

**Untitled Thesis: The Failure of Language
and its Effects on Art and Justice.**

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1. Introduction

Any given word or phrase will not always, or perhaps ever, convey the same thing to two individuals. Even amongst competent users of language, various previous experiences and associations will generate variations in how terms and idioms will be understood. For this reason, no law will always be just.¹ No piece of legislation will be able to accurately and consistently establish a directive or proscription with any expectation of a homogeneous application. A just law would be one that could be applied equally to every constituent. It would also allow us finally to recognize and name justice. It is the failure of language that makes it impossible to designate justice. The same properties of language, its instabilities and slippages, its interpretability, make art possible, since without both interpretation and preservation there can be no old school, no new school and therefore no art as we know it. This thesis will explore the possibility that these conditions – the failures of language – have determined that art can only exist under conditions of injustice, the unnameability of justice.

1. On this failure of language see, Jacques Derrida, "Force of Law: The 'Mystical Foundation of Authority'," *Acts of Religion*, ed. Gil Anidjar, trans. Mary Quaintance, (New York, NY:Routledge, 2002) pp.246.

2. Language

It is civilized language, the ordinary, conventional and commonplace language that serves the purpose of communication, that comes between things and their expressibility.² Convention in language, the illusion of consensuality, is habit forming. It precludes discourse. We believe we apprehend. Where we fail to question, we allow convention to be normative. Civilized, conventional language is contaminated with signifying elements whose connotations exceed their objects and whose objects are partially or wholly anonymous, unnamed. Civilized language is always a hybrid, composed of signifying elements that identify their objects and excess signifying elements that signify nothing. But, where signifiers, signifieds and objects overlap, communication does take place. This contrast between civilized language and a language that identifies its objects is alluded to by Ludwig Wittgenstein:

“On the one hand it is clear that every sentence in our language ‘is in order as it is’. That is to say, we are not *striving after* an ideal, as if our ordinary vague sentences had not yet got a quite unexceptionable sense, and a perfect language awaited construction by us. – On the other hand it seems clear that where there is sense there must be perfect order. –

2. see Walter Benjamin, “On Language as Such and on the Language of Man,” *Reflections*, ed. Peter Demetz, trans. Edmund Jephcott, (New York, NY:Harcourt Brace Jovanovich, Inc., 1978) pp.314-332.

So there must be perfect order even in the vaguest sentence.”³

This leaves us with the question of what a pure, unhybridized language of excessive elements might be, if it were unaffected by signifying elements. These excessive elements, hypothetically separated from elements that conventionally or otherwise identify their objects, seem to be presented to us as signifiers with no objects; they are left on their own to signify nothing but themselves. Signifying themselves without excess, this otherwise excessive language appears to become itself a perfect language: a metalanguage. A circular arrangement appears with metalanguage and civilized language being diametrically opposed to each other.

Conventions in themselves are meaningless. One drives on the right side of the road, or the left as the case may be. As long as people observe the rules accidents are averted. With respect to convention in language, “infractions” are more difficult to spot. One assumes that, by and large, the rules are being observed. There is an illusion of consensuality. Wittgenstein’s private language argument and the objections that have been raised by it bring issues of conventionality and consensuality to the foreground.

In “Philosophical Investigations”, Wittgenstein’s private language argument

3. Ludwig Wittgenstein, *Philosophical Investigations*, trans. G.E.M. Anscombe (Malden, MA:Blackwell,1953) p.38e.

establishes a range of uses of language.⁴ He imagines a man making a mark on his calendar, "E", for every day on which he experiences a given sensation. Wittgenstein is suspicious of the usefulness of such a notation since it refers to a sensation which can only be identified by comparison to a memory of sensation; nothing guarantees the accuracy of the memory. A difference between the presence of a sensation and the absence of a sensation, pain for example, is contrasted with something verifiable in the material world, the difference between a broken and unbroken tooth, something that can be tested for correctness. The issue of verifiability is crucial for Wittgenstein and it distinguishes between two kinds of language.

" 'What difference could be greater?' – In the case of pain I believe that I can give myself a private exhibition of the difference. But I can give anyone an exhibition of the difference between a broken and an unbroken tooth. – But for the private exhibition you don't have to give yourself actual pain; it is enough to *imagine* it – for instance, you screw up your face a bit. And do you know that what you are giving yourself this exhibition of is pain and not, for example, a facial expression? And how do you know what you are to give yourself an exhibition of before you do it? This *private* exhibition is an illusion."⁵

4. Ibid., pp.78e-88e.

5. Ibid., p.88e.

Wittgenstein's point is that the language associated with the private exhibition is on a different footing from the language-game associated with common exhibition. For Wittgenstein, the justification for the use of a given sign is in appealing to an independent reference of some kind. And appealing to the memory of something – he uses a train schedule as an example – in order to verify the departure time of a train, is of a different order than appealing to a memory of a sensation since the train schedule can be checked for its correctness. But, the notion of verifiability with respect to public phenomena is just as suspicious as the verifiability of private sensations. A.J. Ayer recognizes the difficulties in assigning meaning to any sign but wonders how it is any different to assign meaning to a sign that represents something public as compared to assigning meaning to a sign that represents something private.⁶

Ultimately, one is relying on one's senses in recognizing, for example, the numerals on a schedule that show when a train is to leave just as one relies on one's senses in recognizing pain. Ayer puts both private and common language on the same uncertain footing, suggesting that a private language, in Wittgenstein's sense, is just as much a language as a common or, public language. The methods by which we test the justification for understanding of a given term in both cases rely on the testimony of one's senses. Ayer

6. see A.J. Ayer, "Can There Be A Private Language?," *Wittgenstein: The Philosophical Investigations*, ed. Pitcher, George, (Notre Dame, Indiana:University of Notre Dame Press,1968)., pp.251-266.

argues furthermore that the results of any such test, in order to be conclusive would have to be put to a further test and so on *ad infinitum*⁷. It is the failure of language that there can be no ultimate consensus, that consensus is illusory and we are compelled to rely on convention for public language as we are compelled to rely on a memory of sensation for private language. Curiously, neither Wittgenstein nor Ayer identifies the difference between sensation and the memory of sensation. Every justification for the assignment of meaning relies not just on sensation but, more so on its memory. A 'language' of sensation would be unmediated.

It would be possible to recognize elements of language and of metalanguage in Georges Bataille's "Language of Flowers"⁸. Bataille looks at the use of a flower as a symbol for love and conceives a language of appearance. Doubtless, Bataille could have focussed on a language of function instead. The natural functions of the various parts of flowers, pistil, stamens are comparable to human sexual function but, for Bataille, such "symbolic" interpretations are due to distinct properties and thus are purely subjective. Regardless, the distinct properties of a flower's reproductive system could easily be seen to have a one-to-one relationship to the human reproductive

7. Ibid., p.257, note 9.

8. Georges Bataille, "The Language of Flowers," *Visions of Excess: Selected Writings, 1927-1939*, ed. Allan Stoekl, (Minneapolis, MN: University of Minnesota Press, 1985) pp.10-14.

system. But for Bataille, *appearance* rather, has a more "objective value". That a flower signifies the love of a man for a woman is indicated by the transfer of desire from pistil and stamens to the corolla, just as human desire is transferred from the sexual organ to the person that has that organ. Whether one accepts this displacement or not, the corolla of a flower will have connotations well in excess of its intended object here of a woman's person in spite of the conventional understanding of the symbolic relation between a flower and love. Bataille's arbitrariness is an apt metaphor for language. Discrepancies between signifier, signified and object here resemble closely those very discrepancies in civilized language. The appearance of a flower can represent many things but, Bataille's identification of sexual function in flowers and in humans, directly comparable, can be seen to resemble a metalanguage. Ultimately, language and metalanguage will only be distinguishable relatively. Elements of both language and of metalanguage are arranged between complete identity of signifier, signified and object and complete disidentity. Signifying elements all the way at one pole or the other will constitute metalanguage.

