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# Apparitions in the Theory: How the Sciences Cause Race and Gender to Matter in the Twenty-first Century

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*How was I to know that racism and sexism had formed a blueprint for my mistreatment long before I got here? As with most black women, others' hatred of me became self-hatred, which has diminished over the years, but has by no means disappeared.<sup>1</sup>*

-Barbara Smith

In 2005 the Food and Drug Administration (FDA) approved BiDil—a prescription drug engineered to relax blood vessels to help prevent heart failure. The newly approved pharmaceutical remedy was specifically marketed to African-Americans: “[a] study of 1,050 African American heart failure patients showed that BiDil reduced deaths by 43 percent.”<sup>2</sup> Despite their intended demographic, Arbor Pharmaceuticals, the corporation which owns the trademark for BiDil, attempted to minimize any racial backlash the company may have encountered by announcing the label for the medication would be printed to read “for use by those who self-identify as Black.”<sup>3</sup> Along with the racial implications of

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1. Barbara Smith, *Some Home Truths on the Contemporary Black Feminist Movement*, in WORDS OF FIRE: AN ANTHOLOGY OF AFRICAN-AMERICAN FEMINIST THOUGHT 262 (Beverly Guy-Sheftall ed., 1995).

2. Stephanie Saul, *F.D.A. Approves a Heart Drug for African Americans*, N.Y. TIMES (June 24, 2005), <https://www.nytimes.com/2005/06/24/health/fda-approves-a-heart-drug-for-africanamericans.html> [<https://perma.cc/5FEQ-LQXY>].

3. *Heart Failure Steals Precious Moments Away*, BIDIL, <https://www.bidil.com/about-bidil> [<https://perma.cc/VV7T-CUX4>] (last visited June 9, 2019).

the new drug *The New York Times* reported, “Wall Street is factoring use of the drug by people of other races into its forecasts for BiDil. Analysts’ sales predictions range from \$500 million to \$1 billion by 2010.”<sup>4</sup> Financial analysts were able to generate this positive projection because cardiologists who tested the drug reasoned that, if BiDil worked well with Black test-patients, then the medication would also work equally as well among other races and ethnicities.

The approval of BiDil by the FDA evidenced and affirmed the presence and continuation of racialized science in the twenty-first century. Furthermore, the approval of BiDil also tacitly acknowledged the U.S. government’s continuing support of the exclusive use of African-Americans when conducting medical experimentations. The U.S. government’s complicit and approving disposition vis-à-vis its silence regarding medical studies done exclusively on Black persons residing within and outside the nation’s borders is not new.<sup>5</sup> Sanctioned medical exploration of Black persons has deep resonance in the many plantation owners in enslavement America who tested the limits of the human body by way of corporeal punishment. With each whipping, barrel roll, ironing, sexual assault and various other forms of plantation punishment, masters, plantation mistresses, and overseers were able to document how much pain the human body could withstand before succumbing to the wild abandon of colonial violence visited upon it.<sup>6</sup> The pharmaceutical study of BiDil conducted on African Americans also emits historical reverberations in the gynecological experiments of J. Marion Sims on enslaved women, the Tuskegee syphilis study in Alabama, the Statesville Prison malaria experiments in Illinois, the pellagra outbreak across the United States (in which the government withheld medical intervention for those who were dying from the illness—the majority of whom were poverty-stricken African Americans), the many forced sterilizations of the South (so common it was known as the Mississippi appendectomy), the 1990 measles vaccine experiment carried out on Black and Latinx newborn infants in Los Angeles (without parental permission or knowledge), the violent bodily procedures of Guantanamo Bay, the forced injection of birth control into the bodies of African

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4. *Id.*

5. Medical experimentations on African Americans, indeed the Black Diaspora, has been consistent over time and space. *See* HARRIET A. WASHINGTON, *MEDICAL APARTHEID: THE DARK HISTORY OF MEDICAL EXPERIMENTS ON BLACK AMERICANS FROM COLONIAL TIMES TO PRESENT* (2006); *see also* DOROTHY ROBERTS, *FATAL INVENTION: HOW SCIENCE, POLITICS, AND BIG BUSINESS RE-CREATE RACE IN THE TWENTY-FIRST CENTURY* (2011); DOROTHY E. ROBERTS, *KILLING THE BLACK BODY: RACE, REPRODUCTION, AND THE MEANING OF LIBERTY* (1997) [hereinafter ROBERTS, *KILLING THE BLACK BODY*].

6. The violence which occurred during slavery in the United States is largely depicted as a male project. However, plantation mistresses were equally violent toward the enslaved. Highlighting this point is important in that it unveils that the monikers of “lady” and “woman” were brought into being by way of violence, and, furthermore, that gender itself was constituted through race. *See* THAVOLIA GLYMPH, *OUT OF THE HOUSE OF BONDAGE: THE TRANSFORMATION OF THE PLANTATION HOUSEHOLD* (2008); *see also* SARAH HALEY, *NO MERCY HERE: GENDER, PUNISHMENT, AND THE MAKING OF JIM CROW MODERNITY* (2016).

women by the State of Israel, and several other bodily abuses and violations experienced by Black people.

While BiDil compels us to recall the medical horrors and corporeal violations of America's racialized past, the twenty-first century prescription drug also requires that we expand our analysis of medical harms—whether these violations are intended or unintended—beyond the social identifier of race. To the extent that BiDil is understood to suggest differences among humans by way of race then too gender is also implicated. Indeed, as historian E. Francis White admonishes, the social constructions of race and gender are “neither separate nor parallel concepts; rather, the concepts are constructed in relationship to each other. In other words, we cannot understand race without reference to gender, and we cannot understand gender without reference to race.”<sup>77</sup>

E. Francis White's insight takes on greater significance, when we consider that BiDil has generated significant revenue by way of a science that is based in both racialized and gendered stereotypes. Furthermore, the underlying racialized and gendered tenets of Arbor Pharmaceutical's research and clinical studies also implicates both the intimate and reproductive lives of Black women. Otherwise stated, Arbor Pharmaceutical's production of BiDil compels our attention to focus on the interplay of race, gender, and capitalism as the corporation seemingly perpetuates a myth that is centuries old: the sexual production of Black women's bodies functions differently and negatively from other races and ethnicities. In other words, what BiDil signals to the American public, in part, via its presence in the marketplace is that Black persons ourselves, by way of the sexual reproduction of Black women's bodies, are responsible for our racial inferiority because of our alleged irregular biological composition. Indeed, in her landmark text, *Killing the Black Body*, legal scholar Dorothy Roberts asserts, “Black mothers have been thought to pass down to their offspring the traits that marked them as inferior to any white person.”<sup>78</sup> In this way, biology, as an “objective” form of study, constructed Black women's bodies as the biological Other; in turn, Black women's bodies became the dominant conduit by which modes of biological and medical normativity, abnormality, and corrective measures were determined.

