Chronic Harm

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INTRODUCTION

I. REPRODUCTIVE JUSTICE AND THE ANTI-ARCHIVE

II. CHRONIC HARM: REPRODUCTIVE JUSTICE AND THE EXPLOITATION OF CARE LABOR

In this Article, I argue that critical race feminism provides a lens for dismantling the current system of U.S. laws that regulate labor and reproduction, a set of laws that are often represented as unrelated race- and gender-neutral public policies in legal decisions and in dominant media. Critical race feminism challenges this framing of the relation between public policy, power, and identity through the mechanism of counter-narrative. Following other feminist theorists that conceptualize the law as archive, I show how contemporary feminists have developed an anti-archive of counter-narrative that generates alternative models for linking bodily integrity and social welfare. To demonstrate the usefulness of this anti-archive to legal studies, I examine the dominant discourse found in two case studies to show how feminist counter-narratives challenge this discourse: the Supreme Court case Buck v. Bell (1927) and current attempts by victims of forced sterilization to claim reparations in Virginia and North Carolina; and Harris v. Quinn (2014), a case in which the Supreme Court decided that care attendants in the home, supported by Medicaid funds, could not be compelled to pay union dues. Feminist counter-narratives allow for links between the cases, demonstrating that these public policies take form as part of institutional oppression that targets low-income women, especially women of color.
In the 1980s, a scholar activist movement of students and faculty of color developed a set of methods and frameworks in legal studies known as critical race theory (CRT), an “articulation of racial power, one that eschewed the reigning frames that worked to reduce racism to matters of individual prejudice or a by-product of class.”

Recognizing the failure of liberal reform to “address the institutional, structural and ideological reproduction of racial hierarchy,” critical race theory “questions the very foundations of the liberal order, including equality theory, legal reasoning, Enlightenment rationalism, and neutral principles of constitutional law.” Critical race theory has been instrumental in demonstrating how “neutral” institutions of the state reproduce racial hierarchy—in ideologies of color blindness, in adherence to individualism, and in the production and reproduction of identity as hierarchy through a narrow assimilationist logics—and contesting these institutions.

In 1989 and 1991, Kimberlé Crenshaw, a founding CRT theorist and a co-founder and Executive Director of the African American Policy Forum, published two articles introducing intersectionality as a conceptual method for reframing antidiscrimination law, feminist theory and activism, and Black studies and the Civil Rights Movement to address Black women’s structural, political, and representational oppression. She demonstrated that in every site of institutional and social power, the experiences and voices of Black women are marginalized by the dominant frame that uses single-axis conceptions of identity to understand constructions of social reality. Crenshaw argues that Black women’s discrimination claims cannot be addressed within preexisting legal constructs: “problems of exclusion cannot be solved simply by including Black women within an already established analytical structure.” Thus, her work extends CRT’s critique of assimilationist reform as a means of creating substantive transformation of state and social institutions.

5. Id. at 1262.
7. See Crenshaw, supra note 4, at 1253–54.
9. See Crenshaw, Demarginalizing the Intersection, supra note 8, at 139.
10. See id. at 140.
and instead focuses on the reconceptualization of dominant paradigms used to regulate and represent identity. Cho, Crenshaw, and McCall argue that

what makes an analysis intersectional . . . is its adoption of an intersectional way of thinking about the problem of sameness and difference and its relation to power. This framing—conceiving of categories not as distinct but as always permeated by other categories, fluid and changing, always in the process of creating and being created by dynamics of power—emphasizes what intersectionality does rather than what intersectionality is . . . . Intersectionality is inextricably linked to an analysis of power . . . . The recasting of intersectionality as a theory primarily fascinated with the infinite combinations and implications of overlapping identities from an analytic initially concerned with structures of power and exclusion is curious given the explicit references to structures that appear in much of the early work.  

In her early theorizations of intersectionality, Crenshaw also focuses on its roots in Black feminist social activism stretching back to the abolitionist and women’s rights struggles of the nineteenth century, demonstrating that intersectionality is a Black feminist way of knowing developed in Black feminist social movements and in coalitional work with others such as Black men, other women of color, and white feminists. Crenshaw’s work itself can be categorized as part of “an evolving tradition” of women of color legal scholarship that Adrien Katherine Wing identified as “Critical Race Feminism.” Several key components of Crenshaw’s theorizations and, more broadly, of critical race feminist work are often omitted when put into social movement and institutional practice or when appropriated across different fields of research. However, it is not my purpose here to examine either the critiques of intersectionality and critical race feminism, or the use and misuses of intersectionality across disciplines and in contemporary feminist scholarship and activism. Instead, in Part I, I introduce the methods in critical race feminism that allow

11. See id. at 159.
13. See Crenshaw, Demarginalizing the Intersection, supra note 8, at 140, 152.
15. See Cho et al., supra note 12, at 788–89.
16. See id. at 787–88. Recent discussions of those debates include a special issue of Signs 38 (2013). See also ANNA CARASTATIS, INTERSECTIONALITY: ORIGINS, CONTRACTIONS, HORIZONS, 125 (Univ. of Nebraska Press, 2016); VIVIAN M. MAY, PURSUING INTERSECTIONALITY, UNSETTLING DOMINANT IMAGINARIES 2 (2015).
feminist theorists to challenge prima facie neutral laws of gender and race and demonstrate that they form a network of laws and public policies targeting low-income, predominantly women of color.

I. REPRODUCTIVE JUSTICE AND THE ANTI-ARCHIVE

In Movement Intersectionality, critical race theorists Dorothy Roberts and Sujatha Jesudason argue that

intersectionality forces us to break through these [identity] categories to examine how they are related to each other and how they make certain identities invisible. This shift from seeing our differences to seeing our relatedness requires that we understand identity categories in terms of matrices of power that are connected rather than solely as features of individuals that separate us.... [T]he radical potential for intersectionality lies in moving beyond its recognition of difference to build political coalitions based on the recognition of connections among systems of oppression as well as on a shared vision of social justice. The process of grappling with differences, discovering and creating commonalities, and revealing interactive mechanisms of oppression itself provides a model for alternative social relationships.\(^{17}\)

One social movement that develops almost simultaneously and from the same set of methodological frameworks as critical race feminism is the reproductive justice movement. As Roberts and Jesudason argue, "[r]eproductive justice is a prime example of applying an intersectional framework to both political theorizing and political action."\(^{18}\) The reproductive justice framework developed from the activism of women of color in the 1990s, although its roots are in earlier women of color and socialist feminisms in the 1970s, such as the Committee to End Sterilization Abuse, the National Welfare Rights Organization, Women of All Red Nations (WARN), and Chicana activists who helped fight the sterilization of predominantly Chicana women in California in the case of Madrigal v. Quillen, the Indian Health Services record of coerced sterilizations, and eventually change the sterilization consent standards at HEW.\(^{19}\)

\(^{17}\) Dorothy Roberts & Sujatha Jesudason, Movement Intersectionality: the Case of Race, Gender, Disability, and Genetic Technologies, 10 DU BOIS REV., 313, 316 (2013) (citation omitted).

\(^{18}\) Id.

\(^{19}\) See UNDIVIDED RIGHTS: WOMEN OF COLOR ORGANIZE FOR REPRODUCTIVE JUSTICE 10 (Jael Silliman et al. eds., South End Press 2d ed. 2016); NANCY ORDOVÉS, AMERICAN EUGENICS: RACE, Queer, Anatomy and the Science of Nationalism, 183 (U. Minn. Press 2003); Maya Manian, The Story of Madrigal v. Quilligan: Coerced Sterilization of
Their experiences with public hospitals and doctors; social workers; welfare offices; the Indian Health Service; the Department of Health, Education, and Welfare; and the passage of the Hyde Amendment became the basis for contemporary critiques of Roe v. Wade’s “right to privacy” footing as an adequate framework for the securing of reproductive rights for women of color.

