

The Scene of Nature

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Precisely when it happens, how much time passes between when the first bullet is shot and when a body hits the ground – a few seconds, a couple of minutes – is irrelevant. For dying is an event; for the event, any event, happens. Now the killing of a person is not any event. Always in time and space, always situated, the killing of a person is a social event. Questions of when, where, why, and how belong to it. Because it is a social event, the killing of a person belongs in signification and concerns the law, as the institution responsible for the preservation of collective life. Depending on the legal construction of the killing of a person, the juridical apparatus will determine the adequate punishment. I am moving too fast, because punishment is only applicable after it is decided that the killing of a person is a crime: “an act punishable by law, as being forbidden by statutes or injurious to the public welfare” or “contingency as subjective willing of evil, [which] the universal authority must prevent or bring to justice” (Hegel 1952: 146). A crime takes place when the life that was interrupted has ethical significance, if the person is a member of the moral/legal collective. The killing of Amadou Diallo, in the South Bronx on February 4, 1999, was not considered an “act punishable by law,” nor “injurious to the public welfare”: the four officers were acquitted of two charges of second-degree murder and one charge of reckless endangerment. Neither murder nor sacrifice, the killing of Amadou Diallo is irrelevant before the law and public opinion, juridically and morally insignificant, because the person who lives in the South Bronx – the ethico-juridical thing standing at the entrance of that building on that night – was already dead.

While the above statement might remind the reader of Agamben’s (1998) notion of *bare life*, this concept cannot comprehend the ethic-juridical position I delineate here because, as will become evident by the end of this chapter, the black subject standing before the police officer(s) who shoot at him/her has never figured in the scene of life – hence the juridical and ethical irrelevance

of his/her death is not due to banishment. To the contrary: the ethico-juridical entity I delineate here is fully an effect of the very grammar that governs modern ethical and juridical texts, which guides legal decisions, the framing and functioning of legal institutions, as well as critical legal thought. Toward exposing precisely how the black subject before institutions of law enforcement is already dead – or, put differently, why NO is the obvious answer to the question *Black Lives Matter* answers, but never engages – in this chapter I try to comprehend the killing of Amadou Diallo by situating this event between two sets of *decisions* – the cops’ *decisions to shoot*, and the jurors’ *decisions to acquit* them – that constructed his existence as legally and ethically irrelevant. My contention here is that both enact the *analytics of raciality* as each indicates how representations of blackness – as refigured in the black body and urban spaces – (trans) *form* acts which would otherwise be defined as a crime, a subjectively (particular) determined act, into objectively (universal) determined events that are taken as *expressions* of how “laws of nature” regulate collective existence (Silva 2007).

Formulated as a critique of the modern subject, in its juridical and ethical instantiations, which highlights how its writing as a transparent “I” – the sole self-determined thing, i.e., the only one able to decide on its essence/existence and on the design/direction of its actions – the *scene of nature* addresses scientific signification as an instance of production of modern subjects, one which, unlike historical signification, institutes its objects as affectable things, that is, as subjected to the determination of both the “laws of nature” and other coexisting things.¹ With this analytical device I address Hegel’s distinction between “civil society” as the domain of particularity, of contingent, subjective ends, and the state, that in which contingency resolves into the “true universality” of spirit in the moment of “ethical life,” i.e., the moment of transparency, or “the actuality of the substantial will which it possesses in the particular self-consciousness once that consciousness has been raised to consciousness of its universality” (Hegel 1952: 155–6). More precisely, I revisit the thesis of law’s autonomy, its absolute universality, which is resolved anew in each decision, in which the law as “a universal prescription [is] applied to the single case” (Hegel 1952: 272). As such, this critique of modern ontology challenges the *transparency thesis* when it shows how scientific strategies configure the modern social landscape. My argument is that scientific universality mediates the subjective universality attributed to juridical subject (the “individual” formulated in liberal social ontology and presupposed in the legal apparatus) and “true universality,” the moment of transcendentality. As a social

¹ An elaboration of this argument is provided in Silva (2009).

scientific signifier, I contend, the racial (trans) *forms* acts otherwise conceived as contingent into expressions of universal determinants, the “laws of nature” as apprehended in scientific signification, which always already define how certain modern subjects appear before the law.

