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The Time of the Contract: Insurance, Contingency, and the Arrangement of Risk

You must wager. It is not optional.

You are embarked.

—Blaise Pascal, *Pensées*

We do not have the choice not to play.

—François Ewald, *L'état providence*

In the classical liberalism and contract theory of John Locke, the distinction between the free man and the slave was presented as a matter of time. According to Locke, the punctual delineation of work characterized the distinction as an instance of contractual freedom. For liberalism, this limit on work time distinguished the condition of wage labor (the circumscribed sale of property in one's self) from that of slavery (or people as property). But what happens when the work contract—whether tacit or formal, for increasing numbers of people, and perhaps in more visible ways—is no longer limited in time? What are the theoretical and political responses to a situation in which the “normal working day,” as it emerged in the nineteenth century and was formalized in the Fordist period, is discovered to be far less the conventional form of labor in capitalism than a historical exception grounded in the geographic, gendered, and racialized displacement

of a general precariousness? If these were the questions posed in the midst of the rise of European movements around precarity in the first decade of this century,¹ in the meantime the precipitation of crises—both intimate and global—by unpayable debt has undoubtedly amplified the questions of work, time, and life.² Do we, then, reassemble the Lockean precepts of right in the face of their seeming inoperability, or insofar as they have constituted a prevailing paradigm of politics (particularly in the United States), might we instead consider the ways in which they have shaped the apparently intuitive assumptions of a recurrent impasse? And what, precisely, are these Lockean precepts? The labor process has become increasingly personalized and mobile (as with digital labor and those which involve it), and the work contract is both more precarious and infinite in its reach (in the case of zero-hour contracts or the more comprehensive injunction to constant availability and preparedness). Under these circumstances, arguments seem to range from a reassertion of contractual right and natural limits (noting that each invokes a precept of the inalienable properties of man) to claims that the very logic of right has given way to the logics of risk management and insurance in the displacement of industrial capitalism by post-Fordism (or, in more Foucauldian terms, in the change from disciplinary power to governmentality).

Yet such perspectives emphasize an instance of an interlocking contractual schema of right, limit, and risk that I would argue is evident in (a closer reading of) Locke and is illustrative of capitalist dynamics more generally. In my reading, Lockean liberalism presupposes the imbrication of right and risk situated under a transcendental order of divine providence and through the articulation of naturally bequeathed property (and properties). In this and its Scholastic precedents, a providential God constituted the very demarcation between inalienable natural right and commercial exchange, *and* bestowed a rights-bearing subject with a capacity for the ethical deliberation of risk. Across the eighteenth and nineteenth centuries, the Lockean understanding of labor as a form of property—and of contract freedom as the nonabsolute transference of the rights to this property—was central to liberal abolitionism's understanding of free labor. According to David Brion Davis, self-ownership operated as a "transitional ideology," containing the campaigns against slavery by giving "temporary moral insulation to less visible" and emerging "modes of human bondage." As he puts it, "One could justify exploitation . . . by making it impersonal."³ Where Davis's history of the transatlantic slave trade highlights the centrality of contract freedom to the shift from direct and personal forms of coercion to those mediated by

law and money, the analysis here emphasizes the temporal ordering of contingency and necessity that is constantly recomposed through the contractual.⁴ Rather than understand slavery and free labor as they are grasped from within the idealized terms of contract theory—that is, as an epochal and irreversible passage—that even Henry Maine doubted,⁵ the contention here is that contract theory, as it emerged from covenant and shaped legal doctrine, rearranged the sense of time such that it reinstated a naturalized, necessary servitude situated as the object of a prudential logic that was located, in turn, under the ethical constraint of submission to the invisible, but nevertheless increasingly intimate, hand of divine providence.

If it is easy to discern the precursors to Adam Smith's "invisible hand"⁶ and John Maynard Keynes's "practical men"⁷ in this schema, the domain of the "natural economy" (*oikos*) is usually presented as a consequence of the inessential exclusion of women from paid work rather explained as than the requisite dimension of below-the-line labor in capitalism. Yet as Nancy Folbre suggests, according to Locke, women "had no natural rights, only natural obligations"; "individual rights and private property were male prerogatives . . . because only men made choices and responded to incentives." She also points to Locke's insistence that care labor is a "natural proclivity [of women] rather than a form of work."⁸ Approached as worldview that rationalized slavery, colonization, and the subordination of women, Locke's temporal delineation of free labor was placed between, on the one hand, the immeasurable bonds of an ostensibly natural economy and, on the other hand, an infinite, unbreakable covenant with God. This was a new, specifically capitalist formulation of subjectivity, obligation, and genealogy, and therefore of time, an eternalized capitalist dynamics that plays out as the complex interaction between three interlinked temporal orders: of heritable attributes and naturalized obligation (gendered, sexualized, and racialized); of intimate self-management and decisions made under conditions of uncertainty; and of a supernatural (but inscrutable) determinism. In this arrangement, an absolutist God bequeathed man with the capacity for rational thought so that he may decide on ethical conduct. This prudential subject was grounded in the premise of inherent properties and rights. Locke situated the recognition of particular forms of labor as one's own property (insofar as they were defined as productive) alongside and above the naturalized foundations of a servitude apprehended as a property of blackness and domestic/care labor construed (not as labor but) as a quality (a gift) of the properly feminine.⁹ The contract, then, is the switching mechanism that installed and rearranged the pertinent dynamics of capitalist futurity.

