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Outlawry and the Experience of the (Im)possible: Deconstructing Biopolitics

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OUTLAWRY AND THE EXPERIENCE OF THE (IM)POSSIBLE:
DECONSTRUCTING BIOPOLITICS

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by

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Graduate Program in Theory and Criticism

A thesis submitted in partial fulfillment
of the requirements for the degree of
Doctor of Philosophy

The School of Graduate and Postdoctoral Studies
The University of Western Ontario
London, Ontario, Canada

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THE UNIVERSITY OF WESTERN ONTARIO
School of Graduate and Postdoctoral Studies

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Mary Jennifer <u>Bunch</u>

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**Outlawry and the Experience of the (Im)possible:
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Abstract

Outlawry is a legal penalty that banishes wrongdoers from the community; it refers to a refusal to obey the law and a withdrawal of legal rights. Although outlawry is obsolete in western criminal law, Giorgio Agamben links it to modern biopolitics. As outlawry is appropriated to preserve the law, and as the law takes life as its object, the subject of politics disappears. Yet biopolitics also occurs alongside a threat to sovereignty posed by outlawry, and a shift away from the subject as a site of emancipatory politics, toward a politics of difference. Taking a post-structural approach, this project examines outlawry as a deconstructive concept. Outlawry exposes the law's inability to be at one with itself, its undecidability, and its dependence on fiction and force to come into being and to maintain itself. Staging outlawry in the terms of Carl Schmitt, Walter Benjamin, and Jacques Derrida, the first chapter develops outlawry as deconstructive concept with an undecidable relationship to justice. Chapter two looks to Judith Butler's performative subject and Louis Althusser's theory of subject interpellation to re-think the relations between subject and law in light of outlawry. Chapter three examines the overlap between sovereignty, outlawry and the beast (*la bête*) discussed by Agamben and Derrida, and considers political concepts that might deter the conserving power of outlawry in favor of its deconstructive force. Finally, I turn to Levinasian ethics and Deleuze and Guattari's concept of becoming-minoritarian to sketch a politics of outlawry that revises the law according to an ethical responsibility to the Other, the political agency of those who are excluded from the law, and their demand that structures of power be altered. Outlawry need not result in sheer abjection; for both the subject, and the anarchic *demo*s, it can be a source of political vitality and social transformation. Yet as the atrocities of modernity bear witness, from the Shoah to Guantanamo Bay, outlawry can lead to 'the worst.' Outlawry marks the fault line between justice and injustice; if we are to achieve an ethical future, we must remain politically vigilant, self-critical and open to alterity.

Keywords

Outlawry, law, deconstruction, performativity, biopolitics, identity politics, democracy, totalitarianism, multiplicity, becoming animal, becoming minoritarian, Derrida, Agamben, Benjamin, Schmitt, Butler, Althusser, Levinas, Deleuze, Guattari

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List of Abbreviations

BS   Jacques Derrida, *The Beast and the Sovereign*, trans. Geoffrey Bennington (Chicago: U of Chicago P, 2009).

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

CV   Walter Benjamin. "Critique of Violence." *Reflections: Essays, Aphorisms, Autobiographical Writings*, ed. Peter Demetz (New York: Schocken, 1986)

DF   Emmanuel Levinas. *Difficult Freedom: Essays on Judaism*, trans. Seán Hand (London: Althone, 1990)

FL   Jacques Derrida. "Force of Law: The Mystical Foundation of Authority." *Acts of Religion*, ed. Gil Anidjar (New York: Routledge, 2002)

GT   Judith Butler. *Gender Trouble: Feminism and the Subversion of Identity* (London: Routledge, 1990)

HoS   Michel Foucault. *History of Sexuality, Volume I: An Introduction*, trans. Robert Hurley (New York: Vintage Books, 1978)

HS   Giorgio Agamben. *Homo Sacer: Sovereign Power and Bare Life*, trans. Daniel Heller-Roazen (Stanford: Stanford UP, 1995)

IISA   Louis Althusser. "Ideology and the Ideological State Apparatus." *Lenin and Philosophy*, trans. Ben Brewster (London: New Left Books, 1971)

LBLS Jacques Derrida "La Bête et le Souverain." *La Démocratie à Venir*, ed. Marie-Louise Mallet (Paris: Galilée, 2004)

LI   Jacques Derrida. *Limited Inc.*, trans. Samuel Weber and Jeffrey Mehlman (Evanston: Northwestern UP, 1972)

OG   Jacques Derrida. *Of Grammatology*, trans. Gayatri Chakravorty Spivak. (Baltimore: Johns Hopkins UP, 1997)

OGD   Walter Benjamin. *Origins of German Tragic Drama*, trans. John Osborne. (London: Verso, 1998)

PLP   Judith Butler. *Psychic Life of Power: Theories of Subjection* (Stanford: Stanford UP, 1997)

PT   Carl Schmitt. Political *Theology: Four Chapters on the Concept of Sovereignty*, trans. George Schwabb (Cambridge and London: MIT, 1985)

R   Jacques Derrida, *Rogues: Two Essays on Reason*, trans. Pascale-Anne Brault and Michael Naas (Stanford: Stanford UP, 2005)

SE   Giorgio Agamben. *State of Exception*, trans. Kevin Attell (Chicago: University of Chicago Press, 2005).

TI   Emmanuel Levinas, *Totality and Infinity*, trans. Alphonso Lingus (Pittsburgh: Duquesne UP, 1969)

TP   Gilles Deleuze and Félix Guattari. *Thousand Plateaus*, trans. Brian Massumi. (Minneapolis: Minnesota UP, 1987)

TPH   Walter Benjamin. "Theses on the Philosophy of History." *Illuminations: Essays and Reflections*, trans. Harry Zohn (New York: Schocken, 1968)

Introduction

Outlawry has long disappeared from the codes of criminal and common law in the western world. Yet outlaws have a lasting popular currency – we either demonize and fear them as threats to our security and to our 'way of life,' or we idealize them as heroes. Walter Benjamin noted that even when their deeds are heinous the general public tends to side with outlaws in sympathy against the law (CV 281), which tells us as much about our relation to the law as it does about our view of outlaws. Indeed, Marxist historian Eric Hobsbawm, well known for his studies of *Primitive Rebels* (1959) and *Bandits* (1969), viewed the popular idealization of outlawry as a mode of feudal social protest and a precursor to revolution. Yet while outlawry can be linked to revolutionary tendencies and social unrest, it also has affiliations with more politically conservative trends, even among liberal democracies: for instance, today we hear much about the emergence of 'rogue states' that disregard the rule of law in order to preserve existing orders, and government actions that render certain subjects 'outside' of the law by denying legal protections and rights to some categories of people in the name of national security. Outlaws might be romanticized, revered, or reviled: the difference is sometimes merely a matter of ideological or historical perspective, as in the distinction between a freedom fighter and a terrorist, or a successful revolution and a failed one.

However, it is not the relative ethics of outlawry that I am interested in here, but something that penetrates more deeply into the ontologies of law, sovereignty, and the subject, in light of the philosophical ambiguities of outlawry, and its current role in the political sphere. Outlawry, as it is commonly understood, is a refusal to obey or recognize the law, and the withdrawal of legal rights and protections; it is a legal mechanism deployed to enforce subjection to hegemonic rule, and it is a form of protest of that rule. It literally enforces the law by withdrawing the law; it ensures the law's presence by proclaiming its absence.

Outlawry was one of the harshest, and widely applied legal penalties in archaic and medieval Europe.[1] It operated as a kind of social and civic death through banishment from the community. The sentence took the form of a performative proclamation – *caput*

gerat lupinum ("may he bear a wolf's head") in English Common Law, or *wargus esto* ("become a wolf") in the Frankish version – that stripped the lawbreaker of human status and deprived the person of legal rights.[2] An outlaw was distinct from an ordinary criminal. The latter stayed within the community and paid retribution for the transgression, whereas the former was expelled from the community on either a permanent or temporary basis. The outlaw literally became a wolf in the eyes of the law. Not only was it prohibited to aid or shelter outlaws, anyone could harm them without penalty. Indeed, outlawry was a walking death sentence: community members were duty bound to slay such persons, as Pollock and Maitland write in their 1885 *History of English Law Before the Time of Edward I:* "To pursue the outlaw and knock him on the head as though he were a wild beast is the right and duty of every law-abiding man" (476). As state power in European societies increased, and as the weapons and infrastructure for law enforcement became more sophisticated, a sentence of outlawry became less a punishment, and more a process levied against accused persons who refused to respect the law's authority over them by breaking bail or fleeing from justice (476). In other words, outlawry transformed from its role as a substantive force of law (in a law that lacked enforcement), to a supplement of law enforcement, and from there it gradually dwindled from use in criminal law in western nations.

Yet while outlawry may be ancient, its logic has continued relevance in modern political theory, albeit in ways that are particular to our era and its dominant political forms, from the revolutionary impulse to the totalitarian one and from democracy to biopolitics. The existence of a space, or force, outside of the law presents dilemmas and opportunities for re-thinking western political concepts in light of our epistemological and historical context: in the case of this study, a specifically Euro-North American one, but one that is also inescapably global. In particular, a focus on outlawry as a deconstructive force opens new questions with respect to biopolitics, which is generally treated as a de-humanizing politicization of life. Attention to the ambiguities of outlawry, which suggests both a vulnerability and a threat to the law, allows us to consider biopolitics in new ways, disrupting the very binary between political life and biological life on which biopolitics is based. Moreover, a consideration of the politicization of life outside of the

law informs new political concepts, and new conceptualizations of older concepts such as revolution or democracy.

A Modern History of The Outside of the Law

While philosophers such as Hobbes, Locke and Rousseau do not address the concept of outlawry per se, such concepts as the state of nature, the right to revolution, the social contract, sovereignty and democracy that emerged as part of Enlightenment political philosophy have implications with respect to the relationship between the law and its outside. The revolutionary tradition derives its transformative political force from the power to destroy the law and to found new laws; these powers cannot be drawn from within the limits of the law, but only from what is outside of it. Some of the greatest democracies and struggles for justice of modernity are founded in this power to destroy the law, and found a new order. Illegitimate force is a measure through which communities that lack legal status or political power can resist injustice, since legal routes tend to be denied to them. I might cite the French and American revolutions, the slave revolts of Haiti, the African National Congress…the list of extralegal forces establishing new governments on the basis of the political concepts of the Enlightenment (i.e. human rights, liberty, equality) is long. John Locke makes explicit the right of subjects to revolt against an unjust sovereign in *Two Treatises of Government*. He writes that:

> whenever the Legislators endeavour to take away, and destroy the Property of the People, or to reduce them to Slavery under Arbitrary Power, they put themselves into a state of War with the People, who are thereupon absolved from any farther Obedience, and are left to the common Refuge, which God hath provided for all Men, against Force and Violence. (S. 222)

If the regime is unjust, the people have a right to revolution, in which they not only act outside of the law, but by their actions they may dissolve the law so that they can establish a new, and more just regime. Together with Rousseau's social contract theory, ideas such as Locke's informed both the American and French revolutions, setting the

basis for the rights-based liberal democracies that today prevail in the West. The *American Declaration of Independence* (1776) as well as France's revolutionary constitution, the *Declaration on the Rights of Man* (1789), form the theoretical basis for contemporary human rights instruments. These documents assert principles of popular sovereignty, the unalienable rights of man, and the right to revolution.

What is interesting about these instruments with respect to the outside of the law is that they express a legal confirmation of rights that extend beyond the law. Article 3 of the French *Declaration* stipulates that equality is a *natural* right: "All men are equal by nature and before the law." Equality is a fact that is guaranteed not by law, but by something that exceeds the law: men are *born* equal. Should the law fail to reflect this fact of nature, the people have a right to overthrow it: "Resistance to oppression is the consequence of the other rights of man" (Article 33). The *Declaration of Independence* expresses this right to revolution as follows: The people, "endowed by their Creator with certain unalienable Rights," can overthrow a government that fails to uphold these rights: "That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness." Sovereignty, which "resides in the people" (Article 25 of the *Declaration on the Rights of Man*), exceeds the law and grounds the right to revolution.

The extralegal character of the natural right of the people's sovereignty is based on a view of the state of nature – which in this perspective is loosely analogous to the outside of the law – in which man persists in a state of animal-like natural goodness. In his *Discourse on Inequality* (1754) Rousseau writes that:

> The first man who, having enclosed a piece of ground, bethought himself of saying This is mine, and found people simple enough to believe him, was the real founder of civil society. From how many crimes, wars and murders, from how many horrors and misfortunes might not any one have saved mankind, by pulling up the stakes, or filling up the ditch, and crying to his fellows, 'Beware of listening to this impostor;

you are undone if you once forget that the fruits of the earth belong to us all, and the earth itself to nobody.' (N.pag.)

For Rousseau, where the law is artificial, and creates inequality, greed and other such problems, the outside of the law, while not perfectly idyllic, is in a certain sense pure – it is prior to such concepts as wickedness, justice, and morality.

Looking for a way to bring the simple equality of the state of nature back into politics without falling into a crisis of absolute lawlessness, Rousseau determines that subjects are only free when all members of a sovereign nation submit equally to law (2). This is possible only in democracy, which, as he elaborates in the *Social Contract*, is a political form in which all citizens share sovereignty. Indeed, he determines that forms of sovereignty that place the ruler above the law can lead to grave injustice. Rousseau is thus very clear that democracies are not lawless regimes, but ones in which laws are just because they apply equally to all men. Rousseau himself distrusted the lasting integrity of revolutionary factions, and doubted the stability of newly founded governments. Yet, his ideas did inspire revolutions, for the sovereignty of the people depends, and least in the founding moment, on the extralegal power of the people to make law. Indeed, it is this archic power that grants sovereignty to the people; the government merely implements and enforces the people's will. In such a democratic republic people are rendered free by their very subjection to law, since the law is of their own making.

The right to revolution is implicit even in Hobbes, a monarchist and proponent of absolute sovereignty, but Hobbes' view of the state of nature, and of the social contract, vastly differed from Rousseau's (indeed, Rousseau was in part responding to Hobbes, whose viewpoint he disapproved of). The view of the outside of the law that is implicit in Hobbes' writing is quite cynical in comparison to Rousseau's idealized state of nature. The premise of the *Leviathan* is that humans live in a natural state of brutal lawlessness, a "war of all against all" in which life is "poor, solitary, brutish and short" (86). We transcend this natural state by entering a social contract in which natural rights are ceded to a sovereign authority that protects and governs us. Hobbes' social contract theory is not a revolutionary theory – the social body must accept the sovereign's authority, which

is indivisible and absolute, even if power is to a certain extent abused. Yet the finitude of sovereignty might still be wrought through the evil of civil war, with its haunting traces of the state of nature, to which humans might return should the sovereign fail to live up to his side of the contract. Hobbes writes:

> The obligation of subjects to the sovereign is understood to last as long, and no longer, than the power lasteth by which he is able to protect them. For the right men have by nature to protect themselves, when none else can protect them, can by no covenant be relinquished…The end of obedience is protection; which, wheresoever a man seeth it, either in his own or in another's sword, nature applieth his obedience to it, and his endeavor to maintain it. And though sovereignty, in the intention of them that make it, be immortal; yet is it in its own nature, not only subject to violent death by foreign war, but also through the ignorance and passions of men it hath in it, from the very institution, many seeds of a natural mortality, by intenstine discord. (92)

The contract between the sovereign and the subjects in the *Leviathan* involves the exchange of protection by law for submission to the law. While Hobbes' social contract theory is about the formation of a political body under the umbrella of law, it is implicit that if the contract is broken, a resort to illegitimate violence becomes the right of the other party. If the sovereign fails in the obligation to protect subjects, then it follows that the subjects are no longer bound to recognize the law, and might overthrow the regime. Likewise, it is implicit that if a subject does not obey the law, he or she forfeits the rights and protections that the contract guarantees. Such are the conditions under which a community member might be outlawed. Indeed, although Hobbes does not speculate about the relationship between social banishment and the social contract, when he published *Leviathan* in 1651, outlawry was still employed to punish lawbreakers, especially those who failed to appear for trial.

For Hobbes, rebellion against the sovereign is expected only in severe cases of abuse of power, or loss of might on the part of the sovereign (i.e. a failure to protect). The general spirit of *Leviathan* looks to avoid a return to a state of nature wherever possible. Indeed, in Hobbes' cynical view of human nature, the illegitimate violence of the people, who are

naturally selfish and violent, is never to be desired. To avoid such a brutal reality, Hobbes hinges violence, as a natural right, to the sovereign, who is outside of the law. Here the outside of the law begins to emerge as somewhat more complex than initially might appear: that is, for Hobbes the outside of the law is not simply analogous to a state of nature, as a pure absence of law. Instead, the power drawn by the sovereign from natural violence is included in the law as what preserves the permanence, absoluteness and indivisibility of sovereignty. Everyone, except the sovereign, lays down the natural right to act outside of the law. This is why those who do act outside of the law are rendered outlaws. The Hobbesian position of the sovereign above the law, which so offended Rousseau, is in keeping with Jean Bodin's definition of sovereignty. Bodin posits that the sovereign must be outside of the law in order to create law. The sovereign thus maintains an exceptional relationship to the social contract: he guarantees the law by excluding himself from it. In this sense, the outside of the law is analogous to both the absence of sovereignty in the state of nature, and the 'total' sovereignty of an absolute authority that is above the law.

The Political Stakes

By placing the sovereign above the law, Hobbes and Bodin create a relationship between sovereignty and extralegal decision-making. The idea that the law must be suspended in its relation to the sovereign in order to create and enforce law proved to have a significant influence on the Weimar writings of Carl Schmitt, influencing Nazism, which became the paradigm of an outlaw state in the twentieth century. Schmitt, who became a prominent Nazi jurist, develops his political theory as a critique of parliamentary liberalism, which he sees as a weak and ineffective dissolution of sovereignty precisely because it excludes the outside of the law from sovereignty (7). Schmitt proposes a totalitarian approach to save the decaying modern state from liberalism: invest the sovereign with a total authority that exceeds the law. His definition of sovereignty as the power to decide on the state of exception (5) encloses what is outside on the inside: that is, it captures the outside of the law in the law. The outside of the law thus maintains a special relationship to

fascism as what the state both encloses and embodies. In fascism there is no outside of the law except the lawlessness of the state. Such an enclosure of the outside of the law is certainly implied in Mussolini's famous slogan: "Everything in the State, nothing outside the State, nothing against the State" and is echoed in Lenin's definition of dictatorship: "power without limit, resting directly upon force, restrained by no laws, absolutely unrestricted by rules."[3]

That totalitarian states derive their sovereignty from outside of the law was central to Hannah Arendt's critique of totalitarianism. She argues that the totalitarian regimes of the twentieth century produced a "total state of lawlessness" that merged all aspects of society under one mediating ideal. For the National Socialists, the activities of both the Führer (whose word was law) and the secret police did not need to be covered by public legal decrees because valid law was seen to 'spring' naturally from the consciousness of the people as a reflection of a common ethics (394). Yet for Arendt, lawlessness not only permeates the activities of the totalitarian government, which maintains an ongoing state of exception; under such rule, the subjects of the state are transformed. She writes: "Totalitarianism is never content to rule by external means, namely, through the state and a machinery of violence; thanks to its peculiar ideology and the role assigned to it in this apparatus of coercion, totalitarianism has discovered a means of dominating and terrorizing human beings from within" (325). New kinds of citizens are produced through a mode of politics that infiltrates the interior of the individual.

In addition to producing total citizen-subjects, totalitarian states also create a population of denationalized 'undesirables' whose exclusion from the state constitutes an exclusion from the category of human subject worthy of rights. The task of the Nuremburg Laws was to effectively outlaw the Jewish population in this sense. But unlike the archaic outlaw who enjoys a risky freedom from the law, the undesireables of totalitarian regimes do not escape from the confines of the totalized system. Relegated either to internment camps or exile and illegal residence in other countries as refugees, they are exposed in full vulnerability to state violence as outlaws *within* the system. Those in the camps are literally exposed to death and extermination, while refugees take flight as a different kind of outlaw. According to Arendt: "The stateless person, without right to residence and

without the right to work, has of course constantly to transgress the law. He was liable to jail sentences without ever committing a crime" (287). In fact, as Arendt presents it, from a human rights perspective it is preferable to be a criminal than an outlaw, since criminals are at least guaranteed the status of subject worthy of basic rights.[4] Criminals are enclosed within legal systems and are, in a certain way, still protected by the law. Although they have transgressed the law, restitution can be made through payment of a penalty, in the form of a fine or time incarcerated. An outlaw, in the sense intended by Arendt (she uses the phrase "outside the pale of the law" instead of 'outlaw') is someone, such as an exile or refugee, who is not recognized by the law; an outlaw lacks legal status unless brought into the law, either through citizenship or criminalization. In Arendt's view, those who find themselves beyond the pale (287)[5] possess a certain kind of freedom of movement if they are stateless, and freedom of thought if they are interned as a refugee in a democratic country (as opposed to being a full citizen of a despotic regime). However this freedom fails to change their fundamental experience of "rightlessness." Even when they are not deprived of freedom, consequently, these modern outlaws are deprived of the 'right to action" (296).

Biopolitics and Totalitarianism

The exceptional politics advocated by Schmitt and critiqued by Arendt are not restricted to these totalitarian regimes, but lead also to a more general trend linked to the totalization of the political domain in liberal democracies. The ideal vision of Rousseau and his revolutionary contemporaries – equality, fraternity and liberty for all men – was premised on the omission of certain categories of people from legal rights from the outset. Slaves, colonized peoples, and to some extent, women, were excluded not only from legal rights and protections, but from humanity itself, and some of these exclusions were legally instituted well into the twentieth century.[6] While from the perspective of those who are excluded, the illegitimacy of sovereign force and the suspension of legal rights has defined their relation to the state, the outside of the law has a new significance in contemporary politics that exceeds its role in Enlightenment politics and in colonial

rule. Today, the suspension of law is a defining force in *everybody's* relation to states, including those who traditionally benefit from full inclusion in the law. In *State of Exception* Giorgio Agamben argues that a suspension of law – he calls it the 'state of exception' with reference to Schmitt's definition of sovereignty – brings totalitarianism into even 'so-called' democratic regimes. He makes an important point in showing some emerging similarities between certain forms of democracy and totalitarianism. He defines totalitarianism as "the establishment, by means of the state of exception, of a legal civil war that allows for the physical elimination not only of political adversaries but of entire categories of citizens who for some reason cannot be integrated into the political system" (2). The Nazi state, which operated for 12 years under a suspended constitution, is the prototype, but since then, in "what has been called a 'global civil war'" "the voluntary creation of a permanent state of emergency … has become one of the essential practices of contemporary states, including so-called democratic ones" (2). The normalization of the state of exception is visible in the prevalence of security measures in western countries as a response to international terrorism, the paradigm of which is Guantánamo Bay. The result is a catastrophe on a global scale (SE 56). Where for Schmitt the exception suspended the law to guarantee the distinction between law and outlawry, inside and outside, for Agamben these distinctions are blurred to a point of "absolute indeterminacy" in the modern context, so that "the sphere of creatures and the juridical order are caught up in a single catastrophe" (SE 57).

In addition to the constitutive exclusions of western societies, a totalizing impulse infiltrates even the domain of citizenship and inclusion. This calls into question the efficacy of concepts like democracy, human rights, and popular sovereignty. The totalizing impulse seems to be inherent to western metaphysics, and is transferred from the philosophical to the political domain. Jean Luc Nancy suggests the west's totalizing impetus has its roots in Platonic Idealism; it is tightly linked to conceptions of subjectivity, and the need to ground propositions in 'truth,' including the self-certainty of an individual ego. The consequences in western democracies are twofold, as David Ingram elaborates. First, models of the political that prioritize public debate among equals are increasingly precluded through a "total infusion of scientific strategies of prediction and control in economy, polity, society, and culture." Secondly, Ingram

continues, "dialogic pluralism" is suppressed "by the totalitarian logic of a political practice aimed at strategically realizing some unquestioned global ideology" (95). Western democracies are thus structured according to a totalizing logic, this time in the form of bureaucracy instead of the tradition and authority emphasized in totalitarian regimes (96). The effects are insidious; what is taken to be the democracy and pluralism that Arendt once celebrated as non-totalitarian are revoked as masking the coercive manipulation of the population by the state; a variation on the infiltration of the interior of the individual by totalitarian political tactics. The implication is that the public consensus that is so fundamental to democracy is false; it has been orchestrated through limiting the real political choices available, controlling and oversimplifying the information on which the public bases its decisions, and reducing elections to the spectacle of personality (96).

The problem is often cast in terms of biopolitics, a term coined by Foucault in *History of Sexuality* to refer to a trend that grows from Enlightenment rationality. In effect, by making life itself the object of the law, biopolitics objectifies its subjects through calculations bent not on relations between the sovereign and his subjects, nor on retributions against enemies, but on "distributions around the norm" (144). Biopolitics has everything to do with outlaws, in Agamben's view. In *Homo Sacer* he draws an explicit geneology between the outlaw and a figure he calls the sacred man (*Homo sacer*) that represents the new biopolitical citizen. Agamben argues that sovereignty has always been conceptualized as power over life. He intends this thesis to "correct or complete" Foucault's biopolitical conceptualization of modern politics as the inclusion of *zoë* (bare life) in the *polis.* Where for Foucault the "growing inclusion of natural life in the mechanisms and calculations of power" (HS 119) is a modern phenomenon, for Agamben sovereignty has rested on a continuous state of exception in which bare life is indistinguishable from politics. His investigation circulates around the political function of *homo sacer*, the sacred man "who may be killed but not sacrificed" (8). This sacred figure has, for Agamben, its origin in archaic legal structures banning lawbreakers, placing them in an ambivalent position both inside and outside of the law.

To make his point, Agamben indicates the liminal status of the outlaw as a figure poised at the boundary between nature and culture: "The life of the bandit…is not a piece of animal nature without a relation to law and the city. It is rather, a threshold of indistinction and of passage between animal and man, *physis* and *nomos*, exclusion and inclusion: the life of the bandit is the life of the *loup garou*, the werewolf, who is precisely *neither man nor beast*, and who dwells paradoxically within both while belonging to neither" (105). By making biological life political, outlawry, for Agamben, survives today as the logic by which people are stripped of subjectivity and exposed to political power, for the politics of life in western sovereignty revolves around this inclusive exclusion. Although the roots of biopolitics are thus ancient, biopolitics, for Agamben, is a specifically modern phenomenon. What was once properly contained in its authorizing function as an exception, he contends, is today the rule. This has horrific consequences that for Agamben can only be described *vis a vis* the analogy of the concentration camp, the model according to which the bare life of the citizen constitutes the new "biopolitical body of humanity" (9).

My discussion of outlawry takes as its point of departure these discourses of biopolitics that are, for good reason, enjoying so much currency. Who can deny that over the last century, life and death are administrated in ultra-rationalized ways that were not seen before? Yet I would like to move past the seemingly all-encompassing infiltration of the techniques of power in our lives and the administration of our exposure to death. Moreover, I would like to do so without losing sight of the fact that some people are simply more exposed to biopolitical harm than others, even if we are all negatively effected by the logic of biopolitics as Foucault and Agamben stipulate. Biopolitics represents a failure of political concepts such as democracy and human rights that developed during the Enlightenment to be what they promised to be. How do we proceed from here? Foucault writes that where for Aristotle "man…remained a living animal with the capacity for political existence," in biopolitics "modern man is an animal whose politics call his existence as a living being into question" (HoS143). To deconstruct biopolitics *vis a vis* outlawry urgently calls our politics into question on account of the fact that our continued existence, indeed, the continued existence of all life, is now at stake in politics.

These theorists of biopolitics forget that outlawry has another side, one that puts the legitimacy and unified presence of the law into question. Outlawry does not merely separate out human life from subjectivity and make it an object of law; outlawry also has an undecidably archic and anarchic relationship to law: one in which the opposition between *arkhe* and anarchy becomes indistinguishable. Walter Benjamin's work is important in this regard. In "Critique of Violence" he argues that this indistinction accounts for the public's admiration of the outlaw. Like Schmitt, Benjamin takes issue with the impotent banality of liberal democracy as it played out during the Weimar years. However, his response is not a conservative enclosure of outlawry in a total system of absolute sovereignty, but instead a revolutionary transformation of concepts through a violence derived from outside the law that destroys, rather than conserves, the law. It is also Benjamin who points out, in his "Theses on the Philosophy of History," that what later theorists attribute to modernity is by no means new from the perspective of outlaws:

> 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 this will improve our position in the struggle against Fascism." (257)

Agamben, with reference to this thesis, argues that what is new in modernity is that the state of exception is today the rule. He contends, moreover, that the resulting indistinguishability between bare life and political life structures biopolitics. Benjamin, however, demands that we view history from the point of view of those who have been excluded from the law, a perspective that reveals that life has always been political. The politicization of the life of the oppressed, moreover, underscores not merely their biopolitical helplessness, but the necessity that the law be disrupted. When we begin to deconstruct biopolitics in this way, the political focus begins to shift from an inclusive conservation of right and law to strategies to re-invest political life through a deconstructive criticism of the law. This demands a revolution, not necessarily in the sense of a transfer of power from one class or one ideology to another, but a revolution in political concepts such as sovereignty, the subject, biopolitics and democracy.

Outlawry as Deconstruction

To deconstruct outlawry, we begin with the task of deconstruction itself. In *Ethics and Deconstruction* Simon Critchley specifies that this involves questioning the tendency in western philosophy to reduce alterity to identity and plurality to unity: it entails critiquing attempts in western thought to comprehend the Other by mastering and domesticating otherness (29). The goal of deconstruction is to reverse this reductionism and open metaphysics to alterity. As Critchley writes, what deconstruction aims to do is "to locate a point of otherness within philosophical or logocentric conceptuality and then to deconstruct this conceptuality from that position of alterity" (26). This is a decidedly ethical task in the Levinasian framework, in which ethical peace, or a recognition of the Other, overrides and guides political reason (222). As such, political rationality is not the only, nor the best response to political questions. Critchley suggests that this mode of ethics aims for a "new conception of the organization of political space," one that will repeatedly interrupt all claims at totalization, including those secreted in liberal concepts of freedom and autonomy (223).

How are we to be ethically political subjects under the contradictions of outlawry? Although he is not referring to outlawry, Foucault frames the stakes of the present investigation clearly in his preface to Gilles Deleuze and Felix Guattari's *Anti-Oedipus*: "How does one keep from being fascist, even (especially) when one believes oneself to be a revolutionary militant?" (xv). The question is central not just to deconstruction, but to the politics of post-structuralism more generally, which provides the theoretical underpinnings for this dissertation. This branch of thought has its own particular relationship to outlawry in its antinomian critique of structuralism and of the foundations of western thought. Post-structuralism provides a framework for a shift of focus from law to outlawry in its difference from the law. The difference between outlawry and the law is not as straightforward as it initially appears. The law has an identity that can be measured, defined, and categorized. It entails enforced commensurability, it regulates the relations of the people and things that are contained within it. The outside of the law has no such identity, no rules, acts, or enforcing authorities. Its identity is established solely through its difference from the law, not through the commensurability of its elements or

some identifiable agents or qualities inherent to it. Yet it would be overly simple to resort to the Platonic theory of negation in order to define the outside of the law. The theory of negation would see outlawry as what is other to the law, with the implication that the outside occupies the space of a lack. It lacks its own identity, and it lacks the elements that establish the law's identity – legislated rules, enforcement, and authority.

Yet an outlaw does not precisely signify a lack of identity. To be sure, an outlaw is not a subject. Yet outlawry is itself an identity of sorts, an identity of difference from the law. Moreover, outlawry supplements both the law and sovereignty, both of which contain the other in their attempts to foreclose what is outside. If the law requires supplementation, then it is the law that is lacking. As Jacques Derrida argues in *Of Grammatology*, difference is not lacking in its non-identity to the identical. Rather, difference is what makes identity possible. Derrida writes: "difference makes the opposition of presence and absence possible. Without the possibility of difference, the desire of presence as such would not find its breathing-space (143)." Thus outlawry is the difference that founds the identity of the law, that marks the boundary that allows the law's presence to unfold. The law lacks an immediate and unified presence, and depends on something else to be fully itself. It depends on its own limits, and the possibility of an outside; it depends on outlawry**.**

The post-structural shift from law to outlawry coincides with a movement away from conceptions of subjectivity based on identity or sameness toward multiple, fluid, or fragmented forms of difference, in other words, the death of the humanist subject. But if the subject is dead, then what kind of entity takes its place? A biopolitical view suggests that the subject is replaced by a figure of abjection and objectification. Deprived of the law, humans become like animals, available to be counted like sheep, and vulnerable to being killed without culpability, like wolves. This bestialization apparently suppresses the trace of natural ipseity that is also associated with animals, such as what Hobbes infers in his citation of Plautus when he writes *lupus est homo homini* (man is a wolf to man). However, there is another way we might conceptualize the post-human subject through a post-structural reading of outlawry. This approach provides the conceptual tools to mobilize difference as a site of politics, without necessarily entailing abjection and

further exclusion. Some neo liberals, neo-Marxists and American feminists would not necessarily agree that the post-structural approach has a material emancipatory significance.'[7] As Philip Wood points out in his discussion of "'Democracy' and 'Totalitarianism' in Contemporary French Thought," these critics see post-structuralists as theoretical outlaws in a negative sense, indeed, in a specifically totalitarian one, citing a number of problems that undermine the political ethics of post-structuralism: an affiliation with the thought of Heidegger, who was associated with Nazism; the eradication of the modern humanist subject, which serves as the foundation of liberal democracy; and the deprivation of women of the status of subject just as we achieve it, via the 'death of the subject' (76-77). Yet Wood shows that post-structuralists themselves often position their thought as a mode of resistance to fascism, dismissing these accusations as absurd misunderstandings of their claims: for instance, questions about what grounds being in a critique of humanism are mistaken by critics as a denial of human self-consciousness and agency (76, 79). Indeed, linking it to subjugated knowledges such as feminist, queer and post-colonial thought, in *Society Must Be Defended* Foucault casts post-structural thought as an emancipatory revolutionary project. He describes the disruptive quality of:

> the immense and proliferating criticizability of things, institutions, practices, and discourses; a sort of general feeling that the ground was crumbling beneath our feet, especially in places where it seemed most familiar, most solid, and closest to us, to our bodies, to our everyday gestures. But... beneath this whole thematic, through it and even within it, we have seen what might be called the insurrection of subjugated knowledges. (6-7)

Post-structuralism might thus be seen as a revolt against the totalizing tendencies of western metaphysics and politics and the associated failure of Enlightenment ideals (the evidence of this failure ranges from genocide to the pseudo-individualism of consumerism as has been argued by thinkers from Zygmunt Bauman to Theodore Adorno).

For Wood, it is the survival of this very revolutionary (or what I term outlaw) tendency in post-structuralism that motivates the assault against it. In France, Wood argues, the revolutionary tradition has been neutralized in the consumer culture that took hold following May 1968. The subject stars as a key player in this ethos, which is based on the capitalist promotion of individual "desire," "imagination" and "self-expression" (78). Post-structuralism and its "challenge to a philosophy of the subject," thus undermines alignment with "the transnational capitalist order of the European Union" in the context of global capitalism (78).

I take an interest in post-structuralism precisely at the site where its grandest promises and greatest critiques intersect. Like outlawry, post-structuralism is affiliated with both openness toward alterity, and the eradication of the subject. As such, outlawry draws attention to the deconstructability of post-structuralism itself: it blurs the distinctions between the polarized sides of the debate, because with outlawry, the risks and threats are integral to the concept, so it is less likely to be idealized. Poststructualism offers a useful approach to sorting through the ethical and political dilemmas of outlawry precisely because it embodies those dilemmas and treads the precarious threshold between risk and promise. Outlawry is necessary to the very presence of the law: this paradox is definitive of post-structuralism. Its dangers are very real, as the spectres of genocide in the twentieth century can attest. Yet we cannot rid ourselves of outlawry without realizing the very worst of our fears. Post-structuralism allows us to see the fault line, and opens a path toward justice, if we are vigilant and self-critical.

Overview

What began simply with the query 'is outlawry relevant to the political today?', opens up questions about some of the key concepts in political theory, pertaining to subjectivity, to sovereignty, and to ethics. This dissertation looks to provide some insight into how outlawry interacts within each of these spheres, and to offer a sketch of how outlawry might deconstructively contribute to a transformation of these concepts.

The first chapter, "Deconstructing Outlawry," stages the problem in the terms set out by Schmitt and Benjamin, who address the extralegal forces shaping the political sphere from the extremes of the radical right and left. Where Schmitt harnesses the outside of the law to preserve state power, Benjamin looks to the extralegal forces of justice to overthrow the political order. To address the question of how we ensure that outlawry opens toward justice instead of closing back into totalitarianism, I turn to Derrida's "Force of Law" and *Limited Inc*. I show that as a performative force the law is persistently haunted by its outside with the threat or promise of a new law. A deconstructive ethics of outlawry is possible through a continual re-founding of law and politics based on a self-critical and responsible relationship to alterity.

Chapter Two: "The (Un)Becoming Subject of Outlawry" takes outlawry as a starting place to re-think the complex relations between the subject and the law. I take up Judith Butler's theory of the performative subject and Louis Althusser's Interpellation scenario in order to discover what the outlaw is to the subject if outlawry persists as a deconstructive force in relation to the law. I propose that outlawry takes form as the alterity that slips in at the threshold of law and subject, both of which are performative, and thus transformative concepts. As such, the subject is a placeholder in a relationship with the law that is under constant negotiation.

Despite such potential for transformation, it seems as if in modernity, subjects are far more likely to be outlawed in vulnerable forms than transformative ones. Indeed, Agamben contends that today everybody has been reduced from subject to bare life, as states harness outlawry to conserve themselves. In chapter Three: "Sovereignty, Outlawry and the Wolf," I consider Agamben's claim that everyone is *homo sacer*, along with recent works by Derrida that examine the overlap between the concepts of sovereignty, outlawry and the beast (*la bête*). Since ancient times, outlawry has had a simultaneous archic and anarchic function, an ambiguity that serves a politically deconstructive purpose. However, in today's political context, the connection between sovereignty, beastliness, and outlawry takes new and more dangerous forms that are at odds with revolutionary democracy, which relies on the force of the people (as the masses, not as subjects) to rise above the law. I take up Derrida's concepts of the passive decision,

voyoucracy and democracy-to-come to consider political concepts that might reinvest the anarchic, deconstructive powers of outlawry, and divest sovereignty of conserving powers of outlawry that tread dangerously close to totalitarianism.

Chapter Four "Becoming-Outlaw" explores what an ethical politics of outlawry might look like. How do we strive for justice today? How do we open ourselves to alterity without appropriating it? What of those who are already abjected to a point of silence, if not disappearance? My aim here is to discover how we might engage in an ethical politics of outlawry, that is, a politics that allows for alterity and revises the law in accordance with a responsibility to the Other. I turn to Levinas' definition of ethics as responsibility to the Other in the face-to-face encounter, Derrida's resolution of the rift between ethics and politics in Levinas' thought, and Deleuze and Guattari's concept of becoming minoritarian in *A Thousand Plateaus*. Where Derrida proposes that ethical politics is possible in an out-of-joint experience of time, the latter authors' forward an implicit critique of identity politics, arguing instead for a minoritarian politics. The 'subject' of politics is constituted by difference itself: it is a multiplicity that is political not on the basis of sameness, or identifications with the majority, but insofar as we, in our diversity, mobilize the outside.

Chapter I: Outlawry as Deconstruction

The concept of outlawry is implicit in the writing of two thinkers who admired each other, but had notably opposing ethical and political positions with respect to the greatest atrocity of the twentieth century. For Walter Benjamin, a German-Jewish intellectual who took his own life at the Spanish border while fleeing the Nazis, outlawry has transformative revolutionary powers bordering on the divine. For Carl Schmitt, the outside of the law, in the form of a sovereign decision, is what guarantees state power and preserves the existing order. Schmitt, a German political philosopher, is renowned for his turn toward the Nazi party, for whom he became chief jurist in 1933. There is much to learn about the nature of outlawry itself, and its role in the political, when we consider it in the anarchic terms established by Benjamin, the archic ones set by Schmitt, and in the translations between the two. How are we to negotiate such ethical and political extremes in the same concept? Is it possible to achieve an ethical politics that leads to justice *vis a vis* outlawry, when to embrace *and* to foreclose outlawry both seem to land us on the precipice of totalitarian politics? The Benjamin-Schmitt dialogue brings us to this threshold, establishing the stakes of the ancient concept of outlawry in the terms of the twentieth century; but it is deconstruction that provides some insight into how we might strive for an ethics of the outside of the law.

The dialogue between Benjamin and Schmitt was one of the greatest intellectual scandals of its time. Theodore Adorno deleted all reference to Schmitt from the *Origins of German Tragic Drama*, and excluded a letter of admiration from Benjamin to Schmitt from the first edition of Benjamin's correspondence.[8] Taubes called the letter "a mine" that "explodes our conception of the intellectual history of the Weimar period" (cited in Bredekamp, 250). Derrida treats Benjamin's correspondence with Schmitt with mistrust and cautions that Benjamin's theory of messianic violence risks "the worst" through its affiliation with discourses that are complicit with the Shoah.

Indeed, despite their vastly different perspectives, the theorists share some intellectual terrain: both were responding to the political and economic crises of the Weimar Republic and critiquing parliamentary liberalism, albeit from the opposing margins of the

radical left and right. And both were theorists of the extreme who "subscribed to a form of decisionism" (Muller 461). In addition, they shared some common intellectual influences. For instance, both were contributors to the *Archiv für Sozialwissenschaften und Sozialpolitik*. Moreover, they were reading and engaging with each other's work. Benjamin acknowledged Schmitt's influence on his concept of baroque sovereignty, and Schmitt claims that his publication on Hobbes (1938) was an implicit response to this work.[9] Moreover, Schmitt's theory of the state of exception may have been a response to Benjamin's contention that there is a sphere of human action that takes place outside of the law (Agamben 54). "Critique of Violence," as Giorgio Agamben points out in *State of Exception*, was published a year prior to *Political Theology* in a journal (the Archiv) that Schmitt read avidly (52-53).

The concept of outlawry takes shape in the troubling overlap between Benjamin and Schmitt, but not on account of any political or intellectual complicity between them. On the contrary, while there is no doubt they influenced each other, Schmitt is less Benjamin's ally than his nemesis. Where Schmitt's 'state of exception' harnesses outlawry to preserve state power, Benjamin's critique looks to outlaw forces to overthrow the political order. It is precisely the capacity of outlawry to encompass these ethical and political extremes that defines it. The common definition of the term is suggestive of this duality: outlawry is a refusal to obey or recognize the law, and the withdrawal of legal rights and protections. But how do we move on from here without merely collapsing or securing the familiar distinctions between left and right, nature and culture, force and fiction, inside and outside? From the outset, outlawry denies us these familiar polemics; it deconstructs its own opposition to the law. In the work of Schmitt and Benjamin, outlawry haunts the political as the condition of law and/or its undoing; it makes the law possible and impossible, and keeps it revolving, transforming, moving back and forth between presence and absence.

Together, the work of both of these authors in taking up the outside of the law hints at a kind of *avant la lettre* deconstruction of the law that later appears in the work of Jacques Derrida, whom, by no coincidence, finds himself caught in the web of the Benjamin-Schmitt scandal. In "Force of Law" he engages substantively with "Critique of

Violence," cautioning readers to be aware of a possible complicity between Benjamin's thought and the Shoah (via Schmitt and Heidegger); yet he is also accused of a Schmittian form of decisionism, which implicates Derrida himself in the very difficulties he critiques in Benjamin. Derrida negotiates this tricky terrain by elaborating Benjamin's thesis in conjunction with an ethical imperative of responsibility to the Other, intended to deter the totalitarian dangers. His concept of 'the mystical foundation of authority' hints at outlawry's part in the performative enunciation of the law, as what is continually, but secretly, deconstructing the law. However, Derrida does not address outlawry explicitly, and he softens the political edge of Benjamin's 'revolutionary' theory to a merely 'transformative' one. A focus on outlawry reinvests the mystical foundation of authority – the law's deconstruction – with this revolutionary force. But does this render outlawry exceptional, as Schmitt contents, or the rule, as Benjamin insists? Will the whole project to deconstruct the law collapse back into a Schmittian exceptionism, a path of pure authority and danger? Or can we put outlawry to the service of a revolution of the type that Benjamin envisages, a poetic revolution involving complete annihilation of the political and the arrival of new political concepts, ones that are not built of the wreckage of the old ones? And yet, in keeping with Derrida's ethical prerogative, and without turning away from outlawry as it plays out in the hardest lessons of history, how might we conceive of a place for ethics in this outlaw revolution?

The aim of this chapter is to develop a deconstructive theory of outlawry as a political concept that will provide a framework for the chapters that follow, a framework that lays claim to an ethics of outlawry. I begin by drawing out the parameters of outlawry as it is taken up by Benjamin and Schmitt from their opposing ethical and political positions: as a sphere of political action that takes place outside the law in order to overthrow, or to preserve, the existing order. I turn to Derrida, in particular his deconstruction of the law and his theory of performativity, to show how outlawry operates as deconstructive concept. To some extent, my approach stays close to Derrida's argument in "Force of Law;" however, the focus on outlawry along with a more pronounced emphasis on performativity subtly shifts the transformative implications of the mystical foundation of authority, to revolutionary ones, in Benjamin's messianic sense. Drawing also on Homi Bhabha's theory of mimicry I argue that the mimetic force of outlawry menaces the law

through a disavowal in imitation. It is the tension of this identity cut of difference in itself, of iterability, that produces the possibility of justice as Derrida defines it, as what is to-come, as a response to the call of the other.

Benjamin's 'Outlaw' Philosophy

Benjamin's "Critique of Violence" is an apt starting place for this investigation of outlawry, as his approach questions law and violence from the critical perspective of those whom the law excludes. This sets outlawry in relation to ethics and justice from the outset. Robert Sinnerbrink refers to the approach as "a revolutionary philosophy committed to the infinite task of redeeming past suffering" (491). We might also call it an 'outlaw philosophy' since Benjamin theorizes law from outside of the juridical, and history from outside of representation, and he does this as a political and intellectual exile working outside of the academy. Benjamin addresses the relation between law and justice as it hinges on violence from an incongruous position that balances Marxist revolutionary violence with neomessianical Jewish mysticism. For Benjamin, justice is a theological concept that belongs fundamentally outside of the law. The connection he makes between outlawry and justice, and the severing of justice from law, is possible only by approaching the relationship between force, law and justice from outside of the traditions of natural and positive law. He thus asks us to think about the law, and its relationship to violence, from outside the standard conceptual models.

