

Chapter 3: Turning a Face Toward the Law: Anonymity, Privacy and Interpellation

“If individuals could be properly identified, public safety would be significantly enhanced and social and economic costs would be reduced significantly.”

– Amitai Etzioni, *The Limits of Privacy*

“Interpellation is not an event, but a certain way of staging the call, where the call, as staged, becomes deliteralized in the course of its exposition or *darstellung*. The call itself is also figured as a demand to align oneself with the law, a turning around (to face the law, to find a face for the law?), and an entrance into the language of self-ascription — ‘Here I am.’”

– Judith Butler, “Conscience Doth Make Subjects of Us All: Althusser’s Subjection,” *The Psychic Life of Power*

In his 1999 book *The Limits of Privacy*, Amitai Etzioni argues in favor of curtailing “what many Americans consider their right to be anonymous.”¹⁴⁶ Against the grain of recent calls to protect privacy from increasing encroachment, Etzioni makes a communitarian case in favor of strong limitations on privacy. Etzioni does not argue that privacy should be eliminated, only that it should be treated as a value to be balanced with other values, such as the “needs of public safety and public health” and the general good of society. The value of privacy should always be balanced with the costs of allowing criminals to hide from police. Privacy, in short, has a cost, one that is exacted in the havoc that criminals wreak on our society.

The assumption that privacy is opposed to public safety, however, presents an ironic reversal of the principles and political goals of early liberalism, especially in the seventeenth-century formulations of Hobbes discussed in Chapters 1 and 2. For seventeenth century writers public safety was central to, if not the the *raison d’être* of,

146 Amitai Etzioni, *The Limits of Privacy*, p. 117. New York: Basic Books, 1999.

what would later be called the modern liberal state. Far from promoting danger, the private emerged as the place through which bloodshed could be stopped and public safety *preserved*.

How then has the private become dangerous to public safety? For early theorists of the liberal state, contentious questions concerning the identity of persons, especially insofar as they displayed religious convictions publicly, needed to be shepherded into the realm of the private if a stable model of public, secular judgment was to have any credibility or efficacy. For Etzioni and fellow communitarians, the concern is different. Identity is dangerous, yes, but only insofar as it remains hidden. Identity is dangerous if it cannot be identified.

Suitably identified, persons are no longer a threat to public safety. But how? How, according to Etzioni's reasoning, are we confidently able to balance the imperative of identifying people with the ideals of freedom? For Etzioni, the answer follows from a relatively straightforward calculation of the costs versus benefits of policing. A functioning society must be able to provide protection for its members, and it must have the power to lawfully coerce and restrain people it regards as harmful to its members. Hence one of the most important reasons for the curtailment of privacy is the need to ensure that a network of material coercions is properly in place to enforce community norms through surveillance and other means, such as shaming. Shaming, though, first needs to feel good again. Shaming is not the same thing as violent, illegal means of coercion. It is not something to be ashamed of:

"Shaming is not to be confused with harassment, vigilantism, or riding people out of town. These are illegal acts, punishable by law.... Shaming, in contrast, is a

completely legal social expression — indeed, one that is deeply woven into communal life. Shaming occurs naturally whenever an individual stumbles drunk down the street, neglects his children, or makes a belligerent fool of herself at a town meeting, unless there are mitigating personal circumstances that communities take into account.”¹⁴⁷

In order for shaming to do its work, forces that protect individuals from scrutiny must be rolled back or at least tempered so that they may be adjusted to the circumstance. We must be able to see persons and identify them in order for judgment to work.

But what prerogative Etzioni is asking people to surrender so that society might see them? Their right not to be addressed? What is it that protects people from being shamed? Is it the prerogative of people to be free of shaming, of interpellation, of appellation?

On one level, Etzioni’s argument solicits a judgment based upon a balancing of individual rights and the general good. At another level, the judgment in question has less to do with a social or governmental decision as such. Rather, the degree to which privacy and anonymity are dangerous seems to hinge on a judgment of one’s *interior* state of responsibility. Alongside the balancing of general good and specific rights, Etzioni stresses that the operative choice individuals should make is between individualism and responsibility. In order to bring a “fresh emphasis on responsibilities,” Etzioni contends, we must recognize the “need to rein in the excesses of individualism.” This judgment requires a different kind of observation than a *policy* decision that would balance privacy rights with the social good.

What enforces or encourages this responsibility? For Etzioni, the answer involves disclosure and scrutiny. Privacy is the opposite of disclosure and scrutiny:

¹⁴⁷ Ibid., p. 59.

“I suggest that a sound communitarian treatment of privacy views it as the realm in which an actor (either a person or a group, such as a couple) can *legitimately* act without disclosure and accountability to others. Privacy thus is a *societal license* that exempts a category of acts (including thoughts and emotions) from communal, public, and governmental scrutiny.”¹⁴⁸

A subtle shift moves privacy from a right to a license. A license is a privilege, not a right; hence with this move Etzioni opens his argument up to a strong challenge on liberal, rights-based terms. Etzioni hopes to dislodge privacy from its seeming basis in individual rights (whether from the Fourth, Ninth or Fourteenth Amendments to the Constitution, or from more general sources such as natural liberty, property, etc.) by trying to persuade the reader that privacy is more like a driver’s license. Privacy, like the privilege to drive on this account, can result in significant injury and death when not judiciously balanced with the needs of public safety.

But even as the question of privacy and anonymity seems to revolve around a classic dispute between rights and governmental prerogative, there are symptoms that more is at stake than hidden acts harmful to society. It turns out that this remarkable license called privacy exempts many acts. Among them, Etzioni adds parenthetically, are a “category of acts (*including thoughts and emotions*).” More than external acts, the question of privacy seems to involve exposure and scrutiny of interior states of responsibility.

So who or what is the agent of this scrutiny? Who is the observer or overseer that admonishes the subject to be more responsible? Etzioni’s answer is state and society. But how could state and society scrutinize individual responsibility?

In order to be scrutinized by state or society, one must first “appear.”

148 Ibid., p. 196 [emphasis in original].

Identification is proof of appearance. Etzioni asks, ultimately, for proof of appearance, proof that you can be identified. That one *can* be identified is different than the actual verdict of whether you are *correctly* identified or not. This pure potentiality, being identifiable, comprises the epistemological terrain on which the politics envisioned by Etzioni and, we shall see in the next chapter, sovereign legal power, take place. Privacy has a relationship with appearance and identification, and the relationship turns on how the subject appears before law, how one is addressed by law.

Is privacy, then, a protection from the power of the state to *address* you? In current usage, the word address carries a doubly attributive property: to address someone; and to have an address. But address originates in the “direction” of oneself or other people. The meaning of “addressing an envelope” comes from the original meaning “to direct.” Before the notion of a message, the verb “to address” meant to straighten, to make right, to prepare oneself, to correct or address one’s wrongs, to address oneself to god. The word that means “to make right” and “to correct” hews closely to straightening the body:

“My crosse shall shewe my hede to therth and addresse my feet heuen” (Caxton, 1483). “He arose, remaining bended in the midst of the way, like unto a Turkish Bow, without being able to address himself” (Shelton, 1680).¹⁴⁹

The origin of address, then, has a truer resonance with the corrective operation Etzioni envisions. But early uses of the word address make no mention of “safety” as the reason for correction. Ultimately, so too with Etzioni: the reason for identification cannot be reduced to a simple choice between privacy and public safety. Rather, the central prize is that people should be instilled with a sense of responsibility. But responsibility is harder to show. Responsibility is neither necessary to nor neatly or self-evidently derived from the values of privacy or public safety.

Enter the solution of identification. A gaze of identification, a voice of address, serves the dual ends of public safety and responsibility. But is the voice that identifies people that of the state or of conscience? Is it external or internal? This chapter

149 *Oxford English Dictionary*, pp. 105–107.

considers the voice of identification as an internal and external component of what it means to be a free subject. I begin by reading Althusser's and Butler's examination of the constitutive effect of addressing, especially insofar as it can be accounted for in the kind of exemplary depiction of being "hailed" by the state or the church. I shall compare this with another short *récit* depicting the encounter of subject and state, Kafka's "Before the Law," along with Derrida's commentary.

Etzioni wants people to be addressable. For Althusser, responsiveness to address is precisely the constitutive function of ideology, one that dwells in the domain of bodily, 'material' self-reflexivity. Ideology secures the reproduction of relations of production by interpellating individuals as subjects. This moment of interpellation, in its very transmission, makes one a subject through a process of self-reflexive recognition. For Althusser, interpellation is an unavoidable condition of history and ideology as such. One is not a subject without ideology, and therefore one is not a subject without interpellation.

When the policeman calls out "Hey you there!" in Althusser's dramatic parable of internalizing ideology, several overlapping and conflicting forces — desire, complicity, guilt, innocence — are set into motion. What is this voice? Is it the voice of the Leviathan, the great artifact of sovereignty? Or is it the reflexive, interiorized voice of the *person*, echoing in the mirrored, free, prisonhouse of conscience?

One of the things that Althusser is putting into question is the relationship between the voice of law and the identity of the subject. The relationship is complicated: naming and remaining anonymous turn out not to be a unidirectional action of

inscription, even in the unfolding of Althusser's own analysis. Much as in Isaiah Berlin's quandary discussed in the previous chapter, the issue of self-recognition once again returns as a problem in theory of individual freedom.

