### 2AC – Code Switching

This is an embodiment of whiteness and colonialism that upholds structures of anti-black violence and the very form of exclusion their critique criticizes

Curry ’13(Tommy J., Professor of Philosophy at Texas A&M University, “Please Don’t Make Me Touch ‘Em: Towards a Critical Race Fanonianism”, pgs. 145-146, [Academia.edu](http://academia.edu/))

Once we (as African descended people) come to grips with the endemic nature of American racism, our theories about race should reflect a philosophically rigorous position that encounters American racism as sempiternal, while seeking true liberation from the white social context, the ideology of hopeful co-existence, and a forced engagement with the whites that perpetuate the ills of anti-Black racism. “Liberation is the total destruction of the colonial system,”47 and the theories of liberation that result from the acknowledgement of reality, must demand the same practical rigor. African scholars cannot continue to produce scholarship steeped in performative contradictions, since it is the descriptive knowledge of white solidification and its racist immobility that refutes the ideal hope in white sympathy. If we [Black scholars] know that racism is permanent, that whites have not been persuaded by moral appeals for justice, and equality for the last 400 years, and are confronted with the quotidian reality of Black impoverishment and death, then why do we place such faith and intellectual dependence in white revelation? Currently, our social political philosophies and legal strategies rest on the illusion of universal human entitlements and the false hope that whites will voluntarily surrender power, privilege, and their economic interests in Black subjugation in the effort to respect Black humanity.

### 2AC – Irigaray

#### The critique’s approach to sexual difference is totalizing—only by analyzing the articulation of sexual difference among other vectors of domination such as race and class can we preclude the critique from becoming essentialist

Winnubst, 99 Assistant Professor of Philosophy at Southwestern, 1999 [Shannon, “Exceeding Hegel and Lacan: Different Fields of Pleasure within Foucault and Irigaray,” *Hypatia* 14.1, muse]

Simultaneously, bringing Foucault's rich sense of historical discourse, genealogical change, and discursive power into contact with Irigaray's analysis of the phallogocentric economy of the Same might further historicize Irigaray's sense of sexual difference. That is, it might bring Irigaray's insistence on sexual [End Page 29] difference as the primary axis of subjectivity **into a historical field where other differences affect how sexual difference gets articulated**. For example, the roles of racism, of economics, of nationality, of ethnicity, of various historical discourses might begin, through a Foucauldian interpolation, to articulate sexual difference as it changes across different symbolic registers. In so doing, it might further **dispel the insidious possibility of** Irigaray's **reinscribing the economy of the Same in** her **articulations of sexual difference.** Casting this in terms of contemporary debates within poststructuralist feminism, bringing Foucault and Irigaray together dismantles, yet again, the essentialist/constructionist frame. 37 Subsequently, this hybrid of Foucault and Irigaray might begin to unleash some styles of thinking that are not bound to either essentialist or social constructionist models of subjectivity. For example, in merging Irigaray's recuperation of the sexuate body, of materiality as sexed morphology, with Foucault's diagnoses of the dynamics of power, we might begin to articulate bodies that are simultaneously materially and socially constructed **without placing those vectors into a suspiciously competitive ontological hierarchy**. That is, we might begin to articulate bodies that are different both materially (e.g., as sexed, as raced) and historically (e.g., as gendered, as classed, as ethnic, as national, as temporal): **we might begin to articulate these differences simultaneously, rather than oppositionally**. In engaging Foucault and Irigaray, we may thus learn how to articulate bodies that are both historicized and sexed in their subjective differences. We may learn how to articulate differences across their multiplicities of historical and sexed embodiments, exceeding the reign of phallic, oppositional difference. Foucault and Irigaray play within similar discursive fields; however, they accentuate different dynamics within these matrices. **Learning to invoke, rather than to silence, these differences may give us richer** tools with which to approach and articulate the differences within our different lives.

