

# ***The Discreet Charm of the “Anarchist Sublime”: Sovereign Power and Bare Life Revisited***

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HOW HAVE INTELLECTUALS, PARTICULARLY INTELLECTUALS IN THE UNITED STATES, thought about the state in the period inaugurated by the catastrophic events of 9/11 and effectively terminated with the global financial crisis of early 2008? They have not thought about it much in its traditional, eighteenth- and nineteenth-century guise, as arbiter and mediator between antagonistic private or group interests; neither have they tended to dwell on a state that appears in the guise of the social security or Keynesian state of the postwar period, one that undertakes a redistribution of the profits of uneven development with the aim of deflecting acute forms of class struggle and engendering social stability and consensus in the metropolis. The predominant face the state, and especially the state of the United States, showed to its inspectors in this period was rather that of a sinister Leviathan: a state predicated on unlimited and illimitable violence, on force that is not simply unchecked by law but that in fact predates all law, constituting it in the very act of suspending it. It has been an image composed empirically, shaped by the galvanizing synapse that 9/11 was to form between “us” and “them,” between the long-familiar spectacle of non-Western refugees or civil war victims and the sudden revelation of the precarious life of first-world bodies, mass-incinerated in the flaming inferno of the Twin Towers, mutilated by mines and ambushes in Afghani and Iraqi battlefields, frisked by police at metropolitan airports, surveilled, questioned, or detained by newly formed or newly enhanced authorities at home. It was, in short, the state Giorgio Agamben’s *Homo Sacer* and its sequels<sup>1</sup> have envisioned, more dramatically than any other body of critical work in the recent period.

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Originally published in 1995, *Homo Sacer* rose to the status of an emblematic theoretical anatomy of politics in the early twenty-first century, and its author was quickly catapulted to the rank of an academic superstar.<sup>2</sup> The publishing phenomenon that was Hardt and Negri's *Empire*<sup>3</sup> was supplanted by an earlier work that also hailed from the circles of the new Italian Left<sup>4</sup> but that was in effect the very antithesis of the latter's markedly optimistic faith in the capacity of the spontaneous, non-state-mediated organization of the multitude to effect a revolutionary transformation of social relations from within the "Empire." In the constellation formed by Agamben's work and its interactions with a number of already-established or emerging forays into the problematics of the state and its outcasts (the period in question marks the explosion of interest in Carl Schmitt's conception of sovereignty and the state of exception,<sup>5</sup> the revitalization of Michel Foucault's mature explorations of biopolitics and governmentality,<sup>6</sup> and the significant

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<sup>1</sup> Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life*, trans. Daniel Heller-Roazen (Stanford: Stanford University Press, 1998). See also the following works by Agamben: *Remnants of Auschwitz: The Witness and the Archive (Homo Sacer III)*, trans. Daniel Heller-Roazen (New York: Zone Books, 2002); *The Open: Man and Animal*, trans. Kevin Attell (Stanford: Stanford University Press, 2004); *State of Exception*, trans. Kevin Attell (Stanford: Stanford University Press, 2005).

<sup>2</sup> The Modern Language Association bibliography shows that more than a hundred essays, as well as at least three edited volumes, have been published on Agamben between 2003 and the present; without doubt, more were published in disciplines not included in the resources indexed by the MLA database. As the publicity for Agamben's *The Sacrament of Language* (Cambridge: Polity Press, 2011) puts it, Agamben is now "one of the mostly widely read and influential philosophers and cultural theorists of the last decade." See *Wiley-Blackwell Preview*, Oct.-Dec. 2010, 3.

<sup>3</sup> Michael Hardt and Antonio Negri, *Empire* (Cambridge, MA: Harvard University Press, 2000). In the words of the website of the French journal *Multitudes*: "The book by Michael Hardt and Antonio Negri can look back on sales figures like no other radical book could in decades" (<http://multitudes.samizdat.net/The-discussion-about-Empire>, accessed May 10, 2010).

<sup>4</sup> On Agamben's place within postwar Italian leftism, see Antonio Negri, "Giorgio Agamben: The Discreet Taste of the Dialectic," trans. Matteo Mandarini, in *Giorgio Agamben: Sovereignty and Life*, ed. Matthew Calarco and Stephen DeCaroli (Stanford: Stanford University Press, 2007), 124. Timothy Brennan examines the issue of Agamben's proximity to the "new Italians" (including Negri) in "Agamben and the New Italians," in *Wars of Position: The Cultural Politics of Left and Right* (New York: Columbia University Press, 2006), 188-95.

<sup>5</sup> See Susan Buck-Morss's remarks on the importance of Agamben for the rise of interest in Schmitt in her "Sovereign Right and the Global Left," *Cultural Critique* 69 (Spring 2008): 148, 166. The years of the Bush regime seem to have spawned a veritable Schmittian renaissance: *Political Theology* was published by the University of Chicago Press in 2006; Telos Books published *The Nomos of the Earth* in 2006 and *Theory of the Partisan* 2007; *The Concept of the Political* was republished in an "expanded edition" by the University of Chicago Press in the same year; the same press published *The Leviathan in the State Theory of Thomas Hobbes* in 2008; Duke University Press published *Constitutional Theory* in the same year; *Hamlet or Hecuba* was published by Telos Books in 2009; *Writings on War* was published by Polity Press in 2011 and *Dictatorship* is due by the same press in 2012. In short, seven of Schmitt's books have been translated into English in five years, one was republished in an expanded edition, and another one is forthcoming.

<sup>6</sup> The publication in English of Foucault's lectures from 1976-77 (*Society Must Be Defended* [New York: Picador, 2003]), 1977-78 (*Security, Territory, Population* [New York: Picador, 2008]), and 1978-79 (*The Birth of Biopolitics* [Basingstoke: Palgrave Macmillan, 2008]) has led to a number of critical forays into the questions of biopower,

expansion of literary and philosophical engagements with bare life and animality<sup>7</sup>), the popular-democratic future that a book like *Empire* envisioned was replaced by the obstinate archaism of a sovereign right over "life and death" and by the baleful spectacle of its victims, caught in what Negri called "the destinal insignificance of being."<sup>8</sup> It was not an unwarranted paradigm shift: the period saw civil rights and liberties curtailed or suspended, the norms of civil and international law (including due process and the right to legal representation) consigned to oblivion, torture normalized in the interests of "security," the specters of the concentration camp and its "Muslims" (this time, frequently, literally Muslims) return. As far as theory was concerned, mourning was the order of the day. When, in 2004, Judith Butler followed her 1990s classics, *Gender Trouble* (1990) and *Bodies That Matter* (1993), with *Precarious Life*, she was largely registering the impact of disconsolate winds of change: from within the experience of a world order seemingly organized around the globalizable right of states to kill, torture, and detain their subjects or the subjects of other states with impunity, bodies simply did not seem to matter in the way they once did, as sites of transgression and defiance: "each of us is constituted politically in part by virtue of the social vulnerability of our bodies. . . . Loss and vulnerability seem to follow from our being socially constituted bodies, attached to others, at the risk of losing those attachments, exposed to others, at risk of violence by virtue of that exposure."<sup>9</sup>

There have, of course, been critiques of the dominant logic of this theoretical constellation, particularly as regards the kinds of politics it enables or renders impossible. Jef Huysmans, for instance, argues that the tendency to think contemporary democratic politics from the perspective of its absolute limit (the concentration camp) can prove profoundly depoliticizing. If Schmitt's decisionist theory of exception, Huysmans points out, "sought to delete 'the political capacity of society' and to collapse the sociality of the people into a *Volk* brought into existence by fear of the enemy and the Führer," the hypostatization of an anomic, bare life takes on the character of a Heideggerian "jargon of authenticity." Bare life, particularly in Agamben's own deployment, becomes life extricated from all legal, economic, and political forms of mediation, life that "exists purely in relation to itself." Thought that becomes spellbound by this possibility risks succumbing to "an apocalyptic political vision" that radicalizes Schmitt's own separation of politics and

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biopolitics, and governmentality that involve comparative discussion of Foucault and Agamben. See, indicatively, Mika Ojankagas, "Impossible Dialogue on Bio-power: Agamben and Foucault," *Foucault Studies* 2 (May 2005): 5–28; Maria Margaroni, "Care and Abandonment: A Response to Mika Ojankagas' 'Impossible Dialogue on Bio-power: Agamben and Foucault,'" *Foucault Studies* 2 (May 2005): 29–36; Katia Genel, "The Question of Biopower: Foucault and Agamben," trans. Craig Carson, *Rethinking Marxism* 18, no. 1 (January 2006): 43–62; Malcolm Bull, "Vectors of the Biopolitical," *New Left Review* II/45 (May–June 2007): 7–19.

<sup>7</sup> See, e.g., Alasdair Cochrane, *An Introduction to Animals and Political Theory* (Basingstoke: Palgrave Macmillan, 2003); Matthew Calarco and Peter Atterton, eds., *Animal Philosophy: Essential Readings in Continental Thought* (New York: Continuum, 2004); Jacques Derrida, *The Animal That Therefore I Am* (New York: Fordham University Press, 2008); Stanley Cavell et al., eds., *Philosophy and Animal Life* (New York: Columbia University Press, 2009).

<sup>8</sup> Negri, "Giorgio Agamben: The Discreet Taste of the Dialectic," 124.

<sup>9</sup> Judith Butler, *Precarious Life: The Powers of Mourning and Violence* (London: Verso, 2004), 20. Indeed, performativity itself, Butler's earlier alternately celebrated, maligned, and misunderstood foundation for thinking the potentiality of gender and sexual insubordinations, had come to ground the unlimited violence of the state of exception: "My own view is that a contemporary version of sovereignty, animated by an aggressive nostalgia that seeks to do away with the separation of powers, is produced at the moment of this withdrawal [of law], and that we have to consider the act of suspending the law as a performative one which brings a contemporary configuration of sovereignty into being or, more precisely, reanimates a spectral sovereignty within the field of governmentality. . . . The future becomes a lawless future, not anarchical, but given over to the discretionary decisions of a set of designated sovereigns—a perfect paradox that shows how sovereigns emerge within governmentality—who are beholden to nothing and to no one except the performative power of their own decisions" (*ibid.*, 61, 65, emphasis mine).

society, thus rendering “the collapse of order into anomic, self-referential life” the “defining”—one might say sovereign—“principle of politics.”<sup>10</sup> Jacques Derrida’s *The Beast and the Sovereign*, on the other hand, points to the problems that haunt the ambition to turn such apocalypticism into a properly historical reflection on the nature and character of the evolution of sovereignty and of the state form: Agamben’s “insecure” semantic distinction between Aristotelian deployments of *bios* and *zoē* “cannot serve to determine a historical periodization,”<sup>11</sup> for though he appears to take “the Foucauldian idea of *a specifically modern biopolitics* seriously,” he is also “keen to recall that it is as ancient as can be.”<sup>12</sup> The ominous retroactivity with which the extremities of contemporary biopolitics register themselves within the realm of premodern law suggests that historical difference has been overtaken by what the camp itself effects: the ontological obliteration of time itself, the utter annihilation of eventfulness, contingency, and rupture from the horizon of history.

