

KILLING THE BLACK BODY



Race, Reproduction,
and the Meaning
of Liberty

DOROTHY ROBERTS



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REPRODUCTION IN BONDAGE

When Rose Williams was sixteen years old, her master sent her to live in a cabin with a male slave named Rufus. It did not matter that Rose disliked Rufus "cause he a bully." At first Rose thought that her role was just to perform household chores for Rufus and a few other slaves. But she learned the true nature of her assignment when Rufus crawled into her bunk one night: "I says, 'What you means, you fool nigger?' He say for me to hush de mouth. 'Dis my bunk, too,' he say." When Rose fended off Rufus's sexual advances with a poker, she was reported to Master Hawkins. Hawkins made it clear that she had no choice in the matter:

De nex' day de massa call me and tell me, "Woman, I's pay big money for you, and I's done dat for de cause I wants yous to raise me chillens. I's put you to live with Rufus for dat purpose. Now, if you doesn't want whippin' at de stake, yous do what I wants.

Rose reluctantly acceded to her master's demands:

I thinks 'bout massa buyin' me offen de block and savin' me from bein' sep'rated from my folks and 'bout bein' whipped at de stake. Dere it am. What am I's to do? So I 'cides to do as de massa wish and so I yields.'

The story of control of Black reproduction begins with the experiences of slave women like Rose Williams. Black procreation helped to sustain slavery, giving slave masters an economic incentive to govern Black women's reproductive lives. Slave women's childbearing re-

plenished the enslaved labor force: Black women bore children who belonged to the slaveowner from the moment of their conception. This feature of slavery made control of reproduction a central aspect of whites' subjugation of African people in America. It marked Black women from the beginning as objects whose decisions about reproduction should be subject to social regulation rather than to their own will.

For slave women, procreation had little to do with liberty. To the contrary, Black women's childbearing in bondage was largely a product of oppression rather than an expression of self-definition and personhood. As Henry Louis Gates, Jr., writes about the autobiography of a slave named Harriet Jacobs, it "charts in vivid detail precisely how the shape of her life and the choices she makes are defined by her reduction to a sexual object, an object to be raped, bred, or abused."² Even when whites did not interfere in reproduction so directly, this aspect of slave women's lives was dictated by their masters' economic stake in their labor. The brutal domination of slave women's procreation laid the foundation for centuries of reproductive regulation that continues today.

All of these violations were sanctioned by law. Racism created for white slaveowners the possibility of unrestrained reproductive control. The social order established by powerful white men was founded on two inseparable ingredients: the dehumanization of Africans on the basis of race, and the control of women's sexuality and reproduction. The American legal system is rooted in this monstrous combination of racial and gender domination. One of America's first laws concerned the status of children born to slave mothers and fathered by white men: a 1662 Virginia statute made these children slaves.³

Slave masters' control of Black women's reproduction illustrates better than any other example I know the importance of reproductive liberty to women's equality. Every indignity that comes from the denial of reproductive autonomy can be found in slave women's lives—the harms of treating women's wombs as procreative vessels, of policies that pit a mother's welfare against that of her unborn child, and of government attempts to manipulate women's childbearing decisions through threats and bribes. Studying the control of slave women's reproduction, then, not only discloses the origins of Black people's subjugation in America; it also bears witness to the horrible potential threatened by official denial of reproductive liberty.

REPRODUCING THE LABOR FORCE

The Vitality of Slavery

The essence of Black women's experience during slavery was the brutal denial of autonomy over reproduction. Female slaves were commercially valuable to their masters not only for their labor, but also for their ability to produce more slaves. The law made slave women's children the property of the slaveowner. White masters therefore could increase their wealth by controlling their slaves' reproductive capacity. With owners expecting natural multiplication to generate as much as 5 to 6 percent of their profit, they had a strong incentive to maximize their slaves' fertility. An anonymous planter's calculations made the point:

I own a woman who cost me \$400, when a girl, in 1827. Admit she made me nothing—only worth her victuals and clothing. She now has three children, worth over \$3000 . . . I would not this night touch \$700 for her. Her oldest boy is worth \$1250 cash, and I can get it.⁴

Another report confirmed that “[a] breeding woman is worth from one-sixth to one-fourth more than one that does not breed.”⁵ Slave births and deaths were not recorded in the family Bible but in the slaveholder's business ledger.

The ban on importing slaves after 1808 and the steady inflation in their price made enslaved women's childbearing even more valuable. Female slaves provided their masters with a ready future supply of chattel. Black procreation not only benefitted each slave's particular owner; it also more globally sustained the entire system of slavery. Unlike most slave societies in the New World, which relied on the massive importation of Africans, the slave population in the United States maintained itself through reproduction.⁶ As Massachusetts senator Charles Sumner deplored, “Too well I know the vitality of slavery with its infinite capacity of propagation.”⁷ Here lies one of slavery's most odious features: it forced its victims to perpetuate the very institution that subjugated them by bearing children who were born the property of their masters.

To be sure, female slaves were primarily laborers and their capacity to reproduce did not diminish their masters' interest in their work. As we will see below, when a female slave's role as worker conflicted

with that of childbearer, concern for high productivity often outweighed concern for high fertility. Slaveholders were willing to overwork pregnant slaves at the expense of the health of both mother and child. But even if, as some historians contend, "slave childbearing and rearing were not among slaveowners' top priorities,"⁸ there is convincing evidence that whites placed a premium on slave fertility and took steps to increase it. Indeed, it seems incredible that whites, who dominated every aspect of their slaves' existence, would neglect the attribute that produced their most vital resource—their workforce. Nor can we ignore the sentiments of slaveholders like Thomas Jefferson, who instructed his plantation manager in 1820, "I consider a woman who brings a child every two years as more profitable than the best man on the farm."⁹ Slaveowners who overworked their pregnant slaves operated under general ignorance about prenatal health combined with stereotypes about Black women's natural propensity for childbirth. They were not fully aware of the extent of the damage their labor practices inflicted on their long-term human investment.

A more realistic assessment is that because female slaves served as both producers and reproducers, their masters tried to maximize both capacities as much as possible, with labor considerations often taking precedence. Even then, the grueling demands of field work constrained slave women's experience of pregnancy and child-rearing. Every aspect of slave women's reproductive lives was dictated by the economic interests of their white slave masters.

The Carrot and the Stick

Slaveholders devised a number of tactics to induce their female slaves to bear children. Although these methods were neither uniformly practiced nor uniformly successful, most slave masters used some techniques to enhance slave fertility. They rewarded pregnancy with relief from work in the field and additions of clothing and food, punished slave women who did not bear children, manipulated slave marital choices, and forced slaves to breed. The owner of one Georgia plantation, for example, gave slave families an extra weekly ration for the birth of a child; a Virginia planter rewarded new mothers with a small pig. Some women seemed especially to appreciate presents that recognized their femininity, such as a calico dress or hair ribbons. On P. C. Weston's estate, the *Plantation Manual* prescribed that "women

with six children alive at any one time are allowed all Saturday to themselves.”¹⁰ Slave women were sometimes guaranteed freedom if they bore an especially large number of children. Rhoda Hunt’s mother was promised manumission when she had her twelfth child, but died a month before the baby’s due date.¹¹

Even without these concrete rewards, slave women felt pressure to reproduce. Because a fertile woman was more valuable to her master, she was less likely to be sold to another owner. So women could reduce the chances of being separated from their loved ones if they had children early and frequently. In addition, women could expect some relief from their arduous work load in the final months of pregnancy. (Records show, however, that expectant mothers received little or no work relief before the fifth month.)¹² Although data are scanty, it appears that slave women had their first child at an earlier age than white women of the time. A Virginia slaveholder reported in the early 1860s that “the period of maternity is hastened, the average youth of negro mothers being nearly three years earlier than that of the free race.”¹³ The first generation of slaves born in America also had more children than their African mothers, who avoided pregnancy for two or more years while nursing their infants. It was natural increase, and not importation of slaves, that explained the enormous growth in the slave population to 1.75 million by 1825.

Women who did not produce children, on the other hand, were often sold off—or worse. Slaveholders, angered at the loss on their investment, inflicted cruel physical and psychological retribution on their barren female slaves. A report presented to the General Anti-Slavery Convention held in London in 1840 revealed:

Where fruitfulness is the greatest of virtues, barrenness will be regarded as worse than a misfortune, as a crime and the subjects of it will be exposed to every form of privation and affliction. Thus deficiency wholly beyond the slave’s power becomes the occasion of inconceivable suffering.¹⁴

One witness testified that a North Carolina planter ordered a group of women into a barn, declaring he intended to flog them all to death. When the women asked what crime they had committed, the master replied, “Damn you I will let you know what you have done; you don’t breed, I have not had a young one from one of you for several months.” Slaveholders treated infertile slaves like damaged goods, often attempting to pawn them off on unsuspecting buyers. Southern

courts established rules for dealing with sellers' misrepresentations about the fertility of slave women similar to rules governing the sale of other sorts of commodities.

Slave-Breeding

Another aspect of reproductive control made the common inducement of slave childbearing even more despicable. Some slaveowners also practiced *slave-breeding* by compelling slaves they considered "prime stock" to mate in the hopes of producing children especially suited for labor or sale. While slave masters' interest in enhancing slave fertility is well established, slave-breeding has been the subject of greater controversy. That debate, however, has revolved around the extent and purpose of the practice, not whether or not slaveholders engaged in it at all.

In their 1974 bombshell *Time on the Cross: The Economics of American Negro Slavery*, historians Robert Fogel and Stanley Engerman contested the key assumptions about the management of slaves, the material conditions of slaves' lives, and the efficiency of slave agriculture. Among the myths they debunked was "the thesis that *systematic* breeding of slaves for sale in the market accounted for a major share of the net income or profit of slaveholders, especially in the Old South."¹⁵ Their disagreement with prevailing accounts of forced mating centered on the claim that whites widely employed livestock breeding techniques to raise slaves for market. Fogel and Engerman argued that such a practice was unsupported by plantation records and would have interfered with slave masters' overriding objective of maintaining a stable workforce. Unlike animals, slaves would rebel against massive breeding, the authors argued, thus wiping out any potential gain achieved by pushing their fertility rate to its biological peak. Rather, planters usually encouraged fertility through the positive economic incentives described above.

But Fogel and Engerman did not dispute evidence that slaveowners at least occasionally engaged in breeding to enhance the productivity of their own plantations and more rarely to increase their slaves' marketability. In her extensive review of slave narratives, for example, Thelma Jennings discovered that about 5 percent of the women and 10 percent of the men referred to slave-breeding.¹⁶

It is from slaves' stories, such as Rose Williams's experience with Rufus, that we learn of the indignities of forced mating. Frederick

Douglass recorded in his autobiography how Edward Covey purchased a twenty-year-old slave named Caroline as a "breeder." Covey mated Caroline with a hired man and was pleased when a pair of twins resulted. Douglass observed that the slaveowner was no more criticized for buying a slave for breeding than "for buying a cow and raising stock from her, and the same rules were observed, with a view to increasing the number and quality of the one as of the other."¹⁷ Katie Darling, an ex-slave from Texas, described the practice in these words: "massa pick out a p'otly man and a p'otly gal and just put 'em together. What he want am the stock."¹⁸

Slaveholders had a financial stake in male slaves' marital choices, as well, since the children of the union belonged to the *wife's* owner. Although marrying "abroad" was common, some masters forbade their male slaves to court a woman from another plantation. Nor could a slave marry a free Black man or woman. The obstacles to finding a mate of one's choosing led one slave to complain that Black men "had a hell of a time gittin' a wife durin' slavery. If you didn't see one on de place to suit you and chances was you didn't suit them, why what could you do?"¹⁹ Slave marriages were not recognized by law; these were partnerships consecrated by slaves' own ceremonies and customs.

Slaveholders' interference with bonded men's intimate lives was often more blunt. Some masters rented men of exceptional physical stature to serve as studs. Using terms such as "stockmen," "travelin' niggers," and "breedin' niggers," slave men remembered being "weighed and tested," then used like animals to sire chattel for their masters.²⁰ Of course, this also meant forcing slave women to submit to being impregnated by these hired men. Jephtha Choice recalled fulfilling the role of stud: "The master was might careful about raisin' healthy nigger families and used us strong, healthy young bucks to stand the healthy nigger gals. When I was young they took care not to strain me and I was as handsome as a speckled pup and was in demand for breedin'." Elige Davison similarly reported that his master mated him with about fifteen different women; he believed that he had fathered more than one hundred children.²¹ Although this was quite rare, some slaveholders also practiced a cruel form of negative breeding. An ex-slave reported that "runty niggers" were castrated "so dat dey can't have no little runty chilluns."²²

VICTIMS OF "THE GROSSEST PASSION"

"Slavery is terrible for men," wrote Harriet Jacobs, "but it is far more terrible for women." Slave women's narratives often decried the added torment that women experienced under bondage on account of their sex. Female slaves were commonly victims of sexual exploitation at the hands of their masters and overseers. The classification of 10 percent of the slave population in 1860 as "mulatto" gives some indication of the extent of this abuse.²³ Most of these mixed-race children were the product of forced sex between slave women and white men. Of course, the incidence of sexual assault that did not end in pregnancy was far greater than these numbers reveal.

Black women's sexual vulnerability continued to be a primary concern of Black activists after Emancipation. A pamphlet entitled *The Black Woman of the South: Her Neglects and Her Needs*, published in 1881 by the prominent Black Episcopalian minister Alexander Crummel, emphasized the violation of female virtue:

In her girlhood all the delicate tenderness of her sex has been rudely outraged. . . . No chance was given her for delicate reserve or tender modesty. From her childhood she was the doomed victim of the grossest passion. All the virtues of her sex were utterly ignored. If the instinct of chastity asserted itself, then she had to fight like a tiger for the ownership . . . of her own person. . . . When she reached maturity, all the tender instincts of her womanhood were ruthlessly violated.²⁴

The law reinforced the sexual exploitation of slave women in two ways: it deemed any child who resulted from the rape to be a slave and it failed to recognize the rape of a slave woman as a crime.

Legislation giving the children of Black women and white men the status of slaves left female slaves vulnerable to sexual violation as a means of financial gain. Children born to slave women were slaves, regardless of the father's race or status. This meant, in short, that whenever a white man impregnated one of his slaves, the child produced by his assault was his property.

The fact that white men could profit from raping their female slaves does not mean that their motive was economic. The rape of slave women by their masters was primarily a weapon of terror that reinforced whites' domination over their human property.²⁵ Rape was an

act of physical violence designed to stifle Black women's will to resist and to remind them of their servile status. In fact, as historian Claire Robertson points out, sexual harassment was more likely to have the immediate effect of interfering with the victim's productivity both physically and emotionally.²⁶ Its intended long-term effect, however, was the maintenance of a submissive workforce. Whites' sexual exploitation of their slaves, therefore, should not be viewed simply as either a method of slave-breeding or the fulfillment of slaveholders' sexual urges.

