

State-Sponsored Injustice: The Case of Eugenic Sterilization

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Abstract: In analytic political philosophy, it is common to view state-sponsored injustice as the work of a corporate agent. But as I argue, structural injustice theory provides grounds for reassessing the agential approach, producing new insights into state-sponsored injustice. Using the case of eugenic sterilization in the United States, this article proposes a structurally-sensitive conception of state-sponsored injustice with six components: *authorization, protection, systemization, execution, enablement, and norm-and belief-influence*. Iris Marion Young's models of responsibility for agential and structural injustice, and the place of state-sponsored injustice with respect to these models, are also discussed.

Keywords: State-sponsored injustice; structural injustice; responsibility; corporate agency; eugenic sterilization

You knew the reasons were wrong but you found ways to justify your wrong. Not just your wrong—your wickedness, cowardliness. You found ways to justify it. You said that they would produce a generation of people, of children, that would be feeble-minded, inept, unable to care for themselves... But they brought out their personal intentions to attack my mother and other women; they brought out their personal desires and they used the state's money and the state's authority to bring this punishment upon my mother and people like my mother.

- Tony Riddick, Testimony before the Governor's Task Force to Determine the Method of Compensation for Victims of North Carolina's Eugenics Board ¹

¹ *Final Report of the Governor's Task Force to Determine the Method of Compensation for Victims of North Carolina's Eugenics Board*, January 27, 2012, <https://files.nc.gov/ncdoa/JSV/FinalReport-GovernorsEugenicsCompensationTaskForce.pdf>, D-9. Quote edited to standardize spelling and punctuation.

Analytic political philosophers often consider state-sponsored injustice to be the work of a corporate agent, the state, whose decision structures allow it to act volitionally. Yet as I argue in this article, structural injustice theory gives us reason to reassess and expand the agential approach to state-sponsored injustice. As Iris Marion Young observes, social action is mediated by structural processes which, in countless ways visible and invisible, formal and informal, macro and micro, organize and regularize human behavior.² Structural injustice results when individuals and institutions conform to these processes, pursuing “their particular goals and interests, for the most part within the limits of accepted rules and norms,” yet collectively wrong others. Usually it is those already subject to various forms of “domination and deprivation” who are wronged.³

If state-sponsored injustice is agential injustice, it might seem to have little to do with structural injustice. Agential injustice is often taken as structural injustice’s opposite—the former characterized as direct and intentional, the latter indirect and unintentional. Yet the writings of Young and other structural injustice theorists describe how individuals are conscripted into wronging without their full awareness. Injustice often takes place as a result of long-term processes. Broader social structures render some populations unduly vulnerable to injustice. Though there may be good reasons to represent the state as a corporate agent, these insights are nevertheless germane to state-sponsored injustice. An analysis of state-sponsored injustice shows that the agential and structural approaches need not, and indeed, should not be juxtaposed as opposites.

In this article, I advocate a structurally-sensitive conception of state-sponsored injustice. By way of illustration, I use the case of eugenic sterilization in the United States, describing the societal and political circumstances that led to the subjection of over 65,000 individuals to compulsory sterilization surgeries. A six-part framework shows the operation of state-sponsored injustice’s agential and structural aspects: (1) the injustice is *authorized* by the state, (2) the injustice is legally *protected*, (3) procedures by which the injustice is to be carried out are *systemized*, (4) state officials *execute* the injustice, (5) the injustice *enables* other injustices, and (6) the injustice can impact the *norms and beliefs* of society at large.

An insight into the nature of state-sponsored injustice follows from the analysis—namely, that exercising political authority enables those who wield it to do things that they would have difficulty carrying out in its absence. This notion is conveyed vividly in the prefatory quotation. Tony Riddick’s mother Elaine had been sterilized against her will after she had given birth to him, labeled “unfit” and “feeble-minded” by the state of North Carolina. On Tony’s view, given the “wicked, cowardly” intent behind eugenic sterilization, it needed the cover of the law to take

² Young, “Responsibility and Global Labor Justice,” *Journal of Political Philosophy* 12, no. 4 (2004): 365–388; and *Responsibility for Justice* (Oxford: Oxford University Press, 2011).

³ Young, *Responsibility for Justice*, 52.

place at all. Political authority might accordingly be thought of as having a privileged nature.

Reflecting on the privileged nature of political authority and thinking through state-sponsored injustice from the standpoint of those immediately harmed, the idea of an agential state is appealing. A person non-consensually sterilized according to state law is reasonable to think of “the state” as responsible and as the proper object of blame. As I argue, for the purposes of accountability, political officials acting on behalf of the state *qua* corporate agent should accept blame and make efforts to repair harms that were done. Nevertheless, as I argue, a structurally-sensitive conception of state-sponsored injustice gives rise to a more expansive conception of harm than is typically recognized on the agential model. Though a given state-sponsored injustice can cause first-order harms to particular individuals, it can also contribute to more diffuse harms by reinforcing existing unjust structures and creating new ones.

Rethinking the Agential View of State-Sponsored Injustice

In contemporary colloquial usage, the term “injustice” often refers to a moral wrong or wrongs embedded in a systemic context.⁴ Philosophical use of the term largely reflects this. For instance, much recent work on “epistemic injustice” centers on wrongs done to individuals by individuals, e.g., when a hearer discounts an interlocutor’s credibility (“testimonial injustice”). However, the concept of epistemic injustice is deeply intertwined with identity-based prejudice: a person is stereotyped and devalued based on her social group membership.⁵ Using the language of “epistemic injustice” as opposed to “epistemic wrongdoing” reflects that there is a social and institutional context that is a vital part of the phenomenon.

As in the case of epistemic injustice, the term “injustice” itself often applies when a person’s social group membership is the reason they experience a wrong or wrongs. Defining injustice as a systemically-embedded moral wrong encompasses this, but is a broader notion. For example, we might reasonably speak of all future persons as the victims of climate injustice—though it is expected that some will bear disproportionate burdens due to their nationality, race, and socioeconomic class—based on the systemic factors contributing to climate change.

State-sponsored injustice, as its name suggests, is a moral wrong caused by the state’s policies and practices; the systemic context that the wrong is situated in is the context of the state. But, as with epistemic injustice, an act of wrongdoing can be systemically-situated and still interpersonal. Is this the case for state-sponsored injustice, where interpersonal-type harms are done by one agent—the state, a

⁴ Young’s discussion of the definition of injustice is not extensive, but suggests a similar understanding, e.g., in this passage: “Political contestation about structural injustice entails making arguments that some of the sufferings of people is in fact injustice, that is, caused by processes in which many participate” (Ibid., 149).

⁵ Miranda Fricker, *Epistemic Injustice: Power and the Ethics of Knowing* (Oxford: Oxford University Press, 2007), 4.

corporate agent—to other agents? Or is state-sponsored injustice more like climate injustice, a structural injustice in which individuals and institutions create harms by acting in ways shaped by broader social structural forces?⁶ My argument is that an agential understanding of state-sponsored injustice, though not without merit, can be greatly enhanced by structural injustice theory. Let us first look at structural injustice theory, and then turn to the conception of the state as an agent.

Structural injustice is a circumstance of unfairness that precludes simple assessments of guilt and blame. Rather, structural injustice results from *structures*, viz., patterns of individual and institutional behavior, the invisible rules that describe them, and the resources that undergird them.⁷ In addition to climate change, the concepts of “structure” and “structural injustice” have been applied to topics like gender and sexism, race and racism, global labor injustice, global poverty more generally, immigration, colonialism, and the aftermath of Hurricane Katrina.⁸

As Young argues in a 2004 article and in her posthumously published book *Responsibility for Justice*, when it comes to agential wrongdoing in the interpersonal context, responsibility is assigned to “particular agents whose actions can be shown to be causally connected to the circumstances for which responsibility is sought.”⁹ Young is critical of this “liability model” of responsibility not because it is invalid per se, but because it is so dominant that situations of structural injustice are not properly understood. She uses the example of a single mother, Sandy, who faces homelessness after unreliable public bus transport causes her to lose her job. Unable to make rent, Sandy is evicted. To look for a particular blameworthy agent misses the fact that a complexity of social processes have converged to create Sandy’s situation.¹⁰

On the simplest version of the liability model, there is only one blameworthy agent, and that agent is an individual human being. However, agents are defined as

⁶ Robyn Eckersley, “Responsibility for Climate Change as a Structural Injustice,” in *The Oxford Handbook of Environmental Political Theory*, ed. Teena Gabrielson et al. (Oxford: Oxford University Press, 2016), 346–61.

⁷ William Sewell’s classic definition in “A Theory of Structure: Duality, Agency, and Transformation,” *American Journal of Sociology* 98, no. 1 (1992): 1–29, which is cited by Young (*Responsibility for Justice*, 60–61), refers to patterns, rules (“schemas”), and resources.