Loretta Ross and Rickie Solinger, in Reproductive Justice: An Introduction, open the book by defining the movement’s principles,

reproductive justice goes beyond the pro-choice/pro-life debate and has three primary principles: (1) the right not to have a child; (2) the right to have a child; and (3) the right to parent children in safe and healthy environments. In addition, reproductive justice demands sexual autonomy and gender freedom for every human being.20

The authors argue that achieving the goals of reproductive justice requires “access to specific, community-based resources including high-quality health care, housing and education, a living wage, a healthy environment, and a safety net for times when these resources fail.”21 One of the methods utilized to organize the reproductive justice movement is storytelling. Adrien Katherine Wing states that one of the “cornerstone[s]” of CRT is that “a culture constructs its own social reality in its own self-interest. CRT’s critique of society thus often takes the form of storytelling and narrative analysis—to construct alternative social realities and protest against acquiescence to unfair arrangements designed for the benefits of others.”22 Confronted with political, legal, and cultural systems that framed contemporary identity politics within the discourse of postracialism, critical race feminists also tackled the discourse of postfeminism, articulating the ways in which gender-equality laws conceptualized through a single-axis frame have worked for many individual, predominantly white women, but have not, in fact, to quote Audre Lorde, “dismantle[d] the master’s house.”23 Thus, counter-narratives are not merely stories, but stories that challenge the hegemonic logic that structures public policy and

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21. Id.
22. CRITICAL RACE FEMINISM, supra note 14, at 3.
legal decision-making; counter-narratives challenge existing structures that reproduce inequality through the categorical frame of racist patriarchy, by making that frame visible and by providing transformative strategies to change normative institutions.

The counter-narratives of critical race feminism are power analytics and cannot be separated from the explicit desire to transform the legal system—in part by working to center those voices that have been objectified in the formal and informal hierarchical processes of that system, but also in gesturing toward new configurations of political movements and new ways of constructing law and public policy. While many literary theorists and some critical race scholars associate counter-narrative with empathy and persuasion, I read counter-narrative within the frame of 1970s feminist consciousness-raising, the purpose of which is not primarily directed toward goals of empathy or specific legal claims. Counter-narrative has much in common with the practice of consciousness-raising. Consciousness-raising is a primary form of collective identity formation toward decision-making and collective action. As Ross and Solinger describe it, consciousness-raising is a crucial process in movement building:

Vulnerable people may recognize the dangers of telling their truths individually, no matter how much they are dying inside. So we often work together for strength and safety. In the 1970s, the women's movement, for example, used storytelling in groups—what was called "consciousness-raising" then—to interrupt cycles of gendered silencing and oppression. . . . Storytelling helped create the national coalition SisterSong Women of Color Reproductive Justice Collective in 1997. SisterSong, the leading proponent of the concept reproductive justice in the United States and abroad, adopted the motto: "Doing collectively what we cannot do individually" to reflect its members' conviction that our collective power is based on and derived from our power to tell our own stories.

Using the techniques of counter-narrative, a storytelling approach to the legal system that makes claims based on the experiential totality of social structures, rather than narrow legal claims based on adversarial positions means reframing conflicts as products of an

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24. See DELGADO & STEFANIC, supra note 6, at 3, 33–35, and 48–49, for a summary of this debate in CRT.
25. See ROSS & SOLINGER, supra note 20, at 60.
26. Id.
27. Id. at 60 (footnote omitted).
ideological system or as Lisa Ikemoto puts it, entails looking “beyond the law, to the way that social reality constructs the [legal] conflict.”\textsuperscript{28} Thus, counter-narratives are not in opposition to a dominant “side” as in a “conflict of interests,” or in the “balancing of interests” that proceeds in the system of law, but demonstrate how the legal system structures social reality in its elision of its own assumptions of authority, as the ideological structure that frames the procedures of the legal system. If the interpretative power of the law is structurally located with institutions that have their roots in racist patriarchy, if those institutions continue to draw on that history and to use the same texts and methods to interpret that history, then it must be met with tactics, narratives, and interpretations that challenge the premises of those institutional practices.

Much of this intersectional feminist work is being done in art, literature, and collective performance practice, particularly in the building of feminist coalitions around critical race feminism, reproductive justice, and disability rights. In the sections that follow, I discuss some of this work and its engagement with the legal and medical archives of eugenics. My purpose is to show how the counter-narratives of this feminist work open up the eugenic archive in ways that work across differences and hierarchies, seeking commonalities and struggling to find alternative means of addressing the harms of gender and race oppression in the United States. I argue that this approach has been missing from the justice efforts for victims of eugenic sterilization in the United States. Finally, I demonstrate how these works help feminists reconceptualize the relation between reproductive justice and economic justice. As Scott Barclay, Lynn C. Jones, and Anna-Maria Marshall argue, “[s]ocial movement success arises not from changing the law per se, but rather in changing the ability of formerly marginalized groups to now exercise additional power in the changing dynamic it negotiates through and with the law.”\textsuperscript{29}

Obviously at stake in the reparations programs in states like North Carolina and Virginia for sterilization victims are the archives that would have remained buried but for the work of Johanna Schoen, an historian of reproductive rights, gaining access to the records and sharing them with journalists at the \textit{Winston Salem Journal}.\textsuperscript{30} This type of historical archival work and the significance

\textsuperscript{29} Scott Barclay, Lynn C. Jones & Anna-Maria Marshall, Two Spinning Wheels: Studying Law and Social Movements, 54 Studies in L. Pol., & Soc'y (Special Issue) 1, 3 (2011).
\textsuperscript{30} See Scott Sexton, Are Victims of Eugenic Sterilization Program Any Closer to a Fulfillment of Promises, WINSTON-SALEM J. (June 29, 2014), https://www.journalnow.com
it has for public policy and the law today, however, has been a prominent discussion across the disciplines in the last few decades, evidenced by recent literary and artistic engagements with the archive that I discuss in this section.31 Vivian May argues that it is an intersectional framework, in part, that has produced this engagement with the archives, explaining that

[Intersectional reinterpretations (or interruptions) of history . . . are a means of situating oneself, or one’s group, within histories of resistance. Acknowledging this wider trajectory effects an important “rupture” in collective and individual consciousness: it opens up possibilities, past and present, by denaturalizing oppression and presenting it as an ongoing process, not an accomplished (and implicitly unchangeable) fact . . . .] In asking whose voices have been heard, documented, or recognized, intersectionality not only raises questions about who “counts” as a knower, but also what counts as evidence of resistance or insurgency: in so doing, it entails a redefinition of the past, a rethinking of the archive.32

In contemporary theoretical work on archives, archives are no longer seen as mere repositories of records, evidence of past events, but the “traces” of those events that link past and future, according to our own uses of them.33 As Jacques Derrida argues, “there is no political power without control of the archive, if not of memory. Effective democratization can always be measured by this essential criterion: the participation in and the access to the archive, its constitution, and its interpretation.”34 To struggle with legal and medical archives as forms of power, particularly as they have the ability to reproduce ideological systems of race and gender hierarchy, then, requires unconventional methods to “excavate” the human subjects dehumanized in their records.35 Chandan Reddy argues that,

