

M E R I D I A N

THE SACRAMENT OF LANGUAGE

AN ARCHAEOLOGY OF THE OATH

Giorgio Agamben

TRANSLATED BY ADAM KOTSKO

C
R
O
S
S
I
N
G
A
E
S
T
H
E
T
I
C
S

Translated by Adam Kotsko

*Stanford
University
Press*

*Stanford
California
2011*

THE SACRAMENT OF LANGUAGE

An Archaeology of the Oath (Homo Sacer II, 3)

Giorgio Agamben

Stanford University Press
Stanford, California

English translation © 2011 by the Board of Trustees of the
Leland Stanford Junior University. All rights reserved.

The Sacrament of Language was originally published in Italian under the title
Il sacramento del linguaggio. Archeologia del giuramento, copyright © 2008,
Gius, Laterza and Figli. All rights reserved. Published by agreement with Marco
Vigevani Agenzia Letteraria.

No part of this book may be reproduced or transmitted in any form or by
any means, electronic or mechanical, including photocopying and recording,
or in any information storage or retrieval system without the prior written
permission of Stanford University Press.

Printed in the United States of America
on acid-free, archival-quality paper

Library of Congress Cataloging-in-Publication Data

Agamben, Giorgio, 1942–
[Sacramento del linguaggio. English]
The sacrament of language : an archaeology of the oath /
Giorgio Agamben ; translated by Adam Kotsko.
p. cm. — (Meridian, crossing aesthetics)
“Originally published in Italian under the title
Il sacramento del linguaggio.”

Includes bibliographical references.

ISBN 978-0-8047-6897-9 (cloth : alk. paper)

ISBN 978-0-8047-6898-6 (pbk : alk. paper)

1. Oaths—History. 2. Oaths—Philosophy.

3. Language and languages—Philosophy.

I. Kotsko, Adam. II. Title.

III. Series: Meridian (Stanford, Calif.)

GT3085.A3313 2011

128—dc22

2010018153

Contents

<i>Translator's Note</i>	<i>ix</i>
<i>Abbreviations</i>	<i>x</i>
The Sacrament of Language	I
<i>Bibliography</i>	<i>73</i>

Von diesen Vorgängen meldet kein Zeuge; sie zu verstehen bietet unser eigenes Bewusstsein keinen Anhalt. Nur eine Urkunde ist uns von ihnen geblieben, so schweigsam dem Unkundigen, wie beredt dem Kundigen: die Sprache.

(No witness reports these events; our own consciousness offers no grounds to understand them. Only one document is left to us by them, as silent to the ignorant as it is eloquent to the experienced: language.)

—Hermann Usener

Der Schematismus der Verstandesbegriffe ist . . . ein Augenblick in welchem Metaphysik und Physik beide Ufer zugleich berühren *Styx interfusa*.

(The schematism of the concepts of the intellect . . . is an instant in which the shores of metaphysics and physics make contact *Styx interfusa*.)

—Immanuel Kant

Translator's Note

The translator would like to thank Giorgio Agamben, Kevin Attell, Daniel Colucciello Barber, Joshua Furnal, Ted Jennings, and Virgil Brower for their suggested improvements; Nunzio N. D'Alessio, Dennis Hou, Evan Kuehn, Craig McFarlane, and Yotam Pappo for bibliographical assistance; and Emily-Jane Cohen, Sarah Crane Newman, and the rest of the staff of Stanford University Press.

Existing English translations have been used wherever possible, though sometimes altered to reflect the translation provided by the author; citations of modern texts where a translation is available have the original page numbers followed by the English edition cited, while premodern texts are cited according to standard textual divisions. All biblical quotations are taken from the New Revised Standard Version. All other translations are my own, carried out in consultation with the author's translations.

Abbreviations

<i>Aen.</i>	<i>Aeneid</i> (Virgil)
<i>Ann.</i>	<i>Annales</i> (Tacitus)
<i>Apol.</i>	<i>Apologeticus</i> (Tertullian)
<i>Cra.</i>	<i>Cratylus</i> (Plato)
<i>Mens.</i>	<i>De mensibus</i> (Lydus)
<i>Il.</i>	<i>The Iliad</i> (Homer)
<i>Inst.</i>	<i>Institutiones</i> (Gaius)
<i>Metaph.</i>	<i>Metaphysics</i> (Aristotle)
<i>Od.</i>	<i>The Odyssey</i> (Homer)
<i>PL</i>	<i>Patrologia Latina</i> (J.-P. Migne, ed.)
<i>Pyth.</i>	<i>Pythian Odes</i> (Pindar)
<i>Rep.</i>	<i>Republic</i> (Plato)
<i>Theog.</i>	<i>Theogonia</i> (Hesiod)
<i>Tib.</i>	<i>Life of Tiberius</i> (Suetonius)
<i>Verr.</i>	<i>The First Oration Against Verres</i> (Cicero)

THE SACRAMENT OF LANGUAGE

1. In 1992 Paolo Prodi's book *Il sacramento del potere* (The Sacrament of Power) forcefully called attention to the decisive importance of the oath in the political history of the West. Situated at the intersection of religion and politics, the oath not only testifies to that "dual belonging" (Prodi, 522) that defines, according to the author, the specificity and vitality of Western Christian culture. It is also, in fact—and this is the diagnosis from which his book begins—the "basis of the political pact in the history of the West" (ibid., 11). As such, it is possible to find the oath in an eminent role every time this pact enters into crisis or turns to renew itself in diverse forms, from the beginning of Christianity to the War of Investiture, from the "commune" ("sworn association") of the late Middle Ages to the formation of the modern State. In keeping with its central function, the irreversible decline of the oath in our time can only correspond, according to Prodi, to a "crisis in which the very being of man as a political animal is at stake" (ibid.). If we are today "the first generations who, notwithstanding the presence of some forms and liturgies from the past . . . , live our own collective life without the oath as a solemn and total, sacredly anchored bond to a political body," this means, then, that we find ourselves, without being conscious of it, on the threshold of "a new form of political association" (ibid.), whose reality and meaning we have yet to recognize.

As is implicit in its subtitle, *Il giuramento politico nella storia costituzionale dell'Occidente* (The Political Oath in the Constitutional History of the West), Prodi's book is a historical study, and, as must happen in such studies, the author does not pose for himself the problem of what he defines as the "a-historical and immobile nucleus of the oath-event" (ibid., 22). The definition "from the anthropological point of view," which is summarily indicated in the introduction, thus repeats certain commonplaces drawn from the investigations of historians of law, historians of religion, and linguists. As often happens when a phenomenon or institution is positioned at the crossroads of diverse territories and disciplines, none of them can lay claim to it entirely on their own, and the attempt at synthesis, which gestures toward its complexity, origin, and overall relevance, falters before the often imposing mass of particular studies. Since, however, an eclectic compendium of the results of individual disciplines does not seem scientifically reliable and the model of a "general science of man" has been out of favor for some time now, the present study proposes to undertake not an investigation into the oath's origin but rather a philosophical archaeology of the oath.

Bringing together the stakes of a historical investigation like Prodi's—which, like every true historical study, cannot fail to call the present into question—and the results of research into linguistics, the history of law, and religion, the issue here, above all, is the question, What is an oath? What is at stake in it, if it defines and calls into question man himself as a political animal? If the oath is the sacrament of political power, what is it in its structure and its history that has made it possible for it to be invested with such a function? What anthropological level—a decisive one in every sense—is implicated in it, so that all of man, in life and death, can be called to account in it and by it?

2. The essential function of the oath in the political constitution is clearly expressed in the passage from Lycurgus's *Against Leocrates* that Prodi uses as an epigraph: "The power that holds together [*to synechon*] our democracy is the oath" (Lycurgus, 79). Prodi could

have cited another passage, from the Neoplatonic philosopher Hierocles, who, at the twilight of Hellenism, seems to confirm this centrality of the oath by making it the principle that completes the Law: "We have previously shown that the law [*nomos*] is the always uniform operation by means of which God eternally and immutably leads everything to existence. Now we call oath [*horkos*] that which, following this law, conserves [*diatērousan*] all things in the same state and renders them stable in such a way that, as they are held in the guarantee of the oath and maintain the order of the law, the immutable stability of the order of creation is the completion of the creating law" (Hirzel, 74; see also Aujoulat, 109–10).

It is necessary to pay attention to the words that express the function of the oath in the two passages. In both Lycurgus and Hierocles the oath does not create anything, does not bring anything into being, but keeps united [*synechō*] and conserves [*diatēreō*] what something else (in Hierocles, the law; in Lycurgus, the citizens or the legislator) has brought into being.

An analogous function seems to be assigned to the oath by what Prodi considers the fundamental text concerning this institution that has come down to us from Roman juridical culture, namely, the passage from *De officiis* (3.29.10) in which Cicero defines the oath thus:

Sed in iure iurando non qui metus sed quae vis sit, debet intellegi; est enim iusiurandum affirmatio religiosa; quod autem affirmate quasi deo teste promiseris id tenendum est. Iam enim non ad iram deorum quae nulla est, sed ad iustitiam et ad fidem pertinet.

[But in taking an oath it is our duty to consider not what one may have to fear in case of violation but wherein its obligation lies: an oath is an assurance backed by religious sanctity; and a solemn promise given, as before God as one's witness, is to be sacredly kept. For the question no longer concerns the wrath of the gods (for there is no such thing) but the obligations of justice and good faith.]

Affirmatio does not signify simply a linguistic utterance but what confirms and guarantees. (The phrase that follows, "affirmate . . . promiseris," does nothing but reaffirm the same idea:

“That which you have promised in the solemn and confirmed form of the oath.”) And it is this function of stability and guarantee that Cicero draws attention to, writing at the beginning, “In the sacrament it is important to consider not so much the danger that it generates, but its own efficacy [*vis*]”; and the answer to the question of what this *vis* consists in appears unequivocally in the etymological definition of the *fides* that, according to Cicero, is at stake in the oath: *quia fiat quod dictum est appellatam fidem* (“good faith [*fidem*]” is so called because what is promised is “made good [*fiat*]” [ibid., I.23]).

It is with this specific *vis* in mind that one must reread the words with which Émile Benveniste, at the beginning of his 1948 article “L’expression du serment dans la Grèce ancienne” (The Expression of the Oath in Ancient Greece), defined its function:

[The oath] is a particular modality of assertion, which supports, guarantees, and demonstrates, but does not found anything. Individual or collective, the oath exists only by virtue of that which it reinforces and renders solemn: a pact, an agreement, a declaration. It prepares for or concludes a speech act which alone possesses meaningful content, but it expresses nothing by itself. It is in truth an *oral rite*, often completed by a manual rite whose form is variable. Its function consists not in the affirmation that it produces, but in the *relation* that it institutes between the word pronounced and the potency invoked. (Benveniste [1], 81–82)

The oath does not concern the statement as such but the guarantee of its efficacy: what is in question is not the semiotic or cognitive function of language as such but the assurance of its truthfulness and its actualization.

3. All the sources and scholars seem to agree that the oath’s primary function, in its various forms, is that of guaranteeing the truth and efficacy of language. As Philo writes, “Now men have recourse to oaths to win belief, when others deem them untrustworthy [*apistoumenoi*, lacking in *pistis*, that is, in credibility]” (Philo of Alexandria [2], 93). And this function seems to be so

necessary for human society that, despite the clear prohibition of every form of oath in the Gospels (Matthew 5:33–37; James 5:12), it was approved of and codified by the Church, which made the oath an essential part of its own juridical order, legitimizing in this way its maintenance and gradual expansion in the law and practice of the Christian world. And when in *De jure naturae et gentium* [*Of the Law of Nature and Nations*] Samuel Pufendorf assembled the tradition of European law, it is precisely in its capacity of guaranteeing and confirming not only pacts and agreements among men, but also more generally language itself, that he establishes the necessity and the legitimacy of the oath:

We proceed to examine and state the nature of an oath, which is judged to add great strength and confirmation [*firmamentum*] to our discourse and to all our acts which have any dependence upon speech [*sermoni concipitur*]; which though we might have treated of very properly and conveniently hereafter, when we come to explain the enforcements of pacts and covenants, yet we chose to assign it this particular place rather than any other, because the custom of swearing is used for the establishment and security not only of covenants, but of language itself [*quod iureiurando non pacta solum, sed et simplex sermo soleat confirmari*]. (Pufendorf, 326/333; trans. altered)

A few pages later, Pufendorf confirms the subsidiary character of the oath's bond, which, insofar as it confirms an assertion or promise, presupposes not only language but, in the case of the promissory oath, the pronouncement of an obligation: "oaths do not of themselves produce a new and peculiar obligation, but are only applied as an additional bond [*velut accessorium quoddam vinculum*] to an obligation in its nature valid before" (ibid., 333/339).

The oath, then, seems to be a linguistic act intended to confirm a meaningful proposition (a *dictum*), whose truth or effectiveness it guarantees. It is this definition, which distinguishes between the oath and its semantic content, whose correctness and implications we must verify.

✠ On the essentially verbal nature of the oath (even if it can be accompanied by gestures, like raising one's right hand) there is agree-

ment among the majority of scholars, from Lévy-Bruhl to Benveniste, from Loraux to Torricelli. With regard to the nature of the *dictum*, one is accustomed to distinguish between an assertative oath, which refers to a past fact (and hence confirms an assertion), and a promissory oath, which refers to a future act (here a promise is confirmed). The distinction is already clearly enunciated in Servius (*Aen.* 12.816: *Iuro tunc dici debere cum confirmamus aliquid aut promittimus* ["I swear" has thus been called necessary when we confirm something or make a promise]). Not wrongly, however, does Hobbes bring these two forms of the oath back to a single type, essentially promissory: *Neque obstat, quod iusiurandum non solum promissorium, sed aliquando affirmatorium dici possit: nam qui affirmationem iuramento confirmat, promittit se vera respondere* [It is no objection that sometimes an Oath may be said to be not promissory but declarative. For in strengthening an affirmation by means of an oath, he declares that he is giving a true reply] (*De cive* 2.201 *On the Citizen*, 41). The difference concerns, in fact, not the act of the oath, which is identical in the two cases, but the semantic content of the *dictum*.

4. At the end of his reconstruction of the ideology of the three social functions by means of an investigation of the epic poetry of the Indo-European peoples, Georges Dumézil examines a group of texts (Celtic, Iranian, Vedic) in which three evils or "scourges" (*fléaux*) correspond to each of them. It is a matter, so to speak, of "functional scourges" of Indo-European society, each of which menaces one of three fundamental categories or functions: priests, soldiers, and farmers (in modern terms: religion, war, and economy). In one of the two Celtic texts he examines, the scourge corresponding to the priestly function is defined as "the dissolution of oral contracts," that is, the repudiation or disavowal of obligations one has assumed (Dumézil [1], 616). The Iranian and Vedic texts also evoke the scourge in analogous terms: infidelity to the word one has given, falsehood or error in ritual formulas.

One could think that the oath would be the remedy against this "Indo-European scourge" that takes the form of the violation of the word one has given and, more generally, the possibility of falsehood inherent in language. The oath, however, proves singu-

larly inadequate precisely for averting this scourge. Nicole Loraux, in her chapter “Oath, Son of Discord” in *The Divided City*, has lingered on a passage from Hesiod (*Theog.* 231–32) in which the oath is negatively defined solely by means of the possibility of perjury, “as if the first had no other purpose than to punish the second and had only been created, in the form of a terrible curse, for those oath breakers who were produced as such by the oath itself” (Loraux, 121–22/123). Already in the archaic epoch, therefore, when the religious bond is supposed to have been stronger, the oath seems to constitutively imply the possibility of perjury and to be paradoxically intended—as Loraux suggests—not to impede falsehood but to combat perjury. However one understands the etymology of the Greek term for perjury (*epiorkos*), about which scholars never stop debating, it is certain that in archaic and classical Greece it is taken for granted. Not only does Thucydides, describing the cities that have fallen prey to civil war, write that there is no longer any “assurance binding enough, any oath terrible enough, to reconcile men” (3.83), but the inclination of the Greeks (in particular of the Spartans) to perjury was proverbial even in times of peace. Thus Plato advises against requiring oaths of the parties to a trial because otherwise it would be revealed that half of the citizens are perjurers (*Laws* 12.948e). And it is significant that around the third century BCE, the founders of the Stoa were discussing whether it was sufficient, for there to be perjury, that the one who swears have, in the moment of uttering the oath, the intention of not keeping it (this was the opinion of Cleanthes), or if it was necessary, as Chrysippus maintained, that he not in fact fulfill what he had promised (Hirzel, 75; see also Pleiscia, 84). As a guarantee of an oral contract or a promise, the oath appeared, according to all the evidence, from the very beginning to be completely inadequate to the task, and a simple penalty for lying would certainly have been more effective. The oath does not in any way constitute a remedy against the “Indo-European scourge”; instead, the scourge itself is contained within it in the form of perjury.

It is possible, then, not only that what was originally at issue in

the oath was the guarantee of a promise or of the truthfulness of an affirmation but that the institution that we know today by that name contains the memory of a more archaic stage, in which it was concerned with the very consistency of human language and the very nature of humans as “speaking animals.” The “scourge” that it had to stem was not only the unreliability of men, incapable of staying true to their word, but a weakness pertaining to language itself, the capacity of words themselves to refer to things and the ability of men to make profession of their condition as speaking beings.

✠ The passage from Hesiod that Loraux refers to is in *Theog.* 231–32: “Oath [*Horkos*], who indeed brings most woe upon human beings on the earth, whenever someone willfully swears a false oath.” Consistently in the *Theogony* (775–806), the waters of the Styx are described as “the great oath of the gods” (*theōn megan horkon*) and even in this case, they function as “a great scourge for the gods (*mega pēma theoisin*), for whoever of the immortals . . . swears a false oath after having poured a libation from her, lies breathless for one full year. . . . And when he has completed this sickness for a year, another, even worse trial follows upon this one: for nine years he is cut off from participation with the gods that always are, nor does he mingle with them in their assembly or their feasts for all of nine years.”

The connection between oath and perjury seems, however, to be from the very beginning so essential that the sources speak of a veritable “art of the oath”—in which, according to Homer (*Od.* 19.394), Autolycus excelled—which consisted in uttering oaths that, thanks to verbal tricks, could, if taken literally, signify something different from what the person to whom they were given could understand. It is in this sense that one should understand the observation of Plato according to which Homer “praises Autolycus, Odysseus’ grandfather on his mother’s side, and says that ‘in swearing oaths and thieving (*kleptosynēi th’ horkoi te*) he surpassed all men’” (*Rep.* 334b).

5. How should one understand the *arché* that is in question in an archaeological study like the one proposed here? Up to the first half of the twentieth century, in the human sciences the paradigm of such a study had been elaborated by linguistics and compara-

tive grammar. The idea that it was possible to go back, through a purely linguistic analysis, to more archaic stages of human history was put forward toward the end of the nineteenth century by Hermann Usener in his *Götternamen* (Names of the Gods). Asking, at the beginning of his study, how the creation of divine names could have happened, he suggests that in order to respond to such a question, we have no documents other than those that arise for us out of an analysis of language (Usener, 5). But already before him comparative grammar had inspired the investigations of those scholars, from Max Müller to Adalbert Kuhn and Émile Burnouf, who sought in the final thirty years of the nineteenth century to found comparative mythology and the science of religion. Just as the comparison of related linguistic forms allowed one to go all the way back to stages of the language that were not historically attested (those Indo-European forms, for example **deiwos* or **med*, that linguists are in the habit of indicating with a preceding asterisk in order to distinguish them from words documented in historical languages), so also was it possible to go back, through etymology and the analysis of meanings, to otherwise inaccessible stages of the history of social institutions.