Psychoanalysis has enabled modern governmentality – its techniques are used manage populations and develop disciplinary society

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For Foucault, the very genesis of the discipline of psychoanalysis is itself linked to historical changes in the exercise of power-relations, and in particular to the emergence of governmentality. According to the later Foucault, modern power-relations cannot be grasped on the basis of political theory's traditional model of power-law-sovereignty-repression. This juridical model of power, which still dominates political theory, and sees power as emanating from a sovereign, from the top down, ignores the fact that power today also comes from below. As Leslie Paul Thiele has argued in his explication of Foucault's contribution to a theory of power: "Power forms an omnipresent web of relations, and the individuals who support this web are as much the producers and transmitters of power as they are its objects." In place of the juridical model of power, Foucault argues that modern power-relations are instantiated through what he designates as "governmentality." For Foucault: The exercise of power consists in guiding the possibility of conduct and putting in order the possible outcome. Basically power is less a confrontation between two adversaries or the linking of one to the other than a question of government. This word must be allowed the very broad meaning which it had in the sixteenth century. `Government' did not refer only to political structures or to the management of states; rather it designated the way in which the conduct of individuals or groups might be directed: the government of children, of souls, of communities, of families, of the sick. .... To govern, in this sense, is to structure the possible field of action of others. For Foucault, then, the operations of the modern state are not restricted to interdiction or repression in the political sense, but have expanded to incorporate the practices of governmentality. Government, in the Foucauldian sense, depends on the knowledge generated by the human sciences, by the disciplines, in particular psychoanalysis; indeed, the state claims that it governs on the basis of that knowledge. Here, the central role of the human sciences in the operation of the developing disciplinary society, and its techniques for the control and management of its citizens becomes especially clear. Moreover, governmentality, and the technologies for the control of individuals, are by no means limited to the state. Indeed, according to Nikolas Rose and Peter Miller, modern, liberal societies do not leave the regulation of conduct solely or even primarily to the operations of the state and its bureaucracies: "Liberal government identifies a domain outside 'politics,' and seeks to manage it without destroying its existence and its autonomy." This is accomplished through the activities of a host of institutions and agents not formally part of the state apparatus, including psychoanalytic facilities and analysts. As Nikolas Rose has pointed out, psychoanalysis, like "All the sciences which have the prefix `psy-' or `psycho-' have their roots in this shift in the relationship between social power and the human body, in which regulatory systems have sought to codify, calculate, supervise, and maximize the level of functioning of individuals. The `psy sciences' were born within a project of government of the human soul and the construction of the person as a manageable subject." As a manifestation of governmentality and its power-relations, psychoanalysis is implicated in the control of the individual. For Foucault, psychoanalysis is a **discipline that "disciplines**," that helps to **create politically and economically socialized, useful, cooperative**, and -- as one of the hallmarks of bio-power -- **docile individuals**. Indeed, according to John Forrester, for Foucault, psychoanalysis is "the purest version of the social practices that exercise domination in and through discourse, whose power lies in words, whose words can never by anything other than instruments of power." Of course, the aim of the analyst is not