

Neo-eugenics: A Feminist Critique of Agamben

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IN CONTEMPORARY AMERICAN POVERTY POLICY, the welfare mother is exposed to harsh treatment that is designed to maintain her participation in the low-wage labor force and, arguably, to discipline wage labor as a whole by restricting the alternatives to wage earning. I would contend that she is also being subjected to an extraordinarily invasive form of sexual regulation, ranging from teen pregnancy avoidance programs and abstinence education counseling to the family cap¹ and child support enforcement. Welfare sexual regulation—with its broad scope (impacting about ten million adults and vast numbers of high school students in sex education classes across the country at any given moment), its impressive allocations, and its array of un-

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¹ In the United States, the low income household's welfare benefit can be as low as \$250 per month. It is usually adjusted to reflect the size of the household; with each additional dependent child, the benefit is typically increased a modest amount, such as \$70 per month. On the assumption that low income mothers deliberately choose to have more children in order to increase their benefits—an assumption that has absolutely no basis in the empirical evidence—the state attempts to discourage what it regards as “excess” and “irresponsible” reproduction among the poor by imposing a “family cap.” The benefit is calculated with reference to the number of dependent children present in the household at the time of the low income mother's first application for assistance. The family cap is an optional measure; it is only implemented at the behest of the state government. About half of the states have adopted a family cap policy since it was invented in the early 1990s. See Anna Marie Smith, *Welfare Reform and Sexual Regulation* (Cambridge: Cambridge University Press, 2007). To avoid confusion, especially in the American context, I will use the word “state” to refer exclusively to American regional governments. The capitalized term “State” signifies the totality of governmental discourse (institutions, ideas, subjects, and so on) within a given territorially defined space at all levels of jurisdiction (national, regional, and local) and in all branches (legislative, executive, and judicial).



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usually well-coordinated federal and state bureaucratic structures—is becoming a substantial moment in social policy; indeed, we might usefully inquire what this moment teaches us about the relation between the indigent female citizen and the State in our neoliberal context. I argue that poverty policy is working in tandem with capital to construct the welfare mother not simply as a “flexible” proletarian but as a childless “flexible” worker as well—one who arrives at the employer’s doorstep bearing as few domestic burdens as possible, such that she is all the more available for extreme forms of exploitation. Because these pressures to remain or to become childless are being systematically trained upon poor women—and women of color are overrepresented within this category—they introduce the question of eugenics. In this article, I attempt to enrich my analysis of the welfare mother as a target of sexual regulation by interrogating Agamben’s argument about the State’s production of “bare life” from a feminist perspective.

For Agamben, sexual regulation in welfare policy constitutes only one moment within the State’s timeless campaign to produce “bare life.”² Agamben claims that Aristotle’s distinction between life as mere subsistence, which could be lived to its fullest even if one found oneself outside the polis, and the pursuit of the “good life,” which is only possible in a formally constituted polis, serves as the structure of any possible governance. Indeed, with his attempt to transcend historical specificity, Agamben’s theory could be called a “metaphysics of governance.”³ For Agamben, Aristotle’s distinction refers to a fundamental tension between two institutional postures that the State adopts toward “the people.” In Aristotle’s account, the male citizen could perfect himself only within the polis. If he left the city—or if his government descended into anarchistic chaos and effectively dissolved itself—he would revert back to a life in which his highest good would be nothing more than subsistence, or “bare life.” It appears, then, that one enters the condition of bare life only in the absence of government, and that the social contract secures us from the descent into the state of nature. That appearance achieves its ideological perfection in modern liberal democratic legitimation discourse, for the latter promises to safeguard the life, liberty, and happiness of “the people” by prohibiting arbitrary state intervention. Agamben would argue, however, that the liberal democratic form of governance inevitably betrays itself. Even as it promises to embrace “laissez-faire,” it busily measures its population, tracks reproductive rates, controls immigration, manages the markets in food, housing, transportation, and energy, and takes steps to ensure the ready supply of able-bodied military recruits. Ironically enough, caregiving is thereby politicized, and for all the ideological disavowal, biopolitics is established yet again as the essence of governmental interest by the modern nation-state. The latter “assume[s] directly the *care* of the nation’s biological life as one of its proper tasks.”⁴

But this is hardly the politicization of caregiving that is envisioned by feminism. Agamben is particularly interested in the way in which the modern nation-State prioritizes its population management interests when it singles out demon figures and treats them as objects that can be

² Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life* (Stanford: Stanford University Press, 1998).

