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FINGERPRINTS AND BLANKNESS:
"PERSONAL IDENTIFICATION" AND PROOF OF APPEARANCE
IN MODERN SOVEREIGN POWER AND POLITICAL THOUGHT

by
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A dissertation submitted to Johns Hopkins University in conformity with the
requirements for the degree of Doctor of Philosophy

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Abstract

This dissertation situates the political and technological preoccupation with uniquely identifying people as a problem of the representation or “appearance” of the person in several modern political thinkers. Although the technologies of “personal identification” (Galton, 1888) are largely the product of an empiricism that, in and of itself, has no formal political justification, the political meaning of identifying people is often explained as (1) a consequence of modern state projects to make people “legible” (Scott, 1998), or (2) simply the expression of the police power, which can be balanced with the right to privacy.

While not disputing the importance of these frameworks, the dissertation argues that the question of identifying people resides in a more difficult ambiguity in modern political thought, originating with special acuity in Hobbes’s (1651) vision of the political order of a “Dominion of Persons.” It argues that the space of representation opened by Hobbes contains a tension between the radicalness of the private and the exposure (or ‘legibility’) that general representation enables. The proposition that everyone can represent their ‘person’ as a work of art and is entitled to a world of the private where their identity can be as they wish runs into conflict with other strains that require a strong binding between the person and the sovereign voice of address.

Arendt’s (1958) vision of the political cherishes the appearance or “disclosure” of one’s unique identity in public as the foundation of political life as such, but the priority of light over darkness runs into crisis in a twentieth century politics marked by monuments to Unknown Soldiers and Displaced Persons camps. Following Arendt, the dissertation revisits the sovereign prerogative to compel “proof” of the person’s identity

in recent communitarian arguments and then in Althusser, Kafka, Derrida, Blackstone and Agamben.

The dissertation concludes with the argument that the right to privacy should be affirmed, but also that the demand for personal identification can be challenged democratically in the spirit of Hobbes's original call for a voluntarist, self-representing person by affirming the capacity, within political modernity, to create oneself as a work of art.

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Dedicated to the memories of:



Maggy Brown (1965–1998)

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“No doubt, on the level of appearances, modernity begins when the human being begins to exist within his organism, inside the shell of his head, inside the armature of his limbs, and in the whole structure of his physiology; when he begins to exist at the center of a labor by whose principles he is governed and whose product eludes him; when he lodges his thought in the folds of a language so much older than himself that he cannot master its significations, even though they have been called back to life by the insistence of his words.”

– Michel Foucault, *The Order of Things*

“Oedipus’ answer to the Sphinx’s riddles: ‘It is man!’ is the Enlightenment stereotype repeatedly offered as information, irrespective of whether it is faced with a piece of objective intelligence, a bare schematization, fear of evil power, or hope of redemption.”

– Theodor Adorno and Max Horkheimer,
Dialectic of Enlightenment

“Modernist painting in its latest phase has not abandoned the representation of recognizable objects in principle. What it has abandoned in principle is the representation of the kind of space that recognizable objects can inhabit.”

– Clement Greenberg, “Modernist Painting”

Introduction

"Persons should obtain photographs and ordinary measurements periodically of themselves and their children, making it a family custom to do so."

– Francis Galton, *Inquiries into Human Faculty and Its Development* (1883)

"Illegibility has been and remains a reliable resource for political autonomy."

– James Scott, *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed* (1998)

This dissertation is a reflection on two pictures. The first comes with a vision of modern political order (fig. 1, p. 17). Its topmost frame depicts a king of gigantic proportions, gazing with a somewhat vacant and distant expression over a land that looks like the rolling hills of England. His curly locks, defined features, clothes and crown identify him as a prince, a king, a sovereign. But his body comprises of a sea of small figures, each a hundredth the size of the giant prince. Transported from the walls of the town below, they face up toward the head of the giant; their backs are turned away from the City nestled tranquilly in the hills below. Like their great creation, the smaller creatures are newly represented *persons* who, through their radical capacity for artifice, will create by fiat the giant figure which hovers protectively and also encases them. Unlike the prince, however, they have no faces, or at least no descript faces. The viewer has no specific knowledge of the persons in the body of the prince. *Leviathan* itself bristles with possibilities and limitations of knowledge, natural and artificial, but not necessarily of them. They are not yet *information*.

The second picture (fig. 2, p. 18) is also a representation, one that oddly seems to mark our century: a proliferation of surfaces attached to what we are, elaborate and silent maps of fingerprints, eye pigmentations, heights, weights, genetic traits; a condition in which political domination is depicted not as a giant sovereign composed of the people, but in a way, its inversion, one which Francis Galton, father of eugenics, imprints on his manuscript on the eve of the twentieth century. On Galton's frontispiece, the inscription embedded within the compact representation of the ten fingerprints of the hands, in small print, reads "Finger Prints of the Author," and by 1892 refers to something that is representable as data, something to which fingerprints, serial numbers and signatures will be attached as part of a more general preoccupation with identifying individual persons. Fast forwarding about two hundred and fifty years from the first, the second picture, like the first, also traces the contours of powerful authority. The authority, however, comes with no constitution or blueprint, merely the reputation of fact. Galton's articles and lectures on "Personal Identification" argued that statistical and probabilistic analysis could provide valid information about people's unique identity.¹ Galton attempted to give scientific authority, for the first time, to what had only recently been a singular and experimental practice in British colonial India. Though no one had ever proven that people could be uniquely identified, authorities collected finger and palm prints from colonial subjects to ensure their responsibility for work obligations and encourage the consciousness that they *could* be identified (the lack of technological capacity notwithstanding) at any time.²

1 Francis Galton, *Finger Prints*, London: Macmillan and Co., 1892. See also Galton, "Personal Identification and Description," *Nature*, 38:77,201.

2 "Sir William Herschel has presented me with one of the two original 'Contracts' in Bengali, dated

What authorizes "personal identification"?³ In our world of signatures, digital as well as biometric forms of identification (fingerprints, DNA, retina scans), security experts make a basic distinction between authentication and authorization.

Authentication refers to the practices that establish that some person is who they say they are. Authorization, in contrast, deals with the policies that either grant or deny certain privileges to that person. Authentication says nothing about authorization, and vice versa; they are discrete and independent properties. Police bureaus all over the world have developed means of authentication based in part on the work of Francis Galton and Alphonse Bertillon and, as Galton urges, often recommend that people make records of their unique identity for themselves. But what authorizes the authentication itself?

Where does sovereignty gain the right to compel evidence of your unique identity, to authenticate you?

1858, which suggested to this mind the idea of using this method of identification. It was so difficult to obtain credence to the signatures of the natives, that he thought he would use the signature of the hand itself, chiefly with the intention of frightening the man who made it from afterwards denying his formal act; however, the impression proved so good that Sir W. Herschel became convinced that the same method might be further utilised." Francis Galton, *Finger Prints*, pp. 27–8.

For Herschel's account of his fingerprint experiments in India, see William J. Herschel, *The Origin of Finger-Printing* (Oxford: H. Milford, 1916). Galton was first directed to the subject of fingerprints by a letter forwarded to him by Charles Darwin from a Scottish doctor named Henry Faulds. Faulds had first proposed using fingerprints for criminal identification in a letter to *Nature* in 1880. But Galton was more drawn to the reports of William Herschel, who had arguably been the first to actually implement a system of palm and fingerprints in British-controlled India. Galton subsequently published an article in the science journal *Nature* with the title "Personal Identification," which was a study of fingerprints. Galton sought to give a statistical foundation for the claim that persons could be uniquely identified by the ridges of skin found on human fingers and thumbs. Part of Galton's motivation was to find in fingerprints signs of hereditary relationships. But the potential of fingerprints also seemed to promise a more general utility. Galton wanted to find in fingerprints signs of heritable traits, character, and race. He, by his own acknowledgment, failed at the latter goal. But the more general utility was what he called the "evidential value" of fingerprinting for establishing identity.

- 3 An analogous question posed to the rise of statistical knowledge is: "What is it that authorizes the production of statistics? What is it, in other words, that authorizes the numerical representation of the body politic in the first place." (Kirstie McClure, "Figuring Authority: Statistics, Liberal Narrative, and the Vanishing Subject," *Theory and Event*, 3:1, 1999).

Authentication has its precedents. A statute of late fourteenth-century England provided that laborers who escaped their masters were to be branded on their forehead with a letter "F," which indicated their "falsity." Later, by the Tudor and early Stuart period, newly defined vagrants were to be seared with "V" on their chests. Branding became a common practice in the century of the English Civil War and Hobbes's *Leviathan*; a statute from this period added that rogues were to be branded with an "R." Repeat offenses of vagrancy and vagabondage were felonies. In practice, those found guilty were often simply executed, though punishments also included ear-boring, pillorying or forcing the offender to stand or be nailed to a public platform underneath documents that explained who they were and the nature of their crime.⁴

Foreshadowing a modern world they would never know, wanderers at the dawn of modern order were punished for not having identity enough. In a merciless logic, wanderers were simultaneously stripped of the privileges of being a person (put in the stocks, sent to the bridewell) and at the same time burned-in as a person. The instrument is a technology that, when Kafka would describe it in the penal colony five hundred years later, would seem both fanciful and plausible: writing the sign onto and into the body. But even in Hobbes's time, the badge of authentication is generic: "V" for your vagrancy, in general; no individual identification number, no unique print of the ridges of your finger tips, no last names, even, to record.⁵

4 See A.L. Beier, *Masterless Men: The vagrancy problem in England, 1560–1640*, London: Methuen (1985).

5 On the development of permanent surnames, see James C. Scott, *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed*, New Haven: Yale University Press, 1998, pp. 64–71.

In order to be identified, you first have to "appear" before the law. This dissertation is about the appearance of the person in modern political thought, expressed as a tension between the freedom of self-representation, on one hand, and the binds to sovereign power solicited by the very same generalized representation afforded to every person, on the other. On one hand, the arguments below find much in common with the kind of thesis offered recently by James Scott, namely, that the rise of the modern cannot be understood outside of the projects in making people "legible."⁶ On the other hand, I want to put Scott's claim in tension with at least two tendencies that can be found in Hobbes's thinking: first, a voluntarism that privileges the self as an experimental work of representation;⁷ and second, elements of liberal discourse that provide for a certain "opacity" or shield from forces that would yield the person up as "evidence." A political order depicted by Galton's vision of personal identification clearly advances the project of making persons legible. But the demand for personal identification also disciplines a more radical side of Hobbes's political vision: a sphere of the private that shelters people from the imperatives to make oneself legible, on one hand, and a voluntarist spirit that, in some moods, preserves the capacity of human imagination to defeat schemes to make people identifiable, visible and legible.

The account here proposes that modernity offers us a more mysterious and difficult ambiguity than either being freed by the dream of anonymity and opacity or

6 "The premodern state was, in many crucial respects, partially blind; it knew precious little about its subjects, their wealth, their landholdings and yields, their location, their very identity. It lacked anything like a detailed 'map' of its terrain and its people." Scott, *Seeing Like a State*, p.2.

7 Works that support a reading of Hobbes with emphasis on the libertarian and strong voluntarist elements include Flathman, *Thomas Hobbes: Skepticism, Individuality and Chastened Politics*, and Kateb, "Hobbes and the Irrationality of Politics," *Political Theory*, 17:3, 1989. On the general theme of early modern self-making, see also Greenblatt, *Renaissance Self-Fashioning: From More to Shakespeare*.

being absolutely consigned to the exposure of sovereignty's gaze. Attempting to preserve this ambiguity, the dissertation proceeds by moving between, for example, freedom and "binding" in Hobbes, absolute rights and *ligeance* in Blackstone, public appearance and private anonymity in Arendt, and finally, that of sovereign power and abandonment in Agamben.

The chapters are organized as follows. Chapter 1 begins with the innovation of the idea of the "person" as it appears in Hobbes's architecture of modern political order, and considers the extent to which it is party to a great reversal that is taking place: sovereign power in Hobbes's world is becoming more anonymous, ordinary persons, previously faceless and unrepresentable, less. Where the person is taken as the self-evident anchor around which various other debates revolve, Chapter 1 begins with the simple observation that the person is the least self-evident, perhaps most speculative, certainly the most 'artificial' device in Hobbes's work. I argue here that Hobbes's idea of the person is more marked by its capacity for representation and artifice than it is by a demand for possession. At the same time, however, this capacity is in tension with the "binding" needed to make people have a natural knowledge of commands and promises. Chapter 1 tries to capture the spirit of Hobbes's idea that everyone — *everyone*, lords and peasants, masterless men and vagrants presumably — have the power and entitlement to fashion themselves and the world as they see fit. In world where the central problems of politics concern competing claims to transcendent power in burning bushes, scripture and worldly events, Hobbes seemingly only turns up the volume: *Let us make artificial man*, he begins. With this ringingly modern opening challenge, Hobbes

grounds power in every single individual person and, symmetrically, in the great artifact that everyone, through an aggregation of each person's power to make, creates together. Two great artifacts, then, rise up from the power to create yourself as a work of art: yourself as person, which Hobbes links to an actor and the mask one might wear on a public stage, and the person of the leviathan. In its best light, here is politics understood in terms of a radically democratic, voluntarist will, a kind that says that ordinary people have nothing to fear from looking inside and trusting their own power. As if to help others overcome their own fears of themselves, Hobbes quietly reassures that there is nothing to fear in trusting one's own judgment, as it were, together: "we can live, I insist, if we so will." For the first time ordinary people, the dimly illuminated, timid figures with their backs to the camera on Leviathan's frontispiece, by virtue of their natural capacity to represent themselves — to *license* their persona on stage — will represent themselves in the person of sovereignty.

People are coming into focus, though. *Leviathan* is transitional. Ordinary people are becoming less anonymous, sovereign power more so. Sovereignty as such will have no face, as it is the principle of representation itself over and above any specific royal line of descent. The people, on the other hand, start to have *names*: last names, and individual signatures.⁸ The person is not yet self-evident, not yet *information*. But information about each person now begins to fall under epistemological purview. Hobbes presents the person, as it were, in its youth.

⁸ On the emergence of the modern signature, which the author dates to 1554 in France, see Béatrice Fraenkel, *La signature : genèse d'un signe*, Paris: Gallimard, 1992. For the development of fixed surnames, see Anne Lefebvre-Teillard, *Le nom: Droit et histoire*, Paris: Presses Universitaires de France, 1990, and Scott, *Seeing Like a State*.

But how will enhancing each person's capacity to fashion themselves temper the violent civil warfare seemingly endemic to Hobbes's century? The answer is the private. By ushering contentious political questions into the private, early modernity found a solution to competing public appearances and claims to transcendental truths. *Leviathan* dedicates crucial sections of itself to the strict regulation of public appearances. One is free to be whatever one wants, as long as one keeps the representations or "appearances" of one's identity in the private. The private makes people safe for public politics.

Chapter 1 introduces this tension as a fundamental problem in the core of modern political representation: that in the move from general representation to personal identification, the latter makes people safe for the former. On the one hand, you are radically entitled to create your identity as a work of art. On the other hand, Hobbes has to figure out a way to make "masterless men" obey promises and commands. How will people be bound to an anonymous sovereign power? There must be *binding* between your sensory perceptions and the public police. Hobbes, in fact, graphically depicts such a binding as a ligament attached to your ear on one end and the "lips" or voice of sovereignty on the other.

The capacity to create yourself as an experiment subtends the demands of public binding and private freedom. To be public you must be visible and *sign* for yourself. Chapter 1 closes with a discussion of the mixed space of representation in which Hobbes proposes the idea of the person: empiricism and experiment.

Chapter 2 explores the tension between the capacity to "hide" (be epistemologically opaque) and, especially for Hannah Arendt, "appear." It pursues in

more detail how the disclosure of one's uniqueness, one's unique "appearance" for Hannah Arendt, Isaiah Berlin and, in further detail, for Hobbes, both turns on and is problematic to the crucial distinction between public and private. For Arendt, anonymity is the antithesis of the political and human. The chapter begins with Arendt's discomfort with monuments to the Unknown Soldier. Such monuments speak to the failure of modern politics to sufficiently promote the disclosure of unique individuality in public. For Hobbes, the distinction between public and private turns on the problem that signs and appearances pose to public order. Examining Hobbes's efforts to clearly separate the bodily from the incorporeal, Chapter 2 provides a closer specification of what Hobbes's vision of what "face" to the world belongs in the public and what must be kept in the private and, in particular, "in the head." In his discussion of public religious ceremonies and elsewhere, Hobbes works to establish the criteria for properly regulated public religious ceremony, on one hand, and the phantasms and *spectra* of people's minds, on the other, that must remain within the private and not given the status of transcendent authority in worldly affairs. As Hobbes acknowledges, such regulation is an "invitation to simulation," meaning that the face one puts on in public, again analogous to an actor's performance on stage, can slip under the scrutiny of the sovereign gaze. A different kind of freedom obtains in the private, where the *spectra* of one's mind have free reign. Although the public, performative act of self-representation shares some important features in common with Arendt's vision of the public, her vision of the public and the private alike differs markedly.

Arendt presents the private, partially inflected by its classical meaning of

privation, as the place of "the darkness of everyday life," a place of epistemological shadows where, as she puts it, the mysteries of why we are born and why we die dwell in their permanently unanswered state. In the private we are apart from the public, political fellowship with others and are therefore in a state of pure difference. The private is the realm of command, hierarchy, nature, coercion, opacity and difference, and the public one of persuasion, artifice, visibility, action and equality. The modern sense of the social and the private, as Berlin's discussion of negative liberty also holds, has made the limitation of state power on the boundary of the private central to its idea of freedom.

Chapter 2 concludes by bringing Arendt's concern with political "appearance" in public to one of the most dangerous and vexing problems of twentieth century politics: the twin emergence of stateless people and internment/concentration camps. Common to the politics of totalitarian and democratic regimes, the rise of DPs (Displaced Persons) presses upon the question of the disappearance or removal of people from political representation as such. What does it mean to have no space of appearance? For Arendt, this crisis is inseparable from a perplexity inhering in constitutional liberal-democracies framed around the Declaration of the Rights of Man. The inalienable rights of the individual are supposed to be independent of any specific source of sovereign authority. Rights are "self-evident," but the rapid denaturalization policies that have expelled people from sovereign boundaries because of national politics do not, as foretold in the foundational narrative of the liberal state, return displaced people to a state of nature or natural right. Rather, the expulsion or temporary "protective custody" in quasi-sovereign internment camps often exposes such persons to the most dangerous predicaments

politics has to offer. Reduced to being simply human, exposed in a state of "abstract nakedness," envelops one not in the protective shield of a natural right located purely in "Man," rather than God or custom, but instead in a kind of political and simultaneously apolitical peril in the extreme. For Arendt such a predicament only reinforces the need for robust rehabilitation of politics and the public sphere. No appeal to world government will in and of itself come to the rescue. Without the artifice, equality and protection of a vigorous space of the political, persons will be reduced to the state of "pure difference," stripped of their political capacity for action and thereby vulnerable the most horrible fates, including isolation, loneliness and the denuding of everything that is human (and therefore, synonymously, for Arendt, political), that could be imagined.

If the stripping away of one's capacity to appear stems, paradoxically, from the intensification of sovereign power, what, in contrast, are the internal demands of sovereignty when one is within its boundaries and control? Chapters 3 and 4 explore a political theory of *proof of appearance*, or the demand for the subject's body as evidence.

Chapter 3 begins with Amitai Etzioni's communitarian argument that the state should sharply curtail or in some cases eliminate the perception of many Americans that they have "the right to be anonymous." Etzioni argues that public safety is unduly and dangerously jeopardized by the cloak of secrecy that the right to privacy allows.

The idea that public safety and privacy are opposed, however, presents an ironic inversion of the Hobbesian architecture discussed in earlier chapters. Far from harming public safety, the private was intended to be the one of the places where dangerously

contentious political questions could be displaced to and thereby defused.

A different concern stirs in communitarian quarters: the problem of people who cannot be identified. Identity in and of itself is not dangerous; but when hidden, the loose binding attaching identification to persons runs the risk of allowing criminal activity to go unchecked. Identity is dangerous insofar as it cannot be identified.

The question then becomes how to ensure identification through legal and social means. Laws and social sanctions, of course, coerce by definition. But the question of how the coercion actually reaches its target, how evidence of the person is held to be valid, comprises the entirety of its forensic meaning. Etzioni, for instance, argues for the important role that "shaming" plays for peaceable social order. But it is less clear how the intended effect of shaming, which for Etzioni equals the achievement of an internal and external state of responsibility and duty, can be guaranteed. How can we tell when people are suitably responsible? How do we know, as Hobbes more thoughtfully put it, that the public appearance of the person — the face or mask they wear on the stage of public life — is not a simulation? Etzioni does not answer this question directly. He focuses instead on the kinds of policies that should be put in place to make identification and, consequently responsibility, more certain than not.

What is reliably present in Etzioni's policy is the voice of address. Whether from state, society or individual conscience, responsible and identifiable citizens share the awareness that they can be addressed at any moment. Citizens are addressed, addressable.

Emphasizing its earlier origins in the physical correction of oneself, the meaning

of the verb 'to address' provides the main thematic thread of Chapter 3. It explores the way that the voice of address forms a critical component to the articulation of free and lawful subjection. Louis Althusser's discussion of the constitutive effect of address in ideology, along with Butler's commentary on his essay, sets the stage. Arguing that Althusser's privileging of a theological mode of address paints a picture of subjection that seems to disallow refusal or amelioration, Butler wants to probe the *limits* to the constitutive address. She accomplishes this, in part, by illuminating the non-narrativizable origins of subjection, and by trying to think through how the "passionate attachment" to the law and the constitution of being might be refusable. Both Butler and Althusser are interested in understanding the misrecognition (*méconnaissance*) that inheres in the identification with sovereign address. Kafka, I propose, formalizes this misrecognition. Reading Kafka's "Before the Law" and two related stories alongside Derrida's commentary, the chapter argues that Kafka stages scenes of address and interpellation that undermine the silent consensus common to Etzioni and to some extent Althusser: the proof of the subject.

Chapter 4, finally, explores the legal capacity of sovereign power to compel the display of one's identity as evidence. The chapter compares this capacity with the formal political rights that shield persons from such exposure. The first example comes from a strain of U.S. legal doctrine that deals with certain exclusions to the rights protecting citizens from being compelled to testify against themselves. Despite the protections against self-incrimination, unreasonable seizure and other rights included under the "penumbra" of privacy, the state may compel the display of a person's "physical

characteristics" insofar as the characteristics are held to have no "testimonial or communicative content." Examples include fingerprint, handwriting and voice samples, as well as blood analysis under certain restricted conditions.

The state, in other words, may compel the display of your body insofar as its surfaces are regarded as pure *information*. Chapter 4 consists of a reflection on the peculiar way in which such exclusions and exposures repeatedly appear in accounts of sovereign power, comparing the tension between police power and individual rights in two texts, William Blackstone's *Commentaries on the Laws of England* and Giorgio Agamben's *Homo Sacer: Sovereign Power and Bare Life*, as well as in Brandeis and Warren's early articulation of the right to privacy.

Blackstone provides perhaps the most ringing account of the person's absolute rights against the state. In addition to the state's obligation to enforce what he calls the absolute rights of the individual, Blackstone's discussion of the limits of state power to compel absolute duties also seems to provide a solid and attractive legal shield against the reach of state power to "see" the individual on demand.

But the *opacity* afforded to the person runs in tension with other strains in Blackstone's thought, in particular his account of political obligation, or what he terms *ligeance*, and the demands of "public police and oeconomy." Within these depictions one finds a much stronger "binding" or exposure to sovereign power. The exposure is particularly acute for the classes of people whom the state regards as insufficiently tied to and identified by political order, namely, the idle and wandering.

For Agamben, the radical exposure of persons on the boundaries of sovereign

power is not accidental but rather central to its constitution as such. Developing Schmitt's conception of the exceptional capacity of sovereign power, Agamben extends the idea of the juridical emergency to the physical space traversed by the power of the ban. The Roman legal figure of *homo sacer*, like the wolf-man of medieval accounts, lives in the netherworld between the forest and the legal space of the city. "Already dead," the banned figure represents the sign of sovereignty's power to decide what forms of life have value and which may be killed without punishment. In modern sovereignty, the capacity to expose subjects takes on a new dimension by virtue of its interconnection with what Foucault termed biopolitics. Agamben wants to revise Foucault's account, however, by linking biopolitics more directly with sovereign rather than strictly disciplinary power.

Here the theme of what happens when persons are on the boundary of representation or "appearance" within a public political space — in the critical sense described by Arendt earlier — returns. Freedom is preserved under sovereign power insofar as a delicate ambiguity is maintained. The sovereign decides the emergency based upon a factual determination of extraordinary circumstances. There are certain examples, however, where the exception has ceased to be exceptional, but is instead realized normally. Concentration and DP camps are examples where a supposedly exceptional circumstance, the accumulation of persons in a limbo-like state on the margins of sovereign powers, become, as the ambiguity closes and tightens, not a carefully circumscribed and limited exception but rather a normalized, physical embodiment of the "materialization of the state of exception," in Agamben's terms. Like

the wolfman of old, the victims of quasi- and extra-judicial internment camps such as the *versuchspersonen* or human guinea pigs, inhabit the extreme state of exposure and abandonment.

Insofar as this ambiguity can be preserved, however the space for democratic life in the city remains open. The knowledge that the state has of your personal identification is oftentimes far more insecure than Galton's dream would have us believe. In cultures low and high, schemes of personal identification are regularly outwitted and defeated.⁹ The sovereign empiricism that demands our identification papers is also insecure, and remains vulnerable to being outwitted by the very same imagination that made it possible. Identification makes people safe for the private, but the the project to make people identifiable and "legible" will always be on a more unsure footing than its opponent: the capacity of people to change the masks they wear as they represent themselves in the world.

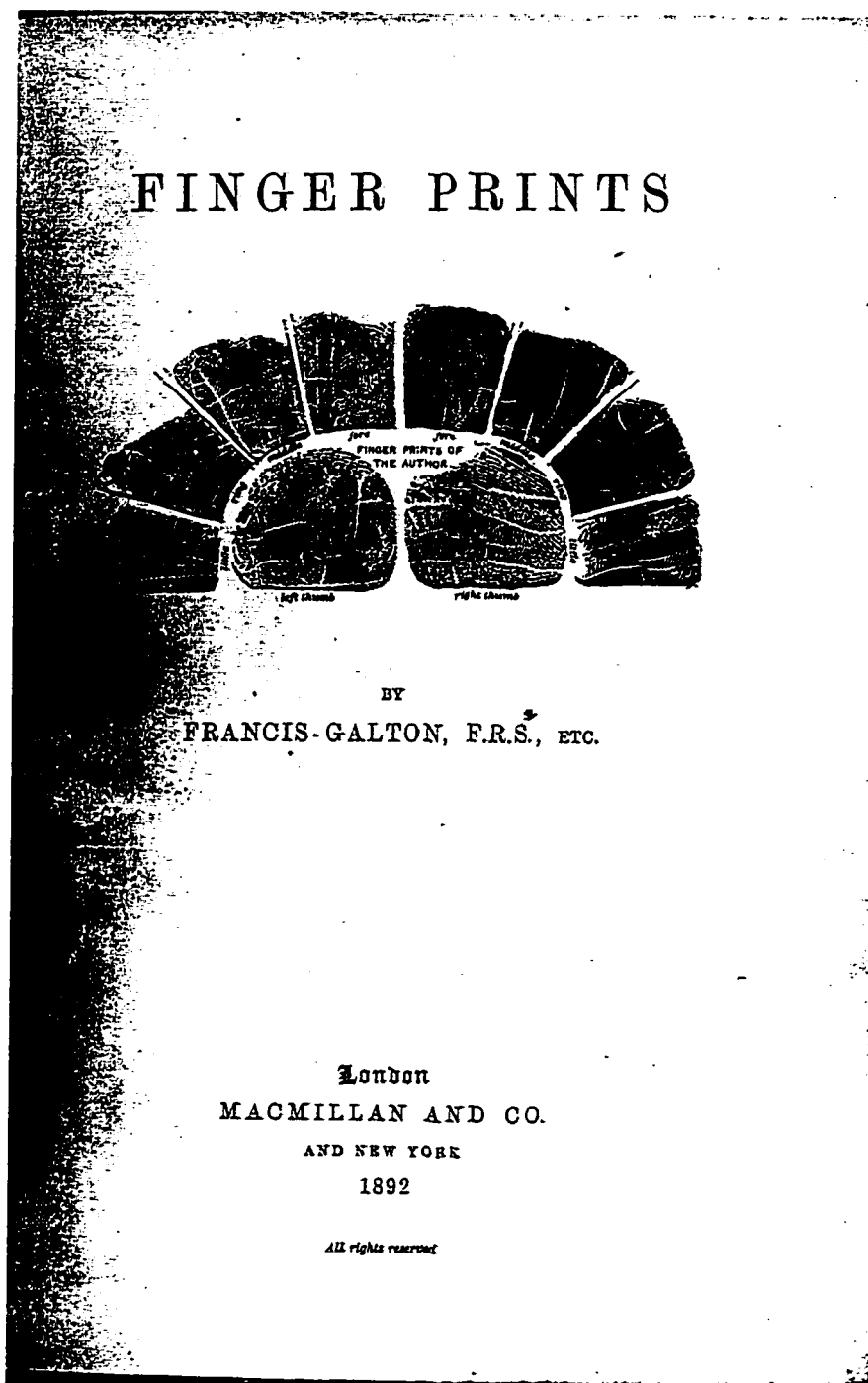
9 Fingerprints have recently come under attack on the grounds that they cannot meet the very criteria of scientific "falsifiability" for identifying unique individuals that they supposedly enshrine. See Simon Cole, "The Myth of Fingerprints: A forensic science stands trial," *Lingua Franca*, 10:8, Nov. 2000. For recent examples of the failure of elaborate identification schemes on poor people, see "Experts Doubt New York Plan To Fingerprint for Medicaid," *New York Times*, Aug. 30. 2000, by Nina Bernstein.

Figure 1. Detail from frontispiece of *Leviathan*. Thumbnail of complete frontispiece.



Figure 2

Galton. Frontispiece to *Finger Prints*.



