

**The Politics of Mere Life:
Foucault, Butler and Agamben on
Biopolitics, Subjectivation and Violence**

By

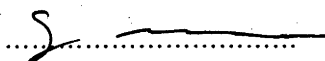
Catherine J. Mills

2003

A thesis submitted for the degree of Doctor of Philosophy of
The Australian National University

This thesis is solely the original work of the author. It does not contain material published or written by another person, except where due reference is made in the text.

Signed:

A handwritten signature in black ink, consisting of a stylized initial 'C' followed by a horizontal line, positioned above a dotted line.

Catherine J. Mills.

Acknowledgments

Undoubtedly, too much of thesis was undertaken in solitude. Nevertheless, a number of people have influenced and supported the research for it in ways that require special mention. First, I want to register my deep appreciation and debt to my supervisors: I thank Penelope Deutscher for her encouragement and assistance in setting the parameters of the research in the first two years and for mentoring for much longer. In the latter half of the project, Fiona Jenkins was an eminently supportive supervisor who helped resolve seemingly intractable difficulties with ease. I am very grateful for her timely and gracious assistance. A number of other people have also acted as advisors throughout the project. In particular, I thank Elizabeth Wilson for her extraordinarily generous commitment to seeing the project through to the end and providing crucial support in a difficult phase. I also thank Barry Hindess for consistent encouragement and careful reading, and Lisa Adkins for early advice and good cheer in moments of quiet desperation. I have had tremendous good fortune to work with these people. They have not only provided practical and intellectual assistance and advice, but have encouraged me to find my own way into the world of academia and develop my interests and capabilities in ways that will undoubtedly stay with me for many years.

In addition, I thank my colleagues in the Philosophy Program at The Australian National University. In particular, I thank Jeremy Shearmur and Bob Goodin, who, while not directly involved with my doctoral research, have been important sources of professional advice and support throughout the time of it. I also thank the administrative staff in the School of Humanities, who manage to keep the practicals in order and make the rest easier for it. The Graduate Board of Studies provided funds for research at the University of California, at Berkeley and Irvine, for which I am appreciative.

Spending a year studying at Berkeley was undoubtedly one of the most rewarding and enjoyable experiences of the past four years. Of the many people who made it so, Judith Butler and David Bates deserve special mention. Both made new research directions possible for me – the thesis would have been poorer without their influence. Many of the graduate students in the Rhetoric Department offered intellectual challenges that forced me to rethink various questions, and brought me to a fuller realization of what I was doing through their own enthusiasm for intellectual debate. In particular, I am grateful to Sara Guyer and Catherine Zimmer for their friendship and enduring intellectual inspiration.

Much gratitude also goes to those who have read and commented on parts of my work. Jeremy Moss, Robert Sparrow and Melinda Cooper deserve special mention in this regard. Colleagues who have been traversing similar paths at the same time as me have been a true source of much welcomed support. Of these people, I am particularly indebted to Christos Mantziaris, whose enthusiasm for intellectuality and many other fine things in life made the final year of the project much richer than it

might have been. Additionally, I thank Kathy Barnes and Susan Spiller for their neighborly support in enduring the quotidian sufferings of thesis production.

Nicole Asquith, Janine Bush, Julie Lahn, Anthony Hayes, John Hepburn, Chris Rose, Undine Sellbach, Rob Sparrow, Paula Turnbull, Phillip Winn and others have brightened the past several years with their incomparable friendship. I am particularly grateful to Erica Seccombe and Robyn Van Dyk for providing me with a quiet place to work and rest in the final weeks. Morgan Brigg, whose friendship is apparently inexhaustible, is an enduring source of support, encouragement and challenge. My ever inadequate thanks to you. David Mathieson brought unexpected pleasure to the closing months. For that I can only be grateful.

Finally, I thank my family for helping me keep it all in perspective. My mother has been extraordinarily generous and supportive throughout the many years of schooling that it has taken to get to this point. I owe you so much, and in recognition of that, I dedicate this thesis to you.

Abstract

This thesis addresses questions of political exclusion and violence through a consideration of the work of Michel Foucault, Judith Butler and Giorgio Agamben. Focusing on their theorizations of power and subjectivity, I argue that the conjunction of exclusion and violence reveals that a determination on life worth living operates as the constitutive decision of the political. In this determination, political life and biological life are brought into indistinction, a situation that is highlighted in Foucault's analysis of biopolitics. However, though a detailed examination of Foucault's later work, I argue that his account of biopolitics suffers from two sets of problems. First, he overemphasizes the differentiation between sovereign power and biopower and thereby fails to consider the ways in which these modalities of power interact. Secondly, his account of subject-formation is ultimately overly reductive in its portrayal of subjectivation as violent imposition. I address these problems through Butler's theorization of subjectivation and Agamben's reconsideration of biopolitics and sovereignty. In doing so, I develop an account of political exclusion and violence that encompasses consideration of both political power and subjectivation. In addition to this, I consider questions of responsibility in relation to biopolitical subjection through examination of the conceptions of ethicopolitical response provided by Foucault, Butler and Agamben. I argue that neither Foucault's ethics of the self nor Butler's politics of the performative provide conceptions of responsibility adequate to yield an account of response to biopolitical subjection. Over and against their formulations, I show that the ethics of witnessing developed by Agamben provide a means of reconsidering ethical responsibility in light of the biopolitical determination of life worth living.

Table of Contents

Introduction	Biopolitics, Subjectivation and Life Worth Living	1
I.	<i>Counting Lives/ Lives that Count</i>	1
II.	<i>Violence and Subjection</i>	4
III.	<i>An Ethics of Survival</i>	13
IV.	<i>Chapter Summary</i>	18
Chapter 1	The Politicization of Life: Foucault on	
Sovereignty, Biopower and Subjectivity		25
1.1	<i>Introduction</i>	25
1.2	<i>From Prohibitive to Productive Power: Sovereignty and Biopower</i>	27
1.3	<i>Subjectivation and the Life of the Body: Violence, Norms and</i>	
<i>Resistance</i>		48
Chapter 2	From Biopolitics to Ethics: Subjectivation, Freedom	
and Care of the Self		70
2.1	<i>Introduction</i>	70
2.2	<i>Power, Subjectivation and Freedom</i>	72
2.3	<i>The Citizen-Subject of the Ethics of the Self</i>	79
2.4	<i>Ethics Against the Politics of Life and Death</i>	85
2.5	<i>Beyond the Citizen-Subject: Contingency and Responsibility</i>	96
Chapter 3	The Body of Signification: Butler on Materiality,	
Subjection and Social Death		110
3.1	<i>Introduction</i>	110
3.2	<i>Subjectivation and Materialization</i>	112
3.3	<i>Risking Life: Abjection and Social Death</i>	133
Chapter 4	The Violence of Recognition: Performativity and	
Responsibility		154
4.1	<i>Introduction</i>	154
4.2	<i>The Linguistic Occasion of Political Agency</i>	156
4.3	<i>Linguistic Agency, Responsibility and Social Death</i>	180

Chapter 5	Agamben's Messianic Politics: Biopolitics, Bare Life, and Abandonment	193
5.1	<i>Introduction</i>	193
5.2	<i>Bare Life and the Sovereign Exception</i>	196
5.3	<i>The Messianics of Happy Life: Agamben and Benjamin</i>	217
5.4	<i>Bare Life, Potentiality and Strong Messianism</i>	224
Chapter 6	Addressing Violence: An Ethics of Witnessing	244
6.1	<i>Introduction</i>	244
6.2	<i>Messianism and the Aporias of Witnessing</i>	247
6.3	<i>Witnessing Violence: An Ethics of Bare Life</i>	265
6.4	<i>Responsibility and Rights</i>	279
Bibliography		288

Introduction

Biopolitics, Subjectivation and Life Worth Living

I. *Counting Lives/ Lives that Count*

In the past year, two of the most public and vehement debates that the Australian Government has been engaged in have been those concerning the political, legal and moral status of refugees and of the human embryo in stem cell research. On the face of it, these debates have little in common. One concerns various international agreements, questions of sovereignty and the duty of the state in the 'global community'. The other concerns questions of bodily integrity, the doctrine of the sanctity of life and the social and moral implications of bio-medical technology. However, at another glance, it is possible to see that they are integrally related insofar as each reduces to contestation over the question of what – or perhaps who – counts. In its participation in these debates, the Australian state is not simply grappling with questions concerning the moral fiber of the Australian political community, but is instead grappling with the determination of the borders of that community itself. That is to say, both of these debates centrally concern the delimitation of political community and the beings that attain legal and moral status within it. While the debate on stem cell research attempts to delimit synchronically *when* a living thing counts as a politically and morally significant life, the debate on refugees attempts the same task diachronically in terms of human lives – not *when* but *which*.

This thesis engages theoretically with this troubled political terrain through an investigation of the question of what counts and the relation that counting bears to life itself. One of the key arguments developed throughout is that the question of what counts is central to the constitution of the political: indeed, that it is the constitutive decision of the political. Jacques Rancière has recently offered such an account of the political, arguing that politics arises in the disjuncture established in counting and the possibility of miscounting that this introduces.¹ For Rancière, the

¹ Jacques Rancière, 'Ten Theses on Politics', *Theory and Event*, 5:3(2001), § 1.

definitional characteristic of politics is the relation of *part-taking*. Politics cannot be seen simply as the exercise of or struggle for power, nor as the functions and institutions of the state, since it involves a specific subject that emerges in opposition to the citizen defined by Aristotle as ‘he who partakes in the fact of ruling and the fact of being ruled’.² The part-taking that this involves engenders the *demos* or ‘the people’ as supplement to the parts of the community counted in politics: ‘the demos’ is figured as ‘a supplement to the count of the parts of society, a specific figure of “the part of those who have no-part”’.³ Thus, politics constitutively involves a struggle over who takes part and the ‘wrong’ that arises in the miscounting of parts that establishes the people as the subject proper to politics. Additionally, Rancière claims that the partition between the citizen and the demos or the people cannot be analyzed through a prior designation of a specific way of life proper to politics – *eu zen* in Aristotle’s terms – which is opposed to the order of ‘mere living’ or *zen*. Rather, what is at stake in politics is precisely this designation: it is not the basis of politics but its object.⁴

Hence, it is crucial to consider the relation between political and biological or mere life, for as I argue, the decision on what counts is fundamentally a decision on ‘life worth living’, that is, the political determination of what constitutes a livable life.⁵ Western political philosophy has long been concerned with the relation of politics to

² Cited in Rancière, ‘Ten Theses on Politics’, § 1.

³ Rancière, ‘Ten Theses on Politics’, § 19.

⁴ Rancière, ‘Ten Theses on Politics’, §2 and 3.

⁵ By this phrase, I seek to highlight the way in which normative reflections on ways of life and possibilities for living contribute to if not effectuate a determination on the question of what counts as a livable life within political community. With regard to the moral questions posed by euthanasia, Peter Singer distinguishes between the condemnation of life on the basis that it is a life ‘*not worthy of being lived*’ and what he argues is the proper object of moral concern, the question of whether a life is a ‘*life worth living*’. Though apparently semantic, the distinction that Singer poses attempts to hold off the slippery slope argument against euthanasia, that once assisted death is legalized, the situation will inexorably move toward the horror of Nazi Germany’s programs of killing the mentally ill or disabled, subsequently extended to killing political prisoners, homosexuals, Jews, Gypsies and other maligned groups. What is important in Singer’s discussion though is not so much the distinction he draws between these phrases, but his point that a properly moral or ethical consideration of the determination of ‘life worth living’ attempts to address the question from the standpoint of the legitimate interests and desires, and well-being, of the subject whose life is in question (Singer, *Writings on an Ethical Life*, p.205). In contrast to this, the political determination of ‘life worth living’ might be distinguished by its being made without regard to the legitimate interests and desires of the person whose life is in question. Instead, it entails the evaluation of the value of a life or way of life independently of those desires and interests and instead, evaluates that life in relation to a normatively applied regulative standard such as the wellbeing of a population. See Peter Singer, *Writings on an Ethical Life* (London: Fourth Estate, 2000), pp.203-205.

life; however, it seems that today, this question should be asked with an increasing urgency. Recent literature suggests a transformation in our conceptions of life and death, largely wrought by biotechnology, such that traditional principles of ethics and politics are collapsing.⁶ However, this literature does not address the interaction of political rationality and conceptions of life, nor does it address the relations of power that constitute and impinge upon our notions of life and the ways in which lives are lived. It says little about the interplay of life, death and power, and as such, cannot adequately address the problematics of political exclusion. Conversely, political theorists and activists who seek to address perceived exclusions from the liberal political arena through the discourses of individual liberties, rights and citizenship seem to elide the fact that too often these very mechanisms are employed to enforce and justify exclusions. Further, these may well be the very means by which biological life is politicized, such that the question of the good life, of life worth living, becomes one of who lives and who dies.

In the context of contemporary political theory and philosophy, Michel Foucault's work has been the most alert to transformations in the political status of biological life, suggesting that in the modern era, life enters into the political field in an unprecedented way. While there is an established industry of Foucault scholarship, one of the noticeable absences within this literature is sustained philosophical interrogation of the concept of biopolitics sketched out in the first volume of the *History of Sexuality* project. In this text, Foucault argues that the rationality of political power underwent a transformation at the end of the seventeenth century, such that power no longer operated through the right of the sovereign to 'take life or let live', but instead through the administration of life that fosters life or disallows it. For Foucault, this regime of biopolitics required a transformation of the Aristotelian precept that man is an animal with the additional capacity for politics to recognize that man is an animal whose politics place his existence in question. Thus, according

⁶ For instance, Peter Singer claims that the traditional ethical principle of the sanctity of life is being overturned, while Jeremy Rifkin has suggested that distinctions between the right and left in politics are collapsing in our 'biological age'. In anthropology, Paul Rabinow has argued that the human genome project transforms our notions of life and human dignity, proposing the category of purgatory as a means of describing the current status of life and ethics. This is to say nothing of the increasing literature on the transformations of human life wrought by robotics and computer technology. See in particular Peter Singer, *Rethinking Life and Death: The Collapse of our Traditional Ethics*, (Melbourne: Text Publishing, 1994); Jeremy Rifkin, 'Politics in the age of biology' in *The Guardian Weekly*, 165:6, August 2-8(2001), p.11; Paul Rabinow, *French DNA: Trouble in Purgatory*, (Chicago: University of Chicago Press, 1999).

to Foucault, in the era after the seventeenth century, the distinction between political and biological life collapses such that they are in fact co-extensive.

Taking up this rewriting of Aristotle's precept, Giorgio Agamben has recently taken Foucault to task over his conception of biopolitics. Agamben argues against Foucault's central historical claim that biopolitics emerged in the eighteenth century to claim instead that biopolitics and sovereignty are integrally related. Against Foucault's collapsing of Aristotle's distinction between political life and biological life, Agamben proposes a third category of 'bare life' to describe the situation in which biological life is politicized through its exposure to sovereign violence. In doing so, Agamben's characterization of the nexus between biopolitics and sovereign power rejects Foucault's historical succession, to show the way in which the production of the biopolitical body is central to the operation of sovereignty. Correlatively, this allows an analysis of sovereignty that exceeds the characterization of centralized state power that Foucault so consistently rejected. Further, the category of bare life and the corresponding analysis of sovereignty and biopower suggests that violence and the threat of death that it prefigures is central to the operation of biopolitics, such that the politics of life fade into and mesh with a politics of death, a 'thanato-politics' as Agamben suggests.

II. *Violence and Subjection*

Much of the emerging, largely sociological, literature on biopolitics is particularly concerned with the technical administration of life permitted through at least the perception of increasing control over life processes through bio-medical science. In this thesis, I depart from this literature by focusing on the role of violence within a politics of life. The difficulty that immediately arises then is that of defining violence. The principal definition that the Oxford English Dictionary gives for violence is: 'the exercise of physical force so as to inflict injury on, or cause damage to, persons or property; action or conduct characterized by this; treatment or usage tending to cause bodily injury or forcibly interfering with personal freedom.'⁷ This definition reveals that violence constitutively involves the body, in both the senses that the body of the

⁷ *Oxford English Dictionary*.

perpetrator comports itself in relation to the other through violent actions and in the sense that those actions impinge upon the body of the other. This is doubly so when it is kept in mind that actions necessarily require a body and the mobilization and arrangement of bodily forces. An action always prefigures a body acting and acted upon and through that, prefigures the forces that pertain in the relation established in that acting of and on the body. However, the OED also gives several modifications in addition to the physicalist definition of violence.

These modifications include:

- b. ...To inflict harm or injury upon; to outrage or violate. Also to make violence.
- c. ...Improper treatment or use of a word; wresting or perversion of meaning or application; unauthorized alteration of wording.
- d. Undue constraint applied to some natural process, habit, etc., so as to prevent its free development or exercise.

Thus, violence inflicts harm and *violates*, but now it is not only bodies that are acted upon, but words as well. That is, words might be used improperly, and in that misuse, have their meaning violated by perversion and unauthorized usage such that the effect on the term is that of violence. Importantly, violence can be done *onto* words, but it might also be the effect of a particular use of a word – that is, violence might be done *by* words. It is not just bodies that violence acts upon and through, but words and meaning. As recent considerations of hate speech and pornography argue, words might be said to act upon bodies with violent force; that is, words may be said to inflict injury upon bodies such that they violate the integrity of that body. What this suggests is not simply that violence can be either discursive or non-discursive, effectuated through words or actions or upon bodies or signs, but that violence brings the distinction between the discursive and non-discursive into question. This point can be made through an example.

In May 1993, in a small town in New South Wales, Australia, Malcolm Green confessed to killing his friend of six years, Don Gillies. Just before dawn, Green had turned up at the Mudgee police station in blood-spattered clothes and told the police

'Yeah, I killed him, but he did worse to me'.⁸ Apparently, Don Gillies had drunkenly tried to fondle Green, touching him on the groin and around his lower back. Green told Gillies to stop, adding 'I'm not like this' and tried to push Gillies away. When Gillies continued to talk to him and touch him, Green started hitting him until in his words 'he didn't look like Don to me'. Then, he stabbed him ten times in the back of his chest with a pair of poultry shears that were nearby and left him lying on the floor in a pool of blood. Green then made some perfunctory efforts to clean up the blood and remove his fingerprints, called his brother-in-law and asked him to drive over and get him, and eventually went to the police. Thus in an attack that was later described in the courts as ferocious, Green killed his friend for making a drunken pass at him. Importantly, Green never claimed that the advances made by Gillies were violent or that he felt frightened; in fact he subsequently described the manner in which he was touched as 'gentle' and suggested that Gillies was attempting to 'sooth' him when he started punching.

In the initial consideration of this case, a jury found Green guilty of murder and he was sentenced to fifteen years in prison. Green appealed this in the New South Wales Court of Criminal Appeal, but this court upheld the original conviction and sentence. Then, in 1997, Green appealed to the High Court of Australia and won.⁹ Consequently, in the retrial Green's conviction was reduced to manslaughter, with a sentence of about 9 years. The legal basis of this appeal was a 'provocation defense', that is the defense that the appellant was so provoked by the conduct of the deceased that he lost control of himself and consequently, killed the deceased.¹⁰ Technically,

⁸ *Green v The Queen*, High Court of Australia (7 November 1997); *R v. Green*, New South Wales Court of Criminal Appeal (18 May 1999); also see Bronwyn Statham, 'The Homosexual Advance Defence: "Yeah, I killed him, but he did worse to me" Green v R', *University of Queensland Law Review*, 20:2(1999), pp.301-11.

⁹ The High Court's role and status is roughly equivalent to that of the US Supreme Court in that it is the final court of appeal in matters within federal jurisdiction and federal constitutional law. Its role differs from that of the Supreme Court in that it is also the final court of appeal for issues within State jurisdiction, whereas in the US, the State Supreme Courts fulfill this function.

¹⁰ In s.23 of the New South Wales *Crimes Act* 1900, the provocation defense is stated as:

(1) Where, on the trial of a person for murder, it appears that the act or omission causing death was an act done or omitted under provocation and, but for this subsection and the provocation, the jury would have found the accused guilty of murder, the jury shall acquit the accused of murder and find the accused guilty of manslaughter.

(2) For the purposes of subsection (1), an act or omission causing death is an act done or omitted under provocation where:

the applicability of the defense swung on the notional 'ordinary person' invoked in it. The point of contention was whether this 'ordinary person' should be understood in an abstract sense, or whether it should be understood to allow for the particular experiences and character of the accused. In particular, Green claimed in the trial that Gillies' advance evoked memories of growing up in a violent family situation and this contributed to his loss of control. Hence, the validity of the defense depended on whether Green's testimony of this 'flashback' was admissible as a mitigating factor in the crime.¹¹

However, what becomes apparent in the High Court judgment is that homosexuality is itself constituted as provocative, such that the violence at issue is not the vicious attack against the homosexual man who is now dead, but rather the pass that he made at the defendant, which is understood as a violation of the defendant's sexual integrity. Further, the prior violence that the defendant had witnessed in his family multiplies and enhances that violence, such that it is now no longer the dead man who is understood as the victim of violence but the attacker. As Chief Justice Brennan argues in his judgment in *Green v The Queen*, the provocation legislation requires that the 'sting of the provocation actually experienced by the accused' be taken account of in jury considerations.¹² Brennan goes on to suggest that:

(a) the act or omission is the result of loss of self-control on the part of the accused that was induced by any conduct of the deceased (including grossly insulting words or gestures) towards or affecting the accused; and

(b) that conduct of the deceased was such as could have induced an ordinary person in the position of the accused to have so far lost self-control as to have formed an intent to kill, or to inflict grievous bodily harm upon, the deceased.

¹¹ Within legal debates this problem is addressed as subjectivist and objectivist approaches to the standard. There is also a substantial literature critiquing the notional 'ordinary person' invoked in the legislation, much of which emphasizes the gendered nature of this standard. See in particular, Adrian Howe, 'More Folk Provoke Their Own Demise (Homophobic Violence and Sexed Excuses – Rejoining the Provocation Law Debate, Courtesy of the Homosexual Advance Defence)', *Sydney Law Review*, 19(1997), pp.336-365. It should be pointed out that the Green appeal has subsequently been cited as one of the principal cases in the institutionalization of the 'homosexual advance defence' in the Australian legal context. While a similar defense has been used in the U.S. legal context – known as the 'homosexual panic defense' – the American defense explicitly psychologizes the homophobic response to an advance through the attempted identification of a latent homosexuality within the attacker as the cause of homophobic violence. In the Australian defense, no reference is made to latent homosexuality, although a 'flashback' to previous trauma is a common attribute of HAD cases, as is often extreme violence. Instead of latent homosexuality, the 'trauma' that is supposedly recalled by a homosexual advance is more generalized. For further discussions of these defenses see, Mison, 'More Folk'; Robert Mison, 'Homophobia in Manslaughter: The Homosexual Advance as Insufficient Provocation', *California Law Review*, 80 (1992), pp.133-178; also see the excellent discussion provided by Justice Michael Kirby in his judgment in the appeal, Kirby J. *Green v The Queen*.

¹² Brennan CJ, *Green v The Queen*.

The real sting of the provocation could have been found not in the force used by the deceased but in his attempt to violate the sexual integrity of a man who had trusted him as a friend and father figure, in the deceased's persistent homosexual advances after the appellant had said "I'm not like this".¹³

In discussing the prior rejection of Green's appeal in the New South Wales Court of Criminal Appeal, Brennan cites the dissenting opinion of Justice Smart, who describes Gillies' non-violent, perhaps even gentle, advance as 'revolting', 'terrifying' and a 'serious and gross violation'. From this, Smart concluded that an ordinary man might 'feel great revulsion at the homosexual advances being persisted with in the circumstances and could be induced to so far lose their self control as to form the intention to and inflict grievous bodily harm', an opinion that Brennan concurred with.¹⁴

Thus, the corporeal homophobic violence of the attack is effaced through the invocation of other kinds of violence, understood to contribute to a sense of gross personal violation on the part of the attacker. Violence appears to proliferate throughout the scene of the trial, ultimately resulting in a double violation in which the dead homosexual body is on the one hand construed as dangerously threatening and on the other, is systematically effaced as the victim of violence. Judith Butler makes a similar point in her discussion of the 1992 trial following the police beating of Rodney King in Los Angeles. Butler highlights the way in which Rodney King was systematically construed as inherently threatening throughout the trial of the police officers, despite the video evidence to the contrary. She argues that this is a consequence and indication of a racial schema that precedes and structures the possibilities of seeing, that determines what counts as seeing. Butler argues that through a series of cross-identifications established through a racist imaginary schema, the vulnerability evident in the beaten body and helpless gestures of Rodney King is attributed to the white police officers, such that the black male body is construed as necessarily threatening and violent. To combat this reading and the repetition of the racist imaginary in operation, she argues that "it is necessary to read not only for the "event" of violence, but for the racist schema that orchestrates and

¹³ Brennan CJ, *Green v The Queen*.

¹⁴ Smart J. cited in Brennan CJ, *Green v The Queen*.

interprets the event, which splits the violent intention off from the body who wields it and attributes it to the body who receives it.¹⁵

Butler's point has several implications for reading the proliferation and mis-identification of violence in the case that I described. I do not mean to suggest that race and sexuality can be understood to be constituted in the same way or with the same effects, nor that racism and homophobia can be rendered equivalent. Nevertheless, several of Butler's key points can be transposed to a consideration of the case described above. Such a transposition highlights the mis-identification of vulnerability in the body of the attacker and the correlative mis-identification of the homosexual body as threatening, violating and provocative. More importantly, within this analysis, the way in which violence undoes the distinction between the discursive and the non-discursive is brought to the fore. The violations effected in the Rodney King trial never settle in a body, – just as they do not in the *Green* appeal – which might be a consequence of the fact that bodies themselves are never entirely settled. The violations both precede and exceed the beating of a black body by white police officers or the beating and killing of the homosexual body by the body whose 'sexual integrity' has been violated, such that those bodies are effectively constituted in their violation. If it is the case that some bodies are constituted as injurious while others are constituted as injurable under the law, it seems pertinent to consider the conditions under which such constitution takes place and the determination that it entails. Additionally, it seems important to consider the normative exclusions effectuated in that constitution, such that some bodies are constituted as 'bodies that matter, ways of living that count as "life"'¹⁶ while others are not.

Hence, in considering the question of the role of violence within the determination of life worth living, it seems appropriate to take up Butler's provocation that the task is not simply to read the event of violence *per se*, but to consider the schemas that allow for the attribution of vulnerability, violence and threat in some bodies and not others. To do this, it must first be recognized that the proliferation of violence does

¹⁵ Judith Butler, 'Endangered/Endangering: Schematic Racism and White Paranoia' in Robert Gooding Williams, ed. *Reading Rodney King/Reading Urban Uprising*, (New York: Routledge, 1993), pp.15-22 at 20.

¹⁶ Judith Butler, *Bodies that Matter: On the Discursive Limits of "Sex"* (New York: Routledge, 1993), p.16

not stop with the mis-identification of violation and vulnerability, since violence is again perpetrated in the enforcement of the law that 'deal[s] pain and death' against the body of the defendant, whose freedom is subsequently constrained through imprisonment.¹⁷ This raises the question of the relation of the law to violence, and more specifically, the status of violence within the institution and maintenance of order. Indeed, it suggests that violence cannot simply be opposed to order, but is in fact integral to the constitution of it. This claim is made by Robert Cover in 'Violence and the Word', in which Cover argues that the interpretation and effective enforcement of the law is necessarily dependent on acts of violence, such that law itself is an 'organized, social practice of violence'.¹⁸ Law and particularly criminal law, he claims, inevitably and necessarily deals pain and death in the practice of judgment; as a practical activity that takes place within the institutional organization of violence, judgment aims to efficaciously 'generate credible threats and actual deeds of violence'.¹⁹

However, Cover's argument is not simply that violence is an instrumental effect of the law; rather, his argument addresses the ontological foundation of the law, insofar as violence is one of the constitutive and inseparable conditions of it.²⁰ As Pheng

¹⁷ Robert Cover, 'Violence and the Word', *Yale Law Review*, 95:1595(1986), pp.1601-1629, *passim*.

¹⁸ Cover, 'Violence and the Word', p.1601. It is perhaps not insignificant that Cover uses the example of martyrdom to initially limn the relation between violence and the law in his paper, a figuration that recalls Walter Benjamin's crucial essay 'The Critique of Violence' and other literature on violence, the law and the sacred. See Walter Benjamin, 'The Critique of Violence' in *Reflections: Essays, Aphorisms, Autobiographical Writings*, ed. Peter Demetz (New York: Schocken Books, 1978); René Girard, *Violence and the Sacred*, tr. Patrick Gregory (Baltimore: Johns Hopkins University, 1977); René Girard, *The Scapegoat*, tr. Yvonne Freccero (Baltimore: Johns Hopkins University, 1986); Georges Bataille, *The Accursed Share*, tr. Robert Hurley (New York: Zone, 1988-1991); Georges Bataille, *Theory of Religion*, tr. Robert Hurley (New York: Zone, 1989); Jacques Derrida, 'The Force of Law: The "Mystical Foundation of Authority"' in Drucilla Cornell, Michel Rosenfeld, David Gray Carson, eds. *Deconstruction and the Possibility of Justice* (New York: Routledge, 1992), pp.3-67; Jacques Derrida, 'Before the Law' in Derek Attridge, ed. *Acts of Literature* (New York: Routledge, 1992), pp.181-220; Stathis Gourgouris, 'Enlightenment and Paranoia', in Hent De Vries and Samuel Weber, eds. *Violence, Identity and Self-Determination* (Stanford: Stanford University Press, 1997), pp.199-149.

¹⁹ Cover, 'Violence and the Word', p.1610.

²⁰ In their considerations of the violence perpetrated in the name of order, Austin Sarat and Thomas Kearns have observed that contemporary legal theory systematically denies and obfuscates the violence of the law, against which they claim that 'law's violence is hardly separable from the rule of law itself. Sarat and Kearns argue that the traditional or 'official' story told about the law, beginning with Thomas Hobbes' characterization of the role of the Leviathan in erasing violence from social life, casts law as a domesticating, if not liberating force. Against this official narrative, they argue that the force of the law is intimately related to violence, not only instrumentally as it is conceived in debates on the legitimate use of violence within certain constraints of means and ends, but also, and more importantly, constitutively. See Austin Sarat and Thomas Kearns, 'A Journey Through Forgetting: Toward a Jurisprudence of Violence' in Austin Sarat and Thomas R. Kearns, eds. *The Fate of Law* (Ann

Cheah and Elizabeth Grosz point out, Cover's emphasis on the *world-making* capacity of the law means that his claim does not simply identify the contingent historical instances of violence effectuated by the law, but instead points to a fundamental force of the law to make the world in its image.²¹ Further, the world-making capacity of the law operates through the imposition of ideality on materiality. Cover argues that 'law is never just a mental or spiritual act. A legal world is built only to the extent that there are commitments that place bodies on the line'.²² As an ontological violence, law constitutively 'shapes the material processes of embodiment': law in general is 'an originary and inhuman violence operative in embodiment' such that 'a founding violence at the level of the body stands at the origin and limit of the law'.²³ The recognition of the centrality of corporeality in the formulation and foundation of the law as well as in its execution or effective interpretation, suggests that understanding the violence of the law requires understanding its relation to the body and, by extension, to subjectivity and ultimately, to life itself.

Foucault insists on this point in his analysis of the corporeal, material dimension of punishment and incarceration in *Discipline and Punish*. While claiming that the law no longer functions as a system of interdiction but as a normalizing apparatus of regulation, Foucault highlights the constitutive capacity of normalizing violence vis-à-vis the human body. The violence that Foucault focuses on in this text is no longer the right of the sword, the discontinuous, extractive violence of the sovereign so forcefully portrayed in the opening pages of the text, but instead, the continuous, anonymous violence of the norm. This is a violence that never lets go of the body; it inscribes the body not simply as a corporeal surface, but as a system of forces that

Arbor: University of Michigan Press, 1991), pp.209-273 at 210. Also see their critique of Cover in Austin Sarat and Thomas R. Kearns, 'Making Peace with Violence: Robert Cover on Law and Legal Theory', in Austin Sarat and Thomas R. Kearns, eds. *Law's Violence* (Ann Arbor: University of Michigan Press, 1992), pp.211-250. For a related argument against H.L.A Hart, see Stanley Fish, 'Force', *Doing What Comes Naturally: Change, Rhetoric and the Practice of Literary and Legal Studies* (Durham: Duke University, 1989), pp.503-524, particularly his claim that 'the force of the law is always already indistinguishable from the forces it would oppose' (p.520) and Thomas Keenan's discussion of this claim in Thomas Keenan, *Fables of Responsibility* (Stanford: Stanford University Press, 1997), pp.16-20.

²¹ Pheng Cheah and Elizabeth Grosz, 'The Body of the Law: Notes Toward a Theory of Corporeal Justice', in Pheng Cheah, David Fraser and Judith Grbich, eds. *Thinking through the Body of the Law* (Sydney: Allen and Unwin, 1996), pp.3-25 at 9; also see their comparison of Cover's conception of the law with Nietzsche's doctrine of the will to power, p.11.

²² Cover, 'Violence and the Word', p.1605.

²³ Cheah and Grosz, 'The Body of the Law', p.10.

can be re-arranged and re-assembled in accordance with the strategic organization of power relations and institutions that embody them. As a form of institutionalized violence, normalization subjugates and makes subjects as one of its principal effects. The individual subject, tied to the operations of power precisely in its identification as individual, emerges from the violating, forceful impositions of the demands of disciplinary capital upon and in the body. But for all the importance of Foucault's analysis, it does simplify the problem somewhat in its formulation of the relation of violence and subjectivation.

For violence is double-edged in relation to the subject: on the one hand, violence subjugates, makes subject to, or indeed, simply makes subjects. On the other though, violence appears to destroy the condition of being a subject, not only insofar as it radically curtails the freedom of the subject, but also appears to destroy the possibility of entering into language and thereby the possibility of taking up the position of subject as such.²⁴ In other words, violence bears an intimate though heterogeneous relation to subjectivation: on the one hand, violence subjectifies and on the other, it radically *de-subjectifies*. Violence signals a crisis for the subject in the threat of death that it prefigures and further, brings about that death through the crisis that it signals. This becomes clear in Butler's analysis of injurious locution in *Excitable Speech* and it is also central to her formulation of the constitutive vulnerability of the subject in its dependence on recognition by others for securing intelligible identifications. Butler highlights the constitutive vulnerability in subjectivation, revealing the ways in which the threat of abjection or social death operates to regulate identity-formation, such that the violence of subjectivation operates through the constitutive exclusions that structure and enforce possibilities for living.

Hence, the inter-relation of law and violence opens into significant questions concerning constituent and constituted violence and the operation of sovereignty in the formulation and institution of the law. It also opens to important questions concerning the status of the body within political order, and through that, appears to

²⁴ See Elaine Scarry, *The Body in Pain: The Making and Unmaking of the World* (Oxford: Oxford University Press, 1985).

return us to the question of what lives count within the political. In this thesis, I take up these questions through the work of Foucault, Agamben, and Butler, since their works present significant challenges to the obviation of violence within the constitution of political and legal order evident in liberal political theory and allow questions about violence to be posed in terms apart from those of legitimation and justification. In different ways, each argues that violence is integral to the constitution of political community and the determination of lives worth living that this involves. For Foucault, the violence of political order is unhinged from the sovereign's power over death and instead effectuated through the processes of normalization and individualization that enforce biopolitical subjection. While Butler tempers Foucault's understanding of subjectivation as violent imposition through an analysis of psychic attachments to subjection, she nevertheless sees violence in the constitutive exclusions that mark hegemonic, regulative apparatuses of subjectivation. For Agamben, the violence of political order is again the violence of the sovereign decision insofar as that decision founds law; however, he argues that the sovereign decision is dispersed beyond a centralized state form and effectively produces the biopolitical body in the moment of its occurrence.

III. An Ethics of Survival

In addition to the analyses of political community and violence mentioned, each of these theorists poses the question of what response is possible, even if the answer they give to this question does not amount to the formulation of a positive political project. Consequently, one of the questions addressed throughout this thesis is how might the violence of biopolitics be addressed? Such a question requires consideration not only of the responses suggested by each theorist, but also of the relation between ethics and politics and more specifically, what space or role the ethical takes when politics plays out through the determination of life worth living. In taking up these questions, I consider the ethical and political responses formulated by Foucault, Butler and Agamben to argue that recognition of a fundamental ethical responsibility is crucial to the delimitation of the political decision. Drawing on Derrida's formulations of ethical responsibility, I argue that such a conception of the relation between ethics and politics cannot be one such that a determinate politics can simply be deduced from a moral foundationalism. Furthermore, as Derrida and others claim, the ethical responsibility that obtains in relation to the political decision

is ineliminable, and as such, cannot be reduced to or deduced from legalistic notions of individual culpability. However, while drawing on Derrida's formulation of ethical responsibility, I do not take up the Levinasian inflected ethics developed in his later work entirely. Instead, through discussion of Agamben's *Remnants of Auschwitz*, I argue for an ethics of witnessing that emerges in the decision of who takes part in the political.

Through his engagements with Emmanuel Levinas, Derrida develops a conception of ethics that exceeds and overrides the deduction of responsibility from the determinable actions of an individual that underpins juridically defined notions of responsibility. To briefly gloss Derrida's account, the conception of responsibility that he develops is an excessive responsibility that holds the subject 'hostage' to the Other, where that being hostage is itself the subjectivity of the subject.²⁵ In other words, responsibility is an internal condition of the subject. As a consequence, the ethical responsibility that holds the subject is *ineliminable*; it cannot be turned away from or negated through recourse to individual culpability. At the same time, such an excessive responsibility is *unassumable*, in that it is not something that the subject can take up as a predicate or particular capability. The subject is not responsible to the other because of its actions toward the other or because of recognition of guilt. Rather, the subject is always already responsible, because that responsibility exceeds and precedes it. Importantly for Derrida, such a conception of ethical responsibility does not give rise to a determinate politics or law; rather, there is a hiatus between the ethical and the political, and it is this hiatus that makes the decision of the political both possible and in multiple senses, impossible.²⁶ The 'mad' decision of the political in which responsibility takes hold because of the lack of ontological foundation underpinning the decision can only be made in the face of that hiatus.²⁷ Throughout this thesis, I critically juxtapose such a conception of ethics with the work of Foucault, Butler and Agamben to develop an account of the ethical

²⁵ Jacques Derrida, *Adieu to Emmanuel Levinas*, tr. Pascale-Anne Brault and Michael Naas (Stanford: Stanford University Press, 1999), p.55.

²⁶ On the impossibility of the decision because the decision is always 'the decision of the other', see Paul Patton and Terry Smith, ed. *Jacques Derrida: Deconstruction Engaged: The Sydney Seminars*, (Sydney: Power Publications, 2001), p.103; on the 'madness' or undecidable condition of the decision, see Jacques Derrida, 'Force of Law', p.24; Jacques Derrida, *The Gift of Death*, tr. David Wills (Chicago: University of Chicago Press, 1995), p.25 and *passim*.

²⁷ Derrida, *Adieu*, p.21.

responsibility that obtains in relation to the biopolitical determination of life worth living and the violence effected in it.

With regard to Foucault and Butler, I argue that the conceptions of ethics and responsibility yielded in their works are inadequate as elaborations of response to the violence of biopolitical subjection. In tracing the interdependency of political belonging and freedom in Foucault's ethics of the self, I make two related claims to highlight the limits of concern for others within such a conception of ethics. First, I argue that the ethics of the self are at base an ethics of the free citizen subject, such that the practices of ethical self-formation elucidated within Foucault's later work appear to be conditioned by belonging to political community; in this, they fail to broach concern for others beyond the borders of part-taking. To strengthen this claim, I consider the contingency of concern for others within Foucault's ethics, and argue that the failure to elaborate an ineliminable concern for others as an internal condition of a practice of ethical self-formation severely limits the value of such a conception of ethics for addressing biopolitical subjection. Of Butler's work, I argue that Butler's conception of intelligibility and social death fundamentally constrains the conception of responsibility that might be yielded in her work. While Butler indicates the necessity of developing a conception of ethical responsibility that cannot be deduced from individual culpability – given the linguistic constitution and hence vulnerability of the subject – to date, she has not provided an extended elaboration of a conception of responsibility. However, a concern with responsibility subtends her most recent work, *Antigone's Claim*. I read this text to highlight the ways in which her theorization of mis-recognition and regulatory interpellation undermines an elaboration of the responsibility of the subject for those whose address is rendered unintelligible within hegemonic regimes of identification.

Over and against Foucault and Butler, I argue that the conception of an ethics of witnessing developed by Agamben provides an important reconsideration of responsibility that cannot be rendered equivalent to individual culpability. In reference to the paradox of witnessing identified by Primo Levi, in which the true witnesses of the concentration camps of Nazi Germany are those who died in the camps, Agamben argues that the aporia of testimony is that what is borne witness to is the impossibility of speech that inheres in subjectivation as a constitutive

desubjectivation. Taking up the rhetorical figure of apostrophe, Agamben argues for a conception of ethics as being called to responsibility, to bear witness to the impossibility of speaking that conditions testimony. Agamben's conception of witnessing is based on a rejection of juridically defined notions of responsibility to yield a conception of irresponsibility or non-responsibility that is simultaneously ineliminable and unassumable. However, while Agamben's argument that responsibility cannot be equated to individual culpability is crucial, I also show the way in which his ethics of witnessing require a conception of responsibility as response to address. In doing so, I aim to bring out the importance of address and response and the intersubjective condition of ethics that is left implicit within Agamben's account of witnessing. In this way, the ineliminable, unassumable responsibility of bearing witness takes hold in the scission between the community of the governed and the part-without-part and the determination of life worth living that defines the borders of political community.

Several points should be added here to elucidate the presumptions that inform the style of this thesis. First, my way of proceeding throughout the thesis has been influenced by one of the fundamental lessons of deconstruction that the task of philosophy is not so much that of providing answers and outlining political programs, but rather of opening up possibilities for thinking. As a theoretical and critical method, deconstruction – along with Foucauldian genealogical politics – has been heavily criticized for the apparent failure to offer positive solutions or political projects in addition to the critiques offered by its practitioners. In response to this criticism, the partisans of deconstruction and genealogy have argued that the value of these theoretical projects lies elsewhere than in the formulation of normative political and ethical programs. In particular, it lies in the capacity of such methods of analysis to bring to light the conditions and presuppositions under which such programs are formulated. As Gayatri Spivak suggests, the point is not that deconstruction does not found a political project, but that it allows for consideration of the problematic foundations of politics.²⁸ While this thesis is neither a deconstructive analysis nor a genealogical analysis, it does take theoretical and methodological inspiration from

²⁸ Gayatri Chakravorty Spivak, *Outside in the Teaching Machine* (New York: Routledge, 1993), pp.121; also see Geoffrey Bennington and Jacques Derrida, *Jacques Derrida*, tr. Geoffrey Bennington (Chicago: University of Chicago Press, 1993), p.264.

these philosophical and political projects in its style and critical agenda. Consequently, the thesis does not attempt to outline a normative political project and nor does it work stylistically as a series of propositions leading to an indubitable conclusion. Instead, the following analysis follows a recursive path along which the problems of violence, subjectivity and political constitution are considered with the aim of highlighting aspects of those problems that have not yet been brought to light.

My way of reading the texts that I take up in the thesis is similar. Given the ready solidification of interpretation, the challenge in this thesis has been to provide a slightly different reading of the texts at hand, bringing out tensions that inflect the texts and exploring the limits of the conceptualizations that are developed in them. This has been particularly challenging in relation to Foucault's work, given the already huge literature on it. In this context, one cannot but ask oneself the question of why another thesis on Foucault now? My justification for re-reading Foucault is two-fold: first, because little philosophical attention has been paid to the concept of biopolitics, and second, because the theoretical naturalization of a 'Foucauldian analysis' within academic debates makes it important to ask precisely what that amounts to. There is now a more or less hegemonic interpretation of Foucault as profoundly Nietzschean in his formulations of power, subjectivity and genealogy, Kantian in his formulation of critique and altogether too Greek in his formulation of an ethics of the self. While all these theoretical precedents hold to a greater or lesser extent in Foucault's work, the established reading of Foucault has frequently neglected influences on Foucault's thought that have not themselves been so prominent within the Anglo-American imaginary as it emerges in political theory and philosophy. Georges Canguilhem for instance, was undoubtedly of immense significance for Foucault's methodology of historical analysis of systems of thought and fundamental for Foucault's later conception of norms and normativity, as well as for his critique of the subject. Yet, Canguilhem is still not widely read as a theoretical precursor to Foucault and little has been said of this influence.²⁹ However, focusing

²⁹ See the letter cited by Didier Eribon, in which Foucault explicitly acknowledges his intellectual debt to Canguilhem in Didier Eribon, *Michel Foucault*, tr. Betsy Wing (London: Faber and Faber, 1991), p.103.

on the conceptions that Foucault borrows from Canguilhem provides new means of responding to some of the apparently intractable questions posed to Foucault's work.

Part of the task of developing new readings of a text is learning how to ask new questions of it. Following this precept, I have not made the by now established debates around Foucault or Butler's work the main foci of discussion. Instead, I have attempted to highlight within their work the conceptualizations that have received less attention, as well as the unstable, ambiguous formulations that open up questions without leading directly to more traditionally defined philosophical problems and modes of analysis. Of Foucault's earlier work for instance, I focus on the concept of biopolitics, and ask what relation is posited between power, life and death. Of the later ethics, I ask what relation is established between ethics and political community; in other words, who participates in an ethics of self-formation and under what conditions? With regard to Butler's work, I attempt to show the ways in which her work can be read within the terms of biopolitics, that is, within the normative determination of life worth living and the correlative political status of death. I emphasize her analyzes of subject-formation, violence and normative exclusion, particularly through the concept of social death. While the challenge posed by Foucault and Butler's work is that of wresting those texts from already established readings, Agamben's work provides a different challenge. While all of the texts I analyze in this thesis are deeply ambiguous and unstable in their formulations, sometimes deliberately so, none are more so than Agamben's. The challenge of Agamben's work has been to produce readings that attend both to the rigorous philosophical conceptuality and to the elusive gestures that simultaneously structure and undo the texts. In the absence of an established body of interpretative literature to refer to, and without a flourishing philosophical conversation around Agamben's work in Australia, on more than one occasion it seemed that these readings wandered too far from what had already been said. I can only hope that that errancy has been productive.

IV. Chapter Summary

Two broad questions structure this thesis: the first concerns the role of violence within a politics of life and the second considers what response is possible to that

violence. Chapters 1, 3 and 5 are given over to consideration of the first of these, through interpretative analysis of the work of Foucault, Butler and Agamben respectively. In these chapters, I begin with a consideration of the account of biopolitical subjection developed by Foucault in his work dating from the mid-1970s, specifically *Discipline and Punish* through to the first volume of *The History of Sexuality* and related essays. I argue in this chapter that Foucault's conception of biopolitical subjection is beset by two sets of problems, the first relating to his account of the emergence of a political rationality of life over and against the rationality of death that he argues characterized sovereign power, and the second relating to his account of bodily subjection. I then consider the responses to these problems given by Butler and Agamben to show the ways in which they extend upon Foucault's work, but also to develop an immanent critique of particular formulations or gestures within their work. The second question is taken up in Chapters 2, 4 and 6. In these, I consider the ethico-political responses proposed by each theorist, given their particular accounts of biopolitical subjection. Hence, rather than referring back to a theoretical problem in Foucault's work, these chapters refer primarily to the preceding analysis provided by the theorist in question, although they also build upon each other consecutively. Throughout these chapters, I argue that neither Foucault's ethics of self-formation nor Butler's politics of mis-recognition and resignification provide wholly satisfactory conceptions of ethico-political response to biopolitical violence. Instead, I suggest that the ethics of impossible witnessing developed by Agamben provide a provocative starting point for rethinking ethics when politics plays out through the determination of life worth living.

The chapters are organized as follows:

In Chapter 1, I discuss Foucault's concept of biopolitics with regard to normalizing violence and the production of subjects by operations of power to argue that the determination of life worth living operates as the constitutive decision of biopolitics. I discuss *Discipline and Punish* and *The History of Sexuality, volume 1* and related texts, with particular reference to the theoretical influence of Georges Canguilhem. I argue that while Foucault's analysis of biopolitics and normalizing violence helps broach the question of the political determination of life worth living, it is limited in two particular ways. The first of these relates to the analysis of power that Foucault

develops while the second pertains to his conception of subjectivation. Of the first, I argue that Foucault's account of the transformation of sovereign power to biopolitics over-emphasizes the break between these regimes of power, such that sovereignty can only appear as ideological within contemporary regimes of power. Of the second, I argue that Foucault's account of subjectivation is overly reductive in its association of subject-formation with violent, normalizing impositions upon the body. As such, he does not provide the theoretical means for an elaboration of why it is that bodies obey the compulsions of power and further, risks remaining tied to the discourse of liberation that he sought to move away from.

In Chapter 2, I discuss the later volumes of the *History of Sexuality* project and related texts in which Foucault develops his conception of an ethics of the self. In particular, I discuss the claim that the later ethics provide a model of ethical practice as a form of political response to the problems of biopolitical subjection. The political value of an ethics of the self is frequently taken to lie in an aesthetic and ethical practice of the self that allows the subject to work upon itself to 'become otherwise', or to free itself from the subjectivating effects of individualizing and normalizing power through a practice of desubjection. In considering this claim, I show that if an ethics of the self can be understood as an ethico-political response to subjectivation, they are limited in important ways. In particular, I consider the ambiguous status of freedom within the ethics, wherein freedom appears as both the condition and effect of ethical self-formation. That is, one must already be a free subject in order to engage in the practice of desubjection. In following the implications of this complexity in the status of freedom, I argue that ultimately the ethics of the self appear as an ethical practice of the citizen. In addressing the question of whether such an ethics can nevertheless be extended beyond the limits of the polity to broach questions of political exclusion, I argue that since such practices do not entail any necessary concern for others over and above concern for self then they are limited in the ways in which they can be taken to address biopolitical subjection.

In Chapter 3, I turn to the second set of problems identified in Foucault's work, that is, those relating to his conception of subjectivation. In particular, I discuss Judith Butler's extension of Foucault's thesis on the normative production of subjects by operations of power, particularly in reference to *Bodies that Matter* and *The Psychic Life of Power*. I argue that while Butler's work contributes to an understanding of

biopolitical subjection by providing a fuller conception of the political emergence of the body and the subject than Foucault, her account nevertheless contains important ambiguities. In tracing these, I show that Butler does not always sustain the irreducibility of materiality and signification that she requires to hold off the charge of linguistic reductionism. One of the consequences of this is that her account of social death contains important ambiguities that undercut her conception of the agency of the excluded. In particular, insofar as Butler occasionally elides the distinction that she requires between biological survival and social survival, her conception of social death slides into death *per se*, such that her account of the agency of the socially dead is put into question. The equivocation identified here is further reinforced through an examination of Butler's figuration of agency and social death, which consistently portrays freedom as ultimately yielded in suicide.

In Chapter 4, I extend this discussion through analysis of Butler's discussion of speech and violence in *Excitable Speech* and *Antigone's Claim*. I discuss her work in relation to J.L. Austin's theory of speech acts and debates on hate speech and pornography, as well as her theoretical and political commitments to the project of radical democracy. The first section of this chapter discusses Butler's portrayal of the relation between violence and signification to consider the limits and limitations of speech as the privileged domain of political engagement. In addition, I consider the account of resignification and political agency that Butler develops to show the ways in which her political commitments entail a fundamental tension between understanding contingency as opening political possibilities and positing contingency as the foundation of political agency. Finally, I close my discussion of Butler's work with a final comment on the question of responsibility as it is posed in *Excitable Speech* and extended in *Antigone's Claim*. In this, I argue that even allowing that Butler has not yet provided an account of responsibility, it remains unclear that the dynamic of mis-recognition that structures her account of subject-formation will yield such an account either. Turning away from the question of whether the subject can be held responsible for speech, I ask of Butler's work, what responsibility does the subject bear for those whose speech is ostensibly unintelligible. This question reveals fundamental problems with Butler's emphasis on intelligibility within subject-formation, which ultimately stymies her account of ethical address and responsibility.

In Chapter 5, I return to the problems of sovereign and biopolitical power that I first identified in my initial discussion of Foucault's work. To do this, I discuss the recent work of Giorgio Agamben, particularly his reformulation of the concept of biopolitics developed in *Homo Sacer*. In the first section of this chapter, I argue that Agamben's theorization of the fundamental interdependency of sovereignty and biopolitics offers an important corrective to Foucault in two particular ways. First, it allows for consideration of material operations of sovereignty that are no longer constrained by the centralized state form but instead arise as dispersed sovereign decisions on life worth living. Secondly, Agamben's notion of bare life as natural life politicized through exposure to sovereign violence offers a means of thinking the relation of the biological and political that avoids the reductive moments in both Foucault and Butler, where the body is posited as either radically resistant or reduced to signification. In the second section of the chapter, I take up an extensive analysis of the gesture that Agamben makes to the notion of 'happy life' as the means of redemption from the biopolitical capture of bare life. I argue that this gesture emerges from Agamben's commitment to a strong messianic position deduced from his theoretical debt to Walter Benjamin, and introduces several problems into Agamben's political theory. In particular, the messianics of happy life forecloses a consideration of potentiality within bare life itself such that political transformation must derive from a transcendental source of redemption. Further, through this gesture, Agamben is committed to the necessity of a total solution to the perceived dangers of biopolitics. To make these claims, I discuss Agamben's text in reference to Carl Schmitt and Walter Benjamin, as well as Jacques Derrida's interpretation of Benjaminian messianics.

In Chapter 6, I discuss the ethics of witnessing that Agamben develops in reference to Primo Levi in *Remnants of Auschwitz*. I show that this text entails a move away from the strong messianic position of the earlier text in order to develop a conception of ethical response to biopolitical subjection through witnessing. I conclude that this allows for the development of a theorization of ethico-political response to the violence to which subjects are exposed in their constitution as bare life. In the final section of this chapter then, I turn to a consideration of rights to concretize the criticisms made against Agamben and to show the way in which an ethics of witnessing neither determines nor forecloses the formulation of rights-based political solutions to biopolitical subjection. In this, I develop a brief reading of Foucault's

document 'Confronting Governments: Human Rights' to moderate the strong rejection of rights that Agamben advocates and conclude that an ethics of witnessing emerges in the schism of citizens and people that marks the boundary of political community.

Chapter 1

The Politicization of Life: Foucault on Sovereignty, Biopower and Subjectivity

We should try to grasp subjectivity in its material instance as the constitution of subjects.¹

1.1 Introduction

In formulating the concept of biopower in the first volume of the *History of Sexuality* project, Michel Foucault brought together questions of political rationality and biological life in a highly provocative intervention. Foucault argues in this volume that in the eighteenth century the operative rationality of power in the West underwent a radical reversal, such that power no longer focused on death, but instead operated through fostering the life of populations and individuals. In developing an analysis of biopolitics, Foucault rejects an understanding of power based on the model of sovereignty and instead proposes an analytics of power that focuses on the productive elements of power's operation. Further, he argues that a conception of power should be based not on the hierarchy of the prince, but rather on the tactics and strategies of war. Reversing Clausewitz in order to criticize the social contract account of political constitution, Foucault argues that politics is war carried out in the realm of civic peace. One of the implications of this theoretical reversal is the suggestion that violence is not so much staved off or eliminated through the installation of order, but is in fact central to its operation. However, within a biopolitical regime, the violence of political order is no longer the violence of the sword characteristic of sovereign power, but rather, that of normalization.

Consequently, Foucault's account of biopower rests on a conception of the political that places subjectivation at the core of political questioning. In his work addressed to the operations of biopower, Foucault is constantly attentive to the moment in

¹ Michel Foucault, 'Two Lectures' in *Power/Knowledge: Selected interviews and other writings 1972-1977*, ed. Colin Gordon, tr. Colin Gordon and others (Pantheon Press: New York, 1980) pp.109-133 at p.97.

which power applies to and remolds the forces of the body to its own ends. Thus, he provides an analytics of power that addresses the 'most material' aspects of power relations. Furthermore, in reformulating power as productive rather than prohibitive, Foucault claims that the individual is itself an effect and vehicle of power, not simply its point of application. In understanding individuality as an artefact of normalization, Foucault opens space for a consideration of the ways in which subjectivity is crucial to the biopolitical determination of life worth living. Nevertheless, Foucault's account of subject-formation in biopolitics is ultimately limited in that he construes subjection as a one-sided imposition and constraint on the body and offers no substantial account of the positive political implications and consequences of subjectivation. Further, while Foucault does allow the theoretical space for an elaboration of the resistant capacities of the body, the account of subjection that he relies upon in this work means that he ultimately does not account for why it is that normalizing operations of power are effective, that is, why bodies obey.

In this chapter, I discuss Foucault's account of the transformation of political rationality from sovereignty to biopower and the account of life and the body that he provides in work published during the early to mid 1970s, to the publication of the first volume of *History of Sexuality*. In particular, I focus on his characterization of violence within political order and the implications that this has for a consideration of life and death within biopolitics. The analysis I develop in this chapter traces a logic in Foucault's work that problematizes recent discussions of biopolitics that focus only on 'fostering life' and seeks instead to consider what it means for technologies of power to 'disallow life' to the point of death. I argue that while Foucault's account of the emergence of a biopolitical rationality is instructive for considering the operations of power and the political capture of life, it is limited by important theoretical foreclosures that diminish the extent to which it illuminates the biopolitical determination of life worth living. In particular, I identify two sets of ambiguities and problems in the account of biopolitics that Foucault gives. The first of these relates to the problem of sovereignty and particularly his refusal to engage in a theorization and analysis of sovereign operations of power. The second relates to his reductive formulation of subjection as an imposition on the body and refusal to elaborate a more substantial theorization of subjectivation and the attachments of the body to mechanisms of power.

1.2 From Prohibitive to Productive Power: Sovereignty and Biopower

In the introduction to the planned volumes of the *History of Sexuality* project, Foucault proposes to undertake a genealogy of 'the deployment of sexuality' as a central axis in the operation of a regime of power he names 'biopower'.² He argues in this introductory text that sexuality is not a 'natural given' held in check by a power that operates through interdiction and rule, nor the secret and obscure domain of our selves that knowledge gradually discovers. Rather, 'sexuality' is the name of a 'historical construct... a great surface network'³ that links the body and its pleasures to the operation of power and knowledge, in continual circuits of incitement, intensification, regulation and discursive elaboration. As an historical construct, sexuality is deployed not simply as a means of prohibition and control, but as a means of harnessing the forces of the body, both of the individual and the population. Thus he claims that sexuality, understood as a discursive arrangement, provided the 'pivot... along which developed the entire political technology of life' since it was a 'means of access to both the life of the body and the life of the species'.⁴

In elaborating the role of sexuality in the new regime of power, Foucault argues that biopower evolved in two basic forms, which constitute two poles of development that are intimately connected though a cluster of intermediary relations.⁵ Foucault refers to the first of these as the 'anatomy-politics of the human body'. This form of power focused on the human body as a machine, seeking to optimize its capabilities, appropriate its forces and insert it into systems of economic, political and military efficiency through the simultaneous increase of both its usefulness and docility. This mode of operation is characteristic of the disciplinary technologies traced in *Discipline and Punish*. The second pole, formed somewhat later, focused on the 'species body' and the mechanics of life that inhered in it, such as the reproduction of populations, mortality, health, life expectancy and the conditions that impinge on these and cause them to vary. It is essentially a form of power that turns around the management of

² Michel Foucault, *The History of Sexuality, vol.1: An Introduction*, [1976] tr. Robert Hurley (London: Penguin, 1981), pp.105-114, 145.

³ Foucault, *History of Sexuality 1*, p.105.

⁴ Foucault, *History of Sexuality 1*, pp.146-147.

⁵ Foucault, *History of Sexuality 1*, p.139.

populations through the collection of information, calculated interventions and regulatory controls: a 'bio-politics of populations'. Foucault claims that in the nineteenth century, these techniques conjoined at the level of concrete arrangements to produce a regime of power that was simultaneously individualizing and totalizing in its attempts to administer and harness the forces that inhere in the body of the population and the individual.⁶

He goes on to argue that the entrance of life into the mechanisms of power and correlative organization of political strategies around the survival of the species constitutes the 'threshold of modernity'. Foucault claims that the eighteenth century witnessed an event nothing short of the engagement of life in history, that is, 'the entry of phenomena peculiar to the life of the human species into the order of knowledge and power, into the spheres of political techniques',⁷ an event which was inextricably caught up with the historical emergence and development of capitalism. To be clear, Foucault is not claiming that life and history had hitherto been completely separate and distinct in their spheres of operation – which would be a strange claim given the biological pressure exerted on history through famines and epidemics for example. Rather, the eighteenth century saw the emergence of knowledges that permitted a relative control over the immanence of death and the correlative inauguration of what could be called a politics of biological existence. He argues that:

For the first time in history, no doubt, biological existence was reflected in political existence; the fact of living was no longer an inaccessible substrate that only emerged from time to time, amid the randomness of death and its fatality; part of it passed into knowledge's field of control and power's sphere of intervention.⁸

⁶ It is worth noting that Foucault saw the deployment of sexuality not as an apparatus of control imposed on the working class by the bourgeoisie but as a 'self-affirmation' on the part of the bourgeoisie. Sexuality, addressed through the composite system of 'perversion-heredity-degenerescence' (Foucault, *History of Sexuality 1*, p.118) was the means by which the bourgeoisie sought to protect and strengthen itself, and only later came to be applied as a means of 'social control and political subjugation' (Foucault, *History of Sexuality 1*, p.123). For Foucault, this is an important empirical point in countering a view of power as repressive.

⁷ Foucault, *History of Sexuality 1*, pp.141-2.

⁸ Foucault, *History of Sexuality 1*, p.142.

Hence, the administration of life has become the central characteristic and defining rationale of the regime of power operative in the modern world. For Foucault, this means that the Aristotelian conception of man as a 'living animal with the additional capacity for a political existence' gives way to the suggestion that 'modern man is an animal whose politics place his existence as a living being in question'.⁹

Additionally, Foucault argues that this indicates that the regime of power that emerged from the seventeenth century onward involved a fundamental reversal of the principle of power's operation.¹⁰ Whereas sovereign power operated on the principle of the right to commit its subjects to death in order to enhance the strength of the sovereign, modern power reverses this axis and works through the multiplication and intensification of the focus on life. Insofar as life is the target of power, the rationale of power is no longer to 'take life or let live' but rather, to 'foster life or disallow it to the point of death'.¹¹ The state, Foucault suggests, no longer kills immediately and directly in an extractive fashion, but fosters life – produces and enhances it – or disallows its continuation, which is different still from simply letting die. In the rationale of the sovereign, the state acts directly on the body to take the life that inheres in it, or alternatively, removes itself from the scene, allowing subjects to live their lives without interference. Under a biopolitical rationality though, the state is always present, enhancing the life of the population in order to strengthen itself and 'disallowing life': the state does not simply withdraw from life, but actively works toward its extinction in such a way that it does not necessarily kill directly.¹² Such a disallowing of life occurs at the level of 'the species, the race and the large-scale phenomena of population', but also at the level of the individual; indeed, it is

⁹ Foucault, *History of Sexuality 1*, p.143.

¹⁰ Foucault, *History of Sexuality 1*, p.136.

¹¹ Foucault, *History of Sexuality 1*, p.138.

¹² On a world scale, an example of such a strategy would be the imposition of economic sanctions that do not seek to kill the population of another state directly but which nevertheless have the effect of disallowing life, whether intentionally or not. Interestingly, in his discussion of the sanctions imposed on Iraq by the United States of America, ('Sanctions, Ignorance and Morality', presented at the Centre for Applied Philosophy and Public Ethics Seminar, Australian National University (October 24, 2001)), Ramon Das suggests the category of 'not letting live' is a morally significant category apart from the more traditional distinction between 'killing and letting die' in moral philosophy. He argues that such a category is necessary to describe courses of action taken that, while not intentionally directed at killing, nevertheless make the continuation of life impossible. While he makes no connection between the necessity of this moral category and political rationality, we might suggest here that it has become necessary as a consequence of the emergence of biopolitical regimes of power.

often the case that the body of the individual is approached through the governmental field of the population. Foucault claims, then, that death reveals not the power of the sovereign as it did in the spectacle of public executions, but rather the limit of power; death evades and undermines the regime of power that has assigned itself the interminable task of administering life. I will return to this characterization of death and the strong opposition between a power of life and power of death that Foucault suggests shortly. First, though, it is important to get a fuller account of Foucault's conception of power.

The reversal of Aristotle that Foucault offers involves both a transformation in political rationality and a correlative transformation in the relation of biological life and political life. Whereas the Aristotelian schema excludes biological life from the field of the political, Foucault's formulation posits biological life as the target of the political, such that it becomes increasingly difficult to maintain a distinction between biological and political life. In the regime of biopower, the biological is co-extensive with the political. The importance of this is that if biological existence is reflected in political existence then questions concerning the good life appear to be inextricably entwined with the determination of who lives and who dies. In other words, the determination of life worth living is central to the processes by which power 'fosters life or disallows it'. However, as I show, for Foucault this determination does not take the form of a sovereign decision but is rather effected through the 'anonymous' operations of exclusion, confinement and the constitution of the 'abnormal'. In the conception of power that he developed during the early 1970s, Foucault casts the violent operation of political exclusion as an effect of order itself, thereby providing a means of thinking through the political determination of life worth living that exceeds liberal questions of the legitimacy and limits of the state.

Drawing on a Nietzschean account of force relations, Foucault develops a conception of power that takes the tactical confrontations of warfare rather than the determinations of the sovereign as its model.¹³ The conception of the state and

¹³ One could question the efficacy of this shift with reference to Jean-Luc Nancy's suggestion that war is the technique par excellence of the sovereign, such that the demand for war 'carries the sovereign exception within itself and also exposes it'. Nancy's deconstructive strategy is illuminating for the way in which it considers the operations of sovereignty, war and the *technē* of power to operate in conjunction. Before taking up this discussion further though, it is first necessary to trace the specific

political order that Foucault develops is cast in direct opposition to Thomas Hobbes' theory of the state, in which the sovereign acts as the creator and defender of peace and security rather than as a threat and source of danger. Hobbes imagined the constitution of the state on the figure of Leviathan, an 'artificial man' constituted through and on the basis of the body of the citizen. Leviathan is created through man giving up his natural freedom for a greater security, a security guaranteed by the state henceforth imposed on the citizenry. Against Hobbes, Foucault argues that a concrete analysis of power must reject the model of sovereignty and begin from a conception of power based on the model of warfare, where the operations of power are analyzed in terms of tactics, strategies and adversarial confrontation. In 'Society Must be Defended',¹⁴ Foucault sets aside the 'false paternity' that attributes such a conception of power to Hobbes, – for Hobbes 'it was nonwar that founds the state and gives it its form'¹⁵– and argues that the model of warfare has two important implications for an analytics of power.

First, according to Foucault, such a model of power undercuts claims to occupy the position of the universal subject, since any position taken will place the speaking subject on one side or another within a general strategy of confrontation and struggle for victory. Correlatively, claims to right and truth are perspectival and strategic. In other words, if theories of sovereignty presuppose an individual endowed with rights as the basis of the state, then the model of war dismantles this presupposition and places the claims made by rights-bearing individuals within a general strategy of struggle.¹⁶ Second, Foucault argues that a model of warfare generates an analytics of

relation that Foucault posits, as this is not as clear as his initial distinction suggests. See Jean-Luc Nancy, 'War, Right, Sovereignty – Technē' in *Being Singular Plural*, tr. Robert D. Richardson and Anne E. O Byrne (Stanford: Stanford University Press, 2000), pp.101-141.

¹⁴ Michel Foucault, 'Society Must be Defended' [1975-6] in *Ethics: Subjectivity and Truth, Essential Works of Michel Foucault 1954-1984*, ed. Paul Rabinow (London: Penguin Press, 1997), p.59-65; also see Michel Foucault, *Il faut défendre la société: cours au Collège de France, 1975-1976* (Paris: Gallimard/Seuil, 1997); John Rajchman, *The Deleuze Connections* (Cambridge, Ma.: MIT Press, 2000), pp.105-107.

For a further discussion of the Course lectures with particular reference to warfare and the problems of race and constitution see Stuart Elden, 'The War of Races and the Constitution of the State: Foucault's *Il faut défendre la société* and the Politics of Calculation', *boundary 2*, 29:1(2002), pp.125-151.

¹⁵ Foucault, 'Society Must be Defended', p.63.

¹⁶ I have emphasized the conditional here in reference to Pasquale Pasquino's critique of Foucault on this point, where he claims that Foucault is mistaken in the view that Hobbes understood the sovereignty of the state to be based on individual rights. Pasquino suggests instead that Hobbes was more concerned with establishing a minimum right for individuals, that is, the right to live. See

power 'from below' that does not seek to rediscover a rationality necessarily linked to 'the just and the good' beneath the 'visible brutality of bodies and passions, but instead, finds 'beneath the form of institutions or laws, the forgotten past of real struggles, of masked victories or defeats, the dried blood in the codes'.¹⁷ Foucault's work during the 1970s thus seeks to elaborate on these two implications, leading to the development of a critique of the sovereign subject and an understanding of power in terms of tactics and strategies, where war is 'the cipher of peace'. I will return to the first of these later, but first, it is necessary to examine the model of power as warfare further.

While Foucault often claimed during the 1970s that he was presenting an 'analytics of power' rather than a theory of power, it is nevertheless true that these analytic tools are informed by a more general model of power as warfare. Foucault comes closest to developing a theory of power in the *History of Sexuality* and related texts, where he asserts that politics is war pursued through other means. In the first of the 'Two Lectures' presented in 1976, Foucault claims of his work to date that it has employed a schema of 'struggle-repression' for understanding relations of power, a schema that finds its purchase in a model of power as war. In countering what he takes as the orthodox association of power with economic relations, alienation and interdiction, Foucault suggests that power should be understood as a relation of force, and thus, it should be analyzed in terms of 'struggle, conflict and war'.¹⁸ The suggestion that politics is war pursued by other means implies that politics be understood as 'sanctioning and upholding the disequilibrium of forces... displayed in war', that all the alterations of relations of force be understood as a continuation of war within the civil and political sphere. This model, which 'for convenience' he attributes to Nietzsche, understands the power relationship as 'the hostile engagement of forces'¹⁹ in which repression is the 'realization... of a perpetual relationship of force'.²⁰

Pasquale Pasquino, 'Political Theory of War and Peace: Foucault and the History of Modern Political Theory', *Economy and Society* 22:1(1993), pp.77-88 at 83.

¹⁷ Foucault, 'Society Must be Defended', p.62.

¹⁸ Foucault, 'Two Lectures', p.90.

¹⁹ Foucault, 'Two Lectures', p.91.

²⁰ Foucault, 'Two Lectures', p.92. For a further discussion of the conceptions of politics and power developed by Nietzsche and Hobbes see Paul Patton, 'Politics and the Concept of Power in Hobbes

Foucault elaborates on this model of power in the first volume of the *History of Sexuality*.²¹ He argues that power is not a matter of individual resources or strengths, but is rather a name that designates the concatenated effect of a 'moving substrate of force relations'. He states that:

Power must be understood in the first instance as the multiplicity of force relations immanent in the sphere in which they operate and which constitute their own organization; as the process which, through ceaseless struggles and confrontations, transforms, strengthens, or reverses them; as the support which these force relations find in one another, thus forming a chain or a system, or on the contrary, the disjunctions and contradictions which isolate them from one another; and lastly as the strategies in which they take effect, whose general design or institutional crystallization is embodied in the state apparatus, in the formulation of the law, in the various social hegemonies.²²

It is through the qualitative and quantitative differences or inequalities between forces that the 'complex strategical situation' that we typically call 'power' arises, as the stabilization and historical sedimentation of the effect of force on force. In outlining this model further, Foucault provides a number of general propositions about the nature, form and unity of power. Power is not possessed but exercised in 'nonegalitarian and mobile relations'; power relations are 'internal conditions' of other forms of relationships, operating in a productive rather than prohibitive way; power comes from below in the sense that relations of force provide the basis for social cleavages and hegemonic consolidations in the form of domination; power relations are both 'intentional and non-subjective', meaning that in its 'local cynicism', power is always exercised with tactical aims and objectives, but the strategy that co-ordinates them has no immediately visible origin or point of articulation.

and Nietzsche', in Paul Patton, ed. *Nietzsche, Feminism and Political Theory* (Sydney: Allen and Unwin, 1993), pp.144-16.

²¹ True, Foucault may have been reconsidering this conception of power around the same time as the publication of *History of Sexuality 1*, however, *pace* Barry Hindess' suggestion that Foucault's conception of power underwent a transformation after *Discipline and Punish* and before *History of Sexuality 1*, the model of power as warfare informs the conception of power used in both these volumes. Foucault himself characterized the relation between these volumes as the development of this model of power in the former and application of it in the latter (Michel Foucault, 'Power Affects the Body', *Foucault Live*, ed. S. Lotringer (New York: Semiotexte, 1996) p.207). The shift in Foucault's conception of power comes after the first volume of *History of Sexuality* and I discuss it in detail in the following chapter. See Barry Hindess, *Discourses of Power: From Hobbes to Foucault* (Oxford: Blackwell, 1996) p.98-99; also see Pasquino, 'Political Theory of War and Peace', esp. his comments on p.79 to which Hindess refers.

²² Foucault, *History of Sexuality 1*, pp.93-4.

Power, which for Foucault is always shorthand for 'power relations', is engendered on the basis of a substrate of permanently unequal and shifting force relations and is thus omnipresent, permanent and infinitely repeated and re-inscribed in local tactics. Power is the overall effect of arrested force relations; it is the consolidated effect of concatenated tactics and strategies of war carried out in the arena of 'civic peace'. Thus, power is 'the name that one attributes to a complex strategical situation in a particular society'.²³ This insistence on a certain nominalism regarding power highlights that the substrate of force relations can only ever be named catachrestically, through its dissimulated effects in the social field.²⁴ Force is not understood simply as violence or strength, but as a pure relationality, intelligible only in its effects. The name power attempts to capture the effects of force relations, but it is perhaps the wrong name, a partial name or a word in misuse. The importance of Foucault's catachrestic use of the term power should not be underestimated; it indicates that power in a substantive sense does not exist. There is no power as object that can be sought after, held, or transferred from one party to another in a relation of exchange. Power does not have interests and intentions of its own, but instead, inappropriately names the consolidated set of relations that arise from the exercise of force on force – where this indicates differences in strength, capacity, opportunity and so on between parties in a relationship – in the pursuit of local interests and intentions.

Furthermore, this view of power catachrestically naming the effect of force relations ensures that Foucault's insistence on genealogical analysis is more than coincidental or pragmatic. As Gilles Deleuze suggests in his discussion of Nietzsche's doctrine of the 'will to power', genealogy derives from the inequalities of forces, or their qualitative and quantitative differences, and is primarily a practice of tracing the effects of force on force.²⁵ Foucault's description of genealogy as an 'effective history', concerned not with lofty origins but rather with the dual concepts of descent and emergence, bears out this relation between force and genealogy and

²³ Foucault, *History of Sexuality 1*, p.93.

²⁴ Pheng Cheah, 'Mattering', *Diacritics*, 26.1(1996), p.126. Also see Gayatri Chakravorty Spivak, *Outside in the Teaching Machine* (New York: Routledge, 1993), p.37.

²⁵ Gilles Deleuze, *Nietzsche and Philosophy* (New York: Columbia University Press, 1983), p.52-54; Gilles Deleuze, 'Active and Reactive' in D.B. Allison, ed. *The New Nietzsche: Contemporary Styles of Interpretation* (MIT Press: Cambridge, 1985), pp.80-106.

points to his concern with the material operations of power. Thus Foucault claims that 'the body and everything that touches it – diet, climate, and soil – is the domain of the *Herkunft* [descent]'.²⁶ Within this, the body is understood as a system of forces actualized and arranged in corporeality. Simultaneously,

emergence is always produced through a particular stage of forces. The analysis of the *Entstehung* must delineate this interaction, the struggle these forces wage against each other or against adverse circumstances, and the attempt to avoid degeneration and regain strength by dividing these forces against themselves.²⁷

With this in mind, and recalling Foucault's methodological precaution that power should be analyzed from the 'bottom up', starting from its 'infinitesimal mechanisms'²⁸ and techniques and drawing out their specific histories and modes of operation, Foucault's analysis of power evinces a deliberate emphasis on the material operations of power as local codifications of force relations or 'micro-powers'.²⁹

This means that an analytics of power cannot assume a necessary overarching unity in the techniques of power such that one can identify a singular goal of domination. Rather, 'although there is continuity... there is neither analogy or homology, but a specificity of mechanism and modality'.³⁰ Furthermore, amongst the complex of 'micro-powers', there are 'innumerable points of confrontation, focuses of instability, each of which has its own risks of conflict, of struggles, and of an at least temporary inversion of power relations'.³¹ Consequently, a specificity of analysis that traces the effects of force on force, that is, the operation of a multiplicity of material techniques and mechanisms that act on the body is required. Additionally, this local analysis aims to draw out the points of instability, change and potentiality within a 'micro-physics of power' focused on the production of docile bodies and its correlate of the

²⁶ Michel Foucault, 'Nietzsche, Genealogy, History' in *Language, Counter-Memory, Practice: Selected Essays and Interviews by Michel Foucault*, ed. Donald F. Bouchard, tr. Donald F. Bouchard and Sherry Simon (Ithaca: Cornell University Press, 1977), pp.139-164 at 148.

²⁷ Foucault, 'Nietzsche, Genealogy, History', p.148-149.

²⁸ Foucault, 'Two Lectures', p.99.

²⁹ See Cheah, 'Mattering', p.126 and Gilles Deleuze, *Foucault*, tr. Sean Hand (London: Athlone Press 1988).

³⁰ Michel Foucault, *Discipline and Punish: The Birth of the Prison*, tr. Alan Sheridan (London: Penguin, 1977), p.27.

³¹ Foucault, *Discipline and Punish*, p.27.

'modern soul'. The importance of this conception of power in Foucault's work is that it drew him from the earlier focus on rules of discourse-formation and allowed for a sustained analysis of social practices and institutions as the 'meticulous rituals of power'. It also provided the means for an analysis aimed at 'deciphering a layer of reality in such a way that the lines of force and the lines of fragility come forth...[and identifying] the points of resistance and the possible points of attack'.³²

In this sense, *Discipline and Punish* is exemplary of the practice of genealogy, since it traces the operations of force on force in the historical emergence of the prison and the production of docile bodies. What Foucault describes is not the ideational development of notions of incarceration, but the historical constitution and emergence of material technologies geared toward the production of bodies that give over their own force toward the regime of power that governs them. In outlining the methodological and analytic suppositions that guide *Discipline and Punish*, Foucault argues that the prison technologies which he is analyzing operate through a 'micro-physics of power' that takes as its object the constitution and control of the forces of the body; as he states 'it is always the body that is at issue – the body and its forces, their utility and docility, their distribution and submission'.³³ This is of course not the first time the constitution of the body has been the object of historical analysis, but Foucault wishes to give to it a decidedly political tone through analyzing the investments of the body within the political field through consideration of the material effects of technologies of power. Further, he claims that the political technology of the prison is inextricably caught up with the economic imperative of productivity. The investment of the body with disciplinary relations of power is directed toward the production of a subjected population suitable for economic exploitation and the development of a biopolitical regime of power was crucial to the emergence and successful installation of capitalistic economic relations.³⁴ Thus, Foucault seeks to explicate a 'political economy of the body' through analysis of the investments of the body in the operation of power relations.³⁵

³² Michel Foucault, 'Clarifications on the Question of Power' in *Foucault Live*, ed. Sylvère Lotringer (New York: Semiotexte, 1986), p.261.

³³ Foucault, *Discipline and Punish*, p.25.

³⁴ Foucault, *History of Sexuality 1*, p.141.

³⁵ Foucault, *Discipline and Punish*, p.25

The reformulation of power that Foucault thus provides has generated a number of analyses of the ways in which technologies of power operate to foster the life of the population and the individual. These projects have focused on the importance of health within governmental strategies, and more recently, on micro-molecular government and the concern with genomic 'health'.³⁶ For instance, Nikolas Rose has recently argued that two state-sponsored biopolitical strategies took shape in the nation-states of Europe and North America, as well as many of their colonies, in the nineteenth and twentieth centuries.³⁷ The first of these sought to maximize the fitness of a population by conjoining individualized attention to the habits of subjects with earlier programs such as town planning, sewerage systems and so on that sought to guarantee external conditions of health.³⁸ The second sought to maximize the fitness of the population through the privileged site of reproduction and particularly eugenics. The result of these two strategies is an 'etho-politics' that operates through tying the lifestyle concerns of individuals with biological health, a notion not dissimilar to Paul Rabinow's notion of 'biosociality', such that 'biopolitics now addresses human existence at the molecular level: it is waged about molecules, amongst molecules, and where the molecules themselves are at stake'.³⁹ Rose concludes his discussion of biomedical technologies with the suggestion that these confront us with 'the inescapable task of deliberating about the worth of different human lives'.⁴⁰ While this conclusion is correct, it is shortsighted to limit the decision on 'lives worth living' to this domain, since the normative adjudication and determination of lives worth living permeates legal, social and political structures well beyond biomedical technology. For the remainder of this section, I clarify the ways in which Foucault's account of biopolitics contributes to considering the ways in which

³⁶ Also see Paul Rabinow, *French DNA: Trouble in Purgatory* (Chicago: University of Chicago Press, 1999); Paul Rabinow, 'Artificiality and Enlightenment: From Sociobiology to Biosociology' in *Essays on the Anthropology of Reason* (Princeton: Princeton University Press, 1996); Melinda Cooper, 'Transgenic Life: Controlling Mutation', *Theory and Event*, 5:3 (2001).

³⁷ Nikolas Rose, 'Politics of Life Itself', *Theory, Culture and Society*, 18:6(2001), pp. 1-30.

³⁸ See Thomas Osborne, 'Security and Vitality: Drains, Liberalism and Power in the Nineteenth Century' in Andrew Barry, Thomas Osborne and Nikolas Rose, eds. *Foucault and Political Reason: Liberalism, Neo-liberalism and Rationalities of Government* (Chicago: University of Chicago Press, 1996), pp.99-122; Alan Hunt, 'Governing the City: Liberalism and Early Modern Modes of Governance' in Andrew Barry, Thomas Osborne and Nikolas Rose, eds. *Foucault and Political Reason: Liberalism, Neo-liberalism and Rationalities of Government* (Chicago: University of Chicago Press, 1996), pp.167-188.

³⁹ Rose, 'Politics of Life Itself', p.17; also see Rabinow, 'Artificiality and Enlightenment', p.102.

⁴⁰ Rose, 'Politics of Life Itself', p.22; Incidentally, this point has also been made in normative bioethics in, for instance, Peter Singer, *Rethinking Life and Death: The Collapse of our Traditional Ethics*, (Melbourne: Text Publishing, 1994).

biopolitics fades into and finds support in a 'thanato-politics' that disallows certain lives. I also identify several limitations in Foucault's account of biopolitics for such considerations.

Several points can be made about Foucault's conception of biopower. First, as I mentioned previously, Foucault's reformulation of power in the 1970s was intended to replace an understanding of power based on the model of sovereignty and right. As he famously suggested at one point, political theory had not yet 'cut off the kings head'⁴¹ and was therefore unable to illuminate contemporary operations of power. By not presupposing a model of sovereignty, Foucault was able to avoid questions of legitimacy and justification of the state and instead investigate the peripheral operative technologies of power. Importantly though, this is not the same as saying that biopolitics itself *replaces* sovereignty as a technology of power. The point is that an analysis of power cannot simply presuppose the model of sovereignty as its starting point, though it may be that one of the technical forms that power takes in its operation is that of sovereignty. The difference is that the former is a methodological claim and the latter an ontological claim. While the former sets out a means of proceeding in an analysis of power, the latter indicates what such an analysis may find, which is why the presupposition of sovereignty is an exercise in question begging.

