

Toward an Affirmative Biopolitics

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Abstract

This essay responds to German theorist Thomas Lemke's call for a conversation between two distinct lines of reception of Foucault's concept of biopolitics. The first line is comprised of sweeping historical perspectives on biopolitics, such as those of Giorgio Agamben and Antonio Negri, and the second is comprised of the more temporally focused perspectives of theorists such as Paul Rabinow, Nikolas Rose, and Catherine Waldby, whose biopolitical analyses concentrate on recent biotechnologies such as genetic techniques and the biobanking of human tissues. This essay develops this conversation by bringing the two lines to bear on the neoliberal "bioeconomy" that has developed over the past three decades and uses the perspective of Italian theorist Roberto Esposito to represent the first line. Esposito's unique combination of Foucauldian biopolitics and the Mausean gift tradition provides a critical perspective that engages and challenges the neoliberal inclination of many theorists from the second line.

Keywords

Foucault, Esposito, Rabinow, bioeconomy, gift

In an essay titled "Beyond Foucault: From Biopolitics to the Government of Life," Thomas Lemke (2011a:166, 172) distinguishes "two central lines of reception" of Foucault's concept of biopolitics, and he laments "that for the most part the two lines have developed their problems independently and hardly touch on each other." The first line is composed of philosophers and theorists, primarily Italians, who have developed sweeping historical perspectives on biopolitics that encompass Western culture, ancient through modern (e.g., Hardt and Negri 2000). The biopolitical stances along this "macro-level" (Lemke 2011a:172) line are quite varied, with Agamben ([1995] 1998:123) at the thanatopolitical end, claiming Nazi death camps are "the pure, absolute, and impassable biopolitical space . . . of modernity" and calling for the transcendence of biopolitics; at the other "radically affirmative" (Campbell 2008:xx) end of the line, Hardt and Negri (2000:388) herald the coming "multitude," calling for "the political . . . to yield to . . . the fundamental forces of biopolitical production" (see also Campbell 2008; Lemke 2005, 2011a, 2011b). The first line shares a foundation in philosophy, whereas the

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second line draws from “the sociology of science and technology, the history of science and medicine, and cultural anthropology, together with feminist theory and gender studies” (Lemke 2011a:166) and includes such scholars as Melinda Cooper, Sarah Franklin, Margaret Lock, Paul Rabinow, Nikolas Rose, and Catherine Waldby. This heterogeneous line takes a “micro-level” (Lemke 2011a:172) approach that focuses on the biopolitical implications of specific techniques, such as assisted reproduction, organ transplantation, and embryonic stem cell research (e.g., Franklin 2013; Rabinow and Rose 2006; Waldby and Mitchell 2006).

Lemke suggests that an engagement between these two lines would help illuminate our biopolitical condition, and while I fully agree, some scholars in the second line appear to resist this conversation. Rabinow and Rose (2006:198) in particular “consider the epochal philosophical deployments” of biopower by Agamben and Negri “to be misleading,” primarily due to their neglect of the biopolitical present (see also Rose 2007). Rather than concentrating on the thanatopolitical past or an immanent biopolitics of the multitude, the second line is more concerned with the powerful confluence of neoliberalism and biomedicine that has occurred in the past four decades (e.g., Cooper 2008; Rabinow and Rose 2006), which has turned bits of the human body into commodities that circulate in what Rose (2007) (following the Organisation for Economic Co-operation and Development) calls the “bioeconomy.” Scholars in the second line hold diverse stances toward the neoliberal bioeconomy, with Rabinow’s collaborative position at one end and Cooper’s Marxist-feminist critique at the other. But in general, the second line eschews the first line’s sweeping historical judgments of biopolitics as such in favor of nuanced examinations of specific benefits and dangers of actual biotechnologies produced by the expanding “political economy of life” (Lemke 2011a:170). As Rabinow and Rose (2006:215) put it, “celebration or denunciation are insufficient as analytical approaches.”

This essay responds to Lemke’s invitation as well as the second line’s reluctance to accept it by engaging that line with the work of another Italian philosopher whom Lemke (2011a, 2011b) briefly identifies as part of the first line—Roberto Esposito. In a series of books—*Communitas* ([1998] 2010), *Immunitas* ([2002] 2011), and *Bíos* ([2004] 2008)—Esposito “developed his own concept of biopolitics at a critical distance from both Agamben’s project and the analysis of Hardt and Negri” (Lemke 2011a:169; see also Campbell 2008). The trilogy traces the “thanatopolitical declension” of biopolitics in a manner that critically complements Agamben’s work on Nazism and the camps, but rather than echo his call for the transcendence of biopolitics, Esposito ([2006] 2008:644) instead claims that “the biopolitical shift underway . . . cannot be reversed.” Without going as far in the other direction as Hardt and Negri, Esposito ([2004] 2008:157) cautiously tries to envision an alternative “biopolitics that is finally affirmative. No longer over life but of life.” Unfortunately, he does not directly engage specific affirmative biopolitical techniques produced by the bioeconomy; in fact, the biotechniques Esposito ([2004] 2008) examines most closely are almost exclusively drawn from Nazi medical practices, which has led some scholars to mistakenly dismiss him for his supposed thanatopolitical focus (e.g., Farneti 2011; Meloni 2010). To foster the conversation Lemke calls for, I will concentrate primarily on Esposito’s intimations about an affirmative biopolitical future rather than his analysis of lingering thanatopolitical threats, and will ultimately expand his perspective to encompass some contemporary bioeconomic developments analyzed by the second line.

Esposito is particularly appropriate for initiating this conversation because his biopolitical perspective has been deeply influenced by an important third line of thought—the line of gift discourse—that figures prominently in the development of the bioeconomy and the second line’s analyses of it. This gift discourse began in France more than a half-century before Foucault’s work on biopolitics, and it continued to flourish alongside the lines of biopolitical

reception. The gift line emerged in explicit opposition to utilitarianism and now struggles against the specifically American form of neoliberalism that Foucault linked with biopolitics in his courses from the late 1970s. Although Foucault said nothing about the gift tradition or its resistance to neoliberalism, Esposito's trilogy combines this gift line with Foucauldian biopolitical discourse in a manner that sheds critical light on the bioeconomy and the second line's orientation toward it. Esposito contributes to this gift tradition a genealogy that traces the gift back to Homeric/Platonic myth and locates the origin of community in a particular form of gift, the *munus*, which is the common root of *communitas* and *immunitas*. He links this genealogy of the *munus* with biopolitics through his concept of "the immunization paradigm," which marks *the modern, specifically biopolitical* stage in the evolving relationship between *communitas* and *immunitas*. Esposito's long historical view is therefore unlike Agamben's in that it is grounded in this gift tradition, not biopolitics. In fact, Esposito's treatment of biopolitics as a *uniquely modern* phenomenon is closer to the second line (and Foucault) than to Agamben, which should facilitate the conversation called for by Lemke. However, the second line's analyses of the bioeconomy has led many of these scholars to dismiss the gift tradition as irrelevant at best or pernicious at worst. While some criticism of the gift's role in the bioeconomy is certainly warranted, part of my aim in this article is to encourage the second line to reconsider that tradition in light of Esposito's unique contribution to it.

This article is divided into four distinct sections. In the first, I examine the tension between the gift and commodity that characterized the initial development of the bioeconomy, and I interpret this tension in light of Foucault's late 1970s analysis of the relationship between neoliberalism and biopolitics. In the second section, I discuss Esposito's integration of gift discourse and Foucauldian biopolitics, paying particular attention to the foundational role that Locke's liberalism plays in Esposito's account of the immunization paradigm. This Lockean foundation is frequently invoked in the bioethical dilemmas generated by the bioeconomy, and I discuss one notorious example later in the essay. In the third section, I examine some of the second line's analyses of recent developments in the bioeconomy, focusing on the affirmative biopolitical potential they identify and their concerns about the gift's impedance of that potential. I end this section by suggesting that from an Espositoan perspective, some of these second line stances toward the gift support the immunization paradigm. I clarify this tension between Esposito and the second line in the fourth section by bringing their distinct biopolitical perspectives to bear on the infamous bio-juridico-ethical case of the "Mo cell line," which involves the development of a lucrative biocommodity from the tissues of an unknowing "donor." I offer an Espositoan critique of some prominent second line responses to this case, and I present an alternative affirmative biopolitical response inspired by Esposito's *munus*-based conception of community.