It is in this sense that Dumézil was able to define his study as a work "not of a philosopher, but of a historian of the oldest history and of the furthest fringe of ultra-history [*de la plus vieille histoire et de la frange d'ultra-histoire*] that one can reasonably seek to reach" (Dumézil [2], 14), declaring at the same time his debt to the comparative grammar of the Indo-European languages.

The basis of the "fringe of ultra-history" that the historian here seeks to reach, then, stands or falls with the existence of Indo-European and of the people who spoke it. It exists in the same sense and to the same degree in which an Indo-European form exists. Yet each of these forms, if we want to be rigorous, is only an algorithm that expresses a system of correspondences among the existing forms in historical languages. In the words of Antoine Meillet, what we call Indo-European is only "the ensemble of these systems of correspondences . . . which presupposes a language x spoken by men x in a place x in a time x ," where x simply stands

for “unknown” (Meillet, 324). Unless one wants to legitimate the *monstrum* of a historical study that produces its own original documents, one could never extrapolate from Indo-European any events that are supposed to have happened historically. For this reason the method of Dumézil registered a significant development with respect to the comparative mythology of the end of the nineteenth century, when, around 1950, he acknowledged that the ideology of the three functions (priests, soldiers, and shepherds or, in modern terms, religion, war, and economy) “was not necessarily accompanied, in the life of a society, by a *real* tripartite division of this society, on the Indian model” but that it rather represented precisely an “ideology,” something like “an ideal and, at the same time, a way of analyzing and interpreting the forces that regulate the course of the world and the life of men” (Dumézil [1], 15).

Similarly, when Benveniste published his *Indo-European Language and Society* (1969), declaring in the preface that in his analyses “no extralinguistic presuppositions have intruded” (Benveniste [2], 1:10/12), it was not completely clear how the epistemological *locus* and the historical foundation of what he calls an “Indo-European institution” should be understood.

It is the nature and foundation of the “oldest history” and the “fringe of ultra-history” that an archaeology can hope to reach that we must define here to the fullest possible extent. It is clear that the *arché* toward which an archaeology seeks to regress cannot be understood in any way as a given that can be situated either in a chronology (even in a broad category like “prehistoric”) or even beyond it, in an atemporal metahistorical structure (for example, as Dumézil ironically suggests, in the neuronal system of a hominid). It is, rather, a force working in history, exactly as the Indo-European language expresses first of all a system of connections among historically accessible languages; just as the child in psychoanalysis expresses a force that continues to act in the psychic life of the adult; and just as the “big bang,” which is supposed to have given rise to the universe, is something that never stops transmitting its background radiation to us. Yet unlike the “big bang,” which astrophysicists claim to be able to date, even if only

in terms of millions of years, the *arché* is not a given, a substance, or an event but a field of historical currents stretched between anthropogenesis and the present, ultrahistory and history. And as such—that is, insofar as, like anthropogenesis, it is something that is necessarily presupposed as having happened but that cannot be hypostatized into an event in a chronology—it can eventually render historical phenomena intelligible.

Investigating the oath archaeologically will mean therefore steering the analysis of historical data, which we will essentially restrict to the Greco-Roman sphere, in the direction of an *arché* stretched between anthropogenesis and the present. My hypothesis is that the enigmatic institution, both juridical and religious, that we designate with the term *oath* can only be made intelligible if it is situated within a perspective in which it calls into question the very nature of man as a speaking being and a political animal. Hence the contemporary interest of an archaeology of the oath. Ultrahistory, like anthropogenesis, is not in fact an event that can be considered completed once and for all; it is always under way, because *Homo sapiens* never stops becoming man, has perhaps not yet finished entering language and swearing to his nature as a speaking being.

6. Before continuing our study, it will be necessary to clear the field of a preliminary misunderstanding, which obstructs access to that “oldest history” or that “fringe of ultra-history” that an archaeology can reasonably seek to reach. Take the exemplary analyses that Benveniste dedicated to the oath first in the article from 1948 cited above and then in *Indo-European Language and Society*. In both, the essential thing is the abandonment of the traditional etymology of the term *horkos*, which traced it back to *herkos*, meaning “enclosure, barrier, bond,” and the interpretation of the technical expression for the oath (*horkon omnymai*) as “to seize with force the sacralizing object.” *Horkos* designates, then, “not a word or an act, but a *thing*, a material invested with evil potency, which confers to the commitment its obliging power” (Benveniste [1], 85–86). *Horkos* is the “sacred Substance” (90), which is vari-

ously embodied in the waters of the Styx, the scepter of the hero, or the entrails of the sacrificial victim. Following Benveniste's path, a great historian of Greek law, Louis Gernet, evokes in almost the same terms the "sacred substance" with which the one who utters the oath is put in contact (Gernet [I], 270/223: "To swear, therefore, is to enter the realm of religious forces of the most fearsome sort.").

In the human sciences, beginning at the end of the nineteenth century, the idea that explaining a historical institution necessarily means tracing it back to an origin or context that is sacred or magico-religious is so strong that when Jean Bollack writes his article "Styx et serments" (1958) to demonstrate, contra Benveniste, that the term *horkos* acquires its true sense only if one traces it back to its etymological origin from *herkos*, he does not notice that he basically maintains the essential traits of the argument he intends to oppose:

The oath places the one who swears, through the magical force of words, in a special relationship with the objects invoked and with the world. . . . Many of the invoked objects, like the hearth, belong to a sacred domain. But in a broadly sacralized universe, every object called as witness can be transformed from a guarantor and preserver into a terrifying potency. This special relationship that ties man to the objects invoked seems to be defined by the term *horkos*, which designates not, as Benveniste thinks, the object on which the oath is pronounced, but the enclosure with which it surrounds the one who swears. (Bollack, 30–31)

The sacrality is here displaced from the object to the relation, but the explanation remains unchanged. According to an endlessly repeated paradigm, the force and efficacy of the oath are once again sought in the sphere of the magico-religious "forces" to which it originally belongs and which is presupposed as most archaic: they derive from this and decline along with the decline of religious faith. Here one presupposes the existence of a *homo religiosus* prior to man as we know him historically. Yet this *homo religiosus* exists only in the imagination of scholars, because all the sources we have

at our disposal always present to us, as we have seen, a man who is religious and also irreligious, faithful to the oath and also more than capable of perjury. It is this presupposition of every analysis of this institution that I intend to call into question.

✠ Benveniste's thesis concerning the *horkos* as a "sacred substance" derives, as the author himself suggests, from an article by Elias Bickermann, a scholar of classical antiquity who was also an excellent historian of Judaism and Christianity. The article in question, published in the *Revue des études juives* in 1935, refers to the oath only under the heading of a methodological example, in the context of a critique of Gerardus van der Leeuw's *Phenomenology of Religion*, which had appeared two years earlier. The methodological principles that Bickermann lays out seem to have had a notable influence on Benveniste, even if they actually reflect a common cultural formation. (Bickermann, who from 1933 had taught in Paris at the *École pratique des hautes études* and until 1942, when he was constrained by his Hebraic origin to seek refuge in the United States—where his name would become Bickerman—had been *chargé des recherches* at the *Centre national de la recherche scientifique*, refers explicitly to the method of Antoine Meillet, who had been Benveniste's teacher.) The fact remains that the four methodological principles recommended by Bickermann (abandoning the recourse to psychology to explain religious phenomena; breaking down facts into their constitutive elements or "roots"; analyzing the function of single elements in isolation; studying their function in the phenomenon in question) are found precisely in Benveniste. Once again, however, such an adroit scholar, examining the oath in a note in order to exemplify his method, repeats uncritically the paradigm of the primordially of the sacred, which Benveniste will take up again in almost the same words: "always and everywhere, the idea is to establish a relationship between an affirmation and something sacred. . . . The goal remains the same everywhere, viz. to establish a relationship between the affirmation and the sacred Substance" (Bickermann, 220–21/888–89).

7. I have demonstrated elsewhere (Agamben, 79–89/49–51), while discussing the supposed ambivalence of the term *sacer*, the inadequacies and contradictions connected with the doctrine of the "sacred" elaborated in the science and history of religions be-

tween the end of the nineteenth century and the first decades of the twentieth century. It suffices here to recall that the defining moment in the establishment of this "scientific mythologeme," which has negatively conditioned the investigations of the human sciences in a particularly delicate area, is the encounter of the Latin notion of *sacer* with that of *mana*, which an Anglican missionary, Robert Henry Codrington, described in his work on the peoples of Melanesia. Already fourteen years earlier Codrington had communicated his discovery in a letter to Max Müller, who made use of it in the Hibbert Lectures, where the concept of *mana* became the way in which "the idea of the infinite, of the unseen, or as we call it afterwards, the Divine, may exist among the lowest tribes in a vague and hazy form" (Müller, 51). In the following years the notion reappeared under various names in ethnographic studies on the American Indians (*orenda* among the Iroquois, *manitou* among the Algonquians, *wakan* among the Dakotas) until Robert Marett, in his *Threshold of Religion* (1909), made this invisible "force" the central category of religious experience. Despite the flimsiness of the theories of religion of authors like Müller (who exercised a veritable dictatorship over this nascent "science"—or, rather, as he preferred to call it—"history" of religions) and Marett, to whom we owe the notion of animism (another scientific mythologeme that refuses to die), the idea of a "sacred power or substance," as terrible as it is ambivalent, vague, and indeterminate, that would be the fundamental category of the religious phenomenon, has exercised its influence not only on Durkheim, Freud, Rudolf, Otto, and Mauss but also on the masterpiece of twentieth-century linguistics that is the *Vocabulaire* of Benveniste.

It was necessary to wait for Lévi-Strauss's essay of 1950 for the problem of the meaning of terms like *mana* to be put on entirely new footings. In a memorable passage Lévi-Strauss brought together these terms with common French expressions like *truc* (thingamajig) or *machin* (thingamabob), which we use to designate an unknown object or one whose use we cannot explain. *Mana*, *orenda*, and *manitou* do not designate something like a sacred substance or social sentiments related to religion but a void of

sense or an indeterminate value of signification, which holds first of all for the very scholars who make use of it: "But always and everywhere, those types of notions, somewhat like algebraic symbols, occur to represent an indeterminate value of signification, in itself devoid of meaning and thus susceptible of receiving any meaning at all; their sole function is to fill a gap between the signifier and the signified, or, more exactly, to signal the fact that in such a circumstance, on such an occasion, or in such a one of their manifestations, a relationship of non-equivalence becomes established between signifier and signified" (Lévi-Strauss, xlv/55-56). If there is a place, adds Lévi-Strauss, in which the notion of *mana* truly presents the characteristics of a mysterious or secret power, it is above all in the thought of the scholars: "*Mana* really is *mana* there" (ibid., xlv/57). At the end of the nineteenth century, religion in Europe had for all appearances become, at least for those who wanted to gather the history and build the science of religion, something so strange and indecipherable that they had to seek the key to it among primitive peoples rather than in their own tradition: but the primitive peoples could only return as in a mirror the same extravagant and contradictory image that these scholars had projected onto them.

✠ In the course of discussing the inevitable disconnection between signifier and signified, Lévi-Strauss again takes up and develops in a new way the theory of Max Müller, who saw in mythology a sort of "disease" of consciousness caused by language. According to Müller, the origin of mythological and religious concepts is to be found in the influence that language, in which paronyms, polysemy, and ambiguity of every kind are necessarily present, exercises on thought. Mythology, he writes, "is in fact the dark shadow which language throws upon thought, and which can never disappear till language becomes entirely commensurate with thought, which it never will." (Cassirer, 4/5)

8. Another aspect of the scientific mythologeme that I have described (which is in truth inseparable from it) is the idea that the sphere of sacredness and religion—often united to that of magic, so that one can then redouble the confusion and speak of

a “magico-religious” sphere—coincides with the most archaic moment that historical research in the human sciences can prudently attempt to recover. A simple textual analysis shows that this is an arbitrary presupposition, set to work by the scholar at the point where he reaches, in his own sphere of research, a documentary limit or threshold. It is as if the passage to what Franz Overbeck called *Urgeschichte* and Dumézil called “fringe of ultra-history” necessarily implied a blind leap into the magico-religious element, which is very often nothing but the name that the scholar gives, more or less consciously, to the terra incognita that lies beyond the area that the patient labor of historians is able to define. Taking the sphere of law as an example, it may be the distinction between the religious sphere and the profane sphere, whose distinctive characteristics appear to us, at least in the historical epoch, to be in some measure defined. If he reaches in this area a more archaic stage, the scholar has the impression that the boundaries become blurred, so he is led to hypothesize a preceding stage, in which the religious sphere and the profane (and often also the magical) are not yet distinct. In this sense Louis Gernet, working on the most ancient Greek law, has designated as “prelaw” (*pré-droit*) an originary phase in which law and religion appear to be indiscernible. In the same sense Paolo Prodi, in his political history of the oath, evokes a “primordial indistinction” in which the process of separation between religion and politics has not yet begun. It is essential, in cases like these, to have the wisdom not to simply and uncritically project onto the supposed “primordial indistinction” the characteristics that define the religious and profane spheres that are known to us and are, precisely, the result of the patient labor of historians. Just as a chemical compound has specific properties that cannot be reduced to the sum of the elements that compose it, so also what stands before the historical division—granted that something of the kind exists—is not necessarily the opaque and indistinct sum of the characteristics that define its fragments. Prelaw cannot be merely a more “archaic” law, just as what stands before religion as we know it historically is not only a more primitive religion (*mana*); it would, in fact, be advisable to bypass the

very terms *religion* and *law* and to try to imagine an *x*. To find the definition of this *x*, we must put forward every possible precaution, practicing a sort of archaeological *epoché* that suspends, at least provisionally, the attribution of predicates with which we are used to defining religion and law.

What must be interrogated at this point is the threshold of indistinction that the analysis of the researcher comes up against. It is not something that should be incautiously projected onto chronology, like a prehistoric past for which documents happen to be lacking, but an internal limit, the comprehension of which, by calling into question the accepted distinction, can lead to a new definition of the phenomenon.

✠ The case of Mauss is a good example of how the presupposition of the sacral system has a strong effect and yet can be neutralized, at least in part, by the exceptional attention to phenomena that defines his method. The 1902 *Esquisse* of a general theory of magic opens with an attempt to distinguish magical phenomena from religion, law, and technology, with which they have often been confused. Yet Mauss's analysis continually runs up against phenomena (for example the juridico-religious rites that include an imprecation, like the *devotio*) that cannot be assigned to only one sphere. Mauss is then led to transform the dichotomous opposition religion-magic into a polar opposition, sketching out a field defined by the two extremes of sacrifice and evil spells, which necessarily presents thresholds of undecidability (Mauss, 14/27). It is on these thresholds that he focuses his labor. The result, as Dumézil has observed, is that for Mauss there are no longer magical facts on the one hand and religious facts on the other; rather, "one of his principal concerns was to emphasize the complexity of each phenomenon and the tendency of most of them to exceed all definition, to be situated simultaneously at various levels" (Dumézil [3], 49).

9. Let us now take the oath as it presents itself during the only epoch in which we can analyze it, namely that for which we have documents. There it appears as a juridical institution that includes elements that we are used to associating with the religious sphere. To distinguish in it a more archaic phase in which it would be only a religious rite, from a more modern one in which it belongs

entirely to law, is perfectly arbitrary. In reality, already in the most ancient documents in our possession, such as the inscription on the vase of Dvenos (dated to the end of the sixth century BCE) from the Roman tradition, it appears as a promissory formula of an undoubtedly juridical character—in this specific case, the guarantee given by the woman's guardian to her (future) husband at the moment of the marriage or engagement. Nevertheless, the formula, written in an archaic Latin, mentions the gods, in fact swears by the gods: *iovest deiuos quoi me mitat* ("the one who sends me"—it is the vase that speaks—"swears [by] the gods") (Dumézil [3], 14–15). Here we have no need to presuppose as more ancient a purely religious phase in the history of the oath, which no document in our possession attests as such: in the most ancient sources that the Latin tradition permits us to reach, the oath is a verbal act intended to guarantee the truth of a promise or an assertion, which presents the same characteristics attested by the later sources and that we have no reason to define as more or less religious, more or less juridical.

The same holds for the Greek tradition. The oath that the most ancient sources present to us in a broad survey entails the testimony of the gods, the presence of objects (the scepter, as the "great oath"—*megas horkos*—of Achilles at the beginning of the *Iliad*, but also horses, the chariot, and the innards of the sacrificed animal), all of which elements we find again in the historical epoch for oaths that certainly have a juridical nature (as in pacts between federated cities, in which the oath is defined as "legal," *horkos nomimos*; see Glotz, 749). And, as we have seen, even the gods swear, invoking the waters of the Styx; and to judge from what Hesiod tells us about the punishment for perjury committed by a god, even the gods are subject to the authority of the oath. We possess, moreover, Aristotle's authoritative testimony informing us that the most ancient philosophers, "who first speculated about the divine [*theologēsantas*]," placed among the first principles of the cosmos, alongside Ocean and Tethys, "the water that serves as the gods' oath, which they called Styx" (*Metaph.* 983b32) and adds: "For the assumption was that the most ancient thing [*presbytaton*] was the

most worthy [*timiōtaton*], and that the oath was the most worthy thing [*horkos de timiōtaton estin*]” (ibid., 938b34–35). According to this testimony, the oath is the most ancient thing, no less ancient than the gods, who are in fact subject to it in some way. Yet this does not mean that it must be thought of as a “sacred substance”; on the contrary, the context of the passage, which is that of the reconstruction of the thought of Thales within the brief history of philosophy that opens the *Metaphysics*, leads one to situate the oath among the “first principles” (*prōtai aitiaī*) of the pre-Socratic philosophers, as if the origin of the cosmos and of the thought that understands it implied the oath in some way.

The entire problem of the distinction between the juridical and the religious, in particular as regards the oath, is thus poorly put. Not only do we have no reason for postulating a pre-judicial phase in which the oath belonged solely to the religious sphere, but perhaps our entire habitual way of representing to ourselves the chronological and conceptual relationship between law and religion must be revised. Perhaps the oath presents to us a phenomenon that is not, in itself, either (solely) juridical or (solely) religious but that, precisely for this reason, can permit us to re-think from the beginning what law is and what religion is.

✠ When law and religion are placed in opposition to each other, it is necessary to remember that the Romans considered the sphere of the sacred as an integral part of law. The *Digest* opens with the distinction between *ius publicum* [public law], which concerns the *status rei publicae* [status of public things], and *ius privatum* [private law], which concerns the *singulorum utilitatem* [utility of individuals]; but, immediately after, the *ius publicum* is defined as that law “which consists in sacred things and rites, in priests and in magistrates” (*ius publicum quod in sacris, in sacerdotibus, in magistratibus consistit* [Ulpian, 1.1]). In the same sense Gaius (*Inst.* 2.2) distinguishes things according to whether they belong to the *ius divinum* [divine law] or to the *ius humanum* [human law], specifying that *divini iuris sunt veluti res sacrae et religiosas* [of the class *divini juris* are things sacred or religious]; but this *summa divisio* [chief division] of things is obviously internal to law.

