

Children's Health and the Ethics of Welfare Cap Legislation: The Case of California's Maximum Family Grant

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Salud infantil y la ética de la legislación de los límites a las ayudas sociales: El caso de la Máxima Subvención Familiar de California

ABSTRACT: Among the laws that compose California's primary welfare program is a rule called the Maximum Family Grant (MFG). Enacted in the mid-1990's, this rule places a cap on the amount of cash aid citizens may receive upon the birth of a new child. Recently, members of the California State Assembly have considered repealing the law on the grounds that it is discriminatory. These claims have been met with criticism, doubt, and confusion. In this essay, I will argue that the Maximum Family Grant rule is indeed discriminatory. Like other welfare and family cap legislation, the MFG rule unjustly redistributes social burdens onto the shoulders of poor households and poor children in particular. Such redistribution has demonstrably negative implications for those children's health, nutrition, and access to medical care. These facts, I will argue, suffice to ground the claim that the MFG rule and welfare caps like it are instances of institutional discrimination. This essay brings a distinctively philosophical perspective to an ongoing political debate about welfare caps and, I hope, provides some clarity about what precisely is normatively objectionable about the MFG rule and other legislation like it.

RESUMEN: Entre las leyes que componen el programa de bienestar primario de California se encuentra la llamada regla de la máxima subvención familiar (MFG). Promulgada a mediados de los noventa, esta norma establece un límite en la cantidad de ayuda en efectivo que los ciudadanos pueden recibir por el nacimiento de un nuevo hijo. Recientemente, los miembros de la Asamblea del Estado de California han considerado la derogación de la ley sobre la base de que es discriminatoria.

Estas afirmaciones han sido objeto de críticas, duda y confusión. En este artículo, argumentaré que la regla de la máxima subvención familiar es de hecho discriminatoria. Al igual que otras legislaciones sobre el bienestar y el límite de ayudas a las familias, la regla del MFG redistribuye injustamente cargas sociales sobre los hombros de los hogares pobres y de los niños pobres en particular. Tal redistribución tiene implicaciones negativas demostrables para la salud de esos niños, la nutrición y el acceso a la atención médica.

Estos hechos, defenderé, son suficientes para justificar la tesis de que la regla de la MFG y los límites a las ayudas sociales son casos de discriminación institucional. Este artículo aporta una perspectiva netamente filosófica a un debate político en curso sobre las limitaciones a ayudas sociales para el bienestar y, espero, proporciona algo de claridad acerca de lo que es, precisamente objetable en un sentido normativo acerca de la regla sobre el MFG y otras leyes similares.

KEYWORDS: Children's health, social justice, welfare, political philosophy, ethics

PALABRAS-CLAVE: Salud infantil, justicia social, bienestar, filosofía política, ética

1. Introduction

Among the laws that compose California's primary welfare program is a rule called the Maximum Family Grant (MFG). Enacted in the mid-1990's, this rule places a cap on the amount of cash aid citizens may receive upon the birth of a new child. Recently, members of the California State Assembly have considered repealing the law on the grounds that it is discriminatory. These claims have been met with criticism, doubt, and confusion. In this essay, I will argue that the Maximum Family Grant rule is indeed discriminatory. Like other welfare and family cap legislation, the MFG rule unjustly redistributes



social burdens onto the shoulders of poor households and poor children in particular. Such redistribution has demonstrably negative implications for those children's health, nutrition, and access to medical care. These facts, I will argue, suffice to ground the claim that the MFG rule, and welfare caps like it, is an instance of institutional discrimination. This essay brings a distinctively philosophical perspective to an ongoing political debate about welfare caps and, I hope, provides some clarity about what is normatively objectionable about the MFG rule and other legislation like it.

