



HOLY DOGS, HECUBA'S BARK

I knew a person in Christ above fourteen years ago,
(whether in the body, I cannot tell; or whether out
of the body, I cannot tell: God knoweth;) such
an one caught up to the third heaven.

—St. Paul, 2 Corinthians 12:2

A MOST UNNATURAL BARGAIN

As regards specters or ghosts, I have hitherto heard
attributed to them no intelligible property: they seem
like phantoms, which no one can understand.

—Spinoza to Hugo Boxel, 1674

IN 1989 HELEN ACKLEY SOLD HER FIVE-THOUSAND-SQUARE-FOOT, eighteen-room Victorian house on the Hudson River in Nyack, New York, to a young couple, Jeffrey and Patrice Stambovsky. After making a down payment of \$32,500 for the house, they learned that it was haunted. Although Jeffrey did not believe in ghosts and did not mind knowing that the house was thus occupied, his wife refused to live there. Ackley had enjoyed a good relationship with the ghosts for over twenty years, and had become accustomed to steps on the stairs, doors slamming, beds shaking, and chandeliers moving back and forth. She assured the couple that they had nothing to fear. The spirits were friendly

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and even gave what Ackley called “gifts” to her children: silver tongs and a gold baby ring. She refused to call off the sale. Stambovsky, a Wall Street bond trader, turned not to exorcism but to the law. He filed suit in New York to cancel the contract, telling the press, “We were the victims of ectoplasmic fraud.”

Although the house was widely known to be possessed by numerous ghosts, this was not disclosed by Ackley. A lower court dismissed the case, as the state applies the rule of caveat emptor, or “let the buyer beware.” Stambovsky appealed. In *Stambovsky v. Ackley* (1991), Judge Israel Rubin, writing for the appellate division of the New York Supreme Court, declared: “[A]s a matter of law, the house is haunted.” Since Helen Ackley not only knew of the spectral inhabitants—allegedly dating from the American Revolution—but had even celebrated them in an article, “Our Haunted House on the Hudson,” for *Reader’s Digest* in May 1977 and in a couple of local newspapers in 1982 and 1989, she was obliged to tell her potential buyers that the house was not vacant as they assumed. Not everyone, after all, shared her enthusiasm for what she described as “elusive spirits ... gracious, thoughtful—only occasionally frightening—and thoroughly entertaining.” Although Ackley lost the lawsuit, she was glad that her ghosts were declared “officially alive.”¹

In an unusually droll and quite unprecedented decision, Rubin argued that no house inspection could have revealed the presence of ghosts. “A very practical problem arises with respect to the discovery of a paranormal phenomenon,” he wrote, “‘Who you gonna call?’ as a title song to the movie ‘Ghostbusters’ asks.” Rubin continued:

Applying the strict rule of caveat emptor to a contract involving a house possessed by poltergeists conjures up visions of a psychic or medium routinely accompanying the structural engineer and Terminix man on an inspection of every home subject to a contract of sale. It portends that the prudent attorney will establish an escrow account lest the subject of the transaction come back to haunt him and his client—or pray that his malpractice insur-

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ance coverage extends to supernatural disasters. In the interest of avoiding such untenable consequences, the notion that a haunting is a condition which can and should be ascertained upon reasonable inspection of the premises is a hobgoblin which should be exorcised from the body of legal precedent and laid quietly to rest.

Arguing that enforcing this contract would offend the "spirit of equity," Rubin held that "the unwitting purchaser" should recover his money and be released from "a most unnatural bargain." Ghosts are not like termites, after all, and no reasonable inspection of the premises could have made this infestation known to Stambovsky.²

The decision in this case made ghost hunters ecstatic and realtors anxious, but it was its style that gave it legal renown. Rubin's approach and his reliance on ghosts as legal matter suggested that judicial speculation owed a great deal to the dead as well as to the unreal. Besides his explicit uses of cinematic and literary allusions to specters, including both *Hamlet* and *Ghostbusters*, he also raised the ghost of equity before the court. A system of jurisprudence that offered an alternative to common law, "equity" originated in England as the "spirit" of fairness, "a court of conscience."³ Rubin suggested that though courts of chancery have been replaced in New York by the formalities of the regular courts, he intended to resurrect the spirit of equity, for he would "not be stifled by rigid application of a legal maxim." For him the appeal became a matter of conscience, enabling him to transcend the letter of the law when necessary. Or, he put the spirit back in the letter, announcing at the outset that he was "moved by the spirit of equity to allow the buyer to seek rescission of the contract of sale and recovery of his down payment."⁴

The afterlife of this judicial bewitching not only changed the application of the doctrine of caveat emptor, but made legal rights dependent upon supernatural phenomena. In this way Rubin took the realtor's term "stigmatized property"—a house possessed by ghosts or where a murder or suicide had taken

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place—and asked that we recall such supposedly extinct legal usages as spectral evidence and ineradicable stigma. He declared: “Common law is not moribund. *Ex facto jus oritur* (law arises out of facts).” But what kinds of facts are these? Are they legal facts or legal fictions? Literal or figurative? Bad logic but good law? In Rubin’s view, “fairness and common sense dictate that an exception” must be made to the rules of law. Is this the beginning, perhaps, of a rationale for haunting?⁵

Although Ackley had no strict duty to disclose the stigma on the property, nonetheless Rubin went beyond the claims of civil law to consider a unique and equitable remedy. He gave relief to the buyer and showed how legal rules could be surpassed by the force of an archaism no less powerful for being disavowed.

Rubin also called up another ghost, the antiquated legal fiction of civil death: the loss of civil and proprietary rights by monks, nuns, and felons. For the felon, the ritual of alienation occasioned an unnatural status: banished from the community, shorn of personality, condemned to degradation. This retributive and punitive sanction survived in America. The person convicted of felony is alive in fact but dead in law. In this sense, the ghosts that possessed Stambovsky’s new home enforced a new framing of an old problem. The house was haunted in law but not in fact. This was more terrifying for some than if he had declared ghosts real. Instead, Rubin posited a reality independent of any conception of what is real. Some commentators thought that “it was as if some other-worldly force entered the courthouse and took possession of the judges” or that Rubin was “speaking in tongues.”⁶

Since the most famous cases of civil death in the nineteenth century were in New York, Rubin is on familiar ground. Considering *Stambovsky* in light of this buried history, we will see how legal reasoning manipulates the fictions that sustain idioms of servility.

Statutory law in 1799 enforced the harsh practices of strict civil death, albeit in a novel way. The effects of this severity will be examined fully in the next chapter, but here let us note what

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happened when the statute changed the common-law wording, "shall be deemed dead to all intents and purposes in the law" to "thereafter be deemed civilly dead." Dispossessed of all the benefits of law, the convict was doomed *in his person* to perpetual incapacitation. Chancellor James Kent, sitting in the New York Court of Chancery until 1823, lamented that civil death ensured "perpetual imprisonment." In *Platner v. Sherwood* (1822), he agreed with the arguments of Platner's lawyers: "Imprisonment for life was a punishment unknown to the common law." Later cases in the Court of Appeals of New York, such as *Avery v. Everett* (1888), demonstrated the eerie staying power of civil death, even if deprivations were ameliorated to allow the convict to retain his right to property.⁷

The fact of property, possessed or lost, became crucial not only to legal status but also to personal identity and the sacrifice of the self to punishment. A creation of law, civil death is the ghost that continues to torment persons convicted of crime. Assuming different forms from state to state, its embodiment depends on statute and judicial argument, and this disenfranchisement still renders precarious the absolute security of personal property.⁸

Rubin takes the specter of legal dispossession and gives it a new role. Fleshed out in law, the errant haunts of a supposedly old and obsolete era resurface in a home in Nyack, New York. Rubin's invocation of equity brings him to commit to law a surprising and unexpected decision. Not only does he mobilize the impulses of equity, but he gives law the power to make ghosts count. This house is not vacant but occupied. What Rubin called its "ghoulish reputation" cannot be exorcised. Since Ackley had made much of the possession of her house by ghosts, the court demanded that she should have admitted the haunting to her unsuspecting buyers. So she was liable for not disclosing the full facts *as she saw them*. A taint or "impairment" deliberately publicized made the house a magnet for ghost hunters, and such a "phantasmal reputation" would significantly decrease the value of the house. In Rubin's words:

