

Punishment, Reproductive Control, and the Construction of Unfit/Fit Mothers

By Rachel Roth, Ph.D.

History

Reproductive control is integral to the history of the United States; it has played a role in nation-building, politics, and social control.¹ From the beginning, the colonization and creation of the United States depended on controlling the reproduction of Native peoples and African slaves. Political elites justified the reservation system and genocidal treatment of Native people as necessary to fulfill “manifest destiny” and westward expansion. Both the colonial and U.S. governments displaced, relocated, and exterminated Native peoples. In the 1830s, President Andrew Jackson encouraged his troops to kill women and children, in order to decimate current and future generations of Native peoples.² Reproductive control of enslaved African women took a different form: plantation owners sought to ensure that women *would* bear children in order to reproduce the labor supply with a new generation of slaves. Women suffered sexual assaults and exploitation but had no control over the fate of their children, who could be sold off at the owner’s will.³

As the country grew more diverse through immigration, political and social elites seeking to maintain their hold on power developed the idea of “race suicide” and ushered in the era of eugenics. The eugenics movement encouraged “worthy” White Anglo Saxon Protestant (WASP) women to bear more children while discouraging and in some cases preventing other groups of women from having children. Beginning in 1907, 23 states passed laws mandating the sterilization of people deemed inferior and unfit, including the vague category of “feeble-minded” women. Although officially a term describing mental capacity, “feeble-minded” was also a code for women’s sexual activity. In the early 20th century, working-class White women who had sex

and bore children outside of marriage might have found themselves targeted for institutionalization and sterilization or for imprisonment in women’s “reformatories,” where they could be held indefinitely until the authorities found them sufficiently rehabilitated to return to society.⁴ By 1960, more than 60,000 people had been subject to “eugenic” sterilization in state institutions for the mentally ill or mentally retarded—institutions which included so-called “feeble-minded” girls and women. “At best,” concludes historian Elaine Tyler May, “only a few of these individuals consented.”⁵

Over the course of the 20th century, compulsory sterilization shifted from institutionalized White women to poor women of color receiving public assis-

THE STERILIZATION OF NATIVE WOMEN⁶

No one knows for certain how many Native women have been sterilized without their informed consent. Several studies estimate that during the 1970s, between 25-50 percent of Native women were sterilized; an activist with Women of All Red Nations estimates that on some reservations, the figure is closer to 80 percent. One problem with these studies, though, is that they do not say how old the women were when they were sterilized. Because many women in the U.S. choose sterilization after they have had children, it is not uncommon to see high rates of sterilization among women in their later reproductive years (up to age 44) or after. Another problem is that most studies are based on one or two Indian Health Service facilities, making generalizations difficult.

On the other hand, Census data reflect a steep decline in Native women’s birth rates between 1970 and 1980, far steeper than among White women. Although the researchers who analyzed the data do not specify sterilization as an explanation, it should be considered as a possible factor.

tance.⁷ Thousands of Native, Puerto Rican, Mexican American, and African American women were sterilized at government expense, often without their informed consent—or even without their knowledge. Indeed, the sterilization of African American women in the South was so widespread that it even has a code name—the “Mississippi appendectomy.” The early 1970s were an especially grim time for Native women—research and anecdotal reports paint a disturbing picture of sterilization abuse at federally funded health centers, including of many young women in their twenties and even their teens. Women tell stories of being pressured to agree to sterilization during the pain of childbirth, or threatened with the loss of welfare benefits if they did not “agree.”⁸ Andrea Smith of Incite! explains that attacks on women’s reproductive rights are part of the history of genocide, affecting entire tribes and peoples as well as individual women and their families.⁹ Coercive sterilization stands alongside other efforts to destroy Native peoples and cultures, such as the government’s “wholesale removal” of children and placement in boarding schools that prohibited all native languages, religions, and customs.¹⁰

Many public policies have embodied an overt social control agenda to curtail reproduction among women considered unfit or unworthy of motherhood. The overt racism, conquest and slavery that fueled control of women’s bodies in the past is reproduced in contemporary times through the criminalizing of women’s conduct and thereby their bodies, health and sexuality.

