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BLACK-MARKET ADOPTIONS IN TENNESSEE: A CALL FOR REPARATIONS

*Hannah Noll-Wilensky**

INTRODUCTION

Today, adoption is a widely celebrated, well-established method of creating a family and providing children in need with loving homes. However, in the early twentieth century, adoptable children were considered undesirable and many child welfare professionals advised would-be parents to avoid adoption altogether.¹ One woman, the director of the Tennessee Children's Home Society, worked to reshape Americans' perception of adoption and adoptable children over the course of several decades beginning in the 1920s.² Georgia Tann was a key figure in popularizing adoption in the United States³—her efforts led to the unquestionable improvement of many children's lives going forward.⁴ However, her methods were sculpted by eugenics prejudices, exploitation of poor families, and human trafficking.⁵ With the aid of many public officials in Tennessee, Tann built a black-market adoption business based in Memphis which harmed countless indigent families in the region.⁶ The state-sanctioned abuses of birth parents and their children, who were illegally taken by Tann and her cohorts, merits redress.

This Note traces the history of this heartbreaking story and proposes a framework for launching reparations. Section I provides the historical

* J.D. Candidate, 2020, University of California, Hastings College of the Law; B.A. in Psychology and Minor in Gender Studies, Lewis and Clark College, 2012; I dedicate this paper to two inspiring women. First, to Professor Jennifer Dunn, who encouraged me write and publish this piece. Second, to my incredible mother who guided me to this story. I am so grateful to have had your support in this labor of love.

1. Ellen Herman, *Adoption Narratives*, THE ADOPTION HISTORY PROJECT, (Feb. 24, 2012), <https://pages.uoregon.edu/adoption/topics/adoptionnarratives.htm> [https://perma.cc/W5Q4-AXKM].

2. BARBARA BISANTZ RAYMOND, *THE BABY THIEF: THE UNTOLD STORY OF GEORGIA TANN, THE BABY SELLER WHO CORRUPTED ADOPTION* 7 (1st ed. 2007).

3. LISA WINGATE, *BEFORE WE WERE YOURS*, 337 (1st ed. 2017).

4. *Id.*

5. *See generally* RAYMOND, *supra* note 2.

6. *Id.* at 336.

context in which this illegal operation took place. Section II discusses the black-market adoption business in Memphis and the complicity of state officials at the highest levels of Tennessee's government. In conclusion, Section III delineates recommended steps Tennessee can take to enact a comprehensive reparations program and addresses challenges such an undertaking would likely face.

Truthfully, there exists no remedy capable of providing full relief from the immeasurable harm inflicted upon the victims of The Tennessee Children's Home Society. However, this is no excuse for continued inaction. Contemporary leaders in Tennessee have a duty to mitigate the ongoing suffering of those impacted and prevent such injustice from resurfacing in future generations.

I. HISTORICAL CONTEXT

A. PAVING THE WAY FOR A BLACK-MARKET ADOPTION OPERATION IN MEMPHIS, TENNESSEE

Massachusetts passed the first modern adoption law in the United States in 1851.⁷ However, adoption remained rare throughout the nineteenth century.⁸ A stigma against unmarried mothers and "illegitimate" children prevented families from considering adoption.⁹ Additionally, "many professionals serving unmarried mothers did not believe in adoption."¹⁰ For example, the director of a nationwide network of maternity homes felt that a mother should "atone for the behavior that led to her unmarried motherhood" by caring for her child.¹¹ Furthermore, families that did adopt were largely motivated by labor and profit rather than a desire to provide a home for a child in need.¹² Adopted children were often used as farm labor or sent to factories to earn a wage for their adoptive family.¹³ However, increased industrialization and mechanization in the last half of the century eventually reduced the relative demand for unskilled child labor.¹⁴ This prompted a shift in Americans' views on adoption and

7. Alice Bussiere, *The Development of Adoption Law*, 1 ADOPTION Q., no. 3, 1991, at 3, 5.

8. VIVIANA A. ZELIZER, *From Baby Farms to Black-Market Babies: The Changing Market for Children*, in SOCIOLOGY OF FAMILIES: READINGS 106, 106 (Linda Purrington ed., Pine Forge Press 1999).

9. ELIZABETH S. COLE & KATHRYN S. DONLEY, *History, Values, and Placement Policy Issues in Adoption*, in THE PSYCHOLOGY OF ADOPTION, 276 (David M. Brodzinsky ed. Oxford University Press 1990).

10. *Id.*

11. *Id.*

12. RAYMOND, *supra* note 2, at 46.

13. COLE & DONLEY, *supra* note 9, at 275.

14. FAMILY & CHILD. SERV. DIVISION, MN DEPT. OF HUMAN SERV., ORPHANAGES: AN HISTORICAL OVERVIEW A DISCUSSION OF THE ROLE OF ORPHANAGES IN CHILD WELFARE POLICY 2 (Mar. 1995).

on children in general.

Enactment of a series of child labor laws led to the demise of the child labor force. Consequently, the American public began placing less emphasis on children's earning potential, and more weight on their sentimental value.¹⁵ This was an important cultural shift because children were no longer seen as immutable products of their parentage.¹⁶ By the late nineteenth century, Americans had gradually accepted the idea that children were products of their environment and could be shaped by proper nurturing.¹⁷ As a result, the prospect of adoption became more attractive.¹⁸ A 1905 article in *Cosmopolitan* celebrated adoption as an opportunity to transform "a plebian into a lord . . . the little ones go from the doorsteps and sewers, to comfort always, and sometimes to luxury."¹⁹ These changing attitudes spurred interest in adoption, but another social movement arising during the same time period cautioned would-be adoptive parents.

As adoption gained increased acceptance, the American eugenics movement simultaneously took root in the early 1900s and spanned almost a half century.²⁰ The movement's advocates espoused a deterministic belief that mental illness, poverty, criminality, and other undesirable traits were hereditary.²¹ Eugenicists based their arguments on Gregor Mendel's theory of genetic inheritance, which claimed certain characteristics are passed from one generation to the next through DNA.²² Studies showing that American prisons, psychiatric hospitals, and charitable institutions often housed people who were related to each other bolstered these claims.²³ Social and academic acceptance of American eugenics impacted public policy and the law through passage of compulsory sterilization laws in over thirty states.²⁴ In 1927, the Supreme Court upheld a challenge to Virginia's eugenics-based sterilization law in *Buck v. Bell*.²⁵ In holding the forced sterilization of an eighteen-year-old girl lawful, Justice Holmes stated that "[t]hree generations of imbeciles are enough."²⁶ Under this decision,

15. RAYMOND, *supra* note 2, at 46.

16. MARILYN IRVIN HOLT, *THE ORPHAN TRAINS: PLACING OUT IN AMERICA* 18 (1994).

17. *Id.*

18. *Id.*

19. ZELIZER, *supra* note 8, at 106.

20. Michael G. Silver, Note, *Eugenics and Compulsory Sterilization Laws: Providing Redress for the Victims of a Shameful Era in United States History*, 72 *GEO. WASH. L. REV.* 862, 862 (2004).

