



Procreative Justice Reconceived

ABSTRACT: *This paper reconsiders Tommie Shelby's (2016) analysis of procreation in poor black communities. I identify three conceptual frames within which Shelby situates his analysis—feminization, choice-as-control, and moralization. I argue that these frames should be rejected on conceptual, empirical, and moral grounds. As I show, this framing engenders a flawed understanding of poor black women's procreative lives. I propose an alternative framework for reconceiving the relationship between poverty and procreative justice, one oriented around reproductive flourishing instead of reproductive responsibility. More generally, the paper develops a methodological challenge for nonideal moral and political philosophy, especially concerning the obligations of the oppressed. Specifically, I argue that in the absence of descriptive and conceptual accountability, the moral gaze of the philosopher risks preserving, rather than destabilizing, oppressive ideologies.*

KEYWORDS: reproductive justice, procreation, abortion, moral gaze, nonideal theory

Introduction

In *Dark Ghettos: Injustice, Dissent, and Reform*, Tommie Shelby (2016) offers an extended analysis of reproduction in poor black communities. At the end of this inquiry, Shelby considers the racist and sexist ideology of the black 'welfare queen' critiqued by Dorothy Roberts (1997). According to Roberts, welfare policies that propose punitive interventions into black women's reproductive lives are a tool of oppression, motivated by the prejudicial ideology that (1) black women are inadequate mothers and (2) race and class inequalities persist as a result of irresponsible procreative decisions on the part of black women. Shelby notes that Roberts's claims are compelling and concedes that such an ideology is 'no doubt' (2016: 139) at work in shaping the perceptions of policy makers (and the public). Yet, while acknowledging this, Shelby maintains that Roberts's critique 'does not settle the question of whether there is a valid justification for welfare policies that deter reproduction among poor single women' (139).

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In this paper, I argue that in attempting to ‘settle the question’, Shelby’s argument reinforces the prejudicial ideology that Roberts critiques. I identify three conceptual frames within which Shelby situates his analysis—feminization, choice-as-control, and moralization—and show that these frames engender a flawed understanding of black women’s procreative lives. Considering each in turn, I argue that these frames should be rejected on conceptual, empirical, and moral grounds. I propose an alternative framework for reconceiving the relationship between poverty and procreative justice, one oriented around reproductive flourishing instead of reproductive responsibility. More broadly, the paper develops a methodological challenge for nonideal moral and political philosophy, especially concerning the obligations of the oppressed. I argue that in the absence of descriptive and conceptual accountability, the ‘moral gaze’ of the philosopher risks preserving, rather than destabilizing, oppressive ideologies.

1. (Ir)Responsible Reproduction

On Shelby’s account, irresponsible procreation is characterized as procreation that morally wrongs either the children created, the public, or the state, where procreation that wrongs the public or state would be a violation of civic reciprocity. His argument analyzes the false ideological position that we are in a just state (i.e., that the basic structure of the United States is just) and that failures of poor blacks to procreate responsibly—insofar as such failures wrong children, the public, or the state—could (and should) be legitimately penalized. Shelby’s argument undermines this view by demonstrating that we are *not* in a just state, concluding that neither the public nor the state are harmed by wrongful procreation among poor blacks. This is because the public and the state are complicit in such wrongdoing—they are at least partially responsible for the unjust situation in which poor blacks find themselves and thus share responsibility for any procreative wrongs that occur.

To show this, Shelby’s argument proceeds on the assumption that the average poor black woman procreates irresponsibly. Shelby refers to these wrongful procreative decisions as ‘violations’ (136) of RRP—the Reproductive Responsibility Principle—where RRP is intended to illuminate ‘failures to live up to our procreative duties’ (132). According to RRP, ‘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’ (132). The ethical permissibility of a person’s procreative choice thus depends on facts about what sort of parent one is likely to be combined with one’s knowledge or unjustified ignorance of these facts. With this characterization of RRP, Shelby pursues the question of whether ‘there is a valid justification for welfare policies that deter reproduction among poor single women’ (139) and if so, what mechanisms can be implemented. Shelby concludes that because wrongful procreation among poor black women ‘results from limited financial means’ (140) where such limitations are rooted in injustices in the basic structure of society, punitive responses on the part of the state are unjustified. What *is* justified—in fact, required—is the collective production of a more just basic structure. Accordingly, Shelby maintains

that ‘the permissible means of discouraging poor single women from procreating . . . are limited to such efforts as rational persuasion, educational programs, the provision of information, and voluntary counseling’ (141).

Shelby’s argument thus undermines three false ideological beliefs—B₁, B₂, and B₃—that are taken to support the conclusion, C₁, that punitive welfare policies are justified:

- B₁: The basic structure of society is just.
- B₂: Poor black women wrong the public or the state in wrongfully procreating.
- B₃: Neither the public nor the state is complicit in such procreative wrongs.
- C₁: Punitive state responses to wrongful procreation are justified.

Importantly, however, the ideology Shelby aims to subvert is supported by at least one other belief—B₄—namely, that poor women violate RRP (with respect to their children) and hence do something morally wrong in procreating. Indeed, the reader must assume B₄ in order to engage the argument:

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.* (132–33, emphasis added)

Let us recall what a violation of RRP entails. In procreating ‘irresponsibly’, the woman in question has not adequately balanced her decision in light of the basic entitlements of children to mental and physical health and overall well-being. To this end, Shelby argues that RRP ‘rightly focuses on the permissibility of the procreative choice rather than solely on what happens to the child after it is born’ (132). Thus, even if a woman *in fact* provides a good (or good enough) home for her child, her choice to procreate could nonetheless have been wrongful if she had good reason to doubt such an outcome.

