

Lecture Notes – Shelby, “Justice, Deviance, and the Dark Ghetto”

- Shelby’s aim is to navigate between two extreme positions:
 - On the one hand are those who criticize poor people who live in ghettos, who blame their poverty, their situation on their own choices, on “black culture”, etc. They deny structural racism and failures of government, and demand that these people take “greater personal responsibility” for their lives.
 - On the other hand are those who criticize the government for the social ills of the ghetto poor. They say we should stop “blaming the victim.” The government and the affluent need to take responsibility for fixing a badly broken system.
 - Shelby thinks that the ghetto poor should be neither demonized nor valorized; they’re just people responding to their circumstances...sometimes their responses are reasonable/justified/appropriate, sometimes they’re not.
- Shelby’s central concern is “to determine what *kinds* of criticisms of the ghetto poor’s behavior and attitudes are or are not appropriate *given* that the social circumstances under which they make their life choices are, at least in part, the result of injustice.”
 - His is a project in *nonideal political theory*.
 - Rawls does mostly ideal theory, i.e., he aims to determine what the conditions of justice would be in an ideal society.
 - Nonideal theory is the part of the theory of justice that asks how we should respond to or correct for injustices, i.e., failures to live up to the ideal theory.
 - We can think of the question in this way:
 - For Rawls, every citizen has a generic, prima facie obligation to obey the laws of her country *given* that the country is relatively just. What if it’s not? What if there are significant injustices that harm some segment of the population? How is it reasonable for them to respond? Do they continue to be bound by the duty of fair play or are they released from their civic obligations.
 - Shelby is going to argue the latter, i.e., they are released from their civic obligations.
 - BUT this doesn’t mean that anything goes.
 - He distinguishes between civic obligations and natural duties
 - Though the ghetto poor may be released from certain of their civic obligations, they remain bound by their natural duties and can (and should) be criticized for failures to fulfill them.
- More terminology:
 - **Deviant**: Shelby uses this to mean “sharply divergent from widely accepted norms.” He does not endorse the negative connotations of the term.
 - **Society**: A system of social cooperation over time (this is drawn straight from Rawls and should be familiar)
 - **Basic Structure**: constituted by the way the major social, political, and economic institutions of society apportion the benefits and burdens of social cooperation (a just basic structure gives each their due, i.e., fairly distributes benefits and burdens, an unjust basic structure may overburden some or under-benefit some)
 - **Racial Justice**: In the first instance, racial justice for Shelby is a matter of racial discrimination. When racial discrimination exists, racial injustice exists. **Racial**

discrimination exists “when a so-called racial characteristic (or set of characteristics) possessed by or attributed to the members of a social group is wrongly treated as a sign of disvalue, incompetence, or inferiority.” Animus is not necessary and not every invocation of race is discriminatory.

- Racial injustice doesn’t function only (or even most prevalently) at the individual level, but also at the institutional level. **Institutional racism** “exists when the administration or enforcement of the rules and procedures of a major social institution – say, the labor market or the criminal justice system – is regularly distorted by the racial prejudice or bias of those who exercise authority over the institution.” It can “exist even when the *content* of the rules and procedures of an institution, when viewed in the abstract, is perfectly just, provided there is pervasive racial bias in the *application* of those rules and procedures.”
- In a **racially just society**, each would have a chance to carry out their own life plan without being unfairly inhibited by the racial prejudice or bias of others.
- **Equal opportunity**: For Rawls (and, by extension, Shelby), fair equality of opportunity requires equal life prospects (as measured by primary social goods) given similar natural talents and motivation. If you have the ability and you’re willing to work, you should be able to get the same goods out of life as anyone else with similar ability and work ethic.
- **Ghetto**: defined by race, urban location, and poverty. In the US, they are predominantly black, urban neighborhoods, with high concentrations of poverty. (Though much of this argument might also apply to white slums, Latino barrios, and some Indian reservations and Asian communities.)
- **Motivating the position**: Consider a situation in which you’ve been part of a cooperative endeavor, you’ve put in the effort and supported the other cooperators in the required ways, yet you do not receive your fair share of the benefits of cooperation.
 - To make this more concrete: suppose you’re part of a rec league softball team. It’s a league where everyone is just out to have a good time and part of having a good time is getting to play the game. You show up to all of the practices, you do the things a good teammate does...hitting grounders for fielding practice, jumping in to play any position that needs to be filled, collecting stray equipment after practice, selling stuff at the bake sale (or whatever) to make money to pay for uniforms, etc. When game time comes around, however, you ride the bench. The manager of the team never puts you in...maybe she’s taking the game more seriously than you think appropriate given the low stakes.
 - In these circumstances, would you be treating the others unfairly if you stopped cooperating, i.e., stopped showing up at practice or started showing up and just playing around?
 - If your gut says you wouldn’t be treating them unfairly, then you think that you’ve been relieved of your obligations arising from the duty of fair play because you’re not getting your fair share of the benefits.
- Bring it back to Shelby:
 - Shelby argues that the basic institutions of American society are racially unjust.
 - A long and brutal history of racial domination, exploitation, and exclusion based on principles of white-supremacy beginning with race-based slavery, leading

