UC Davis
UC Davis Previously Published Works

Title
Agamben's Grammar of the Secret Under the Sign of the Law

Permalink
https://escholarship.org/uc/item/4kr7c30b

Journal
Law and Critique, 20(3)

ISSN
1572-8617

Author
Garrison, Alysia E.

Publication Date
2009-11-01

DOI
10.1007/s10978-009-9057-y

Peer reviewed

Agamben's Grammar of the Secret Under the Sign of the Law

Alysia E. Garrison

Abstract This paper suggests that a grammar of the secret forms a concept in Agamben's work, a gap that grounds the enigma of sovereignty. Between the Indo-European *krei, *se, and *per themes, the secret is etymologically linked to the logics of separation and potentiality that together enable the pliant and emergent structure of sovereignty. Sovereignty's logic of separation meets the logic of relation in the form of abandonment: the point at which division has exhausted itself and reaches an indivisible element, bare life, the exception separated from the form of life and captured in a separate sphere. The *arcanum imperii* of sovereignty and the cipher of bare life are held together in the relation of the ban as the twin secrets of biopower, maintained by the potentiality of law that works *itself* as a concealed, inscrutable force. But the 'real' secret of sovereignty, I suggest, is its dialectical reversibility, the point at which the concept of the secret is met by its own immanent unworking by the critic and scribe under the *krei theme, and subject to abandonment through the work of profanation; here, different species of the secret are thrown against one another, one order undoing the other. The secret founded upon the sacred is displaced by Agamben's critical orientation toward the immanent: what is immanent is both potential and hiddenness.

Keywords Agamben · Dialectic · Kant · Marx · Potentiality · Secret · Sovereignty

In his editorial 'Secret Accomplices: On Security and Terror' which appeared in the *Frankfurter Allgemeine Zeitung* shortly after 9/11, Giorgio Agamben suggests that 'politics is *secretly working* on the production of emergencies' (Agamben 2001).

A. E. Garrison (✉)
Department of English, University of California, 1 Shields Boulevard, Davis, CA 95616, USA
e-mail: agarrison@ucdavis.edu

If adjectives are important indicators to the structure of sovereignty in Agamben's work, we might ask what 'secret' complicities link security with terror to work as accomplices within such a structure. To investigate the work of an obscure modifier in Agamben's philosophy is not to remain at the level of language (where, to read Agamben, we must begin) but to invite a complex, ontopolitical inquiry about the foundational ground of closed systems: to ask, in short, how 'language is the sovereign', and how the machine can be jammed (Agamben 1998, p. 21). During a period that has given rise to secret detentions, interrogations, and raids on Al-Qaeda, under which the Bush Administration invoked the state secrets privilege to strike down dissent and immunise itself against charges of criminality, and where a network of secret prisons outside the US called 'black sites' exist to detain and torture those deemed enemy combatants in the name of state security, the question of the concealment under which sovereignty hides to legitimate itself—and of the 'secrets' it keeps—is deeply resonant (Danner 2009, p. 69). Agamben's *Homo Sacer* series and related texts, which suggest that sovereignty presupposes a 'mystery [*arcano*]', are of particular interest not just for the metaphysical implications of the term, but also given the political history of secret operations—from disappearances to renditions—built into the componentry of the twentieth and twenty-first century modern state and its disciplinary apparatuses, and heightened in the aftermath of 9/11. From Mussolini's secret Organization for Vigilance and Repression of Anti-Fascism (OVRA) that targeted Antonio Gramsci, to the Nazi secret police who admonished prisoners that 'none of you will be left to bear witness' (Agamben 2002, p. 157), to the French *Organisation de l'Armée Secrète* (OAS) formed to combat Algerian terrorism (Agamben 2001), to the spectacular atrocities of the secret police in Timisoara, Romania (Agamben 2000, p. 81), to the recent case against 'the Tarnac nine' in November 2008 in France, where student activists linked to the post-situationist 'Invisible Committee' were accused of being terrorists (Comité Invisible 2007; Agamben 2008b), the effects of this structure's 'secret', which draws security and terror into its dialectical concept, are widespread. Government, in Agamben's analysis, in looking for terrorism ends up constructing it itself, as the operations of state secrecy continue to erode (and co-opt) the fiction of 'privacy', and capture life in a political landscape increasingly indistinguishable from a biopolitical one. In rushing toward a final, exceptional state form at the end of the twentieth century, Agamben suggests that something like a supranational police state has arisen, where 'the secret services' have become 'the model itself of real political organization and real political action' (2000, p. 86). As testament to the immediate relevance of these concerns, the Obama administration—which has put forth a rhetoric of 'transparency'—is at the moment I write in the process of making decisions over precisely what secret information involving terror suspects during the Bush Administration can and should be released; but where the Associated Press reported on 2 March 2009 that with the release of secret memos, Obama has thrown 'open the curtain on years of Bush-era secrets', the future of this promise remains dubious, as Obama's policies waffle and the Senate blocks Guantanamo's closure.

In the wake of these spectacular examples from contemporary politics, this essay reflects on the theoretical purchase of Agamben's language of secrecy itself to argue that for Agamben, the secret grounds the problem of exceptional states and enables

the thinking of politics and ontology at a conceptual border where Agamben's theories of language and law come together. Scholars have variously remarked, at times critically, that at key moments Agamben's prose becomes enigmatic.[1] In part, this aesthetic can be attributed to Agamben's indebtedness to Walter Benjamin (along with the language philosophy of Martin Heidegger and Ludwig Wittgenstein) and linked to a messianic conception of temporality and history, coupled with a politics of pure means that remains open to a community that has not yet been thought. I read Agamben's language of secrecy less as an obscurant than an experiment in form indistinct from content: a rhetorical and political performative that enables Agamben's metaphysical and juridical critique by presenting an enigma about sovereignty's *arcano*—and the 'troublemaker' who repeatedly disrupts it—as a provocation that calls philosophy to task, much like Benjamin's 'enigmatic' allusion to a 'real' state of exception in his eighth thesis, and Agamben's recondite and revealing response to it in *Homo Sacer* (1998, pp. 54–62). While Agamben's writings do not hold the terms in rigorous distinction from one another, we might read the arcanum of sovereignty as the non-secret, the mystery that is no mystery, the obscurant, (what hides or occludes), as what sustains the fiction of such a mystery, and the enigma as what transmits a forgotten reference. In this sense, the secret is political, the occlusion hermeneutic, and the enigma aesthetic and epistemic. Such a lexicon comprises Agamben's 'grammar' of the secret—a synonymical structure that constellates a nexus of words such as hidden, illegible, inscrutable, and concealed along with even more numinous-sounding terms such as cipher, *arcanum imperii*, mystery and enigma. This language, however, is neither merely tropological play nor a retreat into mysticism, but a compass pointing toward the hidden structures of sovereignty and the means of their profanation in law and language. Coupled with a fragmented prose style that often seems to stop short, this grammar is not only a diagnostic of sovereignty's onto-political secret but a *guide*, in the form of a riddle, beyond law's empty nihilism toward a community without secrets, a form that performs its own method. While Agamben's work is underpinned by a dense tradition of Western philosophy and Judeo-Christian messianic thought, here, I can only begin to allude to its complex landscape and inter-articulations as I do something quite modest: open the grammatical construct of the secret.