The wrongfulness of that choice depends on what the procreator knows or should know about their future parenting situation. Yet poor mothers, we are told, have good reason to doubt their ability to provide adequate parental care for their children. Indeed, highlighting the difference between two kinds of mothers, Shelby states, the ‘teenager is unfit to parent because she is too young and inexperienced’, while the ‘disadvantaged woman is unable to parent adequately only because she

lacks resources and opportunities' (140). While the etiology of parental inadequacy differs in the case of the teenage mother and the disadvantaged mother, the fact that both mothers provide inadequate parenting is descriptively affirmed. For the mother who is both young *and* poor, her presumed irresponsibility doubles.

Though B₄ is centrally entertained in Shelby's argument, it is not successfully undermined. Yet, this assumption—that the average poor, single black woman procreates 'irresponsibly'—is a fundamental component of the ideology that motivates punitive welfare policies in the first place. By undermining the justification for punitive welfare policies on the grounds that the public and state are *complicit* in procreative wrongs, Shelby fails to undermine the very idea that a wrong has been committed and that poor black women, specifically, are the primary agents responsible for committing it. Thus, while Shelby rightfully concludes that punitive interventions are unjust, he nonetheless affirms an assumption that directly undergirds their devising. While Shelby affirms this assumption 'for the sake of argument' (140), the assumption itself is never explicitly rejected—despite ample discussion aimed to motivate its plausibility.

Analyses that locate poor black women's disadvantage exclusively in their limited financial means and unequal access to material resources are thus incomplete, for such accounts fail to identify a major ideological source of black women's oppression—namely, their widespread susceptibility to controlling images concerning their sexual, reproductive, and parenting lives. Patricia Hill Collins (2000: 69) begins her now canonical discussion of these images, quoting Trudier Harris:

Called Matriarch, Emasculator and Hot Momma. Sometimes Sister, Pretty Baby, Auntie, Mammy and Girl. Called Unwed Mother, Welfare Recipient and Inner City Consumer. The Black American Woman has had to admit that while nobody knew the troubles she saw, everybody, his brother and his dog, felt qualified to explain her, even to herself.

Collins observes that while news media and government agencies have been noted for their contributory role, 'schools and the scholarship produced and disseminated by their faculty historically have played an important part in generating these controlling images', yet their 'significance in reproducing these images is often less noted' (85). Indeed, she warns that 'embedding research on Black women's sexuality within social problems frameworks thus fosters its portrayal as a social problem' (85).

On Shelby's account, wrongful procreation is framed in terms of poor black women's reproductive choices. This framing proceeds through three stages: feminization framing, choice-as-control framing, and moralization framing. To illustrate, consider several passages through which this framing is progressively co-constructed (emphasis added):

Feminization

When poor single *women* create children, does it harm their offspring or otherwise constitute wrongdoing? (127)

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 fulfil responsibilities she would incur through parenting. (132)

There are single *mothers* who create more children, despite knowing that they are having great difficulty properly caring for their existing children. (132)

Choice-as-Control

The availability of effective contraception alone gives women *considerable control* over their reproductive lives, quite apart from what their male partners do or say. (153)

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? (133)

Choosing to become a teenage single mother is widely thought to be wrong. (127)

[The public] cannot justly condemn these women for *choosing to create children* they could not adequately care for without further public support. (133-134)

Moralization

[The complicity of the public] does not entail that these single mothers *do no wrong* in procreating. (133)

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. (134)

Wrongful procreation has to do with carrying out *immoral* reproductive decisions—creating persons when one shouldn't have. (137)

There are other available ways for the public to address *wrongful* procreation among the ghetto poor. (141)

Even where these propositions are posed interrogatively or where the content is hypothetically endorsed, these frames work together to form the tripartite characterization of the 'problem' under consideration. The first frame genders

procreation: procreation—understood as the act of ‘creating children’—is conceptualized as something that *women* do. The second frame characterizes procreation as a decision or a choice over which women have considerable *control*. The third frame moralizes procreation: procreative choices are depicted as appropriately *morally evaluable*, that is, the merits and demerits of a woman’s procreative choices are fitting subjects of moral scrutiny.

In what follows, I argue that we ought to reject each of these frames on conceptual, empirical, and moral grounds. Conceptually, these frames construct and ideologically reinforce images of black women and girls that distort the realities of their lives. Empirically, the frames are insufficiently attentive to the range of reproductive burdens they experience. Morally, the frames lend undue credence to a sexist (and classist) division of moral-reproductive labor and subject black mothers to an objectifying gaze. As I show, though Shelby rightfully concludes that punitive welfare interventions ‘unfairly reduce the value of these women’s reproductive liberty and compound the injustices they face’ (140), he fails to consider the way in which his own argument contributes to these effects.

2. Feminization

When we are asked to assume that wrongful procreation occurs when poor black women ‘create’ more children than they can adequately care for, procreative responsibility is discursively feminized. Indeed, one might wonder, would not a more appropriate subject of such responsibility be women and the sexual partners *with whom they procreate*? In this section, I consider three possible justifications for the feminization frame and argue that none succeed.

N.B.: One consequence of the feminization frame (and another reason to reject it) is that it renders invisible the reproductive justice needs of queer, trans, and nonbinary people. Shelby utilizes the terms ‘woman’/‘women’ throughout to refer to a particular subset of women, namely, (fertile) cisgender women who engage in penis-in-vagina sexual intercourse with (fertile) cisgender men. When engaging Shelby’s argument, my use of the terms ‘woman’/‘women’ and ‘man’/‘men’ should be understood to refer in this way. However, it is my view that reproductive justice concerns people of all genders and that gender and sex ascriptions should not be uncritically understood to refer to a person’s reproductive body parts or role in reproduction.

2.1 Gendered State Interventions

Traditional sexist narratives about irresponsible reproduction and parenting in poor black communities rest on the assumption that ‘fragile’ families exist because poor mothers create vulnerable children and poor fathers fail to support them financially. Consequently, state interventions target men and women in these constructed gender roles: women (*qua* procreators) and men (*qua* economic providers). Because Shelby is assessing a state system that adopts a gendered division of familial labor, a feminization frame could be said to provide an appropriate lens to analyze women’s unique vulnerabilities and responsibilities.

