

Feminism and Philosophy



SPRING 2018

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APA NEWSLETTER ON

Feminism and Philosophy

SERENA PAREKH, EDITOR

VOLUME 17 | NUMBER 2 | SPRING 2018

FROM THE EDITORS

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Welcome to the spring 2018 Issue of the *APA Newsletter on Feminism and Philosophy*, co-edited by Julinna Oxley and Serena Parekh. The special topic of this issue is feminist perspectives on policing. There are three articles in this issue and three book reviews. Many thanks to all those who submitted articles, reviewed books, and to those who acted as reviewers of submissions for this issue of the newsletter.

Given the publicity that surrounds contemporary policing practices, and the attention being raised by groups such as the NAACP and Black Lives Matter, we thought that the time is ripe for taking a feminist lens to contemporary policing practices. While there is not yet a robust philosophical literature on the issues involved in policing, the ethical, legal, and political issues involved in contemporary policing practices are receiving more attention from academics, and a feminist perspective is crucial to this discussion.

Two essays in this issue focus on current topics in American police practices. Both take an interdisciplinary approach to studying the criminal justice system and its effects on women and families. The first essay focuses on the way that families under the state's scrutiny via social programs are policed in unfair ways, both by the police and by the department of family and children's services. The police serve as an arm of this agency and engage in practices that further endanger and disrespect children and their families. This essay's methodology involves personal interviews in addition to national data, and while this approach is not typical, it provides a compelling and insightful analysis of the effects of policing on mothers and children in the system.

The second essay focuses on the plight of Black women in the criminal justice system. While the practice of mass incarceration and its effects on people of color have received in-depth treatment by Becky Pettit in *Invisible Men: Mass Incarceration and the Myth of Black Progress*, Michelle Alexander in *The New Jim Crow*, and Angela Davis in *Policing the Black Man*, Black women remain in the background of these discussions. As the author argues, Black women become socially invisible in this mass incarceration in a way that results in a functional genocide.

Our hope is that more feminists in philosophy will become aware of these issues in the criminal justice system and seek to shed additional light on them for the purposes of social change. We are grateful to our authors for spearheading this discussion.

We've also included one additional article that falls outside of the topic for this special issue. This essay looks at data from the book review sections of three major philosophy journals in order to assess how women philosophers' books are treated in the book review sections. Because representation of women in publications is such an important issue to feminist philosophers, we've included it here. We hope that it will begin a discussion about what the data they present means for the profession as a whole.

ABOUT THE NEWSLETTER ON FEMINISM AND PHILOSOPHY

The *Newsletter on Feminism and Philosophy* is sponsored by the APA Committee on the Status of Women (CSW). The newsletter is designed to provide an introduction to recent philosophical work that addresses issues of gender. None of the varied philosophical views presented by authors of newsletter articles necessarily reflect the views of any or all of the members of the CSW, including the editor(s) of the newsletter, nor does the committee advocate any particular type of feminist philosophy. We advocate only that serious philosophical attention be given to issues of gender and that claims of gender bias in philosophy receive full and fair consideration.

SUBMISSION GUIDELINES AND INFORMATION

1. Purpose: The purpose of the newsletter is to publish information about the status of women in philosophy and to make the resources of feminist philosophy more widely available. The newsletter contains discussions of recent developments in feminist philosophy and related work in other disciplines, literature overviews and book reviews, suggestions for eliminating gender bias in the traditional philosophy curriculum, and reflections on feminist pedagogy. It also informs the profession about the work of the APA Committee on the Status of Women. Articles submitted to the newsletter should be limited

to ten double-spaced pages and must follow the APA guidelines for gender-neutral language. Please submit essays electronically to the editor (s.parekh@neu.edu). All manuscripts should be prepared for anonymous review. References should follow *The Chicago Manual of Style*.

2. Book Reviews and Reviewers: If you have published a book that is appropriate for review in the newsletter, please have your publisher send us a copy of your book. We are always seeking new book reviewers. To volunteer to review books (or some particular book), please send the editor a CV and letter of interest, including mention of your areas of research and teaching.

3. Where to Send Things: Please send all articles, comments, suggestions, books, and other communications to the editor: Dr. Serena Parekh, Northeastern University, s.parekh@neu.edu.

4. Submission Deadlines: Submissions for spring issues are due by the preceding November 1; submissions for fall issues are due by the preceding February 1.

NEWS FROM THE COMMITTEE ON THE STATUS OF WOMEN

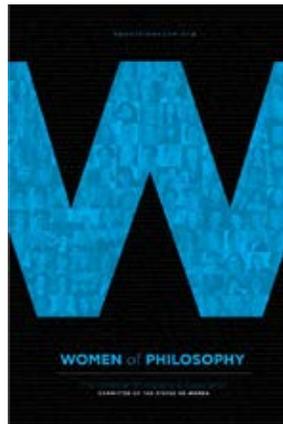
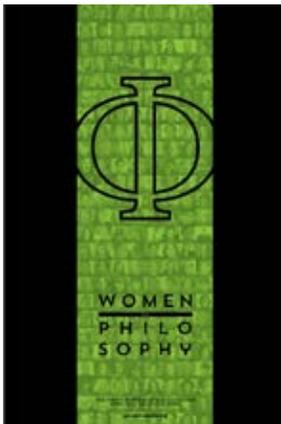
COMMITTEE MEMBERS FOR 2017–2018

As of July 1, 2017, the CSW comprises Charlotte Witt (chair), Peggy DesAutels (*ex officio*), Serena Parekh (*ex officio*), Margaret Atherton, Amy Baehr, Rachel V. McKinnon, Julinna C. Oxley, Peter Railton, Michael Rea, Lisa Shapiro, Katie Stockdale, and Yolanda Wilson.

NEW CSW POSTERS

We are delighted to announce that two new posters are available for purchase on the CSW website (<http://www.apaonlinecsw.org/>).

Each is a large photo montage of a different design and bears the title “Women of Philosophy.” The designs, by Chad Robinson, are a must-buy for departments and offices.



CSW WEBSITE

The CSW website, at <http://www.apaonlinecsw.org/>, continues to offer posters featuring contemporary women in philosophy as well as news about women philosophers.

Links to excellent resources include one to a database on teaching, with articles and readings; another to the crowd-sourced directory of women philosophers; and one to the APA Ombudsperson for Nondiscrimination, who will receive complaints of discrimination and, where possible, serve as a resource to APA members regarding such complaints.

SITE VISIT PROGRAM

The site visit program conducted one visit in November 2017 and another one in February 2018.

CSW SESSIONS AT APA MEETINGS

The Eastern Division session sponsored by CSW, “Inclusivity in the Teaching and Practice of Philosophy,” was cancelled due to bad weather.

ARTICLES

Policing Families: The Many-Headed Hydra of Surveillance¹

Mechthild Nagel

SUNY CORTLAND

The child froze and didn't say another word. At the entrance of the park, a police car pulled in.

Prior to seeing the car, she had talked easily to the emergency medical staff who had arrived ahead of the police. Her mother Nancy whispered to me, “Jasmine* is terrified of cops.” The event where this took place was an emergency-preparedness workshop organized by a social justice group for parents who had run-ins with the “system.” It was by invitation only because most of the parents had been “indicated” by Child Protective Service workers, and their status as “fallen” parents meant that they couldn't congregate with others similarly situated. A United Way staff member gave the training in the shed next to the playground, a convenient location for parents to bring their children along. However, the staff member had dialed 9-1-1 when Jasmine fell from a slide onto her head. That call triggered a visit from both EMT and city police. A trip to the hospital would have triggered another call—to the much-hated Child Protective Services (CPS), a division within the Department of Social Services (DSS), considered by economically disadvantaged parents to be worse than the police. And then Nancy would have had to get affidavits from all of us adults (who weren't “indicated”) stating that she had not pushed her child. So, in light of this hypothetical scenario, Nancy refused all services and did not give her name to the medics. A healing salve fortunately worked wonders for Jasmine, who was pain-free the next day.*

Nancy knew all about the DSS. She had tried to escape their grip before. When pregnant, she had fled to another

jurisdiction to give birth, but to no avail: since she used her proper name and Medicaid card, DSS from Sunshine County was able to find and “hotline” the mother and demand that the hospital hold the baby until a CPS worker could come and whisk the child away. She is one of the few parents who have been successfully reunited with her children. However, the trauma of separation is quite significant and was compounded for the children when they faced abuse, allegedly, in the foster home. For Nancy, and for many similarly situated white families, escaping to the South has been the only way to evade an unjust policing system.

* A pseudonym. The family and the county mentioned are anonymized to protect the families and advocates. These are cases which mother-respondents have reported directly to me or in which I have been involved as a witness.

This narrative, based on a situation which I witnessed in 2014, gives a glimpse of the effects of Social Services’ policing powers on poor families. In what follows, I give my reflections on the policing of poor families in one county in the United States; however, I submit that zealous policing by CPS workers is not an aberration but supported by national policy and law. It is heartening that the work of public philosophy on mass incarceration and solitary confinement is growing, and my modest wish is to ask philosophers to extend that critique into the invisible realm of mass criminalization of parenting and poor families. Specifically, I believe that this reflection has important implications for how we do feminist scholarship on criminal justice and policing going forward. Criminal justice research focuses almost exclusively on the role of police officers and argues that although they do not intend to, police do end up in roles and processes that often result in criminalizing certain communities. There is very little attention given to the surveillance role of Child Protective Services (CPS), and this paper seeks to explain the similarities between policing families and policing communities. By analogy, I argue that the policing arm of CPS intends to keep children safe but does not review carefully the impact of their policies and processes on the families targeted. The modern nation-state invokes the right to broad policing power in order to protect individuals, groups, and property; to deter individuals and groups from committing harm; and to seek appropriate punishment for those who committed harm within the constraints of the rule of law. Police officers who do not uphold the color of law may be prosecuted and, even if they do not face conviction, they may lose their jobs. What kind of equivalent policing roles exist for CPS workers? Does it even make sense to compare their jobs, which deal exclusively with child welfare and protection, to police officers’ duties? There is indeed at least one significant difference. The standard for suing is different. While one can sue officers if they do not follow the law, the caseworkers can only be sued if they fail to act in good faith—something that no one could really prove. And if it is the case that there are similarities and even overlapping responsibilities between the two agencies, how does their work affect parents’ parenting strategies?

This paper focuses primarily on the policing role of CPS within the context of US child welfare practice and family law. Drawing on Miranda Fricker’s theory of epistemic

injustice,² I argue that the testimonies of stigmatized parents cannot be heard within social services and the legal community; furthermore, the child welfare system is experienced as oppressive by mothers and is practically immune to resistance. Part of the problem is that law schools rarely offer courses in family defense³ or child welfare.⁴ Even human rights advocacy groups are almost non-existent in the family defense context. The technical term of “child welfare” or “child protection” refers to a number of government actions, namely, “investigations of allegations of child abuse or neglect, the placement of children in foster care, and the termination of parental rights to make children eligible for adoption.”⁵ Guggenheim argues that there is undue attention paid to abused and murdered children, and it entails a number of policies that are intended to provide an early alert system, but it is overzealous in its implementation by denying parents fundamental protection against an invasive state bureaucracy.

I argue that Child Protective Services tends to subscribe to an elitist ideology and ableist, racist, and neo-colonial practices, targeting the poor, families of color, and those who are socially stigmatized because of criminal records. Those parents targeted and ensnared by CPS workers often find them to be far more menacing than the repressive tactics and criminalization practices employed by police officers. The CPS’s own dragnet depends on the complicity of county therapists, mental health service providers, drug counselors, and, of course, school personnel who are also mandated reporters. Worst of all, parents who are “hotlined”⁶ by neighbors or family members, considered to be “permissive reporters,”⁷ will never know who targets them with a false allegation. The hotline policy was instituted in 1974 through the Child Abuse Prevention and Treatment Act (CAPTA) and completely overhauled the child welfare system. It is perhaps not too farfetched to call these “hotlines” our contemporary *lettres de cachet*: Some 6.3 million hotline calls were placed in 2012, and some 40 percent of caregivers are found to be “indicated,” which means that child protection investigation substantiated “some credible evidence” of child neglect or abuse. Millions of parents join the child abuse registry (called “the register”) every year, and even if they win in court, their name is often not automatically expunged from the state registers. Many indicated parents may even stay on the register for life.⁸ Today, the register is clearly used to stigmatize parents and prevent them from pursuing jobs where they would interact with children or teens. The original intent of the register was for epidemiological purposes and to target state funding for children deemed most at risk. It was not meant to criminalize caretakers.⁹

CHILD WELFARE RIGHTS OR WRONGS

We must ask ourselves how the policy of child removal really is in the best interest of the child and contributes to child welfare. In this section, I focus on two traumatic effects of such “policing.” Sunshine* County has the highest child placement rate in the state since a new commissioner came to town ten years ago.¹⁰ Prior to that punitive era, the Department of Social Services used a strength-based approach, keeping families together and using the draconian measure of removal as a last resort. Today, it is used as “the

first resort," even where no cruelty or negligence can be established and even where less disruptive measures (such as supervision) could be employed. Retired DSS workers have reported to me that at annual parties, workers chant the slogan "They hatch them, we'll snatch them," referring to their first-resort policy of breaking up families without cause. Unlike other jurisdictions, Sunshine's CPS workers, many of whom do not have a social work college degree, target poor, white families. Generally speaking, Sunshine County's rate of punitive foster care is an outlier in the state, and there is no shortage of egregious, wrongful removals. A neighboring county's CPS worker gasped after one such removal, "I think I am seeing legal kidnapping here!" when the Sunshine CPS worker removed a newborn baby and allegedly told the exhausted mother, "You have been in the system as a foster child, your mother was no good, and so you will be a bad mother too!" However, in this case, no hospital worker had reported any evidence of neglect or abuse. Thus, a preemptive strike against the right to motherhood takes its traumatic course. At that early point of separation, irreparable harm in the child's socio-psychological development had already been committed, because the baby's first two years are considered a critical period: Proponents of attachment theory note the occurrence of an *ur-trauma* after even a brief separation at birth (some five days), which effects negatively the mother-child relationship and contributes to the child's increased propensity toward aggressive behavior.¹¹ Doting foster parents cannot make whole what has been severed so violently: the kinship relation to the mother.

The other trauma occurs when a toddler or school child either encounters the shackling of their parent or they themselves are deposited in the police car and driven to complete strangers and new environments, forcing change on all levels, including changing school systems. Jasmine experienced forced removal by police officers and thus developed her distrust of police in general. Her mother worries about a future time when Jasmine might have to face a "resource officer," in high school, patrolling the school and frisking students at will. The child's PTSD is real. Nancy reports, "my oldest is still concerned about it a bit—she made a comment back a few months ago of why she picked her seat in the spot it is at the table . . . so she can see both doors just in case they ever come back. 'I'll see 'em 'n be ready for them. Nobody will ever tear my family apart again or take me from my mom.'"¹² This behavior is akin to that of returning soldiers or returning citizens (from prison), coping with the stress of (surviving) war or witnessing others being shanked in mess hall. As already mentioned, the trauma is often compounded when they face abuse in the foster family. In Nancy's children's case, egregious abuse allegedly occurred in the foster home. One of the daughters vows never to have a child or partner, to protect herself from having anybody close to her be exposed to violence by strangers.¹³

Critics of the foster care system and foster caretakers alike have mentioned to me the prevalence of psychotropic medication: the majority of foster children receive multiple drugs a day, often having severe side-effects.¹⁴ State agencies now openly discuss that removal causes anxiety and trauma for children of all ages, and CPS workers and

foster caretakers are being taught in trauma care.¹⁵ What is not being discussed state-wide is how to minimize CPS workers' vast discretion with removal proceedings and how to strengthen families and disrupt the foster-care-to-prison pipeline. Furthermore, parents are also deeply traumatized and are not given appropriate resources by DSS to overcome the obstacles in order to reunite the family.

THE MEANING OF SURVEILLANCE

Surveillance of poor families strikes at the heart of the unjust practice of policing. Parents are rendered powerless in the choices of whom they consort with, whom they date, and they have to give their children "the talk" when it comes to interacting with personnel from Social Services within school or kindergarten. Children learn to distrust adults who are authority figures and may have anxieties about encountering the school nurse, resource officer, or their own psychiatrist. For parents and children alike who are "in the system," they do not have a right to privacy. In fact, the parents must sign release forms for a broad range of medical services (and others), and information gathered from counseling sessions may be used against them in court. In the case highlighted at the beginning of the article, Nancy had to weigh the benefits of medical intervention for Jasmine with the cost of losing the child (again) to "the system." Nancy is an "indicated" parent, which means that "some credible evidence" was found supporting the allegation of abuse or neglect. Armed with this "indicated" report, the CPS investigators can remove a child without court order, but they then have to seek court order within twenty-four hours confirming it. The CPS version of the situation is almost always confirmed by the courts Sunshine County (whereas only in 40 percent of the cases nationwide). The "indicated" parent also suffers other stigmatizing consequences, similar to a person who is on probation or parole. The parent is supposed to stay away from other indicated parents, which includes a prohibition against dating an adult who has had children removed or is a felon. This is even the case when the person who was formerly incarcerated had charges unrelated to child abuse. However, the pool of eligible adults is quite limited, and the state often uses the accusation of the parent engaging in "inappropriate" socializing practices as the last straw to deny the return of children, even if the parent was otherwise docile, compliant, and finished successfully all boiler-plate parent programming. In certain school districts in Sunshine County, there is such a prevalence of indicated parents that there is nobody left to participate in PTA meetings. Parental involvement in children's learning is key to children's success in staying in school and graduating with a diploma. Disrupting systematically such essential opportunities as parent-teacher conferences prepares the child for the social-services-to-prison pipeline.¹⁶ Children who are shuttled to different foster homes or group homes tend to lack a steady adult advocate and are more likely to be caught engaging in illicit behavior or statute offenses such as truancy than children who do not face removal proceedings. Again, it is important to point out that the policing mechanism of surveillance affects more children in foster care than those who grow up under the watchful eye of their parents and/or in wealthy neighborhoods.¹⁷ In fact, the new "free-range" parenting movement has become policed by Social Services (and the courts). What

is novel is that a few wealthy white parents are all of the sudden charged with neglect when they fail to supervise their children who walked alone to a park. In 2015, one couple was found “responsible for unsubstantiated child neglect,” a judgment considered “Orwellian” and “a legal purgatory” by their lawyer.¹⁸ It was the first case of its kind, not because it was an overreaction by CPS but because the family targeted is wealthy and highly educated. Nationwide, investigators who work for Child Protective Services concentrate on poor Black neighborhoods, and studies have shown that CPS workers are more than three times as likely to report Black children’s accidental injuries as suspicious than accidents involving white children.¹⁹

IN THE TENTACLES OF FAMILY COURT AND CRIMINAL COURT

The field of family defense, which advocates for indicated parents, is considered to be in its infancy.²⁰ Lawyers who file appeals on behalf of the aggrieved parents are stigmatized as “parents’ advocates” or, worse, they may no longer receive assigned cases in family court. In Sunshine County, the family court judge assigns cases, not a third party; thus, there is the appearance of favoritism. Lawyers also tell me that a bigger problem is that, in general, the appellate courts grant too much deference to the rulings of family court so the level of oversight is not the same as it is in criminal court. Furthermore, the standard is too gray—family court always falls back on “credibility determinations” made by the judge.