One group notably absent from this discussion is Asian Americans. For much of the 19th and 20th centuries, the United States controlled Asian reproduction by restricting immigration from Asian countries. Laws against Chinese immigration provide a stark example. Although men came to the U.S. from China in the 1800s to build railroads and do other essential work, they were not rewarded with citizenship, nor could they easily establish families. Few women came to the western frontier in these years. Some Chinese women were “kidnapped, lured, or purchased from poor parents” to work in indentured servitude as prostitutes in the largely male communities. Congress responded with the Page Law of 1875, which officially targeted organized prostitution but effectively ended the entry of unmarried Asian women into the country. A few years later, Congress suspended almost all Chinese immigration with the passage of the Chinese Exclusion Act of 1882, which restricted entry to those in the “merchant class.” Women made up less than ten percent of Chinese residents in the U.S. in the 19th century, and did not approach parity with men until 1980. Subsequent laws and quotas limited immigration from other countries, keeping the numbers of Asian women and Asian families low until Congress opened up immigration in 1965.¹¹

The policies and practices described here served many agendas, including regulating the labor force. Implicit or explicit in many of these policies is the idea that certain women do not deserve to be mothers, or are not fit to be mothers, and should not expect any support from the government if they have children. Many public policies have embodied an overt social control agenda to curtail reproduction among women considered unfit or unworthy of motherhood. The overt racism, conquest and slavery that fueled control of women’s bodies in the past is reproduced in contemporary times through the criminalizing of women’s conduct and thereby their bodies, health and sexuality.

Punishing “Unfit” Mothers Today

The women targeted by public policy as “unfit mothers” today still come largely from the ranks of the poor and from communities of color. Single mothers, welfare recipients, immigrants, and women who use drugs all find themselves the objects of punitive and counter-productive policies, and they increasingly find themselves trapped in the criminal justice, probation, and prison systems. Once in these systems, they may find themselves marked for life, second-class citizens with compromised reproductive rights.

The original New Deal welfare programs of the 1930s privileged White widows as “truly needy” and “deserving” and discriminated against other women. These biases are still with us. For instance, although White women make up the majority of welfare recipients, the picture of a “welfare mother” and especially “welfare queen” in the public imagination is almost always of a Black woman. Beginning in the late 1960s, the news media actively shaped this perception by choosing to run photographs of African Americans in a majority of stories about poverty and welfare. Research on how states choose to implement welfare reform finds that race is a very significant predictor of state social policy choices; states with higher percentages of welfare recipients who are African American are more likely to adopt “get-tough” welfare policies.¹²

Stereotypes about particular groups of women lead to specific policies to punish and control their behavior. As the following chart shows, if women are deemed to be sexually irresponsible, then the solution must be to penalize them for having babies. Encouraged by the federal government, 24 states have adopted “family caps,” policies which deny women additional resources if they have a baby while they are receiving welfare.¹³ To consider another example, if women are deemed to be lazy, then the solution must be to make them work outside the home. Even though conservative ideology maintains that “good mothers” are supposed to be available for their children, women who receive public assistance are forced to work at outside jobs, even when they have babies as young as three months old. And if immigrants are deemed to be coming to the U.S. just to mooch off of public services, then the solution must be to deny them assistance, even if they have entered the country legally and contributed to the economy and their communities.

Rather than individually assessing a woman’s needs, welfare policies deem some women categorically unfit or undeserving of assistance. The federal welfare law imposes a five-year lifetime limit on the receipt of Temporary Assistance to Needy Families (TANF), regardless of any individual’s specific circumstances. In another example, the federal law makes women with a felony drug conviction ineligible for TANF or food stamps, regardless of whether they are involved with drugs or able to take care of their children. In order to give these women eligibility, states must take the initiative to pass a special law. Few states have done so. This provision undermines the rights of poor women to be mothers, and is having a particularly devastating impact on the families of African American and Latina women, who make up nearly half of those affected.¹⁴ As many as 92,000 women lost eligibility for benefits during the first three years of implementation.¹⁵ It also makes poor children even more vulnerable to the possibility of homelessness, family disruption, and government intervention; some 135,000 children were affected by the ban in the first three years.¹⁶ By denying women the resources and assistance they need to care for their children, the ban makes it more likely that women who have criminal records will lose custody of their kids. Policies like these continue to punish women long after they finish serving their prison sentence, creating, in effect, a kind of life sentence that permanently criminalizes women even when they are “free.”

