. Forcible sterilization was the principle medical procedure used by eugenicists. Thirty states had eugenics involuntary sterilization laws on the books by 1931. Most of these laws required sterilization of persons who were deemed "unfit." According to research on the legacy of eugenics:

A review of the history of eugenic sterilizations in the United States makes it evident that many abuses have occurred since thousands of persons who were not mentally retarded were forcibly sterilized. Many individuals were also involuntarily sterilized mainly because of their race (black) or because of poverty and inability to pay for the care of themselves and their children (Buck vs. Bell Superintendent 1927).¹³

We may never know exactly how many times sterilization instead of contraception was provided or forced onto Black women, and other women of color.

Just as the ideology of white supremacy spurred the eugenics movement and shaped the construction and emergence of theories driven by eugenics formulations in most emerging science and social science disciplines throughout the early decades of the 20th century, the eugenics movement directly influenced the emerging Birth Control Movement.¹⁴ For instance, African American women's issues were marginalized in the emerging Birth Control Movement, because most white men and white women struggled along under the highly destructive illusions and mythologies created by the convergence of racism and sexism. By the time the American Birth Control League merged with the Clinical Research Bureau to form the Birth Control Federation of America in 1939, racism and sexism were institutionalized as "science" and human uplift social policy by the eugenics influenced medical and science professionals, who built their reputations by accepting most of the ideas about people of color that derived from the nativist and eugenics movements. Few whites could see that many African American women were as interested in limiting birth rates, so as to improve the quality of life for live births, as were white women.¹⁵

Many whites believed that African American female sexuality and reproductive behavior had to be controlled from outside the Black family by white officials and white agencies. Unfortunately, so convinced were many health professionals and reproductive rights advocates like Margaret Sanger and others -- some of whom counted themselves as feminists committed to such progressive reform as the contraceptive and birth control movement -- of the runaway sexuality and "breeding" capacity of especially poor African American women that Black women's needs were marginalized in the emerging Birth Control Movement.¹⁶ Long accustomed to viewing Black women as little more than baby breeding machines, many were unable or unwilling to perceive Black female sexuality as anything but out of control.

So powerful were those who advocated a racially and sexually prescriptive delineation of the human species into separate and distinct racially defined "species" that the emerging public health movement, like the later social welfare movement bore the impress of eugenics racism and misogyny. Essentially, the eugenics driven racially proscribed beliefs of the day presented Black males and females as a separate race, a sub-species. Scholars have focused on the medical travesty that the infamous Tuskegee Syphilis Experiment indicates, wherein several hundred Black men from the rural South repeatedly visited and left public health clinics untreated for advanced stages of syphilis. Importantly, not only were 431 African American men with syphilis released untreated by the United States Public Health Service back into rural communities of women and children, thereby spreading syphilis still further, but they were kept away from treatment intervention even when penicillin was available. Essentially, the Black men used in the 40 year human experimentation project were betrayed by the doctors representing the U.S. government.¹⁷

Many of the Black men with "Bad Blood" had sex with Black females without knowing that they were spreading untreated syphilis through populations of uninfected women. Obviously, the medical health of the many women and children who contracted syphilis were of no concern to U.S. Public Health care providers, nor was the fact that the trust given to doctors representing the government was betrayed by their complicity in insuring that so many Black men with syphilis passed syphilis to women and the unborn. Since we know that syphilis as a venereal disease is far more difficult to discern in women, the intensity of what the omission suggests is immense, for while Black men routinely made trips to be examined, and at least might have thought that something was wrong with them, scores of already poorly nourished Black women, who received very little if any health care, or prenatal care, were knowingly betrayed by the United States Public Health Service.

Essentially, what has not been said that should be said is that by allowing 431 Black men with advancing stages of syphilis to travel to and from their homes, intermingling with single and married Black women, the U.S. Public Service subjected multiple communities of Black families to untreated syphilis. It is important to consider that the doctors in charge of the experiments went to great lengths to insure that the syphilis went untreated, including where possible foreclosing the option that the afflicted Black men could go elsewhere and receive treatment. The conclusion that emerges from the historical evidence is that in the minds of the nation's leading doctors African American male and female sexuality was a "mechanism" or a "thing" different from white sexuality, and warranting of study without remorse. The medical code of Hippocrates and Constitutional guarantees of equal treatment were swept away, as were any considerations of consent, impact on larger communities of previously uninfected females and children, or the ethical questions raised by interfacing with patients in dishonest, deceitful ways that promote their contagion and suffering.

Poor Black women bore the brunt of racist and misogynist beliefs for they were not amongst the groups of educated or professional Black women most able to avoid dependency on state organized and funded interventions on behalf of public health, birth control, and subsidized social welfare benefits. Increasingly, eugenics thinking and racial medicine were responsible for the tendency of many health and science professionals to perceive and represent poor Black females as the undeserving poor. It is clear, that the processes of the state encroaching on the rights of Black women in the name of "good medicine," "good science," and "good family planning," descends from beliefs and actions that reach all the way back to convergence of the social construction of Black female sexuality under the institution of slavery and racial medicine. So prevalent were the pejorative beliefs about poor and working class Black women, most often believed to be disinterested in aspiring to be like middle-class white women, that some educated middle-

class Black men and women internalized negative beliefs about poor Black women, especially those beliefs that were alleged to be predicated on theories arising from social science scholarship. Hence, poor Black females were rendered invisible, their real lives seldom, if ever, represented through their own words.