Indeed, one might point out, the respective vulnerabilities and responsibilities of men and fathers are not neglected in Shelby's analysis; rather, they are considered separately in a subsequent chapter.

While this rationale makes some conceptual sense, it is insufficiently attentive to the range of critical tasks with which Shelby's discussion is actually engaged. First, the analysis offered in these dual chapters extends beyond exploring the justification for various state interventions. In addition to raising and answering questions regarding what the state owes to poor black adults and their children, the chapters also raise and answer questions regarding what poor black adults owe to each other and to their children (as well as to the state and to the public). It is with respect to this parallel inquiry—concerning the ethical obligations of poor black adults themselves—that the application of the feminization frame is particularly dubious. Such application reproduces an unwarranted state-sanctioned division of gendered labor within the realm of interpersonal procreative ethics.

Second, the suggestion that men's procreative responsibilities are adequately considered in a separate chapter mischaracterizes the content of this later chapter. Rather than offering separate but equal treatments of men's and women's moral obligations with respect to a single subject—namely, procreative responsibility—the two chapters explore fundamentally different, though closely related, topics. Chapter 4 (entitled 'Reproduction') centrally concerns *procreative* responsibility—that is, when and under what conditions it is morally permissible to create a child. Chapter 5 (entitled 'Family') centrally concerns *parental* responsibility—that is, when and under what conditions a person can be said to have incurred responsibilities as a moral (not biological) parent. The separate focuses of each chapter reflect the intuition, defended by Shelby, that to (choose to) create a child and to (choose to) parent a child are distinct. As Shelby states:

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. A person is a moral parent if he or she has moral rights or responsibilities of parenthood with respect to another person. (123)

Thus, while Chapter 4 situates women as the central moral subjects concerning procreative responsibility, very little attention is given here or elsewhere to the subject of men's procreative responsibilities. Though we are later invited to consider the *parental* responsibilities of men in a subsequent chapter, these separate analyses reproduce a disparate gender focus for each type of responsibility.

2.2 Do Men Procreate?

Perhaps the feminization frame is justified if men simply do not procreate. If only women procreate, then the duty to procreate responsibly is one that only women possess. Though this suggestion may strike many as absurd, the text can plausibly be interpreted as supporting it. While women are frequently and consistently described throughout the text as 'bringing persons into existence', 'creating

babies', and 'creating children', Shelby takes great pains to void the suggestion that men likewise do the same. Indeed, consider several passages in which Shelby discusses men's and women's respective procreative roles (all emphases added):

Paternalism towards 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.* (136)

If he uses contraception or if it is mutually understood that his sexual partner uses it, then it wouldn't be reasonable to construe his sexual activity as acceptance of parenthood *should his sperm be used to create a child.* (155)

If neither sexual partner uses contraception and this fact is known to both, then (absent explicit communication to the contrary) the male partner has implied his acceptance of [moral] parental responsibilities *should a child be created from his sperm.* (152–53)

[Claudia] Mills insists that the biological father's parental obligation rests on the fact that he created a helpless person who exists only because of the father's voluntary actions. *However, in addition to the problem just explained— namely, that the child exists only because the mother allowed it to gestate and gave birth to it—* the 'if not- but-for' condition (counterfactual dependency) is overly inclusive, as the child might die in utero or during childbirth if not for various medical professionals (or even if not for the taxi driver who gets the mother to the hospital just in time). Indeed, the child would not exist if not for the voluntary acts of its many ancestors. *Talk of 'creation' here is also misleading. The father has contributed to the creation of a zygote whose ultimate fate lies with the mother.* He played no role in bringing the embryo to term, whereas numerous other persons may have (friends, the mother's family members, a midwife, medical professionals, and so on). (157)

One might argue that the biological father, by having sex with the biological mother, set into motion a series of events . . . that he knew could result in a child and that this initial voluntary act and foreknowledge are sufficient to give him parental responsibilities should his biological child be born. Yet the friend or dating service that sets up a woman and man on a date also satisfies these conditions. . . . No one thinks that automobile manufacturers are morally responsible for compensating victims of car accidents (assuming the cars are built safe), despite the fact that they set into motion automobile use and that accidents are known to happen. *Biological fathers who use reliable contraception are similarly situated.* (158)

In these passages, men's role in procreation is described in such a way that highlights men's lack of procreative agency; their passive relationship to what happens to their sperm; the moral insignificance of their role in a causal chain; their temporal distance from later stages of procreative development. Indeed, a consistent characterization of men's purported role in procreation emerges. Men may engage in consensual sex; they may or may not use contraception; their sperm may 'be used'. But *women* create children.

It would not be unreasonable to conclude that Shelby thinks that men do not procreate, at least not in the sense that is relevant for RRP. Indeed, recall that on RRP, '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 fulfil the obligations thereby created' (132). To clarify, Shelby explains that RRP is intended to account for the ethical badness of two wrongs: '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' (127). If procreation is defined as the act of 'bringing a person into existence' and 'creating vulnerable persons', then it is hard to see how men, as described in the aforementioned passages, could be understood to procreate at all.

In one passage that appears to affirm the idea that men *do* procreate (and can likewise do so irresponsibly), Shelby states:

There are, of course, biological fathers (along with some adoptive ones) who have undertaken parental duties but are unable to fulfill them for lack of resources. Some in this situation have engaged in wrongful procreation: they have undertaken obligations they knew (or should have known) they were unlikely to be able to fulfill. (169)

Here, some men are depicted as having engaged in wrongful procreation in virtue of undertaking obligations they knew or should have known they were unlikely to be able to fulfill. But what distinguished parental responsibility from procreative responsibility—and indeed what warranted a separate chapter for each—is that procreative responsibility centrally involves *creating* helpless children in need of caretaking while parental responsibility centrally involves *undertaking* parental responsibilities for helpless children. Indeed, adoptive parents can irresponsibly undertake parental obligations for children without ever having procreated (responsibly or otherwise). Insofar as Shelby treats biological fathers analogously to adoptive ones, this passage is interpretively ambiguous.

