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HumAnimal

RACE, LAW, LANGUAGE

Kalpana Rahita Seshadri

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INTRODUCTION

The Trace of the Political

THIS PROJECT TAKES THE RISK TO DISCERN THE PREVALENCE OF what can be termed nonsovereign power, a power without right, as that which empties the legitimized power of disciplines and law (moral and juridical). The risk lies in thinking of the practice and prevalence of such neutralizing power as the temporal spacing that is constitutive of all named identities—what Derrida indicates as “trace” or the play of *différance*—thereby disclosing it as the site of the biopolitical. Despite the differing historicity of the biopolitical perspective from the deconstructive, and the difficulty of bringing the interrogation of presence (or oneness) to bear on the analytics of power conceived as fractal, the shape of this inquiry is wholly conditioned by Derrida’s long-standing and relentless engagement with the self-presence and purity of the concepts informing what is said to be proper to the human being as distinguished from the so-called animal. By biopolitical, I refer to a modality of power, which Foucault theorizes as characteristic of “state racism” or a discourse of “care” (the state’s care of its population), which is exercised as a decision over the life that is and is not worth saving or living.

My understanding of power in relation to race draws on Foucault’s genealogy of modern power as characterized by “what might be called power’s hold over life . . . the acquisition of power over man insofar as man is a living being” (Foucault, *Society Must Be Defended*, 239–40). Further in this same lecture of 17 March 1976, he says,

The specificity of modern racism, or what give it its specificity, is not bound up with mentalities, ideologies, or the lies of power. It is bound up with the technique of power, with the technology of power . . . We are dealing with the workings of a State that is obliged to use race, the elimination of races and the purification of the race, to exercise its sovereign power. The juxtaposition of—or the way biopower functions through—the old sovereign power of life and death implies the workings, the introduction and activation, of racism. And it is, I think, here that we find the actual roots of racism. (258)

As the originally canceled origin, the trace, which is the spatializing of time and the temporalization of space, inhabits and haunts every living entity, thereby rendering its self-presence as a dissimulation of what in fact produces it—namely, a temporal composite of a succession of marks in space on a page. The identity of the living subject, in other words, is always written, inscribed by and in a space/time. For Derrida, the trace is not only “prior” but also the condition of all conditions of possibility, be they sensible or transcendental intuitions. It is the mark of the “living in life.” What, then, does it mean to say that this self-canceling and instituted origin, which is nothing if not the necessity of temporal movement, is also the site of biopolitics? Why situate the contemporary struggle of biopolitics at the level of a critique of traditional ontology? How can it be said that the stakes of biopolitics (which are the effects of a historically marked discourse of power/knowledge) are best disclosed through the logic of the trace?

The two perspectives (biopolitics and deconstruction) achieve a synthesis in Agamben’s political theory. For Agamben, who develops the concept of biopolitics, the decision on life (a process of animalization) derives from a political ontology that founds itself on an ancient structure of sovereignty. Agamben’s analysis of the paradoxical structure of sovereignty as a form of power that is essentially sustained by and harbors anomie—as evidenced by its potentiality to suspend the law and create lawlessness (state of exception)—suggests that anomie is properly the trace of the *nomos*. Here, in this space where the trace of the law as anomie is both its suspension and its violent force, Agamben locates a genuine and immanent political possibility—namely, the neutralization of the force of law, an event that he variously delineates as a species of worklessness or nonsovereign power. There is a decisive value to interpreting Agamben’s analysis of sovereign power in terms of the deconstructive trace: it enables a narrowed inquiry into the relation between law and language. The suspension of the law (anomie, trace, state of exception) can now be parsed as the suspension of speech (right, subjectivity, humanity)—a site where the silence opens the political. To reintroduce this analysis into the discursive terrain of contemporary race politics has the effect of reradicalizing the function of the trace with regard to human/animal propriety. Thus, it appears

that any investigation of the logic of race for a revised political ontology requires some contiguity or an impure synthesis of biopolitics and deconstruction.

Derrida elaborates the logic of the trace in varied disciplinary contexts and thereby proliferates a vast lexicon (*différance*, writing, pharmakon, gift, hospitality, democracy, justice, etc.) that refers to singular events that disclose nonpresence. This project takes its point of departure from the ontological and political context of what Derrida terms *la bête*, which can be understood as the trace that renders undecidable the attributes of speech and life in the polis as proper to man. In a parallel yet displacing move, Agamben’s apprehension of sovereignty’s self-division (between constituting and constituted power) as indicative of a secret anomie within law and right locates power (over life) not in self-presence but in the operation of *différance*. In other words, keeping in mind the necessary coimplication of law and language, the problem of sovereign power must be thought as the potentiality of spacing to divide and separate (and manage) life: the state of exception as the *trace* of the law. To follow the workings of power as the appropriation of temporal spacing is also to translate the trace into the terms of potentiality. By rigorously privileging the thought of potentiality in its survival beyond its actualization, Agamben thereby gradually brings into view a power without right that does not so much differ and defer the power of decision and division as it altogether empties it of all significance. The consequence of this displacement is not minimal. If the operation of *différance* is the potentiality that is always held in reserve—the power that invariably spaces and temporalizes—and remains unexhausted by the sovereign decision, then what is thrown open to question by this displacement of the trace is the necessity of the powerful concomitance between language and law. In other words, if violence as anomie or exception is the trace of the structure of sovereignty and its deployment of the law, and if this structure can be neutralized, then language is liberated from a necessary implication in power. What is language that is not implicated in law, sovereignty, and its capacity for violence?

The pretheoretical motivation of this inquiry was to think through what it might mean to outfox the norms by which life is

governed and managed in the contemporary global context. The juxtaposition of deconstruction and biopolitics delivered this pursuit to the aporia of a logic where not only does sovereignty dissimulate presence (and vice versa) but nonpresence, or the trace, is disclosed as nothing but differentiated powers. *HumAnimal* engages the logic of the displacement of the trace into the thought of potentiality by focusing on the spacing between law and language through the figure of silence. More specifically, the question is whether the figure of the animalized brute (neither properly human nor animal) can exercise a power of silence. Throughout, the attempt is not only to apprehend silence as the emptying power within language—in other words, a political potential that dislocates the overlay of language by the law—but more important, to disclose the spatial temporality of such power as quintessentially ethical.

Part I attempts to detail the process of arriving at this argument by first situating the questions within the context of the philosophy of race and studies of animality. Listen: It may all be very well to exhibit the insubstantiality of racial categories as ontological essences, but it is another to address the practice of race as an “ism”—that is, as the violent extirpation of human or animal identity (or propriety) that was never fully possessed to begin with. Furthermore, the political task of conceptualizing resistance on the terrain of impropriety means that it must be discerned as immanent to power. Thus, after delineating the broad problematic and the reasoning that led to its construction, and specifying the use of certain recurring terms, “First Words on Silence” turns to the question of silence as a manifestation of this impropriety and aims to understand its role as immanent to language. As a theme and a device, literature has, of course, claimed ownership of the signifier “silence,” and it has done more to dislodge its adhesion to any given signified by rendering it the element of the literary within literature. However, given the genealogy of literature and its unspeakable secret, as discussed by Derrida, and the “work” that a certain unspeakable silence does in a novel such as J. M. Coetzee’s *Foe*, I attempt, in the next chapter, to distinguish the appearance of a certain neutralizing power held by the slave from what binds the discipline of literature to a discourse of contract. But in what sense does such silence sever language from the law (be it of literature or

right)? And what are the political implications and theoretical consequences of making such distinctions? The inevitability of these questions demands focused attention to the approaches that Derrida and Agamben assume toward the law and its relation to language. This chapter, entitled “Law, ‘Life/Living,’ Language,” however, privileges the question of power as biopower and the commitment to its neutralization through nonsovereign silence. The next chapter in turn privileges the relation between Derrida and Agamben in terms of the deconstruction of presence. What, I wondered, do Agamben’s writings say about the metaphysics of presence and logocentrism? Would it be fair to say that Agamben engages in a serious parody of deconstruction?

These inconclusive elucidations (or obfuscations) of Derrida and Agamben on law and language, silence and power, raised for me other related questions pertaining to singularity and silence and seemed to partition the project along the lines of the political in the first part and a reflection on the ethical in the second.

“The Wild Child: Politics and Ethics of the Name” pursues Derrida’s ethical injunction to a certain silence in the context of hospitality in relation to an extreme figure outside the law—the so-called feral child that haunts the nature/culture dichotomy. To refrain from questioning, and to encounter the ethical decision in and through a discernment of the inherent violence of naming, what do these agonistic experiences disclose about the proper name and its relation to the law and, more pointedly the “good name” of a child that has no name? This inquiry into the wild child is carried over into the next chapter to the context of scientific naturalism as a discipline of naming.

In the last chapter, “*HumAnimal Acts: Potentiality or Movement as Rest*,” it is the mute physical body of the acrobat that appears to turn cartwheels around the machine of the law to confound its workings. This body, it seems, requires that it be situated at the threshold between identities, concepts, even philosophical traditions, and best shows itself in relation to Agamben’s appropriation of Aristotle’s concept of potentiality. This joyful body of the rigorous acrobat redefines space and time by disclosing the stillness that resides in action. To contemplate this body, I suggest, is to perceive that it can embody the

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very power of language beyond the law's purview. As a modality of what Foucault might term the "care of the self," which refers to practices that are necessarily anomic and exceptional, agile movement, if practiced thoughtfully, recalls living beings—humans—to their essential capacity for happiness.

I. Language and Silence

limit that Derrida suggests (in the quotation at the beginning of this chapter) should be proliferated and multiplied. But is it possible that the silence of Friday comes from this outer space of the limit where ethics is not only the ethics of responsibility but also the thought of happiness that we cannot help but imagine beyond the covenant?

THREE

Law, "Life/Living," Language

The scene changes to an empty room. Rimbaud has gone to Abyssinia to make his fortune in the slave trade. Wittgenstein, after a period as a village schoolteacher, has chosen menial work as a hospital orderly. Duchamp has turned to chess. Accompanying these exemplary renunciations of vocation, each man has declared that he regards his previous achievement in poetry, philosophy, or art as trifling, of no importance. But the choice of permanent silence doesn't negate their work. On the contrary, it imparts retroactively an added power and authority to what was broken off—disavowal of the work becoming a new source of its validity, a certificate of unchallengeable seriousness.

—Susan Sontag, "The Aesthetics of Silence,"

A Susan Sontag Reader

TO PROBE THE SECRET OF LITERARY SILENCE IS TO DISCOVER THE paradox of a certain iconoclastic fidelity to tradition and prestige. Modernism's commitment to the avant-garde, insofar as it thrives upon and nurtures literary silence, is revealed as more deeply implicated in the structure and demands of sovereignty than any other genre. Clearly, its relevance to human silence as the potential to neutralize the force of law and its decision to suspend itself is minimal—perhaps even a distraction. As Susan Sontag says in reference to the great modernists, "to be a victim of the craving for silence is to be, in still a further sense, superior to everyone else. It suggests that the artist has had the wit to ask more questions than other people and that he possesses stronger nerves and higher standards of excellence" (Sontag, "Aesthetics of Silence," 184). Furthermore, Sontag writes, "silence exists as a *decision*—in the exemplary suicide of the artist (Kleist, Lautréamont), who thereby testifies that he has gone too far" (Sontag, "Aesthetics of Silence," 185).

Following Derrida's *Literature in Secret*, I have argued that silence as the secret of literature has itself a secret, and that is the possibility of imagining an ethics of the dissimilar. And such an ethics, which begins from the unrecognizable, would also imply an encounter with a limit that renders redundant or "null and void" any participation in the politics of the covenant and thus the ontotheological heritage of literature. Whether one avows or betrays the covenant founded on the secrecy of the singular encounter (with God) and its auto-hetero-transactions of forgiveness, the silence of literature in this context is approachable only within the matrix of sovereignty. For the covenant is nothing if not a covenant of an indivisible sovereignty that, as Derrida shows, is in fact paradoxically shared by God.

To discern that a certain kind of silence absents itself from this scene of sharing and inheriting, thus rendering the covenant null, raises the question of the law and its so-called limits. As Derrida indicates, the ethical imperative toward justice may exceed or break the law, yet it still remains subject to it, in some relation to it, or to another law. But what about the alterity of this silence—the impossible muteness of the slave's severed tongue—and what effect does it have upon the law? Does it make sense to speak of a political or ethical existence beyond the law that voids the law while at the same time acknowledging that silence has everything to do with language? (It is no doubt banal to recall here that language itself is composed of laws and that there can be no law—natural, juridical, or moral—in its absence.)

The conundrums raised by the silence of humAnimal are numerous, but where the relation to politicotheological sovereignty and law are concerned, two issues can be privileged for inquiry: on one hand, the structure of the interrelation of juridical law and language and, on the other, the conception of the limits of the law, especially the relevance of terms such as being inside and outside the law. In other words, to follow the thought of humAnimal silence as repudiation or voiding of the force of law, it is necessary to (a) grapple with the complex topology of the law as the secret of its force and (b) apprehend the spacing between law and language. While it may appear that the former is diagnostic and the latter tactical, the two issues are not really separable, insofar as placing pressure on the link between law and language is invariably to disclose its topology and the so-called limits of

law, just as to grapple with the structure of the law would be to discern how language and its potential for silence are deployed as force.

However, as soon as these issues and questions are raised, we encounter yet again the specter of the slave's severed tongue.

BETWEEN TONGUES: SECRETS AND SILENCES

There is a folkloric story told by the turn-of-the-century African American writer Charles Chesnutt entitled "The Dumb Witness." According to Werner Sollers in his "Note to the Library of America" edition of Chesnutt's works, the story, probably written around 1900, was not published during Chesnutt's lifetime;¹ it is one of his "Conjure" stories, set in North Carolina, and utilizes a layered framing device.

