

Esposito, Foucault, and the Commons

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This paper examines the relationship between concepts of security and dependency integral to a reworking of the idea of the commons via an analysis of Esposito and Foucault. If Foucault's account of modernity focuses on the problem of security in the transition from sovereignty to biopower, Esposito shows that that security is underpinned by a suppression of the original sense of community, dependency on otherness. The paper subsequently explores the possibility that Esposito's discussion of immunity can be enhanced by Foucault's discussion of a "subject of rights" that construes governmental security as the ongoing formation of popular sovereignty through politics.

With the wave of recent anti-neo-liberal and anti-capitalist protest movements, the issue of the commons is back on the left's political agenda.¹ At stake here—as Dean and Deseriis point out in their essay on the Occupy Movement—is a way of thinking about and implementing the management and use of common resources outside of capitalist circuits of private appropriation. But it is hard to think about such management without confronting the problem of social difference. As Dean and Deseriis argue, the multiple aspects of the commons—including the management of resources, the problem of social reproduction, the challenges of production and allocation—feature “elements that cut transversally across these areas,” necessitating a complex system of relations rather than “a one-size-fits-all solution.”² An important aspect of this discussion is the problem of solidarity in the midst of difference. What will be required to deal adequately with the issue of the commons is a notion of solidarity beyond the assertion of discreet identities (i.e., as articulated in identity-politics discourses), while at the same time, acknowledging and respecting differences of social position and constitution in accord with the stipulation that there is no simple or single solution to be had to these problems of constituting the commons.

This paper seeks to make a contribution to this set of issues via an analysis of the idea of rights, guided by the thought that the tradition of the popular assertion of rights can be reworked in the service of an open-ended (non-reductionist) concept of solidarity and collective sovereignty that hinges on respect for differences and that acknowledges dependency on otherness. This argument will proceed by moving through the work of two noted social and political theorists, Roberto Esposito and Michel Foucault, each to some extent read with and against the other, each compensating for deficiencies or gaps in the analysis proposed by the other. In Esposito's work, one finds two particularly valuable features: first, a paradigm of modernity as a project of immunity that builds on, yet compensates for, Foucault's tendency to reduce social dynamics to modes of discontinuous power-relations, and second, a sense of community as exposure to otherness that is suppressed in the project of immunity-as-security that modernity develops, and which neo-liberalism expresses in a highly developed form. Yet the arguable weakness in Esposito's analysis is that the concept of immunity does too much work in the sense that it fails to treat with sufficient nuance aspects of the immune trajectory that Foucault finds in his analysis of the transition from the subject of rights to a neo-liberal subject of interests. By combining these two trajectories of analysis—modernity as a large-scale project of immunity, and modernity as marking a shift in the composition of the political subject—it is possible to articulate a view of rights as constructed solidarity that would contribute to retrieving a sense of the common as dependency on and shared openness to difference, one standing in sharp contrast to the violently enclosing paradigms of neo-liberal immunity.

1. The Immune Paradigm, Security and Biopolitics

As is well-known, for Foucault biopower and biopolitics markedly depart from the state-centric concerns of early modern political thought. Given this, it might be surprising that Esposito positions his intervention in the field of political theory by analyzing Foucault's dramatic shift of focus from sovereignty to biopolitics in modern techniques of biopower. Locating a moment of apparently unresolved tension in Foucault's account of modern biopower's connection to sovereignty in recent history, Esposito suggests that it is precisely at the point of analytic instability in Foucault's work that the theoretical link between biopolitics and traditional political theory (as focused on sovereignty) should be exhumed. Yet in doing this, Esposito will not take up the nature of power as such, and so he will refuse two of the most prominent ways of following Foucault onto the terrain of biopolitics.

On the one hand, then, Esposito parts company with the so-called “History of the Present” school, who find compelling Foucault's assertion of a qualitative rupture between contemporary forms of power that incite and govern through freedom and archaic modes of power predicated on a sovereign right of subtraction expressed

through the ancient right to kill.³ So the transition from archaic to modern society cannot be accounted for or adequately described in terms of a mere discontinuity between techniques of power. Yet on the other hand, Esposito will also part company with accounts—most notably Agamben’s—of modernity as a sort of repetition of the archaic sovereign’s power over life and death that also establishes the boundaries of the political community.⁴ Both of these approaches, argues Esposito, are content to accept one of the two incongruous accounts of modern biopower in Foucault’s work without interrogating with sufficient rigor what might bind them together. The problem is that in modern politics we find both the new, represented by the apparent replacement of sovereign power by biopower, and the old, in the unprecedented resurgence of a sovereign right to kill. As Esposito notes, “Foucault never opts decisively for one [account] or the other. On the one hand, he hypothesizes something like a return to the sovereign paradigm within a biopolitical horizon... [while]... On the other hand, Foucault introduces the opposing hypothesis, which says that it was precisely the final disappearance of the sovereign paradigm that liberates a vital force so dense as to overflow and be turned against itself.”⁵

Esposito’s focus of discussion in this passage is the final lecture in Foucault’s discussion of biopower in the context of state racism in the lectures entitled “Society Must Be Defended.”⁶ In the course of this discussion, Foucault indeed vacillates on the underlying causes of the unprecedented slaughter of the very populations that the new techniques of biopower were not only to protect, but whose flourishing they were meant to ensure. In a treatment of the paradoxes of atomic weaponry, Foucault suggests that either such power “is sovereign and uses the atom bomb, and therefore cannot be power, biopower, or the power to guarantee life... Or, at the other extreme, you no longer have a sovereign right that is in excess of biopower, but a biopower that is in excess of sovereign right.”⁷ While Foucault follows this example by introducing the concept of state racism as a device for licensing the killing those deemed a threat, it is evident that doing so displaces the problem of what type of power is at work in modern state racism. Foucault moves back and forth in his discussion between the claim that racism is an unprecedented phenomenon rather than a repetition of the traditional political conflict between enemies. But if Foucault suggests modern racism expresses a new concern at the level of biology about the danger of exposure to an alien element, it also contains the apparently opposed thesis that “this [i.e., racism] is no more than a biological extrapolation from the theme of the political enemy.”⁸ In the end Foucault argues that what is different about biopolitical racism in its modern form is that not only does it claim to strengthen one’s own population by killing the other who carries the threat of degeneration, but that such exposure to danger entails “a way of regenerating one’s own race. As more and more of our number die, the race to which we belong will become purer.”⁹ So although Foucault does not clearly resolve the issue of power, he is more definite that the paradoxical function of state or biopolitical racism—a logic also present in the atomic bomb example—is to defend by exposing to destruction the very thing one desires to protect.