Departing from the tautological dogmas of natural and positive law – "just ends can be attained by justified means, justified means used for just ends" (278) – Benjamin argues that violence is constituted as legal or illegal by a fictional justice or 'justification' that is established retrospectively (278). Because it awaits a retrospective sanctioning, the law's legitimacy is never assured, but rather depends on fate, that is, on what happens in a future that will inevitably look back and create a justifying narrative of its past. He calls this kind of lawmaking violence mythical, and associates it with power, for violence is the means by which the victor of a struggle for power determines "*what* is to be established as law" and preserves their right to violence (295). Mythical violence, which

makes and then preserves the law, is not just, but it has been historically sanctioned; indeed, that is what is mythical about it. Mythical law, in Benjamin's view, is thus retroactive, it operates via a backward glance, borrowing its authority and legitimacy from past events. But what the myth legitimizes is already in ruins, as we can see through the backward glance of the angel of history that Benjamin invokes in his "Theses on the Philosophy of History." He writes: "His face is turned toward the past. Where we perceive a chain of events, he sees one single catastrophe which keeps piling wreckage and hurls it in front of his feet" (257). There is consequently something "rotten" in law, a point that Drucilla Cornell elaborates in her treatment of Derrida's reading of Benjamin in "The Violence of the Masquerade: Law Dressed Up as Justice." She writes: "[W]hat is 'rotten' in a legal system is precisely the erasure of its own mystical foundation of authority so that the system can dress itself up as justice" (90). Cornell draws on the analogy of the Emperor who has no clothes to illustrate this: the fiction works to erase any acknowledgement that it is a fiction. The law's foundation is thus doubly fragile: it is a decayed and crumbling artifact (the wreckage of history), and a fabrication (the emperor's new clothes), but it pretends to be both solid and authentic.

The forces that fall outside of the law are, in contrast, 'pure' in Benjamin's approach. Divine violence, which is beyond the law and untainted by human rationalization and invention, moves forward, toward the future. For God, in Benjamin's mystical Judaic schema is a messianic god who is yet to arrive. Yet this movement forward is not a teleological one. Divine violence is pure precisely because it contains no instrumental relation between means and ends; the significance of the event is constituted in the event itself, not some other purpose. Where mythical violence establishes and preserves law, divine violence annihilates it, bringing time and history to a stop. Justice, "the principle of all divine end-making" (CV 295), thus belongs to a sphere of pure immanence that is both outside of the law and inaccessible to humans.

The concepts of messianic justice and divine violence shape Benjamin's anarchic-Marxist impulse, not to found a new order, but to destroy the old one. For Benjamin a revolutionary action is distinguished from a political action on the basis of its capacity to eradicate the current state and system of law, in a manner similar to divine violence. The

difference, in other words, is the relationship of the action to the law: a political action works within, or through, the law, but a revolutionary action is outside of the law; it is a mode of outlawry. Drawing from Sorel's treatise on violence, Benjamin differentiates between a political strike that is lawmaking because it merely modifies the system, and the proletarian strike, which aims at overturning the state and its laws. For Benjamin, as for Sorel, "the revolution appears as a clear, simple revolt" (CV 292). Revolutionary outlawry, in this perspective, does not simply transfer power from one group to another, reproducing the old system in an altered form. On the contrary, the revolution demands entirely new political concepts.

But Benjamin's affiliation of revolutionary violence with the divine, and mythical law with "something rotten," might be dangerously romanticizing anarchic outlawry while denigrating all forms of government. Dominick LaCapra argues that Benjamin homogenizes the concepts of state and myth, designating all states as fundamentally "rotten" because they are based on mythical violence, without considering differences between political regimes. Benjamin, he contends, validates revolution at any cost or consequence: "Benjamin's mode of address may seem acceptable if one believes one may justifiably subvert or even destroy the state, ignore consequences, and leave one's objective a blank or an act of faith" (1071). Derrida is likewise concerned that the connection Benjamin establishes between justice and his theological concept of violence might be interpreted as justifying even the Shoah, as "an expiation and an indecipherable signature of the just and violent anger of God" (FL 298). He suggests that Benjamin perpetuates the very injustice he criticizes in the state, because he is unable to maintain the distinctions he sets up between positing and preserving violence, founding (mythic) and annihilating (divine) violence, and between justice and power.

Although Derrida draws significantly from Benjamin's "destruction" of the law in his own deconstruction of law, his critique is haunted by the uncanny correspondence between the gas chambers and cremation ovens of the Shoah and Benjamin's "bloodless" and "expiatory" divine violence. Derrida worries that Benjamin inadvertently colludes with discourses such as Schmitt's and Heidegger's that are complicit with the Final Solution, including, "the critique of *Aufklärung*, the theory of the fall and of originary

authenticity, the polarity between originary language and fallen language, the critique of representation and of parliamentary democracy; etc." (FL 298). He cautions that if there is a lesson to be drawn from the Shoah, it is "that we must think, know, represent for ourselves, formalize, judge the possible complicity among all these discourses and the worst (here the 'final solution')" (298). In the final analysis, Benjamin's "Critique" thus resembles for Derrida "the very thing against which one must act and think, do and speak" (298). But what is this "very thing?" In a sweeping collapse of meaning we are told that this "thing" involves being too Heideggerian, too messianico-Marxist, *and* too archeo-eschatalogical. But do critiques of Enlightenment philosophy and parliamentary democracy necessarily suggest complicity with the Nazis? Do Messianism, Marxism, and religiosity really align one with totalitarianism? By these criteria, Derrida would himself be in deep ethical trouble. Moreover, in Benjamin's terms, there is something fateful about Derrida's reading of "Critique of Violence," with the Shoah placed temporally between these authors. Derrida reads Benjamin with the Shoah in retrospect, which makes his critique somewhat mythic, whereas for Benjamin, the Shoah is unfathomable and yet to arrive; the future is open, which means that another future, not the Shoah, is still possible. And as we shall shortly see, when Benjamin does address the Shoah in due historical time, this event in no way resembles revolutionary violence, but rather is absolutely positioned as the culmination of the mythic law of the *Aufklärung*. For Benjamin, the Shoah demands a critique of the history that led to it; it calls for a revolution in concepts.

The Revolutionary and the 'Great Criminal'

LaCapra and Derrida are correct to caution that we not idealize revolutionary violence, and that we remain vigilantly self-critical in order to forestall a repeat of history. However, Benjamin is not so naïve in his approach to the ambiguities of the archic and anarchic functions of outlawry. To be sure, in 1921 Benjamin could not have foreseen how a totalitarian version of outlawry would play out in National Socialism, nor in Stalinist Russia. Yet it seems that Benjamin is nevertheless concerned with the blurring

of the distinctions between the archic and the anarchic, which puts him right on track for a critique of totalitarianism. How do we achieve change and maintain the pure justice of the revolution, when what is in one instant outlawry, in the next becomes the very law that the revolution has overthrown? What do we make of the paradox that what appear as polar opposites – the law and outlawry – in fact overlap: the law holds within itself something of the outlawry that founded it, and outlawry contains its own kernel of law (the law that it might found).

The problematic is clear in the collapse between the figures of the outlaw and the revolutionary, which accentuates the undecidability between annihilating and founding violence that structures Benjamin's text. Benjamin associates the revolutionary with a figure he terms the "great criminal" who shares the capacity to eradicate the law, and sever the present from its history. His references to the great criminal establish that Benjamin is fully cognizant of the ethical dilemmas presented by revolutionary violence, and the absence of any guarantee that revolutionary violence will lead to justice. For the great criminal is an unethical figure whose ends are "repellent," but who has nonetheless "aroused the secret admiration of the public" (CV 281). Quite simply, he is admired because he is an outlaw: in his actions violence is freed from the law. Benjamin stipulates that the public's admiration of the outlaw "cannot result from his deed, but only from the violence to which it bears witness" (281). He is quite clear that the great criminal is not deserving of our unreserved admiration: his intentions may be evil, his actions corrupt. Yet the criminal nevertheless serves a critical function in relation to the law: he compels our awareness that law can be broken; by so doing he unveils the artificial legitimacy of the law's claim to violence.

The great criminal is split between being an ethical and an unethical being. He is a dangerous and ill-intentioned lawbreaker, but he is also an outlaw whose means are pure in the sense of a "clear and simple revolt." This is why, for Benjamin, the system establishes a monopoly on violence (280). Extralegal violence is a danger that might eradicate the law itself: "violence, when not in the hands of the law, threatens it, not by the ends that it may pursue but by its mere existence outside the law" (281). Whatever ends may arise, the testament to the mythology of the law cannot be undone; through the

great criminal the people have glimpsed what is "rotten" in law. In the purity of this revelation, the revolutionary/outlaw is again divided: from the law's destroyer, this figure is transformed into the law's founder. For as Benjamin continues, the promise of the law's annihilation is swiftly replaced by the new fiction that awaits on the horizon, the new history that might be written, the new law that will be imposed should the outlaw succeed at vanquishing the current powers: "In the great criminal this violence confronts the law with the threat of declaring a new law… The state … fears this violence simply for its lawmaking character" (283-284). In this sense, he implies that in the human realm it is impossible for revolutionary violence to actually lead to justice, since it is transformed into lawmaking and law-preserving violence in the end. Since there is something inherently unjust about all human governance, he strives to imagine a revolution that stops short of its archic function, and that transcends the realm of human politics: he calls this 'divine violence.' He is thus not writing about revolution as a transfer of power, but is calling instead for a poetic revolution, a revolution of our theorizations and imaginings, one in which instead of looking back to justify what we have done, looks forward to something absolutely new.

Outlawry competes with the law for a legitimate presence, and as such is both a revolutionary force, in Benjamin's sense of revolt and annihilation of law, and a lawmaking force. The violence of the great criminal is equated with revolutionary founding violence, a violence that "belongs in advance to the order of a law that remains to be transformed or founded," as Derrida phrases it (FL 269). Since this violence founds a new order of law and right, it is justified retrospectively. The revolutionary/outlaw is thus caught in a collision between mythical and divine violence and the double movement of time that this implies. Benjamin does not simply polarize these forms of violence, nor separate their archic from their anarchic powers. Here he anticipates deconstruction by putting such polarizations into question, and by undermining the purity of the founding moment, which is authentic only in retrospect. Revolutionary violence, an act of faith in the justice of the future, looks forward toward an end that has been eclipsed by the horizon. Yet the revolutionary/outlaw acts in mythical time – his violence becomes history the moment it is past. What was in one instant law-destroying becomes law-making in the next. Such powers are not equivalent with divinity, nor with justice;

they are merely a shock through which we can glimpse the messianic promise for justice here on earth – but also the mythical denial of justice through justification. The demand of outlaw justice, in Benjamin's sense of revolution, is that the archic continue in its revolutions with the anarchic, that 'after the revolution' we do not cease to critique the law that has been founded, that our revolution never end.

Outlawry as Exception

Where for Benjamin outlawry operates as a dismantling criticism of the law, Schmitt subverts outlawry by putting it to the service of the law as force of conservation. His political writing during the Weimar period places him firmly on the path to later embrace National Socialism—indeed, the Nazi state, which operated for 12 years under a suspended constitution, became a realization of Schmitt's 'state of exception.' Schmitt draws on the outside of the law to address what for him was the root of the problems of the Weimar Republic – the replacement of true sovereignty by liberal democracy. As George Schwab explains in the translator's introduction to *Political Theology*, where constitutional liberalism fragments political power, under the premise that "power must be checked by power" Schmitt wants to "reinstate the personal element in sovereignty and make it indivisible once more" (xvi). For, as Schmitt remarks, "[a]ll tendencies in modern constitutional development point toward eliminating the sovereign in this sense [of the decision]" (7). Such a move is equivalent to eliminating the law's access to the power of outlawry. For Schmitt the rationalism of the Enlightenment, with its democratic concepts and faith in the inherent virtue of the people's will, produces a state that operates like a "machine [that] runs by itself" (48). As he sees it, state unity, in such a system, is a stale prize marked by compromise instead of decisive action. Schmitt proposes that the way to save the decaying modern state from liberalism – that "crust of a mechanism that has become torpid by repetition" (15) – is to invest the sovereign with total authority that exceeds the law. He defines sovereignty as the power to decide on the state of exception (5), a temporary suspension of law intended to preserve the law in times of crises. This is quite different from Benjamin's critique of parliamentary

liberalism, which is sometimes conflated with Schmitt's. Benjamin finds liberalism to be corrupt not because it precludes the violence of the sovereign decision, but because it masks it. It is not a rejection of democratic principles at play for Benjamin, but a charge that these principles have not been realized in so-called democracies. As Derrida writes, for Benjamin: "In absolute monarchy, police violence, terrible as it may be, shows itself as what it is and what it ought to be in its spirit, whereas the police violence of democracies denies its own principle, making laws surreptitiously, clandestinely" (FL 281). The result is twofold: first, democracy represents an erosion of the law's power and violence, and second "there is not yet any democracy worthy of its name" (281).

Where Benjamin's outlaw wants to restore the possibility of true (that is revolutionary) democracy by exposing and destroying the violence of the law, Schmitt's sovereign wants to restore order with the extralegal violence of his authoritative decision. Schmitt's concept of sovereignty is thus a borderline concept pertaining to outlawry, but in a very different sense than we find in Benjamin. On the one hand, the decision on the exception must be independent of all law (PT 6). Yet it is not entirely outside the law, because it exists only as it relates to the norm. "After all," writes Schmitt, "every legal order is based on a decision, and also the concept of the legal order … contains within it the contrast of the two distinct elements of the juristic – norm and decision. Like every other order, the legal order rests on a decision and not on a norm" (10). For Schmitt the decision marks the relation between the law and outlawry, and in doing so, allows the norm to come into existence or to remain in existence. This is the opposite of Benjamin's prescription for justice, which involves the banishment of all norms.

Schmitt views the powers of the sovereign as analogous to the divine. He argues that modern political theory, at least with respect to the state, is comprised of secularized theological concepts, such as omnipotence. He offers two explanations for this. The first involves the transfer of theological concepts from God to the sovereign in the historical development of state theory. The second recognizes the systemic structure of jurisprudence – which takes form as the state of exception – as "analogous to the miracle in theology" (36).   These place the power of the sovereign, as a divine power, outside of, or more precisely, above the law. Schmitt's description of the sovereign decision as a

pure, uncodifiable power that is above the law, comparable to a miracle, is, on the surface, strikingly similar to Benjamin's concept of divine violence, but in the final analysis the two concepts differ radically. In the first place, where Schmitt attributes 'divine' powers to the sovereign, Benjamin denies them to representatives of the state in favour of a more anarchic outlaw (who replaces this divinity with myth the instant the law is founded). Where for Benjamin outlaw forces completely annihilate existing structures, making way for a new world order, for Schmitt the law is merely suspended temporarily, with the aim to preserve the existing order.

In "Myth, Law and Order: Schmitt and Benjamin Read *Reflections on Violence*" Jan-Werner Muller proposes that the difference between Benjamin and Schmitt's theories of sovereignty is derived from their respective political theologies. For Schmitt, the divinity of sovereign outlawry is derived from an authoritarian Catholic urge to "restrain… the anti-christ" by stabilizing the current order and/or supporting whatever regime is capable of establishing order – an approach that led to his "demonic entanglement with the Third Reich" (473).[10] Benjamin, on the other hand, arrives at his conclusions via his particular brand of Judaic anarcho-Messianism. This approach, as Muller specifies, "resulted in an endorsement of revolutionary violence from the perspective of a total transformation of a fallen world into a literally lawless, utopian state" (473). In direct contrast to Schmitt, who sees the sovereign as preserving the divine justice already established by the Messiah, Benjamin sees divine justice as something that has not yet arrived. For Schmitt, justice comes from outside of the law in order to preserve the law, but for Benjamin, justice is incompatible to law, and cannot be represented by the state.

Even where Benjamin appears closest to Schmitt, what appear as slight shifts in analysis grow into fissures that radically alter the implications of the concept of outlawry. Both Samuel Weber and Agamben show that in the *Origins of German Tragic Drama* Benjamin closely follows Schmitt in a theory that ties sovereignty to the decision on the exception. However, where for Schmitt the decision on the exception preserves sovereignty, for Benjamin sovereignty is radically undermined (Weber 15). Benjamin's sovereign is incapable of making a decision because the exception overwhelms him:

> The antithesis between the power of the ruler and his capacity to rule led to a
> feature peculiar to the *Trauerspiel*, which is, however, only apparently a generic
> feature and which can be illuminated only against the background of the theory of
> sovereignty. This is the indecisiveness of the tyrant. The prince, who is
> responsible for making the decision to proclaim the state of emergency, reveals, at
> the first opportunity, that he is almost incapable of making a decision. (Benjamin
> 70-71)

Baroque history is comprised of "perennial interruptions," as Weber explains, and this
leaves no room for further interruption: "a decision in the strict sense, is not possible in a
world that leaves no place for heterogeneity" (15). Instead of marking the point of
decisive rule by transcending the law, the sovereign "opens up a gap which no decision is
capable of filling" according to Agamben, an irreparable "fracture" dividing the body of
the law (56). Thus for Benjamin, the function of the sovereign is not to decide on the
exception, but to exclude it because he is unable to decide. He writes: "Whereas the
modern concept of sovereignty amounts to a supreme executive power on the part of the
prince, the baroque concept emerges from a discussion of the state of emergency, and
makes it the most important function of the prince to avert this. The ruler is designated
from the outset as the holder of dictatorial power if war, revolt, or other catastrophes
should lead to a state of emergency" (65). Where Schmitt's sovereign includes the
exception through its very exclusion, Benjamin's sovereign excludes it entirely, for he is
too weak to allow for a space of transcendence in the sovereign sphere, which is why he
has, in his desire for power, become a tyrant. Yet as Weber points out, this is precisely
what compromises sovereignty. By excluding the exception (trancendence, outlawry),
Benjamin's baroque sovereign is defined by his difference from god, in direct opposition
to the Schmittian analogy between sovereignty and divinity (14).

It is for this reason that the state of exception is for Benjamin a paradigm for a
catastrophe rather than a miracle as it is for Schmitt: "In antithesis to the historical idea of
restoration, [the baroque] is faced with the idea of catastrophe, and it is in response to this
antithesis that the theory of the state of exception is devised" (66). Benjamin's theory of
the state of exception as catastrophe was further developed in the eighth fragment of the

"Theses on the Philosophy of History." History, Benjamin argues, is comprised of a perpetual state of exception, that is to say, a perpetual catastrophe. In this view, the Shoah is not extraordinary; it is merely the culmination of the crises that precede it. The eight thesis states:

> 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 this will improve our position in the struggle against Fascism. (257)

We find in this short fragment reference to two separate concepts of the state of exception that once again distinguish the way outlawry is deployed by Benjamin as compared to Schmitt. In Schmitt's state of exception, which is the 'rule,' outlawry is harnessed by the state to preserve itself. In Benjamin's 'real' state of exception outlawry is a revolutionary force that ends history and overturns state power. For Benjamin, what Schmitt sees as an interruption that precedes a return to the normal situation is instead a permanent catastrophe. Benjamin continues: "One reason fascism has a chance is that in the name of progress its opponents treat it as a historical norm" (257). Thus where Benjamin references Schmitt's state of exception, he turns it against Schmitt's entire thesis: the very concept of sovereignty that Schmitt works with is a catastrophe that led inevitably to fascism. As Horst Bredekamp puts it, "Benjamin's conception of the shock like liberation acquires the character of a last judgment of fascism" (264). However, Benjamin's critique extends beyond fascism to sovereignty itself, even in democratic forms. For it has always been the case that the rule is an exception if viewed from the outside of the law, that is, from the perspective of the powerless and disenfranchised.

Where for Schmitt, the exception is what proves and preserves the rule from the crisis, for Benjamin rule is itself the crisis. He invokes as a response to this catastrophe what he terms a "real" state of emergency, that pure violence proper to the outside of the law to which the state has no access: revolutionary violence, an ethical interruption of state violence that he relates to the divine. In "Critique of Violence" he writes: "If the rule of

myth is broken occasionally in the present age, the coming age is not so unimaginably remote that an attack on law is altogether futile. But if the existence of violence outside the law, as pure immediate violence, is assured, this furnishes the proof that revolutionary violence, the highest manifestation of unalloyed violence by man, is possible, and by what means" (300). The true revolution sees an end to 'progress' and the wreckage it leaves in its wake; time must come to a standstill and worldly law be abolished. Yet this does not signify apocalyptic despair on Benjamin's part, for the emphasis is not just the annihilation of the old: it is the introduction of something so new that it is as inconceivable as God. As Werner Hamacher argues: "Benjamin's notions of annihilation and destruction … have nothing to do with the corresponding propaganda terms of the so-called conservative revolution, or with the 'revolution of nihilism' (134). Sinnerbrink agrees that assimilation of Benjamin to fascist discourse is "controversial to say the least" (494), adding that the further equivalence drawn between Benjamin's "messianic-revolutionary rhetoric" and Schmitt's overt complicity with the Shoah forgets or ignores Benjamin's critique of Schmitt (496).

The Mystical Foundation of the Law

The difficulty and the scandal emerge because the distinctions we so desperately want to maintain between Benjamin and Schmitt, especially their ethical positions *vis a vis* the Shoah, cannot be properly maintained. What is rotten in law – we might call it outlawry – is also what is pure in law. But this does not mean that their ideas collapse into similitude; instead, this indistinguishability brings deconstruction to bear on outlawry. Indeed, where the law is deconstructible, outlawry is the absence that is always present in the law. Outlawry thus *is* deconstruction, just as deconstruction is justice: "Justice in itself … outside or beyond law, is not deconstructible. No more than deconstruction itself… *Deconstruction is justice"* (FL 243). On the one hand, outlawry as deconstruction casts the ethics of deconstruction into question, for while justice enjoys the ethical purity of its own impossibility (it is always to-come, for Derrida), outlawry, as we have seen, can lead to justice, but also to 'the worst.' However, if deconstruction is outlawry in

Benjamin's sense of divine violence – as a critique of the present – then its ethical position is once again redeemed.

For Derrida, the deconstructability of law is to be desired, and is absolutely in line with emancipatory ideals, even if it comes with some risk. He writes that "[t]he fact that the law is deconstructable is not bad news. One may even find in this the political chance of all historical progress" (243). Nevertheless, the risks are very real. Responsibility, freedom and decision are possible only under the conditions where evil, perjury and absolute crime are also possible (Sokoloff 343). As Derrida asserts: "Abandoned to itself, the incalculable and giving [*donatrice*] idea of justice is always very close to the bad, even to the worst, for it can always be reappropriated by the most perverse calculation … An absolute assurance against this risk can only saturate or suture the opening of the call to justice, a call that is always wounded" (257). In other words, outlawry as deconstruction holds both risk and promise. The very structure that illegimately imposes the law, illegimately deposes it; it is the outlawry contained within the law, that cannot be contained by the law. This outlawry guarantees nothing but change; its ethics is decided in the difference between justice and justification, which is also the difference between what is to come and what has been.

There is an implicit presence of outlawry (as absence) in Derrida's critique of Benjamin and deconstruction of law. His concept of the 'mystical foundation of authority' elaborates what, according to Benjamin, is rotten in law: the fiction of its legitimacy. Yet in Derrida's analysis, in addition to legitimizing the law's violence, the mystical keeps open a space for transformation and movement toward justice. He shifts the Benjaminian approach by explicitly uniting divine and mythical violence in a single, undecidable concept, with the aim to resolve any potential affinity with fascism he finds in Benjamin's text. As Derrida writes, the mystical "is in law, what suspends law. It interrupts the established law to found another. This moment of suspense, this epokhe, this founding or revolutionary moment of law is, in law, an instance of non-law…But it is also the whole history of law" (FL 269). Staying close to Benjamin's argument, Derrida defines this floating, fictional force as fundamental to the structure of law itself. What this means, with respect to the outside of the law, is that the law is hinged to outlawry so

that as it constructs itself, it continually deconstructs itself. This implies that outlawry is part of what shapes our experience of the political and our striving for justice, and implies that outlawry plays a role in the founding and eradicating of political power.

Derrida draws his concept of the mystical foundation of authority from Michel de Montaigne, who writes: "Laws are now maintained in credit, not because they are just, but because they are laws. It is the mystical foundation of their authority; they have none other…Whosoever obeyeth them because they are just, obeys them not justly the way as he ought" (cited in FL 239-240). Like Benjamin, Montaigne thus distinguishes the law from justice. The mystical signifies an emptiness, in the form of a fiction or myth at the heart of authority, that permeates the law as an integral aspect of its structure. The law's only 'real' legitimacy is the authority established by its violence and the fiction that accepts and sanctions that violence as legal. This means that outlawry lies secretly at the heart of law, on the one hand. But on the other hand, outlawry exposes this violence. It thereby interrupts the law, which continues within the ever-present suspension that is its history, a suspension that lingers like a doubt, wound tight with suspense in anticipation of something else. In this suspension, the destruction of the law is indecipherable from the inauguration of a new law, and so the myth, or mystical element, continues in a new form. In a sense the law never exists in itself and never ceases to exist because it emerges only in that deferred space of its simultaneous possibility and impossibility – a space of undecidability between law and outlawry. Since law is born of the generative powers of outlawry, it has, at its heart, a contradiction; thus its deconstructibility.

Despite his cautions with respect to Benjamin and "the worst," Derrida draws significantly from Benjamin's ideas to deconstruct law in "Force of Law." In fact, as John McCormack argues, Derrida's criticism of Benjamin's conservatism may be less than genuine; the critique may constitute a purely performative gesture. By exaggerating Benjamin's affinity with Schmitt and downplaying Schmitt's fascism, Derrida is "forcing an identification that itself demonstrates a dissociation" and modeling "how deconstruction discusses justice" (410). In a sense, my project to tease out the emphasis on outlawry in the work of Benjamin and Schmitt renders explicit what for Derrida is implicitly deconstructive.

Yet some critics, such as LaCapra, have expressed concern that Derrida fails to adequately guard against a misreading of Benjamin that would equate might with right (1067), and he fails to address the dangerous implications of the undecideability of mythical and divine violence (1071). Moreover, adding to concerns that deconstruction is generally apolitical and ethically impotent, Derrida has himself been charged with sharing an intellectual alliance with Schmitt on the basis of a decisionism implicit to his work, in particular in "Force in Law." Such decisionism is held to justify arbitrary force because it severs human action from reason and leaves it groundless (McCormack 396). Derrida's approach has consequently been labeled by some as "nihilistic, relativistic, and potentially authoritarian" as well as being "a reactive ideology willing to lend a hand to political evil," according to William Sokoloff (341). Thus while Derrida finds that Benjamin's text is haunted by the very mythic violence he critiques, his own essay is shadowed by similar controversies.

Indeed, in his discussion Derrida uses language that is reminiscent of Schmitt: like the state of exception, the mystical is "what suspends law." But where for Schmitt this is what decides the law, Derrida suggests that the suspension that includes outlawry in the law signifies a fundamental undecidability in the concept of the law. Derrida, no more than Benjamin, corroborates Schmitt, but rather counters him. For Schmitt 'to suspend' simply suggests an interruption, withdrawal or delay in law that is temporary and based in political necessity (PT 12). It specifies a situation when the law is still in force, but its application is interrupted to allow the state extralegal powers to deal with a situation of war or civil unrest. When he refers to the suspension of the law, Derrida retains the idea of withdrawal from a prior law but adds an additional meaning. For him the suspension occurs in the moment (and in the potentiality of a coming moment) where one law is destroyed and another founded. This may be anterior and posterior to specific epochs of law, but it is also simultaneous to the law as a possibility that hangs threateningly over whatever law is currently in force. While situations of internal conflict may heighten this threat to the law and make us aware of it, it is nonetheless present even in "normal" circumstances. Indeed, it is the very condition of the law's becoming. This is Cornell's argument in her rebuttal of LaCapra's critique of Derrida: neither the law, nor any other system can fill social reality as Schmitt demands. The law is unable to establish itself as

the only social reality (87). Schmitt's totalizing argument depends on the myth of full presence. Derrida's task, the task of deconstruction, is of course, the debunking of this very myth, the political consequences of which are very real, and that counter fascism. Cornell writes: "The deconstructability of law…is a theoretical conception that *does* have practical consequences; the practical consequences are precisely that law cannot *inevitably* shut out its challengers and prevent transformation, at least not on the basis that the law itself demands that it do so" (88). Thus where Schmittian exceptionality allows the law to continue, even when suspended, the mystical demands attention to the impermanence and arbitrariness of law. Unlike the exception, the mystical is not reserved for emergencies (perpetual or not). It always includes, as a potentiality, outlawry as a part of law, the result of which is as suspense*ful* as it is suspended. For this suspense imbues the concept of law with the uncertainty, doubt, anxiety and excitement of the promise and threat of a new law**.**

Moreover, Derrida's treatment of decision and undecidability in its relation to law and outlawry is marked by a departure from Schmittian decisionism. In "Between Justice and Legality: Derrida on Decision" Sokoloff argues that rather than restoring order, for Derrida decision aggravates the experience of anxiety and insecurity, because in order to be justified a decision depends on a ground, which, in Derrida's analysis, is necessarily arbitrary. Every effort to resolve crisis through a decision produces crisis, since there is no rule to guide it (344). However, Sokoloff counters critics who conclude that Derrida's apparent advocacy of decisionism breaks with legality in an ethically impotent or laissez-faire doctrine in which 'everything is permitted,' or in a proto fascist politics of pure will (346). On the contrary, decision-making is problematic for Derrida, precisely because it is legal (lawpreserving) at the same time as it is extra-legal (law-destroying) (344). For Derrida this binds decision-making to a profound ethical responsibility. He establishes ethical standards that are lacking in Schmitt's more Machiavellian approach, primary of which is respect for others (346). Moreover, for Derrida, Benjamin's divine violence "never attacks—for the purpose of destroying it—the soul of the living [*die Seele des Lebendigen]*." "Consequently," he continues:

one has no right [*on n'a pas le droit*] to conclude from this that divine violence leaves the field open for all human crimes … The individual or the community must keep the "responsibility" (the condition of which being the absence of general criteria and automatic rules), must assume their decision in exceptional situations, in extraordinary or unheard of case [*in ungerheuren Fällen]*" (FL 288).

In other words, when called upon to do so by conditions that demand justice, one must be prepared to break the law. This is one's responsibility to the other, but also to the law, which comes closest to justice when it transforms in response to the exceptional. Derrida does not, like Schmitt, call for the absolute decision-making authority of a sovereign who is above the law in order to resolve the paradoxes of decision-making, but instead demands that the "law … be more flexible in the name of the other" (Sokoloff 347). If it is to be ethical, outlawry is thus not called upon to restore order through a sovereign decision for Derrida, nor is it a means to maintain the balance of dominant power relations. Rather, outlawry is injected into the law through decision-making as a check to those relations of power, and an assurance of responsibility to the other.

This is not without risk, for justice would not be possible without risk. As Derrida writes: "there is no *justesse,* no justice, no responsibility except in exposing oneself to all risks, beyond certainty and good conscience" (287). This is not to suggest that the exposure of justice to risk is a 'free for all,' as some critics fear. Derrida makes explicit an ethical imperative that is only implicit in Benjamin's text. This imperative of responsibility to the other ensures that Divine violence is incompatible with totalitarianism, which does not hesitate to annihilate the other.

Faulting Benjamin for failing to grasp and follow the contradictions that emerge when he polarizes mythic and divine violence, justice and power, Derrida deconstructs these concepts, or rather, allows them to "deconstruct themselves" in an argument that is, as he asserts, "anything but conservative and antirevolutionary" (272). He argues that divine violence is bound tightly to mythic violence through the iterability inscribed in the promise of the founding gesture. "Thus there can be no rigourous opposition between positing and preserving," he argues, "only what I will call … a *differential contamination*

between the two, with all the paradoxes that this may lead to" (272). Yet such a "differential contamination" is precisely what Benjamin identifies as "something rotten," that, as Derrida elaborates, "condemns" and "ruins" the law in advance. As I earlier demonstrated through the revolutionary figure of the 'great criminal' Benjamin was not as unaware of the ambiguities infiltrating his distinctions as Derrida implies. That Benjamin is unable to maintain these distinctions does not signify complicity with fascism, but instead serves as a warning of the dangers of outlawry – even though outlawry is also a necessary precurser to justice. As Cornell explains it: "Revolutionary violence cannot be rationalized by an appeal to what 'is' for what 'is' is exactly to be overturned. In this sense, each one of us is put on the line in a revolutionary situation. Of course, the inability to know whether or not the situation actually demands violence, also means that there can be no justification for not acting. This kind of undecidability is truly frightening" (91-92). This is what Derrida explicitly draws out of "Critique of Violence." Indeed, where the distinction between mythic and divine violence is undecidable, instead of finding a justification for totalitarianism, and the application of outlawry to the conservation of the law, there emerges for Derrida the possibility of legal and political transformation that is more than simply evolution, and this demands the utmost responsibility.

The Creative Force of Performativity

If outlawry is the deconstructibility of law, then what Derrida and Cornell posit as the 'transformation' of the law exceeds the ordinary sense of transformation as an identity in metamorphosis. For deconstruction shatters the concept of the identity of law, in the sense of the law's being identical with itself. Outlawry involves the complete annihilation of law that we find in Benjamin's divine violence; what replaces the law is not an alteration of law, but alterity itself. The law to come is comprised of the law's very difference from itself.

This re-creation of the law is a result of the law's performative structure. Performativity is an aspect of speech act theory advanced by J.L Austin (1965) that Derrida develops in

Limited Inc. In Austin's speech act theory, the performative is a category of utterance that, instead of possessing a descriptive truth-value, acts upon the world. Epitomized in the form of vows and promises, the performative utterance linguistically creates reality; it is a way of "doing things with words." Although Derrida makes only brief reference to it in "Force of Law," performativity fundamentally underlies his deconstruction of the law. If we look more closely at the law in relation to his analysis of performatives in *Limited Inc.* it becomes clear that performativity provides the structure for a concept of law that is constituted of difference with itself; it binds outlawry to the law not as its opposite, but as its other side, and makes possible a switching, usurping structure that constantly re-makes reality. By more closely exploring the performative aspects of the law, with a focus on outlawry, we can access a more 'revolutionary' and less merely transformative deconstruction of the law, as well as a more disruptive understanding of the 'mystical foundation of authority.'

Derrida specifies that his use of the term 'mystical' is different from Montaigne's insinuation of artificiality and faith in the place of justice. For Derrida, the mystical is the "very performative power" by which "discourse… meets its limit – in itself" (FL 242). It is not merely the supplements of faith and artifice that endow the law with a fictional quality; fictionality is embedded in the very structure of the speech act that founds the law. And bound to this fictionality, in the "walled in" silence of the violence that founds the law (242), lies outlawry. The silence of outlawry challenges the very limits of the discourse of the law: it is a creative, violent, or forceful silence. For Derrida, "[t]he very emergence of justice and law, the instituting, founding, and justifying moment of law, implies a performative force, that is to say always an interpretive force and a call to faith [*un appel à la croyance*]" (241-242). In this remark we find the two elements of the performative that constitute the law in its relation to outlawry. The first is force, the violence that destroys, institutes, and justifies; and the second is fiction, the interpretive aspect of this violence, its duplicity and its deceptions, but also its creative powers. This combination of force and fiction is not merely an *attribute* of the law; it constitutes the law through its internal structure as a performative utterance. Speech and force work in tandem in the law; they are equally essential to its concept, so we should not suppose, for instance, that violence is put to service as a supplement to "enforce" the law as pure

nomos (convention). Rather the law is the "exercise of force in language itself" (FL 237).

Outlawry disrupts a pure conceptualization of the law from the outset, for, as Derrida

continues, the exercise of force in language occurs in "the most intimate of [the law's]

essence, as in the movement by which it would absolutely disarm itself from itself" (238).

This disarming intersection of force and fiction is an internal movement of the law; the

law constitutes and is constituted by what it would forbid, exclude and deny, and this is

outlawry.

Force is a fundamental element of law, which would not be obeyed without the threat of

violence. Derrida reminds us, citing Kant, "No law without force" (233), and Pascal,

"justice without force is powerless" (238). However, while it includes violence, force is

not simply equivalent to violence. Violence (*Gewalt)* is complex with respect to the

inside and the outside of the law, for *Gewalt* (the term Benjamin used in "Critique of

Violence") connotes both illegitimate power and "justified authority" (FL 234).[11] Yet

how can the law possess creative forces, if, as Benjamin argued, legal violence is merely

a preserving force? Force, which might take violent form, is also pure energy, power or

capacity. In *Visions of Excess* Bataille defines force as a shock that "presents itself as a

charge, as a value, passing from one object to another" (143). Force thus involves a

creative power, which is emphasized in the effect that performatives have on a given

event or situation. Performativity is distinguished from other speech acts by the elemental

inclusion of such creative force in its structural integrity as a speech act, by virtue of

which the performative utterance has the power to produce and transform reality.[12]

It is very difficult, if not impossible to extricate such creative force from fiction. It is this

emphasis on fiction as a creative force that distinguishes Derrida's approach from speech

act theorists such as Austin. Where Austin excludes deceitful or insincere utterances and

literary or theatrical fictions from the performative category, Derrida includes such

exceptions as necessary elements of any successful performative. Every performative is

always already impure, because iterability, the possibility of repetition, is indispensable

to performativity. Every utterance, performative or constative, might be repeated, or cited

and is thus torn from its immanent context – disrupting its original intention (17). In

ordinary situations this repetition re-creates the legal-political sphere through subtle

replacement-changes; the law's ontology as something that is constantly speaking itself into existence is one of becoming rather than static being. Iterability thus involves more than simple repeatability; it also involves alteration and thus entails a remainder. Alterity haunts every mark. In the case of the performativity of the law, this alterity calls forth what is other to the law, that is, outlawry. Derrida writes:

> Iteration in its "purest" form — and it is always impure — contains *in itself* the discrepancy of a difference that constitutes it as iteration … It is because this iterability is differential, within each individual "element" as well as between the 'elements," because it splits each element while constituting it, because it marks it with an articulatory break, that the remainder, although indispensable, is never that of a full or fulfilling presence: it is a differential structure escaping the logic of presence or the (simple or dialectical) opposition of presence and absence, upon which opposition the idea of permanence depends. (LI 53)

What might constitute such a "discrepancy of difference" that evades the "logic of presence" when it is the law that is reiterated? As what is other to the law, this 'absence' is outlawry. Iterability thus includes outlawry in the law by creating conditions in which the law is constituted through its own difference.

Iterability compels a discrepancy that is both internal to the law and excluded from it. It does this through what Derrida refers to as a force of rupture [*force de rupture*]. This is the breaking force by which a sign splits from its context (citation), allowing it to signify even when the reader or listener has no knowledge of the author's or original speaker's circumstances or intention. The force of this rupture, this breaking point, spacing and deferral is not the simple negativity of a lack, but instead the shock or charge of an emergence (LI 9-10) that does not permit the law to be identical to itself. This quality, in which the law is not identical to itself, does not deny the law's ties to reality, but guarantees it; as a performative force the law produces reality.

The difference between the law and outlawry gives the identity of the law its potentiality, for difference produces the opposition between presence and absence (the 'to-be' of law and the 'not-to-be' of law), giving the desire of presence its "breathing space" (OG 143). Yet outlawry is not other to the law as a lack, even though it is a non-presence. On the contrary, the outside of the law is imbued with the plentitude of a suspended presence of its own. This plentitude marks the first order of significance of the supplement: "The supplement adds itself, it is a surplus, a plentitude enriching another plentitude, the *fullest measure* of presence. It cumulates and accumulates presence…" (144). Outlawry is the force that founds the identity of the law; its difference marks the boundary that allows the law's presence to unfold. Outlawry is always present in its non-presence through suspense/suspension. Yet at the same time, both the law and its outside are lacking. Neither can exist without the other. This is the second significance of the supplement, as Derrida continues: "But the supplement supplements. It adds only to replace. It intervenes or insinuates itself *in-the-place-of;* if it fills, it is as if one fills a void…" (144-145). The difference of outlawry reveals the incompleteness of the law, the impossibility of the law's full presence wrought through its very desire to present itself. As Derrida frames it in *Of Grammatology,* "this desire [the desire of presence] carries in itself the destiny of its non-satisfaction. Difference produces what it forbids, makes possible the very thing that it makes impossible" (143). For the law is itself lacking a pure and total identity. It includes the possibility of its outside as a break or rupture of its purity. Moreover, it lacks the stability of unalterable repeatability, the successful and fully realized *telos* of its intention, which depends on the immanent moment of an original context that has no anchor (LI 12).

The law's presence is thus conditional on the possibility of the law's own limits, its failure to fulfill itself, since it can only exist in relation to what is other to it. The law begins its presencing, and so does the possibility of its outside. By establishing an immediate relation with the other it produces along with itself when it becomes present (the outside of the law), the law's ontological unity is unraveled. Identity, in the classical sense, demands sameness, yet in iteration the law is not the same as itself. For iteration includes outlawry, as a perpetual deconstruction of the law. Iterability, the mutually constituting hinge that unites the interior and the exterior of the law through the violence

of the performative, results in a kind of dispossession from the identical for the inside of the law. The law is different from its other, but what is different from it constitutes it. The law is thus different from itself.

This relationship to alterity establishes the criterion that for Derrida determines the law's relationship to ethics. When the law remains open to its difference with itself, an ethical relation is possible, for ethics demands such openness to the other. But where the law attempts to harness the violence of outlawry in order to preclude transformation, denying openness to what is other to it, as in Schmittian sovereignty, then its ethics is shut down. Yet Derrida suggests that the law is by nature performative: its very ontology is that of a continuous founding and disruption by what is other to it. Yet does such incidental change not fall short of what Benjamin demands in the name of justice? Performative law transforms by building on and retaining traces of the past, which is precisely what Benjamin takes issue with in "Theses on the Philosophy of History." He shows the Angel gazing with sorrow and disgust on the refuse of history, and argues that fascism arose as a result of the normalization of the ongoing crisis in law. What is needed, he demands, is a "real state of emergency," that is, a revolution in concepts, a fully disruptive critique of the present, and an annihilation of the current law. Does the theory of performativity include this potential?

The Imposter

When we consider performativity in light of outlawry rather than simply difference, such revolutionary potential emerges more clearly. In iterability the outside inhabits the law as a promise and a threat, the possibility of something else, something other than the law that has been performed as calculable and predictable. Outlawry is a remainder of the law's own illegitimacy, and alternative to the law's actuality. It has not been brought into the realm of calculation and enclosed within borders that define the manner of its being, as the law has. By breaking through the dualism between presence and absence, the outside of the law casts an uncertainty on the law, since the concept of permanence depends on such a certainty. The law's permanence is what becomes uncertain, and this is

the threat and promise of outlawry that inescapably lurks in the law's very internal structure. This is why Benjamin contends that the public views the outlaw with both horror and admiration, for "the great criminal … confronts the law with the threat of declaring a new law" (CV 284).   When the new law is declared, outlawry is transformed into the law, with its own discrepant shadow.

Moreover, the performative, iterable structure of outlawry generates more than the ongoing alteration or transformation of the law, because performativity re-creates reality itself. The law borrows its force from outlawry, both the force that institutes it as law (law-making violence) and the force that produces reality (the performative shock). Outlawry resides within and outside of the law as the secret source of its power and as a threat to its power. As a function of performativity, the force of law, which is borrowed from outlawry, begins to become indistinguishable from the law's fiction. Outlawry both exposes this mysticism and guarantees the successful fiction of the law. For the law remains mystical, even when exposed, because for every exposed fiction a new fiction takes its place. The new law is an outlaw, a different law, that deposes the old one and becomes its imposter-replacement.

Indeed, the law and the outside of the law relate to each other by impersonating themselves and each other, and becoming what they impersonate. In the normal situation this is expressed through constant small changes, but in a crisis (and recall that from the perspective of the oppressed, or those excluded from the law, the normal situation *is a crisis*) it has revolutionary implications. The form this takes is somewhat like Bhabha's concept of Mimicry in *Location of Culture*. Bhabha is writing of the ambivalence of a colonial discourse that conditions imitation by the Other, who in turn becomes a menace to colonial power. "Mimicry" he writes, "represents an ironic compromise" in the dichotomy between identity and difference in colonial domination (86). The concept depends on the alterity in repetition that structures iterability:

> [C]olonial mimicry is the desire for a reformed recognizable other *as the subject of a difference that is almost the same, but not quite*. Which is to say that the discourse of mimicry is constructed around an *ambivalence*; in order to be

effective mimicry must continually produce its slippage, its excess, its difference…mimicry emerges as the representation of a difference that is itself a process of disavowal. (86)

Outlawry and the law mimic each other in a similar fashion, with the slippage of that differential contamination producing both the difference and the similarity between them. Mimicry operates like the split image of a reflection, on the one hand, and the mottled background of camouflage, on the other. The spectral effect is one of reversal, the reversal of the place-switching when the law is exposed as illegitimate and the outlaw becomes sovereign. But it also involves the reversal of the very operation of performativity/iterability and the differential contamination that blurs the boundaries between law and outlawry. For the law, as we have seen, includes what it forbids – the outside of the law – in its structure through iterability. The outside of the law exists within the law, as the altered remainders of repetition, as what differs and defers, traverses and transforms. Outlawry emphatically differs, it repeatedly disavows the law, contests it, exposes and denies it. But when it is successful what is unmasked is not the alterity it promises, but the displacement of identity. In the founding gesture outlawry becomes the law; it takes on the mantle of the law's very identity, even as what was the law enters the space of alterity left open.

For Benjamin the repetition of this switching movement is difficult to see as time propels forward the storm of progress in which the angel of history is caught. Law and outlawry exchange places with such momentum they leave nothing behind but the ruins of time. Thus for Benjamin time must stop for justice to be realized; justice comes with the end of the world as we know it. As I have argued, this involves not a literal apocalypse, and certainly not a Shoah, but a poetic revolution, and perhaps a political one. What makes the revolution just, moreover, is the purity of the revolt, the sheer outlawry of it, and its absolute difference from present political concepts and structures. But what guarantees that this pure revolt will not found a horrific new law? There is no guarantee. Yet Derrida does offer some ethical criteria that might improve our chances for an ethical outlawry, and a future justice.

For Derrida, every instance of law contains the possibility of Benjamin's pure revolt. The mystical foundation of authority suspends time in a perpetual immanence that freezes the rotating temporal movement that blurs the distinction between the archic and the anarchic implied by Benjamin. In this frozen image the law and outlawry are difficult to distinguish from each other because the difference between them is exposed as undecidable – in their mimicry the difference is "mottled" like camouflage. However, from within the mottled background, a figure emerges, only to be replaced an instant later by another – that is 'almost the same, but not quite.' This mimicry of law and outlawry occurs like an optical illusion. Like the well-known reversible figure/vase illusion, the image switches from one figure to another as the viewer shifts focus between positive and negative space: law to outlawry to law to outlawry.