The tale is set during the period of Reconstruction, and the narrator is a white Northerner, John, who pieces together what he hears told to him in black dialect by Julius, an ex-slave. During a visit to what was once a very prosperous plantation, the narrator witnesses a strange interaction between an old white man seated on a grand oak armchair and a black woman who is his servant but obviously related to him in some way. The old man seems to be questioning the woman in tones alternating between desperation and violence about the whereabouts of some papers. The woman seems unable to speak, and then rails incoherently at the man in a babbling and outlandish jargon. The narrator describes her "speech" thus:

She rose from her seat, and drawing herself up to her full height—she was a tall woman, though bowed somewhat with years—began to speak. I thought at first in some foreign tongue. But after a moment I knew that no language or dialect, at least none of European origin, could consist of such a discordant jargon, such a meaningless cacophony as that which fell from the woman's lips. And as she went on, pouring out a flood of sounds that were not words, and which yet seemed now and then vaguely to suggest words, as clouds suggest the shapes of mountains and trees and strange beasts, the old man seemed to bend like a reed before a storm. (160)

Struck by this extraordinary scene, the narrator subsequently discovers through a local ex-slave, Julius, that the woman, Viney, had

been the old man Malcolm Murchison's slave housekeeper. Murchison managed the plantation and the estates for his wealthy, childless, freewheeling uncle and did so with authoritarian force, knowing full well that he stood to inherit the property at his uncle's death. However, when the avaricious Murchison contracts to marry a rich widow and threatens to evict Viney unless she submits to being displaced by the soon-to-be wife, Viney, resentful of her impending displacement, approaches the would-be mistress secretly and tells her "something." Julius does not know what this "something" is and the text keeps it a secret from us, but it effectively results in the white woman breaking off her engagement with Murchison. Murchison, who discovers Viney's betrayal, punishes her by cutting off her tongue and banishing her from the house to a shack on the grounds.

Meanwhile, Murchison receives a letter from his uncle announcing his own imminent death and affirming that Murchison as heir should retrieve the papers that include the will and other securities and mortgages that he had placed in a safe and secret place. The uncle's letter instructs Murchison to ask Viney, who is "of our blood," as she is the sole person entrusted with the secret. When Murchison approaches Viney lying in agony in her shack, he begins first with an apology. Chesnutt writes that tears roll down her face as she gestures at the pain in her mouth. Murchison, however, makes it clear that he has only one interest and that is to learn the secret hiding place of the papers. Thus ensue decades of mute recalcitrance, regret, and frustration that unfold through the Civil War and the abolition of slavery. And the master and slave remain locked in a mutual dependency. Murchison tries everything in his power to extract the secret from Viney—from threatening to pampering her as well as trying to teach her to read and write. But though she appears to want to communicate, Viney is unable to speak. Steeped in her own loss she is also unable to grasp the rudiments of reading and writing as imparted to her by another slave who has been hired for the purpose. She can only babble incoherently, nodding negatively to Murchison's barrage of questions about the place of hiding—somewhere in the house, the barn, the fields, and so on. She cannot lead him to the place, either; she seems to require words. Murchison, meanwhile, loses portions of his estate to other

claimants and gradually loses his grip over the finances as well as his own mind.

When the narrator sees them, they are two old and demented combatants locked together in a decades-long lethal battle over a secret unable to be revealed. The story ends a year or so later when the narrator visits the plantation again to discover that Murchison has died and the property is now in the hands of Murchison's nephew. The door is opened to the narrator by Viney. When the narrator asks for the master of the house, Viney replies in words that are not inarticulate that he is within. The astonished narrator discovers through Julius that upon Murchison's death, Viney resumed speaking and had immediately revealed the secret hiding place to the nephew. The papers were under the massive oak armchair, grand as a throne, which old Murchison had sat upon all his life, even as he ruled the estate with violence and authority.

The interest of this folkloric tale lies not in the faithful recording of black dialect, the motivations of the characters, the plot device of power and vengeance, or the generic trick ending of the tale, but in the way the articulation of language and law is enforced as silence as much as it is menaced by silence. The tale provides an imaginary forum to which I shall return periodically for thinking through the spacing between language and law and the limits of the latter. The story also raises related questions as to what it means to be a subject "before the law" and how language and law are articulated by power as power over life. Undoubtedly, slavery is paradigmatic of a state where the law simply does not apply to certain lives by declaring them to be "slaves." A slave, by definition, then, is a human person stripped of his/her political existence, thereby reduced to a state of nature, which is to be exposed to an arbitrary and *de facto* law.² Therefore, Murchison may cut off Viney's tongue without being culpable in any way, and Viney has no recourse to a law that does not recognize her as a subject and treats her as property. As the narrator says, "there was no one to say him nay. The law made her his. It was a lonely house, and no angel of mercy stayed his hand" (Chesnutt, "The Dumb Witness," 165). While slaves in general were denied the benefits of reading and writing, thereby making it impossible for them to enter into contracts, Viney's punishment intends to go even further, to deny her language itself and to

deprive her of speaking. It intends to condemn her to a living death, where she is effectively shut up inside herself, unable to communicate to another. The singularity of her intended punishment targets her in her illiteracy where her humanity is at its most vulnerable. To underline this potential of the law to target the singular spot of vulnerable humanity, for animalization, is also to discover the continuity in terms of structural violence among institutions that have vastly differing histories and economies, such as Southern slavery, the Nazi concentration camp, the Middle East crisis, and the contemporary war on terror. Thus, in order to understand how the violence of the law is exercised, it is necessary to turn to the secret of its topological structure.

Law's Secret: The State of Exception

Before we take up the structural relation between language and law in order to broach the question of whether language can be liberated from its function as the foundation of the law, let us revisit the notion of the secret. This time, however, the secret will be something other than a synecdoche for the private, Abrahamic sphere of the singular face-to-face with God. Does law—that is, the juridical apparatus by which human beings are granted the status of legal subject³—have a secret? If it is a secret, it is what is called an "open secret"—one that Agamben suggests has a lengthy genealogy in political thought, as lengthy as the history of sovereignty, pertaining to the "state of exception." The "secret," however, refers not so much to the sovereign's right to declare the exception as to the paradoxical topology of the law, whereby the outside of the law (anomia) is included as an exclusion within it. For Agamben, such a topology of the law enables the acknowledged and extreme right of law not only to *enforce* the rule of law, but also to *suspend* its own application, thereby rendering the inside and the outside of law absolutely undecidable. Agamben refers to Carl Schmitt's *Political Theology* as offering a theory of modern constitutional power that defines the sovereign as the only entity invested with the right to decide on a state of exception. Agamben's interpretation and redeployment of this "secret kernel" as the constitutive structure of the law marks a major intervention in the contemporary critiques of sovereignty.

Agamben's contribution, it may be said, is fundamentally a development of Benjamin's Eighth Thesis in "The Theses in the Philosophy

of History," where Benjamin famously writes, "The tradition of the oppressed teaches us that the 'state of exception' in which we live is the rule. We must arrive at a concept of history that corresponds to this fact. Then we will have the production of a real state of exception as a task." In his essay "The Messiah and the Sovereign: The Problem of Law in Walter Benjamin," published three years before *Homo Sacer*, Agamben dwells not so much on Benjamin's appropriation of Schmitt's theory of the state of exception (the debate between Schmitt and Benjamin is treated in a chapter in *State of Exception*) as on the relevance of his altered reading to a concept of messianic time. Clearly, Agamben's interest in the question of the exception and the law is from the get-go to clear a space for the thought of the law's fulfillment or its paradoxical restoration to any future possibility. His genealogy of the state of exception and the political and ethical implications that attend upon its critique bear a signature that differs markedly from Derrida's. Postponing the necessary discussion here of Agamben's view of messianic time and its difference from Derrida's notion of messianicity without messianism, let us first briefly consider the concept of the exception as Agamben's doctrine of biopolitics.

The concept of the state of exception refers to a political situation that in English and American law is called a state of emergency—a state that can be summarily understood as the suspension of the law (i.e., the Constitution) or the norms of law. Agamben's works, particularly in *State of Exception*, testify to the salience of this concept within the history of political and juridical thought, as it raises central questions in relation to the very nature of political institutions, such as the nature of legality, the nature of the absolute sovereign right by which a given authority declares a state of emergency, the relation of sovereign power to law as constituted, the contingency of norms and civil rights, and so on. Debates around the state of exception, as Agamben demonstrates,⁴ center necessarily on the constitutionality of suspending the Constitution. There are those who see the decision of the sovereign as entirely within the purview of the law—that is, a suspension of the Constitution in order to protect the Constitution—and those who see the suspension of the Constitution as the revolutionary moment when a constituting power comes to the fore. What is important in either case is the paradoxical location of the sovereign. This is paradoxical

in the following sense: insofar as the kernel of sovereignty as the final juridical authority is this absolute right to suspend the Constitution, it is itself outside the law. In other words, as Agamben puts it in the opening pages of *Homo Sacer*, "The paradox of sovereignty consists in the fact the sovereign is, at the same time, outside and inside the juridical order." Further, he writes,

If the sovereign is truly the one to whom the juridical order grants the power of proclaiming a state of exception and, therefore, of suspending the order's own validity, then "the sovereign stands outside the juridical order and, nevertheless, belongs to it, since it is up to him to decide if the constitution is to be suspended *in toto*" (Schmitt, *Politische Theologie*, p.13). The specification that the sovereign is "at the same time outside and inside the juridical order" (emphasis added) is not insignificant: the sovereign, having the legal power to suspend the validity of the law, legally places himself outside the law. This means that the paradox can also be formulated this way: "the law is outside itself," or: "I, the sovereign, who am outside the law, declare that there is nothing outside the law." (Agamben, *Homo Sacer*, 15; 21)

Agamben's stress on the concept of the state of exception is on its peculiar topology, whereby "there is nothing outside the law." In other words, his focus is on how power is exercised by sovereignty through its own suspension as the "sovereign ban." In fact, a characteristic of modern power, he suggests, is not the exercise of its direct punitive capacity, but rather by its capacity to create zones of lawlessness or anomie through a variety of methods, such as suspension of all legal codes (basic civil and human rights, including homicide and habeas corpus); deliberate neglect of people, abandoning and exposing them to arbitrary violence; and denationalizing citizens, as for instance in a concentration camp or internment camps for refugees. In the state of exception, the law is not in effect; it is suspended, but it is in force as *de facto* power. In the exception, the law's force is disclosed through and as silence. As Agamben writes in *The Time That Remains*, "It is important to remember that in the exception, what is excluded from the norm does not simply have no bearing on the law; on the contrary, the law maintains itself in relation to the exception in the form of its own self-suspension. The norm is applied, so to speak, to the

exception in dis-applying itself, in withdrawing itself from it" (Agamben, *The Time That Remains*, 104–5). Everything "outside of the law" is inside the law's purview. Agamben's main point about the law is that, given the anomie at its heart, its capacity to ban or expose the very life of human beings beyond every political, social, and civil identity by utterly depoliticizing and consigning them to an absolutely minimal, animal, or inhuman state of survival or nonsurvival, discloses the secret nucleus of the law. And what is this nucleus? It is the ancient trajectory of sovereignty to not merely capture but also found itself on that aspect of a human being that is ostensibly excluded from or irrelevant to the polis—life, mere life at its most naked, animal, inhuman, biological, private, and impersonal level. (Agamben suggests the Greek term *zōē*, as distinguished from *bios*, as a genealogical term to refer to this basic sense of life.) To sketch a more graphic analogy, we can say that the law has the capacity, the potentiality, to skin or gut human beings—to separate political face (one's aspect) from one's animal or inhuman flesh. Significant to this analysis is the powerful structural analogy that Agamben notes between the sovereign and bare life or "homo sacer" who is "sacred" or set apart from the application of religious and juridical law. And that analogy is precisely the capacity of being included in the law through an exclusion from its application. In both cases, something like a "bare life" (*bête?*) in its difference, in its separation from the qualified life of the political norm (*bios*), secretly founds the force and violence of the law.

Thus, in modernity—as epitomized by the concentration camp—there is a total eclipse of life by the law or, to phrase it differently, there is a total union of life and law. Borrowing from Foucault, Agamben terms this unconditional union biopolitical. According to Agamben, the concentration camp is the paradigm of contemporary politics insofar as the law is increasingly experienced as silent and inert but in force as *de facto* power. The relevance of this contemporary paradigm to the political economy of Southern U.S. slavery as much as to the Nazi concentration camp is unmistakable. However, the case of Southern slavery introduces a complication that I cannot pursue here in the sense that, for the slave, the inaccessibility of the law was usually but not consistently legislated and enforced, whereas apropos the Nazi concentration camp, the law is in force by not signifying. If the camp

is a site of violence as pure abandonment, where criminal impunity reigns, slavery presents a face of violence where the same impunity prevails through legal dictum and abandonment.

In all cases, the precise violence of the law includes (i.e., subjugates) through exclusion, thereby disclosing its greatest force when it maintains silence. The pungency of Chesnutt's tale arises from the narrative's disclosure of the silence of the law as force (the exception) and enforcement (punishment). In other words, the intended punishment reduces the illiterate woman to mere animal voice, and we discern something of the ways in which the structure of language as a necessary relation to silence is utilized by power. For Agamben, the fundamental political task would be to address this lethal juridicization and capture of a "bare" life stripped and isolated from its political form by the law's withdrawal or silence. (If, as Agamben writes in *Death and Language*, human language is the negation of animal voice, then Viney is effectively exiled not only from the law but also from humanness.)

To turn to that aspect of the tale whereby precisely this structure of the law as silence also provides a tactic of emptying power of its force is to raise the "big" question: that of justice or ethics, or the event.

Agamben's political ontology emerges from his analysis of the sovereign decision (capacity for silence) as the pivotal structure of the law and its potentiality to produce bare life. His commitment to what might be termed an "ethical-anarchic"⁵ view of the event, of a community that remains or survives the law—in other words, his approach to thinking the structure of messianic time—differs markedly from that of deconstruction and what Derrida terms "the promise," the *a-venir*, the messianic(ity) without messianism, and so on, without, however, giving up on repetition and nonpresence. And in order to assess the stakes (which are far from being trivial), it will be necessary to grasp on his own terms, without reductive comparisons and false choices, where each thinker situates the ethical question and what that implies about his approach to the structural link or spacing between law and language. Thus, it behooves us to turn, if briefly, to Derrida's diagnosis and approach to the law and the decision.