The reason for this brief foray into the text of Foucault’s lectures is that it shows how Esposito takes up Foucault’s concerns by displacing and relocating the latter’s discussion of power within the larger problematic of immunity. What becomes clear in Foucault’s treatment of biopolitical racism is that it expresses what Esposito will take up under the banner of immunity, while extending its purview “backwards” so as to cover the entire modern political tradition, including what for Foucault would be its opposite, the contract tradition of political theory inaugurated by Hobbes. Furthermore, for Esposito the contradictory logic of immunity will be explicitly linked with what remains mostly implicit in Foucault’s discussion of biopower, namely, the general problem of the relation to difference or otherness within a community supposedly held together on the basis of a common identity. It is thus by means of the issue of the association of differences within the community that Esposito will position the whole problematic of biopower and biopolitics in its relationship to modern social and political order as a question of security, or in other words, as the problem of how modern societies secure a communal identity in the face of internally constitutive differences.

This reworking of the problem of power entails that Esposito must reject Foucault’s claim that there is a decisive difference between biopolitical racism and the traditional political problem of enemies, a feature of the argument in which Esposito’s proximity to Agamben’s concerns is quite striking. For Esposito, this rejection of a decisive difference between biopower and traditional politics means that the problem of *bios* is already intimately connected to the question of political order from the very beginning.¹⁰ That is to say, rather than being juxtaposed, as they are in Foucault’s work, biopolitics and sovereignty for Esposito appear as two different but intimately related responses to the problem of *bios* as such, and that problem reduces to the vulnerability intrinsic to human life—its need for security—which will be described in *Immunitas* in terms of a constitutive negativity. The negativity at stake in human life identified by Esposito here is actually two-fold. The human being is characterized by a lack of developed

instincts that provide an essential or necessary way of life, while this lack of an instinctual basis for life makes humans radically dependent on each other and thus constitutively vulnerable to one another.¹¹ This lack requires compensation in the form of a socio-political counterweight to such intrinsic dependency.¹² Compensation notably includes, as a kind of necessary first-order response, securing life against threats external and internal, and then in developing capacities in a way that allows human life to flourish in its vulnerability. While security and flourishing are analytically distinct, they are not two different things, but appear as tendencies within the overall development of compensating human life for its constitutive vulnerability. For Esposito, then, political association consists in structuring life in common as a mode of compensating for an intrinsic lack or negativity constituting human life.

Compensation, however, must also be understood as an aspect of immunity. Compensation is a form of immunity because, as Esposito points out in *Immunitas*, it “is never, properly speaking, an affirmative, positive, originary act; rather, it is derivative, caused by the need to negate something that in turn contains a negation.”¹³ This statement reveals the prosthetic function of compensation, such that whatever positive value it might seem to contain, it can never, on Esposito’s account, shake itself loose from the negativity with respect to which it compensates. Compensation is thus immunization, securing against a defect or lack, such that its apparent positivity is but “the plus ensuing from the product of two minuses: a non-minus, or the disappearance of a minus.”¹⁴ As we will see in a moment, this negativity is latent to modern society as a whole, shaping the apparently different moments of sovereignty and biopolitics.

Given this overarching theme of security and compensation, it is perhaps not surprising that Esposito positions Hobbes as the most important political philosopher of the modern era. Hobbes makes explicit the dependency and exposure to otherness at the basis of human life precisely in order to turn it back on itself via the immunizing function of sovereignty, the foundation of civil order. In Hobbes, according to Esposito, sheer exposure to the possibility of death at the hands of the other as the ultimate form of dependency is what we find exhibited with unflinching clarity in the account of the state of nature. In this fictional heuristic situation, all are reduced to the sheer fact that each is susceptible to a violent death at the hands of any other. The purpose of this reduction is to show that the foundational function of civil society, instituted by means of the (equally fictional) social contract, is primarily to provide security for its members and secondarily, to justify in the name of that security whatever reductions of liberty it might demand. Inescapably bound up with this demonstrative reduction, as Esposito points out, is the Hobbesian exposition of fear as the great motivator to order, the hinge between the natural and civil states that is bent back on itself, immunizing the social body against common exposure to violence only at the cost of violence itself. As Esposito writes in his discussion of Hobbes in *Communitas*, fear “doesn’t only have a destructive charge, but also a constructive one. It doesn’t only cause flight and isolation, but it also causes relation and union.”¹⁵ But the relation and union at stake in civil society is that in which fear, precisely because of the provision of security by the sovereign power, has a permanent place: “fear not only originates and explains the covenant but also protects it and maintains it in life. Once tested, fear never abandons the scene”; it simply shifts from anarchic “reciprocal” to vertical “institutional” fear, fear of the sovereign power.¹⁶ What is clearly on display in Esposito’s account of the Hobbesian social contract is the way in which compensation, as immunization against an initial condition of lack or negativity, relocates, rather than overcomes, that negativity.

In a parallel fashion, biopolitics will be characterized as a type of compensation within the overall framework of immunization. There is no doubt, as Foucault makes clear, that biopolitics as a regime of fostering life departs from the inaugural institution of sovereign power as the mere provision of security, so much so that biopolitics seems to constitute a different form of relation to life altogether. The main difference between these two, on Esposito’s account in *Immunitas*, is that from early modernity up to the present time, the concept of life has undergone a (scientific) revolution. Life is no longer understood as a state but as a process, something dynamically in flux, and this has profound implications for the compensatory schema. As Esposito puts it, “the compensatory logic had to be transferred from a static equilibrium to a dynamic one”¹⁷ in which it comes to be recognized that “what needs to be preserved in life is not a given, but a process, a development, a growth. What needs to be stabilized is movement.”¹⁸

On Esposito’s account, as life comes to be understood dynamically, an important symmetry develops between the older Hobbesian metaphorical depiction of the state as an artificial body composed of its citizenry and the modern idea detailed by Foucault that society is composed of the biological bodies of the population. What appeared as a simple metaphor in Hobbes, and which he in turn borrowed from classical references to the city-state as political body, becomes in modernity less and less metaphorical with the growth of medical power/knowledge, to the point where the body politic ends up being inseparable from the biological existence of the population.

