Reading the Nebraska Safe Haven Law Controversy

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Neoliberalism, Biopower, and the Discourse of Expendability

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They’ve opened Pandora’s box. —Karen Authier, Director of Nebraska Children’s Center, referring to the Nebraska legislature, which passed the only safe haven law inclusive of children up to the age of 17.

Only when we know what this governmental regime called liberalism was, will we be able to grasp what biopolitics is. —Michel Foucault, speaking on the need to examine economic truths within governmental reason (The Birth of Biopolitics, 2008, p. 22)

On October 26, 2008, Tyseema Brown placed her 12-year-old son in her Chevy, loaded up a few of his things, and started the 1,000 mile drive from Atlanta, Georgia, to Omaha, Nebraska. The decision to surrender her child to the state, particularly one half way across the country, was not an easy one. Tyseema explained later in interviews that she always hoped to raise a son who made the right choices and stayed out of trouble. Over the past few years, she grew increasingly concerned that was not going to be the case, however. He started talking back to teachers. He regularly disrupted class. Then things became more serious; he started stealing. “I had to lock up everything,” Tyseema explained. Hoping to use fear to set him on the right track, she first turned to the police, who provided him with a tour of a juvenile detention facility. Much to her dismay, the tour seemed to have no effect on his outlook: “He came back laughing about it. He’s basically fearless” (Davis & Mahone, 2008, ¶ 22). From there things seemed to get worse. He was suspended from school twice and arrested for stealing a camera. At his juvenile court hearing, Tyseema pleaded with the judge to allow her to enroll him at Boys Town High School, a youth-centered rehabilitation facility. The judge complied but, much to Tyseema’s dismay, his application was denied. Out of options, Tyseema found out from her mother about Nebraska’s newly enacted safe haven law, one that covered children up to the age of 17 and allowed parents to relinquish custody of their children without fear of prosecution, as long as there were no signs of child abuse. Tyseema decided it was worth the 1,000-mile drive and loss of parental rights if she might finally be able to give her son access to the rehabilitation services he needed and, she believed, deserved.

What can be said about Tyseema’s story and corresponding debates that occurred in the public media over parental responsibility, the role of the state, and child rearing that has not
already been said? The first is that Tysheema’s story not only brought awareness to the violent effects of a raced and classed state, it also raised to the surface the destructive capacities of neoliberal policies; stripped of support and mental health services—with a government guided by a philosophy of unfettered capitalism and deregulation and privatization no matter the effects—parents who were unable to secure a position on the right side of the widening abyss between the “haves” and the “have nots” found there are few safety nets to prevent them from entering a freefall. Furthermore, these downward spirals often become self-fulfilling. Parents who are financially strapped must work two or more jobs and, accordingly, have less time and energy to spend raising their children. Harrowed from competing work and parent roles, and fearing the effects of a weakened family structure on their children, these parents discover when they seek out additional support from the state to help them cope, whether it is financial or psychological, there are few if any places to turn. And, with public resources becoming scarcer, what is publicized is often made difficult to access via a myriad of restrictions on eligibility or, when accessed, found all together inadequate to the problems these families face. It seems 30 years of tax rebates to the wealthy and big business have left barren a public sphere where previously these desperate families might have found help.

Unquestionably, neoliberalism is pervasive within culture and material life and operates as a mode of public pedagogy, one that imubes the dispositions and beliefs of neoliberalism via a range of cultural vehicles and pedagogical sites. In regards to the Nebraska safe haven law, with inadequate local, state, and federal resources, and a “pull yourself up by your bootstraps” mentality firmly entrenched across all levels of government, stories such as Tysheema’s have surfaced more frequently, of desperate parents who are willing to drive from far away and cede parental rights as long as some program or agency provides for their children better than they can. Key to this chapter, there are no guarantees on how these stories will be interpreted or acted upon; rather, what such discourse evokes might be thought of as indeterminable possibilities. Certainly, images of Tysheema played out against three decades of attacks on Blacks and the poor. Yet, stories of desperation, such as Tysheema’s and others like it, fueled substantial outrage among key constituents toward an out of touch and often hostile government, especially among outspoken parents, educators, and leaders of grassroots organizations. They also added a contemporary layer to the long historical movement to demand that the state provide protection and support for children and youth and their guardians, particularly for those individuals who are most vulnerable. As Derrida (1981) teaches us, indeterminable possibilities can be both poison and remedy; with indeterminability comes the promise, not of redemption or a cure, but of all the potential associated with the unknown.