Despite this reality, when the history of science (as well as present day scientific research efforts) is critiqued, rarely are the lives of women, more specifically Black women, situated as the lens of analysis. Instead, objections and concerns regarding “objective” scientific discovery are articulated within in a single-axis frame of race and works to “[distort] the multidimensionality of Black women's experiences,” while the intimate and reproductive lives of Black women remain the undisclosed spectacle within scientific inquiry and research, as scientific

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7. E. FRANCIS WHITE, DARK CONTINENT OF OUR BODIES: BLACK FEMINISM AND THE POLITICS OF RESPECTABILITY 82 (2001).

8. ROBERTS, KILLING THE BLACK BODY, *supra* note 5, at 8.

methodologies are simultaneously revised to address feminist concerns in service of White women and racial concerns in service of Black men.<sup>9</sup>

BiDil generated several critiques upon its approval by the Food and Drug Administration. Most analyses were grounded in race—speaking to the centuries-old project of scientific racism. However, important too in the consideration of BiDil as a viable pharmaceutical remedy are both the implications of gender in the production of the medication as well as the absence of a serious consideration of gender in critiques offered within the public sphere at the time of BiDil's release. That is to say, that as critiques of racialized medical violation are offered (and they should be), what is often obscured, or not mentioned at all within public discourse, is how gender is implicated within scientific constructions of racialized differentiation. E. Francis White asserts “biology played a key role in the rise of science and the solidifying of racism and sexism, as biological models became paramount in explaining most social relations.”<sup>10</sup>

Toward this end, this Article takes up the question how does science, no matter the form it takes—be it medical, social, legal, or otherwise, come to cause race and gender to matter in the twenty-first century and who are its actors which allow the racialization and sexualization of scientific inquiry? To answer this question, this work examines three areas of concern: the theorization underlying scientific inquiry, the complicit research executed in the social sciences—namely criminology, and the violations which technologies of law permit. Though these three areas are not exhaustive in taking up the question under consideration, these areas of concern do work to highlight how science in its various different forms work in concert to reify both sexism and racism within society. The examination of these three areas should not be thought to be linear; rather they are flashpoints to which consideration should be given when one carefully interrogates who and what informs the sciences.

This work does not take the position that scientific inquiry is inherently neutral but for a few instances in which sexism and racism happen to creep in. Conversely, this work, in alignment with the history of Black people in the United States, contends that scientific exploration, inquiry, and practices in the United States depend upon the convergence of both racialized and gendered stereotypes in order to construct norms for the human body and how it functions. This position should not be misconstrued as advancing that scientific endeavors created sexism and racism; however, science does, in fact, both perpetuate and legitimate sexist and racist thinking within science as well as in other fields and professions. Indeed, research conducted at Stanford found the following:

standards and reference models are integral to science, health & medicine, and engineering; they are used in educating students, generating and testing

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9. Kimberlé Crenshaw, *A Black Feminist Critique of Antidiscrimination Law and Politics*, in *THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE* 356 (David Kairys ed., 1982).

10. WHITE, *supra* note 7, at 84.

hypotheses, designing products, and drafting legislation. Standards and reference models based on a single sex (or particular groups of men or women) can have damaging material consequences . . . science, medicine, and engineering often take the young, white, able-bodied 70kg male as the norm . . . when studied at all, other segments of the population—women, the elderly, and non-white groups—are frequently considered as deviations from that norm.<sup>11</sup>

With this in mind, this Article now turns to an exploration of how scientific inquiry, the social sciences, and technologies of law work together to cause identity to matter, and how these socially constructed identities in turn cause those impacted by them, namely Black women, to experience injuries that are not acknowledged by law nor can be redressed by it.<sup>12</sup> To be clear, I am advancing that race and gender are made to matter because of their silencing within scientific theorizing, resulting in this critical intersection manifesting as an apparition in theory because it is not immediately noticeable, which in turn permits the perpetuation of both the misrecognition and abuse of Black women.

#### A. SCIENTIFIC INQUIRY

When we think of the discourse pertaining to scientific racism oftentimes nineteenth century diagnoses, such as drapetomania, comes to mind. For others, Charles Darwin’s theory of evolution comes to mind as they, like E. Francis White, argue “[e]volutionary biology was, in fact, far from a value-neutral and disinterested discipline; it depended on social prejudices to make itself understood.”<sup>13</sup> These past examples in which science served as a conduit for the prejudiced minds of scientists and medical practitioners finds deep resonance in the twenty-first century.

A recent study found that “Black Americans are systematically undertreated for pain relative to white Americans.”<sup>14</sup> The study also found that “a substantial number of white laypeople and medical students and residents hold false beliefs about biological differences between blacks and whites” and that these beliefs “predict racial bias in pain perception and treatment recommendation accuracy.”<sup>15</sup> The findings of this study unveil the dangers that persist when biased scientific theorizing becomes medical praxis: “[I]ndividuals with at least some medical training hold and may use false beliefs about biological differences between blacks

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11. *Rethinking Standards and Reference Models*, STAN. U.: GENDERED INNOVATIONS SCI., MED., ENGINEERING, & ENV’T, <https://genderedinnovations.stanford.edu/methods/standards.html> [<https://perma.cc/TT8H-AG4C>] (last visited June 9, 2019).

12. In an earlier work I term this type of injury “gendered duress.” Antwann M. Simpkins, *Under Siege: Black Women, the Choreography of Law, and the Public Carceral Sphere*, ESCHOLARSHIP, UCLA, 67–86 (2016), available at <http://www.escholarship.org/uc/item/1244f7q6> [<https://perma.cc/3YTJ-SFDP>].

13. WHITE, *supra* note 7, at 85.

14. Kelly M. Hoffman et al., *Racial Bias in Pain Assessment and Treatment Recommendations, and False Beliefs About Biological Differences Between Blacks and Whites*, 113 PROC. NAT’L ACAD. SCI. U.S., 4296, 4296–301 (2016).

15. *Id.*

and whites to inform medical judgements.”<sup>16</sup> When intersected with gender, the reality of biased medical assessments and remedies becomes starker as “black mothers in the U.S. die at three to four times the rate of white mothers, one of the widest of all racial disparities in women’s health.”<sup>17</sup> Alarming, “a black woman is 22 percent more likely to die from heart disease than a white woman, 71 percent more likely to perish from cervical cancer, but 243 percent more likely to die from pregnancy—or childbirth-related causes.”<sup>18</sup> Moreover, when Black women have the exact same medical complications during childbirth that a White woman has, Black women are “two to three more times more likely to die.”<sup>19</sup> Important here is that regardless of ailment—be it heart disease, cervical cancer, or childbirth—Black women in all instances are more likely to die as they are being treated for the same condition. As the study indicates, these disparities are not the result of environmental factors; rather, these figures are the result of medically trained personnel who are discriminative in the treatment of their patients.

This insight compels us to take up a consideration of how both racism and sexism finds its way into scientific theory and medical practice. As in the nineteenth century, medical journals and practitioners, as well as academics, are at the center of this perpetually constructed and persistent phenomenon. Carefully examining the recent resignation of Toby Young from the University College London (UCL) sheds light, in part, on how sexism and racism remain pervasive within both the journals and practice of medicine. When Young’s resignation is paralleled with the medical disparities and realities of Black women a truth is revealed: objectivity is a rare privilege, if it exists at all; evidence suggests, that like race, objectivity is a constructed truth predicated upon the viewpoint of those who theorize the prevailing paradigm.