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Where, as here, the seller not only takes unfair advantage of the buyer's ignorance but has created and perpetuated a condition about which he is unlikely to even inquire, enforcement of the contract (in whole or in part) is offensive to the court's sense of equity. Application of the remedy of rescission, within the bounds of the narrow exception to the doctrine of caveat emptor set forth herein, is entirely appropriate to relieve the unwitting purchaser from the consequences of a most unnatural bargain.⁹

In *Thinking with Demons*, Stuart Clark asked that historians not only take the risk involved in treating supernatural phenomena as real, but also more importantly consider what counts as real. To take up Clark's argument, we might say that Rubin tried "to make intelligibility and not reality" his aim. If a house has been the scene of a murder or suicide, it is, according to realtors, "stigmatized property" or "psychologically impacted." To buyers, a supernatural stigma may matter more than physical characteristics. We can go further and add that Rubin's argument was a reasonable if not wholly literal construction of facts. On the terrain of the undead, reason gambles with irrationality.¹⁰

There is a real legal problem here. What does it mean if you engage law in the story of ghosts? Does the interpretation qualify as a legal fiction or not? At issue here, and in the ensuing chapters, is not whether ghosts are real or not, but whether or not in the legal world a new situation is being described as uncontroversial. A house looks vacant, but the law decrees it full of spirits. Some buyers might find this supernaturally added value quite enticing: sudden plenitude in the face of apparent vacancy.

The law has a history of such imagining made real. A resilient acceptance of unreality is a necessary part of legal history. At times, there was no special rule of evidence for psychic phenomena, just as there was no need of proof for seemingly irrational racial beliefs. We can turn to the spectral evidence of dreams and visions famously admitted by the presiding Cotton Mather during the Salem witch trials, as well as to other instances when

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invisible attributes were granted legal validity. What was legally possible long involved give-and-take between such categories as thing and self, physical and incorporeal, wickedness and virtue. Although haunted houses did not often become the subject of legal proceedings, there are much older accounts of tenants who refused to pay rent because of ghosts or to remain for long with spectral nuisances. In a well-known case before the Parlement of Paris around 1550, rollicking spirits made more noise than barking dogs. Just as ghostly occupation of a house remained in the late twentieth century an impediment to its sale, for the purposes of law if not ordinary life the undue influence of communications from the dead, especially when untimely deaths or disputed wills are at issue, must be taken seriously.¹¹

DID ANYONE DIE HERE?

... the phantasm of today is so often
a reality of to-morrow.

—*Burchill v. Hermsmeyer* (1919)

The puzzle faced by Rubin's court has a history. Legal complications arising from specters intruding into marriages, divorces, and the buying and selling of houses were the subject of a thesis for the Doctorate of Laws in Jena on June 25, 1700. In his *Disputatio Juridica de Jure Spectrorum* (Juridical Disputation on the Law of Ghosts), republished forty-five years later, Andreas Becker confronted the question of possession and discussed the rights of tenants, wives, husbands, tutors, servants, and criminals when faced with ghosts. He explains that if spirits haunt one of the betrothed on the eve of nuptials, the other can back out of the match. If such "obsession" occurs after marriage, however, it is not legally recognized as a cause for divorce, no matter how much destruction is brought to the household. Haunted houses, "so infested with specters as to be virtually useless," trigger the

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most protracted analyses. After considering a house presented as dower or rental property but found to be haunted, Becker turns to the rights of a buyer who inadvertently purchases possessed property:

If a house is sold and the purchaser finds it haunted, can he demand a rescinding of the contract of sale? Yes, if the specters had infested the house before the sale, and he had not known it. His action would be *de dolo* [about trickery], and he might be aided by an *actio ad redhibendum* [action for recovery]. Proof of guilty knowledge on the part of the owner might be difficult, and the best means would be *per delationem juramenti* [by deposing an oath].

In this time of animal trials, demonic possession, and the interrogation of alleged witches by torture, Becker recognized other dark corners of pain and suffering that he refused to ignore or conceal. Faced with demonic infestations, whether in houses or in the conjugal bed, Becker concluded with an insight into the terrors of solitary confinement, telling us something about juridical demons as much in need of reformation as any infernal mysticism:

As demoniacal apparitions seek dark places in preference, dark prisons are particularly infested with them. Can a judge then thrust a man accused (guilty?) of capital offence into a dungeon which he knows to be suspected of specters? By no means, for he thus exposes him to the risk of committing suicide, and prisons are places for safe-keeping and not for punishment. Those judges are inconsiderate (*inconsulti*) who send the more atrocious criminals to dungeons which are known by experience to be thus infested, for the purpose of repressing their contumacy.

A belief in ghosts rests perhaps all too easily alongside the practices of law, and leads Becker, like William Blackstone and Jeremy Bentham after him, to recognize the dire effects of silent, sequestered places of incarceration. Bentham came to believe that solitude was “torture in effect”: “When the external senses

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are restrained from action," in "a state of solitude, infantine superstitions, ghosts, and specters, recur to the imagination. This, of itself, forms a sufficient reason for not prolonging this species of punishment."¹²

Ghosts are never proof of vacancy but evidence of plenitude. They return chock full of memories and longing. For them, nothing is ever past, and sometimes they appear to test the limits of death or its meaning in a world of terror. The many forms of the dead in the twenty-first century ask us to look again at the way ghosts invade the precincts of the normal. When they tear off the mask of certainty, we begin to know how such terms as "prelogical," "irrational," or "primitive" are free-floating and easily manipulated. Indignities and damages continue under cover of civilization. "Torture," as Edward Peters wrote, "is one of those signs of increased social rationalism that praisers of rationalism often neglect."¹³ The increased reliance on judicial reason invigorates "systems of terror" more sinister because covert.

"When I am a spooky phantom you want to avoid, when there is nothing but a shadow of a public civil life," the sociologist Avery Gordon writes in *Ghostly Matters*, then "deep 'wounds in civilization' are in haunting evidence."¹⁴ Like ghosts, the law busies itself with property, giving it preeminence. Property bears the mark of persons that are lost to the living, and the legal, acting as if spectral, leads us into paths of thought so uncertain that we should be very afraid of such places. Yet, as the endless processions of dead people find their way into legal narratives, they also present threats to comfort and to the inherited prejudice that takes root there. So law slides backward into the past.

When ghosts come before the law, as we have seen, they are sometimes treated as if real insofar as they have legal effect. What seems supernatural or even extraordinary, once in the presence of judges becomes merely unusual. The law instinct, we might argue, is permanently *primitive*, to invoke all the bias in the term. The common-law hoard of precedent in its language and iteration drags into light the myths of modernity and civilization. In its precincts anything can happen: the residues of

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human materials, forgotten, are dredged up when necessary. Once the doors are opened into the house of law, we find implausible metamorphoses that have the power to exploit and oppress. Once inside, we encounter historical fragments, legal fictions, and spiritual beliefs. We see humans turned into things, ghosts into persons, and corpses into spirits. The intriguing thing is the thoroughly matter-of-fact way these phenomena are dealt with legally.

For legal purposes, in cases of undue influence, defamation, or fraud, spectral emanations may become proof, just like any facts. On this bewitched ground, the fantastic and the commonplace intermingle. In the case of wills, especially, even when the law does not acknowledge the unique gifts of spiritualists, it sometimes admits as valid the communications of the dead. Some early twentieth-century courts refused to invalidate the wills of believers, distinguishing between belief in communion with departed spirits and outright insanity. When property was to be bequeathed, most appellate courts in America allowed the testator's belief in "witchcraft, clairvoyance, spiritual influences, presentiments of the occurrences of future events, dreams, mind-reading, and the like," as the Supreme Court of Illinois determined in *Carnahan v. Hamilton* (1914). Blewett Lee, a New York attorney, wrote in the *Harvard Law Review* (1921):

Justice and common sense require that the judge or jury should put themselves, as well as they can, for this purpose in the place of the believer. If, for example, a person believed that his dead mother told him to make a certain devise, the communication should be dealt with, so far as the believer is concerned, as if it had in fact been made by his mother.