control, but the "mental health" of the individual and the "betterment" of society. Nonetheless, the result of the psychoanalytic management-oriented conception of the subject is an individual who is susceptible to techno-medical control. Moreover, as Nikolas Rose has suggested, the power-knowledge obtained by psychoanalysis (and indeed all of the psy sciences) and its technologies for the control of the individual: fed back into social life at a number of levels. Individuals could be classified and distributed to particular social locations in the light of them -- in schools, jobs, ranks in the army, types of reformatory institutions, and so forth. Further, in consequence, new means emerged for the codification and analysis of the consequences of organizing classrooms, barracks, prisons, production lines, the family, and social life itself....Hence, the psy knowleges could feed back into more general economic and social programs, throwing up new problems and opportunities for attempts to maximize the use of the human resources of the nation and to increase its levels of personal health and well-being. Whatever its impact or health and welfare, this power-knowledge enhanced the degree of control to which the person was subject, and made it possible to effectively discipline the individual. Indeed, **the existence of our developing disciplinary society is inconceivable without the psy sciences**, and the power-relations which they consolidate. The discipline and control of the individual to which psychoanalysis made its signal contribution, was linked to its conception of, and commitment to, normalization. Foucault signalled the increasing role of normality and normalization in the functioning of the developing disciplinary society in Discipline and Punish: "The judges of normality are present everywhere. We are in the society of the teacher-judge, the doctor-judge, the educator-judge, the `social worker'-judge; it is on them that the universal reign of the normative is based; and each individual, wherever he may find himself, subjects to it his body, his gestures, his behavior, his aptitudes, his achievements." For Foucault, discipline and normalization were inseparable components of the emergence of the human sciences, and their technologies. Indeed, he asserted that "a normalizing society is the historical outcome of a technology of power centered on life." Psychoanalysis did not break with this complex. Indeed, according to Foucault, "Freud was well aware of all this. He was aware of the superior strength of his position on the matter of normalization." Indeed, psychoanalysis was thoroughly implicated in the societal process in which the norm increasingly supplanted the law, in which the West was "becoming a society which is essentially defined by the norm." For Foucault: "The norm becomes the criterion for evaluating individuals. As it truly becomes a society of the norm, medicine, par excellence the science of the normal and the pathological, assumes the status of a royal science." Lest one conclude that Foucault is not referring to psychoanalysis here, he is quick to point out that "psychoanalysis, not only in the United States, but also in France, functions massively as a medical practice: even if it is not always practiced by doctors, it certainly functions as therapy, as a medical type of intervention. From this point of view, it is very much a part of this network of medical 'control' which is being established all over." Deviation from the norm, in the establishment of which psychoanalysis played a signal role, the anomaly, became the object of the technologies and therapeutic techniques of the psy sciences, psychoanalysis among them. The theological conception of evil had given way to the psychoanalytic conception of deviance, in the combat against which the analyst was now enlisted to play a leading role. As Hubert Dreyfus has claimed, "Freudian theory thus reinforces the collective practices that allow norms based on alleged sciences of human nature to permeate every aspect of our lives." These practices then become a **lynchpin** of the developing disciplinary society and its techniques for managing people.