A metalanguage that closely approximates an extreme would be Benjamin's "language of things"⁹. Benjamin distinguishes between the "bourgeois" conception of language and the language of naming, which aims to give birth

9. see Walter Benjamin, "On Language as Such and on the Language of Man," *Reflections*, ed. Peter Demetz, trans. Edmund Jephcott, (New York, NY:Harcourt Brace Jovanovich, Inc., 1978) pp.314-332.

to the language of things. For Benjamin, the “bourgeois” conception of language “holds that the means of communication is the word, its object factual...”¹⁰. This is the illusion that what is merely conventional is consensual. But, what language communicates is limited to the linguistic being of things; the mental being of things is communicated only to the extent that it is linguistic. There is a residue, an excess. But, in naming, language aims to generate a language of things, a mute language in which there is no longer any discrepancy between signifiers, signifieds and their objects. This naming language in which the expression of the mental being of things is pure, with no excess in the signifier over the signified and aims to generate a language of things¹¹ approaches a pure metalanguage.

In contrast with this, Benjamin characterizes a post-fall language as a language related to the knowledge of good and evil:

“The knowledge to which the snake seduces, that of good and evil is nameless. It is vain in the deepest sense, and this very knowledge is itself the only evil known to the paradisiac state. Knowledge of good and evil abandons name, it is a knowledge from outside, the uncreated imitation of the creative word. Name steps outside itself in this

10. Ibid., p.318.

11. Ibid., p.325.

knowledge: the Fall marks the birth of the human word, in which name no longer lives intact, and which has stepped out of name language, the language of knowledge, from what we may call its own immanent magic, in order to become expressly, as it were externally, magic. The word must communicate *something* (other than itself)."¹²

The immanent magic of language, the creative possibility of the word here becomes something distant, belonging to an Adamite pre-fall (pre-Babel)¹³ language, a language of pure, unmediated knowledge, the possibility of which is revealed only through language, that is, in its use, no longer in linguistic terms. The fall from grace has civilized us, divided us from the world and rendered language and magic external to one another. If the knowledge of good and evil abandons name, then a name that relates to its referent differently than we are accustomed; there are two names: a prefall metaname which exceeds convention and the name we know, which fails, and always leaves an excess in the referent, the anonymous, beyond that which the name communicates.

Possibly the purest conception of a metalanguage is to be found in Gershom Scholem's "*On the Kabbalah and Its Symbolism*". In his chapter

12. Ibid., p.327.

13. Ibid., p.326.

"The Meaning of the Torah in Jewish Mysticism", Scholem, citing texts of Nachmanides and other 13th century Kabbalists, describes an interpretation of the *Torah* which holds that the entire text taken together is the name of God.¹⁴ This radical thesis represents an approach heterogeneous to the more traditional exegetical reading of the *Torah*.

"...this conception of the Torah as a fabric woven of names provided no contribution to concrete exegesis. It was, rather, a purely mystical principle and tended to remove the Torah from all human insight into its specific meanings, which are, after all, the sole concern of exegesis. But this did not trouble the Kabbalists. To them the fact that God expressed Himself, even if His utterance is far beyond human insight, is far more important than any specific 'meaning' that might be conveyed. So considered, the Torah is an absolute and has primacy over all human interpretations, which, however deep they may penetrate, can only approximate the absolute 'meaninglessness' of the divine revelation."¹⁵

This dual structure of name and exegesis, asymmetrical as it is, bears a strong resemblance to the asymmetrical structures of being and quality,

14. Gershom Scholem, "The Meaning of the Torah in Jewish Mysticism," *On the Kabbalah and Its Symbolism*, trans. Ralph Manheim (New York, NY:Schocken, 1965) pp.32-86.

15. *Ibid.*, p.43.

nomination and proposition. Nomination holds a special place in language since the relation between a proper name and its object has a unique capacity for identification. Though propositions may include names, they never address any more than the qualities of a given object.¹⁶ Scholem's mention of "meaning" and "meaninglessness" are relevant here since both always refer to a sign. Thousands of pages of *Talmud*, commentary and other exegeses have variously interpreted the *Torah* as historical document, directive or parable, whereas a mystical interpretation that takes all of the *Torah* for a name attributes to it an absolute relationship with its referent.

In a letter dated December 26, 1926, Gershom Scholem wrote to Franz Rosenzweig about the secularization of the Hebrew language.¹⁷ Although Scholem was a supporter of the Zionist movement, his letter is a confession that exposes his doubts about the taking of the Hebrew language, the language of scripture and prayer, for the national tongue. Hebrew language newspapers in Jerusalem were publishing lists of new Hebrew words to be added to the vocabulary.¹⁸ Only in an "expressionless linguistic world"¹⁹

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16. On the relationship between nomination and proposition see Giorgio Agamben, "Tradition of the Immemorial," *Potentialities*, ed., trans. Daniel Heller-Roazen (Stanford, California: Stanford University Press, 1999) pp.104-115.
 17. An English translation by Gil Anidjar of Scholem's original German letter appears in Jacques Derrida, "The Eyes of Language: The Abyss and the Volcano," *Acts of Religion*, ed., trans. Gil Anidjar (New York, NY:Routledge, 2002) pp.226-227.
 18. Ibid., Derrida, p.209.
 19. Ibid., Scholem, p.226

could such a secularization take place. As Scholem marks the split between the sacred and the profane with respect to language he at once demonstrates the simultaneous possibility and impossibility of that very split, remarking that “[t]he secularization of language is only a *façon de parler*”,²⁰ a manner of speaking. Two meanings here mark this im/possibility. The “secularization of language” is only an expression, its accomplishment not realized, and the “secularization of language” is only a way of using language, no real transformation (but, a way nevertheless)²¹. But for Scholem, the danger inherent in turning one’s back on the sacred, naming capacity of language is imminent as those propagating the secularization walk blindly over a silent abyss, not seeing the threat of the return of the sacred language in violence.

“If we transmit to our children the language that has been transmitted to us, if we – the generation of transition – resuscitate the language of the ancient books so that it can reveal itself anew to them, must then not the religious violence of this language one day break out against those who speak it?”²²

Scholem’s vision of language revealing itself anew seems to be at once utopian and dystopian. Only where the conventions of language are held up

20. Ibid.

21. For Derrida, “in one case, *façon de parler* names the name of secularization; in the other case it designates the secularization of language itself.” Ibid., p.203.