THE GIFT TRADITION AND NEOLIBERALISM IN THE BIOECONOMY

In the second half of the twentieth century, a series of biomedical breakthroughs fundamentally disrupted the idea of the human body as an organism whose preservation depended on the maintenance of its physical integrity. Beginning with blood transfusions during the world wars and progressing through solid organ transplantation in the 1960s and 1970s, assisted reproductive techniques in the 1980s, and genetic and stem cell research in the 1990s, the human body has been transformed into an aggregation of transferable parts whose preservation and reproduction may now require supplementation by tissues from other bodies or therapies derived from such tissues. These and various other biomedical techniques have rendered bits of the body into a source of "biovalue," the term Waldby (2000:19) coined to

describe the “surplus value of vitality and instrumental knowledge which can be placed at the disposal of the human subject” (see also Waldby and Mitchell 2006). The prevalent paradigm used to conduct the exchange of human body parts in these successive stages of bioeconomic development has been a form of gift—the allogenic donation—through which tissues are given freely for others to use. A persistent tension has arisen, however, between this particular model of tissue procurement and commodity-based approaches that appeared with the ascendance of neoliberalism. Although many in the second line agree with Waldby and Mitchell’s (2006:9) claim that “the gift-commodity dichotomy” is an “an inadequate way to conceptualize the political economy of tissues in the modern world of globalized biotechnology,” it is important to note that this tension between the gift and commodity emerged well before the bioeconomy of human tissues appeared, and it was a prevalent conceptual assemblage, or *dispositif*, of the twentieth century.

This tension surfaced with Marcel Mauss’s 1925 publication of *The Gift*, which Esposito (1995:193) aptly describes as “l’architexte” of a line of discourse that presents the gift as a critique of the ever-expanding utilitarianism of modernity. Mauss ([1925] 1990:76) presented anthropological accounts of archaic gift-exchange societies precisely to challenge the instrumental view of human beings as the “‘economic animal’ . . . *homo oeconomicus*.” As an alternative to the commodity-exchange societies produced by these economic animals, Mauss was particularly intrigued by *potlatch* communities, such as the Kwakiutl of Northwest America. In such communities, gifts were reciprocally exchanged in an obligatory and self-interested manner rather than a gratuitous and altruistic one, and social status was determined not by the accumulation of wealth but by the ability and willingness to return even greater gifts than those received (Mauss [1925] 1990). Despite being governed by a “principle of rivalry and hostility that . . . takes on an extremely marked agonistic character” (p. 6), Mauss nevertheless claimed that the three obligations of the *potlatch*—“to give, to receive, to reciprocate” (pp. 39–43)—were the foundation of social integration in these pre-modern cultures. He recognized vestiges of gift exchange in contemporary culture and sought to cultivate them as a check on the “constant, icy, utilitarian calculation” of capitalist societies (p. 76).

When the first widespread intermingling of body parts occurred, with the transfusion of blood during the world wars, the tension between gift and commodity exchange intensified, and it has shaped the bioeconomy ever since. As would be expected in this nationalistic context, voluntary donation was the standard practice for blood procurement among combatant nations; after the wars, the gift remained the prevalent model for gathering blood. England established the Blood Transfusion Service in 1946, which eventually became the National Blood Service, and the American Red Cross began a national civilian donation system in 1948. Blood donation was of particular symbolic potency in France, where it was viewed as a heroic gesture during the Resistance. In 1949, France established the Centre National de Transfusion Sanguine (CNTS), which “was organized and run according to three sacred guiding principles: benevolence, donor anonymity, absence of profit” (Rabinow 1999:79). Nearly half a century after *The Gift*, Richard Titmuss (1971) praised this voluntary blood donation model in *The Gift Relationship: From Human Blood to Social Policy*, claiming that this form of gift was morally superior to Mauss’s *potlatch* because it involved no obligation of reciprocity; blood was exchanged anonymously among strangers, and “[n]o givers require or wish for corresponding gifts in return. They do not expect and would not wish to have a blood transfusion” (Titmuss 1971:74; see also Waldby and Mitchell 2006).

Titmuss (1971) was effusive in praising this allogenic gift model, but he was equally scathing in his criticism of the way some blood was procured in the United States. Voluntary donation was the prevalent technique for procuring blood in the United States during and

after the Second World War, but local blood banks also appeared that paid for “donations” or required recipients to make a deposit of their own blood or that of a proxy (Titmuss 1971; see also Waldby and Mitchell 2006). Titmuss (1971:158) condemned this commodified exchange of blood and warned quite presciently:

blood as living tissue may now constitute in Western societies one of the ultimate tests of where the “social” begins and the “economic” ends. If blood is considered in theory, in law, and is treated in practice as a trading commodity then ultimately human hearts, kidneys, eyes and other organs of the body may also come to be treated as commodities to be bought and sold in the marketplace.

Titmuss’s warning was late, however: U.S. biomedical practices had already infiltrated the voluntary donation systems of England and France. The practice of private blood banking encouraged U.S. pharmaceutical companies to develop techniques for separating blood plasma from red blood cells and “fractioning” the plasma into biovaluable components, such as Factor VIII, a concentrated clotting agent that greatly increased hemophiliacs’ life expectancy. These U.S. companies began to purchase blood from developing countries in the 1970s in order to produce enough Factor VIII to distribute internationally as a bio-commodity. Because France and England could not produce enough Factor VIII through their voluntary donation systems, they imported this life-saving product from U.S. pharmaceutical companies (Waldby and Mitchell 2006; see also Rabinow 1999), “tainting” their gift models by participating in the profitable, commercial exchange of blood.

I will return to this tension between the treatment of blood as a gift and a commodity in the third section, when I discuss the second line’s criticisms of the gift model, but here I want to emphasize that the circulation of blood as a commodity occurred in the particular neoliberal culture that developed in the United States during the postwar period. Foucault examined this American strain of neoliberalism, just as it was about to manifest politically as Reaganism and Thatcherism, in his 1978–1979 Collège de France course *La naissance de la biopolitique*. These lectures were published in French in 2004, along with the lectures from his 1977–1978 course, *Sécurité, Territoire, Population*, as what editor Michel Sennelart describes as a “diptych unified by the problematic of bio-power” (Foucault [2004] 2007:369). These volumes appeared in English as *Security, Territory, Population* in 2007 and *The Birth of Biopolitics* in 2008, which was too late for them to be taken into account in many of the second line’s major works on the bioeconomy. In fact, among the works from the second line cited here, only Cooper’s (2008) *Life as Surplus* actually acknowledges these lectures, and she mentions *La naissance de la biopolitique* in her Introduction only to emphasize that her analysis begins precisely where Foucault’s analysis ended (Cooper 2008:8–11, see also notes 5 and 6, pp. 177–78).¹ I would like to linger a bit on *The Birth of Biopolitics*, however, because these lectures reveal a facet of American neoliberalism that has proven particularly seductive to some members of the second line, other than Cooper.

Foucault distinguished two contrasting models of postwar neoliberalism in *The Birth of Biopolitics*: German “ordoliberalism,” which developed at the University of Freiburg in the 1930s to 1950s, and American neoliberalism, which flourished at the University of Chicago in the 1960s to 1970s. Ordoliberalism sought to create an “enterprise society” that was conducive to market competition but also supported “the reconstruction of a set of what could be called ‘warm’ moral and cultural values which are presented precisely as antithetical to the ‘cold’ mechanism of competition. . . . The enterprise society imagined by the ordoliberals,” Foucault ([2004] 2008:242) emphasized, “is therefore a society for the market and a society against the market” (see also Lemke 2011b; McNay 2009). There was no such

ambivalence in American neoliberalism, which recognized no values beyond economic rationality. Rather than treating society as a check on the extension of “economic analysis,” as both Titmuss and the ordoliberalists had, American neoliberalism instead saw society as an “unexplored domain” that offered “the possibility of giving a strictly economic interpretation of a whole domain previously thought to be non-economic” (Foucault [2004] 2008:219). The epitome of this American neoliberalism was the “human capital” theory developed at the University of Chicago by Nobel laureates Theodore W. Schultz and Gary Becker, which dissolved the “warm” social values of ordoliberalism into nothing more than individual decisions about the use of scarce resources to satisfy competing ends (Foucault [2004] 2008:222–23; see also Lemke 2011b:109–11).

For the purposes of this conversation about the bioeconomy, Foucault’s most significant point regarding American neoliberalism was that it generated a novel form of *homo oeconomicus*. Classical economists since Smith viewed *homo oeconomicus* as a partner in some form of exchange; indeed, even Mauss’s gift-based challenge to the utilitarian *homo oeconomicus* was framed in terms of exchange. The neoliberalism of the Chicago School, however, presented *homo oeconomicus* as “an entrepreneur, an entrepreneur of himself. . . . [T]he stake in all neo-liberal analyses,” Foucault ([2004] 2008:226) claimed, “is the replacement every time of *homo oeconomicus* as partner of exchange with a *homo oeconomicus* as entrepreneur of himself, being for himself his own capital, being for himself his own producer, being for himself the source of [his] earnings.” A quick survey of the successive stages of bioeconomic development will reveal how this new *homo oeconomicus* became increasingly well established in the burgeoning bioeconomy and may be poised to displace the giving animal, *homo donator* (Godbout 2000:35).