It is no wonder that the debate between Benjamin and Schmitt raises such controversy. Mimicry was the very strategy with which they critiqued the other's treatise on outlawry, constructing opposing concepts linked by that 'almost, but not quite' mimetic structure. The strategy, according to Bhabha, "is the sign of a double articulation" (86). On the one hand, the law appropriates otherness through disciplinary measures, assimilating the other as an expression of its power. Yet on the other hand, mimicry signifies the "inappropriate," an insurgent difference that disavows and threatens the law (86). This is the promise and threat of outlawry. Outlawry frees violence from the law and opens up a space for something new – something that *might* lead to justice. Yet outlawry leaves us open to the worst. It can be harnessed by the law to preserve itself in an attempt to avert a crisis or preclude transformation. Never just, in such a scenario, outlawry might be justifiable in some cases (such as the suspension of law during a natural disaster) but it can also achieve the extremes of injustice, such as we saw in the legacy of the totalitarian regimes of the last century.

Outlawry and Justice

If outlawry can be just or unjust does this render the difference between justice and injustice undecidable or relative? Does it therefore abdicate our responsibility to strive for

justice as Benjamin's and Derrida's critics suggest? Not in the least. What is at stake in the relation between the law, the outside of the law and justice is more subtle than a polemics between the law and outlawry, a naïve glorification of violence, a cynical renunciation of the possibility of justice, or a disavowal of responsibility. On the contrary, the undecidability between the law and outlawry portends an urgent call for responsibility in the exposure of injustice, and striving for a justice that never arrives but remains perpetually on the horizon.

The capacity of the law and outlawry to switch places, transforming themselves and reality, demands a responsibility to justice. For only in destroying the law (Benjamin) or transforming it (Derrida) through outlawry can justice be approached. In "Critique of Violence" Benjamin not only severs the connection between law and justice; he associates outlawry with justice through the immediate, boundless violence that destroys the law – a violence that he nominates 'divine.' In this gesture he maintains the divine character of justice but he transforms it from the law of the Father to a messianic mode of justice, a justice of devastation and transformation. This is not to say that outlawry guarantees justice; on the contrary, risk is essential to the concept, and not only in terms of the extreme case of radical political evil. Even in the most benign of political regimes, the law destroying powers of outlawry are followed by nothing less than its law-making powers and the inauguration of a new law in which the hope for justice is suspended, once again.

Benjamin advocates for the struggle against what is pernicious in the state – any state – and this is state violence and its historical justification. This struggle, he is clear, cannot come through the law but must be derived from outside of it. The justice of the outlaw does not lie in his or her illegitimate violence, but rather in the great criminal's exposure of the law's violence and fraudulent tie to justice. The source of this justice is the wholly other: ethics, and not politics. What Benjamin calls for is not exactly a revolution, but the interruption of the political with a revolutionary ethic, a moment in which we step outside of the wreckage of linear time and open the door for justice. The revolutionary is less a political figure than an outlaw who, viewing history from the perspective of the

other, exposes the mythology of the political, eradicates the law and heralds the coming of a new age.

Benjamin's theorization of expiating and messianic Divine violence informs Derrida's concept of justice to-come (*à venir*). This concept oversees the suspension between outlawry and law not as a synthesizing agent but as a compelling force of action/disruption directed at the future. Because of the mimetic-imposter relation of the law and outlawry, justice is not altogether barred from the law, as long as the law leaves its relationship with outlawry exposed in the double sense of exposure – it allows its own illegitimate origins to remain in the open, and it leaves itself open to transformation. For outlawry can serve as a barrier to justice when it is appropriated to preserve the law, in the Schmittian sense. Outlawry is in this sense a paradoxical concept; it swallows itself, cancels itself out, without ever actually disappearing. This is the same cannibalistic gesture by which power (realized in the form of the law) exercises a constant erasure of justice, but never succeeds in expunging justice, for Divine justice remains always out of reach.

For Derrida, justice is only possible when the generalities of law are suspended in favor of the "fresh judgment" of a decision that has passed the test of the undecidable. Derrida writes: "for a decision to be just and responsible, it must [*il faut*] …be both regulated and without regulation, it must preserve the law [*loi*], and also destroy or suspend it enough to have [*pour devoir*] to reinvent it in each case" (251). The suspension of the law occurs at the threshold between the law and outlawry. Without actually possessing justice (for justice is impossible), outlawry somehow cracks open the aporia that divides the law and justice, opening up the possibility of the experience of the impossible. Outlawry opens up this possiblity, because justice depends on the undecidable, which characterizes outlawry, and the associated movement of reinvention, usurpation, and mimicry that traverses the space between the suspension of law and its maintenance. In a moment of crisis outlawry calls for a decision that is undecidable, which is to say it "calls for a decision in the order of ethical-political responsibility" (116).[13] Outlawry is the shock, the ghost of illegitimacy and the promise of something other that wrenches our attention from the mythicism and mysticism of our narratives with the urgency of the immediate. It

is the rupture in the law, the insertion of something new that keeps it revolving, rolling onward toward the future, toward justice. This involves an open relationship with alterity, for justice also involves, in Derrida's schema, a responsibility toward the Other.

As the possibility of otherness embedded in the performative utterance, the outside of the law is that structurally (non)present possibility that demands the law's responsibility to a justice that is strived for but never realized (248-249). As what differs and defers, repeats, traverses and transforms, outlawry is that very "moment of suspense," that "interval of spacing" that constitutes an epokhe. It is that moment of usurpation when it is not clear which is the law and which is outlawry, the camouflage that mottles the distinction between them. Outlawry emerges in the split image of a reflection that has no original figure, a mimetic reflection of a reflection that is constituted of identity and difference. To paraphrase Derrida, outlawry thus perpetuates a suspense that brims over itself in anguish, cracking open spaces of metamorphosis and revolution, motivating the impossibility we understand as justice. Outlawry is a shock, an impulse for transformation, a summoning of hidden possibilities. Although it is structurally integral to the law, it is that other side that appears not as a lack but as the affective force that constitutes the law's possibility and impossibility alike. It is the liminal tension that activates the aporia of justice –as Derrida puts it, that "experience of the impossible: a will, a desire, a demand for justice…a *call* for justice" (FL 244). Where the law strives for the predictability of the rule, outlawry, in both its dystopic and utopic forms (threat or promise) heralds the "to-come" (*à venir*) of justice, demanding a constant refounding of law and politics (256). Propelled by anticipation, surprise, shock and catastrophe, justice waits on the horizon and summons our responsibility to pierce the suspense and strive toward it.

Chapter 2: The (Un)Becoming Subject of Outlawry

To Simone de Beauvoir's now classic assertion that one is not born a woman, but rather 'becomes' one, Judith Butler queries "Does one ever become [a woman], or is to 'be' a woman a mode of becoming without end?"[14] My questions follow from this. If the subject is always, without end, a becoming subject, then is anyone ever really a subject? What else might one be? If the subject exists in relation to the law, then is there some kind of an outlaw that is an alternative to subjectivity? Is it possible to reverse processes of becoming: to un-do one's gender or 'proper' place, indeed, to change the very conditions of the subject that one (never, after all) becomes? Is there perhaps an (un)becoming as well as a becoming subject? Would such an (un)becoming subject be an outlaw? My use of the term '(un)becoming' is a tongue in cheek reference to the disciplinary accusation leveled against certain girls, that one's behaviour is 'unbecoming' for a young lady. I bracket the (un), because I do not merely want to suggest that the girl will disappear (she always does, in one way or another). I also intend that the '(un)becoming girl' is a mode of becoming outside of the law that challenges the conditions of one's possibility, and potentially alters not only subjectivity, but also (in the context of collective (un)becomings), alters the law. I suggest that subjectivity is a conflicted, doubled experience, a process whereby both law and subjectivity are continually re-created at the law's juncture with outlawry.

As de Beauvoir argues, to become a woman is to become subordinate to man, who is the neutral standard that represents the law. By implication, she once was *not* his Other. Was this before the law? Before the subject? Or before the subject's relation to the law? To become a woman is to 'fall' (in the sense of Eve's fall), outside of the law. If this is the case, then woman (along with queer, racialized, colonized, and disabled subjects) is already outside of the law. For that matter, any subject who exceeds (or falls short of) the law's performative demand – that is, every subject, since the norm is an ideal that cannot be realized – is in a way excluded from the law. No doubt there is something desirable in exceeding the law, for an outlaw is, in some respects, free of the law. Yet surely one would never wish to be an outlaw in the negated sense: at best a failed subject and at

worst as an abjected, excluded, or eradicated one (the latter being another, more sinister form of unbecoming). Wouldn't the project be to find a way 'inside' the law? For we submit to the law's authority in order to receive its gifts of self-consciousness, intelligibility, and agency.

By their very nature, law and subject depend on a constitutive outside. Something, or someone, must always be excluded in order to establish identity. Moreover, it is an exclusion that really places one inside the law, since the ruling order requires the exclusion to exist. Being inside the law does not seem to guarantee the positive content of subjectivity if one can be included by being excluded. Moreover there does not seem to be any real way to get outside of the law, that is, any real possibility to be an outlaw in the emancipatory sense, since the 'outside' is really 'inside.'

The conditions for emancipation from the law are untenable. We cannot be freed without canceling our very identity, because that identity is produced by our subjection to the law.[15] What is the point of resistance if it eradicates one's comprehensible existence in the world? Is there a way in which we might retain, or secure, our intelligibility and agency without being subordinately Othered, without excluding some Other, without being assimilated into a law that denies access to justice, and without being made to disappear in any other way? Is it desirable, or even possible, to evict the 'subject' before the law as a site of emancipatory politics? These questions are vital for communities that fall outside of the law. How do we ensure that difference resists and transforms the law, rather than constituting an impossibility under a law that either assimilates or eradicates its others? And how might we accomplish this persistence of difference, this resistance, this revision of the law?

In what follows, I analyze the subject's relation to the law in its deconstructive relation to outlawry, through a consideration of the interpellation scenario forwarded by Althusser in "Ideology and the ideological State Apparatus." This scenario describes the process of becoming a subject by internalizing ideology and externalizing it in material practices: a person on the street is hailed by a police officer and, recognizing the self in the call, turns toward the officer. How might we read this scene in light of the persistent deconstructive

force of outlawry in relation to the law? What is the subject's relation to outlawry? Does outlawry empower the subject to dismantle the injunction to assume a particular subject position? Can we negotiate this space without simplifying the outlaw into a voluntarist subject that somehow transforms the law through the force of individual will; or without the subject simply ceasing to be; or without valorizing subjectivity (or outlawry for that matter) as something that must be conserved at all cost? Can we find, in this interpellation scene, some way to be outside of the law, to be outside of subjectivity? I argue that it is possible, indeed, it is inevitable that we are always already outside of the law, just as we are always already subjects, although just how 'outside' and how 'inside' we are depends on our social and political context and relative place in the hegemonic order. Certainly there is no 'outside' properly speaking, but, I argue, neither is there a fixed and proper inside. So how does the subject negotiate these translations (between inside and outside) in its relation to law and outlawry?

To address these questions I engage substantially with Butler's interpretation of Althusser in *Psychic Life of Power*, in particular her discussion of the subject's identification with the bad subject and the "one who has broken the law," as well as her theory of the performative subject. I re-consider these possibilities in light of a concurrent performativity of the law and the performativity of outlawry. I propose that at this site of the double performative the subject is a linguistic placeholder that negotiates the difference between interior and exterior. With each articulation of subject and law hovers the possibility of something other, a contingent non-subject and non-law, an outlaw space that constitutes and dissolves this performative pair.

My aim is to take outlawry as a starting place to re-think the complex series of relations between subject, law and emancipatory politics. This is a very specific way of theorizing the subject within the framework of deconstruction and performativity theory. In addition, the (un)becoming subject is implicitly informed by three versions of the outlaw that emerge elsewhere in this dissertation. The first is put forward by Walter Benjamin, who is working within a Marxist framework. He proposes a revolutionary 'great criminal' who possesses the power to both destroy and found the law (281). The public admires the great criminal because everyone secretly wants to see the law overthrown,

that is, to be freed of subjection to it. The second outlaw emerges from Carl Schmitt's totalitarian definition of sovereignty. In this approach, sovereignty is derived from the conservative power to suspend the law, and as such, the sovereign is the outlaw.[16] This has the consequence of turning the state's subjects into outlaws of a third sort, specified by Agamben as *homo sacer*, who is stripped of subjectivity and exposed to death.[17] The concept of the great criminal exposes the openness and limits of the law in the context of outlawry in its sense of revolutionary constituent powers, while the vulnerable outlaw produced by sovereignty serves as a reminder of the risk of exposure to violence, death, and incomprehensibility posed by outlawry.

These variations highlight the political stakes of outlawry in its relation to both subjectivity and the law, and they also reflect the tension between resistance, subjection and abjection. It is necessary that there be law, that there be subjects, and that subjects submit to law; the alternative is both linguistically and politically incomprehensible. Yet there is always a remainder in the contingency that is temporarily foreclosed, as law and subject alike are repeatedly constructed and deconstructed. Through this, subjects transform. Moreover the very laws, norms and conditions of possibility that produce and constrain them are altered. As a site where the law and subject intersect to constitute and deconstruct each other, outlawry is profoundly political, for it is the site where individuals are subjugated, abjected, and emancipated, and where hegemonic norms – indeed, even states – are sedimented, transformed, or overthrown.

The Hailing by the Law

Althusser's theory of interpellation, proposed in "Ideology and the Ideological State Apparatus," has become seminal to conceptions of subjectivity in social and cultural theory. The scenario establishes the law's staging of the subject's call into being: a person on the street is hailed by a police officer ("hey you there!") and, recognizing him or herself in the call, turns toward this agent of the law (106). The scene describes the process of becoming a subject that freely consents to subjection. This hailing/recognition process of subjectivation (a translation of *assujetissement* – both forming and regulating

the subject) denotes the importance of linguistic practices in subject formation, yet the process is also embedded in the materiality of social rituals and social context. As Althusser writes: "The subject acts ...by the following system...ideology existing in a material ideological apparatus, prescribing material practices governed by a material ritual, which practices exist in the material actions of a subject acting in all consciousness according to his belief" (159).

Subjectivity, for Althusser, is constituted materially by the internalization of ideology through processes of interpellation. In this approach, ideology is not merely 'false-consciousness' as it is in earlier Marxist theories. For Marx ideology responds to material reality but is not constituted by it; it has no history of its own. Althusser argues, "[Marx's] [i]deology is conceived as a pure illusion, a pure dream. i.e. as nothingness. All its reality is external to it" (159). Althusser shifts this significantly by weaving Lacanian psychoanalysis into historical materialism. He frames ideology as the reality we construct upon our entry into the symbolic order, since we cannot access the 'real' conditions of existence except through language and convention. This interpretation of ideology is based on Lacan's theory of the mirror stage, which informs Althusser's structure for subject interpellation. Althusser suggests that all ideologies share a specular or 'double mirror' structure. This mirror interpellates the subject in the name of a Unique and Absolute Subject, which is the centre of the ideology. Althusser uses Christian ideology in which the Absolute Subject is God, but we could just as easily substitute Law in the place of God, as the analogy of the police officer suggests. The mirror duplicates the reflection, which both constitutes ideology and ensures its functioning. A mutual recognition occurs that assures the individual that everything is as it should be. One can contemplate the image of the Subject (God/Law), which is one's own image; One is recognized by the Subject, thereby recognizing the self. One then behaves accordingly.

This doubly specular structure grounds the subject in terms of a relational connection between the realm of ideas and the material world. Althusser thus suggests that it is not the *conditions* of material existence that humans represent in ideology, but our *relation* to those conditions - the relations of production and the relations that derive from them. In this perspective ideology is twofold; first, "Ideology represents the imaginary relationship

of individuals to their real conditions of existence" (162); and second, "Ideology has a material existence" (162). Ideology is not about the world *per se*, nor about the imagination *per se*. It is about how humans imagine their place, their role, and their relationships within it. It is thus neither completely intangible, nor absolutely solid, but rather has a dynamic materiality, the modality of which is praxis. Ideology is realized in state apparatuses, which are governed by rituals that produce consent to social relations and establish one's 'place' in society. There are multiple ideological apparatuses: schools, churches, the family, the political system, trade unions, communication media, 'cultural' organizations, and so on. These govern the ritualized social practices that set the parameters for a subject's range of possible characteristics and properties.

Althusser sees this material form of ideology at play in state systems that create the subject in the specular image of the state, through an interpellation mechanism based on recognition (and *mis*recognition), and through various rituals that produce the subject through one's mastery of skills. The state maintains its hegemony because it conditions one's behaviours and actions, compelling the individual's beliefs through these processes. The process is dynamic, for ideology is first about how humans imagine their relationship to their existence; moreover, it is determined in part by materiality, and has material expressions.

The Ideological State Apparatuses work together with the State's Repressive Apparatus, which includes a specialized legal apparatus (police, courts, prisons), the army, the head of state, government and administration (131-2). The Repressive Apparatus uses violence to "secur[e] by force (physical or otherwise) the political conditions of the relations of production which are in the last resort *relations of exploitation…*" (142). It works predominantly by repression, and secondarily by ideology (139). Although ideological state apparatuses are diverse, they are unified by their functioning beneath the ideology of the ruling class, which also holds state power, and has at its disposal the repressive state apparatus.

Resisting Subjects

But what potential for resistance and social change does Althusser's theory promise? Is there an outlaw hidden beneath the surface of his theory, or does the subject, who is always already a subject, totally fill social reality? Althusser's framing question is "how are the relations of production reproduced?" Or in other terms, why do workers willingly work in a system that exploits them? (130). His answer is complex and contradictory. He points to a subject that is produced and reproduced by internalizing ideology, for subjection marks consent to exploitation, on the one hand, and defines one as free person on the other: "[T]he individual is *interpellated as a (free) subject in order that he shall submit freely,"* he writes (136). The contradiction in this theory of the subject has led some readers of Althusser to charge that he leaves little room for agency, for the subject is free only to submit. As Elizabeth Wingrove argues, Marxist readings of Althusser tend to allow for agency only in the gaps and interstices when the system breaks down (872-873).

Yet Althusser's underlying concern is to discover how exploitative relations might be disrupted. His philosophical work in general is inspired by the impulse for political change. He is very clear on this point in the interview by Maria Antoinette Macciocchi that opens the volume of work that contains his essay on Ideology: "My interest in philosophy was aroused by materialism and its critical function…My passion for politics was inspired by the revolutionary instinct, intelligence, courage and heroism of the working class in its struggle for socialism…It was politics which decided everything…Marxist-Leninist politics" (11). By implication, his theory as to how states constitute ideological subjects represents his effort to understand the revolutionary subjectivity of the working classes. Yet where this revolutionary subject is located in his theory of interpellation, or how such a revolutionary subjectivity might manifest itself is unclear. The subject, as he presents it, is really a subject-*position* in terms of the relations of production. One's subject position is created through a structural effect and determined by the limits and possibilities made available through the ISAs. Nevertheless, something in the repeated rituals of interpellation must allow an opening for the revolutionary subject to appear, otherwise how could a revolutionary working class exist at all?

Interpellation, in particular as it is understood through the analogy of a hailing by the law, does leave open the possibility of both personal and political transformation, especially if we consider the policeman's hail as a performative speech act that itself undergoes alteration. However, I shall defer my elaboration on the performativity of the law for the moment, and first address some key elements of interpellation theory that might allow for the possibility of an outside of the law, as well as some of the critiques and elaborations of these elements by others. These features include: the dyad Althusser constructs between a 'good' and a 'bad' subject; the psychic remainder implicit in his reference to Lacanian psychoanalysis; and the slippage between recognition and misrecognition in the trope of specularity.

The Bad Subject

At first glance, Althusser's essay is more diagnostic than prescriptive in terms of its usefulness in determining how a revolutionary mode of outlawry might be realized (both in the sense of a challenge to the law and resistance to subjection), for he proposes two kinds of subjects, good subjects and bad subjects, neither of which seem to contain the potential to transform their social situation, even though the bad subject might act outside of the law. Good subjects are those subjects for whom ideological interpellation works. These are the subjects who consent to hegemonic systems even when the system exploits or oppresses them: they are the good workers and bosses, the good husbands and wives and so on. Most of us are good subjects of ideology in this sense; we enact what we believe and believe in how we act, and fulfill our roles as contributing family members, community members and citizens. Our compliance allows for the reproduction of existing relations of production (and reproduction).

Bad subjects, in contrast, are those uncooperative individuals who fail to work by themselves, provoking the intervention of repressive agencies like the police or the military (169). Yet these disruptive 'bad subjects' are not outlaws. They are not really dissenting, but rather they are still subjects, infused with hegemonic ideology. The difference between good and bad subjects is a matter of conscience in the Hegelian sense

of harmony between one's beliefs and actions. Good subjects have internalized a concept of what is good and correct, and their actions reflect those beliefs. Bad subjects act against their beliefs in contradiction with their consciousness as free subjects. "If he does not do what he ought to do as a function *of what he believes,"* Althusser writes, "he has other ideas in his head, and ...acts according to these other ideas, as a man who is either inconsistent or cynical or perverse" (158, my italics). 'Bad' subjects are bad because they have internalized an ideology that suggests they should act in a certain way, and for whatever reason, they do not act in that way. Like the good subject, the bad subject is constituted ideologically by the law, yet he or she also has ideas or experiences that contradict his or her beliefs. These have led to transgressions that may provoke the intervention of state violence, but they have not yet confronted the underlying ideology that constitutes the subject of the law. The violation of that prior complicity is an act of bad conscience.

For the bad subject and good subject alike there is an underlying presumption that the law has a legitimate authority over them. The bad subject believes in the law's authority, just as the good subject does. His or her guilty transgressions do not challenge law, alter its terms, or reconstitute it, but rather reaffirm its legitimacy by inviting the material praxis of the repressive apparatus. For according to Althusser's logic, material rituals, including the rites of repression, cultivate belief. Thus from arrest, to conviction, to incarceration, the disciplinary rituals of the RSA have a decidedly ideological as well as punitive function. Yet it still remains a question why anybody would act in contradiction to one's beliefs. Is it some kernal of dissent that the subject possesses? Does the bad subject represent some revolutionary pre- or post-subjective essence that possesses the wherewithal to willfully refuse to be exploited?

Not according to Butler. In her analysis of Althusser in the chapter titled "Conscience doth Make Subjects of us All" in *Psychic Life of Power*, the bad subject signals quite the opposite to willful refusal. It reflects the condition for the psychic state of conscience that prepares the way for a full hegemonic submission. This condition is guilt. For Butler, the punitive inflection of the police officer's hailing summons the turn of conscience that is a necessary component of Althusser's subject. We are vulnerable to law even before a

critical understanding of it is possible, she writes, "in the anticipation of culling an identity through identifying with the one who has broken the law" (108). This identification is figured as a guilty one, rather than as a wish to transgress the law, for as beings we seem to exceed the conditions of subjectivity imposed on us: "the law is broken prior to any possibility of having access to the law, and so 'guilt' is prior to knowledge of the law" (108). The result for Butler is that subjects' complicity with the law limits the possibility of a critical view of it, since it is necessary for our very sense of self to exist (108). Butler thus positions the Althusserian subject vis a vis *ressentiment*, for this guilt leads the subject to deny the assertion of one's own will: "in a Nietzschean sense, the subject is formed by a will that turns back upon itself, assuming a reflexive form … the subject is the modality of power that turns on itself; the subject is the effect of power in recoil" (6).[18] In this view, the bad subject is not precisely a 'subject' but rather what precedes the good subject as a figure of originary guilt.

In Butler's reading of Althusser, subjectivity is a repeated performance of innocence, necessitated by this state of guilt, which is derived somehow by transgressing the law before being aware of it. Butler writes that: "[t]o be 'bad' is not yet to be a subject, not yet to have acquitted oneself of the allegation of guilt" (119). This conditions the subject's turn against itself and toward the law. The bad subject's identification with the one who has broken the law does not challenge the law, in the mode of outlawry, but instead merely conditions the person to consent to subjection.

What for me is most interesting about Butler's reading of the 'bad subject' is not entirely explicit in her text, but emerges through an apparent contradiction. This is the paradoxical synchronicity of the bad subject as a figure that precedes the subject ("to be 'bad' is not yet to be a subject" 119), with the conjecture that one is 'always already' a subject ("one …always already… yield[s] to the law in order to assure one's own existence" 112). This contradiction is evident in Althusser's argument as well. He writes of the subject as if it were temporally preceded by a non-ideological individual that undergoes interpellation in order to 'become' a subject. But this is nothing more than a false temporality intended only as a narrative device. For he is also firm in his assertion that we are 'always already' subjects. The various ideological apparatuses pre-exist us;

they establish precisely what kind of subject we are expected to be. Interpellation calls us into being, compelling in us a recognition of ourselves as that subject. ISAs thus establish the criteria for what it means to be a subject in a particular time and place so that we consent to our role in economic, political and social systems. According to Althusser: "That an individual is always-already a subject, even before he is born is…the plain reality, accessible to everyone and not a paradox at all. Freud shows that individuals are always 'abstract' with respect to the subjects they always-already are, simply by noting the ideological ritual that surrounds the expectation of a 'birth,' that 'happy event.' Everyone knows how much and in what way an unborn child is expected" (176). Althusser invokes Lacan's Law of the Father to affirm the inevitable positioning of the subject in one's community, continuing that: "it is certain in advance that it will bear its Father's Name, and will therefore have an identity and be irreplaceable. Before its birth, the child is therefore always-already a subject, appointed as a subject in and by the specific familial ideological configuration in which it is 'expected' once it has been conceived" (176). In this perspective, if one is always already a subject, how can the bad subject *not* already be a subject? One is pre-figured in relation to the law even before one is born: there is no one that is outside of the law.

So why does Butler take such care to explicate the 'bad subject' as a figure that precedes the subject? Surely she is not misunderstanding Althusser, who has, after all, been very clear that one is always already a subject. The logic of conscience, if we follow it through, suggests that a guilty pre-ideological individual is a subject already, for one must first believe in order to act against one's beliefs. So the bad subject does not stand temporally before the good subject as a subject-to-be, but rather after the good subject, as a good-subject-gone-bad. However, such a temporal reading of the subject is not to be taken literally. Butler casts the bad subject as a pre-ideological placeholder in order to establish Althusser's emphasis on conscience, which answers the question as to why a subject would turn to face the law, if that means turning away from one's own will. The logic of conscience demands that one is always already a bad subject because one always falls short of the call to inhabit a particular subject position (no matter how she strives to be good, there is always something unbecoming about the girl), and this conditions ones

willingness to be good. Indeed, the temporal ambiguities lock the subject into subjection because, guilty at the core, they must never cease to prove their innocence.

To be clear, this does not entirely represent Butler's position. Indeed, she argues that Althusser is overly constrained by the "logic of conscience" (129). Conscience does not seem sufficient as an explanation for why one would relinquish one's own volition and turn toward the law, for, as Butler frames it, "the discursive possibilities for existence exceed the reprimand voiced by the law" (129). If this is the case, she continues, the need to "confirm one's guilt" in order to attain an identity requires conditions in which our existence depends on self-negation. She asks how we might oppose the law without denying our complicity in it – a turning away from the law that is enabled by the law itself. Such a turn would not only resist the "lure of identity" and agency promised by the law, it also "demands a willingness *not* to be — a critical desubjectivation — in order to expose the law as less powerful than it seems" (130). Conscience alone is not sufficient as a rationale for the subject's willing turn toward the law, nor does it allow for the subject to change its circumstances. Butler critiques the dependence on Judeo-Christian morality, reflected in both Althusser's analysis and his examples. Casting the subject-to-be as always already guilty, she argues, supposes a "highly religious scenario" in which an "original guilt" is relieved through the promise of identity relayed in the Divine performative (109). The reliance on metaphors of religious authority closes off "any possibility of critical intervention in the workings of the law" (109), as well as suggesting that ideology is somehow eternal or universal. As such, originary guilt renders submission inevitable, diminishing the possibility of dissent on the part of the subject, foreclosing the potential failure of interpellation and subsequent resistance. Butler turns to psychoanalysis in order to address these difficulties, arguing that the subject's turn toward the law is not merely self-recriminatory, but reflects a passionate attachment to the law and its gifts of intelligibility and agency.

The Psychic Remainder

In order to support her argument that the subject is constituted by a passionate attachment to the law, Butler takes up Mladen Dolar's suggestion that the psyche exceeds subjection. For Dolar, interpellation fails at the site of love, that is, through an unconditional surrender to the other, which is an instance of the "pure contingency of the Real" (83). For Butler however, love is directed as surrender to the Law, rather than as a surrender to the other. I will presently review this discussion, but to a different purpose than Dolar and Butler, both of whom seem intent to rescue Althusser's subject with love, in one form or another: Dolar wants to save the subject from ideological totality, and Butler want to release her from the depths of religious self-recrimination. I too am interested in alternatives to a totalized, conscience-ridden subject, but I am skeptical of the capacity of the psyche – presented here as an inner essence constituted by its ability to love – to undo this totalization. I maintain that contestation of the law is derived the law's impossibility to be identical to itself. The subject and the outlaw are deconstructively intertwined, so that resistance is political, as well as psychic. The psyche is insufficient as a figure of resistance since as Butler argues the psyche does not "dismantl[e] the injunction or chang[e] the terms of subject constitution" (PLP 88). Psychoanalysis locates resistance in the imaginary realm of fetishes and dysfunctions of the unconscious, those aspects of the psyche that escape subjectivation, in which case resistance is nothing more than the limits of normalization (88). I turn instead to Slavoj Zizek for the key that unlocks the tautological circle that fixes the subject. Zizek reminds us that the Law is itself a fiction. With this in mind, what remainder does outlawry produce that might open up a space for resistance on the part of the subject? That is, what remainder in addition to a psychic inner essence of the subject?

Dolar situates subjection as an entry into the symbolic and repudiation of the abject realm of the Real. Althusser, he contends, wraps the subject too neatly in ideology, failing to account for the psyche, which is a residue or remainder that is left over in the interpellation process. Dolar argues that the specular process of becoming a subject is constituted through a shift from a pre-ideological subject to an ideological one. In a Lacanian approach this transition is represented in the mirror stage: the critical point in

development when a child enters the symbolic realm of language and meaning, establishing a sense of self that is distinct from other beings and other objects. For Althusser, as we have seen, the ideological subject is the only subject, since subjectivation always occurs retroactively. One becomes a subject by recognizing that one has always been a subject: the mirror's double reflection. However Dolar submits that this approach erases the existence of "a pre-ideological entity, a sort of *materia prima"* (76) that undergoes subjectivation.

Countering Althusser, Dolar insists that the psyche pre-exists and exceeds subjectivation; the psyche can never be assimilated but remains to haunt the subject as a "flaw in the interior" (78). The subject is divided, in the classic psychoanalytic sense, between the conscious subject of ideology (the symbolic self) and the unconscious, psychic self. Where Althusser privileges the symbolic self and excludes the psyche, Dolar intends to correct Althusser's theory of subjectivation from the psychoanalytic point of view: "For Althusser, the subject is what makes ideology work; for psychoanalysis, the subject emerges where ideology fails" (78). This 'subject' is really the psyche, an inner essence that the ISAs cannot assimilate. It can be glimpsed in those cracks in the symbolic self where the unconscious peeks through: dreams, neurosis, and perversion, which are ways to "deal with the remainder," which is after all, the impossibility of really becoming a subject (78). Interpellation is viewed by Dolar as a way of avoiding this reality. Yet interpellation cannot entirely succeed, because the Real nonetheless persists alongside the Symbolic realm. A remainder is expressed, not through the self-restriction of the conscience, which is imposed externally via the Law of the Father, but through "a certain interior register of love." This love for the other is a complicated love, because it is also tied to fear and lack, and is experienced by the subject as if there were no choice. One is overwhelmed by love (Butler 127).

This contradictory situation, constituted by both autonomy and suppression of that autonomy, is reconciled by a retrospective logic. Dolar writes: "the young man [who is in love] has chosen only by recognizing that the choice has already been made…he can only endorse and corroborate the decision of the Other by accepting the unavoidable as his own inner essence. In other words, choice is a retroactive category; it is always in the past

tense, but in a special kind of past that was never present" (83). This retroactivity structures both the love of the symbolic order and a love for the barred other, and it signals, for Dolar, the failure of ideology, in the last instance, to constitute subjects.

Yet is the young man's choice, and his retroactive love, not the same choice and love as that made by the pedestrian who turns toward the police officer? Such 'love' is a self recognition (desire/lack) that is merely a reconfiguration of submission to the law of the father. Butler picks up on the theme of love, but she shows that Dolar missed Althusser's key point that subjectivity combines ideology and materiality. Althusser sees the inner self as something that is derived through the subject's relation to what is exterior to that person. Dolar, however, reduces subjectivity to pure interiority. He claims the human subject is comprised of a *material prima,* which is not material so much as it is an inward consciousness similar to that forwarded by Descartes in his *cogito*. As Butler writes:

> Dolar distinguishes between materiality and interiority, then loosely aligns that distinction with the Althusserian division between the materiality of the state apparatus and the putative ideality of subjectivity. In a formation with strong Cartesian resonance, Dolar defines subjectivity through the notion of interiority and identifies as material the domain of exteriority (i.e. exterior to the subject). He presupposes that subjectivity consists in both interiority and ideality, whereas materiality belongs to its opposite, the countervailing exterior world." (121)

Ideology, for Althusser, is decidedly not about an internal soul; it is pressed onto us through material practices and made to *appear* internal through the mirror function. But it is lived out materially. Butler asserts: "The constitution of the subject is *material* to the extent that this constitution takes place through *rituals*, and these rituals materialize the 'ideas of the subject'" (121-122). Subjectivity, the "lived and imaginary experience of the subject" (122), evolves through repetitive, material practices, a repetition that produces the belief itself. Where Dolar constructs an opposition between repetition and materiality, Butler reasserts that for Althusser not only is materiality "defined by ritual and repetition" but also that this is what produces subjects. Love-feelings – for Dolar, the young man's interior passion – are no more purely interior than those exterior conditions

that produce the range of possible subject-positions. Love for the other is love for the law; it is a love that one chooses, without choosing. This is a re-articulation of Althusser's formula for subjectivity: one submits in order to be free.

Butler reintroduces materiality to the subject's love, which is now directed as a passionate attachment to law. This is represented as the love of the pedestrian for the police officer who stages the entry into the symbolic order. She thus also critiques Althusser's constraint by the logic of conscience: "Althusser would have benefited from a better understanding of how the law becomes the object of passionate attachment, a strange scene of love. For the conscience which compels the wayward pedestrian to turn around upon hearing the policemen's address … appears to be driven by a love of the law which can be satisfied only by ritual punishment" (128). The guilt of the subject encompasses not merely a fear of retribution, but a demand for, a love of, and an attachment to, the law and its promises of intelligibility and agency. This signals a kind of masochism, or "turning back upon the self." Yet it is not purely masochistic, for the law offers the gift of the existence of the self, and the joys of being intelligible to others that comes with it. Without this turning back on the self, there is no I, no self that is left to consent or to resist. She writes: "That the subject turns round or rushes towards the law suggests that the subject lives in passionate expectation of the law. Such love is not beyond interpellation; rather, it forms the passionate circle in which the subject becomes ensnared by its own state" (129). This passionate attachment is ensured by the law's promise of identity. For Butler, the psychic remainder that signified a failure of interpellation – love – is as ensconced in repetition as the rituals of subjectivity: "To the extent that primary introjection is an act of love, it is…not an act performed only once, but a reiterated and indeed a ritual affair" (128). So while she finds Dolar's analysis errs because he fails to grasp Althusser's thesis that ideology has a material existence, she also criticizes Althusser for an emphasis on conscience that precludes the space, in the rituals of subjectivity, of a love for and passionate attachment to the law that subjects.

However, a passionate attachment to the law still does not allow for alteration in the subject's relation to the Law – nor for alterations of subject and Law – any more than a conscientious self-recrimination does: indeed, even less so. A passionate attachment

suggests that the relationship of the subject to the law is structured as lack/desire, and this produces its own kind of guilt. Guilt is etymologically associated with debt: *Schuld*, the German term for guilt, has its origin in the *Schulde,* or debts. Similarly, in Old English *gylt* is connected to *gieldan* 'to pay for, debt.' Traces of these origins are retained in contemporary legal systems: the guilty party must 'pay one's debt to society.' The law does not offer its bounties for free, one purchases intelligibility and consciousness with submission in the form of a debt, the burden of which is another motivating force of complicity.

The passionate purchase thus is the very condition for the guilt of not just the bad subject (whose debt is 'bad' for he has, in a sense, missed a payment), but also the good subject, who also lives under the burden of a life-long debt. Under this coercion, complicity in guilt is not an absolutely free turn against oneself and toward the law. At the most it is a gesture that mimics freedom, so how could it produce a free subject? Moreover, a love relationship with the law is a complicated one: one loves law, but it is a love that the law itself produces, and forces on its subjects, much as a child has no choice but to love its parents. How is a critical view of the law possible, if the relationship is saturated by the subject's dependence on the law for intelligible existence? The theory of conscience at least hints at resentment on the part of the subject; some (suppressed) motivation for a critical perspective.

Yet the point of Butler's repeated demand for a critical view of the law is to identify the site of a failed interpellation. This is necessary if we are ever to act back on the systems that constrain us (129). However, we can neither simply will such a failure through resentment, nor through love. The success of interpellation is not barred by a foreclosure of self-negation and rescued by the psyche or by some internal volition, in the sense that Dolar has argued. Rather, the limit of interpellation, Butler argues, lies in its "inability to determine the constitutive field of the human" (129). But what does this mean? Is it not through ideology that we invent such categories as human and determine humanity's limits?

In one sense, it is precisely ideology that determines humanity's constitutive limits. Yet Butler is not merely calling for a more inclusive humanism. Rather, she is pointing to the contradictory structure of subject interpellation and illuminating the undecidability of the category 'human.' Interpellation does not allow us to see what constitutes one's possibilities outside of its own limited terms; it guarantees its own failure to do so by foreclosing any critique of itself. At its root is a fundamental irony: subject interpellation works because we are passionately attached to the law that promises us an identity. But our dependence on this identity constrains any critique of the law we might forward. As Butler writes: "One cannot criticize too far the terms by which one's existence is secured" (129). Yet our possibilities nevertheless exceed these limits. The very passionate attachment that conditions conscience and allows interpellation to take place is also what signals the failure of interpellation. But we still do not have a real answer to what constitutes a failure of interpellation beyond the contradiction that Althusser has already forwarded: "[T]he individual is *interpellated as a (free) subject in order that he shall submit freely."* What else is there, or are we destined never to alter the conditions of our subjectivity? There must be a way out of this paradox, because we know that social and political conditions do change.

A remainder exists in the interpellation process, something that is external to and different from subjectivity and law, that is, a remainder aside from the psyche, which exceeds, but does not always dismantle the interpellating injunction. Indeed, this remainder must exceed the psyche, for as Zizek argues, the psyche is precisely the condition for submission to the ideological command: "it is precisely this non-integrated surplus of senseless traumatism which confers on the Law its unconditional authority: in other words which—insofar as it escapes ideological sense—sustains what we might call the ideological (43-44). On the one hand, like Butler and Dolar, Zizek positions the psyche as a remainder that exceeds interpellation. However it is not this excess, but its conjunction with fantasy that exposes the workings of interpellation. His criticism of Althusser is that he missed this element of fantasy, which draws in a subject-to-be who is captivated by the Other as object and cause of his or her desire. Zizek describes the Lacanian theory of fantasy as follows:

[I]n the opposition between dream and reality fantasy is on the side of reality; it is, as Lacan once said, the support that gives consistency to what we call 'reality'… Ideology is not a dream-like illusion that we build to escape insupportable reality; in its basic dimension it is a fantasy-construction which serves as a support for our 'reality' itself. (45)

Fantasy, rather than providing an escape from reality, "offer[s] us the social reality itself as an escape from some traumatic real kernel" (45). For Zizek, as for Lacan, equating the subject with an object of fantasy endows the subject with a positive content that cannot be symbolized, and that belongs to itself, outside of the symbolic intersubjective network of Others. This traumatized kernel of the real that exceeds the subject is in keeping with what Dolar describes as the psychic remainder of interpellation, and that for Butler conditions a passionate attachment to the law. Escaping all ideological sense, this remainder sustains what Zizek terms "ideological *jouis-sense*" or "enjoyment-in-sense" that he finds is proper to ideology, and that is the very "condition of the ideological command" that confers authority on the law (43).

Yet the theory of fantasy also shifts the focus from the psyche to a critical view of the law and of social reality that I argue produces another sort of remainder. For Zizek is very clear that the law and social reality, like the subject, are fictions. In the Althusserian/Lacanian framework, our ideas are materialized in our social activities, which become standardized through the actions of subjects. "Belief," Zizek writes, "supports the fantasy which regulates social reality" (36). In other words, the law that we have so far considered in its hailing role in subject interpellation is itself supported to a large extent by the subjects' faith in it (as well as by the repressive apparatus). The law (or what Zizek terms 'social reality'), is contingent on this belief, "it is supported by a certain *as if*" (36). One acts *as if* one believes in the law, *as if* it is all powerful, *as if* it reflects the people's will, and *as if* it express their interests, to paraphrase Zizek's argument (36). Moreover this 'belief' should be understood as ideology in Althusser's sense: it is embodied in material rituals. One turns to face the law. One works, and takes pride in this work. Without this ideology, that is, without the subject, the law is null: "the

very texture of the social field disintegrates" (36). Zizek argues that we obey the law "*simply because it is the law,*" not because it is just or good (37).

Although he doesn't cite the precise passage, Zizek is referring to Pascal's homage to de Montaigne's concept of the mystical foundation of authority. In his *Pensées,* Pascal writes: "Nothing, according to reason alone, is just in itself; all changes with time. Custom creates the whole of equity, for the simple reason that it is accepted. It is the *mystical foundation of its authority*. Whoever carries it back to the first principles destroys it" (10).[19] In Zizek's interpretation, the law's authority is tautological; it has authority because it says it does, and subjects believe it. As Zizek writes, the law's authority "lies in its process of enunciation" (37), a phrasing that implies the performativity of the law.

Yet there is a remainder that is produced by the fact that the force that interpellates the subject is itself a fiction. Moreover, this relationship between subject and law is conditioned as much by a bracketing of a disbelief that accompanies the subject's belief in the law. For as Zizek points out, we act *as if* we believe in what the law promises, but "we all know very well" that the law is neither all-powerful, nor just (36). He points to the senseless bureaucratic machines represented by Kafka to demonstrate this: "Is not Kafka's 'irrational' bureaucracy, this blind, gigantic, nonsensical apparatus, precisely the Ideological State Apparatus with which a subject is confronted *before* any identification, any recognition –any *subjectivation* – takes place?" (44). Zizek argues that Kafka's novels represent a kind of predictive critique of Althusser by revealing the fissure between ideological apparatuses and the subject's internalization of hegemonic norms: the ISA is impossible to identify with. As Zizek writes "the Kafkaesque subject is a subject desperately seeking a trait with which to identify, he does not understand the meaning of the call of the Other" (44).

The law's injunction, its enunciation, is to be obeyed not for its rational qualities, but in its very irrationality, and this is what for Zizek conditions one's entry into ideology. We must make sense of the contingency of the command and of our submission to it. To do so, we repress the law's senselessness through ideology, which gives the law its meaning.

"What is repressed is not some obscure origin of the Law but the very fact that the law is not to be accepted as true, only as necessary—the fact that *its authority is without truth"* (38). This is why one comes to believe by acting as if one already believed, the senseless injunction of Pascal's that Althusser famously cited as the formula for the tie between ideology and materiality. Althusser writes: "[W]e are indebted to Pascal's defensive 'dialectic' for the wonderful formula which will enable us to invert the order of the notional scheme of ideology. Pascal says more or less: "Kneel down, move your lips in prayer, and you will believe" (IISA168). However, such a formula ties neither subject nor law into neat totalities. Both subject and law are structured by clauses that allow for contingency: one acts *as if* one believes, one kneels *despite* one's lack of belief, one accepts the law as true and just, despite its fictitious character. But how might this contingency manifest itself, if laws continue to interpellate subjects, and subjects faithfully submit to laws? And why would they not always continue to do so, if such processes make sense of the senseless, and cover the incomprehensible trauma of reality with meaning? What remainder is produced at the site of this fiction?

Misrecognition

The interpellation scenario incorporates a remainder into its very core through its basis in misrecognition. The hailing call depends on the pedestrian recognizing him or herself as the one being addressed, but even when the recognition function succeeds, it actually fails. There is, after all, no true self to be recognized, and no true law to be obeyed. Dolar puts it clearly when he writes that: "One becomes a subject by suddenly recognizing that one has always already been a subject: becoming a subject always takes place retroactively – it is based on a necessary illusion, an extrapolation, an illegitimate extension of a later state into the former stage. A leap – a moment of sudden emergence – occurs" (76). The recognition occurs as a revision of the self. As such, it not only opens a possibility for misrecognition, it depends on it.

In part, recognition and misrecognition coincide, for the subject is always doubled. This is why we can accept both Butler's supposition that the bad subject is pre-ideological and

Althusser's assurance that there is no pre-ideological entity. We can, indeed we must, live with this contradiction. Every subject is both a good subject and a bad subject at the same time, because identity is constituted through misrecognition and retrospective revision. Thus the "always-already" subject is not a total foreclosure of resistance to the law. Indeed, one is also always already something other than the subject one is expected to be. None of us are perfect daughters, parents, students, or workers, for the mechanisms of subjectivity are never complete. As Althusser specifies, that "former subject-to-be will have to 'find' 'its' place i.e. 'become' the sexual subject (boy or girl) which it already is in advance" (132). The subject is thus launched upon a never-ending quest to find its place, to become a subject despite a sense of dissonance with the subjectivity that is expected.

Subjectivity appears as the threshold between the 'always already' and a guilty 'not-quite yet.' Anticipation thus persists with misrecognition, summoning up the continual performance of subjectivity, the striving to be what one is or ought to be. This failed subjectivity persists at the precipice where the always already subject is never quite a subject. Ideology fills up this gap by offering one a "place," as worker, student, daughter, mother and so on. Yet, as Butler argues, this 'recognition' of oneself as a subject is a form of self-deception that is enacted and made to seem real (PLP112). One's position in society appears natural, and everything seems to be as it should be, but ideology is itself a *mis*recognition of the reality of the relations of production, which are not necessary and natural. Althusser writes:

> [W]hat is really in question in this mechanism of the mirror recognition of the Subject and of the individuals interpellated as subjects, and of the guarantee given by the Subject to the subjects if they freely accept their subjection to the Subject's 'commandments'? The reality in question in this mechanism, the reality which is necessarily *ignored (méconnue)* in the very forms of recognition (ideology = misrecognition/ignorance) is indeed, in the last resort the reproduction of the relations of production and of the relations derived from them. (182-283)

The point, for Althusser, is to disrupt this process of recognition/misrecognition, in order to change the relations of reproduction with an ideological mirror that reveals the exploitative relations and conditions non-exploitative social roles.