2.3 Asymmetrical Procreative Responsibilities

Suppose, however, we take this last passage to suggest that Shelby *does* think that men procreate (and are capable of procreating irresponsibly). Perhaps, then, the feminization frame could be said to reflect the fact that men's role in the procreative process is comparatively limited and that women thus bear greater procreative responsibility. Consequently, we might conclude that men's and women's asymmetrical reproductive roles engender asymmetrical reproductive

responsibilities. Still, we are left wondering: what would a reproductive responsibility principle for men entail?

The most plausible passages from which to generate a correlative principle for men pertain to contraception use. Shelby characterizes contraception use as an exercise of reproductive freedom, where reproductive freedom is defined as ‘the liberty to create or to refrain from creating children’ (134). Such freedom, maintains Shelby, admits of a ‘sex-based’ asymmetry:

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. (134)

Shelby thinks this asymmetry does not unfairly restrict men’s reproduction freedom; it is justified ‘given women’s legitimate interest in controlling what happens to their bodies’ (134–35). But such asymmetry does, he says, underwrite an unfairness in the conventions through which *moral* (not biological) parenthood is thought to be acquired. Indeed, states Shelby, ‘women consent to parent, not by having consensual sex, but by bearing children that they don’t put up for adoption. On the prevailing convention, only men implicitly accept parental responsibilities through consensual sex alone’ (152).

To afford men greater parity, Shelby proposes the following: the use of contraception should be taken to constitute a ‘fair warning’ (153) to a man’s sexual partner that he does not consent to assume parental responsibility for any children resulting from his participation in that sexual act. Should a child subsequently be born, his refusal to assume (moral) parental responsibilities is justified in virtue of the fact that—by using contraception—he duly indicated that he did not consent to undertake those obligations. Shelby states:

The use of contraception voids the inference that he seeks to be a parent or that he is indifferent to whether he becomes a parent. Of course, if she gets pregnant, she is free to terminate the pregnancy or to bear the child and he has no standing to overrule her decision. But her reproductive freedom does not entail a claim right on the biological father for childrearing help or child support. (155)

Shelby later maintains that a man who impregnates a woman might be obligated to provide *pregnancy* support—that is, support for the duration of pregnancy—since he is partially responsible for *this* condition (the pregnancy). But since it is the woman who decides whether or not to carry a pregnancy to term, her partner, if he earlier so signified, is not thereafter responsible should the woman decide to ‘create a child’ (155) with his sperm.

To be clear, Shelby's proposal challenges the convention on which men, in virtue of engaging in consensual sex alone, incur responsibilities associated with *moral* parenthood. Thus, the use of contraception on this proposal voids obligations of parental responsibility. But recall that we are presently interested in a man's *procreative* responsibilities—the responsibilities he has with respect to procreation *simpliciter*. We might, however, draw on these discussions to develop a correlative principle of procreative responsibility for men. In using contraception, a man might be seen as communicating his desire not to become a moral parent, but he is *also* exercising his reproductive responsibility to 'refrain from creating children', in the same way a woman would exercise her reproductive responsibility were she to decide to terminate a pregnancy. Thus, we might propose the following: men satisfy the requirements of reproductive responsibility by using contraception.

There are several problems with this proposal. First, while men can fulfill their procreative moral duties by using contraception (or merely relying on their partner's use of contraception, where such use is mutually known), women occupy a more morally fraught position. Consider the following characterization of a woman's procreative responsibilities:

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. (137)

In order to fulfil her procreative responsibilities, the pregnant woman described above must either get an abortion or give her child up for adoption, regardless of her own desire to parent the child in question. While the situation described above concerns a woman who did not use contraception (she is stipulated to have gotten pregnant with the intention of bearing and raising a child), a woman who *did* use contraception but who nonetheless becomes pregnant faces the same moral requirements—to be satisfied through abortion or adoption. Conversely, the male partner's correlative procreative responsibility would be satisfied in virtue of his having used contraception alone.

This might appear to be the right result. That is, one might think that women reasonably incur greater procreative responsibilities *precisely because* they possess greater procreative freedoms. But this move undercuts the moral justification in virtue of which women are thought to possess such additional 'freedoms' in the first place. Moreover, the asymmetrical procreative responsibilities it assigns to men and women promotes a division of moral labor that is not merely gendered, but sexist (and classist). If access to abortion is necessary to ensure women's reproductive freedom, we should reject the idea that by terminating their pregnancies, poor women successfully satisfy the requirements of a moral principle that, by its very nature, devalues their procreative (and parenting) labor. To be clear, we should reject this idea *not* because there is anything morally wrong with choosing abortion but because there is something morally wrong with

an ethics of procreation in which pregnant women—in virtue of being single and poor—can be said to have violated a moral principle (RRP) should they choose *not* to terminate the pregnancy. This move transmogrifies reproductive freedoms into moral weapons.

One might point out that on Shelby's view, a pregnant woman's responsibility can also be satisfied through adoption. But this observation does not salvage the proposal. First, we should remember that RRP is intended to explain the wrongfulness of *two* acts: wrongful procreation as such (i.e., the simple fact of creating vulnerable persons) and wrongful procreation with intent to parent. While adoption only satisfies the latter requirements, abortion satisfies both. Second, the idea that women, in virtue of being poor, procreate irresponsibly if they do not forgo the opportunity to raise their own biological children is no less disturbing.