This essay is divided into seven sections. Section 1 introduces the Maximum Family Grant, and introduces some very basic points about the California welfare system and welfare systems generally. Section 2 explicitly identifies a number of assumptions and presuppositions that will be important for the following substantive arguments, but whose full analysis lies beyond the scope of this essay. Section 3 defines institutional discrimination and distinguishes it from individual discrimination or bigotry. There I identify the two collectively sufficient conditions for demonstrating that a law or practice is institutionally discriminatory: that the law creates disadvantages and that it does so unjustly. Those two sufficient conditions form the framework for the next two sections. In section 4, I provide evidence that family and welfare cap laws produce disadvantages for social groups, with specific attention paid to how these impact children's health and wellbeing. In section 5, I argue that, contrary to its ostensible justification, the disadvantages produced by the MFG rule are unjust for two reasons. First, the rule violates our basic rights to self-determination. Second, the way that the rule distributes social burdens violates principles of fairness. Section 6 brings these elements together to conclusively argue that the MFG rule and, by analogy, welfare and family cap legislation, are institutionally discriminatory.

1. The California Welfare System and the Maximum Family Grant

In California, and throughout the United States, families that fall below a certain income threshold are entitled to financial support from the government. In California, for instance, households with annual incomes under approximately \$22,000 a year are entitled to supplemental nutrition assistance under the CalFresh program, colloquially referred to as "food stamps" ([California Department of Social Services 2007](#)). Eligible households enrolled in CalFresh are given a modest but significant

amount of money to help pay for food. Such social security or welfare programs are common throughout the world.

The amount of financial support to which a household is entitled varies depending on the needs and situation of that household. Typically, the greater the need of the household is, the greater the entitlement. For instance, according to the US Social Security Administration, in 2016, an eligible individual who lives alone can receive a maximum of \$733 per month in social security payments (Kunkel 2016). However, an eligible person who shares a household with an eligible spouse may receive up to \$1,100. If a woman becomes pregnant, she may be eligible for more assistance than before, given the additional stresses and expenses of pregnancy. Life changes can also result in the *reduction* of entitlements, as when a person's income increases due to receiving a raise.

One paradigmatic example of a life change that commonly augments the amount of assistance for which a household is eligible is the birth of a child (this example will be of central significance for this essay). On its face, this may seem to demand little explanation: more children bring greater expenses; greater expenses imply greater need; and greater need implies a greater entitlement to social support. It is no surprise then, for instance, that from 2014-15, CalFresh gave a maximum of \$357 per month for a household of two, but \$511 for a household of three, and correspondingly more as household size grows (California Department of Social Services 2014).

The Maximum Family Grant rule, the primary subject of this essay, is a California state law that limits the amount of welfare aid for which a household is eligible from the California Work Opportunity and Responsibility to Kids (CalWORKs) program, California's main welfare program that works alongside other programs like CalFresh (California Department of Social Services 2016). The exact text of the maximum family grant rule reads:

For the purposes of determining maximum aid payment... the number of needy persons in the same family shall not be increased for any child born into a family that has received aid under this chapter continuously for the 10 months prior to the birth of the child (Cal. Welf. & Inst. § 11450-11469.1 1994).

The basic idea is that if, while receiving welfare payments, a woman becomes pregnant and carries the pregnancy to term without securing some new source

of income like getting a job, she will not receive additional financial support upon the birth of her new child. These laws have come to be known as “welfare caps” or “family caps” since they limit welfare and have historically been motivated by an interest in managing reproduction, usually among poor or otherwise marginalized social groups (New York Times 1994; Donovan 1995; Hirsch 2002; Jagannathan & Camasso 2003; Horvath-Rose et al. 2008). The law does make explicit exceptions for cases where pregnancy results from rape, incest, and the failure of contraception or sterilization.

Recently, the MFG has received harsh criticism from journalists and activist groups (McBurney 2011; Pamukcu 2015; American Civil Liberties Union of Northern California 2014). They argue that the rationale for the rule is based on widespread concern about “welfare queens”, an economic bogeyman and false stereotype of women receiving financial support from the state to live “irresponsible” and even lavish lifestyles. This image was ripe and present in the public imagination in the early-mid 1990s, when the law was written and passed (Radanovich 1996). Indeed, when the federal government decided not to include a rule like the MFG as part of comprehensive federal welfare reform during the Clinton Administration, at least 23 states, including California, enacted their own (Cal. Welf. & Inst. § 11450-11469.1 1994). Since December 2014, the California State Assembly has been considering repealing the law (CA SB-23 2015). Despite progressing through a variety of committees, the bill to repeal the MFG rule was made inactive in September 2015 by its sponsor. She has so far not responded to requests for commentary on this decision.