This essay takes up the question of insurance to illustrate the historical presuppositions of this temporality—to challenge the assumptions that shape its theoretical analysis and make a limited range of political approaches seem tenable because they have been made legible by the continuing predominance of a remarkably scalable set of Lockean beliefs. Elsewhere, I undertake a longer investigation of contracts through a critical analysis of the politics of the household (*oikonomia*),¹⁰ and here I approach insurance as the dream of inoculation, as the spreading of risk that constantly reconfigures the boundaries between capitalist speculation and the incertitude of value, between free labor and slavery, between those who are inoculated and those who test out the vaccine, between the contractual projection of calculable value and the uninsurable risk, and not least between life and death.

Although Locke has been routinely invoked in critical analyses of insurance as if he posited a distinction between commerce and life, I would argue that this sharp demarcation is not precisely Lockean but neo-Aristotelian. Where neo-Aristotelian approaches are marked by an idealized nostalgia for the slave-holding estate and the political nobility of the ancients, Locke looked forward in time and presented contract as constitutive of the domains of politics, economics, *and* religion. While there are correlations between Locke's and Aristotle's understandings of the demarcation between the *oikos* and politics, to this distinction (and following the Scholastics) Locke will add the dimension of divine providence. For Locke, providence insured property and contract across the contingencies of the temporal world, overseeing, recognizing, and legitimating the labor and the enclosures that he saw as the proper workings of prudence. While Locke defined productive labor as agrarian cultivation and in the form of Adamic authority (in so doing, legitimating colonization and relegating care labor to the sphere of natural obligation and disposition), during much of the nineteenth and twentieth centuries understandings of productive labor became increasingly characterized as industrial production. Locke's divine providence is the premise of the classical liberal understanding of the limit and function of political intervention: that is, nonintervention, except to guarantee the performance of contracts. Whereas Locke echoed the Aristotelian sense of the role of politics as the recomposition of the foundations of *eudiamonia* (the good life), at a time when property rights were an overt matter of legal fiction and were politically contested, he resorted to the Scholastic invention of a providential God to transform the indeterminism of the times into the eternalized necessity of capitalism.

Speculation and Contingency

The currently conspicuous questions of speculation and contingency arose not amid the relatively recent turns to post-Fordism or neoliberalism but in the turbulence of the Middle Ages and in the indeterminate unfolding of capitalist history. Beset by antifeudal struggles and successive outbreaks of plague, the Scholastics sought refuge in the reassuring archaism of an Aristotelian demarcation between a putatively natural order and a dangerously conjectural one. In doing so, they elaborated a cosmology that was neither reducible to the Christian doctrines that came before nor precisely Aristotelian. For Aristotle, contingent propositions were but a variant of (by his reckoning) questionable poetry and rhetoric. His realist theory of language, which insisted on commensurability and adequacy as a condition of truth, could not admit the possibility of a specifically capitalist form of equivalence, even less of a contingent and speculative value, because, as Karl Marx noted, he lived at a time of the naturalized inequalities of the slave-holding household (the *oikos*) and not the equivalence of abstract labor.¹¹

If Aristotle's writings seem an anachronistic choice for comprehending the myriad conflicts and forms of existence that arose during the Middle Ages, his view of the household as the foundational space of a naturalized economy nevertheless served as the moral lexicon for an emerging articulation of the conditions of capitalist futurity.¹² At a time when values were tangibly contested and increasingly uncertain, their wayward inclinations would be moored by the Scholastics in a natural theology of the *oikos*. Extrapolating from Aristotle's delineation between an egalitarian, fraternal sphere of politics and a naturally hierarchical, properly generative realm of the household, they would arrive at a neo-Aristotelian idea of the mutually constitutive distinction between the transactional and the natural. From the medieval period and particularly during the Renaissance, understandings of generation would be displaced by the specifically capitalist formulations of production and reproduction, ideas of biological inheritance would be modeled on norms of the familial transmission of property, a genealogical definition of the household would supplant that of the ancient slave-holding estate, and contingency would be reconfigured as evidence of divine and infinite power.¹³ In the meantime, the Scholastics reworked the Aristotelian denunciations of speculation (and the unproductive but nevertheless generative field of) the chrematistic in order to construct an understanding of providential and prudential time grounded on the divinely ordained hierarchies and properties of the *oikos*.

Setting providence against Fortuna,¹⁴ the problem for the Scholastics in those tumultuous times could no longer be one of simply declaring the existence of a natural order and eternal world that were viscerally in doubt and under challenge, but of finding a way to transform the very sense of contingency into an argument for moral order and divine power. Thomas Aquinas's elegant solution in the *Summa Theologica* was to depict a temporal sphere of mundane and seemingly chaotic events delineated from a divine realm of infinite and absolute knowledge. Indeterminism was presented as the proof of absolute necessity. In this way, Aquinas not only transformed the experience of contingency into the ultimate verification of God's existence, but also defined the import of an emerging rational subjectivity as the capacity for prudential decision by a subject simultaneously construed as the ruler of a household and God's servant. This inseparable nexus of temporal and divine orders is the semantic field of precarious and *precor* (prayer), linking the acquaintance with contingency to the performative inclination of divine worship.¹⁵ Taking issue with claims that prudence and providence could not be ascribed to God, Aquinas began his discussion of providence by distinguishing a divine order of perfect and infinite knowledge—where God “is the cause of things by His intellect”—and a temporal sphere defined as “remembrance of the past, and understanding of the present, [where] we gather how to provide for the future.” Situated in relation to divine providence, Aquinas characterized the prudential subject as “a man . . . who orders well his acts toward the end of life—or in regard to others subject to him, in a family, city or kingdom; in which sense it is said (Mat. 24:45), a ‘faithful and wise servant, whom his lord has appointed over his family.’”¹⁶