Yet, making this distinction between an analysis of power and the concrete arrangements that power takes brings out an important ambiguity in Foucault's own conception of the historical relation between sovereignty and biopolitics. While Foucault consistently opposed an understanding of power as sovereign right and law, it remains unclear precisely what historical and theoretical status he wants to give to sovereignty. On the one hand, the characterization of a transformation of techniques of power from the deductive mechanisms of sovereignty to the productive mechanisms of biopower suggests a radical transformation of power such that sovereignty disappears. Thus, Foucault suggests that sovereignty is diametrically opposed to the mechanisms of biopower; within a sovereign regime, power was 'essentially a right of seizure: of things, time, bodies, and ultimately life itself; it

⁴¹ Foucault, *History of Sexuality 1*, p.89.

culminated in the privilege to seize hold of life in order to suppress it'.⁴² Biopower is a power that 'exerts a positive influence on life, that endeavors to administer, optimize, and multiply it, subjecting it to precise controls and comprehensive regulations'.⁴³ Further, Foucault at the very least implies that the era of sovereignty has passed away when he claims that 'wars are no longer waged in the name of a sovereign who must be defended; they are waged on behalf of the existence of everyone' or again, 'the existence in question is no longer the juridical existence of sovereignty; at stake is the biological existence of a population'.⁴⁴ This point is even clearer in the claim that 'one might say that the ancient right to take life or let live *was replaced by* a power to foster life or disallow it to the point of death'.⁴⁵

On the other hand, Foucault does offer some qualification to the characterization of sovereignty as no longer operative in the claim that "deduction' has tended to be no longer the major form of power but *merely one element among others*'.⁴⁶ Again, 'this formidable power of death now presents itself as a *counterpart* of a power that exerts a positive influence on life'.⁴⁷ However, even with these caveats, it remains unclear what the actual status of sovereignty is, for what does it mean that the ancient power of death 'presents itself as a counterpart' to a power of life? Foucault addresses this problem much more explicitly in his article 'On Governmentality', published shortly after *The History of Sexuality*. Here he claims that 'we must consequently see things not in terms of the substitution for a society of sovereignty of a disciplinary society and the subsequent replacement of a disciplinary society by a governmental one; in reality we have a triangle: sovereignty-discipline-government, which has as its primary target the population and as its essential mechanism apparatuses of security'.⁴⁸ Yet, even here there is little explication of the precise status that sovereignty might have following the 'governmentalization' of the state.

⁴² Foucault, *History of Sexuality 1*, p.136.

⁴³ Foucault, *History of Sexuality 1*, p.137.

⁴⁴ Foucault, *History of Sexuality 1*, p.137.

⁴⁵ Foucault, *History of Sexuality 1*, p.138.

⁴⁶ Foucault, *History of Sexuality 1*, p.136; emphasis added.

⁴⁷ Foucault, *History of Sexuality 1*, p.137; emphasis added.

⁴⁸ Michel Foucault, 'On Governmentality', *I&C* 6(1979), p.19; republished as Michel Foucault, 'Governmentality', in *Power: Essential Works of Foucault, vol. 3*, ed. James D. Faubion, (New York: New Press, 2000), pp.201-222.

However, in 'Two Lectures' Foucault discusses the relation of sovereignty and discipline more explicitly, claiming that sovereignty persists as an ideology. He states that a 'system of right [comes] to be superimposed upon the mechanisms of discipline in such a way as to conceal its actual procedures, the element of domination inherent in its techniques, and to guarantee to everyone, by virtue of the sovereignty of the state, the exercise of his proper sovereign rights'.⁴⁹ Thus, it appears that while sovereignty does not have the status of an operative technology of power, it nevertheless functions as a discursive residue that covers over or masks the real operations of a power focused on life. In other words, discourses of sovereignty operate ideologically to cover over and thereby permit the effective operation of technologies of discipline. The ideological status that Foucault gives to sovereignty means that it is too simplistic to say either that biopolitics succeed the apparatus of sovereignty in a historical 'revolution' in regimes of power, or that sovereignty and biopolitics co-exist as operative apparatuses of power. Rather, sovereignty and disciplinary techniques constitute two irreducibly heterogeneous elements in the operation of biopower, the former as the ideological supplement that aids and abets the material operation of the latter.

Consequently, the position of sovereignty as ideological complicates Foucault's apparent opposition between a productive, administrative power focused on life and a prohibitive, extractive power focused on death. In the transformation of the rationality of power from sovereignty to biopower, Foucault suggests that the respective positions of life and death in relation to power also change. He argues that in sovereignty, death reveals the power of the sovereign: if the formula most appropriate to sovereignty was that of the 'power of life and death', the sovereign's power over life was evinced 'only through the death he was capable of requiring'.⁵⁰ In biopower however, death does not reveal the power of the sovereign but is the limit of power; death evades and undermines the regime of power that has assigned itself the interminable task of administering life. This is precisely why, he suggests, death becomes the 'most secret aspect of existence, the most "private"'.⁵¹

⁴⁹ Foucault, 'Two Lectures', p.105.

⁵⁰ Foucault, *History of Sexuality 1*, p.136.

⁵¹ Foucault, *History of Sexuality 1*, p.138.

However, if sovereignty as the power of death operates ideologically in an era of biopower, then it would seem to follow that death is not so much the limit of a power of life, but rather an internal element in its operation. It is precisely by recalling the risk of death, its immanence in life, that biopower operates.⁵² It is the ever-present threat of death that justifies and rationalizes governmental intervention in the name of the life of populations and individuals. Therefore, rather than attempting to eliminate or privatize death, biopower presupposes it for its operation; death is not the limit of biopower but its precondition. Against Foucault, we might say that it is not so much that ‘a relative control over life averted some of the immanent risks of death’,⁵³ but that an increasing control over death averts the immanent risks of life and permits its administration. This does not mean that biopower does not focus on life, but simply that, at times, the focus on life may be achieved through the control and ‘ideological’ or discursive deployment of death. In this, Durkheim’s study of suicide, which Foucault cites as evidence that death constitutes the limit of power, can be understood instead as an indication of the fact that within biopolitics ‘death becomes a social institution.’⁵⁴

Indeed, Foucault’s comments regarding the status of death within the operation of biopower could be understood as a transposition of the repressive hypothesis from sexuality to death. In suggesting that ‘death is power’s limit, the moment that escapes it; death becomes the most secret aspect of existence, the most “private”’,⁵⁵ Foucault echoes the theoretical fallacy that he accuses his opponents of with regard to sexuality. To posit death as the new limit of power, as that which escapes and undermines power’s exercise over the unfolding of life, merely repeats vis-à-vis death the theoretical fallacy that sexuality opposes power in its privacy and secret force. Additionally, it could be said that in speaking of death against its supposed denial

⁵² This point is similar to the argument made by Brian Massumi, ‘Everywhere You Want to be: Introduction to Fear’ in Brian Massumi, ed. *The Politics of Everyday Fear* (Minneapolis: University of Minnesota Press, 1993), p.vii-x. Massumi argues that fear – of accidents, risks, of ‘falling’ – operates as a discursive and phenomenal support to capital and more or less explicitly links that with the immanent fatality of contemporary life. Also see Beverly Clack, *Sex and Death: A Reappraisal of Human Mortality* (Cambridge: Polity, 2002), particularly her claim that ‘death has been removed from its rightful place *in the midst of life* and is viewed increasingly as an aberration to be avoided’ (p.131).

⁵³ Foucault, *History of Sexuality 1*, p.142.

⁵⁴ Herbert Marcuse, ‘The Ideology of Death’ in Herman Feifel ed. *The Meaning of Death* (New York: McGraw Hill, 1959), p.73.

⁵⁵ Foucault, *History of Sexuality 1*, p.138.

within biopolitics, Foucault also seeks a certain ‘speakers benefit’ in which ‘the mere fact that one is speaking about it has the appearance of a deliberate transgression’, such that one ‘anticipates the coming freedom’.⁵⁶ It is also then possible to say that rather than becoming the most private aspect of existence, there has in fact been in the West a proliferation of discourses on death and dying in a regime of biopolitics. Hence, one does not find one’s truth in death; nor does one oppose power in speaking of it; rather, one deploys and reproduces the very means of power’s operation.

Foucault’s claim that death is the most private aspect of biopolitical existence and the limit of power might be understood to derive from sympathy for the characterization of ‘being-toward-death’ posited by Martin Heidegger, in which the confrontation of death constitutes the condition of authentic being. This characterization of death rests on a distinction between proper and improper death, in which the former entails dying in one’s own being, and as such posits a kind of individualizing heroics of death. Against this though, one could point to Herbert Marcuse’s stringent comments on the ideological transformation of biological necessity into ontological virtue that such a view entails. In his article on the ideology of death, Marcuse sees Heidegger’s conception of death as ‘the latest and most appropriate ideological exhortation to death, at the very time when the political ground was prepared for the corresponding reality of death— the gas chambers and concentration camps of Auschwitz, Buchenwald, Dachau, and Bergen-Belsen’.⁵⁷ Without fully taking up Marcuse’s understanding of ideology, there is clearly some correspondence between his critique of Heidegger and the point that I am making against Foucault.

The second point to make about Foucault’s formulation of biopower is that just as there is a certain ambiguity in the historical relation of sovereignty and biopower, so

⁵⁶ Foucault, *History of Sexuality* 1, p.6.

⁵⁷ Marcuse, ‘Ideology of Death’, p.69. Similarly, one might re-pose Alfonso Lingis’s question: ‘What possibility of dying on our own subsists for us today – we who have now invested in our knowledge and our will the power and the arsenal to send down a Hiroshima disaster upon a city every day for the next five hundred years? We who address one another not with exposed faces but neurological, chemical and biological contagions?’ See Alfonso Lingis, *Deathbound Subjectivity* (Bloomington: Indiana University Press, 1989), p.18. I return to a discussion of some of the problematic implications brought to light by Lingis’ question in the final chapter in reference to Agamben’s discussion of the Heideggerian conception of death.

there is an equivalent ambiguity in Foucault's understanding of the operation of the law and norms. One of the crucial claims that Foucault makes in discussing the relation of sovereignty and biopower is that after the eighteenth century, power no longer works primarily through law, but rather, through normalization. Thus, in *The History of Sexuality*, Foucault states that 'a normalizing society is the historical outcome of a technology of power centered on life'.⁵⁸ However, just as biopower does not simply replace sovereign power, neither do norms simply replace law and legality. Instead, it appears that Foucault means that the law increasingly operates as a norm, such that the power of the law is normalizing, a position more in keeping with the claim that legal institutions increasingly operate in conjunction with regulatory apparatuses such as medicine. In other words then, rather than operating as the sovereign rule that deals death, the law is increasingly infiltrated by a rationale of normalization suited to the distribution of lives in 'the domain of value and utility'. Hence, the apparent proliferation of legislative activity since the French Revolution does not indicate the predominance of the juridical, but instead, provides the means by which an 'essentially normalizing power' was made acceptable.⁵⁹

The distinction between the juridical and the law that François Ewald makes in reference to Foucault's discussions of norms and law is helpful for clarifying this point further.⁶⁰ Ewald rightly points out that Foucault does not mean that the historical development of biopower has been accompanied by a general decline in the importance of the law; in fact, he says, a normalizing society tends to be accompanied by 'an astonishing proliferation of legislation'. Hence, he concludes, the norm is not opposed to law itself, but to the juridical, by which he means the understanding of the law as an expression of sovereign power. The juridical is a 'code' by which law is linked to the institution and expression of monarchical power in the form of violence and death. But, Ewald argues, this link is not necessary as law can also operate through norms; the law is no longer characterized by simple force or violence but by 'an implicit logic that allows power to reflect upon its own strategies and clearly define its objects... that enables us to imagine [both] life and the living as

⁵⁸ Foucault, *History of Sexuality* 1, p.144.

⁵⁹ Foucault, *History of Sexuality* 1, p.144.

⁶⁰ François Ewald, 'Norms, Discipline and the Law', *Representations*, 30(1990), pp.138-161; for a further discussion of norms and law in relation to liberal governmentality and of Ewald's argument, see Mitchell Dean, *Governmentality: Power and Rule in Modern Society* (London: Sage, 1999), esp. pp.118-123.

objects of power and the power that can take “life” in hand, creating the sphere of biopower’.⁶¹ In other words, the law has undergone a transformation, such that the mode of its operation is no longer the power of death, emblemized in the sword of the sovereign, but rather the calculative and standardizing force of the norm. From this then, it becomes clear that as a ‘code’ or model for understanding the operation of the law, the juridical presupposes a link between the law and sovereign power and thus operates as an ideological correlate to the presupposition of sovereignty in understanding power.

However, if this is the case several problems arise. For if Foucault understands the juridical code of law as an ideological remnant of a sovereign regime of power that covers over the contemporary fact that ‘the law operates more and more as a norm’, then he runs the risk of missing the ways in which the juridical and sovereignty operate not as ideology but as operative technologies within the contemporary world. In other words, while Foucault does concede the contemporaneousness of biopolitical and sovereign operations of power, in casting the latter as ideological, he risks a reductive opposition to sovereignty and the juridical that obscures the ways in which a biopolitical regime of power is fundamentally and materially reliant on the ‘power of the sword’ characteristic of sovereignty.⁶² Furthermore, as both Ewald and Duncan Ivison have pointed out, it remains unclear what role Foucault understood legal institutions to have beyond being the ‘epiphenomena of discipline and normalization’⁶³ after the integration of such institutions within regulatory apparatuses. And as Ivison goes on to argue, the question concerning the role of the juridical and the sovereign within contemporary politics becomes particularly pertinent in the context of Foucault’s ambivalence on discourses of rights. On the one hand, Foucault appears to reject recourse to a discourse of rights on the basis that rights talk is a theoretical and political ‘blind alley’.⁶⁴ On the other though, he

⁶¹ Ewald, ‘Norms, Discipline and Law’, p.139.

⁶² This is a difficult point to make at this stage, and I return to it in detail in later chapters where I discuss Giorgio Agamben’s critique of Foucault. Suffice to say here that the power of death is not in contradiction with a power of normalization but is instead a permanent support for it. The conjunction of sovereign violence and biopolitics is in fact suggested in Foucault’s discussion of state racism and the death penalty, but he does not develop this.

⁶³ Duncan Ivison, *The Self at Liberty: Political Argument and the Arts of Government* (Ithaca: Cornell University Press, 1997) p.40; Ewald, ‘Norms, Discipline and the Law’, p.159.

⁶⁴ Foucault, ‘Two Lectures’, p.108.

frequently made recourse to rights discourse himself, suggesting at several points that a new form of right was required. This is particularly the case in his document in response to the predicament of Vietnamese boat people, but also on occasion, in relation to sexuality.⁶⁵ But, if Foucault does want to reject the juridical code that links sovereignty and right, then how does he conceive of a new form of right that does not re-instate that code? I will return to a further discussion of Foucault's call for a new form of right in the final chapter; here it is enough to simply mark the ambiguity in his position.

These two points bring us to a third regarding the role of violence in political order. Clearly, Foucault's position on violence within the contemporary political order is not without ambiguity. Not surprisingly though, little has been said concerning Foucault's understanding of the relation between violence and the political order within secondary literature. This is not surprising because Foucault rejects both the concern with the constitutive spirit of sovereignty and the notion that violence is the principal means of governing in the modern world, at times claiming that violence is only the extreme points of biopower's operation, a last resort and sign of its weakness rather than its strength.⁶⁶ Because of this double exclusion, theorists following Foucault have focused not on the violence of the state, but on the state as a conglomerate of technologies of government that operate less through coercion than through 'making up people'.⁶⁷ While the analyses that this has generated are important and instructive in numerous ways, there is nevertheless a sense in which they overstep the mark in the exclusion of violence from an analytics of biopower.

⁶⁵ See in particular Michel Foucault, 'Confronting Governments: Human Rights', in *Power: Essential Works of Foucault, 1954-1984, vol.3*, ed. James D. Faubion, tr. Robert Hurley and others (New York: New Press 2000), pp.474-475; Michel Foucault, 'The Sexual Triumph of the Social Will' in *Ethics: Subjectivity and Truth, Essential Works of Michel Foucault, 1954-1984*, ed. Paul Rabinow (London: Penguin Press, 1997), pp.157-162; Foucault, 'Two Lectures', p.108. I take up a fuller reading of 'Confronting Governments: Human Rights' in the final chapter.

⁶⁶ The ambiguity in Foucault's position on violence is evident throughout *Discipline and Punish*, where he frequently suggests that discipline 'operates outside these sudden, violent, discontinuous forms [of power] that are tied up with sovereignty' (Foucault, *Discipline and Punish*, p.208). Conversely, he also claims that 'there remains, therefore, a trace of "torture" in the modern mechanisms of criminal justice – a trace that has not been entirely overcome, but which is enveloped, increasingly, by the non-corporal nature of the penal system' (Foucault, *Discipline and Punish*, p.16). The displacement of the object of violence will be discussed further in the next section; suffice to say here that this means that violence is not eliminated, but rather operates through different techniques with different aims and objects.

⁶⁷ Ian Hacking, 'Making Up People' in Thomas C. Heller and Christine Brooke-Rose, eds. *Reconstructing Individualism* (Stanford: Stanford University Press, 1986), pp.222-236.

For while Foucault rejects the tendency to treat certain forms of violence as paradigmatic models of the *raison d'être* of power, he does not exclude violence from an analysis of biopower altogether. His attempt to understand power relations through the model of warfare and the associated genealogical task of revealing the 'blood drying in the codes' should be sufficient to bring that to light. But one can also consider Foucault's statement in reference to Nietzsche that, 'humanity does not gradually progress from combat to combat until it arrives at universal reciprocity, where the rule of law finally replaces warfare; humanity installs each of its violences in a system of rules and thus proceeds from domination to domination'.⁶⁸ Or similarly, 'the law cannot help but be armed'.⁶⁹

The question then should not be whether or not violence plays a role within a biopolitical order, but rather, how violence operates within biopolitics, or more specifically, what is the armature of the law? For Foucault, it appears that the violence of biopolitics is not that of 'the sword' and the sovereign's right to take life, but rather, the ostensibly less spectacular – though perhaps because of that, more effective – form of normalization. Importantly, the violence of normalization cannot simply be understood as a 'symbolic violence' dissociated from corporeal pain, injury and death. Rather, normalization is crucially linked to the rationality that Foucault argued was characteristic of biopolitics: to foster life or disallow it to the point of death. As Mitchell Dean makes clear, the re-inscription of the relation of power and life that biopolitics involves does not eliminate death and violence from political operations. Instead, it transforms the conditions of the determination of who lives and who dies, such that it no longer takes the form of a sovereign decision to kill the enemies of the state but is instead, a 'right to disqualify the life of those who are a threat to the life of the population, to disallow those deemed "unworthy of life"'.⁷⁰

⁶⁸ Foucault, 'Nietzsche, Genealogy, History', p.151.

⁶⁹ Foucault, *History of Sexuality 1*, p.144; also see Beatrice Hanssen, 'On the Politics of Pure Means', in Hent De Vries and Samuel Weber, eds. *Violence, Identity and Self-Determination* (Stanford: Stanford University Press, 1997), pp.236-252.

⁷⁰ Dean, *Governmentality*, p.139; Dean's analysis is one of the few that take up the problem of death and violence within biopolitics; he also addresses the continuity and disparity between liberal and non-liberal forms of biopolitical government. He argues that while these both operate through biopolitical determinations and the optimization of life, the combinations of sovereign and biopolitical rule that they involve differ greatly. For further discussions of racism within biopolitics, see in particular, Ann Laura Stoler, *Race and the Education of Desire: Foucault's History of Sexuality and the Colonial Order of Things* (Durham: Duke University Press, 1999).

As Foucault's own comments on genocide suggest, within a normalizing society in which technologies of power are directed toward the administration of life, 'massacres have become vital. It is as the managers of life and survival, of bodies and the race, that so many regimes have been able to wage so many wars'.⁷¹ Hence, one can conclude that the pre-eminent determination of a biopolitical regime is that of what constitutes life worth living and the means of making that determination today are technologies of normalization.

If this is the case, then another important point begins to emerge. If normalization operates as the means for a determination of life worth living, then it seems that this determination has much to do with questions of subjectivation and subjectivity. That is, since normalization operates as one of the principal axes of subjectivation within biopolitics, subjectivation can be considered one of the means by which power takes hold of life. Indeed, as I discuss in the following section, in understanding subjectivation – or the processes by which subjects are constituted – as coterminous with subjection, Foucault appears to portray subjectivation itself as a form of violence. As a point of reference then, we might say here that Foucault's account of biopolitics contains more than a residue of Nietzsche's proclamation that 'the state is the coldest of all cold monsters... the state lies in all languages of good and evil; and whatever it says, it lies – whatever it has, it has stolen. Everything about it is false; it bites with stolen teeth. Even its belly is false... only there, where the state ceases, does the man who is not superfluous begin'.⁷² In this section, I have discussed the 'stolen teeth' of juridical codes and the 'false belly' of sovereignty; in the following, I discuss the forms of subjection that appear to stymie the emergence of a 'man who is not superfluous'. In this though, I focus not on any form of heroic individualism that Foucault might take from Nietzsche, but rather, on the technical forms of subjection that produce individuals as subjects of the state.

⁷¹ Foucault, *History of Sexuality 1*, p.137.

⁷² Friedrich Nietzsche, *Thus Spoke Zarathustra*, tr. R.J. Hollingdale (London: Penguin, 1961), p.75, 77.

1.3 *Subjectivation and the Life of the Body: Violence, Norms and Resistance*

Foucault's critique of Hobbes' Leviathan and the problem of the political sovereignty of the state necessitate not only a reformulation of power, but also a reconsideration of the subject of politics. Foucault's critique of the subject effectively attempts to reverse the project of political theory, from the focus on the constitution of the state to the constitution of the subject; he states 'rather than worry about the central spirit...we must attempt to study the myriad of bodies which are constituted as peripheral subjects as a result of effects of power'.⁷³ By linking the question of the constitution of the subject with a critique of political theory's focus on the problem of the sovereign spirit, Foucault established a rhetorical link between the sovereignty of the state and of the subject. In other words, Foucault's critique of political sovereignty speaks directly to a critique of the sovereign subject. One of the effects of this is that the critique of the subject is cast as a political project. As such, Foucault's genealogical critique of the subject focuses on the technologies by which the subject is produced, where that production is taken as a form of subjection and subjugation. In short, subjection appears as the principal form of the violence of political order. In this section of the chapter then, I argue that Foucault casts subjection as a form of violence, such that subjectivity itself might be seen as 'the prison of the body'. If this is the case, Foucault's formulation of the relation between power and the subject is overly reductive in that it casts subjectivation as entirely negative, without consideration of the positive political implications of being a subject.

The conception of power as warfare has its correlate in the reformulation of the individual as an effect and vehicle of power rather than simply its origin or target. Thus in 'Two Lectures' Foucault claims that individuals are nodal points in a net-like web of power relations, such that they are

⁷³ Foucault, 'Two Lectures', p.98.

always in the position of simultaneously undergoing and exercising this power. They are not only its inert or consenting target; they are always also the elements of its articulation. In other words, individuals are the vehicles of power, not its points of application... it is already one of the prime effects of power that certain bodies, certain gestures, certain discourses, certain desires, come to be identified and constituted as individuals. The individual, that is, is not the vis-à-vis of power; it is, I believe, one of its prime effects. The individual is an effect of power, and at the same time, or precisely to the extent to which it is that effect, it is the element of its articulation. The individual which power has constituted is at the same time its vehicle'.⁷⁴

I have quoted this passage at length because it contains a number of important keys for understanding Foucault's account of subjection as the process of the constitution of subjects. First, and most obviously, in rewriting the individual as a nodal point in a web of power relations, Foucault is not simply saying that all individuals are in a position to exercise power at one moment or another, which would be a banal suggestion. While this is one consequence of his understanding of the position of the individual vis-à-vis power, it is not the only, nor the most important one. Nor does the claim that individuals are effects and vehicles of power simply refer to the multi-dimensionality of an individual's position within power relations, such that they both undergo a certain constitution by power and then, once constituted as individuals, subsequently exercise power over others and thus carry the operations of power upon themselves.

The point is more subtle and hangs on the 'simultaneously' or 'at the same time' that relates the individual as effect and as vehicle of power. For it is precisely at the same time that the individual is an effect of power that it is a vehicle of power, such that there is no temporal or causal disjuncture between undergoing and articulating power in its subjectivating effect. This is in a way a small point, but it does have consequences for the way in which subjection is understood. For one, the erasure of a temporal disjuncture in subjection forecloses the strategy for articulating modes of resistance and agency adopted by more deconstructive theorists such as Judith Butler. As I discuss in detail in Chapters 3 and 4, it is precisely the temporal break between the subject's constitution within power and its reiterative articulation of

⁷⁴ Foucault, 'Two Lectures', p.98.

power that constitutes the particular vulnerability of power in Butler's account. As she states in *The Psychic Life of Power*,

in the very act by which the subject reproduces the conditions of its own subordination, the subject exemplifies a temporally based vulnerability that belongs to those conditions, specifically, to the exigencies of their renewal. Power considered as a condition of the subject is necessarily not the same as power considered as what the subject is said to wield.⁷⁵

The temporal immediacy that Foucault posits between the individual as effect and vehicle of power does not allow this position, but at the same time, it does not lead to the conclusion that the individual is the 'passive recipient' of the operations of power, as a number of feminist and critical theorists have argued.⁷⁶ As Ewa Ziarek points out, such a conception of the relation of the individual vis-à-vis power presupposes a continuous cause-effect relation, where the moments of cause and effect are necessarily synchronous and determined, 'as if causes could manifest themselves in their effects without reserve ...[as if] disciplinary power could be actualized in the modern docile individual'.⁷⁷ But as this quote suggests, Ziarek also oversteps the mark in defending Foucault on this point, as she bases her reading of Foucault on the notion of the necessary incompleteness and failure of power to actually manifest in the bodies of individuals. But the point appears not to be that these moments are either continuous or disjunctive, but that they are immediate or co-extensive: the moment of causality in which the individual is constituted as the effect of power is simultaneous with the moment in which the individual is the element of articulating the power that constitutes it.

One of the implications of the simultaneity of the individual's being an effect and vehicle is that power cannot be considered to be wholly external to the body, a resource that the subject takes up in its own exercising once it has been constituted

⁷⁵ Judith Butler, *The Psychic Life of Power: Theories in Subjection* (Stanford: Stanford University Press, 1997), p.12.

⁷⁶ See for instance Lois McNay, *Foucault: A Critical Introduction* (Cambridge: Polity Press, 1994), p.102; Lois McNay, *Gender and Agency: Reconfiguring the Subject in Feminist and Social Theory* (Cambridge: Polity Press, 2000), p.8.

⁷⁷ Ewa Plonowska Ziarek, *The Ethics of Dissensus: Postmodernity, Feminism and the Politics of Radical Democracy* (Stanford: Stanford University Press, 2001), p.17. I discuss her argument in more detail in the following chapter.

as an individual by that power. Rather, the power that constitutes the body as individual is in an important sense internal to the body. The question though is how that internality should be construed and under what conditions the body is produced as individual rather than say, as a multiplicity. The claim that individuals are simultaneously effects and vehicles of power suggests that power manifests in bodies, and it does so through the constitution of those bodies as individuals. For Foucault, the individual thus emerges as a material artefact of a particular operation of power, which he calls normalization. In *Discipline and Punish*, Foucault argues that normalization is simultaneously totalizing and individualizing in its operation; it simultaneously establishes a common standard and forces those placed in relation to the norm to reveal their own irreducible particularity through the identification of individual divergences from that standard: in this, it simultaneously establishes equality and inequality. It also produces certain identifications to that irreducible particularity, which are subsequently fixed in the notion of the individual and repeated in the claim to be an individual. Hence, it is only in relation to the norm that the individual emerges, and it is in that sense that the individual is simultaneously both an effect and vehicle of power. Individuality ties the body to a normalizing common standard through the identification of its irreducible particularity and the identification of oneself as individual both rests on and reinstates the operation of the norm.

To get a fuller understanding of the operations of normalization in subjection then, it is first necessary to get a clearer picture of what Foucault means by norms. This is best done through a discussion of Georges Canguilhem's conception of norms, which Foucault draws upon.⁷⁸ Canguilhem's work has a broader bearing for

⁷⁸ See Georges Canguilhem, *The Normal and the Pathological*, tr. Carolyn R. Fawcett (New York: Zone Books, 1991). To get some measure of the significance of Canguilhem's work for Foucault, it is worth considering that in writing the introduction to Canguilhem's best-known text, *The Normal and the Pathological*, Foucault claims that Canguilhem was a crucial figure in the development of a philosophy of rationality, knowledge and the concept against the subject-centred philosophy of phenomenology. Foucault claims that instead of the philosophy of meaning, the subject and lived experience, Canguilhem 'has opposed a philosophy of error, concept and the living being' (Foucault, 'Introduction', *The Normal and the Pathological*, p.24). Of the intellectual and political rebellions of the 1960s, Foucault states, 'everything that took place in the sixties arose from a dissatisfaction with the phenomenological theory of the subject', thus positioning Canguilhem as a central figure within them (Foucault, 'Structuralism and Post-Structuralism', in *Aesthetics, Method and Epistemology: Essential Works of Foucault, 1954-1984, vol.2*, ed. James D. Faubion, tr. Robert Hurley and others (Penguin: London, 1998), p.438). Given Foucault's own oft-stated opposition to phenomenology, it is not hard to see that the philosophy of life that Canguilhem developed would be an important reference for Foucault. In keeping with this, Foucault asks at the end of his discussion of Canguilhem, 'Should not the whole

understanding the concept of biopower than just the formulation of norms that he develops, since his understanding of biological life is an important reference for the conception of life that Foucault uses. Two of Canguilhem's claims are particularly important to Foucault's own understanding of life and its relation to power: the first of these is the claim that life is fundamentally normative and the second that life is characterized by an internal capacity for error.⁷⁹ Here though, I am particularly

theory of the subject be reformulated, seeing that knowledge, rather than opening onto the truth of the world, is deeply rooted in the "errors" of life? (Foucault, 'Life: Experience and Science' in *Aesthetics, Method and Epistemology, Essential Works of Foucault, 1954-1984, vol.2*, ed. James D. Faubion, tr. Robert Hurley and others (London: Penguin, 1997), p.477). Also see Alain Badiou, 'Is there a theory of the subject in Georges Canguilhem?' *Economy and Society*, 27: 2 and 3(1998), pp.225-233.

Foucault's relation to Canguilhem has been documented in more detail by Gary Gutting, Paul Rabinow, Pierre Macherey, Peter Dews and others. Of these authors, Gutting specifically excludes discussion of Foucault's social and political thought to focus on the historical epistemology that Foucault draws from Canguilhem in works such as *The Order of Things* and *Archeology of Knowledge*. Rabinow is most particularly concerned with the conception of life developed in Canguilhem and taken up by Foucault. In 'French Enlightenment' for instance, he compares the conceptions of life and norms in Canguilhem and Foucault, arguing that their common concern with life and knowledge locates them firmly in the category of the French Modern. Paul Rabinow, 'French Enlightenment: Truth and Life', *Economy and Society*, 27:2-3(1998), pp.193-201; Paul Rabinow, *French Modern: Norms and Forms of the Social Environment* (Cambridge: Cambridge University Press, 1989); Gary Gutting, *Michel Foucault's Archeology of Scientific Reason* (Cambridge: Cambridge University Press, 1989); Peter Dews, *The Limits of Disenchantment: Essays on Contemporary European Philosophy* (London: Verso, 1995); Pierre Macherey, *In a Materialist Way: Selected Essays*, ed. Warren Montag, tr. Ted Stolze (London: Verso, 1998); Thomas Osborne and Nikolas Rose, eds. *Economy and Society*, 27:2 and 3(1998), Special Issue on Canguilhem; also see Camille Limoges, 'Errare Humanum Est: Do Genetic Errors Have a Future?' in Carl F. Cranor, ed. *Are Genes Us?: The Social Implications of the New Genetics* (New Brunswick: Rutgers University Press, 1994), pp.113-124 esp. 122-124. In this, Limoges points out that *The Normal and the Pathological* remains the classic study of the concept of the normal. Also see Elisabeth A. Lloyd, 'Normality and Variation: The Human Genome Project and the Ideal Human Type' in the same volume for a discussion of biological normality that resonates with Canguilhem's position. Canguilhem's claims also seem to be at least partly reiterated by a recent study of the concept of normality in child psychology, which concludes that 'concepts of normality should be calibrated to the ecosystemic conditions that constitute organism-environment states. The attribution of normality is never a categorical statement in which fact is simply noted, but is always a theoretically derived hypothesis that directs examination of salient organism-environment transactions... norms are value derived and not neutral transcontextual absolutes' (Eugene. S. Gollin, Gary Stahl, Elyse Morgan 'On the Uses of the Concept of Normality in Developmental Biology and Psychology', *Advances in Child Development and Behavior*, 21(1989), pp.49-71 at 68).

⁷⁹ As Paul Rabinow's clarification of Foucault's relation to Canguilhem shows, Canguilhem and Foucault share a conception of life as grounded in errancy. The concept of error is crucial for Foucault's interpretation of Canguilhem, providing the key moment in Canguilhem's work according to Foucault. Foucault argues in his essay 'Life: Experience and Science' that 'a chance occurrence... like a disturbance in the information system, something like a "mistake", in short, "error" resides at the centre of the problems that preoccupy Canguilhem' (p.476). Further, the error that is borne within life as its necessary potentiality provides the radical contingency around which the history of life and the development of human beings are intertwined for Canguilhem, which enabled him to identify and draw out the relation of life and knowledge and to trace 'the presence of value and the norm within it'. Hence, the permanent potential for error in life underpins the generation of concepts and the distinction between truth and falsehood that organizes them today. Foucault states,

if one grants that the concept is the reply that life itself has given to that chance process, one must agree that error is the root of what produces human thought and its history. The opposition of the true and false, the values that are attributed to the one and the other, the power effects that different societies and different institutions link to that division – all this

concerned with the former of these, which substantially informs Foucault's conception of norms. Canguilhem develops the thesis that life is fundamentally

may be nothing but the most belated response to that possibility of error inherent in life (p.476).

Thus, it is through the notion of error that life is placed in a relation of contiguity and contingency with truth and the structures within which it is told. 'Error', or the inherent capacity of life to 'err' both establishes the relation of life to truth and undermines that relation by disentangling it from the structures of truth and power that respond to the potential for error. Foucault concludes that 'life – and this is its radical feature – is that which is capable of error... with man, life has led to a living being that is never completely in the right place, that is destined to "err" and to be "wrong"' (p.476). See Rabinow, 'French Enlightenment' for a further discussion of Foucault's essay on Canguilhem.

It is worth noting here that while Canguilhem's characterization of error as central to biological life might have been an important move in the development of a philosophy of life, the concept of error that he is offering actually has a longer philosophical history. In his history of the concept of error in the French Enlightenment, David Bates has recently argued that the idea that error was not simply a negative hindrance but also productive was present in Enlightenment thought. Bates shows that in Enlightenment epistemological texts, error was often cast as a necessary risk of enquiry and search for truth; error was not only logically necessary for truth, but was cast as the topological space in which truth might emerge. It is important to note here that historically and etymologically, the term 'error' is in fact more closely linked to the action of wandering than with discrete mental mistakes. Bates points out that the Latin root – *errare* – of error in all its forms originally had two distinct meanings: first, 'to go this way and that, to walk at random' and second, 'to go off the track, to go astray', a variation which is then extended to being mistaken (*mis-taken*). Bates concludes then that 'there is... an ambivalence at the heart of error... between merely aimless wandering and a more specific aberration from some path'. This ambivalence does not disappear in the course of historical usages of the term in France and can still be found to be pertinent today. Hence, error is historically and etymologically less closely related to the idea of discrete mental mistakes, the opposite of truth, than with a process of 'wandering', either a 'ceaseless travelling' or deviation from a particular path. See David W. Bates, *Enlightenment Aberrations: Error and Revolution in France* (Ithaca: Cornell University Press, 2002), p.19-20. Heidegger's conception of the relation of truth and error also make use of this semantic ambivalence, evident in for instance, Martin Heidegger, 'The Essence of Truth' [1930] in *Pathmarks*, ed. William McNeill (Cambridge: Cambridge University Press, 1998), pp.136-154.

Without delving too far here, this conception of errancy may cast an important light on Foucault's conception of resistance, for errancy could be understood as the contingency that underwrites resistance to the normalizing operations of biopower. Foucault suggests in *Discipline and Punish* that normalization is essentially a power that fixes; it is an 'anti-nomadic technique' (p.218), which implies that errant wandering may provide an important avenue of resistance. This understanding of the possibility of resistance in error throws light on Foucault's important caveat in *History of Sexuality 1* that life has not been totally administered and controlled within the purview of biopower; rather, life constantly escapes or exceeds the techniques that govern and administer it. His comment specifically refers to the capacity of life to escape power and not to the internal limitations of power's exercise *per se*. He states that 'it is not that life has been totally integrated into techniques that govern and administer it; it constantly escapes them' (p.143; emphasis added), making life the active subject of the sentence. In the French original, the term that Foucault uses is '*la vie*', which can be taken to mean life in general (Michel Foucault, *Histoire de la sexualité 1, La volonté de savoir* (Paris: Gallimard, 1976), p.188). To the extent that Foucault relies on Canguilhem's account of life, that escape is made possible by the wandering errancy that undergirds biological life. Paul Rabinow also makes the suggestion, without developing it, that Foucault's conception of resistance might be explicated through the notion of errancy. The particular importance of doing so is that it may provide a counter to some of the more extravagant renditions of resistance in terms of transgression and 'a pure experience of rupture'. On this, also see Gary Gutting, 'Foucault's Philosophy of Experience' *boundary 2*, 29:2(2002), p.69-85 and Martin Jay, 'The Limits of the Limit Experience', *Constellations* 2:2(1995), pp.155-174 and particularly Jay's point that the term 'experience' derives from the Latin root '*ex-periri*', which also gives us the word 'peril' such that 'experience' suggests a dangerous journey without assurance of home-coming. The connotations of this are clearly not far from those of wandering in error. Bates' brief discussion of errancy in Heidegger and Nietzsche in the final chapter of *Enlightenment Aberrations* also points to a fruitful way of approaching Foucault.

normative through a consideration of the concepts of 'the normal' and 'the pathological' in the history of medicine. Against the nineteenth century medical doctrine that the states of normality and pathology were simply quantitatively different, Canguilhem argues that they are in fact qualitatively different, expressing different modes of existence for an organism. In conjunction with this, he claims that life is fundamentally a polarized activity, a claim that rests on the conviction that there is no such thing as biological indifference: even at the simplest level, 'living means preference and exclusion'.⁸⁰ For Canguilhem, this fact alone is enough to establish the fundamental normativity of life. He states that 'life is polarity and thereby even an unconscious position of value; in short, life is in fact a normative activity'.⁸¹ By this, he means that life itself 'establishes norms' and, because of that, an organism establishes the state that can be considered 'normal' for it in both the senses of habitual and ideal states.

There is no doubt that Foucault took Canguilhem as a reference point in formulating his conception of normalization in *Discipline and Punish*, as well as the early volume of *History of Sexuality*.⁸² Ewald's specification of three characteristics of norms helps to illuminate the conception of normalization that Foucault develops from Canguilhem's work. Ewald argues that norms can be understood as 'a way for a group to provide itself with a common denominator in accordance with a rigorous principle of self-referentiality', which implies both 'a rule for judgment' and 'the means of producing that rule'.⁸³ Their defining characteristics can be identified as positivity, relativity and polarity. The first of these indicates that norms need only consider the facticity of things without reference to cause or essence since for the norm facts only refer to other facts; the operation of the norm does not rest on interpretation or unmasking, but instead on recording the 'sheer phenomenality of phenomena'.⁸⁴ This allows the norm to establish its appearance of objectivity, exemplified in the techniques and practices of statistics. Second, the relativity of the

⁸⁰ Canguilhem, *The Normal and the Pathological*, p.136

⁸¹ Canguilhem, *The Normal and the Pathological*, p.126.

⁸² Gary Gutting, *French Philosophy in the Twentieth Century* (Cambridge: Cambridge University Press, 2001) p.232; also see Gutting, *Michel Foucault's Archaeology of Scientific Reason*.

⁸³ Ewald, Norms, Discipline and the Law', p.154.

⁸⁴ Ewald, 'Norms, Discipline and the Law', p.156.

norm ensures that it can be neither absolute nor universal. Norms necessarily operate in relation to other norms and each presents a rule of judgment internal to a group such that its efficacy as a rule of judgment is limited to that group. As such, the norm cannot bind anyone indefinitely as the law can. Importantly though, this does not indicate that norms are ephemeral or weak; it is rather a source of strength and durability, in that the flexibility of the norm allows it be adjusted to changing conditions and modes of application.

With the variability of the norm in mind, the third characteristic of polarity has important implications for the determination of normality and abnormality. For if the norm is entirely variable and only applies within a given group, then it becomes unclear how a distinction between the normal and the abnormal can be made. Recalling Canguilhem's comment that the relationship between the normal and abnormal is not 'a relationship of contradiction and externality, but one of inversion and polarity',⁸⁵ Ewald points out that the abnormal is not external to the normal but is presupposed by it, and can in fact become normal. Hence, the abnormal is distinguished from the normal not because of its permanent impossibility, but rather because of the possibilities for existence that it yields in a particular scenario. Or as Ewald puts it 'if all possible forms are not normal, it is not because some forms are naturally impossible but because the various possible forms of existence are not all equivalent for those who must exist in them'.⁸⁶ This means then that the normal and abnormal can only be determined within a particular set of environmental or administrative requirements, and if these change, then so does the boundary of the normal and the abnormal. Understood politically, this means that 'the relationship between the normal and the abnormal thus becomes an unstable threshold... [and] the political stakes in the fixation of this boundary become increasingly apparent'.⁸⁷

⁸⁵ See Canguilhem, *The Normal and the Pathological*, pp.239-240.

⁸⁶ Ewald, 'Norms, Discipline and the Law', p.157.

⁸⁷ Ewald, 'Norms, Discipline and the Law', p.158. It is also possible to identify a point of disagreement with Ewald's analysis here. He claims that a normalizing society is in direct contradiction with sovereignty, since there can be no sovereign who fixes norms (p.155). However, as these comments show in conjunction with Carl Schmitt's analysis of sovereignty in *Political Theology*, it is precisely the determination on the normal and the exception, or the fixing of the boundary between the normal and the abnormal, that constitutes the character of sovereignty. The exception not only reveals the rule in its infraction but is also necessary for the establishment of the rule, since it provokes the sovereign decision that determines the rule. Interestingly, this possibility emerges in Canguilhem, particularly in his claim that the 'polarity of the experience of normalization... builds into

Given this explication of the conception of norms that Foucault employs, it should be clear that the co-incidence of norms and normalization does not indicate a 'normative confusion' in Foucault's work, though it does indicate why it is that Foucault was wary of posing 'alternative norms'.⁸⁸ Foucault consistently questions the derivation of normative positions from a presupposed universal, but this does not mean that his position is either one of relativism or of crypto-normativity as Jurgen Habermas claims.⁸⁹ Rather, the conception of norms given here suggests that knowledge claims are 'internally' normative,⁹⁰ in the sense that insofar as they derive from and partake in the fundamental polarity of life, they express or indicate a position taken in relation to one's environment or conditions of existence. Further, resistance arises as a central expression of the evaluative polarity of life and the struggle to establish normal conditions. This means that the claim to universality made within the attempt to establish alternative norms is itself a part of that struggle, but one that seeks to deny or eliminate the struggle.⁹¹ Hence, as Paul Patton argues in response to the question 'why ought domination to be resisted?' posed by Habermas and Nancy Fraser,⁹² while Foucault does not 'provide any basis for a single universal answer to the question' resistance is nevertheless 'inevitable' within relations of power and domination.⁹³

the relationship of the norm to its area of application the normal priority of the infraction... a norm cannot be original. Rule begins to be rule only in making rules and this function of correction arises from infraction itself (Canguilhem, *The Normal and the Pathological*, pp.239-240). It appears then that despite the difference in their political commitments, there is a parallel in the theorization of the norm and the exception that Canguilhem and Schmitt offer, the former with regard to the biological and the latter to the political. I address Schmitt's characterization of this later in Chapter 5. See Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*, tr. George Schwab (Cambridge: Cambridge University Press, 1985).

⁸⁸ See Nancy Fraser, *Unruly Practices: Power, Discourse and Gender in Contemporary Social Theory* (Minneapolis: University of Minnesota Press, 1989), pp.17-33; for a further discussion of Foucault's wariness regarding the postulation of alternative norms, see Mitchell Dean, 'Normalising Democracy: Foucault and Habermas on Democracy, Liberalism and Law', in Samantha Ashenden and David Owen, eds. *Foucault Contra Habermas* (London: Sage, 1999), pp.166-194.

⁸⁹ Jurgen Habermas, *The Philosophical Discourses of Modernity: Twelve Lectures* (Cambridge, Ma.: MIT Press, 1987) pp.276-286.

⁹⁰ Jay Bernstein, *Recovering Ethical Life: Jurgen Habermas and the Future of Critical Theory* (London: Routledge, 1995) p.166.

⁹¹ As Nietzsche suggests of the law, 'a legal order thought of as sovereign and universal, not as a means in the struggle between power-complexes, but as a means of preventing all struggle in general... would be a principle hostile to life' (Friedrich Nietzsche, *On the Genealogy of Morals* [1887], ed. Walter Kaufman, tr. Walter Kaufman and R.J. Hollingdale (New York: Vintage, 1989) p.76).

⁹² Habermas, *Philosophical Discourses of Modernity*, p.284; Fraser, *Unruly Practices*, p.29

⁹³ Paul Patton, 'Foucault's Subject of Power', *Political Theory Newsletter* 6(1994), pp.60-71 at 61.

However, even with the strong conjunction between Foucault and Canguilhem's conception of norms there is nevertheless an important difference between them. For while Canguilhem understands vital norms as the generative motor of social norms, Foucault effectively reverses this in his formulation of the productive capacity of power relations. As Pierre Macherey points out, for Foucault 'the living has ceased to be the subject of normativity in order to become no more than the point of application'.⁹⁴ The hinge for this crucial reversal is the introduction of the terminology of power into the field of analysis, a vocabulary and concern that was largely absent from Canguilhem's work.⁹⁵ Further, as I show, this reversal turns the question of the operation of norms toward exposure of the political stakes of normalization and the correlative determination of the normal and abnormal, without however, losing site of the constitution and regulation of the body – the 'most material' operations of power – and the normative exclusions these entail.

For Canguilhem, the relation of social and vital norms is one of differential generation, whereby the technical and normative impulse of knowledge derives from the technical and normative impulses of life itself such that the social and biological cannot be seen as simply opposed ontic states.⁹⁶ He states 'human technique extends vital impulses, at whose service it tries to place systematic knowledge which would deliver them from much of life's costly trial and error'.⁹⁷ Importantly though, this does not mean that social norms replicate vital norms. Canguilhem gives at least two reasons why this is so: first because the systems of organization are different, in that for the living being norms are internal to the organism, while in social organization they are externally generated. Canguilhem claims of social organizations that society

⁹⁴ Pierre Macherey, 'From Canguilhem to Foucault by way of Foucault' in *In a Materialist Way: Selected Essays*, ed. Warren Montag, tr. Ted Stolze (London: Verso, 1998), pp.108-115 at 111.

⁹⁵ Notwithstanding the influence of Foucault and Althusser, which led Canguilhem to develop the notion of scientific ideology, but even here, the notion of ideology is used in such a way that it does not directly link to the effects of power within knowledge and the production of truth. See Georges Canguilhem, *Ideology and Rationality in the History of the Life Sciences*, tr. Arthur Goldhammer (Cambridge, Ma.: MIT Press, 1988); also see Thomas Osborne, 'Medicine and Ideology', *Economy and Society* 27: 2 and 3(1998), pp.259-273; Pierre Macherey, 'Georges Canguilhem's Philosophy of Science: Epistemology and the History of Science', in *In a Materialist Way: Selected Essays*, ed. Warren Montag, tr. Ted Stolze (London: Verso, 1998), pp.191-187.

⁹⁶ See Monica Greco, 'Between Social and Vital Norms: Reading Canguilhem and "Somatization"', *Economy and Society*, 27: 2 and 3(1998), pp.234-248; Dominique Lecourt, 'Georges Canguilhem on the Question of the Individual', *Economy and Society*, 27: 2 and 3(1998), pp.217-224.

⁹⁷ Canguilhem, *The Normal and the Pathological*, p.100, 130.

has no 'intrinsic finality' or teleology that binds the various parts or organs together as there is in a biological organism. In a living organism, there is no externality of parts and although different organs might fulfill the needs of the organism, its immanent regulation is expressed in the integration of parts within a whole by means of a single nervous and endocrine system. In social organization however, the integration of its parts is itself expressed as a need – 'regulation is a need in search of its organ and its norms of exercise' – such that social organizations are construed as 'both machine and organism'.⁹⁸

Second, it cannot be assumed that vital norms structure social life without mediation. The disjuncture of social and vital norms is revealed for Canguilhem in the simple fact that an individual may question the needs and norms of the society he or she inhabits. He concludes that:

In a social organization, the rules for adjusting the parts into a collective... are external to the adjusted multiple. Rules must be represented, learned, remembered, applied, while in a living organism the rules for adjusting the parts amongst themselves are immanent, presented without being represented, acting without deliberation nor calculation. Here there is no divergence, no distance, no delay between rule and regulation. The social order is a set of rules with which the servants or beneficiaries, in any case, the leaders, must be concerned. The order of life is made of a set of rules lived without problems.⁹⁹

Hence, while the norms of technical activity might derive from vital norms, it is not the case that the norms of the living organism are identical with the norms of social organization. Ultimately then, the normative organization of society cannot be understood either metaphorically or analogically through the model of the body and its norms.

However, the problem here is that Canguilhem does not elaborate the mechanisms or mediating factors that account for such differentiation. While he recognizes a disturbance or distortion in the transmission of the norms of the human body into social organization, he does not ultimately account for it and the differentiation

⁹⁸ Canguilhem, *The Normal and the Pathological*, p.252.

⁹⁹ Canguilhem, *The Normal and the Pathological*, p.250.

between social and vital norms remains inexplicable. Relatedly, he does not address the question of the effect of social norms upon biological norms either: the generative capacity of biological norms is not attributed to social norms, so any correlative effect of the social on the biological is occluded in his schema. We might read Foucault as being concerned with precisely these problems in his accounts of normalization given in *Discipline and Punish* and *The History of Sexuality*; the crucial difference between Canguilhem and Foucault is that the latter has recourse to a vocabulary of power to explicate the link between the social and the vital. Power, and especially biopower, mediates the link between vital norms and social organization by making the life of the body a crucial nexus in the operation of socio-political relations. This also means that the order of generation of norms is at least partially reversed: for Canguilhem, technical norms derive from bodily norms, but for Foucault, power relations produce bodily norms.

Foucault's thesis that power operates productively can be understood to mean that power does not produce bodies *per se*, but that it produces and enforces bodily norms. Foucault claims that 'the body itself is invested with power relations',¹⁰⁰ meaning that to the extent that biopower is normalizing, it creates and establishes norms or new modes of existence that correlate with new environments and new needs. Foucault's position on the status of the body vis-à-vis power is well summarized in his comments in *Discipline and Punish* that the history of the body demands a 'political economy' that takes note of the body's investiture in power relations. He argues that within disciplinary regimes, 'it is always the body that is at issue – the body and its forces, their utility and their docility, their distribution and submission... the body is directly involved in a political field; power relations have an immediate hold upon it; they invest it, mark it, train it, torture it, force it to carry out tasks, to perform ceremonies, to emit signs.'¹⁰¹ Power 'masters' the body in a political economy that does not simply aim at conquering the forces of the body but at the management and controlled enhancement of them, since 'the body becomes a useful force only if it is both a productive body and a subjected body'.¹⁰² Thus, in the factory, the classroom and the prison, bodies are produced along normative lines that

¹⁰⁰ Foucault, *Discipline and Punish*, p.24.

¹⁰¹ Foucault, *Discipline and Punish*, p.27.

¹⁰² Foucault, *Discipline and Punish*, p.26.

maximize efficiency, productivity and obedience or docility. The bodies that thrive in such environments are those most able to incorporate and reproduce the norms imposed upon it by strategic techniques of power. In modern societies then, Foucault argues, power does not simply inscribe the surface of the body, but reaches to its vital rudiments, that is, to the biological norms of human existence.¹⁰³

But this does not mean that power is determining in its hold on the body. While the body is necessarily and immediately invested in relations of power such that the forces of the body are brought to submission, emit signs and perform tasks, the body also provides the point of resistance to disciplinary technologies. Just as such forces can be composed into productive arrangements, they can also produce their own resistances. Such resistances cannot be understood as a 'great revolt', but rather, as the interplay of force on force, where these forces contradict and overcome through various subterfuge, tactics and errors. In this then, the immanent forces of the body continually present and confront the opportunity for obedience or resistance. What was important in *Discipline and Punish* was precisely the manner in which power relations managed the forces of the body. The phrase 'docile bodies' was not meant to indicate that bodies were in fact docile, but that the aim of disciplinary power is to produce 'docile bodies', an aim predicated on the assumption that bodies were composed of intrinsic, active forces that could be harnessed to increase productivity. The body of the prisoner is the materialized nexus of force relations, forces that are immanent to the body itself and which operate on it through the material arrangements of the prison. Hence, the aim in producing docile bodies was that of 'composing forces in order to obtain an efficient machine'.¹⁰⁴

This understanding of the status of the body counters one of the principle criticisms made against Foucault's conception of the operations of power vis-à-vis the body in *Discipline and Punish*. Numerous critics have argued that Foucault understood the body as the passive material upon which power inscribed the habits, strictures and

¹⁰³ The most obvious way this occurs, which has received much attention in postmodern literature, is through the integration of the body and technology. For an explicitly biopolitical consideration of this see Eugene Thacker, 'The Thickness of Tissue Engineering: Biopolitics, Biotech and the Regenerative Body', *Theory and Event*, 3:3(1999).

¹⁰⁴ Foucault, *Discipline and Punish*, p.164.

rituals of discipline. In this critique, the operations of power upon the body are understood to be not unlike the operations of Franz Kafka's writing machine in 'In the Penal Colony'.¹⁰⁵ In this regard, Elizabeth Grosz' reading of Foucault is instructive for considering feminist responses to Foucault's work, as she explicitly criticizes his perceived 'inscriptional' model of the body as the passive material upon which power writes in terms of feminist politics. However, Grosz perpetuates a misreading of Foucault in suggesting that the body is passive. This point can be made succinctly with regard to her reading of Foucault's account of the execution of Damians in 1757, with which he opens *Discipline and Punish*. Grosz claims that 'Damians' body is quite literally torn to pieces in the most calculated and precise way, in full public view, with all the ceremony and ritual of a public spectacle. His torture and execution are not unlike the descriptions both Nietzsche and Kafka use in outlining the law's inscription on bodies'.¹⁰⁶

But it does not take an especially close reading of the opening pages of *Discipline and Punish* to see that what Foucault's description reveals is that the state's attempt to 'write' on the body through its destruction *fails*. The destruction of Damians' body is far from 'calculated and precise'; while the program or decree to destroy the body might be such, the actual attempt to carry out the task is stymied by the resistances of the body. Thus, Damians' execution signified something more of the order of the difficulty the law faces in writing on the body, such that it is only through the transformation of its tactics that the body is destroyed. This is one moment in which the difference between Foucault and Kafka becomes very clear; for Kafka, the body is destroyed through the ineluctable repetition of law's effect on the body; for Foucault, the body demands that the law transform its own tactics, such that a battle is staged between the body and the law. As I mentioned previously, this flexibility of tactics is one of the defining characteristics of normalization, where it is manifest in the articulated operations of techniques of totalization and individualization, against the constrained operations of sovereign law.

¹⁰⁵ Elizabeth Grosz, *Volatile Bodies: Toward a Corporeal Feminism*, (Sydney: Allen and Unwin, 1994), pp.134-137, 145-151; Franz Kafka, 'In the Penal Colony' in *The Collected Short Stories of Franz Kafka*, ed. Nahum N. Glatzer, tr. W. Muir and E. Muir (London: Penguin, 1988), pp.140-167.

¹⁰⁶ Grosz, *Volatile Bodies*, p.150.

Yet, the analogy with Kafka is instructive in another sense, in that it does help bring out the element of violence in subjection through normalization. However, the violence of normalization does not lie solely and immediately in the inscription of the body, but rather, in the constitution of the individual within a general matrix of the determination of the normal and abnormal and the correlative determination of life worth living that this entails. Foucault claims that the analyses he undertook in *Discipline and Punish* and *The History of Sexuality* were directed toward an analysis of a technology of power that acts directly on the body without mediation through consciousness. He claims, 'what I am trying to do is show how power relations can get through to the very depths of bodies, materially, without having been relayed by the representation of subjects. If power affects the body, it is not because it was first internalized in people's consciousness'.¹⁰⁷ In this, Foucault's account of the normalizing operations of power *are* similar to the operations of Kafka's 'harrow', which acts directly on the body of the condemned without mediation through the psychic circuits of guilt, remorse and retribution. Rather, the recognition of guilt and the subjectivating circuits that this entails follow from the harrow's operations on the body.¹⁰⁸

Similarly, according to Foucault, the investment of the body in disciplinary technologies of power produces subjectivity and the soul of the prisoner as an artefact of the operations of normalization. At the same time though, individuality operates as a means of 'mastering' the forces of the body, tying the body to the norm by locating it within the identification of calibrated particularities and the determination of normality and abnormality. *Unlike* Kafka's machine then, disciplinary normalization operates through precise examinations and comparisons, and the simultaneous location and constitution of the individual in relation to a flexible common standard or rule for judgment. As I pointed out earlier, this underpins and permits the identification of the normal and the abnormal, which in turn is tied fundamentally to the political determination of life worth living. Given this, the subjection effected through normalization appears as one of the means by which power takes hold of life, since norms 'through their idealized expression,

¹⁰⁷ Foucault, 'Power Affects the Body', p.209.

¹⁰⁸ Nietzsche's narrative of the emergence of conscience and memory through the infliction of pain in *On the Genealogy of Morals* is also an important reference for this formulation of subjectivation. See Nietzsche, *On the Genealogy of Morals*, esp. the 'Second Essay'.

speak of nothing but suffering and death, that is, of the threat that reminds [the individual as a] living thing of itself, both of its individuality of living, and of its living of living'.¹⁰⁹

Several critical points can now be made to bring this chapter to conclusion. First, it is now possible to see the way in which Foucault casts subjection as a form of violent imposition upon the body within his work during the late 1970s. This does not mean that normalization is necessarily efficacious such that the body is wholly passive in relation to the operations of normalizing power. But it does mean that the subjectivity that emerges through the totalizing and individualizing operations of normalization appears as an imposition and constraint on the body, which of course is not simply exterior to the body but all the more pernicious because it invests the body through and through in the generation of bodily norms. Further, to the extent that the body is conceived of as a materialized nexus of force relations, it also appears as the site of resistance to the impositions of subjection. The importance of this point is twofold; first, it reveals the re-emergence of a liberationist discourse in that the body is idealized as the point of disruption from the normalizing operations of power and identity. Second, it reveals a theoretical failure to elaborate why it is that bodies obey or submit to the operations of power. The provocation toward the end of *The History of Sexuality* that resistance to the deployment of sexuality should not take the form of recourse to sex-desire but to 'bodies and pleasures' provides a useful means of bringing these points out further.

I mentioned at the beginning of this chapter that Foucault argued in *The History of Sexuality* that sexuality provides a privileged axis in the intermingling of two techniques of biopower, as it provides access both to the life of the individual and of the population. The former of these occurs in techniques such as the minute examinations and self-exegesis in the technology of the confessional, while the latter occurs through eugenics, reproductive health programs and the regulation of modes of subsistence and habitation and so on.¹¹⁰ In other words, sexuality operates as the nexus of normalization and individualization, giving rise to a 'hermeneutics of the

¹⁰⁹ Macherey, 'From Canguilhem to Canguilhem by way of Foucault', p.114.

¹¹⁰ Sexuality was 'employed as a standard for the disciplines and as a basis of regulation' (Foucault, *History of Sexuality 1*, p.146).

self that demands continual elaboration of one's sex and sexual desires as the immanent secret dimension of oneself. As such, sexuality is central to the integration of bodies within the circuits of power and knowledge and the formation of subjects within the regime of biopolitics. In this, sexuality is analogous to the soul in *Discipline and Punish*, where Foucault claims that the soul should be understood as

the present correlative of a certain technology of power over the body. It would be wrong to say that the soul is an illusion, or an ideological effect. On the contrary, it exists, it has a reality, it is produced permanently around, on, within the body by the functioning of power... [the soul] is the element in which are articulated the effects of a certain type of power and the reference to a certain type of knowledge... the soul is the effect and instrument of a political anatomy; the soul is the prison of the body.¹¹¹

Analogously, as a discursive formation, sexuality is produced in and around the body as the articulated effects of a particular regime of power and knowledge. For Foucault, sexuality is not the most secret aspect of ourselves, but rather, an element in the hold that biopower has over the body of the individual and the population: 'an effect and instrument of a political anatomy'. Nor does this does not mean that sexuality is illusory; Foucault states, 'it is a very real historical formation; it is what gives rise to the notion of sex, as a speculative element necessary to its operation'.¹¹² Thus, sexuality operates as a mode of subjection in the regime of biopower, allowing access to the life of the body and as such can be seen as another means of imprisoning the body.

Foucault concludes from this that the political response required to combat the subjection effected through the discursive deployment of sexuality should not take the form of a liberation of desire, but the mobilization of pleasures. He states, 'we must not think that by saying yes to sex, one says no to power; on the contrary, one tracks along the course laid out by the general deployment of sexuality... the rallying point for the counterattack against the deployment of sexuality ought not to be sex-desire, but bodies and pleasures'.¹¹³ Foucault reiterates the sentiment of this

¹¹¹ Foucault, *Discipline and Punish*, pp.29-30.

¹¹² Foucault, *History of Sexuality 1*, p.157.

¹¹³ Foucault, *History of Sexuality 1*, p.157.

provocation in a related interview, where he states that 'we should be striving... toward a desexualization, to a general economy of pleasure that would not be sexually normed'.¹¹⁴

Judith Butler has rightly pointed out that this indicates that Foucault understands the body and its pleasures to operate as the site of radical resistance to power. Butler claims that in Foucault's work, the body maintains a status analogous to the unconscious in psychoanalysis, 'that is, as that which exceeds and confounds the injunctions of normalization'.¹¹⁵ Similarly, she claims elsewhere that 'for Foucault, it sometimes appears that the body exceeds its discursive construction at every instant (*instance*), posing a limit to discursive construction precisely at the surface of its application'.¹¹⁶ She goes on to suggest that the body is thereby 'idealized as a principle of necessary and permanent disruption'.¹¹⁷ Butler's point is particularly targeted against Foucault's 'Introduction' to the *Memoires* of Herculine Barbin, where Foucault appears to take the body as a natural ground of resistance, and finds freedom in bodily pleasures without identities, indicated in the extraordinary image of 'grins [hanging] about without the cat'.¹¹⁸ But it also holds for the analysis of the body presented in *Discipline and Punish* and the first volume of *History of Sexuality*.

What Butler's critique reveals is the extent to which Foucault risks a liberationist discourse that re-instates rather than undermines the liberation-domination dyad that he was at pains to reject. If the body and its pleasures are understood as the wellspring of a savage intransigence against the operations of power, then Foucault would have simply replaced the notion of transgressive desires with that of subversive pleasures. Further, without a clear explication of the effective difference between these two characterizations, it is not clear how bodies and pleasures evade

¹¹⁴ Foucault, 'Power Affects the Body', p.212.

¹¹⁵ Butler, *Psychic Life of Power*, p.94.

¹¹⁶ Judith Butler, 'Revisiting Bodies and their Pleasures', *Theory, Culture and Society*, 16:2(1999), p.11-20 at 14.

¹¹⁷ Butler, 'Bodies and Pleasures', p.14.

¹¹⁸ Michel Foucault, 'Introduction', *Herculine Barbin: Being the Recently Discovered Memoires of a Nineteenth Century Hermaphrodite*, tr. R. McDougall (New York: Pantheon, 1980), p.xiii.

and confront the operations of power in ways that sex and desire do not.¹¹⁹ While Foucault suggests that the notion of desire is wholly tied to sexual subjection in biopolitics, it is not yet enough to simply replace that notion with that of pleasure to erase the difficulties. Further, taking into account the principle of the ‘tactical polyvalence of discourse’, by which Foucault asserts the reversibility and tactical variability of discursive elements vis-à-vis operations of power,¹²⁰ it becomes unclear why it is that, *a priori*, the discourses of sex and desire cannot be mobilized *against* biopolitical subjection. Ultimately then, it seems that Foucault’s understanding of subjection in biopolitics leads to a problematic valorization of non-identity, ‘a refusal of identity... symptomatic of a utopian desire to step outside power, discourse, history and subjectivity’.¹²¹

If this is the case, then Foucault’s conception of subjectivation and subjectivity runs into a further problem in that if the body is cast as the site of permanent disruption, then it seems that the critical question to be posed is not how it is that bodies resist, but why it is that they obey. Under what circumstances do the forces of the body submit to the operations of normalization and subjection and why is the condition of submission apparently so persistent? Foucault claims that he aimed to account for the operations of power that acted directly on the body, without a prior mediation through consciousness and ‘the representations of subjectivity’. In doing so though, he elides the question of psychic attachments to the constitutive operations of discourse and power, for even if the individual is seen as an effect and vehicle of power, it is still necessary to give some account of the persistence of such effects and why they are as effective as they appear to be.¹²² Why, that is, is de-subjection such an apparently complicated and difficult task and why are the constraints of normalizing individuality so persistently re-installed? While the account of subjectivation as the production of bodily norms goes some way toward addressing

¹¹⁹ Nancy Fraser, *Unruly Practices*, p.60. I do not mean to endorse Fraser’s call for a return to humanist discourses against Foucault’s critique here, since her argument rests on a number of simplifications of Foucault’s work, but she is right to note this tension in Foucault’s claims.

¹²⁰ Foucault, *History of Sexuality 1*, p.100.

¹²¹ Steven Angelides, *A History of Bisexuality* (Chicago: University of Chicago, 2001), p.157; also see Paul M. Cohen, *Freedom’s Moment: An Essay on the French Idea of Liberty from Rousseau to Foucault* (Chicago: University of Chicago Press, 1997).

¹²² See Wendy Brown, *States of Injury: Power and Freedom in Late Modernity* (Princeton: Princeton University Press, 1995), esp. the chapter ‘Wounded Attachments’ for a further discussion of the role of attachments in subjection and identity politics.

these questions, it does not respond to them completely, since it is not at all clear how one proceeds from the materialist account of subjection that Foucault provides to an account of hegemonic consciousness and its reverse of critique, though he clearly wants both of these.

In addition to this, the complexity of compulsive attachments to submission and subjection is further reduced by Foucault's failure to maintain a qualitative distinction between forces, which has the consequence that subjection appears to be assured only through contingent tactical advantages that rest on little more than *quantitative* differences in forces in any given confrontation. While I have argued that Foucault draws heavily on Nietzsche's ontology of forces, he does not employ the notion of force in the same way. For Nietzsche, forces must always be seen as active or reactive, depending on whether they strengthen and affirm life or whether they weaken and undermine it; in short, whether they are 'yes' or 'no'-saying forces. This will in turn depend on the will to power that guides and determines the directionality of forces: is it negative, resentful and obedient or affirmative, masterly and directed toward overcoming? However, Foucault does not adopt the distinction between active and reactive forces, nor does he offer an equivalent principle to the will to power, which offers the very possibility of evaluation in Nietzsche's account.¹²³ As we have seen, for Foucault, 'power' is the name given to the consolidated effect of 'a moving substrate of force relations'. Here, forces are purely relational, with no internal qualitative differences by which they could be distinguished or evaluated. Therefore, the theoretical foreclosure of either an account of psychic attachments or a principle of qualitative differences in relations of force prevents Foucault from providing a convincing account of the compulsive obedience to operations of power that seems to characterize normalizing subjection.

Taken together, these critical points reveal that while Foucault's understanding of normalizing subjection offers an important opening to considering the role of subjectivity within biopolitics, particularly vis-à-vis violence and political exclusion, it

¹²³ For further discussion of the evaluative dimension of the will to power, see Gilles Deleuze, 'Active and Reactive', in David B. Allison, *The New Nietzsche*, (Cambridge, Ma.: MIT Press, 1985), pp.80-106 esp at 91; Paul Patton, *Deleuze and the Political* (London: Routledge, 2000), p.65; also see Alan D. Schrift, *Nietzsche's French Legacy: A Genealogy of Poststructuralism* (New York: Routledge, 1995), p.43.

is ultimately overly reductive. Foucault's account of subjectivation is limited to considering the negative impositions of subjectivation, without consideration of the positive political implication of being a subject. This means that in his work during the mid 1970s, Foucault remains too closely aligned with a repressive model of power, despite his efforts to dissociate from that through a critique of sovereign models of power. Furthermore, in critiquing this model of power, Foucault introduces a number of ambiguities into his own account of the transformation of technologies of power, particularly with regard to the historical and analytic relation of sovereignty and biopower. This ambiguity is evident in his positing a break between a power that operates through the extraction of life to one that administers and fosters life. Even so, Foucault's conception of biopower and normalization does offer a constructive means of thinking through the political determination of life worth living, which allows that determination to appear as the constitutive decision of the political.

To conclude then, in this chapter I have discussed Foucault's conception of biopower and violence to draw out the way in which one might approach an analysis of political exclusion through the determination of life worth living. In doing so, I have identified two sets of problems within the work that Foucault undertook during the early to mid 1970s on biopower, subjection and sexuality. The first of these arise in his conception of power, particularly from ambiguities in his account of the transition from sovereign power to biopower. The second set of problems emerges in the conception of subjection that Foucault develops in correlation with the reformulation of power. I have argued that Foucault relies on a conception of subjection as violent imposition, and thereby casts subjectivity as a 'prison of the body'. I take up these problems further through discussing the responses of Giorgio Agamben and Judith Butler in depth in the following chapters. First though, I want to turn to a discussion of Foucault's later work, largely published during the early 1980s, which can and has been read as a form of auto-critique and attempt to resolve the theoretical difficulties that I have identified here. This allows me to extend the critical points that I have raised here, as well as to cast new light on Foucault's ethics through placing these later developments in the context of the problematics of biopolitics.

Chapter 2

From Biopolitics to Ethics: Subjectivation, Freedom and Care of the Self

2.1 Introduction

The first volume of the *History of Sexuality* project, published in France in 1976, was initially intended as an introduction to a lengthy genealogy of the deployment of sexuality, the other 5 volumes of which were projected to appear in quick succession. However, the second volume, entitled *The Use of Pleasure*, did not appear until 1984. And then, the conceptual apparatus put into play by Foucault appeared to bear little relation to that of the introductory volume. While opening the question of the relation between life and politics in the first volume, in the following volumes, Foucault appeared to turn away from it in order to investigate the means by which individuals participate in their own formation as desiring subjects. Rather than the examining the concept of biopower and the deployment of sexuality this regime of power was said to occasion, the second volume focused on the emergence of the desiring subject in games of truth and error and the self-formation of the ethical subject. From this, Foucault developed the concept of an 'ethics of the self' grounded in a practice of liberty. Despite, or indeed because of, the differences between these volumes, interpreters have frequently seen the later ethics as providing at least the outline of a response to the political problematics that Foucault makes clear in the first volume, and particularly the discussion of biopolitics that it contains. This claim is well stated by Georges Canguilhem, one of Foucault's colleagues who was in a privileged position to comment on his work. He suggests that 'what could be taken as a rupture in the last work of Michel Foucault would only be at its core a completion precipitated, perhaps, by a premonitory anxiety... It was normal, in the properly axiological sense, that Foucault would undertake the elaboration of an ethics. In the face of normalization and against it, *Le Souci de soi*.¹

¹ Georges Canguilhem, 'On *Historie de la folie* as an Event' in Arnold I. Davidson, ed. *Foucault and His Interlocutors* (Chicago: Chicago University Press, 1997) pp.28-32 at 32.

In this chapter, I extend the discussion of biopolitics initiated in the first chapter by considering the claim that the later ethics offers a means of response to and resolution of the problems of biopolitics. There are two ways in which Foucault's ethics might be considered a response to the earlier work, first as a theoretical response in which conceptual developments address problems that *emerge* in the earlier work, and second, as the formulation of an ethico-political response to the political problems *described* by the earlier work. While these positions cannot be entirely distinguished, it is nevertheless important to not collapse them wholly into each other, since the theoretical shifts that emerge between the first and second volumes are sufficiently complex to undermine any attempt to simply read the latter project as the development of an ethico-political response to the dangers of biopolitical subjection. In the previous chapter, I discussed the concept of biopower that Foucault develops in the first volume of the *History of Sexuality* project. I identified two sets of ambiguities in Foucault's earlier conceptions of power and subjection that diminish the ways in which his understanding of biopolitics illuminates the operations of violence within political order and the determination of life worth living. In considering the later ethics as a theoretical and political response to biopolitics, I argue that the status of freedom within the later ethics is more complex than is often recognized in that freedom appears as both a *condition* and *consequence* of an ethical practice of the self. In following the implications of this, I show that there is a fundamental interdependence between freedom and political community within the ethics of the self that Foucault describes and advocates such that an ethics of the self are ultimately an ethics of the free citizen.

This chapter is organized in four sections. In the first, I consider the theoretical shifts effected in the intervening period between the first and second volumes of the *History of Sexuality* project. I show that the conceptual shift that emerges in *The Use of Pleasure* can be read as an attempt to move away from the problematic valorization of the body that I identified in the previous chapter, through a theorization of subjectivation itself as the site of political resistance. Within the terms of biopolitics, Foucault effectively transposes the potential for resistance and transformation from biological life to political life. I also show in this section that an interesting ambiguity emerges in Foucault's account of an ethics of the self, where freedom appears as both the condition and consequence of a practice of the self. In the second section, I develop an interpretation of Foucault's account of the ethical practices of the

Ancient Greeks to highlight the interdependency between an ethics of the self and political participation. This highlights Foucault's implicit recognition that the Greek ethics of the self were effectively an ethics of the citizen – of free men. In the third section, I examine the implications of this for the claim that an ethics of the self provides an ethico-political response to biopolitical subjection through a consideration of the relation between practices of liberty and political community. I conclude from this that if an ethics of the self are ultimately an ethics of the citizen, they are limited in the ways in which they broach questions of biopolitical exclusion and the relation to the other that this entails. In the final section, I address the question of whether an ethical practice of the self can be extended to yield a relation to others beyond the limits of political community. I argue that the inherent contingency of the relation to others in the ethics of the self undermines attempts to secure such a relation and suggest that Foucault's ethics should be supplemented with recognition of a fundamental ethical responsibility. This latter claim is developed through Ewa Plonowska Ziarek's recent account of an ethics of dissensus that seeks to reconcile a Foucauldian 'ethos of becoming' with a Levinasian 'ethics of alterity'.

2.2 *Power, Subjectivation and Freedom*

Before I begin a critical discussion of the ethics of the self that Foucault develops in *The Use of Pleasure*, it is first instructive to consider the conceptual shifts that occur in his theorization of subjectivity, power and resistance between this volume and the earlier discussion of biopolitics developed in *The History of Sexuality*. In a reflection characteristic of his self-interpretation in the interim between the volumes of *History of Sexuality*, Foucault claims that the 'modus operandi' of his work was to analyze the relation of experiences like madness, death, sexuality, and crime to technologies of power, and the problem that emerged during the 1970s was that of individuality or the experience of 'self-identity in relation to the problem of individualizing power'.² At the end of this same lecture – 'Omnes Et Singulatim' – he proclaims that the state

²Michel Foucault, 'Omnes et Singulatim: Toward a Critique of Political Reason' *Power: Essential Works of Foucault, vol. 3*, ed. James D. Faubion, tr. Robert Hurley and others (New York: New Press, 2000), pp.298-325 at 300; Originally published as 'Omnes et Singulatim: Toward a Critique of Political Reason' [1979] in *Tanner Lectures on Human Values, vol. 2* (Cambridge: Cambridge University Press, 1981), pp.225-254 at 227.

is both individualizing and totalizing 'right from the start' and the only possibility of liberation comes from attacking 'not just one of these two effects but political rationality's very roots'.³

The provocation of this lecture, presented at Stanford in 1979, is reinforced by a similar formulation in the crucial essay 'The Subject and Power', published in 1982. Here, Foucault claims that:

The political, ethical, social, philosophical problem of our days is not to try to liberate the individual from the state, from the state's institutions, but to liberate us both from the state and from the type of individualization which is linked to the state. We have to promote new forms of subjectivity through the refusal of this kind of individuality which has been imposed on us for several centuries.⁴

These statements bring to the fore the central problem that Foucault claims preoccupied him from the early 1970s, that is, the forms of subjection produced through techniques of individualization and the correlative political opposition required by them. As he claims, 'it is not power, but the subject, which is the general theme of my research'.⁵ Nevertheless, what this necessitated for Foucault was a critique of the rationality of state power, an analysis that accounts for its specificity and generality by tracing its points of operation and the means by which it infiltrates, produces and constrains the fundamental experiences of our existence, tying 'us' to operations of power through the imposition of individuality.

While Foucault attempts to establish the continuity of his concerns in this reformulation of his project, this also begins to indicate the underlying conceptual shifts that took place during this time. For while there is clearly an element of continuity in the formulation of individuality as an imposition that ties 'us' to the operations of the state, there is also an important shift in the conceptualization of power and subjectivity that Foucault offers after the publication of *The History of*

³ Foucault, 'Omnes et Singulatum', p.325.

⁴ Michel Foucault, 'The Subject and Power' in Hubert Dreyfus and Paul Rabinow, *Michel Foucault: Beyond Structuralism and Hermeneutics* (New York: Harvester Wheatsheaf, 1982), pp.208-226 at 216.

⁵ Foucault, 'The Subject and Power', p.209.

Sexuality. At the end of the first lecture of 'Two Lectures', Foucault admits that the understanding of power as war carried out in the arena of civic peace was not, or was no longer, satisfactory for his purposes. This model, he claims, was still tied to a conception of the operation of power as repression, a notion that he was particularly distrustful of, especially given that the task of genealogy was to show that the operations of power do not take the general form of repression but of production.⁶ To overcome the attachment to a notion of repression as the *raison d'être* of power's operation, a number of displacements are required; of these, the decisive one in Foucault's account is that the object or target of power relations is no longer the body and its forces, but rather acts themselves. This has a number of implications for the conception of subjectivation and resistance that Foucault develops in his later work.

As I argued in the previous chapter, the formulation of power as warfare that Foucault relied upon in the genealogical analyses undertaken in *Discipline and Punish* and *The History of Sexuality* had as one of its core precepts that power operates immediately on and within the body, without mediation through the psychic operations of consciousness, conscience and so on. Foucault states that 'it is always the body that is at issue – the body and its forces, their utility and their docility, their distribution and their submission'⁷, such that the psyche, soul and subjectivity itself are produced as artefacts of the operations of normalization on the body. However, in 'The Subject and Power' Foucault suggests that the exercise of power does not involve acting on bodies, since 'a relationship of violence acts upon the body or upon things', but instead on actions. The exercise of power should be understood as 'an action upon an action, on existing actions or on those which may arise in the present or the future... it is... always a way of acting upon an acting subject or acting subjects by virtue of their acting or being capable of action. A set of actions upon other actions.'⁸ He goes on to say that the term most appropriate to describe the specificity of the exercise of power is that of 'conduct', understood as both a way of leading and of behaving within a given field of possibilities. The exercise of power

⁶ Michel Foucault, 'Two Lectures' [1976] in *Power/Knowledge: Selected Interviews and Other Writings 1972-1977*, ed. Colin Gordon, tr. Colin Gordon and others (New York: Pantheon, 1980), p.92.

⁷ Michel Foucault, *Discipline and Punish: The Birth of the Prison*, tr. Alan Sheridan (London: Penguin, 1977), p.25.

⁸ Foucault, 'The Subject and Power', p.220.

then takes the form of 'government', understood as 'the conduct of conduct',⁹ or as 'guiding the possibility of conduct and putting in order the possible outcome'.¹⁰ Foucault concludes from this that:

The relationship proper to power would not therefore be sought on the side of violence or of struggle, nor on that of voluntary linking (all of which can, at best, only be the instruments of power), but rather in the area of the singular mode of action, *neither warlike nor juridical*, which is government.¹¹

Hence, in this essay, Foucault posits government as an alternative to the earlier understanding of power as warfare that he had earlier posed in opposition to the juridical conception of power.

However, the shift in understanding the exercise of power on the model of warfare to that of government does not mean that Foucault wholly reject his earlier thesis on biopolitics. Instead, there is a broad congruence between biopolitics and governmentality, not only conceptually but also empirically.¹² As we saw in the

⁹ Colin Gordon, 'Governmental Rationality: An Introduction' in Graham Burchell, Colin Gordon, and Peter Miller, eds. *The Foucault Effect: Studies in Governmentality* (London: Harvester Wheatsheaf, 1991), pp.1-51 at 2. The phrase 'conduct of conduct' is suggested as a definition of governmentality here. For Foucault's earlier discussion of governmentality see Michel Foucault 'On Governmentality', *IC&C* 6(1976), pp.5-21; Reprinted in *The Foucault Effect* and as Michel Foucault, 'Governmentality', in *Power: Essential Works of Foucault, vol. 3*, ed. James D. Faubion, (New York: New Press, 2000), pp.201-222.

¹⁰ Foucault, 'The Subject and Power', p.221. In the version of this essay reprinted in *Power*, this statement is rendered as 'the relationship proper to power would therefore be sought not on the side of violence or of struggle, nor on that of voluntary contracts (all of which can, at best, only be the instruments of power) but, rather, in the area of that singular mode of action, neither warlike nor juridical, which is government'. (Foucault, 'The Subject and Power' in *Power: Essential Works of Foucault, vol. 3*, ed. James D. Faubion, tr. Robert Hurley and others (New York: New Press, 2000), pp.326-388 at 341) The only appreciable difference is that the reference to contractualist accounts of the state is more explicit in the *Power* version.

¹¹ Foucault, 'The Subject and Power', p.221. The concept of governmentality has generated one of the most substantial and well-developed bodies of literature on Foucault's work, such that it may be considered one of the core concepts in contemporary sociological and political analysis. Its main discussants include Mitchell Dean, Barry Hindess, Nikolas Rose, Mariana Valverde, Pat O'Malley, Thomas Osborne, Colin Gordon and Graham Burchell and others. See in particular Graham Burchell, Colin Gordon, and Peter Miller, eds. *The Foucault Effect: Studies in Governmentality* (London: Harvester Wheatsheaf, 1991); Andrew Barry, Thomas Osborne and Nikolas Rose, *Foucault and Political Reason: Liberalism, Neo-Liberalism and Rationalities of Government* (Chicago: University of Chicago Press, 1996); Mitchell Dean, *Governmentality: Power and Rule in Modern Society* (London: Sage, 1999); Barry Hindess, *Discourses of Power: From Hobbes to Foucault* (Oxford: Blackwell, 1996); Mitchell Dean and Barry Hindess, eds. *Governing Australia: Studies in Rationalities of Government* (Cambridge: Cambridge University Press, 1998); Nikolas Rose *Powers of Freedom: Reframing Political Thought* (Cambridge: Cambridge University Press, 1999); *Economy and Society*, 22:3(1993).

¹² Also see Thomas Lemke, 'The Birth of Bio-politics': Michel Foucault's Lecture at the College de France on Neo-liberal Governmentality', *Economy and Society*, 30:2(2001), pp.190-207.

previous chapter, biopolitics is a political rationality directed toward the administration of life both at the level of populations and individuals, which operates through mechanisms of normalization and individualization. Thus, in course lectures on governmentality and biopolitics, Foucault remarks that biopolitics must itself be understood against the background of the increasing problematization of sovereignty and 'the management of state forces' that the development of 'an arts of government' entailed.¹³ With this as the background, he defines biopolitics as 'the endeavor, begun in the eighteenth century, to rationalize the problems presented to governmental practice by the phenomena characteristic of a group of living human beings constituted as a population: health, sanitation, birthrate, longevity, race...'¹⁴ As this suggests, biopolitics and governmentality are neither mutually exclusive nor co-extensive but present interdependent aspects of the operation of power from the eighteenth century onwards.¹⁵ Keeping within the parameters of Foucault's framework, one might say that while biopolitics provides the rationality of governing, the 'governmentalization of the state'¹⁶ provides the state with the capacity for biopolitical intervention.

One of the important consequences of this substitution of actions rather than the body as the target of power is that the correlative conception of resistance also alters. In *The History of Sexuality*, Foucault had argued that power relations are dependent upon a 'multiplicity of points of resistance', present everywhere in a network of power, which 'play the role of adversary, target, support or handle in power relations... inflaming certain parts of the body, certain moments in life, certain types of behaviors'.¹⁷ This position is summed up in the pithy claim that 'where there is

¹³ Michel Foucault, 'Security, Territory and Population' in *Ethics: Subjectivity and Truth, Essential Works of Michel Foucault, 1954-1984*, ed. Paul Rabinow, tr. Robert Hurley and others (London: Penguin, 1997), pp.67-71 at 71.

¹⁴ Michel Foucault, 'The Birth of Biopolitics' in *Ethics: Subjectivity and Truth, Essential Works of Michel Foucault, 1954-1984*, ed. Paul Rabinow, tr. Robert Hurley and others (London: Penguin, 1997), pp.73-79 at 73.

¹⁵ For a further discussion of the interdependence of biopolitics and governmentality, with regard to both liberal and authoritarian modes of rule, see Dean, *Governmentality*, especially chapters 5, 6 and 7.

¹⁶ Foucault, 'Governmentality', p.220; the thesis on the governmentalization of the state that Foucault develops in this lecture is posed in implicit opposition to the understanding of the state as a 'cold monster', which I suggested could be at least partially taken as the metaphor that informed Foucault's earlier formulation of state power.