While it may be the case that the law was born out of classist or otherwise discriminatory beliefs in the minds of legislators (though I do not here claim that this is so) to criticize the law on the basis of its origins is to commit the genetic fallacy. This is a mistake. A wayward legislature can write a good law. But as we will see, even if we dismiss flaws in its origins as accidents of history, there is excellent reason to believe that the MFG rule and family cap legislation like it ought to be repealed.

1.1. The Maximum Family Grant is Institutionally Discriminatory

This is the basic structure of the argument that the MFG rule is institutionally discriminatory. A law, policy, or practice is institutionally discriminatory if (a) it creates

or distributes social burdens and disadvantages (b) unjustly. The MFG rule meets both of these conditions. To the first, research by pediatricians and epidemiologists have identified strong associations between welfare cap laws like the MFG rule and childhood malnutrition, infant hospitalization, and incidence of severe trauma or disease. With respect to the second condition, these disadvantages are created unjustly. In the first place, the law uses economic coercion to keep dependent parents from exercising their right to self-determination with respect to reproduction. In the second, the rule necessarily targets children to fill this deterrent function, which unfairly burdens those children despite their innocence and vulnerability. The law creates hardships for children, and exploits their vulnerability to deter parents in similar economic circumstances. This being the case, the law is a form of institutional discrimination against children born to dependent parents – as well as against their parents – and ought to be repealed.

2. Assumptions and Presuppositions

Before examining the normative arguments surrounding the MFG rule, we must establish a few basic assumptions that will underlie this investigation. First, from this point on I will assume, or at least will leave uncontested, that the MFG rule and other similar welfare cap policies are effective. That is to say, my arguments will not depend on the claim that the MFG rule and other welfare cap policies do not accomplish their intended social goals or make an otherwise meaningful impact on the social groups they manage. Of course, if the MFG rule were in fact ineffective, that fact alone would ground a decisive argument for its repeal. The case in which we are interested, therefore, is that in which the MFG rule works like a dream, redistributing burdens in order to produce social goods. My thesis will ultimately be that even in the case where the MFG rule works as planned, there are powerful reasons to repeal the law anyway.

Second, from this point on I will assume that the MFG rule and other welfare cap policies are not the products of malice, bigotry, or prejudice on the part of legislators and policymakers. The rule may be, or it may not be. Whether or not an act or a word is discriminatory may very well be determined by the thoughts inside the agent or speaker's mind or the psychological disposition from which they act. *Institutional*

discrimination, however, is divorced from an author's thoughts and psychology. Instead, whether a policy or practice is institutionally discriminatory is determined by patterns within its demonstrated, projected, or even counterfactual outcomes. I will offer additional analysis of the idea of institutional discrimination in the next section of this essay but will spend almost no time speculating about the minds of the authors of this law.

Third, I assume that the MFG rule is morally analogous to other family cap laws. The MFG rule is not identical to other family cap laws in other states, and it may well be that the rule would produce different patterns of outcomes in different jurisdictions and contexts.¹ Nevertheless, the morally relevant elements of the policy appear to be the same across examples: social burdens are placed on already burdened sub-groups to produce social goods whose benefit is distributed population-wide. I appear to be in very good company with others who make a similar assumption, though not always explicitly (New York Times 1994; Donovan 1995; Hirsch 2002; Jagannathan & Camasso 2003; Sabia 2008; Horvath-Rose et al. 2008). However, a careful analysis of a variety of family cap laws and whether they are moral analogues of one another is beyond the scope of this present study. I will proceed therefore on the assumption that these laws are such analogues to one another, and that for many or all of the criticisms I raise here against the MFG rule in California, a similar and analogous criticism can be made of the others.