Stereotype	Attributed Character and Behavioral Defects	Policies to Remedy Alleged Defects
<p>Welfare Queen Myth: A young woman of color who is dishonest, dependent, a drug user, sexually promiscuous, unwilling to work, undisciplined, willing to have additional children to increase her welfare grant, and willing to stay on welfare indefinitely. Or she is an excessively fertile immigrant who refuses to work or learn English. Or both.</p>	<p>Lazy/unwilling to work Undisciplined Dependent No ambition/ignorant Sexually promiscuous Dishonest Drug user “Foreign freeloader”</p>	<p>Work requirements. Sanctions; teen mothers must live with parents. Diversion tactics; work requirements; time limits. Cut access to higher education; promote dress-for-success classes. Abstinence-only program; family cap. Anti-fraud prosecution and long-term penalties for getting caught while working on TANF. No aid for convicted users. New immigrants disqualified from program; non-enforcement of language rights for applicants whose first language is not English.</p>

Source: Gary Delgado and Rebecca Gordon, “From Social Contract to Social Control: Welfare Policy and Race,” in *From Poverty to Punishment: How Welfare Reform Punishes the Poor*. (Oakland: Applied Research Center, 2002), 27-31. Reprinted with permission.

The role of the criminal justice and prison systems in punishing mothers is especially clear in prosecutions of women for using drugs when they are pregnant. Although no state has passed a law specifically making it a crime for a pregnant woman to use drugs, this has not stopped prosecutors in at least 40 states from charging women with such crimes as “fetal abuse” and even homicide in cases of stillbirth. Women of all backgrounds use drugs and alcohol, but the prosecutions have been primarily directed at poor African American women. In addition, courts in many states have terminated women’s parental rights on the basis of a positive drug test at birth. In these cases, women do not face a criminal prosecution but they lose forever the right to contact, let alone rear, their children. Once again, blanket policies that equate a positive drug test with parental unfitness deny mothers and children the individualized assessments and government assistance that are supposed to govern child welfare proceedings. (See following section: “The Role of the State: Criminal Prosecution of Pregnant Women.”)

Not satisfied with the governmental response, some people have decided to take matters into their own hands. Barbara Harris, a conservative from Orange County, California, started an organization, bizarrely named C.R.A.C.K., which stands for Children Requiring A Caring Kommunity (now called Project Prevention). This group pays women who have or have ever had a drug or alcohol problem \$200 to either be sterilized or use long-acting birth control. They have helped to start groups all over the country, and have even begun recruiting at jails, taking advantage of women at an especially vulnerable time. (See “The Role of the Right: Project Prevention.”)

Whether jailed for drug problems or other reasons, imprisonment takes a heavy toll on women’s reproductive rights. Women in jail and prison report that inadequate medical care and crowded conditions threaten their well-being, including their ability to bring a pregnancy safely to term and to maintain their fertility, and changes in federal and state foster care laws jeopardize their parental rights.¹⁷ Drug treatment is in short supply, especially for pregnant women and for women with young children, yet that does not stop women from being penalized for failing to obtain treatment or somehow kick their habits on their own. Both the public and the private

responses to women with drug addictions punish women for health problems instead of providing services to help women take care of themselves and their families. With state governments shifting more of their treatment dollars into drug courts, jails, and prisons, women may find that they have an even harder time getting help outside of the criminal justice system.

Impact

Conservatives like Charles Murray and former Vice President Dan Quayle have been successful at convincing Americans that single mothers are the source of major social problems. As Murray put it in 1993, “illegitimacy is the single most important problem of our time—more important than crime, drugs, poverty, illiteracy, welfare or homelessness—because it drives everything else.”¹⁸ In this view, preventing women from having children outside of marriage is policy goal number one, not preventing corporations from “outsourcing” jobs to other countries, increasing the supply of affordable child care, or ending the misguided war on drugs. Even though it is easy to laugh at Quayle’s speech criticizing the television character Murphy Brown for “glamorizing” single motherhood, the ideas in his speech are reflected in the law that Congress passed in 1996 to change the welfare system.

At the same time that conservatives aim to individualize what are really broad-based social and structural problems, the mainstream pro-choice movement emphasizes individual choice as its core theme. While the question “who decides” is a good one, it needs to be broadened beyond abortion to the full range of reproductive decisions, including the decision to have children. This is not to say that abortion rights are not under attack, because they are. But focusing narrowly on women’s right to choose free from government interference does not provide ground to argue either for women’s rights to receive reproductive health services, including abortion, or for women’s rights to be mothers. As prisons take on greater significance as institutions of social control, women who have drug problems or any history of trouble with the law will find that their ability to exercise their reproductive rights and to be mothers is in serious jeopardy.

Rachel Roth, Ph.D., works at Ibis Reproductive Health in Cambridge, MA. Her work on this section was made possible by a generous grant to Ibis from the David and Lucile Packard Foundation. Her current focus is the impact of imprisonment on reproductive rights; she is the author of Making Women Pay: The Hidden Costs of Fetal Rights (Ithaca: New York, Cornell University Press, 1999).