For this reason, when deployed in legal decisions, the racial “laws of nature” position the black person in a moral region inhabited by subjects not governed by the rule of law, namely, in affectability. Before and after the legal decisions – the *shooting* and the *acquittal* – the killing of Amadou Diallo would not constitute a crime because the *scene of nature* always already resolves it as a racial event, that is, as “urban violence.” This social scientific construct refigures the social position blackness signifies as a product of the arsenal of *raciality* whose role, as a political/symbolic signifier, is to institute a particular kind of modern subject, namely an affectable “I” – a category of person, a moral-juridical thing, a social thing whose existence is ruled by violence. My claim here is then: the arsenal of *raciality* places the person standing at that vestibule toward the horizon of death, that is, in the social position situated before (in front of) the scene of (ethical) life, which is the one played by social subjects protected by the institutions of law enforcement and the administration of justice.

1 ON SCIENTIFIC UNIVERSALITY

Regardless of the precise moment of its occurrence and of its immediate cause (the fatal bullet[s]), the killing of Amadou Diallo happens between two decisions, namely, the officers’ *decisions to shoot* and the jurors’ *decisions to acquit*. Knowing precisely when it happened is not the point here, for the person – the moral-juridical body – standing at that vestibule was already dead. Knowing this, however, does not resolve the question of why a particular black male was killed that night. Knowing that a black person will be killed, that such a thing “may happen [it is not enough] for it to happen”; the determinants of this singular event, the conditions of possibility for each singular death, are not my object here because “That which occurs, and thereby occurs only once, for the first and last time, is always something more or less than its possibility” (Derrida 1997: 18). Nevertheless, whatever preceded them, that which brought these events into being, the *decisions to shoot*, which would only be known after the event, interests me here precisely because it is the matter addressed in the *decisions to acquit* his killers, which is contingent on how the shooting is resolved in representation as a rehearsal of the *scene of nature*. Now, if “the conditions of possibility even existential ones, will never suffice in giving an account of the act or the event” (Derrida 1997: 17), would the analysis of the

decisions bring about its signification: circumscribe the event, obliterating any other possible account of what came to be?

My answer to this question is: *perhaps*. *Perhaps* my reading of these *decisions* will render these police killings of black persons “facts,” imprison them in a closed chain of possibilities, a causal series, thereby foreclosing alternatives and reinforcing, repeating, reenacting their deaths in re-presentation. A dangerous political gesture that would be, were I not starting from the acknowledgment that, before *the decisions*, the person killed as cops discharge their guns is already dead. My choice is to chart the conditions under which these *decisions* take place. If the event necessarily exceeds its conditions of possibility, any reading of these *decisions* is contingent on the circumstances they refigure. When mapping the circumstances delimiting *the decisions*, I am interested in how, before these singular events, it was already decided that the shooting of a defenseless, unarmed person does not constitute an “act punishable by laws,” but a moment of administration of justice – that the *shooting* was the performance of a duty, and the cops’ *decisions to shoot* were just.

How could the first *decisions* be(come) a moment of application of justice? Why could the killing of that particular person – a young black male – under the known circumstances not be considered a crime? These questions cannot be answered with the argument that *racial (or cultural) difference* qualifies universality, that they delimit its zone of deployment. Instead, I propose, that the arsenal of *raciality* crafts the representation of certain social events because social scientific universality produces a particular kind of causal explanation I capture with the construct the *scene of nature*, in which a particular mode of being human is marked by *affectability (exteriority/spatiality)* and is announced by death as the sole outcome of a given social event.