Figures 3, 4

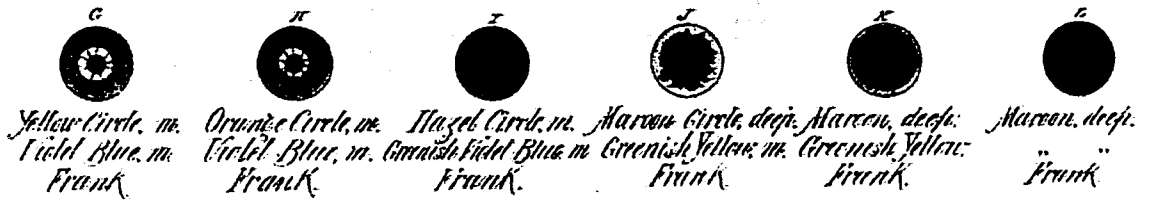
Bertillon. "Scale of [eye] Pigmentation"

Instructions for Taking Descriptions for the Identification of Criminals and Others by the Means of Anthropometric Indications

Bertillon. "Photograph of Henri-Léon Scheffer. First man in Europe to convicted on fingerprint evidence alone"

Alphonse Bertillon: Father of Scientific Detection

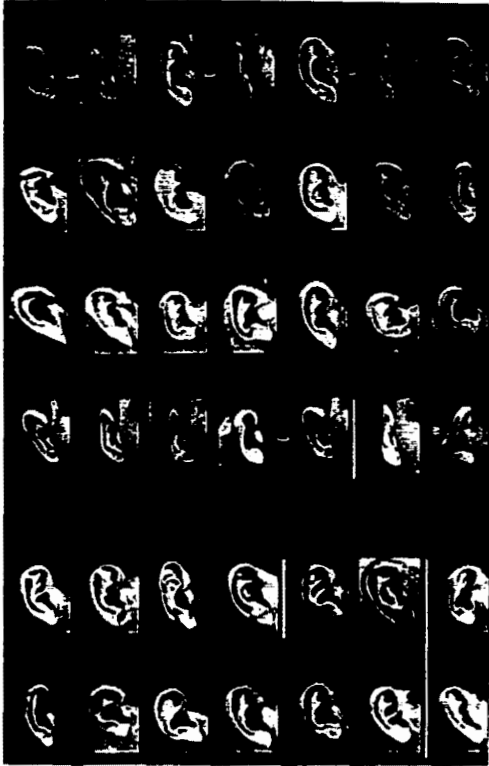
*Scale of Pigmentation:
Divisions Nos. 2, 3, 4, 5, 6 & 7 of the Classification.*



BERTILLON'S PHOTOGRAPH OF HENRI-LÉON SCHEFFER
Scheffer was the first man in Europe to be convicted on fingerprint evidence alone.

Figures 5, 6

Bertillon. Chart of Human Ears: "Pli Interieur," "Pli Superieur," "Forme Generale," "Ecartement," "Particularities." *Alphonse Bertillon: Father of Scientific Detection*
 Bertillon. Measurement of Right Ear. *Instructions for Taking Descriptions for the Identification of Criminals and Others by the Means of Anthropometric Indications*



"LOOK AT HIS EARS!"
 An example of Bertillon's sectional photography, which is the basis of the *portrait parlé*.



FIGURE 16.
 RIGHT EAR.

First Measurement.—The operator gently touches the upper rim of the ear with the stationary branch, keeping it immovable by pressing the upper extremity firmly against the head with the left thumb, his fingers resting on the top of the subject's head.
Second Measurement.—The stem of the compass being in a position parallel to the axis of the ear, the operator pushes forward the sliding branch until it reaches very lightly the lower pole of the lobe. He then catches himself that the ball of the ear has not been compressed by the instrument, and reads the indication.

Chapter 1: Faces, Persons, Anonymity and Obligation: Hobbes

"And it is the Representer that beareth the Person."

"Children, Fooles, and Mad-men that have no use of Reason, may be Personated by Guardians, or Curators; but can be no Authors of any action done by them.... Yet during the Folly, he that hath right of governing them may give Authority to the Guardian. But this again has no place but in a State Civill, because before such estate, there is no Dominion of Persons."

– Hobbes, *Leviathan*

"We can so live, I insist, if we so will."

– Hobbes, *De Homine*

The definition of a *person* does not come before fifteen chapters in Thomas Hobbes's 648-page *Leviathan*, and not before fourteen chapters of *De Homine*. "Of Persons, Authors, and things Personated" is the last chapter in "Of Man," the portion of *Leviathan* dedicated to the swirling rivers of senses, apparitions, power, speech, reason, science and representation flowing underneath and through the human being ("Man") who will be vested to with the right to make contracts with society and sovereign power; to be an "Author" and thereby a voluntary political subject.

When C.B. Macpherson argued in 1962 that the individual theorized by Hobbes is the "proprietor of his person," he wanted to show that Hobbes's otherwise compelling theory of political obligation worked only insofar as society is structured like a market society.¹⁰ The possessive, proprietary relation to oneself is for Macpherson the chief distinguishing feature of the origin of liberal theory, and the most important factor in the

¹⁰ C.B. Macpherson, *The Political Theory of Possessive Individualism: Hobbes to Locke*, Oxford: Oxford University Press. (1962).

alleged crisis of its legitimacy.

The term *person*, however, remains a silent partner in this formulation. In the many debates over the validity of Macpherson's thesis that followed, the centrality of proprietorship has been criticized, but the person carries on as an unquestioned *datum*, so obvious to we moderns, apparently, that it in itself requires no explanation.

Yet the invention of the person is one of the least self-evident and most synthetic features of *Leviathan*, one of the most "artificial," second only perhaps to the more famous artifact of sovereign power itself. Indeed, the fact that the person is not yet identifiable data, not natural or self-evident, not yet *information* in Adorno and Horkheimer's riddle, serves as a reminder that nothing about the individual person in modern life is either inevitable or immutable. The person must still be explicitly constructed in Hobbes's time, introduced *in medias res* in Hobbes's blueprint for a modern secular political order.

Personhood is a self-making and self-fashioning, a premiere example of a new vision of the world that could, perhaps for the first time, find confidence in the idea that every individual has the capacity to meaningfully construct and reconstruct the terms of obligation and identity in political society.¹¹ At the same time, Hobbes's conception of a "Dominion of Persons" introduces, again perhaps for the first time, a distinctly modern sense in which personhood is beginning to be brought into the epistemology of political power. Dimly coming into focus in giant sovereign's body, persons are beginning to become visible, representable, nameable. To have the power to name and be named, to

11 Flathman, *Thomas Hobbes: Skepticism, Individuality and Chastened Politics*; Greenblatt, *Renaissance Self-Fashioning: From More to Shakespeare*.

represent and be represented, constitutes the terms of Hobbes's experimental vision of freedom and civil peace.

This chapter aims to situate Hobbes's concept of the person within an overall argument about the ambiguous place that personhood, and its radical double, anonymity, play in the beginning of modern justifications for political obligation. *Leviathan* emerges in a time when the representation of sovereignty and individuals is changing, when the privilege of naming associated with sovereignty, on the one hand, and the comparative anonymity of the ordinary masses of people, on the other, is beginning to change places. The frontispiece to *Leviathan* depicts, to a certain extent, a traditional hierarchy in which individual subjects are only barely distinguishable and, for the moment, faceless. The state does not know or concern itself with the names and of ordinary people. Only lords, kings and other dignitaries have full names and the distinguished features represented in the genre of the portrait. Leviathan, a fantastic sovereign, still has the face of a king.

But *Leviathan* is also transitional. Hobbes is introducing a world in which subjects, for the first time, sign themselves in mutual obligation to an power that is itself anonymous. Sovereignty is becoming more anonymous; individual persons, perhaps less. Persons are beginning to be politically representable, but also representable as such. The appearance of the person, though seen through a comparatively small aperture in Hobbes's work, nevertheless foregrounds a number of futures of the modern world, some realized and some not.

Hobbes, I think, provides resources both for and against later forms of power preoccupied with the ability to distinguish and identify unique individuals, futures in

which the prerogative of being "identifiable" at all times is considered a normal condition of political existence. The person of the twentieth century, who under normal conditions bears all types of signatures and fingerprints and serial numbers and, under extreme conditions, the serial numbers of the *versuchspersonen* of the concentration camps, is one such future.

Yet within the same future is the very same willful and voluntarist subject, also imagined by Hobbes in the seventeenth century, who stands as the sole principle of self-making and resistance to all compulsory attributions of identity and representation, whether from state or from society.

The ambiguous and overlapping qualities of these possibilities, beginning with the imagination and problems confronted by Hobbes, forms the basis of this initial chapter. In what follows, I will be framing these issues – the emergence of the person as a generally identifiable element in political society – in terms of a tension between obligation and freedom.

Among the dimensions of freedom is a negative freedom emanating from Hobbes's depiction of human identity that is not held internally accountable to a particular notion of good or bad identity, or any *telos* of public utility. Hobbes imagines a political order based upon the capacity to invent one's person, to create it as artifice, as a mask, to license it. Outside of the imaginary moment of consent, however, Hobbes offers a portrait of human beings who retain, at least in terms of their fundamental identity, their natural liberty. Hobbes imagines people alienating a portion of natural liberty in exchange for a more or less commodious and felicitous life. Nothing indicates

that, in alienating this liberty, one opens oneself to a kind of moral or disciplinary jurisdiction, a prerogative of the state to be able to identify and set the terms of identity.

At the same time, Hobbes has to solve the problem of how to develop an internal sense of "binding" to political society. As I will argue below, Hobbes has to theorize a way for people to understand commands and promises. That is, Hobbes has to imagine a way for people to have a natural knowledge of the duties and obligations to which they are signatories, in a scheme in which supernatural knowledge is no longer the basis for legitimate claims of political obligation.

Sovereign power and society as whole, in other words, has for the first time a stake in making subjects "visible" and "legible"¹²; that is, a stake in the probability and likelihood that each person of the mass of individuals has a clear and natural understanding of commands and promises. Although Hobbes keeps these internal bonds "weak," I think, the Hobbesian moment also marks the beginning of a new kind of bond, one through which the person later emerges as a site of administration and identification. This, I argue, is the countervailing tension with the other tendencies in Hobbes's thinking that afford a great deal of freedom and self-creation.

12 Scott, *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed*.

Persons, Faces

Person derives from Greek and Latinate roots. Hobbes locates the origin of the person in the Greek usage of the word for *face* (προσωπον) and the distinctions, observed also in Roman usage, applying to the meaning of face in Greek drama. Because the meaning of person originates in a scene of representation, the theater, both Greek and Roman usage distinguished between the character and the actor, the person being represented and the person doing the representing. If one wanted to refer to the "true man," one said face (*facies*, or his *os*, countenance), and if to the "artificial" man, *persona*.¹³ A person "is the same that an Actor is," and "to *Personate*, is to *Act*, or *Represent* himselfe, or an other."¹⁴

The capacity to represent is grammatically and logically prior to being a person. Representation, in the groundwork that Hobbes lays in the previous chapters of "Of Man," is tied to the relationship between words and motions and things in the world. There is no mention of persons. The field of experience consists solely of motions, speech, sense and desires. "Originall of them all," Hobbes writes, is sense. The motion of objects "which worketh on the Eyes, Eares, and other parts of mans body" with

"pressure, by the mediation of Nerves, and other strings, and membranes of the body, continued inwards to the Brain, and Heart, causeth there a resistance, or counter-pressure, or endeavour of the heart, to deliver it self"¹⁵

and produces appearances. These appearances are representations.

13 *De Homine*, XV, p. 83.

14 *Leviathan*, XVI, p. 217.

15 *Leviathan*, I, p. 85.

A person is itself a representation. This is only possible, in Hobbes's scheme, because persons and objects belong to the realm of things that can be represented. That is why there can be the series which makes up the title of chapter sixteen: "Of Persons, Authors, and things Personated." Things and man can be "personated."

A person is "he whose words or actions are considered, either as his own, or as representing the words or actions of an other man, or of any other thing to whom they are attributed, whether Truly or by Fiction." A person overlays "Man"; a person is an artifice atop the being that can make artifacts. Man can represent himself as a person insofar as he owns his words. He can represent another person by taking ownership of that person's words. Man can take ownership of the property of representation, much as he can, in sense, 'own' an object by virtue of his speech, his capacity to represent that object. In transferring words, one licenses another to represent his person. This alienation, or licensing, of representation is what we recognize as representation in the formally political sense. Ownership is called *Dominus* in Latin, and the right of this ownership is *Dominion*, writes Hobbes. Persons do not exist where this licensing has not taken place: personhood, authorship have "no place but in a State Civill, because before such estate, there is no Dominion of Persons."

This double move, the introduction of the person as an artifice of humans and simultaneously a 'world' of artifacts (objects, political structures, and all "things personated"), makes possible a subject who will, in turn, act as the fulcrum of the political order known as a commonwealth. A subject is the sign produced after the fact, the effect of the artifice of the commonwealth, the agent who is the amalgam of the

sensuous self, the person created by the self, and the political order created by those persons.¹⁶ Like the disguise, the face, the surface of representation that is the very condition of possibility of the person for Hobbes – the person exists in uneasy superimposition upon the conscious, bodily being of human life.

Hobbes's category of the person opens a new space of representation in political theory. Hobbes theorizes a "domain of persons" as a *tabula* onto which humans can represent themselves as artificial entities. The power to represent is also the power to name things in the world. But to what extent may persons themselves be named?

16 The 'self-interested individual' that is most stereotypically associated with Hobbes's thinking – particularly for the realist canon – is better understood not as a static precondition for commonwealth, but rather something that the commonwealth installs, to a certain extent, after the fact for the maintenance of its *raison d'être*. See, for example, Connolly, *Political Theory and Modernity*: "The Hobbesian 'individual' is, first, not a given but a formation out of material that is only partly susceptible to this form and, second, not merely an end in itself but more significantly a means to the end of a stable society. The Hobbesian individual is thus in part a product of the civil society which is to regulate it, and the Hobbesian problem is how to form it so that it will be able and willing to abide by the natural laws and contracts appropriate to civil society." (p. 27)

Personhood and Anonymity

The person is a representation, an artifact, but it is still *anonymous*. As depicted in the frontispiece of *Leviathan*, the anonymity of the people is apparent in several signs. The people have no faces; they are all turned toward the sovereign, who still has a face. Ordinary persons are generally not yet representable, and are only beginning to have individual signatures.¹⁷ Persons are still anonymous in the time of Hobbes. Sovereigns still bear faces.

At the same time, we can look at the theater of power theorized by Hobbes as something of a transition between a feudal and modern order. In older forms of order, "individualization" is greatest at the top, where sovereignty is exercised, in forms of power exercised by manorial lords, princes and kings. In lordly and sovereign hierarchies, the greater the power and privilege, the more one is marked as an individual.

Foucault describes this "ascending individualization" as follows:

"The 'name' and the genealogy that situate one within a kinship group, the performance of deeds that demonstrate superior strength and which are immortalized in literary accounts, the ceremonies that mark the power relations in their very ordering, the monuments or donations that bring survival after death, the ostentation and excess of expenditure, the multiple, intersecting links of allegiance and suzerainty, all these are procedures of an 'ascending' individualization."¹⁸

Beginning in the seventeenth century, however, one starts to see a preoccupation with what Foucault terms "anatomico–metaphysical" and "technico–political"

¹⁷ Fraenkel, *La signature: gèneses d'un signe*. Fraenkel puts the date at which notaries were required to affix the modern form individual signatures to documents as 1554.

¹⁸ Foucault, *Discipline and Punish*, pp. 192–3.

individualization.¹⁹ Both tendencies characterize a greater level of individualization at the lower and more peripheral locations of society.

"In a disciplinary regime, on the other hand, individualization is 'descending': as power becomes more anonymous and more functional, those on whom it is exercised tend to be more strongly individualized; it is exercised by surveillance rather than ceremonies, by observation rather than commemorative accounts, by comparative measures that have the 'norm' as reference rather than genealogies giving ancestors as points of reference; by 'gaps' rather than by deeds."²⁰

Hobbes, I think, theorizes the beginnings of a transition from individualization at the "top" to individualization at the "bottom" level of the person.

At the level of sovereignty, Hobbes theorizes an anonymous form of power, that is, a form separate from its embodiment in any particular royal line of descent, any particular King or Queen, parliament, assembly or ecclesiastically anointed party. The sovereign still has vestiges of a face, but no name. Persons have a generalized "face" (one's *persona* now means the role one takes on as representative of another), but with nothing yet written upon it. *Leviathan* marks a point in which both sovereign and subject are in a transitional point with respect to anonymity, but in different directions. Sovereignty is the power that is becoming anonymous.

But how can obligation to this anonymous power be justified?

19 *Discipline and Punish*, p. 136 "The classical age discovered the body as object and target of power. It is easy enough to find signs of the attention then paid to the body – to the body that is manipulated, shaped, trained, which obeys, responds, becomes skillful and increases its forces. The great book of Man–the–Machine was written simultaneously on two registers: the anatomico–metaphysical register, of which Descartes wrote the first pages and which the physicians and philosophers continued, and the technico–politico register, which was constituted by a whole set of regulation and by empirical and calculated methods relating to the army, the school and the hospital, for controlling or correcting the operations of the body."

20 *Ibid.*

Personal Obligation

"Abstract indebtedness, dependence upon a principle or power identified with the perpetuation of civilization itself, based upon aim inhibition, transforms prideful self-possession in a dual experience of anonymity: individuals simultaneously are anonymous one to another (they 'cohere together' as Hobbes says), and are bound by obligation to an anonymous and generalized principle which guarantees their coherence."

– Wikse, *About Possession*

If feudal regimes were characterized by diffuse and irregular obligations around property and seignior, the period around the English Civil War marks a radical and violent reorganization of relationships of obligation.²¹ *Leviathan* is famously known as a theory of obligation, an ordering of political society under univocal, secular sovereign power, based upon the contractual consent of all governed. How is it that individuals will be "bound by obligation to an anonymous and generalized principle" of sovereignty?

Hobbes's theory of obligation begins not at the top, with a macroscopic description of the sovereign leviathan, nor with any appeal or reference to large-scale groups such as countries, armies, peoples or continents. Rather Hobbes begins at the bottom, with a depiction of the most elemental, microscopic features of the body of human beings who will be ruled and understand themselves as modern subjects. At this level, language infuses the building blocks – the motions, objects, appearances, appetites, marks, names and words – that make up the new individuals of Hobbes's world.

21 See, *passim*, Moore, *Social Origins of Dictatorship and Democracy*; Hill, *World Turned Upside Down*; Wikse, *About Possession: The Self as Private Property*.

"In all parts of the world where feudalism grew up, the ownership of land was always burdened and hedged with a great variety of obligations to other persons. The way in which these obligations disappeared, and who was to win or lose by the change, became crucial political issues in every country that knew feudalism." [Moore, *Social Origins*, p.8]

Obligation, in the medieval relation of being a 'liegeman,' that is, being bound to lord in the sense of property, derives from the Latin *ligare*, meaning to tie or to bind.²² Individuals bind themselves to political society by virtue of being able to create words and, through language, represent themselves as persons. The question I wish to pose concerns the "binding" that newly-conceived persons have by virtue of their "visibility" to sovereignty. To what extent must persons/subjects in Hobbes's vision be bound in the way that to be a citizen in the twentieth century means being identifiable as an individual person or author? Another way to pose this question is: to what extent can Hobbesian persons be *anonymous*? To what extent can subjects remain outside the jurisdiction of sovereign power for the constitution of identity? As described above, I propose that the answer to these questions emerges within a certain ambiguity in Hobbes.

Hobbes locates his whole theory of obligation at the level of individual personhood which, as a result, has mixed implications. On one hand, Hobbes facilitates a radically voluntarist conception of personal identity. Not only do individuals retain a great deal of prerogative over their selves, but, perhaps more importantly, the individual capacity to invent and more generally *represent* oneself without any predetermined limit places the "Art" of creating oneself at the center of society and its political values. On the other hand, it brings the individual person into the epistemology of sovereign power, closing, perhaps, avenues through which a relative anonymity, a way of remaining free of identification and 'addressing' of modern systems of power.

In what follows, I will show how Hobbes sets the stage for the overall ambiguity of freedom described above. The first section deals with Macpherson's claim that

²² Wikse, *About Possession*, pp. 88–9.

Hobbes's theory of obligation depends upon a proprietary relation to one's person. In contrast to Macpherson's claim, I argue that the synthetic, self-representational powers of each individual person is prior to a sense of obligation based on proprietorship and property.

The second section develops the ambiguous way in which personal authorization requires an internal set of bindings to be in place. In imagining a political order defined by invention, Hobbes has to overcome several problems. The first problem is to show how a promise made in fear can still be said to be 'voluntary' in an unambiguous and unassailable way. The second is to show what conditions need to obtain for being able to say, definitively and authoritatively, that a command from a sovereign authority could be reasonably comprehended by a subject who, by definition, has voluntarily acceded to that authority, and is therefore duly obligated to respond to that command.

I argue that the 'binding' required by Hobbes is mitigated by a radical sense in which one's person is *not* subject to the imperatives of general identification. I draw this conclusion from an examination of Hobbes's treatment of individual definitions of desire and morality. Again, I submit that the central activity of personhood remains the "act of authorization," beyond which no kind of identification is required of the individual's person.

Finally, I connect Hobbes's vision of creating oneself as an artifact – or experiment – to the more general emergence, in the sixteenth century, of experimentation as a mixture of public and private space. That each individual has the capacity to create artifacts and acts, public or private, constitutes a domain that we might generally call

'experience.' Experience, with its double, experiment, is that which sits on the boundary of the public and the private.

Personhood and Obligation I: The Triumph of Representation

C.B. Macpherson's *The Political Theory of Possessive Individualism* addresses itself to the perceived difficulty in finding a "firm theoretical basis to the liberal-democratic state."²³ It begins with the observation that, despite differing arguments over whether the emergence of individualism meant new freedoms or an undermining of the natural law tradition, all parties agree that the seventeenth century introduced a "new belief in the value and rights of the individual."²⁴

Whatever sufficiency this individualism carried for the seventeenth century, the hope that it would continue to provide a solid foundation for twentieth century liberal thought has not held out, according to Macpherson. Various critiques, from Bentham to Mill to different flavors of pluralism to the more recent communitarian attacks, all claim to bring needed repair to the seventeenth century conceptions. In general, the alleged shortcomings of liberalism are "more or less identified with Bentham's narrowly selfish, narrowly rationalist version of it."²⁵

Macpherson argues that these problems lay at a much more fundamental level. The problem lies in what Macpherson calls the "possessive quality" of liberal individualism which informed its origin in the seventeenth century. For seventeenth century liberals,

"the individual was seen neither as a moral whole, nor as part of a larger social whole, but as an owner of himself. The individual, it was thought, is free

23 Macpherson, *The Political Theory of Possessive Individualism*, p. 1.

24 Ibid.

25 Macpherson, *The Political Theory of Possessive Individualism*, p. 2.

inasmuch as he is proprietor of his person and capacities..... owing nothing to society for them."²⁶

Macpherson argues that this assumption, that an individual is defined by the requirement of having "property in one's person," pervades the thinking of all major seventeenth century contributors to liberal thought, from Hobbes to the Levellers to Harrington to Locke.

Possessive individualism, however, has requirements, chief among them that the relations of society are structured according to the dictates of a market society.

Macpherson goes into great detail describing the features of a market society that must be assumed in order for possessive individualism make sense.²⁷ These assumptions, organized broadly under a world structured like a market society, gave individualism and liberalism in general their strength in the seventeenth century.

Hobbes's model of the individual assumes a world structured like a market society, where, for example, "each individual's capacity to labour is his own property and is alienable." Hobbes had to be assuming a society such as this, Macpherson argues, because a only such a society could "provide peaceful, non-violent ways by which every man can constantly seek power over others without destroying the society."²⁸

"Only one kind of society, which I call possessive market society, does meet the requirement of Hobbes's argument, and I argue that Hobbes was more a less consciously taking that society as his model of society as such."²⁹

26 Ibid., p.3.

27 Macpherson lists a number of preconditions necessary to a "possessive market society." These include postulates like the following: "There is no authoritative allocation of work." "There is authoritative definition and enforcement of contracts." "Each individual's capacity to labour is his own property and is alienable." "Land and resources are owned by individuals and are alienable." *Political Theory of Possessive Individualism*, pp. 54–6.

28 *Political Theory of Possessive Individualism*, p. 46.

29 Ibid., p. 46.

The individual in Hobbes's state of nature is, in other words, already social, because it behaves in such a way that could only make sense in a market society. Given this assumption, Hobbes develops a compelling theory of political obligation. Hobbes was able to derive a strong theory of political obligation based upon the bare assumptions of a market society without reliance on typical concepts of divine purpose, natural law, etc., but simply on "the materialist model of man and the market model of society."

The problem, according to Macpherson, is that market society, as it developed into the nineteenth century, destroyed many of the prerequisites necessary to sustain this assumption. Hobbes's main and perhaps only flaw, according to Macpherson, was

"his failure to see that the market society generated a degree of class cohesion which made possible a viable political authority without a self-perpetuating sovereign body."³⁰

Macpherson means here that the emergence of class consciousness, both "working-class political articulacy" as well as class interests of capital, created powerful political forces whose authority does not necessarily come from the model of sovereignty Hobbes theorized. Liberalism still relies on the assumptions of possessive individualism, but the conditions necessary for these assumptions to be true no longer obtain. The consequence, according to Macpherson, is that there is no longer a valid theory of obligation to the liberal-democratic state as long as it exists within a possessive market society.³¹

According to Macpherson, Hobbes's theory of obligation relies upon a depiction of the natural state of humankind as a market society, and its members naturally oriented

30 Ibid., p. 265.

31 Ibid., p. 275

towards propriety, ownership and possessive individualism. At least two elements of the themes that I put forward in this chapter, however, differ from Macpherson's reading of Hobbes: (1) that there is, in fact, no intrinsic sense of debt, ownership, propriety, personhood in Hobbes's theorization of human life; and (2) that the capacity to represent, to make the world artificial, to make oneself is a far more fundamental characteristic of Hobbesian individuals than proprietorship.

Note that, for Hobbes, everything consequent to political society depends on the very possibility of authorship and personhood. The precondition for authorship and personhood is the capacity to make representations and, as will be discussed in the next section, the development of a natural understanding of promises and commands. These preconditions come before propriety. Propriety comes as an effect, not cause of representation and contract:

"Therefore before the names of Just, and Unjust can have place, there must be some coercive Power.... to make good that Propriety, which by mutuall Contract men acquire, in recompence of the universall Right they abandon: and such power there is none before the erection of a Commonwealth."³²

Hobbes continues:

"And therefore where there is no *Own*, that is, no Propriety, there is no Injustice; and where there is no coercive Power erected, that is, where there is no Common-wealth, there is no Propriety; all men having Right to all things; Therefore where there is no Common-wealth, there nothing is Unjust. So that the nature of Justice, consisteth in keeping of valid Covenants: but the Validity of Covenants begins not but with the Constitution of a Civill Power, sufficient to compell men to keep them: *And then it is also that Propriety begin.*" [emph. added]³³

Far prior to the possibility of ownership is the capacity of representation and speech, the

32 *Leviathan*, I:15, p. 202.

33 *Ibid.*, pp. 202-3.

capacity for making objects, for making persons, for making artifacts; only fairly late in the description does "propriety begin." The artifact-making everywhere in Hobbes's epistemology is far more profuse, I think, than the specific capacity of ownership. In his definition of the person, Hobbes in fact removes "words owned by" in *Leviathan* and substitutes "words attributed to" by the time of *De Homine*.³⁴

If propriety, in a sense, comes 'later' in Hobbes than when Macpherson finds it, where does that leave the question of obligation? Recall that for Macpherson, Hobbes's theory of obligation remains compelling and coherent, but only insofar as society is structured according to the dictates of the market. If the preconditions for Hobbes's theory of obligation are not proprietorship, but rather the capacity for representation, command, and promise, then, following Macpherson's trajectory, how do these conditions pertain to political modernity since the seventeenth century?

The model of the "individual as proprietor of his person" no doubt illuminates a great deal about the terms of modern identity. But its light leaves a range of experiences and representations unaccounted for, particularly the forms of power notable for the excessive and specific concern for uniquely identified persons: the serial numbers etched into subjects in the concentration camps, elaborate and silent maps of fingerprints, eye pigmentations, heights, weights, the versuchspersonen, the DNA signature. The brutality and "depersonalizing" nature of modern forms of domination carry the strange but unmistakable mark of its double, the intense individuation of persons and the preoccupation with individual identity.

34 Compare "Of Persons, Authors, and things Personated" in *Leviathan* ("Of Persons Artificiall, some have their words and actions *Owned* by those whom they represent.") with its analogous chapter in *De Homine*, "On Artificial Man" ("a person is he to whom the words and actions of men are attributed").

What I want to develop is the notion that the preconditions of obligation – the capacity to create oneself as a person, the inner binding of person to society by virtue of commands and promises – leaves an ambiguous legacy. The person emerges in a mixed jurisdiction of public and private. On one hand, it is taken for granted that the individual is resolutely under the jurisdiction of the state. On the other, the person is the only authority who can decide his or her freedom; or in Hobbes's words,

"There being no Obligation on any man, which ariseth not from some Act of his own; for all men equally, are by Nature free."³⁵

The next section explores some of the countervailing tensions within this formulation, including the binding of commands and promises necessary to obligation and, at the same time, the persistence of a natural freedom and liberty.

35 *Leviathan*, I:21

Personhood and Obligation II: A Natural Knowledge of Commands and Premises

"Passengers seated in an emergency exit seat are requested to identify himself or herself for reseatng if he or she would be unable to perform one or more of the applicable functions because

—
The person lacks the ability to read and understand instructions related to emergency evacuation provided by the airline in printed, handwritten, or graphic form or the ability to understand oral crew commands in the English language;

The person is less than 15 years of age or lacks the capacity to perform all the functions listed here without the assistance of an adult companion;

The person lacks sufficient visual capacity to perform one or more of the applicable functions listed above without the assistance of visual aids beyond contact lens or eyeglasses;

The person lacks sufficient aural capacity to hear and understand instructions shouted by Flight Attendants, without assistance beyond a hearing aid;

The person lacks the ability to adequately impart information orally to other passengers."

— F.A.A., *Passenger Safety Information: Exit Seating*³⁶

After the first modern revolution,³⁷ how can it be certain that people will understand and obey commands? Hobbes's challenge was to show convincingly that all people, presumably including the legions of "masterless men,"³⁸ could be "Authors" of a

³⁶ I select this quotation as example of how the language of sovereign regulation, particularly in the language of emergency, reveals the norm of, in this case, of persons. This relationship will be discussed in Chapter 4. Here in Chapter 1 my goal is to introduce the role that command plays for Hobbes in the establishing the conditions of personhood.

³⁷ That is, the English Civil War, according to Barrington Moore's classic study *Social Origins of Dictatorship and Democracy*.

