

STATUS
Submitted 10/18/2016
SOURCE
ILLiad
BORROWER
AUJ
LENDERS
PLF, *VAL, ZEM

TYPE
Copy
REQUEST DATE
10/18/2016
RECEIVE DATE

OCLC #
945730111
NEED BEFORE
11/17/2016



168095343

DUE DATE

BIBLIOGRAPHIC INFORMATION

LOCAL ID
AUTHOR Shelby, Tommie, 1967- author.

TITLE Dark ghettos : injustice, dissent, and reform /

IMPRINT Cambridge, Massachusetts : The Belknap Press of
Harvard University Press, 2016. ©2016
ISBN 9780674970502

ARTICLE AUTHOR Shelby, Tommie, 1967- author.

ARTICLE TITLE Reproduction (Chapter 4)

FORMAT Book
EDITION
VOLUME
NUMBER
DATE 2016
PAGES 119-

INTERLIBRARY LOAN INFORMATION

ALERT

VERIFIED <TN:95096><ODYSSEY:206.107.42.168/ILL>
MAX COST OCLC IFM - 20.00 USD
LEND CHARGES
LEND RESTRICTIONS

AFFILIATION GOLD/SOLINE/SO6/ACS/ATLA/CCC member
COPYRIGHT US:CCL

SHIPPED DATE
FAX NUMBER 404-577-6034
EMAIL ill@auctr.edu

ODYSSEY 206.107.42.168/ILL
ARIEL FTP
ARIEL EMAIL

BILL TO Interlibrary Loan Department
Robert W. Woodruff Library of the Atlanta Univ
111 James P. Brawley Dr. S.W.
Atlanta, GA, US 30314

SHIPPING INFORMATION

SHIP VIA Library Rate
SHIP TO Interlibrary Loan Department
Robert W. Woodruff Library of the Atlanta Univ
111 James P. Brawley Dr. S.W.
Atlanta, GA, US 30314

RETURN VIA
RETURN TO

HV
4045
S44
2016

UNIVERSITY OF VIRGINIA

OCT 17 2016

LAW LIBRARY

T O M M I E S H E L B Y

Dark Ghettos

Injustice, Dissent, and Reform

THE BELKNAP PRESS OF
HARVARD UNIVERSITY PRESS

Cambridge, Massachusetts
London, England 2016

FOUR

Reproduction

A common view about the ghetto poor is that they often remain in poverty and in disadvantaged black neighborhoods because they grow up in severely disadvantaged family environments and so have sharply diminished life prospects from the start. It is widely thought that such families are disadvantaged both because they are headed by young single mothers who lack the resources, maturity, or skills necessary to adequately care for their children and because the fathers of these children fail to fulfill their parental responsibilities. In other words, many believe that a main factor in explaining the persistence of ghetto poverty is that some blacks create children when they lack the means, competence, or commitment to ensure the proper care and development of these children. Procreation under these conditions is commonly held to be not only unwise but also *wrong*—plunging the already poor into deeper disadvantage, harming the offspring, and unfairly burdening fellow citizens. If more responsible procreating and parenting were to occur, so it is claimed, there would be a significant drop in poverty and perhaps ghettos would finally disappear. Specifically, some believe that if more blacks would delay childbearing until they are older and financially secure, would get married or form stable co-parenting unions if they are going to have children, and faithfully carry out their parental duties (including child support when unions aren't formed or dissolve), the cycle of poverty in ghettos could be broken. This is how the ethics of procreating and parenting intersect with questions of social justice and ghetto poverty.

Even setting aside neighborhood characteristics and the quality of available schools, there are compelling reasons to avoid the formation of poor families, particularly when the prospective parents are very young.¹ Growing up under persistent poverty negatively affects cognitive and verbal ability and thus academic achievement. Many children of poor mothers are born premature and have low birth weight, which increases the risks of various health-related and developmental problems. Poor mothers who are very young and have limited education provide their children with less cognitive stimulation than those reared by older and more educated parents. Mothers' youth and inexperience loom large here, because the impact of home environment from birth to age five has long-term effects. The households of poor children are often stressful, with frequent disruptions in routine, including abrupt changes in residence, sometimes caused by eviction.² The economic pressure on poor parents induces depression, irritability, and explosiveness, which can lead them to be inconsistent, arbitrary, or harsh with discipline. Young parents tend not to be particularly good role models, for they often fail to exemplify the virtues needed to flourish in life—self-control, delayed gratification, determination in the face of adversity, independence, and so on. Poor children have greater emotional and behavioral problems, including low self-esteem, anxiety, impulsiveness, and aggression, which are often made worse if their poverty endures.

That so many children grow up in poverty is deeply troubling and urgently demands a public response. Few would disagree with this judgment. The controversial question is what type of response would be both effective and justifiable to everyone affected. Many liberal egalitarians insist that antipoverty programs that intervene at the family level (for example, by providing social services to children and their parents) won't be effective unless they are joined with measures that attack the structural and neighborhood causes of poverty. They would argue that most of the family-related problems are due to institutional racism, unjust discrimination, unsafe neighborhoods, and a lack of economic resources and opportunities, such as access to adequate education, affordable housing, and well-paying jobs. Still, some would allow that some antipoverty interventions into the lives of poor families are justifiable. Many liberals believe teen pregnancy, nonmarital procreation, family instability, father absence, and failures to pay child support contribute to the persistence of ghetto poverty. Even if the adults

involved are not responsible for their initial disadvantage, they are responsible for how they choose to respond to that disadvantage, and some responses not only make their plight worse but also are blameworthy. Some liberals therefore think it is permissible to intervene to help the ghetto poor make better choices and even to penalize irresponsible choices in order to encourage better behavior.