22. Ibid., Scholem, p.226.

for scrutiny can the capacity for language to reveal itself be interrogated but, Scholem seems to wonder what may befall those who secularize language when their oversights come to light. Mystical speculations notwithstanding, any language can be made secular if its terms are severed from their roots. If we compare secular Hebrew to sacred Hebrew we see meanings related to biblical context and etymology, meanings accumulated over centuries of liturgical repetition obliterated. Conventional civilized (secular) language overlooks deeper historical context, etymology and meanings garnered from repeated ritual use.

In Jacques Derrida's incisive analysis of Scholem's letter and its implications for Scholem's conception of language, is found the suggestion that between the sacred and the secular lies a hypothetical third language, a metalanguage, out of the experience of which one speaks of the sacred and the secular and the translation of and passage from one to the other.²³ It is this experience that allows a step on the edge of the abyss. But Derrida, in questioning his own hypothetical construct also asks,

“What if, in fact, there were no third language, no language in general, no neutral language within which were possible, in order to take place within it, the contamination of the sacred by the profane, the corruption of names (Spinoza), the opposition of the holy and the secular? And what

23. Ibid., Derrida, p.200.

if the dialectico-transcendental hypothesis were already to carry, in its very neutrality, an effect of desacralization, the very thing that the letter incriminates? What if this neutralization by recourse to the third, already to a kind of metalinguistic referee, were also a positivist naturalization of the supernatural?"²⁴

Perhaps the secular-sacred language that Derrida posits (and doesn't posit) could also be a sacred-secular language, one that recognizes its own life as his hypothesis itself does. And if this language (or hypothesis) is already contaminated by the secular that it wishes to prosecute then it is also sanctified by the sacred that illuminates it. The very failure of language to ever finally name, embraces the bringing to light of this contamination/sanctification. It is the challenge to users of language to recognize the latency in language exhibited by its own failure.

John Oswald, inventor of plunderphonics²⁵, has recently released a CD entitled "whisperfield". It is a barely audible, multilingual and metalinguistic layering of voices. Occasionally legible, hushed spoken fragments are intercut with silence, overlaid with each other and the singing of wild birds. Numerous layers obscure each other and all that is communicated is latent communicability. The result is a pure and transparent language in which the

24. Ibid.

25. www.musicweb-international.com/encyclopaedia/o/O42.HTM accessed May 2, 2005.

pitting of the expressible against the inexpressible is at once made present and disarmed. In the overlaid voices of “whisperfield” all seems to be concealed but, it’s easy to forget that revelation and concealment are always inseparable from each other²⁶.

Giorgio Agamben examines language and the word and their capacity for meaning.

“There are the Rhetoricians, who dissolve all meaning into form and make form into the sole law of literature, and the Terrorists, who refuse to bend to this law and instead pursue the opposite dream of a language that would be nothing but meaning, of a thought in whose flame the sign would be fully consumed, putting the writer face to face with the Absolute. The Terrorist is a misologist, and does not recognize in the drop of water that remains on his fingertips the sea in which he thought he had immersed himself; the Rhetorician looks to the words and appears to distrust thought.”²⁷

Perhaps both the Rhetoricians and the Terrorists are metalinguists. In the language of the Rhetoricians, the sign – the word, sentence, paragraph, structure – is everything, all they need to convey their message, all is

26. see Martin Heidegger on *altheia*, in, for example, “The Origin of the Work of Art,” *Poetry, Language, Thought*, trans. Albert Hofstadter (New York, NY: Harper & Row, 1971) pp.15-86, and below.

27. Giorgio Agamben, *The Man Without Content*, trans. Georgia Albert (Stanford, California: Stanford University Press, 1999). p.8.

conveyed in language and through language. Thought, unreliable to the Rhetorician, vanishes in a whisp of smoke or, perhaps more appropriately a brick of smoke, if such a thing is imaginable. The Terrorist, mistrustful of the word, dissolves the sign instead; pure thought is all that exists. Bricks become useless but the Terrorist builds his tower as high as he wants. Perhaps both the Rhetorician and the Terrorist have fallen to bottom of the abyss of language. Agamben refers to Balzac's "The Unknown Masterpiece" in which the painter Frenhofer attempts to represent pure thought. Frenhofer's painting, a chaotic mixture of colours, shapes, tones and nuanced strokes is a "quest for absolute meaning"²⁸ which wants to displace form; only a foot pointing out of the canvas remains. But what is left here is in fact pure form, and so Frenhofer, though he set out to be a Terrorist is perhaps in fact a Rhetorician. A purist in either camp cannot get along without his counterpart in the other but, the purity both seek is contaminated when sign and meaning meet since they never agree.

Language fails. Its signs allude to meanings that are never fully conveyed. Our apprehension of linguistic expressions can only ever be fragmentary and the apparent mastery of any idiom can only be an illusion. Frenhofer's dream of a pure expression is reduced to a pile of rubble as soon he puts his brush to the canvas since no form, linguistic, visual or otherwise, will bring resolution to the thought it wishes to reveal. This very failure makes art

28. Ibid., p.9.

possible by bringing failure to light; not because in succeeding to make its signs deliver their objects with finality would its task would be accomplished but, because its task would be precluded, its task which will be explored further in the next chapter. This same failure precludes the possibility of a just law, for only where a linguistic idiom delivers its meaning, its object, with finality can there be justice. Art can only exist in the absence of justice.

3. Art

In Hegel's "Aesthetics: Lectures on Fine Art", the Classical art of Greek antiquity represents the complete unity of object and expression.²⁹ For Hegel, in Classical art, the artist's identity had been so tied up in the world around him, its politics, its religion, its science, that these materials were

"for him the infinite and true element in his own consciousness – a material with which he lives in an original unity as part of his inmost self, while the form in which he exhibits it is for him as artist the final, necessary, and supreme manner of bringing before our contemplation the Absolute and the soul of objects in general".³⁰

The task of the artist was to make objective this "infinite and true element" and such works of art were the complete expression of these essential elements with which the artist was in immediate identity. In their art, the Greeks gave their gods a perfect embodiment which was the complete fulfilment of their expression. But in the transition that Hegel identifies from Classical to Romantic art, the artist splits off from the complete identity of his subjective inwardness with the external world and the focus of the work of Romantic art becomes, instead of an expression of this unity, an expression

29. G.W.F. Hegel, *Aesthetics: Lectures on Fine Art*, trans. T.M. Knox, vol.1 (Oxford, Clarendon Press, 1975), p.603.

30. Ibid.

of the artist's subjecthood, his subjectivity. The subject matter through which this subjectivity is to be expressed is set free, that is, the artist is free to pursue subject material at whim.

"...if subjective inwardness of heart becomes the essential feature to be represented, the question of which specific material of external actuality and the spiritual world is to be an embodiment of the heart is equally a matter of accident." ³¹

The subject of art becomes the subjectivity of the artist himself expressed through various and sundry elements of the spiritual or of the external world. This transition from the Classical to the Romantic occurred as the fullness of identity between the Classical Ideal and its representation in Greek sculpture eventually became exhausted. Hegel comments on how the gods became involved in earthly things, being called here and there to deal with this and that.