Secret as Separation and Tie

The first two texts of the *Homo Sacer* series begin by posing different versions of an incomplete suggestion, one that gestures toward a hidden dimension of the political—the paradox of sovereignty—without explicitly revealing it or

---

[1] For a sustained critique of this aesthetic, see LaCapra (2007); see also Laurent Dubreuil's critique of Agamben's biopolitics as 'philology for show' (2006). But for a different view about the importance of the 'enigma' in Agamben, see the introduction to a recent collection on Agamben by Clemens et al. (2008).

explicating its workings.[2] *Homo Sacer* calls for a study of the 'tie' that 'secretly governs' bare life and politics; the 'only reflection', it warns, that will bring 'the political out of its concealment, and … return thought to its practical calling' (1998, p. 5). The introduction to *State of Exception* is equally obscure, proposing that an 'understanding of the very stakes' at issue in the relation between the law and the living being is contingent upon the lifting of the 'veil' covering exceptionality's ambiguous zone (2005a, p. 2). Marxist critiques of the state, Agamben argues, have failed to theorise the problem of *arcanum imperii*, or state secrecy, and this, he writes, 'is the reef on which the revolutions of our century been shipwrecked' where 'one ends up identifying with an enemy whose structure one does not understand' (1998, p. 12). Also shored up are humanitarian politics which, Agamben notes, 'can only grasp human life in the figure of bare or sacred life, and therefore, despite themselves, maintain a secret solidarity with the very powers they ought to fight' (1998, p. 133). The secret, in its boundless ubiquity, becomes so visible that it is no longer seen: that is, as Maurice Blanchot points out in his writing on disaster, it 'disappears' as secret (1995, p. 137). The hint that something 'secret' in its very normalisation blocks our understanding of the workings of Western political philosophy and immobilises politics as they slide dangerously toward states of exception not only arouses our theoretical curiosity but, as Agamben's philosophy suggests, invites a hermeneutical process of reading and reflection on this structure that enables the conditions for thinking sovereignty's potentiality and actuality, its empty propositions and instantiations in law. While Agamben's philosophy has an unclear relationship to a Levinasian-styled ethics, the suggestion of a 'secret tie' binding life and law issues an ethical injunction to thought: the sense that philosophy has a 'historical responsibility' (what Agamben calls a modality of 'exigency') to think what is secret about these workings that allows for the continuation of modern political disaster, namely, the separation and capture of language's unspoken, the exception abandoned in discourse (2005, pp. 40, 39). Sovereignty's secret is an invocation to attend to the immemorial: not to 'remember' and 'commemorate' the lost, but to allow for the transmission of the unforgettable by exposing its very abandonment, in order to 'remain faithful to that which having perpetually been forgotten, must remain unforgettable' (2005, p. 40). The secret, like Benjamin's dialectical image, flashes up in a moment of danger in a state of exception, at a tipping point where the threat is oblivion of the forgotten and the eternal return of an ontopolitical bind. Failure to respond, in Agamben's words, will result in a 'return of the repressed' that 'will reappear within us in a destructive and perverse way' (2005, p. 41). To cite an (overused) example, one thinks of the instantiation of the 'camp' in Guantanamo Bay. To overturn this bind, the secret addresses the labour of cognition, the 'stern and resolute openness' of philosophical thought to expose Western metaphysics's 'unworking' from the standpoint of the negative ground of the *as not* (1999,

---

[2] The *Homo Sacer* series, published anachronistically, so far includes I. *Homo Sacer: Sovereign Power and Bare Life* (1998), II.1 *State of Exception* (2003), II.2 *Il Regno e la gloria: Per una genealogia teologica dell'economia e del governo* (untranslated), II.3 *Il Sacramento del linguaggio: Archeologia del giuramento* (untranslated) III. *Remnants of Auschwitz* (2002).

p. 106).[3] As Agamben puts it, the philosophical element is 'something which remains unsaid within the work but which demands to be unfolded and worked out' (2008a, p. 9). The grammar of the secret comprises a syntax without an understanding of which, Agamben suggests, politics and language (and for Agamben, ontology, or first philosophy) will remain in concealment, frozen in an unprofanable sphere. Despite the language of veiling, what is secret is not to be uncovered or revealed; it is, to use Agamben's articulation, to be *profaned*. The secret is the cipher of power: denoting privation or withholding, it is neither absent nor present. It appears as a difficulty or contradiction in language, a stubborn spot or intractable problem where we experience language's limits: the gag in representation that calls thinking to task for the coming politics. What critics have called Agamben's enigmatic aesthetic may be an exercise in the transmission of the very gap that makes the secret unavailable to language as such in Western metaphysics.