Others take a less sympathetic stance. They regard the procreative choices and inadequate parenting of some among the ghetto poor as imposing unfair burdens on the public, not only in the form of higher taxes (to pay for social services and income subsidies) but also in the form of juvenile delinquency and crime. They believe that procreative and parental irresponsibility, even among the poor, wrongs both the children involved and the public. Such conduct, they insist, is a violation of civic reciprocity and warrants a punitive response. And they are not inclined to increase public expenditures to assist these disadvantaged families beyond meeting the basic material needs of poor children.

Drawing on elements of the Personal Responsibility and Work Opportunity Reconciliation Act (1996)—commonly referred to as “welfare reform”—I want to consider three types of family-targeted antipoverty policies that find support across the political spectrum, focusing explicitly on their underlying justification. These policies were conceived and implemented within the medical model framework, and I argue that they suffer from all three problems that often attend that model—status quo bias, downgraded agency, and unjust-advantage blind spots.

The first of these policies uses the structure of welfare benefits to deter nonmarital childbearing. This approach involves such tactics as placing strict limits on the lifetime receipt of welfare benefits (five years), keeping these benefits low, not increasing benefits for parents who have additional children (family cap), making the receipt of these benefits conditional on meeting work or job-training requirements, providing mainly in-kind benefits (food stamps, housing vouchers, educational benefits, and access to medical care) rather than cash assistance, and imposing stiff penalties for noncompliance with program expectations (including cutting off benefits). These are attempts to meet the basic material needs of poor families while discouraging poor people from engaging in nonmarital procreation.

A second type of antipoverty policy involves the promotion of marriage or stable unions and cohabitation between parents who share a child. Many among the public are concerned about the apparent negative effects of single-parent families on children, and so policymakers have proposed and instituted a range of social programs aimed at fostering healthy marriages, reuniting separated spouses or partners, encouraging cooperation between unmarried parents (whether never married or divorced), and preventing divorce.³ Indeed, one of the explicit aims of the 1996 welfare reform legislation is the promotion of two-parent families and marriage.

The final type of antipoverty policy I consider is child support enforcement, which can occur through court orders, withholding from paychecks, and tax refund confiscation. Child support enforcement, in the view of some policymakers, has a triple function. It serves to encourage responsible contraceptive use and thus to reduce nonmarital births, as absent fathers with child support obligations will presumably be disinclined to take on greater financial liability; and others, knowing of these fathers' burdens, will be deterred from irresponsible sexual behavior. It could also encourage stable unions or marriage between those who share kids, as the threat of child support payments would discourage divorce or break ups and motivate absent fathers to reconcile with or marry their children's mothers. And it could ensure that absent fathers fulfill parental obligations, at least the financial ones. The underlying rationale for the first two functions is straightforward: If fathers must bear increased costs for nonmarital births and single motherhood, then, assuming most men are rational, this should reduce the incidence of both.⁴

The point of reflecting on these antipoverty measures is to evaluate interventions into family formation and family life with the aim of identifying the moral limits of such interventions and to think systematically about the ethics of procreating and parenting under conditions of injustice. In this chapter, I first define key terms to sharpen the questions at issue and then consider three plausible standards for determining when procreation is wrong and a violation of civic reciprocity. Next I identify some limits on state interference with the reproductive decisions of the poor. I continue the discussion in Chapter 5 by defending an account of the family's role in maintaining a just society and explaining how persons come to have parental responsibilities. In

light of those remarks, I identify a serious problem with current policies of child support enforcement. Finally, I explain what kinds of public support disadvantaged single-parent families are owed under conditions of injustice and why this support is owed.

Families and Fragile Families

Let's fix terminology. I begin with the notion "parent," which has several meanings. I say a person is a *biological parent* if he or she is the physical source of a sperm or ovum from which another person was created.⁵ A person is a *moral parent* if he or she has moral rights or responsibilities of parenthood with respect to another person. A person is a *social parent* if he or she is generally regarded by custom, tradition, or convention as having parental rights or responsibilities with respect to another person. A person is a *legal parent* if the law (by statute or judicial decision) assigns him or her parental rights or responsibilities with respect to another person.

In a parent-child relationship, the same person can be a biological, social, moral, and legal parent of the child. But this needn't be and often isn't the case. For instance, it is an open question whether a given social parent is actually a moral parent and vice versa. Although many adults (and even some children) will perform caretaking roles in the life of a child, moral parents have primary responsibility for the children in their charge and have considerable discretion over their care and upbringing, including the authority to decide who will supplement their caregiving. These rights and responsibilities may or may not be fully instantiated in law or legally recognized. Moreover, the law may construct parenthood in ways that are not morally justified or that are even unjust. So it's important not to conflate moral and legal parenthood.

The concept *family* is highly contested and fraught. No notion of what a family is can be normatively neutral, but to address the social-theoretic and practical-philosophical questions outlined above we need a working notion that doesn't beg the questions at issue. My purpose is not to define the "ideal" family, nor to settle by definitional fiat which family (or family-like) formations merit approbation and public support or warrant disapproval and state intervention. Rather, the relevant concept must aid us in understanding how certain families, given their structure

and internal dynamics, could be viewed as perpetuating ghetto poverty and help us frame the corresponding normative questions.