21. *Id.* at 864-865.

22. *Id.*

23. Karen Norrgard, *Human Testing, the Eugenics Movement, and IRBs*, 1 *NATURE EDU.* 170 (2008).

24. Silver, *supra* note 20, at 862.

25. *Buck v. Bell*, 274 U.S. 200, 205(1927).

26. *Id.* at 207.

various states forcibly sterilized over 60,000 people.²⁷ As a result of theories prevalent during the eugenics movement, Americans became afraid to adopt.²⁸ Georgia Tann, a social worker in Memphis, Tennessee, would later endeavor to change the perception of adoptable children as genetically flawed, while simultaneously emphasizing the inherent inadequacies of their birth parents.²⁹

Memphis, Tennessee, experienced a series of devastating losses in the late nineteenth century that made it particularly susceptible to becoming a hub for black-market adoptions in the twentieth century. A devastating yellow fever epidemic struck Memphis in 1878, killing over 5,000 of the city's 40,000 residents.³⁰ The epidemic caused many of the city's professionals, businessmen, and political leaders to flee the city, plunging it into poverty.³¹ The vacuum of political leadership was filled by a succession of corrupt politicians eager to accept bribes and turn a blind eye to illegal activities.³² The most powerful was Edward "Boss" Crump, who became mayor of Memphis in 1909.³³ He extorted money from brothels, saloons, and gambling clubs, collecting as much as \$80,000 in a single year in exchange for protection from prosecution and police harassment.³⁴ Crump was widely feared and wielded significant influence over law enforcement, judges, and state legislators.³⁵

Georgia Tann developed close ties with Crump, whose support facilitated the success of her black-market adoption scheme in Memphis.³⁶ A decline in birth rates of white Americans also helped to set the stage for Tann's successful business.³⁷ Between 1850 and 1915, the annual birth rate for white Americans dropped nearly forty percent.³⁸ This "shortage" of white children helped Tann sell the idea that each child was precious, even those born to unworthy parents.³⁹ This theory proved to be a highly profitable one for Tann. Memphis was ripe for underground businesses and the Great Depression made indigent families even more vulnerable to those who sought to prey on them.

27. Silver, *supra* note 20, at 863.

28. RAYMOND, *supra* note 2, at 11.

29. RAYMOND, *supra* note 2, at 11.

30. Thomas H. Baker, *YELLOWJACK: The Yellow Fever Epidemic of 1878 in Memphis, Tennessee*, 42 BULL. HIST. OF MED. 241, 241 (1968).

31. RAYMOND, *supra* note 2, at 22.

32. *Id.* at 38.

33. *Id.*

34. David Tucker, *Edward Hull "Boss" Crump*, TENN. ENCYCLOPEDIA, (last updated Mar. 1, 2018), <https://tennesseeencyclopedia.net/entries/edward-hull-and-crump/> [<https://perma.cc/442U-EW7Y>].

35. RAYMOND, *supra* note 2, at 40.

36. *Id.* at 41.

37. *Id.* at 46.

38. *Id.*

39. *Id.*

II. GEORGIA TANN, THROUGH HER WORK AT THE TENNESSEE CHILDREN'S HOME SOCIETY, ROBBED NUMEROUS FAMILIES IN THE MEMPHIS REGION OF THEIR CHILDREN. MANY MEMBERS OF THE TENNESSEE STATE GOVERNMENT WERE COMPLICIT IN TANN'S ILLEGAL ACTIONS

A social worker from Memphis, Tennessee, Georgia Tann, oversaw an operation that profited from the abduction, and subsequent adoption, of thousands of children born to low-income families from 1924 through 1950.⁴⁰ The story of Georgia Tann and the Memphis branch of the Tennessee Children's Home Society is a tragic paradox.⁴¹ The organization undoubtedly rescued many children from dangerous circumstances and accepted children who were unwanted and placed them in caring homes.⁴² However, "there is also little doubt that countless children were taken from loving parents without cause or due process and never seen again by their. . . biological families."⁴³ While building her black-market business, Tann helped shape modern American adoption.⁴⁴

As discussed in section I, when Tann began her work in Tennessee in the 1920s, adoption was rare, but growing in popularity. Influenced by her involvement in the American eugenics movement, Tann espoused a philosophy of social work that dichotomized the poor and the wealthy.⁴⁵ She argued that low-income parents were incapable of proper parenting.⁴⁶ Rather than take a Mendelian view of poverty and advocating for sterilization, Tann viewed poor, white children as "blank slates" in need of rescue.⁴⁷ She aimed to save them by removing them from their "lowly" parents and placing them for adoption with people of "high type."⁴⁸ Tann "developed both her business and the institution of adoption by doing something unprecedented: making homeless children acceptable, even irresistible, to childless couples."⁴⁹ She accomplished this by insisting that they were neither children of sin nor genetically flawed.⁵⁰ Rather, they were born untainted, and if adopted at an early age, could be molded into

40. Lois Cooper, *Georgia Tann: A Story of Stolen Babies*, NEWTON COUNTY, MISSISSIPPI HISTORICAL AND GENEALOGICAL SOCIETY (May 2, 2019), https://www.nchgs.org/html/a_story_of_stolen_babies.html.

41. WINGATE, *supra* note 3, at 336.

42. *Id.*

43. *Id.*

44. RAYMOND, *supra* note 2, at 11.

45. *Id.* at 34.

46. *Id.* at 53.

47. *Id.*

48. WINGATE, *supra* note 3, at 337.

49. RAYMOND, *supra* note 2, at 47.

50. *Id.*

whatever the adoptive parents wished them to be.⁵¹ With this theory, Tann did much more than popularize adoption.⁵² She commercialized it by charging adoptive parents exorbitant fees and marketing children in nationally syndicated newspaper ads.⁵³ By the time Tann's operation was closed down in 1950, she had illegally amassed a fortune "of \$1 million (equivalent to roughly \$10 million today) while employed at the Tennessee Children's Home Society."⁵⁴

As her marketing of adoption gained traction within Tennessee and across the United States, Tann increasingly augmented her supply of orphans with kidnapped children from the Memphis region.⁵⁵ Tann specifically targeted "single mothers, indigent parents, women in mental wards, and those seeking help through welfare services and maternity clinics."⁵⁶ Fear of Tann's connections to Edward "Boss" Crump's Memphis political machine drove city workers to participate in Tann's operation—including hospital nurses, physicians, Juvenile Court employees, and deputy sheriffs.⁵⁷ Tann had "spotters" who worked in maternity wards of local hospitals who would alert her when poor, white women went into labor.⁵⁸ Birth mothers were convinced to sign releases for adoption "while under postpartum sedation, were told that turning over temporary custody was necessary to secure medical treatment for their children or, in some cases, were told their babies had been stillborn."⁵⁹ Tann did not focus her operation solely on infants, however. Older children who lived through stints in the Tennessee Children's Home Society reported having been taken from playgrounds, front porches, roadsides while walking home from school, and houseboats along the Mississippi River.⁶⁰ They were told that their parents had suddenly died or could no longer keep them.⁶¹ Tann also used her intricate network of connections to make contacts with doctors and lawyers in West Tennessee who persuaded unwed mothers to give up their babies in exchange for medical care.⁶² In essence, poor families who lived, stayed, or visited the Memphis area were at risk of having their children taken during Tann's tenure, particularly those with blue eyes and

51. RAYMOND, *supra* note 2, 47.

52. *Id.*

53. *Id.* at 7.