I intend to show how, as post–World War II sociology of race relations has rewritten *racial difference*, social scientific universality informs the political/symbolic context within which the killing of Amadou Diallo becomes a moment of application of justice. Liberal and historical-materialist versions of the *logic of exclusion*, I argue, retain the idea that *racial difference* remains the “empirical” basis of unbecoming racial ideas, beliefs or ideologies, which sustain actions that are at odds with properly the modern principle of universality.² During the past fifty years or so, social scientists have deployed the arsenal of *raciality* in studies of black communities, seeking to “discover” not only the structural effects of racist behavior, segregation, and discrimination, but also to map the particular kind of consciousness, the asocial, pathological social

² For a discussion of the post–World War II versions (liberal and historical materialist) of sociology of race relations, see Silva (2001).

subject that emerges in the racial spaces. In the sociological mapping of the ghetto's life, the figure of Bigger Thomas, the violent, careless, "asocial" ghetto dweller that Myrdal (1944) describes, became a consistent presence in later sociological studies.

For most, sociologists argue, this "asocial" sociological consciousness was the product of segregation, housing decay, unemployment, and family instability in Northern cities. Though assuming that "race prejudice," individual and institutional racism as we name it now, creates segregation and discrimination, which produce "pathological" urban spaces, the sociological toolbox also assumes that the ghetto, the inner city, or the central city actualize the economically dispossessed black consciousness. As Kenneth Clark (1965: 81) states, "Not only is the pathology of the ghetto self-perpetuating, but one kind of pathology breeds another. The child born in the ghetto is more likely to come into a world of broken homes and illegitimacy; and this family and social instability is conducive to delinquency, drug addiction, and criminal violence. Neither instability nor crime can be controlled by police vigilance or by reliance on the alleged deterring forces of legal punishment, for the individual crimes are to be understood more as symptoms of the contagious sickness of the community itself than as the result of inherent criminal or deliberate viciousness." What distinguishes these formulations is the fact that, even as they construct *racial difference* as extraneous to, at odds with, the principles expressed in post-Enlightenment social configurations, they rewrite the racial as tool of social scientific knowledge which captures forms of modern (cultural) representation – racial beliefs or ideologies – as universal (formal and exterior) determinants whose main effect is to (re)produce the *social* (economic and juridical) *difference* of the racially marginalized.

My reading of the opening statements of the Diallo trial indicates how this sociological toolbox reproduces the event as a play in which affectability (as "social pathology") becomes the distinguishing attribute of the racial subaltern.³ In the *scene of nature*, re-presentation, the resolution of events in signification, the arsenal of *raciality* produces a moral text, in it the personas do not rehearse the principles – universality and self-determination – governing post-Enlightenment conceptions of law and morality. Instead, the arsenal of raciality produces an account of the event, the killing of Amadou Diallo, in which death becomes the sole possible outcome because *racial*

³ As Kelley argues, the social scientific literature on the ghetto produced in the 1960s and 1970s "not only conflates behavior with culture, but when social scientists explore "expressive" cultural forms or what has been called "popular culture" (such as language, music, and style), most reduce it to expressions of pathology, compensatory behavior, or creative 'coping mechanisms' to deal with racism and poverty" (Kelley 1997: 16–17).

difference – refigured in Diallo’s body and the Bronx – institutes *affectable* (outer-determined) subjects, in a moral stage not protected by legal apparatus because it is not inhabited by the “particular self-consciousness” that, as Hegel states, has already “been raised to the consciousness of its universality,” i.e., *man*, the *transparent* “I.”

2 NO MAN’S LAND

From the outset, the killing of Amadou Diallo was re-presented as a *racial* event. To New York City’s inhabitants the fact that a young black male was shot forty-one times by white cops while standing at the entrance of his building in the Bronx belonged to the terrain of signification of the racial, that domain of “prejudice” and “false beliefs” liberal thought sets in opposition to *universality*. These are not “abstract legal subject[s] . . . free and equal with all other legal subjects, liberated from all substantive ties and immune from all determination not of itself” (Fitzpatrick 1992: 156). As the case was often perceived, the prosecution represents the People (of color) of the state of New York against four white NYPD officers who murdered a young black male without concern for his life or the lives of other residents of the overwhelmingly black and brown neighborhood.