10. Two texts will allow us to take up the analysis of the oath on new foundations. The first is a passage from Philo's *Legum allegoriae* (204–8), which, discussing the oath that God makes to Abraham in Genesis 22:16–17, puts the oath in a constitutive relationship with the language of God:

You mark that God swears not by some other thing, for nothing is higher than He, but by Himself, who is best of all things. Some have said, that it was inappropriate for Him to swear; for an oath is added to assist faith [*pisteōs eneka*] and only God . . . is faithful [*pistos*]. . . . Moreover, the very words of God are oaths [*hoi logoi tou theou eisin horkoi*] and laws of God and most sacred ordinances; and a proof of His sure strength is that whatever He says comes to pass [*an eipēi ginetai*], and this is specially characteristic of an oath. It would seem to be a corollary from this that God's words are oaths receiving confirmation by accomplishment in act [*ergōn apotelesmasi*]. They say indeed that an oath is a calling God to witness [*martyria*] to a point which is disputed; so if it is God that swears, He bears witness to Himself, which is absurd, for he that bears the witness must be a different person from him on whose behalf it is borne. . . . If once we take "by Myself have I sworn" in the right way, we shall quit this excessive quibbling. Probably then the truth of the matter is something like this. Nothing that can give assurance [*pistoun dynatai*] can give positive assurance touching God, for to none has He shown His nature, but He has rendered it invisible to our whole race. . . . Nay he alone shall affirm anything regarding Himself since He alone has unerringly exact knowledge of His own nature. God alone therefore is the strongest security first for Himself, and in the next place for his deeds also, so that He naturally swore by Himself when giving assurance as to himself [*ōmnye cath'heautou pistoumenos heauton*], a thing impossible for anyone but God. It follows that men who say that they swear by God should be considered actually impious; for naturally no one swears by Him, since he is unable to possess knowledge regarding His nature. No, we may be content if we are able to swear by his name, which means (as we have seen) the interpreting word [*tou ermeneōs logou*]. For this must be God for us the imperfect folk, but, as for the wise and the perfect, the primal being is their God. Moses, too, let us observe, filled with wonder at the transcendency of the

Uncreated, says, "And thou shalt swear by His Name" (Deut. 6:13), not "by Him," for it is enough for the created being that he should be accredited and have witness borne to him by the Divine word: but let God be His own surest guarantee [*pistis*] and evidence. (trans. altered)

Let us try to summarize in five theses the implications of this brief treatise on the oath:

1. The oath is defined by the verification of words in facts (*an eipēi ginetai*, precise correspondence between words and reality).
2. The words of God are oaths.
3. The oath is the *logos* of God, and only God swears truly.
4. Men do not swear by God but by his name.
5. Since we know nothing of God, the only certain definition that we can give of him is that he is the being whose *logoi* are *horkoi*, whose word testifies with absolute certainty for itself.

The oath, defined by the correspondence between words and actions, here performs an absolutely central function. This happens not only on the theological level, in that it defines God and his *logos*, but also on the anthropological level, since it relates human language to the paradigm of divine language. If the oath is, in fact, that language that is always realized in facts and this is the *logos* of God (in *De sacrificiis* [65] Philo writes that "God spoke and it was done, with no interval between the two [*ho theos legōn ama epoieiz*"]), the oath of men is thus the attempt to conform human language to this divine model, making it, as much as possible, *pistos*, credible.

In *De sacrificiis* (93) Philo confirms this function of the oath. "Now men," he writes, "have recourse to oaths to win belief, when others deem them untrustworthy; but God is trustworthy [*pistos*] in his speech as elsewhere, so that his words in certitude and assurance are no different from oaths. And so it is that while with us the oath gives warrant for our sincerity, it is itself guaranteed by God. For God is not trustworthy because of [*dia*] the oath; but it is God that assures the oath" (trans. altered).

One should reflect on the reciprocal implication between God and the oath contained in the last phrase, which closely follows a

rhetorical model frequent not only in Judaism, which works by inverting a sanctioned truth (of which Mark 2:27—"The sabbath was made for [*dia*] humankind, and not humankind for the sabbath"—is a good example). Just as in the classical tradition the *horkos* is *pistos* par excellence, so also in the Judaic tradition *pistos* (*eman*) is the attribute of God par excellence. Developing this analogy (perhaps following in the path of the verse from Aeschylus—fragment 369—in which one reads that "it is not the oath that makes us believe the man, but the man the oath"), Philo establishes an essential connection between God and oath, making of the latter the very word of God. In this way, however, not only human language but even God himself is irresistibly drawn into the sphere of the oath. On the one hand, in the oath human language communicates with that of God; on the other hand, if God is the being whose words are oaths, it is completely impossible to decide if he is reliable because of the oath or if the oath is reliable because of God.

II. The second text is the celebrated passage from the *De officiis* (3.102–7), from which I have already cited some lines, which we must now restore to their context. What is in question is the behavior of Attilio Regolo, who, sent to Rome by the enemies of whom he had been a prisoner with the oath that he would return, decides to return knowing that he will be put to death. The question that Cicero asks concerns the origin of the binding power of the oath. "What significance, then, someone will say, 'do we attach to an oath? It is not that we fear the wrath of Jove, is it?'" (3.102). And yet, he responds, all the philosophers affirm that the gods do not become angry at or harm men. It is at this point that he formulates the celebrated definition of the oath that I have cited: "But in taking an oath it is our duty to consider not what one may have to fear in case of violation but wherein its obligation lies [*non qui metus sed quae vis sit debet intellegi*]; an oath is an assurance backed by religious sanctity [*affirmatio religiosa*]; and a solemn promise given, as before God as one's witness, is to be sacredly kept" (3.104).

What is decisive here is the reasoning with which Cicero goes on to establish the *vis* of the oath. It is not a matter of the anger of the gods, which does not exist (*quae nulla est*), but of trust (*fides*). Contrary to the opinion very often repeated by modern scholars, the obligatory nature of the oath does not derive from the gods, who are called only as witnesses, but from the fact that it is situated in the sphere of a more far-reaching institution, the *fides*, which regulates relations among men as much as those between peoples and cities. "Whoever, therefore, violates his oath violates trust [*Quis ius igitur iurandum violat, is fidem violat*]" (3.104). In the passage previously cited from the first book of the work, the *fides*, "foundation of law," was defined etymologically, exactly as in Philo, by the verification of what is said: *quia fiat quod dictum est appellatam fidem* ["good faith" is so called because what is promised is "made good"] (1.23). Faithfulness is thus essentially the correspondence between language and actions. Regolo, Cicero can therefore conclude, has done well in observing his oath: if it is lawful not to observe an oath with pirates, with whom, as *hostes omnium* [enemies of all], it is not possible to have a common trust, it would be unjust "to confound by perjury the terms and covenants of war made with an enemy [*condiciones pactionesque bellicas et hostiles perturbare periurio*]" (3.108).

✠ It is advisable to specify the meaning of the term *religiosus* in Cicero's definition of the oath. A *res religiosa* is, in Rome, something that has been devoted to the infernal gods (*religiosae quae diis manibus relictæ sunt* [things religious are those which are given up to the Gods below], Gaius *Inst.* 2.4); in this sense the *religiosus* par excellence is the grave, the place in which a corpse (*corpus*, which the Romans distinguished from the *cadaver*, which designates a dead body deprived of a grave) has been buried. The *res religiosa* is removed from profane use and commerce and can be neither transferred nor burdened with servitude nor given in usufruct or pledge nor made the object of any stipulation whatsoever (Thomas, 74). More generally, the religious thing, like the sacred thing, is subject to a series of ritual prescriptions, which render it inviolable and which must be scrupulously observed. One can understand, then, in what sense Cicero can speak

of the oath as an *affirmatio religiosa*. The "religious affirmation" is a word guaranteed and sustained by a *religio*, which removes it from common use and, consecrating it to the gods, makes it the object of a series of ritual prescriptions (the formula and gesture of the oath, the calling of the gods as witness, the curse in case of perjury, etc.). The double sense of the term *religio*, which according to the lexicons means both "sacrilege, curse" and "scrupulous observation of formulas and ritual norms," can be explained in this context without difficulty. In a passage of the *De natura deorum* (2.11) the two senses are at the same time distinct and juxtaposed: the consul Tiberius Gracchus, who had forgotten to take the auspices at the moment of the designation of his successors, prefers to admit his error and annul the election that has taken place contrary to *religio* rather than allow a "sacrilege" (*religio*) to contaminate the State: *peccatum suum, quod celari posset, confiteri maluit, quam haerere in re publica religionem, consules summum imperium statim deponere, quam id tenere punctum temporis contra religionem* [he preferred to make public confession of an offence that he might have concealed rather than that the stain of impiety should cling to the commonwealth; the consuls preferred to retire on the spot from the highest office of the state rather than hold it for one moment of time in violation of religion].

It is in this sense that, when putting together the two meanings of the term, Cicero, just like Caesar and Livy, can speak of a "religion of the oath" (*religio iusiurandi*). In a similar way Pliny, referring to the rules against looking at certain parts of the body, can speak of a *religio* inherent to the knees, the left hand, and even urine (*Hominum genibus quaedam et religio inest observatione gentium . . . inest et aliis partibus quaedam religio, sicut in dextera: oculis adversa adpetitur, in fide porrigitur* [The knees of a human being also possess a sort of religious sanctity in the usage of the nations. . . . There is a religious sanctity belonging to other parts also, for instance in the right hand: kisses are imprinted in the back of it, and it is stretched out in giving a pledge]; *Natural History* II.250–51). And when, in a text of a magical character, we read the formula against sore throat—*hanc religionem evoco, educo, excanto de istis membris, medullis* [I evoke, lead out, and bring forth by incantation that *religio* from this limb, down to the marrow] (Mauss, 54/76)—*religio* represents both a "curse" and the collection of ritual formulas to be observed in order to produce (and remove) the incantation.

When, anachronistically projecting a modern concept onto the past, one often speaks of a "Roman religion," it must not be forgotten that, according to the clear definition that Cicero puts in the mouth of the pontifex maximus Cotta, this was nothing but the sum of the ritual formulas and practices to be observed in the *ius divinum*: *cum omnis populi Romani religio in sacra* (consecrations) *et in auspicia* (the auspices to be consulted before every important public act) *divisa sit* ("The religion of the Roman people comprises ritual [and] auspices" [*De natura deorum* 3.5]). For this reason he could point to its etymology (which, moreover, is shared by modern scholars) in the verb *relegere*, to observe scrupulously: *qui autem omnia quae ad cultum deorum pertinent diligenter retractarent et tamquam relegerent, sunt dicti religiosi ex relegendo* (Those on the other hand who carefully reviewed and so to speak retraced all the lore of ritual were called 'religious,' from *relegere* [2.72]).

12. The proximity between faith and oath has not escaped scholars and is attested by the fact that, in Greek, *pistis* is synonymous with *horkos* in expressions of the type *pistin kai horka poieisthai* (to take an oath) or *pista dounai kai lambanein* (to exchange an oath). In Homer oaths are what are *pista* (trustworthy) par excellence. And in the Latin sphere, Ennius, in a verse cited by Cicero, defines *fides* as "an oath of Jove" (*ius iurandum Iovis*). And it is significant that there are attested not only formulas of an oath "by the *pistis* of the gods" but also "by one's own *pistis*"—*kata tēs heautōn pisteōs diomosamenoī* (Dionysius of Halicarnassus, II.54)—and that, in fact, the "*pistis* of each person" (*idia ekastōi pistis*) counts as the *megistos horkos* (greatest oath; *ibid.*, 2.75; see also Hirzel, 136).

Dumézil and Benveniste have reconstructed, beginning from linguistic data above all, the originary features of that most ancient of Indo-European institutions that the Greeks called *pistis* and the Romans *fides* (in Sanskrit, it is *sraddha*): "personal loyalty." "Trust" [*fede*] is the high esteem in which someone is held as a consequence of our having confidently given ourselves over to him, binding ourselves in a relationship of loyalty. For this reason trust is both the confidence that we accord to someone—the trust that we give—and the high esteem in which we are held by

someone—the trust or credit we have. The old problem of the two symmetrical meanings of the term *faith*, active and passive, objective and subjective, “guarantee pledged” and “trust inspired,” to which Eduard Fränkel drew attention in a famous article, is understood in this perspective without difficulty: “the one who holds the *fides* placed in him by a man has this man at his mercy. This is why *fides* becomes almost synonymous with *dicio* and *potestas*. In their primitive form, these relations involved a certain reciprocity, placing one’s *fides* in somebody secured in return his guarantee and his support. But this very fact underlines the inequality of the conditions. It is authority which is exercised at the same time as protection for somebody who submits to it, in exchange for, and to the extent of, his submission” (Benveniste [2], 1:118–19/97–98).

Thus the strong link between the two Latin terms *fides* and *credere*, which was to assume such importance in the Christian sphere, becomes comprehensible. Meillet showed that *fides* became a substitute in everyday usage for the ancient verbal substantive **kred*, which expressed a very similar notion. *Credere* in fact meant, originally, “to give **kred*,” to put one’s faith in someone from whom one expects protection and, in this way, to link oneself with him in faith (each person often shaking the other’s right hand: *dextrae dextras iungentes fidem obstrinximus* [Livy 23, 9, 3]).

Beyond regulating personal relationships, *fides* performed an important function in international public law, in the special relationships that were established by means of *fides* between cities and peoples. In a war the enemy city could be defeated and destroyed by force (*kata kratos*) and its inhabitants killed or reduced to slavery. But it could also happen, on the contrary, that the weaker city could have recourse to the institution of the *editio in fidem*. That is to say, it could capitulate, submitting itself unconditionally to the *fides* of the enemy, thus obligating the victor in some sense to a more benevolent form of control. This institution was also called *pistis* by the Greeks (*dounai eis pistin, peithesthai*) and *fides* by the Romans (*in fidem populi Romani venire* or *se tradere*). And we also encounter here the same connection between faith and oath: the cities and people who mutually

bound themselves in the *deditio in fidem* exchanged solemn oaths to sanction this relationship.

The *fides* is, then, a verbal act, as a rule accompanied by an oath, with which one abandons oneself completely to the "trust" of someone else and obtains, in exchange, that one's protection. The object of the *fides* is, in every case, as in the oath, conformity between the parties' words and actions.

Dumézil has shown that, when in Rome the history of the monarchical period was, little by little, constructed retrospectively and assumed a definite form, the *fides*, which assumed an important role in public and private life, became divinized and was associated with the figure of Numa, to whom the foundation of the *sacra* and the *leges* is attributed (Dumézil [4], 202/198). *Fides* thus becomes a goddess, for whom a temple on Capitoline Hill is constructed around 250; but, just as in the case of Deus Fidius, of whom it is disputed whether he is in origin distinct from Jove and who, like Mitra, was a sort of "personified contract" (*ibid.*), here religion does not precede the law but rather follows it.

With the *fides*, exactly as with the oath, we thus find ourselves in a sphere in which the problem of the genetic relationship between religion and law has to be taken up again on new foundations. It does no good, in light of the complexity of these institutions, which seem to be at once moral, religious, social, and juridical, to appeal, as some do, to the category of prelaw (Imbert, 411). The fact that the institutions in question are not juridically sanctioned (impunity of perjury in the most ancient epoch, absence of legal recourse for the creditor who has trusted the *fides* of the debtor) does not mean that they must be considered religious rather than juridical; it means rather that in them the investigation has hit upon a limit, which obliges us to reconsider our definitions of what is juridical and what is religious.

✠ One of the commonplaces of the theory of the oath is that the fact that legal sanction is lacking in the ancient epoch is a sign that it belongs to the religious sphere, insofar as the punishment of perjury was left to the gods. Scholars continue to cite the *dictum* of Tacitus, *deorum iniurias dis curae* ("wrongs done to the gods are the gods' con-

cern" [*Ann.* 1.73]), without taking notice of the juridico-political context from which it is drawn. Rubrius has been accused before Tiberius of "having violated by perjury the *numen* of Augustus" (it is a matter, then, of a particular type of oath "by the genius of the emperor," which became common in the imperial age). The question is not whether perjury in general is more or less punishable but whether Rubrius must be accused, because of his perjury, of *lèse majesté*. Tiberius prefers in this moment not to resort to a charge of which, as Tacitus informs us, he will later make ferocious use and affirms sarcastically that "as to the oath, the thing ought to be considered as if the man had deceived Jupiter. Wrongs done to the gods are the gods' concern [*deorum iniurias dis curae*]." In no way is it a matter, according to the words of a rash commentator, of an "ancient principle of Roman law" but of the sarcasm of an emperor whose scant religious piety is well known (*circa deos et religiones negligentior* [in regard to the gods, and matters of religion, he exhibited great indifference]—Suetonius *Tib.* 69). This is confirmed by the fact that the other case in which we find the same principle enunciated is clearly later and refers to the same problem of the applicability of the offence of *lèse majesté* to an oath on the *numen principis* (even here the response of the emperor is negative and, probably referring to the *dictum* of Tiberius, it is suggested that *iusiurandi contempta religio satis deorum ultorem habet* [the god's vengeance is enough for the one who has contempt for the oath]—*Codex iuris* 4, 1, 2; quoted in Schied, 333).

It is incorrect to claim that we should only consider something juridical if a sanction is attached. On the contrary, Ulpian explicitly affirms that only those laws for which no sanction is provided must be considered *perfecta*, while the presence of a sanction constitutes the law as *imperfecta* or *minus quam perfecta* (Ulpian, prol. 1–2). In the same sense, the impunity of lying in many ancient ordinances does not mean that its punishment is a province of the gods. If anything, it is possible that here we have to do with a sphere of language that stands before law and religion and that the oath represents precisely the threshold by means of which language enters into law and *religio*.

In Plescia's monograph on the oath in Greece, we read, "As a general rule, one may say that, until the end of the sixth century, divine punishment of perjury was still an effective deterrent against the misuse of the oath. From the fifth century, however, the individualism and relativism of the sophistic movement began to undermine the old

notion of the oath, at least among a certain segment of the population, and fear of the gods, in case of perjury, began to wane" (Plescia, 86–87). These affirmations, however, reflect only the opinion of the author. This claim is based on the misunderstanding of a passage from Plato (*Laws* 12.948b–d), obviously ironic, in which Radamanthys, who is credited with introducing oaths into trials, is praised for having understood "that the men of his time had a clear belief in the existence of gods—and naturally so, seeing that most men at that time were the offspring of gods, he himself among others, as the story declares." The irony is again accentuated by the fact that Plato, firmly opposed to the use of the oath of parties in trials, adds that Radamanthys "administered an oath to the disputants regarding each matter in dispute, and thus secured a speedy and safe settlement." Equally ironic, and devoid of all nostalgia for a supposed ancient devotion, is the reason adduced immediately after for the exclusion of the oath of the parties: "But nowadays, when, as we say, a certain section of mankind totally disbelieve in gods, and others hold that they pay no regard to us men, while a third party, consisting of the most and worst of men, suppose that in return for small offerings and flatteries the gods lend them aid in committing large robberies, and often set them free from great penalties—under such conditions, for men as they now are, the device of Radamanthys would no longer be appropriate in actions at law." The essential objection to the oath of the parties is actually, as is said immediately after, that making the parties in the trial swear is equivalent to compelling them to perjury: "For truly it is a horrible thing to know full well that, inasmuch as lawsuits are frequent in a State, well-nigh half the citizens are perjurers" (see, again, in the *Laws* 10.887a, Plato's irony concerning the attempt at "assuming in our legislation the existence of gods [*nomothetountes ōs ontōn theōn*]").