To articulate this structure, I begin with a philological inquiry into the linguistic and political 'mystery of separation' which grounds sovereignty's secret, the means through which the law maintains itself as an inscrutable force, what Agamben calls the condition of law's 'imperfect' Nihilism (1999, p. 171).[4] Throughout his work, Agamben plays with the etymological tie between the words *secret* and *separate* in their verbal, adjectival and nominal forms to provide the structural foundation for his juridical critique. The law in a sense may depend on secrets: dating back to antiquity, the law has used strategies of separation on the one hand and indivisibility on the other to govern populations: the principles of *divide et impera* in the first case and *dignitas non est partibilis* in the second (Coke 1671, pp. 35–36). The term 'secret', (the Italian *segreto*), what is kept from knowledge or observation, hidden, or concealed, derives from the past participle of the Latin *secernere*, to separate or set aside, from *se-* apart and *cernere-* to distinguish or to sift. The Indo-European root **krei*, to sieve, discriminate or distinguish, is the stem that links *secret* with *separate*.[5] The word secret is said to have originated from the process of sifting grain, whose purpose was 'to separate the edible from the nonedible, the good from the bad' (Perrot et al. 1990, p. 163). The secret then evokes at once the process of separation, the element that has been separated, and the decision on the separation. This three-part structure enables a suggestive reading of the link between secret and separate in the puzzle Agamben presents about the ontology of sovereignty. The 'secret tie' to which Agamben alludes that binds law and bare life in a zone of indistinction operates in language through its stem **krei* (and **per*, through the

---

[3] The standpoint of the 'as not' works within the law to disable it through a praxis of pure means: as Agamben describes it in *The Time that Remains*, for example, 'in the as not, the juridical-factical condition is taken up again and is transposed while remaining juridically unchanged to a zone that is neither factual nor juridical, but is subtracted from the law and remains as a place of pure praxis, of simple "use" […]' (2005b, p. 28). See also Agamben (2004a).

[4] See *The Open* (2004b, p. 92), where Agamben writes: '… the solution of the *mysterium coniunctionis* by which the human has been produced passes through an unprecedented inquiry into the practico-political mystery of separation'.

[5] Appendix 1: Indo-European Roots, *The American Heritage Dictionary*, 4th edn. (2006, p. 2034). See also Emile Benveniste's *Indo-European language and society* (1969).

secret's metonymical link with *privation* as it connects to impotentiality, the 'secret' of potentiality) to separate and divide life and make a 'decision' on it, structuring 'the relation of the exception' (1999, pp. 245, 179, 181). *Krei* is also the root for other terms that enter into syntactical relation in Agamben's concept to describe both the structure of sovereignty and the means and figures that work to disable it: among them are riddle, decision, secretary/scribe, criminal, judgment, critic, and hypocrite (to critique from 'below' or under). In taking account of this list one thinks not only of the 'riddle' of sovereignty, the Schmittian 'decision', and Kantian 'judgment', but also Agamben's exemplar troublemaker, the scrivener Bartleby, who, in the moment he does not write, displays what Agamben calls 'perfect' potentiality (through 'privation') (1999, p. 247).

In addition to *krei* and *per*, another Indo-European theme works to build Agamben's architecture of the secret, one that Agamben remarks upon explicitly: *se* (*swe*). The word *secret* (along with the English *secern*: to separate, distinguish, or secrete), while rooted in *krei* is also a derivative of *se*, a stem pertaining to division and the focus of Agamben's discussion in *Potentialities* of Hegel's 'Absolute' and Heidegger's '*Ereignis*'. For Agamben, *se*, which he readily admits, 'is not something simple', is the Absolute at the centre of Western metaphysics, 'the fundamental philosophical problem itself' (1999, pp. 117, 116). The 'secret' of Being's own '"proper" identity', *se*, a reflexive pronoun, is both 'a departure from the self and a return to the self', an uncanny border where what is 'most proper and habitual to man' is that 'to be himself he must necessarily divide himself'; for Hegel, this constitutes the problem of dwelling in division (1999, pp. 135, 118). Agamben ultimately tries to think the unworking of the negative ground of division and unsayability in language implicit in Hegel and Heidegger, a topic he explores in different terms in *Language and Death* and again in *Potentialities*, where he argues that philosophy must 'absolve the proper of division', in which *se*, as social praxis, would in the end become 'transparent to itself', loosened or freed up and led back to itself (2006, pp. 93–97, 1999, pp. 137, 116). *Se* is also the derivative for 'idiot', a term Hannah Arendt uses to describe the rise of abstracted life in modern politics in the division between *zoē* and *bios* on which Agamben's work builds. Following classical political theory, for Arendt, the 'idiot', or *idion*, Greek for 'one's own', is the private life confined to the sphere of 'idiocy', 'deprived life' cast outside politics. For Arendt, this life is abstracted from the Rights of Man and materialised by concentration camp inmates and stateless people who find that in 'the abstract nakedness of being human' they are vulnerable to the most severe danger (1968, pp. 299–300). Arendt's theory of abstracted life (along with the debate between Schmitt and Benjamin) is instrumental to Agamben in forming a theory of exceptionality grounded in a sphere of 'naked life', whose entry into the polis Agamben describes as the decisive event of political modernity, held in contradistinction to Arendt's reading of this sphere's apolitical, anthropological sacrality.[6] Agamben returns to the concept of 'idiot' in *The Time that Remains* through Benjamin's reading of Dostoevsky's Prince Mishkin who, as one who is forgotten (the 'secret' to whom thought bears responsibility), delivers an

---

[6] For a more thorough discussion of Arendt's politics in light of Agamben's, see Rancière (2004, pp. 298–300).

exigency to remain unforgettable. The interlocking terms secret, separate and se, then—along with other words that derive from the *krei, *se and *per themes—enter into a hidden play as they form a nexus in Agamben's work, producing something like an intricately tied Gordian knot that grounds a central concept in Agamben's philosophy, the very enigma on which theory must reflect—and the knot it must cut (later figured as a 'division of division', or messianic caesura)—to drive a wedge through the biopolitical machine (2005a, p. 63).[7] This etymologically dense concept of the secret in its nexus of terms routes through Agamben's serpentine theorisation of the divisions, separations and relations that found the fabric of Western thought and rule in verbal, nominal and adverbial forms to describe the structure of the state of exception and the making of bare life.