While Schultz and Becker were developing their unique strain of neoliberalism in Chicago in the late 1960s and early 1970s, cadaveric and live organ transplantation techniques were being introduced throughout the medically developed world. By the mid-1970s, an “organ shortage” was announced, first in England in 1975, followed by France in 1976, and then the United States in 1978 (Scott 1981). In response to this sudden corporeal scarcity, nations generally followed the pattern established around the global circulation of blood in the first stage of the bioeconomy; they prohibited the sale of live and cadaveric organs and adopted the allogenic gift model for “harvesting” organs from both dead and living donors. But as with blood and blood products, the gift model was unable to satisfy the demand for organs during this second stage of bioeconomic development, and the neoliberal *homo oeconomicus* quickly responded to this shortage. Underground markets for live organs emerged in several developing countries in the 1980s and 1990s, and since then, a global organ trafficking network has developed (Rothman 1996; Scheper-Hughes 2004). Alongside this illicit market, the political ascendance of American neoliberalism generated proposals for regulated organ markets, such as futures markets in cadaveric organs (e.g., Cohen 1989, 1995; Hansmann 1989) and live kidney sales (e.g., Andrews 1986; Radcliffe-Richards et al. 1998). Although none of these markets have yet been implemented, the intractability of the organ shortage has led some prominent bioethics organizations to consider abandoning strict adherence to the gift model (see e.g., Radcliffe-Richards et al. 1998; Riddick 2003). And of course, Becker, that “most radical of the American neoliberals” (Foucault [2004] 2008:269), co-authored an essay advocating a market for both cadaveric and live organs (Becker and Elias 2007).

Although the neoliberal *homo oeconomicus* has not yet replaced *homo donator* in the procurement of blood or whole organs, it has become well established in the third stage of bioeconomic development, the realm of reproduction, which Rabinow and Rose (2006:208) describe as “a biopolitical space par excellence.” Louise Brown, the first child reproduced

through in vitro fertilization (IVF) was born in England on July 25, 1978, during the summer between Foucault's courses on biopower. As IVF became more common in the following decades, the demand for gametes grew, and national responses to this reproductive bioeconomy ranged from unregulated markets to highly regulated gift models. At the neoliberal end of the spectrum lies the virtually untrammelled U.S. market in gametes, where sperm and eggs are bought and sold through private businesses that advertise detailed descriptions of "donors" online.² At the gift end of the spectrum³ lies France, which prohibits sales of gametes and governs the donation of both sperm and eggs, albeit in an extremely heteronormative manner, through its federation of 23 Centres d'Etudes et de Conservation des Oeufs et du Sperme humain (CECOS).⁴ Between the extremes of the United States and France lie nations like England, Canada, and New Zealand, all of which initially allowed clinicians discretion in arranging payments for sperm and eggs for use in IVF but then in the late 1990s attempted the difficult task of phasing out payments in favor of a gift system (Daniels 2000).

Although Foucault's lectures on biopolitics occurred amid these crucial medical breakthroughs, he never explicitly addressed biotechniques such as organ transplantation or IVF, nor did he take a clear stance on the American neoliberalism that was about to render those techniques into bioeconomic factors. In fact, Foucault's stance toward contemporary neoliberalism has been debated since the publication of his 1977–1978 and 1978–1979 lectures, with some arguing that the courses can help the French overcome their deep-seated antipathy toward liberalism/neoliberalism (e.g., Becker, Ewald, and Harcourt 2012; Behrent 2009, 2010; Donzelot 2008) and others claiming that the courses are more critical of neoliberalism (e.g., Dean 2014; Flew 2012; Lemke 2001; McNay 2009; Zamora and Behrent 2016). I cannot fully engage that debate here, but Foucault does seem agnostic about the extension of the neoliberal *homo oeconomicus* into the expanding range of health and reproductive decisions that the bioeconomy presents to individuals. This is reflected in an offhand comment he offered in *The Birth of Biopolitics* concerning the extension of entrepreneurial thinking into reproductive decisions:

[W]e can perfectly well imagine the following: good genetic make-ups . . . will certainly become scarce, and insofar as they are scarce they may perfectly well [enter], and this is entirely normal, into economic circuits of calculations, that is to say, alternative choices. Putting it in clear terms, this will mean that . . . if you want a child whose human capital, understood simply in terms of innate and hereditary elements, is high, you can see that you will have to make an investment, that is to say, you will have to have worked enough, to have sufficient income, and to have a social status such that it will enable you to take for a spouse or co-producer of this future human capital, someone who has a significant human capital themselves. I am not saying this as a joke; it is simply a form of thought or a form of problematic that is currently being elaborated. (Foucault [2004] 2008:228)

Although these remarks about reproductive decision making now sound both quaint (in the assumption of coital reproduction) and prophetic (in the treatment of children as human capital), it is clear that Foucault neither endorsed nor condemned the human capital approach to reproduction. I am fairly confident, however, that he would have been critical of the extremes to which entrepreneurial thinking has developed in the global reproductive bioeconomy, as depicted, for instance, in the documentary *Google Baby* (2009; see also Waldby and Cooper 2010). This film focuses on an Israeli company that links affluent consumers from various nations with relatively poorer American egg vendors and then arranges to have the in vitro fertilized eggs transported to India for gestation by even poorer surrogates. I am

even more confident that Foucault would have opposed Becker's vision of individuals increasing their human capital by selling a kidney. This confidence is based largely on a 1983 interview with Foucault titled "The Risks of Security," which focused on health care. Foucault (2000:365–366) acknowledged that "our system of social guarantees, as it was established in 1946, has now reached its economic limits," but he also claimed that "we should expect our system of social security to free us from the dangers and from situations that tend to debase or to subjugate us." Selling one's gametes or a kidney due to poverty or renting one's womb for similar reasons, would, I think, count as a form of debasement for Foucault. Whatever his attraction to neoliberalism, Foucault (2000:379) claimed that "it goes without saying that I do not advocate that savage liberalism that would lead to individual coverage for those who have the means to pay for it, and to a lack of coverage for others." In the third section, I show that some in the second line seem more inclined toward the affirmative biopolitical potential of the neoliberal *homo oeconomicus* than Foucault appeared to be. Foucault did not, however, provide solid grounds for resisting the neoliberal allure of the bioeconomy, so before discussing the second line's analyses of recent biotechniques, I will first examine Esposito's interweaving of Foucauldian biopolitics and the gift tradition, to foster a critical perspective on neoliberalism.

ESPOSITO'S FUSION OF BIOPOLITICAL AND GIFT DISCOURSE

Lemke identifies him as part of the first line of biopolitical reception, but Esposito has been just as much influenced by the gift discourse that flourished alongside Foucault's work on biopolitics (Tierney 2016). In fact, while Foucault was offering his diptych on biopower at the Collège de France, Derrida was presenting a seminar on the gift at Ecole Normale Supérieure (1977–1978) and Yale University (1978–1979), which would eventually be published as the influential *Donner les temps (Given Time)* (Derrida [1991] 1992). Shortly after Derrida's seminars, in 1981, the Mouvement anti-utilitariste dans les sciences sociales (Anti-utilitarian Movement in the Social Sciences), or MAUSS, was established by French sociologist Alain Caillé and Swiss anthropologist Gérald Berthoud (Graeber 2000), with the explicit aim of challenging the American neoliberalism Foucault examined in *The Birth of Biopolitics*. In contrast to Foucault's largely descriptive treatment of neoliberalism, Caillé (2001:1) proclaimed that MAUSS was formed in opposition to the "overwhelming development and imperialism of what has been called the 'Economic model' in the social sciences . . . , especially with the Chicago School and the work of Gary Becker." Although this movement remains centered in France, David Graeber (2000) notes that "[b]y the mid-'90s, MAUSS had become an impressive network of scholars—ranging from sociologists and anthropologists to economists, historians and philosophers, from Europe, North Africa and the Middle East." As MAUSS gained in prominence, Derrida presented his seminar on the gift for a third time, in 1991, at the University of Chicago, and then published a slightly altered form of it in French that same year and in English in 1992. Derrida ([1991] 1992:82–83) did not criticize Becker and neoliberalism in *Donner les temps* but instead chastised Mauss for settling on the counterfeit gift of the *potlatch*, which he described as a "system of calculated and not excessive generosity, of the profitable gift." Contra the leading voices in MAUSS, who enshrined the tripartite obligations of the *potlatch* into a model of gift exchange, Derrida ([1991] 1992:13) claimed to be "*departing*, in a peremptory and distinct fashion, from this [Maussean] tradition" by insisting that the gift "must not circulate, it must not be exchanged" (p. 7).