As we will see in a moment, taking his cue from Foucault's account of the transformation of juridical to bio-political techniques of rule within the modern state, Esposito writes that "when the body of citizens became the real as well as the metaphoric place where the exercise of power was concentrated, the issue of public health—understood in its widest and most general sense as the "welfare" of the nation—clearly became the pivot around which the entire economic, administrative, and political affairs of the state revolved."¹⁹ The transposing of the citizenry into a biological population coincides with a mutation in the form of life of modern societies such that politics and life—in its double instantiation as individual body and life of the species—become one and the same. Thus for Esposito, "what characterizes the horizon of biopower is...the way the whole sphere of politics, law, and economics becomes a function of the qualitative welfare and quantitative increase of the population, considered purely in its biological aspect."²⁰

In this respect, replacing the prohibiting sovereign rule with the inciting biopolitical norm is consistent with making politics and life inseparable. The important thing to notice about this significant shift is that from Esposito's perspective nothing about it suggests a departure from the overall direction of immunization characterizing modern politics as such. In a passage which clarifies the difference between modernity's earlier concern with security and its later project of biopolitics, Esposito points out that if "biopolitics is not to distinguish life along a line that sacrifices one part of it to the violent domination of the other...but on the contrary, [is] to save it, protect it, develop it as a whole," it is equally evident that "this objective involves the use of an instrument that is bound to it through the negative, as if the doubling that life experiences of itself through the political imperative that "makes it live" contained something that internally contradicted it."²¹ Just as the Hobbesian prosthetic of sovereignty provides security by internalizing (within the state) the exposure to violence, the biopolitical techniques of fostering life do something quite similar: they internalize, by affirming a biological norm, the political principle that fostering life also requires its opposite, suppressing life and sometimes even putting it to death.

Once again, the germ of Esposito's conception of political security and its correspondence with biopolitics can already be found in Foucault's lectures. In the process of describing the difference between the early modern paradigm of sovereignty and biopower, Foucault points out that the shift away from *Raison d'Etat* begins with the social contract tradition in which, as we have already seen in Hobbes, people "delegate absolute power over them to a sovereign [...] because they are forced to by some threat or by need. They therefore do so in order to protect their lives."²² Given that the protection of life is the overriding function of modern political power, Foucault suggests it is unlikely that the modern sovereign, as distinct from the medieval sovereign, could demand "that his subjects grant him the right to exercise the power of life and death over them."²³ It is much more likely, Foucault maintains—anticipating themes he will develop in his subsequent "Birth of Biopolitics" lectures—that the modern sovereign must provide life with security but otherwise leave it "outside the contract."²⁴ As this suggests, Esposito's contention that there is no great difference between early modern political theory's focus on security, and later modernity's turn to the fostering of life, is also found in the text of Foucault's lectures. The parallel between securing and fostering is conveyed by the idea that the biopolitics of the population in its difference from both archaic (specifically pre-modern) sovereign power (the unregulated right to kill), and from disciplinary power targeting the individual body, is concerned to provide security in the form of regularity and equilibrium. Foucault claims that biopower is concerned to "maintain an average, establish a sort of homeostasis, and compensate for variations within this general population and its aleatory field."²⁵ This concern means that "security mechanisms have to be installed around the random element inherent in a population of living beings so as to optimize a state of life."²⁶ The concern to secure life here indeed appears to be contiguous with the concerns of early modern political theory to secure the lives of citizens; given this connection through the concept of security, Esposito certainly seems warranted in arguing that the biopolitics of the population is connected, via biological science's development of the concept of life, to the overall problem of collective security. Such an impression is only deepened by comments Foucault makes prior to the passage just quoted, where he argues that "Biopolitics deals with the population, with the population as a political problem, as a problem that is at once scientific and political, as a biological problem and as power's problem."²⁷

Given the continuity of the theme of security as a basic political problem, a problem that will demand certain shifts in forms power without abandoning the overall objective of the provision of security, Esposito is certainly not wrong to view modernity under the umbrella of immunity. If security is the overall concern of modern society as such, it would follow that Foucault cannot truly maintain the division he would like to make between state racism and the traditional problem of eliminating one's political enemies. Seen from this angle, the phrase "optimize a state of life"

takes on an ominous quality, since it includes the immunizing logic discussed previously in which life must not only destroy that which opposes it, but in doing so, must fight against itself, cut into its own body, in order to secure itself. That such an attempt to control and manage the biological element can rapidly get out of control, can lead to genocide and the wholesale destruction of life, as is implied in the very structure of this immune logic, which might aptly be described for this reason as the logic of "autoimmunity."²⁸ Where Esposito pushes beyond the analysis supplied by Foucault is in his grounding of security in the constitutive vulnerability or dependency of human life. Read through the concept of negativity, that is, the fact that human life is constitutively not-identical, Esposito exposes the contradiction at the heart of the immune paradigm. Biopolitics, as compensation and as a modality of immunization, can never expel the negative on which it is founded, nor can it consequently depart from the ambivalent logic of "securing," in which the latter is accomplished through what appears to be its opposite, where to secure and foster requires the annihilation of that which is deemed incompatible with the protective aim; in the final instance the very life to be secured and fostered. In this way, that security implies violence applies equally to Hobbes' social contract and to more contemporary regimes of biopower. This is also why the coherence of modernity as an epoch of immunity cannot be adequately grasped in terms of discreet types of power; what is required is the re-situation of the problem of power within the problem of the human being's living vulnerability, negativity, or lack of itself. Seen this way, the affirmative and the destructive cannot be cleanly separated, a circumstance that from time to time bends the productive energies of affirming and securing life back toward its annihilation. As Esposito puts this quite strikingly in a passage from *Bios*, "the negative, keeping to its immunitary function of protecting life, suddenly moves outside the frame and on its reentry strikes life with uncontrollable violence."²⁹

2. Immunity and Community

If Esposito's construal of the overarching project of immunity out of material present in Foucault's work turns on the centrality of human dependency on otherness, this dependency will turn out to be a crucial feature of Esposito's own project in articulating the nature of community. In fact, for Esposito, dependency on otherness, constitutive exposure to difference, will turn out to comprise the very notion of community, a notion that modernity as a whole can be said to suppress through the project of immunity. In other words, the modern preoccupation with security in its various guises turns on the problem of the exposure to difference, such that if it turns out that the communal relation just is this exposure, modernity-qua-immunity will turn out to be the suppression of community.