Being hailed by the police in Althusser's allegory occurs between public and private, both spatially and temporally. Spatially, it marks a defining interface between a private sphere, where one could be hidden from scrutiny, and public exposure. Temporally, it marks the moment when one becomes, as in the naming ritual of baptism, more maturely and completely incorporated in the system of the speaking authority.

As the first section explores Althusser's account of the effect of the address of power, the next section examines Judith Butler's commentary on Althusser's work. Butler is concerned, in part, with how these effects might be *limited*. Considering Althusser's essay in the context of other theories of subjection that depict a "turn toward the law" or a "turn back upon oneself," Butler questions the nature of the voice that incites the "turn" and thereby the constitution of the person as subject. In explicating the "passionate attachment" to power and its address, Butler wants to learn how to discover its limit.

Butler argues that the questions "Who is speaking? Why should I turn around? Why should I accept the terms by which I am hailed?" are, in Althusser's allegory, answered largely according to the dictates of Althusser's *exempla*. The voice of address resembles a "divine performative." In part because of this dependence, the voice is to the subject almost indistinguishable from conscience. Althusser is ultimately "fully constrained" by this logic of conscience, according to Butler. Butler asks how the act of

turning toward the law — reflexively entering into “the language of self–ascription though the language of guilt” — might possibly be refused instead of being impossible to refuse.

The very failure of being able to represent fully a ‘founding’ scene of subjection forms an important limit. For Butler, this slippage forms a hopeful space of identity, one that remains unexhausted by any particular interpellation. Althusser, too, sees his study of interpellation in terms of a slippage in how the person appears and/or is represented to himself, in particular through the Lacanian concept of misrecognition (*méconnaissance*).

Kafka’s “Before the Law,” I propose, formalizes this misrecognition. In his depictions of subjects facing the law, Kafka gives a different twist on many of the themes common to Etzioni, Althusser and Butler: the reflexive response to speaking authority, the question of being named, the dream of recognition, the message from the king,¹⁵⁰ the

150 On the dream of recognition in the message from the king, see Kafka’s “An Imperial Message”:

“The Emperor, so it runs, has sent a message to you, the humble subject, the insignificant shadow cowering in the remotest distance before the imperial sun; the Emperor from his deathbed has sent a message to you alone. He has commanded the messenger to kneel down by the bed, and has whispered the message to him; so much store did he lay on it that he ordered the messenger to whisper it back into his ear again. Then by a nod of the head he has confirmed that it is right. Yes, before the assembled spectators of his death — all the obstructing walls have been broken down, and on the spacious and loftily mounting open staircases stand in a ring the great princes of the Empire — before all these he has delivered his message. The messenger immediately sets out on his journey; a powerful, an indefatigable man; now pushing with his right arm, now with his left, he cleaves a way for himself through the throng; if he encounters resistance he points to his breast, where the symbol of the sun glitters; the way, too is made easier for him than it would be for any other man. But the multitudes are so vast; their numbers have no end. If he could reach the open fields how fast he would fly, and soon doubtless you would hear the welcome hammering of his fists on your door. But instead how vainly does he wear out his strength; still he is only making his way through the chambers of the innermost palace; never will he get to the end of them; and if he succeeded in that nothing would be gained; he must fight his way next down the stair; and if he succeeded in that nothing would be gained; the courts would still have to be crossed; and after the courts the second outer palace; and once more stairs and courts; and once more another palace; and so on for thousands of years; and if at last he should burst through the outermost gate — but never, never can that happen — the imperial capital would lie before him, the center of the world, crammed to bursting with its own refuse. Nobody could fight his way through here, least of all one with a message from a dead man. But you sit at your window when evening falls and dream it to yourself.” From *Kafka: The Complete Stories*, ed. by N. Glatzer, New York: Schocken Books.

letter left without reply, the call.

In complicating the stories of how one appears before the law, Kafka shows the slippage in the kind of 'full compliance' with the law of identification that Etzioni's social vision requires. With Derrida, I would like to show that Kafka undermines the silent consensus governing Etzioni's theory and even Althusser's: the possibility of *proof* of the subject. While Kafka's narrations seem to meet the conditions of both Etzioni (knowledge is on the side of a state not hemmed in by restrictions on privacy) and Althusser (subjects appear and are addressed as individuals), they simultaneously show the impossibility of a complete representation of address and, thereby, the confidence in a complete representation, or proof, of the individual identification of the subject.

While Etzioni seeks to amplify an external and internal voice of identification, Kafka undermines the knowledge required for that operation. Kafka upsets the very terrain on which Etzioni and Althusser fight for their particular politics: the proof of the subject's appearance.

Naming and Subjection (Althusser)

In political theory of the last few decades, one of the most compact and influential depictions of the relationship between political subjection and appearing — being named in an address of power — comes in Louis Althusser's essay on ideology.¹⁵¹ In order to understand how Althusser arrives at his notion of "interpellation," one has to understand what he means by the term "ideology," since it is through these concepts that he arrives at the thesis of his essay that "ideology interpellates individuals as subjects." Althusser first introduces a distinction between two kinds of institutions important to state power: ideological state apparatuses and repressive state apparatuses. Both ideological and repressive apparatuses belong to what traditional Marxist political theory refers to as the "superstructure" of capitalist society. The superstructure, following a topographical metaphor interpreters have used to characterize certain concepts from Marx and Engels' *The German Ideology*, refers to political and legal institutions of state power, as well as other institutions that provide the ideological production legitimizing capitalist domination. The superstructure is determined by the "base" of capitalist society, which is made up of the totality of productive forces and the relations of production that organize these forces.

Ideological state apparatuses include schools, churches, cultural and media institutions. While there are many kinds of ideological apparatuses, Althusser writes, there is only one type of repressive state apparatus. The repressive apparatus consists in

¹⁵¹ Louis Althusser, "Ideology and Ideological State Apparatuses (Notes Towards an Investigation)," in Brewster, tr., *Lenin and Philosophy and Other Essays*, Monthly Review Press 1971.

the ensemble of the police, the army, the executive bureaucracy, the prisons. Institutions of the repressive state apparatus are entirely public entities, whereas ideological state apparatuses are often found in institutions that are considered private, such as churches, parties, trade unions, newspapers. Repressive state apparatuses function by violence; ideological state apparatuses function by *ideology*.

One of Althusser's main goals is modify the traditional Marxist theory of state power so that, instead of solely holding that the base determines everything that goes on at the level of the superstructure, the theory could account for the way that cultural and legal institutions in the superstructure have a "reciprocal" effect on the base. Althusser argues that ideological state apparatuses are a primary, if not the sole, site of class struggle. Moreover, Althusser wants to show that ideological state apparatuses are the preeminent place where relations of production are reproduced.

Ideological state apparatuses do their work — that is, reproducing social relations over time and, more importantly for purposes here, making individuals recognize themselves as subjects through interpellation — through ideology, but what is ideology?

Ideology, in Althusser's conception, bears a resemblance to the figure of "Law" in Derrida's reading of Kafka's "Before the Law" in one important way. Ideology in general, Althusser writes, "has no history."¹⁵² Particular forms of ideologies, such as

152 Althusser, "Ideology and Ideological State Apparatuses," pp. 159ff. For comparison, see Derrida, "Before the Law," pp. 191–2: "It seems that the law as such should never give rise to any story. To be invested with its categorical authority, the law must be without history, genesis, or any possible derivation. That would be *the law of the law*. Pure morality has no history: as Kant seems at first to remind us, no intrinsic history. And when one tells stories on this subject, they can concern only circumstances, events external to the law and make it present, to enter into a relation with it, indeed, to enter it and become *intrinsic* to it, but none of these things can be accomplished. The story of these maneuvers would be merely an account of that which escapes the story and which remains finally inaccessible to it. However, the inaccessible incites from its place of hiding.... I say 'the law of laws' because in Kafka's story one does not know what kind of law is at issue — moral, judicial, political,

religious, ethical, legal, political, etc., do have a history, and also unlike ideology in general, always express class positions, according to Althusser. There can be no theory of ideologies in general, Althusser writes, because ideologies in the singular always have a particular history, first, and second, because they always are determined in the “last instance” by something situated “*outside* ideologies alone, although it involves them.”¹⁵³

In trying to formulate a theory of ideology *in general*, Althusser opens the possibility of using the theory of interpellation in contexts detachable from the specific dependencies on capitalist institutions. But what does he mean when he states that ideology has no history?

Althusser wants to distinguish his theory of ideology in general from the one Marx and Engels propound in *The German Ideology*. Althusser argues that the remark in *The German Ideology* that “ideology has no history” appears in a “plainly positivist context.”¹⁵⁴ For Marx, ideology is an empty form, a nothingness. Ideology is “a pure dream, pure illusion” because it contrasts with the positive, rich plenitude of reality. Ideology has no reality in Marx’s view; rather, “all of its reality is external to it.” Only individuals have history and reality. The “reality of the day” is filled with the “concrete history of concrete material individuals materially producing their existence.”¹⁵⁵

Althusser wants to give a “radically different” version of the theory of ideology from the “positivist and historicist thesis of *The German Ideology*.”¹⁵⁶ Althusser maintains the basic distinction between specific ideologies, which have history, and

natural, etc. What remains concealed and invisible in each law is thus presumably the law itself, that which makes laws of these laws, the being-law of these laws.”