In what follows, I suggest that in the conflicts and debates over the rise of life, workplace, and social insurance, these Lockean understandings (following the Scholastics and Aristotle) would transform insurance into the very definition of a worthy life whose reckoning would occur at the moment of death or injury, in either case understood as the interruption or cessation of a productive life. Imbued with a prudential logic that took its cues from the practice of penance and purgatorial time, insurance would eventually align with the ideology and practice of the family wage (as in the form of “breadwinner” insurance) to become the morally sanctioned alternative to unconditional welfare. The nineteenth-century struggles around and reforms over the reduction of the working day and workplace accident insurance were accompanied by attempts and policies that limited the access of women and children to paid work—which is to say, they can only be understood as a part of the history of fraternal insurance and the family wage that

reached a high point in the Fordist period. In the United States, four years after the introduction of a contributory insurance scheme in 1935, it became an extension of the family wage, a system through “which *workers and their families* were viewed as people who had earned the right to access benefits in the face of many of life’s ‘hazards,’”¹⁷ firmly aligning insurance with the transmission of property along intergenerational and familial lines. Moreover, as Eveline M. Burns suggests, the “analogy [of social insurance] with private insurance made the change acceptable to a society which was dominated by business ethics and which stressed individual economic responsibility.”¹⁸ This combination of the prudential and genealogical limited the speculative by restoring a naturalized orderliness to the transmission and distribution of property. Unlike gambling—which “involves the denial of all systems in the apportionment of property, [plunging] the mind in a world of anarchy, when things come upon one and pass from one miraculously”¹⁹—insurance could dictate the transfer of property according to ostensibly natural lines and into an uncertain future.

Insurance and Inoculation

The crises of trade and agriculture, the torrent of losses and bankruptcies, all the fluctuations and vicissitudes of the bourgeois mode of life, which have been epidemic since the introduction of modern industry, all the poetry of bourgeois society will disappear. Universal security and insurance will become a reality.
—Karl Marx and Friedrich Engels, *Marx/Engels Collected Works*, vol. 10

By the time Marx and Engels delivered this riposte to Emile de Girardin’s proposals for a “good socialism,” in an article that appeared in the *Neue Rheinische Zeitung Politisch-ökonomische Revue* in 1850, the distinction between the prudentialism of insurance and the speculative inclination of gambling had been more or less established. Insurance would come to be seen as a responsible way of socializing risk, a virtuous means of conducting welfare policy and, as Marx and Engels joked, a judicious form of inoculation against capitalist contingency. By the middle of the nineteenth century, the demarcation between gambling and insurance, as Geoffrey Clark and Viviana Zelizer have illustrated, had already been a long time in the making.²⁰ At the very center of the conflicts over the creation of this boundary was the implication that life and death had become the objects of a commercial contract, but the need to distinguish insurance from gambling was predicated on the requirement that the distribution and trans-

mission of property be seen as natural or rightful, just as the questions of life and death should be construed as a matter of divine providence and natural proclivity rather than something brought about by transaction. According to Zelizer, the legitimation of insurance in the United States required the eventual formation of a moral and institutional demarcation between speculation and gambling. Placed under suspicion by the Puritan injunction that money must be “tied to work and gradually accumulated by the sweat of one’s brow,”²¹ speculation was recast in the socially utilitarian terms of entrepreneurial risk bearing before insurance could, in turn, fully assume its prudential demeanor. Even so, in Clark’s account of the expansion of the insurance industry in early eighteenth-century Britain, “an increasing confusion between property in things and property in people” pointed to a “recrudescence of quasi-feudal social relations represented by the creation of property in human life,” threatening “to shatter the emerging free market ethos that individuals should have the liberty to engage in a commerce of things, but not of each other.”²²

Prior to the passage of the Gambling Act by the British Parliament in 1774, insurance policies were often used to wager on the lives—and, in one famous instance, the sex²³—of people with whom beneficiaries had no connection that could be construed as an insurable interest. Through the act, insurable interest was defined as a pecuniary interest—brought about by the implied contract of shared familial property or the ownership of property (which, at the time, included slaves)—in the continued existence of that, or that person’s life, covered by the insurance policy. This compensatory redefinition of insurance, however, did not firmly separate insurance from the charge of gambling on someone’s life since it continued to elicit the expectation of financial gain from someone’s death. The act merely specified what a legitimate insurable interest might be. And there continued to be a slave trade.

Less than a decade after the first Gambling Act was passed, that expectation provided the grim calculus for the massacre aboard a British slave ship, the *Zong*. The ship’s captain wagered that the insurance value of the *Zong*’s human cargo—malnourished and most likely suffering from a smallpox epidemic—would exceed that of its sale, and he ordered that some 133 people be thrown overboard. Of this, Ian Baucom has pointed out that value of the insured object “results purely from the ability of two contracting parties to imagine what it would have been worth at that imaginary future moment at which it will have ceased to exist.”²⁴ As Clark argues, at issue in much of this history is the ostensibly parallel distinction of slavery from freedom of contract, or (in Lockean terms) the line that is said to separate per-

sons as property from property in one's self. As is more or less well known, in the century before insurance would become hotly contested, Locke had argued that "every man has a property in his own person. This no body had any right to but himself. The labor of his body, and the work of his hands, we may say, are properly his."²⁵ Yet what many readings of Locke tend to gloss over is the place of this "every man" and Lockean definitions of his labor and properties in a wider schema that situated heterosexual procreation as the original social contract and divine covenant as absolute. In this, the discernment of risk is construed as a property of the self-possessed subject, located between natural propensity and providence.