Justice and Law: The Undecidable

Derrida's approach to the law and sovereignty may be characterized as being more ethicopolitical than biopolitical. One of his most well-known discussions of these topics is his 1989 "Force of Law: The 'Mystical Foundation of Authority.'" Here, Derrida first establishes the "differential character of force" (Derrida, "Force of Law," 929),⁶ where potentially "the greatest force and the greatest weakness strangely enough exchange places" (Derrida, "Force of Law," 929). First of all, the thought of force is also the problem of translation. The term *Gewalt* in the title of Benjamin's "Critique of Violence," he specifies, is not well served when translated merely as violence. "*Gewalt* also signifies, for Germans, legitimate power, authority, public force" (Derrida, "Force of Law," 927). For Derrida, the ambivalence of the term generates the problem of distinguishing legitimate violence, itself unauthorized by "any anterior legitimacy" (Derrida, "Force of Law," 927), and illegitimate violence. Though he does not explore this difference directly, he approaches the nonfoundation of right, or the self-legitimizing power of sovereignty to constitute law and establish the norm, by first introducing the ethical problem of justice and then pursuing the issue through a close reading of Benjamin's "Critique of Violence."

As is well known, for Derrida, the nature of the law as self-legitimizing right exceeds the opposition between "convention and nature" and thereby opens itself to being constructed and deconstructed. In fact, this nonfoundation of the law makes deconstruction possible. However, he writes, "Justice in itself, if such a thing exists, outside or beyond law, is not deconstructible. No more than deconstruction itself, if such a thing exists. Deconstruction is justice" (Derrida, "Force of Law," 945). The implication of distinguishing law from justice, and regarding the latter a metaphor for a procedure of disclosing the nonpresence of the law, is that justice as such cannot be. Justice is not some utopian condition or even an ideal. To put it more prosaically, while the ethical call to justice must be heeded, there can be no "justice in itself" (Derrida, "Force of Law," 945). Justice is the trace that haunts the law as self-legitimizing right and the quotidian application of norms and rules.

In other words, justice, in the way that Derrida develops the term, is not only the trace but also structurally similar to the sovereign

decision that exceeds the norm. Even though he devotes a chapter of *The Politics of Friendship* to an interrogation of Schmitt's view of the political as organized by a rigid demarcation of friend and enemy, here the parallel with Schmitt's theory of sovereignty is unmistakable. The parallel serves to introduce the problem of "decision without sovereignty" as a certain gesture toward justice. Thus, in "The Force of Law," as well as in the numerous writings on hospitality, friendship, and democracy, Derrida situates the thought of justice in a relation to singularity where the failure of the law as norm necessitates the dilemma of a decision. He writes,

How are we to reconcile the act of justice that must always concern singularity, individuals, irreplaceable groups and lives, the other or myself as other, in a unique situation, with rule, norm, value or the imperative of justice which necessarily have a general form, even if this generality prescribes a singular application in each case? If I were content to apply a just rule and the example for each case, I might be protected by law (*droit*), my action corresponding to objective law, but I would not be just. (Derrida, "Force of Law," 949)

Law, then, enables the legal justice that is calculable insofar as it pertains to the application of a general rule. But justice as responsibility to the other, in its incalculability, raises the dilemma of the decision or the judgment in its encounter with the singularity of the subject before it.

We might well ask, then, what the deconstructive position is on the decision, or, rather, what or how a decision can be a decision without being sovereign? Here we have to grasp what Derrida means by the aporia of the decision. He writes,

The undecidable, a theme often associated with deconstruction, is not merely the oscillation between two significations or two contradictory and very determinate rules, each equally imperative . . . The undecidable is not merely the oscillation or the tension between two decisions, it is the experience of that which, though heterogeneous, foreign to the order of the calculable and the rule, is still obliged—it is of obligation that we must speak—to give itself up to the impossible decision, while taking account of law and rules. A decision that didn't go through the ordeal of the undecidable would not be a free decision . . . it might be legal; it would not be just. (Derrida, "Force of Law," 963)

Further, in the second part of his essay, Derrida in a sense attends to the concept of the sovereign decision when he commences his reading of Benjamin's influential essay "Critique of Violence." I cannot here rehearse Derrida's meticulous and painstaking deconstruction of Benjamin's terms (such as constitutive and constituted power, the legality of ends and means, and divine and mythic violence), but I shall simply note that the question of justice comes to rest with Benjamin's problematization of the just decision as divine violence.

If earlier he had underlined the inevitability of the undecidable element haunting every decision, in an added complication, Derrida further specifies through his reading of Benjamin that divine violence is justice and on the side of decision, whereas mythic violence is on the side of law or norm and is on the side of indecision. This seeming reversal of attributions, whereby the undecidable is associated with mythic, sovereign, calculable law, and decision with divine, just, and incalculable obligation, does not at all imply an opposition between the two. Rather, this reversal introduces another level of undecidability or uncertainty. Derrida writes,

To be schematic, there are two violences, two competing *Gewalten*: on one side, decision (just, historical, political and so on); justice beyond *droit* and the state, but without decidable knowledge; on the other, decidable knowledge and certainty in a realm that structurally remains that of the undecidable, of the mythic *droit* of the state. On one side the decision without decidable certainty, on the other the certainty of the undecidable but without decision. In any case, in one form or another, the undecidable is on each side, and is the violent condition of knowledge or action. But knowledge and action are always dissociated. (Derrida, "Force of Law," 1035)

The introduction of nonknowledge into the decision obliged by justice effectively renders justice as such unknowable (without presence). It is, after all, the element that haunts and dislocates the blind calculations of the law. The uncertainty that is here associated with justice is also correlated with constituted law. In his essay "Before the Law," on Kafka's parable of the same title, Derrida discusses the demand for accountability by a law that is prohibited and writes,

Here we know neither *who* nor *what* is the law, *das Gesetz*. This, perhaps, is where literature begins. A text of philosophy, science, or history, a text of knowledge or information, would not abandon a name to a state of not-knowing, or at least it would do so only by accident and not in an essential or constitutive way. Here one does not know the law, one has no cognitive rapport with it; it is neither a subject nor an object *before* which one could take a position. Nothing holds before the law. (Derrida, "Before the Law," 207)

Thus, whether it is justice or the law, which supports but fails it, not-knowing as trace is the inescapable structure of history and politics. For Derrida, such uncertainty or nonknowledge is also the necessary trace of an ethical responsibility toward the other.

Promise of Justice: The Messianic

The consequence of this deconstruction of justice and law, then, is not only *not* indecision but also *not* closure. On the contrary, every decision that goes through the ordeal of not-knowing opens the door to a coming (*avenir*) that is itself utterly and radically undecidable. The messianic opening to the future for Derrida is not only *structural*—a quintessential necessity of the infinite finitude of time, but also, and this despite all indeterminacy, *ethical*, "the *arrivant as justice*" (Derrida, *Specters of Marx*, 28; 56). On one hand, "the messianic" undoubtedly refers with uncompromising clarity to an inescapable condition of living—namely, that time passes, and the next second is always in the coming. There is no going around that condition unless one posits death as the messianic promise, which is to say that there isn't any. On the other hand, the openness to the event renders everything indeterminate—even time and the temporality of livingness. The messianic, then, is a profound confrontation with the historicity of the finite subject—the subject as effect or the *différance* of the "I am mortal," a fundamental syntagm that for Derrida refers to the impossibility of intentional auto-affection. (In fact, another name for the messianic in Derrida is *khōra*.)

In "Faith and Knowledge," Derrida writes,

First name: the *messianic*, or messianicity without messianism. This would be the opening to the future or the coming of the other as the

advent of justice, but without horizon of expectation and without prophetic prefiguration. The coming of the other can only emerge as a singular event when no anticipation sees it coming when the other and death—and radical evil—can come as a surprise at any moment. Possibilities that both open and can always interrupt history, or at least the *ordinary course* of history . . . Interrupting or tearing history itself apart, doing it by deciding, in a decision that can consist in letting the other come and that can take the apparently passive form of the other's decision: even there where it appears in itself, in me, the decision is moreover always that of the other which does not exonerate me of responsibility. The messianic exposes itself to absolute surprise and, even if it always takes the phenomenal form of peace or of justice, it ought, exposing itself so abstractly, be prepared (waiting without awaiting itself) for the best as for the worst . . . An invincible desire for justice is linked to this expectation. By definition, the latter is not and ought not to be certain of anything, either through knowledge, consciousness, conscience, foreseeability or any kind of programme as such . . . This justice, which I distinguish from right, alone allows the hope, beyond all "messianisms," of a universalizable culture of singularities. (Derrida, *Faith and Knowledge*, 56; 30–31)⁷

The relation of the messianic to historical time is crucial for Derrida. Thus, when he writes of the possibility that the event may open or interrupt history as we know it, "interrupting or tearing history itself apart," it is to situate the messianic event as the *différance* between the finite and the infinite, the mortal and the immortal, life and death. Thus, it is not at all definitive that the event is "historical," strictly relegated to the logic of temporality, or that it is timeless, or transcendent of time. Distinguishing the eschatological from the teleological, Derrida speaks of the necessity in *Specters of Marx* of calling into question the ontotheological concept of history that governs Western metaphysics. However,

[it is] not in order to oppose it with an end of history or an ahistoricity, but, on the contrary to, in order to show that this onto-theo-archeo-teleology locks up, neutralizes, and finally cancels historicity. It was then a matter of thinking another historicity—not a new history or still less a "new historicism," but another opening of event-ness as historicity that permitted one not to renounce, but on the contrary to open up access to an affirmative thinking of the

messianic and emancipatory promise as promise: as *promise* and not as onto-theological or teleo-eschatological program of design. Not only must one not renounce the emancipatory desire, it is necessary to insist on it more than ever, it seems, and insist on it, moreover, as the very indestructibility of the "it is necessary." (Derrida, *Specters of Marx*, 74–75; 125–26)

It is this thinking of "another historicity," then, that is at the heart of the nonknowledge that accompanies and arrives with the decision. Insofar as history ("as we know it") is always correlated with law, the messianic event as the hope for justice will be in an undecidable relation with law—for we cannot know in advance whether or not the other historicity that the event brings about will imply another law or not. We cannot know in advance the structure of this other historicity.

The pressure placed on the concept of "promise" distinguishes Derrida's thought on the messianic. Though he speaks of the "invincibility" of this promise as justice and so on, the "promise" could not be further from any soteriology. The promise that deconstruction discloses is quintessentially and unsettlingly empty. In *Specters of Marx*, Derrida speaks of the various messianisms: those of the three monotheistic religions that have mobilized in the Middle East "all the forces of the world and whole 'world order' in the ruthless war they are waging against each other, directly, or indirectly" (Derrida, *Specters of Marx*, 58; 100–101). But there is also, "despite so many modern or post-modern denials, a messianic eschatology" (Derrida, *Specters of Marx*, 59; 102) carried within what he calls "the spirit of Marxism." Interestingly, Derrida says that the fact that Marxism and the religious traditions that it repudiates share this common ground does not imply that they must be "simply deconstructed."

While it is common to both of them, with the exception of the content [but none of them can accept, of course, this *epokhē* of the content, whereas we hold it here to be essential to the messianic in general, as thinking of the other and of the event to come], it is also the case that its formal structure of promise exceeds them or precedes them. Well, what remains irreducible to any deconstruction, what remains as undeconstructible as the possibility of deconstruction is, perhaps, a certain experience of the emancipatory promise; it is perhaps even the formality of a structural messianism, a messianism without religion,

even a messianic without messianism, an idea of justice—which we distinguish from law or right and even from human rights—an idea of democracy—which we distinguish from its current concept and from its determined predicates today. (Derrida, *Specters of Marx*, 59; 102)

Derrida's "structural messianism" as the inseparable promise of the logic of temporal spacing delivers us to an aporia. And "aporia" in Derrida's lexicon is not merely to be without a way. Rather the aporia refers to repetition and responsibility—the necessity that, in fact, "a sort of nonpassive endurance of the aporia [is] the condition of responsibility and of decision" (*Aporias* 16; 37).

Interestingly, from Agamben's perspective, Derrida's conception of the messianic promise as ultimate aporia of justice that enjoins repetition is not sufficient to address the problem of law. Though he, too, is invested in thinking the promise as, in a sense, empty, it has an altogether different tonality from Derrida's. His point of departure to consider the messianic is not the possibility/impossibility of justice as the specter that haunts law, but rather the specter of the state of exception that anchors the norm. As is well known, Agamben decisively situates the thought of the messianic in the Letters of Paul in *The Time That Remains*. Certainly no discussion of the law, whether diagnostic as pertaining to its force or tactical as pertaining to justice or ethics, can be complete without taking this work into account. However, for the sake of clarification, it is necessary to discern the distinction between the biopolitical and deconstructive positions on the *force* of law. For Agamben, it is the interpretation of Kafka's parable "Before the Law" that provides a basis for marking some of these distinctions and their impact on the conception of the messianic as hope, promise, remnant, and so on.

AFTER THE LAW

As is well known, Derrida's essay on Kafka's parable is devoted to a deconstruction of the law (its impossible presence) through a disclosure of its contamination and mutual dependence with the literary. Here, Derrida shows that not only is the foundation and origin of the law the site of fiction but the autonomous foundation of the literary (its

expansive freedom of expression) is also entirely a legal fiction. The law prohibits, but what it prohibits is the law itself—in other words, the possibility of its deconstruction. Law and literature dissimulate each other in order to present themselves as separate and discrete significations of a logocentric truth. However, this move also structurally obligates decision to be ruled by uncertainty—to let the undecidable ultimately prevail over decision. It is not certain if what Derrida intends by uncertainty, or the undecidable, is the same as what he intends by the term "indecision." However, despite the radical openness and emphasis on nonknowledge in Derrida (themes that find an echo in Agamben), it is perhaps the necessary contamination of indecision in every decision that leads Agamben to interpret Derrida as ineffectual in his political critique of sovereignty.