54. WINGATE, *supra* note 3, at 338.

55. RAYMOND, *supra* note 2, at 61.

56. WINGATE, *supra* note 3, at 336.

57. RAYMOND, *supra* note 2, at 70.

58. *Id.* at 73.

59. WINGATE, *supra* note 42, at 336.

60. *Id.*

61. *Id.*

62. Linda T. Austin, *Babies for Sale: Tennessee Children's Adoption Scandal*, 49 TENN. HIST. Q. 91, 93 (1990).

blonde hair.⁶³

Tann bribed judges and city workers to falsify the records of kidnapped children to increase their appeal to potential adoptive parents and to prevent birth parents from locating them.⁶⁴ She frequently changed the birth dates of the children she placed for adoption, lowering their age to satisfy clients' wishes for young adoptees.⁶⁵ Tann also reduced the ages of babies by weeks or months and often subtracted years from the ages of older children.⁶⁶ She would even go as far as changing the birth names and descriptions of the birth parents on birth certificates.⁶⁷ For example, doctored birth records often listed the birth mother as having a "society woman" for a mother and a "prominent physician" for a father.⁶⁸ Additionally, falsified records largely listed that the children were voluntarily given up by their birth parents.⁶⁹ In an effort to conceal her activities, adoption files in West Tennessee counties listed the placement of the children as Tennessee, though most were placed in New York and California.⁷⁰ Adoptive families were given completely false information on their adoptive child's background and were provided with counterfeit birth certificates. These tactics were especially successful in obstructing birth parents' attempts to find their lost children.

Memphis courts played a significant role in making Tann's illegal adoption operation possible, especially Camille Kelley, a long time Judge of the Shelby County Juvenile Court.⁷¹ Judge Kelley not only expedited transfers of custody of scouted children to Georgia Tann, she coerced families in her courtroom to relinquish their children to the State to increase the numbers of children ending up at the Tennessee Children's Home Society.⁷² While advising parents struggling with illness, unemployment, or divorce, Judge Kelley terminated their parental rights against their will and transferred custody of their children to Tann.⁷³ In one instance, Judge Kelley threatened to have a father prosecuted for incest if he refused to relinquish custody of his daughter.⁷⁴ Using these methods, Kelley provided Tann with around twenty percent of the more than five thousand children she placed for adoption.⁷⁵ Kelley, and other Memphis

63. RAYMOND, *supra* note 2, at 61.

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.* at 47.

68. *Id.* at 90.

69. *Id.*

70. Austin, *supra* note 62, at 93.

71. RAYMOND, *supra* note 2, at 55.

72. *Id.* at 64.

73. *Id.* at 56.

74. Austin, *supra* note 62, at 98.

75. RAYMOND, *supra* note 2, at 56.

judges that Tann bribed, routinely ruled against birth parents seeking to challenge the constitutionality of the state's assumption of custody over their children in habeas corpus suits.⁷⁶ Abe Waldauer, an attorney for the Tennessee Children's Home Society, wrote to Tann in 1937 about a mother who had sued to regain custody of her baby.⁷⁷ In his letter, he boasted that his cross-examination had reduced the woman to "mincemeat" and that he had her "convinced her of her own unworthiness."⁷⁸ The Memphis legal system's implicit endorsement of Tann's black-market adoptions reflected the widespread assumption at the time that the poor were inherently unfit to raise their children.

While directing roundups of local children, Tann simultaneously worked on changing the public perception of adoption. She spent time visiting merchants door-to-door, soliciting donations and espousing the benefits of adoption.⁷⁹ Tann emphasized that adoptions benefited not only children, but also taxpayers because they would be spared the cost of maintaining orphanages and subsidizing unsuitable parents—particularly single mothers.⁸⁰ She mentioned the tax aspect often, and in the 1930s claimed to have saved Memphians \$218,000 by arranging two thousand adoptions.⁸¹ As early as 1928, Tann began running "baby ads," newspaper advertisements bearing photos of children at the Tennessee Children's Home Society.⁸² The photos were underscored with captions like "Yours For the Asking," "Want a Real, Live Christmas Present?" and "Are You in the Market for a 14-Month-Old Boy?"⁸³ Tann ran approximately 400 child advertisements between 1929 and the early 1940s.⁸⁴ The advertisements specifically targeted wealthy families and were incredibly successful.⁸⁵ By 1935, Tann had waiting lists with the names of couples from across the United States, Canada, and South America.⁸⁶ Her celebration of children adopted by wealthy, well-known families helped to popularize the idea of adoption in general and dispel the belief that orphaned children were undesirable.⁸⁷ The high-profile list of adoptive parents included political figures such as New York governor Herbert Lehman and Hollywood celebrities Joan Crawford, June Allyson, and Dick Powell.⁸⁸ To the general

76. RAYMOND, *supra* note 2, at 55.

77. *Id.* at 50.

78. *Id.*

79. *Id.* at 54.

80. *Id.*

81. *Id.*

82. Austin, *supra* note 62, at 93.

83. WINGATE, *supra* note 3, at 336.

84. RAYMOND, *supra* note 2, at 64.

85. *Id.*

86. *Id.* at 48.

87. WINGATE, *supra* note 3, at 337.

88. *Id.*

public, Tann was seen as a motherly philanthropist who devoted her life to rescuing children in need.⁸⁹

Tann was heralded as the “Mother of Modern Adoption” and played a significant role in shaping national adoption policy.⁹⁰ The general lack of adoption regulations at the time allowed Tann to exploit loopholes in the few existing laws and lobby state legislatures to enact laws favorable to her operation.⁹¹ Tann’s clients included U.S. congressmen, state representatives, and state senators.⁹² Thus, she had legislators who were particularly inclined to support her policy efforts on both the state and national levels. Testifying before the Tennessee Legislature in 1947, Tann argued it was “better for the adoptive child to grow up in another city where there will be little or no interference from the natural parent.”⁹³ This led the state to replace a statute requiring adoptive parents to be state residents with one that legalized adoption by out-of-state residents.⁹⁴ Additionally, Tann strongly advocated for laws authorizing “closed adoptions,” by which records of an adopted child’s biological parents are kept sealed.⁹⁵ Tann’s backers in various legislatures argued they were trying to protect children from the taint of illegitimacy and ensure that adoptive parents were free from the fear that birth families would one day attempt to disrupt the newly created family.⁹⁶ Her advocacy efforts led to the passage of laws that closed birth and adoption records in several states, many of which remain in effect today.⁹⁷ Herbert Lehman, New York’s governor in the 1930s, adopted three children from the Tennessee Children’s Home Society and signed a series of bills that sealed the original birth certificates of adoptees in that state.⁹⁸ Tann’s success in shaping these laws across the country led national magazines to describe her as “the foremost leading light in adoption laws.”⁹⁹ She delivered speeches in Washington D.C., New York, and other major cities, advised Eleanor Roosevelt on child welfare, and was personally invited to attend President Truman’s inauguration.¹⁰⁰ Famous author, Pearl Buck, asked Tann to

89. WINGATE, *supra* note 3, at 337.

90. *Id.*

91. Austin, *supra* note 62, at 98.

92. RAYMOND, *supra* note 2, at 56.

93. Austin, *supra* note 54, at 94.

94. RAYMOND, *supra* note 2, at 58.

95. Austin, *supra* note 62, at 94.

96. Gabriel Glaser, *Don’t Keep Adopted People in the Dark*, N.Y. TIMES, (June 17, 2018), <https://www.nytimes.com/2018/06/17/opinion/closed-adoptions-birth-certificates.html> [<https://perma.cc/AP4R-NZ5Z>].

