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BlackCrit Theory and the Problem of Essentialism

DOROTHY E. ROBERTS*

Some critical scholars might object to a BlackCrit theory, which is focused on the identities, experiences, and aspirations of Black people, on the grounds that it is essentialist. BlackCrit theory, it could be argued, poses the danger of three forms of false universalism that are characteristic of essentialism.¹ It could erroneously imply that Blacks share a common, essential identity; it could erroneously attribute to all people of color the experiences of Black people; and it could reinforce the white-black paradigm as the only lens through which to view racial oppression. In this essay, I will use reproduction as a concrete substantive point of reference to explore the concern that a BlackCrit theory would be essentialist.

I entitled my first major law review article, which discussed a reproductive rights issue, "Punishing Drug Addicts Who Have Babies: Women of Color, Equality, and the Right of Privacy."² In the years after publishing that article, I have asked myself why I used the words "women of color" in the title. The article concerns Black women in particular, not women of color in general. It focuses on the prosecutions of poor Black women who smoked crack during pregnancy. I think I put "women of color" in the title because I thought it would be essentialist to confine my attention to Black women. I was probably reacting to a criticism that I sometimes heard when I presented the paper before it was published: "You didn't talk about Latinas," "You didn't talk about Asian women," or "You didn't talk about Native American women." I often found these comments distracting because I had not come to talk about those groups of women although I hoped my presentation was

* Professor, Northwestern University School of Law. This essay is based on a transcription of my remarks presented during the Moderated Group Discussion, "From RaceCrit to LatCrit to BlackCrit?: Exploring Critical Race Theory Beyond and Within the Black-White Paradigm," at the LatCritIII Symposium, May 1998. I am grateful to the other participants for their comments on my presentation.

1. On the meaning of essentialism, see KATHARINE T. BARTLETT & ANGELA HARRIS, *GENDER AND LAW: THEORY, DOCTRINE, COMMENTARY* 1007-1009 (2d ed. 1998); *CRITICAL RACE THEORY: THE CUTTING EDGE* 281-343 (Richard Delgado, ed. 1995); Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 *Stan. L. Rev.* 581 (1990).

2. Dorothy E. Roberts, *Punishing Drug Addicts Who Have Babies: Women of Color, Equality, and the Right of Privacy*, 104 *HARV. L. REV.* 1419 (1991).

relevant to them. But the criticisms from and about other women made me feel self-conscious about focusing on Black women.

Such comments were not distracting when they helped to further a discussion about the commonalities and differences among the reproductive experiences of women of color. I appreciated, for example, the Puerto-Riqueña who asked, "Do you know about 'la operación,' the government-supported campaign in Puerto Rico that resulted in the sterilization of one-third of the women of childbearing age?"³ In addition, the Korean graduate students, who remarked, "What you are saying about genetic relatedness and race in the United States reminds me of the way Koreans define national identity," helped me understand how the genetic tie "links individuals together while it preserves social boundaries."⁴ Also, I learned more about the use of birth control to regulate women's bodies from a Native American woman who told me about the coercive distribution of the long-acting contraceptive Norplant on her reservation.

These women of color were trying to connect their experiences of repressive reproductive health policies to what I was saying about poor Black women's experiences. This sharing of distinct experiences, that had common features, helped all of us to better understand the extent and nature of reproductive regulation, to form coalitions, and to formulate strategies to oppose these policies.

Sometimes, however, the question, "What about other women of color?," came from people who were bothered because I was focusing exclusively on Black women. I viewed these comments as a diversion, sometimes even a deliberate one. The question often stemmed from a misunderstanding of the critique of essentialism in feminist scholarship. Minority scholars have noted that white feminists' efforts to find commonalities among women often ended up erasing the identity and experiences of women of color.⁵ Searching for a common oppression implied not only a universal, essential gender identity common to all women, but also that white, middle-class women have no racial and class identity. As Elizabeth Spelman explained, this type of feminist thinking "invites me to take what I understand to be true of me 'as a woman' for some golden nugget of womanness all women have as women. How lovely: the many turn out to be one, and the one that they are is me."⁶

Some feminists mistake this criticism of the exclusive focus on

3. See BETSY HARTMANN, REPRODUCTIVE RIGHTS AND WRONGS: THE GLOBAL POLITICS OF POPULATION CONTROL 247-48 (1995).

4. See Dorothy E. Roberts, *The Genetic Tie*, 62 U. CHI. L. REV. 209, 211 & n. 7 (1995).

5. See, e.g., Harris, *supra* note 1.

6. ELIZABETH V. SPELMAN, INESSENTIAL WOMAN: PROBLEMS OF EXCLUSION IN FEMINIST THOUGHT 159 (1988).

white women's experiences as a prohibition against ever paying exclusive attention to the experiences of one group of women. But the problem of essentialism did not derive from studying the lives of particular women; it derived from claiming that the lives of a particular group of women represented all women.