Presenting themselves either in or out of the flesh, spirit messengers exert real pressures on the testator's mind, and courts must attend to evidence of malfeasance from charlatans or criminals, both living and dead. "The more importance is given to these communications," Lee explained, "the easier it will be to break wills or contracts made under their control." Eccentricity

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was not insanity, however, and except in cases of insane delusion, wills were not invalidated on account of such peculiarities. In numerous eighteenth- and nineteenth-century appellate cases, especially, courts sustained the wills of those advised by mediums channeling the wishes of deceased loved ones into the minds of believers.¹⁵

In *McClary v. Stull* (1895), the Nebraska Supreme Court upheld a widow's bequest, denying that her superstitious beliefs incapacitated her from making a will. Instead, it legally validated the evidence of spirit possession, as long as the testator's will was her own:

Law, it is said, is "of the earth, earthy" and that spirit-wills are too celestial for cognizance by earthly tribunals,—a proposition readily conceded; and yet the courts have not assumed to deny to spirits of the departed the privilege of holding communion with those of their friends who are still in the flesh so long as they do not interfere with vested rights or by the means of undue influence seek to prejudice the interests of persons still within our jurisdiction.

This enchantment, once recognized by law, treads perilously in realms that seem to be outside the precincts of reason. For who is to judge whether or not the testator's free agency has been destroyed? A later case in the Supreme Court of South Dakota, *Irwin v. Lattin* (1912), resorted to magical thinking: "It is sufficient to say that a will brought about by an influence which the testator *could not resist is not his will.*" But, we might complain, the testator is dead. What kind of psychic power must the law possess when it makes judgments about capacity or disability? As we shall see, this judicial reasoning has the power to give and to take away, to affirm personality and to deny it.¹⁶

A cure for all kinds of threats, reasonableness has always been a necessary presupposition for extending enslavement and disability. But this legal rationality is tied to figurative power; and at any moment, its metaphors can become more insistent, literal, operating as Robert Cover famously wrote "on a field of pain

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and death.”¹⁷ What constitutes the real in law when driven by the past, when the traffic between the real and the fantastic becomes unfair to the dead and dangerous to the living? Slave law relied on fictions of invisible taint and property rights in human beings, criminal law on civil death and a host of other apparitional constructs, and property, once judged to be infested with ghosts, was legally stigmatized.

Specters are very much part of the legal domain. Human materials are remade and persons are undone in the sanctity of the courtroom. Whether slaves, dead bodies, criminals, ghost detainees, or any one of the many spectral entities held in limbo in the no-man’s-lands sustained by state power, they all remain subject to the undue influences and occult revelations of law’s rituals.

BENTHAM’S GHOSTS

If you think that you can think about a thing inextricably attached to something else without thinking of the thing it is attached to, then you have a legal mind.

—Thomas Reed Powell

To think legally is to be capable of detaching ways of thinking from what is being thought about. Perhaps this is what the judge meant in *Ruffin v. Commonwealth* (1871), when he cautioned that the Bill of Rights, when applied to a civilly dead convict, should be given “a reasonable and not a literal construction.” To think in law means to reason in a special kind of way, and, as I seek to show, the application of legal rules could and did create a universe unto itself. Lawyers might find Professor Powell’s challenge to think analytically sensible, and they do, quoting Powell’s words often and for all kinds of reasons.¹⁸ But to one outside the guild of lawyers, they call up all kinds of possibilities. What happens if one is concerned with precedents but not

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with the content of precedents? Is that something like thinking about the body without the soul? Arguing against Descartes, Locke asked: "Can the Soul think, and not the Man? Or a Man think, and not be conscious of it?"¹⁹ Or perhaps we might think about the skin of the dog that, as we shall see, is valuable in law while the dog itself counts as nothing. Or the zombie flesh that takes directions from someone else: empty of mind, will, affect but fiercely embodied. Or the body fed, kept warm, and clothed in indefinite solitary confinement while the mind is ignored.

To have a legal mind is to know Bentham's greatest fear: to know that ghosts do not exist yet to recognize the grim effects of that unreality. The "subject of ghosts," Bentham wrote toward the end of his life, "has been among the torments of my life." Though persuaded "of the non-existence of these sources of terror," he wrote, when he went to sleep "in a dark room" they "obtrude themselves," and he remained plagued by visitations of ghosts and specters all through his life. It is perhaps such ambiguous if persistent illusoriness that Melville grasps in the "colorless, all-color" of the whale Moby-Dick, when he writes about the mariner's dread of its whiteness: "the shrouded phantom of the whitened waters is horrible to him as a real ghost."²⁰

As early as 1764, while he was still a student at Oxford, Bentham heard William Blackstone's Vinerian lectures on English law. The publication between 1765 and 1769 of the *Commentaries on the Laws of England* based on these lectures roused Bentham to fury against the "gothic tangle" of the common law, the very "fictions and circuities" that Blackstone had praised. Though Blackstone recognized that such "arbitrary fictions and expedients" are "troublesome," he insisted that they are "not dangerous":

We inherit an old Gothic castle, erected in the days of chivalry, but fitted up for a modern inhabitant. The moated ramparts, the embattled towers, and the trophied halls, are magnificent and venerable, but useless. The inferior apartments, now converted

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into rooms of convenience, are cheerful and commodious, though their approaches are winding and difficult.

Bentham must have found in Blackstone's genial words chimeras more maleficent than his childhood phantasms: manifestations from a world of the dead. Bentham's preoccupation with ghosts inspired all of his writing on law. Early dread became life-long obsession, as Bentham fought against the common law—"a thing merely imaginary . . . an assemblage of fictitious regulations feigned after the images of these real ones that compose the Statute Law." Far from being immaterial, these fictions not only fed on the realities of statutes but, once so embodied, they had real effects: the "dominion of the one and the few" instead of "the greatest happiness of the greatest number."²¹

So whenever Bentham thought about the terrible force of ghosts in their unreality, he raged against legal fictions and the obscure language that supports their existence. Here he followed Locke in condemning the "perpetual abuse of words." Though unreal, legal fictions work wonders on the ordinary, throwing into doubt even quotidian matters: "A fiction of law may be defined a willful falsehood," Bentham explained, "having for its object the stealing legislative power, by and for hands which durst not, or could not, openly claim it; and but for the delusion thus produced, could not exercise it." The "word-magic" of legal fiction remains "a false assertion of the privileged kind," made by those in power to wield ambiguous, even spectacular effects. And "though acknowledged to be false," the fiction is "at the same time argued from, and acted upon, as if true."²²

Ghosts terrified Bentham precisely because they do not exist. The more energy he put into refuting their existence, the more intense became his fear of them. Following Slavoj Žižek's account of the ghostly "as something radically other," Miran Božovič reminds us of the mode of thinking that led to the feint of the panopticon: "In Bentham's elaborate ontology, ghosts—as well as hobgoblins, vampires, the devil, etc.—are classified as 'fabulous maleficent beings,' or, more precisely, imaginary non-

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entities." If they were *really* evil—and Božovič gives the example of "vicious dogs"—if ghosts were as "*maleficent*" as dogs, biting and tearing and grinding, they would not frighten as much as when we know them to be unreal. "We might even say," Božovič adds, "that the most unbearable thing would be to succeed in refuting the existence of ghosts."²³

In Bentham's critique, the history of the common law was evidence of a world gone spectral, with laws and language obscured by "the pestilential breath of Fiction." Even the idea of a legal right was nothing more than a mystifying ruse. Bentham also criticized the demonic "metaphysics" of the French Declaration of the Rights of Man and the Citizen in 1789 in words that anticipate Arendt's confrontation with its vexing paradoxes, its intransigent abstractions: "Words—words without a meaning—or with a meaning too flatly false to be maintained by any body.... Look to the letter, you find nonsense:—look beyond the letter, you find nothing."²⁴

Yet this *nothing*, as Bentham knew, had in its very emptiness power to demoralize people, to work real changes on their lives. What Bentham called this "dark spot" of mendacious vacuity can best be understood by thinking about the terror he experienced as a child: in his room at night, or even outside where servants made "every spot" the habitat of specters. It was always a question of the powerful over the weak: stories told, definitions plied, and language made obscure to rout certainty, create fear, secure obedience. He realized that such inventiveness was very much a part of governance, that making terror was actually a very easy way to keep the multitudes quite literally in the dark.