⁸ See Young, “Responsibility and Global Labor Justice,” *Responsibility for Justice*, and “Katrina: Too Much Blame, Not Enough Responsibility,” *Dissent* 53, no. 1 (Winter 2006): 41–56; Mária Martínez, “On Immigration Politics in the Context of European Societies and the Structural Inequality Model,” in *Dancing with Iris: The Philosophy of Iris Marion Young*, ed. Ann Ferguson and Mechthild Nagel (Oxford: Oxford University Press, 2009), 213–28; Catherine Lu, “Colonialism as Structural Injustice: Historical Responsibility and Contemporary Redress,” *Journal of Political Philosophy* 19, no. 3 (2011): 261–81; Serena Parekh, “Getting to the Root of Gender Inequality: Structural Injustice and Political Responsibility,” *Hypatia* 26, no. 4 (2011): 672–89; Sally Haslanger, *Resisting Reality: Social Construction and Social Critique* (Oxford: Oxford University Press, 2012), Part II; Jade Larissa Schiff, *Burdens of Political Responsibility: Narrative and the Cultivation of Responsiveness* (Cambridge: Cambridge University Press, 2014); Eckersley, “Responsibility for Climate Change”; Clarissa Rile Hayward, “Responsibility and Ignorance: On Dismantling Structural Injustice,” *Journal of Politics* 79, no. 2 (2017): 396–408.

⁹ Young, “Responsibility and Global Labor Justice,” 368; Young, *Responsibility for Justice*, 97.

¹⁰ Young, *Responsibility for Justice*, Ch. 2.

having the capacity to act, a capacity which is not limited to individual persons.¹¹ There can also be corporate agents, in which an assemblage of persons act as a group, with the group's actions non-reducible to the actions of the individuals within it.¹² Like individual agents, corporate agents can have intentional states: Internal processes and procedures, sometimes called "corporate internal decision structures," allow intentional actions to be decided on in the corporate agent's name.¹³

Many analytic political philosophers regard states—along with companies, religious groups, civil associations, political parties, etc.—as corporate agents.¹⁴ The idea of the state as a corporate agent suggests that state-sponsored injustice is a form of agential injustice that can be understood on a liability model. A number of authors have assumed precisely this in inquiring into the relationship between state-sponsored injustice and political subjects, and the grounds upon which liability for the state's injustices can be distributed to citizen-taxpayers.¹⁵

The idea of the state as a corporate agent is moreover supported by ordinary language. As Andrew Vincent observes, "[W]hen we speak of the state performing actions we personify it, we attribute to it a status equivalent to a unique personality—an agent or subject which acts."¹⁶ We only need to compare grammar found in ancient works (like Thucydides' *History of the Peloponnesian War*: "It was evident before that Sparta was plotting against us, and now it is even more evident") and present-day news headlines (e.g., "Syria Blames Israel for Attack on Damascus Airport") to see that state agency is a long-standing tradition.¹⁷ The trope of the body politic is an even more explicit representation of the state as a unified whole, capable of acting volitionally. Indeed, the state as a political concept rose to much greater prominence with the 1651

¹¹ In addition to their capacity to act, List and Pettit specify that agents, including corporate agents, have representational states and motivational states in *Group Agency: The Possibility, Design, and Status of Corporate Agents* (Oxford: Oxford University Press, 2011), 20.

¹² List and Pettit, *Group Agency*.

¹³ See David Copp, "On the Agency of Certain Collective Entities: An Argument from 'Normative Autonomy,'" *Midwest Studies in Philosophy* 30, no. 1 (2006): 194–221, esp. 197–200; and Peter French, *Collective and Corporate Responsibility* (New York: Columbia University Press, 1984).

¹⁴ See, e.g., Robert Goodin, *Utilitarianism as a Public Philosophy* (Cambridge: Cambridge University Press, 1995), 35; Philip Pettit, "Responsibility Incorporated," *Ethics* 117, no. 2 (2007): 171–201, 199; Copp, "On the Agency of Certain Collective Entities" (note that Copp uses the terminology of "collective" rather than "corporate" agents); Anna Stilz, "Collective Responsibility and the State," *Journal of Political Philosophy* 19, no. 2 (2011): 190–208, 191–196; List and Pettit, *Group Agency*, 40; Avia Pasternak, "Limiting States' Corporate Responsibility," *Journal of Political Philosophy* 21, no. 4 (2013): 361–81, 363; and Stephanie Collins, "Distributing States' Duties," *Journal of Political Philosophy* 24, no. 3 (2016): 344–366, 344.

¹⁵ See, e.g., John Parrish, "Collective Responsibility and the State," *International Theory* 1, no. 1 (2009): 119–54; Eric Beerbohm, *In Our Name: The Ethics of Democracy* (Princeton, N.J.: Princeton University Press, 2012); Robert Jubb, "Participation in and Responsibility for State Injustices," *Social Theory and Practice* 40, no. 1 (2014): 51–72; Stilz, "Collective Responsibility and the State"; Pasternak, "Limiting States' Corporate Responsibility"; and Collins, "Distributing States' Duties."

¹⁶ Vincent, *Theories of the State* (Oxford: Basil Blackwell, 1987), 8.

¹⁷ In *Group Agency*, List and Pettit detail the tradition of personifying group agents generally (170–185), and states-as-agents in particular (180–181).

publication of Hobbes' work on "that great Leviathan, called a Commonwealth or State," which analogized the state to an artificial man.¹⁸

However, the agential conception of the state is hardly uncontroversial. Though the idea of the state's corporate agency suggests a unified entity with clear boundaries demarcating it from society, the state does not always act as a whole, and the boundaries between the state, society, and societal institutions can be obscure. Moreover, government officials who work on the state's behalf often have contradictory motives and aims, and it can never be supposed that all are in agreement about a given decision or work in concert to advance an outcome. For these reasons, there was a deliberate push among mid-twentieth century political scientists to forgo the concept of the state in order to make room for a more pluralistic discussion of the different functions of government.¹⁹ Not only is the state's corporate agency rejected by these scholars, some have gone as far as to call the state a "myth."²⁰

Aspects of the history of eugenic sterilization, the subject of the next section, reveal precisely the sort of back-and-forth between society and state that makes some want to dispense with the latter. For instance, who exactly is a government actor? One of the major figures in the push for eugenic sterilization laws was Harry Laughlin, the director of the influential Eugenics Record Office in Cold Spring Harbor, New York and co-founder and president of the American Eugenics Society. Laughlin was also the author of *Eugenical Sterilization in the United States*, a lengthy playbook for getting sterilization laws enacted by state-level legislatures.²¹ At the time he wrote this book, Laughlin was a "Eugenics Associate" of the Psychopathic Laboratory, a research center run by the Municipal Court of Chicago. The Municipal Court held the copyright for and published *Eugenical Sterilization*; its introduction was written by Harry Olson, the Municipal Court's Chief Justice. *Eugenical Sterilization* proved to be a major step towards converting the idea of state-mandated sterilization into statutory law. Did it emerge from inside the government, or is Laughlin better characterized as an activist and key player in the American eugenics (social) movement?

Timothy Mitchell, in his treatment of the debate in political science over jettisoning the concept of the state versus "bringing the state back in," argues that the "state-society divide is not a simple border between two free-standing objects or

¹⁸ Thomas Hobbes, *Leviathan*, ed. Edwin Curley (Indianapolis: Hackett Publishing, 1994), 3. See Martin van Gelderen, "The State and Its Rivals in Early Modern Europe," in *States and Citizens: History, Theory, Prospects*, ed. Quentin Skinner and Bo Stråth (Cambridge: Cambridge University Press, 2003), 79–96, 90–91.

¹⁹ David Easton, "The Political System Besieged by the State," *Political Theory* 9, no. 3 (1981): 303–25; Timothy Mitchell, "The Limits of the State: Beyond Statist Approaches and Their Critics," *American Political Science Review* 85, no. 1 (1991): 77–96.

²⁰ Philip Abrams, "Notes on the Difficulty of Studying the State (1977)," *Journal of Historical Sociology* 1, no. 1 (1988): 58–89.

²¹ Laughlin, *Eugenical Sterilization in the United States* (Chicago: Psychopathic Laboratory of the Municipal Court of Chicago, 1922).

domains,” but rather “a complex distinction internal to these realms of practice.”²² He wants to center the ambiguous boundaries of the state as a means to understanding it. If Mitchell is right, we should resist trying to assign Laughlin to the state or to society, and take away an important lesson about the disunity of the state.