From the federal Indian Welfare Act of 1978 to state laws that include Minnesota’s Minority Child Heritage Preservation Act of 1996, stories of poor White, brown, and Black children and youth living in unfit conditions, psychologically distressed, experiencing cultural genocide, and with parents unable to care for them, provided the terms for a shared sense of moral indignation. Also, a politically charged climate ignited anger amongst citizens toward policies that privileged White, middle-class values and ways of knowing and sparked an aversion toward racism, classism, and Eurocentrism in the design and provision of services to assist vulnerable children and their families. Such outrage catalyzed demands that racial and ethnic backgrounds and class-specific needs be placed at the center of policies and programs as a way to counteract these anti-democratic forces. Of course, the seeds of conservatism were planted long before the 1960s brought these symbolically and materially specific demands upon the state. And, by the 1980s, global capitalism was taking root and a vast diametric-transformation was underway as demands for reparations from a previous era—child care, job training, quality schools, stable employment, and suitable health and retirement benefits—were beset by the rise of troubling
discourse regarding ineffective government bureaucracies, expensive tax-funded services, and program recipients who frequently swindled resources from state and federal agencies. In this sense, the movement to press government toward the actualization of race and class equity for future generations transmuted into the demonization of those very children who were supposed to be the beneficiaries of a colorblind and class-free society and the parents who were supposed to help them get there. In the vacuum of unmet expectations, the images that remained were of the poor—particularly non-White low-income families—draining precious resources away from the market and inhibiting the ability of the United States to compete in an increasingly unforgiving, global economy. The interrelation of state policy and neoliberalism offers a form of public pedagogy whereby the anti-statist discourses of a corporatized democracy have “undermined our claims to state resources as citizens” (Kelley, 1997, p. 81).

Updating the conservative rhetoric of Barry Goldwater, Strom Thurmond, and Richard Nixon, possibly no one is more responsible for this transmutation than Ronald Reagan; proponent of trickle down economics and small government, he transformed the economic and political culture of the United States in ways that had a significant impact on state assumptions about the nature of poor and non-White parents and children. By the end of Reagan’s tenure, the notion of the innocent child who needed state protection from the harsh realities of life—an idea that originated with the radical public pedagogy of the late 1930s whereby collective struggle ended in federal child labor laws—was recoded. No longer innocent and worthy of protection, the child became dangerous and intractable, one who could not be helped, the soon to be hood gangsta and redneck bumpkin, the criminal in the making. Similarly, the downtrodden and struggling mother who it was felt needed government assistance to help with the care of her children through, for example, the Child Nutrition Act of 1972, was recoded as an unfit parent, the Black welfare queen or White trash mama, who used her children to gain access to state welfare funds. In combination, this discourse and related images made possible an era of attacks on poor and non-White children and youth, as well as their parents. Entitlement programs were cut or altogether eradicated; taxes, the main channel for redistributing wealth, were slashed; and social services were privatized.

Reagan’s segregationist tactics and hierarchical ordering of families, ones that demonized poor and non-White families and framed their children as beyond intervention, was so successful that Bill Clinton, a democrat, would make one of the main themes of run for the 1993 presidency, “welfare to workfare.” Playing off what had become the common sense belief that the poor and non-Whites were taking advantage of state programs, Clinton vowed “to end welfare as we know it” by way of time limits on federal support and mandatory transition to work programs. Seized by the moment, Texas Senator Phil Gramm fanned the flames of race and class warfare when he asserted that the time had come for those on welfare “to get out of the wagon and help everybody else pull” (The Economist, 2006, ¶ 2). This was done with little protest from child advocates, heads of public agencies, or working-class parents, all who recognized that forcing mothers into jobs that failed to pay a living wage would do little to pull children out of poverty or encourage more cohesive family structures. By the time Clinton took office, the Persian Gulf War, along with the continued globalization of capitalism and mass consolidation of business and media, fed new forms of patriotism and fostered a general ethos that resources were better spent on battles abroad and training for economic competitiveness at home than state welfare programs.