Although it was neither the first registered case of police brutality nor the only one taken to the courts, the killing of Amadou Diallo underscored how policing re-presents the racial map of New York City’s political landscape. From protests organized by his neighbors in the Bronx and across the state of New York to acts of civil disobedience headed by politicians and celebrities, the days between the shooting and the beginning of the trial saw a challenge to law’s assumed autonomy. As the former Mayor Rudy Giuliani’s “tough” stance on crime became an indication of how governmental authority had mapped the urban space, a *political/symbolic* map demarcated the regions where the law plays a punitive role. This racial mapping of the City of New York’s “body politic” determined that the first *decisions* – the shooting – would be(come) the object of legal scrutiny.

Filling up a form that would be part of a cursory internal, bureaucratic investigation, after which other police officers would decide if the cops had acted beyond that which is warranted by their duty, would not suffice. A criminal case was filed, requiring that the police officers submit their decisions to the scrutiny of a court of law. The prosecution’s case construes the officers’ *decisions to shoot* as guided by intent to kill (in the first count of the indictment) and indifference to human life regardless of intent (in the second and third

counts).⁴ Neither motive nor premeditation is brought into consideration – at stake here is whether there was intent to kill and unquestionable indifference to whether others would be hit by the bullets. The social context of the shooting – the racial map of New York City’s political landscape – frames the prosecution’s case. “I recognize,” the prosecutor remarks in a statement about the indictment, “that the death of Amadou Diallo has a context larger than the facts of this case. Feelings of fear and frustration abound. Troubling questions have been raised, particularly in communities of color but certainly not limited to them, regarding police/community relations, civil liberties and the issue of respect. Questions have also been raised about public safety. All of us cherish the reduction in crime, and none of us wants it to go back up. These questions must be addressed. Certainly we need law and order, but we should not have to sacrifice the freedoms they are designed to protect.”

Fear, disrespect, and the threat of freedoms, mentioned in the prosecutor’s statements, refer to a particular mode of existing in New York City; that these are caused by the acts of police officers indicates a (*political*) position before the state and the law (enforcement) that escapes liberal accounts of the universality of the laws of the body politic. Not an abstract body, the city here is racially determinate: the killing of Diallo is an indication of how people of color – particularly black and brown persons residing in dispossessed urban spaces – stand differentially before the state (the city) and law enforcement apparatus. Not surprisingly, the juridical interpretation of the event, the *decisions to acquit* Diallo’s shooter, reinstates the proper legal subject by deploying a version of New York’s map, which reinstates juridical universality only by writing the shooting as an effect of something that already hindered individual self-determination, of something ruled by objectivity and necessity, which meant that the cops did not own their *decisions to shoot*. That Amadou Diallo died not because the cops had decided to kill him but because they were caught in circumstances in which death, someone’s, anyone’s death was the necessary outcome; they killed Diallo because they had to. The defense’s successful case relied on a construction of the event as a social situation in which death – someone’s death, anyone’s death – is the sole possible outcome.

Haunting the juridical interpretation of the event was the question: Why did these particular individuals shoot Amadou Diallo forty-one times? The key

⁴ The material analyzed and quotes from the District Attorney and defense lawyers used in the section can be found at [<http://www.courtvt.com/archive/national/diallo/indictment.ctv.html>], last accessed on June 23, 2005; and at [<http://criminaldefense.homestead.com/diallo.html>], last accessed on July 2, 2016.

to understanding the defense's successful construction of the event resides in the answer the defense lawyers give to this question, which was not asked by the prosecution. Forty-one bullets were fired at a young black male standing at the entrance of a building in the South Bronx. Why? According to the first lawyer to introduce the defense's case, the prosecution's refusal to explicitly address motive was cause for disappointment and compelling. He offers the jurors three (im)possible answers to the question: (1) that the cops had left their homes with the plan to kill someone, (2) that they went insane on that night, and (3) that the "four police officers individually, individually, as officers with training, experience and knowledge and common sense, made the decision, the very important decision and a last-resort decision, that they had to fire their weapons to remove a threat." Why were the defense lawyers interested in providing a justification for the officers' forty-one pulls of the trigger? Their answer is misleadingly obvious: the performance of their duty. Motive is crucial to the defense because their objective was to prove that the killing of Amadou Diallo was not a criminal act, but a legal, rational one, according to the law and common sense.