I propose that, for purposes of our inquiry, we understand the family in terms of one of its fundamental social functions: a family is the primary sociospatial unit within which parents are expected to provide children with day-to-day, individualized care and to guide them into adulthood. Because "parent" has at least the four meanings just defined, "families" take at least four forms—biological, social, moral, and legal. I'm primarily concerned with the family in its moral sense and will use "parent" to mean moral parent unless otherwise indicated. With that and our other desiderata in mind, we might define a "family" as a cohabiting social group of at least one parent and his or her child (or children), where the group functions as a socioeconomic unit. On this definition, a single child can be a member of more than one family if the parents of the child share custody but live apart. Also, a family living on the street, in a car, or at a homeless shelter is of course still a family, in the sense that its members live together and, circumstances permitting, plan to live together in a stable residence. They are cohabiting, just not in a stable residence.

This definition has limitations. By tying family conceptually to household or living arrangements, there can be a parent who is not in the same family with his or her child simply because the two live apart. It would be odd to regard the nonresident parent as not a member of the same family with his or her kids (perhaps he or she is away performing military service or serving a prison sentence but expects to be a full member of the household upon return home). A child away at a boarding school isn't living with his or her parents either. We can modify the definition by saying that the nonresident parent or child is a part of the cohabiting unit if he or she is morally entitled to reside in the household (though, as a matter of fact, he or she may not do so on a regular basis). So there is a distinction between *visiting* and *cohabiting*: you are a mere visitor if you have no independent claim to reside at the residence but stay there only at the discretion of an adult who does have a claim to reside there.

What this kind of definition reveals is the need for the concept *householder*, which is not to be confused with the traditional idea of a "head of household." The householder is an adult who, because he or she owns or rents the residence, has a right to live at the residence and to decide

(within the limits of the lease) who else can reside there. There can be co-householders, where more than one adult in the household is entitled to determine its occupants. A *single-parent family*, then, is a family in which only one parent is householder. This covers the case where a biological father occasionally resides in the home of his child's mother but only at the discretion of the mother (which is not an unusual scenario). A mother and her child living at the mother's *parent's* residence represent another kind of "single-parent family."⁶ This way of conceiving of families also makes sense of the notion of "broken" families. It is not necessarily that an adult has ceased to be a parent. Instead, a parent is no longer a member of the household with his or her children.

The parents of a child need not be married or even romantic partners to constitute a co-parenting household unit and thus a family. Analysts writing about black urban life frequently speak of "out-of-wedlock births" or "nonmarital births" as a social problem. But the main concern (whatever the terminology) is not that the children are products of biological parents who aren't married and don't plan to marry. If the parental-household union is strong and expected to be enduring and the partners are committed to parenting their children together in the same household, then whether the partners are married is irrelevant. The issues are whether the union is stable and whether there is joint commitment to co-parenting and cohabiting. Dual parenthood is generally deemed important because, given the current labor market, it is difficult for one person to handle all the necessary childcare while maintaining a full-time job. Two people can divide the required labor, both workplace and domestic.

Many express concern about the sharp rise in the number or proportion of "female-headed households" or "single-mother families." Again, this can mislead. The problem is not the decline of patriarchal family units, which from a liberal-egalitarian point of view is a welcome development. Few liberals, given their commitment to gender equality, now think that men should have authority over the mothers of their children or that fathers have greater parental authority than mothers. And, assuming the same limited economic resources, few would regard the situation as better for these poor families if they were single-*father* families. An affluent single parent, of whatever gender, who can live comfortably without working much or who has dependable childcare assistance when at work is not generally in danger of becoming poor or neglecting

his or her children. Even a single parent who lives with another responsible adult (say, her cohabiting lover or her mother) can often manage to stay out poverty, assuming the living arrangement is stable. Thus, neither marriage nor single-parent households as such are the central worry.

The real issue concerns the single parent (and it is almost always a mother) living as the sole adult in the household and who has limited earning power and no meaningful wealth. She will have difficulty avoiding or escaping poverty, and as a result her children will be deeply disadvantaged, often with long-term negative consequences for their lives. And if such single mothers do manage to earn enough to avoid poverty, it is unlikely that they will have sufficient time and energy to adequately care for, guide, and supervise their children. It is these socioeconomically disadvantaged, single-mother households that are taken to be prime examples of "fragile" families. Their fragility is a reason many believe it would be better if they were not formed at all. That is, many think single women who are poor and have limited earning power should avoid having children until they significantly enhance their marketable skills, find a suitable partner with whom they can co-parent in a stable household, or both.

If these disadvantaged single-mother families receive reliable financial and childcare assistance from noncustodial fathers, they are generally better off, which is one reason many advocate tough child support enforcement. But many of the fathers of these children are deeply disadvantaged themselves, with few resources and limited earning power, and thus are rarely able to contribute much while also covering their own household expenses.⁷ However, two low-skilled parents in a stable union, sharing the same household and pooling resources (including domestic and workplace labor), can often manage to live above the poverty line, which would greatly benefit their children. And so some policymakers propose programs that help low-skilled parents stay together or get back together, not because they want to promote traditional marriage per se, but because two-parent families have a better chance of avoiding or escaping poverty.⁸

Wrongful Procreation

Much of the contemporary commonsense morality of reproduction has been deeply shaped by long-surpassed technology. There is now bio-

medical technology that substantially reduces the chances of creating unwanted children. As a result, women who have access to these effective means of contraception have considerable control over their sex lives and bodies. They can avoid pregnancy without abstaining from sex, without depending on unreliable contraceptive methods, and without relying solely on their male sexual partners to take care of contraception (say, through the use of condoms or the withdrawal method). Should they get pregnant (whether by accident or on purpose), they need not accept the role of parent, as safe and affordable abortion procedures are available (assuming the law does not prohibit their use).