Guggenheim and Sankaran argue that criminal prosecutions and child protection cases are treated very differently in the United States. The state does prosecute the rich and socially connected in criminal court, but it never pursues them in family court. The state only targets poor and marginalized parents for neglect and abuse of their children.²¹ Guggenheim and Sankaran’s findings support the claim of penal abolitionist Hal Pepinsky, who co-created the term of criminology as peacemaking, that there is no social pressure whatsoever for prosecutors to “lay child sexual assault charges against a well-established biological father and extraordinarily rare for child protection workers and family judges to believe children who allege they are being sexually abused by their fathers, especially by fathers who otherwise have impeccable community reputation.”²² By contrast, in Sunshine County, parents who face neglect charges in family court have been thrown into jail for far less serious charges than those Pepinsky mentions. In some cases, the CPS worker reported that they suspected the parent abusing drugs, because they a) appeared too thin or b) had missing teeth or acne. Thus, family court may not protect a parent facing spurious allegations from incarceration and losing their child to foster care. Most prison justice activists never focus on the punitive sphere of family courts, even though public defenders report having a larger caseload in family court than in criminal court. Notably, of the hundreds of cases litigated every year by the public defender’s office in Sunshine County, few are ever appealed, even though the judge mostly sides with the DSS lawyer and adjudicates against the errant parent. In the case of Nancy, mentioned in the beginning of this paper, it was a tenacious assigned counsel who, as the

children’s attorney, appealed successfully and was able to reunite Nancy with Jasmine and the other children.

When criminal justice activists neglect their focus on the punitive tentacles of family court, they also ignore a gendered reality. Clearly, family law cases are a bigger chunk of court proceedings and inevitably target women. DSS polices the constitutionally protected right of motherhood—prenatally and at birth—through mandatory drug tests. Furthermore, because the mothers are on Medicaid, they can easily be “hotlined” at birth, since hospitals enter their insurance data on the computer and data are shared with the Sunshine County agency. Hence, women actually are more affected by the surveillance mechanisms of the judicial system than men. This fact is obscured because policing is usually seen in terms of police officers issuing arrests; however, in jurisdictions like Sunshine, NY, that are hostile to a poor parent’s right to raise his or her children, the CPS worker comes along with police officers, who tend to terrify the children with long-lasting effects. So we see a double-prong approach to policing here: the supposedly benign face of a CPS investigator who takes away children under the protective gaze of a police officer, who typically supports the CPS worker’s account. It is rumored that all CPS workers in Sunshine County have to make quotas each month to justify keeping their jobs. And the cynical reality of such quotas means that CPS workers find parents neglectful rather than devise ways to strengthen family bonds or dismiss frivolous hotline charges altogether.

Furthermore, family law clearly is not something that prison critics focus on at all, given the grim reality that the US is the number one jailor of the world. Most women in prison are mothers, and they face serious consequences in family court such as automatically losing their child to the state when they face long-term conviction. Black women were especially targeted during the war on drugs, and their rate of incarceration outpaced that of white men. Worldwide, women are about 6 percent of prisoners. Prisoners’ advocates such as the Sentencing Project, the Vera Institute, Prison Policy Initiative, and the Movement for Black Lives need to raise consciousness that many more millions of Americans are under state supervision when family court cases involving placement are counted. After all, these organizations already examine the parole/probation status of American residents, which is considered an extension of prison regime. Sanctions meted out in family court also involve the curtailment of individual rights and, therefore, the abstract rights-bearing defendant should be afforded the same protections that exist in criminal court.

The state is starting to acknowledge that “removal from the home is a difficult and traumatic experience for a child”²³ and therefore, foster caregivers and DSS officials all need to be trained in safeguarding the needs of the child. However, there are no guidelines for CPS workers counseling aggrieved parents whose children are removed abruptly from their home. The best they can hope for is being forced to take anger-management courses. However, all these DSS-mandated programs tend to focus on a deficit model of parenting. All too often, mothers are so traumatized that they start to self-medicate with opioids. But every aspect of their behaviors is policed so that they find themselves in

criminal court with drug-dealing charges. CPS workers use this as another example of their proven failure as mothers. What starts with civil proceedings in family court in pursuit of the “best interest of the child” without criminal threat by the court often cascades into a felony case with lifelong terrible consequences. Often a parent is stuck in two courts, family and criminal, where different defense strategies operate.²⁴

The family court system was originally set up to keep children away from the adversarial and difficult procedural justice of criminal court, in which family court decisions are to be made using “the best interest of the child” standard. In reality, family law is also antagonistic. Parents’ lawyers face DSS counsel who are hired to advocate for the agency. Their CPS workers, who do the initial investigation, routinely bring along police officers as additional witnesses, clearly designed to intimidate of the parent who is facing allegations. How does one protect oneself from baseless allegations? As a first step, advocates can inform parents in highly criminalized neighborhoods about the need to protect themselves when DSS comes knocking at their door. This is similar to the training that the ACLU gives with respect to stop-and-frisk policies and entering a home without a warrant. Some good practices include collecting time-stamped videotaped evidence of a spotless house when a home visit occurs. Photographic evidence is an important safeguard to thwart accusations of negligence such as a dirty home, spoiled milk bottles on countertops, or empty refrigerators. I was told by a family advocate that this advice worked successfully when an alert parent set up a computer and cell phone at various places in the apartment, and the CPS worker was quick to leave the premises once he found himself being taped. No report charging neglect was filed. However, CPS workers have allegedly threatened other parents not to emulate such self-empowerment.²⁵

Lawyers have noted that family law simply is in the pre-*Gideon* state of legal procedure, which means that there are no fundamental protections (innocent till proven guilty, etc.). In Sunshine County, when CPS workers show up at the door of a parent with the intent to remove a child or children, they often bring along the local police, who also enter the premises. This is the reason why Jasmine is retraumatized when she sees police today, even after her reunification with her mother. The police officer serves a couple of purposes for the DSS: intimidating the parent and serving as witness for the state in family court. The unfounded report does not disappear from the register. In the end, it is clear that the parent is at an enormous disadvantage when two state agencies corroborate and testify against the parent. In Miranda Fricker’s terms of epistemic injustice, the parent’s testimony has no worth against the privileged testimonial voices of the state enforcing law and order.

Martin Guggenheim critiques forcefully such epistemic invalidation of parents and the largely invisible breakup of poor families and of families of color within the past decades.²⁶ He makes a case that this policy started with the birth of the “children’s rights” movement in the 1960s and several US Supreme Court rulings that began to give preference to a “best interest for the child” ideology. Oddly enough, such “child’s rights” perspective prompted state

action, state intrusion into sacrosanct parental decision-making, and the consideration of poverty as an actionable indicator of parental neglect. Only in recent years, when the state made the “mistake” of occasionally arresting the “wrong” kind of parents (i.e., those with social and legal connections and bourgeois community status), have we been treated to a corrective lens to this endemic crisis faced by thousands of poor families and families of color.²⁷ The crisis has reached a veritable tipping point where advocates, such as law professor Guggenheim, may finally get their day in court: shining light on a system which is corrupt and bankrupt, and callously undermines family values of targeted parents, i.e., their constitutionally protected right against state intrusion and the right to rear children beyond the normative purview of white upper-class values. However, the hurdles are many to undo federal policy which pours money mainly into child abuse, but not into child welfare:

The unfortunate turn federal legislation took in child protection in the early 1970s was to make it into an arm of the police with primary investigative and removal powers. A great opportunity was lost to transform child welfare into a program that served the needs of vulnerable families. From the investigative function, it was a short step to becoming a removal and prosecutorial agency. Although many in the field lament this shift and work in child welfare to provide services to bolster vulnerable families, child protection today, more than at any time in the past hundred years, stresses the virtue of breaking up families and freeing children for adoption.²⁸

Guggenheim does not exaggerate. Even though in recent years, social services policy notes that child removal is traumatizing for the child—and their policies are completely silent on parents being traumatized—many resources are spent on making foster homes safer and providing trauma care for children. However, there are no substantive, specialized support services for homeless families; parents dealing with addiction or with felony status, which makes them ineligible for work; or with mental delay and mental disabilities, which have been used against parents’ ability to care for their infants, etc. Guggenheim’s analysis strikes me as correct, especially with the new policing reality that the Adoption and Safe Family Act (1997) put into place.

THE PATRIARCHAL STATE APPARATUS: POLICING FAMILIES THROUGH THE ADOPTION AND SAFE FAMILY ACT

Defenders of the social services regime that controls the foster system claim that state intervention is necessary to rescue kids from cruel and negligent parents. However, in twenty-one states corporal punishment is still legal when carried out in schools, and parents are usually not able to challenge the paddle, Taser, or chemical spray.²⁹ Black children are twice as likely to face corporal punishment than white children. The long-term, harmful effects have been well documented in several hundred studies, yet there is no relief in sight from such cruel and very common state violence.³⁰ Concerning the domestic

sphere, children's advocates note that such rescue ought to be carried out by impartial actors of the state who are trained professionals who know what is in the best interest of the child. Importantly, placement no longer occurs in "orphan trains" or other ghostly institutions of the past, including the colonial practice of removing Indian children and placing them in "boarding schools"—a euphemism for children's prisons and places of torture. Today, CPS workers place small children into families that are immediately urged to file adoption proceedings. Sometimes siblings are separated even though it increases the traumatic experience of being severed from one's parent. The most egregious case of such breaking up of dozens of families involved Lakota families³¹—a haunting colonial reminder of the racist child-removal policies of the past century. It also echoes the violent family breakup of Black families under chattel slavery.

Expediting this process was the federal Adoption and Safe Family Act (ASFA 1997), as it was recognized that children who linger in foster care throughout their teens are at greater danger of graduating into adult prisons rather than graduating high school. So ASFA has a noteworthy child-welfare goal: reduce children's time spent in foster care. It also limits parents' ability to achieve reunification to fifteen months and increases adoption incentives. This has created havoc for incarcerated parents and those on parole. Prisoners have difficulty showing due diligence to maintain bonds with children given the resistance of CPS workers facilitating children's prison visits to remote areas. Furthermore, for returning citizens with drug felony convictions, it is very difficult to obtain public housing and a job in order to re-pay the state in child support debt incurred during incarceration. Given that the average parent with a felony conviction owes \$20,000 in child support, a minimum-wage job would not even be enough to cover expenses for the adult, let alone her child.³² However, ASFA did little to curb the ever-increasing number of teens who are not adoptable, including over 100,000 children who aged out of the system and became legal orphans in the last decade alone.³³

The passage of ASFA in 1997 increased the policing power of Child Protective Services and judges who rubberstamp their decisions. In 2002 over 600,000 children were placed in foster care.³⁴ By 2011, "only" 400,000 kids remained as wards of the state because some states (Arizona and Indiana) abolished family court and dispersed the children to kin (but not to parents).³⁵ Foster care can also be experienced as a prison sentence, even if foster caretakers are not abusive. Since 2016, Sunshine County seems to have reduced its cases by relying increasingly on caretakers who are relatives of the biological parents. The law also allowed DSS to place children with relatives and then those relatives can petition (and get) full custody from parents, relieving DSS of the legal obligation of trying to reunite the family.

However, such lack of reporting seems to violate the US government's own data collection.³⁶ Still, the US is not only the biggest jailor, it also holds the record in foster placement the world over, but this fact is never mentioned in prison statistics. We have to start acknowledging that not only the children who are currently in foster care, but

also those who have been adopted, need to show up in statistics that showcase the massive "legal" transfer of children. Such excessive transfer would be labeled child trafficking if it were not done by the power of the (benign) state.³⁷ Furthermore, the biological parents caught up in such punitive state intervention also need to be counted as life-long probationers—who, along with their children (and grandparents), are subjected to intergenerational stigmatization.

We cannot afford to overlook the damage of family court proceedings as we have cavalierly done since 1997. In the beginning, the main critiques of the 1997 ASFA Act came from prisoners' rights organizations, fighting on behalf of incarcerated parents who have tried to stay in touch with their children beyond the fifteen-month limit allotted them to "overcome the obstacles" so that they could stay bona fide parents. Often, prison sentences are much longer, therefore, they automatically forfeit their parental status. In Sunshine County, no significant effort is made to bus children to their incarcerated parents, even though it may be the express wish of both parties. Sadly, such resistance to visitation requests by both children and parents is not out of the ordinary, as it would require the cooperation of child welfare agencies and the corrections department.³⁸ I would add it also needs the approving nod of the family court judge to ensure that those two entities collaborate, which does not happen in many cases that I observed. A child's loss of her parent to the carceral regime is tremendously traumatic to the child and affects some 2.7 million children annually.³⁹ Compounding this trauma is foster care placement, and children of incarcerated parents are four times more likely to be in contact with CPS than those who do not have parents in prison.⁴⁰ The risk factor of spending life behind bars is already increased for children of prisoners, and even more so, if those children cycle into the foster care system. The foster-care-to-prison pipeline becomes almost inevitable. It is no coincidence that the United States "leads the industrialized world in the rate at which we lock up our young" and it is often "for nonviolent offenses such as truancy, low-level property offenses, and technical probation violations."⁴¹ My first encounter with a CPS worker of Sunshine County provided a glimpse at these intersecting controlling systems. A white caseworker wagged her finger wildly at a young Black teenager, threatening him with violent words: "you will amount to nothing and go to prison when you grow up." She placed him in foster care in a remote, rural area, and an adult Black male mentor was not allowed to interact with the teen. The young man graduated to the adult jail a few years later and did not finish high school. By contrast, the system works for those who are socially connected to the powerful: a few years after the young man was sent into "exile" (i.e., placed with a rural, white family, and he was the only Black child in the elementary school), the CPS worker's husband was caught with marijuana, yet the DA did not prosecute; no instance of child endangerment was brought up against the couple who have children, and she also retained her job with the agency.

CHILDCARE IN THE CROSSFIRE OF CULTURAL CLASHES

What kinds of governmental reforms are necessary to ensure that poor children are not considered throwaways? Children internalize such stigma and may start to blame themselves for being removed from their parents. Poor children have a much more extensive experience with the policing apparatus of DSS, probation, parole, and schools than their wealthier counterparts. According to my own observations and review of court documents and CPS workers' reports of supervised visitations between indicated parents and their children, it is very apparent that the DSS favors a white middle-class cultural perspective on what constitutes as "appropriate" parenting skills. A young woman who reports that she was carted off to *forty* different alienating institutional settings wished that she could have been placed with her grandmother instead, and, for a fraction of the foster care and youth prisons expenditures, her mother's addiction could have been treated.⁴² Do we really need to throw away the "usual suspects," the poor and socially disconnected? As Smith Ledesma argues, the ideological driver of punitive foster care placements is the systemic destruction of the Black family.⁴³ Black children are disproportionately represented in the foster care industry and are also the children who are least likely to find an adoptive home. Natal alienation, the systematic breakup of Black families, was a pernicious feature of US slavery that continues to haunt the American republic, which is indeed exceptional in policing its residents to a much greater extent than other countries. "The intersection of tougher sentencing and child welfare laws has set in motion 'the greatest separation of families since slavery.'"⁴⁴ So is the solution to pour more money into foster arrangements with strangers, or is there a better way?

Norway has been a leader in restorative justice practices. Its government has taken advice from its premier criminologist Nils Christie. In "Conflict as Property," Christie argues boldly that solving conflict belongs to community members, and he rigorously opposes reliance on professionals and bureaucrats in dealing with offenses. While he had in mind the criminal justice system, one can easily translate his concern into the realm of family law.⁴⁵ Incidentally, Norway has made international headlines in recent years for targeting immigrant families, whose values seem to be out of step with Norwegian secular humanism. A Romanian couple lost its five children to the state for using corporal punishment and being too doctrinaire about its Christian teachings.⁴⁶ So, again, I argue that those who are socially disconnected may find themselves policed more harshly. In this case, the immigrant family was criminalized because of their cultural values.

Overall, as with the criminalization of poor people, who make up the vast majority of prisoners around the world, we can take note (but not comfort) of the fact that the benign police apparatus of CPS workers targets poor and socially displaced parents who apparently do not *deserve* to keep their children from state intervention because of "inappropriate" cultural values such as corporal punishment. Of course, I do not want to defend corporal punishment. However, Norway would do well to take note of a strength-

based approach in assisting immigrant families who do not know or understand the Nordic countries' cultural norms that proscribe all acts of corporal punishment. There is nothing wrong with asking CPS workers to become cultural translators and educators instead of using their policing power to stigmatize immigrant parents. Furthermore, to build trust with newcomers, it would be effective to have a mentoring system in place, employing older immigrants to facilitate cultural and political integration. Such a mentoring system could make use of parent advocates who have been successfully reunited with their children. Peer-mentoring is already in place in other domains, e.g., recovery programs.

Not surprisingly, the US court's cultural values reflect those of the dominant culture. It has been labeled as a *staircase culture* of middle-class whites versus the *roller coaster culture* of those who are othered by the system for the crime of holding "inappropriate" family values. Members of the staircase culture believe in the ameliorating force of the American Dream and the optimistic belief in upward mobility whereas those who subscribe to the roller coaster culture believe that outside forces control things and life is a constant up-and-down struggle.⁴⁷ This is especially true for children who have been severely impacted by years of separation from parents and the effects of institutionalization moving from foster care to group homes to detention centers, as this young prisoner decries:

You don't know what it feels like to come up in the world with parents that can't stay out of jail.

