

REPRODUCTIVE JUSTICE: A NEW VISION  
FOR THE TWENTY-FIRST CENTURY

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# Reproductive Justice

*An Introduction*

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## A Reproductive Justice History

Reproductive justice is a contemporary framework for activism and for thinking about the experience of reproduction. It is also a political movement that splices *reproductive rights* with *social justice* to achieve *reproductive justice*. The definition of reproductive justice goes beyond the pro-choice/pro-life debate and has three primary principles: (1) the right *not* to have a child; (2) the right to *have* a child; and (3) the right to *parent* children in safe and healthy environments. In addition, reproductive justice demands sexual autonomy and gender freedom for every human being.

At the heart of reproductive justice is this claim: all fertile persons and persons who reproduce and become parents require a safe and dignified context for these most fundamental human experiences. Achieving this goal depends on access to specific, community-based resources including high-quality health care, housing and education, a living wage, a healthy environment, and a safety net for times when these resources fail. Safe and dignified fertility management, childbirth, and parenting are impossible without these resources.

## REPRODUCTIVE JUSTICE AND HUMAN RIGHTS

The case for reproductive justice makes another basic claim: access to these material resources is justified on the grounds that safe and dignified fertility management, childbirth, and parenting together constitute a fundamental *human right*. Human rights, a global idea, are what governments owe to the people they govern and include both negative rights and positive rights. *Negative rights* are a government's obligation to refrain from unduly interfering with people's mental, physical, and spiritual autonomy. *Positive rights* are a government's obligation to ensure that people can exercise their freedoms and enjoy the benefits of society.

Reproductive justice uses a human rights framework to draw attention to—and resist—laws and public and corporate policies based on racial, gender, and class prejudices. These laws and policies deny people the right to control their bodies, interfere with their reproductive decision making, and, ultimately, prevent many people from being able to live with dignity in safe and healthy communities.

The human rights analysis rests on the claim that interference with the safety and dignity of fertile and reproducing persons is a blow against their humanity—that is, against their rights as human beings. Protecting people against this interference is crucial to ensuring the human rights of all because all of us have the human right to be fertile, the human right to engage in sexual relations, and the human right to reproduce or not, and the human right to be able to care for our children with dignity and safety.

This history of reproduction in the United States pays attention to the ways that women have always been determined to

make secret decisions, pursue bold options, share information and resources, depend on the support of sisters, friends, and strangers, and take the risks they needed to take to make the reproductive decisions they could make. Sometimes these efforts were successful, sometimes not. Indeed, the reproductive options that fertile people have are always structured by the resources they have—or do not have.

Understanding the historical, legal, and technological contexts in which women have lived their reproductive lives is key to understanding how women have seized particular spaces for managing their fertility. This means understanding how women have avoided conception and how they have had children and been mothers when they wanted to. This kind of information allows us to understand how women have been responsible mothers when they had children in the midst of the life they had, in the midst of the community they lived in. The crucial point here is that no matter what kinds of regulations the government, the church, the family, or other authorities created, girls and women have always done what they could to shape their own reproductive lives. These assertions have particular meaning for the lived experience of women of color, whose reproductive capacity has constituted both a key engine for white power and wealth historically and a touchstone for those who want to distinguish the “value” of women's reproductive bodies by race. These perspectives make clear that women of color have been targeted in distinctive, brutal ways across U.S. history.

The reproductive justice framework derives its vital depth from drawing attention to the persistence of this history—the ways that the history of white supremacy operating in a capitalist system penetrates and misshapes the present. “The past is never dead,” William Faulkner famously said. “It’s not even

past.”<sup>11</sup> In this case, past abuses of women’s reproductive bodies live on in contemporary harms and coercions, stimulating reproductive justice activists to define the arena of reproductive dignity and safety in terms of human rights. Keeping in mind the impacts of this history, reproductive justice activists and theorists focus on the lived, embodied reproductive and whole-life experiences within their communities of people who can become pregnant and give birth.

We cannot understand these experiences of fertility and reproduction and maternity separate from our understanding of the community—the social context—in which they occur. When we assess the extent to which a group of fertile and pregnant persons are reproductively healthy and the degree of this group’s access to affordable reproductive health services, we can understand the relationship between health, health care, poverty, community empowerment, and the experiences of individuals. We can see the connection between reproductive health and well-being and the right to be a mother or a parent. We can see how the economic and cultural health of the community structures the degree of safety and dignity available to fertile and reproducing persons. These perspectives demonstrate the limits of the marketplace concept of free, unimpeded individual “choice” and turn us toward a human rights analysis.

This first chapter recounts the history of the thirteen original colonies and the United States and the resistance by women of color that gave birth to the reproductive justice framework. This chapter makes the case that knowing this history is crucial for understanding what animates and defines the contours and content of reproductive justice and the activist movement associated with its claims. It is a history that shows how colonizers, enslavers, employers, and the state, among other entities, have *used* repro-

ductive capacity to pursue goals associated with power, wealth, status, and property, creating difficulties and particular degradations for fertile and reproducing persons because of their sex and gender and their capacity to give birth to new life. It highlights the histories of people of color regarding reproduction and parenting because of racial slavery, immigration restrictions, persecution and genocide of Native populations, and other forms of racism in the original thirteen colonies and then the United States. It also highlights the history that women of color have made as they have responded to official policies, cultural assumptions, and casual practices.

This history calls attention over and over to the vulnerabilities of people without institutionalized power. It shows, for example, how some groups have been unable to prevent rape and its consequences; how some were unable to avoid official and unofficial programs of sterilization; how many people were unable to control when they got pregnant or decide whether to stay pregnant and whether or not to be the parents of the children they gave birth to. We see how, as enslaved persons, parents were unable to protect their children from sale or to assert their authority as parents. After white settlers and armies began moving westward across the North American continent, many Native Americans lost their land and also lost their pregnancies and children to genocidal wars and forced marches, and then to the boarding school system that aimed to drain Native culture from the minds of children who were being remade as “Americans.” Many people lost their fertility to coercive, race-based sterilization programs. All of these brutalities and indignities and others constitute a catalog of reproductive injustices: they name the reproductive dangers that many persons experienced in the past and that many continue to experience, in updated

forms, today. And they define the remedies that mark out the meanings of reproductive justice, in contrast.

By the last third of the twentieth century, a number of factors fueled movement building by feminists of color who focused on matters they would soon associate with reproductive justice. These included the influence of international and U.S. antiracist and feminist-led human rights movements. Movement activists organized against laws and policies that amounted to official reproductive abuse of people of color and their communities. Abuses included coerced sterilization; welfare and fostering policies that punished poor women for "illegitimate" motherhood; and the Hyde Amendment, which denied federal aid to poor women seeking abortions. In other words, reproductive justice was born from the claims of women of color that they had the right to be sexual persons and to be fertile. They claimed the right to decide to become parents and the right to the resources they needed to take care of their children. They also claimed the right to manage their fertility by having access to contraception and abortion services. And they made the case that the reproduction-related abuses of the 1960s and 1970s, the 1980s and 1990s and beyond constituted the direct legacies of a long history of reproductive abuse, reaching back into the slavery regime and earlier. They also drew on their own histories to define the fundamental human rights of all fertile and reproducing persons.

This opening chapter provides a reproductive justice history of reproduction in the United States. It chronicles interactions over time between official efforts to bring reproduction under the control of the state (and other authorities) and the efforts of ordinary people to define, to seek out, to claim, and to hold on to reproductive safety and dignity. These interactions embed some recurrent threads; first, that to achieve its most fundamental goals, *every* gov-

ernment depends on the reproductive capacity of people who can give birth. Government goals might include encouraging reproduction in order to build adequate labor and military forces. From the perspective of European settlers in North America, official laws and policies were crucial to achieving these kinds of aims. The second thread shows that laws and policies were quickly fundamental to racializing the colonies and then the nation, establishing (and fortifying) the primacy of whites. Laws and policies associated with population defined racial groups and boundaries between them, fixing exactly who was enslaved, who was free, and who was native. Over time, every pregnant woman and every baby born was racialized, marked for inclusion or exclusion, as the founding fathers and their heirs defined and protected the national identity of the United States as a "white country." Over time, white settlers and then white citizens used the law to express their sense of the incompatibility of heterogeneity and democracy.