But the sexual revolution, created in part by political struggle but also by technological innovation, has not abolished all moral questions about consensual procreative activity. Difficult questions remain about the ethics of procreation and reproductive freedom that bear directly on our inquiry. When poor single women create children, does it harm their offspring or otherwise constitute wrongdoing? Do poor single women treat their fellow citizens unfairly when they procreate despite not being economically self-sufficient? When, if ever, is it permissible for the state to interfere with the reproductive decisions of poor people? This section addresses the first two questions and the next section addresses the third.

Some among the ghetto poor are, arguably, *imprudent* when it comes to creating children, in the sense that their *own* interests are thereby set back. Generally speaking, it is not wise to create a child when one is single and poor with dim employment prospects, for one would likely be made even worse off as a result. But we should distinguish the wisdom of having a child from its moral permissibility. Some are inclined to view these issues as overlapping because they think imprudence is often a blameworthy vice. My concern, though, is with procreation that arguably wrongs offspring or the public, leaving aside for the moment whether it is also bad for the procreators or a sign of bad character. The relevant wrongs pertain to procreation as such (the simple fact of creating vulnerable persons who will need years of caretaking) and to procreating with intent to parent.

Choosing to become a teenage single mother is widely thought to be wrong. Unless a competent adult is prepared to take primary parental responsibility (at least initially), the newly created child would likely receive inadequate care and guidance, as the young mother would

probably lack the necessary life experience and maturity to meet these obligations. If the would-be mother will wait, she can still have a child when she is older and thus more likely up to the task of parenting. So delaying childbirth would not prevent her from experiencing the welcome challenges and unique pleasures of motherhood. But is there a similar argument to be made to the poor single woman who wants to be a mother? Should she, though already a competent adult, delay child-bearing until she has greater material security? And if so, what moral principle requires this?⁹

According to one argument, the relevant moral principle would likely concern how much foreseeable risk of harm it's permissible to impose on offspring through procreating. All procreation exposes progeny to some risk of harm. Some of these dangers aren't knowable in advance, and the degree of risk can be difficult to determine. The moral principle would have to direct our attention toward known risks, the kind any reasonable person can be expected to foresee and, accordingly, seek to avoid or reduce. Life has many perils, even for those born into the most advantageous circumstances. So unless all procreation is wrong, the issue has to be risk of serious harm.¹⁰ And because misfortune can befall anyone, rich and poor alike, we also have to be talking about a serious risk—a morally unacceptable risk of serious harm. I do not know where to set the risk threshold. I will leave that vague and intuitive. But what constitutes "serious harm"?

We should surely avoid creating persons who we can foresee will live lives so miserable and filled with gratuitous suffering that, from an impartial point of view, it would have been better had they never lived at all. Given this moral fixed point, it might be thought that, because of the "nonidentity problem," those with seriously disadvantaged yet still worth-living lives do not have a valid complaint against their parents for creating them.¹¹ For if their parents had chosen not to have a child or even to delay procreation for as little as a month, the disadvantaged child would not have existed (assuming that a person's existence depends on having developed from a particular ovum fertilized by a particular sperm). There is no way for that *same* child to exist and yet not be disadvantaged by having been born to a poor single mother. The tempting thought "If only my mom had waited until she were married or more financially secure to have me, I would be much better off now" is understandable but incoherent.

In light of this, Peter Vallentyne defends the view that the sole special procreative duty one has to one's offspring is to refrain from producing children with *negative initial life prospects*, that is, children whose lives are highly unlikely to be worth living at all.¹² We could call this the *Life Worth Living Principle*. However, this principle would not make procreation impermissible for the average poor single mother in the United States, even one living in a ghetto. The average teenage mother could probably satisfy it. Although morally responsible procreation requires that we meet this standard, I suspect that the standard is too permissive. But even if it is not, for the sake of argument, let's consider more demanding principles.

Elizabeth Harman believes we can harm our offspring by creating them, but she does not think we harm them by making them worse off than they would have been had we not created them.¹³ Future persons are harmed when we take an action that will cause them serious and chronic pain, early death, physical deformity, bodily damage, and so on, and they are harmed even if they would not have existed had the action not been taken. The harmful action can also *benefit* the newly created individual (by giving them a life well worth living). But these compensating benefits alone are insufficient to make imposing the harms permissible.¹⁴ The principle Harman therefore proposes is this: We act wrongly if we fail to choose an alternative course of action that would allow us to offer parallel benefits without the parallel harms.¹⁵ Call this the *Harm Principle*.

