

REGENT UNIVERSITY SCHOOL OF LAW

JOURNAL OF GLOBAL JUSTICE AND PUBLIC POLICY

IN COLLABORATION WITH HANDONG INTERNATIONAL LAW SCHOOL

VOLUME 7

SPRING 2021

THE INTERSECTIONALITY OF RACE AND CLASS IN BIOETHICS

*Lynne Marie Kohm**

INTRODUCTION

The intersectionality of race and class in bioethics presents an opportunity to address how legal racial inequality intersects with class and legal status in bioethics.¹ Bioethics, the study of the implications of biological or biomedical advances, generally in fields of genetic engineering and research, shapes the public policy in this field of study.² This Article applies that discipline to reproductive health advances in the context of race.

Currently, advances in ongoing research in genetic engineering have provided us with a full set of instructions for creating a human being,³ and

* Professor and John Brown McCarty Professor of Family Law, Regent University School of Law. J.D. Syracuse, B.A. Albany. This material was also presented in January of 2021 at The Federalist Society National Convention, Faculty Scholars Panel.

¹ Intersectionality is the theory that the cumulative effects of various forms of discrimination connect in a complex way to “combine, overlap, or intersect especially in the experiences of marginalized individuals or groups.” *Intersectionality*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/intersectionality> (last visited Feb. 2, 2021). This concept is popularly applied to the intersection of two or more identities an individual may hold. Race and class are among those identities. *Id.* See Arica L. Coleman, *What is Intersectionality? A Brief History of the Theory*, TIME (Mar. 29, 2019), <https://time.com/5560575/intersectionality-theory/>.

² See generally BARRY FURROW ET. AL, *BIOETHICS: HEALTH CARE LAW AND ETHICS* vol. 2, 4–5 (W. Acad. 8th ed. 2018), the excellent casebook we use for Regent University School of Law’s course in Bioethics.

³ See generally JOHN S. FIENBERG & PAUL D. FEINBERG, *ETHICS FOR A BRAVE NEW WORLD* 21 (Crossway Books 2d ed. 2010); see also generally Lynne Marie Kohm, *Designer Babies: Are Test Tubes and Microbes Replacing Romance*, in *DESIGNER BABIES AND GENE EDITING: ARE WE READY FOR THIS?* (Scholars Press forthcoming 2021).

once created other advances have provided us with a myriad of avenues for choosing which human beings survive to birth.⁴ As the law races to catch up with science, it is imperative that exploring legal and ethical concerns can guide law and public policy, principally when a particular race, class, and social identity group experiences a most evident level of disparity. This Article seeks to apply these ideas to those who are identified with the classes of women and children⁵ of color.

Addressing the racial disparities that some face at the beginning of life is a critical aspect of working against racial discrimination. While evidence of discrimination in assisted reproductive technology (ART) is extremely challenging to discern,⁶ the most obvious empirical evidence for racism in bioethics appears to be in the abortion data rather than in ART,⁷ pointing to systemic racism.⁸ According to the New York City Health Department, thousands more Blacks are aborted than born, and the abortion rate for Black mothers is three times what it is for white mothers.⁹ The intersectionality of race and class in abortion is evident in

⁴ See Audrey K. Chapman, *Human Dignity in the Debate about Specific Reproductive Technologies*, HUMAN DIGNITY IN BIOETHICS: FROM WORLDVIEWS TO THE PUBLIC SQUARE 210, 210 (Stephen Dilley & Nathan J. Palpant eds., 2013) (discussing selection technologies for choosing which human embryos advance to birth and which do not).

⁵ Children as an identity group or a class have been categorized over the years in many ways, as possessing only minority legal status, to varied levels of legal responsibility. See generally LYNN D. WARDLE ET. AL., FAMILY LAW FROM MULTIPLE PERSPECTIVES 557 (West 2d ed. 2019). Children have been in the past categorized inappropriately in their legal statuses, most notably in illegitimacy, a status dependent not on their own being, but on the marital status of their parents. While once used as a category upon which to discriminate against children in a particular manner that legalization of illegitimacy of children has been essentially removed as a legal and social category upon which to discriminate against children. See *id.* at 197 “In a series of cases, the United States Supreme Court struck down laws disadvantaging children born out of wedlock, reasoning in part that innocent children should not be disadvantaged merely because their parents engaged in sexual relations outside of marriage.” *Id.* (excepting that illegitimacy may still have consequences for inheritance). The status of a child as born or unborn could be characterized as a social and legal identity that intersects here with race of the child and is the derivation for this Article. For a thorough discussion of the legal status of unborn children, see generally Paul Benjamin Linton, *The Legal Status of the Unborn Child Under State Law*, 6 ST. THOMAS J. L. PUB. POLY 141, 141–42 (2011).

⁶ See e.g., E. McClellan et al., *The Impact of Race and Ethnicity on ART Outcomes*, 106 FERT. & STER. E99, E99–100 (2016) (showing unexplainably low outcomes for minorities, and recommending further investigation).

⁷ Mary Zeigler, *Abortion Wars Have Become a Fight over Science*, N.Y. TIMES (Jan. 22, 2019), <https://www.nytimes.com/2019/01/22/opinion/abortion-roe-science.html> (discussing the law and medicine surrounding abortion).

⁸ See Jason Riley, *Let’s Talk About the Black Abortion Rate*, WALL ST. J. (Jul. 10, 2018), <https://www.wsj.com/articles/lets-talk-about-the-black-abortion-rate-1531263697>, with additional evidence referred to throughout Part I of this Article.

⁹ *Id.* (noting the shift in viewpoints and the lack of a solid understanding for that shift).

the combination of marginalization that exposes the disadvantages presented by extremely high abortion rates among people of color. For too long a sense of urgency has been missing in examining these issues, which has allowed them to become even more entrenched.

To date, biomedical ethics has been dominated by a principled approach that is not concerned with underlying theories and frameworks, but rather considers various issues of autonomy, beneficence, confidentiality, distributive justice, and pragmatism, operating in turn to influence law and public policy.¹⁰ The solution is a focused outcome-based approach by bioethicists that protects against systemic racial discrimination.

Initially it might appear that the heart of this question is the constitutionality of race selective abortion.¹¹ That will be further discussed in Part I, but this Article focuses on three converging questions: 1) Should bioethics law protect minorities? 2) Should bioethics and bioethicists advocate for protection from racial discrimination? 3) Are such policies essential to the survival and development of minority groups of color? Addressing each question considers the intersectionality of class and racism and bioethics. So while abortion may be constitutionally protected and part of current public policy, it may also be foundational to systemic racism in an intersectional manner.