A viable theoretical treatment of state-sponsored injustice should acknowledge this disunity. At the same time, as Mitchell observes, though the state is not autonomous from society and not a unified whole, there is nevertheless a sense in which social and political processes produce a domain of the state.²³ From within this domain, it is possible to talk about state agency: If there are processes by which it is decided that φ will be done in the name of the state, if a critical mass of state officials and employees act together to carry out φ , and if φ takes place, it is reasonable to consider φ an action *of* the state, with φ non-reducible to the actions of the individuals who work to carry it out.²⁴ Accordingly, whereas paradigmatic cases of structural injustice involve actors coordinating their behavior despite being unaware of the structural factors leading them to do so, paradigmatic cases of state-sponsored injustice begin with intentional practices undertaken by actors who deliberately make use of the state’s procedural apparatuses. This does not necessarily mean that state-sponsored injustice is carried out by individuals who appreciate or even realize the harm inflicted by a given practice. But the practice is intentional, even if the harm is not. This gives us reason not to entirely dispose of the agential understanding of state-sponsored injustice.

At the same time, it should not be supposed that state-sponsored injustice is the work of “an entity above and apart from the rest of society, somehow hovering over it.”²⁵ A conception of state-sponsored injustice needs to be structurally-sensitive, and take into account the embeddedness of the state in society. Individual agents exist in society, and therefore in particular social structural contexts; as in the case of epistemic injustice, this is an indispensable aspect of harms that are done. Similarly, the societal context of a given state-sponsored injustice is essential to understanding its course. More generally, we can observe that state processes are a medium through which those advantaged by social structural formations can preserve their advantages

²² Mitchell, “Limits of the State,” 90. See also Peter B Evans, Dietrich Rueschemeyer, and Theda Skocpol, eds., *Bringing the State Back In* (Cambridge: Cambridge University Press, 1985); cf. Easton, “Political System.”

²³ Mitchell, “Limits of the State,” 95.

²⁴ Some would disagree with the claim that φ is non-reducible to the actions of the agents who carry it out. By contrast, authors who have argued against “eliminativism” or “singularism” include Copp, “On the Agency of Certain Collective Entities”; and List and Pettit, *Group Agency*. This debate is part of a larger one over methodological individualism and nonreductionism—see, e.g., Christian List and Kai Spiekermann, “Methodological Individualism and Holism in Political Science: A Reconciliation,” *American Political Science Review* 107, no. 4 (2013): 629–43.

²⁵ Easton, “Political System,” 309.

(whether this is knowingly intended or not), while patterns of structural inequality leave some susceptible to state-sponsored injustice.²⁶

In proposing a structurally-sensitive conception of state-sponsored injustice that nevertheless does not reject state agency, it is fitting to ask: Are structural theories and agency at odds? Sometimes this is thought to be the case. If structures are entirely deterministic of individual decision and action, then indeed, agency has no place. Yet for Young and many other structural injustice theorists, individual freedom and agency are possible.²⁷ Structures are formative, not determinative, when it comes to individual choices. The conception of state-sponsored injustice that I present shows agency at multiple loci, and tries to capture the complex interplay of different kinds of agents with each other and with state and non-state structures. Within this interplay, some agents clearly play a greater causal role than others, and exhibit greater intent. I try to show how the contingent activities of particular individuals who use their power, resources, and will to getting a law or policy enacted can play a decisive role in a given state-sponsored injustice. This may raise the question as to who should be held responsible for state-sponsored injustice: should it be only these particular individuals? Though there may be cases where accountability—even criminal accountability—is appropriate for liable individuals, state-sponsored injustice has the badge of the state’s authority, and thus requires the cooperation of many agents within government. This lends itself to a picture of responsibility where government officials accept blame on the state’s behalf.²⁸

The next section turns to eugenic sterilization in the United States, and outlines a framework for understanding state-sponsored injustice with six components: *authorization, protection, systemization, execution, enablement, and norm- and belief-influence*. A few methodological reflections are in order before proceeding. I see eugenic sterilization as a paradigmatic case of state-sponsored injustice. It is precisely the kind of state-sponsored injustice which many analytic political philosophers would be tempted to attribute to the state *qua* corporate agent whose responsibility the liability model explains, without mention of social structural processes or effects. For this reason, eugenic sterilization is conducive to demonstrating the central claim of this paper—namely, that important aspects of state-sponsored injustice are structural, and that a conception of state-sponsored injustice should be structurally-sensitive. The six-part framework is an attractive way of modeling eugenic sterilization’s structural aspects, while leaving ample room for both individual and corporate agency. But how dependent is the framework on the case study at hand? How representative is eugenic

²⁶ Additionally, we might observe that fundamental aspects of the state are structural, for the definition of a structure encompasses state processes—some, including Young, *Responsibility for Justice*, 142, would say *all* state processes. Much scholarship, particularly in the Marxist tradition and in IR, has been devoted to analyzing the nature and extent of the state’s structurality, and this article’s aim is to theorize state-sponsored injustice, not to theorize the state. Therefore, I do not take a stand on whether all state processes are structural or not, nor do I think my argument depends on my doing so.

²⁷ E.g., Haslanger, *Resisting Reality*, Ch. 11, defends this position.

²⁸ The final section discusses this picture of responsibility.

sterilization of other state-sponsored injustices? Can all state-sponsored injustices be understood on the framework?

Many claims made in the case of eugenic sterilization are intended to be applicable to other cases. As Roger Gomm, Martyn Hammersley, and Peter Foster point out, the “very meaning of the word ‘case’ implies that what it refers to is a *case of* something.”²⁹ On John Gerring’s definition, a case study is “an intensive study of a single unit for the purpose of understanding a larger class of units.”³⁰ Though hailing from empirical social science, this understanding applies to the use of case studies in philosophy.³¹ Young, for example, discusses the post-September 11 U.S. security state to make claims about masculinist protectionism, sovereignty, and war that are applicable in a variety of contexts.³² Her analysis of global labor injustice is meant to elicit insights relevant to other cases of structural injustice.³³ Similarly, my analysis of eugenic sterilization aims to shed light on other cases of state-sponsored injustice.

Furthermore, I consider eugenic sterilization to be a *paradigmatic* case. It is, in Giorgio Agamben’s phrase, “a singularity which in some way stands for all the others” in ways that non-paradigmatic cases wouldn’t.³⁴ Because eugenic sterilization is formally authorized by law, the state’s central decisionmaking apparatus is implicated, and it is in keeping with conventional perceptions to consider “the state” as responsible. But some cases of state-sponsored injustice might not involve the kinds of structural effects I identify with the categories of enablement and norm- and belief-influence; some might not be systematized or protected in the way I describe. Other cases, *viz.*, non-paradigmatic cases, might concern state-sponsored injustice which is not formally authorized. Nonetheless, using the six-part framework to analyze eugenic sterilization discloses insights relevant to a wide range of cases that would uncontroversially be described as state-sponsored injustices—though as Gerring writes, “theory confirmation/disconfirmation is not the case study’s strong suit.”³⁵

²⁹ “Case Study and Generalization,” in *Case Study Method*, ed. Gomm, Hammersley, and Foster (London: SAGE Publications, 2000), 98–116, 102.

³⁰ “What Is a Case Study and What Is It Good For?,” *American Political Science Review* 98, no. 2 (2004): 341–54, 342.

³¹ David Thacher, “The Normative Case Study,” *American Journal of Sociology* 111, no. 6 (2006): 1631–1676, identifies normative case studies as distinct types of case studies alongside the more commonly-recognized methodologies of causal and interpretative case studies. He focuses on their use by sociologists like Jane Jacobs in *The Death and Life of Great American Cities*. However, he is also interested in how philosophers like Young, *Justice and the Politics of Difference* (Princeton: Princeton University Press, 1993), have drawn from such accounts (1642-1644), and in the possibility of philosophers themselves producing normative case studies (1670). Note that Thacher does not mention, and may not have been aware of, the case studies by Young referenced here.

³² Iris Marion Young, “The Logic of Masculinist Protection: Reflections on the Current Security State,” *Signs* 29, no. 1 (2003): 1–25.

³³ Young, “Responsibility and Global Labor Justice.”

³⁴ Giorgio Agamben, “What Is a Paradigm? European Graduate School Lecture” (August 2002). I thank an anonymous reviewer for recommending this essay, and for helping me clarify my sense here.

³⁵ Gerring, “What Is a Case Study,” 350.

Gerring also observes that case study authors tend to “overreport,” that is, to “provide all facts and hypotheses that might be relevant” regardless of their generalizability, a tendency that will be all-too-apparent in the next section.³⁶ However, the case study method should not be discarded, Gerring argues, for it is unique in both the depth of the analyses it is able to provide, as well as its being a “boon to new conceptualizations.”³⁷ If I am right that analytic political philosophers tend to understand state-sponsored injustice as the work of a corporate agent *simpliciter*, this is an area ripe for many new conceptualizations. I hardly expect my six-part framework to be the last word on the matter.