DOGS AND GHOSTS

Howling through the shadows at Hecate's crossroads, sitting at Pontius Pilate's feet, snarling at Jesus crucified, or accompanying the souls of the dead to the other side, dogs inhabit both divine and demonic realms. Like ghosts, dogs are enigmas. So speaks Nietzsche's Zarathustra, haunted by his own thoughts:

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Then, suddenly, I heard a dog *howl* nearby.

Had I ever heard a dog howl like this? My thoughts raced back. Yes! When I was a child, in my most distant childhood:

—then did I hear a dog howl like this. And I saw it too, bristling, its head up, trembling in the stillest midnight when even dogs believe in ghosts.²⁵

Ghosts like dogs are drawn to the familiar, the everyday, even as they tend toward the paranormal and supernatural. They appear as if somewhere between the real and supernatural, returning as a nightmare white phantom, a silent shade, or heavy with flesh, overripe and in need. In the meeting of the actual and the imaginary, ghosts and dogs bear down on the world of social relations and morality. Dogs and ghosts constantly cross boundaries, visit what they coveted most in life, counting on the heaviness of things to give them pleasure, to make them grieve. Ultimately, no matter how much they suggest the impalpable or transcendent, ghosts always come in bodies. They never obey the command to be wisps of air, some kind of steam, wet in the night or voices on the wind.

Let us take dogs and ghosts as entry into that place where creatures both human and nonhuman are outside community, on the borders of the known, “beyond the pale of civilization, a space haunted by exiled criminals, the insane, real and mythical beasts.”²⁶ Rituals of banishment are crucial to cleansing and purifying a place of human holiness, or more precisely to disposing of the stigmatized outside the body politic. It is in myth that we find the history of rituals that inflict death and dehumanization—and the means by which the end to life and loss of affiliation become one. Antoinette in Jean Rhys’s *Wide Sargasso Sea* warned: “There are always two deaths, the real one and the one people know about.”²⁷ Whether we consider public rituals of physical death or secret practices of psychic elimination, dogs figure ubiquitously. Dogs appear as demons, dead spirits, as persons bewitched or things left behind. In all parts of the world and throughout history, they are cast as spectral packs of white dogs,

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hell-hounds, heath-hounds, the gabble ratchets or Gabriel hounds, the red-eyed, dog-headed gatekeepers to the realms of the dead, whether understood as the religious or the legal recesses of punishment.

What gives dogs their unique capacity to haunt? The history of the spectral like that of the sacred is found most surely in the trash bins of society. What is most damaged, torn, and rotten becomes the stuff of spiritual life. And the transformation introduces changes in our definition of spirit and body. This apparent opposition—between spirit and body—is confounded in the story of Hecuba, which I take as preamble to the shape-shifting and undoing of status that are the focus of this book. Changed into a dog, at once mystified and historicized, ghostly and corporeal, she brings us to the interstices of human and animal, person and god, living and dead.²⁸

Laying bare the irreducible link between ghost stories and the properties of death or dislocation, Hecuba defies the consolations of transcendence. In Ovid's *Metamorphoses*, after being stoned for her vengeance on Polymnestor, who killed her son Polydoros for gold and jewels, Hecuba appears changed into a roaming haunt, howling in the Thracian fields:

The Thracians, at the sight of [Polymnestor's] distress,
 began—with stones and lances—to attack
 the Trojan women. But she tried to catch
 those stones: with a hoarse howl, she snapped her teeth.
 Her jaws could only bark, though set for speech.
 And one can still find in the Cherronesus
 this place: the She-hound's Mound or *Kynos sema*,
 the name it gained from Hecuba's sad change.
 And then, for long, through all the fields of Thrace,
 remembering her many griefs, she howled.

(13:565–75)

Ovid understands the curse of ever-remembered loss, for not only does his Hecuba bark like a dog, but she howls into eternity. In earlier versions of the story, as in Euripides' *Hecuba*, instead of

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haunting the living, she dives into the sea and disappears. After her sufferings, her grief and indignities, deprived of her husband Priam, her children, and her city, she learns of her own end. The blinded, bleeding Polymnestor, his eyes gone and the flesh of his eye sockets gouged out by the “luckless” Hecuba, foretells her transformation into a dog with “fiery eyes,” her death when she leaps from the ship’s mast and vanishes in the sea. All that remains after she dies is her tomb on the Chersonese which bears the words: “Grave of the wretched hound, a mark for mariners.”²⁹

Though these are both well-known accounts of Hecuba’s fate, I turn to the amplest if not the most enigmatic of Hecuba’s appearances: Lycophron’s *Alexandra*, variously dated sometime in the third or second century BC. Though the author is often assumed to be Lycophron of Chalcis, a poet of the Alexandrian court at the time of Callimachus, the real author remains a mystery: his birthplace, name, and occupation are still debated. What we know is that this Alexandrian poet crafted a remarkable amalgam of Homeric echoes, mythic returns from Troy, and other archaic and classical sources into a compressed, fractured, learned, and allusive lyric. With the ghosts of the dead before him, Lycophron retrieves a history disfigured and obliterated. The poet coins neologisms, sunders word order and syntax in a language as clashing as the human and nonhuman animals, the terrible spirits that crowd into Cassandra’s vision on the day of Paris’s departure for Greece.³⁰

Out of the mouth of the Trojan Cassandra, locked away by Priam in what Robert Graves surmises is “a bee-hive tomb,” come the “last notes of her Siren-song.” Cassandra’s prophecies about Troy’s ruin are reported to an unbelieving Priam by the woman guardian who cares for her. With her “mazy riddling utterance” come two portraits of Hecuba that deepen the queen’s story as they reveal her unfolding identities as mother, victim, predator, dog, ghost. What these metamorphoses have in common is a secret pact with the nonvisionary. Lycophron gathers the simplest, most forsaken things and works them up into figures as terrible

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as they are ambiguous. The recurring metamorphoses cast their spell in the very twists and turns of the iambic trimeter lines. In a striking passage the "grief-worn dog" turns into lion, captive, and then into the very stones that shower upon her on the coast of Thrace. The stones become a robe and then in turn the black skin of the spectral Maera, the dog attendant upon Hecate, the goddess of the underworld:

And thy doom I lament, thou grief-worn dog,
 One that same earth, which bare her, opening wide
 Shall swallow utterly in yawning depths,
 As she sees direful ruin close at hand,
 There by her forebear's grove, where concubine
 Who wed in secret now lies joined in death
 With her own offspring ere it sucked the breast
 And ere her limbs were bathed, her travail past.
 And thee shall lead to cruel bridal-feast
 And wedding-sacrifices Iphis' son,
 Grim lion, using his fierce mother's rites;
 Slitting her throat into a vessel deep
 The snake, dread butcher of the wreath-crowned cow,
 Shall smite her with Candaon's thrice-owned sword,
 And slay for wolves the opening sacrifice.
 While thee, aged captive, on the hollow shore,
 Stoned publicly by the Dolonican folk
 Embittered by thy curses and abuse,
 A robe shall cover wrought of showering stones,
 When Maera's dusky form thou shalt assume.³¹

(315–34)

The thicket of competing embodiments sustains this ritual of pained recovery. The poem works best and perhaps solely in the zones of stress and uncertainty between the weight of memory and the call of imagination. Its cluster of contradictions demonstrates what a mind might look like pushed to the limits of recognition. Lycophron omits the plot-driven details of Polynestor's murder of Polydoros for gold and Hecuba's subsequent

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revenge so powerfully rendered by Euripides. Instead, though Hecuba appears only twice, her transformation in character captures the experience of the tombless dead.