Racializing the nation depended on the development of a culture and a politics—and a body of law—that declared that white babies had a different, dearer, and nonnegotiable value compared to nonwhite babies and that enforced those different values. Culture and laws were meant to identify which female bodies (and their babies) were marked for which kinds of administration and management by the state.<sup>2</sup> In time, these laws constituted a formidable population-control structure and included antimiscegenation laws, immigration laws, and laws criminalizing contraception and abortion. After slavery ended and the babies of African Americans no longer automatically increased the wealth of slave-owning whites, laws encouraged the sterilization of many women, frequently poor women of color. And welfare laws punished the pregnancy and childbearing of the same women. The government has also created a variety of laws

over time that have separated children from their mothers. These have given the state both the power to decide what constitutes a good mother and the capacity to act against the motherhood of women defined as falling short of that standard, even when that standard might embed and depend on racial and class biases. Crucially, although officials wrote these laws and others in language that called for policing the sex, reproductive, and maternal experiences of *individuals*, in fact, the laws have had the effect of punishing whole *communities*.

A reproductive justice lens helps us explore this history by revealing the impacts of these kinds of state strategies on the lives of individuals and communities over time. This makes a reproductive justice history distinct from national histories that ignore the short-term or long-term consequences for women and their communities of the slavery regime, the program of Native genocide, anti-Asian immigration restrictions, the Mexican "repatriation," and the colonization of the Americas, the Pacific Islands, and the Caribbean. Many histories have traced the progress of women toward personal reproductive autonomy.

This reproductive justice history does not foreground the concept of individual choice. On the contrary, using the reproductive justice framework, this chapter makes the case that individual choices have only been as capacious and empowering as the resources any woman can turn to in her community. Indeed, this history considers the impacts on women *and* their communities when state policies use women's bodies as "mechanisms of oppression against [their own] communities": for example, when an enslaver used sexual force to impregnate an enslaved woman or when birthing occurs under conditions that are deeply alienated from community traditions or interests.<sup>3</sup>

Historically, the absence of adequate reproductive health services has rigorously structured the lived experiences of generations of women of color and their communities. This history calls attention to the colonizing and modernizing processes that separated women from family and community traditions and resources. For example, when gynecological and obstetric medicine emerged as male-dominated, professionalized specialties, traditional women-centered knowledge and experience could be sidelined and then officially outlawed, and some enslaved women served the new experts as guinea pigs.<sup>4</sup> In the process, midwives were discredited and their age-old traditions degraded or lost. Public policies consigned particular pregnant and parturient women to underfunded public health programs, and standardization of obstetrics required that some women give birth in deteriorated public institutions under dangerous and alienating conditions. Health-related and other impacts rippled across and damaged communities for generations.<sup>5</sup>

Reproductive justice clarifies the need for protection from coerced sex and reproduction and also from coerced suppression or termination of fertility. The reproductive justice/human rights framework makes claims on the incarceration system, the immigration system, and the health care system, for example, to block institutional degradations associated with fertility, reproduction, and maternity or parenthood, and to recognize and protect the reproductive health and parenting rights of persons under their purview. Indeed, the human rights framework embeds a key corollary or foundational principle whose absence has degraded and damaged millions of women across U.S. history: health care, including reproductive health care, is properly a human right, not a commodity for purchase.

### COLONIZING NORTH AMERICA AND RACIALIZING THE NATION

In the colonial period, from the time of the first white European settlements until the ratification of the U.S. Constitution, population growth was crucial to the success of the North American colonial project and to the emergence of the new nation. From the white settlers' point of view, population growth among Europeans was crucial for establishing, developing, enlarging, and defending their land claims, their accumulation of wealth, and their political control of the settled territories. From their point of view as well, removal of the Native population that obstructed European settlement was mandatory, as was rapid population growth among enslaved Africans, who provided the hard labor necessary to realize the full range of Europeans' goals.

European settlers pursued a combination of pronatalist and antinatalist strategies to encourage population growth of African Americans and discourage population growth of Indians. Together, these strategies amounted to *population control*, a crucial aspect of establishing "the legal meanings of racial difference."<sup>6</sup> The first law using reproduction for this purpose was passed in 1662 in the Virginia Colony. It overturned the English common law tradition that defined the status of the child—slave or free—as following the status of the father. Now in Virginia, and soon in other colonies, the new law said that the status of every new baby would follow the status of its mother, not its father.<sup>7</sup> This apparently simple change guaranteed the growth of the unfree population and ensured the longevity of the slavery regime. The law made the fertility of the enslaved woman into the essential, exploitable, colonial resource. Her pregnancies, whether the result of rape or love or something else, engrossed the holdings

of her owner. A generation later, in 1692, the Virginia Colony clamped down on the births of racially "mixed" children, outlawing intermarriage, marking all racially indeterminate children as "illegitimate," and forcing them to work for many years as bonded labor. They were forbidden throughout their reproductive years to have children legally or to inherit property.<sup>8</sup>

These laws depended on the complete subordination of enslaved women, including their submission to rape by their masters. Enslaved women did not have any of the sexual, relational, or maternal rights that white females could generally claim, such as the right to choose their sexual partners, the right to enter into a legal marriage, the right to mother and protect their own children, or even the right to *know* their own children.<sup>9</sup> Indeed, research has shown that nearly one out of three children living in the Upper South in 1820 was gone in 1860, sold away to new "owners" in the Lower South and farther west.<sup>10</sup> This is crucial: the catalog of rights enumerated here begins to describe how, at the beginning, the absence of reproductive dignity and safety were key to definitions and mechanisms of degradation, enslavement, and white supremacy.

Enslaved women were often worked viciously hard, far into their pregnancies, despite owners' calculated financial interest in producing the next generation. Many women, near the end of their term and exhausted, lost their pregnancies right in the fields, an event that was all too common since profit-maximizing owners refused to allow enslaved midwives to attend or to call in physicians to supervise, even when such attendance was routine for their own kin.<sup>11</sup>

On Louisiana sugar plantations, pregnant women worked sixty to seventy hours a week "while standing or stooping over cane shoots in ninety-degree temperatures." As a result, they

suffered from insufficient blood supply to their placentas, typically suffered from hypertension, had a high percentage of miscarriages and stillbirths, and gave birth to tiny babies. High levels of infant mortality meant that many women were not nursing after completing a pregnancy. As a result, they resumed monthly periods much sooner than they would have if the babies had lived and nursing had continued, suppressing subsequent fertility for the duration. Inadequate diets caused a woman's milk supply to be poor, leading mothers to wean their babies early, another cause of frequent pregnancies at shorter intervals.<sup>12</sup> Women were also forced to do reproductive labor, nursing the babies of other women. All of these practices and others harmed the health and longevity of women and their babies, many of whom were born tiny and vulnerable.<sup>13</sup>

Sometimes mothers who left the fields to nurse their babies were threatened with the whip. One owner is reported to have established a rigid schedule for infant feeding. Apparently the enslaved women on this plantation were able to stand together, however, and force the owner to accept the feeding schedule they had devised.<sup>14</sup>

Indeed, as this case illustrates, even within such a brutal context, enslaved women sometimes found ways to band together in their own interests, including sharing information and materials with each other about how to control fertility.<sup>15</sup> Having many reasons to avoid pregnancy, they taught each other which herbal contraceptives and abortifacients were effective. Midwives among them performed secret abortions. These efforts reflected women's determination to resist: many refused to produce a new slave for the master and refused, as well, to consign a potential child to a life of enslavement. Sometimes a woman might even kill her newborn to save that child from a horrible life enchained

to slavery. Each of these acts constituted a woman's claim of full personhood—her linkage of her reproductive life to human freedom.<sup>16</sup>

At the same time that the slavery regime produced laws, policies, and practices that made sure that the African American population would grow, government officials pursued antinatalist programs to reduce Native populations. The key program was, of course, using warfare to kill, to conquer, and to remove populations. But Christian missionaries also had a significant impact on the reproductive lives of Native peoples and communities in the eighteenth and early nineteenth centuries. Determined to "civilize the heathens," missionaries disrespected traditional Indian reproductive practices that had, for centuries, defined and marked birthing rituals and the connections between these rituals and maturity, manhood, womanhood, and other basic elements of culture.

Typically, missionaries focused on ameliorating the deficiencies they saw in Native women, including their lack of knowledge of European birthing and child-rearing practices and their lack of traits associated with European femininity. For example, when the religious proselytizers discovered that some Cherokee women had political and economic authority—traditional powers derived from their capacity to bring forth new life and change the shape of the community—missionaries focused on redirecting all authority away from women and into the hands of men. Equally devastating to the status and power of women within the traditional Indian matrilineal kin network, missionaries inserted themselves into the community as "surrogate parents" with supervisory responsibilities over the "new Christian family."