Theorizing State-Sponsored Injustice: The Case of Eugenic Sterilization

The practice of eugenic sterilization, which resulted in irreversible surgeries on over 65,000 Americans, did not take place in a vacuum. The implementation of eugenic sterilization laws occurred (1) more specifically, in the broader socio-ideological context of eugenics in American society and beyond, and (2) more generally, against the backdrop of significant structural injustices whose existence bred eugenicist ideas.

British scientist Francis Galton, inspired by the writings of his half-cousin Charles Darwin, devised the term eugenics—“good in birth”—in 1883.³⁸ By the mid-1920s, eugenic ideas had spread across Europe, to North and South America, and to Russia, Australia, and New Zealand.³⁹ In the U.S., the early exponents of eugenics were scientists and philanthropists, typically white, affluent, and progressive. These individuals founded organizations like the American Eugenics Society, the Race Betterment Foundation, and the Galton Society. By the early twentieth century, a full-fledged social movement was underway dedicated to promulgating eugenics. Because of the eugenics movement, those who attended state fairs could take part in “Better Baby” and “Fitter Family” contests, and see exhibits that bore slogans like “Some people are born to be a burden on the rest” and “Every 15 seconds \$100 of your money goes for the care of persons with bad heredity.”⁴⁰ As the crusade took off, books like *A Eugenics Catechism* interpreted biblical passages (“Do men gather grapes from thorns, or figs from thistles?”) in a eugenic light.⁴¹ Students were exposed to eugenic ideas in their biology textbooks, films like “Are You Fit to Marry?” appeared

³⁶ Ibid., 346.

³⁷ Ibid., 350.

³⁸ Dorothy Roberts, *Killing the Black Body: Race, Reproduction, and the Meaning of Liberty* (New York: Random House, 1997), 59.

³⁹ For more on the history of eugenic sterilization, see Roberts, *Killing the Black Body*, Ch. 2; Wendy Kline, *Building a Better Race: Gender, Sexuality, and Eugenics from the Turn of the Century to the Baby Boom* (Berkeley: University of California Press, 2001); Harry Bruinius, *Better For All the World: The Secret History of Forced Sterilization and America's Quest for Racial Purity* (New York: Random House, 2006); and Randall Hansen and Desmond King, *Sterilized by the State: Eugenics, Race, and the Population Scare in Twentieth-Century North America* (Cambridge: Cambridge University Press, 2013).

⁴⁰ Bruinius, *Better For All the World*, 237.

⁴¹ Ibid., 232.

in theaters, and journals like the *Eugenics Review* and *Eugenical News* kept eugenics devotees informed of scientific and political developments.

The societal context of eugenic sterilization laws in the U.S. is the American eugenics movement; their implementation cannot be understood without it. However, it also cannot be understood without another societal context: significant structural injustices around class, race, and gender (though men were sterilized, over time women emerged as the primary target), as well as implicit norms about able-bodiedness and -mindedness. Eugenics as a scientific theory and practice was motivated by the idea of stamping out those thought to be a drain on society's resources: poor people, women viewed as having weak morals, persons with physical and cognitive disabilities, and persons with mental illness. It was also a racial project, based fundamentally on racial hierarchism, and aimed at purifying and perfecting the white race. In its most pernicious form, eugenics lent scientific backing to the idea of racial extermination, reaching its height in Nazi Germany.⁴² However, Dorothy Roberts writes that the racial threat of eugenics to black Americans was not “the actual elimination of the black race” but rather “the biological justification of white supremacy.”⁴³

We will see how the state practice of eugenic sterilization was able to reinforce existing structural injustices along the lines of race, class, ability, and gender, and contribute to new structural harms. But before getting into this subject, as we can observe, structural injustice on its own cannot provide a full explanation of why eugenic sterilization laws were enacted in 30 U.S. states. We must turn to the actions of agents who specifically sought their *authorization*.

Authorization

Recall the idea that the state's corporate agency involves structures that allow intentional decisions to be made on the state's behalf. *Authorization* refers to the process by which an idea makes its way through the state's internal processes, establishing that it will be adopted as a policy or practice of the state.

Why should the governmental authorization of an unjust practice matter? What incentives motivate authorization-seeking agents? Though some unjust practices either benefit from illegality or could not readily justify their purpose in political terms—e.g., organized crime—there are many reasons for a practice to have government endorsement or to be formally carried out by the state. For one thing, legality can expand the reach of the practice. Taxpayer resources, state institutions, and state officials can all be deployed in the practice's service. Moreover, large-scale injustice may occupy murky legal waters, if it is not outright illegal. Changing the law is one way to accommodate the injustice.

⁴² Hansen and King, *Sterilized by the State*, 141-162.

⁴³ *Killing the Black Body*, 103.

Indeed, in the early 1900s, a handful of states passed laws mandating the compulsory sterilization of men and women considered to be “feeble-minded.”⁴⁴ However, these were subject to a variety of legal challenges. Indiana was the first state to enact a eugenic sterilization law, but its Supreme Court invalidated it on the grounds that it inflicted cruel and unusual punishment, denied sterilization targets due process, and violated the equal protection clause of the Fourteenth Amendment. And so, in 1922, prominent eugenicist Harry Laughlin published his book *Eugenical Sterilization*, which was largely devoted to introducing a “Model Eugenic Sterilization Law” designed to surmount constitutional obstacles that emerged in Indiana and elsewhere. To counter the charge of cruel and unusual punishment, Laughlin’s model law emphasized that the law’s motive was “Purely eugenic, that is, to prevent certain degenerate human stock from reproducing its kind. Absolutely no punitive element.”⁴⁵ Since male sterilization targets were often inmates, this was a necessary stipulation. To provide due process, contested cases would be heard by a State Eugenics Board.⁴⁶ Finally, “class legislation” was argued to withstand the equal protection clause if the class divisions were natural and if there existed a pressing social purpose that the law served. As Laughlin analogized, compulsory vaccination was a kind of class legislation, but had been upheld by the courts due to its medical importance.⁴⁷ Indeed, this was mentioned explicitly in the majority opinion of the 1927 Supreme Court case considering the constitutionality of state-mandated sterilization, *Buck v. Bell*.

With the help of Laughlin’s model law, eugenic sterilization began making its way from book to state after state. Here we can see different kinds of agents influencing the path of state-sponsored injustice. First, Laughlin is a quintessential example of an individual agent who behaved intentionally and freely in working to get eugenic sterilization laws enacted. He was not merely acting upon beliefs common in his day, but was rather a driving force of the advancement of eugenic ideas and practices.

Second, the state legislatures that enacted eugenic sterilization laws fit the definition of corporate agents. Legislatures are not synonymous with states; there are thus corporate agents within and alongside corporate agents. The United States government as a whole, the state of Indiana as a whole, the Indiana General Assembly, the Indiana Supreme Court, and the U.S. Supreme Court—along with agencies and administrative bodies like social welfare bureaus, state hospitals, and Eugenics Boards—all function as corporate agents. In relation to one another, these corporate agents are the visible markers of the state structure—though we usually think of “the

⁴⁴ N.B. “Feeble-minded” was a broad and meaningless diagnosis. For Laughlin, *Eugenical Sterilization*, 446-447, the term applied to criminals, epileptics, alcoholics, the blind, deaf, and “deformed,” persons with tuberculosis, syphilis, leprosy, or other chronic illnesses, and finally, “dependent” persons, i.e., “orphans, ne’er-do-wells, the homeless, tramps and paupers.”

⁴⁵ *Ibid.*, 446.

⁴⁶ *Ibid.*, 447.

⁴⁷ *Ibid.*, 130.

United States government” or “the state of Indiana” as the prototypical states-as-corporate-agents.

Third, eugenic sterilization is typical of many cases of state-sponsored injustice in which the personal identities of agents involved in the process of authorization reflect structurally unjust relations of political power. In the 1920s, state officeholders were generally white, male, and well-to-do. While there was certainly dissent in state legislative debates over eugenic sterilization—particularly shaped by a well-organized Catholic opposition⁴⁸—it was not vocalized by those who would be most affected by the proposed laws.