You don't know what it's like to have your sisters and brothers took from you and placed in a group home.

You don't know what it's like to have no family to be by your side when you need them in a time of hurt.

You don't know what it's like to be me and never will, so I'll tell you . . .

*It feels like a forever going rollercoaster ride through fire and water that ends when you fall.*⁴⁸

The child laments the loss of parental and sibling ties and ultimately faces the profound trauma of being "all alone in the world."

AnnJanette Rosga describes an innovative multicultural awareness session with police recruits who get to reflect on their own unconscious bias when they interact with those marked with outsider status.⁴⁹ I argue that such cultural competence training must be adopted by DSS and similar agencies such as Probation and Parole. While CPS investigators may never understand what the young foster child's life on the roller coaster is like, they may start developing strength-based programming instead of breaking up a family if exposed to such anti-bias training. However, as far as I have been told, no such workshops investigating police officers' or CPS workers' own biases exist in Sunshine County. In this county, CPS reports are replete with reprimands of the following kind: the mother

makes insufficient eye contact with her children during a supervised visit or does not hug the child. Her parenting skills are considered “inappropriate” or outright dangerous: take the case of a mother being cited for bringing chicken nuggets to a supervised lunch visit. Family court judges rarely wonder why “appropriateness” is used as a standard when the law specifies “neglect” or “imminent danger” as grounds for removal of a child. It seems to be the case that the judges have also bought into the DSS’s “staircase” ideology. CPS reports specify more or less the following recommendation using a cookie-cutter patriarchal approach: a mother submits to dozens of programs that focus on anger management or nutrition classes. Often, even mothers who are lauded for their cooking skills are condemned to take nutrition classes because there is no individualized, tailored approach to family reunification. However, such a system fosters dependency, as the mother has to go through a dozen different programs a week, which means typically that she loses her minimum-wage job. Wages also are garnished to pay for foster care, even when she has permanently lost her right to her child.

The state uses surveillance methods on mothers on government assistance. The biopolitics of the paternal state is obvious: due to the government-issued health insurance card, she can easily be “hotlined” if she escapes to another state in order to give birth. Such resistance is obviously futile because the computer system of the hospital alerts Sunshine County DSS that there is a fugitive of justice. And promptly, a call for the return of the newborn is placed to the hospital. In Georgia, where foster placement is a matter of last resort, the state is working with an innovative approach: stakeholder group work. All parties to the system were invited to rewrite the Juvenile Code completely, and parents’ attorneys were at the table as well.⁵⁰ New York City has also used a new, strength-based approach to help families overcome the obstacles and reunite, thanks to the advocacy of the Center for Family Representation. Since 2014, teams of CPS workers, parent advocates, and lawyers work together with the explicit goal to prevent foster placement.⁵¹ It is as if we see in different jurisdictions across the country a breakthrough, where families get to overcome another obstacle: the hermeneutic gap between those living on the roller coaster and those who walk with ease on stairs. Such epistemic injustice is difficult to overcome, but the self-organizing of parents, peer mentors, and parents’ advocates is beginning to occur at a small-scale level and may bring about incremental change.

CONCLUSION: THE WAY FORWARD

Family law was set up to keep family matters out of criminal court. In this article, I highlight practices and policies in one county to show that such good intentions have not served children well. State agencies, including Social Services, acknowledge that it is traumatic for any child to be removed from their home. Feminist philosophers who wish to engage with this hidden care industry must ask who gets to decide, and on what grounds, a child may be forcibly removed from their home. Radically put, one must question the entire family court apparatus with its attendant policing apparatus such as CPS, lawyers for the DSS, semi-privatized psychological services who do evaluations solely in favor of CPS, and other services that claim to work for the “best

interest of the child.” In the end, one thing is clear: the foster care industries are thriving at the expense of children and parents. The federal Adoption and Safe Family Act (1997) has exacerbated the state’s intrusion into families instead of solving the crisis of thousands of children failing to get adoptive homes. Rather than reducing time spent in foster care, children spend exactly the same time: thirty-three months. In 1997, there were about 6,000 legal orphans; a mere seven years later, there were 129,000 legal orphans.⁵² In Sunshine County, there are entire streets where each house has parents who are indicated. It is disturbing to overhear young children taunting each other with “I will hotline your parents!” It is so normalized for them to experience CPS workers and police visiting a home on their block at least once a week that they build this new policing reality into their (agonistic) games. Family advocates must be vigilant in anticipating the biopolitical effects of new technologies. Child development advocates note the large word gap between poor and rich children by eighteen months,⁵³ and studies are now in place to monitor “at-risk” children with word pedometers.⁵⁴ It is not too farfetched to assume that Sunshine County might use these monitors on high-risk children and cite the persistence of gap as an indication of child neglect.

The Lakota lawsuit is only the beginning of what needs to happen: liberating us from the all-powerful family court judge and her team of overzealous prosecutors and CPS workers so that millions of children like Jasmine can play again under the protective and caring watch of her mother. Iris M. Young’s essay “House and Home” gives us an inkling of what it means to fall victim to “inappropriate” child-rearing in a New Jersey suburb.⁵⁵ Her mother lost custody for several years of Iris and her sister for similar reasons that Sunshine County uses to indicate parents. A few empty bottles of alcohol on the floor were enough evidence to substantiate claims of child neglect. In Iris’s case, once they reunited, the mother whisked the teenagers off to the anonymity of New York City. Speaking like a public philosopher, law professor Martin Guggenheim suggests that if child welfare were treated holistically as a “public health or shared social problem, rather than an issue focused solely on child abuse, we could develop policies that address directly and proactively those conditions that adversely affect the health and welfare of poor children in the United States.”⁵⁶ Policing poor families and especially families of color is not the answer.

The “child-advocacy-focused” state under the guise of *parens patriae*—namely, the power of the state to intervene in the affairs of families—sounds good in theory, but in practice, it means the state investigates almost exclusively families that are not socially connected to powerful stakeholders in their communities. Law Professor Dorothy Roberts notes that it costs eleven times more to remove a child to foster care than to overcome obstacles and to strengthen family bonds. She further notes that 95 percent of children in foster care in Chicago are Black.⁵⁷ The state’s attack of the Black family has historical roots in the Middle Passage and chattel slavery. If we are to see a transformation in welfare politics, we need to invest in non-punitive practices such as strength-based advocacy for families and a public health approach to child welfare.

The point of view presented here will not be popular with those who are engaged in the noble pursuit of rescuing children from corporal punishment and other serious cases of abuse. Anecdotal evidence from Sunshine County suggests that arbitrary and capricious removal practices are far more prevalent than justifiable removal of young children. So I agree with Stephanie Smith Ledesma who argues that “until children are protected from the ‘master narrative’ of child welfare that plays out in hundreds of courtrooms across this nation on a daily basis through the inconsistent application of ‘reasonable efforts,’ our children stand desperately in need of protection from the very child protective service agencies that are charged with protecting them.”⁵⁸ The lives of millions of children are at stake, and it must be the case that poor lives matter.

NOTES

1. This publication is the outcome of the project “Performativity in Philosophy: Contexts, Methods, Implications. No. 16-00994Y; Czech Science Foundation,” realized at the Institute of Philosophy of the Czech Academy of Sciences.
2. Miranda Fricker, *Epistemic Injustice: Power and the Ethics of Knowing* (Oxford: Oxford University Press, 2007).
3. Family defense refers to “working on behalf of adults threatened by state intervention with the temporary and permanent loss of the custody and rights to their children.” Guggenheim and Sankaran, *Representing Parents in Child Welfare Cases: Advice and Guidance for Family Defenders*, xix.
4. *Ibid.*, xix–xxi.
5. Guggenheim, “General Overview of Child Protection Laws in the United States,” 175.
6. Hotlining refers to the practice of placing an anonymous call to Child Protective Services to report child endangerment, which may trigger investigation. Redleaf, “The Impact of Abuse and Neglect Findings Beyond the Juvenile Courthouse,” 390.
7. Permissive reporters are those who are encouraged to report any suspicion of child abuse. Redleaf, “The Impact of Abuse and Neglect Findings Beyond the Juvenile Courthouse,” 392.
8. *Ibid.*, 390–91.
9. *Ibid.*, 393.
10. While Sunshine County’s placement rates are disproportionately higher than other counties in the state, the rate of removal of children has dramatically increased across the United States since 1997.
11. Howard et al., “Early Mother-Child Separation, Parenting, and Child Well-Being in Early Head Start Families.”
12. Personal communication, October 16, 2016.
13. *Ibid.*
14. Edelman, “Child Watch Column: Overmedicating Children in Foster Care.”
15. OCFS, “Administrative Directive: Supporting Normative Experiences for Children, Youth, and Young Adults in Foster Care: Applying a Reasonable and Prudent Parent Standard.”
16. Cf. Decker, “The Social Services to Prison Pipeline.”
17. One Texas court room even permitted the criminal defense counsel use of “influenza syndrome” for his wealthy client Ethan Couch who killed several persons while driving under the influence of several drugs in 2013. The judge agreed and sentenced him to probation and drug rehabilitation (Chicago Defenders, 2013).
18. Michelle Goldberg, “Has Child Protective Services Gone Too Far?”
19. Roberts, *Shattered Bonds: The Color of Welfare*; and Goldberg, “Has Child Protective Services Gone Too Far?”
20. Guggenheim and Sankaran, *Representing Parents in Child Welfare Cases*, xxiii.
21. *Ibid.*, xx.
22. Pepinsky, *Peacemaking: Reflections of a Radical Criminologist*, 67.
23. OCFS, “Administrative Directive: Supporting Normative Experiences for Children, Youth, and Young Adults in Foster Care.”
24. deQuattro, “Representing a Parent in Dependency Court Who Also Has a Parallel (Related) Criminal Case.”
25. Personal communication with a family advocate, 2014.
26. Guggenheim, *What’s Wrong with Children’s Rights*.
27. Goldberg, “Has Child Protective Services Gone Too Far?”; and Nagel, “Gender and the Law.”
28. Guggenheim, *What’s Wrong with Children’s Rights*, 211–12.
29. PBS Newshour, “Assessing Whether Corporal Punishment Helps Students, or Hurts Them.”
30. Gershoff, “Spanking and Child Outcomes: Old Controversies and New Meta-Analyses.”
31. *Oglala Sioux Tribe v. Van Hunnik*.
32. Bernstein, *All Alone in the World: Children of the Incarcerated*, 154–55.
33. Guggenheim, “General Overview of Child Protection Laws in the United States,” 18.
34. Guggenheim, *What’s Wrong with Children’s Rights*.
35. Children’s Bureau, AFCARS Report #23.
36. *Ibid.*
37. Nagel, “Gender and the Law.”
38. Woolman, “Special Considerations Representing Clients Involved with the Criminal Justice System,” 52.
39. Bernstein, *All Alone in the World: Children of the Incarcerated*.
40. Woolman, “Special Considerations Representing Clients Involved with the Criminal Justice System,” 51.
41. Bernstein, *Burning Down the House: The End of Juvenile Prison*, 223.
42. Bernstein, *All Alone in the World: Children of the Incarcerated*, 177.
43. Smith Ledesma, “The Vanishing of the African-American Family: ‘Reasonable Efforts’ and Its Connection to the Disproportionality of the Child Welfare System.”
44. McCray, cited in Bernstein, *All Alone in the World: Children of the Incarcerated*, 156.
45. Christie, “Conflicts as Property.”
46. Whewell, “Norway’s Barnevernet: They Took Our Four Children... Then the Baby.”
47. Rosga, “Policing the State.”
48. Cited in Bernstein, *All Alone in the World: Children of the Incarcerated*, 147–48; her italics.
49. Rosga, “Policing the State,” 164.
50. Moore, “Reforming the System,” 419.
51. *Ibid.*, 425.
52. Bernstein, *All Alone in the World: Children of the Incarcerated*, 156–57.
53. Aggarval, “The Ideological Architecture of Whiteness as Property in Educational Policy.”
54. Neergard, “Talk to Babies and Let Them Babble.”
55. Young, “House and Home: Feminist Variations on a Theme.”
56. Guggenheim, *What’s Wrong with Children’s Rights*, 211.

57. Roberts, *Shattered Bonds: The Color of Welfare*.
58. Smith Ledesma, "The Vanishing of the African-American Family: 'Reasonable Efforts' and Its Connection to the Disproportionality of the Child Welfare System."

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Doubly Other: Black Women's Social Death and Re-enslavement in America's Genocidal Prison Nation

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Dedicated to the brave "New Jersey 4"—Venice Brown, Terrain Dandridge, Renata Hill, Patreese Johnson—and to all the women of color fighting to escape mass incarceration.

Recently, scholars have drawn fruitfully on Orlando Patterson's concept of "social death"¹ to describe the experiences of African-Americans, Hispanics, and immigrants trapped within our nation's burgeoning prison nation.² Beginning with Nixon's racially coded avowals to "get tough on crime," which reached fruition with Ronald Reagan's "war on drugs," the United States has engaged in a veritable orgy of prison building and has preyed on its poor citizens of color to fill those prison beds. Thus, even as violent crime has been on the decline, we have thrown more and more of our citizens into prison, the vast majority of whom are African-American and Hispanic, for non-violent drug crimes: the US leads the world when it comes to jailing its inhabitants, with 2.2 million people in prisons or jails, representing a 500 percent increase over the last thirty years.³ As of 2010, 60 percent of those imprisoned in the US are racial and ethnic minorities.⁴ The news media have shown little interest in the drug war's catastrophic impact on poor communities of color because the targets of our prison nation are rendered socially dead, "desocialized and

depersonalized.”⁵ They are in the State but not of it—they are the walking dead.

The scholars paying attention to our racialized prison crisis have unfortunately missed in their analysis that the emphasis on Black men and boys has made doubly invisible the Black women and girls trapped in the juvenile and adult race to incarcerate. From 1977 to 2007, the number of women incarcerated in the United States increased by 832 percent.⁶ From 1980 to 2011, women’s incarceration increased at almost one and a half times the rate of men.⁷ In 2011, Black women’s incarceration rate was two and a half times that of white women.⁸ What activists and scholars alike, focusing on race to the exclusion of gender, have neglected is the extent to which the nation’s collective dominant narrative focuses on the white *male* citizen. Thus Black women are doubly Othered: first as a racialized other and second as a gendered other. As such, their social death is so complete that they are invisible even within the landscape of marginalization. While the vast majority of African-American women are not incarcerated, American society has neither noticed nor ameliorated the social injustices unique to imprisoned African-American women. I shall argue that by incarcerating, isolating, and punishing Black women, the US state is functionally enslaving Black women and pushing them into a genocidal form of social death. Once rendered totally socially invisible and expendable, African-American women in prisons are targeted for sexual abuse, reproductive control, and as sources of free or cheap labor, just as they were in the antebellum South. Thus I conclude that insofar as incarcerated Black women are effectively enslaved today, they experience the same kind of social death as earlier enslaved African-Americans.

I. PRISONS AND SOCIAL DEATH

The socially dead are excluded and lack respect from their fellow citizens; they are shut out of the collective conversation of democratic citizens and from the ideological narrative we spin to tell the story of America. When the United States was founded, the Constitution famously defined a slave as 3/5 of a person, for purposes of taxation; the law defined slaves as property. Supreme Court cases codified the status of African-Americans as chattel. These practices continued the process of genocidal social death. After the Civil War, Black codes and convict leasing effectively re-enslaved and terrorized newly freed African-Americans,⁹ effectively pushing back through racialized terror, rape, and forced labor against the half-hearted legal attempts to integrate former slaves into the nation’s social framework. Such laws even reached out to re-enslave children via “apprentice” statutes that placed allegedly orphaned or neglected African-American children in the hands of their former owners or other white adults until they were eighteen for females and twenty-one for males; in 1865 the “assistant commissioner of the Freedmen’s Bureau reported that, on the request of *any* citizen, justices of the peace and sheriffs would place children into the apprentice program regardless of the ability of their parents to provide for them.”¹⁰ The laws’ focus on removing children of freed slaves meets the 1948 UN definition of genocide: controlling the next generation destroys the social and cultural vitality of their racial group. Jim Crow laws stepped in to fill the gap when convict leasing fell out of

favor after World War II, ensuring the segregation of white and Black spaces and racial privileges for whites. African-Americans remained within a second-class status, without the privileges of full citizenship, including the right to vote and the rights to live, work, and marry as one chooses.

With the rise of the civil rights movement, a new legal mechanism was required to keep African-Americans in their place: the war on crime and drugs fit the bill. The drug war has allowed the majority of white citizens, especially the middle- and upper-class, to define themselves in opposition to a Black Other, much as they have from this nation’s founding. To be free and a full citizen has ever been to be white, male, property-owning and *not* Black, female, and poor. As Lisa Marie Cacho describes this process of meaning creation through negation of the Other, “to be ineligible for personhood is a form of social death; it not only defines who does not matter, it also makes mattering meaningful. . . . Racism is a killing abstraction. It creates spaces of living death and populations ‘dead-to-others.’”¹¹

Even release from prison does not allow former felons of color to attempt a repatriation into full-fledged citizenship, both because they were not socially alive *before* incarceration, and because being marked as a *felon* simply reifies their status as permanently Other. Indeed, Africans and African-Americans have been uniquely targeted for *state* control from their introduction as slaves during Colonial times, under Black Codes and via forced labor after the Civil War,¹² via Jim Crow laws through the Civil Rights Movement, and unto the present day with the creation of the drug wars. And all along the way, from individual owners to corporate owners and today’s for-profit prisons, Black servitude has enriched white capitalist citizens.