Throughout much of the nineteenth century, both before and after the Indian Removal Act of 1830 (a federal law permitting the government to use its military to eject Native populations



from their traditional lands in the Southeast in order to provide new lands for new cotton plantations to be worked by enslaved labor), federal officials pursued policies of genocide—the ultimate population-control policy. The U.S. military forced Indians into areas west of the Mississippi River, a brutal process that had special dangers for women of reproductive age and therefore for the community as a whole. During coerced marches westward, pregnant, parturient, and mothering women were under terrible physical stress and also unable to observe cultural rituals and traditional practices associated with health and well-being. Consequently, many women and their infants did not survive. One missionary reported, “Troops frequently forced women in labor to continue [marching] until they collapsed and delivered” surrounded by soldiers.<sup>17</sup>

Trying to forestall such atrocities by drawing on their maternal authority, Cherokee women led Native resistance against removal. They stood against the government’s demand that the Cherokee trade their ancestral lands for alien tracts far away, arguing, “The land was given to us by the Great Spirit above ... to raise our children upon, and to make support for our rising generations.” Tens of thousands of Native people were removed to the west anyway, and when they arrived, men far outnumbered women. In the new settings, women’s health and their lives were threatened by sexual assaults by white men, deadly diseases, insufficient food, and poverty. Consequently, the reproductive potential of Native communities was devastated. Far from regretting this development, elite whites approved the sentiment of Charles Francis Adams, Jr., the descendant of presidents and a leading industrialist, who declared that official policies and their antinatalist outcomes “saved the Anglo-Saxon stock from being a nation of half-breeds.”<sup>18</sup>

By the time of the Civil War, more than two centuries of white lawmakers had drawn dramatic distinctions between the reproductive bodies of white women and others and had assigned profoundly different values to these bodies by race. White authorities used the locus of life to define the source of racial identity and civic value. While laws, policies, and brutal practices degraded enslaved and Native women, they ennobled free white women in contrast. According to law and cultural norms, the white mother was the fundamental creative symbol of the white nation: dependent but dignified, innocent and pious but wise, a person of deep sentiment but also judicious. She was tethered to the home while shaping the destiny of the nation by raising citizen-sons and future mothers of the Republic. Prescriptively, and in distinction to the African American mother, the white mother could, due to her whiteness, choose her husband and the father of her children. Her whiteness allowed her to manage and protect her own family. Her embodied, intimate whiteness—her alleged “chaste” sexuality, together with her fecund reproductive capacity—amounted to the nation’s most precious resource.<sup>19</sup>

The nineteenth-century laws against contraception and abortion expressed the importance of the white mother’s role in making the white nation and the government’s interest in protecting her fertility. They were also expressions of legislators’ concern that white women might be shirking their duties. Before independence and for the first half century afterward (and decades longer for some states), contraception and early abortion were entirely legal. A woman could, for example, legally seek termination of her pregnancy if she did so before she had reported “quickening” (that is, told someone that she’d felt the fetus move within her). Indeed, many white women believed the rhetoric of the American Revolution, the ways it exulted the “free individual,”

liberty, and “inalienable rights.” Many white women heard within this rhetoric a corollary that African American women knew excluded most of them: that “freedom” could include the right to manage their own bodies, including their fertility.

As women went about trying to limit their fertility and their pregnancies, states moved to put a stop to this behavior. Beginning in the 1820s, physicians interested in professionalizing their status as well as controlling the lucrative domains of gynecology and obstetrics worked successfully with members of state legislatures to stamp out women’s traditional prerogative to ask midwives or physicians to “restore their menses”—that is, to terminate their pregnancies. By the end of the nineteenth century, all states had criminalized abortion.

The federal Comstock Law (1873) gave officials the right to conduct surveillance of letters and packages passing through the U.S. postal service. Deploying this power, the post office system could ensure that its services weren’t being used to transport “obscene” materials, especially contraceptives. Together, these legislative efforts constrained women’s opportunities to learn about contraceptive options and ultimately blocked many from handling their fertility as they thought best. The Comstock Law put control of pregnancy and matters constituting gynecological and obstetric medicine legally in the hands of physicians alone.

Some historians have underemphasized a key justification for laws criminalizing contraception and abortion in the nineteenth century: to make sure that white women brought their pregnancies to term and so gave birth to all the white children necessary for populating the white nation.<sup>20</sup>

After the Civil War, most African American women, the majority of whom lived in the South, did not have the cash to pay for the new commercial contraceptives or for the services of

professional obstetricians, few of whom served newly freed African American communities in any case. Most women probably continued to use traditional herbal preparations to control fertility, and most continued to seek out “granny midwives” in their communities to perform abortions and oversee birthing.

The economic and health-care options of African Americans in the South were not about to stabilize or expand, despite new opportunities in the one-decade-long Reconstruction period after the war. During Reconstruction, Black men could vote; many formerly enslaved persons were elected to office; and the rule of law described a new regime in which this population would be incorporated as full citizens into the polity. But after a scant decade of various kinds of progress in this direction, political deals to resolve the presidential election of 1876 destroyed many of the possibilities and promises of the Reconstruction period and empowered “Redeemer” governments determined to reinstate full white supremacy in all its forms.

Indeed, when Redeemer governments seized power throughout the South after 1876, their officials spent the next thirty years reversing the actions of Reconstruction governments and nullifying the postwar amendments to the Constitution that ended slavery (Thirteenth) and guaranteed citizenship status and voting rights for formerly enslaved men (Fourteenth and Fifteenth). The overthrow of Reconstruction legally reaffirmed white supremacy in the South. Legislatures passed laws that enforced the involuntary labor of African Americans.<sup>21</sup> Tolerating white violence against formerly enslaved people, they rebuilt what historian Eric Foner has described as a “unique combination of legal and extralegal coercions” amounting to a “seamless web of oppression.” In 1883, eighteen years after the ratification of the Thirteenth Amendment, the Supreme Court found the Reconstruction-era

Civil Rights Act unconstitutional. One government official wrote that the time was over when Blacks could be the "special favorite of the laws." By the 1890s, full racial segregation characterized Southern society.

In many states, Redeemer governments, targeted institutions that had served formerly enslaved persons: They ended public funding for hospitals, ensuring their collapse. They dismantled public school systems. Most thoroughly consequential, Redeemer governments made sure that the federal government could not deploy its powers in the South to safeguard the welfare and rights of African Americans or curtail any manifestations of white supremacy. Local "campaigns of violence" targeted formerly enslaved people and their communities. Altogether, these programs directly threatened the health, the welfare, and the reproductive dignity and safety of African American women and their communities.<sup>22</sup>

At the same time that formerly enslaved African Americans were losing access to the various forms of freedom that emancipation and the post-Civil War amendments had promised, white upper-middle-class reformers such as Jane Addams, Florence Kelley, and the sisters Grace and Edith Abbott, along with some state policy makers, focused for the first time on using public policy to meet the needs of poor white mothers. Under-scoring the rigidity and "natural" logic of the racial divide, they crafted and promoted state-run programs to protect "deserving" and "virtuous" mothers, mostly white widows. The new mothers' pension programs recognized the value of mothers who met certain cultural, racial, and so-called moral standards.