"The germ of their decline the classical gods have in themselves, and when the deficiency implicit in them is revealed to our minds through the development of art itself they therefore bring in their train the dissolution of the classical Ideal." ³²

31. Ibid. p.594.

32. Ibid. p.502.

How does that constitute exhaustion? In his section on Symbolic art, Hegel distinguishes between symbol and mere sign.

"... a picture with a meaning is in the main called a symbol only when this meaning is not, as in comparison, explicitly expressed or is otherwise clear already. No doubt its ambiguity is removed from the symbol, strictly so-called, if, on account of this very uncertainty, the linkage of the sensuous picture with the meaning is made customary, and becomes more or less conventional – as is indispensably requisite in a mere sign."³³

That is, the symbolic operates as long as the signified floats, as long as the referent is left somewhat undetermined. In this model of the symbolic, the meaning intended by the outward objective form is left ambiguous; the mental image to be brought before the mind of the viewer is not fully determined, its revelation deferred. But as any given outward objective form is gradually associated, through habit, convention, with a given mental image it takes on the status of sign. And it is the revelation to viewers' minds of the deficiency of the Greek gods that brings about the demise of the Classical, as the reading of Greek Classical sculpture becomes governed by convention. Two things typify this secularization: a distancing from the divine and a subjugation of its signs by convention.

33. Ibid. p.307-8.

A similar process of the secularization of art is described by Giorgio Agamben in "The Man Without Content". Agamben describes how the *Wunderkammer*, or Cabinet of Wonders, undergoes a transformation around the middle of the 17th century. Even in the middle of the 16th century the collections of royalty and men of erudition contained such disparate (to our minds) objects as "rocks of an unusual shape, coins, stuffed animals, manuscript volumes, ostrich eggs, and unicorn horns. Statues and paintings stood side by side with curios and exemplars of natural history...".³⁴ The *Wunderkammer* was a microcosm, a representation of the whole of divine creation and its contents got their meaning from their inclusion here, from their juxtaposition with each other and from being separated from surrounding reality by the bounding walls of the chamber which housed the collection. It is precisely the exclusion provided by the chamber's walls from the rest of the real world that make these exemplars of the real world form a model of the known universe.³⁵ And Agamben's inclusion in his descriptions of the contents of the *Wunderkammer* of "rocks of an unusual shape" is surely no accident since this juxtaposition of natural things with the use-objects such as spears and coins and works of art creates a level playing field. That works of art could, at that time, be classified in such a way as to be placed alongside simple objects of nature and use-objects in a context that formed a model of the

34. Giorgio Agamben, *The Man Without Content*, trans. Georgia Albert (Stanford, California: Stanford University Press, 1999). p.29

35. The structure of exception described here is fully expounded by Agamben in *Homo Sacer: Sovereign Power and Bare Life*, trans. Daniel Heller (Stanford, California: Stanford University Press, 1998) and is explored further in the next chapter.

whole of divine creation was associated with a way of working in which artists were seen to have expressed the whole of their own divine essence.

Around the middle of the 17th century the *Wunderkammer* underwent a transition resulting in something that more resembled the present day gallery.³⁶ Beginning around this time we find galleries of works of art in which the walls are covered from top to bottom with paintings and in which are clustered sculptures of varying descriptions. And although, as in the *Wunderkammer*, the contents of such galleries acquired meaning from their juxtapositions with each other, there is a sense of a growing tendency for the viewer of such works to contemplate long enough to separate their wonder from the wonder of divine creation and to become increasingly aware of an aesthetic response that more acutely divides viewer from maker.³⁷ And although a kind of secularization occurs as a viewer recognizes his own response, his own search for a signified, his own responsibility, all of which respond to the artist's choosing of subject matter, it is worth observing that any secularization of art shares with the secularization of language a simultaneous possibility/impossibility. The 'secularization of art' is just a

36. Agamben, in *The Man Without Content*, quotes from David Teniers' illustrated art museum catalog of 1660, which "could be a prototype of the guide found at the entrance of any modern museum," except that Teniers pays more attention to the exhibition space than to the individual works of art. p.28.

37. Ibid. p.37: "Everything that the spectator can still find in the work of art is, now, mediated by aesthetic representation, which is itself, independently of any content, the supreme value and the most intimate truth that unfolds its power in the artwork itself and starting from the artwork itself."

"facon de parler", a manner of speaking. No real transformation takes place but, along with the artist's freedom of choice in subject matters there necessarily comes a manner of approach in the choosing.

The artist's subject matter, no longer binding maker and viewer together in an experience of the divine, is no longer the crucial element of the work of art. Rather, viewers' experience of the work, their shifting understanding of the experience, the discourse generated, the preservation of the work is what makes it a work of art. But, beyond this, the viewer's aesthetic response is necessarily one of translation. Even where viewer and artist are bound together in an experience of the divine, objective representations of gods are perceived, apprehended and assimilated to consciousness by viewers and necessarily interpreted in the process. This is certainly no less the case where subject matter is capriciously employed to point to an artist's subjectivity.

Even more than Hegel, Agamben laments the transitional apparent loss of content:

"...fatally, the moment will come when this immediate unity of the artist's subjectivity with his material breaks. The artist then experiences a radical tearing or split, by which the inert world of contents in their indifferent, prosaic objectivity goes to one side, and to the other the free subjectivity of the artistic principle, which soars above the contents as

over an immense repository of materials that it can evoke or reject at will. Art is now the absolute freedom that seeks its end and its foundation in itself, and does not need, substantially, any content, because it can only measure itself against the vertigo caused by its own abyss. No longer is any other content – except art itself – *immediately* for the artist the substantiality of his consciousness, nor does it inspire him with the necessity of representing it.”³⁸

This is followed by a quote from Hegel’s “Aesthetics” in which Hegel laments a similar loss in his time, citing specifically the “holy and eternal [which] was previously made visible to human apprehension”.³⁹ But Hegel also notes in his introduction to the Romantic form of art:

“Since therefore the actual individual man is the appearance of God, art now wins for the first time the higher right of turning the human form, and the mode of externality in general, into an expression of the Absolute, although the new task of art can only consist in bringing before contemplation in this human form not the immersion of the inner in external corporeality but, conversely, the withdrawal of the inner into itself, the spiritual consciousness of God in the individual. The different moments which constitute the totality of this world view as the totality of truth itself now therefore find their appearance in man in such a way that

38. Ibid., p.35.

39. Hegel, p.605.

content and form are not afforded either by the natural as such, as sun, sky, stars, etc., or by the beautiful group of the Greek gods, or by heroes and external deeds wrought on the ground of family obligations and political life; on the contrary, it is the actual individual person in his inner life who acquires infinite worth, since in him alone do the eternal moments of absolute truth, which is actual only as spirit, unfold into existence and collect together again.”⁴⁰

Given Hegel’s recognition of this vocation for the Romantic form of art, this expression of the divine, the presence of God in man through the moments of the natural world, not as these moments themselves are but, as the manifestation of the divine in man’s apprehension of these moments, two questions arise. Firstly, as the manifest content, the apparently overt and superficial content of a work recedes in importance, is there any real loss of content or, does content and its very purpose shift as the tropes of a given age or movement become exhausted, become, through the establishment of convention or sheer boredom worn out? That is, does not the emphasis shift to the very structure of the relation between subject (ie. viewer and artist), and content? And secondly, what secularization takes place? As convention takes hold, a given content becomes less sacred, possibly even venturing

40. Ibid., p.520.

beyond the prosaic, the accidental, the contingent, towards the abject but, isn't secularization just a *façon de parler*? Is there any real transformation?