As a critical intellectual, you must resist power relations inscribed in the practice of psychoanalysis

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William Connolly has pointed out that Foucault contended "that systematic cruelty flows regularly from the thoughtlessness of aggressive conventionality, the transcendentalization of contingent identities, and the treatment of good/evil as a duality wired into the intrinsic order of things." It is through "disrupting" our present practices and prevailing categories of thought, showing that they were historically created and contingent, not self-evident and necessary, that Foucault hoped to foster the critical distance needed to see the dangers inherent in them. For Foucault, "A critique is not a matter of saying that things are not right as they are. It is a matter of pointing out on what kinds of assumptions, what kinds of familiar, unchallenged, unconsidered modes of thought the practices that we accept rest." Moreover, for Foucault, the work of the critical intellectual is "to question over and over again what is postulated as self-evident, to disturb people's mental habits, to dissipate what is familiar and accepted, to reexamine rules and institutions...." Only after showing that things are not self-evident or necessary is the conceptual space opened up that will provide the opportunity to exercise the freedom to "think differently" and act otherwise. Thinking differently for Foucault, as C. G. Prado has asserted, entails the "ceaseless problematization of established truths and knowledges" which will "enable us to resist being wholly determined by power-relations." By modifying the truths and knowledges within which we are fashioned, and in terms of which we fashion ourselves, as subjects, we can resist the dominant forms of power-relations instantiated in the developing disciplinary society. Indeed, thinking differently means not just disrupting taken-for-granted modes of thinking, but experiencing the world in new ways, and acting in it on the basis of a new perspective. Thus, thinking differently, critique, for Foucault, is genealogical, not metaphysical. Foucauldian critique is not directed to the quest for any transcendental bases of human thought or action, but rather to separating "out, from the contingency that has made us what we are, the possibility of no longer being, doing, or thinking what we are, do, or think. It is not seeking to make possible a metaphysics that has finally become a science; it is seeking to give new impetus, as far and wide as possible, to the undefined work of freedom." Foucault's conception of the critical intellectual who opens up the space to think differently is linked to his perspectivism, his experiential notion of truth, and to his conception of his own works as "fictions." For Foucault, truth is not a linguistic correspondence with reality, with the "facts." As a Nietzschean, for Foucault, there is no reality "in itself," no facts, to which truth would correspond, or, at any rate, no way to ground such a conception of truth. Instead there are only interpretations, and truth is perspectival and experiential; "Truth is not of the order of that which is, but of that which happens, an event. It is not recorded, but created [suscitée]: something produced, not apophantic." Foucault's perspectivism, his contention that his own conclusions and judgements are interpretations, what Hubert Dreyfus and Paul Rabinow have designated his "interpretive analytics," means that his diagnosis of modernity as a developing disciplinary society cannot itself be grounded; there is nothing outside the analysis or interpretation itself on which to ground it. As Dreyfus and Rabinow contend, Foucault's "diagnosis that the increasing organization of everything is the central issue of our time is not in any way empirically demonstrable, but rather emerges as an interpretation. This interpretation grows out of pragmatic concerns and has pragmatic intent, and for that very reason can be contested by other interpretations growing out of other concerns." Foucault's perspectivism, his commitment to the radical contingency of interpretation, is an extremely novel idea, the implications of which have not always been recognized. This idea that truth is not apophantic, corresponding to something "out there," something "real," is connected to Foucault's claim to write experience-books, to acknowledge that his interpretations "'are nothing but fictions.'" According to Dreyfus and Rabinow, these fictions can be extremely important, though in ways that reveal "more about society and its practices than about ultimate reality. Interpretation starts from current society and its problems. It gives them a genealogical history, without claiming to capture what the past really was." However, Foucault's fictions, through which he creates the space to think differently, which are an exercise of freedom, are not to be understood as "false" over against statements which are true. Rather, these fictions can become true to the extent to which they are taken up and used to comprehend, and act in, the world. That is, these fictions become true as we think with them, and act in the world on the basis of them. This is close to what C. G. Prado understands by Richard Dawkin's notion of "catching on," or to Richard Rorty's conception of "uptake." The constant danger is that these fictions, once they catch on, once they become truths, will end up as ahistorical, transcendental, concepts. It is for this reason that Foucault speaks of a permanent critique of ourselves, and of our historical epoch, which applies not just to the truths established by the prevailing discursive practices, but to the fictions which we want to catch on as well. In that sense, Foucault's injunction to constantly disrupt people's mental habits will also apply to his own fictions should they achieve the status of successful cultural artifacts. Such then is Foucault's "hyper- and pessimistic activism": the critical intellectual seeks to resist the power-relations inscribed in the prevailing social and discursive practices, seeks to overcome the dangers which they instantiate. And it is this hyper- and pessimistic activism which Foucault directs to an encounter with psychoanalysis.

#### Their understanding of femininity as pure negativity, the absolutely otherized in masculine discourse, is an illegitimate monopoly that reproduces masculine violence—otherization functions plurally, making use of women, slaves, children, and animals among others

Butler, 4, Professor of Rhetoric at Berkeley, 2004 [Judith, “Bodies That Matter,” Engaging with Irigaray, Ed. Burke, Schor, Whitford, p.p. 160-162]