Often, the underlying stereotypical beliefs that have dominated much of social policy thinking betray African American female attempts to build empowering interactions with the health care community. In the medical and social science community, concepts like "pathology" have been used to legitimize distancing resources from Black women. Indeed, the background to popularized beliefs that Black female sexuality poses a danger to society is linked with the grafting of "pathology" onto prevailing representations of Black females as Jezebel, Sapphire, and Mammy. African American females have been represented by almost everybody:

Called Matriarch, Emasculator and Hot Momma, Sometimes Sister, Pretty Baby, Auntie, Mammy and Girl. Called Unwed Mother, Welfare Recipient and Inner City Consumer. The Black American Woman has had to admit that while nobody knew the troubles she saw, everybody, his brother and his dog, felt qualified to explain her, even to herself.¹⁸

Many negative attitudes and actions towards African American women have resoundingly reflected the ways in which social policy has been constructed against Black women by social scientists. In the 1960s the word "pathological" entered the white mainstream as the social science assessment of the Black family.¹⁹ True to the tenacity of racist and sexist representations of Black female sexuality as a "thing," and hence Black women as a thing, apart, unintelligible, and backward, Black women emerged in the widely circulated social science scholarship as emasculating of male authority, domineering wives and unfit mothers, and basically dysfunctional. Writing about inner city Black family life in the late 1960s, a team of white social scientists were among those who argued that:

It is our own belief that there are practically no pluses in Negro ghetto culture...We see nothing but bitterness and despair, nihilism, hopelessness, rootlessness, and all the symptoms of social disintegration in the poor speech, poor hygiene, poor education, and lack of security resulting from a non-family background in which the stabilizing paternal factor is absent...the fact that love, warmth, hygiene, education and family stability are absent for most Negroes...booze, gambling, drugs, and prostitution are the inevitable result of the absence of a stable family institution...harassed, cranky, frustrated, church-going, overworked mothers...the damage from this non-family life often leads to young dropouts and unwed mothers, and to crime, violence, alcoholism and drug addiction.²⁰

In other words, the denigrating stereotypes of Sapphire and Jezebel, and the additional representation of Black females as "deviant" implying sickness and craziness as personality disorders were constructed into social science theory, thereby renewing the representations that had worked to effectively marginalize Black females. In addition, "pathology" as a personality disorder was grafted onto the older forms of representational oppression, and a still newer and more deadly representation of Black females and the families they nurtured emerged. In many ways, the fate of poor Black females was sealed in marginalization, subordination, and inferences of personality disorder and craziness of still another age of social policy formulation.

Poor African American women were represented as heading the "pathological" Black family. African American females were represented as social pariah, hopeless and problematic in many assessments of "real" solutions of the problems confronting the majority of African American families.²¹ Like so many other decades, the full force of racial, sexual and socio-economic oppression was laid fully and squarely on the backs of those already victimized. Professor William Ryan named the syndrome clearly in his classic work entitled *Blaming the Victim*.²² Essentially, the needs and developmental issues confronting poor and working class Black women slipped largely into further obscurity, as influential spokesperson on behalf of Black women's self-empowerment needs were few. Even the emerging women's movement largely ignored the needs of poor Black women by eclipsing the consequences of race and instead focusing on a presumed similarity of gender experience across ethnicity.

Most African American communities, eager to support Black manhood and promote Black male leadership and the patriarchal middle-class family sent Black females mixed messages. In those messages, Black women were to know their place, work hard, support the empowerment of "their" men, bear more children and devote their lives to them, take care of the elders, the sick, and the infirm. Nowhere in the messages about what constituted a "good woman" was there the acknowledgment that Black women also needed support, leadership opportunities, especially at the grassroots level, and serious time set aside for self-development, nurturance, and mentorship of one another. Black females were called upon to have no centerplace of their own, to serve everyone else in relative obscurity, to be long enduring, and slow to complain. Long accustomed to being treated as the mule of the world by most whites, poor Black females slipped even further down the personhood ladder, as increasingly explicit expressions of misogyny were acted out, and often denied, tolerated or represented as the victim's fault in Black communities. Too often, Black female attempts at self-help were met with suspicion, as seemingly, only Black women were speaking and writing about the permeation of misogynistic beliefs and actions into Black communities, where there had previously often been far more egalitarianism than in white America.

With each passing decade the misogynist messages in much of social science scholarship, the media and popular culture spread ever more extensively through American culture. Quite frankly, most whites and even many Blacks too often sent Black women the message that sexual violence, rape, incest against women and children, and domestic battering were somehow just personal dilemmas, for seldom did even African American male leadership speak to issues of incest, domestic violence, rape, and the ethos of male sexual conquest and its relationship to abandoned pregnant females. Out of the malaise of everybody wanting to be more important, worthy and deserving than African American females came invisibility for those issues most oppressive to poor Black females.