³⁸ The upheaval and overturning of feudal order saw an increase in large numbers of mobile, "masterless" "servants to nobody." Christopher Hill describes the some of the general types: "First, there were rogues, vagabonds and beggars, roaming the countryside, sometimes in search of employment, too often mere unemployable rejects of a society in economic transformation, whose population was expanding rapidly. Secondly there was London, [which was] for the sixteenth century vagabond what the greenwood had been for the mediaeval outlaw – an anonymous refuge. [Thirdly] a quite different sort of masterless men were the protestant sectaries. These had as it were chosen the condition of masterlessness by opting out of the state church, so closely modelled on the hierarchical structure of society, so tightly controlled by parson and squire. Fourth among our masterless men are the rural equivalents of the London poor – cottagers and squatters on commons, wastes and in

political order to which they would then be obligated. The question of understanding commands is related to but also distinct from another, more familiar question associated with the rise of a contracting modern subject. Framed by Nietzsche, the second question asks: how were modern people created with the right to make promises? Who can make and keep contracts?

Commands are an even more basic element of order. One way Hobbes's texts might be said to be modern is that they define political commands as those coming not from the will of God, but from the will of "men." Thus the question posed above takes a more specific shape: how do you ensure that subjects will understand commands, not from the heavens, but from the world?

Hobbes's goal, I think, is to show – in terms of a strictly natural as opposed to supernatural knowledge – the required relationship between reflection on obligation and performance of obligation. Sovereignty has to be articulated in terms of a direct relation to individual cognition.

Along these lines, the distinction between promises and commands is one of many elements of language that Hobbes expounds upon. Hobbes is at pains to point out Aristotle's errors regarding the distinction between laws and contracts, that is, the distinction between commands and promises. Hobbes writes,

"For contract is *a promise*, law a *command*. In contracts we say, *I will do this*; in laws, *do this*." ³⁹

With contracts or promises, interpretation may precede action. One has time to reflect on

forests." Hill, *World Turned Upside Down: Radical Ideas During the English Revolution*, pp. 32–35.
39 *De Cive*, XIV, pp. 273–4.

one's obligation regarding promises made. With law or command, action comes first, reflection later. More specifically, one must *perform*:

"Therefore in *contract*, it is first determined what is to be done, before we are obliged to do it; but in *law*, we are first obliged to perform, and what is to be done is determined afterwards."⁴⁰

This immediate requirement to perform in the presence of law's injunction forms one of the first pieces of Hobbes's puzzle of modern political order. For there to be orderly civil society, people must obey the law, or at least know that there is a punishment should they break it. In law, one *is first obliged to perform*. But no performance can take place without understanding the meaning of words, commands or otherwise. One should respond reflexively to laws, as if the meaning were (literally) immediate. At the same time, Hobbes confronts the fact that such a situation is necessarily mediated. One task of his political thinking, then, becomes specifying exactly how such mediation takes place.

One of the Hobbes's first and most important narrative accounts of command, understanding and performance occurs in the garden of Eden. Hobbes deploys this scene of representation in order to frame important distinctions between natural and supernatural understanding, the appropriate interpretation of meaning, and the instructional lessons that such a scene produces for knowing the nature of command, obligation and 'what to do.'

A centerpiece of Hobbes's political theory and epistemology is the insistence that marks, names and speech "have arisen from human invention."⁴¹ A mark is something

40 *De Cive*, *ibid.*

41 *De Homine*, X, p.38; *Human Nature*, V, pp. 34–6; *Leviathan* I:4.

assigned "voluntarily" to an object so as to remember it. A name is the voice given to a mark. Chained together, speech is "the connexion of names constituted by the will of man."

But how could speech be a human invention, come from human will, and not God's? Here Hobbes turns to the narrative of Genesis. In the second chapter of Genesis, Adam gives names to the animals that God puts before him.⁴² At this point, Adam's act of naming can be regarded as an allegory of man's capacity to invent and assign names, through a combination of a natural experience of the world and will. The third chapter of Genesis presents a more critical allegory of command, however. God prohibits Adam from eating the fruit from the tree of knowledge, the knowledge being of, among other things, good and evil.

Hobbes asks, "in what manner could Adam have understood that command of God, when he did not as yet know what was meant by *eating, fruit, tree, knowledge*, and lastly, *good or evil*?"⁴³ Moreover, how could Adam know what was meant by "death," as the serpent spoke of, or what God was speaking of when he asked him who told him he was "naked"?

Adam could not have understood this speech from the meaning of the words *death* and *naked*, or *good* and *evil*, because he could not have any notion of what they meant. This is a crucial point for Hobbes. Adam could not have a "natural understanding," but understand these words in "some supernatural manner" only. Adam,

42 "Now the Lord God had formed out of the ground all the beasts of the field and all the birds of the air. He brought them to the man to see what he would name them; and whatever the man called each living creature, that was its name. So the man gave names to all the livestock, the birds of the air and all the beasts of the field." Genesis 2:19-20 (*New International Bible*)

43 *De Homine*, X, p. 38.

the first man, could not have a natural understanding of God's commands, only a supernatural knowledge. Nor could he know the meaning of good and evil in any natural sense. Thus, Hobbes concludes, "speech could not have had a natural origin except by the will of man himself."

At this point, we might see the trajectory of Hobbes's project: to illuminate and justify how we can have a natural understanding of commands, knowledge, life and death, insofar as they come, not from a supernatural source, God, but from an "unnatural" or "artificial" source: man's artifice, his own representations and artifacts.

The power to name, to give meaning to words, can now be separated from supernatural origin. Likewise, an additional horizon of modernity opens by extension: only worldly definitions of just and unjust, true and false, good and evil, virtue and vice, equitable and inequitable. The Adamic allegory sets up the preconditions for what comes next in Hobbes's test, the more famously nominalist proposition, expressed in varying forms, that

*"True and False are attributes of Speech, not of Things. And where Speech is not, there is neither Truth nor Falsehood."*⁴⁴

There is no truth or falsehood without speech, and no justice or injustice without other kinds of speech, which Hobbes calls covenants. This constitutes a natural understanding of the meaning of words, and thereby a binding, non-supernatural relationship to the covenants to which one, as a person, consents.

What is the importance of the Hobbes's story of Adam's bewilderment about commands? The faculty of language God bequeathed to Adam has several "advantages."

44 *Leviathan*, I:4, p. 104.

Words will form the "ligaments" of connection between each individual person and the political sovereignty with which each imagines willing an individual connection. Hobbes divides the importance of words into three categories of political and epistemological use: (a) words are important as enumerators, that is, for counting and classifying; (b) as rhetorical devices, to teach, communicate, warn, advice; (c) for the purpose of commands, and understanding commands.⁴⁵

Commands, however, stand out. "Truly the greatest" of all the advantages, the ability to command and understand commands is the most important *political* component to the general conditions of natural understanding.

This natural understanding is critical because it gives the foundation for acts that, according to Hobbes, we can rightly call *voluntary*. The point of Hobbes's allegory about Adam is to demonstrate that "speech could not have had a natural origin except by the will of man himself."⁴⁶ By making will and language inextricable, Hobbes lays the groundwork for a justification of covenants as a basis for political society.

But this is not all that is required. Other human impulses, less easily tamed and potentially more incendiary, such as desire, fear, lust, ambition and others also surely belong to the realm of language and will. Hobbes's task, then, also must be to clarify the relationship among desires and will.

"Neither our appetite nor our aversion causeth us to desire or shun this or that;

45 *De Homine*, X, pp. 39–40. "First, that the power of numeral words enables man not only to count things, but also to measure them, whatsoever they may be.... Secondly, one may teach another, that is, communicate his knowledge to another, he can warn, he can advise, all these he hath from speech also; so that a good, great in itself, through communications becomes even greater. Thirdly, that we can command and understand commands is a benefit of speech, and truly the greatest. For without this there would be no society among men, no peace, and consequently no disciplines; but first savagery, then solitude, and for dwellings, caves."

46 *De Homine*, X, p. 39.

that is, we do not desire because we will.... What then: Do we desire food and the other necessities of nature because we will? Are hunger, thirst, and desires voluntary?"⁴⁷

"Will" belongs on the side of "deliberation," as well as, crucially, the ability to be able to act freely. One's desires are separated from the question of the voluntary and the willful. Thus Hobbes answers the question he poses as to whether hunger and thirst and desires could ever be said to be voluntary:

"When desiring, one can, in truth be free to *act*; one cannot, however, be free to *desire*."⁴⁸

Again, the main point here is that Hobbes is trying to clear a ground for the kinds of acts we can rightly call voluntary, and furthermore demonstrate a way that everyone could have a natural, as opposed to supernatural, knowledge of when and how the terms of obligation can be established. Hobbes wants to show that a voluntary act of consent can be established irrespective of its origin in irrational and more conflict-provoking passions and desires.

"By this it is manifest, that not onely actions that have their beginning from Covetousnesse, Ambition, Lust, or other Appetites to the thing propounded; but also those that have their beginning from Aversion, or Feare of those consequences that follow the omission, are *voluntary actions*."⁴⁹

Here Hobbes seeks to overcome one final problem: voluntary obligations that are undertaken out of fear. For the same reasons that torture taints the credibility of confessions it produces, Hobbes, I think has to remove the doubt attached to agreements signed out of fear. An agreement made out of fear – whether stemming from the legacy of previous obligations or other embedded commitments – is still an agreement. It is a

47 *De Homine*, XI, pp. 45–6.

48 *Ibid.*

49 *Leviathan*, I:6, p. 128.

valid agreement because it was still done under liberty.

"Feare and liberty are consistent; as when a man throweth his goods into the Sea for *feare* the ship should sink, he doth it neverthelesse very willingly, and may refuse to doe it if he will: It is therefore the action, of one that was *free*: so a man sometimes pays his debt, only for *feare* of Imprisonment, which because no body hindred him from detaining, was the action of a man at *liberty*. And generall all actions which men doe in Commonwealths, for *feare* of the law, or actions, which the doers had *liberty* to omit."⁵⁰

Fear, of course, is also the force that holds people in awe of sovereign power. There must be fear for there to be "bonds" between men and political society. Humans can willfully make "artificial chains," or laws, which they then must obey. By closing up the problem of fear and desire, Hobbes lays out a system whereby the bond between subjects and state will henceforth be based upon (a) a natural understanding of promises and commands, and (b) fear. Only thus can the "bonds" of authority be established:

"But as men, for the atteyning of peace, and conservation of themselves thereby, have made an Artificiall Man, which we call a Common-wealth; so also have they made Artificiall Chains, called *Civill Lawes*, which they themselves, by *mutuall covenants*, have fastned at one end, to the lips of that Man, or Assembly, to whom they have given the *Soveraigne Power*; and at the other end to their own Ears. These Bonds in their own nature but weak, may neverthelesse be made to hold, by the danger, thought not by the difficulty of breaking them."⁵¹ [emphasis added]

Let us pause to consider the nature of this bond. Using a striking image, Hobbes imagines them as sinews fastened from the "lips of that Man, or Assembly" to the ears of each and every subject. On one hand, one cannot imagine a stronger or more physical metaphor for the depiction of political allegiance and representation in this blueprint of the modern state. On the other hand, however, Hobbes says that "these Bonds" are "in their own nature but weak."

⁵⁰ *Leviathan*, II:21, pp. 262–3.

⁵¹ *Leviathan*, II:21, pp. 263–4.

The question of whether bonds are weak or strong is critically related to the question of how closely the person or subject in Hobbes's blueprint might be said to *identified*. By identified we can conceptualize several different senses in which the person is emerges as an epistemological jurisdiction of political authority, ranging from direct requirements for identification (documents, DNA fingerprints) to the more general sense of interpellation, which represents a more deeply embedded consciousness whereby one recognizes oneself through identification by political authority. The extent to which the bonds are 'weak' provides one useful index, I think, of the extent to which Hobbes provides the kind of framework sympathetic to individual freedom.

There are several ways that Hobbes describes individuals in such as to mark off and protect important dimensions of human identity from being in the scope of sovereign administration. First, the "passions and desires" of individuals do not contain any reference to sin, shamefulness or any *telos* of public utility.

"The Desires, and other Passions of man, are in themselves no Sin. No more are the Actions, that proceed from those Passions, till they know a Law that forbids them: which till Lawes be made they cannot know: nor can any Law be made, till they have agreed upon the Person that shall make it."⁵²

Beyond explicit consent to a lawful prohibition, no desire nor action resulting from that desire can be said to be sinful, evil, unjust or in any way condemnable by political society.

Second, Hobbes's conception of individual good is similarly free of any ultimate definition.

"Good (like evil) is divided into *real* and *apparent*. Not because any apparent good may not truly be good in itself, without considering the other things that

52 *Leviathan*, I:13, p. 187.

follow from it; but in many things, whereof part is good and part evil, there is sometimes such a necessary connexion between the parts that they cannot be separated."⁵³

What you regard as good is simply "truly good in itself"; only apparent if it is mixed with things you don't like (evil). There is no injunction to "consider the other things that follow from it," no requirement, even when within political society, to make any utilitarian or deontological judgment about whether your good is 'good for society.'

In both cases the far more significant issue is the very act of self-representation that gives shape to the proper scope of sovereign power, not a "restriction of former naturall liberty":

"Again, the Consent of a Subject to Sovereign Power, is contained in these words, *I Authorise, or take upon me, all his actions*; in which there is no restriction at all, of his own former naturall Liberty: For by allowing him to *kill me*, I am not bound to kill my selfe when he commands me."⁵⁴

Here Hobbes is articulating the subtle but fundamental line dividing the public from the private, explicitly in the terms of internal, personal relationship to command over one's person. The person receives commands from the sovereign, but is not so completely constituted by this relationship that he or she can be ordered to sacrifice — or, as will be developed in the next section, experiment upon — oneself.

It is possible, then, that Hobbesian "self-makers"⁵⁵ fill out an even more radically autonomous picture. Behind this claim is the idea that the pre-person human being has

53 *De Homine*, XI, p. 48.

54 *Leviathan* II:22

55 "Hobbesian human beings impose form and purpose upon the matter that is themselves — their own bodies and minds — and their universe.... My claim is that the primary unit of Hobbes's thinking is the individual person and her makings, unmakings and remakings of herself and her worlds, the primary objective of his political and moral thinking is to promote and protect each person's pursuit of her own felicity as she herself sees it." Flathman, *Thomas Hobbes: Skepticism, Individuality and Chastened Politics*.

the full range of conscious, social, personal experience completely separately from the artifact of the "person" it might choose to present. The very possibility of this willful, voluntary distance implies an individuality that can I think, to a large extent, be isolated from a vision of the subject as a product of sovereignty and civil authority. Ultimately, of course, *Leviathan* is an argument for the reasonableness and prudence of transferring a portion of one's natural rights to the state, thereby authorizing one's "artificial" person to be represented. But this separation of the person from the human being presents a self separate from one of the most important categories of Western political jurisdiction, the person.

There are no doubt difficulties with this kind of claim. For Foucault, the production of one's individuality is inseparable from the "individuation" through which modern disciplinary power constitutes the self. Thus the notion of, in a sense, a 'pre-political' human, bodily being in Hobbes runs the risk of installing precisely the kind of naturalized, biological life that constitutes a central ideological element of individuation as it is described in *The History of Sexuality*, *The Birth of the Clinic* and elsewhere; a central element, that is, of what Foucault termed biopolitics. Agamben goes even further, arguing that this conception of human being is the *zoe* and *bios* elemental to the origin of sovereignty both preceding and extending through to modern biopolitics.⁵⁶

The private space of command and experiment forms a real and important barrier from public encroachments. At the same time, however, the public and private operate on the same epistemological terrain of the 'person.' Writing about one of the first self-

⁵⁶ Agamben, *Homo Sacer: Sovereign Power and Bare Life*. This is the subject of the fourth chapter, below.

experimenters in biochemistry three centuries later, Agamben comments on the overlapping nature of the jurisdiction of the person:

"Since he is accountable only to himself, the barrier between ethics and law disappear; scientific research can freely coincide with biography. His body is no longer private, since it has been transformed into a laboratory; but neither is it public, since only insofar as it is his own body can he transgress the limits that morality and law put to experimentation."⁵⁷

Each individual has the capacity to create artifacts and, insofar as each individual's person is the itself the artifact, we can begin to see how this particular object shares characteristics of both the public and private.

⁵⁷ Agamben, *Homo Sacer: Sovereign Power and Bare Life*, p. 185.

"Things Personated": Persons, Words, Experiments

- "Of his good behaviour I have had sound and large experiment."
– Day, *English Secretary*, 1625
- "I know him by som[e] experiments which I have had of you."
– Howell, *Letters*, 1650
- "Where you yourselves are the experiment."
– Marvell, 1678
- "I speak experimentally: for I took several such poysonous Medicines."
– Godfrey, 1674
- "I speak from experiment."
– Bentley, 1699

On one hand, the person is a decidedly public entity. There are two basic references Hobbes uses to convey the meaning of person, both of which are scenes of public representation. The first is the theater. In order to introduce the distinction of "natural" and "artificial" persons, Hobbes invokes a scene that is *already* public, already a scene of intersubjectivity: "for in the theatre it was understood that the actor himself did not speak." The appearance of a man is purposely "counterfeited" on the stage. The second reference Hobbes uses to show the meaning of person comes from Cicero's speeches. Hobbes links the stage to the state by way of language, or "translation": "And from the Stage, hath been translated to any Representer of speech and action, as well in Tribunalls, as Theaters."⁵⁸ A person takes on a general definition as *any* representer of speech and action, whether taken in public or in private.

A "dominion of persons" is a political order of masks, of disguises and of faces.

It is an imaginary of people representing each other or themselves, bearing their own person or that of another or many others.

58 Hobbes, *Leviathan*, I:16, p. 219.

If persons are public, what is the meaning of a private self? Are there "private" persons? Hobbes's conception of political order sets up a fundamental ambiguity regarding this question. On one hand, Hobbes introduces a conception of personhood that, in its purely public quality, ropes off the vast majority of the self from public jurisdiction. At the same time, however, *Leviathan*, *De Cive*, *De Homine*, *De Corpore Politico* are framing an order in which political obligation is to be maintained. There is no explicit, divine rule guiding the judgment of each individual subject. It is for this reason that words are so important, as they become the only window through which subjects are bound in a mutual, intersubjective covenant with others in commonwealth. The self is both protected from political constitution and also, at the same time, emerges as a site of increased importance to political order through words, instructions, commands.

The person, whether public or private, represents the capacity of individuals to create themselves as an artifact. Artifact-making is less linked to ownership than it is, more broadly, to something we can term *experiment*, and its forgotten twin, *experience*.

The seventeenth century is alive with calls of experiment. In English-speaking world of natural and moral philosophy, the word experiment increasingly appears in texts lamenting the lack of useful, prudent knowledge. Experiment appears in discourses beginning to populate the outlines of modern political order with subjects who are arguably, in the language of more recent political philosophy, self-making.

Such early uses of the word experiment bear a much closer meaning to the word that, according to usage, was for all intents and purposes its synonym, *experience*. From

Wyclif to Chaucer to Spenser, **experience carries the verbal imputation of experiment, and vice versa:** from 1388, "*Now y schal take experience [1382 experyment] of [y]ou,*" to the sixteenth and seventeenth-century meaning of "something expertly fashioned," experience connotes the active trial and experimentation of self, natural objects and others.

"I speak from experiment." To experience/experiment oneself is more linguistically tied to the superimposing of the person described above, to the ability to create and re-present things, humans, and persons artificially, to produce epistemology, truth. **To "take experience" of yourself as a person and to take experience of others is the new program of subjectivity in Hobbes's episteme.** One dimension of this is that it happens through the new plateau opened up by the nominalist sensibility, one at that point still guaranteed by an omnipotent god who has made possible a world of radical contingencies. To take experiment of yourself, to represent/make something expertly fashioned is another way of describing Hobbesian individuals as makers of the world. There is a relationship between the status of experiments in Hobbes's political order and owners of words. Persons, as owners of words, and experiments, as sites of new artifacts, both stand in a liminal place in Hobbes's political-epistemological order. There is of course an important difference between them. Persons are the central artifact of *Leviathan*; their possibility makes possible the "great" artifact of the state, or leviathan. "Experimental science," on the other hand, is arguably more of an annoyance in Hobbes's scheme, a fly in the ointment of the otherwise infinitely more reliable and in Hobbes's mind sound epistemology than the geometric mode of demonstration provides.

Experiments are marginal, to say the least, compared with the status of persons.

Yet both sit on the boundary of the public and the private. Men who gather to conduct and witness experiments are trouble because their machines produce new artifacts. Alone such artifacts have no greater status than any other "appearance" or representation materialized by the sensate being of "Of Man." Alone, that is, insofar as they do not partake, are not productive of, public truth.

Persons own their words, or those of another. But such a meaning of ownership is paradoxical, as speech, for it to have context cannot in itself be confined either to that context⁵⁹ nor to the boundaries of the private. Any owning of your words is a taking—possession of a public resources.

Both word—owning persons and fact—producing experiments are in liminal relation to Hobbes's leviathan because they always threaten a subtle but real usurpation of public truth. You own your words and yet, because they are public, they also own you. Experiments posed a limit condition to the epistemology of Hobbes, opening the possibility that a community of "modest witnesses" could do experiments and thereby establish material truth.⁶⁰

Hobbes was a critic of the new "experimental science" of Robert Boyle and others. Even as Hobbes framed political order in terms of a radical capacity to make artifacts, he was uncomfortable with emergent epistemological space of the laboratory. The space of the laboratory was problematic on several counts for Hobbes.

"The space where these machines worked – the nascent laboratory – was to be a public space, but a restricted public space, as critics like Hobbes were soon to

59 Jacques Derrida, "Signature Event Context," in *Margins of Philosophy*.

60 Bruno Latour, *We Have Never Been Modern*; Shapin and Schaffer, *Leviathan and the Air-Pump*.

point out. If one wanted to produce authenticated experimental knowledge – matters of fact – one had to come to this space and to work in it with others. If one wanted to see the new phenomena created by these machines, one had to come to that space and see them with others. The phenomena were not on show anywhere at all. The laboratory was, therefore, a disciplined space, where experimental, discursive, and social practices were collectively controlled by competent members."⁶¹

Hobbes's view critically differed from Boyle on what could be expected from experiments, that is, on what the epistemological profile of knowledge produced from laboratory experimentation should be. If political order allows matters of fact produced from experiments to have an authority over and above mathematical reasoning, the only mode that Hobbes believed would compel universal assent, then a whole theater of escalation ensues. For Hobbes, this theater is a *bellum omnium contra omnes*, something of the which the English Civil War was perhaps only the ominous dress rehearsal.

Latour paraphrases the danger that Hobbes envisioned:

"One of the great dangers for civil peace comes from the belief in immaterial bodies such as spirits, phantoms or souls, to which people appeal against the judgments of civil power. Antigone might be dangerous when she proclaims the superiority of piety over Creon's 'reasons of state'; the egalitarians, the Levelers and the Diggers are much more so when they invoke the active powers of matter and the free interpretation of the Bible in order to disobey their legitimate princes. Inert and mechanical matter is as essential to civil peace as a purely symbolic interpretation of the Bible..... If you allow experiments to produce their own matters of fact... then you will divide authority again: the immaterial spirits will incite everyone to revolt by offering a court of appeal for frustrations."⁶²

Hobbes's blueprint of modern sovereignty required a strict regulation, not so much of some knowledge in particular, but of the rules by which authoritative judgments of valid knowledge are determined. Hobbes believed mathematical argument was the only form of demonstration that no one could dispute, and that therefore the conclusions reached by

61 Shapin and Schaffer, *Leviathan and the Air-Pump*, p. 39.

62 Latour, *We Have Never Been Modern*, pp. 18–20.

mathematical reasoning would be universally valid. As Latour and Shapin/Schaffer have shown, Boyle's empirical experiments, whose model of validity came by virtue of a public witnessing and verification, threatened the mode of demonstration in Leviathan. The empirical mode of demonstration posed a specifically political problem. Hobbes grounded modern political authority on the premise that physical reality – matter – cannot be "transcendent." Hobbes theorized modern political order on the unity of a sovereign power above which there could be no appeals to transcendent accounts of physical materiality, that is to say, independent sources of authority who could produce their own matters of fact.

"Hobbes was obsessed by the unity of the Person who is, as he puts it, the Actor of which we citizens are the Authors. It is because of this unity that there can be no transcendence. Civil wars will rage as long as there exist supernatural entities that citizens feel they have a right to petition when they are persecuted by the authorities of this lower world.... Hobbes wanted to wipe the slate clean of all appeals to entities higher than civil authority."⁶³

But the twin developments of scientific and political representation emerged on the same terrain. As Latour argues, scientific objects produce a change in scale and cross the lines demarcated by political authority. This is the same problem of knowledge that concerned Hobbes: that scientific objects of knowledge could rearrange hierarchies of power by virtue of their protocols of truth, their introduction of claims on the nature of reality, and their capacity to propagate across boundaries of political authority.

"Boyle is not simply creating a scientific discourse while Hobbes is doing the same thing for politics; Boyle is creating a political discourse from which politics is to be excluded, while Hobbes is imagining a scientific politics from which experimental science has to be excluded. In other words, they are inventing our modern world, a world in which the representation of things through the intermediary of the laboratory is forever dissociated from the representation of

63 Latour, *We Have Never Been Modern*.

citizens through the intermediary of the social contract."⁶⁴

Like the appearance of newly represented persons, the laboratory started to make things visible.⁶⁵

In the next chapter, we continue to explore the problem of public appearances in Hobbes, as well the reflections of another thinker for whom the question of appearance is

64 Latour, *We Have Never Been Modern*, p. 27.

65 For Latour, the laboratory is characterized by several capabilities that ground the power and character of knowledge it produces. (Latour, "Give Me a Laboratory and I Will Raise the World.") First, Latour argues that laboratories should be understood as "technical devices that invert the hierarchy of forces." With Pasteur, laboratory knowledge gains its authority through a reversal of weak and strong positions of knowledge; by rearranging the positions of parties who are previously 'uninterested' in each other (the scientist in the Ecole Normale on one hand and the coalition of knowledge and authority clustered in agricultural authorities, farmers, veterinarians, animals, state authorities and statisticians on the 'outside,' on the other); and by the creation of new objects of life through which human affairs must thenceforth be conducted. Second, laboratories effect an inversion of scale. Pasteur removes the location of knowledge, an invisible bacterium, from the outside and brings it to his laboratory. With the bacterium taken away from its natural competitors, Pasteur and his colleagues use laboratory technologies to grow the now-isolated bacteria into artificially large and collected quantities, starkly visible on the surface of the petri dish. By virtue of this inversion of scale, the laboratory makes the previously invisible *visible*. Third, laboratories operate in conditions which permit the rapid and prolific multiplication of mistakes. Laboratories are premised on the repetition of experimental trials, trials that carry the advantage of hiding mistakes from public scrutiny. Fourth, laboratories are places of inscription. Laboratories write knowledge to new objects, surfaces, and inscription devices: "dots, bands, peaks and spots" from which "quasars, gross national products, statistics on anthrax epizootic microbes, DNA and subparticle physics" draw their representational authority. (Latour, "Give Me a Laboratory and I Will Raise the World").

A similar transformation of a 'weak' position of knowledge to a 'strong' occurs with Boyle's air-pump experiments in Hobbes's time. Latour, paraphrasing the epistemological profile of Boyle, writes:

"We know the nature of the facts because we have developed them in circumstances that are under our complete control. Our weakness becomes a strength, provided that we limit knowledge to the instrumentalized nature of the facts and leave aside the interpretation of causes. Once again, Boyle turns a flaw – we produce only matters of fact that are created in laboratories and have only local value – into decisive advantage: these facts will never be modified, whatever may happen elsewhere in theory, metaphysics, religion, politics or logic." (Latour, *We Have Never Been Modern*, p. 18.)

The representational product of Pasteur's laboratory was the visible bacillus; a representation that encapsulates the complex and overlapping formations of power. Diffuse in scope, such a representation resides not only in the physical space of the laboratory, but also within inoculated animals, university professorships, state policy, representations of the body. The bacillus and its *modus operandi* is only visible, however, under the protocols of laboratory knowledge. Pasteur creates an entire world of artificial conditions under which knowledge of the bacillus is produced, but the term 'artificial' remains of undecidable meaning, since, as Latour later argues, society is by virtue of modern order always-already populated with these objects.

"Yes, scientific facts are indeed constructed, but they cannot be reduced to the social dimension because this dimension is populated by objects mobilized to construct it. Yes, those objects are

paramount, Hannah Arendt.

real but they look so much like social actors they cannot be reduced to the reality 'out there' invented by the philosophers of science." (Latour, *We Have Never Been Modern*, p. 6.) The undecidably artificial character of these objects is what Latour means by the production of hybrids: objects that, strictly speaking, belong neither to the category of nature nor society, as articulated by seventeenth century natural and moral philosophy, but are in fact produced by the very insistence of these categories as separate domains.

Chapter 2: Anonymity and the Limits of Appearance: Public and Private (Hobbes, Berlin, Arendt)

"The privation of privacy lies in the absences of others; as far as they are concerned, private man does not appear, and therefore it is though he did not exist."

"Although nobody knows whom he reveals when he discloses himself in deed or word, he must be willing to risk the disclosure, and this neither the doer of good works, who must be without self and preserve complete anonymity, nor the criminal, who must hide himself from others, can take upon themselves. Both are lonely figures, the one being for, the other against, all men."

"Power preserves the public realm and the space of appearance, and as such it is also the lifeblood of the human artifice."

– Arendt, *The Human Condition*

"In the private worship of many together, there can be ceremonies, since men can jointly decide among themselves about the fittingness of common performance; only provided that they do nothing contrary to the laws of the state. But such a situation is an invitation to simulation, which is, however, sometimes without fault."

– Hobbes, *De Homine*

"What I may seek to avoid is simply being ignored, or patronized, or despised, or being taken too much for granted — in short, not being treated as an individual, having my uniqueness insufficiently recognized, being classed as a member of some featureless amalgam, a statistical unit without identifiable, specifically human features and purposes of my own."

– Berlin, "Two Concepts of Liberty"

In a brief passage toward the end of *The Human Condition*, Hannah Arendt refers to the monuments created after World War I dedicated to the "Unknown Soldier." For Arendt such monuments are a melancholy witness to the need for finding a "who, an identifiable somebody whom four years of mass slaughter should have revealed."⁶⁶

66 Arendt, *The Human Condition*, Univ. of Chicago Press, 1958, p. 181.

That the author of the catastrophe may be, in Arendt's words, *nobody* reveals an anxiety animating both the monument builders and Arendt's vision of political philosophy. Great words and great deeds require an agent who appears in the public, political realm. The Unknown Soldier represents a deprivation in modern politics. That one "cannot disclose the unique and distinct identity of the agent" unravels one of the critical components of the *vita activa*.⁶⁷ Appearance, acting and speaking in the presence of others make up the *vita activa*, and to be human means having the capacity to be public, to be known, to disclose one's unique identity, to distinguish. Anonymity is the antithesis of the political and the human. Anonymity can only be loneliness.