153 Althusser, “Ideology and Ideological State Apparatuses,” p. 159, emphasis added.

154 Ibid., p. 159.

155 Ibid., p. 160.

156 Ibid.

ideology in general, which has no history, but he wants to reconceptualize ideology in general in an “absolutely positive sense.” Here positive refers not it being positivist, but rather something that itself produces “real” things in the sense of the plenitude of reality. Althusser envisions this conception of ideology more along the lines of the unconscious in Freud, which is “eternal, i.e. has no history.”¹⁵⁷ Only specific ideologies have history, and are little different than history itself, which is the history of “social formations containing social classes.”

Why does Althusser detour into this insistence on ideology “in general,” as being without history, eternal? The answer, I think, has much to do with Althusser’s desire to move away from Marx’s positivism and also toward thinking alongside Freud and Lacan. Unlike the flat nothingness that ideology represents in *The German Ideology*, Althusser wants to recast ideology (and consequently, as we will see, the law) less as something restrictive, reducing, and more like the unconscious in psychoanalytic theory: that is, something generative and *productive* of identity. Moreover, Althusser wants to account for a certain slippage, ultimately a kind of *méconnaissance*.¹⁵⁸

157 “If eternal means, not transcendent to all (temporal) history, but omnipresent, trans-historical and therefore immutable in form throughout the extent of history, I shall adopt Freud’s expression [for the unconscious being eternal] word for word, and write *ideology is eternal*.” Ibid., p. 161.

158 For the development of this idea see Althusser’s “Freud and Lacan”: “Since Copernicus, we have known that the earth is not the ‘centre’ of the universe. Since Marx, we have known that the human subject, the economic, political or philosophical ego is not the ‘centre’ of history — and even, in opposition to the Philosophers of the Enlightenment and Hegel, that history has no ‘centre’ except ideological misrecognition. In turn, Freud has discovered for us that the real subject, the individual in his unique essence, has not the form of an ego, centred on the ‘ego,’ on ‘consciousness’ or on ‘existence’ — whether this is the existence of the for-itself, of the body-proper or of ‘behaviour’ — that the human subject is de-centred, constituted by a structure which has no ‘centre’ either, except in the imaginary misrecognition of the ‘ego,’ i.e. in the ideological formations in which it ‘recognizes’ itself. It must be clear that this has opened up one of the ways which may perhaps lead us some day to a better understanding of this *structure of misrecognition*, which is of particular concern for all investigations into ideology.” Althusser, “Freud and Lacan,” in Brewster, tr., *Lenin and Philosophy and Other Essays*, Monthly Review Press 1971.

Althusser wants to show what this productive, real eternality of ideology (like the law, like the unconscious) produces. One of the first things he needs to do is remove the notion of a causal agent in ideological mystification. Althusser has to distance ideology from being thought of as merely a distortion of the real. Hence, ideology is neither the work of select group of mystifiers (despots, priests, or a clique), nor is it merely a manifestation of the alienated character of the world (Feuerbach, Marx). Both are examples of why ideology is emphatically *not*, contra Marx, merely a ‘representation of the imaginary relationship of individuals to their real conditions of existence.’

Ideology is not the imaginary relation to the real, but rather, above all, it is their relationship to the conditions of production that is “represented there.” Put another way, it’s not that men place imaginary ideas “there,” but rather that ideology is *material*: it exists in apparatuses; it is the realization of capitalist–state institutions in the actualization of practice.

“While discussing the ideological State apparatuses and their practices, I said that each of them was the realization of an ideology (... religious, ethical, legal, political, aesthetic, etc...). I now return to this thesis: an ideology always exists in an apparatus, and its practice, or practices. This existence is material.”¹⁵⁹

Now, Althusser says immediately, the kind of “matter” that ideology is is not the same as a “paving–stone or a rifle.” Or rather, it isn’t of the same “modality.” Here Althusser interjects an Aristotelian notion of matter carrying different modalities.

“I shall say that ‘matter is discussed in many senses,’ or rather that it exists in different modalities, all rooted in the last instance in ‘physical’ matter.”¹⁶⁰

Ideology is material because it appears in different modalities of practices, behavior,

159 Althusser, “Ideology and Ideological State Apparatuses,” p. 166.

160 Ibid., p. 166.

institutions and repetitions. Recall that Althusser wants to depart from the notion of ideology being some kind of empty mystification or positivistic nothingness.

“It is not their real conditions of existence, their real world, that ‘men’ ‘represent to themselves’ in ideology, but above all it is their relation to those conditions of existence that is represented to them there.”¹⁶¹

Political relationships of subjection are “represented to them there.” The *there* is the phenomenal experience of everyday life. Ideology is there in the sense that these relationships appear in matter, in different modalities. The modalities correspond to different habits, appearances, reflexes.

Having set up this revised, materialist account of ideology, Althusser now moves to a discussion of “what happens to the ‘individuals’ who live in ideology.” The first example Althusser gives, and one that will persist alongside the example of the policeman’s hail as the paradigmatic example of ideology, is religious belief. Religious belief is a good example because it stages the kind of belief–practice structure common to all ideological systems.

“An individual believes in God, Duty, or Justice, etc. This belief derives from the ideas of the individual concerned, i.e. from him as subject with a consciousness which contains the ideas of his beliefs.... The individual in question behaves in such and such a way, adopts such and such a practical attitude, and, what is more, participates in certain regular practices which are those of the ideological apparatus on which ‘depend’ the ideas which he has in all consciousness freely chosen as a subject. If he believes in God, he goes to Church to attend Mass, kneels, prays, confesses, does penance (once it was material in the ordinary sense of the term) and naturally repents and so on.”¹⁶²

At this point, the only actors and forces are the “subject” and his “consciousness.” The subject has will because he must

161 Ibid., p. 164.

162 Ibid., p. 167.

“‘act according to his ideas,’ must therefore inscribe his own ideas as a free subject in the actions of his material practice.”¹⁶³

There is, as yet, no *voice* of authority involved in the constitution of the subject. At this point in Althusser’s account there are only different modalities of subject practices. The modalities of practice, subjectivity, and matter are brought together; they include:

“the materialities of a displacement for going to mass, of kneeling down, of the gesture of the sign of the cross, or of the *mea culpa*, of a sentence, of a prayer, of an act of contrition, of a penitence, of a gaze, of a hand–shake, of an external verbal discourse or an ‘internal’ verbal discourse (consciousness).”¹⁶⁴

Pascal’s famous aphorism of how to instill faith furnishes a ready example of the relationship between repetitive practice, subjection and belief.¹⁶⁵ But Althusser aims to deepen and extend Pascal’s idea, in part showing that there are a plurality of such practices that are each not reducible to each other. There are, in fact, two specificities: the practice in question and the subject.

“I shall immediately set down two conjoint theses: 1. there is no practice except by an in an ideology; 2. there is no ideology except by the subject and for subjects. I can now come to my central thesis.”¹⁶⁶

The essay’s central thesis, of course, is that “ideology interpellates individuals as subjects.” Just as subjects and ideologies, in the plural, are inseparable, the category of the subject and the category of ideology, in the singular, are also both constitutive of one another. There is no ideology without “concrete” subjects. There are no subjects without ideology.

163 Ibid., p. 168.

164 Ibid., p. 169.

165 “You want to be cured of unbelief and you ask for the remedy: learn from those who were once bound like you and who now wager all they have. These are people who know the road you wish to follow, who have been cured of the affliction of which you wish to be cured: follow the way by which they began. They behave just as if they did believe, taking holy water, having masses said, and so on. That will make you believe quite naturally, and will make you more docile.” Pascal, *Pensées*, #418.

166 Ibid., p. 170.

“I say: the category of the subject is constitutive of all ideology, but at the same time and immediately I add that the category of the subject is only constitutive of all ideology insofar as all ideology has the function (which defines it) of ‘constituting’ concrete individuals as subjects.”¹⁶⁷

This “double constitution,” in turn, works through what Althusser terms “obviousness,” or more specifically, *recognition*. We recognize ourselves as subjects because we see ourselves acting within its categories; we act freely, we act ethically, or at least we ‘know’ when we are consciously choosing to do so. The way in which one sees the truth of God, duty, or the law, comes in same form in which we feel the “transparency” of language: this dimension of ideology is in the form of affirmation, “‘That’s obvious! That’s right! That’s true!’”¹⁶⁸ Althusser’s first example combines self- and intersubjective recognition.

“To take a highly ‘concrete’ example, we all have friends who, when they knock on our door and we ask, through the door, the question ‘Who’s there?’, answer (since ‘it’s obvious’) ‘It’s me.’ And we recognize that ‘it is him,’ or ‘her.’ We open the door, and ‘it’s true, it really was she who was there.’”¹⁶⁹

It is at this point that Althusser begins to link recognition with the action of a speaker. The subject asks “who’s there?”, the friend responds “it’s me,” we find it is really true, and then, finally, Althusser adds in another example: we finish the recognition with a handshake, a “material ritual practice of ideological recognition.”

Speech and rituals of recognition, moreover, reaffirm that we are a distinct individual:

“Freud shows that individuals are always ‘abstract’ with respect to the subjects they always-already are, simply by noting the ideological ritual that surrounds the expectation of a ‘birth,’ that ‘happy event.’ Everyone knows how much and

167 Ibid., p. 171.

168 Ibid., p. 172.

169 Ibid., p. 172.

in what way an unborn child is expected.... It is certain in advance that it will bear its Father's Name, and will therefore have an identity and be irreplaceable.
"170

Rituals of recognition "guarantee for us that we are indeed concrete, individual, distinguishable and (naturally) irreplaceable subjects." Here Althusser brings together, in the famous narration, speech, physical reflex, unique identification and the transparency, or obviousness, of this self-recognizing act.