13. Another institution with which the oath is closely connected is the *sacratio*. The ancient sources and the majority of scholars, in fact, agree in seeing in the oath a form of *sacratio* (or *devotio*, another institution with which consecration tends to be confused). In both cases a man was rendered *sacer*, that is, consecrated to the gods and excluded from the world of men (spontaneously, as in the *devotio*, or because he had committed a *maleficium* that ren-

dered it licit for anyone to kill him). "One calls *sacramentum* (one of the two Latin terms for oath)," one reads in Festus (466.2), "an act that is done with the sanction of the oath [*iusiurandi sacratione interposta*]." As Benveniste writes: "the term *sacramentum* . . . implies the notion of making 'sacer.' One associates with the oath the quality of the *sacred*, the most formidable thing which can affect a man: here the 'oath' appears as an operation designed to make oneself *sacer* on certain conditions" (Benveniste [2], 2:168/437). And Pierre Noailles can write of the oath in the trial in the same way: "The litigant himself has consecrated himself, has rendered himself *sacer* through the oath" (Noailles [1], 282–83). As Hirzel writes of the perjurer: "his situation was no different from that of the Roman *sacer*, who has devoted himself to the Manes, and just like him can . . . be excluded from every religious and civil community" (Hirzel, 158). In the same sense the oath can be seen as a *devotio*: "once the oath is formulated, the man taking it is by anticipation a 'devoted' person. . . . For the oath is a kind of *devotio*: as we have seen, the Greek *horkos* signifies an act of self-consecration by anticipation to the power of an avenging deity if the given word is transgressed" (Benveniste [2], 2:243/498).

Hence the importance, in the oath, of the curse (*ara, imprecatio*), which constitutively accompanies its utterance. Already Plutarch, in those precious sources for the knowledge of Latin antiquity represented by the *Questiones romanae*, informs us that "all oaths are concluded with a curse against perjury" (*eis kataran teleutai tes epiorkias*, 44). Scholars in fact tend to consider the curse as the very essence of the oath and therefore to define the oath as a conditional curse: "The curse appears as the essential part of the oath. Since this essential aspect of the oath was displayed in the purest and strongest way in them, oaths of imprecation were held to be the most powerful. The curse is what is essential and originary" (Hirzel, 138–39); "To swear is first of all to curse, to curse oneself in the event that one says what is false or does not do what has been promised" (quoted in Hirzel, 141).

Bickermann has observed that the curse can, however, be lacking (although the examples cited do not refer to Greek or Latin

sources) and that there can be imprecations without an oath (Bickermann, 220/889). The opinion of Glotz, according to whom the curse necessarily accompanies the oath but is not identical to it, therefore seems more correct, and it is in this sense that one must understand the recommendation, contained in official documents, to "add the curse to the oath" (*tōi horkoi tan aran inēmen* [Glotz, 752]). It is necessary, moreover, to specify that the oath often involves both an expression of a bad omen and a good one and that, in the most solemn formulas, the curse follows a blessing: "To those who swear loyally and remain faithful to their own, may children give them joy, may the earth grant its products in abundance, may their herds be fruitful, and may they be filled with other blessings, them and their children; but to perjurers may the earth not be productive nor their herds fruitful; may they perish terribly, them and their stock!" (Glotz, 752). The blessing can, however, be lacking, while the curse must normally be present (Hirzel, 138). This is the rule in Homer, in whom the curse is accompanied by eloquent gestures and rites, as when, in the scene in which the Trojans and the Achaeans exchange oaths before the duel of Paris and Menelaus, Atreus pours wine on the ground from a bowl and utters the formula: "whichever host of the twain shall be first to work harm in defiance of the oaths, may their brains be thus poured forth upon the ground even as this wine" (*Il.* 3.299–300).

The oath seems, then, to result from the conjunction of three elements: an affirmation, the invocation of the gods as witnesses, and a curse directed at perjury. In the same sense, one can say that the oath is an institution that joins an element of the *pistis* type (the reciprocal trust in the words offered) and an element of the *sacratio-devotio* type (the curse). But, in reality, the three institutions are so closely intertwined terminologically and factually (as in the term *sacramentum*, meaning both oath and *sacratio*) that the scholars, although without drawing all the consequences of this proximity, tend to treat them as a single institution. We would do well not to forget that the series *pistis-horkos-ara* or *fides-sacramentum* refer to a single institution, certainly an archaic one, that is

both juridical and religious (or prejuridical and prereligious) and whose meaning and function we must seek to understand. But this means that the oath seems to lose, in this perspective, its specific identity and become confused with the *fides* and the curse, two institutions whose nature—above all as regards the curse—is not entirely clear and, in any case, has received relatively little attention from scholars. An analysis of the oath will thus first of all have to confront the problem of its relationship with the curse.

⌘ The description of the scene of the oath in the *Critias* (119d–120d) shows very well the mutual belonging of *pistis*, *horkos*, and *ara*. The taking of the oath is here defined as a way of “pledging trust,” and on the other hand it is the oath itself that invokes (*epeuchomenos*) “great curses”: “And when the kings were about to give judgment they first gave pledges one to another of the following description [*pisteis allēlois toiasde edidosan*]. . . . And inscribed upon the pillar, besides the laws, was an oath which invoked mighty curses upon them that disobeyed [*horkos ēn megalas aras epeuchomenos tois apeithousin*]. . . . And after this they drew out from the bowl with golden ladles, and making libation over the fire swore to give judgment according to the laws upon the pillar and to punish whosoever had committed any previous transgression.”

14. Once we examine more carefully the constitutive elements of the oath, however, we are faced with an uncertainty and confusion in terminology that is somewhat surprising. One of the characteristics of the oath on which all the authorities, both ancient and modern, from Cicero to Glotz, from Augustine to Benveniste, seem to be in agreement is the calling of the gods as witnesses. In his commentary on Aristotle’s *De interpretatione* (4a), Ammonius thus distinguishes the oath from the assertion (*apophansis*) by means of “the testimony of the god” (*martyria tou theou*). The oath, according to this endlessly repeated doctrine, is an affirmation to which divine testimony is added. The imperative formulas *martys esto* (Pindar *Pyth.* 4.166: *karteros horkos martys estō Zeus*, “as a mighty oath, may Zeus be our witness”; trans. altered) or *istō Zeus* (*Il.* 7.411: *horkia de Zeus istō*, “Let Zeus be witness to this cov-

enant”), attested in the ancient sources, do not seem to leave room for doubt on this matter.

But is this really so? It has been observed that the testimony at issue here differs essentially from testimony in the proper sense, like that of a witness in a trial, because it cannot be contested or verified in any way (Hirzel, 25). And not only does the number of the divinities invoked tend to increase well beyond the number of “legal Gods” (*nominoi theoi* or *theoi horkioi*) to the point of including eight, sixteen, and finally “all gods” (as in the Hippocratic oath), but at times they include rivers, trees, and even inanimate objects (the “bridal bed,” *lechos kouridion* in *Il.* 15.39). What is decisive in every case is that in the oath it is not in any way really a matter of a testimony in a technical sense, because unlike every other conceivable testimony, it coincides with the call and is accomplished and exhausted together with it. Things do not change if, as some sources allow us to suppose, one understands what the gods do not as a testimony but as the giving of a guarantee. As with testimony, here no standing surety can technically take place, either at the moment of the oath or after: it is presupposed as already accomplished with the utterance of the oath (Hirzel, 27).

The oath is, then, a verbal act that accomplishes a testimony—or a guarantee—independently by the very fact that it has taken place. The formula of Pindar cited above acquires here its full meaning: *karteros horkos martys estō Zeus*, “as a mighty oath, may Zeus be our witness”: Zeus is not a witness of the oath, but rather oath, witness, and god coincide in the utterance of the formula. As in Philo, the oath is a *logos* that is necessarily accomplished, and this is precisely the *logos* of God. The testimony is given by language itself and the god names a potentiality implicit in the very act of speech.

The testimony that is in question in the oath must therefore be understood in a sense that has little to do with much of what we normally understand by this term. It concerns not the verification of a fact or an event but the very signifying power of language. When in the discussion of the oath given by Hector to Achilles (*Il.* 22.254–55), we read that the gods “are the fittest witnesses [*mar-*

tyroi] and guardians of all covenants [*episcopoi harmoniaōn*],” the “joining together” (such is the original meaning of the term *harmonia*, which comes from the vocabulary of carpentry) of which the gods are witnesses and guardians can only be that which unites words and things, that is, the *logos* as such.

✠ A gloss of Hesychius (*horkoi: desmoi sphragidos*) defines oaths as “bonds of the seal” (or sealing, if one prefers the reading *sphragideis*). In the same sense in fragment 115 of Empedocles one speaks of an “eternal decree of the gods, sealed with great oaths” (*plateessi katesphrēgismenon horkois*). The bond that is in question here can only be the one that links the speaker to his speech and, at the same time, words to reality. Hirzel rightly calls attention to the fact that the divine testimony is invoked not only by the promissory oath but also by the assertorial, in which it does not seem to have any meaning, unless what is in question here is meaning itself, the very signifying force of language.

15. If we leave the problem of the intervention of the gods as witnesses in order to turn our attention to that of their role in the curse, the situation is no less confused. That the curse performed an important function in the *polis* is proved by the fact that, in a perfect analogy with Lycurgus’s thesis on the oath, Demosthenes mentions (20.107)—however scandalous it might seem to us—curses (*araî*) alongside the people and the laws (*nomoi*) among the guardians of the constitution (*politeia*). Similarly, Cicero, evoking the bonds among men that it is impossible not to fulfill, names both curses and *fides* (*Verr. 5.104: ubi fides, ubi execrationes, ubi dexteræ complexusque?* [What signify his promises? What do the curses that he will heap on him? What do the pledges of friendship and mutual embraces?]). But what is a curse, and what can its function be here? Already from the terminological point of view the situation is far from clear. The terms that designate it, both in Greek and in Latin, seem to have opposed meanings: *ara* (and the corresponding verb *epeuchomai*) mean, according to the lexicons, both “prayer” (and “to pray”) and “imprecation, curse” (and “to imprecate, to curse”). The same can be said for the Latin terms

imprecor and *imprecatio*, which are the equivalent of both “to augur” and “to curse” (even *devoveo*, which means “to consecrate,” is equivalent to “to curse” in the technical sense in the case of a *devotio* to the infernal gods). The entire vocabulary of the *sacratio* is, as is well known, marked by this ambiguity, the reasons for which I have sought to reconstruct elsewhere.

Once again, interpretations of the curse uncritically repeat the paradigm of the primordially of the magico-religious and limit themselves to going back to a no more specified “numinous power” (see the entry *Fluch* in the *Reallexicon für Antike und Christentum*, 1161) or evoking religion as “a practical auxiliary for the efficacy of law” (Ziebarth, 57). Thus Louis Gernet, in his article “Le droit pénal de la Grèce antique” (Penal Law in Ancient Greece), can write:

The curse has played an important role in the origins of law: it sometimes sanctions the law or substitutes for it, as we can see in a catalogue of public imprecations published in the fifth century in the city of Teos, where it is formulated against an entire series of offences having to do with the security of the State and the very subsistence of the city. Naturally, it is in religious life and in the practice of the sanctuaries that its use was perpetuated above all; but there it could only be a matter of an extremely ancient tradition. The curse presupposes the collaboration of religious forces: these (which, in principle, are not represented in a personal form) are in some way condensed by the incantatory power of the oral rite, and they act on the guilty and those around him by drying up in him the source of all life: the imprecation exercises its fatal effect even on the soil, on what is born from it and nourished by it. At the same time as and by the very fact that it is a *devotio*, it is an exclusion from the religious community constituted by society: it manifests itself through an *interdiction* in the proper sense and, in its concrete application, it is a putting outside the law. (Gernet [2], 11–12)

Only the prestige of the paradigm of the originarity of the magico-religious fact can explain how a sensible scholar like Gernet, repeating the old arguments of Ziebarth, can be satisfied with such a palpably insufficient interpretation in which not only—in clear

contrast with the fact that the curse is fully attested in the oath in the historical epoch—are mythical presuppositions like the “incantatory force of the oral rite,” the “religious force,” and their “lethal effects” taken for granted, but it does not even become clear whether it is an institution in itself or is instead identical with the *devotio* and, in the last instance, with the oath itself, which would then constitute a derivation of it.

It will be helpful, therefore, to put in parentheses, at least provisionally, the traditional definitions—which see the curse as an invocation directed at the gods so that, in order to punish perjury, they are transformed from witnesses into avengers—and instead ask ourselves what is effectively at stake in the curse, in other words, what is the immanent function that the curse has in the oath. According to the common opinion, the gods (or, to be more precise, their names) are mentioned in the oath twice: once as witnesses of the oath and a second time, in the curse, as punishers of perjury. In both cases, if we leave aside mythical definitions, which seek an explanation outside of language, we can see that what is at stake is the relationship between words and facts (or actions) that defines the oath. In one case the name of the god expresses the positive force of language, namely the just relation between words and things (“as a mighty oath, may Zeus be our witness”). In the second case it expresses a weakness of language, namely the breaking of this relation. To this double possibility there corresponds the twofold form of the curse, which, as we have seen, generally presents itself also as a blessing: “If I fulfill this oath without violating it [*euorkounti*], may good things be granted to me. But if I violate it and perjure myself [*epiorkounti*], may the opposite befall me” (Glötz, 752; Faraone, 139). The name of the god, which signifies and guarantees the juncture between words and things, is transformed into a curse if this relation is broken. What is essential, in every case, is the co-originary of blessing and curse, which are constitutively copresent in the oath.

✠ It suffices to read the very ample entry for *Fluch* in the *Reallexicon für Antike und Christentum* (which seeks to make up for the very small space dedicated to the problem in the Pauli-Wissowa and the Darem-

berg-Saglio, in which the curse is treated only fleetingly in the article on the *devotio* by Bouché-Leclercq) to realize that the critical literature has not made much progress with respect to the above-cited article of Erich Ziebarth or that of George Hendrickson (1926). Christopher Faraone's recent study is focused on the difference between oaths that contain both blessings and curses (in general directed toward the private sphere) and oaths accompanied only by curses (most often reserved for the public sphere). In every case, beyond the traditional explanation, which sees the oath as a recourse to religious power to guarantee the efficacy of the law, the oath-curse connection remains uninterrogated.

16. Ziebarth has demonstrated, with ample documentation, the consubstantiality of the curse to Greek legislation. Its function was so essential that the sources speak of a veritable "political curse," which always confirms the efficacy of the law. In the preamble of the laws of Caronda one thus reads: "It is necessary to observe [*emmenein*] what has been proclaimed, but the one who transgresses is subjected to the political curse [*ara politikē*]" (Stobaeus *Florigelium* 44, 40; quoted in Ziebarth, 60). Similarly, Dio Chrysostom of Prusa (80.8) informs us that the Athenians had put down (*ethento*, in the strong sense of the term, as in *nomon titheinai*, to put down a law) in the laws of Solon a curse that extended even to children and descendants (*paides kai genos*). Ziebarth has traced the presence of the "political" curse in the legal apparatuses of all the Greek cities, from Athens to Sparta, from Lesbos to Teos and Chios and finally to the Sicilian colonies (Tauromene). It concerns even questions that have no "religious" element at all, as in Athens's prohibition of exporting agricultural products other than oil (Ziebarth, 64). Moreover, before every assembly the *kēryx*, the town crier, solemnly pronounced the curse against anyone who had betrayed the people or violated their decisions. "This means," comments Ziebarth, "that the entire constituted legal order, according to which the *demos* is sovereign, is sanctioned by means of a curse" (ibid., 61). Not only the oath, but also the curse—in this sense it is rightly called "political"—functions as a genuine "sacrament of power."

It is possible, in this perspective, as William Fowler has already discerned (Fowler, 17), to consider the formula *sacer esto*, which appears in the system of the Twelve Tables, as a curse. It is not, however, as Fowler holds, to be treated as the production of a *taboo* but as the sanction that defines the very structure of law, its way of referring to reality (*talio esto / sacer esto*) (Agamben, 31/22). The enigmatic figure of the *homo sacer*, which is still a topic for debate (and not only among historians of law), seems less contradictory in this light. The *sacratio* that has struck him—and that renders him both killable and unsacrificeable—is only a development (perhaps carried out for the first time by the plebs led by the tribune) of the curse by means of which the law defines its scope. In other words the “political” curse marks out the *locus* in which, at a later stage, penal law will be established. It is precisely this peculiar genealogy that can somehow make sense of the incredible irrationality that characterizes the history of punishment.

✠ It is in the perspective of this technical consubstantiality of law and curse (present even in Judaism—cf. Deuteronomy 21:23—but very familiar to a Jew who lived in a Hellenistic context) that one must understand the Pauline passages in which a “curse of the law” (*katara tou nomou*—Galatians 3:10–13) is spoken of. Those who want to be saved through works (the execution of precepts)—this is Paul’s argument—“are under a curse [*hupo katara eisin*]; for it is written, ‘Cursed is everyone who does not observe and obey [*emmenei*, the same word that one finds in the law of Caronda] all the things written in the book of the law.’” Subjecting himself to the judgment and curse of the law, Christ “redeemed us from the curse of the law by becoming a curse for us—for it is written, ‘Cursed is everyone who hangs on a tree.’” The Pauline argument—and, therefore, the very meaning of redemption—can be understood only if it is situated in the context of the mutual belonging, in a juridical and not only religious sense, of law and curse.

17. How should we understand this double valence (benediction and malediction) of the divine names in oath and perjury? There is an institution that has always lived in such close intimacy with perjury and the curse that it is often confused with them. It

can perhaps furnish us with the key for a correct interpretation of them. I am speaking of blasphemy. In his study "La blasphémie et l'euphémie" ("Blasphemy and Euphemism," originally a lecture held at a colloquium that was, significantly, devoted to the name of God and the analysis of theological language), Benveniste often refers to the proximity among blasphemy, perjury, and oath (evident in French in the paronym *juron*: *jurér*):

Outside of worship, society demands that the name of God be invoked in a solemn circumstance, which the oath is. For the oath is a *sacramentum*, an appeal to God, the supreme witness of truth, and a devotion to divine chastisement in case of lying or perjury. It is the most serious commitment that man can enter into, and the most serious breach he can commit, because perjury relates not to the justice of men, but to the divine sanction. For this reason the name of the god must figure in the formula of the oath. In blasphemy as well, the name of God must appear, because blasphemy, like the oath, calls God as witness. The swearword [*juron*] is an oath, but an oath of outrage. (Benveniste [4], 255–56)

Benveniste underscores, moreover, the interjectory nature proper to blasphemy, which, as such, communicates no message: "The formula pronounced in blasphemy does not refer to any objective situation in particular; the same swearword is pronounced in entirely different circumstances. It expresses only the intensity of a reaction to these circumstances. It does not refer to a second or third person. It transmits no message, it opens no dialogue, it gives rise to no response, and the presence of an interlocutor is not even necessary" (*ibid.*). It is therefore quite surprising that to explain blasphemy, the linguist puts aside the analysis of language and, in one of his rare appeals to the Hebraic tradition, refers to "the biblical interdiction against pronouncing the name of God" (*ibid.*, 254). Blasphemy is, certainly, an act of speech, but it is precisely a matter of "substituting the name of God with its outrage" (*ibid.*, 255). The interdiction does not in fact have a semantic content as its object, but the simple pronunciation of the name, that is, a "pure vocal articulation" (*ibid.*). Immediately after, a citation from

Freud introduces an interpretation of blasphemy in psychological terms: "the interdiction of the name of God holds in check one of the most intense desires of man: that of profaning the sacred. As is well known, the sacred inspires ambivalent behaviors. Religious tradition has wanted to retain only the divine sacred and exclude the cursed sacred. Blasphemy, in its own way, seeks to re-establish this totality by profaning the very name of God. One blasphemes the *name* of God, because all that God possesses is his *name*" (ibid.).