What this tends to leave us with is the hypostatization of “means without ends,” a politics reduced to that project-less, socially deracinated *anomie*<sup>13</sup> that Agamben has popularized in the triad of the Musselman, the human being as “what remains after the destruction of the human being”; the animal, figure of the “great ignorance” that lets life “be outside of being, saved precisely in . . . being unsavable”; and Bartleby, “the extreme figure of the Nothing from which all creation derives,” the guardian angel of “the luminous spiral of the possible” that can only emerge out of “the colorless abyss of the Nothing.”<sup>14</sup> In his *Wars of Position*, Timothy Brennan speaks of an “anarchist sublime”—a term that he does not quite gloss, but that I think is an apt description of the affective and political modality expressed by the idealization of an idiosyncratic type of antistatism, one that extols the redemptive virtues of “passivity rather than rebellion,”<sup>15</sup> mourning rather than insurgent self-assertion, “sur-vival” rather than life. What remains in the wake of the paralyzing image of our universal capture by the sovereign exception is, after all, no longer politics but ethics, “thinking that tars all thought and all politics with its own impotence, by making itself the custodian of the thought of a catastrophe from which no ethics, in any case, was able to protect us.”<sup>16</sup>

<sup>10</sup> See Jef Huysmans, “The Jargon of Exception: On Schmitt, Agamben and the Absence of Political Society,” *International Political Sociology* 2 (2008): 174–75.

<sup>11</sup> Jacques Derrida, *The Beast and the Sovereign*, vol. 1, trans. Geoffrey Bennington (Chicago: University of Chicago Press, 2009), 316.

<sup>12</sup> Ibid., 316–17, emphasis mine.

<sup>13</sup> See Huysmans, “Jargon of Exception,” 176–77.

<sup>14</sup> See Agamben, *Remnants of Auschwitz*, 134; Agamben, *The Open*, 91; and Giorgio Agamben, *Potentialities: Collected Essays in Philosophy*, ed. and trans. Daniel Heller-Roazen (Stanford: Stanford University Press, 1999), 253, 257.

<sup>15</sup> Negri, “Giorgio Agamben: The Discreet Taste of the Dialectic,” 123. Slavoj Žižek has similarly criticized Agamben by casting him as the contemporary embodiment of a Left that accepts “the futility of all struggle, since the framework is today all-encompassing, coinciding with its opposite.” See Žižek’s *In Defense of Lost Causes* (London: Verso, 2007), 337–38. Yet both Negri and Žižek can be said to have outdone Agamben in making of Melville’s Bartleby a privileged instance of a contemporary politics of “refusal” (in Hardt and Negri’s case, despite the otherwise-incompatible emphases of their own conception of “biopolitics”). See Hardt and Negri, *Empire*, 203–4; and Slavoj Žižek, *The Parallax View* (Cambridge, MA: MIT Press, 2006), 381–85.

<sup>16</sup> Jacques Rancière, *Disagreement: Politics and Philosophy*, trans. Julie Rose (Minneapolis: University of Minnesota Press, 1999), 135 (and see also 125–27, 133–34, 136–37). Like Rancière, Badiou strongly criticizes the reduction of philosophy to the role of answering for genocidal catastrophe. See Alain Badiou, *Manifesto for Philosophy*, trans. Norman Madarasz (Albany, NY: SUNY Press, 1999), 27–32; Alain Badiou, *The Century*, trans. Alberto Toscano (Cambridge: Polity Press, 2007), 165–78; and Alain Badiou, *Ethics: An Essay on the Understanding of Evil*, trans. Peter Hallward (London: Verso, 2001).

There is something quite telling about the fact that an understanding of the dialectic of bare life and sovereignty that preempted all recourse to “the key category of democratic politics, ‘the people,’”<sup>17</sup> attained critical legitimacy at a time when the antipolitics of boundless optimism was inverted into an antipolitics of quasi-nihilistic catastrophism: what both share—and what Agamben’s own critique ironically legitimates—is a preemptive ban on the very possibility of collective political action, for they suggest that if history has not rendered the prospects of emancipatory subjectivization redundant (as neoliberal *doxa* would have it in the triumphal 1990s), it has nonetheless rendered them always already impossible.<sup>18</sup> My objective in this essay will be to contest this theoretically hegemonic understanding of the problematics of sovereignty and bare life constructively, by sketching the lineaments of an alternative genealogy of their configuration in Western culture and history. I will do so by revisiting this configuration as it surfaces in three historical conjunctures—Roman antiquity, early modernity, and the industrial era. Each of these moments, in turn, will be tied to a different domain of methodological inquiry: historical philology, political anthropology, and political economy.

## SACRATIO AGAINST SOVEREIGNTY

“Rome,” Michel Serres remarked, “is the city of the object; it does not pose the question of the subject.”<sup>19</sup> Yet, I would argue, it is precisely the question of the subject—the sudden and scandalous irruption of something that disturbs the hierarchical order of the city—that is posed by the violent Roman custom of *sacratio capitii*,<sup>20</sup> the Roman decree that declared one *sacer*. Agamben, it is well known, relies heavily on this “obscure figure of archaic Roman law,” which, in his reading, furnishes the “key” that makes “the very codes of political power” unveil “their mysteries.”<sup>21</sup> Yet there is something striking about the haste with which he moves from the definition of *sacer* in Pompeius Festus’s *De verborum significatu* (On the significance of words)<sup>22</sup> to an examination of the import of the topology of the sacred man’s placement beyond the pale of both human and divine law. It is on the basis of this double exclusion from the civic community and

<sup>17</sup> Huysmans, “Jargon of Exception,” 178–79.

<sup>18</sup> My understanding of this process derives from both Rancière’s *Disagreement* and from Alain Badiou, particularly Badiou’s *Theory of the Subject*, trans. Bruno Bosteels (London: Continuum, 2009), 243–74. This does not mean that there are no important differences between their respective views, particularly as regards the role of the state; see Alain Badiou, *Metapolitics*, trans. Jason Barker (London: Verso, 2005), 107–23.

<sup>19</sup> Michel Serres, *Rome: The Book of Foundations*, trans. Felicia MacCarren (Stanford: Stanford University Press, 1991), 160. Serres reads Roman violence as incapable of producing a subject to the extent that it is caught in the Nietzschean hell of eternal recurrence and *resentiment*: “Friend, enemy. A value on the left, an identical value on the right, as if in symmetry. Wolf, lamb. Nothing can equal the lamb’s hatred but the wolf’s, except that the lamb’s hatred also compensates for its lack of fangs” (197).

<sup>20</sup> I am thankful to W. J. Veraart for informally sharing with me the findings of his unpublished paper “*Homo Sacer* Reconsidered: An Alternative Genealogy?,” presented at Canterbury, Kent, in September 2005. A version of Veraart’s essay appeared in Dutch in *Krisis: Tijdschrift voor empirische filosofie* 2 (2004): 53–69.

<sup>21</sup> Agamben, *Homo Sacer*, 8.

<sup>22</sup> “The sacred man is the one whom the people have judged on account of a crime. It is not permitted to sacrifice this man, yet he who kills him will not be condemned for homicide”; quoted in ibid., 71. Benveniste cites the same source in his entry on “the sacred,” noting both the “ambiguous character” of the term “*sacer*” and its difference from “*sanctus*,” which simply means “that which is defended and protected from human suffering.” See Émile Benveniste, *Le vocabulaire des institutions indo-européennes*, vol. 2, *Pouvoir, droit, religion* (Paris: Minuit, 1969), 187–92. Dumézil, finally, casts the meaning of *sacer* within the religious context, defining it as “that which is reserved and kept apart for the gods, whether by nature or by human agency.” See Georges Dumézil, *Archaic Roman Religion*, vol. 1, trans. Philip Krapp (Baltimore, MD: Johns Hopkins University Press, 1996), 130.

from the realm of the divine that the fundamental affinity between the “double exception” involved in Festus’s definition of *sacratio capitinis* and the “structure of sovereign exception” can be derived; and hence, that the contention that “the production of bare life is the originary activity of sovereignty” can be secured.<sup>23</sup> “The sovereign and *homo sacer*,” Agamben argues, are “joined in a figure of an action that, excepting itself from both human and divine law . . . nevertheless delimits what is, in a certain sense, the *first properly political space of the West*, distinct from both the religious and the profane sphere, from both the natural order and the regular juridical order.”<sup>24</sup>

One cannot help wondering how much such arguments reveal about the actual practice of *sacratio*, a law that is quickly invested with all the portentousness of transhistorical significance. It is puzzling that a study not short of philological erudition eschews analytical discussion of the context in which this practice is embedded in the retrospective Roman commentaries of Livy, Dionysius of Halicarnassus, or Plutarch, not to mention the substantial body of late nineteenth- and twentieth-century philological, historical, and legal commentaries on these inevitably contestable reconstructions of the unwritten history of early Rome. Though scholars have long disagreed over whether *sacratio* persisted, vanished, or was transformed in the legal practice of the Roman Republic,<sup>25</sup> there seems to be consensus over the fact that in its earliest deployment under the kings (753–509 BCE) *sacratio*, “the earliest penalty of Roman criminal law,”<sup>26</sup> was only imperfectly separated from religious practices of sacrifice and was in fact largely subsumed within the auspices of private, family law.<sup>27</sup> Already dwindling in relative significance by the beginning of the Republic at the end of the sixth century BCE (509), *sacratio*, it appears, was originally tied to an area of particular legal difficulty for the early Romans. This area concerned the problem of caring for subjects who were liminally situated in relation to the patrician ruling class—the *clientes* and the plebeians. Book 2 of Dionysius of Halicarnassus’s *Roman Antiquities* identifies the *clientes* with the plebs, suggesting that King Romulus, seeking to redress the fact that the plebeians had no voice in public affairs, “placed” them “as a trust in the hands of the patricians, by allowing every plebeian to choose for his patron any patrician he himself wished.”<sup>28</sup>

<sup>23</sup> Agamben, *Homo Sacer*, 82, 83.

<sup>24</sup> Ibid., 84, emphasis mine.

<sup>25</sup> Aston suggests that “*sacratio* itself was extinct by the time of Verrius Flaccus” (55 BCE–20 CE), having been effectively replaced by the *aquae et ignis interdictio*, the prohibition against offering water or fire to a condemned outlaw. See W. D. Aston, “Problems of Roman Criminal Law,” *Journal of the Society of Comparative Legislation* 13, no. 2 (1913): 215. Bennett’s later study disagrees, arguing that “*sacratio capitinis* . . . was still extant in Rome in the last century of the republic” (the first century BCE). See Harold Bennett, “Sacer Esto,” *Transactions and Proceedings of the American Philological Association* 61 (1930): 16.

<sup>26</sup> Bennett, “Sacer Esto,” 5.