So perhaps here is the return of essentialism, in the notion of a "feminine in language"? And yet, she continues by suggesting that miming is that very operation of the feminine in language. To mime means to participate in precisely that which is mimed, and if the language mimed is the language of phallogocentrism, then this is only a specifically feminine language to the extent that the feminine is radically implicated in the very terms of a phallogocentrism it seeks to rework. The quotation continues, "[to play with mimesis means] 'to unveil' the fact that, if women are such good mimics, it is because they are not simply resorbed in this function. They also remain elsewhere: another case of the persistence of 'matter.' " They mime phallogocentrism, but they also expose what is covered over by the mimetic self-replication of that discourse. For Irigaray what is broken with and covered over is the linguistic operation of metonymy, a closeness and proximity that appears to be the linguistic residue of the initial proximity of mother and infant. It is this metonymic excess in every mime, indeed, in every metaphorical substitution, that is understood to disrupt the seamless repetition of the phallogocentric norm. To claim, though, as Irigaray does, that the logic of identity is potentially disruptible by the insurgence of metonymy, and then to identify this metonymy with the repressed and insurgent feminine, is to consolidate the place of the feminine in and as the irruptive chora, that which cannot be figured, but which is necessary for any figuration. That is, of course, to figure this chora nevertheless, and in such a way, that the feminine is "always" the outside and the outside is "always" the feminine. This is a move that at once positions the feminine as the unthematizable, the nonfigurable, but that, in identifying the feminine with that position, thematizes and figures, and **so makes use of the phallogocentric exercise to produce this identity that "is" the nonidentical**. There are good reasons, however, to **reject the notion that the feminine monopolizes the sphere of the excluded** here. Indeed, **to enforce such a monopoly redoubles the effect of foreclosure performed by the phallogocentric discourse itself, one that "mimes" its founding violence in a way that works against the explicit claim to have found a linguistic site in metonymy that works as disruption.** After all, Plato's scenography of intelligibility depends on the exclusion of **women, slaves, children, and animals**, where slaves are characterized as those who do not speak his language, and who, in not speaking his language, are considered diminished in their capacity for reason. This xenophobic exclusion operates through the production of racialized Others, and those whose "natures" are considered less rational by virtue of their appointed task in the process of laboring to reproduce the conditions of private life. **This domain of the less than rational human bounds the figure of human reason**, producing that "man" as one who is without a childhood; is not a primate, and so relieved of the necessity of eating, defecating, living and dying; one who is not a slave, but always a property holder; one whose language remains originary and untranslatable. This is a figure of disembodiment, but one that is nevertheless a figure of a body, a bodying forth of a masculinized rationality, the figure of a male body that is not a body, a figure in crisis, a figure that enacts a crisis it cannot fully control. This figuration of masculine reason as disembodied body is one whose imaginary morphology is crafted through the exclusion of other possible bodies. This is a materialization of reason that operates through the dematerialization of other bodies, for the feminine, strictly speaking, has no morphe, no morphology, no contour, for it is that which contributes to the contouring of things but is itself undifferentiated, without boundary. The body that is reason dematerializes the bodies that may not properly stand for reason or its replicas, and yet this is a figure in crisis, for this body of reason is itself the phantasmatic dematerialization of masculinity, one that requires that women and slaves, children and animals be the body, perform the bodily functions, that it will not perform.43 **Irigaray** does not always help matters here, for she **fails to follow through the metonymic link between women and these other Others, idealizing and appropriating the "elsewhere" as the feminine**. But what is the "elsewhere" of Irigaray's "elsewhere"? If the feminine is not the only or primary kind of being that is excluded from the economy of masculinist reason, what and who is excluded in the course of Irigaray's analysis? Improper Entry: Protocols of Sexual Difference The above analysis has considered not the materiality of sex but the sex of materiality. In other words, it has traced materiality as the site at which a certain drama of sexual difference plays itself out. The point of such an exposition is not only to warn against an easy return to the materiality of the body or the materiality of sex but to show that to invoke matter is to invoke a sedimented history of sexual hierarchy and sexual erasures, which should surely be an object of feminist inquiry but would be quite problematic as a ground of feminist theory. To return to matter requires that we return to matter as a sign that in its redoublings and contradictions enacts **an inchoate drama of sexual difference.**

#### Their argument relies on a dangerous binaries – there are other differences which produce commonalities of experience

Silverman, 88 (Kaja – Rhetoric Department and Film Studies @ University of California, Berkeley, The Acoustic Mirror: The Female Voice in Psychoanalysis and Cinema, p. 148)

Finally, Irigaray relies heavily upon binary opposition, itself a powerful form of symmetry. At one point in Speculum, she invokes a wonderful sentence from Proust's Within a Budding Grove to illustrate the "a-contrario representation" of the boy through which Freud defines

the girl.31 That sentence reads: "They are, these women, a product of our temperament, an image inversely projected, a negative of our sensibility." This is, indeed, a penetrating gloss on Freud's binary reasoning, and on his implicit "indifference." Unfortunately, it provides an equally apt commentary on Irigaray's own account of the female body and feminine language. Having established that male sexuality and discourse are teleological in organization, Irigaray argues that their feminine equivalents rely instead upon

simultaneity.32 She goes on to associate the former with identity, unity, and vision,33 a sense which (as Metz stresses)34 relies upon distance, and to equate the latter with nonidentity, plurality, and tactility, 35 a sense which depends upon proximity.