Writing from her own prison cell in 1971, Angela Y. Davis (who would later be acquitted), commented on how police officers all too often have functioned to keep Black Americans oppressed and imprisoned in either ghettos or jails, fulfilling their role within a racist state:

It goes without saying that the police would be unable to set in motion their racist machinery were they not sanctioned and supported by the judicial system. The courts only consistently abstain from prosecuting criminal behavior on the part of the police, but they convict, on biased police testimony, countless Black men and women. Court appointed attorneys, acting in the twisted interests of overcrowded courts, convince 85% of defendants to plead guilty. Even the manifestly innocent are advised to cop a plea so that the lengthy and expensive process of jury trials is avoided. This is the structure of the apparatus which summarily railroads Black people into jails and prisons.¹³

Acting as instruments of the state, police officers have targeted African-Americans as slaves, then as freed but *de jure* second-class citizens, then as freed but *de facto* second-class citizens, for various forms of social control, rather than protecting or serving them as equal members of American society.

Decades later, after a successful career as a philosophy professor and activist, Angela Y. Davis pointedly describes racialized mass incarceration in 2012:

When we consider the disproportionate number of people of color among those who are arrested and imprisoned, and the ideological role that imprisonment plays in our lives, I want to suggest that the prison population in this country provides visible evidence of who is not allowed to participate in this democracy, that is to say, who does not have the rights, who does not enjoy the same liberties, who cannot reach the same level of education and access, who cannot be party of the body politic, and who is therefore subject to a form of civil death.¹⁴

As part of the increasingly draconian drug laws, even non-violent felons are stripped of their right to vote in many states,¹⁵ and federal law permanently bars them from accessing public housing,¹⁶ food stamps, student loans, and other federal assistance that might allow them to escape poverty and re-integrate into society.¹⁷ Their formal disempowerment by the state is complete. As Davis argues, white supremacist goals shape the structure and function of punishment at their core; the prison system “in its present role as an institution . . . preserves existing structures of racism as well as creates more complicated modes of racism in US society.”¹⁸

II. INTERSECTIONALITY AND THE INVISIBILITY OF BLACK WOMEN

The Combahee River Collective of Black feminists, in their 1976 statement, spoke eloquently of Black women’s invisibility in both the women’s and civil rights movements:

Above all else, our politics initially sprang from the shared belief that Black women are inherently valuable, that our liberation is a necessity not as an adjunct to somebody else’s, because of our need as human persons for autonomy. This may seem so obvious as to sound simplistic, but it is apparent that no other ostensibly progressive movement has ever considered our specific oppression as a priority or worked seriously for the ending of that oppression.¹⁹

Recent Black feminists, such as Patricia Hill Collins, Kimberlé Crenshaw,²⁰ and bell hooks, have developed the Combahee Collective’s nascent intersectional analysis into a nuanced examination of how race, class, and gender work together to produce a form of oppression and social death ignored by many white feminists and African-American civil rights advocates alike. Black women are present only as absent: even as white supremacy defines its privilege through the negation of Blackness, patriarchy defines its privilege through the negation of women. As such, within the Black community, issues of justice focus on the plight of the Black male; indeed, as Jamila Aisha Brown poignantly commented in the wake of the anger over the Trayvon Martin murder, “if Trayvon Martin had been a young Black woman, no police chief would have resigned over a bungled investigation.

No CNN host would be discussing the case of her accused killer. And we wouldn’t be live streaming her murder trial and hanging on every word of each witness. The reality is we would probably never have heard of her,” as the Black community allows the erasure of Black women’s suffering from their struggle against police brutality.²¹

Indeed, when President Obama spoke following George Zimmerman’s acquittal of all charges in the case, he asserted “Trayvon Martin could have been me thirty-five years ago” and described the daily insults of racism Black men and boys face, he never invoked a single female image or pronoun (even though he has two young African-American daughters who have surely encountered racism in their lifetimes). The unique experiences of gendered racism Black women and girls face yet again is subsumed under the male experience—as seen in African-American journalist Charles M. Blow’s *New York Times* article the day after Obama’s speech: “we can never lose sight of the fact that bias and stereotypes and violence are part of a Black man’s burden in America, no matter that man’s station. We could all have been Trayvon.”²² The Black woman’s burden of invisibility remains, even within her own community.

Worse than merely ignoring white violence against Black women, some Black men play into the narrative of power as dominance when they exert sexist control over “their” women to prove their manhood. From Eldridge Cleaver advocating rape of Black and then white women to assert dominance and show up white men, through misogynistic rap and gang culture of the present day, too often Black manhood is reduced to power over Black women, and not to challenging the larger hierarchical, privilege-based system that disenfranchises all people of color, women and men alike. bell hooks laments that “black males, utterly disenfranchised in almost every arena of life in the United States, often find that the assertion of sexist domination is their only expressive access to the patriarchal power they are told all men should possess as their gendered birthright.”²³ As scholar Paul Murray sees it, “the Black militant’s cry for the retrieval of Black manhood suggests an acceptance of this stereotype, an association of masculinity with male dominance and a tendency to treat the values of self-reliance and independence as purely masculine traits.”²⁴

Whereas Michelle Alexander’s book *The New Jim Crow*, which focuses on African-American men trapped by the drug war, made the *New York Times* bestseller list, Beth Richie’s book examining the plight of African-American Women, *Arrested Justice: Black Women, Violence, and America’s Prison Nation*,²⁵ never received comparable popular or critical acclaim. Critical notice of the invisibility of Black women’s oppression (even within their own communities) comes in a recent report from the African American Policy Forum which challenges the dearth of outrage and attention given to the mass incarceration of Black women and girls:

While the conditions of Black males are certainly worthy of substantial investment, centering *only* the Black male condition has presented a zero-sum philanthropic dilemma, where private and public funding resources have prioritized in their

portfolios a number of efforts to improve the conditions of Black males without consideration for Black females, who share schools, communities, resources, homes and families with these males. For example, most philanthropic portfolios that support racial justice fail to include a gender analysis, and those portfolios that support gender issues often fail to center African American girls [and women]. Without a philanthropic investment in the status of Black girls that is comparable to that of Black boys, the historical framework associated with the invisibility of Black females persists, in which “all the women are white, all the Blacks are men, but some of us are brave. (Hull, Bell-Scott & Smith, 1982)²⁶

Black women and girls’ sufferings must not remain invisible.

The neglect of Black women and girls in larger social justice discussions of the neglect of communities of color stands in stark contrast to their hypervisibility as targets of white male aggression. The US has a long tradition of viewing African-American women’s bodies as inherently for the consumption and use of white men, beginning with slavery. Scholar Joy James notes that Black women activists fighting against legal execution and mob lynching of Black men for alleged sexual offenses against white women in the nineteenth century were well aware that white male assaults on Black women were tolerated and ignored.²⁷ Naming is power: in controlling and disseminating stereotypical images of African and African-American women as passive and obedient asexual Mammy, castrating and domineering Matriarchs, sexually promiscuous Jezebels, or slovenly welfare mothers, power elites relegate Black women to spaces of social death where they can be assaulted and exploited with virtual immunity.²⁸ As Patricia Hill Collins explains these “controlling images,” they “are designed to make racism, sexism, poverty, and other forms of social injustice appear to be natural, normal, and inevitable parts of everyday life.”²⁹ The African race became the deviant opposite of the superior white race, Black males the doppelgangers of the white property-owning males whom the Declaration of Independence rhapsodized about as the bearer of inalienable rights. And once Black women were Otherized and relegated to the permanent margins of society, their normalized inferiority became the opposite against which pure white womanhood shone all the brighter.

Images of African women as less-evolved and hypersexed justified the mass rape of slaves in the American South, whereby white men were portrayed as the innocent dupes of lascivious Black women. Indeed, the African woman’s animality allegedly made it easier for her to reproduce as profligately as she fornicated.³⁰ Just like the “Jezebel” of the Bible, this stereotype of the Black whore signaled both her wantonness and her danger to upstanding white men. After the Civil War, Black Codes continued to criminalize African-American women’s deviance from a mythical norm of pure white womanhood, charging them with crimes such as failure to keep a neat household. Such images also sustained the view of Black domestic workers as easy targets for their white male employers and their sons. The

predation of white men on African-American domestic help in the early- to mid-twentieth century was also rendered impossible because consent could always be assumed for Black women, presumed slutty by nature or essence. As legal scholar Kimberlé Crenshaw explains, the white judicial system presumed Black female promiscuity historically, with some states going so far as to instruct juries that “Black Women were not presumed to be chaste” and thus “the successful conviction of a white man for raping a Black woman was virtually unthinkable.”³¹

Even today, behaviors for which Black females routinely experience disciplinary response are related to their nonconformity with notions of white, middle-class femininity, for example, by their dress, their profanity, or by having tantrums in the classroom.³² In contemporary society, Black women remain more likely to be victimized yet less likely to report their rapes than white women—reflecting the reality that crimes against their bodies are less likely to be believed or punished.³³ Black women are essentialized as rapeable and inferior, subject to the law but not protected by it.³⁴ This is the essence of social death, to be viewed as “*ineligible for personhood*—as populations subjected to laws but refused the legal means to contest those laws as well as denied both the political legitimacy and moral credibility to question them.”³⁵ To combat Black women’s social death, we must acknowledge and understand the gender hierarchy even within the landscape of racialized rightlessness: to paraphrase Orwell, all the socially dead are rightless, but some of the socially dead are more rightless than others—those so invisible as to escape the notice even of their fellow dead.³⁶

III. MODERN PRISON CONDITIONS FOR BLACK WOMEN AND SOCIAL DEATH

Thus African-American women and girls are twice Other and twice socially dead—discounted by both the dominant white community and the dominant patriarchal focus of the African-American community. Such neglect allows a long tradition of incarceration as re-enslavement continues a tradition stretching back to the Black Codes and the Southern penitentiaries created often on former plantation grounds: at Mississippi’s notorious Parchman Penitentiary, founded in 1901, “women confined here, almost all of whom were Black, reproduced their earlier roles under slavery, forced into sexual unions with staff, and working in the cotton fields during harvest time.”³⁷

Kemba Smith, herself a victim of draconian drug sentencing laws (despite her minor involvement via a drug dealing boyfriend), and later pardoned by President Clinton, describes the profit derived from prisoners explicitly as a return to forced labor:

With the entering of the New Year, I want to give you the gift of vision, to see this system of modern-day slavery for what it is. The government gets paid \$25,000 a year by you (taxpayers) to house me (us). The more of us that they incarcerate, the more money they get from you to build more prisons. The building of more prisons creates more jobs. The federal prison system is comprised of

61% drug offenders, so basically this war on drugs is the reason why the prison-industrial complex is a skyrocketing enterprise. Many of its employees are getting paid more than the average school-teacher. All of this is to keep me and thousands like me locked down to waste, useless to our community because they want to label us a threat.³⁸

Wages paid for labor within the prison, including laundry, kitchen work, or educator, range from eight to thirty-seven cents an hour to sixty-three cents a day in some prisons; chain gangs for women have also been reintroduced.³⁹ Corporations such as Merrill Lynch, IBM, Motorola, Compaq, Texas Instruments, Honeywell, Microsoft, and Boeing—to name a few—also feed at the trough of prison labor profits.⁴⁰ Even more disturbing, private prisons have crafted contracts in twenty-one states wherein the state promises to guarantee an 80 to 100 percent filling of beds, lest they have to pay large fines. “This incentivizes states to send prisoners to private prisons rather than to state-run prisons in order to meet the bed guarantee, regardless of the prisons’ distance from families, their security level, or health conditions.”⁴¹ Some states have even agreed to guarantee filling private prison beds at 100 percent (Arizona, three facilities) or for periods as long as twenty years at 90 percent (Ohio). Is it any wonder that Corrections Corporation of America assures its investors that the “growing offender population” and “strong demand” will keep the bottom line fat for decades to come?⁴² In essence, the state now has a pecuniary interest to arrest and charge its own citizens. And rich private masters are reaping profits from the imprisonment and forced labor of Black bodies. Needless to say, those second-class citizens already viewed as socially dead will be the most attractive targets. And Black women are the invisible dead, even less likely to attract defense or protest.

Surely the racialized drug war’s assaults on African-American women and girls demand attention: between 1977 and 2004, the rate of women in prison for more than one year grew by 757 percent versus the 388 percent for men.⁴³ Indeed, sociologist Dr. Natalie Sokoloff argues that since African-American women make up more than half of the women in prison, despite making up only 12 percent of the population, the so-called war on drugs has become a “war on poor Black women.”⁴⁴ Yet a recent *New York Times* article highlighting the overcrowding and alleged civil rights violations within the California prison system, which houses the biggest number of prisoners of any state (and more than some nations), focused almost exclusively on male inmates.⁴⁵ Women remained invisible, despite the equally abysmal conditions in the Central California Women’s Facility at Chowchilla—operating at 180 percent of capacity—and protests by women prisoners and activists within and without the prison.⁴⁶

Sadly, hunger strikes and protests by California women prisoners do not merit inclusion in either the *New York Times* article or the opinion piece on the protest by ex-felon turned prize-winning African-American journalist Walter Rideau that followed a few days later, “When Prisoners Protest,” which only mentioned the male prisoners and opined that prison protests “are almost always the product

of what prisoners perceive to be officials’ abuse of arbitrary power. They are generally done by men made desperate by the lack of options to address their grievances.”⁴⁷ Ironically, male privilege contributed to the women’s overcrowding at Chowchilla: the closure of Valley State Prison for Women in order to turn it into a facility for men led to a large infusion of female prisoners at CCWF and to many being isolated in Administrative Segregation.⁴⁸ When women’s bodies are deemed doubly inferior as bodies of color, their abuse does not merit mention. In contrast, the abuse of male bodies, even those of men of color, draws some sympathy, albeit begrudging and in response to lawsuits.

When the Prison Rape Elimination Act of 2003 unanimously passed the House and Senate, and the National Prison Rape Elimination Commission was convened to study the crisis and formulate responses, women’s experiences were often subsumed under a focus on male rape; for example, the Justice Department’s PREA rules do not provide for access to emergency contraception or abortion in case of pregnancy resulting from rape of women inmates.⁴⁹ Consider also that

The culture of jokes about male inmates is juxtaposed with a discomfiting quiet about abuse in women’s facilities—a fact not addressed by NPREC as explicitly as it addressed the perception of male rape... [t]here is almost zero acknowledgement of sexual abuse perpetuated among inmates in female facilities... If anything, rape between female inmates is sexualized, as seen in such films as *Born Innocent*, *99 women*, *They Call Her One Eye*, *Last House on the Left*, and *Chained Heat 2*.⁵⁰

As such, assault of women by male prison staff, which is rampant, remains invisible; assault by women guards or other women inmates does not register as “real” assault, absent a penis,⁵¹ or the assault is sexualized into a titillating show for the presumed male gaze in the media. In any event, women’s perspectives and rights violations are erased.

A 2013 Department of Justice (DOJ) report estimates that approximately 200,000 prisoners were raped in prison in 2011–2012.⁵² A previous DOJ study reported that about half of the assaults against prisoners were perpetrated by guards and prison staff.⁵³ It can be difficult to get breakdowns by race and gender; but considering the high proportion of Black women in prison, one can safely surmise that much sexual abuse targets women of color, who have already been marked as socially dead, expendable, and rapeable. In addition, women prisoners tend to experience a higher proportion of abuse by staff than men do (though they are also abused by other inmates).⁵⁴ To take three recent examples, (1) in 2012 the DOJ found that the Mabel Basset Correctional Center in Oklahoma has the highest rape rate among US prisons; in July 2013, eleven women at the facility also filed a federal lawsuit alleging sexual assault at the hands of three guards;⁵⁵ (2) in 2014 the Department of Justice charged that the systematic rape and abuse of female prisoners at Alabama’s Julia Tutwiler Prison for women “violates the US Constitution’s prohibition against cruel and usual punishment, and calls

on Gov. Robert Bentley (R) to make immediate changes—or face a lawsuit.⁵⁶ The Alabama Department of Corrections was allegedly aware and did nothing to address the problem, ignoring complaints of abuse, a clear sign it did not view the women prisoners as having rights and thus as citizens. Indeed, 36 percent of all staff members were involved in various kinds of sexual abuse, from habitual rape and sodomy, to demanding sexual favors in return for clothing and other needed goods, to placing in solitary those who tried to report or resist the abuse.⁵⁷ And (3) a 2013 lawsuit alleges that a Texas sheriff's office created a "rape camp" at the county jail, where numerous guards—including the jail supervisor—raped and sexually tortured female inmates over a period of three years as other guards stood by and watched.⁵⁸ In addition, women were denied food and water and threatened with death to compel their participation.⁵⁹

IV. SLAVERY AND IMPRISONMENT AS GENOCIDE

Many scholars view it as no accident that the war on drugs has swept up so many people of color into prison. In her best-selling book, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*,⁶⁰ Michelle Alexander asserts that drug laws are simply the latest incarnation of judicial attempts to control African-Americans. Indeed, the United States was arguably founded on the double genocide of Africans and Native Americans. The United Nations' 1948 Convention on the Prevention and Punishment of the Crime of Genocide stipulates that

Genocide means any of the following acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, as such: (a) killing members of the group; (b) causing serious bodily or mental harm to members of the group; (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) imposing measures intended to prevent births within the group; (e) forcibly transferring children of the group to another group.⁶¹

Relevant for my purposes is Claudia Card's interpretation of the last three clauses as making room for viewing state and individual actions as genocidal when they target groups for cultural death, in addition to or separate from physical slaughter.⁶² For example, scholar Andrea Smith has argued that the United States' twentieth-century practices of forced sterilization of Native women by the Indian Health Services and the practice of seizing Native children for compulsory attendance at boarding schools that denied them access to their languages, religion, and cultural practices both violate the UN Convention and count as genocide, even though they do not aim at murdering the women and children impacted (though the sterilization clearly serves as a kind of pre-emptive strike against the possibility of future Natives existing).⁶³ Likewise, Jeanne Flavin asserts that "as during slavery, contemporary efforts to regulate Black women's reproductive capacities encompass all aspects of reproduction from conception through child raising," including Medicaid encouragement to implant them with Norplant and other long-acting birth control (and later refusing to remove the devices), family

caps and punitive welfare restrictions, and increasingly swift moves to terminate their parental rights, as will be discussed below.⁶⁴

The slave trade was clearly genocidal, subjecting its victims to a massive death rate in the march from interior nations of African to ports for export, continuing with dehumanizing and murderous conditions on slave ships in the Middle Passage to various European and colonial destinations. In the American colonies, buyers turned African human beings into *tools to be used* for their master's ends, in violation of the Kantian ethical imperative never to turn a human being into a mere means for others in violation of his or her intrinsic dignity and worth.⁶⁵ Slave traders and owners thus intended to destroy, in whole or part, a national and racial group, killing them, inflicting extreme bodily and mental harm, subjecting them to conditions calculated to bring about cultural death, and seizing and enslaving all children of the enslaved for ongoing control and degradation. As Card describes, the keystone of genocide need not be mass killing as such, but rather cultural and social death: "social vitality is destroyed when the social relations—organizations, practices, institutions—of the members of a group are irreparably damaged or demolished."⁶⁶

The drug war's assault on Black women meets Card's criterion for genocide as destroying social vitality in its assault on Black women's "central roles in preserving and passing on the traditions, language, and (daily) practices from one generation to the next and in maintaining family and community relationships."⁶⁷ Women in prison have given birth in shackles,⁶⁸ despite the incredibly low likelihood of a woman in labor running off and the fact that most women are in prison for non-violent drug offenses. Despite a 2006 warning from the United Nations Committee Against Torture that shackling during labor and delivery violates the UN Convention against Torture (which the US signed), only thirteen states currently prohibit shackling during labor, and twenty states allow both leg irons and waist chains on women in labor.⁶⁹ Pregnant women in prison are routinely denied adequate prenatal care, have a higher miscarriage rate, often give birth in their cells before guards will grant them transport to the hospital,⁷⁰ and are quickly separated from their infants. Despite evidence that prison-based nursery programs lower recidivism rates of participants and facilitate bonding of mother-child at a crucial developmental stage, only nine states currently have nursery programs operating or in development.⁷¹ The utter control over and demeaning conditions imposed by the state on African-American women in labor are eerily reminiscent of the control and lack of care imposed under slavery and legal segregation.