The racial injustice tied to rape is usually associated with Black men. We are more familiar with myths about Black men's propensity to rape white women, which served as the pretext for thousands of brutal lynchings in the South. In the words of Ida B. Wells, who crusaded against lynching during the nineteenth century, "white men used their ownership of the body of white female[s] as a terrain on which to lynch the black male."²⁷ But white men also exploited Black women sexually as a means of subjugating the entire Black community. After Emancipation, the Ku Klux Klan's terror included the rape of Black women, as well as the more commonly cited lynching of Black men. White sexual violence attacked not only freed Black men's masculinity by challenging their ability to protect Black women; it also invaded freed Black women's dominion over their own bodies.²⁸

I nevertheless think that sexual exploitation belongs in a discussion of reproductive control. Because rape can lead to pregnancy, it interferes with a woman's freedom to decide whether or not to have a child. In addition, forced sex and forced procreation are both degrading invasions of a woman's bodily integrity; both pursue the same ultimate end—the devaluation of their female victim. Although sexual assault and slave-breeding are distinguishable, both were part and parcel of whites' general campaign to control slave women's bodies. A contemporary example of this point is the rape of Muslim women by Serbian soldiers as part of the Serbians' "ethnic cleansing" campaign. Here, too, rape was a form of mass terrorism inflicted on a group of subjugated women. But there are reports that soldiers boasted to their victims, "You will have a Serbian child."²⁹

The law also fostered the sexual exploitation of slave women by allowing white men to commit these assaults with impunity. Slaves were at the disposal of their masters. Owners had the right to treat their property however they wished, so long as the abuse did not kill the chattel. Conversely, slave women had no recognizable interest in preserving their own bodily integrity. After all, female slaves legally

could be stripped, beaten, mutilated, bred, and compelled to toil alongside men. Forcing a slave to have sex against her will simply followed the pattern. This lack of protection was reinforced by the prevailing belief among whites that Black women could not be raped because they were naturally lascivious.

Louisiana's rape law explicitly excluded Black women from its protection.³⁰ Although the language of the Virginia rape law applied to all women victims, there is not a single reported eighteenth-century case in which a white man was prosecuted for raping a female slave.³¹ Even if the criminal code did recognize the rape of a slave, the law would have prevented the victim from testifying in court about the assault. An evidentiary rule in most slave-holding states disqualified Blacks from testifying against a white person.³² In short, for most of American history the crime of rape of a Black woman did not exist.

Nor could Black women be raped by Black men. When a slave named George was charged with having sex with a child under the age of ten, his lawyer argued that the criminal code did not apply because the victim was also a slave. The Mississippi court dismissed the indictment, adopting the lawyer's contention that "[t]he crime of rape does not exist in this State between African slaves."³³ The laws that regulated sexual intercourse among whites were not relevant to slaves: "Their intercourse is promiscuous" and "is left to be regulated by their owners," the court wrote. A similar crime committed against a white woman was a capital offense.

White Women's Fury

Although the law did not recognize a crime against the slave herself, some judges held that the rape of a female slave was grounds for divorce.³⁴ Southern white women often cited in their divorce actions their husbands' "affection" for slave women as the cause for the marital discord. The records from one divorce case revealed the husband's cruelty inflicted on both his wife and his house servant, whose presence in the house made her particularly vulnerable to abuse:

Your petitioner states that shortly after her marriage with her present husband she discovered that he had taken up with one of his female slaves who acted as a cook and waited about the house. So regardless was her husband of her feelings, that he would before her eyes and in the very room in which your peti-

tioner slept go to bed to the said slave or cause the said slave to come in and go to bed with him. Your petitioner states that without complaint, she submitted in silence to her husband's infidelity, and attempted to reclaim him by caresses and obedience but in vain.³⁵

In 1865, a former slave named Louisa was sworn as a witness (over the defendant's objection) at her mistress's Georgia divorce trial. Louisa testified that her master, James Odom, had offered her "two dollars to feel her titties" when her mistress was out. She also told how Odom repeatedly invaded her bedroom despite numerous tactics to evade him, including bringing her children to bed with her, threatening to scream, and nailing up her windows.³⁶

Southern women also frequently cited their husbands' sexual liaisons with slaves as a reason for their opposition to slavery. One of the best known examples is Mary Boykin Chesnut, whose diary contains many passages condemning this aspect of slavery.

[*March 14, 1861*] . . . God forgive us, but ours is a monstrous system, a wrong and an iniquity! Like the patriarchs of old, our men live all in one house with their wives and their concubines; and the mulattoes one sees in every family partly resemble the white children.

[*Aug. 22, 1861*] I hate slavery. You say there are no more fallen women on a plantation than in London, in proportion to numbers; but what do you say to this? A magnate who runs a hideous black harem with its consequences under the same roof with his lovely white wife and his beautiful and accomplished daughters?³⁷

Most white women who opposed this unseemly aspect of slavery appeared to be more concerned about their own humiliation than the injury to female slaves. Other passages of Chesnut's diaries reveal her deep racism, such as criticism of Harriet Beecher Stowe's abolitionist writings. Chesnut, like most women of her time, accepted slavery as a necessary part of her life. Despite their private grumbling, Southern white women failed to attack the entire system, which benefitted them in many ways. "Slavery, with all its abuses, constituted the fabric of their beloved country," explains Elizabeth Fox-Genovese, "the warp and woof of their social position, their personal relations, their very identities."³⁸ The white woman, socialized to view the African female

as an exotic temptress, was more likely to blame the slave woman for her husband's unfaithfulness. While some white wives made their husbands' infidelity public by suing for divorce, most kept it quiet. More common was the reaction of Matilda's mistress, who, upon hearing the thirteen-year-old girl was pregnant by the master, "run to her and crammed these socks in her mouth and say, 'don't you ever tell nobody. If you do, I'll skin you alive.'"³⁹ Bonded women often suffered the brunt of their mistresses' jealousy in the form of taunting, whippings, and other cruel mistreatment.⁴⁰

SHATTERING THE BONDS OF MOTHERHOOD

The domination of slave women's reproduction continued after their children were born. Black women in bondage were systematically denied the rights of motherhood. Slavery so disrupted their relationship with their children that it may be more accurate to say that as far as slaveowners were concerned, they "were not mothers at all."⁴¹

Prenatal Property

Slave mothers had no legal claim to their children. Slave masters owned not only Black women but also their offspring, and their ownership of these children was automatic and immediate. In fact, the law granted to whites a devisable, *in futuro* interest in the potential children of their slaves. Wills frequently devised slave women's children before the children were born—or even conceived. In 1830, for example, a South Carolina slaveowner named Mary Kincaid bequeathed a slave woman named Sillar to her grandchild and Sillar's two children to other grandchildren. Mary's will provided that if Sillar should bear a third child, it was to go to yet another grandchild.⁴² Sillar's future baby became the property of a white master before the child took its first breath!

An 1823 case, *Banks' Administrator v. Marksberry*, confirmed a master's property interest in the reproductive capacity of his female slaves.⁴³ The case involved the following clause in a deed executed by Samuel Marksberry, Sr.: "to Samuel Marksberry, my younger son, I do likewise give my negro wench, Pen; and her increase from this time, I do give to my daughter, Rachel Marksberry." The plaintiff challenged the gift of Pen's "increase" on the ground that the testator

had nothing to give at the time he wrote the will. The court, however, sided with Rachel Marksberry:

He who is the absolute owner of a thing, owns all its faculties for profits or increase, and he may, no doubt, grant the profits or increase, as well as the thing itself. Thus, it is every day's practice, to grant the future rents or profits of real estate; and it is held, that a man may grant the wool of a flock of sheep, for years. The interest which the donor's daughter, Rachel, took in the increase of Pen, must indeed, from its nature, have been contingent at the time of the gift; but as the children of Pen were thereafter born, they would, by the operation of the deed, vest in the donee, and her title thus become complete.⁴⁴

The court viewed the slave Pen just like any other piece of property that produces offspring, crops, or other goods. Marksberry owned not only the piece of property itself but also the goods that she bore, as well as her potential to bear future goods. In this way, the law ensured that the relationship between the master and slave existed prior to the bond between mother and child. Owning a slave woman's future children was another way of cementing whites' control of reproduction.

The Auction Block

Perhaps the most tragic deprivation was the physical separation of enslaved women from their children. It has been estimated that nearly half a million Africans were transported to the North American mainland between 1700 and 1861. Many of these Africans purchased or kidnapped from their homelands lost track of their family members forever.

For slaves in America, the auction block became the agonizing site of slave mothers' separation from their children. Because it was in slaveowners' economic interest to maintain stable, productive families, they did not frequently tear young children from their homes. But the law permitted such disruptions when it became expedient. A nineteenth-century South Carolina court ruled, for example, that children could be sold away from their mothers no matter how young because "the young of the slaves . . . stand on the same footing as other animals."⁴⁵ A planter might decide to sell a mother or her children to

pay off a debt or to get rid of an unruly slave. Slaves were devised in wills, wagered at horse races, and awarded in lawsuits. Bonded families were disbanded when the heirs of an estate decided not to continue the patriarch's business.

A mother's relationship with her children might also be shattered when young children were hired or apprenticed out to labor for others, sometimes for as long as ten years. Mothers often learned the heartbreaking news only when a new master appeared to take their children away. They might even be denied the chance to kiss their babies goodbye. As novelist Toni Morrison so vividly imagined the experience, most of slave women's loved ones "got rented out, loaned out, bought up, brought back, stored up, mortgaged, won, stolen or seized. . . . Nobody stopped playing checkers just because the pieces included [their] children."⁴⁶

Most whites owned slaves to work for them, not to sell on the market. Some slaveowners, however, were in the business of purchasing or breeding human chattel for profit. A matter of dispute, the bulk of historical evidence indicates that the interstate slave trade often broke up slave families.⁴⁷ Professional slave traders fed, washed, and oiled the slaves they acquired, and marched the merchandise, chained together, to market. On the way, a crying baby might be snatched from his mother and sold on the spot to the first slave gang that approached.

The auction was often a government-sponsored event, taking place on the courthouse steps. In fact, government agents conducted half of the antebellum sales of slaves at sheriffs', probate, and equity court sales.⁴⁸ The South Carolina courts, for example, "acted as the state's greatest slave auctioneering firm."⁴⁹ The slaves were paraded before potential buyers, who inspected their teeth and pulled back their eyelids as if they were purchasing a horse. The auctioneer sold each slave to the highest bidder. At auction, families might be mercilessly torn apart, with parents and children sold to different buyers. Josiah Henson remembered the moving scene when, as a young child, his family was splintered on the auction block:

My brothers and sisters were bid off first, and one by one, while my mother, paralyzed with grief, held me by the hand. Her turn came and she was bought by Isaac Riley of Montgomery County. Then I was offered. . . . My mother, half distracted with the thought of parting forever from all her children, pushed through the crowd while the bidding for me was going on, to the

spot where Riley was standing. She fell at his feet, and clung to his knees, entreating him in tones that a mother could only command, to buy her baby as well as herself, and spare to her one, at least, of her little ones. . . . This man disengag[ed] himself from her with . . . violent blows and kicks. . . . I must have been between five and six years old.⁵⁰

The Working Mother

More insidious than the physical separation of mother and child was the slave masters' control over child-rearing. If an enslaved woman was fortunate enough to keep her children with her, she was deprived of the opportunity to nurture them. Becoming a mother did not change her primary task, which was physical labor for her master. Since most slave mothers worked all day, their children were watched by other slaves who were too weak, too old, or too young to join them in the fields.⁵¹ A Florida plantation owner, for example, entrusted forty-two children to the care of an elderly man and woman, assisted by older youngsters. Caregivers were often too inexperienced or overwhelmed to give proper attention to the children in their charge.

Mothers were often forced to leave their nursing babies at home for hours while they worked in the field. Charlotte Brooks remembered how her baby suffered from her long absences: "When I did go I could hear my poor child crying long before I got to it. And la, me! my poor child would be so hungry when I'd get to it!"⁵² All of Charlotte's children, like many slave children, died at an early age "for want of attention." The infant mortality rate among slaves in 1850 was twice that of whites, with fewer than two out of three Black children surviving to age ten.⁵³ Death from malnutrition and disease was more likely to snatch a mother's children than sale to a new owner.

Mothers who were not allowed time out from work to return to their cabins had to bring their infants with them to the field. Slave women ingeniously combined mothering and hard labor. One North Carolina slave woman, for example, strapped her infant to her back and "[w]hen it get hungry she just slip it around in front and feed it and go right on picking or hoeing."⁵⁴ On one plantation, the women dug a long trough in the ground to create a makeshift cradle, where they put their babies every morning while they toiled. A former slave named Ida Hutchinson recalled the tragic fate of those babies as their mothers picked cotton in the distance:

When [the mothers] were at the other end of the row, all at once a cloud no bigger than a small spot came up and it grew fast, and it thundered and lightened as if the world were coming to an end, and the rain just came down in great sheets. And when it got so they could go to the other end of the field, that trough was filled with water and every baby in it was floating round in the water, drowned. [The master] never got nary a lick of labor and nary a red penny for any of them babies.⁵⁵

Ida understood that the deaths of the babies meant a financial loss to the slave master—the infants' gruesome demise denied him both their future labor and the money he might have gotten from selling them to another owner. No one recorded the horror their mothers must have felt upon discovering their precious babies floating lifeless in their makeshift cradle.

Stealing Authority over Children

Mothers could not shield their children from the harsh realities of slave existence. In *Stolen Childhood*, historian Wilma King concludes that "enslaved children virtually had no childhood."⁵⁶ It was the master's decision when a child should be put to work. So it is not surprising that children were sent to the fields at an early age, with most beginning work by age eleven and many working before they turned seven.⁵⁷ They were often initiated into field work as part of a "trash gang" or "children's squad" that pulled weeds, cleaned up, hoed, or picked cotton. By eighteen, children were classified as "prime field hands." The master dictated the slave child's daily routine—when to rise, when to work, when to play, when to eat, and when to sleep. Children who displeased a master or overseer were whipped, and their mothers were powerless to intercede. Adolescent girls who fell prey to sexual abuse had no one to turn to for help. Children were also forced to witness the brutal beatings of their parents, an experience we now know causes deep emotional trauma.

Slave law installed the white master as the head of an extended plantation family that included his slaves. The plantation family ruled by white slaveholders was considered the best institution to transmit moral precepts to uncivilized Africans.⁵⁸ Courts reasoned that the slaveowners' moral authority over the family was ordained by divine imperative. "The slave, to remain a slave, must be made sensible," a

North Carolina judge decreed in 1829. "There is no appeal from his master. . . . [H]is power is in no instance, usurped; but is conferred by the laws of man at least, if not by the law of God."⁵⁹

The slave master's authority over children was reflected in slaves' names. A Black child often received the surname of his owner, which was also the name of his father. His name could change several times during his lifetime, depending on how many owners he had. As an anonymous slave explained, "A Negro has got no name. . . . If you belong to Mr. Jones and he sell you to Mr. Johnson, consequently you go by the name of your owner. Now where you get a name? We are wearing the name of our master. I was first a Hale; then my father was sold and then I was named Reed."⁶⁰ (Slaves commonly noted their lineage despite this rule by giving a newborn child the first name of a parent, grandparent, or another blood relation; some secretly kept a surname different from the owner's.⁶¹) Naming a slave after his owner reinforced the slave's lack of a separate identity apart from his master. It also emphasized the child's ultimate subservience to his white master rather than to his parents.