While he does not discuss slavery or the wage contract, Bill Maurer, in his study of financial clearance and securities, argues that the logic of insurance is of a different order to that of Lockean contractualism. If, for Clark, insurance posed a problem for Lockean understandings of the contractual self in the eighteenth century, for Maurer it defines a subsequent and much more recent period in history. Following Michel Foucault's discussion of governmentality and risk theorists such as Ulrich Beck, Maurer insists that shifts in the way securities are handled recast "the subject of property not as the bearer of rights but as a risk profile subject to the disciplinary practice of insurance." He continues, "[At] stake is not merely a new definition of property but a new definition of personhood and a new form of governmentality. Rights and property give way to risk and insurance." Posed as a question of forgetting the Lockean understanding of property, Maurer draws the argument beyond that of finance: "one might draw an analogy between the shift identified in this essay," he remarks in a footnote, "and the shift from nineteenth-century sciences of sex to late-twentieth-century Centers for Disease Control risk profiles."²⁶ However, where historians of insurance trace the complex shifts in insurance and risk to conflicts that parallel the centuries-long rise and spread of capitalism, risk theory situates a definitive transition from—as Beck argues—"the logic of wealth distribution in a society of scarcity to the logic of risk distribution in late modernity."²⁷ Yet Locke's arrangement of scarcity and abundance—through the logic of property and properties—was at the same time a proposition about risk. A critical history of contract, by contrast to risk theory, need not transform a specifically capitalist form of contingency into a variant of necessity or, differently put, need not substitute notions of technological riskiness for an analysis of the precariousness of capitalism. Risk theory locates technological modernization as the source of risk rather than analyzing the contract as a technique of its allocation, and it abbreviates Locke in so doing.

In the fourteenth century, the insurance contract—and the corollary notion of risk—emerged as the calculation of maritime peril and extended across land as the apprehension of plague. Barrau, described in 1816 in his *Treatise on Plagues and Acts of God* as the “founder and director of the reciprocal insurance companies of Toulouse,” commended “to property-owners of all classes” the institution of a vast system of insurance. It is impossible to separate the development of insurance and risk from that of the history of the plagues. According to François Ewald, by the late nineteenth century, the “idea of (land) insurance adopted and rationalized the quasi-natural practices of solidarity and fraternity that had been customarily used to defend against the threat of plagues.”²⁸ But whereas Ewald insists that the introduction of workplace accident laws in 1898 marks the shift to a logic of social insurance (that universalizes risk and understands insurance as obligation) beyond the theological understanding of acts of God that characterized maritime insurance, the suggestion here is that insurance expanded on a theological conception of time and labor that can be traced back to the Scholastics and was elaborated by Locke in a colonial register.²⁹ If insurance—as with usury—was condemned by the Scholastics as the “theft of time” that belonged to God,³⁰ the pertinent question for both nascent capitalists and theologians alike was, as Andrew Cowell has suggested, the ways in which a “generalized credit” enabled the “postponing [of] debts of time, life, penance, retribution, and money indefinitely.”³¹

Lockean contractualism reached across and defined a distinction between temporal and divine power. Locke was far from suggesting a demarcation between life and contract, or life and property. To invoke Locke on these occasions is not to imply a delineation between life and capitalism (or life and work) but, instead, to posit an infinite contractualism whose premise is nothing less than an externalized capitalism. For Locke, the questions of property and contract were alternately thought in the unbreakable terms of covenant or, by way of extension, according to a natural theory of rights, which is to say, bequeathed by God. The limitations and exceptions Locke placed on the alienation of property—including that of property in one’s self—presupposed and installed a correlative realm of divine power (or covenant); in the case of slave owners or the wage contract of the “free man,” authority and right were figured as a secular version of divine power and labor as a variety of divine creation. If Locke placed a temporal limitation on the work contract, this was construed as the corollary of the limit on temporal power, existing within and underneath the absolute, transcendental power of God.³²

When Locke insisted in *The Second Treatise of Government* that the distinction between the freely entered-into wage contract and slavery resides in the temporal limitation of the former—"a freeman makes himself a servant to another, by selling him[self], for a certain time"—he seems to echo the issue of temporal restrictions on the working day, but it is, as highlighted in *An Essay Concerning Human Understanding*, a question posed in relation to a lifelong "Pilgrimage with Industry and Care," at the cessation of which accounts and labor will come to an end.³³ This is perhaps why, as Marx suggested:

At first the rights of property seemed to us based on a man's own labor. At least, some such assumption was necessary since only commodity-owners with equal rights confronted each other, and the sole means by which a man could become possessed of the commodities of others, was by alienating his own commodities; and these could be replaced by labor alone. Now, however, property turns out to be the right, on the part of the capitalist, to appropriate the unpaid labor of others or its product, and to be the impossibility, on the part of the laborer, of appropriating his own product. The separation of property from labor has become the necessary consequence of that law that apparently originated in their identity.³⁴

It would take some time for Marx to abandon the theory of alienation—derived from Locke's conception of labor as a form of property in one's self, a priori, and eternally commodified—before he would understand the seemingly paradoxical assertion of the nonabsolute transference of right alongside an infinitely expanding contractualism. Liberalism (no more and no less than neoliberalism) understood the limit on temporal power as a positive injunction to intervene in order to ensure the performance of contract.