97. *Id.*

98. *Id.*

99. RAYMOND, *supra* note 2, at 54.

100. *Id.*

collaborate on a book about adoption.¹⁰¹ At the height of her popularity, few outside of Tann's inner circle would have guessed that these laws were designed to protect a massively profitable black-market adoption operation.

Tann's network managed to operate largely unchecked for decades, but it began to crumble in the early 1940s.¹⁰² In 1941, The Tennessee Children's Home Society was dropped from membership in the Child Welfare League.¹⁰³ The League outlined three main deficiencies leading to its decision: 1) failure to adequately investigate the adopting homes in which children were placed; 2) any investigations that were completed were done so by workers lacking proper education and professional training; and 3) the advertising of children for adoption.¹⁰⁴ Tann had first attracted suspicion after failing to respond to repeated warnings from the League's executive director demanding a halt to the adoption advertisements she had been running.¹⁰⁵ The Home's ousting from the Child Welfare League prompted a local Probate judge, Samuel Bates, to write a letter to the Tennessee Commissioner of Public Welfare asking for an investigation into Tann's organization.¹⁰⁶ Judge Bates asserted that the Tennessee Children's Home Society had failed to follow the advice of its medical advisors on health and sanitation, resulting in the deaths of up to fifty children in its facilities.¹⁰⁷ Additionally, Bates' letter contended that Tann and her colleagues had used unfair tactics, including blackmail, to defeat adoption law reform in Tennessee.¹⁰⁸ However, Governor Jim McCord refused to initiate an investigation into the agency for fear of participating in anything "which might lead to undue publicity with the legislative session."¹⁰⁹ Files of the former welfare commissioner, Paul Sauvage, later revealed that there was an internal attempt in the Governor's office to withhold information from the public about the black-market adoptions.¹¹⁰ It was not until 1950 that Governor Gordon Browning, elected on a promise to end the corrupt politics in Memphis, brought some of Tann's misdeeds to the public's attention.¹¹¹ Browning held a press conference that year highlighting only Tann's financial crimes, namely illegally pocketing money from the adoptions and failing to share her profit with the state-funded agency she represented.¹¹² Tann had charged as much

101. RAYMOND, *supra* note 2, at 54.

102. Austin, *supra* note 62, at 94.

103. *Id.*

104. Austin, *supra* note 62, at 94.

105. RAYMOND, *supra* note 2, at 89.

106. *Id.*

107. *Id.* at 95.

108. *Id.*

109. *Id.* at 97.

110. *Id.*

111. WINGATE, *supra* note 3, at 338.

112. RAYMOND, *supra* note 2, at 11.

as \$10,000 for adoptions, equivalent to roughly \$140,000 today.¹¹³ Within days of the press conference, Tann succumbed to uterine cancer and died at home in her own bed.¹¹⁴ She was never held accountable for her crimes against countless indigent families in the state.¹¹⁵

Although the Tennessee Children's Home Society was shut down following Governor Browning's press conference, the full extent of the cruel treatment of the children in the agency's care did not come to light until years later.¹¹⁶ Browning appointed attorney Robert Taylor to investigate the Tennessee Children's Home Society.¹¹⁷ Although, there was one caveat to this appointment, Taylor was prohibited from viewing the court records of judges who had procured children for Tann or her business or private records.¹¹⁸ In 1951, a bill was also introduced in the state legislature to empower a full-scale investigation in the Home and those connected with it.¹¹⁹ However, the bill died in committee due to opposition from vestiges of the Crump political machine still in power.¹²⁰ The effort to defeat the bill was driven by legislators desperate to protect their own reputations and in some cases, preserve their own adoptions.¹²¹ A similar proposal for a federal investigation was also quashed by those who had financially benefitted from Tann's operation.¹²²

In the wake of Governor Browning's 1950 press conference, birth parents' pleas for help in finding their children were largely ignored.¹²³ The general public sentiment was that the children were better off where they were, having been lifted out of poverty, no matter the circumstances of their adoptions.¹²⁴ Despite birth parents' demand for return of their children, Legislators worked quickly to pass legislation legalizing even the most egregiously conducted adoptions and sealing their records.¹²⁵ For example, Tennessee passed the Public Acts of 1951 which made confidential all records "involving an adoption or attempted adoption of a person."¹²⁶ Some children whose adoptions were legalized had only been in adoptive homes for less than a week when Tann's crimes were revealed to

113. RAYMOND, *supra* note 2, at 69.

114. WINGATE, *supra* note 3, at 338.

115. *Id.*

116. *Id.*

117. RAYMOND, *supra* note 2, at 12.

118. *Id.*

119. Austin, *supra* note 62, at 99.

120. *Id.*

121. *Id.*

122. RAYMOND, *supra* note 2, at 12.

123. *Id.* at 11.

124. WINGATE, *supra* note 3, at 338.

125. *Id.*

126. TENN. CODE ANN. § 36-1-127 (West 2014).

the public.¹²⁷ Of the twenty-two wards remaining in Tann's care at the time of her death, only two were returned to their birth parents.¹²⁸ Separated families resorted to hiring private investigators to find their lost children and pursued decades worth of lawsuits to have the sealed adoption records reopened.¹²⁹

It was not until 1995 that the records would finally be opened to the victims of the Tennessee Children's Home Society.¹³⁰ Hundreds of adoptees, birth parents, and even adoptive parents testified before the Tennessee state legislature advocating for a bill which would repeal the Public Acts of 1951 and grant adoptees access to their adoption records.¹³¹ Members of the Tennessee Coalition for Adoption Reform, led by adoptees who had been under Georgia Tann's care, lobbied strenuously to have the proposed bill passed.¹³² The 1995 Public Acts Chapter 532 passed in the Tennessee Senate and House of Representatives and went into effect in July, 1995.¹³³ The law allowed "all adoption records, court records, or sealed adoption records . . . be made available" to any adopted person, legal representative of an adopted person or lineal descendant of a deceased adopted person.¹³⁴ The law specifically mentioned the Tennessee Children's Home Society and the drafters' intent for this to be "remedial legislation."¹³⁵

The law was quickly challenged in court by groups led by televangelist, Pat Roberson, who claimed that open adoptions would result in a decrease in adoptions and an increase in abortions.¹³⁶ For example in *Doe v. Sundquist*, 106 F.3d 702, Plaintiff's challenged the constitutionality of the Tennessee statute, arguing that the statute violated a right to familial privacy established under *Griswold v. Connecticut*.¹³⁷ Additionally, the plaintiffs contended that the law unduly burdened adoption processes and violated their right to reproductive privacy as established in *Roe v. Wade*.¹³⁸ The U.S. Court of Appeals for the Sixth Circuit denied plaintiffs' request for a preliminary injunction and dismissed all federal claims.¹³⁹ Thus, the statute remains in effect and has been used as a model for almost a dozen

127. RAYMOND, *supra* note 2, at 12.

128. *Id.*

129. *Id.*

130. *Id.*

131. *Id.* at 126.