Now the problem is that the officers had fired thirty-eight times more than they are said to be trained to do – of course, if one accepts that per their training police officers are allowed to kill (by shooting three times in the chest) anyone, that the state should exercise its right to use deadly force whenever its law enforcement agents see it fit. There was an excess of thirty-eight bullets fired at one sole person by four men. The defense knew that duty – which Kant (1993) defines in part as that which must be followed regardless of personal desire, inclinations, or interest – alone could not help their case. Neither would an emphasis on their psychological state, which risked confirming the prosecution's argument that the cops shot Diallo because they were racist. Facing the need to exculpate the police (as a political institution) and the cops (as individuals), the defense produces an interpretation of the event in which the excess of thirty-eight bullets is explained as the effect of a kind of universality, that of sociological determinants, of "the facts," which produced the particularities of the event (the shooting), but not the particularities (institutional and individual) of the shooters.

The solution was to place the event, the shooting, in a scene, a text in which the cops' actions (the shooting) rehearse an "objective" (scientific and commonsense) interpretation of the "facts." In it, the shooters appear as "rational" (as opposed to pathological) agents, who acted accordingly. They "fired their weapons to remove a threat" – not a perceived, imagined threat, but a "real" threat, the reality of which is supported by *what-is-known*. "We believe," the first defense lawyer states, "the proof will show the total absence of any motive

in this case other than self-defense, other than a well-founded fear that these officers had to fire to protect their lives and the lives of one another.” This statement is not fortuitous. The defense needed to dismiss the other possible motive, individual racism, implicit in the prosecution’s opening statements. “The reason we are here,” the defense attorney states, “is it got out in this collective wisdom, as to motive and as to why these officers shot, that they were racists, that there is racism here and that’s why they fired their weapons. And today, as we begin this case, that lie, that lie, begins to die. And when this case ends and the evidence is over, that lie, that racism nonsense, will be put to rest once and for all.”

Neither could the *decisions to shoot* be considered another instance of policing practice, the effect of institutional racism. “Police officers in the City of New York,” the lawyer proceeds, “have six million encounters with civilians every year. There are [*sic*] something on the order of approximately 300 shootings. Things like this don’t happen all the time, because it takes a confluence of events to all go wrong at one time and lead to a tragedy like this” (trial transcript). The killing of Amadou Diallo was a “tragedy,” the result of a confluence of events. Not another instance of police brutality, not another moment of disregard for the lives of black and brown New Yorkers – this is not a case of racial discrimination, of “bias and prejudice.” Nothing in the facts of the event, the defense contends, could prove that the officers shot Diallo because he was black: his killing was exceptional. Why did it happen, then? Why were the officers so afraid that they had to fire forty-one times in self-defense? Why were they so certain that the black male standing at that vestibule was a threat? Why did they have to kill him?

Fear here results neither from instinct nor from contingency. It derives from *what-is-known*. From training and experience, the lawyers stated, the officers knew the neighborhood and the threats it housed all too well – the only thing they did not know, which renders the event a “tragedy,” according to the defense, is that Amadou Diallo did not have a gun. The defense’s “evidence” would show that the officers had not committed murder, that they had shown no reckless disregard for human lives, that they fired because they were afraid (but also because “if a police officer has the right to fire, he has the right to fire”). What the defense told the jurors was that the officers’ decisions to fire were justified, they were legal, and the jurors, agreeing with the reconstruction of the event presented by the defense lawyers, the defendants, and the witnesses, decided accordingly. The officers were acquitted because their *decisions to shoot* withstood juridical scrutiny.