"I shall suggest that ideology 'acts' or 'functions' in such a way that it 'recruits' subjects among the individuals (it recruits them all), or 'transforms' the individuals into subjects (it transforms them all) by that very precise operation which I have called *interpellation* or hailing, and which can be imagined along the lines of the most commonplace everyday police (or other) hailing: 'Hey, you there!' Assuming that the theoretical scene I have imagined takes place in the street, the hailed individual will turn round. By this mere one-hundred-and-eighty-degree physical conversion, he becomes a *subject*. Why? Because he has recognized that the hail was 'really' addressed to him, and that 'it was *really him* who was hailed' (and not someone else)."¹⁷¹

Let us go over carefully each point in this description. Each portion is marked by a kind of ambiguity, a choice that isn't made but rather left in a kind of hanging balance. The choice forms an ambiguous space which, in the essay's failure or refusal to decide between them, represents, in that failure I think, a truth of what essay is attempting to narrate: that is, a complete description of the founding of the subject.¹⁷² Each of the terms straddles a different commitment about how interpellation and therefore subject formation takes place.

Ideology "'acts' or 'functions,'" the passage begins. That sovereignty (in the person of the policeman) "acts" implies a dimension of will. Sovereignty acts and carries

170 Ibid., p. 176.

171 Ibid., p. 174.

172 As we will see in Butler's analysis below, this failure of representation belongs to narratives of founding and to allegory as such.

out the ideology. Whether or not one consents to the act, it is an act nevertheless, visible and presumably subject to challenge by political or other means. To say that sovereignty “*functions in such a way as to,*” on the other hand, allows for a kind of pilotless effectivity, where sovereignty could be merely the vessel or instrument of other institutional forces. The first ambiguity leaves the question of sovereign will and singularity undecided. The actor “literally” doing the hailing is a policeman, the voice of public, sovereign authority. Whether the subject–noun in the sentence, sovereignty itself, the policeman actor, acts or does not act in the sense of conscious intentionality is left undecided.

Next comes the transitive verb. Ideology “‘recruits’ or ‘transforms’” individuals among subjects or individuals into subjects, respectively. As many have observed, both choices syntactically presuppose the existence of “‘individuals’” before their recruitment or transformation into subjects. The sense of being an individual (“It’s really me!”) turns precisely on the ‘later’ transformation of one into a subject. Also, “‘to recruit among’” implies persuasion and possibly reward as a compensation for entering into the terms of the recruitment. “‘To transform,’” on the other hand, implies an involuntary metamorphosis. Here again an opposing tension exists between an involuntary transformation and a free choice, especially insofar as the choice involves some degree of desire or enticement.

Lastly, one becomes a subject by virtue of recognition and, perhaps more importantly, by the seal of one’s individual distinctiveness. Distinctiveness, within this general account of ideological interpellation, becomes the *main* cause and effect of how

one becomes a subject. Why does one become a subject by the policeman's hailing, Althusser asks succinctly? Because it was *really addressed to him*, it was really him who was hailed.

Internal Constitution and the Voice of Address (Butler)

“Subjection consists precisely in this fundamental dependency on a discourse we never choose but that, paradoxically, initiates and sustains our agency.”

– Judith Butler, *The Psychic Life of Power: Essays on Subjection*

In arguing for limits on privacy, Etzioni's communitarianism wants to limit the removal of any barrier that would shield persons from being exposed to the gaze or address of power, whether that address comes from social disapproval, state sanction or the disciplining inner voice of conscience. Reading alongside Butler's meditations on Freud and Foucault, we might newly understand Etzioni's project as follows. Under the sign of limitation, Etzioni's communitarianism is an effort to redouble and amplify the constitutive, as opposed to the strictly punitive or regulative, address of power.

Butler understands there to be a deep and complex relationship between the force of overwhelming power and the internal constitution of identity. Theories of subjection attempt to give an account of the mysterious process that relates these two events. Butler begins, however, by differentiating her analysis from some of the more common ways in which the story of subjection is told. A traditional story of subjection in much critical analysis depicts a victim of power being overwhelmed by its force and then, weakened, coming to internalize identification with the master imposing this force.¹⁷³ We can think of examples of this type of analysis in many fields of study, from the analysis of slavery to colonialist models power. A difficulty in this type of story, however, is that the identity ascribed to both victim and victimizer can itself be shown to be a consequence of

¹⁷³ Butler, *The Psychic Life of Power*, p. 2.

this discourse, even as the discourse takes those identities to be prior to it. Subjection, it turns out, exhibits a more paradoxical complexity; it arises within a “discourse we never choose” that nevertheless “initiates and sustains our agency.”¹⁷⁴ Subjection means two seemingly opposite yet complementary things, the submission to power and transformation into a subject, a willing, choosing agent.

Butler wants to offer an alternative to describing power as something simply “internalized” by its victim. Like the Althusser and Foucault she reads, Butler wants to understand both the subordination but also the production that attends the formation of identity as a subject. In many accounts of subjection, Foucault and Althusser’s included, the “subject is initiated through a primary submission to power.”¹⁷⁵ If submission is central to being a subject, Butler asks, then what are the internal or psychic states that make this possible? In Hegel and Nietzsche, for example, power first appears in the form of an external overwhelming force that then, in pressing against the subject, “assumes a psychic form that constitutes the subject’s self identity.”¹⁷⁶ Butler focuses on what she calls the “tropological” formation of the subject. By tropological, Butler means both the physical way in which the subject turns back toward the law, turns back on itself, as well the transformation that the term ‘trope’ effects in rhetoric, for which ‘turn’ is a useful English translation. From Hegel to Nietzsche to Althusser, accounts of subject formation depict a paradoxical ‘turning’:

“The form this power takes is relentlessly marked by a figure of turning, a turning back upon oneself or even a turning *on* oneself. This figure operates as part of the explanation of how a subject is produced, and so there is no subject, strictly

174 Ibid.

175 Ibid., p. 2.

176 Ibid., p. 3.

speaking, who makes the turn. On the contrary, the turn appears to function as a tropological inauguration of the subject, a founding moment whose ontological status remains permanently uncertain.”¹⁷⁷

The subject who turns on itself appears to inaugurate its own founding, which is contradictory and paradoxical. One of the clues emerges from asking why the subject accedes to the overwhelming force and ‘allows’ it to become constitutive. For example:

“In the infamous example that Althusser offers, a policeman hails a passerby on the street, and the passerby turns and recognizes himself as the one who is hailed. In the exchange by which that recognition is proffered and accepted, interpellation — the discursive production of the social subject — takes place. Significantly, Althusser does not offer a clue as to why that individual turns around, accepting the voice as being addressed to him or her, and accepting the subordination and normalization effected by that voice. Why does this subject turn toward the voice of the law? ... Is this a guilty subject and, if so, how did it become guilty?”¹⁷⁸

Part of Butler’s answer will be that Althusser requires a theory of conscience. But even with conscience, how could a subject seemingly be “spoken into existence”? As Butler points out, Foucault makes it clear that his accounts of the “discursive production of the subject” should not be construed to mean that the subject is merely “spoken” into existence, and furthermore that the forces that constitute subjects are neither singular nor sovereign. Althusser’s account, however, seems to depict a singular and sovereign voice — the policeman — who, in addressing the subject, acts as the primary catalyst to the inaugural birth of that very same subject. Even this account, however, presupposes that some apparatus of conscience has already been installed.

“The interpellation of the subject through the inaugurative address of state authority presupposes not only that the inculcation of conscience already has taken place, but that conscience, understood as the psychic operation of a regulatory norm, constitutes a specifically psychic and social working of power

177 *Ibid.*, pp. 3–4.

178 *Ibid.*, p. 5.

on which interpellation depends but for which it can give no account."¹⁷⁹

Interpellation depends upon conscience already being in place, but the theory cannot by itself give any account of it, Butler contends. Moreover, Althusser's account "attributes performative power to the authoritative voice, the voice of sanction." The voice of address is impossible to refuse.

Of all the depictions of subjection that Butler examines (Hegel, Freud, Nietzsche, Foucault, Althusser), Althusser's account of interpellation paints the most explicit picture of a "voice of address" that hails and thereby constitutes the subject. Butler notes that the "call" from authority is reductive and punitive, that it ignores the multiplicitous ways such a call arrives in favor of a semi-fictive depiction of a sovereign voice that is "singular and speaking." Still, she adds, the objections are well known, and his theory of interpellation and ideology seems to have survived many or all of these criticisms.

In fact, if we view Althusser's account as an allegory, it need not, by definition, meet any of these objections *per se*:

"If we accept that the the scene [of being hailed by the policeman] is exemplary and allegorical, then it never needs to happen for its effectivity to be presumed. Indeed, if it is allegorical in Benjamin's sense, then the process literalized by the allegory is precisely what resists narration, what exceeds the narrativizability of events. Interpellation, on this account, is not an event, but a certain way of *staging the call*, where the call, as staged, become deliteralized in the course of its exposition or *darstellung*. The call itself is also figured as a demand to align oneself with the law, a turning around (to face the law, to find a face for the law?), and an entrance into the language of self-ascription — 'Here I am' — through the appropriation of guilt."¹⁸⁰

There are two important points Butler expounds here. First is that the allegory of interpellation stages something like a "call" from sovereignty, but a call that itself cannot

179 *Ibid.*, p. 5.