In January of 2018, Toby Young resigned from UCL where he served in the Office for Students.<sup>20</sup> While he served in the administrative position, Young’s participation in a conference supporting eugenics and intelligence was unveiled by way of *London Student*—a newspaper ran by college students.<sup>21</sup> Young’s involvement in the London Conference on Intelligence, which supports eugenics as

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16. *Id.*

17. See Renee Montagne, *Black Mothers Keep Dying After Giving Birth. Sharon Irving’s Story Explains Why*, NAT’L PUB. RADIO (Dec. 7, 2017), <https://www.npr.org/2017/12/07/568948782/black-mothers-keep-dying-after-giving-birth-sharon-irvings-story-explains-why> [https://perma.cc/3DN6-7AHA]; see also *Pregnancy Mortality Surveillance System*, CTR. FOR DISEASE CONTROL AND PREVENTION (May 1, 2018), <https://www.cdc.gov/reproductivehealth/maternalinfanthealth/pregnancy-mortality-surveillance-system.htm> [https://perma.cc/Y5CH-MLQC].

18. Montagne, *supra* note 17; see also *Pregnancy Mortality Surveillance System*, *supra* note 17.

19. *Id.*

20. Angela Saini, *Racism Is Creeping Back into Mainstream Science*, GUARDIAN, (Jan. 22, 2018), <https://www.theguardian.com/commentisfree/2018/jan/22/eugenics-racism-mainstream-science> [https://perma.cc/4P6V-3RPP].

21. See Ben Van Der Merwe, *Exposed: London’s Eugenics Conference and Its Neo-Nazi Links*, LONDON STUDENT (Jan. 2018), <http://londonstudent.coop/exposed-london-eugenics-conferences-neo-nazi-links/> [https://perma.cc/XSJ9-NJCG].

a rational and objective science, is particularly important because he held an important position in the Office for Students at UCL and also served on the Fulbright Commission—which oversees financial matters between universities in the UK and the U.S. Noting the resignation of Young, Sir Nigel Sheinwald—Chairman of the US-UK Fulbright Commission—issued a statement, which reads in full:

Toby Young got in touch shortly after resigning from the Office for Students to let me know that he'd like to stand down from the Fulbright Commission as well so he can concentrate on his work with free schools. I accepted his resignation, which I believe to be in the best interests of the Fulbright programme. At the same time, my Commission colleagues and I recognise the positive contribution Toby made to the Commission's work since his appointment in 2013.<sup>22</sup>

Sir Sheinwald's statement is concerning in that Young makes clear, via his communication with Sheinwald, his intentions to continue in researching and advancing eugenics as a rational and objective science via his free schools. Specifically harmful within Young's work, who is also a former judge on the successful television show *Top Chef*, is the promotion of the belief that there is a high correlation between IQ and socio-economic status.

In his essay titled *The Fall of Meritocracy* Young argues, in part, if it becomes possible to select human embryos according to their possession of genes associated with certain character traits, such as intelligence, the Left's utopian political projects can be resurrected. Margaret Mead was right after all: human nature is almost unbelievably malleable, you just have to start a lot further back. It is not through changing the culture that we will be able to solve the chronic social problems besetting the advanced societies of the West, but through changing people's genes.<sup>23</sup>

For Young, the problems of society are not rooted in the structural arrangement of it but rather the IQ levels of low-performing citizens who are unable to attain success due to the traits they inherited from their mother as well as their culture. This has significant implications when considering the lives of Black women as well as Black people more broadly.

Importantly, Young's research and viewpoints and their resulting consequences were recognized by Sir Nigel Sheinwald as a "positive contribution" to the Fulbright Commission. One may have little wonder then why Fulbright scholars are overwhelmingly white.<sup>24</sup> Despite his commitment to intellectual

22. Sir Negil Sheinwald, *Resignation from the Commission*, FULBRIGHT COMMISSION (Jan. 9, 2018), <http://www.fulbright.org.uk/news/resignation-from-the-commission> [<https://perma.cc/GS87-A245>].

23. Toby Young, *Fall Meritocracy*, QUADRANT (Sept. 7, 2015), <https://quadrant.org.au/magazine/2015/09/fall-meritocracy/> [<https://perma.cc/NPT6-9V89>].

24. I am not suggesting that Young's research exclusively results in awardees being primarily white. Many other factors, such as Fulbright's qualifications, their vetting process, and the pool from



exploration, what escapes consideration in Young's assertions is the sexist and racist history of intelligence testing—a highly subjective test designed to reinforce the hegemonic dominance of those in power; thus positioning intelligence itself as a social construction and simultaneously presenting a formidable challenge to Young's reliance on such flawed data toward what he identifies as “progressive eugenics.” Furthermore, geneticists have found, as University College London pharmacology Professor David Colquhoun advances, “the actual genetic difference between humans, with respect to race or sex, is absolutely miniscule compared to what they have in common.”<sup>25</sup> Professor Colquhoun's findings unveil academics like Toby Young, along with the arrangement of academic institutions, exaggerate minor differences between persons in an effort to promote a “naturally” occurring hierarchy among humans to suggest the superiority of whiteness as they simultaneously silence the inconsequentiality of these differences in service of “objective” science.

Toby Young's appearance at the London Conference on Intelligence, which had been ongoing since 2014 without the knowledge of UCL officials, perhaps should have come as no surprise. On social media, Young sent out many tweets that were both sexist and racist in nature; moreover, Young's biased claims regarding intelligence and biology were openly supported by the architect of Brexit, Boris Johnson. At the conference, Young was joined by the likes of Richard Lynn, who advocates for the “phasing out” of the “populations of incompetent cultures” and whom the Southern Poverty Law Center identifies as an unapologetic white supremacist and eugenicist.<sup>26</sup> Also in attendance at the conference was Davide Piffer, who Richard Lynn credits with doing “brilliant work identifying the genes responsible for race difference in intelligence.”<sup>27</sup> These men were joined by pseudo-scientists such as Emil Kirkegaard, who is the co-founder of the non-peer reviewed OpenPsych journal, at the London Conference on Intelligence. The conference was financially supported by the Pioneer Fund of the Ulster Institute for Social Research, which itself is headed by Richard Lynn of Ulster University—the largest University in Northern Ireland.<sup>28</sup> The work of Young, Lynn, Piffer, Kirkegaard, and others (along with the support of Boris Johnson and the Ulster Institute for Social Research by way of Ulster University) has significant implications in the reproductive lives of Black women, as well as within immigration policy. While these men work to eliminate undesirable populations through

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which the organization selects candidates, works in tandem with research like Young's to support the alleged higher intelligence of white people. In this way, Nigel Sheinwald is able to frame Toby Young's as a “positive contribution” because it helps to reinforce existing social stereotypes and myths via science.

25. Van Der Merwe, *supra* note 21.

26. *Id.* Richard Lynn was also a lecturer in Psychology at University of Exeter, a professor of psychology at the Economic and Social Research Institute, Dublin, as well as the University of Ulster, Coleraine.