Other commentators at my talks seemed to be implying that the issue of poor Black women's autonomy by itself is not important enough to be the center of discussion. I recognize a similar viewpoint in discussions about the most effective strategy to challenge the prosecutions of women for drug use during pregnancy.⁷ Most of the women prosecuted for these crimes are poor Black women who smoked crack.⁸ These women, however, make especially unsympathetic complainants because of disparaging stereotypes about pregnant crack addicts and the historical devaluation of Black motherhood.⁹

Therefore, some attorneys and scholars have suggested ways of diverting attention away from these women and the devaluing racial images that degrade them by focusing instead on the dangers that punitive policies pose for middle-class white women.¹⁰ Although this approach has certain strategic advantages, it implies that the repression of poor Black women alone is not a persuasive enough basis for advocating policy change.

Moreover, as I thought about the title of my article, I realized that it made me more of an essentialist than if I had just been honest and stated what the article was really about. The title suggests that the article explores the reproductive rights of all women of color when it does not. It might imply the erroneous claim that what I wrote about Black women represents the experiences of other women of color as well. Writing about Black people is not essentialist in and of itself. It only becomes essentialist when the experiences discussed are taken to portray a uniform Black experience or a universal experience that applies to every other group.

When I decided upon the title of my book about Black women's reproductive liberty, I chose *Killing the Black Body*.¹¹ I think that is a more honest title. The book is about the *Black* body — the unique way in which repressive reproductive policies have interpreted and attempted to regulate Black bodies. I could not have adequately described these policies without focusing on black-white relationships and on the partic-

7. See Dorothy E. Roberts, *Unshackling Black Motherhood*, 95 MICH. L. REV. 938, 954-59 (1997).

8. *Id.* at 938.

9. *Id.* at 954.

10. *Id.*

11. DOROTHY ROBERTS, *KILLING THE BLACK BODY* (1997).

ular meaning of blackness — what it means for bodies, as Anthony Farley¹² put it, to be marked as black.

These repressive reproductive policies arose out of the history of the enslavement of Africans in America. The institution of slavery gave whites a unique economic and political interest in controlling Black women's reproductive capacity.¹³ This form of subjugation made Black women's wombs and the fetuses they carried chattel property. The process of making a human being's very reproductive capacity the property of someone else is not replicated in other relationships of power in the United States. While slavery serves as a very powerful metaphor for other reproductive practices, such as contract pregnancy or surrogacy, Black women really were slaves.¹⁴ There is a distinction between a metaphor and the actual experience.

Further, the maternal images that justify these reproductive policies are images that are uniquely Black: Jezebel, Mammy, matriarch, welfare queen, and pregnant crack-addict. When I say these labels, a Black woman almost certainly comes to mind. They do not apply to women of any other race. Other groups of women have their own set of degrading stereotypes that have helped to legitimize the regulation of their bodies and reproductive decisions. The myths about Black motherhood support particular reproductive policies— policies that cannot be explained without investigating the implications of these images and the significance of their blackness.

Does insisting on this focus on Black mothers reinforce the black-white paradigm and its negative features? The answer depends on what we mean by the black-white paradigm and what we see as its impact. I do not believe that this focus necessarily reflects the essentialist aspects of the black-white paradigm. The prominence of this paradigm in Critical Race Theory was criticized for excluding the experiences of people who are neither Black nor white. Critical Race Theory must continue to develop a more accurate and inclusive definition of race, racial identity, and racial issues. But scholarship exploring Black women's reproductive experiences need not suggest that this is the exclusive word on reproductive health policy.

My work in this area, however, has also made it very clear to me that there continues to operate a hierarchy in the United States that is based on white-black relationships with whites on top and Blacks on the bottom. This hierarchy does not operate in every context; there are

12. See, Anthony Farley's piece in the Final Plenary of LatCrit III Conference.

13. See ROBERTS, *supra* note 11, at 22.

14. See Anita L. Allen, *Surrogacy, Slavery, and the Ownership of Life*, 13 HARV. J. L. & PUB. POL'Y 139 (1990).

some contexts, such as debates on immigration policy in some regions, where native-born Blacks hold a privileged position relative to certain immigrants of color. All Blacks and whites, moreover, are not similarly situated within the white-black hierarchy. This hierarchy is complicated by differences of class and gender. Nevertheless, the white-black hierarchy frequently governs discourse in the reproductive policy context.