Part I of this Article offers some compelling data showing racial disparity, while Part II fleshes out the substance regarding the three converging questions. Part III offers some solutions regarding bioethics and the duty and obligation of bioethicists to respond to and work to counter act and amend racism in bioethics, and particularly in reproductive health.

The debate over racism in abortion is a relatively new but critically important one,¹² made more precarious when considering the amplified

¹⁰ BARRY R. FURROW ET. AL, *BIOETHICS: HEALTH CARE LAW AND ETHICS*, 15–16 (West Acad. Pub. 2018) (discussing both consequentialist and deontological theories, utilitarianism, Kantian theories, religiously-based ethics, and natural law). James Mumford, *A Bioethics of the Strong*, *THE NEW ATLANTIS* 160, 161–162 (Winter 2021) (reviewing O. CARTER SNEAD, *WHAT IT MEANS TO BE HUMAN: THE CASE FOR THE BODY IN PUBLIC BIOETHICS* (Harvard 2020)), notes, “For Snead, American public bioethics already *does* have an anthropology, one it pretends not to have: expressive individualism.... [T]he heart of expressive individualism is the unencumbered self, the atomized individual, shorn of social ties, long on rights but short on duties.” This conundrum is at the heart of racism in bioethics.

¹¹ Tori Gooder, *Selective Abortion Bans: The Birth of a New State Compelling Interest*, 87 U. CIN. L. REV. 545, 550 (2018) (examining the rise of legal concern over this issue).

¹² See generally Zeigler, *supra* note 7 (discussing the role of science in the abortion debate).

and united cries against racial inequality.¹³ When threaded into the issues of status and class of children in bioethics, their intersectionality of the two become extremely consequential.

I. COMPELLING DATA

Black women make up less than 14% of the U.S. population,¹⁴ yet the Center for Disease Control (CDC) reports that minority women have some of the highest abortion rates.¹⁵ Evidence shows that 36% of all abortions abort Black babies.¹⁶ 27.1 of every 1000 Black women have an abortion whereas only 10 of every 1000 White women have abortions.¹⁷ In 2014, 18.1 of every 1000 Hispanic women received an abortion.¹⁸ These are the most recent numbers from 2019, declining a bit from 2011:

Nationwide today, black women terminate their pregnancies at a rate five times that of white women. For Latinas, the rate is more than double that of non-Latina whites (28 per 1,000 women compared with 11.) These startling differences reflect equally stark differences in the rate of unintended pregnancy. Forty percent of white women's pregnancies are unintended, compared with well over half among the two other groups. "Unintended," of course, does not necessarily mean unwelcome. But

¹³ See, e.g., Hedwig Lee et al., *The Demographics of Racial Inequality in the United States*, BROOKINGS (Jul. 27, 2020), <https://www.brookings.edu/blog/up-front/2020/07/27/the-demographics-of-racial-inequality-in-the-united-states/> (quantifying racial inequality in terms of justice, economic security, health, employment, and other categories); Jacqueline Howard & Kristen Rogers, *US Racial Inequality Just as Deadly as Covid-19, If Not More, Report Suggests*, CNN.com (Aug. 26, 2020), <https://www.cnn.com/2020/08/26/health/racial-inequality-death-rate-covid-19-wellness/index.html>.

¹⁴ See *QuickFacts*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/US#> (last visited Feb. 7, 2021).

¹⁵ See Emily Ward, *CDC: 36% of Abortions Abort Black Babies*, CNSNEWS.COM (Nov. 28, 2018), <https://www.cnsnews.com/news/article/emily-ward/blacks-make-134-population-36-abortions>.

¹⁶ *Id.*

¹⁷ See John Eligon, *When 'Black Lives Matter' is Invoked in the Abortion Debate*, N.Y. TIMES (July 6, 2019), <https://www.nytimes.com/2019/07/06/us/black-abortion-missouri.html>.

¹⁸ *Abortion Rates by Race and Ethnicity*, GUTTMACHER INST. (Oct. 19, 2017), <https://www.guttmacher.org/infographic/2017/abortion-rates-race-and-ethnicity>.

sometimes it means disaster. And the difference in the rates raises questions about barriers to access to contraception, not only financial but cultural, too complex to be reduced to a sound bite.¹⁹

More than one third of all abortions in America, or 19 million Black children have been aborted since 1973.²⁰ 2009 estimates from the CDC, the National Center for Health Statistics (NCHS) and the Guttmacher Institute, “showed that 11.9% of non-Hispanic white pregnancies were aborted, 17.1% of Hispanic pregnancies, and 35.5% of those of non-Hispanic Blacks.”²¹ The numbers for just one year are staggering.

Applied to the overall pregnancy figures, this translates into 383,000 abortions for whites, 252,000 abortions for Hispanics, and 445,000 abortions for blacks. Looked at in relation to other causes of death by race and ethnicity, this makes abortion responsible for 16.4% of white deaths—the third most significant cause behind heart disease and cancer. *But abortion is by far the leading cause for Hispanics, responsible for 64% of deaths, and for blacks, at 61.1%—close to two out of every three deaths experienced by these communities.*²²

These statistics should be alarming to anyone, and show further evidence of glaring racial disparity.²³ Bioethicists as a key collective

¹⁹ Linda Greenhouse, Opinion, *What Would Shirley Do?*, N.Y. TIMES (Feb. 9, 2011), <https://opinionator.blogs.nytimes.com/2011/02/09/what-would-shirley-do/> (citing, *Induced Abortion in the United States*, GUTTMACHER INST. (Sept. 2019), <https://www.guttmacher.org/fact-sheet/induced-abortion-united-states>).

²⁰ See Walt Blackman, *Abortion: The Overlooked Tragedy for Black Americans*, ARIZ. CAP. TIMES (Feb. 25, 2020), <https://azcapitoltimes.com/news/2020/02/25/abortion-the-overlooked-tragedy-for-black-americans/>.

²¹ Randall K. O'Bannon, *UNC Study Shows Enormity of Abortions Impact on Public Health, Minorities*, NAT'L RT. TO LIFE NEWS (Aug. 31, 2016), <https://www.nationalrighttolifenews.org/2016/08/unc-study-shows-enormity-of-abortions-impact-on-public-health-minorities/#.V6t7JY-cHIV>.

²² *Id.* (emphasis added) (offering 2016 statistics).