What the *decisions to acquit* indicate is how *scientific universality* sustains *juridical universality*. The defense’s successful case rested on a construction of

the event as a moment in which four rational men, experienced and trained police officers, found themselves fending for their lives. Why were they afraid? Before turning onto Wheeler Avenue, before learning that someone stood at the vestibule of the building number 1157, before learning that only one person stood there, before learning whether that person was armed, the officers *knew* they were in *danger*. According to the second defense lawyer, the jurors *already knew* the answer to this question because they were going to “hear about crime in the south Bronx, the Soundview section of the Bronx, one of the most dangerous neighborhoods in New York City. You are now going to hear about robberies and rapes and drug dealing and a lot about illegal guns . . . about police officers shot and killed . . . [The officers] were given the most dangerous assignment imaginable. They were sent in to protect the poorer neighborhoods, which turn out to be the high-crime neighborhoods, by taking guns off the street . . . [T]hese four reasonable, good officers disarmed people, armed criminals in Bronx County, risking their lives for the citizens of places like Soundview.” They *already knew* that place, that it was *dangerous*. No other NYPD cops were as knowledgeable of this risk as those assigned to the Street Crime Unit.

Four well-trained, reasonable, police officers; hardworking, family men, all of them members of *safe* New York City who risked their lives to protect those people living in *dangerous* neighborhoods: Why have they killed one of them? Because, the third lawyer says, “the officers honestly and reasonably believed that they were confronting an armed criminal in the vestibule that night. They didn’t know and they had no reason to know that they were confronting Ahmed Diallo, peddler.” By now the defense had already reminded the jurors that the cops were well trained, but that they were also fearful. They were afraid of the neighborhood they were sent to protect, of the “armed criminals,” “rapists,” “robberers,” and “murderers” they *already knew* would be found there. They shot Diallo forty-one times because they did not *know* that he was not one of the latter. They did not *already know* this crucial “fact” because, as he tells the jurors, “the evidence will show that he [Diallo] was a saint who felt compelled, for reasons best known to him but that we hope to go into, to avoid the police. And that reaction caused a chain reaction that caused this tragic event to happen.” Self-determination had no place there; it was a chain of death: the cops shot him forty-one times because Diallo had acted “suspiciously,” because he avoided the police but more importantly because of what they *already knew*; because “the next block over from Wheeler Avenue was Elder Avenue, a street that was so rife with drug dealing that the police department had to close it off for a year with barricades on either side of the block in order to close down the drug market and keep the citizens at peace.” Whether Amadou Diallo was also

afraid or not does not belong to this interpretation of the event because, unlike the cops, he was already dead. From the officers' point of view, from what they *knew*, he was acting suspiciously and his actions unleashed the chain reaction.

What happened then? Experience, training, the black object, the small black automatic weapon of choice of South Bronx criminals: When the black object came out of Mr. Diallo's pocket in that dimly lit vestibule, his client yelled "Gun." After that, the same lawyer proceeds, "several seconds is all that transpired. Each of the officers fired his gun because he believed that he and his brother officers were in danger." Fear of certain death led four armed officers to fire forty-one times at a "dimly lit vestibule" because, he proceeds, "Mr. Diallo had taken the officers into the no man's land that's every police officer's nightmare," this conduct had his client "scrambling for cover because he believed he would never see his wife and children again." Forty-one shots fired. Not because the officers were shot at, but because they could not see well, they saw "on the periphery one of [their] brother officers falling backwards out of that vestibule . . . He was scrambling for cover."

The officers' senses failed them. If there, the defense lawyer tells the jurors, "you would see what turned out to be the reflection of your own muzzle shots and you would hear what turned out to be the ricochet of your own bullets . . . and you hear the roars of your own gun echoing back at you as if somebody from inside the vestibule were firing at you." Their senses failed them, so the cops had to act upon what they *knew*. And what they *already knew* filled them with fear, such great fear, "that in the horror of those few terrible seconds more than half of the shots that these officers fired missed, proving the tension that they were under, proving the fear that they were under." If the cops were given the chance to "reflect," if only Diallo had given them the chance: "they didn't know that Mr. Diallo was unarmed and that he had pulled out his wallet." And Diallo didn't say to them, "Guys, I live here . . . He didn't keep his hands in view . . . If only he did." If only he had not taken the officers to that "no man's land," they would not have killed him, the defense lawyer argues. Officer Sean Carroll would not have to be "traumatized" and remain traumatized a year after the event, after the night "he [ran] over to Mr. Diallo and attempted to give him CPR and he pleaded with him, 'Don't die. Please, don't die.'"