State programs usually did not support women of color, implicitly defining them as "unfit" due to their color, their poverty, and their alleged moral failings. According to theories of

white supremacy, these women were highly unlikely or incapable of producing "fit" citizens. Moreover, they were rarely targets of law enforcement when they sought abortion. Especially now that their fertility no longer represented profit for whites, their bodies were not worth policing, a brutally ironic illustration of what it means to be "beneath the law."<sup>23</sup>

Many African American women looking for sexual safety and reproductive dignity moved north between 1910 and 1930 as part of the first phase of the Great Migration, when more than six million African Americans left the South for the Northeast, the Midwest, and the West. For women, leaving the South meant, in part, moving away from sexually predatory white men who rarely faced legal sanctions when they attacked women of color. Moving away from the South meant leaving the everyday violence of white supremacy and protecting their children from the degradations of Southern apartheid, even as they faced different types of racism and sexism in these new locales. When African American women and their families made new homes in urban centers, they often found better access to contraception and African American abortion providers.<sup>24</sup>

Fertility and motherhood continued to be sources of danger for Native women as well. A government agent to the Shoshone tribe in the 1880s explained that the problem was biological. If Indian children were to be raised to become proper Americans, he observed, they must be taken away from their families because the capacity to raise "civilized" children was "not in their mothers' milk." The federal government pressed Native mothers to send their children to boarding schools with curricula designed to suppress tribal languages and cultural practices and to promote patriotic U.S. citizenship. Those allowed to keep their children were pressed to embrace "scientific motherhood": that is, to

cast off their traditional child-rearing practices in favor of European American methods.<sup>25</sup>

Many Native parents resisted as hard as they could when federal agents came to take their children away, and in response, agents withheld food rations and called in agency police. An agent to the Mescalero Apache described what parents faced:

Everything in the way of persuasion and argument having failed, it became necessary to visit the camps unexpectedly with a detachment of police, and seize such children as were proper and take them away to school willing or unwilling. Some hurried their children off to the mountains or hid them away in camps, and the police had to chase and capture them like so many wild rabbits. This unusual proceeding created quite an outcry. The men were sullen and muttering, the women loud in their lamentations and the children almost out their wits with fright.<sup>26</sup>

The sale of enslaved African American children away from their families and the removal of Indian children from theirs are horrifying examples of how some women—and only some—have historically faced official, legal obstacles to the right to be mothers of children they bear.

Even as massive immigration from Asia and Europe substantially met the labor requirements of many employers, the state still turned to population policy to distinguish between the value of women's reproductive bodies by race, class, and ethnicity. For example, the government became increasingly involved in setting standards for mothering in the late nineteenth and early twentieth centuries. Immigration and welfare officials pursued cultural and political initiatives that designated hundreds of thousands of girls and women as unfit to be mothers and as unfit to produce new American citizens. Under the Chi-

nese Exclusion Act of 1882, the wives of Chinese laboring men were prevented from immigrating to the United States. The impacts of the law (and its 1875 predecessor, the Page Act) were dramatic. In 1880, females constituted 3.6 percent of the Chinese population in the United States; in 1920, 12.6 percent; and in 1940, still only 30 percent. Gendered immigration restriction, along with antimiscegenation laws, ensured that Chinese men could not legally have sex in the United States and that few ethnic Chinese babies would be born here. Therefore, hardly any Chinese babies would be granted birthright citizenship.<sup>27</sup>

In addition to these government efforts, other official projects ranked the value of mothers. Textbooks and assimilationist school curricula overrode the norms and authority of immigrant parents (as well as Native parents), and various programs supported effective criminalization of premarital childbearing for the poorest and most vulnerable young white women. Laws and policies provided for institutionalizing these young women and sending their children to "orphan farms." These kinds of efforts reinvigorated the qualifications for "republican motherhood," ennobling mothers who were not subject to these degradations while disqualifying the ones who were.

The best evidence shows that, in the face of these kinds of laws and policies—and in the context of urbanization and industrialization—women everywhere were more determined than ever to limit their fertility, however they could. Even under a regime that continued to criminalize abortion and contraception, the average number of children born to white women declined from 4.4 to 2.1 between 1880 and 1940, while the decline for African American women was even more dramatic: from 7.5 to 3.0 during that same period.<sup>28</sup>

### MODERN AMERICA AND REPRODUCTIVE "QUALITY"

The early twentieth century has been known as the Jim Crow era, a time when white officials compensated for the end of racial slavery by building or reinforcing multiple structures of racial exclusion and separation—an apartheid system—in all regions of the country. Local, state, and federal governments and courts validated racial segregation of neighborhoods and institutions including schools, hospitals, movie theaters, hotels, libraries, restaurants, parks, and swimming pools. Employment was governed by the principles of racial segregation as well: through the 1950s, people of color were disproportionately—and sometimes exclusively—hired only as agricultural and domestic laborers, or for jobs in segregated settings. And very consequentially for reproduction, legislatures and courts used the law to enforce the sexual separation of the races, making interracial sex and procreation a crime in many states.<sup>29</sup>

At the beginning of the twentieth century, a number of prominent social scientists used the new "science" of eugenics to revitalize older theories of white supremacy and justify Jim Crow practices of racial separation. Eugenics claimed that the human population was perfectible. Public policies and medical practices could be used to promote the reproduction of the "best examples" of humanity and eradicate "negative expressions" of human life. This second category included persons with psychological, physical, and cognitive disabilities and nonwhites. Working with eugenicists, politicians and policy makers created laws that criminalized interracial sex and permitted sterilization for "racial betterment." Beginning in 1907 in Indiana, state laws encouraged sterilization of "socially inadequate persons," a vast map of

humanity that pinpointed "promiscuous" women, the "feebleminded," some habitual criminals, and others. President Theodore Roosevelt, a eugenicist, strenuously exhorted white Americans to avoid committing "race suicide," a calamity that would befall the country if white women did not reproduce often enough to maintain the demographic advantage of "the race." These kinds of laws and official pronouncements defined racial difference and racial hierarchy as primary goals of the government.<sup>30</sup>

Politicians and policy makers pursued reproductive goals in a number of ways. Here we will introduce several of the ways, including immigration policy, reproductive policy, and policies addressing support for poor mothers and their children. In each area, experts developed policies and programs that depended on regulating reproduction to promote racial exclusion, racial difference, and racial separation.

Following the Page Act (1875) and the Chinese Exclusion Act (1882), the United States continued for decades to enact immigration legislation that would protect the white identity of the United States. In 1911, the Dillingham Commission published a forty-one-volume report, which among other things, condemned the "quality" of Eastern and Southern European immigrants arriving in America and recommended racial quotas to control which persons could enter the country. Eight years later, the most comprehensive exclusion act thus far created an "Asiatic barred zone," which effectively stopped immigration from India.

The Immigration Act of 1924, also called the National Origins Act, which would remain the law of the land with some modifications until 1965, aimed to radically reduce non-Nordic immigrants and thereby curtail the number of "inferior" children born in the United States as American citizens. The law required visas and photographs for all immigrants, which represented a significant

expense especially for Mexicans, who had previously been able to cross the border casually. As part of this act, Congress mandated a "scientific" study of the origins of the population as of 1920 to use as a guide for future allowable quotas by nationality and ethnicity. Subdivision d of Section 11 of the act excluded from "inhabitants of the United States in 1920," among others, Asians and their descendants, descendants of "slave immigrants," and "American aborigines." These laws had profound impacts on the color and ethnicity of the population. For example, before the 1924 law, about 150 Chinese women a year were allowed to enter the country; between 1924 and 1930, none were allowed.<sup>31</sup> All of these immigration restrictions had enormous impacts on the color and the ethnic origins of the babies who would be born in the United States, far into the future.

Second, eugenicists supported public policies that promoted contraception and sterilization as strategies for enhancing national strength, public health, and a better (white) "race." Suppressing fertility, temporarily or permanently, they argued, would diminish poverty and could stabilize a society staggering under the impacts of urbanization, industrialization, migration, and immigration and, most pointedly, could protect the interests of the industrialists and others members of the ruling elite. When Margaret Sanger, the most prominent early advocate of contraception in the United States, promoted the term "birth control" in 1914, she was opportunistically appealing to the era's commitment to "rational," eugenically minded, efficient solutions to social problems, not just to a woman's right to control her own body.