²³ See Tysharah Jones Gardner, *Race Selective Abortion Bans: A New Way to Prevent the Elimination of Minority Groups in the United States*, 7 REG. UNIV. J. GLOB.

should sense a compelling charge to search for solutions addressing the racism of high abortion rates in minority communities.

Race-selective abortion is a fairly new concept,²⁴ as women decide to get abortions for numerous reasons, from resource limitations, to lack of partner support, to career aspirations.²⁵ Only two U.S. states have tried to use their regulatory power to prohibit abortions based on race—Arizona²⁶ and Indiana.²⁷ Research has not suggested that women of color, or any woman, obtains an abortion based on the race of her unborn child.²⁸ This lack of data contributes to the fact that states seem to be avoiding race selective abortion bans.²⁹ It is possible that state legislators fear a backlash from the minority community, or that such legislation would not pass due to similar bills failing in other states.³⁰ Whatever the reason, it is unlikely that the Supreme Court will decide whether race selective abortions are constitutional in the near future, unless considered with other sex or disability selective abortion bans. Nevertheless, concerns over the engineered elimination of a race through abortion were expressed recently by the Supreme Court of the United States in a separate opinion by Justice Clarence Thomas.³¹

JUSTICE & PUB. POLY (forthcoming 2021). (Published in this issue of the *Journal of Global Justice and Public Policy*, whose research and ideas on this subject have been an important and crucial impetus to the ideas presented here).

²⁴ See Gooder, *supra* note 11, at 545.

²⁵ Lawrence Finer et. al., *Reasons U.S. Women Have Abortions: Quantitative and Qualitative Perspectives*, 37 PERSP. ON SEXUAL & REPROD. HEALTH 110, 115, 117 (2005).

²⁶ ARIZ. REV. STAT. ANN. § 13-3603.02(A)(1) (2011).

²⁷ IND. CODE ANN. § 16-34-4-8(a)(b) (2016). Challenged and found unconstitutional in *Planned Parenthood of Ind. & Ky., Inc. v. Comm'r of the Ind. State Dep't of Health*, 888 F.3d 300, 302 (7th Cir. 2018). On appeal to the Supreme Court of the United States, the High Court quickly denied the petition stating that the Court would follow its ordinary practice of waiting for other Courts of Appeal to consider the issue first. *Box v. Indiana*, 139 S. Ct. 1781, 1781–82 (2020).

²⁸ See *Banning Abortions in Cases of Race or Sex Selection or Fetal Anomaly*, GUTTMACHER INST. (Jan. 2020), <https://www.guttmacher.org/evidence-you-can-use/banning-abortions-cases-race-or-sex-selection-or-fetal-anomaly>.

²⁹ A race selective abortion ban would outlaw an abortion based on race of the child, not on the race of the mother or the father. See Gardner, *supra* note 23, at Section II. A. for legislative language.

³⁰ See S.B. 2790(1)(d)(3), 2014 Reg. Sess. (Miss. 2014), <https://legiscan.com/MS/bill/SB2790/2014>.

³¹ *Box v. Indiana*, 139 S. Ct. 1780, 1782–83 (2020) (Thomas, J., concurring), said the following: “Some believe that the United States is already experiencing the eugenic effects of abortion. . . . On this view, ‘it turns out that not all children are born equal’ in terms of criminal propensity. . . . And legalized abortion meant that the children of ‘poor, unmarried, and teenage mothers’ who were ‘much more likely than average to become criminals’ ‘weren’t being born.’ Whether accurate or not, these observations echo the views articulated by the eugenicists and by Sanger decades earlier: ‘Birth Control of itself . . . will make a better race’ and tend ‘toward the elimination of the unfit.’ *Racial Betterment* 11–12.” *Id.* at 1791. The full concurring opinion is an important read on racial

Furthermore, the topic of race selective abortion is a very sensitive one with multiple perspectives. Some in minority communities support legal access to abortion but nonetheless hold that it is morally wrong.³² Some in minority communities may hold that race selective abortion laws will infringe on a minority woman's right to have an abortion, or may be used as a continued tool of institutionalized racism.³³ Others may argue that "race-selective abortion laws are based on the idea that women of color are coerced into abortions or are complicit in a 'genocide' against their own community."³⁴ Still others argue that abortion and population control facilities are disproportionately placed in minority communities, targeting those communities, and that race selective abortion laws protect minorities from the pressures of these organizations.³⁵ Finally, others argue that abortion disparities are more appropriately a public health concern.³⁶

discrimination in America, in the context of eugenic engineering. While not the focus of this Article, and currently beyond its scope, it is important to also note that racial discrimination in abortion access has been discussed elsewhere, in equally compelling ways. See April Shaw, *How Race- Selective and Sex-Selective Bans on Abortion Expose the Color Coded Dimensions of the Right to Abortion and Deficiencies in Constitutional Protections for Women of Color*, 40 N.Y.U. REV. L. & SOC. CHANGE 545, 545 (2016).

³² See Eligon, *supra* note 17 (for example, civil rights activist Rev. Clinton Stancil stated "As much as I believe with all my heart about the killing, the taking of innocent lives, I also believe that I will never support giving white legislators, who have no interest in our community, the ability to tell our women what they can do with their bodies."); see Ward, *supra* note 15; see also Gardner, *supra* note 23 (for further discussion of these perspectives).

³³ This is a surmise, but it is evident that identity theory examines the disadvantage and obstacle even of motherhood. See e.g. Jane H. Aiken, *Motherhood as Misogyny*, WOMEN & L., 2020, at 20, 22 (discussing "the hidden expectation of selflessness incorporated in our consciousness and deeply embraced by our social structures" in the context of the author's lived experiences).

³⁴ *Banning Abortions in Cases of Race or Sex Selection or Fetal Anomaly*, *supra* note 28.

³⁵ Mark Crutcher et. al., *Racial Targeting and Population Control Abstract*, LIFE DYNAMICS (2011), <https://www.klannedparenthood.com/wp-content/themes/trellis/PDFs/Racial-Targeting-Population-Control.pdf>. See also an outline of this concern set forth in *Box v. Indiana*, *Box*, 139 S. Ct. at 15, 25, examples of this engineering in Black communities: "Avoiding the word 'eugenics' did not assuage everyone's fears. Some black groups saw "'family planning' as a euphemism for race genocide" and believed that "black people [were] taking the brunt of the 'planning'" under Planned Parenthood's "ghetto approach" to distributing its services." David Dempsey, *Dr. Guttmacher Is the Evangelist of Birth Control*, N.Y. TIMES MAG., Feb. 9, 1969, at 82. "The Pittsburgh branch of the National Association for the Advancement of Colored People," for example, "criticized family planners as bent on trying to keep the Negro birth rate as low as possible." Kaplan, *Abortion and Sterilization Win Support of Planned Parenthood*, N.Y. TIMES, at L50, col. 1 (Nov. 14, 1968).