The interpellating scene is thus pivotal to social change, as the central activating force of the internalization of ideology. The Ideological State Apparatus is, for Althusser, "not… only the *stake*, but also the *site* of class struggle" (140), since "*no class can hold State power over a long period without at the same time exercising its hegemony over and in the State Ideological Apparatus*" (139). To be a subject is to hold a certain prescribed position in the relations of production. To be a revolutionary subject is to change these relationships, to make possible a different position. But what mechanism does Althusser propose, in this article, to achieve such disruption and move toward both a material and a hegemonic revolution? And who achieves it, if the freedom of the subject is really itself a kind of subjugation?

An answer persists as an undercurrent in the work of both Butler and Althusser at the site of the temporal contradiction that presupposes both a pre-ideological entity and a subject that is always already a subject (this is mirrored as the contradiction of the good subject that identifies with both the law and the one who has broken the law). Butler relates the issue to a resistance to narration on the part of subject interpellation. She writes that the process of interpellation that is literalized in the analogy of a guilty turning toward the law "exceeds the narrativizability of events" (106). Instead of constituting an event, interpellation is "a certain way of *staging the call*, where the call, as staged, becomes deliteralized in the course of its exposition or *darstellung*" (107). In other words, the representation of the event does not reflect the explicit content of the event. Indeed, Butler suggests that the event of interpellation need never actually happen for it to take effect. Even if the police officer never actually hails us, we remain ready to turn toward him; we submit to the law. One might also say that interpellation is always happening, although not in a form that can be literally narrated. We are caught, suspended in perpetual interpellation. Imagine, for instance, instead of a linear series of events, a subject frozen at the moment of exposition, the moment the call is staged. Such a subject is always already a subject, true to the Althusserian/Lacanian model. But it is doubled as

a pre-ideological entity anticipating the call. Now imagine that this doubled pre-subject/subject, although fixed in its moment of exposition, is also revolving in the continual motions of becoming. Two additional effects spin out of this revolving, or dare I say, revolutionary subject. The first is an intensification of the doubled specular structure of interpellation, with its reliance on misrecognition: a misrecognition that signals the inclusion of potential alterity on the part of the subject. The second is the retroactivity of the subject in its relationship to the psyche, the real, and the symbolic order. Both of these are effects of performativity. If we look to the now well-established theory of the performative subject we can see how this allows for alterity in subjectivation. But how does this change social reality? How might we read performativity theory such that it also revises the law? In other words, what is the relation of the subject to outlawry?

The Performative Subject

In *Bodies that Matter*, Butler explicitly describes the interpellation scenario as an instance of performativity. The police officer's hail is a performative utterance that brings the subject into being: "The reprimand does not merely repress and control the subject" she writes, "but forms a crucial part of the juridical and social *formation* of the subject. The call is *formative*, if not per*formative,* precisely because it initiates the individual into the subjected status of the subject" (121). As described in Chapter One, the concept of performativity is derived from J.L. Austin's speech act theory (1965). Austin introduced the performative as a category of utterance that, unlike the descriptive constative utterance, has no truth value. It does not describe the world, but acts upon it. The performative utterance, epitomized in the form of vows and promises, is a way of "doing things with words." As such, to 'act' with language constitutes more than mere linguistic play. Performativity combines the realms of the ideal and the material. Not only does this underscore the pertinence of performativity to the Althusserian model of subject interpellation, which also merges ideology and materiality, it also highlights precisely why the ideological subject is neither static, nor totally determined by the ISAs.

Performatives contain the creative and fictive qualities of the linguistic realm, and also the force to transform reality.[20]

Butler employs the theory of performativity to explore subjectivity, and in particular, the gendering of subjects. She proposes that instead of preceding its actions as an entity with its own ontological status, the subject is constituted through its repeated performance of material and linguistic acts. In other words, subjectivity is not a *de facto* state of being, but a state of doing. Referring to the absence of a "gender identity" prior to gender "expressions," in *Gender Trouble* Butler writes, "identity is performatively constituted by the very 'expressions' that are said to be its results" (25). Performativity theory presents the subject as a becoming subject, one that is produced discursively, rather than emerging from an essence internal to the individual. Thus for Butler, gender is not merely produced as a social construct. The materiality of sex is itself created as a fluid and transforming reality. If this was not always clear in *Gender Trouble,* in *Bodies that Matter,* Butler is decisive on the point that discursive performativity has a material reality in the Althusserian sense. In this, she counters de Beauvoir and social constructionist feminists that divide gender and sex into separate spheres of culture and nature. Sex *is* gender, according to Butler, because we inscribe meaning in the materiality of bodies, and produce meaning through our bodies' actions. Materiality is more than just a landscape on which we signify, for performative enactments of subjectivity shape the material world, in which we encounter real physical benefits and penalties that are attached to these subjectivities and the context in which they are lived.

Some critics caution that performativity theory is limited in its capacity to theorize a subject capable of transforming the law. How can subjects dissent if their very identity is dependent on their consent? Or, as Seyla Benhabib (1995) and Katherine Magnus (2006) caution, how can the subject really *act*, if the subject is a mere effect of language?[21] Moreover, Butler's critics contend that performativity effectively blames subjects for their subordination, since we must submit to power in order to exist and have agency, a critique Butler herself points out in her introduction to *Psychic Life of Power* (6). Yet this is precisely the tension that performativity theory makes sense of: we are called into being as subjects by discourses that we do not choose, but that nonetheless designate the

available modes of being in the world, in a given time and place. Yet the theory of the performative subject includes a "refusal of the law" that is concurrent to one's submission: "Where the uniformity of the subject is expected, where the behavioural conformity of the subject is commanded, there might be produced the refusal of the law in the form of the parodic inhabiting of conformity that subtly calls into question the legitimacy of the command, a repetition of the law into hyperbole, a rearticulation of the law against the authority of the one who delivers it" (BM 122). The performative subject is not a puppet of language, locked into a single pre-determined path; it "exceeds" and "confounds" the discursive injunction, acting back on the law that calls it into being.

Butler uses the example of drag to show how one can re-work or re-signify an oppressive subject position. Drag is subversive, she argues, because it exposes the fiction of the heteronormative gender ideal that otherwise appears naturalized. By parodying gender norms, the drag queen or king contests those norms. Parody blends so well with the theory of performativity because it works through citation; the drag queen cites the gender norms that are already prescribed, she doesn't invent new norms. Yet some questions still remain unclear. How precisely does this "refusal of the law" operate outside of the example of parody? Is drag not an *act*, a critique of gender norms, rather than a revision or re-creation of one's subject position? What does the critique in fact accomplish, when, as Butler points out, drag can also help reinforce gender norms by exaggerating gender stereotypes? How does an apparent 'conformity' call the legitimacy of the law into question? Does performativity open up the space for a subject to undo its subjection, and in so doing, alter the discursive terrain of the law? Or does it merely plummet the doer into abjection and incomprehensibility when the subject exceeds the law's command? How does one negotiate the tricky terrain between re-signification and abjection when one acts back against the law that calls one into being? In order to explore and unpack this dynamic, I consider the interpellation scenario with respect to the tension between repressive and productive power, and between re-signification and abjection as well as iterability and alterity. Subjects do negotiate the performative translations between law and outlawry; their comprehensibility and agency, indeed, their very existence in the world is at stake. But how is resistance meaningful if it is unintelligible? How do we dissent intelligibly? Or is dissent always incomprehensible?

Revolutions of Power

It is curious that Althusser makes the hailing figure of a police officer, of all possible examples, exemplary of subject interpellation. Butler suggests that casting the call in the singular voice of a policeman is without doubt intended to imply its punitive nature; it sets up the call as a "demand to align oneself with the law," and to establish a relation with the law through an appropriation of guilt (PLP 106-107). Yet Althusser does not restrict interpellation to the juridical sphere. Interpellation includes the power to name and beckon in everyday ways, such as shaking hands, greeting friends on the street, or addressing someone by name. Indeed, as Wingrove points out, it is not a given that the legal metaphor is meant to be paradigmatic of the interpellation scenario. It may simply be an example among many possible examples (878). Indeed, one is interpellated repeatedly throughout one's lifetime by a variety of ideological apparatuses, such as families, religious organizations, schools and peer groups. But I concur with Butler, rather than Wingrove, that the "special" form of the policeman's call to suspects in the street is the paradigm for the performative interpellation process, taking centre stage in Althusser's essay for good reason. However, it is not the presumed guilt of the pre-ideological subject that, in my analysis, is produced in this relation. Instead, casting the interpellating agent as the law clearly establishes the power relations at play in subject formation as well as the political stakes of personal agency: these relations oppose political transformation to repression, and subjection to abjection. These stakes have everything to do with the deconstructive relation between the law and outlawry. The implied threat of violence in the spectre of the Repressive Apparatus that looms behind the hailing is thus indicative of the undecidability of the interpellation scene.

Whereas some argue that Althusser polarizes the RSA as an instrument of force and ISAs as mechanisms to gain consent, the use of a representative of a repressive power to demonstrate the process of an ideological apparatus suggests that the distinctions between violence and willing compliance are blurred. For Althusser, neither the repressive nor the ideological apparatuses are "pure." Rather, Althusser writes: "every State Apparatus

whether Repressive or Ideological, 'functions' both by violence and by ideology" (138). The difference is that the Ideological apparatus functions *predominantly* through consent, even though it includes the possibility of violence. The threat that repressive action might be taken if we do not submit haunts our response to the policeman's call. We see this resort to discipline in other otherwise ideological apparatuses as well: the school, the family, and even peer groups might resort to force when a member's actions fall out of line with group hegemony.

Yet this threat of violence, which seems to foreclose the possibility of a refusal to consent, actually indicates the possibility of such a refusal. The threat not only anticipates resistance, it produces it, if we understand the power of the discursive call in a Foucauldian sense, as both repressive and productive. For Butler this definition of power resolves the ambivalence of the subject – subordinated yet free – which, as she asserts, is essential to a theory of subjectivity. She writes: "How can it be that the subject, taken to be the condition for and instrument of agency, is at the same time the effect of subordination, understood as the deprivation of agency" (PLP 8-9)? Butler argues that the necessity of this ambivalence is grounded in two modes of power: power as an external and prior force that "makes the subject possible" and power as the internal agency of the subject, as "what is taken up and reiterated in the subjects 'own' acting" that is, as the "willed effect" of the subject (14). Butler continues:

> As a subject *of* power (where "of" connotes both "belonging to" and "wielding"), the subject eclipses the conditions of its own emergence; it eclipses power with power. The conditions not only make possible the subject but also enter into the subject's formation. They are made present in the acts of that formation and in the acts of the subject that follow. (PLP 14)

The crux of the ambivalence of the subject for Butler, then, is that subjection is the requirement for agency, and thus it conditions resistance and opposition to the very power that subjects. To suggest that power does not simply repress offers a route for resistance to repressive power, for power is understood in terms of action. In "Subject and Power" Foucault asserts: "power is a way of acting upon an acting subject or acting

subjects by virtue of their acting or being capable of action" (220). Resistance is for Foucault an effect, or self-subversion, of power, which is prolific and multi-faceted (PLP 93). Consider the example of the homosexual that Foucault introduces in *History of Sexuality*. The subject position 'homosexual' is made possible through the proliferation of discourses of sexuality that emerged in the 17th century. The identity is constructed as a clearly pathological one, and one that faces severe social penalties. Yet the birth of the homosexual at once signals an emergence of the heterosexual, and comes with a challenge to compulsory heterosexuality that is instituted through the homosexual's very existence. The Foucauldian subject is repeatedly re-created as a series of effects, rather than as a totalized unity, so that even as it undergoes forces of normalization, it launches an assault against normalizing forces (Butler 93). Even as the subject is produced and regulated, a zone of resistance also emerges.

According to Foucault's logic, with every subjection emerges the possibility of resistance to subjection. Thus a reversed threat is implied in the example of the policeman chosen by Althusser: the 'threat' to the law when we do not acknowledge its authority over us. The potency of this threat should not be underestimated, but neither should it be overstated – a missed or refused hailing is not always a revolution. Yet as the earlier discussion with reference to Zizek makes clear, the law is not as all-powerful as we pretend; instead, the law stands on the shaky foundation of its own fiction. Indeed, as Butler argues in *Gender Trouble*, the law produces the subject as a fiction to ground its own legitimacy: "In effect the Law produces and then conceals the notion of a 'subject before the Law' in order to invoke that discursive formation as a naturalized foundational premise that subsequently legitimates that law's own regulatory hegemony" (2-3). Butler is responding here to Derrida's discussion in "Force of Law," in which he stipulates that there can be no subject who stands "before the law," for the law is founded by "who is before it" (270). Something else is thus at play in the performative interpellation scenario, in addition to the constitution of the subject, and that is the simultaneous constitution of the law. When the subject turns to accept the conditions of subjectivation, the law is supported by a faith in the law signified by the action. But the very act of belief underscores the law's fictitiousness. It is as Derrida writes in *Limited Inc.*: "If the police is always waiting in the wings, it is because conventions are by essence violable and

precarious, *in themselves* and by the fictionality that constitutes them, even before there has been any overt transgression, in the first sense of *to pretend"* (105). For whether we are talking about the juridico-legal system or the psychoanalytic Law of the Father, the law is itself constituted through the interpellating performative; it requires the subjects' belief in it to maintain its legitimacy, a belief that in effect proves its illegitimacy.

Outlaw Identifications

Earlier I discussed Butler's argument that Althusser's logic of conscience, which she describes as "culling an identity through identifying with the one who has broken the law," forecloses the possibility of a critical understanding of the law because it pre-conditions the subject as guilty (108). But what if identification with the outlaw is not always a guilty identification? Perhaps it signals the very possibility of criticism of the law. If so, it would signal an aspect of subjectivity that is distinct from both conscience and the passionate desire for the law that Butler indicates. Indeed, where both conscience and desire rely on the subject's belief in the law's authority, such a critical identification highlights the law's fictionality and fragility.

This is precisely what Benjamin writes of when he argues that the public admires the outlaw, not for the deeds committed, but for exposing the fragility of the law. Benjamin writes: "however repellent [the great criminal's] ends may have been, [he] has aroused the secret admiration of the public." The outlaw, Benjamin continues, "arouses even in defeat the sympathy of the mass against law" (CV 281). What if we were to conceive of the "one who has broken the law" not as a subject of bad conscience, but as an outlaw more along the these lines? Let us consider this possibility for a moment, but with a certain reservation. For this 'outlaw' serves the text as a placeholder on the way to a more general theory of subjectivity.

An outlaw does not stand before the law, but only outside of it.[22] As such, this great criminal is no longer a subject; he neither submits to the law, nor enjoys its rights and protections. The outlaw exposes the limits of the law. The transgression of the one who

has broken the law signifies a simultaneous acknowledgement of the law (the bad subject is always already a subject) and refusal of it. Yet for the outlaw, breaking the law is not the violation of the subject's belief and resulting bad conscience; it is the emergence of a real contradiction in ideology that cannot be tolerated, and this signals a critical view of the law that demands a change in the conditions of subjectivation. For example, in the case of gender interpellations, a transgression of the laws of 'girlness' re-writes the conditions of possibility for being a girl, exposing possibilities that the law failed to anticipate. This is the case even when the transgression also produces guilt or is met with sanctions. The girl has not simply broken the law, but rather refused it (willfully or accidentally), because unlike the conscience-ridden bad subject, her refusal signifies a challenge to the law's legitimacy, her girlness exceeds the law's expectation. At play is an unmasking that exposes the law as a fiction. The possible refusal of the outlaw, moreover, is the condition under which subjects might freely consent to their subjection. For both conscience and passionate attachment to the law are tainted by coercion, through the threat of repression, and the burden of debt, as I earlier argued. The identification of the subject with "the one who has broken the law" affirms the possibility for something else, some change, some other law.

This undecidibility is the condition of a decision – a choice to be made that always comes from the outside. Yet what remarkable individual overcomes guilt and passion to so boldly act back against the law? And how does this outlaw manage the contradictions that restrict action to subjects who submit? For it seems as though the one who breaks the law must also be both guilty and passionately subjected in order to be an outlaw; indeed, they must be so, if one is always already a subject. These 'identities' seem to cancel one another out. Can we be both an outlaw and a subject simultaneously? Can we be one without the other? What happens to that subject that turns on the law in a critical refusal? Is that person launched into the incoherent and vulnerable sphere of abjection? How might one identify a site of resistance in which real alteration, including not just personal transformation, but social change, is possible?

The possibilities of an 'outlaw identity' hinge on a tension between re-signification and abjection that is dangerous to the extreme. Butler frames the problem in *Psychic Life of*

Power. She argues that the law so thoroughly "monopolizes the terms of existence" that to oppose it would be to resist the "lure of identity." Such a turn away from the law, she contends, "demands a willingness *not* to be … in order to expose the law as less powerful than it seems" (130). Thus there is an extremely high price to pay when we engage in a critical resistance to the law: one potentially ceases to *be.* One must take the threat of eradication literally: when one is abandoned by the law, one is exposed to death. To 'not be' a subject is compellingly undesirable. The psychoanalytic term for this exposure is abjection, the defining limit of the subject. Abjection is that which the subject has to repudiate or exclude in order to come into being. The term 'abject' literally means to be "cast off" or "rejected." In *Powers of Horror* Julia Kristeva defines abjection as the horror we face when meaning collapses and distinctions between subject and object, self and other, are blurred (2).

The prospect of maintaining a critical understanding of the law is indeed a daunting one, for one risks plummeting into the abyss, and losing all sense of oneself. Yet not only does a vast population of marginalized subjects live at the border of this abyss, every subject risks this loss by identifying with the one who has broken the law. Why would anyone risk this? It is because abjection is more than simply a zone of absolute vulnerability and dejection – it is also the site of confrontation. Resistance is possible in its social and psychic realms, as "from its place of banishment, the abject does not cease challenging its master" (2). This is possible because where the object is barred from the subject, the abject dissolves the border between them. The subject is not constituted by her submission to the sovereign father, but by the outlaw/abject status she shares with her mother, and the ongoing struggle for sovereignty that constitutes her relation to the social. Abjection thus facilitates the double exposure of the fragility of the subject, and also the fragility of the law.

Abjection is not, therefore, a direct opposition to subjectivity, but instead interacts with the subject as what constitutes and deconstructs it. Abjection is not absolutely outside, it contests the limits of what is outside and what is inside. As Kristeva writes, the abject includes "what disturbs identity, system, order. What does not respect borders, positions, rules. The in-between, the ambiguous, the composite" (4). Abjection is to the subject

what outlawry is to the law: exposed and vulnerable, it is also what exposes the fragility of the law. Thus, in Kristeva's framework, the one who has broken the law is abject.[23]

 Identity is thus conditioned by the haunting presence of outlawry in the subject – the undecidable refusal to submit that we encounter in Althusser's scenario. This is a presence that charges the subject – every subject – with a responsibility to critique the law, even at the risk of unintelligibility. Thus 'the outlaw' is not some extraordinary individual, but rather constitutes an aspect of our subjectivity. As such there is a trace of resistance in one's very submission, for the submission is based on possibility – what Derrida might call an essential or necessary possibility – of the refusal to submit. Outlawry takes its place in subject formation as the potential to alter the terms of subjection. But this is not without risk of exposure to death and loss of self. The structure of abjection thus constitutes a kind of doubling; a complex subject of a complex law whose borders are under contestation. Yet we have not yet discovered how this is possible if one is always already a subject. How might this introduce some alterity that is truly outside of the conditions of the law? For as Butler argues, in the Foucauldian model resistance is limited by the terms of whatever discourse is at play: we can only "work the power relations by which we are worked" (100). There is no mechanism for the subject to change its conditions of subjectivation.

Iterability

Butler unhinges power from the path on which it is locked through the linguistic terms of the performative call. Here, where power recoils, the subject's agency emerges, an agency that consists "in opposing and transforming the social terms by which it is spawned" (29). The form of the recoil is open, for the performative utterance that constitutes subject and law is structured by alterity itself. This is because its own condition of possibility is iterability: identity is constituted in repetitive, regulated linguistic and material acts, which incorporate change, or difference in the space between each repetition. But how does alterity, as such, slip into the repetitive sequence?

Butler turns to Foucault's definition of power as what acts on a subject capable of action to illustrate the play of iterability. The reiteration of the subject is not merely mechanical, for power moves fluidly through its capacities to constitute subjects and to act through them as their 'own' action. When we think of the subject in time, we can envision its shifting relationship to power as what limits it and opens up its possibility for action. Each time power repeats, it dismantles its former character: it acts on, it acts through, it acts on, it acts back.[24] The changing nature of power, as it repeats, endows the subject with a changeable character; even as one conforms to the discursive call, one acts back with power of one's own. In other words, the subject is not static, but is a subject in time that is not simply subjected once, but is continually acted on by power in changing ways. Thus, while one arguably always remains on some continuum of subjectivity, one is not, from moment to moment, precisely the same subject, of precisely the same power. This iterability is, in part, how Butler explains the paradoxical nature of subjection and identity formation, whereby the person must submit in order to be free.

This transformative capacity of power offers a partial explanation of how transformation is conditioned by performativity. Yet the subject still remains locked by the terms of institutionalized discourse. We can see how the subject might transform, and even resist, but it is not clear why acting back would not simply result in punishment or abjection in its vulnerable sense. How is the discourse itself transformed? What space for contingency is there? How does iterability make it possible for the conditions of subjectivation to change?

In *Limited Inc.* Derrida identifies iterability as one of three qualities that mark the performative utterance with difference at its very core. In this he departs from Austin's theory, which demands a kind of authenticity or purity for an utterance to qualify as performative (i.e. a wedding vow uttered as a part of a stage performance does not count as a performative utterance). For Derrida, iterability contaminates the purity of any performative (17); indeed, "iterability…ruins (even ideally) the very identity it renders possible" (76). That there is no 'authentic' or 'pure' performative underscores the absence of a pure and authentic subject, and of a pure and authentic law. But why is it the case that all performatives (and this means also subjects and laws) are always already

corrupted by a fiction in advance? It is because every performative utterance – including the policeman's call, "Hey you there!" – is already a citation, it has already been "put between quotation marks" (12). This is important because when it is cited it breaks with its original context, which is to say there is no original context, only citation after citation, "engendering an infinity of new contexts in a manner which is absolutely illimitable" (12) There is something deceiving in a citation that claims originality, moreover, since it fakes its authenticity. This is why drag is such a powerful example of resistance to the call of gender, but also a misleading one, because on the surface the example implies that we 'act out' our gender. Yet as Derrida argues, all performatives are citations, that is, fictions that break with context:

> For, ultimately, isn't it true that what Austin excludes as anomaly, exception, "non-serious," *citation* (on stage, in a poem or in a solilquey) is the determined modification of a general citationality—or rather a general iterability—without which there would not even be a "successful" performative? So that – a paradoxical but unavoidable conclusion—a successful performative is necessarily an "impure" performative… (17)

Drag puts the performative utterance on stage and forces us to recognize the action as an act, the citation as a fiction. When we witness the hailing police officer in the exaggerated performance of a drag king phallically swinging his nightstick, the fiction is transparent. But the point is not that such conscious criticisms are possible, but rather that the police officer that really does hail us in the street is just as fictional. All identity is a sort of unconscious drag, a citation of a citation. The drag king is not cast as the figure of resistance, in this sense, but as exemplary of the fictional quality of identity, all identity. What the drag performer does consciously as a critique of gender norms, we all do unconsciously, as expressions that constitute our identities.

Moreover, iterability, as Derrida theorizes it, also demands that identities constantly transform, for iterability is constituted "*in itself* [by] the discrepancy of a difference" (53).' Any identity is determined through differential relations, but the performative identity is always already different, even from itself. This is because it is constituted

through repetition, and each repeated element defers and differs from the others. The sequence might repeat, as follows: law, outlawry, law, outlawry; or subject, abject, subject, abject. This repetition of alterity operates in the context of the materiality of the performative utterance, which "produces or transforms a situation, it effects" (13), and the reliance of performatives on the constitutive outside: "[performatives] do not exclude what is generally opposed to them, term by term; on the contrary they presuppose it, in an asymmetrical way, as the general space of their possibility" (18-19). What does this mean with respect to Althusser's theory of ideology? How might iterability transform the subject, and the law, that is, the conditions for subjectivation?

For Althusser, the subject is interpellated into ideology through the repetition of material practices, the mastery of a kind of "'know-how' wrapped in the ruling ideology" (118). The repetitions continue throughout one's lifetime, as one strives to become the subject that is expected. But already we have discovered a number of obstacles to successful interpellation; there is some blurring of the distinction between 'bad' and 'good' subjects who share a false temporal sequence that is belied by the 'always already' status of the subject; there is a remainder in addition to the psyche that is related to the mystical foundation of the law's authority; and there is slippage between recognition and misrecognition in the specular structure of interpellation. Indeed, the recognition of self as depicted in the hailing scenario is reiterated through the multiple hailings of various social apparatuses over time, each haunted by misrecognition.

If we conceive of the subject as performative and iterable, the distinction between the good and the bad subject is not the difference between a subject and a non-subject, nor is it temporally inscribed as a good subject gone bad, as it initially appears. Recall that in Althusser's scenario, with reference to Pascal's defensive dialectic "Kneel down, move your lips in prayer, and you will believe" (127), he is clear that the repetition of material rituals is what produces subjectivity, and not vice versa. What is the consequence for subjectivity, then, of a bad subject that believes, but enacts a different relation to his or her material existence? On the one hand, he or she is wicked, perverse or cynical, according to Althusser. One outcome is that the repressive state apparatus enforces material rituals of submission – the subject is disciplined, in both the punitive sense and

the Foucauldian sense. Indeed, this is where Althusser takes it – for the distinction between good and bad is not a question of whether or not a subject works, but whether or not they work by themselves. Bad subjects work, but only under the coercive violence of "repressive agencies like the police or the military" (169). Yet the recourse to repression is only one logical conclusion to the material transgressions of the bad subject. After all, in Althusser's framework, it is the material enactment that produces the belief. If one refuses to kneel and refuses to pray, one might continue to believe (as a bad subject) but one might also cease to believe. In this case, the bad subject would be positioned on a path to transforming themselves, and their material reality.

In each instance that subjectivity is repeated, there is an invitation for alterity, including a critical desubjectivation. This is how performativity resolves the temporal contradictions of the good and bad subjects as well as the outlaw: they are, in a sense, simultaneous if we freeze the frame, but if we watch in slow motion they constitute repetitions of each other, each slightly different. Moreover power shifts between the subject and abject, and law and outlawry, as they act on each other. Indeed it must, for neither subject nor law has an independent existence but each produces the other through their relation. The relation is that of the unnarrativizable performative staging of the call and the turn to face the law, including the inevitable hesitation ("perhaps I will not turn," or "is the call for me?"). As the subject repeats, so does the law, so that the difference is produced not merely in the subject, but in the law as well.

The difference between deconstituting powers and constituting powers is undecidable. But the potential to refuse the hailing remains as a trace in each misrecognition. This trace is identified by Butler as another aspect of subjugation that accounts for resistance. She argues that the production of a "continuous, visible and located" subject is impossible in its purity and totality. Instead, the subject is "haunted by an inassimilable remainder … that marks the limits of subjectivation" (PLP 29). Turning to Freud, she identifies this remainder as melancholic loss, which, like bad conscience, "rifts the subject" and represents a kind of inarticulate grief that one can sense but cannot quite recall[25] (23). As what "inaugurates the subject and threatens it with dissolution" this loss is the very ipseity that the subject desires and represses. But it is not a loss in the sense of

an absence, but rather of the haunting presence of outlawry in the subject who is ensconced at the unstable threshold of a law whose legitimacy is 'mystical' and retrospective.

Becoming (Un)becoming

The police officer's call on the street – "hey you there" – sets the stage for a complicated series of becomings…and unbecomings. The linguistic terms of the call summons both the subject and the law into being, but under the conditions of the fiction and alterity of the performative utterance. The subject thus includes its own undoing and potentiality to be outside of the law as an element of its very constitution and relation to the law. Outlawry is the ever-present condition that allows that the potential subject might refuse the edict to turn. Outlawry is always included as a part of law. Its trace lingers in the force of law, that aspect of the performative utterance that has the power to transform, to violently shock, to create reality, to produce a subject. In addition, outlawry persists in the iterability that is inscribed in the performative, as what alters in each repetition, as what differs and defers as the law reconstitutes itself. Yet the outside of the law/subject is bracketed. For these possibilities lurk within the subject, not as what is prior or subsequent, but as what persistently haunts the subject as she performs her allegiance to the law. Even when the person does turn, she must pass through a moment of decision that holds the possibility that she might not turn. Otherwise, she is not a free subject at all. Alternately, for every resistance to subjection the person draws her power from her very subjection: one cannot speak intelligibly at all except in the language of the symbolic, that is, through the laws and conventions of language of one's community.

Subjectivity thus occurs as a perpetual event, unsteadily anchored at the site of repetition and threshold of a double performative – the performativity of the law and of the subject – each granting the other the conditions of its possibility and threatening the withdrawal of those conditions. Althusser's hailing scenario explicates the dependence of the subject on its being expected or recognized by the law and subsequently addressed: "hey you!" Likewise, the law depends on the subject's recognition in order to establish its legitimacy, whether that recognition comes in the form of conscience or passionate

attachment. This recognition is not guaranteed. The scenario includes the possibility of a refusal of subjection, or a critical or abject desubjectivation, as a condition of subjectivity. Althusser's pedestrian might not turn in answer to a discursive hailing, as a condition that the turn be a free acceptance of subjection. The imperative might be refused. The subject is caught between conscience (a reprimanding or accusing voice) and desire (a passionate attachment to the law and its promises), and also refusal or rejection of the law. That is, the subject is a hybrid of submission and freedom, and of a becoming that hovers on the verge of unbecoming. The law and the subject found each other's fictions, and neither may obtain a purchase on a legitimate identity without the acknowledgment of the other.

In processes of subjectivation, which involve the double performativity of law and subject, just as there is abjection to be repudiated, ideology to be internalized, and authority to be submitted to, there persists some element that escapes subjection and that 'acts back' on what founds it, that resists and re-founds the law. The subject that I propose is a subject of outlawry as well as being a subject of the law, not a subject *per se*, and not an outlaw, but both at once. This subject/outlaw is both a becoming subject and an (un)becoming subject, a term which implies a deconstruction of the subject that is simultaneous to its construction. The (un)becoming subject is an aspect of every person's subjectivity, but just how (un)becoming one is also depends on one's relative position in the social realm. This doubled dynamic, between subjection and alterity, connects us one to the other, for one is only a subject in relation to the Other (which does not erase agency, but does demand responsibility), and ensures our individual and collective variation and variability. The (un)becoming subject is in a continual process of becoming a subject, of repeating the performance of material and linguistic acts with the constraints imposed by the discursive context. He or she is constantly deconstructing this subjectivity, this self that is under construction, and the very discourses that call it into being – to varying degrees. Thus, the (un)becoming subject is an aspect of everyday changes of self and social world. Notwithstanding some people are more normative and others more likely to inhabit zones of subjectivity that might be perceived as 'abject' or 'outlaw.'

The theory of outlawry redirects the focus from the performativity of the subject *per se* to the site of mutual performative constitution of subject and law, for the law is likewise a series of performative citations constituted in its enunciation. I propose at this threshold law and subject are under continual re-creation through a mimetic doubling with their constitutive outsides: that is with outlawry and abjection, respectively. I thus extend Butler's and Althusser's analyses, and, while holding to the general logic of their work, re-direct the lens to the simultaneous construction and deconstruction of the law, via outlawry. The becoming subject mirrors not only the law, but also both abjection and outlawry. It is an (un)becoming subject that acts back against the law; yet this (un)becoming is at second glance a becoming. Thus, in my reading of the hailing scenario forwarded by Althusser, not only is the subject produced and revised by the police officer's call and the pedestrian's ritualized response, so too is the law constituted and re-constituted. Subjectivity is a perpetual event in which one is always already a subject, a becoming subject (subject-to-be), and site of desubjectivation or (un)becoming (turning away from the law, agency, identity). Our notion of the subject is merely a placeholder at a threshold that encapsulates all of these possibilities and impossibilities. This threshold of subjectivity is a porous space, framed by the conditions of performativity – iterability, and différance. Neither subject nor law can be fully contained when undecidability and alterity play a pronounced role in their being and becoming. This is the space of resistance and repression through which the law and the subject are constituted and reconstituted, a space of outlawry.

Chapter 3: Sovereignty, Outlawry and the Wolf

During the first Gulf war the American media devised a nickname for Iraqi president Saddam Hussein that echoed the ancient proclamation of outlawry: *wargus esto*, or "become a wolf." They called him "the Beast of Bagdad," a title he held until his death by hanging in 2006.[26] Thrust into a zone of indistinction between sovereign and outlaw, human and beast, Hussein was transformed into a contemporary equivalent of a werewolf. With this performative proclamation, the world changed. The 1990 American invasion of Kuwait and attack on the World Trade Centre in New York a decade later heralded a new era in global politics, one in which the lines between law and outlawry blurred to a point of such crisis that an indefinite state of exception was declared across the globe. What has been termed the 'war on terror,' with its indeterminate territories, ambiguous enemies and indefinite timeframe not only made a werewolf of Hussein, it makes werewolves of us all. Transfixed and alienated by the screen image, from the video-game-like bombing of Bagdad to the fall of the towers, those of us who live in the west feel ourselves simultaneously disconnected from, and exposed, to death by terrorism; we barely notice when our own rights are eroded by the new security measures. Moreover, the actions of our own states, and our subsequent complicity in terror, torture, and acts of aggression that contravene international law, put our very humanity to the test, as well as the efficacy and justice of political concepts such as sovereignty and democracy. What are the implications of outlawry in the political sphere? Is this 'new' form of politics a total catastrophe? Or is there space for resistance, political transformation, and justice when our political concepts blur the lines between sovereign, outlaw and wolf?

As the reference to the wolf ban implies, the ambiguity between criminal, sovereign and beast is ancient. The ban dates at least as far back as Hittite law, and was a common mechanism to outlaw criminals in archaic and medieval European societies.[27] Historically, outlawry has contested boundaries and oppositions, allowing for transformative flows of power, and complex passages between the domains of nature, culture, and the supernatural.[28] According to Giorgio Agamben, the pronouncement

"become a wolf" placed outlaws in an ambivalent position, both inside and outside of the law, and in a liminal position between humanity and animality, as a werewolf (HS 105). It is no coincidence, moreover, that this is precisely the position of the sovereign, who must be above the law in order to declare such an exception to law. However, legal mechanisms for proclaiming outlawry are long outdated in western countries; so why take the question of outlawry up now? What is it about modernity that compels a detailed consideration of the outside of the law, and of its operation in the political realm?

As the mechanism by which the law takes bare life as its object, the proclamation of outlawry is, for Agamben, the ancient predecessor of biopolitics, a modern form of politics that administrates life, rather than governing subjects. Agamben points to the de-humanizing effect of biopolitics on human populations, which Foucault phrases the "bestialization of man" (HS 3). It is Agamben's particular contribution to link biopolitics, which for Foucault is a function of governance, to modern forms of sovereignty, which are informed by Carl Schmitt's understanding of the sovereign as "he who decides on the state of exception" (11). For Agamben, the sovereign is outside of, or above, the law, but so is *homo sacer*, a figure of bare life that emerges as a remainder produced by the sovereign exception. Notably, where in the past *homo sacer* was an exceptional category, today everybody is *homo sacer,* because, Agamben argues, the exception has become the rule.

By merging biopolitics with the sovereign exception, Agamben sets up the implicit significance of outlawry in biopolitics: the lives of *homo sacer* and the sovereign are the objects of law by virtue of their being outside of the law. This dual role of outlawry in modern politics has catastrophic implications in Agamben's view. Sovereign and non-sovereign entities alike are turned into outlaws, although they are outlaws of very different sorts. Sovereign outlawry is characterized by the power to act outside of the law, whereas the outlawry of *homo sacer* lies in a sheer vulnerability and exposure to death through exclusion from the law. Human life is stripped of its meaning, and governments become outlaws who treat their extralegal activities as if they are legitimate, and deal with citizens and non-citizens alike as objects of bare life, leaving the door wide open for abuses.

These are serious concerns, but it is also feasible that sovereignty may alternately collapse under the sway of outlawry, rather than being supported by it. Does a biopolitical citizenry challenge the law? A close examination of biopolitics through the lens of outlawry opens the possibility of an entirely different kind of biopolitics than we find in Foucault and Agamben. With this in mind, is the relationship of outlawry to sovereignty always necessarily catastrophic? Or could outlawry perhaps provide a means to deconstruct sovereignty in a political context that, by virtue of the various outlawries at play in the sovereign sphere, and in light of the threat posed by politics to life itself, demands new concepts of the political?

Despite a certain overlap in their diagnosis of the political issues faced in modernity, Agamben and Derrida disagree on the meaning of the play of outlawry in modern politics. In recent work, Derrida contends that the sovereign sphere is permeated with a wolfishness that blurs the boundaries between law and outlawry, but with significantly different implications than for Agamben. In *Rogues* Derrida addresses the question of what he terms 'rogue' sovereignty, and in *La Bête et le Souverain,* he links the sovereign and the beast with criminals through a shared status outside of the law.[29] Yet for Derrida, there is no clear division between such abjected beings as *homo sacer* and political subjects, nor between sovereignty and outlawry, nor between political life and bare life (*bios* and *zoë),* the latter being the distinction on which biopolitics rests. Moreover, he disagrees with the contention that biopolitics is a distinctively modern political norm, positing instead that it represents a 'threshold' between old and new political concepts. Such a threshold does not separate the old from the new, but rather traces the continuity and discontinuity of transformations of political concepts through time.

The prevalence of outlawry in the political realm clearly involves some urgent dangers. Since the enlightenment, a cooption of outlawry by sovereignty constitutes the structure of modern secular politics, so that today, something bare is exposed at the heart of the political. However, the solution cannot be a foreclosure of outlawry, for that would only push the present dangers to their totalizing extreme; such a foreclosure would fully enclose outlawry in the law. We need new concepts in light of this bare politics, but not concepts that exclude outlawry. Our task, rather, is to free outlawry from the grip of the

sovereign. A deconstruction of biopolitics, sovereignty, and the law opens up possibilities to re-create our political concepts, by generating openings toward the future, and toward the other. It may be disastrous when sovereignty becomes a roguish wolf, as Derrida argues in *Rogues,* and when political subjects are dehumanized as *homo sacer*, as Agamben contends. Yet a focus on the outlawry of biopolitics also emphasizes the performative and deconstructive interplay between law and outlawry, in which outlawry possesses the power to create something new.

The Biopolitical Outlaw

In the first volume of *History of Sexuality*, Foucault argues that the rationalism of the Enlightenment has led to a new form of politics, particular to modernity, that takes life itself as the object of the law. Biopolitics involves the "growing inclusion of natural life in the mechanisms and calculations of power" (119). This new form of politics takes charge of life through "continuous regulatory and corrective mechanisms" that "distribut[e] the living in the domain of value and utility" (144). The result is a dehumanization of the population, as human lives become the object of politics. Foucault writes: "What follows is a kind of bestialization of man achieved through the most sophisticated political techniques. For the first time in history the possibilities of the social sciences are made known and at once it becomes possible both to protect life and to authorize a holocaust" (HS 3). In Agamben's view, the roots of biopolitics in outlawry are ancient. He frames biopolitics as a form of politics that transforms citizens from subjects to persons who are outside of the law. His investigation in *Homo Sacer* circulates around the political function of the sacred man "who may be killed but not sacrificed" because he is included in the law only by being excluded from it (8). This sacred figure has, for Agamben, its origin in archaic legal structures banning lawbreakers, placing them in an ambivalent position both inside and outside of the law. Indeed, he poses the wolf ban as evidence that, since ancient times, sovereignty has rested on a continuous state of exception in which bare life is indistinguishable from politics.

The ban is the performative proclamation *wargus esto* (become a wolf),[30] pronounced by the sovereign to exile certain lawbreakers from the community as werewolves. Exiled as a being that is neither entirely human nor beast, the person who has been banned from the city is, like *homo sacer*, a sacred figure who can be killed without culpability like a wolf, but not sacrificed. In the figure of the werewolf, animal life and political life have merged to the point where they are indistinguishable. As Agamben makes clear, the ban does not draw a sharp limit between humanity and animality, city and forest, but rather blurs the boundary between such oppositions. He writes:

> The life of the bandit, like that of the sacred man, is not a piece of animal nature without a relation to law and the city. It is rather, a threshold of indistinction and of passage between animal and man, *physis* and *nomos*, exclusion and inclusion: the life of the bandit is the life of the *loup garou*, the werewolf, who is precisely *neither man nor beast*, and who dwells paradoxically within both while belonging to neither. (105)

The ban strips the outlaw of the status of subject, and dissolves the boundaries between human and animal by narrowing the scope of the sovereign's authority over the bandit to the bare fact of his or her being alive. This special category of life, which Agamben terms 'bare life,' is produced performatively as part of the discursive construction of sovereignty. The ban merges, to a point of indistinction, *zoë*, "the simple fact of living common to all living beings," and *bios,* "the form or way of living proper to an individual or group" (1). However 'bare life' is not simply the sheer fact of living as we understand it through *zoë,* a 'being alive' that humans share with all other plant and animal life. On the contrary, the bare life of humans is something that has been performatively produced by sovereignty; it is a political concept of life that belongs as much to *bios* as it does to *zoë.* The ban's proclamation "become a wolf" marks the very instant that constitutes the political power of the sovereign, by suspending the law and including bare life in the political realm. The sovereign dictum *wargus esto* inaugurates sovereignty, by designating who is included and who is excluded, through the performative power of the sovereign to decide, and through the indistinction between life and politics wrought by it. The bare life of *homo sacer* is what's left of the performative production of sovereignty.

As such, *homo sacer* is a remainder of the originary exclusion that constitutes the political domain: "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" (83). In this formulation, the sacredness of *homo sacer* is particular to the state of exemption decided by the sovereign. It is a sacredness that is not consecrated, in which the life of *homo sacer* is merely exposed to a death that is devoid of the meaning imbued in a sacrificial death.

Agamben argues that western politics is constituted by including 'bare life' – the life of *homo sacer* – through excluding it from the sovereign community: "bare life has the peculiar privilege of being that whose exclusion founds the city of men" (7). This tie between law and bare life, Agamben argues, is the always present and always operative presupposition of sovereignty (106). Thus Agamben's biopolitics is a performative concept that produces two outcomes: it transforms all humans into outlaws/werewolves whose deaths hold no meaning; and it inaugurates the power of the sovereign.

Outlawry and Sovereignty

Agamben ties biopolitics to the concept of sovereignty, and more specifically, to the sovereign exception, and thus to outlawry, through the writing of Schmitt, joining what was for Foucault a matter of governmentality, with the sovereign exception. Although he wants to disassociate himself from any political allegiance with Schmitt, Agamben cannot help but stay critically, but uncomfortably, close to the Nazi jurist, because by proposing an era of biopolitical exceptionalism, he leaves no room for an 'outside to the law' that is not subordinated by sovereignty. This corrupts democratic societies' claims of liberty and justice: not because outlawry inevitably leads to fascism, but because it does so when it is reduced to a tool in the hands of the state.

Defined by Jean Bodin as the "absolute and perpetual power in a commonwealth" (1), the model of sovereignty that emerged during the Enlightenment was tied to outlawry, and

this, rather than the archaic ban, is the understanding of sovereignty that informs Schmitt. Bodin's conceptualization of sovereignty was designed to unite a divided society as one body under a single authority. It places the sovereign outside of, or above, the law, in a formula that in different ways has come to structure both totalitarian and (so-called) democratic regimes.

For Bodin, sovereignty is distinguished from other forms of rule by three key features: the sovereign is not answerable to any higher authority (such as a Pope or emperor); sovereign power is permanent rather than being held for a term that expires; and as the one who makes the law, the sovereign is above the law. Each of these conditions is likewise present in Schmitt's definition of sovereignty, connecting the outlaw aspects of Bodin's concept of sovereignty to fascism. For Schmitt, the power of a sovereign who decides on the exception is both indivisible and perpetual. But it is the third characteristic that points most explicitly to the outlawry contained within sovereignty. Indeed, for Schmitt, Bodin's key contribution is his specification of the sovereign's power to suspend valid law (PT 9). Bodin writes:

> [A] subject who is exempted from the force of the laws always remains in subjection and obedience to those who have the sovereignty. But persons who are sovereign must not be subject in any way to the commands of someone else and must be able to give the law to subjects, and to suppress or repeal disadvantageous laws and replace them with others – which cannot be done by someone who is subject to the laws or to persons having power of command over him. This is why the law says that the prince is not subject to the law; and in fact the very word "law" in Latin implies the command of him who has the sovereignty. (11)

The law is thus constituted through its own suspension with respect to the sovereign, that is, Schmitt's 'decision on the exception.' Since the law must be suspended in its relation to the sovereign, the sovereign is outside of the law. For Schmitt and Bodin this lends sovereignty its power and perpetuality. Schmitt specifies that the exception is a temporary suspension of the law in times of emergency, en route to a return to the normal situation. What distinguishes the sovereign from other citizens, or a sovereign act from

other political decisions, is this power to become an outlaw and to temporarily make outlaws of all citizens by suspending their rights.

For Schmitt this is precisely what saves the law from the rupturing effects of competing interests in liberal democracies; indeed, Schmitt totalizes sovereignty to such an extent that it includes even what it excludes. What this means is that outlawry, which formerly only founded and destroyed law, now serves the contradictory role of conserving the law. Schmitt trades what he perceives as the compromising erasure of the political (as he understands it through the friend/enemy antagonism) in liberal pluralism for the more decisive ideological fanaticism and united stand of fascism. Through his affiliation with the Nazi party (a decade after he wrote *Political Theology)* he was implicated in the very Holocaust that for Agamben exemplifies biopolitical state atrocity. It is no wonder that Agamben and Derrida, however much they may draw from Schmitt's analysis of the state of exception, seek an alternative direction, a route out of the ontotheological political legacy that brought us from the revolutions of France and America to the Shoah.