Contrary to claims that insurance contravenes the Lockean distinction between property in one's self and persons as property, Locke always understood labor (and property and right) in the transcendental terms of a contractual relationship with God. He had argued nothing less than that probability is a version of penance. Writing in a tone of extreme humility, Locke wrote that God had afforded man with the twilight of probability, so to "check our Over-confidence and Presumption" and by "every day's experience be made sensible of our Short-sightedness and Liableness to Error." According to Locke, this life and faculty of probabilistic reasoning was God's

constant Admonition to us, to spend the Days of this our Pilgrimage with Industry and Care, in the Search and following of that way, which might lead

us to a state of greater Perfection: it being highly rational to think, even were Revelation silent in the Case, that as men employ those Talents God has given them here, they shall accordingly receive their Rewards at the Close of the Day, when their Sun shall set, and Night shall put an End to their labors.³⁵

Locke, it might be noted, is generally regarded as one of the translators of the *Logique de Port-Royal*, a mid-seventeenth-century textbook on logic likely written, in part, by Blaise Pascal. Indeed, Locke's *Essay* reiterates Pascal's wager as a decision between "the short pleasures of a vicious life" and the "exquisite and endless happiness" that is the consequence of "a good life here."³⁶ Locke construed death as the settling of accounts, the release from a lifelong obligation to labor and penance, original sin recast as debt. Lockean penance is, in short, a Protestant, probabilistic version of purgatory; which is to say, it is insurance.

Well before the Reformation, the Catholic Church began to emphasize purgatory in the thirteenth century as that place, between heaven and hell (distinct from limbo) in which the dead can repay their debt of sins before being welcomed into heaven. Jacques Le Goff has persuasively argued that purgatory was invented at this time as a caveat for an emerging mercantile class against the sin of usury. Furthermore, one could pay off one's sins as well as those of family members by performing acts of ascetic submission while still alive or by making restitution in one's will.³⁷ This regime of reflexive self-mastery, situated in the calculation of an originary and heritable debt, became for Locke the temporality of lifelong penance that reiterated Pascal's wager and mediated between the earlier Thomist distinction between a temporal sphere characterized by randomness and a divine one of everlasting harmony (or interminable hell, depending on the accounting). Just as Aquinas had admitted the contingent in order to posit the existence of absolute determinism, the insurance contract is a variety of inoculation. Debated by the Scholastics and canonists as existing somewhere between the *mutuum* (loan) and *mutare* (mutation), it is the ostensible guarantee against contingency that materializes value in the possible event of the insured object's disappearance.

The logic of this is close to what Jacques Derrida, in a discussion on Eurocentric globalization with Elisabeth Roudinesco, calls the "double movement" of "auto-immunization"—but not precisely.³⁸ What Derrida describes as the interplay of protection and destruction in autoimmunization is, perhaps, something akin to the dual senses of (economic) risk as gain and loss. But vaccination more specifically, in the administration of small doses of a

disease to provoke the body's generation of antibodies, runs counter to the boundary protection of epidemiology (as Derrida contends) but also relies on a history in which the border between insurable and uninsurable risk, prudentialism and gambling, self-possession and people as property, is constantly blurred and reconstituted as its very conditions of possibility. While probabilistic science developed in debates around the risks and benefits of smallpox vaccination in the middle of the eighteenth century, as it strove to distinguish itself as the mathematization of prudence contrary to its previous association with gambling,³⁹ the distinction between prudence and gambling as, respectively, the protection against loss and the creation of risk, is never firmly established but mutually constitutive.

It is always a question of the allocation of risk and the distribution of uncertainty. Lockean preparedness recurs as the doctrine of preemption that brings forth (uninsurable) risk, just as purgatorial time—even as it promises a conditional salvation—presupposes a corollary space and possibility of eternal damnation. Indeed, the reliance of insurance on the creation of contingency⁴⁰ has shaped the convergence of military doctrine and biology in the warfare that reconstitutes boundaries by traversing them. As Lockean preparedness acquired a militarized form in the wake of September 11, 2001, then-president George W. Bush announced the enactment of the smallpox vaccination plan (SVP) “to contribute toward a general system of bioterrorism preparedness,” even as the threat of smallpox weaponization or outbreak had been regarded as unlikely, as Dale A. Rose notes, amounting to “a shift towards vague or uncertain future threats.”⁴¹ As Rose continues, the SVP floundered on questions of compensation for vaccine-induced injury, liability, and adverse events—which included the reporting of one death and a number of incidences of myocarditis and pericarditis—by relegating them to a “highly variable set of Worker's Compensation programs.”⁴²

The ships of the transatlantic slave trade were not only the scene of fatal calculations about the value of dead slaves (as Baucom has argued) and the way in which smallpox spread from Africa to Europe and beyond. They were also the means by which vaccines were tested and conveyed. In the wake of the South Sea Bubble and an outbreak of smallpox, the passage of the Bubble Act in 1720 and the Quarantine Act in 1721 by the British Parliament did not put an end to the South Sea Company, the slave trade, or the spread of smallpox. As Larry Stewart's history of smallpox vaccination shows—and given the dangers of inoculation at the time⁴³—the knowledge of vaccination practiced in Africa and the mass vaccinations aboard

slave ships became a matter of some debate among European and colonial medical practitioners:

Despite the apparent benefits of inoculation, opposition intensified throughout the 1720s as much on moral grounds as on medical uncertainty. The anonymous author of a pamphlet demanding parliamentary regulation of the practice was not alone in regarding inoculation “as a Thing utterly unlawful in it self” and as “a thing forbidden in Scripture.” . . . The extent of inoculation amongst the slaves became a key element in the debate over the practice. One of the more rational of the antagonists, Dr William Douglass of Boston, recognized the African source of the technique but also its direct relation to the traffic in slaves, “So that the first Intention of Inoculation was not the Saving of Life, but as a more ready way of procuring the Small-Pox, than by accidental Infection; that they might know what Beauties were proof and would answer the charge of being carried to Market.”⁴⁴

These early instances of the clinical trial took place in the transatlantic slave trade, just as present-day clinical trials are premised on the active creation of pools of uninsured and informalized labor.⁴⁵ Precarious work is, among other things, characterized by the absence of health insurance in a system that, in the United States and elsewhere, made it contractual and tethered it to the family wage. With the collapse of universal health care in places like China and parts of India, clinical trials have—as for an increasing number of people in the United States—become a way of accessing both income and medical care.⁴⁶ I would suggest that the ostensible prudentialism of insurance, then, as with vaccination, creates dangers for some. In current terms, it assumes the creation of classes of persons who are increasingly compelled to assume contractually (by way of the return of the doctrine of *volenti non fit injuria* of informed consent) the burden of the uninsurable risk. The actuarial requires uninsurable risk as its precondition.

Neocontractualism, Infinite Capitalism

In *L'état providence*, François Ewald echoes the fundamental premise of Pascal's wager. But if for Pascal this inclined the rational subject toward masochistic submission to an absolute and inscrutable God, for Ewald it was a matter of accepting an eternalized capitalism in the shape of an infinite contractualism. Even as Ewald insisted on the eclipse of natural law, he nevertheless posited the existence of an infinite contractualism that both multiplied and did so necessarily: “We do not have the choice not to play.”⁴⁷ “Risk,”

Ewald declares, “has a tendency to proliferate.” Suggesting that all risk “knows” “is the endless chain of discrete quantities,” he nevertheless also notes that by the end of the nineteenth century, “insurance could no longer be optional, a fruit of the private virtue of foresight. It became mandatory, a moral and social obligation—two types of obligation that would henceforth be seen as one. Insurance could then become a state function sanctioned by law: the punishable offense was now to neglect to insure oneself.”⁴⁸ To the extent that Ewald does insist on a distinction between the logics of responsibility and risk as Michael Behrent suggests,⁴⁹ it is not only nuanced by his own remarks, but also by the trajectory of policy, particularly in the areas of welfare reform, such as the introduction of the Personal Responsibility and Work Opportunity Reconciliation Act in 1996. While Ewald’s texts point toward an increasing emphasis on contractualism, they imagine a “disappearance of the State and its constitutional oppressiveness” that, in actuality, is little in evidence. Indeed, the neocontractual turn in welfare—with its emphasis on “mutual obligation,” familial norms, workhouse politics, and sexual moralism⁵⁰—presupposes a (neo-)liberal definition of state intervention. Which is to say, the argument that the state should not intervene except to enforce contracts does not imply a diminution of the state’s role or oppressive power, particularly when social relationships and laws increasingly take the form of the contractual.

Neocontractualism emerged in the wake of the late twentieth-century social movements of feminism, civil rights, and migration that both unsettled the conditions of capitalist exploitation and became increasingly constrained to calls for rights. In the shape of state policy, neocontractualism accentuates the often-ignored aspects of Lockean contractualism: the transcendental order of providence and that of the natural *oikos*. These guarantors of capitalist futurity, playing out as eternal injunction and naturalizing legitimation, are constantly oriented toward the reconstitution and expansion of a surplus labor that is always, by definition and in practice, below-the-line labor—which is to say, that which is not defined or recognized as labor and exceeding any measure of commensurability, but is, instead, legitimated as the naturalized and divinely ordained properties of race, gender, class, nation, and sex. Locke’s three temporal orders (divine providence, prudential self-management, and the naturalized, heritable properties of servitude) are not only recapitulated as assumption in ostensibly critical understandings of biopolitics and governmentality, but they have also—in the wake of a contested politics of the household that precipitated neoliberalism—been reconstituted as the neocontractualism of infinite and unbreakable contracts,

interminable preparedness, and the displacement of capitalist incertitude onto the uninsurable risks of contingent labor. The limits to capitalism are not to be found in the contractual, whether understood in its voluntarist forms or its mutually constituted dimensions of divine and natural orders. On the contrary, the contractual is capitalism's proliferating limit.