Enmeshed in a sequence of losses, each harsher than the last, she suffers a gradual deepening of servility that gnaws at her personal identity until there remains nothing but the image and sound of her grief, the bark and the body of a dog. Is Hecuba's mutation into a dog a degrading transformation, punishment for her bloody revenge on Polymnestor? Certainly not here. The shade and shape of the nonhuman realize the excesses of her grief and the absoluteness of her exile from all she held dear, her banishment from civil and political life: a widow, a slave, with no freedom, no family, no possessions.

There is something worse than enslavement: the haunt of the self made extinct, turned loose to roam outside of society, bereft of intimacy and affiliation. After these mutations a self still lingers, a reminder to those who have damaged her: the haunt of her howls in the night. Lycophron's Cassandra mourns, while prophesying her mother's "fame" as an attendant hound of Hecate, the "Triformed," worshipped in Thrace and honored at Pherae in Thessaly: "Mother, poor mother! Not unknown also / Shall be thy fame; for Brimo, Perses' child, / Triformed, shall make thee an attendant hound / With nightly howls these mortals to affright" (1174–77).

In Lycophron, there are ghosts upon ghosts, not surprising since we are in the realm of the dead, but they are always in league with matter, thickened with physicality. Lycophron's poetic cruces involve conversions between matter and spirit, inglorious brutes and rarified spirits. By forcing proximity on those categories most rigorously separated, he probes the displacement of the human element from these beings. Yet what remains after transfiguration is the self that hangs on to consciousness, the *psyche* that E. R. Dodds describes as "the seat of courage, of passion, of pity, of anxiety, of animal appetite," not primarily "the seat of reason."

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As in later spirit or possession religions, such as medieval sorcery or modern practices of vodou, there is no room for the metaphysical or transcendent. Instead, there is a loosening of boundaries, a radical materiality, as Dodds writes: "The 'soul' was no reluctant prisoner of the body; it was the life or spirit of the body, and perfectly at home there." Those who practice what is called "witchcraft" or "superstition" acknowledge such potent divisions as that between rational agents and dumb animals, but they strive to make indistinct the terms of distinction. Hecuba's dog reminds us that this hierarchy is dubious, its status ambiguous. What matters most in her metamorphoses is the form that victimization takes: the banishment, torment, and loss equally shared by all personalities, whether animals, humans, gods, or ghosts.³²

THINKING WITH ZOMBIES

In the figure of the zombie, a cadaver in appearance only, vodou extends the fiction of civil death. The zombie though dead is alive. The dead-alive zombie in "flesh and bones" survives as the remnant of loss and dispossession. These macabre, depersonalized entities are left to wander alone or forced to work together, shorn of tenderness, comradeship, consciousness. In *Myal* (1988) the Jamaican sociologist, poet, and novelist Erna Brodber regards "spirit thievery" as the dead reanimated by the force of mastery. However this relation of domination is configured, memories of servitude are transposed into a new idiom:

People are separated from the parts of themselves that make them think and they are left as flesh only. Flesh that takes directions from someone. The thinking part of them is also used as nefariously ... "immorally" might be a better word.... In those societies there are persons trained to do the separation and insertion. The name under which they go would be translated as spirit thieves.³³

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Spirit thievery recalls the debilitation of slavery that makes one forever subject to the direction of another. In the violent exclusion from community and kinfolk, the zombie code takes shape. If socially the zombie represents the self undone, the seriatim diminutions of dignity and life, then we can use the image in order to understand how things legally emptied of personhood can be repossessed or turned into vessels for what Mary Midgley has described as “highly sensitive social beings,” intelligent, aware.³⁴

Zombies are unnatural persons, or, put more precisely, fearfully tactile if spectrally real beings. They have been excommunicated and anathematized as retribution for violating the laws of their society. Yet every case of zombification demands that we question the nature of this transgression. The zombie phenomenon only makes sense in terms of the features of a well-defined personality who reaps punishment for ambition, greed, disrespect, or slander. We must anchor this ceremonial of disgrace in culture and legal history rather than nature. Far from supernatural, zombies are experienced as highly contextualized spectacles of alienation intended to inspire horror in the minds of the community.

In our “secular,” “progressive” times, comprehensive forms of expiation function as the backdrop to civil community. Rituals of expulsion remain intact to intimidate and control. Who gets banned and expelled so that we can live in reasonable consensus? Let us name them now. Criminals. Security Threats. Terrorists. Enemy Aliens. Illegal Immigrants. Migrant Contaminants. Unlawful Enemy Alien Combatants. Ghost Detainees.³⁵ These are new orders of life; they hover outside the bounds of the civil, beyond the simple dichotomies of reason and unreason, legal and illegal. The receptacles for these outcasts are in the wilderness, the desert, or islands cut off from sociocultural networks of daily life. The management of rubbish, what we might call fecal motives, draws distinctions between the free and the bound, the familiar and the strange. And this ongoing global cultivation of

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human waste, brazen in its display, makes our sense of inclusion a rare and precarious privilege.

Is there an afterlife of ostracism? What remains once civil has been replaced with penal life? Legal definitions are instrumental in condemning the unthinkable chimera to circumstances where dogmatic divisions between humans and monsters no longer count. As suggestive in their haunt as were unclean spirits, the objects of oppressive state magic are also racially marked, making what Avery Gordon calls "the disposability of a permanently confined life" count in a blatantly phenomenal and therefore pervasively spectral manner.³⁶ Though alive, they are incessantly dying in new ways. Situated beyond the terror of mortality, these exiled persons work powerfully on the minds of the as-yet included. We cannot ignore the threat of this malediction. The state brings up to date the once formidable anathema of the church. Ecclesiastical exorcism survives in the burlesque of justice that continues to find ways to eliminate the accused without due process, without trial, without evidence, without even a charge.

A GOAT FOR AZAZEL

"And I will set my face against you." In Leviticus the face of God orders retribution for turning away from the law. Besides burnt offerings of bullocks, sheep, goats, turtledoves, there remains the central sacrifice of the Day of Atonement, the sign of true repentance: the goat set apart for Azazel. In the days of the Temple, the High Priest went before two goats, alike and equal. Two lots made of gold were thrown together into a casket from which he drew one lot as sacrifice on the altar for the "Name Most High, and one for the rocky steep," released into the wilderness to Azazel. Putting both hands on the goat, he cried aloud: "A sin-offering unto the Lord." After confessing the sins of the people of Israel, he sent this goat with a scarlet fillet around its jowls and the congregation's sins on its head out beyond the city's gates and into the desert.

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And Aaron shall lay both his hands upon the head of the live goat, and confess over him all the iniquities of the children of Israel, and all their transgressions in all their sins, putting them upon the head of the goat, and shall send him away by the hand of a fit man into the wilderness. (Leviticus 16:21)

Animals sent defiled either out into the wilderness or over cliffs, are crucial to cleansing and purifying a place of holiness. Laden with sins, the goat is a terribly polluting force. Sometimes the goat tried to return to the camp, the place it had known for so long. In order to prevent this, the appointed person pushed the goat into an inaccessible area believed to be the place of evil spirits or demons. This is not so much a sacrifice as a going away. Something is being sent away for some kind of death somewhere beyond the borders.

Legal directives join in the solemn enactment of social structure, as moral discrimination cedes to obligatory practice. Let us turn to another site of contamination, also in Leviticus. Not the cliff or wilderness for the banished goat, but the fungal house. If possessed of “the plague of leprosy,” it must be emptied and inspected by a priest.

And he shall look on the plague, and, behold, if the plague be in the walls of the house with hollow strakes, greenish or reddish, which in sight are lower than the wall; Then the priest shall go out of the house to the door of the house, and shut up the house seven days: And the priest shall come again the seventh day, and shall look: and, behold, if the plague be spread in the walls of the house; Then the priest shall command that they take away the stones in which the plague is, and they shall cast them into an unclean place without the city. (Leviticus 14:37–40)

In the process of eliminating impurity, the text portrays infectious property as if personally responsible, grotesquely cursed. What is most striking in this liturgy of disease, priestly inspection, and removal is the formulaic repetitions. How arduous must be the ritual of purification, severe in its orders of detection, its

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suspicion of recurrent defilement. Whether house or human, the severity is unchanging.