Yet the capacity to hide oneself or one's identity has also taken root as an important freedom in political modernity. The same epoch that requires you to be identifiable and representable also spawned its radical twin, the possibility of being unknown and removed from political representation. The state of being unknown, in turn, has its own radically opposite potentialities: being safe or free on one hand, being cast into the whirlwind of stateless persons — a danger concomitant with totalitarianism itself, Arendt will write — on the other.

Appearance and its opposites, disappearance, opacity, non-acting, carry a close relationship with another distinction important to Arendt, the public and the private. Appearance is closely associated with what Arendt means by public and its opposite with what she calls the private. Arendt acknowledges that many confusions and corruptions have altered both categories, however, particularly in the rise of the social associated with the modern era, and have contributed to the kind of evacuation of meaning

⁶⁷ Arendt, *The Human Condition*, p. 180.

represented in the public monument of the unknown soldier. Nevertheless, the distinction between the public and private anchors Arendt's vision of the political and its possibilities.

This chapter pursues the idea that the disclosure of the unique identity of the agent remains a persistent problem in the conceptions of public and private liberty in Hobbes and Arendt, as well as the theory of positive and negative liberty in Isaiah Berlin's famous formulation.

The first part takes a look at Hobbes's use of the term private. The point of this section is to argue that Hobbes sees politics as intimately tied to the regulation of public appearances. In fact, the private itself is a solution to the politics of the public sphere. The private also tempers the radically artificial potential of Hobbes's vision of sovereign power, a power whose very existence owes itself to the right of people to make and remake their world as they see fit. This is part, I want to show, of why Hobbes is so concerned with attending to the whole question of the *spectra* and other images and representations to which people ascribe authority: if people can create artifacts ("Let us make Man"), why not grant authority to *any* creation of the mind? The safety valve for explosive politics of early modernity is the private. Hobbes's great challenge is to move claims about the phantasmic and spirit-filled quality of the world into the confines of the person, literally, as it were, back into the head.

The chapter then moves to a discussion of the relationship between public appearance and private opacity in Arendt's work. Overall, my goal is to try to understand how being in appearance or, alternatively, occupying the space of the private

is analogous to the opposition between being subject to public representation (being identifiable) and being removed from representation (being anonymous).

The private is a realm of secrets, according to Arendt, but its function is very different in relation to the public for the ancients than it is for the moderns. For the ancients, the private is privative because it is the place where the pain of necessity reigns. The private is *opaque* to appearance and to knowledge.⁶⁸ A person in private cannot be represented; private man does not appear and in a sense "does not exist."⁶⁹ Epistemologically, the private stands for the limit of what can be known: the darkness of the mundane yet unanswerable questions of why we are born and live and die. Appearance, on the other hand, means being seen with others and is found only in the public realm.

Hobbes alters this relationship between public light and private darkness. The private becomes the place where contentious *public* political questions are hidden — one can express sectarian religious claims as long as one does not do so outside the bounds of sovereign regulation of publicity. The private becomes a new space in which difference can be expressed, but simultaneously the place of secrets and, in Hobbes's term, the place of *simulation*. The liberal sense of the private that emerges from seventeenth-century formulations such as Hobbes's, in contrast to that of ancients, takes shape as a boundary across which public authority has no jurisdiction.

The place where one is not interfered with defines what Isaiah Berlin, in his well-

68 See, for example, Arendt's discussions of the "sad opaqueness" (from the French poet and writer René Char) of the private as a world deprived of political togetherness. Arendt, *Between Past and Future: Eight Exercises in Political Thought*, p. 3ff. preface; Arendt, *On Revolution*, pp. 280–1.

69 Arendt, *The Human Condition*, p. 58.

known formulation, refers to as negative liberty. The distinction between positive and negative liberty is supposed to be indifferent to the question of public appearance or "recognition." Despite Berlin's efforts to separate recognition from liberty, however, the former turns out to be a central piece with which neither positive nor negative liberty can dispense. Moreover, the opposite of appearance — withdrawing into the "inner citadel" — remains problematic for the very possibility of negative liberty. Berlin secures the private as a place of freedom, but appearance and withdrawal turn out to reveal a problem right in the middle of this security.

Isolation and statelessness are among the most penetrating features of totalitarian politics in the twentieth century. These are the conditions against which Arendt sought to theorize the realm of public appearance that is the lifeblood of her vision of the political. Arendt, for whom everything counts on the possibility of public representation, faces the question: what does it mean to be removed from political representation as such? The last section ties anonymity with statelessness, the condition which voids the conception of political safety embodied in the Rights of Man. Here it follows Arendt into her discussion of the radical denial of representation: the twin emergence of stateless people and the internment/concentration camps.

In relation to the work as a whole, this chapter asks how appearance and identification have changed with the rise, first, of the modern private realm and, second, with the later development of what Sir Francis Galton terms "personal identification." Chapter 1 introduced the concept of the person in Hobbes and examined the extent to which the anonymity of sovereign power and ordinary subjects changed places. I intend

this chapter to provide a bridge to following chapters on identification in the twentieth century. My idea is that, as the private is invented to make the public safe for peace in Hobbes's time, identification, in turn, makes people safe for privacy. Just as the private sphere takes the explosive edge off public politics in the seventeenth century, so does identification temper the radical potential inhering in the idea of privacy and anonymity.

Spectra. (Dis)simulation. Public and Private

To Hobbes, the civil bloodshed that engulfed Europe and England in the sixteenth and seventeenth centuries represented the outcome of sectarian claims and counterclaims of authority over the nature of the common, public realm. Hobbes's thinking about the proper scope of sovereign authority in the realm of what we now call "private" is complicated, but it might best be understood as a solution to the problem of public appearances.

Hobbes was less driven with showing the falsity of any particular doctrine than he was in the general problem of political order. His solution largely stayed away from any claims about the realm of individual choices and identities. Instead, it focused on the public representation of truth. Appearances made in 'private' matter only to the extent that they have a public consequence. Hobbes had to find a solution to the regulation of public appearance.

His answer conceived of a general principle of regulation and representation which he called the "great artifact" of sovereign power. The genius of Hobbes's political solution is that it combines two components: a general representability granted to *everyone*, on one hand, and specific regulation concern private and public appearance, on the other. By displacing all questions of religious doctrine to the realm of private opinion, Hobbes creates a structure in which everybody appears in the sense that they can create themselves as a "Person," a *facies* on a stage, and yet are simultaneously checked by the creation of a dividing line below which one keeps the most potentially incendiary

representations.

The specific regulation involves, first, putting to rest assertions of any transcendence at the level of individual claims to matter and substance, to any incorporeal or immaterial elements, and second, ensuring that there are clear rules concerning the state's absolute authority over what he calls "ceremonies." There can be private worship — private ceremonies in an inconsequential sense of the term, private secrets — only insofar as it is understood that the public display of these signs is strictly under the jurisdiction of sovereignty.

As with the issue of "commands" discussed in Chapter 1, Hobbes's argument about private opinion is based on the difference between natural and supernatural kinds of knowledge. Religious doctrine about faith, Hobbes argues, "is," aside from the basic belief in God, "opinion which ariseth from the authority of the speakers."⁷⁰ Because they "concern things that are placed beyond the grasp of human nature," the basic questions of faith can only be comprehended in supernatural terms. Other elements of doctrine must derive from men's opinion. Unless the speaker's opinion were received by some supernatural means, there is no reason, Hobbes argues, why we should believe any one opinion over another. The only possible sign we could have of someone having supernatural authority is if the speaker can work a miracle. Hobbes goes to great length, however, to restrict and rigorously define the conditions that need to be met for demonstration to qualify as a genuine miracle; it cannot be, for example, merely a claim to have "caused" a known natural phenomenon, or a claim that a dream be a prophecy,

⁷⁰ Hobbes, *De Homine*, p. 72.

and so on.⁷¹

Opinions, any demonstration of faith, any natural as opposed to supernatural knowledge, all fall into the realm of public signs and thus are properly under the jurisdiction of sovereignty. Just as Hobbes uses the allegory of the Garden of Eden to distinguish natural from supernatural knowledge in order to show how the artifact of names, and therefore commands, are derived, here he uses a similar method for theorizing how public, religious signs can be regulated under a secular, public authority. The expression of religion, Hobbes concludes, "must not depend on private persons."⁷² If it does not depend on private persons, then "it must depend on the laws of the state."

Hobbes uses the term "private" in *De Homine* and *Leviathan* to distinguish domains of appearance. In a discussion of religious worship, Hobbes argues that signs willed by an individual are private; those commanded by the state public:

"One kind of worship (*cultus*), however, is *private*, another *public*. It is private when men exhibit it according to their own individual will. It is public when the same is exhibited by the command of the state. Private worship is exhibited either by one person in secret or by many collectively; it is a sign of their sincere piety; for of what use is simulation that is seen by no one save Him who also sees the simulation? Such simulation can only be in vain. In secret worship there are no ceremonies. I call ceremonies those signs of the act of piety that arise not from the nature of the act, but from the will of the state."⁷³

In secret worship there are no ceremonies, although Hobbes then goes on to add that in private gatherings there can be a kind of ceremony, since

"men can jointly decide among themselves about the fittingness of common performance; only provided that they do nothing contrary to the laws of the state. But such a situation is an invitation to simulation, which is, however, sometimes

71 Hobbes, *Leviathan*, Part III, Ch. 37.

72 Hobbes, *De Homine*, p. 72.

73 Hobbes, *De Homine*, p. 75.

without fault."⁷⁴

Hobbes's use of the words *secret* and *simulation* is important. People may make appearances in private, secret representations, as long as they do not violate the laws of the state. This latter regulation, Hobbes admits, is an "invitation to simulation." What stops people from pretending they are doing nothing illegal or publicly demonstrative when in fact they are conducting a highly organized public ceremony? Hobbes acknowledges that people will make false representations. The false representations, however, exist below the threshold of the state's surveillance or concern.

One of the most contentious and central realms of appearance that Hobbes must tame concerns the relation between spirits, internal and external, and phantasms. After setting up the basis of sense and representation of Man and the Person in Part I of *Leviathan*, Hobbes then turns to a theoretical justification for the two kinds of sovereign power, "Humane" and "Divine," in Parts II and III, respectively.

In Part IV, the final part of *Leviathan*, Hobbes turns to another form of power mentioned in Scripture. Coming under various names such as "the Kingdome of Satan" and "the Principality of Beelzebub over Daemons," it is a world of negative power ruled by "the Prince of the Power of the Air," its followers the "Children of Darknesse." Hobbes dedicates his last section to this seemingly third (besides Humane and Divine) form of sovereignty: "Of the Kingdome of Darknesse."

The tactical cleverness of this final part lies in Hobbes's ability to turn sectarian claims of evil powers embodied in worldly entities against themselves. Much of the undue arrogation of power in the landscape of the English Civil War comes about by

⁷⁴ Hobbes, *De Homine*, p. 76.

partisans vying for allegiance by declaring that existing civil powers are merely an earthly sign of Satan's embodiment. Hobbes turns this tactic against the sectarians by first defining "darknesse" precisely in terms of misrepresentation.

"For seeing Beelzebub is Prince of Phantasmes, Inhabitants of his Dominion of Air and Darknesse, the Children of Darknesse, and these Daemons, Phantasmes, or Spirits of Illusion, signifie allegorically the same thing. This considered, the Kingdome of Darknesse, as it is set forth in these, and other places of the Scripture, is nothing else but a *Confederacy of Deceivers, that to obtain dominion over men in this present world, endeavour by dark, and erroneous Doctrines, to extinguish in them the Light, both of Nature, and of the Gospell; and so to dis-prepare them for the Kingdom of God to come.*"⁷⁵

Hobbes uses subtle inflections of the term "darknesse" to several ends in his critique.

The bulk of the critique concerns the pretension that some current church directly represents and embodies the kingdom of God,⁷⁶ or in some other way, seeks to cloak its ambition and the quest for power in spiritual clothing. Other misrepresentations, abuses of scripture, and general darknesse of mind include the failure to distinguish civil and canon law, the confusion of Consecration and Conjunction, and the general use of charms and supposedly enchanted objects in the execution of clerical functions.

The abuse of scripture is an abuse of speech, Hobbes writes. Both are misrepresentations. The stakes of misrepresentation involve matter itself.

"The words, *This is my Body*, are aequivalent to these, *This signifies, or represents my Body*; and it is an ordinary figure of Speech: but to take it literally, is an abuse; nor though so taken, can it extend any further, than to the Bread which Christ himself with his own hands Consecrated. For hee never said, that of what Bread soever, any Priest whatsoever, should say, *This is my Body*, or, *This is Christs Body*, the same should presently be transubstantiated."⁷⁷

This is the crux of what is at stake in Hobbes's effort to establish the rules for what can

75 Hobbes, *Leviathan*, Part IV, Ch. 44, pp 627-8

76 Hobbes, *Leviathan*, Part IV, Ch. 44, p. 629

77 Hobbes, *Leviathan*, Part IV, Ch. 44, p. 635

be considered legitimate, public representations of body and matter. No one has the authority to claim that their body can in some way be transubstantiated into some higher, spiritually embodied form of matter.

Hobbes rounds out his critique by discussing the misrepresentation of images, and it is here where Hobbes lays down some of the fundamental boundaries of personal and public appearance. Hobbes begins Chapter 45 of Part Four with a reiteration of his materialist account of sensation:

"The impression made on the organs of Sight, by lucid Bodies [...] produceth in living Creatures [...] an Imagination of the Object, from whence the Impression proceedeth; which Imagination is called *Sight*; and seemeth not to be a meer Imagination, but the Body it self without us; in the same manner, as when a man violently presseth his eye, there appears to him a light without, and before him, which no man perceiveth but himself; because there is indeed no such thing without him, but onely a motion in the interiour organs, pressing by resistance outward, that makes him think so."⁷⁸

Hobbes uses his materialist conception of sense as a lead into his critique of "Daemonology."

Artfully combining a critique of Aristotelianism with the rhetorical legitimacy of the biblical commandment against idolatry, Hobbes launches an attack on the claim that external appearances in the form of apparitions are in any way corporeal "daemons." We must not mistake phantasms for demons, or claim that we are possessed by such spirits or can verify their appearance externally, publicly. Yes, there are angels and spirits, but they are properly understood as spiritual bodies. They are not the same as the apparitions conjured up, for example, by pressing against one's eye.

"I have not observed any place of Scripture, from whence it can be gathered that any man was ever possessed with any other Corporeall Spirit, but that of his

78 Hobbes, *Leviathan*, Part IV, Ch. 45, pp. 657–8.

owne, by which his body is naturally moved.... I find in Scripture that there be Angels, and Spirits, good and evill; but not that they are Incoporeall, as are the Apparitions men see in the Dark, or in a Dream, or Vision; which the Latines call *Spectra*, and took for *Daemons*. And I find that there are Spirits Corporeall, (though subtile and Invisible;) but not that any mans body was possessed, or inhabited by them; And that the Bodies of the Saints shall be such, namely, Spirituall Bodies, as St. Paul calls them."⁷⁹

Hobbes uses the realm of the *spectra* as battleground for constructing a secular political imaginary in which persons are governed by strict boundaries dividing the corporeal from the incorporeal, the personal from the public. Hobbes wants to locate everything in the body: shut out all representations (political, phantasmic, demonic, etc.) that imply a location otherwise, with the exception of purely spiritual bodies only knowable through supernatural modes of knowledge.

All else falls under the realm of natural knowledge. Natural knowledge, as discussed in Chapter 1 above, is subject to the rules of, and belongs properly in, the realm of public, political disclosure. Do not mistake *spectra* in your mind for worldly entities endowed with civil authority. Partisans and clerics make these claims, Hobbes writes,

"as if the Dead of whom they Dreamed, were not Inhabitants of their own Brain, but of the Air, or of Heaven, or Hell; not Phantasms, but Ghosts; with just as much reason, as if one should say, he saw his own Ghost in a Looking-Glasse, or the Ghosts of the Stars in a River."⁸⁰

The call to recognize what is in your own brain signals a familiar mark of modernity described by Foucault.⁸¹ Images and other representations belong inside the shell of your head.

79 Hobbes, *Leviathan*, Part IV, Ch. 45, pp. 661, 664

80 Hobbes, *Leviathan*, Part IV, Ch. 45, p. 658

81 "No doubt, on the level of appearances, modernity begins when the human being begins to exist within his organism, inside the shell of his head, inside the armature of his limbs, and in the whole structure of his physiology." Michel Foucault, *The Order of Things*, p. 318.

The shell, coming out of Hobbes's discussion of worship, is called the private.

Freedom in the private comes from its secrecy.

"Private, [worship] is in secret Free; but in the sight of the multitude, it is never without some Restraint, either from the Lawes, or from the Opinion of men; which is contrary to the nature of Liberty."⁸²

It is important for Hobbes to clarify the distinction between private and public appearances rigorously. One reason is simply to free the public realm of conflicting claims to authoritative appearance.

"The End of Worship amongst men, is Power. For where a man seeth another worshipped he supposeth him powerfull, and is the readier to obey him; which makes his Power greater."⁸³

Hobbes has to clear the public realm of conflicting claims to authority, but there is also another reason why public appearance must be regulated: to control the kind of 'artifice' that can be fabricated in public. Sovereignty is based upon a radical act of creating the "great artifact" of sovereignty *ex nihilo*; it is dangerous to allow any other entity to usurp the radical potentiality of sovereignty. Other artifact-making should only be done in private, out of the realm of appearance. Phantasms, *spectra* and contentious political questions are displaced to the private; the private is created to make people safe for the public.



We can step back and take an overview of how Hobbes theorizes the appearance and representation of persons in his conception of political order. As discussed in the first chapter, Hobbes first defines a principle that everyone has an equal capacity to represent himself as a person, that is, to define oneself as a *facies*, a *persona*

82 Hobbes, *Leviathan*, Part II, Ch. 31, p. 401

83 Hobbes, *Leviathan*, Part II, Ch. 31, p. 401

representable on a public stage. Once this "Art" of the self is in place, men can agree to imagine a general, unified principle of representation. This generalized "Person" is sovereignty. Sovereignty has jurisdiction over all public representations. At the same time, however, Hobbes renders all questions concerning religious doctrine a matter of private opinion, a matter of appearances or representations made by individuals that are, by that very fact of being a private representation, subject to regulation through the general principle of sovereignty. The crucial factor that delineates public and private concerns which signs and appearances are incendiary enough that they need to be regulated. Hobbes sets up the possibility or even necessity of "simulation" in the realm of the private. This is ambiguous. On one hand, there is no scrutiny of the 'truth' of private identity. On the other hand, it places all public appearance, all personae, under the jurisdiction of the sovereignty.

Hobbes's requirement that all public appearance be recognized as properly in the jurisdiction of the political would seem to satisfy and strengthen Hannah Arendt's conception of politics. But the private is already playing a somewhat different role than what Arendt claims its function in the ancient world was. As described above, the "private" emerges in Hobbes's work as something to which conflicting public claims to authority are relegated. The private, operating as the realm of the secret, as the realm of simulation, becomes a necessary condition to clearing the public realm of challenges to the mode of "artificial" political authority that Hobbes terms sovereignty. Public appearance seems on the surface to be similar to Arendt's conception of the political. But it is conditioned on a different conception of the private.

Hobbes's concept of the person as a *persona*, that is, as a face presented in public, as a disguise or mask on the stage of a theater, displays, if we apply Hannah Arendt's interpretations correctly, a strikingly classical conception of the political. The person is defined by a capacity for "appearance" in the public: "And from the Stage, hath been translated to any Representer of speech and action, as well in Tribunalls, as Theaters." For Arendt, the Roman sense of *persona* could not better characterize the political definition of the person.

Arendt's vision of the private, however, differs markedly.

Opacity and Appearance. Private and Public in Arendt

"The distinction between the private and the public realms ... equals the distinction between things that should be shown and things that should be hidden."

– Arendt, *The Human Condition*

Arendt's conception of the political consists of a complex and tightly woven set of relationships between speech, action and appearance. Her theorization of the private and the public realms follows from and complements these relationships.

Arendt wants to retrieve the original Greek meaning of what in Latin was translated as *vita activa*, and in particular to retrieve its specifically political connotation. Medieval thought used the term *vita activa* to translate Aristotle's *bios politikos*, but eventually it grew to encompass a much larger set of meanings, for example in relation to *vita contemplativa*. Though traces of its original meaning can still be found by the time of Augustine's writings, the term *vita activa* gradually lost its political import.

The *vita activa* fundamentally describes a mode of being in the presence of others. Being together, being under the conditions of "human plurality," has a mutually reinforcing and somewhat circular relationship with action. Human plurality is the "basic condition of action and speech."⁸⁴ Being together is synonymous with being as such, says Arendt of the Romans, who are "perhaps the most political people we have known."⁸⁵ For the Romans, to live and to live among others ("*inter homines esse*") mean the same thing, just as does to die and to be apart from others ("to cease to be among men").⁸⁶ Conversely, action and speech, great words and great deeds, can also constitute

84 Arendt, *The Human Condition*, p. 175

85 *Ibid.*, p. 7.

86 Arendt, *The Life of the Mind*, p. 74, and *The Human Condition*, p. 7.

the conditions of human plurality. Aristotle emphasized that the *bios politikos* requires action (*praxis*) to sustain it.⁸⁷

Action and speech are the media through which individuals distinguish themselves in the presence of others. This, as will be discussed more below, is what Arendt means by "disclosure." The public disclosure of one's unique identity means actively distinguishing oneself, as opposed to simple being distinct.

"Speech and action reveal this unique distinctness. Through them, men distinguish themselves instead of being merely distinct; they are the modes in which human beings appear to each other, not indeed as physical objects, but *qua* men. This appearance, as distinguished from mere bodily existence, rests on initiative, but it is an initiative from which no human being can refrain and still be human. This is true of no other activity in the *vita activa*."⁸⁸

Here Arendt echoes a recurrent theme, taken from her description of Greek thought, of the difference between the realm of necessity and the realm of freedom. Phrases such as "mere bodily existence" and "merely distinct" are weighted to bring into relief the burden and banality of necessity and simple existence, all of which belong on the side of the private. The verb 'to distinguish,' in contrast, indicates action, will and freedom.

The opposition between necessity and freedom appears in many places, notably in the distinction between public and private.⁸⁹ Arendt's goal in the fourth chapter of the *Human Condition* is to distinguish, as sharply as possible, the meaning of the public and the private realm from the contamination introduced by modern problematics of the social, even as she acknowledges that these very same adulterants have changed the definitions permanently.

87 Ibid., p. 13

88 Arendt, *The Human Condition*, p. 176

89 Arendt, *Between Past and Future*, p. 43; p. 117 — for example, where the distinction between public and private is grounded in the way that the *bios politikos* overcomes necessity and the "circular movement" of the daily, "biological" life of the home.

One of her first tasks is to show how being together in the political sense differs from a commonplace notion of social togetherness. Writers have mistranslated political concepts in social terms long before the modern emergence of "the social," according to Arendt. Action demands the presence of others. Figures as early as Seneca and Augustine were already translating Aristotle's *zoon politikon* as *animal socialis*.⁹⁰ Yet the translation already showed how much "the original Greek understanding of politics had been lost."⁹¹ Despite the loss, traces of the Latin term *societas*, for example, insofar as it refers to what today we might call a "combination" as in men organizing for some purpose of domination, still retains a political meaning.

The Greeks, however, had something else in mind besides the truism that "men cannot live outside the company of men." It is not that the Greeks underestimated its importance; rather it was opposite. The need for social companionship is precisely that, a need, one characteristic of all animal life, and for that very reason, something not at all particular to human life *per se*. Special, indispensable, necessary, yes. But not uniquely human.

The realm of necessity belongs to an entirely different realm than that of the political. The *bios politikos* was conceived of as an entirely different life, one forged precisely in opposition to the binds of necessity in the private life of the home.

"According to Greek thought, the human capacity for political organization is not only different from but stands in direct opposition to that natural association whose center is the home (*oikia*) and the family."⁹²

Arendt argues that this relationship — the opposition between the realm of necessity and

90 Arendt, *The Human Condition*, p. 23

91 Ibid.

92 Ibid., p. 24. See also *Between Past and Future*, p. 117.

the realm of the political — can be found in the idea of the *polis* as well as in pre-Socratic thought. In what sense is there a domain of the political before the *polis*? It is true that only with the rise of the city-state does there emerge the possibility of a formal life in the political realm. But the *bios politikos* gathers its very essence from action and speech, *praxis* and *lexis*, from which "everything merely necessary or useful is strictly excluded."⁹³ This spirit of public action pre-dates the *polis* and defines, according to Arendt, the nature of great deeds and great words found in Homeric narrative, for example in the character of Achilles.⁹⁴

Great words are important not because they necessarily express great thoughts, but because they are a sign of the political art of "finding the right words at the right moment."⁹⁵ Choosing the right words at the right time defines rhetorical force, which represents the melding of *lexis* and *praxis*. Arendt's aim in emphasizing the centrality of great speech-action is to drive home another critical component of the political: that great speech overcomes the need for violence.

"Only sheer violence is mute, and for this reason violence alone can never be great.... To be political, to live in a *polis*, meant that everything was decided through words and persuasion and not through force and violence."⁹⁶

It is not that politics is devoid of force and violence. Arendt's point is rather that violence, command, uncontested and unconsensual power belong on the side of the "prepolitical" realm of necessity and the household. Political thought can only say so much about violence, paradoxically,⁹⁷ because it belongs to a realm to which constitutes

93 Arendt, *The Human Condition*, p. 25

94 Arendt, *Between Past and Future*, pp. 46, 72.

95 Arendt, *The Human Condition*, p. 26

96 Arendt, *The Human Condition*, p. 26 See also Arendt, *Between Past and Future*, p. 222.

97 See Arendt, *On Revolution*, p. 19: "The point here is that violence itself is incapable of speech, and not merely that speech is helpless when confronted with violence. Because of this speechlessness

the very opposite of the political. Violence and the household are prepolitical:

"In Greek self-understanding, to force people by violence, to command rather than persuade, were prepolitical ways to deal with people characteristic of life outside the *polis*, of home and family life, where the household head ruled with uncontested, despotic power, or of life in the barbarian empires of Asia whose despotism was frequently likened to the organization of the household."⁹⁸

All of Plato's models of coercion in relationships, such as between the shepherd and his flock, are taken from what the Greeks considered to be the private sphere of life.⁹⁹ The opposition of the despotism of the household and the political realm relates closely to Aristotle's two definitions of man: as *zoon politikon* and *zoon logon ekhon*, a living being capable of speech:

"Everybody outside the *polis* — slaves and barbarians — was *aneu logou*, deprived, of course, not of the faculty of speech, but of a way of life in which speech and only speech made sense and where the central concern of all citizens was to talk with each other."¹⁰⁰

The Latin mistranslation of "political" as "social" fails to grasp and subsequently loses these fundamental distinctions. Thomas Aquinas's inappropriate comparisons of the similarities between the head of the household and the head of political body are a further example of the consequences of this mistranslation, according to Arendt. The *dominus*

political theory has little to say about the phenomenon of violence and must leave its discussion to the technicians. For political thought can only follow the articulations of the political phenomena themselves, it remains bound to what appears in the domain of human affairs; and these appearances, in contradistinction to physical matters, need speech and articulation, that is, something which transcends mere physical visibility as well as sheer audibility, in order to be manifest at all. A theory of war or a theory of revolution, therefore, can only deal with the justification of violence because this justification constitutes its political limitation; if instead, it arrives at a glorification or justification of violence as such, it is no longer political but antipolitical." 19

98 Arendt, *The Human Condition*, p. 27. See also, Arendt, *Between Past and Future*, p. 105

99 See Arendt, *Between Past and Future*, p. 108: "In his attempts to find a legitimate principle of coercion Plato was originally guided by a great number of models of existing relations, such as that between the shepherd and his sheep, between the helmsman of a ship and the passengers, between the physician and the patient, or between the master and the slave.... All of these examples are taken from what to the Greeks was the private sphere of life, and they occur time and again in all the great political dialogues, *The Republic*, the *Statesman*, and the *Laws*."

100 Arendt, *The Human Condition*, p. 27

characteristic of the household is neither less nor more perfect than political rule; it is the opposite. Political power is checked, certainly, 'more' than the power of the *paterfamilias*, but

"this was not because the power of the city's ruler was matched and checked by the combined powers of household heads, but because absolute, uncontested rule and a political realm properly speaking were mutually exclusive."¹⁰¹

Thus far Arendt has laid the groundwork for a theory of the public and private by placing speech, action, persuasion and contestable rule on the side of the former, and the household, compulsory obedience and necessity on the side of the latter.

The next element Arendt adds aims to establish the public realm as *the sole* site of freedom. Another way of framing the distinction important to the Greek thought between the *polis* and the household is to distinguish between "activities related to a common world" on one hand and those related to "the maintenance of life" on the other.¹⁰² Though the "administration of life" that occurs with the modern rise of the social makes this original division difficult to see, the distinction is central to Arendt's conception of the political. The "maintenance of life" belongs in the same domain the things which are one's own (*idion*), both of which are opposed to what is communal (*koinon*). The household was the realm of "natural" association, a place marked by relationships one does not necessarily choose but ones are nevertheless needed for the nourishment and maintenance of individual and human life.

"The realm of the *polis*, on the contrary, was the sphere of freedom, and if there was a relationship between these two spheres, it was a matter of course that the mastering of the necessities of life in the household was the condition of freedom

101 Arendt, *The Human Condition*, p. 28. See also Arendt, *Between Past and Future*, p. 118.

102 Arendt, *The Human Condition*, p. 28

of the *polis*.¹⁰³

The realm of political does not exist *for* the purpose of the household; this is a critical part of Arendt's argument. Rather it is the other way around. The household is important because it provides the conditions of possibility for acting in the entirely different world that is the political.

"What prevented the *polis* from violating the private lives of its citizens and made it hold sacred the boundaries surrounding each property was not respect for private property as we understand it, but the fact that without owning a house a man could not participate in the affairs of the world because he had no location in it which was properly his own."¹⁰⁴

Unlike the modern sense of the political, the Greeks would never conceive of politics as something that exists primarily for the sake of a higher value such as the individual, the family or society. All of those realms are considered prepolitical.

Freedom is located "exclusively in the political realm."¹⁰⁵ The "freedom of the world" — felicity or *eudaimonia* — is something that comes from liberating oneself from the realm of necessity. To be in poor health is to be yoked to necessity, to be a prisoner, unfree. Violence and force are prepolitical phenomena that one employs in order to free oneself from the realm of necessity. The political, furthermore, is the realm of equality, and the household of inequality.

"The *polis* was distinguished from the household in that it knew only 'equals,' whereas the household was the center of the strictest inequality. To be free meant both not to be subject to the necessity of life or to the command of another *and* not to be in command oneself. It meant neither to rule nor to be ruled."¹⁰⁶

103 Ibid., pp. 30–1

104 Ibid., p. 30

105 Ibid., p. 31. See also Arendt, *On Revolution*, pp. 124–5.

106 Ibid., p. 32. See also Arendt, *On Revolution*, p. 31: "Equality existed only in this specifically political realm, where men met one another as citizens and not as private persons.... The equality of the Greek *polis*, its isonomy, was an attribute of the *polis* and not of men, who received their equality by virtue of citizenship, not by virtue of birth. Neither equality nor freedom was understood as a

The head of the household is only free insofar as he has the power to leave it and enter the truly free realm of the political.