³ I am deliberately comparing Agamben’s approach to governance with Derrida’s critique of Western discourse as a “metaphysics of presence.” Derrida’s analysis of the exclusions, closures, and asymmetric dualisms in Western ways of thinking is entirely compelling. However, Derrida himself is quite careful not to overextend the “metaphysics of presence” theory; there is no indication in his work that he thought that his intervention in philosophical texts could be directly applied to the study of historically specific political regimes. Where Derrida respects the differences between social theory and first-order philosophical questions concerning our ontological and epistemological assumptions, Agamben illegitimately conflates these various levels of analysis. I will argue that this theoretical issue could contribute to problematic ways of thinking about political strategy.

⁴ Agamben, *Homo Sacer*, 175; emphasis added.

legally exterminated. The Jewish inmates in Nazi Germany's concentration camps were designated, by public opinion and law, as nothing more than the bearers of mere existence. These were, in effect, disposable nonpersons who had such a tenuous moral claim on the community that the state could, with impunity, strip them of the very basic rights that make human life worth living, consume their energies, and then treat what remained as waste products. They seem to be exceptional cases, for the fascist State reserved for itself comprehensive and unlimited sovereignty over their lives. And yet they were, at the same time, the exception that proved the rule, for the definition of their juridical status was simply the reverse side of the Reich's deliberate cultivation of its living human wealth.⁵ Agamben would also caution us against any complacency and unwarranted self-congratulation where allegations about liberal democracy's resilience against authoritarianism are concerned. Some of the medical experiments carried out by the Nazis, for example, were invented by doctors who lived in the liberal democratic societies, and modern medicine continues to sign up death row inmates as trial subjects.⁶ In addition, we are now well aware that the Bush administration sought to establish a legal basis for torturing its "detainees." As it produces bare life, the State claims that it is advancing its fundamental objective of "caring" for the nation. However, every last trace of the egalitarian and solidaristic dimension of the feminist concept of care is thereby eviscerated, such that we are left with nothing more than brutal exclusion.

Is Agamben's metaphysics of governance adequate to the task of interpreting welfare law? Is the welfare mother analogous to these dehumanized nonpersons who are cast into this horrific condition in which human rights are totally suspended? In Agamben's account, the camp inmates are so totally denuded of their personhood that they are deprived of the right to live. The sovereign authority may allow them to exist as nonpersons; that is, it may permit them to pursue a bare life, and it may choose to revoke that permission at any time and for any reason—or for no reason at all. It is because they have this absolutely minimal capacity to live a bare life that the concentration camp inmates can function as a surface of inscription for the state as it demonstrates—and brings into being at the same time—its population management authority. With the suspension of their right to life, these nonpersons live each moment entirely at the unlimited discretion of the state, in which even the moral ban against cruelty to animals—let alone international human rights treaties, the Bill of Rights, and criminal statutes—has no bearing whatsoever. Because they are nonpersons, the state can kill the concentration camp inmates without committing homicide.⁷

On the one hand, the welfare mother does not completely fulfill Agamben's criteria in narrow juridical terms; the state cannot act affirmatively to put the welfare mother to death without breaking the law. Agamben is referring to the Nazis' treatment of the concentration camp inmates when he writes: "Precisely because they were lacking almost all the rights and expectations that we customarily attribute to human existence, and yet were still biologically alive, they came to be situated in a limit zone between life and death, inside and outside, in which they were no longer anything but bare life."⁸ For all the brutality of American welfare law, we are not

⁵ Ibid., 145.

⁶ Ibid., 154–59.

⁷ "The very body of *homo sacer* is, in its capacity to be killed but not sacrificed, a living pledge to his subjection to a power of death. And yet this pledge is, nevertheless, absolute and unconditional, and not the fulfillment of a consecration" (ibid., 99).

⁸ Ibid., 159.

rounding up welfare mothers and exterminating them en masse; in an absolutely minimal sense, they remain legal persons. They retain a sliver of the right to due process. In theory at least, they have the right to apply for a passport and to emigrate.

Agamben's text, however, also lends itself to a more expansive reading. It can also be interpreted as an invitation to cultivate a more acute sensitivity to the ways in which even the most humanitarian forms of governance can have, as their hidden core principle, the brutal violation of fundamental human rights. As he defends the decision to wage war on Iraq, former President George W. Bush proclaims the exemplary achievements of American democracy. But in this same country, the State has stripped the welfare mother of almost all the basic rights that make a human life worth living, such as the right to refuse demeaning work. (This fact became all the more obvious, even to the corporate media, in the aftermath of Hurricane Katrina in 2005.) The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRA) has eliminated her statutory entitlement to poverty assistance;⁹ she must look to her state constitution to give her claim to emergency aid any binding force. American constitutional law not only refuses to recognize the very concept of social rights¹⁰ but deliberately refuses to construct the poor as a suspect class where equal-protection doctrine is concerned.¹¹ The State is empowered by the law to intervene in the intimate and sexual dimensions of a poor single mother's life in ways that would be considered legally and ethically unacceptable if these same interventions were aimed at professional women. The state has what the courts regard as a legitimate interest in forcing the welfare mother to cooperate with child support enforcement—even if she is fleeing from a violent biological father; it can order her to disclose her sexual history and to open her home, the personal conduct of her teenage children, and her very DNA structure¹² to intensive governmental scrutiny. Federal law allows the states to deprive needy families of benefits when the eligibility time limits are exceeded and to set benefit levels at below-subsistence levels. Workfare rules require custodial mothers with young children to perform duties out of the home on a rigid schedule even though they may not have access to adequate and affordable childcare. In the guise of a