Needless to say, I do not mean to hold Irigaray to the task of disclosing woman's absolute "otherness" with respect to man. This undertaking can only lead back to binary oppositions of the most predictable sort. (It is not surprising, for instance, that many of Irigaray's formulations of "the feminine" are completely congruent with traditional derogations of woman, such as the claim that she is irrational, speaks incoherently, can't concentrate on one thing at a time, lacks visual authority, is closer to her body, or is more oriented toward pleasure than man.)

At the same time, I am more than a little reluctant to jettison the concept of femininity in favor of the much more currently fashionable notion of a subject capable of occupying multiple and even contradictory positions, without necessary reference to biological identity. While the subject's history may not be narrowly determined by his or her biological identity, there is scarcely a moment within that history which is uninflected by it. Although it cannot always be assigned with absolute certainty, it usually has considerable bearing on how one is culturally "recognized," and hence on the social positions to which one has access, even when one's identifications run completely counter to that "recognition." The subject's pattern of identification, moreover, assumes its meaning and political value in relation to his or her socially assigned gender. (It is not the same thing, for instance, for the daughter to align herself psychically with the father as it is for the son to do so, since whereas the latter case constitutes a successful Oedipal interpellation, the former constitutes an Oedipal irregularity—a refusal to become "a little woman.'')

What I am trying to suggest is that there is some cultural specificity, or, to state it somewhat differently, some commonality of experience, behind the categories of "man" and "woman." If what generally passes in this country as "French feminism" tends to ground that commonality of experience in the body, and to view it positively, many more overtly political feminists in both Europe and North America tend to equate it with the exclusion and oppression of women, and to view it negatively. In the first case, then, femininity is an inherent condition, whereas in the second it is a set of learned responses and attitudes for coping with the réel politique. My own desire to salvage the concept of femininity is based upon a very different set of assumptions about how that concept should be articulated. I want to lay out those assumptions in some detail before returning to Irigaray.

#### Irigaray reduces the feminine to bodily sex, removing the mind to something "out there"

Silverman, 88 (Kaja – Rhetoric Department and Film Studies @ University of California, Berkeley, The Acoustic Mirror: The Female Voice in Psychoanalysis and Cinema, p. 147-8)

Irigaray fails, in addition, to distinguish between sexuality and the body, treating the former as if it were absolutely coterminous with the latter. Sexuality cannot be read directly off the body in the way she attempts to do both in "Woman's Exile" and in This Sex Which Is Not One, where she repeatedly invokes the image of woman "touching herself in and of herself¶ without any need for mediation." 27 Even if, as I have suggested elsewhere, the psyche is in certain respects nothing more than a projection inward from the surface of the (constructed)¶ body,28 nevertheless it is a category without which there can be no sexuality. Sexuality requires the internalization and fantasmatization of both the subject and the object—the installation of both as corporeal images within the psyche.¶ Sexuality also obliges the subject to occupy a particular position within a psychic mise-en- scène. The female patients whom Freud discusses in "A Child Is Being Beaten," for instance, derived (unconscious) erotic gratification from putting themselves in "fact" or¶ fantasy into a masochistic subject-position.29 The psychic mise-en-scène, moreover, is itself¶ the product at least in part of reminiscence and deferred action.30 Thus, if the body is the place where pleasure is finally experienced, that pleasure is made possible only through what happens elsewhere, in memory, fantasy, and history. I cannot believe that this holds any less true for the female subject than for her masculine counterpart, nor do I feel that feminism has anything to gain from buying into a myth of sexual immediacy.