In spite of the importance of formal legislation in the case of eugenic sterilization, enacting a law is not the only way for an unjust policy or practice to be authorized by state actors in the state’s name. It might rather traverse established channels of communication and command within the executive, police, military, or bureaucratic arms of government. In common-law countries, a practice can be authorized by way of judicial precedent. Also, it is worth noting that in the case of eugenic sterilization, the state’s authorization of an unjust practice was relatively direct: eugenic sterilization was authorized by eugenic sterilization laws. Authorization can also take place more indirectly. For example, as part of the New Deal, the Roosevelt administration created the Home Owners’ Loan Corporation, which offered low-interest mortgages to homeowners. To do so, it produced color-coded maps of cities depicting some neighborhoods as riskier than others. The practice that came to be known as “redlining” referred to marking black neighborhoods as high-risk, even if middle class, undermining the ability of black families to receive home loans. This was a gradual process, and observers may be tempted to consider state actions as ancillary to the actions of members of society. But, as Richard Rothstein argues in his recent book, redlining is a matter of *de jure* and not just *de facto* segregation.⁴⁹ It lets government actors off the hook to say otherwise. When it comes to authorization, direct and indirect governmental actions may not be as different as they initially appear.

Of course, a given individual’s disadvantaged place in society can be explained by myriad state policies and societal factors that interact in complex ways. The concept of structural injustice exists precisely to think through such circumstances. By contrast, paradigmatic cases of state-sponsored injustice involve identifiable individuals experiencing identifiable harms causally attributed to specific state policies or practices.⁵⁰ In the context of eugenic sterilization, that identifiable individuals experienced identifiable harms is clear enough. In the context of redlining, Ta-Nehisi Coates writes about black Chicago residents who formed the Contract Buyers League

⁴⁸ Bruinius, *Better For All the World*, Ch. 11.

⁴⁹ Richard Rothstein, *The Color of Law: A Forgotten History of How Our Government Segregated America* (New York: W. W. Norton & Company, 2017).

⁵⁰ N.B. Sometimes multiple state policies or practices converge to cause identifiable harms to identifiable individuals. As long as it is possible to isolate which state policies or practices have caused the harm, I would still consider these cases as fitting into a framework of state-sponsored injustice.

and fought for restitution in “The Case for Reparations”—these individuals and others in their position are redlining’s immediate victims.⁵¹

The category of authorization captures the idea that states have internal processes and decision procedures that determine the content of the activities and undertakings carried out by state officials in the state’s name. When a legislature passes a law, a military officer signs an order, or a bureaucratic agency sets a policy for itself, this is often the first step that sets a state-sponsored injustice in motion. But even though authorization usually comes first, the remaining categories—*protection*, *systemization*, *execution*, *enablement*, and *norm- and belief-influence*—do not happen in a sequence. They are different facets of a multi-faceted phenomenon, and many are operative at once.

Protection

In Indiana, sterilization surgeries were conducted for two years beginning in 1907, then stopped for over a decade after hospital superintendents and doctors became fearful about the possible legal repercussions. Speaking before the Indiana General Assembly in 1921, Governor James Goodrich expressed his disapproval of the cessation. “Ever since Governor Marshall raised the question as to the constitutionality of the present law authorizing the desexualization of inmates of certain institutions,” Goodrich stated, referring to Indiana’s governor in 1909, “it has been a dead letter and no serious attempt has been made to enforce it.”⁵² Goodrich explained that he “repeatedly urged” state hospital superintendents “to take advantage of the present law and desexualize all persons who would be fit to return to their homes.” But the superintendents “pretty generally have declined to enforce the law for fear of personal liability in the event the law should be held invalid.”⁵³

Courts serve different functions in different contexts, and not all countries practice judicial review in the manner of the United States. But in the American system, and elsewhere where courts hear challenges as to the legality or constitutionality of laws and policies, the judiciary may provide *protection* for an injustice that has been authorized. The example of Indiana’s sterilization law is pertinent because it shows that even though a law may direct an injustice’s execution, if not protected by the courts, officials do not always agree to execute the law. The same year that Governor Goodrich spoke before the General Assembly about the importance of enforcing Indiana’s sterilization law, the Indiana Supreme Court heard *Williams v. Smith* and

⁵¹ In “The Case for Reparations,” *Atlantic*, June 2014, <http://www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631/>, Coates supports reparations for black Americans collectively, but seemingly also in the case of the individual members of the Contract Buyers League. In the final section, I discuss reparations as a part of accountability for state-sponsored injustices. Reparations should arguably play a role in transforming historical structural injustices, but this subject is beyond the scope of the present article.

⁵² “Message of Governor James P. Goodrich, Delivered at the Opening of the 72nd Biennial Session of the Indiana General Assembly,” January 6, 1921 (Indianapolis: Indiana Senate Journal, 1921), 23.

⁵³ *Ibid.*

officially declared it unconstitutional.⁵⁴ Laughlin's *Eugenical Sterilization* published the proceedings of *Williams v. Smith* in full, setting key passages in bold type, with the aim of showing how his model sterilization law was responsive to the court's objections.⁵⁵

Virginia was first to pass legislation using Laughlin's template in 1924. After the Supreme Court gave the Commonwealth permission to sterilize Carrie Buck in *Buck v. Bell*, many states either passed new sterilization laws or revised existing ones to be more in line with Virginia's.⁵⁶ By 1930, sterilization laws were on the books in 30 states, and the number of sterilizations that had taken place in the U.S. doubled.⁵⁷ The Supreme Court's approval was clearly crucial for the practice's proliferation.⁵⁸ Justice Oliver Wendell Holmes wrote the majority opinion, upholding the Commonwealth's argument that sterilization was to the benefit of those who would undergo the operation. Sexual licentiousness and feeble-mindedness went hand in hand, thus a feeble-minded person could not be out in society without supervision; she would not be able to resist mating.⁵⁹ As an alternative to institutionalization, sterilization was freedom-enhancing. "Defective persons... if now discharged would become a menace but if incapable of procreating, might be discharged with safety and become self-supporting," as Justice Holmes wrote.⁶⁰ However, there was undeniably an even greater overall societal benefit, as described in the opinion's most famous passage:

We have seen more than once that the public welfare may call upon the best citizens for their lives. It would be strange if it could not call upon those who already sap the strength of the State for these lesser sacrifices, often not felt to be such by those concerned, in order to prevent our being swamped with incompetence. It is better for all the world if, instead of waiting to execute degenerate offspring for crime or to let them starve for their imbecility, society can prevent those who are manifestly unfit from continuing their kind... Three generations of imbeciles are enough.⁶¹

The *Buck* decision—backed by a vote of 8 to 1—was a decisive victory for American eugenics movement. Had the Supreme Court struck down Virginia's law, this would have brought the practice of eugenic sterilization to a halt. Moreover, given the efforts on the part of the American eugenics movement to characterize its aims in terms palatable to ordinary Americans, it was significant that Holmes endorsed the

⁵⁴ Hansen and King, *Sterilized by the State*, 78.

⁵⁵ Laughlin, *Eugenical Sterilization*, 258-270.

⁵⁶ *Buck v. Bell*, 274 U.S. 200 (1927). N.B. Indiana passed its 1927 Laughlin-inspired law about six weeks before the *Buck* decision was issued. The law underwent several revisions in the 1930s (Hansen and King, *Sterilized by the State*, 79).

⁵⁷ Hansen and King, *Sterilized by the State*, 77.

⁵⁸ Desmond King, *In the Name of Liberalism: Illiberal Social Policy in the USA and Britain* (Oxford: Oxford University Press, 1999), 61.

⁵⁹ Kline, *Building a Better Race*, 38-48.

⁶⁰ *Buck*, 274 U.S. 200, 205-206.

⁶¹ *Ibid.*, 207.

same arguments being messaged by prominent eugenicists. That the Court ruled compulsory sterilization to be within the legitimate scope of state power helped to disguise the injustice of the practice, and indeed, that die-hard eugenicists were driven by the same ruthless fanaticism that many condemned as the eugenic practices of the Nazis came to light.

Thus far we have seen individual agents, more specifically, powerful figures like Harry Laughlin and Oliver Wendell Holmes, shaping the course of eugenic sterilization laws. We have also isolated governmental bodies acting as corporate agents to establish and preserve eugenic sterilization as a practice of the state. When agents make harm-causing decisions in their capacity as public officials, we often hold them responsible for their “dirty hands,” as Dennis Thompson observes.⁶² However, Thompson argues, when numerous officials contribute to harm, a more apt characterization is that of “many hands,” complicating assessments of responsibility.⁶³ We will see this with the next two categories.

Systemization

An unjust practice broadens its impact as the activities of state institutions and personnel are coordinated to conduct it. Here, new state processes are devised by which officials in different capacities work together, promoting efficiency and creating mechanisms of accountability for seeing the injustice through. As a result of *systemization*, individual agents are assigned the task of carrying out a state policy, and taxpayer resources are directed to realizing its ends. Systemization, in short, describes the state structures set up to implement an authorized practice.