Finally, I assume that if a sound argument can be made for the claim that a law is unjustly and institutionally discriminatory, that argument suffices to ground the further claim that the law should be repealed. If a legal system is to retain any pretensions to justice, or to being justified by its moral status, then a conclusive argument that a law is unjustly discriminatory – that it treats its subjects unequally and on the basis of morally and politically arbitrary characteristics like class, race, or gender – should prove fatal to that law. I take this to be a fundamental tenant of much of political philosophy.

3. Institutional Discrimination Defined

In order to demonstrate that and how the MFG rule is a form of institutional discrimination, we must first understand what institutional discrimination is.

Following the model set primarily by authors and activists during the American civil rights movement, I will define institutional discrimination as the systemic and unjust distribution of burdens by the norms and rules that govern a social group. This definition demands significant unpacking.

Institutional discrimination is most helpfully introduced in opposition to individual discrimination. According to a now standard understanding, individual discrimination happens when a person treats others disrespectfully or inequitably on the basis of prejudiced attitudes or beliefs that they hold about a group to which their target belongs (Adams et al. 1997, p.93; Schmidt 2005) A person shouting racial slurs at passersby is a simple example. Similarly, when a business owner chooses to refuse service on the basis of a person's sexual orientation, that is an example of individual discrimination. Because it is so common and so plain to see, individual discrimination is perhaps what most people have in mind when they think about discrimination.

Institutional discrimination, on the other hand, is when this disrespectful or inequitable treatment is produced not by people with prejudiced attitudes or beliefs, but by important and powerful political structures (institutions) that shape the social landscape.² Also called "structural discrimination" (Pincus 1996; Altman 2015), this concept was powerfully illuminated by Ture (Stokely Carmichael) and Hamilton in their 1967 book *Black Power* (Hamilton & Ture 2011, p.4). That book, written in the context of the American Civil Rights Movement, focused on racial institutional discrimination. Among their primary examples were the segregation laws that systematically disadvantaged black Americans as compared with whites. But just as individual discrimination is not only race-based, neither is institutional discrimination. For instance, some have argued that federal law regarding marriage in the United States was institutionally discriminatory towards same-sex couples prior to the Supreme Court's finding in *Obergefell vs. Hodges*, since it withheld benefits from same-sex couples to which heterosexual couples were entitled (NeJaime 2012; Dienhart 2016).

In his analysis of institutional discrimination, Andrew Altman introduced a helpful articulation of the idea when he writes, opting for the term 'structural' rather than 'institutional':

...the idea of structural discrimination does not presuppose that, whenever the rules of a society's major institutions consistently produce disproportionately disadvantageous results for a salient group such as women or racial minorities, structural discrimination thereby

exists... a pattern of disproportionate disadvantage falling on the members of certain salient groups does not count as structural discrimination unless the pattern violates sound principles of distributive justice (Altman 2015).

Altman's conclusion, with which I agree, is that the mere fact of inequity does not prove discrimination. Instead, in order to conclude that a law, policy, or practice is institutional discriminatory, one must both (a) provide evidence that that law or practice produces inequitable results and (b) argue that either the law or the results are unjust.

The basic task of this essay is to argue that the MFG rule, and by analogy most or all other welfare and family cap legislation, is an instance of institutional discrimination. The task, then, is to show that the MFG rule satisfies the two conditions identified above. The following section, therefore, is an analysis of how the rule produces disproportionate disadvantages, particularly with respect to the health and wellbeing of children born to poor families. Section six will argue that this distribution is in fact unjust since it violates fundamental principles of both fairness and freedom.

4. The MFG Hurts Children Born to Dependent Families

Despite its importance, relatively little empirical work has focused on the health impacts of welfare caps like the MFG rule on children's health, and hardly any has been done on the MFG itself. The majority of academic research on welfare caps has focused on whether and how they impact a woman's choice to become pregnant and give birth to a child, with particular attention paid to unmarried women and women of color (Perone 1998; Joyce et al. 2001; Kearney 2004; Joyce et al. 2004; Sabia 2008).