<sup>27</sup> See Nikolaos Dimaras, *Historia tou dēmosiou Rōmaikou dikaiou kai tōn pēgōn* [History of civil Roman law and its sources], 3rd ed. (Athens: Palligenesia, 1896), 75–76; Aston, “Problems of Roman Criminal Law,” 214–15; Bennett, “Sacer Esto,” 9; Alan Watson, “Roman Private Law and the *Leges Regiae*,” *Journal of Roman Studies* 62 (1972): 101–3; Judy E. Gaughan, “Killing and the King: Numa’s Murder Law and the Nature of Monarchic Authority,” *Continuity and Change* 18, no. 3 (2003): 336.

<sup>28</sup> Dionysius of Halicarnassus, *Roman Antiquities*, Books I–II, trans. Earnest Cary (Cambridge, MA: Harvard University Press, 2001), 2.8.2 (335–37) and 2.9.2 (339). De Coulanges differentiates the two groups, arguing that the plebeians were originally “below the clients themselves” in the Roman social hierarchy and adding that the plebeians who seceded to the Sacer Mons were “completely distinct from the clients.” See Numa Denis Fustel de Coulanges, *The Ancient City: A Study on the Religion, Laws, and Institutions of Greece and Rome*, trans. Willard Small (Baltimore, MD: Johns Hopkins University Press, 1980), 221–22. Theodore Mommsen, on the contrary, notes that “out of the clients arose the Plebs. . . . In law there is no difference between the client and the plebeian, the ‘dependent’ and the

Other views suggest that the *clientes* were a group distinct from the plebeians, bereft of any freedoms and reduced to the status of passively represented elements of the *populus romanus* of patricians. In this interpretation, they were originally immigrants who went to Rome in search of peace and security or employment, or inhabitants of neighboring towns who were conquered without being turned into slaves.<sup>29</sup> It was their being perceived as ethnic aliens that deprived them not merely of access to political office, as was the case with the plebeians, but also of citizenship, civil rights, and recourse to the law.<sup>30</sup>

Whether the distinction between clients and plebeians is to be maintained or not, the case remains that for early Roman law, the former constituted social subjects at once included in and excluded from the *populus romanus*: excluded politically, they were included through private—and, hence, sacred—law. The *hospitium privatum*, which made a citizen responsible for the guardianship of a client (rendering the citizen a *patronus*) was sanctified by religious and customary authority. It also produced mutual rights and obligations between the parties of patron and client.<sup>31</sup> “The patron,” Fustel de Coulanges would note, “was obliged to protect his client by all the means and with all the power of which he was master; by his prayers as a priest, by his lance as a warrior, by his law as a judge.”<sup>32</sup> The breach of *fides*, of the duty to be faithful in one’s representation of the client in legal and juridical affairs (even at the cost of acting against one’s own blood relatives),<sup>33</sup> and of the sacred obligation never to undertake action against the client or bear witness against him, was considered treason or *perduellio* and was among the earliest and most principal wrongs punished by the terrible pronouncement of *sacratio capitii*.<sup>34</sup> Indeed, after Dionysius’s reference to Romulus’s law, which punished the violation of patron-client *fides* by decreeing that the culprit should be put “to death by any man who so wished as a victim devoted to the Jupiter of the infernal regions,”<sup>35</sup> the best-known early reference to *sacratio* is that immortalized by the Twelve Tables. Written in the early years of the Republic (451–450 BCE), largely as an attempt to respond to plebeian pressure for increased civil rights and protection from patrician abuse, the Tables stipulated that “*patronus si clienti fraudem fecerit, sacer esto*” (the patron, if he defrauds his client, is to be decreed *sacer*).<sup>36</sup>

Clearly, the relationship between sovereignty, the state of exception, and bare life in this instance is dramatically different from what *Homo Sacer* has accustomed us to expect: the threat of reduction to bare life hangs over the head *not* of the individual who is caught in “inclusive exclusion” in relation to the community—for that would in fact be the client—but over that of his le-

<sup>29</sup> ‘man of the multitude.’” See his *The History of Rome*, book 1, *The Period Anterior to the Abolition of Monarchy*, trans. William Purdie Dickson (New York: Charles Scribner’s Sons, 1905), 106, 110.

<sup>30</sup> See Dimaras, *Historia*, 77, which cites a number of sources supporting this second interpretation.

<sup>31</sup> See de Coulanges, *Ancient City*, 188–89. The author later describes the original plebs in terms of similar legal privations, including the lack of the rights to marriage, property, paternal authority, and citizenship, political rights, and even the right to a hearth, a domestic altar (*Ancient City*, 224–25).

<sup>32</sup> See Plutarch, *Plutarch’s Lives*, trans. John Langhorne and William Langhorne (Baltimore, MD: William and Joseph Neal, 1835), 18; Dimaras, *Historia*, 75.

<sup>33</sup> De Coulanges, *Ancient City*, 108. On the responsibilities of clients toward patrons (contributing to the dowry of the patron’s daughters, paying fines for lawsuits relating to the patron, helping the patron pay ransom for family members being held hostage by enemies), see Watson, “Roman Private Law and the *Leges Regiae*,” 100.

<sup>34</sup> Watson, “Roman Private Law and the *Leges Regiae*,” 102.

<sup>35</sup> See Aston, “Problems of Roman Criminal Law,” 214; Bennett, “*Sacer Esto*,” 6; and Dimaras, *Historia*, 76.

<sup>36</sup> Dionysius of Halicarnassus, *Roman Antiquities*, 2.10.3 (343).

<sup>37</sup> See Dimaras, *Historia*, 76; Bennett, “*Sacer Esto*,” 5; Watson, “Roman Private Law and the *Leges Regiae*,” 101–3.

gal guardian and representative, the patron. The fall into a condition of bare life, in other words, is at once the sign of the absolute abandonment of one theretofore fully *included* in the political community and of the hyperbolic care the community exhibits toward one it has otherwise *excluded*. It is as if the state of exception through which the client is both excluded *from* and captured *in* the juridico-political order of the city posits a demand for a corresponding and mirroring state of exception, through which the Roman state seeks to redress a fundamental asymmetry of power that it nonetheless maintains. What this early application of *sacratio* illustrates is thus emphatically *not* the unlimited exercise of sovereign violence; it is rather a principle of violent containment targeted specifically against the abuse of the quasi-sovereign power of the patron<sup>37</sup>—against, more precisely, the patron’s violation of the customary constraints of a moral economy based on codependence and loyalty.

As I have already suggested, some historians have cast doubt on the reliability of Dionysius’s conflation of *clientes* and plebs, suggesting instead that the former constituted a third group, besides those of patricians and plebeians. What is more certain is that the ground of protection from patrician abuse was in both cases the proclamation of the *sacrosanctitas* of the legally and politically endangered party.<sup>38</sup> Such sacrosanctity dictated that he who would seek to abuse these groups by exploiting their precarious position was to be decreed *sacer*. Though some have suggested that the shift from monarchy to Republic entailed not merely a loosening of the bonds of patronage but also an increase in the father’s sovereign power over life and death (the *patria potestas*),<sup>39</sup> the threat of *sacratio* did not lose all connection to its earlier role as a means of protecting the socially or economically weaker from abuse by established power and authority: the plebs effectively replaced the clients at center stage in the years of the Republic, partly due to the gradual decline of the patron-client institution<sup>40</sup> and partly because the plebs’ status replicated the clients’ exclusion from personal and civic rights, perhaps in an even more radical form. Responding to the demands posed by that eminent victory of ancient class struggle, the second plebeian secession of 450 BCE,<sup>41</sup> the *Leges Valeriae et Horatiae* of 449 BCE accordingly declared that any man who violated the *sacrosanctitas* of a plebeian tribune (*tribuni plebis*) was to be decreed *sacer*, forfeiting his head to Jupiter, while his possessions were to be sold at the temple of

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<sup>37</sup> “The patron could take possession of the soil the client cultivated, and the money which he possessed, as the lord could do in the case of the serf. . . . The patron was not only a master; he was a judge; he could condemn a client to death. . . . The client bent under this authority, at the same time material and moral, which held both body and soul.” De Coulanges, *Ancient City*, 249.

<sup>38</sup> Discussing the *Leges Valeriae et Horatiae*, for instance, Livy notes that they “revived the sacrosanctity” of the plebs (*plebem . . . sacrosancti viderentur*). He remarks, shortly after, that though the aediles were not regarded as sacrosanct, “the tribunes are sacrosanct in consequence of the ancient oath taken by the plebs, when they first created [the] magistracy.” See Livy, *History of Rome*, Books 3–4, trans. B. O. Foster (Cambridge, MA: Harvard University Press, 2004), 3.55.6, 10.

<sup>39</sup> See Watson, “Roman Private Law and the *Leges Regiae*; Gaughan, “Killing and the King,” 338.

<sup>40</sup> On the quite enigmatic and unrecorded character of the decline of the patron-client institution, see de Coulanges, *Ancient City*, 247–48.

<sup>41</sup> On the class character of the conflict between patricians and plebs that led to the plebeian secession, see Theodore Mommsen, *The History of Rome*, book 2, *From the Abolition of the Monarchy in Rome to the Union of Italy*, trans. William Purdie Dickson (New York: Charles Scribner’s Sons, 1905), 26–42; and de Coulanges, *Ancient City*, 261–70, 275–308.

Ceres, Liber, and Libera:<sup>42</sup> “eius caput Jovi sacrum esset, familia aedem Cereris Liberi Liberaeque venum iret.”<sup>43</sup> Livy further notes that the plebs demanded as a condition for their return to the city that those who “should declare the election of any magistrate without appeal, and that he who might so declare,” should “be put to death without offence to law or religion and that such a homicide should not be held a capital crime.”<sup>44</sup> Agamben himself briefly refers to the similar stipulations of the earlier *Lex sacrata*—a reference that occasions his momentary admission that *sacratio* was capable of founding “a political power that in some way counterbalanced the sovereign power.”<sup>45</sup> Yet instead of elaborating on the reasons for making such an awkwardly counterfactual concession, he hurriedly moves the clock forward, to “the end of the old republican constitution and the birth of the new absolute power” of Augustus, who assumed the *potestas tribunicia* and declared himself *sacrosanctus in perpetuum*.<sup>46</sup>

But this was already the dawn of the empire, when we can be almost certain that *sacratio* had vanished as a practice. In the era of the Republic, Augustus’s usurpation of tribunical authority would have most likely constituted a capital offense, rendering him not sacrosanct but *sacer*. For by the time of the second plebeian secession, *sacratio* had become the fundamental means of safeguarding the inviolability of the civil rights embodied in the plebeian tribune. Note that Pompeius Festus, whose authority *Homo Sacer* evokes, plainly says that the proclamation of *sacratio* belongs to the powers of the “plebiscite,” the *plebei scito* forged out of the class struggles of the fifth century.<sup>47</sup> Having shed its regal prehistory as a patriarchal institution intended to regulate the virtually unlimited power of citizens over aliens, *sacratio* was transformed into a republican weapon, an active means that republican subjectivity deployed against the predations of elite authority. It is such from as early as 509 BCE, the first year of the Republic, when Valerius, as Livy tells us, proposed that any man who would plot for the return of the monarchy was to be decreed accursed (“sacrandoque cum bonis capite eius qui regni occupandi consilia inesset”),<sup>48</sup> to as late as the mid-first century BCE, when Antonius, according to Appian’s *Civil Wars*, was to help legitimate the assassination of Julius Caesar by suggesting that if the latter had indeed usurped sovereign power, he had thereby placed himself beyond the pale of the law: “if

<sup>42</sup> In her study of Ceres, Spaeth characterizes Ceres, Liber, and Libera as “the plebeian triad,” arguing for their strong connection to plebeian culture, particularly in the period of the Middle Republic. See Barrette Stanley Spaeth, *The Roman Goddess Ceres* (Austin: University of Texas Press, 1996), 15, 81–102.