The transition from the household to the public, political realm means not only the transformation from inequality to equality, necessity to freedom, but from darkness into light. The difference between darkness and light closely follows a sense of coming into what Arendt calls being "fully human."

"In ancient feeling the privative trait of privacy, indicated in the word itself was all-important; it meant literally a state of being deprived of something, and even of the highest and most human of man's capacities. A man who lived only a private life, who like the slave was not permitted to enter the public realm, or like the barbarian had chosen not to establish such a realm, was not fully human."¹⁰⁷

Private is to "privative" as individual is to "*idion*" or idiotic; both represent a deprivation in comparison to the plenitude of a world in common.

quality inherent in human nature, they were both not ψυσαι, given by nature and growing out by themselves; they were νομψ, that is, conventional and artificial, the products of human effort and qualities of the man-made world."

107 Arendt, *The Human Condition*, p. 38

"The Darkness of Everyday Life"

The public realm signifies several overlapping themes for Arendt, and all are important for understanding how the meaning of the "private" is defined in contrast.

All meanings of the word public bear some relation to appearance. The two most important meanings of public, according to Arendt, are first, that "everything that appears in public can be seen and heard by everybody and has the widest possible publicity," and second, that public refers to things "common to all of us and distinguished from our privately owned place in it."¹⁰⁸ To these two Arendt adds another, the quality of artifice. The public realm is an artifact of human making. Yes, nature is in common to all of us, but it is not a specifically human creation. The public

"is related, rather, to the human artifact, the fabrication of human hands, as well as to affairs which go on among those who inhabit the man-made world together."¹⁰⁹

Action, artifice, publicity, appearance and the common form the cornerstones of Arendt's conception of the public.

Arendt's presentation of the meaning of the "private" is complex, in part because she acknowledges that the rise of the social, in which affairs that were formally the province of the household come to the center of political concerns, has changed the meaning of private and its relation to the public. Moreover, Arendt recognizes that the liberal protection of individual freedom is a central and desirable feature of modern political life.

¹⁰⁸ Arendt, *The Human Condition*, pp. 50, 52.

¹⁰⁹ *Ibid.*, p. 52.

Arendt's discussion of the private realm is anchored in what she calls its "original privative sense." Both the Greek invention of the *polis* and the Roman sense of *res publica* were ramparts against "the futility of individual life."¹¹⁰ Even the "richest and most satisfying family life" can never be a substitute for the realm of objectivity, appearance and multiplication of perspectives that make up the public realm.

The private is privative, for the Greeks at least, because it lacks the capacity for experiences that make human life truly and fully human. The deprivation of the public means being denied the experience of appearing among others. The lack of appearance means the lack of existence.

"The privation of privacy lies in the absence of others; as far as they are concerned, private man does not appear, and therefore it is though he did not exist. Whatever he does remains without significance and consequence to others, and what matters to him is without interest to other people."¹¹¹

Appearance has several dimensions: the intersubjective experience of being seen and heard by others, a sense of place in the world, the disclosure of one's unique identity. If we take each one of these dimensions, we can find the consequences that the loss or destruction of the public sphere effects for each: loneliness, placelessness, and anonymity.

Before moving to a discussion of these privative consequences, however, we need to add that Arendt also presents what she calls the "non-privative" traits concerning the realm of the private. From above, recall that the household provides the grounding and nourishment necessary to be able to reach the *eudaimonia* and freedom only possible in the realm of the public.

¹¹⁰ Arendt, *The Human Condition*, p. 56

¹¹¹ *Ibid.*, p. 58

One cannot appear, one cannot disclose oneself in the realm of the private, and this is close to the denial of existence. The private is dark.¹¹² Arendt draws an analogy to medieval life in which the "darkness of everyday life" contrasts with the "grandiose splendor" of the realm of the sacred; that is what the transition from private to public is for antiquity.

Most interestingly for purposes here, the opacity of the private is *epistemological* as well as representational. Not only can one not appear in the private. Its closure also fixes limits on what can be known. Such limitations, in fact, are part of the very purpose of the private, one of its "non-privative" characteristics.

"The non-privative trait of the household realm originally lay in its being the realm of birth and death which must be hidden from the public realm *because it harbors the things hidden from human eyes and impenetrable to human knowledge*. It is hidden because man does not know where he comes from when he is born and where he goes when he dies."¹¹³ [emphasis added]

The private represents the place where the limits of human knowledge, the dark dead-ends of inquiry, reside. Why birth and death? The non-privative virtues of the private realm provide a hiding place from the light of publicity, from what can be seen and what can be known.

Having a place to hide, a realm of privacy and personal freedom, constitutes one of the main virtues of modern conceptions of freedom. The next section examines what role the issue of recognition or appearance plays in Isaiah Berlin's theorization of positive and negative liberty.

112 Again, see Arendt's discussions of the "sad opaqueness" (from the French poet and writer René Char) of the private as a world deprived of political togetherness. Arendt, *Between Past and Future: Eight Exercises in Political Thought*, p. 3ff. preface; Arendt, *On Revolution*, pp. 280-1.

113 Arendt, *The Human Condition*, p. 63

"Recognition" and "The Retreat to the Inner Citadel"

Isaiah Berlin begins *Four Essays on Liberty* with a quotation from Benjamin Constant: "L'on immole à l'être abstrait les êtres réels: et l'on offre qu'au peuple en masse l'holocauste du peuple en détail."¹¹⁴ To understand the meaning of this reference, it is helpful to quote the full passage in translation from Constant's *De l'esprit de conquête*, published around 1814, from which Berlin presumably gets the fragment:

"We are always hearing about the great empire, of the whole nation, abstract notions that have no reality. The great empire is nothing independently of its provinces. The whole nation is nothing separated from the parts that compose it. It is in defending the rights of these parts that one defends the rights of the whole nation; since the nation itself is divided into each of those parts. If they are successively stripped of what they hold dearest, if each of them, isolated so as to be made a victim, reverts, by a strange metamorphosis, to being a portion of the great whole, to serve as the pretext for the sacrifice of another portion, the real beings are sacrificed to the abstract one. The people as individuals are sacrificed for the sake of the people *en masse*."¹¹⁵

Writing in the time of France's revolutionary emergence as a new nation-state, Constant is warning against the way the very notion of a nation has an inbuilt proclivity to sacrifice individual persons on the altar of an imagined community, an imagined abstraction that arrogates to itself some surplus of power greater than the actual people of which it is composed. Berlin, like Constant, wants to conceptualize theories of individual liberty that act as a counterprinciple to the totalizing politics of his age.

But Constant is also predicting a phenomenon that brings him closer to Arendt: individuals being "stripped of what they hold dearest, isolated" and by a "strange metamorphosis" folded into some "great abstraction" that serves as a pretext for further

114 Isaiah Berlin, *Four Essays on Liberty*, p. ix

115 Benjamin Constant, *Political Writings*, ed. and trans. by Biancamaria Fontana, p77.

isolation and destruction of other people. A politics that uses isolation as a primary tool and deprives individuals of their very identity describes the kind of regimes in the twentieth century that will come to occupy both Berlin and Arendt.

Like Constant's vision of modern states, totalitarianism metamorphosizes its subjects under the sign of abstraction and utopia, stripping people of their identities. It is against this backdrop that Berlin seeks to codify and defend the moral principle of individual liberty.

Berlin uses the term liberty more or less interchangeably with freedom. The central questions of politics always concern obedience and coercion, Berlin begins in "Two Concepts of Liberty," and coercion means to deprive someone of their freedom. What constitutes this deprivation is the question Berlin seeks to answer. In order to do this, Berlin codifies what is now the well-known distinction between positive and negative liberty.

Negative liberty is the kind of liberty the "classical English political philosophers meant when they used the word."¹¹⁶ The extent to which "no man or body of men interferes with my activity" defines negative freedom; it is freedom from deliberate interference or coercion, from from being prevented from attaining a goal. "Mere incapacity," however, is not a deprivation of negative freedom, as having the capacity or wherewithal for action describes what he will call positive freedom.

Besides an absence of interference, negative freedom implies a sphere of the private. The philosophical tradition of negative freedom always assumes that

"there ought to exist a certain minimum area of personal freedom which must on

¹¹⁶ Berlin, *Four Essays on Liberty*, p. 123

no account be violated... It follows that a frontier must be drawn between the area of private life and that of public authority.... [S]ome portion of human existence must remain independent of the sphere of social control. To invade that preserve, however small, would be despotism."¹¹⁷

The plea for negative liberty is always an insistence that authority be kept at bay and that personal freedom, freedom from interference, intimidation and coercion against one's thoughts and action, be preserved.

Positive liberty, in contrast, can best be described as freedom "to" lead a particular kind of life rather than freedom "from" explicit interference in that endeavor. Positive liberty means self-mastery. Anything that deprives me from being an acting, willful, self-legislating agent constitutes a deprivation of positive liberty.

"I wish, above all, to be conscious of myself as a thinking, willing active being, bearing responsibility for my choices and able to explain them by references to my own ideas and purposes. I feel free to the degree that I believe this to be true, and enslaved to the degree that I am made to realize that is not."¹¹⁸

Positive liberty means having autonomy. Though Berlin ultimately has the kind of collectivist visions of liberty ("freedom from economic slavery") in mind when he speaks of positive liberty, he finds the origins of this philosophical tradition in the more unexpected sources of Rousseau and Kant. In the tradition of positive liberty, any heteronomy, any dependence on outside factors, any obedience to a law not given to oneself makes one less than fully free. Being a slave to one's passions and desires also constitutes a restriction. The project of controlling one's desires, by resistance to or even outright elimination them, enlarge one's liberty in the positive sense.

What role does appearance play in Berlin's political theory of liberty, positive or

117 Ibid., pp. 124, 126

118 Ibid., p. 131

negative? The "preserve" of individual liberty should, as theorized, provide a barrier against state and social coercion. The important point about this preserve, this realm of freedom, is that it exists and is available to everybody. Whether one chooses to "appear" in public or retreat to this sphere of the private should be a matter of pure indifference to the state, society or the theory itself. Yet appearance and retreat are a problem for each treatment of liberty that Berlin confronts.

In his discussion of the "search for status," Berlin addresses the many criticisms of John Stuart Mill's theory of liberty that have emphasized how both how social and interdependent with others individuals are. These criticisms, in fact, go to the heart of the question of what individuals are.

"Ever since the issue was raised towards the end of the eighteenth century, the question of what is meant by 'an individual' has been asked persistently, and with increasing effect. In so far as I live in society, everything that I do inevitably affects, and is affected by, what others do.... For am I not what I am, to some degree, in virtue of what others think and feel me to be? When I ask myself what I am, and answer: an Englishman, a Chinese, a merchant, a man of no importance, a millionaire, a convict — I find upon analysis that to possess these attributes entails being recognized as belonging to a particular group or class by other persons in my society, and that this recognition is part of the meaning of most of the terms that denote some of my most personal and permanent characteristics."¹¹⁹

Berlin here is considering the question of what it means to assert oneself as an individual and to what extent the assertion can be separated from being "recognized," that is, being or acting in the presence of others, defining one's identity *qua* that very recognition.

Berlin argues that the question of recognition, however, easily confuses liberty with its historical "sisters," fraternity and equality, and, when not properly separated out, leads to illiberal conclusions. Berlin concedes however that freedom is very close to

119 Ibid., pp. 154–5

recognition in many respects.

"The lack of freedom about which men or groups complain amounts, as often as not, to the lack of proper recognition. I may be seeking not for what Mill would wish me to seek, namely security from coercion, arbitrary arrest, tyranny.... Equally, I may not be seeking for a rational plan of social life, of the self-perfection of a dispassionate sage."¹²⁰

One may not be seeking, in other words, the blessings of negative and positive liberty, respectively. The revolutionary desire may be related more simply to recognition:

"What I may seek to avoid is simply ignored, or patronized, or despised, or being taken too much for granted — in short, not being treated as an individual, having my uniqueness insufficiently recognized, being classed as a member of some featureless amalgam, a statistical unit without identifiable, specifically human features and purposes of my own..... What oppressed classes or nationalities, as a rule, demand is neither simply unhampered liberty of action for their members, nor, above everything, equality or social or economic opportunity, still less assignment of a place in a frictionless, organic state devised by the rational lawgiver. What they want, as often as not, is simply recognition... and not to be ruled, educated, guided, with however light a hand, as being not quite fully human, and therefore not quite fully free."¹²¹

Berlin observes that the political voice of the demand to be "fully human" is a demand to be recognized, and that people will often tolerate misgovernance, corruption and even bullying from regimes because they identify with them in some other way. The regime is run by people who are each "one of us," they understand me and I them and "this understanding creates within me the sense of being somebody in the world."¹²²

The phenomenon of recognition must be grasped, Berlin writes; otherwise one will never understand why peoples who suffer severe deprivation of rights will nevertheless proclaim and feel that they are freer under a regime in which they are recognized than they did under one under which they had enjoyed far wider freedoms.

120 *Ibid.*, p. 155

121 *Ibid.*, pp. 155–6

122 *Ibid.*, p. 157

The phenomenon will seem like an "unintelligible paradox."¹²³

Yet this apparently central feature of political struggle fits neither in the category of positive nor negative liberty.¹²⁴ Recognition is somehow close to liberty but not the same as it.

"It is not with individual liberty, in either the 'negative' or the 'positive' senses of the word, that this desire for status and recognition can easily be identified. It is something no less profoundly needed and passionately fought for by human beings — it is something akin to, but not itself, freedom."¹²⁵

Liberty and recognition are not the same thing, but the distance between them continues to trouble Berlin. "Is it mere pedantry," Berlin asks, to insist on maintaining this distinction, when the very people who feel freer claim simply that they are? After all, wouldn't such an insistence be the same dogmatic defense of an ideological principle over the very "reality" of "real" people that Berlin sought to prevent in the first place?

Faced with this difficulty, Berlin retracts his earlier assertion that similarity between recognition and liberty is a mere confusion.

"We cannot simply dismiss this case as a mere confusion of the notion of freedom with that of status, or solidarity, or fraternity, or equality, or some combination of these. *For the craving for status is, in certain respects, very close to the desire to be an independent agent.*"¹²⁶ [emphasis added]

Being an "independent agent" in the sense of cultivating individuality is, of course, one of the main underpinnings of John Stuart Mill's famous conceptualization in *On Liberty*.

Mill's philosophical articulation of liberty is the perhaps the closest to a complete

123 Ibid., p. 158

124 See also, "The Bent Twig," in Berlin, *The Crooked Timber of Humanity*, p. 261. Recognition also turns out to be a principle cause of nationalism, a phenomenon so central to modern politics that Berlin's question in "The Bent Twig" — "how did the possibility of this development come to be ignored?" — might be interpreted as applying to the writers he discusses but to his own work as well.

125 Berlin, *Four Essays on Liberty*, p. 158

126 Ibid., p. 159

description of negative liberty, save perhaps for Constant's. Yet several elements of Mill's conception trouble Berlin. Among them is that it becomes very difficult to distinguish the protection of individuality and recognition.

"Indeed, much of what [Mill] says about his own reasons for desiring liberty — the value that he puts on boldness and non-conformity, on the assertion of the individual's own values in the face of the prevailing opinion, on strong and self-reliant personalities free from the leading strings of the official law-givers and instructors of society — has little enough to do with his conception of freedom as non-interference, but a great deal with the desire of men not to have their personalities set at too low a value, assumed to be incapable of autonomous, original 'authentic' behavior, even if such behaviour is to be met with opprobrium, or social restrictions, or inhibitive legislation."¹²⁷

Much of this classic account of negative liberty, Berlin goes on to show, reveals a close dependency on the problematic of recognition. Two of the core political questions for both liberalism and politics as a whole, "What is to be the area of authority?" and "Who is to govern us?", are satisfactorily answered by the very parties wishing to assert the "'personality' of their class, group or nation." Who is to govern reduces to "above all, who?"¹²⁸

The problem of recognition is not the only way in which Mill's classical formulation of negative liberty runs into trouble for Berlin's account. If the search for status and recognition can be compared with Arendt's sense of appearance, the problem of isolation or withdrawal also haunts the integrity of Berlin's depiction of negative liberty.

In the section entitled "The Retreat to the Inner Citadel," Berlin discusses one of the consequences of what he terms the "divided self." Being divided against oneself

127 Ibid., p. 160

128 Ibid., p. 160

comes a logical outgrowth of the idea of self-mastery in the philosophical tradition of positive liberty. One of the objectives of positive liberty is that the person, as a possessor of reason and will, seeks to liberate him or herself from the desires that cannot be controlled or from other accidents or deprivations that human institutions seem to cause. People begin with the desire for happiness, control over their lives, power, nourishment, beauty. But what happens when this is denied, either by social institutions or by the tyrant?

One solution to oppression or deprivation of this type is remove the desire itself. One wishes to be master of whatever kingdom one defines, but if one cannot get it, one can always bring the frontiers of the kingdom further inward. One can change oneself to desire less.

"I determine myself not to desire what is unattainable. The tyrant threatens me with the destruction of my property, with imprisonment, with the exile or death of those I love. But if I no longer feel attached to property, no longer care whether or not I am in prison, if I have killed within myself my natural affections, then he cannot bend me to his will, for all that is left of myself is no longer subject to empirical fears or desires. It is as if I had performed a strategic retreat into an inner citadel — my reason, my soul, my 'noumenal' self — which, do what they may, neither external blind force, no human malice, can touch. I have withdrawn into myself; there, and there alone, I am secure."¹²⁹

This type of emancipation can take many forms, among them asceticism. Withdrawing, removing all dependencies, embracing isolation all take the teeth out of whatever forces one is yoked to or oppressed by and make one no longer vulnerable. Though Berlin primarily associates the "retreat to the inner citadel" with the positive freedom ideal of self-mastery, "all political isolationism, all economic autarky, every form of autonomy,

129 Ibid., p. 135

has in it some element of this attitude."¹³⁰

In fact, the greater the oppression, the more one finds that every opportunity to improve one's condition or seek happiness or freedom or power is futile, the more "the temptation to withdraw may become irresistible." In fact, the more totalizing the political control, the more a strategic retreat genuinely seems to be the only sensible alternative.

Such a scenario is problematic for the very purpose of negative liberty, where the end is precisely the protection of individual freedom from social or state coercion. Berlin acknowledges this problem in Mill's classic conception of negative liberty.

"This makes it clear why the definition of negative liberty as the ability to do what one wishes — which is, in effect, the definition adopted by Mill — will not do. If I find that I am able to do little or nothing of what I wish, I need only contract or extinguish my wishes, and I am made free."¹³¹

Negative liberty cannot mean freedom from interference in doing what one wishes, Berlin writes, even though the concession seems to remove a central component of what makes the theory so appealing as a political principle. But this may have less to do with an inherent weakness in the theory of liberty than it does with the fact that appearance (the public representation of oneself) and withdrawal (isolation or anonymity) are themselves not easily conceptualized in these terms.

Retreat into isolation, in a sense, voids the whole structure of right. Interestingly, this is precisely what Arendt confronts in her treatment of the totalitarian politics of the twentieth century.

Arendt presents an ambivalent picture of the opacity or darkness of the private.

130 Ibid., p. 136

131 Ibid., p. 139

In order to appreciate the full significance of Arendt's vision of the public and private, and the consequences of their destruction, we have to turn to her discussion of modern scenes of extreme destruction of the political.

In the next section, we shall examine how the conception of public and private is both reinforced and then obliterated in the age of totalitarianism. Here Arendt explores what happens when politics destroys the political itself, i.e. the very possibility of public appearance and simultaneously the possibility of any place to hide. For Arendt, the condition of "statelessness" — a condition which I propose is a materialization of the very possibility of anonymity that exists in Hobbes's architecture of the modern state — puts in the very premises of the charter that protects public and private liberty, the Declaration of the Rights of Man, into crisis.

Displaced Persons and the Removal From Public Representation

In Arendt's *The Origins of Totalitarianism*, the chapter "The Decline of the Nation–State and the End of the Rights of Man" acts as somewhat of a bridge between the first part of the book, which deals with pre-totalitarian politics, and the final part, which concerns the nature of totalitarian terror in the twentieth century. The real turning point, and the subject with which Arendt begins, is World War I. Arendt describes the mass devastation as hanging in a kind of silent, awesome emptiness like the flattened, mangled terrain after a hurricane. Shattering the "facade of Europe's political system and laying bare its hidden frame," the period Arendt describes serves as an ominous gateway between the old kind of revolution and the new — between a political era defined by the French Revolution and the Declaration of the Rights of Man, on one hand, and, on the other, a political era defined by totalitarianism, "stateless people," and the internment/concentration camp.

The massive disintegration, destruction and recreation of nation–states also represents a turning point in the history of the "nation" and its "subjects." The movement of national and subnational populations moved to the center of political disputes in the era after World War I. Amidst the "Pan–Movements" and the forced and voluntary relocation of national peoples, Europe produced a new kind of political subject, the Displaced Person ("DP"), and a new anti–territory, the DP camp. Displaced persons, in turn, became tools to the politics that created them. The removal of identity and political representation became an explicit sign of politics:

"The official SS newspaper, the *Schwarze Korps*, stated explicitly in 1938 that if the world was not yet convinced that the Jews were the scum of the earth, it soon would be *when unidentifiable beggars, without nationality, without money, and without passports crosses their frontiers.*"¹³² [emphasis added]

Not only did this "factual propaganda" promote the redistribution of people along racial and national lines, but it also drove home the totalitarian claim that there are no such things as inalienable rights.

The "Minority Treaties" codified for the first time the new idea that there are millions of people within nation-states who require special protection because the majorities in the nation-states could not be trusted to ensure their safety. Many of the older nations argued that such provisions were only a temporary measure. As soon as matters settled, the fundamental principles of their constitutions, framed around the ideas of the Rights of Man, would be sufficient to solve any outstanding problems concerning persecution of minorities and displaced persons. But, as Arendt argues, "the arrival of stateless people brought an end to this illusion."¹³³ The situation of the rightless — displaced persons, stateless people, refugees — changed from being an exceptional feature to a central problem of politics. As denaturalization and deportations became a principle weapon of politics,¹³⁴ displaced persons became negative version of subjects, involuntary protagonists of a new modern order.

132 Arendt, *The Origins of Totalitarianism*, p. 269

133 Arendt, *The Origins of Totalitarianism*, p. 276

134 "The first law of this type was a French war measure in 1915.... Portugal went much farther in a decree of 1916 which automatically denaturalized all persons born of a German father. Belgium issued a law in 1922 which canceled naturalization of persons who had committed antinational acts during the war, and reaffirmed it by a new decree in 1934... In Italy, since 1926, all persons could be denaturalized who were not 'worthy of Italian citizenship' or a menace to the public order.... France threatened with denaturalization those of its new citizens who committed acts contrary to the interests of France (1927). Austria in 1933 could deprive Austrian nationality to any of her citizens who served or participated abroad in an action hostile to Austria. Germany, finally, in 1933 followed closely the various Russian nationality decrees since 1921 by stating that all persons 'residing abroad' could at will be deprived of German nationality." Arendt, *The Origins of Totalitarianism*, p. 279n.

"The situation had deteriorated until the internment camp — prior to the second World War the exception rather than the rule for the stateless — became the routine solution for the problem of domicile of the 'displaced persons.'"¹³⁵

The territory of these new negative subjects materialized in the form of the internment and concentration camps. This was not, however, because states decided that camps should be the solution. To the contrary, the political goal was usually to find a solution for removing people from territories. Yet no destination territory necessarily existed, or at least, none existed that didn't require some further dislocation of its inhabitants.

"Every attempt by international conferences to establish some legal status for stateless people failed because no agreement could possibly replace the territory to which an alien, within the framework of existing law, must be deportable. All discussions about the refugee problems revolved around this one question: How could the refugee be made deportable again? The second World War and the DP camps were not necessary to show that the only practical substitute for a nonexistent homeland was an internment camp. Indeed, as early as the thirties this was the only 'country' the world had to offer the stateless."¹³⁶

Besides bringing into crisis the traditional formula of 'state–people–territory,' the problem of stateless people challenged the very essence of the status of the person within a legal framework: an "anomaly for whom there is no appropriate niche in the framework of the general law — an outlaw by definition — [the man without a state] was completely at the mercy of the police."¹³⁷

This "anomalous" condition lies at the heart of what Arendt terms "perplexity" of the Rights of Man. The perplexity was that the inalienable rights of the individual are supposed to be independent of any specific source of authority. The radicalness of the French Revolution stemmed from the claim that "Man" alone, not God or custom, is the

135 Arendt, *The Origins of Totalitarianism*, p. 279

136 Arendt, *The Origins of Totalitarianism*, p. 284

137 Arendt, *The Origins of Totalitarianism*, p. 283

only source of law.

"The Rights of Man, after all, had been defined as 'inalienable' because they were supposed to be independent of all governments; but it turned out that the moment humans beings lacked their own government and had to fall back upon their minimum rights, no authority was left to protect them and no institution was willing to guarantee them.... The calamity of the rightless is not that they are deprived of life, liberty, and the pursuit of happiness, or of equality before the law and freedom of opinion — formulas which were designed to solved problems *within* given communities — but that they no longer belong to any community whatsoever."¹³⁸

The denaturalization of persons — the removal of persons from government jurisdiction altogether — puts people not back into a protected state of natural right, but rather the opposite. The deprivation of national rights also deprives the person of human rights. The result was further perplexities: that stateless people would have more rights by committing any criminal act than by simply being; that human rights could only be restored through the restoration of national rights, and so on. It is not as an abstract person or even as a human as such that one could be protected from the destiny of the camp or even the gas chamber. To be simply human, in "abstract nakedness" turns out to be the "greatest danger."

The ultimate source of politics remains precisely the creation of human artifice. But statelessness also undermines artifice. Artifice, in turn, goes straight to problem of equality. We are not born equal, Arendt writes, we only become equal as an outcome of a common labor, as an "outcome of the human artifice." Equality grew out of the fundamental *isonomy* of the *polis*, and for this reason all elements of this sphere were constitutively artificial.¹³⁹ The more politically advanced a civilization becomes, the

138 Arendt, *The Origins of Totalitarianism*, pp. 291–2, 295

139 See Arendt, *On Revolution*, pp. 30–1: "The *polis* was supposed to be an *isonomy*, not a democracy.... *Isonomy* guaranteed *ισοτις*, equality, but not because all men were born or created equal, but, on the

more sophisticated its political artifice, the more it will become estranged from things which are not a product of this artifice.

"The more highly developed a civilization, the more accomplished the world it has produced, the more at home men feel within the human artifice — the more they will resent everything they have not produced, everything that is merely and mysteriously given them."¹⁴⁰

Things which are not a product of artifice, things which "simply are," turn out to humans "themselves." The human as it simply is is characteristic of the "private." Mere existence cannot be given by a reason. One's difference simply is. Givenness presents a limit on what we can know, and it cannot be changed by bringing it into the light of public appearance. The private is therefore always-present threat to the public political sphere; removed from public jurisdiction altogether, the state of mere existence becomes the greatest danger as such.

The opacity of the private — the "dark background of mere givenness" — acts as an undermining agent but also as the principle repository of *limitation* to human artifice. The private is a limit on equality; it is the realm of differentiation, and by virtue of that it is a limit on the very reach of human artifice. The private is both "alien" and the site of existence as such, which is to say, of difference:

"The dark background of mere givenness, the background formed by our unchangeable and unique nature, breaks into the political scene as the alien which in its all too obvious difference reminds us of the limitations of human activity — which are identical with the limitations of human equality. The reason why highly developed political communities, such as the ancient city-states or modern nation-states, so often insist on ethnic homogeneity is that they hope to eliminate as far as possible those natural and always present differences and differentiations which by themselves arouse dumb hatred, mistrust, and discrimination because

contrary, because men were by nature (ψυσαί) not equal, and needed an artificial institution, the *polis*, which by virtue of its νομοσ would make them equal."

140 Arendt, *The Origins of Totalitarianism*, p. 301

they indicate all too clearly those spheres where men cannot act and change at will, *i.e.*, the limitations of the human artifice."¹⁴¹

The private is the place where sheer existence rules — "single, unique, unchangeable", difference and differentiation; it is the realm of "dark givenness." The private is a rampart against the designs of human artifice, reminding of the limitations of any project of equality or any project of the artificial political world in general.

"The 'alien' is a frightening symbol of the fact of difference as such, of individuality as such, and indicates those realms in which man cannot change and cannot act and in which, therefore, he has a distinct tendency to destroy."¹⁴²

When people are forced to live outside the common world, they are thrown into a state of pure difference, unprotected by the artifices of a commonwealth.

The conversion of masses of people into stateless people removes not only protection but also the very quality that makes human life human: the opportunity to uniquely identify oneself through deeds done in front of others. Stateless persons are thrown into the world of natural difference, but since they are also deprived of the ability to create artifice, to appear with others, human identity as such is lost. They become simultaneously a human being "in general" (though only in the sense of an animal belonging to the human species) but also different in general, stamped with unique difference but in a situation where this difference "loses all significance."

"The paradox involved in the loss of human rights is that such loss coincides with the instant when a person becomes a human being in general — without a profession, without a citizenship, without an opinion, without a deed by which to identify and specify himself — *and* different in general, representing nothing but his own absolutely unique individuality which, deprived of expression within and action upon a common world, loses all significance. The danger in the existence of such people is twofold: first and more obviously, there ever-increasing

141 Arendt, *The Origins of Totalitarianism*, p. 301

142 Arendt, *The Origins of Totalitarianism*, p. 301

numbers threaten our political life, our human artifice, the world which is the result of our common and co-ordinated effort in much the same, perhaps even more terrifying, way as the wild elements of nature once threatened the existence of man-made cities and countrysides."¹⁴³

Arendt here is describing what is for her the ultimate end of representation, political horror as such, to be cast out as oneself, in absolutely unique individuality, in your difference as such.

Arendt is filling out, in a way, a similar vision of what Hobbes imagined at the dawn of modern political order: what it would mean to be publicly represented, as Arendt puts it, as both a human being in general (a Person) and different in general (a private self who must simulate). Of course, what Arendt is describing is the opposite of Hobbes's goal. What happens when the public and the private are destroyed is something like a private world turned inside out: as if "everybody is a member of the same family." Everyone's individual subjectivity is multiplied, repeated and made indistinguishable. To be at once the 'abstract' human or person and at the same exposed in one's pure difference in the new political territory of the camp is the negative of *Leviathan*: the "wild elements of nature" is the state of nature, a life poor, solitary, nasty, brutish and short.