This hierarchy is especially prominent in rhetoric and practice concerning reproduction-assisting technologies—technologies such as *in-vitro* fertilization (“IVF”), egg-donation, and artificial insemination. These technologies are genetic marketing techniques; they allow parents to purchase the genetic material of their children. They reveal that on the American genetic market the genes of Black people are the least valuable while the genes of whites are the most valuable. I believe that the fertility business is so popular in the United States because it almost exclusively produces white children.¹⁵

This valuation of children is replicated in the adoption market where children are literally valued in dollars according to their racial features. The vast majority of white adoptive parents are only willing to take a white child. When they do adopt outside their race, whites generally prefer non-Black children with Asian or Latin American heritage and are willing to pay more to adopt them.¹⁶ Latino children, for example, are judged by some adoptive parents according to how “Black” or “white” they look; the closer a child’s features are to those associated with white people, the more desirable the child is, while the closer a child’s features are to those associated with Black people, the less desirable the child is.¹⁷ Therefore, the lighter the skin, the blonder the hair, the bluer the eyes, and the narrower the nose, the more valuable the child is. The black-white paradigm in the adoption market for Latino children operates alongside an European-Indian paradigm that values children more highly the more European and the less Indian they look.¹⁸

The black-white paradigm also helps to explain cases in which race adds a disturbing dimension to the use of reproduction-assisting technologies. One case involved a white woman who brought a lawsuit against a fertility clinic she claimed had mistakenly inseminated her with a

15. See Roberts, *supra* note 4, at 269-72.

16. See Zanita E. Fenton, *In a World Not Their Own: The Adoption of Black Children*, 10 HARV. BLACKLETTER J. 39, 51-54 (1993).

17. See Mary Jo McConahay, *The Baby Trade: Where There Is Poverty in the Third World and a Baby Shortage in the First, Children Become a Commodity*, L. A. TIMES, Dec. 16, 1990, at 12; JANICE G. RAYMOND, WOMEN AS WOMBS: REPRODUCTIVE TECHNOLOGIES AND THE BATTLE OVER WOMEN’S FREEDOM 144-54 (1993).

18. I am grateful to Richard Delgado for his observation about the European-Indian paradigm within the adoption market for Latino children.

Black man's sperm instead of her husband's.¹⁹ The mother demanded monetary damages for her injury, which she explained was caused by the unbearable racial taunting her daughter suffered. Although receiving the wrong sperm was an injury in itself, the damage of bearing a Black child was linked to the opposition of Black and white genetic features.

This opposition was even more graphic in a bizarre fertility clinic mix-up in the Netherlands. A woman who gave birth to twin boys as a result of IVF realized when the babies were two months old that one was white and one was Black.²⁰ The Dutch clinic mistakenly fertilized her eggs with sperm from both her husband and a Black man.²¹ A Newsweek article subtitled "A Fertility Clinic's Startling Error" reported that "while one boy was as blond as his parents, the other's skin was darkening and his brown hair was fuzzy."²² The reporters' wording evokes the ominous sense that as the skin of the wrongfully conceived child turned darker and darker and as his hair turned fuzzier and fuzzier, the horror of the mistake increased.

The black-white paradigm is so powerful in the arena of reproduction that it sometimes erases other identities. In *Johnson v. Calvert*,²³ Anna Johnson entered into a gestational surrogacy agreement with Crispina and Mark Calvert, an infertile couple who wanted to have a genetically-related child.²⁴ An embryo formed through IVF using Crispina Calvert's eggs and Mark Calvert's sperm was implanted in Johnson, who became pregnant and gave birth to a child.²⁵ The lawsuit arose when Johnson notified the Calverts that she would refuse to relinquish her parental rights to the child.²⁶ The case was complicated by the fact that all of the parties were of different races: Anna Johnson is Black, Crispina Calvert is Filipina, and Mark Calvert is white.²⁷ The media, however, paid far more attention to Johnson's race than to that of Crispina Calvert.²⁸ As Lisa Ikemoto observed, "the media stories focused on Anna Johnson's blackness and Mark Calvert's whiteness."²⁹ It also por-

19. See Robin Schatz, *Sperm Bank Mix-up Claim; Woman Sues Doctor, Bank; Says Wrong Deposit Used*, NEWSDAY, March 9, 1990, at 5; Ronald Sullivan, *Mother Accuses Sperm Bank of a Mix-up*, N. Y. TIMES, March 9, 1990, at B1.