<sup>43</sup> Livy, *History of Rome*, 3.55.7. See also Bennett, “*Sacer Esto*,” 6; William Smith, *A Dictionary of Greek and Roman Antiquities* (London: John Murray, 1875), 701; Dumézil, *Archaic Roman Religion*, 1:195.

<sup>44</sup> Livy, *History of Rome*, 3.54.5–6. In his commentary on Livy’s discussion of the plebeian secession, Machiavelli praises the “multitude’s” taking up arms against tyrannical abusers of sovereignty and extols the role of class antagonism between plebs and patricians as “the primary cause of Rome’s retaining her freedom.” See Niccolò Machiavelli, *The Discourses*, trans. Leslie J. Walker and Brian Richardson (Harmondsworth: Penguin, 2003), 107, 111, 113, 115.

<sup>45</sup> Agamben, *Homo Sacer*, 84.

<sup>46</sup> Ibid.

<sup>47</sup> See ibid., 71; Bennett, “*Sacer Esto*,” 10.

<sup>48</sup> Livy, *History of Rome*, Books 1–2, trans. B. O. Foster (Cambridge, MA: Harvard University Press, 2002), 2.8.2; Bennett, “*Sacer Esto*,” 6. Spaeth argues for the existence of strong similarities between the law against the violation of tribunician *sacrosanctitas* and that against attempted tyranny, citing Plutarch’s remark on Valerius Publicola’s law, which allowed one “to kill without trial the person wishing to be a tyrant” and established “that the slayer be cleansed of murder.” See Spaeth, *Roman Goddess Ceres*, 71.

our decision is that he was an upstart who ruled by force, his body is cast out unburied beyond the borders of his country and all his acts are invalidated.”<sup>49</sup>

*Sacratio* against sovereign authority: this formula, in which the decree that renders one *sacer* figures as the violent precursor of a number of subsequent struggles for the salvaging of political rights from the rapacity of absolute power, underpins a crucial recasting of what Agamben calls “the secret tie uniting power and bare life”<sup>50</sup>—one that refuses to “identify with the perspective of sovereign power” at the expense of attentiveness to “popular political practice.”<sup>51</sup> In this politically heterodox version, bare life is not the indication of an abject surrender to the power of law and the state. It is rather the means through which a certain kind of power—the power, frequently, of the disempowered—opposes itself to constituted authority.<sup>52</sup> This means that the “and” Agamben’s work interposes between sovereign power *and* bare life does not invariably mark the distribution of law-suspending power and killable *zōē* along the securely discrete positions of sovereign authority and its victims. Rather, it indicates an internal *fracturing within* the concept of sovereignty. If for Agamben, who in turn evokes Nancy, “sovereignty is . . . ‘this law beyond the law to which we are abandoned,’”<sup>53</sup> the Roman record invites us to think of an exceptional “law beyond the law” to which constituted sovereignty is *itself* absolutely exposed so that the vulnerability of those “normally” abandoned by the rule of law may remain less than absolute. The threat reserved for those who would abuse the imperative of fidelity and, conversely, the protection of those excluded from the provisions of normal juridico-political arrangements constitutes a different, oppositional take on the import of inclusive exclusion. As Mika Ojankagas remarks on the question of the Foucauldian figure of the plebs, plebeian subjectivity may thus be understood as “the internal limit of power,” a “counter-figure” of the Schmittian sovereign.<sup>54</sup> The plebeian secessions invite us to reflect on a mirroring of sovereign authority that is also its fracturing: subtracting themselves from the patrician count, the plebs converted the position of the outcast and the excluded<sup>55</sup> into one of exceptional authority,<sup>56</sup> endowing themselves

<sup>49</sup> Appian, *The Civil Wars*, trans. John Carter (Harmondsworth: Penguin, 1996), 2.128 (138); see also Bennett, “*Sacer Esto*,” 17.

<sup>50</sup> Agamben, *Homo Sacer*, 6.

<sup>51</sup> James Holstun, *Ehud's Dagger: Class Struggle in the English Revolution* (London: Verso, 2000), xi.

<sup>52</sup> Of course, *sacratio* was not always limited to the protection or self-protection of the dispossessed. Anna J. Clark argues that there is significant evidence that the plebeian tribune Tiberius Gracchus was murdered by a faction of rich landowners who considered him to have violated his *sacrosanctitas* and who consecrated him “to Jupiter as a *homo sacer*.” See her “Nasica and Fides,” *Classical Quarterly* 57, no. 1 (2007): 126. Significantly—given the earlier establishment of the sanctity of fidelity to the client—the murder was performed by a group that *inverted* the customary procession to the shrine of Fides by walking *away* from it. The reversal seems to associate the act not just with death, as Clark observes (128), but also with the denunciation of the traditional link between *sacratio* and the protection of the clients and plebs. See also Spaeth, *Roman Goddess Ceres*, 73–79.

<sup>53</sup> Agamben, *Homo Sacer*, 59.

<sup>54</sup> See Mika Ojankagas, “Sovereign and Plebs: Michel Foucault Meets Carl Schmitt,” *Telos* 119 (Spring 2001): 39.

<sup>55</sup> “The [original] plebs were a despised and abject class, beyond the pale of religion, law, society, and the family.” De Coulanges, *Ancient City*, 226.

<sup>56</sup> Derrida correctly suggests that “in a certain sense, there is no contrary of sovereignty,” and hence that “the choice is not between sovereignty and nonsovereignty, but among several forms of partings, partitions, divisions, conditions that come along to broach a sovereignty that is always supposed to be indivisible and unconditional.” See Derrida, *The Beast and the Sovereign*, 76. On “countersovereignty”—which should thus be understood not as the antithesis or “other” of sovereign power but as the figure of its internal political fracturing in the context of social struggles—see Craig McFarlane, “Counter-sovereignty,” paper presented at Carleton University, March 31, 2006, <http://theoria.ca/research/files/counter-sovereignty.pdf> (accessed January 10, 2009). We should recall, finally,

with the right to pronounce their own *interdictio* against those who would retain them in impotent, internal political exile.<sup>57</sup>

### THE KING'S THREE BODIES

It is to the extent that it represses the political import of this “other” trajectory that Agamben’s account is able to cast the relationship between sovereign and *homo sacer* in terms of a fatal complementarity at “the two extreme limits of the order” of *sacratio*: “The sovereign is the one with respect to whom all men are potentially *homines sacri*, and *homo sacer* is the one with respect to whom all men act as sovereigns.”<sup>58</sup> But the forgetting or repression of what is resistant to the reductive character of such formulations is not without its symptoms of reactive return: for no sooner has Agamben introduced the initially binary schema of the sovereign and the *homo sacer* than he begins to collapse the two terms onto each other. Hence, the discussion of the religious ritual of imperial *funus imaginarium* and its parallels in medieval burial custom leads the chapter “Sovereign Body and Sacred Body” toward the idea that there exists “a darker and more uncertain zone . . . in which the political body of the king seemed to approximate—and even to become indistinguishable from—the body of *homo sacer*.<sup>59</sup> Yet this is a discussion that involves nothing more politically consequential than the similarity between the emperor’s *colossus* and the one used in the iconic burial of the surviving *devotus*. It is not the logic that authorized the killing of the sovereign that is at stake here; it is rather his natural death, which, in and of itself, is said to make apparent sovereignty’s “supplement of sacred life,” an “excess that seems to be as such inherent in supreme power.”<sup>60</sup>

Agamben’s way of framing the proximity between sovereign and *homo sacer* remains closely linked to the founding thesis of Ernst Kantorowicz’s magisterial *The King’s Two Bodies* (1957), for which medieval absolutist authority involves the “abstract physiological fiction” of the double body of the sovereign: the immortal and immaculate “body politic,” in Edmund Plowden’s Elizabethan formulation, and the perishable and fallible “body natural.”<sup>61</sup> Yet there is good reason to think that this bipartite schema does not quite exhaust the problems raised by the legacy of countersovereign violence—and not merely in Rome. Aristotle’s *Politics*, let us recall, had positioned sovereignty at the borderline, not between mortal and immortal and perfect or imperfect, but between the more-than- and the less-than-human: “But he who is unable to live in society, or who has no need because he is sufficient for himself, must either be a beast or a god.”<sup>62</sup> Un-

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George Bataille’s view of communism, which the author describes as the “most active contradiction” of sovereignty, “the countermovement,” “that drew its strength from sovereignty only to overthrow it,” and, at the same time, “that vast world where what is sovereign must come back to life.” See Bataille, *The Accursed Share*, vols. 2–3, trans. Robert Hurley (New York: Zone Books, 1993), 261–62.

<sup>57</sup> On the issue of plebeian self-empowerment through the conversion of political marginality into exodus, see Isabell Lorey, “Attempt to Think the Plebeian Exodus and Constituting as Critique,” trans. Aileen Derieg, <http://transform.eipcp.net/transversal/0808/lorey/en> (accessed January 3, 2009).

<sup>58</sup> Agamben, *Homo Sacer*, 84.

<sup>59</sup> Ibid., 94, emphasis mine.

<sup>60</sup> Ibid., 100–101.

<sup>61</sup> See ibid., 93–94; Ernst H. Kantorowicz, *The King’s Two Bodies: A Study in Mediaeval Political Theology* (Princeton, NJ: Princeton University Press, 1997), 4, 7.