132. *Id.*

133. *Id.*

134. TENN. CODE ANN. § 36-1-127 (West 2014).

135. *Id.*

136. RAYMOND, *supra* note 2, at 127.

137. *Doe v. Sundquist*, 106 F.3d 702, 705 (6th Cir. 1997).

138. *Id.*

139. *Id.* at 706.

other states in enacting their own open records laws.¹⁴⁰ For many birth parents and adoptees who had spent lifetimes grieving for lost family members, the statute came far too late.¹⁴¹ For others, the new legislation facilitated long-delayed family reunions and the opportunity for adoptees to discover their true identities and histories.¹⁴²

Through the accounts of former wards of the Tennessee Children's Home Society, journalists and investigators have pieced together a pattern of decades-long abuses inflicted upon children under the care of the agency. In addition to the inadequate medical attention given to children as described by Judge Bates in his letter to the commissioner of Public Welfare, adoptees suffered physical and sexual abuse at the hands of employees at the Home.¹⁴³ Adoptees reported being hung from coatracks by ropes tied around their wrists or being dangled down laundry chutes as punishment for bad behavior.¹⁴⁴ Children were beaten with switches and subjected to weeks-long fasts of bread and water.¹⁴⁵ A significant number of infants were delivered to adoptive homes feverish and dehydrated, some dying within days of meeting their new families.¹⁴⁶ Many children did not survive the Tennessee Children's Home Society.¹⁴⁷ Due to abuse, neglect, and illness, as many as five hundred children died while in the agency's care.¹⁴⁸ Georgia Tann failed to report many of her wards' deaths, thus the estimate of children who died while with the agency may be artificially low.¹⁴⁹

The Tennessee state government's response to the Georgia Tann scandal has been extremely limited. As discussed above, the state-appointed attorney tasked with investigating the Tennessee Children's Home Society was stymied in his efforts to conduct a thorough examination of the agency.¹⁵⁰ Governor Browning prohibited indictment or prosecution of those who had participated in the adoption scandal; he instructed investigators simply to put the "baby sellers in Memphis out of operation."¹⁵¹ This curtailment of the investigation was likely due to the fact that those involved still had substantial power within the Tennessee

140. RAYMOND, *supra* note 2, at 131.

141. WINGATE, *supra* note 3, at 338.

142. *Id.*

143. RAYMOND, *supra* note 2, at 99.

144. *Id.*

145. *Id.*

146. *Id.*

147. *Id.* at 6 (In 1935 the U.S. Children's Bureau sent an investigator to Memphis to probe the city's soaring infant mortality rate.).

148. WINGATE, *supra* note 3, at 337.

149. RAYMOND, *supra* note 2, at 6.

150. Austin, *supra* note 62, at 99.

151. *Id.* at 100.

government.¹⁵² There is evidence to suggest that several Commissioners of Public Welfare suspected or had knowledge of what was going on at the Home due to the many complaints filed with their department¹⁵³—all failed to take action during Tann's tenure.¹⁵⁴ Tennessee's sole lawsuit against Tann's estate in response to the discovery of her operation was designed to recover money that Tann had expropriated.¹⁵⁵ The money from the settlement agreed upon with the estate's executrix was recovered for the state.¹⁵⁶ No money was set aside to compensate the victims of the decades-long illegal adoption ring.¹⁵⁷

As a result of the unfavorable publicity the scandal brought upon Tennessee, the state strengthened its adoption laws. New statutes enacted after the story broke required adoption agencies to conduct comprehensive investigations into adopting parents and into the background of the adoptive child.¹⁵⁸ The new laws also included protective provisions for birth parents, ensuring that a child was given up voluntarily without coercion by other parties to the contract.¹⁵⁹ Though these reforms marked a sea change in adoption law going forward, they did little to help the birth parents whose children were wrongfully taken from them or the children who experienced severe abuse while in the custody of the Tennessee Children's Home Society.

In fact, Tennessee's legal system allowed for a shocking lack of accountability during the Georgia Tann era and for many decades after the scandal broke. The swift sealing of adoptee's records a year after the story became public prevented families from finding one another for years. The state provided no assistance for affected families, either financially or by helping parents to locate lost children. No official apology was issued by the state beyond the legislature's acknowledgement of the 1995 Public Acts Chapter 532 as "remedial legislation" for the harms inflicted upon those at the Tennessee Children's Home Society.¹⁶⁰ There is little doubt that Tennessee's response has been inadequate. The government turned a blind eye to the kidnapping, abuse, and commoditization of babies and children within its borders. State officials, social workers, and agencies played active roles in deceiving and threatening countless indigent birth parents and terminating their parental rights without consent. As discussed below, Tennessee should adopt a reparations program for the victims of these black-market adoptions to address this past misconduct of grave proportion.

152. Austin, *supra* note 62, at 102.

153. *Id.* at 101.

154. *Id.*

155. *Id.*

156. RAYMOND, *supra* note 2, at 11.

157. *Id.*

158. Austin, *supra* note 62, at 101.

159. *Id.*

160. TENN. CODE ANN. § 36-1-127 (West 2014).

III. TENNESSEE CAN AND SHOULD UNDERTAKE COMPREHENSIVE REPARATION EFFORTS TO REDRESS HARMS PERPETRATED AGAINST VICTIMS OF THE TENNESSEE CHILDREN'S HOME SOCIETY

The truth is that no change in law or policy can mitigate the pain suffered by the families affected by the black-market adoptions in Tennessee. Both the children who were abused and neglected in Tann's care and the parents who had their children stolen from them experienced unquantifiable losses. However, good faith efforts at identifying the victims and setting aside funds for reparations would provide long-overdue condemnation of Georgia Tann's eugenics-driven operation and provide a modest substitute for the legal damages the families otherwise would have been entitled to. Additionally, issuing a formal apology for the Tennessee government's role in these abuses would be a meaningful first step in redressing the wrongs done by the state. These families have borne extraordinary hardship and deserve some modicum of justice.