Generating gender-asymmetric procreative responsibility principles thus illuminates the arbitrary nature of RRP in its original feminized formulation. As I have argued, we have good moral reason to avoid locating procreative responsibility at one stage for women (childbirth) and at another stage for men (fertilization). If the morally relevant stage at which one ought to exercise preventative procreative responsibility is uniformly understood to concern the prevention of fertilization, rather than preventing birth, then men and women—indeed persons of any gender—bear equal procreative responsibility, to be exercised by using contraception. Importantly, locating procreative responsibility at the stages prior to fertilization does not entail nor is it grounded in any special moral status possessed by a zygote. Rather, locating procreative responsibility here is grounded in the fact that human fertility is a powerful capacity—one which, minimally, may have moral implications for one's sexual partners—and with respect to which the cultivation of attitudes of mutual care seems morally necessary and appropriate.

Indeed, while Shelby is concerned with parity in the conventions for assigning parental responsibility, I am concerned with parity in the conventions for assigning procreative responsibility. Thus, we might think that any fair principle of procreative responsibility should be gender neutral and contraception-focused. Such a principle would require a comparable level of contraceptive care between all fertile participants engaging in sex acts that could result in procreation, without attaching special moral responsibilities to people who become pregnant to get abortions.

While this proposal improves upon others considered in this section, there are still problems with it. First, because the majority of contraception methods are designed to be used by people who are capable of becoming pregnant through intercourse, the burdens associated with contraception use are not evenly distributed (Davis 2017). Second, an idealized discourse concerning contraception (and abortion) promotes false narratives of procreative control. I address these considerations in the following section. Third, and more important, however, there is reason to think that any principle of procreative responsibility will be unduly morally punitive to people who are poor. In the final section, I argue that the moral framework of reproductive responsibility is in tension with the aims of reproductive justice.

3. Choice-As-Control

The affirmation of procreation as a site of moral responsibility depends, in large part, on the characterization of procreation as a choice over which one has control. Indeed, recall that for Shelby, the advantage of RRP over other principles is that RRP ‘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’ (132).

If women did not possess adequate control with respect to procreation, then their procreative lives could not reasonably be considered appropriate sites of moral scrutiny. Indeed, it would seem quite unreasonable—even unjust—to evaluate morally a woman’s ‘reproductive responsibility’ under conditions in which her ability to refuse sex were socially (or legally) compromised or where methods to prevent procreation were unavailable, highly unreliable, or dangerous. The characterization of procreation as appropriately morally evaluable thus presumes adequate control. Indeed, Shelby states:

There is now biomedical 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. 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). (127)

And again later:

The availability of effective contraception (including the morning after pills, which are 85-89 percent effective three to five days after sex) enables women to have sex without having to endure pregnancy, without being forced to become mothers, and without having to rely solely on abortion or adoption to avoid motherhood. The availability of effective contraception alone gives women considerable control over their reproductive lives, quite apart from what their male partners do or say. (153)

These passages suggest that the availability and accessibility of contraception and abortion afford women ‘considerable control’ over their reproductive lives.

While this characterization of control outlines an ideal state of affairs, it hardly describes the reality experienced by many people in the United States. Consider, for example, the fact that emergency contraception (EC) is expensive—sometimes prohibitively so—and while some forms are accessible over the counter, the most effective methods require a prescription. Furthermore, though more research is needed, studies have demonstrated that certain forms of EC (e.g., the ‘morning after pill’) may work less well or not at all for people weighing over 155 pounds (Glasier et al. 2011; Edelman et al. 2016). As the average woman over the age of

20 in the United States weighs 170.6 pounds (Fryar et al. 2018), this limitation cannot be ignored. Finally, while EC can provide enhanced procreative control, it is not always obvious that one *ought* to use it. Indeed, many pregnancies occur when contraception was used but failed without the user's knowledge; in such cases, indicators that one's contraception was not protective may appear well beyond the point at which EC would be effective.

Perhaps most significant, however, is the fact that access to abortion and contraception in the United States cannot be assumed. Even where safe and effective contraception and abortion are *de jure* available, these resources may be *de facto* unavailable. This is true for people experiencing poverty (especially those who are uninsured, underinsured, or who use government-provided insurance), minors required to obtain parental consent, people living in 'care deserts' (i.e., rural or urban communities lacking access to hospitals, pharmacies, clinics), queer, trans, and nonbinary people whose reproductive needs are underserved, those in communities with strong natalist norms, those whose employer-provided insurance will not cover contraception or abortion for religious reasons. Thus, many people are unable to secure a prescription, obtain the necessary funds for a procedure, or access a pharmacy or clinic due to lack of transportation.

Beyond these general considerations, the application of the choice-as-control frame to black women, specifically, raises special concerns. People must not only be able to *access* reproductive resources, but they must be able to access them in environments where they are treated as equals. In the United States, black women receive lower quality care (Feagin and Bennefeld 2014; FitzGerald and Hurst 2017). Because the most effective forms of contraception—shots, IUD, and implant—are expensive, require a prescription, and must be administered, inserted, or removed by a medical professional, it is not surprising that black women may be less likely to choose these provider-mediated methods. Black women's attitudes toward physically invasive and externally mediated methods cannot be assessed in isolation from the history in which such methods—alongside sterilization—have been used forcibly to control their fertility (Davis 1983; Washington 2006; Takeshita 2012). Indeed, while the reproductive justice movement for white, middle-class, and nondisabled women has fought for access to resources like contraception and abortion, reproductive justice movements for those who are poor, nonwhite, and/or disabled have fought not only for equal access *to* these resources but also for freedom *from* their coercive use.