27. *Id.*

28. Richard Lynn also serves on the board for the pioneer fund.

“objective” scientific reasoning, they also manipulate national policy via immigration dog whistles to prevent access to life saving resources by way of citizenship claims.<sup>29</sup>

Those who attend the London Conference on Intelligence often publish their work in *Mankind Quarterly*—a journal that has been in operation since the 1960s and supports racialized science through the lens of both physical and cultural anthropology. The assistant editor of *Mankind Quarterly* is Richard Lynn, who also serves on the editorial board of the well-known journal *Personality and Individual Differences* as well as on the editorial board of the psychology journal *Intelligence*; allowing Lynn to connect *Mankind Quarterly* and its agenda to more reputable mainstream scientific journals. Lynn used these journals as a conduit in 2004 to argue, “Jews have a higher average level of verbal intelligence than non-Jewish whites.”<sup>30</sup> In 2010, Lynn also published an article concerning the IQ of sub-Saharan Africans—which mirrored the arguments of his 2002 text on the relationship between national intelligence and economic growth.<sup>31</sup> This was followed by additional publications by Lynn in 2015 addressing the differences in intelligence among varying races, as well as the difference of sporting ability among various racial groups.<sup>32</sup>

While the scientific ideologies of Toby Young and Richard Lynn seem far away from the United States, their engagement of a racialized and gendered biased science comes home to roost in the person of Richard J. Haier, Professor Emeritus at the University of California, Irvine, Medical School, who is the editor-in-chief of the psychology journal *Intelligence* in which Lynn publishes some of his scientific assertions. When Professor Haier was asked about the work of his colleagues and his complicity in publishing unsound work based on flawed and discriminative data by *The Guardian*, he responded, “I consulted several people about this. I decided that it’s better to deal with these things with sunlight and by inclusion.”<sup>33</sup> Haier continued:

The area of the relationship between intelligence and group differences is probably the most incendiary area in the whole of psychology. And some of the people who work in that area have said incendiary things . . . I have read some quotes, indirect quotes, that disturb me, but throwing people

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29. For more on dog whistles see, IAN HANEY LÓPEZ, *DOG WHISTLE POLITICS: HOW CODED RACIAL APPEALS HAVE REINVENTED RACISM AND WRECKED THE MIDDLE CLASS* (2014).

30. Richard Lynn, *The Intelligence of American Jews*, 36 *PERSONALITY & INDIVIDUAL DIFFERENCES* 201, 201–06 (2004).

31. RICHARD LYNN & TATU VANHANEN, *IQ AND THE WEALTH OF NATIONS* (2002).

32. See Richard Lynn & Gerhard Meisenberg, *The Average IQ of sub-Saharan Africans: Comments on Wicherts, Dolan, and van der Maas*, 38 *INTELLIGENCE: MULTIDISCIPLINARY J.* 21, 21–29 (2010); see also RICHARD LYNN, *RACE DIFFERENCES IN INTELLIGENCE: AN EVOLUTIONARY ANALYSIS* (2d ed. 2015); RICHARD LYNN & EDWARD DUTTON, *RACE AND SPORT: EVOLUTION AND RACIAL DIFFERENCES IN SPORTING ABILITY* (2015).

33. Saini, *supra* note 20.

off an editorial board for expressing an opinion really kind of puts us in a dicey area. I prefer to let the papers and the data speak for themselves.<sup>34</sup>

Professor Haier's decision to include inflammatory, discriminatory, and incorrect scientific inquiries based in flawed and unsound data in *Intelligence* presses the boundaries of the intellectual commitments of the institution he represents, indeed the institution which granted him the recognition of Professor Emeritus—the University of California, a world-class leading research institution. This generates a pointed question toward the Board of Regents of the internationally renowned system of schools: what are the ramifications for those affiliated with the University of California who are knowingly complicit in making possible the perpetuation of racist and sexist scientific projects?

Looking to contemporary medical and academic journals, as well as conferences, which are not widely read or attended by the general public, is important because these are often the means by which science becomes steeped in both racialized and gendered theoretical assertions by academics and practitioners within the field. E. Francis White articulates in her work concerning the racialized and gendered science of the nineteenth century that journals were key to grounding science in race and gender stereotypes via the harmful scientific explorations of Charles Darwin. Moreover, in her work White finds, *Popular Science Monthly*, a nineteenth century medical journal, in likeness to the medical and academic journals of today, had significant influence in public policy, education, resources for women and marginalized persons, as well as the distribution of welfare.<sup>35</sup> Therefore, how *Popular Science Monthly* depicted various persons in the public sphere had significant implications in the lives of many people, particularly those who belonged to a stigmatized group. White provides this quote from *Popular Science Monthly*, which illustrates how the journal helped to stratify society by way of “objective” scientific inquiry and claims:

The pre-eminence of the female sex over the male, occurring only in certain inferior species and races, and in children of the superior races, marks an inferior degree of evolution. The same may be said of equality of the sexes, which is observable only among individuals little advanced in evolution: inferior races and species, youth, aged persons, and the lower classes. On the contrary, the pre-eminence of the male over the female represents a superior phase of evolution, for it characterizes superior species and races.<sup>36</sup>

Unearthing *Popular Science Monthly's* harmful engagement of race, gender, and class within a Western lens dovetails with contemporary journals, such as *Intelligence* and *Mankind Quarterly*, resulting in both the historical and present misrecognition of Black women thereby negatively impacting their experiences within the public sphere. Concerning the misrecognition of Black women via their reproduction and

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34. *Id.*

35. WHITE, *supra* note 7, at 101.

36. *Id.* at 98.

as heads of households within some Black communities, Dorothy Roberts notes the following: “Black reproduction . . . is treated as a form of degeneracy. Black mothers are seen to corrupt the reproduction process at every stage. Black mothers it is believed, transmit inferior physical traits to the product of conception through their genes.”<sup>37</sup> It is these same genes Richard Lynn, Davide Pfiffer, Toby Young, and a host of influential others wish to eliminate. The implications of such discriminative work, with its claims of alleged inherent inferiority among races via gender reproductively, reaches beyond the engagement of the “hard” sciences to the social sciences as well—namely that of criminology, a subfield of sociology which has its own racist and sexist history as well in the United States.

#### B. “TO USE NEUROIMAGING TECHNIQUES”

While Professor Richard Haier’s recognition as Professor Emeritus at the University of California, Irvine Medical School may generate numerous questions toward the leadership of the University system, a closer look at one of the leading academic departments at the University of California, Irvine campus reveals how the racialized and gendered ideologies fueling some scientific inquiries within the “hard” sciences also informs theoretical approaches in the social sciences.