Benefits distributed by reparations programs are often categorized as either material or nonmaterial.¹⁶¹ Material forms of reparations include concrete benefits, such as cash payments, social welfare entitlements, or guaranteed access to education and employment.¹⁶² Non-material, "symbolic" forms of reparations include apologies (whether private, public, or official), memorials, and state-designated days of remembrance.¹⁶³ The following discussion calls for Tennessee to adopt forms of reparations from both categories in order to comprehensively respond to the harms done to the victims of the Tennessee Children's Home Society, as described in Section II. Further, a truly effective reparations package designed for the specific injuries caused in this instance demands the initiation of a taskforce aimed at reuniting families and restoring authentic records to those whose histories had been systematically wiped away by state actors. Finally, this section acknowledges the potential challenges such a reparations program would likely face.

A. NONMATERIAL FORMS OF REPARATIONS

Ideally, Tennessee could launch its reparations program by first engaging in nonmaterial reparations. An official apology acknowledging the role Tennessee's government played in separating poor families is a sensible first step in addressing this shameful history. An apology would bring awareness to a shocking and disturbing, but little known, period in the state's recent history and lay the groundwork for public support of more

161. David C. Gray, *A No-Excuse Approach to Transitional Justice: Reparations as Tools of Extraordinary Justice*, 87 WASH. U. L. REV. 1043, 1054 (2010).

162. *Id.*

163. *Id.* at 1055.

substantive forms of reparations. This measure involves little to no financial burden on the state and will be highly impactful on the families involved.

A recent series of apologies issued by state governments atoning for forced sterilization programs provide a useful guide to the various ways Tennessee may craft an official apology. In 2002, Virginia's Governor, Mark Warner, initiated a cascade of formal state apologies when he declared Virginia's eugenics sterilization program "a shameful effort in which state government should never have been involved."¹⁶⁴ "The governors of North Carolina, South Carolina, Oregon, and California followed suit, delivering similar statements of regret over the next twelve months" regarding their state's involuntary sterilization programs.¹⁶⁵ These five states' sterilization programs "were responsible for approximately half of the 66,000" nonconsensual surgeries "performed nationwide in the thirty-three states that enacted sterilization laws in the twentieth century."¹⁶⁶ Thus, the formal recognition of the victims of these state programs touched many lives.

State legislatures have also taken measures to formally apologize for past harms done under the authority of state law. In 2003, the California State Senate passed a resolution expressing:

Profound regret over the state's past role in the eugenics movement and the injustice done to thousands of California men and women . . . this resolution addresses past bigotry and intolerance against the persons with disabilities and others who were viewed as 'genetically unfit' by the eugenics movement . . . all individuals must honor human rights and treat others with respect regardless of race, ethnicity, religious belief, economic status, disability, or illness . . . The Senate urges every citizen of the state to become familiar with the history of the eugenics movement, in the hope that a more educated and tolerant populace will reject any similar abhorrent pseudoscientific movement should it arise in the future.¹⁶⁷

The strong language incorporated into this resolution was cited in a recent proposal in the California State Legislature to establish a Eugenics Sterilization Compensation Program for victims of state-sponsored sterilization.¹⁶⁸ In some states, gubernatorial and legislative apologies have

164. Alexandra Minna Stern, *Eugenics and Historical Memory in America*, 3 *HIS. COMPASS* 1, 1 (2005).

165. *Id.*

166. *Id.*

167. S. Res. 47, Reg. Sess. 2003-2004 (Cal. 2003) (California Senate resolution denouncing and formally apologizing for eugenics).

168. S.B. 1190, 2017-2018 Leg. (Cal. 2018).

also been accompanied by physical commemorations meant to bring further recognition to victims.¹⁶⁹ For example, in Virginia, two victims of the state's sterilization program unveiled a highway marker at a state ceremony honoring Carrie Buck.¹⁷⁰ Buck was the first person impacted by Virginia's forced sterilization statute and the plaintiff in *Buck v. Bell*, the infamous 1927 United States Supreme Court case which upheld the constitutionality of Virginia's sterilization law.¹⁷¹ Thus, formal apologies can set the foundation for subsequent reparation action for victims of state abuses.

Apologies and other symbolic acts of atonement provide a formal and official recognition of past wrongs. The goal of these reparative acts is to develop a social context where victims of state abuses are finally "identified as individuals capable of being wronged."¹⁷² This is particularly significant in light of the widespread public sentiment that the stolen children were better off at the time the Georgia Tann scandal broke.¹⁷³ There was no public call to have the children returned to their birth parents because many felt that single, indigent parents were inherently unfit to raise children.¹⁷⁴ In swiftly legalizing many of the black-market adoptions after the story broke, Tennessee's government deemed birth parents unworthy of the due process rights that wealthy parents would surely have been afforded. Public apology by state officials is the first step toward making amends for these discriminatory legal and legislative practices. However, wholehearted public recognition is likely insufficient to grant victims the "material conditions necessary to achieve, maintain, and exercise equal status."¹⁷⁵ This requires additional concrete forms of reparations, as discussed below.

B. MATERIAL FORMS OF REPARATION

The most well-known form of state-run reparation programs involve direct monetary compensation to victims. A recent example in the United States was in North Carolina, where lawmakers set aside \$10 million for one-time payments to victims of its state-run sterilization program.¹⁷⁶ However, this is far from the best option available to Tennessee, especially where budgetary limitations could rapidly stymie such proposals. If a

169. Stern, *supra* note 165, at 5.

170. *Id.*

171. *Id.*

172. Gray, *supra* note 161, at 1102.

173. WINGATE, *supra* note 3, at 338.

174. *Id.*

175. Gray, *supra* note 161, at 1102.

176. Scott Neuman, *North Carolina Set to Compensate Forced Sterilization Victims*, NAT'L PUB. RADIO, (July 25, 2013), <https://www.npr.org/sections/thetwo-way/2013/07/25/205547272/north-carolina-set-to-compensate-forced-sterilization-victims> [<https://perma.cc/T6W8-KHY8>].

government's past misconduct systematically denied those in the targeted group access to economic, social, and political opportunities, then one-time payments are not the preferred solution.¹⁷⁷ Creative proponents of reparations programs recommend tailoring reparations strategies to enhance the ability of former victims to participate as equals in society, culture, politics, and the economy.¹⁷⁸ Reparations in the form of access guarantees, loan programs, and preschool and tutoring programs may be better options "to accelerate the arrival of former victims into circles of privilege and power."¹⁷⁹

As discussed in Section II, Georgia Tann's targeted victims were largely indigent families lacking the resources and power to effectively challenge the unjust acts of the government. Thus, Tennessee could design a successful reparation program by providing victims certain guarantees of access to employment and educational opportunities in public institutions. For example, North Carolina approved compensation for sterilization victims in that state in the form of health care and education benefits.¹⁸⁰ However, North Carolina faced criticism for its reparations program because it limited restitution to those victims still alive and did not make funds available to the descendants of those who had already passed.¹⁸¹ Given that almost seventy years have elapsed since this story first came to light, it is likely that many of Georgia Tann's victims have died. To avoid the sharp criticism leveled at North Carolina, Tennessee could extend the benefits distributed from its reparation program to descendants of those impacted by the Tennessee Children's Home Society. This is especially important in light of the government's role in preventing reunification of families for decades after the story came out.