<sup>62</sup> Aristotle, *The Politics and the Constitution of Athens*, ed. Stephen Everson, trans. Benjamin Jowett (Cambridge: Cambridge University Press, 1996), 1253a27–29 (14), emphases mine. See also Aristotle, *Politics*, 1253a1–7: “And he who by nature and not by mere accident is without a state is either a bad man or above humanity; he is like the

like the state rhetoric of what Kantorowicz calls “medieval political theology,” the Aristotelian schema underlies a vision of sovereignty (sovereign autonomy, sovereign externality to law and society) as something that *doubly misses the destiny of the human*, either by superseding it (as godliness) or by proving itself miserably inferior to it (as beastliness). Sovereign power and autonomy thus both replicate and complicate Aristotle’s famous definition of man as “political animal,” with its implicit oscillation between a meaning that would emphasize the qualitative transformation of the noun by its attribute (man as a *political* animal, one whose natural life is taken up and transformed by entry into political relations) and one that would on the contrary underline the power of the noun to transform the meaning of the attribute (man as a *political animal*, a creature that, judged by standards of political virtue, may always come to appear as less than human, and indeed almost less than animal as well).<sup>63</sup>

When it comes to sovereignty, then, one cannot quite speak of political theology without confronting its entanglements with the legacies of something one may call a political zoology. Reflection on the origins, character, and function of political authority and legitimacy involves a complex adjudication of the place of the sovereign within a figurative triad that includes not merely the human and the divine but also the animal. Long before it was divided into “body natural” and “body politic,” the sovereign body was split between sublimely elevated and animalistically degraded valences that cannot properly be mapped within a dichotomy of the properly “political” and the properly “natural.” In the first book of Aristotle’s *Politics*, for instance, sexuality and reproduction appear at once as the biological foundations of the patriarchal family—and, hence, by extension, of the originally monarchical political order of the city—and as signs of a biological automatism and compulsion that renders humans abjectly indistinguishable from the animal world.<sup>64</sup> Or we may recall that in Plato’s *Republic* Socrates describes the city guardian who abuses his authority as a dog, which “disobedience or hunger or some bad trait or other” turns into the very wolf he was meant to guard the herd from.<sup>65</sup> Tyranny (Socrates refers to the possibility of guardians becoming indistinguishable from *despotais agriois*, “savage tyrants”) is thus figuratively grasped as the result not of the fall from human to animal state but of the deviation of an already political animal from its own, paradoxically humanized nature. The domesticated dog, as Socrates remarks earlier on, normally has the “philosophical” ability to distinguish,

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“Tribeless, lawless, hearthless one” whom Homer denounces—the natural outcast is forthwith a liver of war; he may be compared to an isolated piece at draughts.” For a critical commentary on the paradoxical nature of Aristotelian sovereignty, see Derrida, *The Beast and the Sovereign*, 16–17.

<sup>63</sup> “For man, when perfected, is the best of animals; but when separated from law and justice, he is the worst of all. . . . That is why, if he has not excellence, he is the most unholy and most savage of animals.” Aristotle, *Politics*, 1253a31–33, 1253a35–37. See also Georges Dumézil’s discussion of the double and contradictory figuration of the sovereign founder in Roman mythology—the wolf-raised, fratricidal, war-mongering Romulus and the law-abiding, law-giving, pious and pacific Numa—in *Mitra-Varuna: An Essay on Two Indo-European Representations of Sovereignty* (New York: Zone Books, 1988), 47–57, 60, 64, 114–16, 163.

<sup>64</sup> “In the first place there must be a union of those who cannot exist without each other; for example, of male and female, so that the race may continue; and this is a union that is formed, not of deliberate purpose [*ouk ek proeraiseōs*], but because, in common with other animals and with plants [*hōsper en tois allois zōois kai fytois*], mankind have a natural desire to leave behind them an image of themselves. . . . But when several families are united, and the association aims at something more than the supply of daily needs, then comes into existence the village. . . . When several villages are united in a single community, perfect and large enough to be nearly or quite self-sufficing, the state comes into existence, originating in the bare needs of life [*zēn*] and continuing in existence for the sake of a good life [*eu zēn*].” Aristotle, *Politics*, 1252a27–30, 1252b16–17, 1252b28–30. On sexuality as what is “most often held to be bestial in itself,” see Derrida, *The Beast and the Sovereign*, 86, 25–26, 315–16, 321, 326–27.

<sup>65</sup> See Plato, *The Republic*, trans. Desmond Lee (Harmondsworth: Penguin, 2003), 416a2–7, 416b1–4 (118).

in *avant la lettre* Schmittian fashion, between friend and enemy.<sup>66</sup> Centuries later, and on the eve of the French Revolution, Rousseau would advance his argument for popular sovereignty by suggesting that in being entrusted with a pastoral function—in being elevated to the status of a human shepherd of his animal flock—the absolutist sovereign is not so much a dog-turned-wolf as dog *and* wolf, guardian and predator at once.<sup>67</sup>

Derrida's remark that the relationship between beast and sovereign reveals "a profound and essential ontological copula . . . at work"—so that reflection on "la bête et le souverain" is always haunted by an "irresistible hallucination" according to which "la bête est le souverain"<sup>68</sup>—is then only the most recent manifestation of a long-standing recognition, in classical and early modern political theory (Machiavelli's prince-as-centaur, Hobbes's sovereign Leviathan) and, more recently, in cultural anthropology, of the effective interchangeability of sovereign and animal bodies. Whether it be at the level of philosophical speculation or at that of ritual practice and popular mythology (from coronation rites to heraldry or fairy tales), there has always been a recognition of the fact that the distinction between the "creative violence"<sup>69</sup> of law-founding sovereignty and the antisocial, destructive violence of the predatory beast is a precarious one. Readers of Freud's *Totem and Taboo* cannot but recall the black comedy of his description of the unenviable position of those "savage"—but, at a certain remove, also European—kings, who find themselves watched over by ceaselessly distrusting subjects, surrounded by taboos that "vividly recall the restrictions placed on murderers," ceremonially beaten with "such thoroughness" that they do not survive their coronation, "worshipped as god[s] one day" and "killed as criminal[s] the next."<sup>70</sup> And it is difficult to miss the rather strict correspondence between the earlier, Aristotelian designation of the man who has no need of society and is sufficient unto himself as "either a beast or a god" and Freud's own suggestion that taboo "not only distinguishes kings and *elevates them above all ordinary mortals*, but . . . also makes their life a torture and an unbearable burden and forces them into a thralldom which is far worse than that of their subjects."<sup>71</sup>

Freud, it should be noted, comes under sharp criticism in *Homo Sacer* precisely because of *Totem and Taboo*'s allegedly uncritical reproduction of the "mythologeme" of the "theory of the ambivalence of the sacred."<sup>72</sup> Though the theory has earlier exponents, it is only in Freud's work, Agamben argues, that "a genuine general theory of the ambivalence of the sacred" emerges. It is precisely such a theory that in Agamben's view obscures the proper import of the sovereign ban, its function as the key that unlocks the juridico-political secrets of sovereign authority and their

<sup>66</sup> Socrates describes a dog's ability to distinguish between "friend and foe" (*philēn kai eithron*) by sight as a sign of a "truly philosophical nature" (*physeōs . . . alēthos philosofon*). Plato, *Republic*, 376a2–10 (65). On the friend-enemy distinction as irreducible foundation of the political, see Schmitt, *Concept of the Political*, 26–27.

<sup>67</sup> See Jean-Jacques Rousseau, *The Social Contract and Other Later Political Writings*, ed. and trans. Victor Gourevitch (Cambridge: Cambridge University Press, 1997), 43.

<sup>68</sup> See Derrida, *The Beast and the Sovereign*, 18.

<sup>69</sup> Dumézil, *Mitra-Varuna*, 115.

<sup>70</sup> Sigmund Freud, *Totem and Taboo: Resemblances between the Psychic Lives of Savages and Neurotics*, trans. A. A. Brill (New York: Vintage, 1946), 59, 61, 67, 60. It is interesting to compare Freud's primarily "tribalist" account with Jean Bodin's description of a coronation in medieval Carinthia, in which the future duke is forced to wear a poor shepherd's clothes and is given "a light blow" by a peasant. See Jean Bodin, *On Sovereignty*, ed. and trans. Julian H. Franklin (Cambridge: Cambridge University Press, 1992), 8–9.

<sup>71</sup> Freud, *Totem and Taboo*, 68, emphasizes mine.

<sup>72</sup> Agamben, *Homo Sacer*, 75.

implications for modern biopolitics.<sup>73</sup> Yet the denunciation of the explanatory power of the ambivalence of the sacred is by no means an adequate explanation for why *Homo Sacer* and its sequels (as well as the work of many influenced by them) choose to bypass the important record of anthropological engagement with the logical underpinnings and cultural forms of a violence explicitly addressed *against* the figures of sovereign authority. René Girard's *Violence and the Sacred* (a work whose absence from *Homo Sacer*'s references is striking, given the fact that Girard provides a largely antagonistic account of the function of scapegoating violence as a means of arresting the mimetic dynamic that renders violence endemic) is both equally critical of the effectively tautological presuppositions of a theory of the ambivalence of the sacred<sup>74</sup> and emphatic about the fact that the genesis of sovereign authority cannot be extricated from the prior identification of the sovereign and the sacred man:

The encyclopedic character of the transgressions . . . betray[s] who it is that the king is supposed to incarnate: the paragon of transgressors, the man who holds nothing sacred and who fearlessly assumes every form of hubris. . . . It is because of this impurity that the king, in the course of enthronement and renewal ceremonies, is subjected to the ritualistic insults and abuse of the people. . . . The needful insults and hostilities find their outlet in sacrificial ceremonies in which the king plays the chief role—the role of the original victim. . . . What is essential is the granting of authority during his lifetime to someone who is designated as a future victim and who draws his power and prestige retroactively from the reconciling power of the original scapegoat. . . . When we consider the monarchy of the Ancien Régime in France or any other traditional monarchic system, we cannot help wondering whether it would not be more profitable to consider these institutions in the light of sacred kingship than in the light of modern ideas about monarchy. . . . The life and death of the monarchic system in France—its sacred rites, its fools, its cure of scrofula through the royal touch, the grand finale of the guillotine—all this is clearly structured by the influence of sacred violence. The sacred character of the king—that is, his identity with the victim—regains its potency as it is obscured from view and even held up to ridicule.<sup>75</sup>

Girard's reference to the existence of lines of continuity that link the obscure logic of "sacred kingship" not simply to tribal means of containing violence but to the regicidal modernity of the French Revolution is quite significant. Regicidal discourse predicated a specific relation between sovereignty and animality, one in which the sovereign—predisposed, like Rousseau's Calligula, to view himself as God and the people as beasts of burden<sup>76</sup>—is himself cast as a predatory animal whose killing was not murder and could not (any longer) be understood as an act of sacrifice. What Robert Zaller describes as the "desacralization of tyranny"<sup>77</sup>—a process that may be said to escape from the periodicity of "sacrificial crisis" and enter political modernity proper in the period of the English seventeenth century—involved the drastic separation of the king's body from any divine connotations of the sacred and hence threatened to attribute to it the original meaning of *sacer*. It is quite telling in this regard that Prince Rupert, leader of the

<sup>73</sup> See *ibid.*, 80: "An assumed ambivalence of the generic religious category of the sacred cannot explain the juridico-political phenomenon to which the most ancient meaning of the term *sacer* refers."

<sup>74</sup> See René Girard, *Violence and the Sacred*, trans. Patrick Gregory (London: Continuum, 2005), 1.

<sup>75</sup> *Ibid.*, 110–11, 319. See also Serres, *Rome*, 134–35.