Unlike most Black men, the majority of Black women entering the criminal justice system are single parent heads of households.⁷² More than 70 percent of the women entrapped in the prison system have children. Since they are also highly likely to come from impoverished neighborhoods lacking adequate social services and support networks, their loss devastates their children and undermines the entire community.⁷³ Since African-American women are disproportionately incarcerated, they are over-represented among mothers who lose their children

because of penal control. All mothers lose their children to the foster care system and state control upon entering prison, and the 1997 Safe Families Act (ASFA) mandates states to terminate parental rights if a child remains in foster care fifteen of the prior twenty-two months, virtually guaranteeing that mothers with sentences longer than a year will lose their children. Five states have laws rendering the period to termination of parental rights even shorter than fifteen months in foster care.⁷⁴

Restrictive visitation and phone privileges make it extremely difficult for even those mothers who have not lost parental rights to maintain a relationship with their children, as do mothers being moved to different facilities, children moving to different foster homes, or mothers' placement in remote facilities.⁷⁵ Those punished under increasingly arbitrary rules for solitary confinement lose all contact with anyone save prison staff and are isolated in a fashion that the UN has ruled to be a violation of human rights (the practice is also banned in most European nations). Those women lucky enough to be released, if poor—as the majority of those imprisoned for drug offense are—cannot even visit family members in public housing, lest they also be permanently ejected.⁷⁶

All mothers suffer under such conditions, of course, but considered as part of an ongoing *de facto* legal strategy to control and assault African-American social vitality, the drug war's undermining of Black women is genocidal and the coopting of their labor and sexual abuse of their bodies is twenty-first-century re-enslavement. Indeed, Dorothy Roberts has argued explicitly that "the current denial of Black women's reproductive autonomy is a badge of slavery that violates the Thirteenth Amendment."⁷⁷ Discussing a wide range of topics from criminalizing pregnant drug users to pressuring welfare users to get Norplant, Roberts builds a systematic case that these various government interventions into Black women's procreative rights has genocidal implications: these practices are dangerous because "they impose racist governmental judgments that certain members of society do not deserve to have children. . . . Governmental policies that perpetuate racial subordination through the denial of procreative rights, which threaten both racial equality and privacy at once, should be subject to the most intense scrutiny."⁷⁸

V. CONCLUSION

To those who balk at applying the term "genocide" or "re-enslavement" to the State's current treatment of Black women, I suggest that both a failure of philosophical imagination and willful self-deception may be to blame, similar to what Patterson calls the slaveholder's "ideological inversion of reality" wherein slaves were alleged to be akin to ignorant children needing control by the master's superior reason.⁷⁹ The slave owner's self-deception both justified the genocidal oppression of slavery and protected the master from admitting to himself his own condition as a morally bankrupt human parasite, dependent for his own survival on the forced labor of another.⁸⁰ Tim Wise, in his analysis of white privilege, has documented similar white delusion through US history: in early colonial newspapers through slave times and in public opinion polls in the early twentieth century through the present day, a large majority

of white Americans have continued to assert—in defiance of all objective data—that African-Americans had just as much of a chance to flourish and succeed educationally as whites.⁸¹ A 2011 Tufts University study found a majority of whites believe anti-white bias was worse than anti-Black bias,⁸² a 2016 study by the Robert Wood Johnson Foundation found that the majority of whites believe that whites face racial discrimination (though interestingly, only a small percentage reported that they had personally experienced the phenomenon).⁸³ Apparently neither enslavement, nor widespread lynching and re-enslavement via convict leasing, nor segregation and Jim Crow, nor a racially targeted prison nation can convince most white Americans that African-Americans are not to blame for their own unequal situation.

What could possibly explain such blatant self-deception if not deeply enculturated stereotypes used from colonial times to the present, of Blacks as pathologically lazy, stupid, and morally depraved? After all, if everyone has the same chance to make it in society, but one group persists in poverty and at disadvantage on all known measures of health, educational, and other outcomes, the explanation must be that group's inferiority. Even as racially targeted policing and racial disparities in sentencing produce the alleged evidence of Black criminality, various interlocking structural inequalities produce the alleged evidence of a more general Black inferiority. *De facto* segregation and racial discrimination persist in the nation's schools, neighborhoods, churches, synagogues, country clubs, fraternities and sororities, location of garbage dumps and nuclear waste, prisons, hospitals and doctor's offices, and loan offices.⁸⁴ A landscape of social death indeed that amounts to a genocidal assault on the civil, political, and human rights of both Black women and men—albeit to the second degree for the second sex. Black women and girls have faced rape and sexual harassment in schools, juvenile detention centers, and prisons; scapegoating in the drug war; racialized sentencing; a lack of educational, rehabilitative, and health resources in prison; as well as destruction of the mother/child bond and the scattering of family units while they serve out their sentences:⁸⁵ from the hull of the slave ship to the modern prison cell, the attempt to erase Black women's civil and personal lives continues into the twenty-first century. No nation should tolerate such entrenched injustice whilst claiming to be the home of the free.

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My gratitude to three anonymous reviewers for the *APA Newsletter on Feminism and Philosophy* who gave me substantive feedback, especially the reviewer who gave me detailed suggestions on how to re-structure, name, and order the sections of the paper. I would also like to thank Mary Bernard for invaluable assistance with editing, and Melinda Hall, Larry Peppers, Todd Peppers, Joshua Rust, and Michele Skelton for giving me feedback on the paper. All shortcomings remain the author's own.

NOTES

1. Patterson describes the slave's creation as a social nonperson as dependent upon "natal alienation": "alienated from all 'rights' or claims of birth, he ceased to belong in his own right to any legitimate social order. . . . Not only was the slave denied all claims on, and obligations to, his parents and living blood relations but, by extension, all such claim and obligations on his more remote ancestors and on his descendants." Orlando Patterson, *Slavery*

- and *Social Death: A Comparative Study* (Cambridge: Harvard University Press, 1982), 5.
2. See, in particular, Lisa Marie Cacho, *Social Death: Racialized Rightlessness and The Criminalization of the Unprotected* (New York: New York University 2012); and Lisa Guenther, *Solitary Confinement: Social Death and Its Afterlives* (Minneapolis: University of Minnesota Press, 2013).
 3. "Incarceration," The Sentencing Project, N.d., accessed July 18, 2013, <http://www.sentencingproject.org/template/page.cfm?id=107>.
 4. P. Guerino, P. M. Harrison, and W. Sabol, 2011. "Prisoners in 2010," Washington, DC: Bureau of Justice Statistics, as cited in "Racial Disparity," The Sentencing Project, N.d., accessed July 18, 2013, <http://www.sentencingproject.org/template/page.cfm?id=122>.
 5. Patterson, *Slavery and Social Death: A Comparative Study*, 38.
 6. Heather C. West and William J. Sabor, *Prisoners in 2007*, National Prisoner Statistical Data Series conducted by the Bureau of Justice Statistics (Washington, DC: Bureau of Justice Statistics, 2008).
 7. M. Cahalan, *Historical Corrections Statistics in the United States, 1850–1984*. (Washington, DC: Bureau of Justice Statistics, 1986); Carson and Sabol, *Prisoners in 2011* (Washington, DC: Bureau of Justice Statistics, 2012); Beck and Karberg, *Prison and Jail Inmates at Midyear 2000* (Washington, DC: Bureau of Justice Statistics, 2001); Guerino, Harrison, and Sabol, *Prisoners in 2010* (Washington, DC: Bureau of Justice Statistics, 2011).
 8. Carson, as cited in "Incarcerated Women," The Sentencing Project, N.d., accessed July 17, 2013, <http://www.thesentencingproject.org>.
 9. See Douglas A. Blackmon, *Slavery By Another Name: The Re-enslavement of Black Americans from the Civil War to World War II* (New York: Anchor Books, 2008).
 10. Geeta Chowdhry and Mark Beeman, "Situating Colonialism, Race, and Punishment," in *Race, Gender, and Punishment: From Colonialism to the War on Terror*, ed. Mary Bosworth and Jeanne Flavin (New Brunswick: Rutgers University Press, 2007), 13–31, 25.
 11. Lisa Marie Cache, *Social Death: Racialized Rightlessness and the Criminalization of the Unprotected* (New York: New York University Press, 2012), 6–7.
 12. For more on convict leasing and re-enslavement, see David Oshinsky, *Worse than Slavery: Parchman Farm and the Ordeal of Jim Crow Justice* (New York: The Free Press, 1996).
 13. Angela Y. Davis, "Political Prisoners, Prisons, and Black Liberation," in *African American Philosophy: Selected Readings*, ed. Tommy L. Lott (Upper Saddle River: Prentice Hall, 2002), 347.
 14. Angela Y. Davis, *The Meaning of Freedom and Other Difficult Dialogues* (San Francisco: Open Media Series, 2012), 124–25.
 15. Jamie Fellner and Marc Mauer, *Losing the Vote: The Impact of Felony Disenfranchisement Laws in the United States* (New York, NY, and Washington, DC: Human Rights Watch and The Sentencing Project, 1998); Nicole D. Porter, *Expanding the Vote: State Felony Disenfranchisement Reform, 1997–2010* (Washington, DC: The Sentencing Project, 2010). Updates by Jeff Manza and Christopher Uggen, *Locked out: Felony Disenfranchisement and American Democracy* (Washington, DC: The Sentencing Project, 2006).
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 17. As per 1996 welfare reform legislation, the Temporary Assistance for Needy Family Program, which also introduced five-year lifetime limits on benefits and requires all welfare recipients, regardless of parental status or access to childcare, to work in order to get their benefits. Most college and university studies are no longer counted as "work," though some vocational programs do.
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 19. Combahee River Collective, "A Black Feminist Statement," reprinted in *Theorizing Feminisms*, ed. Elizabeth Hackett and Sally Haslanger, 413–18 (New York: Oxford University Press, 2006).
 20. Kimberlé Crenshaw, "Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color," *Stanford Law Review* 43, no. 6 (1991): 1241–99.
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 24. As cited in Patricia Hill Collins, *Black Feminist Thought: Knowledge Consciousness, and the Politics of Empowerment*, 2nd edition (New York: Routledge, 2000), 88.
 25. Beth Ritchie, *Arrested Justice: Black Women, Violence, and America's Prison Nation* (New York: New York University Press, 2012).
 26. Monique W. Morris, "Race, Gender, and the School-to-Prison Pipeline: Expanding Our Discussion to Include Black Girls," *African American Policy Forum*, October 1, 2012, accessed July 18, 2013, <http://www.aapf.org/wp-content/uploads/2012/08/Morris-Race-Gender-and-the-School-to-Prison-Pipeline.pdf>, 9.
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 28. Collins, *Black Feminist Thought: Knowledge Consciousness, and the Politics of Empowerment*, 70–78.
 29. *Ibid.*, 69.
 30. *Ibid.*, 78.
 31. Kimberlé Crenshaw, "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory, and Antiracist Politics," in *African American Philosophy: Selected Readings*, ed. Tommy L. Lott (Upper Saddle River: Prentice Hall, 2002), 208.
 32. Morris, "Race, Gender, and the School-to-Prison Pipeline: Expanding Our Discussion to Include Black Girls," 6. Here is just a sampling of recent cases where young African-American girls with natural hair or braids were suspended from school for being "distracting," as though Black hair itself constitutes an offense: <http://www.newsweek.com/wearing-braids-sends-black-girls-detention-malden-charter-school-608303>; <http://www.msnbc.com/the-last-word-94>; <http://www.khou.com/news/local/texas/mom-upset-after-school-reprimands-girl-for-wearing-afro-puff/166759670>.
 33. Collins, *Black Feminist Thought: Knowledge Consciousness, and the Politics of Empowerment*, 147–48; see also Crenshaw and Sarah Gill, "Dismantling Gender and Race Stereotypes: Using Education to Prevent Date Rape," *UCLA Women's Law Journal* 7, no. 1 (Fall/Winter 1996): section II. D.
 34. For more on this point, see Bat-Ami Bar On, "The 'Scottsboro Case: On Responsibility, Rape, Race, Gender, and Class,'" in *A Most Detestable Crime: New Philosophical Essays on Rape*, ed. Keith Burgess-Jackson (Oxford: Oxford University Press, 1995), 200–10.
 35. Cacho, *Social Death: Racialized Rightlessness and The Criminalization of the Unprotected*, 6.
 36. In *Animal Farm*, George Orwell's parable of fascist revolutions, the leaders move from the brother- and sisterhood of animal equality, to the double-speak of "All animals are equal, but some animals are more equal than others." George Orwell, *Animal Farm* (Orlando: Harcourt Inc., 2003), 80.

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50. Anna Clark, "Why Does Popular Culture Treat Prison Rape As a Joke?" *Women and Prison*, N.d., July 17, 2013, http://womenandprison.org/prison-industrial-complex/view/why_does_popular_culture_treat_prison_rape_as_a_joke/.
51. Marilyn Frye has discussed, with humor and insight, the general inability to understand lesbian sex as "real" sex when looking at it from the dominant heterosexist paradigm in her chapter "Lesbian Sex" in *Willful Virgin: Essays in Feminism* (Freedom, CA: The Crossing Press, 1992): 109-19.
52. Allen J. Beck et al., *Sexual Victimization in Prisons and Jails Reported by Inmates 2011-12* (Bureau of Justice Statistics, May 2013).
53. Allen J. Beck and Candace Johnson, *Sexual Victimization Reported by Former Prisoners, 2008* (Department of Justice Statistics, May 2012), 5.
54. See Joey L. Mogul, Andrea J. Ritchie, and Kay Whitlock, *Queer (In)justice: The Criminalization of LGBT People in the United States* (Boston: Beacon Press, 2011), 101.
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59. Ibid.
60. Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: The New Press, 2010).
61. Nehemiah Robinson, *The Genocide Convention: A Commentary* (New York: Institute of Jewish Affairs, World Jewish Congress, 1960), 147, as cited in Claudia Card, "Genocide and Social Death," in *Genocide and Human Rights*, ed. John K. Roth (New York: Palgrave MacMillan, 2005), 243. Space does not permit me to engage with the vast literature within Genocide Studies debating the meaning and relevance of each of the above clauses and varying candidates for the best definition of "genocide."
62. See Card, "Genocide and Social Death," 239 and 243-44.
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64. Jeanne Flavin, "Slavery's Legacy and Black Women's Reproduction," in *Race, Gender, and Punishment: From Colonialism to the War on Terror*, ed. Mary Bosworth and Jeanne Flavin (New Brunswick: Rutgers University Press, 2007), 99.
65. Immanuel Kant, *Grounding for the Metaphysics of Morals* (Indianapolis: Hackett, 1981), 36, states the second version of the Categorical Imperative thus: "act in such a way that you treat humanity, whether in your own person or in the person of another, always at the same time as an end and never simply as a means."
66. Card, "Genocide and Social Death," 244.
67. Ibid., 250.
68. Anna Clark, "Giving Birth in Chains: The Shackling of Incarcerated Women during Labor and Delivery," *RHRC*, July 6, 2009, accessed April 27, 2015, <http://rhrefcheck.org/article/2009/07/06/giving-birth-chains-the-shackling-incarcerated-women-during-labor-and-delivery/>. According to the article, only four states currently have laws banning shackling women in labor and delivery.
69. "Laws Banning Shackling During Childbirth Gaining Momentum Nationwide," *Women's Prison Association*, N.d., accessed July 22, 2013, http://www.wpaonline.org/pdf/Shackling%20Brief_final.pdf.
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72. Greene and Pranis, *Hard Hit*, 26.
73. Ibid., 21-22.
74. Gail T. Smith, "The Adoption and Safe Families Act of 1997: Its Impact on Prisoner Mothers and Their Children," *Women and*

Prison, N.d., accessed July 22, 2013, http://womenandprison.org/motherhood/view/the_adoption_and_safe_families_act_of_1997_its_impact_on_prisoner_mothers_a/.