C. TASKFORCE FOR REUNIFICATION AND RESTORATION OF RECORDS

Educational and employment guarantees are aimed at achieving substantive equality for those who have been historically disenfranchised. Nonetheless, it is undeniable that some wards of the Tennessee Children's Home Society were placed in wealthy homes and may not be in need of state-sponsored benefits. A comprehensive reparations program should also involve initiation of a taskforce designed to track down victims and assist them in finding their lost family members, true histories, and legal records. Aside from depriving adoptees of an emotional connection to their heritage, the falsification of adoption records has prevented victims of the Tennessee Children's Home Society from making informed medical decisions.¹⁸²

177. Gray, *supra* note 161, at 1059.

178. *Id.* at 1102.

179. Gray, *supra* note 161, at 1102.

180. Stern, *supra* note 164, at 5.

181. Neuman, *supra* note 176.

182. RAYMOND, *supra* note 2, at 122.

Because risk of diseases such as asthma, diabetes, cancer, and heart disease run in families, an adoptee's family history may hold important clues about their chances of developing such illnesses.¹⁸³ Without this knowledge, adoptees are less likely to take preventative measures or make important lifestyle changes to lower their risk factors.¹⁸⁴ There is no doubt that implementing such a program will involve a monumental effort on the part of the Tennessee government, but it is imperative that the state adopt such a measure. Not only will it serve to promote collective healing for state-sponsored injustice, it may save lives by providing victims and their descendants with accurate medical histories.

D. POTENTIAL CHALLENGES IN UNDERTAKING REPARATIONS

Inevitably, there will be arguments made against Tennessee undertaking reparations apart from the anticipated financial objections discussed in the previous section. Opponents often argue that tax payers unconnected to past abuses should not be held responsible for funding reparations aimed at addressing those abuses. Another common criticism of reparations programs is whether they "work." Both of these concerns have been raised in circumstances where those directly responsible for past injustice are long dead, as is the case in the Tennessee Children's Home Society scandal.¹⁸⁵ These arguments are rooted in traditional notions of tort liability, implicating "basic moral considerations and fundamental notions of fairness."¹⁸⁶ However, reparations are not special tort awards, nor are they a transactional means of paying a moral debt. In redressing past wrongs, a government lays the groundwork for peace and stability, acknowledging historical atrocities to inform future conduct and policy.

Various governments across the world launched reparation programs in the last half of the twentieth century, which have faced varying degrees of criticism. There are many examples of reparations efforts involving official rituals of regret or public acts aimed at collective healing.¹⁸⁷ Whether occurring in the direct aftermath or much later, these have largely been in response to episodes of state violence or discrimination.¹⁸⁸ For example, Germany provided monetary reparations both to individuals directly impacted by the Holocaust and to Israel.¹⁸⁹ In 2015, Japan set up an \$8.3

183. GENETIC ALLIANCE, UNDERSTANDING GENETICS: A NEW YORK, MID-ATLANTIC GUIDE FOR PATIENTS AND HEALTH PROFESSIONALS 64, (July 8, 2009), <https://www.ncbi.nlm.nih.gov/books/NBK115560/> [<https://perma.cc/7KZ4-CQ7F>].

184. GENETIC ALLIANCE, *supra* note 184.

185. Gray, *supra* note 161, at 1069.

186. *Id.*

187. Stern, *supra* note 164, at 5.

188. *Id.*

189. Gray, *supra* note 161, at 1053.

million fund for Korean “comfort women.”¹⁹⁰ A variety of reparations have been paid in South Africa to victims of Apartheid.¹⁹¹ “The United States paid reparations to Japanese Americans and others confined to internment camps during World War II.”¹⁹² More recently, there have been calls made for truth and reconciliation committees in addition to monetary compensation, “as partial justice for slavery, Jim Crow laws, and lynching.”¹⁹³ There has been rigorous academic debate as to whether these reparations “work,” with some compelling evidence indicating they do not.¹⁹⁴ However, whether one reaches this conclusion is entirely dependent on what the government in question was aiming to achieve in undertaking reparations.

A persistent objection to reparations programs is that “[e]ven where reparations are paid, the money itself is insufficient to the task of reparation.”¹⁹⁵ In the worst instances, the promised reparations were never delivered. As a result, recipients often remain in a perpetual condition of material and social inequality.¹⁹⁶ For example, “forty acres and a mule,” the reparation promised to former American slaves in the wake of the Civil War, was never paid despite codification in the Freedmen’s Bureau Act.¹⁹⁷ Moreover, lesser grants of land, goods, and money failed to provide former slaves a semblance of justice.¹⁹⁸ Some scholars “now trace the absence and inadequacy of those reparations efforts to [present-day] achievement gaps between black and white Americans.”¹⁹⁹ Likewise, Native Americans have made few gains “despite large land grants, mineral rights, and sovereign exemptions from state regulations.”²⁰⁰ In many of these instances, continuing disenfranchisement and guilt among survivors concerned with spending “tainted” money limit the capacity of reparations to significantly change outcomes for recipients.²⁰¹

Rather than be discouraged by the lack of demonstrative gains for past recipients of reparations programs, Tennessee can learn from the criticisms of past efforts to craft a better model. Reparations programs are relatively modern and are still in experimental stages. These past examples largely support a case for Tennessee to design a program aimed at achieving substantive equality for victims of abuse by guaranteeing access to

190. Gray, *supra* note 161, at 1053.

191. *Id.*

192. *Id.*

193. *Id.* at 1049.

194. *Id.*

195. *Id.*

196. *Id.*

197. *Id.*

198. *Id.*

199. *Id.*

200. *Id.*

201. *Id.* at 1050.

educational and employment opportunities, rather than make one-time payments to victims. Additionally, the implementation of a taskforce designed to assist victims in locating their family and history, as described previously, presents a unique opportunity for Tennessee to concretely address the past actions that continue to harm surviving victims and their descendants.

Another concern surrounding government-sponsored reparations programs centers around whether the choice to make reparations to one abused group necessarily privileges certain victims over others. Critics of these programs argue that making the state the primary payer of reparations can actually threaten equal opportunity among vulnerable populations.²⁰² Where the government is the final arbiter of which victims are entitled to reparation, it can be seen as essentially “picking winners and losers in contests among oppressed groups over limited resources.”²⁰³ This selection process pits victim groups against one another, fragmenting populations that might ordinarily form coalitions along aligned interests.²⁰⁴ This became an issue in the movement for Japanese reparations in the United States.²⁰⁵ At the time, advocates “made their case for compensating victims of internment during World War II by contrasting Japanese Americans with African Americans to suggest that the former were more deserving than the latter.”²⁰⁶ The same concerns could be leveled at Tennessee if it were to begin an effort to compensate victims of the Georgia Tann scandal, as there have been recently renewed calls for Southern states to make reparations for slavery and Jim Crow laws.²⁰⁷

Tennessee has been slow to address the state’s history surrounding slavery and if it were to choose to address the Georgia Tann scandal by initiating a reparations program it will likely face fervent criticism. Reports have shown that the Tennessee House of Representatives was reticent to issue a direct apology for the state’s role in slavery and racial segregation for fear of it leading to monetary reparations.²⁰⁸ This is evidenced by the chamber’s removal of language from its original resolution offering “profound apologies” for slavery and replacing it with “profound regret,” presumably to minimize assumption of culpability.²⁰⁹ Undoubtedly, this

202. Gray, *supra* note 161, at 1065.

203. *Id.*

204. *Id.*

205. *Id.*

206. *Id.*

207. Ta-Nehisi Coates, *The Case for Reparations*, THE ATLANTIC, (May 21, 2014), <https://www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631/> [https://perma.cc/4RME-6W6H].