³⁶ Christine Dehelendorf et. al., *Disparities in Abortion Rates: A Public Health Approach*, 103 AM. J. PUB. HEALTH, 1772 (Oct. 2013), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3780732/>.

What does seem intuitive is that a woman of color does not get an abortion based on the race of her child.³⁷ As Tysharah Jones Gardner notes, it is true that at one point in history Black women prevented the birth of their children to prevent their babies from experiencing the horrors of slavery,³⁸ but legislating on this racial issue might work to exacerbate discrimination, rather than protect against it. This issue affects white women as well who wish to abort a child by a man of a different race.³⁹ Still, it is clear that this is “a true crisis ... that there are more African-American babies being aborted than born.”⁴⁰ What cannot be overlooked is that these disparities in reproductive health outcomes work against unborn minority children and are unmistakably a form of racism – and quite potentially evidence of systemic racism.

In overcoming the trepidation that accompanies examining these issues, bioethicists, constitutionalists, and life science legal scholars can make important contributions. To accomplish this, they will need to consider three converging questions.

II. THREE CONVERGING QUESTIONS

Addressing the three questions stated at the outset become extremely important to reveal the issues surrounding this critical issue.

A. *Should bioethics and life science law protect minorities?*

Constitutional decrees are most relevant in answering this question. The United States Constitution prohibits discrimination based on race.⁴¹ The Thirteenth Amendment outlawed slavery,⁴² the Fourteenth Amendment secured citizenship rights to a race recently emancipated,⁴³

³⁷ *Banning Abortions in Cases of Race or Sex Selection or Fetal Anomaly*, *supra* note 28.

³⁸ Gardner, *supra* note 23; see also Loretta Ross, *African-American Women and Abortion: A Neglected History*, 3 J. HEALTH CARE FOR POOR & UNDERSERVED 274, 276 (1992). Ross argues that African-American women have always attempted to control their fertility. She points out that slave owners would often use African-American fertility for financial means and that the African-American women would often take contraceptives to resist slavery for them and their children. *Id.* at 276.

³⁹ See Gardner, *supra* note 23.

⁴⁰ Clare Hunter, *Abortion is Leading Cause of Death in Black Community*, CATH. REV. (Jan. 19, 2012), <https://www.archbalt.org/pro-lifer-says-abortion-is-leading-cause-of-death-in-black-community/>.

⁴¹ U.S. CONST., amend. XV, §1, XIV §1 (prohibiting racial discrimination in voting, and prohibiting governments from denying citizens of equal protection under the law).

⁴² *Id.* amend. XIII, §1.

⁴³ *Id.* amend. XIV, §1.

a race that through many generations had been held in slavery,⁴⁴ all the civil rights that the other races enjoy, upholding the rights of all citizens regardless of race or skin color.⁴⁵ Ending segregation in public places and banning employment discrimination based on race, color, sex, religion, or national origin, The 1964 Civil Rights Act secured in law prohibitions against treatment disparities based on race.⁴⁶ The United States Equal Employment Opportunity Commission (EEOC) was designed and developed to implement that Act to protect against racial discrimination in employment.⁴⁷

State constitutions, laws, and policies also include mandates against racial discrimination. The Fourteenth Amendment of the U.S. Constitution applies all federal laws to the several states,⁴⁸ and most states have protections from racial discrimination written into their own state constitutions.⁴⁹ Public demand and cultural pressure served to advance protections from racial discrimination, and cultural organizations such as the National Association for the Advancement of Colored People (NAACP) have been watchdogs against such discrimination, helping to promote the best interests of people of color for more than a century.⁵⁰

Faith perspectives throughout the United States also advance and foster the fair and equal treatment of all peoples, regardless of race. Scripture mandates that there is neither Jew nor Greek, slave nor free, male nor female, as all have, should enjoy, and must respect inherent

⁴⁴ Khushbu Shah & Juweek Adolphe, *400 Years Since Slavery: A Timeline of American History*, GUARDIAN (Aug. 15, 2019), <https://www.theguardian.com/news/2019/aug/15/400-years-since-slavery-timeline> (detailing some of those generations); *id.* (“Though enslaved Africans had been part of Portuguese, Spanish, French and British history across the Americas since the 16th century, the captives who landed in Virginia were probably the first slaves to arrive into what would become the United States 150 years later.”).

⁴⁵ U.S. CONST., amend. V.

⁴⁶ Civil Rights Act of 1964, 42 U.S.C. §1971 et seq., §201(a)–(b) (1988).

⁴⁷ See *Facts about Race/Color Discrimination*, U.S. EQUAL EMP. OPPORTUNITY COMM’N (Jan. 15, 1997), <https://www.eeoc.gov/laws/guidance/facts-about-racecolor-discrimination> (offering the guidance document detailing employment protections in conditions surrounding hiring, recruiting, advancement, compensation, harassment, retaliation, segregation, and classification of employees, etc.).

⁴⁸ U.S. CONST. amend. XIV, §1, §5.

⁴⁹ For a summary and update of these rights manifested in the several states, see Goodwin Liu, *State Constitutions and the Protections of Individual Rights: A Reappraisal*, 92 N.Y.U. L. REV. 1307, 1307–08 (Nov. 2017), (Liu’s piece is updating the premier original work on this subject: William J. Brennan, Jr., *State Constitutions and the Protections of Individual Rights*, 90 HARV. L. REV. 489, 489 (1977)).

⁵⁰ Begun in 1909, the National Association for the Advancement of Colored People (NAACP) has been active in culture and community to thwart and end racial discrimination. See *generally About Us*, NAACP, <https://www.naacp.org/> (last visited Mar. 7, 2021).

equality, as created in the image of the Creator.⁵¹ While brokenness seems to be central to our world, it is nonetheless deeply puzzling, as most people still have an intense innate desire for fairness, freedom and friendship.⁵² Based on federal law, state law, and faith traditions, there does seem to be a moral imperative to follow these principles. This leads to the second of our converging questions.