⁹ The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRA), Public Law 104–193, *U.S. Statutes at Large* 110 (1996): 2105. This statutory right was recognized by the Supreme Court in *King v. Smith*, 392 U.S. 309 (1968).

¹⁰ On the doctrine of social rights, see the United Nations' Universal Declaration of Human Rights (GAOR 217A [III] December 10, 1948), art. 22 ("Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality."); art. 25 ("(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. (2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same protection."); arts. 1, 2, 7 (on the right to equal protection of the law); art. 16(3) (on the right to privacy). See also Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); Fourth World Conference on Women Platform for Action (Beijing, September 4–15, 1995). See also Franklin D. Roosevelt's speech on the right to be free from want ("Annual Message to Congress," January 4, 1941, in *The Public Papers and Addresses of Franklin D. Roosevelt*, ed. Samuel Rosenman [New York: Random House, 1941], 671–72); Marshall on social rights (T. H. Marshall, *Class, Citizenship and Social Development: Essays by T. H. Marshall* [Garden City, NY: Doubleday, 1964]); and Sen's argument that every individual has the right to be free from capability deprivation (Amartya Sen, *On Economic Inequality* [Oxford: Clarendon Press, 1997]).

¹¹ See, e.g., *Maher v. Roe*, 432 U.S. 464 (1977).

¹² I am referring here to the authority of the state under the mandatory child support enforcement procedures that entail paternity identification. See Smith, *Welfare Reform*, chap. 3.

poverty program ostensibly aimed at families with dependent children, the state can put so much pressure on a poor single mother that it places her in an absolutely desperate condition, one in which it becomes all the more likely that she will “voluntarily” give up her children for adoption. Indeed, three states evidently do not want to leave the custodial relinquishment effect of poverty policy to chance. They actually require welfare applicants to endure pro-adoption counseling and educational materials designed to encourage them—solely on the basis of their application for means-tested aid alone, with not even the slightest allegation of child abuse or neglect—to relinquish their custodial rights.¹³

There is hardly any difference between the slurs that are commonly circulated in American society and government about the welfare mother—that is, the demonizing representations that construct her as a species of vermin or pestilence—and the absolutely obnoxious and horrific claim that her life is not worth living and does not deserve to be lived.¹⁴ But mainstream American political rhetoric is also invested in portraying the state’s relationship with the poor in a humanitarian light: the state is “reluctantly” withdrawing redistributive supports only because they perversely fostered welfare dependency, and it is introducing therapeutic interventions designed to promote the work ethic and patriarchal and heterosexist family values. What we are really witnessing, however, is a massive reduction in social rights and the augmentation of a harsh punishment regime that advances racial-capitalist and patriarchal interests by keeping the poor disorganized, desperate, and eager to work for low wages.¹⁵ Child support enforcement continues to fail as an antipoverty measure—given the fact that the biological fathers of the children of welfare mothers are typically too poor to meet their legal obligations—but the encapsulation of millions of adults within custodial mother/obliged biological father dyads greatly enhances the state’s ability to render the poor mass into a policeable totality. This tactic also interrupts the formation of solidaristic relations among the poor at an intimate level, and perpetuates neoliberal and traditional family values by displacing entitlement with private patriarchal dependency.¹⁶

Agamben, like Foucault, encourages us to pay close attention not just to the eternal return of exclusion but to the structure of exclusion as well. For his part, Foucault is perhaps the better theorist of the two where the institutionally specific analysis of disciplinary technology is concerned. But they both read the text of State authority against the grain, as it were. In its ideological self-presentation, the State establishes its governmental interests by referring to its showcase policies, namely the ones that are widely accepted as “mainstream” measures for enhancing the “normal” citizen’s well-being. In the American case, we are seductively invited to position ourselves as citizens of a country that has built up the best form of government in human history, one that is deeply committed to securing the conditions necessary for the pursuit of the “good

¹³ See *ibid.*, chap. 4.