[Like all archives, the law . . . as an archive is not simply an institutional site for the recording of the past and of historical and social difference. Rather, it is a framework that, ironically, promises its reader agency only through the perpetual subjugation of . . .]
differences, a subjugation, then, that targets not only the past but also the future. Indeed the law as an archive addressed to the citizen or potential subject of "civility" seeks, above all, to be an archive of the future.36

The feminist anti-archive, then, not only challenges the social architecture of the past, but demonstrates how the archive limits our understanding of the past to that

[empty homogeneous time [that] is the utopian time of capital. It linearly connects past, present, and future, creating the possibility for all of those historicist imaginings of identity, nationhood, progress, and so on that [Benedict] Anderson, along with many others have made familiar to us. But empty homogenous time is not located anywhere in real space—it is utopian. The real space of modern life consists of heterotopia... Time here is heterogeneous, unevenly dense.37

One example of this kind of archival engagement as collective resistance is the "Anarcha Project," a performance collective on the stories of Anarcha, Betsey, and Lucy, the three enslaved black women who were subjected to serial surgeries at the hands of Marion Simms, memorialized as the father of gynecology.38 One of its organizers, Petra Kuppers, writes in Remembering Anarcha: Objection in the Medical Archive, that "[t]he archives of medicine give me little help in accessing the being-in-the-world experienced by someone other than myself... The distance the archive enacts, the 'objective' abstraction necessary to the generation of data, keeps me away."39 Kuppers argues that the systemic domination that produces some human subjects for experimentation is part of the architecture of the archival record.40 In the case of Anarcha, Betsey, and Lucy, the anti-archive seeks some form of representation that Kuppers calls a "sticky web" that makes us more "sensitive to the level of interpretation" and "claim[s] that surround[] historical embodiment" without further objectifying victims.41 The creative act of decolonizing the archive means bringing heterogeneity to concepts of historical time,

39. Id.
40. Id. at 2–3.
41. Id. at 6.
so that feminist anti-archives depend on a creative weaving of new connections between past and present that are neither there, wait­ing to be found, nor linear in their address to the future. In this way, the creative projects discussed here create that “sticky web” between past and present formations of reproductive oppression to imagine futures of reproductive justice, showing how dependent those reparative claims are on epistemic witnessing.

Over the course of the last two decades, Carrie Buck has emerged as an important historical figure because she was chosen as a constitutional test case for eugenicist Harry Laughlin’s model sterilization law,42 new scholarly attention to the history of eugenics has focused on the 1927 U.S. Supreme Court decision in Buck v. Bell that legalized the sterilization of citizens who had been institutionalized by the state.43 However, no trace of Carrie Buck’s own self-making exists to distinguish her from the numerous others steril­ized under the more than thirty U.S. state laws passed in the early twentieth century.44 Buck was a young white woman living with a foster family, the Dodds, who was raped by one of the family members; when they discovered her pregnancy the Dodds had her admitted to the Virginia asylum where her mother was already institutionalized and where Carrie gave birth to a daughter, Vivian.45 Medical historians have spent many years “proving” that Carrie’s diagnosis as “feebleminded” in 1924 was a fabrication, relying on the very records used to sanction her sterilization.46

The medical-legal and welfare archives leave a rich accounting of her case—the details of her mental, emotional, and physical status—but Carrie is subjugated through the archive at the same time that it claims to give her historical presence.47 Her name is archived over and over as part of the process of objectification: her condition, her medical status, her social status in social worker files,

42. Ordover, supra note 19, at 135-36.
44. Ordover, supra note 19, at 134.
47. See sources cited, supra note 46.
asylum files, eugenics records, letters between doctors and eugenicists and lawyers, court files, and transcripts.48 These institutional documents construct the epistemology in which Carrie is named and renamed, in the medical records as “feebleminded”; by Justice Holmes as an “imbecile”; in the words of Albert Priddy, the superintendent of the Virginia State Colony for Epileptics and Feebleminded, where Carrie was an inmate; Carrie is of the type of “the shiftless, ignorant, and worthless class of antisocial whites of the South.”49

These are definitions of Carrie, not descriptions of any condition that she may have had. She embodies a condition that afflicts society, a difference that threatens (“worthless” “shiftless” and “anti-social”) its well-being.50 In Carrie’s case, we can see, as Reddy argues, that the archive is a site for the regulation of difference as hierarchy.51 According to Reddy, understanding the limited epistemology of the archives requires asking:

how regulation marks its interest in difference... requires reading these figures [of the archive] against the grain of the archive, situating that archive within and against the social formation—the forces and relations that constitute it... to read the figure as the limit of the archive, the point at which the archive’s own conditions for existence might be retraced.52

In the twenty-first century, Carrie became a figure of interest to historians of the eugenic project, but also to feminists, particularly those invested in reproductive justice—perhaps because she figures not at all in the feminist archives of the 1920s.53 Feminist approaches to the archive ask not about the evidence that supports Carrie’s diagnosis and substantiates her sterilization, but question those “forces and relations” that constitute the archive, “those conditions for existence” that create Carrie as a limit figure of “threat” to the well-being of society and, thus, the figure that holds together the epistemology of the “universal,” “the normal,” the not-shiftless, the not-ignorant—the not-worthless, the not-antisocial class of whites.54

48. See LOMBARDO, THREE GENERATIONS, supra note 46, at 15–35; see also COHEN, supra note 45.
49. COHEN, supra note 45, at 2, 194; LOMBARDO, THREE GENERATIONS, supra note 46, at 134.
50. LOMBARDO, THREE GENERATIONS, supra note 46, at 134.
51. See Reddy, supra note 36, at 29.
52. Id.
54. COHEN, supra note 46, at 2, 194; LOMBARDO, THREE GENERATIONS, supra note 46, at 134.
This process is complex, however, since it must also account for the erasure of Carrie’s subjectivity from the archive without ignoring her objectification as a historical presence that gives meaning to the nature of personhood and citizenship. This retracing also means retracing the regulatory ideals of liberal, white feminism as one of the conditions that make this archive possible.

Thus, the projects discussed here all recover Carrie’s story as a feminist story, as part of a process of reimagining intersectional feminist approaches to the body, delinking feminism from the enterprises of contemporary neoeugenics that oppress poor and/or women of color under the sign of “universalit.” These projects align themselves with Carrie and with an alternative history of feminism that lends itself to a transformative politics of reproductive justice. Creating a web of meanings that suggest new ways of thinking about how the reparative claims of victims are recognized by the state and in public policy as well as theorizing the frames through which reproductive justice should be debated.

The history of feminist arguments for reproductive justice cannot be understood without a recovery of the premises that violate the bodily integrity and autonomy of Carrie Buck as well as the premises that defined her as unfit for reproduction and parenting. As Alexandra Minna Stern argues, “when the reproductive and erotic body is highlighted, an uninterrupted line can be drawn from the sterilization laws passed by state legislatures in the 1910s that targeted ‘morons’ and the ‘feebleminded’ to the sexual surgeries performed by federal agencies on poor female welfare recipients during the 1960s.” This “uninterrupted line” appropriates the premises of the archive for the future rather than challenge those premises. The feminist anti-archive disrupts that line and redirects our attention to other frameworks of understanding.