Notes

- 1 See Angela Mitropoulos, "Precari-Us?," *Mute* 1, no. 29 (2006): 88–92, www.metamute.org/editorial/articles/precari-us.
- 2 On student debt, see Angela Mitropoulos, "Trading Futures, Consolidating Student Debt," *Mute* 3, no. 2 (2011), www.metamute.org/en/articles/trading_futures_consolidating_student_debt.
- 3 David Brion Davis, *The Problem of Slavery in the Age of Revolution, 1770–1823* (Ithaca, NY: Cornell University Press, 1975), 350–82, 350, 382.
- 4 For an earlier formulation of the ways in which contract braces against contingency, see Angela Mitropoulos, "Under the Beach, the Barbed Wire," *Mute* 2, no. 2 (2006): 34–33.
- 5 Maine's outline of a progression from status to contract is far more ambivalent than is usually admitted. Henry Sumner Maine, *Ancient Law: Its Connection with the Early History of Society, and Its Relation to Modern Ideas* (New York: Harold Holt, 1864).
- 6 Adam Smith, *The Theory of Moral Sentiments* (Cambridge: Cambridge University Press, 2002).
- 7 John Maynard Keynes, *The General Theory of Employment, Interest and Money* (Melbourne: Macmillan, 1967), 214, 146.
- 8 Nancy Folbre, *Greed, Lust, and Gender: A History of Economic Ideas* (Oxford: Oxford University Press, 2009), 19, 25.
- 9 For a lengthier discussion of race, care, and affective labor, see Angela Mitropoulos, "The Materialisation of Race in Multiculture," *darkmatter* 2 (2008), www.darkmatter101.org/site/2008/02/23/the-materialisation-of-race-in-multiculture; and Angela Mitropoulos, "Uncanny Robots and Affective Labor in the *Oikonomia*," *Cultural Studies Review* 18, no. 1 (2012): 153–73.
- 10 Angela Mitropoulos, *Contract and Contagion: From Biopolitics to Oikonomia* (forthcoming).
- 11 Karl Marx, *Capital*, vol. 1 (Moscow: Progress Press, 1978), 245.
- 12 On genealogy as the condition of capitalist futurity, see Angela Mitropoulos, "Legal, Tender: The Genealogical Economy of Pride, Debt, and Origin," *Social Text* 29, no. 3 (2011): 73–91.
- 13 See Mitropoulos, *Contract and Contagion*.
- 14 Silvia Federici notes that in the wake of the Black Death and the struggles around the increased costs of labor and changes in feudal laws, the recurrent theme in the letters of John Ball, "Now is the time," "well illustrates the spirit of the European proletariat at the close of the 14th century, a time when, in Florence, the wheel of fortune was beginning to appear on the walls of taverns and work-shops, to symbolize the imminent change of lot." Silvia Federici, *Caliban and the Witch: Women, the Body, and Primitive Accumulation* (New York: Autonomedia, 2003), 45.

- 15 In *Contract and Contagion*, I also suggest that the demarcation of temporal and divine orders is the premise—construed in slightly different ways—of Frank H. Knight’s and John Maynard Keynes’s understanding of the distinction between calculable risk and unpredictable uncertainty. Both developed their arguments during World War I, and despite their divergent approaches toward the regulatory role of the state, both considered the distinction between risk and uncertainty in epistemological terms as a limit on human knowledge. See Frank H. Knight, *Risk, Uncertainty, and Profit* (Mineola, NY: Dover, 2006); and John Maynard Keynes, *A Treatise on Probability* (London: Macmillan, 1921).
- 16 Thomas Aquinas, *Summa Theologica*, vol. 1 (Westminster, MD: Christian Classics, 1981), 231.
- 17 Leah Rogne et al., eds., *Social Insurance and Social Justice: Social Security, Medicare, and the Campaign against Entitlements* (New York: Springer, 2009), 4; emphasis added.
- 18 Eveline M. Burns, “Social Insurance in Evolution,” *American Economic Review* 34, no. 1 (1944): 199–211, 199.
- 19 John Hobson cited in Pat O’Malley, “Imagining Insurance Risk, Thrift, and Industrial Life Insurance in Britain,” *Connecticut Insurance Law Journal* 5 (1999): 692–99, n29.
- 20 Geoffrey Wilson Clark, *Betting on Lives: The Culture of Life Insurance in England, 1695–1775* (Manchester: Manchester University Press, 1999); and Viviana A. Rotman Zelizer, *Morals and Markets: The Development of Life Insurance in the United States* (New Brunswick, NJ: Transaction Books, 1983).
- 21 Zelizer, *Morals and Markets*, 82.
- 22 Clark, *Betting on Lives*, 62–63.
- 23 On the Chevalier d’Eon, see Clark, *Betting on Lives*, 8.
- 24 The merchants filed their insurance claim, the insurers refused to pay, the merchants appealed, and the court ruled against the appeal on the grounds that the cargo was poorly managed; no murder charges were ever brought. See Ian Baucom, *Specters of the Atlantic: Finance Capital, Slavery, and the Philosophy of History* (Durham, NC: Duke University Press, 2005), 95.
- 25 John Locke, *The Second Treatise of Government; and, a Letter Concerning Toleration* (New York: Dover, 2002).
- 26 Bill Maurer, “Forget Locke? From Proprietor to Risk-Bearer in New Logics of Finance,” *Public Culture* 11, no. 2 (1999): 365–85, 366.
- 27 Ulrich Beck, *Risk Society: Towards a New Modernity* (London: Sage, 1992), 19.
- 28 Barrau cited in François Ewald, “Two Infinities of Risk,” in *The Politics of Everyday Fear*, ed. Brian Massumi and Jean François Lyotard (Minneapolis: University of Minnesota Press, 1993), 226.
- 29 The dynamic of limit and enclosure is a necessary condition of capitalist expansion. In the case of the frontier (figurative or otherwise), the danger of infinite variation is obviated by the expansion of the same pattern of (re-)production irrespective of scale—just as, it might be noted, the more recent formulations of chaos theory seek to derive order from disorder, or, similar to Benoît B. Mandelbrot’s fractals, are self-affine and scalable. Benoît B. Mandelbrot, *Fractals: Form, Chance, and Dimension* (San Francisco: W. H. Freeman, 1977).
- 30 D. Vance Smith, *Arts of Possession: The Middle English Household Imaginary* (Minneapolis: University of Minnesota Press, 2003), 128.