As during the emancipation movement and the Black Women's Club Movement, many scores of African American women have persistently challenged the racist and misogynist consequences of limiting beliefs by creating and strengthening self-help institutions that have strengthened African American communities. Often the work of Black women has been to uplift others as a crucial aspect of service and "race uplift." But alongside helping those in Black American communities traditionally served by the volunteer work of African American women, increasingly significant numbers of middle-class and working class Black women have come together to build collectivist based, female self-help organizations like the African American branches of the Young Women's Christian Association, and in the 19th century, the Women's New Era Club, the National Federation of Afro-American Women, and the National Association of Colored Women. And in the 20th century, the National Council of Negro Women, Alpha Kappa Alpha, Delta Sigma Theta, Zeta Phi Beta, the Links, the American Association of Black Women Entrepreneurs, the National Coalition of 100 Black Women, the National Association of Minority Women in Business, and the National Black Women's Health Project which is organized as local self-help chapters that cut across class lines, have figured prominently as examples of self-help.

Despite a longstanding self-help movement among African American women, pejorative representations of Black females have intensified. Much of the social science has represented Black women as incomplete persons living in bodies capable of reproductive behavior. Curiously enough the very same social science scholarship that has devised rigid and unrealistic class and gender based ascribed roles to Black women carefully avoided crafting a theoretical explanation for a) why Black women's experiences have differed so dramatically from that of middle-class white women, whose experiences have often been held up as the norm, and b) why and how the historical realities of Black women's experiences differed from that of all white women, for Black women have always worked, often doing the same physically demanding and labor intensive work that men have done. The misnomer that tacitly suggests that large numbers of Black females now work at the same time that unprecedented numbers of white females are working, belies the historical reality that Black women have always worked, most often at the most menial work afforded females. In addition, African American females have borne the children of their lovers and oppressors in large numbers, and have always been called upon to be there for the survival of Black communities.

Essentially, poor African American females are of particular concern in this essay because along with women of color on reservations, in barrios and in impoverished rural and urban areas across the country,

they exercise the least constitutional and civil rights of any women in the United States. Poor African American females have been subjugated by pernicious and enduring negative beliefs, initially constructed to defend slavery, and in this century, shaped to blame, shame and abandon Black females.

Now, and in the coming decades much more of our attention should be focused on the protecting the constitutional, civil and human rights of poor marginalized women, first, because poverty amongst women is increasingly producing in many Black American communities impoverished women and children, and communities where the traditional tools for building positive female self-image, self-esteem, and self-respect are under siege from the state and from within the Black community.²³ Increasingly, desperately poor African American households and even families are distanced from a small, educated and prosperous Black middle-class. Consequently, poor women are often rendered invisible in their oppression, and as such, are all too often victimized as the state structures and mechanisms of domestic and international development increasingly abridge and/or deny their rights.

In the United States, the perception of one's moral status affects one's entitlement. By constructing and validating a moral basis for individual worthiness, and then acting to establish that poor Black females are undeserving of entitlement based on moral status, persons acting on behalf of the state have often constructed a definition of female behavior that is morally repulsive, ethically indefensible, and in many cases criminally prosecutable. Increasingly, agencies, legislatures, and some courts across the country are acting to define state interest in a manner that justifies the disparate and unequal treatment of poor Black females in the criminal justice system. Not surprisingly, the issue centers around Black female reproductive sexuality.²⁴

In a century where "racial medicine" has become a tremendously controversial health policy because it has been so influenced by eugenics thinking, discussions about African-American female sexuality and reproductive behavior cannot but concern audiences of professionals and scholars interested in the intersection of health policy, socio-economic status, medical jurisprudence and ethics. Likewise, if "racial medicine" has influenced some number of medical practitioners, public health officials, scholars, social service workers and administrators to perceive of African-American females as sexually promiscuous, out of control, and "racially" incapable and perhaps even undeserving of self-directed development, then increasingly the criminal justice system has intensified its efforts to identify, entrap if possible, and to criminalize African-American female drug use, particularly, drug impairment, under the condition of pregnancy.²⁵

At exactly, the same time that public health structures and operations have intensified efforts to more directly interface with rising health problems, the courts and the criminal justice system are evolving case law precedents that establish or define and redefine socially acceptable boundaries for drug impaired felony prosecution. In terms of African American women, it is the condition of pregnancy and drug use that has propelled a social, law enforcement, criminal justice, legal and political movement in at least 25 states to criminalize and disproportionately prosecute poor pregnant Black females, who for the most part depend on state assistance. While arguably, the condition of drug use and pregnancy is in no way racially prescribed, the criminalization of drug use during pregnancy is as a body of case law and precedent being erected on the backs of mostly young, poor, sexually abused, pregnant Black females.²⁶

Importantly, the moral dimensions of negative judgements against drug impaired pregnant females, is generating a moral force that is fueled by racist beliefs long imbedded in popular notions about Black female sexuality and personality. This is clearly borne out by the fact that despite research findings that pregnant drug use cannot be distinguished by either race or socio-economic factors, it is the most vulnerable females, young, poor Black females that are being singled out.²⁷ Of further importance, the moral judgements against poor women have encouraged the courts to leniently allow officers of the state's judicial apparatus to "hold harmless" and grant immunity to medical providers who report drug using pregnant women to local law enforcement officials.²⁸

Researchers have reported that the consequence of utilizing the prenatal treatment clinic as a drug detection point has been to reduce the numbers of poor pregnant Black females who come to use medical facilities,

where because of their skin color their urine is the first tested.²⁹ Obviously, this compounds the already immense challenge of facilitating the greater access, affordability and utilization of prenatal care amongst poor Black females. The question must become whether the state's intention to increase prenatal care amongst poor women, thereby increasing the quality of care given to infants at the crucial fetal stage is consistent with the policy of using prenatal clinics for poor women as places where trust and confidentiality do not prevail, and where crack cocaine use is disproportionately screened for amongst pregnant Black females?³⁰

The issue here is not whether drug impaired pregnant women are at risk and place their unborn fetuses at risk, for clearly they are at-risk, and sustain risk conditions for unborn fetuses. However, the most fundamental issue here is what are the rights of privacy, equal protection under the law, due process and access to drug addiction treatment for impoverished Black females who have no recourse but to seek medical, legal, and social service assistance from the state? How can the state seek to compromise privacy, due process and equal protection under the law under circumstances where poor Black females are being prosecuted differentially for the same offense that others commit? How can the state commit itself to this tactic, and at the same time protect constitutional rights for poor women?