Nebraska’s safe haven law and the controversy surrounding it might have again broken the silence surrounding parents and children confronted with terrible suffering and the prospect of splitting up their families so as to gain access to state services. At the same time the story emerged of Tysheema driving across country to get help for her son, another troubling story of
despair and desperation surfaced in the media. In this instance, a White, working-class male, Gary Staton, dropped off his nine children under the safe haven law at Nebraska’s Creighton University Medical Center emergency room. Ironically, just 17 months earlier, at this same hospital, days after she delivered their ninth child, Gary’s wife passed away from a brain aneurism. Already on the financial edge and without inadequate insurance, the loss of his wife was the beginning of the family’s fall into economic and mental devastation.

Scarce financial resources and almost non-existent assistance from the state left them with few avenues for complying with child protective services, however. They petitioned for their oldest daughter, age 16, to graduate from high school early so she could help take care of her siblings. After his wife passed away, torn between working long hours and taking care of his family, Gary quit his job to become a fulltime homemaker. After bills piled up and the family faced eviction, Gary felt Nebraska’s safe haven law provided an opportunity for his children to have a better future, even if it meant they move on without him. In contrast to media coverage that framed parents who relinquished custody of their children as uncaring and irresponsible, Gary shared that he surrendered his children to the state precisely because of a deeply held sense of responsibility to them. He shared with a muted sense of pride, “I was able to get the kids to a safe place before they were homeless” (Eckholm, 2008a, A21).

Each time it looked as if the controversial law might fall out of the media spotlight, another child was dropped off and another story surfaced that challenged negative stereotypes about distressed families. Not only were non-White, working-class parents, such as Tysheema, and White, working-class parents, such as Gary, surrendering their children, but White, middle-class parents were also dropping off their kids and relinquishing their rights—parents, such as Lavennia Coover, an elementary school teacher and single mother of a son with bi-polar disorder. After years of inadequate health insurance that would pay for only three weeks of psychiatric treatment at a time and expensive drugs that did little to quell her son’s violent outbursts, Lavennia discovered, just as Tysheema and Gary did, that the only way to gain access to adequate care was if her son became a ward of the state. Notably different from the “Baby Moses” laws in other states, which allow parents to surrender infants from somewhere between seven and 30 days after birth, “all but six” of the children turned over to the state under Nebraska’s law “have been older than 10” (Lavandera, 2008a, ¶ 7). The *New York Times* also wrote that the law “highlighted what child welfare experts say is the widespread shortage of public and private aid, especially mental health services for overstressed families and teenagers...” (Eckholm, 2008b, A10). Low income and middle-class parents, both mothers and fathers, non-White and White alike, coming from nearby as well as half way across the country—the sheer diversity of families suffering prompted “national soul searching about the limits of parental responsibility” (Eckholm, 2008b, A10). Time and time again, race and class intertwined in unique and unexpected ways to unsettle the nation in regards to who struggled in the face of contractions of the public sector.

Amid the controversy, Nebraska now faced a dual crisis. Governor Heineman tried to do damage control. By drawing attention to how the state’s family services were abused, he deflected attention from the plight of needy families (of course, parents did not abuse these services; rather, they used them). Over the next few months Heineman would repeatedly tell the media in no uncertain terms, “‘[the law] needs to be changed to reflect its original intent’ to protect infants” (Jenkins, 2008, ¶ 5). After a number of parents came from surrounding states and beyond to relinquish custody at Nebraska’s state hospitals, he returned to the media to offer a message with a different tone. This time he pleaded with the public, “Please don’t bring your teenager to Nebraska. Think of what you are saying. You are saying you no longer support them. You no longer love them” (Lavandera, 2008b, ¶ 5). Yet the contradiction between the stories of
parents who surrendered their children and the Nebraska Governor’s equation of custody relinquishment with lack of care rendered his statements suspect.