But Sanger was also responding to millions of women of all races and classes who wanted or desperately needed to manage their fertility, and she became a force in helping women meet

that need. Indeed, millions found ways to curb their fertility, especially during the Great Depression of the 1930s. Women were extraordinarily resourceful, getting information and supplies from a variety of new sources. They gathered in labor union settings and in maternity and infant centers for African Americans in the South. In Oklahoma, a coalition of fourteen Black women's clubs underwrote a clinic. In San Francisco, schoolteacher Jane Kwong Lee took Chinese women to the Planned Parenthood clinic, she said, so they could get birth control before they got pregnant. Women opened their homes to door-to-door contraceptive salesmen. Many purchased preparations at five-and-dime stores, ordered "preventatives" from the Sears and Roebuck catalog, and responded to magazine advertisements.<sup>32</sup>

Nevertheless, many authorities ranked their political interests in population control and male authority over the interests of women. When the American Medical Association endorsed birth control as a "proper sexual practice," the organization insisted that doctors retain authority over women's access. Public health officials developed birth control clinics for poor African Americans only partly as a service to women. The key goal was to serve "the public good" by reducing Black fertility. The American Birth Control League and the American Eugenic Society sponsored contraceptives for relief clients as an antinatalist project that would help the country out of the Depression while improving the quality of the population. Notably, long before the government decriminalized female contraceptives, it provided condoms to soldiers during World War I and also listed condoms as "approved prophylactics" in the 1930s, to protect uniformed men against venereal diseases. Using the principle of "public health," the government itself promoted a strategy for separating sex and pregnancy, at least for men.<sup>33</sup>

Various court decisions in the 1930s removed all federal bans on birth control but did not address state bans. In fact, bans or not, birth control along with abortion had become basic requirements of many women determined to manage their bodies safely.<sup>34</sup> We know about these requirements, in part, because experts at the time estimated that between 25 and 40 percent of all pregnancies were terminated by abortion during the Depression. Women who could pay a physician or a midwife encountered few complications, even in this era before antibiotics and even though abortions were often performed in secret, poorly equipped venues. Those who resorted to self-abortion did not fare so well. More than three-quarters ran into serious trouble—infections and death.<sup>35</sup> These women typically lived in either the most rural parts of the country or in the poorest urban areas. They were likely to have had the fewest resources, including money, information, and access to professional medical care. Here we can see again that no matter what the law said, no matter whether a woman had the money to pay or not, millions were deeply determined, in a time of special desperation, to manage their fertility as they saw fit, even when the risk was great.

Sterilization—permanent birth control—was not merely formally allowable by law during the Depression, but it was actively pursued as a public health measure, especially after the Supreme Court had affirmed the right of officials to carry out these operations for eugenical purposes.<sup>36</sup> In fact, the 1930s saw the highest rates of sterilization in the greatest number of states since 1907, when Indiana passed the first sterilization law. In some states, such as Virginia, where the second-highest number (after California) of sterilizations took place between 1932 and 1941, poor people were terrified, with good reason, by the threat of the new laws and the public's enthusiasm for them. One Virginia official

said, "The state sterilization authority raided whole families of 'misfit' [white] mountaineers." The official reported that events like these left "everyone who was drawing welfare ... [sure] they were going to have it done on them.... They were hiding all through these mountains, and the sheriff and his men had to go up after them ... and ran them down to Staunton [Western State Hospital] so they could sterilize them."<sup>37</sup>

Demonstrating the limits of the value of "whiteness," policy makers and others claimed that (white) "relief babies" *caused* the great poverty of the Depression era and deepened it, in the same way that many Republicans blamed poor people for the 2008 mortgage crisis, the Great Recession. Both are examples of politicians and others shielding elite financial leaders and the impacts of their decisions by pointing fingers at the least powerful people in the country.<sup>38</sup> Attacks on poor women of all races and ethnicities—and their children—functioned both as commentary on the unfitness of poor women and as a critique of New Deal programs developed to help them. Many politicians and others, including liberals, marked reproductive control as an important remedy for everything that ailed the country. Nationwide, the number of public clinics dispensing contraceptives, pregnancy and maternity care jumped from 145 in 1932 to 357 in 1937.<sup>39</sup> These clinics tied the sexuality and fertility of poor women to public institutions, services, and scrutiny, and they aimed to suppress the reproduction of the poor. They also dispensed crucial information and materials to poor women trying to manage their own fertility. In the meantime, groups as diverse as the New Jersey League of Women Voters, the 1930 White House Conference on Children and Health, and various religious organizations, as well as scores of prominent academics, supported terminating the reproductive capacity of a broad

category of "unfit" persons as one strategy for saving America's cherished democracy myth.<sup>40</sup>

The development of federal programs to aid poor mothers and their children was a third policy area that promoted racial exclusion, racial difference, and racial separation while legitimately addressing the needs of some women, generally white women. The Sheppard-Towner Act of 1921, which established the first federally funded social welfare program in the United States, was born, in part, of the Progressive impulse to standardize and Americanize care for children in the era of massive immigration. Policy makers were also determined to rationalize public health programs and bring infant mortality rates into line with those of other industrialized countries. White feminist activists fervently supported this legislation (while the American Medical Association opposed it as "socialistic") because it provided services such as infant and maternity care for the poor and pre- and postpartum education for pregnant women. Some states permitted inferior services to women of color under this program, while, as we have seen, a number of states that sponsored mothers' pension programs limited recipients to "worthy," effectively white, widows and their children. This persistent feature of public programs gave special value to white mothers and their families while devaluing the maternity and the children of others.

Again in 1935, when the government initiated Aid to Dependent Children (ADC) as part of the Social Security Act, the program excluded children of "immoral" unmarried mothers and most women of color. The latter were neatly excluded in part because, to keep the support of Southern politicians, President Franklin Roosevelt agreed to categorically exclude agricultural

and domestic workers from benefits, an exclusion that covered the only kinds of jobs most African American women could get in an apartheid labor system.<sup>41</sup> White mothers received help if they promised they would stay home and take care of their children, even during the labor-hungry years of World War II. But women of color were forced to go to work no matter their maternal responsibilities.<sup>42</sup> One reads the racist, antinatalist, population-control intentions of the framers of ADC in subsequent iterations of welfare policy up to the present time.<sup>43</sup>

All of these developments during the Progressive Era, the Great Depression, and the New Deal raised fundamental questions about interactions between sex, citizenship, and race. Congress and state legislatures passed laws that determined the character of the population, the structures of communities, the quality of municipal services, and the availability of credit. These included the "repatriation" of Mexican immigrants brought to the United States for agricultural labor and now forced to return to a country many hardly knew; restrictive immigration controls; and fierce enforcement of segregation, naturalization, and antimiscegenation laws. These laws used reproduction to regulate who could live in the United States, who could become a citizen, who could live where, who could be "white," who could love and have sex with whom, who could marry, who could be born. These laws structured the reproductive lives—and even the physical appearance and the "race"—of people living in America. And they attempted in various ways to associate citizenship with whiteness. Accomplishing this racial goal relied on pursuing policies and encouraging cultural expressions that devalued the inescapable condition of being nonwhite.



# RIGHTS, RESTRAINTS, AND REACTION AFTER WORLD WAR II

Women of color had always labored to sustain their families and communities, either as forced or low-wage workers. But social norms increasingly defined white women, especially "respectable" married women with children, as noneconomic actors. Nevertheless, during and after World War II, as during the Depression, white women's employment outside of the home surged, leading to a steadily growing demand for birth control. Given this huge demand, contraceptives were no longer the enemy of respectability, at least in the case of married women. Medical schools offered contraceptive training, and as we've seen, the number of public clinics grew quickly in this era.

But still the culture transmitted terribly contradictory messages about women's sexuality, fertility, and maternity—messages still structured deeply by race. After the Depression ended, white women were pressed to have many children, to create a large population for the "greatest democracy the world had known" and to undergird the supremacy of the free world and the consumer basis of the free market. Fecund white women of the growing middle class were beneficiaries of cultural approval and various kinds of tax benefits. White women who did not reproduce or did not reproduce enough, who put work before motherhood, or had an abortion, or who got pregnant without having a husband were targets of harsh disapproval.<sup>44</sup>

At the same time, public policies discouraged and punished the childbearing of women of color. The Supreme Court's *Brown v. Board of Education* decision in 1954 provided an occasion for new expressions of white hostility to African American children because many white parents did not want to see these young-

sters in school with their own. The centerpiece of the complaint was an old charge: African American women and other women of color were hypersexual. They did not have the intellectual or the moral resources to be good mothers raising future citizens. Lacking these qualities, they did not qualify as rights-bearing persons. At the outset of the civil rights movement, many whites charged that women of color (most of whom still earned pitiful salaries within the apartheid labor system) lacked the economic resources to be legitimate mothers. As poor persons, so the charge went, they would give birth to welfare recipients and worse, but not to the consumers that the American economy was increasingly dependent on.<sup>45</sup>

Similarly, as immigration restrictions relaxed in the 1960s, immigrant women had to struggle to assert their authority and legitimacy as mothers and to insist on their basic right to have children. A particularly tragic outcome of this era was that the rise of new, more humane public policies addressing the needs of poor mothers and their children stimulated a virulent and lasting backlash. Paradoxically, the civil rights movement articulated the dignity of persons whose lives then became the public policy symbol of unbearable equality for decades to come.<sup>46</sup>

From the 1950s forward, female sexuality and fertility were arguably the most potent and symbolic lightning rods in the domestic policy arena. Laws and policies governing civil rights, racial equality, citizenship qualifications, women's status, and other fundamental conditions of American life were hammered out on the terrain of female fertility. Added to this, fertility became a potent flashpoint in the policy arena at a moment in the early 1960s when many academics and public officials became interested in the concept of a worldwide "population bomb." Typically, these experts warned of the dangers of the bomb's

American manifestation: the supersaturated ghetto that had to be "contained" for the safety and the future of the country's democratic institutions. Proponents of containment cited the especially high birth rates of "Negroes," who "reproduced beyond the capacity of the economy to handle," naming escalating welfare costs, overcrowded urban schools, urban crime, and other ills linked to the impacts of the Great Migration.<sup>47</sup> These experts ignored the apartheid labor system, poor educational systems in poor neighborhoods, and lack of quality medical care as causes of poverty. Instead, relying on post-slavery-era racist charges, they pointed to the "excessive" fertility of "irresponsible females," who persisted in having "unwanted babies" that cost the taxpayers too much.