But there is strong reason to believe that welfare caps like the MFG rule can and do have a significant impact on the health and wellbeing of children born to dependent families. Research conducted since federal welfare reform in 1996 has established a direct correlation between family welfare receipt and child nutrition. One major study, which followed 2,718 children in five major US cities over the course of four years, found that

Exposure of children aged 36 months or younger to termination of or reductions in welfare benefits by sanctions or administrative decreases because of changes in income or expenses was associated with greater odds of being food insecure and experiencing health problems

requiring hospitalization, even after adjusting for health insurance coverage, participation in the Special Supplemental Nutrition Program for Women, Infants, and Children, and other potentially protective factors. Moreover, food stamps did not protect young children from these effects (Cook et al. 2002)

The "Cook study", after principle investigator John T. Cook, found that children born to families whose welfare benefits were sanctioned because of non-compliance, like families affected by the Maximum Family Grant, were 50% more likely to be undernourished than children in families whose benefits were not sanctioned (Cook et al. 2002). Cook et al. write:

Loss or reduction of welfare benefits, whether because of punitive sanctions or administrative decreases, is associated in these results with significantly greater odds of households being food insecure, which has been correlated by others with adverse outcomes for children. (Cook et al. 2002)

This finding confirmed the fears of pediatricians in the early days of welfare reform in the late 1990's (Willis E et al. 1997). It also echoes other research, including at least two major national reviews, that has demonstrated that supplemental nutrition assistance and other welfare supports improve child nutrition (Li et al. 2014; Mabli & Worthington 2014; Andreyeva et al. 2015; Gundersen 2015).

The Cook study indicates other serious impairments to the health and well-being of children whose welfare benefits are reduced by rules like the MFG. First, these children were significantly more prone to serious illness demanding hospitalization. Compared to children whose families' benefits were not reduced, children whose parents were sanctioned were 30% more likely to have been hospitalized since birth. In addition, severity of illness reported was also higher among children whose benefits were reduced by sanctions. Upon arrival at the emergency room, children whose benefits were reduced by sanctions were 80% more likely to be hospitalized than children whose benefits were not reduced. Cook et al. summarize this point when they write:

For children aged 36 months or younger, termination of or reductions in welfare benefits because of sanctions is associated with significantly greater odds of being in food insecure families, of being hospitalized since birth, and of requiring urgent hospitalization (Cook et al. 2002).

While correlation does not prove causation, these studies provide sufficient evidence to suspect such a relationship between reductions in cash aid and children's health

ISSN 1989-7022 and wellbeing, and, more importantly, to consider how the law will impact children when deliberating about its repeal.

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5. Justice and the Maximum Family Grant

Supposing that the previous analysis is correct – that the MFG rule does in fact impose significant burdens on children born to dependent families – the second step in arguing that the rule is a form of institutional discrimination is to show that these burdens are unjust. In this section, I will present what I take to be the most charitable and sympathetic justification for the MFG rule, based on the content of the law and on the political climate of the time when it was passed. I will then offer two arguments for the claim that the MFG rule, so conceived, violates sound principles of justice. First, the rule violates persons' fundamental rights to privacy and self-determination. Second, the rule violates principles of distributive fairness, since it places burdens on the worst off but distributes benefits equally across the society. I choose these principles intentionally, as they draw on fundamental values at either end of the existing political spectrum in California and in the United States. If either of these objections is correct (both are not necessary), then the basic justification for the rule is undermined.

5.1. The Ostensible Justification for the MFG Rule

The case in favor of the MFG draws upon familiar and closely held values like personal responsibility and concern for the welfare of children. The basic argument for the MFG rule is that it fairly produces a socially valuable good. The most sympathetic argument for the rule, therefore, must first show what valuable good is being produced, and second that that good is produced fairly.