Parents told the media and anyone who would listen a different story. They had tried numerous other avenues to garner assistance before finally giving up their children, and did so only after a lot of soul searching and because they loved them. Some parents—so angered at state officials’ repeated attempts to portray them to the broader public as neglectful and thoughtless—began to organize. By way of the Nebraska Family Support Network, they demanded an opportunity to tell their stories directly to the state legislature. These parents testified in detail about the extent to which they tried to secure mental and financial services for their children and the multitude of barriers they confronted, from insurance that would only cover emergency room visits to overbooked agencies that could not see patients for weeks or months at a time.

Most telling, for a short period, even the mainstream media offered insightful critiques of the state for hollowing out public programs as well as the private sector for lobbying to dismantle the tax structures that support them, asking tough questions about accountability before regressing back into commonplace neoliberal rhetoric. Case after case of custody relinquishment helped keep the topic in the media. For much of the citizenry looking in from the outside, the diverse backgrounds of parents giving up on their families, turning children over to the state, one after another, came to signify what the stories of Tysheema, Gary, and Lavennia together so clearly revealed: unsettling questions over how this could happen in the United States, not just to the poor, not just to people of color, but to people from a broad range of economic and racial and ethnic backgrounds.

Nebraska’s safe haven law raised to the surface a struggling, atomized sector of the population that neoliberal and neoconservatives alike had demonized and exposed to unprecedented hardship—justifying doing so for reasons of efficiency in the case of the former and moral failings in the case of the latter. Similar to forensic scientists who reveal evidence that criminals were certain they had hid from view, stories of families who followed the protocols for receiving state support and, failed by their government, fell upon hard times, have a way of weaving themselves into a nation’s consciousness—troubling images of representative democracy violated that remain long after the telling of the story is over. Tysheema’s narrative symbolized a legacy of institutional racism and state services indifferent to, if not organized against, poor non-White parents and children. But the addition of narratives from poor and middle-class White parents revealed more complex images of the raced and classed state. A notably different form of politics, this was one that could be explained less by a matrix of racism, classism, and sexism on its own, than by how such a matrix became a tool for inserting some bodies in the machinery of the new economy while expelling others.

In other words, while Tysheema’s story illustrated what might have been construed as the state’s historical lack of concern toward the needs of Black families, the stories of a White middle-class female teacher and a White working-class father presented a more complicated image of the intersection of neoliberalism and social difference, and who might be thought of as “expendable” so as to preserve the mechanisms of production and the nation’s competitive edge. Tysheema’s story of an African American son raised within a distressed community and heading for a life of crime, and state services geared more toward fear tactics and imprisonment than rehabilitation, speaks to the systemic character of racial injustice. The stories of Gary and Lavennia did not speak to the same racial legacy but they did render suspect the state’s discourse on a nation progressing steadily toward a better future for all. The image of children and youth abandoned with increasing frequency and the state’s reaction (a discourse that focused on parental neglect and irresponsibility) revealed the sort of raced and classed suffering that takes place in what is described by Crenson and Ginsberg (2004) as a highly “privatized democracy.”
It also exposed the rise of a new sort of politics, one in which broad strata within the population are conceived of as nonessential to national prosperity and a drain on increasingly slight state budgets. Not to be taken lightly, what happened in Nebraska unveiled disturbing features of contemporary U.S. politics, necessitating that public pedagogues respond to what Giroux (2004) describes as “the growing threat of free-market fundamentalism and rigid authoritarianism,” (p. 495). Over time biopolitical forces make possible the successive naturalization of a mix of neoliberal and neoconservative political visions, ones where “the analysis of ‘what is’ has led to a neglect of ‘what might be’” (Apple, 2003, p. 18).

Public Pedagogy: Disjuncture Between the People and the State

Once the safe haven bill was signed into law, the successive dismantling of mental health and child and youth services that has occurred over the past two decades became visible, as did the government’s willingness “to sweep under the rug this truth that emerged from Nebraska’s new law” (Stone, 2008, ¶ 10). As safe haven laws make abundantly clear, it is the state and professional organizations that have the authority necessary for dealing with the forms of mental anguish, community distress, and financial hardship brought on by changing economic, political, and social conditions. Furthermore, in a democracy where presumably representative bodies carry out agendas that are sanctioned by and service the needs of the public, it is not merely that government and public sector organizations have the necessary authority; rather, they are ethically obligated in a participatory democracy to meet the needs of the body politic.