And indeed this argument underlies Esposito's attempt in *Communitas* to return us to an ancient understanding of community as exposure and dependency constituting the primary form of social obligation. Thus, according to Esposito's discussion of community in terms of its etymology of the *munus*—the original sense of community in the Roman world—the latter is diametrically opposed to its modern usage. Community, in Esposito's retrieval of the ancient sense of the term, did not entail sharing a common essence or property (such as nationality, ethnicity, or ideology), but rather in sharing out, or more precisely, being dispersed through sharing out and belonging to what differs. To belong to the community is not to partake of what is most one's own, but instead to do just the opposite, to be exposed to a difference or otherness that is alien to one's own and yet constitutive of it. Esposito clarifies this diametrically opposed meaning of community to the modern sensibility with a series of Latin terms that emphasize the obligatory dimension of exposure and dependency on otherness: to incur an onus, to donate (*donum*), and to officiate (*officium*).³⁰ In all these cases the emphasis is on what one must do for the community as a result of one's inescapable dependency on it, rather than on what one receives from the community. As Esposito comments here "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, but loss, subtraction, transfer. It is a "pledge" or a "tribute" that one pays in an obligatory form."³¹ In the ancient world, the obligation to give corresponds to an exposure to otherness rather than a consolidation of the self.

It is this exposure and dependency that, in Hobbes' account of the social contract, becomes something to be avoided and immunized against, for the simple reason that to be exposed to otherness is to be vulnerable to expropriation. As we have seen, for Esposito Hobbes reinterprets collective dependency as exposure to violent death projected onto the state of nature.³² It follows that on Esposito's reading, the social contract represents the radical rupture and suppression of the original sense of community as *munus*:

What is to be loosened is the link with the originary dimension of common living (Hobbes will say "natural" living) via the institution of another artificial origin that coincides with the juridically "privatistic" and

logically "privative" figure of the contract. Hobbes perfectly registers its immunizing power with regard to the previous situation when he defines the statute through the juxtaposition with that of the gift: above all, the contract is that which is not a gift; it is the absence of *munus*, the neutralization of its poisonous fruits.³³

The modern juridical order, erected on the foundation of the social contract, not only neutralizes the older sense of community as giving and as exposure, but already plays an expressly immunizing role that it did not in the pre-modern social order. This role will be continued and developed in the transition from the body politic to the biopolitical body. The radicalness of Hobbes' move is to eradicate the sense of exposure and the risk of expropriation as much as possible via the liquidation of the traditional bonds of communal association. The foundations of liberalism (not to mention of capitalist exchange) are established in the privatization of individual exposure, as interactions between persons take place through the juridical prosthesis of the legal contract guaranteed by sovereign violence.

On this basis Esposito will offer a powerful critique of contemporary attempts to rehabilitate community on the basis of an essential notion of belonging. If Esposito is correct in his assessment of immunity's eradication of the obligatory dimension of the *munus*, the liberal society of the contract will be an alienating one. To overcome such alienation, various rehabilitations of the traditional community are proposed, but with the crucial difference that few of them return to the notion of the *munus*, instead seeking to institute a version of community as essential belonging. As Esposito points out, such versions of community do not significantly depart from the logic of the contract, since on this conception, the members of community become parties to a common essence which they jointly own, not unlike the partners in a business enterprise who retain ownership over their shares of capital. Thus it is that the revival of community becomes mythologized, reified into a self-sufficient entity. As Esposito writes, "Once identified, be it with a people, a territory, or an essence, the community is walled in within itself and thus separated from the outside."³⁴ Community in this form becomes the very opposite of exposure to otherness or dependence on difference; it is instead the hypertrophic image of the legal individual, and accordingly perpetuates the very logic of immunity it seeks to escape.

Extrapolating from Esposito's discussion of what can be called the immune version of community in the collective doubling of the project of immunity, the thanatopolitics of racism can easily emerge within biopolitics. Foucault's discussion of racism as making a cut within the body of the population in order to secure one part of the biological population against another held to be alien and dangerous is precisely the trajectory opened up by the essentialist version of community. Not only does the essentialist or mythical community not resolve the problem of immunity, it actually deepens it by mapping a mythical notion of communal belonging onto the biological existence of a population. The rise of various versions of xenophobic community today understandably raises the fear of new forms of state racism in precisely this way.

The only path beyond such dangerously reactive notions of community, from Esposito's perspective, is to retrieve the sense of community covered over by the modern trajectory of immunization. This will necessitate retrieving the dimension of exposure to otherness at the center of human life. Esposito articulates this necessity as opening ourselves to and acknowledging our constitutive dependency on otherness as the only thing capable of undercutting the logic of immunity. But for Esposito this will involve a rethinking of what the negative means. The negative as interpreted by modern liberalism and xenophobic communalism alike is thought in terms of fear: fear of what is not the same, fear of the outside. Yet what the nothing actually portends is the original meaning of the *munus*, namely, that each person is constitutively exposed to non-identical difference. Reversing the immune dynamic necessitates the abandonment of any given scheme for distributing identity and difference. As Esposito comments, community only emerges "when every meaning that is already given, arranged in a frame of meaningful reference, goes missing that the meaning of the world as such is made visible, turned inside out, without enjoying a reference to any transcendental meaning."³⁵ Meaning, including the meaning of community, cannot emerge from some already given scheme that walls off exposure to otherness, but only begins once exposure to this otherness is risked. Community is something that must be constituted in the awareness of the dependency on otherness that it entails, even if such constitution is not something that can be definitively appropriated.