What is the design of the juridical no-man's-land that has been created when law loosens the link between human beings, animals, devils, other noxious creatures, or infernal vexations? I have cast this traffic and transplantation of persons across vast social, temporal, and spatial distances in the drama of rituals that are both penal and religious. The stuff of spiritual life becomes the raw material of legal authority. My understanding of law thus summons persons as essential to its sustenance: "No person itself, the law lives in persons."³⁷ If I may hazard the comparison, the law also lives off persons as do spirits in search of bodies to inhabit, in much the same way as the Haitian *lwa*, the spirits or gods of vodou, can manifest themselves only in the corporeal envelope. In lineaments both human and nonhuman, spirits experience life and unfold their potential.

The drama of vodou permits human practitioners to take on roles, to find newly malleable identities. In the same way, legal persons have no fixed definition, but instead take on changing capacities variously granted by the state, such as legal rights, freedoms, duties, and obligations. Jurisprudence responds to the "craving for the rational" when confronted with what Alexander Nékám regards as the necessities of "social control and valuation." To be acceptable, communal emotions must be endowed with a "rational form." This incarnation is granted through "the art of the law." Nowhere is the artifice as compelling as in the creation of legal persons, entities that have nothing to do with "human personality." These persons, "whether human being or anything else," prove the absoluteness of law's power: "those to whom the law attributes such a legal personality possess it by force of the law and not by nature." In this preternatural performance, "legal rights and enjoyments" can be given to "spirits and gods, devils, and idols, as well as to the unborn and the dead."³⁸

Highly context-specific situations help us to dramatize the limits of human personality, to intimate law's usurpation of nature. They form the background to the donning and relinquishing

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of masks. So diverse are estimates of what counts for persons that we would do well to compare their changing comportment with that of shape-shifters, shedding and taking on different skins. The *loup-garoux* of medieval France or the *san pwèl* and *san po* (hairless or skinless) in contemporary Haiti, the blood-suckers and vampires of the West Indies and the southern United States, remain fully conscious selves even as they shed skin, take on new skin, and assume nonhuman form. In search of human company, these bloodthirsty spirits take on the appearance of dogs, cows, or goats.

SPIRITUAL LEPERS

"I swear I have never seen such a devilish way of thinking as they seem to have," Shaker Aamer, a legal resident of the United Kingdom captured in Afghanistan in December 2001, wrote in his diary during his July 2005 hunger strike at Guantánamo.³⁹ The occult sorcery of human cruelty brings us closer to thinking about the meaning of monsters.

Some of those called terrorists in the early days of Guantánamo were labeled as threats and imprisoned without being accused of any offense. Objects of contagion, they had to be sealed off. They were subjected to an extrajudicial exhibition of containment that preceded their detention, abuse, and torture. Transmogrified into the chrysalis of confinement, they were drugged, shackled hand and foot, made to wear ear cuffs and mittens, hooded, and blindfolded by blacked-out goggles. These distancing effects, once fixed on their bodies, shrink the space of isolation into a second skin. The place of incapacitation and the incapacitated person collapse into one.

"I am in my tomb," wrote Abdelli Feghoul, in solitary confinement at Camp 6. In the ostensibly more lenient Camp 5 and Camp Echo, prisoners are confined to steel and concrete isolation cells for at least twenty hours a day, with virtually no human contact.⁴⁰ Let us remember that the approximately 200 men who remain imprisoned in this offshore pen are held in defi-

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ance of international law. In many cases the victims of acknowledged kidnapping, of illegal transfer across international borders by the U.S. government, they are not guilty or alleged to be guilty of any crimes. They have not been charged, accused, tried, or found guilty of anything at all. Not even, as the records show—at least at the time of their seizure and torture—of hostility to the United States (which is not, let us remember, a crime).

Since 2002, in response to collective punishment, the captives have initiated a series of individual and coordinated mass suicide attempts, classified by the military as “manipulative self-injurious behavior.” The hunger strikes bear witness to images of incapacitation and the realities of protest. In December 2005, the number of hunger strikes dropped after mobile restraint chairs (called “torture chairs” by prisoners) were introduced. Clive Stafford Smith, a lawyer at Guantánamo, writes that the device “looked rather like an updated electric chair.” As well as straps for the prisoner’s arms and legs, “the Guantánamo chairs had been modified to add two additional straps for the head and the chest.”⁴¹

The largest hunger strike, in which 131 prisoners participated, ended in 2006 with twice-daily force-feeding through nose tubes, a process that involves excruciating pain, bleeding, and vomiting. Talking to a group of reporters about the chair to which prisoners were strapped during the insertion of the feeding tubes, General John Craddock, the head of the United States Southern Command, assured them, “It’s not like ‘The Chair,’ it’s a chair. It’s pretty comfortable, it’s not abusive.” Expanding on his notion of nonabusive comfort, he explained that his soldiers gave those he called “detainees” a choice of colors for feeding tubes—yellow, clear, and beige—adding, “They like the yellow.”⁴²

Seven years after the first captives arrived at Guantánamo, President Barack Obama on January 22, 2009, issued a series of executive orders concerning Guantánamo and U.S. policies on executive detention. Besides requiring the closure of the prison

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within a year, he ordered that conditions of confinement there be reviewed by the secretary of defense, who appointed a team of investigators. The “Review of Department Compliance with President’s Executive Order on Detainee Conditions of Confinement,” presented to Obama by Admiral Patrick W. Walsh in February 2009, describes the practice of “enteral feeding” in chilling detail. In the section called “Medical Ethics—Medical Treatment of Hunger Strikers,” the Department of Defense review team presents coercion as care.

The feeding process, the report argues, comports with Common Article 3 of the Geneva Convention. A surprising conclusion, since that article prohibits, among other things, “outrages upon personal dignity, in particular humiliating and degrading treatment.” Systematic debasement takes on the appearance of emergency preservation. A physician is aided by “a feeding nurse and one or more Corpsmen,” with “periodic consultations from a nutritionist.” When prisoners refuse to come out of their cells, the “Joint Detention Group Commander” authorizes a “Forced Cell Extraction” (FCE). The feeding is then done by FCE teams in “feeding chairs” with “head restraints.” A footnote explains that the “nasogastric tube used is size 10 or 12 French, which would be 3.5–4.5 millimeters in diameter (slightly larger in diameter than a piece of cooked spaghetti but less than a pencil eraser).”⁴³

Aamer, one of the leaders of the hunger strike that began in July 2005, asked Stafford Smith to take down his words when he was in isolation in the supermax unit Camp Echo:

I am dying here every day. . . . Mentally and physically, this is happening to all of us. We have been ignored, locked up in the middle of this ocean for four years. Rather than humiliate myself, having to beg for water here in Camp Echo, I have decided to hurry up a process that is going to happen anyway.⁴⁴

The question is whether captives who have chosen to die, whether as protest or in response to unendurable suffering, should have their decisions respected or should be “saved” by force. In other words, should the deliberate, conscious decision to die by star-

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vation be duly regarded, or should the military guards prevent fully aware and responsible individuals from killing themselves in this way? Do we find our ethics by forcing captives held in defiance of law to live in a dying situation, by refusing them an escape from a situation worse than death, where such a thing as *life* acquires new meaning? In this context, to safeguard health is to make persons accept their passage from subject to object. The transition is involuntary, unlike the willed riposte of suicide. The personhood of the men at Guantánamo remains bound up with their right to decide how they maintain and express their group identity, when they warrant recognition, what they do with their bodies. Not allowing persons to choose death as an escape from a murderous fate depends on the skilled manipulation of grim technologies.