Finally, while self-administered forms of hormonal contraception (e.g., pills, patches, rings, etc.) enable more autonomy and can ameliorate the effects of certain medical conditions in addition to preventing pregnancy, these methods are commonly associated with numerous side effects: mood changes, nausea, headaches, pelvic pain, bleeding, amenorrhea, and (for those forms containing estrogen) increased risk of blood clots and other serious health problems. These side effects range from annoying to intolerable to deadly. The risks are compounded for black women, who are more likely than their nonblack counterparts to have their testimony about their health, pain, or discomfort underestimated or disregarded by medical providers (Meghani, Byun, and Gallagher 2012; Hoffman et al. 2016). Given all this, some black women may

prefer nonhormonal methods (including fertility tracking, barrier methods, and withdrawal) to protect against pregnancy. While nonhormonal methods are more easily (and less expensively) accessed, and some barrier methods offer additional protection against sexually transmitted infections, these methods offer comparatively less reliable protection against pregnancy. More important, condoms and withdrawal require the dedicated cooperation of sexual partners.

Indeed, one study exploring black women's attitudes toward sex, contraception, and pregnancy found that compared to white women, black women had more negative attitudes toward premarital sex and sex at a young age, but were nonetheless less likely to use contraception than their white counterparts (Barber, Eckerman Yarger, and Gatny 2015). In making sense of these differences, the study found that black women's *attitudes toward their partners* were especially salient. While the women expressed less positive attitudes about sex and less desire to have sex in the coming year, they '[were] less willing to refuse sex if it would make their partner angry, more strongly believe that asking a partner to use a condom signifies distrust, and have greater expectations that their partner would be happy about a pregnancy' (Barber, Eckerman Yarger, and Gatny 2015: 773). The study concluded that 'considering male partners' desires when assessing a pregnancy's intention status may explain why some unintended pregnancies occur' (773).

These data thus conflict with Shelby's contention that 'the availability of effective contraception alone gives women considerable control over their reproductive lives, quite apart from what their male partners do or say' (153). First, the research indicates that for many women, their exercise of their own sexual and procreative control, at the level of contraception use and authority to decline sex, is intimately tied up with navigating a partner's preferences and reactions—notably, his anger should she express a desire to use a condom or not to have sex. The choice-as-control frame abstracts away from the reality in which women find themselves negotiating *with their partners* the terms and conditions under which sex and contraception use take place.

Finally, this research indicates that black women's attitudes toward pregnancy are often directly responsive to the attitudes of their partners. If sexual intercourse takes place in the context of a shared openness to pregnancy, such openness may fall short of an intention to procreate or to carry a pregnancy to term. There are relationship-based reasons for such openness—including love, hope, and trust. If a woman's attitudes toward pregnancy are contingent on her partner's actual response to the *reality* of that pregnancy, procreation may occur in the absence of a deliberate choice or decision to do so.

In sum, while the availability and accessibility of reproductive resources are necessary for control over procreation, mere availability and accessibility of resources do not, by themselves, expand a person's options or translate into control. People must be able to access reproductive resources that enhance their health and well-being, and they must be able to access these resources in environments that do not undermine their dignity or render them vulnerable to medical abuse. Furthermore, if a woman's use of reproductive resources jeopardizes relationships that are important or necessary for her or puts her at risk

within a relationship, the fact that such resources are *generally* available does little to ensure that those resources are available *to her*. Although decisions about whether to use contraception or to have an abortion ought to be made freely, these decisions are—even in the most ideal cases—negotiated within the social contexts of relationships, families, communities, healthcare systems, and public institutions. Situating procreation within the individualized framework of choice-as-control obscures the stakes of these vulnerabilities and interdependencies.

Part of the problem with the choice-as-control frame, then, is the conception of reproductive freedom that gives rise to it. Recall that Shelby defines reproductive freedom as ‘the liberty to create or to refrain from creating children’ (134); yet, he stipulates that his ‘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)’ (134). Moreover, he continues:

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). . . . Reproductive freedom concerns the moral limits on state interference with individual reproductive decisions and thus the scope of procreative liberty.

But this characterization of reproductive freedom is insufficient for two reasons. First, a disjunctive characterization of reproductive freedom suggests that the two constitutive liberties can be sensibly separated. Yet, this separation obfuscates the fact that reproductive freedom is a *conjunctive* concept and that for poor black women, *both* liberties are ‘burdened’ (Roberts 1991). Indeed, says Roberts, ‘The reproductive freedom of poor women of color . . . is limited significantly not only by the denial of access to safe abortions, but also by the lack of resources necessary for a healthy pregnancy and parenting relationship’ (1461). On a disjunctive characterization, black women’s right *to* procreate becomes unmoored from their capabilities—more generally—to pursue reproductively healthy and satisfying lives.

Second, when the freedom *to* procreate is conceptualized narrowly as freedom from state interference, this occludes the wider range of ways in which poor black women are reproductively ‘unfree’. Black women in the United States are 2-4 times more likely than their white counterparts to die from causes related to their pregnancies (Petersen et al. 2019; Creanga et al. 2012). Similar asymmetries are observed with respect to severe maternal morbidity (i.e., nonfatal but potentially life-threatening complications), where those giving birth in predominantly black-serving hospitals experience the greatest risk (Howell et al. 2016). These outcomes are preventable: deficient prenatal and postnatal services, inequitable access to quality care, lack of knowledgeable providers before, during, and after birth, and racism in and outside of the healthcare system all collectively undermine black women’s freedom to bear and raise children. For black women in America, having children may literally mean risking one’s life.

Importantly, these disparities exist for black women across all ages, incomes, and education levels (Singh 2010), and some risks increase with advanced age and education levels. For black mothers, the physical effects of racism compound as they age, and this embodied stress has implications for their pregnancies (Forde et al. 2019). Well before black women reach ages generally considered to be ‘higher risk’ (e.g., 35), the social and physical realities of their oppression progressively burden their reproductive opportunities in ways not observed for their white counterparts (Geronimus 1992). Black mothers in their teens experience lower risk pregnancies than black mothers in their twenties, and black women in age-ranges typically considered to be ‘ideal’ for childbearing experience higher rates of complications—including low-birth weight, fetal mortality, and pre-term delivery (Forde et al. 2019). Studies have found that maternal mortality rates for black and indigenous women with at least some college education were higher than those for women of all other racial/ethnic groups who never graduated high school (Petersen et al. 2019; NYC Bureau of Maternal, Infant and Reproductive Health 2016).