¹⁴ On the ideological construction of the “welfare mother,” see *ibid.*, chap. 5. See also Maxine Baca Zinn, “Family, Race and Poverty in the Eighties,” *Signs* 14, no. 4 (Summer 1989): 856–74; Nancy Fraser and Linda Gordon, “A Genealogy of *Dependency*: Tracing a Keyword of the U.S. Welfare State,” *Signs* 19, no. 2 (Winter 1994): 309–34; Ange-Marie Hancock, *The Politics of Disgust: The Public Identity of the Welfare Queen* (New York: New York University Press, 2004); and Martin Gilens, *Why Americans Hate Welfare: Race, Media, and the Politics of Antipoverty Policy* (Chicago: University of Chicago Press, 1999). Compare Agamben’s commentary on German fascist eugenics (*Homo Sacer*, 122–23, 136–43).

¹⁵ Frances Fox Piven and Richard Cloward, *Regulating the Poor: The Functions of Public Welfare* (New York: Vintage, 1993).

¹⁶ Smith, *Welfare Reform*, chaps. 2 and 3. See also Gwendolyn Mink, *Welfare’s End* (Ithaca, NY: Cornell University Press, 1998).

life.” Agamben and Foucault resist the lure of modern State legitimation discourse. Refusing to follow the ostensive gesture of the State itself—again, the state prefers to point out its “mainstream” policies that serve the “general population”—Agamben and Foucault seek to interpret power relations by investigating the “extreme” cases involving individuals who are rendered into nonpersons through the application of purportedly “extraordinary” law (Agamben) or problematized fields of insufficiently disciplined subjectivity (Foucault).

But Agamben would argue that Foucault himself vacillates on this crucial point and at times endorses the view that unilateral forms of exclusionary governance—those that are embodied in State practices such as banishment, the quarantining of the sick within fenced-off spaces like the leper colony, or the execution of criminals, for example—were more or less eclipsed by modern disciplinary technologies.¹⁷ In my view, Foucault’s juridico-discursive and biopower regimes should be understood as ideal types that can bring to light the operations of power that are constitutive of modern liberal democratic societies. The fact that Foucault did not address fascism in his development of these two governance types is indicative of his scrupulous attention to the institutional specificities of distinct political regimes.¹⁸ Further, it is a virtue of Foucault’s work that the political status of the individuals targeted by biopower remains somewhat ambiguous; to a certain extent, they retain some types of liberal democratic rights even as they are excluded. Power in Foucault’s model is a sophisticated force that works best when it finds ways to bend freedom against itself, such that the subject misrecognizes his or her disciplined condition as a form of liberation. Agamben would vigorously resist these suggestions. He would charge Foucault with failing to push the investigation of the “exception” to its proper limit. Agamben’s eccentric reading of Foucault is consistent with his ambitious objective, namely to establish a theory that lays bare the timeless structure of any possible form of Western governance.

From a political theory perspective, it is nevertheless important to note that Agamben proposes a salutary challenge to the status quo. He is effectively insisting that we must reverse the analytical gaze of the social sciences: we must investigate the nature of sovereignty from the perspective of the “exception,” rather than the “mainstream,” policy of the State. It is “the politicization of bare life as such” that constitutes the “decisive event of modernity,” not the establishment of a liberal democracy dedicated to securing the right to life, liberty, and the pursuit of happiness. The opposition that is taken for granted between absolutism and democracy has always been a fragile one, and these two modes of governance are currently entering into a “real zone of indistinction.” Absolutism only appears to lie at the other end of the regime-type continuum at a maximal distance from democracy.¹⁹ Once we pierce the ideological obfuscations that are thrown up by the State, we can grasp the fact that the absolutist assertion of sovereign power over bare life is secretly tied to the most humanitarian moments of liberal democratic State authority.

Standing confidently—some would say arrogantly—on our Enlightenment inheritance, we westerners are enthralled by our own legitimation discourse, namely humanitarianism. We find it almost inconceivable, for example, that it is becoming increasingly difficult to draw the line between imperialist military campaigns and humanitarian aid projects.²⁰ Similarly, we, the American wealthy, like to tell ourselves that we have always been very generous—if not overly

¹⁷ See Agamben, *Homo Sacer*, 10–12.

¹⁸ See Michel Foucault, *Discipline and Punish* (New York: Vintage Books, 1980); and Michel Foucault, *The History of Sexuality*, vol. 1, *An Introduction* (New York: Vintage Books, 1980).

¹⁹ Agamben, *Homo Sacer*, 4.

²⁰ *Ibid.*, 133–34.

generous—toward the poor. It is, in fact, power that lies at the heart of poverty program design: its structures owe everything to the struggles between racial-capitalist and patriarchal forces that are deeply invested in the production of a docile low-wage workforce and in the promotion of the traditional heterosexual family, on the one side, and progressive forces like the poor people’s protests and the civil rights movement, on the other.