Historically, Black Americans, both during and after our emancipation, have been thought to be the cause of various social problems, namely that of crime. The source of the “criminal gene” in Black persons is alleged to have its origins in the bodies of Black women. Indeed, Dorothy Roberts notes, “Black mothers are blamed for perpetuating social problems by transmitting defective genes, irreparable crack damage, and a deviant lifestyle to their children.”<sup>38</sup> Roberts’ assertion here is important in that it references both the biological process of reproduction and the reproductive work Black women undertake to sustain both themselves and their families.<sup>39</sup>

The belief that Black mothers are the source of social ills has steep implications when the field of criminology is examined—as the field finds deep resonance in the racialized and gendered theorizations of medical science journals. These discriminative reverberations come to be applied in myriad ways within the study of crime as a social science. Like many academic fields, criminology has several theoretical approaches. Among the many theoretical approaches of criminology are trait theories which allege that the “hereditary, biochemical, neurological, and evolutionary” development of specific races of persons are the “causes of crime.”<sup>40</sup> Additionally, these theories often give consideration to “diet, vitamin deficiencies,

37. ROBERTS, KILLING THE BLACK BODY, *supra* note 5, at 9.

38. *Id.* at 3.

39. The use of reproductive work, in this instance, refers to the quotidian task Black women execute. This work may be remunerative at times—however, most often it is not.

40. CHARIS E. KUBRIN ET AL., RESEARCHING THEORIES OF CRIME AND DEVIANCE 53 (2009).

and birth complications” to explain the causes and sources of criminal behavior.<sup>41</sup> The approach of trait theories are in lockstep with the earlier criminological study of craniology—which determined one’s capacity for criminality by the shape and character of their skull and brain.<sup>42</sup> Interestingly, some present-day criminologists still focus their attention to both the shape of the human skull and the activity of the brain within it to explain that which is itself socially constructed.<sup>43</sup> Despite this fact, foundational texts of the field, such as *Researching Theories of Crime and Deviance*, describe examining the contours of an individual’s skull and brain as an “historical curiosit[y].”

Recently a prospective graduate student submitted to the Department of Criminology, Law and Society at UC Irvine their proposed research agenda: “to use neuroimaging techniques to address how youth regulate emotions and how that affects decision-making in high stress situations,” and in turn, “translate these scientific findings into useful laws and policy for actors in the legal community.”<sup>44</sup> The student’s prospective research evidences the continuing belief of inherent difference by means of biological determinism.<sup>45</sup> The student’s intended research, particularly its framing and practical application, is not coincidental; rather it directs our attention to the standard theoretical training within the field which comes to inform the types of data students collect as well as how they interpret it.

As students learn about trait theories during their training as emerging criminologists, they also engage in learning strain theories. General strain theory primarily posits that “strains or stressors increase the likelihood of negative emotions like anger and frustration.”<sup>46</sup> In turn, “[t]hese emotions create pressure for corrective action, and crime is one possible response.”<sup>47</sup> The presence of pressure is important within strain theories, as various pressures are believed to generate “negative affective states—most notably anger and related emotions.”<sup>48</sup> What causes the onslaught of pressure is, according to strain theorists, negative relationships with others. Hence, Robert Agnew, a leading scholar of strain theory, offers, “[S]train theory, then, is distinguished by its focus on negative relationships with others and its insistence that such relationships lead to delinquency through the negative affect—especially anger . . . .”<sup>49</sup>

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41. *Id.* at 51.

42. *Id.*

43. *Id.* at 50.

44. E-mail from Amy M. Magnus, to clsgrads listserv (Feb. 7, 2018, 6:48 PM PST) (on file with author).

45. *Id.*

46. Robert Agnew, *Building on the Foundation of General Strain Theory: Specifying the Types of Strain Most Likely to Lead to Crime and Delinquency*, 38 J. RES. CRIME & DELINQ. 319, 319 (2001).

47. *Id.*

48. Robert Agnew, *Foundation for a General Strain Theory of Crime and Delinquency*, 30 Criminology 47, 49.

49. *Id.*

In a general sense, what strain theory advances is that it is the negative emotional state that mediates the relationship between external forces and the act of a particular anti-social behavior. External structurally conditioned forces then, implied in what Agnew offers, are not significant in one's behavior; rather it is a matter of "natural," individual, and neurological factors. There is little wonder then why the prospective student is interested in mapping the regulation of emotions via neuroimaging—their proposed research is informed by a field of study which asserts that it is both possible and true.

While strain theories may perhaps seem more aware of the composition of society as a determining factor of crime, a closer analysis of strain theories reveals that these theories return to the corporeal as the place of impairment and irregularity, which comes to disproportionately implicate Black people, more specifically Black women. A careful review of a recent micro-criminology course syllabus for the Department of Criminology, Law and Society at UC Irvine affirms this position.<sup>50</sup> After students have been thoroughly immersed in criminological theories and approaches, they are then assigned texts whereby which they should understand these theories. Nearly all of the texts and articles assigned in the graduate level micro-criminology seminar in the Department of Criminology, Law and Society places Black and Latinx individuals and communities under gratuitous discriminative scrutiny. In other words, students come to understand "the criminal element" by way of Black and Brown lives, who are the result of Black and Brown mothers—who are themselves silenced in the text, yet who are made to be ever-present because of the unrelenting examination of their children.<sup>51</sup> After gaining this understanding, students are then required, per the course objectives, to "assess [the] implications" of said text "for policy and research."<sup>52</sup> This type of pedagogy comes to reinforce a common belief concerning Black people: "it is the deprived, self-perpetuating character of Blacks themselves that leads to their inferior social status."<sup>53</sup>

In this way the "hard" sciences are not isolated actors in perpetuating the scientific racism which comes to implicate the lives of Black women. Like their medical counterparts who have been exposed to biased patient treatment approaches, students of the social sciences too are often taught theoretical framings that prevent the accurate recognition of marginal communities. Importantly, the social sciences as a whole, not just that of criminology exclusively, comes to cause

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50. Naomi Sugie, "Micro-level Theories in Criminology (C228)," (syllabus, University of California, Irvine, Irvine, CA, 2017).

51. Mothers in this sense are not limited to biological determination, as fictive kinship constitutes community and familial relations in several marginalized communities. Rather, mother, here, encompasses those who are mothers by various means, be it fictive kinship, adoption, biological, or otherwise.

52. Sugie, *supra* note 50.

53. ROBERTS, *KILLING THE BLACK BODY*, *supra* note 5, at 9.

both race and gender to matter in the twenty-first century in numerous and various ways—particularly within social policy and public discourse.

A worthy example is sociologist Orlando Patterson's 1991 *New York Times* Op-ed, *Race, Gender, and Liberal Fallacies*, wherein he constructs Anita Hill as an impossible victim and reconciles now Supreme Court Justice Clarence Thomas, then candidate, as being "justified in denying making the [sexually explicit] remarks, even if he had in fact made them, not only because the deliberate displacement of his remarks made them something else but on the utilitarian moral grounds that any admission would have immediately incurred a self-destructive and grossly unfair punishment."<sup>54</sup> Patterson's peculiar sociological approach to social issues continued beyond 1991. In 2006, in the same periodical—*The New York Times*—Patterson published *A Poverty of the Mind*, in which he advances, in line with the well-known culture of poverty thesis,

and why do so many young unemployed black men have children—several of them—which they have no resources or intention to support? And why, finally, do they murder each other at nine times the rate of white youths? What's most interesting about the recent spate of studies is that analysts seem at last to be recognizing what has long been obvious to anyone who takes culture seriously: socioeconomic factors are of limited explanatory power.<sup>55</sup>

Orlando Patterson's gendered and racialized assertions did not go without a response. After raising fifty thousand dollars, on November 17, 1991, 1600 Black women published *African American Women in Defense of Ourselves* in eight newspapers, among them *The New York Times*.<sup>56</sup> The collective of Black women published the article in part because they recognized "the media are now portraying the Black community as prepared to tolerate both the dismantling of affirmative action and the evil of sexual harassment in order to have any Black man on the Supreme Court."<sup>57</sup> Speaking to how the media, along with Joe Biden (who chaired the Senate Judiciary Committee in 1991 and guided the maligning of Anita Hill and

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54. See Orlando Patterson, *Race, Gender, and Liberal Fallacies*, N.Y. TIMES (Oct. 20, 1991), <https://www.nytimes.com/1991/10/20/opinion/op-ed-race-gender-and-liberal-fallacies.html> [<https://perma.cc/X9YT-4URD>].