These findings do not suggest that black mothers are ‘better off’ having children if they are young and poor. When age and race are held constant, poor women experience higher rates of negative birth outcomes than women with higher incomes (Singh 2010). What it does suggest, however, is that while young, poor black mothers are the least able to access the material and social resources needed to fully exercise their reproductive freedom, their reproductive freedom does not necessarily expand with increased age or advanced education. These injustices are more troubling in light of the fact that poor women of color are less able to access assistive reproductive technologies later in life (Russell 2018), where such technology disproportionately serves to expand the reproductive freedom of white people (for whom infertility is largely treated as a problem) and of people with access to financial resources.

Rather than ‘considerable control’, black women’s reproductive choices are marked by considerable constraint. Simply put, poor women (regardless of race) and black women (regardless of socioeconomic status) are reproductively devalued and underserved. What this means for poor black women, however, is that they occupy the crossroads of multiple vectors of reproductive disinvestment. A conception of reproductive freedom that narrowly identifies the liberty *to* procreate with freedom from state interference renders these inequalities inconspicuous. Yet, these inequalities are so significant that no adequate analysis of reproductive freedom can fail to acknowledge them. This observation thus calls into question both the legitimacy of the choice-as-control frame and the conception of reproductive freedom undergirding it.

4. Moralization

In analyzing the moral-political obligations belonging to the oppressed, Shelby engages what he calls a ‘political ethics of the oppressed’ (14). In this vein, Shelby sets out to ‘discuss social structure *and* individual responsibility, avoiding the all-too-common tendency to emphasize one or the other’, maintaining that it is

possible to ‘do so without devaluing the political agency of the ghetto poor’ (14). As Shelby describes the advantages of this approach:

The ghetto poor are often viewed as either helpless victims of injustice or a menace to society. Their political acts of defiance are therefore generally regarded as posturing, treated as misguided, ignored altogether, or actively repressed. Yet some actions of the ghetto poor that are interpreted as deviant or pathological should instead be understood as moral responses to injustice. By looking at their conduct this way, we gain insight into the political ethics of the unjustly disadvantaged and can better evaluate when these responses are reasonable and permissible or blameworthy and self-defeating. (14)

Thus, by examining this conduct through a moral frame, we are said to gain a better vantage from which to understand and assess it.

This application of the moral frame to black women’s reproductive lives yields RRP. Yet, as I have argued, the idea that black mothers might be in violation of some ethical principle should they procreate when young and poor moralizes their reproductive oppression while obscuring the pervasive disadvantages they face. Poor black women are not poor because they are morally deficient; poor black women are not morally deficient because they are poor. Yet situating reproductive choices inside a discourse of proactive responsibility lends credibility to these conflation. The representation of poverty as a problem that can be characterized and hence appropriately evaluated—even partially—in terms of individual choice or reproductive self-discipline reinforces the oppression of poor black women and girls. RRP implies that in debates about poverty, deliberation about women’s and girls’ purported moral failures deserves a seat at the discursive table.

The moral frame thus engenders a perspective from which the construction of poor black mothers as *moral agents* is coextensive with their construction as ‘agents of immorality’ (Bridges 2017: 53). Black women’s moral agency cannot be affirmed in discourses conducted from the same moral perspective through which, as Khiara M. Bridges puts it, ‘immorality [is] attached to the space where black mothers could be found’ (53). Thus, while the moral frame offers a perspective from which black women are discursively treated as moral agents, they are nonetheless barred from accessing discourses in which they are ‘affirmed’ as moral agents (52). This distinction—between *treating* persons as moral agents and *affirming* them as moral agents—should not be overlooked: if I hold a person responsible for something for which they are not responsible, or if holding them responsible promotes unjustified constraints on their moral agency or unjustifiably diminishes their moral value in the eyes of others, then I may be said to treat them as a moral agent without affirming them as a moral agent.

Thus, while the moral frame refuses to treat poor black women as victims of pathology, it replaces the pathological gaze with a gaze of another kind. The moral obligations that the oppressed have toward one another derive their content in virtue of the participatory relational standing occupied by the moral agents in question. The nature and content of such obligations are thus informed by the

particulars of their private lives, much of which is not readily available from the perspective of a distant moral observer. To conduct the moral assessment in question, then, the moral observer must adopt an asymmetrical stance—one of *looking at* those who are observed—from a detached and seemingly impartial moral vantage. Call this asymmetrical moral looking ‘the moral gaze’.

In assuming the moral gaze, the moral observer looks in on the private world of others, often without their consent. While the moral gaze is undoubtedly intrusive, it is also epistemically limited; it lacks epistemic advantages that are afforded to those imbedded within a particular kind of experience—experience that is central to the perspective of those looked at but is largely inaccessible from the perspective of those who look. In the absence of such access, however, the moral gaze produces a kind of conceptual objectification: those studied need not appear as they are, only as they are imagined to be. From this perspective, black women’s lives are rendered hypervisible sites of speculative inquiry, where such inquiry relies upon a framework in which black women can be ‘known’, ‘understood’, or ‘explained’ by merely presupposing them to be a certain way. When such inquiry is carried out from the authoritative perspective of the moral-political ‘expert’, the moral gaze exerts a controlling force. Insofar as such inquiry assumes a place within the broader moral discourse, its pronouncements influence public morality and public political life.

In Shelby’s analysis, the tainted moral structures responsible for the construction of poor black women *as agents of immorality* provide the frames through which a moral analysis of their conduct is undertaken. Yet such frameworks obstruct our ability to understand black women’s oppression adequately. When skewed conceptual moral frameworks guide our examinations of moral responsibility, they preclude access to knowledge of what black women’s lives are really like. The problem is thus not that the moral lives of black women or of oppressed persons more generally could never be fruitfully examined; the problem, rather, is that the rhetorical structures through which this endeavor is undertaken are antithetical to that task. When these structures are oppressive, they cannot be relied upon to make sense of the moral lives under consideration.