75. Flavin, "Slavery's Legacy and Black Women's Reproduction," 108.
76. The 1998 Quality Housing and Work Responsibility Act of 1998 allows public housing agents to exclude both drug offenders and felons "believed to be using illegal drugs or abusing alcohol—whether or not they have been convicted of a crime." Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, 142, original emphasis. In addition, the Housing and Urban Development Department (HUD) "one strike and you are out" guidelines adopted soon after this allows public-housing tenants who have a guest or member of their household engaging in criminal activity on or off the premises to be evicted, whether or not they knew of the criminal activity. Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, 142–44. Since felons are barred for at least five years following the felony from public housing, allowing them on the premises would constitute an eviction-worthy offense.
77. Dorothy Roberts, *Killing the Black Body: Race, Reproduction, and the Meaning of Liberty* (New York: Vintage Books, 1999), 304.
78. *Ibid.*, 308.
79. Patterson, *Slavery and Social Death: A Comparative Study*, 338–39.
80. See Patterson's insightful chapter, "Slavery as Human Parasitism," *ibid.*, 334–42.
81. Tim Wise, *White Like Me: Reflections on Race From a Privileged Son*, 2nd edition (Brooklyn: Soft Skull Press, 2008), 62–63.
82. Samuel Sommers and Michael Norton, "White People Think Racism Is Getting Worse. Against White People," *The Washington Post*, July 21, 2016, <https://www.washingtonpost.com/posteverything/wp/2016/07/21/white-people-think-racism-is-getting-worse-against-white-people/>.
83. Don Gonyea, "Majority of White Americans Say They Believe Whites Face Discrimination," *NPR*, October 24, 2017, <https://www.npr.org/2017/10/24/559604836/majority-of-white-americans-think-theyre-discriminated-against>.
84. For a wealth of data on all of these points, in the context of a philosophical analysis of the political perils of America's ongoing *de facto* racial segregation, see Elizabeth Anderson's excellent book, *The Imperative of Integration* (Princeton: Princeton University, Reprint edition, 2013), chapters one and two.
85. For discussion of the paucity of resources offered to women in prison, see Joanne Belknap, "Access to Programs and Healthcare for Incarcerated Women," *Federal Probation* 60, no. 4 (December 2006).

to be underrepresented—about 12.36 percent on average—vis-à-vis the number of women in the philosophical discipline overall.

When Haslanger published her paper, there was no access to journal submission data, making it impossible to ascertain whether the problem stems from a difference in the submission or the acceptance rate (or both). Subsequently, new data have come to light, provided by the American and the British Philosophical Associations in 2014.² Gender-specific numbers were provided by *Mind*, *The Philosophical Quarterly*, *The European Journal of Philosophy*, *The Canadian Journal of Philosophy*, *The British Journal for the Philosophy of Science*, and *The British Journal for the History of Philosophy* for the time between 2011–2013/2014. According to this data the journals' acceptance rates are roughly equal for women and men.³ However, with the exception of the *Canadian Journal* (20 percent of submissions by women), the submission rates of women in all the journals were very low (10 percent, 14 percent, 11.84 percent, 12 percent, and 16 percent).

Both studies—Haslanger's paper and the APA/BPA survey—left us asking ourselves how women philosophers' books are treated in the book review sections of philosophical journals. In order to benefit from Haslanger's findings, we chose from her list those journals that include book review sections, i.e., *Ethics*, *Mind*, *The Journal of Philosophy*, and *The Philosophical Review*. However, the book review section in the *Journal of Philosophy* is so small that it did not allow for a workable amount of data (even if we went back until 2003). Thus, we focused on *Ethics*, *Mind*, and *Phil. Review* and examined their book review sections between 2008 and 2015 by collating the numbers of reviewed books authored by men and women as well as the numbers of male and female reviewers. We also correlated the number of female reviewers when a reviewed book was authored by a woman.

Before starting, let us issue two caveats. First, the three journals of this survey make only a small sample. Second, as the APA/BPA survey, Haslanger's survey, and our own survey all scrutinize different periods of time, combining them might not be unproblematic—not least since some philosophy journals' practices have changed in recent years, partly as a result of concerns about biases in review procedure. For example, two of the surveyed journals have triple- and one only double-blind review procedures: *Mind* started the editorial practice of triple-anonymity in 2005, *Ethics* even earlier, in 1991.⁴

Nevertheless, we hope and believe that these collections of data—each taken separately and all of them combined—may contribute to recent and new ideas on this issue, and we wish to stress that it would be very helpful if more editors, institutions, and researchers gathered and released (gender-specific) data in order to achieve a better understanding of the situation.

DATA FROM THE BOOK REVIEW SECTIONS

The survey of the book review sections points to the following three key points (at the very least).

On Minor Publications, Thematic Divisions, and Biases in Philosophy: Insights from the Book Review Sections

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Anna Lindemann
SIGMUND FREUD UNIVERSITY

ON THE DATA SITUATION

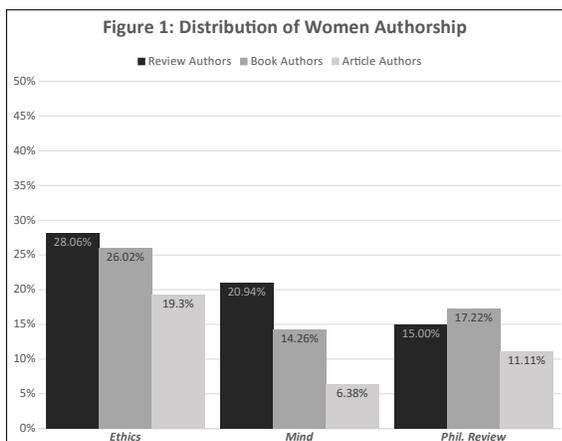
In 2008, Sally Haslanger investigated, among other things, the underrepresentation of women's work in top philosophical journals by quantitatively examining the distribution of author gender. She concentrated on articles and discussions, finding contributions from female authors

(1) While one might expect women’s books to be underrepresented in the book review sections due to a bias against women’s work, the numbers collated here do not confirm such a bias in these journals’ book selections. In *Ethics*, 26.02 percent of the reviewed books are authored by women, in *Mind* 14.26 percent, and in *Phil. Review* 17.22%.⁵ Thus, the attention that women’s work receives appears particularly high in *Ethics*. Yet, this appearance may be deceptive since *Ethics* is a journal that addresses an area of philosophy in which women are actually overrepresented.⁶

Overall, the reviewed books authored by women come to an average of 18.33 percent.⁷ One might be tempted to interpret this finding as an indication of bias against women’s work in the selection of books by these philosophical journals, presuming that the representation of women’s work in the review sections should roughly correlate with their number in the community—so if we take the latter to be between 20 and 25 percent,⁸ the former should correspond accordingly. However, this interpretation has a number of problems.

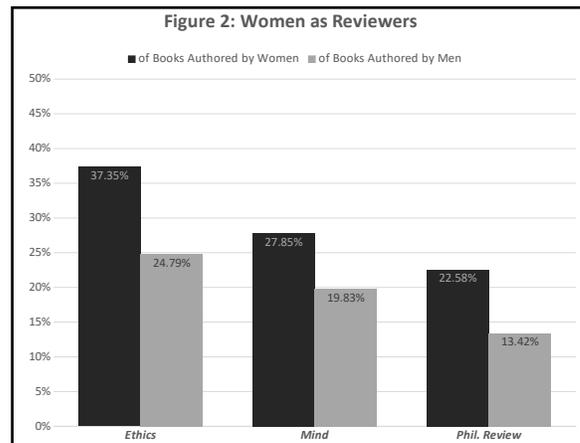
First, it should be kept in mind here that these top journals primarily consider work from people who are already part of “the establishment” and, thus, are perceived to be excellent. However, it is less common for women to reach these upper-career echelons than for men. Second, as mentioned above, the APA/BPA (2014) data reveals that women tend to submit significantly less than their male colleagues. Accordingly, women might also submit book manuscripts less often than men. In sum, we therefore wish to stress that the data does not suggest that there are biases against women’s work in the journals’ book selection. However, the data also does not provide grounds for a positive assessment of the selection of books by these journals (particularly *Mind*).

(2) Women are more strongly represented as review authors than article authors in all three journals (Figure 1). A potential explanation might be that women do not often decline requests for book reviews because, as a rule, they do not receive much support, have inadequate working conditions, and, hence, do not feel that they can afford to reject review requests. This would be in line with an “internalized negative self-evaluation” of women philosophers.⁹ Moreover, it would fit with the fact that



writing a book review counts more as “community service” than as a scientific achievement; it is a “minor publication.”¹⁰ At the same time, however, it is “considerably time consuming” while the reviews have a “shorter shelf life than articles, since they tend to relate the book to the current contextual environment.”¹¹ Thus, book reviews cause a significant amount of work and come with comparatively low prestige—a classic women’s task.¹²

(3) There is a notable tendency that the percentage of women reviewers is higher when the reviewed books are authored by women (Figure 2). Note, however, that the occurrence of same-gender constellations is significant only in *Ethics* ($p = .021$).¹³



Diverse factors could be in play here. Sometimes, men might tend to avoid reviewing women’s books for fear of having to be particularly considerate in their criticism due to otherwise appearing sexist and biased; on the other hand, women could tend to accept requests to review other women’s books more often for feminist reasons.

Yet, the most relevant factor seems to be a thematic division between “hard” (epistemology, philosophy of mind, and philosophy of language) and “soft” (ethics, applied ethics, social and political philosophy) areas of philosophy, the former reportedly more a domain of men, the latter reportedly more of women.¹⁴ Given that there is a statistically significant trend only in *Ethics* and also given the salient percentage of reviewed books authored by women in the same journal (28.06 percent), it seems that women have been able to establish a foothold in specific topics, particularly in ethics—e.g., care ethics, feminist bioethics, intersectionality, ecofeminism, embodiment, standpoint epistemology, or feminist science studies.¹⁵ Therefore, the trend in *Ethics* confirms the suspicion that there are gender-specific areas in philosophy because, if this is the case, there are more books on specific issues authored by women than by men, and more competent women than men are available for reviewing the respective books, meaning that editors simply can find more women experts on these topics.

SUMMARY AND FURTHER DISCUSSION

The most notable finding of this study is that women are more strongly represented as review authors than article

authors in all three journals. We argued that this exemplifies the well-known fact that women tend to do work of lesser prestige more often since book reviews count as “minor publications” while requiring a lot of work. Moreover, the data reveals a notable tendency that the percentage of women reviewers is higher when the reviewed books are authored by women. We argued that this supports the hypothesis that women philosophers tend to focus on specific thematic areas.

These points are interesting with respect to the discussion of gender biases in peer review. While proponents of implicit bias approaches have claimed occasionally that there is a propensity (of referees, editors, etc.) to reject women’s contributions to philosophical journals, the APA/BPA (2014) data does not support this suspicion. Still, in light of the low submission rates by women and the substantial gender differences in the book review sections, we wish to emphasize that this does not mean that gender bias does not play a role when it comes to the underrepresentation of women’s articles in philosophy journals.

Implicit and explicit biases against women and members of minority groups have been elucidated thoroughly by substantial current research.¹⁶ For this reason, we take it as given that there are gender biases playing a decisive role in causing the underrepresentation of women in all areas of academic philosophy including publications—even though most people might successfully take efforts to make unbiased decisions, e.g., when it comes to the evaluation of one’s work. Thus, it seems rather unlikely that biases keep editors away from accepting women’s submissions. However, gender biases are likely to lead to a “chilly climate,”¹⁷ inadequate working conditions,¹⁸ and “internalized negative self-evaluation,”¹⁹ which might interfere with and deflate women’s confidence and stifle their productivity.²⁰ This might very well explain why women philosophers do work of lesser prestige more often, focus on specific thematic areas (i.e., “thematic niches”),²¹ and submit substantially less often than their male colleagues. The empirical findings presented here add, once again, weight to this hypothesis.

ANNEX: DATA

Data are only taken for reviews of single-authored monographs when they are written by no more than two reviewers. Each reviewer of a co-authored review is counted as 0.5 in order to maintain an alignment between the total number of reviews and reviewers.

TABLE 1: BOOK REVIEWS IN ETHICS, 2008–2015, VOL. 118 (2)–VOL. 126 (1)

	Author (m)	Author (f)	Total
Reviewer (f)	58.5	31	89.5
Reviewer (m)	177.5	52	229.5
Total	236	83	319

TABLE 2: BOOK REVIEWS IN MIND, 2008–2015, VOL. 117–VOL. 124

	Author (m)	Author (f)	Total
Reviewer (f)	94	22	116
Reviewer (m)	380.5	57	437.5
Total	474.5	79	553.5

TABLE 3: BOOK REVIEWS IN PHILOSOPHICAL REVIEW, 2008–2015, VOL. 117–VOL. 124

	Author (m)	Author (f)	Total
Reviewer (f)	20	7	27
Reviewer (m)	129	24	153
Total	149	31	180

TABLE 4: ARTICLE DATA FROM HASLANGER (2008, 220)

Journal	Article authors	Female	Percentage
<i>Ethics</i>	114	22	19.30
<i>Phil Review</i>	63	7	11.11
<i>Mind</i>	141	9	6.38

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NOTES

1. Anna Leuschner is responsible for the data collection and interpretation, Anna Lindemann for the statistical evaluation.
2. *APA/BPA Journal Surveys*.
3. As Weisberg (“Journal Submission Rates by Gender: A Look at the APA/BPA Data”) has pointed out, the APA/BPA data has to be taken with a pinch of salt: “A good number of the usual suspects aren’t included, like *Philosophical Studies*, *Analysis*, and *Australasian Journal of Philosophy*. So the usual worries about response rates and selection bias apply. The data are also a bit haphazard and incomplete. Fewer than half of the journals that responded included gender data. And some of those numbers are suspiciously round.”

4. This information was very supportively provided by the journal editors, Prof. Adrian Moore and Prof. Thomas Baldwin (*Mind*), as well as Prof. Henry Richardson (*Ethics*). For more information on triple-anonymity in *Ethics*, see also Richardson, Editorial (*Ethics*); and "Announcing an Improvement to the Journal's Blind Review Process."
5. For the exact numbers, see annex. With regard to ambiguous names of authors, we checked homepages or other internet sources (conference websites, book descriptions, etc.) for pictures and personal pronouns.
6. Cf. Krishnamurthy et al., "The Underrepresentation of Women in Prestigious Ethics Journals"; Haslanger, "Changing the Ideology and Culture of Philosophy: Not by Reason (Alone)," 215; Schwitzgebel and Jennings, "Women in Philosophy: Quantitative Analyses of Specialization, Prevalence, Visibility, and Generational Change"; Wilhelm et al., "New Data on the Representation of Women in Philosophy Journals: 2004–2015"; and point (3) below.
7. The number of books written by women that received reviews divided by the total number of book reviews: 193/1053 = 18.33.
8. Women have held around 21 percent of available permanent positions in the 1990s (Norlock, "Update on the Report to the APA-CSW from 2006"), and recent estimates suggest that there has not been substantial improvement ever since. In particular, it has been shown that the underrepresentation increases significantly when moving up the academic hierarchy from lower to higher positions: women receiving a PhD in philosophy make up roughly 31 percent of recipients (Leslie et al., "Expectations of Brilliance Underlie Gender Distributions Across Academic Disciplines"; and Wilhelm et al., "New Data on the Representation of Women in Philosophy Journals: 2004–2015") and Schwitzgebel and Jennings ("Women in Philosophy") have shown that women comprise, at most, 25 percent of all the philosophy faculty, occupying 37 percent of assistant, 29 percent of associate, and only 20 percent of full professorships.
9. Bright, "Decision Theoretic Model of the Productivity Gap," 426; Dotson, "Tracking Epistemic Violence, Tracking Practices of Silencing"; Lee, "Revisiting Current Causes of Women's Underrepresentation in Science."
10. Valian, *Why So Slow? The Advancement of Women*, 261.
11. Griffiths et al., "Scholarly Communications in the History Discipline. A Report Commissioned by JSTOR," 6–7.
12. This is also supported by Wilhelm et al. ("New Data on the Representation of Women in Philosophy Journals: 2004–2015"), who have shown that women authors are better represented in discussion articles than in research articles. See, e.g., "Science and Gender: Scientists Must Work Harder on Equality."
13. For the exact numbers, see annex. The p-values for *Mind* ($p = .073$) and for *Philosophical Review* ($p = .153$) are not significant; p-values are calculated using Fisher's Exact Test.
14. See Dodds and Goddard, "Not Just a Pipeline Problem: Improving Women's Participation in Philosophy in Australia," 159; Haslanger, "Changing the Ideology and Culture of Philosophy," 215; Schwitzgebel and Jennings, "Women in Philosophy"; Wilhelm et al., "New Data on the Representation of Women in Philosophy Journals: 2004–2015."
15. Friedman, "Women in Philosophy: Why Should We Care?," 32.
16. See, e.g., Brownstein and Saul, *Implicit Bias and Philosophy: Metaphysics and Epistemology*; Crouch and Schwartzman, "Gender, Implicit Bias, and Philosophical Methodology"; Dotson, "Tracking Epistemic Violence, Tracking Practices of Silencing"; Hutchison and Jenkins, *Women in Philosophy. What Needs to Change?*; Kourany, "How Do Women Fare in Philosophy Journals?"; Lee and Schunn, "Social Biases and Solutions for Procedural Objectivity"; and Leslie et al., "Expectations of Brilliance Underlie Gender Distributions Across Academic Disciplines."
17. Brownstein, "On Williams and Ceci"; and Kidd, "Unthinkable: Why Should Men Care about Gender Inequality?"
18. Valian, *Why So Slow? The Advancement of Women?*, 263.
19. Bright, "Decision Theoretic Model of the Productivity Gap," 426.
20. Antony, "Different Voices or Perfect Storm: Why Are There So Few Women in Philosophy?"; Bright, "Decision Theoretic Model

of the Productivity Gap"; Dotson, "Tracking Epistemic Violence, Tracking Practices of Silencing"; and Lee, "Revisiting Current Causes of Women's Underrepresentation in Science."

21. Sonnert and Holton, *Who Succeeds in Science? The Gender Dimension*, 152.

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BOOK REVIEWS

The Moral and Political Philosophy of Immigration

José Jorge Mendoza (Lanham, MD: Lexington Books, 2017). 140 pages. \$85.00 ISBN 978-1-0851-3.

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In *Moral and Political Philosophy of Immigration: Liberty, Security, and Equality*, José Jorge Mendoza argues for what he calls a "minimalist defense of immigrant rights." In particular, his minimalist defense entails that "the burden of proof ought to be on legitimate states to justify any immigration restrictions and not on immigrants to defend their movement across international borders" (xvi).