Secret as Verb and Noun

Sovereignty's mystery of separation in Agamben's account works foundationally as a verb, as an *act* of separation: Agamben's sense that 'to be himself', man 'must necessarily divide himself' (1999, p. 118). As Agamben writes in *The Open*, for Kojève's reading of Hegel, man enters history only through 'a field of dialectical tensions always already cut by internal caesurae that every time separate—at least virtually—"anthropophorous" animality and the humanity which takes bodily form in it' (p. 12). The central divide that separates animal and human life, Agamben continues, 'passes first of all as a mobile border within living man, and without this intimate caesura the very decision of what is human and what is not would probably not be possible' (p. 15). Predicated on Arendt's opposition of 'two lives', the caesura, or 'mobile border', marks the division between *zoē* and *bios*, biological life and politically qualified life (Rancière 2004, p. 299; Agamben 2004b, pp. 15–16). The ontological dwelling in division of *se* links to the caesura that divides *zoē* from *bios* and allows for the separation of bare life from its form; for political power 'as we know it', Agamben writes, 'always founds itself—in the last instance—on the separation of a sphere of naked life from the context of the forms of life' (2000, p. 4). The form-of-life, or 'absolutely immanent' life of the community to come, whose coherence is signified by its hyphens, as Agamben theorises it, would make this division obsolete: 'life that can never be separated from its form' is a life of 'thought' that remains 'without relation', but not without division: it is not one that has done away with separation, but through 'negligence' (from the *ne root, whose other derivatives are no, nothing, and nihilism), has put separation to a new use (1999, p. 220, 2000, p. 3, 1998, p. 60).[8] The foundational separation between

[7] See, for example, the language in *Homo Sacer*, 'the dissolution of the ban, like the cutting of the Gordian knot, resembles less the solution of a logical or mathematical problem than the solution of an enigma' (1998, p. 48). The messianic caesura, the division of division, is prefigured in 'The Idea of Caesura' in *Idea of Prose* (1995, p. 44) and followed up in the 'strategic' division Agamben identifies in Paul's letters in *The Time that Remains* (2005b, pp. 46–47).

[8] As Agamben uses the term in *Profanations*, to 'profane' means to put separation to a new use: 'to open the possibility of a special form of negligence, which ignores separation or, rather, puts it to a particular use' (2007, p. 75; see also p. 87).

vegetative or animal life and human life, voice and language is also the condition of possibility for the 'decision' over life, linked to *krei* as I have pointed out, where, as Foucault has shown, life is administered and 'seized' as politics are transformed into biopolitics, and in Agamben's account, the inclusion of life in law structures all relations (2004b, p. 15, 1998, p. 26). The presupposition of this political separation and decision is language, the condition 'of being in language, of being named' to which a thing is subjected. Language's sovereign claim separates the linguistic from the non-linguistic, meaningful from non-meaningful speech, and in declaring there is 'nothing outside language', inscribes being into law in a 'permanent' state of exception (1998, p. 21).

In the foundational act of separation, then, what is separated is not detached from the regulative character of law; rather, sovereign (Being) and bare life (being) enter into *relation*: the Schmittian sovereign *decision* over life becomes the rule, a murky and violent zone of relationality. Agamben writes that there are politics because 'man is the living being who, in language, separates and opposes himself to his own bare life and, at the same time, maintains himself in relation to that bare life in an inclusive exclusion' (1998, p. 8). Agamben calls the condition where Being and being enter into relation the 'relation of exception' (1998, p. 18). The 'exception' is 'the condition of being included through an exclusion, of being in relation to something from which one is excluded or which one cannot fully assume' (1998, pp. 26–27). As an exception both inside and outside the juridical order, life is captured in a sphere in relation to, but no longer distinguishable from law: the separation of bare life is the condition of possibility for life's total enmeshment by politics, where law 'blurs at all points with life' (2005a, p. 63). The relation of the exception is linked, for Agamben, to Jean-Luc Nancy's theory of 'abandonment', in which the rule of law suspends itself and applies to abandoned being in no longer applying, through its withdrawal (Nancy 1993, pp. 36–47, 44). To be abandoned for Nancy is to be violently exposed in a conceptual and spatial limbo to the law's 'limitless severity', 'on the threshold in which life and law, inside and outside, become indistinguishable' (Nancy 1993, p. 44; Agamben 1998, p. 28). As Agamben conceives it, the sovereign structure of the ban captures life in law in a manner that corresponds to the structure of potentiality, 'which maintains itself in relation to actuality precisely through its ability *not to be*' (1998, p. 46, emphasis added). Drawing from Aristotle's theory of *dynamis* (potentiality) as *dynamis mē energein* (the potentiality not to pass into actuality), potentiality is itself a 'nothing' grounded in impotentiality, the potential *not to do* something, not to pass into actuality by holding something in reserve, in the manner of the kithara player who 'is a kithara player because he can also not play the kithara' (1999, p. 245). Again in dialogue with Aristotle, Agamben describes impotentiality in terms of *privation*, 'to deprive', from the Indo-European stem *per* linked to *private*, which was classically a synonym for secret (1998, p. 28). For the Romans, to say that something was 'secret' or 'private' was to say that it was lost or 'deprived'—that it was being hoarded away, kept away from public and common use (Wallace-Hadrill 1994). From the Aristotelian ontology of privation in the *Metaphysics*, Agamben points out that Aristotle draws an important distinction between privation and absence: privation 'still implies a reference to the being or form deprived which manifests

itself through its lack' (2005b, p. 102). Under Agamben's reading of Russian linguist Trubetzkoy's concept of the 'privative opposition', when thinking two terms in relation, one is characterised by 'the existence of a mark' and 'the other by the lack thereof', where the unmarked term is not an absence to the marked term's presence, but rather, its 'nonpresence', which is equivalent in some manner to 'a zero-degree presence (meaning that presence is *lacking* in its absence)' (2005b, p. 101). Agamben's description of impotentiality, or privation, as the 'cardinal secret' of law's potentiality, is structured like a 'zero-degree presence'; the 'secret' is not an absence of potentiality, but a presence 'lacking in its absence', a non-presence that is the condition of possibility for potentiality (1999, p. 245, 2005b, p. 101). Being realises its sovereignty as absolute actuality through the 'secret' of privation, by depriving or banning its own bare life, while maintaining itself in relation to this bare life as the 'cipher' of sovereignty.