Systemization involves redefining the roles of existing officials and assigning new duties, as well as creating new roles altogether, to ensure that the policy is put to practice.⁶⁴ Roles often fall on officials because of their being written into a law that they had a part in crafting during the authorization stage. Hospital and prison superintendents, for example, were vital to the systemization of eugenic sterilization in the state hospitals, mental institutions, and prisons where the surgeries took place. Whether because of their actively endorsing eugenic beliefs or the perceived benefits that a eugenic sterilization law would bring about, superintendents were key figures in lobbying for and crafting sterilization laws.⁶⁵ To take another example, it was fitting that the most enthusiastic supporters of eugenics should be assigned to their State Eugenics Board, given their interest and presumed expertise. As superintendents systemized the practice of sterilization at the level of individual institutions, Eugenics Board officials saw to its systemization at the level of state government. State social workers were trained to observe the families assigned to them for signs that a woman

⁶² Dennis F. Thompson, “Moral Responsibility of Public Officials: The Problem of Many Hands,” *American Political Science Review* 74, no. 4 (1980): 905–16.

⁶³ *Ibid.*; see also Young, *Responsibility for Justice*, 116.

⁶⁴ Arthur Applbau, *Ethics for Adversaries* (Princeton: Princeton University Press, 1999).

⁶⁵ Hansen and King, *Sterilized by the State*.

would be a candidate for sterilization, and were provided the protocol for reporting out-of-wedlock pregnancies.⁶⁶ At state hospitals, superintendents coordinated personnel to board individuals whom the social workers brought in. (At prisons and mental institutions, sterilization targets were identified from the inside.) Psychiatrists were assigned to administer tests of feeble-mindedness, physicians to report on the physical health of the patient, and obstetricians to perform sterilization surgeries. State Eugenics Boards would convene periodically to review medical reports and make recommendations on disputed cases.

Systemizing the efforts of state institutions and personnel lends officiality to an unjust practice. Officiality often facilitates easy acquiescence. Due to the nature of existing structural inequalities, eugenic sterilization is perhaps an extreme case. In prisons and mental institutions, the sterilization targets were already incarcerated, susceptible to power dynamics that made it more likely that they would comply with the superintendent or psychologist's will. Targets outside of the institutional setting were often equally vulnerable. Many were barely teenagers, sometimes living in foster care or orphanages; no meaningful distinction was made between a girl's licentiousness and her being the victim of child abuse or rape. Frequent visits from a social worker, being told that one needed to come in for a tubal ligation and ought to sign this form, thus had a predictable effect.⁶⁷

The systemization of state-sponsored injustice normalizes it. Though usually this is a point made in the context of despotic regimes, it also applies to non-authoritarian political settings. One needed not buy into the idea of eugenics to simply go along with it, to play one's role. This becomes even clearer in the next category of the framework.

Execution

The systemization of an injustice involves assigning roles to state officials and determining procedures by which these roles are carried out. As roles are assigned and procedures fall into place, the *execution* of an injustice comes about with little effort; to use Arthur Applbaum's phrase, it benefits from a "division of moral labor."⁶⁸ If one is a doctor, correctional officer, or social worker who is undecided on the morality of eugenics, it is easy to not make a decision about its morality, yet go along actively promoting eugenic aims. Once an injustice is authorized by law, and responsibility for its execution is parceled out and coordinated by procedures, what is one to do but do one's role?⁶⁹ True, one may become sympathetic to the victims of injustice. In this case, one is faced with the difficult decision of staying in one's role so that there is a

⁶⁶ Kline, *Building a Better Race*, 54.

⁶⁷ Gregory Michael Dorr, "Protection or Control? Women's Health, Sterilization Abuse, and *Relf v. Weinberger*," in *A Century of Eugenics in America*, ed. Paul A. Lombardo (Indianapolis: Indiana University Press, 2011), 161–90, 179.

⁶⁸ Applbaum, *Ethics for Adversaries*, 6.

⁶⁹ *Ibid.*, 69–71

person on the inside, undermining the injustice in various ways. Or, one can quit—perhaps publicly and dramatically, hoping that others will follow suit and that this will grab the public’s attention.⁷⁰ But whatever one does as an individual, a state-sponsored injustice already set in motion is difficult to obstruct or overturn. Meanwhile, much harm can be done.

And all too often, the heroic civil servant does not emerge. On the contrary, state officials sometimes see themselves as deputized to further the cause of injustice by whatever means, even those that run contrary to the letter of the unjust law. Many sterilizations took place without an individual’s knowledge. To doctors and public officials, it seemed “inconsistent to require both that the client consent and be feeble-minded”; there are documented requests as to whether “some of the ‘red tape’ [could] be cut in regard to the consent of the feeble-minded adult.”⁷¹ It was common for consent forms to be forged, or signed by an illiterate parent or spouse with an ‘X’.⁷² Later on, forms were written so obscurely as to basically ensure that a person who signed them would not understand their purpose, appended by a legal clause absolving all medical staff of liability.⁷³ And in a number of cases, there would be no forms at all authorizing the procedure; the sterilization would take place during a cesarean section without a doctor bothering to even go through the motions of consent. Later in life, a woman would have trouble getting pregnant and see doctor, and she would be told that her fallopian tubes had been severed. Some women never found out at all. Though it is tempting to put all the blame on “bad apples,” the state is nevertheless responsible for surgeries carried out by state doctors without due process, given the circumstances. If in practice due process became an illusory formality, if women who signed papers without requesting a hearing consistently underwent surgery without a clue what was happening, then it is only a matter of degrees before one does not feel obliged to consult with a sterilization target at all; the outcome is the same in every case.

As we move from the authorization and protection of eugenic sterilization laws to the systemization and execution of eugenic sterilization, the picture of state-sponsored injustice becomes more complex. It is not simply that one set of decision-making agents acting on behalf of the state inflict the harm of sterilization on other agents. As Young writes:

[I]f we seek a few powerful actors to blame, we will let many ordinary actors doing their jobs off the hook. A public discourse of blame then oversimplifies, failing to develop a public understanding of the actions and practices whose

⁷⁰ Applbaum evaluates different courses of action for public officials in morally difficult situations in *Ibid.*, Ch. 9; see also Thompson’s discussion in “Moral Responsibility of Public Officials.”

⁷¹ Moya Woodside, *Sterilization in North Carolina: A Sociological and Psychological Study* (Chapel Hill: University of North Carolina Press, 1950), 71.

⁷² Roberts, *Killing the Black Body*, 93.

⁷³ Antonia Hernandez, “Chicanas and the Issue of Involuntary Sterilization,” *Chicana/o Latina/o Law Review* 3, no. 3 (1976): 3–37, 28.

consequences produce injustice. The power of some actors is improperly inflated, and that of many others is ignored.⁷⁴

Some ordinary actors doing their jobs are more culpable than others: a doctor who performs illicit sterilization surgeries is surely worse than a social worker who fights for her client to have due process. But in the involvement of a multiplicity of agents who are variably culpable, the structural dimensions of state-sponsored injustice's enactment are plainly shown.

However, it is not only the enactment of state-sponsored injustice that is structural. State-sponsored injustice gives rise to diverse harms. Besides the first-order harms to particular sterilization targets, there are also structural harms that are more diffuse. This is depicted by the final two categories.

Enablement

A given state-sponsored injustice can interact with established patterns of structural injustice, contributing to the entrenchment of these patterns. It can moreover recur in different forms over time, impressing unjust social goals that recurrently make their way into political practice in new and unforeseen ways. These are two facets of *enablement*, which describes how state-sponsored injustice facilitates and amplifies structural injustice.

Consider first the interaction between state-sponsored injustice and structural injustice when it comes to race and racism. Hansen and King argue that initially, the American eugenic quest for racial purity was primarily about the betterment of the white race.⁷⁵ White people were the main targets for sterilization, while other eugenic tactics like antimiscegenation laws were used to prevent racial mixing.⁷⁶ However, increasingly after World War II—as procedures to obtain consent were becoming laxer—women of color were sterilized in disproportionate numbers. The commonly-used idiom “Mississippi appendectomy,” for example, denoted the nonconsensual sterilization of a black woman during abdominal surgery.⁷⁷ A Government Accountability Office audit found that Indian Health Service doctors sterilized 3,406 Native women in four of the twelve service regions it examined between 1973 and 1976.⁷⁸ If the regions surveyed were representative, 25% of American Indian teenage and adult women were sterilized during this period—some researchers put the

⁷⁴ Young, *Responsibility for Justice*, 117.

⁷⁵ *Sterilized by the State*, 9-11. Though as Roberts, *Killing the Black Body*, 66, observes, earlier usage of castration as a punishment, particularly when black men were convicted of rape or attempted rape, was an important precedent for eugenic sterilization.

⁷⁶ Roberts, *Killing the Black Body*, 70-71.

⁷⁷ *Ibid.*, 90.