Arendt presents neither a defense of the private sphere of the individual nor of human rights as such. Edmund Burke was right: neither principle will provide an ultimate source of protection or safety. Statelessness strips persons of something more radical.

"The fundamental deprivation of human rights is manifested first and above all in the deprivation of a place in the world which makes opinions significant and

143 Arendt, *The Origins of Totalitarianism*, p. 302

actions effective.... This extremity, and nothing else, is the situation of people deprived of human rights. They are deprived, not of the right to freedom, but of the right to action; not of the right to think whatever they please, but of the right to opinion.... Man, it turns out, can lose all so-called Rights of Man without losing his essential quality as man, his human dignity. Only the loss of a polity itself expels him from humanity."¹⁴⁴

The deprivation of one's capacity to be publicly representable is the most extreme form of political domination. Moreover, it cannot be remedied by a more powerful apparatus to provide protection. No appeal to "world government" eliminates the problem. The very terms of rights-based protection of liberty are expelled along with the very 'person' of the subject.

Arendt's conception of the private as a sphere of limitation is *not* the same as what we might associate with negative individual liberty of, say, Mill. Political society cannot be created "for" this protection of the private per se, because the private is not properly speaking political. For Arendt, individuality *has* to be interpellated. Interpellation — your unique identity being called out and recognized in light of public appearance — is the ultimate principle of safety.

The most common statement of refugees, "nobody here knows who I am," reveals the material bond between the problem of statelessness and anonymity. Being deprived of the very possibility of recognition, being named, disclosing one's unique individuality in public represents a modern predicament of politics. In fact, the problem of statelessness, or in Arendt's term, actionlessness, lies as perhaps the most fundamental problem, in her view, for Marx's critique of modern politics.¹⁴⁵

¹⁴⁴ Arendt, *The Origins of Totalitarianism*, pp. 296, 297

¹⁴⁵ See, for example, Arendt, *Between Past and Future*, pp. 24–5: "[Other] inconsistencies are minor when compared with the fundamental contradiction between the glorification of labor and action (as against contemplation and thought) and of a stateless, that is, actionless and (almost) laborless society." In respect of Marx, Arendt adds "such fundamental and flagrant contradictions rarely occur

To review and conclude, a state of being anonymous is the very opposite of Arendt's vision of the political. Anonymity presents a problem to Arendt's conception of private opacity and public appearance. Hobbes understands that public appearance has to be regulated, so he displaces contentious public questions to the private. The private becomes a place where public appearance is suppressed, but left free unto itself. Hobbes's sense of the private seems to be similar to Arendt's conception, but something more is added: the private now becomes politically important because it is a solution to the explosive politics of the public sphere. The private makes people safe for the public.

Appearance is a problem for the integrity of Berlin's theory of negative liberty; the issue of whether one appears or not should be irrelevant to the theory of negative liberty, but it turns out to infuse its most core elements. Anonymity and recognition cannot really be comprehended by the theories of liberty or rights *per se*.

So too for Arendt. According to Arendt, anonymity, the removal from representation, cannot be comprehended by the framework of modern rights specified by the Declaration of the Rights of Man. To the contrary, this state of being — displaced personhood, statelessness, anonymity — represents the greatest danger imaginable.

"Normal" politics, however, is not supposed to produce internment camps as a regular institution. When the private returns to being interior to the common world, rather than turned insideout in the camp, the private retakes its place as the repository of difference and freedom. Yet the potential of the private sphere is also tempered. Just as the new notion of the private takes the punch out of public politics in Hobbes's time, so will personal identification — the idea that everyone can and should be uniquely in second-rate writers, in whom they can be discounted."

identifiable — stabilize and arrest modernity's radical idea of the private as a protected mode where one can do anything or be anybody.

The next chapter examines a contemporary call for stronger identification.

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 Mark, 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."

"The prohibition of compelling a man in a criminal court to be witness against himself is a prohibition of the use of physical or moral compulsion to extort communications from him, *not an exclusion of his body as evidence* when it may be material."²¹⁵ [emphasis added]

Dionisio involved a 1971 federal gambling probe in which a grand jury issued subpoenas to twenty persons, directing each to produce a sample of their voice. Advising each that they were potentially a defendant in a criminal case, the grand jury ordered each person to report to the local U.S. attorney's office and read a selected passage into a tape recorder. The respondent *Dionisio* refused, citing his individual rights under the Fourth and Fifth Amendments. The Supreme Court disposed of *Dionisio*'s Fourth Amendment claim by holding, first, that the demand for voice samples did not constitute a "seizure" in the meaning of that amendment, and second, more generally, that the limits that are placed upon grand juries do not apply in the respondent's case. No right, whether claimed in the context of a grand jury appearance or not, provides protection from physical characteristics "knowingly exposed to the public, even in [a person's] own home or office,"²¹⁶ such as a person's voice, face or handwriting:

"The physical characteristics of a person's voice, its tone and manner, as opposed to the content of a specific conversation, are constantly exposed to the public. Like a man's facial characteristics, or handwriting, his voice is repeatedly produced for others to hear. No person can have a reasonable expectation that others will not know the sound of his voice, any more than he can reasonably expect that his face will be a mystery to the world."²¹⁷

With respect to *Dionisio*'s Fifth Amendment claim, the Court held that voice samples are like "handwriting exemplars or fingerprints" in that they do not constitute testimonial or communicative evidence in the meaning of Court doctrine from *Holt v. U.S.* to

215 *Holt v. U.S.*, 218 U.S. 245 (1910)

216 *Katz v. United States*, 389 U.S. 347 (1967).

217 *United States v. Dionisio*, 410 U.S. 1 (1973).

Schmerber v. California.²¹⁸

Though supposedly not a "mystery to the world," the contours of a person's face, voice and writing are ciphers enough that their discovery may be compelled by the police. Nothing may "exclude" inspection of the body when made for "identification purposes." **The body as evidence stands outside the protections afforded by the constitution. No such right is recognized, no liberty interest protected.**

But why wouldn't the display of physical characteristics be protected by a right to privacy? If not specifically protected by the seizure and self-incrimination clauses of the Fourth and Fifth Amendments, why not then by the "penumbra" of protections and substantive due process upheld under the banner of a general right to privacy in *Griswold v. Connecticut*?²¹⁹ After all, it was precisely the rampant trafficking in published images of people's private lives in the tabloid press — including the authors' — that gave much of the impetus for Samuel Warren and Louis Brandeis to write, in 1890, the most famous law review article on privacy in American jurisprudence on what they called the "right to be let alone."²²⁰ Though the right to privacy articulated in Brandeis and Warren's article was essentially grounded in the potential of private, tort claims at the common law, the introduction of the legal concept paved much of the way for the emergence, a century later, of a substantive constitutional right to privacy.

Published photographic images of people were not the only source of personal

218 *Schmerber v. California*, 384 U.S. 757 (1966). See also *Breithaupt v. Abram*, 352 U.S. 432 (1957); *Skinner v. Railway Labor Executives' Assn.*, 489 U.S. 602 (1989).

219 *Griswold v. Connecticut*, 381 U.S. 479 (1965). In *Griswold*, a 7–2 majority ruled that a Connecticut statute prohibiting contraceptives was unconstitutional. The Court held that the statute "violates the right of marital privacy which is within the penumbra of specific guarantees of the Bill of Rights."

220 Samuel D. Warren and Louis D. Brandeis, "The Right to Privacy," 4 *Harvard Law Review* 193–220 (1890).

data. A year before Brandeis and Warren were preparing their article, a British contemporary of theirs published an article in the science journal *Nature* with the title "Personal Identification."²²¹ The author of the article was Francis Galton. As discussed in the introduction, Galton, a cousin of Charles Darwin, would go on to coin the term "eugenics" and be regarded, subsequently, as the father of eugenics.

Galton's lectures and articles on personal identification, however, concerned fingerprints. Galton sought to give a statistical foundation for the claim that persons could be uniquely identified by the ridges of skin found on human fingers and thumbs. Part of Galton's motivation was to find in fingerprints signs of hereditary relationships. But the potential of fingerprints also seemed to promise a more general utility. Galton was first directed to the subject of fingerprints by a letter forwarded to him by Charles Darwin from a Scottish doctor named Henry Faulds. Faulds had first proposed using fingerprints for criminal identification in a letter to *Nature* in 1880. But Galton was more drawn to the reports of William Herschel, who had arguably been the first to actually implement a system of palm and fingerprints in British-controlled India.²²² Prior to any grounding in statistical authority or technological legitimacy, Herschel, as a colonial administrator, had implemented a system of having native workers "sign" agreements with their handprints. Absent of any technological basis or statistical authority, the point of fingerprinting was to make subjects *think* they could be identified at any moment.

But what gave Herschel the authority to order road workers to sign contracts with

221 Francis Galton, "Personal Identification and Description," *Nature* 38 (1889).

222 William J. Herschel, *The Origin of Finger-Printing* (Oxford: H. Milford, 1916).

their handprints? Reading Herschel provides a ready answer: the blunt force of colonial power, the sovereign right of conquest. Yet no such right is asserted. In fact the transaction, as narrated, is voluntary and practical.²²³

Galton's codification of fingerprint evidence plays no role in Brandeis and Warren's reflection on the right to privacy, but fingerprints reappear as a specific kind of human data not protected by the Fourth and Fifth Amendments.²²⁴ Only in the last few decades has the question of "information" about oneself begun to interlace itself with the law of privacy. In 1967, Alan Westin, in fact, linked the right of control over *information* about oneself to the substantive right to privacy announced in *Griswold*, defining the right to privacy in its terms:

"Privacy is the claim of individuals, groups or institutions to determine for themselves when, how, and to what extent information about them is communicated to others."²²⁵

Human databases proliferate, and the most pressing issues in privacy concern the body's own evidence, genetic and otherwise.²²⁶

This chapter investigates the question of how sovereign power has a claim on the personal identification of its subjects and, more specifically, how "exposure" of the surfaces of the body escapes the protection of individual rights that would otherwise

223 In this sense, fingerprinting embodied what Jeremy Bentham termed, in *Theory of Legislation* and elsewhere, "indirect legislation": i.e. decentralized inducements and constraints executed at the level of individual, voluntary transactions. See Stephen G. Engelmann, "An Invincible Disgust? Bentham's Liberal Government of Indirect Legislation," paper presented at the 2000 APSA annual meeting, Washington, D.C.

224 "The Fourth Amendment prohibition against unreasonable search and seizure applies only where identifying physical characteristics, such as fingerprints, are obtained as a result of unlawful detention of a suspect, or when an intrusion into the body, such as a blood test, is undertaken without a warrant, absent an emergency situation." Quotation of district judge cited in *United States v. Dionisio*, 410 U.S. 1 (1973).

225 Alan Westin, *Privacy and Freedom*, New York: Atheneum (1967), p. 7.

226 See, for example, essays collected in Mark A. Rothstein, ed., *Genetic Secrets: Protecting Privacy and Confidentiality in the Genetic Era*, New Haven: Yale University Press, 1997.

shield one from the reach of sovereign power. The question of how sovereign power has the jurisdiction to take hold of, map and extract information from the body breaks into two stories, one well understood, one more undocumented and obscure. The more well understood account is judicial balancing between governmental powers and individual rights. On one hand is the power of the state to "police" its subjects. The police power traditionally comprises the health, safety, welfare and morals of the citizenry. In opposition to the police power and other explicitly enumerated government powers are the fundamental liberties and rights that put limits on those powers. For this tradition, this chapter explores two legal tracts, William Blackstone's *Commentaries on the Laws of England* and Brandeis and Warren's "The Right to Privacy," to probe the nature of these fundamental personal liberties and, subsequently, how a measure of "opacity" might be secured through the concept of a right to privacy. The awkwardness in this line of thought is that the idea of a right to privacy that emerged in American jurisprudence was, in its most famous formulation prior to the 1960s, a concept that was thought almost solely in terms of tort relief. *Griswold v. Connecticut* gave the right to privacy a foundation in the fundamental liberties protected by the Constitution, and set the tone for a substantive basis of this right. Yet, as the doctrine explained in *Dionisio* maintains, privacy affords no protection from the state to compel your "display."

Something about the empirical exposure of the subject escapes the protection of this substantive right to privacy. The remainder of the chapter connects the exclusion of human data to what Giorgio Agamben terms "bare life" to describe this predicament of exposure. Agamben argues that the "exceptional" quality of sovereign power, precisely

in its capacity to ban or throw the subject into a relation of exposure, destines the subject to this lack of protection. The modern version of the relationship between sovereign and subject, moreover, is "biopolitical"²²⁷ in nature, owing to the politicization of scientific decisions over what constitutes experimental, expendable, and redeemable life. Michel Foucault, finally, locates biopolitics in a more ambiguous relationship to sovereign power.

First though, we explore a classic statement of the right of individuals to be "hidden," in a sense, from the reach and gaze of state power.

²²⁷ Introduced at the end of the *History of Sexuality*, Foucault used the term biopolitics to describe the increasing investment of state and society in the administration of populations and in the biological constitution and welfare of its citizens. The concept of biopolitics resonates beyond Foucault's introduction to his proposed history of sexuality, however, and should be considered in mind with his study of the empiricist revolution in medical science described in the *Birth of the Clinic*, the lectures on "governmentality," and the role the sciences of life play in the overall schema of the empirico-transcendental subject who emerges in the *Order of Things*.

Absolute Rights, *Ligeance* and Opacity: Blackstone

What claim does the law have on persons? The rights of persons comes first in Blackstone's *Commentaries on the Laws of England*, which in each book addresses (I) the "Rights of Persons," (II) the "Rights of Things," (III) "Private Wrongs" and (IV) "Public Wrongs," respectively. After a general discussion of law, Book I begins with "OF THE ABSOLUTE RIGHTS OF INDIVIDUALS." The "Absolute Rights of Individuals" starts with a statement of the law's "principle objects," which are rights and wrongs. According to Blackstone, the basic purpose of law has been expressed consistently from Cicero through to Bracton: "commanding what is right, and prohibiting what is wrong."²²⁸ Rights are divided into rights of persons (*jura personarum*) and rights of things (*jura rerum*). Wrongs are divide into public wrongs and private wrongs.

The most important element for purposes here is the absolute rights of persons, because the sense in which they are "absolute" anchors not only the entire *raison d'être* of English jurisprudence, according to Blackstone, but also, by investigation of their limit, gives the initial picture of the sovereign power's prerogative over its subjects. These limits, however, are mitigated by the relationship between sovereignty and the "ligeance" of the subject, as well as the sovereign enforcement of "police and oeconomy," which will be discussed afterwards. Absolute rights, as distinguished from relative rights, belong to individuals as such, rather than being dependent on a particular relation to others in society. Blackstone installs absolute rights in the traditional idea of a

²²⁸ William Blackstone, *Commentaries on the Laws of England*, 4 vols., Chicago: University of Chicago Press (1979), I:1, p. 118.

state of nature independent of civil society.

"By the absolute *rights* of individuals we mean those which are so in their primary and strictest sense; such as would belong to their persons merely in a state of nature, and which every man is intitled [sic] to enjoy whether out of society or in it."²²⁹

Blackstone's invocation of a pre-social state of nature is, of course, not novel among Anglophone political and juridical thought. Why, then, does it matter?

Absolute rights, independent of society, are of interest here in part because of the way that Blackstone posits their corollary, absolute duties, as being radically unenforceable by worldly law. Duties, in Blackstone's sense, refer to the obligations due from every citizen. A duty is the double side of the right of the magistrate. Just as there are both relative rights and absolute rights, duties also divide into relative duties (owed to society) and absolute duties (which can only be owed to God). Blackstone summarizes relative rights as follows: "Allegiance is the right of the magistrate, and protection the right of the people."²³⁰ But absolute duties are owed to no one. With regard to absolute duties, Blackstone writes,

"it is not to be expected that any human municipal laws should at all explain or enforce them. For the end and intent of such laws being only to regulate the behaviour of mankind, as they are members of society, and stand in various relations to each other, they have consequently no beliefs or concern with any but social or relative duties."²³¹

The law only concerns itself with social or relative duties. Radically, the law can have no natural jurisdiction over the individual's personal identity or behavior, provided — and this will form the next important distinction — the identity or behavior is "kept to

229 Blackstone, *Commentaries*, I:1, p. 119.

230 Blackstone, *Commentaries*, I:1, p. 119.

231 Blackstone, *Commentaries*, I:1, p. 120.

himself." In so doing Blackstone declares the limits of the law's reach:

*"Let a man therefore be ever so abandoned in his principles, or vicious [sic] in his practice, provided he keeps his wickedness to himself, and does not offend against the rules of public decency, he is out of the reach of human laws. But if he makes his vices public, though they be such a seem principally to affect himself, (as drunkenness, or the like) they then become, by the bad example they set, of pernicious effects to society; and therefore it is then the business of human laws to correct them."*²³² [emphasis added]

The difference hinges on what Blackstone terms "publication." Publication means public as opposed to private representations and appearances. Now solidified by the time of Blackstone's writings, the distinction between public and private plays the defining role in delimiting the duties of persons:

*"The circumstance of publication is what alters the nature of the case. Public sobriety is a relative duty, and therefore enjoined by out laws: private sobriety is an absolute duty, which whether it be performed or not, human tribunals can never know; and therefore they can never enforce it by any civil action."*²³³ [emphasis in original]

Though private sobriety is a duty, it does not fall within the cognizance of state power. Relative duties may be enforced by the law, absolute duties may not. The restraint of jurisdiction does not apply to rights, however.

*"With respect to rights, the case is different. Human laws define and enforce as well those rights which belong to a man considered as an individual, as those which belong to him considered as related to others."*²³⁴

Though absolute duties remain beyond the reach of the law, absolute rights do not. The enforcement of absolute rights gives law its primary anchor and first jurisdiction.

The private marks a realm of epistemological opacity: *human tribunals can never know* the extent to which a person keeps fidelity to any standard of identity or behavior,

232 Ibid.

233 Ibid.

234 Ibid.

natural or supernatural. The sphere of private identity, not representable by the gaze of the law, defines what Blackstone terms "natural liberty":

"This natural liberty consists properly in a power of acting as one thinks fit, without any restraint or control, unless by the law of nature: being a right inherent in us by birth, and one of the gifts of God to man at his creation, when he endued [sic] him with the faculty of free-will."²³⁵

A gift of God at creation, natural liberty takes on special status in a particular geographical place, England. Blackstone finds law's defense of absolute rights uniquely implanted in those born on England's soil. Soil gives the material location to the law's jurisdiction.²³⁶ Blackstone writes:

"This spirit of liberty is so deeply implanted in our constitution, and rooted even in our very soil, that a slave or a negro, the moment he lands in England, falls under the protection of the laws, and with regard to all natural rights becomes *eo instanti* a freeman."²³⁷

As was discussed in Chapter 2, with respect to Arendt, and as will also be discussed below with respect to Agamben, the "customary rights of an Englishman" is grounded in a particular scheme of sovereignty, whereas the Rights of Man and "human rights" suffer from a paradox. The enforcement of absolute rights, though they are supposed to be independent of any society or authority, remains exclusively dependent on a sovereign power grounded in land and birthright.

For Blackstone rights are essentially synonymous with liberty.²³⁸ The absolute rights of the individual

235 Blackstone, *Commentaries*, I:1, p. 121.

236 The traditional foundational formula of the sovereignty expressed in land-order-birth returns, below, in Giorgio Agamben's account of sovereign power.

237 Blackstone, *Commentaries*, I:1, p. 123.

238 "The absolute rights of every Englishman (which, taken in a political and extensive sense, are usually called their liberties) as they are founded on nature and reason, so they are coeval with our form of government." Blackstone, *Commentaries*, I:1, p. 123.

"may be reduced to three principal or primary articles; the right of personal security, the right of personal liberty; and the right of private property."²³⁹

The right of personal liberty means freedom of movement "without imprisonment or restraint, unless by due course of law."²⁴⁰ The right of personal security

"consists in a person's legal and uninterrupted enjoyment of his life, his limbs, his body, his health, and his reputation."²⁴¹

In exchange for the blessings of these liberties, what does the English individual owe?

As discussed above, there are no "absolute duties" that can be enforced by worldly law.

Relative duties, on the other hand, must be enforced. Relative duties mean allegiance to the law.

The question of duty appears in a number of places, but one of the most illuminating comes in a section dealing with subjecthood and the meaning of "allegiance." In the chapter entitled "Of the People, whether Aliens, Denizens, or Natives," Blackstone pursues the matter of what he means by the English people. He writes, "I now proceed to consider such persons as fall under the denomination of the *people*."²⁴² Given the centrality of the idea of the "birthright of the people of England"²⁴³ in earlier sections, Blackstone here takes pains to differentiate alien and natural-born subjects.

Interestingly, Blackstone defines natural-born subjects immediately in terms of allegiance *per se*, before addressing the issue of birth to native parents in foreign lands and other special cases. Before any reference to geographical boundaries, Blackstone

239 Blackstone, *Commentaries*, I:1, p. 125.

240 Blackstone, *Commentaries*, I:1, p. 130.

241 Blackstone, *Commentaries*, I:1, p. 125.

242 Blackstone, *Commentaries*, I:10, p. 354 [emphasis in original].

243 See, e.g., I:1, 124 ff., Blackstone, *Commentaries*.

defines natural-born to mean born within the dominion or *ligeance* of the crown.

"Natural-born subjects are such as are born within the dominions of the crown of England, that is, within the *ligeance*, or as it is generally called, the allegiance of the king; and aliens, such as are born out of it. Allegiance is the tie, or *ligamen*, which binds the subject to the king, in return for that protection which the king affords the subject."²⁴⁴

With respect to the idea of the *ligamen*, Blackstone notes that both the word itself and its structure derive from "our Gothic ancestors," by which Blackstone means feudalism.

Though generally disapproving of the feudal system, Blackstone lays down a theory of "*ligeance*" by way of constant analogy to the bonds under feudal law. The fundamental relationship between lord and vassal consisted of a "mutual trust or confidence" in a reciprocal agreement: in exchange for enjoyment of the land under the lord's control and protection, the vassal agrees in turn to be

"faithful to the lord and defend him against all enemies. This obligation on the part of the vassal was called his *fidelitas* or fealty."²⁴⁵

Blackstone then turns to the distinction between oaths of fealty and oaths of allegiance. Oaths of fealty often contained an exception that took account of the fact that the lord was himself subservient to another, higher lord, in which case the oath of fealty acknowledges the party to whom allegiance is ultimately due. If there is no one higher than the immediate lord, then the oath is called an oath of allegiance. What is the significance of the feudal chain of command for English common law? For Blackstone, the key can be found in the priority of oaths of allegiance over oaths of fealty. Oaths of allegiance are properly directed towards a sovereign. Blackstone writes:

"With us in England, it becoming a settled principle of tenure, that *all* lands in the

244 Blackstone, *Commentaries*, I:10, p. 354.

245 Blackstone, *Commentaries*, I:10, pp. 354–5.

kingdom are holden of the king as their sovereign and lord paramount, no oath but that of fealty could ever be taken to inferior lords, and the oath of allegiance was necessarily confined to the person of the king alone."²⁴⁶

An oath of allegiance to the highest authority over the lords, i.e. the king, obtains in England's traditions, and by "an easy analogy," in Blackstone's words, extends to all the relations between prince and subject, including to that of the prince's heirs. Since the revolutions of the seventeenth century, the oath of allegiance excludes references to heirs and is largely directed toward establishing subjects' allegiance to the king instead of the pope or other pretenders to the throne. Oaths of allegiance may be given to all adult persons whether native, denizen or alien.

Ultimately, however, the principle of allegiance must exist *prior* to any explicit oath. Blackstone breaks off from the discussion of historical development to expound a fundamental principle:

"BUT, besides these express engagements, the law also holds that there is an implied, original, and virtual allegiance, owing from every subject to his sovereign, antecedently to any express promise; and although the subject never swore any faith or allegiance in form. For as the king, by the very descent of the crown, is fully invested with all the rights and bound to all the duties of sovereignty, before his coronation; so the subject is bound to his prince by an intrinsic allegiance, before the superinduction of those outward bonds of oath, homage, and fealty; which were only instituted to remind the subject of his previous duty, and for the better securing it's [sic] performance. The formal profession therefore, or oath of subjection, is nothing more than a declaration in words of what was before implied in law."²⁴⁷

The oath serves to "remind" the subject of duties that are already implied in law.

Blackstone makes this claim by virtue of analogy and direct legal reference. The oath of the subject is analogous to the oath of the king.

²⁴⁶ Blackstone, *Commentaries*, I:10, p. 355.

²⁴⁷ Blackstone, *Commentaries*, I:10, p. 357.

The king is bound to the duties of sovereignty before his coronation. He is "reminded" of these duties in the ceremony. All rights and duties have already been specified in law, before the words are spoken. The oath, ironically, turns out to be merely words.²⁴⁸ Blackstone quotes Edward Coke to show that allegiance always already exists in a state "as if" the oath had already been taken. Allegiance, Blackstone concludes, already exists from birth:

"Natural allegiance is such as is due from all men born within the king's dominions immediately upon their birth. For, immediately upon their birth, they are under the king's protection; at a time too, when (during their infancy) they are incapable of protecting themselves. Natural allegiance is therefore a debt of gratitude; which cannot be forfeited, cancelled, or altered, by any change of time, place, or circumstance, nor by any thing but the united concurrence of the legislature."²⁴⁹

Like under feudal rule, allegiance is located in debt. Allegiance cannot be alienated.

To summarize the tension at work in Blackstone reviewed thus far: on one hand, the law, for Blackstone, defers at its core to an absolute right of personal identity and existence, a zone shielded and epistemologically opaque, not knowable by worldly laws. On the other hand, one is bound within a preconsensual allegiance, neither alienable nor mutable nor voluntary. What are the consequences of this allegiance?

I argue the most important and pressing claims relevant to the identification of the subject appear in Blackstone's descriptions of offenses against public health and "the public police or oeconomy," found in the fourth and last book of *Commentaries*. The fourth book addresses the field of "public wrongs" and aims to cover all manner of criminal felonies and misdemeanors. Public wrongs are categorized, broadly, by crimes

248 See above quotation: "The formal profession therefore, or oath of subjection, is nothing more than a declaration in words of what was before implied in law."

249 Blackstone, *Commentaries*, I:10, p. 357.

against God and religion, crimes against the state and public order such as the prosecution of justice, peace and trade, and lastly crimes against persons, habitation, and property.

"Police and oeconomy," as will be discussed below in Foucault's treatment of the subject, maintains a well known presence in any discussion of liberal political economy. One thing that is clear from Blackstone's use of the terms in a legal context is that "police" is unambiguously a positive, regulative concept, one tied to metaphors of a well regulated family and the art of government. Blackstone defines this sense explicitly:

"By the public police and oeconomy I mean the due regulation and domestic order of the kingdom: whereby the individuals of the state, like members of a well-governed family, are bound to conform their general behaviour to the rules of propriety, good neighbourhood, and good manners; and to be decent, industrious, and inoffensive in their respective stations."²⁵⁰

At this point we might pause to note the contrast in tone with Blackstone's earlier characterization of the absolute rights of individuals ("Let a man therefore be ever so abandoned in his principles....").²⁵¹ Recall that the crucial factor distinguishing policeable behavior from behavior that is a matter of indifference to the law is "publication." Here, in the category of offenses that "must therefore be very miscellaneous... not comprehended under any of the four preceding species [of public crimes],"²⁵² lie many of the limit conditions of publication. The first few examples Blackstone lists fall under familiar, regulated domestic institutions. They include "clandestine marriages" and bigamy, which are both felonies.

250 Blackstone, *Commentaries*, IV:13, p. 162.

251 See from quotation above: "Let a man therefore be ever so abandoned in his principles, or vitious [sic] in his practice, provided he keeps his wickedness to himself, and does not offend against the rules of public decency, he is out of the reach of human laws."

252 Blackstone, *Commentaries*, IV:13, p. 162.

Wandering in particular, however, appears as a common sign for a cluster of offenses that bear a markedly different status in the law's eyes than Blackstone's earlier depictions of the absolute right of being a person. "Idle soldiers and mariners wandering about the realm" form the first particular "species" of felony. Next are "outlandish persons calling themselves *Egyptians*, or *gypsies*"; Blackstone writes that "these are a strange kind of commonwealth among themselves of wandering impostors and jugglers."²⁵³

But idle persons, or rather, persons falling into the categories of "idle and disorderly persons, rogues and vagabonds, and incorrigible rogues" bear the main brunt of offenses against the public police and oeconomy. Blackstone writes:

"Idleness in any person whatsoever is also a high offence against the public economy.... The civil law expelled all sturdy vagrants from the city: and, in our own law, all idle person or vagabonds, whom our antient [sic] statutes describe to be 'such as wake on the night, and sleep on the day, and haunt customable taverns, and ale-houses, and routs about; and no man wot [sic] from whence they come, ne [sic] whither they go.'"²⁵⁴

Such itinerants hold no rights against the law, unless they are sponsored by a master (in earlier times),²⁵⁵ or have a "testimonial or pass from a justice of the peace."²⁵⁶ The sense in which English subjects remain at the mercy of the law if they lack either sufficiency themselves or the sponsorship of master acts as a counterweight to the more celebratory depictions of liberty in every English person's birthright. In a later chapter entitled "OF THE MEANS OF PREVENTING OFFENCES," Blackstone elaborates upon the kind of sponsorship that may be formalized in public law through the instrument of sureties.

²⁵³ Blackstone, *Commentaries*, IV:13, p. 165.

²⁵⁴ Blackstone, *Commentaries*, IV:13, p. 170.

²⁵⁵ See A.L. Beier, *Masterless Men: the vagrancy problem in England 1560–1640*, New York: Methuen (1985).

²⁵⁶ Blackstone, *Commentaries*, IV:13, p. 165.

Specifying the power of justices to "bind over" the kind of wanderers and persons depicted in the earlier chapter, Blackstone writes:

"Thus also a justice may bind over all night-walkers; eaves-droppers; such as keep suspicious company, or are reported to be pilferers or robbers; such as sleep in the day, and wake on the night; common drunkards; whoremasters; the putative fathers of bastards; cheats; idle vagabonds; and other personas, whose misbehaviour may reasonably bring them within the general words of the statute, as persons not of good fame."²⁵⁷

To be a person idle, wandering and not of good fame — and not bound to a master or magistrate — stands potentially guilty of a significant public wrong, an offense against the public police, by virtue of their exposure and *ligeance* to sovereignty as such.

²⁵⁷ Blackstone, *Commentaries*, IV:18, p. 253.

The Right to Be Let Alone

If the tension in Blackstone is between absolute private liberty on one hand and being bound by allegiance and compliance with the public police on the other, the law concerning the protection of privacy, in contrast, has largely developed out of the articulation of what Blackstone would categorize as "private wrongs." If one has a "right to privacy" *per se*, it has largely, until the 1960s, been because of arguments made in terms of tort law.