White resentment about public provision for poor mothers continued for the rest of the century to be a major political issue. So did a state's right to assert its own authority to limit or block welfare benefits, against the authority of the federal government to require them. The fact was, ADC, later called Aid to Families with Dependent Children and then Temporary Assistance for Needy Families provided poor mothers only enough money to keep them desperately poor and did not provide comprehensive child-care services or facilitate effective job training or employment that paid well. These programs and the ways they were administered did not shield poor mothers from stigma or from public contempt for their "dependency." In fact, welfare opponents pointed to public assistance to justify new antinatalist public policies that discouraged poor women from having children or punished them when they did. States often gave African American, Mexican-origin, and Native women the smallest benefits and for a long while resisted making payments in cash, claiming that women of color were too irresponsible to manage

money. Especially in regions with larger populations of color, welfare programs distributed surplus commodities and rent vouchers instead.

Policy makers, politicians, and welfare officials typically used the term "illegitimate" to define poor children, as if the government itself disregarded their humanity. Many states used public policy to define mothers as illegitimate, too. Rules permitted welfare-department surveillance of a mother's house, typically targeting households of women of color. Staff were directed to take note, and even to barge in, when a male visitor was present. The point was to entrap women who were, extraordinarily, forbidden by so-called man-in-the-house rules to have sexual relations and to have additional children while they received public benefits. This system operated on the premise that sex-while-poor was against the law, and the punishment was loss of benefits. (Some state legislatures tried to pass laws that mandated sterilization or even imprisonment for this "crime.") Once again, sexuality and fertility and maternity became sources of danger and degradation for poor women.

Poor women typically did not want more children than their middle-class counterparts wanted. Studies at the time showed that poor women reported they had more children than they desired only because they didn't know how *not* to get pregnant. Scholars, welfare administrators, public health physicians, and others who looked into this matter directly found that poor women were absolutely eager for birth control. A North Carolina welfare official said that when his office sent "homemakers" out into the community, knocking on doors, asking the woman of the house if she wanted to "learn something about this subject," no one "ever had one door slammed in [her] face." In Chicago, for example, the number of patients, most of them poor,

who sought birth control at Planned Parenthood clinics doubled in the first nine months of 1962.<sup>48</sup>

A report from Detroit a few years later, after the civil rights-era rebellion of the summer of 1967, showed a stunning commitment among the poor to contraception. Dr. Gary London, a physician attached to the Office of Economic Opportunity, reported, "We have a family planning program, funded by OEO, which is situated in the heart of the riot area. On the block where that building is situated, all the buildings on the block were burned and gutted [during the urban rebellion in July 1967], except for two. When the smoke cleared there, they found two unburned buildings. One was the Negro church ... the other was the family planning center."<sup>49</sup>

Also in the mid-1960s, the Amalgamated Laundry Workers, representing many African American women and in part responding to these workers' demands, launched a free birth control program through its health center.<sup>50</sup> Even the Southern Christian Leadership Conference, belying the common wisdom that African American men were uniformly opposed to birth control for religious, political, and masculinist reasons, issued a publication at this time entitled "To Make Family Planning Available to the Southern Negro through Education, Motivation, and Implementation of Available Services."<sup>51</sup>

Many poor women, organizing welfare-rights groups and women's health organizations in the 1960s and 1970s had, themselves, received welfare under degrading conditions. When they founded the National Welfare Rights Organization and other groups, they emphatically defined themselves as rights-bearing persons and legitimate mothers of legitimate children. Most profoundly, they insisted on their right, despite their poverty, to be mothers, and they maintained that their status as mothers

qualified them as citizens deserving social provision. These claims would later form the backbone of the reproductive justice movement.<sup>52</sup>

The war on motherhood in the 1960s and 1970s excluded several categories of women from legitimate motherhood, along with poor, unwed women of color. Commentators of many political persuasions accused white feminists—women who claimed "too much" power for themselves—of turning their backs on childbearing. These accusations were aimed even at women who were, in fact, mothers but had outside jobs too, and women who advocated for reproductive rights. In the 1950s and 1960s, psychiatrists, social workers, teachers, religious leaders, and other community authorities had disqualified white females who got pregnant outside of marriage from legitimate motherhood. Defining white unwed motherhood as a psychological disorder, authorities promoted adoption as a mass solution for dealing with the growing number of white girls and women who had sex, got pregnant, and stayed pregnant without being married. Authorities decreed that a white unwed mother could "redeem" herself only by secretly "surrendering" her child for adoption to a properly married white couple.

Cultural and political authorities disqualified both white females and females of color without husbands from authentic motherhood, but the strategies for dealing with women in this situation were completely racialized. The white mother was pressed hard to relinquish her child; the mother of color had "no choice" but to keep hers and suffer official punishments for having given birth.<sup>53</sup> At the dawn of the women's rights movement, many mothers of whatever race were vulnerable to degradations associated with their sexuality and fertility. Politicians and policy makers deployed this vulnerability to achieve various public

policy goals, including the reinstitutionalization of racial discrimination at the same time that the civil rights movement was taking form and achieving significant advances.<sup>54</sup>

Hundreds of thousands of girls and women, both whites and people of color, who wanted to avoid the horrible experiences of coerced adoption or impoverished, shamed, or unwanted pregnancy turned to abortion in the decades before decriminalization. These persons, probably more than one million a year around the country, were willing to resist the law. But they also walked a dangerous path because, after decades of ignoring abortion laws, now law enforcement authorities, eager to show how well they were "cleaning up" urban vice, began to target abortionists. District attorneys and police superintendents did not typically call upon religion or the fetus's right to life to justify their raids and crackdowns. Frequently, they did not save their surveillance and arrests for practitioners accused of harming clients or causing death. They hung their reputation for law enforcement on newspaper headlines and lurid photographs and on courtroom sensations. In these locations, the mostly white women who came to the attention of the law were accused of murdering not babies, but their own destiny: motherhood.

Beyond the courtroom, these images and events broadcast a warning to all women, or at least to the white women they focused on and featured: to rededicate themselves to proper female norms. The sensational exposés instructed women that the law (together with their sexuality and fertility) was a source of great danger (a much greater danger than the abortionist) because the law said that women were not permitted to manage their own bodies. Regarding sexuality and fertility, all women were subject, in fact, to this core condition of bondage.<sup>55</sup>

It is worth noting that the surviving death statistics from the decades before the legalization of abortion—numbers which are complicated to interpret since they reflect imperfect knowledge about a secret, criminal activity—provide scant evidence of high death rates from abortion before *Roe v. Wade*. Nevertheless, abortion-rights activists and others press us to remember the criminal era as a time when "back-alley butchers" botched the abortions they performed and caused no end of mayhem and death. In fact, the iconic butchers may have been most palpable as a scare tactic, constructed to distract and discourage women from going into "back alleys," outside the law, to manage their fertility.

Women of color may have had closer relations to practitioners within their communities, granny midwives and others with long-time practices who performed abortions for those they knew. These abortionists would have been protected by their own long-standing knowledge about the procedure and also by the fact police did not generally pay attention to their work. These factors may have allowed girls and women who turned to practitioners in their own neighborhoods to make decisions about pregnancy under less frightening circumstances than many whites faced.

As we've seen, repressive policies in the postwar decades were, in part, reactions to surges of citizen activism. The civil rights movement, the women's rights movement and other "liberation" activities were built on concepts of human dignity, including, in some cases, reproductive dignity. The state wobbled, sometimes supporting, sometimes defending itself against these claims, even while its power to resist claims for human dignity seemed to ebb.