There is obviously much of value in Esposito's thinking of community (and immunity) for the reconstitution or reconceptualization of the commons. Not only does Esposito provide a valuable conceptual analysis of modernity as an overarching project of immunity and security, he demonstrates that this project is predicated on the denial of dependency and difference, a denial that has led to the most horrific and genocidal of outcomes. As contemporary

neoliberalism proceeds to privatize and exploit the commons with increasing intensity, in the process putting the survival of vast numbers in jeopardy by fostering fatal levels of inequality, the (self)destructive logic of immunity can be clearly ascertained, revealing that despite its own intentions, immunity ultimately rests on the *munus* of mutual exposure. Esposito's analysis also shows that any reconstitution of the commons, if it is to escape the immune paradigm, must avoid the false reconciliation promised by versions of community espousing essentialist criteria of membership. While Esposito's critique of essentialist notions of community seems especially apposite for right-wing, xenophobic versions of collectivity, it should not be overlooked that many notions of the commons one finds on the left espouse an equally exclusionary and sectarian view of ideological purity that can easily slide over into xenophobia. Finally, Esposito's diagnosis of what drives immunity, namely, fear of dependency and exposure to difference, should alert us to the difficulties of rebuilding a commons beyond immunity. That such a commons must rest on the valorization rather than the refusal of difference seems self-evident; such an idea reinforces the notion that any non-immune version of the commons must be predicated on equality and plurality rather than on imposing any single reductionist logic.

Despite these important insights, Esposito's work on immunity eventually arrives at a limit to its usefulness for rethinking the common. Esposito's analysis seems to founder on the difference between the social contract as a type of sovereign security and the biopolitics of the population as distinct modes of dealing with the life of the body politic. In other words, while he is able to show that both are part of an overall continuity in modern societies through the trajectory of immunity, there is nonetheless a difference between them at the level of how they deal with life; it is here that this difference becomes somewhat unclear in Esposito's thought. In gesturing toward an "affirmative biopolitics,"³⁶ Esposito seems to be taking up Foucault's suggestion that life is prior to the contract, since it is what the modern sovereign undertakes to protect; despite this affirmative potential, Esposito nonetheless has difficulty providing criteria for what this affirmative dimension might look like or for how it might be prevented from reinstating pathological versions of immunity.³⁷ But perhaps this is because biopolitics increasingly operates outside the contract. In taking life as its object, biopolitics partly exceeds the contractual horizon, and especially in its genocidal moments, cuts the tie between citizen and sovereign in the name of fear, initiating what Agamben has called a state of exception in which the political administration of life comes to substitute for the regularities and protections of the law.³⁸ What Esposito's affirmative biopolitics seems to lack is an idea of collective sovereignty capable of shaping affirmative biopolitics in such a way as to blunt its lethal propensities even as it seeks to reaffirm the life-enhancing attributes associated with the *munus*.

3. Neo-liberalism and the Political Subject

Given Esposito's difficulties around the question of an affirmative biopolitics, it would be helpful to refine further the discussion of immunity in modernity. In this context, while Esposito develops his theory of immunity in close dialogue with Foucault, he neglects the subsequent elaboration of biopolitics undertaken by the latter in the lectures entitled "The Birth of Biopolitics."³⁹ What Foucault presents in these lectures is a trajectory of political development, the purpose of which is to situate the development of new techniques of government (i.e., discipline and bio-politics) in the context of neo-liberalism. In terms of immunity, Foucault's lectures reveal an increase in the isolation—and therefore the immunity—of subjects from relations that take account of dependency within the development of liberalism and the logic of the market composed of atomized choosers. It is by rehabilitating what Foucault describes as the subject of rights prior to the dominance of the liberal subject, suitably recast in a collective dimension, that might make it possible to think relations of dependency in a way that reduces immunity and provides for the constitution of collective sovereignty as construction of the common.

In his "Birth of Biopolitics" lectures, Foucault provides an extensive analysis of the evolution of neo-liberalism as a strategy of opposition to the growth of governmental powers, while at the same time suggesting obliquely that the strategy of liberalism has failed as a device to contain those powers. According to Foucault, there are two distinct responses to the problem of governmental power, each of which responds to the dual exigency of modernity to recognize the autonomy of the legal subject while attempting to manage the overall wellbeing of the population. This dual exigency reflects the fact that life in some sense precedes the legal order of the modern state even while the latter takes life to be the proper object of its regulatory concern as it gains the ability to shape the biological processes of the population. Politically this attempt to restrict the scope of governmental power is expressed as opposition to *raison d'Etat* along two chronological lines which to some extent coexist uneasily in contemporary democratic societies. The first of these, the rights tradition, seeks to assert the rights of the juridical subject against those of the sovereign, using those rights as an index of the latter's legitimacy. Within classical *raison d'Etat* there

was already a tension between “a governmentality with its tendency to become unlimited on one side, and then a system of law opposing it from outside”; the emerging modern legal tradition will entrench and enforce the system of law by tying it to a system of natural or original rights.⁴⁰ As Foucault argues here, this tradition “tries to define the natural or original rights that belong to every individual, and then to define, for what reason, and according to what ideal or historical procedures a limitation or exchange of rights was accepted.”⁴¹ This approach (which Foucault calls the revolutionary approach), “consists in starting from the rights of man in order to arrive at the limitation of governmentality by way of the constitution of the sovereign.”⁴²

The second approach Foucault discusses is the so-called “radical” or utilitarian approach that forms the basis of liberalism and the logic of the market as a concatenation of irreducible individual interests. This approach, as Foucault defines it, starts “from governmental practice and tries to analyze it in terms of the de facto limits that can be set to this governmentality.”⁴³ Such limits “may derive from history, from tradition, or from an historically determined state of affairs, but they can and must also be determined as desirable limits...as the good limits to be established precisely in terms of the objectives of governmentality.”⁴⁴ Hence, liberalism, at least as Foucault conceives it, does not necessarily or only attempt to limit government through the market. Its focus is broader, since instead of limitation being a question of right, the liberal approach calculates on the basis of a quasi-natural causal effectiveness, that is, of the consequences for individuals and for society of any particular act of regulation or intervention in society. This not only presupposes that society (civil society) is factually independent of the sovereign, but it licenses the market mechanism as a “natural” fact, a subset of civil society existing independently of governmental regulation and obeying its own quasi-natural laws. Liberalism, as a calculation of effects of government on society, employs the dual criterion of “Exchange for wealth and utility for the public authorities: this is how governmental reason articulates the fundamental principle of its self-limitation.”⁴⁵

The root of these governmental criteria in the second approach is the concept of interest. Liberal government is a mode of indirect government in the sense that rather than regulating its objects directly, it introduces measures that have effects at the level of interests. As Foucault puts this point, government:

... must not intervene, and it no longer has a direct hold on things and people; it can only exert a hold, it is only legitimate, founded in law and reason, to intervene, insofar as interest, or interests, the interplay of interests, make a particular individual, thing, good, wealth, or process of interest for individuals...Government is only interested in interests.