180 *Ibid.*, p. 107.

be directly represented. Rather, it is deliteralized in its allegorical exposition. Second, the call depicts a turn, a turn toward the law, a turning of one's face toward the law's address. Butler takes this turn as the site on which resistance should be thought.

Recall that the combination of turning around toward the law, and in the same gesture recognizing oneself as the addressee of the state's command, is "literally" how the man in the allegory becomes a subject.¹⁸¹ As Butler notes, however, the depiction carries its own paradoxes. The address constitutes the subject, yet the subject must be conditioned in some way, prior to the call, to respond to the call with recognition and arguably guilt. Subjectivity seems to begin neither exclusively with the law nor with the subject *per se*, but rather, Butler argues, in some type of middle ground in between the two:

"The turning around is an act that is, as it were, conditioned both by the 'voice' of the law and by the responsiveness of the one hailed by the law. The 'turning around' is a strange sort of middle ground which is determined both by the law and the addressee, but by neither unilaterally or exhaustively. Although there would be no turning around without first having been hailed, neither would there be a turning around without some readiness to turn."¹⁸²

The readiness to turn, for Butler, must be conscience.¹⁸³ But this does not solve the mystery of how *assujétissement* occurs. Why does the soon-to-be subject turn, without question? How or why does the "reflex of conscience paralyze the critical interrogation of law"? Butler summarizes these questions as follows:

"The one addressed is compelled to turn toward the law prior to any possibility of asking a set of critical questions: Who is speaking? Why should I turn around?"

181 "By this mere one-hundred-and-eighty-degree physical conversion, he becomes a *subject*. Why? Because he has recognized that the hail was 'really' addressed to him, and that 'it was *really him* who was hailed' (and not someone else)." Althusser, "Ideology and Ideological State Apparatuses," p. 174.

182 Butler, *The Psychic Life of Power*, p. 107.

183 "The turn toward the law is thus a turn against oneself, a turning back on oneself that constitutes the movement of conscience." Butler, *Ibid.*, p. 107.

Why should I accept the terms by which I am hailed?"¹⁸⁴

Here we are returned to a question with which we began: who or what is this voice of address; is it the sovereign Leviathan, or is it the internalized voice of the person, or some combination of the two? Butler is most concerned with trying to articulate a theory of how this identification is both accepted and yet still, hopefully, somehow refusable. A "refused identification," however, can only come about once one unravels the relationship of addressee to the law.

Butler's answer articulates a theory of a "passionate complicity" or "passionate attachment" to the law, and uses this notion of attachment to think through how one can confront its paradoxical dependency.

Althusser's depiction, however, remains unsatisfying to Butler for a number of reasons, chief among them that the reflexive turning driven by conscience seems to be simply that — an automatic and seemingly mandatory reflex — one that does not allow for the varyingly successful and failed resistances to Althusser's picture of the law and ideology, especially as they appear as overarching, impenetrable and total force.

Butler wants to find the *limit* of interpellation. One of these limits comes from a theme that appears as a persistent concern in her work: the limitations of any totalizing system of power. The study of this limit is the study of resistance, its potential and possibility. With respect to interpellation, Butler's question asks to what extent interpellation can be refused, and ultimately how "we might reread 'being' as precisely the potentiality that remains unexhausted by any particular interpellation."¹⁸⁵ In addition,

184 Ibid., p. 108.

185 Ibid., p. 131.

Butler identifies a limit in the very ability to represent the process of *assujettissement* by which subjects are named and addressed: a “non–narrativizable” origin of the subject.

Much of the limitation in Althusser’s model issues from the prominent place that theological scenes hold as examples of interpellation and ideology. Next to the example of the policeman hailing the subject, the most important analogy of how interpellation constitutes subjects comes in the figure of a divine voice that names and thereby brings subjects into existence.

Butler notes that the divine voice and the voice of the policeman are essentially impossible to refuse. Moreover, the naming is irreversibly constitutive of the subject’s very identity. God, in baptismal fiat, gives the name “Peter” to ... Peter? Does Peter exist before the divine performative is delivered?

“To the extent that the naming is an address, there is an addressee prior to the address; but given that the address is a name which creates what it names, there appears to be no ‘Peter’ without the name ‘Peter.’ Indeed, ‘Peter’ does not exist without the name that supplies the linguistic guarantee of existence.”¹⁸⁶

Naming seems to “establish God as the origin of Peter,” collapsing the distinction between the name and the address.

Curiously, neither Althusser’s account nor Butler’s analysis makes any mention of the fact that the name “Peter” is hardly an insignificant name choice, to say the least, in Christian theology. Althusser’s example implies that Peter is an otherwise anonymous individual who is interpellated by the church in its rituals and ceremonies. Peter is the hypothetical subject of the church in Althusser’s example of what he calls “Christian religious ideology”:

186 *Ibid.*, p. 111.

“It says, I address myself to you, a human individual called Peter (every individual is called by his name, in the passive sense, it is never he who provides his own name), in order to tell you that God exists and that you are answerable to Him. It adds: God addresses himself to you through my voice.... It says: this is who you are: you are Peter! This is your origin, you were created by God for all eternity, although you were born in the 1920th year of Our Lord! This is your place in the world! This is what you must do! By these means, if you observe the ‘law of love’ you will be saved, you Peter, and will become part of the Glorious Body of Christ! Etc...”¹⁸⁷

One can compare this depiction with a passage from the Book of Matthew:

“When Jesus came to the region of Caesarea Philippi, he asked his disciples, ‘Who do people say the Son of Man is?’ They replied, ‘Some say John the Baptist; others say Elijah; and still others, Jeremiah or one of the prophets.’ ‘But what about you?’ he asked. ‘Who do you say I am?’ Simon Peter answered, ‘You are the Christ, the Son of the living God.’ *Jesus replied, ‘Blessed are you, Simon son of Jonah, for this was not revealed to you by man, but by my Father in heaven. And I tell you that you are Peter, and on this rock I will build my church, and the gates of Hades will not overcome it. I will give you keys of the kingdom of heaven; whatever you bind on earth will be bound in heaven, and whatever you loose on earth will be loosed in heaven.’* Then he warned his disciples not to tell anyone that he was Christ.”¹⁸⁸ [emphasis added]

The name “Peter” means “rock.” In the passage from Matthew, Jesus initiates a call—and-response exchange. Who am I?, Jesus asks. You are the Son of God, replies Simon. Right answer. Simon is immediately christened “Peter,” and through this appellation embodies the origin of the church and the origin of himself as Peter.

To a secular audience, the description of baptism or consecration by the social institution of the church in the twentieth century appears, perhaps, to be a more “realistic” account of subjection and self-recognition than the ancient mythology of Matthew’s testament. The depiction of being hailed by the policeman may be even more so. But as allegory each account differs little in its result of producing the subject.

187 Althusser, “Ideology and Ideological State Apparatuses,” p. 177.

188 MATTHEW 16: 13–20, *The Holy Bible, New International Version*.

In each of these scenarios, there is no limit *per se* to the interpellation. The call is at once mandatory, irreversible and yet always acceded to voluntarily. As Butler notes, there must be some readiness to be compelled by the authorities, a readiness to turn one's face toward the voice. The person doing the turning must have some readiness to turn, or perhaps, Butler adds, the turn is merely the sign, the confirmation, of a submission that has already taken place. In either case, the narrative of a "founding" subjection requires that an earlier founding has already occurred:

"In this sense, the scene with the police is a belated and redoubled scene, one which renders explicit a founding submission for which no such scene would prove adequate. If that submission brings the subject into being, then the narrative that seeks to tell the story of that submission can proceed only by exploiting grammar for its fictional effects."¹⁸⁹

This prehistory of subjection, the prior subjection, Butler continues, would represent precisely the *non-narrativizable* founding of the subject.

The non-narrativizable origin of the subject is thus something that the narrative of founding both elides and yet, ironically, exposes. While the voice of interpellation can be represented, its truth — that is, the "real" event of subjection — cannot be represented directly.

Two points from Butler's analysis bear on the issue with which we began. First, if "address" founds the subject and at same time exposes the non-narrativizable origin, then the shield of privacy could only protect against address "after the fact" of the subject's constitution. Etzioni has nothing to fear, in other words, because the constitutive work of address has already occurred long before its regulative power is available for use.

189 Butler, *The Psychic Life of Power*, p. 111.

Second, the non-narrativizable origin of the subject pushes us to ask what the voice of interpellation, if it not simply the divine performative Althusser makes it out to be, "is" exactly. If the formation of the subject does not necessarily occur under the rituals of divine performative, then how does the call arrive? Perhaps the voice is internal, that is, the voice of conscience.

Althusser's response would probably point to his own comment that ideological interpellation cannot be "solely explained by guilt feelings."¹⁹⁰ Not to say that Althusser finds a psychoanalytic account unconvincing. To the contrary, Althusser's inclusion of Freud's commentary on baptism in "Ideology and Ideological State Apparatuses" and the more expansive treatment in "Freud and Lacan" indicate his support for psychoanalytic interpretations. The problem, however, is that the fit can only be partial, because a theory of interpellation as an "inner voice" of conscience makes no mention of "external" political institutions such as the state.

One way to organize the partial fit of ideological interpellation within a psychic model is this: Althusser resoundingly embraces the idea that his revisions of Marxian theory belong within the conceptual framework of the "structure of misrecognition." The *méconnaissance* of one's will under the various ways one is addressed by authority, internal or external, may be the best way to give an account of this fundamentally unrepresentable 'event' of *assujettissement*. The allegory of this event can only be represented as one turning one's face toward the law within this very mis/recognition.