Law professor Peggy Cooper Davis sees the denial of slaves' right of family as a critical aspect of denying slaves political and moral autonomy.⁶² The institution of slavery required that the political existence of slaves merge with that of their masters. To be a slave, wrote Lunsford Lane, was "[t]o know . . . that I was never to consult my own will, but was, while I lives, to be entirely under the control of another."⁶³ Whites tried to prevent slaves from constructing their own system of morals and acting according to their own chosen values. To usurp slaves' own moral independence, all sources of values other than the slave master had to be eliminated. The key transmitter of values to be destroyed was the family. As Senator James Harlan observed during the debates on the Thirteenth Amendment, "Another incident [of slavery] is the abolition practically of the parental relation. . . . This guardianship of the parent over his own children must be abrogated to secure the perpetuity of slavery."⁶⁴

Slaveholding whites had to ensure that their human chattel were "bound more surely by ties of ownership than by ties of kinship."⁶⁵ Professor Davis elaborates this point:

To the extent that the system of slave subordination worked according to its design, the values of the enslaved were not nurtured within an intimate, familial community structured by its adult members, but inscribed by authoritarian decree. The slave-

holding class imposed values upon the enslaved and assumed the power to own and to socialize slave children; the moral voice of the slave was therefore silenced in two ways. First, parents were prohibited from teaching freely chosen values to their children. Second, slave children were denied both the moral and social heritage of their families and the freedom to develop values in the more flexible and intimate environment of family.⁶⁶

Slavery could only exist by nullifying Black parents' moral claim to their children.

SLAVE WOMEN'S CONFLICTING ROLES

The dual status of slave women as both producer and reproducer created tensions that perplexed their masters and injured their children. A slaveholder was caught in an impossible dilemma—how to maximize his immediate profits by extracting as much work as possible from his female slaves while at the same time protecting his long-term investment in the birth of a healthy child.⁶⁷ The two goals were simply incompatible. Pregnancy and infant care diminished time in the field or plantation house. Overwork hindered the chances of delivering a strong future workforce.

Bearing children who were their masters' property only compounded the contradictions that scarred slave women's reproductive lives. It separated mothers from their children immediately upon conception. This division between mother and child did not exist for white women of that era. The notion that a white mother and child were separable entities with contradictory interests was unthinkable, as was the idea of a white woman's work interfering with her maternal duties. Both violated the prevailing ideology of female domesticity that posited mothers as the natural caretakers for their children.

The First Maternal-Fetal Conflict

The conflict between mother and child was most dramatically expressed in the method of whipping pregnant slaves that was used throughout the South. Slaveholders forced women to lie face down in a depression in the ground while they were whipped. A former slave

named Lizzie Williams recounted the beating of pregnant slave women on a Mississippi cotton plantation: "I[']s seen nigger women dat was fixin' to be confined do somethin' de white folks didn't like. Dey [the white folks] would dig a hole in de ground just big 'nuff fo' her stomach, make her lie face down an whip her on de back to keep from hurtin' de child."⁶⁸

This description of the way in which pregnant slaves were beaten vividly illustrates the slaveowners' dual interest in Black women as both workers and childbearers. This was a procedure that enabled the master to protect the fetus while abusing the mother. It was the slaveholder's attempt to resolve the tough dilemma inherent in female bondage. As far as I can tell, the relationship between Black women and their unborn children created by slavery is the first example of maternal-fetal conflict in American history.

Feminists use the term "maternal-fetal conflict" to describe the way in which law, social policies, and medical practice sometimes treat a pregnant woman's interests in opposition to those of the fetus she is carrying. The miracles of modern medicine, for example, that empower doctors to treat the fetus apart from the pregnant woman make it possible to imagine a contradiction between the two. If the mother opposes the physician's suggestions for the care of the fetus, courts often treat the standoff as an adversarial relationship between the pregnant woman and her unborn child. Pitting the mother's interests against those of the fetus, in turn, gives the government a reason to restrict the autonomy of pregnant women.

Some feminist scholars have refuted the maternal-fetal conflict by pointing to its relatively recent origin. Ann Kaplan has explored, for example, how current representations of motherhood in popular materials, such as magazines, newspapers, television, and films, allow the public to imagine a separation between mother and fetus. She gives examples of the recent focus on the fetus as an independent subject—sensational pictures in *Life* magazine of fetal development during gestation or a *New York Times* enlarged image of the fetus floating in space, attached to an umbilical cord extending out of frame and disconnected from the mother's body, which is not seen.⁶⁹ Rayna Rapp adds that these fetal images were not even possible fifty years ago: "Until well after World War II, there were no medical technologies for the description of fetuses independent of the woman in whose body a given pregnancy was growing. Now, sciences like 'perinatology' focus on the fetus itself, bypassing the consciousness of the mother, permitting [the] image of the fetus as a separate entity."⁷⁰

Others have attributed the current attention to the fetus as a separate subject to a backlash against the successes of the women's movement during the 1960s and 1970s.

But the beating of pregnant slaves reveals that slave masters created just such a conflict between Black women and their unborn children to support their own economic interests. The Black mother's act of bearing a child profited the system that subjugated her. Even without the benefit of perinatology and advanced medical technologies, slaveowners perceived the Black fetus as a separate entity that would produce future profits or that could be parceled out to another owner before its birth. The whipping of pregnant slaves is the most powerful image of maternal-fetal conflict I have ever come across in all my research on reproductive rights. It is the most striking metaphor I know for the evils of policies that seek to protect the fetus while disregarding the humanity of the mother. It is also a vivid symbol of the convergent oppressions inflicted on slave women: they were subjugated at once as Blacks and as females.

The Cycles of Work and Childbirth

The tension between slave women's productive and reproductive roles also appeared in the fascinating interplay between annual cycles of crop production and the birth of children. It seems that slaves' procreative activities were subtly orchestrated by the nature of the work they performed. By studying the reproductive careers of nearly a thousand slave women, Cheryll Ann Cody discovered that many bore their children in strong seasonal patterns that tracked plantation work and planting calendars.⁷¹ Slave births on the plantations she surveyed were concentrated in the late summer and early fall. On the Ravenal cotton plantations in South Carolina, for example, one-third of the slave children were born during the months of August, September, and October.

Consider the reproductive history of Cate, one of the Ravenal family's slaves. Cate was nineteen when she had her first child, Phillip, in September 1848. Her second child, who died in infancy, was born in August two years later, followed the next August by a third child. Between 1853 and 1859, Cate gave birth to six more children like clockwork—each born between September and January.

Why did slave women tend to give birth during this period? The timing of births, of course, relates back to the timing of conception. A

large proportion of these women became pregnant during the months of November, December, and January when labor requirements were reduced owing to completion of the harvest and to harsh weather, giving slaves more time and energy to devote to their families. As an added factor, the more nutritious diet available after the fall harvest probably increased slave women's fecundity.

It turns out that the seasonality of conceptions and births had a devastating impact on the survival of slave infants. Late summer and early fall, when many slave women were in their last term of pregnancy, was also the time of the highest labor demand and the greatest sickness.⁷² Slaves on cotton and rice plantations spent these months intensely harvesting the crop. There was also a heightened risk of contracting diseases such as typhus and malaria, particularly for slaves who worked in swampy rice fields—diseases that could damage the fetus. Although *Cody* focuses on the effects of hard work and disease on gestation, the season also took its toll on new mothers and their infants. A woman who gave birth during harvest time, when planters had the greatest need for workers, could expect to be called to the fields soon after the delivery. According to the records of an Alabama plantation, a slave named Fanny had a baby in early August 1844, and was back picking cotton by August 29.⁷³ Needless to say, Fanny's fragile baby could hardly have received the type of neonatal care required for healthy development.

Records reveal that season of birth made little difference on plantations with exceedingly high mortality rates: on the Ball rice plantation, for example, nearly half of all infants died before their first birthday, no matter when they were born. But on the Gaillard cotton plantation, "children born during the summer, when their mother's labor was in highest demand, suffered nearly twice the level of infant mortality as those born after the harvest."⁷⁴ Data collected by economist Richard Steckel from three large South Carolina and Alabama cotton plantations confirm this finding: Steckel discovered that the average probability of infant death from February to April (the plowing and planting season) and from September to November (harvest) was 40.6 percent—nearly four times greater than neonatal losses in other months.⁷⁵ In the conflict between slave women's service as producers and as reproducers, children ended up the losers.

Child Hostages

The tension that slavery created between mothers and their children continued after birth. Slaveowners used children as hostages to prevent slave women from running away or to lure escaped women back to the plantation. Owners could threaten unruly slave women with the sale of their children to make them more submissive. As a result, far fewer bonded women than men escaped. Only 19 percent of the runaways advertised in North Carolina from 1850 to 1860, for example, were women.⁷⁶ The same pattern was common throughout the South.

One of the main reasons more men than women fled slavery was that children tied mothers to their masters. It was also true that, because enslaved children were more likely to stay with their mothers, fathers were forced to run away more often to visit their families. Nevertheless, the typical runaway slave was a lone man between the ages of sixteen and thirty-five, who paid the price of losing all contact with his family.

Unwilling to leave their children permanently, women sometimes hid out in woods and rice swamps for varying periods of time before returning to the plantation. "Truancy," historian Deborah White concludes, "seems to have been the way many slave women reconciled their desire to flee and their need to stay."⁷⁷ Some slave women elected to take their children with them on the journey to freedom. Few deliberately abandoned their children in order to increase the chances of their escape. None of the 151 female runaways advertised in the 1850s New Orleans newspapers left children behind.⁷⁸ The same was true for most of the fugitive women publicized in the *Georgia Gazette* between 1763 and 1775 and 1783 and 1795; all reportedly took their children with them. The *Gazette* printed that only one runaway, a slave woman named Hannah, abandoned one of her children. The story quoted Hannah's owner as saying that, although she had taken her five-year-old daughter Lydia, "she had 'inhumanely' left 'a child at her breast.'"⁷⁹ The slaveholder castigated Hannah for shirking her maternal duty rather than condemning the system that necessitated Hannah's flight and enslaved Hannah's child.

Another slave, named Anna Baker, fled the sexual abuse of overseers, leaving her young children behind. After the Civil War, Anna returned to retrieve her children and told them why she had deserted them. Her daughter later explained, "It was 'count o' de Nigger over-

seers. . . . Dey kep 'a-tryin' to mess 'roun' wid her an' she wouldn' have nothin' to do wid 'em." Once, when one of the overseers asked her to go to the woods with him, she offered to go ahead to find a nice spot, and she "jus kep' a'goin. She swum de river an' run away."⁸⁰

Historian Elizabeth Fox-Genovese observes that slave mothers who absconded without their children exhibited an unusual independence, for "however much they may have loved their men and their children, [they] did not feel bound by conventional notions of domesticity and motherhood."⁸¹ Besides, slave women who deserted their children could depend on their being fed by the master and reared by other women of the slave community. Yet the predominant lesson from the fugitive data is that most slave women formed maternal bonds so strong that they renounced the quest of freedom for the sake of their children.

The writings of Harriet Jacobs give us rare insight into the conflicting emotions that drove the slave mother's deliberations about escaping. Harriet's autobiography, first published in 1861, explains how her feelings for her children initially prevented her from fleeing her master's sexual abuse. Harriet tells how her master deliberately used her children as pawns, thinking their presence on the plantation "would fetter me to the spot."⁸² The master's strategy worked for a time:

I could have made my escape alone; but it was more for my helpless children than for myself that I longed for freedom. Though the boon would have been precious to me, above all price, I would not have taken it at the expense of leaving them in slavery. Every trial I endured, every sacrifice I made for their sakes, drew them closer to my heart, and gave me fresh courage. . . .⁸³

Harriet's words reflect the paradox of the slave mother's predicament: her children both bound her to slavery and gave her the courage to resist it. Harriet eventually did escape without her children, spending seven years hiding in closets and crawl spaces. Years later, she bought her children's freedom.

The slave masters' control of Black women's reproduction, dictating when these women gave birth and then usurping their authority over their children, amounted to far more than the physical brutality it entailed. It also reinforced the entire system of slavery in a profound way. Controlling childbearing reproduced slavery both literally and metaphorically. Slave-breeding generated more workers to re-

stock the enslaved labor force. But controlling reproduction and child rearing also reduced slaves to objects created to fulfill the will of their masters. It produced human property without any claims of birth or connection to relatives, past, present, or future. Sociologist Orlando Patterson calls slaves' social isolation "natal alienation," creating "the ultimate human tool, as imprintable and as disposable as the master wished."⁸⁴ We often envision the hallmark of slavery's inhumanity as the slave picking cotton under the overseer's lash. As much as slaves' forced labor, whites' control of slave women's wombs perpetrated many of slavery's greatest atrocities.

THE TIGRESS FIGHTS BACK

Despite the absolute power the law granted them, whites failed to crush slave women's spirit. Black women struggled in numerous ways to resist slave masters' efforts to control their reproductive lives. They escaped from plantations, feigned illness, endured severe punishment, and fought back rather than submit to slave masters' sexual domination. Slave women's sexual resistance, note historians Darlene Hine and Kate Wittenstein, "attacked the very assumptions upon which the slave order was constructed and maintained."⁸⁵

A common recollection of former slaves was the sight of a woman, often the reporter's mother, being beaten for defying her master's sexual advances. Clarinda received a terrible whipping when "she hit massa with de hoe 'cause he try to 'fere with her and she try stop him."⁸⁶ Minnie Folkes remembered watching her mother being flogged by her overseer when she refused "to be wife to dis man." Decades after her emancipation, Minnie repeated with pride her mother's teaching: "Don't let nobody bother yo principle; 'cause dat wuz all yo' had."⁸⁷

A cook named Sukie Abbott was particularly successful at putting an end to her master's harassment. When Mr. Abbott accosted her in the kitchen while she was making soap, Sukie struck back by pushing him, rear end first, into a pot of boiling lye. "He got up holdin' his hindparts an' ran from de kitchen," another Abbott slave recounted, "nor darin' to yell, 'cause he didn't want Miss Sarah Ann [his wife] to know 'bout it."⁸⁸ Mr. Abbott sold Sukie at the slave market a few days later, but he reportedly "never did bother slave gals no mo." No doubt there were, as well, many cases of slave women poisoning their masters in retaliation for sexual molestation.

Playing the Lady

Slave women's procreative ability gave them a unique mode of rebellion. Pregnant slaves could benefit from their masters' interest in a successful pregnancy by "playing the lady"—complaining of some ailment in order to get relief from work. An overseer even accused female slaves on a Georgia plantation of "shamming themselves into the family-way in order to obtain a diminution of their labor."⁸⁹ Planters were frequently frustrated by their female slaves' absence from the field on account of feminine illnesses that were difficult to verify. Although many suspected their slaves were up to no good, they feared the cost of an erroneous judgment. A Virginia planter lamented the "liability of women, especially to disorders and irregularities which cannot be detected by exterior symptoms, but which may be easily aggravated into serious complaints."⁹⁰ Another complained that he had been tricked by several women on his plantation: in addition to Sarah, who laid up for eleven months before giving birth, "Wilmot, . . . whenever she was with child always pretended to be too heavy to work and it cost me twelve months before I broke her," and "Criss of Mangorike fell into the same scheme and really carried it to a great length for at last she could not be dragged out."⁹¹

Of course, this criticism of absenteeism exaggerates the latitude slave masters granted pregnant slaves: most expectant mothers received little or no respite from their grueling work load until the final months of pregnancy. Deborah White found it impossible to tell whether slave women who claimed to be ill were actually sick or just fooling their masters. "They certainly had more leverage in the realm of feigning illness than men," she observes, "but they also perhaps had more reason than men to be ill," owing to maladies associated with the menstrual cycle and childbirth.⁹² No doubt some slave women took advantage of their masters' dilemma over their productivity and fertility to gain some time away from the fields.