Behind the screen of interests, governmental power is to be limited to those measures which affect interests, shaping and directing them in desirable directions. Not only is this an idea of government through freedom, but it shows that liberal governmental reason will concern itself with a new type of political subject, the subject of interest. Interest is central to this liberal (and neo-liberal) approach because it furnishes the motive for economic exchange (the enhancement of individual interest), as well as the principle of the limitation of public authority, since it will be on the basis of a complex play of interests that public authority will operate.

Foucault unsurprisingly devotes significant attention to the issue of the internal composition of the subject of interest. According to him, one finds an articulation of this subject in early British empiricism, particularly in the work of David Hume. The key feature of this subject, on a metaphysical level, is that it takes its own empirically existing desires at face value, as an irreducible given that as such furnishes a criterion for choosing between a series of possible actions. For this subject, as Foucault says, “the principle of my choice really will be my own feeling of painful or not-painful, of pain and pleasure” as empirical givens which are not susceptible to further scrutiny.⁴⁶ This subject’s principle of action is that of “an irreducible, non-transferable, atomistic individual choice which is unconditionally referred to the subject himself.”⁴⁷ The subject of interest becomes the subject of a certain kind of rationality, a certain mode of subjectivation, according to which its own subjective preferences, its own atomistic self-perceptions of its feelings and desires, are taken to be the truth about itself prior to and separately from any contact with others, and especially with respect to any interaction with others as to the relative merit of those preferences.

The subject of interest, so conceived, is a self-identical (because self-enclosed) agent of choice: it wants what it wants, and rationality extends only to the point of figuring out how best to secure those wants, not to whether those wants are themselves reasonable or legitimate. The subject of interest, therefore, negates or suppresses its dependency on otherness in the pursuit of its interests. As an atomistic chooser and agent of its own utility, there is

no point at which its dependency on otherness—although, as discussed shortly, not its dependency on power—is included as something internal to the constitution of what it takes as its interests. Dependency is indeed acknowledged in a formal or abstract way, but solely at the level of bargaining with other subjects on the basis of their own equally atomistic interests. This model of the subject is of course quite familiar: it is the ideal rational subject of the capitalist market economy, a subject whose activities are internal to a set of economic processes that presuppose a “spontaneous” coordination of interests based on the already-constituted character of those interests, and therefore the denial or suppression of a dependency on difference in the composition of that subject and its interests. As liberalism becomes increasingly focused on the capitalist market as the preferred mode of regulating social interaction, and neo-liberalism comes to install market relations ever more widely throughout society—replacing traditional networks of cooperation—the subject of interest becomes more and more central as the model informing individual and collective processes of subjectivation.

As Lois McNay has argued thoroughly and persuasively in her article “Self as Enterprise,” in which she discusses these lectures of Foucault’s, the subject of interest as model of subjectivation encourages a society in which individuals are seen, and come to see themselves, as “enterprises.” That is, as McNay writes, “to view their lives and identities as a type of enterprise, understood as a relation to the self based ultimately on a notion of incontestable economic interest.”⁴⁸ As McNay develops this argument, the troubling thing about the self-as-enterprise is that in its conception of “responsible self-management” the self as enterprise dovetails with and tends to become indistinguishable from the notion of individual autonomy often held up as a model of resistance to various forms of power, particularly that of sovereign power.⁴⁹ But the insidiousness of modern biopolitical forms of power is that they operate “not through the imposition of social conformity but through the organized proliferation of individual difference in an economized matrix.”⁵⁰ In other words, the very ideal held up to people in capitalism, namely, their autonomy with respect to power, is the very device utilized by power to ensure their subjugation, their political docility.

Indeed, as Foucault argues in his lectures, in advanced neo-liberalism, far from comprising “an atom of freedom,” the subject of interest, the enterprise subject, appears “precisely as someone manageable, someone who responds to systematic modifications artificially introduced into the environment. *Homo oeconomicus* is someone who is eminently governable.”⁵¹ Such a subject, according to Foucault, is already “a certain type of subject who precisely enabled an art of government to be determined according to the principle of economy.”⁵² The allegedly autonomous subject is one who calculates in an environment that they do not control and to which they can only respond. The subject’s apparent autonomy, according to Foucault, is largely an illusion, because the isomorphism of subjective interest conceals the basic dependency of this subject on economic mechanisms of control. So what the supposed autonomy actually consists in is in fact a lack of control over the conditions of its own constitution and at the same time a suppression of its dependency on the otherness that constitutes it, even while these relations become invisible by being formalized in terms of abstract economic relations.