into de jure racial segregation enforced through terror, and finally into a racially biased war on drugs and mass incarceration has led to a largely racially segregated society.

- In this society, there is often racial discrimination in **employment** (tied to racial stereotypes, criminal history, etc.) and structural problems that makes access to employment more difficult. Many jobs once available in urban centers have moved to suburbs or abroad, but public transportation is not readily available to those who live in urban centers so they lack access to these jobs. Many businesses fear setting up shop in urban centers because of crime, stereotypes, and lack of access to loans.
- Since schools are funded through local property taxes, poor neighborhoods cannot provide adequate **educational opportunities** to their children. Without adequate education, one lacks access to employment opportunities, yet government does little to correct this manifest injustice.
- Furthermore, there is racial discrimination in **housing**, segregating black (and other minority) residents into ghettoized communities. This is exacerbated by a history of redlining, i.e., racially discriminatory lending practices and by the practices of real estate agents who will not show listings to black folks.
- Our society also provides (via the tax code) for **enormous intergenerational transfers of wealth**. This means that wealth accumulated under conditions of explicit racial discrimination is allowed to grow and transfer the privilege that comes with wealth from generation to generation. The wealthy have greater social mobility, greater access to employment and education, and are greatly advantaged in competition for positions of **political authority**. The distribution of wealth tracks racial divides; whites are in general wealthier than blacks (the racial wealth gap) and even those blacks who are able to climb the rungs of social wealth tend to backslide in future generations as a result of present discriminatory practices (see recent NYT article: <https://www.nytimes.com/interactive/2018/03/19/upshot/race-class-white-and-black-men.html>).
- Since wealth=political authority, those with political power are provided a means for further protecting the wealth they've accumulated. Given our racial history, this means that whites are positioned to protect their wealth from being redistributed to minorities.
- These social inequalities create an “**informal social hierarchy by birth**: some would be born into great wealth and other social and political advantages while others would be born into poverty and its associated disadvantages. Rawls thinks that such inequities are **manifestly incompatible with basic fairness.**”
- Given these conditions, which are most visibly manifested in the lives of the poor residents of “dark ghettos,” Shelby asks whether the various deviant behaviors that these residents exhibit is, in fact, a *reasonable* response to the unjust conditions under which they live.

- The deviance he has in mind comes in the form of crime, the development of gangster and hustler ethics, the growth of a “ghetto subculture”, and disregard for authority.
 - Given few good employment opportunities or opportunities for education, some residents – especially those unemployed for long periods – turn to illegitimate means to secure income, put food on their tables, make ends meet, etc.
 - Crime doesn’t just occur in ghettos, but when ghetto poor turn to crime, “they do so under conditions of material deprivation and institutional racism.” Their criminal activity does not merely express some character flaw or disregard for moral authority, rather it expresses something like a will to survive.
 - Engaging profitably in street crime requires the development of a certain skill set, street capital:
 - Gangster ethic: use violence, threats, and intimidation to forcibly extract money, goods, and services from others.
 - Hustler ethic: use deception, manipulation, and treachery to achieve their objectives...amateur psychologists.
 - They flout the law and have little respect for the authority of institutions....this is rational once the choice has been made to adopt street crime as a way of life.
 - These ethics often work together...pimps, for example.
 - They are reinforced in the prison system creating a feedback loop...the skills learned and reinforced in prison support further crime upon release.
 - They also affect others in community...to survive and not be taken advantage of by gangsters and hustlers, one must cultivate the same skill sets.
 - This reinforces racial stereotypes and reinforces the injustices outlined above...making it more difficult, for example, for all ghetto residents to find work and housing. It also provides cover for policing practices that are part of the war on drugs, which treat minority communities much more harshly, and leads to mass incarceration.
- Is this deviance a rational/reasonable/justifiable response to the injustice of US society?
 - This question hinges on two points:
 - How unjust must a society be in order to justify such deviance?
 - How unjust is US society?
 - Shelby considers three possibilities:
 - US society is fully just – not a real possibility
 - US society includes some injustices but is not fundamentally unjust.
 - US society is fundamentally unjust and requires radical reform.