Queer, disabled artist Eli Clare titles their piece “Yearning Toward Carrie Buck.” This “yearning” toward Carrie as an omission in the feminist archives speaks a desire for feminist reparations that

57. HASIAN, supra note 53, at 87.
58. See id. at 73–74.
59. ALEXANDRA MINNA STERN, EUGENIC NATION: FAULTS AND FRONTIERS OF BETTER BREEDING IN MODERN AMERICA 7 (Univ. of Cal. Press 2015).
60. See id.
go beyond the meager apologies some governors have made to the victims of eugenic sterilization in their states.\textsuperscript{62} Clare seeks the voice and the feelings that the archive has repressed, but they also seek to recognize Carrie’s silence as part of the archive’s necessary conditions.\textsuperscript{63} Clare imagines a future solidarity that does not erase feminism’s absence/presence in the eugenic archive. In place of Carrie’s voice, Clare imagines Carrie’s body as the archive’s suppressed text, its domination a condition of the archival record: “I can almost see the word imbecile etched on your belly, each letter a thin line of scar. Trapped, hounded, desperate—you were released only after John Bell cut into you on October 19, 1927. The body as gut and bowel, hope and dread, literal trash.”\textsuperscript{64} Carrie’s body is not only trash, disposable, but a blank space made legible only through the linked archives of surgical and legal documentation, a record of her own debasement which is “instrumentalized in the service of the regulation of difference.”\textsuperscript{65} Carrie is not citizen, but a placeholder of a population: “Have the historians forgotten? There’d be no story without Carrie’s body. The body as gristle and synapse, water and bone, pure empty space, the body as legal precedent.”\textsuperscript{66} But Carrie’s body is mathematical as well—quantitative and generative; pseudo-statistics estimate her normality, three generations the limits of the court’s recognition of her rights, zero the number of times feminists expressed solidarity with Carrie in 1927.

Clare addresses Carrie through identification with the ableist narration of Carrie’s story by historians and feminists.\textsuperscript{67} Clare tells Carrie, “recent historians seem to think the court case and your sterilization might have been less a travesty if you had been intellectually disabled. They want to believe in real imbeciles. I, diagnosed mentally retarded in 1966, imagine, yearn, stretch toward you, judged feebleminded in 1924.”\textsuperscript{68} Clare’s investigation of the archives, like the investigation of historians, shows that Carrie’s labeling has less to do with mental ability and is instead a fabrication of the patriarchy: raped and blamed and revictimized, the archive connects

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\item \textsuperscript{63} See Clare, supra note 61, at 337.
\item \textsuperscript{64} Id. at 338.
\item \textsuperscript{65} Reddy, supra note 36, at 29.
\item \textsuperscript{66} Clare, supra note 61, at 336.
\item \textsuperscript{67} See id. at 341–42.
\item \textsuperscript{68} Id. at 342.
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sexuality and gender identity to mental and moral capacities, refusing women autonomy and bodily integrity. But why, asks Clare, is it important to proclaim Emma, Carrie, and Vivian as not-imbeciles? What would have been justified if they were found to have intellectual disabilities? In thinking about the limit embodied in Carrie for the feminist archive, Clare asks: when we strike down the facts of the archives, in our zeal do we leave intact its premises?

Similar questions haunt Rory Dawn, the child narrator of Tupelo Hassman’s novel *Girlchild*. Rory Dawn wants to understand Carrie Buck’s experience as non-mother in the social worker archive, stripped of her right to mother Vivian. The novel begins with Rory telling readers about her own mother’s missing teeth; the gap was always there to remind her mother of who she was, keeping her from ever feeling comfortable laughing: “[i]t’s the same with being feebleminded. No matter how smart you might appear to be later with your set of diplomas on their fine white parchment, the mistakes you made before the real lessons sunk in never fade.” Rory steals the social worker file on her mother and resists its degraded labeling of her mother, and when a man in their trailer park begins sexually abusing her, she befriends a possibly imaginary girl named Vivian Buck. When Vivian disappears, Rory rediscovers her in the pages of a library book and decides to write a report on Carrie Buck’s case: “Mama was right. I did find her again, and after spending all this time alone, finding my best friend right there on page 237 feels like an exclamation point in my heart.” Rory begins to see herself as a “feeble-minded daughter of a feeble-minded daughter” in the outlines of Viv’s story: “[t]he thinking on [Justice] Holmes’s part was that if members of the white race behaved in undesirable ways, these behaviors would creep into the upper classes like weeds, root down deep, and put the choke on the delicate hybrids growing up around them.” Hassman emphasizes the racialized class dimensions of Carrie’s story, demonstrating the threat to the white supremacist state that poor white women’s unregulated sexuality represents.

69. *See id.* at 335–42.
70. *Id.* at 341.
71. *See id.* (discussing these questions about disability rights, sexuality, and class); see also Michelle Oberman, *Thirteen Ways of Looking at Buck v. Bell: Thoughts Occasioned by Paul Lombardo’s Three Generations, No Imbeciles*, 59 *J. LEGAL EDUC.* 357, 388 (2010).
72. TUPelo Hassman, GIRLCHILD 182 (Farrar, Straus & Giroux 2012).
73. *Id.* at 182.
74. *Id.* at 3–4.
75. *See generally id.*
76. *Id.* at 171.
77. *Id.* at 174.
78. Hassman, supra note 72, at 172–73.
At the end of the novel, after her mother is killed drunkenly trying to cross a street with no crosswalk and no signal, Rory Dawn commits her story to the anti-archive by burning down their trailer and taking off for parts unknown: “[t]he Fourteenth Amendment’s flag flies in triumph for Roe and Brown but it still hangs at half-mast in the case of Buck v. [sic] and I can’t let that stand. I may not have been born captain of this boat, but I was born to rock it.”79 Rory refuses state care because in writing her C-essay about Buck v. Bell, she comes to understand the denial of personhood is committed against Vivian as well as Carrie:

Viv and I share this history. These are our mothers and the beliefs that touch us and the words that judge us and like the entries in the encyclopedia, there’s no keeping just the good parts and separating the rest. Mothers and grandmothers might align Viv and me but the Man does the rest. We’re like shoes tied tight together and thrown over electrical wire; every pulse going through that wire goes right through us.80

Rory Dawn replaces the social worker’s estimate of her mother and in so doing reminds us that Carrie was a mother, that Vivian was taken away from her as a newborn and delivered back to the same foster family in which Carrie was raped, fulfilling the closed circular logic of eugenic ideology.81

Both authors approach Buck not only from the perspective of reproductive autonomy as an adult woman facing state violence, but that of a girl child stigmatized by a system that tracks her into channels of adult failure.82 The meaning of Buck for contemporary reproductive justice is also a record of institutional violence against the female body, as rape is institutionalized as the girl child’s deviance.83 This institutionalization of violence is enacted in the archive that records domination as poor women’s sexual and reproductive deviance—the family, the school, the state institution, and the courts deny Carrie her parental rights in incorporating her daughter back into the same family that victimized her.84 The archive records no resistance on the part of social workers to Carrie’s institutionalization, her sterilization, or the denial of her parental rights.85

79. Id. at 176.
80. Id. at 182–83 (emphasis added).
81. See id.
82. See generally id.
84. See Gould, supra note 55 (emphasis added).
85. Id.
This focus on the social worker file demonstrates a link between the “unfit” and the feminized role of the social worker in protecting the interests of the state.86 In 2014, NYU’s Asian/Pacific/American Institute produced a series of performances as part of its exhibit titled “Haunted Files: the Eugenics Record Office,” an immersive recreation of the Long Island eugenics archives.87 In one piece “Unheard Voices,” a creative resignification of the archives occurs through the juxtaposition of the records88 of the social worker and Smith alum Margaret Andrews, and the voice of her “unfit” biracial “client” Hazel Whiteman, reversing the powerful function of the state and placing the power of perspective in the audience’s ears.89 Like Carrie, Hazel is taken in by a foster family that puts her to work and is raped by her foster father, ending up pregnant and “immoral.”90 The social worker tells the audience that she has been “bred to be caring” and is genetically predisposed to “compassion,” but she has Hazel’s baby taken away at birth, stating, “too heavy to lift” but “too useful to throw away.”91