Famously giving a shape to privacy as the "right to be let alone," Samuel Warren and Louis Brandeis's "The Right to Privacy" remains an important articulation of the right to privacy in American jurisprudence. Brandeis and Warren begin with a Blackstonian theme of individual liberty and right: "That the individual shall have full protection in person and in property is a principle as old as the common law."²⁵⁸ Blackstone categorized individual right as comprising personal security, personal liberty and private property. Though the "right to life" originated primarily in the protection of battery against the person, Brandeis and Warren contend, the realms of personal security, personal liberty and private property have grown and widened to encompass more and more liberties. The authors then catalog these expansions: the law of battery expanded to the protection against assault, and then later to the protection against excessive noises, odors, dust, smoke and vibration. In this way did the law of nuisance develop. Similarly, offenses against a person's reputation became subject to protection in the law of slander and libel. So, too, did the right to property expand, taking on the realms of

258 Warren and Brandeis, "The Right to Privacy," p. 193.

literature, art, trade secrets and trademarks.²⁵⁹

The essay then moves to the matter of most immediate concern: the "invasion of the sacred precincts of life" by the press and popular publications. The press, in particular, draws special ire. The "evil of the invasion of privacy by the newspapers, long keenly felt" has culminated in a condition in which the press is continually "overstepping in every direction the obvious bounds of propriety and decency."²⁶⁰ Decrying its destructiveness to all "robustness of thought and delicacy of feeling,"²⁶¹ Brandeis and Warren ask: what protection does the law afford?

What principle of law, in other words, can be brought into service to "protect the privacy of the individual"? The law of slander and libel will not suffice, lamentably, because each only deals with the "material" effect of the injury, providing no remedy for injured feelings or "honor," as did Roman law.²⁶²

It is mistaken to try to locate a right to privacy there. Instead, they argue, the resources are better found in "what is ordinarily termed the common law right to intellectual and artistic property." The latter body of common law supplies grounding and, moreover, represents but one instance of a more generalized common law right to privacy. Brandeis and Warren argue that the common law

"secures to each individual the right of determining, ordinarily, to what extent his thoughts, sentiments, and emotions shall be communicated to others,"²⁶³

259 Warren and Brandeis, "The Right to Privacy," pp. 193-4.

260 Warren and Brandeis, "The Right to Privacy," pp. 195-6.

261 "No enthusiasm can flourish, no generous impulse can survive, under its blighting influence."

Warren and Brandeis, "The Right to Privacy," p. 196.

262 Warren and Brandeis, "The Right to Privacy," p. 195.

263 "It is certain every man has a right to keep his own sentiments, if he pleases. He has certainly a right to judge whether he will make them public, or commit them only to the sight of his friends." *Millar v. Taylor*, 4 Burr. 2303 (1769), cited in Warren and Brandeis, "The Right to Privacy," p. 198.

citing a case from 1769. A subtle shift in the next sentence moves to the area of governmental power. The government may not compel speech except when one is being called as a witness. Where a person does choose to speak, he or she has a right to "fix the limits of publicity. This right does not depend on the "method" of expression, nor upon the "excellence of the means of expression." The protection afforded to an author's expression does not turn on its literary merit. Independently of the means or value of expression, the author retains a fundamental right to determine the conditions of publication, or whether there be publication at all.

"In every such case, the individual is entitled to decide whether that which is his shall be given to the public."²⁶⁴

An author forfeits his or her common law right once the material has been published. As Brandeis and Warren point out, the right of controlling publication is completely independent of statutory copyright laws, which are designed to "secure the author, composer, or artist the entire profits arising from publication." The common law right, on the other hand, concerns the prerogative of the author to control publication altogether. As Brandeis and Warren summarize:

"The statutory right is of no value unless there is a publication; the common law right is lost as soon as there is publication."²⁶⁵

Brandeis and Warren are interested in the common law right. What is the basis of this right?

In order to clear away brush and show a clear, independent foundation for a right to be let alone, Brandeis and Warren need to move the right to privacy away from its

264 Warren and Brandeis, "The Right to Privacy," p. 199.

265 Warren and Brandeis, "The Right to Privacy," p. 200.

moorings in property rights, contract law, trade secrets and other areas. The protection of literary and artistic compositions, they note, is stated in case law to be based upon the protection of property. But Brandeis and Warren are not interested in the right to take profits in literary or artistic work, nor in the relative price and value lost or gained by exposure; rather, they want to emphasize the "peace of mind" afforded by being able to prevent publication of one's personal expression altogether. But the right to peace of mind is not immediately synonymous with the right to property in the traditional sense. They give the example of a father writing in his diary that he did not dine with his wife on a certain day. The law affords protection from unauthorized people publishing such writings without the author's consent. What exactly is being protected?

"Surely, not the intellectual act of recording the fact that the husband did not dine with his wife, but the fact itself. It is not the intellectual product, but the domestic occurrence."²⁶⁶

The "domestic occurrence" must be the principle protected, they argue, completely independently of whether the expression constitutes a literary composition. Copyright law would protect the publication of a series of letters as literary compositions, but it would not prevent someone from publishing a catalog of those letters. That even a catalog of letters or personal works finds protection means that the source of the protection must not be the work itself. They summarize:

"It may now be considered settled that the protection afforded by the common law to the author of any writing is entirely independent of its pecuniary value, its intrinsic merits, or of any intention to publish the same, and, of course, also, wholly independent of the material, if any, upon which, or the mode in which, the thought or sentiment was expressed."²⁶⁷

²⁶⁶ Warren and Brandeis, "The Right to Privacy," p. 201.

²⁶⁷ Warren and Brandeis, "The Right to Privacy," p. 204.

Furthermore, they add, the right cannot depend on the "particular nature of the injuries resulting"; for example, the loss of future profits. The right must not be specific, but general.

The general right, they argue, is the right to be let alone. Expressed thoughts and sentiments are protected in the envelope of artistic and literary production. But these are merely specific instances of the more general right to be let alone, they argue. Brandeis and Warren join the new idea of the right to be let alone to all other common law personal rights against being beaten, assaulted, defamed or falsely imprisoned. Though some of these rights overlap with rights associated with possession and ownership, they are clearly distinct from the right to property *per se*.

"The principle which protects personal writings and all other personal productions, not against theft and physical appropriation, but against publication in any form, is in reality not the principle of private property, but that of an inviolate personality."²⁶⁸

If the value of the product, the intention and deliberateness of the author, and the amount of labor put into the work are immaterial to the flat right of protection enjoyed by the author, then this protection must be part of "the more general right to the immunity of the person — *the right to one's personality*."²⁶⁹

Arriving at their main goal, the establishment of a right to privacy based upon "the right to an inviolate personality," Brandeis and Warren proceed to tidy up questions concerning other principles "upon which the publication of private letters could be enjoined." The two they address are contract and trade secrets. One might think that private letters could be protected from unauthorized publication based upon breach of

²⁶⁸ Warren and Brandeis, "The Right to Privacy," p. 205.

²⁶⁹ Warren and Brandeis, "The Right to Privacy," p. 207 [emphasis added].

confidence and implied contract. While this is sometimes true, they argue, such a principle affords no protection from a stranger publishing your letters or diaries. Nor could the recipient of a letter easily be said to be entering into a contract simply by virtue of receiving the letter. Similarly, the law of trade secrets provides no protection against a stranger with no ill or commercial intent. If not property, contract or trade secret, the right to privacy must have its own independent foundation in "rights against the world."

"We must therefore conclude that the rights, so protected, whatever their exact nature, are not rights arising from contract or from special trust, but are rights as against the world; and, as above state, the principle which has been applied to protect these rights is in reality not the principle of private property, unless that word be used in an extended and unusual sense. The principle which protects personal writings and any other productions of the intellect or of the emotions, is the right to privacy, and the law has no new principle to formulate when it extends this protection to the personal appearance, sayings, acts, and to personal relation, domestic or otherwise."²⁷⁰

As a right against the world, the protection of one's "personal appearance" binds to the right of privacy at its inception in American legal jurisprudence.

In sum, Brandeis and Warren move the idea of a right to privacy from the idea of a property in one's letters and elsewhere into a common law tort right of "inviolate personality." This right is "as a right against the world." Brandeis and Warren locate private freedom in the protection against private wrongs. Blackstone locates private freedom in the absolute rights of the individual. Two hundred years later, *Griswold* finds the right to privacy in substantive due process, as a fundamental freedom. All find a right in the individual to control the limits of one's "publicity," one's exposure to world.

²⁷⁰ Warren and Brandeis, "The Right to Privacy," p. 213.

Sovereignty and Abandon

"The sacredness of life, which is invoked today as an absolutely fundamental right in opposition to sovereign power, in fact originally expresses precisely both life's subjection to a power over death and life's irreparable exposure in the relation of abandonment."

– Agamben, *Homo Sacer: Sovereign Power and Bare Life*

The right to control the exposure of oneself, however, has limitations. One limitation is the right of sovereign power to compel the appearance of "identifiable physical characteristics" as evidence, discussed at the beginning of the chapter. For Giorgio Agamben, these limits and exclusions are not accidental but rather go to the heart of sovereign power itself.

Homo Sacer is divided into three overall sections of four to five chapters each.²⁷¹

The first section focuses on the topic of sovereignty itself, and in particular the supplemental "logic" of sovereignty that, along the lines outlined by Carl Schmitt, traverses the boundaries of judicial order in a paradoxical ways. The second section turns its attention to the figure of *homo sacer* in Roman law. The relevance of this figure derives from its own special status within Roman jurisprudence. Both inside and outside of law, such a subject cannot be directly sacrificed, though its killing is assumed to be unpunishable. Agamben ties this liminal status — a relation of abandonment that begins as the *patria potestas* and later becomes what Pufendorf referred to as the power of the sovereign to "expose the life" of its subjects — to the originary foundation of sovereignty and the political as such. As we will see below, the relation of abandonment brings Agamben's argument into direct contact with Hobbes, Foucault and Arendt. The

271 *Homo Sacer: Sovereign Power and Bare Life*, Stanford: Stanford University Press (1998). See also Agamben, *Means Without End: Notes on Politics*, Minneapolis: University Press (2000).

third section, lastly, brings together a theory of subjection based upon a radical exposure to the ban and a theory of state power located in modern totalitarian and democratic states. Situating a theory of sovereignty in terms of "bare life" between Foucault and Arendt, Agamben turns to the camps, in their emergency exemplarity, as the paradigmatic materialization of sovereign power and biopolitics.

Agamben begins by bridging the Schmittian idea of the exception with the old Germanic concept of the "ban."²⁷² Agamben connects the ban to the exception by, in essence, arguing that the ban traverses the "outside" of territorial limits in the same way that the exception goes "outside" normal law. For Schmitt, according to Agamben, sovereignty is a "taking of the outside." Here the word "outside" takes on a more spatial quality than sense in which Schmitt is usually interpreted. How does Agamben arrive at this interpretation of Schmitt? Recall that Schmitt's *Political Theology* begins with the definition "sovereign is he who decides on the exception."²⁷³ By exception Schmitt means the status of a decision, made in the instance of a concrete case, that both can and cannot be circumscribed in advance by a legal or political rule. The sovereign presides over a juridical order that provides for "suspending itself" under certain conditions determined in the decision itself. The power to declare martial law, for example, can be specified in advance in constitution or statute, but the exact conditions that would justify it in a particular case cannot. Rather, the determination that such conditions exist remains the prerogative of the sovereign. Schmitt writes:

"The exception, which is not codified in the existing legal order, can at best be

272 "The relation of exception is a relation of ban." Agamben, *Homo Sacer*, p. 28.

273 Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*, Cambridge: MIT Press (1988), p. 5.

characterized as a case of extreme peril, a danger to the existence of the state, or the like. But it cannot be circumscribed factually and made to conform to a preformed law."²⁷⁴

Agamben ties the peculiar existential status of the decision to the physical materialization of sovereign power itself. For Schmitt, sovereignty is rooted in space, that is, the taking of land and territorial localization ("*Ortung*"), and a principle of juridical order ("*Ordnung*"). Sovereign control over the boundary conditions of both physical space and juridical rule has special consequences for political subjects. The power of the ban, though executed upon subjects within sovereignty authority, carries its effect — the exposure of the subject to danger — across the territorial boundary. Hence, much as in the way that the sovereign determination of emergency takes authority "outside" the juridical order, Agamben argues that the sovereign exception can be shown to be a "taking of the outside." The way in which the subject is exposed in the taking of the outside forms the basis of Agamben's argument about the relationship between sovereignty and bare life. Agamben links a Schmittian conception of sovereignty to a theory of the subject through the problem of the ban. To be banned does not mean simply to be placed outside of the law's jurisdiction. Rather, the ban exercises a relation of abandonment — not to be away from power, but precisely the opposite, to be more deeply subject to power via the very vulnerability to which being excluded from the protection of sovereign power exposes one.

In the chapter "The Ban and the Wolf," Agamben brings together the Roman figure of *homo sacer* with another set of figures in medieval Germanic, Scandinavian, and Anglo-Saxon narratives: the wolf and wolf-man, the *friedlos* ("man without

²⁷⁴ Schmitt, *Political Theology*, p. 6.

peace"), and the bandit, who is also referred to as a *wulfeshead* and is close to the figure of the werewolf. From the laws of Edward the Confessor, for example, one finds the sentence of banishment put in these terms:

*"Lupinum enim gerit caput a die utlagationis suae, quod ab anglis wulfeshead vocatur. [He bears a wolf's head from the day of his expulsion, and the English call this wulfeshead]."*²⁷⁵

Agamben's fundamental point is that these figures, the bandit and the wolf-man, represent a state of subjection that does not fall neatly within any category of political domination: rather, the relation is one of abandonment. Abandonment means radical exposure. Anyone may kill the bandit or the *Friedlos* without committing homicide.

To be in a relation of abandonment means, in a sense, to be "already dead."²⁷⁶ Just as the werewolf is a hybrid of animal and human, the banned figure remains liminal to the political identity constituted by the City: denied the *eu zen* ("good life") but also consigned to lethal danger by the same political order. The banned figure is not an "animal nature without any relation to law and the city"; it is not severed from political constitution in the way that purely non-human life is. The banned figure is in between dead and alive, in between human and animal, in between the forest and the city.

With this conceptual apparatus in hand, Agamben argues that Hobbes's architecture of sovereignty, and the state of nature on which it is thematized, should be understood according the exceptional status of banishment. Agamben bases this argument in two overall elements from Hobbes's thought: first, that Hobbes's conceived

²⁷⁵ Quoted in Agamben, *Homo Sacer*, p. 105.

²⁷⁶ "*Exbannitus ad mortem de sua civitate debet haberi pro mortuo*": "Whoever is banned from his city on pain of death must be considered as dead." From D. Cavalca, *Il bando nella prassi e nella dottrine medieval*, quoted in Agamben, *Homo Sacer*, p. 105.

the state of nature as one in which "man is a wolf to man," and second, that Hobbes finds the origin of sovereign power not in contract but in punishment.

How is sovereignty founded in punishment? The question of punishment poses a special question for Hobbes. In *Leviathan*, Hobbes begins the chapter entitled "Of Punishments, and Rewards" by noting that "there is a question to be answered, of much importance."²⁷⁷ The question concerns how sovereignty has the right to take away a person's natural — and arguably absolute — right to resist violence. Hobbes defines punishment as an "Evill inflicted by a publique Authority" on a wrongdoer "to the end that the will of men may thereby the better be disposed to obedience."²⁷⁸ But a reader of *Leviathan* might rightly point out that no covenant requires a person to give up his or her right to resist violence, even in the central covenant that constitutes the Common-Wealth. How could a person then give anyone, sovereign or otherwise, the right to punish him/herself without resistance?

One cannot, Hobbes acknowledges. Therefore, the sovereign right to punish must not be founded in contract but in the natural right of anyone, sovereign included, to defend themselves.

"It is manifest therefore that the Right which the Common-wealth (that is, he or they that represent it) hath to Punish, is not grounded on any concession, or gift of the Subjects. But I have also shewed formerly, that before the Institution of Common-wealth, every man had a right to every thing, and to do whatsoever he thought necessary to his own preservation; subduing, hurting or killing any man in order thereunto. And this is the foundation of that right of Punishing, which is exercised in every Common-wealth. For the Subjects did not give the Sovereign that right; but onely in laying down theirs, strengthened him to use his own, as he should think fit, for the preservation of them all: so that it was not given, but left

277 Hobbes, *Leviathan*, ed. by C.B. MacPherson, Middlesex: Penguin Books (1968), Part II, Chapter XXVIII.

278 Hobbes, *Leviathan*, Part II, Chapter XXVIII.

to him, and to him onely."²⁷⁹

Somewhat surprisingly then, the right of the sovereign to punish does not derive from the freely given consent of subjects in contract. The right is "not given, but left to him."

Agamben argues that sovereign power, in this way, is itself in a constant state of natural defense, without protection, in *homo hominis lupus* (a wolf in relation to men). Sovereignty itself is in a state of exception, simultaneously "outside" the commonwealth in which it both resides and which it constitutes. Agamben writes:

"So in the person of the sovereign, the werewolf, the wolf-man of man, dwells permanently in the city."²⁸⁰

The externality of the forest — as the place of abandonment — finds its location within the walls that exclude it, the sovereign seat of power.

The last part of Agamben's argument comes in the section entitled "The Camp as Biopolitical Paradigm of the Modern." Here the argument turns to connecting the theme of the sovereign ban to the realm of what Foucault termed biopolitics. Agamben wants to relocate biopolitics to idea the exceptional capacity of sovereign power.

Agamben connects the sovereign exception to biopolitics, but does so within a larger argument about the nature of modern politics: namely, that (1) what Hannah Arendt identified as the crisis in the ability of the Declaration of the Rights of Man to address the profoundly modern problem of refugees and stateless persons, and (2) the intrusion of scientific practices like eugenics, euthanasia and human experimentation onto the front stage of twentieth-century political experience, can both be explained by the relationship between sovereign power and biopolitics. The camps, in turn, emerge as

279 Hobbes, *Leviathan*, Part II, Chapter XXVIII.

280 Agamben, *Homo Sacer*, p. 107.

the preeminent site of this union.

Agamben situates his argument between Arendt and Foucault, viewing each as able to profit along roads not taken from insights of the other. Foucault took up the question of what he termed biopolitics relatively late in his career and life and, to a certain extent, never applied his thought to "what appeared to be the exemplary place of modern biopolitics: the politics of the great totalitarian states of the twentieth century."²⁸¹ In particular, Agamben argues, Foucault's thought does not adequately confront the camp as an exemplary biopolitical space. Agamben proposes unifying two elements of Foucault's critical concepts that are often thought to be divergent: the classical juridical model of sovereign power, on one hand, and biopolitics on the other. Where Foucault views biopolitics as coming less out of the traditional right of sovereignty, or at least a complex relationship between a "triangle" of sovereignty, discipline, and government of population, Agamben locates biopolitics in the sovereign decision that takes the exposure of bare life as its instrument.

Agamben organizes his argument by introducing five broad areas where the modern sovereign decision turns on the delimitation of life that, like the *homo sacer* of Roman law, can be killed without punishment: the rise of discourses concerning the question of euthanasia and the disposal of the "life that does not deserve to live"; eugenic and race health policy; governmental experimentation on *versuchspersonen* (i.e. test subjects, human guinea pigs); the politicization of questions concerning near-death states such as comas and organ-transplant decisions; and, finally, the camp as a new element in the constitution of the state. In contrast to Foucault, Agamben argues that the camp

²⁸¹ Agamben, *Homo Sacer*, p. 119.

cannot, as a space, be accounted for within the discourse of discipline and confinement. Following the discussion of these components, we will move to Agamben's commentary on Arendt as it concerns the relationship of biopolitics to liberal rights.

Agamben's argument begins by extracting two points from a legal-philosophical imprint issued in 1920 entitled "Authorization for the Annihilation of Life Unworthy of Being Lived,"²⁸² published by a German press known for its philosophical catalog and written by a legal scholar and a professor of medicine. The harsh title notwithstanding, the questions posed by the work fall within the mainstream of bioethical tracts published both then and now concerning euthanasia. Their work launches from the reflection that suicide cannot be considered a crime, in the sense of being something punishable, but also that it cannot be considered a matter of indifference to law. From there the authors make a translation — posed as a theoretical question — from the unpunishability of suicide to the unpunishability of killing third parties whose lives have lost value for themselves and for society as a whole. The killing of a life not worthy of being lived is clearly not a matter of indifference to the law. Might there be circumstances when it would be allowed, circumstances where it should go unpunished? People in such a state of disability dwell between life and death. They are alive but lack will either to live or to die, the authors write. They are "incurably lost."²⁸³

Incurably lost, such persons exist in a relationship of abandon to sovereignty. Their marginality, as a theater of decision, defines the contours of sovereign power. They traverse the boundary along which life ceases to have juridical value, and by this

282 Binding, Karl and Alfred Hoche, *Die Freigabe der Vernichtung lebensunwerten Lebens*. Leipzig: F. Meiner, 1920. Quoted and cited in Agamben, *Homo Sacer*, 136ff.

283 Agamben, *Homo Sacer*, p. 138.

very positionality remain within liminal jurisdiction of sovereign power. Agamben argues that the emergence of this type of concrete "case" embodies the connection between sovereignty and biopolitics as they come together in the decision.

"It is as if every valorization and every 'politicization' of life necessarily implies a new decision concerning the threshold beyond which life cease to be politically relevant, becomes only 'sacred life,' and can as such be eliminated without punishment."²⁸⁴

The decision on the "value (or nonvalue) of life as such" gives modern politics a fundamental biopolitical orientation. The issue here is not whether euthanasia is ethical:

"The concept of 'life unworthy of being lived' is clearly not an ethical one, which would involve the expectations and legitimate desires of the individual. It is, rather, a political concept in which what is at issue is the extreme metamorphosis of sacred life – which may be killed but not sacrificed – on which sovereign power is founded. If euthanasia lends itself to this exchange, it is because in euthanasia one man finds himself in the position of having to separate *zoe* and *bios* in another man, and to isolate in him something like a bare life that may be killed."²⁸⁵

Rather, what is important is the way in which questions over the value of life and different biological states need to be translated in juridico–political decisions. Such decisions, simultaneously, turn on and reinforce the hypostatization of the valued life as the chief political principle.

"When life becomes the supreme political value, not only is the problem of life's nonvalue thereby posed, as Schmitt suggests, but further, it is as if the ultimate ground of sovereign power were at stake in this decision. In modern biopolitics, sovereign is he who decides on the value or the nonvalue of life as such."²⁸⁶

The decision on the value of life — and its nonvalue — occupies the space of what Schmitt termed the sovereign exception. The distinction of friend and enemy becomes

284 Agamben, *Homo Sacer*, p. 139.

285 *Ibid.*, p. 142.

286 *Ibid.*, p. 142.

life valuable and nonvaluable.

From this point Agamben addresses the argument to three additional areas. First, the health and eugenic policies most infamously associated with the Nazi regime were not unpolitical accessories to an otherwise properly political agenda, but rather immediately political themselves. Second, every new politicization of the liminal states of life and death, such the near-death coma experiences, requires a decision concerning what kind of life belongs in abandon.²⁸⁷ Third, the translation of an individual's sovereign power over his or her body to a question of sovereign decision finds its deepest manifestation in the normal and horrific experiments on the *Versuchspersonen*, or human guinea pigs. The paradigmatic examples of human experimentation, conducted within a milieu in which state power, scientific authority and the objectives of public health operate under one rubric, were the trials conducted on penitentiary inmates in the United States and, in a more starkly homicidal way, in the famous experiments of Joseph Mengele and other Nazi physicians.²⁸⁸ Experiments conducted in camps and prisons transformed their subject-victims into a kind of internal *wulfeshead* — an internally banned subject who is, like the banished wolf-man, "already dead."

"Like the fence of the camp, the interval between death sentence and execution delimits an extratemporal and extraterritorial threshold in which the human body is separated from its normal political status and abandoned, in a state of exception, to the most extreme misfortunes. In such a space of exception, subjection to experimentation can, like an expiation rite, either return the human

287 "It is as if every valorization and every 'politicization' of life necessarily implies a new decision concerning the threshold beyond which life ceases to be politically relevant, becomes only 'sacred life,' and can as such be eliminated without punishment." Agamben, *Homo Sacer*, p. 139.

288 For human experimentation in the United States, see Susan E. Lederer, *Subjected to Science: Human Experimentation in America before the Second World War*, Baltimore: Johns Hopkins University Press (1995). For Nazi Germany, see George J. Annas and Michael Grodin, eds., *The Nazi Doctors and the Nuremberg Code: Human Rights in Human Experimentation*, New York: Oxford University Press (1992).

body to life (pardon and the remission of a penalty are, it is worth remembering, manifestations of the sovereign power over life and death) or definitively consign it to the death to which it already belongs."²⁸⁹

Victims of experiments inhabit a space of exception, mirroring the quasi-judicial structure that holds them: the camp. Concentration camps, like the political technology of fingerprints, originate in colonial political orders. In the English/Boer conflicts and in Spanish-controlled Cuba, camps emerge in the context of colonial war and declared states of emergency. Agamben argues, accordingly, that camps do not emerge out of "ordinary law."²⁹⁰ The Nazis legal justification for internment, according to Agamben and others, derived from the Prussian concept of *Schutzhaft*, or protective custody. *Schutzhaft* is supposed to derive from the proclamation of a state of siege, something that the Weimar Constitution granted to the president of the Reich for use in emergency situations. Agamben notes that the first German concentration camps were created by Social Democratic governments in the 1920s to intern Eastern European refugees and Communist militants. The Nazis, however, made the state of emergency and the suspension of liberties indefinite. In doing so, the Nazis made the exception the rule, and realized the state of siege as normal operation. Agamben stresses the extra-judicial character. The camps were purposely removed from normal judicial institutions and juridical control. Dachau, the first camp under Nazi rule, was created in 1933 to hold political prisoners; and

"the camp's absolute independence from every judicial control and every reference to the normal juridical order was constantly reaffirmed."²⁹¹

289 Agamben, *Homo Sacer*, p. 159.

290 Agamben, *Homo Sacer*, p. 166.

291 Agamben, *Homo Sacer*, p. 169.

Born in the state of emergency, the camps became a stable feature of Nazi rule long before the extermination campaigns begun in the early 1940s. Under the Weimar constitution, the president was only authorized to declare a state of emergency with a "finding of fact" that the stringent conditions of national peril have been met. Agamben argues that the normalization of the camps under the Nazis and the Soviets blurred the very distinction between fact and law.

One might raise an objection at this point. Given the relatively extrajudicial nature of the camps, why not simply reaffirm the importance of independent judicial institutions in general and the right of habeas corpus in particular? Agamben argues that these protections are indeed critical to modern liberal democratic freedoms, but that the right of habeas corpus itself still relies upon the generic power of sovereign institutions over the bare life of the subject, as specified in the formula "we command that you have before us to show, at Westminster, body X, by whatsoever name he may be called therein."²⁹² What distinguishes a liberal democratic state from a totalitarian state is that, in the latter, the exceptional nature of sovereignty is made *normal*, destroying its fundamental ambiguity.

In the camps, the exceptional quality of sovereignty itself has been removed. The camp is "willed exception." As a consequence, there are no more exceptions, because there is no longer a difference between the normal and the exceptional. If sovereignty, in Schmitt's formulation, is defined by its capacity to decide the exception, then what does sovereign power mean in the camp, the permanent exception?

The camp embodies sovereign power in the state of siege. In the name of

²⁹² Agamben, *Homo Sacer*, p. 124.

declaring a special dispensation in the name of emergency, sovereign power in the camp creates the very state of abnormality, as norm, which the camp was created to protect against. This is a crucial point for Agamben, because it differentiates his view from that of Foucault's. Agamben argues that the camps cannot be understood on the model of confinement, but rather only on the model of the state of siege:

"When our age tried to grant the unlocalizable a permanent and visible localization, the result was the concentration camp. The camp — and not the prison — is the space that corresponds to this ordinary structure of the *nomos*. This is shown, among other things, by the fact that while prison law only constitutes a particular sphere of penal law and is not outside the normal order, the juridical constellation that guides the camp is (as we shall see) martial law and the state of siege. This why it is not possible to inscribe the analysis of the camp in the trail opened by the works of Foucault, from *Madness and Civilization* to *Discipline and Punish*. As the absolute space of exception, the camp is topologically different from a simple space of confinement."²⁹³

The camp destroys the ambiguity upon which sovereignty defines itself — the exceptional, extraterritorial space of the ban — by making this space visible and permanent.

As "the materialization of the state of exception," the camp effects a new kind of space and a mode of appearance of the subject. Spatially, Agamben argues, the camp represents a new, fourth element in what he terms the *nomos* of the modern. Modern sovereignty is premised upon land, order and birth. The materialization of the exception adds a fourth term: camps.

In addition to the new kind of space added to sovereign power (that is, rendering the nether world of the ban, between the forest and the city, visible), the camps represent a new mode of appearance of the subject. Just as the penitentiary made visible the

²⁹³ Agamben, *Homo Sacer*, p. 20.

disciplinary subject, the camp, according to Agamben's argument, makes visible the biopolitical subject.

What is the nature of the biopolitical subject? In Agamben's account, this subject of the camps belongs with its stateless twin, the denationalized refugee described in Arendt's work in the *Origins of Totalitarianism*. The inmates of the camp are not disciplinary subjects; they do not inhabit a space of confinement. Without space and without rights — or at least, in a transitional mode of rights — the biopolitical subject cannot be brought under the rubric of the Declaration of the Rights of Man.

Agamben reads Arendt's *Origins of Totalitarianism* for the way it both identifies the fundamental problem of the displaced person in relation to the Rights of Man, but also, in Agamben's view, for the way it misses the opportunity to see the biopolitics inaugurated in the very same rights. Like Agamben, Arendt sees the increase in displaced persons camps to be more the rule than the exception, or rather an embodiment of the exception as rule, for twentieth century regimes.²⁹⁴ Displaced persons also bring into crisis the basic formula of modern political order: state–people–territory. With Agamben, the camps appear as a supplemental fourth term to this *nomos*.

But Agamben ascribes a different significance to the centrality of birth in the articulation of the Rights of Man than does Arendt. Birth, for Arendt, signifies the organic possibility of change and the new; it is the engine of a vision of human politics that always can imagine regeneration. Agamben, in contrast, sees the linking of birth to sovereignty as strengthening the constitution of sovereignty in bare life. The Nazi "blood

294 "The situation had deteriorated until the internment camp — prior to the second World War the exception rather than the rule for the stateless — became the routine solution for the problem of domicile of the 'displaced persons.'" Arendt, *The Origins of Totalitarianism*, p. 279

and soil" ideology of citizenship actually has banal origins: it simply signifies the ancient Roman formula of *ius soli* and *ius sanguinis*, and in the *ancien régime* merely denotes subjugation without actual inscription in the royal order.²⁹⁵ In the French Revolution, however, birth inscribes one in the sovereignty of the nation.