As many have observed, without question this is a compelling ethical, as well as legal issue, in which the state and the courts are constructing interests that are often adverse to young, poor African American females. How is it consistent with constitutional interpretations in support of civil rights in contemporary society to make the condition of pregnancy the basis for disparate and unequal treatment? Aside from the question of what does such a state policy portend for the rather fragile constitutional interpretations of women's civil rights, what are the consequences of establishing adverse fetal rights as opposed to fetal rights that interconnect first with mother's rights? How can the state intervene to support fetal rights criminalizing pregnancy under a conditional set of circumstances presented as protective of fetuses, while not moving to intervene where legal drug use, like alcohol abuse during pregnancy renders harm like fetal alcohol syndrome against fetuses?

The issue that undergirds much of the criminalization of drug use during pregnancy is the creation of a category of civil rights for fetuses. Specifically constructed as "adverse" the premise behind establishing fetal rights that must be protected by the state in opposition to the rights of pregnant women or mothers, is that women are acting against the civil rights of fetuses.³¹ The implication in such a narrowly tailored construction of causality is that only individual women are to blame for abrogating rational choices and decisions in support of full-term healthy pregnancies. Certainly, while it is important to value encouraging females to keep wanted pregnancies, it should also be important to value encouraging young African American women to care about themselves. From a constitutional point of view the issue is privacy, self-determination, and choice. From an ethical point of view the challenge is to facilitate building self-esteem empowerment as the basis of self-loving choices. Importantly, there are signs that some courts are ruling that states cannot punish drug using pregnant females for the negative consequences of their drug use on unborn fetuses. Hopefully, this progressive direction of the courts will be accompanied by a reassessment of public policies that direct dollars towards much needed treatment, education, and self-esteem enhancement "recovery work."³² Such measures would go a long way towards grappling with the intersection of race, sex and class in terms of distributive justice.

Arguably, choice should proceed from education and opportunities for self-empowerment, not from austere and punitive state legislated interventions in women's reproductive sexuality and behavior. While we cannot and should not be indifferent to the destructive impact of illegal drug use during pregnancy, neither should we confuse helping females become healthy mothers with usurping and controlling pregnant female sexuality.³³ While a good deal of very good scholarship has been offered that elucidates much of this controversy, it is important to say that in the context of poor black women, who themselves have seldom exercised their own civil rights, that the state is forcing many poor African American females to undertake social reproduction with few if any social or systemic supports or institutional structures, except for the most part those constructed and maintained by African American folks themselves.³⁴

In raising the issue of reproductive rights for Black females, more is at stake than the codification of enduring beliefs about Black female sexuality into contemporary thinking. Frankly, white male patriarchy has established a legacy of property interests in Black females that unlike the control white males have exerted over white females and children, in no way builds or furthers self-determination or familial survival for Black females. In other words, racism and misogyny operate at this level to moralistically judge and condemn Black female sexuality, offer little if any vehicle for empowerment, and deprive many poor Black communities of the support to existing familial structures that would likely enhance the quality of life for the next generation of Black children. The spiralling numbers of Black children growing up in state institutions and orphanages testify not only to crisis of impoverishment in many Black communities and households, but also to a systemic problem of economic abandonment and political marginalization of the poor, especially women and children.

Without some serious attention to the ways in which white patriarchal controlled agencies and institutions dominate poor Black families without insuring the empowerment and survival of Black women and their children, many African American communities will experience a level of trauma and loss of control of the most basic institution in Black communities. In an age where even the white middle class nuclear family is giving way to single parent families and escalating divorce rates, Black people can ill afford to pretend that the solutions are to relinquish control over poor families over to the state, for to do so is to position the most vulnerable link in the Black family chain, over to the machinations of state controlled vehicles for shaming and dismembering Black households, and criminalizing Black female reproductive sexuality.

Realistically, if Black females have no rights, exactly what rights will Black children have, and exactly who is it within the state who will protect the rights of Black children? If a continuing aspect of the state's relationship with Black communities is the racism directed at African American men, women and children, then which state vehicle will provide for Black children? For instance, for as long as advocacy groups have worked to raise a consciousness, and a call to action on behalf of at-risk children, it has been extremely difficult to move an agenda forward that deals with empowering the women who are principally responsible for living with and caring for their children.³⁵ Clearly at issue are longstanding negative beliefs about poor women, many of whom are African American.