The life that is banned can no longer be divided; when the logic of separation meets the logic of the exception, abandoned being is produced as a remnant, or 'secret'; at this point in the concept, the secret reaches its nominal form. For Foucault at the end of *The History of Sexuality*, the analytic point at which Agamben begins *Homo Sacer* to 'finish' or rewrite Foucault's project with an onto-political theory of sovereignty, this limit case is sex: what Foucault repeatedly calls the 'secret' of biopolitics, 'discovered everywhere' as power seizes, generates and produces it at the moment at which life enters history (1990, pp. 153–156, 159). In *Remnants of Auschwitz*, Agamben describes bare life—the *Muselmann*, the comatose and the neomort attached to life support systems—as the 'secret cipher' or '*arcanum*' of biopower (2002, p. 156). In Agamben's account, the Nazis sought to produce their final secret in the *Muselmann*, 'a kind of absolute biopolitical substance' that survives while being 'separated from every possibility of testimony', who were invisible because reduced as such, they would become an 'empty space of people … bare, unassignable and unwitnessable life' (2002, pp. 156–157). Likewise, the power that accords to this form of life, the *arcanum imperii* (the state 'secrecy') that separates and abandons life as a 'secret' in a separate sphere through the structure of the law's empty potentiality, also operates as a noun under Agamben's grammar: the Nazis, Agamben writes, called a participant in the Final Solution a *Geheimnistrager*, 'a keeper of secrets' (2002, p. 156). As the mechanism of separation reaches its remnant, the form of law, also operating as a secret, is separated from bare life and yet held in intimate relation to it: the relation of the ban distinguishes, yet keeps united the two terms as twin secrets under Agamben's concept, held together in a zone of indistinction.

Secret as Adjective

At this end stage, the structure that has worked to separate life and implicate it fully in law shifts from verb (an act of separation) to noun (bare life and form of law as twin secrets) to adjective: the bare life that has been separated from its form and made unavailable for free use is arrested and diverted into an 'autonomous', *separate* sphere where the 'exception' (under its **kap* theme, linked to another

derivative), is 'grasped'. These spheres are exceptional spaces 'that power has seized' where life has been evacuated and reduced to its barest substance at which it can no longer be divided (2007, p. 77). Premised on the separations in language and the logic of relationality, it is in these concentrated spatialisations in the world of things (that are 'unlocatable', and as such categorical) that life has lost its gestures and fetishism reigns, where the 'word—that is, the nonlatency and the revelation of something—might become separate from what it reveals and might end up acquiring an autonomous consistency' (2000, p. 83). While for Agamben the concentration camp as *nomos* of modernity is the exemplary sphere of sovereignty, questions of sovereignty are inextricable from questions of political economy: capitalism produces ready examples of sovereignty's separation of an autonomous sphere where language and life enter a state of mortification as merely instrumental, a living death in the society of the spectacle. Drawing from the work of Guy Debord, Benjamin and Marx on commodity fetishism, Agamben argues that life in the spectacular sphere has lost its gestures along with the possibility of communication. Capitalism (as 'religion') uses separation and abandonment as the condition of possibility for use's conversion to exchange, as objects are 'given over to consumption' and 'spectacular exhibition' then abounding (as Marx puts it) in 'metaphysical subtleties and theological niceties'; Agamben's interest in restoring the concept of 'usage' as a profane practice from *within* the realm of exchange value in language and law speaks to his interest in this sphere's *unworking* through a praxis of pure means (Agamben 2007, p. 82; Marx 1990, p. 163; Agamben 2004a, p. 118). Such separate/separated spheres seized by power also include sites of consecration—such as the museum and the domain of sacrality—that cathect aura into objects of commemoration and worship as fetishes, sealed off from free use in sovereignty's 'absolutely unprofanable' zone, unamenable to play (2007, p. 82).

Such an autonomous fetishised sphere is exemplified for Marx, Agamben speculates, in 'the first great triumph of the commodity', the 1851 Crystal Palace in London, in a dialectic between transparency and phantasmagoria (2000, p. 75). Agamben's sense of the 'mystery of separation' that produces capital's separate sphere and in the nineteenth and twentieth centuries gives rise to the fetishism of the commodity, an explicit site at which 'separate' engages with its co-derivative 'secret' under the *krei* theme. Agamben's Hegelian reading of *Capital* places the 'secret' of the commodity at the centre of the text: Agamben argues that without a theory of the mystery of the commodity—'the immaterial center' both sensuous and suprasensible (i.e., social), where products of labour split into use value and exchange value—Marx's critical investigations in *Capital* 'would not have been possible' (2000, p. 76). Agamben's reading of the fetishism of the commodity works as a metaphor for the secrecy of sovereignty (specifically in the language of 'mystery', 'enigma', and 'decipher', linked to 'cipher'), but it is also a metaphor *for metaphor itself* as a figure in language. Agamben's suggestion in an early text, *Stanzas*, that 'the metaphor becomes in the realm of language what the fetish is in the realm of things' can help us think the following analogy: if the secret is a metaphor for the *mysterium coniunctionis* of sovereignty (law's mystery of separation that separates a sphere of naked life from the form of life), and the

commodity is a fetishised abstraction of exchange value separated from use value, metaphor and fetish are linked as the remnants of the principle of division. As Agamben suggests, they point toward the '"barrier resistant to signification" in which is guarded the original enigma of every signifying act' (1993b, p. 149). For Marx, of course, the commodity bears the 'enigmatic character' of the products of labour as soon as it assumes a social form. Labour power actualised and transformed into the commodity takes on the form of a 'social hieroglyphic' that men try to decipher, as the '*secret* of their own social product (Marx 1990, pp. 164, 167 emphasis added). In *Means without End*, Agamben writes: 'The disclosure of the commodity's "secret" was the key that revealed capital's enchanted realm to our thought—a secret that capital always tried to hide by exposing it in full view' (2000, p. 75). Sovereignty also hides bare life, like the commodity, in plain view: in Timisoara, as Agamben chillingly recounts in *Means without End*, the secret police conspired to bring Auschwitz and the age of spectacle together by broadcasting on live television the secret of bare life, tortured and exhumed on camera to simulate genocide (and one thinks here of the now infamous photographs taken by the US military of victims undergoing torture at Abu Ghraib) (2000, p. 81). *Capital*'s other 'secret' is that of primitive accumulation, 'the historical process of divorcing the producer from the means of production' and the foundational presupposition of capitalistic accumulation that brought about class struggle; the enigma of this process is perhaps exemplified for Agamben in the figure of the gypsy or the refugee (Marx 1990, p. 875). For Antonio Negri, primitive accumulation in capitalist economy—as the foundational taking possession of land, the division between 'the worker and the implements of work'—is the 'equivalent' of the political exception in Agamben's work (Negri 2008, p. 98). Between the theory of the commodity and of primitive accumulation, Marx's concept of the secret (like Agamben's concept of the secret in the *Homo Sacer* series and beyond) is foundationally premised on the principles of separation and abandonment, which for Marx takes the form of commodity fetishism. The difference is that for Agamben, of course, separation constitutes a biopolitical chasm as sovereignty's ontological presupposition: while the state of exception (the end stage of the mechanism of separation and the *cipher* of the secret) adopts different guises under shifting modes of production, for Agamben its conditions are stitched into the fabric of Western metaphysics as a fundamental biopolitical fracture. While not contingent on the accumulations of capital, they are instantiated (in a zone of indistinction between actuality and potentiality) in exceptional states such as the state of siege in Revolutionary France and the society of the spectacle, where life has lost its gestures and where such 'indecipherable' life marks the secret of sovereignty, as the commodity form allegorises the secret of capital.