What sort of questions the jurors asked as they listened to these opening statements, to expert witnesses, Diallo's neighbors', and the cops' testimonies, and when they weighed the evidence, I do not know. What I know is their *decisions*, that they agreed with the third defense lawyer that "on February 4, 1999, at 1157 Wheeler Avenue in the Bronx no crime was committed. Amadou Diallo died as a result of four police officers' legally justified conduct that

occurred while patrolling the *dangerous* streets of the Bronx” (my italics). Each of them accepted the defense lawyers’ invitation to step into the officers’ shoes, to appreciate their frame of mind, their training, experience, and fear; each of them agreed that “a mistake happened,” as the fourth lawyer states, “A mistake caused by fear, fear of losing your life, fear that your colleagues *had been shot*, fear of having to make a decision in a split second, a split second, whether to shoot in defense of yourself and your colleagues or take the risk of *being shot yourself*. This is a tragedy, not a crime” (my italics). A “mistake,” forty-one “mistakes” were made, and a “tragedy” took place, because “[Officer] Ken Boss and his colleagues believed that they faced in a split second a deadly threat.” Each juror weighed Diallo’s life, the officers’ lives, the lives of the people who live in the Bronx, and they did so knowing that “there is violence, because it is far from a perfect world . . . we hire people, we ask people to protect us, to protect our lives, to try to make it safe for us to live and raise our families.” Each juror recognized that Ken Boss’s job “is one of the most dangerous jobs in the police department”; each recognized that “[i]t is a terrible thing that we have to have people do that, but *it is a necessity in the Bronx*” (my italics).

The jurors, each a resident of *safe* Albany, miles away from the Bronx, all reasonable citizens, could appreciate how terrible was the need to have people whose job is to go to violent places like the Bronx to wrestle weapons from armed criminals; they could appreciate the fear, they could place themselves in the shoes of the cops, understand Carroll’s “frame of mind” when he saw a “black object,” understand the others’ reactions when they heard “gun,” saw Carroll falling, heard the echoes of their own shots. In that “no man’s land” that Diallo forced them into, they were afraid. What each juror *already knew* was the “fact” that the men sitting in the defendants’ chair were “no villains.” Each juror decided, nine times, the officers’ forty-one decisions to shoot did not constitute a crime, they were afraid, they shot in self-defense, because they *already knew* that Amadou Diallo would have and had already shot them, each of them, all of them, with that black object, which turned out to be a wallet, in which he carried his immigration paper, the document that proved his “right” to reside in South Bronx, with its “armed criminals,” “robbers,” “rapists,” and “drug dealers.” Most probably none of the jurors had ever seen that black object, the small black automatic gun, which turned out to be a wallet. Each heard the witnesses, the defendants, their lawyers, the prosecutor, and decided nine times that the killing of Amadou Diallo was a “tragedy,” an exceptional event, the result of “mistakes.” Diallo’s “mistakes”: He had come from West Africa to the United States. He worked in Manhattan. He lived in South Bronx. On that night he was standing and walking back and forth at the entrance of his building. He did not stop when the cops told him to. Instead

he walked back into the vestibule. He took his wallet out of his pocket. He held his left hand out as the officers told him to do and his right hand in which he had his wallet. He died because he did not do what the officers told him to do and because he did precisely what he was told. The whole event lasted not more than ten seconds. A car stops, four men get out, approach another man standing in a small space. They tell him they are police officers, tell him to put his hands up. He walks no more than a foot. Reaches for his wallet, shows his hands. The officers shoot forty-one times. All took less than ten seconds.