¹⁷ Foucault, *History of Sexuality 1*, p.96.

power, there is resistance'.¹⁸ As we saw in the previous chapter, this led to a problematic valorization of the body as the ground of resistance, wherein the forces that inhere in 'the body and its pleasures' are presented as a locus of intransigence against the normalizing operations of power. In 'The Subject and Power', however, the vocabulary of resistance is replaced with that of freedom, although the role that Foucault gives to freedom is formally similar to that of resistance. As he states:

Power is exercised only over free subjects and only insofar as they are free... there is no face to face confrontation of power and freedom that is mutually exclusive... in this game, freedom may well appear as the condition for the exercise of power (at the same time its precondition, since freedom must exist for power to be exerted, and also its permanent support, since without the possibility of recalcitrance, power would be equivalent to a physical determination [and therefore not a relationship of power])... at the very heart of the power relationship, and constantly provoking it, are the recalcitrance of the will and the intransigence of freedom.¹⁹

Thus, freedom is posited in the place of resistance, as the permanent support and necessary precondition for the exercise of power, not only in the sense that a subject must be free in order to exercise power, but also and more importantly, that power can only be exercised over free subjects. But what is invested in the transition from the term 'resistance' to that of 'freedom'? For all their affective force, Foucault's comments on freedom are perhaps the most difficult aspect of his later work to understand.

What does seem clear is that it is insufficient to simply argue that while Foucault initially provided a negative or 'reactive' conception of opposition to power in *Discipline and Punish* and *The History of Sexuality* for instance, in the later work he elaborates a positive, active conception.²⁰ Such arguments either tend to obscure the other significant conceptual shifts that attend this terminological transposition or, contradictorily, lend credence to the claim that Foucault reinstates a metaphysical

¹⁸ Foucault, *History of Sexuality 1*, p.95.

¹⁹ Foucault, 'The Subject and Power', p.221-222.

²⁰ For a version of this argument, see Ewa Plonowska Ziarek, *An Ethics of Dissensus: Postmodernity, Feminism and the Politics of Radical Democracy* (Stanford: Stanford University Press, 2001).

conception of the subject in his later work by overstating those shifts.²¹ But what is curious about the conception of the subject that Foucault suggests in 'The Subject and Power' is its striking continuity with his earlier understanding of individuality and subjectivity as effects of normalization. For as Foucault defines it in this essay, to be a subject means to be 'subject to someone else by control and dependence, and tied to his own identity by a conscience or self-knowledge'.²² Both these meanings, he claims, 'suggest a form of power which subjugates and makes subject to'.²³ In this sense then, Foucault maintains the position that individuality is produced through the operations of power, such that subjection is itself a form of imposition and constraint. It is precisely because of this that Foucault proclaims the necessity of 'refusing' the subjectivity constituted through the 'simultaneous individualization and totalization of modern power structures'²⁴ and valorizes the 'struggles against individualization' that he takes certain social movements such as feminism to be. But at the same time, Foucault's definition of power raises the possibility and indeed necessity of there being 'free subjects', such that one might be led to understand that the constitution of freedom is itself part of the process of becoming subject: in other words, freedom is itself, or at least risks becoming, an artefact of the operations of power.²⁵ The apparent tension in these claims also points to a more substantial ambiguity in Foucault's later work.

The conjunction of the introduction of the terminology of freedom into an analytics of power and the maintenance of a conception of subjectivity as imposition effected through normalization and individualization highlights an important aspect of Foucault's later work that has only been brought out indirectly in secondary literature. What occurs in this conjunction is an effective transposition of the potential for political opposition vis-à-vis individualizing political rationalities from

²¹ See for instance Lois McNay, *Foucault: A Critical Introduction* (Oxford: Polity Press, 1994); Peter Dews, *The Limits of Disenchantment: Essays on Contemporary European Philosophy* (London: Verso, 1995); also see C. Collwell, 'The Retreat of the Subject in the Late Foucault', *Philosophy Today* (Spring 1994), p.56-69.

²² Foucault, 'The Subject and Power', p.212.

²³ Foucault, 'The Subject and Power', p.212.

²⁴ Foucault, 'The Subject and Power', p.216.

²⁵ See Rose, *Powers of Freedom*, p.63; Barry Hindess, 'Politics and Governmentality', *Economy and Society* 26:2(1997), pp.257-272 at 266-269; Hindess, *Discourses of Power*, p.128; also see Dean, *Governmentality*, p.13.

the body to subjectivity itself. In effect, Foucault moves away from the problematic conception of the body imprisoned by individuality presenting a raw intransigence against operations of power to a formulation that predicates strategies of political opposition on the freedom that inheres in being a subject. Interestingly, the ethics of self-formation that Foucault develops in *The Use of Pleasure* and related texts rely on this predication for their apparent political potential while simultaneously posing freedom as the effective consequence of the de-subjectivation effected through the ethics of self-formation. There is then a fundamental ambiguity in the later ethics in that in order to engage in the process of de-subjectivation and the supervening practice of liberty that this entails, one must already be constituted as a free subject. For the remainder of this chapter, I explore some of the implications of this, particularly with regard to the political potential of an ethics of self-formation as a response to the dangers of biopolitics. First, then, further explication of the notion of an ethics of the self is required.

2.3 *The Citizen-Subject of the Ethics of the Self*

The analytic shift undertaken for the later volumes of *History of Sexuality* is indicated in Foucault's comment that a 'history of desiring man' required that he focus not only on the ways in which subjection is produced through the operations of regimes of power and knowledge, but also on 'the forms and modalities of the relation to self by which the individual constitutes and recognizes himself *qua* subject'.²⁶ While the earlier texts had been concerned with the production of subjects through techniques of power, Foucault claims that in the investigations he undertook for *The Use of Pleasure*, he became increasingly aware of the significance of a different type of technology involved in the process of subject-formation or subjectivation.²⁷ He calls these technologies of the self, which he defines as

²⁶ Michel Foucault, *The Use of Pleasure: The History of Sexuality*, vol. 2 [1984], tr. Robert Hurley (London: Penguin Books, 1985), p.6.

²⁷ Michel Foucault, 'About the Beginning of the Hermeneutics of the Self: Two Lectures at Dartmouth', *Political Theory* 21:2(May 1993), pp.198-227 at 203.

techniques which permit individuals to effect, by their own means, a certain number of operations on their own bodies, on their own souls, on their own thoughts, on their own conduct... so as to transform themselves, modify themselves, and to attain a certain state of perfection, of happiness, of purity, of supernatural power and so on.²⁸

In short, technologies of the self encompass the practices and means by which individuals subjectify themselves as *ethical* subjects, that is, in making themselves subject to particular moral codes, modes of being, or aesthetic or ethical criteria. Foucault's analyses in the later volumes of *History of Sexuality* are thus a genealogical analysis of the practices by which individuals bring themselves into relation with moral codifications and values and thereby constitute themselves as subjects of ethical codes, that is, as ethical subjects.²⁹

The crucial dimension of technologies of the self then is the relation that individuals establish with themselves. This determines the way in which individuals constitute themselves as subjects of their own actions through certain practices and associated matrices of knowledge.³⁰ Foucault claims that the practices of ethical self-formation that he came to recognize through the focus on the various problematizations of sex in Antiquity were closely related to a technique or art of living, an 'aesthetics of existence'. In classical Greece, he argues, 'sexual activity and sexual pleasures were problematized through practices of the self, bringing into play the criteria of an aesthetics of existence'.³¹ Foucault defines the 'arts of existence' as 'those intentional and voluntary actions by which men not only set themselves rules of conduct, but also seek to transform themselves, to change themselves in their singular being, and to make their life into an oeuvre, that carries certain aesthetic values and meets

²⁸ Foucault, 'Hermeneutics of the Self', p.203; Foucault, *The Use of Pleasure*.

²⁹ See Charles E. Scott, *The Question of Ethics: Nietzsche, Foucault, Heidegger* (Bloomington: Indiana University Press, 1990).

³⁰ It should be noted that the relation to oneself established through technologies of the self instantiates a particularly *ethical* subject, and while there are definite links between the domains of the ethical and the political in Foucault's work, it would be overly hasty to collapse the ethical into the political. Nevertheless, what we can say is that an aesthetics of existence establishes a passage between these domains wherein the ethical problem of self-relation becomes political through the practice of liberty.

³¹ Foucault, *The Use of Pleasure*, p.12.

certain stylistic criteria'.³² In other words, an arts, or aesthetics of existence involves establishing a particular relation to oneself that requires the adoption of certain ethical principles and associated practices which allow individuals to act upon their bodies, souls, thoughts and conduct in order to transform themselves and attain a certain state of happiness, wisdom, purity, health or personal fulfillment. It is a matter of developing a certain reflexive relation to oneself that constitutes oneself as an ethical subject of one's own actions, through the selection of a certain action or form of being as the object of ethical concern and transformation, according to voluntarily applied aesthetico-ethical criteria.

Importantly, this is not simply a matter of maintaining an ethical relation to oneself, which would be deeply narcissistic, but rather a matter of how one forms oneself *as* an ethical subject. This means that the ethics of the self does not simply involve a return to a voluntarist conception of the subject that retreats from the anti-humanist critique of the earlier work as some critics have claimed.³³ As Foucault explains, while 'the subject constitutes itself in an active fashion through practices of the self, these practices are nevertheless not something invented by the individual himself. They are models that he finds in his culture and are proposed, suggested, imposed upon him by his culture, his society, his social group'.³⁴ Thus, practices of the self are given by the culture in which an individual lives, but in taking up such practices, the subject actively constitutes its own identity and ethical capacity. Certainly, there is room to question Foucault's formulation here, since the imposition of a model of behavior in the constitution of the subject is different from that model being found by the subject or indeed, being suggested or proposed by the culture or social group of the subject. Furthermore, there is an element of the paradox of referentiality that Butler identifies in her discussions of the subject in Foucault's formulation, insofar as one must refer to a subject before it can be said to have come into being.³⁵ Nevertheless,

³² Foucault, *The Use of Pleasure*, p.10-11.

³³ See further, Pierre Macherey, 'Foucault: Ethics and Subjectivity', in *In a Materialist Way: Selected Essays*, ed. Warren Montag, tr. Ted Stolze (London: Verso, 1998), pp.96-107; also see McNay, *Foucault*, p.162.

³⁴ Foucault, 'The Ethics of the Concern for Self as a Practice of Freedom' in *Ethics: Subjectivity and Truth, Essential Works of Michel Foucault, 1954-1984*, ed. Paul Rabinow, tr. Robert Hurley and others (London: Penguin, 1997), pp.281-302 at 291.

³⁵ Judith Butler, *The Psychic Life of Power: Theories in Subjection* (Stanford: Stanford University Press, 1997), p.4.

the important point is that the process of ethical self-formation requires a relation to oneself and to power and knowledge that permits the constitution of oneself as an ethical subject. It entails a kind of transitive relation of auto-affection, although it is true that Foucault gives little elaboration to this relation.³⁶

Nor does Foucault's ethics of the self simply entail a retreat to an elitist or nihilistic aestheticization of one's life and body away from the politically engaged critiques of biopower and forms of domination undertaken in earlier work.³⁷ The notion of an aesthetics of existence has given rise to a great deal of misunderstanding of Foucault's later work. What should be kept in mind is that the notion of an aesthetics of existence is not a retreat from ethical practice, but rather, an elaboration of it. The aesthetics or arts of existence that an ethics of the self entails are not simply a matter of treating oneself well or with concern for one's physical beauty. Nor is it simply a question of a 'synergy between the ethical and the aesthetic'³⁸ as certain sociological approaches tend to emphasize, but rather a stylization of life itself, of human being. It is a matter of living one's life according to an aesthetic or ethical code that operates as an overriding principle of existence, which gives coherence to one's life and actions and to which the minutiae of everyday living is subsumed. One's life is given an internal teleology, a coherence of signification, which is observed and reinstated in one's daily practices and modes of conduct. In short, it is a matter of making of one's own life and self a 'work of art', of participating in a practical process of self-formation guided by an overriding principle of ethical concern.

³⁶ For an excellent discussion of the conception of the relation of self to self that Foucault relies upon and the tensions that it introduces into his work see Béatrice Han, *Foucault's Critical Project: Between the Transcendental and the Historical*, tr. Edward Pile (Stanford: Stanford University Press, 2002), esp. pp.149-187. Unfortunately, I came across this text too late to incorporate Han's discussion into the arguments of this chapter in a more substantial way, although her discussion of the ambivalence in Foucault's later conception of the self-constituting subject – simultaneously autonomous and subjected within regimes of power and knowledge – clearly has implications for my argument though at least on the face of it they are supporting ones.

³⁷ Rainer Rochlitz, 'The Aesthetics of Existence: Post-Conventional Morality and the Theory of Power in Michel Foucault' in Tim Armstrong, ed. and tr. *Michel Foucault: Philosopher* (New York: Harvester Wheatsheaf, 1992), p.248-258; See McNay, *Foucault*, p.147 for a critical discussion of this claim. One presupposition that informs this argument is that a concern with beauty or aesthetics is necessarily opposed to and leads away from a concern with politics and justice. For a recent critical discussion of this see Elaine Scarry, *On Beauty and Being Just* (Princeton: Princeton University Press, 1999).

³⁸ Michel Maffesoli, 'The Ethic of Aesthetics', *Theory, Culture and Society*, 8:1(1991), pp.7-20 at 18.

However, it is important to specify the object of concern here. While such an ethics of the self has a concern for others as an effect, it is always the case that concern for the self is ethically prior to concern for others, since the relation that one has with oneself is ontologically prior.³⁹ Foucault explains that for the Ancient Greeks, the care of oneself produces an ethical subject who is then able to act correctly toward others, since 'self-rule moderates rule over others'.⁴⁰ What underpins this correct acting toward another is the question of domination and liberty, for an ethics of the self involves a self-reflexive relation to one's own freedom that makes of that freedom both a practical exercise and the object of ethical concern. In short, an ethics of the self entails a 'problematization of freedom'.⁴¹ By this, Foucault means that the elaboration and maintenance of one's freedom form the guiding principles of the practices upon oneself; in other words, the ethos or aesthetics of existence that one develops is predicated on and directed toward the elaboration of one's freedom. This is then a 'practice of liberty', in that freedom is not given once and for all, but requires a practical exercise upon oneself to be maintained and elaborated. Concern for the other emerges as an epiphenomenon of the concern for maintaining one's freedom, since acting tyrannically toward another is indicative of the slavishness of one's own person vis-à-vis one's desires and will. However, the relation that one has with others is not the object of ethical concern but an effect and limit upon the care that one has for oneself, such that ruling another is not unethical in itself but modes of ruling might be indicative of a failure to care for oneself.

Contrary to John Rajchman's position then, the central problematic for Foucault is not community but freedom.⁴² While Rajchman is right to say that the emphasis on subjectivation does not entail a retreat to an individualistic or private practice of aestheticizing one's life, his claim that what is important in an ethics of the self is the 'bonds' of community, oversteps the mark somewhat. While community does play an important role in the elaboration of freedom, it does so in a particular way, which does not supplant the priority of freedom. If there are consequences for community

³⁹ See Foucault, 'The Ethics of Concern for Self', p.287.

⁴⁰ Foucault, *The Use of Pleasure*, p.81.

⁴¹ Foucault, 'The Ethics of Concern for Self', p.286.

⁴² John Rajchman, *Truth and Eros: Foucault, Lacan and the Question of Ethics* (New York: Routledge, 1991), p.99.

within Foucault's ethics, they are ultimately epiphenomenal vis-à-vis the practice of liberty. But nevertheless community, and especially political community, also operates as the presupposed condition of an ethics of the self and the practice of liberty that it entails. Within the analysis of Greek ethics that Foucault develops, freedom is only assured within political community, since participation in the polis is the condition of freedom, though it is not thereby freedom itself. Conversely, freedom conditions political participation, such that the relation of freedom and governing can be understood as one of reinforcing interdependence.

As Foucault points out in the introduction to *The Use of Pleasure*, the ethical practices he examines were directed at men, and particularly free men. He states 'it was an ethics for men: an ethics thought, written, and taught by men and addressed to men – to free men obviously'.⁴³ The ostensible purpose of this comment is to justify the focus on men and male sexual behavior in the later volumes of the *History of Sexuality*. It was not an ethics directed toward the sexual practices of women, Foucault says; rather, it was 'a male ethics... in which women appeared only as objects or, at most, as partners that one had best train, educate and watch over when one had them under one's power, but stay away from when they were under the power of someone else (father, husband, tutor)'.⁴⁴ Whether or not this focus is justified, this comment has two other implications. First, it establishes liberty as the empirico-historical ground of an ethics; thus when Foucault states elsewhere that 'freedom is an ontological condition of ethics. But ethics is the considered form that freedom takes when it is informed by reflection',⁴⁵ the empirical trace should be read in this statement. Furthermore, the identification of an ethics of the self with the practices of free men in Ancient Greece brings into focus that these ethics are closely related to the status of citizenship and participation in the polis, the place of politics.

When pressed on this last point, Foucault suggests that for the Greeks, an ethics of the self immediately coincides with the political insofar as both are grounded in liberty, where liberty is understood both as the collective freedom of the citizen and a

⁴³ Foucault, *The Use of Pleasure*, p.22.

⁴⁴ Foucault, *The Use of Pleasure*, p.22.

⁴⁵ Foucault, 'The Ethics of the Concern for Self', p.285.

matter of the power that one has over oneself, that is, as a form of positive freedom.⁴⁶ As Foucault states ‘the freedom that needed establishing and preserving was that of the citizens of a collectivity of course, but it was also, for each of them, a certain form of relationship of the individual with himself’.⁴⁷ This statement suggests that the latter of these freedoms is more important to Foucault. It also shows that the practices of the self that Foucault describes are effectively predicated on the freedom that obtains through participation in the polis. That is, for the Ancient Greeks, being a free citizen was a necessary condition of participation in an ethics of self-formation and a practice of liberty geared toward the correct governing not only of oneself but also of those outside the status of citizen.

2.4 *Ethics Against the Politics of Life and Death*

The inter-relation of individual freedom maintained through practices of the self on the freedom given through citizenship that Foucault identifies as one of the conditions of ethical self-formation in Ancient Greece has received little attention in discussions of his later work. Nevertheless, it does have important implications for how his ethics can be understood and for their utility as an ethico-political response to biopolitical subjection. However, in drawing out these implications, it is insufficient to simply argue from the model of the free citizen as it appears in Foucault’s description of Ancient Greece, not least because the terms of citizenship, freedom and the polis do not operate in the same way in the contemporary world as they did in Ancient Athens.⁴⁸ More importantly, the question that arises is whether the genealogical analysis of practices of ethical self-formation can be normativized to provide a model of ethical practice that simultaneously brings into question standard moral codifications and establishes a new form of ethical practice and relation to

⁴⁶ Foucault, *The Use of Pleasure*, p.78-80.

⁴⁷ Foucault, *The Use of Pleasure*, p.79.

⁴⁸ For a recent consideration of the differing ways in which citizenship operates as a technology in the constitution of alterity in Ancient Greece and contemporary politics, see Engin F. Isin, *Being Political: Genealogies of Citizenship* (Minneapolis: University of Minnesota Press, 2002). Isin argues that ‘when social groups succeed in inculcating their own virtues as dominant, citizenship is constituted as an expression and embodiment of those virtues against those that lack them’ (Isin, *Being Political*, p.275). Taking up the normativity that such a conception of citizenship brings to light, my argument in this section suggests that freedom can itself be seen as one of the ‘virtues’ of citizens, a virtue that is lacking in those excluded from the status of citizen. However, the added complexity here is that freedom is itself an effect or artefact of citizenship.

oneself and others. Within this, a distinction can also be made between two theoretical tendencies, the first of which is the extent to which Foucault himself intended such a model of ethical practice to provide a model of ethical practice today and the second of which concerns the way in which other theorists have normativized Foucault's genealogical account of ethical self-formation, apart from Foucault's own aims.

On the first of these points, the question of the relevance of such an ethics for contemporary politics was frequently posed to Foucault in discussions leading up to the publication of the later volumes of the *History of Sexuality* project. Despite this though, it remains unclear precisely what role Foucault saw such an ethics having, though it is clear that he was not urging a simple return to the Greeks as a liberatory or utopic move in itself, nor urging the full adoption of their ethics.⁴⁹ Foucault frequently rejected such a return to the Greeks: as he stated, 'The Greek ethics of pleasure is linked to a virile society, to dissymmetry, exclusion of the other, an obsession with penetration, and a kind of threat of being dispossessed of your own energy... all that is quite disgusting!'⁵⁰ Yet, he apparently also saw an ethics of self-formation as potentially opening a space for re-treating the forms of subjectivity available to us today and for creating new ways of living and relating. This is amply clear in the comments he makes on homosexuality in a several interviews, where he proclaimed for instance, that the work that one does on oneself to transform oneself may allow one to 'invent... not discover – a manner of being that is still improbable'.⁵¹

⁴⁹ The ambiguity of Foucault position on the contemporary relevance of an ethics of the self is well indicated in the comments he makes in the interview 'The Ethics of Concern for Self as a Practice of Freedom', where he suggests both that a practice of freedom is a necessary accompaniment to post-colonial liberation and that the relevance for a care of the self for contemporary politics is a problem he has not made much progress with, but would 'like to come back to'. See Foucault, 'The Ethics of Concern for the Self', p.282, 294.

⁵⁰ Foucault, 'On the Genealogy of Ethics: An Overview of Work in Progress' *Ethics: Subjectivity and Truth, Essential Works of Michel Foucault 1954-1984*, ed. Paul Rabinow, tr. Robert Hurley and others (London: Penguin, 1997), pp.253-280 at 258.

⁵¹ Michel Foucault, 'Friendship as a Way of Life' in *Ethics: Subjectivity and Truth, Essential Works of Michel Foucault 1954-1984*, ed. Paul Rabinow, tr. Robert Hurley and others (London: Penguin, 1997), pp.135-140 at 137.

Hence, analysis of the formation of the ethical subject effected through the notion of a practice or care of the self appears to provide Foucault with a means of explicating the process by which subjects act upon themselves to form themselves as ethical beings. It simultaneously provides a way of articulating a capacity or potential to undo or reconfigure those relations through a self-reflexive 'practice of freedom' that did not posit an essential resistance in the body. Perhaps we could say then that while Foucault rejected the substance or content of the Greek ethics, he nevertheless saw ethical and political potential in their form, as a way of undertaking the intellectual and political task of 'getting free of oneself'.⁵² While it would be injudicious to simply transpose the political and ethical formulations of the Ancient Greeks to contemporary ethical and political theorizing for several reasons then, Foucault does appear to take some inspiration from them and at least occasionally suggests that such a conception of ethical practice might provide a model for a reconsideration of ethics and politics today.

This inspiration is particularly well encapsulated in the notion of an 'ascensis' (*askēsis*), defined as 'an exercise of oneself in the activity of thought'⁵³ that Foucault links to the practice of liberty and political potential of self-formation. In this light, Foucault's essay 'What is Enlightenment?' can be read as an attempt to elaborate a particularly modern ascesis through the conjunction of a Kantian-inspired historico-philosophical 'ontology of ourselves' and a Baudelairian-inspired modern 'aesthetics of the self'. In this essay, Foucault isolates a critical attitude of modernity, not unlike 'what the Greeks called an *ethos*',⁵⁴ which behooves the modern man to 'invent himself' through an ascetic elaboration in which a 'practice of liberty simultaneously respects [the reality of modernity] and violates it'.⁵⁵ Foucault thus casts the critical ethos of modernity as a work of ascesis or activity of thought, directed toward the identification of the contemporary limits of being and their possible transgression; as he states 'the philosophical ethos appropriate to the critical ontology of ourselves [is] a historico-practical test of the limits that we may go beyond, and thus as work

⁵² Foucault, *The Use of Pleasure*, p.8.

⁵³ Foucault, *The Use of Pleasure*, p.9.

⁵⁴ Michel Foucault 'What is Enlightenment?' in *The Foucault Reader: An Introduction to Foucault's Thought*, ed. Paul Rabinow (London: Penguin, 1984), pp.32-50 at 39.

⁵⁵ Foucault, 'What is Enlightenment?', p.41.

carried out by ourselves upon ourselves as free beings'.⁵⁶ It is worth noting here that this formulation also clearly evinces the ambiguity in the status of freedom in an ethics of self-formation, in that it is precisely as a 'free being' that one engages in the 'possible transgression' of the historical limits of being.

The formulation of practices of the self as ascesis provides the philosophical backdrop to Foucault's claim that what is required within gay politics is not the affirmation of homosexuality as identity, but rather, the development of a homosexual ascesis or work upon oneself and the limits of being to produce new 'modes of life'.⁵⁷ Taking cue from this, a number of theorists have understood Foucault's ethics of the self to provide an account of a means of resistance to forms of domination, particularly those based on sexual identity, and have thus normativized the model of ethics that he discusses. This project is further reinforced by the opposition Foucault posits between an arts of the self and the hermeneutics of the self that he claims characterizes the operation of biopolitical subjection. As he states, the themes of sexual austerity that characterized the ethics of the self of Ancient Greece should not be understood as 'an expression of, or commentary on, deep and essential prohibitions, but as the elaboration and stylization of an activity in the exercise of its power and the practice of its liberty'.⁵⁸ The contrast of an ethics of the self with the 'hermeneutics of the self' is also present in the claim that 'this kind of ethics was [not] an attempt to normalize the population'.⁵⁹ From this, the ethical practice of an arts of the self appears to provide a model for an ethico-political response to the problematic of the political technology of individualization, as a means of promoting 'new forms of subjectivity through the refusal of this kind of individuality which has been imposed upon us for several centuries'.⁶⁰ It is precisely on this basis that queer theorists such as David Halperin have taken Foucault as

⁵⁶ Foucault, 'What is Enlightenment?', p.47.

⁵⁷ Foucault, 'Friendship as a Way of Life', p.137.

⁵⁸ Foucault, *The Use of Pleasure*, p.23.

⁵⁹ Foucault, 'Genealogy of Ethics', p.254.

⁶⁰ Foucault, 'The Subject and Power', p.216.

celebrating the 'transformative power of queer sexual practices', aimed not at liberation but at the formation of a queer practice of the self and way of life.⁶¹

Regardless of whether such a normative derivation was actually intended by Foucault, a significant problem emerges in such projects. For normative derivations from Foucault's later work tend to reduce the ambiguity of the status of freedom in the ethics by presupposing a one-sided analysis of freedom as the consequence of a practice upon oneself. In doing so, they fail to recognize the way in which such practices are predicated on freedom. The politics of self-formation that underpins this position rest on the more or less explicit presumption of a political value and efficacy in 'becoming otherwise than one is' in order to tear oneself from normalizing and individualizing technologies of subjectivation. The value and efficacy of political intervention in subject-formation is taken to lie in the formation of non-hegemonic identifications and practices and the correlative breakdown of hegemonic identifications such that self-formation is understood as an exercise upon oneself in the *struggle for liberty*. In short, it understands liberty as an unproblematic political good to be sought after and fought for. As such, this position effectively replaces the notion of freedom as the object of ethical problematization that Foucault argued animated practices of the self of the Ancient citizens with a more contemporary conception of freedom as the goal of political transformation and struggle, and moreover, as the bulwark of the individual citizen against the State, or in Foucauldian terms, against governmental technologies of individualization and normalization. However, this misses the ambiguity involved in Foucault's formulation, which takes ethical self-formation as a means by which freedom is elaborated and maintained, such that freedom appears as both a *condition* and *consequence* of working on oneself. To return to the statement from 'What is Enlightenment?' that I cited above, it is *as a free being* that one works upon oneself in order to reconstitute, in both the connotations of re-establishing and transforming, the limits of one's being.

To clarify this further, a more specific understanding of what Foucault means by freedom is required, as it may be that there are different kinds of freedom that

⁶¹ David Halperin, *Saint Foucault: Toward a Gay Hagiography* (Oxford: Oxford University Press, 1995), p.96.

condition or arise from an ethics of the self. Although the distinction between positive and negative liberty elaborated by Isaiah Berlin does not sit entirely easily with Foucault's account of freedom, it may nevertheless help heuristically in clarifying the nature and status of freedom within Foucault's ethics.⁶² Taking up and revising this distinction, Paul Patton has argued that the account of freedom that Foucault develops emphasizes 'the importance of individual capacities as preconditions for the exercise of freedom'⁶³ and two forms of constraint on those capacities. The first of these, which is closely related to Berlin's conception of negative liberty, are external constraints imposed upon the individual that constrain the paths of action they may undertake. The second are internal limits, such as 'the psychological effects of insecurity, dependence or trauma'⁶⁴ on one's capacity to formulate and undertake paths of action, such that the degree to which an individual is constrained by such internal limits indicates a diminution of positive freedom. Patton's account of positive freedom differs from Berlin's then in the way in which it de-emphasizes the desire or will for self-government and emphasizes internal constraints upon individual capacities. That is, for Berlin, positive freedom derives from a 'wish on the part of an individual to be his own master',⁶⁵ whereas for Patton positive freedom refers simply to the individual's capacity to formulate and follow paths of action regardless of external constraints – but *with* regard to internal constraints on that capacity.

While there is still clear overlap between the conceptions of negative and positive freedom in Berlin's sense and the reformulation that Patton offers, the important difference is that for Patton, there is no need to posit two different *kinds* of freedom as such. All that is required is recognition of different constraints on the capacities of

⁶² Isaiah Berlin, 'Two Concepts of Liberty' in *Four Essays on Liberty* (Oxford: Oxford University Press, 1969), pp.118-172.

⁶³ Paul Patton, 'Taylor and Foucault on Power and Freedom', *Political Studies*, 37(1989), pp.260-276 at 262.

⁶⁴ Patton, 'Taylor and Foucault on Power and Freedom', p.262; also see Patton's use of the notion of 'critical freedom' – initially suggested by James Tully in *Strange Multiplicity: Constitutionalism in an Age of Diversity* (Cambridge: Cambridge University Press, 1995) – in relation to the Deleuzian notion of becoming in Paul Patton, *Deleuze and the Political* (London: Routledge, 2000), p.85. Tully's concept of critical freedom is not altogether dissimilar to the way in which Foucault develops the notion of ascesis. Further, Tully's claim that 'the goods of belonging and freedom support rather than oppose each other' (Tully, *Strange Multiplicity*, p.207) in contemporary constitutionalism gives support to the argument I make here.

⁶⁵ Berlin, *Four Essays on Liberty*, p.131.

the individual to act: that is, negative or external constraints, and positive, or internal constraints. Consequently, his account also requires a thinner conception of the subject, in that all that is required is that the subject of freedom be seen as an individual with the capacity to act, not as having a particular desire or will for a specific kind of freedom. Patton goes on to argue from this that Foucault's concern with resisting the individualizing technologies that produce subjects tied to an identity is a concern with the enhancement of positive freedom and the possibilities of what people might be. Thus, 'the "work of freedom" may be regarded as a process of cultural self-creation, one which seeks to expand the space of possibilities for personal identity'.⁶⁶ Hence, Foucault's account of freedom minimally presupposes a thin conception of the subject having the capacity for acting, for responding in one way or another in any given situation and for self-formation.⁶⁷

Patton's characterization of Foucault's conception of the freedom involved in self-formation as positive freedom is an important clarification of Foucault's arguments. In particular, it helps to bring out that there are not different kinds of freedom *per se*, but that the realization of capacities through either the absence of internal and external constraints is fundamentally interrelated. As he points out, making use of one's negative freedom depends on the exercise of positive freedom in the sense that it requires the absence of certain internal limitations. In addition to this, the realization or exercise of positive freedom in the sense of the lack of internal

⁶⁶ Patton 'Taylor and Foucault on Power and Freedom', p.266.

⁶⁷ Patton, 'Taylor and Foucault on Power and Freedom', p.268. While Patton's understanding of freedom as a capacity for acting does help explicate a sense in which Foucault is able to avoid returning to a humanist subject in which freedom is essentially freedom of the will, problems can emerge with this formulation. In Christopher Falzon's treatment of freedom as capacity in *Foucault and Social Dialogue: Beyond Fragmentation* (Routledge: London, 1998) for instance, freedom and power effectively become co-extensive. Falzon claims that 'freedom for Foucault is our capacity or power to act' (p.52). However, this fails as a definition of freedom, in that further specification of the act is required: not all capacities to act could possibly be understood as free, since having a gun held to one's head still allows one to act, but it does not allow one to act in the way that one might want to act if that goes against the commands of the gun-holder. Thus, an element of interest and will appears to sneak back in. Falzon's way of delimiting the actions that might count as free is to suggest that a further sense of freedom is 'the capacity to transgress socially imposed limits' (p.52). Hence, Foucault's conception of freedom amounts to a 'non-normative notion of freedom, freedom understood simply as the human capacity for transgression' (p.53). But tying freedom so strictly to transgression raises substantial problems, not only in that it is not clear that Foucault is as committed to the notion of transgression as this equation suggests but also because freedom is essentially equated with desubjectivation. Consequently, this position fails to fully address what is entailed in being a 'free subject'. Avoiding these difficulties requires that the distinction between positive and negative liberty be emphasized. Hence, while I do not fully endorse the understanding of freedom as capacity, the revised distinction between positive and negative freedom that Patton provides does help to elaborate the status of freedom within Foucault's ethics.

constraints upon the capacities of the individual also depends upon the existence of a degree of negative liberty. In other words, the freedom entailed in self-formation and the development of an ethos of living necessarily requires the prior existence of an arena or area in which a person can act without interference and coercive limitation of the paths of action or modes of being available to them. The interrelation of negative and positive liberty might then be taken to inflect Foucault's suggestion that 'freedom is an ontological condition of ethics. But ethics is the considered form that freedom takes when it is informed by reflection.'⁶⁸ In this statement, we can understand the freedom that provides the ontological condition of ethics as negative liberty and the considered form that that takes as positive freedom, as self-formation or ethics understood as ethos, such that negative liberty appears as a precondition of positive liberty within Foucault's formulation of an ethics of the self.⁶⁹

In this context, it is worth considering the claim that freedom is itself a technology of government and particularly of liberal government made by a number of theorists engaged in analyzes of liberalism as an arts of government in the wake of Foucault's account of the governmentalization of the state.⁷⁰ The starting point for this claim is that as a form or mode of governing, liberalism presupposes and circumscribes an arena of freedom as the domain of the free actions of the individual beyond the purview of the state. However, governmentality theorists argue that the circumscription of this arena of freedom is not thereby opposed to the governmental strategies, but provides the means of their operation. Freedom itself provides the means and techniques of governmental intervention, and as such, liberal governmental strategies establish and rest on the constitution of its subjects as free. In a sense then, the notion of a 'free subject' is not so much descriptive as performative, constituting freedom as the domain and reality of the liberal subject while simultaneously bolstering the operation of liberal techniques of governing. As

⁶⁸ Foucault, 'The Ethics of the Concern for Self', p.285.

⁶⁹ I am not addressing the degrees of freedom that might be required for a practice of liberty to take hold here. On this point, it is worth noting that Foucault's formulation of power suggests that a power relation requires at least a minimal degree of negative freedom on the behalf of the agent over which power is exercised. On the face of it though, the practice of liberty that an ethics of the self entails seems to require a higher degree of negative liberty.

⁷⁰ For discussions of this claim, see in particular the contributions of Nikolas Rose, Graham Burchell and Barry Hindess in A. Barry, T. Osborne, N. Rose, eds. *Foucault and Political Reason: Liberalism, Neo-Liberalism and Rationalities of Government* (Chicago: University of Chicago Press, 1996); also see Hindess, *Discourses of Power*, p.128-134.

Nikolas Rose states, 'the importance of liberalism is not that it first recognized, defined or defended freedom as the right of all citizens. Rather, its significance is that for the first time the arts of government were systematically linked to the practice of freedom'.⁷¹

As this quote from Rose suggests, the claim that freedom is produced as an artefact of government goes to both negative and positive liberty in the senses outlined by Patton. While the former is the most easily recognizable in that the delimitation of the domain of the free subject against the more or less coercive intervention of the state has been central to the project of liberalism, the latter is indicated in the suggestion that there is a 'systematic link' between arts of government and a practice of freedom. Empirically, this link is borne out through recent work that analyzes the practical, governmental enhancement of the subject's positive capacities for autonomy and perhaps a little paradoxically, for self-government.⁷² Barbara Cruickshank has argued, for instance, that the 'self-esteem movement' aimed at the enhancement of personal autonomy and capacities for socially valuable action effectively links subjectivity and self-analysis to liberal arts of government, such that 'self-esteem is a technology of citizenship and self-government'.⁷³ Effectively, the raising of self-esteem is taken to be an enhancement of the positive freedom of an agent, and its operation as a technology of government suggests that the enhancement of positive freedom is not alien to the concerns of liberalism. This concern with positive freedom is also borne out logically given the interdependence of positive and negative freedom indicated above.

To be clear, my point is not that the practice of freedom that Foucault urges in his ethics of the self is simply an uninterrupted repetition of an illusory liberty. The constitution of the subject as free means that while freedom might emerge as an

⁷¹ Rose, *Powers of Freedom*, p.68.

⁷² This suggests an interesting reversal from the situation of the Greeks, in which working upon oneself in a practical exercise of freedom was aimed toward the task of governing well; today, it is apparently geared toward being governable.

⁷³ Barbara Cruickshank, 'Revolutions Within: Self-Government and Self-Esteem', in A. Barry, T. Osborne, N. Rose, eds. *Foucault and Political Reason: Liberalism, Neo-Liberalism and Rationalities of Government* (Chicago: University of Chicago Press, 1996), p.234

artefact and support of government, it is not simply an illusion.⁷⁴ Rather, paraphrasing Foucault, one might say that it has a reality in that it is permanently produced on, around and within the body of the subject who enacts that freedom in their choices, practices and modes of being.⁷⁵ Consequently, in taking freedom as a condition of an ethics of the self, Foucault effectively limits such an ethics to the practical domain of the free subject – that is, of the citizen.⁷⁶ Both negative and positive liberty are inaugurated and circumscribed within a liberal arts of government as freedoms of the citizen, in the sense that both are produced as artefacts of government, but also in the sense that each is central to participation in the polity.⁷⁷ An ethics of the self entails a problematization of the freedom given in the emergence of a citizen subject, a practical exercise of that freedom directed toward its maintenance and elaboration through an ascesis or work upon oneself in the exercise of thought. Furthermore, given that ‘the citizen is unthinkable as an “isolated” individual, for it is his active participation in politics that makes him exist’,⁷⁸ then working upon oneself as citizen subject presupposes at least a minimal inclusion and (opportunity for) participation within political community.

Strictly speaking then, an ethics of the self based on the practice of liberty is an ethics of the citizen.⁷⁹ In other words, an ethics of the self rests on the presupposition of inclusion within political community, a point that is crucial for clarifying the limits of Foucault’s ethics of the self in the context of biopolitical subjection. If practices of the self are predicated on the freedom that obtains within the limits of political community, they are effectively an ethics of the free citizen subject, not of the

⁷⁴ Rose, *Powers of Freedom*, p.63.

⁷⁵ Foucault, *Discipline and Punish*, p.29.

⁷⁶ Etienne Balibar, ‘Subjection and Subjectivation’ in Jean Copjec, ed. *Supposing the Subject* (London: Verso, 1994), pp.1-15.

⁷⁷ Also see James Tully, ‘The Agonic Freedom of the Citizen’, *Economy and Society* 28:2(1999), pp.161-182. On the point that Foucault’s work provides an agonic conception of the political and of ethics, see in particular William E. Connolly, *The Ethos of Pluralization* (Minneapolis: University of Minnesota Press, 1995).

⁷⁸ Etienne Balibar, ‘Citizen Subject’, in E. Cadava, P. Connor and J-L Nancy, eds. *Who Comes After the Subject* (New York: Routledge, 1991), pp.33-57 at 51.

⁷⁹ This claim is not the same as the charge made in feminist critiques that an ethics of the self is the providence of a privileged elite. The extension of the status of citizenship from its limited version in Ancient Athens to contemporary nation-state citizenship means that the breadth of subjects able to engage in ethical practices of the self has also changed.

foreigner, or the ‘part without part’ as Jacques Rancière puts it.⁸⁰ And if Foucault’s ethics of the self reach their limit with the limit of the polity, it is difficult to see how such an ethics yields an account of response to and responsibility toward those others excluded from the polity, constituted in ways other than as free subjects. In light of this, the claim that the ethics of the self provide an outline of a response to biopolitical subjection takes on a particular ambivalence, for it is not clear that an ethics that does not critically broach the political determination of life worth living can yield a relation to the excluded part of the political that can be considered ethical.⁸¹

⁸⁰ Jacques Rancière, *Disagreements: Politics and Philosophy*, tr. Julie Rose (Minneapolis: University of Minnesota Press, 1999), p.9; Also see Jacques Rancière, *On the Shores of Politics* (London: Verso, 1995); Jacques Rancière, ‘Ten Theses on Politics’, *Theory and Event*, 5:3(2001).

⁸¹ It should be kept in mind here that exclusion from political community does not equate to being ‘outside power’. Rather, it indicates a more limited exclusion from governance, or the ‘community of the governed’, and as Foucault’s earlier work makes clear, the limits of governance are not the same as the limits of power. In this perspective, governance is a particular set of technologies of power that do not exhaust all the possible and actual mechanisms and technologies by which relations of power operate. While governance is crucial to the constitution and maintenance of political community, it is not the only, or even necessarily the most important, technology in operation in any given situation. Similarly, exclusion from the polity is not equivalent to exclusion from politics *per se*, since the political is not reducible to the polity, although participation in each is fundamentally inter-related with participation in the other. What is at issue though is precisely this inter-relation, for as Jacques Rancière suggests, ‘it is through the existence of this part of those who have no part, of this nothing that is all, that the community exists as a political community’. See Rancière, *Disagreement*, p.9; also see Isin, *Being Political*, p.275-285. Also see Jean-Luc Nancy’s comment in his book, *The Experience of Freedom*, tr. Bridget McDonald (Stanford: Stanford University Press, 1993) against Foucault that ‘politics does not primarily consist in the composition and dynamics of power... but to the opening of a space... by freedom’ (p.78). Nancy follows up this comment with a footnote on Foucault’s ‘Omnes et Singulatum’. As he says, ‘in reality, we have a choice of defining politics between two poles: either the Aristotelian definition of the “political animal” in terms of the disposition of logos insofar as it involves justice, good and evil, etc. and in terms of the nonuseful finality of “living well” (*eu zen*); or at the other pole, the technology of power’ (p.193n.11). Nancy links these poles through the freedom that is essential at each. In addition, it can be said that an investigation of biopolitics is in itself an attempt to think these poles together. It is also worth noting that there is an ambiguity in Foucault’s conception of ‘the political’, where on the one hand politics appears to be coterminous with governmentality, and on the other, to be essentially anti-governmental. See Barry Hindess, ‘Politics and Liberation’ in Jeremy Moss, ed. *The Later Foucault: Politics and Philosophy* (Thousand Oaks: Sage, 1998), pp.50-63; Barry Hindess, ‘Politics and Governmentality’, *Economy and Society*, 26:2(1997), pp.257-272; also see Rancière’s critique of Foucault’s conception of the political in *Disagreements*, p.32. The potential distinction between power and politics in Foucault’s work is also evinced by his initial distinction between biopower and biopolitics, where the latter designates one of the poles of the development of the former. However, this is not a distinction that Foucault rigorously maintains. Further, to the extent that Foucault associates biopolitics with the governmental apparatuses of administering life, a slight shift is required to see biopolitics as the form of the decision of the political, taking effect between the poles of the good life and power. The importance of Foucault’s discussion then lies in bringing these poles together in thinking through the interaction of the adjudications of life and the operations of power in a non-reductive way.

2.5 *Beyond the Citizen-Subject: Contingency and Responsibility*

If an ethics of the self is at base an ethics of the free citizen subject, the question of whether such an ethics can generate sufficient ethical concern for others who are excluded, for one reason or another, from that status still remains. In this section then, I ask whether Foucault's ethics can be extended beyond the limits of political community to yield an ethical relation to the 'part without part'. Two questions need to be taken up in order to establish this: first, whether Foucault's ethics of the self yield an ethical concern for the other, and second, whether that concern can broach the problems of political exclusion. Underpinning these questions are broader issues concerning the normative content of Foucault's formulation of an ethics of the self and the contingency of the relation to the other that may or may not be yielded in the acting upon oneself in the exercise of one's freedom. In addressing these issues, I argue that the later ethics founder on the lack of an elaboration of necessary ethical obligation to others. From this, I suggest that Foucault's ethics require supplementation with recognition of necessity of concern for others, a claim that I draw out through discussing Eva Ziarek's recent articulation of an ethics of dissensus.

I mentioned previously that while concern for oneself takes precedence in an ethics of the self according to Foucault's descriptive account of ethical self-formation in Ancient Greece, concern for others is nevertheless an important aspect of such practices. Foucault's discussion of the ethical practices of the Ancient Greeks describes concern for others primarily in terms of good governing and the avoidance of domination that this entailed. As Foucault describes it, the Greek ethics of the self were intimately tied to the question of governing, in the sense that self-rule moderates rule over others. Yet there is little indication within Foucault's work that this descriptive claim can be understood normatively, nor does it seem on the face of it that such a model, even if normatively construed, would be adequate to yield an intersubjective ethics. But if this relation cannot be understood as a normative model for ethical elaboration, it remains fundamentally unclear what kind of relation to others an ethics of self-formation generates for ethico-political practice today. For the relation to others that an ethics of the self entails is conditioned by an inherent contingency, which means both that the particular form that that relation takes is

subject to historico-cultural variability and more importantly, that concern for others is not in itself a necessary aspect of an ethics of the self.

Thus, there are two levels to the contingency that inheres in Foucault's formulation of an ethics of the self, the first of which addresses the historical contingency of particular forms of ethical self-formation and the relation to others this may or may not entail. The second, more fundamental sense goes to whether such an ethics entails concern for others at all. The first of these is evident in the descriptive account of ethical self-formation that Foucault develops in the later volumes of *History of Sexuality*, where he genealogically traces the historical variation of techniques of the self geared toward the formation of oneself as an ethical subject. In this, Foucault argues that historical changes in morality can be traced at two levels, first at that of moral codification and secondly at the level of the practices by which one subjectifies oneself in relation to moral codes. While the latter of these appears to Foucault to be subject to great variation, he finds in the former a surprising 'poverty and monotony of interdictions'.⁸² What is important here is the double aspect of Foucault's analysis, in that it emphasizes the historicity of practices by which one establishes a relation to an over-riding moral injunction or delimitation of behavior.

While a number of theorists emphasize Foucault's distinction between moral codification and ethos as the basis of a reconsideration of ethics and politics, in *The Use of Pleasure* and elsewhere Foucault does recognize a fundamental interdependency of ethos and moral codification.⁸³ As he argues, 'every morality, in the broad sense, comprises the two elements...[of] codes of behavior and modes of subjectivation...[which] can never be entirely dissociated, though they may develop

⁸² Foucault, *The Use of Pleasure*, p.250.

⁸³ Han, *Foucault's Critical Project*, p.158-161. As Han points out, the implicit refutation of the Kantian moral *a priori* that underlies the distinction that Foucault makes between moral codes and ethos or modes of self-formation does not amount to a return to 'pre-"codified moralities"', but offers instead 'a rereading or reinterpretation of what it means to be moral, which reveals, even at the heart of the moralities of the law, the need for ethical problematization' and self-formation (Han, *Foucault's Critical Project*, p.161.). The distinction between ethos and moral code is important for William Connolly in particular; See William Connolly, 'Beyond Good and Evil: The Ethical Sensibility of Michel Foucault', in Jeremy Moss, ed. *The Later Foucault: Politics and Philosophy* (Thousand Oaks: Sage, 1998); Connolly, *The Ethos of Pluralization*.

in relative independence from one another'.⁸⁴ Hence, although it was not elaborated as a universal law compelling obedience by everyone, even the ethos or stylization of being of the Ancient Greeks was guided by a fundamental imperative. As Foucault states, 'in antiquity, ethics as the conscious practice of freedom has revolved around this fundamental imperative: "Take care of yourself"'.⁸⁵ The point of contrast between the Ancient Greek ethics of the self and later formulations of ethical practice for Foucault then is not strictly the existence or not of a more or less codified moral injunction, but the scope of application of that injunction. For the Greeks, the rules of conduct applied only to an elite, whereas later formulations of moral codes were understood to apply universally. While Foucault himself does not always maintain adequate recognition of this fundamental interdependency, at times overemphasizing the differentiation between ethical practice as stylization of oneself and submission to a 'universal law',⁸⁶ he was not advocating an ethics as ethos independent from any particular injunction upon self-stylization.

To the extent that he advocates reclamation of the Greek injunction to 'take care of oneself' as the delimiting principle of an ethics of the self, an element of normativity emerges in Foucault's later work. This recalls the distinction that I suggested earlier, whereby Foucault's relation to the Greeks might be understood as one of finding potential in the form of an ethics of the self but not in their determinate content or particular practices by which one places oneself in relation to the injunction to care for oneself. As I have argued, the particular value that Foucault appears to find in this form of ethical injunction is that it delimits an ethos of self-formation and practice of liberty, whereby one's freedom is elaborated in a practical exercise of thought directed toward de-subjection understood as the transgression of the limits of being enforced through subjection. To be sure then, Foucault's advocacy of an ethics of the self guided by the principle of taking care of oneself is limited: it does not amount to positing a universalizable moral principle but is instead a proposal for a non-universalized model of acting upon oneself in order to develop new ways of being. As Patton notes, 'Foucault's problem is not that of formulating the moral norms that accord with our present moral constitution, but rather the

⁸⁴ Foucault, *The Use of Pleasure*, p.29.

⁸⁵ Foucault, 'The Ethics of the Concern for the Self', p.285.

⁸⁶ Foucault, *The Use of Pleasure*, p.250.

Nietzschean problem of suggesting ways in which we might become other than what we are'.⁸⁷ Nevertheless, to the extent that a practical exercise upon oneself as ethical subject is fundamentally interdependent with a more or less codified moral principle, then 'taking care of oneself' appears as the delimiting injunction of an ethos of de-subjectivation.

Foucault has frequently been criticized for the inadequacy of such a principle of delimitation, particularly on the basis that it generates an individualistic aestheticism. Without buying into the sometimes hyperbolic character of these critiques, there is something to the charge that Foucault's ethics provide insufficient delimitation of the kind of practice and relation established in that practice that would count as ethical, not only in the sense of an *ethos* or style of being but also in the more familiar sense of duties and obligations in relation to others. However, the problem goes deeper than the particular formulation of a prescriptive delimitation on an ethics of the self, for it raises the question of the necessity or contingency of concern for others *per se*. More particularly, it raises the question of the concern for the freedom of others and especially for those whose capacity to partake in an exercise of freedom is severely constrained by their exclusion from political community. For while an ethics of the self may take the elaboration of freedom as its central concern, without recognition of a fundamental responsibility or concern for others, there is no guarantee that the concern with the elaboration of one's own freedom will extend to concern for the freedom of others. The problem is that without a necessary and prior responsibility for others, it may be that certain practices of the self yield a concern for others, but whether they do remains entirely contingent. The consequence of this is expressed in the worry that the elaboration of freedom in an ethics of the self may lead to little more than an individualistic concern with one's own capacities and modes of being and a correlative disregard for those of others. This problem is well expressed in Berlin's summary statement in regard to positive freedom that 'freedom for the wolves has often meant death to the sheep'.⁸⁸

⁸⁷ Paul Patton, 'Foucault's Subject of Power', *Political Theory Newsletter*, 6(1994), pp.60-71 at 71.

⁸⁸ Berlin, *Four Essays on Liberty*, p.xlv.

The potential danger of an ethics of the self that does not posit any necessary concern for others can be illustrated through a brief consideration of James Bernauer's attempt to use Foucault's conception of ethical practice to understand aspects of German Nazism. Bernauer opposes the ethics of the self to biopolitical subjection, and claims that an 'aesthetics of existence is in contrast and resistance to a "science of life"... Foucault's history of sexuality points to the ethical task of detaching ourselves from those forces which would subordinate human existence (*bios*) to biological existence (*zōē*)'.⁸⁹ Bernauer interprets Foucault's ethics as an ethics for thought against 'the crisis of a politics of life versus death'. On the basis of this, he develops a reading of the Nazi epoch that rejects the claim that Nazism was amoral or immoral, to show the way in which Nazism itself might be understood as an ethic. He claims that Foucault's work on ethics provides an implicit critique of such an explanation and 'indicates a promising reversal of perspectives for future research and understanding: an examination of Nazism not as nihilism but as an intelligible ethic'.⁹⁰

Bernauer's use of Foucault is illuminating to the extent that it reveals aspects of the ethos, or way of being of Nazism. However, it is difficult to see how this lends itself to a 'post-Auschwitz ethics – beyond the politics of life and death'. While the claim that Nazism can be understood as an ethic is etymologically accurate, insofar as an ethic is synonymous with an ethos, a way or style of being, there is something intuitively wrong with such a view. Something of this intuition is brought out in Giorgio Agamben's study of Auschwitz, where he develops an ethics of witnessing based on the figure of the Muselman, 'the living corpse' that populated the German death camps, not yet dead, but without the sensate characteristics of the living. Commenting on the ethics of Primo Levi, Agamben suggests that:

⁸⁹ James Bernauer, 'Beyond Life and Death: On Foucault's Post-Auschwitz ethic', in Tim Armstrong, ed. *Michel Foucault: Philosopher* (London: Harvester Wheatsheaf, 1992), pp.260-278 at 262.

⁹⁰ Bernauer, 'Beyond Life and Death', p.273. It should be noted though that Bernauer's use of Foucault's analysis of ethical practices of the self to characterize Nazism as an ethic is not prescriptive but critical and analytic. To the extent that Bernauer is prescriptive, this lies in the notion of an ethics of critical thought. Nevertheless, his account does point to a problem in the claim that Foucault's ethics constitute a response to the dangers of biopolitics.

With a gesture that is symmetrically opposed to that of Nietzsche, Levi places ethics before the area in which we are accustomed to think of them [that is, before the judgment of responsibility and guilt]. And... we sense that that this "before" is more important than any "beyond" – that the "underman" must matter to us more than the "overman."⁹¹

One implication of this is that Bernauer is looking in the wrong place for a 'post-Auschwitz ethic': it is not the masters to whom we should be looking but the enslaved. Importantly though, there is no condition internal to Foucault's ethics that establishes and secures the necessity of the shift in focus suggested here; rather, at best, the contingency of concern for others over and against concern for one's own self and the freedom elaborated in that concern leaves the question of what counts as ethical practice open.

In light of this, a stronger recognition of responsibility appears necessary if 'the agon of... politics... will all be instances of good and just democratic politics as opposed to being instances of fascism, xenophobic nationalism, right-wing populism.'⁹² However, this recognition does not necessarily entail the elaboration of a moral foundationalism to undergird political participation, such that a determinate politics can be simply deduced from moral codification. Rather, the point is that recognition of a fundamental and necessary ethical responsibility is required as a delimiting condition of the contingency of the political. As Simon Critchley has argued of Derridean deconstruction, recognition of an infinite ethical obligation to the other is a condition for the contingent political decision, wherein the decision of the political can be thought of as 'the art of response to the singular demand of the other, a demand that arises in a particular context... and calls for political invention'.⁹³ While the ethical demand of the other operates as a condition of the political, the political decision cannot simply be read off from this demand. Instead, the passage from the ethical to the political is struck by a hiatus or indeterminacy, and rather than

⁹¹ Giorgio Agamben, *Remnants of Auschwitz: The Witness and the Archive* (New York: Zone Books, 1999), p.21. I discuss this text at length in the final chapter.

⁹² Seyla Benhabib, 'The Democratic Moment and the Problem of Difference', in Seyla Benhabib, ed. *Democracy and Difference: Contesting the Boundaries of the Political* (Princeton: Princeton University Press, 1996), p.8.

⁹³ Simon Critchley, *Ethics, Politics, Subjectivity: Essays on Derrida, Levinas and Contemporary French Thought* (London: Verso, 1999) pp.254-286 at 276.

undermining the ethical delimitation of the political, the indeterminacy of this passage is itself the potential of ethics and politics. As Derrida states, 'ethics enjoins a politics and a law... But the political or juridical *content* that is thus assigned remains undetermined, still to be determined... singularly in the speech and responsibility *taken* by each person in each situation and on the basis of an analysis that is each time unique'.⁹⁴ In other words, an ethical responsibility that obtains before the political decision operates as a necessary delimitation on that decision, though it does not thereby determine the content of the decision itself or the circumstances in which it might be taken.⁹⁵

The strong response from theorists concerned with establishing a necessary ethical element in the relation of oneself to others can thus be traced to the contingency of concern for others that Foucault's ethics entails. In particular, a number of theorists have urged a return to a Levinasian ethics as a means of articulating an ineliminable ethical demand given in the encounter with the other against Foucault's formulation of an ethics of the self. Barry Smart for instance, has questioned whether Foucault's uncritical adoption of the priority of the relation of self to self in ethical practice undermines the ethical value of his later work, as it fails to provide an effective challenge to the contemporary 'cult of the self' and moreover, obscures the necessary anteriority of responsibility for the other vis-à-vis concern for oneself. Drawing on Emmanuel Levinas's position that the asymmetrical face-to-face encounter is the essence of ethics, Smart argues that 'it is only possible for care for self to encompass care for others if there is from the beginning, if there is already, a responsibility for the other, an unmeasured non-reciprocal responsibility'.⁹⁶ Thus, he hopes to shore up ethical responsibility through positing an unimpeachable ethical obligation in the relation to the other. But in doing so, Smart does not give an indication of how such an obligation is related to political contingency. However, as Critchley suggests, this move is necessary in order to separate the ethical demand elaborated by Levinas from the determination of the content of the political decision.

⁹⁴ Jacques Derrida, *Adieu to Emmanuel Levinas* (Stanford: Stanford University Press, 1999), p.115; also see Critchley, *Ethics, Politics, Subjectivity*, p.278.

⁹⁵ See Critchley, *Ethics, Politics, Subjectivity*, p.283.

⁹⁶ Barry Smart, 'Foucault, Levinas and the Subject of Responsibility' in Jeremy Moss, ed. (1999) *The Later Foucault: Politics and Philosophy* (Thousand Oaks: Sage, 1998), pp.78-92 at 87.

While Smart rejects Foucault's ethics of the self and argues for returning to a Levinasian account of ethical responsibility against what he takes as individualistic indifference, other theorists have been less quick to draw such a strong distinction between Foucault and Levinas. Instead, they have sought to establish congruence between Foucault's ethics of the self and an ineliminable ethical responsibility. Ewa Ziarek has recently taken up such a project in her attempt to integrate Foucauldian and Levinasian concerns in the development of an ethics of dissensus as the foundation of radical democratic politics.⁹⁷ Ziarek argues that while Foucault's 'ethos of becoming' is indispensable for a feminist ethics of dissensus, such an ethos 'reaches its limit in the context of the nonappropriative relations to the Other'⁹⁸ and hence, turns to Levinas's formulations of this relation in order to supplement and rework Foucault. While maintaining that an ethos of becoming is crucial to the radical democratic project, Ziarek also finds it necessary to supplement Foucault with an engagement with Levinas's account of the ethical encounter with the Other and the rethinking of community and difference that this entails. She seeks to negotiate a path between the ethos of freedom that she finds in Foucault and an ethos of alterity found in Levinas, two forms of ethical theorizing that she understands to be opposed in the 'seemingly irreconcilable dilemma of freedom and obligation'.⁹⁹

For Ziarek, the particular value of Foucault's account of an ethics of the self lies in the potential it opens for the creation of new modes of life through an experimental praxis of becoming. She draws upon Gilles Deleuze's interpretation of Foucault to elaborate the ways in which a practice upon oneself exceeds the enabling social conditions that ground it to achieve a certain 'singularity' and freedom through an

⁹⁷ Ewa Plonowsky Ziarek, *An Ethics of Dissensus: Postmodernity, Feminism, and the Politics of Radical Democracy* (Stanford: Stanford University Press, 2001). Foucault's lack of specificity on the concern for others yielded in an ethics of the self has allowed for various characterizations of this concern. Reading Foucault in the terms of a politics of recognition has emerged as one of the main strategies of interpretation in recent years and Ziarek provides one of the more sophisticated renderings of this interpretation. For another less compelling version, see Thomas Dumm, *Michel Foucault and the Politics of Freedom* (Thousand Oaks: Sage, 1996), p.153. Dumm claims that the concern for the other is principally recognitive, where 'the cultivation of ourselves is no exercise in narcissism but involves a deeper engagement with others as we cultivate them and get them to recognize ourselves in response'. Apart from the infelicity of Dumm's formulation, wherein the recognitive relation to the other is deeply narcissistic, there is little textual evidence within Foucault's later work to support this formulation of the concern for others.

⁹⁸ Ziarek, *Ethics of Dissensus*, p.8.

⁹⁹ Ziarek, *Ethics of Dissensus*, p.2.

‘experimental ethos of becoming’.¹⁰⁰ This, she argues, is ‘crucial for a redefinition of contemporary democratic struggles beyond the liberation of repressed identities’.¹⁰¹ Through the conjunction of an ethics of self-formation and an ethics of alterity, then, Ziarek aims to develop an ethics directed toward the transformation of existing ‘unjust power relations and [the assumption of] an infinite responsibility for violence and the oppression of others’ and the provision of ‘a new basis for democratic politics’.¹⁰² Such an ethics, she claims, is crucial for intervention in and opposition to the biopolitics of contemporary technologies of power, in which power relations work through the disciplinary ‘materialization’ of sexed and raced bodies.¹⁰³ Hence, Ziarek’s attempt to extend Foucault’s ethics focuses less on the particular relational matrix in which an ethics of the self were initially elaborated and more on the ethico-political potential for transformation that appears to attend working upon oneself in the exercise of freedom as a means of yielding an ethical relation to the other.

The importance of Ziarek’s argument is that it strives to bring out the interdependency of ethics and politics in a way that recognizes the contingent decision of the political and the ineliminable responsibility of the ethical. Nevertheless, her explication of the interdependency of the ethical and the political fails in important respects. Most importantly for this discussion, while Ziarek seeks to find a path between the apparent opposition of freedom and obligation this project is stymied by her interpretation of Foucault, particularly her failure to read the fundamental interdependency of freedom and political community within his later work. As I have argued, within Foucault’s ethics freedom and community are not so much opposed as brought into a relation of mutual interdependence and tension. It is not that the practice of freedom undertaken by a subject opposes it to community, but that immersion within political community conditions that practice and vice versa. However, the rendering of an ethics of the self as an ethos of

¹⁰⁰ Gilles Deleuze, *Foucault*, tr. Sean Hand (Minneapolis: University of Minnesota, 1988), esp. the chapter entitled ‘Foldings, or the Inside of Thought (Subjectivation)’.

¹⁰¹ Ziarek, *Ethics of Dissensus*, p.42.

¹⁰² Ziarek, *Ethics of Dissensus*, p.219.

¹⁰³ The term ‘materialization’ is in fact taken from Judith Butler’s work rather than Foucault’s. I discuss this further in the following chapter, but suffice to say that for Butler ‘materialization’ indicates the process by which embodied subjects are brought into being by the operations of power. As I point out in the following chapter, it does not operate in the same way as Foucault’s more limited notion of normalization.

becoming takes liberty as the effective consequence of the practical work upon oneself. In doing so, the way in which such working upon oneself also presupposes liberty as a condition of an ethics of the self is occluded. This has two important consequences.

First, the ethos of becoming that Ziarek explicates repeats a failure within Foucault's account of an ethics of the self to consider the risks of de-subjection.¹⁰⁴ This problem arises as a result of the tendency to see subjection as an imposition, without considering the ways in which subjection is itself a positive political operation. After all, it is only as subjects that individuals partake in political community.¹⁰⁵ Returning briefly to the example of Nazism discussed above assists in bringing this problem out more clearly. As Ziarek argues, a Foucauldian ethics emphasizes working upon oneself in an ethics of becoming or de-subjection as the means of freeing oneself from individualizing and normalizing biopolitical techniques. However, as Agamben points out, 'the *Muselmann* produced by Auschwitz is the catastrophe of the subject... the subject's effacement as the place of contingency and its maintenance as existence of the impossible'.¹⁰⁶ Agamben's point is complex and I return to it in the final chapter, but one of the implications of his

¹⁰⁴ The significance of this point can be illustrated through a brief consideration of two examples of what could be understood as illustrations of becoming, or processes of de-subjection, the first taken from Renata Salecl, *(Per)versions of Love and Hate* (London: Verso, 1998) and the second from João Biehl, 'Vita: Life in a Zone of Social Abandonment', *Social Text* 19:3(2001), pp.131-149. Salecl describes the Russian artist Oleg Kulik, in the following way: 'he usually has a dog-house built for a performance, and lives in the gallery day and night totally naked, walking and barking like a dog. He became famous when he started biting visitors to two art shows in Zurich and Stockholm. In both cases, the organizers of the shows called the police, who enchained Kulik and took him to the police station for questioning' (Salecl, *(Per)versions of Love and Hate*, p.104). João Biehl relates the second in a discussion of biopolitics in Brazil: 'In 1998 some twenty homeless persons, including children, invaded an abandoned zoological garden in the city of Pelotas, 150 miles away from Porto Alegre. The squatters made their rooms in the cages. "Luiz Carlos Apio is one of the new residents of the Zoo," wrote the Brazilian *Jornal da da ciência* (SBPC 1998). "He is handicapped and an unemployed auto worker. Luiz made his house in the place formerly destined to the rabbits. In order to enter, he has to go through a small door no more than half a meter high"' (Biehl, p.141). While there are a number of important differences between these examples, one of the most crucial emerges in the fact that when questioned by police, Kulik stopped pretending to be a dog, and reinvoked a reliance on rights while attributing some of the blame for the incident to spectators, 'who treated him as a dog' (Salecl, *(Per)versions of Love and Hate*, p.108). This suggests that the rights that obtain in subjection place a crucial delimitation on becoming and raise the question of responsibility in relation to rights, which I will take up further in the final chapter.

¹⁰⁵ Indeed, as will become apparent in the following chapters, one can understand political struggles based on recognition as struggles *for* the status of subject rather than struggles *against* it.

¹⁰⁶ Agamben, *Remnants of Auschwitz*, p.148.

discussion of the subject is that the politics of 'making live' or 'letting die' play out on 'the battlefield of subjectivity',¹⁰⁷ and in doing so, destroy the claim to subjecthood.

Consequently, the radical incapacity of the individual to enter into the discursive and enunciative 'vacant place' of the subject suggests that it is insufficient to see de-subjectivation as essentially or necessarily liberatory.¹⁰⁸ This also means that the dangers or risks of de-subjectivation are not simply the psycho-social risks of madness, depression or addiction; nor are they simply the risks of re-territorialization, the capture or blockage of becoming in the repetition of the same.¹⁰⁹ Rather, the process of becoming carries with it the risk of exclusion, violence and abandonment. This means then that understanding subjectivation as violent imposition and de-subjectivation as a concomitant process or practice of liberation presents an overly reductive picture of the operations and conditions of subjectivation. What needs to be brought out here is the double movement by which violence both constitutes political subjection and destroys the embodied subject, casting the body as 'volumes in perpetual disintegration'¹¹⁰ while enforcing attachments to political subjection.

Second, the positing of freedom as a consequence of an ethos of becoming effectively blocks Ziarek's attempt to overcome the opposition between freedom and obligation. For in positing freedom as the aim and consequence of an ethos of becoming, she ultimately reinscribes the opposition between freedom and obligation and reinstalls an individualistic characterization of ethico-political participation that takes political community as limiting rather than – in an important though ambiguous sense – as enabling and productive of political freedom. Textually, this

¹⁰⁷ Agamben, *Remnants of Auschwitz*, p.142.

¹⁰⁸ See Elaine Scarry, *The Body in Pain: The Making and Unmaking of the World* (Oxford: Oxford University Press, 1985). Scarry's analysis of physical pain and specifically torture reveals that the annihilating capacity of violence lies in the language-destroying attributes of pain, which can be understood as the destruction of one's status as subject and political participant.

¹⁰⁹ See Gilles Deleuze and Felix Guattari, *A Thousand Plateaus*, tr. Brian Massumi (Minneapolis: University of Minnesota Press: 1987), pp.209-309; Brian Massumi, *A User's Guide to Capitalism and Schizophrenia: Deviations from Deleuze and Guattari* (Cambridge, Ma.: MIT Press, 1992).

¹¹⁰ Michel Foucault, 'Nietzsche, Genealogy, History' in *Language, Counter-Memory, Practice: Selected Essays and Interviews by Michel Foucault*, ed. Donald F. Bouchard, tr. Donald F. Bouchard and Sherry Simon (Ithaca: Cornell University Press, 1977), pp.139-164 at 148.

point is evinced in her formulation of the obligation of response and responsibility as a 'burden' or limit upon freedom.¹¹¹ While recognizing the antagonism that attends negotiation between 'the seemingly incompatible claims of freedom and obligation',¹¹² Ziarek fails to consider a more fundamental interdependency between freedom and obligation. This interdependency is suggested in Etienne Balibar's claim for instance, that 'the value of human agency arises from the fact that no one can be liberated or emancipated *by others*, although no one can liberate himself *without others*'.¹¹³

In this light, it is now possible to give a positive twist to the formulation of freedom and political community elaborated above. For this indicates not only that practices of the self are predicated on the freedom yielded within political community, but also that freedom is itself conditioned by political community. In other words, the freedom that is elaborated and maintained in an ethics of the self reveals a fundamental indebtedness of the subject to others, though one which is not brought out in Foucault's formulation. This begins to indicate a more complex characterization of the relation between freedom and obligation than that posited by Ziarek, for here the social and political relations that the subject is necessarily embedded within condition practices of freedom. This suggests that the irreducible and ineliminable responsibility for the other may not be as incompatible with the claims of freedom as Ziarek supposes. Nevertheless, even with recognition of this, we are still theoretically within the boundaries of political community. For here, it is still the case that the others in relation to which freedom and obligation co-mingle are those other subjects within political community. How then, can a conception of freedom and responsibility be extended to recognize a political and ethical indebtedness to the foreigner, 'the part without part', the other whose presence brings the boundary of political community into relief?¹¹⁴

¹¹¹ Ziarek, *Ethics of Dissensus*, p.10.

¹¹² Ziarek, *Ethics of Dissensus*, p.221.

¹¹³ Balibar, 'Subjection and Subjectivation', p.12

¹¹⁴ This question also opens into literature on cosmopolitanism, particularly that inflected by postcoloniality, poststructuralism and deconstruction, or what might be called a 'new cosmopolitanism'. Of this emerging literature, see in particular, Pheng Cheah and Bruce Robbins, eds. *Cosmopolitics: Thinking and Feeling Beyond the Nation* (Minneapolis: University of Minnesota Press, 1998); Jacques Derrida, tr. Mark Dooley and Michael Hughes, *On Cosmopolitanism and Forgiveness* (New York: Routledge, 2001); Jacques Derrida, *Of Hospitality*, tr. Rachel Bowlby (Stanford: Stanford University

To summarize then, I have argued that the theoretical shifts that Foucault effects between the first two volumes of *History of Sexuality* move away from the problematic valorization of the body that I identified in the previous chapter by shifting the locus of political agency from the resistances of the body to the subject's practice of freedom. I have also argued that the elaboration of an ethics of the self that Foucault develops posits a relation of interdependency between freedom and political community. This reveals an important ambiguity at the heart of an ethics of the self in that the subject must already be constituted as free to engage in an ethics of the self and concomitant practice of liberty. In drawing out the implications of this, I argue that if the ethics of the self are effectively an ethics of the citizen, then it is unclear that such an ethics yields sufficient ethical concern for those beings excluded from political community, a criticism which I suggest is particularly pertinent in the context of biopolitics. In particular, such an ethics of the self seems limited in the face of systematic violence and the destruction of the subject that this entails. The scope of such an ethics is limited to considering the role of subjectivation within the borders of political belonging and as such, does not yield an ethico-political response to the dangers of biopolitical determinations on life and death beyond that. This means that the claim that the ethics of the self that Foucault develops in his later work constitute an ethical response to the political dangers of biopolitics needs to be tempered somewhat, not only through further specification of what those dangers are, but also through a consideration of what ethics might be possible beyond the boundaries of political community.

Press, 2000); Hakan Seckinelgin and Hideaki Shinoda eds. *Ethics and International Relations* (Basingstoke: Palgrave, 2001); for a recent consideration of the role of to the foreigner in the constitution of political community see Bonnie Honig, *Democracy and the Foreigner* (Princeton: Princeton University Press, 2001). Also see Julia Kristeva, *Strangers to Ourselves*, tr. Leon S. Roudiez (New York: Harvester Wheatsheaf, 1991).

Chapter 3

The Body of Signification: Butler on Materiality, Subjection and Social Death*

Without a repetition that risks life – in its current organization – how might we begin to imagine the contingency of that organization, and performatively reconfigure the contours of the conditions of life?¹

3.1 Introduction

While Foucault refused to engage questions of psychic attachments to subjection and the particular vulnerability that this engenders for the survival of the subject, these problems form the core of Judith Butler's response to his work. In her work from *Gender Trouble* to *Antigone's Claim*, Butler addresses two interconnected issues: first, the normative production of subjects and the correlative excluded domain of the abject by hegemonic relations of power and second, the possibilities for social transformation engendered by the process of subjectivation and the peculiar agency of the abject. Explicitly framed as a response to Foucault's work, Butler takes seriously his claim that the subject is produced by power, developing a critical account of constructivism that reconsiders questions of materiality, agency and the subject's vulnerability to power's abuses. This means that in responding to Foucault, Butler does not simply take up his problematic, but instead mobilizes several of his claims in order to provide, ultimately, a theorization of subjectivation and resistance that draws not only on Foucault, but also on Derridean deconstruction, psychoanalytic theory, speech act theory and the political claims made within literature on radical democracy.

* This chapter draws on arguments previously published in Catherine Mills, 'Efficacy and Vulnerability: Judith Butler on Reiteration and Resistance', *Australian Feminist Studies* 15:32(2000), p. 265-279.

¹ Judith Butler, *The Psychic Life of Power* (Stanford: Stanford University Press, 1997), p.29.

Given Butler's concerns, it may not be immediately obvious what contribution her work makes to an understanding of biopolitics; her terms of analysis are gender, sexuality, abjection and reiteration, not the relation between biological and political life. Nevertheless, Butler poses reflection on the constitution of lives worth living as the central concern of her work. Indeed, the animating question of it appears to be that posed in the introduction to *Bodies that Matter*: 'What challenge does that excluded and abjected realm produce to a symbolic hegemony that might force a radical rearticulation of what qualifies as bodies that matter, ways of living that count as "life", lives worth protecting, lives worth saving, lives worth grieving?'² This question opens Butler's work to a different set of concerns than she is usually taken to be addressing by highlighting the way in which a discussion of 'bodies' opens into a discussion of 'life', since lives and bodies are intricately connected through an inextricable interdependence of the political and the biological. The conceptual indistinction or 'indiscernibility' indicated in this statement might in fact be usefully exploited to examine the relations between biological and political life, relations that I argue are established through the process of subjectivation.³ Hence, in this chapter, I develop a 'biased' reading of her work that moves between the terminology of life, bodies and ways of life in order to bring out the contribution that Butler makes to a consideration of biopolitical subjection.⁴

In this chapter then, I develop a reading of Butler's work that foregrounds her understanding of the normative constitution of lives worth living. I focus on *Bodies that Matter* and *The Psychic Life of Power* as these provide the most theoretically elaborated accounts of subjectivation and political exclusion. I argue that her work provides important insights into an analysis of biopolitics, particularly in its explication of the means by which the body enters into the political field. I examine

² Judith Butler, *Bodies that Matter: On the Discursive Limits of Sex* (New York: Routledge, 1993), p.16; emphasis added.

³ For a discussion of conceptual indiscernibility, see Gilles Deleuze, *What is Philosophy?* tr. Hugh Tomlinson and Graham Burchell (London: Verso, 1994), pp.19-20. I take this notion to indicate that the borders or contours of concepts can never be rigorously distinguished, since their components are intrinsically and extrinsically linked to other concepts and conditions. It is not a term that Butler uses, but there is some resonance between this notion and the deconstructive strategy of identifying the points at which attempts to establish conceptual closure fail.

⁴ See Thomas Keenan, *Fables of Responsibility: Aberrations and Predicaments in Ethics and Politics* (Stanford: Stanford University Press, 1997) especially his chapter entitled 'Reading Foucault on a Bias'. His use of the term 'bias' emphasizes the sense of a reading that traces a line across the grain of the text, not of one based on a pre-assessment.

Butler's critical claims concerning the necessarily normative constitution of the body within exclusionary regimes of signification to draw out her understanding of the relation between biological and political existence. In particular, I show that the process of materialization that Butler elaborates initiates an understanding of the relation of materiality and signification as chiasmatic and therefore neither separable nor reducible. However, I also suggest that she is ultimately unable to maintain this figuration and occasionally slides into a reductive identification of signification and materiality.

From this, I develop a critical discussion of her account of political exclusion understood as abjection and social death and her attempt to explicate an agency of the excluded. I argue that Butler's account of the agency of the excluded is weakened by her tendency to understand power as singularly constitutive, a tendency that feeds into a crucial vacillation between the efficacy of resistance and of power such that resistance is cut through with failure from its emergence to its incapacity to produce the effects it seeks to produce. While Butler's re-conception of exclusion as social death and the agency that this spawns in *The Psychic Life of Power* can be read as an attempt to overcome the problems identified in *Bodies that Matter*, I argue in the final section of this chapter that this problematic vacillation reappears in this later text. I show that the metaphors of death that Butler employs result in a figuration of resistance as suicide, such that she establishes a rhetorical link between freedom and death that ambiguously wavers between understanding death as a moment of liberation or a moment of destruction.

3.2 *Subjectivation and Materialization*

Butler's engagement with the question of life worth living begins in her early text, *Gender Trouble*, where she examines the ways in which gender identity is constituted as fixed or essential through an exclusionary heterosexual matrix. In questioning the politics of representation that are often taken as the *sine qua non* of feminist politics, Butler develops the notion of performativity to account for the constitution of gender identification in and through regulatory apparatuses of power. Taking inspiration from Nietzsche's claim that 'there is no being behind doing, effecting,

becoming; 'the doer' is merely a fiction added to the deed--the deed is everything',⁵ Butler argues that gendered behavior is not expressive of an inner gender identity but is rather constitutive of it insofar as that behavior is itself performative. By performative, Butler does not mean that gender is a performance, thus recalling the problem of the actor who – more or less voluntarily – assumes an identity, plays it, and hangs it up again at the end of the day. Rather, the notion of performativity points to the constitutive force of behaviors, behaviors that are simultaneously grounded on psychic identifications with hegemonic norms of gendered identity and constitute those identifications.

This also brings to the fore the claim that insofar as gender identity is performative, it is repeated and it is in this repetition that the possibility for agency appears. Thus, Butler claims that:

The subject is a consequence of certain rule-governed discourses that govern the intelligible invocation of identity. The subject is not *determined* by the rules through which it is generated because signification is *not a founding act, but rather a regulated process of repetition* that both conceals itself and enforces its rules precisely through the production of substantializing effects. In a sense, all signification takes place within the orbit of the compulsion to repeat; "agency", then, is to be located within the possibility of a variation on that repetition.⁶

This means that in *Gender Trouble*, Butler saw the gendered subject neither as rule-bound to the extent of that there was no such thing as agency, nor as voluntarily enacting subversive performances. Instead, she attempted to locate the possibility of agency not in the subject *per se*, but in the necessary repetition of the rules that govern subject-formation.⁷

⁵ Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity* (New York: Routledge, 1990), p.25. Also see Friedrich Nietzsche, *On The Genealogy of Morals*, tr. Walter Kaufmann and R.J Hollingdale (New York: Vintage Books, 1967), p.45.

⁶ Butler, *Gender Trouble*, p.145.

⁷ This attempt to undo the voluntarist-determinist opposition that had plagued debates on constructivism and political agency seemed, unfortunately, to be undermined by the discussion of drag performance in the final chapter of *Gender Trouble*, which prompted criticisms from both sides of the debates. The displacement of agency from the subject to the necessary repetition of the rules by which the subject came into formation seemed to be occluded in this debate.

There is no need to rehearse the criticisms made against Butler's conception of subjectivation and agency given in *Gender Trouble*. Instead, two other claims outlined in this text are more important for the current discussion. First, Butler argues against the constructivist positing of 'the body' as a passive surface that exists prior to the cultural inscriptions necessary to attain cultural meaning and intelligibility. She claims that within constructivism,

the body is figured as a mere instrument or medium for which a set of cultural meanings are only externally related. But "the body" [is] itself a construction, as are the myriad "bodies" that constitute the domain of gendered subjects. Bodies cannot be said to have a signifiable existence prior to the mark of their gender.⁸

Secondly, she claims that the construction of gendered bodies occurs through exclusionary formations of discourse and power, a formation that rigorously demarcates the realms of bodily intelligibility. In particular, Butler argues that a compulsory 'heterosexual matrix'⁹ structures the regulation and formation of bodily intelligibility. The operation of this regulatory matrix establishes the coherence and unity of gender identity at the expense of homosexuality, rendering homosexual identifications unintelligible, incoherent, and in a sense, unlivable. However, the exclusion of homosexuality is never complete, since the very distinction between the included and the excluded, the 'inner' and the 'outer', founders on an inherent permeability of bodily borders taken as synecdochal representations of the social hegemony.¹⁰ This means that gender identities contain an inherent instability, which opens them to a 'constitutive failure' to become natural or real, and hence, to the proliferation of gender norms.¹¹ The questions opened up by these claims subsequently form the central concerns of *Bodies that Matter*, a text that Butler explicitly frames as an attempt to clarify and rework the arguments made in *Gender Trouble*.

⁸ Butler, *Gender Trouble*, p.8.

⁹ See Butler, *Gender Trouble*, p.151, n.6.

¹⁰ See Butler's discussion of Mary Douglas' structuralist analysis of pollution, dirt and the socio-cultural order in *Gender Trouble*, pp.131-134.

¹¹ Butler, *Gender Trouble*, p.146.

In both its questioning of the formation of identity through regulatory discourses and the commitment to intervention in that formation, *Bodies that Matter* takes up concerns first approached in *Gender Trouble*. *Bodies that Matter* is Butler's most explicitly 'deconstructive' text, working between the terms of sex and gender to reconsider the claims of constructivism and reassess the political import of them for feminism and queer theory. She argues against certain forms of constructivism that understand gender as the social counterpart of a naturalized sex and extends, it seems, the claims of construction to sex itself. At the same time though, she criticizes constructivism for its failure to address the constitutive effects of exclusion, and posits a limit to construction that is inarticulable within the domains of contemporary discourse, a 'constitutive outside' that reveals the limit of discourse itself. Butler's difficult task then is to bring this outside into the discourses that constitute and constrain the possibilities of bodily intelligibility. This means that *Bodies that Matter* is not simply an attempt to reconsider constructivist arguments on the formation of the body and sexed identity, but rather, an investigation of the terms of intelligibility that govern sexual identification and, ultimately, an attempt to broaden the field of what counts as intelligible.

In *Bodies that Matter*, Butler expands upon the theory of performativity initiated in *Gender Trouble* by introducing the concept of 'materialization'. She also furthers her understanding of exclusion through the notion of abjection as the repudiated other of the subject in conjunction with the Derridean notion of the 'constitutive outside'. Butler's guiding question in this is whether the 'question of the materiality of the body' can be linked to 'the performativity of gender'. She takes as her starting point the claim that 'the category of "sex" is from the start normative' and operates as a regulatory ideal that 'produces the bodies that it governs'.¹² Reformulated as a regulatory ideal, sex cannot be seen as a natural bodily attribute upon which gender is constructed, but is itself materialized in the body through a forcible process of reiteration, in which the norms of sex performatively constitute the sexed materiality of the body. Performativity is understood 'not as a singular or deliberate "act", but, rather, as the reiterative and citational practice by which discourse produces the effects that it names'.¹³ Hence, 'materialization' is understood as the process by

¹² Butler, *Bodies that Matter*, p.1.

¹³ Butler, *Bodies that Matter*, p.2.

which bodies attain 'the effect of boundary, fixity and surface we call matter',¹⁴ such that materialization performatively effects or engenders the materiality of the body. As a further specification or modality of performativity, materialization works through the enforced repetition of norms, which establishes one's 'being' in complicity with power and operates to define and delimit the very possibilities of being.¹⁵

Specifically, Butler argues that regulatory norms operate to install a heterosexual hegemony that structures the process of materialization and hence the possibilities for bodily existence. This process entails a simultaneous fabrication of possibilities of identification and enforced dis-identifications through the operation of the heterosexual imperative. As such, the 'exclusionary matrix' through which the subject emerges also requires the 'simultaneous production of a domain of abjected beings, those who are not yet "subjects" but who form the constitutive outside to the domain of the subject'.¹⁶ Butler links the notion of a constitutive outside with that of abjection, and asks what forms of exclusion operate within the materialization of bodies to produce a domain of bodies rendered unlivable within the matrix of normative heterosexuality. Butler argues that if materiality is understood as a productive effect of reiterated norms, then 'once "sex" itself is understood in its normativity, the materiality of the body will not be thinkable apart from the materialization of that regulatory norm. "Sex" is, thus, not simply what one has, or a static description of what one is: it will be one of the norms by which the "one" becomes viable at all, that which qualifies a body for life within the domain of cultural intelligibility.'¹⁷

¹⁴ Butler, *Bodies that Matter*, p.9.