This web of interpretation connects Carrie and Hazel demonstrating the state’s linking of “unfitness” to its investment in exploiting poor girls’ labor.92 The categorization of Carrie and Hazel’s placement as “care” is shown to be a systemic investment in providing the domestic labor of poor girls to middle-class families.93 In fact, what makes Carrie’s case different from previous cases brought before the courts is that her sterilization was placed within the framework of deinstitutionalization—once sterilized the “feebleminded” could be paroled and trained to do menial work; like Hazel, Carrie was expected and did return to the domestic work that she had been doing before her institutionalization.94 Dr. Priddy argued at Carrie’s hearing that she “could be released and earn a living as a housekeeper. Because the demand for domestics in housework is so great,’ probably ‘half of our young women of average intelligence’

86. Id.
88. See generally Petra Kuppers, Identity Politics of Mobility: Kara Walker and Berni Searle, 5.1 PERFORMANCE PARADIGM (May 2009).
89. Haunted Files, supra note 87.
90. Id.
91. Id.
92. Id.
93. Compare LOMBARDO, THREE GENERATIONS, supra note 46, at 132, with Haunted Files, supra note 87.
94. LOMBARDO, THREE GENERATIONS, supra note 46, at 132.
could be placed in jobs, but that practice was discontinued because of the 'constant chance of them becoming mothers,' he said. 95

Hazel's record is found in an archive separate from Carrie's. 96 The same year that Virginia passed its model sterilization law it passed its law prohibiting interracial marriage. 97 In 1925, a Virginia eugenicist ranted, "[n]ot a few white women are giving birth to mulatto children. These women are usually feebleminded, but in some cases they are simply depraved. The segregation or sterilization of feebleminded females is the only solution to the problem." 98 Clare, in their work, approaches the archives again, searching for the records of forced sterilization for Virginia's residents of color from the 1920s, writing, "I need to ask: in what ways did Carrie's whiteness protect her?" 99 As Rory Dawn recognizes, Carrie's body is an instrument of normative whiteness, a case put forth specifically from the white asylum to reduce the number of interracial children born to white women. 100 Clare presses against the limits of the archives' segregationist orderings to ask about its omissions (what is not in these records of the white asylum, showing us how archives lie). If Carrie emerges as a historical test case, thousands disappear into the geography of institutional hierarchy and racist oppression. Carrie embodies segregationist obsessions with racial purity and her records become its expression of the concern with establishing white normativity through control of poor white women's sexuality. The reclaiming of Carrie is the claiming of kin, not through genetic records of the archive, but in the recognition of the archive's categorization, its obsession with the scientific recording of race, of mental ability, moral capacities, as a compulsion of classification in the service of legitimating the structure of its own making—and in the process, creating difference as hierarchy, as value.

In a piece that resembles Clare's "yearning" toward Carrie, Cara Page performs "A Poet Psalm for the Mismeasured," for those who became the "brick and mortar" for scientific genocide, declaring "we reclaim you these discarded bodies" and "we release you from your

95. Id.
96. See generally Haunted Files, supra note 87.
98. Clare, supra note 61, at 340.
99. Id. at 339.
Page and Clare build an anti-archive by raising the dead from its files, in a fashion that somewhat eerily resembles Rory Dawn's surrection of an invisible friend, Vivian, to help her survive the abuse she suffers. Clare brings her address to Carrie to a close by addressing herself to contemporary feminists, stating:

[b]eyond the histories, I imagine a congress of sterilized women and men—raging, fierce, grief filled. Puerto Rican women sit with Appalachian men. First Nations teenagers sit with self-described mad women. Disabled folks who have lived their entire lives locked away in state-run hospitals sit with southern Black women who know all too well the words *Mississippi appendectomy*, the meaning behind them. Women of color ordered by judges or paid to take Norplant sit with women tricked into signing tubal ligation consent forms. They won't be asking for apologies nor giving absolution, but rather holding remembrance, demanding reparation, planning revolution.

Clare's ending points us toward a future that imagines reproductive justice out of the revolutionary demands of communities in coalition, that recognizes sterilization as a collective harm to communities as well as a violation of bodily integrity and personhood of those already made vulnerable by a racist patriarchal state. This vision recognizes difference and signifies coalition in the struggle for reparations.

This vision is very different from what has occurred and is occurring in states such as North Carolina and Virginia which have gone through legislative processes to provide compensation for victims.

First of all, in North Carolina, the term "reparation" was purposely dismissed as opening a door to discussions of reparations for slavery, signaling the state legislature's and the Governor's task force's desires to limit the scope of historical and political discussion. The framework brought to bear on these processes is neither victim-centered nor informed by principles of reproductive justice as outlined by Ross and Solinger. In other words, as Ordover argues, the

102. Clare, supra note 61, at 343.
103. See id.
105. Brightman et al., supra note 1, at 474–93.
106. Id.; see also Final Report, supra note 104 (containing the minutes of each meeting.
processes of apology and compensation are for an event that happened in the past, "mistakes" that must be recognized, so that we can learn and they never happen again, despite the evidence that such injustices continue and that eugenic logics clearly emerge as the logic behind other U.S. public policies of reproductive and economic rights. ¹⁰⁷

One of the reasons that North Carolina and Virginia have made so few "compensation[s]" to victims is because of states' requirements that victims produce documentation of their sterilization without consent by the state—and that it be by the state and not a county health department. ¹⁰⁸ Claims of reparative justice cannot be made using the documents of local archives although North Carolina has asked for documentation of those who suffered coerced sterilization. ¹⁰⁹ That archive will document the state's denial of reparations based on the lack of archival documentation. ¹¹⁰

Furthermore, the victim testimony recorded in the public hearings of the North Carolina Governor's task force often shares the same language as the archive. ¹¹¹ Again and again, victims discuss their fitness for parenthood or their sterilized parent's work ethic, parenting skills, or intelligence. ¹¹² The one meeting in which the victims were allowed to tell their stories without interruption is a record of the state's devaluation of the lives of its most vulnerable citizens, but it is also a hearing very much geared to have victims repeat statements of societal "worthiness" that sometimes condemn the indifference and cruelty of the state, but often work not counter to the premises of eugenics but within its binary framing of fit/unfit. ¹¹³

My purpose is not to criticize the victims' stories, but to suggest that little effort has been made to engage in collective consciousness

¹⁰⁷. See ORDOVER, supra note 19, at 201.
¹⁰⁸. See Final Report, supra note 104, at D-5, B-6. There is evidence that many people were sterilized under the stamp of "eugenics" by county and town officials and doctors, but Virginia and North Carolina do not see the state as responsible for compensation. Id. Also, the state has not involved any of the corporations or organizations that funded eugenic sterilization in the process; victims themselves noted that these organizations should be a part of the reparative process and provide monetary compensation. Id.
¹¹⁰. Id.
¹¹². See id.
¹¹³. See id.
raising with the communities harmed by these practices, which might have allowed for more victims to come forward.\textsuperscript{114} Overwhelmingly, what emerges in these stories is the stigma associated with eugenic sterilization, and the state’s lack of concern to have victims, their families, and communities participate in a more transformative collective restorative justice project.\textsuperscript{115} The state has designed the process so that the North Carolina Governor’s task force represents the victims when reproductive justice activists might have been engaged to work with the communities and groups most affected by reproductive oppression—which would have also been those communities most oppressed by the state as well.\textsuperscript{116}