With the media’s extensive coverage of Nebraska’s safe haven law, it was not hard to recognize that families from a wide array of backgrounds were in no-win situations and government had failed them, but what was often portrayed as bad policy and poor parenting was much more than that. It represented a major systematic reconceptualization, a role reversal whereby the government positioned itself as the victim of a specific group of deadbeat parents who demanded state resources be used to take care of their children. An ingenious bait and switch, this rationale provided the terms by which to paint an unflattering image of citizens who utilized public services. By making continuous references to the drain these families placed upon already overtaxed state programs, government officials were largely successful at deflecting responsibility and crafting subject positions from which to reprimand parents for not pursuing other “less extreme” channels to address their concerns. Of course, under a neoliberal regime, what was at issue was less whether parents had exhausted all other resources than the need to paint images of these parents as dangerous to the vitality of the state, invoking “the monstrosity of the criminal” more than the crime in order to rationalize “the safeguard of society” (Foucault, 1990, p. 138).

Amid the controversy, what became clear was that the Nebraska legislators had shaped the law broadly in an attempt to get it through both the house and senate and were admittedly unaware of what would transpire when the word “child” was used in place of “infant.” Most telling, the discourse employed by both the media and government officials had the effect of framing the law as a mistake that was then exploited by state-reliant parents. The law was crafted with a “loophole,” (Riccardi, 2008, ¶ 1), “abused” by citizens (Kavanagh, 2008, ¶ 12), and had “unintended consequences” (Koch, 2008, ¶ 10) that included relinquishing parents from responsibility for their children. Senator Mike Flood, the speaker of the Nebraska legislature, summed up the perspective of legislators who passed the bill rather succinctly: “Looking back, a number of us would have voted differently” (Slevin, 2008, A03). Reflecting a state heavily invested in self-help ideologies, Nebraska’s safe haven law was not heralded as a success for bringing services to what was so clearly a sizeable and high need segment of the population. Instead, the law was framed unequivocally as a miscalculation, an error, one that was encouraging helplessness and
dependency. Once controversy surrounding the law emerged, government leaders quickly ran to the side of laissez-faire institutions, seeking to mitigate the inevitable tensions that are created when select strata of the population receive inordinate rewards by emphasizing self-help, atonement, and entrepreneurship for the remainder who must do without.

In this way, government has been strangely silent on the series of thresholds that had to be passed through to make possible the conditions for this spectacle. Organized around the most efficient ways to silence or subjugate those sub-populations that might inhibit or in any way require resources that might otherwise be used to sustain free markets, unregulated trade, and rampant consumerism, except for the occasional dissenter, discourse was focused on how to cut off the access citizens had to state services. This is what we term the contemporary biopower’s expendable people. The poor and, increasingly, the middle class, along with many non-Whites, must not only take care of themselves when confronted with hardship or tragedy, they must do so quietly or find they will be accused of “communism” or “socialism” if they speak out on the failed social policies that led to their troubling conditions. The by-product of what Fraser (1997) terms “weak” public spheres, where the opinions of the disenfranchised lack practical force (p. 93), they are the expendable people of a newly reformed state, one in “gracious submission” to global capitalism. This is a public pedagogy of institutional constraints that bear down on resistance toward systemic forms of oppression.

The popularity of the program unmasked a vast underworld of struggling Americans, a humiliating set of circumstances for the United States, one for which Nebraska would ultimately be blamed. Interestingly, the indignity of a state going against global neoliberal precepts was not lost on the media. Ari Shapiro, correspondent for National Public Radio, asked in an interview with Nebraska’s Director of Children and Family Services, Todd Landry, “I imagine this law has been a real embarrassment for you guys, huh?” (Shapiro, 2008). Other proponents of neoliberal self-help ideologies deflected criticism from the shocking hostility of the state by simply ignoring the role of race and class altogether. Catherine Arnst (2008), senior writer for Business Week, indulged in a rant about her own 18 month journey to become eligible for adoption, one where she had to “jump through hoops and put up with invasion of privacy” in making the claim that those who relinquish custody of their children to the state are “in many cases truly lousy [parents]. The kind of parents who should never have had kids in the first place” (¶ 2). Focused on the difficulties she faced as she went through processes that ensured applicants are fit for parenthood, Arnst seemed oblivious to the ways racism and classism shaped the conditions out of which parents had no other option but to use the safe haven law.

