

# The New York Times

## A WOMAN'S RIGHTS: PART 4 **Slandering the Unborn**

BY THE EDITORIAL BOARD

**L**egislative intrusion into the womb has a long history in the United States, and nowhere is this paternalism more forceful than when illegal drugs are part of the equation. If the country's war on drugs functions as a system of social control, that control is doubly exercised when a fetus is involved.

Today, with some notable exceptions, the nation is reacting to the opioid epidemic by humanizing people with addictions — depicting them not as hopeless junkies, but as people battling substance use disorders — while describing the crisis as a public health emergency. That depth of sympathy for a group of people who are overwhelmingly white was nowhere to be seen during the 1980s and 90s, when a cheap, smokable form of cocaine known as crack was ravaging black communities across the country.

News organizations shoulder much of the blame for the moral panic that cast mothers with crack addictions as irretrievably depraved and the worst enemies of their children. The New York Times, The Washington Post, Time, Newsweek and others further demonized black women “addicts” by wrongly reporting that they were giving birth to a generation of neurologically damaged children who were less than fully human and who would bankrupt the schools and social service agencies once they came of age.

The myth of the “crack baby” — crafted from equal parts bad science and racist stereotypes — was debunked by the turn of the 2000s. But by then, the discredited notion that cocaine was uniquely and permanently damaging to the unborn had been written into social policies and the legal code. By the time the epidemic was over, the view that the fetus was a person with rights superseding the mother's had gained considerable traction in practice.

Hospitals that served indigent women began drug testing

newborns and reporting the findings to authorities who placed children in foster care or held them in hospitals for months — sometimes based on inaccurate drug tests.

Prosecutors leveraged the myth to expand the war on drugs into the womb, charging pregnant women with serious crimes — child abuse, distributing drugs to a minor or even assault with a deadly weapon.

The Supreme Court of South Carolina took it one step farther, agreeing with the state attorney general at the time, Charles Condon, in “his assertion that a viable fetus is a person,” The Times wrote in 1998, and that “a woman who uses illegal drugs while she is pregnant can be charged with neglect, manslaughter, even murder.” Mr. Condon took pride in referring to the fetus of a crack user as “a fellow South Carolinian.”

Today, that war on the womb targets even legal drugs like antidepressants that also pose no danger to the unborn. All women who use such drugs are vulnerable. But — as during the crack epidemic — poor women are the most vulnerable.

### **The War Against “Crack Mothers”**

Crack cocaine was not an exotic concoction, as it was often described when it appeared in the mid-1980s. It was made by dissolving powdered cocaine in water, combining it with baking soda and cooking it down into smokable pebbles — known as “rocks.” They contained about one tenth of a gram of pure cocaine in a medium that consisted mainly of baking soda and air. The \$10 sale price made crack accessible to poor people who could never have come up with the \$200 or more that affluent users paid for a gram of powder. Crack produced an intense but fleeting high that pushed many users to buy again and again until they ran out of money.

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As the economist Roland Fryer and his colleagues showed a decade ago, competition among gangs for control of the drug market drove up the murder rate among African-Americans between 1985 and the early 1990s. For African American children, the epidemic also brought along with it increases in the fetal death rate, the percentage of low-birth-weight babies and the number of children placed in foster care.

These serious concerns warranted public policy intervention. But the scourge of crack was still new in 1985 when the *New England Journal of Medicine* published a research paper that changed how the news media — and by extension the public — viewed the epidemic.

The author, Dr. Ira Chasnoff, asserted, based on a handful of cases, that the children of mothers who had used crack remained smaller, sicker and less social than other infants. He noted the limitations of his study and cautioned that rigorous research would be needed.

The idea of a mentally impaired “crack baby” resonated with long-held racist views about black Americans. It captured the imaginations of reporters, politicians, school officials and others who were historically conditioned to believe just about anything about the African-American poor.

As the medical writer Harriet Washington wrote of this period in her book “*Medical Apartheid*,” Dr. Chasnoff’s provisional research “was swallowed whole, then regurgitated in a racialized form by newspaper, magazine and even medical accounts.”

Americans were told on the nightly news that crack exposure in the womb destroyed the unique brain functions that distinguish human beings from animals — an observation that no one had ever connected to the chemically identical powdered form of the drug that affluent whites were shoveling up their noses. The legal scholar Dorothy Roberts argues in her reproductive history “*Killing the Black Body*” that, by focusing on maternal use of a drug associated with black people, the press promoted the notion that the “monstrous crack-smoking mother” was typical of black women.