Certainly, states are being forced to provide for unprecedented numbers of infants impaired and suffering fetal toxicity from the disabling effects of crack addiction. Infants are being born with debilitating physical impairments, specifically, low fetal infant birth weight, hyperirritability, abruptio placenta and infant neurobehavioral deficits. Many infants are taken from their mothers, some are abandoned by women who cannot take care of themselves or their infants. However, sometimes there is a policy in place that disallows guardianship by other non-drug using family members, thereby severing the infant from a kinship system that is an alternative to foster care. And, despite the extent of the crisis there are still states where interracial adoption is outlawed, and adoption of abandoned infants by single or alternative lifestyle parents is forbidden.³⁶

While the issues are complex, scholars, legal experts and activists on behalf of "recovery work" for women are concerned that states are responding by selectively "blaming" and "punishing" poor urban and rural women, who are disproportionately African American. Essentially, in the context of normative considerations of equity, civil rights, privacy and access to the range of resources necessary to pursue economic empowerment, most of the women being prosecuted through the criminal justice system are being abandoned, instead of being treated and helped to become financially viable. This is an acute human development and social policy issue as very often pregnant drug using women experience tremendous difficulty accessing drug treatment facilities that will provide services to pregnant women or women with children.

Clearly, this unprecedented response presents legal, normative, economic and political consequences for drug impaired pregnant women, drug addicted infants, and for states. The legal consequences are acute: the punishment for everyone else, except pregnant women, charged with simple possession and use of crack-cocaine amounts to a misdemeanor. This issue raises crucial questions about the premises on which the state is narrowly constructing a body of legal precedent on the premise that "harm" is conveyed to fetuses

via delivery of crack, cocaine or heroin through the umbilical cord. Chief amongst those questions are: What are the consequences of focusing on damage done to unborn fetuses by only drug impaired pregnant females, to the exclusion of assessing the impact of male drug impairment and its possible role in damaging fetal DNA?

In most of the states presently prosecuting pregnant women, who are users of crack-cocaine, it is the condition of pregnancy for women that brings a felony criminal charge, primarily because it is the condition of pregnancy that requires that females interface with the medical establishment. Several questions arise, the most important one being on what normative and constitutional grounds is it permissible and tolerable to deny pregnant women the same legal rights as everyone else? In other words, how is it ethically defensible to abridge the constitutional rights of poor women? Also, a question arises as to the constitutionality of impugning moral weakness to the condition of drug use during pregnancy, and requiring court ordered medical and surgical intervention, particularly in light of precedent setting Supreme Court decisions in which the Court represented drug addiction as a disease and not a moral weakness in *Linder vs. United States* (1925), and a landmark decision in which the court challenged the exercise of state power in its ruling regarding forced tubal ligation sterilization in *Skinner vs. Oklahoma* (1942)?³⁷

In addition, does the: a) historical legacy derived from abusing the human and civil rights of Black women through 200 years of enslavement, and, b) the social construction of pejorative beliefs reflected in the mythology of Jezebel and Sapphire, and, c) the personality disorders projected onto Black females by "pathology" social science theories, factor in the apparent greater readiness of police and prosecutors to arrest and prosecute young, poor Black women? This concern extends to the "reporting" and "screening" procedures and mechanisms, since according to the American Civil Liberties Union the disproportionate arrest and prosecution of Black American women contributes to an image of the crisis of drug impaired mothers as a black problem.³⁸

Also, is it the case, as the trend of 167 (approximately 130 are Black women) prosecutions in 25 states (87 prosecutions are from South Carolina, and 50 are from Florida) on drug related felony charges makes clear, that it is poor women Black females who are dependent on state provided assistance that are being singled out for specific disparate and unequal treatment? Are the very women who have access to the least resources with which to protect their legal and civil rights, and their rights to privacy and due process the very women on whose backs a body of case law is being created? It is simply not true that more pregnant Black females abuse illegal drugs. Indeed, according to the ACLU and other reporting agencies there is drug crisis affecting women across racial and ethnic lines, but the criminal justice system is targeting Black women for prosecution.³⁹

Legal researchers have aptly questioned the consequence of states requiring pregnant women who take drugs to forfeit, not waive their rights. In an impressive volume that examines the criminalization of women's bodies, *The Criminalization of a Woman's Body*, legal professionals and scholars note the deliberateness of state's charging pregnant women as felons. Notably, felons relinquish their right not to be interfered with by the agencies, mechanisms and instrumentalities of the state. Impoverished Black women convicted of felonies are at the mercy of the social services system, criminal justice system, the medical system and legislative system.⁴⁰

There is a substantial body of scholarship that traces court ordered medical interventions. Without a doubt this has cleared the way for the state to insist on forced medical and surgical procedures, the imposition of prison sentences, or conditional "supervised" paroles, during which women are compelled to report on the most intimate details of their sexual and personal lives or face immediate imprisonment. This is a particularly troubling practice for women with children, who may have used drugs during a later pregnancy, but who often forfeit the right to all of their children. To many observing this disturbing trend it appears that the state has unleashed a war on poor pregnant Black females. A number of cases signal the state's questionable actions regarding Black female civil rights, and illustrate how the instrumentalities of the state take over in the context of the criminalization of female drug use during pregnancy.⁴¹

Essentially caught between a rock and a hard spot, pregnant women who have sought treatment have confronted significant challenges. In 1989, of the 78 drug treatment facilities located in New York City 54% excluded all pregnant women, 67% would not accept pregnant women on Medicaid, 87% would not accept pregnant women on Medicaid who were addicted to crack-cocaine. Elsewhere in the country, in California of 366 publically-funded drug treatment programs, only 67 treated women, and only 16 were able to accommodate women's children. In Ohio where there were 16 women's recovery programs, only 2 accommodated children.