What emerges at this point is the basic difference between the subject of interest and the subject of right. As Foucault argues, unlike the latter, the former “is never called upon to relinquish his interest” because “the economic subject and the subject of right have an essentially different relationship to political power.”⁵³ The subject of right is explicitly non-identical to itself. As Foucault argues this:

The subject of right is, by definition, a subject who accepts negativity, who agrees to a self-renunciation and splits himself, as it were, to be, at one level, the possessor of a number of natural and immediate rights, and, at another level, someone who agrees to the principle of relinquishing them and who is thereby constituted as a different subject of right superimposed on the first.⁵⁴

What we have here, in other words, is a conception of a subject that in the first instance takes only its own liberty or solipsistic good into consideration—and at this level is substantially similar to that of a subject of interest—while in the second instance, that of self-splitting, the subject is forced to pass through the (negative) experience of acknowledging the need to renounce some initial liberty, thus constituting itself by taking into account the collectivity on which it depends. It is in this moment of internal division, expressed as negativity, that one can locate an explicit acknowledgement on the part of the subject of rights of its dependence on constitutive otherness, bringing back in Esposito’s notion of community as *munus*. While it is possible to read this transition through the negative and the diremption of the subject of right as a mere bargaining process,⁵⁵ a coordination of pre-reflexively constituted subjective interests—this is indeed what Foucault thinks happens after the consolidation of the subject of

interest, as the latter is projected back onto the subject of right—it is also possible to read the doubling of this subject of right as a process of socialization in which the subject’s very liberty is *constituted* as a result of its encounter with different others.⁵⁶ Rather than simply bargaining with the democratic sovereign on the basis of already constituted interests, it is possible to read the affirmation and constitution of political rights as a process of the collective constitution of subjects who form themselves as a collectivity (i.e., as a political community) by recognizing the obligation of renouncing some freedoms incompatible with the freedoms of others. That is, in contrast to the pejorative way McNay portrays the politics of recognition, such a collective constitution of community would be a form of constitution of the democratic sovereign through recognition.

From the perspective of Esposito’s concerns, Foucault’s discussion of the transition from a subject of right in early modernity to a subject of interest tracks the growth of immunity in the development of modern society. If immunity is a repudiation of dependence on constitutive difference—and so a suppression of constitutive negativity—the subject of right—if it is understood in the way I have suggested above—is arguably less immune to otherness than is the subject of interest. The subject of interest is not obliged to take into account its constitutive dependency, but nonetheless must submit to an alienating mode of such dependency in the form of abstract and reified social relations marking its subjection to new forms of power that thoroughly enclose it. But if this movement toward the subject of interest is a tendency of modern society, it is also conceivable that the heterogeneous and co-existing subject of right might be retrieved. This latter subject, although undeniably partaking in the immune paradigm to the extent that it renounces rights or freedoms in exchange for security, is nevertheless more open to its dependency on otherness through internal diremption. Such a subject of right is constituted as a stake-holder in political (sovereign and governmental) power, and is as such able to have some participatory agency in how that power is utilized and the extent of its purview. The subject of right thus marks a moment in the trajectory of the development of modern society in which immunity has not taken hold to the extent it does under conditions of contemporary neo-liberalism. To this extent, Esposito’s analysis needs to be supplemented by a discussion of the ways that immunity is not homogeneous, and consequently, what reasserting a modified version of the rights paradigm could contribute to a community that both acknowledges dependency but does not for that reason plunge wholly into relations of unspecified obligation.

For such a transition to be entirely plausible, several additional points about the constitution of right as implied by the subject of right would need to be explored.⁵⁷ As Foucault points out, the collective constitution of political right is retroactive, establishing the rights the members of the political community are thought to enjoy as foundational to its very beginning. It needs to be added to this that such retroactive determination of right must also be open-ended: it cannot be simply a matter of defining imprescriptible rights once and for all. While this might have appeared plausible during the period of early-modern democratic revolutions, it is so no longer. What is necessary for the viability of the rights paradigm today is a sense that political communities of democratic sovereignty constitute themselves in an on-going and active process that is the source of their legitimacy.⁵⁸ But such a move would change the tenor of the process of the formation of rights as outlined by Foucault in these lectures from a negative process of *renunciation* to one of *affirmation* and constitution. If rights are not something granted once and for all, if they are the object of struggle, their acquisition broadens the horizon of freedom just as it opens up new forms of subjectivity (new subjects of rights) that can be publically espoused. The constitution of new rights and thus of new subjective articulations instantiated by those rights is not primarily a renunciation of some original fullness of right, but precisely the opposite, the bringing into being of possibilities of collective existence that did not exist previously. The reworking of the rights paradigm as a process of expansion is thus the acknowledgement of the ways subjects are obligated and dependent on one another. If it is understood in this way, there would be no ultimate conflict, and thus no inherent contradiction, between individual and collective rights. If it is acknowledged that individual rights are only won through a process of collective recognition through political struggle, it should not be the case that individual rights must be thought of as held against, as restricting, the freedoms of the collective. Further, although exploring this argument fully is not possible here, it is also not true that the subject of right holds these rights in an exclusively external or antagonistic relationship to sovereign power. Rather, as an ongoing constitution of rights by asserting these in a democratic fashion, such subjects participate and actually come to constitute sovereign power, and thus hold the key to the legitimacy of the use of that power.

In short, then, the constitution of a commons against the contemporary depredations of neo-liberal capitalism does not depend on a complete revocation of modernity as inescapably immune. Instead, if there is such a thing as a positive biopolitics, it would have to begin with a reactivation of a radically democratic assertion of the subject of right, as indeed seems to be taking place today across the globe. Whether this assertion is capable of impacting the

course of the immunization paradigm as incarnated in the domination of the capitalist market is of course not a matter of theoretical speculation and remains to be seen.

Notes

¹ It should be noted that the discussion on the commons predated these movements which are tied to the global financial crisis of 2008 and its ensuing austerity programmes serving to intensify neo-liberal patterns of accumulation.

² Dean and Deseriis, “A Movement Without Demands”, *Possible Futures*, January 3, 2012, available at <http://www.possible-futures.org/2012/01/03/a-movement-without-demands/> (accessed October 25, 2012).

³ The key text in this regard remains Foucault’s *History of Sexuality* Vol. I (New York: Vintage Books, 1980); see especially Nikolas Rose *Powers of Freedom: Reframing Political Thought* (Cambridge: Cambridge University Press, 1999)

⁴ See Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life* (Stanford: Stanford University Press, 1998)

⁵ Esposito, *Bios: Biopolitics and Philosophy*, Trans. Timothy Campbell, (Minneapolis: University of Minnesota Press, 2008), 41

⁶ These lectures mirror in theme and content the section in Volume I of *The History of Sexuality* entitled “The Right of Death and Power over Life.”