Coming from a linguist accustomed to working exclusively on the patrimony of the Indo-European languages, the appeal to biblical data is at least odd (as is the psychological explanation of a linguistic fact). If it is true, in fact, that in the Judeo-Christian tradition blasphemy consists in taking the name of God in vain (as in modern forms of the type: *nom de Dieu! sacré nom de dieu!* "by God!"), the blasphemous utterance of the name of God is just as common in the classical languages, which are quite familiar to linguists in exclamatory forms of the type: *edepol, ecastor*, by Pol-lux, by Castor (Greek: *Nai ton Castora*), *edi medi* (by Dius Fidius), *mehercules, mehercle*. It is significant that in all these cases the formula of imprecation is identical to that of the oath: *nai* and *ma* introduce the oath in Greek; in Latin *edepol* and *ecastor* are also formulas for an oath, exactly like the English "by God" (Festus is, moreover, perfectly aware of the derivation of these exclamations from the oath: *Mecastor et mehercules ius iurandum erat, quasi diceretur: ita me Castor, ita me Hercules, ut subaudiatur iuvet* [Mecastor and mehercules are oath formulas, as if one were to say: "So may Castor, So may Hercules . . . , " implying "come to my aid"] [II2.10]).

Blasphemy presents us, then, with a phenomenon that is perfectly symmetrical to the oath, to understand which there is no need to drag in the biblical interdiction or the ambiguity of the sacred. *Blasphemy is an oath, in which the name of a god is extracted from the assertorial or promissory context and is uttered in itself, in vain, independently of a semantic content.* The name, which in the oath expresses and guarantees the connection between words and

things and which defines the truthfulness and force of the *logos*, in blasphemy expresses the breakdown of this connection and the vanity of human language. The name of God, isolated and pronounced "in vain," corresponds symmetrically to perjury, which separates words from things; oath and blasphemy, as benediction and malediction, are co-originarily implied in the very event of language.

✠ In Judaism and Christianity, blasphemy is linked to the commandment "not to use the name of God in vain" (which, in Exodus 20, significantly follows the one that forbids the making of idols). The translation of the Septuagint (*ou lēmpsēi to onoma kyriou tou theou sou epi mataiōi*, "do not take the name of the Lord your God in vain") underlines the idea of vacuity and vanity (cf. the beginning of Ecclesiastes: *mataiotēs mataiotētōn*, "vanity of vanities"). The originary form of blasphemy is not, then, injury done to God but pronouncing his name in vain (cf. *mataioomai*, "to rave, to speak haphazardly"). This is evident in the euphemisms that intervened to rectify the blasphemous utterance of the name by changing one of its letters or substituting a similar nonsense term for it (as in French *par Dieu* became *pardi* or *parbleu*; cf. the English *gosh* and similar). Contrary to the common opinion, in paganism as well there existed, even if for different reasons, the interdiction of uttering the name of the gods, which took its extreme form in the custom of carefully keeping the true name of a city's patron god unknown in order to avoid its *evocatio* (see below, §18). Plato thus informs us that the Greeks preferred to call Hades by the name of Pluto "because they feared the name [*phoboumenoi to onoma*]" (*Cra.* 403a).

As the awareness of the efficacy of the pronunciation of the divine name was lost, the originary form of blasphemy represented by uttering it in vain took second place to the pronouncing of injury or falsity on God. From *male dicere de deo* [speaking badly of God], blasphemy thus became *mala dicere de deo* [saying bad things about God]. In Augustine, who, significantly, treats blasphemy in his treatise on lying, the evolution is already complete. If the originary proximity to the oath and to perjury is still present, blasphemy is now defined as saying false things of God: *peius est blasphemare quam perierare, quoniam perierando falsae res adhibetur testis Deus, blasphemando autem de*

ipso Deo falsa dicuntur [blasphemy is worse than perjury, because in the latter God is called to witness a falsehood, whereas in the former falsehood is spoken about God Himself] (Augustine [1], 19.39); and even more clearly: *Itaque iam vulgo blasphemia non accipitur, nisi mala verba de Deo dicere* [So usually the word blasphemy is applied only to speaking evil of God] (Augustine [2], 11.20).

Hence the embarrassment of modern theological dictionaries when they find themselves confronted with the ordinary form of blasphemy, which now appears as an entirely venial sin: "The most suspect of these swearwords, the French expression 's . . . n . . . de D . . . ,' is considered by many moralists to be a true blasphemy, and consequently to be gravely culpable, either because of the injurious meaning that it seems to have or because of the horror that it inspires in all consciences with any delicacy at all. . . . Others, observing that the meaning of the words in question is equivocal, say that only intention can transform this manner of speaking into blasphemy" (*Dictionnaire de théologie catholique*, s.v. *Blasphème*).

The evangelical prohibition of the oath in Matthew 5:33–37 (see also James 5:12) must be situated in this context. Essentially, what Jesus opposes to the oath is a *logos* that has the form *nai nai, ou ou*, which is usually translated *yes yes, no no* (*estō de ho logos ymōn nai nai, ou ou*). The expression gains its full meaning if we remember that the Greek formula for the oath was *nai dia* (or negatively *ou ma dia*). By extracting the particle *nai* from the formula and removing the sacred name that followed, Jesus opposed one part of the oath to the whole. What is at stake, then, is a gesture symmetrically opposed to that of blasphemy, which instead extracts the name of God from the context of the oath.

18. It becomes easier to understand, on this basis, both the function of the curse in the oath and the close relation that links it to blasphemy. What the curse sanctions is the loosening of the correspondence between words and things that is in question in the oath. If the connection that unites language and the world is broken, the name of God, which expressed and guaranteed this connection based in blessing [*bene-dicente*], becomes the name of the curse [*male-dizione*], that is, of a word that has broken its truthful relation to things. In the mythical sphere this means that

the curse [*male-dizione*] directs against perjury the same evil-doing force that its abuse of language has liberated. The name of God, released from the signifying connection, becomes blasphemy, vain and meaningless speech, which precisely through this divorce from meaning becomes available for improper and evil uses. This explains why the magical papyri are often nothing other than lists of divine names that have become incomprehensible: in magic the names of the gods taken in vain, especially if they are barbarian and unintelligible, become the agents of the magical work. Magic is the name of God—that is, the signifying power of the *logos*—emptied of its sense and reduced, as in the magical formulas known as *Ephesia Grammata*, to an *abracadabra*. For this reason, “Magicians used Sanskrit in the India of the Prakrits, Egyptian and Hebrew in the Greek world, Greek in Latin-speaking countries and Latin with us. All over the world people value archaisms and strange and incomprehensible terms” (Mauss, 51/71).

It is from the oath—or, better, from perjury—that magic and spells are born: the formula of truth, when broken, is transformed into an efficacious curse, and the name of God, separated from the oath and from its connection to things, passes into a satanic murmur. The common opinion that would have the oath derive from the magico-religious sphere must here be precisely reversed. The oath presents us, rather, in a still undivided unity, what we are accustomed to call magic, religion, and law, which result from the oath as its fragments.

If one who had risked himself in the act of speech knew that he was thereby co-originarily exposed to both truth and lying, to both bene-diction and male-diction, *gravis religio* (Lucretius, I.63) and law are born as the attempt to secure trust, by separating and technicizing in specific institutions blessing and *sacratio*, oath and perjury. The curse becomes at this point something that is added to the oath to guarantee what at the beginning was entrusted entirely to *fides* in speech, and the oath can thus be presented, in the verses of Hesiod that I have cited above, as that which was invented to punish perjury. The oath is not a conditional curse: on the contrary, the curse and its symmetrical *pendant*, the blessing,

are born as specific institutions from the division of the experience of speech that was in question in the oath. Servius's gloss on *Aen.* 2.154 (*exsecratio autem est adversorum deprecatio, ius iurandum vero optare prospera*, a curse is an attempt to stave off adversities, an oath to choose good fortune) clearly shows both the distinction between curse and oath and their constitution as two symmetrical epiphenomena of one sole experience of language. And only if we manage to understand what we could call the anthropogenic nature and valence of this experience (which Thales, according to the testimony of Aristotle, considered the "oldest" and "most venerable thing"), can we perhaps also shed a new light on the relationship among its historical remnants, which magic, religion, and law present to us as divided.

✠ It is possible to take up again in this perspective the question of the etymological meaning of the term *epiorkos*, which has created so much work for scholars. Luther (and Benveniste at first) interpret the term as the fact of being subjected to a *horkos* (in which case the oath becomes synonymous with a curse [see also Loraux, 126/127]). Leumann (and Benveniste in a second moment) instead interprets the term as the fact of adding (*epi*) an oath (*horkos*) to a word or a promise that is known to be false. Developing this last hypothesis, one could see in the *epiorkos* an oath added to the oath, that is the curse that strikes the one who transgresses *fides*. In this sense every word that is added to the initial declaration is a male-diction, implying that the speaker is a perjurer. This is the meaning of the evangelical prescription of keeping to *nai* and *ou*: the *yes* and *no* are the only things that can be added to one's own commitment to the given word.

19. It is in this perspective that we must interrogate the originary meaning and function of the name of the god in the oath and, more generally, the very centrality of divine names in the apparatuses that we are accustomed to call religious. The great philologist—and, in his way, theologian—Hermann Usener dedicated his monograph *Götternamen* to the problem of the genesis of divine names, and it is significant that since the date of this publication (1896), there have been no comparably relevant contributions to

the question. One should reflect on the by now famous reconstruction of the formation of the names of those germinal centers of divinity that Usener calls "special gods" (*Sondergötter*). These are divinities of which neither the literary nor the artistic sources tell us anything and that are known to us only by citations of the *indigitamenta*, the liturgical books of the pontifexes that contained the list of divine names to be pronounced in appropriate cultic circumstances. That is to say, the *Sondergötter* are known to us only through their names, and, to judge from the silence of the sources, they live only in their name, whenever the priest ritually invokes them (*indigitabat*). Even an elementary etymological competence permits one to reconstruct the meaning of these names and the function of the "special gods" that they named: Vervactor refers to the first tilling of May (*vervactum*); Reparator to the second plowing; Inporcitor to the last plowing that traces the *porcae*, that is the elevations of earth between furrows; Occator to the working of the earth with the harrow (*occa*); Subruncinator to the pulling out of weeds with the hoe (*runco*); Messor to the carrying out of the harvest (*messis*); Sterculinius to fertilization with dung. "For every act and situation that could be important to the men of that time," writes Usener, "special gods were created and named with distinct verbal coinages [*Wortprägung*]: in this way, not only are the acts and situations as a whole divinized, but even their parts, singular actions, and moments" (75).

Usener shows that even divinities who have entered into mythology, like Persephone and Pomona, were originally "special gods" who named, respectively, the breaking through of buds (*prosero*) and the maturation of fruits (*poma*). All the names of the gods—this is, indeed, the thesis of his book—are initially names of actions or brief events, *Sondergötter* who, through a long historico-linguistic process, lost their relationship with the living vocabulary and, becoming more and more unintelligible, were transformed into proper names. At this point, when it had already been stably linked to a proper name, "the divine concept [*Gottesbegriff*] gains the ability and impetus to receive a personal form in myth and cult, poetry and art" (*ibid.*, 316).

But this means that, as is evident in the *Sondergötter*, in its originary core the god who presides over the singular activity and the singular situation is nothing other than the very name of the activity and the situation. What is divinized in the *Sondergötter* is the very event of the name; nomination itself, which isolates and renders recognizable a gesture, an act, a thing, creates a “special god,” is a “momentary divinity” (*Augenblicksgott*). The *nomen* is immediately *numen* and the *numen* immediately *nomen*. Here we have something like the foundation or the originary core of that testimonial and guaranteeing function of language that, according to the traditional interpretation, the god came to assume in the oath. Like the *Sondergott*, the god invoked in the oath is not properly the witness of the assertion or the imprecation: he represents, he *is* the very event of language in which words and things are indissolubly linked. Every naming, every act of speech is, in this sense, an oath, in which the *logos* (the speaker in the *logos*) pledges to fulfill his word, swears on its truthfulness, on the correspondence between words and things that is realized in it. And the name of the god is only the seal of this force of *logos*—or, in the case in which it falls into perjury, of the male-diction that has been brought into being.

✠ Usener’s thesis implies in some way that “the origin of language is always a mystical-religious event” (Kraus, 407). This does not mean, however, a primacy of the theological element: event of God and event of the name, myth and language coincide because, as Usener specifies from the beginning, the name is not something already available, which is subsequently applied to the thing it is to name. “One does not form some complex of sounds in order to use it as a sign of a determinate thing as one uses a coin. The spiritual excitation, which a being that is encountered in the outside world calls forth, is at the same time the occasion and the medium of naming [*der Anstoss und das Mittel des Benennens*]” (Usener, 3). This means that, in the event of language, proper name and appellative name are indistinguishable; and, as we have seen by means of the *Sondergötter*, the proper name of the god and the predicate that describes a certain action (harrowing, fertilizing, etc.) are not yet divided. Naming and denotation (or, as

we have seen, the assertorial and veridictional aspect of language) are originally inseparable.

20. In his study “La blasphémie et l’euphémie” (Blasphemy and Euphemism), Benveniste, as we have seen, underlines the interjectory character that defines blasphemy. As he writes, “blasphemy manifests itself as an exclamation and has the syntax of interjections, of which it constitutes the most typical variety” (Benveniste [4], 256). Like every exclamation, blasphemy also is “a word that one ‘lets slip out’ under the pressure of a sudden and violent emotion” (ibid.), and like every interjection, even if it always makes use (unlike what often happens in onomatopoeic interjections like “aha!” and “oh!”) of terms that are meaningful in themselves, it does not have a communicative character; it is essentially non-semantic.

It is remarkable that, in discussing expressions that primitive peoples make use of to signify the divine (like *mulungu* for the Bantu, *vakanda* or *manitu* for the American Indians), Cassirer observes that, to understand them, we must “go back to the most primitive level of *interjections*. The *manitu* of the Algonquins, the *mulungu* of the Bantus is used in this way—as an exclamation that indicates not so much a thing as a certain *impression*, and which is used to greet anything unusual, wonderful, marvelous, or terrifying” (Cassirer, 58/71). The same can be said for the names of the gods in polytheism, which constitute, according to Cassirer, the first form in which the mythico-religious consciousness expresses its feeling of terror or veneration (ibid.).

Like blasphemy, which is its other face, the divine name seems constitutively to have the form of an interjection. In the same way, Adam’s naming of the animals in Genesis 2:19 could not have been a discourse but only a series of interjections. According to the duality between names and discourse that, according to linguists, characterizes human language, names, in their originary status, constitute not a semantic element but rather a purely semiotic one. These are the remains of the originary interjection, which the river of language drags behind it in its historical becoming.

Since it is not semantic but exclamatory in nature, blasphemy shows its proximity to a linguistic phenomenon that is not easy to analyze, that is, the insult. Linguists define insults as performative terms of a particular type that, despite the apparent similarity, are opposed in every respect to normal classifying terms, which inscribe what is predicated into a determinate category. The phrase "you are an idiot" is only apparently symmetrical to "you are an architect" because, unlike the latter, it is not meant to inscribe a subject into a cognitive classification but to produce, simply by uttering it, particular pragmatic effects (Milner, 295). Insults function, then, more like exclamations or proper names than like predicative terms and, in this, they show their similarity with blasphemy (the Greek *blasphēmia* means both insult and blasphemy). It is not surprising, then, that blasphemy, by means of a process that was already completed in Augustine, goes from uttering the name of God in vain to taking the form of an insult (*mala dicere de Deo*), that is, of an injurious term added into an exclamation of the name of God. As a term that is only apparently semantic, the insult reinforces the "vain" character of blasphemy, and the name of God is, in this way, doubly taken in vain.

✠ The special power of the divine name is evident in the institution of Roman war law (it should be clear why I prefer to avoid the term "sacral law," which, beginning with Danz and Wisoza, has been used in such cases) known as *evocatio*. During the siege of a city, immediately before the decisive attack, the commander "evoked," that is, called by name the enemies' tutelary divinities, so that they would abandon the city and transfer themselves to Rome, where they would receive more adequate worship. The formula of the *carmen evocationis* used for Carthage has been conserved for us by Macrobius, without mentioning the proper name of the god: "To any god, to any goddess [*si deus est, si dea est*], under whose protection are the people and state of Carthage, and chiefly to thee who art charged with the protection of this city and people, I make prayer and do reverence [*precor venerorque*] and ask grace of you all, that you abandon the people and state of Carthage, forsake their places, temples, shrines, and city . . . that . . . you come to Rome, to me and mine; and that our places, temples, shrines, and city may be more acceptable and

pleasing to you; and that you may take me and the Roman people and my soldiers under your charge, that we may know the same. If ye shall so have done, I vow to you temples and solemn games" (*Saturnalia* 3.9.7–8).

That this is not an invitation but a genuine binding power tied to the pronunciation of the name, follows from the fact that we know (Pliny, 28.18) that, in order to avoid the danger of an evocation on the part of the enemy, Rome had a secret name (the palindrome *Amor* or, according to Lydus [*Mens.* 4.25], *Flora*). And like Rome, the gods also had a secret name, known only to the priest (or magician), which guaranteed the efficacy of the invocation: as Dionysius in the mysteries was called Pyrigenēs, Lucina with the foreign name of Ilithyia, Persephone with that of Furva, while the true name of the *Bona dea*, to whom Roman matrons dedicated a mystery cult, had to remain unknown to the males (Güntert, 8). The magical power of the name that we encounter in the formulas and amulets of many cultures, in which not only does the name evoke the potency named, but it can even, through its progressive cancellation, drive it out or destroy it (as in the formula *akrakanarba kanarba anarba narba arba rba ba a* [Wessley, 28]) has its basis here. As in the oath (the proximity between the magical formula and the oath is attested by the verb *horkizō*, to evoke, to exorcize: *horkizō se to hagion onoma* [I evoke or exorcize the holy name], with the accusative of the divine name exactly as in the oath [Güntert, 10]), the utterance of the name immediately actualizes the correspondence between words and things. Oath and exorcism are the two faces of the "evocation" of being.