20. See Dorinda Elliot & Friso Endt, *Twins—with Two Fathers: The Netherlands: A Fertility Clinic's Startling Error*, NEWSWEEK, July 3, 1995, at 38.

21. *Id.*

22. *Id.*

23. 851 P.2d 776 (Cal. 1993).

24. *Id.* at 778.

25. *Id.*

26. *Id.*

27. See Lisa C. Ikemoto, *The In/Fertile, the Too Fertile, and the Dysfertile*, 47 HASTINGS L.J. 1007, 1023 (1996).

28. *Id.*

29. *Id.* at 1023-24.

trayed the baby as white.³⁰ Thus, the case was publicized as a dispute over whether a Black surrogate mother had any legal claim to a white child. (The California Supreme Court held that Johnson was not the legal mother of the child.)³¹

Examining the white-black paradigm in the context of reproductive technologies also illuminates the project of defining racial identity in non-biological terms. I have argued that race influences the importance that many whites place on new reproductive technology's central aim—the reproduction of genetically related children.³² The critical importance of racial purity to white domination helped to create the conception of identity rooted in genetic heritage. This claim forced me to ask the question, how important is genetic relatedness to Black people's self-definition? Do Blacks not place equal weight on genetics in their own identity and the meaning of blackness?

Of course, it is important to most Black people to have genetically-related children. We, too, determine whether someone is Black, at least as an initial matter, by their physical features. But I think that Black identity is tied less to biology than we typically acknowledge. Black people have also resisted identifying themselves strictly in biological terms. Instead, Blacks have re-defined themselves as a *political* group. It is not true that Blacks are born with an essential racial identity based entirely on their physical attributes or genetic make-up. Identifying as Black does not mean simply assuming an oppressive straight jacket constructed by whites.

Black people have more options for self-identification than one might think. For example, you might look at me and say, "Of course, she has no choice in her identity: she is a Black or African American woman." What alternatives do I have for fluidity, for shifting identities, or for choice? But the truth is that I am the first Black person in my family born in the United States. I see it as a *political* decision that I made in my teens to identify with Black people whose ancestors were enslaved in the southern United States. As far as I know, I have no ancestors who were slaves in the South. Yet that is how I usually think about myself and present myself to others. I also deliberately decided at an early age *not* to identify as biracial or multi-racial although I am biologically qualified to do so. That, too, is a political judgment.

Sometimes I identify as the daughter of a Jamaican immigrant to the United States. In fact, I identified myself as a Jamaican at the Lat-Crit II conference when several participants discovered that most of the

30. *Id.*

31. *Johnson v. Calvert*, 851 P.2d 776, 778 & 787 (Cal. 1993).

32. *See Roberts*, *supra* note 4, at 223-30.

Black people there were of West Indian descent. At one point, we gathered to share stories about our common backgrounds. When I debated Peter Brimelow, the author of *Alien Nation*, at a conference on immigration, I asserted my identity as the daughter of a dark-skinned immigrant — someone Brimelow argued should have no right to automatic United States citizenship.³³ I passed as a Latina when I lived for a year in Bogotá with a Colombian family and wanted to immerse myself in the culture there as well as to escape the prevalent anti-American sentiment. Again, all of these shifts in self-definition were political moves.

As these examples show, Blacks are not consigned to a superimposed, pre-ordained, uniform, universal, biological identity. We have fluid identities that shift according to the context and that are, at least in part, political and deliberately chosen. We should think more about a BlackCrit Theory that develops a notion of a Black identity that is not rooted in biology or genetics. We know that a theory that posits an essential Black identity and that excludes the experiences of other people of color is false and dangerous. But we must also be careful not to advocate the kind of anti-essentialism that is a way of disassociating with blackness. We should be concerned about avoiding blackness when so many people still feel uneasy about “loving blackness.”³⁴

33. See PETER BRIMELOW, *ALIEN NATION* (1995). I argued that the campaign to deny immigrants of color the right to give birth to citizens perpetuates the racist ideal of a white American identity in Dorothy E. Roberts, *Who May Give Birth to Citizens?: Reproduction, Eugenics, and Immigration*, in *IMMIGRANTS OUT!: THE NEW NATIVISM AND THE ANTI-IMMIGRANT IMPULSE IN THE UNITED STATES* 205 (Juan F. Perea ed., 1997).

34. Bell Hooks, *BLACK LOOKS: RACE AND REPRESENTATION* 9 (1992).