Esposito engaged this gift tradition in "Donner la technique" ("Given Technology"), a short essay published in French in 1995, in *La Revue du MAUSS*, the repository of

contemporary French gift discourse. In the first section of this three-part essay, Esposito (1995:190–94) critically discusses Mauss's and MAUSS's presentation of the gift as an alternative to utilitarianism, and in the second section, he examines Derrida's critique of the Mausean reliance on reciprocity (Esposito 1995:194–99; see also Esposito [1998] 2010: note 23, p. 153). Here I will discuss only the third part (Esposito 1995:199–204), in which Esposito makes his unique contribution to this line of thought by tracing the "origin" of the gift back to the Greeks, recovering an important lesson that is crucial for any analysis of the bioeconomy.

To understand Esposito's lesson, one must first recognize that a fundamental assumption of twentieth-century gift discourse, in all its variations, is that the gift could somehow check the expansion of technological rationality, broadly understood. Whether it is Mauss's struggle against utilitarianism, Titmuss's against the commodification of the body, Derrida's ([1991] 1992:34–70) against "the madness of economic reason," or MAUSS's against Becker's neo-liberalism, all of these perspectives presented the gift as an antidote to an ever-expanding instrumentalism. But the lesson Esposito (1995:200; all translations of this essay are mine) learns from the Greeks is that "the original gift, the first gift offered to men, . . . is precisely technology—the *technai*—in the explicit figure of 'arts' for survival, of 'remedies,' of 'medicines.'" The clearest example of this lesson is from Plato's *The Statesman*, in which "the pilot of the universe let the helm go," and the abandoned world gradually descended toward chaos. To alleviate the "great strait" of a now helpless humanity, "the gifts spoken of in the old tradition were imparted to man by the gods . . . fire was given to them by Prometheus, the arts by Hephaestus and his fellow-worker, Athene, seeds and plants by others" (Plato 1902:v. 3, 557–58; see also Esposito 1995:200). But the Greeks also understood that the gift of technology, like all gifts, has a dual nature: Blessings can easily become curses, and remedies become poisons. Recall Hesiod's (1914:lines II, 42–105) claim that Zeus punished Prometheus's stolen gift of fire by compelling Hephaestus and Athena to create Pandora, the "all gifted," whose "troubled cask" contained countless curses for humanity.

The dangerous nature of the gift of technology is only half the lesson Esposito draws from the Greeks, however. He also reminds us that the gods gave humanity a second gift, "the political, 'given' . . . precisely in order to limit the purely destructive effects of the first gift" (Esposito 1995:202). Here he relies on Plato's version of the Prometheus story in *Protagoras*, according to which Prometheus's gifts to humanity did not include "political wisdom," which he was unable to steal from Zeus's citadel (Plato 1902:v. 1, 121). Consequently, this first generation was unable to use the gift of technology as a community because "when they were gathered together, having no art of government, they evil intreated one another." Fearing for the race, Zeus "sent Hermes to them, bearing reverence and justice to be the ordering principles of cities and the bonds of friendship and conciliation" (Plato 1902:v. 1, 122). According to Esposito (1995:202), these political arts, or *techné*, were given to "affront the *hubris*, the will to be everything, of *technology*," but they can never hope to "heal" or "extinguish" this danger. The ultimate lesson from the Greeks that Esposito (1995:203) insists "must be recalled in any critique of technology," including that of biotechnology and the bioeconomy, is this ancient understanding of the relation between "technology and politics—assuming their difference but also the inextricable entangling of a common origin and, probably, of a similar destiny: *that of a gift that is also abandonment*."

A few years after "Donner la technique" appeared in *La revue du MAUSS*, Esposito published the first volume of his trilogy and picked up where he left off, by performing a genealogy of the second gift from the gods, community. However, he opened *Communitas* not with a discussion of the Greeks but rather with a critique of contemporary "communal, communitarian, [and] communicative" theories of community (Esposito [1998] 2010:1).

Despite their differences, all these theories are shaped by the “ignored assumption that community is a ‘property’ belonging to subjects that join together [*accomuna*]: an attribute, a definition, a predicate that qualifies them as belonging to the same totality [*insieme*], or as a ‘substance’ that is produced by their union” (Esposito [1998] 2010:2). Consequently, these “proprietary” theories of community tend to focus on the distinction between that which most properly belongs to members of a community *as individuals*, which Esposito refers to as the *proper*, and that which belongs to members of the community *in common*. This tension between the *proper* and the *common* informs the discussion of many contemporary social issues, but it becomes particularly taut around the crucial question that underlies the neoliberal bioeconomy—whether organs, gametes, or other tissues should be considered the property of individuals to do with as they will or whether these tissues should be treated as a “biomedical commons” based on allogenic donations (Waldby and Mitchell 2006:135–59). As long as the consideration of such issues is conducted within the parameters of this proper/common distinction, Esposito ([1998] 2010:1) claims, we remain trapped in the “unthinkability of community.” It is only by conceiving “a more originary and intense sense of *communitas*” (Esposito [2004] 2008:157), which moves beyond “this dialectic” (Esposito [1998] 2010:3) of common and proper, that we can hope to cultivate an affirmative biopolitics in which biotechnology remains of, not over, life.

The key to this originary sense of *communitas* lies with a particular form of gift, the *munus*, which is the Latin root it shares with *immunitas*. The *munus* is a singularly “intense” form of gift, the meaning of which “oscillates” among three different ideas, “*onus*, *officium*, and *donum*” (obligation, office, and gift) (Esposito [1998] 2010:4). This oscillation is the result of the ambivalence between the first two meanings, which are “completely traceable to the idea of ‘obligation’ [*dovere*],” and the last meaning, gift, which is at least partially traceable to the idea of gratuity. “In what sense would gift [*dono*] be a duty?” Esposito ([1998] 2010:4) asks. “Doesn’t there appear, on the contrary, something spontaneous and therefore eminently voluntary in the notion of gift?” The *munus* shifts the prevailing tension in the understanding of community from the liberal dichotomy of proper and common to the duty/gratuity dichotomy that vibrates the gift line. Here, the *munus* lies somewhere between Mauss’s obligatory *potlatch* and Titmuss’s gratuitous blood donation. Like the *potlatch*, the *munus* is an obligatory gift “that one gives because one *must* give and because one *cannot not* give” (Esposito [1998] 2010:5), but the *munus* is also gratuitous in that, like Titmuss’s gift of blood, it is given without expectation of reciprocity. And Esposito ([1998] 2010:5) is quite emphatic that the *munus* involves no such expectation:

Although produced by a benefit that was previously received, the *munus* indicates only the gift that one gives, not what one receives. All of the *munus* is projected onto the transitive act of giving. It doesn’t by any means imply the stability of a possession and even less the acquisitive dynamic of something earned.

This lack of reciprocity reveals the dangerous side of the gift of the *munus*, which challenges the proprietary, accumulative theories of community Esposito strives to eclipse. For the *communitas* evoked by the *munus* stresses the loss or depletion that members experience, in contrast to proprietary benefits, such as human capital accumulation, that are usually proffered by theories of community. “[T]he *munus* that the *communitas* shares isn’t a property or a possession [*appartenenza*],” Esposito ([1998] 2010:6) explains. “The subjects of community are united by an ‘obligation,’ in the sense that we say ‘I owe *you* something,’ but not ‘you owe *me* something.’” And what these subjects most fundamentally *owe to* the community—both in the sense of something received and something to be repaid—is their identities. But

rather than securing the identities of community members with the reciprocity of a return-gift, the *munus* instead “expropriates them of their initial property (in part or completely), of the most proper property, namely, their very subjectivity” (Esposito [1998] 2010:7). The experience of *communitas* revealed by the *munus* is therefore a risky one that “threatens [individuals’] identity, exposing them to possible conflict with their neighbor, exposing them to the contagion of the relation with others” (Esposito [1998] 2010:13; see also Esposito 1995:199; [2004] 2008:107; [1998] 2010:8; [2002] 2011:151).

These dangers of the *munus* are present in all communities, ancient through modern, but communities also exempt at least some individuals from the duties of this nonreciprocal gift. Esposito ([2004] 2008:50) uses the term *immunitas* to describe “the condition of dispensation from such an obligation and therefore the defense against the expropriating features of *communitas*.” Immunization has taken a variety of historical forms, but in modernity it became a reflexive, intentional project, which Esposito ([2004] 2008:45–77) describes as the “paradigm of immunization,” and it is at this point that biopolitics enters Esposito’s genealogy of community. In fact, he heralds the immunization paradigm as the “interpretive key” that fills “that semantic void, that interval of meaning which remains open in Foucault’s text between the constitutive poles of the concept of biopolitics, namely, biology and politics” (Esposito [2004] 2008:45). As I mentioned in the introduction, Esposito follows the second line (as well as Hardt and Negri), rather than Agamben, in treating biopolitics as a modern phenomenon, but he is also closer to Foucault’s late 1970s courses on biopolitics than anyone on either line in claiming that the immunization process crossed a biopolitical threshold with classical liberalism. In *Security, Territory, Population*, Foucault located the origins of biopolitics in seventeenth- and eighteenth-century political economy, whereas Esposito’s account focuses on seventeenth-century social contract theory. Specifically, Esposito ([2004] 2008:30) claims that *immunitas* became biopolitical once liberalism grounded civil society in the natural law of self-preservation:

On a typological level the demand for self-preservation, strictly speaking, is far older than the modern epoch. Indeed one could plausibly claim that it is coextensive with the entire history of civilization. . . . What changes, however, is the moment that one becomes aware of the question, and therefore of the kind of responses generated. . . . [I]t wasn’t modernity that raised the question of the self-preservation of life, but that self-preservation is raised in modernity’s own being [*essere*], which is to say, it invents modernity as a historical and categorical apparatus able to cope with it.