Nonetheless, the Schmittian logic of the exception fascinates Agamben, as the norm of modern politics. The state of exception is structured by an inclusive exclusion that takes the form of a suspension of the law rather than a clearly defined inside and outside: "[T]he most proper characteristic of the exception is that what is excluded in it is not, on account of being excluded, absolutely without relation to the rule. On the contrary, what is excluded in the exception maintains itself in relation to the rule in the form of the rule's suspension. *The rule applies to the exception in no longer applying, in withdrawing it"* (HS 17-18). Agamben points out that, according to its etymological root (*ex-capere),* an exception suggests something that is not simply excluded, but rather *taken outside* (18). Working in the theoretical space between Benjamin and Schmitt, in *State of Exception* Agamben suggests that the force that is freed up when the law is suspended in the state of exception is a "mystical element," that references Derrida's theory of law. He terms this element a "force of ~~law~~" that both the state and its adversaries try to appropriate (51):

> [I]n extreme situations "force of law" floats as an indeterminate element that can be claimed by both the state authority…and by a revolutionary organization…The state

of exception is an anomic space in which what is at stake is a force of law without law (which should therefore be written: force of ~~law~~). Such a force of ~~law~~ in which potentiality and act are radically separated, is certainly something like a mystical element, or rather a fictio by means of which law seeks to annex anomie itself. (SE 38-39)

The force of ~~law~~ exposes the law's fiction by dividing the potential and the actual to reveal how fragile this tie is. Agamben specifies that in *Metaphysics* Aristotle defined potentiality as follows: "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 im-potential (that is there will be nothing able not to be)" (*HS* 24-26). Potentiality thus contains both possibilities 'to be' and 'not to be.' The actual occurs when what is potential sets aside its potential not to be (45-46). The law is never fully actual, for it can never rid itself of the potential not to be, or the potential to be something other; it can only suspend this potential. Thus force of ~~law~~ is a deconstructive concept that floats, rather than finding semiotic grounding in an originary signified. Yet in the final analysis, Agamben still leans toward Schmitt and not Derrida (or Benjamin), for he finds that the force of ~~law~~ is particular to the state of exception which has been declared by the sovereign. His emphasis lies on the state's appropriation of the force of ~~law~~ to occupy anomie; the fiction is the lie that provides the means for this annexation.

Indeed, in the sovereign decision, the whole reason that what is "taken outside" of the law is excluded is not to establish some area of existence that is outside of the law (Benjamin's aim), but rather to preserve the normal situation. What this means is that the sovereign and the citizens are taken outside of the law by the sovereign decision in order to preserve the very law that is suspended. Both the law and its outside are permeated through and through with sovereign power, for the sovereign rule extends beyond the law to the space of its exception. In other words, what is at stake is the capture of outlawry in sovereignty, so that there is nothing that truly escapes from the totalizing reach of the law.

Yet Agamben points out that this logic is not as new as Schmitt makes it appear, since it is the same logic that structures the archaic ban. By pronouncing the ban the sovereign is, like the outlaw, simultaneously included and excluded from the juridical order, and is, like the outlaw, a werewolf (15). With reference to Plato and Hobbes, Agamben argues that the sovereign is a wolf at the heart of the city. Holding sovereign power and bare life together, the structure of the ban thus blurs the distinction between nature and the state, rather than instituting a boundary between them. This suggests that the originary juridico-political relation is not a departure from nature, but instead is "always already non-state and pseudo-nature" (109). This power to decide on the state of exception that defines the sovereign (or for Hobbes, what appears as the right to punish) is not something given to the sovereign by citizens as part of a social contract, but is instead something left over from Nature, something that the subjects of the state have agreed to lay down (106).[31] "So in the person of the sovereign," writes Agamben, "the werewolf, the wolf man of man, dwells permanently in the city" (107). What the sovereign and the outlaw have in common is this natural remainder, which imbues them with a force that places them outside of subjection and subjectivity. The difficulty is that by naturalizing the sovereign claim to outlawry by grounding it in the ban, Agamben makes it seem as if totalitarianism were inevitable, however undesirable he finds it. We need to look beyond Agamben if we are to find an alternative to a totalitarian style biopolitics.

For Agamben, the totalitarian implications of his argument that the state of exception has become the norm are clear. Moreover the stakes of the re-emergence of the ban in modern biopolitics are high: if the structure of biopolitics turns all humans into outlaws and werewolves whose deaths hold no meaning, than the new world order is a dangerous one indeed. Agamben defines totalitarianism as "the establishment, by means of the state of exception, of a legal civil war that allows for the physical elimination not only of political adversaries but of entire categories of citizens who for some reason cannot be integrated into the political system" (2). Where Schmitt is concerned with the powers with which the state of exception endows the sovereign, Agamben asks what becomes of political subjects under this structure. His conclusion is that the exception, like the ancient wolf ban, does not produce subjects, but instead it produces abject beings that are stripped of the status of subject.

By showing that the production of bare life was the originary activity of sovereign power Agamben differs from Foucault, who saw biopolitics as distinctively modern. What is new for Agamben is that where in the past, *homo sacer* was extraordinary, today the state of exception is the norm, and all human life has been biopolitically stripped of its meaning, becoming bare life. Where for Foucault this biopolitical blending permeates modern politics, as "modern man is a living animal whose politics calls his existence as a living being into question" (HoS 43), Agamben argues, "*the production of a biopolitical body is the original activity of sovereign power*" (HS 6). He proposes that bare life constitutes the new "biopolitical body of humanity" (9), which is to say that in modernity, the sacred man replaces the subject in its relation to sovereignty. Everybody is *homo sacer*, a person whose rights have been suspended in light of the ongoing emergency that defines the modern condition.

Thus, for Agamben, in modernity there is no biopolitical distinction between accident victims on a holiday weekend, and the victims of the Shoah – both are merely bare life exposed to violence (HS 114). There can be no sacrifice, because the sovereign exception produces a space of disarticulation, in which no act under or against sovereignty can have any significance, since sovereignty itself operates as a zone of indistinction between *nomos* and anomy. To qualify as sacrifice, an action would necessarily entail a revolt against sovereignty in its very demand for significance. Agamben's primary examples of the modern *homo sacer*, concentration camp inmates and comatose persons, exemplify the uncanniness and horror of the modern predicament, since these figures of bare life could be more aptly termed "barely alive," and the new biopolitical world order is thus characterized via the double metaphor of a holocaust and a hospital ward in which the state's role is to administer life and death. This realizes what Benjamin warned against in "Critique of Violence": a pernicious rendering of the sacredness of life that reduces human beings to bare life. As Benjamin writes: "[W]ith mere life the rule of law over the living ceases" (297). It is on this basis that Agamben nominates *homo sacer*, an obscure figure in archaic Roman law, as the object of biopolitical sovereignty.

Yet I am no more convinced that everyone today is an outlaw with the same degree of vulnerability and exposure to death, than I am that totalitarianism is inevitable. Indeed,

we must ask who is most likely to be injured or killed by state violence and non-state violence, workplace injury, environmental disaster, war etc., and for what categories of person such death would constitute a tragedy in the (western) political consciousness. As Judith Butler makes clear in *Precarious Life,* in an era in which violence has become globalized, some human lives *are* treated as if they count more, or as if they are more "real" than other lives; some lives are perceived as more grievable, and others as if they did not count at all (33-34).

On the other hand, Agamben's point that the general logic of the exception has come to permeate the political realm more and more thoroughly does demand consideration. This is the result of the normalization of the sovereign exception over the past century. Agamben argues that "the voluntary creation of a permanent state of emergency … has become one of the essential practices of contemporary states, including so-called democratic ones" (SE 2). The state of exception has subtly become the norm as a result of a gradual transformation of the structure of western democracies from parliamentary to executive.[32] While much of this transformation has gone unnoticed by the general public, it is visible in security measures that have become a norm in western countries in response to international terrorism. These new security measures perpetuate a continual state of exception since rather than instituting laws to deal with the crisis – laws of war, for example – modern states tend to suspend the juridical order itself (4). Agamben points to the *US Military Commissions Act* which denies *habeas corpus* to those suspected of terrorist activities, and the detainee prison at Guantanamo Bay operated under the Bush Administration. These are examples in which democratic governments deny individuals basic rights that are guaranteed by international law, and prohibit their legal status as individuals.

What this signifies for Agamben is that the subordination of bare life to sovereignty means that sovereignty has fallen into a catastrophic disorder, and this is where his argument begins to reflect Benjamin's perspective. Agamben argues that Benjamin's eighth thesis on the philosophy of history – that the state of emergency is the rule – is decisive for understanding modern sovereignty.[33] This thesis collapses the Schmittian theory of the state of exception by dissolving the distinction between exception and rule,

leaving sovereignty with nothing but pure, extra-juridical violence. This is the sovereignty that holds bare life as its object, a sovereignty that is itself stripped bare to its anomic foundation. Like Benjamin, Agamben seeks to free both life and violence from Schmitt's *onto-theological* politics, in which sovereignty is posed as an absolute and indivisible power and the sovereign, though not actually divine, is posed as analogous to a god. What we need, Agamben suggests, is a complete re-thinking of the political, because what was purportedly a temporary suspension of the normal situation has instead resulted in its extinction. An ontotheological politics that grants a godlike absolute and indivisible authority to a political power is no longer possible in a political terrain constituted by the administration of life itself.

Where for Schmitt sovereignty is a borderline concept that manages the distinction between a normal and an abnormal situation, for Agamben it is a concept that erases borders, especially the one that marks the limit between exception and rule. Yet however penetrating Agamben's insights about the modern state of exception may be, in the final analysis it is Schmitt and not Benjamin that for Agamben decides the state of modern politics, although not without a certain degree of despair. When Benjamin argues that the state of emergency is the rule, his point is that from the perspective of the oppressed it has always been so, and that we must not accept the tendency to normalize or naturalize fascism, but must instead liberate revolutionary violence from the totalizing tendencies of the law. From the point of view of outlawry, the problem that Agamben diagnoses is a Schmittian problem: biopolitics is totalitarianism; it is the total capture of outlawry – that is, both natural violence and life itself – in sovereignty. Benjamin suggests that outlawry of a different sort, a disruptive, anarchic outlawry, is the cure. There is another face to biopolitics that Agamben missed. When we deconstruct biopolitics as a play of outlawry between the sphere of the sovereign and the bare life of its subjects, a critical stance emerges in which our existence as living beings calls our politics into question. Such a demand is nothing new, but its urgency reaches an extreme in modernity, as the continued existence of all life is now at stake in our politics.

In this alternative biopolitics sovereignty may become as vulnerable as *homo sacer*. As the outlaw is exposed to sovereign violence, the *nomos* of sovereignty is also stripped

bare; subjectivity and sovereignty unravel together. In the ban, it is on the basis of this dual rupture in subjectivity and sovereignty that the outlaw is exiled, rather than simply punished. The outlaw is rendered unintelligible through a relation to the law marked by the law's relation to him or her not as a political subject but as bare life, rendered vulnerable to be killed without meaning. If sovereignty operates in a mutually constituting relation with subjectivity, the collapse of this reification not only reduces the subject to bare life, it precludes the constitution of sovereignty as a legible construct.

Bare life is the only aspect of the outlaw that the law can grasp, since both operate in a relation with each other that is absent of signification. The legitimacy and *nomos* of the law has been exposed, so that the law's relation to the bandit is anomic. State violence, in this sense, is sheer violence, and like a hurricane or earthquake, its power to kill the outlaw contains no meaning. This is the manner in which the life of *homo sacer* is designated as insignificant and ungrievable. It is not because this life (or death) in fact has no meaning, but that it does not have significance in the terms of a law that is itself incomprehensible because it has been suspended. The injustice of killing such desubjectified individuals is not absent, but it has been rendered impossible to signify.[34] In this space the law and the individual that is held in relation to it are stripped of intelligibility; they cannot grasp each other. This is why the bare life of *homo sacer*, is, for Agamben, indistinguishable from the law. Unqualified, bare life is sheer life, the politically produced fact of being alive, and the law is reduced to the mere fact of violence.

Sovereignty is thus itself rendered unintelligible by the very gesture that produces its intelligibility. When the law takes up a relation to the individual as bare life rather than subject, when that non-subject is rendered unintelligible and unrepresentable, the law itself becomes unintelligible. The violence does not constitute a political act, nor a juridical one because it is based on a denial of the victim's political and legal status, and thus is distinct from an assassination or execution, which are based on the subject's political or legal significance. The condition of possibility for the *nomos* of sovereignty, its law and power to name and to produce subjects, is the anomic space where the law does not apply. From the perspective of an historic outlaw whose relation to the law

centers on the law's nonapplicability, the law appears merely as a force that kills. Its powers to name, to produce the agency and identity that the subject enjoys, are un-realized. As the figure who inhabits this anomic space, the outlaw captured in the wolf ban thus reveals the undecidability of a biopolitics that includes two opposite and simultaneous actions. For rather than simply being an animal whose politics calls his existence as a living being into question, the werewolf bandit is an animal whose very existence as a living being calls the law into question.

Deconstructing Biopolitics

In *The Beast and the Sovereign,* Derrida turns a deconstructive gaze on biopolitics. The aim of Derrida's investigation of "man as a 'political animal'" is this: "We had above all to explore the 'logics' organizing both the submission of the beast (and the living being) to political sovereignty, and an irresistible and overloaded analogy between a beast and a sovereign supposed to share a space of some exteriority with respect to 'law' and 'right' (outside the law: above the law: origin and foundation of the law)" (BS xiii). Yet however similar this may seem to Agamben's project, in this approach some of the key claims of biopolitics begin to fall apart. For instance, the distinction that Agamben makes between biological life (*zoë*) and political life (*bios*), a distinction on which his entire argument depends, does not hold. Derrida argues that politics and life were seen as interrelated and not opposed in early Christian concepts about the founding moment of the Divine arche-performative. He cites the Gospel of John: "the *logos* was in the beginning with God …everything existed through it [through the *logos*] and nothing that existed existed without it. In it [the *logos*] was life (*Zoë)* and life was the light (*phos)* of men" (BS 313). Through the founding powers of *logos,* God, the sovereign, creates life, life that is always already held in relation to sovereignty. Derrida corrects Agamben with regard to Aristotle as well. For while Aristotle makes some distinction between the simple life that is common to all living beings (*zoë)*, and qualified, or political life (*bios politikon),* the distinction is not absolute as Agamben claims. Not only are there exceptions, such as the noble and eternal life of God specified in *Metaphysics*, Derrida

also notes that Aristotle's very definition of man as a political animal, or pointedly "man who is *by nature* (*physei*) a political animal (*politikon zoon*)," merges natural life with politics (BS 315).

Neither does the biopolitical distinction between sovereignty and governmentality hold in Derrida's consideration. Foucault and Agamben specify that biopolitics involves the animalization of man, his reduction to bare life, and exposure to death. Biopolitics represents the transformation from sovereignty (for Foucault, "power over life and death") to governmentality ("the administration of life") that transforms citizens from subjects to mere living beings that must be organized around the norm. In Agamben's revision of biopolitics, sovereignty and governmentality instead become merged in modernity. However, for Derrida, bestialization (*la bête*) is associated with the status the sovereign shares with animals outside of the law.

The association of sovereignty, animality and outlawry has three implications that are of concern here: first of all, governmentality is nothing more than a mode of sovereignty; consequentially the power to initiate the animalization of man is nothing new. Recall, for instance, the sovereign power expressed in the wolf ban, or the exclusions operating in slavery, patriarchy and colonization. Secondly, revolution serves as nothing more than a transfer of power, if the revolution does not include a "poetic revolution," that is, the transformation of political concepts such as sovereignty (290). In other words, the difference between sovereignty as it operates in a democracy (in its current form), and the absolute sovereignty of fascism, is not as great as would appear, because in practice they operate according to the same logic. Finally, sovereignty is indissociably tied not only to outlawry (and the production of bare life), but also to liberty (and the interpellation of subjects). Derrida writes: "our most accredited concept of 'liberty,' autonomy, self-determination, emancipation, freeing, is indissociable from this concept of sovereignty, its limitless 'I can,' and thus from its all-powerfulness, this concept to the prudent, patient, laborious deconstruction of which we are here applying ourselves" (301). This is not to say, simply, that outlawry equals sovereignty equals freedom, any more that we might say sovereignty opposes outlaws, and thus opposes freedom. Our concepts suffer from a "double-bind" in which sovereignty is not indivisible and liberty is not

unconditional: which is to say, they are each deconstructable, a deconstructability that I tie to outlawry, which is the very force that thinkers from Hobbes to Schmitt have attached to sovereignty's absoluteness and indivisibility (although in different terms).

Derrida and the Beast

What for Agamben is an exceptional situation that is produced by sovereignty, that is, the overlapping of *bios* and *zoë*, is always already an aspect of human politics according to Derrida, who deconstructs the "oppositional limits commonly accredited between nature and culture, nature/law, *physis/nomos*, God, man and animal" (LBLS 444). For Derrida, not only is there a kind of beastliness to human politics, animals are political; they have their own social organizations, laws, and even, in the case of some primates, prohibitions against incest (444). In addition, with reference to Aristotle, Derrida argues that the polis is itself a "part of the nature of things" so that "man's political life is natural" (452). Moreover he asserts that while man as a political being mediates between what are said to be two unpolitical poles – that of beasts and gods – the politician draws a little from both of these extremes. Referencing Rousseau's *Social Contract*, Derrida describes human politics as "theo-zoological." Man is "evanescent," a "hyphen between god and beast" (442). Long before modernity, political man disappeared in an undecidable space between god and beast. For, as Rousseau writes, Grotius described humans as herds of cattle who were protected by shepherds only to be devoured by them.[35] In a similar vein, he cites Caligula, for whom kings were the shepherds of men, so that either Kings were gods, or people were animals.[36]

That essential feature of sovereignty proposed by Schmitt – the power to make and to suspend the law – imbues human politics, not only with onto-theology, as Schmitt argued, but also with ontozoology.[37] The power to decide places the sovereign above the law, which means the sovereign is characterized by a kind of lawlessness. As a result, this human being is granted the omnipotence of a god over other humans, but also rendered a brutal beast that despises and flaunts the law (445). It is in this undecidable space

between god and beast, the space where man appears only to disappear, that outlawry reigns. Derrida writes:

> …between the sovereign, the criminal and the animal there is a kind of obscure and fascinating complicity, even a disturbing mutual attraction, a disturbing familiarity, an *unheimlich*, uncanny reciprocal obsession. Both, all three, the animal, the criminal and the sovereign, are outside of the law, or, variably, above the law; the criminal, the animal and the sovereign curiously resemble each other, although they appear to be located in diametric opposition, in diametric opposition to each other. [*…il y a entre le souverain, le criminel et la bête une sorte d'obscure et fascinante complicité, voire une inquiétante attraction mutuelle, une inquiétante familiarité*, une unheimlich, uncanny *hantise réciproque. Tous deux, tous trois, l'animal, le criminel et le souverain, sont hors la loi, a l'écart ou au-dessus des lois ; le criminel, la bête et le souverain se ressemblent étrangement alors qu'ils paraissent se situer aux antipodes, aux antipodes l'un de l'autre.]* (LBLS444)

This resemblance between sovereign, outlaw and beast also has relevance in terms of Derrida's distinction between the concept of the rogue state and the French equivalent, *l'etat voyou*. The English term, in its common use, refers not just to human vagabonds and thieves, but also to outlaw plants and animals. It suggests a departure from community, an isolated or individualistic flaunting of social norms and laws. A mutated plant is said to be 'rogue' as is a vicious and uncontrolled animal that lives apart from its herd. In "La bête et le souverain" Derrida writes: "The '*rogue,*' whether elephant, tiger, lion, or hippopotamus (and more generally carnivorous animals), is an individual who, by its wild or wayward behavior, does not respect the law of its congeners, the animal community, the pack, the horde, it has already left, or is leaving the society to which it belongs" [*Le* « rogue *», qu'il s'agisse de l'éléphant, du tigre, du lion, de l'hippopotame (et plus généralement des animaux carnivores), c'est l'individu qui ne respect même pas la loi de la communauté animale, de la meute, de la horde, de ses congénères, Par son comportement sauvage ou indocile, il se tient ou il va à l'écart de la société à laquelle il appartient]* (446). The non-human rogue infects the concept of rogue states with a suggestion of Nature and of beastliness, which Derrida emphasizes in both *Rogues* and

the Irvine seminar. At the most basic level, the states nominated as rogue by the US, as in the case of Saddam Hussein's Iraq, carry the taint of wildness: "Saddam Hussein was himself sometimes called … the 'Beast of Bagdad,' after having been, like Noriega, a long standing ally and valuable economic partner. The beast is not simply an animal but the very incarnation of evil, of the satanic, the diabolical, the demonic—a beast of the Apocalypse" (*Rogues* 97).

It is not a secret that Hussein was no innocent lamb, even if he was not guilty of the particular crimes of which he was accused.[38] Yet there is something fabulous in this appellation, which is an example of a wolf that masquerades as a lamb, accusing a wolf of being a wolf. There is an echo of Hobbes here: "Man is a wolf to man." Thus in the appellation 'rogue states' is hidden a theme that is made explicit in the seminar on sovereignty and beasts—both nature and fabulation have crept stealthily in. This cross-germination is addressed in Derrida's attention to the pun "*à pas de loup*," which means both "with the step of the wolf" and "without a wolf." The phrase implies a secretive intrusion, "to be caught by surprise, a surprising understanding" (LBLS 434). Yet at the same time it cancels out the presence of the wolf, which has a phantasmic or mythic quality. Sovereignty, he suggests, is haunted by beastliness in its very concept. The reference to beastliness evokes the natural force of sovereign violence, on the one hand, but also something of the artifice of the supplement, of the beast myth, of story and of falsehood. We must not forget that for Derrida there is no sharp and simple limit between humans and animals, as he elaborates in "The animal that therefore I am (more to follow)."[39] Moreover bestiality (*bêtise)*, itself distinct from animality, is a particularly human characteristic, for only humans are asinine, and indeed, *stupid* (*bête)* enough to use an appellation such as *rogue* when guilty of being rogues themselves.[40]

Like other idioms, from "howl with the wolves" to "the big bad wolf," Derrida asserts, the phrase *à pas de loupe* is figurative, culturally specific, and like sovereignty itself, trapped by the "thorny problem of borders" which are of no consequence to 'real' wolves (435).[41] Indeed, real wolves are nothing like the ferocious and devouring beast implied in the fables and analogies that relate wolves to sovereignty, but are in reality nurturing and community-oriented animals.[42] This, in a sense, excludes real wolves from sovereignty,

even as it includes the metaphorical wolf. But the real wolf, or the natural violence that it signifies, is nonetheless there. The wolf that is not there enters, unseen and unheard, like a burglar. Its very lack is its power: "The strength of the wolf is stronger and all the more sovereign because the wolf is not there" (437). Like the wolf of the idiom "*à pas de loup*," ontotheological sovereignty derives its power from fabulation, from seeming to be what it is not, from not being what it seems to be. *And* it derives its power from force, the natural force of the wolf, the devourer.

For Derrida the resemblance between sovereign and beast involves doubling upon doubling – it is uncanny because, like a magician's trick, just when you think you see what is before you it transforms into something else. Derrida compares the superimposition to those vertiginous picture games where one image turns into another when you unfocus your gaze. In one instant it is the image of a sovereign with the face of a wolf. In the next, it is the reflection of the figure of the sovereign in the mouth of the wild beast. The beast is sovereign and the sovereign is beastly. Derrida plays with a continual slippage between the two; they are host and guest to each other, captor and hostage (446). The figures devour each other. "The beast is devouring and the man devours the animal" (450). But this does not signify, for Derrida, merely the violent power of sovereignty, for the organs that tear, chew and swallow are also the *topos* of the utterance, the cry, "the place of bringing voice." The doubling thus blurs the very limit between *physis* and *nomos*, the natural and the artificial, violence and language, the beast and the animal, animals and our ideas about animals.

This signifies an important distinction between Agamben's and Derrida's arguments, despite their similar association of outlaw, beast and sovereign. Where Agamben writes of blurring borders and zones of indistinction, he is very clear about the limit between nature and culture. Nature is the wilderness, the chaotic, the disorderly, the non-human, and *physis*. Culture is the city, the polis, and *nomos*. It is the blurring of the borders that is for Agamben artificial – an artifice miraculously produced by exceptionality and mediated by sovereignty. In the normal situation, for which there is an implicit desire to return, the borders between sovereign, subject, outlaw and beast are clearly drawn. For Derrida, the beast is always already a fiction as well as a natural fact, as is the sovereign,

represented in the figure of Hobbes' Leviathan. Hobbes lingers just below the surface in these discussions of sovereignty and outlawry, and was a key influence for Schmitt, Agamben, and Derrida alike in their work on sovereignty.[43] For Derrida, the undecidability Hobbe's proposes in *Leviathan* between the natural and the artificial, and between man, god and the beast was particularly notable. As Derrida argues, the association of sovereignty with the beast involves a tricky affiliation that not only marries reason and force, but marries sovereignty to artifice as well.

In the Leviathan, Hobbes establishes the fallibility and finitude of sovereign power, "that mortal god" and also the sovereign's divinity, for as well as being absolute and indivisible, sovereignty is in another sense immortal as power is passed from one sovereign to another. The metaphor combines human, divine, animal and machine to suggest that the state is at once natural, a copy of nature, and a prosthesis that institutes an artificial order on a natural chaos. For Hobbes, the distinction between nature and artifice is blurred from the outset – for nature is the art of God, and human artifice, of which the state is an example, mimics God's art. The state is a machine-like fabrication, an "artificial animal" and sovereignty is its "artificial soul." Sovereignty is the life of the civil machine, its death is civil war. But what happens to sovereignty when the nature of war changes? Derrida asks: "What is a war today, which recognizes the difference between a civil war and a war in general? What is the difference between a civil war as 'partisan war' … and an interstate war? What is the difference between war and terrorism? Between domestic terrorism and international terrorism?" (455).

Terror shares with sovereignty a structure that combines the virtual and the actual, fact and fiction. Whether state or anti-state, Derrida argues, terror is the effective deployment of virtual fear. And this fear, with its real political effect in the world is, in Hobbesian fashion, "the spring of politics." This, in the final analysis, is the core of Derrida's critique of enlightenment sovereignty, and what he finds roguish, beastly and criminal about it. Terror, the reign of terror, is at the root of the liberal and humanist politics of the Enlightenment, and is both the cause and the effect of sovereignty and of subjection (461). Fear or panic motivates the union of civil society, the organization of citizens into a state, and their obedience to the sovereign who protects them – the trade-off proposed

by Hobbes of which Schmitt was so fond.[44] Sovereignty, that cyborg-wolf, is a terror-machine, precisely because it territorializes both law and outlawry and because it is derived from both zootheology and ontotheology, wielding the righteous authority of the gods, the violence of the wild beast, and the fabulation of the mythology that binds them. For both the beast and the gods are, like the sovereign, outside of the law.

Deconstructing Sovereignty

The exclusion from the law that makes sovereignty all-powerful masks a secret vulnerability. This grain of outlawry at the heart of sovereignty is an imperceptible fissure that weakens the entire concept, even as it makes it possible. As Derrida argues in *Rogues*, there is no pure sovereignty, because sovereignty "is always in the process of positing itself by refuting itself, by denying or disavowing itself; it is always in the process of autoimmunizing itself" (101). Autoimmunity has particular relevance in a deconstruction of biopolitics, since, in a political sphere fixated on life itself, autoimmunity is a process by which life opposes life. The term is borrowed from biological sciences; it describes the semi-suicidal process of organisms that turn against themselves, for instance when an organism, failing to recognize its various parts as aspects of a cohesive self has an immune response to its own cells and tissues. In his gloss of Derrida's deployment of the concept, Michael Naas compares autoimmunity to the death drive: "With 'autoimmunity,' deconstruction has to be thought as that which happens, like a certain death-drive, to 'life' itself" (18).

Sovereignty, in other words, undoes itself in its very effort to present itself. If sovereignty is indivisible, as Bodin and Schmitt contend, then it either 'is,' or it 'is not'; it cannot be shared, distributed, deferred, or justified. It begins to defeat itself the instant it opens itself up to the counter-sovereignty of the other (Naas 21). Derrida is even more explicit concerning this contradiction in the essence of sovereignty in "La Bête et le Souverain," where, with reference to Hobbes' contention that politics is driven by fear, he proposes that sovereignty presents itself as perpetual expressly because of its fragility: "It [Sovereignty] is posed as immortal and indivisible precisely because it is mortal and

divisible, and the contract or agreement is intended to ensure what it naturally is not, or does not have" *["Elle [souveraineté] est posée comme immortelle et indivisible précisément parce qu'elle est mortelle, et divisible, le contrat ou la convention étant destine à lui assurer ce qu'elle n'a pas ou n'est pas naturellement"]* (463). In a sense, then, sovereignty is made both possible and impossible by the outlawry that founds and then destroys as an autoimmune response to itself. In the biopolitical body politic, it must defend itself against what is external to it (counter-sovereign others, outlawry), and its own constituent parts (the ipseity of its subjects) which sovereignty must reduce to bare life if it is to sustain itself.

Rogue Sovereignty

In *Rogues* Derrida brings the concept of autoimmunity to bear on the political sphere, addressing the deconstructive relation between sovereignty and outlawry as he considers the Enlightenment legacy of reason in relation to democracy and contemporary global politics. With reference to a world order where the state is no longer what is at stake in the war or terrorism, he questions sovereignty's central place in 'the political,' suggesting that sovereignty has, through various turns and transformations, finally undone itself. He equates the terms 'rogue,' and 'state' suggesting an over determination that simultaneously overflows and empties the political of its contents (106). What Derrida announces is as much a disordering of the political as a new political order. What is at stake is the collapse of the concept of sovereignty into outlawry, a term I use with an inflection of the undecidable, of différance, of the pharmakon, of what Derrida refers to in *Limited Inc.* as "wolves" in the "manger of speech acts" (175). Sovereignty, it turns out, is just such a wolf.

The Bush Administration coined the term "rogue state" to refer to states that were outlaws with respect to international law. Derrida writes that a rogue state is "a state that respects neither its obligations as a state before the law of the world community nor the requirements of international law, a state that flouts the law and scoffs at the constitutional state or state of law [*état de droit*]" (xiii). The irony, as Derrida points out,

is that America is itself the principal outlaw: "The first and most violent of rogue states are those that have ignored and continue to violate the very international law they claim to champion, the law in whose name they speak and in whose name they go to war against so-called rogue states each time their interests so dictate. The name of these states? The United States" (96). While Derrida is putting forward a decisive criticism of American foreign policy in the past few decades, his argument goes well beyond accusations with regard to which states are or are not rogue, for he contends that roguishness signifies an aporia in the very structure of sovereignty: "There are … only rogue states. Potentially or actually. The state is voyou, a rogue, roguish" (102). Sovereignty is, by definition, roguish, in part because of its dependence on violence to obtain and maintain its legitimacy, and because sovereign power depends on the suspension of the very law that it names and enforces. The violence of sovereignty, recalling Walter Benjamin's "Critique of Violence," is illegitimate at the site of constituting power, so that, as Derrida cautions: "Abuse of power is constitutive of sovereignty itself" (102).

This anomaly at the heart of sovereignty makes sovereignty a rogue, and imbues sovereignty with what it strives to banish (outlawry), culminating today in the decline of the era of sovereignty. The political concepts that tied together the state, sovereignty and democracy since the Enlightenment are no longer adequate in the context of late modern global and technological realities. This is the second strand of Derrida's critique of sovereignty in *Rogues* – the demise of sovereignty, making way for a post-sovereign concept of the political: "There are thus no longer anything but rogue states, and there are no longer any rogue states" (106). As Naas asserts, Derrida is calling for an "unconditional renunciation of sovereignty" (18), making way for a new order of the political.

Derrida's approach reverses what Agamben proposes. Where for Agamben, totalitarianism is catastrophically inevitable, for Derrida it is the demise of sovereignty that is inevitable, because in a decision sovereignty not only asserts itself, it cancels itself out as a function of its autoimmunity. Following Schmitt, Agamben argues that the decision represents the ipseity of the sovereign because it departs from the norm. Schmitt

writes, "The decision on the exception is a decision in the true sense of the word. Because a general norm, as represented by an ordinary legal prescription, can never encompass a total exception, the decision that a real exception exists cannot therefore be entirely derived from the content of a norm" (PT 6). However, as Derrida elaborates in "Deconstructions: The Im-possible," the concept of the passive decision counters Schmittian decisionism because the absolute self-sovereignty of the decision-maker is not possible. A decision, although distinct from a norm, always occurs in relation to the other. A decision, as Derrida explains, "must interrupt, cut, rend a continuity, the fabric or the ordinary course of history" (27). There must be something new in a free and responsible decision; it must do something more than simply redeploy an already present truth, power, or force. Derrida writes: "I cannot decide except when this decision does more and other than manifest my possibilities, my power, my capacity-to-be, the predicates that define me" (27). To derive something new, something that exceeds the constraints and possibilities present in the subject who decides, a certain openness to the other is necessary: the newness of the decision, its difference from the norm, must come from outside. This responsibility, this openness to the other describes the paradox of what Derrida terms the "passive decision." "This is the sole condition of possibility of a decision worth its name," he writes, "if ever there were such a thing: a strangely passive decision that does not in the least exonerate me of responsibility. Quite the opposite" (27). The passive decision not only implies the in-operation of the rule, law or norm, it also divides the authority of the decision maker, for the decision is received from the other.

Thus where Agamben and Schmitt argue that the decision manifests sovereignty's indivisible power and capacity to be by suspending the rule, the sovereign does not, in Derrida's estimation, really own that decision, but on the contrary shares it with the Other. If he were really master of the situation, there would be no call for a decision; there would be no exception. Decisions are called into being only in circumstances of uncertainty, which thus become the ground of a sovereignty that more and more strongly has the appearance of a masquerade; uncertainty in the guise of certainty, and divisibility in the guise of indivisibility.

The new order of the political is an unmasking: it heralds an anti-sovereign politics that takes the form of a certain uncertainty and a divisible indivisibility. Derrida frames this new emergence as a manifestation of the wholly other: "To be sure, nothing is less sure than a god without sovereignty; nothing is less sure than his coming, to be sure" (114). What order of the political are we waiting for, what naked God, what certain uncertainty? This newness seems to be what we have been waiting for since the dawn of the Enlightenment, that golden promise that appears alongside modern sovereignty; that promise which demands a certain order of decision-making in the realm of a counter-sovereign responsibility to the other. The name of this revelation? Democracy. Or, more precisely, as Derrida has termed it, *la démocratie à venir*, the democracy to come.

Rogue Sovereignty and Democracy

The absolute and indivisible sovereignty of Bodin and Schmitt, that impossible sovereignty that is made and undone by outlawry, makes the most sense in non-democratic states with a single ruler, since sovereignty cannot be shared. Indeed, this is how both authors saw the sovereign state. Yet the same concept of sovereignty is at play in democratic states, where sovereignty is a manifestation of the will of the people, and must by definition be shared. Democracy, it would seem, comes with a certain demand for consensus, or indivisibility; the people must act as one body. Yet democracy, no less than sovereignty, holds court with a certain outlawry, in more than one sense. For on the one hand, democracy legitimizes the roguishness of sovereignty, which guarantees its own autoimmunity. On the other, outlawry's role in democracy is less a contradiction that weakens the political concept and more a necessary element of its promise, its openness and movement toward something new.

In *Rogues* Derrida sets out a critique of the liberal democracy that emerged during the enlightenment and that typifies the structure of many western states today. Although purportedly representative of the power of the people, intended ideally to protect against the tyranny of the monarchy and noble classes, and to guarantee such *Aufklärung* principles as liberty, equality, and fraternity, Derrida argues that democracy is instead

merely a supplement that legitimizes sovereignty's force in the Enlightenment project. *Rogues* is prefaced with La Fontaine's fable, *Le loup et l'agneau*, which forwards a critique of justice and reason as a charade of force. The fable points to a confusion between might and right: "The strongest are always the best at proving they are right, Witness the case we are now going to cite."[45] In the fable, a wolf goes through the farce of a trial before devouring a lamb, pointing to a perilous conflation of reason and force. As Srinivas Aravamudan frames it in "Subjects/ Sovereigns/Rogues," the moral of the story seems to be "the world is one in which wolves generally have their way over lambs" (459). The wolf represents a sovereign power that is above the law; he is referred to by the Lamb throughout as "sire" and "Your Majesty." Moreover, the wolf supplements his natural violence towards lambs with a trial; he is a lawmaker, "creating new norms with every utterance" (458), but he is himself unrestrained by law. To be sure, the wolf's rationale to defeat the lamb's arguments and alibis is spurious and self-legitimizing; his justice lies not in the fact that he is right but in the fact that he possesses the force to actualize his rule. The trial is a sham, rationalizing the wolf's power and inclination to devour the lamb.

The roguishness of the sovereign wolf is at the crux of Derrida's critique. Sovereignty, as a project of the Enlightenment, is at heart hypocritical. It makes a mockery of its own claims to justice by relying on outlawry to claim its legitimacy, and depends on a beastly and self-serving violence to defend that claim. The sovereign, who is the biggest outlaw of all, treats the innocent as criminals. Aravamudan puts it this way: "Derrida's reflections suggest that the Enlightenment is a prime instance of the fabulation of 'roguery.' Paradoxically, the project of sovereignty that is the Enlightenment sought doggedly to domesticate and sideline rogues, even while it proved itself to be the biggest rogue of all" (458). The wolf is both a sovereign and an outlaw, but he hides his illegitimacy behind the supplement of a fabulated justice. We might read La Fontaine's fable as an implicit critique of monarchy and the aristocracy: the nobility are wolves who baffle the innocent masses with their rhetoric and exploit them through deception and force. However, in *Rogues* the violence of sovereignty is framed in the context of democratic forms of governance. It is western democracy, not monarchies or totalitarian regimes, that primarily concerns Derrida as rogue states. Western democracies, he

suggests, have become outlaws that transgress not only international laws, but their own laws, in ways that contradict the very principles of democracy. Democratic sovereignty is structured by an aporia: sovereignty depends on its indivisibility, absolute authority, and cooption of the outside of the law, all of which are rationalized and enforced by violence; democracy depends on the multiplicity of its members (the will of the people) and their right to sovereignty (to be outside of the law). Yet who precisely are 'the people' in all of their heterogeneity? Indeed, can we say they are heterogeneous, when they are united by a common will? Who does the government in actuality represent? What of those who dissent, or fall outside of the norm? How does outlawry operate in democracy in the present? Are outlaws excluded or included? Is their disruption contained, or does it alter the social and political realms?

Derrida's claim that democracies are self-contradictory in relation to outlaws signals aporia in modern struggles for justice. Democratic sovereignty both includes and excludes outlaws. As Derrida writes:

> democracy has always wanted by turns and at the same time two incompatible things: it has wanted, on the one hand, to welcome only men, and on the condition that they be citizens, brothers, and compeers [*semblables],* excluding all the others, in particular bad citizens, rogues, noncitizens, and all sorts of unlike and unrecognizable others, and on the other hand, at the same time or by turns, it has wanted to open itself up, to offer hospitality, to all those excluded. (63)

The hospitality of democracy is limited and conditional: it embraces and then rejects its others. This is the autoimmunity of democracy, it is what ruins it when it tries to assert itself: democracy protects itself from internal and external threats by suspending democracy itself. Because it excludes its other, democracy is always deferred. The implication of this autoimmunity is that today's so-called democracies are not really democratic. This is part of what Derrida finds so roguish in the grand narrative of the Enlightenment: the colonization of both outlawry and democracy by sovereignty. As it turns out, the revolution might well produce a new sovereignty, but the winners will always turn out to be wolves in the long run. Democracy is an end to which one never

arrives. Like justice, democracy is always "to-come" (*à venir*), its existence at once promised and deferred (86). The question is, what is a 'real' democracy in this case, what is the role of outlawry in it, and how do we achieve it, presuming it is even desirable to do so?

Voyoucracy, the Power of Rogues

We might start by reconsidering the relationship that democracy has to outlawry in its deconstructive sense. Derrida's discussion of the translation of rogue as *voyou* and *roué* suggests a different kind of connection between democracy and outlawry, one that holds some promise for a more ethical future. While none of the terms are precisely synonymous with outlaw (*hors la loi)*, rogues, *voyous* and *roués* are all outlaws of sorts. All three terms refer broadly to unscrupulous and dishonest persons, vagrants or tramps, although each term has a slightly different meaning. *Voyou* is derived etymologically from 'path' or 'track' (*voie* is road, path or way) and suggests a denigrating association with the streets, with the common folk, and with the other. In Parisian slang, *voyou* refers to a 'child of the people.' Derrida describes this connection as follows: "The word not only has a popular origin and use but is intended to designate someone who, by social pedigree or by manners, belongs to what is most common or popular in the people" (R 64). Derrida associates the *roué*, which he describes as a kind of *voyou*, with "debauchery and adversity, to the subversive disrespect for principles, norms, and good manners, for the rules and laws that govern the circle of decent, self-respecting people" (20). It is striking that the association of the *roué* with seduction and leading others astray [*dévoiement*] and not merely the person's own debauchery is what calls for exclusion or punishment (20). A *roué* gathers together, transforming the renegade few to a more threatening many, not merely rejecting, but disrupting social norms. *Rogue*, on the other hand, suggests a singular deviation or mutation, a setting apart in contrast with the collectivity implied in the French term.[46] Etymologically 'rogue' is derived from Latin *rogare* "to ask" and is associated with thieves' slang for a type of begging vagabond (*roger* with a hard g), a solitary activity in contrast to the groups of shameless libertines or malcontented thugs rollicking through the streets of Paris. Thus we find with both

voyou and *roué* a collectivity of outlaws that is absent in the more solitary and individualistic English term 'rogue.' There is a distinction between outlaw states, which are beastly, individualistic, and which treat the people as if they are outlaws, and a collection of outlaws that threaten to disrupt social and political norms, yet both of these versions of the politics of outlawry are connected to democracy: the democracies that have turned into rogue states because of their sovereignty; and the democracies (to-come) that are not yet legitimated by sovereignty.

The collectivity of the *voyou* takes us *en route* to a concept that counters sovereignty and precedes democracy. Derrida terms this counter-concept *voyoucracy*. It is a dissenting democracy, an alliance between outlaws that threatens the status quo*:*

> *Voyoucracy* is a corrupt and corrupting power of the street, an illegal and outlaw power that brings together into a *voyoucratic* regime, and thus into an organized and more or less clandestine form, into a virtual state, all those who represent a principle of disorder—a principle not of anarchic chaos but of structured disorder, so to speak, of plotting and conspiracy, of premeditated offensiveness or offenses against public order. Indeed, of terrorism, it will be said—whether national or international. *Voyoucracy* is a principle of disorder, to be sure, a threat against public order; but, as a *cracy*, it represents something more than a collection of individual or individualistic *voyous*. It is the principle of disorder as a sort of substitute order… (66)

A *voyoucracy* is a threat to sovereignty, a competing power, and an offensive one, at least from the perspective of the upstanding and law-abiding citizens of a sovereign power. For *voyou* is an insulting appellation that is used only in the second and third person to denigrate someone that deviates from the law or from proper behaviour. It is only used with reference to others (one never calls oneself a *voyou*, Derrida notes). The *voyou* is accused, called to order, and summoned to appear before the law (64). To call a power a *voyoucracy* likewise opposes it to the presumed morality and legitimacy of a sovereign power. Those it collects in its milieu are "individuals of questionable morals and dubious character whom decent, law-abiding people would like to combat and exclude under a

series of more or less synonymous names…" (66). A *voyoucracy* is illegitimate and illegal, corrupt and corrupting.

Yet we must not forget that this appellation interpellates an addressee – it produces what it names. The accusation *voyou* "casts a normative, indeed performative, evaluation," Derrida asserts (64). It reaffirms the legitimacy of the reigning sovereignty, the reigning law, which shares this performative structure, and must be continually re-created, reiterated. But this also means that the appellation is relative to the authority of the voice of the accuser. The difference between sovereignty and *voyoucracy* is a question of might and right, an equation that for Derrida remains at the heart of sovereignty in this era of rogue states: "From 'rogue state' to '*Etat voyou*' it is a question of nothing less than the reason of the strongest, a question of right and law, of the force of law…" (2). In other words, it is undecideable precisely which power is the legitimate one, when both the state and its opposition are supported by outlawry. Since might is not equivalent to justice, the question emerges: how do we strive for justice? As democracies, or as *voyoucracies*? That is, is justice possible where there is sovereignty as it is currently understood, even in its democratic forms?

Democracy is inextricably tied to the appellation *voyou*, for democracy is the power of the people, and the people are *voyous.* As Derrida writes*:* "The *demos* is … never far away when one speaks of a *voyou*. Nor is democracy far from *voyoucracy* [*voyoucratie]"* (64). This is not to say that the two terms, democracy and *voyoucracy,* are entirely collapsed, one into the other, for they are distinguished by such criteria as legitimacy, secrecy, and order. Where a democratic sovereignty is a legitimate public order, a *voyoucracy* is clandestine, illegitimate and disordering. Yet a *voyoucracy* might well be on its way to democracy, to the democratization of sovereignty "by way of a revolution and a beheading," as Derrida puts it (20). Thus the very distinction between a democracy and voyoucracy is undecidable. Both represent the force (*cracy*) of the people (*demos),* the people of the streets, the people who take to the streets (*voyous).* And both are structured by a relation to outlawry – *voyoucracy* as a corrupting force that lacks the legitimacy bestowed by sovereign right, and democracy as a sovereign force that supports its lawmaking right through a suspension of the law, a right of the people to be outside of

the law in its inaugural moment. Derrida invites a new understanding of democracy with the deferred structure of promise, one that would preserve the revolutionary urge to defeat corruption and strive for justice, but one in which power has not been corrupted by right. In this democracy-to-come the decision is undecidable, passive, a gift from the other and a turning toward the other, a responsibility for the other, a hospitality that has not yet closed its doors on the ones that democracy would exclude, the "bad citizens, rogues, noncitizens, and … unlike and unrecognizable others" (63). Democracy-to-come, like sovereignty, has a relation to outlawry, but one that allows deconstruction to work through it, and through this opening, creates possibilities for justice.

From Outlawry to Justice

Both Derrida and Agamben critique a sovereign condition that is merged with bestiality and outlawry, demanding a shift to a non-theological concept of the political that departs from the legacy of the enlightenment, the Shoah and the biopolitical atrocities that follow it. Agamben's critique is diagnostic, rather than prescriptive. He explores the problematics of the political as it has been transformed to the biopolitical in modern sovereignty. The political is not marked out by the friend/foe dichotomy as it is for Schmitt, but instead by the categorical pairings of bare life/politics, *bios/zoë*, and inclusion/exclusion (8). As politics is not merely a category of human thought and action, but fundamentally structures western metaphysics for Agamben, this has wide reaching and catastrophic effects. Politics "occupies the threshold on which the relation between living beings and *logos* is realized. In the 'politicization' of bare life – the metaphysical task *par excellence* – the humanity of living man is decided" (8). Agamben proposes that we live in an ongoing state of exception, characterized by conditions that seem eerily similar to the Hobbesian state of nature, in which "man is a wolf to man." In this state of exception, what becomes pertinent in human relationships, and the relation between sovereigns and citizens, is not what mediates differences between us, but each person's/political entity's shared status outside of the law. For Agamben, man is an outlaw to man – an outlaw that like the ancient werewolf occupies a liminal status

between beast and man, nature and culture. We are *homo sacer*, available to be killed, but not sacrificed. Our lives and deaths no longer have any meaning.