B. Should bioethics and life science law advocate for protection from racial discrimination?

Race and health science has experienced a windfall of scholarship in the wake of the tragedies brought upon people of color in the COVID-19 virus.⁵³ Race law generally has likewise seen an increased awareness in public concern over racial disparities in the general community.⁵⁴ These events have opened up for fresh viewing the intersectionality of race and health law, something feminist legal theory is most concerned with regarding reproductive health.⁵⁵

Arising out of feminist legal theory, the concept of intersectionality seeks to protect people and groups that experience discrimination from multiple sides and angles of their lives due to their social identities.⁵⁶ “Throughout the final decades of the 20th and the first decade of the 21st centuries, women of color published many groundbreaking works that highlighted these dynamics. In doing so they exposed the interlocking systems that define women’s lives.”⁵⁷ In this scholarship, black feminist legal scholars considered the abortion question, deeming it to be largely a personal moral choice.⁵⁸ This public support for abortion brought a shift

⁵¹ *Galatians* 3:28; *Colossians* 3:11; *Genesis* 1:27.

⁵² N.T. WRIGHT, *BROKEN SIGNPOSTS: HOW CHRISTIANITY MAKES SENSE OF THE WORLD* 4–6 (2020) (discussing the seven themes which function as signposts that enable us to make sense of a world that is not always right and fair, these signposts include justice, love, spirituality, beauty, freedom, truth, and power, all of which are central to fairness and equality, but which are now broken in some significant way).

⁵³ See e.g. the research and work of Vernellia R. Randall, *Dying While Black – Covid-19: Another Manifestation of the Impact of Chronic Racial Stress*, RACE, RACISM & L. (Dec. 12, 2020), <https://racism.org/covid-19/covid-19-articles/8681-dying-while-black-covid19>. See also generally Howard, *supra* note 13.

⁵⁴ Again, the efforts of Vernellia R. Randall are important here. See Randall, *supra* note 53.

⁵⁵ See, e.g. Rebecca J. Cook, *International Human Rights and Women’s Reproductive Health*, 24 *STUD. FAM. PLANNING* 73, 73 (1993), <https://www.jstor.org/stable/2939201> (discussing the impact of feminist thinking on abortion).

⁵⁶ See Arica L. Coleman, *What is Intersectionality? A Brief History of the Theory*, *TIME* (Mar. 29, 2019), <https://time.com/5560575/intersectionality-theory/>.

⁵⁷ *Id.* Citing e.g. BEVERLY GUY-SHEFTALL, *WORDS OF FIRE: AN ANTHOLOGY OF AFRICAN AMERICAN FEMINIST THOUGHT* (The New Press 1995), as a leading feminist scholarship of women of color.

⁵⁸ See Rebecca J. Cook, *supra* note 55, at 73.

in African-American policy and thinking on abortion, promoting it in a new way, despite historical opposition from the black religious community to abortion.⁵⁹

It now seems clear that these early efforts toward understanding intersectionality have not considered the alarming statistics and facts presented in Part I. One must question why they have been ignored, even exacerbated, creating unintended consequences. Barriers to contraception access, both financially and culturally, have been suggested by feminist opinions.⁶⁰ What was perceived as a way to protect women of color from the harm and tragedy of illegal back-alley abortion appears to have been turned on its head to vast harm on a much larger scale, to the great detriment of the very race of the women they sought to protect.

I'm certain that Shirley Chisholm, who died in 2005 at the age of 80, would be distressed to know that the shibboleths she risked her career to fight are even more potent in today's wired world than they were in the days when abortion was a crime. Those of us privileged to live in the world that she helped to make have an obligation to resist the cynicism of those who know better and the recklessness of those who don't.⁶¹

Feminist legal theory should be protecting the lives of black women and children, lives that face discrimination from multiple angles. Rather, it seems that very same theory has controverted intersectionality to have surrendered or forfeited black lives to its own theory, in a manner. In the face of such egregious statistics as those presented herein, bioethics and life science law must indeed advocate for protection from racial disparity in reproductive health. Scholarship cited here has led to greater equality in other areas, and in a logical and natural progression, this scholarship is obligated to be applied to this issue as well.

Critical race theory (CRT) scholarship may also shed light on these issues. CRT approaches racism by analyzing systems and biases embedded in social structures, recognizing claims that systemic racism is

⁵⁹ See generally *About Us*, CHISHOLM PROJECT, <http://chisholmproject.com/about-us> (last visited Mar. 7, 2021) (outlining and detailing this important shift).

⁶⁰ Greenhouse, *supra* note 19.

⁶¹ *Id.*

part of the American life, and challenging beliefs that allow it to flourish.⁶² This Article is seeking to challenge systemic racism in the context of race and abortion. CRT is axiomatic, providing an approach to grappling with a history of what is referred to as white supremacy that rejects the belief that what is in the past is in the past, and that the laws and systems that grow from that past are essentially detached from it.⁶³ While the theory was started as a way to examine how laws and systems promote inequality,⁶⁴ it has since expanded. "Critical race theory attends not only to law's transformative role which is often celebrated, but also to its role in establishing the very rights and privileges that legal reform was set to dismantle...."⁶⁵ CRT should be leading the way in questioning, researching, and curbing the high black abortion rate. By not doing so it has abdicated its foundational responsibility of remedying racial inequality.

It is likely that within critical race circles abortion is perceived as liberating black women from oppression,⁶⁶ yet that very perception misses the alarming disparity in numbers of aborted blacks. The tangible reality is that all women, which includes minority women, who wish to keep their babies, require emotional, financial, and social support if they are not to abort their children.⁶⁷ These concrete goods are as critical, and even more important than, the theory. Yet, theories are helpful in that they serve as ideological guardrails to leading the way out of the oppression of the skyrocketing abortion of black Americans. It could make a tremendous difference, and is something bioethicists should turn their ears to in protecting against racism in America and globally. "Critical race theory

⁶² See *Critical Race Theory (1970s – present)*, PURDUE U., https://owl.purdue.edu/owl/subject_specific_writing/writing_in_literature/literary_theory_and_schools_of_criticism/critical_race_theory.html (last visited Mar. 8, 2021) (detailing the rise of the theory and significant terms used to apply and advance it).

⁶³ See generally Victor F. Caldwell, *Book Note: Critical Race Theory*, 96 COLUM. L. REV. 1363, 1363–64 (1996) (reviewing KIMBERLÉ CRENSHAW et. al., *CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT* (The New Press 1995)).