55. Orlando Patterson, *A Poverty of the Mind*, N.Y. TIMES (Mar. 26, 2006), <https://www.nytimes.com/2006/03/26/opinion/a-poverty-of-the-mind.html> [<https://perma.cc/M56D-4L4M>].

56. DeNeen L. Brown, *The Scathing Ad 1,600 Black Women Bought to Oppose Clarence Thomas*, WASH. POST (Sep. 20, 2018), [https://www.washingtonpost.com/history/2018/09/21/scathing-ad-black-women-bought-oppose-clarence-thomas/?utm\\_term=.52e3f2d627ea](https://www.washingtonpost.com/history/2018/09/21/scathing-ad-black-women-bought-oppose-clarence-thomas/?utm_term=.52e3f2d627ea) [<https://perma.cc/9L3B-K4Q8>]. Also important to recognize is in 2011, nearly twenty years to the date of Orlando Patterson's remarks concerning Anita Hill, law professor Kimberlé Crenshaw published "Black Women Still in Defense of Ourselves" in *The Nation* pointing to the persisting nature of violence and assault experienced by Black women, but also the silencing of these experiences coupled with the profound misrecognition of Black women within the public sphere. See Kimberlé Crenshaw, *Black Women Still in Defense of Ourselves*, NATION (Oct. 24, 2011), <https://www.thenation.com/article/black-women-still-defense-ourselves/> [<https://perma.cc/5MRY-9R4M>].

57. Crenshaw, *supra* note 56.

prevented other women from testifying who corroborated her testimony), silenced the voices of Black women by ignoring them, the 1600 Black women stated, “[W]e want to make clear that the media have ignored or distorted many African American voices. We will not be silenced.” The article went on to argue:

Many have erroneously portrayed the allegations against Clarence Thomas as an issue of either gender or race. As women of African descent, we understand sexual harassment as both. We further understand that Clarence Thomas outrageously manipulated the legacy of lynching in order to shelter himself from Anita Hill’s allegations. To deflect attention away from the reality of sexual abuse in African American women’s lives, he trivialized and misrepresented this painful part of African American people’s history. This country which has a long legacy of racism and sexism, has never taken the sexual abuse of Black women seriously. Throughout U.S. history Black women have been sexually stereotyped as immoral, insatiable, perverse; the initiators in all sexual contacts – abusive or otherwise. The common assumption in legal proceedings as well as in the larger society has been that Black women cannot be raped or otherwise sexually abused. As Anita Hill’s experience demonstrates, Black women who speak of these matters are not likely to be believed. In 1991, we cannot tolerate this type of dismissal of any one Black woman’s experience or this attack upon our collective character without protest, outrage, and resistance.<sup>58</sup>

Whether it is criminological explanations of Black life, delimited sociological framing<sup>59</sup>, Barack Obama’s My Brother’s Keeper initiative, Donald Trump’s welfare policies, the national discourse concerning subjects of incarceration, or the attempted conservative evisceration of reproductive rights, what is unyielding in the United States is “a persistent objective of American social policy . . . to monitor and restrain [the] corrupting tendency of Black motherhood;” this is especially true when we consider the infamous government study: *The Negro Family: The Case for National Action*—also known as the Moynihan Report.<sup>60</sup> Concerning these discriminative efforts and many others, noted law professor Kimberlé Crenshaw provides:

At the core of conservative social policy about race are old ideas that link racial inequality to non-traditional family formation and its attendant culture of poverty. Marginalized in this frame are structural and historical forces that limit the upward trajectory of scores of African-Americans no matter how closely the stick to a male-centered script of family and individual responsibility. And while foundations, legislative committees, advocacy groups and others rightly address crises facing black men and boys, their mistaken assumptions that such interventions will simply trickle

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58. *Id.*

59. For a discussion on the importance of proper sociological framing, see MARCUS HUNTER, BLACK CITY MAKERS: HOW THE PHILADELPHIA NEGRO CHANGED URBAN AMERICA 11–15 (2013).

60. Roberts, *supra* note 8.



down to black women and girls obscures the gendered structures of race, romance and work that contribute to the inequalities that stretch across black communities nationwide.<sup>61</sup>

### C. THE SCIENCE OF LAW

Lastly, I wish to take up a consideration of how law comes to be complicit in causing race and gender to matter in the twenty-first century. An area of law in which this becomes most evident is reproductive law along with the several fetal protection regulations throughout the United States—which socially and politically pass as caring for and addressing the health of the mother. With the slow yet consistent erosion of reproductive rights since *Roe*,<sup>62</sup> Black women and their access to reproductive healthcare have become increasingly at stake—particularly those who are working class.<sup>63</sup> What lawmakers have allowed to take place is further exacerbated by the surge of crisis pregnancy centers (whether they be licensed or not).<sup>64</sup>

When cases regarding reproductive rights are heard, courts rely on expert testimony, much of which is comprised of experts from both the “hard” and social sciences. To the extent that we are cognizant of the sciences impact on law, particularly as it relates to the point of viability, we must also be concerned about the gendered and racial bias of science. In example, if viability is believed to be somewhere between 20 to 24 weeks—how might the point of viability be impacted by socioeconomic status, those who reside in food deserts, environmental factors—such as oil refineries located in close proximity to working class communities, those who are disadvantaged by spatial mismatch, or an aggressive housing economy such as that which is present in Los Angeles? Further, what are the implications of the aforementioned in consideration of the rapidly developing technologies of medical science and the assumption that all have equal access to it. The importance of these points of inquiry are thrown into sharp relief when we consider the higher index at which Black women experience maternal mortality and unequal access to primary care.

The impact of external environmental forces, along with Black women’s constrained access to full and equitable healthcare paired with the scientific construction of their being as aberrant, results in the public misrecognition of Black women. Indeed, in 1996, as the House of Representatives engaged in debate concerning the Personal Responsibility and Work Opportunities Act—Bill Clinton’s welfare reform bill—Michigan Representative Nick Smith offered the

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61. Crenshaw, *supra* note 56.

62. *Roe v. Wade*, 410 U.S. 113 (1973).

63. La’Tasha D. Mayes, *Black Women Are Dying From a Lack of Access to Reproductive Health Services*, TIME (Jan. 19, 2018), <http://time.com/5109797/black-women-dying-reproductive-health/> [<https://perma.cc/WM3Z-GGFJ>].