Gershom Scholem's 1926 letter to Franz Rosenzweig refers to an abyss.

"We do live inside this language, above an abyss, almost all of us with the certainty of the blind. But when our sight is restored, we or those who come after us, must we not fall to the bottom of this abyss?"⁴¹

"We" are the secularizers, those who take part in the failure of civilized, everyday language, the failure of its signs to keep their word, to resolve their objects. And although Scholem here refers to the Hebrew language, the significance of this for language in general and for art, is not to be overlooked. Every unquestioned reliance on convention turns a blind eye to the illusion of consensus. The publishing of lists of new words to be added to a vocabulary may on one level facilitate communication but on another level expression and nomination are overruled.

Though the economies of art and of language differ in what they trade, they meet in semiology as this is where exchange takes place. Certainly, it is not

41. An English translation by Gil Anidjar of Scholem's original German letter appears in Jacques Derrida, "The Eyes of Language: The Abyss and the Volcano," *Acts of Religion*, ed., trans. Gil Anidjar (New York, NY:Routledge, 2002) pp.226-227.

enough to demonstrate the linguistic structure of art. The unchallenged rule of convention plagues art as well. As in language, where convention facilitates communication, pedestrian, profane and secular though it may be, convention in art sanctions the understanding of the terms of an arena of discourse, establishes the arena of discourse. Any fear of venturing toward the perimeter of regions established by convention, of touching the boundaries of this arena, of departing from the familiar tropes, reinforces convention. As a given trope is overtaken by convention, its likelihood of advancing that discourse is reduced proportionately to its conventionality. As in language, the blindness of convention in art hovers over an abyss. Any reliance on convention today is much the same as it was two hundred years ago.

“What through art or thinking we have before our physical or spiritual eye as an object has lost all absolute interest for us if it has been put before us so completely that the content is exhausted, that everything is revealed, and nothing obscure or inward is left over any more. For interest is to be found only in the case of lively activity [of mind]. The spirit only occupies itself with objects so long as there is something secret, not revealed, in them.”⁴²

The mere sign, its ambiguity and capacity for revelation removed by habitual reading, loses its interest for us. The ambiguity of Hegel’s symbol which

42. Hegel, p.604.

holds our interest does so because of its promise of revelation.

An awareness of this seems to have given rise to a floating signifier, its indeterminate destination calling upon the viewer to interpret. Eventually, the floating signifier and its floating signified become themselves a convention. The 'secularization' that happens here is the resignation to a habitual reading in which to a great extent, the specific interpretation is no longer what matters but the fact of interpretation itself. From this point of view, the task of art is not communication per se, but a provocation to awareness.

In "The Origin of the Work of Art", Heidegger identifies a relationship between truth and art.⁴³ Where truth is understood to be an agreement between knowledge and fact, there still remains a question as to how fact shows itself. Drawing upon and extrapolating from the Greek concept of *altheia*, unconcealedness, Heidegger demonstrates that in order for there to be an agreement between knowledge and fact, fact must show itself.

"With all our correct representations we would get nowhere, we could not even presuppose that there already is manifest something to which we can conform ourselves, unless the unconcealedness of beings had already

43. see Martin Heidegger on *altheia*, in "The Origin of the Work of Art," in *Poetry, Language, Thought*, trans. Albert Hofstadter (New York, NY: Harper & Row, 1971) pp.49-55.

exposed us to, placed us in that lighted realm in which every being stands for us and from which it withdraws.”⁴⁴

The withdrawal that Heidegger refers to is a concealment within the realm of the unconcealed which occurs in two ways – through refusal and through dissembling.⁴⁵ Refusal represents the limit of unconcealment, beyond which we cannot know but, it is not only the end of that which is illuminated but also its beginning. In this way the refusal somewhat resembles the horizon, as if viewed from a distant and opposing position. Dissembling is a concealment in which things obscure one another, things which seem to come to the foreground hide those which are behind. Things present themselves as other than that which they are. It is the condition of humanity, living in the Open, the lighted realm, as we do, to be unable to distinguish fully between refusal and dissembling. This is the reason for the possibility of error and of transgression. That the unconcealment can only take place alongside concealment is what forces decision upon us. But, another consequence of free will being thrust upon us in this way is the possibility of forward movement. A capacity to “overreach ourselves”⁴⁶ relies on the same thing as our capacity for error and for transgression. Truth is what we experience in the tension between the unconcealed and the concealed. And although Heidegger, in his use of a painting to exemplify this tension, does

44. Heidegger, p.51.

45. Ibid., pp.52-54.

46. Ibid., p.52.

little, if anything, to distinguish between the experience of Van Gogh's painting of a peasant woman's shoes and of the shoes themselves, it is the bringing to light of the conflict between the unconcealed and the concealed in the shoes as they appear in the painting that makes the artwork what it is. In the making of works of art humanity is engaged in an activity that is to demonstrate the concealedness/unconcealedness of the world. From this point of view, the purpose of a work of art is not communication per se, not the transmission of signs which point to their objects in a conventional, habitual fashion or even in an unconventional way but, the provocation to interrogation, the bringing to light of the concealment that we experience daily and the representation of that bringing to light.

Conventional readings in language facilitate communication at the same time as they overrule expression. Conventional readings in art result in boredom and exhausted arenas of discourse; the simple facilitation of communication will prevent a work from being art and make of it a mere sign. Conventional readings of the world around us make us normal, as to read otherwise is possibly to border on the visionary or, possibly to border on the psychotic. To believe that we've closed the gap between an utterance and its meaning is to walk above an abyss; the gap between the objects of the world and our apprehension of them is what keeps the darkness of obscurity within the light of day. Things make themselves obscure, as they present themselves to us as they are not – through refusal and dissemblance. Just as this gap thrusts free will upon us it is the same gap, the same concealment, the same

barefaced lie taking place in the light of day that offers us the possibility of moving forward.

To recognize the gravity of keeping this gap before our sensibility with respect to an artwork is to preserve it.

"... the more purely the work is itself transported into the openness of beings – an openness opened by itself – the more simply does it transport us into this openness and thus at the same time transport us out of the realm of the ordinary. To submit to this displacement means: to transform our accustomed ties to world and to earth and henceforth to restrain all usual doing and prizing, knowing and looking, in order to stay within the truth that is happening in the work. Only the restraint of this staying lets what is created be the work that it is. This letting the work be a work we call the preserving of the work." ⁴⁷

In his essay "The Task of The Translator" ⁴⁸ Benjamin argues that a similar preservation is what is demonstrated by translation. Translation is what makes evident the sacredness of language – and not a given language that might be considered sacred by one group of people or another – but the

47. Ibid., p.64.

48. Walter Benjamin, "The Task of the Translator," in *Illuminations*, ed. Hannah Arendt, trans. Harry Zohn (New York, NY: Harcourt Brace Jovanovich, Inc., 1968) pp.69-82.

sacred that is generated by the gap between an utterance and its meanings. The relation between art and language is an analogous one.