⁶⁴ *Critical Race Theory*, *supra* note 62. CRT scholarship also emphasizes the importance of finding a way for diverse individuals to share their experiences. However, CRT scholars do not only locate an individual's identity and experience of the world in his or her racial identifications, but also their membership to a specific class, gender, nation, sexual orientation, etc. They read these diverse cultural texts as proof of the institutionalized inequalities racialized groups and individuals experience every day. *Id.*

⁶⁵ Faith Karimi, *What Critical Race Theory Is – and Isn't*, CNN (Oct. 1, 2020), <https://edition.cnn.com/2020/10/01/us/critical-race-theory-explainer-trnd/index.html>.

⁶⁶ Carl R. Trueman, *Evangelicals and Race Theory*, FIRST THINGS (Feb. 2021), <https://www.firstthings.com/article/2021/02/evangelicals-and-race-theory>. ("Critical theory, whatever form it takes, relies on the concept of false consciousness – the notion that the oppressors control society so completely that the oppressed believe their own interests are served by the status quo.")

⁶⁷ *Finer et. al.*, *supra* note 25.

is American in its origin and content, but Black Lives Matter (BLM) has given it currency worldwide.”⁶⁸ When Black Lives Matter is invoked in an abortion debate black women and children can be unfairly juxtaposed against each other.⁶⁹ CRT and BLM ought to proffer and advance the significance and importance of black lives at all stages of black life, including the initial beginning of black life, for both mother and child. Here the politics of racial identity and class identity intersect in the particular context of abortion.

The politics of abortion, while inappropriately boxing in women to one view— that of pro-abortion,⁷⁰ must be balanced with the reality of systemic racial disparity in the highest abortion rates of all women being experienced by minority women, thus the intersectionality of race and class in bioethics. Equality means protection of life of all races, which requires and demands abetting and supporting better minority birth rates.

The evidence presented in this section unveils that bioethics and life science law should advocate for protection from racial discrimination, and when appropriately applied race theories can be helpful in leading the way toward this justice. This leads to the third converging question.

C. Are such policies essential to the survival and development of minority groups of color?

To determine what effect, if any, the survival and development of minority groups of color may be based on minority abortion rates, or how great that effect is on the survival of minority groups, a quick review of mortality rates is necessary.

⁶⁸ Trueman, *supra* note 66 (discussing how the CRT portrays power struggles and solidified oppression into a self-justifying system, and a comprehensive explanation for all evils).

⁶⁹ Eligon, *supra* note 17 (“The racial intolerance that exists in the country is an intrinsic part of the discussion. ‘Black Lives Matter,’ a motto born of the abuse black people suffer at the hands of police officers, can be heard on both sides of the abortion debate among black people, with one side emphasizing the life of the mother and the other the fetus.”).

⁷⁰ Not all women are politically, socially, or morally favorable toward abortion. See, e.g. Lynne Marie Kohm & Colleen Holmes, *The Rise and Fall of Women’s Rights: Have Sexuality and Reproductive Freedom Forfeited Victory?*, 6 WM & MARY J. WOMEN & L. 381, 394 (2000); Lynne Marie Kohm, *Sex Selection Abortion and the Boomerang Effect of a Woman’s Right to Choose: A Paradox of the Sceptics*, 4 WM & MARY J. WOMEN & L. 91, 91, 96 (1997). Both of these articles discuss how not all women favor abortion even though abortion may be perceived as freeing women it has worked to harm women.

For the last twenty years mortality rates for people of color have declined.⁷¹ Age-adjusted death rates for “black adults declined through 2011 and 2012 respectively, and then were stable through 2017.”⁷² Furthermore, the difference in death rates between non-Hispanic white and non-Hispanic Black adults has generally narrowed.⁷³ While death rates for Blacks over 65 were about 5 percentage points higher than white death rates for people of the same age group, those numbers are nearly the same now at the end of the second decade of the 21st century.⁷⁴ These demographics on minority populations are important to consider and review, and they are very different from the minority abortion rate.

Total fertility rate is another important factor to address especially when contrasted with the minority abortion rate. “The total fertility rate is an estimation of the number of children who would theoretically be born per 1,000 women through their childbearing years (generally considered to be between the ages of 15 and 44) according to age-specific fertility rates.”⁷⁵ These fertility rates are “different from the birth rate, in that the birth rate is the number of births in relation to the population over a

⁷¹ Sally C. Curtin & Elizabeth Arias, *Mortality Trends by Race and Ethnicity Among Adults Aged 25 and Over: United States 2000–2017*, NAT'L CTR. FOR HEALTH STAT. (July 2019), <https://www.cdc.gov/nchs/products/databriefs/db342.htm#ref1>.

⁷² *Id.* (“Rates for Hispanic adults were always lower than for non-Hispanic white and non-Hispanic black adults. The difference in age-adjusted rates between Hispanic and non-Hispanic black adults remained relatively stable over the period, whereas the difference in rates between Hispanic and non-Hispanic white adults widened. The difference in age-adjusted death rates between non-Hispanic white and black adults was reduced by almost one-half over the period, from 24% lower for non-Hispanic white adults in 2000 to 13% lower in 2017. Among those aged 25–44, all race and ethnicity groups experienced increases in death rates more recently, with greater percentage increases for non-Hispanic white and non-Hispanic black adults than for Hispanic adults. Trends for Hispanic adults aged 45–64 differed from trends for non-Hispanic white and black adults. After declining from 2000 through 2011, death rates for Hispanic adults aged 45–64 remained steady from 2011 through 2017. Rates for non-Hispanic white and non-Hispanic black adults increased recently, from 2010–2011 to 2017, with a greater percentage increase for non-Hispanic white adults than for non-Hispanic black and Hispanic adults. For adults aged 65 and over, all race and ethnicity groups showed general declines over the period, with non-Hispanic black adults experiencing the greatest percentage decline. The findings in this report are consistent with previous research showing that Hispanic adults in the United States have traditionally had lower mortality and higher life expectancy than non-Hispanic white and non-Hispanic black adults. This report also shows that the mortality advantage for Hispanic adults has endured through 2017 and has been increasing with respect to non-Hispanic white adults.”).

⁷³ *Id.* (citing to specific aspects of the study in their summary).

⁷⁴ *Id.* at fig. 4.