While there is a strident effort to criminalize crack-cocaine use, fetal alcohol syndrome, tobacco use and the misuse of prescription drugs by more women remain important but relatively invisible "issues" in the reproductive fetal rights movement, leading to the observation that it is drug use by poor females, many of whom are African American and dependent on the agencies and institutions of the state for medical, economic and social assistance, that is being selectively pursued and criminalized.

Black women are marginalized and often treated as non-persons in the legal and public policy decisions that abridge or deny them constitutional rights of privacy. Reproductive sexuality and individual civil rights for Black females are at the center of the controversy. On the surface the use of the contraceptive Norplant appears uncomplicated by issues of "choice" versus "coercion." Often drawing on pejorative beliefs that have consistently been used to stigmatize Black female reproductive sexuality, the state has recently targeted poor Black females in inner city areas for implementation of invasive contraceptive technology.⁴² There are those who argue that the courts should order women to use long-acting contraceptives:

Because it does not require constant monitoring and is nearly foolproof, Norplant is an appealing candidate for use as a method for controlling the reproduction of women who courts or others deem unfit to be mothers, either because they have been convicted of child abuse or because they are drug users. The use of Norplant could be required as a condition of probation. In addition, Norplant may be used as an incentive to women on welfare or as a condition of receiving further benefits to induce them to have fewer children and thus to lower welfare costs.⁴³

Significantly, in this century the state has implemented reproductive technology that has negatively impacted women of color. Often swept aside in conversations about women's problems in the context of economic development, "Operation Bootstrap" a U.S. funded sterilization program in Puerto Rico exposed the extent to which population planning programs often utilize women of color for experimentation of new reproductive technologies or drugs. The role of racism and sexism in the state's implementation of controversial contraceptives like Depo-Provera amongst populations of poor women who exercise far less "choice" than more economically and racially privileged women, is well documented. Norplant is after Depo-Provera the next drug to be used to affect reproductive sexuality amongst poor women. Significantly, Norplant which is comprised of silicone tubes that release a synthetic version of progestin, has to be inserted beneath a female's skin, and as such, she relinquishes control over her body. While conceivably a female should be able to have the contraceptive implant removed by a doctor at any time, the question of whether social service benefits are tied to a poor female leaving the Norplant rods in their bodies even though they might experience a negative consequence, is problematic, even though it is an invisible issue because the women affected are rendered largely invisible.

Poor women were the first to receive Norplant in Maryland, and many questioned whether the state was engaging coercion where choice should have been operative? There are disturbing reports from poor women in Baltimore that they are being coerced into using Norplant as a measure to limit their own pregnancies. Equally disturbing are reports that poor Black females with teen age daughters are being coerced into pressuring their daughters into using Norplant. Importantly, while Norplant is largely effective in preventing pregnancy, it is ineffective in preventing the spread of sexually transmitted diseases. Given the poor HIV/AIDS prevention information outreach to Black communities, contraceptive devices like Norplant can easily be misunderstood to provide more protection than in fact is present. If Norplant becomes the quick-fix then the state will have abandoned poor Black females to its own agenda of limiting

the financial costs of supporting and caring for increasing numbers of teen births, while devising largely ineffective educational efforts to promote HIV/AIDS and STDs prevention.

A progression of events are making historical precedent even as we speak. As with all precedent, the past becomes significant and consequential for the present. Importantly, choices and decisions made by privileged men and women in the latter twentieth century are giving rise to an age in which biomedical technology will redefine the family by instigating the dialogues that will give rise to laws, social policies, ethical standards and medical procedures that increasingly resituate and renegotiate the role of the state in the lives of all women.⁴⁴

While scholars and legal experts have been clear to point out that female sexuality and reproductive behavior is being criminalized, the fact that most of the females being identified and prosecuted through the criminal justice system are poor and Black should qualify our remarks about the criminalization of female sexuality in the context of drug use during pregnancy. More precisely stated, at exactly the same time as poor Black female sexuality and reproductive behavior is being criminalized, there is an effort to commercialize the female body, its reproductive organs (womb), and fetal tissue. Viewed in this manner it is possible to see that both the criminalization of poor Black female sexuality, and the increasingly popular perception that it is Black women's wombs that should be for hire in the context of contract motherhood, or what some have called "surrogate motherhood" has derived from long standing white constructed perceptions and beliefs about Black females as unfit mothers of their own children, but apt vehicles and containers for other people's property in the form of unborn children.

With the introduction and use of an invasive contraceptive drugs that have been promoted among poor Black females of childbearing age, the state has developed policies and practices that like earlier reproductive sexuality infringements on African American women's rights continue to blur the line between coercion and choice. Already there are those who are calling for a policy that links Norplant use to receipt of continued social service benefits. Such a requirement would establish still another social policy that requires poor Black females to agree to undertake limited social reproduction without the forms of legal and social supports available to middle class women. This is a crucial issue that contributes to the feminization of poverty as the impoverishment and the denial of civil rights protections for many poor Black females place poor Black women and their children at risk to be treated in arbitrary, whimsical or inhumane manner.