Moreover, Nancy Ordover argues that eugenic practices in care for those with physical and cognitive disabilities, and how disability is socially defined, have been mostly absent from discussion:

\begin{quote}
[from the passage of the earliest sterilization statutes, warnings have been issued on the repercussions of eugenicists’ assaults on the “feeble-minded.” Eugenics opponents noted that women and people of color were frequently and erroneously so designated, and cautioned that endorsements of compulsory sterilization of the disabled would lead to an ever-widening circle of candidates among other reviled groups. Ironically, while physically and developmentally disabled women have historically been among the most prone to eugenic attack, their precarious position has rarely been viewed as anything other than an alarm, a call to safeguard the rights of [the] nondisabled, though otherwise marginalized, individuals and groups.\textsuperscript{117}
\end{quote}

Similarly, Johanna Schoen, whose turning over of the eugenic files to journalists eventually resulted in this compensation process, argues that intersectional reproductive justice frameworks have been mostly ignored.\textsuperscript{118} Schoen believes this is because the dominant

\begin{itemize}
\item \textsuperscript{115} See \textit{Final Report, supra} note 104.
\item \textsuperscript{117} Ordover, \textit{supra} note 19, at 195 (footnote omitted).
\item \textsuperscript{118} See \textit{generally Johanna Schoen, Choice and Coercion: Birth Control, Sterilization, and Abortion in Public Health and Welfare 247} (Univ. N.C. 2005).
\end{itemize}
paradigm of women’s sexuality and motherhood is embedded in eugenic logics:

Women’s reproductive rights . . . and particularly the reproductive rights of welfare recipients, remain a contested issue. In fact, I would suggest that the public discussion . . . centered on race at the expense of reproductive rights because a great many people in this country continue to believe that women should not have children while they are receiving public assistance.119

An intersectional approach would not separate discussions of race and reproductive justice, particularly in discussions of welfare rights and motherhood because, historically, racist stereotypes of black women have been used to defund programs such as Temporary Assistance to Needy Families (TANF) and Medicaid.120 These racist stereotypes are at the root of support for such programs as workfare, child caps, and time-limits in the receipt of TANF benefits, passed as part of the bipartisan Personal Responsibility and Work Opportunity Reconciliation Act of 1996.121

Theses compensation processes offer no transformative thinking about the relation between the archives and contemporary structures of oppression that might be used to put in place the economic structures, public policies (including the healthcare system), and social safety structures that reproductive justice requires.122 Nor does the process seek to place eugenic sterilization within a reproductive justice framework that would connect it to contemporary issue such as the criminalization of pregnancy, discrimination against pregnant women, and currently, the separation and detention of minors from their refugee parents and the ability to lie to women seeking abortions, which are all reproductive justice issues.123

The “single-issue” platform of abortion negates the ways that eugenic logics, patriarchal dominance, and white supremacy continue to define processes of public policy making and how little mainstream liberal attention is given to issues that do not fit within the white liberal feminist definition of a reproductive rights issues (i.e., birth control, abortion).124 Loretta Ross and Rickie Solinger provide one example of how such limited thinking results in an essentializing of

119. Id.
120. See JAEL SILLIMAN ET AL., UNDIVIDED RIGHTS: WOMEN OF COLOR ORGANIZE FOR REPRODUCTIVE JUSTICE 9, 162 (South End Press 2d ed. 2016).
121. Id. at 162.
122. See id.
123. Id. at 9.
124. See id. at 5.
gender and is detrimental to the bodily autonomy and integrity of women of color. 125 In 2011, in Mississippi, pro-choice activists financed a successful campaign to defeat a “personhood” initiative on the ballot, but did not give equal funding and education to linking this issue to an initiative to further restrict voting rights in the state, and the initiative passed:

African American women working in Mississippi and throughout the South were profoundly disappointed that some mainstream feminists failed to understand the intersection between women’s rights and voting rights. This failure demonstrated how single-issue feminism could be used to perpetuate white supremacy and thwart human rights, even in the twenty-first century. 126

Equally important, in ignoring how eugenic sterilization of Black women is part of ongoing attempts to control and regulate their sexual and bodily integrity and ability to mother, these processes ignore the origins of eugenic logics in the enslavement of Black people and the genocide of indigenous peoples:

[S]lave women’s wombs to sustain the system of slavery provided an early model of reproductive control. “Eugenic ideas were perfectly suited to the ideological needs of the young monopoly capitalists,” Angela Davis points out, as their “[i]mperialist incursions in Latin America and in the Pacific needed to be justified, as did the intensified exploitation of Black workers in the South and immigrant workers in the North and West.” It is no wonder that the movement was financed by the nation’s wealthiest capitalists, including the Carnegie, Harriman, and Kellogg dynasties . . . . [a]lthough eugenic policies were directed primarily at whites, they grew out of racist ideology. 127

II. CHRONIC HARM: REPRODUCTIVE JUSTICE AND THE EXPLOITATION OF CARE LABOR

In this final section, I consider another case that seems to be illuminated from an intersectional reproductive justice approach to

125. See Ross & Solinger, supra note 20, at 117.
126. See id. at 114 (citation omitted); see also Tanya Ann Kennedy, Feminist Ideology and the U.S. Supreme Court: A New Era? Speech at the National Women’s Studies Ass’n Annual Convention (Nov. 2014) (offering another argument that links reproductive justice and Harris v. Quinn to the voting rights act. After 2016, intersectional feminist education on voting suppression and white supremacy as feminist issues has been occurring more frequently).
127. Roberts, supra note 46, at 61.
the archives, the Supreme Court case *Harris v. Quinn*. In that case, Pamela Harris, the caregiver for her disabled son, received a Medicaid subsidy from the state so that she could take care of him in her home. However, Harris objected to paying union dues to the Service Employees International Union (SEIU), which represented health care workers in Illinois who were paid by the state to act as personal attendants in the home. Although Harris was not required to join the union, she was required to pay union dues, according to the “fair share” law designed to prevent workers from accepting the benefits of the union’s collective bargaining without contributing to its financial support. The Supreme Court decided that the state was only a “partial” employer and that the true employer was the client with a disability. The Court further concluded that caregivers supported by Medicaid funds could not be compelled to pay union dues because the client was the “true” employer.

As a jointly authored piece in *The Nation* pointed out, the majority opinion threatened state employee unionism but was also aligned with a racist patriarchal tradition of excluding care work from labor protections:

> [the majority opinion in] *Harris* is an extension of a different tradition in American labor law, the denial of rights to workers in industries dominated by female and non-white workers. Far from universal, the major New Deal labor laws—the National Labor Relations Act, the Social Security Act and the Fair Labor Standards Act—explicitly excluded particular occupations, including farm work and domestic labor, which had large numbers of

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130. *Supreme Court Asked to Hear Case Seeking Return of Union Fees*, NAT’L RIGHT WORK LEGAL FOUND. (May 21, 2018), https://nrtw.org/news/riffey-cert-05212018/[https:// perma.cc/8QLL-0T8A]. Several caregivers joined this lawsuit with Harris as the lead petitioner, and thus, the “face” of the lawsuit. The National Right to Work Legal Defense Foundation funded the lawsuit. Id.