One piece of reproductive technology that seemed to support sexual liberation for all women was the birth control pill, first marketed in 1960, after extensive testing, largely in programs, such as the one in Puerto Rico, that used women of color as guinea pigs, including massive sterilization campaigns.<sup>56</sup> In fact, even while the pill did allow millions of women substantial new control over their fertility, the policy purpose of the pill was quickly racialized. Magazines and newspapers of the day, salaciously covering the so-called sexual revolution, wrote about the birth control pill as a protective vehicle for the sex lives of (white) college girls. The media covered the so-called (black) welfare queen in exactly the same years, and just as salaciously. This female was directed to use the new pill as a social *duty*, to suppress her fertility. Elaborating on the iconic welfare queen, politicians typically portrayed all single mothers as persons of color and all persons of color as dependent on public assistance. Even and perhaps especially in the era of liberation movements, reproductive capacity and maternity continued to provide the grounds for racializing women's bodies, public policy, and the political culture to mobilize conservative resentment against progressive social change. These tactics were not just about racism and sexism; they were designed to mobilize a white electorate to maintain political and economic power.<sup>57</sup>

A number of important pieces of federal legislation and several Supreme Court decisions in the 1960s and early 1970s, together with the new birth control pill, enhanced the potential for women's sexual and reproductive dignity and safety. Unquestionably, these developments were stimulated by popular demands for human rights, welfare rights, and reproductive rights. The Medicaid Act of 1965 created a health care system that drew on a combination of federal and state money to pro-

vide medical services to low-income people, including pregnant and parturient women who previously had little access to costly medical care. The Supreme Court's decision in *Griswold v. Connecticut* (1965) finally fully dismantled the old Comstock Law, specifically its measures criminalizing contraception. *Griswold* defined birth control as a matter of marital "privacy." The *Roe v. Wade* decision (1973) that legalized abortion gave women individual reproductive "choice" (not "rights" or "justice") while tying their decisions to a physician's permission and other limitations.

*Roe* closely associated the concept of choice with a "zone of privacy" within which women could make reproductive decisions. Women of color activists began to point out in the 1970s and 1980s that only women who could afford to enter the marketplaces of choices—motherhood, abortion, and adoption, for example—had access to this zone. Women without resources could not exercise choice in the same way. For example, a poor woman might not have access to a doctor's prescription for birth control pills. She might have to decide whether to use her family's rent money or food budget to pay for an abortion. Or she simply may not have had the cash to make any such decision at all, unlike middle-class choice makers with hard cash on hand.

Women of color activists pointed out that the concept of choice masks the different economic, political, and environmental contexts in which women live their reproductive lives. Choice, they argued, disguises the ways that laws, policies, and public officials differently punish or reward the childbearing of different groups of women as well as the different degrees of access women have to health care and other resources necessary to manage sex, fertility, and maternity. In contrast, white advocates of legal and accessible contraception and abortion were often focused solely

and fiercely on women's right to prevent conception and unwanted births. They typically ignored the other side of the coin: the right to reproduce and to be a mother, a crucial concern of women whose reproductive capacity and maternity had been variously degraded across American history.<sup>58</sup>

Ironically, after *Roe v. Wade*, some white women began to claim the right to decide whether or not to be mothers of the children they gave birth to. Many unmarried pregnant girls and women claimed the right to block parents and other authorities from making them put their "illegitimate" children up for adoption. (They also thoroughly rejected the concept of illegitimacy.) After all, the pill gave women the option to protect against pregnancy, and *Roe v. Wade* gave women the legal right to choose whether to continue a pregnancy. Shouldn't we have the right to keep the baby we give birth to, they insisted. Thus, the phenomenon of respectable white single motherhood was born, leading to the decline of domestic white adoption and the rise of searches for adoptable infants in the new international marketplace of babies. Public institutions responded to the burgeoning numbers of white single mothers; for example, in the early 1970s, new laws directed schools to develop in-building programs for pregnant and parenting teens, whereas earlier, these students would have been expelled. But still most middle-class white women did not make common cause with poor mothers of color—or even with poor white mothers—who were also struggling to assert maternal rights.

In this period characterized by progressive politics and old bigotry, new laws could cut in any number of directions. Notably, the Supreme Court decision *Loving v. Virginia* (1967) ended the government's long-standing power to criminalize marriage between a person identified as "white" and another identified as

"colored." Forcing the law out of this terrain had substantial consequences for the ways ordinary people could think about—and experience—intimacy, race, family, reproduction, the law, and related matters—but antiwelfare policies were attacking the parental rights of women of color at the same time.

The Stonewall riots in New York City staged an immense public objection to the official policing of male sexuality. After a police raid of a Greenwich Village bar with a gay, lesbian, and transgender clientele in 1969, hundreds of protesters massed in the streets for several nights, both engaging and interrupting police aggression. The Stonewall rebellion has been credited with stimulating the public emergence of the gay rights movement as an ongoing struggle, with its own history of pursuing a full range of human rights. Within several years of Stonewall, the American Psychiatric Association and the American Psychological Association both stopped classifying homosexuality as a mental illness, moves that relieved millions of the burden of an inaccurate, unjust diagnosis linked to social degradations.<sup>59</sup> And yet, a generation later, in 1996, the federal Defense of Marriage Act allowed states to refuse to acknowledge the marriages of same-sex couples that had taken place in states that permitted such unions. The government validated the use of religious dicta to place restrictions not only on who a person could love and marry but also on who could be a parent and what could constitute a family.

#### NEW STRATEGIES OF CONTROL

Female sexuality and reproduction, still at the heart of American politics in this era, remained for decades a key policy arena for conservatives interested in rolling back human rights

advances. It bears underscoring again that at the height of the civil rights movement, conservatives packaged the sexuality, reproduction, and maternity of women of color as transgressive and argued that the bad choices of these women disqualified them from being modern women and full citizens. These degradations directly harmed women, their children, and also the communities in which they lived. In these communities, all females—the mothers, the grandmothers, the sisters, the daughters, the aunts—were under official suspicion as potentially too fertile and likely targets of punishment for reproducing while poor.

In the civil rights era, programs of coercive sterilization were established in a number of hospitals serving communities of color.<sup>60</sup> The Indian Health Service was particularly aggressive in this arena, although it is difficult to know exactly how many sterilizations were performed under its auspices since the IHS neglected to keep complete and accurate records. A Native organization, Women of All Red Nations, has estimated that on some reservations, the rate of female sterilization was as high as 80 percent. Scholars have found that between 1968 and 1982 about 42 percent of Native women of childbearing age were sterilized compared to 15 percent of white women.<sup>61</sup>

African American, Puerto Rican, and Mexican immigrant women were also targets of sterilization programs. Legislators in at least thirteen states tried to pass laws that would mandate the sterilization of women for having “too many” children while receiving day-care or housing assistance, welfare, or Medicaid. In fact, poor women could not generally afford private physicians, so mostly they relied on public clinics, where they too often received treatment from staff who agreed with legislators that motherhood was an economic status: poor women had no

business having children if they didn’t have “enough” money. A number of studies conducted in the 1970s showed that women of color, Medicaid recipients, and women receiving welfare benefits were sterilized at much higher rates than women who did not fall into these categories. The head of obstetrics and gynecology at a public hospital in New York reported, “In most major teaching hospitals in New York City, it is the unwritten policy to do elective hysterectomies on poor black and Puerto Rican women, with minimal indications, to train residents.”<sup>62</sup> Indeed, the Medicaid program paid for sterilizations of poor women—although not for abortions—up to 150,000 annually.<sup>63</sup>

We don’t have documents showing how many physicians literally forced women to undergo sterilization, but this question provides a good opportunity to consider the meaning of “choice.” When a poor woman arrived at a public health clinic for health care or had just delivered her baby at a public hospital and the physician, a person she probably did not know, pressed her to terminate her fertility, how much latitude did this woman have to assert her own interests? How much did her poverty and lack of education, perhaps her lack of English, and the various other stigmas arrayed against her prevent this woman from objecting to the physician’s prescription, sterilization?<sup>64</sup> We do know that sterilization was the fastest growing method of birth control in this era. In 1970, 200,000 operations were performed; in 1980, more than 700,000, a disproportionate number of them on women of color.<sup>65</sup>

Ironically but predictably, at the very same time, white women had a hard time getting their doctors to agree to tie their tubes. Presumably, doctors believed the babies these women produced represented superior value to American society. A white woman typically could not be sterilized unless her reproductive output satisfied a formula devised by the medical profession: her age



multiplied by the number of children she had already given birth had to equal the number 120 or greater. Plus, she needed the permission of two doctors and a psychiatrist before sterilization was approved. Only after meeting all of those conditions would the white woman have satisfied her reproductive duty. For example, if a white woman had three children, she had to wait until she was forty before even beginning to seek permission to terminate her fertility.<sup>66</sup>

Clearly, the experience of sterilization was profoundly different for white women and women of color. For white feminists developing their "reproductive rights" program in the late 1960s and 1970s, easy access to sterilization was an important demand. Generally, white women did not understand, and often did not try to understand, that historical and contemporary sterilization abuse of women of color meant that these women had an entirely different perspective on the issue. For women of color, the right to refuse sterilization was paramount. Even more fundamental, women of color sought to put an end to the political culture that had defined their babies as "unwanted" and made their own bodies into targets for sterilization.