“To grasp the genuine relationship between an original and a translation requires an investigation analogous to the argumentation by which a critique of cognition would have to prove the impossibility of an image theory. There it is a matter of showing that in cognition there could be no objectivity, not even a claim to it, if it dealt with images of reality; here it can be demonstrated that no translation would be possible if in its ultimate essence it strove for likeness to the original. For in its afterlife – which could not be called that if it were not a transformation and a renewal of something living – the original undergoes a change.”⁴⁹

Translation demonstrates that a gap always exists between an utterance and its meaning. If fidelity to an original were possible, translation would be impossible and unnecessary, its task precluded.

Language and art share a semiological structure. Understandings of both rely heavily on convention, without which there can be no communication. But the boundaries of convention extend into cognition as well. The consensual possibilities of language are in dispute as are the possibilities of the apprehension of real events. Rebuttals of Wittgenstein’s private

49. Ibid., p.73.

language argument bring this dispute to the foreground. For Wittgenstein, a notation made to represent a private sensation is an idle ceremony, of no meaning, since the repeated identification of a sensation relies on the memory of that sensation, a memory that cannot be tested for its accuracy. In contrast, a memory of objects in the world such as train schedules can be tested. Ayer's argument with this is that to test a train schedule for accuracy one still relies on one's senses – one's ability to recognize the numerals on the schedule. In dispute here is the relation between private language and public language. To what extent do they share the same reliability? For Wittgenstein private language is not reliable. For Ayer both private and public languages are equally unreliable since any test for the accuracy of their signs will rely on the testimony of one's senses. If our reliance on conventional meanings is all that grants us the ability to communicate and the possibility of society, then our reliance on memory is all that grants us subjectivity but, both need to be questioned. The reliability of a memory of a sensation and the communicability of a sensation ultimately are both in question and any difference in kind or degree does not prevent the failure of either. And as long as cognition and language fail there is a vocation for art.

Benjamin's comparison of translation to cognition is germane. Just as cognition's images of reality have no claim to objectivity, translation has no claim to an objective rendering of the original. But the task of the translator is not just the rendering of the text but the rendering of the capacity of language to reveal its own impenetrable relation to its objects. Where

convention perches over the abyss of the unknown and unknowable, where understanding needs to face a perpetually receding horizon, where art and aesthetic responses to it exhaust one arena of discourse after another, eschatological speculations about a metalinguistic structure that unifies signs with their effects on cognition and their counterparts in the real world has euphoric appeal. It is a conception of metalanguage that must not lament the fatality of any loss of content or even interfere with a dissolution of traditional, or any, notions of artmaking but, might provide a lookout point from which to gain courage.

In Heidegger's "Building Dwelling Thinking"⁵⁰ it is by building and dwelling that we are in the world. For Heidegger a bridge which simply is, exemplifies the meaning of things. If we take the bridge for a symbol allowing it to represent something other than what it simply is and give it connotations beyond what belongs to it then its capacity for expression is overlooked. For Heidegger, that the bridge is ultimately only a thing, is precisely what allows it to gather together an awareness of man, god, earth and sky. There is no longer any question of the essence of a thing as compared to its properties since any cultivated or built thing has the same meaning – man's existence in the world.

50. Martin Heidegger, "Building Dwelling Thinking," in *Poetry, Language, Thought*, trans. Albert Hofstadter (New York, NY: Harper & Row, 1971) pp. 141-160.

4. Justice

In his essay, "Critique of Violence"⁵¹, Benjamin, in taxonomizing violence, distinguishes between two kinds of strike. There is the coercive, extortive political strike in which work is withheld until some condition or other is met, at which point work will resume. This is distinguished from the proletarian general strike which withholds work until the structures of work itself are changed. The proletarian general strike calls for the destruction of state power and a wholly new kind of work.

"Against this deep, moral, and genuinely revolutionary conception, no objection can stand that seeks, on grounds of its possibly catastrophic consequences, to brand such a general strike as violent. Even if it can rightly be said that the modern economy, seen as a whole, resembles much less a machine that stands idle when abandoned by its stoker than a beast that goes berserk as soon as its tamer turns his back, nevertheless the violence of an action can be assessed no more from its effects than from its ends, but only from the law of its means."⁵²

The extortive political strike is seen as violent but, the withholding of work for a new structure is seen as non-violent, keeping in mind that the German, "*Gewalt*", here translated "violence" also refers to "authority" and to "force".

51. Walter Benjamin, "Critique of Violence," in *Reflections*, ed. Peter Demetz, trans. Edmund Jephcott (New York, NY: Harcourt Brace Jovanovich, 1978), pp.277-300.

52. *Ibid.*, p.292.

Benjamin's taxonomy of violence is provoked by his Marxist and messianic vision of one more revolution, the conditions under which such a revolution might take place, the means by which it might be conducted and the ends which it might serve. Theories of natural law hold that there is a human right to violence and that therefore, means need no justification. So long as ends are justified, violent means are legitimized. Theories of positive law conversely hold that means are to be examined and that ends, having been determined by law or otherwise are somehow guaranteed just⁵³. Benjamin goes on to show that violence recognized by legal theory is either law-making or law-preserving⁵⁴. Violence is either directed (ultimately) at the state, or maintains the status quo, is enacted by the state to preserve its own order. But since both kinds of violence support the questionable notion that "just ends can be attained by justified means, justified means used for just ends"⁵⁵ and because he recognizes that the complete exclusion of violence in principle could in fact prevent humanity at times from prevailing over inequitable and wrongful circumstances, Benjamin, in a search for justice and a justification for the violence that he knows cannot be precluded, asks what kinds of violence might exist outside of those found to support law. Violence exemplified by Greek myth, mythic violence, Benjamin finds to resemble law-making violence more than law-preserving. This is a violence that resembles a manifestation of anger, not a means to an end but a sheer

53. Ibid., p.278-9.

54. Ibid., pp.284-4

55. Ibid., p.293.

manifestation of power. Though violence enacted by the Greek gods may appear to be a punishment, Greek heroes often challenge fate and do battle resulting in situations that leave open the possibility of their making new law at some future time. Opposed to mythic violence is "divine"⁵⁶ violence. Where mythic violence threatens, divine violence just strikes; where mythic violence invokes guilt and punishment, divine violence expiates, invokes atonement; where mythic violence is bloody, divine violence is lethal but bloodless; where mythic violence anticipates law-making, divine violence is law-destroying. There is, in Benjamin's conception of divine violence an absence of the contradictions that exist in law-making and law-preserving violence.