This is as true in modern democracies as it is in totalitarian states, Agamben warns. Democracy, which presents itself as a liberation of *zoë*, a vindication and politicization of the life of the people, has failed in this effort. It has become a corrupt version of the democratic concept. Corrupt, decadent, and consumed in the society of the spectacle, democracy converges with totalitarianism (HS 10). Surreptitiously (with the step of a wolf) what we call democracy colludes with its enemy to "transform the decision on bare life into the supreme political principle" (10). In such a context, sovereignty, which is inextricably tied to the sovereign decision, no longer has an intelligible meaning. The way has been cleared for a new concept of the political, but this concept "largely remains to be invented" (11). Agamben's call that this biopolitical hegemony must be stopped is urgent. But he is not clear about how it might be halted. As *Homo Sacer* draws to a close, he calls for "a politics that will have learned to take the fundamental biopolitical fracture of the west into account." Only such a politics "will be able to stop this oscillation and put an end to the civil war that divides the peoples and the cities of this earth" (180). But I remain suspect, or at least unsure about what is at stake here. Does Agamben call for a return to a newly defined "normal situation?" His terminology suggests that biopolitics is equivalent to a global "civil war." If global conflict is a civil war, are we then one global nation? If read in accordance with Hobbes, it is civil war that kills the Leviathan. Do we build a new concept on the corpse of this body politic? Should we save the Leviathan and cap the global body with a sovereign head, democratic or otherwise? If so, what becomes of the exception? Does it revert to its place as a temporary solution meant to preserve the law by acting outside of the law? Agamben does not answer these questions: his project was to try to understand "the bloody mystifications of the new world order." He does not yet attempt to sketch out what a new concept of the political may involve, outside of the disruption of biopolitics.

For Derrida an alternative political concept takes the form of Messianicity without Messianism – an anticipation of something that is miraculous without being divine, what Derrida names alternately as the justice-to-come and democracy-to-come. This involves a

politics derived not from terror but from hope. Aravamudan points out that this glimmer of hope prefaces the text of *Rogues,* where Derrida cites a single word from Ovid in the voice of Echo: "*Veni*!" (462). Echo, Aravamudan continues, signifies not only the "embodied alterity" that breaks Narcissus' solipsistic gaze, but also the "audible but invisible difference within" (462). Yet this patient and passive hope is also the limit to Derrida's analysis. The democracy and justice for which we wait are 'weak forces,' they beckon with the faint intervention of an eventless ethics that turns outward (463). A weak force, as Derrida explains, is a "vulnerable force, [a] force without power," one that "opens up unconditionally to what or who *comes* and comes to affect it," and that exceeds the performative conditions of mastery and authority (R xiv). If Derrida wants an end to sovereignty's occupation of the political – a sovereignty that is incurably infected with the theological, and the metaphysics of ipseity, "a power that *gives itself* its own law, its force of law" – it may take more than passive waiting. As Derrida himself points out in *Rogues*, sovereignty is circular.[47] If we wait, even in the context of an openness to the other, of an extreme hospitality, what guarantee do we have that sovereignty will not just take another turn, albeit in a new configuration? In the "*in turns"* and the "*by turns"* of sovereignty, outlawry casts the totalizing shadow of the Schmittian exception, the violence of the beast who does not reply and the omnipotence of an uncaring god who does not answer. Outlawry's productive potential, its counter-normative otherness, is reduced to an iterability that allows for a performative transformation of sovereignty, even a revolution, but not a rupture in the concept. The God of sovereignty continues to reign, as long as there is sovereignty. This is the case even in a so-called democracy, which remains a *voyoucracy* in the sense of a corrupt and corrupting force, but not one that for more than an (already past) instant represents the power of the people who take to the streets. Sovereignty will always be beastly, even if, for a brief turn, the wolf appears to lie down with the lamb.

Derrida has something here, I think, as long as we do not read the deconstruction of sovereignty too 'passively.' We need to read him with the injection of a little Bataille – a reading of the passive decision as a passionate one.[48] As Jean-Luc Nancy suggests, passion, for Bataille is a "movement that carries to the limit – to the limit of being" (59). Nancy interprets this as referring to the limit of singularity, the movement of any singular

being outside of the self and toward others in community. I would add that the passive/passionate decision is a movement toward the absolutely Other – an ethical decision in the Levinasian sense. Not a passive turning toward the other, but a passionate turn, an unleashing of passions. Such passion is evident in Benjamin's work, which tends to haunt Derrida's more messianic political moments. For Benjamin's anomic pure violence (he calls it *divine* violence) is no weak force – it is expiating, shocking, and altogether new. What Benjamin passionately demands *is* the coming of the Messiah, rather than a perpetual waiting and deferment. Like Derrida, Benjamin marks the political as a space of undecidability and anticipation for the shock of an event that is about to happen. The Messiah, the new, the expected unexpected, always comes but never arrives. It is an exception that, like a miracle, comes from the outside, not to preserve sovereignty but to herald the arrival of its Other. The future is always deferred, but we do not patiently wait. On the contrary, we advance steadily toward it. To advance toward this Other, to risk uncertainty, is not to depend on a weak force after all, when we interpret the passive decision as a passionate decision. The Schmittian decision, in contrast, is weak in its very solipsistic ipseity. For Schmitt, the Other is an enemy, and the decision is motivated by a Hobbesian fear that compels decisive action. The Sovereign trembles inside his absolute and indivisible authority, which is why, for Derrida, sovereignty is a fragile concept that only wears a mask of omnipotence.

Whatever concept of the political emerges in the coming years, if we heed the intended and unintended warnings from Schmitt and Benjamin to Derrida and Agamben, we might ensure that it includes, not a foreclosure of the outside, but rather a passionate turning toward it. Sovereignty's claim on outlawry poses certain dangers and risks, and outlawry at times threatens order and the normal situation. Yet it would be catastrophic on the scale of absolute and final totalitarianism to attempt to eliminate outlawry itself. Outlawry can be seen, through Derrida's framework, as both the poison and the cure, which is why I include it, along with différance and the pharmakon, with the wolves that Derrida finds in the manger of speech acts. Outlawry is both the terror wrought by politics and its hope – the threat and promise of Benjamin's great criminal who exposes the violence of the law and signifies the potentiality of a new law. It is the undecidability that undoes the theology of the political as we wait for something that is not precisely a

messiah. It is the passive in the decision, which passionately opens the decision up to the other, to the new and the future. To borrow from the religious metaphor that Benjamin and Derrida are so fond of, the Messiah is an outlaw – he or she comes to us from the outside, from outside of the law. Yet outlawry is not a moral or ethical term. Its relation to good and evil is undecidable. Outlawry is integral to the law, and to the possibility that the law might be replaced. It is essential to the law's performativity, indeed to the political as a performative concept.

Chapter 4: Becoming-Outlaw

Emmanuel Levinas knew the political and personal costs of being cast outside of the law. The philosopher was detained in a Nazi camp as a Jewish prisoner of war from 1940 to 1945, and he reflects on this dehumanizing experience in "Name of the Dog; Or Natural Rights." The Jewish prisoners of war, he writes, were "looked at" by both camp guards and villagers as if they were "subhuman, a group of apes" (48). Those qualities that made him a subject, that imbue life with meaning and form identity were bracketed: "Our comings and goings, our sorrow and laughter, illnesses and distractions, the work of our hands and the anguish of our eyes, the letters we received from France and those accepted for our families – all that passed in parenthesis" (48). The Jewish prisoners were instead "beings entrapped in their species; despite all their vocabulary, beings without language" (48). They became what Giorgio Agamben terms h*omo sacer,* a figure of political life that has been returned ambiguously to nature and exposed to violence.

This process of dehumanization survives today as the logic by which everyone is stripped of subjectivity and exposed to political power. Agamben calls it the new "biopolitical body of humanity" (9): the structure of the camp, which is a suspension of the law, has become the paradigm of modern politics. But if this is an outcome of the force of outlawry at work within the law – a force that both makes the law possible and exposes its fundamental insufficiency and incapacity to be at one with itself – then it seems we are left with nothing but the horror of the law's (il)legitimate violence, and our naked exposure to it. Or is there some echo of hope, some positive, creative force, that is also wrought through the law's difference from itself? Can there be an ethical outlaw politics, and if so, according to what understanding of ethics, and for what 'subject' and model of politics?

Levinasian ethics are an obvious starting point for a study of the ethics of outlawry, precisely because his philosophical insights locating ethics in relation to alterity are informed by this experience of being cast outside of the law. The Shoah left a lasting imprint on Levinas' thought: in *Difficult Freedom* he describes his work as being "dominated by the presentiment and memory of the Nazi horror" (291). His work

critiques modernity's totalitarian tendencies and explores the ethics of human relationships. Yet notably, when he reflects on his experience of the Shoah, Levinas reverses the ethical position he elsewhere maintains that makes human transcendence of animality a prerequisite of ethical thought and action. In "The Name of a Dog" the only ethical being encountered by the prisoners – the only being that recognized their humanity – was a dog they named "Bobby," whom Levinas nominates as "the last Kantian in Nazi Germany" (51). "[Bobby] would appear at morning assembly and was waiting for us as we returned, jumping up and down and barking in delight. For him, there was no doubt we were men" (49). The dog was more 'human' than the camp guards and the villagers who demonstrate no concern for the life the Other, and he restores the humanity of the prisoners from whom this dignity has otherwise been stolen.

Levinas' discussion pinpoints the very ambiguous space in which the differences between human and animals blur, since what is animal about humans – the beastliness of the Nazis and the passively complicit villagers – is in fact not animal-like at all.[49] Moreover, in the narrative, ethics, which is proper to humans for Levinas, is embodied by an animal in a case where all the humans have been animalized as the subject or object of a beastly action. This simultaneous animalization of ethics and ethical injustice raises questions, not only about the subject of ethics, but also about the relationship of ethics to the law and to outlawry, since animals exist outside of the law. While normally we might ascribe a negative value to animality as such – it is what is unreasonable, non-conceptual, simple, mechanical, bereft of signification, brute and violent – the notion of an ethical dog returns some of the natural purity of *zoë* to the ethical realm. Is there an ethics in life itself, as it occurs as a creative force outside of the law?

This concept of an ethical dog denotes a rather curious departure from Levinas' usual ethical stance.[50] Levinasian ethics are situated in the human face-to-face encounter, an openness to the Other that is both visual (one regards the face of the Other) and performatively enunciated through language (a 'saying' that is also a doing) that irrefutably exposes one to the Other. Where humans split from pure being in this encounter with the Other, animals (including Bobby) exist in the world without the mediation of language and conceptual thought. I include this deviation because it raises

questions about the subject (via the face) as the proper site for ethics. Lisa Guenther hints at the issue in the definition of friendship that she proposes as a criterion for an ethics that includes a responsibility to animals. Guenther writes that such an ethical friendship "involves a mutual exposure at the level of sensible, and potentially nonsensical, life" (219). It is this basis of a 'mutual exposure' at the level of bare life as a site of ethics that interests me. Bobby is witness to the significance of the Jewish prisoners as living beings, a significance that he shares with them.[51] He does not require the legibility of the face to care for the Other.

But we are letting the tale get ahead of the dog. Bobby, and his ethics, are not really at issue here. It is the becoming-animal of Levinas himself, during that period when he finds himself excluded from ethical consideration, that launches this moment of ethical becoming. Levinas extends his ethics to Bobby (he recognizes Bobby as an ethical being) at the instant of his own desubjectivation. Indeed, this is his most ethical moment if we are to truly locate ethics outside of the knowing ego. Thus taking my cue from Levinas' own anomalous encounter with Bobby, the ethical dog, I wonder if the ethical/political relation may *not* properly be that of the human subject at all; at least not as subjectivity has been understood, from Aristotle to Heidegger, as what comes to be through a negation of animality. An outlaw politics must be derived from the margins – including the margins of humanity itself. By 'margins of humanity' I mean not only those humans who are politically margin*alized.* I also intend to indicate the contingency of the limit that demarcates our humanity, and the threshold where subjectivity borders on abjection.

Clearly, as the experience of the Shoah makes clear, the ethical violations and violence associated with outlawry, directed at life itself, can be horrific. But what of the ethics for and of those that have been cast outside of the law and exposed to that violence? Does this ethics have a relationship to politics? For Levinas, the purview of ethics 'outside of the law' is restricted to a general exclusion of ethics from politics. However, I am interested in exploring the possibility of a specifically political outlaw ethics. If Levinas cannot take us directly there, what concepts are available to us in contemporary theory that depart from the political/ethical dualism that limits Levinas, while retaining the ethics of alterity? Deconstruction provides one route for this, through the aporia of an out

of joint understanding of time and a transformative understanding of law. Likewise, Gilles Deleuze and Felix Guattari's theory of minoritarian politics, and in particular the becoming-animal/becoming-minoritarian series of concepts elaborated in *A Thousand Plateaus* establish an ethics of alterity that possesses some political force. These authors blur the boundaries between the human subject and the animal and politicize the ambiguity of subjection/abjection.

I bring together these frameworks – the ethics of exteriority, deconstruction, and the minoritarian politics of becoming – to address the question: How do we conceive of an outlaw politics that is located not only in the power that closed in on Levinas in the camp in the form of a Schmittian exception and the cruelty of the dehumanizing biopolitical gaze, but rather in the politics of those that were denied political status and exposed to death? What force of change, what transformational power, do we possess to the extent that we are denied the agency of the subject? By making beasts of us all (in one way or another), the Shoah epitomizes the dangers of an outlaw politics when sovereignty permeates even the outside of the law in the totalitarian sense. But is there an outlaw politics that is ethical? Is there an anti-totalitarian outlaw politics, a politics of justice? What would such a politics look like? Who is the agent of such a politics if not the subject?

The Outlaw Ethics of Levinas

The prevailing norm of modernity places ethics firmly inside of the law. In the Kantian regulative ideal, one respects or cares for the other by identifying with him,[52] that is, by recognizing that like the self, the other is a rational agent that obeys the universal moral law, one that is ideally reflected, moreover, in the laws of the realm. In this view, we are subjects to the extent that we transcend our particularities and share a common identity as rational autonomous beings, a common identity that also grounds our rights in the political sphere. The subject is thus constituted in its finitude: one finds within oneself the human rationality that grounds one's good will, and makes one a good community member.[53]

What makes Levinasian ethics interesting from the perspective of outlawry is the shift he initiates that allows us to conceive of ethics as proper to the outside of the law (although in the sense of a true outside that is completely divided from the law). The partition between ethics and law that I point to is based on the separation Levinas makes between ethics and politics. Where for Kant both ethical and political judgment are based on rational autonomy mediated by universal laws, Levinas sees politics as mediated by such generalizations, but ethics as instead based in singularity, heterogeneity and infinitude. Levinas' experience of being cast outside of the law, during the Shoah, was doubtlessly a motivating force in this shift. Indeed, his work might be read, at least in part, as a response to the role played by Enlightenment thought and German Idealism in preparing the way for this atrocity.[54] In general, he was skeptical about the moral autonomy of the finite subject, and found the notion of a universal moral law to be homogenizing and violent. These critiques lead him to disrupt the totalizing tendency of Kantian logic by shifting the emphasis from identity to alterity. He subverts the inside/outside dichotomy whereby Kant asserts an ethical relation to the extent that we share a common moral law. For Levinas, we are responsible to the Other not because the Other is like us, but because the Other is absolutely different.[55] We come to ethics, in other words, through an openness to heterogeneity, rather than its foreclosure. As John Llewelyn phrases it, the implication is that: "The Other is he to whom and in virtue of whom I am subject, with a subjectivity that is heteronomy, not autonomy, and hetero-affection, not auto-affection" (4). One does not become an ethical subject by turning inward. On the contrary, through the ethical relation the unity of the subject is disrupted and emphasis is placed on what is exterior to the self.

The openness of the ethical is made possible by exposure to the face of the other, and through speech, which is conceived not as mediating or universalizing, but instead as what makes possible a "breach" of the finite totality of the subject (TI 23). "Speech proceeds from absolute difference" (194), writes Levinas, continuing: "Language is a relation between separated terms" (195). Being in language is not a total experience, an identity with the Same, but instead is the experience of being Other with Others. Ethics is thus communicative, derived of the face-to-face relation with the other: a relation of "a

living presence," an "expression" that speaks to another expressive living presence that speaks (66).

But how does this visual and articulate face-to-face relationship with the other breach the boundaries of law, instead of simply re-creating the shared moral space identified by Kant? Levinas shifts from an emphasis on the interiority of ethical rationality to the fact of exteriority and from identity to difference. This shift will make possible an understanding of outlawry as the constitutive outside of the law, through the later introduction of deconstruction to Levinas' logic. But it does not in itself envision a political ethics of outlawry: it only divides the realm of ethics from that of politics and law. For Levinas, the law, as an aspect of politics, is situated in relation to totality, rather than the infinite embrace of the other. Ethics is what disrupts such finitude, as an expression of the infinite. As he elaborates in *Totality and Infinity*, infinity, for Levinas, is what exceeds totality: "[Infinity] is produced in the improbable feat whereby a separated being fixed in its identity, the same, the I, nonetheless contains in itself what it can neither contain nor receive solely by virtue of its own identity" (26-7). The subject's relation to infinitude grounds subjectivity as a relational activity, a hospitality toward the other through extension outside of the self, but only on an ethical, and not a political level.

There is no actual place for outlawry in politics, unless we bring in deconstruction, because outlawry strides both sides of Levinas' divide between ethics and politics: it pertains to law as its outside in a somewhat impossible way, since the political realm is finite (it has no outside), but outlawry also 'belongs' to the infinite as what is excluded from the bounds of law and politics. Yet outlawry, as we understand it as a disruption of the totality of the law, is also an implicit aspect of Levinas' entire project. For the very point of his development of an ethics of alterity is to disrupt the totality that constitutes politics, and the primacy of identity (the same). But is this disruption played out in the realm of the political, or in some other, transcendent sphere?

If ethics and politics are separate, there also must be a separation, for Levinas, between the political subject and the ethical subject. A political subject would be an identity-based

subject, a subject-in-common, whereas an ethical subject is an other among others. Already there is some disruption of the political field when the subject is divided in this way, for neither commonality, nor subjection to the sovereign, are any longer a requirement for the agency of a subject who is split between their political being and ethical being. Of the ethical subject Levinas writes: "Subjectivity realizes these impossible exigencies – the astonishing feat of containing more than it is possible to contain…. subjectivity [is] welcoming the Other, as hospitality; in it the idea of infinity is consummated" (27). Ethics, in other words, is an openness to exteriority. But can a political subject open toward the Other? It seems this openness only happens in the ethical, and not the political sphere. The ethical relation, it follows, transcends the law, because the law, as an aspect of politics, invokes identity and erases difference, indeed it must, of we are to achieve 'equality before the law.' But this transcendence is not an 'outlaw' event, at least not prior to deconstruction, since it does not seem to exist in relation to law and politics at all.

In a conversation with Derrida, recalled in *Adieu Emmanuel Levinas*, Levinas describes his ethical approach as a matter of theology: "You know, one often speaks of ethics to describe what I do, but what really interests me in the end is not ethics, not ethics alone, but the holy, the holiness of the holy" (4). A kind of transcendental disruption of politics is thus possible, but the disconnect between ethics and politics diminishes the political usefulness of ethics as a concept, as Simon Critchley elaborates in *Five Problems in Levinas' View of Politics*. According to Critchley, Levinasian politics, in accordance with the Schmittian friend/enemy divide, is derived from the antagonism between friends and enemies. His ethics, however, is shaped by monotheism and a concept of fraternity that contradicts this division, for on an ethical level "all humanity is my friend and no one is my enemy," as Critchley phrases it (174). In other words, humanity is a spiritual fraternity mediated through the presence of God.

This separation, which aligns politics with totalitarianism and ethics with theology, does not bode well for our political life. The ideal transcendence of the face-to-face encounter is impossible in the plurality of beings that comprise the political sphere. Politics is the regulation of chaos, the imposition of order on disorder: there is no outside. We are

political when we find ways to manage our relation to each other, so the political is always a mediation. Levinas calls it *le tier*, the third party. In contrast to ethics, the third-party relation refers specifically to law and the state, which tend always toward totalization. Third-party relations are always already ethically unjust because they are unable to account for the specificity of the face-to-face encounter, and must generalize for the good of all citizens. As a consequence of this unifying function, Levinas equates the political with violence and war. Politics is *"the art of foreseeing war and of winning it by every means … the very exercise of reason. Politics is opposed to morality, as philosophy is to naiveté"* (*TI* 21). As he continues Levinas links war, and implicitly politics and political subjects, to totalization: "The visage of being that shows itself in war is fixed in the concept of totality, which dominates western philosophy. Individuals are reduced to being bearers of forces that command them unbeknown to themselves. The meaning of individuals (invisible outside this totality) is derived from the totality" (21-2). Thus for Levinas it is not possible to be a political actor without being complicit with the forces of totalization.

Levinas puts ethics to the task of re-constituting political space by repeatedly interrupting all claims at totalization, including those hidden in liberal concepts of freedom and autonomy, as Critchley points out in *Ethics and Deconstruction* (223). In other words, the role of ethics in relation to the violent and totalizing forces of politics is to override and guide political reason, to disrupt politics (222). A recognition of and responsibility to the Other disrupts the hatred of the Other on which political unity is organized. Yet Levinas' politics are fraught with difficulties. First of all, Levinas' view of what counts as political is very narrow (173). Indeed, his approach appears similar to Schmittian political concepts in which the state's role is to distinguish friend from enemy and foreclose all difference in the name of unity. Moreover the political, as Levinas conceptualizes it, has further traces of Schmittian decisionism, which ironically installs a different side of outlawry at the heart of politics. As Critchley elaborates, Levinas sees politics as archic: "it is obsessed with the moment of foundation, origination, declaration, or institution that is linked to the act of government, of sovereignty, most of all of *decision* that presupposes and initiates a sovereign political subject capable of self-government and the government of others" (182). A decision is extralegal, for in order to qualify as a decision

it must exceed the realm of rule and calculation that comprises the law. Yet the Schmittian sovereign decision aims not at disrupting law, but at conserving it. This is the essence of totalitarianism as conceived by Schmitt. As a result, the political sphere is a realm where only the sovereign has agency and political subjects find themselves limited by a prescribed social role, on the one hand, and exposed to the extralegal violence of the decision, on the other.

To be clear, the similarities between these thinkers' definitions of politics do not by any means align Levinas with Schmitt, either ethically or politically: where Schmitt recommends decisive totalitarian politics as an ideal political system, Levinas is intent on disrupting such totalizing forces with what lies outside of the political realm. Yet his ethical challenge to politics seems ineffectual. For as Critchley points out, Levinasian ethics leaves no room for progressive political action: the disruptive moment transforms into the archic founding gesture, instituting a new third party (1992). In other words, when ethics engages politics, it becomes political, which is to say it takes on a unifying, totalizing impulse and erasure of the ethics that founded it. If this is the case, can we put Levinasian ethics to the task of disrupting politics as a mode of outlawry? In the following section, I address this question, suggesting that while Levinas opens up the possibility for such an ethical role for outlawry by replacing the identity imperative of German Idealism with the imperative for alterity, he does not allow politics to contain that ethical disruption within itself: but Derrida's re-working of the ethics of alterity does.

The Ethical Politics of Deconstruction

How might we move toward an ethical politics that negotiates the subversive mimicry of outlawry by disrupting the totality of the political realm? As we have seen in the work of Agamben and Schmitt, outlawry can be captured in the political totality, where it wreaks havoc to subjectivity in the manner that Levinas encountered in the camp. But if we align what is outside of the law with the ethics of alterity, it can also subvert the homogenizing identity of politics through an ethical opening toward others. Yet some commentators argue that deploying ethics in the sphere of law is impossible if we are to maintain a

Levinasian framework. In "Questions for a Reluctant Jurisprudence of Alterity," Nick Smith cautions that the ethics of alterity are simply neither generalizable nor 'programmable' in a political context. Smith argues that applying alterity to governance would do violence to Levinas' overall intent to critique such generalizations of identity thinking, since it would generalize alterity itself. Levinas' contribution is more useful in terms of abstract theories of justice than actual legal issues, he argues. "Violence," Smith writes, "begins in the subsumption of the particular to the universal, and pretensions otherwise only allow the roots of injustice to grow deeper" (2). As Smith sees it, for Levinas the shift from ethics to politics would constitute a shift from the singular to the general, and would necessarily be violent. This is especially so with respect to the law, which "operates at the level of abstract universals" while "ethics can only be found in the singular relationship with concrete particulars" (2). In other words, while politics operates in the realm of law, ethics can only operate in a realm that transcends human law.

Yet Levinas' ethics of alterity, his hospitality to the Other, has been key in poststructural ethico-political thought. This is especially pertinent in the project underway, since we are conceptualizing outlawry as a deconstructive concept. Derrida scholars have been divided as to whether deconstruction is ethical in a Levinasian vein, or whether ethics is incompatible with deconstruction.[56] I am in agreement with such scholars as Crichley, Robert Bernasconi and Drucilla Cornell; deconstruction is informed by Levinas through an emphasis on a responsibility toward the Other as a guiding principle for political decisionmaking. However, Derrida departs from Levinas by bridging the gap between ethics and politics. Smith may be correct in his affirmation that for Levinas the political is a totalizing sphere that is incompatible with ethical alterity, but Derrida demonstrates that the political need not be conceptualized as totalizing: the politicization of ethics does not necessarily generalize alterity, but rather disrupts the general with difference.

Ethics is linked to politics, in Derrida's approach, through the ethical structure of the political decision. This differs from the Schmittian decision, which suspends the law to eliminate difference and dissension under the unifying banner of sovereignty. What Derrida terms 'undecidability' and the 'passive decision' invert decision making from an

autonomous act, to a resolution that, received from the Other, demands responsibility to the Other. In this approach politics can be ethical – that is open toward alterity – without it being a contradiction in terms. For Derrida, undecidability is the condition of every decision, because a decision, as opposed to a rule or calculation, contains the possibility that it could have been otherwise. Decisions thus contain an element of chance and judgment (*LI*, 116). Since no decision can be calculated in advance, it always carries a certain responsibility. A decision must be *made*, which means that alterity (alternatives) must be considered. It is not that every decision will necessarily be responsible *to* the Other, but that in order to be a decision it must pass through a process of deliberation and judgment (116). Irregardless of the decision itself, the responsibility cannot be shirked. Decision making as such is a risky process; there is no guarantee that the 'right' decision will be made, nor that the decision will be ethical. By virtue of undecidability however, the political realm opens up from the total enclosure stipulated by both Levinas and Schmitt. No longer is the political merely a realm of identity where restrictive rules of sameness establish what it means to be in common. Instead, the political realm is open to dissent and negotiation in defining what being in common means.

These conditions by no means establish a calculable program for ethical-political decision making (an impossibility), but Derrida nevertheless proposes some general criteria for ethical decision-making. These criteria are captured in the concept of the passive decision, the notion that the decision (every decision) is received from the other. This involves a tricky negotiation of the singular event of a given decision, which must remain open to alternatives in order to be a decision, and the general rule of ethics derived from the Levinasian framework: a responsibility to the Other. This transition is a troublesome one: the very demand for ethical criteria – even when that criteria is openness to alterity – potentially results in an erasure of that very openness. The relation between ethics and politics, in short, involves the difficult translation between the singularity of the event in question, and the universality of criteria for decision-making. Yet the passage from universal to particular is negotiated all the time. Derrida's approach incorporates Levinasian ethics in order to shift politics from totality to transformation. Derrida's ethical decision interrupts and disrupts order in a field of risk and danger, moved by a responsibility to the Other.

This structure of the ethico-political decision shapes the concept of justice-to-come, which constitutes politics as alterity. Such a politics of difference is possible for Derrida where it is not for Levinas because Derrida supplements ethics (responsibility to the other) with an 'out of joint' experience of time (the *à venir* or to-come) that structures his concept of justice. This allows the contradiction between the general and the specific to persist, and for an ethical politics to exist within this space of contradiction. Derrida terms this experience of time 'Messianicity without Messianism,' elaborating it in various works, but most notably in *Spectres of Marx*. This non-religious form of messianism, understood as an anticipation of the coming of the Other, signifies a discontinuity of time, a deferment to the future and a trace of the past that is present in every instant. This heterogeneity in time is what conditions our relationship to justice, which Derrida describes as the experience of absolute alterity and singularity (FL 257). We must negotiate the contradiction that demands that justice be singular and immediate, yet universal. This time of the event also ties and divides justice from the law, for the impossibility of justice is what compels us to make the law, and it is what drives us to deconstruct it. Justice-to-come is thus a political and juridical concept that re-founds and transforms law and politics in the structure of openness. The distinction between the to-come [*avenir*] and the future is that the to-come is a "horizon of expectation," a deferral that never loses its openness and anticipation of the coming of the Other, whereas the future simply re-produces the present (FL 256-257).[57] Thus, justice, while never precisely realized, is strived for through the dynamic politics of transformation.

Outlawry, as what disrupts the law with its difference from itself, has an implicit relationship to ethics in a deconstructive approach, since it pertains to the relationship between law/politics and alterity. Outlawry, moreover, signifies the impossibility of completely separating the sphere of ethics from that of politics, since the concept is itself a threshold connecting the law and its outside (ethics, in this case). Derrida shows how by re-conceptualizing the political in its relation to alterity, the gap between ethics and politics can be crossed, *vis a vis* the temporal disruption/suspension of the 'to-come.' This temporal approach to transformative politics makes sense with respect to outlawry, because it suspends the difference between the archic and the anarchic in an undecidable instant.

The Limits of Faciality

Yet we are faced with another restriction in Levinas' thinking that neither undecidability nor the out-of-jointness of time can resolve: the limitation of faciality as a structure for ethics. For Levinas, subjectivity becomes visible through faciality, for through the face, one's uniqueness as an "incomparable subject" and an "other for the others" is established. Levinas writes in *Otherwise than Being*: "as a subject incomparable with the other, I am approached as an other by the others, that is, 'for myself'" (158). But what of the Other that is not recognized as a subject? Indeed, the subject as the ground for truth and political action has been in crisis for some time, both through the psychoanalytic split with the unconscious, and poststructural destabilizations that posit the subject as nothing more than a linguistic placeholder. But even on a more concrete level, there are vast populations who do not properly qualify as political subjects: the stateless, the dispossessed, and the subaltern. As Derrida reminds us in *Rogues*, even liberal democracy welcomes "only men, and on the condition that they be citizens, brothers, and compeers [*semblables*], excluding all the others" (63). On the one hand, these disenfranchised populations are the very Others that Levinas argues demand an ethical response. But exclusion from the polis also demands a disruption of politics in the form of a politics of the dispossessed. Moreover, we might also posit these others as more than mere recipients of an ethical response, but subjects of their own ethical and political agency. Levinas does not adequately account for Others whose faces are unrecognizable to us, or whose language is incomprehensible. A critique of faciality, and of the singularity of the face-to-face ethical relation, has implications for our questions about the ethics of outlawry by shifting the focus from ethics directed toward those who are excluded, to the ethics *of* those who are excluded, whose politics are disruptive of the status quo. This involves a movement away from the singularity of the face-to-face encounter to the multiplicity of the people, a crowd of others in which we cannot distinguish faces.

Somewhat ironically, the politics of the other is an area where Levinas falters. His own thinking is shadowed by a xenophobic bias that seems to contradict the essence of his ethical thought. Indeed in "Five Problems," Critchely advises that politics is Levinas' "Achilles heel" on account of the questionable political *content* of his ethics, including his Zionism, French republicanism, Eurocentrism, and androcentrism (181).[58] His positioning of the feminine as other, or as a pre-ethical opening to the other, is well known, since, for example, Beauvoir's criticism of the Levinasian view of the feminine other.[59] Another form of xenophobia emerges in Levinas' explicit racism, which is revealed in a statement from a 1991 interview that Critchley cites: "I often say, although it is a dangerous thing to say publicly, that humanity consists of the Bible and the Greeks. All the rest can be translated: all the rest – all the exotic – is dance."[60] The embrace of alterity suffers clear limits through such narrow lenses; there is a softening of the sharp edges of difference that seems to arise from an astigmatism in the gaze that fixes on the face. Some faces, it seems, are simply not apprehended as members of the fraternity of Others. How do we resolve responsibility to the Other with an ethics that is restricted to humanity, limits humanity to Europeans and Jews, and excludes the feminine half of this humanity from ethical action?

The difficulties in Levinas' political content suggest to me that there is a problem with the structure of the formal ethical relation – that is the face-to-face relation – that is also left unresolved in Derrida's Messianism. Notwithstanding the importance of an ethics of the subject, can we also conceive of an ethics that dos not reside in the subject, via the face-to-face encounter between the self and Other, nor in the specifically singular relation? Is there an ethics of what Derrida terms 'the weak' forces of messianic politics? Derrida describes a "weak force" in the preface to *Rogues*, as*:* "This vulnerable force, this force without power, opens up unconditionally to what or who *comes* and comes to affect it" (xiv). The force is weak because it comes, not just from the Other but from the Other who is *to come*, and therefore lacks legitimacy in the present moment. But this weakness is not literally weak; it is more like an outlaw force, for Derrida describes the call as "heterogeneous and rebellious, irreducible, to law, to power and to the economy of redemption" (xv). The Others of messianic politics are weak because they are outside of the law, their power has not yet arrived, it remains to-come.

Derrida is precise on this point in an interview with globalization activist Lieven De
Cauterm. Messianic politics belong to those who fall outside of the lines of power in
today's legal, political and economic structures. He asserts that it includes those
"movements that are still heterogeneous, still somewhat unformed, full of contradictions,
but that gather together the weak of the earth, all those who feel themselves crushed by
the economic hegemonies, by the liberal market, by sovereignty, etc. …it is these weak
who will prove to be strongest in the end and who represent the future."[61] But how do we
conceive of a political multiplicity, of a *demos* that is comprised not only of citizens but
of those excluded from the polis? What is the structure of politics, aside from a passive
deferral to the future – as we wait and hope for change – that makes possible the
translation from the margins to the mainstream, that is, real hegemonic and material
change? How do we experience such an outlaw politics, without it constituting a state of
chaos, or a new totality?

Deleuze and Guattari: Becoming-Outlaw

Identifying the ethics of such an outlaw politics is my aim in this chapter. In this politics,
the outlaw is both a vulnerable figure of bare life (i.e *homo sacer)* and a 'weak' but
threatening force that promises to disrupt the law. Both these aspects of the outlaw –
vulnerable and threatening – converge in the multiplicity of minorities. Levinas, in
particular as Derrida has developed his ethical thought, is key to this project because of
the shift his thought initiates from an emphasis on identity to difference, and from the self
to responsibility to the Other, as well as his overall project to disrupt the political with
ethics. However, neither Levinas nor Derrida accounts for an ethics of bare life, nor the
politics of the heterogeneous crowd of others.

For this I turn to Deleuze and Guattari, who share Derrida's focus on themes ranging
from difference and alterity, to animality,[62] and have an affinity with Levinas' anti-fascist
position, although they counter his emphasis on faciality. Where Levinas saw the polis as
tending always toward totalization, as Deleuze describes in an interview with Paul
Rabinow, Deleuzian political philosophy treats society, the subject, and power as always

already escaping the total.[63] He comments that: "For me a society is something that never stops slipping away. So when you say I am … 'fluid,' you are totally right: there's no better word. Society is something that leaks, financially, ideologically – there are points of leakage everywhere. Indeed the problem for society is how to stop itself from leaking" (1985). In *A Thousand Plateaus* Deleuze's political philosophies are paired with Guattari's anti-psychoanalytic perspective. Guattari is known for an approach to psychoanalysis that shifts the priority from the individual ego of the clinic and the couch, to a subject in constant interaction with a plurality of other subjects. While trained as an analyst under Jacques Lacan and Jean Oury, he came to oppose psychoanalysis as a "capitalist drug" that placated desire, which is the impetus for social change, treating it as an interior concern of the individual. Guattari politicizes what psychoanalysis treats as strictly personal, that inner kernal that exceeds subjectivation, the psyche. The 'schizoanalytic' approach, as Guattari terms it, thus distinguishes this excess from the concept of abjection derived from the psychoanalytic tradition, for schizoanalysis is not concerned with the psychic struggles of a divided subject, so much as it is concerned with the politics of the subject in relation to the psyche, which for our purposes opens up some new ways to approach the politics of bare life.

As Foucault describes in the preface to *Anti-Oedipus*, Deleuze and Guattari's philosophy lays out a political ethics that includes an emphasis on plurality that opposes fascism in theory, politics and as a tendency in all of us. It is part of the authors' anti-totalizing innovations in a metaphysics that prioritizes what is positive, multiple, proliferating and disjunctive over the "old categories" of the Negative (i.e. law, castration or lack), the Individual and hierachization. They also propose a joyous (in the sense of *jouissance)*, non-unitary field of political action that is de-individualizing, and ungrounded in mediating terms such as Truth (xiii). This approach thus complements deconstruction as a way to conceptualize an outlaw political ethics, in particular adding an emphasis on becoming and multiplicity that is not as prominent in deconstruction.

The implication is that for Deleuze and Guattari, an ethical realm of politics exists, but it is separate from both identity (the face) and from the structural elements that are considered proper to the political sphere by Levinas, that is, law and the state. Instead,

ethical politics belongs to an interstitial space between identity and the law, and at the same time, it lies outside of both spheres. In the chapter titled "Faciality" in *A Thousand Plateaus* Deleuze and Guattari argue that we are ethical only insofar as we move away from the assimilating "horrors" of the face, which they specify is a site not of ethics, but of xenophobia: "From the viewpoint of racism there is no exterior, there are no people of the outside. There are only people who should be like us and whose crime it is not to be," they write. This is a response to a logic that would appropriate what is outside the law, through assimilation or extermination. They write: "Racism never detects the particles of the other; it propagates waves of sameness until those who resist identification have been wiped out…" (178). Faciality, in their analysis, is a fiction, a mask that is imposed as a condition of humanity. The face is an artifice that limits and restricts our possibilities. For Levinas the face is always the wholly other, the face of God, and through it our responsibility, our love for the other: ethics. For Deleuze and Guattari, the face represents a love for the same and the similar, its openness to otherness is a mere fiction.

What Levinas represents as 'ethics' – that is, the face – is in fact a 'politics' in Levinas' own restricted sense. It is a totalizing force through which we represent ourselves and establish our relation to structures of power: the face is the vehicle for signification and subjectivation (181). Deleuze and Guattari write: "The white European male face defines the apex from which humanity declines by degrees into the faces of women, children, nonwesterners, subalterns, aborigines, hominids, troglodytes, chimpanzees, pets, bats, flies" (29). As Gerald Bruns suggests in "Becoming-Animal (Some Simple Ways)," instead of being the site of ethics, the face is "a regime of socialization to be escaped" (712). A more ethical politics would involve a movement outside of faciality.

Such an embodied politics of difference and action is a posthuman politics, in the sense that it deposes the human from its stature above all of nature, repositioning humans as one of many species. Moreover, it expands the field of ethical consideration beyond the human subject. This approach contradicts the conditions of Levinas' face-to-face ethics, but it is not entirely foreign to Levinas, who has himself experienced a posthuman ethics in the camp, when he was reduced to bare life and positioned in relation to Bobby, the ethical dog. Such dehumanization signals, or even demands the emergence of a post-

human ethics because it exposes the limits of humanism: one can always disregard the ethical demands of humanism by treating others as animals or as objects. If, on the other hand, ethics extends to non-human others, then humanism loses its prioritizing exclusions. This is the moment that we glimpse when Levinas reflects on his relation to Bobby. It signifies what Deleuze and Guattari would term the Becoming-animal of Levinas. A political ethics of the Other became possible when Levinas found himself stripped of subjectivity and relegated to the sphere outside of the law.

 In such becomings, politics and ethics shift from the face – that is, from logos, signification and subjectivation – to the bare life of the body. In a short paper on the art of Francis Bacon, titled "The Body, the Meat and the Spirit: Becoming-Animal," Deleuze describes the ethics of the animal spirit in man: "the face is a structured spatial organization which covers the head, while the head is an adjunct of the body, even though it is its top. It is not that it lacks a spirit, but it is a spirit which is body, corporeal and vital breath, an animal spirit; it is the animal spirit of man: a pig-spirit, a buffalo-spirit, a dog-spirit, a bat-spirit..." (19). In effect, Deleuze deconstructs the mind/body dualism that has structured western metaphysics since antiquity, positioning spirit as an aspect of bare life, although in a different sense than we find in Agamben. Unlike conceptions of spirit as logos or rationality, spirit and body are interconnected as a force of sheer vitality, a kind of *zoë*. Deleuze's approach in 'Becoming-animal' shifts the ethical apparatus from face to figure, and from reason to passion. The political apparatus is also dislodged from macro to micro elements, so that both ethics and politics coincide in the mobile terrain of multiplicity. Yet the meaning of this shift remains somewhat obscure, and is certainly foreign to models of political agency and of subjectivity that often dominate western discourses, in which subjectivity is taken as a requirement of both political and ethical action. What are the implications of this transfer of ethics from face to figure with respect to the outside of the law? And how is such an ethics politicized in its turn?

Becoming-animal situates the political actor in terms of movement between the inside and the outside of the law, between identity and heterogeneity, between subjection, abjection, and resisting subjection. The concept refers to the post-human shift in some

post-structural and psychoanalytic thought from an ontology of 'being' to one of 'becoming.' In *A Thousand Plateaus* Deleuze and Guattari are very clear that "the human being does not 'really' become an animal" for "becoming produces nothing other than itself" (238). The authors remark: "a becoming lacks a subject distinct from itself," adding that "it has no term since its term in turn exists only as taken up in another becoming of which it is the subject, and which coexists, forms a block, with the first" (238). The focus shifts from fixed terms of identification to what passes between such terms.

Where for Levinas ethics as a singular event is divided from politics as a universalizing structure, Deleuze and Guattari no longer hold to such polarizations: the realm of the political includes both singular and general qualities. This approach has much in common with deconstruction; these writers share a similar logic to Derrida with respect to the movement that dislodges binaries, but their emphasis and the details of this destabilization of identity thinking differ. Where Derrida resolves the tension between the singular (ethics and justice) and the general (law and politics) with a temporal deferral of justice-to-come, Deleuze and Guattari make the dichotomy vanish in a blur of movement. Where Derrida plays with temporality, Deleuze and Guattari are spatial in their approach. When we consider outlawry in Derridian terms, its difference from the law proper is suspended in a time that is out of joint. Viewed in the terms of Deleuze and Guattari, outlawry dissolves the borders between the law as a macro structure, and the heterogeneous micro elements that both constitute and exceed the macro form. Similarly to Derrida, Deleuze and Guattari are interested in process, metamorphosis, and connection, rather than how, or what, things *are*. Where dichotomies depend on fixed positions and oppositional relations, in this ontology of becoming the borders between oppositions vanish. Becoming-animal takes place on a 'vanishing line' or a 'line of flight.' Thus these thinkers offer us a way to conceive of a politics of minorities, but in such a way that a relation to a 'majority' is always kept in view, and in which neither position – minority or majority – is fixed. Indeed, minor politics as such act on and re-constitute the more structured third-party political sphere.

This approach dissolves a polarized approached to politics. In "Power, Theory and Praxis" Ian Buchanen describes Deleuze and Guattari's abandonment of the "old binaries that distinguish between the powerful and the powerless" in favor of a more variegated view of power relations in which power exists in both consolidated and dispersed forms (17). The consolidated forms, termed 'molar,' are comparable to a body of matter rather than its molecules; this constitutes the realm of law, state, and subject. This is *Le Tier*, the politics of the majority, or 'majoritarian' politics. The dispersed form of politics is a micropolitics, or minoritarian politics. Such politics can be understood through a molecular metaphor; it is like an infinitesimal multiplicity of molecules that exist in constant movement and transformation. 'Molecular' politics challenges liberal notions of the political, which tend to organize around static identities. Such minority politics "express minoritarian groups, or groups that are oppressed, prohibited, in revolt, or always on the fringe of recognized institutions, groups all the more secret for being extrinsic, in other words, anomic" (*TP* 247). Yet molar and molecular politics are not opposed to each other. Instead they overlap and act on the other, much in the way the human body is at the same time a solid and self-contained whole, and is comprised of billions of minuscule and mobile molecules (Buchanan 17). Becoming-animal, and becoming minoritarian more generally, move between these molar and molecular forms. In becoming-minoritarian one finds an entryway along the borders of the molar forms of politics, and passes through, always away from condensed forms.

Becoming-Revolutionary

Becoming-animal is a version of bare life that replaces the subject as the figure of political agency. This anti-identity political actor signals a movement toward outlawry: as bare life, becoming animal is vulnerable in her exclusion from the polis, but she nevertheless acts to counter the law. Such revolutionary becoming is ethical, in Levinas' sense, because of its relationship to Otherness, and the disruption of finitude that constitutes it. But it is quite different from Levinasian ethics, because the ethics does not arise through facial recognition (identity). Where for Levinas it is recognition of the Other that constitutes one as a subject, for Deleuze and Guattari one literally becomes

Other in a dispersal away from subjectivity. Where Levinasian ethics is an ethics of hospitality in which the subject (understanding the self to be an other amongst others) welcomes the other. But the authors of *A Thousand Plateaus* are not concerned with hospitality; they are not concerned with welcoming in those that are on the outside. They are interested instead in a movement toward the outside, leaving the safety of the familiar and the similar, and casting off of privilege and dominance. It is an ethics of self-transformation, alliance, and exteriority, not hospitality. Deleuze and Guattari write: "As Faulkner said, to avoid ending up a fascist there was no other choice but to become-black" (292).

Minoritarian politics is a politics of the Other, evoked through an 'Anomalous' phenomenon of bordering. The Anomalous (*anomal)* refers to "that which is outside rules or goes against the rules" and moreover "*an-omalie…*designates unequal, the coarse, the rough, the cutting edge of deterritorialization" (244). The concept dislodges the dominant subject-position of the "self-conscious white male of the occident" and dismantles the human ideal inherited from western metaphysics (Günzel 9). As Stephan Günzel phrases it in "Immanence and Deterritorialization," "the only way to realize what is hidden in the idea of justice within 'human rights' ... is exactly 'a becoming-inhuman'" (9). Becoming-animal thus expresses a politics of the post-subject, a revolutionary politics of those who exceed or fall short of the law. But the mechanics and motivations for such peripheral revolutionary movement is perplexing. It is obvious why those who are outside of the law might want a new law. But why would anyone who inhabits a dominant subject position move out toward a minority position, which we know to be disenfranchised? How would this be revolutionary? It seems as though it would simply expand the space of disenfranchisement. Moreover it would appear to limit the ethical capacity of becoming-minoritarian to those that first have status in major political structures, much like the ethics of hospitality does (i.e. to men, but not women, to straights but not queers, to white majorities but not racialized minorities). If one is already a minority, dispossessed of subject status, is one barred from processes of becoming? Must one first assimilate to the majority in order to then dismantle it?