¹⁵ Butler intends the notion of materialization to supplant 'constructivism', on the basis that the former concept allows for a better grasp of the reiterative temporality of the process by which bodies come to matter. Butler notes that the notion of temporality in operation is not that of a progressive succession of distinct moments or acts, but rather, one in which the 'moments' of construction become indistinguishable through the sedimented historicity of such moments and the constitutive effect of that which is foreclosed in construction. See her footnoted discussion of temporality, p.244-246. For a critical discussion of her understanding of temporality see Vicki Kirby, *Telling Flesh: The Substance of the Corporeal* (New York: Routledge, 1997), p.122.

¹⁶ Butler, *Bodies that Matter*, p.3.

¹⁷ Butler, *Bodies that Matter*, p.2.

The turn to the notion of 'viability' and cultural intelligibility made in this statement begins to indicate not only what is at stake in Butler's argument but also one of the crucial ambiguities in it. For coming to 'matter' carries the double resonance of attaining the status of matter and of entering into signification and intelligibility. For Butler, both these processes will be fundamentally underwritten by the normativity of 'constitutive constraint', such that the attainment of materiality and intelligibility will be synonymous with the acquisition of value or worth. Hence, the question of 'how bodies come to matter' addresses the necessarily normative process of simultaneously attaining both a material status and a discursive status. In exploiting these ambiguities, Butler brings the divergent implications of 'matter' together in the concept of 'materialization'. On the one hand, her argument on materialization appears to be an argument for the formative effect of power on the body *per se*, such that the corporeal fleshiness of the body is itself produced, that is, brought into the world by the operations of power. On the other hand though, Butler undercuts the strength of this claim by conceding the 'irrefutability' and accompanying necessity of such 'primary' experiences of eating and sleeping, living and dying. She argues though that 'their irrefutability in no way implies what it might mean to affirm them and through what discursive means', thus inscribing matter into the realm of intelligibility or indeed, epistemology. As she explains, any attempt to describe such experiences as extra-discursive will itself engage a formative discourse even in the positing of them as extra-discursive. In other words, there is no reference to an outside of discourse that is itself outside of discourse such that the reference refers without calling upon a prior, formative discourse. All references to the body will themselves be formative or constitutive, thereby limiting the possibilities of intelligible bodily life. As Butler states then, 'bodies only appear, only endure, only live within the productive constraints of certain highly gendered regulatory schemas'.¹⁸

It is not possible to address the critical issues that arise from these claims completely, however, several points must be made.¹⁹ Butler appears to make two sets of claims,

¹⁸ Butler, *Bodies that Matter*, p.xi.

¹⁹ The tension in these claims accounts for much of the confusion amongst Butler's critics over whether Butler can be read as offering an argument for or against constructivism. On the one hand, she is clearly critical of constructivist arguments while on the other she also endorses some of its central claims. However, Butler's position is more complicated than either of these positions, for

the first of which is epistemological, where in addressing the question of referentiality vis-à-vis materiality, Butler claims that matter cannot be rendered apart from regimes of signification, and thus reduces the problem of matter to that of knowledge or intelligibility. In opposition to this, Butler refuses to cede the prerogative to make ontological claims in three ways. First, she argues against the criticism of linguistic monism, second, she concedes a certain 'irreducibility' of matter and third, she claims that the nature of bodies is that their materiality is brought into being through discourse. The apparent tension between these sets of claims has led to a number of responses on the part of Butler's readers. First, it has been argued that in establishing a distinction between signification and matter, and ceding the irrefutability of matter, Butler maintains a notion of matter as the unintelligible, passive radical outside of discourse. Vicki Kirby for instance has suggested that Butler 'denies the possibility that nature scribbles or that flesh reads'²⁰ such that matter is unintelligible to itself, a passivity that which can only be remedied through language. Similarly, Timothy Kaufman-Osborne has identified a 'residual Cartesianism' in the claim 'that all things, if not discursively intelligible, are so much nonsense'.²¹ Another, somewhat stronger response suggests that Butler seeks to distance herself from all ontological claims on the basis that such claims necessarily require the provision of naturalized grounds. Further, this criticism holds that Butler 'believes that ontological claims are best subsumed in epistemological frameworks',²² thereby forestalling the project within feminist science to reconsider ontology.

Yet what these criticisms fail to consider fully is the element of normativity involved in materialization and the fact that the 'constitutive constraint' that produces a regulated domain of bodies that do or do not 'matter' is Butler's primary concern. In

Bodies that Matter is concerned precisely with the bind of constructivism on materiality and language, but in such a way that it resides in the paradox rather than resolving it. As she clarifies: 'Just as no prior materiality is accessible without the means of discourse, so no discourse can ever capture that prior materiality; to claim that the body is an elusive referent is not the same as claiming that it is only and always constructed. In some ways, it is precisely to claim that there is a limit to constructedness, a place, as it were, where construction necessarily meets its limit' (Butler in Irene Costera Meijer and Baukje Prins, 'How Bodies Come to Matter: An Interview with Judith Butler', *Signs*, 23:2(1999), pp.275-286 at 278.)

²⁰ Kirby, *Telling Flesh*, p.127.

²¹ Timothy Kaufman-Osborn, 'Fashionable Subjects: On Judith Butler and the Causal Idioms of Postmodern Feminist Theory', *Political Research Quarterly*, 50: 3(1997), pp.649-674 at 673.

²² Jacinta Kerin, 'The Matter at Hand: Butler, Ontology and the Natural Sciences', *Australian Feminist Studies*, 14: 29(1999), pp.91-104 at 98.

taking this as her focus, Butler effectively reinscribes the ontological claim as performative rather than descriptive – ‘the constative claim is always to some degree performative’²³ – and suggests that such claims in fact constitute the domain of ontological intelligibility. Thus, it is not that Butler shies away from ontological claims – quite the reverse – but that in making such claims, she recognizes that the attempt to explain or describe the nature of matter has a constitutive force.²⁴ However, in doing so, she also recognizes that this constitution will never be complete, first, because the ontological claim ‘gestures toward a referent it cannot capture’²⁵ and second, because any claim to ontology will also necessarily constitute its own outside, an outside that will continue to disrupt the claim to ontological closure. Thus, Butler is attempting to redraw the boundaries of bodily ontology by enacting a genealogical move of considering the ways in which the domain of ontological intelligibility is inscribed in and through discourse and power. Additionally, in attempting to bring into discourse that which has hitherto been excluded as its constitutive outside, she hopes to open further possibilities for making the claim to ontological intelligibility, for livability. As she states: ‘my work

²³ Butler, *Bodies that Matter*, p.11.

²⁴ For a further discussion of the status of ontological claims in Butler’s work see Stephen K. White, *Sustaining Affirmation: The Strengths of Weak Ontology in Political Theory* (Princeton: Princeton University Press, 2000). My main disagreement with White’s analysis pertains to the valuation of ‘proliferation’ within Butler’s analysis of constitutive identifications in *Bodies that Matter*, since White overemphasizes the importance of this notion in Butler’s argument and this generates several further problems in his analysis. While Butler is concerned with the transfiguration of the boundaries of identification, this cannot simply be seen as a matter of the proliferation of identities – indeed, she explicitly rejects this interpretation at times. Correlatively, nor is Butler’s understanding of subject-formation as tied to seeing identity as oppressive as White argues. Butler’s position is more complicated than this, in that she is well aware of the necessity of identifications, though she does hold open the possibility of an ‘open future’, in which identifications are aligned differently and the abuses and exclusions of identity are reworked. Nor does her argument align with the claim that ‘the changing of one’s culture, even when it is not a particularly free choice, is thus taken as a relatively costless shift.’ (White, *Sustaining Affirmations*, p.97). Her arguments on abjection and the constitutive outside work against that position. Nevertheless, White is right to say that the risks involved in the transfiguration of identifications are made clearer in *The Psychic Life of Power*.

²⁵ Butler in Meijer and Prins, ‘How Bodies Come to Matter’, p.279. This claim is consistent with Butler’s insistence that the performative is always open to failure, a claim she maintains as the basis of her arguments on reiteration. In discussing this, she states that ‘I also want to claim that the ontological claim can never fully capture its object... The “there is” gestures toward a referent it cannot capture, because the referent is not fully built up in language, is not the same as the linguistic effect. There is no access to it outside of the linguistic effect, but the linguistic effect is not the same as the referent that it fails to capture’ (Butler in Meijer and Prins, ‘How Bodies Come to Matter’, p.279). It is this concession of a referent that cannot be captured by language that primarily concerns the first two criticisms and I will return to this later.

has always been undertaken with the aim to expand and enhance a field of possibilities for bodily life'.²⁶

In the remainder of this section, then, I focus on the critical potential of Butler's re-inscription of claims to ontology in order to temper the force of the charges outlined above. Clearly, to do this Butler's use of the notion of 'the body' requires further explication. As Kirby points out, Butler's interest in 'the body' does not extend to its fleshy substance, but instead, remains at the surface of bodies. Kirby suggests that Butler's analysis does not approach the 'very meat of carnality that is born and buried, the stuff of decay that seems indifferent to semiosis... the commonsense understanding of bodily substance as the sheer insistence and weight of the body's interiority'.²⁷ Kirby takes this absence in Butler's work as indicative of the exclusions necessarily enacted by it, an exclusion that renders the substance of the body unintelligible to itself and hence subordinate to and dependent on language. However, in taxing Butler for not addressing the 'substance' of the corporeal, Kirby backs away from the critical point in Butler's work that such a 'substance' cannot be elucidated without partaking in discourse and this discourse will be cut through with regulatory norms. Moreover, this critique underestimates the critical force of the fact that Butler's target of discussion is not 'flesh and blood' bodies *per se*, but rather the very means by which such bodies might be understood, where this 'understanding' is itself formative of bodily contours and the possibilities for living. In explicating the operation of a constitutive intelligibility, Butler develops the notion of 'morphological imaginary' to bring out the ways in which 'normative heterosexuality shapes a bodily contour that vacillates between materiality and the imaginary, indeed, that is that very vacillation'.²⁸ My contention then is that Butler's concept of the 'morphological imaginary', which describes the process by which 'the body' is brought into discourse and power, allows an opening to considering the relation

²⁶ Butler in Meijer and Prins, 'How Bodies Come to Matter', p.277.

²⁷ Kirby, *Telling Flesh*, p.125-126.

²⁸ Butler, *Bodies that Matter*, p.17. This conception of the morphological imaginary is in part analogous to the conception of the soul suggested by Foucault in the introduction to *Discipline and Punish* but also bears some resemblance to the analysis of racial identity developed by Franz Fanon, *Black Skin, White Masks*, tr. C.L. Markmann (New York: Grove Press, 1967).

between politics, bodies and life that is excluded by a more sustained focus on 'the body *per se*'.²⁹

Butler begins developing the notion of a morphological imaginary through a discussion of Aristotle and Foucault with the aim of undoing the distinctions between form and matter, and correlatively, between the constructivist thesis and the concession of an irreducibility of bodily materiality. She asks whether the presumption of a necessary opposition between materiality and the constructed body prevents articulation of the matrix of power that orchestrates the scenography or topography of construction and thus questions the presumption of the irreducibility of materiality. Against this presumption, she claims that materiality only appears within a highly gendered matrix. Hence, she considers Foucault's reworking of the Aristotelian distinction between the body and the soul, such that the soul becomes a 'normative and normalizing ideal' under which the body is effectively materialized. To the extent that the body appears under the condition of its investiture in relations of power, "'materiality" designates a certain effect of power or, rather, *is* power in its formative or constituting effect'.³⁰

²⁹ The relation of the imaginary or signification and materiality has of course been a central concern within contemporary feminist theory. For major contributions to this see in particular, Elizabeth Grosz, *Volatile Bodies: Toward a Corporeal Feminism* (Sydney: Allen and Unwin, 1994); Elizabeth Grosz, *Space, Time and Perversion: The Politics of Bodies* (Sydney: Allen and Unwin, 1995); Moira Gatens, *Imaginary Bodies: Ethics, Power and Corporeality* (London: Routledge, 1996); Gail Weiss, *Body Images: Embodiment as Intercorporeality* (New York: Routledge, 1999); for feminist theoretical interventions that begin from a position more substantially inflected with understanding of biology and psychology, see Anne Fausto-Sterling, *Sexing the Body: Gender Politics and the Construction of Sexuality* (New York: Basic Books, 2000) and Elizabeth A. Wilson, *Neural Geographies: Feminism and the Microstructure of Cognition* (Routledge New York, 1998). This project is also closely aligned with debates on essentialism and the distinction between nature and culture, which predominated in feminist theory during the early 1990s. For major contributions to this debate see, among others, Drucilla Cornell, *Beyond Accommodation: Ethical Feminism, Deconstruction and the Law* (New York: Routledge, 1991); Diana Fuss, *Essentially Speaking: Feminism, Nature and Difference* (New York: Routledge, 1989); Denise Riley, "Am I That Name?": *Feminism and the Category of 'Women' in History* (London: MacMillan: 1998); Luce Irigaray, *Speculum of the Other Woman*, tr. Gillian C. Gill (Ithaca: Cornell University Press, 1985); Margaret Whitford, *Luce Irigaray: Philosophy in the Feminine* (London: Routledge, 1991) For Deleuzian renditions of the relation between signification and materiality vis-à-vis femininity, see Rosi Braidotti, *Nomadic Subjects: Embodiment and Sexual Difference in Contemporary Feminist Theory* (New York: Columbia University Press, 1994) and Camilla Griggers, *Becoming-Woman* (Minneapolis: University of Minnesota Press, 1997). Also see Karen Barad, 'Getting Real: Technoscientific Practices and the Materialization of Reality', *differences* 10:2(1998), pp.86-128 for an interesting extension of the concept of materialization from the human to a broader consideration of the 'materiality of phenomena' (p.108).

³⁰ Butler, *Bodies that Matter*, p.34.

But, she warns, it is also necessary to ask whether there are ‘modalities of materialization’; she asks: ‘to what extent is materialization governed by principles of intelligibility that require and institute a domain of radical unintelligibility that resists materialization altogether or that remains radically dematerialized?’³¹ In particular, Butler is concerned with the materialization of sex, a position that explicitly undercuts the presumption of sexual difference as the irreducible ground of feminist politics. Of Luce Irigaray’s ‘mimetic’ reading of Plato’s *Timaeus*, she suggests that what is required is not a return to the ‘matter’ of sexual difference, but, rather, a ‘return to matter as a sign, which in its redoublings and contradictions enacts an inchoate drama of sexual difference’.³² Thus, in her own ‘rude and provocative’ reading of Plato, Butler argues that the body emerges as a site of ambivalence, where sexual difference ‘operates in the very formulation of matter’, not only in the formulation of the ‘masculine’ and the ‘feminine’, but also in the formulation of that which is ‘outside these oppositional positions as their supporting conditions’.³³

There are thus two arms to the argument that follows in *Bodies that Matter*. First, Butler seeks to establish that the materiality of sex is forcibly established through regulatory ideals, and second, she wants to understand matter as a sign. To address the first of these, Butler turns to psychoanalysis, particularly Freud and Lacan, to question the constitutive effect of prohibition for the relation of the psyche and body. Her question is whether prohibition determines ‘a psychic experience of the body which is radically separable from something that one might want to call the body itself’ or whether ‘the productive power of prohibition in morphogenesis render[s] the very distinction between *morphe* and *psyche* unintelligible’.³⁴ Deploying Freud’s concept of the ‘bodily ego’, Butler argues for the ‘indissolubility of a body part and the phantasmatic partitioning that brings it into psychic experience’.³⁵ There is no need to follow Butler’s rendition of Freud in detail here; suffice to say that Freud’s speculations on narcissism, hypochondria and the libidinal investiture in a body part lead to the conclusion that prohibitions ‘in some sense, constitute

³¹ Butler, *Bodies that Matter*, p.35.

³² Butler, *Bodies that Matter*, p.49.

³³ Butler, *Bodies that Matter*, p.52.

³⁴ Butler, *Bodies that Matter*, p.55.

³⁵ Butler, *Bodies that Matter*, p.59.

projected morphologies'.³⁶ Without such 'ideas' of the body, there could be no ego, and hence, 'to the extent that such supporting "ideas" are regulated by prohibition and pain, they can be understood as the forcible and material effects of regulatory power'.³⁷ Hence, the psyche cannot be understood as an epistemic grid through which the body, figured as an 'ontological in-itself', is known. Nor can the morphological imaginary be understood as a 'body image' that stands in a (distorting) mimetic relation to the real body. Rather, Butler claims that 'psychic projection confers boundaries and, hence, unity on the body, so that the very contours of the body are sites that vacillate between the psychic and the material'.³⁸

As provocative as it is, the claim that the contours of the body are sites that vacillate between the psychic and the material warrants further consideration. For what, precisely, is Butler aiming at in such a claim? Most obviously, Butler is attempting to recast the relation between the psyche and the body to argue that such a distinction is unsustainable; the body emerges then, not as the passive surface on which the psyche operates, but as a 'constitutive demand that mobilizes psychic action from the start'.³⁹ In this, Butler concurs with a broader feminist project to rethink the relation between body and psyche in order to bring out the constitutive tension between them.⁴⁰ Perhaps less clearly, but more importantly for this discussion, Butler's concern with the constitutive effects of psychic prohibitions on the body through the shaping of the morphological imaginary yields an insight into the position of the body within the political. For the morphological imaginary that emerges from materialization makes it clear that the body is political from its inception. As the process of the compelled repetition of regulatory norms, materialization brings into focus the political dimension of the formation of the body. The bodily contour yielded in materialization comes into being through the constitutive effects of prohibition and regulatory power; and further, as a material effect of regulatory power, the morphological imaginary vacillates between the psychic and the anatomical.

³⁶ Butler, *Bodies that Matter*, p.64.

³⁷ Butler, *Bodies that Matter*, p.64.

³⁸ Butler, *Bodies that Matter*, p.66.

³⁹ Butler, *Bodies that Matter*, p.67.

⁴⁰ See in particular Weiss, *Body Images*, Grosz, *Volatile Bodies*, Gatens, *Imaginary Bodies*.

For Butler, this vacillation is also precisely the space of political operations. If we consider that politics occurs in the place of signification – Butler wants to ‘locate the political in the very signifying practices that establish, regulate and deregulate identity’⁴¹ – and that the anatomical is only ‘given’ in signification, specifically through the emergence or constitution of a morphological imaginary, then the morphological imaginary appears as the site of the political. In this sense, then, it is not bodies *per se* that she is concerned with, but rather, the appearance of bodies as sites of political operations and particularly, of operations of exclusion. This is not simply a matter of politics pertaining to the body, as the relation has been thought of in for instance, feminist debates on abortion and the notion that ‘the personal is political’. Rather, in their appearance or materialization bodies are constituted as sites of political operations through the effects of regulatory power. As such, the process of materialization, a process in which regulatory norms stabilize over time to produce the effect of ‘boundary, fixity and surface we call matter’⁴² brings the body into the realm of the symbolic, recast as the ‘the temporalized regulation of signification’,⁴³ and the realm of the political.

Importantly, throughout her argument, Butler tends to treat the terms of the body and the subject as interchangeable,⁴⁴ such that becoming ‘a body’ through the process of materialization is equivalent to becoming a subject. In other words, the morphological imaginary is itself a form of subjection, and hence, it is through

⁴¹ Butler, *Gender Trouble*, p.147.

⁴² Butler, *Bodies that Matter*, p.9.

⁴³ Butler, *Bodies that Matter*, p.22.

⁴⁴ For example, this interchangeability is clear in the following two formulations of her central question. First:

How does that materialization of the norm in bodily formation produce a domain of abjected bodies, a field of deformation, which in failing to qualify as the fully human, fortifies those regulatory norms? What challenge does that excluded and abjected realm produce to a symbolic hegemony that might force a radical rearticulation of what qualifies as ways of living that count as “life”, lives worth protecting, lives worth saving, lives worth grieving? (Butler, *Bodies that Matter*, p.16.)

Second:

[The] exclusionary matrix by which subjects are formed thus requires the simultaneous production of a domain of abject beings, those who are not yet “subjects” but who form the constitutive outside to the domain of the subject. The abject designates here precisely those “unlivable” and “uninhabitable” zones of social life which are nevertheless densely populated by those who do not enjoy the status of the subject, but whose living under the sign of the “unlivable” is required to circumscribe the domain of the subject. (Butler, *Bodies that Matter*, p.3.)

subjectivation, here rendered as the process of materialization, that the anatomical or biological body enters into political operations. Furthermore, her understanding of 'the subject' as 'life in language', suggests that the morphological imaginary can also be understood as life in language. But what then does Butler mean by 'life'? The slippage in Butler's terms does not help clarify this question, but to borrow a Wittgensteinian distinction, Butler is referring to a linguistically conditioned form of life, rather than life *per se*. Further, for her, such forms of life are necessarily underwritten by normative valuation in order to 'count as life'.

Hence, counting as life means the attainment of live-ability within the realm of the political, that is, within signification or, more tellingly, within the regulatory norms of morphological intelligibility. For a form of life to count as life, or to be clearer, to count as live-able, a certain adherence and repetition of regulatory norms is required, and it is because of this necessary adherence to regulatory norms that the judgment on whether a form of life counts as life is possible. Such an understanding connects 'life' intimately with 'the subject', and through this, to a normatively materialized body, that is, the 'morphological imaginary'. But to go back to an earlier point, because the morphological imaginary is neither distinct from nor coterminous with the anatomical or biological body but is rather the means of approaching it, it becomes clear that the politically conditioned form of life is neither distinct from nor coterminous with biological life. Instead, it would seem that the form of life gives access to life *per se*, or biological life, suggesting that counting as life within the political is crucial for survival since the judgment on political live-ability will be played out on the ground of biological life – of living and dying.

The importance of this reflection on the terms of life and its relation to the morphological imaginary in Butler's work is twofold: first, it brings out the way in which Butler's work gives itself to the concerns of an analysis of biopolitics, although it is not explicitly engaged in the terms of biopolitics. Butler's concern with the regulatory constitution of the morphological imaginary moves into the question of the political valuation of forms of life and brings to the fore the political engagement of life *per se*. As I have argued, the concept of the morphological imaginary broaches the relation between the 'natural' or ontic body and discursive formations in a non-reductionist way. Second, the question of the relation between forms of life, life and

the normative inauguration of the morphological imaginary as a form of subjection is crucial for Butler's discussion of political exclusion and the agency that it spawns. Her understanding of political exclusion engages the question of living and dying in a provocative, yet problematic way. I will take up a discussion of this in the following section, but first a further discussion of the second arm of Butler's argument on the relation of signification and materiality is required.

The question of the relation of the body to signification is a vexed one within Butler's work, not least because she ties it very closely to the question of agency such that the formulation of the relation between bodies and signification is made to carry significant theoretico-political weight. In addition to figuring the body as a sign, Butler also makes signification the site of agency in that the vulnerability of terms to performative resignification provides the possibility for the reconfiguration or re-imagination of the terms of bodily intelligibility. Importantly, Butler makes this claim against a theoretical tendency to construe the body as the radical outside of signification, such that it becomes the irreducible site from which agency is spawned. This claim clearly introduces several important complexities into her argument. Butler is careful to allow a distance or separation between the body and signification, both to combat the charge of linguistic reductionism and so signification can be construed as the point of emergence of agency against the construal of the body as that point. Hence, she allows a certain referential excess to the body, such that the materiality of the body is a 'demand in and for language', but not language itself. At times though, this distance appears to be closed down by her initial claim that 'mattering' describes both the body's accession to language and its normative constitution within language, where the materiality of the body only appears through that accession and constitution. The questions that arise then are whether the terms of 'mattering' and materiality do the work that Butler wants them to do, and whether she is able maintain the distinction between materiality and signification that she requires. To respond to these questions, it is worth considering the status of the sign in Butler's work, which can be done most effectively through a comparison of her constructivist thesis on the body with that of Foucault.

I argued in the first chapter that Foucault portrays the body as necessarily and immediately invested in relations of power, such that the forces of the body are

brought to submission through the formation of bodily norms as a consequence of the operations of normalization. These are complicated claims, in that Foucault does not suggest explicitly that the body is itself constructed in its materiality by power, but nevertheless holds that there is no body outside of power relations. This ambiguity is reproduced in Butler's arguments, where she simultaneously argues for the primacy of signification vis-à-vis bodily intelligibility and suggests an anatomical body distinct from signification.⁴⁵ However, Butler extends Foucault's claims considerably in claiming that the materiality of the body itself only emerges through the operations of regulatory regimes. In doing so, she wants to oppose the tendency within Foucault's thought to construe the body as permanently resistant, which itself takes Butler some way from other feminists who have been concerned to rewrite the materiality of the body as active against a perceived passivity in Foucault's account.⁴⁶

Hence, in considering the relation between bodies and signification, Butler aims to avoid the need to posit the body as the material outside of structuration and as the site of resistance against it. But what does Butler mean by her insistence that 'to return to matter requires that we return to matter as a sign'? This question is important because the central claims that Butler makes do not immediately support the apparent strength of her conclusion. Butler's reconsideration of language and the

⁴⁵ See Clare Colebrook, 'Ethics, Positivity and Gender: Foucault, Aristotle and the Care of the Self', *Philosophy Today* 42:1(1998), pp.40-52 at n.2.

⁴⁶ Notably both Foucault and Butler draw upon Nietzsche in theorizing the body as either invested in or constituted by operations of power; however, they take different elements from his work to make their claims. While Foucault emphasizes the ontology of force relations, Butler emphasizes the notion of the 'sign-chain' to explicate the operation and vulnerability of power. This has significant implications for their respective portrayals of the relation between power and the body and I draw these out throughout these chapters on Butler's work. Interestingly, José Gil suggests that the opposition between understanding forces or signs as the operative means of power is one of the principle antinomies present in contemporary discourses of power. He claims that while the latter position holds that power operates through signification, since forces could only gain directionality through signs and thus would be subordinate to them, the former position claims that since only forces can operate on other forces, signs must be dissimulated or concealed forces and hence, only force can create power. The distinction Gil makes is a useful heuristic for clarifying the point that I want to make there. Certainly, Butler and Foucault cannot be taken as perfectly upholding this opposition, since the emphasis on performativity in Butler's work enables an understanding of signs as forceful and Foucault's understanding of discourse establishes a domain in which the force relations that engender relations of power operate through signification. Nevertheless, it is possible to see that they are approaching the question of power from antinomial positions, insofar as each privileges signs or forces respectively. Thus, while Foucault located the political purchase of his work in the delineation of force relations, Butler wants to 'locate the political in the very signifying practices that establish, regulate and deregulate identity' (Butler, *Gender Trouble*, p.147), thus giving political priority to the sign. Consequently, while Foucault sought to make a distinction between the discursive and the non-discursive, Butler questions the very possibility of such a distinction and conflates the operative logic of signification with that of power. See José Gil, *Metamorphoses of the Body*, tr. Stephen Meucke (Minneapolis: University of Minnesota Press, 1998), p.9-14.

body targets a representational understanding of language on the basis that such a position fails to consider the constitutive effects of signification; on the other hand, she strives to avoid the charge of linguistic reductionism frequently made against constructivism. Thus she claims that the body is the 'elusive referent' of language, 'a demand in and for language', the 'that which' that conditions signification, claims that clearly differ from the identification of signification and matter in the earlier statement.

Ultimately, Butler limns the relation of signification and matter as one of chiasmatic interdependence. Drawing on Maurice Merleau-Ponty's account of 'flesh of the world' and the figure of the chiasm,⁴⁷ Butler claims that there is no necessary opposition between signification and materiality, since the sign itself is 'always already material', thus establishing a degree of 'indiscernibility' and reversibility between them.⁴⁸ As Butler argues,

the materiality of the signifier (a "materiality" that comprises both signs and their significatory efficacy) implies that there can be no reference to a pure materiality except via materiality... every effort to refer to materiality takes place through a signifying process which, in its phenomenality, is always already material.⁴⁹

Thus, materiality and signification maintain an interlocking interdependence, wherein language and corporeality are 'never fully identical, never fully different'.⁵⁰ While the anatomical body is only accessible or 'given' through signification, it also exceeds that signification, providing 'the elusive referent in relation to which the variability of signification performs'.⁵¹ The morphological imaginary emerges in this crossing over of signification and materiality, produced in the vacillations of each; indeed one might say that it emerges *as* the crossing over and vacillation of the sign and the elusive referent of the corporeal.

⁴⁷ Maurice Merleau-Ponty, *The Visible and the Invisible*, tr. Alfonso Lingis (Evanston: Northwestern University Press, 1968) esp. chp. 4, 'The Intertwining – The Chiasm', pp.130-155.

⁴⁸ See note 3, this chapter on indiscernibility.

⁴⁹ Butler, *Bodies that Matter*, p.68.

⁵⁰ Butler, *Bodies that Matter*, p.69.

⁵¹ Butler, *Bodies that Matter*, p.91.

Yet, while the morphological imaginary is produced through the chiasmatic interdependence of materiality and signification, such that the morphological imaginary is itself both signficatory and material, there is nevertheless a body remaindered in Butler's notion of the 'elusive referent'. This appears to be the body that she refers to as anatomical, and we might also take it to be the irreducible 'primary experiences' that are 'affirmed' in discursive arrangements. This construal of the relation between the body and signification re-appears in Butler's more recent work, primarily in *Excitable Speech*, where the political import of this relation is made particularly clear through the discussion of language, violence and agency. In the introduction to this text, Butler discusses a number of accounts of the relation between the speech act and the body, notably that suggested in a parable related by Toni Morrison,⁵² in Shoshana Felman's discussion of Don Juan⁵³ and Elaine Scarry's impressive work on the irruptions of bodily pain vis-à-vis language.⁵⁴ From this discussion, Butler concludes that:

There is a strong sense in which the body is alternately sustained and threatened through modes of address... Language sustains the body not by bringing it into being or feeding it in a literal way; rather, it is by being interpellated within the terms of language that a certain social existence of the body first becomes possible... one must imagine an impossible scene, that of a body that has not yet been given social definition, a body that is, strictly speaking, not accessible to us, that nevertheless becomes accessible on the occasion of an address, a call, an interpellation that does not "discover" this body, but constitutes it fundamentally... [therefore] if language can sustain the body, it can also threaten its existence.⁵⁵

Thus, the strictly inaccessible body that we are asked to imagine becomes accessible through the interpellative constitution of a social body. It is this secondary, derivative social body that is sustained and threatened within language. But what happens to the

⁵² In this parable, offered in Morrison's 1993 Nobel Lecture in Literature, a blind woman is asked by young children whether the bird they hold in their hands is living or dead. She responds 'I don't know... but what I do know is that it is in your hands. It is in your hands'. Morrison cited in Judith Butler, *Excitable Speech: A Politics of the Performative* (New York: Routledge, 1997), p.6. I discuss the status of violence and signification within these claims in the following chapter.

⁵³ Shoshana Felman, *The Literary Speech Act: Don Juan with J.L. Austin or Seduction in Two Languages*, tr. Catherine Porter (Ithaca: Cornell University Press, 1983).

⁵⁴ Elaine Scarry, *The Body in Pain: The Making and Unmaking of the World* (Oxford: Oxford University Press, 1985).

⁵⁵ Butler, *Excitable Speech*, p.5. I return to a further discussion of these claims in the following chapter.

body that is strictly inaccessible and what is its relation to the social body that derives from it? It seems fair to suggest that the material, anatomical body provides the ground upon which the social body is constituted, insofar as that ground carries the body produced through interpellation. The corporeality of the body is not itself constituted in the address after all, but must exist *sui generis* in order for the social body to come into existence in the interlocking of corporeality and the signifying practices of regulatory norms. Hence, Butler's use of the term the 'body' in this passage indicates two rather different statuses, one of which we can understand as the morphological imaginary or 'social' body while the other seems to be something like an anatomical or biological body, to the extent that it can be designated at all (it is, after all, an *elusive* referent).

The status of Butler's concession of the corporeality of the body as an elusive referent of signification is undoubtedly ambiguous within the schema of materialization. This ambiguity provides the starting point for the critical arguments that I mentioned earlier, which I have argued can be tempered through a consideration of the necessary normativity of materialization. But while the emphasis on a necessary normativity counter-acts charges of a 'residual Cartesianism' in Butler's work, it also brings to light the tendency toward linguistic reductionism within the notion of materialization. While at times Butler concedes a corporeal excess to signification, at other times, she reduces the materiality of the body to that of signification, such that the former is identified with the latter. The crux of Butler's attempt to stave off the charge of linguistic reductionism is her claim that there is an unbroachable difference between the referent and the signified. As she states:

Apart from and yet related to the materiality of the signifier is the materiality of the signified as well as the referent approached through the signified, but which remains irreducible to the signified. This radical difference between referent and signified is the site where the materiality of language and that of the world which it seeks to signify are perpetually negotiated.⁵⁶

Thus, in order to steer away from the reduction of the materiality of the world and more specifically of the body to that of language and particularly the signifier, Butler posits a referential relation between signification and corporeality, while maintaining

⁵⁶ Butler, *Bodies that Matter*, p.69.

that that referentiality will never be complete or entirely accurate since the signifier never completely 'captures' that to which it refers.

However, the critical force of Butler's argument rests on a *performative* theory of language, wherein the statement enacts or constitutes what it says. To borrow an example from J.L. Austin's theorization of performative statements, the statement 'I promise' does not refer to the promising agent's inner state nor to their capacity to promise, – although at least the latter of these operates as an important condition of felicity – but enacts the promise in its enunciation.⁵⁷ In this schema, it becomes fundamentally unclear what the signifier-signified-referent relation is, such that the apparent irreducibility of the signifier, signified and referent is brought into question. Importantly, for Butler, the performative capacity of language is not limited to first-person singular present indicative verb statements as it was for Austin,⁵⁸ but is instead characteristic of linguistic practice and signification *per se*. The question that arises then concerns the compatibility of a Saussurian account of the sign and referent with an Austinian account of performative speech acts.⁵⁹ This is surely a question and not one I can take up here; but, in the shadow of this question, I do want to suggest that Butler's attempt to maintain a radical difference between the signifier and the referent is itself brought into question by her central thesis on the performative function of discourse. I will take up this point further in the next chapter as it clearly requires further explication; for now though, let me approach the problem of a potential reduction between corporeality and signification from a different angle.

⁵⁷ See J.L. Austin, *How to Do Things with Words*, J.O. Urmson and M. Sbisà, eds. (Cambridge Ma.: Harvard University Press: 1962), esp. pp.10-11; J. L. Austin, 'Performative Utterances' in *Philosophical Papers*, J. O. Urmson and G.J. Warnock, eds. 3rd Edition (Oxford: Oxford University Press, 1979), pp.233-252.

⁵⁸ Austin 'Performative Utterances', p.242. At times, Austin does extend performative speech acts beyond this, but these locutions might be taken as the ideal types of illocutionary performatives. I develop a fuller discussion of this in the next chapter.

⁵⁹ The tension between these different accounts of linguistic practice in part informs Jacques Derrida's reading of Austin in 'Signature, Event, Context' in *Limited Inc* (Evanston: Northwestern University Press, 1988) and more broadly, the ensuing debate between Derrida and John Searle. Importantly, these tensions are not so much resolved in the Derridean notion of citationality, but are effectively *brought into play*, in an important methodological derivation from Nietzsche.

What is at stake in the charge of linguistic reductionism in Butler's argument is not whether the body is constituted through signification precisely but the nature of the materiality of the corporeal vis-à-vis the materiality of the signifier. Butler insists on the materiality of the signified to hold off the potential charge of idealism that often accompanies that of linguistic reductionism. But to insist on the materiality of language is not yet to say that the materiality of the body is distinguishable from that of language, which is necessary to avoid a conflation of the corporeal and the signifiatory. In taking up this point, Butler implies that the notion of 'modalities of materialization' identified by Louis Althusser with regard to the operations of ideology provides a way of disarticulating the matter of the sign and the matter of the body. As such, it provides a useful starting point for an account of 'how bodies materialize, how they come to assume the *morphe*, the shape by which their material discreteness is marked'.⁶⁰

However, Butler's brief references to Althusser do not resolve the difficulty raised here. In 'Ideology and Ideological State Apparatuses' Althusser comments that

an ideology always exists in an apparatus, and its practice or practices. This existence is material. Of course the material existence of the ideology in an apparatus and its practices does not have the same modality as the material existence of a paving-stone or rifle... I shall say that "matter is discussed in many senses", or rather, that it exists in different modalities, all rooted in the last instance in "physical" matter.⁶¹

In order to establish the material basis of ideology against an ideal or 'spiritual' portrayal Althusser posits the existence of different modalities of materiality, but does not resolve the question of the relation between such modalities. Instead, this question is subjected to a double deferral in both the reference to 'the final instance' and the quote marks on the 'physical', which problematize or put into question the very nature of the physical. But even if one ignores the movement of double deferral then problems nevertheless appear to arise, for if it is simply the case that different modalities of materialization are rooted in the physical in the last instance, then it

⁶⁰ Butler, *Bodies that Matter*, p.69; also see pp.35, 252 n.13.

⁶¹ Louis Althusser, 'Ideology and Ideological State Apparatuses' in *Lenin and Philosophy and Other Essays* (New York: Monthly Review Press, 1971), pp.127-186 at 166; also see Butler, *Bodies that Matter*, p.252, n.13.

would seem that Butler's attempt to delineate a radical difference between the materiality of signification and of the body is stymied rather than secured through reference to Althusser.⁶²

The reference to Althusser helps secure the materiality of signification against the charge of linguistic idealism, but in doing so, it also brings to the fore the moment in which the materiality of signification and the body *coincide* 'in the last instance'. As we know, the acquisition of bodily materiality occurs through the compelled identifications and repetitions of normative regulation understood as the process of materialization. Within Butler's account, coming to matter describes the process by which the bodily subject comes into being and attains a certain intelligibility within hegemonic regulatory norms or ideals. It describes the process of attaining an existence necessarily conditioned by intelligibility: both coming to be and coming to be intelligible at one and the same time. In a sense then, the conflation of corporeality and signification is necessary or unavoidable within materialization, an intrinsic aspect of materialization that is suggested in Butler's initial proposal that what is required is to return *to matter as a sign*. This means that the identification of signification and materiality cannot simply be written off as a moment of rhetorical excess, for it indicates important tensions within Butler's account of the constitution of bodies that matter, of life worth living. Furthermore, it has significant implications for Butler's conception of agency and exclusion. In the following section, I draw out some of the theoretical implications that such a reduction of signification and materiality has for Butler's account of exclusion, rendered as abjection and social death.

3.3 *Risking Life: Abjection and Social Death*

Throughout her work, Butler develops a theorization of political exclusion that focuses on the normative constitution of subjects, through, for instance, regimes of compulsory heterosexuality and 'racialization'. Such regimes, she argues, necessarily

⁶² This is not the place to offer an analysis of the status of the phrase 'in the last instance' within Althusser's work. What I am suggesting here though is that whether the 'last instance' is read as an infinitely deferred moment that never actually arrives, or whether it is read as an actual moment of congruence that could in fact be reached, problems will arise for Butler.

produce a 'constitutive outside' or a domain of bodily and subjective life that is rendered unintelligible by the regulatory ideals of subjectivation, but which is simultaneously necessary for the constitution of the subject. She variously describes the risk of unintelligibility as the risk of 'abjection' or 'social death'. The first of these terms is used in *Bodies that Matter*, where Butler links the Derridean notion of the constitutive outside with the more psychoanalytic concept of abjection to consider those bodies or subjects whose claims to life go unfulfilled.⁶³ This has the effect of allowing an understanding of abjection in its political and systemic operations, not simply as a psychic phenomenon of visceral repulsion. Further, in analyzing the means by which the domain of exclusion is produced, Butler also aims to develop an account of the agency of the 'outside', wherein the beings excluded by hegemonic regimes of signification disrupt those regimes through a differential repetition of their terms.

However, I argue in this section that her attempt to base an account of agency on abjection founders on a vacillation between the efficacy of subversive repetition and its radical instability in the face of hegemonic discourse. Butler's understanding of agency as reiteration is limited by a vacillation between vulnerability and efficacy in resistance, where she simultaneously affirms the necessity and efficacy of linguistic agency and undermines it by positing failure as the constitutive and defining

⁶³ This differentiates Butler's understanding of abjection from that proposed by Julia Kristeva in *Powers of Horror: An Essay on Abjection*, tr. Leon S. Roudiez (New York: Columbia University Press, 1982). Kristeva understands abjection primarily as a psychic and bodily phenomenon without linking the repulsion of the object to the political conditions in which subjects are constituted within normative discourses. Butler's conception of abjection has the advantage of making this link, thus making abjection a more politically relevant notion. However, this is not so much the case with Kristeva's later formulations of abjection, such as in *Strangers to Ourselves*, tr. Leon S. Roudiez (New York: Harvester Wheatsheaf, 1991). Also see Iris Young's political inflection of the theory of abjection in Iris Marion Young, *Justice and the Politics of Difference* (Princeton: Princeton University Press, 1990), esp. Ch.5. Similar to but extending on Young's claims, Butler's account of abjection aims to account for the way in which certain subjects, and particularly homosexual subjects, are constituted as object. This entails a considerable movement from Kristeva's account of the relation of abjection to sexual difference, in which femininity is associated with abjection through the maternal body. For additional criticisms of the conception of abjection and particularly the foreclosure of homosexuality in Kristeva's account, see Judith Butler, 'The Body Politics of Julia Kristeva' in Kelly Oliver, ed. *Ethics, Politics and Difference in Julia Kristeva's Writings* (New York: Routledge, 1993); Elizabeth Grosz, 'The body of signification' in John Fletcher and Andrew Benjamin, eds. *Abjection, Melancholia and Love: The work of Julia Kristeva* (London: Routledge, 1990), pp.80-104; for a defense of Kristeva on this point see Kelly Oliver, *Reading Kristeva: Unravelling the Double-bind* (Bloomington: Indiana University Press, 1993), esp. pp.140-142. Either way, the Kristevan notion of abjection has been used to understand the exclusion of homosexuality, though it is unhelpful in developing an analysis of the state's relation to hate violence. On the question of violence, Kristeva's account of a sacrificial economy of violence has been used to understand violence against women in Martha J. Reineke, *Sacrificed Lives: Kristeva on Women and Violence* (Bloomington: Indiana University Press, 1997).

characteristic of subversive agency. In later work the notion of abjection is replaced by that of 'social death', which Butler uses to delineate a space or mode of existence 'between life and death'. I suggest that the account of subjection and the apparent intractability of regulatory norms offered in *The Psychic Life of Power* is in part an attempt to rethink the problems that emerge in the use of the notions of the constitutive outside and abjection. However, I argue that Butler ultimately fails to overcome these problems in *Psychic Life*, where resistance is again figured as a form of social suicide, such that a rhetorical link is established between death and freedom.

In developing an understanding of materialization as a form of subjectivation in *Bodies that Matter*, Butler argues that subjects produced by power attain their tenuous coherence through the exclusion of those bodies that fail to fully materialize, subjects who fail to attain the status of subjecthood. She argues that bodies that fail to fully materialize are the constitutive outside of the subject, simultaneously excluded from the domain of the subject and providing its necessary condition. The term Butler uses in *Bodies that Matter* to describe the condition in which bodies fail to fully materialize as subjects is 'abjection'. Butler notes that abjection 'literally means to cast off, away, or out, and hence presupposes and produces a domain of agency from which it is differentiated'.⁶⁴ She proposes to rethink abjection not simply as a 'degraded or cast out status within the terms of sociality', but rather, in resonance with the psychoanalytic notion of foreclosure, as a 'zone of uninhabitability which a subject fantasizes as threatening its own integrity with the prospect of a psychotic dissolution'.⁶⁵

In order to secure this understanding of abjection, Butler draws on the notion of the 'constitutive outside' given in Jacques Derrida's work. She argues that recognition of the constitutive outside of the subject reveals the limit of constructivism; she claims that this project cannot account for the necessary exclusions enacted in the process of subjectivation, and hence, the 'constitutive force of exclusion, erasure, violent foreclosure, abjection and its disruptive return within the very terms of discursive

⁶⁴ Butler, *Bodies that Matter*, p.243, n.2.

⁶⁵ Butler, *Bodies that Matter*, p.243, n.2.

legitimacy'.⁶⁶ Clearly, there is a double movement posited in Butler's critique that needs to be traced, for on the one hand the abject is cast out of the terms of sociality, but on the other, it returns within those terms. Further, in returning, the abject disrupts the coherence and integrity of discursivity and the subjects sustained within it, and ultimately, allows for a 'subversive' reconfiguration. As we will see, this third move is the means by which Butler attempts to secure an account of the agency of the abject.

First though, a closer look at the means of conjoining the concepts of abjection and constitutive exclusion is required. In countering a constructivism that cannot recognize the radical outside of constitutive discursivity,⁶⁷ Butler argues that the 'normalization of (hetero)sexuality' is instituted through a logic of repudiation that posits desiring otherwise as a threat to the integrity of the heterosexual subject. In rewriting the Oedipal scenario through which Freudian and post-Freudian psychoanalytic theory understands the assumption of sexual identification, Butler claims that the threat of castration that motivates sexual identification rests on the unintelligibility of abjected homosexuality. Within the Lacanian schema in particular, the 'terror' over occupying the site of abjected homosexuality compels the assumption of a sexed position within language, 'a sexed position that is sexed by

⁶⁶ Butler, *Bodies that Matter*, p.8.

⁶⁷ Importantly though, Butler wants to see the constitutive outside as historically produced, not as an ahistorical feature of the symbolic, as she claims it is understood within Lacanian psychoanalysis. This caveat is developed through her discussion of Slavoj Žižek's use of the Lacanian notion of the Real. As Ewa Plonowska Ziarek points out,

the "constitutive outside" is an inevitable effect of any identity claims, including the claims of queer identities, but the forms of these exclusions are neither invariant nor ahistorical. Undercutting the political neutrality and ahistorical permanence of "the constitutive outside", Butler's emphasis on the historicity of exclusion removes the threat of psychosis associated with it and opens the borders of intelligibility to political contestation. (Ewa Plonowska Ziarek, 'From Euthanasia to the Other of Reason: Performativity and the Deconstruction of Sexual Difference', in Ellen K. Feder, Mary C. Rawlinson and Emily Zakin, eds. *Derrida and Feminism: Recasting the Question of Woman* (New York: Routledge, 1997), pp.115-140 at 130).

However, several questions arising from this account of the constitutive outside remain undiscussed by Ziarek. First, it is unclear that Butler's critique of Žižek holds, given that he has counter-argued that Butler consistently misreads 'the real' as ahistorical, whereas for him it is necessarily historical. Second, the formal inevitability of exclusion raises questions about the political commitment to combat exclusion: for one, why do some exclusions warrant investigation over others and relatedly, what motivates the critical engagement with structures of exclusion if exclusion is itself necessary and inevitable. This latter question is one of political ideals and normative commitments, and Butler responds to it by arguing that while the aim is to broaden the field of inclusion, the notion of complete inclusion is not only a fantasy but perhaps a dangerous one. Even so, this does not entirely obviate these problems.

virtue of its heterosexual positioning, and that is assumed through a move that excludes and abjects gay and lesbian possibilities'.⁶⁸ The figures of homosexual abjection – for instance, the 'feminized "fag" and the phallicized "dyke"' – constitute the state of punishment, figuring a 'gendered afterlife', a 'death sentence of sorts'.⁶⁹ While these figures remain inarticulate sites of identification, they nevertheless operate as organizing figures within the Lacanian symbolic. Further, as the limit-figures of binary identification, these 'specters' are 'produced by that symbolic as its threatening outside to safeguard its continuing hegemony'.⁷⁰

Butler's point is not simply to affirm the constraints and exclusions by which the assumption of sexed identifications takes place, but to ask how their fixity is achieved and to work the possibilities for reconfiguring such constraints. She questions the notion of identification and suggests that identifications cannot be understood on the level of the event – happening once and for all – but are instead phantasmatic efforts of alignment that constitute and unsettle identity through the permanent installation of alterity within it. That is, if identification works through repudiation, that which is repudiated will be installed within identity as the enabling condition of identification. This logic can be made clear in the statement 'I am not that', which presupposes the 'not that' as a definitional requirement of the 'I'. Further, identifications are 'never fully and finally made' but are 'incessantly reconstituted' and hence, 'subject to the volatile logic of iterability'.⁷¹ As citational, identifications are always made in relation to prohibitions that work through the threat of punishment, prohibitions which themselves can be rewritten as performative. As performative, prohibitions attain their authoritative force precisely in the identifications that simultaneously invoke the law as a prior authority and install the authority of it.

In rewriting the coerced assumption of sexed positions in terms of performative constitution and citational practice, Butler suggests that the symbolic is open to reinscription. If 'assuming' a sexed position is a repetitive process of citing norms, where 'sexed positions' are not spatial but citational practices within a domain of

⁶⁸ Butler, *Bodies that Matter*, p.96.

⁶⁹ Butler, *Bodies that Matter*, p.98, 10.

⁷⁰ Butler, *Bodies that Matter*, p.104.

⁷¹ Butler, *Bodies that Matter*, p.105.

constitutive constraints, and the citation of norms reinvests the symbolic law with authority, then the sheer repetition of norms will always present the risk of reinscription, as no repetition will be complete, exact or final. Furthermore, the alterity that conditions identification will haunt the subject, compelling the incessant repetition of norms, but also radically destabilizing the identity thus produced. If homosexuality is the abjected other of normative heterosexuality, then it disrupts the claim to normative closure through its spectral return. In its disruption of citational practices of sexed identity, homosexuality opens the symbolic that sustains normative heterosexuality to a reinscription of the prohibition on homosexuality as the abject. As Butler states:

If the figures of homosexualized abjection must be repudiated for sexed positions to be assumed, then the return of those figures as sites of erotic cathexis will refigure the domain of contested positionalities within the symbolic. Insofar as any position is secured through differentiation, none of these positions would exist in a simple opposition to normative heterosexuality. On the contrary, they would refigure, redistribute and resignify the constituents of that symbolic and, in this sense, constitute a subversive rearticulation of that symbolic.⁷²

Hence, it is in this 'subversive rearticulation' effected through a spectral return that Butler locates the agency of the abject.

One of the crucial caveats that Butler makes in rewriting prohibition as performative is that the performative is consistently open to failure; to be compelled does not ensure the necessary efficacy of the norm. Indeed, the necessity of repetition in this compulsion opens a radical instability in the performative whereby the failed, unfulfilled or catachrestic citation reinstates the norm, but reinstates it in such a way that the instability of the norm is revealed as a moment of political potential. As Butler states, 'the resignification of norms is thus a function of their inefficacy, and so the question of subversion, of working the weakness in the norm, becomes a matter of inhabiting the practices of its rearticulation'.⁷³ Agency then, is 'the hiatus in iterability, the compulsion to install an identity through repetition, which requires the

⁷² Butler, *Bodies that Matter*, p.109.

⁷³ Butler, *Bodies that Matter*, p.237.

very contingency, the undetermined interval, that identity insistently seeks to foreclose'.⁷⁴ Significantly, this conception of agency has the rhetorical effect of linking subversion with failure, inefficacy and instability. This points to a serious equivocation within Butler's understanding of political transformation.

If we return to Butler's initial note that abjection means 'literally to cast off, away, or out, and hence presupposes and produces a domain of agency from which it is differentiated', it becomes clear that Butler is also bringing a different conception of agency to bear upon the abject, and perhaps one which undermines the agency of the abject. For here, agency is that which the abject is differentiated from, cast away from and hence the agency produced in that casting away is not the agency of that which is cast away. If the agency of the abject is considered a 'hiatus in iterability', we might consider the agency produced by and differentiated from the abject as the agency of iterability, an agency that is then simultaneously productive of the abject. As such, the agency of the abject would appear as a destabilizing gap in the operation of the agency produced against the abject, as an inevitable counterstroke that stymies the mechanical reproduction of exclusionary normative formations. But what is the force of this gap in the face of the compelled repetition of norms? While it might disrupt the reiteration of norms, this could only appear as a negative resistance and in order to make the step to positive subversion Butler urges resignification as a political strategy that works with the gap in reiteration.⁷⁵ However, Butler also argues that the performative force of norms rests on their citational authority, an authority

⁷⁴ Butler, *Bodies that Matter*, p.220.

⁷⁵I recognize that the claim that Butler urges resignification as a political strategy is not uncontroversial, and I discuss this in detail in the next chapter. Here though, suffice to say that for Butler subversion is 'working the weakness in the norm', thereby revealing the instability within regulative norms. Bringing this instability to the fore does not necessarily lead to a naïve 'proliferation of genders' as the aim of political strategy. Yet for Butler, resignification of terms such as 'queer' is an attempt to deviate 'the citational chain toward a more possible future to expand the very meaning of what counts as a valued and valuable body in the world', and in an important sense, to make life bearable (Butler, *Bodies that Matter*, pp.237 and 22). In this, resignification operates as a political strategy. For a related discussion of 'instability' and 'subversion' in *Gender Trouble*, see Penelope Deutscher, *Yielding Gender: Feminism, Deconstruction and the History of Philosophy* (London: Routledge, 1997). Deutscher argues that while Butler establishes a rhetorical link between instability and subversion in *Gender Trouble*, 'she is not discussing subversion as a political strategy, but rather as something which lies at the heart of all reproducibility' (Deutscher, *Yielding Gender*, p.26). She goes on to note that in *Bodies that Matter*, Butler de-emphasizes the vocabulary of subversion in order to focus more on the operation of resignification within political discourse (Deutscher, *Yielding Gender*, p.32). Against this reading though, it is the instability identified in norms that allows for the later focus on resignification where resignification is the strategy of working that instability for its politically transformative effects. In other words, normative instability enables resignification as a political strategy; hence, at least in Butler's later work, the opposition between political strategy and the inevitable instability of norms is not quite as stark as Deutscher is suggesting here.

established through conventionality and sanction. She states ‘no “act” apart from a regularized and sanctioned practice can wield the power to produce that which it declares. *Indeed, a performative act apart from a reiterated and, hence, sanctioned set of conventions can appear only as a vain effort to produce effects that it cannot possibly produce.*’⁷⁶

This clearly introduces a vacillation into Butler’s work on the question of the agency of the abject, for on the one hand, that agency is derived from the failed repetitions of norms, but on the other, it is also bound to fail in its attempt to ‘produce effects it cannot possibly produce’. Hence, while the agency of the abject is produced within the process of repetition, it is also bound to failure by that process, such that the agency produced against abjection undercuts the efficacy of the agency of the abject. This tension is also heightened by the fact that abjection is itself produced in the failure of repetition, since it is precisely the failure to fulfill the normative requirements of heterosexuality that establishes desiring otherwise as the abject. This vacillation in Butler’s account of agency no doubt arises as a response to those readings – both critical and celebratory – of *Gender Trouble* that saw Butler positing drag as necessarily subversive. But the effect that this has in *Bodies that Matter* is that the account of agency is weakened by a vacillation between subversive efficacy and power’s intractability.⁷⁷ Ultimately, the agency of the abject is cut through with failure from the scene of its emergence to its inability to produce the effects it strives to produce.

We might speculate here that it is precisely this problem of vacillation in the conception of agency derived from a constitutive outside that Butler attempts to address in *The Psychic Life of Power*. A terminological shift from constitutive exclusion

⁷⁶ Butler, *Bodies that Matter*, p. 107; emphasis added. It should be noted though that this does not mean that the speech act does not have any effect, but simply that it does not have the effect intended. See Felman, *The Literary Speech Act*, p.84; Austin, *How to do Things with Words*, pp.16-17.

⁷⁷ For a further discussion of this see Mills, ‘Efficacy and Vulnerability’, pp.265-279. In this article, I discuss this vacillation in relation to the arguments presented in *Excitable Speech* and *The Psychic Life of Power*, however, my claims are also apposite to the arguments made in Butler’s earlier work. Slavoj Žižek has made a similar point – again in relation to *The Psychic Life of Power* – through a Lacanian framework. He argues that Butler is simultaneously too optimistic and too pessimistic, since on the one hand she ‘overestimates the subversive potential of disturbing the functioning of the big Other through the practices of performative configuration/displacement’, but on the other, she ‘does not allow for the radical gesture of the thorough restructuring of the hegemonic symbolic order in its totality’ (Slavoj Žižek, *The Ticklish Subject: The Absent Centre of Political Ontology* (London: Verso, 1999), p.264).

and abjection to the notion of 'social death' indicates that Butler is aware of problems arising from *Bodies that Matter*, and is attempting to redress them. Even if this is the case though, the problem identified here does not get resolved, but instead reappears in the notion of social death. Given the concern in *Bodies that Matter* with the constitutive effect of sex as a normative regulatory ideal and the critical reformulation of the body that Butler effects through it, it should come as no surprise that she subsequently takes up questions about the durability of subjection and the difficulty of reconfiguring the subject's attachments to relations of power again in *The Psychic Life of Power*. In doing so, she develops the notion of social death to describe the risk to the subject posed by a failure to properly reiterate hegemonic norms and identifications.

In this text, Butler elaborates on Foucault's suggestion that the individual is both the effect and vehicle of power through combining recognition of the founding role of power with a psychoanalytic approach to the subject.⁷⁸ Butler moves between the apparent paradox of referentiality posed by subjection, whereby one must refer to the subject to describe its very formation, thus presupposing its existence before it can be said to have come into being, and the paradox of subjection itself. 'Subjection', Butler claims 'consists precisely in [our] fundamental dependency on a discourse we never chose but that, paradoxically, initiates and sustains our agency'.⁷⁹ In order to do this, she invokes the figure of the 'turn', the figure of the subject 'turning back upon oneself or even turning on oneself'⁸⁰ and finds this turn elaborated in the work of Hegel, Nietzsche, Freud, Althusser and Foucault. This turn, she suggests, functions as a 'tropological inauguration of the subject, a founding moment whose ontological status remains permanently uncertain',⁸¹ for finally, it is unclear whether the trope inaugurates the subject or whether subjection inaugurates tropology. Butler locates this ambivalence in tropological subjection at the heart of the subject, which brings into question the relation between the 'internal' world of the psyche and the 'external' world of the social.

⁷⁸ Michel Foucault, 'Two Lectures', in *Power/Knowledge: Selected Interviews and Other Writings 1972-1977*, ed. Colin Gordon, tr. Colin Gordon and others (New York: Pantheon, 1980), p.98.

⁷⁹ Butler, *Psychic Life*, p.2.

⁸⁰ Butler, *Psychic Life*, p.3.

⁸¹ Butler, *Psychic Life*, p.3-4.

Briefly, Butler argues that the term 'subjection' signifies both the process of becoming a subject and of becoming subordinated to power. The incorporation of subordination is one of the founding conditions of the subject, since in order to have a social existence one must accept terms that are not of one's own making. The subject emerges through a primary submission to the categories, terms and names established by the concatenations of power relations that precede and extend beyond the subject they hail into being. Thus, the subject is condemned to seek recognition of its own existence in a discourse that is both 'dominant and indifferent'. The social categories through which the subject comes to exist signify subordination and existence simultaneously, such that 'within subjection, the price of existence is subordination'.⁸² The disturbing consequence of this primary submission to power in order to exist is that the subject comes to desire the conditions of its own subordination in order to persist as a social being,⁸³ since one would rather exist in subordination than not exist at all.⁸⁴ This opens the subject to a founding vulnerability to power's abuses, since the necessity of subordination for its survival constitutes the subject as an exploitable being. In being constituted in the terms of a 'dominant and indifferent' discourse and desiring the subordination thus instituted, the subject's existence is tenuously broached upon the rough terrain of injury, oppression and dissolution. For Butler, this means that the urgency to oppose power's abuses is redoubled and in this the terms of power bear their own vulnerability. The terms of discursive constitution are consigned to repetition, which breaches their intractability and efficacy by opening such terms to resignification, reappropriation and other semantic and performative abuses.

In order to maintain one's existence then, one is forced to continually re-enact the conditions of power that make one's existence possible. However, the assumption and re-enactment of power is not a straightforward process of mechanical reproduction. The constitutive character of power should be understood non-mechanistically and non-behavioristically, since 'it does not always produce according to a purpose, or rather its production is such that it often exceeds or alters the

⁸² Butler, *Psychic Life*, p.20.

⁸³ Butler, *Psychic Life*, p.9.

⁸⁴ But importantly, desiring one's conditions of subordination cannot be seen as an after-effect of the constitution of the subject, but is instead the site at which the subject emerges through a tropological turning back of the desire to exist upon itself.

purposes for which it produces'.⁸⁵ Butler suggests that power acts on the subject in at least two ways, first, by making the subject possible, as the constitutive conditions of possibility of the subject, and second, as what is 'taken up and reiterated in the subjects "own" acting'.⁸⁶ Being a subject of power connotes both 'belonging to' and 'wielding' power, and this temporal reversal consequently allows the subject to '[eclipse] the conditions of its own emergence'⁸⁷ by using power against power. In other words, the temporal shift of power from that which precedes and constitutes the subject to being the effect of the subject points to the paradoxical constitution of an agency that allows the subject to intervene in the reiteration of power. Hence, in being reiterated or re-enacted, the relations of power are susceptible to transformation.

While the subject is the necessary site of power's renewal, the subject's agency emerges precisely as a consequence of the founding subjection that one must endure in order to exist. Butler considers the subject as a necessary precondition for a 'radically conditioned' form of agency, but if we keep in mind that the subject emerges through its primary subordination to power, it is precisely this subordination that makes agency possible. That is, if subjection consists in both 'becoming a subject' and 'being subject to', it seems that the agency of the subject is intimately connected to the process of subjection whereby one becomes subordinate to power. As Butler states, 'if subjection produces a subject and a subject is the precondition of agency, then subjection is the account by which a subject becomes the guarantor of its resistance and opposition'.⁸⁸ From the paradox that agency is produced through subjection, Butler argues that 'agency exceeds the power by which it is enabled',⁸⁹ insofar as it works toward purposes that were not intended by power and are not historically or logically derived from it. Agency operates in a relation of 'contingency and reversibility' vis-à-vis the power that constitutes it, presenting the subject with the opportunity to distort and destabilize relations of power in their reiteration. Hence, while efforts to oppose subordination will necessarily 'presuppose and

⁸⁵ Butler, *Psychic Life*, p.18.

⁸⁶ Butler, *Psychic Life*, p.14.

⁸⁷ Butler, *Psychic Life*, p.14.

⁸⁸ Butler, *Psychic Life*, p.14.

⁸⁹ Butler, *Psychic Life*, p.15.

reinvoke' that subordination, the reiteration of power illuminates the temporal vulnerability of those conditions to the 'exigencies of their renewal'.⁹⁰

Significantly, Butler's characterization of power as necessarily constitutive, producing subversive intervention in the reproduction of relations of power in its very operation, leads to a characterization of the risk of subversion as a risk that threatens the subject with 'social death'. Simply, if the subject is dependent on the categories, names and norms of power for its survival, then a transgression or failure to properly reiterate these makes the subject vulnerable to dissolution. If one fails to reinstate social norms properly or completely, one's own existence as a socially recognizable subject is brought into question, and one becomes subject to social castigation and sanction which threaten one's future survival. As Butler remarks, 'the risk of death is coextensive with the insurmountability of social life'.⁹¹ Given that the subject desires its own subordination in order to persist in its own being, – since one would rather exist in subordination than not exist at all – a problem arises for formulating an account of agency in this scenario. For if the subject is fundamentally dependent of the terms of power for its survival, how does the subject turn against itself, thereby threatening its own existence by refusing those terms, or at least by failing to reiterate them properly or accurately?

Butler's account of the emergence of conscience and melancholia provides some solution to the apparent quandary of the subject turned against itself, which allows the subject to survive the impasse of self-beratement and thwarted desire. Butler traces the turns of psychic life through the installation of reflexivity in conscience, a form of self-regulation and beratement that works in tandem with social regulation. While the emergence of conscience establishes the subject as being in recoil against itself, 'recoiled at the thought of its desire',⁹² the turning back on oneself also produces another order of desire, a desire for the very circuit of reflexivity and the subordination enacted by it. This melancholic desire marks the limit of reflexivity insofar as the subject cannot reflect on the loss that is foreclosed in the compelled identification with the subordination given in social existence. But importantly,

⁹⁰ Butler, *Psychic Life*, p.12.

⁹¹ Butler, *Psychic Life*, p.28.

⁹² Butler, *Psychic Life*, p.81.

melancholia can also be understood as a form of revolt:⁹³ melancholia is an aggressivity improperly turned against oneself in order to maintain a lost love object and as such, constitutes a “gathering place” for the death drives’.⁹⁴ Eventually then, the melancholic is brought to the impasse of following the lost object into death or breaking the attachment in order to survive.

Thus, the loss of the loss becomes necessary for living: ‘Survival is a matter of avowing the trace of loss that inaugurates one’s own emergence’.⁹⁵ We might say then that the turn against life in its current configuration does not lead directly to death, but instead indicates a risk to life in order to live, a risk that breaks the shackles that initially inaugurated the subject. But, if this is the case, the avowal of the loss must then engender a transmogrification of the prohibition incorporated into the psyche – where that incorporation itself produces the psyche – such that the vulnerability of the subject is redoubled. For now the subject has not only lost the loss that sustains it, but, additionally, the prohibition that inaugurates the constitutive loss is itself exposed in its vulnerability. The radical vulnerability posed in this scenario exposes both the subject and the prohibitions that constitute it to an immanent transformation that cannot be determined in advance. We might understand this transformation as a moment of becoming, where ‘that “becoming” is no simple or continuous affair, but an uneasy practice of repetition and its risks, compelled yet incomplete, wavering on the horizon of social being’.⁹⁶

Hence, while the emergence of self-reflexivity through conscience and melancholia allows an account of the subject turned against itself whereby that turning against

⁹³ Butler takes the idea that melancholia can be understood as a form of revolt from Homi K. Bhaba, ‘Postcolonial Authority and Postmodern Guilt’ in Lawrence Grossberg, Cary Nelson, and Paula A. Triechler, eds. *Cultural Studies* (New York: Routledge, 1992), p.56-68 at 65; Bhaba develops the claim through a discussion of Freud and Frantz Fanon.

⁹⁴ Butler discussing Freud, *Psychic Life*, p.194.

⁹⁵ Butler, *Psychic Life*, p.195.

⁹⁶ Butler, *Psychic Life*, p.30. In this quote, Butler is using the notion of becoming to trace the temporal paradox in delineating the constitution of the subject. I am using it in a stronger sense, more akin to the process suggested by Deleuze. See in particular the discussions of becoming in *Nietzsche and Philosophy*, tr. H. Tomlinson (London: Athlone Press, 1983), exemplified in the comment that ‘multiplicity is the difference of one thing from another, becoming is difference from self’ (p.189), and throughout Gilles Deleuze and Felix Guattari, *A Thousand Plateaus: Capitalism and Schizophrenia*, tr. Brian Massumi (Minneapolis: University of Minnesota Press, 1987).

permits its survival beyond the impasse seemingly presented by resistance, in doing so, the vulnerability of the subject is not lessened but enhanced. The question then is whether the notion of social death can accommodate this vulnerability and the agency that it suggests. The answer to this question rests in large part on what Butler means by the 'social' nature of social death, and further, on the relation of the social to the natural or anatomical body that dies and decays, apparently resistant to the operations of linguistic agency. In other words, what is at issue here is the relation between a socially and linguistically conditioned form of life and life *per se*, the sheer fact of living.⁹⁷ I pointed out previously that Butler posits a relation of chiasmatic interdependence between materiality and signification, between life *per se* and conditioned forms of life. But I also suggested that her work evinced a moment of reduction and identification of materiality and signification, which has particular significance for her conception of social death and the agency engendered within and by it. In light of this identification, it appears that the metaphors of death that Butler invokes actually work against the agency suggested in the scenario in which both the subject and the prohibitions that produce it are brought to crisis.

Butler understands the risks posed by such a reconfiguration as that of 'social death'; but can this concept accommodate the vulnerability and immanent instability of this moment? While Butler does not provide an account of precisely what the notion of social death means in *Psychic Life*, she does indicate elsewhere that the term is taken from Orlando Patterson's study of slavery.⁹⁸ Patterson outlines two distinct characterizations of the phenomenon of social death that attends the status of slaves within widespread slavery systems. The first, intrusive mode of representing social death was determined by recruitment of slaves from outside the community in question. This figured the slave as a 'permanent enemy on the inside', living in a community without being of the community and thus without ancestral attachment while simultaneously symbolizing the vanquished enemy. In contrast, the extrusive representation of social death indicated slaves from within the community. In this

⁹⁷ The Aristotelian terms for this distinction are *bios* and *zōē* respectively; I discuss these further in the following chapters on Agamben.

⁹⁸ Orlando Patterson, *Slavery and Social Death: A Comparative Study* (Cambridge Ma.: Harvard University Press, 1982). Butler uses Patterson's conception of social death to understand the position of Antigone 'between life and death' in Judith Butler, *Antigone's Claim: Kinship Between Life and Death* (New York: Columbia University Press, 2001). I discuss this text further in the following chapter.

conception, slaves were members of the community who had 'fallen' through a failure to fulfill 'minimum legal or socio-economic norms of behavior'.⁹⁹ For Patterson, whether represented as intrusive or extrusive, the status of social death ultimately reduces to a question of liminality: while socially dead and hence marginal in social relations, the slave is nevertheless included in social relations, indicating an 'institutionalized marginality' in which the slave exists as a degraded person without honor.¹⁰⁰

The status of institutional marginality or liminality within social relations should be appreciated here as it introduces a logic into Butler's treatment of political exclusion that was not present in *Bodies that Matter*. In that text, Butler relied upon the logic of a constitutive exclusion, whereby what is excluded returns as a spectral figure to provide both the constitutive ground for the establishment of identity and the disruption that prevents closure on identity. In employing a notion of social death built through the concept of liminality, the logic in operation is one of threshold or an ambiguous passage between consolidated states of social survival. Hence, to be socially dead is not exactly the same as being an outcast, or the abject that is cast out, for while the latter is excluded from social relations the former exists between social statuses; it is a transitory state 'betwixt and between the positions assigned by law, custom, convention and ceremonial'.¹⁰¹ The structuralist logic of the anthropological

⁹⁹ Patterson, *Slavery and Social Death*, p.41. Further difficulties in using Patterson's conception of social death for understanding the position of homosexuality are also evident. First, given the understanding of intrusive and extrusive understandings of 'the socially dead', it is unclear that these have an empirical purchase vis-à-vis homosexuality. Patterson also makes the interesting point that while slaves were considered socially dead, they were not 'outcasts', primarily because they were not spatially segregated from the community and importantly, were not considered to be *polluting* (p.50). This final point reveals the difficulty of using his notion of 'social death' to understand homophobia since pollution and dirt are common themes in anti-gay and lesbian violence and hate speech. See Gail Mason, *The Spectacle of Violence: Homophobia, Gender, and Knowledge*, (New York: Routledge, 2002), for a recent discussion of the way in which homophobic violence is characterized precisely by a discourse of pollution and dirt.

¹⁰⁰ Patterson, *Slavery and Social Death*, p.46. The notion of liminality derives from structuralist anthropology and was initially used by Arnold van Gennep in his typology of ritual processes and practices in Arnold van Gennep, *The Rites of Passage*, tr. Monika B. Vizeden and Gabrielle L. Caffee (Chicago: University of Chicago Press, 1960). It was developed further by Victor Turner in his classic study, *The Ritual Process: Structure and Anti-structure* (Ithaca: Cornell Publishing, 1977), particularly the chapter entitled 'Liminality and Communitas', pp.94-130. Interestingly, van Gennep links the status of liminality to that of sacredness, suggesting that liminal novitiates in a rituals of transition do not properly belong either to the sacred or the profane but are 'held between heaven and earth... suspended between life and death' (van Gennep, *Rites of Passage*, p.186). I will return to a lengthier discussion of this status in the chapter on *Homo Sacer*, in which the status of the sacred as doubly excluded becomes important.

¹⁰¹ Turner, *The Ritual Process*, p.95.

conception of liminality is certainly complicated by Butler, particularly in her suggestions that the authority of the law and social norms is established through their repetition and that this repetition is constitutive of the subject and its agency. Nevertheless, the general conception of liminality as a threshold or passage between consolidated states is maintained in Butler's thought, where these states are understood as life and death.

Built through the concept of liminality, social death is the threshold state 'between life and death' and as threshold, the notion of social death seems to, on the one hand, open a space of radical indeterminacy and on the other, close that space through the recollection of death as the mark of finitude, *finis*.¹⁰² The question to be asked of Butler's metaphors of social death as threshold is whether the notion of death as *a* limit through which one passes into a life after death – a 'gendered afterlife' as Butler has suggested – can be sustained against the notion of death as *the* limit, beyond which no life, no agency, survives. In other words, can Butler sustain a notion of social death over and against death *per se*, the fundamental finitude of the human body and self. While the answer to this question might seem self-evident, it is actually not so, particularly given the slide toward the conflation of signification and materiality, writ large into a conflation between a socially conditioned form of life and life *per se*. Consider here Butler's provocative comment noted earlier that 'the risk of death is co-extensive with the insurmountability of the social'.¹⁰³ For Butler, life itself can only be brokered within the terms of sociality, through a primary subordination to a 'dominant and indifferent discourse'. If life can only be brokered within the terms of the social, such that there is no life beyond the social, one might conclude that it is redundant to speak of 'social death', because death within the social will always necessarily equate to death *per se*.

If this is the case, then there is a sense in which resistance appears as a form of suicide for Butler, and insofar as this suicide is figured as the mark of finitude, there can be no agency beyond it. Butler claims that no transformation of the conditions of

¹⁰² For further considerations of death as threshold see Jean-Luc Nancy, 'On the Threshold', *Paragraph*, 16:2, pp.111-121; Jacques Derrida *Aporias*, tr. Thomas Dutoit (Stanford: Stanford University Press, 1993).

¹⁰³ Butler, *Psychic Life*, p.28.

life is possible without risking life itself, and the risk that attends the transformation of the conditions of (social) existence is that of (social) death. In a sense then, the transformation of conditions of existence might be understood as a form of suicide, insofar as the subject turns against itself, ready to stake its own existence on the possibility of transformation of social conditions in order, paradoxically, to survive. However, if the sense of suicide evoked here is not metaphoric, but literalized in the death of the body, then there will be no survival beyond the impasse of the subject turned back against itself, for while social death indicates the death of the subject, if the life of the subject is only yielded in the body's accession to the social then death within the social plays out on the body itself. Interestingly, Butler's explication of the subject's death within the social frequently return to the literal death of the body in suicide, a tendency which is not without significance for her theorization of social death.

To illustrate these points out more clearly, I want to return briefly to Butler's reading of Willa Cather's short story 'Paul's Case'. In this story, an ambiguously gendered – or 'gender-liminal' as Eve Sedgwick puts it¹⁰⁴ – young man embezzles his father's company to escape the oppressive strictures of everyday life, runs away to a suite at the Waldorf in New York and becomes, for a few short days, 'exactly the kind of boy he had always wanted to be'.¹⁰⁵ When his theft is discovered, rather than return to his hometown to face the risk that the 'tepid gray waters of Cordelia Street were to close over him finally and forever',¹⁰⁶ Paul throws himself in front of a train, 'drop[ping] back into the immense design of things'.¹⁰⁷ Butler concludes her reading of this story with these comments:

¹⁰⁴ Eve Kosovsky Sedgwick, *Tendencies* (Durham: Duke University Press, 1993) p.171.

¹⁰⁵ Willa Cather, 'Paul's Case' in *Willa Cather's Collected Short Fiction 1892- 1912* (Lincoln: University of Nebraska, 1965), p.255.

¹⁰⁶ Cather, 'Paul's Case', p.258.

¹⁰⁷ Cather, 'Paul's Case', p.261.

Released from prohibitive scrutiny, the body frees itself only through its own dissolution. The final figure of “Paul dropped back into the immense design of things” confirms the ultimate force of the law, but this force unwittingly sustains the eroticism it seeks to foreclose: is this his death or his erotic release? “Paul dropped back”: ambiguously dropped by another and by himself, his agency arrested and perhaps, finally, yielded.¹⁰⁸

Butler’s final suggestion that it is in suicide that agency is finally yielded starkly brings out the ambiguity of her conception of agency.¹⁰⁹ In escaping the death by drowning evoked by Cather’s ‘tepid gray water of Cordelia Street’, freedom is found in a self-willed suicide, a sacrificing of oneself for the agency yielded in suicide. In this then, death is the limit that yields agency, but in its literalization as limit through the destruction of the body, death does not yield an agency that passes beyond death. Ultimately, the agency yielded in suicide is rendered obsolete in the face of the force of hegemony, figured as the train that obliterates Paul’s life.

If agency is thus yielded in suicide but does not pass beyond that suicide in the emergence of a new form of life, then we are clearly returning to the vacillation in Butler’s conception of agency that I identified in her account offered in *Bodies that Matter*, a vacillation that is heightened rather than reduced by the shift from abjection to social death. The effect of this is that Butler establishes a highly problematic conceptual link between death and freedom, where a suicidal resistance wavers between the figuration of death as the limit beyond which no life survives or of death as the limit beyond which one must pass in order to pass into a realm of agency and freedom – that is of death as destruction or liberation. Interestingly, Russ Castronova has argued that the association of death and freedom finds a particularly strong articulation within the American cultural imaginary particularly in relation to the historico-cultural portrayals of the institution of slavery.¹¹⁰ He shows through his

¹⁰⁸ Butler, *Bodies that Matter*, p.166.

¹⁰⁹ The number of times Butler returns to suicide as the moment in which agency is yielded is striking; also see her discussions of Nella Larsen’s ‘Passing’ (*An Intimation of Things Distant: The Collected Fiction of Nella Larsen*, ed. Charles Larson (New York: Anchor Books, 1992)) in *Bodies that Matter*, pp.155-185 esp. at 172, and *Antigone’s Claim*, which I discuss in detail in the following chapter.

¹¹⁰ Russ Castronova, ‘Political Necrophilia’ *Boundary 2*, 27:2(2000), pp.113-148; also see Robert C. Solomon, ‘Death Fetishism, Morbid Solipsism’ in Jeff Malpas and Robert C. Solomon, eds. *Death and Philosophy* (New York: Routledge, 1998), pp.152-176 at 163. Solomon argues that much contemporary theory fetishizes death, understanding death as the definitive experience of life, and ultimately, as the experience through which ‘authenticity’ and hence autonomy are achieved, through a distillation of

analysis of literary portrayals of citizenship and slavery that death is frequently understood to bring freedom from the responsibilities of the embodied citizen and the restrictive arbitration of social and political institutions. In this sense then, death secures an absolute freedom over and above the contingencies and struggles of existence. This sense of death securing freedom over and against the obligations and strictures of social and political life is further enhanced in portrayals of suicide, characterized as a self-willed, and therefore free, act of liberation. Such 'political necrophilia', to borrow Castronova's phrase, clearly has important implications for theorizing subjectivation and agency in the context of a political rationality of life and death, some of which I take up in the next chapter.

I have argued in this chapter that Butler's account of subjectivation moves on substantially from Foucault's in its consideration of the material and psychic operations of power. In particular, her account of materialization usefully highlights the ways in which regulatory norms produce and constrain possibilities for bodily life and play into the determination of life worth living at the level of subject-formation. In interrogating the particular relation that Butler posits between the biological and the social or the corporeal and the signifiatory, though, I also show that while Butler strives to establish a rendering of this relation as chiasmatic, moments of reductive identification sometimes occur within *Bodies that Matter*. In the second section of the chapter, I go on to consider the effects of this reduction for Butler's account of exclusion and agency, developed through the notions of abjection and social death. I argue that the identification of the social and the biological leads to a problematic figuration of resistance as suicide, which renders death as a form of freedom. To appreciate how deeply the difficulties that arise from this go in Butler's work, further consideration of her commitment to the project of a 'politics of recognition' is required, as it is precisely the commitment to a reworked Hegelian dialectic of recognition that leads to the problems that I have identified. In the following

Heidegger's understanding of 'being-toward-death' and the necessity of 'making death one's own' as the condition of authentic existence. While Solomon's identification of the heritage of this tendency within contemporary theory is somewhat restrictive, it is worth considering in this context Edith Wyschogrod's critique of the Hegelian and Heideggerian conceptions of death from the perspective of a consideration of man-made mass death in which she claims that these are limited by an excessive focus on the effect of the individual's own death for itself. See Edith Wyschogrod, *Spirit in Ashes: Hegel, Heidegger, and Man-Made Mass Death* (New Haven: Yale University Press, 1985); also see my discussion in Chapter 1 concerning the status of death with Foucault's work and the later discussion in Chapter 6.

chapter, then, I extend upon this discussion and draw out further ethical and political implications through an examination of Butler's theoretico-political commitments.

Chapter 4

The Violence of Recognition: Performativity and Responsibility*

4.1 Introduction

In the previous chapter, I read Butler's work with an emphasis on her contribution to questioning the normative exclusion of certain lives from the political arena. I argued that her understanding of subjectivation offers insight into the relation between biological and political life and the way in which normative operations of power constitute and constrain what counts as a livable life. Additionally, I discussed her understanding of political exclusion, developed through the concepts of abjection and social death, and particularly her aim of explicating the peculiar political agency of the excluded. In this chapter, I continue this discussion of political exclusion and agency through further consideration of the status of signification within Butler's work, particularly with regard to locutionary violence. This requires focus on her most recent work, *Excitable Speech* and *Antigone's Claim*, and discussion of the theoretico-political commitments that underpin the politics of the performative that Butler poses as a response to that violence.

Butler's political commitments have been the source of much confusion amongst readers of her work, as she simultaneously commits to the project of radical democracy while distancing herself from it through a Foucauldian genealogical politics. While emphasizing the potential of critical re-appropriations of political signifiers, Butler also strives to develop a theoretical means of political critique that opens possibilities for transformation without establishing in advance how such transformation might in fact occur. Thus, in a recent interview, Butler underscores her commitment to a pragmatic politics on the basis that programmatic theory 'pre-empt the whole problem of context and contingency... political decisions are made in that lived moment and they can't be predicted from the level of theory' and

* An earlier version of the arguments made in this chapter is to be published as Catherine Mills, 'Contesting the Political: Foucault and Butler on Power and Resistance', *The Journal of Political Philosophy*, Forthcoming.

explicitly aligns herself with the 'noble tradition' of Foucault's refusal to specify 'what is to be done'.¹ She is of course not alone in attempting to establish a clear theoretical and political lineage between herself and Foucault and not without some justification either. However, the ostensible conceptual similarities between their positions are undercut by important differences such that it is obscurantist to suggest that their works give rise to the same difficulties, lead us into the same errors and offer only the same theoretical means for political critique.

For while Butler's account of subjectivation and agency is underwritten by a political commitment to a genealogical analysis of hegemonic regimes of sexual subjectivation, which has as one of its aims the denaturalization and demystification of the operation of such regimes, much of the critical strength of Butler's political project derives from the posited inherent instability of signification. In Butler's view, political motivation and action derives from the failure of terms to fully capture that which they purport to name and the correlative potential for terms to be misappropriated and resignified. Thus in *Excitable Speech* she argues against calls for legal regulation of pornography and hate speech and affirms the strategy of resignification and the 'insurrectionary speech' that it permits as 'the necessary response'² to hate speech. However, I argue that the *a priori* designation of resignification as an insurrectionary political strategy stands in sharp contradiction with the political pragmatism that Butler takes from Foucault and indicates substantial tensions within her political commitments. In particular, I identify an important ambiguity in the status of contingency within Butler's political formulations, in which contingency is understood as both the inevitable circumstance of political agency and as the foundation of it. This is particularly evident in Butler's positing of resignification based on the inevitable instability and failure of political signifiers as a necessary response to hate speech.

¹ Butler in Vikki Bell 'On Speech, Race and Melancholia: An Interview with Judith Butler', *Theory, Culture and Society*, 16:2(1999), pp.163-174 at 169. However, this position is not new for Butler; in her previous article 'Poststructuralism and Postmarxism', *Diacritics* 23:4(Winter 1993), pp.3-11, she criticizes Ernesto Laclau and Drucilla Cornell for their adherence to a Derridean logic of deferral and failed ideals and aligns herself with a Foucauldian genealogical politics.

² Judith Butler, *Excitable Speech: A Politics of the Performative* (New York: Routledge, 1997), p.163.

In tandem with the emphasis on the failure of political signifiers to fully capture that which they hail into being, Butler's political claims emphasize the importance of recognition in the constitution of the subject, which she critically reformulates through Althusser's concept of interpellation as *mis*-recognition. A consideration of mis-recognition returns us to the notion of social death that I began to discuss in the previous chapter, and here, I extend this discussion through a consideration of *Antigone's Claim*, a text that, in this context, usefully illustrates the ethico-political limits of Butler's account of resignification, recognition and responsibility. I argue that Butler's analysis of Antigone leaves her unable to broach questions of responsibility in the face of death. Against Butler's arguments, I ask what responsibility is given in death and how might that condition the relation to others that underpins ethical concern. What demands are made in social death, and how might an ethical responsibility begin to be formulated within the constraints and possibilities of linguistic survival? I suggest in the final section of this chapter that Butler's formulation of mis-recognition does not allow for consideration of these questions and, hence, for the development of an account of responsibility for those bodies that have not attained the status of subject.