Agamben, too, undertakes a reading of "Before the Law," Kafka's parable from *The Trial*, but derives a markedly different consequence from it. Almost as though in response to this interpretation of the law and the event by Derrida, Agamben, in his essay "The Messiah and the Sovereign," discussing the messianic potentiality of the state of exception (as thought by Benjamin), writes,

The success of deconstruction in our time is founded precisely on its having conceived of the whole text of tradition, the whole law, as a *Geltung ohne Bedeutung*, a being in force without significance. In Scholem's terms, we could say that contemporary thought tends to reduce the law (in the widest sense of the term, which indicates all of tradition in its regulative form) to the state of a Nothing and yet, at the same time, to maintain this Nothing as the "zero point of its content." The law thus becomes ungraspable—but, for this reason, insuperable, ineradicable ("undecidable," in the terms of deconstruction). We can compare the situation of our time to that of a petrified or paralyzed messianism that, like all messianism, nullifies the law, but then maintains it as the Nothing of Revelation in a perpetual and interminable state of exception, "the 'state of exception' in which we live." (Agamben, *Potentialities*, 170–71; 271)

This comment is an aside in Agamben's article, which primarily examines the relation of Benjamin's concept of messianic time to the decision that declares the state of exception. If in "Before the Law," Derrida was invested in disclosing the *différance* between law and literature

as a "topographical system" (Derrida, "Before the Law," 201), Agamben in this essay suggests that the question of messianic time and the exception is located at an interstice where philosophy and religion are brought into their greatest proximity in their confrontation with the law (Agamben, *Potentialities*, 163; 255). To put it simply, any sustained thought or practice that deals with the radical finitude of time would necessarily be a decisive encounter with the law. Through a detailed reading of the exchange between Scholem and Benjamin on the structure of the law before the Fall and after the event of redemption that engages the Jewish mystical tradition as well as Kafka's work, Agamben suggests that Scholem, in a sense, fails to grasp the true import of messianism. He writes that Scholem's reading of Kafka's conception of the law as "being in force without significance" and "defines not only the state of the Torah before God but also and above all our current relation to law—the state of exception, according to Benjamin's words, in which we live. Perhaps no other formula better expresses the conception of law that our age confronts and cannot master" (Agamben, *Potentialities*, 170; 264). In other words, Derrida, like Scholem, leaves the law in the inert but pernicious state where its force prevails without legality or legitimacy. The Benjaminian position, he suggests, goes further toward a more "perfect nihilism that does not let validity survive beyond its meaning but instead, as Benjamin writes of Kafka 'succeeds in finding redemption in the overturning of the Nothing'" (Agamben, *Potentialities*, 171; 266). This overturning entails thinking the figure of the Messiah as double—one that is vanquished by evil and another that triumphs over it. To adopt this perspective, Agamben suggests, is to enable an alternative reading of Kafka's parable. If other commentators have read the man from the country who stands before the law hoping to gain entrance to it as ultimately failing in his pursuit, Agamben argues the possibility of the opposite meaning:

The interpreters seem to forget, in fact, precisely the words with which the story ends: "no one else could enter here, since this door was destined for you alone. Now I will go and close it [*ich gehe jetzt und schliesse ihn*]." If it is true that the door's very openness constituted, as we saw, the invisible power and specific "force" of the law, then it is possible to imagine that the entire behavior of the man from the country is nothing other than a complicated and patient strategy to have the door closed in

order to interrupt the law's being in force. The final sense of the legend is thus not, as Derrida writes, that of an "event that succeeds in not happening" (or that happens in not happening: "an event that happens not to happen," *un événement qui arrive à ne pas arriver*), but rather just the opposite: the story tells how something has really happened in seeming not to happen. (Agamben, *Potentialities*, 173–74; 269–70)

The double figure of the messiah as the death of the man from the country and the closing of the door of the law, Agamben suggests, corresponds to "a real state of exception" of which Benjamin speaks in the Eighth Thesis. In this conception of the *eskhaton*, Agamben specifies, there is a certain belonging to not only the time of history and its law but also the ending of this time and the law. Rather than a situation in which the law is in force and "events indefinitely differ from themselves" (Agamben, *Potentialities*, 174; 270), we apprehend the messianic event as a "bi-unitary figure" (Agamben, *Potentialities*, 174; 270). "Only in this way can the event of the Messiah coincide with historical time yet at the same time not be identified with it, effecting in the *eskhaton* that 'small adjustment' in which, according to the rabbi's saying told by Benjamin, the messianic kingdom consists" (Agamben, *Potentialities*, 174; 270).

Agamben repeats with further elaborations this interpretation of Kafka's parable in *Homo Sacer*. There he writes,

It is precisely concerning the sense of this being in force (and of the state of exception that it inaugurates) that our position distinguishes itself from that of deconstruction. Our age does indeed stand in front of language just as the man from the country in the parable stands in front of the door of the Law. What threatens thinking here is the possibility that thinking might find itself condemned to infinite negotiations with the doorkeeper or, even worse, that it might end by itself assuming the role of the doorkeeper who, without really blocking the entry, shelters the Nothing onto which the door opens. (Agamben, *Homo Sacer*, 54; 63)

In *State of Exception*, Agamben elaborates on the exchange between Scholem and Benjamin on the state of the law in Kafka's texts and its implications for political messianism. Benjamin's statement in his essay on Kafka that the "law which is studied but no longer practiced is the gate to justice" (Agamben, *State of Exception*, 63) figures the

law "as a sort of remnant" (Agamben, *State of Exception*, 63). But inquiring after what it might mean to figure the law in this manner—that is, "what becomes of the law after its messianic fulfillment?" (Agamben, *State of Exception*, 63)—Agamben is careful to specify that it is not in any case the full presence of justice. Rather, "the decisive point here is that law—no longer practiced, but studied—is not justice, but only the gate that leads to it" (Agamben, *State of Exception*, 64). It is this opening of a passage through the closing of the gate of law that Agamben suggests is prevented by Derrida and Scholem's maintenance of the empty and spectral form of the law. Kafka's characters, on the other hand, seek not only to study the law, which means to "deactivate it, [but] to 'play' with it" (Agamben, *State of Exception*, 64).

Thus, Agamben's emphasis on the violence of the decision leads him to be politically and ethically committed to a complex image of deactivating the law. To fully understand this "image" of deactivation as study or "play" requires that we take up Agamben's book on messianic time, *The Time That Remains*, to which I shall turn momentarily. However, we cannot fail to ask what Derrida himself says about the problem of the law and whether deconstruction can countenance the possibility of deactivating it. Though one may dispute or defend Agamben's reading of Derrida's position as leading to paralysis before the law conceived as a problem, the true import of Agamben's critique undoubtedly arises from the disparity in their attitudes to the law. The point is that it is not at all clear that Derrida would agree with Agamben's diagnosis of the law.

To focus for the moment only on his last writings on the question of sovereignty (namely, his 2002–2003 seminar notes, *The Beast and the Sovereign*, volumes 1 and 2), in contradistinction to Agamben's antinomianism, Derrida in fact asserts that "we can't take on the concept of sovereignty without also threatening the value of liberty" (Derrida, *Beast and Sovereign*, 401).⁸ We may, for instance, be opposed to fences and enclosures that confine beasts and the mentally ill, but "who will dare militate for a freedom of movement without limit, a liberty without limit? And this without law?" (Derrida, *Beast and Sovereign*, 301). The deconstruction of the norms of sovereignty, Derrida says, is always in a relational double bind insofar as "the choice and the decision are not between indivisible sovereignty and indivisible non-sovereignty

but between several divisions, distributions *economies* (-*nomy*, *nomos*, *nemein* meaning . . . distribution and division), *economies* of a divisible sovereignty" (Derrida, *Beast and Sovereign*, 402). The task, then, is to think not a postsovereignty or the inoperativity of the law, but "unconditionality . . . without indivisible sovereignty" (Derrida, *Beast and Sovereign*, 402). The difficulty of the task lies in the fact that "sovereignty has always given itself out to be indivisible, and therefore absolute and unconditional" (Derrida, *Beast and Sovereign*, 402).

Deconstruction and Biopolitics

Derrida's problematic is clearly very differently configured from that of either Foucault or Agamben. As can be expected, it is in greater continuity with his earlier work on the animal and on the question of what is "proper" to man. Thus, his field of inquiry is the instability of the categories that refer to the sovereign and the animal, each of which carries at different times and ways the trace of a certain *bêtise*. Read alongside Agamben and Foucault, Derrida clearly approaches the concept of sovereignty not in terms of the historicity of power as epistemology, but in ontological terms, where the question of human and animal propriety is dislocated by the fable of "the right of the stronger." In other words, the political problematic here is the relation (as always with Derrida) between force on the one hand and the necessity and impossibility of an irreducible justice on the other, which he insists quintessentially resists deconstruction. In the first volume of the seminar, Derrida proceeds by positing an analogy between the sovereign and "*la bête*" or the beast (which he distinguishes from the animal) and suggests that what "sovereign and beast seem to have in common [is] their being-outside-the-law" (Derrida, *Beast and Sovereign*, 38). Further, he says,

It is as though both of them were situated by definition at a distance from or above the laws, in nonrespect for the absolute law, the absolute law that they make or that they are but they do not have to respect. Being-outside-the-law can, no doubt, on the one hand (and this is the figure of sovereignty), take the form of being-above-the-laws, and therefore take the form of the Law itself, of the origin of laws . . . but being-outside-the-law can also, on the other hand (and this is the figure of what is most often understood by animality or bestiality) . . . situate the place where the law does not appear, or is not respected, or gets

violated . . . There is between sovereign, criminal, and beast a sort of obscure and fascinating complicity, or even a worrying mutual attraction, a worrying familiarity, an *unheimlich*, uncanny reciprocal haunting. (Derrida, *Beast and Sovereign*, 38)

Given the way in which he structures the problematic of sovereignty (norm and excess), Derrida acknowledges the state of exception and its power to depoliticize as the potentiality of sovereignty, but not necessarily as the secret kernel of the force of law. Rather than opposing sovereignty (in the name of humanitarianism or antihumanitarianism), he calls for a "slow and differentiated deconstruction" (Derrida, *Beast and Sovereign*, 113):

It cannot be a matter, under the pretext of deconstruction, of purely and simply, frontally, opposing sovereignty. There is not SOVEREIGNTY or THE sovereign. There is not THE beast and THE sovereign. There are different and sometimes antagonistic forms of sovereignty, and it is always in the name of one that one attacks another . . .

In a certain sense, there is no contrary of sovereignty, even if there are things other than sovereignty. Even in politics (and the question remains of knowing if the concept of sovereignty is political through and through)—even in politics, the choice is not between sovereignty and nonsovereignty, but among several forms of partings, partitions, divisions, conditions that come along to broach a sovereignty that is always supposed to be indivisible and unconditional. Whence the difficulty, awkwardness, aporia even, and the slowness, the always unequal development of such a deconstruction. This is less than ever the equivalent of a destruction. But recognizing that sovereignty is divisible, that it divides and partitions, even where there is any sovereignty left, is already to begin to deconstruct a pure concept of sovereignty that presupposes indivisibility. (Derrida, *Beast and Sovereign*, 114)

Clearly, there is no unified concept of THE Sovereign or THE Beast to be found in either Foucault or Agamben insofar as these concepts are always effects of regimes of truth and right generated by discourse and knowledge. More specifically, power, or the force of law, is not necessarily associated with presence or purity. And this is particularly the case with modern power, which is unlocalizable, temporal, and nonsubjective. In a sense, modern power, as that which is knowable only in its functioning, is not so much indifferent

as apposite to the deconstruction of presence and thus could be viewed as "post-metaphysical." Very schematically, it can be said that it is the historicity of the metaphysics of presence and not that of power that concerns Derrida. In *Of Grammatology*, once again in his debate with Levi-Strauss, Derrida folds the *différance* of power into the logo-phono-centric critical schema. Moreover, given the privileging of technology in this critical schema, one cannot expect deconstruction to charge the law and its *dispositifs* of structural oppression. It only follows, then, that Derrida will refute some of the basic premises and even inflate the logic of some of the terms of biopolitics, especially as developed by Agamben.