⁷⁵ *Total Fertility Rate by Ethnicity U.S. 2018*, STATISTA (Nov. 28, 2019), <https://www.statista.com/statistics/226292/us-fertility-rates-by-race-and-ethnicity/>.

specific period of time.”⁷⁶ The total fertility rate (TFR) is the best indicator of a population group’s increase or decline over time, and a rate of 2.1 is needed to maintain a population. “The fertility rate for all ethnicities in the U.S. was 1,729.5 births per 1,000 women” or 1.729 in 2018,⁷⁷ with the Black TFR of 1.79, the Hispanic TFR of 1.96, and the white TFR of 1.64.⁷⁸

These facts seem to indicate that race of a population is not a factor for either increased death rates nor for decreased total fertility rates. Considering these indicators alongside abortion statistics provides clarity in that minority populations, particularly Black Americans, are consequentially experiencing tremendous disparity in the number of persons lost to abortion, rather than to normal death or declining births. An examination of the entire life span of a person is important,⁷⁹ and further research would not be unhelpful here. It is also clear that bioethics policies that protect racial minorities could very well be quite helpful, if not essential, to the survival and development of minority groups of color.

The answer to the third converging question is affirmative in that such policies would protect Black children from racial discrimination at the beginning of their lives and are essential to the survival and development of minority groups of color.

The three questions posited at the outset have assisted in clarifying and contrasting the interlocking issues crystalizing the concerns surrounding this critical issue. These answers are not exhaustive, and further research may more fully develop the solutions suggested herein.

III. AMENDING AND RECTIFYING RACISM IN BIOETHICS

One initial hurdle in amending and rectifying racism inherent in bioethics is the level of distrust of the health care system held generally by minorities.⁸⁰ This distrust is not surprising and more than

⁷⁶ *Id.* For a fuller view of TFR in America over the past 200 years *see generally* Aaron O’Neill, *Total Fertility Rate in the United States from 1800 to 2020*, STATISTA (Feb. 17, 2021), <https://www.statista.com/statistics/1033027/fertility-rate-us-1800-2020/>.

⁷⁷ *Total Fertility Rate by Ethnicity U.S. 2018*, *supra* note 75.

⁷⁸ *Id.* (“Native Hawaiian and Pacific Islander women had the highest fertility rate of any ethnicity in the United States in 2018, with about 2,106.5 births per 1,000 women.”).

⁷⁹ As stated by one concerned about this issue, “[t]hose who are most vocal about abortion and abortion laws are my white brothers and sisters, and yet many of them don’t care about the plight of the poor, the plight of the immigrant, the plight of African-Americans,” said the Rev. Dr. Luke Bobo, a minister from Kansas City, Mo., who is vehemently opposed to abortion. ‘My argument here is, let’s think about the entire life span of the person.’” Eligon, *supra* note 17. I would like to thank Lee Otis of the Federalist Society for challenging me to pursue these facts in the context of this thesis during my presentation of this material at the 2021 Annual Convention’s Faculty Scholarship Panel.

⁸⁰ *See generally* Randall, *supra* note 53, at 191–92.

understandable given the tragic and sad history of medical experimentation endured by Black Americans throughout America's history.⁸¹

This distrust extends to bioethics research and scholarship. Leading bioethics scholars are asking "Who are the gatekeepers in bioethics? Does editorial bias or institutional racism exist in leading bioethics journals?"⁸² When researchers analyzed the composition of the editorial boards of 14 leading bioethics journals by country, they found a clear bias against representation of members from minorities and developing countries.⁸³ "This severe underrepresentation of bioethics scholars from developing countries on editorial boards suggests that bioethics may be affected by institutional racism, raising significant questions about the ethics of bioethics in a global context."⁸⁴ This discovered reality was accompanied by a concern for greater racial fairness in bioethics scholarship. These same bioethics experts have also come to the conclusion that "[g]lobal health and ethics are far more effectively served by egalitarian partnerships between local and global experts working together to identify and reduce health inequities in culturally competent ways. Bioethics journals must open their pages to the whole of humanity."⁸⁵

Furthermore, bioethicists themselves are starting to come to the conclusion that their field must consider and be more active against systemic racism.⁸⁶ "The problems of racism and racially motivated violence in predominantly African American communities in the United States are complex, multifactorial, and historically rooted. While these problems are also deeply morally troubling, bioethicists have not

⁸¹ *Id.* at 191 (citing fears about the AIDS epidemic of the 1980s and the experimentation on the Tuskegee airmen during WWII).

⁸² Subrata Chattopadhyay & Catherine Myser & Raymond De Vries, *Bioethics and Its Gatekeepers: Does Institutional Racism Exist in Leading Bioethics Journals?* 10 *BIOETHICAL INQUIRY* 7 (2013).

⁸³ *Id.* (using an index called "Human Development Index" to assess national involvement in bioethics publications).

⁸⁴ *Id.*

⁸⁵ *Id.* at 8–9 (noting that some "members have redoubled influence by serving on the editorial and advisory boards of more than one bioethics journal, yet again multiplying the exclusion of would be developing country board members.").

⁸⁶ See Patrick R. Granzka, Jenny Dyck Bryan & Janet K. Shim, *My Bioethics Will Be Intersectional or It Will Be [Bleep]*, 16 *AM. J. BIOETHICS* 27 (Mar. 16, 2016), <https://www.tandfonline.com/doi/abs/10.1080/15265161.2016.1145289?journalCode=uajb20>; KARLA F. HOLLOWAY, *PRIVATE BODIES, PUBLIC TEXTS: RACE, GENDER, AND A CULTURAL BIOETHICS* (Duke Univ. Press 2011); Laura Mamo and Jennifer Fishman, *Why Justice?: Introduction to the Special Issue on Entanglements of Science, Ethics, and Justice*, 38 *SCIENCE, TECH., & HUM. VALUES* 159 (2013); ALONDRA NELSON, *SOCIAL LIFE OF DNA: RACE, REPARATIONS, AND RECONCILIATION AFTER THE GENOME* (Beacon Press 2016); and DOROTHY E. ROBERTS, *FATAL INVENTIONS: HOW SCIENCE, POLITICS, AND BIG BUSINESS RE-CREATE RACE IN THE TWENTY-FIRST CENTURY* (The New Press 2012).

contributed substantially to addressing them.”⁸⁷ Indeed, bioethicists themselves are realizing that they not only need to be more proactive but they need to be part of the solution, stating that they “should contribute to addressing these problems.”⁸⁸ Bioethicists have been “glaringly absent from ongoing social movements to combat racism.”⁸⁹ Some bioethics scholars have called this racial problem “unbearable whiteness.”⁹⁰ Bioethics needs and has the capacity and “obligation to engage in a robust and sustained anti-racist politics.”⁹¹

This obligation not only addresses racism, but to do something about it must include confronting the data that reveals disparities facing minorities. To affect change, rather than engaging a one-dimensional approach, a different multi-faceted and multi-layered approach, indeed one of intersectionality is needed, as supported by leading bioethicists.⁹² “Thus intersectionality compliments and extends the essential work of bioethics that aims to intervene and transform disparities in health status and effects of unequal access to medical science and technologies.”⁹³ In this Article I have argued that reproductive health cannot and should not be excluded from this transformation simply because abortion is a political issue. Abortion’s heightened political friction should increase its importance and make it all the more imperative to intersectionality scholars and bioethicists, especially considering the immense racial disparities revealed in the statistical evidence.