21. One can thus understand the essential primacy of the name of God in monotheistic religions, its identification with and almost substitution for the God it names. If, in polytheism, the name assigned to [*il nome del dio*] the god named this or that event of language, this or that specific naming, this or that *Sondergott*, in monotheism *God's* name [*il nome di Dio*] names language itself. The potentially infinite dissemination of singular, divine events of naming gives way to the divinization of the *logos* as such, to the name of God as archi-event of language that takes place in names. Language is the word of God, and the word of God is, in the words of Philo, an oath; it is God insofar as he reveals himself

in the *logos* as the “faithful one” (*pistos*) par excellence. God is the oath-taker in the language of which man is only the speaker, but in the oath on the name of God the language of men communicates with divine language.

Hence, in Maimonides and in rabbinic Judaism the persistency with regard to the status of the proper name of God, the Tetragrammaton. There it is kept—as *šem ha-meforaš*, “distinctly pronounced name” but also “separate, secret”—distinct from simple appellative names (*kinnui*), which express this or that action of God, this or that divine attribute: “the other names,” writes Maimonides, “like *dayan* (judge), *shaddai* (almighty), *tsaddik* (righteous), *channun* (gracious), *rachum* (merciful), and *elohim* (chief) . . . are unquestionably appellatives and derivatives. The derivation of the name, consisting of *yod*, *hé*, *vau*, and *hé*, is not positively known, the word having no additional signification” (Maimonides, 1:61). Commenting on a passage from the *Pirkè R. Eliezer*, in which one reads, “Before the universe was created, there was only the Almighty and His name,” Maimonides adds, “Observe, how clearly the author states that all these appellatives employed as names of God came into existence after the Creation. This is true; for they refer to actions connected with the Universe. If, however, you consider His essence as separate and as abstracted from all actions, you will not describe it by an appellative, but by a proper noun, which exclusively indicates that essence” (ibid.). What is proper to this name (the *šem ha-meforaš*), according to Maimonides, is that, unlike other names that “do not signify a simple substance, but a substance with attributes,” it “conveys the meaning of ‘absolute existence,’” that is an essence that coincides with its existence (ibid.). The “name” (the term *šem* in the Bible is often used as a synonym of God) is the being of God, and God is the being that coincides with its name.

✠ In his study “The Name of God and the Linguistic Theory of the Kabbala,” Scholem has shown the special function that the name of God has in the Cabbala, in which it constitutes “the metaphysical origin of all language” (Scholem, 10/5). The name of God, on which men swear, is, according to the Cabbalists, what produces and sustains hu-

man language, which is nothing but a breaking apart, recombination, and deployment of the letters that compose this name. In particular the Torah "is completely founded and built on the tetragram; it is woven from the tetragram and its qualifying names, that is, from the divine epithets which are derivable from it, and emerge in it at any given moment. . . . The Torah is therefore a living garment and tissue, a *textus* in the most accurate understanding of the term, in which, as a kind of basic motif and as a leitmotif, the tetragram refers back to it in every possible kind of metamorphosis and variation" (ibid., 50/38).

Christian theologians speak of a *communicatio idiomatum* to define the communication between the properties of the divine nature and those of the human nature that are hypostatically united in Christ. It would be possible to speak, in an analogous sense, of a *communicatio* between the speech of God and the speech of men, which takes place, according to the Cabbalists, in the name of God. In Philo (see above, §10) the communication between the languages has its place in the oath, in which God swears by himself and men on the name of God. In Benjamin's essay "On Language in General and Human Language," of which Scholem's study cited above represents a resumption and development, the place of the *communicatio idiomatum* is in the proper name, by means of which the language of men communicates with the creative word of God (Benjamin, 150/74).

✠ In Exodus 3:13, when Moses asks him how he should respond to the Hebrews when they ask him about the name of God, Yahweh responds: *ehyé acher ahyé*, "I am who I am." The Septuagint, produced in a Hellenistic environment, and thus in contact with Greek philosophy, translates this name with *egō eimi ho on*, that is, with the technical term for being (*ho on*). Maimonides, commenting on this passage, shows himself to be perfectly conscious of the philosophical implications of this name of God: "Then God taught Moses how to teach them, and how to establish amongst them the belief in the existence of himself, namely, by saying *ehyé ašer ehyé*, a name derived from the verb *haya* in the sense of 'existing,' for *haya* means 'to be,' and in Hebrew no difference is made between the verbs 'to be' and 'to exist.' The principal point in this phrase is that the same word which denotes 'existence,' is repeated as an attribute. The word *ašer* . . . is an incomplete noun. . . . It must be considered as the subject of the predicate that follows. The first noun which is to be described is *ehyé*;

the second, by which the first is described, is likewise *ehyé*, the identical word, as if to show that the object which is to be described and the attribute by which it is described are in this case necessarily identical. This is, therefore, the expression of the idea that God exists, but not in the ordinary sense of the term; or, in other words, He is 'the existing being which is the existing Being,' that is to say, whose existence is absolute" (Maimonides, 1:63).

22. The connection of the theological theme of the name of God with the philosophical one of absolute being, in which essence and existence coincide, is definitively carried out in Catholic theology, in particular in the form of argument that, since Kant, one is accustomed to defining as ontological. As interpreters have clarified, the force of Anselm's famous argument in the *Proslogion* does not consist in a logical deduction of existence from the notion of a most perfect being or "that than which no greater can be thought"; it is a matter, rather, of the understanding of *id quo maius cogitare non potest* as the most proper name of God. To pronounce the name of God means to understand it as that experience of language in which it is impossible to separate name and being, words and things. As Anselm writes at the end of the *Liber apologeticus contra Gaunilonem* (the only text in which he speaks of a proof, or rather of a *vis probationis*), "what is spoken of [*hoc ipsum quod dicitur*] is proved (as a necessary consequence of the fact that it is understood and thought of [*eo ipso quod intelligitur vel cogitatur*]) . . . to exist" (§10). It is a matter, that is to say, above all, of an experience of language (of a "saying": *hoc ipsum quod dicitur*) and this experience is that of faith. For this reason Anselm thinks it important to inform us that the original title of the treatise was *fides quaerens intellectum* (faith seeking understanding) and that it had been written *sub persona* . . . *quaerentis intelligere quod credit* (in the name of someone who wants to understand what he believes). To understand the object of faith means to understand an experience of language in which, as in the oath, what is said is necessarily true and exists. That is to say, the name of God expresses the status of

the *logos* in the dimension of the *fides* oath, in which nomination immediately actualizes the existence of what it names.

Fifty years later, Alain of Lille, in his *Regulae theologicae* (PL 210:621–84), pushes this special status of the divine name still further, writing that every name, even that which expresses an attribute, like *iustus* or *bonus*, when referring to the being of God is transformed into a pronoun (*pronominator*); that is, it ceases to indicate, like every name, a substance plus an attribute and, being emptied of its content, now designates, like pronouns or proper names, a pure existence (*substantia sine qualitate* [substance without quality], in the tradition of classical grammatical thought). Not only that, but even the pronoun, if predicated of God, loses the sensible or intellectual ostentation that defines it [*cadit a demonstratione*] and carries out a paradoxical *demonstratio ad fidem*, that is, to the pure act of speech as such (*apud Deum, demonstratio fit ad fidem*).

For this reason Thomas Aquinas, taking up again the thesis of Maimonides on the name *qui est*, can write that it “names a being that is absolute and undetermined by anything added. . . . It does not signify what God is [*quid est Deus*], but signifies a sea of existence that is infinite and as if indeterminate . . . and thus there remains in our intellect only the fact that he is [*quia est*] and nothing more: and so it is as though it were in some state of confusion [*in quadam confusione*]” (Aquinas, d.8, q.1, a.1). The meaning of the name of God, then, has no semantic content, or better, suspends and puts in parentheses every meaning in order to affirm through a pure experience of speech a pure and bare existence.

We can therefore specify further the meaning and function of the name of God in the oath. Every oath swears on the name par excellence, that is on the name of God, because the oath is the experience of language that treats all of language as a proper name. Pure existence—the existence of the name—is not the result of a recognition, nor of a logical deduction: it is something that cannot be signified but only sworn, that is, affirmed as a name. The certainty of faith is the certainty of the name (of God).

✠ At the end of the notes published in 1969 under the title *On Certainty*, Wittgenstein, in order to clarify what we call certainty and often mistake for “knowledge,” appeals to the example of the proper name and wonders: “Do I know or do I only believe that I am called L. W.?” (Wittgenstein, §491). He interrogates, that is to say, the particular “security” that is linked to the plane of names. It is a matter of a certainty, or better of a “trust” (*Worauf kann ich mich verlassen?* “What can I rely on?” [ibid., §508]), which we cannot doubt without renouncing every possibility of judgment and reasoning (ibid., §494). “If my name is not L. W., how can I rely on what is meant by ‘true’ and ‘false?’” (ibid., §515). The security of the propriety of names conditions every other certainty. If someone calls into question, in language, the very moment of naming on which every language game is founded (if it is not secure that I am named L. W. and that “dog” means dog), then speaking and judging become impossible. Yet Wittgenstein shows that here it is not a matter of a certainty of a logical or empirical type (like the certainty of never having been on the moon [ibid., §662]) but of something like a “rule” of the game that language is.

It is a certainty, or better a “faith,” of this kind that is in question in the oath and in the name of God. The name of God names the name that is always and only true, that is, that experience of language that it is not possible to doubt. For man this experience is the oath. In this sense every name is an oath, and in every name a “faith” is in question, because the certainty of the name is not of an empirico-constative or logico-epistemic type but rather always puts in play the commitment and praxis of men. To speak is, above all, to swear, to believe in the name.

23. It is in this perspective that one must reread the theory of performatives or “speech acts,” which, in the thought of the twentieth century, represent a sort of enigma, as if philosophers and linguists were coming up against a magical stage of language. The performative is a linguistic enunciation that does not describe a state of affairs but immediately produces a fact, actualizes its meaning. “I swear” is, in this sense, the perfect paradigm of a “speech act,” and it is curious that Benveniste, who mentions it as such in his study on performatives (Benveniste [3], 270/234), takes no account of its special nature in the chapter on the oath in

the *Vocabulaire*. It is precisely the status of the oath that we have sought so far to reconstruct that allows us, in fact, to understand in a new light the theory of performatives. They represent in language a remnant of a stage (or, rather, the co-originary of a structure) in which the connection between words and things is not of a semantico-denotative type but performative, in the sense that, as in the oath, the verbal act brings being into truth. This is not, as we have seen, a magico-religious stage but a structure antecedent to (or contemporaneous with) the distinction between sense and denotation, which is perhaps not, as we have been accustomed to believe, an original and eternal characteristic of human language but a historical product (which, as such, has not always existed and could one day cease to exist).

How, in fact, does the performative function? What permits a certain syntagma to acquire, solely by its utterance, the efficacy of fact, casting off the ancient maxim that would have it that words and things are separated by an abyss? What is essential here, certainly, is the self-referential character of the performative expression. This self-referentiality is not exhausted in the fact that the performative, as Benveniste notes (*ibid.*, 274), takes itself as referent, insofar as it refers to a reality that it itself constitutes. Rather it is necessary to specify that the self-referentiality of the performative is constituted always by means of a suspension of the normal denotative character of language. The performative verb is in fact necessarily constructed with a *dictum* that, considered in itself, has a purely denotative nature and without which it remains void and ineffective (*I swear* does not have any force if it is not followed—or preceded—by a *dictum* that fills it in). It is this denotative character of the *dictum* that is suspended and called into question in the very moment it becomes the object of a performative syntagma. Thus the denotative expressions “yesterday I was in Athens” or “I will not fight against the Trojans” cease to be such if they are preceded by the performative *I swear*. That is to say, the performative substitutes for the denotative relationship between speech and fact a self-referential relation that, putting the former out of play, puts itself forward as the decisive fact. The model of

truth here is not that of the adequation between words and things but the performative one in which speech unfailingly actualizes its meaning. Just as, in the state of exception, the law suspends its own application only to found, in this way, its being in force, so in the performative, language suspends its denotation precisely and solely to found its existential connection with things.

Considered in this perspective, the ontological (or onto-theological) argument simply says that if speech exists, then God exists, and God is the expression of this metaphysical "performance." In it, sense and denotation, essence and existence coincide, the existence of God and his essence are one sole and identical thing. That which results performatively from the pure existence [*darsi*] of language exists purely and simply (*on haplōs*). (Paraphrasing a thesis of Wittgenstein, one could say that the existence of language is the performative expression of the existence of the world.) Ontotheology is, therefore, a performance of language and is in solidarity with a certain experience of language (that which is at issue in the oath), in the sense that its validity and its decline coincide with the strength and decline of this experience. In this sense metaphysics, the science of pure being, is itself historical and coincides with the experience of the event of language to which man devotes himself in the oath. If the oath is declining, if the name of God is withdrawing from language—and this is what has happened beginning from the event that has been called the "death of God" or, as one should put it more exactly, "of the name of God"—then metaphysics also reaches completion.

There remains, in any case, the possibility of perjury and blasphemy, in which what is said is not really intended and the name of God is taken in vain. The co-originary of the performative structure and denotative structure of speech ensures that the "Indo-European scourge" is inscribed in the very act of speaking, which is to say, is consubstantial with the very condition of the speaking being. With the *logos* are given both—co-originally, but in such a way that they cannot perfectly coincide—names and discourse, truth and lie, oath and perjury, bene-diction and male-diction, existence and non-existence of the world, being and nothingness.

✠ This performative power of the name of God explains the fact, which is at first glance surprising, that the polemic of the Christian apologists against the pagan gods did not concern their existence or nonexistence but only their being, in the words that Dante puts in the mouth of Virgil, “false and lying” (*Inferno* 1.72). The pagan gods exist but are not true gods; they are demons (according to Tatian) or human beings (for Tertullian). In correspondence with a potentially infinite multiplication of their names, the pagan gods are equivalent to false oaths, are constitutively perjurers. On the contrary, the invocation of the true God’s name is the very guarantee of every worldly truth (Augustine: *Te invoco, deus veritas, in quo et a quo et per quem vera sunt quae vera sunt omnia* [Thee do I invoke, God, Truth, in whom and by whom and through whom are all things true which are true] [Augustine [3], 1.3]). Once the performative power of language was concentrated in the name of the one God (which had become, for this reason, more or less unpronounceable), the individual divine names lose all efficacy and fall to the level of linguistic ruins, in which only the denotative meaning remains perceptible (in this sense, Tertullian can mention sarcastically *Sterculus cum indigitamentis suis* [Some Sterculus, I suppose]—*Apol.* 25.10).

24. In this perspective the sharp distinction between assertorial oaths and promissory oaths corresponds to the loss of the experience of speech that is in question in the oath. This is neither an assertion nor a promise but something that, taking up a Foucauldian term, we can call a “veridiction,” which has as the sole criterion of its performative efficacy its relationship to the subject who pronounces it. Assertion and veridiction define, that is to say, the two co-originary aspects of the *logos*. While assertion has an essentially denotative value, meaning that its truth, in the moment of its formulation, is independent of the subject and is measured with logical and objective parameters (conditions of truth, noncontradiction, adequation between words and things), in veridiction the subject constitutes itself and puts itself in play as such by linking itself performatively to the truth of its own affirmation. For this reason the truth and consistency of the oath coincide with its performance, and for this reason the calling of the god as witness

does not imply a factual testimony but is actualized performatively by the very utterance of the name. What we today call a performative in the strict sense (the speech acts “I swear,” “I promise,” “I declare,” etc., which must, significantly, always be pronounced in the first person) are the relics in language of this constitutive experience of speech—veridiction—that exhausts itself with its utterance, since the speaking subject neither preexists it nor is subsequently linked to it but coincides integrally with the act of speech.

Here the oath shows its performative proximity with the profession of faith (*homologia*, which in Greek also designates the oath). When Paul, in Romans 10:6–10, defines the “word of faith” (*to rema tēs pisteōs*) not by means of the correspondence between word and reality but by means of the closeness of “lips” and “heart,” it is the performative experience of veridiction that he has in mind: “The word is near you, on your lips and in your heart’ (that is, the word of faith that we proclaim); because if you confess [*homologēsēis*] with your lips that Jesus is Lord and believe [*pisteusēis*] in your heart that God raised him from the dead, you will be saved.”

If one pretends to formulate a veridiction as an assertion, an oath as a denotative expression, and (as the Church began to do from the fourth century on by means of conciliar creeds) a profession of faith as a dogma, then the experience of speech splits, and perjury and lie irreducibly spring up. And it is in the attempt to check this split in the experience of language that law and religion are born, both of which seek to tie speech to things and to bind, by means of curses and anathemas, speaking subjects to the veritative power of their speech, to their “oath” and to their declaration of faith. The ancient formula of the Twelve Tables, which expresses the performative potentiality of speech in law, *uti lingua nuncupasset, ita ius esto* (as the tongue has said—has taken the name, *nomen capere*—so the law is), does not mean that what is said is constatively true but only that the *dictum* is itself the *factum* and that, as such, it obliges the person who has pronounced it. It is necessary once again to reverse, in this sense, the common opinion that explains the efficacy of the oath by reference to the powers [*potenze*]

of religion or of archaic sacred law. Religion and law do not pre-exist the performative experience of language that is in question in the oath, but rather they were invented to guarantee the truth and trustworthiness of the *logos* through a series of apparatuses, among which the technicalization of the oath into a specific "sacrament"—the "sacrament of power"—occupies a central place.

✠ A loss of the understanding of the performative character of the experience of language in question in the oath is evident in the philosophical analyses of perjury of which we already have testimony in Aristotle. Discussing the oath of the Trojans in the *Iliad* (3.276ff.), Aristotle observes that it is necessary to distinguish between breaking the oath (*blapsai ton horkon*), which can only apply to a promissory oath, and *epiorkesai*, to perjure, which can refer only to an assertorial oath (Aristotle [1], frag. 143). In the same way Chrysippus distinguishes between *alethorkein/pseudorkein*, to swear the true / to swear the false, which are in question in the assertorial oath, according to whether the affirmation on which one swears is objectively true or false, and *euorkein/epiorkein*, which are applied to the fulfillment or nonfulfillment of a promissory oath (Diogenes Laertius, 7.65–66; cf. Hirzel, 77–78; Plescia, 84–85). Here one sees how the model of logical truth founded on the objective adequation between words and things cannot give an account of the experience of language implicit in the oath. Insofar as the oath performatively actualizes what is said, the *epiorkos* is not simply a false oath but implies the evacuation of the performative experience that is proper to the *horkos*.

Logic, which watches over the correct use of language as assertion, is born when the truth of the oath has already waned. And if logic and science are born from the management of the assertorial aspect of the *logos*, from veridiction there proceed, even if through crossings and superimpositions of every kind (which have their highest place precisely in the oath), law, religion, poetry, and literature. In the middle is philosophy, which, abiding in both truth and error, seeks to safeguard the performative experience of speech without renouncing the possibility of lying and, in every assertorial discourse, experiences the veridiction that takes place in it.