⁷⁸ “Investigation of Allegations Concerning Indian Health Service, Report to Senator James G. Abourezk,” Comptroller General of the United States, Government Accountability Office, November 4, 1976, <http://www.gao.gov/assets/120/117355.pdf>.

percentage even higher.⁷⁹ Studies found that the doctors believed that sterilization created fewer welfare recipients, lessening their own tax burdens, and that American Indians were incapable of learning to use birth control.⁸⁰ Expressing a similar sentiment regarding sterilization in Puerto Rico, a *Eugenics Quarterly* author wrote, “A drastic measure by American standards, it is a godsend to a population not sufficiently educated and motivated to practice systematic birth control.”⁸¹ Roberts describes “armies of public health workers” peddling what was called *la operación* to Puerto Rican women; as of 1968, a staggering one-third of those in their childbearing years had been sterilized.⁸² “Eugenic policy may have been motivated by many forms of domination,” writes Roberts. “But history shows that it has a particular affinity for racial hatred.”⁸³

This brings us to the second prong of enablement. It can be difficult to eradicate state-sponsored injustice after it has been authorized by law: surgeries under the supervision of Eugenics Boards were phased out over time, ceasing to be widespread after the 1970s, yet coercive sterilization still made a resurgence in California women’s prisons in the 2000s.⁸⁴ However, it is even more difficult to eradicate the social goals whose existence precipitates and is legitimated by the injustice. Consider, for example, Susan Thomas’s claim that “To be a woman, poor and fertile, in the United States in the 1990s is to be blamed by politicians and social reformers for an increase in poverty and alleged immorality in society.”⁸⁵ Or as Nancy Fraser and Linda Gordon wrote in 1994, “In current debates, the expression ‘welfare dependency’ evokes the image of ‘the welfare mother,’ often figured as a young, unmarried black woman (perhaps a teenager) of uncontrolled sexuality.”⁸⁶ In her article “Three Generations of Welfare Mothers Are Enough,” Nicole Huberfeld argues that the 1996 U.S. workfare initiative contained many measures designed to lower the birthrate for single mothers receiving public assistance. Compared to eugenic sterilization, the provisions that Huberfeld discusses are mild. But her overall point seems to be that the United States still operates in a political paradigm where curbing

⁷⁹ Jane Lawrence, “The Indian Health Service and the Sterilization of Native American Women,” *American Indian Quarterly* 24, no. 3 (2000): 400–419.

⁸⁰ *Ibid.*, 409. A white South Carolina doctor investigated for sterilizing black welfare recipients stated that “he worked hard to pay his taxes and was tired of having people come to him to have babies he would have to support with his tax dollars.” “Hell, man, don’t you realize we’re paying for her kids?” a white California doctor told a black man reluctant to agree to his wife’s sterilization. She did not receive welfare. See Dorr, “Protection or Control?” 174–175; and also Roberts, *Killing the Black Body*, 92.

⁸¹ J. Mayone Stycos, “Female Sterilization in Puerto Rico,” *Eugenics Quarterly* 1, no. 2 (1954): 3–9, 8.

⁸² *Killing the Black Body*, 94.

⁸³ *Ibid.*, 81.

⁸⁴ “Sterilization of Female Inmates,” California State Auditor Report No. 2013-120, June 2014, <https://www.auditor.ca.gov/pdfs/reports/2013-120.pdf>.

⁸⁵ “Race, Gender, and Welfare Reform: The Antinatalist Response,” *Journal of Black Studies* 28, no. 4 (1998): 419–46, 419.

⁸⁶ “A Genealogy of Dependency: Tracing a Keyword of the U.S. Welfare State,” *Signs* 19, no. 2 (1994): 309–36, 311.

the number of births had by unfit, dependent mothers remains a goal, even if eugenic sterilization is no longer considered a valid means.⁸⁷

Again, enablement describes the intersection of state-sponsored injustice and structural injustice, as well as how the state's unjust practices entrench the social goals underlying these practices, contributing to structural harms. Let us turn, finally, to the category that goes hand-in-hand with enablement: namely, state-sponsored injustice's influence on norms and beliefs.

Norm- and Belief-Influence

Recall that eugenic sterilization laws were preceded by an active eugenics movement. The eugenics movement's presence does not necessarily mean that the majority of Americans shared its beliefs. However, an effect of authorizing, protecting, systemizing, and executing eugenic sterilization laws is the normalization and diffusion of eugenic ideas, which can feed into and reinforce an ideological climate in which both a given state-sponsored injustice and attendant structural injustices go unchallenged. This is described by *norm- and belief-influence*.

The influence of the law on norms is something to which legal theorists have called attention.⁸⁸ Because the law “expresses normative principles and symbolizes societal values,” as Richard McAdams puts it, it has a “moralizing” character.⁸⁹ The law is one of the major sources from which individuals learn what is considered right and wrong in their society, helping form broad standards of conduct that individuals often follow without thinking.⁹⁰ Though legal change almost always indicates a shift in societal norms, it can likewise further this shift along. Take the example of antismoking laws. In a short span of time, smoking in workplaces, bars, and restaurants went from being incredibly common to almost taboo. Smoking indoors did not decline only because restaurant owners feared legal repercussions. Rather, antismoking laws bolstered an antismoking norm so much that, as McAdams argues, it was not long before enforcement became entirely informal.⁹¹

A norm is a behavioral convention, or to use Edna Ullmann-Margalit's definition, “a regularity such that people generally conform with it” and “generally approve of conformity to it and disapprove of deviance from it.”⁹² By what means, then, does a norm's observance garner approval and regularize behavior? The notion

⁸⁷ “Three Generations of Welfare Mothers Are Enough: A Disturbing Return to Eugenics in the Recent ‘Workfare’ Law,” *UCLA Women's Law Journal* 9 (1998): 97–132. See also Thomas, “Race, Gender, and Welfare Reform”; King, *In the Name of Liberalism*, 258–286; and Hansen and King, *Sterilized by the State*.

⁸⁸ See, e.g., Richard McAdams, “The Origins, Development, and Regulation of Norms,” *Michigan Law Review* 96 (1997): 338–433; Cass Sunstein, “Social Norms and Social Roles,” *Columbia Law Review* 96 (1996): 903–68; and Robert Cooter, “Expressive Law and Economics,” *Journal of Legal Studies* 27, no. 2 (1988): 585–607.

⁸⁹ “Origins, Development, and Regulation of Norms,” 398.

⁹⁰ Note that the law and norms literature often refers to “law” in the broad sense, and is not exclusively intended to apply to laws created by statute.

⁹¹ “Origins, Development, and Regulation of Norms,” 405.

⁹² “Revision of Norms,” *Ethics* 100, no. 4 (1990): 756–67, 756.

of “beliefs” and “belief systems” is essential to any account of norms; it is due to the fact that members of a society share certain beliefs that converging on behaviors through the mechanisms of approval and disapproval are possible. Beliefs often are not rationally determined. They can be internalized through social conditioning without conscious processing. As McAdams observes, this can take place by indicating the state of public opinion.⁹³ That antismoking legislation passed publicized the information that enough Americans saw smokers as “unhappy addicts” and second-hand smoke as a health hazard for “a well-financed tobacco lobby” to be defeated.⁹⁴ Hence an antismoking norm was preceded by the dispersion of new beliefs about where smoking may reasonably take place.

In the literature on law and norms, authors often use examples in which new laws encourage salutary societal change: antismoking norms superseding smoking norms with the help of antismoking legislation, norms of racial equality superseding norms of racial discrimination with the help of civil rights legislation, and so on.⁹⁵ But just as “enacting a law might change the equilibrium and cause most people to switch behavior from wrong to right,” to use Robert Cooter’s words, the enactment of a new law can “tip aggregate behavior” in the other direction.⁹⁶ The human social world is not characterized by a stable set of values and meanings. There is uncertainty and ambiguity, and often we are hard-pressed for information as to what to believe and how to behave, especially when faced with novelty and change.⁹⁷ That the law often “tracks” morality, as Cooter puts it, is a common enough notion that people are not irrational to take cues about right and wrong from it.⁹⁸ Injustice is often argued for in language compatible with broader political values; many eugenicists were progressives who framed their agenda as essential to the preservation of democracy.⁹⁹ In this light, it is not hard to see how many would not rationally process that a law is extreme and unjust, and unthinkingly internalize it as part of a larger public morality.

Going back to our example, eugenic sterilization laws cultivated the perception of a dependent class whose societal presence threatened the public welfare, and who could be reasonably bred out of existence. It is the normative influence of sterilization laws that explains why doctors saw themselves as deputized to perform sterilization surgeries unlawfully, forging consent forms or performing Mississippi

⁹³ “Origins, Development, and Regulation of Norms,” 396.

⁹⁴ *Ibid.*

⁹⁵ Cooter, “Expressive Law and Economics,” 594; Sunstein, “Social Norms and Social Roles,” 931.