The Harm Principle would condemn the procreation decisions of only those poor single women who have the *option* to delay procreation while they acquire an adequate co-parent, increase their earning power, or both. If neither finding a partner nor escaping poverty is a realistic possibility during childbearing years, then procreating even when this would cause bodily harm to offspring would not be wrong (provided it doesn't violate the Life Worth Living Principle), for the parallel benefits of a worthwhile life could not be conferred without imposing the parallel harms. Moreover, the bodily harm done must be attributable to being poor and single, and not to some other (possibly related) cause, such as drinking heavily, chain smoking, or abusing drugs throughout pregnancy. Given these qualifications and the kinds of bodily harms Harman has in mind, I doubt that the Harm Principle would make procreation impermissible for the average poor single black woman.

To see this, let's distinguish three ways a female procreator could violate the Harm Principle.¹⁶ First, she might violate it because of the harms *gestation* will impose on her offspring. For example, a poor single woman could violate it because, given the state of her resources and health during pregnancy, her offspring will likely be born unhealthy and suffer the long-term effects of this ill health. While there is some risk that poor single black women will create persons who fail to have or maintain a healthy bodily state (say, because of low birth weight or premature birth), the risk would not appear to be intolerably high. Most poor black women in the United States have access to the nutrition and medical care necessary to create babies without serious health problems or birth defects.

A poor single woman could also violate the Harm Principle because of the *family environment* the child will be born into. If the woman knows that her child's vital needs will go unmet or the child will be exposed to physical abuse in the household, then she should not reproduce until she can provide a better home. But unless she had good reason to believe that she would abuse or neglect her child or that she would be unable to prevent someone else in the household from doing so, it does not appear that responsibility for any bodily damage or shortened life span that occurred because of her familial circumstances could be attributed to the mother's choice to procreate. In fact, the single mother who is sole householder will often be able to prevent abusive adults from residing with her children. So unless she is prone to violence or negligence or knows she could not meet her child's material needs, the fact that she is poor and single would not be sufficient reason to refrain from procreating.

Third, the Harm Principle could be violated because of the *neighborhood* environment the newly created child would inhabit. Some ghettos are known to be highly dangerous—with, for instance, alarming violent crime rates (see Chapter 7). If poverty has forced one to live in a very violent neighborhood and one knows that moving to a safer community is highly unlikely in the near future (at least not before the fetus is viable), this might be a sufficient reason to delay childbearing until a less violent neighborhood can be formed or found. Exposing a child to a dangerous neighborhood when one cannot insulate the child sufficiently from its hazards could be wrong by Harman's standard (assuming moving to a safer neighborhood is a feasible option).¹⁷ Yet not

all poor black neighborhoods are hazardous to their inhabitants' health. And even the ones that do have a violent crime problem may not pose a serious threat to very young children. A young (prospective) mother might reasonably believe that she will be able to move away before her child was at risk.

Still, the Harm Principle, if sound, has some relevance for the ethics of procreating under ghetto conditions. Needlessly putting one's offspring in harm's way—whether because of factors having to do with gestation, family environment, or neighborhood context—is one mode of procreative wrongdoing. It is just that few poor single mothers engage in this kind of wrongdoing. Ironically, some disadvantaged single black women procreate permissibly precisely because their socioeconomic situation is so constrained, as they don't have the option to procreate outside of poverty. Thus, the Harm Principle does not justify a general policy aimed at deterring nonmarital births among the poor, as this would needlessly interfere with the procreative freedom of most disadvantaged women.

But I believe there is another, more relevant form of wrongful procreation. Instead of relying on a conception of "harm" to understand procreative wrongs, James Woodward offers this principle: You should not bring a child into existence when you know (or should know) that it is highly unlikely that you will be able to fulfill your obligations to the child.¹⁸ Woodward understands such obligations in terms of the correlative rights of children, but this isn't crucial to the main point. Indeed, it isn't necessary that the obligation undertaken be an obligation to a particular child, which might seem impossible, given that the child doesn't exist and so can have no interests to protect at the point of the procreation decision. One could of course vow to care for any child created from one's gametes and thus be blamed for making a commitment that one should have known (and perhaps did know) one probably couldn't keep. And one can certainly undertake an obligation to the public, on whose behalf one will take primary responsibility for the care of the child. The general underlying moral idea is that in deciding whether to assume an obligation, one should take into account the likely effects on others should one fail to fulfill the obligation. In particular, one should keep in mind that others will be depending on you to follow through on your commitment. Better not to assume the obligation if there is a good chance that one will not be able to meet it.¹⁹

Some obligations are undertaken through voluntary procreation. For example, procreators should see to it that their offspring are properly cared for. If one procreates with the reasonable expectation that some third party will do the parenting (as in surrogacy, gamete donation, or prearranged adoption), then provided the child would be in good hands, no relevant procreative wrong has occurred. When procreation is undertaken with the understanding that the procreator will parent the offspring, this is to accept the obligations of parenthood. In both scenarios, the corresponding ethical principle is this: you should not bring a person into existence when you know (or should know) that it is highly unlikely that you will be able to fulfill the obligations thereby created. Let's call this the *Reproductive Responsibility Principle* (RRP). Given this principle, if a poor single woman wrongfully creates a child, the wrongfulness of her act is to be explained by the fact that she knew (or should have known) that, because of her limited resources or lack of childcare assistance, she would very likely be unable to fulfill responsibilities she would incur through procreating.

The Reproductive Responsibility Principle provides a more demanding standard for judging procreative choices than the Life Worth Living Principle, and it allows us to understand failures to live up to our procreative duties without supposing that such failures are always to a particular person (that is, it gets around the nonidentity problem). It rightly focuses on the permissibility of the procreative *choice* rather than solely on what happens to the child after it is born, which often is not within the control of the mother or could not have been anticipated. The emphasis on assumed obligations also allows us to include moral considerations other than the imposition of unnecessary bodily harm, such as failures to educate, instill self-discipline, and foster autonomy. And finally, it enables us to see how procreation could wrong the public, who may be forced to meet needs of children that should have been met by those who created them.