The social good produced by the MFG rule is the deterrence of irresponsible family planning and a reduction in the rates of children born into severe poverty.³ By targeting households that have received cash aid for 10 consecutive months prior to the birth of a child, the MFG rule is designed to give pause to a woman or family receiving welfare prior to conception, and to discourage her from going forward. The rule encourages a woman or family to consider their finances, their job prospects, and their reliance of public support prior to conception – and casts those all as

reasons *against* conceiving. By creating this disincentive, the MFG rule was expected to reduce the number of children born to families on welfare.⁴

It is important to note here that the primary and perhaps sole beneficiary of the MFG rule is the citizen at large. The benefit to the citizen is, in theory, twofold: First, taxpayers pay marginally less into the pool of socially available funds since the MFG rule reduces the amount of cash aid granted; second, the MFG shifts trends in births away from impoverished families towards families that have the material resources to support a child's flourishing, and so theoretically increases the ratio of well-supported children within the population overall. The material magnitude of these benefits is indeterminate as they are so indirect and widely dispersed. In these ways, even those potential parents who were discouraged from having children by the MFG, the parents who went ahead and had children despite not receiving additional benefits, and the children born to them are beneficiaries.

Because everybody, even those who are apparently disadvantaged, benefit, the MFG rule produces these social benefits fairly. The rule distributes the burdens intrinsic to the encouragement of responsible family planning to the correct groups – that is, to the irresponsible parent(s). The basic idea here is expressed perfectly by then Speaker of the California State Assembly Curt Pringle when he said, addressing the assembly to support family cap legislation in the state,

In July 1994, California passed common-sense 'family cap' welfare reform legislation to end the perverse practice of increasing payments to welfare recipients who have additional children... it is unfair to tax low-income working mothers whose wages are not based on family size and use the money to subsidize welfare recipients who choose to have more children. Fairness and self-reliance will be the cornerstones of California's new welfare system (Radanovich 1996).

Pringle's claim here is twofold: First, it is unfair to force taxpayers who are not receiving welfare benefits and couples who forego pregnancy because they are already on welfare, to support children born to parents who are already receiving cash aid. Second, it *is* fair to put this burden on new parents who are receiving welfare benefits. After all, parents are and should be ultimately responsible for the well-being of their children – or so one might argue.

We might formally represent the argument for the MFG rule, therefore, roughly as follows:

1. A law, policy, or practice is justified if it produces a social good fairly.
 2. The MFG discourages irresponsible family planning by placing extra burdens on irresponsible parents.
 3. Discouraging irresponsible family planning is a social good.
 4. It is fair for irresponsible parents to bear the burden for discouraging irresponsible family planning.
- C. So the MFG is justified.

I take this argument, or something very close to it, to be the fundamental normative argument for the claim that the MFG rule is justified. The basic idea is clear enough: society as a whole suffers when children are born into severe poverty, so we will discourage this by refusing to support parents who choose to bring children into those conditions.

Despite the availability of this understandable interpretation of the rule, this argument is susceptible to at least two decisive objections. On one hand, it violates the basic right of self-determination. On the other, it violates principles of fairness by inequitably distributing burdens.

5.2. The Objection from Basic Liberties

One major criticism of the MFG rule is that it unjustly imposes a too-narrow conception of responsibility on a population of individuals who hold a variety of reasonable personal conceptions about parental responsibility. It violates persons' rights to self-determination and strays into being inappropriately paternalistic.⁵ Recall, the function of the rule is primarily to deter people from choosing to have a child and to encourage them to seek and use contraception (this is further clarified by the fact that the rule does not apply in cases of rape or contraception failure) (Cal. Welf. & Inst. § 11450-11469.1 1994). Implicit in this function is the judgment that it is irresponsible to have a child while already on welfare. But citizens bound to this rule might reasonably disagree with this judgment. For instance, they might adhere to a religion that encourages reproduction even at great cost. Alternatively, they might come from a large family themselves, and view greater numbers as sufficient compensation for what they lack materially. Whatever the biographical details, these suggestive remarks suffice to make the point that a person might reasonably decide that having a child while earning less than \$11,000 a year and receiving CalWORKS

cash aid was a worthwhile choice. Even a person who disagrees with that judgment can accept that it could be made understandably. The MFG rule's fundamental dependence on the narrow conception of responsible family planning, therefore, imposes one conception of responsibility – the conception of those in power – on people who may well hold a very different conception. In this light, the MFG rule appears problematically paternalistic.