Refusing to Bear Children for the Slave Master

Even more controversial is slave women's rebellion against their role as reproducer. There is evidence that some female slaves refused to bear children by abstaining from sexual intercourse or by using contraceptives and abortives. It is impossible to tell how much of female

infertility and miscarriage was self-induced and how much resulted from slaves' harsh living conditions. Healthy pregnancy was hardly possible with the strenuous labor, poor nutrition, and cruel punishment bonded women endured. Still, whites suspected that their slaves took deliberate steps to prevent or terminate pregnancy.

Southern medical journals occasionally documented the abortion practices that planters found so disturbing. Dr. E. M. Pendleton from Hancock County, Georgia, wrote in 1849 that his patients who were slaves had many more abortions and miscarriages than white women.⁹³ Although he attributed some prenatal deaths to the stress of hard work, he confirmed planters' frequent complaint that "the blacks are possessed of a secret by which they destroy the fetus at an early stage of gestation." John T. Morgan, a physician from Murfreesboro, Tennessee, reported similar findings in a paper read before the Rutherford County Medical Society in 1860. Morgan recorded a number of techniques slave women employed "to effect an abortion or to derange menstruation": they used "medicine," "violent exercise," and "external and internal manipulation"; one stuffed "a roll of rags about two or three inches long and as hard as a stick" into her vagina. But Morgan found that slave women preferred herbal remedies to these "mechanical" means of abortion, including "the infusion or decoction of tansy, rue, roots and seed, of the cotton plant, pennyroyal, cedar gum, and camphor, either in gum or spirits"—techniques slaves probably brought with them from Africa.⁹⁴ Midwives conspired with pregnant slaves to induce and cover up abortions.⁹⁵ Despite these birth control practices, slave women were less successful at avoiding pregnancy than white women, whose birth rate declined throughout the nineteenth century.⁹⁶

Some male slaves also refused to father children destined to become their masters' property. J. W. Loguen vowed he would never marry until he was free, for "slavery shall never own a wife or child of mine."⁹⁷ Henry Bibb similarly declared, "if there was any one act of my life while a slave that I have to lament over, it is that of being a father and a husband of slaves." Bibb tried to flee to freedom with his wife, Malinda, and young daughter, but the party was captured by a patrol. When Bibb later succeeded in escaping without his family, he determined that the daughter he left behind "was the first and shall be the last slave that ever I will father for chains and slavery on this earth."⁹⁸ Bibb relinquished his procreative role by eluding the bonds of slavery altogether, a solution far easier for men than women to accomplish.

Infanticide was the most extreme form of slave mothers' resistance. Some enslaved women killed their newborns to keep them from living as chattel. In 1831, a Missouri slave named Jane was convicted of murdering her infant child, Angeline.⁹⁹ Jane was charged with "knowingly, willfully, feloniously and of her malice aforethought" preparing a "certain deadly poison" and giving it to Angeline to drink on December 8 and 9. The indictment further alleged that on December 11, so "that she might more speedily kill and murder said Angeline," she wrapped the baby in bedclothes and then "choked, suffocated and smothered" her.

Historian and former federal judge A. Leon Higginbotham, Jr., asks two important questions about this case.¹⁰⁰ First, he questions Missouri's purpose in convicting Jane for murder:

Did the state prosecute because it cared about the dignity and life of a child born into lifetime slavery with the concomitant disadvantages of Missouri's law? Or did the state prosecute because Jane's master was denied the profit that he would have someday earned from the sale or exploitation of Angeline?

Slavery's dehumanization of Black children leaves little doubt that the courts condemned slave mothers in order to protect whites' financial stake in the children, not out of respect for the children themselves.

Second, Judge Higginbotham questions Jane's purpose in killing her daughter: "Perhaps the mother felt that the taking of her daughter's life was an act of mercy compared to the cruelty she might confront in Missouri's jurisprudence." Jane's motivation may have been to protect her child from slavery's brutality—to spare, rather than harm, her child. Death may have appeared a more humane fate for her baby than the living hell of slavery.

Judge Higginbotham does not ask a more troubling question: What if Jane sacrificed her child as an act of defiance, one small step in bringing about slavery's demise? Although compelled to do so, slave mothers helped to sustain slavery by producing human chattel for their masters. By bearing children, female slaves perpetuated the very system that enslaved them and their offspring. Perhaps Jane killed Angeline because she refused to take any part in that horrible institution. This possibility raises a difficult moral question: When is taking a life justified by a noble social end? But before reaching that issue we are faced with factual questions we cannot answer without more information about slave women's reasoning.

The present state of research leaves too many uncertainties for us to discern a definitive picture of female slave resistance against reproduction.¹⁰¹ We do not know, for example, whether slave mothers practiced abortion and infanticide selectively, terminating pregnancies or the lives of children that resulted from rape or forced mating. Moreover, while infanticide spared children from the horrors of slavery, it was not a desirable strategy for overthrowing the institution. Slave mothers must have realized that their sporadic practice of infanticide would have little effect and its widespread practice would annihilate the race. The low suicide rate of slaves—only one-third that of whites—suggests that they did not commonly view death as a good way to escape from slavery's horrors.¹⁰² It seems more likely that some slave mothers acted in desperation to protect their children, not to sacrifice them in protest against slavery.

Nor will we ever know for sure how many slave mothers committed infanticide. It appears that female slaves killed their own children more often than white children.¹⁰³ But these women were often falsely accused of smothering their babies, either deliberately or carelessly, by rolling over them in bed. Almost 10 percent of infant deaths among slaves in 1850 were attributed to suffocation, compared to only 1.2 percent among whites.¹⁰⁴ Recent investigation has identified the true cause of many of these deaths as poor prenatal care.¹⁰⁵ Black children died at a dramatically higher rate than white children because of the hard physical work, poor nutrition, and abuse that their mothers endured during pregnancy. American slave children had lower birth weights than white American, European, and even Caribbean slave populations.¹⁰⁶

Whatever her precise motivation, Jane was not alone. Lou Smith recalled what happened when a woman, whose three young children had been sold off, gave birth to a fourth child. When the baby was two months old,

she just studied all the time about how she would have to give it up, and one day she said, "I just decided I'm not going to let ol' master sell this baby; he just ain't going to do it." She got up and give it something out of a bottle and pretty soon it was dead.¹⁰⁷

In *Beloved*, Sethe, a former slave who is haunted by the spirit of the daughter she killed as captors approached, explains, "I stopped him. . . . I took and put my babies where they'd be safe."¹⁰⁸

Keeping the Family Together

Abortion and infanticide were extreme steps taken to maintain some autonomy over the decision to become a mother. But slave women's resistance far more often involved ensuring their children's survival. The growth of the slave population in the face of disease, abuse, and toil is a testament to slave mothers' care of their children. Mothers had to fight not only to keep their children alive but also to keep them close by. When the Virginia planter St. George Tucker planned to move two of his slaves from Missouri to Texas, the women wrote their master a letter suggesting that he sell them locally instead, even providing the names of four potential Missouri buyers. They explained the pain that leaving their home would cause:

We can't bear to go to Texas with a parcel of strangers—if you were there we should go without saying a word, but to be separated from our husbands forever in this world would make us unhappy for life. . . .

We don't think there will be the least difficulty in getting ourselves sold together with our children from whom we hope you will not separate us. Ersey has six children, the youngest of which is about six weeks old, a fine little Girl. Susan has two Boys, the eldest nearly three years old, and the youngest eight months.¹⁰⁹

Free Black women with the means to do so purchased freedom for their daughters and sisters. One mother in Augusta, Georgia, remained a slave herself so that she could emancipate her five children with earnings from extra work.¹¹⁰ In 1893 the former slave Anna Julia Cooper spoke to the World's Congress of Representative Women, held in Chicago and attended by delegates from twenty-seven countries, about the struggle of Black women to safeguard their daughters. Her unforgettable words were:

Yet all through the darkest period of the colored women's oppression in this country her yet unwritten history is full of heroic struggle, a struggle against fearful and overwhelming odds, that often ended in horrible death, to maintain and protect that which woman holds dearer than life. The painful, patient, and silent toil of mothers to gain a fee simple title to the bodies of their daugh-

ters, the despairing fight, as of an entrapped tigress, to keep hal-
lowed their own persons, would furnish material for epics.¹¹¹

These mothers were forced to deal with whites in the currency of the time. Female slaves had no right to autonomy over their own bodies. Their mothers' only recourse, short of hazarding flight north, was to wrest from slaveholders a "title to the bodies of their daughters."

Some slave women turned to the courts, as well, to win their children's freedom. Polly, a woman wrongfully held in slavery, successfully sued a white man in 1842 for the return of her daughter Lucy.¹¹² Polly used slave law to prove unlawful possession. She argued that, because she was not in fact a slave at the time of Lucy's birth, she was the rightful owner of her daughter.

Black women, along with Black men, succeeded remarkably often in maintaining the integrity of their family life despite slavery's traumas. Historian Edmund S. Morgan remarked that eighteenth-century Virginia slaves "did manage to live a life of their own within the limits prescribed for them," limits which, although confining, were "not so close as to preclude entirely the possibility of a private life."¹¹³ In his monumental study of Black family life during slavery, Herbert Gutman debunked many of the myths about the destruction of slave families. Contrary to common beliefs about slaves' promiscuity and matriarchal family structure, Gutman found that enslaved men and women often sustained lasting marriages. In the period between 1800 and 1857, for example, most Black adults in Good Hope, South Carolina, eventually settled into permanent marriages and most children grew up within these relationships.¹¹⁴ Although one in three of the women had children by more than one mate, most had all their children by a single husband. Slaves severed from their original families and thrown together on an unfamiliar plantation developed settled kin networks over time.

In her study of slave family structure in nineteenth-century Louisiana, historian Ann Patton Malone stresses the themes of mutability and constancy that shaped the slave community.¹¹⁵ The slave community of the old Hercules O'Connor plantation was strong and stable by the 1820s when the widowed owner, Rachel O'Connor, transferred titles for seventeen of her slaves to her half-brother David Weeks, who owned two sugar plantations a hundred miles away. O'Connor hoped to keep her "black family" together until her death, but labor shortages and economic difficulties compelled Weeks to request the "loan" of his O'Connor slaves. Over the next two decades

the old community was dismembered as slaves were sent to work on Weeks's plantations, Shadows and Grand Cote. Even this stable and cohesive community, composed almost entirely of descendants of the original workers, was subject to disruption, a fate its members resisted:

In response to the series of transfers, the O'Connor slave community—like a wooden top receiving a glancing blow that interrupted its steady whirl—wobbled and tottered on its fragile axis, uncertain about its absent members' return and fearful as to who might leave next. The elderly slaves, former allies of the mistress with whom they had shared a lifetime, now avoided her or served her in stony silence. Friends and relatives of the transfers [*sic*] mourned, and each new departure reopened the wounds of severance. On Grand Cote, several of the O'Connor young men made a risky effort to find their way back to their home plantation though they were woefully ignorant of the geography involved. They reached their destination but were recovered, sent back, and punished for absconding.¹¹⁶

Malone observes that the story of the O'Connor slave community illustrates the extreme vulnerability of slave families despite their stability and the intense attachments of their members.

Their unions were not sanctioned by law, but slaves devised their own ceremonies and customs to consecrate their domestic relationships. Slave spiritual leaders officiated at weddings where the most common ritual was jumping over a broom. As William Davis described the marital rite in Tennessee, "Dey go in de parlor and each carry de broom. Dey lays de broom on de floor and de woman puts her broom front de man and he puts de broom front de woman. Dey face one 'nother and step 'cross de brooms at de same time to each other and takes hold of their hands and dat marry dem."¹¹⁷ Whites' recognition of these unofficial marriages depended on each particular owner's production needs at the time; while countless slaveholders recklessly split up married couples, most accommodated or even facilitated these unions. After all, stable marriages reduced the number of runaways and fostered steady reproduction. Amazingly, despite forced mating, sale of loved ones, and other brutalities of bondage, many slaves lived in settled, intimate families for a good part of their lives. The form of these family relationships depended on the masters'

wishes, but they provided a site for slaves to develop their own culture and identities within the confines of servitude.

Yet the enslaved community did not simply replicate whites' nuclear family model. Although the two-parent nuclear family was the societal ideal among slaves as well as their masters, historians may have been tempted to exaggerate its incidence in the slave community in the effort to dispel earlier misconceptions about slave family composition. Elizabeth Fox-Genovese warns that "historians of the slave community have minimized the consequences of enslavement for the relationships between slave women and men, and, in defending the strength and vitality of Afro-American culture, have too easily assumed that the slaves developed their own strong attachment to a 'normal' nuclear family life."¹¹⁸ Monogamy did not necessarily mean that husbands and wives lived together, since some married "abroad," choosing their partner from another plantation, and since couples were often separated through sale, hiring, inheritance, or flight. Households composed of women and their children were therefore far more prevalent among slaves than among their owners. On George Washington's Virginia plantation in 1799, for example, 66 percent of married slaves were in abroad marriages and only 16.5 percent lived together as husband and wife.¹¹⁹ One incentive to marry abroad was the slaves' taboo against marrying first cousins, although such marriages were common among whites.

Most significant, slaves created a broad notion of family that incorporated extended kin and non-kin relationships.¹²⁰ Although the only recollection Frederick Douglass had of his mother was "a few hasty visits made in the night," he played with his cousins and grew close to his grandmother Betsey until he was hired out at age nine. Because families could be torn asunder at the slave master's whim, slave communities created networks of mutual obligation that reached beyond the nuclear family related by blood and marriage. "A teenager sold from the Upper to the Lower South after 1815 was cut off from his or her immediate Upper South family," for example, "but found many fictive aunts and uncles in the Lower South."¹²¹ Children were expected to address all Black adults as "Uncle" and "Aunt," a practice Gutman suggests "socialized [children] into the enlarged slave community and also invested non-kin slave relationships with symbolic kin meanings and functions."¹²² During and following the Civil War, ex-slaves throughout the South took in Black children orphaned by wartime dislocation and death ("motherless children") who were ex-

cluded from formal adoption services.¹²³ Overemphasizing the importance of two-parent units, then, notes Malone, "detracts from the fact that the real strength of the slave community was its multiplicity of forms, its tolerance for a variety of families and households, its adaptability, and its acceptance of all types of families and households as functional and contributing."¹²⁴

The slaves' communal bonds left a legacy that continues to shape the meaning of family in the Black community today. This flexible family structure has proven to be an adaptive strategy for surviving racial injustice. Contemporary studies of the Black family commonly note the practice of informal adoption of children within the extended kinship network.¹²⁵ Sociologist Robert Hill estimates that over 15 percent of all Black children have been informally adopted by extended kin.¹²⁶ Children whose parents are unable to care for them, because their parents are unmarried, too young, unemployed, or overwhelmed by other children, are often absorbed into a relative's or neighbor's family.¹²⁷ It is not uncommon for a Black child's "Mama" to be a woman who did not give birth to her or who is not even related to her by blood. Another scholar of the contemporary Black family, Andrew Billingsley, gives the example of Rev. Otis Moss of Cleveland, Ohio, whose father perished in a car accident a few years after his mother's death: "While young Otis was standing viewing the wreckage, a woman completely unrelated to him took him by the arm and said, 'Come home with me.' He grew up as a member of her family."¹²⁸

Slave Women's Housework—Exploitation or Resistance?