Thus, Derrida refutes the notion that there can ever be any conceptual separability between a notion of biological life and political life—that is, *zōē* and *bios*—either in the Greek texts (particularly Aristotle, whom Agamben cites) or, for that matter, in the long history of metaphysics and political sovereignty. By this philological and genealogical refutation, he also implies a dismissal of the problematic of *Homo Sacer*. Obviously, it is not that Derrida wishes to claim some kind of indivisible self-identity to the concept of life, thereby refusing a difference within the signifier "life." His debate with Agamben turns around his sense that the latter "wants absolutely to define this specificity by putting his money on the concept of 'bare life,' which he identifies with *zōē*, in opposition to *bios*" (Derrida, *Beast and Sovereign*, 433).⁹ And Derrida suggests that this ill-judged investment falsifies the argument of the book as a whole. What is confounding here is whether any concept of biopolitics can admit of a simple identity between bare life, which is a thoroughly political concept insofar as it is produced as an effect of power, and *zōē*, a term whose epistemological status is ostensibly secured by a discourse of natural science. In other words, the force of biopolitics (in Foucault or Agamben's terms) derives from its capacity to work on a powerful norm—namely, organic biological life—to bring it into a "zone of indistinction" with *bios* and thereby produce bare life (or a so-called state of nature). The key point can be stated in Derridean terms as follows: biopower depends on a contamination, the trace, the *différance* between biological (natural) life and political (human) life, in order to produce the specter of bare life. The category of the "homo sacer" or bare life is not a preexisting natural

category that depends for its identity upon its opposition to political life. On the contrary, bare life is produced by sovereignty as an inverse image—an excluded inclusion or an included exclusion. As Agamben writes in *State of Exception*,

If it is true that the articulation between life and law, between anomie and *nomos*, that is produced by the state of exception is effective though fictional, one can still not conclude from this that somewhere either beyond or before juridical apparatuses there is an immediate access to something whose fracture and impossible unification are represented by these apparatuses. There are not *first* life as a natural biological given and anomie as the state of nature, and *then* their implication in law through the state of exception. On the contrary, the very possibility of distinguishing life and law, anomie and *nomos*, coincides with their articulation in the biopolitical machine. Bare life is a product of the machine and not something that preexists it, just as law has no court in nature or in the divine mind. Life and law, anomie and *nomos auctoritas* and *potestas*, result from the fracture of something to which we have no other access than through the fiction of their articulation and the patient work that, by unmasking this fiction, separates what it had claimed to unite. But disenchantment does not restore the enchanted thing to its original state: According to the principle that purity never lies at the origin, disenchantment gives it only the possibility of reaching a new condition. (Agamben, *State of Exception*, 87–88)

Derrida may not dispute the relevance of this detail, but he probably would still oppose the premise of biopolitics: the idea that, be it Western metaphysics (Agamben) or modern epistemology (Foucault), the *différance* within life could become a *dispositif* of power. In a sense, what is implicit in Derrida's rebuttal of Agamben is that the latter's insistence that biopolitical sovereignty captures the divisibility of life and manipulates it as an ultimate exercise of power is untenable. Derrida seems to read such a view of the functioning of power and the *dispositif* as a misguided positing of watertight homogeneous categories in philosophy, if not in nature, but we cannot afford to ignore the fact that biopolitics as a form of power/knowledge has a certain historicity. However, Derrida finds it problematic that, for Agamben, the problem of power's use of life as a *dispositif* can be traced beyond contemporary modalities of knowledge to the discourse of Western metaphysics,

which, given its notion of the polis, necessarily regards life in terms of certain separable (and therefore collapsible) categories.¹⁰ It is tempting to sum up by saying that, ultimately, when the chips are down, the quarrel (if that is what it is) between the two perspectives may be salient for the history of thought but not for politics. But unfortunately, I don't think such a separation can be made.

So what in fact does Derrida say about life and its *différance*? In the sixth session of his seminar, Derrida, in the context of a discussion on the notion of "stupidity," or *la bêtise*, suggests that "at bottom what is irreducibly bête . . . is life pure and simple, which is both infinitely bête and cunning, intelligent, bête and anything but bête: it is the living in life itself which outplays the opposition between bêtise and its supposed contrary, the decidable limit between the two, both in what is called man and in what is called the animal, the living being in general that is both bête and not bête, idiotic and cunning, naïve and smart, etc." (Derrida, *Beast and Sovereign*, 240). In other words, Derrida here suggests that the *différance*, the trace of life, which is the "living in life," is bête, as it is a form of nonknowledge, which in its "impurity, non-rigor, essential incompleteness" (Derrida, *Beast and Sovereign*, 239) is, he says, the very inspiration for the seminar. Derrida's emphasis on the trace of living in life not only enables the deconstruction of the human and the animal through the specter of *la bêtise* but also discloses the implication of life in the metaphysics of presence through the notion of the "living present." Thus, he underlines that it is not life but the phenomenological notion of the living present that should be deconstructed. In the context of his discussion of Paul Celan's speech "The Meridian," he says,

If I use, emphasize, the expression "living present" (*lebendige Gegenwart*: living now), an expression to which Husserl, as you know, gave a phenomenological status and a sort of letter of nobility in philosophy, it is of course in order to make a strategically essential and necessary reference to Husserlian phenomenology and the transcendental phenomenology of the time . . . But it is above all to interrogate one more time this way of naming life, or more precisely the living being: not Life, the Being or Essence or Substance of something like LIFE, but the living being, the presently living being, not the substance Life that remains in life, but the attribute "living" to qualify or determine the present, the

now, a now that is supposedly essentially living, presently living, now as living (*die lebendige Gegenwart*). (Derrida, *Beast and Sovereign*, 292)

In several places, Derrida insists that death must be inscribed into a concept of life, but not by positing a stark opposition between the two. In a footnote in *Specters of Marx*, he suggests that the "very alternative (life and/or death)," should be rethought in terms of survival "or of a return of the dead (neither life nor death) on the sole basis of which one is able to speak of 'living subjectivity' (in opposition to its death): to speak of it but also to understand that it can, itself, speak and speak itself, leave traces or legacies beyond the living present of its life" (Derrida, *Specters of Marx*, 187).¹¹

How does such a perspective on life—life as haunted by an undecidable trace of living—compare to the biopolitical perspective? Once again, to put it in reductive terms, it is the shift in emphasis on power versus presence that comes to matter. For Foucault and Agamben, it is the trace of living—its very undecidability, its impure preinscription in death—that is the locus of biopower. In *Society Must Be Defended*, Foucault's genealogy also traces the shift in the way death as an event is incorporated by power from the sovereign's public death sentence, to its privatization by the regime of disciplines, and finally to its trivialization. This trajectory is also accompanied by a shift that sees death as heterogeneous to life (it comes from elsewhere like the plague) to the modern view where death is not only banal but ubiquitous and requires vigilance (like a virus that must be managed and controlled).

Also in his archaeology of the medical sciences, Foucault pinpoints the moment of what he terms as the volatilization of death in terms of the new vitalism inaugurated by Bichat in the nineteenth century. In *The Birth of the Clinic*, he traces the shift in the medical gaze of the clinic from a reading of symptoms and signs on the surface of the body to the dissecting gaze of pathological anatomy that "opens up a few corpses." The understanding of death undergoes a change as well:

Death is therefore multiple, and dispersed in time: it is not that absolute, privileged point at which time stops and moves back; like disease itself. It has a teeming presence that analysis may divide into time and space; gradually, here and there, each of the knots breaks, until organic life ceases, at least in its major forms, since long after the death of the

individual, miniscule, partial deaths continue to dissociate the islets of life that still subsist. In natural death, the animal life is extinguished first: first sensorial extinction, then the slowing down of brain activity, the weakening of locomotion, rigidity of the muscles and diminution of their contractility, quasi-paralysis of the intestines, and finally immobilization of the heart. (Foucault, *Birth of the Clinic*, 142)

With Bichat, there are multiple deaths that are partialized into "successive envelopes" (Foucault, *Birth of the Clinic*, 143), and the study of the causes of phthisis and decomposition provides a privileged perspective on the organism. Foucault writes, "Death is the great analyst that shows the connexions by unfolding them, and bursts open the wonders of genesis in the rigour of decomposition" (Foucault, *Birth of the Clinic*, 144). Thus, we can extrapolate from Foucault's discussion that insofar as medical science ignores the difference between life and death, it opens itself to a political decision. The solution, of course, is not to fortify the differences, but to interrogate the ways in which power appropriates the trace and, as Agamben might say, to free it for another use.

In both Foucault and Agamben, but particularly in the latter, the notion of survival as the wedge that deconstructs life and death takes on a different tonality—a much less benign one—in that biopolitics is nothing if not the proliferation of such undecidable apparitions. Whether it is the neomort in Agamben's schema of the homo sacer or the suicide state that Foucault identifies as the secret of the Nazi regime, the nondead is as much a locus of the political as the living present. In other words, the biopolitical perspective requires that we distinguish between the specter of power and social control and a certain spectral remainder of power. If the former is the trace as manipulated by power, then the latter is that which silently drops out of this field of management and sometimes even voids it of force and significance. To grasp this differing sense of survival, it is necessary to turn to the question of silence within language and its effect on the law.

The question can be formulated following the premise that the discursivity of the law and its unconditionality depend upon the absolute relational structure of language. In other words, this premise refers first and foremost to the absolute juridicization of speech that

refers not only to the silence of the sovereign decision but also to the legal protection of taciturnity "the right to remain silent." Thus, if both speaking and not speaking are related to the law as inclusion and exclusion, how might we conceive of a relation to (or a way to be in) language where its juridicization, which serves the separation of human and inhuman, is no longer effective or deactivated? Can silence be discerned as that which neutralizes the law? Can it function as the active force of deactivation—that is, the separation of law and language? What is the relation of such a separation to the thought of the messianic promise or of messianic time?

It is necessary, then, to take up in earnest the spacing between law and language as the site of the biopolitical (state of exception) and the time of the messianic promise. This spacing can also be conceived in terms of the relation between the structure of the political state of exception (as potentiality of law) and the alterity of silence (as potentiality of language).

SHIBBOLETH, OR SOVEREIGNTY OF LANGUAGE

First, a bare and fundamental question: what is the relation, as conceptualized within deconstruction and biopolitics, between language and the force of law?

In a sense, all of Derrida's work, particularly his deconstruction of Saussurean linguistics with its dependence on a nature/culture opposition, can be said to revolve around this question, insofar as the law always bears a relation to the instituted truth. However, where the juridical law in particular is concerned, Derrida, in "Force of Law,"¹² suggests that this relation always touches on the possibility of dispensing justice. There must be a shared language for the law to function as a legal force. Thus, he writes, "It is unjust to judge someone who does not understand the language in which the law is inscribed or the judgment pronounced, etc." (Derrida, "Force of Law," 951). The problem, then, is the impossibility of sharing the same idiom. For Derrida, it is not only that a scenario of perfect sharing of language, of having a language in every sense common, is impossible but also that the very dispensation of justice is predicated on "man as a speaking animal, in the sense that we, men, give to this world language" (Derrida, "Force

of Law," 951). Such a predication of the law's function of dispensing justice, Derrida asserts, necessarily excludes the possibility of "injustice or violence toward an animal, even less toward a vegetable or a stone. An animal can be made to suffer, but we would never say, in a sense considered proper, that it is a wronged subject, the victim of a crime, of a murder, of a rape or a theft, of a perjury . . . There have been, there are still, many 'subject' among mankind who are not recognized as subjects and who receive this animal treatment" (Derrida, "Force of Law," 951). For Derrida, this inherently unjust situation in the founding of justice is a symptom of what he terms, in his interview with Jean-Luc Nancy "Eating Well: Or the Calculation of the Subject," "caro-phallogocentrism" (114), or a culture of carnivorous sacrifice that is essential to "the founding of the intentional subject" (Derrida, "Force of Law," 953). Significantly, Derrida does not correlate this primary exclusion of the improper nonhuman animal from justice (or the law) with the structure of the sovereign decision, thereby salvaging a certain justice from deconstruction and maintaining a relation to law.

Another significant instance when the force of law is mentioned directly in relation to the structure of language is when Derrida discusses the place of the secret or silence. It is, as Derrida says, "the sharing of what is not shared: we know in common that we have nothing in common" (Derrida, *A Taste for the Secret*, 58). Further, the secret, he suggests, is always political. Structurally, it serves as the threshold between democracy and totalitarianism. Only the secret (not a secret) separates them. In a conversation with Maurizio Ferraris, he says, "I have an impulse of fear or terror in the face of a political space, for example, a public space that makes no room for the secret. For me, the demand that everything be paraded in the public square and that there be no internal forum is a glaring sign of the totalitarianization of democracy. I can rephrase this in terms of political ethics: if a right to the secret is not maintained, we are in a totalitarian space" (Derrida, *A Taste for the Secret*, 59). By situating the collapse of the distinction between the private and the public in the suspension of the "right" to the secret, and by referring to that situation of indistinction as political and as absolute exposure and terror, Derrida here implicitly correlates the expropriation of the secret to a situation of political emergency when all fundamental rights guaranteed by the Constitution are suspended.

Derrida, however, implies that the ethical and political task is to ensure that the juridical apparatus preserves the right to the secret. In other words, the law is implicitly called upon here to respect the division of public and private. In fact, since Derrida speaks here of right, it is law itself that must within its jurisdiction preserve the secret, but as that which is exempted from its force. The secret here, then, bears a strong resemblance to the juridical "right to silence." From the biopolitical perspective, this view of the secret raises the question of what it might mean to require that the force of law mandate the limit of its own force—to enforce the inviolability of the secret.

In several of his works, most notably in *Homo Sacer* and *State of Exception*, Agamben raises the question of the relation between the force of law and language, sometimes formulating it as a foundation and at others as a structural analogy. In his discussion of the logic of sovereignty in *Homo Sacer*, Agamben illustrates the inside/outside topology of the sovereign exception with the help of two grammatical categories: the exception to the rule, wherein the thing in question is included or belongs to the set by virtue of being excluded from it, and the example of a rule, wherein the thing in question is excluded from the set by virtue of being included or belonging to it. In short, if the exception is an inclusive exclusion, the example is an exclusive inclusion (Agamben, *Homo Sacer*, 21; 26). Agamben then goes on to secure the analogy between the grammatical structure and the structure of sovereignty with a biblical example. Citing the famous episode of "Shibboleth" in Judges 12:6, which pertains to the slaying of the Ephraimites by the Galatians, who distinguish their victims by their distinctive pronunciation of a single word, "Shibboleth," Agamben suggests that "in the Shibboleth, example and exception become indistinguishable. 'Shibboleth' is an exemplary exception or an example that functions as an exception. (In this sense, it is not surprising that there is a predilection to resort to exemplary punishment in the state of exception.)" (Agamben, *Homo Sacer*, 23; 28). While Agamben's example here of the Shibboleth refers to the intimate alliance between the performance of language and law and the lethal effects of juridicized speech, it also underscores the central lawlessness—the anomie within this structure.

More specifically, in *State of Exception*, he indicates that the structural analogy between language and law pertains to the separation

between norm and application. Insofar as both language and law in the state of exception can disclose the norm only through its suspension in concrete practice (for instance, the suspension of habeas corpus in concrete practice, which is not uncommon, always discloses the formality of the norm), they found themselves on a central emptiness, a formality that can and also cannot apply to reality. Agamben writes, "It can generally be said that not only language and law but all social institutions have been formed through a process of desamentization and suspension of concrete praxis in its immediate reference to the real" (Agamben, *State of Exception*, 37). In other words, the coimplication of law and language is founded on the emptiness of meaning and nonreference to reality.