The confluence of abortion’s political significance, the minority community’s distrust of the health care system, and distrust of bioethics scholarly structures, reveals a knotted and interwoven fabric that is harmful to minorities.

Polls show that most African-Americans support at least some form of legal access to abortion. More than 33 percent of African-Americans said they believed that abortion should be legal under any

⁸⁷ Marion Danis, Yolanda Wilson & Amina White, *Bioethicists Can and Should Contribute to Addressing Racism*, 16 AM. J. BIOETHICS 3 (2016) (noting that “concern for justice is one of the core commitments of bioethics.”).

⁸⁸ *Id.*

⁸⁹ Granzka, *supra* note 86, citing Danis, *supra* note 87.

⁹⁰ Kahan Parsi, *The Unbearable Whiteness of Bioethics: Exhorting Bioethicists to Address Racism*, 16 AM. J. BIOETHICS 1 (2016), <https://www.tandfonline.com/doi/full/10.1080/15265161.2016.1159076>.

⁹¹ Granzka, *supra* note 86 (agreeing wholeheartedly with this premise).

⁹² *Id.* (arguing exactly as I have here, that the rich intersectional and intellectual history of Black feminism should be invoked and highly involved in this discussion); *see* discussion *supra*, Part II. B.

⁹³ *Id.*

circumstance, and 47 percent said they favored allowing it under certain conditions, according to Gallup polls.

Still, those who believe abortion should be legal, the polls suggest, want limits. More than a third of both black and white respondents said abortion should be legal “in only a few” circumstances. Black and white Americans opposed abortion at similar rates: Around 16 percent of African-Americans said it should be illegal in all circumstances, compared with 17 percent of white respondents.⁹⁴

These complex views pull back the curtain on the African American community’s desire for protections against racism in bioethics, specifically in abortion and reproductive health. Bioethicists, minorities, and legal scholars seem to agree that things as they are now are not as they could, or should, be.

The value of life for Black human beings, for Black women, and for Black children should be undervalued and unvalued no longer.⁹⁵ Racial value can and ought to be embedded into bioethics public policy, and it can and should be done by bioethicists, bioethics scholars, researchers, engineers, doctors, and all health specialists who deal with reproductive health. The facts on racial disparity in abortion cannot and should not go undiscussed, or unfronted, any longer.

Abortion has been characterized as the most common form of death in America,⁹⁶ and that fact is all the more profound for minorities, as evidenced by the alarming effects on national mortality rates of minorities.⁹⁷ “How long will justice be crucified and truth bear it?”⁹⁸ When the intersection of race and class in abortion are considered together the “consequences are enormous, across the board, but the impact is

⁹⁴ Eligon, *supra* note 17.

⁹⁵ In 1994 Professor Lee Sigelman wrote the important book *BLACK AMERICANS’ VIEWS OF RACIAL INEQUALITY: THE DREAM DEFERRED* (Cambridge Univ. Press 1994).

⁹⁶ Danny David, *Study: Abortion is the Leading Cause of Death in America*, LIVEACTIONNEWS.ORG (Aug. 11, 2016, 01:44PM), <https://www.liveaction.org/news/unc-study-demonstrates-effect-of-abortion-on-minorities-and-public-health/>.

⁹⁷ O’Bannon, *supra* note 21; “Unlike most health studies or mortality statistics, authors James Studnicki, Sharon J. Mackinnon, and John W. Fisher chose to include deaths from abortion as human fatalities.” David, *supra* note 96.

⁹⁸ Martin Luther King, Jr., *Our God is Marching on!*. THE MARTIN LUTHER KING, JR. RSCH. AND EDUC. INST. (March 25, 1965), <https://kinginstitute.stanford.edu/our-god-marching>.

absolutely devastating on Black and Hispanic communities. When one considers not only the lives, but the years lost, the loss is staggering.”⁹⁹

Fortification of Black families is needed to combat racism in bioethics. Bioethicists can offer meaningful contributions to the public discourse, to the needed further research, to teaching students and law students particularly of the need to combat systemic racism in this area.¹⁰⁰ Training medical professionals in guarding against this systemic racism at the time of abortion can be extremely helpful, as can “policy development, and academic scholarship in response to the alarming and persistent patterns of racism and implicit biases associated with it.”¹⁰¹ Amending and rectifying racism in bioethics is absolutely essential, and should go undone no longer.

CONCLUSION

Bioethics is critical to fairness and equality in American reproductive science, and it should be a cohesive, integrated, dynamic area of law that can address critical issues of racial disparity. An important discussion must ensue among legal scholars toward protection against systemic racial discrimination from the very beginnings of life.

This Article has presented some facts that can no longer be ignored, while attempting to draw together the issues presented in this data via three key questions. Those questions are focused on issues related to the intersectionality of race and class for certain persons. This Article has also offered some solutions on this intersectionality in the bioethics of race and class, and the duty and obligations of bioethicists and legal scholars to respond and to work to counteract and amend racism in bioethics, most particularly in reproductive health.

When considering the current cries against racial inequality, the debate over racism in abortion is a critically important one. Combined with the status and class of women and children in bioethics, the intersectionality of the two become extremely consequential for not only the present, but for future generations.

A focused and targeted outcome-based approach by bioethicists that protects against systemic racial discrimination is possible, and right, and good, and ought to be pursued. Based on the shared common interest in protecting against racial discrimination, the issues surrounding race selective abortion as potentially discriminatory are pivotal legal concerns.

⁹⁹ O’Bannon, *supra* note 21 (examining and analyzing the multidimensional areas of loss because of the loss of these lives in the minority community).

¹⁰⁰ Danis, *supra* note 87 (offering details on these strategies).

¹⁰¹ *Id.* (noting also that to “make any useful contribution, bioethicists will require preparation and should expect to play a significant role through collaborative action with others.”).

Bioethicists along with American law and public policy makers must move forward against racism in bioethics, with close particular attention in reproductive health.