25. The performative efficacy of the oath is evident in the ancient trial, which, in both Greece and Rome, had the form of a

conflict between two oaths. The civil trial opened with the oath of the two parties to the suit: the oath with which the plaintiff affirmed the truth of his claims was called a *promosia* (etymologically: the oath pronounced first), that of the defendant an *antomosia* (that is, an oath pronounced in opposition to the first), and the exchange of oaths was called *amphiorkia*. Analogously, in penal law "the accuser swears that his adversary has committed the crime and the accused that he has not committed it" (Lysias, 46; see also Glotz, 762). The law of Gortyna shows that the Greeks sought to limit the oath to cases in which testimonial evidence was impossible and consequently to establish which of the two parties (usually the accused) had a preferential right to the oath. In every case the judge decided who had "sworn rightly" (*poteros euorkei*) (Plescia, 49). Glotz has rightly observed, against the opinion of Rohde, that the declaratory oath that is in question in the Greek trial, "far from constraining to perjury and from proving, as one says, that the Athenians were not a *Rechtsvolk*, and far from being a purely religious institution that was destined eventually to substitute the justice of the gods for the fallible justice of men" (Glotz, 761), was a properly juridical procedure in which the declarative oath of the suit was clearly distinct from that requested as evidence. In the Roman trial the procedure called *legis actio sacramenti* [the bringing forward of the legal oath], which Gaius describes to us in book 4 of his *Institutiones*, was similar. Each of the two parties affirmed his right—in the case Gaius uses as an example, the *vidicatio* of the ownership of a slave—with the formula: *Hunc ego hominem ex iure Quiritium meum esse aio, secundum suam causam sicut dixi ecce tibi vindictam imposui* [I assert that this slave is mine by Quiritary title, in accordance with his status, as I have declared it. Look you, I lay my wand upon him], accompanied by the laying of a wand (*vindicta*) on the head of the contested slave (*Inst.* 4.16). Subsequently, the one who had pronounced the first declaration provokes the other to the *sacramentum* of a certain sum of money (*quando tu iniura vindicavisti, D aeris sacramento te provoco* [Inasmuch as you have made a claim without right to support it, I challenge you in a deposit of five hundred *asses*]). Festus, commenting on the word

sacramentum in the passage cited above, explains that it is a matter of a genuine oath that entails a *sacratio*: *sacramento dicitur quod iusiurandi sacratione interposita factum est* (one calls a *sacramentum* what is done with the sanction of the oath). Only at this point did the judge pronounce his decision: "This *sacramentum* is the central point, the crux of the trial, which gives its name to the whole. The role of the judge is in fact limited, after the examination of the case, to declaring which is the *sacramentum justum* and which is the *sacramentum injustum*" (Noailles [I], 276).

Once more, the historians of law, though realizing that what is here in question is a genuinely performative efficacy, tend to explain the function of the oath in the trial by recourse to the sacral paradigm: "It seems that the most ancient forms of obligation make the oath effective. They provoke a change of estate among the parties, and they create something between them in the world beyond. In order to create, they bring forces into play. . . . These are so-called religious forces" (Gernet [I], 61/172-73). What is thus presupposed in the form of religiosity is just the experience of language that takes place in veridiction. In this sense the opposition between faith and religion, so important in modern culture, in reality corresponds point by point to the opposition between two co-originary characteristics of the *logos*, which are veridiction (from which law and positive religion proceed) and assertion (from which logic and science derive).

26. Let us attempt to understand, in the perspective of our investigation, the "forces" that are really in question here. One of the terms about whose meaning historians never stop debating is *vindicta* (and related terms like *vindex*, *vindicere*), which in the trial seems to designate the wand with which the parties touched the disputed property. It is the merit of Pierre Noailles to have clarified the original meaning of this term. It comes, according to the traditional etymology, from *vim dicere*, literally: "to say or show force." But what force? Among scholars, Noailles observes, there reigns the greatest confusion on this point: "they oscillate perpetually between the two possible meanings of the word: either

force or violence, which is to say force materially put to use. In reality they do not choose. According to the occasion, it is one or the other meaning that is put forward. The *vindicaciones* of the *sacramentum* are presented now as manifestations of force, now as symbolic or simulated acts of violence. The confusion is still greater with regard to the *vindex*. For it is not clearly determined whether the force or violence that the name indicates is his own, which he puts at the service of the law, or if it is the violence of his adversary, whom he denounces as contrary to justice" (Noailles [2], 57). Against this confusion Noailles shows that the *vis* in question cannot be a material force or violence but only the force of the rite, that is a "force that compels, but does not seek to be or need to be applied materially in an act of violence, even a simulated one" (ibid., 59). Noailles cites in this connection a passage from Aulus Gellius in which the *vis civilis . . . quae verbo diceretur* (the civil force, which is said with the word) is opposed to the *vis quae manu fieret, cum vi bellica et cruenta* (the force which is carried out with hands, with warlike and cruel force). Developing the thesis of Noailles, one can hypothesize that the "force said with the word," which is in question in the action of the *vindex* as also in the oath, is the force of effective speech, as the originary force of law. The sphere of law is that of effective speech, of a "saying" that is always *indicere* (to proclaim, to declare solemnly), *ius dicere* (to say what conforms to the law), and *vim dicere* (to say the effective word). The force of speech that is in question is, according to Noailles, the same one that is expressed in the formula of the Twelve Tables: *uti lingua nuncupassit, ita ius esto* (as language has said, so the law is). *Nuncupare* is explained etymologically as *nomen capere*, to take the name:

The general characteristic of all the *nuncupationes*, whether in sacred law or civil law, is that of delimiting and circumscribing. . . . The essential goal of the formulary is that of determining the object, of seizing it. Thus one can perceive the profound relationship that exists between gesture and speech, and the strict correlation that unites them. *Rem manu capere, nomen verbis capere*, such are the two cornerstones of this act of total capture. It is well known what mystical importance

the Romans attached to the *nomen* as the means to acquire mastery over the *res* that they designated. The first condition for acting with effectiveness on one of the mysterious forces of nature, on a divine potency, was being able to pronounce its name. (Noailles [1], 306)

It is sufficient to set aside the recourse to "divine potency," by now all too familiar to us, for the nature and function of the oath in the trial to become evident. The "just oath" is that of which the *iudex*, who in the trial is substituted for the archaic *vindex*, "declares and recognizes the force" (*vim dicit*); it is, therefore, that which has completed in the most correct and effective way the "performance" implicit in the oath. The act of the counterparty is not, for this reason, necessarily an *epiorkos*, perjury: it is simply an act whose performative *vis* is less perfect than that of the victor. The "force" that is in question here is that *quae verbo diceretur*, the force of speech. One must therefore suppose that in the *sacramentum*, as in every oath, there was implied a performative experience of language, in which the utterance of the formula, the *nomen capere* of the *nuncupatio*, had the force of actualizing what it said. There is no need to drag in religion, myth, or magic to explain this force: it is a matter of something that is verified again every time the formula of a verbal juridical act is pronounced. It is not by means of a sacred power that the spouses, uttering their "I do" before a civil official, find themselves effectively united in marriage; it is not by means of magic that the verbal agreement of a sale immediately transfers the ownership of movable goods. The *uti lingua nuncupasset, ita ius esto* is not a magico-sacral formula; it is, rather, the performative expression of the *nomen capere* that the law has preserved at its center, drawing it from the original experience of the act of speech that takes place in the oath.

✠ Magdelain has shown that the verbal mode proper to law, both sacred and civil, is the imperative. Both in the *leges regiae* and the Twelve Tables the imperative formula (*sacer esto, paricidas esto, aeterna auctoritas esto* [be sacer, be a parricide, be an eternal authority], etc.) is the normal one. The same holds for juridical transactions: *emptor esto* [be the buyer] in the *mancipatio* [ritual transfer of goods], *heres esto*

[be the heir] in testaments, *tutor esto* [be the guardian], etc., as also in the formulas of the pontifical books: *piaculum data, exta porriciunto* [let the entrails be placed as an offering] (Magdelain, 33–35; Johnson, 334–35). The same verbal mode is found, as we have seen (§14 above), in formulas of the oath.

Let us look at the imperative formula of the Twelve Tables cited above: *uti lingua nuncupassit, ita ius esto*. Festus, who has transmitted its text to us, explains the term *nuncupata* as *nominata, certa, nominibus propriis pronuntiata* (the sum of money named, determined, pronounced in precise terms [Riccobono, 43; Festus, 176.3–4]). The formula expresses, that is, the correspondence between correctly pronounced nomination and juridical effect. The same can be gathered from the formula of the *inauguratio* of the temple on the *arx capitolina*: *templa tescaque me ita sunt, quoad ego ea rite lingua nuncupavero* (temples and sacred lands be mine in this manner, up to where I have named them with my tongue according to the rites [Varro, 7.8]); here, as well, the imperative expresses the conformity between words and things that follows on correct naming. The *nuncupatio*, the taking of the name, is in this sense the originary juridical act, and the imperative, which Meillet defines as the primitive form of the verb, is the verbal mode of nomination in its performative juridical effect. To name, to take a name, is the originary form of the command.

⌘ We know from the sources that, in the Roman trial, the term *sacramentum* did not immediately designate the oath but the sum of money (of fifty or five hundred *asses*) that was, so to speak, put at stake by means of the oath. The one who did not succeed in proving his right lost the sum, which was paid into the public treasury. “If it is that money which comes into court in lawsuits, it is called *sacramentum*, ‘sacred deposit,’ from *sacrum*, ‘sacred, consecrated’: the plaintiff and the defendant each deposited with the praetor [or, according to some editors, the pontifex] five hundred copper asses for some kinds of cases, and for other kinds the trial was conducted likewise under a deposit of some other fixed amount specified by law; he who won the decision got back his *sacramentum* from the consecration, but the loser’s deposit passed into the state treasury” (Varro, 5.180). The same etymology is found in Festus (468.16–17): *Sacramentum aes significat quod poenae nomine pendetur* (*sacramentum* designates the money paid as a penalty).

The object of the *sacratio* that takes place in the trial is therefore the money. The *sacer*, that which was consecrated to the gods, was not in this case, as in the sanctions of the Twelve Tables, a living being but a sum of money. Cicero informs us that originally the object of the procedural *sacratio* was not money but livestock (Noailles [I], 280). Hence the hypothesis of some historians of law, according to which it was the party who pronounced the oath who was rendered in this way *sacer*, that is killable and unsacrificeable. In any case what is essential is that the sacredness here inhered, beyond all doubt, in the money, that the money was literally and not metaphorically "sacred." The sacral aura that surrounds money in our culture in all likelihood has its origin in this vicarious consecration of a sum of money in place of a living being; as *sacramentum*, money is truly equal to life.

27. Let us now attempt to fix in a series of theses the new position of the oath that results from the analysis developed so far.

1. Scholars have constantly explained, in a more or less explicit way, the institution of the oath by means of a reference to the magico-religious sphere, to a divine power, or to "religious forces" that intervene to guarantee its efficacy by punishing perjury. With a curious circularity the oath was thus in fact interpreted, as in Hesiod, as that which serves to prevent perjury. My hypothesis is exactly the reverse: the magico-religious sphere does not logically preexist the oath, but it is the oath, as originary performative experience of the word, that can explain religion (and law, which is closely connected with it). For this reason *Horkos* is, in the classical world, the most ancient being, the sole potency to which the gods are submitted for punishment; for this reason, in monotheism, God is identified with the oath (he is the being whose word is an oath or who coincides with the position of the true and efficacious word *in principio*).

2. The proper context of the oath is therefore among those institutions, like the *fides*, whose function is to performatively affirm the truth and trustworthiness of speech. *Horkia* are par excellence *pista*, reliable, and the gods, in paganism, are performatively summoned in the oath essentially to testify to this reliability. The monotheistic religions, above all Christianity, inherit from the

oath the centrality of faith in the word as the essential content of religious experience. Christianity is, in the proper sense of the term, a religion and a divinization of the *Logos*. The attempt to reconcile faith as the performative experience of a veridiction with belief in a series of dogmas of an assertive type is the task and, at the same time, the central contradiction of the Church, which obliges it, against the clear evangelical command, to technicalize oath and curses in specific juridical institutions. For this reason philosophy, which does not seek to fix veridiction into a codified system of truth but, in every event of language, puts into words and exposes the veridiction that founds it, must necessarily put itself forward as *vera religio* [true religion].

3. It is in the same sense that the essential proximity between oath and *sacratio* (or *devotio*) must be understood. The interpretation of *sacertas* as an originary performance of power through the production of a killable and unsacrificeable bare life must be completed in the sense that, even before being a sacrament of power, the oath is a consecration of the living human being through the word to the word. The oath can function as a sacrament of power insofar as it is first of all the *sacrament of language*. This original *sacratio* that takes place in the oath takes the technical form of the curse, of the *politikē ara* that accompanies the proclamation of the law. Law is, in this sense, constitutively linked to the curse, and only a politics that has broken this original connection with the curse will be able one day to make possible another use of speech and of the law.

28. This is the moment to situate the oath archaeologically in its relationship to anthropogenesis. In the course of our investigation we have often looked to the oath as the historical testimony of the experience of language in which man was constituted as a speaking being. It is in reference to such an event that Lévi-Strauss, in his study on Mauss that I have previously cited, spoke of a fundamental inadequation between signifier and signified that was produced in the moment in which, for the speaking man, the universe suddenly became meaningful:

At the moment when the entire universe all at once became significant, it was none the better known for being so, even if it is true that the emergence of language must have hastened the rhythm of the development of knowledge. So there is a fundamental opposition, in the history of the human mind, between symbolism, which is characteristically discontinuous, and knowledge, characterized by continuity. Let us consider what follows from that. It follows that the two categories of the signifier and the signified came to be constituted simultaneously and interdependently, as complementary units; whereas knowledge, that is, the intellectual process which enables us to identify certain aspects of the signifier and certain aspects of the signified . . . only got started very slowly. . . . The universe signified long before people began to know what it signified. (Lévi-Strauss, xlvii/60–61)

The consequence of this lost equalization is that man

has from the start had at his disposition a signifier-totality which he is at a loss to know how to allocate to a signified, given as such, but no less unknown for being given. There is always a non-equivalence or “inadequation” between the two, a non-fit and overflow which divine understanding alone can soak up; this generates a signifier-surfeit relative to the signifieds to which it can be fitted. So in man’s effort to understand the world, he always disposes of a surplus of signification (which he shares out among things in accordance with the laws of the symbolic thinking which it is the task of ethnologists and linguists to study). (ibid., lxix/62–63)

We have seen how, according to Lévi-Strauss, it is precisely this inadequation that explains magico-religious notions such as *mana*, which represent that “floating” or excessive and, in short, empty signifier that constitutes “the disability of every finite thought” (ibid., lxix/63). As mythology does in Max Müller, so also for Lévi-Strauss, even if certainly in a different sense, magico-religious notions represent in some way a malady of language, the “opaque shadow” that language casts on thought and that permanently impedes the welding together of signification and consciousness, of language and thought.

The predominance of the cognitive paradigm ensures that,

in Lévi-Strauss, the event of anthropogenesis is seen solely in its gnoseological aspect, as if, in the becoming human of man, there were not necessarily and above all ethical (and, perhaps, also political) implications at issue. What I would like to suggest here is that when, following on a transformation whose study is not a task of the human sciences, language appeared in man, the problem it created cannot have been solely, as according to the hypothesis of Lévi-Strauss, the cognitive aspect of the inadequation of signifier and signified that constitutes the limit of human knowledge. For the living human being who found himself speaking, what must have been just as—perhaps more—decisive is the problem of the efficacy and truthfulness of his word, that is, of what can guarantee the original connection between names and things, and between the subject who has become a speaker—and, thus capable of asserting and promising—and his actions. With a tenacious prejudice perhaps connected to their profession, scientists have always considered anthropogenesis to be a problem of an exclusively cognitive order, as if the becoming human of man were solely a question of intelligence and brain size and not also one of *ethos*, as if intelligence and language did not also and above all pose problems of an ethical and political order, as if *Homo sapiens* was not also, and of course precisely for that reason, a *Homo iustus*.

Linguists have often sought to define the difference between human and animal language. Benveniste has thus opposed the language of bees, a fixed code of signals whose content is defined once and for all, to human language, which can be analyzed into morphemes and phonemes whose combinations allow for a virtually infinite potentiality of communication (Benveniste [3], 62/54). Once more, however, the specificity of human language with respect to animal language cannot reside solely in the peculiarity of the instrument, which later analyses could find—and, in fact, continually do find—in this or that animal language. It consists, rather, no less decisively in the fact that, uniquely among living things, man is not limited to acquiring language as one capacity among others that he is given but has made of it his specific potentiality; *he has, that is to say, put his very nature at stake in language.*

Just as, in the words of Foucault, man “is an animal whose politics places his existence as a living being in question” (Foucault, 143), so also is he *the living being whose language places his life in question*. These two definitions are, in fact, inseparable and constitutively dependent on each other. The oath is situated at their intersection, understood as the anthropogenic operator by means of which the living being, who has discovered itself speaking, has decided to be responsible for his words and, devoting himself to the *logos*, to constitute himself as the “living being who has language.” In order for something like an oath to be able to take place, it is necessary, in fact, to be able above all to distinguish, and to articulate together in some way, life and language, actions and words—and this is precisely what the animal, for which language is still an integral part of its vital practice, cannot do. The first promise, the first—and, so to speak, transcendental—*sacratio* is produced by means of this division, in which man, opposing his language to his actions, can put himself at stake in language, can promise himself to the *logos*.

Something like a human language was in fact only able to be produced in the moment in which the living being, who found itself co-originarily exposed to the possibility of both truth and lie, committed itself to respond with its life for its words, to testify in the first person for them. And just as *mana* expresses, according to Lévi-Strauss, the fundamental inadequation between signifier and signified, which constitutes “the disability of every finite thought,” so also does the oath express the demand, decisive in every sense for the speaking animal, to put its nature at stake in language and to bind together in an ethical and political connection words, things, and actions. Only by this means was it possible for something like a history, distinct from nature and, nevertheless, inseparably intertwined with it, to be produced.

29. It is in the wake of this decision, in faithfulness to this oath, that the human species, to its misfortune as much as to its good fortune, in a certain way still lives. Every naming is, in fact, double: it is a blessing or a curse. A blessing, if the word is full, if

there is a correspondence between the signifier and the signified, between words and things; a curse if the word is empty, if there remains, between the semiotic and the semantic, a void and a gap. Oath and perjury, bene-diction and male-diction correspond to this double possibility inscribed in the *logos*, in the experience by means of which the living being has been constituted as speaking being. Religion and law technicalize this anthropogenic experience of the word in the oath and the curse as historical institutions, separating and opposing point by point truth and lie, true name and false name, efficacious formula and incorrect formula. That which was "badly said" became in this way a curse in the technical sense, and fidelity to the word became an obsessive and scrupulous concern with appropriate formulas and ceremonies, that is, *religio* and *ius*. The performative experience of the word is constituted and isolated in a "sacrament of language" and this latter in a "sacrament of power." The "force of law" that supports human societies, the idea of linguistic enunciations that stably obligate living beings, that can be observed and transgressed, derive from this attempt to nail down the originary performative force of the anthropogenic experience, and are, in this sense, an epiphenomenon of the oath and of the malediction that accompanied it.