Within a few seconds an event took place, a singular event, for a person dies once. What happened on that February night, one of the lawyers says, was “destiny,” it was bound to happen, the predictable outcome of a chain of events that took place at a particular place: the killing of Amadou Diallo was an *already-known* event, a social event. According to the victorious representation of what happened, it resulted because Diallo’s conduct took the officers to a particular mental space, a “no man’s land,” the place of affectability (outer-determination), where fear becomes rational, where emotion becomes a reasonable basis for action, where the senses fail, the stomach is sickened, where excess becomes the right measure. We *already know* so much about that place, even without going there, there where force rules, where the law and its agents face but death. Where is that place?

3 BEFORE THE EVENT

Neither Hobbes’ nor Locke’s formulations of the “state of nature,” as that which precedes the emergence of political society and is ruled by natural law, nor the (irrational/a-historical) domain ruled by instincts, the forces operating in Freud’s notion of the unconscious, the *scene of nature* captures a mode of existing in *exteriority/spatiality*, thoroughly determined by universal (Kant’s transcendental) reason. This follows a formulation of reason as productive – in that it always already mediates that which is accessible to representation – but, nevertheless, *exterior*. It is constituted by *what-is-known* – what may be observed or predicted – but which does not need to come into being in order to have an effect.

Needing neither expression nor actualization, belonging neither to time nor to space, being neither possible nor potential, the *scene of nature* is virtual, whatever takes place there *is known*. *What-is-known* does belong in signification, it presumes signifiers but the closure, signification, takes place in justification, as it provides an explanation for that which is a privilege of the living (sovereign) thing, namely, the decision. For *what-is-known* is a signifying reservoir to which the arsenal of racial knowledge has also contributed: as the

scene of nature is rehearsed every time a black person is stopped by the highway patrol for search, every time a black or brown person is closely observed by store surveillance, by a convenience store owner or employee. Precisely because it stands there, *before* the decision, always available at the moment of closure, of resolution, of signification, the *scene of nature* rehearses the play of death, that which delimits the horizon of life, as it brings it about while announcing its obliteration. How so? As my description of resolution (comprehension, interpretation, decision) of the killing of Amadou Diallo indicates, any enactment of the *scene of nature* repeats the crucial effects of scientific signification, which is to produce a particular kind of modern subject, namely the *affectable* “I” – the thing of outer-determination, the one which thrives before the horizon of death.

From Émile Durkheim to Talcott Parsons and afterwards, the uncovering of universal determinants depends on the mapping of conditions of collective existence, the identification of its various moments, the specification of their functions, and the circumscription of a totality which is both an *actualization* and an *expression* of a particular consciousness. These social scientific products are very rapidly endowed with the same kind of “objectivity” that racial difference acquired. That they are products of scientific discourse is quickly forgotten, for they become *facts*. The kind of “social facts,” commonsense truths the jurors *already knew*. As the products of sociological knowledge invade common sense to become “facts,” the *scene of nature* emerges as another moment of materialization of raciality, another strategy of racial subjection. When the defense lawyers built their case, they brought a socially contingent event into the universal domain of the law to purify it from the references to racism. And yet, the arsenal of raciality does its work as their references to danger, fear, and crime recall a mode of existing not bounded by the rule of law but ruled by another universal: the sociological laws which produced the South Bronx and its (black and brown) “armed criminals,” “rapists,” “robbers,” and “murderers” as so violent that the state itself trembles at the core of its authorized violent apparatuses.

What preexists and remains after the event of the killing of Amadou Diallo? The analytics of raciality, the reservoir of racial knowledge, which casts the officers’ *decisions* to kill as a passage of the play of universal reason, namely the *scene of nature*. Without a beginning or an end, each of its deployments re-produces racial subjugation when it delimits, circumscribes, and tames the locus of *affectability* – the mark of death. When it explains as a matter-of-course the acts of total violence afflicting the economically dispossessed urban and global regions where the racial subaltern live and die.

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