In seeking a model to exemplify divine violence, Benjamin turns to a story from the *Torah* in which he sees divine violence represented by Yahweh's wrath: sudden, bloodless and expiatory. Yet, the story of Korah⁵⁷ that Benjamin cites is an unlikely example of anything that might resemble his conception of divine violence. For seeking the honours granted only the high priest, Korah is issued a warning by Moses which can only be seen as a threat, coercive.⁵⁸ The following morning, Korah and his company are

56. Ibid., p.297.

57. Old Testament (*Torah*), Book of Numbers, chapter 16.

58. Rabbi Yisrael Isser Zvi Herczeg, *The Torah: With Rashi's Commentary Translated, Annotated, and Elucidated*, (Brooklyn, NY: Mesorah Publications, 1997), p.195, note 9. Though from about 1915 to about 1935, Benjamin's friend Gershom Scholem involved him in Jewish religious studies, this interpretation of Rabbi Shlomo ben Yitzchak (1040-1105 C.E.), better known as Rashi and considered the quintessential interpreter of the *Torah*, seems to have eluded him.

swallowed up by a chasm that opens in the ground under their feet; this occurs in front of the rest of the Israelites, who flee in a panic for fear of being swallowed up themselves. In this context, only law-preserving violence can warn and threaten. What can it mean that Benjamin has chosen an example of violence that is clearly moved by law to stand for his conception of divine violence? Where divine (or pure, unalloyed, as Benjamin also calls it) violence has occurred, like justice, it cannot be recognized.

“Less possible and also less urgent for humankind, however, is to decide when unalloyed violence has been realized in particular cases. For only mythic violence, not divine, will be recognizable as such with certainty...”^{59, 60}

If justice were recognizable, a just law would be formulable. This is why justice must destroy law and along with it, the failures of language.

Anticipating accusations that his law destroying conception of divine violence would grant the right to kill, Benjamin objects that the answer to this charge is to be found in the sixth commandment, “Thou shalt not kill”⁶¹. Benjamin

59. Benjamin, p.300.

60. On the subject of the unrecognizability of justice, see Jacques Derrida, “Force of Law: The ‘Mystical Foundation of Authority’,” *Acts of Religion*, ed. Gil Anidjar, trans. Mary Quaintance, (New York, NY:Routledge, 2002) p.245 and 287.

61. Old Testament, Book of Exodus chapter 20, v.13.

interprets this in a relative way, not final, in positing that the commandment only anticipates the act and is without punitive intent, leaving the individual to contemplate and decide privately, according to circumstances whether or not to abide. This again demonstrates a problematic reading of the text of the *Torah*, since the chapter that follows the initial giving of the commandments expounds the various penalties for infraction. A killer is to be put to death. Since there are circumstances under which killing is considered acceptable in the *Torah* though, and without guilt, Benjamin's conception warrants a close reading.

"For the question 'May I kill?' meets its irreducible answer in the commandment 'Thou shalt not kill.' This commandment precedes the deed, just as God was 'preventing the deed'. But just as it may not be fear of punishment that enforces obedience, the injunction becomes inapplicable, incommensurable, once the deed is accomplished. No judgement of the deed can be derived from the commandment. And so neither the divine judgment nor the grounds for this judgment can be known in advance. Those who base a condemnation of all violent killing of one person by another on the commandment are therefore mistaken. It exists not as a criterion of judgment, but as a guideline for the actions of persons or communities who have to wrestle with it in solitude and, in exceptional cases, to take on themselves the responsibility of ignoring it."⁶²

62. Benjamin, p.298.

A solitary struggle with law is universal and inescapable. Where penalties are stipulated or not, a fear of punishment may not secure obedience. In the *Torah* there are two words which can be translated into the English 'kill': *hahrog* and *ratzach*. Both words are used for instances of killing which are sometimes permissible and sometimes not, and so to translate either as 'murder' would be erroneous. *Hahrog* is most often used in a narrative context: Cain kills Abel, Joseph's brothers conspire to kill him, Yahweh kills the first born of the Egyptians. It is only rarely used in a legislative capacity. *Ratzach*, on the other hand, is never used in a narrative context. Its only occurrences are in the making of law, "Thou shalt not kill", and in the sanctions against transgression, in which is found the application of the word that implies permission. Only when someone has committed *ratzach* is *ratzach* permissible: the killing of a killer.⁶³ The commandment is, for particular circumstances, expressly contradicted. The use of the same word for both permissible and impermissible killing, where another word could have been used is not only a demonstration of the failure of language but, also a recognition of the impossibility of a just law.

In imaging a divine violence, Benjamin is either culpable of a pretense to denotation: "divine", or possibly, he has imagined a violence and a justice which as it destroys law, destroys language and along with it, its

63. There are two permissible instances in the text of the *Torah* of *ratzach*. Both involve the killing of a killer. That Judaism has "rejected the condemnation of killing in self-defense", as Benjamin states on page 298, is not *Torah* but, commentary, extrapolation.

consequential pretense to denotation. Each of us who has been made subject to any legislation has to decide according to circumstances whether or not to abide. No adherence to a law or any transgression against it can be enacted without decision. Free will is thrust upon us.

The fallacy of a dangerous precedent demonstrates the necessity of risk in decision making.

“The Principle of the Dangerous Precedent is that you should not now do an admittedly right action for fear you, or your equally timid successors, should not have the courage to do right in some future case, which, ex hypothesi, is essentially different, but superficially resembles the present one. Every public action which is not customary, either is wrong, or, if it is right, is a dangerous precedent. It follows that nothing should ever be done for the first time.”⁶⁴

Cornford’s remarks are somewhat glib since, obviously, if a public action is wrong it is a genuinely dangerous precedent. Either way, actions which follow the customary, relying on the convention of precedent, will not even remotely bring about a just outcome, since in every case the relevance of the precedent will need to be established anew, and the new is not just a

64. F.M. Cornford, *Microcosmographia Academica: Being a Guide for the Young Academic Politician*, (Cambridge: Bowes & Bowes, 1908), part 7.

possibility – it is a certainty. The unrecognizability of justice shows this. The unrepeatability of events demonstrates the inescapability of the new.

Justice is not merely fairness, the equitable or the impartial but, the recognizably just. The possibility of justice is mitigated by law since a given idiom will seldom, if ever, be understood the same way by any two individuals.⁶⁵ Subtle differences in understanding will always result from the necessarily connotative elements of civilized language – any civilized language. Conventional meanings will always be augmented by an excess of signification over and above the intended object. The ultimate unknowability of any object too, means that it can never be named in an exhaustive way. Since there will always be some excess in the object over its appellation, it can never be fully identified. The unrepeatability of events in the world too, means that any applicability of a law will need to be constantly reinterpreted.⁶⁶ The failures of language prevent legislation from being just. But the impossibility of justice is mitigated by law too. There can be no justice without law.

“Law is not justice. Law is the element of calculation, and it is just that there be law, but justice is incalculable, it demands that one calculate with the incalculable; and aporetic experiences are the experiences, as

65. Derrida, p.246.

66. Ibid., p.251.

improbable as they are necessary, of justice, that is to say of moments in which the *decision* between just and unjust is never insured by a rule."⁶⁷

Concepts of justice come into being simultaneously with law. One could claim that without law there will always be transgressors but, in fact, there would be nothing to transgress against. "Guilt refers not to transgression, that is, to the determination of the licit and the illicit, but to the pure force of the law, to the law's simple reference to something."⁶⁸ In a prejudicial space, there is no transgression. Guilt only comes into being as such, with conceptions of transgression, of law. "Guilt" then, characterizes an action only in relation to a law; there is no inherent or intrinsic guilt. The occurrence of guilt before the law is therefore not chronologically prior to it but, always simultaneous, always coincident.