Agamben’s ambitious deployment of transhistorical overview is quite suggestive; like Hortense Spillers’s concept of the American grammar book²¹ (i.e., Spillers’s diagnosis of the underlying structure of gender and race hierarchies that remains constant in American culture from the colonial period to the present), his theory interrupts our complacent assumption that liberal democratic formations are somehow magically endowed with such a distinct orientation to the law, and such resilient and self-sustaining capacities, that we need not consider the possibility that they can harbor antidemocratic moments—such as slavery, imperialism, and eugenics—at their very core, or that they can descend quite quickly into various forms of absolutism. Agamben and Spillers help us to resist the lure of progressivism: the myth that the West is always moving forwards in its bid to achieve a just form of social cooperation. They show us how to grasp the continuities between the various moments of constitutive exclusion in the history of American identity, whether they involve the strategic production of the indigenous “savage” or that of the slave woman and the welfare mother.

However, Agamben, unlike Spillers, moves at such a distance from historical specificities that he loses sight of institutionalized gendered dynamics. His objective is not only to thematize Western discourse on a metaphysical level, in the Derridean sense, but to establish a critical sociopolitical theory that can bring to light the fundamental character of Western governance that has purportedly endured, like a timeless essence, from Aristotle’s ancient Greece to post-9/11 American government. Like Spillers, Agamben underlines the fact that biopolitics constructs the national population in a racially essentialist manner. But he cannot detect the specificity of racial formations; he cannot help us to understand the ways in which the anti-Semitism of the Nazis resembles, but also deviates from, institutional racism in contemporary American society. Further, he completely fails to grasp the centrality of gender to the biopolitical project of producing bare life. For Agamben, the sovereign preserves for itself “the natural right to do anything to *anyone*.”²² As the line between legitimate authority and the right of the sovereign in a state of exception to protect “the people” by producing bare life is increasingly blurred, we become unable to identify “any one clear figure of the sacred man.”²³ In effect, “we are all virtually *homines sacri*.”²⁴ “Bare life is no longer confined to a particular place or a definite category. It now dwells in the biological body of every living being.”²⁵

The historical record, however, makes it crystal clear that it is the structurally disempowered who are most vulnerable to the exercise of arbitrary state power in the state of emergency. Women are placed in especially constrained positions by the modern State when it devotes itself to population management. In the context of positive eugenics, the “fittest” women of the racial nation are asked to serve as the wombs of “the people” through natalist propaganda and policies.

²¹ Hortense Spillers, “Mama’s Baby, Papa’s Maybe: An American Grammar Book,” in *The Black Feminist Reader*, ed. Joy James and T. Denean Sharpley-Whiting (Malden, MA: Blackwell, 2000), 57–87.

²² Agamben, *Homo Sacer*, 106.

²³ *Ibid.*, 115.

²⁴ *Ibid.*

²⁵ *Ibid.*, 140.

Negative eugenics in turn promotes the exclusion of the “unfit” through selective immigration controls, sterilization, and the discouragement of child-rearing. Poor women typically bear the brunt of these policies. In some eugenic contexts, the “unfit” woman is offered partial redemption, but only insofar as she is rendered into a sterile worker, a prostitute, or a military servant.²⁶

The practical implications of Agamben’s failure to address the historically specific and stratified character of the State’s targeting (i.e., the fact that in the midst of an emergency, the State escalates its already established class, race, ethnic, and gender profiling instead of striking out in an unpredictable manner) are sobering. If we convinced ourselves that vulnerability is equally distributed, we would implicitly reinforce our already excessive tendency toward bourgeois self-regard.²⁷ We would also foreclose all radical attempts to hold the agents who actively participate in the establishment of eugenics policy, and those who benefit handsomely from its operation, collectively responsible.²⁸ Out of our bourgeois narcissism, we would refuse to face the Other and to receive the Other’s inscrutable and yet insistent demand.²⁹ Instead of facing the Other, we would merely fixate on the image of the Other’s suffering. We would derive compensation for our perceived vulnerability through our consumption of this image; it would become our fetish. We would congratulate ourselves for having the fortitude to commodify suffering, and we would act as if we could exhaust our moral obligation by doing so. Thus, we would forget that we had forgotten the Other and that we were keeping our backs turned against the Other’s face. Fetishism, however, is not solidarity.

If any person can be rendered into bare life, then we should assume that Agamben’s absolute sovereign will strike in a random fashion, anywhere and everywhere at once. If absolutism is omnipresent, then virtually every form of political organizing is doomed to fail. Once again, Agamben’s argument risks the incitement of bourgeois self-regard and quietistic resignation. Agamben’s sensitization is one-sided—it raises our awareness of the fact that it is the interests of powerful elites, not charity, that structure poverty programs, but it allows us to avoid the inconvenient truth: the State remains a terrain of struggle, and it is our moral duty to contribute to the advance of social justice. Today’s welfare mothers are not strategically positioned in exactly the same way as the Nazis’ concentration camp inmates; nor are they subjected to totalistic domination like the slave woman or Carrie Buck.³⁰ They can, and they do, engage in political organizing; they have a few—albeit far too few—allies in civil society, Congress, state legislatures, and local governments; and they are exercising their right to self-determination against very steep odds.³¹

²⁶ See Nira Yuval-Davis, *Gender and Nation* (London: Sage, 1997); Zillah Eisenstein, *Against Empire: Feminisms, Racism, and the West* (New York: Zed Books, 2004); and Cynthia Enloe, *Maneuvers: The International Politics of Militarizing Women’s Lives* (Berkeley and Los Angeles: University of California Press, 2000).