208. James DeWolf Perry, *Tennessee Weighs an Apology for Slavery*, TRACING CENTER (Apr. 16, 2014), <https://perma.cc/VV6Z-L7BP>.

209. *See Tennessee House Votes to Express Regret for Slavery*, A.P. (Apr. 16, 2014) <https://perma.cc/VBT9-QAXP>.

mild response to abhorrent past abuse calls for further action, but it is unproductive to engage in comparative harm measurement of collective tragedies. The Tennessee Children's Home Society abuses are just one aspect of a United States' history marred by persistent injustice. To allow these stories to go unacknowledged endangers everyone by increasing the likelihood that these abuses will happen again. Reparations provide a roadmap for creating a better, more accountable government—one less prone to injuring those it purports to represent. Tennessee should unquestionably endeavor to redress harms done to its citizens during slavery and in the Jim Crow era. So too should it answer for the abuses inflicted upon the victims of the Tennessee Children's Home Society

The most ubiquitous and easily anticipated objection to reparations programs stems from the fundamental principle that a person should only be forced to compensate for harms he has caused.²¹⁰ This notion forms the backbone of the American legal system and informs Americans' basic conceptions of fairness. Thus, those in opposition to reparations programs often argue that contemporary tax payers with no direct connection to the abuses the reparations seek to redress should not be held responsible for paying compensation.²¹¹ This objection is amplified when the proposed recipients of reparations were not harmed themselves.²¹² These concerns were present in the record of a recent U.S. Senate resolution apologizing for slavery and Jim Crow laws, which declined to support claims for reparations.²¹³ While there tends to be less overall complaint in cases limited to symbolic reparations, these programs always face some degree of controversy because they still involve a diversion of public resources that could be directed to other public projects.²¹⁴ This kneejerk reaction to a call for reparations is easy to predict, but the shameful history of the Tennessee Children's Home Society casts a wide net of responsibility. Children wrongfully taken from their families are still alive and the legal barriers used to prevent their birth parents from locating them remained in place for decades with little public protest. Consequently, many in the state are collectively accountable for this injustice to some extent.

Members of the Tennessee government, including judges, legislators, social workers, medical staff at public hospitals, and a state-funded adoption agency willfully violated the rights of poor parents in the state for decades. It stripped vulnerable citizens of custody of their children and prevented reunification of families for decades. The lack of public outrage on behalf of these families allowed children to grow up thinking their birth

210. Gray, *supra* note 161, at 1045.

211. *Id.* at 1045-1046.

212. *Id.* at 1046.

213. S. Con. Res. 26, 111th Cong. (2009) (officially recognizing and apologizing for the wrongs and persisting consequences of slavery and Jim Crow laws but disclaiming, "Nothing in this resolution . . . authorizes or supports any claim against the United States.")

214. Gray, *supra* note 161, at 1064.

parents had died or abandoned them and perpetuated the suffering of thousands of parents unable to locate their lost children. Furthermore, elected officials profited from the commoditization of these adoptees and empowered Georgia Tann to run her black-market operation undisturbed for years. Their complicity allowed stolen children to be placed with agencies known to provide inadequate medical care, leading to countless children's deaths. Additionally, the widely held, eugenics-driven belief that the poor were unfit to raise children enabled these abuses. Rather than ignore this ugly history, current Tennessee officials must define themselves in opposition to the conduct of their predecessors.

Reparations are not a means to measure and then erase past harms. If designed holistically and transparently, these programs can promote social reconciliation and work to rebuild trust in our fragile democracy. This requires "keeping alive the memory of past abuses and acknowledging the need to correct present inequities."²¹⁵ By crafting a comprehensive reparations program that includes both material and non-material forms of reparations, Tennessee can enact groundbreaking legislation that will provide guidance for other states and the federal government moving forward. Most importantly, a reparations program would furnish some means to achieve substantive equality, find loved ones, and give long overdue recognition to the victims of Georgia Tann and the Tennessee Children's Home Society. Eugene Calhoun, taken by Tann as a child and sold into an abusive home, stated:

People don't know what it's like to be deprived of a family. Anything you can do to see that this doesn't happen to another child will be wonderful It's heartbreaking to know that my own state where I was born won't even recognize me. That's what I've had for sixty years—no family, no parents . . . nothing.²¹⁶

CONCLUSION

No state action can truly compensate for the wrongful separation of families, some of whom will never have the opportunity to reunite with loved ones lost. Neither can Tennessee erase memories of neglect and sexual abuse inflicted upon children under custody of the Tennessee Children's Home Society. However, reparations can be tools for addressing the social conditions that fuel these forms of injustice. Black-market adoptions still present a profound problem internationally and no government to date has undertaken a reparations program to redress harms done in the wake of such scandals.²¹⁷ Thus, this gives the state of

215. Gray, *supra* note 162, at 1087.

216. RAYMOND, *supra* note 2, at 126.

217. MARY ELLEN FIEWEGER, *Stolen Children and International Adoptions*, in *SOCIOLOGY OF FAMILIES: READINGS*, 118 (Linda Purrington ed., Pine Forge Press 1999).

Tennessee the opportunity to pioneer a socially transformative program which can set the standard for similar reparations programs around the world. If they are transparent, the procedures designed around reconciliation can also foster a renewed trust in state officials and government as a whole. This duty to achieve justice for the future in light of the past reaffirms core commitments to democracy, human rights, and the rule of law.²¹⁸

Justice for the victims of the Tennessee Children's Home Society means recognizing past wrongs as oppositional markers for future conduct and policy. Therefore, it is imperative that Tennessee undertake reparations to begin redressing the immeasurable harms done to the victims of this black-market adoption ring. To achieve this end, Tennessee's strategy would ideally involve three critical measures. First, the government should issue a formal apology and condemn the repugnant, eugenics-based theories underlying these injustices. Second, the state should initiate a taskforce to assist victims in finding their lost families and buried histories. Finally, the state must adopt educational and employment guarantees to help indigent victims overcome the socioeconomic barriers that, for decades, prevented them from being seen as casualties of a cruel miscarriage of justice. These victims deserve to have their stories told and to reclaim the dignity and rights denied to them. There is simply no excuse for continued silence in the face of these families' immense suffering—Tennessee must rise to the challenge.

218. Gray, *supra* note 161, at 1096.