If the state does differentially criminalize crack cocaine drug use in pregnancy in ways that reflect the construction of racist and misogynist beliefs about Black female sexuality, what is to prevent the state from arguing for other "conditions" that warrant the disparate treatment of Black females because of some perceived "fault" of pregnant Black females? Specifically, in the context of how the state has constructed its interest in representing adverse fetal rights as a consequence of real or imagined child and infant abuse, and in the context of how the state has furthered its intrusion into the privacy rights of poor women in establishing the legal precedents that have buttressed and represented Norplant as a necessary and efficient means for controlling poor Black female reproductive sexuality, at this point there is little that is to prevent the state from adjudicating its actions in defense of pressuring or requiring poor Black females to undergo prenatal gene therapy to correct chronic, debilitating and expensive genetic mutations that afflict fetuses.

The line between female rights in pregnancy has already blurred to the point that race and class largely determine the extent to which those in the employment of the state as its representatives seek to identify, morally condemn, prosecute and criminalize drug use during pregnancy. Given the moral climate in many places in the country, requiring poor Black females to undergo corrective gene therapy surgery would be an extension of the mindset that characterizes most poor Black women as morally unworthy of caring for the interests of unborn fetuses.

Since adverse fetal rights is a position that rests on the belief that women are engaging in harmful conduct towards fetuses, the state could construct its interests on behalf of fetuses as predicated on the cost efficiency of having poor women undertake prebirth gene therapy to correct genetic mutations like sickle cell anemia. Sickle Cell Anemia is characterized as "chronic inherited anemia, primarily affecting blacks, in

which red blood cells sickle, or form crescents, plugging arterioles and capillaries. Like a number of other genetic mutations (i.e., hemophilia, cystic fibrosis, muscular dystrophy and ADA deficiency) sickle cell anemia derives from the genetic information coded into the nucleus of human chromosomes."⁴⁵

In recent years medical researchers have identified the genes that are responsible for transmitting sickle cell anemia through procedures associated with gene mapping. Genetic mapping is concerned with genetic testing to identify, isolate, and diagnose specific genes located in the chromosomal pairs that are comprised of one chromosome from each parent. In the context of sickle cell anemia, one or both genetic parents contributes a gene for sickle cell anemia. Researchers at the Human Genome Project have identified the eleventh chromosomal pairs as the cellular location for where the genes responsible for sickle cell anemia are present. Currently, medical researchers are able to provide a DNA test to ascertain the presence of sickle cell anemia.⁴⁶

But, it bears remembering a disquieting recent history involving genetic screening for sickle-cell anemia. While the testing for sickle-cell anemia was not prenatal the discrimination that occurred against African Americans might be instructive for the considerations raised in this essay. In the early 1970s the government undertook a large-scale sickle-cell anemia testing project. By the middle of that decade the United States Air Force Academy excluded sickle-cell carriers, a number of commercial airlines and many employers fired Black personnel with sickle-cell, and a number of insurance companies raised the premiums of sickle-cell carriers. Often, there was little if any distinction made between those persons whose blood showed evidence of the trait, as opposed to the disease.⁴⁷

Consistent with how adverse fetal rights has evolved alongside the social construction of "good" motherhood, it might not take much for the state to represent morally deserving mothers as mothers willing to undergo a corrective procedure to change an otherwise debilitating condition like sickle cell anemia or ADA deficiency that might not afflict either genetic parent, but would prove chronic or fatal to the child born with the disease.⁴⁸ Theoretically, a woman's or couple's right to choose would guard their constitutional right to privacy. Realistically, one's race and class actually shape the degree to which one exercises "rights." Therefore, in the context of reproductive sexuality, poor Black females exercise few if any protected rights, and could arguably be coerced into undergoing gene therapy, especially if the state argued that from a cost efficiency perspective, that it costs less to subsidize gene therapy than to pay for a lengthy, and even life long chronic health condition that sickle cell anemia disease represents.

The genetics revolution is profoundly redefining social relations because the state is in the process of redefining what life and individual rights will mean in the age of emerging biomedical modalities. One thing is certain, namely, that the promise of unlimited good in the genetics age will operate against a historical backdrop replete with examples of how the social construction of African American women as "other" has created a social environment of disparate and unequal access to constitutional protections. As in previous centuries the question will be is the state friend or foe?

End Notes

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FOOTNOTES

1 . See the really fine collection of essays that deal with a broad range of reproductive issues, public policies and laws in Sherrill Cohen and Nadine Tabb, Eds., *Reproductive Laws for the 1990s* (Clifton, N.J.: Humana Press, 1989), and in Rima D. Apple, Ed., *Women, Health, and Medicine in America* (New Brunswick, N.J.: Rutgers University Press, 1992).

2. See R.W. Connell's discussion of gender politics in "The State, Gender, and Sexual Politics: Theory and Appraisal," *Theory and Society* 19 (1990), 508-510. Also, Ellen M. Charlton, Jana Everett and Kathleen Staudt, "Women, the State, and Development," *Women, the State and Development* (Albany: State University of New York Press, 1989), 5.

3. See Orlando Patterson, *Slavery and Social Death: A Comparative Study* (Cambridge: Harvard University Press, 1982).

4. A. Leon Higginbotham, Jr., *In the Matter of Color, Race and the American Legal Process: The Colonial Period* (New York: Oxford University Press, 1978), 43.