When the nondenotational aspect of language, its pure conventionality as grammar, is suspended as semantic foundation and is instead in force as pure form, what we have is the password. The password (shibboleth) is entirely meaningless in and of itself, but it is precisely in force as meaningless law. For Agamben, this central emptiness is decisive for our understanding of the very history of Western metaphysics. Correlating the space of pure anomie with being and the law with logos, he writes, "everything happens as if both law and logos needed an anomic (or alogical) zone of suspension in order to ground their reference to the world of life. Law seems able to subsist only by capturing anomie, just as language can subsist only by grasping the nonlinguistic. In both cases, the conflict seems to concern an empty space: on the one hand, anomie, juridical vacuum, and on the other, pure being, devoid of any determination or real predicate. For law, this empty space is the state of exception as its constitutive dimension" (Agamben, *State of Exception*, 60).

The implication of this capture hardly needs to be spelled out, but Agamben's words immediately prior to his discussion of the difference between authority and formal power (*auctoritas* and *potestas*) provides a simple summation that also expresses an aspect of his political ontology. He writes, "And perhaps the moment has come to try to better understand the constitutive fiction that—in binding together norm and anomie, law and state of exception—also ensures the relation between law and life" (Agamben, *State of Exception*, 73). Perhaps the task of inventing a political praxis, in Agamben's terms, may well

be the rescue or the deactivation of the unpronounceable letter, the silenced "h" captured by the Ephramites, from its juridical function.

This political project can be even better clarified with reference to one small moment in Derrida's discussion of the nondenotational force of language. In "Shibboleth: For Paul Celan," Derrida, reading the irruption of this Hebrew word within Celan's pluralized German, pauses to decline the word in relation to the sovereignty of language, to the possibility of the poem's very existence. For him, however, the empty password is what fundamentally gives access to the poem, to language. It permits a crossing and lets the poem be. "To inhabit a language, one must already have a Shibboleth at one's disposal" (Derrida, *Sovereignities in Question*, 26). Derrida's sense that this emptiness can be both a crossing and a barring (a limit of discrimination) emphasizes the ultimate undecidability of the emptiness. It is tragically reversible, and "sometimes overtakes the initiatives of subjects" (Derrida, *Sovereignities in Question*, 30), he writes. The subtle difference here between deconstruction and biopolitics can perhaps be said to lie in their different attitudes to this reversibility. For Derrida, the password enables the poem to be within the law, to live, to speak, "[s]o as no longer to be outside the law" (Derrida, *Sovereignities in Question*, 26). For Agamben, however, the poem can perhaps be a poem only insofar as it appropriates the password, so that the password no longer permits or denies but becomes indistinguishable from the poem. The password no longer functions, thereby letting the poem take place.

But let us return to the import of the structural analogy, which lies in its disclosure of the sovereignty of language. How should this complex syntagm—the sovereignty of language—be understood? In *The Beast and The Sovereign*, Derrida cites a passage from Agamben's *Homo Sacer* on this question. Here, Agamben writes with reference to Hegel:

Language is the sovereign who, in a permanent state of exception, declares that there is nothing outside language and that language is always beyond itself. The particular structure of the law has its foundation in [the] presuppositional structure of human language. It expresses the bond of inclusive exclusion to which a thing is subject because of the fact of being in language, of being named. To speak [*dire*] is, in this sense, always to "speak the law" *ius dicere*. (Agamben, *Homo Sacer*, 21; 26)

Derrida comments that this point is true and convincing because it is wholly obvious; moreover, the notion of the presuppositional aspect of language is not only a fundamental tenet in the history of philosophy and any reflection on language but it is anterior to Hegel (Derrida, *Beast and Sovereign*, 93). However, Agamben's particular emphasis on the negativity inherent in language (the structure of the ban) pertains to the *contingency* of the law's overlay of language.

For instance, in a fragment entitled "The Idea of Language II," Agamben offers an interpretation of Kafka's wellknown fable "The Penal Colony" that seems to encapsulate the essence of his thought on the consequences of neutralizing power through severing the link between language and law. He suggests several readings of the fable's ending, wherein the commandant decides to personally demonstrate to the unconvinced visitor the virtues of his exquisite torture-writing apparatus. The phrase that the apparatus was to engrave on his flesh even as it begins to malfunction horribly is "be just." The reading that Agamben finally settles on is the following:

"Be just" does not refer to the decree the officer has broken, but is rather the instruction that shatters the machine. And the officer is perfectly aware of this . . . he inserts the instruction into the machine in the intention of destroying it. The ultimate meaning of language—the tale now seems to say—is the injunction "Be just; and yet it is precisely the meaning of this injunction that the machine of language is absolutely incapable of getting us to understand. Or, rather, it can do it only by ceasing to perform its penal function, only by shattering into pieces and turning from punisher to murderer. In this way justice triumphs over justice, language over language. That the officer does not find in the machine what others had found is now perfectly understandable: at this point there is nothing left in language for him to understand. (Agamben, *The Idea of Prose*, 117)

Agamben implies that when the law and its penal function are extirpated from language, there is nothing left in language that requires interpretation. It appears that language stands revealed not so much as a medium for law or communication, but as pure mediality itself. The immediate enigma is no doubt how, when, and by what means language can cease to mediate the penal function of the law, thereby disclosing its ultimate potentiality for a justice beyond justice. Justice, or

the injunction to "be just," Agamben implies, is a performative speech act that makes happen an event. It can free language from its captivity to the law. In other words, not only is justice a performative that unmasks the limits of law—it also discloses something of law's structural relation to language. Perhaps the stakes lie in the possibility of analyzing the true and fundamental relation between law and language (its power to penalize) and proposing and thinking through the consequences of a thorough disengagement of language from the law. This task, as Agamben conceives it, mediated through Benjamin, would be not to reactivate the law (the exquisite torture-writing machine) to restore it to its original efficacy, but to deactivate it so that it is suspended and no longer in effect. In other words, it is to seize the political state of exception as a means of bringing about a "real" state of exception when the law is rendered inoperative. He writes that "only if it is possible to think the Being of abandonment beyond every idea of law (even that of the empty form of law's being in force without significance) will we have moved out of the paradox of sovereignty toward a politics freed from every ban" (Agamben, *Homo Sacer*, 59; 68). Ultimately, the question that is confronting us here is what it might mean to think through the unconditionality, the absolute relationality of the sovereignty of language. No doubt, this question is not only impossible but appears to border on the nonrational. However, Agamben approaches this issue through a certain use of modal logic.

Language and Contingency

The notion of language's possible contingency appears in *Remnants of Auschwitz* when Agamben thinks the relation between the subject and language. Here he shows that Foucault's archaeology of knowledge, which describes the functioning of language in terms of asemanic statements, in a sense, presupposes the erasure of the subject. In all of Foucault's works, the the subject is an effect and the author a function of enunciation, so that his focus on the modalities of exclusion, focused on what is said and unsaid, that secure discursive formations is a part of his metasemantic project to describe the way statements are eventuated. They are not interested in the fate of the subject per se. Agamben's intervention at this point is to reintroduce the question of the subject as a fundamentally ethical one that can be raised

not at the site of enunciation per se, which is located between what is said and what is unsaid (which pertains to exclusions), but between the sayable and the unsayable (i.e., pertaining to the possible and the impossible). In other words, he situates the subject at a prior moment where language itself is expressed as contingency—between enunciation and its possibility. Asking "what happens to the living individual who occupies the vacant space of the subject, when he enters into the process of enunciation" (Agamben, *Remnants of Auschwitz*, 142; 132), Agamben specifies this subject position as fundamentally one of possibility or potentiality. The subject who enters enunciation—in other words, Foucault's erased subject—is the manifestation of potentiality, of the ability to have and not have language. Defining contingency as the fundamental modal category of potentiality or possibility in that it expresses being as "to be able not to be," in other words, the subject as one who "can and also can not have language" (and can thereby enter into the plane of enunciation), he shows that the subject of desubjectification is fundamentally one who is denied this possibility. Instead of possibility and contingency ("able to be" and "able not to be"), impossibility as "not being able" penetrates reality, thereby bringing about a condition of necessity, or "not to be able not to be." To be a subject of desubjectification, then, is to be submitted to an impossible necessity or a necessary impossibility. What is important here for our purposes is the notion of the subject's relation to language as expressed through contingency, not necessity or presuppositionality. There is a way to be in language, to negotiate a relation to language, that is not always determined by the ban—the said and the unsaid. This other way is to be in language as potential—"able to be" and "able not to be." Silence, of course, is nothing if not the expression of language's contingency, of its potentiality. In short, the absolute relationality of language is not a condition of necessity, but on the contrary it is the foundation of contingency, and therefore possibility. When silence is understood as the condition of language's potentiality, its contingency, then we have a situation where the law as that which is in force though it is suspended, the empty form of the law, is neutralized and can have no effect.

The topology of this zone of silence that Agamben delineates must be reviewed if we are to grasp it as the site where the subject emerges in and as the contingency of language. Silence as the sign of

the contingency of language, of its potentiality, should not be assimilated to the withholding of discourse. If Foucault identifies the archive as the asemantic plane where the modalities, the pathways of the functioning of enunciation, are studied in terms of their exclusions (the archive as a flow chart), Agamben shifts the asemantic plane of study to the existence or the fact of the possibility of enunciation. Silence, then, is not to be located between the said and the unsaid but the sayable and the unsayable—the very possibility that we have language, that there is enunciation. In *Remnants of Auschwitz*, Agamben gives the name "testimony" to this potentiality—not a flow chart but a relation more akin to that between dark and light. He writes,

In opposition to the *archive*, which designates the system of relations between the unsaid and the said, we give the name *testimony* to the system of relations between the inside and the outside of *langue*, between the sayable and the unsayable in every language—that is, between a potentiality of speech and its existence, between a possibility and an impossibility of speech. To think a potentiality in act as *potentiality*, to think enunciation on the plane of *langue* is to inscribe a caesura in possibility, a caesura that divides it into a possibility and an impossibility, into a potentiality and an impotentiality; and it is to situate a subject in this very caesura. (Agamben, *Remnants of Auschwitz*, 145; 135)

To clarify further, perhaps we can translate Agamben's move to the realm of writing to suggest that it is not the difference between what is written and not written, but that there is writing and no writing.

The political value of silence can be appreciated only if we can approach silence as a modality of being in language that offers a way to neutralize the necessities imposed by the law of discourse. Silence can effect such a neutralization by referring the subject to his/her ability to have and not have language. Perhaps the real opposition to discourse's ability to desemanticize and dehumanize comes not from a subject's location within this law that permits and forbids, thereby questioning and challenging the law in what can only be particular and individual cases, in other words, asserting one's right to speak or remain silent, but from a subject's ability to reach from discursive control all the way back to the potentiality of language—to the fact that one can and also

can not have language. This way, one challenges not particular workings of discursive exclusion, but the very law that mandates discourse based on exclusions. This is the logic behind noncooperation movements that aim not so much to challenge or reform the law as to expose and therefore nullify it.

THE WORD OF SILENCE

The discussion so far has been confined to the differences between the deconstructive and biopolitical perspectives on the force of law (the sovereign decision) and the structure of the interrelation between the law and denotative language. The notion that language can be freed from this interrelation with the law, thereby neutralizing its force, I suggested earlier, requires a shift from a diagnostic to a more tactical mode of inquiry. The concept of the messianic—as the experience of disengagement with the law—is here unavoidable. What is the experience of language that is neither in a relationship to the juridical ban nor beyond it? What is life in this space of the in-between? In what sense is this space also that of the time of the messianic?

As I suggested earlier, Derrida's discussion of the messianic without messianism is deeply implicated with his concept of the *a-venir* and the promise as the desire for justice. To recapitulate the main points thus far, Derrida's view of the messianic is structural in the sense that it emerges from the logic of temporality and therefore incorporates an absolute openness to a radical nonknowledge. The space of the promise arises from the deconstruction of the law's presence and dissimulation of sovereignty. For Agamben, such a view of the promise remains inadequate in terms of the problem of the law—an issue that each perspective diagnoses in differing ways. Thus, the ethical charge of messianism for each is quite different as well. For Derrida, the very existence of positive law is haunted by an impossible desire and promise of justice, thereby radically calling into question the sovereignty of right and norm but nevertheless sustaining their repetition and reproduction. (In other words, the ethical is always a figure of haunting, contamination, autoimmunity, etc.) For Agamben, the ethical emerges in the neutralization of positive law and its separation from whatever is possible—life, community, happiness, and so on. (In other words, the

ethical is the operation of a countercaesura.) In this sense, the remnant that Agamben delineates as the separation and conservation of pure possibility (potentiality) does differ from the Derridean trace as inevitable survival of the other within.