On February 23, 2009, on the same day as the presentation of the Department of Defense review, the Center for Constitutional Rights issued its own report on conditions at Guantánamo, revealing that purportedly humane methods there consisted of sensory and sleep deprivation in the camps, as well as force-feeding, described by the euphemism “intensified assisted feeding.” Sabin Willett, an attorney for Guantánamo prisoners, described the experiences of one of his clients: “[Y]ou try talking to a man who only wants to see the sun. You will never forget the experience.”⁴⁵

Human in form but dead in spirit, these captive entities live on in our minds, preserved in amber, like the corpse kept in cellophane in that singularly unreal photo from Abu Ghraib. Dependent on spectacle for their force—whether the proliferation of effigies from Abu Ghraib and Guantánamo or the haunt of the unseen in lethal injection rooms or supermax cells in the United States—these hints of something worse than death produce a new sign of the self. These dead are not improved by dying.

What happens to the bodies of the dead already entombed at Guantánamo? Lost to their families when living, they remain abandoned in death, deprived of the quick burial required in

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Islamic practice.⁴⁶ In the haunt of Guantánamo, the spirits of persons lie dead. This nightmarish dispensation puts us on the cusp of a belief in ghosts. The new ghost story is really a very old one, and as always these ghosts are in league with matter. Describing the fate of “outlaws, convicted felons and excommunicates,” who take on the shape of wolves, Frederick Pollock and Frederic William Maitland focus on “outlawry” as “the law’s ultimate weapon.” The decree of outlawry, they explain, occurred not at a time of no law but “when law was weak, and its weakness was displayed by a ready recourse to outlawry.”

He who breaks the law has gone to war with the community; the community goes to war with him. It is the right and duty of every man to pursue him, to ravage his land, to burn his house, to hunt him down like a wild beast and slay him; for a wild beast he is; not merely is he a “friendless man,” he is a wolf. Even in the thirteenth century, when outlawry had lost its exterminating character and had become an engine for compelling the contumacious to abide the judgment of the courts, this old state of things was not forgotten; *Caput gerat lupinum* [Let him bear the head of a wolf]—in these words the courts decreed outlawry.⁴⁷

Has outlawry—or, for that matter, law—lost its exterminating character? Not if we consider the Obama administration’s revised plan for trial by military commission. The three men accused of planning 9/11, outlaws who desire the transfiguration of martyrdom, will have their chance. They can be exterminated without a genuine hearing. In a very unusual juridical turn, these prisoners will be allowed to plead guilty, thus eliminating the need for “proof,” which might necessarily include acknowledgment of torture. Thus, security secrets will not be divulged, nor brutal interrogation techniques.⁴⁸

Lynn White once wrote: “To know the subliminal mind of a society, one must study the sources of its liturgies of inflicting death.”⁴⁹ The tensions between archaic and modern are fitful and rapidly evaporating. Once considered legal aberrations, the ruins of an irrational past are reconfigured as acceptable. On May 21,

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2009, Obama proposed, as if a novel idea, the protracted incarceration of alleged terrorists. In spite of admirable intentions, his suggested “legitimate legal framework”—what he also described as “an appropriate legal regime” for preventive detention—is virtually unprecedented within the law and wholly unconstitutional. It is not unprecedented in actuality. It remains indistinct from the worst though least-discussed excess of Guantánamo: the use of indefinite isolation as psychological torture. Sensory deprivation is the form of discipline preferred by prison management. Now it is offered as the solution to the Guantánamo disgrace. The “rendering” of prisoners as packaged goods during delivery to be later sealed off and warehoused thus presaged their future.

By legitimizing incapacitation without proven crimes or violations of law—and without trial or even charge—President Obama regularizes the anomalous and rationalizes solitary torture. He reimagines *preventive detention* offshore as *prolonged detention* on the mainland. Not as degraded or mendacious a euphemism perhaps as his predecessor’s “enhanced interrogation techniques” for torture, but a euphemism nevertheless. In the wily magic of changing terminologies, “prolonged detention” replaces both “indefinite detention” and “administrative segregation”—the latter already an evasive and legally convenient renaming of “solitary confinement.”

The majority of prisoners held in long-term, open-ended, and often permanent supermax confinement in the United States are labeled “Security Threat Groups.” These alleged gang members usually have no disciplinary infractions; they are locked down and isolated allegedly for the safety of the rest of the prison population. The incarceration of “dangerous terrorism suspects” on our soil without due (or indeed, any) process of law also trades on the promise of security. The new global logic of punishment offers democracy while dispensing with judge and jury. It also ensures the broader establishment of super-maximum security units.⁵⁰

What the United Nations Convention Against Torture, as well as human rights groups such as Human Rights Watch, Amnesty

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International, and others have long singled out as torturous solitary-confinement practices in the United States and what Guantánamo detainees have revealed to be the most horrific part of their detention—its systematic psychic cannibalism—President Obama presents as what every reasonable American should admit as worthy of our heritage: “the power of our most fundamental values.” He asks us to bear in mind: “Nobody has ever escaped from one of our federal supermax prisons, which hold hundreds of convicted terrorists.” His proposal, he says, resulted from approaching “difficult questions with honesty and care and a dose of common sense.” When did common sense become so difficult, honesty so terrifying?⁵¹

“After two days of solitude,” J. M. Coetzee writes in *Waiting for the Barbarians*, “my lips feel slack and useless, my own speech seems strange to me. . . . I build my day unreasonably around the hours when I am fed. I guzzle my food like a dog. A bestial life is turning me into a beast.”⁵² But this dog, though reduced to appetite alone, at least has the chance to know, to desire. There are other kinds of metamorphoses: the nefarious production of another kind of person—whether canine or ghostly, human relic or spirit—drained of self-identity, forever anomalous, condemned as extraneous to civil society, excluded from belonging.

The incapacitated, the as yet improperly apprehended legal person is sufficiently unreal to make claims on our habits of thought. If more-or-less tangible objects can be either “property” or “persons” in the eyes of the law, what we consider subjects of legal rights and duties can also be stripped of these attributes. We are obliged to consider the creation of a species of depersonalized persons. Deprived of rights to due process, to bodily integrity, or life, these creatures remain *persons in law*. The reasoning necessary to this terrain of the undead sanctions the irrational: the reasonable extension of unspeakable treatment into an unknowable future.⁵³

When law is called upon to ascertain a “rational” basis for sustaining the dominion of the dead and the ghostly, much depends on assumptions that most of us claim to find intolerable. But

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recent events continue to prove how much we can tolerate. How easy it is for fear, dogma, and terror to allow us to demonize others, to deny them a common humanity, the protection of our laws, to do unspeakable things to them. In a morally disenchanted world, daily cruelty and casual violence accompany the call for order, the need for security.

In an age of scientific advances, when "spare-part" medicine is applied to corpses or living bodies, when the unborn fetus becomes rights-bearing, and genetic and embryonic chimeras are realities, the question of legal personhood corresponds with an inscrutable idiom. It is perhaps because of this cohabitation and the "magicalities" it allows that state power is less open to criticism. If witchcraft is "the use of preternatural power by one person to damage others," then the practitioners who inhabit the dark world of stigma know how to make law the basis of extralegality. This sorcery is not overt, and the illusionists who practice it rely on secrecy to guarantee its malignancy and predations.⁵⁴

Life and death, possession and demonism are, to a surprising extent, buttressed by the normal forms and regular course of law. Cultural expectations of legitimate punishment, necessary pain, and reasonable violence are produced, transmitted, sustained in a legal idiom. One of the judges in *Bailey v. Poindexter* (1858), an antebellum case central to my inquiry, declared that to treat the slave as capable of choice was to create "a legal impossibility." Now, the U.S. government and courts are busy turning living, willful, sentient, believing persons into inanimate, rightless objects. These objects are disfigured, reduced to organs that can fail and legally be put at the threshold of life and death, where pain is torture only if it causes death.⁵⁵

DOGS' BODIES

The dead do not die. They haunt the living. Both free and unfree, the undead still speak in the present landscape of terror and ruin. The dogs of hurricane Katrina, citizens turned refugees in

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the United States; prisoners warehoused indefinitely; disappeared ghost-detainees tortured and held incommunicado in prolonged detention; sick cows kicked and prodded in slaughter—the rationales and rituals of terror proliferate. But perhaps we need to think more deeply about the dying and the dead.