Anthropologist and social critic Ghassan Hage (2000) has argued that what spurs stories like these are not the fact but fantasy, prejudice that “actively reproduces the empirical ground on which it is based” (p. 234). This is why key to the fantasies government officials have of non-Whites and the poor are the “technologies of problematisation” it employs to construct custody relinquishment into a problem ready-made for a state resolution. Characteristic of the transformation of government around neoliberal and neoconservative precepts, the stakes are higher than merely the return to pre-civil rights era classism and racism. More recently, scholars and practitioners alike have acknowledged that different social groups have unequal capacities to produce and circulate counter-discourses that challenge stereotypes; for those without the ability to contest ideas and images that do not reflect what they know of themselves, the social and material consequences can be extreme. Given increasing concerns over immorality and the call to legislate policies that penalize citizens who do not adhere to a narrow range of social ideals, custody relinquishment and lack of values merge in the equation of unmarried, non-White, and poor and working class parents with moral failings. The transformation toward criminalization of the poor and non-Whites and “survival of the fittest” state mentalities operate beyond
the more obvious consolidation of biopower among government and business elites. They are also used to justify increased government secrecy and the shift to backroom decision-making around public functions, ones that inevitably remain outside the scrutiny of everyday citizens.

Within weeks following the passage of the safe haven law, Nebraska's hospitals were inundated with parents—some who contemplated and others who were determined to surrender their children—a number far beyond the parents of the 35 children and youth who were actually turned over to the state. Emergency rooms suffused with pleas from children and youth to “go home” were captured by the media and used by government officials as evidence of bad policy. Of course, these mischaracterizations only served to further mask the trauma that existed long before the law was passed, including parents’ struggles over months and even years to contend with mental illness, suicide threats, drug abuse, gang involvement, homicidal threats (Omaha World-Herald, 2008). Once surrendered, parents were treated as miscreants, denied even the most basic information in regards to their children’s status, forbidden from visitation, and refused future opportunities to regain custody. Lost in the contrast between images of girls and boys frantically searching emergency rooms for their parents and cool, calm, and collected government officials who promised to “fix the flawed law” (The Times-Picayune, 2008) were opportunities to engage in deeper discussions of the conditions that made these events possible. Instead, state officials downplayed the severity of the problem altogether. Nebraska Governor Heineman, in an interview about the high number of teenagers surrendered, equated his own challenges raising a teenage boy with those of parents who faced economic devastation or coped for years with children who had serious mental illnesses, from bi-polar disorder to schizophrenia.

Nebraska’s safe haven law raised to the surface stories and images that unsettled many people’s conceptions of the United States at home as well as abroad: significant numbers of working- and middle-class people from a range of racial and ethnic backgrounds betrayed by state support systems, unable to obtain adequate health insurance and forced to dissolve their families in order to get adequate care for their children. As Biehl (2002/03) so aptly notes, prior to Nebraska, safe haven laws had typically been the “by-product of a social and political ‘fix it’ attitude promoted by people who would rather believe that infant abandonment represents a unitary failure on the part of [the] individual [rather than] a symptom of our society’s gross, willful ignorance of the real issues facing women and children” (p. 17). Biehl offers an indispensable, feminist perspective on the conditions that brought the Nebraska safe haven law into existence. To add to Biehl’s analysis of the issues at hand, it seems necessary to offer a complementary analysis on how race and class are also a set of mechanisms at play, ones employed differently within a new set of biopolitical arrangements—that is, within arrangements where human life is no longer considered sacred a priori but assigned value based on the ways bodies are variously positioned in relationship to capital within global, neoliberal economies.