What is needed, then, is to shift the moral gaze. Black womanist ethicist Katie G. Cannon articulates the power of such a shift when she questions the fittingness of dominant ethical principles—of which RRP might be considered one example—as evaluative standards to assess the character and moral conduct of dominated people whose experience of oppression ‘knows no ethical or physical bounds’ (2006: 4). In her study of the possibility of a black woman’s ethic, she argues that black women have ‘justly regarded survival against tyrannical systems of triple oppression as a true sphere of moral life’ (4). Although the moral knowledge generated from this perspective ‘does not rescue black women from the bewildering pressures and perplexities of institutionalized social evils’, it ‘exposes those ethical assumptions which are inimical to the ongoing survival of Black womanhood’ (4–5).

To see how such a shift might be initiated, consider an analogy between the moral gaze, as it functions in moral and political philosophy, and ‘the white gaze’, as Toni Morrison outlines its historical function in traditional African American novels. As

Morrison asks, ‘whose eye, whose language is controlling this?’ (Morrison 2013). Operating perspectively, the white gaze signifies a presumed (white) audience whom the narrator must address, a presumed language with which the narrator must communicate, a presumed conflict with which the narrative must engage, a presumed set of beliefs to which the narrative must respond. While the language and framing of the white gaze is tailored to match the needs of this presumed audience, these choices also affect the experiences of the *actual* audience—the readers—whoever they may be.

Indeed, when discussing her decision to displace the white gaze in her own writing, Morrison credited her personal experiences as a young reader of African American fiction. Describing many of the books available to her in her youth, she states she ‘could feel the address of the narrator, over my shoulder, talking to somebody else, talking to somebody white. I could tell because they were explaining things that they didn’t have to explain if they were talking to me’ (Morrison 1998). This presumed white audience imposed constraints that she, as a writer, could not accept. For Morrison, shifting the gaze in her books was a way of rejecting the implication that black lives ‘have no meaning, and no depth, without the white gaze’ (Morrison 1998). Morrison identified the space in which she (alongside other black women writers) found herself writing as the ‘free space opened up by refusing to respond every minute to the gaze—somebody else’s gaze’ (Morrison 2013).

bell hooks offers parallel observations in her analysis of the white gaze in classical cinema and cinema criticism. hooks identifies a two-fold erasure of black women—as *producers* and *protagonists* in cinema, on the one hand, and, on the other, as *spectators* and *critics*. Of this second erasure, she writes that black women’s exclusion ‘disallows the possibility of a theoretical dialogue that might include black women’s voices. It is difficult to talk when you feel no one is listening, when you feel as though a special jargon of narrative has been created that only the chosen can understand’ (1992: 125).

Theorizing what she refers to as the ‘oppositional gaze’, hooks locates those ‘spaces of agency . . . wherein we can both interrogate the gaze of the other but also look back, and at one another, *naming what we see*’ (116, emphasis added). hooks identifies the oppositional gaze as a site of protest—a ‘gesture of resistance’ (121) through which black women refuse controlling and intrusive looking relations. Citing the importance of ‘counter-memory’ as essential to this practice, hooks states: ‘Black women involve ourselves in a process whereby we see our history as counter-memory, using it as a way to know the present and invent the future’ (131). While the oppositional gaze thus constitutes a site of moral knowledge, it produces knowledge that is grounded in documentation and invention—engaging practices of naming and description that do not presuppose the salience of concepts or ideologies that carry with them the ‘threat of violation’ (126).

The success of our moral and political projects depends on how we understand the social phenomena with respect to which our projects are devised. Like the white gaze identified by Morrison and hooks, the moral gaze—as it operates in moral and political philosophy—presumes the salience of concepts, characterizations, and presuppositions that bear the markings of dominant and

controlling ideologies. Morrison and hooks call our attention to practices of descriptive and conceptual accountability. Such accountability precedes the stages at which one evaluates the justification of various responses (e.g., policies, interventions) to social injustice; it concerns the much earlier stages in which social injustices are themselves descriptively conceptualized and discursively reproduced. Where and with whom one locates the ‘problem’ is itself a matter of justice.

Descriptive and conceptual accountability is a requirement of justice when persons whose experiences are being described have been wrongfully excluded from participation in the formation and acceptance of dominant conceptions of those experiences (Fricker 2007; Dotson 2014; Medina 2013). We might put the proposal like this: a deliberator’s understanding and, hence, conceptual framing of the ideas under consideration must reflect sufficient knowledge of and accountability to the experiences of those whose lives are directly concerned, where, owing to oppression, these perspectives have not been adequately influential in the academic-public-political domain. In this way, the aim of conceptual and descriptive accountability is both ethical and epistemic. Epistemically, the practice aims to ensure that accounts offered are not false, distorted, or reductionistic in their depictions. Ethically, the practice aims to ensure that descriptive accounts of the lives of the oppressed are informed by and responsive to those who inhabit those lives.

Descriptive and conceptual accountability takes seriously the idea that what happens in the future depends on how we know the present. The discourse surrounding black women’s and girls’ sexual and reproductive lives cannot engender justice if it is not informed by black women and girls—not only at the level of evaluating the illegitimacy of various policies, but in our very conceptions of what it means to exercise reproductive agency while one is young, poor, and black. To achieve this goal, the discourse must be informed by black women’s and girls’ perspectives (Brooks and Martin 2019; Caldera and Sturdivant 2022). Shifting from a framework of reproductive responsibility to a framework of reproductive flourishing is imperative in this pursuit (Luna 2009; Roberts 2014; Threadcraft 2016). Philosophy that positions itself from the perspective of the moral gaze is not equipped to do this work.

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