5. Angela Davis, "Reflections on the Black Woman's Role in the Community of Slaves" *Black Scholar* 3/4 (1971).

6. Black women scholars have clearly delineated the social construction of mythological white characterizations of Black females dating from the colonial era. See, especially bell hooks, *Ain't I A Woman: Black Women and Feminism* (Boston: South End Press, 1981), Ch. 1; Deborah Gray White, Angela Y. Davis, *Women, Race & Class* (N.Y.: Random House, 1981), Ch. 1; *Ar'n't I a Woman: Female Slaves in the Plantation South* (New York: W.W. Norton & Co., 1985), Ch 1.; Patricia Hill Collins, *Black Feminist Thought: Knowledge, Consciousness, and the Politics of Empowerment, Perspectives on Gender, Volume 2* (N.Y.: Routledge, 1990) 67-90; K. Sue Jewell, *From Mammy to Miss America and Beyond: Cultural Images & the Shaping of US Social Policy* (N.Y.: Routledge, 1993), Ch. 3.

6. See especially scientist George Cuvier's reflection on the "Hottentot Venus" after she died in Paris: "She had a way of pouting her lips exactly like we have observed in the orang-utan. Her movements had something abrupt and fantastical about them, reminding one of those of the ape. Her lips were monstrously large. Her ear was like that of many apes, being small... I have never seen a human head more like an ape than that of this woman." P. Topinard, *Anthropology* (London: Chapman and Hall, 1878) 493-494.

7. See E.B. Turnipseed, "Hymen of the Negro Women," *Richmond and Louisville Medical Journal*, VI (1868), 194-195; Turnipseed, "Some Facts in Regard to the Anatomical Difference between the Negro and White Races," *American Journal of Obstetrics and Diseases of Women and Children*, X (1877), 33; C.H. Fort, "Some Corroborative Facts in Regard to the Anatomical Difference Between the Negro and White Races," *American Journal of Obstetrics and Diseases of Women and Children*, X (1877), 258-259.

8. See, Stephen Jay Gould, *The Mismeasure of Man* (N.Y.: W. W. Norton & Co., 1981) 56.

9. John S. Haller, Jr., *Outcasts from Evolution: Scientific Attitudes of Racial Inferiority, 1859-1900* (Urbana: University of Illinois Press, 1971) 56.

10. *Ibid.*, 54.

11. See Donald Bogle, *Toms, Coons, Mulattoes, Mammies & Bucks: An Interpretive History of Black in American Films* (N.Y.: Continuum Press, expanded edition, 1989) for excellent assessment of the social construction of racial and sexual stereotypes projected onto Black Americans, and K. Sue Jewell, *From Mammy to Miss America and Beyond* (N.Y.: Routledge Press, 1993) for a piercing discussion of how cultural images contribute to shaping U.S. social policy.

12. Kenneth, L. Garver, M.D., Ph.D. and Bettylee Garver, "Eugenics: Past, Present, and the Future," *American Journal of Human Genetics*, 49 (1991), 1109.

13. *Ibid.*, 1111-1112; also, P. Reilly, "The Surgical Solution: the Writings of Activist Physicians in the Early Days of Eugenical Sterilization," *Perspectives on Biology and Medicine* 26 (1983) 637-656; Reilly,

"Involuntary Sterilization in the United States: a Surgical Solution," *Quarterly Review of Biology* 62 (1987) 153-162.

14. See especially, Ruth Hubbard, *The Politics of Women's Biology* (New Brunswick, N.J.: Rutgers University Press, 1990), 143, and generally, Linda Gordon, *Woman's Body, Woman's Right* (N.Y.: Grossman Press, 1976).

15. Jessie M. Rodrique, "The Black Community and the Birth-Control Movement," Ellen Carol DuBois and Vicki L. Ruiz, Eds., *Unequal Sisters: a Multicultural Reader in U.S. Women's History* N.Y.: Routledge, 1990) 333-344.

16. Angela Y. Davis, *Women, Race & Class* (N.Y.: Random House, 1981) 202-220.

17. James H. Jones, *Bad Blood: The Tuskegee Syphilis Experiment* (N.Y.: The Free Press, 1981).

18. Trudier Harris, *From Mammies to Militants: Domesticity in Black American Literature* (Philadelphia: Temple University Press, 1982) 4.

19. Daniel Patrick Moynihan, *The Negro Family: The Case for National Action* (Washington: Department of Labor, Office of Policy Planning and Research, 1966).

20. Henry Etzkowitz and Gerald M. Schaflander, *Ghetto Crisis: Riots or Reconciliation?* (Boston: Little, Brown Publishers, 1969) 14-15.

21. It is important to distinguish "household" from "family". A number of cultural and class assumptions comprise the Census Bureau's basis for evaluating household structure as the measurement of one's "family". The Black American family has long been the repository of values and beliefs that have served to mold individual character, inculcate values about obligation, reciprocity, mutual assistance, deference to elders, responsibility for dependent children -- whether one's own or others, hard work, charity to those in need, spiritual growth, respect for one's mother, and race uplift. Through much of this century, the Black American rural and urban family has operated as an extended kinship network of spatially linked households, or if you will, what I call "familial clusters". The presence of African American rural and urban, working class and middle class familial clusters has been so important to Black family resource sharing and basic survival, that it calls into question whether the Census Bureau's basis for evaluating a single household structure as the measurement of the "family" is as useful as would be a multiple-household measurement that assessed African American families on terms that are appropriate outgrowths of culturally influenced Black beliefs about the nature and responsibilities of kinship.

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