Unless we regard parental obligations as fairly minimal and easily fulfilled, it would seem that at least some disadvantaged women living in ghetto poverty procreate in violation of RRP. For instance, there are single mothers who create more children despite knowing that they are having great difficulty properly caring for their existing children. If such persons have no feasible plan for escaping poverty, there is a good chance that they will not be able to give their new offspring sufficient

care and guidance. Just what percentage of poor single mothers are in this situation, I do not know. Maybe, from the standpoint of public policy, the number is negligible.

But to fully assess whether a welfare policy that deters nonmarital births is warranted, let's suppose that when the average poor single woman chooses to procreate, she violates RRP with respect to her offspring. Would it follow that she also thereby violates it with respect to her fellow citizens? After all, public funds may now have to be used to satisfy the needs of her children that she could not meet. By creating deeply disadvantaged children when she could have avoided doing so and knew (or should have known) that she would struggle to adequately care for them, has she displayed a lack of civic reciprocity?

The answer depends on whether the basic structure of U.S. society is reasonably just. If it is not, as I have argued and will further support in the chapters to come, then procreation by poor single women living in ghettos does not represent a failure of civic reciprocity. The public at large is (at least partly) responsible for the fact that these women lack the necessary means to provide adequate care for their young and so cannot justly complain of being wronged. If the reason I failed to meet you at our agreed-upon time is that you have wrongly withheld money you owe me and I need that money to pay for transportation, then you cannot reasonably claim to have been wronged if, despite my reasonable efforts, I don't show up at the appointed time. This would be true even if I could have made it there on time had I chosen to make an arduous and long trek on foot. And if I do manage to meet you at the appointed time by, say, taking a taxi, it hardly seems unfair to you if you are stuck paying the fare.

This normative conclusion does not entail that these single mothers do no wrong in procreating. But if the explanation for their inability to meet obligations to their children is that they have been denied resources they were due because of past or ongoing injustices, then their wrongs (if they are wrongs) are ones for which the public shares responsibility. Though these women perhaps should not have taken on primary caregiving responsibilities given their constricted material circumstances, the public is partly responsible for their failure to fulfill these obligations. And if the public has been complicit in this wrong, it cannot reasonably complain of the burdens imposed by this wrongful procreation. In particular, it cannot justly condemn these women for

choosing to create children they could not adequately care for without further public support. Nor can it be just for the state to act to deter nonmarital births on the grounds that such childbearing unfairly burdens the public.

There is still the question of whether the state can permissibly act to prevent nonmarital births among the ghetto poor on the grounds that it is protecting *children*—those future persons whose interests are at stake. If poor single mothers engage in wrongful procreation, then it might seem that the state, even if it is in some ways complicit in this wrongdoing, can justifiably act to prevent such procreation.

Limits of Reproductive Freedom

Reproductive freedom is the liberty to create or to refrain from creating children, a basic moral right that any society must respect if it is to be just. My concern is less with the right *not* to procreate (for example, access to contraception and abortion) and more with the right *to* procreate (for instance, the right to have a child when one is young, single, or poor). I distinguish the ethics of procreating (whether, and under what conditions, it is permissible or blameworthy to procreate) from reproductive freedom (a right against state interference with reproductive decisions). As discussed, it can be wrong to create a child under some circumstances. However, reproductive freedom concerns the moral limits on state interference with individual reproductive decisions and thus the scope of procreative liberty. We must recognize that a procreative decision may be morally wrong and yet it might be unjust for the state to interfere with that decision.

There is a sex-based asymmetry in reproductive freedom. Both men and women have the liberty to choose whether, when, and with whom to have consensual sex. Both men and women have the right to use contraception. But only women, and not the men who impregnate them, have the liberty to decide whether they will carry a pregnancy to term. So although both men and women contribute to pregnancy and thus share responsibility for its consequences, only women have the right to decide whether they will gestate and bear children. I assume that this asymmetry, when backed by law, is not an illegitimate restriction on men's reproductive freedom but is, in fact, required by justice—given women's legitimate interest in controlling what hap-

pens to their bodies, including whether a child will develop within their wombs.²⁰

Reproductive freedom would be *limitless* if it entailed the liberty to create as many children as one chooses to, regardless of one's personal circumstances (including the ability to care for and raise them) and no matter one's intentions in creating them (including one's intention to care for and raise them). If reproductive freedom isn't limitless, the question then is whether and under what conditions the state has the authority to interfere (through directives, incentives, sanctions, or physical force) with individuals' reproductive decisions and on what grounds.

I assume that, within a just society, the state has some legitimate regulatory powers with respect to reproduction, and so reproductive freedom has limits. The state may, for instance, regulate access to contraceptive methods, as some drugs or biomedical technology may be too dangerous for use. The state may prohibit reproduction between close biological relatives to prevent genetic disorders. It may also use legal regulations to ensure safe abortion. Though more controversial, the state may be justified in interfering with reproductive decisions when there are severe problems of overpopulation and, perhaps, underpopulation.²¹ Overpopulation could threaten the welfare of existing people or future generations. Underpopulation could make it difficult to maintain a just social structure, for the ratio of old to young could make it difficult to meet the needs of the old.