To further articulate the messianic as countercaesura, one must take up in detail Agamben's *The Time That Remains: A Commentary on the Letter to the Romans*. I shall not here pretend to outline the powerful hermeneutics of the book, even though the work as a whole deals with nothing but the interrelation and possible severance between law and language as event. The specific achievement of the work is its theorization of the messianic event-word as a temporal image (in Benjamin's sense) that is thoroughly historical. Agamben cites Benjamin's fragment N3,1, where Benjamin writes that images are indices of the historical:

In it, truth is charged to the bursting point with time. (This point of explosion, and nothing else, is the death of the *intentio*, which thus coincides with the birth of authentic historical time, the time of truth.) It is not that what is past casts its light on what is present, or what is present its light on what is past; rather, image is that wherein what has been comes together in a flash with the now to form a constellation. In other words: image is dialectics at a standstill. For while the relation of the present to the past is purely temporal, the relation of what-has-been to the now is dialectical: not temporal in nature but figural <*bildlich*>. Only dialectical images are genuinely historical—that is, not archaic—images. The image that is read—which is to say, the image in the now of its recognizability—bears to the highest degree the imprint of the perilous critical moment on which all reading is founded. (145)

The extent to which this concept of "image" directs Agamben's project in *The Time That Remains* is clarified by remarks made by Anselm Haverkamp in his "Notes on the 'Dialectical Image' (How Deconstructive Is It?)" on the understanding of this concept:

The flash pictures the moment of evidence, a standstill explained in the next sentence. But what needs to be recognized first is the use of "image" as "constellation," a use of the word that is closer to Wittgenstein's "picture theory" than to any "imagistic" philosophy. The difference in translation, however, between "logical pictures" and "dialectical

images" is telling (*Bilder* in both cases). The stress, as Max Black underlines, "is upon the invisible logical form," not on the actuality of an archaic pattern. *Tractatus* 4.01 offers some help by replacing "picture" in the first sentence with "model" in the second: "A proposition [*Satz*] is a picture [*Bild*] of reality. A proposition is a model [*Modell*] of reality as we imagine it [*so wie wir sie uns denken*]" [36; my emphasis]. Like Wittgenstein's "picture," Benjamin's "image" is a schema of thought (*Denken*) and "*Bild*" its most common and, at the time, fashionable denominator. (Haverkamp, "Notes on the 'Dialectical Image,'" 72)

Furthermore, Haverkamp insists that the term "image" in Benjamin, which is often misunderstood, refers to an instance of language. He refers to the conclusion of fragment N2a.3, where Benjamin says of the image, "the place one happens upon them is language."

Language is their natural place of existence; or, to put it somewhat more emphatically, the "state of aggregation" within which their paradigmatic instances are to be found. (The physical analogy with "states of aggregation" like water and air includes the possibility of change from the one to the other state, such as in "sublimation.") More precisely, and this is by no means self-evident, the paradigmatic instance of the dialectical image's existence in language is citation: language reused and reread. One might be tempted to go so far as to say that the word image is the metaphor-and a very suggestive one-for citation, while the word "dialectical" has to be taken as "reading." The expression "dialectical image" has to be translated in to and put to use as "reading citation." (Haverkamp, "Notes on the 'Dialectical Image,'" 71)

Given that his reading of Paul is a palimpsest of "Theses on the Philosophy of History," it is not surprising that Agamben not only ends with a *Tornada* (a term that takes on messianic significance) on the relation between Benjamin and Paul but that the final words are also the previous quotation from Benjamin. Nevertheless, it is important to ask in what sense this view of messianic time as image is historical and not in any sense transcendent of time or the logic of temporality.

Agamben clarifies that the concept of messianic time derives from the image not as a picture or an idea, but as the historicity of a certain recognizability. He writes, "*Das Jetzt der Lesbarkeit*, 'the now of legibility' (or of 'knowability,' *Erkennbarkeit*) defines a genuinely Benjaminian hermeneutic principle" (Agamben, *The Time That Remains*, 145). In

other words, the image is not open to infinite interpretation and deferral. Rather, "every work, every text, contains a historical index which indicates both its belonging to a determinate epoch, as well as its only coming forth to full legibility at a determinate historical moment" (Agamben, *The Time That Remains*, 145). Messianic time is the time of the now, a contraction of the past into the present—as a nesting of time. Language, as the carrier of temporality, contracts into the word. This structure of the event as image generates a philosophical imperative: it gives the book its expository form, as much as the exposition can be said to give the event form by bringing it to light. Thus, while the book as a whole deals with only the first line of Paul's Letter, each chapter treats a single word of this single sentence. This method, then, performs the thesis of messianic time as recapitulation and contraction and of the event as the performative word—a word of faith.

This concept of the word of faith as a linguistic performative unpacked from the perspective of messianic time-image is at the heart of Agamben's ethics and politics. Unlike the constative, the performative, Agamben suggests, is not in a "relation of truth between words and things, but rather, the pure form of the relation between language and world, now generating linkages and real effects. Just as, in the state of exception, law suspends its own application in order to ground its enforcement in a normal case, so too in the performative does language suspend its own denotation only in order to establish links with things" (Agamben, *The Time that Remains*, 133). Thus, if the performative is backed by authority of law and religion, something extraordinary takes place in what Agamben terms as the "*performativum fidei*" or the confession of faith. Agamben specifies that the Pauline word of faith is to be distinguished from the "sacramental performative" (of confession) and the penitential performative of sins. Associated with grace or *charis*, it effectively dissolves the link between, on the one hand, the personal loyalty that swears an oath and, on the other, *nomos*, or law. If loyalty as obligation and law were once conjoined, the word of faith as grace now discloses "a space of gratuitousness [*gratuita*]" (Agamben, *The Time that Remains*, 119). In other words, the experience of the word of faith is a particular kind of promise. It is a promise that, insofar as it is freed from the oath and confession with its accessories of contract,

obligation, guarantee, credit, reciprocity, and so on, divides faith from law. Agamben writes,

The promise exceeds any claim that could supposedly ground itself in it, just as faith surpasses any obligation whatsoever of counterservice. Grace is that excess which, while it always divides the two elements of prelaw and prevents them from coinciding, does not even allow them to completely break apart. The *charis* issuing from this fracture between faith and obligation, between religion and law [*diritto*], cannot in turn be taken as a substantial and separate sphere, for it can only maintain itself through an antagonistic relation to faith and obligation. In other words, *charis* can only maintain itself as the insistence of a messianic exigency in the two, without which law [*diritto*] and religion would, in the long run, be condemned to atrophy. (Agamben, *The Time That Remains*, 120)

The effect that Agamben claims that the messianic has on the law is, then, not simply destructive. The Greek term he underlines as disclosing the relation between the messianic and the law is *katargeō*, "a compound of *argeō*," which in turn derives from the adjective *argos*, meaning "inoperative, not-at-work (a-ergos), inactive. The compound therefore comes to mean "I make inoperative, I deactivate, I suspend the efficacy" (95). Thus, the real relation that the messianic performative has with the world can be measured in its revocation of all vocation. In the messianic calling (*klēsis*), the juridical terms by which relations and properties are instituted and identified are revoked and transformed. But this revocation is not programmatic resistance, confrontational or oppositional. Instead, the transformation is immanent to the vocation, relation, identity, and property in that the terms of the relation are inhabited "as not" (*hōs mē*) applying. Distinguishing the idea of living in a fictional "as if" from the messianic "as not," Agamben writes,

In the *as not*, in a characteristic gesture, Paul pushes an almost exclusively juridical regulation to its extreme, turning it against the law. What does it actually mean to remain a slave in the form of the *as not*? Here, the juridical-factual condition invested by the messianic vocation is not negated with regard to juridical consequences that would in turn validate a different or even opposite legal effect in its place, as does the

fictio legis. Rather, in the *as not*, the juridical-factual condition is taken up again and is transposed, while remaining juridically unchanged, to a zone that is neither factual nor juridical, but is subtracted from the law and remains as a place of pure praxis, of simple "use" ("use it rather!"). Factual *klēsis*, set in relation to itself via the messianic vocation, is not replaced by something else, but rendered inoperative. (Agamben, *The Time That Remains*, 28)

The relevance of Agamben's theory of inoperativity (*katargeō*) to the power of a certain kind of silence to empty the power of law is unquestionable when we consider the following: In continuing to read Paul closely, Agamben shows that the Pauline *katargeō* is related to the Aristotelian concepts *dynamis* and *energeia*, translated as potentiality and actuality. (It is necessary to signal here that these terms are of central importance in Agamben's oeuvre, and cannot be taken up in detail here.) Philologically, it leads to a reading whereby to make inoperative "signals a taking out of *energeia*, a taking out of the act" (96). The consequence of discerning the relation between (in)operativity and (im)potentiality (for *dynamis* always contains its own privation as *adynamia*) is to discover a process by which "the messianic enacts an inversion" (Agamben, *The Time That Remains*, 97). Here, "potentiality passes over into actuality and meets up with its telos, not in the form of force or ergon, but in the form of *astheneia*, weakness." Thus, Agamben writes, "According to Paul, messianic power does not wear itself out in its ergon; rather, it remains powerful in it in the form of weakness. Messianic *dynamis* is, in this sense, constitutively 'weak'—but it is precisely through its weakness that it may enact its effects" (Agamben, *The Time That Remains*, 97).

The Witness

Returning to the example offered by the tale of "The Dumb Witness," the silence in the narrative is not merely a stubborn nondisclosure of the papers, but a certain secret to the silence. Here the figure of the slave woman appears to make a secret discovery of a possibility within language in its relation to law.

Insofar as Derrida's model of the place and function of the secret appears to capture and expatriate silence to the discretion of the law,

it does not go far enough to explain Viney's outwitting of law and authority. Perhaps her secret is not some content but rather her secret is her silence—not a silence about something but her capability for silence, which manifests as simple persistence—where by accessing the place where she can and can not have language, she withholds herself from power. Viney is a witness not so much to a legal secret as to the secret of her silence, which Derrida equates with the notion of alterity as such. He says,

There is in every poetic text, just as in every utterance, in every manifestation outside of literature, an inaccessible secret to which no proof will ever be adequate . . . Testimony that is given may be *false*, but one can never prove that there has been *false testimony*. Why? Because, on the other side, on the side of the witness, as on the side of the poet, there is always the recourse that consists in saying: what I said is perhaps false, I was mistaken, but I did so in *good faith* [emphasis added]. If that is so, then there is no perjury, no false testimony, and no lie . . . One will never be able to *prove*—what we call 'prove'—that someone is in bad faith. This stems from the fact that the other is secret . . . I will never be equal to the secret of otherness. The secret is the very essence of otherness. (Derrida, *Sovereignities in Question*, 164–65)

Derrida, of course, locates the secret as the unsaid in utterance itself and by invoking the problem of veracity versus proof or, more precisely, value versus fact, he locates the secret and the unsaid as not only within the context but also the orbit of the law. The lie can never be proven, thereby rendering the truth uncertain. The witness is always the site of the secret—the unspoken unsaid that will escape the arbitration of the law and therefore at some level pose a threat to its sovereignty. Here, in a departure from his earlier statement about the asemantic password, which is also a secret that permits one to be within the law—to be in a place where one can negotiate with the law—the secret of the witness is one that may potentially disrupt the law. It appears heterogeneous to the law, as the essence of alterity itself.

Again, we cannot fail but note the small and salient difference between Derrida and Agamben's positions. For Agamben, the secret of the witness is perhaps immanent to the secret of the law as the place of anomie. In the context of Chesnutt's story, it is the presupposed shared

secret between Murchison and Viney and the violent excess that it gives rise to—it is this structure that is the true secret. However, if we read Viney's silence strictly within the limits of Derrida's location of the secret as alterity, heterogeneity, then the secret of her silence will displace the question from the law to whether she was in good faith or not in indicating her inability to communicate. In other words, her secret is undecidable only to the extent that it remains impossible to prove the wound to her tongue. However, if we read the secret as that which is excluded from the arbitration of the law by virtue of the law's own structure (anomie as excluded inclusion that prevails in the exception), then we can begin to interpret Viney's muteness as something more than a question of "good faith." We could say that she is neither in good faith nor in bad faith vis-à-vis the law as it functions.

How can we understand the idea that her silence was effectively a nullification of the law? If, as the narrator puts it, "the law made her his," then the law in effect suspends itself with reference to the master-slave relation or, more precisely, it invests the master with absolute sovereign authority. For Viney, he is the final law. If the force of law that accrues to Murchison is in good part owed to his wealth (his ability to own himself and others), and if this de facto power is granted de jure by inheritance laws—laws of property that render her mute as subject—then Viney effectively, through her muteness, nullifies the law's capacity to grant him this power. Through her silence, she renders the law entirely powerless and unenforceable. The law is suspended (the inheritance laws are ineffective) and also not in force, insofar as Murchison can do nothing about her. In other words, the true secret of her silence exceeds factual knowledge of the papers. Her silence should not be read as a silence about something but as her capability of silence, which manifests as a withholding. By fully inhabiting the outside of the law—that is, the law's capacity for arbitrary (exemplary and exceptional) punishment, its central lawlessness (in other words its foundational excess, which is its well-kept secret insofar as it is never legislated)—she disperses the law's anomie, its nonsignifying aspect, rendering indistinct the inside and the outside of the law. Viney is a witness not so much to a legal secret as to the secret of her silence. In a sense, Viney's discovery of her ability to be mute is effectively to grant herself a holiday from the law—to not just live outside, or at the door of

the law, but to succeed in closing the door, if not permanently, then at least for a short while, to live in a pure "anomic" nonrelation to the law.

The performative silence in Chesnutt's folkloric tale illuminates the messianic word as a modality of silence. As Agamben writes,

The word of faith manifests itself as the effective experience of a pure power [*potenza*] of saying that, as such, does not coincide with any denotative proposition, or with the performative value of a speech act. Rather, it exists as an absolute nearness of the word. One therefore understands why, for Paul, messianic power finds its *telos* in weakness. The act itself of a pure potentiality of saying, a word that always remains close to itself, cannot be a signifying word that utters true opinions on the state of things, or a judicial performative that posits itself as fact. There is no such thing as a content of faith, and to profess the word of faith does not mean formulating true propositions on God and the world . . . "Messianic and weak" is therefore that potentiality of saying, which in dwelling near the word not only exceeds all that is said, but also exceeds the act of saying itself, the performative power of language. This is the remnant of potentiality that is not consumed in the act, but is conserved in it each time and dwells there. If this remnant of potentiality is thus weak, if it cannot be accumulated in any form of knowledge or dogma, and if it cannot impose itself as a law, it does not follow that it is passive or inert. To the contrary, it acts in its own weakness, rendering the word of law inoperative, in de-creating and dismantling the states of fact or of law, making them freely available for use. (Agamben, *The Time That Remains*, 136–37)

4. See, for instance, the essays in *Silence: The Currency of Power*, edited by Maria-Luisa Achino-Loeb.

5. "La Littérature au secret: une filiation impossible," in *Donner la mort*, translated by David Wills as *The Gift of Death, Second Edition and Literature in Secret*.