The figure who posed this question of self-preservation most clearly was Hobbes, whom Esposito ([2004] 2008:46; [1998] 2010:13; [2002] 2011:86) identifies throughout the trilogy as the seminal figure in the biopolitical transformation of *immunitas*. I have written elsewhere that Esposito’s interpretation of Hobbes illuminates a blind spot in Foucault’s thoughts about biopolitics (Tierney 2016:61–64; see also Tierney 2006:609–17), but here I will focus on another early modern theorist who is more relevant to the issues raised by the bioeconomy—Locke. Like Hobbes, and virtually every other seventeenth-century liberal theorist, Locke grounded his view of society in the natural law of self-preservation; where Locke exceeded his contemporaries was in binding self-preservation with *property*. As Esposito ([2004] 2008:63) puts it, Locke articulates self-preservation “in a form that conditions it to the presence of something, precisely the *res propria*, that contemporaneously arises from and reinforces it.”

Locke’s explanation of this relation between self-preservation and property begins with the Judeo-Christian myth of the original gift, according to which God gave Adam dominion

over the earth and its creatures. By itself, the natural law of self-preservation grounds only an individual's right to use that which was given in common; it does not confer a property right, whereby one can exclude others from using that which one is not using. Nevertheless, Locke argued, contra Hobbes, that such exclusive property rights existed prior to any social conventions and were therefore "natural." The crux of Locke's argument for natural property rights is the idea of self-ownership, by which he famously inscribed the proper/common distinction around the body: "Though the Earth, and all inferior Creatures be common to all Men, yet every Man has a *Property* in his own *Person*. This no Body has any Right to but himself. The *Labour* of his *Body*, and the *Work* of his *Hands*, we may say, are properly his" (Locke [1690] 1988:II, 27, 287–88; see also II, 44, 298, underlining added). According to Locke, whenever a person transforms that which was given in common by mixing with it the labor of their body, they gain an exclusive property right to that which has been transformed. Many theorists focus on the role labor plays in this classic account of property rights, but Esposito ([2004] 2008:65–66) recognizes the foundation of Locke's argument in the exclusive ownership individuals have of their bodies:

The body is the primary site of property because it is the location of the first property, which . . . belongs solely to the individual who at the same time is constituted by it and who possesses it before any other appropriation, which is to say in originary form. It is in . . . having one's own body that the Lockean individual finds its ontological and juridical, its ontojuridical foundation for every successive appropriation.

Locke's emphasis on self-ownership intensifies, or "accentuates," the immunization paradigm he inherited from Hobbes by recognizing each individual as sovereign of their body. "[T]hanks to the originary antithesis that juxtaposes 'common' to 'one's own' [*proprio*]" Esposito ([2004] 2008:63) explains, the Lockean claim of a natural property right in one's body means that "'one's own' [body] is as such always immune." This classically liberal form of subjectivity, which owns itself in a corporeal sense, took hold in the United States and eventually gave rise to the entrepreneurial *homo oeconomicus* of the Chicago School. Earlier we saw this neoliberal economic animal appearing, in a limited way, around shortages in human organs and gametes, but recent bioeconomic developments have increased opportunities and calls for a range of entrepreneurial forms of subjectivity. In the next section, we will see that these calls are coming not only from the usual suspects of the Chicago School but also from some members of the second line and in a manner that actually reinforces the immunization paradigm.

THE IMMUNOLOGICAL INCLINATION OF THE SECOND LINE

Gift discourse enjoyed an academic resurgence in France and a few other countries in the 1980s, but American neoliberalism surged globally as a political-economic movement. In fact, many in the second line identify 1980 as the point when neoliberalism and biotechnology merged in the United States, catalyzing the bioeconomy. In 1980, the U.S. Supreme Court decided in *Diamond v. Chakbaraty* that a living organism—a genetically modified oil-eating bacterium—could be patented (Frow 1997; Rabinow 1996c; Waldby and Mitchell 2006). The U.S. Congress also passed the Bayh-Dole Patent and Trademark Act in 1980, which shifted ownership of patents on federally funded research from the government to private corporations and encouraged universities to patent faculty research (Rabinow 1996b, 1996c; Waldby and Mitchell 2006). Cooper (2008:27) claims these policies "effectively gave rise to a new academic personage, the scientist-entrepreneur," and Rabinow (1996b, 1996c)

notes that the dramatic increase in patent applications filed by university researchers demonstrates that such scholars were now able to amass economic, not just symbolic, capital.

No one was better positioned than Rabinow to offer a Foucauldian reading of this neoliberal transformation of science and its impact on the bioeconomy. As scientists were becoming entrepreneurial during the 1980s, Rabinow was busy bringing Foucault to an English audience, co-authoring with Hubert Dreyfus the influential *Michel Foucault: Beyond Structuralism and Hermeneutics* (1983) and editing *The Foucault Reader* (1984). In the 1990s and early 2000s, Rabinow (1996b, 1999; Rabinow and Dan-Cohen 2005) conducted seminal ethnographic studies of the formation of companies in the fourth, genetics-based stage of bioeconomic development. Alongside these ethnographies, Rabinow produced crucial theoretical essays that reflected on these bioeconomic transformations in conceptual terms derived from Foucault, as well as other theorists. Through Rabinow's ethnographic and theoretical publications, one can trace the emergence of that line of biopolitical reception that avoids the first line's broad historical celebrations or condemnations, but one can also glimpse an affinity for neoliberal entrepreneurialism and an aversion to the gift, traits that have also influenced some analyses of the second line.

Rabinow's first ethnographic foray into the bioeconomy began in 1990, when he studied the research scientists at Cetus, the private biotechnology company that invented and patented polymerase chain reaction (PCR) in the early 1980s, making it possible to quickly produce adequate quantities of DNA for genetic research. *Making PCR: A Story of Biotechnology* (Rabinow 1996b) was published in 1996, but in 1992, in the midst of this research, Rabinow published an influential essay titled "Artificiality and Enlightenment: From Sociobiology to Biosociality." He wrote this essay in response to the 1990 announcement of the international, publicly funded Human Genome Project (HGP). To support his open, receptive stance toward the HGP, Rabinow invoked Foucault's aversion to the Frankfurt School's sweeping suspicion of instrumental rationality, and he cited "The Subject and Power," the famous afterword that Foucault contributed to his and Dreyfus's *Michel Foucault*:

I follow Foucault when he asks, "Shall we try reason? To my mind nothing would be more sterile. First, because the field has nothing to do with guilt or innocence. What we have to do is analyze specific rationalities rather than always invoking the progress of rationalization in general." My ethnographic question is: How will our social and ethical practices change as this project advances? (Rabinow 1992:236–37)

Rabinow (1992:249–50) concluded the essay with the following ambivalent sentences that not only sound Foucauldian but also Espositoan in that he recognized the dual potential of any gifts that might emerge from the HGP: "The term manipulation carries with it the appropriate ambiguities implying both an urge to dominate and discipline as well as an imperative to improve on the organic. Confronting this complexity constitutes the challenge of artificiality and enlightenment."

In 1996, the year *Making PCR* appeared, Rabinow (1996a) published a slightly different version of "Artificiality and Enlightenment" in a collection of his writings titled *Essays on the Anthropology of Reason*. The two versions are largely identical, but there is a crucial difference in the way Rabinow concluded the later essay. He replaced the final two sentences of the 1992 version quoted previously with the following paean to Donna Haraway:

[Who] concludes her iconoclastic and enlightened 1985 "Manifesto for Cyborgs" by arguing that "taking responsibility for the social relations of science and technology

means refusing an anti-science metaphysics, a demonology of technology, and so means embracing the skillful task of reconstructing the boundaries of daily life, in partial connection with others, in communication with all of our parts.” She applauds the subversion of “myriad organic wholes (e.g., the poem, the primitive culture, the biological organism)” and proclaims that “the certainty of what counts as nature—a source of insight and a promise of innocence—is undermined, perhaps fatally.”