4.2 *The Linguistic Occasion of Political Agency*

While *Bodies that Matter* and *The Psychic Life of Power* examined the ways in which discourse delimits and enforces constraints on what counts as livable life, *Excitable Speech* is more concerned with the delimitation and constraints on what counts as speech itself. Drawing on her previous theorization of the performative constitution of the subject in language, Butler turns to a consideration of the implications of the vulnerability and agency of the subject given in that constitution for debates on hate speech and the regulation of pornography. In doing so, she not only considers the violent effects of language upon the subject and body exposed to it, but also, the breach and contact between language and violence. In this, the threat stands as a privileged example, since as a form of enunciation or linguistic practice, threatening speech brings to the fore the nexus between speech and force, highlighting the force of address and the violence effected in it.

To explicate the relation between force and speech, Butler takes up Toni Morrison's parable of a blind woman who responds to the question posed by a group of small children whether the bird they hold is alive or dead, by refusing and displacing the question. The woman responds, 'I don't know... but what I do know is that it is in your hands. It is in your hands.'³ Butler reads the question posed to the woman as a threat, a speech act that prefigures the transfer of violence done to the bird to the woman herself, a figuration that is central to the operation of the threat. The threat operates to register the force of the speech act, 'a force that both presages and inaugurates a subsequent force'.⁴ However, Butler notes that it would be wrong to see the force of the speech act as belonging wholly to language while the subsequent force threatened belongs to the realm of materiality and corporeal pain. Rather, the threat reveals the chiasmatic interdependence of the speech act and the body:

the threat prefigures, or indeed, promises a bodily act and is yet already a bodily act, thus establishing in its very gesture the contours of the act to come... the first act, the threat, only makes sense in terms of the act that it prefigures.⁵

Hence for Butler, the force of language and the force of the body are interdependent but not thereby reducible. The force threatened in the speech act is distinguished from the bodily force that it prefigures since the prefiguration does not guarantee the inevitable fulfillment of the threat. In other words, the threat is not necessarily efficacious in its promise of violence.

Butler argues that the chiasm of the speech act and the body means that speech is always already to some degree out of the control of the speaker. The body 'scandalizes' the speech act, both anchoring it and disrupting it by preventing the speaker from ever gaining full control over the speech situation.⁶ Thus the relation between the speech act and the body is doubled, in the sense that that relation both establishes the peculiar force of the threat and undermines the efficacy of that force. As Butler goes on to state:

³ Morrison cited in Butler, *Excitable Speech*, p.6.

⁴ Butler, *Excitable Speech*, p.9.

⁵ Butler, *Excitable Speech*, p.11.

⁶ This claim is drawn from Shoshana Felman's provocative interpretation of J.L. Austin in Shoshana Felman, *The Literary Speech Act: Don Juan with J.L. Austin, or Seduction in Two Languages*, tr. Catherine Porter (Ithaca: Cornell University Press, 1983); cited in Butler, *Excitable Speech*, p.10.

The notion that speech wounds appears to rely on this inseparable and incongruous relation between body and speech, but also, consequently, between speech and its effects. If the speaker addresses his or her body to the one addressed, then it is not merely the body of the speaker that comes into play: it is the body of the addressee as well. Is the one speaking merely speaking, or is the one speaking comporting his or her body toward the other, exposing the body of the other as vulnerable to address. As an "instrument" of a violent rhetoricity, the body of the speaker exceeds the words spoken, exposing the addressed body as no longer (and not ever fully) in its own control.⁷

Thus for Butler, the corporeal excess of the body confounds speech while simultaneously establishing its force insofar as that corporeality exposes the vulnerability of the body of the one addressed in or by the threat. I will return to the particular dynamic posited here later, but the point to note here concerns the ways in which speech is confounded by corporeality. The force of speech is exposed by the comportment of the speaker to the addressee, such that the speech act is founded on a constitutive possibility for failure.

The theory of language that Butler relies on in making this argument derives in part from the theory of performative speech acts developed by J.L. Austin. Butler offers a critical analysis of recent deployments of Austinian speech act theory by theorists such as Catharine Mackinnon and Rae Langton in pornography debates, as well as its appropriations within legal decision-making processes and suggests an alternative use of Austin. In *How To Do Things With Words*, Austin distinguishes three kinds of speech acts: locutionary, perlocutionary and illocutionary. While the first of these involves uttering a meaningful sentence, that is, saying something, the second refers to speech acts that have certain consequences as a result of something being said. Illocutionary acts are those in which the utterance itself does something; for example, if a person says 'I promise' then the saying of that constitutes the act of promising. As Butler outlines, the distinction between perlocutionary and illocutionary speech acts lies in the temporal relation of the utterance and its effects.⁸ In perlocutionary acts, the utterance puts into effect certain temporally distinct consequences or in

⁷ Butler, *Excitable Speech*, p.12-13

⁸ Butler, *Excitable Speech*, p.17.

other words, the act itself precedes its effect. In illocutionary acts though, there is no temporal distinction between the act and its effect – the saying *is* the doing. Furthermore, Butler emphasizes that while perlocutionary acts operate through consequences, illocutionary acts proceed through conventionality, pointing to the ‘ritual or ceremonial’⁹ dimension of such performatives.

The conventionality of illocutionary acts means that they invoke a pre-established set of social traditions and institutional arrangements in their utterance. Furthermore, they work to the extent that they are repeated through time and become established conventions within themselves. In a sense then, the illocutionary act both precedes and exceeds any particular utterance or speaker, constituting a ‘condensed historicity’¹⁰ that cannot be limited to a singular moment of utterance. While the illocutionary act is temporally indistinct from its effects, illocutionary force derives from the ritualization of the act, from ‘prior and future invocations that constitute and escape the instance of utterance’.¹¹ The conventionality of illocutionary acts also points to the contextual contingency of the efficacy of such acts. For utterances to have the effects they pronounce, certain ‘felicity’ conditions must be met. Thus, for the pronouncement ‘I sentence you...’ to have legal efficacy, it must not only be made by someone who is a qualified judge, but must also be made in a situation in which that statement can be considered to carry legal weight, that is, in a court of law. If the appropriate felicity conditions are not in place, then an illocutionary act is itself condemned to failure.

It is precisely this vulnerability to failure that Butler makes much of in her conceptualization of resistance in *Excitable Speech*, since the incompleteness of signification indicates an inherent vulnerability that exposes signification itself to a differential repetition and transformation of interpellative force. The phrase ‘linguistic vulnerability’ carries two interrelated meanings for Butler; first, there is the linguistic vulnerability of the subject, insofar as the subject is produced through language and hence is susceptible to its power to injure and wound. This means that the sovereign individual existing outside language is a fiction, and this leads directly

⁹ Austin cited in Butler, *Excitable Speech*, p.3.

¹⁰ Butler, *Excitable Speech*, p.3.

¹¹ Butler, *Excitable Speech*, p.3.

to the second meaning of the phrase. Linguistic vulnerability also refers to the vulnerability of language to reappropriation and resignification, because there is no sovereign subject to fix the meaning of terms and ensure the efficacy of speech acts. The power of words to injure in being spoken cannot be seen as directly arising from the position of the speaker and their capacity to control language. Illocutionary force is to a large extent given by the conventional nature of the terms and by the way in which relations of power are embedded within and reproduced through the speaking of terms. The double sense of linguistic vulnerability begins to bring into focus the theoretical threads and stakes of Butler's argument, two of which require further discussion here.

The first of these is the theory of subject-formation that she develops. Butler's critical reformulation of the Hegelian dialectical scene of desire and recognition through Althusser's *mis-èn-scène* of interpellation emphasizes the political potential of *mis*-recognition as a central tenet of the politics of the performative.¹² Perhaps the most innovative aspect of Butler's use of Austinian speech act theory is the association she establishes between illocution and interpellation, through which she inflects the problematics of discursive construction with those of intersubjective dynamics of recognition, a position that is particularly evident in her arguments in *Excitable Speech*. Butler recognizes the ostensible opposition between Austin and Althusser, insofar as the former assumes that the subject precedes speech, while for the latter speech brings the subject into existence. She suggests, in fact, that the constitutive interpellation that Althusser describes seems to constitute the prior condition for the subject-centred speech acts of Austin's analysis. She argues that if hate speech is to be seen as illocutionary in such a way that it injures the one it names in the act of naming, then its interpellative function must also be recognized. For Butler, interpellation is the necessary precondition for the social existence of a subject. She states that 'it is by being interpellated within the terms of language that a certain social existence of the [subject] first becomes possible'.¹³ Or in other words,

¹² See her prefatory comments in the paperback issue of *Subjects of Desire: Hegelian Reflections in Twentieth Century France* (New York: Columbia University Press, 1999), where she comments that 'all my work remains within the orbit of a certain set of Hegelian questions: What is the relation between desire and recognition, and how is it that the constitution of the subject entails a radical and constitutive relation to alterity?' (p.xiv).

¹³ Butler, *Excitable Speech*, p.5.

'to be addressed is not merely to be recognized for what one already is, but to have the very terms conferred by which the recognition of existence becomes possible. One comes to "exist" by virtue of this fundamental dependency on the address of the Other.'¹⁴

Butler's reference to an Althusserian conception of the emergence of the subject in discourse allows her to reformulate the Hegelian master-slave dialectic to emphasize the fundamental dependence of the subject on the regulatory norms animated through linguistic practices for its existence.¹⁵ To state it simply, in the dialectic of the master and slave, each participant in the confrontation confers recognition upon the other and that conferral inaugurates the emergence of the subjectivity of each. While drawing on this figuration of the subject's emergence in relation to the other, Butler also takes up Althusser's figuration of interpellation in the call of the police officer, understood by Althusser as the interpellative call of ideology. In doing so, she shifts focus from the constitutive engagement with the other to the constitutive force of signification, whereby the subject emerges through identification with the interpellations offered in the normative operations of a 'dominant and indifferent' discourse that both precedes and exceeds the subject. Thus recognition is mediated through the terms and names by which one is called into being as a subject, a condition of existence that exposes the subject to potentially debilitating injuries effected through language. As Butler argues, the social existence and recognition of a subject are facilitated by conventional terms, 'the effects and instruments of a social ritual that decide, often through exclusion and violence, the linguistic conditions of

¹⁴ Butler, *Excitable Speech*, p.5.

¹⁵ That the notion of linguistic practice designates more than speech is evident in Butler's critique of Althusser's *mis-én-scène* of interpellation on the basis that it presumes a more or less sovereign voice that hails the subject into being (see Judith Butler, *The Psychic Life of Power* (Stanford: Stanford University Press, 1997), pp.5-6, 106-131). However, throughout the argument in *Excitable Speech*, Butler is primarily interested in the limits of speech itself. Further, Butler also claims to want to privilege speech in order to 'struggle free of a narrow version of textualism' (Butler in Bell, 'Speech, Race and Melancholia', p.169), by which she means the theoretical positing of the primacy of writing, by emphasizing the constitutive role of speech over that of writing. Thus, her argument in *Excitable Speech* is especially concerned with the borders of what *speech* is. While I will not develop this point here, this privileging of speech may engender a certain difficulty for Butler's emphasis on resignification as a strategy of resistance to hate speech, since it is then difficult to imagine the scene of speaking back to anonymous graffiti, policy documents and other such discursive elements. In other words, as modalities of invective and hate, do speech and writing permit or necessitate the same response? One of the potential problems mooted here is whether Butler's understanding of signification is overstretched in its reference, for it covers both the voice and the act of speaking, as well as writing and most broadly, ideology.

survivable objects'.¹⁶ For instance, the utterances of hate speech are an element in the continuous process of discursive subjectivation, one that attempts to produce subjects through derogation in order to reproduce positions of subordination. Thus the capacity of hate speech to injure those it names rests on its interpellative force and the fundamental dependence of the subject on language for social existence.

Furthermore, maintenance of the status of being a subject is only assured through the repetition of the conditions of power that inaugurate that status, such that these conditions themselves are reenacted or reproduced through their continued citation. Hence the performativity of sexual identity should be 'understood not as a singular or deliberate "act", but, rather, as the reiterative and citational practice by which discourse produces the effects it names'.¹⁷ Or in other words, performativity is 'always a reiteration of a norm or set of norms, and to the extent that it acquires an act-like status in the present, it conceals or dissimulates the conventions of which it is a repetition'.¹⁸ This means that the site of the subject, what Butler sees primarily as a 'linguistic category, a place holder, a structure in formation'¹⁹ is not only the occasion by which the individual comes to acquire a level of social intelligibility without which they cannot survive, but is also the occasion for the reproduction of conditions of power. As Butler states 'if conditions of power are to persist, they must be reiterated; the subject is precisely the site of such reiteration'.²⁰ Hence, the reproduction of conditions of power is never purely mechanical, but founders instead on the temporal vulnerability of power, whereby the repetition of conditions of power opens the way for their being re-inscribed or reiterated differently.²¹

¹⁶ Butler, *Excitable Speech*, p.5.

¹⁷ Judith Butler, *Bodies that Matter: On the Discursive Limits of "Sex"* (New York: Routledge, 1993), p.2.

¹⁸ Butler, *Bodies that Matter*, p.12.

¹⁹ Butler, *Psychic Life*, p.10.

²⁰ Butler, *Psychic Life*, p.16.

²¹ Contra Lois McNay, 'Gender, Habitus and the Field: Pierre Bourdieu and the Limits of Reflexivity' *Theory, Culture and Society* 16:1(1999), pp.95-117 at 102. McNay claims that in Butler's work 'reiteration becomes a static rather than temporal act where the reproduction of the sex-gender system involves a ceaseless reinscription of the same. This notion of time as a succession of self-identical and discrete acts renders the dominant hermetic and self-sustaining and means that disruption can only come from the outside. This provokes the dualisms of 'subjection-resistance, exclusion-inclusion that limit Butler's work'. This clear misreading fails to appreciate the Derridean influence within Butler's work, and particularly of the notion of citationality, which is not a matter of the incessant repetition of the same but rather opens the very possibility of difference. It is interesting to note that in the debate

Hence, while Butler sees the subject as conditioned and given existence by language through the address of the other, it would be a mistake to see in this argument a denial of the agency of the subject. Instead, Butler wants to effect a repositioning of agency as a consequence of the linguistic constitution of the subject, stating that 'the one who acts... acts precisely to the extent that he or she is constituted as an actor, and hence, [operates] within a linguistic field of enabling constraints from the outset'.²² The subject survives the impasse of subordinating recognition, since the interpellations by which the subject is brought into being also inaugurate the agency of the subject, enabling the subject to turn against the terms by which recognition is established. The incompleteness of the signifier, which ensures that the signifier necessarily fails to fully capture that which it names and is thus stricken by the ever-present possibility of mis-recognition, or the failure of the subject to find itself in the terms by which it is called. Thus, the agency of the 'subject' – to the extent that this term can be used here – emerges through the failure to identify, the failure to recognize oneself in the terms by which one is called into being as subject. It takes the form of a turning back upon the interpellation and recasting the term to give it new life, an appropriation and re-signification that works to untether the term from the effects of derogation and subordination.

In other words, if the subject who is named in derogation refuses that identification and returns the name to its initial speaker in a transmogrified form, the illocutionary and interpellative force of the original performative is destabilized. Correlatively, the transformation of interpellative force effected through resignification opens new possibilities for forms of life conditioned by the demands of linguistic survival.²³ This is at least what Butler's theory of resistance seems to suggest at times. But it would be inaccurate to over-emphasize the possibility and efficacy of this refusal, because as Butler remarks 'speech is always in some way out of our control'²⁴ and therefore also beyond the control of those who would refuse its power to injure. Furthermore, as

between Pierre Bourdieu and Butler, it is precisely this problem of providing a static model of hegemonic institutions and mechanical notion of social reproduction that Butler taxes Bourdieu for.

²² Butler, *Excitable Speech*, p.15-16.

²³ Also see Butler's development of the concept of resignification in *Bodies that Matter*, especially in the chapter entitled 'Critically Queer', pp.223-242. In her earlier work, Butler links the idea of resignification much more closely to parody, but this should be seen as one particular mode of resignification, and not necessarily as paradigmatic.

²⁴ Butler, *Excitable Speech*, p.15.

she points out, and as Althusser failed to draw out, the act of naming exceeds the existence of the one who is named. One can be named without being present in the occasion of being named, or without knowing that one is being named. While social existence is ensured through the constitutive capacity of naming, that social constitution may well be efficacious without the subject turning and identifying with the terms in which they are hailed. As Butler states: 'the measure of... constitution is not to be found in a reflexive appropriation of that constitution, but, rather in a chain of signification that exceeds the circuit of self-knowledge. The time of discourse is not the time of the subject'.²⁵

A number of questions can be posed to this rendering of the subject's emergence and survival within discourse, but for now, I want to hold questions concerning the dynamic of recognition and mis-recognition that underpin this in abeyance and return to them in the final section of this chapter. Here, it is important to pursue the implications of an agency that consists in recasting the terms by which one is given existence as a subject and Butler's concomitant positing of resignification as a necessary strategy against the derogation of hate speech. This returns us to the second meaning of linguistic vulnerability and allows for a discussion of the political project of radical democracy that supports Butler's performative politics.

Butler has recently provided an explicit discussion of her longstanding commitment to the central claims of the theoretical and political project of radical democracy in her engagement with Ernesto Laclau and Slavoj Žižek in *Contingency, Hegemony, Universality*. In this text, Butler situates herself in the terrain of political theorists who find radical democratic potential in the 'incompletion of the political signifier and the relations between political signifiers',²⁶ while simultaneously marking her disagreements with other radical democracy theorists. The most substantial point of agreement between these theorists is a mutual commitment to the questioning of a politics of representation and insistence on the productive political possibilities that attend the necessary incompletion that marks signification and identification. Rather than bemoaning 'what constitutes the failure of any claim to identity to achieve full

²⁵ Butler, *Excitable Speech*, p.31.

²⁶ Fiona Webster, 'The Politics of Sex and Gender: Benhabib and Butler Debate Subjectivity', *Hypatia* 15.1(2000), p.14.

and final determination²⁷ as the crisis of the political, this failure becomes, in itself, the condition of political possibility rendered as 'democratic contestation'. The term 'democratic contestation' is taken from the seminal articulation of radical democratic theory by Ernesto Laclau and Chantal Mouffe in *Hegemony and Socialist Strategy* and indicates the instability of political articulation and the consequent agonism of democracy.²⁸ Laclau and Mouffe argued that political signifiers produce or constitute the political field in which they operate and are incomplete in the sense that they perpetually and necessarily fail to fully describe or represent that which they purport to name. Furthermore, since political signifiers are contingently related to one another, a continual rearticulation of these signifiers is required in order to produce new subject positions and political signifiers, thus leading to the development of new linkages that can operate as rallying points of politicization.²⁹

While Butler concurs with the theoretical claim of a necessary or intrinsic failure of signification and identification central to radical democracy theory, the principal point of difference between her, Laclau and Žižek also emerges from this commitment. Specifically, their disagreements rest on how that failure is figured and the theoretical and political effects of that figuration. That is, while all three theorists emphasize a constitutive failure in representation, a strong divergence emerges in how each accounts for it and the political effects of it. Against Žižek's insistence that the Lacanian notion of the Real operates as the 'inherent limitation of the Symbolic, the impossibility of the Symbolic fully to "become itself"',³⁰ Butler argues that recourse to the Real as that which resists signification is itself an effect of signification, one which operates to consolidate the excluded other of the hegemonic

²⁷ Judith Butler, Ernesto Laclau and Slavoj Žižek, 'Introduction', *Contingency, Hegemony and Universality: Contemporary Dialogues on the Left* (London: Verso, 2000) pp.1-10 at 2.

²⁸ Ernesto Laclau and Chantal Mouffe, *Hegemony and Socialist Strategy: Toward a Radical Democratic Politics* (London: Verso, 1985); also see Butler, Laclau and Žižek, *Contingency, Hegemony and Universality*.

²⁹ Laclau and Mouffe, *Hegemony and Socialist Strategy*, especially chapter 4; Also see Butler, *Bodies that Matter*, p.193; for further discussions of the centrality of contestation or agonism within democratic politics see among others, William E. Connolly, *Identity/Difference: Democratic Negotiations of Political Paradox* (Ithaca: Cornell University Press, 1991); William E. Connolly, *The Ethos of Pluralization* (Minneapolis: University of Minnesota Press, 1995); Chantal Mouffe, *The Return of the Political* (London: Verso, 1993); Chantal Mouffe, ed. *Deconstruction and Pragmatism* (London: Routledge, 1996); Chantal Mouffe, *The Democratic Paradox* (London: Verso, 2000); Bonnie Honig, *Political Theory and the Displacement of Politics* (Ithaca: Cornell University Press, 1993).

³⁰ Slavoj Žižek, 'Class Struggle or Postmodernism? Yes Please!' in J. Butler, E. Laclau and S. Žižek, *Contingency, Hegemony, Universality: Contemporary Dialogues on the Left* (London: Verso, 2000), pp.90-135 at 120.

order as ahistorical and necessarily unintelligible.³¹ Not altogether dissimilarly, in her article 'Poststructuralism and Postmarxism', Butler criticizes Laclau on the basis that the necessary failure of political ideals provides no means of staving off political pessimism. She perceives in Laclau's approach a tendency to isolate and valorize conceptual ideals from social formations and practices by 'postulating a logic to which social practices are subject but which is itself subject to no social practice'.³² Consequently, he fails to recognize the ways in which the logic of failure is itself configured within operations of power. Further, Butler claims that 'the assumption of a radical ontological divide between the logical and the social' characteristic of Laclau's approach 'precludes from the start the realizability of a logical norm within the domain of the social' and asks whether 'the theoretical demarcation of 'the logically possible' can suffice as a normative ideal for social practice'.³³

In response to this, Butler underlines her preference for a Nietzschean and Foucauldian approach to the political, which emphasizes the productive force of relations of power and knowledge on the formulation of logical ideals, and asks how it is that such ideals take hold in particular historico-cultural formations.³⁴ Butler urges a Foucauldian analysis of the circumscription of logical possibilities that recognizes the ways in which those possibilities are produced through the regulative operation of power and the mechanisms by which this production is concealed. She argues that the abstraction of logical possibilities is an abstraction from the constitutive relations of power that regulate the borders between the intelligible and the unintelligible and limit the range of possibilities through the constitution of the impossible. For Butler, the domain of the logical operates as one of the mechanisms of regulation; it is an 'instrument and effect of social power'. She argues that this comes to light in a Foucauldian analysis of the logical, through which one would

³¹ See in addition to her discussions in *Contingency, Hegemony, Universality*, her chapter on Žižek in *Bodies that Matter*, entitled 'Arguing with the Real', pp.187-222. It is not necessary to take up the question of whether Butler's critique of Žižek is accurate here, though Žižek has defended himself against Butler's criticism on a number of occasions, claiming that the Lacanian Real is historical. See in particular Christopher Hanlon 'Psychoanalysis and the Post-Political: An Interview with Slavoj Žižek', *New Literary History* 32:1(2001), p.1-21 at 16; also see Slavoj Žižek *The Abyss Of Freedom* (Ann Arbor: University of Michigan Press: 1997) p.83-4.

³² Butler, 'Poststructuralism and Postmarxism', p.9.

³³ Butler, 'Poststructuralism and Postmarxism', p.9.

³⁴ It should also be noted though that Butler takes distance from what she perceives as a utopian impulse or moment of the notion of the sign-chain suggested by Nietzsche and utilized by Foucault.

'encounter the limits of the intelligible as controlled by strategies of social regulation'.³⁵ Thus she underlines her preference for a genealogical approach directed toward the fabrication of 'local ideals [that] enhance the sense of politically practical possibilities'³⁶ where the context of both formulation and realization are indeterminate and locally contingent.

However, the theoretical and political status that Butler gives to contingency is double-edged and ultimately reveals important tensions within her political commitments. On the one hand, in aligning herself with a Foucauldian-inspired pragmatism, Butler understands that political strategy is of necessity constrained and made possible by the particular circumstances in which a political decision has to be taken. The strategies and tactics of political confrontation cannot be determined in advance of the conditions to which they must respond. On the other hand though, Butler posits contingency as the necessary ground of politics, not in the sense that political strategy is itself contingent, but in that political strategy derives from the inherent contingency of discursivity. For Butler, resistance arises through the inherent temporal vulnerability of power relations, figured in *Excitable Speech* and elsewhere as the vulnerability of signification to re-appropriation. This suggests then that despite her stated commitment to a pragmatic politics in the lineage of Foucault, Butler's theoretical claims take her some way from this commitment.

This point can be clarified through a brief consideration of Butler's criticism of both Pierre Bourdieu and Derrida on the performative force of speech acts in *Excitable Speech*. Butler attempts to negotiate a path between what she sees as the structural determinism of Bourdieu, and Derrida's installation of iterability as a structural necessity of every linguistic utterance or mark.³⁷ She takes issue with Bourdieu on the basis that if the performative force of illocutionary speech acts is said to derive from the pre-ordained authority of the speaker, an authority established through social ritual and convention, then opportunities for linguistic agency that exist 'at the

³⁵ Butler, 'Poststructuralism and Postmarxism', p.9.

³⁶ Butler, 'Poststructuralism and Postmarxism', p.10-11.

³⁷ See Jacques Derrida, 'Signature, Event, Context' in *Limited Inc* (Evanston: Northwestern University Press, 1988), pp.1-23 and Pierre Bourdieu *Language and Symbolic Power*, ed. John B. Thompson, tr. Gino Raymond and Matthew Adamson (Cambridge Ma.: Harvard University Press, 1991).

margins of power³⁸ are foreclosed. In order to bring these opportunities to the fore, Butler draws on Derrida's critique of Austin and his argument that iterability constitutes a condition of possibility of linguistic practice. However, Butler claims that in developing his argument for iterability as the basis of performative force, Derrida overemphasizes the capacity of the utterance to 'break' with any context because of an internal capacity, 'thus paralyzing the social analysis of the forceful utterance'.³⁹

But while Butler refutes Derrida's position on the basis that it does not permit recognition of the ways in which context inheres in speech acts within the operation of hate speech and thereby both contributes to and undermines their efficacy, it is difficult to see the actual significance of how her position differs from Derrida's. For in making power citational, Butler posits citationality and the vulnerability to misappropriation as a structural necessity of power in much the same way as Derrida makes iterability and the possibility of (mis)appropriation a structural condition of any utterance or linguistic mark. While she recognizes the way in which context conditions, and perhaps even undermines, the re-appropriations of language effected through resistance to hateful interpellations, thereby weakening the radical decontextualisation of deconstruction, citationality is nevertheless maintained as a logical possibility that necessarily conditions both linguistic practice and the operation of power. Several points can be made to bring out the implications of this and ultimately, to point toward a deep rift that runs through *Excitable Speech*. In particular, two closely related dimensions of Butler's argument warrant further examination, these being the conception of the state that she relies on and her argument against casting hate speech as illocutionary. These fields of analysis find their conjunction in legality and law, and particularly in the attribution of sovereign power to the state, the law and speech acts.

The aims of *Excitable Speech* are both theoretical and political; of the former, it can be said that Butler attempts to clarify the relation of speech and conduct, and through this, the relation between speech, violence and the body. She argues against the

³⁸ Butler, *Excitable Speech*, p.156; also see Judith Butler 'Performativity's Social Magic' in R. Shusterman, ed. *Bourdieu: A Critical Reader* (Oxford: Blackwell Press: 1999), pp.113-128.

³⁹ Butler, *Excitable Speech*, p.150.

characterization of hate speech and pornography on the model of illocutionary speech acts, doing what it says in the saying of it, evident in the work of Catharine Mackinnon, Rae Langton, and Mari Matsuda among others.⁴⁰ Butler claims that it is necessary to understand such speech as perlocutionary – to the extent that pornography can be understood as speech at all – and thereby maintain a distinction between speech and conduct. From this theoretical explication, Butler makes the political claim that state power should not be extended to include legal regulation of pornography, and further, that the state cannot be relied upon for protection against hate speech. In fact, the appropriate response to hate speech for Butler is the adoption of a strategy of the misappropriation of hateful appellations and the restaging of them within different contexts in such a way that these terms necessarily take on different meanings. In other words, the best response to hate speech is more speech. Indeed, calls for legal regulation are not only doomed to failure through the necessary incompleteness of signification and the subject's lack of sovereign control over language, but are in fact pernicious. This is both because the state itself is engaged in the production of hate speech, and because the attempt to regulate speech limits the opportunities for resignification. As Butler states: 'the effort to tighten the reins on speech undercuts the political impulses to exploit speech itself for its insurrectionary effects'.⁴¹

The first argument that Butler provides against the legal regulation of hate speech derives from a general mistrust of the state and wariness regarding the extension of state power. This is based on the 'arbitrary use of... power' in relation to racial and sexual speech that Butler claims is evident in recent US. Supreme Court decisions. In particular, Butler argues that precedents on hate speech are used in contrary ways to 'promote conservative political goals and thwart progressive efforts'.⁴² This arbitrariness means that extending the power of the state to regulate the uses of speech potentially empowers the state to invoke progressive legislation against the very movements that it was initially designed to protect. Hence, 'the prosecution of

⁴⁰ The relevant texts include: Catharine Mackinnon *Only Words* (Cambridge, Ma.: Harvard University Press, 1993); Rae Langton, 'Speech Acts and Unspeakable Acts', *Philosophy and Public Affairs* 22:4(1993), pp.293-330 and Mari J. Matsuda, Richard Delgado, Charles R. Lawrence III, Kimberlè Williams Crenshaw, *Words That Wound: Critical Race Theory, Assaultive Speech and the First Amendment* (Boulder: Westview Press, 1993).

⁴¹ Butler, *Excitable Speech*, p.162.

⁴² Butler, *Excitable Speech*, p.64.

hate speech in a court runs the risk of giving that court the opportunity to impose a further violence of its own'.⁴³ Additionally, Butler makes the stronger claim that 'the state produces hate speech'⁴⁴ by which she means that the 'category cannot exist without the state's ratification'. This means that the state actively intervenes in the production of what is considered publicly accepted speech, 'demarcating the line between the domains of the speakable and the unspeakable, and retains the power to make and sustain that consequential line of demarcation'.⁴⁵ In so doing, it enacts a kind of violence that is not dissimilar to that enacted through racist or homophobic speech, that is, the violence of exclusion and interpellative derogation. What is at issue then is both the state's capacity to produce and enforce the limit of acceptable linguistic practice and its ability to re-appropriate discourses and legislation in reactionary and dangerous ways.

Butler's characterization of the state is posed in opposition to the portrayal of the state as a neutral arbiter of civil conflict that theorists who call for legal regulation tend to rely on and this corrective is surely important. But there is a sense in which Butler's characterization of the state runs the risk of reproducing the logic of the argument she opposes. While Butler suggests that the operations of state power are 'arbitrary', her argument assumes that the incursions of the state into the sphere of speech through legal regulation are necessarily reactionary. But this neglects the fact that various progressive movements have been importantly assisted by state intervention.⁴⁶ The point that is elided is that *a priori* designations of state intervention as reactionary, neutral or even necessary miss the vagaries of the state's position within relations of power and political contestation. Insofar as this is true, Butler's position on the state is distinctly *un-Foucauldian*, despite her explicit

⁴³ Butler, *Excitable Speech*, p.65.

⁴⁴ Butler, *Excitable Speech*, p.77.

⁴⁵ Butler, *Excitable Speech*, p.77.

⁴⁶ See Paul A. Pavasant and Jodi Dean 'Laws and Societies', *Constellations* 8:3(2001), pp.376-389 for a challenge to Butler's opposition to legal redress that highlights the internal pluralism of the law. Also see the discussion between Elizabeth Povinelli, John Frow and Meaghan Morris in Lauren Berlant's *Intimacy*, for a critical elucidation of the political and theoretical stakes of conflating the operations of juridical and state institutions in relation to tolerance and multiculturalism. See Elizabeth Povinelli, 'The State of Shame: Australian Multiculturalism and the Crisis of Indigenous Citizenship', in L. Berlant, ed. *Intimacy* (Chicago: University of Chicago Press, 2000), pp.253-288; John Frow and Meaghan Morris, 'Two Laws: Response to Elizabeth Povinelli', in L. Berlant, ed. *Intimacy* (Chicago: University of Chicago Press, 2000), pp.421-425; Elizabeth Povinelli, 'The Cunning of Recognition: A Reply to John Frow and Meaghan Morris', in L. Berlant, ed. *Intimacy* (Chicago: University of Chicago Press, 2000), pp.426-432.

commitment to his critique of understanding power as sovereign and centralized in the state. This divergence is further evinced by her suggestion that her concern is ‘*not only* with the protection of civil liberties against the incursions of the state, but with the discursive power given over to the state through the process of legal redress’.⁴⁷ If we understand this to mean that it is at least partly concerned with the incursions of the state into the sphere of civil liberties, then Butler’s positing of a sphere of civil activity – indeed civil liberty – distinct from the proper sphere of state activity is problematic from a Foucauldian viewpoint. Foucault’s own work and the literature inspired by it on the governmentalization of the state shows the difficulty in making such a distinction between the civil sphere and the proper sphere of state intervention, particularly since the notion of the civil sphere only makes sense in terms of the political and legal production of that sphere.⁴⁸

It is perhaps unfortunate that Butler’s engagement with Foucault’s explication of genealogical analysis remains limited to theoretical critique. For the problem that Butler does not engage with in *Excitable Speech* is the historical interrelation of political subjectivity and language within a liberal arts of government. To put it simply, a more strictly Foucauldian intervention in the debates concerning legal regulation of speech would trace the historical problematization of speech within liberalism with the aim of bringing to light the techniques through which speech is able to be governed, the way in which it contributes to the governing of political subjects and the possible points of intervention that raise the possibility of being governed differently. This kind of genealogical analysis seeks to bring to light the historical particularity of forms of government and rationalization that present as universal, ahistorical and given. In doing so, it methodologically brackets the truth claims made by those forms of government and rationalization in order to trace the lines of force that constitute the conditions of their emergence and consolidation.

⁴⁷ Butler, *Excitable Speech*, p.77; emphasis added.

⁴⁸ See especially, Michel Foucault, ‘Governmentality’ in *IBC* 6(1979), pp.5-21, reprinted in Graham Burchell, Colin Gordon, and Peter Miller, eds. *The Foucault Effect: Studies in Governmentality* (Chicago: University of Chicago Press, 1991), pp.87- 104. For further elaboration of the relation of civil society to the state and law within a liberal rationality of government, see Colin Gordon, ‘Governmental Rationality: An Introduction’, pp.1-52 and Graham Burchell, ‘Peculiar Interests: Civil Society and Governing “The system of Natural Liberties”’, pp.119-150 in the same volume.

However, Butler's methodological approach is a rhetorical and theoretical questioning, which, while attempting to challenge the claims of liberal political institutions, is nevertheless bound by the truth claims and problematics of liberalism. The shift to an Austinian theoretical articulation of the relation between violence and speech, whether one sees that relation as illocutionary or perlocutionary, is after all, still a matter of trying to establish the extent to which speech causes harm, and is thus played out on theoretical and political ground established by J.S. Mill.⁴⁹ My point though is not to criticize Butler for not being more strictly Foucauldian. Rather, it is to highlight the way in which her work diverges from this theoretical and political lineage against those critics who elide the differences between Butler and Foucault as well as Butler's own attempt to place herself within that political tradition.

To return to the question of Butler's position *vis-à-vis* Foucault's political pragmatism then, so far we have seen that Butler's political claims are based on the inevitable instability of political performatives. From this claim, Butler goes on to advocate a strategy of resignification as a 'necessary response' to hate speech. Butler's claim that this response is 'necessary' is somewhat ambiguous here, since it could be taken to mean either that the response is inevitable or that it is indispensable, a strategy that cannot but be pursued or a strategy that must be pursued; it is I think this latter sense that is most appropriate here, since resignification is posed as an *alternative* to legal regulation and to make it inevitable would rob her argument of its force. However, there is a further ambiguity in that the instability of the signifier is necessary, or inevitable. This ambiguity is resolved by positing the inevitable instability generated by citationality as the condition for resignification as a potential political strategy, one that Butler sees as a necessary response to hate speech. However, in taking this approach, Butler forgoes a contextually contingent pragmatics and instead posits a logic of political action that precedes the conditions which it addresses. Her

⁴⁹ For a similar, though more explicitly liberal and therefore less anti-juridical, argument against Mackinnon developed through deconstruction and Lacanian psychoanalytic theory, see Drucilla Cornell, *The Imaginary Domain: Abortion, Pornography, and Sexual Harassment* (New York: Routledge, 1995) esp. pp.140-163. For further considerations of the harm principle and speech act theory see the discussion between Rae Langton and Leslie Green in the collection, *Censorship and Silencing*. Leslie Green, 'Pornographizing, Subordinating and Silencing' in Robert C. Post. ed. *Censorship and Silencing: Practices of Cultural Regulation* (Los Angeles: Getty Research Institute for the History of Art and the Humanities, 1998), pp.285-311; Rae Langton, 'Subordination, Silence and Pornography's Authority' in Robert C. Post. ed. *Censorship and Silencing: Practices of Cultural Regulation* (Los Angeles: Getty Research Institute for the History of Art and the Humanities, 1998), pp.261-283; also see Leslie Green, 'Pornographies', *The Journal of Political Philosophy* 8:1(2000), pp.27-52.

opposition to the legal regulation of hate speech and the correlative reliance on discursive resignification to contest the interpellative violence that hate speech enacts posits resignification as an *a priori* response, regardless of the contingent conditions of its realization.

To be sure, Butler does occasionally concede that she is not opposed to legal redress *per se* and that in certain situations it might well be called for. Butler concedes that legal regulation might be appropriate when she states that 'this is not to say that subjects ought not to be prosecuted for their injurious speech; I think there are probably occasions when they should be'.⁵⁰ But when she makes such concessions, Butler is engaging in a performative contradiction, or a speech act that actually produces a meaning that undercuts the meaning that it purports to make. This concession is made in the context of a critique of the attribution of responsibility for hate speech to a singular subject, which problematizes the prosecution of an individual for their injurious speech. In this scene then, there is considerable tension between the act of conceding the appropriateness of legal regulation and the argument against such regulation. This suggests that such concessions are made primarily for rhetorical effect, or perhaps indicate an anxiety that Butler has about the implications of her argument. This tension is further increased when we consider that Butler characterizes calls for legal circumscription of offensive or injurious speech as 'dogmatic'⁵¹ and perniciously detrimental to extra-judicial attempts to combat such speech. Hence, the overwhelming impulse of *Excitable Speech* is to provide a theoretical argument that makes such redress illegitimate.

The divergence that this indicates from Foucault's approach to the question of theoretical engagement with political problems becomes even clearer if Butler's theoretical position is contrasted with a genealogical approach, for the aim of the latter would be to trace relations of force in order to bring to the fore the points of weakness and possible intervention. As such, these points of weakness cannot be designated in advance. However, this is precisely what Butler does in presuming that the structural instability of power *qua* language should be the privileged point of intervention in combating hate speech. In short, while resignification might well be a

⁵⁰ Butler, *Excitable Speech*, p.50; cf. p.102.

⁵¹ Butler, *Excitable Speech*, p.102.

logically possible mode of redress against the speech of hate, this does not ensure that it is necessarily the most efficacious one, since this could only be decided *in loco*, not *a priori*, if even then. Furthermore, such a presumption of the efficacy of resignification as a strategy of resistance is precisely what her considered arguments against the sovereign force of the speaker warn against. For just as the efficacy of hate speech cannot be assured through recourse to a notion of the sovereign subject, neither can the efficacy of reappropriation and resignification. The effectiveness of resignification will necessarily be conditioned not only by the 'condensed historicity' of the term, but also by the circumstances in which the attempt at resignification takes place, what might be called the conditions of felicity.⁵² This has the consequence that while resignification might be logically possible with all terms or utterances, the historical and discursive circumstances in which resignification is attempted will more or less severely limit the actual realizability or efficacy of a strategy of resignification.

Contrary to what some of her critics have suggested, Butler is not unaware that resignification is itself both subject to discursive limits and open to the possibility of failure. As she states 'neither the radically new nor the subversive repetition can be logically guaranteed; there will be a necessary difference between what is shown to be logically possible and what in any given nexus of discourse and power is possible to realize'.⁵³ Thus she does recognize that as a strategy of resistance to the interpellative force of hate speech, the success of resignification will vary. However, in developing her arguments against the legal regulation of hate speech, Butler seems to resile from this recognition by overemphasizing the progressive political potential of citationality and positing resignification as a necessary political strategy. If this is the case, Butler is, to use her own words, 'postulating a logic to which social practices are subject but which is itself subject to no social practice',⁵⁴ by posing instability and contingency as the necessary ground of political engagement. However, to pose contingency as the ground or condition of political engagement is not the same as recognizing that the form that political action takes is contingent upon the circumstances in which such action is taken. In this light, Butler's positing of resignification as a necessary strategy

⁵² Following Austin in *How to do Things with Words*.

⁵³ Butler, 'Poststructuralism and Postmarxism', p.10.

⁵⁴ Butler, 'Poststructuralism and Postmarxism', p.9.

of political response based on the inherent instability of signification directly contradicts her stated political allegiance to the genealogical pragmatism that she finds in Foucault's work. Further, this suggests that the Derridean-inflected politics of democratic contestation that Butler develops are not so easily reconciled with a Foucauldian historical 'ontology of ourselves'.⁵⁵

Given this, several further points can be made about the politics of the performative that Butler elaborates, which relate to her analysis of illocution and the effects of the concept of sovereignty within the hate speech debate. In a second argument against recourse to legal regulation of speech, she notes that calls for such recourse typically rely on an illocutionary model of hate speech, wherein the speech act brings into being what it says in the very saying of it. This means that there is no temporal distinction between the speech act and its consequences or effects – the speaking is the doing. But she claims, such arguments for legal regulation of speech wrongly attribute a sovereign efficacy to speech acts, or more precisely to the subject that performs such acts. Such arguments presume that speech acts necessarily do what they say they will do, and thereby elide both the conditions necessary for such felicity and the potential for failure that conditions the speech act. This seems to be the case particularly with regard to hate speech, where the power to injure is located in the speaker of hate, thereby detracting from the recognition of a 'condensed historicity'⁵⁶ that conditions the terms they use. This dimension of the speech act ensures that in fact their interpellative force is citational or iterative, deriving from the prior uses or conventionality of terms. As she states, 'the iterability of hate speech is effectively dissimulated by the "subject" who speaks the speech of hate'.⁵⁷ In contesting the presumption of efficacy, Butler argues that this wrongful attribution of sovereign efficacy also operates within the law, since it relies on the location of the origin of

⁵⁵ It should be noted though that Butler's conceptual borrowing from Derrida is quite specific in that while she takes the idea of signifiatory instability and citationality from his essays 'Structure, Sign and Play' and 'Signature, Event, Context', she does not take up the ethical concerns of his later work. Indeed, ethical questions have not received much attention in Butler's work to date, although political concerns have been central. In the following section, I consider the concept of responsibility in relation to Butler's later work, particularly *Antigone's Claim*, to show the way in which Butler's formulation of mis-recognition works against an adequate conception of ethical response. See Jacques Derrida, 'Structure, Sign and Play', in *Writing and Difference*, tr. Alan Bass (Chicago: University of Chicago Press, 1978), pp.278-293.

⁵⁶ Butler, *Excitable Speech*, p.3.

⁵⁷ Butler, *Excitable Speech*, p.80.

hate speech in an individual subject in order to maintain the legal requirement of culpability.

The attribution of sovereignty that characterizes illocutionary models of hate speech is for Butler a compensating fantasy that arises from an anxiety over the demise of sovereignty such that power is no longer constrained by its parameters.⁵⁸ She argues that the figure of sovereignty is a fantasy that compensates precisely for the decline of sovereign power within the political field and which is manifest in the figure of a sovereign subject who performs speech acts as they intend. Displaced from considerations of state power, this fantasy returns in language, figuring the performative as necessarily efficacious and the subject who speaks hate as the origin of that speech. This fantasy simplifies the political field by reducing the complexity of current relations of power to a single utterance, thus ignoring the way in which racist and sexist practices exceed and condition that utterance and occludes the conventionality that gives utterances illocutionary force.⁵⁹ More importantly, it ignores the vulnerability of speech acts to failure and reappropriation by those they are meant to injure and derogate.⁶⁰ Thus, the constraints of legal language permit the attribution of responsibility for the injurious effects of speech to an individual who can be held culpable, thereby bringing speech and its effects within a controllable field of operation. She states, 'by locating the cause of injury in a speaking subject and the power of that injury in the power of speech, we set ourselves free, as it were, to seek recourse to the law – now set against power and imagined as neutral – in order to control that onslaught of hateful words'.⁶¹

Butler concludes that the fantasy of the sovereign subject undercuts the possibility of extra-legal opposition to hate speech, evinced by her remark that 'agency begins where sovereignty wanes'.⁶² Yet, there is a sense in which Butler herself fantasizes a

⁵⁸ Butler, *Excitable Speech*, p.78.

⁵⁹ Butler, *Excitable Speech*, pp.78-80.

⁶⁰ This argument is particularly directed against the performative figure invoked by Mackinnon and Langton.

⁶¹ Butler, *Excitable Speech*, p.80.

⁶² Butler, *Excitable Speech*, pp.15-16. Butler's comment echoes Hannah Arendt's suggestion that 'if men wish to be free, it is precisely sovereignty they must renounce' (Hannah Arendt, 'What is Freedom?' in *Between Past and Future: Eight Exercises in Political Thought*, New York: Penguin, 1993), pp.143-172 at 165.

certain sovereignty of the law in suggesting that the legal regulation of speech closes down or limits opportunities for extra-judicial opposition in the form of misappropriation and resignification.⁶³ If legal regulation of speech has such an effect, it would be necessary that the law actually do what it says it will do, that is, demarcate the line of the speakable and the unspeakable and rigorously maintain that demarcation. In other words, to imagine the law as sovereign is not to close down such opportunities but to suggest that such opportunities are foreclosed by legal regulation is to imagine that the state and law is sovereign.⁶⁴

More importantly, this highlights problems in Butler's conception of sovereignty and particularly the elision effected between a critique of the sovereign subject and a critique of sovereignty as a form of state organization. Butler's understanding of sovereignty derives primarily from Nietzsche's discussion of the sovereign subject in *Genealogy of Morals*, in which he links the emergence of the sovereign individual with the capacity to make and fulfill one's promises, or more broadly, to do as one wills. Thus, for Butler, sovereignty reduces to a necessary efficacy: the sovereign will is a will that is necessarily efficacious, able to overcome and forestall the contingencies that undermine or usurp the force of that will. In *Excitable Speech*, the spectral figure of the sovereign subject is a subject whose word always meets its mark, a subject with supreme control over its speech acts. Consequently, the recognition of the inherent instability of signification and the ways in which speech is always partially 'out of our control' is taken to undermine such a conception of the subject.⁶⁵ No doubt, this conception of sovereignty also in part derives from Foucault's own formulation, again partly following Nietzsche, of a critique of the sovereign individual as a direct

⁶³ See my discussion in Mills, 'Contesting the Political'; also see Fiona Jenkins 'The Heeding of Differences: On Foreclosure and Openness in a Politics of the Performative', *Constellations* 8:3(2001), pp.364-375 at 368 and Pavasant and Dean, 'Law and Societies', p.380 for alternative formulations of this point.

⁶⁴ Butler's characterization of resignification as a 'non-judicial' activity is also curious if one considers the relation between speech and the law in operation today in the context with which she is concerned. For what precisely would be 'non-judicial' in the scene in which the freedom of speech is guaranteed by the law? What would 'free speech' be, given that the domain of freedom is here more or less precisely circumscribed and delineated by the law? This suggests that it is extremely difficult if not impossible to designate a sphere of linguistic activity as non-judicial, as if this activity were unaffected by, if not opposed to, the law and legal intervention.

⁶⁵ See for instance, her discussion in the chapter entitled 'Sovereign Performatives', in *Excitable Speech*, pp.71-102; also see Judith Butler, 'Ruled Out: Vocabularies of the Censor' in R.C. Post, ed. *Censorship and Silencing: Practices of Cultural Regulation* (Los Angeles: Getty Research Institute for the History of Art and the Humanities, 1998) pp.247-259.

correlate of the critique of the sovereign state-form, which I discussed in the first chapter. If this is the case, then Butler's treatment of sovereignty can be subjected to the same critical points that I made against Foucault, for as with Foucault, in Butler the discourse of sovereignty emerges as primarily ideological, masking the constitutive effects of power on the one hand, and the radically conditioned position of the speaking subject on the other. However, as I argued in Chapter 1, this neglects the operations of sovereignty within contemporary politics, even if these cannot be seen as co-extensive with the operations of the state, which I claim is the case in the following chapter.

Against recourse to legal regulation then, Butler argues that the necessary counter-strategy to hate speech is to insist on the gap between speech and conduct, to 'lend support for the role of non-judicial forms of opposition, ways of restaging and resignifying speech in contexts that exceed those determined by the courts'.⁶⁶ Hate speech is more appropriately construed as perlocutionary, thus maintaining a distinction between speech and conduct and re-opening the temporal disjuncture between the speech act and its effects. This opens the possibilities for non-judicial forms of opposition to hate speech in several ways. First, because it challenges the presumption of sovereign efficacy of speech acts, allowing for the failure of terms to do what they say. This also has the consequence that terms are thus available for resignification, and the transformation of their interpellative force that this allows. Second, the failure of the performative is for Butler precisely the site of the political agency of subjects; in other words, the constraints on the efficacy of the performative to do what it says not only signal a failure of action but also generate the opportunity for political action.⁶⁷

But the insistence on construing hate speech as perlocutionary sits somewhat uneasily within the terms of Butler's work, for there is substantial tension between the two arms of Butler's argument that I have traced above. For on the one hand, Butler strives to separate speech and conduct through a strong critique of the portrayal of speech as illocutionary, but on the other hand, her thesis on

⁶⁶ Butler, *Excitable Speech*, p.23.

⁶⁷ Butler, *Excitable Speech*, p.93.

interpellation appears to presuppose that speech, and particularly the name, operates constitutively through illocutionary force. Interestingly, in the introductory discussion of interpellation, Butler is careful to avoid the specification of interpellation as illocutionary or perlocutionary, though she does suggest that there is a parallel between illocution and interpellation. Further, on the face of it, naming cannot be understood as perlocutionary, for it seems inaccurate to suggest that names are a consequence temporally distinct from the act of naming. While naming does have perlocutionary effects, being named is itself an illocutionary act.

What underlies the points of tension I have identified is a crucial conceptual slippage between the terms of 'conduct' and 'efficacy', which brings into focus a deeper rift that runs through *Excitable Speech*. On the one hand, Butler's argument is an argument against the characterization of hate speech as illocutionary, and in that she insists that a gap between speech and conduct must be maintained. On the other hand, her arguments against the attribution of sovereignty to the speaker of hate rely on a presumption of *efficacy*, not precisely on whether or not the speech act is illocutionary.⁶⁸ For it is possible to have an illocutionary speech act which fails to do what it says it will do. In other words, illocutionary speech acts are not always or necessarily efficacious or felicitous to be more precise – and thus do not *necessarily* presuppose a sovereign speaker – but they nevertheless remain illocutionary utterances. If we uncouple the critiques of sovereignty and illocution in this way, these two dimensions of Butler's argument appear at cross-purposes, giving rise to further tensions between the critique of sovereignty that she offers and the suggested consequences or effects of this critique for responding to hate speech.

⁶⁸ Consider here Butler's comment that 'If we accept that hate speech is illocutionary, we accept as well that words perform injury immediately and automatically' (Butler, *Excitable Speech*, pp.101-2). This comment makes clear the slippage between the questions of the illocutionary force of utterances and the ('sovereign') efficacy of such utterances. However, Austin's catalogue of potential ways that an illocutionary performative can fail in *How to do Things with Words* shows that it is possible to have an illocutionary speech act which fails to do what it says it will do. Butler does in fact recognize this when she states that 'a speech act can be an act without necessarily being an efficacious act' (Butler, *Excitable Speech*, p.16.), however this recognition is lost in her arguments against casting hate speech as illocutionary.

4.3 Linguistic Agency, Responsibility and Social Death

To close my discussion of Butler's work, I want to turn to the question of responsibility, which is provocatively raised but ultimately left unresolved in *Excitable Speech*. In the introduction to this text, Butler asks how responsibility for hate speech can be established if speech cannot be said to originate with the sovereign subject. Unfortunately, she passes over the question of responsibility to address not how one ought to speak, but what is for her the more fundamental question of what occurs in speaking, though she does suggest that the paradox of responsibility 'intimates an ethical dilemma brewing at the inception of speech'.⁶⁹ It is somewhat preemptory to turn the questions posed by such a paradox back onto Butler at this stage, but the grounds for doing so are indicated by her characterization of the stakes of signification, which are ultimately nothing short of the subject's survival within language. As Butler states 'the excessive historicity and structure [of language] makes possible that subject's linguistic survival as well as, potentially, that subject's linguistic death'.⁷⁰ The importance of this question then is redoubled in the context of linguistic vulnerability, and here, I take up Butler's provocation to ask what response is elicited in social death. What call is made to the subject from those beings cast out of social intelligibility, which are not yet or no longer fully subjects? What, ultimately, is the nature of interpellative address? In asking these questions, I also return to several of the points made in the previous chapter, which can now be extended following the consideration of contingency, agency, and linguistic vulnerability in the previous section. Interestingly, the questions of responsibility and social death come together in Butler's most recent text, *Antigone's Claim*, and I use this reading of Sophocles' *Antigone* as a point of reference here.

Given her critique of the sovereign subject and of legal regulation of speech, Butler casts *Excitable Speech* as an attempt to rethink questions of linguistic agency and ultimately, of responsibility. As she states '[u]ntethering the speech act from the sovereign subject finds an alternative notion of agency and, ultimately, of responsibility'.⁷¹ The alternative account that Butler gestures toward would be one

⁶⁹ Butler, *Excitable Speech*, p.28.

⁷⁰ Butler, *Excitable Speech*, p.28.

⁷¹ Butler, *Excitable Speech*, p.15.

that addresses the subject's constitution in language, a position which she concedes may well 'intensify our sense of responsibility' for linguistic utterance, since 'the one who utters hate speech is responsible for the manner in which such speech is repeated, for reinvigorating such speech, for reestablishing contexts of hate and injury'.⁷² There is undoubtedly a certain amount of tension between the suggestion that responsibility might be heightened by the citationality of language, and the opposition to legal regulation that Butler maintains. However, the question to be asked here is how the responsibility that is heightened by citationality differs from and undermines legal responsibility. Initially, it seems that the crucial point of difference is a matter of sovereignty, since for Butler the law is mistaken in its casting of the subject as the origin and sovereign agent of hate speech, in which case it may be that her characterization of the attribution of responsibility in law unnecessarily assumes that legal culpability requires a sovereign subject. For it could surely be the case that the speaker of hate can still be held *legally* culpable even if the philosophical recognition that the individual is not the origin of such speech is maintained. After all, is it not possible that the individual may still be held *legally* responsible for their citing of a term that carries with it considerable historical and cultural weight as racist or homophobic? Certainly the determination and attribution of culpability is complicated by this recognition, but it may not yet be undermined completely.

But it is also important to recognize that the responsibility that is enhanced by recognition of the subject's dependence on and vulnerability toward language that Butler gestures toward is a particularly *ethical* responsibility, a responsibility that cannot be contained or delimited through legal culpability.⁷³ While it has some

⁷² Butler, *Excitable Speech*, p.27.

⁷³ Renata Salecl also addresses this point through setting Lacanian psychoanalysis against Butler's 'deconstructive' argument to conclude that while language both can and cannot be controlled, the subject remains ethically responsible for the *jouissance* they experience in speaking hate (p.136). As she states, 'although the words might escape the subject's intentions, and he or she says more in slips of the tongue or between the lines, the subject cannot escape responsibility, even if that responsibility accounts for no more than the mere fact that he or she is a subject' (Renata Salecl, *(Per)Versions of Love and Hate* (London: Verso, 1998), pp.118-140 at 124). However, Salecl does not address the distinction between ethical and legal responsibility that operates in Butler's work and while gesturing toward the responsibility of the subject, gives no description of what that responsibility entails. The distinction between legal culpability and moral or ethical responsibility at least partly maps on to the distinction between blame and responsibility proposed by Iris Young in her discussion of whether persons can be held responsible for denigratory and offensive statements or actions that they are not consciously aware of. See Iris Marion Young, *Justice and the Politics of Difference* (Princeton: Princeton University Press, 1991), pp.148-151. Also see Nicola Lacey, 'Responsibility and Modernity in Criminal Law', *The*

bearing on this discussion, whether Butler can sustain a strong distinction between ethical and legal responsibility is not a question I take up here, particularly since it is as yet unclear how Butler would elaborate this distinction. Instead, I suggest that even if we accept that the responsibility that is enhanced by recognition of the linguistic embeddedness of the subject is ethical, it is still not clear that the dynamic of (mis)-recognition that structures the relations of intersubjectivity for Butler yields an adequate conception of ethical responsibility. I mentioned earlier that Butler critically reformulates Hegel's master-slave dialectic through Althusser's discussion of interpellation to bring out the fundamental dependence of the subject on the address of the other for its existence. As she states,

to be addressed is not merely to be recognized for what one already is, but to have the very terms conferred by which the recognition of existence becomes possible. One comes to "exist" by virtue of this fundamental dependency on the address of the Other. One "exists" not only by virtue of being recognized, but, in a prior sense, by being *recognizable*.⁷⁴

In her rendering of the subject's emergence, the address of the other is the constitutive condition of the subject and survival hinges on the possibility of address, on intelligibility within language, and therefore on the determinations of 'speakability' and 'unspeakability' within configurations of hegemonic regulation. In this scenography, it is not the gaze that conditions social existence but the voice, the possibility of speaking and address.⁷⁵

From this account of linguistic vulnerability and intersubjective dependence, it is possible to see how one's responsibility for one's own speaking may be enhanced by recognition of the vulnerability of the other to one's own speaking. This is so even in the scenario where that responsibility is tempered by the instability of one's own utterances and their vulnerability to re-appropriation, return and redress. If one's

Journal of Political Philosophy, 9:3(2001), pp.249-276 for a pertinent Foucauldian inflected clarification of historical changes in conceptions of responsibility in Western criminal law.

⁷⁴ Butler, *Excitable Speech*, p.5.

⁷⁵ In this, Butler is aligned with Aristotle's formulation of the political being as the speaking being, a position re-articulated most forcefully in Hannah Arendt, *The Human Condition* (Chicago: University of Chicago Press, 1958) esp. pp.25-27. Also see Butler, 'Ruled Out'. As will be discussed in later chapters, this definition of the subject is also crucial for Giorgio Agamben, whose work is wholly engaged in addressing the question of the role of voice in ethico-political survival.

own speech reinstalls normative foreclosures of non-hegemonic identifications then there is certainly a sense in which one might be said to be responsible for that speech, even if it does not amount to legal responsibility. It appears intuitively plausible to suggest that ethical responsibility for one's speech is enhanced given that social survival is conditioned by linguistic vulnerability, even if giving elaboration to this intuition may prove difficult. In any case, this is not the question that concerns me here. Rather, I want to ask whether, or how, the subject can be seen as responsible for the 'not yet subject' or those beings rendered unintelligible by hegemonic normative exclusions, the speech of whom is doubly unspeakable or unintelligible given the condensed historicity or ritual dimension that underpins the performative force and intelligibility of speech acts. That is, if the speech acts of the socially dead are unintelligible or inefficacious, what weight of responsibility falls on the subject to heed a call they cannot or at least do not understand? Can the call of the socially dead interpellate the subject into the space or mode of the ethical? To what extent can the call from the socially dead to take responsibility, to identify, be rendered operative within the demands of intelligibility or hegemony?

The question to consider here is whether the address of the socially dead constitutes a demand for ethico-political response. To approach this, it is worth considering that in addition to positing the demand for intelligibility by the other as a condition of the subject's survival, Butler also suggests that 'to become a subject means to be subjected to a set of implicit and explicit norms that govern the kind of speech that will be legible as the speech of a subject... to move outside of the domain of speakability is to risk one's status as a subject'.⁷⁶ Thus the constitutive effect of speech for the survival of the subject is double-edged. Not only does the emergence and survival of the subject depend on its recognizability within the speech of the other, that is on the possibility of address by the other, but also on the intelligibility of its own speech: to be a subject is to speak within the borders of discursive intelligibility. In other words, the risk of social death, of falling outside the domain of intelligible life as a subject, lies not only in the failure to fully enter into the terms of recognition conferred by the other but also in the perilous perturbation of one's own speaking.

⁷⁶ Butler, 'Ruled Out', pp.252-253.

The double-edged, self-destructive force of speech acts can in fact be seen as the problematic heart of Butler's reading of the figure of Antigone, developed in *Antigone's Claim*. Butler argues against the perceived tendency, following Hegel, to posit the figure of Antigone as representative of a pre-political domain of kinship, which while essential to the constitution of the political is not political itself. She claims instead to read the figure of Antigone as exposing a crisis of representation and of the political defined against kinship. The effect of this crisis is that the problematics of kinship appear in the sphere of the political, resulting in a 'deformation of both idealized kinship and political sovereignty... as a consequence of her act'.⁷⁷ The act in question is Antigone's attempt to bury her brother Polyneices, whose dead body is left unburied following an injunction against his burial by Creon, King of Thebes. However, for Butler, it is not so much this act but the speech act by which Antigone claims the deed of burying the body as hers and the ensuing locutionary struggle between her and Creon, read in part as a struggle for sovereignty in speech, that takes precedence. The kernel of Butler's reading is Antigone's performative, 'I say that I did it and I do not deny it',⁷⁸ in which Antigone claims the deed and thus inaugurates her exclusion from the domain of moral and political intelligibility and her conscription to a mode of existence 'between life and death'. Antigone's life subsequently ends with her suicide in the 'bridal chamber of death'⁷⁹ to which she is condemned by Creon, a scene that Butler understands as the completion of the social death that Antigone had been living.

There is no need to take up a full reading of *Antigone*, nor of Butler's interpretation of the play. Instead, I restrict my discussion to several points that bear on the question of the speech of the socially dead and whether an account of ethico-political responsibility can be sustained through the formulation of recognition and the linguistic survival of the subject. In doing so, my aim is not to develop a strong critique of Butler's reading, but simply to pose some questions to it in order to open

⁷⁷ Butler, *Antigone's Claim*, p.6.

⁷⁸ Cited in Butler, *Antigone's Claim*, p.8; the translation Butler is referring to is from Hugh Lloyd Jones, ed. and tr. *Sophocles*, vol. 2, Loeb Library Series, (Cambridge Ma.: Harvard University Press: 1994), p.43; also see David Grene, ed. and tr. *Sophocles 1*, 2nd Edition (Chicago: University of Chicago Press, 1991), p.178; for another Austinian reading of Antigone that also takes this performative as its starting point, see Timothy Gould, 'The Unhappy Performative' in Andrew Parker and Eve Kosovsky Sedgwick, eds. *Performativity and Performance* (New York: Routledge, 1995), pp.19-44.

⁷⁹ Lloyd-Jones, *Sophocles*, p.115.

this account to concerns that I take up in detail in the following chapters. First then, Butler's reading of *Antigone* seeks to establish the critical agency of Antigone's speech within the normative order imposed through Creon's injunction to leave the body of her brother unburied. Butler argues that in defying the king's injunction, and in claiming that defiance in speech, Antigone disrupts the normative order of kinship and attempts to claim a legitimate position in a language that is not hers. In doing so, Antigone upsets the preconditions for the delimitation of the human, bringing the human into catachresis, thereby opening possibilities for an 'unprecedented future'.⁸⁰ The background to this claim is the recuperation of incestuous desire effected in Antigone's defiance, a repetition that gives new life to the curse imposed upon Antigone's life by her father Oedipus.

However, the emphasis on the agency of the socially dead recalls the discussions of the previous chapter. There, I argued that Butler's account of the agency of the abject is stricken by a crucial vacillation between the insistence on resignification as the site of the subject's agency and the inevitable failure of resignification, whereby defiant speech acts 'cannot possibly' produce the effects that they seek. Further, I suggested that Butler's account of agency was undercut by the conflation of social death with literal death, such that suicide appears as a form of freedom. These claims take hold again against Butler's reading of *Antigone*, in which Antigone's defiant speech act renders her unintelligible within a political and moral order by obviating and undermining her claim to legitimacy and intelligibility within that order. Antigone's speech act indicates the return of the unintelligible within the regulatory norms of intelligible political existence, thus simultaneously disrupting that existence and condemning its author to social death. The unspeakability of Antigone's love for her brother traces the horizon of the possible within social existence and marks her existence as the impossible outside, bound as she is to the world of the dead more than to that of the living. Thus her suicide merely actualizes the termination of a life already dead, and in doing so, renders her free from the curse of the moral order that condemns the kinship relations to and by which she is bound.

⁸⁰ Butler, *Antigone's Claim*, p.82.

Two closely related points can now be made. The first concerns the status of intelligibility within Butler's account of social death, and the second concerns the way in which social death, while predicated on the prior existence of the social nevertheless appears not to yield a demand for response within it. As I have argued, for Butler, political engagement and belonging is at base a matter of linguistic practice conditioned by the productive constraints of intelligibility. Intelligibility, in the sense of being speakable and therefore recognizable, traces the line of political inclusion and exclusion and in doing so, demarcates the limits of the livable. Thus social death is the status of unintelligibility within the normative constraints of hegemony – a threshold status 'between life and death' to which one is condemned through either a failure of discursive interpellation or the failure of one's own speech acts to be 'hearable', that is, politically and socially intelligible. By speaking the unspeakable, one risks one's own intelligibility and thus one's status as subject. Clearly, a lot of weight falls on the notion of intelligibility within this framework. However, this seems to raise problems for developing an account of ethical responsibility. Assuming that social death is synonymous with a certain social unintelligibility, it would seem to follow that the speech acts of the socially dead would also be unintelligible and certainly inefficacious as Butler herself suggests. This is of course the point behind the claim that political exclusion amounts to a question of silencing, of one's claims going unheard or unaddressed within the contestatory domain of the political. Yet while it might be accurate to say that politically the socially dead are silenced, what are the implications of this at the level of ethical responsibility?

Kelly Oliver has argued that Butler's characterization of the dependency of the subject on language for its emergence and survival as subordination and subjection reveals that Butler is still nostalgically beholden to the figure of the sovereign subject that she seeks to undermine. Oliver cites Butler's comment that 'vulnerable to terms that one never made, one persists always, to some degree, through categories, names terms and classifications that mark a primary and inaugurative alienation in sociality'.⁸¹ From this, Oliver argues that Butler's insistence that dependence on external conditions of sociality constitutes an inaugurative alienation and subordinating violence presupposes an ideal of a self-contained, self-constituting

⁸¹ Butler, *Psychic Life*, p.28.

subjectivity violated by dependence. The problem with this framework for Oliver is that it becomes difficult to see the ways in which subjects engage in mutually constitutive and sustaining relations beyond the troubled conferral of recognition. Overcoming such a conception of the subject requires instead that dependence be affirmed as a necessary and enabling condition of subjectivity rather than a debilitating violence.⁸² Thus, while Butler presupposes the constitutive force of the social upon the subject, in casting that constitution as subjugating alienation, the sustaining effects of interdependence and community are elided within her account of subject formation.

Oliver's point does not entirely hold since it does not give enough weight to the fact that for Butler dependence is not bad in itself. Instead, dependency on address opens the subject to a certain vulnerability to the language of others with potentially though not necessarily harmful consequences. Nevertheless, Oliver's point does help bring out an important lacuna in Butler's framework. The problem is that Butler does not give adequate consideration to the implications of this dependency; while she understands this as vulnerability, she does not give an account of the responsibility yielded, or perhaps demanded, in that vulnerability. That is, while Butler does provide an account of the potentially injurious effects of that vulnerability, her silence on the particular responsibility yielded in that dependence and vulnerability is a curious lacuna in her work. It is curious because on the one hand, Butler is pointedly aware of the need to risk the current conditions of existence in order to expand the possibilities of livable lives, lives that count as fully human and hence as the life of a subject in the full political sense. On the other hand though, she does not give an indication of why it is that subjects should risk that status for others, why one might be obliged and compelled to risk one's life as a subject for another.⁸³

While Butler is aware of the political pertinence of 'risking the incoherence of identity' in order to allow connection with others, there is nevertheless a sense in

⁸² Kelly Oliver, *Witnessing: Beyond Recognition* (Minneapolis: Minnesota University Press, 2001), p.68.

⁸³ There is a sense in which Butler's figuration (in *Antigone's Claim* for instance) reveals why that risk *is* taken, but does not clarify why it *should* be taken. That is, while the figures that Butler invokes risk the status as subject because of relations of desire, it is not clear whether an ethics can be yielded from that condition, that is, whether relations of desire should be the enabling condition of ethical responsibility.

which her argument can be extended further. Fiona Jenkins has argued for instance that while Butler is correct to emphasize the productive communicative possibilities of risking the coherence of identity, she does not go far enough toward explicating the implications of this in her account of mis-recognition. Turning to Alfonso Lingis' work on the ethical demand of the face and gesturality, Jenkins argues that addressing the singularity of the other exposes identity to a deeper crisis than that discussed by Butler. She comments that 'if there is to be a singular self at all, it must be "exposed" to that otherness which "presents" the finitude in which it begins and ends; the hazards of quasi-mimetic responsiveness... must be undergone if there is to be a singularity to risk at all'.⁸⁴ In this formulation, the exposure to the other calls for a double identification, both in the sense of identifying with the other and identifying oneself in the exposure of constitutive vulnerability. Interestingly, the blindspot in Butler's formulation of mis-recognition and linguistic vulnerability is evident in her formulation of the dynamic of address that I quoted at length at the beginning of this chapter. To reiterate, Butler asks 'is the one speaking merely speaking, or is the one speaking comporting his or her body toward the other, *exposing the body of the other as vulnerable to address*. As an "instrument" of a violent rhetoricity, the body of the speaker exceeds the words spoken, *exposing the addressed body as no longer (and not ever fully) in its own control*'.⁸⁵ This indicates that while Butler recognizes the exposure of the vulnerability of the body addressed in the threat, she is not sufficiently cognizant of the correlative vulnerability and exposure of the body comported to the addressee. That is, the vulnerability of the speaker in the scenography of address is elided in her account of linguistic constitution. However, the speech situation exposes both the addressee and the speaker in their constitutive corporeal vulnerability to the other.⁸⁶

⁸⁴ Fiona Jenkins, 'Plurality, Dialogue and Response: Addressing Vulnerability', *Contretemps* 3(July 2002), pp.85-97 at 94.

⁸⁵ Butler, *Excitable Speech*, p.12-13; emphasis added.

⁸⁶ On the mutual corporeal exposure of 'plural singularities' in address, see Jean-Luc Nancy, 'Of Being Singular Plural', in *Being Singular Plural*, tr. Robert O. Richardson and Anne E. O'Byrne, (Stanford: Stanford University Press, 2000), pp.83-88; Jean-Luc Nancy, 'Corpus', in *The Birth to Presence*, tr. Brian Holmes and others (Stanford: Stanford University Press, 1993), pp.189-207, particularly his claim that 'neither signification, nor manifestation, nor incarnation and not revelation, either. The body exposes – the body; bodies expose each other' (p.204).

It is not necessary to follow Lingis' conception of the body and intersubjectivity completely to see that a different conception of address begins to emerge in this scenario. This form of address moves away from the strong emphasis on intelligibility to an unintelligible yet potentially efficacious *affective* demand upon the subject to identify itself, in both the sense of making itself known to the other and identifying with the other. The language of this encounter is not the linguistic demand for recognition that structures the speech act in Butler's account, but a gestural language that operates at the level of the body that demands that one 'identify oneself' to and with the other rather than confer recognition upon the other. This account suggests that more might be taken from Butler's phrase that the body constitutes 'a demand in and for language', for in this 'demand' the body speaks its own language, but one that cannot be wholly understood through the performativity of the speech act. Further, the response elicited by that language cannot be rendered through the cognitive problematics of intelligibility and unintelligibility, for the language of the body derives its force not from entering into signification and reiteration, but from the affectivity of the call to the other to identify.

This also suggests that Butler's claim that 'speaking is itself a bodily act'⁸⁷ might be usefully reversed, such that the bodily act can be construed as a form of speaking. For Butler, the body confounds the efficacy of the speech act, but might it also be the case that the speech act obviates and confounds the demands of the body, its own obscure language of gesture, sensibility and affect that is not silenced in death? The scene of response to the call of the body and the identification evoked in that can be read throughout *Antigone*; Antigone's crime might be said to be to respond to the call of the dead body of her brother, the call to honor the finitude and singularity of the unburied body laid bare and exposed above ground when its proper place is below. In responding to that call, Antigone identifies with the dead brother and it is this identification that compels Antigone to her own finality. As she states, 'my life has long been dead, so as to help the dead', or perhaps more tellingly, 'where the act was death, the dead are witnesses'.⁸⁸ Antigone's hesitant, defiant speech act in which she claims the deed as hers, in which she cannot deny the deed, yet cannot fully affirm it since she alienates herself from the deed in and through language, indicates

⁸⁷ Butler, *Excitable Speech*, p.10.

⁸⁸ Lloyd-Jones, *Sophocles*, p.55; Grene, *Sophocles 1*, p.182.

not only the instability and incompleteness of language but also the excess of the deed and the difficulty of putting oneself in relation to the dead, of taking the place of the one who bears witness to their death. My point here is clearly more suggestive than it ought to be, and it must remain so at this stage. However, the identification and taking place of the witness will be given further elaboration in the final chapter, where I discuss Giorgio Agamben's provocative suggestion that the central gesture of ethics is the affective, apostrophic address of the remnant.⁸⁹

In this chapter, I extended discussion of Butler's conception of agency and signification through an examination of her theoretico-political commitments and the strategy of resignification that she urges. I have argued that Butler's positing of resignification as a necessary political response indicates important ambiguities in her political commitments. In particular, this indicates a tension between the contingent pragmatics of Foucauldian genealogical politics and the Derridean inflected politics of radical democracy, both of which Butler explicitly claims to hold. The double role that Butler gives to contingency also reflects tensions in her critique of illocution and sovereignty, which I suggest ultimately reveal a deep rift running through the arguments of *Excitable Speech*. In addition, I close the chapter with a discussion of responsibility, given the constitutive vulnerability of the subject in language. I suggest that Butler's account of interpellative mis-recognition is marked by an important lacuna in that it does not yield an account of the responsibility of the subject for those beings that do not yet count as subjects. While the account of interpellative mis-recognition and the attendant account of linguistic vulnerability might allow an

⁸⁹ In this, it might not be without significance that the figures Butler invokes throughout her work to illustrate the agency of the abject or the socially dead predominantly *die alone*. That is, their death does not yield a relation to others, in which the status of those others is itself risked and exposed in its finitude and vulnerability. Against this, the vulnerability and dependence established in the exposure of oneself to the other in identification – in both senses noted above – secures a sense of responsibility that exceeds the dynamic of mis-recognition. Jenkins' suggestion links the question of singularity both risked and established in the exposure of one's own vulnerability to the inherent finitude of that singularity, thus posing the question of responsibility in relation to death. Tentatively taking up this gesture, one might also call upon Jean-Luc Nancy's suggestion that 'community is revealed in the death of others' or Alfonso Lingis's suggestion that 'we die *with* others' to suggest that the finitude revealed in the vulnerable, gestural identification bestows upon each singularity a responsibility for others in dying. This is not the place to take up a discussion of this thematic, though it clearly has significance for the arguments developed throughout this thesis. It would however, take the thesis into territories that cannot be explored at this time. See Jean-Luc Nancy, *The Inoperative Community* (Minneapolis: University of Minnesota Press, 1991), p.15; Alfonso Lingis, 'To Die With Others', *Diacritics* 30:3(2000), pp.106-113 at 106. Also see Tina Chanter, *Time, Death and the Feminine: Levinas with Heidegger* (Stanford: Stanford University Press, 2001) for an excellent comparative discussion of ethics and death in Levinas and Heidegger, two philosophers who have immediate relevance to this thematic and to Lingis and Nancy's contributions.

account of the ethical responsibility of the subject for its own speech, Butler does not address the sense in which the subject might be ethically beholden to those abjected, excluded beings whose speech is radically unintelligible, inefficacious but still affectively compelling.

1992, 2005, 2008).

Chapter 5

Agamben's Messianic Politics: Biopolitics, Bare Life, and Abandonment

Human life is politicized only through an abandonment to an unconditional power of death.¹

5.1 Introduction

In the first chapter of this thesis, I examined Foucault's account of biopolitical subjection and argued that the determination of life worth living operates as a constitutive decision within the biopolitical. I claimed that while Foucault opens discussion of the role of violence within the operation of biopolitics through his characterization of normalization as constitutive violence, his account was nevertheless limited by two sets of problems. The second of these related to Foucault's characterization of subjectivation. I argued that his account of subjectivation is overly reductive and fails to account for psychic attachments to the operations of power and the positive political implications of subjectivation. To address these problems, I turned to the work of Judith Butler, who explicitly addresses the risks posed to the subject as a consequence of its fundamental dependence on the productive operations of relations of power for survival. Butler extends Foucault's work by giving an account of the normative materialization of the 'morphological imaginary', by which the body appears as political from its inception. Furthermore, her work broaches the question of the psychic dimensions of subjectivation in a way that Foucault refused to do, thus strengthening her account of subjection and the difficulties and dangers of resistance.

In this chapter, I return to the other set of problems identified in Foucault's account of biopolitics, which pertain to the relation between biopolitics and sovereignty. I take up Giorgio Agamben's recent critique of Foucault in which he develops an

¹ Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life*, tr. Daniel Heller-Roazen (Stanford: Stanford University Press, 1998), p.90.

alternative account of biopolitics that sees the biopolitical capture of life as fundamentally co-existent with the operations of sovereignty. Agamben develops a critique of Foucault that challenges both the historical narrative of the emergence of biopolitics as the 'threshold of modernity' and Foucault's provocation that 'bodies and their pleasures' should provide the rallying point for opposition to biopolitical operations. This entails a reconsideration of the concept of sovereignty and its relation to biopolitics, as well as a reformulation of the concept of life. Taking the term 'abandonment' from Jean-Luc Nancy, Agamben links a theorization of sovereign power with the biopolitical capture of life through the concepts of abandonment and bare life. Drawing simultaneously on Aristotle, Carl Schmitt and Walter Benjamin as well as the obscure figure of sacred man or '*homo sacer*' from Roman law, Agamben argues that life captured within the sovereign ban is bare life, and as such, is irreparably exposed to the force of death that characterizes sovereignty. In this, Agamben provides a means of thinking through the nexus between sovereign violence and the exposure of life to the law to specify the hold that biopolitical power has on life in abandonment.

In formulating a response to the dangers of biopolitics discussed in *Homo Sacer*, Agamben concludes this text with an elusive gesture toward a new 'form-of-life' as the ground of a coming politics over and against the bloody nexus of sovereign violence and biopolitics. In the second section of this chapter, I take up this gesture to highlight the *messianic* aspect of Agamben's work and develop three points to clarify his gesture of political futurity. First, I argue that the commitment to messianic redemption rests on a failure to consider the political potentiality of bare life itself within Agamben's work, which has the concomitant effect of limiting his account of abandonment. Second, through a comparison of Agamben's messianics with the insistence on immanent possibilities of resistance in Foucault and Butler, I show that Agamben's position is based on the predication of the pure immanence of a new 'form-of-life' on transcendent conditions of political futurity. Third, to specify this further I compare the 'weak messianics' of Jacques Derrida with Agamben's position, which I call 'strong messianics'. In this comparison, I focus particularly on the essays in which Derrida provides an interpretation of Benjamin's messianics and the status of the law, these being 'Force of Law' and 'Before the Law', as these texts are closely paralleled in Agamben's work.

In this chapter then, I investigate the theoretical shifts between Foucault and Agamben, particularly in the concepts of life and politics and their various accounts of biopolitics to make two claims of Agamben's work. First, I suggest that Agamben's theorization of sovereignty and biopower is an important corrective to Foucault's account in that it allows for consideration of the operations of sovereign power beyond questions of legitimacy and centralized state power without casting sovereignty as ideological. Second, I develop a discussion of the messianic aspect of Agamben's work to bring out the specific characteristics of his political eschatology and account of political futurity. I show in this section that the strong messianics that Agamben holds derive from the decisive influence of Walter Benjamin's eschatology in Agamben's work, and I draw out several implications of this for the political theory that Agamben develops. Thus the chapter is largely explicatory, providing a detailed interpretation of Agamben's work to highlight his conceptual divergence from Foucault's formulation of biopolitics and his particular version of political messianics, two aspects of his work that have received insufficient treatment within secondary literature to date.

It is worth noting at this point I have reconstructed Agamben's argument in *Homo Sacer* in a form that may initially seem at odds with the ethos of his work. One of the difficulties that Agamben's work presents for interpretation lies in his fragmentary and iterative style, which means that the reduction of summary is a particularly difficult task that can too easily give the impression of a greater systematicity than there is in the original work. Yet while Agamben's work is densely interwoven in fragments, 'thresholds', and short essays, there is nevertheless an internal consistency of argumentation and it is this that I am concerned with here. Hence, my reconstruction of Agamben's argument does not attempt to either replicate or to simply obscure his stylistics but instead attends to the rigorous conceptuality that gives such a style its critical theoretical force. In doing so, I have also drawn from essays and fragments in several other books that complement the often dense and enigmatic claims made in *Homo Sacer*.

5.2 *Bare Life and the Sovereign Exception*

In the final chapter of *The History of Sexuality*, Foucault argues that the regime of power that emerged from the seventeenth century onward involved a fundamental reversal of the principle of power's operation.² He claims that whereas sovereign power operated on the principle of the right to commit its subjects to death in order to enhance the strength of the sovereign, modern power reverses this axis and works through the administration of life. The entrance of life into the mechanisms of power and correlative organization of political strategies around the survival of the species constitutes the 'threshold of modernity' for Foucault. He argues that the eighteenth century witnessed an event nothing short of the engagement of life in history, that is, 'the entry of phenomena peculiar to the life of the human species into the order of knowledge and power, into the spheres of political techniques'.³ As he states, 'for the first time in history, no doubt, biological existence was reflected in political existence'.⁴ Thus, the administration of life has become the central characteristic and defining rationale of the regime of power operative in the modern world. From this, Foucault suggests that the Aristotelian conception of man as a 'living animal with the additional capacity for a political existence' should be revised to acknowledge that 'modern man is an animal whose politics place his existence as a living being in question'.⁵

In his recent book on biopolitics, Giorgio Agamben takes up this redefinition of the Aristotelian conception of man in order to reconsider the relation between politics and life posited by Foucault. Tracing the etymological roots of the word 'life', he finds that the Greeks had two semantically and morphologically distinct terms for it: 'ζοή, which expressed the simple fact of living common to all living beings (animals, men or gods), and *bios*, which indicated the form or way of living proper to an individual or a group'.⁶ This qualitative distinction between modes of existence had the effect of excluding natural life from the polis in the strict sense and relegating it

² Michel Foucault, *The History of Sexuality, vol.1: An Introduction*, tr. Robert Hurley (London: Penguin, 1981), p.136.

³ Foucault, *History of Sexuality*, pp.141-142.

⁴ Foucault, *History of Sexuality*, p.142.

⁵ Foucault, *History of Sexuality*, p.143.

⁶ Agamben, *Homo Sacer*, p.1.

entirely to the private sphere, as the basic life of reproduction.⁷ Thus, according to Agamben, Foucault's supplanting of this distinction in his redefinition of Aristotle signals the entry not of 'life' in its generality, but rather the integration of what is captured by the more specific designation of *zōē* or natural life into the realm of politics. What is at stake in political operations in the modern era according to Foucault is the simple living body of the individual and the species. As Agamben states, for Foucault 'the entry of *zōē* into the sphere of the polis... constitutes the decisive event of modernity and signals a radical transformation of the political-philosophical categories of political thought'.⁸ From this clarification, Agamben develops a critical analysis of Foucault's historico-theoretical thesis on biopolitics and sovereignty.

Foucault's historical claim that biopolitics emerged during the seventeenth century provides the point of purchase of Agamben's critical thesis, which he describes as an attempt to 'correct or at least complete' Foucault's analysis of the relation between biopolitics and sovereign power. Agamben claims that Foucault's rejection of an analytics of juridical power has led to a certain absence in his work, such that the relation of biopower to sovereignty remains hidden. Agamben states this problem in the following manner: Foucault's later work follows two lines of research, these being the study of political techniques by which the natural life of individuals is integrated into circuits of governance by the State and technologies of the self, or those processes of subjectification by which the individual actively intervenes in their own self-formation. It is clear that there are points of interaction between these two dimensions of his research, articulated in his concern over the 'political double bind' engendered by the 'simultaneous individualization and totalization of modern power structures'.⁹ However, the point at which these two 'faces of power' converge

⁷ Neither Foucault nor Agamben are sensitive to the gendered dimension of the exclusion of natural life from the realm of the political, although feminists have long argued that the association of femininity with natural, biological life is a consistent element of the Western political and cultural imaginary. It would be worth considering the formulations of biopolitics developed by Agamben and Foucault with reference to gender, though to my knowledge, this has not yet been done and it is beyond the scope of this thesis.