⁷ Foucault, “Society Must Be Defended”, *Lectures at the College de France*, Trans. David Macey, (London: Picador, 2003), 253-254

⁸ *Ibid*, 257

⁹ *Ibid*

¹⁰ There is both proximity and distance here because, like Agamben, Esposito wants to situate the problem of life as internal to sovereignty along with the explicit management of life that arises in modernity. Unlike Agamben, Esposito does not seek to think *bios* in its difference from *zoe*. For Esposito, human life is already political: there is no separate ontological moment where the political founds *bios* by distinguishing it from *zoe* as a kind of original fact.

¹¹ While I cannot take this issue up here, the notion of lack or groundlessness of human life, especially in connection with a constitutive dependency on otherness, puts Esposito in proximity to Heidegger’s concept of Dasein.

¹² See Esposito, *Immunitas: The Protection and Negation of Life*, (Cambridge: Polity Press, 2011), especially the section “The Productivity of the Negative” in the chapter entitled *Compensatio*, beginning on page 80

¹³ *Immunitas*, 81

¹⁴ *Ibid*, 82

¹⁵ Esposito, *Communitas: The Origin and Destiny of Community*, Trans. Timothy Campbell, (Stanford: Stanford University Press, 2010), 23

¹⁶ *Ibid*

¹⁷ *Immunitas*, 82

¹⁸ *Ibid*, 83

¹⁹ *Ibid*, 137

²⁰ *Ibid*, 138

²¹ *Ibid*, 139

²² Foucault, “Society Must Be Defended”, 241

²³ *Ibid*

²⁴ *Ibid*; one might notice here that Foucault’s discussion of the move toward “humane” forms of power (e.g., imprisonment rather than execution) in the transition to modernity, explained in terms of a shift in types of power in *Discipline and Punish*, might also be expressed in the language of traditional political theory.

²⁵ *Ibid*, 246

²⁶ *Ibid*

²⁷ *Ibid*, 245

²⁸ The concept of autoimmunity is discussed by Jacques Derrida in the context of a discussion of sovereignty. See his *Rogues: Two Essays on Reason*, (Stanford: Stanford University Press, 2005)

²⁹ Esposito, *Bios: Politics and Philosophy*, 63

³⁰ Esposito, *Communitas*, 4

³¹ *Ibid*, 5

³² On a biographical level, this makes sense, since Hobbes saw the traditional social order fall apart during his lifetime in the English Civil War, exposing beneath traditional forms of peace a disturbing capacity for apparently pre-social violence.

³³ Esposito, *Communitas*, 13-14

³⁴ *Ibid*, 16

³⁵ Ibid, 149

³⁶ See *Bios: Biopolitics and Philosophy*, 185 onwards; see also in this connection Timothy Campbell's recent discussion of the influence of Foucault's Biopolitics lectures on Esposito's discussion of the person in Campbell, *Improper Life: Technology and Biopolitics from Heidegger to Agamben*, (Minneapolis: Minnesota University Press), 2011, especially pp. 64-81.

³⁷ Brett Levinson, in "Biopolitics in Balance: Esposito's Response to Foucault", *The New Continental Review* (Michigan: Michigan State Press), Vol. 10, No. 2, Fall 20120, 239-261, argues that Esposito's attempt to formulate an affirmative biopolitics ends up on the horns of a dilemma whereby unconditionally affirming life's unruly developmental propensities conflicts with the need to contain those very propensities for the sake of survival. But attempts to contain and measure result in immunity, and in particular, neo-liberal governmentality, and so cannot truly be overcome. While this appears to be a legitimate criticism of Esposito, Levinson articulates this dilemma as a general principle of measurement per se, since it reveals a situation intrinsic to finitude. The analysis of rights as the constitution of collective sovereignty presented below would perhaps mitigate the severity of this view.

³⁸ See Giorgio Agamben, *State of Exception*, Trans. Kevin Attell, (Chicago: University of Chicago Press, 2005). Agamben neatly solves the problem of biopolitics being in excess of the contract by relying Carl Schmitt's thesis that being "outside the contract" is the most proper gesture of sovereignty itself.

³⁹ Foucault, *The Birth of Biopolitics: Lectures at the College de France 1978-79*, Trans. Graham Burchell, (New York: Palgrave MacMillan, 2010)

⁴⁰ *Birth of Biopolitics*, 37

⁴¹ Ibid, 39

⁴² Ibid

⁴³ Ibid, 40

⁴⁴ Ibid

⁴⁵ Ibid, 44

⁴⁶ Ibid

⁴⁷ Ibid

⁴⁸ See Lois McNay, "Self as Enterprise: Dilemmas of Control and Resistance in Foucault's *The Birth of Biopolitics*", *Theory Culture and Society* 2009, (Sage, London: Vol. 26 (6): 55-77), 56

⁴⁹ Ibid

⁵⁰ Ibid; given this broad definition, one could include under the frame of biopolitical techniques of management the entire apparatus of consumer-oriented advertising and public relations industries, which quite openly seeks to manage and direct the perceptions and desires of populations.

⁵¹ *The Birth of Biopolitics*, 270

⁵² Ibid, 271

⁵³ Ibid, 275-76

⁵⁴ Ibid, 275

⁵⁵ This is the way McNay seems to portray this splitting, introducing a slippage between what Foucault insists is the heterogeneity between the subject of rights and that of interests. As McNay puts it, the subject "is constituted through an internal division insofar as certain natural liberties are renounced in order to acquire positive freedoms" (61). That she reads it this way rather than as a process of political recognition seems to emerge from her critical assessment of the latter.

⁵⁶ Foucault cites certain eighteenth century jurists who read the contract tradition in terms of the interests of the parties in order to explain why such otherwise thoroughly self-interested agents would agree to cede their inherent freedom. In short, as Foucault summarizes this view, "it is not because we have contracted that we respect the contract, but because it is in our interest that there is a contract". In this backwards projection of the subject of interest onto the subject of right, "the appearance and the emergence of the contract have not replaced a subject of interest with a subject of right"; *The Birth of Biopolitics*, 274

⁵⁷ Due to length considerations I cannot do so in detail here.

⁵⁸ McNay rightly stresses this point in her analysis of Foucault's lectures by suggesting that the subject of rights be developed along the lines espoused by Rancière as an eruption of the demands of those who are counted solely in not counting in the distribution of social order, disrupting it and (potentially) forcing it to acknowledge the count of the uncountable.