The mere fact that a reasonable person could disagree with a judgment implicit in a law does not necessarily render that law unjustified, but it does in this case. For contrast, one might disagree with the speed limit on the street in front of one's house because it endangers one's children when they play in the front yard. This does not render that speed limit unjustified however, at least because one does not have a fundamental right to determine speed limits. A person might believe, however, that we do have such a fundamental right to decide whether to have a child or not. This decision is sufficiently personal and profound, so deeply tied to one's conception of a good life, and so bound up in other rights to bodily integrity and self-determination, that one might plausibly believe that the right to make that decision is private. It would be wrong for the government to choose whether you will have a child, and this extends to mere discouragement.

5.3. The Objection from Fairness

A second criticism of the MFG rule is that, even if its purpose were not problematically paternalistic, it places the burdens of the production of a social good on the shoulders of the wrong social group. The first step in this critique is to recall our earlier discussion of the benefits and beneficiaries of the MFG rule. The parents who are deterred do not benefit; neither do the parents who receive fewer benefits because of the rule. If either group does benefit at all, it is only as much as every other tax-paying citizen who pays marginally less in taxes – since the costs of the welfare program are reduced – and who hopefully benefits from a reduction of children born into poverty and the presumptively consequent social burdens that follow from such births. The benefit of the MFG rule is to the public as a whole.

Although the public as a whole is the ostensible beneficiary of the MFG rule, or at least stands to be, the cost of the program is not born by that same group. That burden is born by those who are denied aid. Although the ostensible justification

claims that welfare caps like the MFG rule shift the burdens from the general citizenry onto dependent parents who choose to reproduce, the research we discussed in section four on the health impacts of welfare reductions illustrates and explains how those burdens are in fact most sharply felt by children born into those families. Of all parties affected, the children bear the greatest burden for the price of encouraging responsible family planning.

It is no mere accident that the children of dependent parents bear the burden of the MFG rule – that children, rather than their parents, pay the most significant price is in fact *essential* to the deterrent function of the rule. The MFG turns the data discussed in section four into a threat to people on welfare, and a tool for their exploitation, as if it were saying, “If you have a child now, she will be vulnerable to malnutrition and illness beyond what you and your family are already facing.”

The fact that those who pay are not also those who benefit is not necessarily problematic. In certain cases, it is permissible for a minority subgroup to bear the costs for a social good enjoyed by the public. For instance, a Benthamite might argue that persons guilty of a crime are incarcerated and even executed for the protection of the general public (Bentham 1876).⁶ Alternatively, some egalitarian theorists argue that wealthy persons ought to contribute more money to social programs than less wealthy persons, even if those wealthy persons will never directly benefit from those programs (though they may benefit indirectly) (Rawls 2005). Both of these scenarios impose unequal burdens for the production of social goods on a small minority, but are widely accepted as permissible, and it may not be obvious that the MFG rule is any different.

But the redistribution of social burdens under the MFG rule bears significant moral differences from the distribution of burdens in the unproblematic cases just mentioned. In the case of criminal incarceration, at least in the idealized case at hand, the burdened person is guilty of a crime.⁷ It is not obvious to me that the children born to families that are dependent on financial aid are guilty of a crime, or even how they could possibly be. The disadvantages of the MFG rule are imposed at the moment of birth, before the child is even capable of willed activity. Even supposing that it is the parent, and not the child, who bears the burden of the MFG rule, a person who chooses to have a child while receiving welfare aid is not committing a crime. Even if one believes that it is immoral to do so, clearly it is not illegal to do so.