3. LAW, "LIFE/LIVING," LANGUAGE

1. The version that appears in *The Conjure Woman, and Other Conjure Tales* is based on two drafts of the story in the Charles Waddell Chesnutt Papers at Fisk University Library. The earlier and more complete of these drafts is a twenty-one-page typescript that is missing its second page; the other typescript version, consisting of eight pages, represents a later stage of revision but is fragmentary and incomplete. The Duke edition is a composite text based on these typescripts, following the later typescript wherever it exists and using the first typescript for the remainder of the story. "The Dumb Witness" was revised and incorporated with an altered ending into chapters 19 and 35 of Chesnutt's novel *The Colonel's Dream* (1905).

2. See, for instance, George M. Stroud, *A Sketch of the Laws Relating to Slavery in the Several States of the United States of America* (1856) (New York: Negro Universities Press, 1968).

3. On the hidden play of words between *subditus* (subjection to authority) and *subjectum* (substratum) in the notion of the modern subject, see Etienne Balibar, "Subjection and Subjectivation," in *Supposing the Subject*, ed. Joan Copjec (New York: Verso, 1994), 1–15. Balibar writes, "Why is it that the very name which allows modern philosophy to think and designate the *originary freedom* of the human being—the name of 'subject'—is precisely the name which *historically* meant suppression of freedom, or at least an intrinsic limitation of freedom, i.e. *subjection*? We can say it in other terms: if freedom means freedom of the subject, or subjects, is it because there is, in 'subjectivity', an originary source of spontaneity and autonomy, something irreducible to objective constraints and determinations? Or is it not rather because 'freedom' can only be the result and counterpart of liberation, emancipation, *becoming free*: a trajectory inscribed in the very texture of the individual, with all its contradictions, which starts with subjection and always maintains an inner or outer relation with it?" (8–9). Balibar takes up these themes also in "The Subject" in *(U)mbra: A Journal of the Unconscious*; "Ignorance of the Law," 2003, 9–23; see also his *Politics and the Other Scene* and *Masses, Classes, Ideas: Studies on Politics Before and After Marx*, especially chapters 2 and 9.

4. See the chapters "Force of Law" (32–40) and "Gigantomachy Concerning a Void" (52–64) in *State of Exception*.

5. Agamben, *The Time That Remains*, 32.

6. I have omitted the corresponding original page reference as the text is bilingual and the original is on the facing page.

7. Derrida, *Foi et Savoir* (Paris: Éditions Seuil, 1996), translated in 1998 as "Faith and Knowledge: The Two Sources of 'Religion' at the Limits of Reason Alone" in *Acts of Religion*, 40–101.

8. Page references are to original paragraph numbers. Perhaps an early indication of this "disagreement" is found in Derrida's criticism of Levi-Strauss in *Of Grammatology*. Discussing the latter's condemnation of writing as associated with power and corruption, Derrida writes, "In this text, Levi-Strauss does not distinguish between hierarchization and domination, between political authority and exploitation. The tone that pervades these reflections is of an anarchism that deliberately confounds law and oppression. The idea of law and positive right, although it is difficult to think them in their formality—where it is so general that ignorance of the law is no defense—before the possibility of writing, is determined by Levi-Strauss as constraint and enslavement. Political power can only be the custodian of an unjust power. A classical and coherent thesis, but here advanced as self-evident, without opening the least bit of critical dialogue with the holders of the other thesis, according to which the generality of the law is on the contrary the condition of liberty in the city" (132; 191).

9. Philology aside, the distinction between *bios* and *zōē* in relation to Aristotle's *Nicomachean Ethics* is one that Heidegger makes in *Basic Concepts of Aristotelian Philosophy*, 52 (paragraphs 72–75). Arendt repeats this point in *The Human Condition*, 24.

10. Ultimately, the true point of difference between the deconstructive and biopolitical perspectives perhaps has everything to do with the ways each thinker "inherits" Nietzsche. Foucault and Agamben are perhaps much more indebted to Heidegger's reading of Nietzsche's thought of the will to power than Derrida, but I cannot engage this underlying philosophical discussion here. See *Of Grammatology*, 19, and also *Spurs*.

11. The original 1993 edition does not contain the notes added to the 1994 English translation.

12. See also his *Of Hospitality*.

4. BETWEEN DERRIDA AND AGAMBEN

1. Parenthetical page numbers following quotations are for the French text, *La voix et le phénomène*, followed by those for Allison's English translation. In places where reference is made to a turn in the argument without quotation, the parenthetical page numbers refer to the English translation only.

2. Derrida writes, "For Husserl, historical progress always has as its essential form the constitution of idealities whose repetition, and this tradition, would be assured *ad infinitum*, where repetition and tradition are the transmission and reactivation of origins. And this determination of being as ideality is properly a *valuation*, an ethico-theoretical act that revives the decision that founded philosophy in its Platonic form. Husserl occasionally admits this; what he always opposed was conventional Platonism. When he affirms the nonexistence or nonreality of ideality, it is always to acknowledge that ideality is a way of being that is irreducible to sensible existence or empirical reality and their fictional counterparts. In determining the *ontōs on* as *eidos*, Plato himself was 'affirming the same thing'" (59; 52–53).

3. As I understand it, Derrida's critique of Husserl here itself interestingly repeats Heidegger's critique of Kant in *Kant and the Problem of Metaphysics*. In his influential analysis of the first critique, Heidegger discusses Kant's proposition that time and the "I think" are the same. Heidegger writes, "It is at once obvious, therefore, that time as pure self-affection is not found 'in the mind' 'beside' pure apperception. On the contrary, as the basis of the possibility of selfhood, time is already included in pure apperception and first enables the mind to be what it is . . . time and the 'I think' are no longer opposed to one another as unlike and incompatible; they are the same" (197). I owe this reference to Dennis Schmidt, who included this work in his reading list for the *Collegium Phaenomenologicum* 2007.

4. For a useful discussion of Heidegger's use of the term ontotheology and its subsequent impact, see Iain Thompson, "Ontotheology? Understanding Heidegger's *Destruktion* of Metaphysics."

5. In *Of Grammatology*, Derrida, discussing the proximity of Hjelmslev's linguistic theory to grammatology, with the caveat that the latter could not admit the experience of arche-writing within his system, writes, "As for the concept of experience, it is most unwieldy here. Like all the notions I am using here, it belongs to the history of metaphysics and we can only use it under erasure [*sous rature*]. 'Experience' has always designated the relationship with a presence, whether that relationship had the form of consciousness or not . . .

That is not so at all in the case of experience as arche-writing. The parenthesizing of regions of experience or of the totality of natural experience must discover a field of transcendental experience. This experience is only accessible insofar as . . . one asks the question of the transcendental origin of the system itself, as a system of the objects of a science . . . It is because I believe that there is a short-of and a beyond of transcendental criticism. To see to it that the beyond does not return to the within is to recognize in the contortion the necessity of a pathway [*parcours*]. The pathway must leave a track in the text. Without that track, abandoned to the simple content of its conclusions, the ultra-transcendental text will so closely resemble the precritical text as to be indistinguishable for it. We must now form and meditate upon the law of this resemblance" (61; 89–90).

6. The concept of potentiality is taken up in modest detail in chapter 7, "HumAnimal Acts: Potentiality or Movement as Rest."

5. THE WILD CHILD

1. Originally published in *Cahiers de chemin* 29 (January 15 1977): 19–29. English translation in Foucault, *Power: The Essential Works of Foucault*, 157–75.

2. See especially his *Monolingualism of the Other*.

3. See *Speech and Phenomena* and *Of Grammatology*, 140.

4. See, however, Michael Nass's eulogy to Derrida, "Alors, qui êtes-vous?: Jacques Derrida and the Question of Hospitality," in *SubStance* 106, 34, no.1 (2005): 6–17.

5. Richard Kearney writes, "In the *Timaeus* 48e–53b, Plato enquires into the primordial origin from which all things come. In what must be one of the most intriguing passages in his entire oeuvre, Plato struggles to identify the fundamental condition of possibility of the being a world. He calls this *khōra*, a virtually untranslatable term referring to a kind of placeless place from which everything that is derives. Deploying a number of allusive metaphors—nurse, mother, a perfume base, space, winnowing sieve, receptacle—Plato acknowledges *khōra* challenges our normal categories of rational understanding" (Kearney, *Strangers, Gods, and Monsters*, 193).

6. THE WILD CHILD AND SCIENTIFIC NAMES

1. According to Stephen Jay Gould, the reason for the Linnaean system's continued success is its uncanny consistency with "evolutionary topology." Gould offers a useful explanation regarding Linnaeus's "binomial

nomenclature": "the formal name of each species includes two components: the generic designation, given first with an initial uppercase letter (*Homo* for us, *Canis* for dogs, etc.); and the so-called 'trivial' name, presented last and in fully lowercase letters (*sapiens* to designate us within the genus *Homo*, and *familiaris* to distinguish dogs from other species within the genus *Canis*—for example the wolf, *Canis lupus*) . . . We regard the 1758 version of *Systema Naturae* as the founding document of modern animal taxonomy because, in this edition and for the first time, Linnaeus used the binomial system in complete consistency and without exception" (Gould, *I Have Landed*, 292–93).

2. See Banton, *Racial Theories*.

3. The characteristics Linnaeus attributed to the races in the 1758 edition are as follows: "Americanus: reddish, choleric, and erect; hair black, straight, thick; wide nostrils, scanty beard; obstinate, merry, free; paints himself with fine red lines; regulated by customs. Asiaticus: sallow, melancholy, stiff; hair black; dark eyes; severe, haughty, avaricious; covered with loose garments; ruled by opinions. Africanus: black, phlegmatic, relaxed; hair black, frizzled; skin silky; nose flat; lips tumid; women without shame, they lactate profusely; crafty, indolent, negligent; anoints himself with grease; governed by caprice. Europeanus: white, sanguine, muscular; hair long, flowing; eyes blue; gentle, acute, inventive; covers himself with close vestments; governed by laws."

4. See, for instance, Patricia Fara, *Sex, Botany, and Empire: The Story of Carl Linnaeus and Joseph Banks* (New York: Columbia University Press, 2003), 10; Philip R. Sloan, "The Buffon-Linnaeus Controversy," *Isis* 67, no. 238 (spring 1976): 356–75; Douthwaite, *The Wild Girl, Natural Man, and the Monster*, 17; Richard Nash, *Wild Enlightenment: The Borders of Human Identity in the Eighteenth Century* (Charlottesville: University of Virginia Press, 2003), 16.

5. See Gunnar Broberg, "Linnaeus' Classification of Man," in *Linnaeus: The Man and His Work*, ed. Tore Frangsmyr, Sten Lindroth, Gunnar Eriksson, and Gunnar Broberg (University of California Press, 1983), 156–94.

6. It is interesting in this context to note that Gould mentions that later physicists characterized Linnaean taxonomy and paleontology as "philately"—mere stamp-collecting with little relevance to true science. See his *We Have Landed*, 288–89.

7. However, in *The Open: Between Man and Animal*, Giorgio Agamben writes that Linnaeus's decision to "classify man among the *Anthropomorpha*, the 'man-like' animals" indicates clearly that "*Homo* is constitutively nonhuman" (30) and that this central nonhumanity of man was already adumbrated three centuries earlier in the preeminent work of Renaissance humanism, Pico's *Oration on the Dignity of Man*.

8. I was led to both the Digby and the Connor sources by Michael Newton, *Savage Girls and Wild Boys*, 18–23. Digby's *Two Treatises* is available online at http://gateway.proquest.com/openurl?ctx_ver=Z39.88-2003&res_id=xri:eebo&rft_id=xri:eebo:image:59612. Connor's *History of Poland* (1698) is available online at http://gateway.proquest.com/openurl?ctx_ver=Z39.88-2003&res_id=xri:eebo&rft_id=xri:eebo:image:52719:201.

9. For accounts of Peter, see Newton, *Savage Girls and Wild Boys*, 24–52. See also "An enquiry how the wild youth, lately taken in the woods near Hanover, (and now brought over to England) could be there left, and by what creature he could be suckled, nursed, and brought up . . ." (London: H. Parker, 1726) and Daniel Defoe, "Mere Nature Delineated," ed. Andrew Wear (1726) in Defoe, *Writings on Travel, Discovery, and History*, eds. W. R. Owens and P. N. Furbank (London: Pickering and Chatto, 2001–2).

10. Despite her relatively fluent French, Lord Monboddo, who was famed for his view that Orang Outang's are a variety of human, classified her as the closest relation to *Homo sapiens*. Monboddo, in fact, classified Peter the Wild Boy below an Orang Outang and Marie Angelique as above the latter and next to the fully human. Of course, he never bothered with the inconsistent logic of classifying the singular case of Peter or Marie Angelique with a species of ape, let alone the fact that he also aimed to discover her racial or national origins.

7. HUMANIMAL ACTS

1. Perhaps it is folklore that best grasps the body as movement when it speaks of "shape-shifting"—that is, the body's ability to change shape, to undefine its form, and thereby render all forms temporal. If "metamorphosis" is traditionally understood as the shedding of an old form for a new one, shape-shifting throws all shapes and forms into question. The patron god here may well be Proteus, who changes shape to avoid foretelling the future, thereby rendering knowledge of the truth uncapturable. For an interesting discussion of shape-shifting in Ovid's *Metamorphosis*, see Elaine Fantham, "Sunt quibus in plures ius est transire figuras: Ovid's Self-Transformers in the 'Metamorphoses,'" in *The Classical World* 87, no. 2 (November–December 1993): 21–36. Fantham discusses the few instances of voluntary shape-shifting in Ovid, selecting among them the figures of Thetis, Mestra, and Vertumnus. As is well known, Ovid does not retell the story of Proteus, though he is of course invoked periodically in his text.

2. *Irish Cinema Times*, "Interview: The Man on Wire," http://www.movies.ie/interviews/Interview__The_Man_On_The_Wire.