In a just society, the state may legitimately restrict the procreative choices of adolescents. For example, in exercising its authority to determine the age of majority, the state can set the age at which individuals can give valid consent to sex, thus limiting the reproductive freedom of underage teenagers. Penalizing boys or men who have sex with underage girls can therefore prevent teenage pregnancy without violating anyone's reproductive rights. But what explains the legitimacy of such government action?

It might be thought that the reproductive freedom of teenage girls is not actually limited because they are not penalized for having sex or getting pregnant, only the boys or men who have sex with them are penalized; and the boys or men are free to have sex with adult women (and even with teenage girls if married to them). But this can't be correct. Few would think that women's reproductive freedom is not limited when

physicians are prohibited from performing abortions or making contraception available. Teenagers would have more reproductive freedom if boys and men were not penalized for having sex with teenage girls.

In *Michael M. v. Superior Court* (1981), the U.S. Supreme Court held that the state of California could penalize for statutory rape on the ground that adolescent girls should be protected from the physical and psychological consequences of pregnancy. The statute is premised not on the idea that the male is a "culpable aggressor" but on the need to prevent teenage pregnancy. This is clearly a paternalistic law. It is not justified on the ground that future children need to be protected from unfit (because too young) mothers. It is an attempt to protect the young from the negative consequences of their own choices (analogous to prohibiting dropping out of school before age sixteen). Even apart from worries about parental competence, there is the concern that many pregnant teenagers drop out of school and have limited marketable skills and work experience. Without significant help from others, single teenage mothers will have difficulty staying out of poverty.

Paternalism toward teenagers can be justified. Such paternalistic reasoning cannot however be extended to the procreative choices of adult women or the men who have consensual sex with them. So the fact that the state may interfere with the procreative choices of teenagers is unlikely to be a good guide to whether the reproductive freedom of poor single women can be limited on the ground that their decision to procreate would be morally wrong.

Let's assume that the public has a legitimate stake in preventing violations of RRP—the principle that one should not bring a person into existence when one knows (or should know) that it is highly unlikely that one will be able to fulfill the obligations thereby created—because of the public's interest in protecting future children from unfit parents.²² What kinds of measures could it justifiably use to deter people from violating it? The state may not permissibly use forced sterilization, the coercive implantation of IUDs, or involuntary abortions, for these measures would violate the right of individuals to control what happens to their bodies and their right to medical privacy. Apart from education and information, incentives and penalties would seem to be the only alternatives.

Punishment could seem ruled out from the start, as it might be thought objectionable to penalize someone for an action before anyone

is actually harmed by it. Punishing poor single pregnant women would fall into this category. But no one thinks it is wrong to penalize a drunk driver before he injures someone. By driving he has undertaken an obligation (to drive safely and follow the rules of the road) that he is highly unlikely to be able to fulfill. This drunk driving is enough to make him blameworthy because he is exposing others to a morally unacceptable high risk of harm. However, perhaps penalizing wrongful procreation before the child is born is like penalizing an inebriated person before he has gotten behind the wheel. The fact that he intends to drive or has made plans to drive is not a sufficient reason to punish him, as he has not yet imposed an unjustified risk on others. After all, he may change his mind before actually driving. Similarly, a woman may have gotten pregnant intending all along to bear and raise the child but then (realizing she will not be able to meet her obligations to the child) terminating her pregnancy before the fetus is viable or putting the child up for adoption before actually harming it. The interests of future persons are then protected, and the requirements of RRP are satisfied.

Thus, if antiprocreation penalties are justified, these penalties would have to be applied only after the single mother has assumed parental obligations to the child. The trouble is, such penalties would likely make the children in poor single-mother families even worse off. Prison time or fines for these mothers would be self-defeating. Such penalties would make it that much harder for these mothers to fulfill their obligations to their children, thus undermining the point of preventing violations of RRP. Forcibly removing the children to foster care, even on a temporary basis, is a drastic and severe measure best reserved for serious neglect and abuse, as parent-child involuntary separation is usually traumatic for children. Removing at-risk infants from their mothers would also likely be considerably less cost-effective than simply supplementing the incomes of poor single mothers so they can effectively meet their parental obligations.

It's important not to confuse punishing wrongful procreation with punishing parental misconduct. Wrongful procreation has to do with carrying out immoral reproductive decisions—creating persons when one shouldn't have. The wrong lies in undertaking obligations one can't fulfill. Failing to fulfill the obligations—say, by not providing adequate care and supervision for an existing child—is an additional wrong. If

wrongful procreation can be punished legitimately, then penalties can be applied prior to any actual parental misconduct. Punishing parental wrongs could deter wrongful procreation, as some prospective procreators might refrain from procreating if they think they are likely to perpetrate parental wrongs and to be punished for these violations. This suggests that punishing wrongful procreation is in reality unnecessary because punishing actual parental wrongs should be sufficient to deter wrongful procreation.