<sup>76</sup> Rousseau, *Social Contract*, 43.

<sup>77</sup> Robert Zaller, "The Figure of the Tyrant in English Revolutionary Thought," *Journal of the History of Ideas* 54, no. 4 (October 1993): 585.

Royalist army defeated during the English Civil War, was effectively identified with his “necromantic” pet dog, “Boy,” and that the latter’s intentional killing during the Marston Moor battle (1644) was deemed significant enough from the military point of view to be triumphantly reported in parliamentary journals and celebrated in pugnacious verse;<sup>78</sup> and that the executed king, Charles I, was himself so closely identified with his beloved spaniels that “King Charles dogs” were thrown into national disfavor as court pets until the last of the Catholic Stuarts had died.<sup>79</sup> As Zaller shows, what prepared the ground for such literally *cynical* deflations of sovereign authority was not simply the rhetorical reinvigoration of Roman models of tyrannicidal virtue in pamphleteering and on the stage;<sup>80</sup> it was also a certain image of the sovereign as beast, doubtlessly invigorated by Christian apocalypticism: “Is it utterly impossible that our King,” Joseph Boden was to ask of Charles I in his *An Alarne Beat up in Sion* (1644), “should be one of those tenne, of whom we read, [in] Revl. 17.13, that have one mind, and shall give their power and strength unto the beast?”<sup>81</sup> Charles’s successor to the throne during the brief Restoration of the Stuarts, Charles II, fared no better in the zoological invectives of anti-Catholic propaganda: “No tumbling play’r so oft e’er changed his shape / As this goat, fox, wolf, timorous French ape,” in the telling imagery conjured by the libelous ballad “Oceana and Britannia.”<sup>82</sup>

But no document attests to the lasting resonance of *sacratio* for early modern varieties of countersovereign violence as well as Edward Sexby’s tellingly entitled *Killing Noe Murder* (1657),<sup>83</sup> an uncompromising invective against Cromwell’s betrayal of revolutionary promise, his violation of the *fides* due to the revolutionary process itself. Sexby, a New Model Army agitator and a vociferous Leveller in the Putney debates,<sup>84</sup> charged Cromwell with conspiring to reintroduce an effectively counterrevolutionary politics of individual charisma in the commonwealth, and thus with intending to turn the republican revolution into a farce, a mere instrument of authoritarian dictatorship. Strikingly, Sexby’s text was dedicated to the Lord Protector himself, figuring him as its literary patron. It is difficult not to see this homicidal, as James Holstun calls it,<sup>85</sup> recasting of the relationship to patronage as a strategically motivated indexing of the Roman tradition of *sacratio* against the unfaithful *patronus*. Sexby focuses on the murderous reconfiguration of his relationship to his own sarcastically proclaimed patron, converting the conventionally adulating and deferential language of the dedicatory preface into that of a death threat directed against a protector who has turned, so the argument goes, into a predatory beast. The body of the pamphlet’s argument, accordingly, is a virtually textbook illustration of the persistence of Roman *sacratio* in the political imaginary of countersovereign violence, one crucially

<sup>78</sup> “A Dog’s Elegy, or Rupert’s Tears,” quoted in Katharine MacDonogh, *Reigning Cats and Dogs: A History of Pets at Court since the Renaissance* (New York: St. Martin’s Press, 1999), 209.

<sup>79</sup> See MacDonogh, *Reigning Cats and Dogs*, 88–92.

<sup>80</sup> See Zaller, “Figure of the Tyrant,” 586.

<sup>81</sup> Quoted in *ibid.*, 596.

<sup>82</sup> Quoted in *ibid.*, 607.

<sup>83</sup> On the “ vexed” question of the authorship of *Killing Noe Murder* (attributed by different sources to Sexby, William Allen, or Silius Titus), see Holstun, *Ehud’s Dagger*, 332–33.

<sup>84</sup> Sexby’s response to the conservative, propertarian parliamentarianism of Ireton is quite revealing: “we have had little property in the kingdom as to our estates, yet we have had a birthright; but it seems now, except a man has a fixed estate in this kingdom, he has no right in this kingdom. I wonder we were so much deceived.” *The Putney Debates, in Divine Right and Democracy: An Anthology of Political Writing in Stuart England*, ed. David Wootton (Harmondsworth: Penguin, 1986), 302.

<sup>85</sup> Holstun, *Ehud’s Dagger*, 334.

dependent on the figuration of sovereign pretensions to superhumanity as proofs of a subhumanity that deserves to be annihilated with impunity, without any trace of sacrificial solemnity:

A tyrant [is one] over whom every man is naturally a judge and an executioner, and whom the laws of God, of nature, and of nations expose, like beasts of prey, to be destroyed as they are met. That I may be as plain as I can, I shall first make it a question (which indeed is none), whether my Lord Protector be a tyrant or not? Secondly, if he be, whether it is lawful to do justice upon him without solemnity, that is, to kill him. . . . I find none . . . that have been so great enemies to common justice and the liberty of mankind as to give any kind of indemnity to a usurper who can pretend no title but that of being stronger, nor challenge the people's obedience upon any other obligation but that of their necessity and fear. Such a person, as one out of all bonds of human protection, all men make the Ishmael, against whom is every man's hand, as his is against every man. To him they give no more security than Cain, his fellow murderer and oppressor, promised to himself, to be destroyed by him that found him first. . . . A tyrant, as we have said, being no part of the commonwealth, nor submitting to the laws of it, but making himself above all law . . . is therefore in all reason to be reckoned in the number of those savage beasts that fall not with others into any herd, that have no other defense but their own strength, making a prey of all that's weaker. . . . His person should be *sacrosancta, cui nihil sacrum aut sanctum*, to whom nothing is sacred, nothing inviolable.<sup>86</sup>

### CAPITAL OFFENSES; OR, OF DWARF AND LEVIATHAN

Sexby's pamphlet, Holstun tells us, enjoyed a long and interesting life of reeditions, translations, adaptations, and muted intertextual appropriations during the eighteenth and nineteenth centuries. A 1792 edition celebrated the "assassination of Gustavus III and the death of Emperor Leopold III," while a translation published in 1804 replaced Cromwell with Napoleon I, and an 1856 version directed the threat against the target of Karl Marx's vitriolic lampooning, Louis Napoleon.<sup>87</sup> Marx himself, as Holstun recalls, was to evoke Sexby's leaflet in the third volume of *Capital* (1894):

In October 1855 Leonard Horner was already complaining about the resistance that a very large number of factory-owners were placing to the legal provisions for safety devices on horizontal shafts, even though the danger was continually being demonstrated by accidents, often fatal ones, and this safety appliance is neither expensive nor in any way disturbs the work. . . . The factory-owners were given open support in resisting these and other legal provisions by the unpaid Justices of the Peace who had to decide on the cases, and were generally factory-owners themselves, or friends of factory owners. . . . The factory-owners of the time formed a "trade union" to resist the factory legislation, the so-called "National Association for the Amendment of the Factory Laws," based in Manchester, which collected a sum of more than 50,000 in March 1855 from contributions on the basis of 2 shillings per horse-power, to meet the legal costs of members prosecuted by the factory inspectors and conduct their cases on behalf of the Association. The object was to prove "*killing no murder*" if done for the sake of profit.<sup>88</sup>

<sup>86</sup> William Allen (i.e., Edward Sexby), *Killing Noe Murder*, in Wootton, *Divine Right and Democracy*, 364, 370–73.

<sup>87</sup> Holstun, *Ehud's Dagger*, 359–60.

<sup>88</sup> Karl Marx, *Capital: A Critique of Political Economy*, vol. 3, trans. David Fernbach (Harmondsworth: Penguin, 1991), 183, emphasis mine.

There are a number of things deserving closer scrutiny in this passage. First, Marx discards the political content and historical context of Sexby's pamphlet, preserving only its title and leaving the task of restoring its original significance to Engels's dutiful editorial hand.<sup>89</sup> Second, and in direct connection to his gesture of drastic decontextualization, Marx inverts the inversion that Sexby's phrase originally embodied: killing without murder is no longer the name of a popular tradition aimed at curtailing the abuses of sovereign power but a designation of the violence visited on workers' bodies by what Marx calls "economy in the use of constant capital." Third, and most importantly, the inversion does *not* reinstate sovereign violence at the antipodes of bare life; for though the victims of industrial *sacratio* are reduced to "beasts of burden,"<sup>90</sup> the perpetrator of their killing does not embody political sovereignty and does not authorize homicide by fiat of sovereign authority. The specter Marx conjures by speaking of a killing that does not amount to homicide is not, pace Schmitt and Agamben, that of the law in the form of its own suspension. In Marx's deployment, Sexby's phrase obtains a new, thoroughly modern meaning: if killing is deemed no murder, it is not because workers' deaths are understood as affairs toward which the law remains indifferent (on the contrary, the context of Marx's discussion is precisely bourgeois legal reform); it is because law, as instrument of the state, is in fact utterly impotent before the violence that inscribes itself within the workaday sphere of civil society. Though this is a thesis explored in a number of works of the 1840s ("On the Jewish Question," *Contribution to Hegel's Philosophy of Right, The German Ideology*), it is perhaps most clearly put forth in one of Marx's less-well-known early works, "Critical Notes on the Article 'The King of Prussia and Social Reform'"), from which it is worth quoting extensively:

Why did not Napoleon simply decree the abolition of beggary at a stroke? . . . This question is just as valid as that of our "Prussian" [Arnold Ruge] who asks: "Why does the King not decree the education of all deprived children at a stroke?" . . . The contradiction between the vocation and the good intentions of the administration on the one hand and the means and powers at its disposal on the other cannot be eliminated by the state, except by abolishing itself; for the state is based on this contradiction. . . . For this reason, the state must confine itself to *formal, negative activities*, since the scope of its own power comes to an end at the very point where civil life and work begin. Indeed, when we consider the consequences arising from the asocial nature of civil life, of private property, of trade, of industry, of the mutual plundering that goes on between the various groups in civil life, it becomes clear that the *law of nature* governing the administration is *impotence*. . . . If the modern state desired to abolish the *impotence* of its administration it would have to abolish contemporary *private life*. And to abolish private life it would have to abolish itself, since it exists *only* as the antithesis of private life. However, no *living* person believes the defects of his existence to be based on the *principle*, the essential nature of his own life. . . . Hence the state cannot believe in the intrinsic impotence of its administration, i.e. of itself. It can *only* perceive formal, contingent defects in it and try to remedy them. If these modifications are inadequate, well, that just shows that social ills are natural imperfections, independent of man, they are a *law of God*, or else, the will of private individuals is to degenerate to meet the good intentions of the administration halfway. . . . The more powerful a state and hence the *more political* a nation, the less inclined it is to explain the *general principle* governing *social ills* and to seek out

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<sup>89</sup> Engels's relevant note reads: "Marx is alluding to the pamphlet *Killing No Murder* published in 1657 by the Leveller Sexby, calling with appropriate moral and religious justification for the assassination of Cromwell." Marx, *Capital*, 3:183.