By 1990, however, policy makers still pursued the sterilization option, especially now that an FDA-approved chemical agent, an implantable set of capsules called Norplant, was on the market. Norplant caused five-year periods of sterility, and after the implant was removed, infertility could persist for several additional months. At first the implant was simply offered to women—again, disproportionately to poor women, through their contact with Medicaid. Soon, though, as in earlier instances, numerous state legislatures devised measures to pressure poor women to use the contraceptive. But these new laws and policies did not require a medical determination of Norplant's safety for a given

person. Legislatures also considered bills offering financial incentives to people on welfare who accepted Norplant and making acceptance a condition of receiving welfare benefits. Some states tried to make acceptance *mandatory* for women on welfare, for "inner-city" teenagers, or as a punishment for various kinds of behavior. While most teen mothers at this time were white, as were the majority of welfare recipients, these efforts targeted girls and women of color. Policy makers and public supporters of these efforts vociferously denied the racist assumptions driving the programs, claiming that their purposes were to reduce single motherhood, end poverty, and reduce the economic burdens facing the American taxpayer. They did not address how these new sterilization efforts singled out and harmed the persons and the communities they targeted.<sup>67</sup>

Right in the midst of these sterilization efforts, Congress passed the Hyde Amendment and has continued to reaffirm support for it every year since 1977. This is the rule that bars the use of federal funds to pay for abortions of low-income women. According to the author of the Hyde Amendment, the resourcelessness of poor women and their dependence on public health care provided an effective opportunity to pass a federal law embedding a religious objection to legal abortion.<sup>68</sup>

While cutting off access to abortion, the amendment's supporters frequently described poor women as "bad choice makers" and bad mothers who require reproductive restrictions on their sex life and its consequences. For many policy makers in these antiwelfare decades, an unintended pregnancy was no longer simply an "accident" but more like a crime, punishable by reduced welfare benefits or ineligibility for any assistance at all. A poor pregnant immigrant or a woman of color dealing with public officials and agencies might be sentenced (without medical consultation) to a regimen of



long-acting contraceptives or prosecuted for a behavior that pregnant middle-class women could easily keep private. Using public services, a poor woman might also suffer the consequences of public policies that accommodated Catholic and other religious strictures.<sup>69</sup> Notably, neither the Hyde Amendment nor the criminalization of the reproductive lives of poor women has been a major issue for mainstream reproductive rights organizations in the United States until very recently after pressure from the reproductive justice movement.

However, some progressive reproductive freedom organizations, such as the Reproductive Rights National Network, the National Women's Health Network, and the National Network of Abortion Funds, have supported the campaigns against Hyde, distinguishing themselves from mainstream organizations.<sup>70</sup>

#### DEFINING REPRODUCTIVE JUSTICE

Not surprisingly, in the 1990s, after generations of sexuality- and fertility-related degradations—from slavery times throughout the twentieth century—a number of women of color spoke out together, making the case that their route to reproductive dignity did not depend on simply making good *personal choices*. These women, many associated with SisterSong, an Atlanta-based reproductive justice organization founded by Luz Rodriguez, Loretta Ross, and others, were responding to white feminists (and white-led organizations) who had, for several decades, defined “reproductive choice” as the watchword of that era, the key to life as a modern, independent woman. Looking across history, women of color activists, such as members of the National Council of Negro Women in 1973 and the National Black Women's Health Project in 1984, focused on the serious limits of choice. They under-

scored the lived experience of the enslaved woman who could be raped and impregnated with impunity. They pointed at the child who could be sold away from her mother or taken away and given to others to raise. They invoked the massacred Native populations. They catalogued the ways that law could mandate a woman's sterilization, could punish her for having a child, could enforce her poverty and punish her for it, could exclude her from hospitals and her children from schools and jobs, based on race. They added that laws had blocked women from immigrating to this country to join their husbands, to make families and citizens. The law could criminalize birth control and punish a woman for trying to manage her fertility. The law and other instruments of power could use this woman's body and her fertility to degrade her and her children, harm her community, and protect white supremacy in the United States. In the context of such histories, such laws and policies, what role did individual, personal choice have in safeguarding the reproductive dignity and safety of women of color?<sup>71</sup>

The women of color activists also pointed out that “choice,” as conceived by white feminists, focused almost entirely on a woman's ability to *prevent* conception and motherhood. The activists, again pointing to their own history, objected to this singular focus on prevention. They argued that the right to have a child was as crucial to women's dignity and safety (and the dignity and safety of her community) as the right to prevent conception. The activists agreed with the mainstream reproductive rights organizations that legal, effective, and accessible contraception and abortion were crucial to women's reproductive safety and dignity, but they added that these methods of limiting reproduction did not comprise everything, or even the core conditions, that all women needed to achieve these goals.

They pointed out the limits of the U.S. legal system that could not address multiple, simultaneous vectors of oppression, and they critiqued the policy-making process that fails to address the needs of the most vulnerable populations or give them access to political power.

Once more drawing from the histories of their peoples, their families, and their communities, reproductive justice activists maintained that reproductive safety and dignity depended on having the resources to get good medical care and decent housing, to have a job that paid a living wage, to live without police harassment, to live free of racism in a physically healthy environment—all of these (and other) conditions of life were fundamental conditions for reproductive dignity and safety—*reproductive justice*—along with legal contraception and abortion. The first reproductive justice activists explained that the right to reproduce and the right not to—the right to bodily self-determination—is a basic human right, perhaps the most foundational human right. Therefore, they determined, they would begin the struggle to achieve this broadly defined human rights goal, building broad-based coalitions to move forward.

From the mid-1990s onward, an ever-expanding group of activists and organizations, most of them affiliated with an Atlanta-based umbrella group called SisterSong, built and promoted the reproductive justice framework and movement. Proclaiming that the organizations, united, could succeed by “doing collectively what we cannot do individually,” the reproductive justice movement influenced activism, scholarship, and policy in a number of domains, while pressing for a broad redefinition of the constituent elements of reproductive dignity and safety.

The reproductive justice movement worked with groups fighting the effects of toxic waste on communities of color, including

the negative effects on their reproductive potential and on infant and maternal health. The movement pressed the Centers for Disease Control to include women in all public health information and treatment regarding AIDS. Reproductive justice activists helped defeat several state attempts to restrict or ban abortion as well as so-called personhood legislation in Colorado. They championed the cause that led to the landmark Supreme Court decision *Lawrence v. Texas* (2003), effectively ending criminalization of same-sex sexual activity in every U.S. state and territory. Reproductive justice organizations promoted state legislation and supported legal cases validating domestic partnerships for same-sex couples, antidiscrimination measures protecting LGBT persons, and voluntary hormone therapy for incarcerated trans persons. They have given perspective and support to legislation and legal actions on behalf of pregnant women who face a variety of prosecutions and punishments based on their pregnancies. Acting collectively, reproductive justice organizations and their allies have refocused and redefined the basic elements of sexual and reproductive dignity for all.

The next three chapters will look at the conceptual, theoretical, and practical bases of reproductive justice and at ways that the reproductive justice framework has redefined three broad areas: decision making about conception, reproductive health, and parenthood. Each chapter will show how new definitions have driven politics, activism, and accomplishments in these arenas. The discussions will also address some of the major challenges ahead. Finally, the last chapter looks at how activists are pursuing reproductive justice goals around the country.