Slave women resourcefully performed a number of domestic tasks for the slave community, spinning thread, sewing clothes, growing crops, and preparing meals to feed and clothe their own people. Women would often return to their quarters in the evening, worn out from picking cotton in the blazing sun, only to weave cloth by firelight for their own kin. We should not romanticize domestic work in the slave quarters: female slaves were disadvantaged by a gendered division of labor that assigned to them the double duty of housework on top of backbreaking toil in the field.¹²⁹ (A slave master might humiliate a disobedient male slave by giving him "women's work" such as washing clothes.)

Yet work in the home had a unique dimension born of women's dual service to whites and to their own families. For slave women,

work outside the home was an aspect of racial subordination while the family was a site of solace from white oppression.¹³⁰ Angela Davis's assertion that slave women performed "the *only* labor of the slave community which could not be directly and immediately claimed by the oppressor" must be couched in the realization that their masters ultimately profited from their care of other slaves.¹³¹ But Davis is right that slave women's devotion to their own households defied the expectation of total service to whites. Black women's housework and nurturing, then, can be seen as a form of resistance, directly benefitting Black people rather than their white masters alone. This feature of slave women's domestic labor complicates the radical feminist interpretation of the family as an institution of violence and subordination. Further, although a slave woman's act of giving birth enhanced the master's workforce, it just as surely ensured the life of the slave community. True, whites had the brute power, through the whip and auction block, to steer the course of their slaves' reproductive lives; but they could not dictate the full value of procreation and mothering for Black women.



Slave women's fight to retain a modicum of reproductive autonomy despite the repressive conditions of bondage indicates the importance of reproduction to our humanity. Slaveholders knew that controlling their slaves' childbearing was critical to the perpetuation of slavery. Slave women had the unique capacity to reproduce the enslaved labor force. Yet despite its profitability, it would be a mistake to view whites' interest in Black women's fertility as entirely financial. Domination of reproduction was the most effective means of subjugating enslaved women, of denying them the power to govern their own bodies and to determine the course of their own destiny. Slave women's resistance against these practices demonstrates even more powerfully that reproductive liberty is vital to our human dignity. Women like Jane, Sukie Abbott, and Anna Julia Cooper viewed reproductive freedom as a liberty worth struggling for—even dying for—because they recognized it as part of what makes us truly human.

- Thomas, and the Construction of Social Reality* (New York: Pantheon, 1992), pp. 323, 339.
49. Lucy A. Williams, "Race, Rat Bites, and Unfit Mothers: How Media Discourse Informs Welfare Legislation Debate," *Fordham Urban Law Journal* 22 (1995), pp. 1159, 1164-66.
 50. See, e.g., Rich Cornell, "The Hidden Devastation of Crack," *Los Angeles Times*, Dec. 18, 1994, p. A1; Judith Kleinfeld, "Crack-Impaired Children Show Strange Behavior in School," *Anchorage Daily News*, Feb. 20, 1995, p. B8; Sheila Simmons, "Greater Cleveland's First Crack Babies Are Now in School; How Are They Doing? And at What Cost to Society?" *Plain Dealer*, Dec. 11, 1994, p. 8.
 51. Ted Weisenburger, "Who's Protecting Our Children?" *Arizona Republic*, Sept. 18, 1994, p. E1.
 52. Tony Tague, Muskegon County Prosecutor, *Protection of Pregnant Addicts and Drug-Affected Infants in Muskegon County, Michigan* (Muskegon, Mich.: Muskegon County Prosecutor's Office, 1991), p. 3.
 53. Katharine Greider, "Crackpot Ideas; Exaggerated Reports of Damage Done to Babies Born to Mothers Who Use Crack Cocaine," *Mother Jones* 20 (July 1995), p. 52, quoting columnist Charles Krauthammer.
 54. *Ibid.*
 55. Marilyn Gardner, "Crack Babies Disadvantaged from Day 1," *Houston Post*, Jan. 14, 1990, p. F1 (emphasis added).
 56. Jeff Dickerson, "Crack Babies Cost Us a Lot More Than \$504 Million," *Atlanta Journal*, Sept. 20, 1991, p. A18.

Chapter 1. Reproduction in Bondage

1. Herbert G. Gutman, *The Black Family in Slavery and Freedom, 1750-1925* (New York: Pantheon, 1976), pp. 84-85.
2. Henry Louis Gates, Jr., "To be Raped, Bred, or Abused," *New York Times Book Review*, Nov. 22, 1987, p. 12, reviewing Harriet Jacobs, *Incidents in the Life of a Slave Girl* (1987).
3. A. Leon Higginbotham, Jr., *In the Matter of Color: Race and the American Legal Process; The Colonial Period* (New York: Oxford University-Press, 1978), pp. 42-45, 252.
4. Gutman, *Black Family in Slavery and Freedom*, pp. 77-78.
5. W. E. B. Du Bois, *Black Reconstruction in America, 1860-1880*, ed. August Meier (New York: Atheneum, 1985 [1935]), p. 44.
6. Wilma King, *Stolen Childhood: Slave Youth in Nineteenth-Century America* (Bloomington: Indiana University Press, 1995), p. xvii.
7. Bernard Schwartz, ed., *Statutory History of the United States*, vol. 1, *Civil Rights* (New York: Chelsea House, 1970), p. 83.
8. Claire Robertson, "Africa into the Americas? Slavery and Women, the Family, and the Gender Division of Labor," in David Barry Gasper and Darlene Clark Hine, eds., *More Than Chattel: Black Women and Slavery in the Americas* (Bloomington: Indiana University Press, 1996), pp. 3, 27.
9. Thomas Jefferson to John W. Eppes, June 30, 1820, in Edwin Morris Betts, ed., *Thomas Jefferson's Farm Book: With Commentary and Relevant Extracts from Other Writings* (Princeton: Princeton University Press, 1953), p. 46.
10. Gutman, *Black Family in Slavery and Freedom*, p. 77.
11. George P. Rawick, ed., *The American Slave: A Composite Autobiography*, supp. series 1, vol. 8 (Westport, Conn.: Greenwood, 1977), p. 1075.
12. Richard H. Steckel, "Women, Work, and Health Under Plantation Slavery in the United States," in Gaspar and Hine, *More Than Chattel*, pp. 43, 55.
13. Gutman, *Black Family in Slavery and Freedom*, p. 50.
14. bell hooks, *Ain't I a Woman? Black Women and Feminism* (Boston: South End Press, 1981), pp. 40-41.

15. Robert William Fogel and Stanley L. Engerman, *Time on the Cross: The Economics of American Negro Slavery* (Boston: Little, Brown, 1974), p. 78.
16. Thelma Jennings, "Us Colored Women Had to Go Through a Plenty," *Journal of Women's History* 1 (Winter 1990), pp. 45, 49-74.
17. Frederick Douglass, *Life and Times of Frederick Douglass* (New York: Crowell, 1966), pp. 118-19.
18. Quoted in George P. Rawick, *From Sundown to Sunup: The Making of the Black Community* (Westport, Conn.: Greenwood, 1972), p. 88.
19. Jacqueline Jones, *Labor of Love, Labor of Sorrow: Black Women, Work, and the Family from Slavery to the Present* (New York: Vintage, 1986), p. 34.
20. Catherine Clinton, "Caught in the Web of the Big House: Women and Slavery," in Walter Raser, R. Frank Saunders, and John L. Wakelyn, eds., *The Web of Southern Social Relations: Women, Family, and Education* (Athens: University of Georgia Press, 1985), pp. 19, 23.
21. Quoted in Rawick, *From Sundown to Sunup*, p. 88.
22. Clinton, "Caught in the Web of the Big House," p. 24.
23. Jones, *Labor of Love, Labor of Sorrow*, p. 37. Robert Fogel and Stanley Engerman estimate that "the share of Negro children fathered by whites on slave plantations probably averaged between 1 and 2 percent." *Time on the Cross*, p. 133.
24. Quoted in Beverly Guy-Sheftall, *Daughters of Sorrow: Attitudes Toward Black Women, 1880-1920* (Brooklyn, N.Y.: Carlson, 1990), p. 60.
25. Angela Y. Davis, *Women, Race, and Class* (New York: Vintage, 1983), pp. 23-24.
26. Robertson, "Africa into the Americas?" p. 25.
27. Quoted in Angela P. Harris, "Race and Essentialism in Feminist Legal Theory," *Stanford Law Review* 42 (1990), pp. 581, 600.
28. See Jacquelyn Dowd Hall, "'The Mind That Burns in Each Body': Women, Rape, and Racial Violence," in Ann Snitow et al., eds., *Powers of Desire: The Politics of Sexuality* (New York: Monthly Review Press, 1983), pp. 328, 332-33.
29. Caroline D. Krass, "Bringing the Perpetrators of Rape in the Balkans to Justice: Time for an International Criminal Court," *Denver Journal of International Law and Policy* 22 (Spring 1994), pp. 317, 320.
30. Judith Kelleher Schafer, "The Long Arm of the Law: Slave Criminals and the Supreme Court in Antebellum Louisiana," *Tulane Law Review* 60 (1986), pp. 2147, 1265.
31. A. Leon Higginbotham Jr. and Anne F. Jacobs, "The 'Law Only as an Enemy': The Legitimization of Racial Powerlessness Through the Colonial and Antebellum Criminal Laws of Virginia," *North Carolina Law Review* 70 (1992), pp. 969, 1055-56.
32. See A. Leon Higginbotham, *In the Matter of Color: Race and the American Legal Process* (New York: Oxford University Press, 1978), p. 146.
33. *George v. State*, 37 Miss. 316 (1859).
34. Martha Minow, "Forming Underneath Everything That Grows: Toward a History of Family Law," *Wisconsin Law Review*, 1985, pp. 819, 862.
35. Dorothy Sterling, ed., *We Are Your Sisters: Black Women in the Nineteenth Century* (New York: Norton, 1984), p. 26.
36. *Ibid.*; Gutman, *Black Family in Slavery and Freedom*, p. 80.
37. Quoted in Eugene D. Genovese, *Roll, Jordan, Roll: The World the Slaves Made* (New York: Pantheon, 1976), pp. 426-27.
38. Elizabeth Fox-Genovese, *Within the Plantation Household: Black and White Women of the Old South* (Chapel Hill: University of North Carolina Press, 1988), p. 334.
39. Sterling, *We Are Your Sisters*, p. 25.
40. Clinton, "Caught in the Web of the Big House," pp. 30-31; hooks, *Ain't I a Woman?* pp. 36-37.
41. Davis, *Women, Race, and Class*, p. 7.
42. Kenneth M. Stampp, *The Peculiar Institution: Slavery in the Ante-Bellum South* (New York: Vintage, 1956), p. 205. On the law governing bequests of slaves not yet born,

- see Thomas D. Morris, *Southern Slavery and the Law, 1619-1860* (Chapel Hill: University of North Carolina Press, 1996), pp. 89-93.
43. *Banks' Administrator v. Marksberry*, 3 Littell's Rep. 275 (1823).
 44. *Ibid.*, p. 280.
 45. Quoted in Davis, *Women, Race, and Class*, p. 7.
 46. Toni Morrison, *Beloved* (New York: Plume, 1987), p. 23.
 47. Stamp, *The Peculiar Institution*, p. 239; Herbert Gutman and Richard Sutch, "The Slave Family: Protected Agent of Capitalist Masters or Victim of the Slave Trade?" in Paul A. David et al., *Reckoning with Slavery* (New York: Oxford University Press, 1976), p. 94; Michael Tadman, *Speculators and Slaves: Masters, Traders, and Slaves in the Old South* (Madison: University of Wisconsin Press, 1989).
 48. Thomas D. Russell, "South Carolina's Largest Slave Auctioneering Firm," *Chicago-Kent Law Review* 68 (1993), p. 1241.
 49. *Ibid.*
 50. Josiah Henson, *Father Henson's Story of His Own Life* (New York: Corinth Books, 1962), pp. 12-13, quoted in Julius Lester, *To Be a Slave* (New York: Laurel Leaf Library, 1976), pp. 48-49.
 51. Wilma King, "'Suffer with Them till Death': Slave Women and Their Children in Nineteenth-Century America," in Gaspar and Hine, *More Than Chattel*, pp. 147, 152.
 52. Octavio Albert, *The House of Bondage; or, Charlotte Brooks and Other Stories* (1890), pp. 3-4.
 53. Jones, *Labor of Love, Labor of Sorrow*, p. 35.
 54. *Ibid.*, p. 14.
 55. Quoted in Lester, *To Be a Slave*, p. 38.
 56. King, *Stolen Childhood*, p. xx.
 57. Stamp, *The Peculiar Institution*, p. 57; Steckel, "Women, Work, and Health," p. 44.
 58. Margaret A. Burnham, "An Impossible Marriage: Slave Law and Family Law," *Law and Inequality* 5 (1987), pp. 187, 194.
 59. *State v. Mann*, 13 N.C. 263 (1829).
 60. Lester, *To Be a Slave*, p. 77.
 61. Herbert Gutman devotes an entire chapter to slave naming practices. See "Somebody Knew My Name," in *Black Family in Slavery and Freedom*, pp. 230-56.
 62. Peggy Cooper Davis, "Contested Images of Family Values: The Role of the State," *Harvard Law Review* 107 (1994), p. 1348. In *Neglected Stories: The Constitution and Family Values* (New York: Hill and Wang, 1997), Professor Davis demonstrates how the stories of enslaved families influenced the development of the United States Supreme Court's family rights jurisprudence. Despite legal constraints, Davis argues, slaves formed family relationships in which they created their own moral meanings.
 63. *Narrative of Lunsford Lane* (1842), reprinted in William L. Katz, ed., *Five Slave Narratives* (New York: Arno Press, 1968), p. 8.
 64. Schwartz, *Civil Rights*, p. 72.
 65. Peggy Cooper Davis, "Neglected Stories and the Lawfulness of *Roe v. Wade*," *Harvard Civil Rights-Civil Liberties Law Review* 28 (1993), pp. 299, 309.
 66. Davis, "Contested Images," p. 1362.
 67. Jones, *Labor of Love, Labor of Sorrow*, p. 19.
 68. Michael P. Johnson, "Smothered Slave Infants: Were Slave Mothers at Fault?" *Journal of Southern History* 47 (1981), pp. 493, 513.
 69. E. Ann Kaplan, "Sex, Work, and Motherhood: The Impossible Triangle," *Journal of Sex Research* 27 (1990), pp. 409, 417.
 70. Rayna Rapp, "Constructing Amniocentesis: Maternal and Medical Discourses," in Faye Ginsburg and Anna Loewenhaupt Tsing, eds., *Uncertain Terms: Negotiating Gender in American Culture* (Boston: Beacon Press, 1990), p. 33.
 71. Cheryll Ann Cody, "Cycles of Work and of Childbearing: Seasonality in Women's Lives on Low-Country Plantations," in Gaspar and Hine, *More Than Chattel*, p. 61. Ann Patton Malone discovered a similar seasonality in her study of 989 slave births