<sup>90</sup> *Ibid.*, 180.

their causes by looking at the *principle of the state*, i.e. at the *actual organization of society* of which the state is the active, self-conscious and official expression. *Political* understanding is just *political* understanding because its thought does not transcend the limits of politics. The sharper and livelier it is, the more incapable it is of comprehending social problems.<sup>91</sup>

The passage is remarkably clear in unraveling the contradictions that render the meaningful reform of social conditions an impossibility from within the pale of the bourgeois, liberal state. Perhaps more striking, however, is the revelation of a hidden identity between that state's social impotence and its political power: the more powerful the (modern, liberal) state, Marx says, the less able it is to address the general principle of social ills (i.e., the contradictions generated by the mode of production), and hence the more prone it is to seek solace in a policy that is *intrinsically* impotent, doomed to degenerate into the evocation of "formal, contingent defects" or, worse, into appeals to the obstacles presented by natural imperfections, the laws of God, or the obstinacy of private individuals. In Marx's use, the attribute "political" thus simultaneously evokes the presence of state power and the vacuity of such power in the face of the real, lived social contradictions that rift the space of civil society. "Politics," to put it otherwise, is another name for the delusional prism that pictures the modern state as the locus of transcendent sovereignty, while missing the fact that this same sovereignty amounts to nothing when confronted with the violence that thoroughly saturates the petty affairs of so-called private and contractual relations—of "private property, of trade, of industry, of the mutual plundering that goes on between the various groups in civil life."

To return, then, to the passage in the third volume of *Capital*, killing that is no murder is, in its modern, industrial guise, subtracted from reference to sovereign violence, just as it is also removed from the reach of its historical counterpart, the countersovereign deployment of a killing that is no murder. The violence that Marx makes visible—what "On the Jewish Question" calls civil society's *bellum omnium contra omnes*<sup>92</sup>—is, under "normal" circumstances, not something that concerns the drama of sovereign decision, the solemn theatrics of sacrifice, the Schmittian distinction between friend and enemy, or the dispensing of penal justice. If workers die (or are mutilated, are left without the means of subsistence, or remain what they "naturally" are, means toward the extraction of surplus value), they do so not simply in a situation that lies beyond the edicts of law and religion alike but in one that modern sovereignty does not quite comprehend, whether in the sense of perceiving it as a politically intelligible event or in that of subsuming it as its own prerogative. Violence that is so thoroughly mediated by the sphere of "objective conditions" as to escape from the grasp of political intelligibility<sup>93</sup> is a reality that cannot be addressed by a legal or political formalism and cannot be redressed via recourse to the realm of executive decision or to the ethico-juridical language of rights (and wrongs). The proletariat, Marx was to

<sup>91</sup> Karl Marx, "Critical Notes on the Article 'The King of Prussia and Social Reform. By a Prussian,'" in *Karl Marx: Early Writings*, trans. Rodney Livingstone and Gregor Benton (Harmondsworth: Penguin, 1992), 410–13.

<sup>92</sup> See Karl Marx, "On the Jewish Question," in *Karl Marx: Early Writings*, 221.

<sup>93</sup> See Kojin Karatani, "Revolution and Repetition," trans. Hiroki Yoshikuni, *Umbr(a): A Journal of the Unconscious*, 2008, 147: "The state begins when a community violently plunders and rules other communities.... On the other hand, there is not necessarily an equal relationship of human beings in commodity exchange.... In reality, commodity exchange takes place between money and commodities, which are not in a symmetrical relationship.... Those who have money can obtain others' products and use others without recourse to violent measures. Namely, those who have money and those who have commodities are supposed to be in an equal relationship but effectively are not. It is possible to force others with money, and those with money become capitalists through the movement of M-C-M. Consequently, classes are formed not by violence but by modes of commodity exchange."

note, claims “no *particular* right because the wrong it suffers is not a *particular* wrong but *wrong in general*.<sup>94</sup> The violence of wrong is not simply contained in this or that empirically demonstrable damage inflicted on the worker—“crowding workers into confined and unhealthy premises,” “squeezing dangerous machines into the same premises and dispensing with means of protection against these dangers,” “neglect of precautionary measures in those production processes whose very nature is harmful to health or involves risk”<sup>95</sup>—but pertains to the very separation of the bourgeois state from a civil society whose concrete life becomes illegible from the perspective of the law, even though it shapes the lifeworld of its members.<sup>96</sup> As for the agent of the violence initially expressed in the nominally liberating, democratizing division of state and civil society, it is certainly not an empirical individual either, nor even a class that could be conceived in ethical terms, as sovereign and autonomous from external determinations;<sup>97</sup> it is the logic of capitalist accumulation, and capital, as we know, is neither a “thing” nor a “self-constituted subject” but a “definite social relationship.”<sup>98</sup> In Marx’s carefully phrased take on the factory situation: “The contradictory and antithetical character of the capitalist mode of production leads it to count the squandering of life and health of the worker, and the depression of his conditions of existence, as . . . a means for raising the rate of profit.”<sup>99</sup>

It is a crucial consequence of Marx’s intervention that the rhetoric of moral outrage at the rapacity of capital and the evocations of the sanctity of legal right are exposed as pitifully inadequate lines of defense against the hegemony of the market and its *ratio*. In his *The Age of Capital*, Eric Hobsbawm usefully captures the emphatically noncoercive direction of the legal reforms that marked the period of global capitalist consolidation, between 1848 and 1875: “In Britain the ‘Master and Servant’ law was changed, establishing equality of treatment for breaches of contract. . . . Between 1867 and 1875 all significant legal obstacles to trade unions and the right to strike were abolished with remarkably little fuss. . . . Only the market was to rule the sale and purchase of labour power, as of everything else.”<sup>100</sup> “Tyranny” could no longer name the power that is historically specific to the confluence of capitalism and formal democracy, even though the power of the market as a new version of reasons of state certainly remains a power that retains authority over life and death, even though it is explicitly unchecked by customary or legal constraints. The prerogatives assigned to the market’s “invisible hand” trump not simply all law (as has been demonstrated recently by the onslaught of unconstitutional measures in the Inter-

<sup>94</sup> Karl Marx, “A Contribution to the Critique of Hegel’s Philosophy of Right: Introduction,” in *Karl Marx: Early Writings*, 256.

<sup>95</sup> Marx, *Capital*, 3:180.

<sup>96</sup> See *ibid.*, 182: “[Capitalist production] squanders human beings, living labour, more readily than does any other mode of production, squandering not only flesh and blood, but nerves and brain as well. In fact it is only through the most tremendous waste of individual development that the development of humanity in general is secured and pursued, in that epoch of history that directly precedes the conscious reconstruction of human society.”

<sup>97</sup> See Foucault, *Society Must Be Defended*, 44: “the theory of sovereignty presupposes the subject.” As regards the fact that Marx does not view the bourgeoisie as sovereign inheritor of absolutist power, recall *The Communist Manifesto*’s characteristic emphasis on the former’s alienated subjection to the profit principle, its inability to control and contain the social processes it itself sets into motion. Karl Marx and Friedrich Engels, *The Communist Manifesto*, in *Marx and Engels: Basic Writings on Politics and Philosophy*, ed. Lewis S. Feuer (New York: Anchor Books, 1959), 10 and *passim*.

<sup>98</sup> See Werner Bonefeld, “Social Form, Critique and Human Dignity,” <http://libcom.org/library/social-form-critique-and-human-dignity> (accessed August 30, 2010).

<sup>99</sup> Marx, *Capital*, 3:179.

<sup>100</sup> Eric Hobsbawm, *The Age of Capital, 1848–1875* (London: Abacus, 1999), 52.

national Monetary Fund backwaters of modern Greece)<sup>101</sup> but also, once they have been pronounced sovereign in themselves, all recourse to the language of political decision. As Marx was perhaps the first to notice, this fact drastically curtails the possibilities of finding in past struggles the means for responding to the predicaments of the present. Faced with the abstractions of political economy, the legacy of premodern countersovereign violence is reduced to little more than a nostalgic rhetorical ploy, a fanciful poetic anachronism that reanimates past glories only at the expense of converting them into obstacles to critical understanding:

The tradition of all dead generations weighs like a nightmare on the brains of the living. And just as they seem to be occupied with revolutionizing themselves and things, creating something that did not exist before, precisely in such epochs of revolutionary crisis they anxiously conjure up the spirits of the past to their service, borrowing from them names, battle slogans, and costumes in order to present this new scene in world history in time-honored disguise and borrowed language. Thus Luther put on the mask of the Apostle Paul, the Revolution of 1789–1814 draped itself alternately in the guise of the Roman Republic and the Roman Empire, and the Revolution of 1848 knew nothing better to do than to parody, now 1789, now the revolutionary tradition of 1793–95. In like manner, the beginner who has learned a new language always translates it back into his mother tongue, but he assimilates the spirit of the new language and expresses himself freely in it only when he moves in it without recalling the old and when he forgets his native tongue.<sup>102</sup>

Marx's own determination to learn to speak a new language by “forgetting” the naïve “native tongue” of the tradition of countersovereign violence cannot be divorced from his understanding of the conceptual limits imposed by the political formalism of the “spirits of the past.” Sexby's own regressive self-fashioning “in the guise of the Roman Republic” is a telling indication of why Marx remembers his text—relic of a revolution that devolved into the bourgeois political consolidation of 1688—only in order to forget it. In his own reading of Sexby's pamphlet, Holstun rightly concedes that “the secular millennialism of the assassin,” the “obsessive dream” of a “single, carefully planned act of violence” that could “automatically inaugurate a new age,” leads Sexby to “mystified individualism” and hence to the inability to grasp the significance of the “transformation of productive relations” in the republic.<sup>103</sup> That the consequences of this transformation involved the supersession of what had made Sexby's vision possible in the first place is precisely what Marx's striking intertextual politics registers.<sup>104</sup> And it is precisely this fact that those theorists who content themselves with registering the continuities between absolutist and democratic models of sovereignty consistently underestimate:<sup>105</sup> something fundamentally

<sup>101</sup> See “Wage, Benefit, and Pension Cuts Are Unconstitutional,” interview with professor of constitutional law Yiorgos Kasimatis, in *Dromos tēs Aristeras*, August 28, 2010.

<sup>102</sup> Karl Marx, *The Eighteenth Brumaire of Louis Bonaparte* (New York: International Publishers, 1994), 15–16.

<sup>103</sup> Holstun, *Ehud's Dagger*, 355.

<sup>104</sup> Of course, Marx does not derive the modern situation ex nihilo, without any reference to the historical role of sovereign violence; his concept of “primitive accumulation” is intended precisely as a link between the structures of feudal authority and the genesis of the capitalist mode of production. Indeed, primitive accumulation highlights the historically pivotal role of sovereign violence in furnishing the initial preconditions (the production of a propertyless class forced to sell its labor for wages) for capitalist accumulation. See Karl Marx, *Capital*, vol. 1, trans. Samuel Moore and Edward Aveling (New York: International Publishers, 1975), 713–74.