⁸ Agamben, *Homo Sacer*, p.4.

⁹ Michel Foucault, 'The Subject and Power' in Hubert L. Dreyfus and Paul Rabinow, *Michel Foucault: Beyond Structuralism and Hermeneutics* (New York: Harvester Wheatsheaf, 1982), pp.208-226 at 216.

remains almost entirely unarticulated in Foucault's own work.¹⁰ For Agamben, Foucault's critique of the traditional juridical model of power and development of an analytic of power that supplants the model of law means that the 'zone of indistinction' between 'techniques of individualization and totalizing procedures'¹¹ remains largely obscured. Hence, the ostensible aim of Agamben's argument in *Homo Sacer* is to address this lacuna: he claims that it is precisely this 'hidden point of intersection between the juridico-institutional and the bio-political models of power' that he focuses on in his own study of power.

While there are evidently problems in Agamben's characterization of Foucault's account of biopolitics and sovereignty, particularly insofar as he over-emphasizes the temporal succession of sovereignty and biopolitics, these do not wholly disable Agamben's thesis. As I discussed in Chapter One, there is substantial ambiguity in Foucault's work on this point, since the characterization of the emergence of biopolitics in *The History of Sexuality* does seem to posit a transformative break in operations of power such that biopower effectively replaces sovereignty. Agamben exploits this ambiguity to develop an alternative historical and theoretical account of the relation between biopolitics and sovereignty.¹² In doing so, he effects a number

¹⁰ Agamben, *Homo Sacer*, p.5.

¹¹ Agamben, *Homo Sacer*, p.6.

¹² However, the distinction between biopolitics and sovereignty is not as clear in Foucault's work as Agamben initially suggests. There are after all, points at which Foucault explicitly denies such a temporal succession of regimes of power and states that sovereignty and discipline operate together in modernity. In 'On Governmentality', Foucault states that it is not a matter of 'the substitution for a society of sovereignty of a disciplinary society and the subsequent replacement of a disciplinary society by a governmental one; in reality, we have a triangle: sovereignty-discipline-government, which has as its primary target the population and as its essential mechanism apparatuses of security.' (Michel Foucault, 'On Governmentality', *IC&C* 6(1976), pp.5-21 at 19. See my further discussion of this in the first chapter where I draw out the ambiguity in Foucault's formulation). Reflecting on this, Peter Fitzpatrick has claimed that Agamben does not so much 'correct and complete' Foucault's arguments as reinstate them in a reduced form. However, Fitzpatrick's criticism does not take enough account of the conceptual shifts involved in Agamben's reconsideration of biopolitics and sovereignty. In particular, Fitzpatrick does not engage with the indisputable and central influence of Walter Benjamin – particularly his 'Theses on the Philosophy of History' – in *Homo Sacer*. See Peter Fitzpatrick, 'These mad abandon'd times' *Economy and Society* 30:2(2001), pp.255-270 at 265 and Peter Fitzpatrick, 'Bare Sovereignty: *Homo Sacer* and the Insistence of the Law', *Theory and Event* 5:2(2001). Additionally though, Agamben's characterization of the relation between political techniques and technologies of the self reduces the complexity of Foucault's analysis by establishing an association between, on the one hand, political techniques and sovereignty and on the other, technologies of the self and biopolitics. To Foucault's work he poses the questions 'what is the point at which the voluntary servitude of individuals comes into contact with objective power... is it legitimate or even possible to hold subjective technologies and political techniques apart?' (Agamben, *Homo Sacer*, p.6.) While this implies that these form the guiding questions of Agamben's thesis, he then goes on to claim that the point of intersection that he is interested in is that between sovereign power and biopolitics. Within

of important conceptual transformations from Foucault's initial account of biopower. Most broadly, Agamben's work displays much less reticence to consider questions of metaphysics in discussing political constitution. In this, his heritage is not so much the Nietzschean rejection of metaphysics that informs Foucault's genealogical approach but the ontological concerns of Aristotle and Heidegger, even though each of these are critically reformulated in Agamben's later work. Consequently, the historiographical commitments of Foucault and Agamben are also strikingly at odds: while Foucault's genealogy rejects the search for origins and instead traces the emergence of particular configurations of relations of force, Agamben seeks to illuminate the 'originary' relation of law to life.¹³

These broad historiographical and metaphysical divergences between Foucault and Agamben underpin important differences in their conceptions of power and life and their work cannot be successfully compared without recognition of these. In this chapter then, I set aside the empirical aspects of the historical divergence between Foucault and Agamben in order to trace the central conceptual shifts that distinguish their work. In particular, the theoretical divergence I trace is driven by the decisive influence of Walter Benjamin on Agamben's theorization of law and his engagement with the theory of sovereignty posed by Carl Schmitt.¹⁴ Agamben's work on

Foucault's work, these two problems, while inseparable, are nevertheless not equivalent. Additionally, Foucault's analyzes of the sexual ethics of the Ancient Greeks suggests that he was himself revising the historical thesis presented in the first volume of *History of Sexuality*, most explicitly brought to light in his comment that Ancient dietetics manifested 'a twofold anxiety about the survival of the individual and the maintenance of the species' (Michel Foucault, *The Use of Pleasure: The History of Sexuality*, vol. 2, tr. Robert Hurley (London: Penguin Books, 1985), esp. p.251). Nevertheless, Foucault does not explicitly recant on the claim that biopolitics emerged during the seventeenth century, and his later analyzes of bodily techniques of the self do not address the question of the relation between sovereignty and biopolitics.

¹³ While it is not possible to examine the historical methodologies of Foucault and Agamben here, it should be noted that these differing commitments undermine criticisms of their respective works simply on the basis of empirical accuracy, since such criticism fails to consider the specific conceptual underpinnings of historical interpretation.

¹⁴ Schmitt's work has enjoyed a renaissance in political theory in the last two decades, with particular attention being paid to his definition of the political as constituted by the friend-enemy opposition. While some radical democratic theorists such as Chantal Mouffe have taken up this opposition in order to articulate the essential conflictual or antagonistic characteristics of the political, others such as Derrida and Žižek have sought to overcome the formulation offered by Schmitt. See in particular Chantal Mouffe, *The Democratic Paradox* (London: Verso, 2000); Chantal Mouffe ed. *The Challenge of Carl Schmitt* (London: Verso, 1999); Jacques Derrida, *Politics of Friendship* (London: Verso, 1997); For a discussion of political theology see Heinrich Meier, *The Lesson of Carl Schmitt: Four Chapters on the Distinction between Political Philosophy and Political Theology*, tr. Marcus Brainard (Chicago: University of Chicago Press, 1998); for extensive discussions of Schmitt's critique of liberalism see David Dyzenhaus, *Legality and Legitimacy: Carl Schmitt, Hans Kelsen and Hermann Heller in Weimar* (Oxford: Clarendon Press, 1997); David Dyzenhaus ed. *Law as Politics: Carl Schmitt's Critique of Liberalism*

biopolitics can in fact be read as an attempt to extend or perhaps fulfill Benjamin's critique of Schmitt's theory of sovereignty, presented in Benjamin's essays 'The Critique of Violence' and 'Theses on the Philosophy of History'. Agamben's understanding of sovereignty, law and violence works between on the one hand, Schmitt's understanding of sovereignty as the decision on the exception and Benjamin's implicit critique of Schmitt in his eighth thesis on the philosophy of history, where he claims that the exception has increasingly become the rule. For the remainder of this section of the chapter, I closely trace Agamben's argument to bring out the theoretical effects of this engagement and the commitments it entails. Three particular aspects of Agamben's work on biopolitics will be considered. These are his conception of sovereignty and politics, his understanding of life and his characterization of the concept of abandonment that he develops in reference to Jean-Luc Nancy to link these together.¹⁵

The starting point for Agamben's discussion of sovereignty is the apparent paradox of sovereignty, wherein the sovereign is simultaneously inside and outside the juridical order, a situation encapsulated in the notion of the sovereign exception. Taking up Schmitt's thesis that 'sovereign is he who decides on the exception',¹⁶ Agamben argues that what is at stake in the state of exception is the very possibility of juridical rule and the meaning of State authority. According to Schmitt, in deciding on the state of exception – a process in which the sovereign both includes and excludes itself from the purview of law – 'the sovereign "creates and guarantees the situation" that the law needs for its own validity'.¹⁷ He argues that since the exception cannot be codified in the established order, a true decision is required in order to determine whether it is an exception, and thus, whether the rule applies to it.

(Durham: Duke University Press, 1998); William E. Scheuerman *Between the Norm and the Exception: The Frankfurt School and the Rule of Law* (Cambridge, Ma.: MIT Press, 1994); William Rasch, 'Conflict as Vocation: Carl Schmitt and the Possibility of Politics', *Theory, Culture and Society* 17:6(2000), pp.1-32.

¹⁵ In particular, I am interested in the uses to which Agamben puts two particular fragments from Schmitt and Benjamin to work in *Homo Sacer*. These are the opening paragraphs of Schmitt's *Political Theology* and especially the dictum on sovereignty, and the eighth fragment of Benjamin's 'Theses on the Philosophy of History'. Throughout his oeuvre, Agamben methodologically relies on the fragment as the spur of interpretation, and this is the case with the theoretical method of *Homo Sacer*. While these fragments clearly do not exhaust the theoretical complexity or heritage of Agamben's thought, grasping their significance is nevertheless crucial for understanding the claims he makes.

¹⁶ Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*, tr. George Schwab (Cambridge, Ma.: MIT Press, 1985), p.5.

¹⁷ Agamben, *Homo Sacer*, p.17.

Sovereignty resides in this decision on what constitutes public order and security, and hence, whether the social order has been disturbed. He claims that 'the exception is that which cannot be subsumed; it defies general codification, but it simultaneously reveals a specific juristic element – the decision in absolute purity... Therein resides the essence of the state's sovereignty... which must be juristically defined... as the monopoly to decide.'¹⁸ Further, because the sense of the legal order rests upon the existence of the normal situation, the form of the sovereign decision is a decision on the norm and the exception. Thus, sovereignty is the 'border-line concept' of order and the exception, where the sovereign decides whether the situation that confronts it is truly an exception or the normal order, such that sovereignty itself becomes apparent in that decision.

In his interpretation of Schmitt, Agamben takes up the notion of the sovereign as borderline or limit concept to argue that the peculiar characteristic of sovereignty is that the sovereign determines when law is applicable and what it applies to, and in doing so, must also create the conditions that are necessary for law to operate since the law presupposes normal order for its operation. As Agamben states, 'what is at issue in the sovereign exception is not so much the control or neutralization of an excess as the creation and definition of the very space in which the juridico-political order can have validity.'¹⁹ The sovereign thus operates as the threshold of order and exception, determining the purview of the law. This means that the state of exception is not simply the chaos that precedes order. For Agamben, it operates both as a condition of law's operation and an effect of the sovereign decision such that the exception is not simply outside the realm of the law, but is in fact created through the law's suspension. The sovereign determines the suspension of the law vis-à-vis an individual or extraordinary case and simultaneously constitutes the efficacy of the law in that determination.

But Agamben adds the crucial caveat that while the law might be suspended in relation to the exception, this does not mean that the exception is without relation to the rule; rather, the state of exception is such that what is excluded from the purview

¹⁸ Schmitt, *Political Theology*, p.13.

¹⁹ Agamben, *Homo Sacer*, p.19.

of the law continues to maintain a relation to the rule precisely through the suspension of that rule. In making this claim, Agamben employs a specific distinction between inclusion and membership made in set theory to make a distinction between exceptionality and exemplarity, showing that the exception functions as an inclusive exclusion while the example functions as an exclusive inclusion. By this Agamben means that the exception is only included within a set by its differentiation from that set and hence, 'cannot be included in the whole of which it is a member and cannot be a member of the whole in which it is always already included'.²⁰ The effective consequence of this is that the exception confirms the rule by its being other than the normal reference of the rule. Agamben concludes from this structure of the exception that 'the rule applies to the exception in no longer applying, in withdrawing from it'.²¹ With regard to juridical rule, the state of exception that characterizes the structure of sovereignty is not simply inaugurated through an interdiction or confinement, but through the suspension of the validity of the juridical order, wherein the rule withdraws from the exception and applies to the exception in that withdrawal. As Agamben states, 'the exception does not subtract itself from the rule; rather, the rule, suspending itself, gives rise to the exception and, maintaining itself in relation to the exception, first constitutes itself as a rule. The particular force of law consists in this capacity of law to maintain itself in relation to an exteriority'.²²

In the state of exception, the form of the law, that is law considered apart from any positive or actual content, can be understood as 'being in force without significance'.²³ Addressing a disagreement between Benjamin and Judaic scholar, Gerschom Scholem on the status of law in Franz Kafka's writings,²⁴ Agamben argues

²⁰ Agamben, *Homo Sacer*, p.25. Conversely, the example is differentiated from a set by its belonging to it. For a discussion of exemplarity within Agamben's work, see Steven D. DeCaroli, 'Visibility and History: Giorgio Agamben and the Exemplary', *Philosophy Today* 45:5(2001), pp.9-17.

²¹ Agamben, *Homo Sacer*, p.18.

²² Agamben, *Homo Sacer*, p.18.

²³ Agamben, *Homo Sacer*, p.51; also see Andreas Gailus, 'Lessons of the Cryptograph: Revelation and the Mechanical in Kafka's "In the Penal Colony"', *Modernism/Modernity* 8:2(2001), pp.295-302.

²⁴ The exemplary parable of Kafka for Agamben is 'Before the Law', in which a man from the country presents himself before the doorkeeper who refuses to let him enter through the door (of the law). The man from the country waits indefinitely, only to be told toward the end of his life that the door was meant for him alone. See Franz Kafka, 'Before the Law', in *The Collected Short Stories of Franz Kafka*, ed. Nahum N. Glatzer, tr. W. Muir and E. Muir (London: Penguin, 1988), pp.3-4. The discussion of

that the formulation 'being in force without significance' proposed by Scholem perfectly describes the status of law in the state of exception. Agamben takes this phrase to describe the situation in which 'the law is valid precisely insofar as it commands nothing and has become unrealizable'.²⁵ In being in force without significance, the law is not absent, but is emptied of positive content or meaning and suspended in its application. It is not that the law no longer applies as if in a state of lawlessness, but rather that while applying the law cannot apply in any concrete or immediate sense since it has lost any apparent meaning or intelligibility. The examples that Agamben uses to explicate this paradoxical condition of the law in suspension are the original meaninglessness of the Torah – where the letters of the Torah are said to have no order at all, and hence no meaning, until the coming of the Messiah – and the open door of the law through which no-one can pass, not even the one for and to whom the door presents itself.

But in taking up Scholem's phrase, Agamben also proposes that Scholem misses the fundamental importance of Benjamin's objection that the law that has lost all content is indistinguishable from life.²⁶ By the indistinguishability of life and law, Benjamin appears to mean that the law is reduced to the ontic conditions of existence and cannot rule over life through claims to transcendence. Correlatively, there is no possibility of interpretation of the law from the position of life, since life is itself indistinguishable from law.²⁷ Agamben concludes from these opposed positions that there is an essential correlation between life under a law in force without significance and life in the sovereign exception in that neither situation allows that life and law be distinguished: in the state of exception in which we live, law without significance passes into life while life always subsists in relation to the law. For Agamben, this is

this problem in *Homo Sacer* is offered in a more developed form in Giorgio Agamben, 'The Messiah and the Sovereign: The Problem of Law in Walter Benjamin' in *Potentialities: Collected Essays in Philosophy*, ed and tr. Daniel Heller-Roazen (Stanford: Stanford University Press, 1999), pp.160-174. I discuss this further in the final section of this chapter, where I compare Agamben's interpretation with that of Derrida.

²⁵ Agamben, 'The Messiah and the Sovereign', p.172.

²⁶ Agamben, *Homo Sacer*, p.53. For a discussion of the coincidence of life and law in Nazi Germany see David Fraser, 'Law Before Auschwitz: Aryan and Jew in the Nazi Rechtsstaat', in Pheng Cheah, David Fraser and Judith Grbich, eds. *Thinking through the Body of the Law* (Sydney: Allen and Unwin, 1996), pp.63-79.

²⁷ See the discussion of Benjamin in Agamben, *Homo Sacer*, p.53-55. Also compare Agamben's discussion of Kafka in the same section of *Homo Sacer*.

the true danger of modern politics, for the indistinction between life and law means there is nothing in life itself from which to oppose the rule of law. Importantly then, this passage pre-empts the distinction between the real and virtual state of exception that Benjamin makes in his 'Theses on the Philosophy of History', to which Agamben responds with a distinction between imperfect and perfect nihilism. The latter of these will provide the redemptive overcoming of the state of exception in which we find ourselves today. However, this is moving too far ahead; I will return to a discussion of this distinction and its implication for Agamben in the following section.

What is important here is to get a clearer view of the proposed indistinction between life and law established in the sovereign exception wherein law applies while no longer applying. Following Jean-Luc Nancy, Agamben suggests that the term most appropriate to the capacity of the law to apply in no longer applying is that of the ban.²⁸ That which is excluded is not simply set outside the law and made indifferent or irrelevant to it, but rather abandoned by it, where to be abandoned means to be subjected to the unremitting force of the law while the law simultaneously withdraws from its subject. As Nancy states 'the origin of "abandonment" is a putting at *bandon*', where

bandon is an order, a prescription, a decree, a permission and the power that holds these freely at his disposal. To abandon is to remit, entrust, or turn over to such a sovereign power, and to remit, entrust, or turn over to its ban, that is, to its proclaiming, to its convening, and to its sentencing... the law of abandonment requires that the law be applied through its withdrawal... abandoned being finds itself deserted to the degree that it finds itself remitted, entrusted, or thrown to this law.²⁹

Agamben claims from this that the position of being in abandonment correlates to the structural relation of the exception; 'the relation of exception is a relation of ban'.³⁰ Just as with the exception that is included only through its exclusion, the subject of the ban is not simply excluded from the realm of the law, set outside and

²⁸ Agamben, *Homo Sacer*, p.28.

²⁹ Jean Luc Nancy, 'Abandoned Being' in *The Birth to Presence*, tr. Brian Holmes and others (Stanford: Stanford University Press, 1993), pp.43-44.

³⁰ Agamben, *Homo Sacer*, p.28.

untouched by it, but is given to the law in its withdrawal. The correlation between the exception and abandonment means that it is impossible to say clearly whether that which has been banned is inside or outside the juridical order.³¹ Moreover, if the exception is the 'originary structure of the law' as Agamben claims, then the principle relation of the law to life is abandonment. Thus, the concept of abandonment provides the key to understanding the relation between life and law in the exception. I will come back to a fuller discussion of the characterization of abandonment that Agamben develops in the following section. First though, the questions to address here are what Agamben means by 'life' and how he accounts for the capture of life within the sovereign ban.

Taking cue from both Benjamin and Schmitt, Agamben argues in *Homo Sacer* that what is captured within the sovereign ban is life itself. He states that 'life... [is] the element that, in the exception, finds itself in the most intimate relation with sovereignty'.³² Furthermore, since the 'law is made of nothing but what it manages to capture inside itself through the inclusive exclusion' it finds its own existence in the 'very life of men'.³³ Importantly, Agamben is not simply suggesting that natural life or nutritive, biological life provides the foundation for the existence of law. Rather, the principle protagonist in the inclusive exclusion that founds the law is bare life, or 'life that is irremediably exposed to death'. As he states 'not simple natural life, but life exposed to death (bare life or sacred life) is the originary political element'.³⁴

³¹ Agamben, *Homo Sacer*, pp.28-29.

³² Agamben, *Homo Sacer*, p.67.

³³ Agamben, *Homo Sacer*, p.27.

³⁴ Agamben, *Homo Sacer*, p.88. The notion of 'bare life' has given rise to a great deal of misunderstanding in literature on *Homo Sacer*, as bare life is frequently conflated with natural, nutritive life. But if bare life is understood as synonymous with nutritive life, Agamben's rejection of the thesis on sacrifice and the sacralization of life makes little sense and his final gesture to a new 'form-of-life', which I discuss in the following section, cannot, it seems, be read at all. What has to be kept in mind is that it is precisely the exposure to (non-sacrificial) violence that marks bare life as both inside and outside the political order, as the 'zone of indistinction' or excrescence produced in the division of biological, nutritive life and political life. The new 'form-of-life' that Agamben posits aims to overcome the exposure of bare life to bio-sovereign violence through rendering the division of nutritive and political life impossible. There are thus four categories of life that operate in *Homo Sacer*: *zōē* or biological life, *bios* or political life, bare life (sometimes rendered as sacred life or naked life, from the original Italian term 'nuda vita') and a new 'form-of-life', rendered elsewhere as 'happy life'. This contradicts Andrew Norris's claim, then, that 'it is because biopolitics in the form of sacred life defines both bare life and political life that these definitions change, and even, as in modernity, collapse into one another' (Andrew Norris, 'Giorgio Agamben and the Politics of the Living Dead', *Diacritics* 30:4(2002), pp.38-58 at n.17); Norris's confusion emerges from failing to make adequate distinction between natural life and bare life to begin with.

Agamben's category of bare life recalls, and in a limited sense deconstructs, the Aristotelian distinction between *bios* and *zōē*, in that bare life appears as that which is neither *bios* nor *zōē*, but rather the politicized form of natural life. Immediately politicized but nevertheless excluded from the polis, bare life is the limit-concept between the *polis* and the *domis*. In being that which is caught in the sovereign ban, bare life indicates the exposure of natural life to the force of the law in abandonment, the ultimate expression of which is the sovereign's right of death. Thus, neither *bios* nor *zōē*, bare life emerges through the irreparable exposure of life to death in the sovereign ban. This means then that the object of biopolitics is not precisely biological life, but rather bare life: natural life politicized in its capture in the sovereign ban.³⁵

To outline the category of bare life further, Agamben resuscitates the figure of 'sacred man' or *homo sacer* from Roman law. In particular, he takes up the definition of sacred man given by Pompius Festus who writes that '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'.³⁶ Agamben

Nevertheless, it is true that even Agamben does not always maintain sufficiently clear conceptual distinctions, for his final examples of Karen Quinlan and the 'over-comatose' reveal a seduction by the current concentration on health and biotechnologies as the privileged examples of biopolitical intervention. This concentration is carried forward in Paul Rabinow's *French DNA: Trouble in Purgatory* (Chicago: University of Chicago Press, 1999) as well as in the work of Nikolas Rose and others (eg. Nikolas Rose 'The Politics of Life Itself', *Theory, Culture and Society* 18:2(2001), pp.1-30; Melinda Cooper, 'Transgenic Life: Controlling Mutation', *Theory and Event* 5:3(2001)). I am not disputing the importance of this work, nor claiming that biotechnology does not constitute a form of biopolitical intervention in the life of individuals and populations. However, the category of bare life that Agamben develops offers other directions for research as well. For just as bare life shades into biological life, so it does into political life, which reveals its usefulness for understanding political exclusion. If this is taken seriously, then it may be that the privileged examples of biopolitics should not so much be biotechnologies, genetic counselling, state-sponsored health programs and so on, but rather, political terror waged against ways of life in, for instance, the Rwandan genocide, the current global abandonment of refugees, or hate violence. As I argued in the Chapter 1, it is shortsighted to limit the decision on life worth living to the domain of bio-medical technology. In fact, the normative adjudication and determination of lives worth living permeates legal, social and political structures well beyond the bio-medical. Additionally then, the category of bare life suggested by Agamben is formally similar to the concept of the morphological imaginary developed by Butler, though there are differences between these concepts. In particular, Agamben argues that bare life emerges through the constitutive relation it maintains to sovereign power, whereas Butler – following Foucault – understands the violence in subjectivation as that of normalization and exclusion. Again following Foucault, Butler's strong critique of sovereignty, understood primarily as a critique of the notion of the sovereign subject rather than the state, fails to consider the ways in which sovereignty operates within the contemporary political field apart from its posited discursive or indeed, ideological function of concealing the radically conditioned status of the subject.

³⁶ Cited in Agamben, *Homo Sacer*, p.71.

claims that the apparently contradictory traits of the sacred man, which allow that he can be killed with impunity but not according to ritual practices, have eluded full explanation. Agamben rejects explanation of these characteristics through positing an essential ambiguity of the sacred on the basis of circularity, and argues instead that the sacred man is most properly understood to be characterized by a 'double exclusion and a double capture'.³⁷ That sacred man can be killed but is unable to be sacrificed means that this figure is set outside the purview of human law and is simultaneously excluded from divine law, since to be sacrificed is to be given over to the gods, dedicated to or revered as if of the gods, a fate which sacred man is excluded from. Consequently, the violence committed against *homo sacer* does not constitute sacrilege but is instead considered licit.³⁸ Agamben goes on to argue that the double exclusion of sacred man points to a correlative double inclusion in the realms of the divine and the human, since the formal characteristics of being able to be killed and not sacrificed also indicate inclusion of *homo sacer* within the human community and to God. He states that '*homo sacer* belongs to God in the form of unsacrificeability and is included in the community in the form of being able to be killed'.³⁹

He concludes from this contradictory status that sacred or bare life is life lived beyond both divine and profane law, and is thus life singularly exposed to death. However, the 'double exclusion and double capture' of bare life means that the zone in which bare life persists is not simply lawless, but instead reveals the inclusive exclusion or abandonment of bare life vis-à-vis law. Furthermore, it reveals a fundamental homology between *homo sacer* and the exception, in that each is simultaneously included and excluded from the law and thus subject to the sovereign

³⁷ Agamben, *Homo Sacer*, p.82.

³⁸ Agamben cites the observation of Macrobius that "While it is forbidden to violate the other sacred things, it is licit to kill the sacred man" (*Cum cetera sacra violari nefas sit, hominem sacrum ius fuerit occidi*); cited in Agamben, *Homo Sacer*, p.82.

³⁹ Agamben, *Homo Sacer*, p.82. There is a clear opening in the idea of life able to be killed with impunity expressed through the figure of *homo sacer* to develop a consideration of homophobic violence and the correlative abandonment of the homosexual victim by the law. For an attempt to use Agamben's work to consider the homosexual advance defence discussed in the introduction to this thesis, see my 'The 'homosexual advance defence': the law of abandonment', Conference Proceedings, http://www.kcwh.unimelb.edu.au/full_length_papers/Catherine%20Mills.doc; presented at *Sexconf 2001*, 3rd Conference of the International Association for the Study of Sex, Culture and Society, University of Melbourne, October 2001.

decision.⁴⁰ For Agamben, the figure of *homo sacer* expresses the originary political relation, as this figure recalls the memory of the exclusions which found the juridico-political sphere as the excrescence of the religious and profane, and illuminates the indistinction between sacrificial and homicidal violence that lies at the heart of sovereign power. Hence, he states that ‘the sovereign sphere is the sphere in which it is permitted to kill without committing homicide and without celebrating a sacrifice, and sacred life – that is life that may be killed but not sacrificed – is the life that has been captured in this sphere’.⁴¹ A crucial symmetry then becomes apparent between *homo sacer* and sovereignty, for while ‘the sovereign is the one with respect to whom all men are potentially *homines sacri*... *homo sacer* is the one to whom all men [may] act as sovereign’.⁴² Clearly then, *homo sacer* is exposed to violence and the power over life and death as a condition of existence; *homo sacer* persists in relation to sovereignty, wholly turned over to sovereign power, but, in its correlation with the sovereign exception, simultaneously left bereft by it. This, then, is the double structure of abandonment.

To add an important caveat, Agamben does not see the proximity of sacredness and sovereignty as the ‘secularized residue of the originary religious character of every political power’,⁴³ or as an attempt to provide a theological foundation for politics. Nor is it that the sacredness that is often assumed to belong inexorably to life as such necessarily places the political in relation to the sacred. Rather, sacredness constitutes the ‘originary’ form of the inclusion of bare life in the juridical order, and the syntagm *homo sacer* brings to light the inclusive exclusion of bare life in the political order as the object of the sovereign decision, and thus names the ‘originary political relation’. In response to Benjamin’s question posed in ‘Critique of Violence’ concerning the origins of the dogma of the sacredness of life,⁴⁴ Agamben argues that the sacredness of life emerges only to the extent that life is incorporated into the sovereign exception: ‘life is sacred only insofar as it is taken into the sovereign

⁴⁰ Agamben, *Homo Sacer*, p.84.

⁴¹ Agamben, *Homo Sacer*, p.83.

⁴² Agamben, *Homo Sacer*, p.84.

⁴³ Agamben, *Homo Sacer*, pp.84-85.

⁴⁴ See Walter Benjamin, ‘Critique of Violence’ in *Reflections: Essays, Aphorisms, Autobiographical Writings*, ed. Peter Demetz (New York: Schocken Books, 1978), pp.277-300 at 299.

exception'.⁴⁵ Consequently, he rejects recourse to the notion of the sacredness of life against the power of the sovereign in the form of power over life and death, and claims instead that it is precisely the sacralization of life that permits the capture of life within the sovereign exception and the concomitant production of bare life and the exposure to death that this life entails. As he states, the 'sacredness of life that is invoked today as an absolutely fundamental right in opposition to sovereign power, in fact originally expresses precisely both life's subjection to a power over death and life's irreparable exposure in the relation of abandonment.'⁴⁶

One of the important theoretical consequences of the inclusive exclusion of bare life vis-à-vis the realm of the political is that biopower and sovereign power are tightly integrated in their operation. Moreover, modern politics does not represent a definitive break from classical sovereignty but rather the extension and generalization of the state of exception that founds sovereign power. In a provocative formulation, Agamben suggests that 'in Western politics, bare life has the peculiar privilege of being that whose exclusion founds the city of men [sic].'⁴⁷ This means that the transformation of life into the good life characteristic of politics necessitates that bare life is always already politicized, but nevertheless remains excluded from the polis. Recalling Aristotle's exclusion of *zōē* from politics, it becomes clear that traditionally, the polis, the place of politics, is grounded upon that which it necessarily excludes. This is the starting point for Agamben's argument that 'the state of exception actually constituted, in its very separateness, the hidden foundation on which the entire political system rested',⁴⁸ where by the state of exception he means 'the extreme form of relation by which something is included only through its exclusion'.⁴⁹ Agamben claims that 'the inclusion' of bare life in the political realm constitutes the original – if concealed – nucleus of sovereign power. *It can even be said that the production of a biopolitical body is the original activity of sovereign power.* In this sense,

⁴⁵ Agamben, *Homo Sacer*, p.85.

⁴⁶ Agamben, *Homo Sacer*, p.83. Peter Singer and others have also argued for the irrelevance of the doctrine of the sacredness of human life in normative discussion of the ethical dilemmas generated by new technologies of life and death. See for instance, Peter Singer, *Rethinking Life and Death* (Melbourne: Text Publishing, 1994).

⁴⁷ Agamben, *Homo Sacer*, p.7.

⁴⁸ Agamben, *Homo Sacer*, p.9.

⁴⁹ Agamben, *Homo Sacer*, p.18.

biopolitics is at least as old as the sovereign exception'.⁵⁰ Consequently, he concludes that the modern State 'does nothing other than bring to light the secret tie uniting power and bare life, thereby reaffirming the bond between... modern power and the most immemorial of the *arcana imperii*'.⁵¹

Therefore, Agamben argues that the biopolitical regime of power operative in modernity is not so much distinguished by incorporating life into politics, but by the fact that the 'state of exception comes more and more to the foreground as the fundamental political structure and ultimately begins to become the rule'.⁵² Or again, 'together with the process by which the exception everywhere becomes the rule, the realm of bare life – which is originally situated at the margins of the political order – gradually begins to coincide with the political realm, and exclusion and inclusion, outside and inside, *bios* and *zōē*, right and fact, enter into a zone of irreducible indistinction'.⁵³ In other words, while sovereignty and biopolitics are intimately conjoined in their treatment of life, biopolitics constitutes an extension and generalization of the state of exception that founds sovereign power. The theoretical point of inspiration for this claim comes from Benjamin's suggestion in his 'Theses on the Philosophy of History' that 'the tradition of the oppressed teaches us that the state of emergency in which we live is not the exception but the rule'.⁵⁴ Taking up the provocation in this thesis, Agamben generalizes the sovereign exception such that it no longer appears as the exceptional case, but as the norm. Given what we now know about the sovereign exception and bare life, this means that the capture of bare life within the exception is a general condition of existence, such that the rule and the exception, inclusion and exclusion, and right and violence are no longer clearly distinguishable. Agamben claims from this that under a regime of biopolitics, all subjects are potentially *homo sacer*. That is, all subjects are at least potentially if not

⁵⁰ Agamben, *Homo Sacer*, p.6.

⁵¹ Agamben, *Homo Sacer*, p.6.

⁵² Agamben, *Homo Sacer*, p.20.

⁵³ Agamben, *Homo Sacer*, p.9.

⁵⁴ Benjamin, 'Theses on the Philosophy of History', in *Illuminations*, ed. Hannah Arendt, tr. Harry Zohn (London: Fontana, 1973), pp.255-266 at 259.

actually abandoned by the law and exposed to violence as a constitutive condition of political existence.⁵⁵

Agamben's historical reference points for elaborating this theoretical claim include the legal doctrine of *habeas corpus*, the French Revolution and the German concentration camps of the Second World War. He claims that the founding moment for the extension of the state of exception was the transference of sovereignty to the people in the French Revolution and discourses that struggled with the articulation of a new form of governance that arose at that time. Agamben argues that the French 'Declaration of Rights of Man and Citizens' of 1789 marks the 'originary figure of the inscription of bare life within the juridico-political order of the nation-state'.⁵⁶ Bare life as such now appears as the source and bearer of rights, and citizenship 'names the new status of life as the origin and ground of sovereignty'.⁵⁷ The biopolitical state in which the exception has become the rule is further exemplified by concentration camps and the determination of 'life unworthy of being lived'⁵⁸ that accompanied the Nazi eugenics programs in Second World War Germany. Since the camps do not constitute an aberration in modern political rationality for Agamben but rather the apogee of it, these extreme situations actually bring to light the *nomos* of the political conditions of existence today.⁵⁹ By this,

⁵⁵ This clearly has implications for a consideration of rights within contemporary politics and I will return to a discussion of this in the final chapter after the philosophical commitments that Agamben holds are made clearer. Suffice to say at this point that Agamben wholly rejects recourse to rights as a limitation on the violence of sovereign power, claiming that 'every attempt to found political liberties in the rights of the citizen is... in vain' (Agamben, *Homo Sacer*, p.181). In the final section of the thesis though, I argue that this claim is ultimately untenable, though it is one that Agamben cannot avoid easily given his other theoretical commitments. Yet, it is possible to moderate Agamben's position through a close reading of the messianic gestures within his work, which I then juxtapose with Foucault's critique of rights. But first, clarification of Agamben's philosophical claims is required to see how closely he is tied to the full rejection of rights.

⁵⁶ Agamben, *Homo Sacer*, p.127.

⁵⁷ Agamben, *Homo Sacer*, p.129.

⁵⁸ Agamben points out that this is not an ethical valuation but a political one, since in the context of biopolitics the decision on life and death is taken without regard for the expectations and legitimate desires of the individuals involved. Rather, 'euthanasia is situated at the intersection of the sovereign decision on life that may be killed and the assumption of care for the biological body of the nation'. Here, sovereignty is 'transformed into the power to decide the point at which life ceases to be politically relevant' (Agamben, *Homo Sacer*, p.142), and biopolitics fades into 'thanato-politics' – a politics of death that recalls and partly challenges Foucault's understanding of biopower as that which fosters life or disallows it.

⁵⁹ This claim is discussed in *Homo Sacer*, but also see Giorgio Agamben, 'The Camp as the Nomos of the Modern' in Hent de Vries and Samuel Weber, eds. *Violence, Identity and Self-Determination* (Stanford: Stanford University Press, 1997), pp.106-118.

Agamben means that the camps are a biopolitical space *par excellence*, since their operative rationality is the reduction of human life to bare existence and exposure to violence, yet as such they are not isolated exceptions, but reveal the general conditions of political rationality in operation today. Hence, the condition of abandonment that bare life finds itself in is not limited to the camps, but instead enters into a process of banalization with scientific experimentation on human subjects on death row⁶⁰ or the determination of the limits of life and death required by the invention of the category of brain death and *coma dépassé* ('overcoma'). Of these, Agamben claims that the suspension between life and death reveals that bare life is exposed absolutely, such that killing does not constitute murder, but can in no way be understood as sacrificial; here, life is itself exceptional, such that life and law are truly indistinguishable.⁶¹

Two points can be made of this characterization of biopolitics and sovereignty. The first point relates to Foucault's distinction of biopolitics and sovereignty, and the subsequent casting of sovereignty as ideological that I discussed in the first chapter. I argued that the ambiguity in Foucault's distinction between sovereignty as an extractive power over life and death and biopolitics as a productive form of power that fosters life leads to the view that the deployment of discourses of sovereignty ideologically masks the operations of the material technologies of biopolitics. Insofar as this is the case, Foucault risks a reductive analysis of operations of power that, *a*

⁶⁰ For an important discussion of experimentation on prisoners in the United States of America, see Allen N. Hornblum, *Acres of Skin: Human Experiments at Holmesburg Prison* (New York: Routledge, 1998).

⁶¹ Agamben's list of examples of biopolitics raises the question of the comparability and generalizability of such situations as examples, a problem that Agamben is not unaware of himself. In addressing the imagined criticism that his examples are 'extreme or arbitrary', he reaches for further 'more familiar' examples such as Bosnian women in rape camps, but the list could be expanded indefinitely. What is important to recognize though is not whether the examples are comparable or generalizable with a 'normal' political situation – for a number of reasons, if Agamben's foregoing argument is accepted – but that the task is to reveal something previously uncovered in such examples and to ask whether such examples reveal something previously uncovered in contemporary life. What is important in these examples is the way in which they actually confound or trouble more established means of understanding. Thus, the example of 'overcoma' and the definition of brain death brings into question traditional definitions of life and death, and does so through a politicized technology that leaves the decision of what counts as life and death both radically undetermined and simultaneously over-determined. In this regard, Peter Singer's discussions of the Karen Quinlan case (among others) to show the ways in which the doctrine of the sanctity of life is being radically undermined by bio-medical technology and the legal decisions that the capabilities of such technology occasion operates in a similar way: what is at issue is the continued relevance of more traditional frameworks for interpretation and decision-making. Consequently, it is an exercise in question-begging to return to those as the privileged tools of interpretation. See Singer, *Rethinking Life and Death*.

priori, excludes consideration of sovereignty as a material technology in the operation of power. Against this, it is clear that Agamben's theorization of the intersection of biopolitics and sovereignty allows for consideration of the operational technologies of sovereignty in ways foreclosed by Foucault's account. Agamben's analysis of the ways in which biopolitics constantly overlaps with a politics of death or 'thanatopolitics' brings into focus the constitutive role of sovereign violence within biopolitics. Furthermore, it does so in a way that does not require the allocation of sovereign power solely to the nation-state, and thus avoids returning analysis of sovereignty to the questions of legitimacy and centralized state power that Foucault had sought to overcome. In this light, in his rejection of an analysis of State sovereignty, it appears that Foucault failed to consider that sovereignty might operate in ways distinct from the state figured on the monarch. However, as Antonio Negri and Michael Hardt point out, 'the decline of sovereignty of nation-states... does not mean that sovereignty as such has declined.'⁶²

Indeed, the implication of Agamben's reformulation of Schmitt's definition of the constitution of sovereignty through Benjamin's claim that contemporary conditions are characterized by the state of exception becoming the rule is that the sovereign decision has been radically dispersed. However, it does not follow that the sovereign decision has *disappeared*. Rather, if we accept Agamben's claim that all subjects are potentially *homo sacers*, that is, subject to irremediable sovereign violence, then it is also the case that all subjects can potentially take the sovereign position of deciding on the exception, of deciding on the life and death of another. As I noted previously, Agamben suggests that 'the sovereign is the one with respect to whom all men are potentially *homines sacri*... *homo sacer* is the one to whom all men [may] act as sovereign'.⁶³ The symmetry posited between sovereignty and *homo sacer* is also marked by an inherent reversibility enabled by the indistinction between law and life itself in which life is caught in the sovereign ban. In this then, the violence that conditions bare life might usefully be understood as *bio-sovereign violence*, violence that enacts the sovereign determination on life worth living in the moment of its execution.

⁶² Antonio Negri and Michael Hardt, *Empire* (Cambridge Ma.: Harvard University Press, 2000), p.x; also see Saskia Sassen, *Losing Control? Sovereignty in the Age of Globalization* (New York: Columbia University Press, 1996).

⁶³ Agamben, *Homo Sacer*, p.84.

The second point follows from this in that insofar as Agamben's reconsideration of biopolitics and sovereignty allows for further explication of the role of violence within the political, so it allows for reconsideration of the status of the subject, understood as the particularly *political* status of human beings. In particular, what becomes clear at this point is that within biopolitics, the status of being a subject is intimately linked to the exposure of life to bio-sovereign violence. While I discuss this further in the following chapter, it is worth noting here that the role of violence is not only subjectifying as it is in Foucault's discussion of normalization, in which subjection ultimately emerges as an enforced constraint on the internal forces of the body. Rather, violence is at the same time the constitutive condition of the subject and the permanent threat of destruction and desolation of the subject through its desubjectifying effects. As the excrement of the distinction between *bios* and *zōē*, bare life – that is, life exposed to bio-sovereign violence – simultaneously indicates an extreme limit of subjection and a radical desubjectivation in which human life is reduced to a matter of survival. If it is the case that human life is politicized through its abandonment to the law, which exposes life to the irremediable force of the sovereign decision and that abandonment constitutes the fundamental condition of existence today, then it seems that there is a particular urgency in developing a political response to the biopolitical capture of life.

In formulating a response to the capture of bare life in the sovereign ban, in the final pages of *Homo Sacer*, Agamben gestures toward a new 'form-of-life',⁶⁴ formulated elsewhere as 'happy life',⁶⁵ in which *bios* and *zōē* cannot be separated. We have seen that for Agamben, the 'originary' relation between the sovereign exception and the bare life captured within it indicate that life has always been included in politics, even if only through its exclusion. However, while Agamben sees an essential continuity between classical and modern politics, this does not lead to the conclusion that there has been no substantive alteration of the relation between political power and bare life since the Greeks. Rather, Agamben suggests that what distinguishes modern democracy from classical democracy is that the former 'presents itself from the

⁶⁴ See Giorgio Agamben, 'Form-of-Life' in *Means without End: Notes on Politics*, tr. Vincenzo Binetti and Cesare Casarino (Minneapolis: University of Minnesota Press, 2000), pp.3-12.

⁶⁵ For instance, in Giorgio Agamben, 'Notes on Politics' in *Means without End: Notes on Politics*, tr. Vincenzo Binetti and Cesare Casarino (Minneapolis: University of Minnesota Press, 2000), pp.109-118 at 114.

beginning as a vindication and liberation of $\zeta\theta\bar{\epsilon}$, and that it is constantly trying to transform its own bare life into a way of life and to find, so to speak, the *bios* of $\zeta\theta\bar{\epsilon}$.⁶⁶ Thus the *raison d'être* of contemporary political power is the annulment of the distinction between *bios* and $\zeta\theta\bar{\epsilon}$; that is, a total politicization of biological life that undercuts the distinction between *bios* of $\zeta\theta\bar{\epsilon}$ and therefore eradicates bare life. At the same time though, Agamben also claims that modern democracy has consistently failed in the endeavor to reconcile *bios* and $\zeta\theta\bar{\epsilon}$, such that 'bare life remains included in politics in the form of the exception, that is, as something which is included only through an exclusion'.⁶⁷ While modern politics is increasingly played out on the level of biological life, in its attempt to discover the *bios* of $\zeta\theta\bar{\epsilon}$ it nevertheless produces bare life as the excrescence of its failure, thereby preventing the overcoming of the sovereign exception and the violence that conditions bare life.

He goes on to claim that this situation leads to an aporia specific to modern democracy: 'it wants to put the freedom and happiness of men into play in the very place – "bare life" – that marked their subjection'.⁶⁸ According to Agamben, this aporia stymies any attempt to oppose biopolitical regimes from within the framework of *bios* and $\zeta\theta\bar{\epsilon}$. Such projects will tirelessly repeat the aporia of the exception, the danger of which lies in the gradual convergence of democracy with totalitarianism. In other words, the condition of abandonment indicates a fundamental aporia for contemporary politics, where attempts to overcome the capture of life within the sovereign exception through recourse to natural life necessarily repeat and reinstall that capture in their politicization of natural life. Thus, Agamben rejects Foucault's gesture toward a 'new economy of bodies and their pleasures', claiming that 'the body is always already a biopolitical body and bare life, and nothing in it or the economy of its pleasure seems to allow us to find solid ground on which to oppose the demands of sovereign power'.⁶⁹ He argues instead that:

⁶⁶ Agamben, *Homo Sacer*, p.10.

⁶⁷ Agamben, *Homo Sacer*, p.11.

⁶⁸ Agamben, *Homo Sacer*, p.10.

⁶⁹ Agamben, *Homo Sacer*, p.187.

Until a completely new politics – that is, a politics no longer founded on the *exceptio* of bare life – is at hand, every theory and every praxis will remain imprisoned and immobile, and the “beautiful day” of life will be given citizenship only either through blood and death or in the perfect senselessness to which the society of the spectacle condemns it.⁷⁰

The reference in this passage to the ‘beautiful day’ of life not only gestures toward the distinction Aristotle makes between the great difficulty of *bios* and the natural sweetness of *zōē*, but offers the key to the foundation of the coming politics that Agamben proposes.⁷¹

For Agamben, the transformation of politics must take the form of an inauguration of a ‘form-of-life’ or ‘happy life’. As he states in *Means Without End*:

The “happy life” on which political philosophy should be founded thus cannot be either the naked life that sovereignty posits as a presupposition so as to turn it into its own subject or the impenetrable extraneity of science and of modern biopolitics that everybody tries in vain to sacralize. This “happy life” should be rather, an absolutely profane “sufficient life” that has reached the perfection of its own power and its own communicability – a life over which sovereignty and right no longer have any hold.⁷²

Agamben seeks a philosophical redefinition of life that no longer separates between the natural life of the species and contemplative or political life,⁷³ since, in his view, it is precisely this distinction that underlies the political situation in which we find ourselves today. Bare life is produced as the excrescence of the distinction between *bios* and *zōē* and as such, is the carrier of the sovereign nexus of right and violence and the locus of biopolitical capture. Against this situation, he points toward a new

⁷⁰ Agamben, *Homo Sacer*, p.11.

⁷¹ The relevant fragment from Aristotle’s *Politics* for Agamben’s argument is quoted as: “This [life according to the good] is the greatest end both in common for all men and for each man separately. But men also come together and maintain the political community in view of simple living, because there is probably some kind of good in the mere fact of living itself [*kata to zēn auto monon*]. If there is no great difficulty as to the way of life [*kata ton bios*], clearly most men will tolerate much suffering and hold on to life [*zōē*] as if it were a kind of serenity [*euēmeria*, beautiful day] and a natural sweetness.” Aristotle, *Politics*, 1278b, 23-31. The parenthetical inserts are Agamben’s. Agamben, *Homo Sacer*, p.2.

⁷² Agamben, ‘Notes on Politics’, pp.114-115.

⁷³ For a different approach to this problem see Hannah Arendt, *The Human Condition*, 2nd Edition (Chicago: University of Chicago Press, 1958).

conception of life, described as ‘happy life’ or a ‘form-of-life’, in which it is never possible to isolate bare life as the biopolitical subject.⁷⁴ The happy life will be such that no separation of *bios* and *zoē* is possible, and life will find its unity in a pure immanence to itself, in ‘the perfection of its own power’. In this way, Agamben offers a redemptive hope that is external to the problems of biopolitics; the problems posed by the state of exception and sovereignty’s hold over the bare life caught within it can be resolved by the coming unified life. The inauguration of the happy life and the coming politics it grounds redeems bare life in the face of biopolitical capture.

5.3 *The Messianics of Happy Life: Agamben and Benjamin*

As provocative as it is, Agamben’s gesture toward a happy life that provides foundation for the coming politics clearly warrants further consideration and to do this, I turn to discussing the theoretical commitments that underpin Agamben’s theorization of biopolitics and the sovereign exception. In particular, I consider the *messianic* dimension of Agamben’s theorization. This derives from the influence of Walter Benjamin, whose work is perceived to provide the means of overcoming the Schmittian conception of sovereignty. While the messianic dimension of Agamben’s thought has received little consideration in secondary literature, I show that understanding this aspect of Agamben’s later work is crucial to recognizing the specificity of the theoretico-political position he outlines and for recognizing the implications of this position. I argue that the conception of ‘happy life’ that Agamben posits as foundational for the coming politics that overthrow biopolitical capture of bare life can be understood as a gesture of messianism not dissimilar to that made on occasion by Benjamin. Indeed, it is no coincidence that the most important of Benjamin’s texts for Agamben are those in which the gesture toward the messianic is most explicitly formulated.⁷⁵ However, I am less concerned with the

⁷⁴ Agamben, ‘Form-of-Life’, pp.4, 11-12.

⁷⁵ These are ‘Critique of Violence’, ‘Theologico-Political Fragment’, ‘On Language as Such and on the Language of Man’, and ‘Theses on the Philosophy of History’. See Walter Benjamin, ‘On Language as Such and on the Language of Man’ in *Reflections: Essays, Aphorisms, Autobiographical Writings*, ed. Peter Demetz, tr. Edmund Jephcott (New York: Schocken Books 1978), pp. 314-332; Walter Benjamin, ‘Theologico-Political Fragment’, in *Reflections: Essays, Aphorisms, Autobiographical Writings*, ed. Peter Demetz, tr. Edmund Jephcott (New York: Schocken Books 1978), pp.312-313. For discussions of Benjamin’s conception of the messianic see Gordon Hull, “‘Reduced to a Zero-Point’: Benjamin’s Critique of Kantian Historical Experience”, *Philosophical Forum* 31:2(2000), pp.163-186; Irving

particular characteristics of Benjamin's conception of the messianic than with the way in which this gesture operates within Agamben's argument on sovereignty and biopolitics. In particular, I am interested in the theoretico-political implications of Agamben's messianism, which can be brought out through a comparison of his position with that of Foucault and Derrida. I show that Agamben's commitment to a notion of messianic redemption forecloses consideration of an immanent potentiality within bare life, which both limits his conception of abandonment and reveals a fundamental opposition between Agamben and Foucault on questions of political praxis. This opposition can be further illustrated by comparison of Agamben's interpretation of Benjamin's essay 'Critique of Violence' and Kafka's parable 'Before the Law' with Derrida's.

The conflict between Scholem and Benjamin on the status of law in Kafka's work that I mentioned previously provides the point of departure for this discussion. Agamben argues that Scholem's description of Kafka's conception of the law as being in force without significance exactly describes the status of the law in the situation of the sovereign exception. Extending on this insight through Benjamin's contention that a law in force without significance is essentially indistinguishable from life itself, Agamben argues that the fundamental condition of biopolitical existence is the indistinction of life and law. This indistinction, understood through the notion of abandonment, exposes life itself to an irreparable sovereign violence, a violence that can only be overcome through the inauguration of a new form-of-life. Further, it can now be said that for Agamben recognition of the status of law as being in force without significance in the ban is insufficient as the aim and achievement of contemporary thought, since residing in this recognition does little other than repeat the ontological structure of the sovereign ban.

Instead, Agamben claims that contemporary thought must think abandonment beyond any conception of the law in order to move toward a politics freed of every ban. He states that:

Wohlfarth, 'On Some Jewish Motifs in Benjamin', in A. Benjamin ed. *The Problems of Modernity: Adorno and Benjamin* (London: Routledge, 1989); Howard Caygill, *Walter Benjamin: The Colour of Experience*, (London: Routledge, 1988); Richard Wolin, *Walter Benjamin: An Aesthetics of Redemption* (New York: Columbia University Press, 1982).

The relation of abandonment is now to be thought in a new way. To read this relation as a being in force without significance – that is, as Being's abandonment to and by a law that prescribes nothing, and not even itself – is to remain inside nihilism and not to push the experience of abandonment to the extreme. Only where the experience of abandonment is freed from every idea of the law and destiny... is abandonment truly experienced as such.⁷⁶

This complicated suggestion brings to light several crucial aspects of Agamben's theorization of abandonment. First and most obviously, this statement summarizes Agamben's critique of the conception of abandonment given by Nancy in his essay 'Abandoned Being'. Nancy argues that abandonment is the condition – perhaps the sole condition – of the thinking of being in the contemporary world and, further, abandonment is always to be abandoned in relation to law, since 'abandonment respects the law; it cannot do otherwise'.⁷⁷ He concludes that 'abandonment's only law... is to be without return and without recourse'.⁷⁸ Without exploring the complexities of Nancy's text or his critical relation with Heidegger from whom the notion of abandonment is taken, it can be said that Agamben diverges from Nancy on this final point of the resolution and recourse of abandonment. Agamben's divergence from Nancy's formulation lies in his claim that the state of abandonment must be overcome through pushing the experience of abandonment to its extreme limit, beyond the law's being in force without significance and beyond the contemporary condition of nihilism.

This reference to nihilism is key for disentangling Agamben's commitment to a Benjaminian messianics as the path of overcoming the condition of abandonment, for it prefigures his distinction between perfect and imperfect nihilism that he poses as synonymous with the virtual and real state of exception posed by Benjamin.⁷⁹

⁷⁶ Agamben, *Homo Sacer*, p.60.

⁷⁷ Nancy, 'Abandoned Being', p.44.

⁷⁸ Nancy, 'Abandoned Being', p.47.

⁷⁹ This comment also reveals the critical relation that Agamben maintains toward Heidegger, for the notion of abandonment that both he and Nancy are working with comes from the Heideggerian conception of the abandonment of being by Being. Agamben's response to the Heideggerian ontology of Being and the abandonment of being is to argue for the overcoming of abandonment through the messianic redemption of happy life. On Agamben's relation to Heidegger see Leland Deladurantaye, 'Agamben's Potential', *Diacritics* 30:2(2000), p.3-24 at 8. Deladurantaye's note concerning Agamben's comments in the French daily newspaper *Libération* on his theoretical engagement with Martin Heidegger and Benjamin is of particular importance. Agamben is quoted as claiming that his

Benjamin's distinction is made in the 'Theses on the Philosophy of History', where he writes that:

The tradition of the oppressed teaches us that the "state of emergency" in which we live is not the exception but the rule. We must attain to a conception of history that is in keeping with this insight. Then we shall clearly realize that it is our task to bring about a real state of emergency, and will improve our position in the struggle against Fascism.⁸⁰

Benjamin's fragment posits the generalization of the state of exception and the correlative necessity of developing an account of historical time that can clearly illuminate and assist in realizing a means of overcoming that state through the creation of a real state of exception. The distinction that Benjamin posits between the virtual and the real state of exception or state of emergency can be understood as strictly analogous to a differentiation between the state of exception that constitutes sovereignty according to Schmitt's thesis and the exceptionality of the messianic, which redeems and rescues humanity from the grip of the former. That is, historical fulfillment or redemption comes in the form of a messianic, real exceptionality that overcomes the form of law in the virtual state of exception, the latter of which is at least partly equated for Benjamin with Fascism.

Given that the fragment from the 'Theses on the Philosophy of History' presents a barely disguised critique of Schmitt,⁸¹ it provides Agamben with the solution to the

encounter with Heidegger meant that 'philosophy became possible'. He goes on to say though that 'this is precisely the interest of encounters – both in life and in thinking. They render life, for us, possible (or, sometimes, impossible). In any event, this is what happened to me with Heidegger, and, during these same years, with Benjamin's thought. Every great oeuvre contains a degree of shadow and poison for which it does not always furnish the antidote. For me, Benjamin was that antidote which helped me to survive Heidegger', (Agamben cited in Deladurantaye, 'Agamben's Potential', p.8, n.8).

⁸⁰ Benjamin, 'Theses on the Philosophy of History' p.259; the phrase 'state of emergency' is more accurately rendered as 'state of exception' from the original '*Ausnahmestand*'. Agamben uses this latter translation, as do other Benjamin and Schmitt scholars.

⁸¹ For discussions of Benjamin's relation to Schmitt, particularly on the question of the state of exception, see Samuel Weber, 'Taking Exception to Decision: Walter Benjamin and Carl Schmitt', *Diacritics* 22:3-4(1992), pp.5-18; Horst Bredekamp, 'From Walter Benjamin to Carl Schmitt, via Thomas Hobbes', *Critical Inquiry* 25(Winter 1999), pp.247-266. Bredekamp also points out the importance of the Benjamin-Schmitt interaction for reading Derrida's 'Force of Law' and concludes his essay with a quote from Benjamin's diary that emotively summarizes his relation to Schmitt: "Schmitt/Agreement, Hate, Suspicion" (Benjamin cited in Bredekamp, 'From Walter Benjamin' p.266). For a discussion of Schmitt's relation to Sorel, which also reflects on Benjamin's 'Critique of Violence', see Stathis Gourgouris, 'The Concept of the Mythical (Schmitt with Sorel)', *Cardozo Law Review* 21(2000), pp.1487-1514.

perceived urgency of overcoming or escaping the operations of the sovereign ban and biopolitics and the capture of bare life that this entails. Accepting the essential correlation between nihilism and messianism posited by Scholem and Benjamin, Agamben claims that it is necessary to distinguish between two forms of messianism or nihilism.⁸² The first form, which he calls 'imperfect nihilism' nullifies the law but maintains 'the Nothing [that is, the emptiness of the law] in a perpetual and infinitely deferred state of validity'. This is the nihilism that Agamben refers to above in his critique of Nancy's conception of abandonment. The second form, called 'perfect nihilism' overturns the Nothing, and does not even permit the survival of validity beyond meaning; perfect nihilism, as Benjamin states, 'succeeds in finding redemption in the overturning of the Nothing'.⁸³ The task that contemporary thought is faced with is the thought of perfect nihilism, which overturns the law in force without significance that characterizes the 'virtual' state of exception of Western politics.⁸⁴ Importantly though, the overturning of the law does simply mean instituting a new law, and nor does it mean reinstating the lost law of a previous time 'to recuperate alternative heredities'.⁸⁵ Both of these modes of progression would merely repeat the political aporia of abandonment. Rather, the task of redeeming life from the aporia of law in force without significance requires both the destruction of

⁸² Giorgio Agamben, 'The Messiah and the Sovereign', p.171. The distinction Agamben poses between imperfect and perfect nihilism is similar to that between passive and active nihilism made by Nietzsche in for instance Friedrich Nietzsche, *The Will to Power*, ed. Walter Kaufman, tr. Walter Kaufman and R.J. Hollingdale (New York: Vintage, 1967), esp. pp.5-82 at 17. Additionally, one should see Heidegger's discussion of nihilism in Martin Heidegger, 'On the Question of Being' [1955], in *Pathmarks*, ed. William McNeill, tr. William McNeill (Cambridge: Cambridge University Press, 1998), pp.291-322 and Mark Warren, *Nietzsche and Political Thought* (Cambridge, Ma.: MIT Press, 1988).

⁸³ Cited in Agamben, 'The Messiah and the Sovereign', p.171.

⁸⁴ Agamben's conception of the law is particularly ambiguous throughout his work and has given rise to a number of criticisms. This ambiguity derives from his metonymic characterization of the institutions of positive law on the model of the Torah, a characterization that is unlikely to be convincing for many legal and political theorists. Indeed the theological dimension of Agamben's political analysis is no doubt problematic from a number of points of view. Later in this chapter, I argue that the strong messianic position that Agamben takes in developing his political theology is problematic in its insistence on the overturning of the law in its totality, a position which is further reinforced by the association of positive legality with divine law. Setting this aside though, it remains the case that the analysis of sovereignty and biopolitics in *Homo Sacer* offers important reconsiderations of violence and the determination of life worth living. See Fitzpatrick 'These mad abandon'd times'; Fitzpatrick, 'Bare Sovereignty'; Anton Schütz, 'Thinking the Law with and against Luhmann, Legendre and Agamben', *Law and Critique* 11:2(2000), pp.107-136; Thanos Zartaloudis, 'Without Negative Origins and Absolute Ends: A Jurisprudence of the Singular', *Law and Critique* 13:2(2002), pp.197-230.

⁸⁵ Giorgio Agamben, 'Benjamin and the Demonic: Happiness and Historical Redemption' in *Potentialities: Collected Essays in Philosophy*, ed and tr. Daniel Heller-Roazen (Stanford: Stanford University Press, 1999), pp.138-159 at 153.

the past and the realization of 'that which has never been'.⁸⁶ It is only the inauguration of that which has never been, the not having been of the past, that will suffice to overturn the Nothing maintained by the law in force without significance and thereby restore human life to the unity of *bios* and *zōē*, a unity that itself has never yet been. As Agamben states 'this – what has never happened – is the historical and wholly actual homeland of humanity'.⁸⁷

In this light, it becomes clear that the 'form-of-life' or 'happy life' that Agamben proposes as the foundation of the coming politics constitutes the 'real state of exception' from which the biopolitics of modern democracy and its correlation with totalitarianism can be combated and life redeemed. For Agamben, the real state of exception or the messianic redemption that overturns law in force without significance can be actualized in the inauguration of a happy life that does not partake in the distinction between natural life and political life, but has instead 'reached the perfection of its own power and its own communicability'.⁸⁸ What then does Agamben mean by the term 'happy life' and what is he suggesting in the enigmatic phrase cited here? If Agamben's starting point for the theorization of bare life is the term 'mere life' that Benjamin uses in 'Critique of Violence', the inspiration for the notion of a 'happy life' derives from the short text, 'Theologico-Political Fragment'. In this, Benjamin explicitly addresses the relation of Messianic and historic time and writes that 'only the Messiah himself consummates all history, in the sense that he alone redeems, completes, creates its relation to the Messianic'.⁸⁹ Constructing an image of two arrows pointing in different directions but which are nevertheless reinforcing, Benjamin goes on to say that 'the order of the profane should be erected on the idea of happiness'. This is because while the profane cannot in itself establish a relation with the Messianic, it assists the coming of the Messianic Kingdom precisely by being profane. In other words, while the profane is not a category of the Messianic, it is 'the decisive category of its quietest approach',

⁸⁶ See further, Agamben 'The Messiah and the Sovereign'; Agamben, 'Benjamin and the Demonic'; Deladurantaye, 'Agamben's Potential', p.17-19; Daniel Heller-Roazen, 'Editor's Introduction: To Read What Was Never Written', in Agamben, *Potentialities: Collected Essays in Philosophy*, ed and tr. Daniel Heller-Roazen (Stanford: Stanford University Press, 1999), pp.1-23.

⁸⁷ Agamben, 'Benjamin and the Demonic', p.159.

⁸⁸ Agamben, 'Notes on Politics', pp.114-115.

⁸⁹ Benjamin, 'Theologico-Political Fragment', p.312.

because 'the rhythm of Messianic nature is happiness'. Happiness allows for the fulfillment of historical time, since the Messianic kingdom is 'not the goal of history but the end'.⁹⁰

Agamben's absolutely profane happy life draws on this characterization of the profane and messianic, wherein the profane happy life provides passage for messianic redemption. The inauguration of happy life in which neither *zōē* nor *bios* can be isolated allows for the law in force without significance to be overturned such that the Nothing maintained by that law is eliminated and humanity reaches its own fulfillment in its transparency to itself. For Agamben, happy life might be characterized as life lived in the experience of its own unity, its own potentiality of 'being-thus'.⁹¹ In this, the notion of happy life is structurally similar to the theoretical gesture that Agamben makes in his earlier text, *The Coming Community*. Though not formulated in the terms of bare and happy life, the messianic overturning of expropriated being provides the logical impetus of this text, in which Agamben develops his conception of community without essence realized in the 'whatever' singularity. In this text, the community of whatever, the being-thus of humanity, which is neither general nor particular, without attribute or identity, is essentially a messianic community of humanity restored to its own potentiality, its own 'being-in language' that thereby overturns being's expropriation by the Nothing of the spectacle to which it is currently condemned.⁹² However, it is important to be clear this does not amount to a nostalgic re-invocation of *Gemeinschaft*, rather, as should be expected from the structure of messianics, the coming community has never yet been. As Thomas Carl Wall comments, 'without destiny and without essence, the community that returns is one never present in the first place.'⁹³ This suggests then

⁹⁰Benjamin, 'Theologico-Political Fragment', pp.312-313; Agamben, 'Benjamin and the Demonic', p.154.

⁹¹ Giorgio Agamben, *The Coming Community*, tr. Michael Hardt, (Minneapolis: University of Minnesota Press: 1993), p.93; Also see Thomas Carl Wall, *Radical Passivity: Levinas, Blanchot and Agamben* (Albany: State University of New York Press, 1999), pp.115-162. However, the problem with Wall's otherwise instructive sympathetic reading of Agamben is that he does not give enough weight to the messianic gesture within *The Coming Community*.

⁹² Guy Debord's classic analysis of the spectacle of commodification in *The Society of the Spectacle*, tr. D. Nicholson-Smith (New York: Zone Books, 1994) is crucial for Agamben's political theory.

⁹³ Wall, *Radical Passivity*, p.156; also see Agamben's essay '*S: Hegel's Absolute and Heidegger's Ereignis?' in *Potentialities: Collected Essays in Philosophy*, ed and tr. Daniel Heller-Roazen (Stanford: Stanford University Press, 1999), pp.116-137 for a further discussion of the proper being of humanity, understood as neither 'something unsayable, the *sacer* that must remain unsaid in all speech and

the gesture toward a new form of life or happy life to ground the coming politics that appears in the final pages of *Homo Sacer* derives from a fundamental messianism that underpins Agamben's conceptions of life, politics and historical transformation developed in recent work.

5.4 *Bare Life, Potentiality and Strong Messianism*

At this point, three closely related points can be made to specify the nature of Agamben's messianic gesture further. First, the messianic commitment that Agamben maintains rests on a foreclosure of consideration of the potentiality of bare life itself. This not only limits Agamben's conception of abandonment but also guarantees the necessity of the messianic gesture. Second, Agamben's positing of the political necessity of happy life reveals an important difference between his conception of political praxis and that of Foucault and Butler, which I have discussed in earlier chapters. While these latter theorists emphasize the importance of immanent resistance, according to Agamben this does little other than repeat the aporia of abandonment. Instead, Agamben predicates the redemptive immanence of happy life on transcendent conditions of futurity. Third, in order to specify Agamben's gesture to transcendent futurity, I compare his interpretation of Benjaminian messianics with that of Derrida. This shows that while Derrida adopts a 'weak messianics',⁹⁴ Agamben takes a position of strong messianics. I conclude by suggesting that the strength of this position must be tempered in order to overcome some of its more problematic aspects.

If this characterization of happy life as the condition of the messianic fulfillment of humanity and history is correct, it is worth considering the implications of Agamben's messianism for his conception of abandonment and bare life. What this

praxis... nor... according to the pathos of contemporary nihilism, a Nothing whose nullity grounds the arbitrariness and violence of social activity. Rather **se* – *ēthos* [dwelling place] – is the social praxis itself that, in the end, becomes transparent to itself. This also indicates and helps explain Agamben's unequivocal insistence on the elimination of the dogma of the sacredness of life, for here he states that 'a fulfilled foundation of humanity in itself necessarily implies the definitive elimination of the sacrificial mythologeme' (Agamben, '**Sē*', p.137). Cf. Jean-Luc Nancy, *The Inoperative Community* (Minneapolis: University of Minnesota Press, 1991); Maurice Blanchot, *The Unavowable Community*, tr. Pierre Joris (New York: Station Hill Press, 1988).

⁹⁴ John D. Caputo, *The Prayers and Tears of Jacques Derrida: Religion without Religion* (Bloomington: Indiana University Press, 1997), p.352, n.1.

reveals is that the perceived necessity of messianic redemption occludes formulation of an inherent potentiality within bare life, which also limits the conception of abandonment developed in *Homo Sacer*. To recapitulate the main points of Agamben's conception of abandonment: he argues that the term abandonment describes the relation by which the law applies to bare life in not applying, in withdrawing from the life caught in the sovereign ban. The force of law lies in the capacity to be in operation through its suspension or withdrawal, such that the life caught in the ban is simultaneously thrown to the law and bereft of it. This is why bare life can be killed but not sacrificed, since the double exclusion from the realm of the profane and the sacred that characterizes bare life means that it is exposed to the force of sovereignty but no longer protected by the either profane or divine law. Finally, even the doctrine of the fundamental sanctity of human life can no longer operate as a bulwark against the force of the law, since that doctrine is the means by which life is brought to the law.⁹⁵ Agamben concludes from this that abandonment rather than application constitutes the originary form of the relation of law to life.⁹⁶ Moreover, abandonment indicates the fundamental condition of existence today, where biopolitics constitutes the extension and generalization of the sovereign exception and bare life is entirely politicized.

While Agamben's analysis places the concept of abandonment at the center of understanding the relation between life and politics, his characterization of this condition requires that the redemption of life comes through the production of a happy form of life that does not partake in the distinction between natural and political life at all. However, the necessity of this for Agamben begins to indicate a fundamental weakness in his characterization of abandonment. In his borrowing of the terminology of the ban from Nancy to describe the relation of the law to the 'exceptio' of bare life, Agamben adds in parentheses that 'in Romance languages, to be "banned" originally means both to be "at the mercy of" and "at one's own will,

⁹⁵ One might say that, in effect, there is no home for bare life. The suggestion that bare life is 'homeless' is not misplaced in its evocation of Martin Heidegger's notion of homelessness, since Agamben does in fact see the isolation of bare life in Western politics as analogous to the isolation of pure Being in Western metaphysics, such that the resolution of each of these problems is dependent on the resolution of the other. However, this is not the place to investigate the purported relation between bare life and pure Being. See Agamben's brief discussion of this on p.182 of *Homo Sacer*. See Martin Heidegger, 'Letter on "Humanism"' [1949], in *Pathmarks*, ed. William McNeill, tr. Frank A. Capuzzi and others (Cambridge: Cambridge University Press, 1998), pp.239-276.

⁹⁶ Agamben, *Homo Sacer*, p.29.

freely,” to be “excluded” and also “open to all, free”.⁹⁷ Following this parenthetical statement, he goes on to say that ‘the matchless potentiality of the *nomos*, its originary “force of law” is that it holds life in its ban by abandoning it’.⁹⁸ However, the parenthetical status of the freedom given in abandonment and the subsequent formulation of the ‘matchless potentiality’ of the law bring into focus a crucial lacuna in Agamben’s theorization of abandonment. While he notes the freedom given in abandonment, in his following account this is entirely occluded by the force of the law. The life captured within the sovereign ban is entirely given over to the law, even if that law only applies in its withdrawal, such that its freedom consists in being entirely subsistent in relation to the law and thus, in being exposed to death. What this fails to allow then is that abandonment is not simply the exposure of life to death without recourse, but also indicates a profusion of possibilities such that the potentiality of bare life itself is not entirely exhausted in abandonment.⁹⁹

The one-sidedness of this conception of abandonment hangs on the equation of potentiality with sovereignty that Agamben develops, indicated in his characterization of a matchless potentiality of the *nomos* and explicitly posited in his discussion of Aristotle’s conception of potentiality. Agamben claims that the paradox of sovereignty is most clearly evident in the distinction between constituting and constituted power, where constituting power is essentially identical with sovereign power insofar as each is concerned with the ‘constitution of potentiality’.¹⁰⁰ That is, sovereign power is essentially coequal to constitutive power in that neither can be determined by the existing order and nor can either be limited to constituting that order but are instead ‘free praxis’ and potentiality.¹⁰¹ This means that the problem of

⁹⁷ Agamben, *Homo Sacer*, p.29.

⁹⁸ Agamben, *Homo Sacer*, p.29.

⁹⁹ See Nancy, ‘Abandoned Being’, p.37.

¹⁰⁰ Giorgio Agamben, *Homo Sacer*, p.44; the phrase cited by Agamben is taken from Antonio Negri, *Il Potere Costituente: Saggio sulle alternative del moderno* (Milan: SugarCo, 1992), p.383. Agamben’s discussion of Negri is directed against the latter’s attempt to distinguish between sovereign power and constituent power, but allows that the real import of Negri’s analysis lies in his identification of the way in which constituent power transforms from a political concept to an ontological problem through the notion of potentiality employed here. Also see Michael Hardt and Antonio Negri, *Labor of Dionysus: A Critique of the State-Form* (Minneapolis: University of Minnesota Press, 1994).

¹⁰¹ Agamben, *Homo Sacer*, p.43. This claim is made in the context of a critique of Antonio Negri’s dis-identification of sovereign and constitutive power on the basis that while constitutive power is ‘the punctual determination that opens a horizon, the radical enacting of something that did not exist before and whose conditions of existence stipulate that the creative act cannot lose its characteristics

sovereignty returns political philosophy to ontology, and at that level, necessitates a rethinking of the relation between potentiality and actuality. Returning to Aristotle's *Metaphysics* then, Agamben finds that Aristotle rigorously separates potentiality from actuality, giving it an autonomous existence prior to actuality. From this, Agamben claims that to maintain the distinction between potentiality and actuality and explicate the effective mode of potentiality's existence, it is necessary that potentiality be able to not always pass over into actuality. Therefore, potentiality is defined precisely by its capacity to not (do or be) and is thus also 'impotentiality'.¹⁰² He states that 'potentiality maintains itself in relation to actuality in the form of its suspension; it is capable of the act in not realizing it, it is sovereignly capable of its own impotentiality'.¹⁰³

This characterization necessarily raises the question of the passage into actuality, and Agamben argues that this does not entail the destruction of potentiality, but rather entails the maintenance or conservation of potentiality as such.¹⁰⁴ His point of departure for this claim is Aristotle's enigmatic phrase 'a thing is said to be potential if, when the act of which it is said to be potential is realized, there will be nothing impotential'.¹⁰⁵ Agamben interprets this phrase to mean that 'if a potential to not-be originally belongs to all potentiality, then there is truly potentiality only where the potential to not-be does not lag behind actuality but passes fully into it as such'.¹⁰⁶

in creating' while sovereignty 'arises as the establishment – and therefore the end – of constituting power, as the consumption of the freedom brought by constituting power' (Negri cited in Agamben, *Homo Sacer*, p.43).

¹⁰² Agamben, *Homo Sacer*, p.45. The claims concerning potentiality made in *Homo Sacer* are explicated further in Giorgio Agamben, 'On Potentiality' in *Potentialities: Collected Essays in Philosophy*, ed and tr. Daniel Heller-Roazen (Stanford: Stanford University Press, 1999), p.177-185; also see Giorgio Agamben, 'Bartleby, or On Contingency' in *Potentialities: Collected Essays in Philosophy*, ed and tr. Daniel Heller-Roazen (Stanford: Stanford University Press, 1999), pp.243-271.

¹⁰³ Agamben, *Homo Sacer*, p.45.

¹⁰⁴ Yet, the question that Agamben does not broach is whether there is a qualitative transformation apart from the destruction of potentiality in the passage to actuality. This question is more thoroughly addressed by Gilles Deleuze in his treatment of the concept of virtuality, however a comparison of Agamben and Deleuze is beyond the scope of this thesis. For insightful discussions of the concept of virtuality as it relates to the concept of life in Deleuze, see John Rachjman, *The Deleuze Connections* (Cambridge, Ma.: MIT Press, 2000); Keith Ansell-Pearson, *Philosophy and the Adventure of the Virtual: Bergson and the Time of Life* (London: Routledge, 2002); Keith Ansell-Pearson, *Germinal Life: The Difference and Repetition of Deleuze* (London: Routledge, 1999); Keith Ansell-Pearson, *Deleuze and Philosophy: The Difference Engineer* (London: Routledge, 1997).

¹⁰⁵ Aristotle cited in Agamben, *Homo Sacer*, p.45.

¹⁰⁶ Agamben, 'On Potentiality', p.183.

Hence Aristotle's phrase concerns the conditions in which potentiality is realized; potentiality is not destroyed in the passage to actuality, with im-potentiality set aside or overcome. Rather, the potentiality to not be or do is conserved in the passage to actuality. In this way, the passage from potentiality to actuality appears as a gift, a giving of oneself to self. As Daniel Heller-Roazen points out 'actuality is nothing other than a potentiality to the second degree, a potentiality that, in Aristotle's phrase, "is the gift of the self to itself"... actuality reveals itself to be simply a potential not to be (or do) turned back on itself, capable of not not being and, in this way, granting the existence of what is actual.'¹⁰⁷

From this discussion of potentiality in *Homo Sacer*, Agamben claims that Aristotle 'actually bequeathed the paradigm of sovereignty to Western philosophy. For the sovereign ban, which applies to the exception in no longer applying, corresponds to the structure of potentiality, which maintains itself in relation to actuality precisely through its ability not to be'.¹⁰⁸ Agamben argues that the structure of potentiality corresponds to that of the operation of the sovereign, wherein the sovereign decides on what the law applies to. He claims that potentiality is 'that through which Being finds itself sovereignly... without anything preceding or determining it... other than its own ability not to be. And an act is sovereign when it realizes itself by simply taking away its own potentiality not to be, letting itself be, giving itself to itself.'¹⁰⁹ Moreover, the particular force of the sovereign in relation to the exception is that it maintains itself indefinitely in its own potentiality, that is, its own not passing into actuality through the structure of not applying, of withdrawing from the exception. Interestingly though, it is precisely as Agamben concludes that sovereignty is identical with potentiality that he adds – again in parentheses – that 'the troublemaker is precisely the one who tries to force sovereign power to translate itself into actuality'.¹¹⁰ But if it is possible to understand the troublemaker as equivalent to the exception momentarily, this interpolated statement reveals that the force of the exception is that it forces the sovereign into actuality, such that the

¹⁰⁷ Heller-Roazen, 'Editor's Introduction, p.18.

¹⁰⁸ Agamben, *Homo Sacer*, p.46.

¹⁰⁹ Agamben, *Homo Sacer*, p.46.

¹¹⁰ Agamben, *Homo Sacer*, p.47.

exception founds sovereignty.¹¹¹ If this is the case, then the figure of the troublemaker opens the question of potentiality and sovereignty to a different alignment.

This becomes clearer if we return briefly to Schmitt's discussion of sovereignty and the exception, wherein the decision on the exception is the essential characteristic of sovereignty. One of the axiomatic claims that Schmitt makes is that the exception not only proves the rule, but also proves the very existence of the rule: hence, 'the rule as such lives off the exception alone'.¹¹² He goes on to say that 'in the power of the exception the power of real life breaks through the crust of a mechanism that has grown torpid by repetition'.¹¹³ Thus, not only is the exception rendered as constitutive of the rule, but in addition, since it is also in the decision on the exception that the sovereign is realized, then sovereignty itself depends on the exception for its own force. Now if this is the case, it becomes unclear which can be identified with constituent power, for in a sense, the exception displays the characteristics of constituent power as much as the sovereign does. The exception is by definition undetermined by the previous order and exists in a symbiotic relation with sovereignty, insofar as each emerges mutually in a pure decision that violently establishes the normal order. Nor can the exception be limited to constituting that order, since it threatens order by breaking through the crust of torpid mechanisms. Similarly, Slavoj Žižek points out that the ambiguity of Schmitt's notion of the

¹¹¹ In fact, Agamben closes his brief discussion of sovereignty and potentiality with the suggestion that potentiality must be thought without any relation to actuality or Being at all, 'not even in the extreme form of the ban and the potentiality to not be' (Agamben, *Homo Sacer*, p.47). This, he suggests, implies a total revaluation of politics and ontology, and requires 'thinking ontology and politics beyond every figure of relation' (Agamben, *Homo Sacer*, p.47). This claim mirrors the messianism that I discuss below.

¹¹² This translation of Schmitt's comment appears in *Homo Sacer*, p.16 and is presumably Agamben's translation from German to Italian and Heller-Roazen's translation from Italian to English. In his English translation of *Political Theology*, George Schwab renders this passage as 'the exception proves everything: It confirms not only the rule but also its existence, which derives only from the exception' (Schmitt, *Political Theology*, p.15; emphasis added).

¹¹³ Schmitt, *Political Theology*, p.15; for a discussion of the connection between a theory of the political and a philosophy of life that Schmitt establishes in his conception of the norm and the exception, see Giacomo Marramao, 'The Exile of the Nomos: For a Critical Profile of Carl Schmitt', *Cardozo Law Review* 21(2000), pp.1567-1587. Interestingly, the characterization of the exception in the political given by Schmitt is not altogether dissimilar to the conception of the error in biological life developed by Georges Canguilhem in *The Normal and the Pathological*, tr. Carolyn Fawcett (New York: Zone Books, 1991). Also see Oren Gross, 'The Normless and Exceptionless Exception: Carl Schmitt's Theory of Emergency Powers and the "Norm-Exception" Dichotomy', *Cardozo Law Review* 21(2000), pp.1825-1868.

exception lies in the fact that it 'stands simultaneously for the intrusion of the Real (of the pure contingency that perturbs the universe of symbolic automaton) and for the gesture of the sovereign who (violently, without foundation in the symbolic norm) imposes a symbolic normative order. In 'Lacanesque', Žižek claims that the Schmittian exception is both the *objet petit a* and S_1 , the master signifier.¹¹⁴

The important correlative of the foreclosure of recognizing the potentiality of the exception that Agamben effects in associating potentiality with sovereignty is that if bare life is caught within the exception then recognition of the potentiality within bare life is also foreclosed. For Agamben, the only means of escape from a biopolitical regime is the reconsideration of the notion of life apart from the separation of bare life from political life, such that a 'coming politics' that no longer takes bare life as its ground is made possible. In doing so though, Agamben construes bare life as fundamentally passive in relation to sovereign violence, singularly exposed without recourse or response. As Antonio Negri and Michael Hardt claim in *Empire*, Agamben's understanding of naked or bare life exposes 'behind the political abysses that modern totalitarianism has constructed the (more or less) heroic conditions of passivity.'¹¹⁵ By contrast, Negri and Hardt claim that Nazism and fascism do not reveal the essential passivity of bare life so much as amount to an attempt to destroy 'the enormous power that naked life could become'.¹¹⁶ Without following Negri and Hardt into their Deleuzian formulation of the potentiality of naked or bare life, this helps bring into view the second point that I want to make about Agamben's characterization of political futurity, particularly as it relates to the opposition of immanence and transcendence in conceptions of political praxis.

¹¹⁴ Slavoj Žižek, *The Ticklish Subject: The Absent Centre of Political Ontology* (London: Verso, 1999), p.114.

¹¹⁵ Negri and Hardt, *Empire*, p.366; Michael Hardt and Thomas Dumm, 'Sovereignty, Multitudes, Absolute Democracy: A Discussion between Michael Hardt and Thomas Dumm about Hardt and Negri's *Empire*', *Theory and Event* 4:3(2000), §16.

¹¹⁶ Negri and Hardt, *Empire*, p.366; their response to the biopolitical dilemma is to invoke the Deleuzian concept of multiplicity and sketch out a liberatory future in 'machinic metamorphosis' (Negri and Hardt, *Empire*, p.367). However, this simply endorses the powers of multiplicity against sovereignty in *Empire* and sidesteps Agamben's point that no new body provides sufficient foundation for opposition to biopolitical capture (Agamben, *Homo Sacer*, p.188). In fact, while Negri and Hardt's position is diametrically opposed to Agamben's, the gesture toward multiplicity and machinic metamorphosis might ultimately be structurally similar to Agamben's gesture to a happy life. However, this is not something I can explore here.

The foreclosure of consideration of a potentiality of bare life itself is closely related to the rejection of Foucault's formulation of a political response to biopolitics at the end of *The History of Sexuality*, where he calls for the inauguration of a new 'economy of bodies and pleasures' to combat biopolitical subjection and the deployment of sexuality. As I discussed in the first chapter, Foucault's account of biopolitics involves collapsing the Aristotelian distinction between political and natural life. Whereas Aristotle proposed that man was an animal with the additional capacity for political existence, Foucault claims that natural, biological life immediately coincides with political existence under a regime of biopolitics. From this, he appears to claim that natural, biological life is the site of resistance to biopolitical subjection, first in his suggestion that life has not been totally integrated into the techniques that govern it, but constantly escapes them, but more importantly, in his claim that struggles against biopolitics 'relied for support on the very thing [power] invested, that is, on life and man as a living being'.¹¹⁷ The theoretical stance underpinning this historical observation is elaborated earlier in the text, where Foucault claims that resistance is never external to power, but is inscribed in relations of power as the 'irreducible opposite', the 'odd term' that provide the 'adversary, target or support' for their strategic operation.¹¹⁸ Resistance is an immanent possibility within any confrontation of power relations, and as such it emerges from the inherent forces of the body targeted by techniques of biopower. It is precisely that which power targets that provides the points of opposition, resistance and possible transformation. Thus, Foucault locates the possibility of escaping the capture of biopolitical techniques within the body itself through the immanent potential for reversal within relations of force.