As with nature, so too, it seems, with culture. (Rabinow 1996a:108; quoting Haraway 1991:181)

Gone from this later conclusion is the ambivalence of the earlier version and the sense that one ought to be wary, if not suspicious, of the dangers that attend new forms of knowledge. It is tempting to say that by the mid-1990s Rabinow learned to stop worrying and love the cyborg, but he actually became more comfortable than other theorists of the second line, such as Cooper, with the scientist-entrepreneur.

In 1992, when the first version of “Artificiality and Enlightenment” appeared and Rabinow was deeply engaged with his research at Cetus, he met Daniel Cohen, the senior director of France’s “premier genomics laboratory, the publicly organized *Centre d’Etude du Polymorphisme Humain*” (CEPH). As Rabinow (1999:1) put it, they “hit it off.” In 1994, Cohen was working on a collaborative diabetes research project between the CEPH and a U.S. venture-funded biotechnology company that he co-founded, Millennium Pharmaceuticals, and he extended an intriguing invitation to Rabinow: Cohen “insisted that while he did not want an ‘ethics committee’ at the CEPH, he would welcome ‘a philosophical observer’” (quoted in Rabinow 1999:168). When Rabinow (1999:168) asked “what was wrong with ethics committees, Cohen gave an irritated and dismissive wave of his hand.” Although Cohen “identified himself as the Henry Ford of biology” (Rabinow 1999:45), Rabinow (1999:24) described him as a “dynamic and visionary doctor” and accepted the invitation, which led to his second biotechnology ethnography, *French DNA: Trouble in Purgatory*. This book appeared in 1999 and chronicled the French government’s last minute thwarting of Cohen’s planned project between the CEPH and Millennium. Through his work with Cohen at the CEPH, Rabinow seems to have developed an aversion to any normative constraints on the bioeconomy and a neoliberal confidence in letting science and technology develop with minimal “social” interference. This is only hinted at in the Harawayan conclusion of the 1996 version of “Artificiality and Enlightenment,” but it is a central theme of *French DNA*.

Rabinow spends a significant part of the first chapter of *French DNA* interpreting bioethical entities (e.g., France’s Comité Consultatif National d’Ethique [CCNE], which led the opposition to Cohen’s planned collaboration between CEPH and Millennium) as examples of what Weber described as “this worldly mysticism” (Rabinow 1999:7–10). According to Weber, one of the few forms faith can take in a world dominated by the capitalist spirit is “‘the mystic’s “benevolence” which does not at all inquire into the man to whom and for whom it sacrifices. . . . Mysticism is a unique escape from this world in the form of an objectless devotion to anybody, not for man’s sake but purely for devotion’s sake’” (quoted in Rabinow 1999:8). Rabinow (1999:95) is particularly critical of “the principle of the freely given gift . . . the cornerstone of French bioethics” and discusses at length the early 1980s scandal involving the French refusal to modify their blood collection system in light of evidence that HIV was being spread through transfusions, especially among hemophiliacs (Rabinow 1999:78–89). Due to nationalistic pride in their gift model, administrators of the French system refused to screen and exclude some donors from this revered act of solidarity;

they also refused to introduce an antigen test and blood-heating techniques developed by U.S. companies. For Rabinow (1999:178), this scandal reveals the bioethical “commitment to fixed (if empty) concepts of the human person, dignity, beneficence, and solidarity” as a dangerous mysticism that “risks universalizing values and ideas embedded in the past” at the expense of individuals who actually suffer as a result of such commitment—in this case hemophiliacs.

This same mysticism thwarted Cohen’s attempt to join CEPH’s massive genetic database, which was created through the donations of French citizens, with his U.S. pharmaceutical company, at the cost of non-insulin dependent diabetics. In response to this planned collaboration, France’s CCNE invoked the sacred model of the gift in a risky attempt to “valorize ‘benevolence’ as the virtue through which the glacial night of American capitalism can be warmed and the practice through which both capitalism and science can be put at the service of solidarity” (Rabinow 1999:9). Rabinow clearly appreciates the role the gift played in postwar France, but he thinks this rather ordoliberal model has become a nostalgic impediment to the development of beneficial biotechniques from new disciplines like genetics and regenerative medicine. As we will soon see, this dismissive attitude toward the gift is shared by others in the second line.

Alongside the bioentrepreneurs he studied, Rabinow was also keenly interested in the expansion of the neoliberal *homo oeconomicus* among populations affected by bioeconomic techniques. He coined the term *biosociality* in “Artificiality and Enlightenment” to positively describe “the likely formation of new group and individual identities and practices” that would arise “out of [the] new truths” produced by the HGP (Rabinow 1992:243–44; see also Rabinow 1996a:101; 2008:189). Rabinow was referring to groups formed on the basis of a shared vulnerability or risk status, which then work to promote research on those particular medical conditions. In a 1994 essay, he claimed that “a new ethics of truth, suffering and solidarity” will be “forged by all those patients at risk, passionately curious about their health, happiness and freedom—us” (Rabinow 1994:63). The second line has been deeply influenced by this perspective on biosocialities, with Novas and Rose (2000:502) citing Rabinow’s claim about a new ethics of truth and enthusiastically adding that these developments “exemplify the formation of a new ethics of biomedical subjectivity that . . . is emerging out of the plethora of new movements organized around the new sciences of medicine and life.” Waldby and Mitchell (2006:128–29), in turn, cite Novas and Rose’s claim and concur that this “neoliberal medical subjectivity [that] is oriented toward the entrepreneurial maximization of future health” is “a positive response to the devolution of medical care from the state to private providers.”⁵ To be fair, Rabinow reassessed his initial enthusiasm for biosocialities in 2008, but this reconsideration was prompted by the unfulfilled promise of genetic research, not the entrepreneurial inclination of these biosocialities (Rabinow 2008; see also Lemke 2011b: note 1, p. 127).

An example of such an active patient group frequently and favorably discussed by the second line is PXE International, a nonprofit organization formed by Patrick and Shannon Terry, the parents of children afflicted by psuedoaxanthoma elasticum (PXE), a rare, single gene disease that causes the premature aging of cells (Andrews 2005; Novas 2006; Rose and Novas 2005; Rose 2007; Waldby and Mitchell 2006). In 1995, the Terrys developed a network of people affected by PXE, and the following year they created a repository of tissue samples, or “biobank,” to promote research on the disease. Using these samples, PXE International identified and patented the PXE gene in 2004, with Sharon Terry listed as a “co-inventor” on the patent (Waldby and Mitchell 2006:154). What Waldby and Mitchell find most intriguing about PXE International is the way it muddles and ultimately renders anachronistic the gift-commodity distinction. This biosociality funds research on PXE by

leasing the patented gene, *as a commodity*, to researchers working on other age-related illnesses, and using the lease revenues to create a “biocommons” that provides free access to the gene, *as a gift*, to researchers working directly on PXE. Citing a 2002 presentation that Sharon Terry delivered on the “Commercialization of Human Genomics,” Waldby and Mitchell (2006:155) emphasize that “according to the Terrys, the commodity . . . enables (and is thus logically prior to) the formation of the ‘gift’ research community of PXE patients.” However, in a 2007 article that presents PXE International as a model biosociality, the Terrys appear to give the gift precedence over the commodity in the formation of this biopolitical community:

A novel and essential component at [the initial] stage was the establishment of a *community of trust*—a gathering of individuals bound by the effects of mutations in the . . . gene that underlies PXE, who could share their experiences and appreciate the feeling of no longer “being alone” in the way that individuals with rare disorders have often experienced. . . . *Drawn together in a community* that was designed to represent their needs, individuals who were affected by PXE *generously and eagerly donated* biological samples and the annotation that was needed (in the form of medical records, questionnaires and longitudinal data), *in collaboration with the research community*. (Terry et al. 2007:160, italics added)

Regardless of whether the gift or the commodity came first in the formation of PXE International (which perhaps depends on the audience), I want to stress that the particular form of gift circulated by this biosociality is closer to Mauss’s reciprocating *potlatch* than to Titmuss’s allogenic donation or Esposito’s *munus* in that it is given with the expectation of return. This is as true of the original tissue donors who hope to receive a therapy or cure from the research as it is of PXE International when it gives the gene to PXE researchers. But unlike the *potlatch*, PXE International is not obligated to give the gene to anyone because the patent creates an exclusive property right that immunizes this biosociality from any duty to provide the gene to the larger research community. Under this model biosociality, gifts are given—whether as donated tissue or the patented gene—in a manner that maximizes the return on this bit of human capital, creating a form of gift perfectly suited for the neoliberal bioeconomy. Waldby and Mitchell (2006:155), to their credit, recognize that such neoliberal biosocialities narrow the sense of communal obligations, but they think this drawback is outweighed by the empowerment of patients who are treated as partners in this entrepreneurial model of scientific research.