190 "Experience shows that the practical telecommunication of hailings is such that they hardly ever miss their man: verbal call or whistle, the one hailed always recognizes that it is really him who is being hailed. And yet it is a strange phenomenon, and one which cannot be explained solely by 'guilt feelings,' despite the large number who 'have something on their consciences.'" Althusser, "Ideology and Ideological State Apparatuses," p. 174.

Does one misrecognize the law, or misrecognize oneself, or both? Etzioni wants the state to be able to clearly recognize individual subjects and for subjects to clearly recognize the voice of authority. Kafka's "Before the Law" and related parables take the self-evidence of recognition and turn it into evidence that is not so much familiar as strange, not so much evident as contestable in its performance.

Before the Address (Kafka)

“It was very early in the morning, the streets clean and deserted, I was on my way to the station. As I compared the tower clock with my watch I realized it was much later than I had thought and that I had to hurry; the shock of this discovery made me feel uncertain of the way, I wasn’t very well acquainted with the town as yet; fortunately, there was a policeman at hand, I ran to him and breathlessly asked him the way. He smiled and said: ‘You asking me the way?’ ‘Yes,’ I said, ‘since I can’t find it myself.’ ‘Give it up! ‘Give it up!’ said he, and turned with a sudden jerk, like someone who wants to be alone with his laughter.”

– Franz Kafka, “Give it Up!”¹⁹¹

By way of a direct comparison with Althusser’s parable, we can start with “Give it Up!”, a short story of Kafka’s that also stages an encounter of a subject with a policeman. Like the policeman in Etzioni’s ideal and Althusser’s critique, knowledge rests on the side of the state.

The streets are clean and deserted. The voice is first-person. “I” was on the way to the station implies a direction known. The first interference with the tranquil setting of cleared streets and solitary composure is a clock tower. The tower clock provides information. There is a difference between the authority of the tower and the authority of my watch. My watch must be wrong, though this conclusion itself cannot be drawn from anything said thus far, except perhaps from the facts of the the internal state described: I am on my way to the station, not just *a* station but *the* station; and the station that will carry me must also carry the correct measure of its own movement and indeed all movement (the timed displacement of space). The authority of the clock, at best, follows from the nature of the station itself. The greatest reassurance of the station lies in it being a destination itself. The station is where I go if I want to go, because it is the gateway to the destination I choose.

191 From *Kafka: The Complete Stories*, ed. by Nahum N. Glatzer, New York: Schocken Books

Its reassuring qualities notwithstanding, the “shock of this discovery made me feel uncertain of the way.” The disjuncture of the tower’s information with mine has introduced, in one shove, a general disjuncture. I am now lost.

Fortunately, there is a policeman. This time the hailing runs in the opposite direction of Althusser’s subject. I run to the policeman, not he to me. Moreover I am running and asking him for direction, breathlessly. The policeman confirms the mode of address: are you asking me the way? to which I respond with equally full confirmation. Yes, I can’t find the way. By this affirmation the trauma, the disjuncture, has been forgotten. It is not that some earlier encounter with an authoritative source shook me out of a sense of purpose and direction. No, “since I can’t find it myself,” at all.

Give it up! says the policemen, twice. And in the same action of speech, an imperative that recapitulates the earlier trauma — give up, give up to the tower your direction and your time and your way, give it up! — the policeman “turned with a sudden jerk.”

The *turn* away from the subject comes in a sudden jerk like the shock of the subject’s earlier “discovery.” In an inversion of Althusser’s parable, the subject is stripped of subjectivity and the policeman gains it. Turning away in laughter like someone who wants to be alone, the policeman can be alone. The man on the street, stripped of a subjectivity previously possessed, cannot.

Instead of the subject turning toward the law, the policeman turns instead. Somehow the policeman, the clock tower, the train station represent a knowledge that cannot be known. What is this knowledge, this discourse that “we never choose but

paradoxically initiates and sustains our agency”?

Before the Law (Kafka)

“Contentment and a feeling of happiness as the ‘Legend’ [‘Before the Law’] in particular inspires in me.”

– Kafka, *Diaries*, December 13, 1914

In his diaries, Kafka refers to “Before the Law”¹⁹² as “the Legend.” According to history, a *legend* is a story of saints. Or, it is a story of characters who are similar to saints, or a story in general, or an inauthentic or non–historical story that is nevertheless

192 “Before the Law stands a doorkeeper. To this doorkeeper there comes a man from the country and prays for admittance to the Law. But the doorkeeper says that he cannot grant admittance at the moment. The man thinks it over and then asks if he will be allowed in later. ‘It is possible,’ says the doorkeeper, ‘but not at the moment.’ Since the gate stands open, as usual, and the doorkeeper steps to one side, the man stoops to peer through the gateway into the interior. Observing that, the doorkeeper laughs and says: ‘If you are so drawn to it, just try to go in despite my veto. But take note: I am powerful. And I am only the least of the doorkeepers. From hall to hall there is one doorkeeper after another, each more powerful than the last. The third doorkeeper is already so terrible that even I cannot bear to look at him.’ These are difficulties the man from the country has not expected; the Law, he thinks, should surely be accessible at all times and to everyone, but as he now takes a closer look at the doorkeeper in his fur coat, with his big sharp nose and long, thin, black Tartar beard, he decides that it is better to wait until he gets permission to enter. The doorkeeper gives him a stool and lets him sit down at one side of the door. There he sits for days and years. He makes many attempts to be admitted, and wears the doorkeeper by his importunity. The doorkeeper frequently has little interviews with him, asking him questions about his home and many other things, but the questions are put indifferently, as great lords put them, and always finish with the statement that he cannot be let in yet. The man, who has furnished himself with many things for his journey, sacrifices all he has, however valuable, to bribe the doorkeeper. The doorkeeper accepts everything, but always with the remark: ‘I am only taking it to keep you from thinking you have omitted anything.’ During these many years the man fixes his attention almost continuously on the doorkeeper. He forgets the other doorkeepers, and this first one seems to him the sole obstacle preventing access to the Law. He curses his bad luck, in his early years boldly and loudly; later, as he grows old, he only grumbles to himself. He becomes childish, and since in his yearlong contemplation of the doorkeeper he has come to know even the fleas in his fur collar, he begs the fleas as well to help him and to change the doorkeeper’s mind. At length his eyesight begins to fail, and he does not know whether the world is really darker or whether his eyes are only deceiving him. Yet in his darkness he is now aware of a radiance that streams inextinguishably from the gateway of the Law. Now he has not very long to live. Before he dies, all his experiences in these long years gather themselves in his head to one point, a question he has not yet asked the doorkeeper. He waves him nearer, since he can no longer raise his stiffening body. The doorkeeper has to bend low toward him, for the difference in height between them has altered much to the man’s disadvantage. ‘What do you want to know now?’ asks the doorkeeper; ‘you are insatiable.’ ‘Everyone strives to reach the Law,’ says the man, ‘so how does it happen that for all these many years no one but myself has ever begged for admittance?’ The doorkeeper recognizes that the man has reached his end, and, to let his failing senses catch the words, roars in his ear: ‘No one else could ever be admitted here, since this gate was made only for you. I am now going to shut it.’” “Before the Law,” *Kafka: The Complete Stories*, ed. by Nahum N. Glatzer, New York: Schocken Books

regarded as historical, or writing inscribed on something, or writing that accompanies an illustration. A legend may be writing embossed on a symbol of sovereignty, like a coin, or the writing that explains the symbols of another body of representation it supplements, like a map.¹⁹³

“Before the Law” is a title and epigram to the text itself and, according to Kafka’s other writing, a legend, something exterior that gives measure to some other representation. What is the thing that the legend of “Before the Law” represents? In what follows, I would like to advance the proposition that, as a legend, Kafka’s account attempts an ‘actual’ account of the address of sovereignty and subject, an unrepresentable representation, an allegory of address.

Unlike Althusser’s parable, the person comes to the law, the law does not come to him. The man from the country is appearing before the law; the man is praying for admittance to the law. Later in the story we learn that the man, being from the country, assumes that the law is and should be accessible to anyone.

The man desires admittance to the law, but there is no reason given for his appearance *per se*. By the time he appears, there is already mediation. The parable begins, “Before the law stands a doorkeeper.” Before the man appears, there is already a space of appearance, one that exists prior to his effort to gain admittance. A space of appearance exists before the man comes before the law. This particular place is also defined by mediation. There is already a “doorkeeper” in the space where one appears before the law. Who or what is the doorkeeper?

On the surface of the narrative, the doorkeeper is a voice that answers questions

¹⁹³ *Oxford English Dictionary*, pp. 807–809.

posed to the law. The man asks admittance to the law, and the doorkeeper responds that he cannot grant admittance “at the moment.” In the man from the country’s sense of the “present,” admission is denied. Might he be allowed in later? Possibly, responds the doorkeeper, but not now. The sense in which admittance — or alternatively, recognition — cannot be realized in the present, but only in the supplicant’s future, appears under different narrative guises in Kafka’s writing. The *deferral* affects only the admittance itself. The man can appear in the present, but can see the effect of his will, his wish to be admitted, only in some unspecified future. The deferral is not exceptional but constitutive.¹⁹⁴

The gate to the law remains open. Only the doorkeeper prevents entrance. The barriers are visible, and one can see how they might be crossed. They are nevertheless insurmountable. Derrida argues that the difficulties faced by the man from the country echo the problem one faces in trying to decide a criterion that would distinguish law and literature “in general,” and the status of “Before the Law” in particular.