<sup>105</sup> See, e.g., Schmitt, *Political Theology*, 36; Michel Foucault, *History of Sexuality*, vol. 1, trans. Robert Hurley (New York: Vintage Books, 1990), 88–89; Claude Lefort, *Democracy and Political Theory*, trans. David Macey (Minneapolis: University of Minnesota Press, 1988), 240–41, 247; Derrida, *The Beast and the Sovereign*, 282.

new *does* happen to the link between sovereignty and violence in the era of capitalist democracy; but its nature cannot be explained by reference to the imaginary of political theory, that is to say, by appealing to a discourse that reflexively confers analytical sovereignty on the idea that sovereignty is the absolute horizon and the state the supreme embodiment of social power.<sup>106</sup> The lineaments of the novelty that is at stake in the Marxian intervention cannot be made to appear without taking critical stock of the violent abstractions of that species of modern discourse which neither Schmitt nor Agamben (and not quite Foucault, though he is virtually the only one to have insisted on the rupture between absolutist sovereignty and its modern counterparts, particularly those of disciplinary power and governmentality)<sup>107</sup> seem to consider vital in the genealogy of our present: political economy, not simply as the so-called science dealing with the processes of extracting labor power and surplus value from living bodies but also as the domain that thereby dramatizes the rise of a species of violence *beyond political sovereignty*.<sup>108</sup>

What does it mean to think the problem of *bare life without the sovereign*—without, in other words, conceding pride of place to the gesture of restoring the political discourse of sovereignty to the place from which Marx's own understanding of capitalist biopolitics had uprooted it more than a century and a half ago?<sup>109</sup> In his "Taming the Beast: The Other Tradition in Political The-

<sup>106</sup> This is why a "Marxist political theory" is something like a contradiction in terms. As Bonefeld puts it, "the notion . . . of a Marxist political theory amounts to the renewal of the *aporias* of bourgeois political thought and, because of its espousal of the state as a subject in its own right, the suppression of human emancipation. . . . Political theory, the theory of the state, is fundamentally an affirmative theory of separation, and that is a theory of power as constituted power. It presupposes the existence of labour as object-less labour, as a labouring commodity and, because of this presupposition, contributes to the containment of labour as a human factor of production." See Werner Bonefeld, "The Capitalist State: Illusion and Critique," <http://libcom.org/library/capitalist-state-illusion-critique-werner-bonefeld> (accessed August 30, 2010).

<sup>107</sup> Foucault argues emphatically that "we have to study power outside the model of Leviathan, outside the field delineated by juridical sovereignty and the institution of the State." The "theory of sovereignty . . . is the great trap we are in danger of falling into when we try to analyze power." Foucault, *Society Must Be Defended*, 34; see also 36–39, 40–49, 111, 241–43, 247–49. At the same time, however, Foucault does not quite argue that the configuration of discipline and biopower entirely supersedes the older structures of sovereignty: see his remarks on the ways racism (and its culmination in Nazism) effects a fusion of the two, in *ibid.*, 36, 249, 254–60 (Butler elaborates on the complex temporal dynamics of sovereignty and governmentality in Foucault's work in *Precarious Life*, 93–98). Nonetheless, the dominant direction of Foucault's analysis tends to privilege the knowledge/power dyad over the discussion of the problems posed to sovereignty by the capitalist mode of production as such. See, e.g., *Society Must Be Defended*, 35–36; *History of Sexuality*, 1:140–43.

Alongside Foucault's at least partial concession of a shift from sovereignty to "nonsovereign" power (*Society Must Be Defended*, 36), Bataille's *Accursed Share* is one of the few non-Marxist works to concede the fact that modernity marks, at a certain level, the decline of sovereign experience and sovereign subjectivity. Bataille interprets such decline in terms of the replacement of a sovereign economy based on expenditure by the capitalist regime of accumulation: "in the feudal world there was a preference for a *sovereign* use, for an unproductive use of wealth. The preference of the bourgeois world was reserved, quite on the contrary, for *accumulation*" (280).

<sup>108</sup> Thus, as Brett Neilson notes regarding Agamben, in "emphasizing bare life and the state of exception, the question of the historical process of the production of abstraction and abstraction of production disappears (and with it the development of class struggle)" See "Potenza Nuda?" *Contretemps* 5 (December 2004): 76.

<sup>109</sup> The qualitative difference and fundamental irreconcilability between Schmitt's essentially Hobbesian frame of reference and Marx's own self-consciously *modern* understanding of the problem of the state seem to escape Susan Buck-Morss. In her reading, the necessity of "enriching" Marx through Schmitt is grounded in the view that "political economy" consolidated the "relative importance of the economy versus the state," thus reducing the state to an "epiphenomenon" ("Sovereign Right and the Global Left," 149–50). Yet as Werner Bonefeld points out, in Marx "the critique of political economy amounts to the critique of the form of the state" ("Capitalist State"). Marx does not criticize the state in order to replace it analytically with the reified abstractions of political economy; he criticizes the (modern, capitalist) state as precisely the other side, the counterpart and complement, of these abstractions. Kojin

ory,” Michael Marder rightly remarks on “the subterranean development of capitalism as a historical economic form that depends on the bestialization of a significant portion of the population.”<sup>110</sup> Reflecting on Joseph Townsend’s 1786 *Dissertation on the Poor Laws*, Marder concludes that its discussion of hunger as the prime mover and great disciplinarian of the human animal is vital in this respect, to the extent that it makes an impersonal, biological fact supplant “the tyrannical force of the sovereign . . . with a more powerful despotism,” one that, as Karl Polanyi was to remark, “dwarfed the Leviathan.”<sup>111</sup> The historical sequence of the first years of the twenty-first century, one in which the Bush regime’s paradigm of a state on steroids was replaced by that of an anemic, impotent state that is hostage to its debt and beholden to the private interests of banking and big industry<sup>112</sup> is a dramatic reminder of the acuity of Marx’s insight into the paradoxical tendency of the modern state to appear as Leviathan when viewed from a juridico-political perspective centering on the entities of people, nation, and race (Hobbes, Schmitt, Agamben)<sup>113</sup> and as a dwarf when viewed from the far less dignifying lens of political economy. It is the *same* state that contemporary theory has frequently inflated to the dimensions of the Leviathan that is currently revealing its ludicrous inability to address or redress the violence inherent in spreading unemployment, in rising poverty, in the collapse of personal and family lives, in the disintegration of the public health and education systems.

To the extent that capital is today the par excellence name of sovereign authority (not the king, of course, but also, as we all know, not the people as represented constituency either), sovereignty thus comes to appear *as an effect without a cause*. In being ever more abstracted from the sphere of subjective experience, its authority becomes ever more resistant to normative, juridically or ethically inflected forms of intervention and critique—far more so than historical, politically organized sovereignty ever was. The critical responsibility that the insistence of bare life—life exposed to the violence of depersonalized and inhuman processes, beyond the confines of what the modern state is inclined to view as its sphere of competent jurisdiction—confers on our own moment, then, far exceeds the scope of an Arendtian genealogy of the origins of totalitarianism<sup>114</sup> or a retroactive derivation of political history from the standpoint of the exterminationist,<sup>115</sup> racially predicated politics of the camp. It involves the task of developing a thought

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Karatani, on the other hand, demonstrates that it is possible to concede the importance of the relative autonomy of the state without thereby hypostatizing the principle of sovereignty. See his “Revolution and Repetition,” esp. 138–43.

<sup>110</sup> Michael Marder, “Taming the Beast: The Other Tradition in Political Theory,” *Mosaic: A Journal for the Interdisciplinary Study of Literature* 39, no. 4 (December 2006): 55.

<sup>111</sup> *Ibid.*, 56.

<sup>112</sup> See Marx and Engels’s timely remarks on the transformation of the state into an impotent prisoner of the twin formations of pure private property and national debt in *The German Ideology*, ed. C. J. Arthur (New York: International Publishers, 1993), 79–80.

<sup>113</sup> Marx’s anti-identitarian critique of anti-Semitism in “On the Jewish Question” reminds us, however, that the question of racial difference does not *in itself* prescribe an analytical focus on the workings of political sovereignty at the expense of an understanding of civil society as the realm of both existing oppression and potential emancipation.

<sup>114</sup> See Hannah Arendt, *The Origins of Totalitarianism* (San Diego, CA: Harcourt, 1994).

<sup>115</sup> There is an interesting terminological shift in this regard in Agamben’s deployment of Foucault in the context of his own discussion of Nazi thanatopolitics. Foucault defines the shift from sovereignty to biopolitical power as a movement from the (always asymmetrical) right of the sovereign to “take life or let live” to biopower’s “new right” to “make’ live and ‘let’ die” (*Society Must Be Defended*, 241). In Agamben’s version, however, *letting die* quietly becomes *making die*: “The ancient right to kill and let live gives way to an inverse model, which defines modern biopolitics, and which can be expressed by the formula to *make live and to let die*. . . . In Hitler’s Germany, an unprecedented absolutization of the biopower to *make live* intersects with an equally absolute generalization of the sovereign power to *make die*, such that biopolitics coincides immediately with thanatopolitics” (*Remnants of Auschwitz*, 82–83).

and a practice that lays hold not simply of the dwarf (the antagonistic realm of civil society) hidden in the Leviathan (the state) but also of the Leviathan (capital) nestled in the dwarf. Today, we are still lagging behind the challenge of facing up to the illimitable power vested in a state of the situation<sup>116</sup> that has never cast itself in terms of a state of emergency or of exception; and that, perhaps for this very reason, continues to constitute political theory's—and the *Homo Sacer* project's—great unthought. [A]

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Agamben thus “corrects” the language that had exposed Foucault to the problem of having to explain how biopower—power to “make live and let die”—had led to the Nazi state’s quite consciously exterminationist agenda. But he also thereby bypasses the vital tension that Foucault’s analysis introduces, the irreducible difference between *letting die* and *making die*, between the “objectively” mediated violence of political economy from Malthus onward and the direct, intentional exercise of violent force. The problem posed by contemporary violence, however, has never simply been how “letting die” can mutate into “making die”; it has also involved how “letting die” can work to reconstitute the relationship between violence and sovereignty.

<sup>116</sup>In Badiou’s own simultaneously ontologico-mathematical and historical weaving of “state” and “state of the situation,” what defines the political event and the truth procedure that it engenders is the event’s ability to counteract “the subjective errancy of the power of the State.” The (political) event forces the state as metastructure of representation (presupposed by the phenomenal disclosure of the inconsistent multiplicity of parts, their counting-as-one) to present *itself* by resorting to repressive violence. It thus configures or gives shape to “the state of the situation” by providing a measure of the power of the state, by literally *arresting* it. Hence, too, the event countmands the tendencies of mystification attendant upon the fact that every “state of the situation” always exceeds “the situation itself.” See “Politics as Truth Procedure,” in *Metapolitics*, 143–45.