The exceptional sphere that has been separated from the rule of law is not an isolated space of modernity, but a categorical *nomos*, an 'onto-theo-logical strategy aimed at capturing pure being in the meshes of the logos' that encroaches on the entire political order (2005a, p. 60). As the end stage of the entanglements that found the 'mystery of separation', the state of exception is described as sovereignty's 'mystical element' or *fictio*, 'a force of law without law' in which no articulation between outside and inside is possible and in which law seeks to

incorporate lawlessness in a Mobius-strip like topology (2005a, p. 39). 'Separation', linked through its root to 'discernment', requires a decision: for Carl Schmitt's version of sovereignty on which Agamben draws, the sovereign is he who decides on the exception (Schmitt 1985, p. 5). But, Agamben asks, following Benjamin in the debate he stages with Schmitt, 'what then happens when exception and rule become undecidable?' The state of exception becomes permanent when the distinction between exception and rule can no longer be maintained, where the rule withdraws from the exception, suspending itself as pure violence that presents 'an enunciation without any real reference' (2005a, p. 40). Sovereign power and the exercise of that power are divided where the distinction between law's norm and its application become undecidable, where Kantian judgment's aporia (judgment being another term under the *krei root) comes to the fore between particular and general (2005a, p. 39). As law becomes progressively enveloped by its exception, the exception becomes the rule, the Schmittian machine of sovereignty can no longer function, and politics enters a catastrophic zone of indeterminacy between anomie (the violent state of nature) and law, where it 'becomes impossible to distinguish between observance and transgression of the law' (2005b, p. 105). The condition for the rule's suspension is the suspension of life itself, of 'being' separated from its form and 'seized': law itself is nothing but what it tries to capture; it is a 'dead letter' without the life that nourishes it as exception (1998, p. 27).

The form of law in the state of exception, like a vampire feeding off the living, maintains its empty nihilism as pure potentiality through privation, through the separation and abandonment of bare life; the knot of entanglements tightens sovereignty's grip as this form of law is held in relation to the form of life that dwells at its doorstep. The labyrinth of separations and privations that instantiate the concept of the secret within the *krei/*sel/*per theme becomes even more dense as these themes enter into syntactical array with the *ne theme, whose derivatives include not, nothing and nihilism. Here we find that the very law that separates, suspends (or 'deprives') and 'hides' life in plain sight as a 'secret' in a separate sphere is *itself* 'secret'; a concealed, 'inscrutable', empty form of law that is 'in force without signifying'; a zone of indistinction in the pure relation between law and violence (1998, p. 52). Sovereignty is paradoxical in that this condition of the law's pure actuality (realised through the suspension of impotentiality) 'presupposes nothing other than its own potentiality', thus creating a limit at which pure potentiality and actuality are indistinguishable, where the sovereign 'is precisely this zone of indistinction' (1998, p. 47). Here, in the zone of indistinction between potentiality and actuality, law no longer contains a fracture; only a pure relation. Abstracted of every content and utterly lacking reference, and characterised by its 'unformulability', it is all the more pervasive in its force: it becomes an 'imperfect' Nihilism that 'would let the Nothing subsist indefinitely in the form of a being in force without significance' (1998, p. 53, 2005b, p. 106). To understand this structure, Agamben turns to Kantian law, the categorical relation to which life is held in 'respect' or 'reverential attention': as Jean-Luc Nancy puts it, the condition in which being is abandoned to 'an order', a 'compulsion to appear absolutely under the law'; a 'categorical judgment' in the inherence of a predicate which dictates an order to man, and says 'this is that' (1998, p. 52; Nancy 1993, pp. 44, 46). The

freedom that can be deduced from the law is, for Kant, an 'inscrutable faculty'; as he continues in *Religion within the Boundaries of Mere Reason*, this freedom is 'inscrutable to us … since it is not given to us in cognition', leaving just the empty force of law in its place; that is, as Agamben quotes Kant, 'once the content of the free will is eliminated, the law is the only thing left in relation to the formal element of the free will' (Kant 2000, p. 376, fn. 34; Agamben 1998, p. 52). The *inscrutable* functions as a key term in Agamben's concept, both as a metonym for the secret and as it links to the theme **krei*. The 'inscrutable' by definition 'cannot be searched into or found out by searching', for it is 'impenetrable or unfathomable to investigation', 'quite unintelligible', and 'entirely mysterious' (OED). In 'Analytic of the Sublime', Kant uses a term in German, *die Unerforschlichkeit*, translated by Paul Guyer and others as 'inscrutability', to describe the idea of freedom under moral law, that which is inscrutable to the cognitive faculty (p. 156). In German, *forschen* links to the practice of research: one could literally translate inscrutability as 'unresearchability'.[9] Yet the non-self identity of the concept begets its own unworking through a crack in its hull. Embedded in the 'inscrutable' is the etymological tie to 'research', which recalls the primacy Kant places on the researcher, along with the emphasis Agamben places on the critic in the stem **krei*, where '[T]o have a faculty' means '*to have* a privation' (1999, p. 179). Lodged in the patient unworking brought about by the practice of 'criticism', the enigma of thought turns back on itself to think itself, its own 'unresearchability' (1999, p. 251).