²⁷ See Michèle Barrett and Mary McIntosh, *The Anti-social Family* (London: Verso, 1991); Mary Dietz, “Hannah Arendt and Feminist Politics,” in *Feminist Interpretations and Political Theory*, ed. Mary Lyndon Shanley and Carole Pateman (State College, PA: Pennsylvania State University Press, 1991), 232–53.

²⁸ See Timothy Kaufman-Osborn, “We are All Torturers Now’: Accountability After Abu Ghraib,” *theory & event*, 11:2 (2008) (http://muse.jhu.edu/journals/theory_&_event/).

²⁹ See Butler on Levinas in Judith Butler, *Precarious Life: The Powers of Mourning and Violence* (New York: Verso, 2004).

³⁰ See *Buck v. Bell*, 274 U.S. 200 (1927), upholding state law allowing the superintendents of insane asylums to order the sterilization of an inmate with an inherited condition of insanity or mental disability whenever they deem that such an operation would advance the interests of the inmate and society as a whole.

³¹ To cite only a few examples, see the organizing activities of ACORN (<http://www.ACORN.org>), the Kensington Welfare Rights Union (<http://www.kwru.org>), Sistersong (<http://www.sistersong.org>), and New Orleans’ Common Ground Collective (<http://www.commongroundrelief.org>).

To return to Agamben, what precisely is the relationship between human reproduction and governance? Introducing Aristotle's distinction between the life of the citizen and bare life, Agamben deploys a distinctly liberal democratic topographic metaphor: "In the classical world . . . simple natural life is excluded from the *polis* in the strict sense, and remains confined—as merely reproductive life—to the *sphere* of the *oikos*, home."³² The concept of confining a particular social practice to a distinct spatial region, like a "sphere," seems to be at odds with the ancients' organicism. To be sure, Agamben refers in particular to Aristotle's rejection of the argument that governing the polis amounted to nothing more than the continuation of the sort of governing required in the household on a grander scale. But Agamben's introductory passage on Aristotle continues to muddy the water even further. At one moment he is referring to distinct "spheres" of governance—the political versus the reproductive—in which different types of leadership take different fields of human activity as their proper object. At the next, he discusses Aristotle's hierarchy of moral ends: man is "born with regard to life, but exist[s] essentially with regard to the good life."³³

In fact, the organicism that was proper to the ancients had a very specific character. The Greek citizen's household was not a distinct "sphere" of human intersubjectivity in the modern sense; household relations had a great deal of bearing upon the good of the community and the ability of the polis to facilitate the pursuit of the good life. Ideally, the male citizen conducts himself ethically when he acts as the head of the household, for he enters into relations with other citizens from the most felicitous position when he does so, and the good of the polis depends upon the ethical performance of social roles in every nook and cranny of the citizens' world. It is also best for the citizen to manage his economic affairs properly—that is, to achieve a subsistence standard of living and to generate the small surplus necessary for honoring virtuous friends with appropriate gifts. Ultimately, however, these domestic matters ought to be determined by a set of ethical principles that are unique; the guiding principles for household management cannot be derived from the ones that are proper to political deliberation. This is not because the household was located in a separate domestic sphere, however. In the ideal polis, the citizen rules and is ruled by other citizens in turn. In the household, the patriarch is directing subjects who allegedly do not meet the male citizen's standard of rationality, namely women, children, and slaves. Even if the "good man" is the same as the "good citizen" in the ideal polis, the art of governing one's peers remains distinct from that pertaining to the management of one's dependents.³⁴ Let us assume, then, that the polis remains properly constituted, and that the household in question is headed by a male citizen. In that case, we certainly cannot construct the household as if it existed in a distinct sphere—it is not wholly apart from the polis, and it is not a special place within the polis that cannot be considered a proper object of public deliberation. The citizen has to adopt a different leadership posture when he applies himself to the task of

³² Agamben, *Homo Sacer*, 2; emphasis added to the translator's use of the English word "sphere."