64. Amy G. Bryant & Jonas J. Swartz, *Why Crisis Pregnancy Centers Are Legal but Unethical*, 20 AM. J. ETHICS 269 (2018).

following concerning a Black woman who was, at the time of his comments, a resident of Detroit, Michigan:

Bertha Bridges is still waiting for the end of welfare as she knows it. She and her three children have been on and off welfare since the early 1980s, and she has been unable to hold a job in recent years because school administrators often call several times a week to ask her to pick up her disruptive, severely depressed 13 year-old son for fighting and disobeying teachers.<sup>65</sup>

Though Representative Smith is a Republican, grounding the need of welfare reform in the lives of Black women was a bi-partisan effort. For Democrat Bill Clinton, Black women were irresponsible mothers and needed to be forced to work, because

[o]ppportunity for all is not enough, . . . [f]or if we give opportunity without insisting on responsibility, much of the money can be wasted and the country's strength can be still be sapped. So we favor responsibility for all. That's the idea behind national service. It's the idea behind welfare reform.<sup>66</sup>

When racialized and gendered attitudes embodied by national political figures are matched with the present-day proliferation of crisis pregnancy centers as well as the challenging of existing reproductive law in cases such as *Burwell*,<sup>67</sup> one may reasonably conclude the debate concerning reproductive health is not about maintaining the health of the fetus or that of the mother.<sup>68</sup> Rather, law acts as a technology to both monitor and control the reproductive decisions of particular populations of women—specifically those who are negatively impacted by race and class; the State of Texas provides a case-in-point.

In March of 2016, the Supreme Court heard arguments for *Whole Women's Health v. Hellerstedt*.<sup>69</sup> The case elevated to the Court because the State of Texas in 2013 passed legislation (HB 2) requiring clinics, which provided abortion services, to (a) have admitting privileges to a hospital no more than 30 miles from the respective facility, and (b) to meet the State standards for ambulatory surgical centers.<sup>70</sup> This requirement enacted by lawmakers in the name of protecting mothers and the fetus, worsened the already strained access to reproductive services in the State. Before the legislation took effect, just over forty licensed abortion centers in the State existed to service the nearly 5.4 million women of Texas

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65. ANGE-MARIE HANCOCK, THE POLITICS OF DISGUST: THE PUBLIC IDENTITY OF THE WELFARE QUEEN 1 (2004).

66. Norman Soloman, *Clinton on Sex: Poor Can't Handle It*, ORLANDO WKLY (Apr. 2, 1998), <https://www.orlandoweekly.com/orlando/clinton-on-sex-poor-cant-handle-it/Content?oid=2264360> [<https://perma.cc/G9AV-RD8U>].

67. *King v. Burwell*, 135 S. Ct. 2480 (2015).

68. *See Burwell v. Hobby Lobby Stores*, 573 U.S. 682 (2014).

69. *Whole Women's Health v. Hellerstedt*, 136 S. Ct. 2292 (2016).

70. *Id.* at 2296.

covering nearly 280,000 square miles.<sup>71</sup> This understanding is particularly important because clinics provide more than abortion services; clinics may also offer ultrasounds, routine Pap smear checks, alternative contraceptive methods, as well as various other women's health services in order to stabilize, preserve, and improve the health of women. Because of this, clinics that offer a full-range of healthcare services are vitally important to working-class women of color, particularly Black women. When HB 2 took effect, the number of clinics available offering full-range healthcare services for women, inclusive of abortion, fell to seven including only "one facility in Austin, two in Dallas, one in Fort Worth, two in Houston, and either one or two in San Antonio."<sup>72</sup> The implications both beyond and inclusive of abortion here are clear, especially when we consider that Black women are three to four times more likely to die during pregnancy or as a result of child-birthing complications as earlier mentioned.

Beyond the reduction in clinics, waitlist for various services surged—despite the alleged intention of the bill being to protect mothers; instead HB 2 placed mothers at greater, and potentially, irreparable risk. Indeed, the Court found, "[I]n our view, the record contains sufficient evidence that the admitting-privileges requirement led to the closure of half of Texas' clinics, or thereabouts. Those closures meant fewer doctors, longer waiting times, and increased crowding."<sup>73</sup> Moreover, the Court also found that the "number of women of reproductive age living in a county . . . more than 150 miles from a provider increased from approximately 86,000 to 400,000 . . . and the number of women living in a county more than 200 miles from a provider from approximately 10,000 to 290,000."<sup>74</sup> Important here is not only the increase in women encountering an undue burden in accessing services as a result of HB 2 but that an undue burden to services existed before HB 2; therefore, the bill operated in such a way so as to further harm an already vulnerable population. The decision of the Court in finding HB 2 unconstitutional did not alleviate the pre-existing strained services in Texas, nor did it provide redress for those who were negatively impacted as the case made its way to the Court. Consequently, the passing of HB 2, as well as the pronounced unconstitutionality of it, came to punish status as opposed to conduct. In this way, law is limited in its capacity to address the injuries of women who are negatively impacted by race and class, thereby permitting law to allow for the phenomenon of gendered duress to take place.

Gendered duress "is a choreography of law which imposes forced conditions of confinement, the persistent threat of a harm, and/or the constraining of rights[.]"

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71. *Id.*

72. *Id.* at 2301.

73. *Id.*

74. *Id.*

which produce “the hidden injury that Black women experience.”<sup>75</sup> Important in the concept of gendered duress is the approach to law as a type of social choreography, primarily because “it is a carefully crafted dance of disavowal and universalism in which violations” are permitted to legally persist.<sup>76</sup> Furthermore, gendered duress points to “lawful permitted bias resulting in the penalization of both a racialized and gendered status as opposed to conduct.”<sup>77</sup> Vital to gendered duress is “profound irreversible dispossession, negligence, and unyielding psychological trauma.”<sup>78</sup> Moving our attention to gendered duress compels us to reconsider what we mean when we assert that justice has been served (the Supreme Court ruled HB 2 unconstitutional, a decision which many deemed to be justice)—as a utilitarian approach to jurisprudence oftentimes necessitates that the injuries sustained by the most vulnerable in society will remain unaddressed. In situations such as these, oftentimes the population who is disproportionately impacted are Black women, which renders them as apparitions in society and, as a result, misrecognized.

In July of 2013, police in Brooklyn, New York, arrested thirty-seven-year-old Kyam Livingston.<sup>79</sup> After arresting Kyam, police transported her to Brooklyn’s central booking where she was placed in a crowded holding cell.<sup>80</sup> While jailed for several hours in an overcapacity space, Kyam repeatedly asked for help, complaining of severe abdominal pain.<sup>81</sup> Those in the cell with Kyam took her complaints seriously, as Aleah Holland, who was jailed with Kyam, was a registered nurse and recognized Kyam was in need of immediate medical attention due to her symptoms.<sup>82</sup> As a result, the women who were detained with Kyam and Aleah “banged on the bars calling for help;” however, officers told the women Kyam Livingston was an alcoholic who was drunk—ascribing both an assumed behavior and status to Kyam despite evidence which suggested otherwise.<sup>83</sup> As the women continued to plead for assistance, Aleah made an effort to explain what was taking place with Kyam in the crowded holding cell; for her advocacy Aleah was told by

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75. Antwann M. Simpkins, *Under Siege: Black Women, the Choreography of Law, and the Public Carceral Sphere* 79 (2016) (unpublished B.A. thesis, University of California, Los Angeles). ProQuest ID: Simpkins\_ucla\_0031N\_14750. Merritt ID: ark:/13030/m5101qvx.