Secret as Troublemaker

The 'secret' of sovereignty then, in the form of inscrutable law, contains its own 'critic', working from inside the concept to *disable* it. Given Agamben's Hegelian foundations, embedded structurally in Agamben's architecture of the secret is that which moves against it, its own dialectical reversibility: under the **krei* theme, the 'secret' of sovereignty that presents a 'riddle' to thought is met by the 'critic', but also the 'hypocrite' and the 'scribe', figures, that through the derivatives 'not', 'nothing' and 'nihilism' under the **ne* theme, suspend and render inoperative the very inscrutable form of law that *also* operates within these themes under a metaphysics of sovereignty. Agamben's positing of 'secret accomplices' such as 'security and terror' are indices of the secret's very non-coincidence with itself; the fracture that is in 'secret complicity' with the concept and that is the condition of possibility for its own immanent unworking. Within the structures of sovereignty 'secretly working' on the production of emergencies, there is another kind of secret working: that of the 'troublemaker'; the one, Agamben suggests in *Homo Sacer*, 'who tries to force sovereign power to translate itself into actuality' (1998, p. 47). Agamben's exemplar troublemaker is Bartleby, whom the narrator of Melville's story fittingly calls 'the inscrutable scrivener', an impenetrable figure who counters the inscrutability of law through the elisions of reference in language; when summoned, for example, Bartleby mildly asks, 'What is wanted?' omitting any

---

[9] I am grateful to Gerhard Richter for pointing this out.

reference to himself as a 'subject' or inhabitant of a socio-juridical identity in the vocation to which he has been called (Melville 2007, pp. 27, 12). Bartleby, who famously prefers 'not to', is a figure of contingency who possesses 'perfect potentiality' in 'the moment in which he does not write', meeting the imperfect potentiality or Nothing of the law—a quasi-divine *hyper*-Being—not only by means of its immanent critique, but by critiquing it as a *hypo*critic (again tied to the **krei* theme): a Nothing from 'below'.[10] In preferring not to perform the duties given to him, through the work of privation or impotentiality (what Agamben calls 'pure' potentiality), Bartleby enacts a 'privative opposition': a zero-degree presence between occurrence and non-occurrence, by expressing not an *absence* but a *non-presence* of language's content. In so doing he enables the passivity of thought itself, turning thought back to the potentiality to not-think, to enact 'the thought of thought' (1993a, p. 37). Agamben points out that Aristotle calls this impotent unworking that gives thought to its own intelligibility 'agent intellect'. Bartleby, secretly working from what Melville's narrator repeatedly calls his 'hermitage', or private dwelling to force the law to actuality, resembles a secret 'agent intellect' in his private, obstinate praxis to hold the law in suspension, through what Deleuze calls a formula of 'secret agrammaticality' in language (1999, p. 255). Hermited away behind a folding screen, Bartleby frustrates his employer with a series of 'mulish vagaries' in which he retracts successively from the law, coiling ever inward: he 'prefers not to' proof or read copy, to let the narrator into his own office, to disclose any personal details or information about himself, to go for a walk or leave his space, to write, to copy, or to quit the chamber once the narrator has decided to move; all part of a patient strategy to force the law/yer to terminate him, to translate the empty potentiality of law into actuality. Bartleby's renunciation of copying interrupts the eternal replications of the law that are grounded on the abandonment of impotentiality; by forcing law's potentiality to actuality where nothing is left impotential, Bartleby becomes the life over which the 'decision' is forced within the **krei* root, taken as a 'criminal' to jail where he will die. But for Agamben this is not a tragic narrative: in jamming the law by ceasing to copy it, Bartleby has 'disremembered' the law in preferring not to replicate it. Through the patient work of privation, Bartleby has forced the law to actuality, taking away what is potential in the law and in so doing, subjecting it to the very logic of abandonment that structures the exception and captures bare life. Following Agamben's logic in *The Idea of Prose*, in the limbo space in which Bartleby dwells, it is not God/the 'law' who has abandoned and forgotten him, but *he* who has forgotten God/the law; in a sense he has abandoned God (p. 78). Agamben wants to recuperate Bartleby's death not as a tragic one, but as one who is 'saved in being irredeemable', in a limbo space that carves a dwelling beyond necessity and contingency, a domain of the 'irreparable' or *profane* (1999, p. 271). This limbo nature, Agamben writes, is the 'secret' of Bartleby, 'the ineradicable root of that "I would prefer not to" on which, along with the divine, all human reason shatters' (1995, p. 78).

---

[10] See discussion of Neoplatonism's two 'Nothings', one from above and one from below, in *Potentialities* (1999, p. 252).

The secret of the metaphysics of sovereignty implicated in the divine and human reason is here met and suspended by Bartleby's own secret gesture as limbo creature between heaven and earth; Bartleby's 'secret' is prefigured as a 'profanation' or 'disremembrance' of God in *Idea of Prose*, published in Italian twenty years before *Profanations*, which explicitly formulates the logic of profanation. For Agamben, to profane (the opposite of 'to consecrate') is to return something that was once 'sacred', or that has been arrested and captured in a separate sphere by the mechanisms of sovereignty, to the realm of free use; he uses a series of figures (contagion, negligence, play, distraction, study) to explore the unmooring of the possibility of use from these spheres that have worked to become 'unprofanable' (2007, pp. 73–92). Agamben argues in previous texts that the logic of abandonment must be pushed to an extreme in order to free it: 'only where the experience of abandonment is freed from every idea of law and destiny (including the Kantian form of law and law's being in force without significance) is abandonment truly experienced as such' (1998, p. 60).