- 31 Andrew Cowell, *At Play in the Tavern: Signs, Coins, and Bodies in the Middle Ages* (Ann Arbor: University of Michigan Press, 1999), 142–43.
- 32 Voluntarist contractualism was positioned between divine covenant and personalized obligation, at a time when the relationship between worker and employer was largely face-to-face, domestic, and that of master and servant. Selling one's labor granted the master "a temporary power over" the servant, who was placed "into the family of his master, and under ordinary discipline thereof." As Amy Dru Stanley argues, Locke's "depiction of that power as a form of family discipline" took place in a context where, "in the early formulations of liberalism," "the wage contract appeared as a hybrid: a composite of commercial and household conventions." Stanley goes on to note that, at the time, marriage and the wage contract were both regarded as variants of "paternal domination" by "the master of the household; as Locke stated, the husband's authority mirrored that of 'a master over his servant.'" Amy Dru Stanley, *From Bondage to Contract: Wage Labor, Marriage, and the Market in the Age of Slave Emancipation* (Cambridge: Cambridge University Press, 1998), 9–10.
- 33 John Locke, *An Essay Concerning Human Understanding*, vol. 2 (Dublin: H. Saunders, W. Sleater, D. Chamberlaine, and J. Potts, 1777), 272.
- 34 Marx, *Capital*, 547.
- 35 Locke, *Essay*, 272.
- 36 John Locke, *An Essay Concerning Human Understanding*, vol. 1 (London: T. Tegg and Son, 1836), 182.
- 37 Jacques Le Goff, *The Birth of Purgatory* (London: Scholar, 1984).
- 38 Jacques Derrida and Elisabeth Roudinesco, *For What Tomorrow: A Dialogue*, trans. Jeff Fort (Stanford, CA: Stanford University Press, 2004), 178.
- 39 Lorraine Daston, *Classical Probability in the Enlightenment* (Princeton, NJ: Princeton University Press, 1988), 83.
- 40 For a discussion of the ways in which insurance valorizes and creates uncertainty, see Neil Smith, "Disastrous Accumulation," *South Atlantic Quarterly* 106, no. 4 (2007): 769–87. Smith opens his essay with a consideration of the rise of "intelligent design" doctrines, arguing that while the campaigns to install such a position within the curriculum faded, its logic was nevertheless echoed in responses to Hurricane Katrina. For Smith, this appeal to supernatural causes is a way to deflect attention from man-made catastrophes. I agree, but would add that the interlocking logics of the actuarial, the providential, and the *oikonomic* extend well beyond the Christian Right's adherence to "intelligent design" and require a reconsideration of the very understanding of ecology as Ernst Haeckel derived it from a neo-Aristotelian understanding of *oikonomia*. For an earlier text on the prudential, the ecological, and the *oikonomic* in the wake of Hurricane Katrina and the subprime housing crisis, see Angela Mitropoulos, "Oikopolitics and Storms," *Global South* 3, no. 1 (2009): 66–82.
- 41 Dale A. Rose, "How Did the Smallpox Vaccination Program Come About? Tracing the Emergence of Recent Smallpox Vaccination Thinking," Anthropology of the Contemporary Research Collaboratory working paper, no. 4 (2006): 1–2. See also Melinda Cooper, "Pre-Emptying Emergence," *Theory, Culture, and Society* 23, no. 4 (2006): 113–35.
- 42 Rose, "How Did the Smallpox Vaccination Program Come About?," 5–7. By the end of 2003, the SVP reached a standstill as medical practitioners and states—under pressure by unions and doctors—had begun wagering that the risk of a smallpox attack was smaller than the problem of liability for vaccine-induced injury and death.

- 43 According to Daston, "The choice facing the average Parisian circa 1750 was between a one in seven chance of dying from smallpox spread over the long term, and a one in two hundred chance of dying of the inoculation over the short term (one or two months)." Daston, *Classical Probability in the Enlightenment*, 83.
- 44 Larry Stewart, "The Edge of Utility: Slaves and Smallpox in the Early Eighteenth Century," *Medical History* 29 (1985): 54–70, 67–68.
- 45 See Melinda Cooper, "Experimental Labor: Offshoring Clinical Trials to China," *East Asian Science, Technology and Society: An International Journal* 2, no. 1 (2008): 73–92.
- 46 Ibid. See also Melinda Cooper and Catherine Waldby, *Clinical Labor: Human Research Subjects and Tissue Donors in the Global Bioeconomy* (forthcoming).
- 47 François Ewald, *L'état providence* (Paris: B. Grasset, 1987), 11.
- 48 François Ewald, "Two Infinities of Risk," in *The Politics of Everyday Fear*, 221–28.
- 49 Michael C. Behrent, "Accidents Happen: François Ewald, the 'Antirevolutionary' Foucault, and the Intellectual Politics of the French Welfare State," *Journal of Modern History* 82, no. 3 (2010): 585–624.
- 50 Notable in the work and influence of Lawrence M. Mead's *Beyond Entitlement: The Social Obligations of Citizenship* (New York: Free Press, 1986).