⁹⁶ “Expressive Law and Economics,” 595, 586.

⁹⁷ Beerbohm, *In Our Name*, Ch. 7.

⁹⁸ Cooter, “Expressive Law and Economics,” 596.

⁹⁹ As Justice Harry Olson wrote in the introduction to Laughlin’s *Eugenical Sterilization*, v: “The success of democracy depends upon the quality of its individual elements. If in these elements the racial values are high, government will be equal to all the economic, educational, religious and scientific demands of the times. If, on the contrary, there is a constant and progressive racial degeneracy, it is only a question of time when popular self-government will be impossible, and will be succeeded by chaos, and finally a dictatorship.” See also King, *In the Name of Liberalism*, on liberal democracies implementing policies at odds with their express ideals.

appendectomies. Further, it seems fairly safe to suppose that eugenic sterilization laws did more than nourishing societal norms that obscured the injustice of eugenic sterilization. For example, Robert Hayman traces a host of legal norms and social practices surrounding the presumptive unfitnes of the “mentally retarded parent”—e.g., the court-ordered placement of a child in foster care or a group home instead of allowing her to live with her biological mom or dad—to state sterilization laws and the *Buck* decision.¹⁰⁰ More broadly, disability theorists have long been attune to the socially constructed elements of mental and physical disabilities, demonstrating many of the operative distinctions today to be historically contingent and arbitrary. Surely these authors are right that in the U.S., over half a century of eugenic sterilization played a non-negligible role in modern constructs of disability and ability.¹⁰¹

Responsibility for State-Sponsored Injustice

We began our inquiry by looking at how an agential conception on its own is not sufficient for understanding state-sponsored injustice, and how it can be enriched by insights from structural injustice theory. Authorization, protection, systemization, execution, enablement, and norm- and belief-influence were put forward as the most important components of a structurally-sensitive conception of state-sponsored injustice. As has been argued, the harm of state-sponsored injustice consists of both first-order wrongs and contributions to unjust structural formations.

On a structurally-sensitive conception of state-sponsored injustice, where should moral responsibility be located? Let us return to Young, and the contrast she sets up between a “liability” model of responsibility and a forward-looking “social connection” (sometimes called “political”) model.¹⁰² Again, Young does not reject the liability model wholesale, but rather thinks it is inappropriately applied to situations of structural injustice. If important aspects of state-sponsored injustice are structural, should the social connection model, rather than the liability model, be employed?

In the case of eugenic sterilization, it would be wrong to give up on the liability model. Those who are harmed may well have an understanding of the role of broader, impersonal social structures in state-sponsored injustice’s operation. Yet they still rightly blame the state and state actors, whose coordination on an unjust course of action is an essential aspect of the nature of the wrong that was done. Recall Tony Riddick’s specific complaint that “the state’s money and the state’s authority” were used to sterilize his mother. His words came as part of his testimony before a taskforce charged with determining appropriate redress for sterilization victims in North Carolina, and Riddick made clear his view that the state of North Carolina owed its

¹⁰⁰ “Presumptions of Justice: Law, Politics, and the Mentally Retarded Parent,” *Harvard Law Review* 103 (1990): 1201–71.

¹⁰¹ Mary Manion and Hank Bersani, “Mental Retardation as a Western Sociological Construct: A Cross-Cultural Analysis,” *Disability, Handicap & Society* 2, no. 3 (1987): 231–45; Claire Liachowitz, *Disability as a Social Construct* (Philadelphia: University of Pennsylvania Press, 1988), Ch. 4.

¹⁰² Young, *Responsibility for Justice*.

accountability to his mother. Karen Beck testified before the same taskforce: “Can the state fix this problem? Can it go back and mend the bodies they broke and restore all those stolen legacies? No, it can’t,” Beck reasoned. “But I’ll tell you what it can do. It can say it’s sorry in a way that’s meaningful. It can breach the walls of shame and guilt it erected and it can make restitution.”¹⁰³ In their testimonies, Riddick and Beck represent the state of North Carolina as a moral agent, holding it responsible for past harm and a present duty of redress. In doing so, they call state power to account, indicting the state system (despite its complicated boundaries, despite the complexities of responsibility within the state system) for using political authority in service of a project that caused irreparable harm. Far from suggesting an inadequate theorization of state-sponsored injustice, they properly ascribe responsibility to the state as the locus of political authority and power.¹⁰⁴ Officials acting on the state’s behalf owe it to them to accept blame and make efforts to repair the harm, offering an apology and redress.¹⁰⁵

However, the harm of state-sponsored injustice goes beyond first-order harms. Recall the structural harms to which the practice of eugenic sterilization contributed. The practice targeted women of color in the postwar period, diffusely impacting those who were not sterilized by putting their reproductive lives at the center of public debate over poverty and character. It set a precedent for later policy measures designed to curb the birthrates of “unfit” mothers. It helped form norms about the permissibility of sterilizing patients without their consent, as well as contributing to the stigmatization of disability. Does the state owe its accountability for eugenic sterilization’s structural dimensions, or just for sterilizing individual men and women?

A possible Youngian response would be that the answer is not terribly important. Individuals share the responsibility to transform unjust structures. In order to fulfill this responsibility, they may employ the power of, or initiate reforms within, the state and state institutions.¹⁰⁶ Whether the state has its own set of obligations is arguably immaterial.

But as I have tried to show, identifiable structural injustices may be facilitated by particular state-sponsored injustices. In such cases, the state’s contributory role, paired with its authority and resources, would seem to give it special responsibilities in dismantling these structural injustices. I am not suggesting that the state would have the same kinds of remedial obligations vis-à-vis structural harms to which it

¹⁰³ *Final Report of the Governor’s Task Force*, D-19.

¹⁰⁴ N.B. List and Pettit, *Group Agency*, Ch. 7, outline three criteria for the fitness of agents to be held responsible: normative significance, judgmental capacity, and relevant control. Within the structurally-sensitive conception of state-sponsored injustice that I have argued for, the state satisfies all three criteria.

¹⁰⁵ Stephen Winter’s argument for state redress in *Transitional Justice in Established Democracies: A Political Theory* (Basingstoke: Palgrave Macmillan, 2014) fits the claim I am making here.

¹⁰⁶ Young, *Responsibility for Justice*, 150-151, 167-169; cf. Christian Neuhäuser, “Structural Injustice and the Distribution of Forward-Looking Responsibility,” *Midwest Studies in Philosophy* 38, no. 1 (2014): 232–51.

contributed as it does for the direct harms caused by its policies. No one thing creates an unjust structure, and the harm of any single agent's contribution is diffuse—which is why Young is skeptical that moral blame applies. The state would thus not seem to have a backward-looking responsibility to individuals to whose structurally unjust situations state policies contributed. Nevertheless, we might think of the state—represented, as always, by state officials acting on the state's behalf—as a distinct actor in a social connection model of responsibility with forward-looking obligations to these individuals.

However, the individuals harmed by state-sponsored injustice in a first-order sense live within, and are often affected by, social structural formations shaped and fortified by the harmful policies. If they successfully obtain redress and an apology for state-sponsored injustice, these individuals may not trust that the state is actually being meaningfully accountable if the unjust structures remain intact. The state thus may have a backward-looking responsibility to the parties immediately harmed by its policies to work to transform unjust structures, in addition to its forward-looking obligations to do so.

Of course, the work of transforming unjust structures is extremely difficult.¹⁰⁷ It cannot be accomplished in a single effort. The state's obligations are likely to begin with state officials' identifying unjust structures connected to the state-sponsored injustice in question, thinking expansively about concrete policies and programs that could alter these structures, and implementing some of the most promising ones. In political apologies, it is fairly conventional for state officials to address wrongs that extend beyond first-order instances of harm, and make promises to work to create a better world. Too often these promises are empty. But genuine accountability for state-sponsored injustice may require a concrete, acted-upon commitment for the state to do its part to transform unjust structures.¹⁰⁸

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¹⁰⁷ Schiff, *Burdens of Political Responsibility*; Hayward, "Responsibility and Ignorance."

¹⁰⁸ Versions of this paper were presented at the Cogut Fellows Seminar at Brown University, the Geneva Colloquium in Political Theory, the REAPP Graduate/Early Careers Conference at the University of Reading, and SWIP Switzerland's Feminist Philosophy Reading Group at the University of Bern. Thanks to these audiences, and to Dennis Thompson, Nancy Rosenblum, Adrian Vermeule, Jonathan Gould, David Hémons, Tony Bagues, Amanda Anderson, Kirun Sankaran, Francis Cheneval, Jessica Simes, Robert Jubb, and Alasia Nuti for their comments. I am especially grateful to Michael Frazer for giving comments multiple times.