Public Pedagogy: Biopower and the Making of Subjects

Over the past 30 years, the changing nature of state power within a new global order has required the retheorization of the interconnections between the state, policy, and capitalism, particularly new ways to understand the evolving relationship between life and politics. These changing terms necessitate that we examine once again how biopolitics plays out in various segments of society. While prominent education theorists offer distinct notions of biopower, from Patti Lather and Michael Peters to Mark Olssen and Stephen Ball, their interest convenes at the crossroads of policy, politics, and life. One might say they share in Foucault’s desire to better understand “the different modes by which…human beings are made subjects” (Foucault,
1983, p. 208). Within this line of reasoning, politics no longer functions merely as a mechanism for disciplining the body. That is, technologies of production focused on revealing the body to itself—its constituent elements exposed—to be studied, recorded, and administered, as well as fed into demographic studies, population analyses, and statistical forecasts as to what the future might hold. Where the state and capitalism meet, biopower points toward a new form of politics, doubled in its concerns, invested in the individual body as an object that with fuller knowledge can be “manipulated, shaped, trained” (Foucault, 1995, p. 136) and also as a body that enters “the processes of normalization” (Foucault, 1990, p. 144). That is, bodies are subjected to a series of interventions and regulatory controls that distribute “the living in the domain of value and utility” (p. 144) and enlarge the targets of control, so as to incite further optimization of the aptitudes and forces of life.

What Foucault describes as the emergence of biopower captures the shift from pre-modern power operationalized under the threat of death to its modern form underwritten “by a power to foster life or disallow it to the point of death” (Foucault, 1990, p. 138). As Foucault argues, biopower does not display itself in “murderous splendor” but takes charge of life through “continuous regulatory and corrective mechanisms” that included qualification, assessment, and assigning worth (p. 144). Yet, he explains, affirming life brings with it an ominous undercurrent, for new life administering capacities have as their parallel procedures of power that include the right to kill those who represent a “biological terror to others” (p. 138). Death within biopower is characteristically different then its antecedent form, where the sovereign practiced the right to kill or let live. Here the death-function is justified as a way to protect society, a counterpoint to a power that promises to offer a constructive, affirmative influence on human practices. Key to this chapter, biopower offers vital mechanisms for coordinating diverse social institutions in an effort to sustain economic processes. In this sense, biopower is insinuated with the workings of the state, ones where racism and classism are employed to adjust the attributes of populations to the needs of capital “without at the same time making them more difficult to govern” (p. 141). Segregation and hierarchical ordering are rationalized on behalf of the existence of everyone, a necessity for the biological perseverance of a population.

To update Foucault’s arguments regarding biopower, we want to offer two positions. The first is that deregulation, privatization, and dismantling the public sphere are the prevailing biopolitical mechanisms in contemporary times. The second is that linking free market principles to state functions has eroded protective barriers and further subjugated already vulnerable populations; moving beyond adjusting bodies to the machinery of production to render various sub-populations altogether expendable, this is a new and particularly vicious form of biopower. Whereas Tysheema Brown’s struggle to locate nearly non-existent public services for her son represented a long history of racism and classism in the allocation of state resources, biopower’s newest tactic adds another, more sinister stock to its repertoire of controls and regulations. Here the classed and raced dimensions of the state are joined by techniques of power that require not so much a series of adjustments to the aptitudes and outlooks of populations in order to expand productive forces as their very expulsion. As Linebaugh (2008) teaches us, capitalist democracies have not only failed to provide essential services to a large percentage of the population but have done so through “the practice of state terror and violence” (p. 275). While few would argue that the notion of a robust public commons has faced a series of attacks from privatizing forces since the 1960s, over the last two decades, the contested idea of a strong public sphere has been more or less discarded, revived only recently as a talking point by President Obama.