Prodi opened his history of the "sacrament of power" with the observation that we are today the first generations to live our collective life without the bond of the oath and that this change cannot but entail a transformation in the forms of political association. If this diagnosis hits at all upon the truth, that means that humanity finds itself today before a disjunction or, at least, a loosening of the bond that, by means of the oath, united the living being to its language. On the one hand, there is the living being, more and more reduced to a purely biological reality and to bare life. On the other hand, there is the speaking being, artificially divided from the former, through a multiplicity of technico-mediatic apparatuses, in an experience of the word that grows ever more vain, for which it is impossible to be responsible and in which anything like a political experience becomes more and more precarious. When the ethical—and not simply cognitive—connec-

tion that unites words, things, and human actions is broken, this in fact promotes a spectacular and unprecedented proliferation of vain words on the one hand and, on the other, of legislative apparatuses that seek obstinately to legislate on every aspect of that life on which they seem no longer to have any hold. The age of the eclipse of the oath is also the age of blasphemy, in which the name of God breaks away from its living connection with language and can only be uttered "in vain."

It is perhaps time to call into question the prestige that language has enjoyed and continues to enjoy in our culture, as a tool of incomparable potency, efficacy, and beauty. And yet, considered in itself, it is no more beautiful than birdsong, no more efficacious than the signals insects exchange, no more powerful than the roar with which the lion asserts his dominion. The decisive element that confers on human language its peculiar virtue is not in the tool itself but in the place it leaves to the speaker, in the fact that it prepares within itself a hollowed-out form that the speaker must always assume in order to speak—that is to say, in the ethical relation that is established between the speaker and his language. *The human being is that living being that, in order to speak, must say "I," must "take the word," assume it and make it his own.*

Western reflection on language has taken nearly two millennia to isolate, in the formal machinery of language, the enunciative function, the ensemble of those indicators or *shifters* (*I, you, here, now, etc.*) by means of which the one who speaks assumes language in a concrete act of discourse. What linguistics is undoubtedly not in a position to give an account of, however, is the *ethos* that is produced in this gesture and that determines the extraordinary implication of the subject in his word. It is in this ethical relation, the anthropogenic significance of which we have sought to determine, that the "sacrament of language" takes place. Precisely because, unlike other living things, in order to speak, the human being must put himself at stake in his speech, he can, for this reason, bless and curse, swear and perjure.

At the beginning of Western culture, in a small territory at the eastern borders of Europe, there arose an experience of speech

that, abiding in the risk of truth as much as of error, forcefully pronounced, without either swearing or cursing, its yes to language, to the human being as speaking and political animal. Philosophy begins in the moment in which the speaker, against the *religio* of the formula, resolutely puts in question the primacy of names, when Heraclitus opposes *logos* to *epea*, discourse to the uncertain and contradictory words that constitute it, or when Plato, in the *Cratylus*, renounces the idea of an exact correspondence between the name and the thing named and, at the same time, draws together onomastics and legislation, an experience of *logos* and politics. Philosophy is, in this sense, constitutively a critique of the oath: that is, it puts in question the sacramental bond that links the human being to language, without for that reason simply speaking haphazardly, falling into the vanity of speech. In a moment when all the European languages seem condemned to swear in vain and when politics can only assume the form of an *oikonomia*, that is, of a governance of empty speech over bare life, it is once more from philosophy that there can come, in the sober awareness of the extreme situation at which the living human being that has language has arrived in its history, the indication of a line of resistance and of change.

✠ In the *Opus postumum*, Kant has recourse to the mythical image of the oath of the gods in the process of explaining one of the most difficult points of his teachings, the transcendental schematism, which modern interpreters, developing one of Schelling's intuitions, tend to connect to language. Kant writes: "The schematism of the concepts of the intellect . . . is an instant in which the shores of metaphysics and physics make contact *Styx interfusa*" (22.487). The Latin citation comes from a passage in the *Georgics* (4.480) in which Virgil evokes the water of the Stygian swamp in grim terms, which refer to its function as "a great and terrible oath of the gods": *tardaue palus inamabilis unda / alligat et novies Styx interfusa coerces* [there lies the unlovely swamp of dull dead water, and, to pen them fast, Styx with her nine-fold barrier poured between]. Schematism (language) joins for an instant in a kind of oath two kingdoms that seem as though they must always remain divided.

Bibliography

- Agamben, G. *Homo sacer: Il potere sovrano e la nuda vita* (Einaudi: Turin, 1995). English translation: *Homo Sacer: Sovereign Power and Bare Life*, trans. Daniel Heller-Roazen (Stanford: Stanford University Press, 1998).
- Alain of Lille. *Regulae theologicae*, in *Patrologia latina cursus completus*, ed. J.-P. Migne, vol. 210 (Paris: Garnier, 1844–55).
- Anselm of Canterbury. *The Major Works*, ed. Brian Davies and Gillian Evans (New York: Oxford University Press, 1998).
- Aquinas, Thomas. *Scriptum super Sententiis*, in *S. Thomae de Aquino Opera Omnia*, www.corpusthomicum.org/iopera.html (accessed Dec. 30, 2009).
- Aristotle [1]. *Fragments*, in *The Works of Aristotle*, trans. David Ross, vol. 12 (New York: Clarendon, 1952).
- Aristotle [2]. *The Metaphysics*, trans. Hugh Lawson-Tancred (New York: Penguin, 1999).
- Augustine [1]. “Lying (*Contra mendacium*),” in *Treatises on Various Subjects*, trans. Mary S. Muldowney (New York: Catholic University of America Press, 2002).
- Augustine [2]. “On the Morals of the Manicheans (*De mor. Manich.*),” in *Nicene and Post-Nicene Fathers of the Christian Church*, part 4, ed. Philip Schaff, trans. Richard Stothert and Albert H. Newman (Edinburgh: T & T Clark, 1996).
- Augustine [3]. *The Soliloquies of St. Augustine*, trans. Rose Elizabeth Cleveland (Boston: Little, Brown, 1910).
- Aujoulat, N. *Le néoplatonisme alexandrin: Hiérocles d’Alexandrie: Fili-*

- ations intellectuelles et spirituelles d'un néoplatonicien* (Leiden: Brill, 1986).
- Benjamin, W. "Über Sprache überhaupt und über die Sprache des Menschen," in *Gesammelte Schriften*, vol. 1 (Frankfurt am Main: Suhrkamp, 1977). English translation: "On Language as Such and on the Language of Man," in *Selected Writings*, vol. 1: 1913–1926, ed. Marcus Bullock and Michael W. Jennings (Cambridge: Harvard University Press, 1996).
- Benveniste, É. [1]. "L'expression du serment dans la Grèce ancienne," *Revue de l'histoire des religions* (1948): 81–94.
- Benveniste, É. [2]. *Le vocabulaire des institutions indo-européennes*, vols. 1–2 (Minuit: Paris, 1969). English translation: *Indo-European Language and Society*, ed. Jean Lallot, trans. Elizabeth Palmer (London: Faber, 1973).
- Benveniste, É. [3]. *Problèmes de linguistique générale*, vol. 1 (Gallimard: Paris, 1966). English translation: *Problems in General Linguistics*, trans. Mary Elizabeth Meek (Coral Gables, FL: University of Miami Press, 1971).
- Benveniste, É. [4]. *Problèmes de linguistique générale*, vol. 2 (Paris: Gallimard, 1974).
- Bickermann, E. "À propos de la phénoménologie religieuse," *Revue des études juives* 99 (1935): 92–108. English translation: "On Religious Phenomenology," in *Studies in Jewish and Christian History*, vol. 2 (Leiden: Brill, 1986).
- Bollack, J. "Styx et serments," in *Revue des études grecques* 71 (1958): 1–35.
- Cassirer, E. *Sprache und Mythos, ein Beitrag zum Problem der Götternamen* (Leipzig: B. G. Teubner, 1925). English translation: *Language and Myth*, trans. Susanne K. Langer (New York: Harper, 1946).
- Cicero. *De natura deorum and Academica*, trans. H. Rackham (Cambridge: Harvard University Press, 1933).
- . *De officiis*, trans. Walter Miller (New York: Macmillan, 1913).
- . *The First Oration Against Verres*, trans. C. D. Yonge (London: George Bell and Sons, 1903).
- The Civil Law: Including The Twelve Tables, The Institutes of Gaius, The Rules of Ulpian, The Opinions of Paulus, The Enactments of Justinian, and The Constitutions of Leo*, trans. S. P. Scott, 17 vols. (Cincinnati: Central Trust, 1932).
- Codrington, Robert Henry. *The Melanesians: Studies in Their Anthropology and Folk-Lore* (Oxford: Clarendon, 1891).

- Dante. *The Divine Comedy*, vol. 1: *Inferno*, trans. Mark Musa (New York: Penguin, 2002).
- Demosthenes. *Orations*, trans. J. H. Vince, 7 vols. (Cambridge: Harvard University Press, 1930).
- Diogenes Laertius. *Lives of Eminent Philosophers*, trans. R. D. Hicks (Cambridge: Harvard University Press, 1925).
- Dionysius of Halicarnassus. *Antiquitates romanae*, ed. Charles Jacoby (Stuttgart: B. G. Teubner, 1967).
- Dumézil, G. [1]. *Mythe et épopée*, vol. 1 (Paris: Gallimard, 1968).
- Dumézil, G. [2]. *Mythe et épopée*, vol. 3 (Paris: Gallimard, 1973).
- Dumézil, G. [3]. *Idées romaines* (Paris: Gallimard, 1969).
- Dumézil, G. [4]. *La religion romaine archaïque, avec un appendice sur la religion des Étrusques* (Paris: Payot, 1966). English translation: *Archaic Roman Religion: With an Appendix on the Religion of the Etruscans*, trans. Philip Krapp (Chicago: University of Chicago Press, 1970).
- Faraone, C. A. "Curses and Blessings in Ancient Greek Oaths," *Journal of Ancient Near Eastern Religions* 5 (2006): 139–58.
- Festus, Sextus Pompeius. *De la signification des mots*, trans. M. A. Savagner (Paris: C. L. F. Panckoucke, 1846).
- Foucault, M. *History of Sexuality, Volume 1: An Introduction*, trans. Robert Hurley (New York: Vintage, 1990).
- Fowler, W. W. *Roman Essays and Interpretations* (Oxford: Clarendon, 1920).
- Fränkel, H. "Zur Geschichte des Wortes 'fides,'" *Rheinisches Museum* 71 (1916): 187–99.
- Gaius. *The Commentaries*, in *The Commentaries of Gaius and Rules of Ulpian*, ed. and trans. J. T. Abdy and Bryan Walker (Cambridge: Cambridge University Press, 1885).
- Gernet, L. [1]. *Anthropologie de la Grèce antique* (Paris: Maspero, 1968). English translation: *The Anthropology of Ancient Greece*, trans. John Hamilton and Blaise Nagy (Baltimore: Johns Hopkins University Press, 1981).
- Gernet, L. [2]. "Le droit pénal de la Grèce antique," in *Du châtement dans la cité* (Rome: École française, 1984).
- Glötz, G. "Iusiurandum," in C. Daremberg and E. Saglio, eds., *Dictionnaire des antiquités grecques et romaines . . .* (Paris: Hachette, 1900).
- Güntert, H. *Von der Sprachen der Götter und Geister* (Halle: Niemeyer, 1921).

- Hendrickson, G. L. "Archilochus and the Victims of His Iambics," *American Journal of Philology* 61 (1926): 101–27.
- Hesiod. *Theogony, Works and Days, Testimonia*, ed. and trans. Glenn W. Most (Cambridge: Harvard University Press, 2006).
- Hirzel, R. *Der Eid: Ein Beitrag zu seiner Geschichte* (Leipzig: Hirzel, 1902).
- Hobbes, T. *On the Citizen [De cive]*, ed. Michael Tuck and Michael Silverthorne (Cambridge: Cambridge University Press, 1998).
- Homer. *Iliad*, trans. A. T. Murray, 2 vols. (Cambridge: Harvard University Press, 1924).
- Imbert, J. "De la sociologie au droit: La fides romaine," in *Mélanges Lévy-Bruhl* (Paris: Recueil Sirey, 1959).
- Johnson, Michael J. "The Pontifical Law of the Roman Republic." PhD diss., Rutgers University, 2007.
- Kant, Immanuel. *Opus postumum*, ed. Eckart Förster and Michael Rosen (New York: Cambridge University Press, 1995).
- Kraus, C. *Mysterium und Metapher: Metamorphosen der Sakraments- und Worttheologie bei Odo Casel und Günter Bader* (Aschendorf: Münster, 2007).
- Lévi-Strauss, C. "Introduction à l'œuvre de M. Mauss," in M. Mauss, *Sociologie et anthropologie* (PUF: Paris, 1950). English translation: *Introduction to the Work of Marcel Mauss*, trans. Felicity Baker (Boston: Routledge, 1987).
- Livy. *History of Rome*, trans. B. O. Foster, 2 vols. (Cambridge: Harvard University Press, 1919).
- Loraux, N. *La cité divisée: L'oubli dans la mémoire d'Athènes* (Paris: Payot and Rivages, 1997). English translation: *The Divided City: On Memory and Forgetting in Ancient Athens*, trans. Corinne Pache and Jeff Fort (New York: Zone, 2001).
- Lucretius. *On the Nature of Things*, trans. W. H. D. Rouse (Cambridge: Harvard University Press, 1975).
- Lysias. "Against Simon," in *Lysias*, trans. W. R. M. Lamb (Cambridge: Harvard University Press, 1930).
- Lycurgus. *Against Leocrates*, in *Minor Attic Orators*, vol. 2, trans. J. O. Burt (Cambridge: Harvard University Press, 1962).
- Macrobius. *The Saturnalia*, trans. Percival Vaughn Davies (New York: Columbia University Press, 1969).
- Magdelain, A. *Ius Imperium Auctoritas* (Rome: École française, 1990).

- Maimonides. *Guide of the Perplexed*, trans. M. Friedlander, 3 vols. (London: Trübner, 1885).
- Marett, R. R. *The Threshold of Religion* (London: Methuen, 1909).
- Mauss, M. *Esquisse d'une théorie générale de la magie*, in *Sociologie et anthropologie* (Paris: PUF, 1950). English translation: *A General Theory of Magic*, trans. Robert Brain (New York: Routledge, 2001).
- Meillet, A. *Linguistique historique et linguistique générale* (Paris: Champion, 1975).
- Milner, J.-C. *De la syntaxe à l'interprétation* (Paris: Seuil, 1978).
- Müller, F. M. *Lectures on the Origin and Growth of Religion as Illustrated by the Religions of India (Hibbert Lectures)* (New York: Scribner's, 1879).
- Noailles, P. [1]. *Du droit sacré au droit civil: Cours de droits romain approfondi (1941-42)* (Paris: Recueil Sirey, 1949).
- Noailles, P. [2]. *Fas et jus: Études de droit romain* (Paris: Les Belles Lettres, 1948).
- Philo of Alexandria [1]. *Allegorical Interpretation of Genesis II and III (Legum allegoriae)*, in *Philo*, trans. F. H. Colson and G. H. Whitaker, vol. 1 (New York: Putnam, 1929).
- Philo of Alexandria [2]. *On the Birth of Abel and the Sacrifices Offered by Him and by His Brother, Cain (De sacrificiis Abelis et Caini)*, in *Philo*, trans. F. H. Colson and G. H. Whitaker, vol. 2 (New York: Putnam, 1929).
- Plato. *Cratylus*, in *Plato*, trans. R. G. Bury, vol. 4 (Cambridge: Harvard University Press, 1999).
- . *Critias*, in *Plato*, trans. R. G. Bury, vol. 9 (Cambridge: Harvard University Press, 1999).
- . *The Republic*, ed. G. R. F. Ferrari, trans. Tom Griffith (Cambridge: Cambridge University Press, 2000).
- . *Laws*, in *Plato*, trans. R. G. Bury, vols. 10 and 11 (Cambridge: Harvard University Press, 1967-68).
- Plescia, J. *The Oath and Perjury in Ancient Greece* (Tallahassee: Florida State University Press, 1970).
- Pliny. *Natural History*, trans. H. Rackham, vol. 3 (Cambridge: Harvard University Press, 1940).
- Plutarch. *Questiones romanae*, in *Moralia*, vol. 4, trans. Frank Cole Babbitt (Cambridge: Harvard University Press, 1936).
- Prodi, P. *Il sacramento del potere: Il giuramento politico nella storia costituzionale dell'Occidente* (Bologna: Il Mulino, 1992).

- Pufendorf, S. *De jure naturae et gentium* [1672] (Berlin: Akademie Verlag, 1998). English translation: *Of the Law of Nature and Nations*, trans. Basil Kennet (Clark, NJ: Lawbook Exchange, 2005).
- Riccobono, S., ed. *Fontes iuris romani antejustiniani*, vol. 1: *Leges* (Florence: Barbèra, 1941).
- Schied, John. "The Expiation of Impieties Committed Without Intention and the Formation of Roman Theology," in Jan Assmann and Guy G. Stroumsa, eds., *Transformations of the Inner Self in Ancient Religions* (Leiden: Brill, 1999).
- Scholem, G. *Judaica*, vol. 1 (Suhrkamp: Frankfurt am Main, 1973). English translation: "The Name of God and the Linguistic Theory of the Kabbala," trans. Simon Pleasance, *Diogenes* 20, nos. 79–80 (1972): 59–194.
- Servius. *Grammatici qui feruntur in Vergilii carmina commentarii*, ed. George Thilo and Hermann Hagen (Leipzig: Teubneri, 1881).
- Suetonius. *The Lives of the Twelve Caesars; An English Translation, Augmented with the Biographies of Contemporary Statesmen, Orators, Poets, and Other Associates*, ed. Alexander Thomson (Philadelphia: Gebbie, 1889).
- Tacitus. *Annales*. In *Complete Works*, trans. Alfred John Church and William Jackson Brodribb (New York: Random House, 1942).
- Tertullian. *Tertulliani Apologeticus*, trans. A. Souter (Cambridge: Cambridge University Press, 1917).
- Thomas, Y. "Corpus aut ossa aut cineres: La chose religieuse et le commerce," *Micrologus* 7 (1999): 73–112.
- Thucydides. *The History of the Peloponnesian War*, trans. Charles Foster Smith, 4 vols. (New York: Putnam, 1970).
- Torricelli, P. "Sul greco horkos e la figura lessicale del giuramento," *Atti Accad. naz. del Lincei* 36 (1981): 125–42.
- Ulpian. *The Rules*, in *The Commentaries of Gaius and Rules of Ulpian*, ed. and trans. J. T. Abdy and Bryan Walker (Cambridge: Cambridge University Press, 1885).
- Usener, H. *Götternamen: Versuch einer Lehre der religiösen Begriffsbildung* [1896] (Frankfurt am Main: Klosterman, 1985).
- Varro, Marcus Terentius. *On the Latin Language*, trans. Roland G. Kent (Cambridge: Harvard University Press, 1938).
- Vergil. *Bucolics, Aeneid, and Georgics of Vergil*, ed. J. B. Greenough (Boston: Ginn, 1900).

- Wessley, K. *Ephesia Grammata* (Vienna: Jahresbericht des Franz-Joseph Gymnasium, 1886).
- Wittgenstein, L. *On Certainty* (Oxford: Blackwell, 1969).
- Ziebarth, E. "Der Fluch im griechischen Recht," *Hermes* 30 (1895): 57–70.