Similarly, while Judith Butler criticizes Foucault for an apparent valorization of the body as the 'principle of necessary and permanent disruption',¹¹⁹ she extends the claim that resistance is internal to the operation of power through her conception of resignification as political strategy. Against Foucault's conception of the body, Butler develops the concept of the morphological imaginary to effectively deconstruct the

¹¹⁷ Foucault, *History of Sexuality 1*, p.144.

¹¹⁸ Foucault, *History of Sexuality 1*, pp.95-96.

¹¹⁹ Judith Butler, 'Revisiting Bodies and their Pleasures', *Theory, Culture and Society* 16:2(1999), pp.11-20 at 14.

distinction between nature and culture and to argue that the body is political from its inception. She claims that the 'dominant and indifferent' discourses that structure the emergence of the morphological imaginary through compelled identification only establish their efficacy in being repeated. At the same time, it is precisely the necessity of repetition that opens the terms and conditions through which subjectivation takes place to reconfiguration. Butler's theory of agency posits an irremediable temporal vulnerability in discursive relations such that the performative force of the terms of subjectivation can be altered, thereby allowing for the development of new possibilities of bodily life. The aim of Butler's conception is to establish the tremulous agency of those bodies excluded from the status of subject, their capacity to disrupt or destabilize hegemonic identifications effected through discursive subjectivation and to force a more or less radical reconsideration of conditions of existence. In this, her argument repeats the insistence upon the immanent possibilities for resistance within the operations of power evident in Foucault's characterization of resistance to biopolitical subjection.

Against this position, Agamben argues that the attempt to isolate the body as the site of resistance remains trapped within the logic of biopolitics; analogous to attempts to sacralize life in opposition to sovereign power, this position ultimately does nothing but reinscribe the very means of subjection. While Agamben's formulation of the concept of bare life is formally similar to Butler's concept of the morphological imaginary insofar as it deconstructs the distinction between *bios* and *zōē*, or political and natural life, he concludes that resistance to biopolitical capture cannot be generated from within the terms of biopolitics. Rather, in positing the necessity of the inauguration of happy life as the condition of messianic redemption, Agamben gestures toward the necessity of a radically disruptive event that does not simply reconfigure current conditions of existence but overturns the totality of the current order of political existence.¹²⁰ To summarize the distinction between Foucault, Butler

¹²⁰ In this, Agamben's position is not entirely dissimilar to Slavoj Žižek's claim that Foucault fails to consider the possibility that the 'system itself, on account of its inherent inconsistency, may give birth to a force whose excess it is no longer able to master and which thus detonates its unity, its capacity to reproduce itself' (p.256). Or, as Žižek claims of Butler, the account of immanent resistance cannot consider the possibility of a 'radical gesture of the thorough restructuring of the hegemonic symbolic order in its totality' (Žižek, *The Ticklish Subject*, p.264); also see Alain Badiou's discussion of the importance of the event that has never taken place, in Alain Badiou, *Manifesto for Philosophy*, ed. and tr. Norman Madarasz (Albany: State University of New York Press, 1999) and his interview on politics and philosophy with Peter Hallward, in Alain Badiou, *Ethics: An Essay on the Understanding of Evil*, tr. Peter Hallward (London: Verso, 2001), pp.95-144.

and Agamben, the Foucault/Butler position is guided by the presupposition of an immanent capacity for resistance, which is not however essential or localizable within the subject. Agamben's position gestures toward a happy life predicated on its own transcendence, insofar as the parameters of the happy life cannot derive from the conditions of existence given today. Yet, Agamben's conception of happy life also requires a notion of pure immanence insofar as happy life is entirely transparent to itself and bare life and political life cannot be distinguished. This means that Agamben effectively predicates the possibility for redemptive immanence on transcendent conditions of futurity.

The particular characteristics of Agamben's gesture of political futurity can be outlined through a brief comparison of Agamben and Derrida's interpretations of Benjaminian messianics. So far, I have argued that Agamben's conception of opposition to biopolitical capture draws upon the logic suggested by Benjamin in his eighth thesis on the philosophy of history, such that instead of residing in the immanent potentiality of bare life he posits a messianic redemption from biopolitical capture in the form of a unified, happy life. Several commentators on Agamben have suggested that this logic can be understood as the transformation of the aporia of the exception in a redemptive euporia that subsequently provides the hope and foundation of a coming politics.¹²¹ In other words, Agamben's political logic relies on a transition from a situation of hopelessness or literally, 'lack of way' into a 'felicitous way' or hopefulness.¹²² This transition is suggested in his discussion of the role of terminology and 'the trace' in the work of Jacques Derrida,¹²³ where he argues that the concept of the trace is an attempt to rethink the Aristotelian paradox of potentiality. The deconstructive writing of the trace does not indicate the passage of potentiality into actuality, but is rather 'a potentiality that is *capable* and that experiences itself in its passivity.'¹²⁴ As the 'excess of signification in all sense', the concept of the trace (which is nevertheless not a concept) central to deconstruction

¹²¹ See Heller Roazen, 'Editors Introduction', p.5; Deladurantaye, 'Agamben's Potential', p.8. Deladurantaye in particular points out that the logic of the transformation of aporia into euporia derives from Benjamin's influence on Agamben's thought.

¹²² Heller-Roazen, 'Editors Introduction', p.5.

¹²³ Giorgio Agamben, 'Pardes: The Writing of Potentiality', in *Potentialities: Collected Essays in Philosophy*, ed. and tr., Daniel Heller-Roazen, (Stanford: Stanford University Press, 1999), pp.205-219 at 217.

¹²⁴ Agamben, 'Pardes', p.216.

radicalizes the paradox of self-reference wherein a term refers only to a term and through that only to itself. But Agamben argues, Derrida's response to the paradox of self-reference is not logical resolution, but dislocation and transformation: he states, 'the aporias of self-reference do not find their solution here; rather, they are dislocated and... transformed into euporias'.¹²⁵ While Agamben does not seek to distinguish his own position from that which he finds in Derridean deconstruction, his position on aporetic hopefulness differs substantially from that taken by Derrida. This difference can be illustrated through a brief consideration of their respective interpretations of Kafka's parable, 'Before the Law'.¹²⁶

In his essay 'Before the Law', presented in 1982, Derrida seeks to elaborate the relation between law and literature through an interpretation of Kafka's parable of the same title. The key moment in this parable of the man from the country arriving before the open door of the Law for Derrida's reading is the doorkeeper's response to the man's request to enter, the 'not yet', or 'not at the moment'. Derrida suggests that this response indefinitely defers the decision on whether the man from the country can pass through the door. The deferral of passage is not a direct prohibition but an interruption that delays access to the law itself, a paradoxical situation given that it is precisely the law that delays that access. As Derrida writes 'what is deferred forever till death is entry into the law itself, which is nothing other than that which dictates the delay'.¹²⁷ Importantly, for Derrida, this suggests that the law might be understood as 'a nothing that incessantly defers access to itself, thus forbidding itself in order thereby to become something or someone'.¹²⁸ This is the law that the man

¹²⁵ Agamben, 'Pardes', p.217.

¹²⁶ It is clearly not possible to take up a full discussion of Derrida's messianics here. Instead, I will limit my engagement to the short texts mentioned, which are paralleled in Agamben's work. For Derrida's discussions of the messianic see in particular Jacques Derrida, *Specters of Marx: The State of Debt, the Work of Mourning and the New International* (New York: Routledge, 1994); Jacques Derrida, *Politics of Friendship*, tr. George Collins (London: Verso, 1997). For further discussions of the messianic dimension of deconstruction though see Caputo, *Prayers and Tears*; John D. Caputo, *Deconstruction in a Nutshell* (New York: Fordham University Press, 1997), esp. pp.156-180; John Caputo, 'Dreaming of the Innumerable: Derrida, Drucilla Cornell and the Dance of Gender' in Ellen K. Feder, Mary C. Rawlinson and Emily Zakin, eds. *Derrida and Feminism: Recasting the Question of Woman* (New York: Routledge, 1997), pp.141-160; Drucilla Cornell, *The Philosophy of the Limit* (New York: Routledge, 1992) esp. Ch.3; Richard Rand, ed. *Futures of Jacques Derrida* (Stanford: Stanford University Press, 2001); Claire Colebrook, 'The Future-to-Come: Derrida and the Ethics of Historicity', *Philosophy Today* (Winter 1998) pp.347-360.

¹²⁷ Jacques Derrida, 'Before the Law', in Derek Attridge, ed. *Acts of Literature* (New York: Routledge, 1992), pp.181-220 at 205.

¹²⁸ Derrida, 'Before the Law', p.208.

from the country is always subject to, for he is a figure of the subject of the law for Derrida, always before the law, before an incessantly deferred judgment. Further, as a subject of the law, the man from the country is before the law, but because he is before it, he is also outside of it, as an 'outlaw'. 'He is neither under the law nor in the law. He is both a subject of the law and an outlaw.'¹²⁹ Thus, the subject/outlaw presents himself before a law that is destined for him alone, but the incessant deferral of the decision on whether he can pass through the door means for Derrida that the parable is 'an account of an event which arrives at not arriving, which manages not to happen... [the subject/outlaw] is always and remains *before the law*'.¹³⁰

Derrida addresses the thematic of the decision of the law again in his later text, 'Force of Law', where he strives to establish a distinction between law and incalculable justice. In this essay, Derrida explicitly links the calculability of the law with the impossible but necessary experience of the aporia that conditions the political decision. In the first section of the essay, Derrida identifies three aporia that condition the relation of the law and justice, two of which are particularly important here. The first of these, identified as 'the ghost of the undecidable', marks the spectral residue of undecidability or incalculable justice in any political or juridical decision.¹³¹ The undecidable is not simply a matter of vacillation between two determinate decisions in the application of a rule, but marks the infinite, irreducible 'idea of justice' that haunts every decision and necessarily haunts it in order for it to be a decision and not merely the application of a rule. The second aporia, identified as 'the urgency that obstructs the horizon of knowledge', adds to this in that it marks the necessity of the political decision in the face of the undecidable of infinite, irreducible justice.¹³² Justice, Derrida claims, cannot wait; rather than providing an

¹²⁹ Derrida, 'Before the Law', p.204.

¹³⁰ Derrida, 'Before the Law', p.210, 215.

¹³¹ Jacques Derrida, 'Force of Law: the "Mystical Foundation of Authority"' in Drucilla Cornell, Michel Rosenfeld and David Gray Carlson, eds. *Deconstruction and the Possibility of Justice* (New York: Routledge, 1992), pp.3-67 at 24; for further discussion of Derrida interpretation of 'Critique of Violence' see Alexander Garcia Düttman, 'The Violence of Destruction' in David S. Ferris ed. *Water Benjamin: Theoretical Questions* (Stanford: Stanford University Press, 1996); Tom McCall, 'Momentary Violence', in David S. Ferris ed. *Water Benjamin: Theoretical Questions* Stanford: Stanford University Press, 1996); also see the discussions in *Cardozo Law Review* 13:4 from the 'On the Necessity of Violence for the Possibility of Justice' symposium at which Derrida's 'Force of Law' was presented; of these, for a strong, but ultimately confused, feminist critique of Derrida see Nancy Fraser, "'The Force of Law': Metaphysical or Political?", *Cardozo Law Review* 13:4(1991).

¹³² Derrida, 'Force of Law', p.24.

excuse to remain outside the antagonism of politics, incalculable justice requires us to calculate, to take the decision on what is just and right at any moment. As Derrida states, 'not only must we calculate, negotiate the relation between the calculable and the incalculable... but we must take it as far as possible, beyond the place we find ourselves and beyond the already definable zones of morality or politics or law'.¹³³ This then is the 'mad' decision of the political, always gesturing beyond itself to an incalculable justice that necessitates and haunts the decision.¹³⁴ These two complementary, conflicting, aporia bring into focus the very specific position that Derrida takes toward the messianic in this essay. In identifying the irreducible 'idea of justice' that haunts the mad decision of the political, Derrida goes on to say that he would hesitate to 'assimilate too quickly this "ideal of justice" to a regulative ideal (in

¹³³ Derrida, 'Force of Law', p.28.

¹³⁴ However, the unfounded decision of deconstruction does not indicate a straightforward return to Schmitt's strong decisionism. The mad decision of the political that Derrida indicates here is similar to Schmitt's sovereign decision in that neither can be determined by pre-existent rules and cannot be a true decision if merely applying or reinstating a codified rule. Additionally, both insist on the constitutive force of the decision, in that the true decision must suspend the currently existing law in order to 'reinvent it in each case' as Derrida says ('Force of Law', p.23). Nevertheless, there are important differences. First, while the decision of the sovereign is essentially an expression of the will of the sovereign in Schmitt, in Derrida, the undecidability of the decision deconstructs the sovereign decision through the insistence on the 'absolute other' of justice. In other words, for Derrida, the political decision must 'negotiate with the undecidable' (Gayatri Chakravorty Spivak, 'Schmitt and Poststructuralism: A Response', *Cardozo Law Review* 21(2000), pp.1723-1737 at 1729). Furthermore, as Slavoj Žižek points out, for Schmitt it is not possible to pass directly from the pure normative order to the concrete order of social life- this passage is necessarily mediated by the will of the sovereign expressed in the sovereign decision on the exception. However, the decision of the sovereign is not a decision for any concrete order but for the principle of order as such – 'the principle of order, the *Dass-sein* of Order, has priority over its concrete content, over its *Was-Sein*' (Slavoj Žižek, 'Carl Schmitt in the Age of Post-Politics' in Chantal Mouffe, ed. *The Challenge of Carl Schmitt* (London: Verso, 1999), pp.18-37 at 18; Žižek, *The Ticklish Subject*, p.114). For Derrida, the situation is almost exactly the opposite. That is, the decision that must be taken is a decision within and on the actuality of social life, which is disrupted by the 'to-come' of justice that cannot be assimilated to a regulative ideal (or the principle of order). One might say then that the 'madness' of the decision derives from the gap between the concrete actuality of social and political existence and the undecidability of the absolute other of justice, a madness that cannot be absolved through a sovereign will but which instead interminably haunts every decision. If it is not apparent yet, it should become clear by the end of this chapter that Agamben's messianic event is actually more akin to Schmitt's sovereign decision than is the account of the political decision given by Derrida. On the Derrida-Schmitt contrast, also see John P. McCormick, 'Schmittian Positions on Law and Politics?: CLS and Derrida', *Cardozo Law Review* 21(2000), pp.1693-1722; John P. McCormick, 'Derrida on Law; Or Poststructuralism Gets Serious', *Political Theory* 29:3(2001), pp.395-423. Nevertheless, one might argue that Schmitt's strong decisionism and the spectre of the sovereign that it invokes still haunts not only deconstruction but also much other contemporary political theory. This is evident not only in the theorist's whose work I examine throughout this thesis, but poststructuralist and radical democratic political theory generally, which is explicitly engaged in putting the Schmittian ghost to rest. But further, it is also evident in liberal, proceduralist political theory. The important differences lie in how such approaches attempt to exorcise the spirit of the strong sovereign and the unfounded, founding decision, whether through denying that the decision takes place or by attempting to deconstruct and displace it. For a further discussion of the place of the decision in political theory generally and deconstruction in particular see Ernesto Laclau, 'Deconstruction, Pragmatism, Hegemony', in Chantal Mouffe, ed. *Deconstruction and Pragmatism* (London: Routledge, 1996), pp.47-68.

the Kantian sense), to a messianic promise or to other horizons of *the same type*.¹³⁵ Derrida explains this hesitancy further, when he suggests several pages later that his reason for keeping distance from the Kantian regulative idea or messianic advent is precisely because they are *horizons*, a term which indicates both ‘the opening and the limit that defines an infinite progress or *period of waiting*’.¹³⁶ Thus, Derrida rejects the formulation of the messianic advent as waiting, as requiring infinite patience, because justice ‘does not wait’. Incalculable justice does not require patience but a just decision ‘right away’ as he says. It necessitates the negotiation between calculable law and incalculable justice as an urgent decision; but at the same time, justice is the irreducible ‘to-come’ of the decision. As Derrida writes, justice ‘has no horizon of expectation... But for this very reason, it may have an *avenir*, a “to-come”... Justice remains, is yet, to come, *à venir*, it has an, it is *à-venir*, the very dimension of events irreducibly to come... Justice as the experience of absolute alterity is unrepresentable, but it is the chance of the event and the condition of history’.¹³⁷

Hence, the absolute alterity of justice does not entail a horizon of waiting, but is nevertheless resolutely messianic; the ‘to-come’ of justice ‘is not a horizon but the disruption or opening up of the horizon’¹³⁸ that necessitates constant and urgent engagement with the aporia of the undecidable decision of the political. In this context, Derrida’s taking distance from Benjamin in the post-script to ‘Force of Law’ can be read not as a rejection of the messianic *tout court*, but as a rejection of a particular form or structure of messianism. In particular, it can be read as a matter of taking distance from a messianism that associates the promise of the messianic with divine violence, which, for Benjamin, obviates and overturns the violence of the law in its totality, that is of both law-making and law-preserving violence, or mythic violence. In criticizing Benjamin’s suggestion that divine violence – which he understands as absolutely annihilating, bloodless and expiatory – must overturn the pernicious, bloody violence of the legal order, Derrida suggests that such a conception of messianism is haunted by ‘the theme of radical destruction,

¹³⁵ Derrida, ‘Force of Law’, p.25, italics in original; for further discussion of this comment and its later reformulation, see Caputo, *Prayers and Tears*, p.117.

¹³⁶ Derrida, ‘Force of Law’, p.26; emphasis added.

¹³⁷ Derrida, ‘Force of Law’, p.27.

¹³⁸ Caputo, *Prayers and Tears*, p.118.

extermination, total annihilation, beginning with the annihilation of the law and right, if not of justice'.¹³⁹ But as such, it gives itself too readily to an interpretation of the Nazi 'final solution' as messianic, divine violence. Thus, against this, Derrida insists upon the interminable urgency of the undecidable, on justice as the irreducible condition of history. In this, Derrida's position can be summarized as one of 'weak messianics' where the 'to-come' is not outside of our time, but the spectral potentiality of every political, moral, juridical decision.¹⁴⁰ As its constitutive condition, the 'to-come' of justice opens every decision of the political to undecidability, and as such, constitutes every second of our time as 'the strait gate through which the Messiah might enter'.¹⁴¹

The question of the overturning of the law is in fact the key to the different approaches that Derrida and Agamben take to Benjamin's conception of the messianic: while Derrida rejects the association of the messianic with the waiting of the horizon and the total overturning of the law that divine violence entails, these are the central characteristics of the messianic for Agamben. In the essay 'The Messiah and the Sovereign', Agamben explicitly rejects an understanding of messianism as "life lived in deferral and delay" in which nothing can be brought to fulfillment and nothing accomplished once and for all'.¹⁴² He argues instead that the messianic task is the restoration of meaning to the original form of the law, metonymically illustrated in the idea that in its original state the Torah was composed only of meaningless letters. Thus, he claims that the crucial problem for messianism is how the Messiah can restore a law that has no meaning. And as I have discussed previously, the resolution of the meaninglessness of the law does not come about simply through the inauguration of a new law; rather the messianic task is to confront and ultimately overturn the law in force without significance. Further, given that the law's being in force without significance is characteristic of the state of exception of contemporary

¹³⁹ Derrida, 'Force of Law', p.63, n.6

¹⁴⁰ Elsewhere, Derrida formulates this position as 'messianicity without messianics'. See Derrida, *Specters of Marx* and his comments in Caputo, *Deconstruction in a Nutshell*, pp.22-23 as well as Caputo's discussion in Chapter 6, 'The Messianic: Waiting for the Future', pp. 156-180; Caputo, *Prayers and Tears*, p.136.

¹⁴¹ Benjamin, 'Theses on the Philosophy of History', p.266.

¹⁴² Agamben, 'The Messiah and the Sovereign', p.166; Agamben's primary target here is Gershom Scholem, who is cited in the quote I have provided. However, the characterization of messianism that Agamben is criticizing bears a strong resemblance to the position taken by Derrida.

politics, the overturning of the law is the task that contemporary thought must confront. Only then will the bloody violence of the sovereign ban be halted. For Agamben, the messianic kingdom is differentiated from the historical time of the exception by a 'small adjustment'¹⁴³ brought about by a messianic event that confronts and overturns the meaninglessness of the law. These characteristics are clearly evinced in Agamben's reading of 'Before the Law', in which he explicitly criticizes Derrida's reading of the parable.

Given that Derrida's understanding of the law in Kafka's parable is remarkably reminiscent of Nancy's account of abandonment in relation to the law, where the subject is both turned over to the law and left bereft by it, held in the grip of the deferred decision as both subject and outlaw, it should be no surprise that Agamben's interpretation of 'Before the Law' strikes at the heart of Derrida's reading. According to Agamben, the parable is not an account of an event that never happens, or that happens in not happening, but exactly the reverse: Kafka's parable describes 'how something really has happened in seeming not to happen'.¹⁴⁴ This parable allegorizes the state of the law in the age of imperfect nihilism, insofar as the law appears as being in force without significance, and the apparent aporias of it express the complexity of the messianic task of overturning the Nothing of the law. Whereas for Derrida the law opens on to nothing and holds the subject before the law through the incessant deferral of the judgment on his passage through the already open door of the law, for Agamben the open door of the law is analogous to the operation of the law in the ban. The law holds the man from the country in its potentiality by asking nothing from him and imposing nothing on him except the ban. Hence, the man from the country does not so much figure as the subject of the law than as the messiah, who fulfils the messianic task in overturning the law. Agamben suggests that the behavior of the man from the country might be considered to be a 'complicated and patient strategy' to have the door closed in order to interrupt the law's being in force without significance. Hence, the final line of the parable, in which the doorkeeper states 'No-one else could enter here, since this door was destined for you alone. Now I will go and close it' indicates the success of the

¹⁴³ Agamben, 'The Messiah and the Sovereign', p.164.

¹⁴⁴ Agamben, 'The Messiah and the Sovereign', p.174; also see Agamben, *Homo Sacer*, pp.49-58.

messianic event in overturning the totality of the law and the Nothing that characterizes the condition of nihilism.

Several brief points can be made from this to summarize the differentiation between the messianics of Derrida and Agamben. First, Derrida poses the indeterminacy of the 'weak force' of the messianic as the condition of contemporary politics, such that the political decision is simultaneously necessary and impossible, ungrounded yet unavoidable. This is the core experience of the aporia as the experience of the impossible that marks Derrida's political theory. Against this, Agamben posits the messianic overturning of the law in force without significance – that is, of the contemporary condition of imperfect nihilism – as a necessary ground of the coming politics of radical immanence and unity. This means that the indeterminacy of contemporary politics evident in the zones of indistinction between life and law for instance, is not the condition of the political decision but precisely the aporetic condition to be overcome. Hence Agamben's concern over the failure of the body to provide 'solid ground' for opposition to sovereign violence. Relatedly, Derrida's weak messianics insists on ongoing engagement through the undecidable decision of the political. Against this, the strong messianic position that Agamben takes requires that the law be overturned *in its totality*; anything less merely repeats the aporia of abandonment and reinscribes the dangers of the biopolitical distinction between *bios* and *zōē*. Third, Derrida's position entails recognition of the undecidable danger and hope within the aporetic experience of contemporary politics. Agamben sees the contemporary condition of political existence as one of irreparable danger, such that a wholly new form of life is necessary to redeem humanity from the exposure of bare life to sovereign violence.

While the aim of this discussion has not been to develop a critical assessment of Agamben's conception of the messianic so much as explication, I want to conclude this chapter by suggesting that one of the problems that emerges in Agamben's eschatological gesture is that it fails to acknowledge the new risks entailed in the coming politics. As Agamben construes it, contemporary conditions of existence are characterized by unprecedented dangers of abandonment and bio-sovereign violence that can only be resolved and overcome through messianic redemption. Such redemption is inaugurated through the development of absolutely profane happy life

that has reached the 'perfection of its own power and its own communicability', and restores humanity to the homeland of 'what has never been', that is the community without essence or identity. As compelling as this political theology of the fall and subsequent redemption of humanity may be, this position ignores the fact that new hopes necessarily bring new dangers. To briefly invoke Derrida's early analysis of Plato's *pharmakon*,¹⁴⁵ it is worth considering that the cure of contemporary politics that Agamben posits may also bring with it its own poison. Or more critically, one might agree with Georges Canguilhem's suggestion that 'to dream of absolute remedies is often to dream of remedies which are worse than the ill'.¹⁴⁶ What these positions point to against Agamben's strong messianics is the interminable necessity of political engagement and the unavoidable urgency of the undecidable decision of the political, for as Derrida states 'politicization... is interminable even if it cannot and should not ever be total.'¹⁴⁷ In the following chapter, I argue that this weaker and more sustainable version of messianics emerges in Agamben's most recent book, *Remnants of Auschwitz*, in which he develops an ethico-political account of witnessing based on the aporias of testimony.

To summarize, in this chapter I have discussed Agamben's critical arguments against Foucault's conception of the relation between sovereignty and biopolitics to show the way in which they allow for a reconsideration of this relation. I argued in the first section of the chapter that Agamben's construal of the fundamental complementarity of sovereign violence and biopolitics allows for an analysis of contemporary operations of sovereign violence that nevertheless does not return the question of sovereignty to the problematics of legitimacy and centralized government. Instead, radicalizing Schmitt's theorization of the sovereign decision on the exception through reference to Benjamin's dictum that the exception has become the rule, Agamben shows that the event of the sovereign decision exceeds the parameters of state power. The decision that constitutes sovereignty as a power over life and death is a decision on life worth living that can potentially be taken by all subjects in relation to bare life. In the second and third section, I discussed the strong messianism that underpins Agamben's gesture toward 'happy life' as the means of

¹⁴⁵ Jacques Derrida, *Dissemination*, tr. Barbara Johnson (London: Athlone Press, 1981), pp.95-117.

¹⁴⁶ Canguilhem, *The Normal and the Pathological*, p.281.

¹⁴⁷ Derrida, 'Force of Law', p.28.

redemption and suggested that such a conception of the messianic event as that which overturns the law in its totality is problematic because it forecloses recognition of potentiality within bare life. Further, such a conception of messianism overemphasizes the total transformation of the political, which risks ignoring the new dangers that come with any new mode of political existence.

Chapter 6

Addressing Violence: An Ethics of Witnessing

To bear witness is to place oneself in one's own language in the position of those who have lost it, to establish oneself in a living language as if it were dead, or in a dead language as if it were living – in any case, outside both the archive and the corpus of what has already been said.¹

One must in the end speak dangerously and dangerously remain silent in the very act of breaking this silence.²

6.1 Introduction

While Agamben develops a political analysis of the contemporary biopolitical conditions of existence in *Homo Sacer*, in its companion volume, *Remnants of Auschwitz*, he develops an account of ethical response to biopolitical subjection. Having argued in *Homo Sacer* that the concentration camp operates as the *nomos* of the earth, the biopolitical space *par excellence*, in *Remnants*, Agamben takes the condition of the camps as the starting point for a reconsideration of ethics in light of the political determination of life worth living. Structured as a comment on Primo Levi's essays on the status of survivor and the ethics of bearing witness that he suggests, *Remnants* gives philosophical elaboration to the intuitions that illuminate Levi's ethics. Agamben argues that ethics can no longer be thought through the fundamentally juridical categories of responsibility or dignity, but must instead be sought in a terrain *before judgment*, a terrain in which the conditions of judgment are suspended through the indistinction of the human and the inhuman. Locating the figure of the *Muselmann* at the zone of indistinction between the human and the inhuman,

¹ Giorgio Agamben, *Remnants of Auschwitz: The Witness and the Archive* (New York: Zone Books, 1999), p.161.

² Maurice Blanchot, letter to Emmanuel Levinas, February 11, 1980, cited as an epigraph in Steven Ungar, *Scandal and Aftereffect: Blanchot and France since 1930* (Minneapolis: Minnesota University Press, 1995).

Agamben elaborates on Levi's paradox that the *Muselmann*, the one who cannot speak, is the true witness of the camps. The ethical aporia of testimony that Agamben circumscribes in reflection on this paradox yields an account of an ethics of bare life – an ethics of witnessing the collapse of the human and inhuman.

Interestingly, in developing an account of an ethics of witnessing as a response to bare life, Agamben appears to move away from the strong messianic position gestured toward in *Homo Sacer*, where redemption from biopolitical capture was said to be only possible through a complete overturning of the law. While *Remnants* is inflected by a rejection of the juridical as the founding source of ethical responsibility, the ethical space that Agamben elaborates is no longer beyond the law, as in the messianic redemption of happy life, but rather, *before it*. Testimony is an ongoing, aporetic yet necessary ethical activity that suspends judgment under what could be called a radical undecidability brought about through the collapse of traditional western ethical categories and the corresponding determination of culpability. True, Agamben does not altogether explicitly reject the strong version of messianism discussed in the previous chapter in his elaboration of an ethics of testimony. Nevertheless, there is at least some instability in the conception of messianism operating in *Remnants*, if not an explicit conceptual shift from that found in his interpretations of Benjamin and Kafka. Indeed, Agamben's elaboration of an ethics of testimony is much closer in its messianic dimension to the weak messianics of Derrida discussed in the previous chapter than the radical messianic violence suggested in Benjamin's 'Critique'.

In tracing this instability or shift, I argue in this chapter that the weakened version of messianics that emerges in *Remnants* allows for an understanding of an ethics of witnessing as means of addressing or responding to bio-sovereign violence. To make this argument, several aspects of Agamben's formulation of ethical responsibility left implicit within the text need to be made explicit. Agamben's ethics takes as its starting point a rejection of the notion of responsibility on the basis that it is a juridical notion that always already returns ethics to judgment. Against this, I suggest that Agamben's selective etymology of responsibility neglects an interpretation of responsibility not as culpability but as *response*, returning the call or address of another. Although occasionally suggested in *Remnants*, Agamben does not develop

this dimension of responsibility in his account of an ethics of witnessing. In emphasizing this connotation of responsibility, I argue that bearing witness to the plight of others constitutes the ethical dilemma of biopolitical subjection, such that testimony can be understood as the proper response to the apostrophic call of bare life. Testimony entails bearing witness to that which is neither simply biological life nor political life, but bare life, that is, life exposed to violence and death without reprieve. Such an understanding of testimony enables the development of an ethico-political response to the dangers of biopolitical subjection, understood as a matter of bearing witness to bio-sovereign violence.

In this chapter, I discuss the ethics of witnessing developed by Agamben in *Remnants of Auschwitz*. I argue that this account of ethics reveals a shift in Agamben's conception of the messianic from the strong version of messianic redemption in happy life to a weaker version that allows an account of ethics in the suspense of judgment. I go on to show that Agamben's ethics of witnessing are an ethics of bare life and as such yield an account of ethical response to biopolitical subjection and the violence entailed in it. From this, I suggest that bearing witness to the political determination of life worth living constitutes the ethical dilemma at the heart of subjectivity. Additionally, I discuss the ways in which Agamben's ethics extend upon the accounts of ethico-political response to biopolitical subjection given by Foucault and Butler. I claim that Agamben's ethics of witnessing has two advantages over the formulations of ethico-political response suggested by Butler and Foucault. The first of these is that it allows a conception of ethical responsibility that recognizes the linguistic constitution of the subject while avoiding the reduction of responsibility to legal culpability. Second, it allows for recognition of a fundamental and irreducible responsibility without deriving a political program from that recognition. To illustrate this, in the final section of this chapter I turn to a concluding discussion of the respective positions that Foucault and Agamben take to rights, and particularly human rights, to explicate the status of an ethics of witnessing in relation to the political decision of life worth living.³

³ I noted in the previous chapter that Agamben's texts defy easy summary because of their fragmentary development and style. *Remnants of Auschwitz* is no exception to this, and indeed, my caveat can be strengthened in regard to this text, as Agamben develops his argument recursively through interlocking comments and philosophical observations, the connections between which are not always made explicit. Indeed, much of the argumentation remains suggestive, often without

6.2 *Messianism and the Aporias of Witnessing*

Toward the end of his book on the ethical ramifications of Auschwitz, Agamben notes that the notion of remnant does not simply indicate the part of a whole remaindered through a process of selection and segregation but instead indicates the troubled caesuras and points of contact between the part and the whole. Agamben claims that the remnant is a theologico-messianic concept, which designates the consistency of a people in relation to salvation or the messianic event. Marking the division or non-coincidence between the whole and the part, the remnant appears as the 'redemptive machine' that permits the salvation of the whole from which it emerges as the signification of division and loss. The remnants mark the division between the whole and part and provide the only means of redemption. In relation to Auschwitz, the remnants of Auschwitz are neither those who died in the gas chambers nor those who survived the camps; neither the drowned nor the saved, but rather, that which remains between them. Further, for Agamben, the remnants of Auschwitz are the true witnesses, a situation that reveals the inherent coincidence of the aporia of testimony with the aporia of messianism.⁴ The coincidence of the aporias of testimony and messianism through the notion of the remnant as true witness that Agamben posits is not self-evident, since it rests on particular characterizations of both testimony and messianism. To bring out the coincidence of these aporia and the implications of it for this discussion, then, it is first necessary to take up Agamben's characterization of witnessing and the paradoxes of the remnant.

Agamben begins his reflections on the aporia of witnessing the event of Auschwitz by noting two terms for witness in Latin: the first of these is *testis*, which indicates the position of a third party in a trial or lawsuit between rival parties. The second is *superstes*, a term that designates a person who has lived through something, 'who has experienced an event from beginning to end and can therefore bear witness to it',⁵ that is, one who survives an event and can thus speak of it from the position of having undergone it. It is the second of these definitions of witnessing that Agamben

clarification of the central claims and their implications. The greater part of this chapter then is explicatory work, undertaken in order to give a coherent account of Agamben's ethics of witnessing and to draw out the implications of it within the framework of this thesis.

⁴ Agamben, *Remnants*, p.162.

⁵ Agamben, *Remnants*, p.17.

is interested in, as it is in light of this definition of witnessing that Auschwitz presents a particular problem for an account of testimony and witnessing. As Primo Levi insists,

we, the survivors are not the true witnesses... we survivors are not only an exiguous but also anomalous minority. We... did not touch bottom. Those who did so, who saw the Gorgon, have not returned to tell about it or have returned mute, but they are the 'Muslims', the submerged, the complete witnesses.⁶

For Levi, to have survived the camps already introduces an ambiguity into testimony, since to have survived the concentration camps is to have not lived through the experience from end to end because that necessarily ends in death.⁷ The survivor presents a particular paradox: those who might bear witness and who are compelled to do so cannot do so in all truth. Only the drowned and destroyed could literally bear witness to the experience of the camps and chambers of annihilation.

⁶ Primo Levi, *The Drowned and the Saved*, tr. R. Rosenthal (London: Abacus, 1988), pp.63-64; cited in Agamben, *Remnants*, p.33.

⁷ For additional discussions of the aporia presented by the camps, see Jean-François Lyotard, *The Differend: Phrases in Dispute*, tr. G. van Den Abbeele (Minneapolis: University of Minnesota Press, 1988); Shoshana Felman and Dori Laub, *Testimony: Crises of Witnessing in Literature, Psychoanalysis and History* (New York: Routledge, 1992); See Agamben's discussion of these and his critique of the aesthetic element in Felman's account of witnessing, *Remnants*, p.36. It is important to note that Agamben and the authors noted here are particularly concerned with the ethical and political significance of testimony, not with the epistemological questions raised by it. The emphasis on the ethical raises a different set of questions than those raised in relation to the epistemology of testimony. This difference can be summarized by suggesting that while the former is concerned with the responsibility that the subject bears to and with others in testimony, the latter epistemological questions concern knowledge of other minds, the intentions and presuppositions that inform and truth-value of statements. Even so, it is not clear these domains of analysis are entirely separable, which suggests that Agamben's silence on the epistemological dimension of testimony may not be wholly justified. For a thorough analytic treatment of the epistemology of testimony, see C.A.J. Coady, *Testimony: A Philosophical Study* (Oxford: Clarendon Press, 1992). Agamben's insistence that he is particularly concerned with the ethical ramifications of the Nazi concentration camps is also taken to justify a lack of discussion of the empirical circumstances of the camps, which effectively renders 'Auschwitz' more a figure of a topological space of ethico-political indeterminacy than a historico-political event. This largely figurative use of Auschwitz, sometimes rendered more generally as 'the camps', certainly raises questions about the movement from the specific to the general in Agamben's ethico-political considerations. In other words, can 'Auschwitz' stand synechdocally for the biopolitical condition that Agamben diagnoses in its generality? Some of the potential criticism that this figural usage generates is held off by the argument elaborated in the previous chapter that for Agamben the point is that the exception has increasingly become the rule, and further, the exception *reveals* the general conditions of existence. Even so, Agamben's treatment of Auschwitz does raise serious questions that are largely unresolved in the text. Here though, I simply want to register the problem – I cannot address these questions in detail since my aim is primarily to consider the theorization of subjectivation and ethical responsibility that Agamben offers.

The paradox presented in Levi's observation lies at the center of Agamben's reflections on witnessing. He asks, if the complete and true witnesses of Auschwitz are not the survivors but rather the drowned and desolate, those who have not returned at all or who have returned mute, then how is it possible that the event of Auschwitz be borne witness to and what, further, are the ethical implications of this paradox? To respond to these questions, Agamben takes up Levi's reference to the 'Muslims' or '*Muselmann*' of the camps, the extreme figures of survival who no longer sustained the sensate characteristics of the living but who were not yet dead. The term '*Muselmann*' refers to those in the camps who had reached such a state of physical decrepitude and existential disregard that 'one hesitates to call them living: one hesitates to call their death death'.⁸ '*Muselmann*' names the 'living corpses' that moved apparently inexorably toward death in the camps, beings who, through exhaustion and circumstance, had lost the capacity for living. They are the 'anonymous mass' that formed 'the backbone of the camps' – 'the drowned' in Levi's formulation.⁹ For Agamben, the suggestion that the *Muselmann* is the true witness of the camps reveals that 'the value of testimony lies essentially in what it lacks; at its center it contains something that cannot be borne witness to and that discharges the survivors of authority.'¹⁰ Further, assuming the task of bearing witness in the name of those who cannot speak reveals that the task of bearing witness is essentially a task of bearing witness to the impossibility of witnessing.

The aporia of witnessing, in which what is testified to is the impossibility of witnessing, has been theorized previously in post-Holocaust literature, particularly that influenced by the work of Maurice Blanchot.¹¹ However, the particular contribution that Agamben makes to this literature is to link the question of the aporia of witnessing to the definition of the human and the inhuman within the context of biopolitical subjection. Against understanding the status of the *Muselmann* as a threshold state between life and death, Agamben argues instead that the *Muselmann* is more correctly understood as the limit-figure of the human and

⁸ Levi cited in Agamben, *Remnants*, p.44.

⁹ Levi cited in Agamben, *Remnants*, p.44.

¹⁰ Agamben, *Remnants*, p.34.

¹¹ See in particular, Maurice Blanchot, *The Writing of the Disaster*, New Edition, tr. A. Smock (Lincoln: University of Nebraska Press, 1995); Sarah Kofman, *Smothered Words*, tr. M. Dobie (Evanston: Northwestern University Press, 1998).

inhuman. Rather than simply being a death camp, Auschwitz is the site of an extreme biopolitical experiment, wherein 'the Jew is transformed into a *Muselmann* and the human into a non-human'.¹² However, as the threshold between the human and the inhuman, the figure of the *Muselmann* does not simply mark the limit beyond which the human is no longer human. Agamben argues that such a stance would merely repeat the experiment of Auschwitz that places the *Muselmann* outside the limits of human and the moral status that attends the categorization. Instead, the *Muselmann* indicates a more fundamental indistinction between the human and the inhuman, in which it becomes impossible to distinguish them from each other. The *Muselmann* is an indefinite being in which (or whom) the distinction between humanity and non-humanity is brought to crisis, and as such, calls into question the moral categories that attend the distinction.¹³

Agamben claims from this ambiguous status that 'in Auschwitz, ethics begins precisely at the point where the *Muselmann*, "the complete witness" makes it forever impossible to distinguish between man and non-man.'¹⁴ The ethical problematic presented by Auschwitz is that of remaining human or not, but in the biopolitical situation of the camps, remaining human takes on a particular cast that eludes and contradicts attempts to sanctify human life through moral categories such as dignity and respect. To make this argument, Agamben discusses the position taken by Bruno Bettelheim, who suggests in his interpretation of the ethical implication of the *Muselmänner* that the absolute distinction between the human and the inhuman is marked by the loss of an element of self-reflexivity and freedom in relation to one's own actions. For Bettelheim, the *Muselmänner* has lost this trace of freedom and the dignity it gives, and as such, has irretrievably passed from the human to the inhuman. The *Muselmann* effectively becomes the cipher of a 'moral death against which one must resist with all one's strength, to save humanity, self-respect, and perhaps, even life'.¹⁵ Against Bettelheim, Agamben argues that 'Auschwitz marks the end and the ruin of every ethics of dignity and conformity to a norm... the *Muselmann*... is the guard on the threshold of a new ethics, an ethics of a form of life that begins where

¹² Agamben, *Remnants*, p.52.

¹³ Agamben, *Remnants*, p.55-63.

¹⁴ Agamben, *Remnants*, p.47.

¹⁵ Agamben, *Remnants*, p.63.

dignity ends'.¹⁶ The *Muselmänner* is the 'shipwreck of dignity'¹⁷ and it is precisely as such that this figure presents itself with such ethical urgency, for if dignity and respect are taken as definitional to the distinction between the human and inhuman, then the limits of ethics are circumscribed through their loss. Instructively, Agamben points out that the legal status of Jews under Nazism was described as '*entwürdigten*', which he literally transcribes as 'deprived of dignity'.¹⁸

In line with this, Agamben also rejects the thesis that the unique characteristic of Auschwitz was not the degradation of the dignity of human life but of human death. The transformation of death effected within the camps is indicated in Levi's observation of the Muselman that 'one hesitates to call their death death', such that the death of a human being is no longer or is only catachrestically called death. In addition to this, Agamben recalls Hannah Arendt's use of the phrase 'the fabrication of corpses' to describe the mass slaughter in the camps. He claims from this that 'in Auschwitz, people did not die; corpses were produced'.¹⁹ In the camps, the idea of human death entailing a fundamental individual profundity that gives unity to one's life as a human being is completely eroded, such that death itself becomes a matter of 'mass production and cost-cutting'.²⁰ However, to conclude from this that the apparent debasement of human death that these phrases indicate constitutes the particular horror of Auschwitz is again to risk ethical ineffectuality when confronted with the *Muselmänner*.

This position is articulated in Heidegger's distinction between proper and improper death for instance, in which the former indicates 'Being-toward-death' as the condition of authenticity and the appropriation of the impropriety of being, and the latter indicates mere decease, or in the case of the camps, elimination and the

¹⁶ Agamben, *Remnants*, p.69.

¹⁷ Agamben, *Remnants*, p.62.

¹⁸ Agamben, *Remnants*, p.68.

¹⁹ Agamben, *Remnants*, p.72. Also see Hannah Arendt, 'The Concentration Camps', *Partisan Review*, 15:7(1948), pp.743-763. Her discussion of a distinction between the juridical and moral person is also pertinent to this discussion.

²⁰ Theodor Adorno, *Minima Moralia: Reflections from Damaged Life*, [1951] (London: NLB, 1974), p.233

'fabrication of corpses'.²¹ As Agamben points out, in Heidegger's account, proper death is impossible within the camps, since 'the camp is the place in which it is impossible to experience death as the most proper and insuperable possibility, as the possibility of the impossible... in the camps... the Being of death is inaccessible and men do not die, but are instead produced as corpses'.²² Against this, Agamben asks if it is even possible to make a distinction between proper and improper death in the camps, since here 'the appropriation of the improper is no longer possible because the improper has completely assumed the function of the proper: human beings live factually at every instant toward their death'.²³ This means that it is no longer possible to distinguish between proper and improper death, between dying and merely deceasing; the fabrication of corpses is the material, trivial and bureaucratic actualization of death, such that 'the prisoners exist *everyday anonymously* toward death'.²⁴

Agamben concludes that neither the claim that the intolerable uniqueness of Auschwitz lies in the degradation of life nor, conversely, in the degradation of death, is sufficient to yield an understanding of the indistinction of the human and the inhuman and yield an ethics adequate to the challenge presented by the *Muselmänner*. In light of the failure of the dignity of either life or death to definitely characterize the human being and ground a post-Auschwitz ethics, Agamben characterizes the *Muselmann* as 'the non-human who obstinately appears as human: he is the human that cannot be told apart from the inhuman'.²⁵ How then does he understand the distinction between the human and the inhuman and what are the implications of its irreparable collapse in the biopolitical space of the camps? First, it should be kept in mind that in questioning the distinction between the human and the inhuman,

²¹ The text in question is Heidegger's lecture on technology, presented in Bremen under the title 'The Danger' (*Die Gefahr*); cited in Agamben, *Remnants*, p.73.

²² Agamben, *Remnants*, p.75.

²³ Agamben, *Remnants*, p.76.

²⁴ Agamben, *Remnants*, p.76. For a similar critique of the Heideggerian conception of death and authenticity, see Jonathon Strauss, 'After Death', *Diacritics* 30:3(2000), pp.90-104; for a critique of the 'authenticity' paradigm in relation to mass death, see Edith Wyschogrod, *Spirit in Ashes: Hegel, Heidegger and Man-Made Mass Death* (New Haven: Yale University Press, 1985). For recent arguments in favour of a Heideggerian conception of death, see Jeff Malpas, 'Death and the Unity of Life' in Jeff Malpas and Robert C. Solomon, eds. *Death and Philosophy* (London: Routledge, 1998), pp.120-134 and Julian Young, 'Death and Authenticity' in Jeff Malpas and Robert C. Solomon, eds. *Death and Philosophy* (London: Routledge, 1998), pp.112-120.

²⁵ Agamben, *Remnants*, p.82.

Agamben is not seeking to elaborate an essence of the human, but the potentiality of being human or more precisely, human being as potentiality. Recalling Agamben's earlier discussions of potentiality as the capacity to not-be and actuality as the giving of the self to itself in a capacity to not not-be, then by being human, he means being human in not not-being human.²⁶ While this definition of the human may appear to be tautological, or at least truistic, it also raises questions of the passage of the human into the non-human or vice-versa, the conditions under which such passage occurs and the inherent relation between being human and non-human.

Of this relation, Agamben begins by suggesting that

human power borders on the inhuman; the human also endures the inhuman... humans bear within themselves the mark of the inhuman... their spirit contains at its very center the wound of non-spirit, non-human chaos atrociously consigned to its own being capable of everything.²⁷

Being human is fundamentally conditioned by an indefinite potentiality for being non-human, for being capable of everything and of enduring the inhuman. Being human is a question of enduring, of 'bearing all that one could bear', and surviving the inhuman capacity to bear everything. In this, testimony plays a constitutive role, since for Agamben remaining human is ultimately a question of bearing witness to the inhuman: "human beings are human insofar as they bear witness to the inhuman"²⁸ To endure the inhuman is to bear witness to it, and it is in this sense that Levi speaks of the *Muselmann* as the true witness, for the *Muselmänner* have endured the inhuman, borne more than they should ever have had to bear, and in doing so, remained fundamentally human. Correlatively, the survivor is human to the extent that they bear witness to an impossibility of bearing witness, that is, of being inhuman. Hence, the human being exists as the nodal point for 'currents of the human and the inhuman', and as such, presents testimony itself as the human being's remaining human. Testimony takes place at the site of non-coincidence between the

²⁶ See my discussions of potentiality in the previous chapter.

²⁷ Agamben, *Remnants*, p.77.

²⁸ Agamben, *Remnants*, p.121.

human and the inhuman as the task of the human being's bearing witness to the inhuman.²⁹

The fracturing of the human that Agamben is proposing is given further elaboration in his account of subjectivation, which rests on a distinction between the human as a speaking being and as a living being.³⁰ Agamben's account of subjectivation, which he defines as the 'production of consciousness in the event of discourse',³¹ emerges through theorization of two interrelated existential modalities, the first affective and the second linguistic. Taking up Levi's identification of the particular shame felt by survivors of the camps, Agamben argues that shame is the constitutive affective tonality of subjectivity. He rejects interpretations of the shame of the survivor in terms of guilt or innocence to argue that the experience of shame derives not from culpability but from the ontological situation of being consigned to something that one cannot assume. The starting point for Agamben's understanding of shame is Emmanuel Levinas' claim that shame arises from 'our being's incapacity to move away and break from itself',³² evident in for instance the impossible desire to separate oneself from a particular presentation of oneself. Shame is not a consequence of an imperfection or lack from which we separate ourselves, but arises from the sheer impossibility of separating ourselves from ourselves. For example, the shame felt in nudity is not shame at a lack that one perceives in oneself, but a consequence of not being able to present oneself otherwise, of being exposed in a vision from which one seeks to hide.

Extending on this, Agamben argues that shame arises from consignment to something that one cannot assume, but that this something is not external to ourselves but 'originates in our own intimacy; it is what is most intimate in us',³³ that

²⁹ Agamben, *Remnants of Auschwitz*, p.135

³⁰ The importance of this distinction in Agamben's work cannot be overemphasized. It not only maps onto the Aristotelian distinction between *bios* and *zōē* that structures Agamben's account of biopolitics, but is also fundamental to his critique of Heidegger in *Language and Death: The Place of Negativity*, [1982] tr. Karen E. Pinkus with Michael Hardt (Minneapolis: University of Minnesota Press, 1991). Also see n.46, this chapter.

³¹ Agamben, *Remnants*, p.123.

³² Agamben, *Remnants*, p.104.

³³ Agamben, *Remnants*, p.105.

is, something from which we cannot separate ourselves, but which simultaneously, we cannot wholly take on as ours. The dilemma this creates for the subject is one of simultaneous subjectification and desubjectification, wherein the subject is called to witness its own ruin. As Agamben puts it:

It is if our consciousness collapsed, and seeking to flee in all directions, were simultaneously summoned by an irrefutable order to be present at its own defacement, at the expropriation of what is most its own. In shame, the subject thus has no other content than its own desubjectification; it becomes witness to its own disorder, its own oblivion as a subject.³⁴

The experience or affectivity of shame thus indicates a double movement, whereby subjectification is accompanied by desubjectification, understood as the destitution or ruin of the subject. However, this double movement is not simply an occasional turmoil for the subject, but instead indicates a fundamental characteristic of subjection itself. For if subjection or the position of being a subject is understood as the event of being simultaneously sovereign and subjected by another, then the double movement of shame is replicated in the event of subjection. But more fundamentally, the doubling of subjectification is the interminable condition of the subject insofar as subjectification is itself an event in language or discourse.

Through an analysis of pronouns as grammatical shifters, Agamben argues that the enunciative taking place of the subject is itself an occasion for shame and the double movement of subjectification and desubjectification it entails. Grammatical shifters, or 'indicators of enunciation', are linguistic signs that have no substantive reference outside of themselves, but which allow a speaker to appropriate and put language to use. Thus, terms such as 'I' and 'you' indicate an appropriation of language, without referring to a reality outside of discourse. Instead, their sole point of reference is to language itself and particularly the taking place of enunciation. 'Enunciation... refers not to the text of what is stated, but to its taking place; the individual can put language into act only on condition of identifying himself with the very event of saying, and not with what is said in it'.³⁵ For Agamben, the appropriation of language as an enunciative taking place of language indicates the double movement of

³⁴ Agamben, *Remnants*, p.106.

³⁵ Agamben, *Remnants*, p.116.

subjectification and desubjectification that marks the relation of the subject to the language in which it speaks and thus appears. That is, the appropriation of language requires that the psychosomatic individual erase or desubjectify itself as an individual in its identification with the grammatical shifters that indicate the taking place of enunciation in order to become the subject of enunciation.

Agamben concludes from this that 'the subject of enunciation is composed in discourse and exists in discourse alone. But, for this very reason, once the subject is in discourse, he can say nothing: he cannot speak.'³⁶ That is, the assumption of the position of subject of enunciation does not so much allow access to the possibility of speaking as the impossibility of it. In becoming the subject of enunciation, the subject finds itself anticipated and preceded by a 'glossolalic potentiality over which he has neither control nor mastery'.³⁷ Because the individual is always already distinct from the 'I' that gives it a place within language, always other to the 'I' of enunciation and further, because the event of enunciation is itself a pure event in language without reference outside language and thus without meaning, the 'I-other' of enunciation is held in the impossibility of speech, of saying anything. In other words, it is only in the assumption of the grammatical position of 'I' as the subject of enunciation that the individual enters into the possibility of speaking. But because that 'I' is always already distinct from the individual, it is not the individual who speaks – the individual remains silent. But at the same time, the 'I' cannot be the subject of enunciation on its own, since as a grammatical shifter, it has no substantive content outside its indication of the event or taking place of enunciation.

The double structure in operation here parallels the double movement of subjectification and desubjectification in shame, in that it brings the necessary consignment of the individual to language as a speaking being and the simultaneous impossibility of assuming or taking up the event of speech to light. In this light, shame appears as the principle emotive tonality, or 'hidden structure', of subjectivity, understood as the constitution of consciousness in the event of discourse. For 'insofar as it consists solely in the event of enunciation, consciousness constitutively

³⁶ Agamben, *Remnants*, pp.116-117.

³⁷ Agamben, *Remnants*, p.116.

has the form of being consigned to something that cannot be assumed.³⁸ If this is the case, then the correlate of this is that the structure of subjectification is at base always already double: every subjectification entails a constitutive desubjectification in order to take place as the constitution of consciousness. Subjectivity and consciousness are founded on 'what is most precarious and fragile in the world: the event of speech'.³⁹ But as a consequence of the impossibility of the psychosomatic individual ever fully appropriating the taking place of speech as the site of subjectification, 'the fragile text of consciousness incessantly crumbles and erases itself, bringing to light the disjunction on which it is erected: the constitutive desubjectification in every subjectification'.⁴⁰ Conversely, every desubjectification is attended by the process or event of subjectification, the assumption of the enunciative event of the 'I' and the correlative constitution of consciousness in discourse.

The enunciative event of 'I' marks the assumption of the position of speaking subject by the phenomenal or living individual; but rather than allowing the subject thereby constituted and the individual to coincide, the 'I' indicates their fundamental irreducibility. As Agamben puts it, "'I'" signifies precisely the irreducible disjunction between vital functions and inner history, between the living being's becoming a speaking being and the speaking being's sensation of itself as living'.⁴¹ What is at stake in subjectivation and desubjectivation for Agamben is nothing less than the traditional philosophical definition of the human as a speaking being, or the living being that has language: as '*zōon logon echōn*'. In particular, the nature of the *having* of language by a living being or the living being's appropriation of language is brought into question and shown to be conditioned by a full expropriation. 'The living individual appropriates language in a full expropriation alone, becoming a speaking being only on condition of falling silent'.⁴² Thus, the 'I' marks the simultaneous appropriation and expropriation of the living being in language and their irreducible disjuncture.

³⁸ Agamben, *Remnants*, p.128.

³⁹ Agamben, *Remnants*, p.122.

⁴⁰ Agamben, *Remnants*, p.123.

⁴¹ Agamben, *Remnants*, p.125.

⁴² Agamben, *Remnants*, p.129.

This provides the background to Agamben's claim that the disjuncture between the human as living being and speaking being is the condition of possibility of testimony. Testimony arises in the intimate non-coincidence of the human and inhuman or the speaking being and the living being, the subject and non-subject. As Agamben states, 'if there is no articulation between the living being and language, if the 'I' stands suspended in this disjunction, then there can be testimony'.⁴³ Testimony marks the fracture of the human being in its own potentiality for being human or not-being human, since the 'place of the human being is divided... the human being exists in the fracture between the living being and the speaking being, the inhuman and the human'.⁴⁴ It is in this sense that testimony appears as the task of remaining human, since testimony marks the trial by which the human being undergoes the double process of appropriation and expropriation in speaking, in which the human endures the inhuman and survives beyond its own expropriation or desubjectivation. Given this account of the human being's remaining human and the problem of testimony, three further points should be mentioned about Agamben's ethics of witnessing.

First, testimony appears as a matter of bearing witness to the impossibility of speaking, that is, to the process of desubjectivation that attends every subjectivation. In testimony, the subject turns back on itself to give account of its ruin in the constitutive desubjectivation endured in becoming a subject of enunciation and in doing so, bears witness to the impossibility of speaking. This is one of the reasons why testimony is so central to considerations of the implications and ramifications of Auschwitz for ethics, for as Agamben states 'the *Muselmann* produced by Auschwitz is the catastrophe of the subject'.⁴⁵ Several steps are required to fully understand what Agamben means by this claim. In a critical comment on Foucault's archaeological analysis of statements understood as utterances at the level of the event of speaking rather than at the level of semantic content, Agamben proposes that for all the value of Foucault's analysis, what it obscures is the ethical and ontological implication of the living being entering into the 'vacant place' of the subject. In order to address these questions, the point of analysis has to be shifted from the difference between the statement as an indication of enunciation and discourse as the corpus of what is

⁴³ Agamben, *Remnants*, p.130.

⁴⁴ Agamben, *Remnants*, p.135.

⁴⁵ Agamben, *Remnants*, p.146.

said or unsaid, to the difference between 'the pure possibility of speech and its existence as such'.⁴⁶ In other words, focus is redirected from the system of relation between the inside and outside of what is said to the pure potentiality of language itself, that is, to the system of relation 'between the sayable and unsayable in every language... between a possibility and impossibility of speech'.⁴⁷

From this redirection of analysis, Agamben states that while the term 'archive' designates the system of relations of the unsaid and the said, 'testimony' designates the relations between the potentiality and impotentiality of language. That is, testimony marks the taking place of language as such and the impossibility of speaking that this is predicated on, not the content of what is said or not. This returns us to the question of potentiality discussed in the previous chapter; there, I discussed potentiality in relation to sovereignty and the distinction of constituting and preserving power. What becomes apparent here though is that language is itself the potentiality of the human being. To the extent that potentiality passes into actuality through the suspension of its own impotentiality such that potentiality is ultimately a matter of not *not-being*, then 'the human being is the speaking being, the living being who has language, because the human being is capable of *not having* language'.⁴⁸ Conversely, the human being is only human in having language, that is, in the expropriation of speaking that marks the event of language as such.

In conjunction with this, Agamben claims that the modal operators of contingency, necessity, possibility and impossibility that attend the categories of potentiality and impotentiality appear as sites of biopolitical experimentation. Such categories are not

⁴⁶ Agamben, *Remnants*, p.144.

⁴⁷ Agamben, *Remnants*, p.145. The question of the relation between speaking and the possibility of speech as such can be seen as the key question that structures Agamben's work as a whole. As he suggests in the preface of *Infancy and History: Essays on the Destruction of Experience*, tr. Liz Heron (London: Verso, 1993), 'in both my written work and unwritten books, I have stubbornly pursued only one train of thought: what is the meaning of "there is language; what is the meaning of "I speak"?' (p.5). For a related consideration of the relation of language and ethics through the possibility of speaking as such and what is spoken, see Levinas's discussions of the Saying and the Said, in Emmanuel Levinas, *Otherwise than Being, or, Beyond Essence*, tr. Alphonso Lingis (The Hague: Martinus Nijhoff, 1981).

⁴⁸ Agamben, *Remnants*, p.146; for a further discussion of language and potentiality, see Daniel Heller-Roazen 'Editors Introduction: To Read What was Never Written', in Giorgio Agamben, *Potentialities: Collected Essays in Philosophy*, ed. Daniel Heller-Roazen (Stanford: Stanford University Press, 1999), pp.1-23.

innocuous logical categories but ‘weapons used in the biopolitical struggle... in which a decision is made each time on the human and the inhuman, on “making live” and “letting die”’.⁴⁹ For Agamben, the ground of this battle is subjectivity itself. He claims that while contingency and possibility are the ontological operators of subjectification, impossibility and necessity are the operators of desubjectification. Thus the ‘catastrophe of the subject’ to which Agamben refers indicates the historical collapse of potentiality and impotentiality, through the erasure of contingency and the installation of the impossible as the possible. Agamben states, as a biopolitical experiment, Auschwitz ‘represents the historical point in which [potentiality and impotentiality] collapse. Auschwitz is the existence of the impossible, the most radical negation of contingency’.⁵⁰ The claim that Auschwitz is the catastrophe of the subject indicates the erasure of the contingency of subjectivation in the camps, and the radical installation of the subject as ‘the existence of the impossible’. In bearing witness to the impossibility of speaking then, testimony bears witness to the desubjectification and destitution of the subject in the biopolitical experiment carried out through the determination and allocation of life and death.

Second, insofar as testimony marks the non-coincidental intimacy of the human and inhuman, that is, the human being’s remaining human in enduring the inhuman, testimony appears as the task of the remnant. Returning to the notion of the remnant that I mentioned at the beginning of this chapter, it is now possible to see that this characterization of the remnant indicates the consistency of the human in relation to the event of the biopolitical determination of ‘making live’ and ‘letting die’, that is, the determination of life worth living and the production of the inhuman in radical desubjectification. Within Agamben’s account, subjectivity appears as the ‘battlefield’ of the decision on the human and inhuman that characterized the biopolitical experiment of the camps. As we have seen, the camps are effectively the catastrophe of the subject insofar as the biopolitical experiment that takes place in the space of the camps eliminates the subject in its potentiality within language and instead installs the subject in its own impossibility through a radical desubjectification. The subject is installed in the impossibility of speaking, which leads to the collapse of testimony insofar as the true witnesses of the camps are those who do not return from the

⁴⁹ Agamben, *Remnants*, p.147.

⁵⁰ Agamben, *Remnants*, p.148.

camps, or return unable to speak. As the task of the remnant, testimony supplements and completes the witnessing of those who cannot speak and in doing so, bears witness to the impossibility of speaking and the desubjectification that installs the subject at the site of impossibility. Hence, 'the witness, the ethical subject, is the subject who bears witness to desubjectification.'⁵¹

Consequently, the ethics of witnessing that Agamben develops can be understood as an ethics of survival, insofar as the subject survives its radical and constitutive desubjectification in testimony. As Agamben notes, the double movement of desubjectification and subjectification suggests that within humans, 'life bears with it a caesura that can transform all life into survival and all survival into life'.⁵² This suggestion clearly bears a strong relation to the distinction between bios and *zōē* that Agamben argues is crucial to the operation of biopolitics in his earlier book, *Homo Sacer*. In that text, Agamben argued that biopolitics operates through the disjuncture of bios and *zōē*, and the production of bare life as the excrescence of the failure of modern democracy to broach that disjuncture. Similarly, in *Remnants*, Agamben states that 'biopower's supreme ambition is to produce, in a human body, the absolute separation of the living being and the speaking being, *zōē* and *bios*, the inhuman and the human – survival'.⁵³ Against Foucault, Agamben suggests that the definitional formula of biopolitics is not 'to make live or let die', but rather, *to make survive*, that is, to produce bare life as life reduced to survival through the separation of the human from the inhuman, or the speaking being from the living being.⁵⁴ Biopolitics entails the absolute breaking apart of the double articulation of subjectification and desubjectification in the space of the camps, where subjectification is installed in the place of desubjectification and the impossibility of speaking, that is, the reduction of the human or the speaking being to the living being, the inhuman.

⁵¹ Agamben, *Remnants*, p.151.

⁵² Agamben, *Remnants*, p.133.

⁵³ Agamben, *Remnants*, p.156.

⁵⁴ For a contemporary literary rendition of this, see J.M Coetzee, *The Life and Times of Michael K*. (London: Vintage, 1988). While it is not possible to take up an interpretation of Coetzee's work here, much of his later work can productively be read through the problematic of the separation of the living being and the speaking being in biopolitical operations upon the subject.

This suggests that bare life is the remnant of biopolitics in that it traces the caesura of the whole and the part, the disjuncture of the inhuman and the human produced in the operations of biopolitical subjection. As such, it is ultimately the production of bare life that testimony bears witness to and in doing so, resists. Thus the *Muselmänner* that Agamben argues are the true witnesses of the camps are so because of the reduction of human existence to survival or bare life, which is produced as the biopolitical excrescence of the caesuras that cross and fracture the human being. Simply, the inhuman life of the *Muselmann* is bare life or natural, organic life exposed to violence and death without reprieve. Given that testimony emerges in the interstices between the human and the inhuman, the speaking being and the living being – that is, between subjectification and de-subjectification – the value of testimony is that it presents an interminable opposition to the reduction of human life to survival. In bearing witness to desubjectification, testimony re-subjectifies and resists the biopolitical operations on the caesura in human life. In this, testimony appears as an ethics of survival insofar as ‘with its every word, testimony refutes precisely this isolation... of survival from life’.⁵⁵ Testimony provides a means of response to bare life that does not abandon bare life to its absolute exposure to violence or sacralize human life at the expense of the biological and inhuman.

To the extent that testimony can be understood as a means of response to the biopolitical exposure of bare life, the ethics of witnessing developed in *Remnants* appear to necessitate a revision of the strong messianic position that Agamben took in *Homo Sacer*. As I discussed in the previous chapter, in developing his position of strong messianics in the earlier text, Agamben rejected recourse to an inherent potentiality or immanent resistance within bare life and instead posits the inauguration of a ‘happy life’ that has reached the perfection of its own power and communicability as the necessary ground of messianic redemption. Further, the strong messianic position that Agamben gestured toward required the total overturning of the law in order to overcome the biopolitical capture of bare life. Neither bare life nor the suspension of the law in abandonment could be taken to provide the ground for the messianic redemption required to overturn the imperfect nihilism and corresponding bloody violence of our time. For Agamben, each of these gestures did little more than reinstate the biopolitical conditions of existence, in

⁵⁵ Agamben, *Remnants*, p.155.

which bare life is produced as the excrescence of the distinction between *bios* and *zōē* and exposed to sovereign violence without reprieve. In contrast to this, in *Remnants*, Agamben does not argue that redemption can only come through the complete overturning of the ban or the law in force without significance that produces bare life. Instead, redemption is only possible in bearing witness to bare life as the remnant of biopolitics.

To be sure, Agamben maintains his critique of the extension of the 'juridification' of ethics and politics beyond the law, which is understood in *Homo Sacer* as the coincidence of the law and life. In *Remnants*, this is evident in his aim to establish an account of ethics without reference to juridical concepts such as responsibility and dignity. However, the gesture that informs this critique in each text is substantially different. In the earlier text, this takes the form of positing the necessity of a complete overturning of the law and the expropriation of being in the name of a fulfilled humanity or coming community. In the later text however, the rejection of the juridical is not based on the overcoming of the law, but the specification of an ethical dimension or domain *before* the law. That is, the ethics of witnessing developed by Agamben are an attempt to articulate an ethics without final recourse to judgment. This is indicated in the central importance of Levi's text 'The Grey Zone', in which Levi refuses to allocate blame and culpability in his analysis of complicity within the camps. It is also made explicit in Agamben's comment that

what is at issue here, therefore, is a zone of irresponsibility and "*impotentia judicandi*?" that is situated not beyond good and evil but rather before them...

This infamous zone of irresponsibility is our First Circle, from which no confession of responsibility will remove us⁵⁶

I will return to a fuller discussion of this rejection of the concept of responsibility in a moment, but first, the consideration of the messianic gesture operating within an ethics of witnessing must be pushed further.

In addition to this, Agamben also suggests in the final pages of *Remnants* that:

⁵⁶ Agamben, *Remnants*, p.21; the additional citation within Agamben's text is to Levi, 'The Grey Zone', in *The Drowned and the Saved*, pp.23-51 at 43. This text provides the main point of reference for Agamben's rejection of a notion of responsibility based on judgment and culpability.

We must cease to look toward processes of subjectification and desubjectification... and more generally, toward historical processes as if they had an apocalyptic or profane telos in which the living being and the speaking being... are joined in an established, completed humanity and reconciled in a realized identity... the Messianic kingdom is neither the future (the millennium) or the past (the golden age); it is, instead, a *remaining time*.⁵⁷

Agamben's suggestion that the Messianic time is the remaining time has several implications pertinent to this discussion. First, the characterization of the messianic kingdom as the remaining time might be read as an almost explicit rejection of the earlier portrayal of the Messianic as the telos of an 'absolutely profane happy life', that entailed the full appropriation of human existence against the expropriation of biopolitics and the spectacle of contemporary sociality analyzed in *The Coming Community*. Such a reading would be reinforced by an association of the remaining time with the time of biopolitics, insofar as biopolitical operations give ground to the witness of bare life as the remainder of the distinction between bios and *zōē*. The disjuncture of bios and *zōē* appears as analogous to the messianic, and the witness marks the consistency of the human in relation to that and as such, traces the caesura of the whole and the part, the inhuman and the human. Thus, the remaining time is not a coming time in the sense that the time of happy life is; rather, it is the present time, conditioned by its own historicity and futurity.

Furthermore, this statement throws light on the co-incident of the aporia of testimony with the aporia of messianics that structures Agamben's argument. I mentioned at the start of this chapter that for Agamben, the remnant is a theologico-messianic concept that ultimately reveals the co-incident of the aporia of testimony and the messianic. We can now see that what Agamben means by this is that the disjuncture of the speaking being and the living being that founds testimony is also precisely the site of the messianic event. Here then, the messianic event no longer takes the form of the redemptive overcoming of the disjuncture of bios and *zōē*, but is precisely the means by which the disjuncture is brought to bear as the condition of ethics. An ethics of witnessing emerges from the doubled aporias of language and the messianic, in which the capacity of the human being to have language is predicated

⁵⁷ Agamben, *Remnants*, p.159.

on its not having language and the human being is crossed over with the human and the non-human and the related non-coincidence of the living and the speaking being. Further, since an ethics of witnessing can be understood as an ethics of survival insofar as what is borne witness to is bare life, then there is no final full appropriation in the human being's having language. Instead, the human is infinitely abandoned to its expropriation in language and the double structure of subjectification and desubjectification that attends becoming a speaking being. This however is not the travesty of ethics, but rather the condition of ethics. An ethics of witnessing is an ethics of bearing witness to the human being's expropriation in language.

6.3 *Witnessing Violence: An Ethics of Bare Life*

Given this account of an ethics of witnessing and the revision of messianism that it entails, I want to propose at this stage that Agamben's account of witnessing can be extended from the specific context of Auschwitz and the aporia of testimony the camps present to accommodate a broader response to bio-sovereign violence. This extension is already implicit within Agamben's account, and primarily requires being made explicit. However, it also requires further consideration of the position that Agamben takes vis-à-vis the concept of responsibility. On the one hand, Agamben rejects the concept of responsibility because of its juridical roots, but on the other, he develops an account of apostrophic address that indicates a more fundamental sense of responsibility that cannot be reduced to the juridical, although he ultimately gives little elaboration to this sense. Building on his figuration of apostrophic address, I show that Agamben's ethics of witnessing can usefully extend on the accounts of responsibility and address given by Foucault and Butler. An ethics of witnessing providing a means of thinking through the ethical responsibility that obtains in the subject's constitution in language and identifies an ethical responsibility subtending the political decision without determining it. To elaborate on this latter claim, I turn to a concluding discussion of Foucault and Agamben's respective positions vis-à-vis the political status of rights, which also helps illustrate the relation of an ethics of witnessing to the political determination of life worth living.

Agamben makes two points in his argument that indicate the possibility of extending an ethics of witnessing beyond the particular aporetic circumstances of the camps. The first of these is the posited continuity of the rationality of the camps beyond the specific historical manifestation of Auschwitz and other camps of Nazi Germany with the conditions of politics *per se*. For Agamben, the rationality manifest in the camps is not marked by a radical break from the political traditions and systems of the West, as totalitarianism was for Hannah Arendt for instance. Instead, the camps expose the internal *nomos* of modern politics, revealing a fundamental continuity between totalitarianism and the political traditions of the West, including those that underpin the institutions and rationality of modern democracy. As Agamben argues in *Homo Sacer* and elsewhere, as the biopolitical space par excellence, the camp operates as the exception that reveals the general rule: the camp is not an isolable anomaly distinct from the general contemporary political conditions of existence, but instead exposes the biopolitical '*nomos* of the modern'.⁵⁸

Hence, this is not precisely a matter of the comparability of the violence of Auschwitz and genocide more generally with other forms of violence, but of the extension of the rationality of the camps beyond their spatial limits into the political rationality of modern democracy. Agamben's critical claim that democracy and totalitarianism are not entirely distinct because they converge in their *modus operandi* is not novel in itself, since this claim has been made in a number of guises in the post-war period.⁵⁹ However, the novelty of Agamben's version lies in his explication of the concept of biopolitics, in which sovereignty is not distinct from biopolitics, but intimately linked to it through the capture of bare life in the sovereign ban. This suggests that biopolitical violence and the determination of life worth living that accompanies it are characteristic of a political rationality that aims to administer and control the biological life of populations and people, whether that rationality be realized within the extreme situation of the camps or in the seemingly less benign

⁵⁸ Giorgio Agamben, 'The Camp as the Nomos of the Modern' in Hent de Vries and Samuel Weber, eds. *Violence, Identity and Self-Determination* (Stanford: Stanford University Press, 1997) pp.106-118.

⁵⁹ For a recent sociological version of this argument see Zygmunt Bauman, *Modernity and the Holocaust* (Cambridge: Polity Press, 1989); on the continuity of biopolitics in totalitarianism and modern democracy, see Mitchell Dean, *Governmentality: Power and Rule in Modern Society* (London: Sage, 1999); Mitchell Dean, 'Liberal Government and Authoritarianism', *Economy and Society* 31:1(2002), pp.37-61. Also see the discussions of violence and modernity in David Campbell and Michael Dillon, eds. *The Political Subject of Violence*, (Manchester: Manchester University Press, 1993).

exclusions of modern democracy. Whether this is the case is in part an empirical and sociological question, and as such, is not one I can take up here. Yet, even with this caveat in mind, the theoretical possibility of extending an ethics of witnessing beyond the camps remains.

The second indication that an ethics of witnessing based on the aporia of testimony can be extended beyond the particular historico-empirical reference point of Auschwitz lies in the ontological status of subjectivity as the event of the constitution of consciousness in language. Following on from the account of subjectification and desubjectification and the biopolitical condition of contemporary politics discussed above, what becomes apparent toward the end of *Remnants* is that bare life is ultimately the irremediable condition of the subject that is exposed in desubjectification. Furthermore, if the task of witnessing is to bear witness to the impossibility of speaking and the exposure of bare life that this entails, then it follows that every subject is at least potentially a witness. In other words, to the extent that desubjectification is a constitutive condition of subjectification and the subject's taking place in language, then the impossibility of fully entering into the enunciative place of the subject always calls to be witnessed. As Agamben suggests, 'the authority of the witness consists in his capacity to speak solely in the name of an incapacity to speak – that is, in his or her being a subject'.⁶⁰ This means that bearing witness to the impossibility of speaking pertains to the subject as one of its fundamental tasks: the task of the remnant, that is, of the subject of testimony.

However, if it is possible to extend the ethics of witnessing that Agamben develops in reference to the conundrum presented to testimony by Auschwitz to a broader scenario of biopolitical subjection, then it is first necessary to return to the concept of responsibility that subtends Agamben's analysis. In this, it is necessary to give emphasis to an aspect of responsibility that is ultimately crucial to the ethics that Agamben elaborates though it ostensibly sits in tension with his rejection of the concept of responsibility as fundamentally juridical. As I mentioned previously, the aim of Agamben's elaboration of an ethics of witnessing is the specification of an ethical domain *before* the legal codification of judgment and culpability, since the law

⁶⁰ Agamben, *Remnants*, p.158.

is only ever concerned with judgment and not with justice or truth.⁶¹ Agamben points out though that the necessity of elaborating an ethical domain apart from the juridical is not because a judgment cannot be made, but simply because it cannot be presumed that the law exhausts the question of responsibility.⁶² Moreover, it is precisely that which exceeds the law that concerns the survivor. Given this, Agamben rejects the concept of responsibility, claiming that it is founded in the Latin legal term of 'spondeo' or sponsor, meaning someone who offers legal guarantee for a course of action, and therefore always returns ethics to the problems of the law.⁶³ It also because of this that Agamben attempts to move away from a Levinasian account of ethical responsibility, since Levinas' ethical formulation 'transformed the gesture of the sponsor into the ethical gesture par excellence'.⁶⁴ Even so, it is not always clear how far Agamben can or does move away from such a formulation of ethics. While this is not the place to take up a full examination of the attempted divergence on Agamben's part, several points can be made, which also help to clarify some of the implications of Agamben's formulation of an ethics of witnessing.

Over and against this conception of responsibility, which is 'irremediably contaminated by law', Agamben suggests that ethics has seized terrain from the juridical not in order to assume another kind of responsibility, but to articulate 'zones of non-responsibility'.⁶⁵ By the idea of non-responsibility, Agamben indicates not a zone of impunity or amorality, but rather, 'a confrontation with a responsibility that is infinitely greater than any we could ever assume. At the most, we can be faithful to it, that is, assert its unassumability'.⁶⁶ Apart from this though, Agamben gives little further explication of the conception of non-responsibility that he posits to ground an ethics of witnessing. However, on the face of it, this conception of non-responsibility set against the juridical delimitation of responsibility resonates strongly with Derrida's conception of justice as that which exceeds the law, a point that reinforces the possibility of reading a shift or at least instability in the conception of

⁶¹ Agamben, *Remnants*, p.18.

⁶² Agamben, *Remnants*, p.17.

⁶³ Agamben, *Remnants*, p.21.

⁶⁴ Agamben, *Remnants*, p.22.

⁶⁵ Agamben, *Remnants*, p.21.

⁶⁶ Agamben, *Remnants*, p.21.

the messianic operating in *Remnants*. It also closely resembles the conception of responsibility that Derrida elaborates in his engagements with Levinas in the development of an ethics of hospitality.

In response to the charge that deconstruction entails a retreat from questions of responsibility, Derrida claims in 'Force of Law' that exactly the reverse is true: deconstruction engages a 'responsibility without limits, and so necessarily excessive, incalculable, before memory... a responsibility before the very concept of responsibility'.⁶⁷ Derrida gives further elaboration to the idea of an incalculable, excessive responsibility through the distinction he draws between justice and the law, in which justice precedes and exceeds the law: incalculable justice conditions the law but cannot be reduced to it. Hence, justice is not equivalent to judgment and the enforcement of the law that it entails and nor can it be reduced to the delimitation of culpability and guilt. Rather, Derrida suggests elsewhere in reference to Levinas's elliptical suggestion that justice is equivalent to the relation to the Other, that justice is the absolute responsibility that is borne in relation to the absolute Other or *tout autre*, which requires that 'one denounce, refute, and transcend, at the same time, all duty, all responsibility, and every human law'.⁶⁸

Taking up the form of this argument again in his ethics of hospitality, Derrida argues that a pure hospitality exceeds and conditions the presentation of the Other 'at the door', such that the invitation or welcome to the stranger that hospitality entails always refers to a pure hospitality that cannot be realized in any given encounter.⁶⁹ Furthermore, Derrida suggests that the welcome of hospitality is the welcome of the other, where the genitive indicates an aporia inherent in the welcome, whereby the welcome both comes from the other and addresses the other. The aporia inherent in

⁶⁷ Jacques Derrida, 'Force of Law: The "Mystical Foundations of Authority"', in Drucilla Cornell, David Gray Carlson and Michel Rosenfeld, eds. *Deconstruction and the Possibility of Justice* (New York: Routledge, 1992), pp.3-67 at 19-20.

⁶⁸ Jacques Derrida, *The Gift of Death*, tr. David Wills (Chicago: University of Chicago Press, 1995), p.66; also see John D. Caputo, *The Prayers and Tears of Jacques Derrida: Religion without Religion* (Bloomington: Indiana University Press, 1997), p.203; Simon Critchley, *The Ethics of Deconstruction: Derrida and Levinas* (Oxford: Blackwell, 1992); Simon Critchley, *Ethics, Politics, Subjectivity: Essays on Derrida, Levinas and Contemporary French Thought*, (London: Verso, 1999).

⁶⁹ Jacques Derrida and Anne Dufourmantelle, *Of Hospitality*, tr. Rachel Bowlby (Stanford: Stanford University Press, 2000), p.25; Paul Patton and Terry Smith, ed. *Jacques Derrida: Deconstruction Engaged: The Sydney Seminars*, (Sydney: Power Publications, 2001), p.93-104.

the welcoming address means that 'the call is only called from the response. The response comes ahead of or comes to encounter the call, which, before the response, is first only in order to await the response that makes it come'.⁷⁰ Hence, there can be no first call and subsequent response: the first call both precedes and comes from the response, such that the opposition of host and stranger is put into question: the stranger appears in the place of the host, and the host is 'hostage' to the stranger. Of course, this dynamic cannot be simply read into Agamben's ethics of witnessing; nevertheless, there is a sense in which Derrida's conception of welcoming the other does throw light on a critical gap in Agamben's conception of bearing witness and the responsibility or non-responsibility that it entails.

In particular, it suggests that Agamben overemphasizes the theoretical need to move away from the concept of responsibility in his selective etymology of the term, for Derrida's ethics of hospitality help bring out the sense of responsibility as response that subtends Agamben's argument. While Agamben bases his rejection of the term of responsibility on its juridical origins in the Latin root of 'spondeo', he neglects that responsibility can also be traced to the term 'responso', meaning to give an answer, to reply or respond to another.⁷¹ This alternative etymology of responsibility as a capacity for address and response is of course central to the Levinasian precedent of Derrida's formulation of an ethics of hospitality⁷². It is also given articulation in Kelly Oliver's recent account of an ethics of witnessing, which she argues overcomes the perceived problems of recognition-based theories of subject-formation.⁷³ Oliver argues that 'response-ability' must be central to an account of witnessing, as it brings to light the fundamental dependence of the subject on the dynamic of address and response entailed in bearing witness for its own emergence and survival. Witnessing necessarily involves a relation to the other, since it is essentially a question of the subject's comportment and response to the address of the other.

⁷⁰ Jacques Derrida, *Adieu to Emmanuel Levinas*, tr. Pascale-Anne Brault and Michael Naas (Stanford: Stanford University Press, 1999), p.24.

⁷¹ *Oxford English Dictionary*; *Oxford Latin Dictionary*.

⁷² See in particular, Emmanuel Levinas, *Totality and Infinity*, tr. Alfonso Lingis (The Hague: Martinus Nijhoff, 1979).

⁷³ Kelly Oliver, *Witnessing: Beyond Recognition* (Minneapolis: University of Minnesota Press, 2001).

The ethical confrontation with legally delimited concepts of responsibility that Agamben suggests also seems to require a conception of response, which in turn presupposes a prior capacity for response, since his account of an ethics of witnessing is tied together through a figuration of the demand of ethical responsibility as apostrophe. The rhetorical device of apostrophe, by which the narrative convention of a text is disrupted in a figurative turn to an absent character or audience, marks an unavoidable call within a text, an authorial turning toward the reader or audience to call them into the text. Taking up this figuration, Agamben suggests that the *Muselmänner* of the camps present an apostrophic call for ethical response in their transformation from the human to the inhuman and the irreconcilable disjuncture between the speaking and living being which this marks. Hence, the non-responsibility or ethical confrontation with responsibility takes hold of the subject through the apostrophic address that emerges in the absolute exposure of bare life. The proper response to such a call is testimony, a task in which the inhuman is borne witness to and which thus allows the human to endure. Several points should be made about the apostrophic address of the *Muselmann* as the extreme figure of the biopolitical exposure of bare life.

First, the apostrophe of bare life is characterized and made possible not by what one has seen but by the sheer impossibility of seeing. From Levi's suggestion that the *Muselmänner* are the one's who have 'seen the Gorgon', that is, the Greek figure upon which it is impossible to look and remain human, Agamben suggests that the Gorgon does not indicate something that exists or takes place in the camps. Instead, the Gorgon figures the inhuman impossibility of seeing or knowing that belongs constitutively to the *Muselmann*. That is, the apostrophe of bare life does not arise from gazing on the face of the other, by looking upon the *Muselmänner*, but springs from the impossibility of seeing that constitutes the *Muselmänner* as such. As Agamben states,

at the 'bottom' of the human being there is nothing other than an impossibility of seeing – this is the Gorgon, whose vision transforms the human into a non-human. That precisely this inhuman impossibility of seeing is what calls and addresses the human, the apostrophe from which human beings cannot turn away – this and nothing else is testimony.⁷⁴

Hence, the impossibility of seeing operates as the condition for ethical response to bare life in the form of testimony.

Second, just as apostrophe does not require that testimony arise from the possibility of seeing, nor does it require a temporally and spatially limited encounter with the other such that ethical response is limited to the intersubjective face-to-face encounter for instance. While Agamben's account of apostrophe is not posed as an explicit critique of Levinas, this dimension of his account does allow the unassumable responsibility of testimony to be extended beyond the particular formulation given to this encounter by theorists more sympathetic to Levinasian ethics. Within such accounts, the immediacy of the face-to-face encounter presents a problem for establishing historical responsibility with regard to that encounter, since those involved in the encounter are not the subjects being held in responsibility. James Hatley addresses this in his Levinasian account of an ethics of witnessing by noting that while historical testimony exceeds the face-to-face encounter of ethical responsibility elaborated by Levinas, it constitutes a 'wider, secondary circle of responsibility'.⁷⁵ This secondary responsibility is mediated through language and the textuality of historical record, such that the face-to-face encounter is reconstituted through testimony. However, as Hatley recognizes without fully overcoming, such an account of historical testimony founders on the potential falsification of testimony introduced by the process of dissemination, such that the original encounter is increasingly obscured through the successive transmissions of testimony.