Beyond entrepreneurial biosocialities like PXE International, the bioeconomy has recently created opportunities for each individual *homo oeconomicus* to turn its body into capital. The range of human tissues routinely stored in biobanks has expanded as the bioeconomy has grown and now includes tissues such as pathological specimens, surgical waste, surplus IVF embryos, and stem cell lines. As Waldby and Mitchell (2006:36) put it, “[v]irtually every organ and tissue type in the body has its cognate tissue bank.” The initial protocol for turning such tissues into biovalue was the allogenic “gift with consent” model, whereby individuals donate their tissues for research through routine informed consent procedures, but that model has come under criticism from some in the second line. Waldby and Mitchell (2006:72), for instance, claim that the allogenic donation model no longer checks the commodification of the body in the current neoliberal bioeconomic environment but instead “acts as a kind of surrogate property contract” that severs any relation between donors and their gifts and allows recipients to transform those gifts into biovaluable commodities (see also Cooper 2008: note 5, p. 178; Waldby and Cooper 2010:11). However, an

alternative model—the “autologous” biobank—has recently appeared in which tissues are “donated” for the future use of the individual donor, not others, amounting to what Waldby and Mitchell (2006:54) describe as a “gift to oneself.” The sorts of tissues currently stored in autologous biobanks include blood, gametes, embryos, and most recently and controversially, umbilical cord blood, which contains hematopoietic stem cells that are genetically matched to the donor.

As one would expect from earlier patterns that developed in the bioeconomy, autologous cord blood banks appeared in the United States, but France rejected that model in favor of allogenic banks that maintain the country’s tradition of altruistic donation. A 2002 CCNE report strenuously objected to autologous cord blood banks in terms that Rabinow would likely characterize as mysticism: “Preserving placental blood for the child itself strikes a solitary and restrictive note in contrast with the implicit solidarity of donation” (quoted in Waldby and Mitchell 2006:128). Waldby and Mitchell (2006:128) have weighed in on the controversy and agree with Rabinow that the allogenic gift model championed by France is outdated: The French “appeal to a particular order of medicalized subjectivity . . . associated with a state commitment to universal and redistributive medical care,” but this *donating* form of subjectivity now “competes with the appeal of a more recent dynamic [form] of medical subjectivity, exemplified by private cord-blood [*sic*] account holders, for whom new medical technology and health consumer services are a means of transforming their body into a strategic enterprise.” Waldby and Mitchell (2006:130) favor the entrepreneurial subjectivity in this “competition” and in fact present the autologous cord blood model as a “prototype” for other kinds of tissue banking that will likely develop alongside breakthroughs in regenerative medicine. This is a “form of investment [that] appeals not only to a generalized parental prudence and credulity,” Waldby and Mitchell (2006:129) note, “but also to . . . new norms of entrepreneurship, risk management and collaboration with the future of biotechnology.”

In response to these various second line stances toward issues raised by the genetics-based stage of bioeconomic development, I suspect Esposito would sense an underlying immunological orientation. From the resentment Rabinow shares with Cohen for constraining bioethical principles such as benevolence, solidarity, and the gift, through the second line’s general affinity for entrepreneurial biosocialities like PXE International, to Waldby and Mitchell’s preference for autologous over allogenic biobanks, there is an inclination toward strategies that provide greater opportunities for bioentrepreneurs and individuals to increase their capital and an aversion to obligations to the larger community. To some extent, many in the second line seem to accept that the American strain of neoliberalism can more effectively contribute to an affirmative biopolitics and bioeconomy than can the gift tradition. But before abandoning the gift altogether, I want to suggest that the second line ought to consider Esposito’s unique contribution to that tradition, which offers an affirmative biopolitics that resists the neoliberal inclination of the bioeconomy. I will illustrate Esposito’s alternative biopolitical perspective in the following section by contrasting it with some second line interpretations of an oft-interpreted U.S. court case that raised the fundamental immunological distinction between the proper and the common precisely in the context of the bioeconomy.

MORE ON MOORE

In 1976, as Foucault was developing his thoughts on biopower and biopolitics, an American named John Moore was diagnosed with hairy cell leukemia. His physician, Dr. Golde, noticed that Moore’s T-lymphocyte cells overproduced particular proteins that regulate the immune

system; these cells were therefore quite valuable for research. Without informing Moore of this potential, Golde advised him to have his spleen removed as part of his treatment. Moore followed this advice, signed a consent form that granted the University of California Los Angeles (UCLA) ownership of any tissues removed from his body, and also signed such forms when he had other tissue samples taken during follow-up treatment. Golde developed a cell line from Moore's spleen tissue, filed for a U.S. patent in 1979, and in 1982 formed a partnership with Sandoz Pharmaceuticals to conduct research on the "Mo" cell line. Moore became suspicious in 1983, when asked to sign a consent form granting Golde and UCLA exclusive property rights to the immortalized cell line. Only after he refused to consent did Moore learn that Golde had applied for a patent, which was awarded in 1984. That same year, Moore filed suit in the California court system, alleging that Golde and UCLA had "converted" his property without consent. The trial court rejected Moore's claims, the Court of Appeals overturned that decision, and in 1990, the California Supreme Court ultimately reversed the appellate decision. Although the Supreme Court found that Golde failed to fulfill his fiduciary responsibilities to Moore by withholding information about the economic potential of the research, they also found that Moore's cells were no longer his property once they were removed from his body, and thus no conversion had taken place.

Despite its limited precedential authority as a state court case, *Moore v. Regents of the University of California* (271 Cal. Rptr. 146) has become a touchstone, or "index" (Waldby and Mitchell 2006:107), in the discourse surrounding the bioeconomy, discussed not only by bioethicists and legal scholars but also by the sociologists and anthropologists in the second line (e.g., Cooper 2008; Frow 1997; Lock 2001; Rabinow 1996c, 1999; Rose 2007; Waldby and Mitchell 2006). Of course, the second line is not of one voice regarding the *Moore* case. At one end of the line is Rabinow, who wrote an essay on the case in 1992 titled "Severing the Ties: Fragmentation and Dignity in Late Modernity," which he republished in *Essays on the Anthropology of Reason* (1996c). As in his contemporaneous essay on the HGP, Rabinow took an agnostic stance toward the *Moore* decision and claimed an even more impressive theoretical lineage for this essay's neutrality than he did for "Artificiality and Enlightenment": "Following the line of Max Weber and Michel Foucault, I [merely] want to chart the forms of life-regulation and the production of value emergent today among those we have authorized to speak the truth about life" (Rabinow 1996c:131). At the other end of the line are Waldby and Mitchell, who discuss the *Moore* case at length in *Tissue Economies* (2006) and are more disturbed than Rabinow about its biopolitical implications. Although Esposito has not, to the best of my knowledge, commented on *Moore*, I will offer an Espositoan interpretation of these second line discussions of the case in an effort to highlight the differences in their conceptions of an affirmative form of bioeconomy.

Rabinow (1996c:129) focuses on the way biotechnologies like the "Mo" cell line have severed "[t]he intimate linkage" that traditionally existed in Western culture "between the two key symbolic arenas, 'the body' and 'the person.'" As examples of this linkage, he mentions medieval Christianity's fascination with the relationship between discarded bodily tissues and the resurrected body as well as the relic cults that developed around remnants of saintly bodies. Without a hint of nostalgia, Rabinow (1996c:149–50) claims this correspondence between the body and the person has been eclipsed by the bioeconomy:

The approach to "the body" found in contemporary biotechnology and genetics fragments it into a potentially discrete, knowable, and exploitable reservoir of molecular and biochemical products and events. By reason of its commitment to fragmentation, there is literally no conception of the person as a whole underlying these particular technological practices. In and of itself, this shift away from an organismic focus is neither good nor bad.

The tension between “organismic” and fragmented views of the body/person relationship is crystallized in the conflicting judicial opinions in the *Moore* case, which according to Rabinow (1996c:130) “unwittingly presented” late-moderns with the uncomfortable choice “between the long covered-over but still lingering residuum of Christian beliefs which hold ‘the body’ to be a sacred vessel [that cannot be commodified] and the tenets of the market culture’s ‘rational actor’ view of the human person as contractual negotiator” who can treat his or her body, and parts therefrom, as alienable commodities. Rabinow (1996c:130) acknowledges that this choice “can lead to melancholy or stress depending on your disposition,” but as in *French DNA*, he discourages reliance on outdated mystical ideas, such as the body as a sacred vessel, to allay this discomfort. “Contemporary technical capacities . . . raise a range of possibilities for new practices and hence new meaning which overflow the older vessels,” Rabinow (1996c:146) puns. “In this context, it is the vessels and their attributes which warrant re-examination.” And although he does not make an explicit case for the rational actor alternative, neither does Rabinow offer any reservations or concerns about the proprietary view of the body as the exclusive, alienable property of the contractual negotiator.