Under the terms of erasure, the state no longer holds up the conditions of their most vulnerable populations as evidence of democracy at work. Eclipsed by global capitalism that knows no state allegiances, the populations that reside furthest from the impulses of capital now occupy
spaces where calls for entitlements based on citizenship carry very little weight, regardless of hardship or suffering. As the work of Ida B. Wells made abundantly clear, in prior eras people subjugated around race and class could force at least some baseline support from the state if for no other reason than the failure to do so was shameful, the sort of savagery and disregard for human life unflattering to a nation that claims benevolence (see Pinar, 2001). Contemporary biopower has recalculated the management of life toward something far harsher; new instruments of the state have reinforced the exceptionalism of vast subpopulations who have not managed to locate and keep a hold of increasingly untenable positions in the sphere of economic processes. Whereas biopower’s investment in the body and distributive management of its forces assumed responsibility for life, the recent reversal of a technology of power centered on life has defined increasingly larger segments of the population as dangerous, incorrigible, and a menace toward national health—and exposed them to suffering and death. Smaller and smaller segments of society—predominately the White, upper-middle class—experience the American Dream as viable, living lifestyles made possible by what Fraser and Honneth (2003) describe as the problems of symbolic misrecognition and material inequities that plague post-socialist societies. In light of “free market” ideologies that have offered neither hope for a better future or a sense of security or community to those who live on the borders of society, it is imperative public pedagogues examine the rebirth of biopower in the moment of our now. The work before us is made all the more urgent by the suffering and desperation the Nebraska safe haven law revealed to the world.

Conclusion: Thinking Public Pedagogy Differently

The Nebraska safe haven law controversy suggests we are living through times of great change. The spectacle that affected 35 children and youth and their families is about more than government indifference, political posturing, and polemical debates. The suffering the controversy revealed broke the myths of a class and color-free society to expose the role of the state in cultivating the circumstances of non-Whites and the poor, all of whom were afflicted with the burdens of policies shot through with the racism and classism of the newest iteration of the neoliberal state. In this sense, antidemocratic politics opened a space where global capitalism and those rendered most vulnerable under its free market ideologies were joined by way of the logic of expendability, innumerable rationales for cutting state services and reconfiguring the discourse and terms for citizenship and entitlement. Undeniably, the safe haven law controversy has taught us that racism and classism are alive and well in the United States, operationalized by a sort of “inversion of the relationships of the social to the economic” (Foucault, 2008, p. 240).

Against this dark moment in history, with market fundamentalism deeply embedded in contemporary society, we will need to think again what it means to secure the conditions for critical education inside as well as outside schools. Biopower does not simply operate to denigrate vulnerable sub-populations to the most rudimentary elements of life. In all its indeterminable possibilities, biopower makes feasible the use of state knowledge to reform the state. Critical studies in demography, the relationship between life quality and resource distribution, and class standing and longevity, as well as the ways discipline is embodied in social institutions can illuminate the limitations of current political arrangements. Here potential resides in as-yet unknown language and practice that articulate a renewed sense of determination and new visions whereby not knowing becomes a way of knowing in any efforts to re-imagine the public sphere. This implies any viable conception of public pedagogy must be open to uncharted illustrations of how desire, language, and human relations are implicated in relations of power, and the implications for self-knowledge and social agency. As interested in good translations as new
theories, what seems necessary are discourses that lay bare the problematics of global neoliberalism while simultaneously drawing individual struggles into broader discussions over the kind of democracy we as a nation wish to practice. Furthermore, in an era where debates over issues of public concern reside in the media like never before, critical media studies might be one of the most promising movements to counter hegemonic market forces.

The global transmutation of people as property into the disposable inputs of production, Bales (1999) points out, must be confronted through more expansive understandings of education, international trade regulation, and human rights. In addition, if we are to take seriously Patti Lather’s (2007) assertion that “enlightenment categories of rationality, individual autonomy, and historical development are under suspicion, along with such terms as revolution, socialism, and proletarian democracy” (p. 12), then the idea is not to exchange one neoliberal regime for another but to learn how to produce and learn out of the very breakdowns and pitfalls in our efforts toward democracy. Here a sense of justice resides at the interstices of a call that is beyond our grasp and the urgent need to get to work toward a different discourse, a different logic, a different public pedagogy.

Notes

1. Here we refer to the ways in the discourse of governing bodies and corresponding institutional practices serve to reproduce social and material inequities via racism and classism. Segregation, hierarchization, and differentiation become tactics of the state for organizing populations and rationalizing the inequitable distribution of resources.

2. Foucault suggests it is important to determine what there is in life that resists and, in resisting, creates forms of subjugation and forms of life that escape its control. Therefore, it should be noted that Nebraska Senator Annette Dubas was particularly critical of the callous tone of both Landry and Heineman and chastised them for the ways they misrepresented parents who surrendered custody of their children.

References