While he calls his proposal minimalist in nature, Mendoza advocates, in this book, a sweeping variety of "migrant-friendly" policies. Some examples of these include the following: (1) a rejection of "prevention through deterrence"—a policy adopted in the 1990s that served to militarize the Mexico-US border at urban ports of entry and funnel unauthorized migrants into the Sonoran desert, where they are far more likely to die of dehydration, starvation or assault; (2) a rejection of "attrition through enforcement," a complex strategy on the part of various actors and social institutions to make life so difficult for undocumented migrants that they "give up and deport themselves" (107, quoting Mark Krikorian); (3) amnesty for undocumented migrants; (4) the expansion of guest worker programs; (5) the rejection of deportations of legal permanent residents (including those who may have committed crimes); (6) a consideration of past injustices—such as colonialism—in the crafting of future immigration policy; and (7) a move toward immigration policies and reforms that "aim to make future immigration less a matter of necessity, and more a matter of an option for people" (128).

In addition to his stated goal of advocating a minimalist conception of immigrant rights, Mendoza also sets out to demonstrate that "immigration might be the most pressing issue that moral and political philosophers have to grapple with today" (xxi). Indeed, he states that "immigration is not simply a new riddle on which philosophers try out their competing conceptions of justice. Immigration is

an important issue to consider because it exposes the limits of our current conceptions of justice and in doing so challenges us to rethink them" (xxi). In this review, I will first explore Mendoza's project of conveying to readers the philosophical richness and urgency of "the immigration question." As I shall soon discuss, I believe that Mendoza is immensely successful in achieving this goal. Second, I shall turn to Mendoza's arguments for a minimalist conception of immigrant rights. While I am most sympathetic to Mendoza's arguments—and consider them to be a tremendously significant contribution to the ethics and political philosophy of immigration—I shall raise an objection to the scope of Mendoza's arguments and also identify some methodological questions that linger for me after reading the book.

Throughout *The Moral and Political Philosophy of Immigration: Liberty, Security, and Equality*, Mendoza takes the reader on something of a voyage through much of the history of political philosophy. He does this in order to demonstrate that the philosophical complexity of "the question of immigration" cuts deep into a range of broad, trenchant debates in which political philosophers have engaged. Mendoza argues that we (that is, the "we" of society, as well as the "we" of the historical and contemporary communities of political philosophers) have long been trapped in what he describes in terms of two dilemmas: a *liberty dilemma* and a *security dilemma*.

The "security concern and security dilemma" likely stems from early arguments from philosophers like Hobbes, who claimed that our desire for security in the state of nature has compelled us to relinquish a great deal of our autonomy to something like a powerful sovereign. Mendoza reads Hobbes—and the security concern and security dilemma—into the US Plenary Power Doctrine, which "allows the federal government to admit, exclude, and deport noncitizens as it sees fit," (10) without any judicial review or oversight. Engaging the work of Agamben, he argues that this effort to escape concerns about security in the so-called state of nature—particularly in the realm of immigration and the Plenary Power Doctrine—has brought about a "state of exception" in which the sovereign is exempt from the very laws it creates. This unchecked power of the sovereign actually makes citizens *more vulnerable* to the sovereign than they would have been under the State of Nature.

Mendoza then explains that in the United States, under the Plenary Power Doctrine, noncitizens are in a "constant state of exception," having "basically been abandoned by the United States government" (10). This should be an appalling conclusion, he argues, for anyone who believes that justice demands that "something be in place to protect all citizens against such absolute and arbitrary exercises of power" (10). Ultimately, Mendoza argues—partly by way of referencing key cases of immigration law, in which the Supreme Court came to the defense of noncitizens (and I'll add that this book is most noteworthy for its careful assessment of US immigration law in particular)—that we can escape the security dilemma through a functioning constitutional democracy that features both constitutional protections and judicial review (15).

Mendoza then turns to the *liberty dilemma*. He depicts it as a conflict over potentially competing understandings of liberty (namely, positive versus negative). Mendoza explores how the classical liberalism of figures like Locke has seemed to prioritize “individual freedom over universal equality and democratic self-determination” (47). On the other hand, the civic republicanism of figures like Rousseau has prioritized “democratic self-determination and universal equality over individual freedom” (47). This ultimately leads to questions about whether the rights and universal equality of immigrants and other noncitizens should be allowed to enter into conflict with the individual freedom of states and individuals who wish to exclude noncitizens.

Mendoza ultimately argues that Rawlsian political philosophy gets us closer to escaping the *liberty dilemma* without falling into a *security dilemma*. He suggests that Rawls’s use of the “veil of ignorance” thought experiment attends to the risk-averseness of Hobbesian political thought—securing in the process both basic liberties and individual inviolability. At the same time, Mendoza argues that Rawls’s “difference principle”—which would guarantee that inequalities benefit the worst-off in society—responds to the concerns of figures like Rousseau and Marx that “too much inequality undermines democratic self-determination, individual freedom, and also security” (46). Let me pause to note that another interesting feature of this book is that Mendoza takes something of a “bottom-up approach” to identifying his underlying theory of justice. In other words, rather than stipulating his working theory of justice at the outset and then making decrees about the ethics of immigration in a “top-down” fashion, Mendoza allows himself to “arrive at” a Rawlsian framework after surmising about ways to escape the liberty and security dilemmas of political philosophy.

However, while Rawls’s theory of justice may get us closer to escaping the liberty dilemma, Mendoza argues that it is not fully equipped to do so. This is because Rawls famously argued that his theory of justice only holds for closed/bounded societies—leaving philosophers with puzzles about what immigrants in a new society are owed at the bar of justice. Mendoza traces the development of a distinctive political philosophy of immigration over the past decades—particularly the respective contributions of Joseph Carens, Michael Walzer, and Michael Blake—in order to argue that “the issue of immigration brings moral and political philosophy back into a *liberty dilemma*.” In Mendoza’s words,

Philosophers who favor democratic self-determination believe that states should have the presumptive right to exclude foreigners, while philosophers who place greater emphasis on principles of individual freedom and universal equality believe that borders should be (fairly) open. (66)

By this stage of the book, I believe that Mendoza has successfully demonstrated the importance of immigration not just as an area of “applied ethics” but as a fundamental area, feature, and problem of political philosophy. For even

if we employ what appear to be our best philosophical tools for the purposes of resolving the liberty and security dilemmas—those of Rawls in a *Theory of Justice*, on Mendoza’s view—we are still left with the dilemma of whether liberty or security ought to be valued more strongly in the realm of international migration. *The Moral and Political Philosophy of Immigration* is an important read not only for those who are interested in the ethics of immigration but for anyone seeking to improve their understanding of the history of Western political thought. Mendoza’s work complements other texts in the ethics and political philosophy of immigration that provide practical arguments about immigration while delving into a range of connected debates in political philosophy (like Peter Higgins’s relatively recent book *Immigration Justice*, to name just one example).

The final chapters of this book are devoted to the development of Mendoza’s own proposal for achieving immigration justice. Mendoza frames his proposal as a response to Christopher Heath Wellman’s prominent “freedom of association” argument for closed borders. This is because, on Mendoza’s view, “Wellman’s argument is one of the best attempts to resolve the liberty dilemma within the immigration debate,” because “he argues that legitimate states . . . have a right to be democratically self-determined and . . . this right entails a presumptive right to control immigration” (90). In other words, Wellman seems to be able to develop a view that, in theory, both respects universal moral equality and democratic self-determination.

In particular, Wellman has argued that countries can exclude prospective migrants for the same reasons that individuals can, say, reject certain individuals as friends, marriage partners, and fellow country club members. First, we all have a right to associate with those with whom we please (provided that those with whom we wish to associate also desire to associate with us). Second, Wellman argues that a right to freedom of association necessarily includes a right *not to associate*. Just as we are justified in rejecting friendship or marriage proposals, Wellman argues, so too can states justly reject prospective immigrants. Note that Wellman presents his argument as liberal egalitarian in nature, and he therefore argues, by way of engaging the arguments of Michael Blake, that just states cannot reject prospective migrants on the basis of things like race and ethnicity. Doing so, Wellman maintains, would send a demeaning, inegalitarian message to current citizens of the state in question who happen to be members of the same ethnorracial group in question.

With this philosophical context in mind, I now turn to how Mendoza uses Wellman’s view as a springboard for the development of his own account of immigrant rights. While he applauds Wellman’s recognition that states should not discriminate against prospective immigrants on the basis of race and ethnicity if doing so sends a demeaning message to current citizens who are members of the same racial or ethnic group as the prospective immigrants in question, Mendoza argues that Wellman has failed to recognize the ways in which *internal*, immigration-related enforcement and expulsion strategies serve to marginalize US citizens who are members of the same ethnorracial group as the

targeted immigrants in question. Stated more broadly, Mendoza suggests that political philosophers have focused disproportionately on the question of justice in immigrant admissions, and have failed to reckon with the ethical complexities of internal enforcement and expulsion strategies.

He argues that “when minority communities are forced to bear a disproportionate amount of the surveying, identifying, interrogating, and apprehending that comes along with internal immigration enforcement, members of those particular minority communities become socially and civically ostracized” (96). In other words, *contra* Wellman, Mendoza argues that a commitment to universal moral equality rules out a “presumptive right to control immigration” on the part of states. This is because it can very reasonably be expected that internal methods of immigration enforcement and expulsion not be inegalitarian in nature.

This means, Mendoza argues, that Wellman has not successfully solved the liberty dilemma. That is, states cannot enjoy unfettered freedom of association while still upholding the moral equality of all of its citizens. As a result, he argues, the rights of states to control immigration “should be limited by presumptive duties (e.g., *equality of burdens* and *universal protections* standards) and its admissions and exclusions criteria must be determined, in part, by external factors such as social, historical and economic circumstances” (96). He ends with discussion of his “minimalist defense of migrant rights” that he uses to generate the concrete set of proposals that I identified at the outset.

I believe that Mendoza has very successfully demonstrated that philosophers of immigration need to grapple with the complicated realities of internal enforcement and expulsion strategies. Furthermore, his liberal egalitarian arguments to the effect that these strategies are unjust inasmuch as they marginalize US citizens and legal residents that are members of the same ethnoracial group as the targeted migrants are both important and compelling. Also praiseworthy is the fact that Mendoza points to a wide range of immigration policies that require careful philosophical evaluation, rather than focusing exclusively on the oft-debated question of immigrant admissions.

Bearing in mind these virtues of Mendoza’s praiseworthy book, I do wish to raise here two sets of concerns. The first pertains to the scope of Mendoza’s original argument for immigrant rights, and the second pertains to his methodology. First, let me turn to the scope of Mendoza’s positive argument for immigrant rights. Specifically, I wonder whether the range of important immigrant rights for which Mendoza strives to argue are fully supported by his argument in its present form (which is, again, an argument framed as a response to Wellman that makes important reference to the deeply inegalitarian nature of current internal enforcement and expulsion strategies in the United States).

To motivate my concern, I return to an objection I have raised elsewhere to his arguments against internal enforcement

and expulsion strategies in the context of immigration.¹ I previously argued that while Mendoza does, indeed, successfully demonstrate that internal enforcement and expulsion strategies are unjust inasmuch as they marginalize US citizens and legal residents who are members of the targeted migrant group (in particular, US citizen and legal resident Mexicans and Latina/o/xs who are taken to “look” illegal), he leaves unanswered some important questions about what undocumented migrants, *qua* undocumented migrants, are owed *themselves* (independently of how their treatment marginalizes and affects US citizens of the same ethnoracial and/or national group).

I continue to wish to hear more from Mendoza about possible forms of mistreatment of undocumented migrants that do not necessarily lead to unjust targeting of US citizens and legal residents. Take, for example, the failure to give amnesty to those undocumented migrants who have resided in the United States for an extended period of time. Joseph Carens has argued that long-term undocumented migrants should be granted amnesty on the grounds they have become *de facto* members of society over time, and that they are therefore owed formal membership.² While you will recall that Mendoza explicitly calls for amnesty for undocumented migrants, I remain curious about how such a right to remain follows from the type of arguments Mendoza makes against internal enforcement and expulsion strategies. While Mendoza had made a compelling case for the idea that internal enforcement and expulsion strategies violate the rights of US citizen Latina/o/xs and other communities of color, it is not entirely clear that denying long-term undocumented migrants citizenship and an official right to remain necessarily violates the “equality of burdens” or “universal protections” standards that all US citizens enjoy and to which Mendoza points in making his arguments. In other words, we may need a different type of argument to get to the conclusion that long-term undocumented migrants are owed amnesty.

This issue of the scope of Mendoza’s battery of immigrant rights is also rendered pressing, I believe, if we try to consider what is owed to undocumented migrants and other noncitizens who happen to be members of an ethnoracial group *that is not represented in the “new society” in question*. Recall that Mendoza calls upon the arguments of Wellman (where Wellman draws from Blake) to the effect that it is unjust to exclude prospective immigrants on the basis of race or ethnicity because so doing would send an inegalitarian message of disrespect to the citizens of that country who are members of the same ethnoracial group. However, Wellman is forced to concede—in a conclusion that Mendoza would himself surely regard as wrong-headed—that in those cases in which *no citizens of the country in question* are members of that particular ethnoracial group, the country can permissibly exclude members of that group on explicit ethno-racial grounds. Wellman himself states that “if I am right that restricting immigration according to racial, ethnic or religious criteria wrongs the current subjects in the banned groups, then only a state completely devoid of people in the banned category could permissibly institute this kind of immigration policy.”³ I consider this to be another problem with attaching the rights to undocumented migrants too directly and too

tightly to the rights of citizens of the same ethnoracial group.

My second set of concerns pertains to the *methodology* of the book. Here, I do not wish to raise objections; rather, I merely identify some questions that linger for me after reading this excellent book. Mendoza ultimately develops a liberal egalitarian defense of immigrant rights that is, in his view, “sympathetic to” an open borders position. I believe that readers will be left wondering whether Mendoza’s arguments ultimately boil down to a defense of open borders—and whether Mendoza himself is an open borders theorist. If this is not a “veiled open borders argument,” then I would like to hear more about how one could consistently defend a system of coercive borders while also accepting many of the specific proposals argued for in this book. On the other hand, if this is, indeed, ultimately an open borders treatise (or a pseudo-open borders treatise), then I would like to hear more about why, on a methodological level, Mendoza chooses to circumvent a great deal of the open borders debate in political philosophy in the development of his powerful arguments.

These sets of concerns and lingering curiosities aside, *The Moral and Political Philosophy of Immigration* is a powerful contribution to the field of immigration philosophy. While the book is not explicitly positioned in the area of feminist philosophy, it is of interest to feminist scholars given its analysis of the relationship between immigration enforcement and expulsion strategies and anti-Latina/o/x discrimination. I highly recommend that others read this book, engage the powerful arguments therein, and assign it to students of immigration and political philosophy.

NOTES

1. See Amy Reed-Sandoval, “Locating the Injustice of Undocumented Migrant Oppression,” *Journal of Social Philosophy* 47, no. 4 (2016): 372–98, partly in reply to José Jorge Mendoza, “Discrimination and the Presumptive Rights of Migrants,” *Critical Philosophy of Race* 2, no. 1 (2014): 68–83.
2. Joseph Carens, “Immigrants and the Right to Stay,” *Boston Review*, <http://bostonreview.net/br-book/immigrants-and-right-stay>.
3. Christopher Heath Wellman, “Immigration and Freedom of Association,” *Ethics* 119, no. 1 (2008): 33.

Beyond the Binary: Thinking About Sex and Gender

Shannon Dea (Ontario: Broadview Press, 2016). 202 pages. \$24.95. ISBN978-155481-283-7.

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Beyond the Binary: Thinking about Sex and Gender, a lively, engaging, and ambitious introductory text, grew out of an undergraduate course in philosophy and women’s studies taught by its author, Shannon Dea. While the course originally focused on primary texts, Dea supplemented these with her own notes and then expanded these notes to serve as a free-standing introduction to such questions

as “What is sex? What is gender? What is the relationship between those two categories? How many sexes are there? How many genders? Are sex and gender categories biological inevitabilities or historically contingent?” (xii). In the process of exploring these questions, Dea covers a dizzying array of topics: the myth of Aristophanes; Freudian and other nineteenth-century German understandings of same-sex desire; varieties of biodeterminism; historical, anthropological, and biological challenges to the sex- and gender-dimorphic model of humans; and the tension between radical feminists and trans activists. There is even a detailed discussion of the dueling conceptions of Eve to be found in *Genesis*. But while Dea draws on work from many disciplines, clearly this book was written by a philosopher. In addition to discussing Plato, Aristotle, St. Augustine, Michel Foucault, Judith Butler, and Simone de Beauvoir (among other philosophers), the introductory chapter presents a useful and penetrating discussion of categories, classificatory systems, and natural kinds, and the concluding one summarizes Ian Hacking’s thinking about social construction, which Dea then applies to the work of Susan Bordo.

Dea is an uncommonly good writer. It is no easy task to convey the views of so many complex thinkers in so few pages, much less paragraphs, without lapsing into empty abstractions, resorting to jargon, or generally getting lost in the weeds, but Dea has a knack for including just the right amount of conceptual detail and offering clear and provocative examples to illustrate the theories she presents. As a textbook, however, this volume faces some challenges. It is structured the way a thick anthology of primary texts might be, some sections organized around particular topics, others around the views of particular thinkers, and still others around particular debates. But while such anthologies present selections from primary texts, Dea’s text depends on synopses, often very brief and sometimes very superficial. To be sure, Dea makes connections throughout the book between the topics and texts she treats, and she returns often to central questions and themes, especially the debate about whether sex and gender categories are biologically determined or socially constructed. And at the beginning of the book, after an excellent discussion of the implications of dividing the world up in one way rather than another, she urges readers to be vigilant while they read about asking what ends the various categorial systems she surveys might serve. But these are difficult matters, and readers are left to navigate them on their own. Thus, Dea’s text might work best in the classroom; at twelve chapters, it would take about a semester to cover a chapter each week.