Esposito would concur with Rabinow’s overall assessment of the fragmenting effect that biotechnology has had on the relationship between personal identity and the body and go even further in celebrating this disintegration. For he not only shares Rabinow’s appreciation of Haraway’s perspective, which Esposito ([2002] 2011:146) describes as a “paradigm shift,” he also embraces Georges Bataille’s (1985:251) dictum “that human beings are only united with each other through rents or wounds” (see also Esposito [1998] 2010:123–24). But despite this shared enthusiasm for the disintegration of the body/person relationship, Esposito would likely interpret the significance of the *Moore* case quite differently than would Rabinow. Rather than focusing on the decision’s impact on the traditional Christian view of the sacred body, he would instead concentrate on its disruption of the Lockean conception of the person-body relationship, which lies at the foundation of the immunization paradigm.

As we saw earlier, Locke’s assertion that individuals own their bodies established a corporeal border around each person and sanctified the body as the “ontojudicial foundation” of exclusive property rights that immunize owners from obligations to others.⁶ Indeed, it was by extending Locke’s labor theory of property, from the labor of one’s hands to that of one’s mind, that the California Supreme Court established Golde’s exclusive property right to the cell line. Although *Moore* is usually interpreted as legitimating such intellectual property patents, Esposito’s perspective reveals that the court’s denial of Moore’s claim to the excised tissues actually challenges the very idea of corporeal self-ownership, which grounds the extended labor theory of property upon which the court relied, as well as the rational actor view of the body that Rabinow at least implicitly favors. The *Moore* case is therefore deeply disturbing, although for different reasons than those offered by Rabinow. It is not so much that the decision violates the religious idea of the body as a sacred vessel as that it violates the modern, liberal sense that each individual is the owner of their body. Waldby and Mitchell’s interpretation of the *Moore* case comes close to this recognition.

Like Rabinow, Waldby and Mitchell see *Moore* as presenting a choice between two conflicting views of the body. However, their interpretation is heavily influenced by John Frow’s (1997) discussion of the case in his essay “Gift and Commodity,” which frames the dichotomous choice somewhat differently than Rabinow:

“The *Moore* case sets up two alternative ways in which I can formulate my relationship to my body. In the first, I have a property right, which means that others cannot appropriate parts of my body without my consent, but also that I have the right to sell all or part of my body. In the second, I have no property right; I can’t alienate it, but it

has become a commons to which others may lay claim.” (Waldby and Mitchell 2006:123–24, quoting Frow 1997:160–61)

Although this interpretation replicates the proper/common dichotomy that Esposito strives to move past, Waldby and Mitchell do recognize, along with Frow, that the *Moore* decision reveals the fundamental paradox, or “aporia,” that lies at the foundation of liberal property rights: “‘This self-possessing subject is both the foundation of all other property rights, and the prototype of those things that cannot be alienated in the marketplace’” (Waldby and Mitchell 2006:124, quoting Frow 1997:161). However, the paradox is even more fundamental than Frow and Waldby and Mitchell acknowledge; it is not just that Moore could not alienate “his” tissues but that the Court found he could not do so because he did not own those tissues.

Despite their common recognition of the paradoxical nature of *Moore*, Esposito would part ways with Waldby and Mitchell over their response to this paradox. Rather than using this aporia to challenge the propriety of patents on intellectual property derived from human tissues, Waldby and Mitchell instead respond by reestablishing the individual body as “the proper,” through endorsement of the neoliberal view of the body as investment capital. “While John Moore’s case came to grief on this paradox of liberal self-possession,” Waldby and Mitchell (2006:124) write, “the [model of the] private cord-blood account creates a form of property that resolves an element of this tension.” Esposito would be critical of Waldby and Mitchell’s turn to autologous tissue banking as a response to the biocommons legitimated by the *Moore* decision but not simply because it maintains the private/common dichotomy of the immunization paradigm. He would find even more troubling the explanation they offer for this response:

Excluded [as Moore was] from the commercial wealth created by intellectual property rights in tissues, holders of autologous tissue accounts will nevertheless be able to benefit if even some of the possibilities predicted for regenerative medicine and stem cell technologies are realized in clinical applications. If as private citizens they cannot claim commercial wealth in their own tissues, they can nevertheless transform their bodies into a source of venture capital invested in technological innovation. (Waldby and Mitchell 2006:130)

Here Waldby and Mitchell rely on the common judgement that the *Moore* decision is somehow unfair for allowing bioentrepreneurs and pharmaceutical companies to establish private property rights to valuable biocommodities while rejecting any claims of the original “owners” of the tissues from which those biocommodities were developed. Esposito would share their concern about the exploitative nature of the research model legitimated by the *Moore* case, but he would not respond to big pharma’s patenting of tissues with strategies for reestablishing strong property claims in our bodies, either through the autologous tissue banks favored by Waldby and Mitchell or through more detailed informed consent protocols that others have suggested in response to *Moore* (e.g., Andrews 2005); for such strategies rely on a neoliberal sense of justice that aims to maximize individuals’ opportunities to develop their embodied human capital and therefore only reinforce the immunization paradigm. Esposito would instead look to the second gift from the gods—that is, the political community or society—for non-immunological responses that foster a biopolitics of, not over, life.

Rather than resenting Moore’s loss of self-ownership, Esposito would instead celebrate it and recognize that this loss supports a community of the sort Bataille envisioned. “Never before have we had such an accurate perception of this community of bodies,” Esposito ([2002] 2011:11) writes, “the endless contagion that combines, overlaps, soaks, coagulates, blends, and clones them.” This sense of community would expect Moore, and all others, to

give their tissues for the benefit of anonymous others, without expectation of return. Such gifts would include organs and tissues salvaged upon one's death as well as various other tissues that slough from the body over the course of one's life, including pathological specimens, as well as gametes and embryos. This obligation to give, which goes beyond the voluntary donations praised by Titmuss, is required by the *munus* in an era when people's lives increasingly depend on bits from other bodies. But of course it is not just individuals who would lose immunization from the obligations of the *munus*; companies in the bioeconomy would also lose the exemption from communal obligations they have achieved through exclusive patents (see Esposito 2013:89). In this affirmative biopolitical community that Esposito, and perhaps Foucault, would endorse, neither donors nor researchers could legitimately invoke the Lockean conception of corporeal self-ownership to establish exclusive property rights that withhold from others what they need to live.⁷

CONCLUSION

Esposito ([2004] 2008:194) ends his trilogy by warning that “[w]hether [biopolitics’] meaning will again be disowned in a politics of death or affirmed in a politics of life will depend on the mode in which contemporary thought will follow its traces.” To my mind, it is not enough to simply chart, much less embrace, the waxing neoliberal dimensions of biopolitics and dismiss the waning idea of the gift as part of a misguided mystical effort to preserve some sense of community in the burgeoning bioeconomy. Rabinow may be right that the fragmentation of the body/person relationship is neither good nor bad in itself, but I think it is worse if that fragmentation supports a neoliberal environment and better if it fosters Esposito's *munus*-based conception of community. While I acknowledge Rabinow's concerns about worldly mysticism, I do not think a sense of community based on the nonreciprocal gift of the *munus* necessarily becomes an abstract ideal that ignores the suffering of specific individuals; in fact, I worry more that the neoliberal *homo oeconomicus*—the rational, contractual actor who seeks to maximize his or her corporeal capital—will become such a form of mysticism. There is clearly great potential for the sort of suffering that worries Rabinow if bioentrepreneurs, biosocialities, and pharmaceutical companies have no sense of the munificent obligations revealed through Esposito's work.

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NOTES

1. Years before their publication in French, Rabinow (1999:13) did mention the 1977–1978 lectures in passing, but not the 1978–1979 lectures.
2. See, for example, <http://www.premiumeggdonation.com> (retrieved September 24, 2016).
3. Some nations do not fit within the gift-commodity spectrum, such as Esposito's Italy, which not only banned the sale of human gametes but their donation as well (EU Report 2006). Germany and Norway have also prohibited the donation and sale of eggs, but they allow sperm donations (Cheng 2012).
4. See <http://cecos.cluster005.ovh.net/federation/organisation> (retrieved September 24, 2016).
5. Scholars in the second line who took Foucauldian biopolitics in a neoliberal direction in the 1990s were not alone. In France, Francois Ewald, Foucault's student and literary executor, shifted from being a student of the role of insurance in governmentality, to an editor of a journal of the insurance industry, and eventually to the resident academic of the “Movement of French Companies (Mouvement des Entreprises Francais), or Medef” (Behrent 2010:619).
6. It is important to note that Locke did not recognize absolute immunity from such obligations; see note 7.

7. Although I do not have space to develop this thought here, an affirmative biopolitical community that Esposito could endorse might revive the famous “Lockean proviso,” which required, at least in the “state of nature,” that one leave as much and as good for others to use for their preservation (Locke [1690] 1988:290–91), as well as Locke’s ([1690] 1988:170) less well known “right of charity,” which allowed a person to use the private property of others in situations “where he has no means to subsist otherwise.”

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