The appetite for stories of black depravity extended to medical journals, which favored shoddy studies showing that cocaine harmed babies over better research refuting that claim. Eugenicists who had long sought justification for sterilizing African-American women found some affirmation for that view when, in 1989, *The Washington Post* opinion writer Charles Krauthammer noted in a widely syndicated column that black women were

spawning “a bio-underclass” of impaired children “whose biological inferiority is stamped at birth.” This disability was said to be “irrevocable.” Mr. Krauthammer went on to say that “the dead babies may be the lucky ones.”

News organizations embraced far-fetched ideas like the one advanced by doctors who believed they could discern babies who had been exposed in the womb by the tone of their cries. In 1990, *Time* magazine argued that the case for limiting the rights of women — and elevating the rights of fetuses — was gaining strength, based on the fact that maternity wards around the country were ringing “with the high-pitched ‘cat cries’ of crack babies who may face life long handicaps as a result of their mothers’ drug use.”

The *Times* amplified the “damaged generation” theory, too. This editorial page argued in 1989 that it would cost more than \$700 million to prepare fewer than 20,000 children for school in the state of Florida alone — a figure that was clearly drawn from myth. The former executive editor Abe Rosenthal, in a column entitled “*The Poisoned Babies*,” urged the authorities to suspend the parental rights of crack-addicted women, a course of action that had already been shown to drive women away from treatment and provide substandard care for many children.

In 1990, a front-page story in *The Times* warned that “inner-city schools, already strained by the collapse of families and the wounds of poverty, will face another onslaught this fall — the first big wave of children prenatally exposed to crack.” The reporter who wrote the piece, Susan Chira, said recently that she would “unwrite” the story if she could and has since come to understand that the damage theories put forward by medical and school professionals three decades ago were “far too alarmist and totally unsubstantiated.”

## **The Legacy of a Myth**

Researchers debunked the “damaged generation” theory numerous times, finding no indication that children exposed to crack in the womb faced long-term debilitation and that the effects once tied to exposure were attributable to other drugs like alcohol and tobacco, or to factors associated with poverty, including homelessness and domestic violence. It has become increasingly clear how unjustified American lawmakers and journalists were in singling out overwhelmingly black crack users over consumers of powdered cocaine, tobacco or alcohol — all of which are far more widely used.

Nevertheless, policies had already been written in stone. At the height of the epidemic, Congress passed an infamous bill that included what became known as the 100-to-1

rule. It mandated a 10-year sentence for anyone caught with 50 grams of crack — about the weight of a candy bar. To get a similar sentence, a dealer would need to be caught with enough of the powdered version of the drug to fill a briefcase.

For some mothers, the stakes were higher than prison time. In 1995, Suzanne Sellers tested positive for drugs when she gave birth to her son. She got clean, but an Illinois caseworker coerced her to sign away her parental rights anyway. Now in her 50s, Ms. Sellers worked for years to begin to rebuild her relationship with her children. “I will go to my grave regretting signing over my rights,” Ms. Sellers said.

As the anthropologist Kelly Ray Knight shows in her book “Addicted. Pregnant. Poor,” crack hysteria drove a draconian new welfare policy that “sacrificed poor women — especially black, crack smoking mothers — on the altar of ‘reform.’” In 1996, for example, Congress denied food stamps and welfare payments for life to people convicted of drug felonies — many of whom happened to be women with children in desperate need of medical or mental health care.

Legislative initiatives with roots in crack hysteria continued to resonate across the country. As Lynn Paltrow, the founder and executive director of National Advocates for Pregnant Women, noted a decade ago: “New legislative proposals on the subject of drug-using pregnant women appear each year throughout the country at both the federal and state levels. Unfortunately, legislators continue to introduce highly punitive bills proposing to criminalize pregnancy and addiction, to mandate sterilization of women who give birth despite addiction problems and to treat a single positive drug test as presumptive child neglect.”

These legislators seized upon the twin fallacies of the “crack baby” epidemic — the notion that the drug was uniquely and permanently damaging and that pregnant women used it by choice instead of because of the disease of addiction — to promote the view that fetuses “needed to be protected from dangerous mothers who would kill them.” And prosecutors who should know better are still using the myth to reduce women from human beings with rights to mere vessels for carrying the unborn.

The story of the “crack baby” shows how weak science, poorly informed crusaders and racist attitudes can work

together to shape public policy. We now grapple with questions about whether opioids or even legal marijuana are harmful during pregnancy, not to mention the thousands of breathless studies on drugs like alcohol, caffeine or Tylenol. But the science around pregnancy needs to be approached with humility and humanity. Because when that’s lost, even in a quest for social good, the results can be irreversible.