132. See id. at 2638.

133. See id. at 2634–38.
female, African-American and Mexican-American workers. While some racially and sexually biased exclusions were later eliminated, *Harris* effectively extends this history of discrimination.\textsuperscript{134}

In direct contrast to the undervaluation of this labor, Justice Kagan argued in her *Harris* dissent that "[s]uch a ruling subverts the state’s determination of these labors as being of the utmost public interest."\textsuperscript{135} Kagan’s emphasis on the connection between quality of care, and wages and benefits challenges the Court’s attempt to devalue in-home-care work.\textsuperscript{136} Because of collective bargaining, Kagan argues home-care assistants have nearly doubled their wages in less than 10 years, obtained state-funded health insurance, and benefited from better training and workplace safety measures. . . . The State, in return . . . believes it has gotten a more stable workforce providing higher quality care, thereby avoiding the costs associated with institutionalization [of home care clients].\textsuperscript{137}

The case of *Harris* raises significant questions about the organizing models of poor workers’ unions.\textsuperscript{138} The incorporation of home health care attendants into the SEIU was the result of a decades long struggle to organize workers who had previously been excluded from traditional unions and the most important national labor laws of the twentieth century.\textsuperscript{139} These early organizations developed out of worker centers and community organizations such as the Association of Community Organizations for Reform Now (ACORN), as well as early domestic workers organizing at the local level.\textsuperscript{140} Such organizing had to address what Nancy Fraser has identified as the “injustices of redistribution, recognition, and representation[.]”\textsuperscript{141}

Poor workers and their allies have approached worker organizing through community and social justice movement models that implicitly reject the limited structures of traditional unionism that has, as Susan Porter Benson argues, “devoted most of its energy to enhancing the privileges of a constituency that was already in a position of privilege because of its race and gender.” 142 Vanessa Tait argues that these unions “usually begin their organizing in the community, taking on multiple issues outside the usual scope of representation, such as affordable housing, health care, childcare, racial and gender discrimination, and police brutality.” 143 According to Tait, “[these] unions offer a different vision of what the labor movement can be: activist based, inventive, adventurous, and infused with ideals of social justice and equality.” 144

This struggle for worker rights including the right to collective bargaining has been centrally about the “rights of poor women as both clients of and workers for the welfare state.” 145 This fight led ultimately to health care workers incorporation into the SEIU after decades of struggle, seen as a hard-won revival of unionism due in part to SEIU’s work to reach out to workers previously excluded from unions. 146 For example, Bruce Nissen argues that SEIU’s social movement orientation accounted for its success in organizing Florida nursing home workers. 147

However, Eileen Boris and Jennifer Klein argue that the ruling in Harris shows that these two models of worker organizing may have reached an impasse. 148 Boris and Klein raise this question at the end of Caring for America and in their update in Feminist Studies, written as a response to Harris: can the centralizing, top-down, growth-driven model of SEIU address the specific needs of care workers as well as the more activist and client centered approach that has defined Domestic Workers United? Home-care workers and domestic workers have built their organizations through such client-worker care organizations as Caring Across Generations and in coalition with other community organizations. 149

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142. VANESSA TAIT, POOR WORKERS’ UNIONS: REBUILDING LABOR FROM BELOW 15 (South End Press, 2005).
143. Id. at 12.
144. Id. at 2.
147. Id. at 308.
148. See Boris et al., supra note 134.
149. BORIS & KLEIN, CARING FOR AMERICA, supra note 145, at 151–52.
Further questions are raised for feminist organizers and workers' rights advocates by the patriarchal framing of Harris.\(^{150}\) What are the limits for incorporating home-care workers into public sector unions when the union includes those who are privileged by the white patriarchal framing of laws that ensure their status as "unpaid" caregivers, while negating the absent structuring of the welfare state in making that status possible?\(^{151}\) This is the subtext of Harris's complaint and Alito's opinion in Harris.\(^{152}\)

While most histories of the case document it as part of a larger orchestrated attack on public sector unionism, it is also a strategic move to resist organizers' attempts to bring together care and labor, to bringing home and work together in a way that frames low-income and no-income women's role as caregivers as central to the state. If we return to the archives that focus on the exploitive use of the "feeble-minded" as domestic workers, then we see the relationship between eugenic sterilization and the logics of the majority in Harris: of utmost interest is the lesser cost to the state through exploitation of women's labor, even if it leaves those who do paid care work in poverty and without the ability to exercise the kind of "ideal motherhood" represented by Pamela Harris.\(^{153}\)

Alito argues that the compelling interest of the state is in providing home-care attendants "to prevent the unnecessary institutionalization of individuals who may instead be satisfactorily maintained at home at a lesser cost to the State."\(^{154}\) In this representation of home care, the rights of the disabled are not mentioned; instead the interests of the state are solely imagined in terms of cost benefit and Harris's willingness to align her interests as caregiver with the interests of the state.\(^{155}\) However, as Boris and Klein point out, most workfare placements for recipients of Temporary Assistance to Needy Families "designated home care, like home-based child care, an appropriate workfare placement only if performed for individuals other than family."\(^{156}\) Thus, the split between care and work is implicit in the treatment of mothers based on their social class, because mothers of children with disabilities are considered deserving of a subsidy to prevent the institutionalized care of their loved ones and mothers receiving Temporary Assistance for Needy Families are not.

Nor are most working mothers able to provide even temporary care by taking leave time from work. For example, Alito's protection

\(^{150}\) See Harris v. Quinn, 134 S. Ct. 2618, 2644 (2014).
\(^{151}\) See generally id.
\(^{152}\) See id.
\(^{153}\) See id. at 2623.
\(^{154}\) See id. (emphasis added).
\(^{155}\) See id. at 2645.
\(^{156}\) BORIS & KLEIN, CARING FOR AMERICA, supra note 145, at 118.
of the relationship of mother and son in *Harris* is in stark contrast to my student who was threatened with the loss of TANF benefits. This happened because daycare enrollment occurred in August while my student did not begin classes until after Labor Day. She was forced to “volunteer” for a month at a local nonprofit. Workfare measures such as this have actually been the impetus, historically, for social justice movements. As Vanessa Tait and Premilla Nadasen have documented, the National Welfare Rights Organization had, in the late 1960s and early 1970s developed a coalition model of “welfare recipients and the working poor, including low-wage workers, rank-and-file union caucus members, domestic workers, and the unemployed.” Since the earliest workfare schemes, workfare activists and low-wage union workers and public sector workers had worked together to avoid being pit against each other, “redefin[ing] welfare in terms of economic justice—the right to a decent job [of] livable wages—as well as the continued political fight for state support of caregiving activities in the home.”

This simultaneous focus on economic justice and social citizenship as caregivers recognizes the need to resist on two fronts the racist and classist frames that guide U.S. public policy and that protect and subsidize Pamela Harris’s care for her son because it is in the “public interest,” whereas excluding poor women’s caregiving from collective bargaining—and, thus, denying that the state receives any benefit from their care labor—

[...]take the capability of Life. Life does not simply appear into the world. It must be reproduced and sustained. Whites have long been advantaged relative to blacks in their efforts to reproduce—and therefore advantaged in coming into being. They have also been advantaged in their efforts to keep the body alive. And, if producing and keeping the body itself alive forms a major part of “so-called” women’s work” [sic] the body politic has helped white women a great deal in their efforts while at the very least neglecting black women in their efforts to do the same. Whites have

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158. Out of this coalition came ACORN and the Movement for Economic Justice—at their roots, the movements developed by poor women of color to bring together the interests of those excluded from the labor and family laws that protect middle-class workers, offering some semblance of economic security and protection from exploitation.
159. TAIT, *supra* note 142, at 179 (citation omitted).
hoarded support for bringing life into being and they have done so in a racialized social context where black women were far more likely to suffer disabling reproductive intervention. Whites have therefore hoarded opportunities to produce healthy infants.\footnote{161 \citep{THREADCRAFT, supra note 114, at 153.}