- from 15 Louisiana plantations recorded from 1822 through 1861. Ann Patton Malone, *Sweet Chariot: Slave Family and Household Structure in Nineteenth-Century Louisiana* (Chapel Hill: University of North Carolina Press, 1992), pp. 232-33.
72. Cody, "Cycles of Work and of Childbearing," p. 69.
 73. King, "Suffer with Them till Death," p. 152.
 74. Cody, "Cycles of Work and of Childbearing," p. 72.
 75. Richard H. Steckel, "A Dreadful Childhood: The Excess Mortality of American Slaves," *Social Science History* 10 (1986), p. 427.
 76. Deborah Gray White, *Ar'n't I a Woman? Female Slaves in the Plantation South* (New York: Norton, 1985), p. 70.
 77. *Ibid.*, p. 74.
 78. *Ibid.*, p. 71.
 79. Betty Wood, "Some Aspects of Female Resistance to Chattel Slavery in Low-Country Georgia, 1763-1815," *Historical Journal* 10 (1987), pp. 603, 610 n.24, quoting *Georgia Gazette*, April 20, 1786.
 80. Fox-Genovese, *Within the Plantation Household*, p. 323.
 81. *Ibid.*, p. 321.
 82. Linda Brent (Harriet Jacobs), *Incidents in the Life of a Slave Girl*, ed. L. Maria Child (New York: Harcourt Brace Jovanovich, 1973), p. 96.
 83. *Ibid.*, pp. 91-92.
 84. Orlando Patterson, *Slavery and Social Death: A Comparative Study* (Cambridge: Harvard University Press, 1982), pp. 5-7.
 85. Darlene Hine and Kate Wittenstein, "Female Slave Resistance: The Economics of Sex," in Filomina C. Steady, ed., *The Black Woman Cross-Culturally* (Rochester, Vt.: Schenkman, 1981), pp. 289, 296. See also Stephanie Shaw, "Mothering Under Slavery in the Antebellum South," in Evelyn Nakano Glenn, Grace Chang, and Linda Rennie Forcey, eds., *Mothering: Ideology, Experience, and Agency* (New York: Routledge, 1993), p. 237.
 86. Gutman, *Black Family in Slavery and Freedom*, p. 80.
 87. Brenda E. Stevenson, "Gender Convention, Ideals, and Identity Among Antebellum Virginia Slave Women," in Gaspar and Hine, *More Than Chattel*, pp. 169, 171.
 88. Charles L. Perdue, Thomas E. Barden, and Robert K. Phillips, eds., *Weevils in the Wheat: Interviews with Virginia Ex-Slaves* (Charlottesville: University Press of Virginia, 1976), pp. 48-49.
 89. Stamp, *The Peculiar Institution*, p. 104.
 90. White, *Ar'n't I a Woman?* p. 80.
 91. *Ibid.*, pp. 80-81.
 92. *Ibid.*, p. 84.
 93. Gutman, *Black Family in Slavery and Freedom*, p. 80.
 94. *Ibid.*, p. 81.
 95. White, *Ar'n't I a Woman?* pp. 125-26.
 96. *Ibid.*, p. 87.
 97. Quoted in *ibid.*, p. 147.
 98. Henry Bibb, *Narrative of the Life and Adventures of Henry Bibb, an American Slave*, 3d ed. (Miami: Mnemosyne, 1969 [1850]), p. 44.
 99. *Jane (a slave) v. The State*, 3 Mo. 45 (1831).
 100. A. Leon Higginbotham, Jr., "Race, Sex, Education, and Missouri Jurisprudence: *Shelley v. Kramer* in Historical Perspective," *Washington University Law Quarterly* 67 (1989), pp. 673, 694-95.
 101. Elizabeth Fox-Genovese, "Strategies and Forms of Resistance: Focus on Slave Women in the United States," in Gary Y. Okihiro, ed., *In Resistance: Studies in African, Caribbean, and Afro-American History* (Amherst: University of Massachusetts Press, 1986), pp. 143, 158.
 102. Fogel and Engerman, *Time on the Cross*, pp. 124-25.
 103. Higginbotham and Jacobs, "The 'Law Only as an Enemy,'" p. 1042.
 104. Fogel and Engerman, *Time on the Cross*, p. 124.

105. Todd L. Savitt, "Smothering and Overlaying of Virginia Slave Children: A Suggested Explanation," *Bulletin of the History of Medicine* 49 (1975), p. 400.
106. Richard H. Steckel, "A Peculiar Population: The Nutrition, Health, and Mortality of American Slaves from Childhood to Maturity," *Journal of Economic History* 46 (Sept. 1986), pp. 721-41.
107. Lester, *To Be a Slave*, p. 40.
108. Morrison, *Beloved*, p. 164.
109. Gutman, *Black Family in Slavery and Freedom*, p. 355. Gutman does not explain how Tucker's slaves learned to read and write. Criminal laws prior to the Civil War prohibited such instruction (Higginbotham, *In the Matter of Color*, p. 198), but a tiny percentage of slaves were literate.
110. Stamp, *The Peculiar Institution*, p. 97. Stamp explains how a few slaves (usually skilled ones who lived in towns) were able to purchase freedom for themselves or their loved ones:

Occasionally, they earned the necessary funds by working nights and Sundays. More often, they hired their own time. Either way, they gradually accumulated enough money to pay their masters an amount equal to their value and thus obtained deeds of emancipation. Benevolent masters helped ambitious bondsmen by permitting them to make the payments in installments over a period of years or by accepting a sum lower than the market price.

- Ibid., p. 96.
111. Quoted in Bert James Loewenberg and Ruth Bogin, eds., *Black Women in Nineteenth-Century American Life* (University Park: Pennsylvania State University Press, 1976), p. 329.
112. See Anita L. Allen, "Surrogacy, Slavery, and the Ownership of Life," *Harvard Journal of Law and Public Policy* 13 (1990), pp. 139, 142-44.
113. Edmund S. Morgan, *Virginians at Home: Family Life in the Eighteenth Century* (Williamsburg, Va.: Colonial Williamsburg, 1952), quoted in Gutman, *Black Family in Slavery and Freedom*, p. 352.
114. Gutman, *Black Family in Slavery and Freedom*, p. 51. This conclusion was confirmed by Robert Fogel and Stanley Engerman in *Time on the Cross*, pp. 126-44. Fogel and Engerman further assert that "the high fertility rate of slave women was not the consequence of the wanton impregnation of very young unmarried women by either white or black men, but of the frequency of conception after first birth." Ibid., p. 137.
115. Malone, *Sweet Chariot*.
116. Ibid., pp. 1-2.
117. Gutman, *Black Family in Slavery and Freedom*, p. 276.
118. Fox-Genovese, *Within the Plantation Household*, p. 48.
119. Stevenson, "Gender Convention, Ideals, and Identity," p. 178.
120. Gutman, *Black Family in Slavery and Freedom*, pp. 196-229.
121. Ibid., p. 222.
122. Ibid., p. 217 (emphasis deleted).
123. Ibid., pp. 226-27.
124. Malone, *Sweet Chariot*, p. 258.
125. See, e.g., Andrew Billingsley, *Climbing Jacob's Ladder: The Enduring Legacy of African American Families* (New York: Simon and Schuster, 1992); Robert Hill, *Informal Adoption Among Black Families* (Washington, D.C.: National Urban League Research Department, 1977); Elmer P. Martin and Joanne Mitchell Martin, *The Black Extended Family* (Chicago: University of Chicago Press, 1978); Carol B. Stack, *All Our Kin: Strategies for Survival in a Black Community* (New York: Harper, 1975).
126. See Billingsley, *Climbing Jacob's Ladder*, p. 30.
127. See Patricia Hill Collins, *Black Feminist Thought: Knowledge, Consciousness, and the Politics of Empowerment* (Boston: Unwin Hyman, 1990), pp. 120-21.

128. Billingsley, *Climbing Jacob's Ladder*, p. 31.
129. Jacqueline Jones, "My Mother Was Much of a Woman': Black Women, Work, and the Family Under Slavery," *Feminist Studies* 8 (1982), pp. 235, 252-61.
130. Jones, *Labor of Love, Labor of Sorrow*, pp. 12-13.
131. Davis, *Women, Race, and Class*, p. 17, quoting Angela Y. Davis, "The Black Woman's Role in the Community of Slaves," *Black Scholar* 3 (Dec. 1971). Davis amended this statement to acknowledge that men also performed domestic tasks important to the slave community.

Chapter 2. The Dark Side of Birth Control

1. *Griswold v. Connecticut*, 381 U.S. 479 (1965)
2. David M. Kennedy, *Birth Control in America: The Career of Margaret Sanger* (New Haven: Yale University Press, 1970); Ellen Chesler, *Woman of Valor: Margaret Sanger and the Birth Control Movement in America* (New York: Simon and Schuster, 1992).
3. Margaret Sanger, *Woman and the New Race* (New York: Brentano's, 1920), p. 94.
4. See, e.g., Carole R. McCann, *Birth Control Politics in the United States, 1916-1945* (Ithaca, N.Y.: Cornell University Press, 1994); Linda Gordon, *Woman's Body, Woman's Right: A Social History of Birth Control in America* (New York: Grossman, 1976).
5. Angela Davis, "Racism, Birth Control, and Reproductive Rights," in Marlene Gerber Fried, ed., *From Abortion to Reproductive Freedom: Transforming a Movement* (Boston: South End Press, 1990), pp. 15, 20.
6. Historian Carole McCann criticizes accounts of the birth control movement written by Linda Gordon, David Kennedy, Ellen Chesler, and others for representing the development of the movement as a consequence of Margaret Sanger's will, independent of its historical context. McCann, *Birth Control Politics in the United States*, pp. 3-4.
7. Daniel J. Kevles, *In the Name of Eugenics: Genetics and the Uses of Human Heredity* (New York: Knopf, 1985), p. 8.
8. Francis Galton, *Eugenics: Its Definition, Scope and Aims* (London: Macmillan, 1905), p. 50.
9. Francis Galton, *Inquiries into the Human Faculty* (New York: Macmillan, 1883), pp. 24-25.
10. Francis Galton, "Hereditary Talent and Character," *Macmillan's Magazine* 12 (1865), pp. 157, 165.
11. Francis Galton, "The Possible Improvement of the Human Breed Under the Existing Conditions of Law and Sentiment," *Nature* 64 (1901), pp. 659, 663.
12. Francis Galton, "Hereditary Improvement," *Fraser's Magazine* 7 (1873), quoted by William H. Tucker, *The Science and Politics of Racial Research* (Urbana: University of Illinois Press, 1994), p. 48.
13. Galton, "Hereditary Talent and Character," pp. 318, 320.
14. *Ibid.*, p. 321.
15. President Theodore Roosevelt, "Sixth Annual Message to Congress," Dec. 3, 1903, quoted in Elaine Tyler May, *Barren in the Promised Land: Childless Americans and the Pursuit of Happiness* (New York: Basic Books, 1995), p. 61.
16. Davis, "Racism, Birth Control, and Reproductive Rights," p. 20.
17. Sven Lindqvist, *Exterminate All the Brutes* (New York: New Press, 1996).
18. Charles B. Davenport, *Heredity in Relation to Eugenics* (New York: Holt, 1911).
19. Kevles, *In the Name of Eugenics*, pp. 45-47.
20. *Ibid.*, p. 56; Philip R. Reilly, *The Surgical Solution: A History of Involuntary Sterilization in the United States* (Baltimore: Johns Hopkins University Press, 1991), pp. 19-20.
21. Reilly, *The Surgical Solution*, p. 18.
22. Stephen Jay Gould, *The Mismeasure of Man* (New York: Norton, 1981), pp. 175-77.

WELFARE AS A WAIVER OF PRIVACY

The regulation of welfare mothers' fertility is bolstered not only by these myths but also by a legacy of disrespect for the privacy of welfare recipients. Public relief for single mothers is structured to permit bureaucratic supervision of clients in order to determine their eligibility based on both means- and morals-testing. Middle-class Americans avoid these impositions because they receive their benefits in the form of entitlements and tax breaks that are not subject to the discretion of caseworkers, supervisors, or administrators. While poor single mothers must endure government surveillance for their paltry benefits, "self-sufficient" traditional families receive huge public subsidies—Social Security, tax breaks, and government-backed mortgages, for example—without any loss of privacy.⁹²

By regarding welfare benefits as an undeserved subsidy, the law allows states to treat recipients as subjects whose behavior may be modified to fit current social policy. The notion that receipt of welfare benefits should be conditioned on prescribed improvements in recipients' lifestyle has recently gained favor across the country. Over the last several years, the federal government has granted waivers to more than thirty states allowing them to change their welfare programs to incorporate a form of behavior modification.⁹³ States are experimenting with schemes that cut off benefits if recipients fail to go to work, stay on welfare past a set period of time, have babies out of wedlock, or cannot stop their children from dropping out of school. These new programs are based on the twin premises that paying welfare benefits entitles the government to regulate mothers' behavior and that only mothers who conform to middle-class values deserve government support.⁹⁴ Journalist Rosemary Bray, a former welfare recipient herself, calls the social supervision of welfare clients "a control many Americans feel they have bought and paid for every April 15."⁹⁵ The new federal law sets states free to experiment even more with these behavioral conditions on welfare benefits.

Means- and morals-testing allows welfare bureaucrats to place recipients under surveillance to check for cheating or lapses in eligibility. This probing forces recipients to assume a submissive stance lest offended caseworkers throw them off the rolls. With the power to cut a client's lifeline, bureaucrats often berate and degrade the mothers who pack the welfare office, adding to the humiliation of begging for public assistance. "Think of the worst experience you've ever had

with a clerk in some government service job—motor vehicles, hospital, whatever—and add the life-threatening condition of impending starvation or homelessness to the waiting line, multiply the anxiety by an exponent of ten," writes Theresa Funicello, "and you have some idea of what it's like in a welfare center."⁹⁶ Clients are made to wait in long lines, shuttled back and forth, and told to return another day. Noncompliant recipients are sometimes arrested or beaten up by security guards.