For Deleuze and Guattari, populations are not divided into simple categories such as included/excluded or majority/minority. We are always already both at once. What differentiates us, one from the other, as ethical beings is not our degree of inclusion or exclusion, nor precisely our orientation toward others (although the latter is important). Ethics is expressed through our becoming-ness, our movement away from generalizations toward the specificity of the outside in all of its multiplicity and otherness. Ethics is criticism, that is, self criticism and criticism of the general, from the perspective of the particular. Becoming-animal specifies the direction of the flow between those aspects of ourselves that are part of the majority (our sense of belonging, our sense of self) and our affiliation with the minute particular. A becoming always begins in the majority, until one meets that dispersive detail that launches the entity outward toward the margins.[64] Deleuze and Guattari write: "Yes, all becomings are molecular: the animal, flower or stone one becomes are molecular collectivities, haeccities, not molar subjects, objects, or form that we know from the outside and recognize from experience, through science, or by habit" (275). However the apparent primacy of majoritarianism (primacy in the sense of coming first, which carries the implication of greater importance in western metaphysics) may be a problem on at least two counts. The first is the assumption that one is always already a subject, which returns us to the quandaries of the post-structural subject: the fiction that the subject comes before the law that hails it into being. The second is based on the risks of misreading Deleuze and Guattari's specific uses of common terms such as 'minority' and 'majority,' which lends itself to a romanticization of disenfranchisement, and the erasure of the very real oppression experienced by some populations.

For Deleuze and Guattari, one does not become a subject. Becoming is limited to a deconstruction of subjectivity, since becoming is a process of dispersal, not consolidation. While the authors specify that one's engagement in molar politics may be necessary for survival, this does not constitute a becoming. With regard to identity feminism, for instance, they write: "It is of course, indispensable for women to conduct a molar politics, with a view to winning back their own organism, their own history, their own subjectivity: 'we as women' makes its appearance as a subject of enunciation" (TP 276). But they find the revolutionary potential restricted in such identity politics, because

the approach tends toward stasis rather than movement. Its criteria are confining. As they continue: "But it is dangerous to confine oneself to such a subject, which does not function without drying up a spring or stopping a flow" (276).

The implications of becoming-minoritarian for feminist thought and practice is an excellent example of shifts in the operation of 'the political' from identity-based formations (molar models) to minoritarian ones, and from efforts to be included in the law to disruptions of it from the outside. However, the argument has raised some alarms for feminist scholars such as Alice Jardine and Rosie Braidotti, who question the emergence of a post-subject politics just as women (and by implication other minorities) consolidate our status as subjects. In "Woman In Limbo: Deleuze And His Br(Others)" Jardine argues that "becoming-woman" is an example of the tendency by male scholars such as Lacan, Derrida and Deleuze to mystify and fictionalize "woman" in response to the rise of feminism, subtly undermining the feminist cause. Likewise, in *Patterns of Dissonance* Braidotti critiques Deleuze and Guattari's "becoming-minoritarian," which she argues destabilizes 'woman' as a specific category, and undermines feminism more generally. Braidotti is concerned that the shift from specificity to multiplicity in becoming-minoritarian will "result in women's disappearance from the scene of history, their fading-out as agents of history" (111). However, the minoritarian approach is compatible with feminism. Indeed, it addresses some of the limits that identity feminism has encountered as a monolithic entity that fails to account for the variability and multiplicity of women themselves, critiques that have been forwarded by queer, racialized, and disabled feminists. Moreover, as Pelagia Goulimari argues, Deleuze and Guattari acknowledge the importance of feminism in their work on becoming-woman/minoritarian:

> In my view … descriptions of 'becoming woman'–as '*introductory* power' and as '*first* quantum'– along with their comment 'all becomings *begin and pass through* the becoming-woman' serve, first, to recognize feminism's success in opening the way to the desire of becoming other, that is, other than one's 'self,' other than a branch on the tree of Man, other than a subordinate referent of Majority Rule. (103)

Moreover, as Goulimari continues, these are references to the historical role that feminism has played in opening up minoritarian movements. Thus the loss of 'woman' as a universal referent does not undermine either 'women' or feminism, but rather alters the emphasis from unity of identity to a diverse, multiple collective understandings of both 'women' and feminism. Goulimari terms this "'minoritarian' feminism, a 'becoming minoritarian' of feminism" (103).

In other words, the approach is more of a critique of identity politics than of feminism proper. Deleuze and Guattari challenge the very binaries around which sexed identities are crystallized: "It is as deplorable to miniaturize, internalize the binary machine as it is to exacerbate it; it does not extricate us from it" (276). Thus it is precisely when women consolidate our status as subjects that as feminists we must consider a post-subject politics, an outlaw politics by and for the other. While identity groups must at times consolidate (establish a state, struggle for recognition, demand rights, etc.), such archic approaches ought not constitute the entire political field, or they may become counter-revolutionary forms that mimic their very oppressors. Political struggle takes molecular as well as molar forms, forms that dismantle institutions and decentralize the flow of power. Deleuze and Guattari write that: "It is thus necessary to conceive of a molecular women's politics that slips into molar confrontations, and passes under or through them" (276). In other words, politics exceeds the accumulation of status in the present system, the gaining of rights and participation in the polis to include a disruption and reconfiguration of the political system. This is not to exclude the importance of molar politics, including strategies to promote civic engagement for women and other vulnerable groups. Because molar and molecular politics are not opposed to one another, it does not constitute a contradiction for both forms of politics to occur simultaneously. This is good news for feminists, for whom the need to organize under the molar identity of 'women' has certainly not passed. At the same time, it allows feminism the mobility to itself be multiple, to transform, and to engage in alliances with other identities and non-identities.

 The second concern with regard to the apparent primacy of molar positions is based on the use of the terms 'minority' and 'majority' which might easily be misunderstood.

Because they appear to have numerical significance, the majority might be understood to be the larger quantity, minority the smaller quantity. However, the majority does not in this case refer to the largest number of people, but is instead a normative model, an ideal that nobody ever really attains. We might think of the majority as what is normatively 'inside the law' and minority as what moves toward the 'outside of the law.' In an interview with Negri, Deleuze explains:

> The difference between minorities and majorities isn't their size. A minority may be bigger than a majority. What defines the majority is a model you have to conform to: the average European adult male city-dweller, for example ... A minority, on the other hand, has no model, it's a becoming, a process. One might say the majority is nobody. Everybody's caught, one way or another, in a minority becoming that would lead them into unknown paths if they opted to follow it through. When a minority creates models for itself, it's because it wants to become a majority, and probably has to, to survive or prosper (to have a state, be recognized, establish its rights, for example). But its power comes from what it's managed to create, which to some extent goes into the model, but doesn't depend on it. A people is always a creative minority, and remains one even when it acquires a majority; it can be both at once because the two things aren't lived out on the same plane. (N.pag.)

The suggestion that "the majority is nobody" and that "everybody is caught…in a minority becoming" might be read as a refusal to acknowledge the reality that some people really do benefit from privileged subject positions. Indeed, the fact that this can so easily be inferred is a limitation of minoritarian theory. Yet the authors' point is not to deny real power imbalances and differential social statuses, nor is it to suggest that one must be a member of the majority in order to engage in processes of becoming. It is only to denaturalize the 'normal' on the one hand by suggesting that the majority is an imaginary construct (in the ideal sense). And on the other hand, it is to suggest that to be a subject (a member of a majority) is simply to have a consolidated identity, a sense of oneself as a singular and continuous being, irregardless of one's particular subject position. One engages in processes of becoming as a dispersal of this unity, and as a strategy to re-configure the model of the majority. Certainly some people are more

engaged in minoritarian becomings than others, and some are more firmly ensconced in majority subject positions that privilege them. Yet we are all subjects, whether we belong to dominant or to marginalized communities. Deleuze and Guattari write that "[t]here is no subject of the becoming except as a deterritorialized variable of the majority; there is no medium of a becoming except as a deterritoralized variable of a minority" (292). Since one's status as a political subject is established *vis a vis* this molar sense of being – that is, as a function of social identity – becoming as such operates as a critique of that social position. State structures are constantly undergoing processes of dispersal and transformation through this mode of the political**.**

Deleuze and Guattari are thus interested in the politics of the subject at that moment of spontaneous rebellion that is a part of the movement of the subject between inside and outside. Even as we undergo processes of subjectivation, to some degree we evade hegemonic power and knowledge, as we engage in becomings that reverse subjectivation. This is why Deleuze and Guattari frame minoritarian becomings under the heading of becoming-animal: if subjectivity is based on a break from animality, then becoming-animal must derive from a break with subjectivity.[65] In psychoanalysis and metaphysics more generally, such a movement toward animality is associated with degradation and abjection (as with *homo sacer)*, but this is not necessarily the case for becoming-animal/becoming-minoritarian. The call to becoming-animal comes from the outside of the generalizing, molar force of law. It is not a naming call to conscience, but instead an affect that calls our humanity into question, propelling us into new configurations and transformations outside of the law, at the threshold, and between the borders, altering what it means to be political, revising what it means to be human.

Become-animal constitutes another version of the outlaw that I elsewhere took up as the 'unbecoming girl' and werewolf. What is distinctive about becoming animal is that the concept brings a sense of multiplicity to conceptualizations of outlawry, unlike the werewolf and becoming girl, who were discussed in their singularity. For however singular an urge for becoming may be, becoming animal-minoritarian-revolutionary is qualitatively affective: becomings pull beings together, one to the other, without binding them under conditions of sameness. Deleuze and Guattari write: "[T]he affect is not a

personal feeling, nor is it a characteristic; it is the effectuation of the power of the pack that throws the self into upheaval and makes it reel. Who has not known the power of these animal sequences, which uproot one from humanity, if only for an instant.... A fearsome involution calling us toward unheard-of becomings" (240). The affect pulls us into a becoming that is a critical de-subjectivation (like the unbecoming girl); it launches into a border position (like the werewolf). But these alterations of the conditions of our subjectivity exceed the transformation of singular beings. We are a gang of girls, a pack of wolves, a swell of revolutionaries. The series of becomings produce a revolutionary humanity, or more precisely a revolutionary post-humanity.

Becoming-animal thus brings us to a form of revolutionary philosophy, but not in the precise sense derived from Enlightenment politics, nor from Marxism, as transfers of power from one group to another. As Buchanen explicates, traditional revolutions, those that focus on securing power, are counter-revolutionary: they don't change the institutions and ideologies in which power is invested; they merely transfer power from one class to another (14). But what would a revolutionary dispersal of power look like? Deleuze and Guattari propose a form of "revolutionary becoming" which Deleuze contends in his interview with Negri is "the only way of casting off … shame or responding to what is intolerable." Paul Patton notes that what these authors are after is a "resistance to the present" (178). Becoming-revolutionary transforms our social and collective identities. The impetus for change is derived from the diffusion of molar political forms, through a myriad of minoritarian-becomings (182). If these minoritarian-becomings constitute another version of outlawry, than revolutionary-becoming must as well. But what kind of politics does this portend? If it involves a dispersal, rather than a transfer of power, does becoming-revolutionary undo all molar forms and dismantle all identities, leaving us in a wild realm of outlaw chaos? Is this a return to the state of nature, in its brute Hobbesian form, or Rousseau's idyllic version? Is becoming-outlaw nothing but an assault against any form of structure or authority? Not necessarily. Outlawry is a critique of molar political forms that allows for some creative processes of re-invention. It is a critique of the present, so to speak, that launches us toward that justice-to-come that Derrida promises. As such, outlawry, as I have conceptualized it, informs (by resisting) the political structures of the present, such as democracy.

Revolutionary Democracy

I began this chapter with the becoming-animal of Levinas and the becoming-ethical of Bobby the dog, with the aim of exploring their mutual exposure at the level of bare life as a site of ethics – an ethics that is situated in the space outside the law, that exceeds the conditions of subjectivation, but that is nevertheless political. The irony of the association of ethics with bare life should not be ignored: indeed, we are most *un*ethically political when we dehumanize others, as we have seen in the Shoah and other genocides, slavery, patriarchy, colonization and so on. So how can the very terms of dehumanization – bare life, or animal life – become a site for ethics and political action? Becoming animal sheds a different light on the politics of life itself by presenting a post-human, rather than merely de-humanized figure, that can be both ethical and political. Moreover, rather than referring to some individual who flouts the law in isolation, becoming animal shares an affective relation with other entities as part of a collective or multiplicity. If Agamben's conception of bare life diagnoses a crisis in modern politics in which the law is suspended and everyone is *homo sacer*, exposed to death through totalitarian appropriations of the outside of the law, Deleuze and Guattari's minoritarian politics, together with deconstruction, provide the framework to re-conceptualize our political concepts so that outlawry becomes a threshold for a revolving disruption of the political sphere with ethics. We might thus conceive of democracy in terms of a politics of bare life, but along the lines of becoming animal instead of *homo sacer*, and theorize democracy as processes of minority becomings instead of majority rule. How then might we conceive of democracy as a becoming that moves in the direction of the outside of the law, rather than always consolidating the terms of what is inside the law's borders? In short, how does outlawry, in its deconstructive sense, transform our understanding of democracy?

Democracy is typically affiliated with the politics of subjects, and is what Deleuze and Guattari term a molar model, since it is based on the majority, rather than minorities, and consensus, rather than dissensus. As Patton suggests, contemporary liberal democracy is

"a form of government in which the governed exercise control over governments and their policies, typically through regular and fair elections…They ensure equal rights to effective participation in political processes, but also set limits to what majorities can decide by protecting basic civil and political rights and ensuring the maintenance of a rule of law" (185-6). Derrida has demonstrated how problematic this understanding of democracy is with respect to minorities. As he argues in *Rogues*, the democratic state excludes "all sorts of unlike and unrecognizable others," in particular the "bad citizens, rogues [and] noncitizens," despite its promise "at the same time or by turns… to open itself up, to offer hospitality, to all those excluded" (63).

The problem with – and the cure for, present forms of democracy arise from the auto-immunity of democracy. Democracy protects itself from what threatens it, from within and from without, by suspending democracy itself. Because it excludes its other, democracy is always 'put off.' Derrida refers to this as the *Renvoi* of democracy: "[R]*envoi* signifies putting off to later, the reprieve [*sursis*] that remits or defers [*sursoit*] democracy until the next resurgence [*sursaut*] or until the next turn or round; it suggests the incompletion or essential delay, the self inadequation of every present and presentable democracy, in other words, the interminable adjournment of the present democracy" (R 37-38). But this concept is more than simply a critique of the inherent failure of democracy on account of its deferral and difference from itself. The *renvoi* of democracy refers to alterity itself, to the difference of the other. The deferral is thus also a reaching toward difference. In the terms of Deleuze and Guattari, it is a becoming-minoritarian. Or as Derrida puts it: différance *as reference or referral* [*renvoi*] to the other, that is, as the … *undeniable*, experience of the alterity of the other, of heterogeneity, of the singular, the not-same, the different, the dissymmetric, the heteronomous" (38). Democracy thus takes a liminal position between the law and justice, the political and the ultra-political: from this border it seeks to re-create itself through a simultaneous construction and deconstruction.

With these concepts Derrida provides a starting place for bringing Levinas' ethics into the political realm. It is through this very contradiction, this difference within itself that democracy-to-come incorporates an ethics of alterity and exteriority. The Derridean sense

of time as out of joint suspends the difference between the law and its outside through a 'revolution' that literally implies revolving or circling about. It is through this circular action that democracy-to-come overcomes the homogenizing exclusions of what Levinas terms third party politics (*A Tier)* with a movement toward alterity – that is ethics – in the political field. However, the deconstructive approach also has its limits: the impossibilities, passivity and the necessary deferral to the future produces a political concept whose praxis is somewhat obscure. What of the politics of the present? What route do we take, as individuals or collectively, toward this future? And who or what is the agent of such a politics?

Deleuze and Guattari propose a theory of becoming-democratic that sounds strikingly similar to Derrida's democracy-to-come, but point also to modes of political praxis in the present, or more precisely, to political praxis as a mode of resistance to the present. This includes a resistance to present democracies, which, Deleuze and Guattari agree, are Capitalist fraternities that have no claim to justice.[66] As they ask in *What is Philosophy*: "What social democracy has not given the order to fire when the poor came out of their territory or ghetto?" (108). Democracy, no less than other political forms, makes outlaws of its minorities, in the vulnerable and disenfranchised sense of *homo sacer*. But like democracy-to-come, becoming-democratic involves becoming-outlaw in its anarchic sense. Becoming-democratic is the politics of the poor when they come out of their ghetto, and it is the becoming-minoritarian (opening up) of those very forces that exclude the poor. It is a dispersion of the majority that makes up a conventional democracy. Where a democracy is a state of law, becoming-democratic is outside of the law; where democracies are communicative, becoming-democratic is creative. Deleuze and Guattari describe becoming-democratic as a critical philosophy, as follows:

> We lack creation. *We lack resistance to the present*. The creation of concepts in itself calls for a future form, for a new earth and people that do not yet exist…Art and philosophy converge at this point: the constitution of an earth and a people that are lacking as the correlate of creation. …This people and earth will not be found in our democracies. Democracies are majorities, but a becoming is by its nature that which always eludes the majority. (108)

This form of politics differs from present constitutional states – indeed from any constitutional states – and does not specify a determinate structure. In his commentary on "Becoming-Democratic" Patton points out that the concept "points towards future as yet unrealized forms of democracy, but also reminds us that there is no definitive form that will ever arrive….it enables us to perceive the world differently (180-181). Like Derrida's 'to-come' of democracy, the concept does not offer specific models of political practice, or universal maxims, but instead a critical approach that is anti-conservative; it deconstructs current realities from outside, rather than conserving them from within.

With their series of concepts of becoming Deleuze and Guattari set the groundwork for an ethical politics of bare life because people are seized by these becomings to the extent that they are not subjects, citizens or members of normative majorities. Bare life is precisely what we exclude in order to be subjects. However, bare life is not simply 'being alive' in the sense that all animal and plant life is alive. It is the politicization of the sheer fact of living through its exclusion from the polis. Agamben discusses bare life as a site of vulnerability and exposure to death, but in Deleuze and Guattari's framework we might also conceive of bare life as the spring of resistance to the present by which we strive for something new. Levinas experienced this ethics, and this politicization of his own bare life, with his fellow prisoners in the camp. Bare life is thus what constitutes the demos: the people, before they become a democracy, are in processes of becoming-democratic. For Deleuze and Guattari, this is possible as a movement of dispersal even when we are already citizens, or members of the majority, but it is absolutely necessary if we are not.

The distinction between bare life and the subject is not absolute when we consider it in the framework of outlawry as a deconstructive becoming minoritarian. We might be both vulnerable and exposed, as in the camp, and yet imbued with the capacity to resist the present, as those in the camp did in various ways, even to their death. And this resistance has the capacity to reconfigure the political sphere – as indeed, those in the camp succeeded at doing (some like Levinas, in a literal sense, and others less directly), for our ethico-political concepts have been dramatically transformed as a consequence of the Shoah, and continue to be. For Deleuze and Guattari, ethical political action occurs at the

threshold between centre and periphery, subject and non-subject, singular and general that is expressed in 'becoming-animal' and becoming-minoritarian. From this liminal position agency is not only possible but is, as a matter of necessity, tied to the vulnerability of bare life, which is always poised at the edge of violence or death. In other words, it is those very people that are excluded, or more generally anyone to the extent that one is outside of the law, that demands both an ethical and political response. Political change, if it is to be ethical, mobilizes around those exclusions.

Let us return to Levinas, but this time through Critchley, who both embraces and critiques Levinasian politics. Critchley forwards a very clear description of a demos that possesses the deconstructive qualities of outlawry. His solution to Levinas' political difficulties – the separation between ethics and politics – follows Derrida's lead, incorporating an 'a priori' notion of the messianic into the *formal* concept of the ethical relation, while refusing Levinas' more problematic specific political content (i.e. the androcentricism, racism and Zionism) (180-181). The approach is also similar to revolutionary minoritarianism: Critchley proposes the incarnation of ethics in politics through the manifestation of what he terms an 'anarchic demos.' This shifts the discussion from 'politics' to 'the political,' that is, from politics as it is played out in present government structures, to the political as a field of theoretical concern that defines the content of the politics of the future. In this view, the state is undermined by the politics of the people as they exceed any classification. The people, in this sense, are not subjects, citizens, or members of some group, they are those "who do not count" and "who have no right to govern" (183). Critchley thus situates "a radical manifestation of the people" as the agent of politics. As he describes it, this refers to "the people not as *das Volk* or *le peuple* shaped by the state, but as *die Leute*, or *les gens*, the people in their irreducible plurality" (182). This turn toward an anarchic demos corrects Levinas' separation of ethics and politics for Critchly, by making politics the stake of ethics.

In this formulation, ethics is "a moment of *disincarnation* that challenges the borders and legitimacy of the state" (181). Critchley bridges this gap between ethics and politics by re-defining the political terrain, shifting politics from what mediates the multiplicity, to the multiplicity itself. Politics, for Critchley, is an anarchic *demos*, a zone in which

people live a politics, as opposed to politics producing a people. But who precisely are 'the people?' How do we differentiate the anarchic demos from the fascist masses, and from the depoliticized body of the people as bare life, that is, the people as they are exposed to death, as in the camps? Or, more to the point, how do we disengage the fascist masses of their fascism, or, in more moderate regimes of governance, free the citizens of their subjection and make their lives (bare life) matter, once again? And how do we maintain a politics that acknowledges and supports the politics of the people in the margins and in the camps, the people as beings exposed to one another and to death?

Critchley proposes that ethics become an "anarchistic disturbance of politics," transforming ethics from a theological term to a kind of outlawry. His approach is similar to Deleuze and Guattari's concept of becoming democratic in that it involves a revised definition of politics as the "dissensual space of democracy" instead of the generalizing structures of law and governance. This is a metapolitics of the people that is intended to prevent politics from "closing over itself" in a totalizing sense (181). An ethical politics is possible, for Critchley, if it is a politics of difference and disruption, involving a metapolitical process of democratization that does not allow itself to become a totality. Through a structure of dissensus and openness to transformation, a political system can avoid becoming "tyrannical" (181). In Critchley's engagement with Levinas we find not only a reversal in the definition of the political from mediation to disruption and from consensus to dissensus – we also find a new kind of political subject. Or, rather, not a political subject per se, but a political multiplicity that is not a mere mass or mob, but a *demos*. This demos is different from the body politics as it is currently constituted, because it is based not on the common terms shared by subjects – their common will, or shared national or cultural identity – but on their internal differences as a collective determined by dissensus and the anticipation of disruption.

For Deleuze and Guattari 'the people' of becoming-democratic make up just such a demos. The people are performatively constituted as pre-political agents, or outlaws who have both an archic and anarchic function. We find them in Deleuze and Guattari's enigmatic phrase "the people are missing" derived from their discussion of Kafka and minor literature. For Kafka, minor literature treats private affairs as political matters of

life and death, as opposed to adhering to the border between public and private that is maintained by major literatures. Major literature, or for our purposes major politics, treat only those who are included and privileged in the system as political subjects. In this definition of the political the people are missing because they exist only as minorities. As discussed earlier, a minority is not to be understood conventionally as a disenfranchised few. Indeed, the people insofar as they constitute a minoritarian becoming – a becoming-animal – are a multiplicity. Becoming-animal is part of a movement, a collectivity: "A becoming-animal always involves a pack, a band, a population, a peopling, in short a multiplicity... modes of expansion, propagation, occupation, contagion, peopling" (TP 239). But what is the difference between a majoritarian multiplicity and a minoritarian one? It is precisely the difference between Levinas' Third Party politics, and a revolutionary democracy. The former, which Deleuze and Guattari term a 'mass,' is the collective of subjects organized under the banner of a state. But the minoritarian multiplicity is 'the people' in what Critchley terms their "irreducible plurality" (1992).

Do we not, in this schema, end up with something that resembles a band of outlaws more than a mode of politics? Are we heading straight into chaos and anarchy? Becoming-revolutionary and becoming-democratic always move in the direction of the outside of the law, since they involve processes of dispersal away from the molar forms that are definitive of law and state politics. But like the deconstructive, performative theory of law explored in Chapter 1, the concept of 'becoming-outlaw' disrupts and dissolves binaries of inside and outside of the law: the archic becomes anarchic, the anarchic founds a new law, and keeps revolving in new becomings. New fields of molar and molecular politics allow for simultaneous condensation and dispersal of our affinities and identities. Deleuze and Guattari propose a dispersing direction of becoming-minoritarian, in the movement of its vanishing lines, yet all these becomings move back and forth between minor and major frames, dispersing and condensing, condensing and dispersing. The shift from the individual to the multiplicity is imperative in these movements. Indeed, Deleuze and Guattari explicitly depart from traditions that oppose the total to the multiple. We are always both molar and molecular. Moreover, their aim is to escape dialectics in an effort to distinguish between different kinds of multiplicity – of selves, of states, and of political movements, those that condense in molar forms and others that

disperse in the direction of infinity. They move away from always conceiving of the multiple in its totalizing form as an archaic or future unity, and instead conceive of it in its "pure state" of sheer multiplicity (32).

The relationship of the self to such multiplicity is not the same as the subject's relation to state. The self, in this approach, is a threshold between multiplicities that are always transforming, multiplicities that are "composed of heterogeneous terms in symbiosis" (249). The self – the fascinated self, as the authors term it – occupies various positions along the borderline of these shifting multiplicities, desiring both the otherness of the other, and desiring to become the other. Fascinated selves form and dispel collectives with other diverse elements, and act back in relation to the molar forms of power that it meets in its bordering capacities. These relationships are not dialectical, and they may be simultaneous. For on the one hand, these collectives interact with the state political forms: "they continually work them from within and trouble them from without, with other forms of content, other forms of expression" (242). And on the other, multiplicities may transform from one form to the other "replacing pack effects with family feelings or State intelligibilities" (256).

Becoming-outlaw involves a new way of understanding or undertaking democracy, in this case as a mode of outlawry in the form of the ongoing revolution, in the sense of revolving, continual disruption from the outside, and continual change.[67] Yet can we say that those individuals who are systematically stripped of their politics – the people who are missing – make up the political demos? The answer is definitively yes. Since outlawry is a deconstructive and performative concept, it disrupts binaries such as public and private, major and minor politics. We can see this in the outlaw politics of the camp, where the switching that is endemic to outlawry thrives. The inmates are stripped of humanity and transformed into beasts without language, but it is the Nazi guards and the villagers who "sometimes raised their eyes" that are inhumane and beastly (they saw, but did not see, they retained their politics and language, but neither acted, nor spoke).

On the one hand, it seems as if there is an inherent contradiction in conceiving people (*les gens*) as a force of political agency because it is the denial of political agency that

constitutes them as outlaws in the sense of *homo sacer*, yet a politic directed toward the future belongs to them, since their very degradation and lack of representation demands change, and movement toward the future. Yet only the people (*le peuple*) that are interpellated as subjects through the state are capable of acting or representing themselves as political subjects. Thus liberal social movements aim to insert those who are excluded into the polis as people who count, have rights and the capacity for self-representation. Of course, on one level this is to be desired. But how is this to be achieved without limiting citizenship and participation in the polis to sheer subjection and assimilation to current structures of power, especially those structures that are unjust or totalizing? Is not subjectivity/subjection what transforms us, as individuals and as a group, from *les gens* to *le peuple*, separating us from animals and grounding our agency, consciousness, and our rights as political subjects in our very humanity? How do we grasp that space in which the unrepresented Other or outsider gains access through action that instead transforms the political sphere? Outlawry thus raises questions about the very relationship between politics and subjectivity and the direction of the flow of power between those who are included and those who are excluded.

In a revolutionary democracy, the figure that is marginalized has a kind of outlaw force – or conversely, those who are afforded privilege in relation to the law foreclose that privilege in the ethical demand to strive for justice. Often representations of exclusions from the law demarcate a kind of helplessness, an absence of subjectivity, articulation, and action – we see this in Agamben's concepts of *homo sacer* and bare life. These are important dramatizations of spaces of unrepresentability that illuminate gaps in the realm of the political where some groups fall outside of the lines of power and channels of representation. Nevertheless, revolutionary democracy provides a structure of the political through which outlawry might address that tension between exclusion and inclusion. It is a matter of how Foucault's assertion that "where there is power there is resistance" plays out. The people (*les gens*) are the people to the extent they threaten and push back on the law in becoming-democratic. They are the anarchic demos that take to the streets. They are what Derrida terms a *voyoucracy*. They are outlaws. Yet they are also potentially the people (*les peuples*), the citizens and subjects of the law that have agency and are represented in politics and in language – in the democracy that is to-come.

Conclusion

The deconstructive logic of outlawry is ancient. The sovereign proclamation of outlawry – *Wargus Esto*, in Frankish law, or "become a wolf" – was a common legal penalty from the archaic period through the Middle Ages that tied sovereign power to its own undoing. The post-human politics of twentieth-century post-structuralism was thus anticipated hundreds of years earlier in a figure who challenged the law from the outside, not as a subject, but as liminal creature suspended between human and beast. This post-human figure is both a werewolf and an outlaw. In the wolf ban the law is constituted by what challenges it; as recourse to this challenge, the law is dissolved with respect to the offender in order to preserve itself; but it can never completely preserve itself. By banishing its challengers instead of killing or rehabilitating them, the sovereign reduces the outlaw to absolute vulnerability and exposure to death, but also ensures its own mortality.

Outlawry exposes the law's inability to be at one with itself, its fundamental insecurity, its undecidability, and its dependence on force to come into being and maintain itself. Yet outlawry is the non-presence that allows the law to begin its presencing. What is outside of the law is included in the law: even as the outside is severed from the inside – it is nonidentical to it, exterior to or excluded from it – it is nevertheless joined to it by the very limit that defines it as other. Outlawry is always already present as the law's deconstructive double: it is fundamental to the law's structure as a performative force. By refusing to allow the law to be final or complete, outlawry keeps the political system from stagnating. The law must continually transform as its context changes, or it will be replaced with a new law. In transformation or revolution, for better or for worse, this alterity is derived from outside of the law. Outlawry is persistent in its presence (as a nonpresence), and in its promise and threat to the law.

But it seems as if in modernity, outlawry has a new logic; one that conserves the law instead of ensuring the law's difference from itself. Giorgio Agamben points to the dangers of this modern mode of outlawry in *Homo Sacer*. Outlawry structures Agamben's vision of biopolitics: sovereignty, which today takes life itself as its object,

depends on forces outside of the law for the foundation and conservation of its power (the sovereign's decision on the exception comes from outside of the law). As such, modern sovereignty, even in democratic states, is a totalizing force that encloses its outside. In this extra-legal state, everybody becomes an outlaw of sorts as they suffer a withdrawal of legal rights and protections. Citizens are no longer subjects capable of political action, but instead are abjected and exposed to death. This double mode of outlawry is the legacy of the camps. Agamben writes:

> [t]here is no return from the camps to classical politics…[T]he possibility of distinguishing between our biological body and our political body…was taken from us forever. And we are not only, in Foucault's words, animals whose life as living beings are at issue in their politics, but also—inversely—citizens whose very politics is at issue in the natural body." (188)

Western metaphysics, politics, medico-biological sciences and jurisprudence are together implicated in a state of affairs that brings us to the edge of "an unprecedented biopolitical catastrophe" (188) as bare life (life that is excluded from the law) becomes the object of the law (a law that preserves its power by suspending itself in relation to the life that it excludes).

There is something compelling in Agamben's dark vision, in which exposure to death seems to enter the very core of life, infiltrating every aspect of social and political life in a new kind of totalitarianism. His diagnosis of the modern political condition as an indefinite state of exception populated by *homo sacer,* while cynical, seems to hit the mark, whether one is considering the post 9-11 global 'war on terror,' or biotechnology. Whether it is in the decision to cease life-preserving treatment, or to deem someone a terrorist or "unlawful enemy combatant" and detain them without the protection of the usual legal rights, the suspension of the law in relation to some lives changes the law's relation to all human life. In Agamben's analysis this new relation – what he defines as biopolitics–takes the structure of the archaic ban, the proclamation of outlawry that inaugurates sovereignty by excluding the outlaw. In this view, the ban does not deconstruct sovereignty, it preserves it. For Agamben, outlawry serves two functions. It

guarantees the total indivisible power of the sovereign, while in the case of the subject, outlawry constitutes an erasure of agency and exposure to death (the banned individual enters a liminal space between human and beast, and as such can be killed but not sacrificed). In effect, for Agamben the reappearance of outlawry as biopolitics encloses all forms of modern sovereignty in a form of totalitarianism.

However, it is not outlawry that traps modernity in the logic of the camps, nor is it a return to some 'normal' situation that saves us from fascism. This was Walter Benjamin's message, a message that often seems to go unheard, although it is obvious to those who are outside of the law: fascism *is* the normal situation. The fact that this has not changed in the six decades following the Shoah, but rather expanded to secretly structure even liberal democracies, as Agamben argues, is cause for significant concern. We cannot rid ourselves of outlawry in the political sphere. To ban outlawry, if such a thing were logically possible, would only intensify the biopolitical catastrophe because it would foreclose the law's difference from itself, its capacity to transform, while to welcome only outlawry would surely invite chaos. Indeed, there must be law. Yet the solution is not a foreclosure of the outside of the law. Agamben creates a very compelling sketch of the problem when outlawry is taken up in biopolitics, but he forgets the challenge that outlawry poses to sovereignty, missing the deconstructive relation outlawry maintains with the law. A mimetic switch complicates the biopolitical situation, deconstructing biopolitics itself and reversing the significance of outlawry to sovereignty and subject. Sovereignty is exposed to its own annihilation, as Derrida surmises in *Rogues*, it has finally undone itself; it has lost all meaning (101). And the subject, exiled from the law, tastes its unmediated freedom (ipseity), glimpses the law's mystical authority, and celebrates the possibility of a new law, if only for a suspended instant.

Outlawry is tricky; it can be two things at once: founder and destroyer, presence and absence, crime and justice, conservation and transformation. As Hannah Arendt surmises in the preface to *Origins of Totalitarianism,* it is as if "progress and doom are two sides of the same medal" (vii). This is why we say that outlawry is deconstructive. There is something (im)possible about outlawry; it makes the law at once possible and impossible, just as it makes justice (which is separate from the law) at once possible and impossible.

We can see this in the fine line dividing the thought of Benjamin, who took his own life to thwart confinement in the camps, and Carl Schmitt, the Nazi jurist. Where Benjamin identifies a sphere of human action that takes place outside of the law in order to overthrow the political order, Schmitt's 'state of exception' harnesses outlawry in order to preserve state power. The problem is thus not outlawry, but rather the conserving relation of sovereignty to outlawry, and the abuse of power when life becomes the object of sovereignty as such. What is needed is not less outlawry, but an ethical relation of outlawry to the political that opens up possibilities for justice, that transforms rather than conserves, and that affirms life in all of its diversity, instead of making life the object of calculation. In other words, what is needed are political concepts that would permit a deconstructive, rather than empowering and conserving operation of outlawry in the political sphere, an ethics of outlawry that opens the political to alterity.

Thus whether we are referring to the singular subject, or the people as an anarchic *demos*, a relation to outlawry need not result in sheer abjection and subordination. Instead, outlawry can be a source of political vitality, another kind of biopolitics entirely, one that affirms life rather than infusing life with death. One can act politically from a place outside of what the law permits, that is, not as subjects but as those who have been excluded from the law. This is why we can affiliate the outlaw with such vulnerable figures as the werewolf, exile, or concentration camp inmate, but also the politically transformative crowds that stormed the Bastille, or that overthrew the Apartheid regime in South Africa. The law can be challenged from a place of exclusion or disenfranchisement after all, even if we usually understand political agency as proper to the subject. Indeed, outlawry as deconstruction provides a structure that makes it possible to live with the contradictions between a politics of the subject and a politics of difference. For when we view the law as always already undergoing its own deconstruction, the difference between subject and abject, law and outside of the law is suspended. We might think of this in temporal terms, as Derrida does: time is "out of joint" and we persist in a perpetual undecidability in which is it impossible to know which is which, law or outlawry, subject or abject. Alternatively, we might conceptualize this undecidability via the spatial and biological metaphors proposed by Deleuze and Guattari: we are at once molar territories and molecular constellations. Our relationship

to the law and its outside is under constant negotiation as our psychic and social realities shift, and as we disperse and aggregate in our changing identities.

We thus might enjoy a politics of identity and a politics of difference simultaneously. For the subject, who depends on the law for coherence and agency, but who is vulnerable in this very dependence, outlawry institutes a threshold of revision. We live with an aporia whereby the subject is hailed into its becoming by the law, and the law is performatively brought into being by the subject. Since the law depends on outlawry as the limit from which it presents itself, both law and subject undergo constant alteration: as law and outlawry exchange places, the subject is simultaneously becoming and unbecoming, consenting to and resisting its subjection. The relation between subject and law is thus a living, dynamic relation; it cannot stagnate in a biopolitical death, even when one is literally killed by the law, because when the subject is stripped of its coherence and agency, the law is, in that very instant, rendered unintelligible.

Outlawry offers no neat solution to the crises of modernity. There is no requirement or guarantee that an action outside of the law be ethical, even when the actor intends it to be. Outlawry is risky because it is a politics of openings and transformations whose outcomes are not predetermined; even as we strive for justice we risk injustice; as political actors we risk that we will become what we least want to become, that the fascist will sneak up on us and take our place, an imposter. To deter this risk, outlawry demands our vigilance as ethical political actors, our perpetual critique of the present, and our openness to transformation from the outside. It is in the context of such critique and openness to the transformation of our own identities, as subjects and as a *demos*, that outlawry can lead to justice.

Such an ethical politics of outlawry revises the law by the other and for the Other. The 'subject' of politics is constituted by difference itself, and thus a post-human subject of politics is possible. Rather than the singular identity of the subject as a political actor who votes or participates in a politics of representation, the politics of outlawry is that of a multiplicity that acts to transform society on the basis of who or what the law excludes. Or, to be more precise, it is both a politics of identity and inclusion, and a politics of

difference and exclusion at once, for a politics of outlawry exists by maintaining, rather than resolving, its contradictions.

The political, as such, is not constituted by inclusion in a majority, but rather by differences inherent in the plurality; democracy is comprised not through the sovereign will of a majority, but through the dissolution of the majority into its minorities. Democracy is a verb, not a noun, a process, not a constative political body. It is what Derrida refers to as the democracy-to-come and Deleuze and Guattari term 'becoming-democratic.' We might think of this as a 'revolutionary democracy:' a democracy in which the inside is under constant revision and deconstruction by the outside, a poetic revolution whose political concepts remain under irreducible negotiation. An ethical outlaw politics is thus a politics of transformation and revolution, not of conservation. It does not build on the past or culminate some trajectory of progress. Ethical political action occurs at the threshold between centre and periphery, subject and non-subject, singular and general, law and outlawry.

We cannot grasp blindly onto outlawry as that otherness that will save us from ourselves. The dangers of outlawry are very real, as we have witnessed through the injustices of the twentieth century, from the Shoah to Guantánamo Bay. Outlawry, when it is deployed to conserve the law, is tied to totalitarianism, even in the context of so-called democracy. Yet we cannot rid ourselves of outlawry without realizing the very worst of our fears. Outlawry is necessary to the very presence of the law; moreover, it is the deconstructive force that allows the law to persist in its difference from itself, to transform and to open itself to alterity. Outlawry marks the fault line between justice and injustice; to walk it we must remain politically vigilant and self-critical; we must be willing to become something other than ourselves. In "Force of Law," Derrida writes that there is no justice without the experience of aporia. Outlawry must be manifested as the aporia of the law, not its rationalization, if we are to have justice. According to Derrida: "Justice is an experience of the impossible: a will, a desire, a demand for justice" (244). Outlawry is just such a call for the impossible. It turns the inside out and the outside in; its difference demands change; its becomings herald the future.

Bibliography

Agamben, Giorgio. *Homo Sacer: Sovereign Power and Bare Life.* Trans. Daniel Heller-Roazen. Stanford: Stanford University Press, 1995. Print.

---. State of Exception. *Trans. Kevin Attell. Chicago: University of Chicago Press,* 2005. Print.

Althusser, Louis. "Ideology and Ideological State Apparatuses: Notes Toward an Investigation." *Lenin and Philosophy, and Other Essays*. Trans. Ben Brewster. London: New Left Books, 1971. 127-188. Print.

---. "Philosophy as a Revolutionary Weapon. Interview by Maria Antonietta Macciocchi. *Lenin and Philosophy, and Other Essays*. Trans. Ben Brewster. London: New Left Books, 1971. 11-22. Print.

Aravamudan, Srinivas. "Subjects/Sovereigns/Rogues." *Eighteenth-Century Studies* 40.3 (2007): 457-465. ABI/Inform Complete. Web. 4 November 2008.

Arendt, Hannah. "Ideology and Terror: A Novel Form of Government." *The Review of Politics* 15.3 (July 1953): 303-327. Print.

---. *Origins of Totalitarianism*. San Diego: Harcourt, 1994. Print.

Austin, J. L. *How to Do Things with Words*. New York: Oxford University Press, 1965. Print.

Balke, Friedrich. "Derrida and Foucault on Sovereignty." *German Law Journal* 6.1 (2005): 71-84. Google Scholar. Web. 4 November 2008.

Batailles, Georges. *Theory of Religion*. Trans. Robert Hurley. New York: Zone Books, 1989. Print.

---. *Visions of Excess: Selected Writings, 1927-1939*. Trans. Allan Stoekl. Minneapolis: University of Minnesota Press, 1986. Print.

Bauman, Zygmunt. *Modernity and Ambivalence*. Cambridge: Polity, 1991. Print.

---. *Modernity and the Holocaust*. Cambridge: Polity, 1989. Print.

Benhabib, Seyla. "Subjectivity, Historiography, and Politics: Reflections on the 'Feminism/Postmodernism Exchange.'" *Feminist Contentions: A Philosophical Exchange*. Eds. Seyla Benhabib, Judith Butler, Drucilla Cornell, and Nancy Fraser. New York: Routledge, 1995. Print.

Benjamin, Walter. "Critique of Violence." *Reflections: Essays, Aphorisms, Autobiographical Writings*. Ed. Peter Demetz. New York: Schocken Books, 1986. 277-300. Print.

---. *Origins of German Tragic Drama*. Trans. John Osborne. London: Verso, 1998. Print.

---. "Theses on the Philosophy of History." *Illuminations: Essays and Reflections*. Trans. Harry Zohn. New York: Schocken, 1968. Print.

Bernasconi, Robert. "Deconstruction and the Possibility of Ethics." *Deconstruction and Philosophy: The Texts of Jacques Derrida*. Ed. J. Sallis. Chicago: U of Chicago, 1987. Print.

---. "The Trace of Levinas in Derrida." *Derrida and Différance*. Ed. D. Wood and R. Bernasconi. Evanston, IL: Northwestern UP, 1988. Print.

Bhabha, Homi. *Location of Culture*. London: Routledge, 1994. Print.

Blackstone, W. *Commentaries on the Laws of England.* Vol. 3. London: Cavendish, 2001. Print.

Bodin, Jean. *On Sovereignty: Four Chapters from Six Books of the Commonwealth*. Ed. Julian H. Franklin. New York: Cambridge University Press, 1992. Print.

Boucher, Geoff. "The Politics of Performativity: A Critique of Judith Butler." *Parrhesia* 1 (2006): 112-141. Print.

Braidotti, Rosi. *Patterns of Dissonance*. Trans. Elizabeth Guild. Cambridge: Polity Press, 1991. Print.

Bredekamp, Horst. "Walter Benjamin to Carl Schmitt, via Thomas Hobbes." Trans. Melissa Thorson Hause and Jackson Bond. *Critical Inquiry* 25.2 (Winter 1999): 247-266. Print.

Bruns, Gerald L. "Becoming-Animal (Some Simple Ways)." *New Literary History* 38 (2007): 703-720. *MLA Annotated Bibliography*. Web. 12 September 2009.

Buchanan, Ian. "Power, Theory and Praxis." *Deleuze and Politics*. Eds. Ian Buchanan and Nicholas Thobrun. Edinburgh: Edinburgh UP, 2008. 11-34. Print.

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

---. *Gender Trouble: Feminism and the Subversion of Identity*. London: Routledge, 1990. Print.

---. *Precarious Life: The Powers of Mourning and Violence*. London: Verso, 2004. Print.

---. *Psychic Life of Power: Theories of Subjection*. Stanford: Stanford UP, 1997. Print.

Canada. Royal Commission on Aboriginal Peoples. Bridging the Cultural Divide: A Report on Aboriginal People and Criminal Justice in Canada. Ottawa: Supply and Services Canada, 1996. Print.

Chalier, Catherine. *"What Ought I to Do?": Morality in Kant and Levinas*. Trans. J. M. Todd. Ithaca: Cornell UP, 2002. Print.

Chanter, Tina, ed. *Feminist Interpretations of Emmanuel Levinas*. 2001. University Park PA: Pennsylvania State UP, 2001. Print.

Cornell, Drucilla. *Philosophy of the Limit*. New York: Routledge, 1992. Print.

---. "The Violence of the Masquerade: Law Dressed Up as Justice." *Working through Derrida*. Ed. Gary B. Madison. Evanston: Northwestern University Press, 1993. 77-93. Print.

Critchley, Simon. *Ethics and Deconstruction: Derrida and Levinas*. Oxford: Blackwell, 1992. Print.

---. "Five Problems in Levinas's View of Politics and the Sketch of a Solution to Them." *Political Theory* 32.2 (2004): 172-185. *ABI/Inform Complete.* Web. 8 October 2009.

De Beauvoir, Simone. *The Second Sex*. Trans. H. M. Parshley. New York: Vintage Books, 1989. Print.

"Declaration of Independence." 1776. *The National Archives*. Government of the United States. Web. 1 May 2010.

"Declaration of the Rights of Man and of the Citizen." 1789. *Constitution Society.* Web. 1 May 2010.

De Cauterm, Lieven. "For A Justice To Come: An Interview with Jacques Derrida." *The Brussels Tribunal*. (Monday, Apr. 05, 2004). *Indymedia.be* Archive. Web. 9 May 2010.

Deleuze, Gilles. "The Body, the Meat and the Spirit: Becoming-animal." *The Artist's Body*. Trans. Liz Heron, ed. Tracy Warr. London: Phaidon, 2000. 197-8. Print.

---. "Control and Becoming: Conversation with Toni Negri." Trans. Martin Joughin. *Futur Anterieur* 1 (Spring 1990): n.pag. *Generation Online.* Web. 8 October 2009.

---."Foucault and the Prison." Interview by Paul Rabinow, with Keith Gandal. *Michel Foucault: Critical Assessments*, ed. Barry Smart. Volume 3. London: Routledge, 1994.

Deleuze, Gilles, and Félix Guattari. *Anti-Oedipus: Capitalism and Schizophrenia*. Trans. Robert Hurley, Mark Seem, and Helen R. Lane. New York: Viking, 1977. Print.