³³ Ibid. This ambiguity becomes more acute in the following passage, in which Agamben takes a passing remark by Foucault about the ancients in the concluding section of *The History of Sexuality*, vol. 1, somewhat out of context (*Homo Sacer*, 3). Foucault's primary task in that section of *The History of Sexuality*, vol. 1, is not to compare modern power with ancient forms of governance or to find continuities in the structure of power that are consistently maintained throughout Western civilization. On the contrary, he is interested mainly in drawing out the contrast between juridico-discursive power—an ideal type that he associates with early modern Europe—and modern biopower.

³⁴ See Aristotle, *The Politics*, trans. Ernest Barker (Oxford: Oxford University Press, 1946); and *The Nichomachean Ethics*, trans. David Ross (Oxford: Oxford University Press, 1925).

heading the household, but that is not because the polis has no interest in regulating reproduction. He does so only because he must deal with his inferiors when he acts as the head of the household and manages his domestic affairs.³⁵

Agamben's use of Aristotle to set up his broader argument could distract us from the fact that Aristotle actually wanted the legislator to take a deep interest in the management of human reproduction. In *The Politics*, for example, the discussion of constitutional types is juxtaposed with a substantial section in which a plan for the ideal city-state is sketched out, complete with advice on demographics, territorial considerations, the best division of labor, public planning, military preparation, and education.³⁶ At its foundation, the polis must seek to enhance the moral development of the citizen,³⁷ but educational institutions work best when they receive the best pupils. Reflecting the biological and medical thinking of his day, Aristotle lays out a model family law. Indeed, the topic is treated as if the text does not sense any particular need for extraordinary explanation; for Aristotle's students,³⁸ this expansive view of the polis—which includes population management within the scope of legitimate governmental interests—was entirely unremarkable. The legislator in the ideal city-state naturally concerns himself with the task of establishing the legal conditions that foster the best types of human reproduction. The polis's interest in ensuring the reproduction of the best offspring is so extensive that it may quite properly establish rigid and narrow age requirements for marriage (around eighteen for women and thirty-seven for men).³⁹ The legislator is invited to consider a law that would require pregnant mothers to perform daily pilgrimages in order to enhance their physical fitness.⁴⁰ As for the treatment of the unfit child, *The Politics* states plainly that "there should certainly be a law to prevent the rearing of deformed children."⁴¹ The legislator is also counseled to establish the upper limit of children in the ideal family and to ensure that miscarriages are induced when a family has reached that limit. Of course, the liberal democratic idea of a right to privacy has no place in Aristotle's scheme. Men and women form intimate partnerships, not as an expression of their individual and autonomous wills, but to "render service to the state by bringing children into the world."⁴²

Fascist organicism similarly seeks to extend the grip of the sovereign into every corner of the Reich such that the will of the Führer defines virtually every field of social activity, from the courts to the market, the church, and the family. Agamben quite rightly draws our attention to the integration of eugenics into fascist social policy. The National Socialists sought to secure the life of the people by preserving the Aryan racial stock from miscegenation and degeneration.⁴³

³⁵ Modern readers who have fallen into the habit of assuming that the barrier between the private and the public is nonporous, that each of these two spheres develops according to its own autonomous logic, and that the private/public dualism is constitutive of any possible society—that it can be found in virtually any cultural, political, or historical formation—might be confused by the terms Agamben uses: "At the beginning of the *Politics*, Aristotle takes the greatest care to distinguish the *oikonomos* (the head of an estate) and the *despotēs* (the head of the family), both of whom are concerned with the reproduction and the subsistence of life, from the politician, and he scorns those who think the difference between the two is one of quantity and not of kind" (*Homo Sacer*, 2).

³⁶ Aristotle, *The Politics*, bks. 7 and 8.

³⁷ *Ibid.*, 3.9.14.

³⁸ Aristotle's students apparently collected their lecture notes and published them as *The Politics*.

³⁹ *Ibid.*, 7.16.9.

⁴⁰ *Ibid.*, 7.16.14.

⁴¹ *Ibid.*, 7.16.15.

⁴² *Ibid.*, 7.16.16.

⁴³ Agamben, *Homo Sacer*, 147.

They adopted laws permitting the sterilization of those deemed to be carrying “hereditary disorders of the body or the mind.” They prohibited marriage for anyone who was institutionalized or who suffered from contagious disease, mental illness, or hereditary disease. Only those with Aryan blood were considered full citizens with the right to a passport, and Jews were not allowed to marry full citizens.⁴⁴ Agamben could have also pointed to the fact that these prohibitions were combined with positive eugenics strategies. The Aryan woman was charged with the duty of marrying an Aryan man, bearing children, and faithfully rearing the Reich’s future generation. Aryan women who bore more than four children received the Cross of Honor of the German mother. In Hermann Göring’s “Nine Commandments for the Workers’ Struggle,” German Aryan women were called to “take hold of the frying pan, dust pan and broom and marry a man.”⁴⁵