- The truth, he thinks, is somewhere in the middle, but we need to be more precise. When would a society exceed tolerable injustice?
 - Would it be enough if the constitutional essentials – formal equality, voting, due process, etc. – were secured?
 - Shelby argues it would not, and we see this when we see that securing the constitutional essentials fails to ensure genuine conditions of reciprocity for the most disadvantaged in the scheme.
 - Even if the essentials are secure, the ghetto poor continue to lack access to employment, education, etc, yet they're still motivated to secure the goods that a consumerist society tells them they need – nice clothes, cars, TVs, phones, etc. – as well as put food on the table. They don't have access to the legitimate economy, and public welfare programs don't provide even enough for the necessities, so they turn to crime, to the illegitimate economy, and this, he thinks, is reasonable.
 - If they don't have access to education to develop marketable skills, how could we hold them to an obligation to work in the legit economy? We can't...this civic obligation does not obtain even if the constitutional essentials are secured.
 - FURTHERMORE, there's reason to believe that even the constitutional essential are not secured – civil rights laws are not fully enforced, there is voter suppression, there is mass incarceration and felon disenfranchisement.
 - If this is right, then it is reasonable for the ghetto poor to refuse to accept menial jobs or to respect the authority of the law qua law, i.e., to engage in the illegitimate economy to make ends meet, for they do not thereby violate the principle of reciprocity or shirt valid civic obligations. Those obligations are voided by the conditions of injustice represented by the very existence of the dark ghetto.
- Now, Shelby is quick to argue that this does not mean that no valid criticisms can be made of the deviant behavior of the ghetto poor.
 - Even if the civic obligations that arise from the principle of reciprocity (what Rawls calls the duty of fair play) are void, the **natural duties** or moral obligations that one has apart from being a member of society still exist.
 - We each (including the ghetto poor) have duties not to be cruel, to help the needy and vulnerable, to not cause unnecessary suffering, to show due respect for moral personhood, etc.

- This means that reckless, gratuitous violence, selfish indifference to the suffering of others, and disregard for the humanity of others should not be morally tolerated (by the ghetto poor or anyone else). We also should be mindful of how adult behavior shapes the moral development of children.
 - This is not necessarily incompatible with all crime.
 - Taking the property of reasonably well-off others may be justifiable in the form of shoplifting and petty theft.
 - Participating in gangs as a means of defense and income may be justifiable.
 - Victimless crimes like prostitution, welfare fraud, tax evasion, selling stolen goods, etc. may be reasonable.
 - Developing the skills to successfully engage in these activities – the criminal ethics outlined above – is reasonable, but one should not allow them to define one’s identity. It is not wrong to be good at hustling, it is wrong to be a hustler.
- Further, each of us has a **natural duty of justice**. This requires each of us not only to do justice to others and support just institutions, but to work to bring about more just institutions, a more just society.
 - This duty, Shelby argues, applies to the oppressed as well. It is not “blaming the victim” to claim that they should be working to create a more just society (though, of course, one must at the same time recognize the injustice they face and appropriately lay blame for that injustice at the foot of the powers that be).
 - Of course, there are limits to what can be demanded. The ghetto poor face significant constraints, and we must not demand more than they are capable of.
 - Even so “Expecting the ghetto poor to honor their natural duties, including the duty of justice, does not blame the victims. The ghetto poor should not be held responsible for the appalling social conditions that have been imposed on them because of the workings of an unjust social structure, but they should be held accountable for how they choose to respond to these conditions. **Demanding this basic level of moral responsibility treats them as full moral persons and as political agents in their own right.”**
- **So, Shelby’s argument is essentially that the duty of fair play does not generate valid civic obligations for the ghetto poor because they are not getting their fair share of the goods of social cooperation, yet they are still open to criticism for failing to fulfill their natural duties, especially the duty of justice.**
- He closes his argument by examining the duty of self-respect. He argues that many of the spontaneous acts of rebellion – openly transgressing norms, expressing contempt for authority,

desecrating revered symbols, pilfering from employers or state institutions, vandalizing property, disrupting public events, and even rioting – might be reasonable in some cases as necessary for maintaining self-respect, as cathartic, as an outlet for justified anger, and as a means for building solidarity.

- Yet, the duty of justice demands working toward a more sustained political resistance.