#### **The neg’s examination of gender ignores the biopolitical construction of sexuality**

Repo ’13 (Jemima Repo “The Biopolitical Birth of Gender: Social Control, Hermaphroditism, and the New Sexual Apparatus” Alternatives: Global, Local, Political 2013 38: 228 DOI: 10.1177/0304375413497845 The online version of this article can be found at: http://alt.sagepub.com/content/38/3/228)//JL

In 1955, John Money (1921–2006), professor of medical psychology and pediatrics at Johns Hopkins University, published a series of articles with his colleagues introducing a radical idea that a person’s psychological sex was learned and did not necessarily arise from biological factors. This idea was encapsulated in a new concept: gender. In this article, I argue that this moment marked the birth of a new apparatus of sexuality that would not challenge the old monarchy of sex as such, but address its newfound biological complexities that were epitomized in the problematic body and mind of the hermaphrodite.1 I show how gender was deployed into the sexual order through a highly psychologized and medicalized field of knowledge production centered on the problem of gaining access to human life by controlling the behavioral system that upheld it. It produced individuals who ￼possessed not only a sex but also learned a gender, expanding and multiplying the access points of power to the body, rendering it more elastic and malleable and hence, more governable. In Will to Knowledge, Michel Foucault argues that sexuality was deployed in the nineteenth cen- tury as the hinge between the anatamopolitics of the body and the biopolitics of population. Sexu- ality was the point of access that connected the biopolitical strategy to manage and regulate the life of the species to the discipline of individual material bodies and their organic functions. Sexuality was introduced as ‘‘the index of a society’s strength, revealing both its political energy and its bio- political vigour.’’2 Its regulation, Foucault writes, ‘‘was motivated by one basic concern: to ensure population, to reproduce labour capacity, to perpetuate the form of social relations.’’3 Since Fou- cault, however, few have continued his biopolitical genealogy of sexuality to uncover how this access to life through sex has been guaranteed after the Victorian period. Feminist applications of Foucault’s analysis have produced theories of the historical contingency of gender constructs,4 but not genealogical analyses of the biopolitics of the gender category itself. The invention of gender has been examined in the context of the medical history of intersexuality and transsexuality, demonstrating how the idea of gender was introduced to justify sex reassignment surgeries on intersex infants.5 Gender is often assumed to be a universal concept applicable to any historical time or place, and invented by either sociology, Simone de Beauvoir, or other feminists.6 The idea of gender actually originates from intersexual case management in the 1950s. It is only from this period onward that we can really conduct a genealogy of gender. As Foucault argues, we cannot do a history of the science of life, or philology or political economy in the Classical period, simply because they did not exist in the order of knowledge.7 Likewise, in a Foucauldian genealogical analysis, we cannot examine the history of gender before gender itself came into exis- tence. It is not only anachronistic, but it also prevents us from examining how the apparatus itself emerged, through what conditions of knowledge and strategies of power.

#### Nothing wrong with Agamben

Cerwonka and Loutfi 11 (Allaine Cerwonka, professor of gender studies at Central European University, Anna Loutfi, assistant professor of gender studies at Central European University, “Biopolitics and the Female Reproductive Body as the New Subject of Law,” Feminists at Law Volume 1 Number 1, journals.kent.ac.uk/index.php/feministsatlaw/article/view/18/75‎)

To say that the histories and conceptual frameworks of Michel Foucault have, since the late 1980s, heavily influenced feminist theory is an understatement. On the other hand, one might add that the influence of Foucault on feminist jurisprudence and feminist legal theory has been much less pronounced, in spite of the obvious value of Foucault’s work for critical legal theory more generally. One probable reason for this is the uncanny resemblance of Foucault’s ‘sexless subject’ to the abstract sexless subject of law which feminist legal theory has been tirelessly critiquing since its inception (giving rise to feminist works with titles such as: “unspeakable subjects”, “the hidden gender of law”, “sexing the subject of law”, and so on). And yet, when a ‘new Foucault’ – the Italian political philosopher Giorgio Agamben – hit the critical legal scene in the late nineties, one might argue that a new kind of feminist legal theory was quickly born; one that was receptive and subtly attentive to the work of both Foucault and Agamben. And this in spite of the fact that Agamben’s legal subjects are, like Foucault’s, utterly sexless. What might explain this phenomenon? Here, we suggest that Agamben’s work on law and citizenship, in focusing exclusively on Foucault’s concept of biopolitics, and therefore on questions of the regulation of populations rather than of individual bodies, represents a point of departure that is particularly ‘user friendly’ for feminist legal theory. We would also argue that feminist legal scholars need not be disturbed by Agamben’s apparent sex blindness – as earlier scholars were by the sex blindness of Foucault.