The conception of any law necessarily presumes the coexistence of an interior and exterior of juridical space. Only the potential for such a dual space can found law. In "Homo Sacer: Sovereign Power and Bare Life", Giorgio Agamben outlines this structure of exception with respect to sovereign power. It is the sovereign who is given the power to suspend law. With this power, he is at the same time inside and outside of the law.

67. Ibid., p.244.

68. Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life*, trans. Daniel Heller-Roazen (Stanford, California: Stanford University Press, 1998) p.27.

"The paradox of sovereignty consists in the fact the sovereign is, at the same time, outside and inside the juridical order. If the sovereign is truly the one to whom the juridical order grants the power of proclaiming a state of exception and, therefore, of suspending the order's own validity, then 'the sovereign stands outside the juridical order and, nevertheless, belongs to it, since it is up to him to decide if the constitution is to be suspended *in toto*'.⁶⁹

The sovereign exception takes the form of what Agamben calls the "ban", the name given to the potential in structure, legal or otherwise, that is the potential to be or not to be.

"...we shall give the name *ban* (from the old Germanic term that designates both exclusion from the community and the command and insignia of the sovereign) to this potentiality (in the proper sense of the Aristotelian *dynamis*, which is always also *dynamis me energein*, the potentiality not to pass into actuality) of the law to maintain itself in its own privation, to apply in no longer applying. The relation of exception is a relation of ban. He who has been banned is not, in fact, simply set outside the law and made indifferent to it but rather *abandoned* by it, that is, exposed and threatened on the threshold in which life and law, outside

69. Ibid., p.15. Agamben quotes here from Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*. trans. George Schwab. (Cambridge, Mass.: MIT Press, 1985)

and inside, become indistinguishable.”⁷⁰

The one who is banned is forced to the exterior of the law but, this does not make for a relationship of indifference. The banished one is forced outside of the law by the law. Spaces within and without law bear a symmetrical relation to each other. Any juridical structure will include such a space, in which occurs exception; at the extreme, for example, the concentration camp, not given sanction by any law, not governed in the events that occur within its boundaries or in its very existence. (“Sanction” is the appropriate word here since in its use as a noun in English it has two meanings: a punishment, and an allowance.) This is the exception that a legal structure includes by turning a blind eye to it and the potential for such exception is what founds the rule. The antinomy in such a space can only exist outside of but, alongside a law. And just as such a space of exception is included because of its exclusion, the prison for example, and everything that happens within it that conforms to its many rules, openly sanctioned by the law is excluded by being included. This same structure of exception as exemplified by legal order, its interior and its exterior, is to be found in language. According to Agamben, any given idiom’s capacity to denote depends on its capacity also not to denote.

70. Ibid., p.28.

“Take the case of the grammatical example: the paradox here is that a single utterance in no way distinguished from others of its kind is isolated from them precisely insofar as it belongs to them. If the syntagm ‘I love you’ is uttered as an example of a performative speech act, then this syntagm both cannot be understood as in a normal context and yet still must be treated as a real utterance in order for it to be taken as an example.”⁷¹

In other words, does the phrase “I love you” have its usual meaning here or not? In order to serve as an example of speech it needs to be understood in its usual sense yet, as an example, its meaning does not hold. Law, legality, juridical space share their form with this structure of language. Language pretends to denote, sometimes very convincingly, and we believe that there is an element of denotation, some part of a word that identifies its object. In Agamben’s “love” example, it is the example that demonstrates that “love” is a word. This is how one gets a sense of the vocation of language to communicate – from the example, in which the word does not fulfill its vocation. This is the function of law – to be normative while demonstrating the inescapability of exception. A law demonstrates the aspiration to justice and at once, its absence. It is just that there be a law but, no law will be just. Language, as an act of speech is able to denote only because of its

71. Ibid., pp.21-2.

capacity for not denoting. Looked at from the point of view from which language never denotes because of the difficulties inherent in assigning meaning, the analogy only becomes stronger. Certainly any idiom has a capacity not to denote, even aside from its being bound to connote as well but, how is this what its capacity to denote depends on? That language engages in a pretense to denotation is exactly what makes this analogy. Just as a given signifier will never finally agree with its object, no law will treat circumstance with justice. Law only ever pretends to circumscribe the contingencies of circumstance. Whether language's capacity to denote, whatever capacity it has, depends on this capacity not to denote or not, our pretense to denotation is wishful thinking as is our pretense to justice. And adherence to, belief in convention, with respect to justice is to walk blindly over the abyss of language.

At once, law mitigates both the possibility and the impossibility of justice. This is a consequence of the law's being in force without finally signifying. In actualization, potentiality is given away along with impotentiality since the potential to be (or do) must also be the potential not to be (or do) in order to be genuinely potential. This duality of the potential and impotential of the law is the passage of law into life. Agamben sees a metaphorical interpretation of this potentiality of law in Kafka's short story, "Before the Law", in which the man from the country never passes through the open door to the Law, though he begs to do so. Two emblematic readings of Kafka's story are represented by interpretations by Benjamin and Scholem.

"...two different interpretations confront each other here: on the one hand, that of Scholem, which sees in this life the maintenance of the pure form of law beyond its own content – a being in force without significance – and, on the other hand, that of Benjamin, for which the state of exception turned into rule signals law's fulfillment and its becoming indistinguishable from the life over which it ought to rule. Confronted with the imperfect nihilism that would let the Nothing subsist indefinitely in the form of a being in force without significance, Benjamin proposes a messianic nihilism that nullifies even the Nothing and lets no form of law remain in force beyond its own content." ⁷²

Whichever of these two is "correct", it is the force of the law in the absence of its signifying anything that prevents the man from the country in Kafka's story from experiencing justice. Language, with its potential to denote or not to denote passes into life at the same point as does law, with its dual potential to be actualized or not. The non-linguistic, the ineffable, is available to us only through its relation to the linguistic;⁷³ and the paradoxical structure of law, in its being in force without signifying, is all that allows a concept of justice at all.

72. Ibid., p.53.

73. Ibid., p.50.

Conclusion

Perhaps failure, where it brings failure to light, is not really failure.

Regardless, the failures that come to light in language, the challenges of nomination, the disagreements between signifier, signified and referent are what give art a vocation. Where this gap is closed, art has nothing to do.

This same gap, in precluding a just law, precludes a recognition of justice, any possibility of identifying it and any assuredness of invoking it. Art, as we know it, can only exist under these conditions of injustice. The inexpressibility of sensation and its memory abandons us to the rule of language. The inscription of a sign to refer to a sensation refers to the memory of that sensation at once, but the sensation itself is immediate. It is sensation that tells us we are sensing something – when a thorn pricks our finger we don't pause to reflect that it hurts, we withdraw our finger.

Speculation about a metalanguage that would unify signifier, signified and object brings to mind the non-linguistic, the ineffable – accessible only through language. This is where we can contemplate exchanging art for justice.

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