Derrida’s description is similar to Butler’s discussion of interpellation as a “call” given in the form of an allegory. The call is not really an event, but rather, “a certain way of staging the call, where the call, as staged, becomes deliteralized in the course of its exposition or *darstellung*.” The “actual” event being staged need never have happened; it in itself “resists narration” and can only be described by “exploiting grammar for its fictional effects.”

The gate is open, partly obscured by the gatekeeper, and the man from the

¹⁹⁴ “*Différance* produces what it forbids, makes possible the very thing that it makes impossible.” See “*Différance*,” in Derrida, *Margins of Philosophy*, tr. Alan Bass. Chicago: University of Chicago Press, 1982.

country tries to peer around him so as to see what is past the gate. The doorkeeper laughs like the policeman in the parable "Give It Up!". The doorkeeper recognizes the man's desire and says try to go in if you like, but beware that there are successively more powerful and terrifying gatekeepers. Like the policeman's turn away in "Give It Up!", the moment of laughter and withdrawal of the voice of the law away from the subject seem to enhance the subjectivity of authority. Whereas before there were only the generic figures of the "doorkeeper" and the "man from the country," now the doorkeeper comes into relief in all specificity and definition. The man from the country thought the law should be accessible to all,

"but as he now takes a closer look at the doorkeeper in his fur coat, with his big sharp nose and long, thin, black Tartar beard, he decides that it is better to wait until he gets permission to enter."¹⁹⁵

The man from the country, who has no description or features, came to the law expecting access in general, but meets with prohibition in the figure of a specific, singular personage. In fact, the man from the country becomes focused on the the singularity of the law's doorkeeper.

"During these many years the man fixes his attention almost continuously on the doorkeeper. He forgets the other doorkeepers, and this first one seems to him the sole obstacle preventing access to the Law. He curses his bad luck, in his early years boldly and loudly; later, as he grows old, he only grumbles to himself. He becomes childish, and since in his yearlong contemplation of the doorkeeper he has come to know even the fleas in his fur collar, he begs the fleas as well to help him and to change the doorkeeper's mind."¹⁹⁶

Meanwhile, the doorkeeper retains a kind of generalized prerogative over the man, now subjected. The doorkeeper puts questions to him, about "home and many other things,"

195 Kafka, "Before the Law," tr. by Willa and Edwin Muir, in Glatzer, ed., *Kafka: The Complete Stories*, p. 3.
196 Ibid.

but the “questions are put indifferently, as great lords put them.”

The doorkeeper gains a persona, the subject flattens to a *datum*. The doorkeeper puts questions like great lords do, indifferently (something close to yet different from *neutrally*) and in this sense belongs in the epistemological spaces of those who know the law. “The Problem of Laws,” another of Kafka’s parables, begins with “our laws are not generally known.”¹⁹⁷ It is not a question of differing interpretations, or a question as to whether there is democratic participation in interpreting them. Rather, there seems to be some limit that hovers over the seeming contradiction that the laws both can be known and cannot be known.

The man sees a “specific” identity in the state, and thereby makes a false ID. The identification is a false positive. For the law only *stages* singularity. Who then, coming out of Kafka’s parables, remains “truly” singular? The man presents himself before the law but, as Derrida notes, “nothing presents itself in this appearance.”

¹⁹⁷ See Kafka, “The Problem of Our Laws,” in *Kafka: The Complete Stories*.

Sovereignty as Impossible Address (Derrida)

“Allegorical personification has always concealed the fact that its function is not the personification of things, but rather to give the concrete a more imposing form by getting it up as a person.”

– Benjamin, *The Origin of German Tragic Drama*

“The story and the law appear together and find themselves summoned one before the other: the story, as a certain type of *relation*, is linked to the law that it relates, appearing, in so doing, before that law, which appears before it. And yet, as we shall read, nothing really presents itself in this appearance; and just because this is given to us to be read does not mean that we shall have proof or experience of it.”

– Derrida, “Before the Law”

In *The Psychic Life of Power*, Butler concludes her reflections on Althusser with the following:

“According to the logic of conscience, which fully constrains Althusser, the subject’s existence cannot be linguistically guaranteed without passionate attachment to the law. This complicity at once conditions and limits the viability of a critical interrogation of the law. One cannot criticize too far the terms by which by which one’s existence is secured.”¹⁹⁸

Being before the law, in Butler’s reading, means that one is not only constituted by the law but also maintains a “passionate attachment” to it. The turning of one’s face toward the law reflects the action of conscience. The challenge is to articulate a notion of being outside the economy of interpellation, perhaps to understand how the desire to be might be freed, if only partially, from the constituting voice of address.

But how how to we decide who is speaking? How do we know when and by which authority we are being summoned? Recall from above some of the different narratives of interpellation: Jesus naming Peter; the policeman hailing the subject; the Church addressing the believer. How do we tell the difference between authorities? It

¹⁹⁸ Butler, *The Psychic Life of Power*, p. 129.

may be that the question of “who addresses” and “who appears” cannot be answered directly, Derrida argues, or at least that the questions cannot be answered without some usurpation of genre.

Derrida begins his reading of Kafka’s “Before the Law” by stipulating three conventions that govern the ability to make decisions about the authority of the law’s address. Each in some way turns on the ability to decide what constitutes a *fictional* account of the law, the subject, etc. Derrida identifies each of these conventions as a kind of axiom that is typically used in the service of an argument that seeks to establish a clean account of the difference between fictional legal characters and real legal characters, between law and literature, and by extension the relationship between sovereign address and subject. These conventions are precisely what, in Derrida’s reading, Kafka undermines.

The first axiom is that the text has a distinct identity as a story, that is, that it is singular and unified. We recognize the text as a story by virtue of certain identifiable marks.

“There is a beginning and end to this story whose boundaries or limits seem guaranteed by a certain number of established criteria — established, that is, by positive rules and conventions. We presuppose this text, which we hold to be unique and self-identical, to exist as an original version incorporated in its birthplace with the German language.”¹⁹⁹

These marks constitute what might be called the legal profile or “legal personality” of the text, in part because because the marks and conventions owe their existence to a history of legal acts.

The second axiom governing conventional reading is that the text has an author.

199 Derrida, “Before the Law,” in Attridge, ed., *Acts of Literature*, p. 185.

By the text having an author Derrida means the understanding or settlement that “the existence of [the text’s] signatory is not fictitious, in contrast with the characters of the story.”²⁰⁰ There are several registers in which Derrida argues that this axiom operates, each turning on the difference between the legal signatories to the story and the identity of the characters appearing before the law:

“It is the law which requires and guarantees that the difference between the *presumed* reality of the author, bearing the name of Franz Kafka, whose civil status is registered by authority of the state, be one thing, while the fictitious characters within the story be another. This difference implies a system of laws and conventions without which the consensus to which I am presently referring, within a context that to a certain extent we share, would never have the chance of appearing — whether it is well founded or not.”²⁰¹

The legal difference between the reality of the author and the reality of the characters (K., the man from the country, etc.) defines the way in which they each differently “appear before the law.” As Derrida points out, it is a history of conventions pressed into service within positive law that makes possible this appearance, whether the convention of the differing authorial realities is “well founded or not.” Echoing Nietzsche’s observation that only that which has no history has settled meaning, Derrida adds that the structure on which the system of differences defining the author depends remains a fragile and mutable artifice.

“Among the works we have inherited there are those in which unity, identity, and completion remain problematic because nothing can allow us to decide for certain whether the unfinished state of the work is a real accident of a pretense, a deliberately contrived simulacrum by one or several authors of our time or before. There are and have been works in which one or several authors are staged as characters without leaving us signs or strict criteria for distinguishing between their two functions or values.”²⁰²

200 Ibid.

201 Ibid.

202 Ibid., p. 185.

The singularity of appearance, in other words, is only made possible by a plurality of fictions, each with credentials that are undecidably distinguishable from their real and unreal doubles.

The third axiom governing the reading of a text like “Before the Law” is that it must be a “relation” of events (as in a telling of a *récit*), and that this particular genre of narration belongs to what we call literature. “Before the Law” is a literary relation. Why does such a seemingly trivial point matter? A literary kind of relation can be compared to relations that do not belong to literature, like “historical chronicles, for example, or accounts that we encounter daily.”²⁰³ A man tells you that he had to appear before the law in Massachusetts on a bench warrant, or before the law in Juarez for murder, or that he asked a federal marshal for directions in Washington, or is on trial for a capital offense. Setting, content, context or structure alone do not provide sufficient criteria to distinguish the genre to which each *récit* belongs.

“It is therefore not as narrative that we define *Before the Law* as a literary phenomenon, nor is it as fictional, allegorical, mythical, symbolic, parabolic narrative, and so on. There are fictions, allegories, myths, symbols, or parables that are not specifically literary. What then decides that *Before the Law* belongs to what we think we understand under the name of literature?”²⁰⁴

Derrida notes that the question of “who decides or who judges what belongs to literature” runs the risk of being overstated, badly formulated, or leading to a “purely aporetic conclusion.” Furthermore, the question may well assume or depend upon the existence of literary essence, or a stable historically–delimited domain.