Taking inspiration from Agamben, and yet rejecting his metaphysical approach to governance, I would argue that contemporary social policy is an expression of neo-eugenics. Neo-eugenics is a special kind of biopolitics that resembles fascist organicism but is unique in several key respects. Eugenics is certainly alive and well in the United States today. Not only are publications like *The Bell Curve* that espouse a theory of biologically determined and racially differentiated intelligence received as mainstream texts, but we are also witnessing the training of a myriad of forces upon the poor that effectively discourage them from forming kinship groups and bearing and rearing children on their own terms.⁴⁶ The harsh character of poverty assistance policy, the gap between the living wage and the minimum wage, gender- and race-based discrimination, and the stratified nature of the labor market operate in tandem. Together, they guarantee that millions of American adults will never earn enough to support a family even when they do manage to find full-time and year-round jobs. The racial bias of the criminal justice system places a disproportionate number of black and Latino men and women in prison at precisely the moment in their life cycles in which nonincarcerated adults typically start building their families. American infant mortality rates are the worst for any developed country,⁴⁷ while HIV infection and AIDS continue to hit poor women of color particularly hard. Even if a poor black woman beats the odds and manages to bear and rear a healthy child and to provide him or her with an adequate diet, decent housing, a safe neighborhood, adequate childcare, and early education, she is still exposed to the inequitable child welfare system that threatens to cancel out her parental rights in an arbitrary manner.⁴⁸

But for all its continuities with ancient and fascist visions of legitimate governmental interest, contemporary eugenics remains unique. To be sure, there are the jeremiads from conservative-policy pundits and think tanks condemning middle-class women for utilizing childcare services and selfishly combining parenting with the pursuit of a professional career. It is also certainly true that the middle-class mother has been largely abandoned by the neoliberal state and that when she secures an adequate education for her children, she is, in all likelihood, reaching

⁴⁴ *Ibid.*, 149, quoting from the law of the Reich.

⁴⁵ “Women in the Third Reich,” United States Holocaust Memorial Museum, <http://www.ushmm.org>. See also Gisela Bock, “Racism and Sexism in Nazi Germany: Motherhood, Compulsory Sterilization, and the State,” *Signs* 8 (1983): 400–421; Claudia Koonz, *Mothers in the Fatherland: Women, the Family, and Nazi Politics* (New York: St. Martin’s Press, 1987); and Lisa Pine, *Nazi Family Policy, 1933–1945* (New York: Berg, 1997).

⁴⁶ Richard Herrnstein and Charles Murray, *The Bell Curve: Intelligence and Class Structure in American Life* (New York: Free Press, 1994).

⁴⁷ Central Intelligence Agency, *The World Factbook*, infant mortality rate, <http://www.cia.gov>.

⁴⁸ Dorothy Roberts, *Shattered Bonds: The Color of Child Welfare* (New York: Basic Books, 2003).

into her own bank account to do so. Even with these caveats in mind, however, the middle-class professional woman is not being subjected to compulsory maternalism; she is not being effectively pressed to do her patriotic duty by bearing and rearing the next generation. The rise of the liberal feminist movement has transformed the political landscape, social policy, and popular attitudes. As such, the free-market liberty of the professional woman will, in all likelihood, resist the attacks of the most conservative reformers for decades to come.

We are witnessing, then, the establishment of a neo-eugenics trend in public policy rather than a return to the organicist worldviews that are specific to the ancients and the fascists. Against Agamben's de-historicization, I would insist on the importance of this departure. The concept of "neo-eugenics" usefully reminds feminist and queer activists that any analysis of the contemporary backlash against gender equality, sexual liberation, and secular humanism that does not pay close attention to class, race, and transnational capital accumulation would be woefully inadequate. We may see the re-criminalization of abortion, for example, thanks to the rise of antifeminist extremists at every level in the American political scene, from the local hospital board to the Supreme Court. It is nevertheless unlikely that we will see the wealthiest professional women being pressed to give up their careers and coerced into putting their wombs at the service of the "race." Under pressure from patriarchal and capitalist forces, the State will probably do as little as possible to make the combination of wage earning and mothering any easier—we will not, in all likelihood, see the establishment of a universal childcare program, for example—but it is unlikely that elite professional women will be assaulted by the same degree of patriarchal propaganda, racially motivated population control anxieties, economic coercion, and religious proselytization that poor women must endure on a daily basis as a matter of course. To be sure, conservative forces have not entirely abandoned the fray. They champion the women with college degrees who have eschewed the paid-work world in favor of full-time domestic labor, and they continue to make every effort to whip up a social panic about the pediatric perils of childcare. But on the whole, the career gains of elite professional women will remain somewhat unassailable, such that any calls for a full-scale return to earlier forms of "positive" eugenics and the insistence that the "fittest" women take up their proper maternal duties will remain muted. It is the welfare mother, not the professional career woman, who will bear the brunt of neo-eugenics. A