⁷⁴ Agamben, *Remnants*, p.54.

⁷⁵ James Hatley, *Suffering Witness: The Quandary of Responsibility after the Irreparable* (Albany: State University of New York Press, 2000), p.105.

In distinction from this, the apostrophe is ‘flying through time to reach us, to bear witness’⁷⁶ and calls for response without the constraint of historical mediation and attempted reproduction of the original face-to-face encounter. Again, Agamben is largely silent on the implications of this figuration for an understanding of responsibility – or non-responsibility in his formulation – beyond the immediate temporality of the injury and violence inflicted in biopolitical subjection. However, two implications can be noted. First, it suggests that ethical responsibility does not diminish because of the temporal or spatial distance of the speaking subject from the event of violence. Because the conception of responsibility that Agamben aims at in the notion of a ‘zone of non-responsibility’ does not refer to the juridical category of culpability, and therefore does not require attribution of blame or admissions of guilt, it does not require that the subject held in the zone of non-responsibility be identifiable as the perpetrator or cause of violence. The unassumable responsibility of bearing witness falls upon the subject by virtue of being a subject, that is, by the living being’s entering into the ‘vacant place’ of enunciation. Response-ability takes hold in the grammatical shifters such as ‘I’ and ‘you’ that mark the disjuncture of the living and speaking being and not by virtue of the subject’s violent acts against other subjects strictly speaking.

Second, while the imperative to re-trace the original face-to-face encounter in bearing witness introduces the possibility of falsification of testimony, it also operates as a limitation on the truthfulness or veracity of testimony within the position indicated above. However, this cannot be the case in Agamben’s figuration of the apostrophic call to witness, since the *aporia* that he locates at the heart of testimony brings the veracity of testimony into question in a more radical way. The *aporia* of testimony undermines the attempt to establish the truthfulness of testimony by reference to an original event that provides the empirical delimitation and condition of that testimony. Nevertheless, this does not mean that there is no constraint on testimony, such that witnesses are not bound in what can be said in testimony or what counts as testimony. Instead, the imperative of bearing witness to the impossibility of speaking provides the delimitating condition of testimony, such that testimony that fails to

⁷⁶ Agamben, *Remnants*, p.104; also see Jean-Luc Nancy, ‘On the Threshold’, *Paragraph* 16:2, pp.111-121, which can be read as an illustration of the apostrophic call of the dead or dying body through history.

address and respond to the desubjectivation effectuated in the impossibility of speaking appears as false witness. Hence, for Agamben, Levi's paradox does not substantiate denials of the existence of the camps, but provides the only real means of refuting such denials. Witnessing effectively refutes the dehumanizing biopolitical experiment of the camps by bringing the impossibility of speaking to speech, – though not simply by speaking of it but by making it appear within speech – and thereby bearing witness to the *Muselmann*. Thus, apostrophe calls the subject into history to bear witness to the impossibility of speaking.

In addition to this, the Levinasian inflected ethics of witnessing elaborated by Hatley overlooks the implications of the unassumability of the experience of violence and trauma. How does one bear witness to the face-to-face encounter when that encounter is so deeply traumatic that one cannot fully assume the experience as an experience that one has endured and survived? In her analysis of trauma and historical narrative, Cathy Caruth argues that the traumatic wound has an 'endless impact' on life. As she states, 'trauma is not locatable in the simple violent or original event in an individual's path, but rather in the way that its very unassimilated nature – the way it was precisely not known in the first place – returns to haunt the survivor later on.'⁷⁷ Building on this, Caruth identifies a voice within the wound, understood as 'a command to awaken...[to] the language of trauma and the silence of its mute repetition of suffering'.⁷⁸ Interestingly, this 'profound and imperative demand' operates as a call to ethical response to and encounter with the other, a figuration that bears a close resemblance to the apostrophic call identified by Agamben. In line with this figural resemblance, the unendurability of the experience analyzed by Caruth can also be seen to inflect the paradox of bearing witness identified by Levi when he claims that the survivors of Auschwitz are not the true witnesses. It is not only that the survivors have not lived through the experience of the camps to the end, but also that the experience of having lived through internment at all is radically unendurable, unable to be borne witness to because it is in a sense unknowable. In this scenario, the shame that arises for the survivor appears as the shame of not being able to fully assume the task of bearing witness, but at the same time being

⁷⁷ Cathy Caruth, *Unclaimed Experience: Trauma, Narrative and History* (Baltimore: Johns Hopkins University Press, 1996), p.4.

⁷⁸ Caruth, *Unclaimed Experience*, p.9.

unable to separate oneself from the responsibility to do so. In this sense, Agamben's account of witnessing takes the unendurability of experience and unassumability of responsibility for testifying to that experience as its starting point.

This brings us to the third characteristic of Agamben's notion of the unassumable responsibility brought to bear on the subject in the apostrophic address of bare life. While the responsibility indicated by Agamben is ultimately unassumable, it is also unavoidable: while ethical responsibility cannot be fully assumed or taken up as the task of the subject, nor can the subject turn away from it. The task of bearing witness to desubjectification in testimony is simultaneously unavoidable, since every subjectification is conditioned by a constitutive desubjectification, but also unassumable in that what one bears witness to is the impossibility of speaking and of bearing witness. In this light then, the ethical 'non-responsibility' that Agamben identifies appears to be closely related to the characterization of shame that he develops. As I discussed previously, shame arises in the situation of confrontation with a presentation or aspect of oneself that one cannot separate oneself from but cannot fully assume as one's own being. Hence, shame appears to be the affectivity proper to the ethical, since responsibility is precisely that which one simultaneously cannot turn away from but cannot assume. Further, if shame is the fundamental affective tonality of the subject as Agamben argues, then ethical responsibility may itself be seen as one of the constitutive conditions of the subject.

Interestingly, Oliver makes a similar point in her account of witnessing, where she claims that the problems of testimony and bearing witness are central to subjectivity. For Oliver, the dependency of the subject on the possibilities of address and response means that witnessing appears as the dilemma at the heart of the subject.⁷⁹ The dynamic of address and response in testimony means that the subject is necessarily in relation with others, a condition that indicates that subjectivity itself entails a fundamental responsibility to and for others. Similarly, in Agamben's account, the taking place of enunciation can itself be seen as always a matter of

⁷⁹ Oliver, *Witnessing*, pp.88-91.

'being-with' others,⁸⁰ insofar as grammatical shifters do not simply indicate the double movement of subjectification and desubjectification, but also indicate the position of the subject in relation to others. That is, the living being's entering into language through the designation of pronouns does not simply indicate the position of the individual vis-à-vis language, but also necessarily indicates the position of the individual in relation to other living and speaking beings. Pronouns such as 'I', 'you' and 'we' necessarily position the speaking subject in relation with those being addressed or identified.⁸¹

While Oliver's account of subject-formation is substantially different from Agamben's then, her insight can still usefully be turned to Agamben's analysis. This difference is particularly evident in that while she focuses on the interdependency of subjectivity and the affectivity of love, he focuses on the dynamic of subjectification and desubjectification in the event of enunciation and the affectivity of shame. Yet, one consequence of placing Oliver's analysis alongside Agamben's is that the intersubjective dimension of ethical response is highlighted over and against Agamben's analysis, which tends to theoretically neglect the implications of intersubjectivity within witnessing. This neglect is indicated by his limited etymology of responsibility, in which the capacity for response is obviated. Nevertheless, if this sense of responsibility does subtend Agamben's analysis as I have suggested it does, then the intersubjective aspect of witnessing is not strictly foreclosed or wholly excluded by his account. While it is neither possible nor necessary to extend upon Agamben's theorization in this direction here, the neglect of the implications of intersubjectivity within an ethics of witnessing does mark a limitation of his analysis, but one that could be overcome without the insights that he offers being rejected in their entirety.

⁸⁰ On 'being-with' see in particular Jean-Luc Nancy, *The Inoperative Community* (Minneapolis: University of Minnesota Press, 1991); Jean-Luc Nancy, 'Of Being Singular Plural', in *Being Singular Plural*, tr. Robert D. Richardson and Anne E. Byrne (Stanford: Stanford University Press, 2000), pp.1-100; Jean-Luc Nancy, 'Of Being-in-Common', in Miami Theory Collective, eds. *Community at Loose Ends* (Minneapolis: University of Minnesota Press, 1991), pp.1-12.

⁸¹ For a discussion of the gendered dimensions of this see Luce Irigaray, *je, tu, nous: Toward a Culture of Difference* (New York: Routledge, 1993).

Given these characteristics, two advantages of the conception of an unassumable responsibility within an ethics of witnessing can be made clear. The first of these is that such a conception of ethical response largely short-circuits the focus on culpability and judgment as the ultimate determinants of responsibility while allowing a consideration of the ethical responsibility that obtains in the subject's constitution in language. The second is that it allows for the elaboration of an irreducible responsibility apart from the *a priori* determination of political strategy, that is, it allows for the recognition of a fundamental sense of responsibility that conditions but does not determine the content of the political decision required in response to the contingent conditions of political survival. These points can best be illustrated through returning to the problems that I identified in the work of Butler and Foucault, which also helps to draw out the ways in which Agamben's formulation of an ethics of witnessing extends upon the conceptions of ethico-political response to biopolitical subjection suggested in their work.

Regarding the first of these, the distinction between legal and ethical responsibility that Agamben poses recalls a similar distinction suggested by Butler in her discussion of hate speech, but which was ultimately left undeveloped. As I argued in Chapter 4, for Butler, the linguistic constitution of the subject by which the subject is dependent on a discourse that is both 'dominant and indifferent' for its emergence and survival effectively calls into question the attribution of legal responsibility for speech to a speaking subject. This challenge to the attribution of culpability is further reinforced for Butler by the claim that speech is always out of the control of the speaker, insofar as the performative force of terms is conditioned by a 'condensed historicity' and potential for reappropriation and resignification. At the same time though, Butler adds that the linguistic constitution of the subject reinforces rather than undermines a sense of responsibility, but one that cannot be reduced to the attribution of legal culpability. Yet, while making this claim, Butler leaves the theoretical path opened by it unexplored. While she develops an account of political agency in her thesis on resignification as a necessary response to hate speech, ultimately, she does not provide an account of the ethical responsibility that bears upon the subject in its status as a speaking being. However, Agamben's formulation of ethical responsibility dispatched in testimony and bearing witness allows recognition of the linguistic constitution of the subject – since subjectification is understood as the constitution of consciousness in language – while maintaining recognition of the necessity of

ethical response and delimiting an arena of unassumable 'non-responsibility' apart from juridically defined responsibility and judgment.

Additionally, Agamben's account of an ethics of witnessing as a response to biopolitical subjection allows for recognition of a fundamental and irreducible responsibility as a limiting condition of the indeterminate political decision taken in response to contingent circumstances without determining political strategy in advance. In Chapter 2, I argued that Foucault's ethics of the self were limited as a potential response to biopolitical subjection because his account did not allow sufficient ground for an elaboration of a necessary ethical responsibility. Insofar as an ethics of the self can be understood to provide a model of ethical practice over and against biopolitical subjection, such an ethics is limited in that it fails to elaborate a necessary concern for others as a guiding and limiting condition of concern for self. Foucault's account of an ethics of the self is characterized by two levels of contingency, the first of which pertains to the contingent circumstances and practices by which one forms oneself as an ethical subject, while the second pertains to whether or not a concern for oneself in ethical self-formation requires concern for others at all. In discussing the second of these, I argued that insofar as 'taking care of oneself' can be understood as the normative principle informing an ethical practice of the self, then that formulation of ethical practice did not sufficiently allow for recognition of a fundamental responsibility to and for others.

In returning to the problem of political contingency in Chapter 4, where I discussed Butler's conflicting commitments to the perceived political pragmatism of Foucault and the Derridean inflected politics of resignification, I suggested that it was necessary to distinguish between recognizing the contingency of political strategy and posing contingency as the necessary ground of political agency. I showed that in *Excitable Speech*, Butler posits resignification as a 'necessary response' to hate speech on the basis that the inherent instability and reversibility of signification provided the ground and occasion of political agency. However, in making this claim, Butler effectively moves away from recognition of the contingency of political strategy, in the sense that strategy cannot be determined in advance of the conditions under which such actions take place and instead posits contingency itself as the condition of political agency. In doing so, she posits resignification as the principal political

strategy over and against legal recourse, in an *a priori* manner that does not maintain sufficient regard to the theoretical recognition of political pragmatism, which holds that such decisions can only be made in the circumstances to which they respond.

However, Agamben's formulation of an irreducible ethical responsibility avoids both of these paths, in that it allows for a necessary obligation and responsibility to others without deriving a political program from that recognition. Witnessing does not constitute a particular path of action to be taken in relation to a set of circumstances, but instead, indicates the position of the subject in relation to others. As an internal element in the process of subjectification and desubjectification, bearing witness indicates the subject's taking place in language and by dint of that, the living and speaking being's being in the world with others. As such, it delimits an ethical relation to others, but does not determine the content of the political decision, understood as a form of judgment and delimitation of what must be done, here and now.⁸² The responsibility of witnessing is both unavoidable and unassumable, such that it operates as a limiting condition of the political decision, but is neither exhausted by that decision nor fully taken up in it. This point can be made clearer through a brief consideration of political recourse to the discourse of rights, which I suggest is neither necessitated by nor incompatible with an ethics of witnessing.

6.4 *Responsibility and Rights*

Given the foregoing reading of instability within the conception of messianics operating in the ethics proposed in *Remnants*, which I have argued allows for the formulation of witnessing as an ethical response to biopolitical violence, I want to close this thesis with a brief consideration of the interaction of ethics and politics in relation to rights. To do this, I will focus on Agamben and Foucault's comments on refugees and human rights, to draw out their respective positions and discuss those in relation to an ethics of witnessing. To be sure, these comments have quite different statuses within the respective oeuvres of Agamben and Foucault and are inflected by different theoretical and political aims: while Agamben's are at one with the theoretical analysis of biopolitics and sovereignty, Foucault's strongest comment on human rights appears in a short document drafted as a manifesto of response to a

⁸² See my earlier discussion of Derrida in Chapter 5.

particular political situation. Nevertheless, they can be productively compared to bring out the relation of politics and ethics, particularly with regard to witnessing. In particular, I show that Agamben's strong rejection of rights, to which he is committed to the extent that he holds to a position of strong messianics, is unjustified in light of the account of witnessing discussed above. Instead, I show that the moderated position of political vigilance that takes note of the possibility that politically, 'everything is dangerous' emerges from Foucault's short document on human rights. This position allows for recognition of an ethical responsibility to bear witness that emerges in and subtends the decision of the political.

Agamben begins his reflections on human rights by reference to Hannah Arendt's analysis of the relation between human rights and the rights of the citizen that she develops in *The Origins of Totalitarianism*, under the chapter heading of 'The decline of the nation-state and the rights of man'.⁸³ In this, Arendt argues that the rights outlined as inalienable human rights in the French 'Declaration of the Rights of Man and the Citizen' effectively prove to be rights of the citizen, as the massive groundswell of stateless people in Europe following the First World War revealed. Arendt argues that people without their own national government, that is, non-citizens, were effectively people without rights, such that the existence of rights is determined by inclusion within a polity. From this, Agamben goes on to argue that the link between nativity and sovereignty evident in the Declaration means that natural life appears as the bearer of rights at the same time as it 'vanishes' into the figure of the citizen. He states, 'rights are attributed to man (or originate in him) solely to the extent that man is the immediate vanishing ground (who must never come to light as such) of the citizen'.⁸⁴ However, this distinction and the state form of sovereignty is brought to crisis by refugees, who break the continuity between man and citizen and nativity and nationality, thereby revealing the status of bare life within the politics of the nation-state.

⁸³ Hannah Arendt, *The Origins of Totalitarianism* (London: Allen and Unwin, 1967); also see Balibar's comment that the conjunctive in the phrase 'Man and the Citizen' in the French Declaration introduces a split between the named citizen and man and thus raises the question whether '...the rights declared [are] those of the citizen *as man* or those of man *as citizen*?'; Etienne Balibar, 'Citizen Subject', in Eduardo Cadava, Peter Connor and Jean-Luc Nancy, eds. *Who Comes After the Subject?* (New York: Routledge, 1991), pp.33-57 at 44.

⁸⁴ Agamben, *Homo Sacer*, p.128; also see Giorgio Agamben, 'Beyond Human Rights' in *Means without End: Notes on Politics*, tr.Vincenzo Binetti and Cesare Casarino (Minneapolis: University of Minnesota Press, 2000), pp.15-25.

In following the logic of strong messianism that structures the arguments of *Homo Sacer*, Agamben claims in light of this that the only solution to the conundrum exposed by the refugee is the complete rejection of rights and reformulation of the founding concepts of Western politics. As he argues, the refugee is 'nothing less than a limit concept that at once brings a radical crisis to the principles of the nation-state and clears the way for a renewal of categories that can no longer be delayed'.⁸⁵ In particular, what Agamben argues for as part of this renewal is the radical separation of the concept of the refugee from that of human rights, and the consequent development of a politics in which 'bare life is no longer separated and excepted, either in the state order or in the figure of human rights'.⁸⁶ Further, in 'Beyond Human Rights', he lays out a schematic utopia of a Europe beyond the nation-state, in which each citizen is brought to recognize the refugee that they ultimately are: Europe conceptualized as 'an atterritorial or extraterritorial space in which all the (citizen and noncitizen) residents of the European states would be in a position of exodus or refuge'.⁸⁷

Whatever other problems there might be in such a formulation, the pertinent point here is that the strong rejection of rights that this entails derives from Agamben's conviction that within the nation-state, rights are one of the central means by which bare life is politicized. Further, given his strong rejection of political potential internal to the nexus of bare life and politics that I discussed in the previous chapter, the strong messianic position that Agamben holds commits him to an outright rejection of political recourse to rights. However, if it is possible to read the messianic position in *Remnants* as substantially weaker than the earlier version, then the question arises of whether such a rejection of rights can be maintained. Contrary to this strong rejection, as I outlined above, the weaker version of messianics allows for the formulation of ethical responsibility without a necessary commitment to a political *a priori* such as the rejection of rights that Agamben urges. While a weak messianic position does not entail any necessary commitment to a *particular* political stance, it does allow for the formulation of political strategies underpinned by an unassumable yet unavoidable ethical responsibility understood as the necessity of bearing witness.

⁸⁵ Agamben, 'Beyond Human Rights', p.23.

⁸⁶ Agamben, *Homo Sacer*, p.134.

⁸⁷ Agamben, 'Beyond Human Rights', p.24-25.

This suggests that a more moderated position in relation to rights is required. Interestingly, at this stage, we can turn back to Foucault's own comments on rights, and particularly his short document 'Confronting Governments: Human Rights' for a further elaboration of the dynamic I am suggesting here. I noted in the previous chapter that there is a particular ambiguity in Foucault's remarks on rights, since he appears to hold at least three different positions at different times in that he:

- (1) rejects a discourse of rights as a 'blind alley',
- (2) suggests that what is required is a new form of rights and
- (3) calls upon the notion of human rights vis-à-vis Vietnamese boat people.

Both the latter positions – though perhaps not the first – are compatible with the 'rule of tactical polyvalency' that Foucault outlines in the first volume of *History of Sexuality*, where discourse is an element within the tactical confrontation of power relations and any given discursive element can be used both in the service of power or in the service of resistance. In line with this, Foucault's various positions can be written off as the effect of a political pragmatics that allows recourse to rights as a tactic within the operations of power.⁸⁸ Or, with Thomas Keenan, Foucault's call to human rights can be seen as a gesture toward the enunciation of a new form of right beyond sovereignty as 'the condition of a radically democratic politics, rights without limit and end, rights as the irreducible claim and gesture of the political as such'.⁸⁹ But what does the recourse to rights, even a new form of rights, indicate within Foucault's work, particularly if these are understood as the condition of the political as such?

Foucault's strongest call for rights comes in the short document translated as 'Confronting Governments: Human Rights', written on the occasion of the formation of an International Committee against Piracy in response to attacks on

⁸⁸ See Duncan Ivison, *The Self at Liberty: Political Argument and the Arts of Government* (Ithaca: Cornell University Press, 1997) p.46.

⁸⁹ Thomas Keenan, *Fables of Responsibility: Aberrations and Predicaments in Ethics and Politics* (Stanford: Stanford University Press, 1997), p.171. Michel Foucault, 'Two Lectures', in *Power/Knowledge: Selected Interviews and Other Writings 1972-1977*, ed. Colin Gordon, tr. Colin Gordon and others (New York: Pantheon Press, 1980), pp78-108 at 108. For a further discussion of Foucault's speculation on the necessity of a new form of right in 'Two Lectures', see Kirstie McClure, 'Taking Liberties in Foucault's Triangle: Sovereignty, Discipline, Governmentality and the Subject of Rights', in Austin Sarat and Thomas Kearns, eds. *Identities, Politics, and Rights* (Ann Arbor: University of Michigan Press, 1995), pp.149-192.

Vietnamese refugees in the Gulf of Thailand.⁹⁰ In this document, Foucault evokes the notion of an international citizenry with rights and duties, obliged to speak out against abuses of power in solidarity as members of the community of the governed. He goes on to say that, 'it is the duty of this international citizenry to always bring the testimony of people's suffering to the eyes and ears of governments'.⁹¹ Thus in a surprisingly complex text, Foucault evokes some of the most potent figures of Western democracy: the citizenry, the people, and the community of the governed. What, then, are the posited relations between these figures? Foucault's claim that it is the duty of the international citizenry to bring testimony of the suffering of the people to the 'eyes and ears' of government suggests a threefold separation between these figures, such that the citizenry and the people are not co-extensive and neither coincide with the government. The suffering of the people is brought to the eyes and ears of government by the citizenry that stands in testimony to that suffering. Thus, the suffering of which Foucault speaks introduces a caesura or break between the citizenry and the people that obliges the former to bear witness for the latter.

This returns us to the distinction between the rights of man as the rights of humans as such, and the rights of the citizen identified by Arendt. What Arendt's analysis marks is that citizenship traces the line of belonging to political community, and that it is only within that political community that one can effectively speak of the rights of man, or human rights.⁹² In the terminology of Foucault's text, citizenship marks the limit of the community of the governed. However, Foucault's response to this break is not the radical rejection of rights that Agamben argues for. Instead, his radical call *for* rights seems in direct opposition to the political project that Agamben suggests. What arises in Foucault's text though is a double movement: on the one hand a call for rights without limit and on the other, a reinscription of the distinction between forms of right. How can these be read together? With Keenan, Foucault's

⁹⁰ Michel Foucault, 'Confronting Governments: Human Rights' [1984] in *Power: Essential Works of Foucault, 1954-1984*, vol. 3, ed. James D. Faubion, tr. Robert Hurley and others (New York: New Press, 2000), pp.474-475.

⁹¹ Foucault, 'Confronting Governments', p.474.

⁹² This analysis is confirmed by recent arguments of Foucauldian scholars who, albeit with different analytic purposes, have understood citizenship as a technology of government central to the control and management of populations and the movements within and between political communities. In short, citizenship marks the limit of the community of the governed. See for example, Barry Hindess, 'Citizenship in the International Management of Populations', *The American Behavioral Scientist* 43:9(2000), pp.1486-1497.

positing of a new right without limit can be seen as an attempt to overcome the non-continuity between the rights of the citizen and the human rights, but in re-inscribing a break between the citizen and the people Foucault also appears to reinstate a scission between the rights of each. This suggests that Keenan's cosmopolitan reading of Foucault's text must be supplemented to take account of this, since the scission that Foucault introduces here is an important one that should not be elided too quickly.

Indeed, it might be that it is precisely this scission that underlies Keenan's claim that the rights that Foucault indicates can be seen as 'the irreducible claim and gesture of the political as such'⁹³ even if Keenan himself does not bring this entirely to light. In his deconstructive reading of the conjuncture of ethical and political, Keenan attempts to develop an account of the political and especially of democracy without foundation. He argues that rather than undermining ethico-political responsibility the absence of grounds enhances responsibility by laying bare the ethico-political decision in the moment of its occurrence, where politics is 'the experience of risk, chance and the undecidable. Not the decisionist celebration of the pathos of pure resolution'.⁹⁴ Keenan renders the undecidable decision of the political through the trope of 'who's there?', particularly as it is cast in the opening lines of Shakespeare's *Hamlet*:

Barnardo: Who's There?

Francisco: Nay, answer me. Stand and unfold yourself.

Barnardo: Long Live the King!

Franciso: Barnado?

Barnardo: He.

In Keenan's reading, the interrogative 'who's there?' provides a tropic rendition of the confrontation on the border of political community, while the imperative of 'stand and unfold yourself' indicates the interpellation of the subject to the law and the necessary establishment of identity. As he states, 'the address interpellates in the

⁹³ Keenan, *Fables of Responsibility*, p.171

⁹⁴ Keenan, *Fables of Responsibility*, p.5

strict sense: it brings the other into the field of the law, constitutes him as subject in addressing him, opens him out of the question into the upright stability of the self.⁹⁵

But Keenan moves too quickly in identifying the imperative as an interpellation that brings the subject into the field of the law, for the question of 'who's there?' is implicitly reiterated in the imperative, such that the imperative foreshadows an interpellation and a decision but does not thereby effect it. The question of 'who's there?' opens the space in which an interpellation can occur, but that interpellation does not occur, not until the proper name is spoken. The imperative to 'stand and unfold oneself' does not constitute the unknown arrivant as a unitary subject 'in the field of the law', but presents the law as a condition of the arrivant's exposure to interpellation and the political decision. It demands that the arrivant step into the space of the decision, to unfold and expose themselves to the decision, which the arrivant does through the utterance of a password – perhaps an arbitrary one, but one which allows the *possibility* of identification and of passage into political community. Importantly, the imperative to identify oneself also falls back upon the speaker, for in demanding identification the speaker identifies himself. The demand for and subsequent locution of the password 'Long Live the King' indicates a dynamic of identification from which the speaker is not immune. He is always already identified in speaking, in comporting his body in relation to that of the arrivant and exposing his own vulnerability in demanding the password.

Following Jacques Rancière, the decision of the political that follows from the presentation of the arrivant at the border of political community can be characterized as the decision on part-taking, on who takes part in the political.⁹⁶ Although Rancière has more in mind, in this context the decision on part-taking can be minimally limned as a decision on citizenship, or the interpellated status of the citizen-subject. It is a decision on whether the arrivant can be constituted as a citizen or as part of the people without the rights and freedoms of the citizen, abandoned to their fate outside the borders of 'the community of the governed'. Further, if the normative judgments that attend the status of citizenship can effectively be understood as

⁹⁵ Keenan, *Fables of Responsibility*, p.9.

⁹⁶ Jacques Rancière, *Disagreement: Politics and Philosophy*, tr. Julie Rose (Minneapolis: University of Minnesota Press, 1999), p.9; Jacques Rancière, 'Ten Theses on Politics', *Theory and Event* 5:3(2001).

judgments on the comparative value of ways of life,⁹⁷ then the decision on part-taking appears as a decision on life worth living. This might in fact be behind the particular acuity of Foucault's comment at the end of *The History of Sexuality*, that it is life more than right that has come to be at stake in political struggles, even if these struggles are formulated on the basis of the affirmations of rights.⁹⁸

In this way, the break or caesura that Foucault marks opens the space for an ethics of witnessing addressing itself to the determination of life worth living, for it precisely in the decision of the political that the undecidable emerges as its destabilizing ground. One of the key statements that Foucault makes in this document is the one I cited above concerning the duty of the citizenry to bring the testimony of the suffering of the people to the eyes and ears of government. In this formulation, testimony emerges as the ethical responsibility of the community of the governed in relation to the political decisions of governments that inflict suffering on the people. Thus, the ethical space for testimony is opened by the determinations of the political, which must be undertaken and negotiated in relation to the undecidable, the unassumable yet unavoidable responsibility of ethics. In short, the political decision must be negotiated in relation to the ethical task of bearing witness to desubjectification and the determination of life worth living that lies behind bio-sovereign violence.

⁹⁷ See Hindess, 'Citizenship in the International Management of Populations'.

⁹⁸ Michel Foucault, *The History of Sexuality, vol.1: An Introduction*, [1976] tr. Robert Hurley (London: Penguin, 1981), p.145.

Bibliography

- Adorno, T. *Minima Moralia: Reflections from Damaged Life*. London: NLB, 1974.
- Agamben, G. 'Beyond Human Rights.' *Means Without End: Notes on Politics*. tr.V. Binetti and C. Casarino, Minneapolis: University of Minnesota Press, 2000, p.15-25.
- . 'Notes on Politics.' *Means without End: Notes on Politics*. tr.V. Binetti and C. Casarino, Minneapolis: University of Minnesota Press, 2000, pp.109-118.
- . *Remnants of Auschwitz: The Witness and the Archive*. New York: Zone Books, 1999.
- . 'The Messiah and the Sovereign: The Problem of Law in Walter Benjamin.' *Potentialities: Collected Essays in Philosophy*. ed. and tr. D. Heller-Roazen, Stanford: Stanford University Press, 1999, pp.160-174.
- . 'On Potentiality.' *Potentialities: Collected Essays in Philosophy*. ed. and tr. D. Heller-Roazen, Stanford: Stanford University Press, 1999, pp.177-184.
- . 'Pardes: The Writing of Potentiality.' *Potentialities: Collected Essays in Philosophy*, ed. and tr. D. Heller-Roazen, Stanford: Stanford University Press, 1999, pp.205-219.
- . 'Benjamin and the Demonic: Happiness and Historical Redemption.' *Potentialities: Collected Essays in Philosophy*. ed and tr. D. Heller-Roazen, Stanford: Stanford University Press, 1999, pp.138-159.
- . '*Se: Hegel's Absolute and Heidegger's Ereignis.' *Potentialities: Collected Essays in Philosophy*.ed and tr. D. Heller-Roazen, Stanford: Stanford University Press, 1999, pp.116-137.
- . 'Bartleby, or On Contingency.' *Potentialities: Collected Essays in Philosophy*.ed and tr. Daniel Heller-Roazen, Stanford: Stanford University Press, 1999, pp.243-271.
- . *Homo Sacer: Sovereign Power and Bare Life*. tr. D. Heller-Roazen, Stanford: Stanford University Press, 1998.

- . 'The Camp as the Nomos of the Modern.' *Violence, Identity and Self-Determination*. ed. H. De Vries and S. Weber, Stanford: Stanford University Press, 1997, pp.106-118.
- . *The Coming Community*. tr. Michael Hardt, Minneapolis: University of Minnesota Press: 1993.
- . *Infancy and History: Essays on the Destruction of Experience*. tr. L. Heron, London: Verso, 1993.
- . *Language and Death: The Place of Negativity*. tr. K. E. Pinkus with M. Hardt, Minneapolis: University of Minnesota Press, 1991.
- Althusser, L. 'Ideology and Ideological State Apparatuses.' *Lenin and Philosophy and Other Essays*. tr. B. Brewster, New York: Monthly Review Press, 1971, pp.127-186.
- Angelides, S. *A History of Bisexuality*. Chicago: University of Chicago, 2001.
- Ansell-Pearson, K. *Philosophy and the Adventure of the Virtual: Bergson and the Time of Life*. London: Routledge, 2002.
- . *Germinal Life: The Difference and Repetition of Deleuze*. London: Routledge, 1999.
- . ed. *Deleuze and Philosophy: The Difference Engineer*. London: Routledge, 1997.
- Arendt, H. 'What is Freedom?' *Between Past and Future: Eight Exercises in Political Thought*. New York: Penguin, 1993, pp.143-172.
- . *The Origins of Totalitarianism*. London: Allen and Unwin, 1967.
- . *The Human Condition*. Chicago: University of Chicago Press, 1958.
- . 'The Concentration Camps.' *Partisan Review*. 15:7, 1948, pp.743-763
- Aristotle, *The Politics*. tr. T.A. Sinclair, revised by R.J. Saunders, London: Penguin, 1981.
- Austin, J.L. 'Performative Utterances.' *Philosophical Papers*. ed. J.O. Urmson and G.J. Warnock, 3rd Edition, Oxford: Oxford University Press, 1979, pp.233-252.

- . *How to Do Things with Words*. ed. J.O. Urmson and M. Sbisà, Cambridge Ma.: Harvard University Press, 1962.
- Badiou, A. *Ethics: An Essay on the Understanding of Evil*. tr. P. Hallward, London: Verso, 2001.
- . *Manifesto for Philosophy*, ed. and tr. N. Madarasz, Albany: State University of New York Press, 1999.
- . 'Is there a theory of the subject in Georges Canguilhem?' *Economy and Society*. 27: 2 and 3, 1998, pp.225-233.
- Balibar, E. 'Subjection and Subjectivation' *Supposing the Subject*. ed. J. Copjec, London: Verso, 1994, pp.1-15.
- . 'Citizen Subject.' *Who Comes After the Subject*. ed. E. Cadava, P. Connor and J-L Nancy, New York: Routledge, 1991, pp.33-57.
- Barad, K. 'Getting Real: Technoscientific Practices and the Materialization of Reality.' *differences*. 10:2, 1998, pp.86-128.
- Barry, A., Osborne, T., and Rose, N. *Foucault and Political Reason: Liberalism, Neo-Liberalism and Rationalities of Government*. Chicago: University of Chicago Press, 1996.
- Bataille, G. *The Accursed Share*. tr. R. Hurley, New York: Zone, 1988-1991.
- . *Theory of Religion*, tr. R. Hurley, New York: Zone, 1989.
- Bates, D.W. *Enlightenment Aberrations: Error and Revolution in France*. Ithaca: Cornell University Press, 2002.
- Bauman, Z. *Modernity and the Holocaust*. Cambridge: Polity Press, 1989.
- Bell, V. 'On Speech, Race and Melancholia: An Interview with Judith Butler.' *Theory, Culture and Society*. 16:2, 1999, pp.163-174.
- Benhabib, S. 'The Democratic Moment and the Problem of Difference', in S. Benhabib ed. *Democracy and Difference: Contesting the Boundaries of the Political*. Princeton: Princeton University Press, 1996, pp.3-18.

- Benjamin, W. 'Critique of Violence.' *Reflections: Essays, Aphorisms, Autobiographical Writings*. ed. P. Demetz, tr. E. Jephcott, New York: Schocken Books, 1978, pp.277-300.
- . 'Theologico-Political Fragment.' *Reflections: Essays, Aphorisms, Autobiographical Writings*. ed. P. Demetz, tr. E. Jephcott, New York: Schocken Books, 1978, pp.312-313.
- . 'On Language as Such and on the Language of Man.' *Reflections: Essays, Aphorisms, Autobiographical Writings*. ed. P. Demetz, tr. E. Jephcott, New York: Schocken Books, 1978, pp.314-332.
- . 'Theses on the Philosophy of History.' *Illuminations*. ed. H. Arendt, tr. H. Zohn, London: Fontana, 1973, pp.255-266.
- Bennington, G. and Derrida, J. *Jacques Derrida*. tr. G. Bennington, Chicago: University of Chicago Press, 1993.
- Berlin, I. *Four Essays on Liberty*. Oxford: Oxford University Press, 1969.
- Bernauer, J. 'Beyond Life and Death: On Foucault's Post-Auschwitz Ethic.' *Michel Foucault: Philosopher*. ed. T. Armstrong, London: Harvester Wheatsheaf, 1992, pp.260-279.
- Bernstein, J. *Recovering Ethical Life: Jurgen Habermas and the Future of Critical Theory*, London: Routledge, 1995.
- Bhaba, H.K. 'Postcolonial Authority and Postmodern Guilt.' *Cultural Studies*. ed. L.Grossberg, C.Nelson and P. A. Triechler, New York: Routledge, 1992, pp.56-68.
- Biehl, J. 'Vita: Life in a Zone of Social Abandonment.' *Social Text*. 19:3, 2001, pp.131-149.
- Blanchot, M. *The Writing of the Disaster*. tr. A. Smock. New edition, Lincoln: University of Nebraska Press, 1995.
- . *The Unavowable Community*. tr. Pierre Joris, New York: Station Hill Press, 1988.
- Bourdieu, P. *Language and Symbolic Power*. ed. John B. Thompson, tr. G. Raymond and M. Adamson, Cambridge Ma.: University Press, 1991.

- Braidotti, R. *Nomadic Subjects: Embodiment and Sexual Difference in Contemporary Feminist Theory*. New York: Columbia University Press, 1994.
- Bredekamp, H. 'From Walter Benjamin to Carl Schmitt, via Thomas Hobbes.' *Critical Inquiry*. 25, Winter, 1999, pp.247-266.
- Brown, W. *States of Injury: Power and Freedom in Late Modernity*. Princeton: Princeton University Press, 1995.
- Burchell, G. Gordon, C. and Miller, P. eds. *The Foucault Effect: Studies in Governmentality*. London: Harvester Wheatsheaf, 1991.
- Burchell, G. 'Peculiar Interests: Civil Society and Governing "The system of Natural Liberties."' *The Foucault Effect: Studies in Governmentality*. ed. G. Burchell, C. Gordon and P. Miller, London: Harvester Wheatsheaf, 1991. pp.119-150.
- Butler, J. *Antigone's Claim: Kinship Between Life and Death*. New York: Columbia University Press, 2000.
- . *Subjects of Desire: Hegelian Reflections in Twentieth Century France*. New York: Columbia University Press, 1999.
- . 'Revisiting Bodies and their Pleasures.' *Theory, Culture and Society*. 16:2, 1999, pp.11-20.
- . 'Performativity's Social Magic.' *Bourdieu: A Critical Reader*. ed. R. Shusterman, Oxford: Blackwell Press, 1999, p.113-128.
- . 'Ruled Out: Vocabularies of the Censor.' *Censorship and Silencing: Practices of Cultural Regulation*. ed. R.C. Post, Los Angeles: Getty Research Institute, 1998, pp.247-259.
- . *The Psychic Life of Power: Theories in Subjection*. Stanford: Stanford University Press, 1997.
- . *Excitable Speech: A Politics of the Performative*. New York: Routledge, 1997.
- . *Bodies that Matter: On the Discursive Limits of "Sex"*. New York: Routledge, 1993.
- . 'Poststructuralism and Postmarxism.' *Diacritics*, 23:4, 1993, pp.3-11.

- . 'Endangered/Endangering: Schematic Racism and White Paranoia.' *Reading Rodney King/Reading Urban Uprising*. ed. R. Gooding Williams, New York: Routledge, 1993, pp.15-22.
- . 'The Body Politics of Julia Kristeva.' *Ethics, Politics and Difference in Julia Kristeva's Writings*. ed. K.Oliver, New York: Routledge, 1993.
- . *Gender Trouble: Feminism and the Subversion of Identity*. New York: Routledge, 1990.
- Butler, J. Laclau, E. and Žižek, S. *Contingency, Hegemony and Universality: Contemporary Dialogues on the Left*, London: Verso, 2000.
- Campbell, D. and Dillon, M. eds. *The Political Subject of Violence*. Manchester: Manchester University Press, 1993.
- Canguilhem, C. 'On Historie de la folie as an Event.' *Foucault and His Interlocutors*. ed. A. I. Davidson. Chicago: Chicago University Press, 1997.
- . *The Normal and the Pathological*, tr. C. R. Fawcett, New York: Zone Books, 1991.
- . *Ideology and Rationality in the History of the Life Sciences*. tr. A. Goldhammer, Cambridge, Ma.: MIT Press, 1988.
- Caputo, J.D. *The Prayers and Tears of Jacques Derrida: Religion without Religion*. Bloomington: Indiana University Press, 1997.
- . *Deconstruction in a Nutshell*, New York: Fordham University Press, 1997.
- . 'Dreaming of the Innumerable: Derrida, Drucilla Cornell and the Dance of Gender'. *Derrida and Feminism: Recasting the Question of Woman*. ed. E.K. Feder, M.C. Rawlinson and E. Zakin, New York: Routledge, 1997, pp.141-160.
- Caruth, C. *Unclaimed Experience: Trauma, Narrative and History*. Baltimore: Johns Hopkins University Press, 1996.
- Castronova, R. 'Political Necrophilia.' *boundary 2*. 27:2, 2000, pp.113-148.
- Cather, W. 'Paul's Case.' *Willa Cather's Collected Short Fiction 1892- 1912*. ed. M.R. Bennet, Lincoln: University of Nebraska, 1965.

- Caygill, H. *Walter Benjamin: The Colour of Experience*. London: Routledge, 1998.
- Chanter, T. *Time, Death and the Feminine: Levinas with Heidegger*. Stanford: Stanford University Press, 2001.
- Cheah, P. 'Mattering.' *Diacritics*. 26:1 1996, pp.108-139.
- Cheah, P. and Robbins, B. ed. *Cosmopolitics: Thinking and Feeling Beyond the Nation*. Minneapolis: University of Minnesota Press, 1998.
- Cheah, P. and Grosz, E. 'The Body of the Law: Notes Toward a Theory of Corporeal Justice.' *Thinking through the Body of the Law*. ed. P.Cheah, D.Fraser and J.Grbich, Sydney: Allen and Unwin, 1996, pp.3-25.
- Clack, B. *Sex and Death: A Reappraisal of Human Mortality*. Cambridge: Polity, 2002.
- Coady, C.A.J. *Testimony: A Philosophical Study*. Oxford: Clarendon Press, 1992.
- Coetzee, J.M. *The Life and Times of Michael K*. London: Vintage, 1998.
- Cohen, P.M. *Freedom's Moment: An Essay on the French Idea of Liberty from Rousseau to Foucault*. Chicago: University of Chicago Press, 1997.
- Colebrook, C. 'Ethics, Positivity and Gender: Foucault, Aristotle and the Care of the Self.' *Philosophy Today*. 42:1, 1998, pp.40-52.
- . 'The Future-to-Come: Derrida and the Ethics of Historicity.' *Philosophy Today*. 42:4, 1998, pp.347-360.
- Collwell, C. 'The Retreat of the Subject in the Late Foucault.' *Philosophy Today*. Spring 1994, p.56-69.
- Connolly, W.E. 'Beyond Good and Evil: The Ethical Sensibility of Michel Foucault.' *The Later Foucault: Politics and Philosophy*. ed. J. Moss, Sage: London, 1998, pp.108-128.
- . *The Ethos of Pluralization*. Minneapolis: MIT Press, 1995.

- . *Identity/Difference: Democratic Negotiations of Political Paradox*. Ithaca: Cornell University Press, 1991.
- Cooper, M. 'Transgenic Life: Controlling Mutation.' *Theory and Event*. 5:3, 2001.
- Cornell, D. *The Imaginary Domain: Abortion, Pornography, and Sexual Harassment*. New York: Routledge, 1995.
- . *The Philosophy of the Limit*. New York: Routledge, 1992.
- . *Beyond Accommodation: Ethical Feminism, Deconstruction and the Law*. New York: Routledge, 1991.
- Cover, R. 'Violence and the Word.' *Yale Law Review*. 95:1595, 1986, pp.1601-1629.
- Critchley, S. *Ethics, Politics, Subjectivity: Essays on Derrida, Levinas and Contemporary French Thought*. London: Verso, 1999.
- . *The Ethics of Deconstruction: Derrida and Levinas*. Oxford: Blackwell, 1992.
- Cruikshank, B. 'Revolutions Within: Self-Government and Self-Esteem.' *Foucault and Political Reason: Liberalism, Neo-Liberalism and Rationalities of Government*. ed. A. Barry, T. Osborne, N. Rose, University of Chicago Press: Chicago, 1996.
- Das, R. 'Sanctions, Ignorance and Morality', Unpublished Paper, presented at the Center for Applied Philosophy and Public Ethics Seminar, Australian National University, 2001.
- Dean, M. 'Liberal Government and Authoritarianism.' *Economy and Society*. 31:1, 2002, pp.37-61.
- . *Governmentality: Power and Rule in Modern Society*. London: Sage, 1999.
- . 'Normalising Democracy: Foucault and Habermas on Democracy, Liberalism and Law.' *Foucault Contra Habermas*. ed. S. Ashenden and D. Owen, London: Sage, 1999, pp.166-194.
- Dean, M. and Hindess, B. eds. *Governing Australia: Studies in Rationalities of Government*. Cambridge: Cambridge University Press, 1998.

- Debord, G. *The Society of the Spectacle*. tr. D. Nicholson-Smith, New York: Zone Books, 1994.
- DeCaroli, S.D. 'Visibility and History: Giorgio Agamben and the Exemplary.' *Philosophy Today*. 45:5, 2001, pp.9-17.
- Deladurantaye, L. 'Agamben's Potential.' *Diacritics*. 30:2, 2000, p.3-24.
- Deleuze, G. *What is Philosophy?* tr. H. Tomlinson and G. Burchell, London: Verso, 1994.
- . *Foucault*, tr. S. Hand, London: Athlone Press, 1988.
- . 'Active and Reactive.' *The New Nietzsche: Contemporary Styles of Interpretation*. ed. D.B. Allison, Cambridge, Ma.: MIT Press, 1985, pp.80-106.
- . *Nietzsche and Philosophy*, tr. H. Tomlinson, New York: Columbia University Press, 1983.
- Deleuze, G. and Guattari, F. *A Thousand Plateaus: Capitalism and Schizophrenia*, tr. B. Massumi, Minneapolis: University of Minnesota Press, 1987.
- Derrida, J. *On Cosmopolitanism and Forgiveness*. New York: Routledge, 2001.
- . *Adieu to Emmanuel Levinas*. tr. P-A Brault and M. Naas, Stanford: Stanford University Press, 1999.
- . *Politics of Friendship*. tr. G. Collins, London: Verso, 1997.
- . *Specters of Marx: The State of Debt, the Work of Mourning and the New International*. tr. P. Kamuf, New York: Routledge, 1994.
- . *Aporias*. tr. T. Dutoit, Stanford: Stanford University Press, 1993.
- . 'Before the Law.' *Acts of Literature*. ed. D. Attridge, New York: Routledge, 1992, pp.181-220.
- . 'Force of Law: The "Mystical Foundation of Authority"?' *Deconstruction and the Possibility of Justice*. ed. D.G. Carlson, D. Cornell and M. Rosenfeld, New York: Routledge, 1992, pp.3-67.

- . *Limited Inc.* tr. S. Weber, Evanston: Northwestern University Press, 1988.
- . *Dissemination*, tr. B. Johnson, London: Athlone Press, 1981.
- . *Writing and Difference*. tr. A. Bass, Chicago: University of Chicago Press, 1978.
- Derrida, J. and Dufourmantelle, A. *Of Hospitality*. tr. R. Bowlby, Stanford: Stanford University Press, 2000.
- Deutscher, P. *Yielding Gender: Feminism, Deconstruction and the History of Philosophy*, London: Routledge, 1997.
- Dews, P. *The Limits of Disenchantment: Essays on Contemporary European Philosophy*. London: Verso, 1995.
- Dumm, T. *Michel Foucault and the Politics of Freedom*. London: Sage, 1996.
- Düttman, A.G. 'The Violence of Destruction.' *Water Benjamin: Theoretical Questions*. ed. David. S. Ferris, Stanford: Stanford University Press, 1996.
- Dyzenhaus, D. ed. *Law as Politics: Carl Schmitt's Critique of Liberalism*. Durham: Duke University Press, 1998.
- . *Legality and Legitimacy: Carl Schmitt, Hans Kelsen and Hermann Heller in Weimar*. Oxford: Clarendon Press, 1997.
- Elden, S. 'The War of Races and the Constitution of the State: Foucault's *Il faut défendre la société* and the Politics of Calculation.' *boundary 2*. 29:1, 2002, pp.125-151.
- Eribon, D. *Michel Foucault*. tr. B. Wing, London: Faber and Faber, 1991.
- Ewald, F. 'Norms, Discipline and the Law.' *Representations*. 30, 1990, pp.138-161.
- Falzon, C. *Foucault and Social Dialogue: Beyond Fragmentation*. London: Routledge, 1998.
- Fanon, F. *Black Skin, White Masks*. tr. C.L. Markmann, New York: Grove Press, 1967.

- Fausto-Sterling, A. *Sexing the Body: Gender Politics and the Construction of Sexuality*. New York: Basic Books, 2000.
- Felman, S. *The Literary Speech Act: Don Juan with J.L. Austin or Seduction in Two Languages*. tr. C. Porter, Ithaca: Cornell University Press, 1983.
- Felman, S. and Laub, D. *Testimony: Crises of Witnessing in Literature, Psychoanalysis and History*. New York: Routledge, 1992.
- Fish, S. 'Force.' *Doing what comes Naturally: Change, Rhetoric and the Practice of Literary and Legal Studies*. Durham: Duke University, 1989, pp.503-524.
- Fitzpatrick, P. 'These mad abandon'd times.' *Economy and Society*. 30:2, 2001, pp.255-270.
- . 'Bare Sovereignty: *Homo Sacer* and the Insistence of the Law.' *Theory and Event*, 5:2, 2001.
- Foucault, M. 'Governmentality.' *Power: The Essential Works of Michel Foucault, 1954-1984, vol.3*. ed. J.D. Faubion, tr. R. Hurley et.al. New York: New Press, 2000, pp.201-222.
- . 'Omnes et Singulatum: Toward a Critique of Political Reason' *Power: The Essential Works of Michel Foucault, 1954-1984, vol.3*. ed. J.D. Faubion, tr. R. Hurley et.al. New York: New Press, 2000, pp.298-325.
- . 'The Subject and Power.' *Power: Essential Works of Foucault, vol. 3*, ed. J.D. Faubion, tr. R. Hurley et.al. New York: New Press, 2000, pp.326-388.
- . 'Confronting Governments: Human Rights.' *Power: The Essential Works of Michel Foucault, 1954-1984, vol.3*. ed. J.D. Faubion, tr. R. Hurley et.al. New York: New Press, 2000, pp.474-475.
- . 'Structuralism and Post-Structuralism.' *Aesthetics, Method and Epistemology: Essential Works of Michel Foucault, vol.2*, ed. J.D. Faubion, tr. R. Hurley et.al. London: Penguin Press, 1998, pp.433-458.
- . 'Life: Experience and Science.' *Aesthetics, Method and Epistemology: Essential Works of Michel Foucault, vol.2*, ed. J.D. Faubion, tr. R. Hurley et.al. London: Penguin Press, 1998, pp.465-478.

- . *Il faut défendre la société: cours au Collège de France, 1975-1976*. Paris: Gallimard/Seuil, 1997.
- . 'Society Must be Defended.' *Ethics: Subjectivity and Truth, The Essential Works of Michel Foucault, 1954-1984 vol.1*, ed. P. Rabinow, tr. R. Hurley, et.al. London: Penguin, 1997, pp.59-65.
- . 'Security, Territory and Population.' *Ethics: Subjectivity and Truth, The Essential Works of Michel Foucault, 1954-1984 vol.1*, ed. P. Rabinow, tr. R. Hurley, et.al. London: Penguin, 1997, pp.67-71.
- . 'The Birth of Biopolitics.' *Ethics: Subjectivity and Truth, The Essential Works of Michel Foucault, 1954-1984 vol.1*, ed. P. Rabinow, tr. R. Hurley, et.al. London: Penguin, 1997, pp.73-79.
- . 'The Sexual Triumph of the Social Will.' *Ethics: Subjectivity and Truth, The Essential Works of Michel Foucault, 1954-1984 vol.1*, ed. P. Rabinow, tr. R. Hurley, et.al. London: Penguin, 1997, pp.157-162.
- . 'The Ethics of the Concern for Self as a Practice of Freedom.' *Ethics: Subjectivity and Truth, The Essential Works of Michel Foucault, 1954-1984 vol.1*, ed. P. Rabinow, tr. R. Hurley, et.al. London: Penguin, 1997, pp.281-302.
- . 'Power Affects the Body.' *Foucault Live*. ed. S. Lotringer, New York: Semiotexte, 1996, pp.207-213.
- . 'Clarifications on the Question of Power.' *Foucault Live*. ed. S. Lotringer, New York: Semiotexte, 1996, pp.255-263.
- . 'About the Beginning of the Hermeneutics of the Self: Two Lectures at Dartmouth.' *Political Theory*. 21:2, May 1993, pp.198-227.
- . *The Care of The Self: The History of Sexuality, vol. 3*. tr. R. Hurley, London: Penguin Books, 1986.
- . *The Use of Pleasure: The History of Sexuality, vol. 2*. tr. R. Hurley, London: Penguin Books, 1985.
- . 'What is Enlightenment?' *The Foucault Reader: An Introduction to Foucault's Thought*. ed. P. Rabinow, London: Penguin, 1984, pp.32-50.

- . 'The Subject and Power.' H. Dreyfus and P. Rabinow, *Michel Foucault: Beyond Structuralism and Hermeneutics*. New York: Harvester Wheatsheaf, 1982, pp.208-226.
- . *The History of Sexuality, vol.1: An Introduction*. tr. R. Hurley, London: Penguin, 1981.
- . 'Omnes et Singulatum: Toward a Critique of Political Reason'. *Tanner Lectures on Human Values, vol. 2*. Cambridge: Cambridge University Press, 1981, pp.225-254.
- . 'Two Lectures.' *Power/Knowledge: Selected interviews and other writings 1972-1977*. ed. C. Gordon, New York: Pantheon Press, 1980, pp.109-133.
- . 'Introduction.' *Herculine Barbin: Being the Recently Discovered Memoires of a Nineteenth Century Hermaphrodite*. tr. R. McDougall, New York: Pantheon, 1980.
- . 'On Governmentality', *I&C* 6, 1979.
- . *Discipline and Punish: The Birth of the Prison*. tr. A. Sheridan, London: Penguin, 1977.
- . 'Nietzsche, Genealogy, History.' *Language, Counter-Memory, Practice: Selected Essays and Interviews by Michel Foucault*. ed. D. F. Bouchard, tr. D.F. Bouchard and S. Simon, Ithaca: Cornell University Press, 1977, pp.139-164.
- . *Histoire de la sexualité 1, La volonté de savoir*. Paris: Gallimard, 1976.
- . *Surveiller et punir: naissance de la prison*. Paris: Gallimard, 1975.
- Fraser, D. 'Law Before Auschwitz: Aryan and Jew in the Nazi Rechtsstaat.' *Thinking through the Body of the Law*. ed. P. Cheah, D. Fraser and J. Grbich. Sydney: Allen and Unwin, 1996, pp.63-79.
- Fraser, N. "'The Force of Law": Metaphysical or Political?' *Cardozo Law Review*. 13:4, 1991.
- . *Unruly Practices: Power, Discourse and Gender in Contemporary Social Theory*. Minneapolis: University of Minnesota Press, 1989.

- Frow, J. and Morris, M. 'Two Laws: Response to Elizabeth Povinelli.' *Intimacy*. ed. L. Berlant, Chicago: University of Chicago Press, 2000, pp.421-425.
- Fuss, D. *Essentially Speaking: Feminism, Nature and Difference*. New York: Routledge, 1989.
- Gailus, A. 'Lessons of the Cryptograph: Revelation and the Mechanical in Kafka's 'In the Penal Colony'.' *Modernism/Modernity*. 8:2, 2001, pp.295-302.
- Gatens, M. *Imaginary Bodies: Ethics, Power and Corporeality*. London: Routledge, 1996.
- Gil, J. *Metamorphoses of the Body*. tr. S. Meucke, Minneapolis: University of Minnesota Press, 1998.
- Girard, R. *The Scapegoat*. tr. Y. Freccero, Baltimore: John Hopkins University, 1986.
- . *Violence and the Sacred*. tr. P. Gregory, Baltimore: Johns Hopkins University, 1977.
- Gollin, E.S., Stahl, G., and Morgan, E. 'On the Uses of the Concept of Normality in Developmental Biology and Psychology.' *Advances in Child Development and Behavior*. 21, 1989, pp.49-71.
- Gordon, C. 'Governmental Rationality: An Introduction.' *The Foucault Effect: Studies in Governmentality*. ed. G. Burchell, C. Gordon and P. Miller, London: Harvester Wheatsheaf, 1991, pp.1-51.
- Gourgouris, S. 'The Concept of the Mythical (Schmitt with Sorel).' *Cardozo Law Review*. 21, 2000, pp.1487-1514.
- . 'Enlightenment and Paranomia.' *Violence, Identity and Self-Determination*. ed. H. De Vries and S. Weber, Stanford: Stanford University Press, 1997, pp.199-149.
- Gould, T. 'The Unhappy Performative.' *Performativity and Performance*. ed. A. Parker and E.Kosovsky Sedgwick, Routledge: New York, 1995, pp.19-44.
- Greco, M. 'Between Social and Vital Norms: Reading Canguilhem and 'Somatization'.' *Economy and Society*. 27: 2 and 3, 1998, pp.234-248.
- Green, L. 'Pornographies.' *The Journal of Political Philosophy*. 8:1, 2000, pp.27-52.

- . 'Pornographizing, Subordinating and Silencing.' *Censorship and Silencing: Practices of Cultural Regulation*. ed. R. C. Post, Los Angeles: Getty Research Institute for the History of Art and the Humanities, 1998, pp.285-311.
- Green v The Queen*. High Court of Australia. 7 November 1997.
- Grene, D. ed. and tr. *Sophocles 1*. Second edition, Chicago: University of Chicago Press, 1991.
- Griggers, G. *Becoming-Woman*. Minneapolis: University of Minnesota Press, 1997.
- Gross, O. 'The Normless and Exceptionless Exception: Carl Schmitt's Theory of Emergency Powers and the "Norm-Exception" Dichotomy.' *Cardozo Law Review*. 21, 2000, pp.1825-1868.
- Grosz, E. *Space, Time and Perversion: The Politics of Bodies*. Sydney: Allen and Unwin, 1995.
- . *Volatile Bodies: Toward a Corporeal Feminism*, Sydney: Allen and Unwin, 1994.
- . 'The Body of Signification.' *Abjection, Melancholia and Love: The Work of Julia Kristeva*. ed. John Fletcher and Andrew Benjamin, London: Routledge, 1990, pp.80-104.
- Gutting, G. *French Philosophy in the Twentieth Century*. Cambridge University Press: Cambridge, 2001.
- . *Michel Foucault's Archaeology of Scientific Reason*. Cambridge: Cambridge University Press, 1989.
- . 'Foucault's Philosophy of Experience.' *boundary 2*. 29:2, 2002, p.69-85.
- Habermas, J. *The Philosophical Discourses of Modernity: Twelve Lectures*. Cambridge, Ma.: MIT Press, 1987.
- Hacking, I. 'Making Up People' in *Reconstructing Individualism*. ed. T.C. Heller and C. Brooke-Rose, Stanford: Stanford University Press, 1986.
- Halperin, D. *Saint Foucault: Toward a Gay Hagiography*. Oxford: Oxford University Press, 1995.

- Han, B. *Foucault's Critical Project: Between the Transcendental and the Historical*, tr. E. Pile, Stanford: Stanford University Press, 2002.
- Hanlon, C. 'Psychoanalysis and the Post-Political: An Interview with Slavoj Žižek.' *New Literary History*. 32:1, 2001, p.1-21.
- Hanssen, B. 'On the Politics of Pure Means.' *Violence, Identity and Self-Determination*. ed. H. De Vries and S. Weber, Stanford: Stanford University Press, pp.236-252.
- Hardt, M. and Dumm, T. 'Sovereignty, Multitudes, Absolute Democracy: A Discussion between Michael Hardt and Thomas Dumm about Hardt and Negri's *Empire*.' *Theory and Event*. 4:3, 2000.
- Hardt, M. and Negri, A. *Labor of Dionysus: A Critique of the State-Form*. Minneapolis: University of Minnesota Press, 1994.
- Hatley, J. *Suffering Witness: The Quandary of Responsibility after the Irreparable*. Albany: State University of New York Press, 2000.
- Heidegger, M. 'The Essence of Truth.' *Pathmarks*. ed. W. McNeill, tr. J. Sallis, Cambridge: Cambridge University Press, 1998, pp.136-154.
- . 'Letter on "Humanism".' *Pathmarks*. ed. W. McNeill, tr. F. A. Capuzzi, Cambridge: Cambridge University Press, 1998, pp.239-276.
- . 'On the Question of Being.' *Pathmarks*. ed. W. McNeill, tr. W. McNeill, Cambridge: Cambridge University Press, 1998, pp.291-322.
- . *Being and Time*. tr. J. Stambaugh, Albany: State University of New York Press, 1996.
- Heller-Roazen, D. 'Editor's Introduction: To Read What Was Never Written.' G. Agamben, *Potentialities*, ed. and tr. D. Heller-Roazen, Stanford: Stanford University Press, 1999, pp.1-23.
- Hindess, B. 'Citizenship in the International Management of Populations.' *The American Behavioral Scientist*. 43:9, 2000, pp.1486-1497.
- . 'Politics and Liberation.' *The Later Foucault: Politics and Philosophy*. ed. J. Moss, London: Sage, 1998, pp.50-63.

- . 'Politics and Governmentality.' *Economy and Society*. 26:2, 1997, pp.257-272.
- . *Discourses of Power: From Hobbes to Foucault*. Oxford: Blackwell, 1996.
- Honig, B. *Democracy and the Foreigner*. Princeton: Princeton University Press, 2001.
- . *Political Theory and the Displacement of Politics*. Ithaca: Cornell University Press, 1993.
- Hornblum, A.N. *Acres of Skin: Human Experiments at Holmesburg Prison*. New York: Routledge, 1998.
- Howe, A. 'More Folk Provoke Their Own Demise (Homophobic Violence and Sexed Excuses – Rejoining the Provocation Law Debate, Courtesy of the Homosexual Advance Defence).' *Sydney Law Review*. 19, 1997, pp.336-365.
- Hull, G. "'Reduced to a Zero-Point": Benjamin's Critique of Kantian Historical Experience.' *Philosophical Forum*. 31:2, 2000, pp.163-186.
- Hunt, A. 'Governing the City: Liberalism and Early Modern Modes of Governance.' *Foucault and Political Reason: Liberalism, Neo-liberalism and Rationalities of Government*. ed. A. Barry, T. Osborne and N. Rose, Chicago: University of Chicago Press, 1996, pp.167-188.
- Irigaray, L. *je, tu, nous: Toward a Culture of Difference*. New York: Routledge, 1993.
- . *Speculum of the Other Woman*. tr. G. C. Gill, Ithaca: Cornell University Press, 1985.
- Isin, E.F. *Being Political: Genealogies of Citizenship*. Minneapolis: University of Minnesota Press, 2002.
- Iverson, D. *The Self at Liberty: Political Argument and the Arts of Government*. Ithaca: Cornell University Press, 1997.
- Jay, M. 'The Limits of the Limit Experience.' *Constellations*. 2:2, 1995, pp.155-174.
- Jenkins, F. 'Plurality, Dialogue and Response: Addressing Vulnerability.' *Contretemps*. 3, July, 2002, pp.85-97.

- . 'The Heeding of Differences: On Foreclosure and Openness in a Politics of the Performative.' *Constellations*. 8:3, 2001, pp.364-375.
- Kafka, F. 'In the Penal Colony.' *The Collected Short Stories of Franz Kafka*, ed. N.N Glatzer, tr. W. Muir and E. Muir, London: Penguin, 1988, pp.140-167.
- Kaufman-Osborn, T. 'Fashionable Subjects: On Judith Butler and the Causal Idioms of Postmodern Feminist Theory.' *Political Research Quarterly*. 50:3, 1997, pp.649-674.
- Keenan, T. *Fables of Responsibility: Aberrations and Predicaments in Ethics and Politics*. Stanford: Stanford University Press, 1997.
- Kerin, J. 'The Matter at Hand: Butler, Ontology and the Natural Sciences.' *Australian Feminist Studies*. 14:29, 1999, pp.91-104.
- Kirby, V. *Telling Flesh: The Substance of the Corporeal*. New York: Routledge, 1997.
- Kofman, S. *Smothered Words*. tr. M. Dobie, Evanston: Northwestern University Press, 1998.
- Kristeva, J. *Strangers to Ourselves*. tr. L. S. Roudiez, New York: Harvester Wheatsheaf, 1991.
- . *Powers of Horror: An Essay on Abjection*. tr. L. S. Roudiez, New York: Columbia University Press, 1982.
- Lacey, N. 'Responsibility and Modernity in Criminal Law.' *The Journal of Political Philosophy*. 9:3, 2001, pp.249-276.
- Laclau, E. 'Deconstruction, Pragmatism, Hegemony.' *Deconstruction and Pragmatism*. ed. C.Mouffe, London: Routledge, 1996, pp.47-68.
- Laclau, E. and Mouffe, C. *Hegemony and Socialist Strategy: Toward a Radical Democratic Politics*. London: Verso, 1985.
- Langton, R. 'Subordination, Silence and Pornography's Authority.' *Censorship and Silencing: Practices of Cultural Regulation*. ed. R.C. Post, Los Angeles: Getty Research Institute for the History of Art and the Humanities, 1998, pp.285-311.

- . 'Speech Acts and Unspeakable Acts.' *Philosophy and Public Affairs*. 22:4, 1993, pp.293-330.
- Larsen, N. 'Passing.' *An Intimation of Things Distant: The Collected Fiction of Nella Larsen*, ed. C. Larson, New York: Anchor Books, 1992.
- Lecourt, D. 'Georges Canguilhem on the Question of the Individual.' *Economy and Society*. 27: 2 and 3, 1998, pp.217-224.
- Lemke, T. 'The Birth of Bio-politics': Michel Foucault's Lecture at the College de France on Neo-liberal Governmentality.' *Economy and Society*. 30:2, 2001, pp.190-207.
- Levi, P. *The Drowned and the Saved*, tr. R. Rosenthal, London: Abacus, 1988.
- . *If This is a Man; The Truce*. tr. S. Woolf, London: Abacus, 1987.
- Levinas, E. *Otherwise than Being, or, Beyond Essence*. tr. A. Lingis, The Hague: Martinus Nijhoff, 1981.
- . *Totality and Infinity*, tr. A. Lingis, The Hague: Martinus Nijhoff, 1979.
- Limoges, C. 'Errare Humanum Est: Do Genetic Errors Have a Future?' *Are Genes Us?: The Social Implications of The New Genetics*. ed. C.F. Cranor, New Brunswick: Rutgers University Press, 1994.
- Lingis, A. *Deathbound Subjectivity*, Bloomington: Indiana University Press, 1989.
- . 'To Die With Others.' *Diacritics*. 30:3, 2000, pp.106-113.
- Lloyd, E.A. 'Normality and Variation: The Human Genome Project and the Ideal Human Type.' *Are Genes Us?: The Social Implications of The New Genetics*, ed. C. F. Cranor, New Brunswick: Rutgers University Press, 1994.
- Lloyd-Jones, H. ed. and tr. *Sophocles*, vol. 2, Loeb Library Series, Cambridge Ma.: Harvard University Press, 1994.
- Lyotard, J-F. *The Differend: Phrases in Dispute*, tr. G.van Den Abbeele, Minneapolis: University of Minnesota Press, 1988.

- Macherey, P. 'Foucault: Ethics and Subjectivity.' *In a Materialist Way: Selected Essays*. ed. W. Montag, tr. T. Stolze, London: Verso, 1998, pp.96-107.
- . 'From Canguilhem to Canguilhem by way of Foucault.' *In a Materialist Way: Selected Essays*. ed. W. Montag, tr. T. Stolze, London: Verso, 1998, pp.108-115.
- . 'Georges Canguilhem's Philosophy of Science: Epistemology and History of Science.' *In a Materialist Way: Selected Essays*. ed. W. Montag, tr. T. Stolze, London: Verso, 1998, pp.161-187.
- Mackinnon, C. *Only Words*. Cambridge Ma.: Harvard University Press, 1993.
- Maffesoli, M. 'The Ethic of Aesthetics.' *Theory, Culture and Society*. 8:1, 1991, pp.7-20.
- Malpas, J. 'Death and the Unity of Life.' *Death and Philosophy*. ed J. Malpas, and R. C Solomon, London: Routledge, 1998, pp.120-134.
- Marcuse, H. 'The Ideology of Death.' *The Meaning of Death*. ed. H. Feifel, New York: McGraw Hill, 1959.
- Marramao, G. 'The Exile of the Nomos: For a Critical Profile of Carl Schmitt.' *Cardozo Law Review*, 21, 2000, pp.1567-1587.
- Mason, G. *The Spectacle of Violence: Homophobia, Gender, and Knowledge*. New York: Routledge, 2002.
- Massumi, B. 'Everywhere you want to be: Introduction to Fear.' *The Politics of Everyday Fear*. ed. B. Massumi, Minneapolis: University of Minnesota Press, 1993.
- . *A User's Guide to Capitalism and Schizophrenia: Deviations from Deleuze and Guattari*. Cambridge: MIT Press, 1992.
- Matsuda, M.J., Delgado, R. Lawrence, C.R, Williams Crenshaw, K., eds. *Words That Wound: Critical Race Theory, Assaultive Speech and the First Amendment*. Boulder: Westview Press, 1993.
- McCall, T. 'Momentary Violence', *Water Benjamin: Theoretical Questions*. ed. D.S. Ferris, Stanford: Stanford University Press, 1996.

- McCormick, J.P. 'Derrida on Law; Or Poststructuralism Gets Serious.' *Political Theory*. 29:3, 2001, pp.395-423.
- . 'Schmittian Positions on Law and Politics?: CLS and Derrida.' *Cardozo Law Review*. 21, 2000, pp.1693-1722.
- McClure, K. 'Taking Liberties in Foucault's Triangle: Sovereignty, Discipline, Governmentality and the Subject of Rights.' Ed. A.Sarat and T. Kearns. *Identities, Politics, and Rights*. Ann Arbor: University of Michigan Press, 1995, pp.149-192.
- McNay, L. *Gender and Agency: Reconfiguring the Subject in Feminist and Social Theory*. Cambridge: Polity Press, 2000.
- . *Foucault: A Critical Introduction*. Cambridge: Polity Press, 1994.
- . 'Gender, Habitus and the Field: Pierre Bourdieu and the Limits of Reflexivity.' *Theory, Culture and Society*. 16:1,1999, pp.95-117.
- Meier, H. *The Lesson of Carl Schmitt: Four Chapters on the Distinction between Political Philosophy and Political Theology*, tr. M. Brainard, Chicago: University of Chicago Press, 1998.
- Meijer, I. C. and Prins, B. 'How Bodies Come to Matter: An Interview with Judith Butler.' *Signs*. 23:2, 1999, pp.275-286.
- Merleau-Ponty, M. *The Visible and the Invisible*. tr. A. Lingis, Evanston: Northwestern University Press, 1968.
- Mills, C. 'Contesting the Political: Foucault and Butler on Power and Resistance.' *The Journal of Political Philosophy*. Forthcoming.
- . 'The "Homosexual Advance Defence": The Law of Abandonment.' http://www.kcwh.unimelb.edu.au/full_length_papers/Catherine%20Mills.doc. Conference Proceedings, *Sexconf 2001*, 3rd Conference of the International Association for the Study of Sex, Culture and Society, University of Melbourne, October 2001.
- . 'Efficacy and Vulnerability: Judith Butler on Reiteration and Resistance.' *Australian Feminist Studies*. 15: 32, 2000, pp.265-279.

Mison, R. 'Homophobia in Manslaughter: The Homosexual Advance as Insufficient Provocation.' *California Law Review*. 80, 1992, pp.133-178.

Mouffe, C. *The Democratic Paradox*. London: Verso, 2000.

———. ed. *The Challenge of Carl Schmitt*. London: Verso, 1999.

———. ed. *Deconstruction and Pragmatism*. London: Routledge, 1996.

———. *The Return of the Political*. London: Verso, 1993.

Nancy, J-L. *The Experience of Freedom*. tr. B. McDonald, Stanford: Stanford University Press, 1993.

Nancy, J-L. 'Of Being Singular Plural', in *Being Singular Plural*, tr. R.D. Richardson and A.E. O'Byrne, Stanford: Stanford University Press, 2000, pp.101-143.

———. 'War, Right, Sovereignty – Technē.' *Being Singular Plural*. tr. R.D. Richardson and A.E. O'Byrne, Stanford: Stanford University Press, 2000, pp.1-99.

———. 'Abandoned Being.' *The Birth to Presence*. tr. B. Holmes, et.al. Stanford: Stanford University Press, 1993, pp.36-47.

———. 'Corpus.' *The Birth to Presence*. tr. B. Holmes et.al. Stanford: Stanford University Press, 1993, pp.189-207.

———. *The Inoperative Community*. ed. P. Connor, tr. P. Connor et.al. Minneapolis: University of Minnesota Press, 1991.

———. 'Of Being-in-Common.' *Community at Loose Ends*. ed. Miami Theory Collective, Minneapolis: University of Minnesota Press, 1991, pp.1-12.

———. 'On the threshold.' *Paragraph*. 16:2, pp.111-121.

Negri, A. *Il Potere Costituente: Saggio sulle alternative del moderno*, Milan: SugarCo, 1992.

Negri, A. and Hardt, M. *Empire*, Cambridge Ma.: Harvard University Press, 2000.

- Nietzsche, F. *On the Genealogy of Morals*, ed. W. Kaufman, tr. W. Kaufman and R.J. Hollingdale, New York: Vintage, 1989.
- . *The Will to Power*. ed. W. Kaufman, tr. W. Kaufman and R.J. Hollingdale, New York: Vintage, 1967.
- . *Thus Spoke Zarathustra*. tr. R.J. Hollingdale, London: Penguin, 1961.
- Norris, A. 'Giorgio Agamben and the Politics of the Living Dead.' *Diacritics*. 30:4, 2002, pp.38-58.
- Oliver, K. *Witnessing: Beyond Recognition*. Minneapolis: Minnesota University Press, 2001.
- . *Reading Kristeva: Unravelling the Double-Bind*. Bloomington: Indiana University Press, 1993.
- Osborne, T. 'Medicine and Ideology.' *Economy and Society*. 27: 2 and 3, 1998, pp.259-273.
- . 'Security and Vitality: Drains, Liberalism and Power in the Nineteenth Century.' *Foucault and Political Reason: Liberalism, Neo-liberalism and Rationalities of Government*. ed. A. Barry, T. Osborne and N. Rose, University of Chicago Press: Chicago, 1996, pp.99-122.
- Osborne, T. and Rose, N. eds. *Economy and Society: Special Issue on Canguilhem*. 27:2 and 3, 1998.
- Pasquino, P. 'Political Theory of War and Peace: Foucault and the History of Modern Political Theory.' *Economy and Society*. 22:1, 1993, pp.77-88.
- Patterson, O. *Slavery and Social Death: A Comparative Study*. Cambridge Ma.: Harvard University Press, 1982.
- Patton, P. *Deleuze and the Political*. London: Routledge, 2000.
- . 'Foucault's Subject of Power.' *Political Theory Newsletter*. 6, 1994, pp.60-71.
- . 'Politics and the Concept of Power in Hobbes and Nietzsche.' *Nietzsche, Feminism and Political Theory*. ed. P. Patton, Sydney: Allen and Unwin, 1993, pp.144-16.

- . 'Taylor and Foucault on Power and Freedom.' *Political Studies*. 37, 1989, pp.260-276.
- Patton, P. and Smith, T. eds. *Jacques Derrida: Deconstruction Engaged: The Sydney Seminars*. Sydney: Power Publications, 2001.
- Pavassant, P.A. and Dean, J. 'Laws and Societies.' *Constellations*. 8:3, 2001, pp.376-389.
- Povinelli, E. 'The State of Shame: Australian Multiculturalism and the Crisis of Indigenous Citizenship.' *Intimacy*. ed L. Berlant, Chicago: University of Chicago Press, 2000, pp.253-288.
- . 'The Cunning of Recognition: A Reply to John Frow and Meaghan Morris.' *Intimacy*. ed L. Berlant, Chicago: University of Chicago Press, 2000, pp.426-432.
- Rabinow, P. *French DNA: Trouble in Purgatory*. Chicago: University of Chicago Press, 1999.
- . 'French Enlightenment: Truth and Life.' *Economy and Society*. 27:2-3, 1998, pp.193-201.
- . 'Artificiality and Enlightenment: From Sociobiology to Biosociology.' *Essays on the Anthropology of Reason*. Princeton: Princeton University Press, 1996, pp.91-111.
- . *French Modern: Norms and Forms of the Social Environment*. Cambridge: Cambridge University Press, 1989.
- Rajchman, J. *The Deleuze Connections*. Cambridge, Ma.: MIT Press, 2000.
- . *Truth and Eros: Foucault, Lacan and the Question of Ethics*. New York: Routledge, 1991.
- Rancière, J. 'Ten Theses on Politics.' *Theory and Event*. 5:3, 2001.
- . *Disagreement: Politics and Philosophy*. tr. J. Rose, Minneapolis: University of Minnesota Press, 1999.
- . *On the Shores of Politics*, tr. L. Heron, New York: Verso, 1995.

- Rand, R. ed. *Futures of Jacques Derrida*. Stanford: Stanford University Press, 2001.
- Rasch, W. 'Conflict as Vocation: Carl Schmitt and the Possibility of Politics.' *Theory, Culture and Society*. 17:6, 2000, pp.1-32.
- Reineke, M.J. *Sacrificed Lives: Kristeva on Women and Violence*. Bloomington: Indiana University Press, 1997.
- Rifkin, J. 'Politics in the Age of Biology.' *The Guardian Weekly*. 165:6, August 2-8 2001, p.11
- Riley, D. *'Am I That Name?': Feminism and the Category of 'Women' in History*. London: MacMillan, 1988.
- Rochlitz, R. 'The Aesthetics of Existence: Post-conventional Morality and the Theory of Power in Michel Foucault.' *Michel Foucault: Philosopher*. ed. and tr. T. Armstrong, 1992, New York: Harvester Wheatsheaf, pp.248-258.
- Rose, N. 'Politics of Life Itself.' *Theory, Culture and Society*. 18:6, 2001, pp.1-30.
- . *Powers of Freedom: Reframing Political Thought*. Cambridge: Cambridge University Press, 1999.
- R v. Green*. New South Wales Court of Criminal Appeal. 18 May 1999.
- Salecl, R. *(Per)versions of Love and Hate*. London: Verso, 1998.
- Sarat, A. and Kearns, T.R. 'Making Peace with Violence: Robert Cover on Law and Legal Theory.' *Law's Violence*. ed. A.Sarat and T.R. Kearns, Ann Arbor: University of Michigan Press, 1992, pp.211-250.
- . 'A Journey Through Forgetting: Toward a Jurisprudence of Violence.' *The Fate of Law*. ed. A. Sarat and T.R. Kearns, Ann Arbor: University of Michigan Press, 1991, pp.209-273.
- Sassen, S. *Losing Control? Sovereignty in the Age of Globalization*. New York: Columbia University Press, 1996.
- Scarry, E. *On Beauty and Being Just*. Princeton: Princeton University Press, 1999.

- . *The Body in Pain: The Making and Unmaking of the World*. Oxford: Oxford University Press, 1985.
- Scheuerman, W.E. *Between the Norm and the Exception: The Frankfurt School and the Rule of Law*. Cambridge, Ma.: MIT Press: 1994.
- Schmitt, C. *The Concept of the Political*, tr. G. Schwab, Chicago: University of Chicago Press, 1996.
- . *Political Theology: Four Chapters on the Concept of Sovereignty*, tr. G. Schwab, Cambridge, Ma.: MIT Press, 1985.
- . *The Crisis of Parliamentary Democracy*. tr. E. Kennedy, Cambridge, Ma.: MIT Press, 1985.
- Schrift, A.D. *Nietzsche's French Legacy: A Genealogy of Poststructuralism*. New York: Routledge, 1995.
- Schütz, A. 'Thinking the Law with and against Luhmann, Legendre and Agamben.' *Law and Critique*. 11:2, 2000, pp.107-136.
- Seckinelgin, H. and Shinoda, H. ed. *Ethics and International Relations*. Basingstoke: Palgrave, 2001.
- Sedgwick, E. *Tendencies*. Durham: Duke University Press, 1993.
- Singer, P. *Writings on an Ethical Life*. London: Fourth Estate, 2000.
- . *Rethinking Life and Death: The Collapse of our Traditional Ethics*. Melbourne: Text Publishing, 1994.
- Smart, S. 'Foucault, Levinas and the Subject of Responsibility.' *The Later Foucault: Politics and Philosophy*. ed. J. Moss, London: Sage, 1998, pp.78-92.
- Solomon, R.C. 'Death Fetishism, Morbid Solipsism.' *Death and Philosophy*. ed. J.Malpas and R. C. Solomon, New York: Routledge, 1998, pp.152-176.
- Spivak, G. 'Schmitt and Poststructuralism: A Response.' *Cardozo Law Review*. 21, 2000, pp.1723-1737.

———. *Outside in the Teaching Machine*. London: Routledge, 1993.

Statham, B. 'The Homosexual Advance Defence: "Yeah, I killed him, but he did worse to me" Green v R.' *University of Queensland Law Review*. 20:2,1999, pp. 301-11.

Stoler, A.L. *Race and the Education of Desire: Foucault's History of Sexuality and the Colonial Order of Things*. Durham: Duke University Press, 1999.

Strauss, J. 'After Death.' *Diacritics*. 30:3, 2000, pp.90-104.

Thacker, E. 'The Thickness of Tissue Engineering: Biopolitics, Biotech and the Regenerative Body.' *Theory and Event*. 3:3, 1999.

Tully, J. 'The Agonic Freedom of the Citizen.' *Economy and Society*. 28:2, 1999, pp.161-182.

———. *Strange Multiplicity: Constitutionalism in an Age of Diversity*. Cambridge: Cambridge University Press, 1995.

Turner, V. *The Ritual Process: Structure and Anti-structure*. Ithaca: Cornell Publishing, 1977.

Ungar, S. *Scandal and Aftereffect: Blanchot and France since 1930*. Minneapolis: Minnesota University Press, 1995.

Van Gennep, A. *The Rites of Passage*. tr. M. B. Vizeden and G. L. Caffee, Chicago: University of Chicago Press, 1960.

Wall, C.T. *Radical Passivity: Levinas, Blanchot and Agamben*. Albany: State University of New York Press, 1999.

Warren, M. *Nietzsche and Political Thought*. Cambridge, Ma.: MIT Press, 1988.

Weber, S. 'Taking Exception to Decision: Walter Benjamin and Carl Schmitt.' *Diacritics*. 22:3-4, 1992, pp.5-18.

Webster, F. 'The Politics of Sex and Gender: Benhabib and Butler Debate Subjectivity.' *Hypatia*. 15.1, 2000, pp.1-22.

- Weiss, G. *Body Images: Embodiment as Intercorporeality*. New York: Routledge, 1999.
- White, S.K. *Sustaining Affirmation: The Strengths of Weak Ontology in Political Theory*. Princeton: Princeton University Press, 2000.
- Whitford, M. *Luce Irigaray: Philosophy in the Feminine*. London: Routledge, 1991.
- Wilson, E.A. *Neural Geographies: Feminism and the Microstructure of Cognition*. New York: Routledge, 1998.
- Wohlfarth, I. 'On Some Jewish Motifs in Benjamin.' *The Problems of Modernity: Adorno and Benjamin*. ed. Andrew Benjamin, London: Routledge, 1989.
- Wolin, R. *Walter Benjamin: An Aesthetics of Redemption*. New York: Columbia University Press, 1982.
- Wyshogrod, E. *Spirit in Ashes: Hegel, Heidegger, and Man-Made Mass Death*. New Haven: Yale University Press, 1985.
- Young, I.M. *Justice and the Politics of Difference*. Princeton: Princeton University Press, 1990.
- Young, J. 'Death and Authenticity.' *Death and Philosophy*. ed. J. Malpas and R.C. Solomon, London: Routledge, 1998, pp.112-134.
- Zartaloudis, T. 'Without Negative Origins and Absolute Ends: A Jurisprudence of the Singular.' *Law and Critique*. 13:2, 2002, pp.197-230.
- Ziarek, E. *The Ethics of Dissensus: Postmodernity, Feminism and the Politics of Radical Democracy*. Stanford: Stanford University Press, 2001.
- . 'From Euthanasia to the Other of Reason: Performativity and the Deconstruction of Sexual Difference.' *Derrida and Feminism: Recasting the Question of Woman*. ed. E. K. Feder, M. C. Rawlinson and E. Zakin, Routledge: New York, 1997, pp.115-140.
- Žižek, S. 'Class Struggle or Postmodernism? Yes Please!' *Contingency, Hegemony and Universality: Contemporary Dialogues on the Left*. J. Butler, E. Laclau, and S. Žižek. London: Verso, 2000, pp.90-135.
- . *The Ticklish Subject: The Absent Center of Political Ontology*. London: Verso, 1999.

———. 'Carl Schmitt in the Age of Post-Politics.' *The Challenge of Carl Schmitt*. ed.C. Mouffe, New York: Verso, 1999, pp.18-37.

———. *The Abyss Of Freedom*. Ann Arbor: University of Michigan Press, 1997.