76. *Id.*

77. *Id.* at 70.

78. *Id.* at 80.

79. I am deeply indebted to my student Omar Abdulkarim, who brought Kyam Livingston’s story to my attention during his illuminating presentation given in the Summer of 2018 at UCLA concerning Black Women and their encounters with police state violence.

80. *Brooklyn Mother Seeks Answers 4 years After Daughter’s Mysterious Death*, NEWS12, <http://brooklyn.news12.com/story/35945186/brooklyn-mother-seeks-answers-4-years-after-daughters-death> [https://perma.cc/F86D-DK6D] (last updated July 24, 2007, 6:52 AM).

81. *Id.*

82. Barry Paddock & Bill Hutchinson, *Cops Ignored Pleas as Inmate Kyam Livingston Died in Brooklyn Jail: Witness*, N.Y. DAILY NEWS (July 23, 2013), <https://www.nydailynews.com/new-york/brooklyn/cops-pleas-inmate-died-witness-article-1.1406255> [https://perma.cc/U8ND-4F67].

83. *Id.*

police officers to “shut up before we lose your paperwork and you won’t be seen by a judge.”<sup>84</sup>

With their pleas going ignored, as well as having little alternatives toward a remedy, the fifteen women who were packed into the cell managed to make space for Kyam on the bench; soon thereafter, Kyam began convulsing. As Kyam convulsed, in obvious need of medical care, an attending officer looked on and stated, “[J]ust let it play out.”<sup>85</sup> Emergency medical personnel were finally called between 5:30 a.m. and 6 a.m. Sunday morning.<sup>86</sup> By the time paramedics finally arrived Kyam had already passed away twenty minutes prior.<sup>87</sup>

In the final analysis, Kyam Livingston’s deadly encounter with the New York Police Department compels our attention to be directed toward the means by which Black women are perpetually misrecognized and cast as both disposable and non-credible within society. In the case of Kyam Livingston, state violence materialized as willful neglect and misrecognition causing her death. Furthermore, Kyam and Aleah’s repeated pleas for help allows us to understand how police state violence, the “hard” and social sciences, as well as law converge to cause both race and gender to matter in the twenty-first century.

Giving attention to the how of this contemporary social phenomenon is important in that biased science helps to shape how we see one another, as well as how individuals see themselves—particularly those who belong to a marginalized and/or stigmatized social group. Indeed, political scientist Melissa Harris-Perry offers the following statement:

An individual who is seen primarily as a part of a despised group loses the opportunity to experience the public recognition for which the human self strives. Further, if the group itself is misunderstood, then to the extent that one is seen as part of this group, that “seeing” is inaccurate. Inaccurate recognition is painful not only to the psyche but also the political self, the citizen self . . . [m]isrecognition in public has a profound impact on the private self.<sup>88</sup>

The misrecognition, which Harris-Perry speaks of, is important in that it generates what she terms the “crooked room.” Harris-Perry advances that when Black women “confront race and gender stereotypes [they] are standing in a crooked room, and they have to figure out which way is up.”<sup>89</sup>

Biased scientific endeavors such as BiDil, the many problematic theoretical approaches of both the “hard” and social sciences, as well as the societal impact of the science of law, have profound psychic ramifications in the lives of those whom

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84. *Id.*

85. *Id.*

86. *Id.*

87. *Id.*

88. MELISSA HARRIS-PERRY, SISTER CITIZEN: SHAME, STEREOTYPES, AND BLACK WOMEN IN AMERICA 38 (2011).

89. *Id.* at 29.

these areas of scientific inquiry silently target. Simultaneously, these divisions of intellectual inquiry and medical innovations also contribute toward the construction of the crooked room in which Black women are forcefully thrust into in the United States. Concerning the trauma an individual experiences when they are mis-recognized, Charles Taylor offers, “a person or group of people can suffer real damage, real distortion, if the people or society around them mirror back to them a confining or demeaning or contemptible picture of themselves.”<sup>90</sup> Differently stated, there is an unacknowledged injury that occurs in the lives of Black women because of biased scientific inquiry and social misrecognition; moreover, this injury continues beyond the immediate impacts of medical experimentation and violent disciplinary theoretical approaches.

In giving attention to how the lives of Black women tacitly inform scientific inquiry, we expose the underlying discriminative practices of an alleged objective intellectual enterprise. Simultaneously, what is also unveiled are the limits of law, particularly as it relates to its inability to provide redress to those who are impacted by more than one protected class. While this brief work focuses on the sciences and how these research areas cause race and gender to matter by silencing the presence of this intersection within its theoretical approaches, this silencing is not limited to the sciences.

As exemplified by Kyam Livingston, incarceration and police state violence—along with law, income inequality, hiring practices, and much more—contribute to the misrecognition and abuse Black women experience. Examining law reveals that the experiences of Black women are more than isolated incidents in which an individual violates their being. Rather, by centering the lives of Black women, such as Kyam Livingston, we gain an understanding that the problem at hand is structural in nature and individuals often act complicity in accordance with the discriminative disposition of the institution(s) in which they serve as opposed to challenging set norms. Indeed, the 1600 Black women who penned *African American Women in Defense of Ourselves* pointed to the correlation between individual actions and the discriminative nature of US social institutions:

As women of African descent, we express our vehement opposition to the policies represented by the placement of Clarence Thomas on the Supreme Court. The Bush administration, have obstructed the passage of civil rights legislation, impeded the extension of unemployment compensation, cut student aid and dismantled social welfare programs, has continually demonstrated that it is not operating in our best interests. Nor is this appointee.<sup>91</sup>

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90. Charles Taylor, *The Politics of Recognition*, in *MULTICULTURALISM: EXAMINING THE POLITICS OF RECOGNITION* 25 (Charles Taylor & Amy Gutmann eds., 1994).

91. *The Proclamation*, SISTERS TESTIFY, <https://www.sisterstestify.com/about/the-proclamation/> [<https://perma.cc/TA7A-UFMF>]; see Agnew, *supra* note 49; see also Sugie, *supra* note 50.

By ignoring Black women and silencing their voices as a lens of analysis, research as well as public officials and intellectuals, repeatedly situate Black women as counter-normative. This results in the lives and experiences of Black women being hidden in the substructures of academic work, thereby contributing to the perpetual experience of misrecognition Black women encounter. Scientific endeavors, no matter their specified disciplinary bounds, must carefully interrogate who and what inform their theoretical and methodological approaches. If we as researchers fail to critically evaluate the epistemological mooring of our disciplines, we risk perpetuating discriminative and violent work and simultaneously consigning Black women to be apparitions in the theory.