This hierarchy of “hoarding opportunities” is the case in the Family Medical Leave Act as well.\footnote{162 \citep{See id. at 157.}} Policies such as FMLA make clear that some members of the state are imagined as not being part of a care network that is integral to social citizenship—in which they will expect to care for others and be cared for by themselves at some point in their lives—whereas others are imagined as full citizens precisely through their ability to access FMLA as a benefit of economic and gendered privilege.\footnote{163 \citep{See U.S. DEP’T OF LABOR, Need Time?: The Employee’s Guide to the Family and Medical Leave Act 2 (2015), https://www.dol.gov/whd/fmla/employeeguide.pdf.}}

Current economic and family policies perpetuate and exploit existing class and race inequalities among women to disenfranchise the majority of poor white and Black and Latina workers from accessing basic care for themselves, whereas at the same time symbolically excluding them from the personhood implied in the entitlement to care and economic security. The Supreme Court’s decision reaffirms a system of racist and classist oppression for most women by treating these policies as gender neutral and by arguing that these are cases of “love and care” and not a means of emotional exploitation of women in service of the state and capital.\footnote{164 \citep{See Quinn, 134 S. Ct. at 2618.}} At the same time, the laws produce as an effect the image of Pamela Harris to represent the public face of caregiving as one that insists on its private, apolitical nature.

In all these cases, Pamela Harris, the student in my class, the imagined worker who takes leave, it is women who are the representative worker, but whose status is defined by the state in relational terms—according to the abilities of the child, according to her relation to the employer; Harris is rewarded for her marital status, her class status, and her symbolic representation of “ideal motherhood” but only so far as her interests align with the interests of the state and her work can be defined in relation to her son’s disability—perhaps if institutionalization were cheaper or more convenient for the state, then Harris, too, might find herself excluded from the public interest.\footnote{165 \citep{See id.}}

According to a 2000 U.S. Department of Labor Study, more than sixty percent of low-wage mothers do not have access to paid leave
to take care of a sick child or other family member, but they also do not have access to other options for care.\textsuperscript{166} Whereas more than 77.8% of workers that make at least $75,000 a year are eligible for FMLA, less than 39.8% of workers that make less than $35,000 a year are eligible, and about 73.4% of workers who are in the $35,000 to $75,000 income bracket are also eligible, according to the U.S. Dept. of Labor.\textsuperscript{167} According to the Feminist Majority Foundation:

\begin{quote}
[...] the Department of Labor reports that only 11 percent of private sector workers in the United States have access to paid family leave through their employers. Low-wage workers fare even worse. Only 5 percent of these workers receive paid leave. And research from the Center for American Progress indicates that Black and Latino workers are less likely to be able to access paid leave, even for the birth or adoption of a new child.\textsuperscript{168}
\end{quote}

Providing a gender-neutral unpaid family leave law, according to Deborah Anthony,

overlooks the fact that changing the law merely masks those social stereotypes, assumptions, and expectations of women's caregiving roles and does not repair the problem. A law that refuses to take gender into account is effective only if the private social structure does not itself perpetuate women's inequality, regardless of what the law says.\textsuperscript{169}

It also does not address systemic racial inequalities that keep Black and Latina workers in the workforce in informal or low-wage work and more often makes them both caregivers and breadwinners in the family.\textsuperscript{170}

In this case, the state makes invisible the racist patriarchal assumptions of the structure of labor and public policy, denying that the state benefits from the care work of low-income women—indeed,

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\textsuperscript{168} Burroughs, supra note 166.


\end{flushright}
as we learned from the eugenic archives, the state has systemically exploited that work.\textsuperscript{171} Whereas joining the SEIU offers care workers a means of ensuring access to collective bargaining, it also assimilates workers to a leadership and organizing model that is traditionally based on white male leadership, electoral politics, and shop-centered.\textsuperscript{172} In contrast, Ai-Jen Poo describes how Domestic Workers United (one of the founding organizations of the National Domestic Workers Alliance) began in Asian-American community centers as part of a program that centered on racist and gendered violence.\textsuperscript{173} The organizers discovered that much of the violence domestic workers experienced was at the hand of their employers and that much of the oppression they suffered was structured into their lives as women of color, as immigrants, and as domestic workers.\textsuperscript{174} This organizing model—which has been more successful than traditional union organizers would have predicted—shares a similar consciousness-raising model as reproductive justice organizing (protesting in the street, using worker and community centers based in race-ethnic affiliation as shop floors), argued for legislation (passing domestic workers’ rights bills in several states), and used a pedagogical framework (Caring Across the Generations and Hand in Hand) which educates the public, employers, patients, and their families about care work as \textit{labor}.\textsuperscript{175} It recognizes that economic justice (redistribution) cannot occur without recognition.\textsuperscript{176}

What \textit{Harris} makes clear is that while the SEIU can provide worker security, its model of collective bargaining cannot provide caregivers with “recognition” or “redistribution” in the sense that the Supreme Court decision folds care work back into the framework of the family, and refuses to recognize caregivers as being paid for work, preferring to see the payment as a form of keeping the ideal family “together.”\textsuperscript{177} This ideal family can be seen as a strategy for structuring the care economy as private in two ways that are detrimental to women and care workers: (1) to privatize the system of care (or to keep it private in many cases) in the marketplace, refusing to recognize the state’s obligations to the social welfare of citizens; and (2) to maintain care work in the private family, relying

\textsuperscript{171} See Harris v. Quinn, 134 S. Ct. 2618, 2618 (2014).

\textsuperscript{172} See generally id.

\textsuperscript{173} Ai-Jen Poo & Eric Tang, \textit{Domestic Workers Organize in the Global City, in The Fire This Time: Activism and the New Feminism} 150, 163 (Vivien Labaton & Dawn Lundy Martin eds., 2004).

\textsuperscript{174} See id. at 164.

\textsuperscript{175} Id.

\textsuperscript{176} On redistribution and recognition, see \textit{Nancy Fraser, Justice Interruptus: Critical Reflections on the “Postsocialist” Condition} 23 (Routledge 1997).

\textsuperscript{177} See Harris v. Quinn, 134 S. Ct. 2618, 2620, 2644 (2014).
on women’s free emotional labor. This maintains the historical devaluation of feminized and racialized labor in an economy increasingly devoted to the work of care, but protects and further aligns the interests of the “ideal family” and the state. ¹⁷⁸

It may be an impossibility for domestic workers and home-care workers to translate their labor into “collective bodily presence” within the hierarchical bargaining model used by public sector unions. ¹⁷⁹ It is only feminist social justice movement organizing that can provide a framework for the recognition that leads to economic justice in the care economy.

Obama’s executive order requiring overtime and minimum wage for home-care workers corrects the racist and sexist exclusion from the Fair Labor Standards Act. ¹⁸⁰ But it corrects this wrong of the past without providing a floor for the future of low-income women workers and cannot mandate a shift in the care economy’s exploitation of women. Such an order fails, like the Supreme Court and FMLA, to redress the unequal distribution of precarity as a chronic condition. Poor women, and more especially women of color, have to assert their labor as that which structures public policies of care in both the positive and negative sense. Public policy is still designed to create women of color as the structuring absence of gender- and race-neutral public policies designed to provide social and economic citizenship for some receivers and givers of care and to deny others redistribution, recognition, and representation. ¹⁸¹

Journalist Liza Featherstone puts it this way: feminism needs to be concerned with those “whose bodies prevent them from creating profits for capital” because the contempt with which they are treated shows us that we are all disposable. ¹⁸² This requires struggling against feminist historical collusion with capitalist eugenic framing of the body, including forced sterilization, and the use of state systems to exploit the care of women of color.

¹⁷⁸. See id. at 2620–44.