For a long time, as we shall see, the dog could not be the subject of larceny. Only the taking of skin from the dog's dead body was a felony. Dogs, the most intimate and persistent friends of humans, were legally considered as no different in terms of property from human corpses. In the analogy I make here between the *dead body of a human* and the *living body of a dog*, I propose that we consider not just the metaphysical violence but also the literal dispossession, so much a part of legal reasoning. How far can we take this judgment of negated personality or nullified property? In his *Commentaries*, Blackstone writes "that no larceny can be committed, unless there be some property in the thing taken," and here he gives the example not of the theft of a dog but of an enshrouded corpse: "This is the case of stealing a shroud out of a grave; which is the property of those, whoever they were, that buried the deceased: but stealing the corpse itself, which has no owner, (though a matter of great indecency) is no felony, unless some of the gravecloths be taken with it." There is property in a winding sheet just as in the hide of a dog. What lies inside has paradoxically less intrinsic value than what is most superficial, just skin-deep. Whether living or dead, there is something that links dogs and humans, damaged, diseased, or dead, in Anglo-American law.⁵⁶

Jerry Cruncher, the "resurrectionist" of Dickens's *The Tale of Two Cities*, exhumed bodies and gave them up for dissection. The court ruled that he had not committed larceny but a misdemeanor, since a corpse was *res nullius*: it belonged to no one, no one had any right in it. The origins of the rule nullifying property in corpses are obscure and confused. A corpse awaiting burial has a status distinct from bodies rotting in the earth or turned into mummies. The natural decay making dust of the corporeal remains is quite unlike the labor expended to preserve

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them. When the body has been worked on and bettered, possessed or occupied by another's labor and thus owned, it gains legal recognition. In this uncertain tenancy, the play of legal reasoning between living and dead becomes a curious, illogical process. A deliberation both casual and terrible, it marks the abrupt legal transition of a dead body from subject to object. The preservation of dignity vies with the trashing of junk. American courts, unlike English, recognized the sometimes-gruesome consequences of the classic notion of no-property-interest in cadavers, and instead granted human remains the status of quasi-property. Thus recognizing the claims and rights of family members, the courts gave them the right to possess the corpse for burial and determine the manner in which it would be laid to rest.⁵⁷

The unloved, unwanted, and abandoned are not always left alone. Sometimes they are lost, taken, discarded, or made ready for predation. Early and late, pre- and postmodern, some entities get special treatment when subjected to prejudice and irregular vengeance. Possessed physically by devils—however they are construed anew over time—or exploited as zombies, they are turned into new human, animal, or other unspecified shapes. The results are real: injuries, murders, and often dazzling transmutations. In the latter case, society creates the highly effective illusion through deference to legal forms and usages, whether as part of state ritual or as religious practice.

Devils enter physically into corpses, borrow their bodily functions. Recent thought experiments about dying and death, organ transplants or persons dead to cognition—such as Karen Quinlan, described as being in a permanent vegetative state and allowed to die—make us think again about phantasms of personhood, spirit possession, and what it means to be considered in terms of law.

When reflecting on humans assailed, transformed, or disposed of, we turn to catastrophe, to the disorder piled onto animals thought to be conscious of wrongdoing, and possessed of intelligence and passion. If animals were so endowed with the

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“spiritual principle,” they could be blamed and incur retribution in the hereafter. Yet the immortality of their souls was contrary to the dogma of the Christian church, which depended on hierarchical estimation in order to validate the privilege of the faithful. Medieval jurisprudence handily solved the problem by portraying animals as infested with hell power, possessed by demons. Yet such diabolic tenancy did not stop with the Middle Ages. The Jesuit father Guillaume-Hyacinthe Bougeant in his *Amusement philosophique sur le langage des bestes* (1739) brings demonology into the eighteenth century:

... so the good Catholic becomes an efficient co-worker with God by maltreating brutes and thus aiding the Almighty in punishing the devils, of which they are the visible and bruisable forms. Whatever pain is inflicted is felt, not by the physical organism but by the animated spirit. It is the embodied demon that really suffers, howling in the beaten dog and squealing in the butchered pig.

Jesus casts out the unclean spirits inhabiting the man who called himself “Legion” in the fifth chapter of the Gospel of Mark. The spirits enter a great herd of swine, and the swine thus possessed rush down the cliffs into the sea.⁵⁸

If there is a remedy for the bad magic, the damages of law, we must try to describe what such a healing metamorphosis would look like. The dread of threat and stigma can be countered by a healing that is not so much segregation as coalescence. Mutual adaptability becomes the way to repossession. The path to this cure involves a dog, a white dog. It is neither the sacrificial “sacred White Dog” of the Iroquois, “spotless” and “faithful,” “the purest envoy ... to the Great Spirit,” as Melville wrote in *Moby-Dick*, nor the evil dog, that nameless terror whose spectral white skin contains the person lost forever to evil enchantment.⁵⁹ Instead, we confront a strangely genial dog who gains wonderful ascendancy. The serene outcome, which we can call redemption, depends on a spiritual state that remains bound to the body.

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Apollonius of Tyana, a first-century healer, philosopher, itinerant preacher, and spiritual adviser—who avoided food, clothing, or sacrifice that involved killing animals—rivalled Jesus of Nazareth in his miracles and cures, or so those condemned as pagans by later Christians believed. In Philostratus's lengthy biography of Apollonius, dating probably from the early third century A.D., we read about the healing of a boy bitten by a rabid dog in Tarsus. The dog matters here as much as the boy. Canine and human become dependent one on the other, and in their reciprocity and stunning cross-species collaboration we find an alternative to the ugly hocus-pocus of Judeo-Christian dogma in the promise of a law that carries with it the Pauline covenant written "not on tablets of stone but on tablets of human hearts" (2 Corinthians 3:3).⁶⁰

For thirty days after being bitten by a mad dog, a young boy ran around on all fours, barking and howling. When Apollonius met him he ordered that the "dog responsible for all this" should be tracked down. No one had ever seen the dog, nor had any idea how to find it, since the victim "no longer even recognized himself." Apollonius tells Damis, his Boswell, to seek out "a white shaggy sheepdog, the size of one from Amphilochia [in North-western Greece] . . . standing by such-and-such a fountain, trembling because it both desires and fears water." "Bring it to me," Apollonius says, "just say I sent for it." Dragged by Damis to Apollonius, the dog lay down at his feet, "weeping like a suppliant at an altar." Then, remarkably, instead of ordering the demons to depart, Apollonius enacts a ritual as palpable, as immediate as an embrace. Invoking the memory of King Telephus of Mysia wounded by Achilles and healed by the touch of his spear, Apollonius gives us an early version of a "hair of the dog that bit you": the way out of harm—whether drunkenness or madness—is through the thing that has caused the harm.

After making it [the dog] even tamer and stroking it with his hand, he makes the youth stand beside him, while he himself

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held him. Then, so that the crowd should not miss a great miracle, he said, "The soul of Telephus the Mysian has migrated into this boy, and the Fates are planning the same treatment for him." So saying, he told the dog to lick the bite, so that the boy's wounder should also be his healer.

The boy is healed and comes back to himself, recognizing his parents and friends. As I have noted, Apollonius's attention to the dog is crucial. He prays to the river and tells the dog to swim across the Cydnus. On the other side, not in the underworld as the crossing might suggest, but reborn as if from a fate worse than death, he regains consciousness of himself. In words that are both instructive and moving, Philostratus records the dog's metamorphosis:

When it had crossed the Cydnus, it stood on the bank and let out a bark, which does not happen at all when dogs are rabid, and it bent back its ears and wagged its tail, realizing that it had been cured, since water is the remedy for rabies if the victim has the courage to drink it.⁶¹

In the Gospels, Jesus heals the possessed by curing them of cognizance. It is a dispossession as costly as it is beneficial. Though cured of their demons, they lose their singular ability to recognize him. But Apollonius heals by replenishment, a bestowal of bounty for both boy and dog. The boy is healed, but so is the dog that brings the story to a close. The dog is renewed, indeed graced with sentience, gratitude, and recognition: not penalized but personalized, for life not for death. But this is only a promise, a story to hold onto, as I turn my attention to a past defined by the grievous assertion of indignity, a death sentence played out in the spheres of ecclesiastical and secular power.