---. *A Thousand Plateaus: Capitalism and Schizophrenia*. Trans. Brian Massumi. Minneapolis: Minnesota UP, 1987. Print.

---. *Kafka: Toward a Minor Literature.* Trans. Dana Polan. Minneapolis: U of Minnesota P, 1986. Print.

---. *What is Philosophy.* Trans. Hugh Tomlinson and Graham Burchell. New York: Columbia UP, 1994. Print.

Derrida, Jacques. *Adieu to Emmanuel Levinas.* Trans. M. Naas and P. A. Brault. Stanford: Stanford University Press, 1999. Print.

---."The Animal that Therefore I Am (More to Follow)." *Critical Inquiry* 28.2 (Winter 2002): 369-418. Print.

---. *The Beast and the Sovereign.* Trans. Geoffrey Bennington. Chicago: University of Chicago Press, 2009. Print.

---. "La Bête et le Souverain." *La Démocratie à Venir*. Ed. Marie-Louise Mallet. Paris: Galilée, 2004. Print.

---. "De-constructions: The Impossible." *French Theory in America.* Eds. Sylvère Lotringer and Sande Cohen. London: Routledge, 2001. 13-32. Print.

---. "Force of Law: The Mystical Foundation of Authority." *Acts of Religion.* Ed. Gil Anidjar. New York: Routledge, 2002. Print.

---. *Limited Inc.* Trans. Samuel Weber and Jeffrey Mehlman. Evanston: Northwestern UP, 1972. Print.

---. *Of Grammatology.* Trans. Gayatri Chakravorty Spivak. Baltimore: Johns Hopkins University Press, 1997. Print.

---. *Rogues: Two Essays on Reason.* Trans. Pascale-Anne Brault and Michael Naas. Stanford: Stanford University Press, 2005. Print.

---. *Spectres of Marx.* Trans. Peggy Kamuf. New York: Routledge, 1994. Print.

De Vries, Hent. "Anti-Babel: The 'Mystical Postulate' in Benjamin, de Certeau and Derrida." *MLN* 107.3 (April 1992): 441-477. *ABI/Inform Complete*. Web. 8 August 2007.

Dolar, Mladen. "Beyond Interpellation." *Qui parle* 6(2) (Spring/Summer 1993): 75-96. Print.

Durkheim, Emile. *Elementary Forms of Religious Life*. Trans. Karen E. Fields. New York: Free Press, 1995. Print.

Emergencies Act. Government of Canada Depository Services Program. Web. Accessed March 10, 2010.

Fischer Drew, Katherine. ed. and trans. *The Laws of the Salian Franks.* Philadelphia: University of Pennsylvania Press, 1991. Print.

Fitzpatrick, Peter. "Bare Sovereignty: *Homo Sacer* and the Insistence of Law." *Theory & Event* 5.2 (2001): N.pag. *Project Muse*. Web. 6 January 2009.

Foote, Peter Godfrey, and D.M. Wilson. *The Viking Achievement: The Society and Culture of Early Medieval Scandinavia.* London: Sidgwick and Jackson, 1980. Print.

Foucault, Michel. *History of Sexuality Volume I: An Introduction*. Trans. Robert Hurley. New York: Vintage Books, 1978. Print.

---. Preface. *Anti-Oedipus: Capitalism and Schizophrenia*. By Gilles Deleuze and Felix Guattari. Trans. Robert Hurley, Mark Seem, and Helen R. Lane. Minneapolis: University of Minnesota Press, 1983. Print.

---. *Society Must be Defended*. Trans. David Macey. New York: Picador, 2003. Print.

---. "The Subject and Power." *Michel Foucault: Beyond Structuralism and Hermeneutics*. 2nd ed. Eds. Hubert L. Dreyfus and Paul Rabinow. Chicago: University of Chicago Press, 1982. Print.

Gerstein, Mary R. "Germanic *Warg*: The Outlaw as Werwolf." *Myth in Indo-European Antiquity*. Ed. G. J. Larson. Berkeley: University of California Press, 1974. Print.

Goulimari, Pelagia. "A Minoritarian Feminism? Things to Do with Deleuze and Guattari." *Hypatia* 14.2 (1999): 97-120. *MLA Annotated Bibliography.* Web. 14 January 2010.

Guattari, Felix. *Chaosophy*. Trans. Janis Forman. New York: Semiotext(e), 1995. 209-224. Print.

Guenther, Lisa. "*Le flair animal:* Levinas and the Possibility of Animal Friendship." *PhaenEx* 2.2 (Fall/Winter 2007): 216-238. *Directory of Open Access Journals.* Web. 8 October 2009.

Günzel, Stephan. "Immanence and Deterritorialization: The Philosophy of Gilles Deleuze and Félix Guattari." *Twentieth World Congress of Philosophy, Boston, Massachusetts, U.S.A*. (August 1998): 10-15. *Paideia Project On-Line.* Web. 18 September 2008.

Hägglund, Martin. "The Necessity Of Discrimination Disjoining Derrida and Levinas." *Diacritics* 34.1 (1004): 40–71. *Jstore.* Web. 20 February 2010.

Hamacher, Werner. "Afformative, Strike: Benjamin's 'Critique of Violence.'" Trans. Dana Hollander. *Walter Benjamin's Philosophy: Destruction and Experience.* Eds. Andrew Benjamin and Peter Osborne. London: Routledge, 1994. 110-138. Print.

Hayden, Patrick. *Multiplicity and Becoming: The Pluralist Empiricism of Gilles Deleuze*. New York: Peter Lang, 1998. Print.

Herre, Wolf and Manfred Rohrs. "Animals in Captivity." *Grzimek's Encyclopedia of Mammals*. Bernhard Grzimek, ed. New York: McGraw-Hill, 1990. Print.

Hobbes, Thomas. *The Leviathan*. 1660. New York: E. P. Dutton, 1950. Print.

Hobsbawm, Eric. *Bandits.* London: Weidenfeld & Nicolson, 2000. Print.

---. *Primitive Rebels: Studies in Archaic Forms of Social Movement in the 19th and 20th Centuries*. Manchester: Manchester University Press, 1971. Print.

Hubert, Henri and Marcel Mauss. *Sacrifice: Its Nature and Function*. Trans. W. D. Halls. Chicago: University of Chicago Press, 1968. Print.

Ingram, David. "The Retreat of the Political in the Modern Age: Jean-Luc Nancy on Totalitarianism and Community." *Research in Phenomenology* 18 (1988): 93-124. *ProQuest.* Web. 18 September 2009.

Jardine, Alice. "Woman in limbo: Deleuze and his br(others)." *SubStance* 44/45 (1984): 46-60. *MLA Annotated Bibliography*. Web. 8 October 2009.

Judith Butler: Philosophe en Tout Genre. Dir. Paule Zajdermann. ATRE France et Associés, 2006, video.

Kafka, Franz. *The Trial*. Trans. Willa and Edwin Muir. New York: Alfred Knopf. 1968. Print.

Kristeva, Julia. *Powers of Horror: An Essay on Abjection*. Trans. Leon Roudiez. New York: Columbia University Press, 1982. Print.

LaCapra, Dominic. "Violence, Justice and the Force of Law." *Cordozo Law Review* 11:1047 (1990): 1065-1078. Print.

Larson, Lawrence M. trans. *The Earliest Norwegian Laws: Being the Gulathing Law and the Frostathing law.* New York: Columbia University Press, 1939. *ACLS Humanities E-Book.* Web. 13 July 2006.

Leitch, Vincent B. "Late Derrida: The Politics of Sovereignty." *Critical Inquiry* 33.2 (2007): 229-47. Print.

Levinas, Emmanuel. *Difficult Freedom: Essays on Judaism*. Trans. Seán Hand. London: Althone, 1990. Print.

---. *Otherwise than Being: Or Beyond Essence*. Trans. Alphonso Lingis. Pittsburg: Duquesne University Press, 1981. Print.

---. "Paradox of Morality: An Interview with Emmanuel Levinas." Interview by Tamra Wright, Peter Hughes, and Alison Ainley. *Provocation of Levinas: Rethinking the Other.* Eds. Robert Bernasconi and David Wood. London and New York: Routledge & Kegan Paul, 1988. 168-180. Print.

---. *Time and the Other*. Trans. Richard A. Cohen. Pittsburgh: Duquesne University Press, 1987. Print.

---. *Totality and Infinity*. Trans. Alphonso Lingus. Pittsburgh: Duquesne University Press, 1969. Print.

Llewelyn, John. *Appositions of Jacques Derrida and Emmanuel Levinas*. Bloomington and Indianapolis: Indiana University Press, 2002. Print.

Locke, John. *Two Treatises of Government; and, A Letter Concerning Toleration*. Ed. Ian Shapiro. New Haven: Yale University Press, 2003. Print.

Lyotard, Jean-François. *The Differend: Phrases in Dispute*. Trans. Georges Van Den Abbeele. Minneapolis: University of Minnesota Press, 1988. Print.

---. *Postmodern Condition: A Report on Knowledge*. Trans. Geoff Bennington and Brian Massumi. Minneapolis: University of Minnesota Press, 1984. Print.

Magnus, Kathy Dow. "Judith Butler and the Social Conditions of Intersubjective Agency." *Hypatia* 21(2) (Spring 2006): 81-103. Print.

Marx, Karl. *German Ideology*. Amherst, N.Y.: Prometheus Books, 1998. Print.

McCormick, John. "Derrida on Law; Or, Poststructuralism Gets Serious." *Political Theory* 29.3 (June 2001): 395-423. *ABI/Inform Complete.* Web. 8 August 2007.

Morreiras, Alberto. "A God without Sovereignty. Political Jouissance. The Passive Decision." *CR: The New Centennial Review* 4.3 (Winter 2004): 71-108. *ABI/Inform Complete*. Web. 4 November 2008.

Muller, Jan-Werner. "Myth, Law and Order: Schmitt and Benjamin Read *Reflections on Violence.*" *History of European Ideas* 29.4 (2003): 459-473. *ISI Web of Knowledge.* Web. 9 August 2007.

Naas, Michael. "One Nation . . . Indivisible: Jacques Derrida on the Autoimmunity of Democracy and the Sovereignty of God." *Research in Phenomenology* 36 (2006): 15-43. *Religion and Philosophy Collection*. Web. 29 May 2010.

Nancy, Jean-Luc. *The Inoperative Community.* Trans. Peter Connor. Minneapolis: University of Minnesota Press, 1991. Print.

Nietzsche, Friedrich. *On the Geneology of Morals.* Trans. Walter Kaufman and R. J. Hollingdale. New York: Vintage Books, 1967. Print.

Noakes, Jeremy and Geoffrey Pridham. *Documents of Nazism 1919-1945.* New York: Viking, 1974. Print.

Patton, Paul. "Becoming-Democratic." *Deleuze and Politics*. Eds. Ian Buchanan and Nicholas Thobrun. Edinburgh: Edinburgh University Press, 2008. 178-195. Print.

Perreault, Samuel. "The Incarceration of Aboriginal People in Adult Correctional Services." *Juristat* 29. 3 July 2009. Web. 18 April 2010.

Pollock, Frederick, and Frederic William Maitland. *The History of English Law Before the Time of Edward I.* Cambridge: Cambridge University Press, 1898. Rpt. Union: Lawbook Exchange, 1998. Print.

Pugh, Ralph B. "Early Registers of English Outlaws." *American Journal of Legal History* 27.4 (1983): 319-329. *EBSCO Host.* Web. 9 March 2010.

Rivers, Theodore John. Trans. *Laws of the Salian and Ripuarian Franks.* New York: AMS Press, c1986. Print.

Rousseau, Jean-Jacques. *Discourse on the Origin of Inequality*. Trans. GDH Cole. 1754: n.pag. Public Domain. Constitution Society. *Google*. Web 9 March 2010.

---. *The Social Contract*. Trans. Christopher Betts. Oxford and New York: Oxford University Press, 1994. Print.

Rummel, Rudolf. *Death by Government*. New Brunswick NJ: Transaction Publishers, 1994. Print.

Schmitt, Carl. *The Concept of the Political.* Trans. George Schwabb. Chicago and London: University of Chicago Press, 1996. Print.

---. *Political Theology: Four Chapters on the Concept of Sovereignty.* Trans. George Schwabb. Cambridge and London: MIT Press, 1985. Print.

Schwab, Gabriele. "Introduction: Derrida, Deleuze and the Psychoanalysis to Come." *Derrida, Deleuze, Psychoanalysis*. Ed. Gabriele Schwab. New York: Columbia University Press, 2007. 1-34. Print.

Seidler, Victor J., *Recovering the Self: Morality and Social Theory*. London: Routledge, 1995. Print.

Sinnerbrink, Robert. "Deconstructive Justice and the 'Critique of Violence': On Derrida and Benjamin." *Social Semiotics* 16.3 (September 2006): 485-497. *SocIndex*. Web. 14 August 2007.

Smith, Nick. "Questions for a Reluctant Jurisprudence of Alterity." *Levinas and Law: A Mosaic.* Ed. Desmond Manderson. New York: Palgrave Macmillan, 2008. Print.

Sokoloff, William. "Between Justice and Legality: Derrida on Decision." *Political Research Quarterly* 58.2 (June 2005): 341-352. *ABI/Inform Complete.* Web. 9 August 2007.

Spivak, Gayatri. *A Critique of Postcolonial Reason: Toward a History of the Vanishing Present.* Cambridge: Harvard University Press, 1999. Print.

Sandford, Stella. *The Metaphysics of Love* London: Continuum, 2000. Print.

Thoburn, Nicholas. "Vacuoles of Noncommunication: Minor Politics, Communist Style and the Multitude." *Deleuze and the Contemporary World.* Eds. Ian Buchanan and Adrian Parr. Edinburgh: Edinburgh University Press, 2006. 42-51. Print.

Weber, Samuel. "Taking Exception to Decision: Walter Benjamin and Carl Schmitt." *Diacretics* 22.3-4 (Autumn/Winter 1992): 5-18. *ISI Web of Knowledge.* Web. 9 August 2007.

White, Stephen K. "As the World Turns: Ontology and Politics in Judith Butler." *Polity* 332(2) (Winter 1999): 155-177. Print.

Wingrove, Elizabeth. "Interpellating Sex." *Signs* 24(4) (Summer 1999): 869-891. Print.

Wittig, Monique. *The Straight Mind and Other Essays.* Boston: Beacon Press, 1992. Print.

Wood, Philip. "'Democracy' and 'Totalitarianism' in Contemporary French Thought: Neoliberalism, the Heidegger Scandal and Ethics in Post-structuralism." *Terror and Consensus: Vicissitudes of French Thought.* Eds. Jean-Joseph Goux and Philip R. Wood. Stanford: Stanford University Press, 1998. 75-103. Print.

Zizek, Slavoj. *The Sublime Object of Ideology.* London and New York: Verso, 1989. Print.

Endnotes

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[1] There were vast populations of outlaws living in the forests and countryside in England and other Northern European countries throughout the Middle Ages. In his analysis of the "Early Registers of English Outlaws" Ralf Pugh reports that in the late 1300 and early 1400s well over a thousand people were outlawed every year, with the numbers adding up on account of the long-term nature of the sentence. Pugh estimates that: "If England's population was about 2.25 million, the proportion of people created outlaws was 12 per thousand in 1398-99 and 7 per thousand in 1409-10. If, further, we assume that many outlawries remained for long or permanently un-reversed, the total outlaw population could have approached [a] "vast multitude"…(323)

[2] Traces of outlawry in archaic Frankish law can be found in Frankish law books such as the Lex Salica and Lex Ripuaria, in the phrases *wargus sit* ('he shall be a wolf'), and *wargus esto* (become a wolf). See also Giorgio Agamben's discussion of the ancient Germanic legal framework known as *Friedlosegkeit* that excluded wrongdoers from the community as men who were 'without peace' (*friedlos)* and consequently became wolf-men (*wargus*) (*Homo Sacer* 104-105). See also Mary Gerstein's discussion of outlawry in Norse societies (131).

[3] Cited in Rummel, Rudolf. *Death by Government*. New Brunswick NJ: Transaction Publishers, 1994, 86.

[4] In *Origins of Totalitarianism* Arendt writes:

> For then a criminal offense become the best opportunity to regain some kind of human equality, even if it be as a recognized exception to the norm. The one important fact is that this exception is provided for by law. As a criminal even a stateless person will not be treated worse than another criminal, that is, he will be treated like everybody else. Only as an offender against the law can he gain protection from it. As long as his trial and his sentence last, he will be safe from that arbitrary police rule against which there are no lawyers and no appeal. The same man who was in jail yesterday because of his mere presence in this world, who had no rights whatever and lived under threat of deportation, or who was dispatched without sentence and without trial to some kind of internment because he has tried to work and make a living, may become almost a full-fledged citizen because of a little theft. Even if he is penniless hew can now get a lawyer, complain about his jailers, and he will be listened to respectfully. He is no [286] longer the scum of the earth but important enough to be informed of all the details of the law under which he will be tried. He has become a respectable person. 287

[5] This appears to be an intentional misuse of the idiom 'beyond the pale' which means, colloquially, 'beyond the standards of decency.' It is derived from an obsolete definition of pale (from the Latin *palus*) as a stake or pointed piece of wood (i.e. impaled), and refers to an area that is fenced in and safe. An early meaning of 'beyond the pale' is to be outside of a boundary. A pale is also a jurisdiction under a particular authority; often held by one nation in another country. By implication, anything outside their control was uncivilised. Notably, the phrase 'beyond the pale' also refers to restricted areas created to enclose certain groups for political reasons, such as the 'Pale of Settlement' created by Catherine the Great in 1791 that restricted Jews to the western border region of Russia. As a concession, some Jews were allowed to live 'beyond the pale.' Other notable political pales include the Pale of Dublin in Ireland and the Pale of Calais in France.

[6] Laws outlawing indigenous peoples in both the US and Canada persisted until quite recently. Traces of this exclusion remain in inordinately high criminalization rates as Native people tread the line between being outlaws and populations who, like Arendt's refugees, enjoy the 'rights' of criminals. In the US, Indigenous people were not considered human until the 1879 Standing Bear Trial and in Canada they did not have citizenship rights until 1956, nor the right to vote until 1960. In Newfoundland, one could casually kill 'Indians' without culpability until the colony joined Canada in 1949. A negative politics of outlawry, one that guarantees the law by excluding some people from legal protections, has thus long co-existed with democratic governance as the very premise of colonial sovereignty

Another example is Canada's *War Measures Act* of 1914, which the gave the federal Cabinet the power to govern by decree in the case of "real or apprehended" "war, invasion or insurrection." The Act limited the freedom of Canadians during both world wars, and was used to detain in camps German, Ukrainian and Slavic Canadians in WWI and Japanese Canadians during WWII. In October and November 1970, it was applied to declare a state of "apprehended insurrection" in Québec and institute emergency regulations in response to two kidnappings by the Front de Libération du Québec. In 1988 *The War Measures Act* was replaced by the *Emergencies Act*, which has more limited powers. See *The Emergencies Act*. Government of Canada Depository Services Program. Web. Accessed March 10, 2010. http://dsp-psd.pwgsc.gc.ca

[7] Wood directs readers to Luc Ferry and Alain Renaut (*Hiedegger et Les Modernes*) for a neo liberal critique of post-structuralism, Bourdieu for Neo-Marxist critique, Habermas (*The Philosophical Discourses of Modernity*) from the perspective of critical theory, and Nancy Harstock ("Foucault and Power: A Theory for Women") for a feminist viewpoint (96-97, and notes 3, 5, 19)

[8] Benjamin's letter to Schmitt reads as follows:

> Esteemed Professor Schmitt,
>
> You will receive any day now from the publisher my book The Origin of the German Mourning Play. With these lines I would like not merely to announce its arrival, but also to express my joy at being able to send it to you, at the suggestion of Mr. Albert Salomon. You will very quickly recognize how much my book is indebted to you for its presentation of the doctrine of sovereignty in the seventeenth century. Perhaps I may also say, in addition, that I have also derived from your later works, especially the "Diktatur," a confirmation of my modes of research in the philosophy of art from yours in the philosophy of the state. If the reading of my book allows this feeling to emerge in an intelligible fashion, then the purpose of my sending it to you will be achieved.
>
> With my expression of special admiration,
>
> Your very humble Walter Benjamin

Dated December 1930, cited in Samuel Weber's "Taking Exception to Decision: Walter Benjamin and Carl Schmitt" p.5. Original Source: *Gesammelte Schriften*. Frankfurt am Main: Suhrkamp, 1980, 1: 3.8871

[9] Schmitt makes this claim in a series of letters to Hansjörg Veisel in 1973 (Viesel, 1988 cited in Bredekamp 1999 and Agamben 2005).

[10] This is not to suggest an affinity between Catholicism and Nazism but merely Schmitt's particular interpretation of Catholic doctrine. Muller writes: "Schmitt was an authoritarian Catholic, with occasional

forays into totalitarianism, who—at least at certain points in his life—put his faith in the Biblical figure of the Katechon who holds off the Anti-Christ" (461).

[11] In contrast the English and French understandings of the term violence is derived from the Latin *violentia*, meaning "vehemence, impetuosity" and *violentus*, or "vehement, forcible." Where the German clearly associates *Gewalt* with law and justice, in French and English violence is commonly related to illegal, unjustified, or extreme uses of force. Likewise, in contradiction to Benjamin's association between Greek mythology and lawmaking violence, in Classic Greek, as in French and English, violence is associated with physical force, but not legislative power. The Greek term is *bia,* meaning bodily strength, force.

[12] In *Limited Inc.* Derrida writes:

> As opposed to the classical assertion, to the constative utterance, the performative does not have its referent … outside of itself or, in any event before and in front of itself. It does not describe something that exists outside of language and prior to it. It produces or transforms a situation, it effects; and even if it can be said that a constative utterance also effectuates something and always transforms a situation, it cannot be maintained that that constitutes its internal structure, its manifest function or destination, as in the case of the performative. (13)

[13] Derrida writes that: "A decision can only come to being in a space that exceeds the calculable program that would destroy all responsibility by transforming it into a programmable effect of determinate causes. There can be no moral or political responsibility without this trial and this passage by way of the undecidable. Even if a decision seems to take only a second and not to be preceded by any deliberation it is structured by this experience and experiment of the undecidable" (LI 116).

[14] Butler makes this statement in the film *Judith Butler: Philosophe en Tout Genre*, by Paule Zajdermann. ATRE France et Associés, 2006.

[15] This might be understood along the lines of Monique Wittig's argument in "The Straight Mind" when she writes that lesbians are not women, because 'woman' connotes subservience to 'man' in the rules of heterosexual discourse.

[16] Conservative because the law is suspended in order to preserve it, rather than to overthrow it.

[17] Agamben claims that in modernity, we have all become outlaws of this second type, which he terms *homo sacer*. See chapter One for a discussion on Benjamin and Schmitt, and chapter three for an analysis of Agamben's concept of Homo Sacer

[18] On Ressentiment and the subject Nietzsche writes:

> A quantum of power is nothing more than the drive, will, effect. But language seduces common people to add subject, or substratum, a "being" behind the doing, effecting, becoming. This doubles the doing, as a cause and its effect. Ressentiment exploits this to uphold the belief that the strong one is free to be weak, and thus the bird of prey should be held accountable for not choosing to be a lamb. From this the powerless say, let us be different from the evil ones, let us be good. "As if the weakness of the weak… [is] something chosen, a deed, a merit. This kind of human needs the belief in a neutral subject with free choice, out of an instinct of self-preservation, self-affirmation, in which every lie tends to hallow itself. It is perhaps for this reason that the subject…has until now been the best article of faith on earth, because it made possible for the

majority of mortals, the weak and oppressed of every kind, that sublime self-deception of interpreting weakness itself as freedom, of interpreting their being such-and-such as a merit." (*Geneology of Morals* 13.20)

[19] De Montagne's citation reads as follows: "Lawes are now maintained in credit not because they are just, but because they are lawes. It is the mystical foundation of their authority; they have none other…whosoever obeyeth them because they are just, obeyes them not justly the way that he ought." Cited in "Force of Law" 239-240.

[20] This was discussed at length in Chapter One.

[21] Magnus finds that Benhabib's earlier critique still holds for Butler's more recent (1997) *The Psychic Life of Power* and *Excitable Speech*, and that in fact, the diminished agency of the subject becomes more pronounced as Butler reduces subjectivity to the discursive effects of interpellation and naming. However, she argues that Butler's 2003 *Kritik der ethischen Gewalt* resolves these issues to a large extent through the intersubjective recognition of the interpellated subject (82).

[22] Historically, in British common law, refusal to appear before the law was grounds to be proclaimed an outlaw. This follows an earlier Anglo Saxon law that proclaimed as outlaws those who would not pay blood money to the family of a murdered person – literally refusing the guilt/debt.

[23] In *Powers of Horror,* Kristeva writes that the abject includes: "The traitor, the liar, the criminal with a good conscience, the shameless rapist, the killer who claims he is a savior…Any crime, because it draws attention to the fragility of the law, is abject, but premeditated crime, cunning murder, hypocritical revenge are even more so because they heighten the display of such fragility" (4).

[24] In *Psychic Life of Power* Butler writes that:

> If conditions of power are to persist, they must be reiterated; the subject is precisely the site of such reiteration, a repetition that is never merely mechanical. As the appearance of power shifts from the condition of the subject to its effects, the conditions of power (prior and external) assume a present and futural form. But power assumes this present character through a reversal of its own direction, one that performs a break with what has come before and dissimulates as a self-inaugurating agency. The reiteration of power not only temporalizes the conditions of subordination but also shows these conditions to be, not static structures, but rather temporalized—active and productive. (16)

[25] According to Butler in *Psychic Life of Power*: "Significantly, Freud identifies heightened conscience and self-beratement as one sign of melancholia, the condition of uncompleted grief…Melancholia rifts the subject, marking a limit to what it can accommodate. Because the subject does not, cannot, reflect on that loss, that loss marks the limit of reflexivity, that which exceeds (and conditions) its circuitry. Understood as forclosure, that loss inaugurates the subject and threatens it with dissolution" (23).

[26] Coincidentally, in archaic European traditions, hanging was the proper mode of execution for outlaws. The Germanic and Norse terms for werewolf, Wargus and Vargr are linked to the Germanic "strangle" (wergh via wargaz). Strangling was not just a means of execution or murder; it was the proper mode of sacrifice to Odin, as well as the proper mode of killing the outlaw, on the gallows, or Varghr Tree (Gerstein 141-144).

[27] In antiquity, banning was instituted only in special cases, for crimes that were deemed beyond compensation or retribution. Such crimes not only called the 'humanity' of the perpetrator into question, they also threatened sovereignty and community cohesion. For instance, corpse desecration, cannibalism, cowardice, oath breaking, bail breaking, and treason were all crimes that were taken up through the ban rather than models of justice based on guilt and retribution.

[28] In the ontology of the ban, not only are werewolves held in a liminal relation to the law, they are mediators between the worlds of the living and the dead, between matter and spirit. Their relatives are the berserkers and young warriors who channeled the spirits of bears or wolves in battle (Gerstein 155-156), and the mystical hounds that guard passage to the land of the dead.

[29] When I refer to the article "La Bête et le Souverain" (LBLS) published in *La Démocratie à Venir*, edited by Marie-Louise Mallet, the translations are my own. This article is an excerpt from Derrida's *Seminar La Bête et le Souverain* which was not available in English when I wrote the first draft of this chapter. When I refer to the text by its English title *The Beast and the Sovereign* (BS), I am citing Geoffrey Bennington's translation of the Seminar.

[30] According to Douglas Harper's *Online Etymology Dictionary* ban is derived from the proto-European base *bha*- "to speak" (which becomes the Greek *phanai*, and Latin *fari* "to say" and Armenian *ban*, or "word").) In Old English and French Ban refers to a public proclamation, in Old Norse (*banna*) it means to curse or prohibit. A second Old French meaning refers to outlawry and banishment. All of these originate from the proto germanic *bannan*, meaning proclaim, command, forbid, or the same word in Old High German, meaning to command under threat of punishment. In contemporary German this is *bannen*, curse, expel, banish. In Old Irish *bann* is "law." A second meaning in Serbo-Croatian and Persian refers to rulers themselves as the *Ban*, and is linked to *pati*, the Sanskrit word for "guard" or "protect."

[31] In *Leviathon*, Hobbes writes" "This is the foundation of that right of punishing, which is exercised in every common-wealth. For the Subjects did not give the Soveraign that right; but onely in laying down theirs, strengthened him to use his own, as he should think fit, for the preservation of them all: so that it was not *given* but *left* to him, and to him onely; and (excepting the limits set him by naturall Law) as entire, as in the condition of meer Nature, and of warr of everyone against his neighbour" (Cited in Agamben, HS 106, his emphasis).

[32] Agamben uses Italy for an example:

> It is well known that since the practice of executive legislation by law-decrees has become the rule in Italy. Not only have emergency decrees been issued in moments of political crisis, thus circumventing the constitutional principle that the rights of the citizens can be limited only by law…but law-decrees now constitute the normal form of legislation to such a decree that they have been described as "bills strengthened by guaranteed emergency" (Fresa 1981, 1520). This means that the democratic principle of the separation of powers has today collapsed and that the executive power has in fact, at least partially, absorbed the legislative power. Parliament is no longer the sovereign legislative body that holds the exclusive power to bind the citizens by means of the law: it is limited to ratifying the decrees issued by the executive power. In a technical sense, the Italian Republic is no longer parliamentary but executive. And it is significant that though this transformation of the constitutional order (which is today underway to varying decrees in all the Western democracies) is perfectly well known to jurists and politicians, it has remained entirely unnoticed by the citizens. And at the very moment when it would like to give lessons in

democracy to different traditions and cultures, the political culture of the west does not realize that it has entirely lost its canon. SE 8

[33] As Horst Bredekamp points out in "From Walter Benjamin to Carl Schmitt, via Thomas Hobbes" Benjamin's eighth thesis is a response to Schmitt that turns Schmitt's own concept of history against him: "Benjamin's conception of the shock like liberation acquires the character of a Last Judgment of Fascism" (264).

[34] See Lyotard's "differend" and Spivak's concept of the "subaltern." The differend is the name Lyotard gives to the silencing of a player in a language game, a term he borrows from Wittgenstein, and elaborates in *The Postmodern Condition*. In Lyotard's language game theory, the language games of particular discourses are based on rules that reify their own validity (10). In the Differend Lyotard suggests that when a player in a language game is silenced, she lacks access to articulate her truth or reality, trapped in the silence of an impossibility of phrasing an injustice. In other words, in the differend, there are no agreed upon procedures for what is other to the law to be presented in the domain of discourse. In *Critique of Postcolonial Reason* Gayatri Spivak draws on the concept of the differend to elaborate her theory of the subaltern as characterized by silence, a silence that emerges not through a lack of utterance on her part, but by the apparent unrecognizability of this speech, and the inability within hegemonic mechanisms of power to hear it. As Spivak argues, the subaltern may not only be speaking, but over the generations engaging in continuous counterhegemonic insurgency. But the insurgency is outside of the cultural academic or institutional modes through which power flows, so that her insurgency consistency fails.

[35] Derrida cites Book I, Chapter 2 of the *Social Contract* "The First Societies" by Rousseau. The citation I have included is derived from the translation of the *Social Contract* by G. D. H. Cole. Derrida cites the French original in his article. Rousseau writes: "It is then, according to Grotius, doubtful whether the human race belongs to a hundred men, or that hundred men to the human race: and, throughout his book, he seems to incline to the former alternative, which is also the view of Hobbes. On this showing, the human species is divided into so many herds of cattle, each with its ruler, who keeps guard over them for the purpose of devouring them."

[36] Rousseau continues: "As a shepherd is of a nature superior to that of his flock, the shepherds of men, i.e., their rulers, are of a nature superior to that of the peoples under them. Thus, Philo tells us, the Emperor Caligula reasoned, concluding equally well either that kings were gods, or that men were beasts" (*Ibid.)*

[37] In "La bête et le souverain" Derrida writes:

> The question is all the more obscure and necessary that the minimum feature that one must recognize in the position of sovereignty… which we have stressed in the last years around Schmitt, is a certain power to make, but also to suspend the law. It is the exceptional right to move above the law, the right to lawlessness, if I may say so, which carries the risk of placing the person of the sovereign above the human, granting him the omnipotence of God … and, at the same time because of the arbitrary suspension or rupture of right, it makes the sovereign resemble the most brutal beast which does not respect anything any more, despises the law, lies outlawed at the outskirts, with the laws variations." *(»La question est d'autant plus obscure et nécessaire que le trait minimal qu'on doive reconnaître dans la position de souveraineté, a ce stade a peine préliminaire, c'est, nous y avons insiste les années dernières autour de Schmitt, un certain pouvoir de donner, de faire mais aussi de suspendre la loi ; c'est le droit exceptionnel de se placer au-dessus du droit, le droit au non-droit, si je puis dire, ce qui a la fois risque de porter le souverain humain au-dessus de l'humain, vers la toute-puissance divine (qui aura d'ailleurs le plus souvent fonde le principe de souveraineté dans son origine sacrée et théologique) et a la fois, a cause de*

cette arbitraire suspension ou rupture du droit, risque justement de faire ressembler le souverain à la bête la plus brutale qui ne respecte plus rien, méprise la loi, se situe d'entrée de jeu hors la loi, a l'écart de la loi. ») (445)

[38] The US and its allies accused Iraq of possessing weapons of mass destruction, and for colluding with the terrorist group El Quada, for which no evidence was ever found. However, Hussein perpetrated numerous crimes against humanity in Iraq's war with Iran, and against the Kurdish people living in northern Iraq.

[39] In "The Animal that Therefore I am (More to Follow)" Derrida writes:

> Beyond the edge of the so-called human, beyond it but by no means on a single opposing side, rather than "the Animal" or "Animal Life" there is already a heterogeneous multiplicity of the living, or, more precisely (since to say the living" is already to say too much or not enough) a multiplicity of organizations of relations between living and dead, relations of organizations or lack of organization among realms that are more and more difficult to dissociate my means of the figures of the organic and inorganic, of life and/or death. These relations are at once close and abyssal; they can never be totally objectified. They do not leave room for any simple exteriority of one term with respect to another. (399)

[40] Derrida continues: "One cannot speak—moreover it has never been done of the bêtise or bestiality of an animal. It would be an anthropomorphic projection of something that remains reserved to man, as the single assurance finally, and the single risk, of what is "proper to man." One can ask why the ultimate fallback of what is proper to man, if there is such a thing, a property that could never in any case be attributed to the animal or to God, thus comes to be named bêtise or bestiality." Ibid 408-409

[41] Indeed, borders are part of what constitutes the concept of sovereignty, which is geo-territorial as well as being onto-theological.

[42] In their article "Animals in Captivity" in Grzimek's *Encyclopedia of Mammals*, Herre and Rhors show that wolves are community oriented animals, who prioritize the young and nursing mothers at the feeding site, and are particularly social compared to domestic dogs, who as individuals in a hierarchy, are far less likely to share their dinner. Wolf packs include heterogeneous members with complex modes of communication and different individual behaviours and roles: some are fierce fighters, others have well developed alertness and powers of observation, and together they cooperate to ensure pack survival. Dogs, in contrast are more homogenous and less communicative, tending predominantly to be neither aggressive nor particularly alert. Both wolf packs and dogs operate in accordance with a hierarchy, but these hierarchies are realized in very different ways. For wolves, the hierarchy is always shifting, with members swiftly and frequently changing position within power relations. Dogs, on the other hand, establish long term hierarchies to which they submit over the long term, their behaviour more similar to young than to adult wolves.

[43] Bredekamp argues that Hobbes was likewise a key influence on Benjamin: "While Benjamin himself does not quote Hobbes, there can be no doubt that his fundamental theses are based on the latter's definition of the political. Thus it has been surmised that the image of the Leviathan should be viewed as a secret antithesis to the emptiness of the allegory. At the beginning of Benjamin's "Kritik der Gewalt," where he deals with Spinoza, Hobbes is likewise present between the lines" (254).

[44] George Schwab species in his introduction to *Political Theology* that: "It is not surprising …that [Schmitt] returned again and again in his writings to Thomas Hobbe's "mutual relation between Protection and Obedience," and shared with Hobbe's the belief that *autoritas, non veritas facit legem*. The one who

has authority can demand obedience—and it is not always the legitimate sovereign who possesses this authority. In was this belief in the need to support the legally constituted authority that led Schmitt to participate in the Nazi adventure between 1933 and 1936 (xiii).

[45] From the translation of "The lamb and the Wolf" included as a preface to *Rogues*.

[46] According to Derrida:

> …the word rogue, as an adjective or substantive…refers in everyday language, in the language of the law, and in great works of literature…to beggars and homeless vagabonds of various kinds but also, and for this same reason, to all sorts of riffraff, villains, and unprincipled outlaws….From there the meaning gets extended, in Shakespeare as well as in Darwin, to all nonhuman living things, that is to plants and animals whose behaviour appears deviant or perverse….the qualification rogue calls for a marking or branding classification that sets something apart. A mark of infamy discriminates by means of a first banishing or exclusion that then leads to a bringing before the law." (R 93-94)

[47] In *Rogues*, Derrida writes: "This sovereignty is a circularity, indeed a sphericity. Sovereignty is round; it is a rounding off. This circular or spherical rotation, the turn of the re-turn upon the self, can take either the alternating form of the by turns, the in turn, or the each in turn…or else the form of an identity between the origin and the conclusion, the cause and the end or aim, the driving (motric463)e) cause and the final cause" (13).

[48] 'Passive' and 'passionate' share an etymological link to the Latin *passivus* "capable of feeling or suffering," from stem of the Latin *pati* "to suffer, endure." Also related to Greek *Pathos* "suffering, feeling, emotion."

[49] Derrida elaborates on this ambiguity in "The animal that therefore I am:" "One can ask why the ultimate fallback of what is proper to man, if there is such a thing, a property that could never in any case be attributed to the animal or to God, thus comes to be named bêtise or bestiality" (408-409).

[50] In a paper exploring the place of animals in Levinasian theories of friendship, Lisa Guenther argues that Levinas does not elsewhere take the question of the ethical response of animals seriously. Citing his discussion of animal faces in "Paradox of Morality" ("The human face is completely different and only afterwards do we discover the face of an animal. I don't know if a snake has a face…" Levinas 171-2) Guenther shows that while ethics might be extended to animals, Levinas does not see animals as capable of ethical responsibility because they cannot speak or respond to the face of the Other (217).

[51] Both Levinas and Guenther refer to Bobby as a witness of the prisoner's humanity. In the "Name of the Dog" Levinas writes "For him, there was no doubt we were men" (49). Guenther does not challenge this interpretation. She argues that "Bobby's genius was to bear witness to the human at a time when other human beings regularly failed to do so" (217).

[52] The use of the masculine pronoun here is intentional.

[53] For a comparison of the ethics of Kant and Levinas see Catherine Chalier's *"What Ought I to Do?": Morality in Kant and Levinas*. Trans. J. M. Todd. Ithaca: Cornell UP, 2002.

[54] For a discussion on the link between the Shoah and Enlightenment thought see Zygmunt Bauman's *Modernity and the Holocaust*. Cambridge: Polity, 1989. For discussion on Kantian ethics and modern instrumental rationalism see Zygmunt Bauman. *Modernity and Ambivalence*, Cambridge: Polity, 1991; and Victor J. Seidler, *Recovering the Self: Morality and Social Theory*, London: Routledge, 1995.

[55] The use of the masculine pronoun is intentional: for Levinas the feminine is secondary and the subject and other are male. The feminine is alterity, but she is not the Other. See Stella Sandford's *The Metaphysics of Love*. London: Continuum, 2000, and her analysis of Levinas portrayal of the feminine as what is pre-ethical, but what opens the ethical sphere.

[56] Scholars such as Robert Bernasconi, Drucilla Cornell, and Simon Critchley are well known for associating deconstruction with a Levinasian ethics of alterity, characterized by a "responsibility to the Other." See for instance Bernasconi, Robert. "Deconstruction and the Possibility of Ethics." *Deconstruction and Philosophy: The Texts of Jacques Derrida*. Ed. J. Sallis. Chicago: U of Chicago, 1987. See also Bernasconi's "The Trace of Levinas in Derrida." 1985. *Derrida and Différance*. Ed. D. Wood and R. Bernasconi. Evanston, IL: Northwestern UP, 1988. Cornell, Drucilla. *The Philosophy of the Limit*. New York: Routledge, 1992. Critchley, Simon. *The Ethics of Deconstruction: Derrida and Levinas*. Oxford: Blackwell, 1992; expanded 2nd ed. Edinburgh: Edinburgh UP, 1999. For a discussion on the incompatibility of deconstruction and Levinasian ethics see Martin Hägglund "The Necessity Of Discrimination Disjoining Derrida and Levinas." *Diacritics* 34.1: 40–71

[57] See chapter 1 for an extended discussion on Derrida's distinction between justice and law. In "Force of Law" Derrida writes:

> Paradoxically, it is because of this overflowing of the performative, because of this always excessive advance of interpretation, because of this structural urgency and precipitation of justice that the latter has no horizon of expectation (regulative or messianic). But for this very reason it has perhaps an avenir, precisely [*justement*], a to-come [*à-venir*] that one will have to [*qu'il faudra*] rigorously distinguish from the future. The future loses the openness, the coming of the other (who comes), without which there is no justice; and the future can always reproduce the present, announce itself or present itself as a future present in the modified form of the present. Justice remains to come, it remains by coming [*la justice reste à-venir*], it has to come [*elle a à-venir*] it is to come, the to-come [*elle est à-venir*], it deploys the very dimension of events irreducibly to come. It will always have it, this à-venir, and it will always have had it. Perhaps this is why justice, insofar as it is not only a [256] juridical or political concept, opens up to the avenir the transformation, the recasting or refounding [*la fondation*] of law and politics. 256-257

[58] For an in depth discussion of these difficulties see Critchley's "Five Problems in Levinas' View of Politics and the Sketch of a Solution to Them." In this article, Critchley argues that the following five political problems compromise Levinas' ethics: fraternity, monotheism, androcentrism, the family, and Israel.

[59] For more detailed discussion of Levinas and the feminine, see Tina Chanter's anthology *Feminist Interpretations of Emmanuel Levinas*. University Park PA: Pennsylvania State UP. 2001. 1-27. Chanter corrects Beauvoir, who misses the radical implications of Levinas' disruption of the same, reiterates the expectation that women to conform to masculine models (3). For Chanter, Levinas' view of the feminine may be problematic, but it also does have a radical potential.

[60] Critchley comments on Levinas' racism in the following citation:

> What about those whom, in a careless and ill-advised remark on 'the yellow peril,' Levinas subsumes under the category of the Asiatic, the Chinese, and even the Russians insofar as they submit themselves to the 'paganism' of communism? What about those outside of the influence of the Bible and the Greeks? What about those who simply dance, in Levinas' frankly racist aside in a 1991 interview. I quote, 'I often say, although it is a dangerous thing to say publicly, that humanity consists of the Bible and the Greeks. All the rest can be translated: all the rest – all the exotic – is dance.' (175-6)

[61] This interview was conducted by Lieven De Cauterm on Monday, Apr. 05, 2004 in conjunction with *The Brussels Tribunal*, which Derrida was too ill to attend. The tribunal, which ran from April 14 through 17, was an inquiry into the "New Imperial Order," and more particularly into the "Project for A New American Century" (PNAC), the neo-conservative think tank of the Bush administration. For the entire interview, see the *Indymedia.be* archive (2000-2005) at *http://archive.indymedia.be/news/2004/04/83123.html*. Some small translation errors have been corrected in my citation of the interview.

[62] Gabriele Schwab points to the scholarly affinity Deleuze shares with Derrida in her introduction to *Derrida, Deleuze, Psychoanalysis* (7). She elaborates on Derrida's opposing position to Deleuze and Guattari's anti-psychoanalysis project, citing his remark that: "I resisted the way he [Deleuze] attacked psychoanalysis because I thought it would help the resistance to psychoanalysis, and I didn't want to help." According to Schwab, he made this comment at the conference "Derrida/Deleuze: Psychoanalysis, Politics, Territoriality" and followed it with an anecdote in he conducts a "play between self and other" with Deleuze that is "based on a mutual recognition of resistance to fully engage the differences in their positions, especially towards psychoanalysis" (3). Schwab cites Derrida's telling of the story: "I remember once, the only moment I discussed this with Deleuze was …just after he published the Anti-Oedipus…both of us were on the jury of a thesis at Nanterre…I took Deleuze back to Paris. I was driving. It was brief. I said: do you knows *Anti-Oedipus*? 'No, I don't!' he replied. And that was all. Then we arrived in Paris" (3).

[63] Here Deleuze is comparing himself to Michel Foucault in an interview with Paul Rabinow. The a quote is excerpted from Deleuze's response to the following question: "You yourself seem to have a much more fluid vision of the social world than Foucault. People underlined his use of architectural metaphors, diametrically opposed to your "fluidity." In Deleuze, Gilles. "Foucault and the Prison." Interview by Paul Rabinow, with Keith Gandal. In Barry Smart. Michel Foucault: Critical Assessments, Volume 3. London: Routledge, 1994. Original Source: Deleuze, Gilles. "The Intellectual and Politics: Foucault and the Prison." Interview by Paul Rabinow, with Keith Gandal. History of the Present 2 (Spring 1986): 1-2, 20-21.

[64] Deleuze and Guattari write: "We can be thrown into a becoming by anything at all, by the most unexpected, most insignificant of things. You don't deviate from the majority unless there is a little detail that starts to swell and carries you off" (TP 292).

[65] Philosophers from Aristotle to Heidegger have argued that the human animal becomes a thinking, speaking, political subject by negating his or her animality. For Aristotle, animals, lacking logos, are without ethics and thus incapable of crime. The Cartesian animal is likewise bereft of reason, a mere machine, a sentiment echoed in Heidegger's characterization of animal poverty in "world" in relation to man, as beings who are trapped in their mere existence, bereft of the capacity to conceptualize their being in the world. Psychoanalytic theorists likewise require a suppression of animality – in this case represented by the drives of the Id – for healthy ego development. Indeed, as Deleuze and Guattari argue,

psychoanalytic theorists "killed becoming-animal" (TP 286). They treat childhood identification with animals as normal, but pathologize such identifications in adults as masochistic or fetishistic.

[66] In *What is Philosophy* Deleuze and Guattari write that: "The immense relative deterritorialization of world capitalism needs to be reterritorialized on the modern national state, which finds an outcome in democracy, the new society of "brothers," the capitalist version of the society of friends" (98).

[67] This differs from the marxist concept of a 'permanent revolution,' because it does not relate to transfers of power from one class to another. It would be interesting, however, to compare the concept of revolutionary democracy developed here with Trotsky's version of the permanent revolution in particular, which thinks marxism outside of advanced capitalism.

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