In the case of egalitarian demands that wealthy individuals pay more into social programs than non-wealthy individuals, the fundamental argument for this demand is based on the moral conviction that equality is an important social value that deserves a central place in the production of social norms. While the redistributive principles endorsed by egalitarians tend, tautologically, to encourage equality, the MFG rule appears only to deepen inequality. The children who bear the burden of the MFG rule are not somehow sufficiently compensated for their burden by the indirect and widely dispersed benefits of responsible family planning.

6. Conclusion

I have argued that the Maximum Family Grant is an example of institutional discrimination. In order to show that a law, policy, or practice is institutionally discriminatory, we said that we must show that it produces disadvantages unjustly. When it was adopted in California, the MFG rule added to the already immense burdens born by needy families, and especially by the children. By refusing the cash aid to which those families would otherwise have been entitled, the maximum family grant contributes to malnutrition among poor children and adds an additional barrier to making sure that all children receive adequate medical care. These medical costs come hand in hand with a variety of other social and educational disadvantages. These outcomes are not accidents, but are systematically produced and reproduced by the rule. Upon investigation, it became clear that these systematically produced outcomes were not merely unfortunate. They are unjust. The rule that generates them violates our basic right to choose whether to have a child or not. Furthermore, the rule violates basic principles of distributive fairness by shifting the burdens of producing a social good that benefits all citizens onto the shoulders of the very poorest.

Although this discussion has focused on a relatively local issue – a single law in one state within the US – it is a critical part of a much larger conversation about the legacy and persistence of welfare and family cap legislation worldwide. While the language may be different across different welfare cap laws, the normative issues are the same: welfare unjustly caps shift social burdens onto poor households. Family caps unjustly shift social burdens onto poor children. Criticisms of welfare and family cap legislation is not new, but among criticisms that focus on outcomes, on historical

injustices, on bigoted legislators, it can be difficult to track what precisely is wrong with such laws. This philosophical analysis provides, or is at least an important step towards providing, a full account of the normative issues at hand and what precisely is wrong with welfare cap legislation.

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Notes

1. It is not obvious to me how such a policy would not uniquely impact children born to poor families, but other policies in other regions might not, for instance, be a form of institutionalized discrimination against Latinos like the MFG rule likely is in California. See (Joyce et al. 2001)
2. This idea of institutional discrimination has become a mainstay in political philosophy. One can see it very visibly, for instance, in (Butler 2006; Pogge 2008, p.37; James 2012; Heiner 2015) Many of these authors, particularly Pogge and James, cite (Rawls 2005).
3. To be very clear, I use the term 'irresponsible family planning' throughout this essay to mean *intentionally conceiving and carrying to birth a child for whose flourishing one lacks the necessary material resources*. More simply, irresponsible family planning is when a parent purposefully has a child whom they cannot support. I use the term 'irresponsible' intentionally, as it invokes a sense of disapprobation and judgment. Though I do not agree with this judgment, I use the term 'irresponsible' to give voice to those in favor of the MFG rule, and to add appropriate force to that position. Even those who hesitate to judge a choice as personal and private as that to conceive and have a child, like myself, may still be able to conjure a feeling of concern for children born to parents who willingly bring them into a life of poverty and destitution. Between these two positions, there is no obviously right perspective. One of the most important points of this paper is, I believe, that we can condemn the MFG rule without simultaneously absolving irresponsible parents, though perhaps we should do that too.
4. Again, as mentioned previously, it is unclear whether family caps like the MFG rule in fact had the desired deterrent effect. See (Sabia 2008; Dunifon et al. 2009)
5. My argument here is similar to that presented in (Friedman 1995).
6. I use Bentham's consequentialist theory of punishment only for the case of this example here, as there are significant and well-discussed issues with it. See (Hart 2008; Duff 2013; Walen 2015)
7. In fact, this is not always the case. The United States is currently having a significant problem with mass incarceration, and it is clear now that not all people who are incarcerated are in fact guilty or otherwise deserving of their punishment. See (Heiner 2015) My point here is only that a policy that places burdens on people who are guilty of, say, violent crimes, for the benefit of society could be justified on the basis of that person's guilt. It is a serious injustice that so many underserving people are in fact incarcerated.