The indignity does not end at the welfare office. Welfare mothers must also allow caseworkers to search their homes. A Black domestic's experience with poor relief in the 1930s remains typical of that of welfare recipients today:

The investigators, they were like detectives, like I had committed a crime. . . . I had to tell them about my life, more than if I was on trial . . . the investigator searched my icebox. . . . I was ashamed of my life . . . that's how you're made to feel when you're down and out like you're nothing better than a criminal.⁹⁷

A contemporary mother similarly described her experience with welfare workers: "I know they be wanting to *know* everything. They are so nosy. They control your life. I don't like it."⁹⁸ Plans to weed out fraudulent claims by welfare cheats, like one instituted in 1995 by New York City mayor Rudolph Giuliani, have intensified harassment of welfare recipients and thrown legitimate clients off the rolls.⁹⁹ Although we never hear about them, there are far more people entitled to benefits who do not receive them than welfare cheats.

Why do constitutional guarantees such as the right of privacy and the right against unlawful searches and seizures not prevent these government intrusions into citizens' personal lives? Privacy doctrine does not shield people who receive welfare benefits. An individual's acceptance of government benefits is deemed to constitute a waiver of privacy. The Supreme Court has routinely allowed states to regulate poor families by conditioning benefits on conformance to various mandates. Because these families are not entitled to government support, the Supreme Court has reasoned, the government may force them to open up for inspection, shrink, rearrange, or break up in order to qualify for benefits. Although the Court sometimes finds an egregious invasion of poor families' privacy to be unconstitutional, most of the day-to-day decisions of family life remain vulnerable to state regulation.

Over and over again, the Court has upheld welfare regulations that determine eligibility for benefits based on household composition despite their negative effects on families' chosen living arrangements.¹⁰⁰ In 1995, the Court held that states could group into a single "assistance unit" all needy children living in the same household under the care of one relative even though this rule results in a decrease in AFDC benefits for each child.¹⁰¹ All the government needs is a "rational" reason for its regulation, which can include the goal of decreasing welfare expenditures. One of Americans' most cherished freedoms is the right to keep government agents out of our homes. The police must obtain a search warrant to inspect even the homes of suspected criminals. Yet the Court has ruled that welfare workers can demand home entry as a condition of welfare eligibility; there is no need to get judicial approval even when an applicant protests the home inspection.¹⁰²

This loss of privacy often entails state intrusion in welfare recipients' reproductive decisionmaking. Since welfare's inception, states have conditioned payments on mothers' compliance with standards of sexual and reproductive morality, such as "suitable home" or "man in the house" rules. The ADC law passed in 1935 provided that the state may "impose such other eligibility requirements—as to means, moral character, etc.—as it sees fit." More recently, welfare mothers have been required to undergo mandatory paternity proceedings involving state scrutiny of their intimate lives. Under the Family Support Act of 1988, the states are required to meet federal standards to establish the paternity of children born out of wedlock as a means of procuring child support from absent fathers. The Supreme Court has approved the federal requirement that welfare mothers cooperate in establishing the paternity of their children and tracking down the father.¹⁰³ Mothers must submit to investigation that often delves into their sexual activities, or else lose their benefits. In one case, a woman was denied public assistance for refusing to turn over a calendar on which she had allegedly written the names of her sexual partners.¹⁰⁴

Some family cap laws open up another area for government prying. Arkansas allows recipients to avoid the exclusion if they prove that the child was conceived by rape or that they were using a "reliable" method of contraception. Although this exception relieves some of the hardship of undeterrable births, it also means having to reveal intimate details of your sex life to government workers in order to get benefits. In addition, the exception pressures women to use the most invasive means of birth control. Because the contraceptive must be 96

percent reliable or better to qualify, welfare mothers have to use Norplant or IUDs to qualify for the exception. We have already seen the problems associated with long-lasting, provider-controlled devices.

GOVERNMENT FUNDING OF ABORTIONS

Why does the constitutional right to privacy, which protects a woman's decision to terminate a pregnancy, not protect a welfare mother's decision to have a baby? To explore this question, we must begin with Supreme Court cases deciding whether or not poor women have a right to government funding of an abortion. *Roe v. Wade* and subsequent cases guaranteed women's freedom from government interference in their private reproductive decisions. But what about women too poor to pay for private health care? If the facilities needed to effectuate a reproductive decision cost money, poor and low-income women—who are disproportionately Black—may not be able to afford to take advantage of them. Prenatal care, abortion services, reproduction-assisting technologies, fetal surgery, contraceptives, and family-planning counseling are some examples of the means to realize reproductive choices that may be financially out of reach.¹⁰⁵ Institutional, cultural, language, and educational barriers also deter poor women of color from using the limited services that are available.¹⁰⁶

Poor women's inadequate access to reproductive health services is bolstered by traditional constitutional jurisprudence. Current legal doctrine fails to recognize these barriers as a constitutional issue at all for two principal reasons. First, the prevailing view holds that the Constitution protects only an individual's "negative" right to be free from unjustified intrusion, rather than the "positive" right to actually lead a free life. Second, this view restricts constitutional protection to interference by the state. The Constitution, then, does not obligate the government to ensure the social conditions and resources necessary for individual liberty or to protect the individual from degradation inflicted by social forces other than the state. This means that citizens have no constitutional right to government benefits, even benefits needed to subsist.

The ability to deny benefits, however, can give the government intolerable power over citizens' exercise of their constitutional rights. That power expands the more we live on "government largess";¹⁰⁷ but it is mightiest against those who depend on benefits for their very survival. The government could grant benefits only on the condition that

Chapter 5. The Welfare Debate: Who Pays for Procreation?

1. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Title III, Pub. L. No. 104-193, 110 Stat. 2105 (1996).
2. Bob Herbert, "The Mouths of Babes," *New York Times*, July 22, 1996, p. A19.
3. Books demonstrating these flaws in the American welfare system include Frances Fox Piven and Richard A. Cloward, *Regulating the Poor: The Functions of Public Welfare* (New York: Pantheon, 1971); Mimi Abramovitz, *Regulating the Lives of Women: Social Welfare Policy from Colonial Times to the Present* (Boston: South End Press, 1988); Jill Quadagno, *The Color of Welfare: How Racism Undermined the War on Poverty* (New York: Oxford University Press, 1994).
4. Linda Gordon, *Pitied but Not Entitled: Single Mothers and the History of Welfare* (New York: Free Press, 1994). Other important histories of the American welfare system include Gwendolyn Mink, *The Wages of Motherhood: Inequality in the Welfare State, 1917-1942* (Ithaca N.Y.: Cornell University Press, 1995), and Theda Skocpol, *Protecting Soldiers and Mothers: The Political Origins of Social Policy in the United States* (Cambridge: Harvard University Press, 1992).
5. Gordon, *Pitied but Not Entitled*, p. 53.
6. *Ibid.*, p. 48; Abramovitz, *Regulating the Lives of Women*, p. 201; Joel F. Handler and Yeheskel Hasenfeld, *The Moral Construction of Poverty: Welfare Reform in America* (Newbury Park, Calif.: Sage, 1991), pp. 25-27
7. Michael W. McConnell, "Originalism and the Desegregation Decisions," *Virginia Law Review* 81 (1995), pp. 947, 1131 n.856.
8. Gordon, *Pitied but Not Entitled*, p. 87. See also Mink, *Wages of Motherhood*, p. 120.
9. Gordon, *Pitied but Not Entitled*, pp. 111-43.
10. Eileen Boris, "The Power of Motherhood: Black and White Activist Women Redefine the 'Political,'" *Yale Journal of Law and Feminism* 2 (1989), pp. 25, 26.
11. Gordon, *Pitied but Not Entitled*, p. 295.
12. *Ibid.*, p. 282.
13. *Ibid.*, pp. 276-77; Quadagno, *The Color of Welfare*, p. 21; Piven and Cloward, *Regulating the Poor*, pp. 130-45.
14. Abramovitz, *Regulating the Lives of Women*, p. 344 n.22.
15. Gordon, *Pitied but Not Entitled*, p. 276.
16. Gwendolyn Mink, "Welfare Reform in Historical Perspective," *Connecticut Law Review* 26 (1994), pp. 879, 891.
17. Quadagno, *The Color of Welfare*, pp. 28-31; Piven and Cloward, *Regulating the Poor*, pp. 248-338.
18. Gordon, *Pitied but Not Entitled*, p. 5.
19. Mink, "Welfare Reform in Historical Perspective," pp. 891-92.
20. Quoted in Lucy A. Williams, "Race, Rat Bites, and Unfit Mothers: How Media Discourse Informs the Welfare Legislation Debate," *Fordham Urban Law Journal* 22 (1995), pp. 1159, 1183.
21. Julius Paul, "The Return of Punitive Sterilization Proposals: Current Attacks on Illegitimacy and the AFDC Program," *Law and Society Review* 3 (1968), pp. 77, 103 n.42.
22. Quadagno, *The Color of Welfare*, p. 4.
23. Marcia Coyle and Harvey Berkman, "Welfare Entitlements Face Erosion," *National Law Journal* 18 (June 17, 1996), p. A1.
24. See, e.g., Handler and Hasenfeld, *Moral Construction of Poverty*; Michael B. Katz, *The Underserving Poor: From the War on Poverty to the War on Welfare* (New York: Pantheon, 1989).
25. *The Personal Responsibility Act of 1995, H.R. 4*, 104th Cong., 1st sess., 1995; "GOP Welfare Plan Would Take Cash from Unwed Mothers to Aid Adoptions," *Chicago Tribune*, Nov. 14, 1994, p. A7.
26. Nancy Gibbs, "The Vicious Cycle," *Time*, June 20, 1994, p. 24.

27. "Senate Finance Committee Hearing," *Federal News Service*, July 13, 1994, in the News Section, p. 1.
28. Nina Perales, "A 'Tangle of Pathology': Racial Myth and the New Jersey Family Development Act," in Martha A. Fineman and Isabel Karpin, eds., *Mothers in Law: Feminist Theory and the Legal Regulation of Motherhood* (New York: Columbia University Press, 1995), pp. 250, 263.
29. David Whitman, "War on Welfare Dependency: A New Crackdown is Great Politics, but the Results May Not Thrill Taxpayers," *U.S. News and World Report*, April 20, 1996, pp. 37, 40.
30. Statement of Assemblyman Wayne Bryant, New Jersey Assembly Bill 4703 (1990).
31. James R. Kelly, "Why Republican and New Democrat Welfare Changes Need Legal Abortion," *America* 173 (Dec. 30, 1995), p. 7; Iver Peterson, "Abortions Up Slightly for Welfare Mothers," *New York Times*, May 17, 1995, p. B7.
32. *60 Minutes: \$64 Question*, CBS television broadcast, May 15, 1994.
33. Plaintiff's Brief in Opposition to Federal Defendant's Motion for Summary Judgment, *C.K. v. Shalala*, 883 F. Supp. 991 (D.N.J. 1995), aff'd sub nom. *C.K. v. New Jersey Dep't of Health & Human Servs.*, 92 F.3d 171 (3d Cir. 1996), Exhibit C; Barbara Vobejda, "N.J. Welfare 'Cap' Has No Effect on Births, Study Finds," *Washington Post*, June 21, 1995, p. A3. One analysis of New Jersey welfare and hospital records contends that "since the implementation of the reform, births to welfare mothers and welfare caseloads have declined significantly." Ted G. Goertzel and Gary S. Young, "New Jersey's Experiment in Welfare Reform," *Public Interest*, Fall 1996, pp. 72, 73.
34. Testimony of Assemblyman Wayne Bryant, 1991 public hearing before New Jersey Assembly Health and Human Services Committee, quoted in Perales, "Tangle of Pathology," p. 257.
35. Brief Amici Curiae for Women's Legal Defense Fund et al., *C.K. v. New Jersey Dep't of Health & Human Servs.*, 92 F.3d 171 (3d Cir. 1996), p. 26 n.18.
36. Paul, "Return of Punitive Sterilization Proposals," p. 89.
37. Quoted in Edgar May, *The Wasted Americans: Cost of Our Welfare Dilemma* (New York: Harper, 1964), p. 14.
38. Paul, "Return of Punitive Sterilization Proposals," p. 90 n.20.
39. *Ibid.*, p. 89 n.17.
40. Public Hearings before Assembly Health and Human Services Committee, New Jersey Assembly Bills Nos. 4700-4705 (Oct. 22, 1991).
41. Lally Weymouth, "Building Self-Sufficiency," *Washington Post*, March 27, 1992, p. A21.
42. Quoted in Perales, "Tangle of Pathology," p. 262.
43. *Personal Responsibility Act, H.R. 4*, sec. 100.
44. Carl Rowan, "Duplicitous Newt a Bigot-in-Denial," *Chicago Sun-Times*, Editorial Section, June 21, 1995, p. 39; DeWayne Wickham, "Gingrich Blames Poor for 'Self-Made' Poverty," *USA Today*, July 3, 1995, p. A11.
45. Staff of House Committee on Ways and Means, *Overview of Entitlement Programs: 1994 Green Book* 103d Cong., 2d sess., 1994, pp. 402, 444; Teresa L. Amott, "Black Women and AFDC: Making Entitlement Out of Necessity," in Linda Gordon, ed., *Women, the State, and Welfare* (Madison: University of Wisconsin Press, 1990), p. 280.
46. Richard L. Dugdale, *The Jukes* (1891; New York: Arno Press, 1970), p. 167.
47. Charles B. Davenport, *Heredity in Relation to Eugenics* (New York: Holt, 1911).
48. Quoted in Alexander Cockburn, "Eugenic Nuts Would Have Loved Norplant: The Coercion of Women on Welfare to Avoid Child-bearing Smells of '30s Social Cleansing," *Los Angeles Times*, June 30, 1994, p. B7.
49. Daniel J. Kevles, *In the Name of Eugenics: Genetics and the Uses of Human Heredity* (New York: Knopf, 1985), p. 183, quoting Ronald A. Fisher, "Family Allowances in the Contemporary Economic Situation" (1932).
50. *Ibid.*