In place of a general question, Derrida focuses instead on what he calls the

203 Ibid., p. 186.

204 Ibid., p. 186.

“singularity” of the preceding Kafka stages. Just as the text has its unique, copyrightable identity by virtue of law, so does it narrate the very encounter of a solitary individual, the man from the country, as he encounters the law both in the particular, in the unmistakable personal features of the doorkeeper, the only individual he ever sees, and in general, before *the* law. Yet this encounter between singularity and the universal essence of the law cannot be represented directly; they can never come into contact.

“There is a singularity about the relationship to the law, a law of singularity which must come into contact with the general or universal essence of the law without ever being able to do so. Now this text, this singular text, as you will already have noted, names or relates in its way this conflict without encounter between law and singularity, this *paradox* or *enigma* of being-before-the-law; and *ainigma*, in Greek, is often a relation, a story, the obscure words of a fable: ‘These are difficulties the countryman has not expected; the Law, he thinks, should surely be accessible at all times and to everyone...’”²⁰⁵

The man is perplexed by the singular figure who is the doorkeeper standing before the law. He thinks the law should be accessible to everyone. The more he scrutinizes the doorkeeper for clues, however, the more the law eludes him, the more he fails to identify it. He thought he knew what the law was. We, too, think we know what a “title” is; this is the fourth convention of reading. The title is placed in an unvarying and reliable place: it is always before the text. We know the title in the same way that we know when we are reading literature, because the strictures attending to statements of fact versus statements of fancy are guaranteed by law.

Why do the possibility and guarantee of the title matter? “Before the Law” depicts a formal act: appearing before the law. A reciprocal arrangement obtains. By appearing before the law you guarantee your reliability and credibility as a subject; you

205 Ibid., p. 187.

will not “fail to appear.” At the same time, the appearance grants entrance under the title of the law. By giving proof of your appearance before the law, you presumably gain admission to the law.

But the real significance is that, in staging the title’s guarantee of appearance, Kafka successfully shows how the maneuvers of appearance remain “finally inaccessible” to both the man and the story itself. The appearance of the man from the country before the law occurs within a mutual appearance of genre: the literary story and the law are each summoned before each other. The story is a relation. Yet its very structure as a story is in part derived from the law it relates. The story and its author appear by virtue of the law, though the law, from the perspective of the character in the story, appears before them. The representation denies, however, the very proof of appearance that the man seeks. As Derrida notes, “Nothing really presents itself in this appearance; and just because this is given to us to be read does not mean that we shall have proof or experience of it.”²⁰⁶ The law both solicits and resists any attempt to render it in a story. For Kant, Derrida adds, the law “should never give rise to any story.” The “law of the law” has no history.

“Pure morality has no history: as Kant seems at first to remind us, no intrinsic history. And when one tells stories on this subject, they can concern only circumstances, events external to the law and, at best, the modes of its revelation. Like the man from the country in Kafka’s story, narrative accounts would try to approach the law and make it present, to enter into a relation with it, indeed, to enter it and become *intrinsic* to it, but none of these things can be accomplished. The story of these maneuvers would be merely an account of that which escapes the story and which remains finally inaccessible to it. However, the inaccessible incites from its place of hiding.... I say ‘the law of laws’ because in Kafka’s story one does not know what kind of law is at issue — moral, judicial, political,

²⁰⁶ Ibid., p. 191.

natural, etc.’²⁰⁷

The account of facing the law can only be an description of that which escapes the account itself; the law remains “finally inaccessible” to the representation.

Let us compare the depiction of the man from the country before the law and the man hailed by the policeman in Althusser’s account. One difference hinges on the way the the subject appears before or turns a face toward the law. Derrida notes,

“In German as in French and English, the expression ‘before the law’ commonly describes the position of a subject who respectfully and submissively comes before the representatives or guardians of the law. S/he presents himself of herself before representatives: the law in person, so to speak, is never present, even though the expression ‘before the law’ seems to signify ‘in the presence of the law.’ The man is therefore in front of the law without ever facing it; while he may be in front of it, he thus never confronts it.”²⁰⁸

In Althusser, turning toward the law marks the moment of subjection. In Kafka, the representative of the law and the man face each other.

“The two characters in the story, the doorkeeper and the man from the country, are both before the law, but since in order to speak they face each other, their position ‘before the law’ is an opposition. One of them, the doorkeeper, turns his back on the law and yet stands before it (*Vor dem Gesetz steht ein Türhüter*). The man from the country, on the other hand, is also before the law but in a contrary position, insofar as one can suppose that, being ready to enter, he faces it.”²⁰⁹

The man scrutinizes the law, he “takes a closer look at the doorkeeper in his fur coat, with his big sharp nose and long, thin, black Tartar beard.”²¹⁰

In Althusser, the voice of interpellation is intelligible and readable. It is clearly a policemen who hails you, clearly the church baptizing you toward a specific ideological end. Kafka, instead, makes legibility a riddle. The doorkeeper has sharp, defined

207 Ibid.

208 Ibid., p. 201.

209 Ibid.

210 Kafka, “Before the Law.”

features; yet the “face” of the law presents only infinite surfaces increasingly inaccessible and opaque. In fact, the more the law is readable, the less accessible it becomes.²¹¹

Thus, in the mirror of law’s illegibility, Kafka presents a counternarrative to the dream of making subjects more legible by making them appear.

One could imagine an allegory that would reinforce the basic lesson that, in order to benefit from the law, you must appear. Indeed, this is precisely what Etzioni wants to inscribe into a citizenry grown too obscured from the basic gaze of the law.

In arguing for limits on privacy, Etzioni’s communitarianism wants to redouble the constitutive address of power that Althusser identifies. Althusser demonstrates the voice of address to prove the existence of the subject. Butler wants to limit or undo its effects. Kafka, perhaps, subverts the very proof of the subject required on all counts. There is no secret of the subject, except the singularity of the proceeding which represents singularity itself.

‘That is the law of the law, the process of a law of whose subject we can never say, ‘There it is,’ here or there.’²¹²

There is no truth of the subject’s uniquely identifiable singularity, because singularity is staged by the ‘proceeding’ (the narrative) itself. It is always “K.,” but there is no truth to the singularity of K. K. is a cipher: the fictitious surname, the fictitious signature. The experience staged is one of blankness, of promised but denied truth. It is only a subsequent reading that wants to turn this into the denial of individuality against which is

211 “Reading a text might indeed reveal that it is untouchable, *precisely because it is readable*, and for the same reason unreadable to the extent to which the presence within it of a clear and graspable sense remains as hidden as its origin. Unreadability thus no longer opposes itself to readability. Perhaps man is the man from the country as long as he cannot read; or, if knowing how to read, he is still bound up in unreadability within that very thing which appears to yield itself to be read.” Derrida, “Before the Law,” p. 197.

212 Derrida, “Before the Law,” p. 205.

posited “proof.” But the proof of the individual is precisely what is undermined by Kafka’s small and large *récites*.

Identification, proof of the subject’s appearance, is an important requirement of Etzioni’s communitarianism. More than a privileging of public safety over privacy, Etzioni’s identification aims to instill an internal voice of address, an internal consciousness of responsibility. Like Althusser’s subject, Etzioni depends upon a consciousness of responsibility and self–disclosure, yet one for which no account can be given. Consciousness can only be instilled through disclosure and scrutiny administered internally by a voice of address and externally by the police.

As mentioned in the introduction, instilling a consciousness of subjection was the original goal of fingerprints. The next chapter examines the power of the sovereignty to produce the person as evidence as well as the rights that limit that power.

Chapter 4: Identification, Privacy, Ligeance

"It has long been held that the compelled display of identifiable physical characteristics infringes no interest protected by the privilege against compulsory self-incrimination."

– Justice Stewart, *United States v. Dionisio* (1973)

"The scene of a crime, too, is deserted; it is photographed for the purpose of establishing evidence."

– Walter Benjamin

What authorizes the state to compel the display of a person's "identifiable physical characteristics"? At a basic level, the opinion in *United States v. Dionisio*²¹³ simply reaffirms a point of Court doctrine concerning some specific limitations of individual rights under the Constitution. The Fifth Amendment to the U.S. Constitution provides that no one may be compelled to be a witness against himself or herself in criminal cases. *Dionisio* and the cases before it hold that the the state can compel the display of one's identifying characteristics, however, as long as the these characteristics are regarded as evidence having no "testimonial or communicative" content.²¹⁴ As Justice Holmes explained in *Holt v. U.S.*:

²¹³ 410 U.S. 1 (1973).

²¹⁴ See *Schmerber v. California*, 384 U.S. 757 (1966): "The privilege against self-incrimination is not available to an accused" if the evidence demanded is not of a "testimonial or communicative nature."

The Fourth and Fifth Amendments are still "relevant" (*Skinner v. Railway Labor Executives' Assn.*, 489 U.S. 602 (1989)), however, to the extent that some actions do constitute seizure of the person, interference with freedom of movement, or intrusion that shocks the conscience of the court (for example, in *Rochin v. California*, 342 U.S. 165 (1952), where the forced stomach pumping of a suspect "shock[ed] the conscience"). However, in general, as the Court wrote in *INS v. Delgado*, 466 U.S. 210 (1984):

"Interrogation relating to one's identity or a request for identification by the police does not, by itself, constitute a Fourth Amendment seizure. Unless the circumstances of the encounter are so intimidating as to demonstrate that a reasonable person would have believed he was not free to leave if he had not responded, such questioning does not result in a detention under the Fourth Amendment."