Welfare Provision and Reproductive Freedom

Yet punishment is not the only way that the state, through law, can constrain reproductive freedom. The state could use, and has used, law to distribute public benefits in a way that aims to discourage irresponsible procreation. For instance, the tax scheme could limit tax exemptions for certain kinds of families.²³ However, when dealing with the poor, structuring the provision of welfare benefits has seemed, to many, more effective and fairer. The state tries to discourage poor single mothers from further reproduction by making public support conditional on, for example, meeting work requirements and facilitating the establishment of paternity.²⁴ It also places lifetime limits on welfare receipt to discourage multiple births. The idea behind such rules is that poor single women who are tempted to procreate would then think twice, as the public support their prospective families would receive would be paltry, and these women would have to submit to conditions they might find onerous if they are to receive this support. On the assumption that no one has a *positive* right to procreate, it might be thought that the public has no obligation to equip prospective procreators with the means necessary for permissible reproduction. The state need only supply means of subsistence and health care to families who cannot afford them. Moreover, advocates of this aspect of welfare reform believe that these provisions can come with strings attached, as they do not believe that welfare recipients have an unconditional claim on public support.

The conditions these mothers would have to meet, although they might be unwelcome, do not constitute punishment, because these families, by receiving welfare provisions, are made better off, at least financially. According to defenders of welfare reform, the key difference between punishment and conditional welfare is that the state is not de-

priving these families of something they (if not for the violation) would otherwise be entitled to, as it would be in the case of a fine. It is giving them something that they lack and have no independent claim on, just not being terribly generous about it. So on this view, meager and conditional welfare support does not violate reproductive freedom and might be an effective and nonpunitive way to prevent wrongful procreation. Poor single women still have their full liberty to procreate, but given their limited means, they have less incentive to do so.

Dorothy Roberts has argued that these elements of welfare policy are racist and sexist.²⁵ She views welfare reform (at least the aspects that bear on reproductive freedom) as a tool of oppression whose use is motivated (at least in part) by prejudice and hostility toward blacks, particularly black women. She argues that such policies serve an ideological function—to justify an oppressive social structure by suggesting that racial inequality is caused by bad reproductive decisions rather than injustice. There is an old and persisting ideology that portrays black women as unfit to be mothers. This system of representations depicts black women as sexually promiscuous, as procreating with abandon but without providing proper parenting for their young, as “matriarchs” who demoralize black men and cause them to desert their families, as “welfare queens” who create more children to increase their welfare benefits, and as creating irreparably impaired children (“crack babies”) by abusing drugs during pregnancy.²⁶ Black reproduction is viewed as degeneracy—as leading to the transmission of inferior genes, made worse by the bad habits of black mothers during pregnancy, and made worse still by the bad example of black parents’ deviant lifestyles. These stereotypes, Roberts argues, are false and offensive, and they obscure the real causes of racial inequality.

Roberts’s critique is compelling. I have no doubt that such an ideology is at work. However, her critique, as important as it is, does not settle the question of whether there is a valid justification for welfare policies that deter reproduction among poor single women. It is clear that advocates of such policies could have racist or sexist motives, and some people might endorse them because they accept racial or gender stereotypes or are infected with implicit bias. But others might endorse them because they want to encourage responsible procreation and reduce black poverty. One might also think that, even though these interventions into the reproductive lives of the black poor are frequently

premised on a mistaken diagnosis of the fundamental causes of black poverty, these policies (perhaps combined with others) would nonetheless reduce such poverty and, more generally, improve the lives of disadvantaged black women. This position, I believe, merits a response and so, for the sake of argument, I assume that some disadvantaged blacks make reproductive choices that contribute to perpetuating ghetto conditions and that violate the Reproductive Responsibility Principle.

Using the structure of welfare benefits to prevent violations of RRP could (at least in principle) be effective, nonpunitive, nonracist, and nonsexist. Yet for reasons already discussed, it cannot be fully justified to poor single mothers, particularly those among the ghetto poor. The false background assumption here is that the public has provided the ghetto poor with all the resources and opportunities to which they are entitled as equal citizens.

We can see the mistake by highlighting a disanalogy between teenage mothers and adult poor single mothers in ghettos. The teenager is unfit to parent because she is too young and inexperienced. The disadvantaged woman is unable to parent adequately only because she lacks resources and opportunities.²⁷ If the public had fulfilled its obligations to these women by ensuring that they were not subject to pervasive racism and sexism, that their class background did not severely diminish their life prospects, that their neighborhoods were safe for raising children, and that they were not disadvantaged because of unrectified past injustices, then perhaps they could not rightly complain if their reproductive freedom is limited by the structure of welfare benefits. As it is, these welfare measures unfairly reduce the value of these women's reproductive liberty and compound the injustices they face. Notice that this argument does not rely on the premise that reproductive freedom is limitless or that no welfare benefits can be conditional on their recipients following certain rules. The argument rests on the claim that the basic structure of U.S. society is unjust and that principles of corrective justice do not permit using the provision and administration of welfare benefits to deter nonmarital births among unjustly disadvantaged women.

Perhaps some procreation among the ghetto poor is wrong. But this wrongful procreation, insofar as it results from limited financial means, does not wrong the public. Nor is a punitive response to this wrongful procreation justified. The state and the public at large are deeply com-

licit in these procreative wrongs. And there are other available ways for the public to address wrongful procreation among the ghetto poor—namely, working collectively to bring about a more just basic structure. Short of undertaking that immense but necessary task, the permissible means of discouraging poor single women from procreating (here assuming they would be in violation of RRP) are limited to such efforts as rational persuasion, educational programs, the provision of information, and voluntary counseling. And even here, as we've seen with cultural reform, the state may lack the standing to play this role in the lives of the oppressed, thus leaving such outreach efforts to those the ghetto poor have more reason to trust.