51. *Ibid.*, p. 184.
52. Charles Murray, *Losing Ground: American Social Policy, 1950-1980* (New York: Basic Books, 1984), pp. 154-66.
53. Charles Murray, "The Coming White Underclass," *Wall Street Journal*, Oct. 29, 1993, p. A14.
54. Richard J. Herrnstein and Charles Murray, *The Bell Curve: Intelligence and Class Structure in American Life* (New York: Free Press, 1994).
55. Paul Starr, "Who Owns the Future?" *American Prospect*, Spring 1995, p. 6.
56. *Congressional Record* S11783 (daily ed., Aug. 7, 1995) (statement of Sen. Faircloth).
57. *Congressional Record* H11515 (daily ed., Dec. 16, 1987) (statement of Rep. Roukema).
58. See, e.g., Mickey Kaus, *The End of Equality* (New York: Basic Books, 1992); Lawrence M. Mead, *The New Politics of Poverty: The Nonworking Poor in America* (New York: Basic Books, 1992); Murray, *Losing Ground*.
59. Gregory Acs, "Does Welfare Promote Out-of-Wedlock Childbearing?" in Isabel Sawhill, ed., *Welfare Reform: An Analysis of the Issues* (Washington, D.C.: Urban Institute, May 15, 1995), pp. 51, 53; David Ellwood, *Poor Support: Poverty in the American Family* (New York: Basic Books, 1988), p. 72.
60. Marian Wright Edelman, *Families in Peril: An Agenda for Social Change* (Cambridge: Harvard University Press, 1987), pp. 70-71. See also Mark R. Rank, "Fertility Among Women on Welfare: Incidence and Determinants," *American Society Review* 54 (1989), pp. 296, 298-300, finding that AFDC mothers have lower fertility rates than the general public.
61. Staff of House Committee on Ways and Means, *Overview of Entitlement Programs: Background Material and Data on Programs within the Jurisdiction of the Committee on Ways and Means* 102d Cong., 2d sess., 1992, p. 669.
62. Theresa Funciello, *Tyranny of Kindness: Dismantling the Welfare System to End Poverty in America* (New York: Atlantic Monthly Press, 1993), p. 57.
63. Kaus, *The End of Equality*, p. 117.
64. Clarence Page, "Thomas' Sister's Life Gives Lie to His Welfare Fable," *Chicago Tribune*, July 24, 1991, p. A19.
65. *Ibid.*
66. Funciello, *Tyranny of Kindness*, p. 9.
67. Nancy Fraser and Linda Gordon, "A Genealogy of Dependency: Tracing a Keyword of the U.S. Welfare State," *Signs* 19 (1994), pp. 309, 311.
68. Handler and Hasenfeld, *Moral Construction of Poverty*, p. 19; Eric R. Kingson and Edward D. Berkowitz, *Social Security and Medicare: A Policy Primer* (Westport, Conn.: Greenwood, 1993), pp. 23-25; Gilbert Y. Steiner, *The State of Welfare* (Washington, D.C.: Brookings Institution, 1971), p. 3.
69. Fraser and Gordon, "Genealogy of Dependency," p. 322.
70. Stephen D. Sugarman, "Reforming Welfare Through Social Security," *University of Michigan Journal of Law Reform* 26 (1993), pp. 817, 819-21.
71. Gordon, *Pitied but Not Entitled*, p. 2.
72. David E. Rosenbaum, "Answer: Cut Entitlements. Question: But How?" *New York Times*, June 8, 1993, p. A22.
73. Theodore R. Marmor, Jerry L. Mashaw, and Philip L. Harvey, *America's Misunderstood Welfare State: Persistent Myths, Enduring Realities* (New York: Basic Books, 1990), p. 86.
74. Mink, "Welfare Reform in Historical Perspective," p. 882; Kathryn Edin and Laura Lein, *Making Ends Meet* (New York: Russell Sage Foundation, 1997); Kathryn Edin and Christopher Jencks, "Reforming Welfare," in Christopher Jencks, *Rethinking Social Policy: Race, Poverty and the Underclass* (Cambridge: Harvard University Press, 1992), p. 204, 205-11, describing how poor mothers in Illinois combine work and welfare in order to survive; Kathryn Edin, "Surviving the Welfare System: How AFDC Recipients Make Ends Meet in Chicago," *Social Problems* 38 (1991), p. 462.

75. Sara Rimer, "Jobs Program Participants: Still Poor and in Need of Aid," *New York Times*, April 10, 1995, pp. A1, B10.
76. Alan Finder, "Welfare Clients Outnumber Jobs They Might Fill," *New York Times*, Aug. 25, 1996, p. A1.
77. William Julius Wilson, "Work," *New York Times Magazine*, Aug. 18, 1996, p. 26.
78. U.S. Department of Commerce, Bureau of the Census, *Statistical Abstract of the United States 1993* (Washington, D.C., 1993), p. 470 tab. 737.
79. See, e.g., Donald J. Hernandez, *America's Children: Resources from Family, Government and the Economy* (New York: Russell Sage, 1993), pp. 290, 325; Mary Jo Bane, "Household Composition and Poverty: Which Comes First?" in Sheldon H. Danziger and Daniel H. Weinberg, eds., *Fighting Poverty: What Works and What Doesn't* (Cambridge: Harvard University Press, 1986), pp. 209, 321.
80. William A. Darity and Samuel L. Myers, "Does Welfare Dependency Cause Female Headship? The Case of the Black Family," *Journal of Marriage and the Family* 46 (1984), pp. 765, 773. See also Amott, "Black Women and AFDC," pp. 282-84, examining the factors leading to the rise of single-parent families in the black community.
81. Jencks, *Rethinking Social Policy*, p. 227.
82. Martha F. Davis and Susan K. Kraham, "Beaten, Then Robbed," *New York Times*, Jan. 13, 1995, p. A31.
83. See Martha Fineman, "Masking Dependency: The Political Role of Family Rhetoric," *Virginia Law Review* 81 (1995), p. 2181.
84. Margaret C. Simms, "Black Women Who Head Families: An Economic Struggle," in Margaret C. Simms and Julianne Malveaux, eds., *Slipping Through the Cracks: The Status of Black Women* (New Brunswick, N.J.: Transaction, 1986), pp. 141, 142.
85. Bane, "Household Composition and Poverty," pp. 227-28, 231 tab. 9.6.
86. Greg J. Duncan and Willard Rodgers, "Longitudinal Aspects of Children's Poverty," *Journal of Marriage and the Family* 50 (1988), pp. 1007, 1012.
87. Andrea H. Beller and John W. Graham, *Small Change: The Economics of Child Support* (New Haven: Yale University Press, 1993).
88. Johanna Brenner, "Towards a Feminist Perspective on Welfare Reform," *Yale Journal of Law and Feminism* 2 (1989), pp. 99, 123.
89. Irwin Garfinkel, Daniel R. Meyer, and Gary D. Sandefur, "The Effects of Alternative Child Support Systems on Blacks, Hispanics, and Non-Hispanic Whites," *Social Service Review* 66 (1992), pp. 505, 518 tab. 3.
90. Perales, "Tangle of Pathology," pp. 252-53.
91. *Ibid.*
92. See Martha Albertson Fineman, *The Neutered Mother, the Sexual Family, and Other Twentieth-Century Tragedies* (New York: Routledge, 1995), for a critique of the nuclear-family norm that leaves women with the burden of caretaking while denying them adequate government support and stigmatizing those who do not depend on husbands.
93. Susan Bennett and Kathleen A. Sullivan, "Disentitling the Poor: Waivers and Welfare Reform," *University of Michigan Journal of Law Reform* 26 (1993), p. 741.
94. Lucy A. Williams, "The Ideology of Division: Behavior Modification Welfare Reform Proposal," *Yale Law Journal* 102 (1992), p. 719.
95. Rosemary L. Bray, "So How Did I Get Here?" *New York Times Magazine*, Nov. 8, 1992, pp. 35, 40.
96. Funicello, *Tyranny of Kindness*, p. 24.
97. Brenda Clegg Gray, *Black Female Domestic Workers During the Depression in New York City, 1930-1940* (New York: Garland, 1993), p. 103, quoted in Gordon, *Pitied but Not Entitled*, p. 192.
98. Quoted in Lucie E. White, "No Exit: Rethinking 'Welfare Dependency' from a Different Ground," *Georgetown Law Journal* 81 (1993), pp. 1961, 1973.
99. Patrick J. Horvath, "Has Harassment Become the Plan for Reducing Welfare Rolls?" *New York Times*, Aug. 15, 1995, p. A16 (letter to editor).

100. See, e.g., *Bowen v. Gilliard*, 483 U.S. 587 (1987); *Lyng v. Castillo*, 477 U.S. 635 (1986). The Supreme Court invalidated, however, early welfare eligibility requirements such as AFDC's "man in the house" rule. *Lewis v. Martin*, 397 U.S. 552 (1970) (holding unconstitutional a regulation allocating to mother for purposes of AFDC eligibility income of man who shares her home with no legal obligation to provide support); *King v. Smith*, 392 U.S. 309 (1968) (invalidating Alabama's regulation disqualifying from AFDC any mother living with man who was not obligated to provide support).
101. *Anderson v. Edwards*, 115 S. Ct. 1291 (1995).
102. *Wyman v. James*, 400 U.S. 309 (1971).
103. *Roe v. Norton*, 422 U.S. 391 (1975).
104. *Allen v. Eichler*, No. 89A-FE-4, 1990 WL 58223 (Del. Super. Ct. April 3, 1990).
105. Laurie Nsiah-Jefferson, "Reproductive Laws, Women of Color, and Low-Income Women," in Nadine Taub and Sherrill Cohen, eds., *Reproductive Laws of the 1990s* (Clifton, N.J.: Humana, 1989), p. 23 (discussing limitations on access to abortion services and new reproductive technologies); Ruth Colker, "An Equal Protection Analysis of United States Reproductive Health Policy: Gender, Race, Age, and Class," *Duke Law Journal* (1991) pp. 324, 340-50 (describing the unavailability of contraception and sex education, prenatal care, and abortion for poor or adolescent females); Dorothy E. Roberts, "The Future of Reproductive Choice for Poor Women and Women of Color," *Women's Rights Law Reporter* 12 (1990), p. 59 (describing the constraints on the reproductive choices of a hypothetical pregnant woman in the inner city).
106. Jacquelyne Johnson Jackson, "Urban Black Americans," in *Ethnicity and Medical Care* (Cambridge: Harvard University Press, 1981), p. 37; Ruth Zambrana, "A Research Agenda on Issues Affecting Poor and Minority Women for Understanding Their Health Needs," in Cesar A. Perales and Lauren Young, eds., *Too Little, Too Late: Dealing with the Health Needs of Women in Poverty* (New York: Harrington Park Press, 1988), p. 137.
107. Charles Reich, "The New Property," *Yale Law Journal* 73 (1964), p. 733.
108. *Sherbert v. Verner*, 374 U.S. 398 (1963).
109. *Maher v. Roe*, 432 U.S. 464 (1977).
110. *Ibid.*
111. *Harris v. McRae*, 448 U.S. 297 (1980).
112. Susan Frelich Appleton, "Standards for Constitutional Review of Privacy-Invasive Welfare Reforms: Distinguishing the Abortion-Funding Cases and Redeeming the Undue Burden Test," *Vanderbilt Law Review*, 49 (1996), pp. 1, 20. For more on baselines, see Seth F. Kreimer, "Allocational Sanctions: The Problem of Negative Rights in a Positive State," *University of Pennsylvania Law Review* 132 (1984), pp. 1293, 1358-74; Cass R. Sunstein, "Neutrality in Constitutional Law (With Special Reference to Pornography, Abortion, and Surrogacy)," *Columbia Law Review* 92 (1992), p. 1.
113. 111 S. Ct. 1759 (1991). For a more thorough discussion of the *Rust v. Sullivan* decision, see Dorothy E. Roberts, "*Rust v. Sullivan* and the Control of Knowledge," *George Washington Law Review* 61 (1993), p. 201.
114. Brief of Amici Curiae, The American Public Health Association, The American College of Physicians, et al., in Support of Petitioners, *Rust v. Sullivan* (declaration of Dr. David A. Grimes).
115. William D. Mosher, "Use of Family-Planning Services in the United States: 1982 and 1988," *National Center for Health Statistics, Advance Data*, no. 184 (April 11, 1990), pp. 2-3.
116. Angela Y. Davis, "Sick and Tired of Being Sick and Tired: The Politics of Black Women's Health," in Evelyn C. White, ed., *The Black Women's Health Book: Speaking for Ourselves* (Seattle: Seal Press, 1990), pp. 18, 23.
117. Mosher, "Use of Family Planning Services in the United States," pp. 2-3.

118. Francis G. Caro, Debra Kalmuss, and Iris Lopez, *Barriers to Prenatal Care* (New York: Community Service Society, 1988), p. 1.
119. Zambrana, "Research Agenda on Issues Affecting Poor and Minority Women," p. 150.
120. *Rust v. Sullivan*, p. 1772.
121. *Ibid.*, p. 1776.
122. *Ibid.*, p. 1782 n.3 (Blackmun, J., dissenting).
123. Brief for Petitioners, *Rust v. Sullivan*, p. 12.
124. *New York v. Sullivan*, 889 F.2d 401, 413-14 (2d Cir. 1989).
125. Keith Goldschmidt, "Tallahassee: Fear, Panic and Frustration Lurk Capitol Halls," *Gannett News Service*, Feb. 25, 1994.
126. *C.K. v. Shalala*, 883 F. Supp. 991 (D.N.J. 1995), *aff'd sub nom. C.K. v. New Jersey Dep't of Health & Human Servs.*, 92 F.3d 171 (3d Cir. 1996).
127. *Ibid.*, p. 997.
128. *Ibid.*, pp. 1007-8.
129. *Dandridge v. Williams*, 397 U.S. 471 (1970).
130. *C.K. v. Shalala*, pp. 486-87.
131. See, e.g., *Plyer v. Doe*, 457 U.S. 202 (1982) (invalidating Texas law withholding funding for education of children not legally admitted to U.S.); *New Jersey Welfare Rights Organization v. Cabill*, 411 U.S. 619 (1973) (holding statute limiting welfare benefits to married parents denied equal protection to children born out of wedlock).
132. *C.K. v. Shalala*, pp. 1013-14.
133. *Planned Parenthood v. Casey*, 112 S. Ct. 2791, 2811 (1992).
134. On opposition to welfare reform policies on the grounds that they will increase abortion rates, see Tamar Lewin, "Abortion Foes Worry About Welfare Cutoffs," *New York Times*, March 19, 1995, p. D4; Cheryl Wetzstein, "Abortion Tops 'Family Cap' Debate: Policy Feared as Coercion to End Pregnancy," *Washington Times*, May 1, 1995, p. A6. Susan Frelich Appleton discusses the constitutional implications of family caps' promotion of abortion in "When Welfare Reforms Promote Abortion: 'Personal Responsibility,' 'Family Values,' and the Right to Choose," *Georgetown Law Journal* 85 (1996), p. 155.
135. Appleton, "Standards for Constitutional Review," pp. 57-58.
136. *Ibid.*, pp. 62-64.
137. *C.K. v. Shalala*, p. 1015.
138. *Primetime Live: End of Innocence*, ABC television broadcast. Sept. 9, 1993.
139. Gaston Rimlinger, *Welfare Policy and Industrialization in Europe, America, and Russia* (New York: Wiley, 1971), p. 62, quoted in Quadagno, *Color of Welfare*, p. 5.
140. Quadagno, *The Color of Welfare*, pp. 5-6.
141. Robert L. Heilbroner, "The Roots of Social Neglect in the United States," in Eugene V. Rostow, ed., *Is Law Dead?* (New York: Simon and Schuster, 1971), pp. 288, 296.
142. W. E. B. Du Bois, *Black Reconstruction in America, 1860-1880*, ed. August Meier (New York: Atheneum, 1992 [1935]), p. 700.
143. Derrick Bell, *Faces at the Bottom of the Well: The Permanence of Racism* (New York: Basic Books, 1992), p. 12.
144. Dirk Johnson, "Duke's Loss Brings Joy Even as It Fans Anger," *New York Times*, Nov. 18, 1991, p. B7.
145. Harold Cruse, *Rebellion or Revolution?* (New York: Morrow, 1968), p. 104.

Chapter 6. Race and the New Reproduction

1. For descriptions of new reproductive technologies, see Lori B. Andrews, *New Conceptions: A Consumer's Guide to the Newest Infertility Treatments, Including In Vitro Fertilization, Artificial Insemination, and Surrogate Motherhood* (New York: St. Martin's, 1984), pp. 4-7, 120-263; John A. Robertson, *Children of Choice: Freedom and the New*