Like Bartleby's disremembrance of God from a deeply embedded sphere of law in his hermitage in the narrator's legal chambers, in Agamben's essay 'Genius' in *Profanations*, life can only bid Genius adieu, in the iconic image of Prospero telling Ariel to go free, *after* one has abandoned oneself to him in the 'secret relationship' one maintains with him: *indulgere genio* (2007, p. 10). In time, Agamben is quick to point out, we must separate from him; it is only when we 'begin to forget about Genius'—when we hear the distant notes of his departure along with the last vestiges of Kantian law—that exhausted and suspended messianic time is fulfilled (p. 18). This logic of 'seizure' or 'indulgence' and then 'separation', a reversal of the abandonment enacted under sovereign law, applies not only to the secret relationship one maintains with Genius, but to the relationship to the figure of the secret in its more mystical connotations, as 'magic'. In the essay 'Magic and Happiness', Agamben writes that the secret (in my reading a metaphor for the secret of sovereignty) is guarded by an evil magus who holds the secret name as 'the seal of his power of life and death over the creature that bears it' (p. 22). Here, life as bare life is 'seized' by the secret name to which, as if under Kantian law, 'it can not fail to respond'. But from within this grasp there is another tradition, in which the secret name is not the cipher of life's subservience to power, but what 'sanctions its liberation from language': the gesture that allows a 'separation' or a 'breaking free' from the name and that 'restores the creature to the unexpressed' (p. 22). This may lead us closer to what Agamben means when he writes that a society in which profanation is practiced is not one without separation, but one that has learned to put separation to a *new use*, in pushing the logic of abandonment to the extreme (p. 87). Freed of all traces of metaphysical presupposition, the 'secret' that meets and dialectically reverses sovereignty's secret is revealed as nothing more than *gesture*, the sphere of pure means and the end of secrets, 'a wholly profane mystery in which human beings, liberating themselves from all sacredness, communicate to each other their lack of secrets as their most proper gesture' (p. 85). For politics, Agamben writes, 'is the sphere of the full, absolute gesturality of human beings, and it has no name other than its Greek pseudonym, which is barely uttered here: philosophy' (p. 85). Under the name of philosophy, the labour of criticism is an

immanent dynamic that forms a mediation with the secret and separate to show the point of reversibility at the fault line of the concept. It allows us to contemplate politics in relation to language in the political exigencies of our moment as we are addressed by the secret's injunction to the immemorial, from the office of the Dead Letter, and beyond.

References

Agamben, Giorgio. 1993a. *The coming community*. Minneapolis: University of Minnesota Press.
Agamben, Giorgio. 1993b. *Stanzas*. Minneapolis: University of Minnesota Press.
Agamben, Giorgio. 1995. *Idea of prose*. Albany, NY: SUNY Press.
Agamben, Giorgio. 1998. *Homo Sacer: Sovereign power and bare life*. Stanford: Stanford University Press.
Agamben, Giorgio. 1999. *Potentialities*. Stanford: Stanford University Press.
Agamben, Giorgio. 2000. *Means without end*. Minneapolis: University of Minnesota Press.
Agamben, Giorgio. 2001. 'Heimliche Komplizen. Über Sicherheit und Terror'. *Frankfurter Allgemeine Zeitung*, Sept 20 (trans: Sascha Andreas Gerhards).
Agamben, Giorgio. 2002. *Remnants of Auschwitz: The witness and the archive*. New York: Zone Books.
Agamben, Giorgio. 2004a. 'I am sure that you are more pessimistic than I am …' An interview with Giorgio Agamben. *Rethinking Marxism* 16(2): 115–124.
Agamben, Giorgio. 2004b. *The open*. Stanford: Stanford University Press.
Agamben, Giorgio. 2005a. *State of exception*. Chicago and London: University of Chicago Press.
Agamben, Giorgio. 2005b. *The time that remains*. Stanford: Stanford University Press.
Agamben, Giorgio. 2006. *Language and death: The place of negativity*. Minneapolis: University of Minnesota Press.
Agamben, Giorgio. 2007. *Profanations*. New York: Zone Books.
Agamben, Giorgio. 2008a. Qu'est-ce qu'un paradigme? *Agamben, Signatura rerum: Sur la methode*. Paris: Vrin.
Agamben, Giorgio. 2008b. Térrorisme ou tragicomédie? *Libération*, Nov 18. http://www.liberation.fr/societe/0101267186-terrorisme-ou-tragi-comedie.
Arendt, Hannah. 1968. *The origins of totalitarianism*. New York and London: Harcourt.
Benveniste, Emile. 1969. *Indo-European language and society*. London: Faber & Faber.
Blanchot, Maurice. 1995. *The writing of the disaster*. Lincoln: University of Nebraska Press.
Clemens, Justin, Nicholas Heron, and Alex Murray. ed. 2008. The enigma of Giorgio Agamben. In *The work of Giorgio Agamben: Law, literature, life*, 1–12. Edinburgh: Edinburgh University Press.
Coke, Edward. 1671. *Cap. 1. The fourth part of the institutes of the laws of England*. London: John Streater et al.
Comité Invisible. 2007. *L'insurrection qui vient*. Paris: La Fabrique. English translation at http://tarnac9.wordpress.com/texts/the-coming-insurrection/.
Danner, Mark. 2009. US torture: Voices from the black sites. *The New York Review of Books* 56(6): 69–77.

Dubreuil, Laurent. 2006. Leaving politics: *bios*, *zoē*, life. *Diacritics* 88: 83–98.

Foucault, Michel. 1990. *The history of sexuality*, vol. 1. New York: Vintage.

Kant, Immanuel. 2000. *Critique of the power of judgment*. Cambridge: Cambridge University Press.

LaCapra, Dominick. 2007. Approaching limit events: Siting Agamben. In *Giorgio Agamben: Sovereignty and life*, ed. Matthew Calarco, and Steven DeCaroli, 126–162. Stanford: Stanford University Press.

Marx, Karl. 1990. *Capital*, vol. 1. London and New York: Penguin.

Melville, Herman. 2007. *Bartleby the scrivener*. London: Herperus Press.

Nancy, Jean-Luc. 1993. Abandoned being. *The birth to presence*, 36–47. Stanford, CA: Stanford University Press.

Negri, Antonio. 2008. Sovereignty: That divine ministry of the affairs of earthly life. *JCRT* 9(1): 96–100.

Perrot, Michelle, Philippe Ariès, and Georges Duby. 1990. *A history of private life: From the fires of revolution to the Great War*. Cambridge: Harvard University Press.

Rancière, Jacques. 2004. Who is the subject of the Rights of Man? *South Atlantic Quarterly* 103(2/3): 297–310.

Schmitt, Carl. 1985. *Political theology*. Cambridge, MA: MIT Press.

The American Heritage Dictionary. 2006. *Appendix 1: Indo-European roots*, 4th ed. Boston and New York: Houghton Mifflin.

Wallace-Hadrill, Andrew. 1994. *Houses and society in Pompeii and Herculaneum*. Princeton: Princeton University Press.