But the very link between natality, nationality and rights proves to be the greatest danger to the persons whose existence puts the framework of rights into crises: the stateless, displaced person. The rights enumerated in the Declaration of the Rights of Man are supposed to be independent of any specific political authority. Yet the lack of a specific authority results in the evacuation of any entity willing to enforce the general right.

"If refugees represent such a disquieting element in the order of the modern nation—state, this is above all because by breaking the continuity between man and citizen, *nativity* and *nationality*, they put the originary fiction of modern sovereignty in crisis. Bringing to light the difference between birth and nation, the refugee causes the secret presupposition of the political domain — bare life — to appear for an instant within that domain. In this sense, the refugee is truly 'the man of rights,' as Arendt suggests, the first and only real appearance of rights outside the fiction of the citizen that always covers them over. Yet this is precisely what makes the figure of the refugee so hard to define politically."²⁹⁶

The refugee exposes the negative relationship of abandon in the origin of the citizen.

The modern subject is born in a sovereign decision concerning what counts as life. For Agamben, this inaugurates a modern biopolitics because it necessitates a decision on what may be excluded from viable life deserving of sovereign protection.

The problem of the displaced person and refugee, then, must be separated from the concept of the rights of man and the human rights generalized from them. The rights

²⁹⁵ Agamben, *Homo Sacer*, p. 129.

²⁹⁶ Agamben, *Homo Sacer*, p. 131.

of man remain bound to the national citizen. Until the problem of the relationship of sovereignty's jurisdiction over the bare life of the subject is comprehended, a human rights-based politics will persist in an unthought complicity with the very state power it attempts to contest.

"The separation between humanitarianism and politics that we are experiencing today is the extreme phase of the separation of the rights of man from the rights of the citizen. In the final analysis, however, humanitarian organizations — which today are more and more supported by international commissions — can only grasp human life in the figure of bare or sacred life, and therefore, despite themselves, maintain a secret solidarity with the very powers they ought to fight."²⁹⁷

Agamben draw this conclusion in part from Arendt's own diagnosis of the problem of stateless persons, and in part from Schmitt and Foucault. The refugee camp remains the primary site, the city "taken outside," where the sovereign jurisdiction over the bare life of the subject displays its exclusion and inclusion.

For Agamben, in sum, any theory that gives an account of the relationship between sovereignty and the subject needs to combine and modify the schemata given by Arendt and Foucault. Arendt correctly understands the camps as sites of experiment, as laboratories "verifying that everything is possible," but does not explore the bond between sovereignty and biopolitics. Foucault articulates the theory of biopolitics, but never got the chance to tie biopolitics to sovereign power. Arendt, however, does identify a fundamental feature of late modern subjection: the rise of displaced persons and their ambiguous relation to, and derivation from, a system of rights based upon the nation-state.

²⁹⁷ Agamben, *Homo Sacer*, p. 133.

Does sovereignty require the exposure or "evidence" of the subject? For Agamben the answer is categorically yes, but tautologically so, for the capacity of sovereignty to expose the subject to abandon is fundamental to sovereignty's constitution. Foucault, however, posits a more complex relationship between biopolitics, sovereign power and the rise of the problematic of "population."

Sovereignty and Population

What if sovereign power does not directly solely account for exposure of subjects to a biopolitics of population? On one hand, the concept of "biopolitics" introduced by Foucault in *La volonté de savoir* implies a broad sovereign jurisdiction, a power over life:

"If genocide is indeed the dream of modern powers, this is not because of a recent return of the ancient right to kill; it is because power is situated and exercised at the level of life, the species, the race, and the large-scale phenomena of population."²⁹⁸

On the other hand, as Foucault develops in "Governmentality," the accumulation of knowledge at the level of individual identification of the body and in the statistical knowledge of population often exceeds any specific operation of sovereign power.

Foucault locates the emergence of population within the birth, hiatus and subsequent reappearance under completely different instrumentality, of an "art of government." Foucault dates the tracts dedicated to the art of government as beginning in the middle sixteenth century and extending to the end of the eighteenth century. Diverging from the discourses of "advice to the prince" associated most controversially with Machiavelli during this period, the discourses of art of government are preoccupied with personal conduct or the government of the self, the government of children, and the problem pedagogy. Machiavelli's prince had to solve the problem of how to retain control over a principality when the prince's relation to the principality and its subjects is by no means necessarily natural or organic. Principalities may be acquired by violence,

²⁹⁸ Foucault, *The History of Sexuality: Volume 1, an Introduction*, p. 137.

treaty or family lineage. Protection is at once the primary and also most tenuous link attaching the prince to his territory and subjects. The prince retains, for Machiavelli, a certain removed, "transcendent singularity" in relation to the principality. At the same time, however, the prince's problem is to be able to predict and control forces dangerous and subversive to this relationship. The difference between most Machiavelliisms and the discourse on the art of government is that, whereas the former is constantly delineating the difference between sovereign power and other forms of power, the art of government seeks to show a continuity between sovereign power and other domains such as the family. The continuity between the good government of the state and the proper management of individual behavior and the family is better known under its emergent title of "police," and the government of the family itself under the title of "economy." For a number of reasons that include peasant rebellions, the destruction of the Thirty Year War and the fiscal crises of the state, however, "reason of state" acted as an impediment to the realization of the art of government, according to Foucault's argument. In addition, juridical treatises of the seventeenth century were preoccupied with sovereignty, theory of right, and burgeoning contract theory. The art of government, in sum, was held in a kind of suspended animation, hemmed in on one end by the gargantuan figure of sovereign power and on the other end by the relative thinness of a model of economy based upon the family.²⁹⁹

The emergence of the problem of *population*, however, provided an outlet for a resurgent art of government. Whereas before the art of government could only be

299 Foucault, "Governmentality," in Burchell, et al., eds., *The Foucault Effect: Studies in Governmentality*, pp. 87–98.

articulated in terms of the family,

"it was thanks to the perception of the specific problems of the population, and thanks to the isolation of that area of reality that we call the economy, that the problem of government finally came to be thought, reflected and calculated outside of the juridical framework of sovereignty.... Whereas statistics had previously worked within the administrative frame and thus in terms of the functioning of sovereignty, it now gradually reveals that population has its own regularities, its own rate of deaths and diseases, its cycles of scarcity, etc.; statistics shows also that the domain of population involves a range of intrinsic, aggregate effects, phenomena that are irreducible to those of the family, such as epidemics, endemic levels of mortality, ascending spirals of labour and wealth."³⁰⁰

The phenomena organized under the sign of population are far larger than, and irreducible to, the level of the family. Nevertheless, the family retains special status because it is the main location where information about aggregate effects must be collected. The family shifts from being a model for the art of government to its direct *instrument*.³⁰¹

Population becomes the chief object of government. The origin of the British census, for example, largely came out of the "population controversy" of the eighteenth century, a dispute over whether the policies of various political regimes dating to the Glorious Revolution had increased or diminished the population.³⁰² By the early nineteenth century, however, population becomes the *raison d'être* and, often, actual instrument of a kind of quasi-sovereign government policy.

"It is the population itself on which government will act either directly through large-scale campaigns, or indirectly through techniques that will make possible, without the full awareness of the people, the stimulation of birth rates, the directing of the flow of population into certain regions or activities, etc. The population now represents more the end of government than the power of the sovereign; the population is the subject of needs, of aspirations, but it is also the

300 Foucault, "Governmentality," p. 99.

301 Ibid.

302 See Edward Higgs, *Making Sense of the Census: The Manuscript Returns for England and Wales, 1801-1901*, London: H.M.S.O. (1989).

object in the hands of the government, aware, *vis-à-vis* the government, of what it wants, but ignorant of what is being done to it."³⁰³

The question of sovereignty does not disappear by any means, however. Foucault argues that, if anything, the questions concerning sovereignty were posed even more persistently. The difference is that, instead of posing the question of abstract right, the task became finding how government finds its origin and purpose in the health, wealth and safety of the population. Foucault summarizes:

"Accordingly, we need to see things not in terms of the replacement of a society of sovereignty by a disciplinary society and the subsequent replacement of a disciplinary society by a society of government; in reality one has a triangle, sovereignty–discipline–government, which has as its primary target the population and as its essential mechanism the apparatuses of security."³⁰⁴

In a more complementary than direct way, sovereign power becomes intertwined with the emergence of population as data and as a field of intervention.

To review and conclude, this chapter has explored ways in which the person is exposed as a *datum*, and the tension that this exposure holds in relation to privacy and other substantive rights that offer to "hide" the person. Brandeis and Warren define this right as the "right to an inviolate personality." For Blackstone, a deeper, absolute natural liberty is in tension with the binds of *ligeance* and public police. But the right of sovereignty to compel the display of the human as evidence escapes this right. Agamben argues that the predicament of exposure derives from a prerogative and ambiguity within sovereignty itself. When this ambiguity is closed, when the exception, that is, becomes the norm, the subject is made visible in the most extreme sense: in the appearance of stateless persons and internment camps. Foucault, lastly, moves the exposure back to

303 Foucault, "Governmentality," p. 100.

304 Foucault, "Governmentality," p. 102.

Blackstone's public police, although with a more indirect relation to sovereignty. A "subject of needs" and "aware, *vis-à-vis* the government, of what it wants," the population as an object of intervention is nonetheless "ignorant of what is being done to it."

Ignorant to exposure, the person remains subject to the preconsensual *ligeance* of which Blackstone writes, a silent binding to a power that makes the ciphers of one's identifying surfaces speak.

Conclusion: Information, Liberty, Blankness

"I'm interested in what blankness looks like now as opposed to a hundred years ago where it once marked the absence of the sign by being a sign for absence."

– Jeremy Gilbert-Rolfe, "Blankness as a Signifier"

"Proof ... is what we do not need."

– Ulrich Baer, "To Give Memory a Place: Holocaust Photography and the Landscape Tradition"

How did we become information? The word "information," like "address" (Chapter 3), has its origin in verbs: shaping, forming and directing, as in the scholastic usage of *informare* or "informing" matter; hence "molding of the mind or character."³⁰⁵ The more familiar sense of information as a piece of knowledge comes from its close intertwining with the act of narration, in other words, from the act of being told of some knowledge, given an account or information of something. The verb became a noun by virtue of the *imprint* that the narration left on the recipient, as in to receive "an information" [1589]. We no longer attach the article "an" because it sounds strange to us to give the noun a verbal quality; it sounds strange to mix together the fact of information and the action of telling. The voice who informs or addresses you could be another person or sovereignty itself. The Crown may "lay" at court "criminal information" about you through a descriptive complaint, like being accused by an "informer." It was, and still is in this sense, always a "relation or report." Information was always a telling. Only in the twentieth century, apparently, does the separation of the piece of knowledge from its telling take place.

³⁰⁵ OED, pp. 272–4.

Familiar to us moderns, information can now mean "separated from, or without the implication of, reference to a person informed."³⁰⁶ The separation of information from the "person informed," ironically, emerges at the same time as the political technologies that *identify* you by your imprint. Detached from the specific investigator, information now represents the dream of a neutral, repeatable, procedure born of the laboratory that would provide knowledge about who you "really are" through the production bodily evidence: the contours and surfaces of your skin, the sequences of your DNA, the patterns on your retina. As bodily evidence we become information, in a sense, without being told.

In opposition to being identified by information, we assert the "the right to control information about ourselves" (the right to privacy, Chapter 4). The language of this right carries its compound composition: one part individual right against the state and one part a flat empiricism that, in a sense, we concede and take as a given, or *datum*. It is information already "about" ourselves, data detached from the conversation and the speaker.

In the preceding chapters, I have tried to capture something of this peculiarity, the way in which the appearance of the person appears as a willful agent, an engine of verbs, and yet, as the persons in Hobbes's *Leviathan* slowly turn toward the camera, also a cipher, a surface of increasing concern to the state. What follows is a brief review of some of the terrain covered plus, I hope, some useful statements about where I locate my views and ideas about the difficulties presented by the thinkers and work discussed. My initial curiosity in beginning this work came from observing the preoccupation with

306 Ibid., p. 300 in 1987 edition supplement.

identifying or authenticating people, a preoccupation familiar to our time in proposals for national identification cards, compulsory DNA databases, biometric identifiers. I locate this preoccupation within a series of ambiguities opened up by the commitment to the idea, in political modernity, of a general representation grounded in part in the rise of the private/public distinction and in part in the radical proposition that everyone can represent their "person" as a work of art. Just as modernity made people safe for public politics by inventing the private, the demand to make people identifiable, I think, makes people safe for the private, arresting the more radical potential inherent in the free space of identity afforded by the private (as seen, for example, in the demand to roll back the private discussed in Chapter 3). The technology of fingerprints, at least in its statist implementation, is scarcely a hundred years old. But the pressure to identify ordinary people dates to political possibilities of a slightly older vintage.

In Hobbes, the pressure for personal identification turns on his introduction of the person as the central self-representing artifact in his architecture of sovereignty, or "Dominion of Persons." The *persona* or face on the stage is both a creation of and subject to a new field of visibility and exposure, or "legibility" in Scott's terms. As a condition of self-making, the person also must be brought into the light enough to learn a natural knowledge of commands and promises. Furthermore, the public, as opposed to private, appearance of one's identity is frequently subject to strict regulation.

Appearance presents a series of dilemmas for Arendt. The political itself turns on the distinction between the public and private, and to be political and alive means not only the encouragement of distinguishing oneself in public but also the avoidance of disappearance into the opacity of the private.

The demand for proof of appearance increasingly characterizes the position of those, including some communitarians, who argue that the assertions of a right to privacy jeopardize public safety. The claim that privacy and public safety are opposed presents an ironic reversal of the modern project in Hobbes, for whom the private serves to help ensure that public safety is preserved. Public safety, according to the communitarian reversal, demands that people must be addressable and identifiable. For Althusser, however, the address of the subject by the state represents not added-on regulation but rather a constitutive feature of political subjection as such. Thus the question, as Butler develops, becomes one of thinking through the tension between the totalizing voice of address and the capacity for refusal. The ideal of complete address, in the form of guaranteed identification of the person, can be found in Etzioni's vision of suppressing the possibility of anonymity in the name of public safety. But resources for refusal come in many forms. The discussion of Kafka and Derrida explored the inherent failure within a consensus common to Etzioni and to some extent Althusser: the possibility of proof of the subject's appearance.

The final chapter explored the tension between the sovereign power to compel the display of one's "identifiable physical characteristics" and the right to hide from this gaze. The right to protect "one's personal appearance" was contrasted with several

accounts of political compulsion, ranging from formal legal justifications to, in Agamben's account, the production of a biopolitical subject as the "materialization of the state of exception." The most extreme compulsion of appearance, identification and binding (or *ligeance* in Blackstone's terms) lies within the closure of an inbuilt ambiguity in sovereign power, where the emergency is made normal.

In all, the chapters above visited different moments in modern political thought in which the person appears, alternately, as the vehicle of modern agency and the bearer of surfaces that demand identification and proof.

Positions

What light, if any, might this shed on current preoccupations with identifying people? Most debates about identification usually resolve into a basic dispute between the power of the state or commercial interests, on one side, and the rights of individuals to control personal information, on the other. One example was discussed in Chapter 3, which examined a communitarian argument that our society, in the name of public safety, needs to substantially curtail "what many Americans consider their right to be anonymous."

A good example of the kind of counterargument to the communitarian claim is one based in civil liberties. In the United States, a persistent source of civil liberties argumentation can be found in the positions of the American Civil Liberties Union. The ACLU maintains that demands for "identification papers," for example in the form of a national ID card, represent an invasion of privacy.³⁰⁷

³⁰⁷ See ACLU publications: "Privacy In America: Social Security Numbers" (<http://www.aclu.org/library/ibpriv4.html>) and "Take Back Your Data Pocket Card" (<http://www.aclu.org/action/privcard.html>).

"The sale, storage and transfer of vast collections of highly personal information seriously threaten privacy rights. To take back our data we need laws that are consistent with the following principles —

1. Your personal information should never be collected or disseminated without your knowledge and permission.
2. Organizations must let you know why they're collecting your information; and they can't use it for other reasons than the one you granted permission for (unless they get a second permission from you)
3. Organizations must ensure the privacy of the personal information they collect or maintain on you, retaining only what is necessary information and only for as long as it is needed.
4. You should have the right to examine, copy, and correct your own personal information.
5. There must be no national ID system — either in law or in practice
6. Unrelated data bases must be kept strictly separate so information can't be cross-referenced.
7. Personal "biometric" data — your fingerprints, DNA, retina or iris scans, etc. — must not be involuntarily captured or used (except for fingerprinting criminals).
8. The government must not prohibit or interfere with the development of technologies that protect privacy (such as encryption).

The ACLU defines the right to privacy in terms of (a) the right to let alone (discussed in Chapter 4), and (b) the right to control information about oneself.³⁰⁸ They use these principles to derive a kind of bill of rights for protecting the individual's prerogative to control personal information.

Besides defending the right to privacy, the ACLU also argues that identification schemes have an inbuilt tendency, ironically, to increase the possibility of fraud in direct proportion to their stringency. The more everyday interactions depend on producing one's personal identification data, in other words, the more the market for fake ids rises in value, the more copies proliferate, and the more easily one is harmed by the very data that supposedly identifies you securely and reliably.

Each component of the argument they present can and should, in my view, be supported strongly. Everyone should have the right to control information about themselves to the greatest extent possible, and the right to privacy should be affirmed and defended. Sovereign identification schemes are usually pernicious and often self-defeating.

At the same time, however, I hope that the preceding reflections have unearthed some dimension of complexity that, I think, ultimately shows that the question of personal identification cannot be reduced to a simple choice between public safety and personal freedom.

Some of this complexity can be summarized as follows. First, it is clear from

9. These principles should be enforceable by law. Furthermore, no service, benefit, or transaction should be conditioned on waiving your privacy rights.

Take back your data! Write your local elected officials and tell them you want stronger laws to protect your privacy."

³⁰⁸ The latter forms Alan Westin's classic definition of the right to privacy. See *Privacy and Freedom*.

both the problem of the appearance in Hobbes and Arendt, as well as the depiction of appearance before the law in Althusser, Kafka, Derrida, Blackstone, Agamben and others that identification is not an afterthought but rather central and constitutive to the question of subjection in modern political order. Being named, addressed, produced as evidence, "appearing" in the space of the public, representing oneself as persona, turning around when the police officer calls you, or conversely, finding yourself expelled to a refugee camp where "nobody knows who you are" by the very same addressing power: none of these phenomena of political life is cleanly in the realm of the voluntary, nor easily dispensed with by a recourse to privacy or the private. Second, the penumbra of privacy is replete with exceptions. Chapter 4 discussed both the explicit and exceptional right of sovereign power to produce your body as evidence, as well as a political theory holding that some of the most urgent political predicaments of modern times (refugees, camps) depend precisely on the traversal of sovereign bounds in exceptional circumstances. Even the ACLU is always careful to note exceptions to the right to control information about yourself:

"Personal 'biometric' data — your fingerprints, DNA, retina or iris scans, etc. — must not be involuntarily captured or used (*except for fingerprinting criminals*)."³⁰⁹

Except for criminals, except for peasants guilty of vagrancy, except for refugees who need to be identified for humanitarian purposes, except for respondents to government censuses whose privacy is normally protected,³¹⁰ except for every citizen with a social

309 ACLU, "Privacy In America: Social Security Numbers" and "Take Back Your Data Pocket Card" (emphasis added).

310 Except American citizens of Japanese decent during wartime, whose internment was facilitated by the explicit use of census information.

security number: except for all these people, the rest of us should be able to control the information about ourselves. Through the small space of the exception, one finds a window into a whole series of subject positions that are less exceptional and rather more normal to political modernity.

Criticism should affirm the right to privacy and, at the same time, embrace the creative double side of the modernity that can counteract the demand for your identification papers. This means undermining the ontological claim of representation depicted by Galton's fingerprints: that your fingerprints, retina, DNA is who you "are," rather than, for example, the *persona* of your creation.

What would a non-ontological system of identification look like? Identification based upon networks of trust, rather than on a scientific claim about your individual body, seems to offer an attractive alternative. Digital signatures, for example, resemble fingerprints in that they make an essentially mathematical claim about your uniqueness: according to some trusted third party, a numerical key is associated with you, and here is a digitally signed "statement," one mathematically unfeasible to refute, that says so. But digital signatures are not like fingerprints in an important way: they are not biometric. They do not produce your body as evidence of a correct identification.

There are at least two problems, however, with this dream. First, putting one's political faith in a technological solution to "information" about the individual restages Adorno and Horkheimer's riddle (p. iii, above): it represents a stereotype of enlightened man that, in its vision of a technical rationality coming to the rescue of political problems, can only repeat a cliché: not a new description of man but merely a repetition of its

formal properties, blind, as Heidegger put it, to a political essence that is nothing technological.

Second, any systematic solution almost inevitably condemns one to a further evasion of the political. One could imagine a system of trust-based identification that is non-technological. One that oddly seemed to stay in my mind during this dissertation is the medieval "frankpledge" system. The frankpledge system, which appears to be unique to England, provided that the appearance of any individual person was always to be guaranteed by ten other persons. Knowledge, in this scheme, can remain local rather than central, and thus also address the kind of "legibility" schemes that Scott rightly attributes to modern state power.

But a community of guarantors (or, if the relationships turn sour, a community of busybodies and enforcers) does not necessarily free one from the demands of appearance and identification. Moreover, a system of community binding like that of the frankpledge tradition could not easily cope with people who move from one parish to another. The frankpledge system does not lend itself to a modern world marked by mobility.

Advocacy, I think, must instead begin to think through the conditions of representation which, if the reflections above have any credence, are closely intertwined with the very predicament of identification introduced with the modern artifact of the person.

Blankness

What if the demand for identification lives in a modernist impulse that also carries its radical double, a refusal of compelled details that supposedly reveal the individuality and depth of the subject, an inversion of foreground and background, a flatness of surface that redoubles back upon the dimensionality making it possible, a critique posing as apparent erasure?

The demand for identification remains most vulnerable in the conditions of representation required for its promises of proof and certain evidence. What are these conditions? They stem in part, we propose, from the political space of personal appearance discussed in the preceding chapters. But we might also add to this condition: a surface on which identification can be both read and written, a foreground of signs on the body that indicate the unique index of the person in the background. Even before fingerprints and modern political order itself, the aristocratic portrait, in its honorific mode of representation, presented the unique person in three-dimensional space with an illusion of depth. But in Hobbes's landscape ordinary people are only dimly coming into view; it would take a more sophisticated state capacity to implement identification schemes on a large scale for cataloging ordinary people.

State-implemented schemes of anthropometrics and fingerprinting arose in Galton's century. Yet Galton's self-representation of his "Finger Prints" as a means of ensuring identification also came on the eve of a *collapse* of representation of persons occurring in contemporary culture: the rise of modernism in painting. What kind of

space for representation did this modernist moment, contemporary with fingerprints and anthropometrics, create?

Some of its elements are: flatness, critique, blankness.³¹¹ In closing, I propose that these elements can be seen as examples of critical responses to the problems discussed in the chapters above: appearance, binds of representation, and proof. A recent article defines the modernist moment as the emergence of "blankness":

"The difference between the late nineteenth and the late twentieth centuries is the difference between wallpaper and the blank wall..... The passage from the Victorians to modernism and beyond leads from a *horror vacui* to a displayed blankness."³¹²

Gilbert–Rolfe, following Meyer Schapiro, argues that the idea of a smooth white background being necessary to representational pictorialisms is fairly late development in art. Cave painters saw no interference or necessary conflict between pictorial elements and the surface on which they were painted, no perceived need for an anti–space of zero interference that the white, rectilinear, primed canvas would later require.

Modernism, though, turned this very condition of representation into a critical value as such. Blankness is tied to a critical practice of the representation of the person:

311 "Manet's became the first Modernist pictures by virtue of the frankness with which they declared the flat surfaces on which they were painted.... Because flatness was the only condition painting shared with no other art, Modernist painting oriented itself to flatness as it did to nothing else." (Clement Greenberg, "Modernist Painting," *Clement Greenberg: The Collected Essays and Criticism, Volume 4: Modernism with a Vengeance, 1957–1969*, pp. 86–87. Besides Greenberg's descriptions of the modernist moment, I will also refer to three recent critical accounts that treat of blankness and the question of proof in representation. Branden W. Joseph, "White on White," *Critical Inquiry* 27 (Winter 2000); Jeremy Gilbert–Rolfe, "Blankness as a Signifier," *Critical Inquiry* 24 (Autumn 1997); Ulrich Baer, "To Give Memory a Place: Holocaust Photography and the Landscape Tradition," *Representations* 69 (Winter 2000).

312 Gilbert–Rolfe, "Blankness as a Signifier," p. 162.

"Cézanne might be seen as halfway towards a contemporary idea of blankness as a condition in which something is already happening — halfway because the depth he saw in the blank canvas was still a depth, tied to human perception and to the idea of the human as requiring volume."³¹³

Blankness brought the background — the flat condition of representation on which the rich plenitude of the subject, the color and shadows and detail of the aristocratic portrait, fulfills the purpose of the picture — to the surface to which it was previously in service. Blankness is a refusal of depth, the depth that the foreground is supposed to produce as information.

Like Rauschenberg's *White Paintings*,³¹⁴ blankness is a critique of the conditions of representation. Not that modernist art demands a theoretical program; rather, as Clement Greenberg writes, it "converts theoretical possibilities into empirical ones."³¹⁵ Modernism stages a refusal of representation through emptiness and blankness. In this way, blankness can be seen as a critique of proof or evidence of the person. Chapters 3 and 4 discussed such demands for proof of appearance.

But why wouldn't we want proof, especially, for example, in the case of persons who have *disappeared*? Proof is often an urgent political necessity, something that, in the example of debates about holocaust revisionism, acts as a critical epistemological tool. Against those who would redouble the political disappearance of persons and the misrepresentation of politics, why wouldn't we want proof of the holocaust?

One response comes from a recent essay on holocaust photography that focuses

313 Gilbert-Rolfe, "Blankness as a Signifier," p. 163.

314 See Joseph, "White on White."

315 Greenberg, "Modernist Painting," p. 92. "I want to repeat that Modernist art does not offer theoretical demonstrations. It can be said, rather, that it happens to convert theoretical possibilities into empirical ones, in doing which it tests many theories about art for their relevance to the actual practice and actual experience of art. In this respect alone can Modernism be considered subversive."

on blankness as a critical tool. Discussing the work of photographers Dick Reinartz and Mikael Levin, whose works depict empty fields not in any way recognizable as sites of former concentration camps, the article argues that "these photos show that *proof is what we do not need.*"³¹⁶ Rather, Baer argues that the evidentiary status of the photograph, and by extension its realist representation of persons, is perhaps what most urgently needs to be put into question. Baer uses the blankness of the photographers' work to organize several points about their critical value. Among them: (1) they do not contain evidence; (2) they counteract the seeming political necessity to show the individuality of victims (shoes, personal effects) as the only way to represent the "reality" of the catastrophe; (3) they refuse both historicist and contextualist conventions of representation. Baer writes:

"Reinartz's and Levin's images confront us with a dimension of the Holocaust that cannot be fully accounted for by drawing on material or documentary evidence. Yet the deliberate exclusion of historical markers in these pictures is not an irresponsible, vain, or ahistoricist gesture. Rather, Reinartz and Levin rely on the aesthetic as a category to draw attention to the unbridgeable gap between, on one hand, philosophical efforts of understanding and historicist attempts at explanation and, on the other hand, the actual event of the extermination. Since they do not contain evidence to reveal their importance, these photographs ask to be regarded on strictly modernist terms: as if their significance and merit derived not from knowledge of their context but from intrinsic formal criteria alone. These photographs silently question the reliance on a historical context as an explanatory frame."

Baer argues that an "aesthetic approach to the landscape photograph" is especially well suited to critically encountering the problem of holocaust historiography, ironically, because of its refusal of historicist imperatives.³¹⁷ Moreover, the landscape tradition of

³¹⁶ Baer, "To Give Memory a Place," p. 57.

³¹⁷ "The modernist, arguably Eurocentric, and wholly 'aesthetic' approach to the landscape photograph as autonomous image is particularly well-suited to address the Holocaust as the historical event that calls that entire tradition into question.... Reinartz's photograph of Sobibór show that strict adherence to the currently favored directive to *always historicize* means to forget the irremediable fact that an

viewing "shelters us from the lasting trauma that for a long time silenced many of the survivors and witnesses who nonetheless had no choice but to feel addressed."³¹⁸

Here we can see the overlap of problems in representation discussed in the chapters above: these photographs provide an alternative critical space for those who have "no choice but to feel addressed." Blankness acts in the most critical of conditions, where the stakes lie precisely in the importance of establishing the presence and erasure of individual persons.³¹⁹

But blankness is not erasure. Blankness in modernism, rather, represents critique in Greenberg's sense.³²⁰ Modernism disturbs the kind of space objects can inhabit:

"Modernist painting in its latest phase has not abandoned the representation of recognizable objects in principle. What it has abandoned in principle is the representation of the kind of space that recognizable objects can inhabit."³²¹

This dissertation has tried to reflect on the space that we inhabit as persons recognizable to sovereign power. It returns to the ambiguity with which we began: the very same practices that, in architecture and state planning, demand that people be legible also provide resources for the critique of representation and its demands for legibility.

Lastly, even as the machinery that demands your identity papers runs at higher and higher efficiency, so too do its rates of failure.³²² So too, by this very failure, do

event may be historical precisely because it destroyed or made unavailable all references to its historical context." Baer, "To Give Memory a Place: Holocaust Photography and the Landscape Tradition," pp. 45–6.

318 Baer, "To Give Memory a Place: Holocaust Photography and the Landscape Tradition," p. 53.

319 For another meditation on the problem of representing the "disappearance" of persons in language, also in the context of holocaust revisionism, see Jean-François Lyotard, *The Differend: Phrases in Dispute*, Minnesota: University of Minnesota Press, 1988.

320 "I identify Modernism with the intensification, almost the exacerbation, of the self-critical tendency that began with the philosopher Kant." Greenberg, "Modernist Painting," p. 85.

321 Greenberg, "Modernist Painting," p. 87.

322 See Edward Tenner, *Why Things Bite Back: Technology and the Revenge of Unintended Consequences*, New York: Vintage Books, 1996. Simon Cole, "The Myth of Fingerprints: A Forensic Science Stands Trial," *Lingua Franca*, 10:8, Nov. 2000. Nina Berstein, "Experts Doubt New York

creative efforts to invert the terms of its representations, ironically, succeed.

Plan To Fingerprint for Medicaid," New York Times, Aug. 30. 2000.

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