But there is still the vexed question of what is lost when synopses replace primary texts, especially in a volume that remains so anchored in these absent texts. In a work as short and extremely wide-ranging as Dea’s, oversimplifications are inevitable, but too many of Dea’s readings struck me as misleading or inaccurate. Sometimes she seems to force texts or thinkers into convenient theoretical pigeonholes they don’t quite fit into. For example, her description of Carol Gilligan as working within the “feminist essentialist tradition” is hasty, especially since Dea characterizes feminist essentialists as believing that there “really are

essential differences between men and women” and Gilligan’s view as holding that “women are naturally more nurturing and other-focused than men” (153). However, Gilligan, in her introduction to the classic work *In A Different Voice: Psychological Theory and Women’s Development*, denies this explicitly, making a point to say both that the association of nurturing with women is not absolute and that she “makes no claim about the origins of the differences described or their distribution in a wider population, across cultures, or through time.”¹ Granted, Dea mentions Gilligan only in passing, but she does something similar with the work of the historian Thomas Laqueur, to which she devotes an entire chapter. In *Making Sex: Body and Gender from the Greeks to Freud*, Laqueur argues that in the eighteenth century, a one-sex model of the human body, accepted in the West since Aristotle, was largely replaced by a two-sex model. Thus, the female body came to be understood no longer merely as an inferior or incompletely developed male one, but as a body of a qualitatively different sort. However, Laqueur claims, this shift came about *before* science discovered the facts about female anatomy that might have justified it, and so the change in perspective cannot be explained by this discovery. After an extensive discussion of “seeing as,” Dea concludes that Laqueur is “skeptical of the notion of scientific progress,” which, she claims, he “problematizes” along with “the idea that there are objectively true or false views” (147-8). But, again, this reading sits uneasily with what Laqueur himself says in the introduction to *Making Sex*: “There has clearly been progress in understanding the human body in general and reproductive anatomy and physiology in particular. Modern science and modern women are much better able to predict the cyclical likelihood of pregnancy than were their ancestors; menstruation turns out to be a different physiological process from hemorrhoidal bleeding, contrary to the prevailing wisdom well into the eighteenth century, and the testes are histologically different from the ovaries. Any history of a science, however much it might emphasize the role of social political, ideological, or aesthetic factors, must recognize these undeniable successes.”² Dea’s characterization of Laqueur is particularly puzzling in light of the space she devotes to Ian Hacking’s caution against invoking, in discussions of social construction, such “high level, abstract terms as ‘facts,’ ‘truth,’ reality,’ and ‘knowledge’”—“elevator words,” as Hacking calls them. “Once introduced,” Dea continues, “they quickly change the level of discourse. Put simply, the conversation takes a huge turn when interlocutors move from discussing, say, women and men, to discussing truth and reality” (167). But Dea herself seems to be the one doing this here, not Laqueur, whose claim, in the end, concerns the genealogy of the modern Western category of sex difference. Indeed, by presenting Laqueur as skeptical about science or “facts” in general, Dea begs the question about whether the biology of sex difference should be regarded on a par with, say, the laws of gravity. She also distracts from Laqueur’s actual argument—one based on historical fact.

Dea’s discussion of LGBTQ issues, especially the tension between a certain stripe of radical feminism and trans activism, is particularly strong, but questions arise here too. After claiming that Freud saw the origin of homosexuality in “improper childhood psychosexual development”(68)—

certainly an oversimplification of his view—she contrasts his “developmental” perspective with LGBTQ activists’ and scholars’ inclination to believe that their gender identities and sexual orientations are innate. (Dea also lays responsibility for “conversion therapy” at Freud’s door: after all, if gender and sexual orientation are not biologically determined and innate, they can be changed.) But Dea does not even mention Foucault’s very important alternative approach, neither biologically deterministic nor Freudian, to thinking about sexual orientation. This omission is surprising since Dea opens her chapter on methodology by stating that it “is arguably impossible to undertake the study of sex and gender without some awareness” of Foucault’s views (11). She discusses at some length the idea of a genealogical approach, taking Foucault’s argument about the repressive hypothesis as an example and presenting a clever example of how power, on Foucault’s view, can work by permission rather than prohibition: A landscape architect, Dea writes, rather than posting “do not enter” signs, “can lure people to the desired area by means of benches, bridges, and attractive ponds” (14). The example is illuminating as far as it goes, but just before this discussion of permissive power Dea states that for Foucault, “all social practices, including discursive practices, reflect the nature of the society in which they are produced, and in particular they reflect the nature of power relations within that society” (12). But surely “reflect” is not the best term here, especially combined with her brief account, just below in a shaded side-bar, of Foucault’s debt to neo-Marxist conceptions of ideology. Dea is wise not to get bogged down in a discussion of Marxist ideology, but Foucault clearly parts ways with a Marxist base-superstructure model in which ideologies arise from and *reflect* power relations. Instead, Foucault emphasizes that the discourse of sexuality, itself a consolidation of specific discourses with various histories, *produces* a network of power relations, which themselves are multivalent, shifting, and unstable. Perhaps as a way to limit the range of her discussion, Dea writes that Foucault applies genealogical analysis “to the kind of sex that we have” more than to “the kind of sex we are here interested in—sex as a category” (16). But this is to miss the connection that Foucault would make between these two kinds of sex and thus to understate the scope and power of his view. To expand on Dea’s landscape-design example, the pleasures of this garden may eventually bring into existence visitors’ very identities, as they come to regard themselves as furtive or proud pond-, bridge-, or bench-seekers. For Foucault, power is not only permissive but also productive—indeed, productive of the very categories Dea’s text examines.

While this book attempts not to take sides on the debates it discusses, it is perhaps more sympathetic to some perspectives than to others. It gives short shrift, for example, to the extreme biodeterminism of some evolutionary psychologists, but it may also shortchange, if more subtly, the view, presented by Judith Butler and the anthropologists Suzanne J. Kessler and Wendy McKenna, that “sex is socially constructed, just as gender is, and within the same system of power as gender is” (25). Dea’s discussion of Kessler and McKenna is cursory, and (perhaps not surprisingly, in light of her treatment of Laqueur and Foucault) Dea announces that she will “continue to distinguish between biological sex and socio-

cultural gender in a way that Kessler and McKenna and Butler reject"; she does so, she says, both for the sake of clarity and "in order to conveniently disambiguate between different kinds of data and concepts" (26). Dea does, nevertheless, urge readers to keep an open mind on this question, but the way she has stacked the deck makes this difficult, and confusing, to do.

Related challenges also arise in reconciling the various theoretical implications and assumptions of different portions of the book. In discussing India's hijras, for example, Dea cautions readers against trying to shoehorn the gender systems of other cultures into "North American" categories. In another chapter, though, she gives rules for how to apply categories like trans, cis, and intersex, along with reasons that the categories of hermaphrodite and transsexual are anachronistic and problematic. Such instructions are certainly useful for those who want to keep up with current usage and avoid giving offense. But are these categories supposed to be privileged in any other way? Or is Dea just describing the categories used in some precincts of "North America" at the present time? In her discussion of Aristophanes, Dea claims that while his famous myth about the origins of love is accepting of homosexuality, it leaves no room for bisexuality, asexuality, pansexuality, serial monogamy, or polyamory. "So while it is in some senses quite 'progressive' it is also conservative in many ways" (65). Despite the quotes around "progressive," one is left to wonder: Is the most progressive categorical system necessarily the one that recognizes the greatest number of categories and hence marginalizes the fewest people? And if so, does *this* imply that bisexuality, asexuality, pansexuality, serial monogamy, and polyamory should be understood to be transcultural and transhistorical? Or should this list of categories, and the identities they define, be understood more historically, as Foucault would have it? If the latter, it is no wonder Aristophanes didn't recognize these categories. In spite of the philosophically sophisticated treatment of categories with which this volume begins, its structure and scope invite many such unannounced shifts in the way it presents the categories it discusses. The effect is a kind of conceptual whiplash, at least if one reads closely.

Dea notes that there is no other philosophically oriented introductory text that addresses the questions she tackles, and this is no wonder. The challenges of writing such a book are formidable, and, in spite of the problems I note, Dea's text has many virtues. Besides introducing students to an enormous range of material, it captures the informality and freshness of an engaging classroom discussion, complete with interesting asides and examples. Students, who are sure to enjoy reading it, will learn a great deal, and their instructors will be challenged to rethink the basic questions it examines. However, I believe that this text is best used in conjunction with the relevant primary sources—and with care.

NOTES

1. Carol Gilligan, *In a Different Voice: Psychological Theory and Women's Development* (Cambridge: Harvard University Press, 1982), 2.
2. Thomas Laqueur, *Making Sex: Body and Gender from the Greeks to Freud* (Cambridge Harvard University Press, 1990), 16.

Women in Later Life: Critical Perspectives on Gender and Age

Martha Holstein (Lanham, MD: Rowman and Littlefield, 2015). 316 pages. \$34. ISBN: 978-1-4422-2287-8.

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Martha Holstein's impressive work is infused with the wisdom acquired through a lifetime's ongoing critical engagement with the study of ageing in America. She defines two central goals for this book: "to consider how women experience late life as uniquely shaped by their life course and by contemporary cultural norms and political ideologies" (3), and by "revealing our strengths as women and possible fractures in the social and political context, [to] . . . look for opportunities to resist what harms us and thus create the potential for change" (3-4). Holstein's work speaks powerfully to questions of perennial ethical interest: What is the meaning of life? How should we think about our own mortality? It is also timely, as political debate continues over the social safety net and responses to the changing age structure of the population in America.

Holstein draws on empirical findings from many disciplines—sociology, biology, geriatric medicine, public policy—but she interrogates such research with a critical, intersectional feminist lens. Without such critical reflection, she notes, positivist biomedical and social science risk reinforcing the status quo (92). And empirical research alone cannot answer questions of the meaning of life in old age (103). She is also cautious to avoid overgeneralizing from her own, situated experience to universal claims. For these reasons, she supplements personal reflection on her own life with insights from conversations with working-class women at a retirement community, literary fictions, and memoirs by women in late life.

Holstein is clear about her own evaluative commitments. She criticizes the shortcomings of the dominant neoliberal worldview in American political culture, as it interacts with sexism, classism, and racism, by drawing on the insights of feminist and critical theory. She documents the harmful impact of neoliberal policies in real people's lives, especially old women's lives, and contrasts that with more inclusive and egalitarian goals of public policies based on feminist care ethics. Holstein also embraces an ethical ideal that all parts of human life should be valued and valuable, and is committed to "reclaiming 'old' as a valued and important time in human life," where one may be free to define one's life on one's own terms (5). She exhorts feminists to ensure that deep old age, which is predominantly a woman's experience, can be a time replete with meaningful possibilities of flourishing, even though old age may involve real loss, pain, and decline.

Holstein locates the origins of contemporary neoliberalism in 1980s conservatism and identifies its goals as "radically reducing the size of the state; privatizing services, including Social Security and the military; expanding the role of the free market; diminishing the power of organized

labor; elevating individual responsibility; and effectuating deregulation” (176). Neoliberal values of liberty and hyper individualism have displaced solidarity across generations and appeal to the common good in American political culture, with dire effects for vulnerable groups, including old women. However, neoliberalism relies on an implausible notion of the self as only contingently dependent (152), thereby marginalizing both those who need care and those who give care. Instead, Holstein defends a feminist, relational account of the self that acknowledges and embraces vulnerability and interdependence.

With other feminist care ethicists, Holstein argues that the right to receive care and the responsibility to contribute to caring should be more equally distributed in America. This would require changing deep-seated assumptions about family, gender roles, and what counts as valuable work, as well as shifts in public policy. At present, public policy is made by unrepresentative elites, mostly rich, white men, resulting in grave harms and injustice to vulnerable others. Drawing on feminist epistemology, Holstein critiques the “privileged ignorance” of these powerful elites, whose limited moral imagination reflects their standpoint at the intersection of multiple privileges (153; 177-78). She argues that the gendered division of care work renders its importance invisible to those who can “command care” because of their wealth and sex, with deleterious effects on public policy and women’s well-being.

Against this background, each chapter focuses on one aspect of women’s experience of aging in America, beginning with the physical changes of aging, how women experience these changes, and the social meanings imposed upon such changes. Holstein notes that “Bodies matter . . . because how we see our bodies and how others interpret them inform our relationships with individuals and with institutions” (44) and “the body is the most visible locus of exclusionary practices that constitute societal ageism, which we experience in multiple ways” (60). Those who reach old age do so marked by a lifetime framed by intersecting and persistent inequalities—notably, gender, class, and race-based inequalities—that structure American society. In a sexist society where women’s worth is often reduced to their conformity to restrictive norms of youthful, feminine, physical beauty, the biological changes of aging are overlaid with social and personal significance, of which we must make sense. As in subsequent chapters, Holstein invites women to “exercise [our] autonomy competency in groups” (59) by engaging in critical conversations together to construct our own more positive counterstories about our old age.

Holstein’s second chapter explores various definitions of ageism, explains ageism’s negative effects, especially on old women, and considers strategies for resisting ageism in America today. Ageism involves both negative stereotyping and discrimination against those marked as old, and privileges those seen as young or youthful. Justice and enlightened self-interest alike should motivate us to dismantle ageism. Instead of strategies of denial and deferral—such as assertions that “you’re only as old as you feel”—we should dismantle the negative connotations of “old.” Women should reclaim the meaning of old age

by “redefining ‘old’ in our own [positive] terms . . . not by valorizing the exceptional. . . . By [narrating] the complex identities, the many pleasures but also the pains, and the ways of life that constitute old age” (88-89). Resources for such projects of reclamation include old women’s memoirs and biographies as well as group conversations modeled on Second Wave consciousness-raising.

Chapter three maps the transformation of the notion of a “Third Age,” as it moved from academic discourse into public policy and popular culture. In part, it offers a cautionary tale to well-intentioned academics. Researchers in the late 1970s coined the term to capture the observation that many Americans were living longer and healthier lives after retirement, and also to push back against an established view of old age as a time of decline and loss, to be endured passively by old people. Instead, the Third Age imagined a time of continued health and productivity, through “encore careers” or civic involvement. Researchers and marketers alike were eager to provide people with tools and methods to extend their enjoyable and productive years. Early advocates of positive aging disregarded the effects of structural inequalities in shaping individual life chances. Hence, when the “Third Age” morphed into a new cultural norm of “successful aging,” it implied that individual people were to blame if they failed to arrive at retirement in good health, with savings and pensions in hand. Policy makers then deployed this idea to scapegoat old people who rely on state support to survive, and to blame “greedy geezers” for reductions in state support for youths in need, rather than acknowledging the consequences of their own policy decisions to reduce spending on the social safety net. Holstein concludes that “Third Age” is too narrow and exclusive an ideal, being premised on a life-course open only to a few, privileged individuals, whose lives have been untouched by the negative forces of sexism, racism, or poverty. Further, the ideal fails to explore “the unique developmental possibilities of late life” (105) and “the potential for strength and personal growth, even when and if one is frail and dependent” (106).

In chapter four, Holstein turns to the reality that old age may feature chronic physical and cognitive impairments that are hard to integrate into our identities, and challenge our ability to experience our lives as meaningful. Women tend to live longer than do men, so we are more likely to face an old age with chronic impairments, and heterosexual women are more likely to outlive their partners, thus facing the task of sustaining their identities alone. Instead of focusing solely on the need for biomedical interventions to manage the physical aspects of chronic illness, Holstein urges that society should also consider how to support elders in the existential tasks of integrating identity and supporting meaning in old age, even in the context of physical and cognitive decline.

In chapter five, Holstein tackles challenges arising from the shift to community-based care for old people in contemporary America. American society has yet to construct policies and resources to ensure that all who need care are cared for without exploiting others, including those—mostly women—who gladly embrace a caring role, but at great cost to themselves. This arises due to a set

of deeply held assumptions about values, family, and gender roles, namely, that female family members, and not the state, are primarily responsible for caring for old people's needs, despite women's other obligations to engage in paid work and save for their own old age, as well as other costs to caregivers' personal well-being (152). Holstein notes that truly valuing caregivers' work has direct policy implications, including "assuring that, as workers, caregivers receive credit towards Social Security, that they are given generous sick leave and vacation time, and that they have an opportunity to participate in a supplemental public pension plan akin to a 401(k) but with the government assuming the employer role" (170).

Chapter six examines women's chances for economic security in old age. Holstein argues that feminists should agitate to ensure that the opportunity for a secure retirement is open to all. She is deeply concerned about efforts to dismantle Social Security, one of the most effective anti-poverty programs in American history: "Today, Social Security covers 95 percent of all retirees, scores of spouses and children of deceased workers, and people with serious disabilities who are unable to work" (179). She argues that, given sufficient political will, the so-called crisis in the funding of Social Security could be resolved, in part by raising taxes on the most wealthy. However, as a large-scale government program, Social Security has been under sustained attack by conservatives since the 1980s. Neoliberal solutions such as deferring the retirement age, or privatization, reflect the privileged ignorance of wealthy elites, whose material security in old age is already assured by pensions, investments, and savings. Those who have spent a lifetime working minimum-wage jobs or prioritizing care work for family are unlikely to have such sources of income in retirement, and they are less likely to be able or willing to continue working in late life. As Holstein says, "The irony by now is familiar—powerful people, predominantly men and generally affluent, casually accept the rightness of benefit reductions that will have little or no effect on them or promote and extended work life for people whose jobs are not anything like theirs" (177-78). Holstein argues that feminists and progressives should fight to ensure that all Americans have the chance for a dignified old age, and that requires preserving Social Security.

Chapter seven considers what is required to live out the end of one's old age well. National conversation about end-of-life has focused too narrowly on access to, and compliance with, advance healthcare directives. This focus, and the social taboo on death, distract Americans from deeper reflection about what we want at the end of life, and how society can support what matters to the dying patient in her own terms, whether through hospice, in-home care, nursing homes, or access to physician-assisted suicide. As old women are more often single and poorer than their male counterparts, and most hands-on care work for elders is assigned to women, from nursing home aides, to daughters at home, gender matters crucially in this conversation.

Holstein's book concludes by collating strategies to ensure that old women have the chance to live well in old age, from telling counterstories to entering politics and building

cross-generational alliances to supporting a public ethic of care.

Overall, Holstein's important book is deeply researched, humane, and wise. She draws on a broad range of empirical sources and theoretical insights to launch her concluding call to action. Holstein makes reference to race throughout the work, but a chapter focused on race and aging would have been a particularly useful addition.

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